

the salary which that member would receive but for the assignment under this section or the salary of the position to which that member is assigned.

(2) The salary of a member of the Service assigned under this section shall be paid from appropriations made available for the payment of salaries and expenses of the Service. Such appropriations may be reimbursed for all or any part of the costs of salaries and other benefits for members assigned under this section.

(3) A member of the Service assigned under subsection (a)(4) of this section to a Member or office of the Congress shall be deemed to be an employee of the House of Representatives or the Senate, as the case may be, for purposes of payment of travel and other expenses.

(c) Length of assignment

Except as otherwise provided in subsection (d)(5) of this section, assignments under this section may not exceed four years of continuous service for any member of the Service unless the Secretary approves an extension of such period for that member because of special circumstances.

(d) Assignment to the American Institute in Taiwan

(1) The Secretary may assign a member of the Service, or otherwise detail an employee of the Department, for duty at the American Institute in Taiwan, if the Secretary determines that to do so is in the national interest of the United States.

(2) The head of any other department or agency of the United States may, with the concurrence of the Secretary, detail an employee of that department or agency to the American Institute in Taiwan, if the Secretary determines that to do so is in the national interest of the United States.

(3) In this subsection, the term “employee” does not include—

(A) a noncareer appointee, limited term appointee, or limited emergency appointee (as such terms are defined in section 3132(a) of title 5) in the Senior Executive Service; or

(B) an employee in a position that has been excepted from the competitive service by reason of its confidential, policy-determining, policy-making, or policy-advocating character.

(4) An assignment or detail under this subsection may be made with or without reimbursement from the American Institute in Taiwan.

(5) The period of an assignment or detail under this subsection shall not exceed a total of 6 years, except that the Secretary (or any other head of a department or agency of the United States, with the concurrence of the Secretary) may extend the period of an assignment or detail for an additional period of not more than 6 years.

(Pub. L. 96-465, title I, § 503, Oct. 17, 1980, 94 Stat. 2093; Pub. L. 107-228, div. A, title III, § 326, Sept. 30, 2002, 116 Stat. 1386.)

AMENDMENTS

2002—Subsec. (c). Pub. L. 107-228, § 326(2), substituted “Except as otherwise provided in subsection (d)(5) of this section, assignments” for “Assignments”.

Subsec. (d). Pub. L. 107-228, § 326(1), added subsec. (d).

§ 3984. Service in United States and abroad

(a) Obligation to serve abroad; length of stay in United States

Career members of the Service shall be obligated to serve abroad and shall be expected to serve abroad for substantial portions of their careers. The Secretary shall establish by regulation limitations upon assignments of members of the Service within the United States. A member of the Service may not be assigned to duty within the United States for any period of continuous service exceeding eight years unless the Secretary approves an extension of such period for that member because of special circumstances.

(b) Intermittent duty within United States

Consistent with the needs of the Service, the Secretary shall seek to assign each career member of the Service who is a citizen of the United States (other than those employed in accordance with section 3951 of this title) to duty within the United States at least once during each period of fifteen years that the member is in the Service.

(c) Sabbaticals

The Secretary may grant a sabbatical to a career member of the Senior Foreign Service for not to exceed eleven months in order to permit the member to engage in study or uncompensated work experience which will contribute to the development and effectiveness of the member. A sabbatical may be granted under this subsection under conditions specified by the Secretary in light of the provisions of section 3396(c) of title 5, which apply to sabbaticals granted to members of the Senior Executive Service.

(Pub. L. 96-465, title I, § 504, Oct. 17, 1980, 94 Stat. 2094; Pub. L. 103-236, title I, § 180(a)(5), Apr. 30, 1994, 108 Stat. 416.)

AMENDMENTS

1994—Subsec. (b). Pub. L. 103-236 inserted “(other than those employed in accordance with section 3951 of this title)” after “citizen of the United States”.

§ 3985. Temporary details

A period of duty of not more than six months in duration by a member of the Service shall be considered a temporary detail and shall not be considered an assignment within the meaning of this subchapter.

(Pub. L. 96-465, title I, § 505, Oct. 17, 1980, 94 Stat. 2094.)

SUBCHAPTER VI—PROMOTION AND RETENTION

§ 4001. Promotions

(a) Method of promotion

Career members of the Senior Foreign Service are promoted by appointment under section 3942(a) of this title to a higher salary class in the Senior Foreign Service. Members of the Senior Foreign Service serving under career candidate appointments or noncareer appointments

are promoted by appointment under section 3943 of this title to a higher salary class in the Senior Foreign Service. Foreign Service officers, and Foreign Service personnel who are assigned to a class in the Foreign Service Schedule, are promoted by appointment under section 3942(a) of this title as career members of the Senior Foreign Service or by assignment under section 3964 of this title to a higher salary class in the Foreign Service Schedule.

(b) Recommendations and rankings of selection boards

Except as provided in section 4006(a) of this title, promotions of—

(1) members of the Senior Foreign Service, and

(2) members of the Service assigned to a salary class in the Foreign Service Schedule (including promotions of such members into the Senior Foreign Service),

shall be based upon the recommendations and rankings of selection boards established under section 4002 of this title, except that the Secretary may by regulation specify categories of career members, categories of career candidates, and other members of the Service assigned to salary classes in the Foreign Service Schedule who may receive promotions on the basis of satisfactory performance.

(c) Eligibility; request for promotion; time of consideration; withdrawal of request; basis for decision; affidavits

(1) Promotions into the Senior Foreign Service shall be recommended by selection boards only from among career members of the Service assigned to class 1 in the Foreign Service Schedule who request that they be considered for promotion into the Senior Foreign Service. The Secretary shall prescribe the length of the period after such a request is made (within any applicable time in class limitation established under section 4007(a) of this title) during which such members may be considered by selection boards for entry into the Senior Foreign Service. A request by a member for consideration for promotion into the Senior Foreign Service under this subsection may be withdrawn by the member, but if it is withdrawn, that member may not thereafter request consideration for promotion into the Senior Foreign Service.

