

**Editorial Notes**

## REFERENCES IN TEXT

Section 3939a of title 5, referred to in subsec. (d), was repealed by Pub. L. 107-296, title XIII, §1321(a)(1)(B), Nov. 25, 2002, 116 Stat. 2296.

## AMENDMENTS

1990—Subsec. (d). Pub. L. 101-280 made technical correction to Pub. L. 101-194. See 1989 Amendment note below.

1989—Subsec. (d). Pub. L. 101-194, as amended by Pub. L. 101-280, added subsec. (d).

1985—Subsec. (c). Pub. L. 99-93 added subsec. (c).

**Statutory Notes and Related Subsidiaries**

## EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-194 effective Jan. 1, 1991, see section 506(d) of Pub. L. 101-194, set out as a note under section 3151 of Title 5, Government Organization and Employees.

## EFFECTIVE DATE OF 1985 AMENDMENT

Pub. L. 99-93, title I, §119(c), Aug. 16, 1985, 99 Stat. 412, provided that: “The amendments made by subsections (a) and (b) [amending this section and provisions set out as a note under section 3901 of this title] shall take effect on October 1, 1985.”

## EFFECTIVE DATE

Section effective Feb. 15, 1981, with an exception that appointments to the Senior Foreign Service by the Secretary of Commerce shall be excluded in the calculation and limitation in subsec. (b) of this section until Oct. 1, 1985, which was repealed by section 119(b) of Pub. L. 99-93, see section 2403 of Pub. L. 96-465, set out as a note under section 3901 of this title.

## PLACEMENT OF SENIOR FOREIGN SERVICE PERSONNEL

Pub. L. 106-113, div. B, §1000(a)(7) [div. A, title III, §324], Nov. 29, 1999, 113 Stat. 1536, 1501A-437, required the Director General of the Foreign Service to submit a report on the first day of each fiscal quarter to the appropriate congressional committees containing the number of members of the Senior Foreign Service, the number of vacant positions designated for such members, and the number of those members not assigned to positions, prior to repeal by Pub. L. 107-228, div. A, title VI, §671(4), Sept. 30, 2002, 116 Stat. 1407.

**§ 3946. Career appointments****(a) Trial period under limited appointment**

Before receiving a career appointment in the Service, an individual shall first serve under a limited appointment as a career candidate for a trial period of service prescribed by the Secretary. During such trial period of service, the Secretary shall decide whether—

(1) to offer a career appointment to the candidate under section 3943 of this title, or

(2) to recommend to the President that the candidate be given a career appointment under section 3942 of this title.

**(b) Decisions by Secretary**

Decisions by the Secretary under subsection (a) shall be based upon the recommendations of boards, established by the Secretary and composed entirely or primarily of career members of the Service, which shall evaluate the fitness and aptitude of career candidates for the work of the Service.

**(c) Foreign Service Grievance Board decisions**

Nothing in this section shall be construed to limit the authority of the Secretary or the For-

eign Service Grievance Board under section 4137 of this title.

(Pub. L. 96-465, title I, §306, Oct. 17, 1980, 94 Stat. 2086; Pub. L. 100-204, title I, §181(c), Dec. 22, 1987, 101 Stat. 1363.)

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## AMENDMENTS

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

**Statutory Notes and Related Subsidiaries**

## EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100-204, title I, §181(e), Dec. 22, 1987, 101 Stat. 1364, provided that: “The amendments made by this section [amending this section and sections 4010 and 4137 of this title] shall not apply with respect to any grievance in which the Board has issued a final decision pursuant to section 1107 of the Foreign Service Act of 1980 (22 U.S.C. 4137) before the date of enactment of this Act [Dec. 22, 1987].”

**§ 3947. Entry levels for Foreign Service officer candidates**

A career candidate for appointment as a Foreign Service officer may not be initially assigned under section 3964 of this title to a salary class higher than class 4 in the Foreign Service Schedule unless—

(1) the Secretary determines in an individual case that assignment to a higher salary class is warranted because of the qualifications (including foreign language competence) and experience of the candidate and the needs of the Service; or

(2) at the time such initial assignment is made, the candidate is serving under a career appointment in the Service and is receiving a salary at a rate equal to or higher than the minimum rate payable for class 4 in the Foreign Service Schedule.

