

A, title V, §504(a)(1), Nov. 5, 1990, 104 Stat. 1559, renumbered §1407(e)(1)(A), Pub. L. 107–107, div. A, title III, §353(1), Dec. 28, 2001, 115 Stat. 1063, §429; amended Pub. L. 99–145, title XIII, §1303(b)(10), Nov. 8, 1985, 99 Stat. 741; renumbered §489 and amended Pub. L. 112–81, div. A, title VI, §631(d)(2), (e)(28), Dec. 31, 2011, 125 Stat. 1460, 1464; Pub. L. 112–239, div. A, title X, §1076(a)(6), Jan. 2, 2013, 126 Stat. 1948.)

## REFERENCES IN TEXT

The Defense Dependents' Education Act of 1978, referred to in subsec. (a), is Pub. L. 95–561, title XIV, Nov. 1, 1978, 92 Stat. 2365, which is classified principally to chapter 25A (§921 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 921 of Title 20 and Tables.

## AMENDMENTS

2013—Pub. L. 112–239, §1076(a)(6), made technical amendment to directory language of Pub. L. 112–81, §631(e)(28). See 2011 Amendment note below.

2011—Pub. L. 112–81, §631(e)(28), as amended by Pub. L. 112–239, §1076(a)(6), inserted subsec. (a) designation and heading before “Under regulations” and added subsec. (b).

Pub. L. 112–81, §631(d)(2), renumbered section 429 of this title as this section.

1985—Pub. L. 99–145 inserted “(20 U.S.C. 921 et seq.)”.

## EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112–239, div. A, title X, §1076(a), Jan. 2, 2013, 126 Stat. 1947, provided that the amendment made by section 1076(a)(6) is effective Dec. 31, 2011, and as if included in Pub. L. 112–81 as enacted.

## EFFECTIVE DATE

Section effective Oct. 1, 1978, and no provision to be construed in impair or to prevent the taking of effect of any other Act providing for the transfer of the described functions to an executive department having responsibility for education, see section 1415 of Pub. L. 95–561, set out as a note under section 921 of Title 20, Education.

## TRANSFER OF FUNCTIONS

All functions of the Secretary of Defense and the Department of Defense under this section, with the exception of functions relating to operation of overseas institutions of higher education, were transferred to the Secretary of Education by section 3442(a) and (d) of Title 20, Education.

## DEPENDENT STUDENT TRAVEL WITHIN UNITED STATES

For availability of Department of Defense funds for travel and transportation of dependent students of members of the Armed Forces stationed overseas for transportation allowances for travel within or between the contiguous States, see section 1786 of Title 10, Armed Forces.

## AUTHORITY UNDER THE DEFENSE DEPARTMENT OVERSEAS TEACHERS PAY AND PERSONNEL PRACTICES ACT AVAILABLE TO SECRETARY OF EDUCATION

The authority of the Secretary of Defense and the Secretaries of the military departments under the Defense Department Overseas Teachers Pay and Personnel Practices Act, section 901 et seq. of Title 20, Education, made available to the Secretary of Education with respect to all functions transferred from the Secretary of Defense and Department of Defense under this section by section 3442(b) of Title 20, Education.

**§ 490. Travel and transportation: dependent children of members stationed overseas**

(a) AVAILABILITY OF ALLOWANCE.—(1) Under regulations prescribed by the Secretary of De-

fense, a member of a uniformed service may be paid the allowance set forth in subsection (b) if the member—

(A) is assigned to a permanent duty station outside the continental United States;

(B) is accompanied by the member's dependents at or near that duty station (unless the member's only dependents are in the category of dependent described in paragraph (2)); and

(C) has an eligible dependent child described in paragraph (2).

(2) An eligible dependent child of a member referred to in paragraph (1)(C) is a child who—

(A) is under 23 years of age and unmarried;

(B) is enrolled in a school in the continental United States for the purpose of obtaining a formal education; and

(C) is attending that school or is participating in a foreign study program approved by that school and, pursuant to that foreign study program, is attending a school outside the United States for a period of not more than one year.

(b) ALLOWANCE AUTHORIZED.—(1) A member described in subsection (a) may be paid a transportation allowance for each eligible dependent child of the member of one annual trip between the school being attended by that child and the member's duty station outside the continental United States and return. The allowance authorized by this section may be transportation in kind or reimbursement therefor, as prescribed by the Secretaries concerned. However, the transportation authorized by this section may not be paid a member for a child attending a school in the continental United States for the purpose of obtaining a secondary education if the child is eligible to attend a secondary school for dependents that is located at or in the vicinity of the duty station of the member and is operated under the Defense Dependents' Education Act of 1978 (20 U.S.C. 921 et seq.).

