

(B) after December 31, 2013, becomes a participant performing service which is creditable service under section 4071c of this title;

(9) the term “supplemental liability” means the estimated excess of—

(A) the actuarial present value of all future benefits payable from the Fund under this part based on the service of participants or former participants, over

(B) the sum of—

(i) the actuarial present value of (I) deductions to be withheld from the future basic pay of participants pursuant to section 4071e of this title and (II) contributions for past civilian and military service;

(ii) the actuarial present value of future contributions to be made pursuant to section 4071f of this title;

(iii) the Fund balance as of the date the supplemental liability is determined, to the extent that such balance is attributable—

(I) to the System, or

(II) to the contributions made under the Federal Employees’ Retirement Contribution Temporary Adjustment Act of 1983 (5 U.S.C. 8331 note); and

(iv) any other appropriate amount, as determined by the Secretary of State in accordance with generally accepted actuarial practices and principles;

(10) the term “System” means the Foreign Service Pension System; and

(11) the term “special agent” has the same meaning given in section 4044(15) of this title.

(Pub. L. 96-465, title I, §852, as added Pub. L. 99-335, title IV, §415, June 6, 1986, 100 Stat. 615; amended Pub. L. 100-238, title II, §241, Jan. 8, 1988, 101 Stat. 1776; Pub. L. 105-382, §2(a)(2), Nov. 13, 1998, 112 Stat. 3406; Pub. L. 112-96, title V, §5002(a), Feb. 22, 2012, 126 Stat. 200; Pub. L. 113-67, div. A, title IV, §402(a), Dec. 26, 2013, 127 Stat. 1185.)

#### REFERENCES IN TEXT

The Federal Employees’ Retirement Contribution Temporary Adjustment Act of 1983, referred to in pars. (3)(A) and (7)(B)(iii)(II), is title II of Pub. L. 98-168, Nov. 29, 1983, 97 Stat. 1106, as amended, which is set out as a note under section 8331 of Title 5, Government Organization and Employees.

#### AMENDMENTS

2013—Par. (7)(B). Pub. L. 113-67, §402(a)(2), inserted “and before January 1, 2014,” after “after December 31, 2012.”

Pars. (8) to (11). Pub. L. 113-67, §402(a)(1), added par. (8) and redesignated former pars. (8) to (10) as (9) to (11), respectively.

2012—Pars. (7) to (10). Pub. L. 112-96 added par. (7) and redesignated former pars. (7) to (9) as (8) to (10), respectively.

1998—Par. (9). Pub. L. 105-382 added par. (9).

1988—Pars. (3) to (8). Pub. L. 100-238 added par. (3) and redesignated former pars. (3) to (7) as (4) to (8), respectively.

#### EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-382 effective Nov. 13, 1998, with provisions relating to applicability with respect to certain individuals, see section 4 of Pub. L. 105-382, as

amended, set out as a note under section 4044 of this title.

#### EFFECTIVE DATE OF 1988 AMENDMENT

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

### § 4071b. Participants

#### (a) Covered members

Except for persons excluded by subsection (b), (c), or (d), all members of the Foreign Service, any of whose service after December 31, 1983, is employment for the purpose of title II of the Social Security Act [42 U.S.C. 401 et seq.] and chapter 21 of title 26, who would, but for this section, be participants in the Foreign Service Retirement and Disability System pursuant to section 4043 of this title shall instead be participants in the Foreign Service Pension System.

#### (b) Exclusion of participants in Foreign Service Retirement and Disability System

Members of the Service who were participants in the Foreign Service Retirement and Disability System on or before December 31, 1983, and who have not had a break in service in excess of one year since that date, are not made participants in the System by this section, without regard to whether they are subject to title II of the Social Security Act [42 U.S.C. 401 et seq.].

