AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

TITLE 5—GOVERNMENT ORGANIZATION AND EMPLOYEES

This title was enacted by Pub. L. 89–554, § 1, Sept. 6, 1966, 80 Stat. 378

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II.	**Civil Service Functions and Responsibilities**	**1101**
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AMENDMENTS

1979—Pub. L. 96–54, § 2(a)(1), Aug. 14, 1979, 93 Stat. 381, substituted ''Civil Service Functions and Responsibilities'' for ''The United States Civil Service Commission'' in item for part II.

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ENACTING CLAUSE

Section 1 of Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 378, provided in part: ''That the laws relating to the organization of the Government of the United States and to its civilian officers and employees, generally, are revised, codified, and enacted as title 5 of the United States Code, entitled 'Government Organization and Employees', and may be cited as '5 U.S.C., § '.''

LEGISLATIVE PURPOSE: INCONSISTENT PROVISIONS

Section 7(a) of Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 631, provided that: ''The legislative purpose in enacting sections 1–6 of this Act is to restate, without substantive change, the laws replaced by those sections on the effective date of this Act [Sept. 6, 1966]. Laws effective after June 30, 1965, that are inconsistent with this Act are considered as superseding it to the extent of the inconsistency.''

REFERENCES TO OTHER LAWS

Section 7(b) of Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 631, provided that: ''A reference to a law replaced by sections 1–6 of this Act, including a reference in a regulation, order, or other law, is deemed to refer to the corresponding provision enacted by this Act.''

OUTSTANDING ORDERS, RULES AND REGULATIONS

Section 7(c) of Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 631, provided that: ''An order, rule, or regulation in effect under a law replaced by sections 1–6 of this Act continues in effect under the corresponding provision enacted by this Act until repealed, amended, or superseded.''

SAVINGS PROVISION

Section 7(d) of Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 631, provided that: ''An action taken or an offense committed under a law replaced by sections 1–6 of this Act is deemed to have been taken or committed under the corresponding provision enacted by this Act.''

LEGISLATIVE CONSTRUCTION

Section 7(e) of Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 631, provided that: ''An inference of a legislative construction is not to be drawn by reason of the location in the United States Code of a provision enacted by this Act or by reason of the caption or catchline thereof.''

PAY, ALLOWANCES, COMPENSATION, OR ANNUITY

Section 7(f) of Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 631, provided that: ''The enactment of this Act does not increase or decrease the pay, allowances, compensation, or annuity of any person.''

SEPARABILITY

Section 7(g) of Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 631, provided that: ''If a provision enacted by this Act is held invalid, all valid provisions that are separable from the invalid provision remain in effect. If a provision of this Act is held invalid in one or more of its applications, the provision remains in effect in all valid applications that are severable from the invalid application or applications.''

APPLICABILITY TO COMMISSIONED OFFICERS OF PUBLIC HEALTH SERVICE AND COAST AND GEODETIC SURVEY

Section 7(h) of Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 632, provided that: ''Sections 1–6 of this Act shall be construed to apply to commissioned officers of the Public Health Service and commissioned officers of the Coast and Geodetic Survey [now the National Oceanic and Atmospheric Administration] to the same extent that the laws replaced by those sections applied to these officers immediately before the date of enactment of this Act [Sept. 6, 1966].''

REPEALS

Section 8(a) of Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 632, repealed the sections or parts thereof of the Revised Statutes or Statutes at Large codified in this title, except with respect to rights and duties that matured, penalties that were incurred, and proceedings that were begun, before Sept. 6, 1966, and except as provided by section 7 of Pub. L. 89–554.

Section 8(c) of Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 632, provided that: ''The repeal of a law by this Act may not be construed as a legislative inference that the provision was or was not in effect before its repeal.''

CONTINUATION OF RIGHT TO DEFERRED ANNUITY

Section 8(b) of Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 632, provided that: ''The right to a deferred annuity on satisfaction of the conditions attached thereto is continued notwithstanding the repeal of the law conferring the right.''

IMPROVEMENT OF UNITED STATES CODE BY PUB. L. 90–83; LEGISLATIVE PURPOSE; INCONSISTENT PROVISIONS; CORRESPONDING PROVISIONS; SAVINGS AND SEPARABILITY OF PROVISIONS

Section 9(a)–(g) of Pub. L. 90–83, Sept. 11, 1967, 81 Stat. 222, provided that:

''(a) The legislative purpose in enacting sections 1–8 of this Act is to restate, without substantive change, the laws replaced by those sections on the effective date of this Act. Laws effective after February 21, 1967, that are inconsistent with this Act are considered as superseding it to the extent of the inconsistency.

''(b) A reference to a law replaced by sections 1–8 of this Act, including a reference in a regulation, order, or other law, is deemed to refer to the corresponding provision enacted by this Act.

''(c) An order, rule, or regulation in effect under a law replaced by sections 1–8 of this Act continues in effect under the corresponding provision enacted by this Act until repealed, amended, or superseded.

''(d) An action taken or an offense committed under a law replaced by sections 1–8 of this Act is deemed to have been taken or committed under the corresponding provision enacted by this Act.

''(e) An inference of a legislative construction is not to be drawn by reason of the location in the United States Code of a provision enacted by this Act or by reason of the caption or catchline thereof.

''(f) The enactment of this Act does not increase or decrease the pay, allowances, compensation, or annuity of any person.

''(g) If a provision enacted by this Act is held invalid, all valid provisions that are severable from the invalid provision remain in effect. If a provision of this Act is held invalid in one or more of its applications, the provision remains in effect in all valid applications that are severable from the invalid application or applications.''

TITLE REFERRED TO IN OTHER SECTIONS

This title is referred to in title 2 sections 353, 437c, 622; title 7 sections 84, 1765a, 1988, 2007b, 6981; title 10 sections 1408, 1590, 1601, 2164; title 12 sections 1422b, 1795f, 1821, 2278a–3, 2279aa–3, 2405, 3307; title 14 section 186; title 15 sections 634d, 648, 649a, 2206, 2451; title 16 sections 410cc–36, 410ww–24, 410ccc–22, 469j, 583j–1, 742f, 1401, 3702, 4005, 4604; title 18 sections 202, 3006A; title 20 sections 76k, 80g, 80*o*, 80q–4, 964, 971, 1004, 1098, 1134, 1135a–1, 1135d–3, 1213c, 1221e, 1221e–1, 1233b, 1233d, 1417, 1505, 2839, 3413, 3425, 3461, 4416, 4831, 5509, 5826, 5848, 6011, 6021, 6031, 9011; title 21 section 394; title 22 sections 1622d, 2124c, 2421, 2581, 2873, 2905, 3008, 3642, 3664, 4606, 4823, 5421, 6204, 6207; title 24 section 417; title 25 sections 640d–11, 1661, 2021, 2022, 2704, 2707, 3113, 3505, 3731; title 26 sections 7471, 9010, 9040; title 28 sections 375, 561, 625, 1877; title 29 sections 761a, 783, 797a, 1774; title 31 sections 301, 732, 733; title 33 section 1123; title 36 sections 1405, 1406, 5202; title 38 sections 106, 707, 4103, 4304, 4312, 4322, 5303A, 7281, 7403, 7406, 7425, 7453, 7802; title 40 sections 136, 873, 1106; title 41 section 422; title 42 sections 217a, 237, 282, 285a–2, 285a–4, 285b–3, 288–4, 290aa, 299c–1, 299c–4, 300v–2, 903, 904, 907, 907a, 1314, 1320a–4, 1320b–9, 1320c–2, 1395w–1, 1395*oo*, 1395ww, 1863, 1975d, 2000e–4, 2210, 3015, 3525, 3533, 3788, 4025, 4372, 4768, 5149, 5404, 5667g–2, 7231, 7412, 8104, 10704, 12314, 12373, 12619, 12651e, 12651f, 14196; title 43 section 1731; title 46 App. sections 41, 1295g; title 49 sections 325, 10363, 11161, 32306; title 50 section 2081; title 50 App. section 2153.

PART I—THE AGENCIES GENERALLY

Chap.		Sec.
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CHAPTER 1—ORGANIZATION

Sec.	
101.	Executive departments.
102.	Military departments.
103.	Government corporation.
104.	Independent establishment.
105.	Executive agency.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 15 sections 205j–1, 2225a; title 19 section 2571.

§ 101. Executive departments

The Executive departments are:

[1] Pub. L. 90–83 added section 500 to chapter 5 without making a corresponding change in Part analysis.

[2] Editorially supplied. Chapter 6 added by Pub. L. 96–354 without a corresponding amendment of Part analysis.

The Department of State.
The Department of the Treasury.
The Department of Defense.
The Department of Justice.
The Department of the Interior.
The Department of Agriculture.
The Department of Commerce.
The Department of Labor.
The Department of Health and Human Services.
The Department of Housing and Urban Development.
The Department of Transportation.
The Department of Energy.
The Department of Education.
The Department of Veterans Affairs.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 378; Pub. L. 89–670, § 10(b), Oct. 15, 1966, 80 Stat. 948; Pub. L. 91–375, § 6(c)(1), Aug. 12, 1970, 84 Stat. 775; Pub. L. 95–91, title VII, § 710(a), Aug. 4, 1977, 91 Stat. 609; Pub. L. 96–88, title V, § 508(b), Oct. 17, 1979, 93 Stat. 692; Pub. L. 100–527, § 13(b), Oct. 25, 1988, 102 Stat. 2643.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 1.	R.S. § 158. Feb. 9, 1889, ch. 122, § 1 (38th through 54th words), 25 Stat. 659. Feb. 14, 1903, ch. 552, § 1 (83d through 99th words), 32 Stat. 825. Mar. 4, 1913, ch. 141, § 1 (75th through 91st words), 37 Stat. 736. Aug. 10, 1949, ch. 412, § 4 ''Sec. 201(c)'', 63 Stat. 579. July 31, 1956, ch. 802, § 1(a), 70 Stat. 732.
.....	5 U.S.C. 2.	R.S. § 159.

The reference in former section 1 to the application of the provisions of this title, referring to title IV of the Revised Statutes, is omitted as unnecessary as the application of those provisions is stated in the text.

The statement in former section 2 that the use of the word ''department'' means one of the Executive departments named in former section 1 is omitted as unnecessary as the words ''Executive department'' are used in this title when Executive department is meant.

''The Department of Commerce'' is substituted for ''The Department of Commerce and Labor'' on authority of the act of March 4, 1913, ch. 141, § 1, 37 Stat. 736.

AMENDMENTS

1988—Pub. L. 100–527 inserted ''The Department of Veterans Affairs.''

1979—Pub. L. 96–88 substituted ''Department of Health and Human Services'' for ''Department of Health, Education, and Welfare'' and inserted ''The Department of Education.''

1977—Pub. L. 95–91 inserted ''The Department of Energy.''

1970—Pub. L. 91–375 struck out ''The Post Office Department.''

1966—Pub. L. 89–670 inserted ''The Department of Housing and Urban Development.'' and ''The Department of Transportation.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–527 effective Mar. 15, 1989, see section 18(a) of Pub. L. 100–527, set out as a Department of Veterans Affairs Act note under section 301 of Title 38, Veterans' Benefits.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–88 effective May 4, 1980, with specified exceptions, see section 601 of Pub. L. 96–88, set out as an Effective Date note under section 3401 of Title 20, Education.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–375 effective within 1 year after Aug. 12, 1970, on date established therefor by Board of Governors of United States Postal Service and published by it in Federal Register, see section 15(a) of Pub L. 91–375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–670 effective Apr. 1, 1967, as prescribed by the President and published in the Federal Register, see section 16(a), formerly § 15(a), of Pub. L. 89–670 and Ex. Ord. No. 11340, Mar. 30, 1967, 32 F.R. 5453.

PROHIBITION AGAINST CONSTRUCTION THAT WOULD RENDER APPLICABLE TO THE DEPARTMENT OF TRANSPORTATION PROVISIONS OF LAW INCONSISTENT WITH PUB. L. 89–670 CREATING THE DEPARTMENT OF TRANSPORTATION

Section 10(c) of Pub. L. 89–670 provided that: ''The amendment made by subsection (b) of this section [amending this section] shall not be construed to make applicable to the Department any provision of law inconsistent with this Act [Pub. L. 89–670].''

CROSS REFERENCES

Attorney General to advise heads of executive departments, see section 512 of Title 28, Judiciary and Judicial Procedure.
Definition of department—
Administrative Expenses Act of 1946, see section 5a of Title 41, Public Contracts.
Crimes and Criminal Procedure, see section 6 of Title 18, Crimes and Criminal Procedure.
Departmental provisions—
Agriculture, see section 2201 et seq. of Title 7, Agriculture.
Commerce, see section 1501 et seq. of Title 15, Commerce and Trade.
Defense, see section 111 et seq. of Title 10, Armed Forces.
Education, see section 3401 et seq. of Title 20, Education.
Energy, see section 7101 et seq. of Title 42, The Public Health and Welfare.
Health and Human Services, see section 3501 et seq. of Title 42, The Public Health and Welfare.
Housing and Urban Development, see section 3531 et seq. of Title 42.
Interior, see section 1451 et seq. of Title 43, Public Lands.
Justice, see section 501 et seq. of Title 28, Judiciary and Judicial Procedure.
Labor, see section 551 et seq. of Title 29, Labor.
State, see section 2651 et seq. of Title 22, Foreign Relations and Intercourse.
Transportation, see section 101 et seq. of Title 49, Transportation.
Treasury, see section 301 et seq. of Title 31, Money and Finance. Internal revenue authority, see section 7801 of Title 26, Internal Revenue Code.
Veterans Affairs, see section 301 et seq. of Title 38, Veterans' Benefits.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 18 sections 115, 351, 1030, 6001; title 28 section 451; title 31 sections 1343, 1344; title 36 section 175; title 41 sections 403, 601; title 42 sections 8262c, 10156, 10222.

§ 102. Military departments

The military departments are:

The Department of the Army.
The Department of the Navy.
The Department of the Air Force.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 378.)

HISTORICAL AND REVISION NOTES

The section is supplied to avoid the necessity for defining ''military departments'' each time it is used in this title. See section 101(7) of title 10.

CROSS REFERENCES

Attorney General to advise Secretaries of military departments, see section 513 of Title 28, Judiciary and Judicial Procedure.
Organization—
Air Force, see section 8011 et seq. of Title 10, Armed Forces.
Army, see section 3011 et seq. of Title 10.
Navy, see section 5011 et seq. of Title 10.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 15 sections 638, 3703; title 18 section 6001; title 26 section 6050M; title 29 sections 203, 633a; title 31 section 1344; title 35 section 201; title 36 section 175; title 38 section 4303; title 41 sections 48b, 403, 601; title 42 sections 2000e–16, 10156, 10222.

§ 103. Government corporation

For the purpose of this title—

(1) ''Government corporation'' means a corporation owned or controlled by the Government of the United States; and

(2) ''Government controlled corporation'' does not include a corporation owned by the Government of the United States.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 378.)

HISTORICAL AND REVISION NOTES

The section is supplied to avoid the necessity for defining ''Government corporation'' and ''Government controlled corporation'' each time it is used in this title.

CROSS REFERENCES

Federal Crop Insurance Corporation, see section 1501 et seq. of Title 7, Agriculture.
Government Corporation Control provisions, see section 9101 et seq. of Title 31, Money and Finance.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 20 section 1132f; title 26 section 6402; title 31 sections 1344, 3720A; title 42 section 12651.

§ 104. Independent establishment

For the purpose of this title, ''independent establishment'' means—

(1) an establishment in the executive branch (other than the United States Postal Service or the Postal Rate Commission) which is not an Executive department, military department, Government corporation, or part thereof, or part of an independent establishment; and

(2) the General Accounting Office.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 379; Pub. L. 91–375, §6(c)(2), Aug. 12, 1970, 84 Stat. 775.)

HISTORICAL AND REVISION NOTES

The section is supplied to avoid the necessity for defining ''independent establishment'' each time it is used in this title.

Certain agencies are not independent establishments under the definition since they are constituent agencies or parts of an independent establishment. However, these agencies would continue to be subject to the provisions of this title applicable to the independent establishment of which they are a constituent or part. Also, the definition does not expand or abridge any rights or authority possessed by these agencies as no substantive changes are intended, see section 7(a) of the bill.

AMENDMENTS

1970—Par. (1). Pub. L. 91–375 inserted ''(other than the United States Postal Service or the Postal Rate Commission)'' after ''executive branch''.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–375 effective within 1 year after Aug. 12, 1970, on date established therefor by Board of Governors of United States Postal Service and published by it in Federal Register, see section 15(a) of Pub. L. 91–375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

CROSS REFERENCES

General Accounting Office, see section 701 et seq. of Title 31, Money and Finance.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 41 sections 403, 601.

§ 105. Executive agency

For the purpose of this title, ''Executive agency'' means an Executive department, a Government corporation, and an independent establishment.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 379.)

HISTORICAL AND REVISION NOTES

The section is supplied to avoid the necessity for defining ''Executive agency'' each time it is used in this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 306, 5948 of this title; title 7 section 2132; title 12 section 1749bbb–10b; title 15 sections 638, 3301, 3703, 4901, 5802; title 16 section 2602; title 22 sections 2685, 3641; title 29 sections 203, 633a; title 31 section 1353; title 35 section 201; title 38 sections 4211, 4303; title 40 section 913; title 41 section 48b; title 42 sections 2000e–16, 4071, 4902, 6361, 6964, 7911, 8241, 8802, 10101; title 43 section 2003; title 50 section 1601.

CHAPTER 3—POWERS

Sec.
301. Departmental regulations.
302. Delegation of authority.
303. Oaths to witnesses.
304. Subpenas.
305. Systematic agency review of operations.
306. Strategic plans.

AMENDMENTS

1993—Pub. L. 103–62, §11(a), Aug. 3, 1993, 107 Stat. 295, added item 306.

§ 301. Departmental regulations

The head of an Executive department or military department may prescribe regulations for the government of his department, the conduct of its employees, the distribution and performance of its business, and the custody, use, and preservation of its records, papers, and property.

This section does not authorize withholding information from the public or limiting the availability of records to the public.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 379.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 22.	R.S. § 161. Aug. 12, 1958, Pub. L. 85–619, 72 Stat. 547.

The words ''Executive department'' are substituted for ''department'' as the definition of ''department'' applicable to this section is coextensive with the definition of ''Executive department'' in section 101. The words ''not inconsistent with law'' are omitted as surplusage as a regulation which is inconsistent with law is invalid.

The words ''or military department'' are inserted to preserve the application of the source law. Before enactment of the National Security Act Amendments of 1949 (63 Stat. 578), the Department of the Army, the Department of the Navy, and the Department of the Air Force were Executive departments. The National Security Act Amendments of 1949 established the Department of Defense as an Executive Department including the Department of the Army, the Department of the Navy, and the Department of the Air Force as military departments, not as Executive departments. However, the source law for this section, which was in effect in 1949, remained applicable to the Secretaries of the military departments by virtue of section 12(g) of the National Security Act Amendments of 1949 (63 Stat. 591), which provided:

''All laws, orders, regulations, and other actions relating to the National Military Establishment, the Departments of the Army, the Navy, or the Air Force, or to any officer or activity of such establishment or such departments, shall, except to the extent inconsistent with the provisions of this Act, have the same effect as if this Act had not been enacted; but, after the effective date of this Act, any such law, order, regulation, or other action which vested functions in or otherwise related to any officer, department, or establishment, shall be deemed to have vested such function in or relate to the officer, or department, executive or military, succeeding the officer, department, or establishment in which such function was vested. For purposes of this subsection the Department of Defense shall be deemed the department succeeding the National Military Establishment, and the military departments of Army, Navy, and Air Force shall be deemed the departments succeeding the Executive Departments of Army, Navy, and Air Force.''

