§ 5948. Physicians comparability allowances

(a) Notwithstanding any other provision of law, and in order to recruit and retain highly qualified Government physicians, the head of an agency, subject to the provisions of this section, section 5307, and such regulations as the President or his designee may prescribe, may enter into a service agreement with a Government physician which provides for such physician to complete a specified period of service in such agency in return for an allowance for the duration of such agreement in an amount to be determined by the agency head and specified in the agreement, but not to exceed—

(1) $14,000 per annum if, at the time the agreement is entered into, the Government physician has served as a Government physician for twenty-four months or less, or

(2) $30,000 per annum if the Government physician has served as a Government physician for more than twenty-four months.

For the purpose of determining length of service as a Government physician, service as a physician under section 4104 or 4114 or, in the case of a Government physician appointed to an internship or residency training position, service as a medical officer in the commissioned corps of the Public Health Service under Title II of the Public Health Service Act (42 U.S.C. ch. 6A) shall be deemed service as a Government physician.

(b) An allowance may not be paid pursuant to this section to any physician who—

(1) is employed on less than a half-time or intermittent basis,

(2) occupies an internship or residency training position,

(3) is a reemployed annuitant, or

(4) is fulfilling a scholarship obligation.

(c) The head of an agency, pursuant to such regulations, criteria, and conditions as the President or his designee may prescribe, shall determine categories of positions applicable to physicians in such agency with respect to which there is a significant recruitment and retention problem. Only physicians serving in such positions shall be eligible for an allowance pursuant to this section. The amounts of each such allowance shall be determined by the agency head, subject to such regulations, criteria, and conditions as the President or his designee may prescribe, and shall be the minimum amount necessary to deal with the recruitment and retention problem for each such category of physicians.

(d) Any agreement entered into by a physician under this section shall be for a period of one year of service in the agency involved unless the physician requests an agreement for a longer period of service.

(e) Unless otherwise provided for in the agreement under subsection (f) of this section, an agreement under this section shall provide that the physician, in the event that such physician voluntarily, or because of misconduct, fails to complete at least one year of service pursuant to such agreement, shall be required to refund the total amount received under this section, unless the head of the agency, pursuant to such regulations as may be prescribed under this section by the President or his designee, determines that such failure is necessitated by circumstances beyond the control of the physician.

(f) Any agreement under this section shall specify, subject to such regulations as the President or his designee may prescribe, the terms under which the head of the agency and the physician may elect to terminate such agreement, and the amounts, if any, required to be refunded by the physician for each reason for termination.

(g) For the purpose of this section—

(1) “Government physician” means any individual employed as a physician or dentist who is paid under—

(A) section 5332 of this title, relating to the General Schedule;

(B) Subchapter VIII of chapter 53 of this title, relating to the Senior Executive Service;

(C) section 5371, relating to certain health care positions;

(D) section 3 of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831b), relating to the Tennessee Valley Authority;

(E) chapter 4 of title I of the Foreign Service Act of 1980 (22 U.S.C. 3961 and following), relating to the Foreign Service;

(F) section 10 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403j), relating to the Central Intelligence Agency;

(G) section 1202 of the Panama Canal Act of 1979, relating to the Panama Canal Commission;

(H) section 2 of the Act of May 29, 1959 (Public Law 86–36, as amended, 50 U.S.C. 402 note), relating to the National Security Agency;

(I) section 5376, relating to certain senior-level positions;

(J) section 5377, relating to critical positions; or

(K) subchapter IX of chapter 53, relating to special occupational pay systems; and

(2) “agency” means an Executive agency, as defined in section 105 of this title, the Library of Congress, and the District of Columbia government.

(h)(1) Any allowance paid under this section shall not be considered as basic pay for the purposes of subchapter VI and section 5595 of chapter 55, chapter 81 or 87 of this title, or other benefits related to basic pay.

(2) Any allowance under this section for a Government physician shall be paid in the same manner and at the same time as the physician’s basic pay is paid.

(i) Any regulations, criteria, or conditions that may be prescribed under this section by the President or his designee shall not be applicable to the Tennessee Valley Authority, and the Tennessee Valley Authority shall have sole responsibility for administering the provisions of this section with respect to Government physicians employed by the Authority.

