

DEPARTMENT OF STATE SPECIAL AGENTS RETIREMENT
ACT OF 1998

SEPTEMBER 28, 1998.—Committed to the Committee of the Whole House on the
State of the Union and ordered to be printed

Mr. GILMAN, from the Committee on International Relations,
submitted the following

REPORT

[To accompany H.R. 633]

[Including cost estimate of the Congressional Budget Office]

The Committee on International Relations, to whom was referred the bill (H.R. 633) to amend the Foreign Service Act of 1980 to provide that the annuities of certain special agents and security personnel of the Department of State be computed in the same way as applies generally with respect to Federal law enforcement officers, 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:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Department of State Special Agents Retirement Act of 1998”.

SEC. 2. AMENDMENTS RELATING TO THE FOREIGN SERVICE RETIREMENT AND DISABILITY SYSTEM.

(a) **DEFINITION OF A SPECIAL AGENT.**—

(1) **IN GENERAL.**—Section 804 of the Foreign Service Act of 1980 (22 U.S.C. 4044) is amended—

(A) by striking “and” at the end of paragraph (13);

(B) by striking the period at the end of paragraph (14) and inserting “; and”; and

(C) by adding at the end the following:

“(15) ‘special agent’ means an employee of the Department of State with a primary skill code of 2501—

“(A) 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 persons pursuant to section 2709(a)(3) of title 22, United States Code, against threats to personal safety; and
 “(ii) are sufficiently rigorous that employment opportunities should be limited to young and physically vigorous individuals, as determined by the Secretary of State pursuant to section 4823 of title 22, United States Code;

“(B) performing duties described in subparagraph (A) before, on, or after the date of the enactment of this paragraph; or

“(C) transferred directly to a position which is supervisory or administrative in nature after performing duties described in subparagraph (A) for at least 3 years.”

(2) CONFORMING AMENDMENT.—Section 852 of such Act (22 U.S.C. 4071a) is amended—

(A) by striking “and” at the end of paragraph (7);

(B) by striking the period at the end of paragraph (8) and inserting “; and”; and

(C) by adding at the end the following:

“(9) the term ‘special agent’ has the same meaning given in section 804(15).”

(b) CONTRIBUTIONS.—

(1) IN GENERAL.—Section 805(a) of such Act (22 U.S.C. 4045(a)) is amended by adding at the end the following:

“(3) For service as a special agent, paragraph (1) shall be applied by substituting for ‘7 percent’ the percentage that applies to law enforcement officers under section 8334(a)(1) of title 5, United States Code.”

(2) CONFORMING AMENDMENT.—Section 805(a)(1) (22 U.S.C. 4045(a)(1)) of such Act is amended by striking “Except as provided in subsection (h),” and inserting “Except as otherwise provided in this section.”

(c) SPECIAL CONTRIBUTION FOR PRIOR NONDEPOSIT SERVICE.—Section 805(d) of such Act (22 U.S.C. 4045(d)) is amended by adding at the end the following:

“(6) Subject to paragraph (4) and subsection (h), for purposes of applying this subsection with respect to prior service as a special agent, the percentages of basic pay set forth in section 8334(c) of title 5, United States Code, with respect to a law enforcement officer, shall apply instead of the percentages set forth in paragraph (1).”

(d) COMPUTATION OF ANNUITIES.—

(1) IN GENERAL.—Section 806(a) of such Act (22 U.S.C. 4046(a)) is amended—

(A) by redesignating paragraph (6) as paragraph (7); and

(B) by inserting after paragraph (5) the following:

“(6)(A) The annuity of a special agent under this subchapter shall be computed under paragraph (1) except that, in the case of a special agent described in subparagraph (B), paragraph (1) shall be applied by substituting for ‘2 percent’—

“(i) the percentage under subparagraph (A) of section 8339(d)(1) of title 5, United States Code, for so much of the participant’s total service as is specified thereunder; and

“(ii) the percentage under subparagraph (B) of section 8339(d)(1) of title 5, United States Code, for so much of the participant’s total service as is specified thereunder.

