

[§ 5532. Repealed. Pub. L. 106-65, div. A, title VI, § 651(a)(1), Oct. 5, 1999, 113 Stat. 664]

Section, Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 482; Pub. L. 95-454, title III, §308(a), (c)-(f)(1), Oct. 13, 1978, 92 Stat. 1149-1151; Pub. L. 97-276, §151(b), Oct. 2, 1982, 96 Stat. 1200; Pub. L. 98-396, title III, §306, Aug. 22, 1984, 98 Stat. 1424; Pub. L. 98-525, title XV, §1537(b), Oct. 19, 1984, 98 Stat. 2635; Pub. L. 99-88, title I, §100, Aug. 15, 1985, 99 Stat. 351; Pub. L. 99-500, §101(f), Oct. 18, 1986, 100 Stat. 1783-308, and Pub. L. 99-591, §101(f), Oct. 30, 1986, 100 Stat. 3341-308; Pub. L. 100-202, §§101(f) [title I, §101], 106, Dec. 22, 1987, 101 Stat. 1329-358, 1329-362, 1329-433; Pub. L. 100-457, title I, Sept. 30, 1988, 102 Stat. 2129; Pub. L. 101-509, title V, §529 [title I, §108(a)], Nov. 5, 1990, 104 Stat. 1427, 1449; Pub. L. 101-510, div. A, title XII, §1206(j)(1), Nov. 5, 1990, 104 Stat. 1663; Pub. L. 102-83, §5(c)(2), Aug. 6, 1991, 105 Stat. 406; Pub. L. 102-190, div. A, title VI, §655(a)(1), Dec. 5, 1991, 105 Stat. 1390; Pub. L. 102-378, §8(a), Oct. 2, 1992, 106 Stat. 1359; Pub. L. 105-55, title I, §107, Oct. 7, 1997, 111 Stat. 1184, related to employment of retired members of uniformed services and reduction in retired or retainer pay.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1999, see section 651(c) of Pub. L. 106-65, set out as an Effective Date of 1999 Amendment note under section 1466 of Title 10, Armed Forces.

§ 5533. Dual pay from more than one position; limitations; exceptions

(a) Except as provided by subsections (b), (c), and (d) of this section, an individual is not entitled to receive basic pay from more than one position for more than an aggregate of 40 hours of work in one calendar week (Sunday through Saturday).

(b) Except as otherwise provided by subsection (c) of this section, the Office of Personnel Management, subject to the supervision and control of the President, may prescribe regulations under which exceptions may be made to the restrictions in subsection (a) of this section when appropriate authority determines that the exceptions are warranted because personal services otherwise cannot be readily obtained.

(c)(1) Unless otherwise authorized by law and except as otherwise provided by paragraph (2) or (4) of this subsection, appropriated funds are not available for payment to an individual of pay from more than one position if the pay of one of the positions is paid by the Secretary of the Senate, the Chief Administrative Officer of the House of Representatives, or the Chief of the Capitol Police, or one of the positions is under the Office of the Architect of the Capitol, and if the aggregate gross pay from the positions exceeds \$7,724 a year (\$10,540, in the case of pay disbursed by the Secretary of the Senate).

(2) Notwithstanding paragraph (1) of this subsection, appropriated funds are not available for payment to an individual of pay from more than one position, for each of which the pay is disbursed by the Chief Administrative Officer of the House of Representatives or the Chief of the Capitol Police, if the aggregate gross pay from those positions exceeds the maximum per annum gross rate of pay authorized to be paid to an employee out of the clerk hire allowance of a Member of the House.

(3) For the purposes of this subsection, "gross pay" means the annual rate of pay (or equivalent thereof in the case of an individual paid on other than an annual basis) received by an individual.

(4) Paragraph (1) of this subsection does not apply to pay on a when-actually-employed basis received from more than one consultant or expert position if the pay is not received for the same day.

(d) Subsection (a) of this section does not apply to—

(1) pay on a when-actually-employed basis received from more than one consultant or expert position if the pay is not received for the same hours of the same day;

(2) pay consisting of fees paid on other than a time basis;

(3) pay received by a teacher of the public schools of the District of Columbia for employment in a position during the summer vacation period;

(4) pay paid by the Tennessee Valley Authority to an employee performing part-time or intermittent work in addition to his normal duties when the Authority considers it to be in the interest of efficiency and economy;

(5) pay received by an individual holding a position—

(A) the pay of which is paid by the Secretary of the Senate, the Chief Administrative Officer of the House of Representatives, or the Chief of the Capitol Police; or

(B) under the Architect of the Capitol;

(6) pay paid by the United States Coast Guard to an employee occupying a part-time position of lamplighter; and

(7) pay within the purview of any of the following statutes:

(A) section 162 of title 2;

(B) section 23(b) of title 13;

(C) section 327 of title 15;

(D) section 907 of title 20;

(E) section 873 of title 33; or

(F) section 631 or 631a of title 31, District of Columbia Code.

