

CHAPTER 5
National Government Employees'
Early Retirement Program

SECTIONS

- § 501. Short title.**
- § 502. Purpose.**
- § 503. Definitions.**
- § 504. Commencement of Early Retirement Program.**
- § 505. Eligibility; procedures.**
- § 506. Compensation.**
- § 507. Ineligibility for re-employment.**
- § 508. Program Loan; Fund. [REPEALED]**
- § 509. Freeze on salary increases; compensatory time and overtime compensation.**
- § 510. Annual report.**
- § 511. Act supersedes other laws.**

§ 501. Short title.

This chapter may be cited as the National Government Employees' Early Retirement Program.

Source: PL 9-155 § 2.

§ 502. Purpose.

The purpose of this chapter is to lower the long-term cost of National Government operations in ways that will promote the shift in the economy toward private sector development and will minimize the negative impact on National Government employees.

Source: PL 9-155 § 3.

§ 503. Definitions.

As used in this chapter, unless the context clearly requires otherwise, the term:

(1) “Agency” means any authority, office, commission, board, bureau or other entity of the Government of the Federated States of Micronesia outside of the executive, legislative or judicial branches of government, the employees of which authority, office, commission, board, bureau or other entity are subject to the National Public Service System Act and regulations promulgated thereunder.

(2) “Base salary” means the average bi-weekly rate of pay to an employee over the most recent 26 pay periods based upon an 80 hour bi-weekly pay period. The most recent 26 pay periods shall be determined starting from the date such employee is approved for early retirement. Base salary does not include differentials, including but not limited to foreign service differentials, of allowances for night work, transfer, overtime, holiday work, travel per diem, or other similar allowances.

(3) “Permanent employee” means an employee who is not employed through a contract that has a specific date of termination and has been appointed to a position in the public service system who has successfully completed a probation period.

(4) “Program” means the early retirement program with its eligibility requirements and benefits as defined in this chapter.

(5) “Public service” means all offices and other positions in the National Government of the Federated States of Micronesia not exempted by section 117 of chapter 1 of the National Public Service System Act.

Source: PL 9-155 § 4.

Cross-reference: The National Public Service System Act is codified in chapter 1 of this title 52.

§ 504. Commencement of Early Retirement Program.

(1) The program will commence on the date the President, or his designee, certifies that there are funds available in the program for disbursement to eligible program employees and shall continue from the date of certification through May 31, 2000.

(2) Copies of the certification shall be provided to each branch and agency of the National Government.

Source: PL 9-155 § 5; PL 11-35 § 1.

§ 505. Eligibility: procedures.

Eligibility for the benefits under this chapter shall be determined as follows:

(1) Within 60 days of the end of the First Regular Session of the Tenth Congress of the Federated States of Micronesia, before or during which session the President shall have submitted a National Government Restructuring Plan for review and action by the Congress, the President of the Federated States of Micronesia for the executive branch, the Chief Justice of the Supreme Court of the Federated States of Micronesia for the judiciary branch, the Speaker of the Congress of the Federated States of Micronesia for the Congress, and the chief executive officer of each

agency of the National Government shall submit to the President, or his designee, a list for their respective branch or agency of the National Government. Each list may be updated from time to time and shall include each position:

- (a) Ineligible for inclusion in the program. A position shall be ineligible if such position is exempt by law from the provisions of the Public Service System Act, or provides essential public services and if abolished would cause the National Government to fail to provide such essential public services;
- (b) Which shall be terminated because such position is to be abolished; and
- (c) Which may be eligible for inclusion in the program.

(2) A permanent employee in a position which shall be terminated under subsection (1)(b) of this section shall be automatically deemed a participant in the program subject only to the abolishment of the position. Such abolishment may occur at any time during the program period but not less than 90 days after the employee receives notice that the position is to be abolished, except that such 90-day period can be waived by the employee.

