

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).

1994—Subsec. (b)(4). Pub. L. 103–236 amended par. (4) generally. Prior to amendment, par. (4) read as follows: “The total amount of basic salary plus performance pay received in any fiscal year by any member of the Senior Foreign Service may not exceed the salary payable for level I of the Executive Schedule under section 5312 of title 5 as in effect at the end of that fiscal year. Any amount which is not paid to a member of the Senior Foreign Service during a fiscal year because of this limitation shall be paid to that individual in a lump sum at the beginning of the following fiscal year. Any amount paid under this authority during a fiscal year shall be taken into account for purposes of applying the limitation in the first sentence of this subparagraph with respect to such fiscal year.”

1987—Subsec. (b)(4), (5). Pub. L. 100–204 inserted at end of par. (4) “Any amount which is not paid to a member of the Senior Foreign Service during a fiscal year because of this limitation shall be paid to that individual in a lump sum at the beginning of the following fiscal year. Any amount paid under this authority during a fiscal year shall be taken into account for purposes of applying the limitation in the first sentence of this subparagraph with respect to such fiscal year.” and added par. (5).

### Statutory Notes and Related Subsidiaries

#### EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–228, div. A, title III, §312(b), Sept. 30, 2002, 116 Stat. 1378, provided that: “The amendment made by subsection (a) [amending this section] shall take effect October 1, 2002.”

#### SENIOR FOREIGN SERVICE PERFORMANCE PAY

Pub. L. 103–236, title I, §173(a)–(c), Apr. 30, 1994, 108 Stat. 412, as amended by Pub. L. 103–415, §1(gg), Oct. 25, 1994, 108 Stat. 4303, provided that:

“(a) PROHIBITION ON AWARDS.—Notwithstanding any other provision of law, the Secretary of State may not award or pay performance payments for fiscal years 1994 and 1995 under section 405 of the Foreign Service Act of 1980 (22 U.S.C. 3965), unless the Secretary awards or pays performance awards to other Federal employees for such fiscal years.

“(b) AWARDS IN SUBSEQUENT FISCAL YEARS.—The Secretary may not make a performance award or payment in any fiscal year after a fiscal year referred to in subsection (a) for the purpose of providing an individual with a performance award or payment to which the individual would otherwise have been entitled in a fiscal year referred to in such subsection but for the prohibition described in such subsection.

“(c) APPLICATION TO USIA, AID, AND ACDA.—Subsections (a) and (b) shall apply to the United States Information Agency, the Agency for International Development, and the United States Arms Control and Disarmament Agency in the same manner as such subsections apply to the Department of State, except that the Director of the United States Information Agency, the Administrator of the Agency for International Development, and the Director of the United States Arms Control and Disarmament Agency shall be subject to the limitations and authority of the Secretary of State under subsections (a) and (b) for their respective agencies.”

[For abolition of United States Information Agency (other than Broadcasting Board of Governors and International Broadcasting Bureau), transfer of functions, and treatment of references thereto, see sections 6531, 6532, and 6551 of this title, and for abolition, transfer of functions, and treatment of references to United States Arms Control and Disarmament Agency, see section 6511 et seq. of this title.]

#### REVIEW OF PERFORMANCE PAY PROGRAMS

Pub. L. 100–204, title I, §175(a), Dec. 22, 1987, 101 Stat. 1361, provided that:

“(1) SUSPENSION OF AWARDS DURING REVIEW.—During the period beginning on the date of enactment of this Act [Dec. 22, 1987], and ending on the date on which the Inspector General of the Department of State reports to the Congress pursuant to paragraph (2), performance pay may not be awarded under section 405 of the Foreign Service Act of 1980 (22 U.S.C. 3965) to any member of the Senior Foreign Service in the Department of State.

“(2) REVIEW BY INSPECTOR GENERAL.—The Inspector General of the Department of State shall conduct a complete and thorough review of—

“(A) the procedures in the Department of State under which performance pay recipients are chosen to determine whether the procedures and award determinations are free from bias and reflect fair standards; and

“(B) the adequacy of the criteria and the equity of the criteria actually applied in making those awards. The review should be conducted in accordance with generally accepted Government auditing standards. The Inspector General shall report the results of this review to the Secretary of State and to the Congress no later than May 1, 1988.

“(3) REPORT BY SECRETARY OF STATE.—No later than 60 days after the report of the Inspector General is submitted to the Secretary of State under paragraph (2), the Secretary shall submit to the Congress a report containing the comments of the Secretary on the report of the Inspector General and describing the actions taken and proposed to be taken by the Secretary as a result of the report.”

