(3) the Library of Congress;
(4) the Office of the Architect of the Capitol;
(5) the Botanic Garden;
(6) the Administrative Office of the United States Courts, the Federal Judicial Center, and any of the courts set forth in section 610 of title 28; and
(7) the Congressional Budget Office.

For purposes of this section, the Director of the Administrative Office of the United States Courts shall be the head of the agency in the case of those entities set forth in paragraph (6) of this subsection.

For the purposes of this section, the term "authorized official" means—
(1) the head of an agency, with respect to an agency or employee in the legislative branch; or
(2) the Director of the Office of Management and Budget, with respect to any other agency or employee.


AMENDMENTS

2005—Subsec. (g)(7). Pub. L. 109–55 added par. (7) in subsec. (g) defining "agency".

1996—Subsec. (a). Pub. L. 104–316, §103(d)(1), in par. (1) substituted "authorized official" for "Comptroller General of the United States", and in par. (2) inserted "and" at end of subpar. (A), redesignated subpar. (C) as (B) and substituted "authorized official" for "Comptroller General", and struck out former subpar. (B) which read as follows: "the claim is not the subject of review as a note under section 130c of Title 2, The Congress." Subsec. (b)(2). Pub. L. 104–316 inserted "if application for waiver is received in his office" in cl. (2), and substituted "October 21, 1968" for "the effective date of this section." Subsec. (b)(3). Pub. L. 92–453 added cl. (3).

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–55, title I, §1100(b), Aug. 2, 2005, 119 Stat. 577, amended this section [amending this section shall apply with respect to fiscal year 2006 and each succeeding fiscal year.]

EFFECTIVE DATE OF 1996 AMENDMENT


EFFECTIVE DATE OF 1988 AMENDMENT

Section 1009(b) of Pub. L. 100–702 provided that: "The amendments made by this section [amending this section] shall apply with respect to any claim arising before the date of the enactment of this Act [Nov. 19, 1988] which is pending on such date, and to any claim which arises on or after such date of enactment."

EFFECTIVE DATE OF 1985 AMENDMENT

Section 4 of Pub. L. 99–224 provided that: "The amendments made by section 1 of this Act [amending this section] shall apply to any claim arising out of an erroneous payment of travel, transportation, or relocation expenses and allowances made on or after the date of the enactment of this Act [Dec. 28, 1985]. The amendments made by sections 2 and 3 of this Act [amending section 2774 of Title 10, Armed Forces, and section 716 of Title 32, National Guard] shall apply to any claim arising out of an erroneous payment of travel and transportation expenses and allowances made on or after the date of the enactment of this Act."

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–54 effective July 12, 1979, see section 2(b) of Pub. L. 96–54, set out as a note under section 305 of this title.

SUBCHAPTER IX—SEVERANCE PAY AND BACK PAY

AMENDMENTS

§ 5595. Severance pay

(a) For the purpose of this section—

(1) "agency" means—

(A) an Executive agency;

(B) the Library of Congress;

(C) the Government Printing Office;

(D) the government of the District of Columbia;

(E) the Administrative Office of the United States Courts, the Federal Judicial Center, and the courts named by section 610 of title 28; and

(F) the Office of the Architect of the Capitol; and

(2) "employee" means—

(A) an individual employed in or under an agency; and

(B) an individual employed by a county committee established under section 590h(b) of title 16; but does not include—

(i) an employee (other than a member of the Senior Executive Service or the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service, or an employee whose pay is fixed under section 5376) whose rate of basic pay is fixed at a rate provided for one of the levels of the Executive Schedule or is in excess of the maximum rate for the Executive Schedule;

(ii) an employee serving under an appointment with a definite time limitation, except one so appointed for full-time employment without a break in service of more than 3 days following service under an appointment without time limitation;

(iii) an alien employee who occupies a position outside the several States, the District of Columbia, and the areas and installations in the Republic of Panama made available to the United States pursuant to the Panama Canal Treaty of 1977 and related agreements (as described in section 3(a) of the Panama Canal Act of 1979);

(iv) an employee who is subject to subchapter III of chapter 83 of this title or any other retirement statute or retirement system applicable to an employee as defined by section 2105 of this title or a member of a uniformed service and who, at the time of separation from the service, has fulfilled the requirements for immediate annuity under such a statute or system;

(v) an employee who, at the time of separation from the service, is receiving compensation under subchapter I of chapter 81 of this title, other than one receiving this compensation concurrently with pay or on account of the death of another individual;

(vi) an employee who, at the time of separation from the service, is entitled to receive benefits under section 609(b)(1) of the Foreign Service Act of 1980 or any other severance pay from the Government;

(vii) an employee of the Tennessee Valley Authority;

(viii) an employee of the Office of the Architect of the Capitol, who is employed on a temporary when actually employed basis;

(ix) an employee of the Government Printing Office, who is employed on a temporary when actually employed basis; or

(x) such other employee as may be excluded by regulations of the President or such other officer or agency as he may designate.

(b) Under regulations prescribed by the President or such officer or agency as he may designate, an employee who—

(1) has been employed currently for a continuous period of at least 12 months; and

(2) is involuntarily separated from the service, not by removal for cause on charges of misconduct, delinquency, or inefficiency;

is entitled to be paid severance pay in regular pay periods by the agency from which separated. However, the Director of the Administrative Office of the United States Courts may prescribe regulations to effect the application and operation of this section to the agencies specified in subsection (a)(1)(E) of this section. The Architect of the Capitol may prescribe regulations to effect the application and operation of this section to the agency specified in subsection (a)(1)(F) of this section. The Public Printer may prescribe regulations to effect the application and operation of this section to the agency specified in subsection (a)(1)(C) of this section.

(c) Severance pay consists of—

(1) a basic severance allowance computed on the basis of 1 week's basic pay at the rate received immediately before separation for each year of civilian service up to and including 10 years for which severance pay has not been received under this or any other authority and 2 weeks' basic pay at that rate for each year of civilian service beyond 10 years for which severance pay has not been received under this or any other authority; and

(2) an age adjustment allowance computed on the basis of 10 percent of the total basic severance allowance for each year by which the age of the recipient exceeds 40 years at the time of separation.

