

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) 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) 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.)

Editorial Notes

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)”.

Statutory Notes and Related Subsidiaries

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; suspension

(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 conducted 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) 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.

(c) Suspension

(1) In order to promote the efficiency of the Service, the Secretary may indefinitely suspend without duties a member of the Service when—

(A) the member's security clearance is suspended; or

(B) there is reasonable cause to believe that the member has committed a crime for which a sentence of imprisonment may be imposed.