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100TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } 100-374

TECHNICAL CORRECTIONS RELATING TO FERS, CSRS,
AND CERTAIN OTHER RETIREMENT SYSTEMS

OCTOBER 15, 1987.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed

Mr. FORD of Michigan, from the Committee on Post Office and Civil
Service, submitted the following

REPORT

[To accompany H.R. 3395]

[Including cost estimate of the Congressional Budget Office]

The Committee on Post Office and Civil Service, to whom was referred the bill (H.R. 3395) making technical corrections relating to the Federal Employees' Retirement System, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

TITLE I—AMENDMENTS RELATING TO THE CIVIL SERVICE RETIREMENT
SYSTEM AND THE FEDERAL EMPLOYEES' RETIREMENT SYSTEM

SEC. 101. REFERENCES.

Except as otherwise expressly provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or a repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 5, United States Code.

SEC. 102. DEPOSITS FOR "COVERED SERVICE" AFTER 1986 FOR EMPLOYEES UNDER CSRS OFFSET PROVISIONS.

Section 8334(c) is amended by striking the period at the end of the last sentence and inserting in lieu thereof the following: "and, with respect to any such service performed after December 31, 1986, be equal to the amount that would have been deducted from the employee's basic pay under subsection (k) of this section if the employee's pay had been subject to that subsection during such period."

SEC. 103. AMENDMENTS RELATING TO LAW ENFORCEMENT OFFICERS AND FIREFIGHTERS.

(a) MAXIMUM ENTRY AGES.—

(1) IN GENERAL.—Section 3307 is amended—

- (A) in subsection (d), by striking "may, with the concurrence of such agent as the President may designate," and inserting in lieu thereof "may"; and
- (B) by adding at the end the following:
- "(e) The head of an agency may determine and fix the maximum age limit for an original appointment to a position as a firefighter or law enforcement officer, as defined by section 8401(14) or (17), respectively, of this title."
- (2) **CLARIFYING AMENDMENTS.**—Paragraphs (14)(A)(ii) and (17) of section 8401 are amended by striking "are required to be" each place those words appear and inserting in lieu thereof "should be".
- (b) **DEFINITION UNDER THE LIFE INSURANCE PROGRAM.**—Section 8704(c)(2) is amended by inserting "or 8401(17)" after "8331(20)".
- (c) **AMENDMENTS TO DEFINITIONS.**—
- (1) **LAW ENFORCEMENT OFFICERS.**—Section 8401(17) is amended—
- (A) by redesignating subparagraphs (B) and (C) as subparagraphs (C) and (D), respectively;
- (B) by inserting after subparagraph (A) the following:
- "(B) an employee of the Department of the Interior or the Department of the Treasury (excluding any employee under subparagraph (A)) who occupies a position that, but for the enactment of the Federal Employees' Retirement System Act of 1986, would be subject to the District of Columbia Police and Firefighters' Retirement System, as determined by the Secretary of the Interior or the Secretary of the Treasury, as appropriate;"; and
- (C) by amending subparagraph (C), as so redesignated by subparagraph (A), to read as follows:
- "(C) an employee who is transferred directly to a supervisory or administrative position after performing duties described in subparagraph (A) or (B); and"
- (2) **FIREFIGHTERS.**—Section 8401(14)(B) is amended by striking "for at least 10 years".
- (d) **COORDINATION OF FERS WITH THE DISTRICT OF COLUMBIA POLICE AND FIREFIGHTERS' RETIREMENT SYSTEM FOR EMPLOYEES OF THE PARK POLICE AND THE SECRET SERVICE.**—
- (1) **IN GENERAL.**—Section 4-607(1) of title 4 of the District of Columbia Code is amended by striking the period and inserting in lieu thereof the following: "but does not include an officer or member of the United States Park Police force, or of the United States Secret Service Division, whose service is employment for the purposes of title II of the Social Security Act and chapter 21 of the Internal Revenue Code of 1986, and who is not excluded from coverage under chapter 84 of title 5, United States Code, by operation of section 8402 of such title."
- (2) **CONFORMING AMENDMENT.**—Section 8401(11)(i)(II) is amended by striking "(other than an employee of the United States Park Police, or the United States Secret Service, whose civilian service after December 31, 1983, is such employment)".
- (e) **OFFSETS TO PREVENT FULL DOUBLE COVERAGE FOR EMPLOYEES OF THE PARK POLICE AND THE SECRET SERVICE.**—Notwithstanding any other provision of law, in the case of an employee of the United States Secret Service or the United States Park Police whose pay is simultaneously subject to a deposit requirement under the District of Columbia Police and Firefighters' Retirement and Disability System and the contribution requirement under section 3101(a) of the Internal Revenue Code of 1986—
- (1) any deposits under the District of Columbia Police and Firefighters' Retirement and Disability System shall be adjusted in a manner consistent with section 8334(k) of title 5, United States Code (relating to offsets in deductions from pay to reflect OASDI contributions); and
- (2) any benefits payable under the District of Columbia Police and Firefighters' Retirement and Disability System based on the service of any such employee shall be adjusted in a manner consistent with section 8349 of title 5, United States Code (relating to offsets to reflect benefits under title II of the Social Security Act).
- (f) **EFFECTIVE DATE.**—This section, and the amendments made by this section, shall be effective as of January 1, 1987.
- SEC. 104. MILITARY SERVICE DEPOSITS BY SURVIVORS.**
- (a) Section 8422(e) is amended by adding at the end the following:

"(5) For the purpose of survivor annuities, deposits authorized by this subsection may also be made by a survivor of an employee or Member."

(b) Section 8411(c)(4)(A) is amended by striking "subsection (f)(4)" and inserting in lieu thereof "section 8422(e)(5)".

SEC. 105. DEPOSITS AND REFUNDS RELATING TO CERTAIN SERVICE UNDER THE CIVIL SERVICE RETIREMENT SYSTEM.

(a) **DEPOSIT FOR SERVICE COVERED BY REFUND PERMITTED ONLY IF REFUND WAS PURSUANT TO APPLICATION FILED BEFORE BECOMING SUBJECT TO FERS.**—Section 8411(f)(1) is amended by adding at the end the following: "A deposit under this paragraph may be made only with respect to a refund received pursuant to an application filed with the Office before the date on which the employee or Member first becomes subject to this chapter."

(b) **LUMP-SUM CREDIT FOR CERTAIN CSRS SERVICE SOUGHT AFTER BECOMING SUBJECT TO FERS IS PAYABLE TO THE EXTENT THAT IT EXCEEDS 1.3 PERCENT OF BASIC PAY.**—The last sentence of section 8342(a), as added by section 207(h) of the Federal Employees' Retirement System Act of 1986 (Public Law 99-335; 100 Stat. 596) is amended to read as follows: "In applying this subsection to an employee or Member who becomes subject to chapter 84 (other than by an election under title III of the Federal Employees' Retirement System Act of 1986) and who, while subject to such chapter, files an application with the Office for a payment under this subsection—

"(i) entitlement to payment of the lump-sum credit shall be determined without regard to paragraph (1) or (3) if, or to the extent that, such lump-sum credit relates to service of a type described in clauses (i) through (iii) of section 302(a)(1)(C) of the Federal Employees' Retirement System Act of 1986; and

"(ii) if, or to the extent that, the lump-sum credit so relates to service of a type referred to in clause (i), it shall (notwithstanding section 8331(a)) consist of—

"(I) the amount by which any unrefunded amount described in section 8331(8) (A) or (B) relating to such service, exceeds 1.3 percent of basic pay for such service; and

"(II) interest on the amount payable under subclause (I), computed in a manner consistent with applicable provisions of section 8331(8)."

SEC. 106. OPTION FOR CERTAIN EMPLOYEES TO ELECT FERS COVERAGE.

Section 301(a) of the Federal Employees' Retirement System Act of 1986 (Public Law 99-335; 100 Stat. 599) is amended by adding at the end the following:

"(3)(A) Except as provided in subparagraph (B), any individual—

"(i) who is excluded from the operation of subchapter III of chapter 83 of title 5, United States Code, under subsection (g), (i), (j), or (l) of section 8347 of such title, and

"(ii) with respect to whom chapter 84 of title 5, United States Code, does not apply because of section 8402(b)(2) of such title, and shall, for purposes of an election under paragraph (1) or (2), be treated as if such individual were subject to subchapter III of chapter 83 of title 5, United States Code.

"(B) An election under this paragraph may not be made by any individual who would be excluded from the operation of chapter 84 of title 5, United States Code, under section 8402(c) of such title (relating to exclusions based on the temporary or intermittent nature of one's employment)."

SEC. 107. CERTAIN CSRS SERVICE CREDITABLE TO DETERMINE ELIGIBILITY FOR 1.1 PERCENT ACCRUAL RATE.

Section 302(a)(1)(D) of the Federal Employees' Retirement System Act of 1986 (Public Law 99-335; 100 Stat. 602) is amended—

(1) by striking "and" at the end of subclause (IV);

(2) by striking the period at the end of subclause (V) and inserting in lieu thereof "; and"; and

(3) by adding after subclause (V) the following:

"(VI) the provision of subsection (g) of section 8415 which relates to the minimum period of service required to qualify for the higher accrual rate under such subsection."

SEC. 108. AMENDMENTS RELATING TO MISCELLANEOUS PROVISIONS OF LAW EXTENDING COVERAGE OR BENEFITS UNDER CERTAIN FEDERAL PROGRAMS TO INDIVIDUALS NOT OTHERWISE ELIGIBLE.

(a) **TERMINATION OF CERTAIN SPECIAL ELIGIBILITY PROVISIONS.**—

(1) **CIVIL SERVICE RETIREMENT SYSTEM.**—Section 8347 is amended by adding at the end the following:

“(o) Any provision of law outside of this subchapter which provides coverage, service credit, or any other benefit under this subchapter to any individuals who (based on their being employed by an entity other than the Government) would not otherwise be eligible for any such coverage, credit, or benefit, shall not apply with respect to any individual appointed, transferred, or otherwise commencing that type of employment on or after October 1, 1988.”

(2) LIFE INSURANCE.—

(A) IN GENERAL.—Section 87 of title 5, United States Code, is amended by inserting after section 8712 the following:

“§ 8713. Effect of other statutes

“Any provision of law outside of this chapter which provides coverage or any other benefit under this chapter to any individuals who (based on their being employed by an entity other than the Government) would not otherwise be eligible for any such coverage or benefit shall not apply with respect to any individual appointed, transferred, or otherwise commencing that type of employment on or after October 1, 1988.”

(B) CHAPTER ANALYSIS.—The analysis for chapter 87 of title 5, United States Code, is amended by inserting after the item relating to section 8712 the following:

“8713. Effect of other statutes.”

(3) HEALTH INSURANCE.—

(A) IN GENERAL.—Chapter 89 of title 5, United States Code, is amended by adding at the end the following:

“§ 8914. Effect of other statutes

“Any provision of law outside of this chapter which provides coverage or any other benefit under this chapter to any individuals who (based on their being employed by an entity other than the Government) would not otherwise be eligible for any such coverage or benefit shall not apply with respect to any individual appointed, transferred, or otherwise commencing that type of employment on or after October 1, 1988.”

(B) CHAPTER ANALYSIS.—The analysis for chapter 89 of title 5, United States Code, is amended by adding at the end the following:

“8914. Effect of other statutes.”

(b) EXTENSION OF OFFSET PROVISIONS UNDER CHAPTER 83.—

(1) CONTRIBUTIONS.—Section 8334(k) is amended by adding at the end the following:

“(4) In administering paragraphs (1) through (3)—

“(A) the term ‘an individual described in section 8402(b)(2) of this title’ shall be considered to include any individual—

“(i) who is subject to this subchapter as a result of a provision of law described in section 8347(o), and

“(ii) whose employment (as described in section 8347(o)) is also employment for purposes of title II of the Social Security Act and chapter 21 of the Internal Revenue Code of 1986; and

“(B) the term ‘Federal wages’, as applied with respect to any individual to whom this subsection applies as a result of subparagraph (A), means basic pay for any employment referred to in subparagraph (A)(ii).”

(2) BENEFITS.—Section 8349 is amended by adding at the end the following:

“(d) In administering subsections (a) through (c)—

“(1) the terms ‘an individual under section 8402(b)(2)’ and ‘an individual described in section 8402(b)(2)’ shall each be considered to include any individual—

“(A) who is subject to this subchapter as a result of any provision of law described in section 8347(o), and

“(B) whose employment (as described in section 8347(o)) is also employment for purposes of title II of the Social Security Act and chapter 21 of the Internal Revenue Code of 1986; and

“(2) the term ‘Federal service’, as applied with respect to any individual to whom this section applies as a result of paragraph (1), means any employment referred to in paragraph (1)(B) performed after December 31, 1983.”

(3) EFFECTIVE DATE.—The amendments made by this subsection shall be effective as of January 1, 1987.

SEC. 109. CONTINUED COVERAGE UNDER CERTAIN FEDERAL EMPLOYEE BENEFIT PROGRAMS FOR CERTAIN EMPLOYEES OF SAINT ELIZABETHS HOSPITAL.

(a) **IN GENERAL.**—Section 207 of the Federal Employees' Retirement System Act of 1986 (Public Law 99-335; 100 Stat. 594) is amended by adding at the end the following:

“(o) An employee of Saint Elizabeths Hospital who is appointed to a position in the government of the District of Columbia on October 1, 1987, pursuant to the Saint Elizabeths Hospital and District of Columbia Mental Health Services Act (Public Law 98-621; 98 Stat. 3369 and following) shall, for purposes of chapters 83, 87, and 89 of title 5, United States Code, be treated in the same way as an individual first employed by the government of the District of Columbia before October 1, 1987.”

(b) The amendment made by this section shall be effective as of October 1, 1987.

SEC. 110. CREDITABILITY UNDER CSRS OF CERTAIN SERVICE PERFORMED UNDER A PERSONAL SERVICE CONTRACT WITH THE UNITED STATES.

(a) **IN GENERAL.**—

(1) **CONDITIONS FOR RECEIVING CREDIT.**—Subject to the making of a deposit under section 8334(c) of title 5, United States Code, upon application to the Office of Personnel Management within 2 years after the date of the enactment of this Act, any individual who is an employee (as defined by section 8331(1) or 8401(11) of such title) on such date shall be allowed credit under subchapter III of chapter 83 of such title for any service if such service was performed—

(A) before November 5, 1985; and

(B) under a personal service contract with the United States, except as provided in paragraph (3).

(2) **CERTIFICATION.**—

(A) **IN GENERAL.**—The Office shall, with respect to any service for which credit is sought under this subsection, accept the certification of the head of the agency which was party to the contract referred to in paragraph (1)(B), but only if such certification—

(i) states that the agency had intended, through such contract, that the individual involved (or that persons like the individual involved) be considered as having been appointed to a position in which such individual would be subject to subchapter III of chapter 83 of title 5, United States Code; and

(ii) indicates the period of service which was performed under the contract by the individual involved, and includes copies of appropriate records or other documentation to support the determination as to the length of such period.

(B) **FINALITY.**—A decision by an agency head concerning whether or not to make a certification under this paragraph in any particular instance shall be at the sole discretion of the agency head, and shall not be subject to administrative or judicial review.

(3) **EXCEPTION.**—Nothing in this subsection shall apply with respect to any service performed under—

(A) a contract for which any appropriations, allocations, or funds were used under section 636(a)(3) of the Foreign Assistance Act of 1961; or

(B) a contract entered into under section 10(a)(5) of the Peace Corps Act.

(b) **APPLICABILITY TO ANNUITANTS.**—

(1) **IN GENERAL.**—In the case of any individual who—

(A) performed service for which credit is allowable under subsection (a), and

(B) retired on an annuity payable under subchapter III of chapter 83 of title 5, United States Code, after January 23, 1980, and before the date of the enactment of this Act,

any annuity under such subchapter based on the service of such individual shall be redetermined to take into account the amendment made by subsection (a) if application therefor is made, and the deposit requirement under such subsection is met, within 2 years after the date of the enactment of this Act.

(2) **AMOUNTS TO WHICH APPLICABLE.**—Any change in an annuity resulting from a redetermination under paragraph (1) shall be effective with respect to payments accruing for months beginning after the date of the enactment of this Act.

SEC. 111. EXCLUSION OF FOREIGN NATIONAL EMPLOYEES UNDER CSRS FROM PARTICIPATING IN THE THRIFT SAVINGS PLAN.

(a) **IN GENERAL.**—Section 8351 is amended—

(1) by redesignating subsection (c) as subsection (d); and

(2) by inserting after subsection (b) the following:

“(c) A member of the Foreign Service described in section 103(6) of the Foreign Service Act of 1980 shall be ineligible to make any election under this section.”

(b) **EFFECTIVE DATE.**—The amendments made by subsection (a) shall be effective as of March 31, 1987. Any refund which becomes payable as a result of the preceding sentence shall, to the extent that such refund involves an individual's contributions to the Thrift Savings Fund (established under section 8437 of title 5, United States Code), be adjusted to reflect any earnings attributable thereto.

SEC. 112. FOREIGN NATIONAL EMPLOYEES APPOINTED AFTER DECEMBER 1987 EXCLUDED FROM CSRS.

Section 8331(1) is amended—

(1) by striking “or” at the end of clause (x);

(2) by striking the period at the end of clause (xi) and inserting in lieu thereof “; or”; and

(3) by adding after clause (xi) the following:

“(xii) a member of the Foreign Service (as described in section 103(6) of the Foreign Service Act of 1980), appointed after December 31, 1987.”

SEC. 113. EXCLUSION OF FOREIGN NATIONAL EMPLOYEES FROM FERS.

(a) **NO ELECTION TO CONVERT FROM CSRS.**—

(1) **IN GENERAL.**—Section 301(a) of the Federal Employees' Retirement System Act of 1986 (Public Law 99-335; 100 Stat. 599) is amended by adding at the end the following:

“(4) A member of the Foreign Service described in section 103(6) of the Foreign Service Act of 1980 shall be ineligible to make any election under this subsection.”

(2) **EFFECTIVE DATE.**—The amendment made by paragraph (1) shall be effective as of June 30, 1987. Any refund which becomes payable as a result of the preceding sentence shall, to the extent that such refund involves an individual's contributions to the Thrift Savings Fund (established under section 8437 of title 5, United States Code), be adjusted to reflect any earnings attributable thereto.

(b) **EXCLUSION FROM FERS.**—

(1) **IN GENERAL.**—Section 8401(11) is amended—

(A) by striking “or” at the end of clause (i)(III);

(B) by inserting “or” after the semicolon in clause (ii); and

(C) by adding at the end the following:

“(iii) a member of the Foreign Service described in section 103(6) of the Foreign Service Act of 1980;”

(2) **EFFECTIVE DATE.**—The amendments made by paragraph (1) shall be effective as of January 1, 1987. Any refund which becomes payable as a result of the preceding sentence shall, to the extent that such refund involves an individual's contributions to the Thrift Savings Fund (established under section 8437 of title 5, United States Code), be adjusted to reflect any earnings attributable thereto.

SEC. 114. EXCLUSION OF CERTAIN ONE-TIME GOVERNMENT CONTRIBUTIONS TO THRIFT SAVINGS PLAN.

Section 8432(d) is amended by adding at the end the following: “However, no contribution made under subsection (c)(3) shall be subject to, or taken into account, for purposes of the preceding sentence.”

SEC. 115. GOVERNMENT'S 1 PERCENT THRIFT CONTRIBUTION NOT FORFEITABLE FOR DEATH IN SERVICE.

Section 8432(g) is amended—

(1) in paragraph (1), by striking “Except as provided in paragraphs (2) and (3),” and inserting in lieu thereof “Except as otherwise provided in this subsection,”; and

(2) by adding at the end the following:

“(4) Nothing in paragraph (2) or (3) shall cause the forfeiture of any contributions made for the benefit of an employee, Member, or Congressional employee under subsection (c)(1), or any earnings attributable thereto, if such employee, Member, or Congressional employee is not separated from Government employment as of date of death.”

SEC. 116. CLARIFICATION RELATING TO AMOUNTS SUBJECT TO LEGAL PROCESS FOR CHILD SUPPORT OR ALIMONY.

Section 8437(e)(3) is amended by adding at the end the following: “For the purposes of this paragraph, an amount contributed for the benefit of an individual under section 8432(c)(1) (including any earnings attributable thereto) shall not be

considered part of the balance in such individual's account unless such amount is nonforfeitable, as determined under applicable provisions of section 8432(g)."

SEC. 117. CLARIFICATION RELATING TO SOURCE OF FUNDING FOR ADMINISTRATIVE EXPENSES OF THE THRIFT SAVINGS PLAN.

(a) **IN GENERAL.**—Section 8437 is amended—

(1) in subsection (d), by inserting a period after "earnings in such Fund" and by striking the matter thereafter; and

(2) in subsection (e)(1), by inserting "subsection (d) and" before "paragraphs (2) and (3)."

(b) **EFFECTIVE DATE.**—The amendments made by subsection (a) shall take effect on the first day of the first month beginning on or after the date of the enactment of this Act.

SEC. 118. EXCLUSION FROM AGE-BASED REDUCTION UNDER CHAPTER 83 FOR CSRS PORTION OF ANNUITY MADE SUBJECT TO REDUCTION UNDER CHAPTER 84 FOLLOWING AN ELECTION INTO FERS.

Section 302(a)(4) of the Federal Employees' Retirement System Act of 1986 (Public Law 99-335; 100 Stat. 603) is amended by adding at the end the following: "Notwithstanding the preceding sentence, in computing accrued benefits under this paragraph for an individual retiring under section 8412(g) or 8413(b) of title 5, United States Code, section 8339(h) of such title (relating to reductions based on age at date of separation) shall not apply."

SEC. 119. INTEREST ON REFUNDS OF CERTAIN EXCESS CONTRIBUTIONS BY INDIVIDUALS MAKING ELECTIONS UNDER TITLE III OF THE FEDERAL EMPLOYEES' RETIREMENT SYSTEM ACT OF 1986.

(a) **FOR INDIVIDUALS ELECTING FERS COVERAGE.**—Section 302(c)(2) of the Federal Employees' Retirement System Act of 1986 (Public Law 99-335; 100 Stat. 605), as amended by section 302(a) of the Federal Employees' Retirement System Technical Corrections Act of 1986 (Public Law 99-556; 100 Stat. 3136), is amended to read as follows:

"(2) In accordance with regulations prescribed by the Office of Personnel Management, a refund under this subsection shall be payable upon written application therefor filed with the Office and shall include interest at the rate provided in section 8334(e)(3) of title 5, United States Code. Interest on the refund shall accrue monthly and shall be compounded annually."

(b) **FOR INDIVIDUALS ELECTING COVERAGE UNDER CSRS WITH OFFSETS FOR SOCIAL SECURITY.**—The last sentence of section 303(a) of the Federal Employees' Retirement System Act of 1986 (Public Law 99-335; 100 Stat. 605), as added by section 302(b) of the Federal Employees' Retirement System Technical Corrections Act of 1986 (Public Law 99-556; 100 Stat. 3136), is amended to read as follows: "A refund under this subsection shall be computed with interest in accordance with section 302(c)(2) and regulations prescribed by the Office of Personnel Management."

SEC. 120. EFFECTIVE DATE OF FINAL MERIT INCREASE UNDER THE PERFORMANCE MANAGEMENT AND RECOGNITION SYSTEM FOR EMPLOYEES OF SAINT ELIZABETHS HOSPITAL.

