§ 5948. Physicians comparability allowances

(a) Notwithstanding any other provision of law, and in order to recruit and retain highly qualified Government physicians, the head of an agency, subject to the provisions of this section, section 5307, and such regulations as the President or his designee may prescribe, may enter into a service agreement with a Government physician which provides for such physician to complete a specified period of service in such agency in return for an allowance for the duration of such agreement in an amount to be determined by the agency head and specified in the agreement, but not to exceed—

(1) $14,000 per annum if, at the time the agreement is entered into, the Government physician has served as a Government physician for twenty-four months or less, or

(2) $30,000 per annum if the Government physician has served as a Government physician for more than twenty-four months.

For the purpose of determining length of service as a Government physician, service as a physician under section 4104 or 4114 of title 38 or active service as a medical officer in the commissioned corps of the Public Health Service under Title II of the Public Health Service Act (42 U.S.C. ch. 6A) shall be deemed service as a Government physician.

(b) An allowance may not be paid pursuant to this section to any physician who—

(1) is employed on less than a half-time or intermittent basis,

(2) occupies an internship or residency training position,

(3) is a reemployed annuitant, or

(4) is fulfilling a scholarship obligation.

(c) The head of an agency, pursuant to such regulations, criteria, and conditions as the President or his designee may prescribe, shall determine categories of positions applicable to physicians in such agency with respect to which there is a significant recruitment and retention problem. Only physicians serving in such positions shall be eligible for an allowance pursuant to this section. The amounts of each such allowance shall be determined by the agency head, subject to such regulations, criteria, and conditions as the President or his designee may prescribe, and shall be the minimum amount necessary to deal with the recruitment and retention problem for each such category of physicians.

(d) Any agreement entered into by a physician under this section shall be for a period of one year of service in the agency involved unless the physician requests an agreement for a longer period of service.

(e) Unless otherwise provided for in the agreement under subsection (f) of this section, an agreement under this section shall provide that the physician, in the event that such physician voluntarily, or because of misconduct, fails to complete at least one year of service pursuant to such agreement, shall be required to refund the total amount received under this section, unless the head of the agency, pursuant to such regulations as may be prescribed under this section by the President or his designee, determines that such failure is necessitated by circumstances beyond the control of the physician.

(f) Any agreement under this section shall specify, subject to such regulations as the President or his designee may prescribe, the terms under which the head of the agency and the physician may elect to terminate such agreement, and the amounts, if any, required to be refunded by the physician for each reason for termination.

(g) For the purpose of this section—

(1) “Government physician” means any individual employed as a physician or dentist who is paid under—
(A) section 5332 of this title, relating to the General Schedule;
(B) Subchapter VIII of chapter 53 of this title, relating to the Senior Executive Service;
(C) section 5371, relating to certain health care positions;
(D) section 3 of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831b), relating to the Tennessee Valley Authority;
(E) chapter 4 of title I of the Foreign Service Act of 1980 (22 U.S.C. 3961 and following), relating to the Foreign Service;
(F) section 10 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403j), relating to the Central Intelligence Agency;
(G) section 1202 of the Panama Canal Act of 1979, relating to the Panama Canal Commission;
(H) section 2 of the Act of May 29, 1959 2 (Public Law 86–36, as amended, 50 U.S.C. 402 note), relating to the National Security Agency;
(I) section 5376, relating to certain senior-level positions;
(J) section 5377, relating to critical positions; or
(K) subchapter IX of chapter 53, relating to special occupational pay systems; and

(2) “agency” means an Executive agency, as defined in section 105 of this title, the Library of Congress, and the District of Columbia government.

(h) (1) Any allowance paid under this section shall not be considered as basic pay for the purposes of subchapter VI and section 5595 of chapter 55, chapter 81 or 87 of this title, or other benefits related to basic pay.
(2) Any allowance under this section for a Government physician shall be paid in the same manner and at the same time as the physician’s basic pay is paid.

(i) Any regulations, criteria, or conditions that may be prescribed under this section by the President or his designee shall not be applicable to the Tennessee Valley Authority, and the Tennessee Valley Authority shall have sole responsibility for administering the provisions of this section with respect to Government physicians employed by the Authority.