(2) Decisions by the Secretary on the numbers of individuals to be promoted into and retained in the Senior Foreign Service shall be based upon a systematic long-term projection of personnel flows and needs designed to provide—

(A) a regular, predictable flow of recruitment in the Service;

(B) effective career development patterns to meet the needs of the Service; and

(C) a regular, predictable flow of talent upward through the ranks and into the Senior Foreign Service.

(3) The affidavit requirements of sections 3332 and 3333(a) of title 5 shall not apply with respect to a member of the Service who has previously complied with those requirements and who subsequently is promoted by appointment to any class in the Senior Foreign Service without a break in service.

(4) Not later than March 1, 2001, and every four years thereafter, the Secretary of State shall submit a report to the Speaker of the House of Representatives and to the Committee on Foreign Relations of the Senate which shall include the following:

(A) A description of the steps taken and planned in furtherance of—

(i) maximum compatibility among agencies utilizing the Foreign Service personnel system, as provided for in section 3923 of this title, and

(ii) the development of uniform policies and procedures and consolidated personnel functions, as provided for in section 3924 of this title.

(B) A workforce plan for the subsequent five years, including projected personnel needs, by grade and by skill. Each such plan shall include for each category the needs for foreign language proficiency, geographic and functional expertise, and specialist technical skills. Each workforce plan shall specifically account for the training needs of Foreign Service personnel and shall delineate an intake program of generalist and specialist Foreign Service personnel to meet projected future requirements.

(5) If there are substantial modifications to any workforce plan under paragraph (4)(B) during any year in which a report under paragraph (4) is not required, a supplemental annual notification shall be submitted in the same manner as reports are required to be submitted under paragraph (4).

(Pub. L. 96-465, title I, § 601, Oct. 17, 1980, 94 Stat. 2094; Pub. L. 100-204, title I, § 185(b), Dec. 22, 1987, 101 Stat. 1366; Pub. L. 103-236, title I, § 180(a)(6), Apr. 30, 1994, 108 Stat. 416; Pub. L. 106-113, div. B, § 1000(a)(7) [div. A, title III, § 326], Nov. 29, 1999, 113 Stat. 1536, 1501A-437.)

AMENDMENTS

1999—Subsec. (c)(4), (5). Pub. L. 106-113 added pars. (4) and (5) and struck out former par. (4), which required report not later than Mar. 1 of each year, describing steps taken and planned in furtherance of compatibility and development of uniform procedures and consolidated personnel functions, specifying upper and lower limits planned for recruitment, retention, and advancement of members, and specifying numbers of members assigned to positions more than one grade higher or lower than the member.

1994—Subsec. (b). Pub. L. 103-236, which directed amendment of par. (2) by striking “and” the last place it appears and by inserting “and other members of the Service” after “categories of career candidates,” was executed by striking “and” after “categories of career members,” and making the insertion in concluding provisions below par. (2), to reflect the probable intent of Congress.

1987—Subsec. (c)(4). Pub. L. 100-204 added par. (4).

REPORTS ELIMINATED

Pub. L. 104-66, title II, § 2241, Dec. 21, 1995, 109 Stat. 733, which provided that reports required under section 4001(c)(4) of this title would not cover activities of the United States Information Agency, was repealed by Pub. L. 105-277, div. G, subdiv. A, title XIII, § 1336(5), Oct. 21, 1998, 112 Stat. 2681-790.

LANGUAGE TRAINING IN FOREIGN SERVICE

Pub. L. 102-138, title I, § 155, Oct. 28, 1991, 105 Stat. 675, as amended by Pub. L. 105-277, div. G, subdiv. A, title

XIII, §1335(q), Oct. 21, 1998, 112 Stat. 2681-789, provided that: “The Department of State and the Department of Commerce shall ensure that the precepts for promotion of Foreign Service employees provide that end-of-training reports for employees in full-time language training shall be weighed as heavily as the annual employee efficiency reports, in order to ensure that employees in language training are not disadvantaged in the promotion process.”

FOREIGN SERVICE PROMOTION PANELS

Pub. L. 101-246, title I, §163, Feb. 16, 1990, 104 Stat. 47, as amended by Pub. L. 107-132, §1(b), Jan. 16, 2002, 115 Stat. 2412, provided that: “It is the sense of the Congress that, to the greatest extent possible, Foreign Service promotion panels should—

“(1) only promote candidates to the Senior Foreign Service who have demonstrated foreign language proficiency in at least one language at the General Professional Speaking Proficiency level, as defined by the George P. Shultz National Foreign Affairs Training Center;

“(2) strive for the objective stipulated in the Foreign Service Manual ‘to be able to use two foreign languages at a minimum professional level of proficiency of S-3/R-3, which is the general professional speaking proficiency level’; and

“(3) have at least one person on each Foreign Service promotion panel who has attained at least the General Professional Speaking Proficiency level in one language level.”

LANGUAGE PROFICIENCY IN EMPLOYEE EVALUATION REPORT

Pub. L. 101-246, title I, §164, Feb. 16, 1990, 104 Stat. 47, required revision of employee and officer evaluation reports for Foreign Service officers of Department of State and Agency for International Development to include separate assessment of employee’s effectiveness in using foreign language and required that precedence in promotion be given to officers achieving certain levels of proficiency in foreign language, prior to repeal by Pub. L. 103-236, title I, §191(b), Apr. 30, 1994, 108 Stat. 418. See section 191(a) of Pub. L. 103-236, set out as a note under section 3926 of this title.

