OGC 83-03533
5 May 1983

MEMORANDUM FOR: [redacted] STAT
Deputy Director of Personnel

[redacted] STAT
SSA/DDA

FROM: [redacted] STAT
Chief, Legislation Division, OGC

SUBJECT: S. 1136, the "Foreign Service Act Amendments of 1983"

1. Attached for your information, review, and comment is an excerpt from the 26 April Congressional Record where Senator Charles Percy (R., IL) introduces S. 1136 at the request of the State Department. The bill amends the Foreign Service Act of 1980 and is reprinted in the Record along with a section-by-section analysis of the bill. Please note in particular section (6)(a)(1) of the Bill which amends the definition of a former spouse and section (6)(a)(3) which concerns the election of a survivor annuity.

2. I would appreciate your review of the bill and your comments as soon as possible. We will send you a copy of the actual bill once it is printed. Please refer your comments, in writing or by telephone, to [redacted] of this Office STAT
[redacted]. STAT

[redacted]

Attachment

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tion of the airman certificates and for additional penalties for the transportation by aircraft of controlled substances, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. DANFORTH (for himself and Mr. TSONGAS):

S. 1147. A bill to amend the Internal Revenue Code of 1954 to exclude from gross income the discharge of mortgage debt on a principal residence; to the Committee on Finance.

By Mr. MELCHER:

S. 1148. A bill to provide for the use and distribution of funds awarded the Assiniboine Tribe of the Fort Belknap Indian Community, Mont., and the Assiniboine Tribe of the Fort Peck Indian Community, Mont., in docket numbered 10-81L by the U.S. Court of Claims, and for other purposes; to the Select Committee on Indian Affairs.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. MOYNIHAN:

S. Res. 122. Resolution expressing the sense of the Senate that the President should reduce imports of apparel so that imported apparel comprises no more than 25 percent of the American apparel market; to the Committee on Finance.

By Mr. DIXON:

S. Res. 123. Resolution providing for an investigation and report by a standing or select Senate committee regarding Department of the Interior coal leasing activities; to the Committee on Rules and Administration.

By Mr. GOLDWATER (for himself, Mr. MOYNIHAN, Mr. GARN, Mr. CHAFEE, Mr. LUGAR, Mr. WALLOP, Mr. DURENBERGER, Mr. ROTH, Mr. COHEN, Mr. HUDDLESTON, Mr. BIDEN, Mr. INOUYE, Mr. JACKSON, Mr. LEAHY, and Mr. BENTSEN):

S. Con. Res. 28. Concurrent resolution to support the establishment of a National Historical Intelligence Museum; to the Select Committee on Intelligence.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. PERCY (by request):

S. 1136. A bill to amend the Foreign Service Act of 1980, and for other purposes; to the Committee on Foreign Relations.

FOREIGN SERVICE ACT AMENDMENTS OF 1983

● Mr. PERCY. Mr. President, by request, I introduce for appropriate reference a bill to amend the Foreign Service Act of 1980.

This legislation has been requested by the Department of State, and I am introducing the proposed legislation in order that there may be a specific bill to which Members of the Senate and the public may direct their attention and comments.

I reserve my right to support or oppose this bill, as well as any suggested amendments to it, when the matter is considered by the Committee on Foreign Relations.

I ask unanimous consent that the bill be printed in the RECORD at this point, together with a section-by-section analysis of the bill and the letter from the Assistant Secretary of State for Congressional Relations to the President of the Senate dated April 15, 1983.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 1136

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Foreign Service Act Amendments of 1983".

MANAGEMENT OF THE SERVICE

SEC. 2. Chapter 2 of title I of the Foreign Service Act of 1980 is amended as follows:

Section 209(a), relating to the Inspector General, is amended by adding at the end thereof the following new paragraph:

"(3) For the purposes of section 7324 of title 5, United States Code, the Inspector General shall not be considered to be an employee who determines policies to be pursued by the United States in relations with foreign powers or in the nationwide administration of Federal laws.".

APPOINTMENTS

SEC. 3. Chapter 3 of title I of the Foreign Service Act of 1980 is amended as follows:

(1) Section 305(b), relating to appointment to the Senior Foreign Service, is amended to read as follows:

"(b) An individual may not be given a limited appointment in the Senior Foreign Service if that appointment would cause the number of members of the Senior Foreign Service serving under limited appointments to exceed 5 percent of the total number of members of the Senior Foreign Service, except that—

"(1) members of the Senior Foreign Service assigned to the Peace Corps shall be excluded in the calculation and application of this limitation,

"(2) members of the Senior Foreign Service serving under limited appointments who have reemployment rights under section 310, as career appointees in the Senior Executive Service or as career senior appointees in any other Federal personnel system, shall be considered to be career members of the Senior Foreign Service for purposes of this subsection, and

"(3) not to exceed 10 members at any one time appointed by the Secretary of Commerce (excluding from this limit of 10, any career appointees described in paragraph (2) above) shall be excluded in the calculation and application of this limitation.".

(2) Section 309, relating to limited appointments, is amended to read as follows:

"SEC. 309. LIMITED APPOINTMENTS.—(a) Except as provided in subsection (b), a limited appointment in the Service may not exceed 5 years in duration and may not be extended or renewed. An 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: (1) in order to permit the completion in extraordinary circumstances of a current assignment, or (2) for continued service as—

"(1) a consular agent;

"(2) a family member employed under section 311; or

"(3) a career candidate, if continued service is determined appropriate to remedy a grievance cognizable under chapter 11.".

COMPENSATION

SEC. 4. Chapter 4 of title I of the Foreign Service Act of 1980 is amended as follows:

"(1) Section 401(a), relating to salaries of chiefs of mission, is amended by inserting, immediately after "mission", the words "appointed under section 302(a)(1)".

(2) Section 406, relating to within-class salary increases, is amended as follows:

"(A) In subsection (a), delete all between the comma after "13" and the period.

"(B) In subsection (b), substitute the following text in its entirety—

"(b) The Secretarty may grant, on the basis of especially meritorious service, to any member of the Service receiving a salary under the Foreign Service Schedule, an additional salary increase to any higher step in the salary class in which the member is serving. Such increases may be granted at the same time as the increases provided under Subsection (a) or at any other time established by regulation."

"(C) Add the following new subsection (c)—

"(c) Notwithstanding subsection (a) the Secretary shall prescribe regulations under which a periodic within-class salary increase may be withheld or deferred for a member of the Service who is on leave without pay, or in part-time employment status, and shall be withheld or deferred for a member whose performance is found in a review by a selection board to fall below the standards of performance for the member's salary class."

(3) Section 408(a)(1), relating to local compensation plans, is amended by revising the third sentence thereof to read as follows: "Any compensation plan established under this section may include provision for:

"(A) leaves of absence with pay for foreign national employees in accordance with prevailing law and employment practices in the locality of employment without regard to any limitations contained in section 6310 of title 5, United States Code; and

"(B) payments by the Government and foreign national employees to a trust or other fund in a financial institution in order to finance future benefits for foreign national employees, including provision for retention in the fund of accumulated interest for the benefit of covered foreign national employees.".