(a) **IN GENERAL.**—Notwithstanding any other provision of law, the effective date of any merit increase under section 5404 of title 5, United States Code, during calendar year 1987 shall, in the case of any individual employed in or under Saint Elizabeths Hospital on September 1, 1987, be considered to be the first day of the first applicable pay period commencing on or after September 1 (rather than October 1) of such year.

(b) **DEFINITION.**—For purposes of this section, "Saint Elizabeths Hospital" refers to the institution identified under section 3(1) of the Saint Elizabeths Hospital and District of Columbia Mental Health Services Act (Public Law 98-621; 98 Stat. 3371).

SEC. 121. DEADLINE FOR AGENCY CONTRIBUTIONS TO THRIFT SAVINGS PLAN.

(a) **THE 1-PERCENT CONTRIBUTION.**—Section 8432(c)(1)(A) is amended—

(1) by striking "At the end of" and inserting in lieu thereof "At the time prescribed by the Executive Director, but no later than 12 days after the end of"; and

(2) by striking "at the end of each succeeding pay period," and inserting in lieu thereof "within such time as the Executive Director may prescribe with respect to succeeding pay periods (but no later than 12 days after the end of each such pay period)."

(b) **AMOUNTS BASED ON INDIVIDUAL CONTRIBUTIONS.**—The second sentence of section 8432(c)(2)(A) is amended by striking "at the end of such pay period." and inserting in lieu thereof "within such time as the Executive Director may prescribe, but no later than 12 days after the end of each such pay period."

SEC. 122. AMENDMENTS RELATING TO DISABILITY ANNUITIES.

(a) INITIAL DISABILITY ANNUITY OFFSET TO BE BASED ON ACTUAL SOCIAL SECURITY DISABILITY INSURANCE BENEFIT; AMOUNT OF OFFSET NOT SUBJECT TO ADJUSTMENT UNTIL AFTER THE FIRST YEAR.—Section 8452(a)(2)(B)(i) of title 5, United States Code, is amended to read as follows:

“(B)(i) For purposes of this paragraph, the assumed disability insurance benefit of an annuitant for any month shall be equal to—

“(I) the amount of the disability insurance benefit to which the annuitant is entitled under section 223 of the Social Security Act for the month in which the annuity under this subchapter commences, or is restored, or, if no entitlement to such disability insurance benefits exists for such month, the first month thereafter for which the annuitant is entitled both to an annuity under this subchapter and disability insurance benefits under section 223 of the Social Security Act, adjusted by

“(II) all adjustments made under section 8462(b) after the end of the period referred to in paragraph (1)(A)(i) (or, if later, after the end of the month preceding the first month for which the annuitant is entitled both to an annuity under this subchapter and disability insurance benefits under section 223 of the Social Security Act) and before the start of the month involved (without regard to whether the annuitant’s annuity was affected by any of those adjustments).”.

(b) REVISED METHOD FOR REDETERMINING A DISABILITY ANNUITY AT AGE 62.—Section 8452(b) of title 5, United States Code, is amended to read as follows:

“(b)(1) Except as provided in subsection (d), if an annuitant is entitled to an annuity under this subchapter as of the day before the date of the sixty-second anniversary of the annuitant’s birth (hereinafter in this section referred to as the annuitant’s ‘redetermination date’), such annuity shall be redetermined by the Office in accordance with paragraph (2). Effective as of the annuitant’s redetermination date, the annuity (as so redetermined) shall be in lieu of any annuity to which such annuitant would otherwise be entitled under this subchapter.

“(2)(A) An annuity redetermined under this subsection shall be equal to the amount of the annuity to which the annuitant would be entitled under section 8415, taking into account the provisions of subparagraph (B).

“(B) In performing a computation under this paragraph—

“(i) creditable service of an annuitant shall be increased by including any period (or periods) before the annuitant’s redetermination date during which the annuitant was entitled to an annuity under this subchapter; and

“(ii) the average pay which would otherwise be used shall be adjusted to reflect all adjustments made under section 8462(b) with respect to any period (or periods) referred to in clause (i) (without regard to whether the annuitant’s annuity was affected by any of those adjustments).”.

(c) METHOD FOR APPLYING COST-OF-LIVING ADJUSTMENTS TO CERTAIN DISABILITY ANNUITY PROVISIONS.—

(1) MINIMUM DISABILITY ANNUITY AMOUNT SUBJECT TO ADJUSTMENT AFTER THE FIRST YEAR.—Section 8452 is amended—

(A) by redesignating subsection (d) as subsection (d)(1); and

(B) by adding after subsection (d)(1), as so redesignated, the following:

“(2) In applying this subsection with respect to any annuitant, the amount of an annuity so computed under section 8415 shall be adjusted under section 8462 (including subsection (c) thereof)—

“(A) to the same extent, and otherwise in the same manner, as if it were an annuity—

“(i) subject to adjustment under such section; and

“(ii) with a commencement date coinciding with the date the annuitant’s annuity commenced or was restored under this subchapter, as the case may be; and

“(B) whether the amount actually payable to the annuitant under this section in any month is determined under this subsection or otherwise.”.

(2) DISABILITY ANNUITY COLAS.—

(A) IN GENERAL.—Section 8452(a)(1)(B) of title 5, United States Code, is amended to read as follows:

“(B) An annuity computed under this paragraph—

“(i) shall not, during any period referred to in subparagraph (A)(i), be adjusted under section 8462; but

“(ii) shall, after the end of any period referred to in subparagraph (A)(i), be adjusted to reflect all adjustments made under section 8462(b) after the end of the period referred to in subparagraph (A)(i), whether the amount actually pay-

able to the annuitant under this section in any month is determined under this subsection or otherwise.”.

(B) CLARIFYING AMENDMENT.—Section 8452(a) of title 5, United States Code, is amended by adding at the end the following:

“(3) Section 8462 shall apply with respect to amounts under this subsection only as provided in paragraphs (1) and (2).”.

(d) EFFECTIVE DATE.—The amendments made by this section shall be effective as of January 1, 1987, as if they had been enacted as part of the Federal Employees’ Retirement System Act of 1986 (Public Law 99-335; 100 Stat. 514 and following).

SEC. 123. CLARIFYING AMENDMENTS RELATING TO FUNDING.

(a) FUND BALANCE.—Section 8331(18) is amended by adding at the end the following:

“but does not include any amount attributable to—

“(i) the Federal Employees’ Retirement System; or

“(ii) contributions made under the Federal Employees’ Retirement Contribution Temporary Adjustment Act of 1983 by or on behalf of any individual who became subject to the Federal Employees’ Retirement System;”.

(b) Section 8423(b)(1) is amended by striking the period and inserting in lieu thereof “, except that in computing any supplemental liability under subparagraph (B), any benefits, deductions, or other amounts may not be taken into account unless they relate to a period of service performed by the current or former employee involved while subject to this chapter.”.

SEC. 124. CONCURRENT ENTITLEMENT TO BENEFITS UNDER CHAPTER 81 AND CHAPTER 83 OR 84 OF TITLE 5, UNITED STATES CODE.

(a) IN GENERAL.—

(1) AMENDMENTS.—

(A) CSRS.—Section 8337 is amended by striking subsections (f) and (g) and inserting in lieu thereof the following:

“(f)(1) An individual is not entitled to receive—

“(A) an annuity under this subchapter, and

“(B) compensation for injury to, or disability of, such individual under subchapter I of chapter 81, other than compensation payable under section 8107, covering the same period of time.

“(2) An individual is not entitled to receive an annuity under this subchapter and a concurrent benefit under subchapter I of chapter 81 on account of the death of the same person.

“(3) Paragraphs (1) and (2) do not bar the right of a claimant to the greater benefit conferred by either this subchapter or subchapter I of chapter 81.

“(g) If an individual is entitled to an annuity under this subchapter, and the individual receives a lump-sum payment for compensation under section 8135 based on the disability or death of the same person, so much of the compensation as has been paid for a period extended beyond the date payment of the annuity commences, as determined by the Department of Labor, shall be refunded to that Department for credit to the Employees’ Compensation Fund. Before the individual may receive the annuity, the individual shall—

“(1) refund to the Department of Labor the amount representing the commuted compensation payments for the extended period; or

“(2) authorize the deduction of the amount from the annuity.

Deductions from the annuity may be made from accrued or accruing payments. The amounts deducted and withheld from the annuity shall be transmitted to the Department of Labor for reimbursement to the Employees’ Compensation Fund. When the Department of Labor finds that the financial circumstances of an individual entitled to an annuity under this subchapter warrant deferred refunding, deductions from the annuity may be prorated against and paid from accruing payments in such manner as the Department determines appropriate.”.

(B) FERS.—Subchapter VI of chapter 84 is amended by inserting after section 8464 the following:

“§ 8464a. Relationship between annuity and workers’ compensation

“(a)(1) An individual is not entitled to receive—

“(A) an annuity under subchapter II or V, and

“(B) compensation for injury to, or disability of, such individual under subchapter I of chapter 81, other than compensation payable under section 8107, covering the same period of time.

"(2) An individual is not entitled to receive an annuity under subchapter IV and a concurrent benefit under subchapter I of chapter 81 on account of the death of the same person.

"(3) Paragraphs (1) and (2) do not bar the right of a claimant to the greater benefit conferred by either this chapter or subchapter I of chapter 81.

"(b) If an individual is entitled to an annuity under subchapter II, IV, or V, and the individual receives a lump-sum payment for compensation under section 8135 based on the disability or death of the same person, so much of the compensation as has been paid for a period extended beyond the date payment of the annuity commences, as determined by the Department of Labor, shall be refunded to that Department for credit to the Employees' Compensation Fund. Before the individual may receive the annuity, the individual shall—

"(1) refund to the Department of Labor the amount representing the commuted compensation payments for the extended period; or

"(2) authorize the deduction of the amount from the annuity.

Deductions from the annuity may be made from accrued or accruing payments. The amounts deducted and withheld from the annuity shall be transmitted to the Department of Labor for reimbursement to the Employees' Compensation Fund. When the Department of Labor finds that the financial circumstances of an individual entitled to an annuity under subchapter II, IV, or V warrant deferred refunding, deductions from the annuity may be prorated against and paid from accruing payments in such manner as the Department determines appropriate."

(2) CHAPTER ANALYSIS.—The analysis for chapter 84 is amended by inserting after the item relating to section 8464 the following:

"8464a. Relationship between annuity and workers' compensation."

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Subchapter V of chapter 84 is amended—

(A) by striking section 8456; and

(B) by redesignating section 8457 as section 8456.

(2) The analysis for chapter 84 is amended—

(A) by striking the item relating to section 8456; and

(B) by striking "8457" and inserting in lieu thereof "8456".

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall be effective as of January 1, 1987, and shall apply with respect to benefits payable based on a death or disability occurring on or after that date.

(2) EXCEPTION.—The amendment made by subsection (a)(1)(A) shall take effect on the date of the enactment of this Act and shall apply with respect to benefits payable based on a death or disability occurring on or after that date.

SEC. 125. ELIGIBILITY OF CERTAIN INDIVIDUALS TO PARTICIPATE IN THE THRIFT SAVINGS PLAN.

(a) DEFINITIONS.—For purposes of this section—

(1) the term "Executive Director" means the Executive Director under section 8474 of title 5, United States Code; and

(2) the term "Thrift Savings Plan" refers to the program under subchapter III of chapter 84 of title 5, United States Code.

(b) REGULATIONS.—

(1) IN GENERAL.—The Executive Director shall prescribe regulations relating to participation in the Thrift Savings Plan by an individual described in subsection (c).

(2) SPECIFIC MATTERS TO BE INCLUDED.—Under the regulations—

(A) in computing a percentage of basic pay to determine an amount to be contributed to the Thrift Savings Fund, the rate of basic pay to be used shall be the same as that used in computing any amount which the individual involved is otherwise required, as a condition for participating in the Civil Service Retirement System or the Federal Employees' Retirement System (as the case may be), to contribute to the Civil Service Retirement and Disability Fund; and

(B) an employing authority which would not otherwise make contributions to the Thrift Savings Fund shall be allowed, with respect to any individual under subsection (c) who is serving under such authority, and at the sole discretion of such authority, to make any contributions on behalf of such individual which would be permitted or required under the provisions of section 8432(c) of title 5, United States Code, if such authority were the individual's employing agency under such provisions.

(c) **APPLICABILITY.**—This section applies with respect to any individual participating in the Civil Service Retirement System or the Federal Employees' Retirement System as—

(1) an individual who has entered on approved leave without pay to serve as a full-time officer or employee of an organization composed primarily of employees (as defined by section 8331(1) or 8401(11) of title 5, United States Code);

(2) an individual assigned from a Federal agency to a State or local government under subchapter VI of chapter 33 of title 5, United States Code; or

(3) an individual appointed or otherwise assigned to one of the cooperative extension services, as defined by section 1404(5) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3103(5)).

(d) **EFFECTIVE DATE.**—

(1) **IN GENERAL.**—Except as provided in paragraph (2), the regulations prescribed under this section shall become effective in accordance with the provisions of such regulations.

(2) **EXCEPTION.**—The regulations prescribed under this section shall, with respect to individuals under subsection (c)(3), be effective as of January 1, 1987.

SEC. 126. SPECIAL PAY OF VETERANS' ADMINISTRATION PHYSICIANS INCLUDED IN AVERAGE SALARY UNDER FERS.

Section 4118(f) of title 38, United States Code, is amended—

(1) in paragraph (1), by striking "81 or 83" and inserting in lieu thereof "81, 83, or 84"; and

(2) in paragraph (2)—

(A) in the first sentence, by striking "chapter 83 of title 5" and inserting in lieu thereof "chapter 83 or 84 of title 5, as the case may be";

(B) in the second sentence, by striking "section 8331(4)" and all that follows thereafter through "; or" and inserting in lieu thereof the following: "section 8331(4) or 8401(3) of such title (as applicable) only—

"(A) for the purposes of computing benefits paid under section 8337, 8341(d) or (e), 8442(b), 8443, or 8451 of such title; or"; and

(C) in subparagraph (B), by inserting "if" at the beginning thereof.

SEC. 127. APPLICATION DEADLINE FOR CERTAIN FORMER SPOUSES.

Section 4(b)(1)(B) of the Civil Service Retirement Spouse Equity Act of 1984 (Public Law 98-615; 98 Stat. 3205), as amended by section 201(b)(1)(C) of the Federal Employees Benefits Improvement Act of 1986 (Public Law 99-251; 100 Stat. 22), is amended—

(1) in clause (i), by inserting ", and before May 8, 1987" before the semicolon; and

(2) by amending clause (iv) to read as follows:

"(iv) the former spouse files an application for the survivor annuity with the Office on or before May 7, 1989; and".

TITLE II—FOREIGN SERVICE RETIREMENT

PART A—GENERAL PROVISIONS

SEC. 201. REFERENCES.

Except as otherwise expressly provided, whenever in this title an amendment or repeal is expressed in terms of an amendment or repeal to a section or other provision, the reference shall be considered to be made to a section or other provision of the Foreign Service Act of 1980 (22 U.S.C. 4041 et seq.).

SEC. 202. FORMER SPOUSES MARRIED BETWEEN 9 MONTHS AND 10 YEARS.

(a) **IN GENERAL.**—Subchapter I of Chapter 8 (22 U.S.C. 4041 et seq.) is amended by adding after section 829 the following new section:

"**SEC. 830. QUALIFIED FORMER WIVES AND HUSBANDS.**—(a) Notwithstanding section 4(h) of the Civil Service Retirement Spouse Equity Act of 1984, section 827 of this Act shall apply with respect to section 8339(j), section 8341(e), and section 8341(h) of title 5, United States Code, and section 4 (except for subsection (b)) of the Civil Service Retirement Spouse Equity Act of 1984 to the extent that those sections apply to a qualified former wife or husband. For the purposes of this section any reference in the Civil Service Retirement Spouse Equity Act of 1984 to the effective date of that Act shall be deemed to be a reference to the effective date of this section.

"(b)(1) Payments pursuant to this section which would otherwise be made to a participant or former participant based upon his service shall be paid (in whole or in part) by the Secretary of State to another person if and to the extent expressly pro-

vided for in the terms of any court order or spousal agreement. Any payment under this paragraph to a person bars recovery by any other person.

"(2) Paragraph (1) shall only apply to payments made by the Secretary of State under this chapter after the date of receipt by the Secretary of State of written notice of such court order or spousal agreement and such additional information and documentation as the Secretary of State may prescribe.

"(c) For the purposes of this section, the term 'qualified former wife or husband' means a former wife or husband of an individual if—

"(1) such individual performed at least 18 months of civilian service creditable under this chapter; and

"(2) the former wife or husband was married to such individual for at least 9 months but not more than 10 years.

"(d) Regulations issued pursuant to section 827 to implement this section shall be submitted to the Committee on Post Office and Civil Service and the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate. Such regulations shall not take effect until 60 days after the date on which such regulations are submitted to the Congress."

(b) CONFORMING AMENDMENT.—The table of contents in section 2 of the Foreign Service Act of 1980 is amended by inserting after the item relating to section 829 the following:

"Sec. 830. Qualified former wives and husbands."

SEC. 203. ELECTION TO PROVIDE SURVIVOR ANNUITY FOR CERTAIN SPOUSES ACQUIRED BEFORE THE EFFECTIVE DATE OF THE FOREIGN SERVICE ACT OF 1980.

(a) ELECTION.—A former participant who married his or her current spouse before the effective date of the Foreign Service Act of 1980 and who married such spouse after retirement under the Foreign Service Retirement and Disability System and who was unable to provide a survivor annuity for such spouse because—

(1) the participant was married at the time of retirement and elected not to provide a survivor annuity for that spouse at the time of retirement, or

(2) subject to subsection (e), the participant failed to notify the Secretary of State of the participant's post-retirement marriage within one year after the marriage,

may make the election described in subsection (b).

(b) ELECTION DESCRIBED.—

(1) The election referred to in subsection (a) is an election in writing—

(A) to provide for a survivor annuity for such spouse under section 806(g) of the Foreign Service Act of 1980 (22 U.S.C. 4046(g));

(B) to have his or her annuity reduced under section 806(b)(2) of such Act; and

(C) to deposit in the Foreign Service Retirement and Disability Fund an amount determined by the Secretary of State, as nearly as may be administratively feasible, to reflect the amount by which such participant's annuity would have been reduced had the election been continuously in effect since the annuity commenced, plus interest computed under paragraph (2).

(2) For the purposes of paragraph (1), the annual rate of interest shall be 6 percent for each year during which the annuity would have been reduced if the election had been in effect on and after the date the annuity commenced.

(c) OFFSET.—If the participant does not make the deposit referred to in subsection (b)(1)(C), the Secretary of State shall collect such amount by offset against such participant's annuity, up to a maximum of 25 percent of the net annuity otherwise payable to such participant. Such participant is deemed to consent to such offset.

(d) NOTICE.—The Secretary of State shall provide for notice to the general public of the right to make an election under this section.

(e) PROOF OF ATTEMPTED ELECTION.—In any case in which subsection (a)(2) applies, the retired employee or Member shall provide the Secretary of State with such documentation as the Secretary of State shall decide is appropriate, to show that such participant attempt to elect a reduced annuity with survivor benefit for his or her current spouse and that such election was rejected by the Secretary of State because it was untimely filed.

(f) DEPOSIT.—A deposit required by this subsection may be made by the surviving spouse of the participant.

(g) LIMITATION.—The election authorized in subsection (a) may only be made within one year after the date of enactment of this title in accordance with procedures prescribed by the Secretary of State.

(h) DEFINITIONS.—For the purposes of this section, the terms “participant” and “surviving spouse” have the same meaning given such terms in subchapter I of chapter 8 of the Foreign Service Act of 1980.

SEC. 204. BENEFITS FOR CERTAIN FORMER SPOUSES OF MEMBERS OF THE FOREIGN SERVICE.

(a) IN GENERAL.—Subchapter I of Chapter 8 (22 U.S.C. 3901 et seq.), as amended by section 202 of this title, is amended by inserting after section 830 the following:

“SEC. 831. RETIREMENT BENEFITS FOR CERTAIN FORMER SPOUSES.

“(a) Any individual who was a former spouse of a participant or former participant on February 14, 1981, shall be entitled, to the extent of available appropriations, and except to the extent such former spouse is disqualified under subsection (b), to benefits—

“(1) if married to the participant throughout the creditable service of the participant, equal to 50 percent of the benefits of the participant; or

“(2) if not married to the participant throughout such creditable service, equal to that former spouse’s pro rata share of 50 percent of such benefits.

“(b) A former spouse shall not be entitled to benefits under this section if—

“(1) the former spouse remarries before age 55; or

“(2) the former spouse was not married to the participant at least 10 years during service of the participant which is creditable under this chapter with at least 5 years occurring while the participant was a member of the Foreign Service.

“(c)(1) The entitlement of a former spouse to benefits under this section—

“(A) shall commence on the later of—

“(i) the day the participant upon whose service the benefits are based becomes entitled to benefits under this chapter; or

“(ii) the first day of the month in which the divorce or annulment involved becomes final; and

“(B) shall terminate on the earlier of—

“(i) the last day of the month before the former spouse dies or remarries before 55 years of age; or

“(ii) the date of the benefits of the participant terminates.

“(2) Notwithstanding paragraph (1), in the case of any former spouse of a disability annuitant—

“(A) the benefits of the former spouse shall commence on the date the participant would qualify on the basis of his or her creditable service for benefits under this chapter (other than a disability annuity) or the date the disability annuity begins, whichever is later, and

“(B) the amount of benefits of the former spouse shall be calculated on the basis of benefits for which the participant would otherwise so qualify.

“(3) Benefits under this section shall be treated the same as an annuity under section 814(a)(7) for purposes of section 806(h) or any comparable provision of law.

“(4)(A) Benefits under this section shall not be payable unless appropriate written application is provided to the Secretary, complete with any supporting documentation which the Secretary may by regulation require, within 30 months after the effective date of this section. The Secretary may waive the 30-month application requirements under this subparagraph in any case in which the Secretary determines that the circumstances so warrant.

“(B) Upon approval of an application provided under subparagraph (A), the appropriate benefits shall be payable to the former spouse with respect to all periods before such approval during which the former spouse was entitled to such benefits under this section, but in no event shall benefits be payable under this section with respect to any period before the effective date of this section.

“(d) For the purposes of this section, the term ‘benefits’ means—

“(1) with respect to a participant or former participant subject to this subchapter, the annuity of the participant or former participant; and

“(2) with respect to a participant or former participant subject to subchapter II, the benefits of the participant or former participant under that subchapter.

“(e) Nothing in this section shall be construed to impair, reduce, or otherwise affect the annuity or the entitlement to an annuity of a participant or former participant under this chapter.

“SEC. 832. SURVIVOR BENEFITS FOR CERTAIN FORMER SPOUSES.

“(a) Any individual who was a former spouse of a participant or former participant on February 14, 1981, shall be entitled, to the extent of available appropriations, and except to the extent such former spouse is disqualified under subsection (b), to a survivor annuity equal to 55 percent of the greater of—

“(1) the full amount of the participant’s or former participant’s annuity, as computed under this chapter; or

“(2) the full amount of what such annuity as so computed would be if the participant or former participant had not withdrawn a lump-sum portion of contributions made with respect to such annuity.

“(b) If an election has been made with respect to such former spouse under section 2109 or 806(f), then the survivor annuity under subsection (a) of such former spouse shall be equal to the full amount of the participant’s or former participant’s annuity referred to in subsection (a) less the amount of such election.