This section was part of title IV of the Revised Statutes. The Act of July 26, 1947, ch. 343, § 201(d), as added Aug. 10, 1949, ch. 412, § 4, 63 Stat. 579 (former 5 U.S.C. 171–1), which provides ''Except to the extent inconsistent with the provisions of this Act [National Security Act of 1947], the provisions of title IV of the Revised Statutes as now or hereafter amended shall be applicable to the Department of Defense'' is omitted from this title but is not repealed.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

EQUAL OPPORTUNITY IN FEDERAL EMPLOYMENT

Establishment of equal employment opportunity programs by heads of Executive departments and agencies, see Ex. Ord. No. 11246, Sept. 24, 1965, 30 F.R. 12319 and Ex. Ord. No. 11478, Aug. 8, 1969, 34 F.R. 12985, set out as notes under section 2000e of Title 42, The Public Health and Welfare.

CROSS REFERENCES

Confidential records—

Tax returns and lists, publicity, see section 6103 et seq. of Title 26, Internal Revenue Code.

Visas or permits to enter United States, records of Department of State and of diplomatic and consular offices respecting issuance or refusal, see section 1202 of Title 8, Aliens and Nationality.

§ 302. Delegation of authority

(a) For the purpose of this section, ''agency'' has the meaning given it by section 5721 of this title.

(b) In addition to the authority to delegate conferred by other law, the head of an agency may delegate to subordinate officials the authority vested in him—

(1) by law to take final action on matters pertaining to the employment, direction, and general administration of personnel under his agency; and

(2) by section 3702 of title 44 to authorize the publication of advertisements, notices, or proposals.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 379; Pub. L. 94–183, § 2(1), Dec. 31, 1975, 89 Stat. 1057.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 22a.	Aug. 2, 1946, ch. 744, § 12, 60 Stat. 809.

Clause (2) of former section 22a is omitted because of the repeal of R.S. § 3683 (31 U.S.C. 675) by the Act of Sept. 12, 1950, ch. 946, § 301(76), 64 Stat. 843.

The word ''agency'' is substituted for ''department'' and defined to conform to the definition of ''department'' in section 18 of the Act of Aug. 2, 1946, ch. 744, 60 Stat. 811.

In subsection (b), the words ''In addition to the authority to delegate conferred by other law,'' are added for clarity and in recognition of the various reorganization plans which generally have transferred all functions of the departments and agencies to the heads thereof and have authorized them to delegate the functions to subordinates.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1975—Subsec. (b)(2). Pub. L. 94–183 substituted ''3702'' for ''324''.

§ 303. Oaths to witnesses

(a) An employee of an Executive department lawfully assigned to investigate frauds on or attempts to defraud the United States, or irregularity or misconduct of an employee or agent of the United States, may administer an oath to a witness attending to testify or depose in the course of the investigation.

(b) An employee of the Department of Defense lawfully assigned to investigative duties may administer oaths to witnesses in connection with an official investigation.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 379; Pub. L. 94–213, Feb. 13, 1976, 90 Stat. 179.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 93.	R.S. §183. Mar. 2, 1901, ch. 809, §3, 31 Stat. 951. Feb. 13, 1911, ch. 43, 36 Stat. 898.

The word ''employee'' is substituted for ''officer or clerk'' in view of the definition in section 2105. The words ''Executive department'' are substituted for ''departments'' as the definition of ''department'' applicable to this section is coextensive with the definition of ''Executive department'' in section 101. So much as related to the Armed Forces is omitted as superseded by section 636 of title 14 and section 936(b) of title 10.

This section was part of title IV of the Revised Statutes. The Act of July 26, 1947, ch. 343, §201(d), as added Aug. 10, 1949, ch. 412, §4, 63 Stat. 579 (formerly 5 U.S.C. 171–1), which provides ''Except to the extent inconsistent with the provisions of this Act [National Security Act of 1947], the provisions of title IV of the Revised Statutes as now or hereafter amended shall be applicable to the Department of Defense'' is omitted from this title but is not repealed.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1976—Pub. L. 94–213 designated existing provisions as subsec. (a) and added subsec. (b).

CROSS REFERENCES

Armed forces personnel, administration of oaths by designated persons on active duty, see section 936 of Title 10, Armed Forces.

Coast Guard, administration of oaths by designated officers, see section 636 of Title 14, Coast Guard.

§ 304. Subpenas

(a) The head of an Executive department or military department or bureau thereof in which a claim against the United States is pending may apply to a judge or clerk of a court of the United States to issue a subpena for a witness within the jurisdiction of the court to appear at a time and place stated in the subpena before an individual authorized to take depositions to be used in the courts of the United States, to give full and true answers to such written interrogatories and cross-interrogatories as may be submitted with the application, or to be orally examined and cross-examined on the subject of the claim.

(b) If a witness, after being served with a subpena, neglects or refuses to appear, or, appearing, refuses to testify, the judge of the district in which the subpena issued may proceed, on proper process, to enforce obedience to the subpena, or to punish for disobedience, in the same manner as a court of the United States may in case of process of subpena ad testificandum issued by the court.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 379.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(a)	5 U.S.C. 94.	R.S. §184.
(b)	5 U.S.C. 96.	R.S. §186.

In subsection (a), the words ''Executive department'' are substituted for ''department'' as the definition of ''department'' applicable to this section is coextensive with the definition of ''Executive department'' in section 101. The word ''thereof'' is added to reflect the proper relationship between ''department'' and ''bureau'' as reflected in title IV of the Revised Statutes of 1878. The words ''in any State, District, or Territory'' are omitted as unnecessary. The word ''individual'' is substituted for ''officer'' as the definition of ''officer'' in section 2104 is narrower than the word ''officer'' in R.S. §184 which word includes ''officers'' as defined in section 2104 as well as notaries public who are not ''officers'' under section 2104, but are ''officers'' as that word is used in R.S. §184.

In subsection (a), the words ''or military department'' are inserted to preserve the application of the source law. Before enactment of the National Security Act Amendments of 1949 (63 Stat. 578), the Department of the Army, the Department of the Navy, and the Department of the Air Force were Executive departments. The National Security Act Amendments of 1949 established the Department of Defense as an Executive Department including the Department of the Army, the Department of the Navy, and the Department of the Air Force as military departments, not as Executive departments. However, the source law for this section, which was in effect in 1949, remained applicable to the Secretaries of the military departments by virtue of section 12(g) of the National Security Act Amendments of 1949 (63 Stat. 591), which is set out in the reviser's note for section 301.

This section was part of title IV of the Revised Statutes. The Act of July 26, 1947, ch. 343, §201(d), as added Aug. 10, 1949, ch. 412, §4, 63 Stat. 579 (former 5 U.S.C. 171–1), which provides ''Except to the extent inconsistent with the provisions of this Act [National Security Act of 1947], the provisions of title IV of the Revised Statutes as now or hereafter amended shall be applicable to the Department of Defense'' is omitted from this title but is not repealed.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

CROSS REFERENCES

Examiners appointed by directors of Federal Deposit Insurance Corporation, power to subpena witnesses, see section 1820 of Title 12, Banks and Banking.

Fees and allowances for witnesses subpenaed under subsec. (a) of this section, see section 503 of this title.

Legal services on pending claims in departments and agencies, see section 514 of Title 28, Judiciary and Judicial Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 503 of this title.

§ 305. Systematic agency review of operations

(a) For the purpose of this section, ''agency'' means an Executive agency, but does not include—

(1) a Government controlled corporation;
(2) the Tennessee Valley Authority;
(3) the Virgin Islands Corporation;
(4) the Atomic Energy Commission;
(5) the Central Intelligence Agency;
(6) the Panama Canal Commission; or
(7) the National Security Agency, Department of Defense.

(b) Under regulations prescribed and administered by the President, each agency shall review systematically the operations of each of its activities, functions, or organization units, on a continuing basis.

(c) The purpose of the reviews includes—

(1) determining the degree of efficiency and economy in the operation of the agency's activities, functions, or organization units;

(2) identifying the units that are outstanding in those respects; and

(3) identifying the employees whose personal efforts have caused their units to be outstanding in efficiency and economy of operations.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 380; Pub. L. 96–54, § 2(a)(2), Aug. 14, 1979, 93 Stat. 381; Pub. L. 96–70, title III, § 3302(e)(1), Sept. 27, 1979, 93 Stat. 498; Pub. L. 97–468, title VI, § 615(b)(1)(A), Jan. 14, 1983, 96 Stat. 2578.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(a)	5 U.S.C. 1085.	Oct. 28, 1949, ch. 782, § 205, 63 Stat. 957.
(b), (c)	5 U.S.C. 1151.	Oct. 28, 1949, ch. 782, § 1001, 63 Stat. 971.

Subsection (a) is based in part on former sections 1081 and 1082, which are carried into section 5102.

In subsection (a)(1), the exception of ''a Government controlled corporation'' is added to preserve the application of this section to ''corporations wholly owned by the United States''. This is necessary as the defined term ''Executive agency'' includes the defined term ''Government corporation'' and the latter includes both Government owned and controlled corporations. Thus the exclusion of Government controlled corporations, which are distinct from wholly owned corporations, operates to preserve the application of this section to wholly owned corporations. The exception for the Inland Waterways Corporation in former section 1082(13) is omitted on authority of the Act of July 19, 1963, Pub. L. 88–67, 77 Stat. 81. The exceptions for Production Credit Corporations and Federal Intermediate Credit Banks in former section 1082(18) and (19) are omitted as they are no longer ''corporations wholly owned by the United States''. Under the Farm Credit Act of 1956, 70 Stat. 659, the Production Credit Corporations were merged in the Federal Intermediate Credit Banks, and pursuant to that Act the Federal Intermediate Credit Banks have ceased to be corporations wholly owned by the United States.

In subsection (a)(7), the words ''Panama Canal Company'' are substituted for ''Panama Railroad Company'' on authority of the Act of Sept. 26, 1950, ch. 1049, § 2(a)(2), 64 Stat. 1038.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1983—Subsec. (a)(3) to (8). Pub. L. 97–468 struck out par. (3), which excluded The Alaska Railroad, and redesignated pars. (4) to (8) as (3) to (7), respectively.

1979—Subsec. (a)(7). Pub. L. 96–70 substituted ''Commission'' for ''Company''.

Subsec. (b). Pub. L. 96–54 substituted ''President'' for ''Director of the Bureau of the Budget''.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–468 effective on date of transfer of Alaska Railroad to the State [Jan. 5, 1985], pursuant to section 1203 of Title 45, Railroads, see section 615(b) of Pub. L. 97–468.

EFFECTIVE DATE OF 1979 AMENDMENTS

Amendment by Pub. L. 96–70 effective Oct. 1, 1979, see section 3304 of Pub. L. 96–70, set out as an Effective Date note under section 3601 of Title 22, Foreign Relations and Intercourse.

Section 2(b) of Pub. L. 96–54 provided that: ''Except as otherwise expressly provided in subsection (a), the amendments made by subsection (a) [amending sections 305, 1308, 2101, 2105, 2106, 2108, 3102, 3132, 3302, 3305, 3315, 3317, 3324, 3326, 3503, 4102, 4109, 4111, 4112, 4701, 5102, 5108, 5311 to 5316, 5333 to 5335, 5347, 5504, 5514, 5516, 5521, 5545, 5550a, 5562, 5581, 5584, 5596, 5702, 5903, 5943, 6104, 6304, 6305, 6323, 6325, 7325, 7327, 7701, 7702, 8331, 8332, 8339, 8347, 8701, 8901, and 8906 of this title], shall take effect July 12, 1979, or the date of the enactment of this Act [Aug. 14, 1979], whichever is earlier.''

TRANSFER OF FUNCTIONS

Atomic Energy Commission abolished and functions transferred by sections 5814 and 5841 of Title 42, The Public Health and Welfare. See also Transfer of Functions notes set out under those sections.

DELEGATION OF FUNCTIONS

Functions of President under subsec. (b) of this section delegated to Director of Office of Management and Budget, see Ex. Ord. No. 12152, Aug. 14, 1979, 44 F.R. 48143, set out as a note under section 301 of Title 3, The President.

DISSOLUTION OF VIRGIN ISLANDS CORPORATION

Virgin Islands Corporation established to have succession until June 30, 1969, unless sooner dissolved by Act of Congress, by act June 30, 1949, ch. 285, 63 Stat. 350, as amended (48 U.S.C. 1407 et seq.). Corporation terminated its program June 30, 1965, and dissolved July 1, 1966. Act June 30, 1949, was repealed by Pub. L. 97–357, title III, § 308(e), Oct. 19, 1982, 96 Stat. 1710.

CROSS REFERENCES

Antidiscrimination in employment in administration of this section, see section 7204 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7204 of this title; title 10 sections 4540, 7212, 9540.

§ 306. Strategic plans

(a) No later than September 30, 1997, the head of each agency shall submit to the Director of the Office of Management and Budget and to the Congress a strategic plan for program activities. Such plan shall contain—

(1) a comprehensive mission statement covering the major functions and operations of the agency;

(2) general goals and objectives, including outcome-related goals and objectives, for the major functions and operations of the agency;

(3) a description of how the goals and objectives are to be achieved, including a description of the operational processes, skills and technology, and the human, capital, information, and other resources required to meet those goals and objectives;

(4) a description of how the performance goals included in the plan required by section 1115(a) of title 31 shall be related to the general goals and objectives in the strategic plan;

(5) an identification of those key factors external to the agency and beyond its control that could significantly affect the achievement of the general goals and objectives; and

(6) a description of the program evaluations used in establishing or revising general goals and objectives, with a schedule for future program evaluations.

(b) The strategic plan shall cover a period of not less than five years forward from the fiscal year in which it is submitted, and shall be updated and revised at least every three years.

(c) The performance plan required by section 1115 of title 31 shall be consistent with the agen-

cy's strategic plan. A performance plan may not be submitted for a fiscal year not covered by a current strategic plan under this section.

(d) When developing a strategic plan, the agency shall consult with the Congress, and shall solicit and consider the views and suggestions of those entities potentially affected by or interested in such a plan.

(e) The functions and activities of this section shall be considered to be inherently Governmental functions. The drafting of strategic plans under this section shall be performed only by Federal employees.

(f) For purposes of this section the term ''agency'' means an Executive agency defined under section 105, but does not include the Central Intelligence Agency, the General Accounting Office, the Panama Canal Commission, the United States Postal Service, and the Postal Rate Commission.

(Added Pub. L. 103–62, §3, Aug. 3, 1993, 107 Stat. 286.)

CONSTRUCTION

No provision or amendment made by Pub. L. 103–62 to be construed as creating any right, privilege, benefit, or entitlement for any person who is not an officer or employee of the United States acting in such capacity, and no person not an officer or employee of the United States acting in such capacity to have standing to file any civil action in any court of the United States to enforce any provision or amendment made by Pub. L. 103–62, or to be construed as superseding any statutory requirement, see section 10 of Pub. L. 103–62, set out as a note under section 1115 of Title 31, Money and Finance.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 31 sections 1115, 1117, 1118, 1119.

CHAPTER 5—ADMINISTRATIVE PROCEDURE

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501. Advertising practice; restrictions.
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593. Administrative Conference of the United States.
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AMENDMENT OF ANALYSIS

Table of sections for subchapter III repealed effective six years after Nov. 29, 1990, see section 5 of Pub. L. 101–648, as amended, set out as an Effective Date of Repeal; Savings Provision note under section 561 of this title.

For termination of amendment by section 11 of Pub. L. 101–552, see Termination Date; Savings Provision note set out under section 571 of this title.

AMENDMENTS

1992—Pub. L. 102–354, §4, Aug. 26, 1992, 106 Stat. 945, substituted headings of subchapters III, IV, and V and items 561 to 570, 571 to 583, and 591 to 596 for former heading of subchapter III and former items 571 to 576 relating to Administrative Conference of the United States, former heading of subchapter IV and former items 581 to 593 relating to alternative means of dispute resolution in the administrative process, and former heading of subchapter IV and former items 581 to 590 relating to negotiated rulemaking procedure.

1990—Pub. L. 101–648, §§3(b), 5, Nov. 29, 1990, 104 Stat. 4976, added heading of subchapter IV and items 581 to 590 relating to negotiated rulemaking procedure, and repealed that heading and those items effective six years after Nov. 29, 1990.

Pub. L. 101–552, §4(c), Nov. 15, 1990, 104 Stat. 2745, temporarily added heading of subchapter IV and items 581 to 593 relating to alternative means of dispute resolution. See Termination Date; Savings Provision note set out under section 581 of this title as added by Pub. L. 101–552.

1986—Pub. L. 99–470, §2(b), Oct. 14, 1986, 100 Stat. 1198, substituted ''Authorization of appropriations'' for ''Appropriations'' in item 576.

1985—Pub. L. 99–80, §6, Aug. 5, 1985, 99 Stat. 186, revived item 504 and repealed Pub. L. 96–481, title II,

[1] So in original. Does not conform to section catchline.

§ 203(c), Oct. 21, 1980, 94 Stat. 2327, which provided for the repeal, effective Oct. 1, 1984, of item 504.

1980—Pub. L. 96–481, title II, § 203(a)(2), (c), Oct. 21, 1980, 94 Stat. 2327, added item 504 ''Costs and fees of parties'', and repealed that item effective Oct. 1, 1984.

1976—Pub. L. 94–409, § 3(b), Sept. 13, 1976, 90 Stat. 1246, added item 552b.

1974—Pub. L. 93–579, § 4, Dec. 31, 1974, 88 Stat. 1905, added item 552a.

1967—Pub. L. 90–83, § 1(1)(B), Sept. 11, 1967, 81 Stat. 195, added item 500.

Pub. L. 90–23, § 2, June 5, 1967, 81 Stat. 56, substituted ''Public information; agency rules, opinions, orders, records and proceedings'' for ''Publication of information, rules, opinions, orders, and public records'' in item 552.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 2 section 437d; title 12 sections 1467a, 1730a, 1786, 1818, 2266, 4582, 4633; title 15 sections 77s, 637, 687e, 1691b, 1715, 2703, 3803; title 16 section 460aa–3; title 20 sections 240, 1066, 3474, 7711; title 21 sections 342, 343; title 25 sections 450*l*, 954; title 29 sections 1579, 1861; title 30 section 811; title 39 sections 204, 410, 3001, 3603; title 42 sections 1760, 9613, 11504; title 43 section 1740; title 44 section 3507; title 45 sections 1116, 1212; title 46 App. section 1241p.

SUBCHAPTER I—GENERAL PROVISIONS

§ 500. Administrative practice; general provisions

(a) For the purpose of this section—

(1) ''agency'' has the meaning given it by section 551 of this title; and

(2) ''State'' means a State, a territory or possession of the United States including a Commonwealth, or the District of Columbia.