Total severance pay under this section may not exceed 1 year's pay at the rate received immediately before separation. For the purpose of this subsection, "basic pay" includes premium pay under section 5545(c)(1) of this title.

(d) If an employee is reemployed by the Government of the United States or the government of the District of Columbia before the end of the period covered by payments of severance pay, the payments shall be discontinued beginning with the date of reemployment and the service represented by the unexpired portion of the period shall be recredited to the employee for use in any later computations of severance pay. For the purpose of subsection (b) (1) of this section,
reemployment that causes severance pay to be discontinued is deemed employment continuous with that serving as the basis for severance pay.  (e) If the employee dies before the end of the period covered by payments of severance pay, the payments of severance pay with respect to the employee shall be continued as if the employee were living and shall be paid on a pay period basis to the survivor of the employee in accordance with section 5582(b) of this title.  (f) Severance pay under this section is not a basis for payment, and may not be included in the basis for computation, of any other type of United States or District of Columbia Government benefits. A period covered by severance pay is not a period of United States or District of Columbia Government service or employment.  (g) The Secretary of Agriculture shall prescribe regulations to effect the application and operation of this section to an individual named by subsection (a)(2)(B) of this section.  (h)(1) Severance pay under this section may not be paid—  (A) a person described in paragraph (4)(A) during any period in which the person is employed in a defense nonappropriated fund instrumentality; or  (B) a person described in paragraph (4)(B) during any period in which the person is employed in a Coast Guard nonappropriated fund instrumentality.  (2)(A) Except as provided in subparagraph (B), payment of severance pay to a person referred to in paragraph (1) may be resumed upon any involuntary separation of the person from the position of employment in a nonappropriated fund instrumentality, not by removal for cause on charges of misconduct, delinquency, or inefficiency.  (B) Payment of severance pay may not be resumed under subparagraph (A) in the case of a person who, upon separation, is entitled to immediate payment of retired or retainer pay as a member or former member of the uniformed services or to an immediate annuity under—  (i) a retirement system for persons retiring from employment by a nonappropriated fund instrumentality;  (ii) subchapter III of chapter 83 of this title;  (iii) subchapter II of chapter 84 of this title; or  (iv) any other retirement system of the Federal Government for persons retiring from employment with the Federal Government.  (3) Upon resumption of payment of severance pay under paragraph (2)(A) in the case of a person separated as described in such paragraph, the amount of the severance pay so payable for a period shall be reduced (but not below zero) by the portion (if any) of the amount of any severance pay payable for such period to the person by the nonappropriated fund instrumentality that is attributable to credit for service taken into account under subsection (c) in the computation of the amount of the severance pay so resumed.  (4) Paragraph (1) applies to a person who, on or after January 1, 1987, moves without a break in service—  (A) from employment in the Department of Defense that is not employment in a defense nonappropriated fund instrumentality to employment in a defense nonappropriated fund instrumentality; or  (B) from employment in the Coast Guard that is not employment in a Coast Guard nonappropriated fund instrumentality to employment in a Coast Guard nonappropriated fund instrumentality.  (5) The Secretary of Defense, in consultation with the Secretary of Homeland Security, shall prescribe regulations to carry out this subsection.  (6) In this subsection:  (A) The term “defense nonappropriated fund instrumentality” means a nonappropriated fund instrumentality of the Department of Defense.  (B) The term “Coast Guard nonappropriated fund instrumentality” means a nonappropriated fund instrumentality of the Coast Guard.  (C) The term “nonappropriated fund instrumentality” means a nonappropriated fund instrumentality described in section 2105(c)(1) of this title.  (i)(1) In the case of an employee of the Department of Defense who is entitled to severance pay under this section, the Secretary of Defense or the Secretary of the military department concerned may, upon application by the employee, pay the total amount of the severance pay to the employee in one lump sum.  (2)(A) If an employee paid severance pay in a lump sum under this subsection is reemployed by the Government of the United States or the government of the District of Columbia at such time that, had the employee been paid severance pay in regular pay periods under subsection (b), the payments of such pay would have been discontinued under subsection (d) upon such reemployment, the employee shall repay to the Department of Defense (for the military department that formerly employed the employee, if applicable) an amount equal to the amount of severance pay to which the employee was entitled under this section that would not have been paid to the employee under subsection (d) by reason of such reemployment.  (B) The period of service represented by an amount of severance pay repaid by an employee under subparagraph (A) shall be considered service for which severance pay has not been received by the employee under this section.  (C) Amounts repaid to an agency under this paragraph shall be credited to the appropriation available for the pay of employees of the agency for the fiscal year in which received. Amounts so credited shall be merged with, and shall be available for the same purposes and the same period as, the other funds in that appropriation.  (3) If an employee fails to repay to an agency an amount required to be repaid under paragraph (2)(A), that amount is recoverable from the employee as a debt due the United States.  (4) This subsection applies with respect to severance pay payable under this section for separations taking effect on or after February 10, 1996, and before October 1, 2014.  (j)(1) In the case of an employee of the Department of Energy who is entitled to severance pay
under this section as a result of the establishment of the National Nuclear Security Administration, the Secretary of Energy may, upon application by the employee, pay the total amount of the severance pay to the employee in one lump sum.

(2)(A) If an employee paid severance pay in a lump sum under this subsection is reemployed by the Government of the United States or the government of the District of Columbia at such time that, had the employee been paid severance pay in regular pay periods under subsection (b), the payments of such pay would have been discontinued under subsection (d) upon such reemployment, the employee shall repay to the Department of Energy an amount equal to the amount of severance pay to which the employee was entitled under this section that would not have been paid to the employee under subsection (d) by reason of such reemployment.

(B) The period of service represented by an amount of severance pay repaid by an employee under subparagraph (A) shall be considered service for which severance pay has not been received by the employee under this section.

(C) Amounts repaid to the Department of Energy under this paragraph shall be credited to the appropriation available for the pay of employees of the agency for the fiscal year in which received. Amounts so credited shall be merged with, and shall be available for the same purposes and the same period as, the other funds in that appropriation.

