

§ 3968. Local compensation plans

(a) Establishment; rates of pay; leaves of absence; supplemental payments; transfer from Civil Service Retirement and Disability Fund

(1) The Secretary shall establish compensation (including position classification) plans for foreign national employees of the Service and United States citizens employed under section 3951(c)(1) of this title. To the extent consistent with the public interest, each compensation plan shall be based upon prevailing wage rates and compensation practices (including participation in local social security plans) for corresponding types of positions in the locality of employment, except that such compensation plans shall provide for payment of wages to United States citizens at a rate which is no less than the then applicable minimum wage rate specified in section 206(a)(1) of title 29. Any compensation plan established under this section may include provision for (A) leaves of absence with pay for employees in accordance with prevailing law and employment practices in the locality of employment without regard to any limitation contained in section 6310 of title 5, (B) programs for voluntary transfers of such leave and voluntary leave banks, which shall, to the extent practicable, be established in a manner consistent with the provisions of subchapters III and IV, respectively, of chapter 63 of title 5, and (C) payments by the Government and employees to (i) a trust or other fund in a financial institution in order to finance future benefits for employees, including provision for retention in the fund of accumulated interest and dividends for the benefit of covered employees; or (ii) a Foreign Service National Savings Fund established in the Treasury of the United States, which (I) shall be administered by the Secretary, at whose direction the Secretary of the Treasury shall invest amounts not required for the current needs of the Fund; and (II) shall be public monies, which are authorized to be appropriated and remain available without fiscal year limitation to pay benefits, to be invested in public debt obligations bearing interest at rates determined by the Secretary of the Treasury taking into consideration current average market yields on outstanding marketable obligations of the United States of comparable maturity, and to pay administrative expenses. For United States citizens under a compensation plan, the Secretary shall define those allowances and benefits provided under United States law which shall be included as part of the total compensation package, notwithstanding any other provision of law, except that this section shall not be used to override United States minimum wage requirements, or any provision of the Social Security Act [42 U.S.C. 301 et seq.] or title 26.

(2) The Secretary may make supplemental payments to any civil service annuitant who is a former foreign national employee of the Service (or who is receiving an annuity as a survivor of a former foreign national employee of the Service) in order to offset exchange rate losses, if the annuity being paid such annuitant is based on—

(A) a salary that was fixed in a foreign currency that has appreciated in value in terms of the United States dollar; and

(B) service in a country in which (as determined by the Secretary) the average retirement benefits being received by individuals who retired from competitive local organizations are superior to the local currency value of civil service annuities plus any other retirement benefits payable to foreign national employees who retired during similar time periods and after comparable careers with the Government.

(3)(A) Whenever a foreign national employee so elects during a one-year period established by the Secretary of State with respect to each post abroad, the Secretary of the Treasury (at the direction of the Secretary of State) shall transfer such employee's interest in the Civil Service Retirement and Disability Fund to a trust or other local retirement plan certified by the United States Government under a local compensation plan established for foreign national employees pursuant to this section (excluding local social security plans).

(B) For purposes of subparagraph (A), the phrase "employee's interest in the Civil Service Retirement and Disability Fund" means the total contributions of the employee and the employing agency with respect to such employee, pursuant to sections 8331(8) and 8334(a)(1) of title 5, respectively, plus interest at the rate provided in section 8334(e)(3) of such title.

(C) Any such transfer shall void any annuity rights or entitlement to lump-sum credit under subchapter III of chapter 83 of such title.

(b) Employment programs

For the purpose of performing functions abroad, any agency or other Government establishment (including any establishment in the legislative or judicial branch) may administer employment programs for its employees who are foreign nationals, are United States citizens employed in the Service abroad who were hired while residing abroad, or are family members of Government employees assigned abroad, in accordance with the applicable provisions of this chapter.

(c) Regulations

The Secretary of State may prescribe regulations governing the establishment and administration of local compensation plans under this section by all agencies and other Government establishments.

(Pub. L. 96-465, title I, § 408, Oct. 17, 1980, 94 Stat. 2090; Pub. L. 98-164, title I, § 127(a), Nov. 22, 1983, 97 Stat. 1026; Pub. L. 101-246, title I, § 141(a), Feb. 16, 1990, 104 Stat. 35; Pub. L. 102-138, title I, §§ 148, 152, Oct. 28, 1991, 105 Stat. 670, 672; Pub. L. 103-236, title I, § 180(a)(4), Apr. 30, 1994, 108 Stat. 415; Pub. L. 106-113, div. B, § 1000(a)(7) [div. A, title III, § 322], Nov. 29, 1999, 113 Stat. 1536, 1501A-436; Pub. L. 107-228, div. A, title III, § 313, Sept. 30, 2002, 116 Stat. 1378.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (a)(1), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§ 301 et seq.)

of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

This chapter, referred to in subsec. (b), was in the original “this Act”, meaning Pub. L. 96-465, Oct. 17, 1980, 94 Stat. 2071, as amended, known as the Foreign Service Act of 1980, which is classified principally to this chapter (§3901 et. seq.). For complete classification of this Act to the Code, see Short Title note set out under section 3901 of this title and Tables.