(b) An individual who is a member in good standing of the bar of the highest court of a State may represent a person before an agency on filing with the agency a written declaration that he is currently qualified as provided by this subsection and is authorized to represent the particular person in whose behalf he acts.

(c) An individual who is duly qualified to practice as a certified public accountant in a State may represent a person before the Internal Revenue Service of the Treasury Department on filing with that agency a written declaration that he is currently qualified as provided by this subsection and is authorized to represent the particular person in whose behalf he acts.

(d) This section does not—

(1) grant or deny to an individual who is not qualified as provided by subsection (b) or (c) of this section the right to appear for or represent a person before an agency or in an agency proceeding;

(2) authorize or limit the discipline, including disbarment, of individuals who appear in a representative capacity before an agency;

(3) authorize an individual who is a former employee of an agency to represent a person before an agency when the representation is prohibited by statute or regulation; or

(4) prevent an agency from requiring a power of attorney as a condition to the settlement of a controversy involving the payment of money.

(e) Subsections (b)–(d) of this section do not apply to practice before the Patent Office with respect to patent matters that continue to be covered by chapter 3 (sections 31–33) of title 35.

(f) When a participant in a matter before an agency is represented by an individual qualified under subsection (b) or (c) of this section, a notice or other written communication required or permitted to be given the participant in the matter shall be given to the representative in addition to any other service specifically required by statute. When a participant is represented by more than one such qualified representative, service on any one of the representatives is sufficient.

(Added Pub. L. 90–83, § 1(1)(A), Sept. 11, 1967, 81 Stat. 195.)

HISTORICAL AND REVISION NOTES

Section of title 5	*Source (U.S. Code)*	*Source (Revised Statutes at Large)*
500(a)	5 App.: 1014.	Nov. 8, 1965, Pub. L. 89–332, § 3, 79 Stat. 1281.
500(b)–(e) ...	5 App.: 1012.	Nov. 8, 1965, Pub. L. 89–332, § 1, 79 Stat. 1281.
500(f)	5 App.: 1013.	Nov. 8, 1965, Pub. L. 89–332, § 2, 79 Stat. 1281.

The definition of ''State'' in subsection (a)(2) is supplied for convenience and is based on the words ''State, possession, territory, Commonwealth, or District of Columbia'' in subsections (a) and (b) of 5 App. U.S.C. 1012.

In subsection (d), the words ''This section does not'' are substituted for ''nothing herein shall be construed''.

In subsection (d)(3), the word ''employee'' is substituted for ''officer or employee'' to conform to the definition of ''employee'' in 5 U.S.C. 2105.

CHANGE OF NAME

Patent Office, referred to in subsec. (e), redesignated Patent and Trademark Office by Pub. L. 93–596, § 3, Jan. 2, 1975, 88 Stat. 1949, set out as a note under section 1 of Title 35, Patents.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 31 section 330; title 38 section 5901; title 49 section 10308.

§ 501. Advertising practice; restrictions

An individual, firm, or corporation practicing before an agency of the United States may not use the name of a Member of either House of Congress or of an individual in the service of the United States in advertising the business.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 381.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 101.	Apr. 27, 1916, ch. 89, § 1, 39 Stat. 54.

The words ''may not'' are substituted for ''It shall be unlawful for''. The words ''agency of the United States'' are substituted for ''any department or office of the Government''. The words ''an individual in the service of the United States'' are substituted for ''officer of the Government'' in view of the definitions in sections 2104 and 2105.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

§ 502. Administrative practice; Reserves and National Guardsmen

Membership in a reserve component of the armed forces or in the National Guard does not

prevent an individual from practicing his civilian profession or occupation before, or in connection with, an agency of the United States.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 381.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 30r(c) (2d sentence).	Aug. 10, 1956, ch. 1041, §29(c) (2d sentence), 70A Stat. 632.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

§ 503. Witness fees and allowances

(a) For the purpose of this section, ''agency'' has the meaning given it by section 5721 of this title.

(b) A witness is entitled to the fees and allowances allowed by statute for witnesses in the courts of the United States when—

(1) he is subpenaed under section 304(a) of this title; or

(2) he is subpenaed to and appears at a hearing before an agency authorized by law to hold hearings and subpena witnesses to attend the hearings.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 381.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 95.	R.S. §185.
.....	5 U.S.C. 95a.	Aug. 2, 1946, ch. 744, §10, 60 Stat. 809.

Former sections 95 and 95a are combined and restated for clarity and brevity. The words ''or expenses in the case of Government officers and employees'' are omitted as covered by section 1823 of title 28. The word ''agency'' is substituted for ''department'' and defined to conform to the definition of ''department'' in section 18 of the Act of Aug. 2, 1946, ch. 744, 60 Stat. 811.

This section was part of title IV of the Revised Statutes. The Act of July 26, 1947, ch. 343, §201(d), as added Aug. 10, 1949, ch. 412, §4, 63 Stat. 579 (former 5 U.S.C. 171–1), which provides ''Except to the extent inconsistent with the provisions of this Act [National Security Act of 1947], the provisions of title IV of the Revised Statutes as now or hereafter amended shall be applicable to the Department of Defense'' is omitted from this title but is not repealed.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

CROSS REFERENCES

Government officers and employees, see sections 5515, 5537, 5751, and 6322 of this title.

§ 504. Costs and fees of parties

(a)(1) An agency that conducts an adversary adjudication shall award, to a prevailing party other than the United States, fees and other expenses incurred by that party in connection with that proceeding, unless the adjudicative officer of the agency finds that the position of the agency was substantially justified or that special circumstances make an award unjust. Whether or not the position of the agency was substantially justified shall be determined on the basis of the administrative record, as a whole, which is made in the adversary adjudication for which fees and other expenses are sought.

(2) A party seeking an award of fees and other expenses shall, within thirty days of a final disposition in the adversary adjudication, submit to the agency an application which shows that the party is a prevailing party and is eligible to receive an award under this section, and the amount sought, including an itemized statement from any attorney, agent, or expert witness representing or appearing in behalf of the party stating the actual time expended and the rate at which fees and other expenses were computed. The party shall also allege that the position of the agency was not substantially justified. When the United States appeals the underlying merits of an adversary adjudication, no decision on an application for fees and other expenses in connection with that adversary adjudication shall be made under this section until a final and unreviewable decision is rendered by the court on the appeal or until the underlying merits of the case have been finally determined pursuant to the appeal.

(3) The adjudicative officer of the agency may reduce the amount to be awarded, or deny an award, to the extent that the party during the course of the proceedings engaged in conduct which unduly and unreasonably protracted the final resolution of the matter in controversy. The decision of the adjudicative officer of the agency under this section shall be made a part of the record containing the final decision of the agency and shall include written findings and conclusions and the reason or basis therefor. The decision of the agency on the application for fees and other expenses shall be the final administrative decision under this section.

(b)(1) For the purposes of this section—

(A) ''fees and other expenses'' includes the reasonable expenses of expert witnesses, the reasonable cost of any study, analysis, engineering report, test, or project which is found by the agency to be necessary for the preparation of the party's case, and reasonable attorney or agent fees (The amount of fees awarded under this section shall be based upon prevailing market rates for the kind and quality of the services furnished, except that (i) no expert witness shall be compensated at a rate in excess of the highest rate of compensation for expert witnesses paid by the agency involved, and (ii) attorney or agent fees shall not be awarded in excess of $75 per hour unless the agency determines by regulation that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys or agents for the proceedings involved, justifies a higher fee.);

(B) ''party'' means a party, as defined in section 551(3) of this title, who is (i) an individual whose net worth did not exceed $2,000,000 at the time the adversary adjudication was initiated, or (ii) any owner of an unincorporated business, or any partnership, corporation, association, unit of local government, or organization, the net worth of which did not exceed $7,000,000 at the time the adversary adjudication was initiated, and which had not more

than 500 employees at the time the adversary adjudication was initiated; except that an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 501(c)(3)) exempt from taxation under section 501(a) of such Code, or a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)), may be a party regardless of the net worth of such organization or cooperative association;

(C) ''adversary adjudication'' means (i) an adjudication under section 554 of this title in which the position of the United States is represented by counsel or otherwise, but excludes an adjudication for the purpose of establishing or fixing a rate or for the purpose of granting or renewing a license, (ii) any appeal of a decision made pursuant to section 6 of the Contract Disputes Act of 1978 (41 U.S.C. 605) before an agency board of contract appeals as provided in section 8 of that Act (41 U.S.C. 607), (iii) any hearing conducted under chapter 38 of title 31, and (iv) the Religious Freedom Restoration Act of 1993;

(D) ''adjudicative officer'' means the deciding official, without regard to whether the official is designated as an administrative law judge, a hearing officer or examiner, or otherwise, who presided at the adversary adjudication; and

(E) ''position of the agency'' means, in addition to the position taken by the agency in the adversary adjudication, the action or failure to act by the agency upon which the adversary adjudication is based; except that fees and other expenses may not be awarded to a party for any portion of the adversary adjudication in which the party has unreasonably protracted the proceedings.

(2) Except as otherwise provided in paragraph (1), the definitions provided in section 551 of this title apply to this section.

(c)(1) After consultation with the Chairman of the Administrative Conference of the United States, each agency shall by rule establish uniform procedures for the submission and consideration of applications for an award of fees and other expenses. If a court reviews the underlying decision of the adversary adjudication, an award for fees and other expenses may be made only pursuant to section 2412(d)(3) of title 28, United States Code.

(2) If a party other than the United States is dissatisfied with a determination of fees and other expenses made under subsection (a), that party may, within 30 days after the determination is made, appeal the determination to the court of the United States having jurisdiction to review the merits of the underlying decision of the agency adversary adjudication. The court's determination on any appeal heard under this paragraph shall be based solely on the factual record made before the agency. The court may modify the determination of fees and other expenses only if the court finds that the failure to make an award of fees and other expenses, or the calculation of the amount of the award, was unsupported by substantial evidence.

(d) Fees and other expenses awarded under this subsection shall be paid by any agency over which the party prevails from any funds made available to the agency by appropriation or otherwise.

(e) The Chairman of the Administrative Conference of the United States, after consultation with the Chief Counsel for Advocacy of the Small Business Administration, shall report annually to the Congress on the amount of fees and other expenses awarded during the preceding fiscal year pursuant to this section. The report shall describe the number, nature, and amount of the awards, the claims involved in the controversy, and any other relevant information which may aid the Congress in evaluating the scope and impact of such awards. Each agency shall provide the Chairman with such information as is necessary for the Chairman to comply with the requirements of this subsection.

(f) No award may be made under this section for costs, fees, or other expenses which may be awarded under section 7430 of the Internal Revenue Code of 1986.

(Added Pub. L. 96–481, title II, § 203(a)(1), (c), Oct. 21, 1980, 94 Stat. 2325, 2327; revived and amended Pub. L. 99–80, §§ 1, 6, Aug. 5, 1985, 99 Stat. 183, 186; Pub. L. 99–509, title VI, § 6103(c), Oct. 21, 1986, 100 Stat. 1948; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100–647, title VI, § 6239(b), Nov. 10, 1988, 102 Stat. 3746; Pub. L. 103–141, § 4(b), Nov. 16, 1993, 107 Stat. 1489.)

REFERENCES IN TEXT

The Religious Freedom Restoration Act of 1993, referred to in subsec. (b)(1)(C)(iv), is Pub. L. 103–141, Nov. 16, 1993, 107 Stat. 1488, which is classified principally to chapter 21B (§ 2000bb et seq.) 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 2000bb of Title 42 and Tables.

Section 7430 of the Internal Revenue Code of 1986, referred to in subsec. (f), is classified to section 7430 of Title 26, Internal Revenue Code.

AMENDMENTS

1993—Subsec. (b)(1)(C). Pub. L. 103–141 added cl. (iv).

1988—Subsec. (f). Pub. L. 100–647 added subsec. (f).

1986—Subsec. (b)(1)(B). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

Subsec. (b)(1)(C)(iii). Pub. L. 99–509 added cl. (iii).

1985—Subsec. (a)(1). Pub. L. 99–80, § 1(a)(1), (2), struck out ''as a party to the proceeding'' after ''the position of the agency'', and inserted ''Whether or not the position of the agency was substantially justified shall be determined on the basis of the administrative record, as a whole, which is made in the adversary adjudication for which fees and other expenses are sought.''

Subsec. (a)(2). Pub. L. 99–80, § 1(b), inserted ''When the United States appeals the underlying merits of an adversary adjudication, no decision on an application for fees and other expenses in connection with that adversary adjudication shall be made under this section until a final and unreviewable decision is rendered by the court on the appeal or until the underlying merits of the case have been finally determined pursuant to the appeal.''

Subsec. (a)(3). Pub. L. 99–80, § 1(a)(3), inserted ''The decision of the agency on the application for fees and other expenses shall be the final administrative decision under this section.''

Subsec. (b)(1)(B). Pub. L. 99–80, § 1(c)(1), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: '' 'party' means a party, as defined in section 551(3) of this title, which is an individual, partnership, corporation, association, or public or private

organization other than an agency, but excludes (i) any individual whose net worth exceeded $1,000,000 at the time the adversary adjudication was initiated, and any sole owner of an unincorporated business, or any partnership, corporation, association, or organization whose net worth exceeded $5,000,000 at the time the adversary adjudication was initiated, except that an organization described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)(3)) exempt from taxation under section 501(a) of the Code and a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)), may be a party regardless of the net worth of such organization or cooperative association, and (ii) any sole owner of an unincorporated business, or any partnership, corporation, association, or organization, having more than 500 employees at the time the adversary adjudication was initiated;''.

Subsec. (b)(1)(C). Pub. L. 99–80, §1(c)(2), designated existing provisions of subpar. (C) as cl. (i) thereof by inserting ''(i)'' before ''an adjudication under'', added cl. (ii), and struck out ''and'' after the semicolon at the end.

Subsec. (b)(1)(D), (E). Pub. L. 99–80, §1(c)(3), substituted ''; and'' for the period at end of subpar. (D), and added subpar. (E).

Subsec. (c)(2). Pub. L. 99–80, §1(d), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''A party dissatisfied with the fee determination made under subsection (a) may petition for leave to appeal to the court of the United States having jurisdiction to review the merits of the underlying decision of the agency adversary adjudication. If the court denies the petition for leave to appeal, no appeal may be taken from the denial. If the court grants the petition, it may modify the determination only if it finds that the failure to make an award, or the calculation of the amount of the award, was an abuse of discretion.''

Subsec. (d). Pub. L. 99–80, §1(e), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows:

''(1) Fees and other expenses awarded under this section may be paid by any agency over which the party prevails from any funds made available to the agency, by appropriation or otherwise, for such purpose. If not paid by any agency, the fees and other expenses shall be paid in the same manner as the payment of final judgments is made pursuant to section 2414 of title 28, United States Code.

''(2) There is authorized to be appropriated to each agency for each of the fiscal years 1982, 1983, and 1984, such sums as may be necessary to pay fees and other expenses awarded under this section in such fiscal years.''

1980—Pub. L. 96–481, §203(c), which provided for the repeal of this section effective Oct. 1, 1984, was itself repealed and this section was revived by section 6 of Pub. L. 99–80, set out as a note below.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 applicable to proceedings commencing after Nov. 10, 1988, see section 6239(d) of Pub. L. 100–647, set out as a note under section 7430 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–509 effective Oct. 21, 1986, and applicable to any claim or statement made, presented or submitted on or after such date, see section 6104 of Pub. L. 99–509, set out as an Effective Date note under section 3801 of Title 31, Money and Finance.

EFFECTIVE DATE OF 1985 AMENDMENT

Section 7 of Pub. L. 99–80 provided that:

''(a) IN GENERAL.—Except as otherwise provided in this section, the amendments made by this Act [reviving and amending this section and section 2412(d) of Title 28, Judiciary and Judicial Procedure, and amending and repealing provisions set out as notes under those sections] shall apply to cases pending on or commenced on or after the date of the enactment of this Act [Aug. 5, 1985].

''(b) APPLICABILITY OF AMENDMENTS TO CERTAIN PRIOR CASES.—The amendments made by this Act shall apply to any case commenced on or after October 1, 1984, and finally disposed of before the date of the enactment of this Act [Aug. 5, 1985], except that in any such case, the 30-day period referred to in section 504(a)(2) of title 5, United States Code, or section 2412(d)(1)(B) of title 28, United States Code, as the case may be, shall be deemed to commence on the date of the enactment of this Act.

''(c) APPLICABILITY OF AMENDMENTS TO PRIOR BOARD OF CONTRACTS APPEALS CASES.—Section 504(b)(1)(C)(ii) of title 5, United States Code, as added by section 1(c)(2) of this Act, and section 2412(d)(2)(E) of title 28, United States Code, as added by section 2(c)(2) of this Act, shall apply to any adversary adjudication pending on or commenced on or after October 1, 1981, in which applications for fees and other expenses were timely filed and were dismissed for lack of jurisdiction.''

EFFECTIVE DATE

Section 208 of title II of Pub. L. 96–481, as amended by Pub. L. 99–80, §5, Aug. 5, 1985, 99 Stat. 186, provided that: ''This title and the amendments made by this title [see Short Title note below] shall take effect of [on] October 1, 1981, and shall apply to any adversary adjudication, as defined in section 504(b)(1)(C) of title 5, United States Code, and any civil action or adversary adjudication described in section 2412 of title 28, United States Code, which is pending on, or commenced on or after, such date. Awards may be made for fees and other expenses incurred before October 1, 1981, in any such adversary adjudication or civil action.''

Section 203(c) of Pub. L. 96–481 which provided that effective Oct. 1, 1984, this section is repealed, except that the provisions of this section shall continue to apply through final disposition of any adversary adjudication initiated before the date of repeal, was itself repealed by Pub. L. 99–80, §6(b)(1), Aug. 5, 1985, 99 Stat. 186.

SHORT TITLE

Section 201 of title II of Pub. L. 96–481 provided that: ''This title [enacting this section, amending section 634 of Title 15, Commerce and Trade, section 2412 of Title 28, Judiciary and Judicial Procedure, Rule 37 of the Federal Rules of Civil Procedure, set out in Title 28 Appendix, and section 1988 of Title 42, The Public Health and Welfare, and enacting provisions set out as notes under this section and section 2412 of Title 28] may be cited as the 'Equal Access to Justice Act'.''

PROHIBITION ON USE OF ENERGY AND WATER DEVELOPMENT APPROPRIATIONS TO PAY INTERVENING PARTIES IN REGULATORY OR ADJUDICATORY PROCEEDINGS

Pub. L. 102–377, title V, §502, Oct. 2, 1992, 106 Stat. 1342, provided that: ''None of the funds in this Act or subsequent Energy and Water Development Appropriations Acts shall be used to pay the expenses of, or otherwise compensate, parties intervening in regulatory or adjudicatory proceedings funded in such Acts.''

REVIVAL OF PREVIOUSLY REPEALED PROVISIONS

Section 6 of Pub. L. 99–80 provided that:

''(a) REVIVAL OF CERTAIN EXPIRED PROVISIONS.—Section 504 of title 5, United States Code, and the item relating to that section in the table of sections of chapter 5 of title 5, United States Code, and subsection (d) of section 2412 of title 28, United States Code, shall be effective on or after the date of the enactment of this Act [Aug. 5, 1985] as if they had not been repealed by sections 203(c) and 204(c) of the Equal Access to Justice Act [Pub. L. 96–481].