“(c) A former spouse shall not be entitled to a survivor annuity under this section if—

“(1) the former spouse remarries before age 55; or

“(2) the former spouse was not married to the participant at least 10 years during service of the participant which is creditable under this chapter with at least 5 years occurring while the participant was a member of the Foreign Service.

“(d)(1) The entitlement of a former spouse to a survivor annuity under this section—

“(A) shall commence—

“(i) in the case of a former spouse of a participant or former participant who is deceased as of the effective date of this section, beginning on such date; and

“(ii) in the case of any other former spouse, beginning on the later of—
“(I) the date that the participant or former participant to whom the former spouse was married dies; or

“(II) the effective date of this section; and

“(B) shall terminate on the last day of the month before the former spouse’s death or remarriage before attaining the age 55.

“(2)(A) A survivor annuity under this section shall not be payable unless appropriate written application is provided to the Secretary, complete with any supporting documentation which the Secretary may by regulation require, within 30 months after the effective date of this section. The Secretary may waive the 30-month application requirement under this subparagraph in any case in which the Secretary determines that the circumstances so warrant.

“(B) Upon approval of an application provided under subparagraph (A), the appropriate survivor annuity shall be payable to the former spouse with respect to all periods before such approval during which the former spouse was entitled to such annuity under this section, but in no event shall a survivor annuity be payable under this section with respect to any period before the effective date of this section.

“(e) The Secretary shall—

“(1) as soon as possible, but not later than 60 days after the effective date of this section, issue such regulations as may be necessary to carry out this section; and

“(2) to the extent practicable, and as soon as possible, inform each individual who was a former spouse of a participant or former participant on February 14, 1981, of any rights which such individual may have under this section.

“(f) Nothing in this section shall be construed to impair, reduce, or otherwise affect the annuity or the entitlement to an annuity of a participant or former participant under this chapter.

“SEC. 833. HEALTH BENEFITS FOR CERTAIN FORMER SPOUSES.

“(a) Except as provided in subsection (c)(1), any individual—

“(1) formerly married to an employee or former employee of the Foreign Service, whose marriage was dissolved by divorce or annulment before May 7, 1985;

“(2) who, at any time during the 18-month period before the divorce or annulment became final, was covered under a health benefits plan as a member of the family of such employee or former employee; and

“(3) who was married to such employee for not less than 10 years during periods of government service by such employee, is eligible for coverage under a health benefits plan in accordance with the provisions of this section.

“(b)(1) Any individual eligible for coverage under subsection (a) may enroll in a health benefits plan for self alone or for self and family if, before the expiration of the 6-month period beginning on the effective date of this section, and in accordance with such procedures as the Director of the Office of Personnel Management shall by regulation prescribe, such individual—

“(A) files an election for such enrollment; and

“(B) arranges to pay currently into the Employees Health Benefits Fund under section 8909 of title 5, United States Code, an amount equal to the sum of the employee and agency contributions payable in the case of an employee enrolled under chapter 89 of such title in the same health benefits plan and with the same level of benefits.

“(2) The Secretary shall, as soon as possible, take all steps practicable—

“(A) to determine the identity and current address of each former spouse eligible for coverage under subsection (a); and

“(B) to notify each such former spouse of that individual’s rights under this section.

“(3) The Secretary shall waive the 6-month limitation set forth in paragraph (1) in any case in which the Secretary determines that the circumstances so warrant.

“(c)(1) Any former spouse who remarries before age 55 is not eligible to make an election under subsection (b)(1).

“(2) Any former spouse enrolled in a health benefits plan pursuant to an election under subsection (b)(1) may continue the enrollment under the conditions of eligibility which the Director of the Office of Personal Management shall by regulation prescribe, except that any former spouse who remarries before age 55 shall not be eligible for continued enrollment under this section after the end of the 31-day period beginning on the date of remarriage.

“(d) No individual may be covered by a health benefits plan under this section during any period in which such individual is enrolled in a health benefits plan under any other authority, nor may any individual be covered under more than one enrollment under this section.

“(e) For purposes of this section the term ‘health benefits plan’ means an approved health benefits plan under chapter 89 of title 5, United States Code.”

(b) CONFORMING AMENDMENT.—The table of contents in section 2 of the Foreign Service Act of 1980 is amended by inserting after the item relating to section 830 the following:

“Sec. 831. Retirement benefits for certain former spouses.

“Sec. 832. Survivor benefits for certain former spouses.

“Sec. 833. Health benefits for certain former spouses.

PART B—FOREIGN SERVICE RETIREMENT AND DISABILITY SYSTEM

SEC. 211. DEFINITION OF SURVIVING SPOUSE.

Paragraph (13) of section 804 (22 U.S.C. 4044) is amended—

(1) by striking out “, in the case of death in service or marriage after retirement,”;

(2) by striking out “one year” and inserting in lieu thereof “9 months”; and

(3) by inserting before the semicolon the following: “, except that the requirement for at least 9 months of marriage shall be deemed satisfied in any case in which the participant or annuitant dies within the applicable 9-month period, if—

“(A) the death of such participant or annuitant was accidental; or

“(B) the surviving spouse of such individual had been previously married to the individual and subsequently divorced and the aggregate time married is at least 9 months”.

SEC. 212. CONTRIBUTIONS FOR PRIOR SERVICE

Paragraph (1) of section 805(d) (22 U.S.C. 4045(d)) is amended—

(1) by striking out “equal to” and inserting in lieu thereof “Special contributions for purposes of subparagraph (A) shall equal”; and

(2) by adding at the end thereof the following: “Special contributions for refunds under subparagraph (B) shall equal the amount of the refund received by the participant.”

SEC. 213. COMPUTATION OF ANNUITIES.

(a) JOINT ELECTION TO WAIVE SURVIVOR ANNUITY WITH RESPECT TO A FORMER SPOUSE.—Subparagraph (C) of section 806(b)(1) (22 U.S.C. 4046(b)(1)) is amended by striking out “12-month” and inserting in lieu thereof “24-month”; and

(b) RECALL SERVICE.—Paragraph (2) of section 806(i) (22 U.S.C. 4046 (i)) is amended by striking out “section 814(b)” and inserting in lieu thereof “this subchapter”.

SEC. 214. SURVIVOR BENEFITS FOR CHILDREN.

(a) SURVIVOR BENEFITS FOR CHILDREN.—Section 806 of Chapter 8 (22 U.S.C. 4046) (as amended by section 213 of this Act) is amended—

(1) in subsection (c), by inserting "or a former spouse who is the natural or adoptive parent of a surviving child of the annuitant" after "survived by a spouse" each place it appears; and

(2) in subsection (d), by amending the first sentence to read as follows: "On the death of the surviving spouse or former spouse or termination of the annuity of a child, the annuity of any other child or children shall be recomputed and paid as though the spouse, former spouse, or child had not survived the participant."

(b) **DEATH IN SERVICE.**—Section 809 (22 U.S.C. 4049) is amended—

(1) in subsection (c), by inserting "or a former spouse who is the natural or adoptive parent of a surviving child of the annuitant," after "spouse"; and

(2) in subsection (d), by inserting "or a former spouse who is the natural or adoptive parent of a surviving child of the annuitant," after "spouse,".

SEC. 215. MINIMUM AGE REQUIREMENT.

(a) **DISABILITY ANNUITY.**—Subsections (a) and (b) of section 808 (22 U.S.C. 4048) are each amended by striking out "65" each place it appears and inserting in lieu thereof "60".

(b) **DEATH IN SERVICE.**—Subsection (e) of section 809 (22 U.S.C. 4049) is amended by striking out "65" and inserting in lieu thereof "60".

SEC. 216. VOLUNTARY RETIREMENT.

Section 811 of Chapter 8 (22 U.S.C. 4051) is amended by adding at the end thereof the following: "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. 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 had been covered under the Civil Service Retirement System rather than subject to this chapter while a member of the Service, may receive an annuity under section 8836 or 8338, notwithstanding section 8333(b) of title 5, United States Code, if 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 or contributed by the employer, and deposited into the Fund during the period he or 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."

SEC. 217. FORMER SPOUSES.

(a) **5 YEAR FOREIGN SERVICE REQUIREMENT.**—Paragraph (1) of section 814(a) is amended by inserting "if such former spouse was married to the participant for at least 10 years during service of the participant which is creditable under this chapter with at least 5 of such years occurring while the participant was a member of the Foreign Service and" after "annuity".

(b) **COURT ORDER EFFECTIVE 24 MONTHS AFTER MARRIAGE IS DISSOLVED.**—Paragraph (4) of section 814(a) (22 U.S.C. 4054(a)) is amended by striking out "12" and inserting in lieu thereof "24".

(c) **MONTHLY RATE OF ANNUITY NOT APPLICABLE IN CERTAIN SITUATION.**—

(1) Subsection (1) of section 806 (22 U.S.C. 4046) is repealed.

(2) Subsection (d) of section 814 (22 U.S.C. 4054) is repealed.

SEC. 218. LUMP SUM PAYMENTS.

(a) **REQUIREMENTS FOR PAYMENT.**—Subsection (a) of section 815 (22 U.S.C. 4055) is amended to read as follows:

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

"(A) is separated from the Service for at least 31 consecutive days, or is transferred to a position in which the participant is not subject to this chapter and remains in such a position for at least 31 consecutive days;

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

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

"(D) will not become eligible to receive an annuity under this subchapter within 31 days after filing the application; and

"(E) has notified any spouse or former spouse the participant may have of the application for payment in accordance with regulations prescribed by the Secretary of State.

Such regulations may provide for waiver of subparagraph (E) under circumstances described in section 806(b)(1)(D).

"(2) Such lump sum credit shall be paid to the participant and to any former spouse of the participant in accordance with subsection (i)."

SEC. 219. COST OF LIVING ADJUSTMENTS.

Paragraph (1) of section 826(c) (22 U.S.C. 4066(c)) is amended to read as follows:

"(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 died in service or a deceased annuitant whose annuity was not increased under this section, shall be equal to the product (adjusted to the nearest $\frac{1}{10}$ of 1 percent) of—

"(A) $\frac{1}{12}$ 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."

PART C—FOREIGN SERVICE PENSION SYSTEM

SEC. 241. DEFINITION OF LUMP-SUM CREDIT.

Section 852 of Chapter 8 (22 U.S.C. 4071a) is amended—

(1) by redesignating paragraph (3), (4), (5), (6), and (7) as paragraphs (4), (5), (6), (7), and (8), respectively; and

(2) by inserting after paragraph (2) the following new paragraph:

"(3) the term 'lump-sum credit' means the unrefunded amount consisting of—

"(A) retirement deductions made from the basic pay of a participant under section 856 of this chapter (or under section 204 of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983);

"(B) amounts deposited by a participant under section 854 to obtain credit under this System for prior civilian or military service; and

"(C) interest on the deductions and deposits which, for any calendar year, shall be equal to the overall average yield to the Fund during the preceding fiscal year from all obligations purchased by the Secretary of the Treasury during such fiscal year under section 819, as determined by the Secretary of the Treasury (compounded annually); but does not include interest—

"(i) if the service covered thereby aggregates 1 year or less; or

"(ii) for a fractional part of a month in the total service;"

SEC. 242. CONTRIBUTION FOR CREDITABLE SERVICE OF EMPLOYEE OF A MEMBER OR OFFICE OF THE CONGRESS.

The second sentence of subsection (e) of section 854 (22 U.S.C. 4071c) is amended—

(1) by striking out "matching"; and

(2) by inserting "determined under section 857(a)" after "participant".

SEC. 243. CONFORMING, AMENDMENT, HEALTH CARE.

Subsection (b) of section 904 (22 U.S.C. 4084) is amended by inserting "or Foreign Service Pension System" after "Foreign Service Retirement and Disability System".

PART D—SAVINGS PROVISIONS AND EFFECTIVE DATE

SEC. 261. EFFECTIVE DATE.

(a) **IN GENERAL.**—Except as provided in subsection (b), this title and the amendments made by this title shall take effect 90 days after the date of enactment of this title.

(b) **EXCEPTIONS.**—

(1) The amendments made by section 202 shall apply to any individual who, on or after the date of enactment of this title, is married to a participant or former participant.

(2) The amendment made by section 217(a) shall not apply with respect to the former spouse of a participant or former participant who is subject to Subchapter I of Chapter 8 of the Foreign Service Act of 1980 if, on the date of enactment of this title, that former participant who is subject to Subchapter I of Chapter 8 of the Foreign Service Act of 1980 if, on the date of enactment of this title, that former spouse—

(A) was the spouse of that participant or former participant; or

(B) is entitled to an annuity under section 814 of the Foreign Service Act of 1980 pursuant to the divorce or annulment of the marriage to that participant or former participant.

(c) DEFINITIONS.—For the purpose of this section, the terms “participant” and “former participant” have the same meaning as such terms in chapter 8 of the Foreign Service Act of 1980.

EXPLANATION OF COMMITTEE AMENDMENT

The committee amendment strikes all after the enacting clause and inserts a substitute text. The explanation of the substitute text is contained in the “Explanation of the Committee Amendment” set forth later in this report.

PURPOSE

The purpose of H.R. 3395 is to make necessary changes in laws relating to the Civil Service Retirement System, the Federal Employees’ Retirement System, the Foreign Service Retirement System, and the Foreign Service Pension System.

COMMITTEE ACTION

H.R. 3395 was introduced by Chairman William D. Ford on October 1, 1987. On October 6, 1987, the Committee on Post Office and Civil Service ordered H.R. 3395 favorably reported by a voice vote, a quorum being present.

STATEMENT

H.R. 3395 makes numerous amendments to provisions of law relating to the Civil Service Retirement System (CSRS), the Federal Employees Retirement System (FERS), the Foreign Service Retirement System (FSRS), and the Foreign Service Pension System (FSPS). The amendments are generally technical in nature and address problems which have been discovered during implementation of the Federal Employees’ Retirement System Act of 1986 (Public Law 99-335) (FERSA)

The committee staff has discussed the amendments made by the bill with representatives of affected agencies. In fact, most of the amendments have been proposed by executive branch agencies. In some instances provisions of the bill pertain to matters within the jurisdiction of other committees of the House. Those committees have been consulted and letters from various committee chairmen concerning these matters are set forth below:

HOUSE OF REPRESENTATIVES,
COMMITTEE ON FOREIGN AFFAIRS,
Washington, DC, October 2, 1987.

HON. WILLIAM D. FORD,
Chairman, Committee on the Post Office and Civil Service, Cannon Building, Washington, DC.

DEAR MR. CHAIRMAN: On Tuesday, October 6, the Committee on the Post Office and Civil Service is scheduled to markup H.R. 3395, providing for technical amendments to the Federal Employees Personnel System. It is my understanding that an amendment to this legislation, dealing with benefits to former spouses of members of

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the Foreign Service, may be offered by Representative Schroeder in full committee markup. This amendment would make certain technical changes to existing law and would include language relating to benefits for former spouses as included in the House-passed version of the State Department Authorization Act for fiscal years 1988 and 1989. If this amendment is accepted by your full committee and H.R. 3395 is favorably reported, the Committee on Foreign Affairs will not request sequential referral of the legislation.

Because some of the language in the Schroeder amendment may potentially be included in two legislative vehicles, it would be my understanding that the provision dealing with retirement, health, and survival benefits for former spouses would be deleted from one of the bills, once the provision is signed into law.

Thank you for your kind attention to this matter.

With warm regards,
Sincerely,

DANTE B. FASCELL,
Chairman.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON VETERANS' AFFAIRS,
Washington, DC, September 28, 1987.

Hon. WILLIAM D. FORD,
Chairman, Committee on Post Office and Civil Service, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: Bob Lockhart called to our attention an amendment proposed by the Office of Personnel Management to section 4118(f) of title 38, United States Code, which would provide that special pay for physicians and dentists in the Veterans' Administration may, under certain conditions, be included in the computation of the average salary for Civil Service retirement purposes. This amendment insures that special pay for these individuals will be treated the same under FERS as under CSRS.

Mr. Chairman, we appreciate your calling to our attention matters within our jurisdiction and we are grateful to have had an opportunity to review the proposed amendment. I am satisfied with the amendment and have no objection to it being contained in a bill which you may take to the floor. I'm grateful to you and your very excellent staff.

Sincerely,

G.V. (SONNY) Montgomery,
Chairman.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE DISTRICT OF COLUMBIA,
Washington, DC, May 7, 1987.

Hon. WILLIAM D. FORD,
Chairman, Committee on the Post Office and Civil Service, Cannon House Office Building, Washington, DC.

DEAR CHAIRMAN FORD: In 1984, the Committee on the District of Columbia, which I chair, passed legislation transferring St. Eliza-

beths Hospital from federal control to that of the District of Columbia. P.L. 98-621, the St. Elizabeths Hospital and District of Columbia Mental Health Services Act, begins the transfer process October 1, 1987.

In order to assure that this process moves as smoothly as possible, I request that two technical amendments enclosed herein be included in the legislation for, "The Federal Employment Retirement Systems Act of 1986".

Should you have any questions regarding this, please contact me or have staff call Mr. Ronald C. Willis, Senior Staff Associate, Committee on the District of Columbia, at X54457.

Sincerely,

RONALD V. DELLUMS,
Chairman.

EXPLANATION OF THE COMMITTEE AMENDMENT

TITLE I

Title I makes amendments relating to the Civil Service Retirement System and the Federal Employees' Retirement System.

Section 101. References

Section 101 provides that, except as otherwise provided, references in title I to sections or other provisions of law shall be considered references to sections or provisions of title 5, United States Code. Similarly, in the explanation of title I, references to sections or provisions of law are references to title 5 unless otherwise indicated.

Section 102. Deposits for "covered service" after 1986 for employees under CSRS offset provisions

Section 102 of the committee amendment amends section 8334(c) relating to deposits for service for which retirement contributions were not withheld. Section 8334(c) authorizes, and prescribes appropriate amounts for, deposits for such nondeduction service. Under section 8334(c) the required deposit, generally, is 7 percent of basic pay. For service subject to the Federal Employees' Retirement Contribution Adjustment Act of 1983, the required deposit is 1.3 percent of basic pay. There is no deposit specified, however, for nondeduction service which becomes creditable under the Civil Service Retirement System offset provisions of sections 8334(k) and 8349. Offset service is service which is subject to both Social Security coverage and CSRS. The amendment made by section 102 of the committee amendment provides that the appropriate deposit for nondeduction offset service performed after December 31, 1986, is the amount that would have been deducted under the offset provisions of section 8334(k) had the employee's pay been subject to that section. Generally, this amount is equal to the employee's basic pay multiplied by the difference between 7 percent and the OASDI tax.

Section 103. Amendments relating to law enforcement officers and firefighters

Section 103 of the committee amendment makes several amendments relating to retirement benefits for law enforcement officers

and firefighters as those terms are defined in sections 8331(20) and (21) (relating to employees under CSRS) and section 8401(14) and (17) (relating to employees under FERS).

Section 103(a) of the committee amendment amends section 3307. Section 3307 concerns the establishment of maximum entry ages. It permits an agency head, with the concurrence of the President's designated agent, to fix minimum and maximum age limits for appointments of law enforcement officers and firefighters who are covered by CSRS (section 3307(d)). Inadvertently, no similar authority to fix age limits is provided with respect to law enforcement officers or firefighters under FERS. Section 103(a) of the committee amendment adds a new section 3307(e) which authorizes agency heads to fix such age limits. It also deletes the requirement that the President designate an agent to concur in the fixing of age limits. As a practical matter, the agency head makes the determination. The required concurrence is an unnecessary additional administrative action.

Section 103(b) of the committee amendment amends section 8704(c)(2), relating to determining annual pay rates for purposes of the Federal Employee Group Life Insurance Program, to include a reference to section 8401(17) (the "law enforcement officer" definition under FERS). That reference was inadvertently omitted in FERSA.

Section 103(c) of the committee amendment amends section 8401(17) to include within the definition of "law enforcement officer" under FERS certain members of the United States Park Police and the Uniformed Division of the Secret Service. Park Police are covered by the District of Columbia Police and Firefighters' Retirement System. Similarly, certain Secret Service employees are allowed to join the D.C. System after 10 years of Federal service involving protection of the President. The D.C. System provides benefits similar, but not identical, to those provided to law enforcement officers under CSRS and FERS. Individuals under the D.C. System are excluded from CSRS. FERSA brings Park Police and Secret Service personnel hired after December 31, 1983, under FERS. Although these individuals are commonly thought to be law enforcement officers, the Office of Personnel Management says they do not meet the FERS definition of "law enforcement officer" under section 8401(17), and thus do not qualify for FERS law enforcement officer benefits. Section 103(c) of the committee amendment amends section 8401(17) to ensure these individuals will receive FERS law enforcement officer benefits.

Sections 103(c) of the committee amendment also amends sections 8401(14) and 8401(17) to eliminate the requirement that firefighters and law enforcement officers who are transferred to administrative or supervisory positions must have completed at least ten years of law enforcement or firefighter service prior to such a transfer in order to continue coverage under the law enforcement or firefighter retirement provisions. Various law enforcement agencies have argued that this 10-year requirement will have a disastrous effect on their ability to promote talented employees to supervisory or administrative positions.

Section 103(d) of the committee amendment is a technical amendment to exclude those Park Police and Secret Service Personnel covered by FERS from the D.C. System.

Section 103(e) of the committee amendment is a clarifying amendment which ensures that Federal employees who are covered by both the D.C. System and Social Security will be treated in a manner similar to other Federal employees who have such dual coverage. Their retirement deductions will be reduced by their Social Security taxes and their retirement benefits will be reduced when they become eligible for Social Security benefits based on the same period of simultaneous coverage.

Section 104. Military service deposits by survivors

Section 104 of the committee amendment amends sections 8422(e) and 8411(c)(4)(A) to authorize survivors of deceased employees to make deposits for military service which is creditable under FERS.

In the event that an employee dies without having made or completed a deposit owed for civilian service, section 8411(f) allows the deposit to be made by the employee's survivor. Due to an oversight, however, there is no similar authority with respect to deposits for military service. Section 8411(c)(4) states that deposits made by survivors under section 8411(f)(4) will be considered in determining creditability of military service performed by a deceased employee. Since section 8411(f)(4) deals only with deposits for civilian service, the reference to this provision in section 8411(c)(4) is erroneous. This amendment corrects the erroneous reference and allows survivors to make deposits for military service.

Section 105. Deposits and refunds relating to certain service under the Civil Service Retirement System

Section 105 of the committee amendment clarifies and revises certain rules concerning deposits and refunds related to service under CSRS for employees covered by FERS.

Section 105(a) of the committee amendment amends section 8411(f)(1) to provide that a deposit under that section may be made only with respect to a refund received pursuant to an application filed with OPM before the date on which an employee or Member first becomes subject to FERS. Deposits for refunded service are generally prohibited under FERS. However, section 8411 allows deposits under FERS for pre-1989 civilian service performed subject to CSRS but creditable under FERS, including service for which CSRS contributions were made and subsequently refunded. To be consistent with the general bar on deposits of refunded contributions, this deposit authority with respect to employees who are subject to FERS should be limited to those who apply for refunds before becoming subject to FERS.

Except in the case of an employee who begins FERS-covered service after completing five or more years of civilian service, if an employee becomes subject to FERS, past civilian and military service become creditable under FERS rather than CSRS. Once this prior service has become FERS service, deposit rules generally applicable to FERS service should apply and an employee should not be permitted to redeposit withdrawn retirement contributions which covered that prior service.