§ 4002. Establishment of selection boards

(a) Evaluation of performance; recommendations

The Secretary shall establish selection boards to evaluate the performance of members of the Senior Foreign Service and members of the Service assigned to a salary class in the Foreign Service Schedule. Selection boards shall, in accordance with precepts prescribed by the Secretary, rank the members of a salary class on the basis of relative performance and may make recommendations for—

(1) promotions in accordance with section 4001 of this title;

(2) awards of performance pay under section 3965(c) of this title;

(3) denials of within-class step increases under section 3966(a) of this title;

(4) offer or renewal of limited career extensions under section 4007(b) of this title; and

(5) such other actions as the Secretary may prescribe by regulation.

(b) Public members; appointment of women and minority groups

All selection boards established under this section shall include public members. The Secretary shall assure that a substantial number of women and members of minority groups are appointed to each selection board established under this section.

(c) Disqualification for service on foreign service selection boards

No public members appointed pursuant to this section may be, at the time of their appointment or during their appointment, an agent of a foreign principal (as defined by section 611(b) of this title) or a lobbyist for a foreign entity (as defined in section 1602(6) of title 2) or receive income from a government of a foreign country.

(Pub. L. 96-465, title I, §602, Oct. 17, 1980, 94 Stat. 2095; Pub. L. 101-246, title I, §142, Feb. 16, 1990, 104 Stat. 36; Pub. L. 104-65, §12(c), Dec. 19, 1995, 109 Stat. 701.)

AMENDMENTS

1995—Subsec. (c). Pub. L. 104-65 inserted “or a lobbyist for a foreign entity (as defined in section 1602(6) of title 2)” before “or receive income”.

1990—Subsec. (c). Pub. L. 101-246 added subsec. (c).

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104-65 effective Jan. 1, 1996, except as otherwise provided, see section 24 of Pub. L. 104-65, set out as an Effective Date note under section 1601 of Title 2, The Congress.

§ 4003. Recommendations and rankings

(a) Recommendations and rankings by selection boards shall be based upon records of the character, ability, conduct, quality of work, industry, experience, dependability, usefulness, and general performance of members of the Service. Such records may include reports prepared by or on behalf of the Inspector General of the Department of State and the Foreign Service, performance evaluation reports of supervisors, records of commendations, reports of language test scores from the George P. Shultz National Foreign Affairs Training Center, awards, reprimands, and other disciplinary actions, and (with respect to members of the Senior Foreign Service) records of current and prospective assignments.

(b) Precepts for selection boards shall include a description of the needs of the Service for performance requirements, skills, and qualities, which are to be considered in recommendations for promotion. The precepts for selection boards responsible for recommending promotions into and within the Senior Foreign Service shall emphasize performance which demonstrates the strong policy formulation capabilities, executive leadership qualities, and highly developed functional and area expertise, which are required for the Senior Foreign Service. The precepts for selection boards shall include, whether the member of the Service or the member of the Senior Foreign Service, as the case may be, has demonstrated—

(1) a willingness and ability to explain United States policies in person and through the media when occupying positions for which such willingness and ability is, to any degree, an element of the member’s duties, or

(2) other experience in public diplomacy.

(Pub. L. 96-465, title I, §603, Oct. 17, 1980, 94 Stat. 2095; Pub. L. 107-132, §1(b), Jan. 16, 2002, 115 Stat. 2412; Pub. L. 108-458, title VII, §7110(c), Dec. 17, 2004, 118 Stat. 3794.)

AMENDMENTS

2004—Subsec. (b). Pub. L. 108-458 inserted at end “The precepts for selection boards shall include, whether the member of the Service or the member of the Senior Foreign Service, as the case may be, has demonstrated—” and pars. (1) and (2).

2002—Subsec. (a). Pub. L. 107-132 substituted “George P. Shultz National Foreign Affairs Training Center” for “Foreign Service Institute”.

§ 4004. Records

(a) The records described in section 4003(a) of this title shall be maintained in accordance with regulations prescribed by the Secretary. Except to the extent that they pertain to the receipt, disbursement, and accounting for public funds, such records shall be confidential and subject to inspection only by the President, the Secretary, such employees of the Government as may be authorized by law or assigned by the Secretary to work on such records, the legislative and appropriations committees of the Congress charged with considering legislation and appropriations for the Service, and representatives duly authorized by such committees. Access to such records relating to a member of the Service shall be granted to such member, upon written request.

(b) Notwithstanding subsection (a) of this section, any record of disciplinary action that includes a suspension of more than five days taken against a member of the Service, including any correction of that record under section 4137(b)(1) of this title, shall remain a part of the personnel records until the member is tenured as a career member of the Service or next promoted.

(Pub. L. 96-465, title I, § 604, Oct. 17, 1980, 94 Stat. 2096; Pub. L. 106-113, div. B, § 1000(a)(7) [div. A, title III, § 327(a)], Nov. 29, 1999, 113 Stat. 1536, 1501A-438.)

AMENDMENTS

1999—Pub. L. 106-113, in section catchline, substituted “Records” for “Confidentiality of records”, designated existing provisions as subsec. (a), and added subsec. (b).

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106-113, div. B, § 1000(a)(7) [div. A, title III, § 327(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A-438, provided that: “The amendments made by this section [amending this section] apply to all disciplinary actions initiated on or after the date of enactment of this Act [Nov. 29, 1999].”

§ 4005. Implementation of selection board recommendations

(a) Recommendations for promotion made by selection boards shall be submitted to the Secretary in rank order by salary class or in rank order by specialization within a salary class. The Secretary shall make promotions and, with respect to career appointments into or within the Senior Foreign Service, shall make recommendations to the President for promotions, in accordance with the rankings of the selection boards.

(b) Notwithstanding subsection (a) of this section, in special circumstances set forth by regulation, the Secretary may remove the name of an individual from the rank order list submitted by a selection board or delay the promotion of an individual named in such a list.