''(b) REPEALS.—

''(1) Section 203(c) of the Equal Access to Justice Act [which repealed this section] is hereby repealed.

''(2) Section 204(c) of the Equal Access to Justice Act [which repealed section 2412(d) of title 28] is hereby repealed.''

CONGRESSIONAL FINDINGS AND PURPOSES

Section 202 of title II of Pub. L. 96–481 provided that:

''(a) The Congress finds that certain individuals, partnerships, corporations, and labor and other organizations may be deterred from seeking review of, or defending against, unreasonable governmental action because of the expense involved in securing the vindication of their rights in civil actions and in administrative proceedings.

''(b) The Congress further finds that because of the greater resources and expertise of the United States the standard for an award of fees against the United States should be different from the standard governing an award against a private litigant, in certain situations.

''(c) It is the purpose of this title [see Short Title note above]—

''(1) to diminish the deterrent effect of seeking review of, or defending against, governmental action by providing in specified situations an award of attorney fees, expert witness fees, and other costs against the United States; and

''(2) to insure the applicability in actions by or against the United States of the common law and statutory exceptions to the 'American rule' respecting the award of attorney fees.''

LIMITATION ON PAYMENTS

Section 207 of title II of Pub. L. 96–481, which provided that the payment of judgments, fees and other expenses in the same manner as the payment of final judgments as provided in this Act [probably should be ''this title'', see Short Title note above] would be effective only to the extent and in such amounts as are provided in advance in appropriation Acts, was repealed by Pub. L. 99–80, § 4, Aug. 5, 1985, 99 Stat. 186.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 580 of this title; title 15 section 634b; title 18 section 293; title 20 section 1234; title 25 section 450m–1; title 28 section 2412; title 42 section 3612.

SUBCHAPTER II—ADMINISTRATIVE PROCEDURE

SHORT TITLE

The provisions of this subchapter and chapter 7 of this title were originally enacted by act June 11, 1946, ch. 324, 60 Stat. 237, popularly known as the ''Administrative Procedure Act''. That Act was repealed as part of the general revision of this title by Pub. L. 89–554 and its provisions incorporated into this subchapter and chapter 7 hereof.

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 571, 592, 7118, 7134, 8902 of this title; title 2 sections 501, 502; title 7 sections 136d, 1642, 6911; title 10 sections 2397, 2397a; title 12 sections 635a–2, 1437, 1441a, 1749bbb–17, 1959, 2278a–10, 3349, 4525, 4545; title 15 sections 78dd–1, 78dd–2, 78ggg, 266, 1715, 3412, 3710a, 5103, 5308; title 16 sections 460aa–3, 470q, 470hh; title 17 sections 701, 802; title 19 sections 1337, 1677c; title 20 sections 107d–2, 641; title 21 sections 360kk, 811, 824, 875, 958, 971; title 22 sections 277d–24, 1623, 1645n, 4116; title 25 section 954; title 28 section 509; title 29 sections 156, 164, 213, 481, 628, 792, 1137; title 30 sections 184, 956; title 31 sections 321, 3801, 3803; title 33 sections 524, 597; title 39 section 3008; title 41 section 43a; title 42 sections 1436c, 1975a, 2000e–12, 2231, 2236, 2454, 3789d, 6212, 6241, 6393, 7191, 7276, 7420, 7607, 11346, 12116, 12206; title 43 section 1624; title 45 sections 1116, 1212; title 46 sections 7702, 9303; title 47 sections 303, 305, 310, 409; title 49 sections 10530, 10705, 10724, 10925, 10928, 10929, 11123, 11124, 11125, 11127, 11349, 20143, 40103, 46102, 46105; title 50 sections 167h, 835; title 50 App. sections 463, 2159.

§ 551. Definitions

For the purpose of this subchapter—

(1) ''agency'' means each authority of the Government of the United States, whether or not it is within or subject to review by another agency, but does not include—

(A) the Congress;

(B) the courts of the United States;

(C) the governments of the territories or possessions of the United States;

(D) the government of the District of Columbia;

or except as to the requirements of section 552 of this title—

(E) agencies composed of representatives of the parties or of representatives of organizations of the parties to the disputes determined by them;

(F) courts martial and military commissions;

(G) military authority exercised in the field in time of war or in occupied territory; or

(H) functions conferred by sections 1738, 1739, 1743, and 1744 of title 12; chapter 2 of title 41; subchapter II of chapter 471 of title 49; or sections 1884, 1891–1902, and former section 1641(b)(2), of title 50, appendix;

(2) ''person'' includes an individual, partnership, corporation, association, or public or private organization other than an agency;

(3) ''party'' includes a person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, in an agency proceeding, and a person or agency admitted by an agency as a party for limited purposes;

(4) ''rule'' means the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency and includes the approval or prescription for the future of rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services or allowances therefor or of valuations, costs, or accounting, or practices bearing on any of the foregoing;

(5) ''rule making'' means agency process for formulating, amending, or repealing a rule;

(6) ''order'' means the whole or a part of a final disposition, whether affirmative, negative, injunctive, or declaratory in form, of an agency in a matter other than rule making but including licensing;

(7) ''adjudication'' means agency process for the formulation of an order;

(8) ''license'' includes the whole or a part of an agency permit, certificate, approval, registration, charter, membership, statutory exemption or other form of permission;

(9) ''licensing'' includes agency process respecting the grant, renewal, denial, revocation, suspension, annulment, withdrawal, limitation, amendment, modification, or conditioning of a license;

(10) ''sanction'' includes the whole or a part of an agency—

(A) prohibition, requirement, limitation, or other condition affecting the freedom of a person;

(B) withholding of relief;

(C) imposition of penalty or fine;

(D) destruction, taking, seizure, or withholding of property;

(E) assessment of damages, reimbursement, restitution, compensation, costs, charges, or fees;

(F) requirement, revocation, or suspension of a license; or

(G) taking other compulsory or restrictive action;

(11) ''relief'' includes the whole or a part of an agency—

(A) grant of money, assistance, license, authority, exemption, exception, privilege, or remedy;

(B) recognition of a claim, right, immunity, privilege, exemption, or exception; or

(C) taking of other action on the application or petition of, and beneficial to, a person;

(12) ''agency proceeding'' means an agency process as defined by paragraphs (5), (7), and (9) of this section;

(13) ''agency action'' includes the whole or a part of an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act; and

(14) ''ex parte communication'' means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given, but it shall not include requests for status reports on any matter or proceeding covered by this subchapter.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 381; Pub. L. 94–409, §4(b), Sept. 13, 1976, 90 Stat. 1247; Pub. L. 103–272, §5(a), July 5, 1994, 108 Stat. 1373.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(1)	5 U.S.C. 1001(a).	June 11, 1946, ch. 324, §2(a), 60 Stat. 237. Aug. 8, 1946, ch. 870, §302, 60 Stat. 918. Aug. 10, 1946, ch. 951, §601, 60 Stat. 993. Mar. 31, 1947, ch. 30, §6(a), 61 Stat. 37. June 30, 1947, ch. 163, §210, 61 Stat. 201. Mar. 30, 1948, ch. 161, §301, 62 Stat. 99.
(2)–(13)	5 U.S.C. 1001 (less (a)).	June 11, 1946, ch. 324, §2 (less (a)), 60 Stat. 237.

In paragraph (1), the sentence ''Nothing in this Act shall be construed to repeal delegations of authority as provided by law,'' is omitted as surplusage since there is nothing in the Act which could reasonably be so construed.

In paragraph (1)(G), the words ''or naval'' are omitted as included in ''military''.

In paragraph (1)(H), the words ''functions which by law expire on the termination of present hostilities, within any fixed period thereafter, or before July 1, 1947'' are omitted as executed. Reference to the ''Selective Training and Service Act of 1940'' is omitted as that Act expired Mar. 31, 1947. Reference to the ''Sugar Control Extension Act of 1947'' is omitted as that Act expired on Mar. 31, 1948. References to the ''Housing and Rent Act of 1947, as amended'' and the ''Veterans' Emergency Housing Act of 1946'' have been consolidated as they are related. The reference to former section 1641(b)(2) of title 50, appendix, is retained notwithstanding its repeal by §111(a)(1) of the Act of Sept. 21, 1961, Pub. L. 87–256, 75 Stat. 538, since §111(c) of the Act provides that a reference in other Acts to a provision of law repealed by §111(a) shall be considered to be a reference to the appropriate provisions of Pub. L. 87–256.

In paragraph (2), the words ''of any character'' are omitted as surplusage.

In paragraph (3), the words ''and a person or agency admitted by an agency as a party for limited purposes'' are substituted for ''but nothing herein shall be construed to prevent an agency from admitting any person or agency as a party for limited purposes''.

In paragraph (9), a comma is supplied between the words ''limitation'' and ''amendment'' to correct an editorial error of omission.

In paragraph (10)(C), the words ''of any form'' are omitted as surplusage.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

CODIFICATION

Section 551 of former Title 5, Executive Departments and Government Officers and Employees, was transferred to section 2242 of Title 7, Agriculture.

AMENDMENTS

1994—Par. (1)(H). Pub. L. 103–272 substituted ''subchapter II of chapter 471 of title 49; or sections'' for ''or sections 1622,''.

1976—Par. (14). Pub. L. 94–409 added par. (14).

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–409 effective 180 days after Sept. 13, 1976, see section 6 of Pub. L. 94–409, set out as an Effective Date note under section 552b of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 500, 504, 552, 562, 571, 592, 595, 601, 701, 3344 of this title; title 2 sections 501, 502; title 7 section 6997; title 15 sections 78d–1, 78w, 632, 637c, 766, 2053, 3412, 3416; title 16 section 470w; title 20 section 5097; title 22 section 3731; title 26 sections 6103, 9041; title 30 section 956; title 31 sections 3901, 6101, 7501; title 41 section 422; title 42 sections 2231, 2992c, 6107, 6241, 6393, 7191, 8259, 8262, 8287c, 11317, 11504; title 46 sections 7702, 9303; title 47 sections 155, 409; title 50 App. sections 2159, 2412.

§ 552. Public information; agency rules, opinions, orders, records, and proceedings

(a) Each agency shall make available to the public information as follows:

(1) Each agency shall separately state and currently publish in the Federal Register for the guidance of the public—

(A) descriptions of its central and field organization and the established places at which, the employees (and in the case of a uniformed service, the members) from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions;

(B) statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(C) rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

(D) substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency; and

(E) each amendment, revision, or repeal of the foregoing.

Except to the extent that a person has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, a matter required to be published in the Federal Register and not so published. For the purpose of this paragraph, matter reasonably available to the class of persons affected thereby is deemed published in the Federal Register when incorporated by reference therein with the approval of the Director of the Federal Register.

(2) Each agency, in accordance with published rules, shall make available for public inspection and copying—

(A) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(B) those statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register; and

(C) administrative staff manuals and instructions to staff that affect a member of the public;

unless the materials are promptly published and copies offered for sale. To the extent required to prevent a clearly unwarranted invasion of personal privacy, an agency may delete identifying details when it makes available or publishes an opinion, statement of policy, interpretation, or staff manual or instruction. However, in each case the justification for the deletion shall be explained fully in writing. Each agency shall also maintain and make available for public inspection and copying current indexes providing identifying information for the public as to any matter issued, adopted, or promulgated after July 4, 1967, and required by this paragraph to be made available or published. Each agency shall promptly publish, quarterly or more frequently, and distribute (by sale or otherwise) copies of each index or supplements thereto unless it determines by order published in the Federal Register that the publication would be unnecessary and impracticable, in which case the agency shall nonetheless provide copies of such index on request at a cost not to exceed the direct cost of duplication. A final order, opinion, statement of policy, interpretation, or staff manual or instruction that affects a member of the public may be relied on, used, or cited as precedent by an agency against a party other than an agency only if—

(i) it has been indexed and either made available or published as provided by this paragraph; or

(ii) the party has actual and timely notice of the terms thereof.

(3) Except with respect to the records made available under paragraphs (1) and (2) of this subsection, each agency, upon any request for records which (A) reasonably describes such records and (B) is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed, shall make the records promptly available to any person.

(4)(A)(i) In order to carry out the provisions of this section, each agency shall promulgate regulations, pursuant to notice and receipt of public comment, specifying the schedule of fees applicable to the processing of requests under this section and establishing procedures and guidelines for determining when such fees should be waived or reduced. Such schedule shall conform to the guidelines which shall be promulgated, pursuant to notice and receipt of public comment, by the Director of the Office of Management and Budget and which shall provide for a uniform schedule of fees for all agencies.

(ii) Such agency regulations shall provide that—

(I) fees shall be limited to reasonable standard charges for document search, duplication, and review, when records are requested for commercial use;

(II) fees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by an educational or noncommercial scientific institution, whose purpose is scholarly or scientific research; or a representative of the news media; and

(III) for any request not described in (I) or (II), fees shall be limited to reasonable standard charges for document search and duplication.

(iii) Documents shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(iv) Fee schedules shall provide for the recovery of only the direct costs of search, duplication, or review. Review costs shall include only the direct costs incurred during the initial examination of a document for the purposes of determining whether the documents must be disclosed under this section and for the purposes of withholding any portions exempt from disclosure under this section. Review costs may not include any costs incurred in resolving issues of law or policy that may be raised in the course of processing a request under this section. No fee may be charged by any agency under this section—

(I) if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee; or

(II) for any request described in clause (ii) (II) or (III) of this subparagraph for the first two hours of search time or for the first one hundred pages of duplication.

(v) No agency may require advance payment of any fee unless the requester has previously failed to pay fees in a timely fashion, or the

agency has determined that the fee will exceed $250.

(vi) Nothing in this subparagraph shall supersede fees chargeable under a statute specifically providing for setting the level of fees for particular types of records.

(vii) In any action by a requester regarding the waiver of fees under this section, the court shall determine the matter de novo: *Provided*, That the court's review of the matter shall be limited to the record before the agency.

(B) On complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant. In such a case the court shall determine the matter de novo, and may examine the contents of such agency records in camera to determine whether such records or any part thereof shall be withheld under any of the exemptions set forth in subsection (b) of this section, and the burden is on the agency to sustain its action.

(C) Notwithstanding any other provision of law, the defendant shall serve an answer or otherwise plead to any complaint made under this subsection within thirty days after service upon the defendant of the pleading in which such complaint is made, unless the court otherwise directs for good cause shown.

[(D) Repealed. Pub. L. 98–620, title IV, § 402(2), Nov. 8, 1984, 98 Stat. 3357.]

(E) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this section in which the complainant has substantially prevailed.

(F) Whenever the court orders the production of any agency records improperly withheld from the complainant and assesses against the United States reasonable attorney fees and other litigation costs, and the court additionally issues a written finding that the circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously with respect to the withholding, the Special Counsel shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the officer or employee who was primarily responsible for the withholding. The Special Counsel, after investigation and consideration of the evidence submitted, shall submit his findings and recommendations to the administrative authority of the agency concerned and shall send copies of the findings and recommendations to the officer or employee or his representative. The administrative authority shall take the corrective action that the Special Counsel recommends.

(G) In the event of noncompliance with the order of the court, the district court may punish for contempt the responsible employee, and in the case of a uniformed service, the responsible member.

(5) Each agency having more than one member shall maintain and make available for public inspection a record of the final votes of each member in every agency proceeding.

(6)(A) Each agency, upon any request for records made under paragraph (1), (2), or (3) of this subsection, shall—

(i) determine within ten days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of such determination and the reasons therefor, and of the right of such person to appeal to the head of the agency any adverse determination; and

(ii) make a determination with respect to any appeal within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such appeal. If on appeal the denial of the request for records is in whole or in part upheld, the agency shall notify the person making such request of the provisions for judicial review of that determination under paragraph (4) of this subsection.

(B) In unusual circumstances as specified in this subparagraph, the time limits prescribed in either clause (i) or clause (ii) of subparagraph (A) may be extended by written notice to the person making such request setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than ten working days. As used in this subparagraph, ''unusual circumstances'' means, but only to the extent reasonably necessary to the proper processing of the particular request—

(i) the need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(ii) the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(iii) the need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.

(C) Any person making a request to any agency for records under paragraph (1), (2), or (3) of this subsection shall be deemed to have exhausted his administrative remedies with respect to such request if the agency fails to comply with the applicable time limit provisions of this paragraph. If the Government can show exceptional circumstances exist and that the agency is exercising due diligence in responding to the request, the court may retain jurisdiction and allow the agency additional time to complete its review of the records. Upon any determination by an agency to comply with a request for records, the records shall be made promptly available to such person making such request. Any notification of denial of any request for records under this subsection shall set forth the names and titles or positions of each person responsible for the denial of such request.

(b) This section does not apply to matters that are—

(1)(A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order;

(2) related solely to the internal personnel rules and practices of an agency;

(3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual;

(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) geological and geophysical information and data, including maps, concerning wells.

Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection.

(c)(1) Whenever a request is made which involves access to records described in subsection (b)(7)(A) and—

(A) the investigation or proceeding involves a possible violation of criminal law; and

(B) there is reason to believe that (i) the subject of the investigation or proceeding is not aware of its pendency, and (ii) disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings,

the agency may, during only such time as that circumstance continues, treat the records as not subject to the requirements of this section.

(2) Whenever informant records maintained by a criminal law enforcement agency under an informant's name or personal identifier are requested by a third party according to the informant's name or personal identifier, the agency may treat the records as not subject to the requirements of this section unless the informant's status as an informant has been officially confirmed.

(3) Whenever a request is made which involves access to records maintained by the Federal Bureau of Investigation pertaining to foreign intelligence or counterintelligence, or international terrorism, and the existence of the records is classified information as provided in subsection (b)(1), the Bureau may, as long as the existence of the records remains classified information, treat the records as not subject to the requirements of this section.

(d) This section does not authorize withholding of information or limit the availability of records to the public, except as specifically stated in this section. This section is not authority to withhold information from Congress.

(e) On or before March 1 of each calendar year, each agency shall submit a report covering the preceding calendar year to the Speaker of the House of Representatives and President of the Senate for referral to the appropriate committees of the Congress. The report shall include—

(1) the number of determinations made by such agency not to comply with requests for records made to such agency under subsection (a) and the reasons for each such determination;

(2) the number of appeals made by persons under subsection (a)(6), the result of such appeals, and the reason for the action upon each appeal that results in a denial of information;

(3) the names and titles or positions of each person responsible for the denial of records requested under this section, and the number of instances of participation for each;

(4) the results of each proceeding conducted pursuant to subsection (a)(4)(F), including a report of the disciplinary action taken against the officer or employee who was primarily responsible for improperly withholding records or an explanation of why disciplinary action was not taken;

(5) a copy of every rule made by such agency regarding this section;

(6) a copy of the fee schedule and the total amount of fees collected by the agency for making records available under this section; and

(7) such other information as indicates efforts to administer fully this section.

The Attorney General shall submit an annual report on or before March 1 of each calendar year which shall include for the prior calendar year a listing of the number of cases arising under this section, the exemption involved in

each case, the disposition of such case, and the cost, fees, and penalties assessed under subsections (a)(4)(E), (F), and (G). Such report shall also include a description of the efforts undertaken by the Department of Justice to encourage agency compliance with this section.