(Pub. L. 96-465, title I, §307, Oct. 17, 1980, 94 Stat. 2086.)

**§ 3948. Recall and reappointment of career members****(a) Retired career members**

Whenever the Secretary determines that the needs of the Service so require, the Secretary may recall any retired career member of the Service for active duty in the same personnel category as that member was serving at the time of retirement. A retired career member may be recalled under this section to any appropriate salary class or rate, except that a retired career member of the Senior Foreign Service may not be recalled to a salary class higher than the one in which the member was serving at the time of retirement unless appointed to such higher class by the President, by and with the advice and consent of the Senate.

**(b) Former career members**

Former career members of the Service may be reappointed under section 3942(a)(1) or 3943 of this title, without regard to section 3946 of this title, in a salary class which is appropriate in light of the qualifications and experience of the individual being reappointed.

(Pub. L. 96-465, title I, §308, Oct. 17, 1980, 94 Stat. 2086.)

### Statutory Notes and Related Subsidiaries

#### USAID OVERSEAS PROGRAM

Pub. L. 116-260, div. K, title VII, §7064(a)-(d), Dec. 27, 2020, 134 Stat. 1809, provided that:

“(a) **AUTHORITY.**—Up to \$110,000,000 of the funds made available in title III of this Act [title III of div. K of Pub. L. 116-260, 134 Stat. 1702] pursuant to or to carry out the provisions of part I of the Foreign Assistance Act of 1961 [22 U.S.C. 2151 et seq.], including funds appropriated under the heading ‘Assistance for Europe, Eurasia and Central Asia’, may be used by the United States Agency for International Development to hire and employ individuals in the United States and overseas on a limited appointment basis pursuant to the authority of sections 308 and 309 of the Foreign Service Act of 1980 (22 U.S.C. 3948 and 3949).

“(b) **RESTRICTION.**—The authority to hire individuals contained in subsection (a) shall expire on September 30, 2022.

“(c) **PROGRAM ACCOUNT CHARGED.**—The account charged for the cost of an individual hired and employed under the authority of this section shall be the account to which the responsibilities of such individual primarily relate: *Provided*, That funds made available to carry out this section may be transferred to, and merged with, funds appropriated by this Act in title II [title II of div. K of Pub. L. 116-260, 134 Stat. 1701] under the heading ‘Operating Expenses’.

“(d) **FOREIGN SERVICE LIMITED EXTENSIONS.**—Individuals hired and employed by USAID [United States Agency for International Development], with funds made available in this Act [titles I to VII of div. K of Pub. L. 116-260, 134 Stat. 1691] or prior Acts making appropriations for the Department of State, foreign operations, and related programs, pursuant to the authority of section 309 of the Foreign Service Act of 1980 (22 U.S.C. 3949), may be extended for a period of up to 4 years notwithstanding the limitation set forth in such section.”

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 116-94, div. G, title VII, §7064(a)-(d), Dec. 20, 2019, 133 Stat. 2928, 2929, as amended by Pub. L. 116-136, div. B, title XI, §21004, Mar. 27, 2020, 134 Stat. 591.

Pub. L. 116-6, div. F, title VII, §7057(a)-(e), Feb. 15, 2019, 133 Stat. 371.

Pub. L. 115-141, div. K, title VII, §7057(a)-(e), Mar. 23, 2018, 132 Stat. 941.

Pub. L. 115-31, div. J, title VII, §7057(a)-(e), May 5, 2017, 131 Stat. 695.

Pub. L. 114-113, div. K, title VII, §7057(a)-(e), Dec. 18, 2015, 129 Stat. 2803, 2804.

Pub. L. 113-235, div. J, title VII, §7057(a)-(e), Dec. 16, 2014, 128 Stat. 2664, 2665.