PROMOTION AND RETENTION

SEC. 5. Chapter 6 of title I of the Foreign Service Act of 1980 is amended as follows:

(1) Section 601(b), relating to promotions, is amended by adding at the end thereof the following new sentence: "The Secretary shall exclude members of the Service from eligibility for promotion when they remain in the Serivce after expiration of time-in-class and any limited career extensions under section 607.".

(2) Section 607, relating to retirement for expiration of time in class, is amended as follows:

(A) In subsection (b)(1), immediately after "class", insert "(including a class from which no effective promotional opportunities exist)";

(B) In subsection (d)(2), immediately after "case", insert "except when necessary to attain eligibility for an immediate annuity under chapter 8".

(3) Section 609, relating to retirement benefits, is amended as follows:

(A) Subsection (a) is amended to read as follows:

"(a) A member of the Service who is retired under section 607(c) or 608(b)—

"(1) after becoming eligible for voluntary retirement under section 811, or

"(2) from the Senior Foreign Service or class 1 in the Foreign Service Schedule,

shall receive retirement benefits in accordance with section 806.";

(B) Subsection (b) is amended by striking out "607(c)(1)" and inserting in lieu thereof "607(c)".

(4) Section 610, relating to separation for cause, is amended in subsection (a)(2), by adding at the end thereof the following new sentence: "Section 1110 shall also apply to proceedings under this paragraph.".

FOREIGN SERVICE RETIREMENT AND DISABILITY SYSTEM

SEC. 6. (a) Chapter 8 of title I of the Foreign Service Act of 1980 is amended as follows:

(1) Section 804(6), relating to definitions, is amended by inserting immediately after "10 years", the phrase "(including at least 5 years while the participant was making contributions for current service to the Fund)".

(2) Section 805(d)(1), relating to contributions to the Fund, is amended as follows:

(i) strike out "equal to" and insert in lieu thereof a period and "Special contributions for purposes of subparagraph (A) shall equal", and

(ii) at the end thereof add the following new sentence: "Special contributions for prior refunds under subparagraph (B) shall equal the amount of the prior refund received by the participant.";

(3) Section 806, relating to computation and election of annuities and surviver annuities is amended as follows:

(A) Subsection (b)(1)(C) is amended as follows:

(i) insert, immediately after "waive", the words "or reduce";

(ii) strike out "(i)"; and

(iii) strike out all after "final" and insert in lieu thereof a period;

(B) Subsection (b)(1)(D) is repealed.

(4) Section 808, relating to retirement for disability or incapacity, is amended as follows:

(A) Subsections (a) and (b) are each amended by striking out "65" each time it appears and inserting in lieu thereof "60".

(B) Subsection (a) is further amended by adding at the end thereof the following: "However, if a participant retiring under this section is receiving retired pay or retainer pay for military service (except that specified in section 8332(c) (1) or (2) of title 5 of the United States Code) or Veterans Administration pension or compensation in lieu of such retired or retainer pay, the annuity of that participant shall be computed under this chapter excluding extra credit authorized by this subsection and excluding credit for military service from that computation. If the amount of the annuity so computed, plus the retired or retainer pay which is received, or which would be received but for the application of the limitation in section 5532 of title 5 of the United States Code, or the Veterans' Administration pension or compensation in lieu of such retired pay or retainer pay, is less than the annuity that would be payable under this chapter in the absence of the previous sentence, an amount equal to the difference shall be added to the annuity computed under this chapter.".

(5) Subsection (e) is amended by striking out "65" and inserting in lieu thereof "60"; and

(6) Subsection (h) is amended by striking out "(b)(4)" and inserting in lieu thereof "(b)(3)(C)". (6) Section 811, relating to voluntary retirement, is amended by adding the following at the end thereof: "The Secretary shall withhold consent for retirement under this section by any participant who has not been a member of the Service for 5 years. However, any participant who voluntarily separates from the Service before completing 5 years in the system and who, on the date of separation, would be eligible for an annuity, based on a voluntary separation, under section 8336 or 8338 of title 5, United States Code, if the participant then had an appointment under the Civil Service Retirement System, counting the participant's total federal service, may receive an annuity under section 8336 or 8338, notwithstanding section 8333(b) of title 5 United States Code, provided that all contributions transferred to the Fund under section 805(c)(1) of this Act, as well as all contributions withheld from the participant's pay and deposited into the Fund during the period he/she was subject to this chapter, including interest on these amounts, are transferred to the Civil Service Retirement and Disability Fund effective on the date the participant separates from the Service."

(7) Section 814(a), relating to former spouses, is amended as follows:

(A) In paragraph (3), strike out "on the first day of the month" and insert in lieu thereof "or the first day of the month following the month";

(B) In paragraph (4), immediately after "final", insert ", unless it is issued in recognition of a substantial change in the economic circumstances of either party".

(8) Section 815, relating to lump-sum payments, is amended as follows:

(A) Subsection (a) is amended to read as follows:

"(a)(1) A participant is entitled to be paid the lump-sum credit if he or she—

"(A) is separated from the Service for at least thirty-one consecutive days, or is transferred to a position in which he is not subject to this chapter and remains in such a position for at least thrity-one consecutive days;

"(B) files an application with the Secretary for payment of the lump-sum credit;

"(C) is not reemployed in a position in which he or she is subject to this chapter at the time he or she files the application; and

"(D) will not become eligible to receive an annuity within thirty-one days after filing the application.

Payment of the lump-sum credit voids all annuity rights under this chapter based on the service on which the lump-sum credit is based, until the participant is reemployed in the Service subject to this chapter.

"(2) Whenever a participant becomes entitled to be paid under subsection (a)(1), the lump-sum credit shall be paid to the participant and to any former spouse (who has not remarried prior to age 60) of the participant in accordance with subsection (i) and to any spouse to whom the participant was married on the date of the separation from the Service, which separation forms the basis for the payment, in accordance with subsection (j).";

(B) At the end thereof, add a new subsection (j) to read as follows:

"(j)(1) If a written request by either the participant (or former participant) or the spouse is received by the Secretary of State no later than 15 days after the later of—

"(A) the effective date of the separation; or

"(B) the receipt of the refund application by the Secretary of State,

then, unless otherwise expressly provided by a any spousal agreement or court order under section 820(b), the amount of a participant's or former participant's lump-sum credit payable to a spouse of that participant shall be—

"(i) if the spouse was married to the participant throughout the period of creditable service of the participant, 50 percent of the lump-sum credit to which such participant would be entitled in the absence of this subsection, or

"(ii) if such spouse was not married to the participant throughout such creditable service, an amount equal to a pro rata share (calculated under section 804(10) as if the spouse were a former spouse) of 50 percent of such lump-sum credit.

"(2) The lump-sum credit of the participant shall be reduced by the amount of the lump-sum credit payable to the spouse.".

(9) Section 816(i)(2), relating to creditable service, is amended to read as follows:

"(2) A former spouse shall not be considered as married to a participant for periods assumed to be creditable service under section 808(a) or section 809(e).";

(10) Section 817, relating to extra credit for service at unhealthful posts, is amended by adding, at the end thereof, the following new sentence: "Such extra credit shall not be used to determine the eligibility of a person to qualify as a former spouse under section 804(6), or to compute the pro rata share under section 804(10).".