“(B) A special agent described in this subparagraph is any such agent or former agent who—

“(i)(I) retires voluntarily or involuntarily under section 607, 608, 611, 811, 812, or 813, under conditions authorizing an immediate annuity, other than for cause on charges of misconduct or delinquency, or retires for disability under section 808; and

“(II) at the time of retirement—

“(aa) if voluntary, is at least 50 years of age and has completed at least 20 years of service as a special agent; or

“(bb) if involuntary or disability, has completed at least 20 years of service as a special agent; or

“(ii) dies in Service after completing at least 20 years of service as a special agent, when an annuity is payable under section 809.

“(C) For purposes of subparagraph (B), included with the years of service performed by an individual as a special agent shall be any service performed by such individual as a law enforcement officer (within the meaning of section 8331(20) or section 8401(17) of title 5, United States Code), or a member of the Capitol Police.”

(2) SPECIAL RULE FOR THOSE WHO EXERCISED ELECTION RIGHTS UNDER SECTION 860.—Section 806(a) of such Act (22 U.S.C. 4046(a)), as amended by paragraph (1), is further amended—

(A) by redesignating paragraph (7) (as so redesignated by paragraph (1)(A)) as paragraph (8); and

(B) by inserting after paragraph (6) (as added by paragraph (1)) the following:

“(7) In the case of a special agent who becomes or became subject to subchapter II pursuant to an election under section 860—

“(A) for purposes of paragraph (6)(B), any service performed by the individual as a special agent (whether under this subchapter or under subchapter II) shall be creditable; and

“(B) if the individual satisfies paragraph (6)(B), the portion of such individual’s annuity which is attributable to service preceding the effective date of such election shall be computed in conformance with paragraph (6).”.

(3) TECHNICAL AND CONFORMING AMENDMENTS.—

(A) Paragraph (8) of section 806(a) of such Act (22 U.S.C. 4046(a)), as so redesignated by paragraph (2)(A), is amended by striking “and (4)” and inserting “(4), and (6)”.

(B) Paragraphs (1) and (3) of section 855(b) of such Act (22 U.S.C. 4071d(b)) are each amended by inserting “611,” after “608,”.

SEC. 3. MANDATORY SEPARATION OF SPECIAL AGENTS.

The first sentence of section 812(a)(2) of the Foreign Service Act of 1980 (22 U.S.C. 4052(a)(2)) is amended to read as follows: “Notwithstanding paragraph (1)—

“(A) an individual described in section 4(a)(2)(B) of the Department of State Special Agents Retirement Act of 1998 who is otherwise eligible for immediate retirement under this chapter, or

“(B) a Foreign Service criminal investigator/inspector of the Office of Inspector General of the Agency for International Development who would have been eligible for retirement pursuant to either section 8336(c) or 8412(d) of title 5, United States Code, as applicable, had the employee remained in civil service, shall be separated from the Service on the last day of the month in which such individual under subparagraph (A) or such Foreign Service criminal investigator/inspector under subparagraph (B) attains 57 years of age or completes 20 years of service if then over that age.”.

SEC. 4. EFFECTIVE DATE; APPLICABILITY.

(a) IN GENERAL.—Except as provided in subsection (b), this Act and the amendments made by this Act—

(1) shall take effect on the date of the enactment of this Act; and

(2) shall apply with respect to—

(A) any individual first appointed on or after that date as a special agent; and

(B) any individual making an election under subsection (b), subject to the provisions of such subsection.

(b) ELECTION FOR CURRENT PARTICIPANTS.—

(1) ELIGIBILITY.—An election under this subsection may be made by any currently employed participant under chapter 8 of the Foreign Service Act of 1980 who is serving or has served as a special agent, or by a survivor of a special agent who was eligible to make an election under this section.

(2) EFFECT OF AN ELECTION.—

(A) IN GENERAL.—If an individual makes an election under this subsection, the amendments made by this Act shall become applicable with respect to such individual, subject to subparagraph (B).

(B) TREATMENT OF PRIOR SERVICE.—

(i) SPECIAL CONTRIBUTION.—An individual may, after making the election under this subsection, make a special contribution up to the full amount of the difference between the contributions actually deducted from pay for prior service and the deductions that would have been required if the amendments made by this Act had then been in effect. Any special contributions under this clause shall be computed under regulations based on section 805(d) of the Foreign Service Act of 1980 (as amended by section 2), including provisions relating to the computation of interest.