(j) Not later than June 30 of each year, the President shall submit to each House of Congress a written report on the operation of this section. Each report shall include, with respect to the year covered by such report, information as to—

(1) which agencies entered into agreements under this section;
(2) the nature and extent of the recruitment or retention problems justifying the use of authority by each agency under this section;
(3) the number of physicians with whom agreements were entered into by each agency;
(4) the size of the allowances and the duration of the agreements entered into; and
(5) the degree to which the recruitment or retention problems referred to in paragraph (2) were alleviated under this section.

Footnotes
1 See References in Text note below.
2 See References in Text note below.

References in Text

Sections 4104 and 4114 of title 38, referred to in subsec. (a), were repealed by Pub. L. 102–40, title IV, § 401(a)(3), May 7, 1991, 105 Stat. 210, and a new section 4101 containing different subject matter was added. For provisions similar to those contained in sections 4104 and 4114 prior to repeal, see sections 7401 and 7405 to 7407 of Title 38, Veterans’ Benefits.

The Public Health Service Act, referred to in subsec. (a), is act July 1, 1944, ch. 373, 58 Stat. 682, as amended. Title II of the Public Health Service Act is classified generally to subchapter I (§ 201 et seq.) of chapter 6A of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 201 of Title 42 and Tables.


Section 1202 of the Panama Canal Act of 1979, referred to in subsec. (g)(1)(G), is classified to section 3642 of Title 22, Foreign Relations and Intercourse.


Amendments

2000—Subsec. (d). Pub. L. 106–571, § 2(a)(1), struck out second sentence which read as follows: “No agreement shall be entered into under this section later than September 30, 2005, nor shall any agreement cover a period of service extending beyond September 30, 2007.”

Pub. L. 106–554 amended second sentence generally. Prior to amendment, second sentence read as follows: “No agreement shall be entered into under this section later than September 30, 2000, nor shall any agreement cover a period of service extending beyond September 30, 2002.”

Subsec. (h)(1). Pub. L. 106–571, § 3(d), substituted “chapter 81 or 87” for “chapter 81, 83, or 87”.

Subsec. (j). Pub. L. 106–571, § 2(b), in par. (1), substituted “(j)” for “(j)(1)”, redesignated subpars. (A) to (E) as pars. (1) to (5), respectively, in par. (5), substituted “paragraph (2)” for “paragraph (B)”, and struck out former par. (2) which read as follows: “In addition to the information required under paragraph (1), the last report due under this subsection before the expiration of the authority to enter into agreements under this section shall include—

“(A) recommendations as to whether or not such authority should be continued beyond September 30, 2000, and, if so, by what period of time; and

“(B) the reasons for those recommendations.”

1998—Subsec. (a)(2). Pub. L. 105–266 substituted “$30,000” for “$20,000”.

1997—Subsec. (d). Pub. L. 105–61, § 517(a)(1), substituted “No agreement shall be entered into under this section later than September 30, 2000, nor shall any agreement cover a period of service extending beyond September 30, 2002.” for “No agreement shall be entered into under this section later than September 30, 1997, nor shall any agreement cover a period of service extending beyond September 30, 1999.”


1993—Subsec. (d). Pub. L. 103–114, § 1(a)(1), amended second sentence generally. Prior to amendment, second sentence read as follows: “No agreement shall be entered into under this section later than September 30, 1993, nor shall any agreement cover a period of service extending beyond September 30, 1995.”

Subsec. (g)(1)(C) to (L). Pub. L. 103–89 redesignated subpars. (D) to (L) as (C) to (K), respectively, and struck out former subpar. (C) which read as follows: “chapter 54 of this title, relating to the performance management and recognition system;”.

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NB: This unofficial compilation of the U.S. Code is current as of Jan. 4, 2012 (see http://www.law.cornell.edu/uscode/uscodeprint.html).


Subsec. (g)(1)(D). Pub. L. 102–378, § 2(51)(B)(i), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: “section 5371 of this title, or similar statutory authority, relating to administratively determined pay for certain specially qualified scientific or professional personnel;”.