Section 105(b) of the committee amendment amends the last sentence of section 8342(a) to authorize partial refunds of contributions made under CSRS for service which subsequently becomes creditable under FERS. The amendment applies in the case of an employee who becomes subject to FERS automatically, as opposed to one who elects FERS coverage. If an employee who has completed less than five years under CSRS becomes subject to FERS, that CSRS service, becomes creditable under FERS rather than CSRS. Since CSRS contributions (generally 7 percent) exceed those required under FERS (generally 1.3 percent), an employee has paid too much for the service which is now creditable under FERS. The amendment authorizes a refund of the difference between the CSRS contribution and 1.3 percent of basic pay plus interest on the amount payable.

Section 106. Option for certain employees to elect FERS coverage

Section 106 of the committee amendment amends section 310(a) of FERSA to permit certain employees to elect FERS coverage. Under subsections (g), (i), (j), and (l) of section 8347, employees serving under certain types of appointments (generally temporary, indefinite, and term appointments) may be, and have been, administratively excluded from CSRS coverage. Additionally, if these employees have five or more years of creditable prior CSRS service, they are also excluded from FERS. Although FERSA authorizes similar administrative exclusions (section 8402(c)) at least one agency authorized serving under these types of appointments from FERS. The amendment permits those individuals excluded from FERS by virtue of five or more years prior CSRS service but not excluded by administrative action under section 8402(c) to elect FERS coverage in the same manner as employees covered by CSRS.

Section 107. Certain CSRS service creditable to determine eligibility for 1.1 percent accrual rate

Section 107 of the committee amendment amends section 302(a)(1)(D) of FERSA to provide that certain service counts for purposes of determining whether an individual is entitled to a higher accrual rate (1.1 percent instead of 1.0) under section 8415(g). Section 8415(g) provides that an employee retiring under FERS who has attained age 62 and has completed 20 years of creditable service is entitled to the higher accrual rate for annuity computation purposes. "Service" within the meaning of section 8415(g) means service creditable under FERS. In the case of an employee who transfers to FERS from CSRS and who has completed at least five years under CSRS, FERSA provides that CSRS service is not creditable under FERS except for certain specified purposes (see, FERSA, sections 302(a)(1)(A), 302(a)(1)(D)(I)-(V)). CSRS service of an individual who transfers to FERS should count for determining eligibility for the higher accrual rate. The amendment ensures that it will.

Section 108. Amendments relating to miscellaneous provisions of law extending coverage or benefits under certain Federal programs to individuals not otherwise eligible

Over the years various statutes have accorded civil service retirement, life, and health insurance coverage to individuals who are employed by entities other than the Federal Government. Examples include the Legal Services Corporation, certain Indian Tribes, the State Justice Institute, Presidential Transitions, and Congressional Staff Fellows. In enacting FERSA, Congress sought to establish FERS as a system for Federal employees and, with two exceptions (both closed classes in which the number of employees covered will diminish over time), retirement credit is not allowed for non-Federal service. Similarly, the group that consists of employees under CSRS is now a closed class with newly hired Federal employees subject to FERS not CSRS. Hence, CSRS coverage for future employees of non-Federal entities is inappropriate. Section 108(a)(1) of the committee amendment amends section 8347 to provide that such employees appointed, transferred, or otherwise commencing that type of employment on or after October 1, 1988, will not be entitled to coverage, service credit, or any other benefit under CSRS. Sections 108(a)(2) and 108(a)(3) make similar amendments to chapters 87 and 89 relating to coverage under the Federal Employees' Group Life Insurance program and the Federal Employees' Health Benefits Plan, respectively.

Some employees of these non-Federal entities hired after December 31, 1983, are subject to both Social Security and CSRS. Section 108(b) amends sections 8334(k) and 8349 to include these individuals under the CSRS offset arrangement provided under those sections. The amendments made by section 108(b) of the committee amendment are retroactive to January 1, 1987, (the date the so-called interim retirement system expired). Contributions made or benefits paid after January 1, 1987, and before the date of enactment of section 108(b) of the committee amendment may have to be adjusted appropriately.

Section 109. Continued coverage under certain Federal employee benefit programs for certain employees of Saint Elizabeths Hospital

The Saint Elizabeths Hospital and District of Columbia Mental Health Services Act (Public Law 98-621) transferred control of Saint Elizabeths Hospital from the Federal Government to the government of the District of Columbia effective October 1, 1987. Employees of Saint Elizabeths who prior to the transfer were Federal employees, were offered positions with the D.C. Government. As Federal employees these individuals were covered by the Federal Government's retirement, life insurance, and health insurance programs. Many accepted appointments and were appointed as D.C. employees on October 1, 1987. Congress intended that this coverage continue.

FERSA prospectively terminated retirement, life insurance, and health insurance coverage for D.C. employees first employed by the D.C. government on or after October 1, 1987 (FERSA, section 207(f), (k), and (l)). D.C. employees first employed before that date continue retirement, life insurance, and health insurance coverage.

FERSA was not intended to result in a loss of coverage by any employee.

By coincidence, the Saint Elizabeths employees who were appointed to D.C. positions on October 1 are ineligible for coverage since they were first employed by the D.C. government on October 1. Thus, they have lost Federal retirement, health insurance, and life insurance coverage, a result never intended by Congress.

Section 109 of the committee amendment corrects this unintended situation. It amends section 207 of FERSA to provide that an employee of Saint Elizabeths Hospital who is appointed to a position in the government of the District of Columbia on October 1, 1987, pursuant to Public Law 98-621, shall be treated in the same way as an individual first employed by the D.C. government before October 1, 1987, for purposes of the Federal retirement, health insurance, and life insurance programs. Section 109(b) of the committee amendment provides the amendment to section 207 of FERSA is effective retroactive to October 1, 1987. This ensures continuous coverage for these employees and may require appropriate adjustments in contributions and benefits required or paid in the interim between September 30, 1987, and the date of enactment of the bill.

Section 110. Creditability under CSRS of certain service performed under a personal service contract with the United States

Section 110 of the committee amendment addresses an unfairness visited on a small group of employees due to an administrative policy change by the Office of Personnel Management. Some years ago it was common for the Department of State to employ certain individuals under personal service contracts rather than by appointments in the civil service. The vast majority of these individuals were so-called "Foreign Service National" (FSN) employees. These employees typically are foreign nationals who provide clerical, administrative, technical, fiscal, and other support at foreign service posts abroad. Subsequent to such contract service, many of these individuals received appointments in the civil service. Prior to 1980 OPM treated this personal service contract service as creditable for retirement purposes under the Civil Service Retirement System. OPM's Federal Personnel Manual instructions indicated such service was creditable. Individuals with such service commonly understood it would be used in computing their eventual retirement annuities.

Sometime in the early 1980's, perhaps as early as January 1980, OPM began denying retirement credit for this service in some cases. It appears that OPM policy at this time was administered inconsistently; some individuals received retirement credit while others did not. In any event, OPM's Federal Personnel Manual instructions were not revised to reflect this policy change until November 5, 1984. Thus, individuals who had performed this type of service were not put on notice that it was no longer deemed creditable until sometime after that date.

OPM's position that contract service is not creditable has been litigated and upheld in Federal court. While OPM's actions may be appropriate as a matter of law, individuals who performed such service prior to this policy change should be able to rely on published OPM instructions and prior administrative actions granting

credit for such service. OPM's actions denying this credit have been extremely unfair, particularly in view of the apparent inconsistent administration of the policy in the early 1980's and the fact that it took more than four years from the time OPM began denying retirement credit until it changed its publicly available instructions.

Section 110 of the committee amendment provides that the service in question will be creditable subject to certain conditions. An individual must be an employee (as defined by section 8331(1) or 8401(11)). An individual must make an appropriate deposit for such service as required by section 8334(c). The individual must apply for such credit within two years after the date of enactment of the bill. And, the service must have been performed prior to November 5, 1985, a date one year after OPM published its changed policy in the Federal Personnel Manual.

The service involved is service performed pursuant to a personal service contract, i.e., a written agreement between the individual involved and an entity of the United States Government. The service should have been performed on a regular basis under the supervision of a Federal officer or employee. Except for the fact that there were no appointments, the individuals performing this service essentially were employees of the Government. Further, the service will be creditable only if the head of the agency which was party to the contract certifies that the agency had intended that the individual employed pursuant to the contract was considered to be an employee for purposes of receiving retirement credit under subchapter III of chapter 83 of title 5. Also, the certification must indicate the period of service which was performed and include copies of appropriate records or other documentation to support the determination as to the length of that service. A decision by the agency head concerning whether or not to make a certification is not subject to review.

Finally, the committee recognizes that some individuals who have performed the contract service in question may have retired from the service. Section 110(b) of the committee amendment provides that such individuals, upon application, may receive credit for such service on a prospective basis.

Section 111. Exclusion of Foreign National employees under CSRS from participating in the Thrift Savings Plan

Section 111(a) amends section 8351 to preclude Thrift Savings Plan (TSP) participation by Foreign Service National (FSN) employees who are subject to CSRS. The employees involved are members of the Foreign Service described in section 103(6) of the Foreign Service Act of 1980, i.e., foreign nationals appointed pursuant to that Act who provide clerical, administrative, technical, fiscal, and other support at Foreign Service posts abroad.

The Department of State says TSP participation by FSNs would be extremely difficult to administer since FSNs are typically paid in local currencies which fluctuate as a result of floating exchange rates. For example, a TSP contribution expressed as a percentage of pay could result in differing actual dollar amounts being deposited in different pay periods due to fluctuating exchange rates. On the other hand, a TSP contribution rate expressed as a U.S. dollar

amount could result in fluctuations in an FSN's take home pay. Further, TSP participation would be inconsistent with regulations issued by foreign affairs agencies which prohibit payroll allotments for purposes of purchasing U.S. dollar instruments such as U.S. savings bonds. FSNs would not be able to take advantage of the tax-deferred aspects of the TSP since their pay is not subject to Federal income tax. Finally, some countries prohibit conversion of local currencies for investment in U.S. dollars, and TSP participation would conflict with such prohibitions.

Section 111(b) of the committee amendment makes the amendment prohibiting TSP participation retroactive to March 31, 1987, the day before employees were eligible to participate in the TSP. The Department says it advised posts abroad by world-wide cable on September 9, 1986, that FSNs could not participate in the TSP. It says it is therefore unlikely any FSN has contributed to the TSP. Nevertheless, the committee amendment provides for a refund of contributions plus earnings, if any, if such contributions have been made.

Section 112. Foreign National employees appointed after December 31, 1987, excluded from CSRS

Section 112 of the committee amendment amends section 8331(1), to exclude FSNs (described above) appointed after December 31, 1987, from the definition of "employee" for purposes of subchapter III of chapter 83 of title 5, relating to the Civil Service Retirement System. This amendment is consistent with the overall policy of closing CSRS to new entrants. As a practical matter, the Department of State says it ceased making civil service appointments of FSNs in 1985. As a result those hired since then are not covered by CSRS.

Section 113. Exclusion of Foreign National employees from FERS

Section 113 of the committee amendment excludes FSNs (described above) from participating in FERS. Section 113(a) of the committee amendment amends section 301(a) of FERSA to prevent FSNs participating in CSRS from electing to transfer to FERS. Section 113(b) of the committee amendment amends section 8401(11) to exclude FSNs from the definition of "employee" for purposes of FERS. These amendments are retroactive and authorize refunds of contributions and earnings, if any, as appropriate.

Section 408 of the Foreign Service Act of 1980 directs the Department of State to base pay and benefits for FSNs on "prevailing wage rates and compensation practices (including participation in local Social Security plans) . . ." Participation in FERS would be inconsistent with that direction. Further, most FSNs are not subject to United States Social Security coverage, an important element of the retirement package available to employees covered by FERS.

The exclusion of FSNs from CSRS and FERS resulting from the amendments made by section 112 and 113 of the committee amendment does not mean FSNs will have no retirement coverage. The Department of State says many FSNs are covered by Social Security programs of other countries, and the Department participates in local retirement plans for the benefit of these employees.

Section 114. Exclusion of certain one-time Government contributions to the Thrift Savings Plan

Section 8432(d) provides that employee and employer contributions to the Thrift Savings Plan may not be made to the extent those contributions, when added to other contributions for a given year, exceed any limitation under section 415 of the Internal Revenue Code. Employer contributions during 1987 include the so-called automatic contribution (equal to 1 percent of an employee's pay), matching contributions (up to four percent of an employee's pay), and one-time "retroactive" contributions required by section 8432(c) (3). The "retroactive" contribution is equal to one percent of an employee's total pay during 1984, 1985, and 1986. This retroactive contribution was intended to partially compensate employees for benefits which were forgone during the time Congress was developing FERS. Although the retroactive contribution was paid in 1987 it is actually compensation for prior years and should not be considered 1987 contributions for purposes of applying the Internal Revenue Code limitations. Section 114 of the committee amendment amends section 8432(d) to provide that the retroactive contributions will not be taken into account in applying the Internal Revenue Code limitations.

Section 115. Government's 1 percent Thrift contribution not forfeitable for death in services.

For an employee covered by FERS, the employing agency is required to contribute an amount equal to one percent of the employee's pay to the TSP whether or not the employee chooses to participate in the Plan (section 8432 (c) (1) (A)). This is the so-called "automatic" contribution. Section 8432(g) provides the automatic contribution is forfeited if the employee does not complete a required period of service. The required period is two or three years, depending on the position held. Section 115 of the committee amendment amends section 8432(g) to provide that the automatic contribution, and any earnings thereon, are not forfeited in the case of an employee who dies prior to completing the required period of service.

Section 116. Clarification relating to amounts subject to legal process for child support or alimony

Section 8437(e) (3) provides that Thrift Savings Plan accounts are subject to legal process for the enforcement of legal obligations to pay child support or alimony. Section 116 of the committee amendment amends section 8437(e) (3) to provide that the automatic contribution made by an employee's agency (discussed above) will not be subject to legal process unless that contribution is nonforfeitable. It is inappropriate to subject to legal process funds which do not yet belong to the employee for purposes of satisfying an obligation of the employee.

Section 117. Clarification relating to source of funding for administrative expenses of the Thrift Savings Plan

Administrative expenses of the TSP are paid from forfeitures, and if forfeitures are insufficient, from earnings on moneys held by the Plan. Earnings accrue on employee contributions and agency

contributions. Section 8437, however, provides that administrative expenses will be paid only from earnings on agency contributions. This causes two problems. The first is a complicated and unnecessary accounting problem. The second is that only the earnings of TSP participants covered by FERS (as opposed to those covered by CSRS) will be tapped to pay administrative expenses. Section 117 of the committee amendment amends section 8437 to provide that administrative expenses shall be paid from earnings on all contributions, not just earnings on agency contributions.

Section 118. Exclusion from age-based reduction under chapter 83 for CSRS portion of annuity made subject to reduction under chapter 84 following an election into FERS

Annuity reductions are required under both FERS and CSRS in certain instances where individuals retire before the normal retirement age. In the case of an individual who transfers from CSRS to FERS, the reduction formula under FERS was intended to apply. The applicable FERSA provisions, however, could be read to require a double reduction, i.e., the reduction under CSRS and under FERS. Section 118 of the committee amendment amends section 302 of FERSA to clarify that only the FERS reduction shall apply in such cases.

Section 119. Interest of refunds of certain excess contributions by individuals making elections under title III of the Federal Employees' Retirement System Act of 1986

Section 119 of the committee amendment provides for interest on refunds of excess CSRS contributions made by employees who elect to transfer to FERS and by certain employees who elect to become subject to the CSRS offset provisions. It also provides for monthly accrual and annual compounding of interest.

Section 120. Effective date of final merit increase under the performance management and recognition system for employees of Saint Elizabeths Hospital

The Performance Management and Recognition System (PMRS) established by chapter 54, of title 5, provides for pay adjustments and performance awards for supervisory and management employees in grades GM-13, GM-14, and GM-15. Pay adjustments and performance awards are based on annual performance appraisals, and by law (section 5404) adjustments are made in the first pay period commencing on or after October 1. In effect, the System operates on a fiscal year basis with pay increases earned during one fiscal year being paid in the first period of the next fiscal year.

Supervisory and managerial employees of Saint Elizabeths, like all other employees, were scheduled to receive these pay increases in October, 1987. However, pursuant to the Saint Elizabeths Hospital and District of Columbia Mental Health Services Act (Public Law 98-621), control of Saint Elizabeths was transferred to the D.C. government and employment at Saint Elizabeths terminated on September 30, shortly before merit increases for fiscal year 1987 were due to be paid.

Section 120 of the committee amendment advances the date of merit increases for Saint Elizabeths employees to the first pay

period commencing on or after September 1, 1987, to ensure that increases earned will in fact be paid.

Section 121. Deadline for agency contributions to the Thrift Savings Plan

Section 8432(c)(1)(A) and 8432(c)(2)(A) provide that agency Thrift Savings Plan contributions shall be made at the end of the pay period involved. Most Federal employees are paid on the basis of a biweekly pay period. The actual pay date, however, is usually several days following the close of the pay period. This allows for records processing and the issuance of pay checks. Thus, existing law requires agencies to make contributions for a pay period before an employee receives a pay check for that period (and before an employee's TSP contribution for that pay period is deposited in the Thrift Savings Fund).

Section 121 of the committee amendment amends sections 8432(c)(1)(A) and 8432(c)(2)(A) to provide that agency contributions shall be made such time as the Executive Director may prescribe, but not later than 12 days after the end of the appropriate pay period. The committee understands that no pay date occurs later than 12 days after the end of the pay period. The committee expects the Executive Director's regulations to require that agency contributions to the TSP will be made no later than the day on which the employee involved is actually paid.

Section 122. Amendments relating to disability annuities

Section 8452 provides rules for the computation of disability annuities under FERS. Generally, a disability annuitant is entitled to an annuity equal to 60 percent of average pay for the first year of disability and 40 percent of average pay thereafter. If the annuitant is also entitled to Social Security disability benefits the FERS disability annuity is reduced to reflect the receipt of those benefits. Section 8452 requires a recomputation of the disability annuity at age 62. The recomputation was intended to take into account the fact that Social Security old age benefits are generally payable at that age.

The Office of Personnel Management has pointed out certain problems with rules established under section 8452. OPM's description of these problems follows:

Problems Related to Disability Provisions of the Federal Employees' Retirement System

1. The "assumed" Social Security disability benefit

Section 8452(a)(2) of title 5, United States Code, requires a FERS disability annuity to be offset by a percentage of an "assumed" Social Security disability benefit if the annuitant is also entitled to a disability insurance benefit (DIB) under Social Security. The "assumed" benefit is the DIB the individual would be receiving if his or her entitlement to that benefit had begun when the FERS disability annuity began. The "assumed" DIB includes cost-of-living adjustments (COLA's) payable under FERS on and after the commencing date of the FERS annuity.

The "assumed" DIB is used in the annuity redetermination at age 62 even if the annuitant is not entitled to Social Security disability benefits. At age 62, the nondisability annuity based on the individual's service projected to age 62 is compared to the disability annuity with a reduction based on the "assumed" DIB. The latter reduction applies even if the individual has no entitlement to Social Security benefits. Since the lesser of the two benefits is payable after age 62, an individual who is not entitled to a DIB will experience a substantial annuity reduction at age 62. This reduction will constitute a significant reduction in total income for individuals who also are not entitled to a retirement insurance benefit from Social Security at age 62 (or who are entitled only to a very small retirement benefit) because they lack sufficient Social Security-covered employment.

Example: A CSRS-covered employee transfer to FERS at age 35 with 12 years of service. Two years later he becomes disabled. Although totally disabled for any gainful employment, he lacks sufficient quarters of coverage for entitlement to Social Security Benefits. His FERS annuity is 60 percent of average salary for the first 12 months, and 40 percent of average salary thereafter. At age 62, a nondisability benefit is computed for him based on 39 years of service (including the period of disability) and an updated average salary. This benefit will be compared to his disability annuity (40 percent of average pay) minus 60 percent of his "assumed" Social Security DIB. The lesser of these two amounts will be payable from age 62 on. If the individual is receiving a FERS disability annuity of \$1200 a month on the eve of his sixty-second birthday and the "assumed" DIB is \$800 a month, the FERS annuity will be reduced by \$480 a month. Beginning at age 62, the annuitant will experience a 40 percent loss in income.

* * * * *

2. Application of COLA's during first year of entitlement

A FERS disability annuity is not adjusted by any COLA during the first 12 months. Nevertheless, the "assumed" Social Security DIB by which the annuity is reduced does include FERS COLA's that take effect after the annuity begins. This results in a drop in the amount of the annuity when a COLA takes effect within the first year of disability.

Example: An individual begins receiving a FERS disability annuity of \$500 a month on April 1. On September 1, she also begins receiving a Social Security disability benefit. The FERS annuity, beginning September 1, is reduced by an "assumed" DIB of \$200 a month. This means the net monthly annuity is \$300. On December 1, a 3-percent COLA takes effect under FERS but is not payable to this disability annuitant. Nevertheless, the "assumed" DIB, by definition, includes this COLA. Therefore, the "assumed"

DIB would increase from \$200 to \$206 beginning on December 1. This would reduce the FERS annuity from \$300 to \$294 a month.

* * * * *

3. Application of COLA's to net annuity rather than the unreduced annuity

Section 8462(b) of title 5, United States Code, provides that COLA's apply to "each annuity payable from the Fund under this chapter." In the case of a disability retiree who is also receiving a Social Security DIB, the annuity payable would be the amount after the reduction based on receipt of the DIB is made. However, since the amount of the reduction (the "assumed" DIB) includes FERS COLA's, this means that payment of COLA's under section 8462(b) will result in a decline in the amount of the net annuity.

Example: A disability retiree is entitled to \$500 a month minus \$200 (60 percent of his "assumed" DIB), resulting in a monthly annuity of \$300. When a 3-percent COLA is payable, the amount of the offset will increase to \$206. The net annuity will also increase, but only to \$302 ($\$500 - \$206 = \$294 \times 1.03 = \302.82). The next time a 3-percent COLA is payable, 60 percent of the "assumed" DIB will become \$212. After subtracting this amount from \$500 and increasing the remainder (\$288) by 3 percent, the net annuity will fall to \$296.

* * * * *

4. Application of COLA's when entitlement shifts between the "earned" annuity and the special disability computation

Section 8452(d) specifies that a disability annuity (after any offset due to receipt of a DIB is applied) must be at least as great as the individual's "earned" annuity based on his or her creditable service and average salary, under section 8415. There is no provision for applying COLA's to this amount except when the "earned" amount is actually payable. In the absence of such a provision, the possibility that annuities will shift back and forth between the "earned" rate and the disability computation may produce irrational results.

Example A: After the first year of disability, a retiree receives his "earned" benefit of \$750 a month because this produces a higher benefit than the disability computation. (Forty percent of his average salary comes to about \$1,200 a month and this is reduced by \$500, which is 60 percent of his "assumed" DIB, for a net annuity of \$700 a month. Since this amount is less than his "earned" annuity, the latter is payable.)

If this retiree's condition improves somewhat and, five year later, he loses entitlement to a Social Security DIB, 40 percent of average salary becomes payable because it is

greater than the "earned" benefit. Since the law does not provide for applying COLA's to anything other than the payable amount, it appears that the annuity after the individual's Social Security entitlement terminates would become \$1,200 a month (40 percent of average salary), even though the retiree would be receiving \$1,390 a month at that point if the 40-percent disability computation had been applicable all along (assuming 3 percent annual COLA's during the five years he was entitled to Social Security benefits).

