

Stat. 281; Pub. L. 108-447, div. B, title IV, § 412(a), Dec. 8, 2004, 118 Stat. 2905.)

#### Editorial Notes

##### REFERENCES IN TEXT

Level II of the Executive Schedule, referred to in subsec. (a)(3)(A), is set out in section 5313 of Title 5, Government Organization and Employees.

##### AMENDMENTS

2004—Subsec. (a)(1). Pub. L. 108-447, § 412(a)(1), substituted “The President shall also prescribe ranges of basic salary rates for each class. Except as provided in paragraph (3), basic salary rates for the Senior Foreign Service may not exceed the maximum rate or be less than the minimum rate of basic pay payable for the Senior Executive Service under section 5382 of title 5.” for “The President shall also prescribe one or more basic salary rates for each class. Basic salary rates for the Senior Foreign Service may not exceed the maximum rate or be less than the minimum rate of basic pay payable for the Senior Executive Service under section 5382 of title 5, and shall be adjusted at the same time and in the same manner as rates of basic pay are adjusted for the Senior Executive Service.”

Subsec. (a)(2), (3). Pub. L. 108-447, § 412(a)(2), added pars. (2) and (3) and struck out former par. (2) which read as follows: “The Secretary shall determine which of the basic salary rates prescribed by the President under paragraph (1) for any salary class shall be paid to each member of the Senior Foreign Service who is appointed to that class. The Secretary may adjust the basic salary rate of a member of the Senior Foreign Service not more than once during any 12-month period.”

1982—Subsec. (a). Pub. L. 97-241 designated existing provisions as par. (1), inserted provision authorizing the President to prescribe one or more basic salary rates for each class, and added par. (2).

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE

Section effective Feb. 15, 1981, except that subsec. (a), for purposes of implementing section 4151 of this title, is effective Oct. 17, 1980, see section 2403(a) and (d)(2) of Pub. L. 96-465, set out as an Effective Date note under section 3901 of this title.

#### Executive Documents

##### ESTABLISHMENT OF SALARY CLASSES WITH TITLES FOR SENIOR FOREIGN SERVICE

For establishment of salary classes with titles for the Senior Foreign Service, at basic rates of pay equivalent to that established from time to time for the Senior Executive Service under section 5382 of Title 5, Government Organization and Employees, see section 4 of Ex. Ord. No. 12293, Feb. 23, 1981, 46 F.R. 13969, set out as a note under section 3901 of this title.

#### § 3963. Foreign Service Schedule

The President shall establish a Foreign Service Schedule which shall consist of 9 salary classes and which shall apply to members of the Service who are citizens of the United States and for whom salary rates are not otherwise provided for by this subchapter. The maximum salary rate for the highest class established under this section, which shall be designated class 1, may not exceed the maximum rate of basic pay prescribed for GS-15 of the General Schedule under section 5332 of title 5. Salary rates established under this section shall be adjusted in accordance with section 5303 of title 5.

(Pub. L. 96-465, title I, § 403, Oct. 17, 1980, 94 Stat. 2088; Pub. L. 101-509, title V, § 529 [title I, § 101(b)(1)], Nov. 5, 1990, 104 Stat. 1427, 1439.)

#### Editorial Notes

##### AMENDMENTS

1990—Pub. L. 101-509 substituted “section 5303” for “subchapter I of chapter 53”.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-509 effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title I, § 305] of Pub. L. 101-509, set out as a note under section 5301 of Title 5, Government Organization and Employees.

##### EFFECTIVE DATE

Section effective Feb. 15, 1981, except that for purposes of implementing section 4151 of this title it is effective Oct. 17, 1980, see section 2403(a) and (d)(2) of Pub. L. 96-465, set out as an Effective Date note under section 3901 of this title.

#### Executive Documents

##### EXECUTIVE ORDER NO. 12249

Ex. Ord. No. 12249, Oct. 25, 1980, 45 F.R. 71347, which provided for a Foreign Service Schedule, was superseded by Ex. Ord. No. 12330, Oct. 15, 1981, 46 F.R. 50921, formerly set out as a note under section 5332 of Title 5, Government Organization and Employees.

##### ADJUSTMENT OF FOREIGN SERVICE SCHEDULE

For adjustment of Foreign Service Schedule pay rates under this section, see the executive order detailing the adjustment of certain rates of pay set out as a note under section 5332 of Title 5, Government Organization and Employees.

#### § 3964. Assignments to salary class

(a) The Secretary shall assign all Foreign Service officers and Foreign Service personnel (other than Foreign Service personnel who are paid in accordance with section 3967 of this title or section 3968 of this title) to appropriate salary classes in the Foreign Service Schedule.

(b)(1) The salary class to which a member of the Service is assigned under this section shall not be affected by the assignment of the member to a position classified under subchapter V.

(2) Except as authorized by subchapter I of chapter 35 of title 5, changes in the salary class of a member of the Senior Foreign Service or a member of the Service assigned to a salary class in the Foreign Service Schedule shall be made only in accordance with subchapter VI. The Secretary shall prescribe regulations (which shall be consistent with the relevant provisions of subchapter VI of chapter 53 of title 5 and with the regulations prescribed to carry out such provisions) providing for retention of pay by members of the Service in cases in which reduction-in-force procedures are applied.

(Pub. L. 96-465, title I, § 404, Oct. 17, 1980, 94 Stat. 2088; Pub. L. 103-236, title I, § 180(a)(3), Apr. 30, 1994, 108 Stat. 415.)