(11) Section 826(c)(1), relating to cost of living adjustments in annuities, is amended to read as follows:

"(c)(1) The first increase (if any) made under this section to an annuity which is payable from the Fund to a participant or to the surviving spouse or former spouse of a deceased participant who dies in service or a deceased annuitant whose annuity has not been increased under this section, shall be equal to the product (adjusted to the nearest one-tenth of 1 percent) of—

"(A) one-twelfth of the applicable percent change computed under subsection (b) of this section multiplied by

"(B) the number of months (counting any portion of a month as a month)—

"(i) for which the annuity was payable from the Fund before the effective date of the increase, or

"(ii) in the case of a surviving spouse or former spouse of a deceased annuitant whose annuity has not been so increased, since the annuity was first payable to the deceased annuitant.";

(12) Immediately after section 827, insert a new section 828 to read as follows:

"SEC. 828. MISSING SPOUSES AND FORMER SPOUSES.—The Secretary of State may prescribe regulations under which a participant or former participant may make an election to waive or reduce a survivor annuity to a spouse or former spouse under section 806(b), and to waive or reduce a lump sum payment to a spouse or former spouse under section 815 without agreement of the participant's spouse or former spouse if the participant establishes to the satisfaction of the Secretary of State, after having taken all reasonable steps to determine the whereabouts of the spouse or former spouse, that the participant does not know the whereabouts. When the Secretary of State determines that a spouse or former spouse is missing during the time an annuity is payable to such missing spouse or former spouse under sections 806 or 814, the Secretary of State may by regulation provide for payment of such annuity to the former participant, if alive, or to a surviving spouse or surviving former spouse who is not missing.".

(b)(1) The amendment made by section 6(a)(6) of this Act to section 811 of the Foreign Service Act of 1980, relating to voluntary retirement, shall not apply to individuals who are participants in the System on the date of enactment of this Act.

(2) The amendments made by section 6(a)(11) of this Act to section 826(c) of the Foreign Service Act of 1980, relating to cost-of-living adjustments of annuities, shall be made retroactively effective to August 13, 1981, and shall apply to annuities which commence before, on, or after such date.

LABOR-MANAGEMENT RELATIONS

SEC. 7. Chapter 10 of title I of the Foreign Service Act of 1980 is amended as follows:

(1) Section 1002(12)(E), relating to definitions, is amended by inserting, immediately after "209", a comma and "or comparable investigation, inspection, or audit activities in the other agencies to which this chapter is applicable under section 1003".

(2) Section 1014(a)(3), relating to resolution of implementation disputes, is amended by inserting, immediately after "appeal", a comma and "including cost-sharing arrangements,".

TRANSITION

SEC. 8. Chapter 1 of title II of the Foreign Service Act of 1980 is amended as follows:

(1) Section 2104, relating to conversion from the Foreign Service, is amended by adding at the end thereof the following new subsection:

"(c) The 3-year period referred to in subsection (a) shall be extended for an additional 3 years after the date of enactment of this subsection in the case of members of the Service who were initially ineligible for conversion under that subsection because they were available for worldwide assignment and there was a need for their services in the Foreign Service, but as to whom subsequent events require the services of these members, and of those later employed who are similarly situated, only or primarily for domestic functions.".

(2) Section 2106(e)(2), relating to preservation of status and benefits, is amended to read as follows:

"(2) who, immediately before the effective date of this Act, was not subject to section 633(a)(2) of the Foreign Service Act of 1946 or section 625(a)(2) of the Foreign Assistance Act fo 1961.".

EFFECTIVE DATE OF 1980 ACT

SEC. 9. Section 2403, pertaining to effective dates, is amended by deleting subsection (c) and redesignating the following subsections accordingly.

AMENDMENTS TO BASIC AUTHORITIES ACT

SEC. 10. Title I of the State Department Basic Authorities Act is amended as follows:

(1) Section 2 is amended as follows:

(A) The introductory clause is amended to read "The Secretary of State may—";

(B) Strike out "and" at the end of subsection (e), strike out the period at the end of subsection (f) and insert in lieu thereof a semicolon, and add at the end thereof the following new subsection:

"(g) Obtain services as authorized by section 3109 of title 5, United States Code, at a rate not to exceed the maximum prescribed for GS-18 under section 5332 of title 5, United States Code.".

(2) Section 11 is amended to read as follows:

"SEC. 11. Funds appropriated to the Department of State shall be available for expenses of international arbitrations and other proceedings for the peaceful resolution of international disputes under treaties or other international agreements, and arbitrations arising under contracts authorized by law for the performance of services or acquisition of property abroad.".

(3) Section 32 is amended by adding at the end thereof the following new sentence: "The authorities available to the Secretary of State under this section with respect to the Department of State shall be available to the Director of the United States Information Agency and the Director of the United States International Development Cooperation Agency with respect to their respective agencies.".

AMENDMENTS TO TITLE 5, UNITED STATES CODE

SEC. 11. Title 5 of the United States Code is amended as follows:

(1) Section 5551(a), relating to lump-sum payment for accumulated and accrued leave on separation, is amended by striking out "pay" in the second sentence and inserting in lieu thereof "basic pay".

(2) Section 5724a(a)(3), relating to travel and transportation expenses of employees, is amended by striking out the period at the end of the second sentence and inserting in lieu thereof a semi-colon and "or, in the case of an employee moving from a post in a foreign area, the period of residence in temporary quarters may be extended for an additional period of 30 days less such period as the employee has been compensated for by temporary lodging allowance under section 5923(1)(B) of title 5, United States Code, in connection with the same move.".

(3) Section 5924(4), relating to education allowances, is amended as follows:

(A) In the introduction, immediately after "foreign areas", insert a comma and "or official assignment to serve in such area or areas,".

(B) In paragraph (A), strike out "kindergarten" and insert in lieu thereof "pre-kindergarten for handicapped children, kindergarten".

(C) In paragraph (B), strike out "undergraduate college" each time it appears and insert in lieu thereof "post-secondary educational institution".

(4) Section 5944, relating to burial and last illness expenses of native employees in foreign countries, is repealed.

FOREIGN SERVICE ACT AMENDMENTS OF 1983: SECTIONAL ANALYSIS

SECTION 2: "HATCHING" THE INSPECTOR GENERAL (F.S. ACT SEC. 209(a))

This amendment would make clear that the Inspector General of the Foreign Service and the Department of State is under provisions of the Hatch Act, thus prohibiting participation in certain partisan political activities.

Section 3(c) of the Inspector General Act of 1978 states that no Inspector General shall be considered to be an employee who determines policies to be pursued by the United States in the nationwide administration of Federal laws. The purpose of this provision is to make clear that the Inspectors General are subject to the limitations of the Hatch Act on participation in political campaigns. There is no comparable provision in the law establishing the Inspector General of the Department of State and the Foreign Service. This amendment would eliminate any question that the holder of that position, who is appointed by the President with the advice and consent of the Senate, is not subject to the Hatch Act. Accordingly, it seems appropriate to emphasize the nonpolitical nature of the incumbents' responsibilities. The enactment of this section is in no way intended to be used as a precedent in determining whether any other officer of the Government is or is not subject to the Hatch Act.