Assume that this retiree's condition again worsens so that he regains entitlement to a Social Security DIB two years later and that 3 percent COLA's have been effective in each of those two years. Assume also that problem #3 described above does not exist. The statute does not make clear whether the monthly offset of \$611 (60 percent of the "assumed" DIB, including seven 3-percent COLA's) is to be subtracted from \$1,200 (40 percent of average pay with no COLA's), \$1,273 (the 40-percent rate, including two COLA's actually payable before the DIB was resumed), or \$1,473 (40 percent of average pay, updated by all COLA's since the annuity commencing date). The latter is the only logical choice. However, it appears that the remainder (\$1,473 minus \$611 is \$862) would be compared to the original "earned" annuity of \$750, even though that "earned" benefit would actually be worth \$919 if it had continued to be payable.

The chart below summarizes this example.

Event	Monthly rate payable
"Earned" annuity is paid	\$750
3-percent COLA	772
3-percent COLA	795
3-percent COLA	818
3-percent COLA	842
3-percent COLA	867
Loss of Social Security benefit	1,200? 1,390?
	(40 percent of average salary)
3-percent COLA	1,236? 1,431?
3-percent COLA	1,273? 1,473?
Social Security resumes	greater of:
	589? (1200-611) 750?
	662? (1273-611) or 919?
	862? (1473-611)

Example B: A disability retiree is age 50 with 27 years of service when the annuity begins. She is entitled to the "earned" rate (\$900 a month) because this amount is greater than the disability computation (\$850), which includes an offset based on receipt of Social Security benefits. At age 62, the \$850, increased by 12 years of COLA's, will be compared to the nondisability benefit that includes the period of disability and an average salary adjusted by FERS COLA's up to the annuitant's sixty-second birthday. The disability computation (\$850 adjusted by annual

COLA's of 3 percent over 12 years would be \$1,207) will be the smaller of these two benefits and, therefore, will be payable after age 62, unless the "earned" benefit is greater. It is unclear whether, for purposes of this comparison, the "earned" benefit would be the original \$900 rate without COLA's, or the "earned" rate the individual is actually receiving on the eve or the redetermination (12 COLA's of 3 percent would bring this amount to \$1,279 a month). Since the statute does not provide for adding COLA's to the minimum "earned" annuity, it appears that COLA's would have to be removed from the "earned" rate at age 62. This individual would then have her monthly annuity reduced from the \$1,279 "earned" amount to \$1,207 (the reduced disability annuity).

* * * * *

Section 122 of the committee amendment addresses the problems described by OPM. Section 122(a) of the committee amendment amends section 8452(a)(2)(B)(i) to provide that an individual's actual Social Security benefit, not a hypothetical benefit, is used to determine the appropriate annuity offset. The offset amount is determined by adjusting the actual Social Security benefit by COLAs which take affect under section 8462(b). Only COLAs taking affect after the first year of disability are taken into account.

Section 122(b) of the committee amendment amends section 8452(b) to revise the method for redetermining a disability annuitant's annuity at age 62. Under amended section 8452(b), the redetermined annuity will be equal, generally, to the amount of annuity the annuitant would have received had the annuitant been able to work until age 62 and retire with an immediate annuity computed under the provisions of section 8415.

Section 122(c)(1) of the committee amendment amends section 8452(d) to provide that in determining the guaranteed minimum annuity, COLAs under section 8462 shall be taken into account in computing an annuity under section 8415. Section 122(c)(2) of the committee amendment amends section 8452(a)(1)(B) to ensure that COLAs are applied to the unreduced disability annuity rather than the net, or offset, annuity.

Section 123. Clarifying amendments relating to funding

Section 123(a) of the committee amendment amends the definition of "Fund balance" (section 8331(18)) to clarify that in determining the balance of the Civil Service Retirement and Disability Fund attributable to CSRS, amounts in the Fund attributable to FERS or contributions made under the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983 shall not be taken into account. This clarification ensures the continuation of payments from the Treasury on the interest of the CSRS unfunded liability during the life of CSRS. If FERS assets were included in the computation of CSRS Fund balance, Treasury payments and income to the fund would be improperly reduced. The revised definition of "Fund balance" does not affect the operation of the Fund itself. All assets in the Fund, whether attributable to CSRS or FERS, remain available to pay benefits under both systems.

Section 123(b) of the committee amendment amends section 8423(b)(1) to provide that in computing any supplemental liability of the United States Postal Service under FERS, benefits, deductions, or other amounts which relate to service performed under CSRS may not be taken into account.

Section 124. Concurrent entitlement to benefits under chapters 81 and 84 of title 5, United States Code

Section 124(a)(1)(A) of the committee amendment amends section 8337 to conform the provisions thereof to the provisions of new section 8464a.

Section 124(a)(1)(B) adds a new section 8464a to subchapter VI of chapter 84. Subchapter VI contains the general and administrative provisions of FERS. New section 8464a replaces existing section 8464 which is found in subchapter V of chapter 84. Subchapter V contains the disability provisions of FERS. Both new section 8464a and existing section 8456 concern the relationship between annuities and workers' compensation benefits and are derived from existing sections 8337 (f) and (g) which relate to the Civil Service Retirement System. The committee amendment moves the FERS provision from subchapter V to subchapter VI because it contains general provisions concerning basic and survivor annuities as well as disability annuities.

New section 8464a(a) clarifies that an individual is not entitled to receive both a workers' compensation benefit under chapter 81 and any concurrent FERS annuity based on that individual's own service. It also provides that a survivor may not receive a FERS survivor annuity and a benefit under chapter 81 based on the same individual's death.

New Section 8464a(b) addresses situations involving commuted workers' compensation benefits. Under section 8135 an employee or survivor may under certain circumstances receive a commuted lump-sum payment of compensation benefits. New section 8464a(b) does not contain provisions in existing section 8456(b) which stipulate that an individual may receive a lump-sum workers' compensation benefit and a FERS annuity, so long as the latter is not based on the same disability as the compensation benefit. It is unreasonable for the Government to pay an individual a FERS benefit and a commuted lump-sum workers' compensation benefit covering the same period of time, even if the payments are triggered by different events.

New section 8464a(b), preserves the general rule that an employee or survivor who qualifies for both an annuity and a lump-sum workers' compensation benefit based on the employee's own service, or on the death of the same person, may receive either benefit, but cannot receive both for the same period of time. In the case of an employee or survivor who receives a commuted lump-sum payment of workers' compensation, an annuity based on the service of the same employee or on the death of the same person cannot be paid during the period of time covered by the commuted benefit.

The legislative history of the 1944 provision on which both section 8337(g) and section 8456(b) are based reveals that the law was intended to address the specific case of an individual who received a commuted lump-sum payment of workers' compensation, then re-

turned to work in the Federal Government and was told that no future annuity benefit would be payable because of the prior receipt of the commuted benefit. The Office of Personnel Management says the law was intended to allow the individual to earn and receive a benefit based on the lump-sum payment. The Office further says that situation has never happened. (The individual for whom the legislation was enacted died before retirement from later service and did not have a survivor entitled to annuity.) Even though such a situation is possible, the service on which a subsequently earned benefit would be based would include service performed before payment of the lump-sum commuted compensation benefit. Therefore, the general rule barring concurrent receipt should still be applied.

Section 124(c) of the committee amendment provides that the amendments made by section 124(a)(1)(B) shall be effective, retroactively, on January 1, 1987, the date FERS commenced. Thus, certain benefits subject to the provisions of new section 8464a may have to be recomputed and adjustments made.

Section 125. Eligibility of certain individuals to participate in the Thrift Savings Plan

Section 125 of the committee amendment clarifies the original intent of Congress that certain Federal employees will be eligible to participate in the Thrift Savings Plan and that employee and employer contributions to the TSP on behalf of these employees will be made on a tax-deferred basis. The employees involved are employees on leave without pay to serve as officers of employee organizations, employees on leave without pay serving on Intergovernmental Personnel Act (IPA) mobility assignments, and employees engaged in cooperative extension service work. Although these individuals are Federal employees and, by law, are entitled to participate in CSRS or FERS, a question has arisen as to whether they may participate in the TSP on a tax-deferred basis. The question arises because the employees involved are receiving no salary from the Federal Government. Section 125 of the committee amendment ensures that they may so participate.

Section 125(a) of the committee amendment defines "Executive Director" and "Thrift Savings Plan". Section 125(b) of the committee amendment requires the Executive Director to issue regulations relating to TSP participation by the employees involved. The regulations must provide that in computing the percentage of basic pay to determine permissible TSP contributions, the rate of pay used in computing the employee's CSRS or FERS contribution shall be used. Further, the regulations must provide that the employer that pays the employee's salary may make employer TSP contributions permitted or required under section 8432(c). These contributions include the "automatic" one percent contribution (section 8432(c)(1)(A)), employer matching contributions (section 8432(c)(2)), and "retroactive" contributions (sections 8432(c)(1)(B) and (C) and 8432(c)(3)). The decision whether to make employer contributions is within the sole discretion of the employer. However, all TSP eligible employees of the employer must be treated the same with respect to employer contributions. For example, if matching contribu-

tions are made for one employee, they must be made for all TSP eligible employees of the employer.

Section 125(c) of the committee amendment defines the class of employees subject to the provisions of section 125. The class consists of individuals on approved leave without pay to serve as full-time officers or employees of employee organizations, individuals assigned from a Federal agency to a State or local government under subchapter VI of chapter 33 of title 5 (IPA mobility assignments), and individuals appointed or otherwise assigned to one of the cooperative extension services (as defined by section 1404(5) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977).

Section 125(d) of the committee amendment provides that the regulations prescribed by the Executive Director shall become effective in accordance with their own provisions. An exception is made with respect to employees performing cooperative extension work. The regulations are made effective with respect to them on January 1, 1987. This retroactive application is necessary because these employees have been participating in the TSP since its inception. Past employee or employer (automatic, retroactive, and matching) contributions will be deemed to have been made on a tax-deferred basis with respect to these cooperative extension service workers.

Section 126. Special pay of Veterans' Administration physicians included in average salary under FERS

Section 126 amends section 4118(f) of title 38, United States Code. That section provides that special pay for physicians and dentists in the Veterans' Administration's Department of Medicine and Surgery may, under certain conditions, be included in the computation of average salary for civil service retirement purposes. The amendment ensures that special pay will be treated in the same manner under FERS. Special pay paid after September 30, 1980, will be included in determining average salary for purposes of disability annuities, benefits for widows and widowers of deceased employees, children's annuities, and, if the retiree performed at least 15 years of service in the Department of Medicine and Surgery, any other annuity under FERS beginning after September 30, 1990. For FERS annuities commencing before October 1, 1990, other than those specified in section 4118(f)(2)(A), one-half of special pay will be included in the computation of average pay.

Section 127. Application deadline for certain former spouses

Section 127 of the committee amendment amends section 4(b)(1)(B) of the Civil Service Retirement Spouse Equity Act of 1944 to extend for two years (from May 7, 1987, to May 7, 1989) the application deadline by which certain former spouses must apply for survivor benefits under that Act.

TITLE II

Title II makes numerous amendments relating to Foreign Service retirement.

Part A

Part A contains general provisions affecting Foreign Service retirement.

Section 201. References

Section 201 of the committee amendment provides that, except as otherwise provided, references in title II to sections or other provisions of law shall be considered references to sections or provisions of the Foreign Service Act of 1980 (22 U.S.C. 4041 et. seq.). Similarly, in the explanation of title II, references to sections or provisions of law are references to that Act.

Section 202. Former spouses married between 9 months and 10 years

Section 202(a) of the committee amendment amends chapter 8 of the Foreign Service Act of 1980 by adding a new section 830, entitled "Qualified Former Wives and Husbands." Current law entitles a Foreign Service spouse married at least 10 years to a pro-rata share of retirement and survivor benefits. However, neither retirement or survivor benefits are payable to a spouse if the parties are divorced before completing 10 years of marriage.

New section 830 makes certain provisions of law which govern the treatment of divorced spouses of civil service employees applicable to members of the Foreign Service and their spouses in cases where a marriage lasts less than ten years. The provisions of law made applicable are the following sections of title 5, United States Code:

- section 8339(j), concerning election and waiver of survivor benefits for former spouses;
- section 8341(e), concerning survivor benefits payable to the surviving children of an employee; and
- section 8341(h), concerning survivor benefits payable to a divorced spouse.

Also made applicable is section 4 (except subsection (b)) of the Civil Service Retirement Spouse Equity Act of 1984 (P.L. 98-615). Among the applicable provisions of section 4 are those relating to a "second chance" election of survivor benefits for a post-retirement marriage and health insurance benefits for former spouses. Subsection (b) of section 4 authorized limited survivor benefits for certain spouses of civil service employees divorced before the effective date of Public Law 98-615, and is explicitly made inapplicable.

Section 830(b) essentially restates existing section 8345(j) of title 5, United States Code, which authorizes courts to award a share of annuity benefits to a former spouse. This section applies in the case of marriages of less than 10 years.

Section 830(c) defines the term "qualified former wife or husband." It is a two-part definition: (1) the Foreign Service member must have performed at least 18 months of creditable civilian service under chapter 8 of the Foreign Service Act, and (2) the former wife or husband must have been married to the Foreign Service member of more than 9 months but not more than 10 years. For marriages lasting 10 years or more, the existing pro-rata former spouse provisions of chapter 8 continue to apply.

Section 830(d) requires the Secretary of State to submit the regulations proposed to implement section 830 to the Committee on Post Office and Civil Service and the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate. These regulations cannot take effect until 60 days after they are submitted to these committees.

Subsection (b) amends the table of contents in section 2 of the Foreign Service Act of 1980 to incorporate the new section 830.

Section 203. Election to provide survivor annuity for certain spouses acquired before the effective date of the Foreign Service Act of 1980

Section 203 permits a Foreign Service member who married after retirement but before the effective date of the Foreign Service Act of 1980 to elect to provide survivor benefits for his or her spouse. The retiree would have to deposit in the Foreign Service Retirement and Disability Fund an amount equal to the amount that would have been withheld had the survivor benefit reduction been in effect since the date of retirement, plus 6 percent interest. The deposit may be made by the surviving spouse of the Foreign Service retiree. This "second chance" election may only be made within one year after the effective date of this Act.

Section 204. Benefits for certain former spouses of members of the Foreign Service

Section 204 amends chapter 8 of the Foreign Service Act of 1980 (P.L. 95-465) to provide retirement, survivor, and health insurance benefits for Foreign Service former spouses who were divorced before the effective date of the 1980 Act. The language in section 204 is identical to that in section 152 of H.R. 1777, the Foreign Relations Authorization Act for Fiscal Years 1988 and 1989 which passed the House of Representatives on June 23, 1987.

According to the report of the Committee on Foreign Affairs, the amendment parallels certain provisions of the 1987 and 1988 Intelligence Authorization Acts which entitle a former spouse to a pro-rata share of up to 50 percent of the amount of a participant's retirement benefit if certain conditions are met (see H. Rept. No. 100-34, 100th Cong., 1st sess. (1987)). The former spouse may also be entitled to a survivor annuity of up to 55 percent of the amount of the participant's annuity or what the annuity would have been if the participant had not withdrawn a lump-sum of previously made retirement contributions. The survivor benefits available under this section to any former spouse for whom an election has been made under section 2109 or 806(f) of the Foreign Service Act will be reduced by the amount of benefits provided by such election. Nothing in new section 831 (retirement benefits) or new section 832 (survivor benefits) shall be construed to affect, in any way, the annuity or entitlement to an annuity of a participant or former participant under the Foreign Service Retirement System. Finally, the former spouse may participate in the Federal Employees' Health Benefits Program if the spouse was participating in that Program prior to the divorce and arranges to pay an amount equal to the employee and agency share of health insurance premiums.

PART B

Part B contains amendments to the Foreign Service Retirement System.

Section 211. Definition of surviving spouse

Section 211 of the committee amendment amends the definition of "surviving spouse" in paragraph (13) of section 804 by reducing from one year to nine months the minimum time that the spouse had to be married to the Foreign Service member or retiree in order to qualify for survivor benefits. To conform this definition to that in the civil service retirement law, language is added to paragraph (13) providing that the 9-month marriage requirement will be deemed met even though the member or retiree dies during that period if (1) the death was accidental, or (2) the surviving spouse was previously married to the member or retiree and the aggregate time married is at least 9 months.

Section 212. Contributions for prior service

Section 212 of the committee amendment concerns contributions to the Foreign Service Retirement and Disability Fund. It amends section 805(d)(1) to provide that when an employee has received a refund of contributions, any redeposit of that refund must equal the amount of the refund plus interest.

Section 213. Computation of annuities

Section 213 of the committee amendment amends section 806, pertaining to the computation of annuities. Section 213(a) of the committee amendment amends section 806(b)(1)(C) to extend from 12 months to 24 months the time period following a divorce during which a Foreign Service participant and his or her former spouse may jointly elect to waive survivor benefits.

Subsection (b) of section 213 of the committee amendment amends section 806(i)(2) to clarify that recalculation of survivor annuities based on recall service affects only participants in the Foreign Service Retirement System. Credit for recall service is handled differently for participants in the new Foreign Service Pension System.

Section 214. Survivor benefits for children

Section 214 of the committee amendment concerns survivor benefits for children. Under both the Foreign Service and Civil Service retirement systems, children's survivor benefits are paid at one rate if there is a surviving spouse and at a higher rate if not. Under civil service law, the lower rate is paid if there is a surviving former spouse who is the parent of the surviving child. Subsection (a) of section 214 of the committee amendment amends section 806(c) and 806(d) to clarify that the lower rate is paid if there is a surviving former spouse who is the parent of the surviving child. Section 214(b) of the committee amendment amends section 809(c) and 809(d) to provide that the lower rate for death in service benefits is paid if there is a surviving former spouse who is the parent of a surviving child.

Section 215. Minimum age requirement

Section 215 of the committee amendment pertains to disability retirement and death in service. Subsection (a) of section 215 of the committee amendment amends sections 808(a) and 808(b) to provide that disability retirement benefits will be calculated as if the employee had been able to serve until age 60, rather than 65. This reduction will conform the Foreign Service retirement provisions those relating to civil service retirement. Similarly, section 215(b) of the committee amendment amends section 809(e) so that death in service benefits will be calculated as if the employee had served until age 60, rather than age 65.

Section 216. Voluntary retirement

Section 216 of the section committee amendment amends section 811, "Voluntary Retirement," to require at least five years of service as a participant in the Foreign Service Retirement System in order to retire with benefits calculated under that system. A former civil service employee who took a Foreign Service position and wished to retire before completing five years under the Foreign Service Retirement System could no longer retire under Foreign Service provisions, but rather could retire under the Civil Service Retirement System if all contributions to the Foreign Service Retirement and Disability Fund were returned and deposited in the Civil Service Retirement and Disability Fund.

Section 217. Former spouses

Section 217 of the committee amendment makes three amendments to the former spouse provisions of the Foreign Service Act of 1980. Section 217(a) of the committee amendment amends section 814(a)(1) to require that an individual be married to a Foreign Service participant for at least five years while the employee was in the Foreign Service in order to qualify as a "former spouse." The definition of "former spouse" which requires a minimum of 10 years of marriage during years of creditable service remains unchanged. The new requirement is prospective and will not apply to anyone who, on the date of enactment of this Act, is the spouse of a participant or a former spouse entitled to an annuity under section 814. This amendment will cover participants in the Foreign Service Retirement System who married after the date of enactment, and individuals vested in the Civil Service Retirement System who transfer into the FSRS.

Subsection (b) of section 217 of the committee amendment amends section 814(a)(4) by extending from 12 to 24 months the time period following a divorce during which a court order relating to the participant's annuity may be issued.

Subsection (c) of section 217 of the committee amendment repeals sections 806(1) and 814(d). These sections pertain to a guaranteed benefit equal to a minimum Social Security benefit. The minimum Social Security benefit no longer exists, and a similar provision in civil service retirement law has been repealed.

Section 218. Lump-sum payments

Section 218 of the committee amendment concerns lump-sum payments and amends section 815(a) by setting out the procedures under which an employee may claim a refund of lump-sum credit. The procedures track the requirements under the Civil Service Retirement System, and thus the employee is required to notify a spouse or former spouse of the employee's application for the lump-sum credit. However, subsection (a)(2) differs from the analogous civil service retirement provision in that it retains language in existing section 815(a) to insure that the lump-sum credit will be paid to the employee and to any former spouse of the employee under the terms of section 815(i). Under the Foreign Service Act of 1980, if the parties have been married for at least 10 years, the former spouse is entitled to a pro-rata share of any lump-sum credit unless a contrary order has been issued.

Section 219. Cost-of-living adjustments

Section 219 of the committee amendment amends section 826(c) to codify the current treatment of cost-of-living adjustments. The conditions for COLAs under the Civil Service Retirement System were established by Public Law 97-35 and by executive order made applicable to the Foreign Service Retirement System. Section 219 of the committee amendment codifies the executive order provisions.

Part C

Part C makes amendments to the Foreign Service Pension System.

Section 241. Definition of lump-sum credit

Section 241 of the committee amendment amends section 852 by adding a new definition of "lump-sum credit" to conform to the definition in section 8401(19) of the Federal Employees' Retirement System Act of 1986 (P.L. 99-335), as amended by the Federal Employees' Retirement System Technical Corrections Act of 1986 (P.L. 99-556). Lump-sum refunds to FSPS participants are based on contributions under FSPS to the Foreign Service Retirement Fund.

Section 242. Contribution for creditable service of employee of a Member or office of the Congress

Section 242 of the committee amendment amends section 854(e), concerning creditable service while a Foreign Service employee works for a Member or office of the Congress. The amendment requires that a full normal cost contribution be made to the Foreign Service Retirement and Disability Fund for a participant who serves in the office of a Member or office of the Congress while on approved leave without pay from the Foreign Service.

Section 243. Conforming amendment, health care

Section 243 of the committee amendment makes a conforming amendment to section 904(b) to provide that any health care program established for participants in the Foreign Service Retirement

ment System must also be available to participants in the Foreign Service Pension System.

Part D

Part D establishes effective dates for the amendments made by this Act.

Section 261. Effective date

Subsection (a) of section 261 of the committee amendment states that all provisions except sections 202 and 217 of the committee amendment shall take effect 90 days after the date of enactment.

Subsection (b) of section 261 of the committee amendment makes two exceptions to the general effective date described above. Section 202 of the committee amendment, concerning qualified former wives or husbands, shall apply to an individual who, on or after the date of enactment, is married to a participant or former participant as defined in chapter 8 of the Foreign Service Act of 1980. Section 217 of the committee amendment, requiring a former spouse to have been married to a participant for five years while the participant was in the Foreign Service, applies only to spouses or former spouses of participants in the Foreign Service Retirement System. It does not apply to any individual who, on the date of enactment of this Act, is the spouse of a participant or is a former spouse entitled to an annuity under section 814 of the Foreign Service Act of 1980.

COST

The cost estimate prepared by the Congressional Budget Office pursuant to sections 308(a) and 403 of the Congressional Budget Act of 1974 is set forth below:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 15, 1987.

HON. WILLIAM D. FORD,
Chairman, Committee on Post Office and Civil Service, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: As you requested, the Congressional Budget Office has reviewed H.R. 3395, as ordered reported on October 6, 1987, a bill that, among other purposes, would make technical corrections to the Civil Service Retirement System, the Federal Employees' Retirement System, and the Foreign Service Retirement System. Several sections of the bill would codify existing practices, currently addressed either by regulation or by Executive Order.

The bill would liberalize disability and retirement benefits for certain workers and their surviving spouses as well as establish some new benefit provisions—mainly for spouses or former spouses of Foreign Service Officers. As a result, annual outlays would increase eventually but not appreciably within the fiscal year 1988–1992 period used for CBO cost estimates.