#### Editorial Notes

##### AMENDMENTS

1994—Subsec. (a). Pub. L. 103-236 struck out “who are family members of Government employees paid in ac-

cordance with a local compensation plan established under” after “section 3967 of this title or”.

### § 3965. Performance pay

#### (a) Eligibility; additional lump sum payment; excessive compensation not precluding award

Subject to subsection (e), members of the Senior Foreign Service who are serving—

(1) under career or career candidate appointments, or

(2) under limited appointments with reemployment rights under section 3950 of this title as career appointees in the Senior Executive Service,

shall be eligible to compete for performance pay in accordance with this section. Performance pay shall be paid in a lump sum and shall be in addition to the basic salary prescribed under section 3962 of this title and any other award. The fact that a member of the Senior Foreign Service competing for performance pay would, as a result of the payment of such performance pay, receive compensation exceeding the compensation of any other member of the Service shall not preclude the award or its payment.

#### (b) Criteria; limitations

Awards of performance pay shall take into account the criteria established by the Office of Personnel Management for performance awards under section 5384 of title 5 and rank awards under section 4507 of title 5. Awards of performance pay under this section shall be subject to the following limitations:

(1) Not more than 33 percent of the members of the Senior Foreign Service may receive performance pay in any fiscal year.

(2) Except as provided in paragraph (3), performance pay for a member of the Senior Foreign Service may not exceed 20 percent of the annual rate of basic salary for that member.

(3) Not more than 6 percent of the members of the Senior Foreign Service may receive performance pay in any fiscal year in an amount which exceeds the percentage limitation specified in paragraph (2). Payments under this paragraph to a member of the Senior Foreign Service may not exceed, in any fiscal year, the percentage of basic pay established under section 4507(e)(1) of title 5 for a Meritorious Executive, except that payments of the percentage of the basic pay established under section 4507(e)(2) of such title for Distinguished Executives may be made in any fiscal year to up to 1 percent of the members of the Senior Foreign Service.

(4) Any award under this section shall be subject to the limitation on certain payments under section 5307 of title 5, or the limitation under section 3962(a)(3) of this title, whichever is higher.

(5) The Secretary of State shall prescribe regulations, consistent with section 5582 of title 5, under which payment under this section shall be made in the case of any individual whose death precludes payment under paragraph (4) of this subsection.

#### (c) Determination of amount by Secretary; distribution on basis of selection board recommendations

The Secretary shall determine the amount of performance pay available under subsection

(b)(2) each year for distribution among the members of the Senior Foreign Service and shall distribute performance pay to particular individuals on the basis of recommendations by selection boards established under section 4002 of this title.

#### (d) Recommendations for meritorious or distinguished service awards

The President may grant awards of performance pay under subsection (b)(3) on the basis of annual recommendations by the Secretary of State of members of the Senior Foreign Service who are nominated by their agencies as having performed especially meritorious or distinguished service. Such service in the promotion of internationally recognized human rights, including the right to freedom of religion, shall serve as a basis for granting awards under this section. Recommendations by the Secretary of State under this subsection shall be made on the basis of recommendations by special interagency selection boards established by the Secretary of State for the purpose of reviewing and evaluating the nominations of agencies.

#### (e) Recognition in lieu of award

Notwithstanding any other provision of law, the Secretary of State may provide for recognition of the meritorious or distinguished service of any member of the Foreign Service described in subsection (a) (including any member of the Senior Foreign Service) by means other than an award of performance pay in lieu of making such an award under this section.

(Pub. L. 96-465, title I, § 405, Oct. 17, 1980, 94 Stat. 2088; Pub. L. 100-204, title I, § 175(b), Dec. 22, 1987, 101 Stat. 1361; Pub. L. 103-236, title I, § 173(d), Apr. 30, 1994, 108 Stat. 412; Pub. L. 105-277, div. G, subd. B, title XXIII, § 2311(a), Oct. 21, 1998, 112 Stat. 2681-826; Pub. L. 105-292, title V, § 504(a), Oct. 27, 1998, 112 Stat. 2811; Pub. L. 106-113, div. B, § 1000(a)(7) [div. A, title III, § 323], Nov. 29, 1999, 113 Stat. 1536, 1501A-437; Pub. L. 107-228, div. A, title III, § 312(a), Sept. 30, 2002, 116 Stat. 1378; Pub. L. 108-447, div. B, title IV, § 412(b), Dec. 8, 2004, 118 Stat. 2905.)

### Editorial Notes

#### AMENDMENTS

2004—Subsec. (b)(4). Pub. L. 108-447 inserted “, or the limitation under section 3962(a)(3) of this title, whichever is higher” before period at end.

2002—Subsec. (b)(3). Pub. L. 107-228 inserted second sentence and struck out former second sentence which read as follows: “Payments under this paragraph to a member of the Senior Foreign Service may not exceed \$10,000 in any fiscal year, except that payments of up to \$20,000 in any fiscal year may be made under this paragraph to up to 1 percent of the members of the Senior Foreign Service.”

1999—Subsec. (b)(1). Pub. L. 106-113 substituted “33” for “50”.

1998—Subsec. (a). Pub. L. 105-277, § 2311(a)(1), substituted “Subject to subsection (e), members” for “Members” in introductory provisions.

Subsec. (d). Pub. L. 105-292 inserted “Such service in the promotion of internationally recognized human rights, including the right to freedom of religion, shall serve as a basis for granting awards under this section.” after first sentence.

Subsec. (e). Pub. L. 105-277, § 2311(a)(2), added subsec. (e).