

scribe an appropriate title for each class. 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.

(2) The Secretary shall determine which basic salary rate within the ranges prescribed by the President under paragraph (1) shall be paid to each member of the Senior Foreign Service based on individual performance, contribution to the mission of the Department, or both, as determined under a rigorous performance management system. Except as provided in regulations prescribed by the Secretary and, to the extent possible, consistent with regulations governing the Senior Executive Service, 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.

(3) Upon a determination by the Secretary that the Senior Foreign Service performance appraisal system, as designed and applied, makes meaningful distinctions based on relative performance—

(A) the maximum rate of basic pay payable for the Senior Foreign Service shall be level II of the Executive Schedule; and

(B) the applicable aggregate pay cap shall be equivalent to the aggregate pay cap set forth in section 5307(d)(1) of title 5 for members of the Senior Executive Service.

**(b) Career appointees in Senior Executive Service accepting limited appointment in Senior Foreign Service; adjustment**

(1) An individual who is a career appointee in the Senior Executive Service receiving basic pay at one of the rates payable under section 5382 of title 5 and who accepts a limited appointment in the Senior Foreign Service in a salary class for which the basic salary rate is less than such basic rate of pay, shall be paid a salary at his or her former basic rate of pay (with adjustments as provided in paragraph (2)) until the salary for his or her salary class in the Senior Foreign Service equals or exceeds the salary payable to such individual under this subsection.

(2) The salary paid to an individual under this subsection shall be adjusted by 50 percent of each adjustment, which takes effect after the appointment of such individual to the Senior Foreign Service, in the basic rate of pay at which that individual was paid under section 5382 of title 5 immediately prior to such appointment.

(Pub. L. 96-465, title I, § 402, Oct. 17, 1980, 94 Stat. 2087; Pub. L. 97-241, title I, § 124, Aug. 24, 1982, 96 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 accordance 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