The attached staff analysis describes the potential budgetary effects for those sections of H.R. 3395 that have a significant impact

as well as those sections where sufficient data are available to make an estimate. As always, we are available to provide you and your staff with additional information or to discuss the basis for our estimate.

With best wishes,
Sincerely,

EDWARD M. GRAMLICH,
Acting Director.

Attachment.

CBO STAFF ANALYSIS FOR H.R. 3395

Section 103 would classify about 300 current federal employees as law enforcement officers for retirement purposes. They are employed mainly as U.S. Park Service Police or as uniformed officers of the U.S. Secret Service. As a result, mandatory payroll withholdings for these employees would increase by 0.5 percent of pay. It is estimated that the yearly revenue generated during the next five years from the additional workers' retirement contributions would have no significant budgetary effect.

Section 107 would ensure that Civil Service Retirement System (CSRS) employment counts toward satisfying the 20-years-of-service requirement under the Federal Employees' Retirement System (FERS). As a result, the FERS pension benefit would increase—for nearly all employees who transfer to FERS with more than five years of CSRS service and who then retire after age 62—from 1.0 percent of average pay per year of FERS employment to 1.1 percent. At the time CBO prepared its analysis of the FERS Act of 1986, however, it was assumed an individual who switched to FERS was entitled to credit CSRS service. Thus, as measured against either the CBO baseline for February or for August 1987, this section has no budgetary consequence.

Section 123 would prevent the consideration of FERS contributions, and associated investment earnings, when calculating the unfunded liability of the CSRS. Without this change, the CSRS soon would appear to be fully funded and thus the annual in-lieu-of-interest payments made to the CSRS Trust Fund by the U.S. Treasury would stop. This is strictly an accounting change; it would not impact on the timing or the size of annual benefit payments.

This section also would shift, from the U.S. Postal Service (USPS) to the U.S. Treasury, the responsibility for financing certain unfunded liabilities for postal employees who switch from CSRS to FERS. Failure to enact this change could have a dramatic effect on the USPS operating budget in fiscal year 1988, depending on how many postal employees switch to FERS and on how the Office of Personnel Management calculates the resulting unfunded liability. As the USPS is now an on-budget entity, however, unfunded liability payments made by the USPS or the Treasury would represent

an intrabudgetary transfer of funds and would not impact direct spending in 1988.

Section 125 would allow some 13,000 individuals, covered by the CSRS and FERS pension provisions but mainly paid by land grant colleges, to participate in the federal Thrift Savings Plan. Currently, about 1,100 of these employees already have Thrift Plan accounts (300 workers covered by the CSRS and another 800 covered by FERS). But they are ineligible to participate, according to the Internal Revenue Service, as they are paid by nonfederal sources. Unless Section 125 is enacted, the Thrift Board will refund employee and employer contributions of less than \$1 million dollars—without any investment earnings. Section 125 would have no significant effect on federal tax revenues. The direct spending impact depends on the budgetary treatment of the Thrift Plan.

If the Thrift Plan is on budget, as it is for CBO's February 1987 baseline, this section would reduce annual outlays over the next five years by progressively larger amounts: some \$1 million in fiscal year 1988, and an estimated \$3 million in 1992. On the other hand, if the Thrift Plan is independent of the unified budget, as adopted by the CBO August 1987 baseline following the recommendations of the General Accounting Office, the section's direct spending effect is limited to the estimated yearly increase in interest payments by the Treasury on nonmarketable U.S. securities held by the Thrift Savings Plan. The additional interest payments in 1992 would amount to less than \$0.5 million.

Section 204 gives certain former spouses of foreign service officers retirement, survivor, and health benefits. This would result in additional future federal liabilities through new entitlement authority. Outlays from these new benefits are expected to be \$0.7 million in fiscal year 1988, then slightly increase in the next three fiscal years before declining due to reductions in the number of beneficiaries. Outlays would come from the Foreign Service Retirement and Disability Fund.

OVERSIGHT

Under the rules of the House, the Committee on Post Office and Civil Service is vested with legislative and oversight jurisdiction over the subject matter of this legislation. As a result of its consideration, the committee concluded that there is ample need and justification for the enactment of this legislation.

The committee received no report of oversight findings or recommendations from the Committee on Government Operations pursuant to clause 4(c)(2) of House Rule X.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(1)(4) of House Rule XI, the committee has concluded that the enactment of H.R. 3395 will have no inflationary impact on the national economy.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill,

as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 5, UNITED STATES CODE

* * * * *

PART III—EMPLOYEES

* * * * *

CHAPTER 33—EXAMINATION, SELECTION, AND PLACEMENT

* * * * *

Subchapter I—Examination, Selection, and Appointment

* * * * *

§ 3307. Competitive service; maximum-age entrance requirements; exceptions

(a) * * *

* * * * *

(d) The head of any agency [may, with the concurrence of such agent as the President may designate,] *may* determine and fix the minimum and maximum limits of age within which an original appointment may be made to a position as a law enforcement officer or firefighter, as defined by section 8331 (20) and (21), respectively, of this title.

(e) The head of an agency may determine and fix the maximum age limit for an original appointment to a position as a firefighter or law enforcement officer, as defined by section 8401 (14) or (17), respectively, of this title.

* * * * *

Subpart G—Insurance and Annuities

* * * * *

CHAPTER 83—RETIREMENT

* * * * *

Subchapter III—Civil Service Retirement

§ 8331. Definitions

For the purpose of this subchapter—

(1) “employee” means—

(A) an employee as defined by section 2105 of this title;

(B) the Architect of the Capitol, an employee of the Architect of the Capitol, and an employee of the Botanic Garden;

(C) a Congressional employee as defined by section 2107 of this title (other than the Architect of the Capitol, an employee of the Architect of the Capitol, and an employee of the Botanic Garden), after he gives notice in writing to the official by whom he is paid of his desire to become subject to this subchapter;

(D) a temporary Congressional employee appointed at an annual rate of pay, after he gives notice in writing to the official by whom he is paid of his desire to become subject to this subchapter;

(E) a United States Commissioner whose total pay for services performed as Commissioner is not less than \$3,000 in each of the last 3 consecutive calendar years ending after December 31, 1954;

(F) an individual employed by a county committee established under section 590h(b) of title 16;

(G) an individual first employed by the government of the District of Columbia before October 1, 1987;

(H) an individual employed by Gallaudet College;

(I) an individual appointed to a position on the office staff of a former President under section 1(b) of the Act of August 25, 1958 (72 Stat. 838); and

(J) an alien (i) who was previously employed by the Government, (ii) who is employed full time by a foreign government for the purpose of protecting or furthering the interests of the United States during an interruption of diplomatic or consular relations, and (iii) for whose services reimbursement is made to the foreign government by the United States;

but does not include—

(i) * * *

* * * * *

(x) an employee subject to the Federal Employees' Retirement System; **[or]**

(xi) an employee under the Botanic Garden excluded by the Director or Acting Director of the Botanic Garden under section 8347(l) of this title **[.]**; or

(xii) a member of the Foreign Service (as described in section 103(6) of the Foreign Service Act of 1980), appointed after December 31, 1987.

* * * * *

(18) "Fund balance" means the sum of—

(A) the investments of the Fund calculated at par value; and

(B) the cash balance of the Fund on the books of the Treasury;

but does not include any amount attributable to—

(i) the Federal Employees' Retirement System; or

(ii) contributions made under the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983 by or on behalf of any individual who became subject to the Federal Employees' Retirement System;

§ 8334. Deduction contributions, and deposits

(a) * * *

* * * * *

(c) Each employee or Member credited with civilian service after July 31, 1920, for which retirement deductions or deposits have not been made, may deposit with interest an amount equal to the following percentages of his basic pay received for that service:

	Percentage of basic pay	Service period
Employee	2½	August 1, 1920, to June 30, 1926.
	3½	July 1, 1926, to June 30, 1942.
	5	July 1, 1942, to June 30, 1948.
	6	July 1, 1948, to October 31, 1956.
	6½	November 1, 1956, to December 31, 1969.
	7	After December 31, 1969.

* * * * *

Notwithstanding the preceding provisions of this subsection and any provision of section 206(b)(3) of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983, the percentage of basic pay required under this subsection in the case of an individual described in section 8402(b)(2) shall, with respect to any covered service (as defined by section 203(a)(3) of such Act) performed by such individual after December 31, 1983, and before January 1, 1987, be equal to 1.3 percent [.], and, with respect to any such service performed after December 31, 1986, be equal to the amount that would have been deducted from the employee's basic pay under subsection (k) of this section if the employee's pay had been subject to that subsection during such period.

* * * * *

(k)(1) * * *

* * * * *

- (4) In administering paragraphs (1) through (3)—
- (A) the term "an individual described in section 8402(b)(2) of this title" shall be considered to include any individual—
 - (i) who is subject to this subchapter as a result of a provision of law described in section 8347(o), and
 - (ii) whose employment (as described in section 8347(o)) is also employment for purposes of title II of the Social Security Act and chapter 21 of the Internal Revenue Code of 1986; and
 - (B) the term "Federal wages", as applied with respect to any individual to whom this subsection applies as a result of subparagraph (A), means basic pay for any employment referred to in subparagraph (A)(ii).

* * * * *

§ 8337. Disability retirement

(a) * * *

* * * * *

[(f) An individual is not entitled to receive an annuity under this subchapter and compensation for injury or disability to himself under subchapter I of chapter 81 of this title covering the same period of time. This provision does not bar the right of a claimant to the greater benefit conferred by either subchapter for any part of the same period of time. Neither this provision nor any provision of subchapter I of chapter 81 of this title denies to an individual an annuity accruing to him under this subchapter on account of service performed by him, or denies any concurrent benefit to him under subchapter I of chapter 81 of this title on account of the death of another individual.]

[(g) The right of an individual entitled to an annuity under this subchapter is not affected because he has received a lump-sum payment for compensation under section 8135 of this title. However, if the annuity is payable on account of the same disability for which compensation under section 8135 of this title has been paid, so much of the compensation as has been paid for a period extended beyond the date the annuity becomes effective, as determined by the Department of Labor, shall be refunded to that Department to be covered into the Employees' Compensation Fund. Before the individual may receive the annuity he shall—

[(1) refund to the Department of Labor the amount representing the commuted compensation payments for the extended period; Or

[(2) authorize the deduction of that amount from the annuity payable to him under this subchapter, which amount shall be transmitted to the Department of Labor for reimbursement to the Employees' Compensation Fund.]

Deductions from the annuity may be made from accrued and accruing payments. When the Department of Labor finds that the financial circumstances of the annuitant warrant deferred refunding, deductions from the annuity may be prorated against and paid from accruing payments in such manner as that Department determines.]

(f)(1) An individual is not entitled to receive—

(A) an annuity under this subchapter, and

(B) compensation for injury to, or disability of, such individual under subchapter I of chapter 81, other than compensation payable under section 8107,

covering the same period of time.

(2) An individual is not entitled to receive an annuity under this subchapter and a concurrent benefit under subchapter I of chapter 81 on account of the death of the same person.

(3) Paragraphs (1) and (2) do not bar the right of a claimant to the greater benefit conferred by either this subchapter or subchapter I of chapter 81.

(g) If an individual is entitled to an annuity under this subchapter, and the individual receives a lump-sum payment for compensation under section 8135 based on the disability or death of the same person, so much of the compensation as has been paid for a period

extended beyond the date payment of the annuity commences, as determined by the Department of Labor, shall be refunded to that Department for credit to the Employees' Compensation Fund. Before the individual may receive the annuity, the individual shall—

(1) refund to the Department of Labor the amount representing the commuted compensation payments for the extended period; or

(2) authorize the deduction of the amount from the annuity. Deductions from the annuity may be made from accrued or accruing payments. The amounts deducted and withheld from the annuity shall be transmitted to the Department of Labor for reimbursement to the Employees' Compensation Fund. When the Department of Labor finds that the financial circumstances of an individual entitled to an annuity under this subchapter warrant deferred refunding, deductions from the annuity may be prorated against and paid from accruing payments in such manner as the Department determines appropriate.

* * * * *

§ 8342. Lump-sum benefits; designation of beneficiary; order of precedence

(a) Subject to subsection (j) of this section, an employee or Member who—

(1)(A) is separated from the service for at least thirty-one consecutive days; or

(B) is transferred to a position in which he is not subject to this subchapter, or chapter 84 of this title; and remains in such a position for at least thirty-one consecutive days;

(2) files an application with the Office of Personnel Management for payment of the lump-sum credit;

(3) is not reemployed in a position in which he is subject to this subchapter, or chapter 84 of this title; at the time he files the application; and

(4) will not become eligible to receive an annuity within thirty-one days after filing the application,

is entitled to be paid the lump-sum credit. Except as provided in section 8343a of this title, the receipt of the payment of the lump-sum credit by the employee or Member voids all annuity rights under this subchapter based on the service on which the lump-sum credit is based, until the employee or Member is reemployed in the service subject to this subchapter. [In applying this subsection with respect to an employee or Member who becomes subject to chapter 84 of this title, entitlement to payment of the lump-sum credit shall be determined without regard to paragraph (1) or (3) if, and to the extent that, such lump-sum credit relates to service of a type described in clauses (i) through (iii) of section 302(a)(1)(C) of the Federal Employees' Retirement System Act of 1986.] *In applying this subsection to an employee or Member who becomes subject to chapter 84 (other than by an election under title III of the Federal Employees' Retirement System Act of 1986) and who, while subject to such chapter, files an application with the Office for a payment under this subsection—*

(i) entitlement to payment of the lump-sum credit shall be determined without regard to paragraph (1) or (3) if, or to the extent that, such lump-sum credit relates to service of a type described in clauses (i) through (iii) of section 302(a)(1)(C) of the Federal Employees' Retirement System Act of 1986; and

(ii) if, or to the extent that, the lump-sum credit so relates to service of a type referred to in clause (i), it shall (notwithstanding section 8331(8)) consist of—

(I) the amount by which any unrefunded amount described in section 8331(8)(A) or (B) relating to such service, exceeds 1.3 percent of basic pay for such service; and

(II) interest on the amount payable under subclause (I), computed in a manner consistent with applicable provisions of section 8331(8).

* * * * *

§ 8347. Administration; regulations

(a) * * *

* * * * *

(o) Any provision of law outside of this subchapter which provides coverage, service credit, or any other benefit under this subchapter to any individuals who (based on their being employed by an entity other than the Government) would not otherwise be eligible for any such coverage, credit, or benefit, shall not apply with respect to any individual appointed, transferred, or otherwise commencing that type of employment on or after October 1, 1988.

* * * * *

§ 8349. Offset relating to certain benefits under the Social Security Act

(a) * * *

* * * * *

(d) In administering subsections (a) through (c)—

(1) the terms "an individual under section 8402(b)(2)" and "an individual described in section 8402(b)(2)" shall each be considered to include any individual—

(A) who is subject to this subchapter as a result of any provision of law described in section 8347(o), and

(B) whose employment (as described in section 8347(o)) is also employment for purposes of title II of the Social Security Act and chapter 21 of the Internal Revenue Code of 1986; and

(2) the term "Federal service", as applied with respect to any individual to whom this section applies as a result of paragraph (1), means any employment referred to in paragraph (1)(B) performed after December 31, 1983.

* * * * *

§ 8351. Participation in the Thrift Savings Plan

(a) * * *

(c) A member of the Foreign Service described in section 103(6) of the Foreign Service Act of 1980 shall be ineligible to make any election under this section.

[(c)] *(d) The Executive Director of the Federal Retirement Thrift Investment Board may prescribe regulations to carry out this section.*

CHAPTER 84—FEDERAL EMPLOYEES' RETIREMENT SYSTEM

SUBCHAPTER V—DISABILITY BENEFITS

8451. Disability retirement.

[(8456. Relationship to workers' compensation.)
[(8457.) 8456. Military reserve technicians.]

SUBCHAPTER VI—GENERAL AND ADMINISTRATIVE PROVISIONS

- 8461. Authority of the Office of Personnel Management.
- 8462. Cost-of-living adjustments.
- 8463. Rate of benefits.
- 8464. Commencement and termination of annuities of employees and Members.
- 8464a. *Relationship between annuity and workers' compensation.*

Subchapter I—General Provisions

§ 8401. Definitions

For the purpose of this chapter—

(1) * * *

(11) the term "employee" means—

(A) an individual referred to in subparagraph (A), (E), (F), (H), (I), or (J), of section 8331(1) of this title; and
 (B) a Congressional employee as defined in section 2107 of this title, including a temporary Congressional employee and an employee of the Congressional Budget Office; whose civilian service after December 31, 1983, is employment for the purposes of title II of the Social Security Act and chapter 21 of the Internal Revenue Code of 1954, except that such term does not include—

(i) any individual referred to in—

(I) clause (i), (v), (vi), or (ix) of paragraph (1) of section 8331;

(II) clause (ii) of such paragraph [(other than an employee of the United States Park Police, or the United States Secret Service, whose civilian service after December 31, 1983, is such employment)]; or

- (III) the undesignated material after the last clause of such paragraph; **[or]**
- (ii) any individual excluded under section 8402(c) of this title; **[or]**
- (iii) *a member of the Foreign Service described in section 103(6) of the Foreign Service Act of 1980;*

- * * * * *
- (14) the term "firefighter" means—
- (A) an employee, the duties of whose position—
 - (i) are primarily to perform work directly connected with the control and extinguishment of fires; and
 - (ii) are sufficiently rigorous that employment opportunities **[are required to]** *should* be limited to young and physically vigorous individuals, as determined by the Director considering the recommendations of the employing agency; and
 - (B) an employee who is transferred directly to a supervisory or administrative position after performing duties described in subparagraph (A) **[for at least 10 years]**;

- * * * * *
- (17) the term "law enforcement officer" means—
- (A) an employee, the duties of whose position—
 - (i) are primarily—
 - (I) the investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws of the United States, or
 - (II) the protection of officials of the United States against threats to personal safety; and
 - (ii) are sufficiently rigorous that employment opportunities **[are required to]** *should* be limited to young and physically vigorous individuals, as determined by the Director considering the recommendations of the employing agency;
 - (B) *an employee of the Department of the Interior or the Department of the Treasury (excluding any employee under subparagraph (A)) who occupies a position that, but for the enactment of the Federal Employees' Retirement System Act of 1986, would be subject to the District of Columbia Police and Firefighters' Retirement System, as determined by the Secretary of the Interior or the Secretary of the Treasury, as appropriate;*
 - [(B)]** an employee who is transferred directly to a supervisory or administrative position after performing duties described in subparagraph (A) for at least 10 years; and
 - (C) *an employee who is transferred directly to a supervisory or administrative position after performing duties described in subparagraph (A) or (B); and*
 - [(C)]** (D) an employee—
 - (i) of the Bureau of Prisons or Federal Prison Industries, incorporated;

(ii) of the Public Health Service assigned to the field service of the Bureau of prisons or of the Federal Prison Industries, Incorporated; or

(iii) in the field service at Army or Navy disciplinary barracks or at any other confinement and rehabilitation facility operated by any of the armed forces; whose duties in connection with individuals in detention suspected or convicted offenses against the criminal laws of the United States or of the District of Columbia or offenses against the punitive articles of the Uniform Code of Military Justice (chapter 47 of title 10) require frequent direct contact with these individuals in their detention and are sufficiently rigorous that employment opportunities [are required to] *should* be limited to young and physically vigorous individuals, as determined by the head of the employing agency;

* * * * *

Subchapter II—Basic Annuity

* * * * *

§ 8411. Creditable service

(a) * * *

* * * * *

(4)(A) Notwithstanding paragraphs (2), for purposes of computing a survivor annuity for a survivor of an employee or Member—

(i) who was awarded retired pay based on any period of military service, and

(ii) whose death occurs before separation from the service, creditable service of the deceased employee or Member shall include each period of military service includable under subparagraph (A) or (B) or paragraph (1) or under paragraph (3). In carrying out this subparagraph, any amount deposited under [subsection (f)(4)] *section 8422(e)(5)* shall be taken into account.

* * * * *

(f)(1) An employee or Member who has received a refund of retirement deductions under subchapter III of chapter 83 with respect to any service described in subsection (b)(2) or (b)(3) may not be allowed credit for such service under this chapter unless such employee or Member deposits an amount equal to 1.3 percent of basic pay for such service, with interest. *A deposit under this paragraph may be made only with respect to a refund received pursuant to an application filed with the Office before the date on which the employee or Member first becomes subject to this chapter.*

* * * * *

§ 8422. Deductions from pay; contributions for military service

(a) * * *

* * * * *

(e)(1) * * *

(5) For the purpose of survivor annuities, deposits authorized by this subsection may also be made by a survivor of an employee or Member.

§ 8423. Government contributions

* * *

(b)(1) The Office shall compute—

(A) the amount of the supplemental liability of the Fund with respect to individuals other than those to whom subparagraph (B) relates, and

(B) the amount of the supplemental liability of the Fund with respect to current or former employees of the United States Postal Service (and the Postal Rate Commission) and their survivors;

as of the close of each fiscal year beginning after September 30, 1987 [.] , except that in computing any supplemental liability under subparagraph (B), any benefits, deductions, or other amounts may not be taken into account unless they relate to a period of service performed by the current or former employee involved while subject to this chapter.

* * * * *

Subchapter III—Thrift Savings Plan

* * * * *

§ 8432. Contributions

(a) * * *

* * * * *

(c)(1)(A) [At the end of] *At the time prescribed by the Executive Director, but no later than 12 days after the end of the pay period that includes the first date on which an employee or Member may make contributions under subsection (a) (without regard to whether the employee or Member has elected to make such contributions during such pay period), and [at the end of each succeeding pay period,] within such time as the Executive Director may prescribe with respect to succeeding pay periods (but no later than 12 days after the end of each such pay period), the employing agency shall contribute to the Thrift Savings Fund for the benefit of such employee or Member the amount equal to 1 percent of the basic pay paid of such employee or Member for such pay period.*

* * * * *

(2)(A) In addition to contributions made under paragraph (1), the employing agency of an employee or Member who contributes to the Thrift Savings Fund under subsection (a) for any pay period shall make a contribution to the Thrift Savings Fund for the benefit of such employee or Member. The employing agency's contribution shall be made [at the end of such pay period.] *within such*

time as the Executive Director may prescribe, but no later than 12 days after the end of each such pay period.

* * * * *

(d) Notwithstanding any other provision of this section, no contribution may be made under this section for any year to the extent that such contribution, when added to prior contributions for such year, exceeds any limitation under section 415 of the Internal Revenue Code of 1954. *However, no contribution made under subsection (c)(3) shall be subject to, or taken into account, for purposes of the preceding sentence.*

* * * * *

(g)(1) Except as **provided in paragraphs (2) and (3),** *otherwise provided in this subsection, all contributions made under this section shall be fully nonforfeitable when made.*

* * * * *

(4) Nothing in paragraph (2) or (3) shall cause the forfeiture of any contributions made for the benefit of an employee, Member, or Congressional employee under subsection (c)(1), or any earnings attributable thereto, if such employee, Member, or Congressional employee is not separated from Government employment as of date of death.

* * * * *

§ 8437. Thrift Savings Fund

(a) * * *

* * * * *

(d) Administrative expenses incurred to carry out this subchapter and subchapter VII of this chapter shall be paid first out of any sums in the Thrift Savings Fund forfeited under section 8432(g) of this title and then out of net earnings in such Fund **attributable to sums contributed to such Fund under section 8432(c) of this title**.