[(G) Repealed. Pub. L. 96-70, title III, §3302(e)(8), Sept. 27, 1979, 93 Stat. 498.]

(e)(1) This section does not apply to an individual employed under sections 174j-1 to 174j-7 or 174k¹ of title 40.

(2) Subsection (c) of this section does not apply to pay received by a teacher of the public schools of the District of Columbia for employment in a position during the summer vacation period.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 483; Pub. L. 90-57, §105(h), July 28, 1967, 81 Stat. 143; Pub. L. 90-206, title II, §214(o), Dec. 16, 1967, 81 Stat. 637; Pub. L. 91-510, title IV, §477(d), Oct. 26, 1970, 84 Stat. 1195; Pub. L. 93-140, §23, Oct. 26, 1973, 87 Stat. 508; Pub. L. 93-145, §101, Nov. 1, 1973, 87 Stat. 532; Pub. L. 94-183, §2(21), Dec. 31, 1975, 89 Stat. 1058; Pub. L. 94-440, title I, §103, Oct. 1, 1976, 90 Stat. 1443; Pub. L. 95-454, title IX, §906(a)(2), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 96-70, title III, §3302(e)(8), Sept. 27, 1979, 93 Stat. 498; Pub. L. 104-186, title II, §215(7), Aug. 20, 1996, 110 Stat. 1745; Pub. L. 111-145, §7(b)(2), Mar. 4, 2010, 124 Stat. 55.)

¹ See References in Text note below.

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 3105 (less (e)).	Aug. 19, 1964, Pub. L. 88-448, § 301 (less (e)), 78 Stat. 488.

In subsection (a), the words “an individual” are substituted for “civilian personnel”.

In subsection (b), the words “and issue” are omitted as surplusage.

In subsection (c), the words “appropriated funds are not” are substituted for “no funds appropriated by any Act shall be”. The words “\$2,000 a year” are substituted for “the sum of \$2,000 per annum”.

In subsection (d)(7)(D), reference to “section 907 of title 20” is substituted for 5 U.S.C. 3105(d)(7)(F) to reflect the scheduled transfer of 5 U.S.C. 2358(b) to title 20.

In subsection (d)(7)(H), the words “of chapter 7” are omitted as surplusage.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

REFERENCES IN TEXT

Sections 174j-1, 174j-3, 174j-4, 174j-5, 174j-6, 174j-7, and 174k of title 40, referred to in subsec. (e)(1), were transferred to sections 2042, 2043, 2044, 2045, 2046, 2047, and 2041, respectively, of Title 2, The Congress. Section 174j-2 of title 40 was repealed by Pub. L. 107-217, § 6(b), Aug. 21, 2002, 116 Stat. 1304.

AMENDMENTS

2010—Subsec. (c)(1). Pub. L. 111-145, § 7(b)(2)(A)(i), substituted “, the Chief Administrative Officer of the House of Representatives, or the Chief of the Capitol Police” for “or the Chief Administrative Officer of the House of Representatives”.

Subsec. (c)(2). Pub. L. 111-145, § 7(b)(2)(A)(ii), inserted “or the Chief of the Capitol Police” after “House of Representatives”.

Subsec. (d)(5)(A). Pub. L. 111-145, § 7(b)(2)(B), substituted “, the Chief Administrative Officer of the House of Representatives, or the Chief of the Capitol Police” for “or the Chief Administrative Officer of the House of Representatives”.

1996—Subsecs. (c)(1), (2), (d)(5)(A). Pub. L. 104-186 substituted “Chief Administrative Officer” for “Clerk”.

1979—Subsec. (d)(7). Pub. L. 96-70 struck out subpar. (G) which made reference to section 102 of title 2, Canal Zone Code.

1978—Subsec. (b). Pub. L. 95-454 substituted “Office of Personnel Management” for “Civil Service Commission”.

1976—Subsec. (c)(1). Pub. L. 94-440 inserted “(\$10,540, in the case of pay disbursed by the Secretary of the Senate)” after “exceeds \$7,724 a year”.

1975—Subsec. (d)(7). Pub. L. 94-183 struck out subpar. (F) relating to section 3335 (a) or (c) of title 39, and redesignated subpars. (G) and (H) as (F) and (G), respectively.

1973—Subsec. (c)(1), (4). Pub. L. 93-145 inserted reference to par. (4) in par. (1) and added par. (4).