(f) For purposes of this section, the term ''agency'' as defined in section 551(1) of this title includes any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 383; Pub. L. 90–23, §1, June 5, 1967, 81 Stat. 54; Pub. L. 93–502, §§1–3, Nov. 21, 1974, 88 Stat. 1561–1564; Pub. L. 94–409, §5(b), Sept. 13, 1976, 90 Stat. 1247; Pub. L. 95–454, title IX, §906(a)(10), Oct. 13, 1978, 92 Stat. 1225; Pub. L. 98–620, title IV, §402(2), Nov. 8, 1984, 98 Stat. 3357; Pub. L. 99–570, title I, §§1802, 1803, Oct. 27, 1986, 100 Stat. 3207–48, 3207–49.)

HISTORICAL AND REVISION NOTES

1966 ACT

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 1002.	June 11, 1946, ch. 324, §3, 60 Stat. 238.

In subsection (b)(3), the words ''formulated and'' are omitted as surplusage. In the last sentence of subsection (b), the words ''in any manner'' are omitted as surplusage since the prohibition is all inclusive.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 ACT

Section 1 [of Pub. L. 90–23] amends section 552 of title 5, United States Code, to reflect Public Law 89–487.

In subsection (a)(1)(A), the words ''employees (and in the case of a uniformed service, the member)'' are substituted for ''officer'' to retain the coverage of Public Law 89–487 and to conform to the definitions in 5 U.S.C. 2101, 2104, and 2105.

In the last sentence of subsection (a)(2), the words ''A final order * * * may be relied on * * * only if'' are substituted for ''No final order * * * may be relied upon * * * unless''; and the words ''a party other than an agency'' and ''the party'' are substituted for ''a private party'' and ''the private party'', respectively, on authority of the definition of ''private party'' in 5 App. U.S.C. 1002(g).

In subsection (a)(3), the words ''the responsible employee, and in the case of a uniformed service, the responsible member'' are substituted for ''the responsible officers'' to retain the coverage of Public Law 89–487 and to conform to the definitions in 5 U.S.C. 2101, 2104, and 2105.

In subsection (a)(4), the words ''shall maintain and make available for public inspection a record'' are substituted for ''shall keep a record * * * and that record shall be available for public inspection''.

In subsection (b)(5) and (7), the words ''a party other than an agency'' are substituted for ''a private party'' on authority of the definition of ''private party'' in 5 App. U.S.C. 1002(g).

In subsection (c), the words ''This section does not authorize'' and ''This section is not authority'' are substituted for ''Nothing in this section authorizes'' and ''nor shall this section be authority'', respectively.

5 App. U.S.C. 1002(g), defining ''private party'' to mean a party other than an agency, is omitted since the words ''party other than an agency'' are substituted for the words ''private party'' wherever they appear in revised 5 U.S.C. 552.

5 App. U.S.C. 1002(h), prescribing the effective date, is omitted as unnecessary. That effective date is prescribed by section 4 of this bill.

CODIFICATION

Section 552 of former Title 5, Executive Departments and Government Officers and Employees, was transferred to section 2243 of Title 7, Agriculture.

AMENDMENTS

1986—Subsec. (a)(4)(A). Pub. L. 99–570, §1803, amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''In order to carry out the provisions of this section, each agency shall promulgate regulations, pursuant to notice and receipt of public comment, specifying a uniform schedule of fees applicable to all constituent units of such agency. Such fees shall be limited to reasonable standard charges for document search and duplication and provide for recovery of only the direct costs of such search and duplication. Documents shall be furnished without charge or at a reduced charge where the agency determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public.''

Subsec. (b)(7). Pub. L. 99–570, §1802(a), amended par. (7) generally. Prior to amendment, par. (7) read as follows: ''investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would (A) interfere with enforcement proceedings, (B) deprive a person of a right to a fair trial or an impartial adjudication, (C) constitute an unwarranted invasion of personal privacy, (D) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (E) disclose investigative techniques and procedures, or (F) endanger the life or physical safety of law enforcement personnel;''.

Subsecs. (c) to (f). Pub. L. 99–570, §1802(b), added subsec. (c) and redesignated former subsecs. (c) to (e) as (d) to (f), respectively.

1984—Subsec. (a)(4)(D). Pub. L. 98–620 repealed subpar. (D) which provided for precedence on the docket and expeditious disposition of district court proceedings authorized by subsec. (a).

1978—Subsec. (a)(4)(F). Pub. L. 95–454 substituted references to the Special Counsel for references to the Civil Service Commission wherever appearing and reference to his findings for reference to its findings.

1976—Subsec. (b)(3). Pub. L. 94–409 inserted provision excluding section 552b of this title from applicability of exemption from disclosure and provision setting forth conditions for statute specifically exempting disclosure.

1974—Subsec. (a)(2). Pub. L. 93–502, §1(a), substituted provisions relating to maintenance and availability of current indexes, for provisions relating to maintenance and availability of a current index, and inserted provisions relating to publication and distribution of copies of indexes or supplements thereto.

Subsec. (a)(3). Pub. L. 93–502, §1(b)(1), substituted provisions requiring requests to reasonably describe records for provisions requiring requests, for identifiable records, and struck out provisions setting forth procedures to enjoin agencies from withholding the requested records and ordering their production.

Subsec. (a)(4), (5). Pub. L. 93–502, §1(b)(2), added par. (4) and redesignated former par. (4) as (5).

Subsec. (a)(6). Pub. L. 93–502, §1(c), added par. (6).

Subsec. (b)(1). Pub. L. 93–502, §2(a), designated existing provisions as cl. (A), substituted ''authorized under criteria established by an'' for ''required by'', and added cl. (B).

Subsec. (b)(7). Pub. L. 93–502, § 2(b), substituted provisions relating to exemption for investigatory records compiled for law enforcement purposes, for provisions relating to exemption for investigatory files compiled for law enforcement purposes.

Subsec. (b), foll. par. (9). Pub. L. 93–502, § 2(c), inserted provision relating to availability of segregable portion of records.

Subsecs. (d), (e). Pub. L. 93–502, § 3, added subsecs. (d) and (e).

1967—Subsec. (a). Pub. L. 90–23 substituted introductory statement requiring every agency to make available to the public certain information for former introductory provision excepting from disclosure (1) any function of the United States requiring secrecy in the public interest or (2) any matter relating to internal management of an agency, covered in subsec. (b)(1) and (2) of this section.

Subsec. (a)(1). Pub. L. 90–23 incorporated provisions of: former subsec. (b)(1) in (A), inserting requirement of publication of names of officers as sources of information and provision for public to obtain decisions, and striking out publication requirement for delegations by the agency of final authority; former subsec. (b)(2), introductory part, in (B); former subsec. (b)(2), concluding part, in (C), inserting publication requirement for rules of procedure and descriptions of forms available or the places at which forms may be obtained; former subsec. (b)(3), introductory part, in (D), inserting requirement of general applicability of substantive rules and interpretations, added clause (E), substituted exemption of any person from failure to resort to any matter or from being adversely affected by any matter required to be published in the Federal Register but not so published for former subsec. (b)(3), concluding part, excepting from publication rules addressed to and served upon named persons in accordance with laws and final sentence reading ''A person may not be required to resort to organization or procedure not so published'' and inserted provision deeming matter, which is reasonably available, as published in the Federal Register when such matter is incorporated by reference in the Federal Register with the approval of its Director.

Subsec. (a)(2). Pub. L. 90–23 incorporated provisions of former subsec. (c), provided for public copying of records, struck out requirement of agency publication of final opinions or orders and authority for secrecy and withholding of opinions and orders required for good cause to be held confidential and not cited as precedents, latter provision now superseded by subsec. (b) of this section, designated existing subsec. (c) as clause (A), including provision for availability of concurring and dissenting opinions, inserted provisions for availability of policy statements and interpretations in clause (B) and staff manuals and instructions in clause (C), deletion of personal identifications from records to protect personal privacy with written justification therefor, and provision for indexing and prohibition of use of records not indexed against any private party without actual and timely notice of the terms thereof.

Subsec. (a)(3). Pub. L. 90–23 incorporated provisions of former subsec. (d) and substituted provisions requiring identifiable agency records to be made available to any person upon request and compliance with rules as to time, place, and procedure for inspection, and payment of fees and provisions for Federal district court proceedings de novo for enforcement by contempt of noncompliance with court's orders with the burden on the agency and docket precedence for such proceedings for former provisions requiring matters of official record to be made available to persons properly and directly concerned except information held confidential for good cause shown, the latter provision superseded by subsec. (b) of this section.

Subsec. (a)(4). Pub. L. 90–23 added par. (4).

Subsec. (b). Pub. L. 90–23 added subsec. (b) which superseded provisions excepting from disclosure any function of the United States requiring secrecy in the public interest or any matter relating to internal management of an agency, formerly contained in former subsec. (a), final opinions or orders required for good cause to be held confidential and not cited as precedents, formerly contained in subsec. (c), and information held confidential for good cause found, contained in former subsec. (d) of this section.

Subsec. (c). Pub. L. 90–23 added subsec. (c).

EFFECTIVE DATE OF 1986 AMENDMENT

Section 1804 of Pub. L. 99–570 provided that:

''(a) The amendments made by section 1802 [amending this section] shall be effective on the date of enactment of this Act [Oct. 27, 1986], and shall apply with respect to any requests for records, whether or not the request was made prior to such date, and shall apply to any civil action pending on such date.

''(b)(1) The amendments made by section 1803 [amending this section] shall be effective 180 days after the date of enactment of this Act [Oct. 27, 1986], except that regulations to implement such amendments shall be promulgated by such 180th day.

''(2) The amendments made by section 1803 [amending this section] shall apply with respect to any requests for records, whether or not the request was made prior to such date, and shall apply to any civil action pending on such date, except that review charges applicable to records requested for commercial use shall not be applied by an agency to requests made before the effective date specified in paragraph (1) of this subsection or before the agency has finally issued its regulations.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98–620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–409 effective 180 days after Sept. 13, 1976, see section 6 of Pub. L. 94–409, set out as an Effective Date note under section 552b of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Section 4 of Pub. L. 93–502 provided that: ''The amendments made by this Act [amending this section] shall take effect on the ninetieth day beginning after the date of enactment of this Act [Nov. 21, 1974].''

EFFECTIVE DATE OF 1967 AMENDMENT

Section 4 of Pub. L. 90–23 provided that: ''This Act [amending this section] shall be effective July 4, 1967, or on the date of enactment [June 5, 1967], whichever is later.''

SHORT TITLE OF 1986 AMENDMENT

Section 1801 of Pub. L. 99–570 provided that: ''This subtitle [subtitle N (§§ 1801–1804) of title I of Pub. L. 99–570, amending this section and enacting provisions set out as a note under this section] may be cited as the 'Freedom of Information Reform Act of 1986'.''

SHORT TITLE

This section is popularly known as the ''Freedom of Information Act''.

FREEDOM OF INFORMATION ACT EXEMPTION FOR CERTAIN OPEN SKIES TREATY DATA

Pub. L. 103–236, title V, § 533, Apr. 30, 1994, 108 Stat. 480, provided that:

''(a) IN GENERAL.—Data with respect to a foreign country collected by sensors during observation flights conducted in connection with the Treaty on Open Skies, including flights conducted prior to entry into

force of the treaty, shall be exempt from disclosure under the Freedom of Information Act—

''(1) if the country has not disclosed the data to the public; and

''(2) if the country has not, acting through the Open Skies Consultative Commission or any other diplomatic channel, authorized the United States to disclose the data to the public.

''(b) STATUTORY CONSTRUCTION.—This section constitutes a specific exemption within the meaning of section 552(b)(3) of title 5, United States Code.

''(c) DEFINITIONS.—For the purposes of this section—

''(1) the term 'Freedom of Information Act' means the provisions of section 552 of title 5, United States Code;

''(2) the term 'Open Skies Consultative Commission' means the commission established pursuant to Article X of the Treaty on Open Skies; and

''(3) the term 'Treaty on Open Skies' means the Treaty on Open Skies, signed at Helsinki on March 24, 1992.''

EXECUTIVE ORDER NO. 12174

Ex. Ord. No. 12174, Nov. 30, 1979, 44 F.R. 69609, which related to minimizing Federal paperwork, was revoked by Ex. Ord. No. 12291, Feb. 17, 1981, 46 F.R. 13193, formerly set out as a note under section 601 of this title.

EX. ORD. NO. 12600. PREDISCLOSURE NOTIFICATION PROCEDURES FOR CONFIDENTIAL COMMERCIAL INFORMATION

Ex. Ord. No. 12600, June 23, 1987, 52 F.R. 23781, provided:

By the authority vested in me as President by the Constitution and statutes of the United States of America, and in order to provide predisclosure notification procedures under the Freedom of Information Act [5 U.S.C. 552] concerning confidential commercial information, and to make existing agency notification provisions more uniform, it is hereby ordered as follows:

SECTION 1. The head of each Executive department and agency subject to the Freedom of Information Act [5 U.S.C. 552] shall, to the extent permitted by law, establish procedures to notify submitters of records containing confidential commercial information as described in section 3 of this Order, when those records are requested under the Freedom of Information Act [FOIA], 5 U.S.C. 552, as amended, if after reviewing the request, the responsive records, and any appeal by the requester, the department or agency determines that it may be required to disclose the records. Such notice requires that an agency use good-faith efforts to advise submitters of confidential commercial information of the procedures established under this Order. Further, where notification of a voluminous number of submitters is required, such notification may be accomplished by posting or publishing the notice in a place reasonably calculated to accomplish notification.

SEC. 2. For purposes of this Order, the following definitions apply:

(a) ''Confidential commercial information'' means records provided to the government by a submitter that arguably contain material exempt from release under Exemption 4 of the Freedom of Information Act, 5 U.S.C. 552(b)(4), because disclosure could reasonably be expected to cause substantial competitive harm.

(b) ''Submitter'' means any person or entity who provides confidential commercial information to the government. The term ''submitter'' includes, but is not limited to, corporations, state governments, and foreign governments.

SEC. 3. (a) For confidential commercial information submitted prior to January 1, 1988, the head of each Executive department or agency shall, to the extent permitted by law, provide a submitter with notice pursuant to section 1 whenever:

(i) the records are less than 10 years old and the information has been designated by the submitter as confidential commercial information; or

(ii) the department or agency has reason to believe that disclosure of the information could reasonably be expected to cause substantial competitive harm.

(b) For confidential commercial information submitted on or after January 1, 1988, the head of each Executive department or agency shall, to the extent permitted by law, establish procedures to permit submitters of confidential commercial information to designate, at the time the information is submitted to the Federal government or a reasonable time thereafter, any information the disclosure of which the submitter claims could reasonably be expected to cause substantial competitive harm. Such agency procedures may provide for the expiration, after a specified period of time or changes in circumstances, of designations of competitive harm made by submitters. Additionally, such procedures may permit the agency to designate specific classes of information that will be treated by the agency as if the information had been so designated by the submitter. The head of each Executive department or agency shall, to the extent permitted by law, provide the submitter notice in accordance with section 1 of this Order whenever the department or agency determines that it may be required to disclose records:

(i) designated pursuant to this subsection; or

(ii) the disclosure of which the department or agency has reason to believe could reasonably be expected to cause substantial competitive harm.

SEC. 4. When notification is made pursuant to section 1, each agency's procedures shall, to the extent permitted by law, afford the submitter a reasonable period of time in which the submitter or its designee may object to the disclosure of any specified portion of the information and to state all grounds upon which disclosure is opposed.

SEC. 5. Each agency shall give careful consideration to all such specified grounds for nondisclosure prior to making an administrative determination of the issue. In all instances when the agency determines to disclose the requested records, its procedures shall provide that the agency give the submitter a written statement briefly explaining why the submitter's objections are not sustained. Such statement shall, to the extent permitted by law, be provided a reasonable number of days prior to a specified disclosure date.

SEC. 6. Whenever a FOIA requester brings suit seeking to compel disclosure of confidential commercial information, each agency's procedures shall require that the submitter be promptly notified.

SEC. 7. The designation and notification procedures required by this Order shall be established by regulations, after notice and public comment. If similar procedures or regulations already exist, they should be reviewed for conformity and revised where necessary. Existing procedures or regulations need not be modified if they are in compliance with this Order.

SEC. 8. The notice requirements of this Order need not be followed if:

(a) The agency determines that the information should not be disclosed;

(b) The information has been published or has been officially made available to the public;

(c) Disclosure of the information is required by law (other than 5 U.S.C. 552);

(d) The disclosure is required by an agency rule that (1) was adopted pursuant to notice and public comment, (2) specifies narrow classes of records submitted to the agency that are to be released under the Freedom of Information Act [5 U.S.C. 552], and (3) provides in exceptional circumstances for notice when the submitter provides written justification, at the time the information is submitted or a reasonable time thereafter, that disclosure of the information could reasonably be expected to cause substantial competitive harm;

(e) The information requested is not designated by the submitter as exempt from disclosure in accordance with agency regulations promulgated pursuant to section 7, when the submitter had an opportunity to do so at the time of submission of the information or a reasonable time thereafter, unless the agency has substantial reason to believe that disclosure of the information would result in competitive harm; or

(f) The designation made by the submitter in accordance with agency regulations promulgated pursuant to

section 7 appears obviously frivolous; except that, in such case, the agency must provide the submitter with written notice of any final administrative disclosure determination within a reasonable number of days prior to the specified disclosure date.

SEC. 9. Whenever an agency notifies a submitter that it may be required to disclose information pursuant to section 1 of this Order, the agency shall also notify the requester that notice and an opportunity to comment are being provided the submitter. Whenever an agency notifies a submitter of a final decision pursuant to section 5 of this Order, the agency shall also notify the requester.

SEC. 10. This Order is intended only to improve the internal management of the Federal government, and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

RONALD REAGAN.

CROSS REFERENCES

Federal Register Act, see section 1502 et seq. of Title 44, Public Printing and Documents.

Section applicable to functions exercised under International Wheat Agreement Act of 1949, see section 1642 of Title 7, Agriculture.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 551, 552a, 552b, 566, 574, 1216, 7133 of this title; title 2 sections 472, 501, 502; title 7 sections 12, 509, 608d, 948, 958, 1314g, 1314i, 1508, 1642, 5651, 5662, 5906; title 10 sections 128, 424, 1034, 1102, 2304, 2305, 2306a, 2328, 2506; title 12 sections 1786, 1818, 1831*o*, 4611; title 14 section 645; title 15 sections 18a, 57b–2, 78m, 78*o*–5, 78q, 78w, 78x, 78dd–1, 78dd–2, 278n, 719d, 773, 796, 1314, 1335a, 2055, 2217, 2613, 3364, 3710a, 4019, 4104, 4107, 4305, 4403, 4606, 4912, 5104, 5308; title 16 sections 973j, 1402, 4304; title 18 sections 207, 208; title 19 sections 1333, 1431, 1509, 1625, 1677f, 2418, 3315; title 20 sections 1078, 1087–2, 2422, 2836, 6512; title 21 sections 360j, 379, 379f, 830; title 22 sections 2200a, 3902, 4355, 4415, 4604, 4607, 4833, 5841; title 25 sections 450c, 450k, 1951, 2716; title 26 sections 6103, 6110, 7611; title 28 sections 594, 1657; title 29 sections 1310, 1343, 2635; title 30 section 1604; title 31 sections 716, 1352, 3729, 3733, 5319; title 33 sections 524, 941, 1513; title 35 sections 202, 209; title 38 sections 501, 502, 7451; title 39 section 410; title 41 sections 253, 253b, 254b, 706; title 42 sections 263b, 300v–2, 300aa–25, 405, 1306, 1320c–9, 2167, 2168, 2297b–13, 2454, 2996d, 3027, 4332, 5916, 5919, 6272–6274, 7135, 8103, 9122, 9208, 9660, 10704, 13385; title 44 sections 2201, 2204, 2206; title 46 sections 4309, 7702, 9303; title 46 App. section 1705; title 49 sections 10310, 10706, 11164, 11346; title 50 section 431; title 50 App. sections 463, 2158, 2159, 2170, 2406, 2411.