(e)(1) Subject to *subsection (d) and paragraphs (2) and (3)*, sums in the Thrift Savings Fund credited to the account of an employee, Member, former employee, or former Member may not be used for, or diverted to, purposes other than for the exclusive benefit of the employee, Member, former employee, or former Member or his beneficiaries under this subchapter.

* * * * *

(3) Moneys due or payable from the Thrift Savings Fund to any individual and, in the case of an individual who is an employee or Member (or former employee or Member), the balance in the account of the employee or Member (or former employee or Member) shall be subject to legal process for the enforcement of the individual's legal obligations to provide child support or make alimony payments as provided in section 459 of the Social Security Act (42 U.S.C. 659). *For the purposes of this paragraph, an amount contributed for the benefit of an individual under section 8432(c)(1) (including any earnings attributable thereto) shall not be considered part of the balance in such individual's account unless such*

amount is nonforfeitable, as determined under applicable provisions of section 8432(g).

* * * * *

Subchapter V—Disability Benefits

* * * * *

§ 8452. Computation of disability annuity

(a)(1)(A) * * *

[(B) An annuity computed under this paragraph shall not, for purposes of any adjustment under section 8462 (including any adjustment under subsection (c)(1) of such section), be considered to have commenced until after such annuity ceases to be determined under subparagraph (A)(i).**]**

(B) An annuity computed under this paragraph—

(i) shall not, during any period referred to in subparagraph (A)(i), be adjusted under section 8462; but

(ii) shall, after the end of any period referred to in subparagraph (A)(i), be adjusted to reflect all adjustments made under section 8462(b) after the end of the period referred to in subparagraph (A)(i), whether the amount actually payable to the annuitant under this section in any month is determined under this subsection or otherwise.

(2)(A) * * *

[(B)(i) For purposes of this paragraph, the assumed disability insurance benefit of an annuitant for any month shall be equal to—

[(I) the amount of the disability insurance benefit to which the annuitant would have been entitled under section 223 of the Social Security Act for the month in which the annuity under this subchapter commenced, or was restored, determined as if such annuitant had then satisfied all requirements for entitlement to a benefit under such section, adjusted by

[(II) all adjustments made under section 8462(b) between the date on which the annuity commenced, or was restored, and the start of the month involved (without regard to whether the annuitant's annuity was affected by any of those adjustments).

For purposes of computing the assumed disability insurance benefit, the month in which the annuitant's disability began (as determined under section 216(i)(2)(C) of the Social Security Act) shall be the month in which the annuitant commenced or, if earlier (and if a determination was actually made) the month determined under such section.**]**

(B)(i) For purposes of this paragraph, the assumed disability insurance benefit of an annuitant for any month shall be equal to—

(I) the amount of the disability insurance benefit to which the annuitant is entitled under section 223 of the Social Security Act for the month in which the annuity under this subchapter commences, or is restored, or, if no entitlement to such disability insurance benefit exists for such month, the first month thereafter for which the annuitant is entitled both to an annuity under this subchapter and disability insurance benefits under section 223 of the Social Security Act, adjusted by

(II) all adjustments made under section 8462(b) after the end of the period referred to in paragraph (1)(A)(i) (or, if later, after the end of the month preceding the first month for which the annuitant is entitled both to an annuity under this subchapter and disability insurance benefits under section 223 of the Social Security Act) and before the start of the month involved (without regard to whether the annuitant's annuity was affected by any of those adjustments).

* * * * *
(3) Section 8462 shall apply with respect to amounts under this subsection only as provided in paragraphs (1) and (2).

[(b)(1) Except as provided in subsection (d), if an annuitant is entitled to an annuity under this subchapter as of the day before the date of the sixty-second anniversary of the annuitant's birth (hereinafter in this section referred to as the annuitant's "redetermination date"), such annuity shall be redetermined under paragraph (3) or (4), as applicable. Effective as of the annuitant's redetermination date, the annuity (as so redetermined) shall be in lieu of any annuity to which such annuitant would otherwise be entitled under this subchapter.

[(2)(A) In order to carry out paragraphs (3) and (4), the Office shall compute an annuity for the annuitant under section 8415.

[(B) In performing a computation under this paragraph—

[(i) creditable service of the annuitant shall be increased by including the period (or periods), if any, before the annuitant's redetermination date during which the annuitant was entitled to an annuity under this subchapter; and

[(ii) the average pay which would otherwise be used shall be adjusted to reflect all adjustments made under section 8462(b) with respect to any period (or periods) referred to in clause (i) (without regard to whether the annuitant's annuity was affected by any of those adjustments).

[(3) If, as of the day before the annuitant's redetermination date, the annuitant's annuity is subject to reduction under subsection (a)(2), the annuitant's redetermined annuity shall be the lesser of—

[(A) the amount determined with respect to such annuitant under paragraph (2); or

[(B) subject to the following sentence, the amount (converted so as to be expressed as an annual amount) which would otherwise be payable under this subchapter for the month in which occurs the day before the annuitant's redetermination date, as computed under subsection (a) (based on the assumption that the annuitant was entitled to an annuity under this subchapter, and to a disability insurance benefit under section 223 of the Social Security Act, for the entirety of such month).

If the annuitant's redetermination date occurs during the period described in subsection (a)(1)(A)(i), the amount used under subparagraph (B) may not exceed the amount (converted so as to be expressed as an annual amount) which would otherwise be payable under this subchapter for the first month after such period, as computed under subsection (a) based on the assumption that the annuitant was entitled to an annuity under this subchapter, and to a dis-

ability insurance benefit under section 223 of the Social Security Act for the entirety of such month.

[(4) If, as of the day before the annuitant's redetermination date, the annuitant's annuity is not subject to reduction under subsection (a)(2), the annuitant's redetermined annuity shall be the lesser of—

[(A) the amount determined with respect to such annuitant under paragraph (2); or

[(B) the amount which would be used for such annuitant under subparagraph (B) of paragraph (3) (as determined subject to the second sentence of such paragraph), if such paragraph applied to such annuitant.]

(b)(1) Except as provided in subsection (d), if an annuitant is entitled to an annuity under this subchapter as of the day before the date of the sixty-second anniversary of the annuitant's birth (hereinafter in this section referred to as the annuitant's "redetermination date"), such annuity shall be redetermined by the Office in accordance with paragraph (2). Effective as of the annuitant's redetermination date, the annuity (as so redetermined) shall be in lieu of any annuity to which such annuitant would otherwise be entitled under this subchapter.

(2)(A) An annuity redetermined under this subsection shall be equal to the amount of the annuity to which the annuitant would be entitled under section 8415, taking into account the provisions of subparagraph (B).

(B) In performing a computation under this paragraph—

(i) creditable service of an annuitant shall be increased by including any period (or periods) before the annuitant's redetermination date during which the annuitant was entitled to an annuity under this subchapter; and

(ii) the average pay which would otherwise be used shall be adjusted to reflect all adjustments made under section 8462(b) with respect to any period (or periods) referred to in clause (i) (without regard to whether the annuitant's annuity was affected by any of those adjustments).

* * * * *

(d) (1) The annuity to which an annuitant is entitled under this section (after the reduction under subsection (a)(2), if applicable, has been made) shall not be less than the amount of an annuity computed under section 8415 (excluding subsection (f) of such section).

(2) In applying this subsection with respect to any annuitant, the amount of an annuity so computed under section 8415 shall be adjusted under section 8462 (including subsection (c) thereof)—

(A) to the same extent, and otherwise in the same manner, as if it were an annuity—

(i) subject to adjustment under such section; and

(ii) with a commencement date coinciding with the date the annuitant's annuity commenced or was restored under this subchapter, as the case may be; and

(B) whether the amount actually payable to the annuitant under this section in any month is determined under this subsection or otherwise.

* * * * *

§ 8456. Relationship to workers' compensation

[(a)(1) An individual is not entitled to receive an annuity under this subchapter and compensation for injury to or disability of the individual under subchapter I of chapter 81 covering the same period of time.

[(2) Paragraph (1) does not bar the right of a claimant to the greater benefit conferred by either subchapter referred to in such paragraph for any part of the period referred to in such paragraph.

[(3) Paragraph (1) and the provisions of subchapter I of chapter 81 do not deny an individual an annuity which the individual is entitled to receive under this chapter on account of service performed by the individual and do not deny any concurrent benefit to the individual under subchapter I of chapter 81 on account of the death of another individual.

[(b)(1) Subject to paragraph (2), an individual's receipt of a lump-sum payment for compensation under section 8135 shall not affect the individual's entitlement to an annuity under this subchapter.

[(2) If an annuity is payable under this subchapter by reason of the same disability for which a lump-sum payment of compensation referred to in paragraph (1) has been made, so much of the compensation as has been paid for a period extended beyond the date payment of the annuity commences, as determined by the Department of Labor, shall be refunded to that Department for credit to the Employees' Compensation Fund. Before the individual may receive the disability annuity, the individual shall—

[(A) refund to the Department of Labor the amount representing the commuted compensation payments for the extended period; or

[(B) authorize the deduction of the amount from the annuity.

Deductions from the annuity may be made from accrued or accruing payments. The amounts deducted and withheld from the annuity shall be transmitted to the Department of Labor for reimbursement to the Employees' Compensation Fund. When the Department of Labor finds that the financial circumstances of an individual entitled to an annuity under this subchapter warrant deferred refunding under this paragraph, deductions from the annuity may be prorated against and paid from accruing payments in such manner as the Department determines appropriate.]

§ [8457.] 8456. Military reserve technicians

(a)(1) Except as provided in paragraph (2) or (3), an individual shall be retired under this subchapter if the individual—

(A) is separated from employment as a military reserve technician by reason of a disability that disqualifies the individual from membership in a reserve component of the Armed Forces

specified in section 261(a) of title 10 or from holding the military grade required for such employment;

* * * * *

Subchapter VI—General and Administrative Provisions

* * * * *

§ 8464a. Relationship between annuity and workers' compensation

(a)(1) An individual is not entitled to receive—

(A) an annuity under subchapter II or V, and

(B) compensation for injury to, or disability of, such individual under subchapter I of chapter 81, other than compensation payable under section 8107,

covering the same period of time.

(2) An individual is not entitled to receive an annuity under subchapter IV and a concurrent benefit under subchapter I of chapter 81 on account of the death of the same person.

(3) Paragraphs (1) and (2) do not bar the right of a claimant to the greater benefit conferred by either this chapter or subchapter I of chapter 81.

(b) If an individual is entitled to an annuity under subchapter II, IV, or V, and the individual receives a lump-sum payment for compensation under section 8135 based on the disability or death of the same person, so much of the compensation as has been paid for a period extended beyond the date payment of the annuity commences, as determined by the Department of Labor, shall be refunded to that Department for credit to the Employees' Compensation Fund. Before the individual may receive the annuity, the individual shall—

(1) refund to the Department of Labor the amount representing the commuted compensation payments for the extended period; or

(2) authorize the deduction of the amount from the annuity. Deductions from the annuity may be made from accrued or accruing payments. The amounts deducted and withheld from the annuity shall be transmitted to the Department of Labor for reimbursement to the Employees' Compensation Fund. When the Department of Labor finds that the financial circumstances of an individual entitled to an annuity under subchapter II, IV, or V warrant deferred refunding, deductions from the annuity may be prorated against and paid from accruing payments in such manner as the Department determines appropriate.

* * * * *

CHAPTER 87—LIFE INSURANCE

Sec.

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- 8713. *Effect of other statutes.*

* * * * *

§8704. Group insurance; amounts

(a) * * *

* * * * *

(c) The Office shall prescribe regulations providing for the conversion of other than annual rates of pay to annual rates of pay and shall specify the types of pay included in annual pay. For the purpose of this chapter, "annual pay" includes—

- (1) premium pay under section 5545(c)(1) of this title; and
- (2) with respect to a law enforcement officer as defined in section 8331(20) or 8401(17) of this title, premium pay under section 5545(c)(2) of this title.

* * * * *

§ 8713. Effect of other statutes

Any provision of law outside of this chapter which provides coverage or any other benefit under this chapter to any individuals who (based on their being employed by an entity other than the Government) would not otherwise be eligible for any such coverage or benefit shall not apply with respect to any individual appointed, transferred, or otherwise commencing that type of employment on or after October 1, 1988.

* * * * *

CHAPTER 89—HEALTH INSURANCE

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- 8912. Jurisdiction of courts.
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- 8914. *Effect of other statutes.*

* * * * *

§ 8914. Effect of other statutes

Any provision of law outside of this chapter which provides coverage or any other benefit under this chapter to any individuals who (based on their being employed by an entity other than the Government) would not otherwise be eligible for any such coverage or benefit shall not apply with respect to any individual appointed, trans-

ferred, or otherwise commencing that type of employment on or after October 1, 1988.

* * * * *

SECTION 4-607(l) OF TITLE 4 OF THE DISTRICT OF COLUMBIA CODE

§ 4-607. Definitions.

Wherever used in §§ 4-607 to 4-630:

(1) The term "member" means any officer or member of the Metropolitan Police force, of the Fire Department of the District of Columbia, of the United States Park Police force of the Executive Protective Service, and any officer or member of the United States Secret Service Division to whom §§ 4-607 to 4-630 shall apply [.], but does not include an officer or member of the United States Park Police force, or of the United States Secret Service Division, whose service is employment for the purposes of title II of the Social Security Act and chapter 21 of the Internal Revenue Code of 1986, and who is not excluded from coverage under chapter 84 of title 5, United States Code, by operation of section 8402 of such title.

* * * * *

FEDERAL EMPLOYEES' RETIREMENT SYSTEM ACT OF 1986

* * * * *

TITLE II—OTHER AMENDMENTS TO TITLE 5 OF THE UNITED STATES CODE

* * * * *

SEC. 207. MISCELLANEOUS AMENDMENTS

(a) * * *

* * * * *

(o) *An employee of Saint Elizabeths Hospital who is appointed to a position in the government of the District of Columbia on October 1, 1987, pursuant to the Saint Elizabeths Hospital and District of Columbia Mental Health Service Act (Public Law 98-621; 98 Stat. 3369 and following) shall, for purposes of chapters 83, 87, and 89 of title 5, United States Code, be treated in the same way as an individual first employed by the government of the District of Columbia before October 1, 1987.*

* * * * *

TITLE III—OTHER PROVISIONS RELATING TO THE FEDERAL EMPLOYEE'S RETIREMENT SYSTEM AND THE CIVIL SERVICE RETIREMENT SYSTEM

SEC. 301. ELECTIONS.

(a) ELECTIONS FOR INDIVIDUALS SUBJECT TO THE CIVIL SERVICE RETIREMENT SYSTEM.—(1) * * *

* * * * *

(3)(A) *Except as provided in subparagraph (B), any individual—*
(i) who is excluded from the operation of subchapter III of chapter 83 of title 5, United States Code, under subsection (g), (i), (j), or (l) of section 8347 of such title, and
(ii) with respect to whom chapter 84 of title 5, United States Code, does not apply because of section 8402(b)(2) of such title, shall, for purposes of an election under paragraph (1) or (2), be treated as if such individual were subject to subchapter III of chapter 83 of title 5, United States Code.

(B) An election under this paragraph may not be made by any individual who would be excluded from the operation of chapter 84 of title 5, United States Code, under section 8402(c) of such title (relating to exclusions based on the temporary or intermittent nature of one's employment).

(4) A member of the Foreign Service described in section 103(6) of the Foreign Service Act of 1980 shall be ineligible to make any election under this subsection.

* * * * *

SEC. 302. EFFECT OF AN ELECTION UNDER SECTION 301 TO BECOME SUBJECT TO THE FEDERAL EMPLOYEES' RETIREMENT SYSTEM.

(a) GENERAL AND SPECIAL RULES.—All provisions of chapter 84 of title 5, United States Code (including those relating to disability benefits, survivor benefits, and any reductions to provide for survivor benefits) shall apply with respect to any individual who becomes subject to such chapter pursuant to an election under section 301, except if, or to the extent that, such provisions are inconsistent with the following:

(1)(A) * * *

* * * * *

(D) Any service described in subparagraph (A)—
(i) which is not covered service;
(ii) which constitutes service of a type described in section 8411(b)(3) of title 5, United States Code (determined without regard to whether such service was performed before, on, or after January 1, 1989, and without regard to the provisions of section 8411(f) of such title); and
(iii) which, in the aggregate, is equal to 5 years or more;
shall be creditable for purposes of—

(I) * * *

* * * * *

(IV) any provision of section 8412(d) of such title which relates to a minimum period of service for entitlement to an annuity, but only if and to the extent that the service described in subparagraph (A) was as a law enforcement officer or firefighter; **[and]**

(V) any provision of section 8412(e) of such title which relates to a minimum period of service for entitlement to an annuity, but only if and to the extent that the service described in subparagraph (A) was as an air traffic controller **[.]** ; and

(VI) the provision of subsection (g) of section 8415 which relates to the minimum period of service required to qualify for the higher accrual rate under such subsection.

* * * * *

(4) Except as provided in paragraph (12)(B), accrued benefits under this paragraph shall be computed in accordance with applicable provisions of subchapter III of chapter 83 of title 5, United States Code (but without regard to subsection (j) or (k), or the second sentence of subsection (e), of section 8339 of such title) using only any civilian service under paragraph (1)(D), and any military service under paragraph (2)(B), which would be creditable for purposes of computing an annuity under such subchapter. *Notwithstanding the preceding sentence, in computing accrued benefits under this paragraph for an individual retiring under section 8412(g) or 8413(b) of title 5, United States Code, section 8339(h) of such title (relating to reductions based on age at date of separation) shall not apply.*

* * * * *

(c) REFUNDS RELATION TO CERTAIN CIVILIAN SERVICE.—(1) * * *

[(2) A refund under this subsection—

[(A) shall be payable with interest, computed in accordance with paragraphs (2) and (3) of section 8334(e) of title 5, United States Code, and regulations prescribed by the Office of Personnel Management.

[(B) shall be payable upon written application therefor filed with the Office of Personnel Management.]

(2) In accordance with regulations prescribed by the Office of Personnel Management, a refund under this subsection shall be payable upon written application therefore filed with the Office and shall include interest at the rate provided in section 8334(e)(3) of title 5, United States Code. Interest on the refund shall accrue monthly and shall be compounded annually.

SEC. 303. PROVISIONS RELATING TO AN ELECTION TO BECOME SUBJECT TO CHAPTER 83 SUBJECT TO CERTAIN OFFSETS RELATING TO SOCIAL SECURITY.

(a) REFUND.—Any individual who makes an election under section 301(b)(1)(A) shall, upon written application to the Office of Personnel Management, be entitled to a refund equal to—

(1) for the period beginning on January 1, 1984, and ending on December 31, 1986, the amount by which—

(A) the total amount deducted from such individual's basic pay under section 8334(a)(1) of title 5, United States Code, for such period, exceeds

(B) 1.3 percent of such individual's total basic pay for such period; and

(2) for the period beginning on January 1, 1987, and ending on the day before the effective date of the election, the amount by which—

(A) the total amount deducted from such individual's basic pay under such section 8334(a)(1) for such period, exceeds

(B) the total amount which would have been deducted if such individual's basic pay had instead been subject to section 8334(k) of such title during such period.

[A refund under this subsection shall be computed with interest in accordance with paragraphs (2) and (3) of section 8334(e) of title 5, United States Code, and regulations prescribed by the Office of Personnel Management.]

A refund under this subsection shall be computed with interest in accordance with section 302(c)(2) and regulations prescribed by the Office of Personnel Management.

* * * * *

SECTION 4118 OF TITLE 38, UNITED STATES CODE

§ 4118. Special pay for physicians and dentists

(a) * * *

* * * * *

(f)(1) Except as provided in paragraph (2) of this subsection, any additional compensation provided as special pay under this section shall not be considered as basic pay for the purposes of subchapter VI and section 5595 of chapter 55, chapter [81 or 83] 81, 83, or 84 of title 5, or other benefits related to basic pay.

(2) Additional compensation paid as special pay under this section after September 30, 1980, to any full-time employee shall be included in basic pay for purposes of [chapter 83 of title 5] chapter 83 or 84 of title 5, as the case may be. Notwithstanding the preceding sentence, special pay paid to any full-time employee after September 30, 1980, shall be included in average pay, as defined in [section 8331(4) of such title, for the purposes of computing an annuity under such chapter only if—

(A) the annuity is paid under section 8337 of title 5 or under subsection (d) or (e) of section 8341 of such title; or [section 8331(4) or 8401(3) of such title (as applicable) only—

(A) for the purposes of computing benefits paid under section 8337, 8341(d) or (e), 8442(b), 8443, or 8451 of such title; or

(B) if the employee has completed not less than 15 years of full-time service in the Department of Medicine and Surgery (except that, regardless of the length of such employee's service, no special pay may be included in average pay in computing an annuity that commences before October 1, 1985, and only one-half of any special pay paid after September 30, 1980,

may be included in average pay in computing an annuity that commences on or after October 1, 1985, but before October 1, 1990).

* * * * *

SECTION 4 OF THE CIVIL SERVICE RETIREMENT SPOUSE EQUITY ACT OF 1984

SEC. 4. (a) * * *

(b)(1) Notwithstanding subsection (a)(1) of this section, a former spouse of an employee or Member who retired before May 7, 1985, or who died after becoming eligible to retire and before such date, is entitled to a survivor annuity under section 8341(b) of title 5, United States Code, as amended by this Act, if—

(A) * * *

(B) where the employee or Member dies or died on or before the one hundred and eightieth day after the day of enactment of this Act or does not make the election described in subparagraph (A)—

(i) the former spouse's marriage to the employee or Member was dissolved after September 14, 1978, and before May 8, 1987;

(ii) the former spouse was married to the employee or Member for at least ten years during periods of creditable service under section 8332 of title 5, United States Code;

(iii) the former spouse has not remarried before age fifty-five after September 14, 1978;

[(iv) the former spouse files an application for the survivor annuity with the Office within thirty months after the date of enactment of this Act; and]

(iv) the former spouse files an application for the survivor annuity with the Office on or before May 7, 1989; and

* * * * *

FOREIGN SERVICE ACT OF 1980

* * * * *

SEC. 2. TABLE OF CONTENTS.—The table of contents for this Act is as follows:

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* * * * *

CHAPTER 8—FOREIGN SERVICE RETIREMENT AND DISABILITY

SUBCHAPTER 1—FOREIGN SERVICE RETIREMENT AND DISABILITY SYSTEM

SEC. 804. DEFINITION.—As used in this subchapter,^{72a} unless otherwise specified, the term—

(1) * * *

(13) "surviving spouse" means the surviving wife or husband of a participant or annuitant who [, in the case of a death in service or marriage after retirement,] was married to the participant or annuitant for at least [one year] *nine months* immediately preceding his or her death or is a parent of a child born of the marriage, *except that the requirement for at least 9 months of marriage shall be deemed satisfied in any case in which the participant or annuitant dies within the applicable 9-month period, if—*

(A) *the death of such participant or annuitant was accidental; or*

(B) *the surviving spouse of such individual had been previously married to the individual and subsequently divorced and the aggregate time married is at least 9 months; and*

SEC. 805. CONTRIBUTIONS TO THE FUND.—(a) * * *

(d)(1) Any participant credited with civilian service after July 1, 1924—

(A) for which no retirement contributions, deductions, or deposits have been made, or

(B) for which a refund of such contributions, deductions, or deposits has been made which has not been redeposited.

may make a special contribution to the Fund [equal to]. *Special contributions for purposes of subparagraph (A) shall equal the following percentages of basic salary received for such service:*

Time of Service:	Percent of basic salary
July 1, 1924, through October 15, 1960, inclusive	5
October 16, 1960, through December 31, 1969, inclusive	6½
On and after January 1, 1970	7

Special contributions for refunds under subparagraph (B) shall equal the amount of the refund received by the participant.