Subsec. (e). Pub. L. 93-140 designated existing provisions as par. (1) and added par. (2).

1970—Subsec. (c)(1). Pub. L. 91-510 inserted “and except as otherwise provided by paragraph (2) of this section” after “authorized by law” and substituted “if the aggregate gross pay from the positions exceeds \$7,724 a year” for “if—

“(A) the pay of one or more of the positions is fixed at a single gross per annum rate, and the aggregate gross pay from the positions exceeds \$6,256 a year, or

“(B) the pay of each such position is fixed at a basic rate plus additional compensation authorized by law, and the aggregate basic pay of the positions exceeds \$2,000 a year”.

Subsec. (c)(2). Pub. L. 91-510 substituted provision making appropriated funds unavailable for payment to

an individual of pay from more than one position, for each of which pay is disbursed by the Clerk of the House, if the aggregate gross pay from those positions exceeds the maximum per annum gross rate of pay authorized to be paid to an employee out of clerk hire allowance of a Member of the House for definition of “gross pay”, now incorporated in cl. (3).

Subsec. (c)(3). Pub. L. 91-510 redesignated former cl. (2) as (3) and deleted provision which included in gross pay of an individual receiving basic pay plus additional compensation provided by law the aggregate amount received as basic and additional compensation, but excluded sums received as premium pay under subchapter V of this chapter.

1967—Subsec. (c). Pub. L. 90-206 provided for an increase in the aggregate gross pay allowed to certain specified congressional employees on two payrolls as dual office compensation.

Pub. L. 90-57 designated existing dual pay limitation provisions relating to basic compensation as par. (1), redesignated cls. (1) and (2) as (A) and (B), eliminated from cl. (A) provision for pay for one of the positions by the Secretary of the Senate and restricted such cl. (A) to payments in case of employees receiving basic rates of compensation and added par. (2) dual pay limitations applicable to aggregate gross compensation of employees receiving single per annum rates of compensation.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-145 effective as though enacted as part of section 1018 of Pub. L. 108-7, see section 7(d) of Pub. L. 111-145, set out as a note under section 2107 of this title.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-70 effective Oct. 1, 1979, see section 3304 of Pub. L. 96-70, set out as an Effective Date note under section 3601 of Title 22, Foreign Relations and Intercourse.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-510 effective immediately prior to noon on Jan. 3, 1971, see section 601(1) of Pub. L. 91-510, set out as a note under section 4301 of Title 2, The Congress.

EFFECTIVE DATE OF 1967 AMENDMENTS

Amendment by Pub. L. 90-206 effective at beginning of first pay period which begins on or after Dec. 16, 1967, see section 220(a)(3) of Pub. L. 90-206, set out as a note under section 603 of Title 28, Judiciary and Judicial Procedure.

Amendment by Pub. L. 90-57, effective Aug. 1, 1967, see section 105(k) of Pub. L. 90-57, set out as an Effective Date note under section 4575 of Title 2, The Congress.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

INCREASE IN COMPENSATION OF INDIVIDUALS WHOSE PAY IS DISBURSED BY SECRETARY OF SENATE

2010—The figure “\$10,540” in subsec. (c)(1) of this section to be deemed to refer, effective Jan. 1, 2010, to the

1971—The figure “7,724” in subsection (c)(1) of this section, deemed to refer, effective Feb. 1, 1971, to the figure “8,187”, see section 9 of Salary Directive of President pro tempore of the Senate, Jan. 15, 1971, formerly set out as a note under section 4571 of Title 2.

1970—Adjustment by President pro tempore of the Senate with respect to Senate, by Finance Clerk of House with respect to House of Representatives, and by Architect of Capitol with respect to Office of Architect of Capitol, effective on the first day of the first pay period which begins on or after Dec. 27, 1969, of rates of pay of employees of legislative branch subject to section 214 of Pub. L. 90-206 with certain exceptions, by amounts of adjustment for corresponding rates for employees subject to the General Schedule, set out in section 5332 of this title, which had been made by section 2 of Pub. L. 91-231 raising such rates by 6 percent, see Pub. L. 91-231, formerly set out as a note under section 5332 of this title.

1969—The figure “6,662” in subsection (c)(1)(A) of this section, as increased by Order of June 12, 1968, deemed, on and after July 1, 1969, to refer to the figure “7,287”, see section 4(d) of Salary Directive of President pro tempore of the Senate, June 17, 1969, formerly set out as a note under section 4571 of Title 2.

1968—The figure “6,256” in subsection (c)(1)(A) of this section deemed to refer, on and after July 1, 1968, to the figure “6,622”, see section 1(i) of Salary Directive of President pro tempore of the Senate, June 12, 1968, formerly set out as a note under section 4571 of Title 2.