(j) Not later than June 30 of each year, the President shall submit to each House of Con-
grees a written report on the operation of this section. Each report shall include, with respect to the year covered by such report, information as to—

(1) which agencies entered into agreements under this section;

(2) the nature and extent of the recruitment or retention problems justifying the use of authority by each agency under this section;

(3) the number of physicians with whom agreements were entered into by each agency;

(4) the size of the allowances and the duration of the agreements entered into; and

(5) the degree to which the recruitment or retention problems referred to in paragraph (2) were alleviated under this section.


REFERENCES IN TEXT

Sections 4104 and 4114 of title 38, referred to in subsec. (a), were repealed by Pub. L. 102–40, title IV, § 401(a)(3), May 7, 1991, 105 Stat. 210, and a new section 4101 containing different subject matter was added. For provisions similar to those contained in sections 4104 and 4114 prior to repeal, see sections 7401 and 7405 to 7407 of Title 38, Veterans’ Benefits.

The Public Health Service Act, referred to in subsec. (a), is act July 1, 1944, ch. 373, 58 Stat. 682, as amended. Title II of the Public Health Service Act is classified generally to subchapter I (§ 201 et seq.) of chapter 6A of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 201 of Title 22, Foreign Relations and Intercourse.

Section 3018 of the Panama Canal Act of 1979, referred to in subsec. (g)(1)(G), is classified to section 3018 of Title 22, Foreign Relations and Intercourse.


AMENDMENTS

2000—Subsec. (d). Pub. L. 106–571, § 2(a)(1), struck out second sentence which read as follows: ‘‘No agreement shall be entered into under this section later than September 30, 2000, nor shall any agreement cover a period of service extending beyond September 30, 2002.’’

Subsec. (h)(1). Pub. L. 106–571, § 3(d), substituted ‘‘chapter 81 or 87’’ for ‘‘chapter 81, 83, or 87’’.

Subsec. (j). Pub. L. 106–571, § 2(b), in par. (1), substituted ‘‘(j)(1)’’ for ‘‘(j)(1)(D)’’, redesignated subpars. (A) to (E) as pars. (1) to (5), respectively, in par. (5), substituted ‘‘paragraph (2)’’ for ‘‘subparagraph (B)’’, and struck out former par. (2) which read as follows: ‘‘In addition to the information required under paragraph (1), the last report due under this subsection before the expiration of the authority to enter into agreements under this section shall include—

(A) recommendations as to whether or not such authority should be continued beyond September 30, 2000, and, if so, by what period of time; and

(B) the reasons for those recommendations.’’


1993—Subsec. (d). Pub. L. 103–114, § 1(a)(1), amended second sentence generally. Prior to amendment, second sentence read as follows: ‘‘No agreement shall be entered into under this section later than September 30, 1993, nor shall any agreement cover a period of service extending beyond September 30, 1995.’’


1990—Subsec. (d). Pub. L. 103–114, § 1(a)(1), amended second sentence generally. Prior to amendment, second sentence read as follows: ‘‘No agreement shall be entered into under this section later than September 30, 1990, nor shall any agreement cover a period of service extending beyond September 30, 1995.’’

1987—Subsec. (d). Pub. L. 106–89 redesignated subpars. (D) to (L) as (C) to (K), respectively, and struck out former subpar. (C) which read as follows: ‘‘chapter 54 of this title, relating to the performance management and recognition system;’’.

1985—Subsec. (d). Pub. L. 102–378, § 2(51)(B)(i), substituted ‘‘(1)(1)’’ for ‘‘(1)(1)(A)’’, which read as follows: ‘‘chapter 81, 83, or 87’’.

1983—Subsec. (d). Pub. L. 98–168 substituted ‘‘$20,000’’ for ‘‘$10,000’’.

1981—Subsec. (a). Pub. L. 94–435, substituted ‘‘5 years’’ for ‘‘4 years’’; redesignated subpars. (A) to (L) as (K) to (R), respectively, and struck out former subpar. (R) which read as follows: ‘‘$10,000’’.

1979—Subsec. (d). Pub. L. 95–603, § 2(a), substituted ‘‘$20,000’’ for ‘‘$30,000’’.


