

By the authority vested in me as President of the United States of America by Sections 7 and 8 of the Defense Department Overseas Teachers Pay and Personnel Practices Act of 1959, as amended (20 U.S.C. 905-906), Section 235 [see 707] of Title 38 of the United States Code, and Section 301 of Title 3 of the United States Code, and in order to delegate authority with respect to allowances for Veterans Administration [now Department of Veterans Affairs] personnel and to update existing authorities, it is hereby ordered as follows:

1-101. Payment of the additional compensation authorized by Section 8(a)(2) of the Defense Department Overseas Teachers Pay and Personnel Practices Act of 1959, as amended, shall be governed by the regulations contained in Executive Order No. 10000, as amended [set out as a note under section 5941 of Title 5, Government Organization and Employees], which govern the payment of additional compensation in foreign areas (referred to as foreign post differential), subject to the provisions of Section 8(b) of that Act (20 U.S.C. 906(a)(2) and (b)).

1-102. The following functions vested in the President are delegated to the Secretary of State:

(a) That part of the functions in Section 7(a) of the Defense Department Overseas Teachers Pay and Personnel Practices Act which consists of the authority to prescribe regulations relating to quarters and quarters allowances (20 U.S.C. 905(a)).

(b) The authority in Section 8(a)(1) of the Defense Department Overseas Teachers Pay and Personnel Practices Act to prescribe regulations relating to cost of living allowances (20 U.S.C. 906(a)(1)).

(c) The following authority in Section 235 [see 707] of Title 38 of the United States Code to prescribe rules and regulations:

(1) Section 235(2) [see 707(2)], except as that section pertains to an allowance similar to that provided for in Section 901(6) of the Foreign Service Act of 1980 (22 U.S.C. 4081(6));

(2) Section 235(3) [see 707(3)];

(3) Section 235(5) [see 707(5)];

(4) Section 235(6) [see 707(6)]; and

(5) Section 235(7) [see 707(7)].

1-103. The following functions vested in the President by Section 235 [see 707] of Title 38 of the United States Code are delegated to the Administrator of the Veterans Administration [now Secretary of Veterans Affairs]. The authority with respect to the allowances or benefits of paragraphs (1) and (4) of Section 235 [see 707(1), (4)] which are similar to the benefits and allowances provided in the sections of the Foreign Service Act of 1980 [22 U.S.C. 3901 et seq.], designated in those paragraphs.

1-104. Executive Order No. 10853 [not classified to Code], as amended, is revoked. The rules and regulations which were prescribed by the Secretary of State or the Administrator of the Veterans Administration [now Secretary of Veterans Affairs] pursuant to Executive Order No. 10853, as amended, and which would be valid if issued pursuant to this Order, shall be deemed to have been issued under this Order.

§ 709. Employment restrictions

(a)(1) Notwithstanding section 3134(d) of title 5, the number of Senior Executive Service positions in the Department which are filled by non-career appointees in any fiscal year may not at any time exceed 5 percent of the average number of senior executives employed in Senior Executive Service positions in the Department during the preceding fiscal year.

(2) For purposes of this subsection, the average number of senior executives employed in Senior Executive Service positions in the Department during a fiscal year shall be equal to 25 percent of the sum of the total number of senior executives employed in Senior Executive Service posi-

tions in the Department on the last day of each quarter of such fiscal year.

(b) The number of positions in the Department which may be excepted from the competitive service, on a temporary or permanent basis, because of their confidential or policy-determining character may not at any time exceed the equivalent of 15 positions.

(c)(1) Political affiliation or activity may not be taken into account in connection with the appointment of any person to any position in or to perform any service for the Department or in the assignment or advancement of any employee in the Department.

(2) Paragraph (1) shall not apply—

(A) to the appointment of any person by the President under this title, other than the appointment of the Under Secretary for Health, the Under Secretary for Benefits, and the Inspector General; or

(B) to the appointment of any person to (i) a Senior Executive Service position as a non-career appointee, or (ii) a position that is excepted from the competitive service, on a temporary or permanent basis, because of the confidential or policy-determining character of the position.

(Added Pub. L. 102-83, §2(a), Aug. 6, 1991, 105 Stat. 395; amended Pub. L. 102-405, title III, §302(c)(1), Oct. 9, 1992, 106 Stat. 1984.)

Editorial Notes

PRIOR PROVISIONS

Prior sections 709 and 710 were renumbered sections 1909 and 1910 of this title, respectively.

Provisions similar to those in this section were contained in section 12 of Pub. L. 100-527, known as the Department of Veterans Affairs Act, prior to repeal by Pub. L. 102-83, §3(3).

AMENDMENTS

1992—Subsec. (c)(2)(A). Pub. L. 102-405 substituted “Under Secretary for Health” for “Chief Medical Director” and “Under Secretary for Benefits” for “Chief Benefits Director”.

§ 711. Grade reductions

(a) The Secretary may not implement a grade reduction described in subsection (b) unless the Secretary first submits to the Committees on Veterans' Affairs of the Senate and House of Representatives a report containing a detailed plan for such reduction and a detailed justification for the plan. The report shall include a determination by the Secretary (together with data supporting such determination) that, in the personnel area concerned, the Department has a disproportionate number of employees at the salary grade or grades selected for reduction in comparison to the number of such employees at the salary levels involved who perform comparable functions in other departments and agencies of the Federal Government and in non-Federal entities. Any grade reduction described in such report may not take effect until the end of a period of 90 calendar days (not including any day on which either House of Congress is not in session) after the report is received by the committees.

