

§ 4071d. Entitlement to annuity**(a) Retirement conditions; definitions**

(1) Any participant may be retired under the conditions specified in section 4051 of this title and shall be retired under the conditions specified in sections 4052 and 4053 of this title and receive benefits under this part.

(2) For the purposes of this subsection—

(A) the term “participant”, as used in the sections referred to in paragraph (1), means a participant in the Foreign Service Pension System; and

(B) the term “System”, as used in those sections, means the Foreign Service Pension System.

(3) For purposes of any annuity computation under this subsection, the average pay (as used in section 8414¹ of title 5) of any member of the Service whose official duty station is outside the continental United States shall be considered to be the salary that would have been paid to the member had the member’s official duty station been Washington, D.C., including locality-based comparability payments under section 5304 of title 5 that would have been payable to the member if the member’s official duty station had been Washington, D.C.

(b) Voluntary or mandatory retirement with authorization for immediate annuity; computation of annuity

(1) Any participant who retires voluntarily or mandatorily under section 4007, 4008, 4010a, 4051, 4052, or 4053 of this title under conditions authorizing an immediate annuity for participants in the Foreign Service Retirement and Disability System or for participants in the Foreign Service Pension System, and who has completed at least 5 years as a member of the Foreign Service, shall be entitled to an immediate annuity computed under paragraph (2).

(2) An annuity under paragraph (1) shall be computed—

(A) in accordance with section 8415(e)(1) of title 5 for all service while a participant in this System and for prior service creditable under this part not otherwise counted as—

(i) a member of the Service,

(ii) an employee of the Central Intelligence Agency entitled to retirement credit under title II of the Central Intelligence Agency Retirement Act (50 U.S.C. 2011 et seq.) or under section 302(a) or 303(b) of that Act (50 U.S.C. 2152(a), 2153(b)), or

(iii) a participant as a Member of Congress, a congressional employee, law enforcement officer, firefighter, or air traffic controller in the Civil Service Retirement System under subchapter III of chapter 83, title 5, or in the Federal Employees’ Retirement System under chapter 84 of title 5; and

(B) at the rate stated in section 8415(a) of title 5 for all other service creditable under this System including service in excess of 20 years otherwise creditable under paragraph (A).

(3) Any participant who is involuntarily retired or separated under section 4007, 4008, 4010,

or 4010a of this title and who would if a participant under part I, become eligible for a refund of contributions or a deferred annuity under part I, shall, in lieu thereof, receive benefits for an involuntary separation under this part.

(4) A disability annuity under this part required to be redetermined under section 8452(b) of title 5, or computed under section 8452(c) or (d) of such title 5, shall be recomputed or computed using the formula in subsection (b)(2)(A) of this section rather than section 8415 of such title 5 (as stated in section 8452(b)(2)(A) and 8452(c) and (d) of such title). Such annuity shall also be computed in accordance with the preceding sentence if, as of the day on which such annuity commences or is restored, the annuitant satisfies the age and service requirements for entitlement to an immediate annuity under section 4051 of this title.

(5) A former participant entitled to a deferred annuity under section 8413(b) of title 5 shall not be subject to section 8415(g)(1) of such title 5 if the former participant has 20 years of service creditable under this part and is at least 50 years of age as of the date on which the annuity is to commence.

(6)(A) The amount of a survivor annuity for a widow or widower of a participant or former participant shall be 50 percent of an annuity computed for the deceased under this part rather than under section 8415 of such title 5 (as stated in sections 8442(a)(1), (b)(1)(B), and (c)(2) of such title).

(B) Any calculation for a widow or widower of a participant or former participant under section 8442(f)(2)(A) shall be based on an “assumed FSRDS annuity” rather than an “assumed CSRS annuity” as stated in such section. For the purpose of this subparagraph, the term “assumed FSRDS annuity” means the amount of the survivor annuity to which the widow or widower would be entitled under part I based on the service of the deceased annuitant determined under section 8442(f)(5) of such title 5.

(c) Annuity supplement

A participant who is entitled to an immediate annuity under subsection (b) shall be entitled to receive an annuity supplement while the annuitant is under 62 years of age. The annuity supplement shall be based on the total creditable service of the annuitant and shall be computed in accordance with sections 8421(b) and 8421a of title 5 as if the participant were a law enforcement officer retired under section 8412(d) of such title.

(d) Separation for cause based on disloyalty

Any participant who is separated for cause under section 4010 of this title shall not be entitled to an annuity under this System when the Secretary determines that the separation was based in whole or in part on disloyalty to the United States.

(Pub. L. 96-465, title I, §855, as added Pub. L. 99-335, title IV, §415, June 6, 1986, 100 Stat. 617; amended Pub. L. 99-556, title IV, §406, Oct. 27, 1986, 100 Stat. 3138; Pub. L. 103-178, title II, §204(b)(3), Dec. 3, 1993, 107 Stat. 2033; Pub. L. 105-277, div. G, subdiv. B, title XXIII, §2312(b), Oct. 21, 1998, 112 Stat. 2681-827; Pub. L. 105-382,

¹ See References in Text note below.

§ 2(d)(3)(B), Nov. 13, 1998, 112 Stat. 3408; Pub. L. 107-228, div. A, title III, § 322(b)(1), Sept. 30, 2002, 116 Stat. 1384; Pub. L. 112-96, title V, § 5001(c)(2)(F), Feb. 22, 2012, 126 Stat. 200.)