(3) If an employee fails to repay to the Department of Energy an amount required to be repaid under paragraph (2)(A), that amount is recoverable from the employee as a debt due the United States.


REFERENCES IN TEXT

The Executive Schedule, referred to in subsec. (a)(2)(i), is set out in section 5311 et seq. of title 5.

Section 3(a) of the Panama Canal Act of 1979, referred to in subsec. (a)(2)(ii), is classified to section 3602(a) of Title 22, Foreign Relations and Intercourse.

Section 609(b)(1) of the Foreign Service Act of 1980, referred to in subsec. (a)(2)(vi), is classified to section 4069(b)(1) of Title 22.

AMENDMENTS


Historical and Revision Notes

Section 5595 of this title was not transferred to Title 5, United States Code, as part of the act of August 3, 1950 (5 U.S.C. 61f) to reflect the codification of the act in title 5, United States Code.
Restaurants" after "an employee" and "or" after the semicolon.


Subsec. (b). Pub. L. 105–55, §310(a)(3), inserted at end "The Architect of the Capitol may prescribe regulations to effect the application and operation of this section to the agency specified in subsection (a)(1)(F) of this section."


1989—Subsec. (b). Pub. L. 101–474, §5(k)(2), inserted at end "However, the Director of the Administrative Office of the United States Courts may prescribe regulations to effect the application and operation of this section to the agencies specified in subsection (a)(1)(E) of this section."


1979—Subsec. (a)(2)(iii). Pub. L. 96–70 substituted "areas and installations in the Republic of Panama made available to the United States pursuant to the Panama Canal Treaty of 1977 and related agreements (as described in section 3(a) of the Panama Canal Act of 1979)" for "Canal Zone".


EFFECTIVE DATE OF 1999 AMENDMENT

EFFECTIVE DATE OF 1994 AMENDMENT
Section 343(b) of Pub. L. 103–337 provided that: "Subsection (h) of section 5396 of title 5, United States Code, as added by subsection (a), shall apply with respect to pay periods that begin on or after the date of the enactment of this Act (Oct. 5, 1994)."
(i) annual leave restored under this paragraph which is in excess of the maximum leave accumulation permitted by law shall be credited to a separate leave account for the employee and shall be available for use by the employee within the time limits prescribed by regulations of the Office of Personnel Management, and
(ii) annual leave credited under clause (i) of this subparagraph but unused and still available to the employee under regulations prescribed by the Office shall be included in the lump-sum payment under section 5551 or 5552(1) of this title but may not be retained to the credit of the employee under section 5552(2) of this title.

(2)(A) An amount payable under paragraph (1)(A)(i) of this subsection shall be payable with interest.

(B) Such interest—
(i) shall be computed for the period beginning on the effective date of the withdrawal or reduction involved and ending on a date not more than 36 days before the date on which payment is made;
(ii) shall be computed at the rate or rates in effect under section 6621(a)(1) of the Internal Revenue Code of 1986 during the period described in clause (i); and
(iii) shall be compounded daily.

(C) Interest under this paragraph shall be paid out of amounts available for payments under paragraph (1) of this subsection.

(3) This subsection does not apply to any reclassification action nor authorize the setting aside of an otherwise proper promotion by a selecting official from a group of properly ranked and certified candidates.

(4) The pay, allowances, or differentials granted under this section for the period for which an unjustified or unwarranted personnel action was in effect shall not exceed that authorized by the bargaining agreement under which the unjustified or unwarranted personnel action is found, except that in no case may pay, allowances, or differentials be granted under this section for a period beginning more than 6 years before the date of the filing of a timely appeal or, absent such filing, the date of the administrative determination.

(5) For the purpose of this subsection, “grievance” and “collective bargaining agreement” have the meanings set forth in section 7103 of this title and (with respect to members of the Foreign Service) in sections 1101 and 1002 of the Foreign Service Act of 1980, “unfair labor practice” means an unfair labor practice described in section 7116 of this title and (with respect to members of the Foreign Service) in section 1015 of the Foreign Service Act of 1980, and “personnel action” includes the omission or failure to take an action or confer a benefit.

(c) The Office of Personnel Management shall prescribe regulations to carry out this section. However, the regulations are not applicable to the Tennessee Valley Authority and its employees, or to the agencies specified in subsection (a)(2) of this section.


HISTORICAL AND REVISION NOTES

Section of Source: (U.S. Code) Source: (Statutes at Large)

5596(a) ..... 5 App.: 652a.
5596(b) ..... 5 App.: 652b.
5596(c) ..... 5 App.: 652c.


In subsection (a)(1), the term “Executive agency” is substituted for “executive department of the Government of the United States”, “agency or independent establishment in the executive branch of such Government”, “corporation owned or controlled by such Government”, and “the General Accounting Office” to conform to the definition in 5 U.S.C. 105.

In subsection (b), the word “employee” is substituted for “civilian officer or employee” and “such officer or employee” to conform to the definition in 5 U.S.C. 101.

In subsection (c), the words “employees” is substituted for “officers and employees” to conform to the definition in 5 U.S.C. 101.

REFERENCES IN TEXT


Chapter 11 of title I of the Act is classified generally to subchapter XI (§ 1151 et seq.) of chapter 52 of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 3901 of Title 22 and Tables.

Section 6621(a)(1) of the Internal Revenue Code of 1986, referred to in subsec. (a)(2), is classified to section 6621(a)(1) of Title 26, Internal Revenue Code.

Sections 1101, 1002, and 1015 of the Foreign Service Act of 1980, referred to in subsec. (b)(5), are classified to sections 4131, 4102, and 4115, respectively, of Title 22, Foreign Relations and Intercourse.

AMENDMENTS


Subsec. (c). Pub. L. 101–474, § 5(b)(2), substituted “employees, or to the agencies specified in subsection (a)(2) of this section” for “employees”.

1987—Subsec. (b)(2) to (4), Pub. L. 100–202 added par. (2) and redesignated former pars. (2) and (3) as (3) and (4), respectively.