#### (c) Exclusion of individuals with certain creditable civilian service

Individuals who become members of the Service after having completed at least 5 years of civilian service creditable under part I of this subchapter, subchapter III of chapter 83 of title 5 (the Civil Service Retirement System), or title II of the Central Intelligence Agency Retirement Act (50 U.S.C. 2011 et seq.) (determined without regard to any deposit or redeposit requirement under any such part, subchapter, or title, any requirement that the individual become subject to such part, subchapter, or title after performing the service involved, or any requirement that the individual give notice in writing to the official by whom such individual is paid of such individual’s desire to become subject to such part, subchapter, or title) are not participants in the System, except to the extent provided for under title III of the Federal Employees’ Retirement System Act of 1986 pursuant to an election under such title to become subject to this part (under regulations issued by the Secretary of State pursuant to section 4071i of this title).

#### (d) Exclusion of temporary or intermittent employees

The Secretary may exclude from the operation of this part any member of the Foreign Service, or group of members, whose employment is temporary or intermittent, except a member whose employment is part-time career appointment or career candidate appointment under section 3946 of this title.

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

## REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (a) and (b), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title II of the Social Security Act is classified generally to subchapter II (§401 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

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

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

## AMENDMENTS

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

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

**§ 4071c. Creditable service****(a) Service included**

For purposes of this part, creditable service of a participant includes—

(1) service as a participant after December 31, 1986;

(2) service with respect to which deductions and withholdings under section 204(a)(2) of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983 have been made; and

(3) except as provided in subsection (b), any civilian service performed before January 1, 1989 (other than service under paragraph (1) or (2)), which, but for the amendment made by section 414 of the Federal Employees' Retirement System Act of 1986, would be creditable under part I (determined without regard to any deposit or redeposit requirement under such part, subchapter III of chapter 83 of title 5 (the Civil Service Retirement System), or title II of the Central Intelligence Agency Retirement Act (50 U.S.C. 2011 et seq.), any requirement that the individual become subject to such part, subchapter, or title after performing the service involved, or any requirement that the individual give notice in writing to the official by whom such individual is paid of such individual's desire to become subject to such part, subchapter, or title).

**(b) Refund of retirement deductions; retirement deduction not made; required deposit; computation of interest**

(1) A participant who has received a refund of retirement deductions under part I with respect

to any service described in subsection (a)(3) may not be allowed credit for such service under this part unless such participant deposits into the Fund an amount equal to 1.3 percent of basic pay for such service, with interest.

(2) A participant may not be allowed credit under this part for any service described in subsection (a)(3) for which retirement deductions under part I have not been made, unless such participant deposits into the Fund an amount equal to 1.3 percent of basic pay for such service, with interest.

(3) Interest under paragraph (1) or (2) shall be computed in accordance with section 4045(d) of this title and regulations issued by the Secretary of State.

**(c) Volunteer service; required payment**

(1) Credit shall be given under this System to a participant for a period of prior satisfactory service as—

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

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

(C) a full-time volunteer for a period of service of at least 1 year's duration under part A, B,<sup>1</sup> or C of title I of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4951 et seq.),

if the participant makes a payment to the Fund equal to 3 percent of pay received for the volunteer service; except, the amount to be paid for volunteer service beginning on January 1, 1999, through December 31, 2000, shall be as follows:

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

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

(2) The amount of such payments shall be determined in accordance with regulations of the Secretary of State consistent with regulations for making corresponding determinations under chapter 83, title 5, together with interest determined under regulations issued by the Secretary of State.

**(d) Prior service under other retirement system; waiver of credit and payment into Fund**

Credit shall be given under this System to a participant for a period of prior service under the Federal Employees' Retirement System (described in chapter 84 of title 5) or under title III of the Central Intelligence Agency Retirement Act (50 U.S.C. 2151 et seq.) if the participant waives credit under the other retirement system and makes a payment to the Fund equal to the amount which was deducted and withheld from the individual's basic pay under the other retirement system during the prior creditable service under the other retirement system together with interest on such amount computed in accordance with regulations issued by the Secretary of State.

**(e) Employees of Members or offices of Congress**

A participant who, while on approved leave without pay, serves as a full-time paid employee of a Member or office of the Congress shall continue to make contributions to the Fund based

<sup>1</sup> See References in Text note below.