(Pub. L. 96-465, title I, § 605, Oct. 17, 1980, 94 Stat. 2096.)

§ 4006. Other bases for promoting or increasing pay

(a) The Secretary may pursuant to a recommendation of the Foreign Service Grievance Board, an equal employment opportunity appeals examiner, or the Special Counsel of the Merit Systems Protection Board, and shall pursuant to a decision or order of the Merit Systems Protection Board—

(1) recommend to the President a promotion of a member of the Service under section 3942(a) of this title;

(2) promote a member of the Service under section 3943 of this title;

(3) grant performance pay to a member of the Senior Foreign Service under section 3965(c) of this title; or

(4) grant a within-class salary increase under section 3966 of this title to a member of the Service who is assigned to a salary class in the Foreign Service Schedule.

(b) In implementing subsection (a) of this section and in cases in which the Secretary has exercised the authority of section 4005(b) of this title, the Secretary may, in special circumstances set forth by regulation, make retroactive promotions, grant performance pay, make retroactive within-class salary increases, and recommend retroactive promotions by the President.

(Pub. L. 96-465, title I, § 606, Oct. 17, 1980, 94 Stat. 2096.)

§ 4007. Retirement for expiration of time in class**(a) Maximum time**

(1) The Secretary shall, by regulation, establish maximum time in class limitations for—

(A) career members of the Senior Foreign Service,

(B) Foreign Service officers, and

(C) other career members of the Service who are in such occupational categories as may be designated by the Secretary and who are assigned to salary classes in the Foreign Service Schedule to which Foreign Service officers may also be assigned.

(2) Maximum time in class limitations under this subsection (which may not be less than 3 years for career members of the Senior Foreign Service) may apply with respect to the time a member may remain in a single salary class or in a combination of salary classes.

(3) The Secretary may, by regulation, increase or decrease any maximum time in class established under this subsection as the needs of the Service may require. If maximum time in class is decreased, the Secretary shall provide any member of the Service who is in a category and salary class subject to the new time in class limitation an opportunity to remain in class (notwithstanding the new limitation) for a period which is at least as long as the shorter of—

(A) the period which the member would have been permitted to remain in class but for the decrease in maximum time in class, or

(B) such minimum period as the Secretary determines is necessary to provide members of

the Service who are in the same category and salary class as that member a reasonable opportunity to be promoted into the next higher class or combination of classes, as the case may be.

(b) Limited career extension

Members of the Service whose maximum time in class under subsection (a) of this section expires—

(1) after they have attained the highest salary class for their respective occupational categories, or

(2) in the case of members of the Senior Foreign Service, while they are in salary classes designated by the Secretary,

may continue to serve only under limited extensions of their career appointments. Such limited extensions may not exceed 5 years in duration and may be granted and renewed by the Secretary in accordance with the recommendations of selection boards established under section 4002 of this title. Members of the Service serving under such limited career extensions shall continue to be career members of the Service.

(c) Members subject to retirement; reception of retirement benefits

Any member of the Service—

(1) whose maximum time in class under subsection (a) of this section expires and who is not promoted to a higher class or combination of classes, as the case may be, or

(2) whose limited career extension under subsection (b) of this section expires and is not renewed,

shall be retired from the Service and receive benefits in accordance with section 4009 of this title, subject to any career extension under subsection (d) of this section.

(d) Extensions

Notwithstanding any other provision of this section—

(1) the career appointment of a member of the Service whose maximum time in class under subsection (a) of this section expires, or whose limited career extension under subsection (b) of this section expires, while that member is occupying a position to which he or she was appointed by the President, by and with the advice and consent of the Senate, shall be extended until the appointment to that position is terminated; and

(2) if the Secretary determines it to be in the public interest, the Secretary may extend temporarily the career appointment of a career member of the Service whose maximum time in class or limited career extension expires, but in no case may any extension under this paragraph exceed one year and such extensions may be granted only in special circumstances.

(Pub. L. 96-465, title I, § 607, Oct. 17, 1980, 94 Stat. 2096.)

§ 4008. Retirement based on failure to meet standard of performance

(a) The Secretary shall prescribe regulations concerning the standards of performance to be

met by career members of the Service who are citizens of the United States. Whenever a selection board review indicates that the performance of such a career member of the Service may not meet the standards of performance for his or her class, the Secretary shall provide for administrative review of the performance of the member. The review shall include an opportunity for the member to be heard.

(b) In any case where the administrative review conducted under subsection (a) of this section substantiates that a career member of the Service has failed to meet the standards of performance for his or her class, the member shall be retired from the Service and receive benefits in accordance with section 4009 of this title.

(Pub. L. 96-465, title I, § 608, Oct. 17, 1980, 94 Stat. 2097.)

§ 4009. Retirement benefits

(a) Entitlement

A member of the Service—

(1) who is retired under section 4007(c)(2) of this title; or

(2) who is retired under section 4007(c)(1) or 4008(b) or 4010a of this title—

(A) after becoming eligible for voluntary retirement under section 4051 of this title or any other applicable provision of chapter 84 of title 5, or

(B) from the Senior Foreign Service or while assigned to class 1 in the Foreign Service Schedule,

shall receive retirement benefits in accordance with section 4046 of this title or section 4071d of this title, as appropriate.