(ii) ACTUARIAL REDUCTION.—

(I) RULE IF THE SPECIAL CONTRIBUTION IS PAID.—If the full amount of the special contribution under clause (i) is paid, no reduction under this clause shall apply.

(II) RULE IF LESS THAN THE ENTIRE AMOUNT IS PAID.—If no special contribution under clause (i) is paid, or if less than the entire amount of such special contribution is paid, the recomputed annuity shall be reduced by an amount sufficient to make up the actuarial present value of the shortfall.

(c) REGULATIONS AND NOTICE.—Not later than 6 months after the date of the enactment of this Act, the Secretary of State—

(1) shall promulgate such regulations as may be necessary to carry out this Act; and

(2) shall take measures reasonably designed to provide notice to participants as to any rights they might have under this Act.

(d) ELECTION DEADLINE.—An election under subsection (b) must be made not later than 90 days after the date on which the relevant notice under subsection (c)(2) is provided.

(e) DEFINITION.—For purposes of this section, the term “special agent” has the meaning given such term under section 804(15) of the Foreign Service Act of 1980 (22 U.S.C. 4044(15)), as amended by section 2(a).

BACKGROUND AND PURPOSE

H.R. 633 amends the Foreign Service Act of 1980 to provide that the annuities of Diplomatic Security (DS) special agents of the Department of State, who are participating in (or have participated in) the “old” Foreign Service Retirement and Disability System, “be computed in the same way as applies generally to Federal law enforcement officers.”¹ In general, other Federal law enforcement officers who are covered under the Civil Service Retirement System (the “old” civil service system) contribute an additional one-half percent of their basic salary to their retirement fund and are eligible to receive an additional one-half percent per year served (for up to 20 years) or 25% increase in their annuity computation for the first 20 years as law enforcement officers, as compared to other employees.

Other law enforcement officers employed by the United States are, in general, provided with this special retirement benefit based upon a regulatory determination by their employing agency that they meet the definition of a “law enforcement officer” set out in 5 U.S.C. 8331 or 5 U.S.C. 8401. Retroactive benefits are provided to employees working at the time of the determination in a manner similar to that provided for in this bill. Retroactive benefits date back to the time their duties began to fit the definition of a law enforcement officer.

This legislation will affect a relatively small number of people—around 200 DS agents. The State Department believes it will resolve equity concerns in the Bureau of Diplomatic Security.

An additional purpose of this bill is to ensure that DS special agents who have prior service in other federal law enforcement jobs receive “law enforcement” credit for that service. A number of DS special agents have transferred to the State Department from other Federal law enforcement agencies. When employed at these other agencies they contributed to the Civil Service retirement system at the higher “law enforcement” rate. This bill will permit them to be accorded benefits commensurate to their contributions for that

¹ Under the “new” foreign service system (the Foreign Service Pension System), all foreign service employees, whether or not they are law enforcement officers, have their retirement benefits computed in general on the same basis as “new system” (or Federal Employee Retirement System) law enforcement officers in the civil service.

service when they retire under the Foreign Service Retirement and Disability System.

Finally, the bill applies to “old system” State Department special agents the mandatory retirement provisions applicable to “old system” civil service law enforcement officers. Specifically, it conforms to the precedent established in the case of AID Inspector General criminal investigators who became foreign service employees and had law enforcement benefits, and mandatory retirement, extended to them. This change occurred in 1990 (see section 587(b) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1991 (Public Law 101–513, 104 Stat. 2056)).

COMMITTEE ACTION

MARKUP OF THE BILL

The bill was introduced on February 6, 1997 and referred to the Committee on International Relations, and in addition to the Committee on Government Reform and Oversight, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned. On July 24, it was marked up by the Subcommittee on International Operations and Human Rights and forwarded, amended, to the full Committee. On August 6, 1998, the bill was considered and further amended. It was then ordered reported, as amended, by voice vote, with the recommendation that the bill, as amended, do pass.