Pub. L. 113-76, div. K, title VII, §7057(a)-(e), Jan. 17, 2014, 128 Stat. 549.

Pub. L. 112-74, div. I, title VII, §7057(a)-(e), Dec. 23, 2011, 125 Stat. 1244.

Pub. L. 111-117, div. F, title VII, §7059(a)-(g), Dec. 16, 2009, 123 Stat. 3380, 3381.

Pub. L. 111-8, div. H, title VII, §7059(a)-(g), Mar. 11, 2009, 123 Stat. 896.

Pub. L. 110-161, div. J, title VI, §676, Dec. 26, 2007, 121 Stat. 2357.

Pub. L. 109-102, title V, §577, Nov. 14, 2005, 119 Stat. 2231.

Pub. L. 108-447, div. D, title V, §588, Dec. 8, 2004, 118 Stat. 3034.

Pub. L. 108-199, div. D, title V, §525, Jan. 23, 2004, 118 Stat. 176, provided that: “Funds appropriated by this and subsequent appropriations Acts to carry out the provisions of part I of the Foreign Assistance Act of 1961 [22 U.S.C. 2151 et seq.], including funds appropriated under the heading ‘Assistance for Eastern Europe and the Baltic States’, may be made available to

employ individuals overseas on a limited appointment basis pursuant to the authority of sections 308 and 309 of the Foreign Service Act of 1980 [22 U.S.C. 3948, 3949]: *Provided*, That in fiscal years 2004, 2005, and 2006 the authority of this section may be used to hire not more than 85 individuals in each such year.”

### § 3949. Limited appointments

(a) A limited appointment in the Service, including an appointment of an individual who is an employee of an agency, may not exceed 5 years in duration and, except as provided in subsections (b) and (c), may not be extended or renewed. A limited appointment in the Service which is limited by its terms to a period of one year or less is a temporary appointment.

(b) A limited appointment may be extended for continued service—

(1) as a consular agent;

(2) in accordance with section 3951(a) of this title;

(3) as a career candidate, if—

(A) continued service is determined appropriate to remedy a matter that would be cognizable as a grievance under subchapter XI; or

(B) the individual is serving in the uniformed services (as defined in section 4303 of title 38) and the limited appointment expires in the course of such service;

(4) as a career employee in another Federal personnel system serving in a Foreign Service position on detail from another agency;

(5) as a foreign national employee;

(6) in exceptional circumstances if the Secretary determines the needs of the Service require the extension of—

(A) a limited noncareer appointment for a period not to exceed 1 year; or

(B) a limited appointment of a career candidate for the minimum time needed to resolve a grievance, claim, investigation, or complaint not otherwise provided for in this section.

(c)(1) Except as provided in paragraph (2) non-career employees who have served for 5 consecutive years under a limited appointment under this section may be reappointed to a subsequent noncareer limited appointment if there is at least a 1-year break in service before such new appointment.

(2) The Secretary may waive the 1-year break requirement under paragraph (1) in cases of special need.

(Pub. L. 96-465, title I, §309, Oct. 17, 1980, 94 Stat. 2086; Pub. L. 100-204, title I, §176, Dec. 22, 1987, 101 Stat. 1361; Pub. L. 103-236, title I, §180(a)(1), Apr. 30, 1994, 108 Stat. 415; Pub. L. 103-415, §1(hh), Oct. 25, 1994, 108 Stat. 4303; Pub. L. 114-323, title IV, §409, Dec. 16, 2016, 130 Stat. 1930.)

### Editorial Notes

#### AMENDMENTS

2016—Subsec. (a). Pub. L. 114-323, §409(1), substituted “subsections (b) and (c)” for “subsection (b)”.

Subsec. (b)(3). Pub. L. 114-323, §409(2)(A), substituted “if—” for “if”, inserted subpar. (A) designation before “continued service” and “or” after semicolon at end, and added subpar. (B).

Subsec. (b)(6). Pub. L. 114-323, §409(2)(B)-(D), added par. (6).