(b) Computation of amount; refund; death of member

Any member of the Service (other than a member to whom subsection (a) of this section applies) who is retired under section 4007(c)(1) or 4008(b) or 4010a of this title shall receive—

(1) one-twelfth of a year's salary at his or her then current salary rate for each year of service and proportionately for a fraction of a year, but not exceeding a total of one year's salary at his or her then current salary rate, payable without interest from the Foreign Service Retirement and Disability Fund in 3 equal installments, such installments to be paid on January 1 of each of the first 3 calendar years beginning after the retirement of the member (except that in special cases, the Secretary of State may accelerate or combine such installments); and

(2)(A) for those participants in the Foreign Service Retirement and Disability System, a refund as provided in section 4055 of this title of the contributions made by the member to the Foreign Service Retirement and Disability Fund, except that in lieu of such refund a member who has at least 5 years of service credit toward retirement under the Foreign Service Retirement and Disability System (excluding military and naval service) may elect to receive an annuity, computed under section 4046 of this title, commencing at age 60; and (B) for those participants in the Foreign Service Pension System, benefits as provided in section 4071 of this title.

In the event that a member of the Service has elected to receive retirement benefits under paragraph (2) and dies before reaching age 60 (for participants in the Foreign Service Retirement and Disability System) or age 62 (for participants in the Foreign Service Pension System), his or her death shall be considered a death in service within the meaning of section 4049 of this title.

(Pub. L. 96-465, title I, § 609, Oct. 17, 1980, 94 Stat. 2098; Pub. L. 103-236, title I, § 181(a)(3), Apr. 30, 1994, 108 Stat. 417; Pub. L. 105-277, div. G, subdiv. B, title XXIII, § 2312(a), Oct. 21, 1998, 112 Stat. 2681-827.)

AMENDMENTS

1998—Subsec. (a). Pub. L. 105-277, § 2312(a)(2), inserted “or section 4071d of this title, as appropriate” after “section 4046 of this title” in concluding provisions.

Subsec. (a)(2)(A). Pub. L. 105-277, § 2312(a)(1), inserted “or any other applicable provision of chapter 84 of title 5” after “section 4051 of this title”.

Subsec. (b). Pub. L. 105-277, § 2312(a)(4), inserted “(for participants in the Foreign Service Retirement and Disability System) or age 62 (for participants in the Foreign Service Pension System)” after “age 60” in concluding provisions.

Subsec. (b)(2). Pub. L. 105-277, § 2312(a)(3), designated existing provisions as subpar. (A), inserted “for those participants in the Foreign Service Retirement and Disability System,” before “a refund”, and added subpar. (B).

1994—Subsecs. (a)(2), (b). Pub. L. 103-236 inserted “or 4010a” after “4008(b)”.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105-277, div. G, subdiv. B, title XXIII, § 2312(c), Oct. 21, 1998, 112 Stat. 2681-827, provided that:

“(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and section 4071d of this title] shall take effect on the date of the enactment of this Act [Oct. 21, 1998].

“(2) EXCEPTIONS.—The amendments made by paragraphs (2) and (3) of subsection (a) and paragraphs (1)(A) and (2) of subsection (b) [amending this section and section 4071d of this title] shall apply with respect to any actions taken under section 611 of the Foreign Service Act of 1980 [22 U.S.C. 4010a] on or after January 1, 1996.”

SPECIAL ANNUITY FOR CERTAIN FOREIGN SERVICE OFFICERS

Pub. L. 95-105, title IV, § 411, Aug. 17, 1977, 91 Stat. 855, as amended by Pub. L. 95-426, title IV, § 412(b), Oct. 7, 1978, 92 Stat. 981, provided that:

“(a) Subject to the conditions established in subsection (b), any Foreign Service officer—

“(1) who was retired under section 633(a)(1) of the Foreign Service Act of 1946 [former section 1003(a)(1) of this title, see section 4007(a) of this title] before the date of enactment of this section, [Aug. 17, 1977];

“(2) who was not in class 1, 2, or 3 at the time of retirement;

“(3) who was 40 years of age or older at the time of retirement; and

“(4) who had at least 20 years of service, exclusive of credit for unused sick leave, creditable for purposes of section 821 of such Act [former section 1076 of this title, see section 4046 of this title] at the time of retirement;

shall be entitled to receive retirement benefits in accordance with the provisions of such section 821 [former section 1076 of this title, see section 4046 of this title] in lieu of any retirement benefits which the officer may be entitled to elect under section 634(b)(2) of such Act [former section 1004(b)(2) of this title, see subsec. (b)(2) of this section]. Such retirement benefits shall be paid

from the Foreign Service Retirement and Disability Fund and shall be effective on the date the officer reaches age 50, the date of enactment of this section [Aug. 17, 1977], or October 1, 1977, whichever date is latest.

“(b) Retirement benefits may not be paid under this section unless (1) any refund of contributions paid to the officer under section 634(b)(2) of the Foreign Service Act of 1946 [former section 1004(b)(2) of this title, see subsec. (b)(2) of this section] is repaid to the Foreign Service Retirement and Disability Fund, with interest, in accordance with sections 811(d) and (f) of such Act [former section 1071(d) and (f) of this title, see section 4045(d) and (f) of this title]; and (2) the service forming the basis for such retirement benefits is not used as the basis for any other retirement benefits under any retirement system.

“(c) In the event that an officer who is entitled to retirement benefits under this section dies before reaching the age of fifty, but after the date of enactment of this section [Aug. 17, 1977], his or her death shall be considered a death in service within the meaning of section 832 of the Foreign Service Act of 1946 [former section 1082 of this title, see section 4049 of this title], except that no survivor's annuity (other than a survivor's annuity which would be payable under the first complete sentence in section 634(b)(2) of such Act [former section 1004(b)(2) of this title, see subsec. (b)(2) of this section] but for the enactment of this section) shall become effective before October 1, 1977.

“(d) An officer entitled to retirement benefits under this section may make the election described in section 821(b) or (f), as appropriate, of the Foreign Service Act of 1946 [former section 1076(b) or (f) of this title, see section 4046(b) and (f) of this title] at any time before reaching the age of fifty or before the end of the sixty-day period beginning on the date of enactment of this section [Aug. 17, 1977], whichever is later.”