(2) The allowance authorized under paragraph (1) for the travel of an eligible dependent may include reimbursement for costs incurred by or on behalf of the dependent for lodging of the dependent that is necessitated by an interruption in the travel caused by extraordinary circumstances prescribed in the regulations under subsection (a). The amount of the reimbursement shall be determined using the rate applicable to such circumstances.

(3) At the option of the member, in lieu of the transportation of baggage of a dependent child under paragraph (1) from the dependent's school in the continental United States, the Secretary concerned may pay or reimburse the member for costs incurred to store the baggage at or in the vicinity of the school during the dependent's annual trip between the school and the member's duty station or during a different period in the same fiscal year selected by the member. The amount of the payment or reimbursement may not exceed the cost that the Government would incur to transport the baggage.

(4) The transportation allowance paid under paragraph (1) for an annual trip of an eligible dependent child who is attending a school outside the United States may not exceed the transpor-

tation allowance that would be paid under this section for the annual trip of that child between the child's school in the continental United States and the member's duty station outside the continental United States and return.

(c) **USE OF AIRLIFT AND SEALIFT COMMAND.**—Whenever possible, the Air Mobility Command or Military Sealift Command shall be used, on a space-required basis, for the travel authorized by this section.

(d) **ATTENDANCE AT SCHOOL IN ALASKA OR HAWAII.**—For a member assigned to duty outside the continental United States, transportation under this section may be provided a dependent child as described in subsection (a)(2) who is attending a school in Alaska or Hawaii.

(e) **EXCEPTION.**—The transportation allowance authorized by this section (whether transportation in kind or reimbursement) may not be paid in the case of a member assigned to a permanent duty station in Alaska or Hawaii for a child attending a school in the State of the permanent duty station.

(f) **DEFINITIONS.**—In this section:

(1) The term “formal education” means the following:

(A) A secondary education.

(B) An undergraduate college education.

(C) A graduate education pursued on a full-time basis at an institution of higher education.

(D) Vocational education pursued on a full-time basis at a postsecondary vocational institution.

(2) The term “institution of higher education” has the meaning given that term in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001).

(3) The term “postsecondary vocational institution” has the meaning given that term in section 102(c) of the Higher Education Act of 1965 (20 U.S.C. 1002(c)).

(g) **TERMINATION.**—No transportation, allowance, reimbursement, or per diem may be provided under this section for travel that begins after the travel authorities transition expiration date.

(Added Pub. L. 98–94, title IX, §910(a)(1), Sept. 24, 1983, 97 Stat. 638, §430; amended Pub. L. 101–189, div. A, title VI, §625(a), Nov. 29, 1989, 103 Stat. 1448; Pub. L. 101–510, div. A, title XIV, §1484(e)(1), Nov. 5, 1990, 104 Stat. 1717; Pub. L. 102–25, title VII, §702(b)(1), (2), (c), Apr. 6, 1991, 105 Stat. 117; Pub. L. 105–261, div. A, title VI, §634, Oct. 17, 1998, 112 Stat. 2044; Pub. L. 106–398, §1 [[div. A], title VI, §646], Oct. 30, 2000, 114 Stat. 1654, 1654A–162; Pub. L. 107–107, div. A, title VI, §639(a)–(c), title IX, §931(c), Dec. 28, 2001, 115 Stat. 1148, 1200; Pub. L. 107–314, div. A, title VI, §654(b)(6), Dec. 2, 2002, 116 Stat. 2582; Pub. L. 108–136, div. A, title VI, §633, Nov. 24, 2003, 117 Stat. 1509; Pub. L. 108–375, div. A, title VI, §633, Oct. 28, 2004, 118 Stat. 1957; renumbered §490 and amended Pub. L. 112–81, div. A, title VI, §631(d)(2), (e)(29), Dec. 31, 2011, 125 Stat. 1460, 1464.)

#### REFERENCES IN TEXT

The Defense Dependents' Education Act of 1978, referred to in subsec. (b)(1), is title XIV of Pub. L. 95–561,

Nov. 1, 1978, 92 Stat. 2365, which is classified principally to chapter 25A (§921 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 921 of Title 20 and Tables.

#### AMENDMENTS

2011—Pub. L. 112–81, §631(d)(2), renumbered section 430 of this title as this section.

Subsec. (g). Pub. L. 112–81, §631(e)(29), added subsec. (g).

2004—Subsec. (b)(2) to (4). Pub. L. 108–375 added par. (2) and redesignated former pars. (2) and (3) as (3) and (4), respectively.

2003—Subsec. (b)(2). Pub. L. 108–136 inserted before period at end of first sentence “or during a different period in the same fiscal year selected by the member”.