ROLLCALL VOTES ON AMENDMENTS

Clause (2)(1)(2)(B) of rule XI of the Rules of the House of Representatives requires the record of committee rollcall votes on final passage or amendments during the committee’s consideration of H.R. 4283. No such rollcall votes were taken.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT FINDINGS

No findings or recommendations of the Committee on Government Reform and Oversight were received as referred to in clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO THE LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or

accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

CONSTITUTIONAL AUTHORITY STATEMENT

In compliance with clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee cites the following specific powers granted to the Congress in the Constitution as authority for enactment of H.R. 633 as reported by the Committee: Article I, section 8, clause 1 (relating to providing for the common defense and general welfare of the United States); Article I, section 8, clause 3 (relating to the regulation of commerce with foreign nations); and Article I, section 8, clause 18 (relating to making all laws necessary and proper for carrying into execution powers vested by the Constitution in the government of the United States).

NEW BUDGET AUTHORITY AND TAX EXPENDITURES, CONGRESSIONAL BUDGET OFFICE COST ESTIMATE, AND FEDERAL MANDATES STATEMENTS

The Committee adopts the cost estimate of the Congressional Budget Office as its submission of any new required information on new budget authority, new spending authority, new credit authority, or an increase or decrease in the national debt, which is set out below. It adopts the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act, also set out below.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 2, 1998.

Hon. BENJAMIN A. GILMAN,
*Chairman, Committee on International Relations,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 633, the Department of State Special Agents Retirement Act of 1998.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Eric Rollins.

Sincerely,

JUNE E. O'NEILL, *Director.*

Enclosure.

H.R. 633.—Department of State Special Agents Retirement Act of 1998

Summary: H.R. 633 would provide higher retirement benefits for employees in the Foreign Service who are covered by the Foreign Service Retirement and Disability System (FSRDS) and perform duties of a law enforcement nature. Retirement annuities for these employees would be calculated in the same manner as benefits for law enforcement personnel who are covered by the Civil Service Retirement System (CSRS). The bill would also set a mandatory retirement age of 57 for these employees and criminal investigators working in the Agency for International Development (AID).

CBO estimates that this bill would increase direct spending by \$4 million over the 1999–2003 period due to higher FSRDS benefits. The bill would also increase discretionary spending and revenues by insignificant amounts. Because the bill would affect direct spending, pay-as-you-go procedures would apply.

H.R. 633 does not contain any intergovernmental or private-sector mandates as defined by the Unfunded Mandates Reform Act of 1995 (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 633 is shown in the following table.

TABLE 1.—ESTIMATED BUDGET EFFECTS OF H.R. 633

	By fiscal years, in millions of dollars—				
	1999	2000	2001	2002	2003
SPENDING SUBJECT TO APPROPRIATION					
Agency retirement contributions	(¹)	(¹)	(¹)	(¹)	(¹)
Employer Social Security taxes	(¹)	(¹)	(¹)	(¹)	(¹)
Total discretionary spending	(¹)	(¹)	(¹)	(¹)	(¹)
CHANGES IN DIRECT SPENDING					
On-Budget:					
FSRDS retirement benefits	(¹)	1	1	1	1
Agency retirement contributions (receipts)	(¹)	(¹)	(¹)	(¹)	(¹)
Subtotal	(¹)	1	1	1	1
Off-Budget:					
Employer Social Security taxes (receipts)	(¹)	(¹)	(¹)	(¹)	(¹)
Total direct spending	(¹)	(¹)	1	1	1
CHANGES IN REVENUES					
On-Budget:					
Employee retirement contributions	(¹)	(¹)	(¹)	(¹)	(¹)
Off-Budget:					
Employee Social Security taxes	(¹)	(¹)	(¹)	(¹)	(¹)
TOTAL COST					
Direct spending and revenues	(¹)	(¹)	(¹)	(¹)	(¹)
All spending and revenues	(¹)	1	1	1	1

¹ Less than \$500,000.

This estimate assumes that H.R. 633 is enacted on October 1, 1998.

The mandatory costs of this legislation fall within budget function 600, Income Security.

