

(d) Each employee who is placed in a position under paragraph (1), (2), (3), (4), or (6) of subsection (c) shall be paid at a rate of basic pay which is not less than the rate of basic pay to which he would have been entitled if he had not been assigned to duty outside the United States.

(e)(1) Each employee who is displaced from a position by reason of the exercise of a return right under subsection (c)(1) shall be placed, as of the date of such displacement, without reduction in seniority, status, and tenure, in a vacant existing position or new continuing position, for which he is qualified, available in the department concerned, in the same geographical area as, with rights and benefits equal to the rights and benefits of, in a grade equal to the grade of, and at a rate of basic pay not less than the last rate of basic pay which is not less than the last rate of basic pay to which he was entitled while in, the position from which he is displaced.

(2) If the employee cannot be placed in a position under paragraph (1), he shall be reassigned to a position other than the position from which he is displaced, or separated, under the regulations prescribed by the Office of Personnel Management to carry out sections 3501-3503 of title 5.

(f) The President may, upon his determination that such action is necessary in the national interest, declare that, for such period as he may specify, an assignment of an employee to duty in Alaska or Hawaii shall be held and considered, for the purposes of this section, to be an assignment to duty outside the United States.

(g) In this section:

(1) The term "rotation" means the assignment of civilian employees referred to in subsection (b) to duty outside the United States and the return of such employees to duty within the United States.

(2) The term "grade" means, as applicable, a grade of the General Schedule as prescribed in section 5104 of title 5 or a grade or level of the appropriate prevailing rate schedule.

(h) The Secretary of Defense may, under such regulations as he may prescribe, make the provisions of subsections (a) through (g) applicable to civilian employees of the Department of Defense who are residents of Guam, the Virgin Islands, or the Commonwealth of Puerto Rico at the time of their employment by the Department of Defense in the same manner as if the references in such subsections to the United States (when used in a geographical sense) were references to Guam, the Virgin Islands, or the Commonwealth of Puerto Rico, as the case may be.

(Added Pub. L. 86-585, §1, July 5, 1960, 74 Stat. 325; amended Pub. L. 89-718, §15, Nov. 2, 1966, 80 Stat. 1117; Pub. L. 90-83, §3(3), Sept. 11, 1967, 81 Stat. 220; Pub. L. 96-513, title V, §511(61), Dec. 12, 1980, 94 Stat. 2925; Pub. L. 96-600, §1, Dec. 24, 1980, 94 Stat. 3493; Pub. L. 97-295, §1(20)(A), Oct. 12, 1982, 96 Stat. 1290; Pub. L. 98-525, title XIV, §1405(29), Oct. 19, 1984, 98 Stat. 2623; Pub. L. 101-189, div. A, title XVI, §1622(e)(4), Nov. 29, 1989, 103 Stat. 1605.)

AMENDMENTS

1989—Subsec. (g). Pub. L. 101-189, in introductory provisions, substituted "In this section:" for "For the pur-

poses of this section—", in par. (1), inserted "The term" before "rotation" and substituted the period for ";" and", and in par. (2), inserted "The term" before "grade".

1984—Subsec. (b). Pub. L. 98-525, §1405(29)(A)(iii), in provisions following par. (3) struck out "of this subsection" after "paragraphs (2) and (3)".

Subsec. (b)(3). Pub. L. 98-525, §1405(29)(A)(i), (ii), substituted "30" for "thirty" and struck out "of this section" after "subsection (c)".

Subsec. (c). Pub. L. 98-525, §1405(29)(B)(i), in provisions preceding par. (1) substituted "30" for "thirty".

Subsec. (c)(3). Pub. L. 98-525, §1405(29)(B)(ii), (iv), substituted "90 days" for "ninety days" and struck out "of this subsection" after "paragraph (2)".

Subsec. (c)(4). Pub. L. 98-525, §1405(29)(B)(ii), (iv), substituted "90 days" for "ninety days" and struck out "of this subsection" after "paragraph (3)".

Subsec. (c)(5). Pub. L. 98-525, §1405(29)(B)(iii)-(v), substituted "90-day" for "ninety-day", struck out "of this subsection" after "paragraphs (3) and (4)", and struck out "such" before "paragraph (4)".

Subsec. (c)(6). Pub. L. 98-525, §1405(29)(B)(vi), struck out "of this subsection" after "paragraph (1)" and "of this subsection," after "as applicable,".