§ 552a. Records maintained on individuals

(a) DEFINITIONS.—For purposes of this section—

(1) the term ''agency'' means agency as defined in section 552(e)[1] of this title;

(2) the term ''individual'' means a citizen of the United States or an alien lawfully admitted for permanent residence;

(3) the term ''maintain'' includes maintain, collect, use, or disseminate;

(4) the term ''record'' means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph;

(5) the term ''system of records'' means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual;

(6) the term ''statistical record'' means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided by section 8 of title 13;

(7) the term ''routine use'' means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected;

(8) the term ''matching program''—

(A) means any computerized comparison of—

(i) two or more automated systems of records or a system of records with non-Federal records for the purpose of—

(I) establishing or verifying the eligibility of, or continuing compliance with statutory and regulatory requirements by, applicants for, recipients or beneficiaries of, participants in, or providers of services with respect to, cash or in-kind assistance or payments under Federal benefit programs, or

(II) recouping payments or delinquent debts under such Federal benefit programs, or

(ii) two or more automated Federal personnel or payroll systems of records or a system of Federal personnel or payroll records with non-Federal records,

(B) but does not include—

(i) matches performed to produce aggregate statistical data without any personal identifiers;

(ii) matches performed to support any research or statistical project, the specific data of which may not be used to make decisions concerning the rights, benefits, or privileges of specific individuals;

(iii) matches performed, by an agency (or component thereof) which performs as its principal function any activity pertaining to the enforcement of criminal laws, subsequent to the initiation of a specific criminal or civil law enforcement investigation of a named person or persons for the purpose of gathering evidence against such person or persons;

(iv) matches of tax information (I) pursuant to section 6103(d) of the Internal Revenue Code of 1986, (II) for purposes of tax administration as defined in section 6103(b)(4) of such Code, (III) for the purpose of intercepting a tax refund due an individual under authority granted by section 464 or 1137 of the Social Security Act; or (IV) for the purpose of intercepting a tax refund due an individual under any other tax refund intercept program authorized by statute which has been determined by the

[1] See References in Text note below.

Director of the Office of Management and Budget to contain verification, notice, and hearing requirements that are substantially similar to the procedures in section 1137 of the Social Security Act;

(v) matches—

(I) using records predominantly relating to Federal personnel, that are performed for routine administrative purposes (subject to guidance provided by the Director of the Office of Management and Budget pursuant to subsection (v)); or

(II) conducted by an agency using only records from systems of records maintained by that agency;

if the purpose of the match is not to take any adverse financial, personnel, disciplinary, or other adverse action against Federal personnel;

(vi) matches performed for foreign counterintelligence purposes or to produce background checks for security clearances of Federal personnel or Federal contractor personnel; or

(vii) matches performed pursuant to section 6103(*l*)(12) of the Internal Revenue Code of 1986 and section 1144 of the Social Security Act;

(9) the term ''recipient agency'' means any agency, or contractor thereof, receiving records contained in a system of records from a source agency for use in a matching program;

(10) the term ''non-Federal agency'' means any State or local government, or agency thereof, which receives records contained in a system of records from a source agency for use in a matching program;

(11) the term ''source agency'' means any agency which discloses records contained in a system of records to be used in a matching program, or any State or local government, or agency thereof, which discloses records to be used in a matching program;

(12) the term ''Federal benefit program'' means any program administered or funded by the Federal Government, or by any agent or State on behalf of the Federal Government, providing cash or in-kind assistance in the form of payments, grants, loans, or loan guarantees to individuals; and

(13) the term ''Federal personnel'' means officers and employees of the Government of the United States, members of the uniformed services (including members of the Reserve Components), individuals entitled to receive immediate or deferred retirement benefits under any retirement program of the Government of the United States (including survivor benefits).

(b) CONDITIONS OF DISCLOSURE.—No agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record would be—

(1) to those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties;

(2) required under section 552 of this title;

(3) for a routine use as defined in subsection (a)(7) of this section and described under subsection (e)(4)(D) of this section;

(4) to the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13;

(5) to a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(6) to the National Archives and Records Administration as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Archivist of the United States or the designee of the Archivist to determine whether the record has such value;

(7) to another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought;

(8) to a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;

(9) to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

(10) to the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office;

(11) pursuant to the order of a court of competent jurisdiction; or

(12) to a consumer reporting agency in accordance with section 3711(f) of title 31.

(c) ACCOUNTING OF CERTAIN DISCLOSURES.—Each agency, with respect to each system of records under its control, shall—

(1) except for disclosures made under subsections (b)(1) or (b)(2) of this section, keep an accurate accounting of—

(A) the date, nature, and purpose of each disclosure of a record to any person or to another agency made under subsection (b) of this section; and

(B) the name and address of the person or agency to whom the disclosure is made;

(2) retain the accounting made under paragraph (1) of this subsection for at least five years or the life of the record, whichever is longer, after the disclosure for which the accounting is made;

(3) except for disclosures made under subsection (b)(7) of this section, make the ac-

counting made under paragraph (1) of this subsection available to the individual named in the record at his request; and

(4) inform any person or other agency about any correction or notation of dispute made by the agency in accordance with subsection (d) of this section of any record that has been disclosed to the person or agency if an accounting of the disclosure was made.

(d) ACCESS TO RECORDS.—Each agency that maintains a system of records shall—

(1) upon request by any individual to gain access to his record or to any information pertaining to him which is contained in the system, permit him and upon his request, a person of his own choosing to accompany him, to review the record and have a copy made of all or any portion thereof in a form comprehensible to him, except that the agency may require the individual to furnish a written statement authorizing discussion of that individual's record in the accompanying person's presence;

(2) permit the individual to request amendment of a record pertaining to him and—

(A) not later than 10 days (excluding Saturdays, Sundays, and legal public holidays) after the date of receipt of such request, acknowledge in writing such receipt; and

(B) promptly, either—

(i) make any correction of any portion thereof which the individual believes is not accurate, relevant, timely, or complete; or

(ii) inform the individual of its refusal to amend the record in accordance with his request, the reason for the refusal, the procedures established by the agency for the individual to request a review of that refusal by the head of the agency or an officer designated by the head of the agency, and the name and business address of that official;

(3) permit the individual who disagrees with the refusal of the agency to amend his record to request a review of such refusal, and not later than 30 days (excluding Saturdays, Sundays, and legal public holidays) from the date on which the individual requests such review, complete such review and make a final determination unless, for good cause shown, the head of the agency extends such 30-day period; and if, after his review, the reviewing official also refuses to amend the record in accordance with the request, permit the individual to file with the agency a concise statement setting forth the reasons for his disagreement with the refusal of the agency, and notify the individual of the provisions for judicial review of the reviewing official's determination under subsection (g)(1)(A) of this section;

(4) in any disclosure, containing information about which the individual has filed a statement of disagreement, occurring after the filing of the statement under paragraph (3) of this subsection, clearly note any portion of the record which is disputed and provide copies of the statement and, if the agency deems it appropriate, copies of a concise statement of the reasons of the agency for not making the amendments requested, to persons or other agencies to whom the disputed record has been disclosed; and

(5) nothing in this section shall allow an individual access to any information compiled in reasonable anticipation of a civil action or proceeding.

(e) AGENCY REQUIREMENTS.—Each agency that maintains a system of records shall—

(1) maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or by executive order of the President;

(2) collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs;

(3) inform each individual whom it asks to supply information, on the form which it uses to collect the information or on a separate form that can be retained by the individual—

(A) the authority (whether granted by statute, or by executive order of the President) which authorizes the solicitation of the information and whether disclosure of such information is mandatory or voluntary;

(B) the principal purpose or purposes for which the information is intended to be used;

(C) the routine uses which may be made of the information, as published pursuant to paragraph (4)(D) of this subsection; and

(D) the effects on him, if any, of not providing all or any part of the requested information;

(4) subject to the provisions of paragraph (11) of this subsection, publish in the Federal Register upon establishment or revision a notice of the existence and character of the system of records, which notice shall include—

(A) the name and location of the system;

(B) the categories of individuals on whom records are maintained in the system;

(C) the categories of records maintained in the system;

(D) each routine use of the records contained in the system, including the categories of users and the purpose of such use;

(E) the policies and practices of the agency regarding storage, retrievability, access controls, retention, and disposal of the records;

(F) the title and business address of the agency official who is responsible for the system of records;

(G) the agency procedures whereby an individual can be notified at his request if the system of records contains a record pertaining to him;

(H) the agency procedures whereby an individual can be notified at his request how he can gain access to any record pertaining to him contained in the system of records, and how he can contest its content; and

(I) the categories of sources of records in the system;

(5) maintain all records which are used by the agency in making any determination

about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination;

(6) prior to disseminating any record about an individual to any person other than an agency, unless the dissemination is made pursuant to subsection (b)(2) of this section, make reasonable efforts to assure that such records are accurate, complete, timely, and relevant for agency purposes;

(7) maintain no record describing how any individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity;

(8) make reasonable efforts to serve notice on an individual when any record on such individual is made available to any person under compulsory legal process when such process becomes a matter of public record;

(9) establish rules of conduct for persons involved in the design, development, operation, or maintenance of any system of records, or in maintaining any record, and instruct each such person with respect to such rules and the requirements of this section, including any other rules and procedures adopted pursuant to this section and the penalties for noncompliance;

(10) establish appropriate administrative, technical, and physical safeguards to insure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained;

(11) at least 30 days prior to publication of information under paragraph (4)(D) of this subsection, publish in the Federal Register notice of any new use or intended use of the information in the system, and provide an opportunity for interested persons to submit written data, views, or arguments to the agency; and

(12) if such agency is a recipient agency or a source agency in a matching program with a non-Federal agency, with respect to any establishment or revision of a matching program, at least 30 days prior to conducting such program, publish in the Federal Register notice of such establishment or revision.

(f) AGENCY RULES.—In order to carry out the provisions of this section, each agency that maintains a system of records shall promulgate rules, in accordance with the requirements (including general notice) of section 553 of this title, which shall—

(1) establish procedures whereby an individual can be notified in response to his request if any system of records named by the individual contains a record pertaining to him;

(2) define reasonable times, places, and requirements for identifying an individual who requests his record or information pertaining to him before the agency shall make the record or information available to the individual;

(3) establish procedures for the disclosure to an individual upon his request of his record or information pertaining to him, including special procedure, if deemed necessary, for the disclosure to an individual of medical records, including psychological records, pertaining to him;

(4) establish procedures for reviewing a request from an individual concerning the amendment of any record or information pertaining to the individual, for making a determination on the request, for an appeal within the agency of an initial adverse agency determination, and for whatever additional means may be necessary for each individual to be able to exercise fully his rights under this section; and

(5) establish fees to be charged, if any, to any individual for making copies of his record, excluding the cost of any search for and review of the record.

The Office of the Federal Register shall biennially compile and publish the rules promulgated under this subsection and agency notices published under subsection (e)(4) of this section in a form available to the public at low cost.

(g)(1) CIVIL REMEDIES.—Whenever any agency

(A) makes a determination under subsection (d)(3) of this section not to amend an individual's record in accordance with his request, or fails to make such review in conformity with that subsection;

(B) refuses to comply with an individual request under subsection (d)(1) of this section;

(C) fails to maintain any record concerning any individual with such accuracy, relevance, timeliness, and completeness as is necessary to assure fairness in any determination relating to the qualifications, character, rights, or opportunities of, or benefits to the individual that may be made on the basis of such record, and consequently a determination is made which is adverse to the individual; or

(D) fails to comply with any other provision of this section, or any rule promulgated thereunder, in such a way as to have an adverse effect on an individual,

the individual may bring a civil action against the agency, and the district courts of the United States shall have jurisdiction in the matters under the provisions of this subsection.

(2)(A) In any suit brought under the provisions of subsection (g)(1)(A) of this section, the court may order the agency to amend the individual's record in accordance with his request or in such other way as the court may direct. In such a case the court shall determine the matter de novo.

(B) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this paragraph in which the complainant has substantially prevailed.

(3)(A) In any suit brought under the provisions of subsection (g)(1)(B) of this section, the court may enjoin the agency from withholding the records and order the production to the complainant of any agency records improperly withheld from him. In such a case the court shall determine the matter de novo, and may examine

the contents of any agency records in camera to determine whether the records or any portion thereof may be withheld under any of the exemptions set forth in subsection (k) of this section, and the burden is on the agency to sustain its action.

(B) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this paragraph in which the complainant has substantially prevailed.

(4) In any suit brought under the provisions of subsection (g)(1)(C) or (D) of this section in which the court determines that the agency acted in a manner which was intentional or willful, the United States shall be liable to the individual in an amount equal to the sum of—

(A) actual damages sustained by the individual as a result of the refusal or failure, but in no case shall a person entitled to recovery receive less than the sum of $1,000; and

(B) the costs of the action together with reasonable attorney fees as determined by the court.

(5) An action to enforce any liability created under this section may be brought in the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, without regard to the amount in controversy, within two years from the date on which the cause of action arises, except that where an agency has materially and willfully misrepresented any information required under this section to be disclosed to an individual and the information so misrepresented is material to establishment of the liability of the agency to the individual under this section, the action may be brought at any time within two years after discovery by the individual of the misrepresentation. Nothing in this section shall be construed to authorize any civil action by reason of any injury sustained as the result of a disclosure of a record prior to September 27, 1975.

(h) RIGHTS OF LEGAL GUARDIANS.—For the purposes of this section, the parent of any minor, or the legal guardian of any individual who has been declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction, may act on behalf of the individual.

(i)(1) CRIMINAL PENALTIES.—Any officer or employee of an agency, who by virtue of his employment or official position, has possession of, or access to, agency records which contain individually identifiable information the disclosure of which is prohibited by this section or by rules or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than $5,000.

(2) Any officer or employee of any agency who willfully maintains a system of records without meeting the notice requirements of subsection (e)(4) of this section shall be guilty of a misdemeanor and fined not more than $5,000.

(3) Any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses shall be guilty of a misdemeanor and fined not more than $5,000.

(j) GENERAL EXEMPTIONS.—The head of any agency may promulgate rules, in accordance with the requirements (including general notice) of sections 553(b)(1), (2), and (3), (c), and (e) of this title, to exempt any system of records within the agency from any part of this section except subsections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i) if the system of records is—

(1) maintained by the Central Intelligence Agency; or

(2) maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws, including police efforts to prevent, control, or reduce crime or to apprehend criminals, and the activities of prosecutors, courts, correctional, probation, pardon, or parole authorities, and which consists of (A) information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status; (B) information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or (C) reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision.

At the time rules are adopted under this subsection, the agency shall include in the statement required under section 553(c) of this title, the reasons why the system of records is to be exempted from a provision of this section.

(k) SPECIFIC EXEMPTIONS.—The head of any agency may promulgate rules, in accordance with the requirements (including general notice) of sections 553(b)(1), (2), and (3), (c), and (e) of this title, to exempt any system of records within the agency from subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I) and (f) of this section if the system of records is—

(1) subject to the provisions of section 552(b)(1) of this title;

(2) investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2) of this section: *Provided, however*, That if any individual is denied any right, privilege, or benefit that he would otherwise be entitled by Federal law, or for which he would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence;

(3) maintained in connection with providing protective services to the President of the

United States or other individuals pursuant to section 3056 of title 18;

(4) required by statute to be maintained and used solely as statistical records;

(5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence;

(6) testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service the disclosure of which would compromise the objectivity or fairness of the testing or examination process; or

(7) evaluation material used to determine potential for promotion in the armed services, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence.

At the time rules are adopted under this subsection, the agency shall include in the statement required under section 553(c) of this title, the reasons why the system of records is to be exempted from a provision of this section.

(*l*) ARCHIVAL RECORDS.—Each agency record which is accepted by the Archivist of the United States for storage, processing, and servicing in accordance with section 3103 of title 44 shall, for the purposes of this section, be considered to be maintained by the agency which deposited the record and shall be subject to the provisions of this section. The Archivist of the United States shall not disclose the record except to the agency which maintains the record, or under rules established by that agency which are not inconsistent with the provisions of this section.

(2) Each agency record pertaining to an identifiable individual which was transferred to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, prior to the effective date of this section, shall, for the purposes of this section, be considered to be maintained by the National Archives and shall not be subject to the provisions of this section, except that a statement generally describing such records (modeled after the requirements relating to records subject to subsections (e)(4)(A) through (G) of this section) shall be published in the Federal Register.

(3) Each agency record pertaining to an identifiable individual which is transferred to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, on or after the effective date of this section, shall, for the purposes of this section, be considered to be maintained by the National Archives and shall be exempt from the requirements of this section except subsections (e)(4)(A) through (G) and (e)(9) of this section.

(m)(1) GOVERNMENT CONTRACTORS.—When an agency provides by a contract for the operation by or on behalf of the agency of a system of records to accomplish an agency function, the agency shall, consistent with its authority, cause the requirements of this section to be applied to such system. For purposes of subsection (i) of this section any such contractor and any employee of such contractor, if such contract is agreed to on or after the effective date of this section, shall be considered to be an employee of an agency.

(2) A consumer reporting agency to which a record is disclosed under section 3711(f) of title 31 shall not be considered a contractor for the purposes of this section.

(n) MAILING LISTS.—An individual's name and address may not be sold or rented by an agency unless such action is specifically authorized by law. This provision shall not be construed to require the withholding of names and addresses otherwise permitted to be made public.

(*o*) MATCHING AGREEMENTS.—(1) No record which is contained in a system of records may be disclosed to a recipient agency or non-Federal agency for use in a computer matching program except pursuant to a written agreement between the source agency and the recipient agency or non-Federal agency specifying—

(A) the purpose and legal authority for conducting the program;

(B) the justification for the program and the anticipated results, including a specific estimate of any savings;

(C) a description of the records that will be matched, including each data element that will be used, the approximate number of records that will be matched, and the projected starting and completion dates of the matching program;

(D) procedures for providing individualized notice at the time of application, and notice periodically thereafter as directed by the Data Integrity Board of such agency (subject to guidance provided by the Director of the Office of Management and Budget pursuant to subsection (v)), to—

(i) applicants for and recipients of financial assistance or payments under Federal benefit programs, and

(ii) applicants for and holders of positions as Federal personnel,

that any information provided by such applicants, recipients, holders, and individuals may be subject to verification through matching programs;

(E) procedures for verifying information produced in such matching program as required by subsection (p);

(F) procedures for the retention and timely destruction of identifiable records created by a recipient agency or non-Federal agency in such matching program;

(G) procedures for ensuring the administrative, technical, and physical security of the

records matched and the results of such programs;

(H) prohibitions on duplication and redisclosure of records provided by the source agency within or outside the recipient agency or the non-Federal agency, except where required by law or essential to the conduct of the matching program;

(I) procedures governing the use by a recipient agency or non-Federal agency of records provided in a matching program by a source agency, including procedures governing return of the records to the source agency or destruction of records used in such program;

(J) information on assessments that have been made on the accuracy of the records that will be used in such matching program; and

(K) that the Comptroller General may have access to all records of a recipient agency or a non-Federal agency that the Comptroller General deems necessary in order to monitor or verify compliance with the agreement.