Subsec. (b)(3). Pub. L. 96–465, § 2306(2), inserted “and (with respect to members of the Foreign Service) in sections 1101 and 1002 of the Foreign Service Act of 1980” after “section 7103 of this title”, and “and (with respect to members of the Foreign Service)” in section 1015 of the Foreign Service Act of 1980” after “section 7116 of this title”.

5 App.: 652c.
5 App.: 652b.
5 App.: 652a.

1978—Subsec. (b). Pub. L. 95–454 substituted provisions relating to corrective measures applicable to an employee who, on the basis of a timely appeal or an administrative determination, including a decision relative to an unfair labor practice or grievance, is found by an appropriate authority under applicable law, rule, regulation, or collective bargaining agreement to have been affected by an unjustified or unwarranted personnel action, for provisions relating to corrective measures applicable to an employee who, on the basis of an administrative determination or a timely appeal, is found by an appropriate authority under applicable law or regulation to have undergone an unjustified or unwarranted personnel action.

1975—Subsec. (b)(2). Pub. L. 94–172 struck out in introductory clause provision relating to prohibition on leave credit cumulated in excess of maximum allowed under law or regulations, and added subpars. (A) and (B).

EFFECTIVE DATE OF 2001 AMENDMENT
Pub. L. 107–68, title III, §309, Nov. 12, 2001, 115 Stat. 592, provided that: “(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by subsection (a) [amending this section] shall take effect on the date of enactment of this Act [Dec. 22, 1987], and shall apply with respect to any employee found, in a final judgment rendered or a final decision otherwise rendered on or after such date, to have been the subject of an unjustified or unwarranted personnel action, the correction of which enables such employee, to an amount under section 5596(b)(1)(A)(i) of title 5, United States Code.

“(2) EXCEPTION.—

“(a) CASES IN WHICH A RIGHT TO INTEREST WAS RESERVED.—The amendments made by subsection (a) [amending this section] shall also apply with respect to any claim which was brought under section 5596 of title 5, United States Code, and with respect to which a final judgment was otherwise rendered before the date of the enactment of this Act [Dec. 22, 1987], if, under terms of such judgment or decision, a right to interest was specifically reserved, contingent on the enactment of a statute authorizing the payment of interest on claims brought under such section 5596.

“(b) METHOD OF COMPUTING INTEREST.—The amount of interest payable under this paragraph with respect to a claim shall be determined in accordance with section 5596(b)(2)(B) of title 5, United States Code (as amended by this section).

“(c) SOURCE.—An amount payable under this paragraph shall be paid from the appropriation made by section 302 of title 31, United States Code, notwithstanding section 5596(b)(2)(C) of title 5, United States Code (as amended by this section) or any other provision of law.

“(d) DEADLINE.—An application for a payment under this paragraph shall be ineffective if it is filed after the end of the 1-year period beginning on the date of the enactment of this Act [Dec. 22, 1987].

“(e) LIMITATION ON PAYMENTS.—Payments under this paragraph may not be made before October 1, 1988, except that interest shall continue to accrue in accordance with section 5596(b)(2)(B) of title 5, United States Code.”

EFFECTIVE DATE OF 1980 AMENDMENT
Amendment by Pub. L. 96–465 effective Feb. 15, 1981, except as otherwise provided, see section 2403 of Pub. L. 96–465, set out as an Effective Date note under section 3901 of Title 22, Foreign Relations and Intercourse.

EFFECTIVE DATE OF 1979 AMENDMENT
Amendment by Pub. L. 96–54 effective July 12, 1979, see section 2(b) of Pub. L. 96–54, set out as a note under section 365 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

EFFECTIVE DATE OF 1975 AMENDMENT
Section 1(b) of Pub. L. 94–172 provided that: “The amendment made by subsection (a) [amending this section] shall apply to any employee found, on or after March 30, 1966, to have undergone an unjustified or unwarranted personnel action the correction of which entitled or entitles such employee to the benefits provided under section 5596 of title 5, United States Code.”

LUMP-SUM PAYMENTS FOR FORMER EMPLOYEES NOT ON THE ROLLS ON DECEMBER 23, 1975
Section 2 of Pub. L. 94–172 provided that: “With respect to a former employee (except a former employee referred to in section 3 of this Act) [set out as a note below] who is not on the rolls on the date of the enactment of this Act [Dec. 23, 1975], annual leave which was not credited under section 5596 of title 5, United States Code, because it was in an amount that would have caused the amount of leave to the employee’s credit to exceed the maximum amount authorized for the employee by law or regulation, is subject to credit and liquidation by lump-sum payment only if a claim therefor is filed within three years immediately following the date of enactment of this Act with the agency by which the employee was employed when the lump-sum payment provisions of section 5551 of title 5, United States Code, last became applicable to such employee. Payment shall be by that agency at the rate of interest in effect on the date the lump-sum payment provisions became applicable.”

LUMP-SUM PAYMENTS FOR POSTAL EMPLOYEES NOT ON THE ROLLS ON DECEMBER 23, 1975
Section 3 of Pub. L. 94–172 provided that: “(a) With respect to a former employee of the Post Office Department or a former employee of the United States Postal Service who had prior civilian service with the Post Office Department or other Federal agency, who is not on the rolls on the date of the enactment of this Act [Dec. 23, 1975], annual leave which was not credited under section 5596 of title 5, United States Code, because it was in an amount that would have caused the amount of leave to the employee’s credit to exceed the maximum amount authorized for the employee by law or regulation, is subject to credit and liquidation by lump-sum payment only if a claim therefor is filed within three years immediately following the date of enactment of this Act with the Postal Service. Payment shall be by the Postal Service at the rate of interest in effect on the date the lump-sum payment provisions of section 5551 of title 5, United States Code, or comparable provisions of regulations of the Postal Service, as appropriate, last became applicable to the former employee.