SECTION 3(1): FIVE PERCENT LIMITATION ON NON-CAREER MEMBERS OF THE SENIOR FOREIGN SERVICE (F.S. ACT SEC. 305 (b))

Section 305 of the Act now provides that career government employees who are members of the Senior Executive Service are not to be counted against the 5% limit on non-career membership in the Senior Foreign Service. Most senior career government officials appointed to limited appointments in the SFS, with reemployment rights to their career status, will in fact come from the SES. In rare cases, however, it will be desirable to appoint a non-SES career employee to an SFS limited appointment (for example, a scientific supergrade appointed under P.L.-313, or a member of one of the parallel services to the SES. This amendment would exempt career government officials from their other career services from being counted against the non-career ceiling. This is consistent with the original purpose of the 1980 Act.

Section 305 is also being revised to make permanent the temporary provision in section 2403(c) of the 1980 Act that excludes appointments made by the Secretary of Commerce to the Senior Foreign Service from the calculation and application of the limitation of this section on limited appointments. The amendment makes permanent the limit of 10 on the number of members serving in the Senior Foreign Service at any one time under limited appointment by the Secretary of Commerce.

This change is being sought by the Department of Commerce because the October 1, 1985 expiration date in section 2403(c) of the Foreign Service Act of 1980 does not allow for "phased hiring" during the period of transition from State detailees to FCS personnel. Moreover, the Department needs flexibility indefinitely to competitively fill numerous SFS positions with available highly qualified private sector executives.

Typically, the individuals would serve one 3-4 year tour and apply their expertise to penetrating difficult export markets and building extensive Embassy contacts in host countries and regional markets.

Section 2403(c) of the 1980 Act is being repealed by section 10 of the bill.

Section 305(b) of the 1980 Act is being completely restated for editorial reasons. The only substantive changes are those described above.

SECTION 3(2): EXCLUSIONS FROM 5-YEAR LIMIT ON LIMITED APPOINTMENTS (F.S. ACT SEC. 309)

This amendment would correct inadvertent omissions in the original text of section 309 and would consolidate in a single section all exceptions to the 5 year limitation on the duration of limited appointments. Exceptions are provided in order to avoid interruption of a current assignment, for service as a consular agent, for employment as a family member, and for continued service as a career candidate when a grievance is pending. Consular agents perform consular and related services in locations where there are no Foreign Service posts, and it is highly desirable to retain their services for an indefinite period of time, if their performance is satisfactory. They cannot be career members of the Foreign Service, either because they are foreign nationals, or because they are available for service only in one locality. Career candiates serving on limited appointments sometimes contest decisions not to grant them career status before the expiration of the maximum 5 year period for such appointments. The amendment would clarify the Department's authority to extend the candidate's appointment in such a case, if ordered by the Foreign Service Grievance Board, or if deemed necessary administratively to provide an equitable chance for career consideration. The exception for family members is already provided by existing law, but is consolidated here with other exceptions for convenient reference. The exception to permit completion of a current assignment is intended to promote greater efficiency in the assignment of individuals serving under limited appointments. It is expected that the need to use this authority will arise rarely.

SECTION 4(1): SALARIES FOR CHIEFS OF MISSION (F.S. ACT SEC. 401 (a))

This amendment would make clear that only those individuals appointed by the President and confirmed by the Senate are to receive the salary of a Chief of Mission. Members of the Service assigned to perform the functions of a Chief of Mission, for example, as the head of a U.S. Interests Section or as a charge d'affaires, would remain eligible for a salary differential under section 411 of the Act, but would not receive the statutory salary of an Ambassador.

SECTION 4(2): ELIGIBILITY FOR WITHIN GRADE SALARY INCREASES (F.S. ACT SEC. 406(a))

Section 406 presently addresses three points. First, it provides in subsection (a) a schedule for regular within-class salary increases for members of the Service. Second, in the same subsection it provides for withholding such increases on the basis of selection board determination that performance, while satisfactory, is at a level below that of most members of the class. Finally, subsection (b) provides for additional increases for meritorious service. Because of the difference between the Foreign Service performance evaluation cycle and the anniversary dates of promoter into a class, it has been difficult under the present language to reconcile the regularly scheduled increases with meritorious increases, on the one hand, and, on the other, withholding of regular increases on performance grounds. The amendments would make each point the subject of a separate subsection, so that, by regulation, the actions may be keyed to one another or independent as appropriate. Implementing regulations would be consistent with government-wide practice for the Civil Service system. In addition, new subsection (c) would make clear that either deferral or withholding may be offered in case of members on leave without pay or in part-time employment and must be ordered in cases where selection boards determine performance is not up to the standard of the class.

SECTION 4(3): PROVIDENT FUNDS FOR FOREIGN NATIONAL EMPLOYEES (F.S. ACT SEC. 408)

This amendment would clarify the Secretary's authority to utilize provident funds in countries where this is in accordance with local practice. A provident fund is used in lieu of a life-certain annuity as a retirement benefit in many countries. Basically, a provident fund is made up of the deposits of a specified percentage of an employee's salary by the employer and the employee. Upon termination of employment for retirement or other reasons, an employee receives the cumulative deposits plus interest as a lump-sum, rather than being paid a periodic annuity for life.

The existing statute clearly gives the Secretary authority to establish provident funds consistent with local pay practices for the benefit of Foreign Service National employees. This amendment is necessary to permit the interest that accumulates in such trust funds to be paid out in subsequent years to the beneficiaries. The amendment restates the third sentence of section 408(e) of the Act. Clause (B) is new material, clause (A) is a restatement of existing language.

SECTION 5(1): INELIGIBILITY FOR PROMOTION AFTER EXPIRATION OF TIME-IN-CLASS (F.S. ACT SEC. 601 (b))

In certain cases, members of the Foreign Service are allowed to remain beyond expiration of their time-in-class, normally for humanitarian reasons to allow them to qualify for an immediate annuity. (Individuals at the FS-1 level and higher are eligible for such an annuity at expiration of time-in-class under section 609, but those at FS-2 and lower are not.) This amendment would insure that individuals retained for this purpose are not eligible for promotion. If they were allowed to compete for promotion, then time-in-class rules would become meaningless.

SECTION 5(2): LIMITED CAREER EXTENSIONS BELOW THE HIGHEST CLASS IN AN OCCUPATION/RETENTION AFTER EXPIRATION OF TIC TO GAIN ELIGIBILITY FOR AN IMMEDIATE ANNUITY (F.S. ACT SEC. 607(b)(1) AND 607(d)(2))

The current law permits Limited Career Extensions (LCEs) when individuals have attained the highest salary class for their occupation categories except in the Senior Foreign Service, in which case ICEs are available at each class level. It is now clear that such a restriction below the SFS level could lead to undesirable separations through expirations of time-in-class in categories where there are a very few positions at the highest possible class, so that most individuals could never expect to be promoted. This amendment would permit the Secretary to determine when this circumstance exists, and to authorize by regulation use of LCEs in classes below the most senior. The second part of the amendment would provide new authority to the Secretary to retain individuals below the FS-1 level for more than one year after their TIC has expired, in order to allow them to qualify for an immediate annuity.