2002—Subsec. (f). Pub. L. 107–314 added subsec. (f) and struck out heading and text of former subsec. (f). Text defined the terms “continental United States” and “formal education”.

2001—Subsec. (a). Pub. L. 107–107, §639(a), inserted heading and amended text generally. Prior to amendment, text read as follows:

“(a) Under regulations to be prescribed by the Secretary of Defense, a member of a uniformed service who—

“(1) is assigned a permanent duty station outside the continental United States,

“(2) is accompanied by his dependents at or near his duty station (unless his only dependents are in the category of dependent described in clause (3)), and

“(3) has a dependent child who is under 23 years of age attending a school in the continental United States for the purpose of obtaining a formal education,

may be paid the allowance set forth in subsection (b) if he otherwise qualifies for such allowance.”

Subsec. (b). Pub. L. 107–107, §639(b)(1), inserted heading.

Subsec. (b)(1). Pub. L. 107–107, §639(b)(2), in first sentence, substituted “each eligible dependent child of the member of one annual trip between the school being attended by that child” for “each unmarried dependent child, who is under 23 years of age and is attending a school in the continental United States for the purpose of obtaining a formal education, of one annual trip between the school being attended”.

Subsec. (b)(3). Pub. L. 107–107, §639(b)(3), added par. (3).

Subsec. (c). Pub. L. 107–107, §931(c), substituted “Air Mobility Command” for “Military Airlift Command”.

Pub. L. 107–107, §639(c)(1), inserted heading.

Subsec. (d). Pub. L. 107–107, §639(c)(2), inserted heading and substituted “subsection (a)(2)” for “subsection (a)(3)”.

Subsec. (e). Pub. L. 107–107, §639(c)(3), inserted heading.

Subsec. (f). Pub. L. 107–107, §639(c)(4), inserted heading.

2000—Subsecs. (a)(3), (b)(1). Pub. L. 106–398, §1 [[div. A], title VI, §646(1)], substituted “for the purpose of obtaining a formal education” for “for the purpose of obtaining a secondary or undergraduate college education”.

Subsec. (f). Pub. L. 106–398, §1 [[div. A], title VI, §646(2)], substituted “In this section:” for “In this section,” inserted par. (1) designation, substituted “The term” for “the term”, and added par. (2).

1998—Subsec. (b). Pub. L. 105–261 designated existing provisions as par. (1) and added par. (2).

1991—Subsec. (a). Pub. L. 102–25 struck out “of this subsection” after “clause (3)” in par. (2) and “of this section” after “subsection (b)” in concluding provisions.

Subsec. (b). Pub. L. 102–25, §702(b)(1), struck out “of this section” after “subsection (a)”.

1990—Subsec. (b). Pub. L. 101–510 inserted “(20 U.S.C. 921 et seq.)” after “Education Act of 1978”.

1989—Subsec. (a). Pub. L. 101-189, §625(a)(1), inserted “continental” before “United States” in pars. (1) and (3) and struck out “oversea” before “duty station” in par. (2).

Subsec. (b). Pub. L. 101-189, §625(a)(2), inserted “continental” before “United States” in two places and substituted “outside the continental United States” for “in the oversea area”.

Subsecs. (d) to (f). Pub. L. 101-189, §625(a)(3), added subsecs. (d) to (f).

#### EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107-107, div. A, title VI, §639(d), Dec. 28, 2001, 115 Stat. 1149, as amended by Pub. L. 112-81, div. A, title VI, §631(f)(4)(B), Dec. 31, 2011, 125 Stat. 1465; Pub. L. 112-239, div. A, title X, §1076(a)(9), Jan. 2, 2013, 126 Stat. 1948, provided that: “The amendments made by this section [amending this section] shall apply with respect to travel described in subsection (b) of section 490 of title 37, United States Code, as amended by this section, that commences on or after the date of the enactment of this Act [Dec. 28, 2001].”

#### EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101-189, div. A, title VI, §625(b), Nov. 29, 1989, 103 Stat. 1449, provided that: “The amendments made by subsection (a) [amending this section] shall apply with respect to travel and transportation commenced after the date of the enactment of this Act [Nov. 29, 1989].”

#### EFFECTIVE DATE

Pub. L. 98-94, title IX, §910(b), Sept. 24, 1983, 97 Stat. 639, as amended by Pub. L. 112-81, div. A, title VI, §631(f)(4)(B), Dec. 31, 2011, 125 Stat. 1465; Pub. L. 112-239, div. A, title X, §1076(a)(9), Jan. 2, 2013, 126 Stat. 1948, provided that: “Section 490 of title 37, United States Code, as added by subsection (a), shall apply only with respect to travel begun after September 30, 1983.”