Subsec. (g)(1). Pub. L. 96–166, §2(2)(A), directed the amendment of subsec. (g)(1) by inserting "or dentist" after "physician" which was executed by inserting the term after "employed as a physician" in introductory phrase as the probable intent of Congress.

Pub. L. 96–166, §2(2)(B)–(E), redesignated subpars. (B) through (G) as (D) through (J), respectively, added subpars. (B) and (C), substituted in subpar. (D) as redesignated, "5371" for "5361", and substituted in subpar. (H) as redesignated, "section 1202 of the Panama Canal Act of 1979, relating to the Panama Canal Commission; or" for "section 121 of title 2 of the Canal Zone Code, relating to the Canal Zone Government and the Panama Canal Company; or".


**Effective Date of 1997 Amendment**

Section 517(c) of Pub. L. 105–61 provided that: "The amendments made by this section [amending this section and provisions set out as a note under this section] shall take effect on the date of the enactment of this Act [Oct. 19, 1997]."

**Effective Date of 1993 Amendment**

Amendment by Pub. L. 103–49 effective Nov. 1, 1993, see section 3(c) of Pub. L. 103–49, set out as a note under section 3732 of this title.

**Effective Date of 1984 Amendment**

Section 205 of Pub. L. 98–615 provided that amendment by Pub. L. 98–615 was effective Oct. 1, 1984, and applicable with respect to pay periods commencing on or after that date, with certain exceptions and qualifications.

**Effective Date of Repeal**


**Short Title of 2000 Amendment**

Pub. L. 106–571, §1, Dec. 28, 2000, 114 Stat. 3054, provided that: "This Act [amending this section and sections 3831, 3839, 4801, and 8415 of this title] may be cited as the 'Federal Physicians Comparability Allowance Amendments of 2000'."

**Short Title of 1983 Amendment**

Section 101 of title I of Pub. L. 98–168 provided that: "This title [amending this section, enacting provisions set out below, and amending provisions set out as a note above] may be cited as the 'Federal Physicians Comparability Allowance Amendments of 1983'."

**Short Title of 1981 Amendment**

Section 1 of Pub. L. 97–141 provided: "That this Act [amending this section and section 8344 of this title and provisions set out below and enacting provisions set out as notes under this section and section 8344 of this title] may be cited as the 'Federal Physicians Comparability Allowance Amendments of 1981'."

**Short Title of 1979 Amendment**

Section 1 of Pub. L. 96–166 provided: "That this Act [amending this section and section 5383 of this title and provisions set out as a note under this section, and enacting provisions set out below] may be cited as the 'Federal Physicians Comparability Allowance Amendments of 1979'."

**Construction of 1998 Amendment**

Pub. L. 105–266, §7(c), Oct. 19, 1998, 112 Stat. 2370, provided that: "Nothing in this section [amending this section and enacting provisions set out as notes below] shall be considered to authorize additional or supplemental appropriations for the fiscal year in which occurs the date of the enactment of this Act [Oct. 19, 1998]."

**Construction of 1993 Amendment**

Section 1(a)(4) of Pub. L. 103–114 provided that: "The amendments made by this subsection [amending this section and enacting and amending provisions set out as notes above] shall be treated as having been enacted immediately before the provisions of subsection (b)(2) [enacting and amending provisions set out as notes above]; and (2) the provisions of subsection (b)(2) shall be treated as having been enacted immediately before the provisions of subsection (a) [amending this section and enacting and amending provisions set out as notes above]."

**Modification of Service Agreements in Effect on October 19, 1998; Limitation**

Pub. L. 105–266, §7(b), Oct. 19, 1998, 112 Stat. 2369, provided that: "(1) in general.—Any service agreement under section 5948 of title 5, United States Code, which is in effect on the date of the enactment of this Act [Oct. 19, 1998] may, with respect to any period of service remaining in such agreement, be modified based on the amendment made by subsection (a) [amending this section].

(2) Limitation.—A modification taking effect under this subsection in any year shall not cause an allowance to be increased to a rate which, if applied throughout such year, would cause the limitation under section 5948(a)(2) of such title (as amended by this section), or any other applicable limitation, to be exceeded."