SECTION 5(3) (A) AND (B): RETIREMENT BENEFITS/SEVERANCE PAY FOR INDIVIDUALS SEPARATED FROM THE SERVICE AFTER EXPIRATION OF TIC OR FAILURE TO HAVE A LIMITED CAREER EXTENSION RENEWED (F.S. ACT SEC. 609(a) AND (b))

These amendments modify the existing language of section 609 to avoid an anomaly which would otherwise be created by the adoption of Section 5(2) above. Without these amendments, an individual leaving the service from FS-2 or below for expiration of time-in-class would receive severance pay, while one at the same levels leaving for expiration of a limited career extension without renewal would be entitled to an immediate annuity. The two situations should be treated the same. The amendments would conform the two cases, and follow the existing practice, first legislated in 1946, that those separated involuntarily from class FS-1 or higher receive an immediate annuity, while those separated involuntarily from classes FS-2 and lower receive severance pay.

SECTION 5(4): JUDICIAL REVIEW IN SEPARATION FOR CAUSE CASES (F.S. ACT SEC. 610(a)(2))

Section 1110 of the Act authorizes an aggrieved party in a grievance case to obtain judicial review of a final action of the Secretary or the Board. Section 610, which provides for separation for cause, specifically applies only the hearing procedures of section 1106 to separation cases before the Board. Other provisions of Chapter 11 applicable to grievances may in general be applied to the extent appropriate to separations by rule of the Board itself, but it takes a provision of law to have judicial review. This amendment would apply the judicial review provisions, now applicable to grievances, to separation for cause cases as well.

SECTION 6(a)(1): DEFINITION OF FORMER SPOUSE (F.S. ACT SEC. 804(6))

The Act now requires only 10 years of marriage during any period of Federal Government service. Thus an employee who has a former spouse at time of transfer from Civil Service to Foreign Service could be affected, even where the 10 years of marriage do not include any period of time while the participant was in the Foreign Service. This amendment would require that there be at least five years of marriage while one of the partners was a participant in the Foreign Service retirement system in order to qualify for benefits as a former spouse under that System.

When a family separation occurs and a divorce is initiated while an employee is under the Civil Service and the divorce is finalized months or years later after the employee has transferred to the Foreign Service, there is no reason the former spouse should benefit by the special Foreign Service provisions.

The special provisions in the Foreign Service retirement system for spouses and former spouses are in recognition of difficulty spouses of Foreign Service employees have in building an independent economic base caused by frequent moves and the prohibitions of spousal employment abroad. The proposed requirement that at least 5 years of the 10-year marriage requirement must have occurred while the employee was in the Foreign Service is a minimum requirement. This change is consistent with the proposed change of section 811 of the Act to add to the requirements that a member must meet to apply for voluntary retirement, a requirement that the member have completed at least 5 years in the Foreign Service.

SECTION 6(a)(2): REPAYMENT OF REFUNDS (F.S. ACT SEC. 805(d)(1))

This amendment simplifies the calculation of the amount owing by a member for a previous refund of contributions from the Foreign Service Retirement and Disability System (FSRDS) or from any other retirement system for Government employees. Such refunds must be repaid by a member in order to obtain any credit for the prior service. At present, amounts owing for such refunds are determined by taking into account the differing contribution rates previously in effect under the FSRDS during the period covered by the refund. This rate at different times has been both higher and lower than the corresponding rate in the Civil Service Retirement and Disability System (CSRDS). The proposed change would adopt the current CSRDS formula expressed in 5 U.S.C. 8334(d) under which the amount owing is simply the amount of the previous refund plus interest.

SECTION 6(a)(3)(A): ELECTION OF SURVIVOR ANNUITY (F.S. ACT SEC. 806(b)(1)(C))

This change would permit a member and former spouse to elect by spousal agreement a reduced survivor annuity. At present they must elect either the maximum survivor annuity or none. This change would also permit such an agreement to be entered into within 12 months after a divorce in the event a divorce occurs after the member's retirement. At present, such elections cannot be made after retirement despite the changed circumstances and desires of the parties.

SECTION 6(a)(3)(B): MISSING PERSONS (F.S. ACT SEC. 806(b)(1)(D))

This amendment deletes section 806(b)(1)(D) of the Act because it is encompassed by the broader treatment of the subject of missing spouses and former spouses in new section 828 of the Act that would be added by section 6(a)(12).

SECTIONS 6(a)(4)(A) AND (6)(a)(5)(A): AGE REQUIREMENT FOR MINIMUM ANNUITY AND DISABILITY EXAMINATION (F.S. ACT SECS. 808 (a) AND (b), 809(e))

Sections 808(a) and 809(e) of the Act fix the minimum disability and survivor annuity, respectively, for members who become disabled or who die in service. The mini-

mums are currently based on assumed service to 65, or to a total of 20 years whichever is less.

These amendments would change the specified age to 60 instead of 65 to conform with 5 U.S.C. 8339(g) and 8341(d).

Section 808(b) of the Act requires a disability annuitant whose disability has not been declared permanent by the Office of Medical Services to undergo an annual physical examination up to the age of 65. This change would reduce the age to 60 and consequently reduce the number of such examinations. This amendment would conform with 5 U.S.C. 8337(c).

SECTION 6(a)(4)(B): MINIMUM DISABILITY ANNUITY (F.S. ACT SEC. 808(a))

This amendment picks up an amendment made by Executive order 12289 of February 14, 1981 and inserts it at the appropriate place in the statute. The provision, which was made applicable to the Civil Service retirement system by section 404 of the Omnibus Reconciliation Act of 1980, section 404 excludes individuals who are receiving military retired pay or veterans' compensation from the guaranteed minimum disability annuity provision which will continue to apply to individuals who receive military retired pay on account of service-connected disabilities received in combat or caused by an instrumentality of war.

SECTION 6(a)(5)(B): CORRECTION OF REFERENCE (F.S. ACT SEC. 809(h))

This amendment would correct a reference in section 809(h) of the Act.

SECTION 6(a)(6): VOLUNTARY RETIREMENT (F.S. ACT SEC. 811)

This amendment would require members to complete 5 years under the FSRDS before becoming eligible for voluntary retirement at age 50 after 20 years creditable service. In the 1980 Act, a requirement was imposed that a member have at least 5 years of civilian service credit in order to retire voluntarily in order to prevent those with extensive military service from entering the Service and retiring in less than 5 years. This amendment will impose a comparable requirement for those with extensive service under CSRS. The change will be made applicable only to those who enter the Service after enactment of the Act (see effective date section 6(b)(1)). The amendment will permit a member who wishes to retire before completing 5 years in the Foreign Service Retirement and Disability System, whose total Federal Service would entitle him/her to do so under the Civil Service retirement system, to revert to the latter system and receive an annuity thereunder.

SECTION 6(a)(7)(A): EFFECTIVE DATE OF PENSION TO FORMER SPOUSE (F.S. ACT SEC. 814(a)(3))

The first change—insertion of the word "or"—is purely technical to clarify the original intent. The change of effective date of pension payments to a former spouse to first of month following divorce from first of month in which divorce occurs would reduce potential for overpayments and provide consistency with the effective date for changes in survivorship reductions stated in sections 806(i) and 814(b)(5)(A) of the Act. It would eliminate the need to make two successive annuity recomputations when a divorce occurs after retirement—one adjustment to provide a pension to the former spouse and another adjustment the next month to adjust the survivorship reduction.