“(b) With respect to a present employee of the Post Office Department or other Federal agency, annual leave which was accrued before July 1, 1971, but was not credited under section 5596 of title 5, United States Code, because it was in an amount that would have caused the amount of leave to the employee’s credit to exceed the maximum amount of the leave authorized for the employee by law or regulation, is subject to credit and liquidation by lump-sum payment only if a claim therefor is filed with the Postal Service within three years immediately following the date of
§ 5597. Separation pay

(a) For the purpose of this section—
(1) the term "Secretary" means the Secretary of Defense;
(2) the term "defense agency" means an agency of the Department of Defense, as further defined under regulations prescribed by the Secretary; and
(3) the term "employee" means an employee of a defense agency, serving under an appointment without time limitation, who has been currently employed for a continuous period of at least 12 months, except that such term does not include—
(A) a reemployed annuitant under subchapter III of chapter 83, chapter 84, or another retirement system for employees of the Government; or
(B) an employee having a disability on the basis of which such employee is or would be eligible for disability retirement under any of the retirement systems referred to in subparagraph (A).

(b) In order to avoid or minimize the need for involuntary separations due to a reduction in force, base closure, reorganization, transfer of function, workforce restructuring (to meet mission needs, achieve one or more strength reductions, correct skill imbalances, or reduce the number of high-grade, managerial, or supervisory positions), or other similar action affecting 1 or more defense agencies, the Secretary shall establish a program under which separation pay may be offered to encourage eligible employees to separate from service voluntarily (whether by retirement or resignation).

(c) Under the program, separation pay may be offered by a defense agency only—
(1) with the prior consent, or on the authority, of the Secretary; and
(2) to employees within such occupational groups or geographic locations, or subject to such other similar objective and nonpersonal limitations or conditions, as the Secretary may require.

A determination of which employees are within the scope of an offer of separation pay shall be made only on the basis of consistent and well-documented application of the relevant criteria.

(d) Such separation pay—
(1) shall be paid in a lump-sum or in installments;
(2) shall be equal to the lesser of—
(A) an amount equal to the amount the employee would be entitled to receive under section 5595(c) if the employee were entitled to payment under such section; or
(B) $25,000;
(3) shall not be a basis for payment, and shall not be included in the computation of any other type of Government benefit;
(4) shall not be taken into account for purposes of determining the amount of any severance pay to which an individual may be entitled under section 5595 based on any other separation; and
(5) if paid in installments, shall cease to be paid upon the recipient’s acceptance of employment by the Federal Government, or commencement of work under a personal services contract, as described in subsection (g)(1).

(e) No amount shall be payable under this section based on any separation occurring after September 30, 2003.

(f) The Secretary shall prescribe such regulations as may be necessary to carry out this section.

(g)(1) An employee who receives separation pay under this section on the basis of a separation occurring on or after the date of the enactment of the Federal Workforce Restructuring Act of 1994 and accepts employment with the Government of the United States, or who commences work for an agency of the United States through a personal services contract with the United States, within 5 years after the date of the separation on which payment of the separation pay is based shall be required to repay the entire amount of the separation pay to the defense agency that paid the separation pay.

(2) If the employment is with an Executive agency, the Director of the Office of Personnel Management may, at the request of the head of the agency, waive the repayment if the individual involved possesses unique abilities and is the only qualified applicant available for the position.

(3) If the employment is with an entity in the legislative branch, the head of the entity or the appointing official may waive the repayment if the individual involved possesses unique abilities and is the only qualified applicant available for the position.

(4) If the employment is with the judicial branch, the Director of the Administrative Office of the United States Courts may waive the repayment if the individual involved possesses unique abilities and is the only qualified applicant available for the position.

(5) If the employment is without compensation, the appointing official may waive the repayment.

(h)(1)(A) In addition to any other payment that it is required to make under subchapter III of chapter 83 or chapter 84, the Department of Defense shall remit to the Office of Personnel Management an amount equal to 15 percent of the final basic pay of each covered employee.

(2) Amounts remitted under paragraph (1) shall be deposited in the Treasury of the United States to the credit of the Civil Service Retirement and Disability Fund.

(i) For the purposes of this subsection—
(A) the term ‘covered employee’ means an employee who is subject to subchapter III of chapter 83 or chapter 84 and to whom a voluntary separation incentive has been paid under this section on the basis of a separation occurring on or after October 1, 1997; and
(B) the term “final basic pay” has the meaning given such term in section 4(a)(2) of the Federal Workforce Restructuring Act of 1994.

(i)(1) Notwithstanding any other provision of this section, during fiscal year 2001, separation pay may be offered under the program carried out under this section with respect to workforce restructuring only to persons who, upon separation, are entitled to an immediate annuity under section 8336, 8412, or 8414 of this title and are otherwise eligible for the separation pay under this section.

(2) In the administration of the program under this section during fiscal year 2001, the Secretary shall ensure that not more than 1,000 employees are, as a result of workforce restructuring, separated from service in that fiscal year entitled to separation pay under this section.

(3) Separation pay may not be offered as a result of workforce restructuring under the program carried out under this section after fiscal year 2003.


REFERENCES IN TEXT

The date of the enactment of the Federal Workforce Restructuring Act of 1994, referred to in subsec. (g)(1), is the date of enactment of Pub. L. 103–226, which was approved Mar. 30, 1994.

Section 4(a) of the Federal Workforce Restructuring Act of 1994, referred to in subsec. (h)(1)(B), (3)(B), is section 4(a) of Pub. L. 103–226, as amended, which is set out as a note under section 8333 of this title.

AMENDMENTS

2000—Subsec. (b). Pub. L. 106–398, § 1 [(div. A), title XI, § 1153(a)], inserted “workforce restructuring (to meet mission needs, achieve one or more strength reductions, correct skill imbalances, or reduce the number of high-grade, managerial, or supervisory positions),” after “transfer of function,”.


Subsec. (d)(3). Pub. L. 106–398, § 1 [(div. A), title XI, § 1151(d)(3)], added par. (1) and struck out former par. (1) which read as follows: “shall be paid in a lump sum;”.