§ 4010. Separation for cause

(a) Authorization of Secretary; right to hearing; attorneys fees and backpay; leave without pay

(1) The Secretary may decide to separate any member from the Service for such cause as will promote the efficiency of the Service.

(2)(A) Except as provided in subparagraph (B), whenever the Secretary decides under paragraph (1) to separate, on the basis of misconduct, any member of the Service (other than a United States citizen employed under section 3951 of this title who is not a family member) who either—

- (i) is serving under a career appointment, or
- (ii) is serving under a limited appointment,

the member may not be separated from the Service until the member receives a hearing before the Foreign Service Grievance Board and the Board decides that cause for separation has been established, unless the member waives, in writing, the right to such a hearing, or the member's appointment has expired, whichever is sooner.

(B) The right to a hearing in subparagraph (A) does not apply in the case of an individual who has been convicted of a crime for which a sentence of imprisonment of more than one year may be imposed.

(3) If the Board decides that cause for separation has not been established, the Board may direct the Department to pay reasonable attorneys' fees to the extent and in the manner provided by section 4137(b)(5) of this title. The hearing provided under this paragraph shall be con-

ducted in accordance with the hearing procedures applicable to grievances under section 4136 of this title and shall be in lieu of any other administrative procedure authorized or required by this or any other Act. Section 4140 of this title shall apply to proceedings under this paragraph.

(4) Notwithstanding the hearing required by paragraph (2), at the time that the Secretary decides to separate a member of the Service for cause, the member shall be placed on leave without pay. If the member does not waive the right to a hearing, and the Board decides that cause for separation has not been established, the member shall be reinstated with back pay.

(b) Refund of contributions to Fund; annuity election

Any participant in the Foreign Service Retirement and Disability System who is separated under subsection (a) of this section shall be entitled to receive a refund as provided in section 4055 of this title of the contributions made by the participant to the Foreign Service Retirement and Disability Fund. Except in cases where the Secretary determines that separation was based in whole or in part on the ground of disloyalty to the United States, a participant who has at least 5 years of service credit toward retirement under the Foreign Service Retirement and Disability System (excluding military and naval service) may elect, in lieu of such refund, to an annuity, computed under section 4046 of this title, commencing at age 60.

(Pub. L. 96-465, title I, § 610, Oct. 17, 1980, 94 Stat. 2098; Pub. L. 100-204, title I, § 181(d), Dec. 22, 1987, 101 Stat. 1364; Pub. L. 101-167, title V, § 586(b), Nov. 21, 1989, 103 Stat. 1252; Pub. L. 101-246, title I, § 143, Feb. 16, 1990, 104 Stat. 36; Pub. L. 102-138, title I, § 143(a), Oct. 28, 1991, 105 Stat. 668; Pub. L. 103-415, § 1(h)(2), Oct. 25, 1994, 108 Stat. 4300; Pub. L. 105-277, div. G, subdiv. B, title XXIII, § 2313, Oct. 21, 1998, 112 Stat. 2681-827; Pub. L. 106-113, div. B, § 1000(a)(7) [div. A, title III, § 328], Nov. 29, 1999, 113 Stat. 1536, 1501A-438; Pub. L. 107-228, div. A, title III, § 314(a), Sept. 30, 2002, 116 Stat. 1378.)

AMENDMENTS

2002—Subsec. (a)(1). Pub. L. 107-228, § 314(a)(1), inserted “decide to” after “may”.

Subsec. (a)(2) to (6). Pub. L. 107-228, § 314(a)(2), (3), added pars. (2) to (4) and struck out former pars. (2) to (6) which related to the rights of members of the Service to hearings before the Foreign Service Grievance Board prior to being separated from the Service, suspensions from the Service pending final resolution of the underlying matter, procedural rights of suspended members, review of suspensions by the Board, and leave without pay pending final resolution for members recommended for separation.

1999—Subsec. (a)(6). Pub. L. 106-113 added par. (6).

1998—Subsec. (a)(2). Pub. L. 105-277, in first sentence, substituted “Except in the case of an individual who has been convicted of a crime for which a sentence of imprisonment of more than 1 year may be imposed, a member” for “A member”.

1994—Subsec. (a)(2). Pub. L. 103-415 inserted “(other than a United States citizen employed under section 3951 of this title who is not a family member)” after “A member of the Service”.

1991—Subsec. (a)(3). Pub. L. 102-138, § 143(a)(1), substituted “a member has been convicted of a crime” for “there is reasonable cause to believe that a member has committed a crime”.

Subsec. (a)(4)(A). Pub. L. 102-138, § 143(a)(2), substituted “suspension” for “suspension, including the grounds for reasonable cause to believe a crime has been committed”.

Subsec. (a)(5). Pub. L. 102-138, § 143(a)(3), substituted “the conviction requirements of subsection (a)(3) of this section have been fulfilled” for “there exists reasonable cause to believe a crime has been committed for which a sentence of imprisonment may be imposed”.

1990—Subsec. (a)(2). Pub. L. 101-246 inserted before period at end of first sentence “or, notwithstanding section 4136(8) of this title, unless the member has been convicted of a crime related to the cause for separation, subject to reinstatement with back pay (for any period during which separation for cause had not been established by such a hearing) if such conviction is reversed on appeal” and inserted sentence at end that section 4140 of this title apply to proceedings under this paragraph.

1989—Subsec. (a)(3) to (5). Pub. L. 101-167 added pars. (3) to (5).

1987—Subsec. (a)(2). Pub. L. 100-204 inserted after first sentence “If such cause is not established at such hearing, the Grievance Board shall have the authority to direct the Department to pay reasonable attorneys fees to the extent and in the manner provided by section 4137(b)(5) of this title.”