SECTION 6(a)(7)(B): COURT-ORDERED CHANGES (F.S. ACT SEC. 814(a)(4))

This amendment would permit a court, irrespective of the date of divorce, to order a change in the percentage of a member's annuity which is payable to a former spouse provided the court finds that a substantial change in the economic circumstances of a least one party has occurred. At present, court orders affecting annuity payments issued more than 12 months following a divorce are not valid. The proposed change is consistent with the philosophy of the Act which allows a court to set aside the "pro rata" division stated in section 814 of the Act when individual circumstances so dictate.

SECTION 6(a)(8)(A): REFUNDS OF CONTRIBUTIONS (F.S. ACT SEC. 815(a))

This amendment divides section 815(a) of the Act into two paragraphs. New paragraph (1) requires that members be separated from the Service for at least 31 consecutive days and meet related requirements to be eligible for a refund of their contributions to the Fund. It conforms the FSRDS with the change made in CSRS by section 303(c) of the Omnibus Budget Reconciliation Act of 1982 as amended by section 3(f) of P.L. 97-346.

New paragraph (2) of section 815(a) would correct an apparent oversight in the 1980 Act by eliminating the right of a former spouse who remarries prior to age 60 to a share of the lump-sum payment, just as rights to an annuity are cut off in such circumstances. Also, this paragraph, coupled with new section 815(j) of the Act to be added by section 6(a)(8)(B), would provide a spouse who so requests a pro rata share of any refund of retirement contributions on resignation, unless waived by a spousal agreement, or a court ordered otherwise. It would provide a spouse the same right to share in the refunds on resignation of a Member as section 806(b) now provides with respect to a survivor annuity upon retirement of a Member. It would protect a spouse in the event a member leaves the Service prior to divorce in order to avoid payments to a former spouse required by the Foreign Service Act. In the event a member has both a spouse and former spouse when a refund becomes payable, each would receive a pro rata share of 50% of the refund, and the member would receive the other 50 percent plus any balance of the first 50 percent not included in a "pro rata share."

SECTION 6(a)(8)(B): DIVISION OF REFUNDS WITH SPOUSES ON REQUEST (F.S. ACT SEC. 815(j))

This amendment is explained under section 6(a)(8)(A).

SECTION 6(a)(9): UNHEALTHFUL POST CREDIT—APPLICATION TO FORMER SPOUSES—I (F.S. ACT SEC. 816(i)(2))

This amendment deletes current subparagraph (B) of section 816(i)(2) of the Act which relates to unhealthful post credit. The amendment is explained under section 6(a)(10).

SECTION 6(a)(10): UNHEALTHFUL POST CREDIT—APPLICATION TO FORMER SPOUSES—II (F.S. ACT SEC. 817)

This amendment would eliminate extra service credit for assignments at unhealthful posts granted to members not receiving post differential or danger pay from computations of the 10 years of creditable service during which a marriage must have endured and from computations of the pro rata share benefit. This would mean that a marriage must have endured during ten years of actual service to qualify a former spouse for benefits and that benefits would be based on actual Government service.

Currently, subparagraph (B) of section 816(i)(2), which would be repealed by section 6(a)(9), makes it necessary for the Department to determine whether a spouse resided with a member at an unhealthful post, both before or after passage of the Act. This is almost impossible to determine for periods prior to institution of the special reports now required. The change would simplify administration of the Act without significantly affecting benefits.

SECTION 6(a)(11): COST OF LIVING ADJUSTMENTS OF ANNUITIES (F.S. ACT SEC. 826(c)(1))

This amendment would conform cost-of-living adjustments in Foreign Service annuities with comparable adjustments in Civil Service annuities under 5 U.S.C. 8340 as amended by the Budget Acts of December 5, 1980 and August 13, 1981 (P.L. 96489 and P.L. 97-35, respectively). The former Act ended the "look-back" computation and provided for proration of the first adjustment. These changes were extended to the Foreign Service by Executive orders 12272 and 12289 of January 16, 1981 and February 14, 1981, respectively, except it was not possible to make the change applicable to former spouses by Executive order. This amendment is necessary to accomplish the latter. This amendment also changes the proration formula to conform with the change made by P.L. 97-35 effective August 13, 1981 and is made effective on the same date by section 6(b)(2).

SECTION 6(a)(12): MISSING PERSONS (F.S. ACT SEC. 828)

This amendment would add a new section 828 to the Act. It would expand current section 806(b)(1)(D) to cover additional types of elections when it is established that a spouse or former spouse is missing. It would also authorize payment of benefits otherwise due to the missing person to the participant, if alive, or to a spouse or other former spouse. Section 806(b)(1)(D) of the Act would be repealed by section 6(a)(3)(B).

SECTION 6(b): EFFECTIVE DATES

Section 6(b)(1) exempts current members from the application of the change in voluntary retirement made by section 6(a)(6) as is explained under that section.

Section 6(b)(2) makes the changes in section 826(c) of the Act, which provides for prorating initial annuity adjustments, retroactive to the date the formula was made applicable to CSRS.

SECTION 7(1): DESIGNATION OF INVESTIGATORS AND AUDITORS AS MANAGEMENT OFFICIALS FOR LABOR-MANAGEMENT PURPOSES (F.S. ACT SEC. 1002(12))

The current section designates as management officials employees assigned to carry out the functions of the Inspector General of the Foreign Service and the Department of State as management officials. Through inadvertence, officials performing similar audit and investigatory functions in the other foreign affairs agencies were not included. Government-wide practice is to exclude such officials from the bargaining unit, on grounds they have a special relationship and responsibility to management.

SECTION 7(2): COST SHARING FOR INSTITUTIONAL GRIEVANCES (F.S. ACT SEC. 1014(a)(3))

Under section 1105(e) all expenses of the Foreign Service Grievance Board are now paid out of funds appropriated to the Department of State; this includes expenses of institutional grievances where a union participates in bringing the grievance under chapter 10 of the Act. This amendment would require cost-sharing for these institutional (but not individual) grievances to be included in procedures negotiated by agency management and the exclusive representatives for resolution of implementation disputes relating to collective bargaining agree-

ments. Our estimate, assuming a presiding officer's fee of $300 per day plus travel and per diem, is that the average institutional grievance would have a cost of from $1500 to $3000.

SECTION 8(1): PROTECTION OF RIGHTS FOLLOWING MANDATORY CONVERSION FROM FOREIGN SERVICE TO CIVIL SERVICE (F.S. ACT SEC. 2104)

As enacted, the conversion provisions of the Foreign Service Act expire on February 14, 1984 (July 1, 1984 for USIA). In a few limited cases, it is now apparent that this will not be sufficient time to realign the personnel organization of the several agencies, especially for groups of employees who were originally considered to be worldwide available and therefore appropriately remaining in the Foreign Service, but who subsequently have been determined to be needed only for employment at home.