Basis of estimate: Foreign Service employees who were hired before 1987 are generally covered by the Foreign Service Retirement and Disability System. Under FSRDS, employees contribute 7 percent of their basic pay towards retirement, with the employing agency contributing an equal amount. Employees may retire voluntarily once they reach the age of 50 and have completed 20 years of service; they face mandatory retirement when they reach age 65 or spend too much time in their class without being promoted. Retirement benefits under FSRDS equal 2 percent of an employee's average pay for each year of service. Most employees hired after 1987 are covered by the Foreign Service Pension System (FSPS).

The bill would allow certain employees (termed “special agents”) who are covered by FSRDS and perform duties of a law enforcement nature to have their annuities calculated using a more generous formula. Special agents would be able to use a 2.5 percent rate for their first 20 years of service instead of the current rate of 2 percent. This would match the formula used for law enforcement personnel who are covered by CSRS. In order to be eligible, employees would have to complete 20 years of service as a special agent and be at least 50 years old. Employees who worked as special agents while in FSRDS and have since elected to join FSPS would also be eligible for the higher rate, but the rate would apply only to service as an agent under FSRDS. The bill would also set a mandatory retirement age of 57 for special agents and criminal investigators in AID.

Discretionary spending

Agency Retirement Contributions. The bill would increase the amount that the State Department contributes towards Foreign Service retirement for two reasons. First, the bill would increase the amount that special agents in FSRDS contribute towards their retirement from 7.0 percent to 7.5 percent. This would match the rate paid by law enforcement personnel in the similar CSRS program. Under FSRDS, the State Department makes retirement contributions at the same rate paid by employees. As a result, contributions paid by the Department would also increase.

Second, the bill would induce some special agents to retire earlier than they would otherwise (as discussed below). CBO assumed that the total number of special agents would remain constant, and that retiring agents would be replaced by new employees covered by FSPS, which requires agency contributions equal to 18 percent of pay. Overall, agency retirement contributions would rise by about \$100,000 in 1999 and \$120,000 in 2003.

Employer Social Security Taxes. Unlike employees in FSRDS, the new agents hired under FSPS would be covered by Social Security. As a result, agency payments for Social Security taxes would increase, but by less than \$45,000 annually.

Direct spending

FSRDS Retirement Benefits. H.R. 633’s provisions would affect only special agents who are hired after the bill’s enactment and current agents who elect to be covered by the bill. Current agents electing to be covered would be required to make a deposit into the Foreign Service retirement trust fund equal to the additional 0.5 percent in retirement contributions they would have paid under law enforcement rates during their career, plus interest. Agents who did not make this deposit would be required to take an actuarially equivalent reduction in their annuity.

According to the State Department, about 200 current employees would qualify as special agents under the bill. CBO assumed that all of them would elect to be covered by the bill’s provisions. The higher 2.5 percent accrual rate would boost annuities for many agents by 15 to 20 percent. This increase would be large enough that CBO assumed that half of the special agents would be induced to retire a year earlier than under current law. Finally, CBO as-

sumed that all of the agents would take an actuarial reduction in their annuity (which would amount to 1 to 2 percent) rather than making the required deposit (which for many agents would be about \$10,000). By taking the reduction, agents would be able to receive higher benefits without having to make a substantial deposit to get them. CBO estimates that spending on FSRDS retirement benefits would increase by about \$270,000 in 1999, rising to \$960,000 in 2003.

The mandatory retirement age included in the bill would only affect a handful of employees. According to the State Department, almost all Foreign Service employees retire before age 57 either voluntarily or under the time-in-service requirements.

Agency Retirement Contributions. The additional agency contributions discussed above would also increase receipts by the Foreign Service trust fund by about \$70,000 in 1999 and \$45,000 in 2003. CBO scores only the increase in receipts due to higher contributions for FSRDS employees. The additional receipts for new special agents hired under FSPS are associated with higher spending on FSPS benefits that lie outside the 5-year budget window. CBO's longstanding practice in these situations is not to include these receipts under direct spending since they would present an inaccurate picture of the bill's overall impact on direct spending.

Employer Social Security Taxes. The additional agency payments of Social Security taxes, discussed above, would increase receipts by the Social Security trust funds. These receipts, which are off-budget, would increase by less than \$45,000 annually.