(3) A permanent employee in a position eligible for inclusion in the program under subsection (1)(c) of this section may participate in the program by submitting a written application to the Office of Administrative Services and if:

- (a) There are funds available in the program;
- (b) Long-term cost savings would be achieved by the employees participation in the program; and
- (c) The respective branch or agency of government may abolish the position without compromising essential public services or such position may be filled by a permanent or probationary employee and such employees previous position is abolished.

(4) A permanent employee holding a position identified as “ineligible” for the program under subsection (1) (a) of this section may become eligible for inclusion in the program if he submits a written application and:

- (a) A person who is eligible for the program through subsection (1)(b) or (c) of this section agrees, in writing, to become employed in the ineligible position;
- (b) The head of the branch or agency containing that ineligible position agrees, in writing, to employ that eligible person in the permanent employee’s ineligible position; and
- (c) Sufficient funds are available in the program.

Source: PL 9-155 § 6, modified.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 3 of this code. The statutory provisions on the FSM Supreme Court and the judiciary are found in title 4 of this code.

The website of the FSM National Government contains announcements, press releases, news, forms, and other information on the National Government at <http://fsmgov.org>.

The FSM Supreme Court website contains court decisions, rules, calendar, and other information of the court, the Constitution, the code of the Federated States of Micronesia, and other legal resource information at <http://www.fsmsupremecourt.org/>.

The official website of the Congress of the Federated States of Micronesia contains the public laws enacted by the Congress, sessions, committee hearings, rules, and other Congressional information at <http://www.fsmcongress.fm/>.

§ 506. Compensation.

(1) Subject to the availability of funds, an employee eligible for participation in the program and less than 60 years of age may choose to receive either:

- (a) a lump sum payment equal to 48 bi-weekly base salary payments; or
- (b) 52 bi-weekly base salary payments.

(2) (a) Subject to the availability of funds, an employee eligible for participation in the program, who is more than 55 years of age and not yet eligible for FSM Social Security Administration (hereinafter "SSA") retirement benefits, may retire and may choose to receive the benefits described in subsection (1)(a) or (b) of this section, or may receive a lump sum payment equaling six base salary pay periods and a monthly amount equal to the monthly SSA retirement benefits that the person would have received if he had been 60 years of age when his employment with the National Government ceased due to his participation in the Early Retirement Program. Such payments shall terminate upon the person reaching the age of 60 or becoming eligible for SSA retirement benefits, whichever occurs first. The Secretary of the Department of Finance may enter into an agreement with the SSA authorizing the SSA to administer the payments under this subsection. The agreement may also provide for the collection of reasonable administrative fees by the SSA.

(b) If a participating employee disputes National Government records that indicate what his age is, and if resolution of the dispute would control the amount of the benefits that the worker would receive under this section, the worker may request a determination of the dispute by the Director of the Social Security Administration (hereinafter, "the Director"). Such a request must be in writing. The Director must resolve the dispute promptly, and he may receive any evidence that he deems appropriate in resolving such a dispute. The Director must make written findings explaining his evaluation of the evidence presented to him and explaining his ultimate resolution of the dispute. The Director must also provide a copy of those written findings to the employee in question.

(c) After each eligibility list has been determined, it shall be promptly transmitted to the Director of Social Security, who shall promptly deliver written notification to each worker who is between 53 and 59 years of age and whose position is described in section 505(1)(c) of this chapter, of the following: how many "quarters of coverage" the worker has accumulated for the purposes of Social Security benefits, whether that number is sufficient to entitle the worker to Social Security retirement benefits at age 60 and, if not, how many more "quarters of coverage" the employee would have to accumulate to become entitled to such benefits.

(3) Subject to the availability of funds, an employee who is more than 60 years of age and eligible to receive SSA retirement benefits and who is otherwise eligible to participate in the program, shall receive a lump sum payment equal to six bi-weekly base salary periods.