Subsec. (g)(1). Pub. L. 106–398, § 1 [(div. A), title XI, § 1151(d)], inserted “; or who commences work for an agency of the United States through a personal services contract with the United States,” after “employment with the Government of the United States”.


are to be eliminated and such employees as are to be separated for ‘the eliminated positions and functions’; and

"(C) the agency strategic plan referred to in subsection (b) of such section shall, in addition to the information described in paragraph (2) thereof, contain the following: the steps to be taken to realign the Government Accountability Office’s workforce in order to meet budgetary constraints or mission needs, correct skill imbalances, or reduce high-grade, managerial, or supervisory positions;

"(D) subsection (c)(1) of such section shall be applied by substituting ‘to the extent necessary (A) to realign the Government Accountability Office’s workforce in order to meet budgetary constraints or mission needs, (B) to correct skill imbalances, or (C) to reduce high-grade, managerial, or supervisory positions, in conformance with that agency’s strategic plan (as referred to in subsection (b))’ for the matter following ‘only’;

"(6) subsection (c)(2)(D) of such section shall be applied by substituting ‘December 31, 2003, or the end of the 3-month period beginning on the date on which such payment is offered to such employee, whichever is earlier’ for ‘December 31, 1997’; and

"(7) instead of the amount described in paragraph (1) of subsection (d) of such section, the amount required under such paragraph shall be determined in accordance with subsection (c)(4) of this section.

"(c) ADDITIONAL CONTRIBUTION TO RETIREMENT PAY—

"(1) Determination of amount required.—The amount required under this paragraph shall be the amount determined under subparagraph (A) or (B), whichever is greater, for the fiscal year involved.

"(A) FIRST METHOD.—The amount required under this subparagraph shall be determined as follows:

"(i) First, determine the sum of the following:

"(I) The amount equal to 419 percent of the final basic pay of each employee described in paragraph (2) who takes early retirement under section 8336(d) of title 5, United States Code.

"(II) The amount equal to 17 percent of the final basic pay of each employee described in paragraph (2) who retires on an immediate annuity under section 8336 of such title 5 (not including any employee covered by clause (I)).

"(ii) Second, reduce the sum of the amounts determined under clause (i) by the sum of the following (but not below zero):

"(I) The amount equal to 419 percent of the final basic pay of each employee described in paragraph (2), who is covered by subchapter III of chapter 83 of title 5, United States Code, and who resigns;

"(II) The amount equal to 17 percent of the final basic pay of each employee described in paragraph (2) who takes early retirement under section 8414(b) of such title 5.

"(III) The amount equal to 8 percent of the final basic pay of each employee described in paragraph (2) who retires on an immediate annuity under section 8412 of such title 5.

"(IV) The amount equal to 211 percent of the final basic pay of each employee described in paragraph (2), who is covered by chapter 84 of such title 5, and who resigns.

"(B) SECOND METHOD.—The amount required under this subparagraph shall be equal to 45 percent of the final basic pay of each employee described in paragraph (2).

"(2) COMPUTATIONS TO BE BASED ON SEPARATIONS OCCURRING IN THE FISCAL YEAR INVOLVED.—The employees described in this paragraph are those employees who receive a voluntary separation incentive payment under this section based on their separating from service during the fiscal year involved.

"(3) REGULATIONS.—

"(A) IN GENERAL.—The Office of Personnel Management shall prescribe any regulations necessary to carry out this subsection, including provisions under which any additional contribution determined under this subsection shall, at the election of the Government Accountability Office, be payable either in a lump sum or through installment payments made over a period of not to exceed 3 years.

"(B) INTENT.—The regulations shall include provisions under which if the installment method is chosen, interest shall be payable at the same rate as provided for under section 8348(f) of title 5, United States Code.

"(4) RULE OF CONSTRUCTION.—As used in this subsection, the term ‘resign’ shall not be considered to include early retirement or a separation giving rise to an immediate annuity.

"(d) DEFINITIONS.—

"(1) FINAL BASIC PAY.—As used in this section, the term ‘final basic pay’ has the same meaning as under section 6364(d)(2) of the Treasury, Postal Service, and General Government Appropriations Act, 1997, as contained in Public Law 104–208 (5 U.S.C. 5597 note).

"(2) EMPLOYEE.—As used in this section and, for purposes of this section, the provisions of law cited in subsection (b), the term ‘employee’ shall be considered to refer to an officer or employee of the Government Accountability Office.

"(e) NUMERICAL LIMITATION.—Not to exceed 5 percent of the Government Accountability Office’s workforce (as of the start of a fiscal year) shall be permitted to receive a voluntary separation incentive payment under this section based on their separating from service in such fiscal year.

"(f) REGULATIONS.—The Comptroller General shall prescribe any regulations necessary to carry out this section, excluding subsection (c). Such regulations shall include provisions under which a voluntary separation incentive payment may be offered to any employee or group of employees based on—

"(1) geographic area, organizational unit, or occupational series or level;

"(2) skills, knowledge, or performance; or

"(3) such other similar factors (or combination of factors described in this or any other paragraph of this subsection) as the Comptroller General considers necessary and appropriate in order to achieve the purpose involved.

"(g) SENSE OF CONGRESS.—It is the sense of Congress that the implementation of this section is intended to reshape the Government Accountability Office workforce and not downsize the Government Accountability Office workforce.”

Pub. L. 106–117, title XI, Nov. 30, 1999, 113 Stat. 1595, as amended by Pub. L. 106–419, title II, §207, Nov. 1, 2000, 114 Stat. 1822, known as the “Department of Veterans Affairs Employment Reduction Assistance Act of 1999”, authorized the Secretary of Veterans Affairs to submit a plan to the Director of the Office of Management and Budget for the payment of voluntary separation incentive payments, and upon approval thereof to pay voluntary separation incentive payments to eligible employees of the Department of Veterans Affairs only to the extent necessary to reduce or restructure the positions and functions identified by the plan, provided that the employees separate from service with the Department through Dec. 31, 2002, whether by retirement or resignation, defined “employee” for separation incentive purposes, and provided for additional contributions to the Retirement Fund, effect of subsequent employment with the Federal Government, and effect on agency employment levels.

the development of an agency strategic plan and the approval of such plan by the Director of the Office of Management and Budget, required additional agency contributions to the Retirement Fund, specified the effect of subsequent employment with the Federal Government, mandated a reduction of agency employment levels, and authorized the Office of Personnel Management to prescribe regulations to implement these provisions.