SEC. 806. COMPUTATION OF ANNUITIES.—(a) * * *

(b)(1)(A) * * *

(C) If a participant or former participant has a former spouse, the participant and such former spouse may jointly elect by spousal agreement under section 820(b)(1) to waive a survivor annuity under section 814(b) for that former spouse if the election is made (i) before the end of the [12-month] *24-month* period after the di-

voiced or annulment involving that former spouse becomes final or (ii) at the time of retirement whichever occurs first.

* * * * *

(c)(1) If an annuitant who was a participant dies and is survived by a spouse or a former spouse who is the natural or adoptive parent of a surviving child of the annuitant and by a child or children, in addition to the annuity payable to the surviving spouse, there shall be paid to or on behalf of each child an annuity equal to the smaller of—

- (A) \$900, or
- (B) \$2,700 divided by the number of children.

(2) If an annuitant who was a participant dies and is not survived by a spouse or a former spouse who is the natural or adoptive parent of a surviving child of the annuitant but by a child or children, each surviving child shall be paid an annuity equal to the smaller of—

- (A) \$1,080, or
- (B) \$3,240 divided by the number of children.

* * * * *

(d) [If a surviving spouse dies or the annuity of a child is terminated, the annuities of any remaining children shall be recomputed and paid as though such spouse or child had not survived the participant.] *On the death of the surviving spouse or former spouse or termination of the annuity of a child, the annuity of any other child or children shall be recomputed and paid as though the spouse, former spouse, or child had not survived the participant.* If the annuity to a surviving child who has not been receiving an annuity is initiated or resumed, the annuities of any other children shall be recomputed and paid from that date as though the annuities to all currently eligible children in the family were then being initiated.

* * * * *

(i)(1) * * *

(2) The Secretary of State shall issue regulations to provide for the application of paragraph (1) of this subsection and of section 823 in any case in which an annuitant has a former spouse who was married to the participant at any time during a period of recall service and who qualifies for an annuity under [section 814(b).] *this subchapter.*

* * * * *

[(1)(1) The monthly rate of an annuity payable under this subchapter to an annuitant, other than a child, shall not be less than the smallest primary insurance amount, including any cost-of-living increase added to that amount, authorized to be paid from time to time under title II of the Social Security Act (42 U.S.C. 401 et seq.).

[(2) The monthly rate of an annuity payable under this subchapter to a surviving child shall not be less than the smallest primary insurance amount, including any cost-of-living increase added to that amount, authorized to be paid from time to time under title II of the Social Security Act (42 U.S.C. 401 et seq.) or three times such

primary insurance amount divided by the number of surviving children entitled to an annuity, whichever is the lesser.

[(3) This subsection does not apply to an annuitant or to a survivor who is or becomes entitled to receive from the United States an annuity or retired pay under any other civilian or military retirement system, benefits under title II of the Social Security Act (42 U.S.C. 401 et seq.), a pension, veterans' compensation, or any other periodic payment of a similar nature when the monthly rate thereof is equal to or greater than the smallest primary insurance amount, including any cost-of-living increase added to that amount, authorized to be paid from time to time under title II of the Social Security Act (42 U.S.C. 401 et seq.).

[(4) This subsection shall not apply to the extent provided in section 814(d).]

* * * * *

SEC. 808. RETIREMENT FOR DISABILITY OR INCAPACITY.—(a) Any participant who has at least 5 years of service credit toward retirement under the System (excluding military and naval service) and who becomes totally disabled or incapacitated for useful and efficient service by reason of disease, illness, or injury (not due to vicious habits, intemperance, or willful conduct of the participant) shall upon his or her own application or upon order of the Secretary, be retired on an annuity computed as prescribed in section 806. If the disabled or incapacitated participant has less than 20 years of service credit toward retirement under the System at the time of retirement, his or her annuity shall be computed on the assumption that the participant has had 20 years of service, except that the additional service credit that may accrue to a participant under this sentence shall in no case exceed the difference between his or her age at the time of retirement and age [65.] 60. 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 subchapter.

(b) Before being retired under this section, the participant shall be given a physical examination by one or more duly qualified physicians or surgeons designated by the Secretary of State to conduct examinations. Disability or incapacity shall be determined by the Secretary of State on the basis of the advice of such physicians or surgeons. Unless the disability or incapacity is permanent, like examinations shall be made annually until the annuitant has at-

tained age [65.] 60. If the Secretary of State determines on the basis of the advice of one or more duly qualified physicians or surgeons conducting such examinations that an annuitant has recovered to the extent that he or she can return to duty, the annuitant may apply for reinstatement or reappointment in the Service within 1 year from the date recovery is determined. Upon application, the Secretary shall reinstate such recovered annuitant in the class in which the annuitant was serving at time of retirement, or the Secretary may, taking into consideration the age, qualifications, and experience of such annuitant, and the present class of his or her contemporaries in the Service, appoint or recommend that the President appoint the annuitant to a higher class. Payment of the annuity shall continue until a date of 6 months after the date of the examination showing recovery or until the date of reinstatement or reappointment in the Service, whichever is earlier. Fees for examinations under this section, together with reasonable traveling and other expenses incurred in order to submit to examination, shall be paid out of the Fund. If the annuitant fails to submit to examination as required under this subsection, payment of the annuity shall be suspended until continuance of the disability or incapacity is satisfactorily established.

* * * * *

SEC. 809. DEATH IN SERVICE.—(a) * * *

* * * * *

(c) If a participant who has at least 18 months of civilian service credit toward retirement under the System dies before retirement or other separation from the Service and is survived by a spouse, or a former spouse who is the natural or adoptive parent of a surviving child of the annuitant, and a child or children, each surviving child shall be entitled to an annuity computed in accordance with subsections (c)(1) and (d) of section 806.

(d) If a participant who has at least 18 months of civilian service credit toward retirement under the System dies before retirement or other separation from the Service and is not survived by a spouse, or a former spouse who is the natural or adoptive parent of a surviving child of the annuitant, but by a child or children, each surviving child shall be entitled to an annuity computed in accordance with subsections (c)(2) and (d) of section 806.

(e) If, at the time of his or her death, the participant had less than 20 years of service credit toward retirement under the System, the annuity payable in accordance with subsection (b) shall be computed in accordance with section 806 on the assumption he or she has had 20 years of service, except that the additional service credit that may accrue to a deceased participant under this subsection shall in no case exceed the difference between his or her age on the date of death and age [65.] 60. In all cases arising under this subsection or subsection (b), (c), (d), or (g), it shall be assumed that the deceased participant was qualified for retirement on the date of death.

* * * * *

SEC. 811. VOLUNTARY RETIREMENT.—Any participant who is at least 50 years of age and has 20 years of creditable service, includ-

ing at least 5 years of service credit toward retirement under the System (excluding military and naval service), may on his or her own application and with the consent of the Secretary be retired from the Service and receive retirement benefits in accordance with section 806. *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. 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 had been covered under the Civil Service Retirement System rather than subject to this chapter while a member of the Service, may receive an annuity under section 8336 or 8338, notwithstanding section 8333(b) of title 5, United States Code, if 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 or contributed by the employer, and deposited into the Fund during the period he or 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.*

* * * * *

SEC. 814. FORMER SPOUSES.—(a)(1) Unless otherwise expressly provided by any spousal agreement or court order under section 820(b)(1), a former spouse of a participant or former participant is entitled to an annuity *if such former spouse was married to the participant for at least 10 years during service of the participant which is creditable under this chapter with at least 5 of such years occurring while the participant was a member of the Foreign Service and—*

(A) if married to the participant throughout the creditable service of the participant, equal to 50 percent of the annuity of the participant; or

(B) if not married to the participant throughout such creditable service, equal to that former spouse's pro rata share of 50 percent of such annuity.

For the purposes of this paragraph, the term "creditable service" means service which is creditable under subchapter I or II.

* * * * *

(4) No spousal agreement or court order under section 820(b)(1) involving any participant may provide for an annuity or any combination of annuities under this subsection which exceeds the annuity of the participant, nor may any such court order relating to an annuity under this subsection be given effect if it is issued more than [12] 24 months after the date the divorce or annulment involved becomes final.

* * * * *

[(d) Section 806(l) shall not apply—

[(1) to any annuity payable under subsection (a) or (b) to any former spouse if the amount of that annuity varies by reason of a spousal agreement or court order under section 820(b)(1), or an election under section 806(b)(1)(B), from the amount

which would be calculated under subsection (a)(1) or (b)(1), as the case may be, in the absence of such spousal agreement, court order, or election; and

[(2) to any annuity payable under subsection (c).]

SEC. 815. LUMP-SUM PAYMENTS.—[(a) Whenever a participant becomes separated from the Service without becoming eligible for an annuity or a deferred annuity under this subchapter, a lump-sum credit shall be paid to the participant (and to any former spouse of the participant, in accordance with subsection (i)). A participant who becomes subject to subchapter II shall be entitled to payment of the lump-sum credit if, and to the extent that, such lump-sum credit relates to service of a type described in clauses (i) through (iii) of section 302(a)(1)(C) of the Federal Employees' Retirement System Act of 1986.]

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

(A) is separated from the Service for at least 31 consecutive days, or is transferred to a position in which the participant is not subject to this chapter and remains in such a position for at least 31 consecutive days;

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

(C) is not reemployed in a position in which the participant is subject to this chapter at the time the participant files the application;

(D) will not become eligible to receive an annuity under this subchapter within 31 days after filing the application; and

(E) has notified any spouse or former spouse the participant may have of the application for payment in accordance with regulations prescribed by the Secretary of State.

Such regulations may provide for waiver of subparagraph (E) under circumstances described in section 806(b)(1)(D).

(2) Such lump sum credit shall be paid to the participant and to any former spouse of the participant in accordance with subsection (i).

* * * * *
SEC. 826. COST-OF-LIVING ADJUSTMENTS OF ANNUITIES.—(a) * * *

* * * * *
(c) Eligibility for an annuity increase under this section shall be governed by the commencing date of each annuity payable from the Fund as of the effective date of an increase except as follows:

[(1) The first increase (if any) made under this section to an annuity which is payable from the Fund under this subchapter to a participant or to the surviving spouse of a deceased participant who dies in service shall be equal to the product (adjusted to the nearest 1/10 of 1 percent) of—

[(a) 1/6 of the applicable percent change determined under Subsection (b) of this Section, multiplied by

[(b) the number of full months for which the annuity was payable from the Fund under this subchapter before the effective date of the increase (counting any portion of a month as a full month).

In the administration of this paragraph, the number of days of unused sick leave to the credit of a participant or deceased participant on the effective date of the then last preceding general annuity increase under this section shall be deemed to be equal to the number of days of unused sick leave to his or her credit on the day of separation from the Service.】

(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 of former spouse of a deceased participant who died in service or a deceased annuitant whose annuity was not increased under this section, shall be equal to the product (adjusted to the nearest $\frac{1}{10}$ of 1 percent) of—*

(A) $\frac{1}{12}$ 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.

* * * * *

SEC. 830. QUALIFIED FORMER WIVES AND HUSBANDS.—(a) Notwithstanding section 4(h) of the Civil Service Retirement Spouse Equity Act of 1984, section 827 of this Act shall apply with respect to section 8339(j), section 8341(e), and section 8341(h) of title 5, United States Code, and section 4 (except for subsection (b)) of the Civil Service Retirement Spouse Equity Act of 1984 to the extent that those sections apply to a qualified former wife or husband. For the purposes of this section any reference in the Civil Service Retirement Spouse Equity Act of 1984 to the effective date of that Act shall be deemed to be a reference to the effective date of this section.

(b)(1) Payments pursuant to this section which would otherwise be made to a participant or former participant based upon his service shall be paid (in whole or in part) by the Secretary of State to another person if and to the extent expressly provided for in the terms of any court order or spousal agreement. Any payment under this paragraph to a person bars recovery by any other person.

(2) Paragraph (1) shall only apply to payments made by the Secretary of State under this chapter after the date of receipt by the Secretary of State of written notice of such court order or spousal agreement and such additional information and documentation as the Secretary of State may prescribe.

(c) For the purposes of this section, the term "qualified former wife or husband" means a former wife or husband of an individual if—

(1) such individual performed at least 18 months of civilian service creditable under this chapter; and

(2) the former wife or husband was married to such individual for at least 9 months but not more than 10 years.

(d) Regulations issued pursuant to section 827 to implement this section shall be submitted to the Committee on Post Office and Civil

Service and the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate. Such regulations shall not take effect until 60 days after the date on which such regulations are submitted to the Congress.

SEC. 831. RETIREMENT BENEFITS FOR CERTAIN FORMER SPOUSES.

(a) Any individual who was a former spouse of a participant or former participant on February 14, 1981, shall be entitled, to the extent of available appropriations, and except to the extent such former spouse is disqualified under subsection (b), to benefits—

(1) if married to the participant throughout the creditable service of the participant, equal to 50 percent of the benefits of the participant; or

(2) if not married to the participant throughout such creditable service, equal to that former spouse's pro rata share of 50 percent of such benefits.

(b) A former spouse shall not be entitled to benefits under this section if—

(1) the former spouse remarries before age 55; or

(2) the former spouse was not married to the participant at least 10 years during service of the participant which is creditable under this chapter with at least 5 years occurring while the participant was a member of the Foreign Service.

(c)(1) The entitlement of a former spouse to benefits under this section—

(A) shall commence on the later of—

(i) the day the participant upon whose service the benefits are based becomes entitled to benefits under this chapter; or

(ii) the first day of the month in which the divorce or annulment involved becomes final; and

(B) shall terminate on the earlier of—

(i) the last day of the month before the former spouse dies or remarries before 55 years of age; or

(ii) the date the benefits of the participant terminates.

(2) Notwithstanding paragraph (1), in the case of any former spouse of a disability annuitant—

(A) the benefits of the former spouse shall commence on the date the participant would qualify on the basis of his or her creditable service for benefits under this chapter (other than a disability annuity) or the date the disability annuity begins, whichever is later, and

(B) the amount of benefits of the former spouse shall be calculated on the basis of benefits for which the participant would otherwise so qualify.

(3) Benefits under this section shall be treated the same as an annuity under section 814(a)(?) for purposes of section 806(h) or any comparable provision of law.

(4)(A) Benefits under this section shall not be payable unless appropriate written application is provided to the Secretary, complete with any supporting documentation which the Secretary may by regulation require, within 30 months after the effective date of this section. The Secretary may waive the 30-month application requirement under this subparagraph in any case in which the Secretary determines that the circumstances so warrant.

(B) Upon approval of an application provided under subparagraph (A), the appropriate benefits shall be payable to the former spouse with respect to all periods before such approval during which the former spouse was entitled to such benefits under this section, but in no event shall benefits be payable under this section with respect to any period before the effective date of this section.

(d) For the purposes of this section, the term "benefits" means—

(1) with respect to a participant or former participant subject to this subchapter, the annuity of the participant or former participant; and

(2) with respect to a participant or former participant subject to subchapter II, the benefits of the participant or former participant under that subchapter.

(e) Nothing in this section shall be construed to impair, reduce, or otherwise affect the annuity or the entitlement to an annuity of a participant or former participant under this chapter.

SEC. 832. SURVIVOR BENEFITS FOR CERTAIN FORMER SPOUSES.

(a) Any individual who was a former spouse of a participant or former participant on February 14, 1981, shall be entitled, to the extent of available appropriations, and except to the extent such former spouse is disqualified under subsection (b), to a survivor annuity equal to 55 percent of the greater of—

(1) the full amount of the participant's or former participant's annuity, as computed under this chapter; or

(2) the full amount of what such annuity as so computed would be if the participant or former participant had not withdrawn a lump-sum portion of contributions made with respect to such annuity.

(b) If an election has been made with respect to such former spouse under section 2109 or 806(f), then the survivor annuity under subsection (a) of such former spouse shall be equal to the full amount of the participant's or former participant's annuity referred to in subsection (a) less the amount of such election.

(c) A former spouse shall not be entitled to a survivor annuity under this section if—

(1) the former spouse remarries before age 55; or

(2) the former spouse was not married to the participant at least 10 years during service of the participant which is creditable under this chapter with at least 5 years occurring while the participant was a member of the Foreign Service.

(d)(1) The entitlement of a former spouse to a survivor annuity under this section—

(A) shall commence—

(i) in the case of a former spouse of a participant or former participant who is deceased as of the effective date of this section, beginning on such date; and

(ii) in the case of any other former spouse, beginning on the later of—

(I) the date that the participant or former participant to whom the former spouse was married dies; or

(II) the effective date of this section; and

(B) shall terminate on the last day of the month before the former spouse's death or remarriage before attaining the age 55.

(2)(A) A survivor annuity under this section shall not be payable unless appropriate written application is provided to the Secretary, complete with any supporting documentation which the Secretary may by regulation require, within 30 months after the effective date of this section. The Secretary may waive the 30-month application requirement under this subparagraph in any case in which the Secretary determines that the circumstances so warrant.

(B) Upon approval of an application provided under subparagraph (A), the appropriate survivor annuity shall be payable to the former spouse with respect to all periods before such approval during which the former spouse was entitled to such annuity under this section, but in no event shall a survivor annuity be payable under this section with respect to any period before the effective date of this section.

(e) The Secretary shall—

(1) as soon as possible, but not later than 60 days after the effective date of this section, issue such regulations as may be necessary to carry out this section; and

(2) to the extent practicable, and as soon as possible, inform each individual who was a former spouse of a participant or former participant on February 14, 1981, of any rights which such individual may have under this section.

(f) Nothing in this section shall be construed to impair, reduce, or otherwise affect the annuity or the entitlement to an annuity of a participant or former participant under this chapter.

SEC. 833. HEALTH BENEFITS FOR CERTAIN FORMER SPOUSES.

(a) Except as provided in subsection (c)(1), any individual—

(1) formerly married to an employee or former employee of the Foreign Service, whose marriage was dissolved by divorce or annulment before May 7, 1985;

(2) who, at any time during the 18-month period before the divorce or annulment became final, was covered under a health benefits plan as a member of the family of such employee or former employee; and

(3) who was married to such employee for not less than 10 years during periods of government service by such employee, is eligible for coverage under a health benefits plan in accordance with the provisions of this section.

(b)(1) Any individual eligible for coverage under subsection (a) may enroll in a health benefits plan for self alone or for self and family if, before the expiration of the 6-month period beginning on the effective date of this section, and in accordance with such procedures as the Director of the Office of Personnel Management shall by regulation prescribe, such individual—

(A) files an election for such enrollment; and

(B) arranges to pay currently into the Employees Health Benefits Fund under section 8909 of title 5, United States Code, an amount equal to the sum of the employee and agency contributions payable in the case of an employee enrolled under chapter 89 of such title in the same health benefits plan and with the same level of benefits.

(2) The Secretary shall, as soon as possible, take all steps practicable—

(A) to determine the identity and current address of each former spouse eligible for coverage under subsection (a); and
(B) to notify each such former spouse of that individual's rights under this section.

(3) The Secretary shall waive the 6-month limitation set forth in paragraph (1) in any case in which the Secretary determines that the circumstances so warrant.

(c)(1) Any former spouse who remarries before age 55 is not eligible to make an election under subsection (b)(1).

(2) Any former spouse enrolled in a health benefits plan pursuant to an election under subsection (b)(1) may continue the enrollment under the conditions of eligibility which the Director of the Office of Personnel Management shall by regulation prescribe, except that any former spouse who remarries before age 55 shall not be eligible for continued enrollment under this section after the end of the 31-day period beginning on the date of remarriage.

(d) No individual may be covered by a health benefits plan under this section during any period in which such individual is enrolled in a health benefits plan under any other authority, nor may any individual be covered under more than one enrollment under this section.

(e) For purposes of this section the term "health benefits plan" means an approved health health benefits plan under chapter 89 of title 5, United States Code.

SUBCHAPTER II— FOREIGN SERVICE PENSION SYSTEM

* * * * *

SEC. 852. DEFINITIONS.—As used in this subchapter, unless otherwise specified—

(1) * * *

* * * * *

(3) the term "lump-sum credit" means the unrefunded amount consisting of—

(A) retirement deductions made from the basic pay of a participant under section 856 of this chapter (or under section 204 of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983);

(B) amounts deposited by a participant under section 854 to obtain credit under this System for prior civilian or military service; and

(C) interest on the deductions and deposits which, for any calendar year, shall be equal to the overall average yield to the Fund during the preceding fiscal year from all obligations purchased by the Secretary of the Treasury during such fiscal year under section 819, as determined by the Secretary of the Treasury (compounded annually); but does not include interest—

(i) if the service covered thereby aggregates 1 year or less; or

(ii) for a fractional part of a month in the total service;

[3] (4) the term "normal cost" means the entry-age normal cost of the provisions of the System which relate to the fund,

computed by the Secretary of State in accordance with generally accepted actuarial practice and standards (using dynamic assumptions) and expressed as a level percentage of aggregate basic pay;

[4] (5) the term "participant" means a person who participates in the Foreign Service Pension System;

[5] (6) the term "pro rata share" in the case of any former spouse of any participant or former participant means the percentage which is equal to the percentage that (A) the number or years during which the former spouse was married to the participant during the service of the participant which is creditable under this chapter is of (B) the total number of years of such service, disregarding extra credit under section 817;

[6] (7) the term "supplemental liability" means the estimated excess of—

(A) the actuarial present value of all future benefits payable from the Fund under this subchapter based on the service of participants or former participants, over

(B) the sum of—

(i) the actuarial present value of (I) deductions to be withheld from the future basic pay of participants pursuant to section 856 and (II) contributions for past civilian and military service;

(ii) the actuarial present value of future contributions to be made pursuant to section 857;

(iii) the Fund balance as of the date the supplemental liability is determined, to the extent that such balance is attributable—

(I) to the System, or

(II) to the contributions made under the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983 (5 U.S.C. 8331 note); and

(iv) any other appropriate amount, as determined by the Secretary of State in accordance with generally accepted actuarial practices and principles; and

[7] (8) the term "System" means the Foreign Service Pension System.

* * * * *
SEC. 854. CREDITABLE SERVICE.—(a) * * *

* * * * *
(e) A participant who, while on approved leave without pay, serves as a full-time paid employee of a Member or office of the Congress shall continue to make contributions to the Fund based upon the Foreign Service salary rate that would be in effect if the participant were in a pay status. The participant's employing Member or office in the Congress shall make a **[matching]** contribution (from the appropriation or fund which is used for payment of the salary of the participant) *determined under section 857(a)* to the Treasury of the United States to the credit of the Fund. All periods of service for which full contributions to the Fund are made under this subsection shall be counted as creditable service for purposes of this subchapter and shall not, unless all retirement credit

is transferred, be counted as creditable service under any other Government retirement system.

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CHAPTER 9—TRAVEL, LEAVE, AND OTHER BENEFITS

* * * * *

SEC. 904. HEALTH CARE.—(a) * * *

(b) Any such health care program may include (1) medical examinations for applicants for employment, (2) medical examinations and inoculations or vaccinations, and other preventive and remedial care and services as necessary, for members of the Service and employees of the Department who are citizens of the United States and for members of their families, and (3) examinations necessary in order to establish disability or incapacity of participants in the Foreign Service Retirement and Disability System or *Foreign Service Pension System* or to provide survivor benefits under chapter 8.

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