(4) The following adjustments shall be made from each payment due to an employee:

- (a) Any advance annual or sick leave owed by the employee;
- (b) Any salary advance;

(c) Any per diem or other travel advance including outstanding travel authorizations; and any other adjustment which the employee may owe to the National Government, or which the National Government may owe to the employee.

(d) If authorized by the employee in writing, amounts requested by the employee to be deducted from compensation received pursuant to subsection (1)(b) of this section, and remitted to a third party, provided that no more than two such remittances shall be permitted for each employee at any one time and that each such remittance must be in effect for at least six months, unless otherwise provided by law. A remittance under this subsection shall be binding upon the employee in accordance with the terms of the request therefor, including but not limited to any prohibition on canceling remittance without the consent of the third-party payee, provided that the terms of the remittance are otherwise in accordance with applicable law, including but not limited to usury laws.

(5) For purposes of this chapter, compensation received by an employee pursuant to this chapter shall be exempted from the:

(a) Provisions of sections 901 and 902 of title 53 to the extent that such compensation shall not be deemed wages received by the employee;

(b) Provisions of section 121 of title 54 to the extent that such compensation shall not be deemed wages or salaries received by the employee; and

(c) Provisions of section 603(6) of title 53 to the extent that such compensation shall not be deemed dollars earned in a quarter by the employee.

(6) If a participating employee dies, his entitlement to compensation under the program shall survive and the remainder shall be paid to persons or entities in accordance with the general law of descent and distribution or in accordance with customary law if the applicable jurisdiction does not have general law of descent and distribution.

Source: PL 9-155 § 8.

Cross-reference: Title 53 of this code is on Social Security and Prior Service Benefits. Title 54 of this code is on Taxation and Customs.

§ 507. Ineligibility for re-employment.

(1) Any employee who receives compensation under the program shall not be eligible for re-employment in any capacity by the National Government or any agency of the National Government prior to September 30, 2001, or two years from the effective date of the employee's early retirement, whichever comes later in time, except that such ineligibility shall not apply to program participants who are re-employed by the National Government in the following positions:

(a) members of the Congress of the Federated States of Micronesia;

(b) the President and Vice President of the Federated States of Micronesia; and

(c) persons appointed to any positions by the President with the advice and consent of the Congress of the Federated States of Micronesia, except that program participants who receive compensation pursuant to section 506(4) of this chapter shall not be eligible for re-employment by the National Government in any position appointed by the President with the advice and consent of Congress prior to September 30, 2001, or two years from the effective date of the employee's early retirement, whichever comes later in time.

(2) For purposes of this section, a person paid from the National Government funds to render services for and under the direction of an entity that is not part of the National Government or an agency thereof is not to be considered

re-employed by the National Government or any agency thereof notwithstanding the source of such funding and the fact that the person is rendering such services pursuant to a contract signed by a National Government official or employee in the latter's capacity as allottee or suballottee of such funds.

(3) For purposes of this section, a person is not re-employed by the National Government if he has entered into a contract to provide services to the National Government where:

- (a) the contract is an independent contract; and
- (b) the contract is not the primary source of revenue for the contractor during the contract period.

Source: PL 9-155 § 9; PL 11-35 § 2.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 3 of this code.

§ 508. Program Loan; Fund. [REPEALED]

Editor's note: Section 508, originally created by PL 9-155 § 10, was repealed in its entirety by PL 12-17 § 17, which provided that:

Section 17. Termination of Retirement Fund. Title 52 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by repealing section 508 thereof in its entirety. Funds currently in the National Government Employee's Early Retirement Fund created by that section 508 shall be deposited in the master repayment account of the External Debt Management Fund created by this act.

The External Debt Management Fund is created under subchapter XI of title 55 (Government Finance and Contracts).

§ 509. Freeze on salary increases; compensatory time and overtime compensation.

