

“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 employee 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, or threaten to 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 substantial 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; Pub. L. 113-66, div. A, title VI, § 641, Dec. 26, 2013, 127 Stat. 787.)

AMENDMENTS

2013—Subsec. (b). Pub. L. 113-66 inserted “, or threaten to take or fail to take,” after “take or fail to take”.

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

Pub. L. 98-94, title XII, §1253(b), Sept. 24, 1983, 97 Stat. 700, 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

Pub. L. 104-106, div. A, title X, §1042, Feb. 10, 1996, 110 Stat. 434, 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.