Subsec. (d). Pub. L. 98-525, §1405(29)(C), struck out "of this section" after "subsection (c)".

Subsec. (e)(1). Pub. L. 98-525, §1405(29)(C), struck out "of this section" after "subsection (c)(1)".

Subsec. (e)(2). Pub. L. 98-525, §1405(29)(D), struck out "of this subsection" after "paragraph (1)".

Subsec. (g)(1). Pub. L. 98-525, §1405(29)(C), struck out "of this section" after "subsection (b)".

1982—Subsecs. (d), (e)(1). Pub. L. 97-295 substituted "pay" for "compensation" wherever appearing.

1980—Subsecs. (c)(5), (e)(2). Pub. L. 96-513 substituted "Office of Personnel Management" for "United States Civil Service Commission".

Subsec. (h). Pub. L. 96-600 added subsec. (h).

1967—Subsec. (g)(2). Pub. L. 90-83 substituted "General Schedule as prescribed in section 5104 of title 5" for "compensation schedule for the General Schedule of the Classification Act of 1949, as amended,".

1966—Pub. L. 89-718 substituted "sections 3501-3503 of title 5" for "section 12 of the Act of June 27, 1944 (5 U.S.C. 861)" wherever appearing.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96-513, set out as a note under section 101 of this title.

EX. ORD. NO. 10895. DUTY IN ALASKA OR HAWAII

Ex. Ord. No. 10895, Nov. 25, 1960, 25 F.R. 12165, provided:

By virtue of the authority vested in me by section 1586(f) of title 10 of the United States Code, and as President of the United States, and having determined that such action is necessary in the national interest, it is ordered as follows:

SECTION 1. Assignment of an employee to duty in the State of Alaska or Hawaii under regulations prescribed pursuant to section 1586 of title 10 of the United States Code shall be held and considered for the purposes of that section, to be an assignment to duty outside the United States.

SEC. 2. The Secretary of Defense shall from time to time, and at least annually, consider the need for continuing this order in effect, and he shall recommend the revocation thereof at such time as he may deem such action advisable.

DWIGHT D. EISENHOWER.

§ 1587. Employees of nonappropriated fund instrumentalities: reprisals

(a) In this section:

(1) The term "nonappropriated fund instrumentality employee" means a civilian em-

ployee who is paid from nonappropriated funds of Army and Air Force Exchange Service, Navy Exchange Service Command, Marine Corps exchanges, or any other instrumentality of the United States under the jurisdiction of the armed forces which is conducted for the comfort, pleasure, contentment, or physical or mental improvement of members of the armed forces. Such term includes a civilian employee of a support organization within the Department of Defense or a military department, such as the Defense Finance and Accounting Service, who is paid from nonappropriated funds on account of the nature of the employee's duties.

(2) The term "civilian employee" has the meaning given the term "employee" by section 2105(a) of title 5.

(3) The term "personnel action", with respect to a nonappropriated fund instrumentality employee (or an applicant for a position as such an employee), means—

- (A) an appointment;
- (B) a promotion;
- (C) a disciplinary or corrective action;
- (D) a detail, transfer, or reassignment;
- (E) a reinstatement, restoration, or reemployment;

(F) a decision concerning pay, benefits, or awards, or concerning education or training if the education or training may reasonably be expected to lead to an appointment, promotion, or other action described in this paragraph; and

(G) any other significant change in duties or responsibilities that is inconsistent with the employee's salary or grade level.

(b) Any civilian employee or member of the armed forces who has authority to take, direct others to take, recommend, or approve any personnel action shall not, with respect to such authority, take or fail to take a personnel action with respect to any nonappropriated fund instrumentality employee (or any applicant for a position as such an employee) as a reprisal for—

(1) a disclosure of information by such an employee or applicant which the employee or applicant reasonably believes evidences—

- (A) a violation of any law, rule, or regulation; or
- (B) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;

if such disclosure is not specifically prohibited by law and if the information is not specifically required by or pursuant to executive order to be kept secret in the interest of national defense or the conduct of foreign affairs; or

(2) a disclosure by such an employee or applicant to any civilian employee or member of the armed forces designated by law or by the Secretary of Defense to receive disclosures described in clause (1), of information which the employee or applicant reasonably believes evidences—

- (A) a violation of any law, rule, or regulation; or
- (B) mismanagement, a gross waste of funds, an abuse of authority, or a substan-

tial and specific danger to public health or safety.