Revenues

Receipts from employee retirement contributions, which are on-budget, would rise slightly since the bill would raise the rate paid by special agents a half percentage point to 7.5 percent. The accelerated hiring of special agents covered by FSPS would also increase receipts from employee Social Security taxes, which are off-budget. In both cases, the amount of the annual increase would be less than \$45,000.

Pay-as-you-go considerations: Section 252 of the Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. The net changes in outlays and governmental receipts that are subject to pay-as-you-go procedures are shown below. For the purposes of enforcing pay-as-you-go procedures, only the effects in the current year, the budget year, and the succeeding four years are counted.

TABLE 2.—ESTIMATED PAY-AS-YOU-GO EFFECTS OF H.R. 633

	By fiscal years, in millions of dollars—										
	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Changes in outlays	0	0	1	1	1	1	1	1	1	1	1
Changes in receipts	0	0	0	0	0	0	0	0	0	0	0

Intergovernmental and private-sector impact: H.R. 633 does not contain any intergovernmental or private-sector mandates as defined by the Unfunded Mandates Reform Act of 1995 (UMRA) and would impose no costs on state, local, or tribal governments.

Estimate prepared by: Federal Costs: Eric Rollins. Impact on State, Local and Tribal Governments: Pepper Santalucia. Impact on the Private Sector: Lesley Frymier.

Estimate approved by: Paul N. Van de Water, Assistant Director for Budget Analysis.

SECTION-BY-SECTION ANALYSIS

Section 1. Short Title. This section provides that this Act may be cited as the “Department of State Special Agents Retirement Act of 1998”.

Section 2. Amendments Relating to the Foreign Service Retirement and Disability System. Section 2 makes amendments to the Foreign Service Act relating to the Foreign Service Retirement and Disability System. It provides that certain special agents of the Department of State receive the same kind of law enforcement benefits that generally are available to other Federal law enforcement officers and must make increased contributions for such benefits.

Section 2(a) amends the Foreign Service Act of 1980 to define “special agent,” for Foreign Service retirement and disability provisions, as an employee of the Department of State with a primary skill code of 2501 performing certain investigative or protective duties or having been transferred directly to a position which is supervisory or administrative in nature after performing such duties for at least three years.

Section 2(b) sets forth the percentage rate applicable to special agents for both employee and agency contributions to the Foreign Service Retirement and Disability Fund. The percentage rate is that which applies to law enforcement officers under the Civil Service Retirement and Disability System, 5 U.S.C. 8334(a)(1).

Section 2(c) provides that special agents, when making a special contribution for prior service as a special agent, shall be subject to the percentages for law enforcement officers under the Civil Service Retirement and Disability System, 5 U.S.C. 8334(c).

Section 2(d) provides for the computation of annuities of eligible special agents participating in the Foreign Service Retirement and Disability System in the same manner as that for law enforcement officers under the Civil Service Retirement System. It also provides that a special agent, who elected to transfer from the Foreign Service Retirement and Disability System to the Foreign Service Pension System, have the portion of that agent’s annuity attributable to service preceding such an election be computed in the same manner as for law enforcement officers under the Civil Service Retirement and Disability System.

Section 3. Mandatory Separation of Special Agents. Section 3 amends the Foreign Service Act of 1980 to subject special agents who make an election under this Act to the same mandatory retirement provisions that currently apply to law enforcement officers under the Civil Service Retirement System and certain Foreign Service criminal investigators/inspectors of the Office of Inspector General of the Agency for International Development who participate in the Foreign Service Retirement and Disability System.

Section 4. Effective Date; Applicability. Section 4 sets forth the effective dates and applicability of the bill.

Section 4(a) provides that the Act and its amendments take effect upon enactment. The Act only applies to: (1) individuals first appointed on or after the date of enactment as a special agent who will have any portion of their annuity computed under the Foreign Service Retirement and Disability System, and (2) eligible individuals who make an election to become subject to the Act.

Section 4(b) specifies who is eligible to make an election to become subject to the Act. An election may be made by: (1) any current employee covered by one of the Foreign Service retirement systems who is serving or has served as a special agent, or (2) by a survivor of a special agent who was eligible to make an election. An election may not be made by any retired special agent. Special agents who elect to become subject to the Act may make a special contribution to make up the difference between their deducted contributions and the applicable law enforcement rate. If a special contribution is not made or fully made, the special agent's annuity will be subject to an actuarial reduction.