Consistent with the intent of the Act that domestic functions be carried out by members of the Civil Service, this change would allow completion of realignment of our two personnel systems without loss of pay, status, or benefits by employees. The three year period would expire 3 years after the date of enactment of this subsection, and would be consistent with the conversion period allowed other convertees under the Act. The amendment would apply only to individuals not previously eligible for conversion from the Foreign Service, since they were originally in the worldwide category after the effective date of the Act but prior to a decision that a particular occupation should be in the domestic group. Thus, it would not extend the original 3 year period allowed for conversion for those originally designated as domestic, particularly in the Department of State or USIA. The current plan is to apply the new authority only to certain security officers in the Department of State.

SECTION 8(2): SELECTION-OUT AUTHORITY FOR AID (F.S. ACT SECT. 2106(E)(2))

This is a technical amdendment. Prior to the effective date of the Foreign Service Act of 1980 the Department of State had a selection-out procedure for Foreign Service officers who failed to meet standards of performance prescribed by regulation. Selection-out was not applicable to State's Foreign Service Staff (FSS) employees. State's authority for selection-out was based on section 633 of the Foreign Service Act of 1946. Concurrently A.I.D. had a selection-out procedure applicable, with certain exceptions, to all A.I.D. FSS and Foreign Service Reserve (FSR) employees; however, A.I.D.'s selection-out authority was based on section 625(e) of the Foreign Assistance Act of 1961, as amended.

Section 608 of the 1980 Act, which replaces both former selection-out authorities, is applicable to the United States citizen Foreign Service career members of all the foreign affairs agencies.

The intent was to limit adverse impact on individuals who were in a career Foreign Service *Staff* status prior to the enactment of the Foreign Service Act of 1980 (October 17, 1980) and thus were not subject to selection-out, but who were involuntarily made "members of the (Foreign) Service" under the 1980 Act. To achieve this result the 1980 Act, in section 2106(e), exempted career appointees who had not been subject to section 633(a)(2) of the 1946 Act immediately prior to February 15, 1981 from selection-out for ten years. Unfortunately, a literal interpretation of the language of section 2106(e) could also exempt A.I.D. Foreign Service employees who were not subject to section 633(a)(2), but instead were subject to the FAA counterpart, section 625(e).

This amendment corrects a technical defect in the statute by making clear that A.I.D. Foreign Service employees, who were subject to selection-out under section 625(e) of the FAA, remain subject to the selection-out provisions of section 608 of the 1980 Act.

SECTION 9: FOREIGN COMMERCIAL SERVICE LIMIT ON NON-CAREER SFS APPOINTMENTS (F.S. ACT SEC. 2403(C))

Section 2403(c), a temporary provision of the 1980 Act is being repealed. The limitation contained therein is being made a permanent provision and is being included in section 305 of the act by section 3(1) of the bill.

SECTION 10: AMENDMENTS OF DEPARTMENT OF STATE BASIC AUTHORITIES ACT

This section of the bill amends various sections of the Basic Authorities Act (B.A. Act) as explained below.

SECTION 10(1)(A): AUTHORIZATION TO EXPEND FUNDS (B.A. ACT SEC. 2: 22 U.S.C. 2669)

As presently drafted, section 2 of the B.A. Act requires that each appropriation act contain language permitting use of appropriated funds for the purposes specified in section 2 such as provision for printing and binding, payment of tort claims under specified limitations, etc. This amendment removes that requirement in order to avoid the possibility of inadvertent loss of necessary authorities by dropping a few words during the appropriation process.

SECTION 10(1)(B): EXPERTS AND CONSULTANTS (B.A. ACT SEC. 2(g) 22 U.S.C. 2269(g))

As required by 5 U.S.C. 3109, an agency must have special statutory authority to hire experts and consultants. At present the Department does this by language in each annual appropriation act. In order to avoid loss of necessary authority by inadvertent dropping of the necessary words in the appropriation process, this amendment to 22 U.S.C. 2669(g) would make the authority a permanent provision of law. In accordance with Government-wide practice, the amendment would also authorize compensation up to the top of GS-18, rather than GS-15, the current maximum for this Department.

SECTION 10(2): USE OF GOVERNMENT VEHICLES/EXPENSES OF ARBITRATION (B.A. ACT SEC. 11: 22 U.S.C. 2678)

Both section 11 (22 U.S.C 2678) and 28 (22 U.S.C. 2700) of the B.A. Act provide essentially the same authority for a Chief of Mission to authorize use of Government-owned vehicles for transporting employees and their families for reasons of safety or other advantage to the Government. Section 28 was enacted in 1980, making the older section 11 duplicative. This amendment replaces old section 11 with new material on international arbitrations.

At present, the Department's authority to use appropriated funds for the expenses of arbitration and other dispute resolution proceedings under international agreements and contracts requires inclusion of language in each annual appropriation act. This amendment makes such authority a permanent provision of law to avoid the possibility of inadvertent loss of necessary authority through dropping a few words in the appropriations process.

SECTION 10(3): ADDITIONAL PER DIEM FOR AID AND USIA EMPLOYEES (B.A. ACT SEC. 32, 22 U.S.C. 2704

Section 32 of the Department's Basic Authorities Act now provides for additional per diem for 1) security officers required to accompany principals of the Department and Foreign dignitaries and 2) other employees who are required to spend extraordinary amounts of time in travel status, and who thereby incur additional expenses. The proposed amendment would extend this authority to officers of AID and USIA in like circumstances.

SECTION 11(1): CALCULATION OF LUMP SUM LEAVE PAYMENT UPON SEPARATION (5 U.S.C. 5551)

This amendment would prohibit inclusion of any post differentials or territorial allowances for hardship in lump sum leave payments for employees who retire from a post abroad rather than in the United States. The existing statute provides the possibility of a windfall payment, which the Inter-Agency Committee on Allowances has recommended be eliminated. This amendment would produce Government-wide savings. The term "basic pay" is defined in 5 U.S.C. 8331(3).

SECTION 11(2): HOME SERVICE TRANSFER ALLOWANCE (5 U.S.C. 5724a(a)(3))

This amendment would permit flexibility with payment of lodging/subsistence upon an employee's transfer from a foreign post to the U.S. At present, up to 30 days is authorized at the foreign post prior to departure and up to 30 days is authorized in the U.S. after arrival here. The amendment would permit flexibility for the employee to use up to a total of 60 days in any combination at the post and in the U.S., according to personal circumstances.

SECTION 11(3): EDUCATION ALLOWANCES AT TIME OF TRANSFER, FOR HANDICAPPED CHILDREN AND AT POST SECONDARY EDUCATIONAL INSTITUTIONS (5 U.S.C. 5924(4))

Together, these changes update and improve the education allowance system to bring it into line with current circumstances and problems.

The first change permits payment of educational allowances for children of employees being transferred or newly assigned to a Foreign Service post with inadequate schooling for the entire school year, even if the member of the Service does not depart the United States until after the beginning of the school year. (Generally, the reverse situation, transfer back to the United States during the school year, can be managed, if the member of the Service wishes his or her children to remain in their current schools during the remainder of the semester.)

The second amendment would permit educational services to be provided for handicapped children, beginning at age 3. P.L. 94-142, the "Education for All Handicapped Children Act of 1975," generally requires states to offer public educational facilities for handicapped children from age three. It seems desirable to amend 5 U.S.C. so that overseas education allowance policy may be consistent with U.S. public school education practice for handicapped children. Under present law no allowance can be granted for a handicapped or normal child under age 4 and who is not at least in a kindergarten program.