(c) This section does not apply to an employee in a position excluded from the coverage of this section by the President based upon a determination by the President that the exclusion is necessary and warranted by conditions of good administration.

(d) The Secretary of Defense shall be responsible for the prevention of actions prohibited by subsection (b) and for the correction of any such actions that are taken. The authority of the Secretary to correct such actions may not be delegated to the Secretary of a military department or to the Assistant Secretary of Defense for Manpower and Logistics.

(e) The Secretary of Defense, after consultation with the Director of the Office of Personnel Management and the Special Counsel of the Merit Systems Protection Board, shall prescribe regulations to carry out this section. Such regulations shall include provisions to protect the confidentiality of employees and applicants making disclosures described in clauses (1) and (2) of subsection (b) and to permit the reporting of alleged violations of subsection (b) directly to the Inspector General of the Department of Defense.

(Added Pub. L. 98-94, title XII, §1253(a)(1), Sept. 24, 1983, 97 Stat. 699; amended Pub. L. 100-26, §7(k)(2), Apr. 21, 1987, 101 Stat. 284; Pub. L. 104-106, div. A, title IX, §903(f)(3), title X, §1040(a)-(d)(1), Feb. 10, 1996, 110 Stat. 402, 433; Pub. L. 104-201, div. A, title IX, §901, Sept. 23, 1996, 110 Stat. 2617.)

AMENDMENTS

1996—Pub. L. 104-106, §1040(d)(1), inserted "reprisals" after "instrumentalities" in section catchline.

Subsec. (a)(1). Pub. L. 104-106, §1040(c), substituted "Navy Exchange Service Command" for "Navy Resale and Services Support Office".

Pub. L. 104-106, §1040(a), inserted at end "Such term includes a civilian employee of a support organization within the Department of Defense or a military department, such as the Defense Finance and Accounting Service, who is paid from nonappropriated funds on account of the nature of the employee's duties."

Subsec. (d). Pub. L. 104-106, §903(a), (f)(3), which directed amendment of subsec. (d), eff. Jan. 31, 1997, by substituting "official in the Department of Defense with principal responsibility for personnel and readiness" for "Assistant Secretary of Defense for Manpower and Logistics", was repealed by Pub. L. 104-201.

Subsec. (e). Pub. L. 104-106, §1040(b), inserted before period at end of second sentence "and to permit the reporting of alleged violations of subsection (b) directly to the Inspector General of the Department of Defense".

1987—Subsec. (a). Pub. L. 100-26 inserted "The term" after each par. designation and struck out uppercase letter of first word after first quotation marks in each par. and substituted lowercase letter.

EFFECTIVE DATE

Section 1253(b) of Pub. L. 98-94 provided that: "Section 1587 of such title [this section], as added by subsection (a), shall apply with respect to any conduct prohibited by subsection (b) of such section which occurs

after the date of the enactment of this Act [Sept. 24, 1983].”

LIMITATION ON PROVISION OF OVERSEAS LIVING QUARTERS ALLOWANCES FOR NONAPPROPRIATED FUND INSTRUMENTALITY EMPLOYEES

Section 1042 of Pub. L. 104-106 provided that:

“(a) CONFORMING ALLOWANCE TO ALLOWANCES FOR OTHER CIVILIAN EMPLOYEES.—Subject to subsection (b), an overseas living quarters allowance paid from nonappropriated funds and provided to a nonappropriated fund instrumentality employee after the date of the enactment of this Act [Feb. 10, 1996] may not exceed the amount of a quarters allowance provided under subchapter III of chapter 59 of title 5 to a similarly situated civilian employee of the Department of Defense paid from appropriated funds.

“(b) APPLICATION TO CERTAIN CURRENT EMPLOYEES.—In the case of a nonappropriated fund instrumentality employee who, as of the date of the enactment of this Act [Feb. 10, 1996], receives an overseas living quarters allowance under any other authority, subsection (a) shall apply to such employee only after the earlier of—

“(1) September 30, 1997; or

“(2) the date on which the employee otherwise ceases to be eligible for such an allowance under such other authority.

“(c) NONAPPROPRIATED FUND INSTRUMENTALITY EMPLOYEE DEFINED.—For purposes of this section, the term ‘nonappropriated fund instrumentality employee’ has the meaning given such term in section 1587(a)(1) of title 10, United States Code.”