Pub. L. 107-107, div. C, title XXXI, §§513(b), (c), Dec. 28, 2001, 115 Stat. 1777, provided that: "The amendment made by subsection (a) (amending section 3161 of Pub. L. 106-65, set out above) may be superseded by another provision of law that takes effect after the date of the enactment of this Act [Dec. 28, 2001], and before January 1, 2004, establishing a uniform system for providing voluntary separation incentive payments (including a system for requiring approval of plans by the Office of Management and Budget) for employees of the Federal Government."
“(G) any employee who, during the twenty four month period preceding the date of separation, has received a recruitment or relocation bonus under section 5753 of title 5, United States Code, or who, within the twelve month period preceding the date of separation, received a retention allowance under section 5754 of title 5, United States Code.

“(H) the agency, prior to obligating any resources for voluntary separation incentive payments, shall submit to the House and Senate Committees on Appropriations and the Committee on Governmental Affairs [now Committee on Homeland Security and Governmental Affairs] of the Senate and the Committee on Government Reform and Oversight [now Committee on Oversight and Government Reform] of the House of Representatives a strategic plan outlining the intended use of such incentive payments and a proposed organizational chart for the agency once such incentive payments have been completed.

“(2) CONTENTS.—The agency's plan shall include:

“(A) the positions and functions to be reduced or eliminated, identified by organizational unit, geographic location, occupational category and grade level;

“(B) the number and amounts of voluntary separation incentive payments to be offered; and

“(C) a description of how the agency will operate without the eliminated positions and functions.

“(3) AUTHORITY TO PROVIDE VOLUNTARY SEPARATION INCENTIVE PAYMENTS.—

“(1) IN GENERAL.—A voluntary separation incentive payment under this section may be paid to any employee only to the extent necessary to eliminate the positions and functions identified by the strategic plan.

“(2) AMOUNT AND TREATMENT OF PAYMENTS.—A voluntary separation incentive payment—

“(A) shall be paid in a lump sum after the employee's separation;

“(B) shall be paid from appropriations or funds available for the payment of the basic pay of the employee;

“(C) shall be equal to the lesser of:

“(i) an amount equal to the amount the employee would be entitled to receive under section 5595(c) of title 5, United States Code; or

“(ii) an amount determined by the agency head not to exceed $25,000;

“(D) may not be made except in the case of any qualifying employee who voluntarily separates (whether by retirement or resignation) before December 31, 1997;

“(E) shall not be a basis for payment, and shall not be included in the computation, of any other type of Government benefit; and

“(F) shall not be taken into account in determining the amount of any severance pay to which the employee may be entitled under section 5595 of title 5, United States Code, based on any other separation.

“(4) ADDITIONAL AGENCY CONTRIBUTIONS TO THE RETIREMENT FUND.—

“(1) IN GENERAL.—In addition to any other payments which it is required to make under subchapter III of chapter 83 of title 5, United States Code, an agency shall remit to the Office of Personnel Management for deposit in the Treasury of the United States to the credit of the Civil Service Retirement and Disability Fund an amount equal to 15 percent of the final basic pay of each employee of the agency who is covered under subchapter III of chapter 83 or chapter 84 of title 5, United States Code, to whom a voluntary separation incentive has been paid under this section.

“(2) DEFINITION.—For the purpose of paragraph (1), the term 'final basic pay', with respect to an employee, means the total amount which would be payable for a year of service by such employee, computed using the employee's final rate of basic pay, and, if last serving on other than a full-time basis, with appropriate adjustment therefor.

“(e) EFFECT OF SUBSEQUENT EMPLOYMENT WITH THE GOVERNMENT.—An individual who has received a voluntary separation incentive payment under this section and accepts any employment for compensation with the Government of the United States, or who enters into a separate agreement with the United States through a personal services contract, within 5 years after the date of the separation on which the payment is based shall be required to pay the United States, after the individual's first day of employment, the entire amount of the incentive payment to the agency that paid the incentive payment.

“(f) RECOGNITION OF AGENCY EMPLOYMENT LEVELS.—

“(1) IN GENERAL.—The total number of funded employee positions in the agency shall be reduced by one position for each vacancy created by the separation of any employee who has received, or is due to receive, a voluntary separation incentive payment under this section. For the purposes of this subsection, positions shall be counted on a full-time-equivalent basis.

“(2) ENFORCEMENT.—The President, through the Office of Management and Budget, shall monitor the agency and take any action necessary to ensure that the requirements of this subsection are met.

“(g) EFFECTIVE DATE.—This section shall take effect October 1, 1996.

Pub. L. 104–205, title III, §349, Sept. 30, 1996, 110 Stat. 2976, authorized certain agencies of Department of Transportation to provide voluntary separation incentive payments to any qualifying employee of the agency that no amount would be payable based on any separation occurring before Sept. 30, 1996, or after Sept. 30, 1997, directed agencies to submit to Congress a strategic plan outlining intended use of such incentive payments and proposed organization chart for agency once such incentive payments have been completed, and further provided for definitions, additional agency contributions to the Retirement Fund, effect of subsequent employment with the Government, reductions of agency employment levels, and that program would take effect Oct. 1, 1996.

Pub. L. 104–204, title IV, §432, Sept. 26, 1996, 110 Stat. 2931, as amended by Pub. L. 106–377, §1(a)(1) [title IV, §428], Oct. 27, 2000, 114 Stat. 1441, 1441A–56, known as the "National Aeronautics and Space Administration Federal Employment Reduction Assistance Act of 1996", authorized the Administrator of the National Aeronautics and Space Administration (NASA), in order to avoid or minimize the need for involuntary separations due to a reduction in force, installation closure, reorganization, transfer of function, or other similar action affecting NASA, to establish a program under which voluntary separation pay, subject to the availability of appropriated funds, be offered to encourage eligible employees to separate from service by retirement or resignation up to Sept. 30, 2002, defined terms, provided for effect of subsequent employment with the Federal Government, required additional agency contributions to the Retirement Fund, reduced agency employment levels, and required an annual report on the program to be submitted to the Office of Personnel Management.