The third amendment would permit post-secondary educational travel for dependents not only for undergraduate college education, but also at other institutions such as nursing, technical, vocational, music and performing arts schools which are not considered colleges. This amendment is necessary in order to provide the appropriate kinds of post-secondary education for a wider variety of chosen career fields for dependent children. The term "educational institution" in the text of the amendment is drawn from 38 U.S.C. 1701(a)(6) (Veterans Benefits). It is not planned to extend the benefit during post-graduate education, as is possible for Veterans. Accredited educational institutions at which these benefits can be used will be determined by reference to

an established list, such as that developed by the Veterans Administration or the Department or Education. The list or lists to be used will be specified by regulations issued by the Secretary.

SECTION 12(4): BURIAL EXPENSES FOR FOREIGN SERVICE NATIONAL EMPLOYEES (5 U.S.C. 5944)

The existing provision provides for a $100 payment of burial expenses for FSN employees. At times, this is in conflict with local practice and can give the appearance that the United States Government does not properly appreciate or value the contributions of its foreign national employees. If this section is repealed, the intention would be to rely upon the authority contained in section 408 of the Foreign Service Act of 1980, Local Compensation Plans, to develop appropriate provisions for payment of burial and last illness expenses where such payment is in accordance with local practice in specific countries.

UNITED STATES DEPARTMENT OF STATE,
Washington, D.C., April 15, 1983.

Hon. GEORGE BUSH,
President of the Senate.

DEAR MR. PRESIDENT: Enclosed for consideration by the Congress is a draft bill to amend the Foreign Service Act of 1980 and other statutes affecting the Department, together with a section-by-section analysis and a list of amendments.

The proposed amendments have been developed by the Department in cooperation with other foreign affairs agencies. Many of these proposed amendments reflect technical changes designed to clarify the 1980 statute and to improve its administration, while a few are designed to correct inequities among various groups of employees affected by the 1980 Act.

We estimate the overall cost of the draft bill to the Department at $500,000 annually, primarily for modifications in the home service transfer allowance, in Section 11(2), and changes in educational allowances, in Section 11(3).

We would appreciate the early consideration of these amendments by the Congress. A similar letter is being sent to the Speaker of the House.

We have been advised by the Office of Management and Budget that there is no objection from the standpoint of the Administration's program to the submission of the enclosed draft bill for the consideration of the Congress.

With cordial regards,

Sincerely,

POWELL A. MOORE,
Assistant Secretary for Congressional Relations.●

By Mr. GRASSLEY:

S. 1136. A bill to amend the Internal Revenue Code of 1954 to provide a Federal income tax credit for tuition; to the Committee on Finance.

EDUCATIONAL OPPORTUNITY AND EQUITY ACT OF 1983

● Mr. GRASSLEY. Mr. President, today, I introduce a measure to provide tuition tax credits for parents of elementary and secondary students. My bill parallels the administration proposal, S. 528, in every respect except it limits the credit to parents earning less than $50,000 annually.

Tuition tax credits are important because they increase educational choices vital to the perpetuation of a pluralistic society. Tuition tax credits foster innovation and flexibility in education, assisting individuals to choose a curriculum enabling them to meet their vocational and educational goals.

For some American families, the purpose of education goes far beyond intellectual development and maximum economic opportunities. These families consider the classroom an extension of parental responsibility to shape the character and values of the next generation, and often make immense sacrifices to provide a particular learning environment for their children.

Despite the common presumption that children in private schools come from wealthy families, the typical parents sending their young to private schools have a moderate income of less than $25,000 annually. Like other taxpayers, they contribute tax dollars for public education: Unlike other taxpayers, they bypass the public education system and sustain the additional cost of alternative training for their children.

Private education plays an important part in our Nation's educational history. America's earliest schools were private, and were often an extension of Catholic or Protestant church ministries. Private institutions were more prevalent than State-supported, State-founded, or State-initiated schools until the late 19th century.

America's pluralistic society should sustain broad-based, innovative, flexible educational options for all its people irrespective of their personal wealth. Competition in the marketplace of ideas has enabled America to achieve greatness. Offering all citizens the right to enhance their own intellectual development through a learning environment which reflects personal and family values is an important public policy goal.

The tuition tax credit legislation developed by President Reagan is an effective way to sustain a wide variety of educational choices. While preserving our fine public education system, it would provide modest tax credits targeted to families with children in nondiscriminatory elementary and secondary schools. This measure would provide equal educational options for all citizens.

I am introducing a bill limiting the qualifying family income for these tax credits to $50,000, beginning to phase out at $40,000. Under President Reagan's proposal, families with incomes over $60,000 are ineligible for the credit. I am lowering the income limits to $50,000 because I feel it is vitally important to limit this proposal to families whose economic circumstances make it the most difficult to support a dual educational system. Moderate income families should be the focus of our effort, since upper income families are more able to absorb the cost of private education for their children.

Another reason to lower the income limit on the tuition tax credit is to limit Federal revenue expenditure to those in greatest need. In this era of budget restraint, it is important to minimize any new drain on Federal revenue.

By assuring lower income families the same multiple educational programs tapped by wealthier Americans, we should also stimulate cost-effective management of both public and private systems. Monopolies tend to lose their commitment to quality and cost effectivity. By sustaining competition in the marketplace of ideas through diverse educational systems, we encourage both cost and quality control in public and private school systems.●

By Mr. PRESSLER:

S. 1138. A bill to establish a shelterbelt improvement program, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

SHELTERBELT IMPROVEMENT ACT OF 1983

● Mr. PRESSLER. Mr. President, today, I am introducing the Shelterbelt Act of 1983. The legislation is similar to a measure I originally proposed in the House of Representatives and as an amendment to the 1981 farm bill. The amendment was included in the Senate version of the farm bill, but unfortunately, the provision was deleted in the conference committee. The only change is to allow the Secretary of Agriculture to use surplus commodities to compensate farmers, rather than using cash.

The Shelterbelt Act would promote the preservation, restoration, improvement, and establishment of shelterbelts to reduce wind erosion and provide numerous additional benefits. The measure will also help to reduce the current farm commodity surpluses. Land planted to tree shelterbelts will permanently take the land out of production and help control grain surpluses. Yet the shelterbelts will help to maintain the productivity of adjacent farmland.

Shelterbelts provide numerous benefits, including protection for livestock, crops, and wildlife, as well as conserve energy. Many of our Nation's current shelterbelts were established under the planting programs of the 1930's and need to be restored or replaced. For example, in South Dakota, three-fourths of our shelterbelts established during this period have been destroyed or are in desperate need of rehabilitation. It is important that current shelterbelts be maintained and new ones established.

The Shelterbelt Act of 1983 would provide farmers with assistance to establish and maintain shelterbelts, either with a payment in kind or with a cash payment. The establishment of shelterbelts is essential to preserving our Nation's agricultural productivity. Topsoil losses due to wind erosion in recent years have dramatically increased. If this trend is permitted to continue, the productivity of American farmland will decrease. A recent USDA study on soil erosion estimated