§ 5534. Dual employment and pay of Reserves and National Guardsmen

A Reserve of the armed forces or member of the National Guard may accept a civilian office or position under the Government of the United States or the government of the District of Columbia, and he is entitled to receive the pay of that office or position in addition to pay and allowances as a Reserve or member of the National Guard.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 484.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 30r(c) (1st sentence).	Aug. 10, 1956, ch. 1041, § 29(c) (1st sentence), 70A Stat. 632.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

§ 5534a. Dual employment and pay during terminal leave from uniformed services

A member of a uniformed service who has performed active service and who is on terminal leave pending separation from, or release from active duty in, that service under honorable conditions may accept a civilian office or position in the Government of the United States, its territories or possessions, or the government of the District of Columbia, and he is entitled to receive the pay of that office or position in addition to pay and allowances from the uniformed service for the unexpired portion of the terminal leave. Such a member also is entitled to accrue annual leave with pay in the manner specified in section 6303(a) of this title for a retired member of a uniformed service.

(Added Pub. L. 90-83, §1(22), Sept. 11, 1967, 81 Stat. 199; amended Pub. L. 109-364, div. A, title XI, §1101, Oct. 17, 2006, 120 Stat. 2407.)

HISTORICAL AND REVISION NOTES

This section amends chapter 55 of title 5, United States Code, by inserting a new section 5534a. This section is based on subsections (a) and (f) of former 5 U.S.C. 61a-1 the source statute for which (act of Nov. 21, 1945, ch. 489, 59 Stat. 584) was repealed by the act of September 6, 1966, Public Law 89-554 (sec. 8, 80 Stat. 653). Senate Report 1380, 89th Congress, second session, pages 449, 511, explains that the source was repealed since it had been rendered obsolete by section 4(c) of the Armed Forces Leave Act of 1946, as amended (37 U.S.C. 501), and section 219(c) of the Public Health Service Act, as added August 9, 1950 (ch. 654, sec. 2, 64 Stat. 426; 42 U.S.C. 210-1(c)), and that any existing rights are preserved by section 8 of Public Law 89-554.

At the time of enactment of the act of November 21, 1945, there was no authority to make lump-sum leave payments to members of the uniformed services who were being separated from or released from active duty in the uniformed services. Accordingly, they were placed on terminal leave until the expiration of the unused portion of their accumulated and current accrued leave, and only then separated or released. The act of November 21, 1945, in part, authorized the employment of these members during terminal leave and provided they were entitled to receive, in addition to the payment from the employment, military pay and allowances for the unexpired portion of the terminal leave. The Armed Forces Leave Act of 1946 authorized lump-sum leave payments of unused accumulated and current accrued leave. Generally, thereafter, members of the uniformed services were not placed on terminal leave, but were separated and paid a lump-sum leave payment. However, in certain instances a member may be placed on terminal leave. Such a case was considered recently by the Comptroller General of the United States (see B-157500, Oct. 13, 1965, 45 Comp. Gen. 180. In view of the foregoing, it is concluded that subsection (a) of former 5 U.S.C. 61a-1 had prospective effect and should have been reenacted in title 5, U.S.C., by Public Law 89-554.

In section 5534a, the words “A member of a uniformed service who has performed active service” are substituted for “Any person, who, shall have performed active service in the Armed Forces” to conform to the style of title 5 and the definition of “uniformed services” in 5 U.S.C. 2101 which is coextensive with the definition of “armed forces” in subsection (f) of former 5 U.S.C. 61a-1. Reorganization Plan No. 2 of 1965 (79 Stat. 1318), effective July 13, 1965, consolidated the Coast and Geodetic Survey and the Weather Bureau to form a new agency in the Department of Commerce to be known as the Environmental Science Services Administration. The words “subsequent to May 1, 1940” are omitted as executed. The word “territories” is substituted for “Territories” inasmuch as there now are no incorporated territories. The words “(including any corporation created under authority of an act of Congress which is either wholly controlled or wholly owned by the Government of the United States, or any department, agency, or establishment thereof, whether or not the employees thereof are paid from funds appropriated by Congress)” are omitted as included in “a civilian office or position in the Government of the United States”. The word “pay” is substituted for “compensation.”

AMENDMENTS

2006—Pub. L. 109-364 inserted at end “Such a member also is entitled to accrue annual leave with pay in the manner specified in section 6303(a) of this title for a retired member of a uniformed service.”

EFFECTIVE DATE

Section effective Sept. 6, 1966, for all purposes, see section 9(h) of Pub. L. 90-83, set out as an Effective Date of 1967 Amendment note under section 5102 of this title.