



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

83-00680

January 20, 1983

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer

Department of Agriculture
Department of Commerce
Department of Defense
Agency for International Development
U.S. Information Agency
Office of Personnel Management
Central Intelligence Agency
Department of Education (Sec. 12(b)(B))
Department of Justice (Sec. 11(1)(B) and 11(3))
General Services Administration (Sec. 7 and 12(2) & (3))
Merit Systems Protection Board (Sec. 2)

SUBJECT: Department of State draft bill "To amend the Foreign Service Act of 1980, and for other purposes."

The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

A response to this request for your views is needed no later than February 22, 1983.

Questions should be referred to Jim Barie (395-4580) or to Hilda Schreiber (395-4650), the legislative analyst in this office.

Naomi R Sweeney

Naomi R. Sweeney for
Assistant Director for
Legislative Reference.

Enclosures

DEPARTMENT OF STATE

Washington, D.C. 20520

Dear Mr. Speaker:

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.

Also included are amendments to conform provisions of the Foreign Service Retirement and Disability System with comparable provisions of the Civil Service Retirement and Disability System recently amended by the Omnibus Budget Reconciliation Act of 1982, Public Law 97-253. Some of these conforming changes were implemented by Executive order No. _____ of January _____ 1983, pursuant to section 827 of the Foreign Service Act of 1980. The draft bill would codify all of the permanent provisions of the Executive order as well as make those conforming changes not possible to make by Executive order.

We estimate the overall cost of the draft bill to the Department at \$2.2 million annually. Section 4(5) authorizing on-call pay in lieu of standby pay for non-officer personnel abroad would cost the Department an estimated \$1.2 million annually. Other amendments that would have a cost impact, including amendments to chapter 9 of the Foreign Service Act of 1980 and to Title 5 of the U.S. Code, would cost less than \$.9 million annually. Also, there would be a net savings to the Foreign Service Retirement Fund from enactment of the retirement amendments in section 6 of the draft bill.

The Honorable,
Thomas P. O'Neill, Jr.,
Speaker of the House,
House of Representatives,
Washington, D. C.

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

We have been advised by the Office of Management and Budget that there is no objection from the standpoint of the President's program to the enactment of the enclosed draft bill.

With cordial regards,

Sincerely,

Powell A. Moore
Assistant Secretary for
Congressional Relations

Enclosures:

1. List of Amendments
2. Draft Bill
3. Section by Section Analysis

PROPOSED AMENDMENTS TO THE
FOREIGN SERVICE ACT OF 1980 AND RELATED LEGISLATION

<u>Section</u>	<u>Subject</u>	<u>Section of Act</u>
CHAPTER 2: MANAGEMENT		
2	"Hatching" the Inspector General and the Director General	FSAct 208/209
CHAPTER 3: APPOINTMENTS		
3(1)	Five Percent Limitation on Non- Career Members of SFS	FSAct 305(b)
3(2)	Exclusions from 5 Year Limit on Limited Appointments	FSAct 309
CHAPTER 4: COMPENSATION		
4(1)	Salaries for Chiefs of Mission	FSAct 401(a)
4(2)	Eligibility for Within Grade Salary Increases	FSAct 406(a)
4(3)	Provident Funds for Foreign National Employees	FSAct 408
4(4)	On-Call Pay	FSAct 414
CHAPTER 6: PROMOTION AND RETENTION		
5(1)	Ineligibility for Promotion After Expiration of Time-in-Class	FSAct 601(b)
5(2)	Limited Career Extensions Below Highest Class in an Occupation/ Retention After Expiration of TIC to Gain Eligibility for an Immediate Annuity	FSAct 607(b)(1), 607(d)(2)
5(3)	Retirement Benefits/Severance Pay for Individuals Separated from the Service after Expira- tion of TIC or Failure to Have A Limited Career Extension Renewed	FSAct 609

5(4) Attorneys' Fees in Separation for Cause Cases FSAct 610(a)(2)

CHAPTER 8: RETIREMENT

6(a)(1)	Definition of Former Spouse	FSAct 804(6)
6(a)(2)(A)	Repayment of Funds	FSAct 805(d)(1)
6(a)(2)(B)	Interest Rates on Contributions to Fund	FSAct 805(d)(3)
6(a)(2)(C)	Contributions for Military Service	FSAct 805(e)
6(a)(2)(D)	Contributions for Military Service	FSAct 805(f)
6(a)(3)(A)	Contributions for Civilian Service	FSAct 806(a)
6(a)(3)(B)(1)	Election of Survivor Annuity	FSAct 806(b)(1)(C)
6(a)(3)(B)(2)	Missing Persons	FSAct 806(b)(1)(D)
6(a)(4)	Later Commencement Date for Certain Annuities	FSAct 807(a)
6(a)(5), 6(a)6(A)	Age Requirement for Minimum Annuity and Disability Examination	FSAct 808(a) and(b), 809(e)
6(a)(6)(B)	Correction of Reference	FSAct 809(h)
6(a)(7)	Deferred Annuities	FSAct 810
6(a)(8)	Voluntary Retirement	FSAct 811
6(a)(9)(A)	Effective Date of Pension to Former Spouse	FSAct 814(a)(3)
6(a)(9)(B)	Court Ordered Changes	FSAct 814(a)(4)
6(a)(10)(A)	Refunds of Contributions	FSAct 815(a)
6(a)(10)(B)	Division of Refunds with Spouses on Request	FSAct 815(j)
6(a)(11)(A)	Credit for Military Service	FSAct 816(a)
6(a)(11)(B)	Contributions for Prior Civilian Service	FSAct 816(d)