Section 4(c) requires the Secretary of State to promulgate such regulations as may be necessary to carry out this legislation and to take measures reasonably designed to provide notice to individuals who may have rights under its provisions.

Section 4(d) requires that an election under section (4)(b) of the bill must be made not later than 90 days after the date on which the relevant notice under section (4)(c) is provided.

Section 4(e) defines the term "special agent" in the same manner as it is defined in section 2(a).

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):

FOREIGN SERVICE ACT OF 1980

* * * * *

TITLE I—THE FOREIGN SERVICE OF THE UNITED STATES

* * * * *

CHAPTER 8—FOREIGN SERVICE RETIREMENT AND DISABILITY

SUBCHAPTER I—FOREIGN SERVICE RETIREMENT AND DISABILITY SYSTEM

* * * * *

SEC. 804. DEFINITIONS.—As used in this subchapter, unless otherwise specified, the term—

(1) * * *

* * * * *

(13) "surviving spouse" means the surviving wife or husband of a participant or annuitant who was married to the participant or annuitant for at least 9 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]**

(14) “unfunded liability” means the estimated excess of the present value of all benefits payable from the Fund over the sum of—

(A) the present value of deductions to be withheld from the future basic salary of participants and of future agency contributions to be made on their behalf, plus

(B) the present value of Government payments to the Fund under section 821, plus

(C) the Fund balance as of the date the unfunded liability is determined **[.]; and**

(15) “special agent” means an employee of the Department of State with a primary skill code of 2501—

(A) 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 persons pursuant to section 2709(a)(3) of title 22, United States Code, against threats to personal safety; and

(ii) are sufficiently rigorous that employment opportunities should be limited to young and physically vigorous individuals, as determined by the Secretary of State pursuant to section 4823 of title 22, United States Code;

(B) performing duties described in subparagraph (A) before, on, or after the date of the enactment of this paragraph; or

(C) transferred directly to a position which is supervisory or administrative in nature after performing duties described in subparagraph (A) for at least 3 years.

SEC. 805. CONTRIBUTIONS TO THE FUND.—(a)(1) **[Except as provided in subsection (h),]** *Except as otherwise provided in this section*, 7 percent of the basic salary received by each participant shall be deducted from the salary and contributed to the Fund for the payment of annuities, cash benefits, refunds, and allowances. An equal amount shall be contributed by the Department from the appropriations or fund used for payment of the salary of the participant. The Department shall deposit in the Fund the amounts deducted and withheld from basic salary and the amounts contributed by the Department.

* * * * *

(3) *For service as a special agent, paragraph (1) shall be applied by substituting for “7 percent” the percentage that applies to law en-*

forcement officers under section 8334(a)(1) of title 5, United States Code.

* * * * *

(d)(1) * * *

* * * * *

(6) Subject to paragraph (4) and subsection (h), for purposes of applying this subsection with respect to prior service as a special agent, the percentages of basic pay set forth in section 8334(c) of title 5, United States Code, with respect to a law enforcement officer, shall apply instead of the percentages set forth in paragraph (1).

* * * * *

SEC. 806. COMPUTATION OF ANNUITIES.—(a)(1) * * *

* * * * *

(6)(A) The annuity of a special agent under this subchapter shall be computed under paragraph (1) except that, in the case of a special agent described in subparagraph (B), paragraph (1) shall be applied by substituting for “2 percent”—

(i) the percentage under subparagraph (A) of section 8339(d)(1) of title 5, United States Code, for so much of the participant’s total service as is specified thereunder; and

(ii) the percentage under subparagraph (B) of section 8339(d)(1) of title 5, United States Code, for so much of the participant’s total service as is specified thereunder.