(2)(A) A copy of each agreement entered into pursuant to paragraph (1) shall—

(i) be transmitted to the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House of Representatives; and

(ii) be available upon request to the public.

(B) No such agreement shall be effective until 30 days after the date on which such a copy is transmitted pursuant to subparagraph (A)(i).

(C) Such an agreement shall remain in effect only for such period, not to exceed 18 months, as the Data Integrity Board of the agency determines is appropriate in light of the purposes, and length of time necessary for the conduct, of the matching program.

(D) Within 3 months prior to the expiration of such an agreement pursuant to subparagraph (C), the Data Integrity Board of the agency may, without additional review, renew the matching agreement for a current, ongoing matching program for not more than one additional year if—

(i) such program will be conducted without any change; and

(ii) each party to the agreement certifies to the Board in writing that the program has been conducted in compliance with the agreement.

(p) VERIFICATION AND OPPORTUNITY TO CONTEST FINDINGS.—(1) In order to protect any individual whose records are used in a matching program, no recipient agency, non-Federal agency, or source agency may suspend, terminate, reduce, or make a final denial of any financial assistance or payment under a Federal benefit program to such individual, or take other adverse action against such individual, as a result of information produced by such matching program, until—

(A)(i) the agency has independently verified the information; or

(ii) the Data Integrity Board of the agency, or in the case of a non-Federal agency the Data Integrity Board of the source agency, determines in accordance with guidance issued by the Director of the Office of Management and Budget that—

(I) the information is limited to identification and amount of benefits paid by the source agency under a Federal benefit program; and

(II) there is a high degree of confidence that the information provided to the recipient agency is accurate;

(B) the individual receives a notice from the agency containing a statement of its findings and informing the individual of the opportunity to contest such findings; and

(C)(i) the expiration of any time period established for the program by statute or regulation for the individual to respond to that notice; or

(ii) in the case of a program for which no such period is established, the end of the 30-day period beginning on the date on which notice under subparagraph (B) is mailed or otherwise provided to the individual.

(2) Independent verification referred to in paragraph (1) requires investigation and confirmation of specific information relating to an individual that is used as a basis for an adverse action against the individual, including where applicable investigation and confirmation of—

(A) the amount of any asset or income involved;

(B) whether such individual actually has or had access to such asset or income for such individual's own use; and

(C) the period or periods when the individual actually had such asset or income.

(3) Notwithstanding paragraph (1), an agency may take any appropriate action otherwise prohibited by such paragraph if the agency determines that the public health or public safety may be adversely affected or significantly threatened during any notice period required by such paragraph.

(q) SANCTIONS.—(1) Notwithstanding any other provision of law, no source agency may disclose any record which is contained in a system of records to a recipient agency or non-Federal agency for a matching program if such source agency has reason to believe that the requirements of subsection (p), or any matching agreement entered into pursuant to subsection (*o*), or both, are not being met by such recipient agency.

(2) No source agency may renew a matching agreement unless—

(A) the recipient agency or non-Federal agency has certified that it has complied with the provisions of that agreement; and

(B) the source agency has no reason to believe that the certification is inaccurate.

(r) REPORT ON NEW SYSTEMS AND MATCHING PROGRAMS.—Each agency that proposes to establish or make a significant change in a system of records or a matching program shall provide adequate advance notice of any such proposal (in duplicate) to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget in order to permit an evaluation of the probable or potential effect of such proposal on the privacy or other rights of individuals.

(s) BIENNIAL REPORT.—The President shall biennially submit to the Speaker of the House of

Representatives and the President pro tempore of the Senate a report—

(1) describing the actions of the Director of the Office of Management and Budget pursuant to section 6 of the Privacy Act of 1974 during the preceding 2 years;

(2) describing the exercise of individual rights of access and amendment under this section during such years;

(3) identifying changes in or additions to systems of records;

(4) containing such other information concerning administration of this section as may be necessary or useful to the Congress in reviewing the effectiveness of this section in carrying out the purposes of the Privacy Act of 1974.

(t)(1) EFFECT OF OTHER LAWS.—No agency shall rely on any exemption contained in section 552 of this title to withhold from an individual any record which is otherwise accessible to such individual under the provisions of this section.

(2) No agency shall rely on any exemption in this section to withhold from an individual any record which is otherwise accessible to such individual under the provisions of section 552 of this title.

(u) DATA INTEGRITY BOARDS.—(1) Every agency conducting or participating in a matching program shall establish a Data Integrity Board to oversee and coordinate among the various components of such agency the agency's implementation of this section.

(2) Each Data Integrity Board shall consist of senior officials designated by the head of the agency, and shall include any senior official designated by the head of the agency as responsible for implementation of this section, and the inspector general of the agency, if any. The inspector general shall not serve as chairman of the Data Integrity Board.

(3) Each Data Integrity Board—

(A) shall review, approve, and maintain all written agreements for receipt or disclosure of agency records for matching programs to ensure compliance with subsection (*o*), and all relevant statutes, regulations, and guidelines;

(B) shall review all matching programs in which the agency has participated during the year, either as a source agency or recipient agency, determine compliance with applicable laws, regulations, guidelines, and agency agreements, and assess the costs and benefits of such programs;

(C) shall review all recurring matching programs in which the agency has participated during the year, either as a source agency or recipient agency, for continued justification for such disclosures;

(D) shall compile an annual report, which shall be submitted to the head of the agency and the Office of Management and Budget and made available to the public on request, describing the matching activities of the agency, including—

(i) matching programs in which the agency has participated as a source agency or recipient agency;

(ii) matching agreements proposed under subsection (*o*) that were disapproved by the Board;

(iii) any changes in membership or structure of the Board in the preceding year;

(iv) the reasons for any waiver of the requirement in paragraph (4) of this section for completion and submission of a cost-benefit analysis prior to the approval of a matching program;

(v) any violations of matching agreements that have been alleged or identified and any corrective action taken; and

(vi) any other information required by the Director of the Office of Management and Budget to be included in such report;

(E) shall serve as a clearinghouse for receiving and providing information on the accuracy, completeness, and reliability of records used in matching programs;

(F) shall provide interpretation and guidance to agency components and personnel on the requirements of this section for matching programs;

(G) shall review agency recordkeeping and disposal policies and practices for matching programs to assure compliance with this section; and

(H) may review and report on any agency matching activities that are not matching programs.

(4)(A) Except as provided in subparagraphs (B) and (C), a Data Integrity Board shall not approve any written agreement for a matching program unless the agency has completed and submitted to such Board a cost-benefit analysis of the proposed program and such analysis demonstrates that the program is likely to be cost effective.[2]

(B) The Board may waive the requirements of subparagraph (A) of this paragraph if it determines in writing, in accordance with guidelines prescribed by the Director of the Office of Management and Budget, that a cost-benefit analysis is not required.

(C) A cost-benefit analysis shall not be required under subparagraph (A) prior to the initial approval of a written agreement for a matching program that is specifically required by statute. Any subsequent written agreement for such a program shall not be approved by the Data Integrity Board unless the agency has submitted a cost-benefit analysis of the program as conducted under the preceding approval of such agreement.

(5)(A) If a matching agreement is disapproved by a Data Integrity Board, any party to such agreement may appeal the disapproval to the Director of the Office of Management and Budget. Timely notice of the filing of such an appeal shall be provided by the Director of the Office of Management and Budget to the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House of Representatives.

(B) The Director of the Office of Management and Budget may approve a matching agreement notwithstanding the disapproval of a Data Integrity Board if the Director determines that—

(i) the matching program will be consistent with all applicable legal, regulatory, and policy requirements;

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[2] So in original. Probably should be ''cost-effective.''

(ii) there is adequate evidence that the matching agreement will be cost-effective; and

(iii) the matching program is in the public interest.

(C) The decision of the Director to approve a matching agreement shall not take effect until 30 days after it is reported to committees described in subparagraph (A).

(D) If the Data Integrity Board and the Director of the Office of Management and Budget disapprove a matching program proposed by the inspector general of an agency, the inspector general may report the disapproval to the head of the agency and to the Congress.

(6) The Director of the Office of Management and Budget shall, annually during the first 3 years after the date of enactment of this subsection and biennially thereafter, consolidate in a report to the Congress the information contained in the reports from the various Data Integrity Boards under paragraph (3)(D). Such report shall include detailed information about costs and benefits of matching programs that are conducted during the period covered by such consolidated report, and shall identify each waiver granted by a Data Integrity Board of the requirement for completion and submission of a cost-benefit analysis and the reasons for granting the waiver.

(7) In the reports required by paragraphs (3)(D) and (6), agency matching activities that are not matching programs may be reported on an aggregate basis, if and to the extent necessary to protect ongoing law enforcement or counterintelligence investigations.

(v) OFFICE OF MANAGEMENT AND BUDGET RESPONSIBILITIES.—The Director of the Office of Management and Budget shall—

(1) develop and, after notice and opportunity for public comment, prescribe guidelines and regulations for the use of agencies in implementing the provisions of this section; and

(2) provide continuing assistance to and oversight of the implementation of this section by agencies.

(Added Pub. L. 93–579, §3, Dec. 31, 1974, 88 Stat. 1897; amended Pub. L. 94–183, §2(2), Dec. 31, 1975, 89 Stat. 1057; Pub. L. 97–365, §2, Oct. 25, 1982, 96 Stat. 1749; Pub. L. 97–375, title II, §201(a), (b), Dec. 21, 1982, 96 Stat. 1821; Pub. L. 97–452, §2(a)(1), Jan. 12, 1983, 96 Stat. 2478; Pub. L. 98–477, §2(c), Oct. 15, 1984, 98 Stat. 2211; Pub. L. 98–497, title I, §107(g), Oct. 19, 1984, 98 Stat. 2292; Pub. L. 100–503, §§2–6(a), 7, 8, Oct. 18, 1988, 102 Stat. 2507–2514; Pub. L. 101–508, title VII, §7201(b)(1), Nov. 5, 1990, 104 Stat. 1388–334; Pub. L. 103–66, title XIII, §13581(c), Aug. 10, 1993, 107 Stat. 611.)

REFERENCES IN TEXT

Section 552(e) of this title, referred to in subsec. (a)(1), was redesignated section 552(f) of this title by section 1802(b) of Pub. L. 99–570.

Section 6103 of the Internal Revenue Code of 1986, referred to in subsec. (a)(8)(B)(iv), (vii), is classified to section 6103 of Title 26, Internal Revenue Code.

Sections 464, 1137, and 1144 of the Social Security Act, referred to in subsec. (a)(8)(B)(iv), (vii), are classified to sections 664, 1320b–7, and 1320b–14, respectively, of Title 42, The Public Health and Welfare.

For effective date of this section, referred to in subsecs. (k)(2), (5), (7), (*l*)(2), (3), and (m), see Effective Date note below.

Section 6 of the Privacy Act of 1974, referred to in subsec. (s)(1), is section 6 of Pub. L. 93–579, which was set out below and was repealed by section 6(c) of Pub. L. 100–503.

For classification of the Privacy Act of 1974, referred to in subsec. (s)(4), see Short Title note below.

The date of enactment of this subsection, referred to in subsec. (u)(6), is the date of enactment of Pub. L. 100–503 which enacted subsec. (u) of this section, and which was approved Oct. 18, 1988.

CODIFICATION

Section 552a of former Title 5, Executive Departments and Government Officers and Employees, was transferred to section 2244 of Title 7, Agriculture.

AMENDMENTS

1993—Subsec. (a)(8)(B)(vii). Pub. L. 103–66 added cl. (vii).

1990—Subsec. (p). Pub. L. 101–508 amended subsec. (p) generally, restating former pars. (1) and (3) as par. (1), adding provisions relating to Data Integrity Boards, and restating former pars. (2) and (4) as (2) and (3), respectively.

1988—Subsec. (a)(8) to (13). Pub. L. 100–503, §5, added pars. (8) to (13).

Subsec. (e)(12). Pub. L. 100–503, §3(a), added par. (12).

Subsec. (f). Pub. L. 100–503, §7, substituted ''biennially'' for ''annually'' in last sentence.

Subsecs. (*o*) to (q). Pub. L. 100–503, §2(2), added subsecs. (*o*) to (q). Former subsecs. (*o*) to (q) redesignated (r) to (t), respectively.

Subsec. (r). Pub. L. 100–503, §3(b), inserted ''and matching programs'' in heading and amended text generally. Prior to amendment, text read as follows: ''Each agency shall provide adequate advance notice to Congress and the Office of Management and Budget of any proposal to establish or alter any system of records in order to permit an evaluation of the probable or potential effect of such proposal on the privacy and other personal or property rights of individuals or the disclosure of information relating to such individuals, and its effect on the preservation of the constitutional principles of federalism and separation of powers.''

Pub. L. 100–503, §2(1), redesignated former subsec. (*o*) as (r).

Subsec. (s). Pub. L. 100–503, §8, substituted ''Biennial'' for ''Annual'' in heading, ''biennially submit'' for ''annually submit'' in introductory provisions, ''preceding 2 years'' for ''preceding year'' in par. (1), and ''such years'' for ''such year'' in par. (2).

Pub. L. 100–503, §2(1), redesignated former subsec. (p) as (s).

Subsec. (t). Pub. L. 100–503, §2(1), redesignated former subsec. (q) as (t).

Subsec. (u). Pub. L. 100–503, §4, added subsec. (u).

Subsec. (v). Pub. L. 100–503, §6(a), added subsec. (v).

1984—Subsec. (b)(6). Pub. L. 98–497, §107(g)(1), substituted ''National Archives and Records Administration'' for ''National Archives of the United States'', and ''Archivist of the United States or the designee of the Archivist'' for ''Administrator of General Services or his designee''.

Subsec. (*l*)(1). Pub. L. 98–497, §107(g)(2), substituted ''Archivist of the United States'' for ''Administrator of General Services'' in two places.

Subsec. (q). Pub. L. 98–477 designated existing provisions as par. (1) and added par. (2).

1983—Subsec. (b)(12). Pub. L. 97–452 substituted ''section 3711(f) of title 31'' for ''section 3(d) of the Federal Claims Collection Act of 1966 (31 U.S.C. 952(d))''.

Subsec. (m)(2). Pub. L. 97–452 substituted ''section 3711(f) of title 31'' for ''section 3(d) of the Federal Claims Collection Act of 1966 (31 U.S.C. 952(d))''.

1982—Subsec. (b)(12). Pub. L. 97–365, §2(a), added par. (12).

Subsec. (e)(4). Pub. L. 97–375, §201(a), substituted ''upon establishment or revision'' for ''at least annually'' after ''Federal Register''.

Subsec. (m). Pub. L. 97–365, § 2(b), designated existing provisions as par. (1) and added par. (2).

Subsec. (p). Pub. L. 97–375, § 201(b), substituted provisions requiring annual submission of a report by the President to the Speaker of the House and President pro tempore of the Senate relating to the Director of the Office of Management and Budget, individual rights of access, changes or additions to systems of records, and other necessary or useful information, for provisions which had directed the President to submit to the Speaker of the House and the President of the Senate, by June 30 of each calendar year, a consolidated report, separately listing for each Federal agency the number of records contained in any system of records which were exempted from the application of this section under the provisions of subsections (j) and (k) of this section during the preceding calendar year, and the reasons for the exemptions, and such other information as indicate efforts to administer fully this section.

1975—Subsec. (g)(5). Pub. L. 94–183 substituted ''to September 27, 1975'' for ''to the effective date of this section''.

CHANGE OF NAME

Committee on Government Operations of House of Representatives changed to Committee on Government Reform and Oversight of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 effective Jan. 1, 1994, see section 13581(d) of Pub. L. 103–66, set out as an Effective Date note under section 1320b–14 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 10 of Pub. L. 100–503, as amended by Pub. L. 101–56, § 2, July 19, 1989, 103 Stat. 149, provided that:

''(a) IN GENERAL.—Except as provided in subsections (b) and (c), the amendments made by this Act [amending this section and repealing provisions set out as a note below] shall take effect 9 months after the date of enactment of this Act [Oct. 18, 1988].

''(b) EXCEPTIONS.—The amendment made by sections 3(b), 6, 7, and 8 of this Act [amending this section and repealing provisions set out as a note below] shall take effect upon enactment.

''(c) EFFECTIVE DATE DELAYED FOR EXISTING PROGRAMS.—In the case of any matching program (as defined in section 552a(a)(8) of title 5, United States Code, as added by section 5 of this Act) in operation before June 1, 1989, the amendments made by this Act (other than the amendments described in subsection (b)) shall take effect January 1, 1990, if—

''(1) such matching program is identified by an agency as being in operation before June 1, 1989; and

''(2) such identification is—

''(A) submitted by the agency to the Committee on Governmental Affairs of the Senate, the Committee on Government Operations of the House of Representatives, and the Office of Management and Budget before August 1, 1989, in a report which contains a schedule showing the dates on which the agency expects to have such matching program in compliance with the amendments made by this Act, and

''(B) published by the Office of Management and Budget in the Federal Register, before September 15, 1989.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–497 effective Apr. 1, 1985, see section 301 of Pub. L. 98–497, set out as a note under section 2102 of Title 44, Public Printing and Documents.

EFFECTIVE DATE

Section 8 of Pub. L. 93–579 provided that: ''The provisions of this Act [enacting this section and provisions set out as notes under this section] shall be effective on and after the date of enactment [Dec. 31, 1974], except that the amendments made by sections 3 and 4 [enacting this section and amending analysis preceding section 500 of this title] shall become effective 270 days following the day on which this Act is enacted.''

SHORT TITLE OF 1990 AMENDMENT

Section 7201(a) of Pub. L. 101–508 provided that: ''This section [amending this section and enacting provisions set out as notes below] may be cited as the 'Computer Matching and Privacy Protection Amendments of 1990'.''

SHORT TITLE OF 1989 AMENDMENT

Pub. L. 101–56, § 1, July 19, 1989, 103 Stat. 149, provided that: ''This Act [amending section 10 of Pub. L. 100–503, set out as a note above] may be cited as the 'Computer Matching and Privacy Protection Act Amendments of 1989'.''

SHORT TITLE OF 1988 AMENDMENT

Section 1 of Pub. L. 100–503 provided that: ''This Act [amending this section, enacting provisions set out as notes above and below, and repealing provisions set out as a note below] may be cited as the 'Computer Matching and Privacy Protection Act of 1988'.''

SHORT TITLE

Section 1 of Pub. L. 93–579 provided: ''That this Act [enacting this section and provisions set out as notes under this section] may be cited as the 'Privacy Act of 1974'.''