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-204 not applicable with respect to any grievance in which the Board has issued a final decision pursuant to section 4137 of this title before Dec. 22, 1987, see section 181(e) of Pub. L. 100-204, set out as a note under section 3946 of this title.

EXPEDITED SEPARATION OUT

Pub. L. 105-277, div. G, subdiv. B, title XXIII, § 2311(b), Oct. 21, 1998, 112 Stat. 2681-826, provided that:

“(1) SEPARATION OF LOWEST RANKED FOREIGN SERVICE MEMBERS.—Not later than 90 days after the date of enactment of this Act [Oct. 21, 1998], the Secretary of State shall develop and implement procedures to identify, and recommend for separation, any member of the Foreign Service ranked by promotion boards of the Department of State in the bottom 5 percent of his or her class for 2 or more of the 5 years preceding the date of enactment of this Act (in this subsection referred to as the ‘years of lowest ranking’) if the rating official for such member was not the same individual for any two of the years of lowest ranking.

“(2) SPECIAL INTERNAL REVIEWS.—In any case where the member was evaluated by the same rating official in any 2 of the years of lowest ranking, an internal review of the member’s file shall be conducted to determine whether the member should be considered for action leading to separation.

“(3) PROCEDURES.—The Secretary of State shall develop procedures for the internal reviews required under paragraph (2).”

DEFINITION OF “REASONABLE CAUSE”

Section 586(c) of Pub. L. 101-167 provided that for purposes of amendments by section 586(a) and (b) of Pub. L. 101-167, which amended this section and section 4136 of this title, reasonable cause to believe that a member has committed a crime for which a sentence of imprisonment may be imposed was to be defined as a member of the Service having been convicted of, and sentence of imprisonment having been imposed for, a job-related crime, prior to repeal by Pub. L. 102-138, title I, § 143(c), Oct. 28, 1991, 105 Stat. 668.

§ 4010a. Reductions in force

(a) Authorization and regulations

The Secretary may conduct reductions in force and shall prescribe regulations for the separation of members of the Service holding a ca-

reer or career candidate appointment under subchapter III of this chapter, under such reductions in force which give due effect to the following:

- (1) Organizational changes.
- (2) Documented employee knowledge, skills, or competencies.
- (3) Tenure of employment.
- (4) Documented employee performance.
- (5) Military preference, subject to section 3501(a)(3) of title 5.

(b) Applicability of retirement benefits

The provisions of section 4009 of this title shall be applicable to any member of the Service holding a career or career candidate appointment under subchapter III of this chapter, who is separated under the provisions of this section.

(c) Grievance procedure

An employee against whom action is taken under this section may elect either to file a grievance under subchapter XI of this chapter or to appeal to the Merit Systems Protection Board under procedures prescribed by the Board. Grievances under subchapter XI of this chapter shall be limited to cases of reprisal, interference in the conduct of an employee's official duties, or similarly inappropriate use of the authority of this section.

(Pub. L. 96-465, title I, §611, as added Pub. L. 103-236, title I, §181(a)(2), Apr. 30, 1994, 108 Stat. 417; amended Pub. L. 103-415, §1(ii), Oct. 25, 1994, 108 Stat. 4303.)

PRIOR PROVISIONS

A prior section 611 of Pub. L. 96-465 was renumbered section 612 and is classified to section 4011 of this title.

AMENDMENTS

1994—Pub. L. 103-415 made technical amendment relating to style of section catchline.

EMPLOYMENT ASSISTANCE REFERRAL SYSTEM FOR CERTAIN MEMBERS OF FOREIGN SERVICE

Section 179 of Pub. L. 103-236, as amended by Pub. L. 103-415, §1(g), Oct. 25, 1994, 108 Stat. 4300, provided that:

“(a) REFERRAL SYSTEM.—Certain members of the Foreign Service (as described in subsection (b)), may participate in the Office of Personnel Management's Interagency Placement programs or any successor program. Such members of the Foreign Service shall be treated in the same manner as employees participating in such a program as of the effective date of this Act [Apr. 30, 1994].

“(b) CERTAIN MEMBERS OF THE FOREIGN SERVICE.—For purposes of this section, the term ‘members of the Foreign Service’ means any individuals holding career or career candidate appointments under chapter 3 of the Foreign Service Act of 1980 [22 U.S.C. 3941 et seq.]”

CONSULTATION WITH DIRECTOR OF OFFICE OF PERSONNEL MANAGEMENT PRIOR TO PRESCRIBING REGULATIONS FOR REDUCTIONS IN FORCE

Section 181(c) of Pub. L. 103-236, as amended by Pub. L. 103-415, §1(i), Oct. 25, 1994, 108 Stat. 4301, provided that: “The Secretary of State (or in the case of any other agency authorized by law to utilize the Foreign Service personnel system, the head of that agency) shall consult with the Director of the Office of Personnel Management before prescribing regulations for reductions in force under section 611 of the Foreign Service Act of 1980 [22 U.S.C. 4010a] (as added by subsection (a) of this section), and shall publish such regulations.”

§ 4011. Termination of limited appointments

Except as provided in section 4010(a)(2) of this title, the Secretary may terminate at any time the appointment of any member of the Service serving under a limited appointment who is in the Senior Foreign Service, who is assigned to a salary class in the Foreign Service Schedule or who is paid in accordance with section 3967 of this title or is a United States citizen paid under a compensation plan under section 3968 of this title.

(Pub. L. 96-465, title I, §612, formerly §611, Oct. 17, 1980, 94 Stat. 2099; renumbered §612 and amended Pub. L. 103-236, title I, §§180(a)(7), 181(a)(1), Apr. 30, 1994, 108 Stat. 416.)

PRIOR PROVISIONS

A prior section 612 of Pub. L. 96-465 was renumbered section 613 and is classified to section 4012 of this title.

