

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 foreign national who is or was employed under a personal services contract, who is or has been imprisoned by a foreign government if the Secretary of State (or, in the case of a foreign national employed by the Central Intelligence Agency, the Director of Central Intelligence) determines that such imprisonment is the result of the employment of the foreign national by the United States. Such compensation may not exceed the amount that the agency head determines approximates the salary and other benefits to which the foreign national would have been entitled had he or she been employed during the period of such imprisonment. Such compensation may be paid under such terms and conditions as the Secretary of State deems appropriate. For purposes of this section, an agency head shall have the same powers with respect to imprisoned foreign nationals who are or were employed by the agency as an agency head has under subchapter VII of chapter 55 of title 5 to the extent that such powers are consistent with this section.

**(b) Time spent imprisoned considered as period of employment**

Any period of imprisonment of a current or former foreign national employee which is compensable under this section shall be considered for purposes of any other employee benefit to be a period of employment by the Government, except that a period of imprisonment shall not be creditable—

(1) for purposes of subchapter III of chapter 83 of title 5, unless it is expressly creditable under that subchapter; or

(2) for purposes of subchapter I of chapter 81 of title 5, unless the individual was employed by the Government at the time of his or her imprisonment.

**(c) Time of filing of claims**

No compensation or other benefit shall be awarded under this section unless a claim therefor is filed within 3 years after—

(1) the termination of the period of imprisonment giving rise to the claim, or

(2) the date of the claimant's first opportunity thereafter to file such a claim, as determined by the appropriate agency head.

**(d) Regulations**

The Secretary of State may prescribe regulations governing payments under this section by all agencies and other Government establishments.

(Pub. L. 96-465, title I, § 410, Oct. 17, 1980, 94 Stat. 2091.)

CHANGE OF NAME

Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the intelligence community deemed to be a reference to the Director of National Intelligence. Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the Central Intelligence Agency deemed to be a reference to the Director of the Central Intelligence Agency. See section 1081(a), (b) of Pub. L. 108-458, set out as a note under section 3001 of Title 50, War and National Defense.

**§ 3971. Temporary service as principal officer**

For such time (in excess of such minimum period as the Secretary of State may establish) as any member of the Service is temporarily in charge of a Foreign Service post during the absence or incapacity of the principal officer, that member shall receive, in addition to the basic salary paid to the member and notwithstanding sections 5535 and 5536 of title 5, an amount equal to that portion (which the Secretary of State may determine to be appropriate) of the difference between such salary and the basic salary provided for the principal officer, or, if there is no principal officer, for the former principal officer.

(Pub. L. 96-465, title I, § 411, Oct. 17, 1980, 94 Stat. 2091.)

**§ 3972. Special differentials**

**(a) Additional work requirements**

The Secretary may pay special differentials, in addition to compensation otherwise authorized, to Foreign Service officers who are required because of the nature of their assignments to perform additional work on a regular basis in substantial excess of normal requirements.

**(b) Salary limitations**

The Inspector General of the United States Agency for International Development (USAID) shall limit the payment of special differentials to USAID Foreign Service criminal investigators to levels at which the aggregate of basic pay and special differential for any pay period would equal, for such criminal investigators, the bi-weekly pay limitations on premium pay regularly placed on other criminal investigators within the Federal law enforcement community. This provision shall be retroactive to January 1, 2013.

**(c) Compensatory time off**

Nothing in this chapter, or in subchapter V of chapter 55 of title 5 shall preclude the granting of compensatory time off for Foreign Service officers.

(Pub. L. 96-465, title I, § 412, Oct. 17, 1980, 94 Stat. 2092; Pub. L. 103-236, title I, § 139(6), Apr. 30, 1994, 108 Stat. 398; Pub. L. 114-323, title II, § 206, Dec. 16, 2016, 130 Stat. 1917.)

AMENDMENTS

2016—Subsec. (b). Pub. L. 114-323 added subsec. (b).  
1994—Subsec. (b). Pub. L. 103-236 struck out subsec. (b) which read as follows: "Before implementing any proposal to limit either the number of Foreign Service

officers who may receive a special differential under subsection (a) of this section or the amounts of such special differentials, the Secretary shall submit such proposal to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives.”

### § 3973. Death gratuities

#### (a) Criteria; amount; payment deemed gift

The Secretary may provide for payment of a gratuity to the surviving dependents of any Foreign Service employee, who dies as a result of injuries sustained in the performance of duty abroad, in an amount equal to one year’s salary at level II of the Executive Schedule under section 5313 of title 5 at the time of death, except that for employees compensated under local compensation plans established under section 3968 of this title the amount shall be equal to the greater of either one year’s salary at the time of death, or one year’s basic salary at the highest step of the highest grade on the local compensation plan from which the employee was being paid at the time of death. Any death gratuity payment made under this section shall be held to have been a gift and shall be in addition to any other benefit payable from any source.