### § 3966. Within-class salary increases

#### (a) Time period; limitation

Any member of the Service receiving a salary under the Foreign Service Schedule shall be advanced to the next higher salary step in the member's class at the beginning of the first applicable pay period following the completion by that member of a period of—

(1) 52 calendar weeks of service in each of salary steps 1 through 9, and

(2) 104 calendar weeks of service in each of salary steps 10 through 13,

unless the performance of the member during that period is found in a review by a selection board established under section 4002 of this title to fall below the standards of performance for his or her salary class.

**(b) Additional increase for meritorious service**

The Secretary may grant, on the basis of especially meritorious service, to any member of the Service receiving an increase in salary under subsection (a), an additional salary increase to any higher step in the salary class in which the member is serving.

(Pub. L. 96-465, title I, § 406, Oct. 17, 1980, 94 Stat. 2089.)

**§ 3967. Salaries for Foreign Service personnel abroad who perform routine duties**

(a) The Secretary may establish salary rates at rates lower than those established for the Foreign Service Schedule for the Foreign Service personnel described in subsection (b). The rates established under this subsection may be no less than the then applicable minimum wage rate specified in section 206(a)(1) of title 29.

(b) The Secretary may pay Foreign Service personnel who are recruited abroad, who are not available or are not qualified for assignment to another Foreign Service post, and who perform duties of a more routine nature than are generally performed by Foreign Service personnel assigned to class 9 in the Foreign Service Schedule, in accordance with the salary rates established under subsection (a).

(Pub. L. 96-465, title I, § 407, Oct. 17, 1980, 94 Stat. 2090.)

**§ 3968. Local compensation plans**

**(a) Establishment; rates of pay; leaves of absence; supplemental payments; transfer from Civil Service Retirement and Disability Fund**

(1) The Secretary shall establish compensation (including position classification) plans for foreign national employees of the Service and United States citizens employed under section 3951(c)(1) of this title. To the extent consistent with the public interest, each compensation plan shall be based upon prevailing wage rates and compensation practices (including participation in local social security plans) for corresponding types of positions in the locality of employment, except that such compensation plans shall provide for payment of wages to United States citizens at a rate which is no less than the then applicable minimum wage rate specified in section 206(a)(1) of title 29. Any compensation plan established under this section may include provision for (A) leaves of absence with pay for employees in accordance with prevailing law and employment practices in the locality of employment without regard to any limitation contained in section 6310 of title 5, (B) programs for voluntary transfers of such leave and voluntary leave banks, which shall, to the extent practicable, be established in a manner consistent with the provisions of subchapters III and IV, respectively, of chapter 63 of title 5, and (C) payments by the Government and employees to (i) a trust or other fund in a finan-

cial institution in order to finance future benefits for employees, including provision for retention in the fund of accumulated interest and dividends for the benefit of covered employees; or (ii) a Foreign Service National Savings Fund established in the Treasury of the United States, which (I) shall be administered by the Secretary, at whose direction the Secretary of the Treasury shall invest amounts not required for the current needs of the Fund; and (II) shall be public monies, which are authorized to be appropriated and remain available without fiscal year limitation to pay benefits, to be invested in public debt obligations bearing interest at rates determined by the Secretary of the Treasury taking into consideration current average market yields on outstanding marketable obligations of the United States of comparable maturity, and to pay administrative expenses. For United States citizens under a compensation plan, the Secretary shall define those allowances and benefits provided under United States law which shall be included as part of the total compensation package, notwithstanding any other provision of law, except that this section shall not be used to override United States minimum wage requirements, or any provision of the Social Security Act [42 U.S.C. 301 et seq.] or title 26.

(2) The Secretary may make supplemental payments to any civil service annuitant who is a former foreign national employee of the Service (or who is receiving an annuity as a survivor of a former foreign national employee of the Service) in order to offset exchange rate losses, if the annuity being paid such annuitant is based on—

(A) a salary that was fixed in a foreign currency that has appreciated in value in terms of the United States dollar; and

(B) service in a country in which (as determined by the Secretary) the average retirement benefits being received by individuals who retired from competitive local organizations are superior to the local currency value of civil service annuities plus any other retirement benefits payable to foreign national employees who retired during similar time periods and after comparable careers with the Government.

(3)(A) Whenever a foreign national employee so elects during a one-year period established by the Secretary of State with respect to each post abroad, the Secretary of the Treasury (at the direction of the Secretary of State) shall transfer such employee's interest in the Civil Service Retirement and Disability Fund to a trust or other local retirement plan certified by the United States Government under a local compensation plan established for foreign national employees pursuant to this section (excluding local social security plans).

(B) For purposes of subparagraph (A), the phrase "employee's interest in the Civil Service Retirement and Disability Fund" means the total contributions of the employee and the employing agency with respect to such employee, pursuant to sections 8331(8) and 8334(a)(1) of title 5, respectively, plus interest at the rate provided in section 8334(e)(3) of such title.