

**Executive Documents**

## ADJUSTMENT OF PAY RATES

For adjustment of 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.

## EXECUTIVE ORDER NO. 12438

Ex. Ord. No. 12438, Aug. 23, 1983, 48 F.R. 39205, which related to review of increases in rates of basic pay for employees of the Veterans' Administration, was revoked by Ex. Ord. No. 12797, Apr. 3, 1992, 57 F.R. 11671, set out as a note under section 7455 of this title.

**§ 7404A. Awards**

(a) SUPERIOR ACCOMPLISHMENTS AND PERFORMANCE AWARDS PROGRAM.—The Secretary may establish an awards program for personnel listed in section 7421(b) of this title consistent with chapter 45 of title 5, to the extent practicable.

(b) EXECUTIVE PERFORMANCE AWARDS PROGRAM.—Notwithstanding section 7425 of this title or any other provision of law, the Secretary may establish a performance awards program consistent with section 5384 of title 5 for—

(1) personnel appointed under section 7401(1) of this title for a position that the Secretary has determined is of equivalent rank to a Senior Executive Service position (as such term is defined in section 3132(a) of title 5) and is subject to an agency performance management system; and

(2) personnel appointed under section 7306 or 7401(4) of this title.

(c) PAYMENT OF AWARDS.—Awards under this section may be paid based on criteria established by the Secretary and shall not be considered in calculating the limitation under section 7431(e)(4) of this title.

(d) NOT CONSIDERED BASIC PAY.—Awards under this section shall not be considered basic pay for any purpose.

(e) REGULATIONS.—The Secretary may prescribe regulations for the administration of this section.

(Added Pub. L. 117–168, title IX, §906(b)(1), Aug. 10, 2022, 136 Stat. 1812.)

**Statutory Notes and Related Subsidiaries**

## LIMITATION ON PAST AWARDS

Pub. L. 117–168, title IX, §906(b)(2), Aug. 10, 2022, 136 Stat. 1812, provided that: “Notwithstanding any other provision of law, awards made by the Secretary of Veterans Affairs for any period on or after January 1, 2017, and before the date of the enactment of this Act [Aug. 10, 2022] for an employee under section 7306 or 7401(4) of title 38, United States Code, or for a position described in section 7401(1) of such title that the Secretary has determined is of equivalent rank to a Senior Executive Service position (as such term is defined in section 3132(a) of title 5, United States Code), may be subject to section 7404A of title 38, United States Code, as added by paragraph (1).”

**§ 7405. Temporary full-time appointments, part-time appointments, and without-compensation appointments**

(a) The Secretary, upon the recommendation of the Under Secretary for Health, may employ, without regard to civil service or classification laws, rules, or regulations, personnel as follows:

(1) On a temporary full-time basis, part-time basis, or without compensation basis, persons in the following positions:

(A) Positions listed in section 7401(1) of this title.

(B) Positions listed in section 7401(3) of this title.

(C) Librarians.

(D) Other professional, clerical, technical, and unskilled personnel (including interns, residents, trainees, and students in medical support programs).

(2) On a fee basis, persons in the following positions:

(A) Positions listed in section 7401(1) of this title.

(B) Positions listed in section 7401(3) of this title.

(C) Other professional and technical personnel.

(b) Personnel employed under subsection (a)—

(1) shall be in addition to personnel described in section 7306, paragraphs (1) and (3) of section 7401, and section 7408 of this title; and

(2) shall be paid such rates of pay as the Secretary may prescribe.

(c)(1) Temporary full-time appointments under this section of persons in positions listed in paragraphs (1) and (3) of section 7401 of this title may be for a period in excess of 90 days only if the Under Secretary for Health finds that circumstances render it impracticable to obtain the necessary services through appointments under that section.

(2) A temporary full-time appointment may not be made for a period in excess of two years in the case of a person who—

(A) has successfully completed—

(i) a full course of nursing in a recognized school of nursing, approved by the Secretary; or

(ii) a full course of training for any category of personnel described in paragraph (3) of section 7401 of this title, or as a physician assistant, in a recognized education or training institution approved by the Secretary; and

(B) is pending registration or licensure in a State or certification by a national board recognized by the Secretary.

(3)(A) Temporary full-time appointments of persons in positions referred to in subsection (a)(1)(D) shall not exceed three years.

(B) Temporary full-time appointments under this paragraph may be renewed for one or more additional periods not in excess of three years each.

(4) Temporary full-time appointments of other personnel may not be for a period in excess of one year except as authorized in subsection (f).

(d) A part-time appointment may not be for a period of more than one year, except for appointments of persons specified in subsection (a)(1)(A) and interns, residents, and other trainees in medical support programs and except as authorized in subsection (f).

(e) A student who has a temporary appointment under this section and who is pursuing a

full course of nursing in a recognized school of nursing approved by the Secretary, or who is pursuing a full course of training for any category of personnel described in paragraph (3) of section 7401 of this title in a recognized education or training institution approved by the Secretary, may be reappointed for a period not to exceed the duration of the student's academic program.

(f) During any period during which the Secretary is exercising the authority provided in subsections (a) and (f)(1) of section 7403 of this title in connection with the appointment, under paragraph (3) of section 7401 of this title, of personnel in a category of personnel described in such paragraph—

(1) the Secretary may make temporary full-time appointments of personnel in such category for periods exceeding 90 days if the Under Secretary for Health finds that circumstances render it impractical to obtain the necessary services through appointments under paragraph (3) of section 7401 of this title; and

(2) part-time appointments of personnel in such category may be for periods of more than one year.