6(a)(11)(C)	Benefits to Spouses and Former Spouses	FSAct 816(i)(1)
6(a)(11)(D)	Unhealthful Post Credit - Application to Former Spouses	FSAct 816(i)(2)
6(a)(11)(E)	Application of "Catch - 62" (5 USC 8332(j))	FSAct 816(j)
6(a)(12)	Unhealthful Post Credit - Application to Former Spouses - II	FSAct 817
6(a)(13)	Unfunded Liability Obligations	FSAct 822(a)
6(a)(14)(A)	Cost of Living Adjustments of Annuities	FSAct 826(c)
6(a)(14)(B)	Rounding Down	FSAct 826(e)
6(a)(14)(C)	Capping Annuity Adjustments	FSAct 826(g)
6(a)(15)	Missing Persons	FSAct 828
6(b)	Effective Dates	--

CHAPTER 9: TRAVEL, LEAVE, AND OTHER BENEFITS

7(1)	Storage of Household Effects	FSAct 901(12)(B)
7(2)	Travel for Children of Separated Parents	FSAct 901(15)

CHAPTER 10: LABOR - MANAGEMENT RELATIONS

8(1)	Designation of Investigators and Auditors as Management Officials for Labor - Management Purposes	FSAct 1002(12)
8(2)	Cost Sharing for Institutional Grievances	FSAct 1014(a)(3)

CHAPTER 1(Title II): TRANSITION

9(1)	Protection of Rights Following Mandatory Conversion from Foreign Service to Civil Service	FSAct 2104
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9(2) Selection-Out Authority for FSAct 2106(e)(2)
A.I.D.

CHAPTER 4(Title II): EFFECTIVE DATE

10 Foreign Commercial Service FSAct 2403(c)
Limit on Noncareer SFS
Appointments

DEPARTMENT OF STATE BASIC AUTHORITY

11 Use of Government Vehicles/ Basic Authority,
Extra Per Diem for Individuals 2, 11, 30, 32
Accompanying Dignitaries

TITLE 5, UNITED STATES CODE

12(1) Calculation of Lump Sum Leave 5 USC 5551
Payment Upon Separation

12(2) Home Service Transfer Allowance 5 USC 5724(a)(3)

12(3) Travel and Transportation in 5 USC 5725(a)
Conjunction with Separate
Maintenance Allowance

12(4) Advance Payment of Differ- 5 USC 5922(b)
entials

12(5) Education Allowances at Time 5 USC 5924(4)
of Transfer, for Handicapped
Children and at Post Secondary
Educational Institutions

12(6) Burial Expenses for Foreign 5 USC 5944
National Employees

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(A) Subsection (a) is amended by inserting in the last sentence, immediately after "service" the first time it appears, "performed prior to (effective date of section 1 of order)";

(B) 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;

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

(4) Subsection 807(a), relating to payment of annuity, is amended to read as follows:

"(a) (1) Except as otherwise provided in paragraph (2), the annuity of a participant who has met the eligibility requirements for an annuity shall commence on the first day of the month after--

"(A) separation from the Service occurs; or

"(B) pay ceases and the service and age requirements for entitlement to annuity are met.

"(2) The annuity of--

"(A) a participant who is retired and is eligible for benefits under section 609(a) or a participant who is retired under section 813 or is otherwise involuntarily separated from the

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Section 6(a)(2)(C): CONTRIBUTIONS FOR MILITARY SERVICE
(F.S. Act Sec. 805(e))

This section redesignates subsections (e) and (f) of section 805 of the Foreign Service Act of 1980 (hereafter, the Act) and inserts a new subsection (e). The new subsection authorizes contributions to the Fund for prior military and naval service in conformance with changes made in CSRS by section 306(d) of ORA as amended by sections 3(a) and (3)(e)(1) of P.L. 97-346.

Section 6(a)(2)(D): CONTRIBUTIONS FOR MILITARY SERVICE
(F.S. Act Sec. 805(f))

This amendment conforms subsection 805(f) of the Act as redesignated by section 6(a)(2)(C) with new subsection 805(e) of the Act. It is similar to the change made by section 306(e) of the ORA.