AMENDMENTS

1994—Pub. L. 103-236, §180(a)(7), substituted “or who is paid in accordance with section 3967 of this title or is a United States citizen paid under a compensation plan under section 3968 of this title.” for “, or who is a family member of a Government employee serving under a local compensation plan established under section 3968 of this title.”

§ 4012. Termination of appointments of consular agents and foreign national employees

(a) The Secretary of State may terminate at any time the appointment of any consular agent in light of the criteria and procedures normally followed in the locality in similar circumstances.

(b) The Secretary may terminate at any time the appointment of any foreign national employee in light of the criteria and procedures normally followed in the locality in similar circumstances.

(Pub. L. 96-465, title I, §613, formerly §612, Oct. 17, 1980, 94 Stat. 2099; renumbered §613, Pub. L. 103-236, title I, §181(a)(1), Apr. 30, 1994, 108 Stat. 416.)

PRIOR PROVISIONS

A prior section 613 of Pub. L. 96-465 was renumbered section 614 and is classified to section 4013 of this title.

§ 4012a. Foreign national employees separation pay

(a) Establishment

There is established in the Treasury of the United States a fund to provide separation pay for foreign national employees of agencies of the United States Government, other than the Department of Defense.

(b) Funding

There shall be deposited in such account—

(1) all amounts previously obligated for accrued separation pay of foreign national employees of such agencies of the United States Government; and

(2) amounts obligated for fiscal years after 1991 by such agencies for the current and future costs of separation pay of foreign national employees.

(c) Availability

Amounts shall be deposited in the fund annually and are authorized to be available until expended.

(d) Expenditures from fund

Amounts deposited in the fund shall be available for expenditure to make separation payments to foreign national employees in countries in which such pay is legally authorized.

(Pub. L. 102-138, title I, §151, Oct. 28, 1991, 105 Stat. 672.)

CODIFICATION

Section was enacted as part of the Foreign Relations Authorization Act, Fiscal Years 1992 and 1993, and not as part of the Foreign Service Act of 1980 which comprises this chapter.

§ 4013. Foreign Service awards

The President shall establish a system of awards to confer appropriate recognition of outstanding contributions to the Nation by members of the Service. The awards system established under this section shall provide for presentation by the President and by the Secretary of medals or other suitable commendations for performance in the course of or beyond the call of duty which involves distinguished, meritorious service to the Nation, including extraordinary valor in the face of danger to life or health. Distinguished, meritorious service in the promotion of internationally recognized human rights, including the right to freedom of religion, shall serve as a basis for granting awards under this section.

(Pub. L. 96-465, title I, §614, formerly §613, Oct. 17, 1980, 94 Stat. 2099; renumbered §614, Pub. L. 103-236, title I, §181(a)(1), Apr. 30, 1994, 108 Stat. 416; amended Pub. L. 105-292, title V, §504(b), Oct. 27, 1998, 112 Stat. 2811.)

AMENDMENTS

1998—Pub. L. 105-292 inserted at end “Distinguished, meritorious service in the promotion of internationally recognized human rights, including the right to freedom of religion, shall serve as a basis for granting awards under this section.”

DELEGATION OF FUNCTIONS

Functions of President under this section delegated to Secretary of State, see section 1 of Ex. Ord. No. 12293, Feb. 23, 1981, 46 F.R. 13969, set out under section 3901 of this title.

SUBCHAPTER VII—CAREER DEVELOPMENT, TRAINING, AND ORIENTATION

§ 4021. Institution for training**(a) Institution or center for training**

The Secretary of State shall maintain and operate an institution or center for training (hereinafter in this subchapter referred to as the “institution”), originally established under section 701 of the Foreign Service Act of 1946, in order to promote career development within the Service and to provide necessary training and instruction in the field of foreign relations to members of the Service and to employees of the Department and of other agencies. The institution shall be headed by a Director, who shall be ap-

pointed by the Secretary of State. The institution shall be designated the “George P. Shultz National Foreign Affairs Training Center”¹

(b) Provision of training

To the extent practicable, the Secretary of State shall provide training under this subchapter which meets the needs of all agencies, and other agencies shall avoid duplicating the facilities and training provided by the Secretary of State through the institution and otherwise.

(c) Training and instruction to citizens of Trust Territory of the Pacific Islands

Training and instruction may be provided at the Institute² for not to exceed sixty citizens of the Trust Territory of the Pacific Islands in order to prepare them to serve as members of the foreign services of the Federated States of Micronesia, the Marshall Islands, and Palau. The authority of this subsection shall expire when the Compact of Free Association is approved by the Congress.

(d) Training and instruction of employees of foreign governments

(1) The Secretary of State is authorized to provide for special professional foreign affairs training and instruction of employees of foreign governments through the institution.

(2) Training and instruction under paragraph (1) shall be on a reimbursable or advance-of-funds basis. Such reimbursements or advances to the Department of State may be provided by an agency of the United States Government or by a foreign government and shall be credited to the currently available applicable appropriation account.

(3) In making such training available to employees of foreign governments, priority consideration should be given to officials of newly emerging democratic nations and then to such other countries as the Secretary determines to be in the national interest of the United States.

(e) Training or services for United States person

(1) The Secretary may provide appropriate training or related services, except foreign language training, through the institution to any United States person (or any employee or family member thereof) that is engaged in business abroad.

(2) The Secretary may provide job-related training or related services, including foreign language training, through the institution to a United States person under contract to provide services to the United States Government or to any employee thereof that is performing such services.

(3) Training under this subsection may be provided only to the extent that space is available and only on a reimbursable or advance-of-funds basis. Reimbursements and advances shall be credited to the currently available applicable appropriation account.

(4) Training and related services under this subsection is authorized only to the extent that it will not interfere with the institution’s primary mission of training employees of the De-

¹ So in original. Probably should be followed by a period.

² So in original. Probably should be “institution”.