(B) A special agent described in this subparagraph is any such agent or former agent who—

(i)(I) retires voluntarily or involuntarily under section 607, 608, 611, 811, 812, or 813, under conditions authorizing an immediate annuity, other than for cause on charges of misconduct or delinquency, or retires for disability under section 808; and

(II) at the time of retirement—

(aa) if voluntary, is at least 50 years of age and has completed at least 20 years of service as a special agent; or

(bb) if involuntary or disability, has completed at least 20 years of service as a special agent; or

(ii) dies in Service after completing at least 20 years of service as a special agent, when an annuity is payable under section 809.

(C) For purposes of subparagraph (B), included with the years of service performed by an individual as a special agent shall be any service performed by such individual as a law enforcement officer (within the meaning of section 8331(20) or section 8401(17) of title 5, United States Code), or a member of the Capitol Police.

(7) In the case of a special agent who becomes or became subject to subchapter II pursuant to an election under section 860—

(A) for purposes of paragraph (6)(B), any service performed by the individual as a special agent (whether under this subchapter or under subchapter II) shall be creditable; and

(B) if the individual satisfies paragraph (6)(B), the portion of such individual’s annuity which is attributable to service preceding the effective date of such election shall be computed in conformance with paragraph (6).

[(6)] (8) For purposes of paragraphs (2), (3), [and (4)] (4), and (6) of this subsection, the term “basic pay” includes pay as provided in accordance with section 412 of this Act or section 5545(c)(2) of title 5, United States Code.

* * * * *

SEC. 812. MANDATORY RETIREMENT.—(a)(1) Except as provided in subsection (b), any participant shall be retired from the Service at the end of the month in which the participant has reached age 65 and has at least 5 years of service credit toward retirement under the System (excluding military and naval service), and shall receive retirement benefits in accordance with section 806.

(2) [Notwithstanding paragraph (1), a Foreign Service criminal investigator/inspector of the Office of Inspector General of the Agency for International Development who would have been eligible for retirement pursuant to either section 8336(c) or 8412(d) of title 5, United States Code, as applicable, had the employee remained in civil service, shall be separated from the Service on the last day of the month in which that Foreign Service criminal investigator/inspector attains 57 years of age or completes 20 years of service if then over that age.] *Notwithstanding paragraph (1)—*

(A) *an individual described in section 4(a)(2)(B) of the Department of State Special Agents Retirement Act of 1998 who is otherwise eligible for immediate retirement under this chapter, or*

(B) *a Foreign Service criminal investigator/inspector of the Office of Inspector General of the Agency for International Development who would have been eligible for retirement pursuant to either section 8336(c) or 8412(d) of title 5, United States Code, as applicable, had the employee remained in civil service, shall be separated from the Service on the last day of the month in which such individual under subparagraph (A) or such Foreign Service criminal investigator/inspector under subparagraph (B) attains 57 years of age or completes 20 years of service if then over that age. If the head of the agency judges that the public interest so requires, that agency head may exempt such an employee from automatic separation under this subsection until that employee attains 60 years of age. The employing office shall notify the employee in writing of the date of separation at least 60 days before that date. Action to separate the employee is not effective without the consent of the employee, until the last day of the month in which the 60-day notice expires.*

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SUBCHAPTER II—FOREIGN SERVICE PENSION SYSTEM

* * * * *

SEC. 852. DEFINITIONS.—As used in this subchapter, unless otherwise specified—

(1) * * *

* * * * *

(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) * * *

* * * * *

(iv) any other appropriate amount, as determined by the Secretary of State in accordance with generally accepted actuarial practices and principles; **[and]**

(8) the term “System” means the Foreign Service Pension System**[.]**; and

(9) the term “special agent” has the same meaning given in section 804(15).

* * * * *

SEC. 855. ENTITLEMENT TO ANNUITY.—(a) * * *

(b)(1) Any participant who retires voluntarily or mandatorily under section 607, 608, 611, 811, 812, or 813 under conditions authorizing an immediate annuity for participants in the Foreign Service Retirement and Disability System and who has completed at least 5 years as a member of the Foreign Service shall be entitled to an immediate annuity computed under paragraph (2).

* * * * *

(3) any participant who is involuntarily retired or separated under section 607, 608, 611, or 610 and who would if a participant under subchapter I, become eligible for a refund of contributions or a deferred annuity under subchapter I, shall, in lieu thereof, receive benefits for an involuntary separation under this subchapter.

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