Section 6(a)(3)(A): CONTRIBUTIONS FOR CIVILIAN SERVICE
(F.S. Act (Sec. 806(a))

This amendment coupled with the amendment of section 816(d) of the Act by section 6(a)(11)(B) requires that contributions to the Fund must be made by a participant in order to obtain credit for service performed in the future for which no contributions were made concurrently. The old rule that an annuity is reduced by 10 percent of the amount owing for such prior service will apply only for service performed prior to (effective date of section 1 of Order). This change is similar to the change in the CSRS made by section 303(b) of ORA.

Section 6(a)(3)(B)(1): 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.

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1 and naval service) is eligible for a discontinued
2 service annuity commencing the first day of the month
3 following the month he or she reaches age 60, unless
4 the individual withdraws his or her contributions to
5 the Fund before attaining eligibility for commencement
6 of an annuity under this section. Alternatively, such
7 an individual may withdraw, pursuant to section 815,
8 his or her contributions to the Fund."

9 (8) Section 811, relating to voluntary retirement, is
10 amended by adding at the end thereof the following new sen-
11 tence:

12 "The Secretary shall withhold consent for retirement
13 under this section by any participant who has not been
14 a member of the Service for 5 years except in extra-
15 ordinary circumstances prescribed in regulations of
16 the Secretary of State."

17 (9) Section 814(a), relating to former spouses, is
18 amended as follows:

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

22 (B) In paragraph (4), immediately after "final",
23 insert "unless it is issued in recognition of a sub-
24 stantial change in the economic circumstances of eith-
25 er party".

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Section 6(a)(7): DEFERRED ANNUITIES (F.S. Act Sec. 810)

This amendment conforms section 810 of the Act to the amendments made by section 6(a)(4) concerning the effective date of annuities and 6(a)(10)(A) imposing certain restrictions on the withdrawal of contributions by participants who resign.

Section 6(a)(8): 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)(2)).

Section 6(a)(9)(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)(9)(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 at 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.

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1 date of the adjustment under this
2 section.

3 "(2) For the purposes of paragraph (1) of
4 this subsection, 'salary' means the rate of sal-
5 ary as payable under any provision of law, in-
6 cluding any provision of law limiting the expend-
7 iture of appropriated funds.

8 "(3) This subsection shall not cause any
9 annuity to be reduced below the rate that is pay-
10 able on the date of enactment of this subsection,
11 but shall apply to any adjustment occurring on or
12 after such date under this section to any annuity
13 payable from the Fund, whether such annuity has a
14 commencing date before, on, or after such date."

15 (15) Immediately after section 827, insert a new sec-
16 tion 828 to read as follows:

17 "SEC. 828. MISSING SPOUSES AND FORMER SPOUSES.--
18 The Secretary of State may prescribe regulations under
19 which a participant or former participant may make an
20 election to waive or reduce a survivor annuity to a
21 spouse or former spouse under section 806(b), and to
22 waive or reduce a lump sum payment to a spouse or
23 former spouse under section 815 without agreement of
24 the participant's spouse or former spouse if the
25 participant establishes to the satisfaction of the
26 Secretary of State, after having taken all reasonable

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Section 6(a)(14)(A): COST OF LIVING ADJUSTMENTS OF ANNUITIES (F.S. Act Sec. 826(c))

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. 96-489 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)(3).

Section 6(a)(14)(B): ROUNDING DOWN (F.S. Act Sec. 826(e))

This amendment provides for rounding annuities to the next lowest dollar instead of the nearest dollar. It is comparable to the change made by section 304(a) of ORA.

Section 6(a)(14)(C): CAPPING ANNUITY ADJUSTMENTS (F.S. Act Sec. 826(g))

This amendment adds a new subsection (g) to section 826 of the Act. It provides that no Foreign Service annuity (including survivor annuities) may be increased as the result of a cost-of-living adjustment to an amount which exceeds the greater of (a) the maximum rate payable for class FS-1 (currently \$63,115), or (b) the final pay (or average pay, if higher) of the member increased by the overall annual average percentage adjustments in the Foreign Service Schedule pay rates that have occurred between the date the member's annuity commenced and the date of the cost-of-living adjustment. The amendment is comparable to the change made by section 309 of ORA.

Section 6(a)(15): 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

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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)(2).

Section 6(b): EFFECTIVE DATES

Section 6(b)(1) authorizes former participants who retired between September 8, 1982 (the date ORA was enacted) and October 1, 1983 to make contributions for prior military service if it is to their advantage. This provision is similar to the authority granted by section 3(e)(2) of P.L. 97-346.

Section 6(b)(2) exempts current members from the application of the change in voluntary retirement made by section 6(a)(8) as is explained under that section.

Section 6(b)(3) 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.

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