1990—Subsec. (d). Pub. L. 101–420 added second sentence and struck out former second sentence which read as follows: “No agreement shall be entered into under this section later than September 30, 1990, nor shall any agreement cover a period of service extending beyond September 30, 1992.”


Subsec. (a)(1). Pub. L. 100–140, § 1(a)(1), substituted “$14,000” for “$7,000”.

Subsec. (a)(2). Pub. L. 100–140, § 1(a)(2), substituted “$20,000” for “$10,000”.


Subsec. (g)(1). Pub. L. 96–166, § 2(2)(A), directed the amendment of subsec. (g)(1) by inserting “or dentist” after “physician” which was executed by inserting the term after “employed as a physician” in introductory phrase as the probable intent of Congress.

Pub. L. 96–166, § 2(2)(B)–(E), redesignated subpars. (B) through (G) as (D) through (I), respectively, added subpars. (B) and (C), substituted in subpar. (D) as redesignated, “section 5371” for “5361”, and substituted in subpar. (H) as redesignated, “section 1202 of the Panama Canal Act of 1979, relating to the Panama Canal Commission; or” for “section 121 of title 2 of the Canal Zone Code, relating to the Canal Zone Government and the Panama Canal Company; or”.


Effective Date of 1997 Amendment

Section 517(c) of Pub. L. 105–61 provided that: “The amendments made by this section [amending this section and provisions set out as a note under this section] shall take effect on the date of enactment of this Act [Oct. 10, 1997].”

Effective Date of 1993 Amendment

Amendment by Pub. L. 103–89 effective Nov. 1, 1993, see section 3(c) of Pub. L. 103–89, set out as a note under section 3372 of this title.

Effective Date of 1984 Amendment

Section 205 of Pub. L. 98–615 provided that amendment by Pub. L. 98–615 was effective Oct. 1, 1984, and applicable with respect to pay periods commencing on or after that date, with certain exceptions and qualifications.

Effective Date of Repeal


**Short Title of 2000 Amendment**


**Short Title of 1983 Amendment**

Section 101 of title I of Pub. L. 98–168 provided that: “This title [amending this section, enacting provisions set out below, and amending provisions set out as a note above] may be cited as the ‘Federal Physicians Comparability Allowance Amendments of 1983’.”

**Short Title of 1981 Amendment**

Section 1 of Pub. L. 97–141 provided: “That this Act [amending this section, enacting provisions set out below and enacting provisions set out as notes under this section and section 8344 of this title] may be cited as the ‘Federal Physicians Comparability Allowance Amendments of 1981’.”

**Short Title of 1979 Amendment**

Section 1 of Pub. L. 96–166 provided: “That this Act [amending this section and section 5383 of this title and provisions set out as a note under this section, and enacting provisions set out below] may be cited as the ‘Federal Physicians Comparability Allowance Amendments of 1979’.”

**Short Title**

Section 1 of Pub. L. 95–603 provided: “That this Act [enacting this section and provisions set out as notes under this section] may be cited as the ‘Federal Physicians Comparability Allowance Act of 1978’.”

**Construction of 1998 Amendment**

Pub. L. 105–266, § 7(c), Oct. 19, 1998, 112 Stat. 2370, provided that: “Nothing in this section [amending this section and enacting provisions set out as a note below] shall be considered to authorize additional or supplemental appropriations for the fiscal year in which occurs the date of the enactment of this Act [Oct. 19, 1998].”

**Construction of 1993 Amendment**

Section 1(a)(4) of Pub. L. 103–114 provided that: “The amendments made by this subsection [amending this section and provisions set out above] shall not be construed to authorize additional or supplemental appropriations for the fiscal year ending September 30, 1993.”

Section 1(c) of Pub. L. 103–114 provided that: “For purposes of applying the amendments made by this section [amending this section and enacting and amending provisions set out as notes above]—

“(1) the provisions of subsection (b)(1) [enacting and amending provisions set out as notes above] shall be treated as having been enacted immediately before the provisions of subsection (b)(2) [enacting and amending provisions set out as notes above]; and

“(2) the provisions of subsection (b)(2) shall be treated as having been enacted immediately before the provisions of subsection (a) [amending this section and enacting and amending provisions set out as notes above].”