(g)(1) Except as provided in paragraph (3), employment of a registered nurse on a temporary part-time basis under subsection (a)(1) shall be for a probationary period of two years.

(2) Except as provided in paragraph (3), upon completion by a registered nurse of the probationary period described in paragraph (1)—

(A) the employment of such nurse shall—

(i) no longer be considered temporary; and  
(ii) be considered an appointment described in section 7403(a) of this title; and

(B) the nurse shall be considered to have served the probationary period required by section 7403(b).

(3) This subsection shall not apply to appointments made on a term limited basis of less than or equal to three years of—

(A) nurses with a part-time appointment resulting from an academic affiliation or teaching position in a nursing academy of the Department;

(B) nurses appointed as a result of a specific research proposal or grant; or

(C) nurses who are not citizens of the United States and appointed under section 7407(a) of this title.

(Added Pub. L. 102-40, title IV, § 401(b)(2), May 7, 1991, 105 Stat. 226; amended Pub. L. 102-405, title III, § 302(c)(1), Oct. 9, 1992, 106 Stat. 1984; Pub. L. 106-419, title II, § 204, Nov. 1, 2000, 114 Stat. 1842; Pub. L. 108-170, title III, § 301(c), Dec. 6, 2003, 117 Stat. 2057; Pub. L. 111-163, title VI, § 601(c), May 5, 2010, 124 Stat. 1168.)

#### Editorial Notes

##### PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 4114(a) of this title prior to the repeal of that section as part of the complete revision of chapter 73 of this title by Pub. L. 102-40.

##### AMENDMENTS

2010—Subsec. (g). Pub. L. 111-163 added subsec. (g).

2003—Subsec. (a)(1)(B), (C). Pub. L. 108-170, § 301(c)(1)(A), added subpars. (B) and (C) and struck out former subpars. (B) and (C) which read as follows:

“(B) Certified or registered respiratory therapists, licensed physical therapists, licensed practical or vocational nurses, pharmacists, and occupational therapists.”

“(C) Dietitians, social workers, and librarians.”

Subsec. (a)(2)(B). Pub. L. 108-170, § 301(c)(1)(B), added subpar. (B) and struck out former subpar. (B) which read as follows: “Certified or registered respiratory therapists, licensed physical therapists, licensed practical or vocational nurses, pharmacists, and occupational therapists.”

Subsec. (c)(1). Pub. L. 108-170, § 301(c)(2), substituted “paragraphs (1) and (3) of section 7401” for “section 7401(1)”.

2000—Subsec. (c)(2). Pub. L. 106-419, § 204(a), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “Temporary full-time appointments of persons who have successfully completed a full course of nursing in a recognized school of nursing, approved by the Secretary, or who have successfully completed a full course of training for any category of personnel described in paragraph (3) of section 7401 of this title in a recognized education or training institution approved by the Secretary, and who are pending registration or licensure in a State, or certification by a national board recognized by the Secretary, shall not exceed two years.”

Subsec. (c)(3), (4). Pub. L. 106-419, § 204(b), added par. (3) and redesignated former par. (3) as (4).

1992—Subsecs. (a), (c)(1), (f)(1). Pub. L. 102-405 substituted “Under Secretary for Health” for “Chief Medical Director”.

#### Statutory Notes and Related Subsidiaries

RECRUITMENT OF MENTAL HEALTH PROVIDERS FOR FURNISHING MENTAL HEALTH SERVICES ON BEHALF OF THE DEPARTMENT OF VETERANS AFFAIRS WITHOUT COMPENSATION FROM THE DEPARTMENT

Pub. L. 112-239, div. A, title VII, § 729, Jan. 2, 2013, 126 Stat. 1813, provided that:

“(a) IN GENERAL.—The Secretary of Veterans Affairs shall carry out a national program of outreach to societies, community organizations, nonprofit organizations, and government entities in order to recruit mental health providers who meet the quality standards and requirements of the Department of Veterans Affairs to provide mental health services for the Department on a part-time, without-compensation basis, under section 7405 of title 38, United States Code.

“(b) PARTNERING WITH AND DEVELOPING COMMUNITY ENTITIES AND NONPROFIT ORGANIZATIONS.—In carrying out the program required by subsection (a), the Secretary may partner with a community entity or nonprofit organization or assist in the development of a community entity or nonprofit organization, including by entering into an agreement under section 8153 of title 38, United States Code, that provides strategic coordination of the societies, organizations, and government entities described in subsection (a) in order to maximize the availability and efficient delivery of mental health services to veterans by such societies, organizations, and government entities.

“(c) MILITARY CULTURE TRAINING.—In carrying out the program required by subsection (a), the Secretary shall provide training to mental health providers to ensure that clinicians who provide mental health services as described in such subsection have sufficient understanding of military-specific and service-specific culture, combat experience, and other factors that are unique to the experience of veterans who served in Operation Enduring Freedom, Operating Iraqi Freedom, or Operation New Dawn.”

#### § 7406. Residencies and internships

(a)(1) The Secretary may establish residencies and internships. The Secretary may appoint