Pub. L. 104–190, §1, Aug. 20, 1996, 110 Stat. 1932, authorized Agency for International Development to provide voluntary separation incentive payments to not more than 100 qualified employees of such agency who voluntarily separated (whether by retirement or resignation) before Feb. 1, 1997, and only to extent necessary to eliminate positions and functions identified by strategic plan to be submitted to Congress outlining intended use of such incentive payments and proposed organizational chart for agency once such incentive payments have been completed, and further provided for definitions, amount and treatment of payments, additional agency contributions to the Retirement Fund, effect of subsequent employment with the Government, and reduction of agency employment levels.

Pub. L. 104–180, title VII, §735, Aug. 6, 1996, 110 Stat. 1604, authorized Department of Agriculture to provide
voluntary separation incentive payments to qualified employees to extent necessary to eliminate positions and functions identified by strategic plan to be submitted to Congress outlining intended use of such incentive payments and proposed organizational chart for agency once such incentive payments have been completed, provided that no amount would be payable based on any separation occurring before Aug. 6, 1996, or after Sept. 30, 2000, and further provided for definitions, amount and treatment of payments, additional agency contributions to the Retirement Fund, effect of subsequent employment with the Government, reduction of agency employment levels, and that program would take effect Oct. 1, 1996.

Pub. L. 104–134, title I, §180(c), Apr. 26, 1996, 110 Stat. 1321–156, 1321–210; renumbered title I, Pub. L. 104–140, §1(a), May 2, 1996, 110 Stat. 1327, provided that, in order to avoid or minimize need for involuntary reduction in force, reorganization, transfer of function, or other similar action, Secretary of the Smithsonian Institution could pay, or authorize payment of, voluntary separation incentive payments to Smithsonian Institution employees who separated from Federal service voluntarily through Oct. 1, 1996 (whether by retirement or resignation).

Pub. L. 104–19, title I, §702, July 27, 1995, 109 Stat. 221, provided that General Accounting Office could for such employees as it deemed appropriate authorize payment to employees who voluntarily separated before Oct. 1, 1995, whether by retirement or resignation, which payment would be paid in accordance with provisions of subsection (d) of this section.

Section 3 of Pub. L. 103–226 authorized Executive agencies (other than Department of Defense, Central Intelligence Agency, or General Accounting Office) to provide voluntary separation incentive payments to qualified employees of such agencies in order to avoid or minimize need for involuntary separations due to reorganization and function, transfer of function, or other similar action, provided that in order to receive incentive payment, employee must have separated from service with agency (whether by retirement or resignation) before Apr. 1, 1995, or, under certain circumstances, not later than Mar. 31, 1997, and further provided for definitions, amount and treatment of payments, effect of subsequent employment with the Government, regulations, and authority for Director of Administrative Office of the United States Courts to establish similar program for individuals serving in the judicial branch.

MONITORING AND REPORT RELATING TO VOLUNTARY SEPARATION INCENTIVE PAYMENTS

Section 6 of Pub. L. 103–226 provided that: “No later than December 31st of each fiscal year, the Office of Personnel Management shall submit to the Secretary of the Senate, the House of Representatives, and the Committee on Post Office and Civil Service of the Senate, a report which, with respect to the preceding fiscal year, shall include—

(1) the number of employees who received a voluntary separation incentive payment under section 3 [set out above] during such preceding fiscal year;

(2) the agency from which each such employee separated;

(3) at the time of separation from service by each such employee—

(A) such employee’s grade or pay level; and

(B) the geographic location of such employee’s official duty station, by region, State, and city (or foreign nation, if applicable); and

(4)(A) the number of waivers made (in the repayment upon subsequent employment) by each agency or other authority under section 3 [set out above] or the amendments made by section 8 [amending this section and section 403 of Title 50, War and National Defense]; and

(B) the title and the grade or pay level of the position filled by the employee to whom such waiver applied."

SOURCE OF PAYMENTS

Section 4436(b)(1) of Pub. L. 102–484 provided that: “For fiscal years after fiscal year 1993, separation pay shall be paid by an agency out of any funds or appropriations available for salaries and expenses of such agency.”

REPORT

Section 4436(c) of Pub. L. 102–484 provided that: “At the end of each of fiscal years 1995 through 1998, the Secretary of Defense shall submit to the President, the Congress, and the Director of the Office of Personnel Management a report on the effectiveness and costs of carrying out the amendments made by this section [enacting this section].”

CHAPTER 57—TRAVEL, TRANSPORTATION, AND SUBSISTENCE

SUBCHAPTER I—TRAVEL AND SUBSISTENCE EXPENSES; MILEAGE ALLOWANCES

Sec.
5701. Definitions.
5702. Per diem; employees traveling on official business.
5703. Per diem, travel, and transportation expenses; experts and consultants; individuals serving without pay.
5704. Mileage and related allowances.
5705. Advancements and deductions.
5706. Allowable travel expenses.
5706a. Subsistence and travel expenses for threatened law enforcement personnel.
5706b. Interview expenses.
5706c. Reimbursement for taxes incurred on money received for travel expenses.
5707. Regulations and reports.
5707a. Adherence to fire safety guidelines in establishing rates and discounts for lodging expenses.
5708. Effect on other statutes.
5709. Air evacuation patients; furnished subsistence.
5710. Authority for travel expenses test programs.
5711. Authority for telework travel expenses test programs.

SUBCHAPTER II—TRAVEL AND TRANSPORTATION EXPENSES; NEW APPOINTEES, STUDENT TRAINEES, AND TRANSFERRED EMPLOYEES

5721. Definitions.
5722. Travel and transportation expenses of new appointees; posts of duty outside the continental United States.
5723. Travel and transportation expenses of new appointees and student trainees.
5724. Travel and transportation expenses of employees transferred; advancement of funds; reimbursement on commuted basis.
5724a. Relocation expenses of employees transferred or reemployed.
5724b. Taxes on reimbursements for travel, transportation, and relocation expenses of employees transferred.