**Effectiveness of Service Agreements Limited by Appropriation Acts**

Section 1(a)(3) of Pub. L. 103–114 provided that: "Any service agreement entered into on or after the date of the enactment of this Act [Oct. 26, 1993] pursuant to section 5948 of title 5, United States Code, as amended by paragraph (1), shall be effective only to such extent as provided in advance in appropriation Acts."

**Due Date for First Annual Report on Operation of Section**

Section 2(b) of Pub. L. 103–114 provided that: "The first report under section 5948(j) of title 5, United States Code, which is in effect on the date of the enactment of this Act [Oct. 26, 1993], and any subsequent report, shall be transmitted to the Congress not later than 90 days before the beginning of the fiscal year for which the report is to be made."
agreement entered into on or after Dec. 29, 1981, pursu -


amounts as are provided in advance in appropriation

97–141, shall be effective only to such extent or in such

ant to this section, as amended by section 2 of Pub. L.

plemental appropriations for the fiscal year ending

Acts, and that the amendments made by Pub. L. 97–141

ant to this section, as amended by section 2 of Pub. L.

section 5 of Pub. L. 96–166 provided that any service

Section 4 of Pub. L. 97–141 provided that any service

agree-ment entered into on or after Dec. 29, 1981, pursu-

vent to this section, as amended by section 2 of Pub. L.

ay in advance in appropriation

acts, and that the amendments made by Pub. L. 97–141

shall not be construed to authorize additional or supple-

fiscal year ending Sept. 30, 1982.

SERVICE AGREEMENTS ENTERED INTO ON OR AFTER DE-

December 29, 1979; ADVANCE AUTHORIZATION

Section 5 of Pub. L. 96–166 provided that any service

agreement entered into on or after Dec. 29, 1979, pursu-

ant to this section, as amended by section 2 of Pub. L.

be effective only to such extent or in such

amounts as are as provided in advance in appropriation

acts.

"TIME OF ENTRY INTO ALLOWANCE AGREEMENTS AND

FOR COMMENCEMENT OF ALLOWANCE"

Section 2(c) of Pub. L. 95–603 provided that no agree-

ment be entered into under this section before 60th day

after Nov. 6, 1978, and that no agreement provide for

payment of any allowance under such section for any

pay period beginning before later of such 60th day, or


EX. ORD. NO. 12109. DELEGATION OF AUTHORITY TO

DIRECTOR OF OFFICE OF PERSONNEL MANAGEMENT

Ex. Ord. No. 12109, Dec. 28, 1978, 44 F.R. 12671, provided:

CIVIL SERVICE COMMISSION

Sec. 1–101. By the authority vested in me as President of

the United States of America by Section 5948 of Title 5 of

the United States Code, I hereby order as follows:

§ 5949. Hostile fire pay

(a) The head of an Executive agency may pay

an employee hostile fire pay at the rate of $150

for any month in which the employee was—

(1) subject to hostile fire or explosion of hos-

tile mines;

(2) on duty in an area in which the employee

was in imminent danger of being exposed to

hostile fire or explosion of hostile mines and

in which, during the period on duty in that

area, other employees were subject to hostile

fire or explosion of hostile mines; or

(3) killed, injured, or wounded by hostile

fire, explosion of a hostile mine, or any other

hostile action.

(b) An employee covered by subsection (a)(3)

who is hospitalized for the treatment of his or

her injury or wound may be paid hostile fire pay

under this section for not more than three addi-

tional months during which the employee is so

hospitalized.

(c) An employee may be paid hostile fire pay

under this section in addition to other pay and

allowances to which entitled, except that an em-

ployee may not be paid hostile fire pay under

this section for periods of time during which the

employee receives payment under section 5925 of

this title because of exposure to political vio-

lence or payment under section 5928 of this title.

(Added Pub. L. 107–107, div. A, title XI, § 1111(a),


EFFECTIVE DATE


115 Stat. 1238, as added by Pub. L. 108–375, div. A,


that: "Section 5949 of title 5, United States Code, as

added by subsection (a), is effective as if enacted into

law on September 11, 2001, and may be applied with re-

spect to any hostile action that took place on or after

that date."

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