Notwithstanding any other applicable law, there is hereby enacted:

(1) a freeze on annual salary step increases of all employees in the public service system; and

(2) compensatory time, with which employees in the public service system shall be credited in lieu of receiving overtime compensation as otherwise authorized under the National Public Service System Act and regulations promulgated thereunder. Compensatory time means those hours authorized in advance and worked by an employee outside established work hours and for which the employee is credited with one hour in the form of leave with pay for each hour of work an employee is directed to work and performs in excess of the regular 40 hour workweek as provided by law. Compensatory time shall be accrued by National Government public service employees and shall be included in the compensation received by a program participant pursuant to subsection (4)(c) of section 506 of this chapter; except that any accumulation of time in excess of 280 hours shall be forfeited unless taken before the end of the calendar year in which the excess was accumulated. For purposes of computing whether a program employee's accrued compensatory and/or annual leave hours are in excess of 280 hours, accrued compensatory time and annual leave shall be included in computing the 280-hour ceiling.

(3) Notwithstanding the provisions of this section, an employee shall be entitled to receive overtime differential, retroactive to the effective date of Public Law No. 9-155, as authorized under the National Public Service System Act, for:

(a) time worked in the event that the National Government would be entitled to compensation for payment of such differential under section 115 of title 50 and section 416 of title 22;

(b) time worked in the event that the National Government would be entitled to compensation for payment of such differential through a written agreement with a legal entity that seeks to provide relief from emergency conditions, as long as the time worked is directly related to efforts to provide emergency relief, in accordance with an emergency declared by the President under article X, section 9 of the Constitution of the Federated States of Micronesia;

(c) time worked in the event that the National Government would be entitled to compensation for payment of such differential through a written agreement with the Water Users Corporation, as long as the time worked is directly related to management and maintenance of the Capital Water System; or

(d) time worked as follows:

(i) by personnel within the Division of Budget in preparation of the annual budget submission at the discretion of the Secretary of the Department of Finance and Administration;

(ii) by accounting personnel with the Division of Treasury in preparing the annual financial statements for the FSM National Government, at the discretion of the Secretary of the Department of Finance and Administration;

(iii) by accounting personnel within the Division of Treasury in preparing reports pursuant to section 226 of title 55 of this code, or a successor provision, at the discretion of the Secretary of the Department of Finance and Administration. Notwithstanding section 164 of this title, persons working hours entitling them to overtime differential pursuant to paragraph (d) of subsection (3) of this section shall receive compensation at straight time for those hours.

(4) Notwithstanding other provisions of this section, the employees of the National Weather Services may receive annual increments retroactive to the effective date of Public Law No. 9-155.

(5) Notwithstanding the provisions of this section, the following employees shall be entitled to receive overtime differential as authorized under the National Public Service System Act, except that overtime compensation shall be at the rate of straight time instead of time and one-half:

(a) food inspectors as designated pursuant to title 41 of this code;

(b) officers of the Division of National Police of the Department of Justice.

Source: PL 9-155 § 11; PL 13-43 § 1; PL 14-73 § 1.

Cross-reference: Title 50 of this code is on Immigration. Title 22 of this code is on Agriculture and Livestock. Title 55 of this code is on Government Finance and Contracts. Title 41 of this code is on Public Health, Safety and Welfare.

§ 510. Annual report.

The President, or his designee, shall submit a report to the Congress of the Federated States of Micronesia not later than May 1 of each year, which report shall provide as of the end of the second quarter of the fiscal year the following information:

- (1) A full accounting of the status of the Retirement Fund;
- (2) A full accounting of the status of the Asian Development Bank funds received by the National Government in accordance with law;
- (3) The status of the program, including details regarding actual expenditures and estimated expenditures for the year in progress;
- (4) The status of repayments into the Retirement Fund and a projection of how the fund balance will meet or exceed the original principal amount before September 30, 2001, as required by law.

Source: PL 9-155 § 13.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 3 of this code.

§ 511. Act supercedes other laws.

The provisions of this chapter shall supersede in their entirety any other provisions of any law that may be interpreted as inconsistent with any provision of this chapter.

Source: PL 9-155 § 14.