#### DEPENDENT STUDENT TRAVEL WITHIN UNITED STATES

For availability of Department of Defense funds for travel and transportation of dependent students of members of the Armed Forces stationed overseas for transportation allowances for travel within or between the contiguous States, see section 1786 of Title 10, Armed Forces.

Pub. L. 98-212, title VII, §799B, Dec. 8, 1983, 97 Stat. 1456, as amended by Pub. L. 98-396, title I, Aug. 22, 1984, 98 Stat. 1378, provided in part that: “After August 31, 1984, none of the funds appropriated to the Department of Defense for the travel and transportation of dependent students of military personnel stationed overseas shall be obligated for a transportation allowance for travel within or between the contiguous United States.”

### § 491. Benefits for certain members assigned to the Defense Intelligence Agency

(a) The Secretary of Defense may provide to members of the armed forces described in subsection (e) allowances and benefits comparable to those provided by the Secretary of State to officers and employees of the Foreign Service under paragraphs (2), (3), (4), (6), (7), (8), and (13) of section 901 and sections 705 and 903 of the Foreign Service Act of 1980 (22 U.S.C. 4081(2), (3), (4), (6), (7), (8), and (13), 4025, 4083) and under section 5924(4) of title 5.

(b) The authority of the Secretary of Defense to make payments under subsection (a) is effective for any fiscal year only to the extent that appropriated funds are available for such purpose.

(c) Members of the armed forces may not receive benefits under both subsection (a) and any

other provision of this title for the same purpose. The Secretary of Defense shall prescribe such regulations as may be necessary to carry out this subsection.

(d) Regulations prescribed under subsection (a) may not take effect until the Secretary of Defense has submitted such regulations to—

(1) the Committee on Armed Services and the Select Committee on Intelligence of the Senate; and

(2) the Committee on Armed Services and the Permanent Select Committee on Intelligence of the House of Representatives.

(e) Subsection (a) applies to members of the armed forces who—

(1) are assigned—

(A) to Defense Attaché Offices or Defense Intelligence Agency Liaison Offices outside the United States; or

(B) to the Defense Intelligence Agency and engaged in intelligence-related duties outside the United States; and

(2) are designated by the Secretary of Defense for the purposes of subsection (a).

(Added Pub. L. 99-145, title XIII, §1302(b)(1), Nov. 8, 1985, 99 Stat. 738, §431; amended Pub. L. 102-25, title VII, §702(b)(1), (c), Apr. 6, 1991, 105 Stat. 117; Pub. L. 104-93, title V, §502(b), Jan. 6, 1996, 109 Stat. 973; Pub. L. 106-65, div. A, title X, §1067(2), Oct. 5, 1999, 113 Stat. 774; Pub. L. 112-81, div. A, title VI, §631(d)(2), Dec. 31, 2011, 125 Stat. 1460; renumbered §491, Pub. L. 112-239, div. A, title X, §1076(h)(2), Jan. 2, 2013, 126 Stat. 1955.)

#### PRIOR PROVISIONS

Provisions similar to this section were contained in section 192 of Title 10, Armed Forces, prior to enactment of this section by Pub. L. 99-145.

#### AMENDMENTS

2013—Pub. L. 112-239 renumbered section 431 of this title as this section.

2011—Pub. L. 112-81 transferred this section to this chapter.

1999—Subsec. (d)(2). Pub. L. 106-65 substituted “Committee on Armed Services” for “Committee on National Security”.

1996—Subsec. (a). Pub. L. 104-93, §502(b)(1), substituted “described in subsection (e)” for “who are assigned to Defense Attaché Offices and Defense Intelligence Agency Liaison Offices outside the United States and who are designated by the Secretary of Defense for the purposes of this subsection”.

Subsecs. (d), (e). Pub. L. 104-93, §502(b)(2), (3), added subsecs. (d) and (e) and struck out former subsec. (d) which read as follows: “Regulations prescribed pursuant to subsection (a) shall be submitted to the Committee on Armed Services and the Permanent Select Committee on Intelligence of the House of Representatives and the Committee on Armed Services and the Select Committee on Intelligence of the Senate before such regulations take effect.”

1991—Subsecs. (b) to (d). Pub. L. 102-25 struck out “of this section” after “subsection (a)”.

#### DELEGATION OF AUTHORITY OF SECRETARY OF DEFENSE

Section 1302(b)(3) of Pub. L. 99-145, as amended by Pub. L. 100-180, div. A, title XIII, §1314(d)(4), Dec. 4, 1987, 101 Stat. 1176, provided that: “The authority of the Secretary of Defense under section 431 of title 37, United States Code, as added by paragraph (1), may be delegated in accordance with section 113(d) of title 10, United States Code.”