AMENDMENTS

2002—Subsec. (a)(1). Pub. L. 107-228 in third sentence substituted “payments by the Government and employees to (i) a trust or other fund in a financial institution in order to finance future benefits for employees, including provision for retention in the fund of accumulated interest and dividends for the benefit of covered employees; or (ii) a Foreign Service National Savings Fund established in the Treasury of the United States, which (I) shall be administered by the Secretary, at whose direction the Secretary of the Treasury shall invest amounts not required for the current needs of the Fund; and (II) shall be public monies, which are authorized to be appropriated and remain available without fiscal year limitation to pay benefits, to be invested in public debt obligations bearing interest at rates determined by the Secretary of the Treasury taking into consideration current average market yields on outstanding marketable obligations of the United States of comparable maturity, and to pay administrative expenses.” for “payments by the Government and employees to a trust or other fund in a financial institution in order to finance future benefits for employees, including provision for retention in the fund of accumulated interest for the benefit of covered employees.”

1999—Subsec. (a)(1). Pub. L. 106-113, in last sentence, struck out “(A) provide such citizens with a total compensation package (including wages, allowances, benefits, and other employer payments, such as for social security) that has the equivalent cost to that received by foreign national employees occupying a similar position at that post and (B)” after “Secretary shall” and substituted “the total compensation package” for “this total compensation package”.

1994—Subsec. (a)(1). Pub. L. 103-236, §180(a)(4)(D), inserted at end “For United States citizens under a compensation plan, the Secretary shall (A) provide such citizens with a total compensation package (including wages, allowances, benefits, and other employer payments, such as for social security) that has the equivalent cost to that received by foreign national employees occupying a similar position at that post and (B) define those allowances and benefits provided under United States law which shall be included as part of this total compensation package, notwithstanding any other provision of law, except that this section shall not be used to override United States minimum wage requirements, or any provision of the Social Security Act or title 26.”

Pub. L. 103-236, §180(a)(4)(B), (C), in second sentence struck out “employed in the Service abroad who were hired while residing abroad and to those family members of Government employees who are paid in accordance with such plans” after “United States citizens” and in third sentence struck out “foreign national” before “employees” wherever appearing.

Pub. L. 103-236, §180(a)(4)(A), inserted first sentence and struck out former first sentence which read as follows: “The Secretary shall establish compensation (including position classification) plans for foreign national employees of the Service, United States citizens employed in the Service abroad who were hired while residing abroad, and for United States citizens employed in the Service abroad who are family members of Government employees.”

1991—Subsec. (a)(1). Pub. L. 102-138, §152(a), inserted “United States citizens employed in the Service abroad who were hired while residing abroad,” after “employees of the Service,” and “to United States citizens em-

ployed in the Service abroad who were hired while residing abroad and” after “payment of wages”.

Pub. L. 102-138, §148, added cl. (B) and redesignated former cl. (B) as (C).

Subsec. (b). Pub. L. 102-138, §152(b), inserted “, are United States citizens employed in the Service abroad who were hired while residing abroad,” after “foreign nationals”.

1990—Subsec. (a)(3). Pub. L. 101-246 added par. (3).

1983—Subsec. (a)(1). Pub. L. 98-164 designated existing provisions as cl. (A) and added cl. (B).

DATE OF TRANSFER FROM CIVIL SERVICE RETIREMENT AND DISABILITY FUND

Section 141(c) of Pub. L. 101-246 provided that: “The transfer of an employee’s interest in the Civil Service Retirement and Disability Fund shall occur after October 1, 1990.”

FOREIGN NATIONAL PAY PLANS

Pub. L. 96-60, title I, §107(a), Aug. 15, 1979, 93 Stat. 397, provided that: “It is the sense of the Congress that the Secretary of State should—

“(1) improve coordination between the Department of State and the Department of Defense and other departments and agencies of the United States operating outside the United States with respect to foreign national pay systems and wage schedules to the extent that—

“(A) joint wage surveys and compatible pay schedules are adopted in countries where two or more departments or agencies of the United States directly employ foreign nationals, and

“(B) Department of Defense wage rates are included in wage surveys of the Department of State where the Department of Defense operates under indirect-hire arrangements;

“(2) monitor the establishment of wage rates outside the United States more closely to insure that United States missions—

“(A) operate under salary schedules that reflect private sector average pay or average pay ranges,

“(B) include the cost of severance in making pay adjustments, and

“(C) survey jobs in the private sector which represent as closely as possible the work force of the mission; and

“(3) substitute, whenever possible, prevailing local retirement plans for civil service retirement with respect to the retirement of foreign nationals employed by the United States.”

§ 3969. Salaries of consular agents

The Secretary of State shall establish the salary rate for each consular agent. Such salary rate shall be established after taking into account the workload of the consular agency and the prevailing wage rates in the locality where the agency is located, except that, in the case of a consular agent who is a citizen of the United States, the salary rate may not be less than the then applicable minimum wage rate specified in section 206(a)(1) of title 29.

(Pub. L. 96-465, title I, §409, Oct. 17, 1980, 94 Stat. 2091.)

§ 3970. Compensation for imprisoned foreign national employees

(a) Eligibility; rates of compensation; terms and conditions of payment; applicability of powers under other statutory provisions

The head of any agency or other Government establishment (including any in the legislative or judicial branch) may compensate any current or former foreign national employee, or any for-