**Modification of Service Agreements in Effect on October 19, 1998; Limitation**


“(1) In general.—Any service agreement under section 5948 of title 5, United States Code, which is in effect on the date of the enactment of this Act [Oct. 19, 1998] may, with respect to any period of service remaining in such agreement, be modified based on the amendment made by subsection (a) [amending this section].

“(2) Limitation.—A modification taking effect under this subsection in any year shall not cause an allowance to be increased to a rate which, if applied throughout such year, would cause the limitation under section 5948(a)(2) of such title (as amended by this section), or any other applicable limitation, to be exceeded.”
Effectiveness of Service Agreements Limited by Appropriation Acts

Section 1(a)(3) of Pub. L. 103–114 provided that: “Any service agreement entered into on or after the date of the enactment of this Act [Oct. 26, 1993] pursuant to section 5948 of title 5, United States Code, as amended by paragraph (1), shall be effective only to such extent or in such amounts as are provided in advance in appropriation Acts.”

Due Date for First Annual Report on Operation of Section

Section 2(b) of Pub. L. 103–114 provided that: “The first report under section 5948 (j) of title 5, United States Code, as amended by subsection (a), shall be due not later than June 30, 1994.”

Pay of Certain Federal Physicians for Fiscal Year 1982

Section 103 of Pub. L. 98–168 provided that any individual whose aggregate pay for fiscal year 1982 exceeded the limitation set forth in section 5383 (b) of this title is relieved of all liability to the United States for any amounts paid to such individual in excess of such limitation if, and to the extent that, such liability takes into account any allowance paid under this section, provided for repayment to individuals relieved from liability of amounts already paid, and defined the terms “aggregate pay”, “appropriate agency head”, and “agency”.

Service Agreements Entered Into On or After December 29, 1981; Advance Authorization; Fiscal Year 1982

Section 4 of Pub. L. 97–141 provided that any service agreement entered into on or after Dec. 29, 1981, pursuant to this section, as amended by section 2 of Pub. L. 97–141, shall be effective only to such extent or in such amounts as are provided in advance in appropriation Acts, and that the amendments made by Pub. L. 97–141 shall not be construed to authorize additional or supplemental appropriations for the fiscal year ending Sept. 30, 1982.

Service Agreements Entered Into On or After December 29, 1979; Advance Authorization

Section 5 of Pub. L. 96–166 provided that any service agreement entered into on or after Dec. 29, 1979, pursuant to this section, as amended by section 2 of Pub. L. 96–166, shall be effective only to such extent or in such amounts as are provided in advance in appropriation Acts.

Time of Entry into Allowance Agreements and for Commencement of Allowance

Section 2(c) of Pub. L. 95–603 provided that no agreement be entered into under this section before 60th day after Nov. 6, 1978, and that no agreement provide for payment of any allowance under such section for any pay period beginning before later of such 60th day, or Oct. 1, 1978.

Ex. Ord. No. 12109. Delegation of Authority to Director of Office of Personnel Management

Ex. Ord. No. 12109, Dec. 28, 1978, 44 F.R. 1067, provided:

By the authority vested in me as President of the United States of America by Section 5948 of Title 5 and Section 301 of Title 3 of the United States Code, it is hereby ordered as follows:

1–101. The Director of the Office of Personnel Management is hereby designated and empowered to exercise, in consultation with the Director of the Office of Management and Budget, the authority of the President under Section 5948 of Title 5 of the United States Code, to prescribe regulations, criteria, and conditions with regard to the payment of comparability allowances to recruit and retain certain Federal physicians.

1–102. Until the Office of Personnel Management is established (on or before January 1, 1979), pursuant to Reorganization Plan No. 2 of 1978 (43 FR 36037) [set out under section 1101 of this title], the Civil Service Commission shall exercise the authority delegated under this Order to the Director of the Office of Personnel Management.

Jimmy Carter.