UNIFORM HEALTH BENEFITS PROGRAM FOR EMPLOYEES OF DEPARTMENT OF DEFENSE ASSIGNED TO NONAPPROPRIATED FUND INSTRUMENTALITIES

Pub. L. 103-337, div. A, title III, §349, Oct. 5, 1994, 108 Stat. 2727, as amended by Pub. L. 108-375, div. A, title VI, §652, Oct. 28, 2004, 118 Stat. 1973, provided that:

“(a) IN GENERAL.—Not later than October 1, 1995, the Secretary of Defense shall take such steps as may be necessary to provide a uniform health benefits program for employees of the Department of Defense assigned to a nonappropriated fund instrumentality of the Department.

“(b) PROGRESS REPORT.—Not later than March 15, 1995, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a report on the progress made by the Secretary in implementing subsection (a).

“(c) TREATMENT OF PROGRAM AS FEDERAL HEALTH BENEFIT PROGRAM.—(1) No State tax, fee, other monetary payment, or State health plan requirement, may be imposed, directly or indirectly, on the Nonappropriated Fund Uniform Health Benefits Program of the Department of Defense, or on a carrier or an underwriting or plan administration contractor of the Program, to the same extent as such prohibition applies to the health insurance program authorized by chapter 89 of title 5, United States Code, under section 8909(f) of such title.

“(2) Paragraph (1) shall not be construed to exempt the Nonappropriated Fund Uniform Health Benefits Program of the Department of Defense, or any carrier or underwriting or plan administration contractor of the Program from the imposition, payment, or collection of a tax, fee, or other monetary payment on the net income or profit accruing to, or realized by, the Program or by such carrier or contractor from business conducted under the Program, so long as the tax, fee, or payment is applicable to a broad range of business activity.

“(3) In this subsection, the term ‘State’ means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, and any political subdivision or other non-Federal authority thereof.”

§ 1587a. Employees of nonappropriated fund instrumentalities: senior executive pay levels

(a) AUTHORITY.—To achieve the objective stated in subsection (b), the Secretary of Defense may regulate the amount of total compensation that is provided for senior executives of nonappropriated fund instrumentalities who, for the fixing of pay by administrative action, are under the jurisdiction of the Secretary of Defense or the Secretary of a military department.

(b) PAY PARITY.—The objective of an action taken with respect to the compensation of senior executives under subsection (a) is to provide for parity between the total compensation provided for such senior executives and total compensation that is provided for Department of Defense employees in Senior Executive Service positions or other senior executive positions.

(c) STANDARDS OF COMPARABILITY.—Subject to subsection (d), the Secretary of Defense shall prescribe the standards of comparison that are to apply in the making of the determinations necessary to achieve the objective stated in subsection (b).

(d) ESTABLISHMENT OF PAY RATES.—The Secretary of Defense shall apply subsections (a) and (b) of section 5382 of title 5 in the regulation of compensation under this section.

(e) RELATIONSHIP TO PAY LIMITATION.—The Secretary of Defense may exercise the authority provided in subsection (a) without regard to section 5373 of title 5.

(f) DEFINITIONS.—In this section:

(1) The term “compensation” includes rate of basic pay.

(2) The term “Senior Executive Service position” has the meaning given such term in section 3132 of title 5.

(Added Pub. L. 108-375, div. A, title XI, §1104(a), Oct. 28, 2004, 118 Stat. 2073.)

§ 1588. Authority to accept certain voluntary services

(a) AUTHORITY TO ACCEPT SERVICES.—Subject to subsection (b) and notwithstanding section 1342 of title 31, the Secretary concerned may accept from any person the following services:

(1) Voluntary medical services, dental services, nursing services, or other health-care related services.

(2) Voluntary services to be provided for a museum or a natural resources program.

(3) Voluntary services to be provided for programs providing services to members of the armed forces and the families of such members, including the following programs:

(A) Family support programs.

(B) Child development and youth services programs.

(C) Library and education programs.

(D) Religious programs.

(E) Housing referral programs.

(F) Programs providing employment assistance to spouses of such members.

(G) Morale, welfare, and recreation programs, to the extent not covered by another subparagraph of this paragraph.

(4) Voluntary services as a member of a funeral honors detail under section 1491 of this title.