(b) A grade reduction referred to in subsection (a) is a systematic reduction, for the purpose of

reducing the average salary cost for Department employees described in subsection (c), in the number of such Department employees at a specific grade level.

(c) The employees referred to in subsection (b) are—

(1) health-care personnel who are determined by the Secretary to be providing either direct patient-care services or services incident to direct patient-care services;

(2) individuals who meet the definition of professional employee as set forth in section 7103(a)(15) of title 5; and

(3) individuals who are employed as computer specialists.

(d) Not later than the 45th day after the Secretary submits a report under subsection (a), the Comptroller General shall, upon request of either of such Committees, submit to such committees a report on the Secretary's compliance with such subsection. The Comptroller General shall include in the report the Comptroller General's opinion as to the accuracy of the Secretary's determination (and of the data supporting such determination) made under such subsection.

(e) In the case of Department employees not described in subsection (c), the Secretary may not in any fiscal year implement a systematic reduction for the purpose of reducing the average salary cost for such Department employees that will result in a reduction in the number of such Department employees at any specific grade level at a rate greater than the rate of the reductions systematically being made in the numbers of employees at such grade level in all other agencies and departments of the Federal Government combined.

(Added Pub. L. 102-83, §2(a), Aug. 6, 1991, 105 Stat. 396; amended Pub. L. 103-446, title XII, §1201(e)(5), Nov. 2, 1994, 108 Stat. 4685; Pub. L. 104-316, title I, §119, Oct. 19, 1996, 110 Stat. 3836.)

Editorial Notes

PRIOR PROVISIONS

Prior section 711 was renumbered section 1911 of this title.

Provisions similar to those in this section were contained in former section 210(b)(3) of this title prior to repeal by Pub. L. 102-83, §2(a).

AMENDMENTS

1996—Subsec. (d). Pub. L. 104-316 inserted “, upon request of either of such Committees,” after “the Comptroller General shall” in first sentence.

1994—Subsec. (d). Pub. L. 103-446 substituted “committees” for “Committees”.

[§ 712. Repealed. Pub. L. 107-103, title V, § 509(a)(1), Dec. 27, 2001, 115 Stat. 997]

Section, added Pub. L. 103-446, title XI, §1102(a), Nov. 2, 1994, 108 Stat. 4680; amended Pub. L. 104-262, title III, §303, Oct. 9, 1996, 110 Stat. 3194; Pub. L. 105-33, title VIII, §8023(e), Aug. 5, 1997, 111 Stat. 667; Pub. L. 105-368, title X, §1005(b)(1), Nov. 11, 1998, 112 Stat. 3364, limited reduction of full-time equivalent positions in the Department of Veterans Affairs during the period beginning on Nov. 2, 1994, and ending on Sept. 30, 1999.

Editorial Notes

PRIOR PROVISIONS

A prior section 712 was renumbered section 1912 of this title.

§ 713. Senior executives: removal, demotion, or suspension based on performance or misconduct

(a) **AUTHORITY.**—(1) The Secretary may, as provided in this section, reprimand or suspend, involuntarily reassign, demote, or remove a covered individual from a senior executive position at the Department if the Secretary determines that the misconduct or performance of the covered individual warrants such action.

(2) If the Secretary so removes such an individual, the Secretary may remove the individual from the civil service (as defined in section 2101 of title 5).

(b) **RIGHTS AND PROCEDURES.**—(1) A covered individual who is the subject of an action under subsection (a) is entitled to—

(A) advance notice of the action and a file containing all evidence in support of the proposed action;

(B) be represented by an attorney or other representative of the covered individual's choice; and

(C) grieve the action in accordance with an internal grievance process that the Secretary, in consultation with the Assistant Secretary for Accountability and Whistleblower Protection, shall establish for purposes of this subsection.

(2)(A) The aggregate period for notice, response, and decision on an action under subsection (a) may not exceed 15 business days.

(B) The period for the response of a covered individual to a notice under paragraph (1)(A) of an action under subsection (a) shall be 7 business days.

(C) A decision under this paragraph on an action under subsection (a) shall be issued not later than 15 business days after notice of the action is provided to the covered individual under paragraph (1)(A). The decision shall be in writing, and shall include the specific reasons therefor.

(3) The Secretary shall ensure that the grievance process established under paragraph (1)(C) takes fewer than 21 days.

(4) A decision under paragraph (2) that is not grieved, and a grievance decision under paragraph (3), shall be final and conclusive.

(5) A covered individual adversely affected by a decision under paragraph (2) that is not grieved, or by a grievance decision under paragraph (3), may obtain judicial review of such decision.

(6) In any case in which judicial review is sought under paragraph (5), the court shall review the record and may set aside any Department action found to be—

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with a provision of law;

(B) obtained without procedures required by a provision of law having been followed; or

(C) unsupported by substantial evidence.

(c) **RELATION TO OTHER PROVISIONS OF LAW.**—Section 3592(b)(1) of title 5 and the procedures