REFERENCES IN TEXT

Section 8414 of title 5, referred to in subsec. (a)(3), does not contain the term “average pay”. Section 8415 of title 5 relates to annuity computation, and section 8401 of title 5 defines “average pay”.

The Central Intelligence Agency Retirement Act, referred to in subsec. (b)(2)(A)(ii), 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.

AMENDMENTS

2012—Subsec. (b)(2)(A). Pub. L. 112-96, § 5001(c)(2)(F)(i), substituted “section 8415(e)(1)” for “section 8415(d)(1)” in introductory provisions.

Subsec. (b)(5). Pub. L. 112-96, § 5001(c)(2)(F)(ii), substituted “section 8415(g)(1)” for “section 8415(f)(1)”.

2002—Subsec. (a)(3). Pub. L. 107-228 added par. (3).

1998—Subsec. (b)(1). Pub. L. 105-277, § 2312(b)(1)(A), and Pub. L. 105-382 amended par. (1) identically, inserting “4010a,” after “4008.”

Pub. L. 105-277, § 2312(b)(1)(C), substituted “Service, shall” for “Service shall”.

Pub. L. 105-277, § 2312(b)(1)(B), inserted “or for participants in the Foreign Service Pension System,” after “Retirement and Disability System”.

Subsec. (b)(3). Pub. L. 105-382, which directed the insertion of “4010a,” after “4008,” in par. (3), was not executed to reflect the probable intent of Congress and the amendment by Pub. L. 105-277, § 2312(b)(2). See below.

Pub. L. 105-277, § 2312(b)(2), substituted “4010, or 4010a” for “or 4010”.

1993—Subsec. (b)(2)(A)(ii). Pub. L. 103-178 substituted “under title II of the Central Intelligence Agency Retirement Act (50 U.S.C. 2011 et seq.) or under section 302(a) or 303(b) of that Act (50 U.S.C. 2152(a), 2153(b))” for “under title II of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees or under section 302(a) or 303(b) of that Act”.

1986—Subsec. (b)(1). Pub. L. 99-556, § 406(a), substituted “as a member of the Foreign Service” for “of service subject to this subchapter”.

Subsec. (b)(2). Pub. L. 99-556, § 406(b), amended par. (2) by substituting subpars. (A) and (B) for former subpars. (A) to (C). Prior to amendment, subpars. (A) to (C) read as follows:

“(A) for all service earned while a participant in this System, at the rate stated in section 8415(d) of title 5; and

“(B) for all service earned while a participant in another retirement system creditable under section 4071c(d) of this title, at the rate which would have been applicable to the individual had that individual remained a participant in the other system; and

“(C) for all volunteer service creditable under section 4071c(c) of this title, at the rate stated in section 8415(a) of title 5.”

Subsec. (b)(3) to (6). Pub. L. 99-556, § 406(c), added pars. (3) to (6).

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-228 applicable to service performed on or after the first day of the first pay period beginning on or after the date that is 90 days after Sept. 30, 2002, see section 322(c)(1) of Pub. L. 107-228, set out as a note under section 4046 of this title.

EFFECTIVE DATE OF 1998 AMENDMENTS

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.

Amendment by Pub. L. 105-277 effective Oct. 21, 1998, except that amendment made by section 2312(b)(1)(A), (2) of Pub. L. 105-277 applicable with respect to any actions taken under section 4010a of this title on or after Jan. 1, 1996, see section 2312(c) of Pub. L. 105-277, set out as a note under section 4009 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-556 effective Jan. 1, 1987, see section 408 of Pub. L. 99-556, set out as a note under section 4046 of this title.

§ 4071e. Deductions and withholdings from pay

(a) Basic pay

(1) The employing agency shall deduct and withhold from the basic pay of each participant the applicable percentage of basic pay specified in paragraph (2) of this subsection minus the percentage then in effect under section 3101(a) of title 26 (relating to the rate of tax for old age, survivors, and disability insurance).

(2)(A) The applicable percentage for a participant other than a revised annuity participant or a further revised annuity participant shall be as follows:

7.5	Before January 1, 1999.
7.75	January 1, 1999, to December 31, 1999.
7.9	January 1, 2000, to December 31, 2000.
7.55	After January 11, 2003.

(B) The applicable percentage for a revised annuity participant shall be as follows:

9.85	After December 31, 2012
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(C) The applicable percentage for a further revised annuity participant shall be as follows:

11.15	After December 31, 2013.
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(b) Consent to deductions; discharge of claims

Each participant is deemed to consent and agree to the deductions under subsection (a). Notwithstanding any law or regulation affecting the pay of a participant, payment less such deductions is a full and complete discharge and acquittance of all claims and demands for regular services during the period covered by the payment, except the right to any benefits under this part based on the service of the participant.

(c) Deposit of amounts

Amounts deducted and withheld under this section shall be deposited in the Treasury of the United States to the credit of the Fund under such procedures as the Comptroller General of the United States may prescribe.

(d) Entry on individual retirement records

Under such regulations as the Secretary of State may issue, amounts deducted under subsection (a) shall be entered on individual retirement records.

(Pub. L. 96-465, title I, § 856, as added Pub. L. 99-335, title IV, § 415, June 6, 1986, 100 Stat. 618; amended Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 105-33, title VII, § 7001(e)(1)(A), Aug. 5, 1997, 111 Stat. 661; Pub. L. 106-346, § 101(a) [title V, § 505(e)(1)], Oct. 23, 2000, 114 Stat. 1356, 1356A-53; Pub. L. 107-228, div. A, title III,