#### (b) Other executive agencies

The head of an executive agency shall, pursuant to guidance issued under subsection (c), make a death gratuity payment authorized by this section to the survivors of any employee of that agency or of an individual in a special category serving in an uncompensated capacity for that agency, as identified in guidance issued under subsection (c), who dies as a result of injuries sustained in the performance of duty abroad while subject to the authority of the chief of mission pursuant to section 3927 of this title.

#### (c) Guidance

Not later than 60 days after January 17, 2014, the Secretary shall, in consultation with the heads of other relevant executive agencies, issue guidance with criteria for determining eligibility for, and order of payments to, survivors and beneficiaries of any employee or of an individual in a special category serving in an uncompensated capacity for that agency who dies as a result of injuries sustained in the performance of duty while subject to the authority of the chief of mission pursuant to section 3927 of this title.

#### (d) Eligibility to elect monthly compensation as condition to payment

A death gratuity payment shall be made under this section only if the survivor entitled to payment under subsection (c) is entitled to elect monthly compensation under section 8133 of title 5, because the death resulted from an injury (excluding a disease proximately caused by the employment) sustained in the performance of duty, without regard to whether such survivor elects to waive compensation under such section 8133.

#### (e) Definitions

As used in this section—

(1) the term “Foreign Service employee” means any member of the Service or United

States representative to an international organization or commission; and

(2) each of the terms “widow”, “widower”, “child”, and “parent” shall have the same meaning given each such term by section 8101 of title 5.

(Pub. L. 96-465, title I, §413, Oct. 17, 1980, 94 Stat. 2092; Pub. L. 113-76, div. K, title VII, §7082(a), Jan. 17, 2014, 128 Stat. 565.)

#### AMENDMENTS

2014—Subsec. (a). Pub. L. 113-76, §7082(a)(1), substituted “at level II of the Executive Schedule under section 5313 of title 5, United States Code, at the time of death, except that for employees compensated under local compensation plans established under section 3968 of this title the amount shall be equal to the greater of either one year’s salary at the time of death, or one year’s basic salary at the highest step of the highest grade on the local compensation plan from which the employee was being paid at the time of death” for “at the time of death”.

Subsec. (b). Pub. L. 113-76, §7082(a)(2), (3), added subsec. (b) and redesignated former subsec. (b) as (d). Former subsec. (d) redesignated (e).

Subsec. (c). Pub. L. 113-76, §7082(a)(4), amended subsec. (c) generally. Prior to amendment, text read as follows: “A death gratuity payment under this section shall be made as follows:

“(1) First, to the widow or widower.

“(2) Second, to the child, or children in equal shares, if there is no widow or widower.

“(3) Third, to the dependent parent, or dependent parents in equal shares, if there is no widow, widower, or child.

“If there is no survivor entitled to payment under this subsection, no payment shall be made.”

Subsecs. (d), (e). Pub. L. 113-76, §7082(a)(2), redesignated subsecs. (b) and (d) as (d) and (e), respectively.

#### EFFECTIVE DATE OF 2014 AMENDMENT

Pub. L. 113-76, div. K, title VII, §7082(c), Jan. 17, 2014, 128 Stat. 567, provided that: “Notwithstanding any other provision of law, sections 413, 415, and 416 of the Foreign Service Act of 1980 [22 U.S.C. 3973, 3975, 3976], as amended or added by this section, shall apply in the case of a Foreign Service employee or executive branch employee subject to the authority of the chief of mission pursuant to section 207 of the Foreign Service Act (22 U.S.C. 3927), serving at a United States diplomatic or consular mission abroad, who died on or after April 18, 1983, as a result of injuries sustained in an act of terrorism, as defined in section 140(d) of the Foreign Relations Authorization Act, Fiscal Years 1998 and 1999 [probably means ‘1988 and 1989’] (22 U.S.C. 2656f(d)).”

### § 3974. Border equalization pay adjustment

#### (a) In general

An employee who regularly commutes from the employee’s place of residence in the continental United States to an official duty station in Canada or Mexico shall receive a border equalization pay adjustment equal to the amount of comparability payments under section 5304 of title 5 that the employee would receive if the employee were assigned to an official duty station within the United States locality pay area closest to the employee’s official duty station.

#### (b) Employee defined

For purposes of this section, the term “employee” means a person who—

(1) is an “employee” as defined under section 2105 of title 5; and