DELEGATION OF FUNCTIONS

Functions of Director of Office of Management and Budget under this section delegated to Administrator for Office of Information and Regulatory Affairs by section 3 of Pub. L. 96–511, Dec. 11, 1980, 94 Stat. 2825, set out as a note under section 3503 of Title 44, Public Printing and Documents.

PUBLICATION OF GUIDANCE UNDER SUBSECTION (p)(1)(A)(ii)

Section 7201(b)(2) of Pub. L. 101–508 provided that: ''Not later than 90 days after the date of the enactment of this Act [Nov. 5, 1990], the Director of the Office of Management and Budget shall publish guidance under subsection (p)(1)(A)(ii) of section 552a of title 5, United States Code, as amended by this Act.''

LIMITATION ON APPLICATION OF VERIFICATION REQUIREMENT

Section 7201(c) of Pub. L. 101–508 provided that: ''Section 552a(p)(1)(A)(ii)(II) of title 5, United States Code, as amended by section 2 [probably means section 7201(b)(1) of Pub. L. 101–508], shall not apply to a program referred to in paragraph (1), (2), or (4) of section 1137(b) of the Social Security Act (42 U.S.C. 1320b–7), until the earlier of—

''(1) the date on which the Data Integrity Board of the Federal agency which administers that program determines that there is not a high degree of confidence that information provided by that agency under Federal matching programs is accurate; or

''(2) 30 days after the date of publication of guidance under section 2(b) [probably means section 7201(b)(2) of Pub. L. 101–508, set out as a note above].''

EFFECTIVE DATE DELAYED FOR CERTAIN EDUCATION BENEFITS COMPUTER MATCHING PROGRAMS

Pub. L. 101–366, title II, § 206(d), Aug. 15, 1990, 104 Stat. 442, provided that:

''(1) In the case of computer matching programs between the Department of Veterans Affairs and the Department of Defense in the administration of education benefits programs under chapters 30 and 32 of title 38 and chapter 106 of title 10, United States Code, the

amendments made to section 552a of title 5, United States Code, by the Computer Matching and Privacy Protection Act of 1988 [Pub. L. 100–503] (other than the amendments made by section 10(b) of that Act) [see Effective Date of 1988 Amendment note above] shall take effect on October 1, 1990.

''(2) For purposes of this subsection, the term 'matching program' has the same meaning provided in section 552a(a)(8) of title 5, United States Code.''

IMPLEMENTATION GUIDANCE FOR 1988 AMENDMENTS

Section 6(b) of Pub. L. 100–503 provided that: ''The Director shall, pursuant to section 552a(v) of title 5, United States Code, develop guidelines and regulations for the use of agencies in implementing the amendments made by this Act [amending this section and repealing provisions set out as a note below] not later than 8 months after the date of enactment of this Act [Oct. 18, 1988].''

CONSTRUCTION OF 1988 AMENDMENTS

Section 9 of Pub. L. 100–503 provided that: ''Nothing in the amendments made by this Act [amending this section and repealing provisions set out as a note below] shall be construed to authorize—

''(1) the establishment or maintenance by any agency of a national data bank that combines, merges, or links information on individuals maintained in systems of records by other Federal agencies;

''(2) the direct linking of computerized systems of records maintained by Federal agencies;

''(3) the computer matching of records not otherwise authorized by law; or

''(4) the disclosure of records for computer matching except to a Federal, State, or local agency.''

CONGRESSIONAL FINDINGS AND STATEMENT OF PURPOSE

Section 2 of Pub. L. 93–579 provided that:

''(a) The Congress finds that—

''(1) the privacy of an individual is directly affected by the collection, maintenance, use, and dissemination of personal information by Federal agencies;

''(2) the increasing use of computers and sophisticated information technology, while essential to the efficient operations of the Government, has greatly magnified the harm to individual privacy that can occur from any collection, maintenance, use, or dissemination of personal information;

''(3) the opportunities for an individual to secure employment, insurance, and credit, and his right to due process, and other legal protections are endangered by the misuse of certain information systems;

''(4) the right to privacy is a personal and fundamental right protected by the Constitution of the United States; and

''(5) in order to protect the privacy of individuals identified in information systems maintained by Federal agencies, it is necessary and proper for the Congress to regulate the collection, maintenance, use, and dissemination of information by such agencies.

''(b) The purpose of this Act [enacting this section and provisions set out as notes under this section] is to provide certain safeguards for an individual against an invasion of personal privacy by requiring Federal agencies, except as otherwise provided by law, to—

''(1) permit an individual to determine what records pertaining to him are collected, maintained, used, or disseminated by such agencies;

''(2) permit an individual to prevent records pertaining to him obtained by such agencies for a particular purpose from being used or made available for another purpose without his consent;

''(3) permit an individual to gain access to information pertaining to him in Federal agency records, to have a copy made of all or any portion thereof, and to correct or amend such records;

''(4) collect, maintain, use, or disseminate any record of identifiable personal information in a manner that assures that such action is for a necessary and lawful purpose, that the information is current and accurate for its intended use, and that adequate safeguards are provided to prevent misuse of such information;

''(5) permit exemptions from the requirements with respect to records provided in this Act only in those cases where there is an important public policy need for such exemption as has been determined by specific statutory authority; and

''(6) be subject to civil suit for any damages which occur as a result of willful or intentional action which violates any individual's rights under this Act.''

PRIVACY PROTECTION STUDY COMMISSION

Section 5 of Pub. L. 93–579, as amended by Pub. L. 95–38, June 1, 1977, 91 Stat. 179, which established the Privacy Protection Study Commission and provided that the Commission study data banks, automated data processing programs and information systems of governmental, regional and private organizations to determine standards and procedures in force for protection of personal information, that the Commission report to the President and Congress the extent to which requirements and principles of section 552a of title 5 should be applied to the information practices of those organizations, and that it make other legislative recommendations to protect the privacy of individuals while meeting the legitimate informational needs of government and society, ceased to exist on September 30, 1977, pursuant to section 5(g) of Pub. L. 93–579.

GUIDELINES AND REGULATIONS FOR MAINTENANCE OF PRIVACY AND PROTECTION OF RECORDS OF INDIVIDUALS

Section 6 of Pub. L. 93–579, which provided that the Office of Management and Budget shall develop guidelines and regulations for use of agencies in implementing provisions of this section and provide continuing assistance to and oversight of the implementation of the provisions of such section by agencies, was repealed by Pub. L. 100–503, § 6(c), Oct. 18, 1988, 102 Stat. 2513.

DISCLOSURE OF SOCIAL SECURITY NUMBER

Section 7 of Pub. L. 93–579 provided that:

''(a)(1) It shall be unlawful for any Federal, State or local government agency to deny to any individual any right, benefit, or privilege provided by law because of such individual's refusal to disclose his social security account number.

''(2) the [The] provisions of paragraph (1) of this subsection shall not apply with respect to—

''(A) any disclosure which is required by Federal statute, or

''(B) the disclosure of a social security number to any Federal, State, or local agency maintaining a system of records in existence and operating before January 1, 1975, if such disclosure was required under statute or regulation adopted prior to such date to verify the identity of an individual.

''(b) Any Federal, State, or local government agency which requests an individual to disclose his social security account number shall inform that individual whether that disclosure is mandatory or voluntary, by what statutory or other authority such number is solicited, and what uses will be made of it.''

AUTHORIZATION OF APPROPRIATIONS TO PRIVACY PROTECTION STUDY COMMISSION

Section 9 of Pub. L. 93–579, as amended by Pub. L. 94–394, Sept. 3, 1976, 90 Stat. 1198, authorized appropriations for the period beginning July 1, 1975, and ending on September 30, 1977.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 552b, 1212, 3111, 7133, 8148 of this title; title 7 section 2204b; title 10 sections 424, 1102, 1588; title 12 section 1715z; title 14 section 645; title 15 section 278g–3; title 16 sections 410cc–35, 1536; title 19 section 1631; title 20 sections

1080a, 1221e–1, 9010; title 22 section 4355; title 25 section 3205; title 26 sections 6103, 7852; title 31 sections 3701, 3711, 3718, 3729, 3733; title 38 sections 3684A, 5701; title 39 section 410; title 42 sections 300aa–25, 402, 405, 904, 1306, 3544, 9660; title 44 sections 2906, 3501, 3504; title 46 sections 7702, 9303; title 49 sections 111, 30305; title 50 App. section 2159.

§ 552b. Open meetings

(a) For purposes of this section—

(1) the term ''agency'' means any agency, as defined in section 552(e)[1] of this title, headed by a collegial body composed of two or more individual members, a majority of whom are appointed to such position by the President with the advice and consent of the Senate, and any subdivision thereof authorized to act on behalf of the agency;

(2) the term ''meeting'' means the deliberations of at least the number of individual agency members required to take action on behalf of the agency where such deliberations determine or result in the joint conduct or disposition of official agency business, but does not include deliberations required or permitted by subsection (d) or (e); and

(3) the term ''member'' means an individual who belongs to a collegial body heading an agency.

(b) Members shall not jointly conduct or dispose of agency business other than in accordance with this section. Except as provided in subsection (c), every portion of every meeting of an agency shall be open to public observation.

(c) Except in a case where the agency finds that the public interest requires otherwise, the second sentence of subsection (b) shall not apply to any portion of an agency meeting, and the requirements of subsections (d) and (e) shall not apply to any information pertaining to such meeting otherwise required by this section to be disclosed to the public, where the agency properly determines that such portion or portions of its meeting or the disclosure of such information is likely to—

(1) disclose matters that are (A) specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign policy and (B) in fact properly classified pursuant to such Executive order;

(2) relate solely to the internal personnel rules and practices of an agency;

(3) disclose matters specifically exempted from disclosure by statute (other than section 552 of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) involve accusing any person of a crime, or formally censuring any person;

(6) disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(7) disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would (A) interfere with enforcement proceedings, (B) deprive a person of a right to a fair trial or an impartial adjudication, (C) constitute an unwarranted invasion of personal privacy, (D) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (E) disclose investigative techniques and procedures, or (F) endanger the life or physical safety of law enforcement personnel;

(8) disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

(9) disclose information the premature disclosure of which would—

(A) in the case of an agency which regulates currencies, securities, commodities, or financial institutions, be likely to (i) lead to significant financial speculation in currencies, securities, or commodities, or (ii) significantly endanger the stability of any financial institution; or

(B) in the case of any agency, be likely to significantly frustrate implementation of a proposed agency action,

except that subparagraph (B) shall not apply in any instance where the agency has already disclosed to the public the content or nature of its proposed action, or where the agency is required by law to make such disclosure on its own initiative prior to taking final agency action on such proposal; or

(10) specifically concern the agency's issuance of a subpena, or the agency's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the agency of a particular case of formal agency adjudication pursuant to the procedures in section 554 of this title or otherwise involving a determination on the record after opportunity for a hearing.

(d)(1) Action under subsection (c) shall be taken only when a majority of the entire membership of the agency (as defined in subsection (a)(1)) votes to take such action. A separate vote of the agency members shall be taken with respect to each agency meeting a portion or portions of which are proposed to be closed to the public pursuant to subsection (c), or with respect to any information which is proposed to be withheld under subsection (c). A single vote may be taken with respect to a series of meetings, a portion or portions of which are proposed to be closed to the public, or with respect to any information concerning such series of meetings, so long as each meeting in such series involves the same particular matters and is scheduled to be held no more than thirty days after the initial

[1] See References in Text note below.

meeting in such series. The vote of each agency member participating in such vote shall be recorded and no proxies shall be allowed.

(2) Whenever any person whose interests may be directly affected by a portion of a meeting requests that the agency close such portion to the public for any of the reasons referred to in paragraph (5), (6), or (7) of subsection (c), the agency, upon request of any one of its members, shall vote by recorded vote whether to close such meeting.

(3) Within one day of any vote taken pursuant to paragraph (1) or (2), the agency shall make publicly available a written copy of such vote reflecting the vote of each member on the question. If a portion of a meeting is to be closed to the public, the agency shall, within one day of the vote taken pursuant to paragraph (1) or (2) of this subsection, make publicly available a full written explanation of its action closing the portion together with a list of all persons expected to attend the meeting and their affiliation.

(4) Any agency, a majority of whose meetings may properly be closed to the public pursuant to paragraph (4), (8), (9)(A), or (10) of subsection (c), or any combination thereof, may provide by regulation for the closing of such meetings or portions thereof in the event that a majority of the members of the agency votes by recorded vote at the beginning of such meeting, or portion thereof, to close the exempt portion or portions of the meeting, and a copy of such vote, reflecting the vote of each member on the question, is made available to the public. The provisions of paragraphs (1), (2), and (3) of this subsection and subsection (e) shall not apply to any portion of a meeting to which such regulations apply: *Provided*, That the agency shall, except to the extent that such information is exempt from disclosure under the provisions of subsection (c), provide the public with public announcement of the time, place, and subject matter of the meeting and of each portion thereof at the earliest practicable time.

(e)(1) In the case of each meeting, the agency shall make public announcement, at least one week before the meeting, of the time, place, and subject matter of the meeting, whether it is to be open or closed to the public, and the name and phone number of the official designated by the agency to respond to requests for information about the meeting. Such announcement shall be made unless a majority of the members of the agency determines by a recorded vote that agency business requires that such meeting be called at an earlier date, in which case the agency shall make public announcement of the time, place, and subject matter of such meeting, and whether open or closed to the public, at the earliest practicable time.

(2) The time or place of a meeting may be changed following the public announcement required by paragraph (1) only if the agency publicly announces such change at the earliest practicable time. The subject matter of a meeting, or the determination of the agency to open or close a meeting, or portion of a meeting, to the public, may be changed following the public announcement required by this subsection only if (A) a majority of the entire membership of the agency determines by a recorded vote that agency business so requires and that no earlier announcement of the change was possible, and (B) the agency publicly announces such change and the vote of each member upon such change at the earliest practicable time.

(3) Immediately following each public announcement required by this subsection, notice of the time, place, and subject matter of a meeting, whether the meeting is open or closed, any change in one of the preceding, and the name and phone number of the official designated by the agency to respond to requests for information about the meeting, shall also be submitted for publication in the Federal Register.

(f)(1) For every meeting closed pursuant to paragraphs (1) through (10) of subsection (c), the General Counsel or chief legal officer of the agency shall publicly certify that, in his or her opinion, the meeting may be closed to the public and shall state each relevant exemptive provision. A copy of such certification, together with a statement from the presiding officer of the meeting setting forth the time and place of the meeting, and the persons present, shall be retained by the agency. The agency shall maintain a complete transcript or electronic recording adequate to record fully the proceedings of each meeting, or portion of a meeting, closed to the public, except that in the case of a meeting, or portion of a meeting, closed to the public pursuant to paragraph (8), (9)(A), or (10) of subsection (c), the agency shall maintain either such a transcript or recording, or a set of minutes. Such minutes shall fully and clearly describe all matters discussed and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any rollcall vote (reflecting the vote of each member on the question). All documents considered in connection with any action shall be identified in such minutes.

(2) The agency shall make promptly available to the public, in a place easily accessible to the public, the transcript, electronic recording, or minutes (as required by paragraph (1)) of the discussion of any item on the agenda, or of any item of the testimony of any witness received at the meeting, except for such item or items of such discussion or testimony as the agency determines to contain information which may be withheld under subsection (c). Copies of such transcript, or minutes, or a transcription of such recording disclosing the identity of each speaker, shall be furnished to any person at the actual cost of duplication or transcription. The agency shall maintain a complete verbatim copy of the transcript, a complete copy of the minutes, or a complete electronic recording of each meeting, or portion of a meeting, closed to the public, for a period of at least two years after such meeting, or until one year after the conclusion of any agency proceeding with respect to which the meeting or portion was held, whichever occurs later.

(g) Each agency subject to the requirements of this section shall, within 180 days after the date of enactment of this section, following consultation with the Office of the Chairman of the Administrative Conference of the United States

and published notice in the Federal Register of at least thirty days and opportunity for written comment by any person, promulgate regulations to implement the requirements of subsections (b) through (f) of this section. Any person may bring a proceeding in the United States District Court for the District of Columbia to require an agency to promulgate such regulations if such agency has not promulgated such regulations within the time period specified herein. Subject to any limitations of time provided by law, any person may bring a proceeding in the United States Court of Appeals for the District of Columbia to set aside agency regulations issued pursuant to this subsection that are not in accord with the requirements of subsections (b) through (f) of this section and to require the promulgation of regulations that are in accord with such subsections.

(h)(1) The district courts of the United States shall have jurisdiction to enforce the requirements of subsections (b) through (f) of this section by declaratory judgment, injunctive relief, or other relief as may be appropriate. Such actions may be brought by any person against an agency prior to, or within sixty days after, the meeting out of which the violation of this section arises, except that if public announcement of such meeting is not initially provided by the agency in accordance with the requirements of this section, such action may be instituted pursuant to this section at any time prior to sixty days after any public announcement of such meeting. Such actions may be brought in the district court of the United States for the district in which the agency meeting is held or in which the agency in question has its headquarters, or in the District Court for the District of Columbia. In such actions a defendant shall serve his answer within thirty days after the service of the complaint. The burden is on the defendant to sustain his action. In deciding such cases the court may examine in camera any portion of the transcript, electronic recording, or minutes of a meeting closed to the public, and may take such additional evidence as it deems necessary. The court, having due regard for orderly administration and the public interest, as well as the interests of the parties, may grant such equitable relief as it deems appropriate, including granting an injunction against future violations of this section or ordering the agency to make available to the public such portion of the transcript, recording, or minutes of a meeting as is not authorized to be withheld under subsection (c) of this section.

(2) Any Federal court otherwise authorized by law to review agency action may, at the application of any person properly participating in the proceeding pursuant to other applicable law, inquire into violations by the agency of the requirements of this section and afford such relief as it deems appropriate. Nothing in this section authorizes any Federal court having jurisdiction solely on the basis of paragraph (1) to set aside, enjoin, or invalidate any agency action (other than an action to close a meeting or to withhold information under this section) taken or discussed at any agency meeting out of which the violation of this section arose.

(i) The court may assess against any party reasonable attorney fees and other litigation costs reasonably incurred by any other party who substantially prevails in any action brought in accordance with the provisions of subsection (g) or (h) of this section, except that costs may be assessed against the plaintiff only where the court finds that the suit was initiated by the plaintiff primarily for frivolous or dilatory purposes. In the case of assessment of costs against an agency, the costs may be assessed by the court against the United States.

(j) Each agency subject to the requirements of this section shall annually report to Congress regarding its compliance with such requirements, including a tabulation of the total number of agency meetings open to the public, the total number of meetings closed to the public, the reasons for closing such meetings, and a description of any litigation brought against the agency under this section, including any costs assessed against the agency in such litigation (whether or not paid by the agency).

(k) Nothing herein expands or limits the present rights of any person under section 552 of this title, except that the exemptions set forth in subsection (c) of this section shall govern in the case of any request made pursuant to section 552 to copy or inspect the transcripts, recordings, or minutes described in subsection (f) of this section. The requirements of chapter 33 of title 44, United States Code, shall not apply to the transcripts, recordings, and minutes described in subsection (f) of this section.

(*l*) This section does not constitute authority to withhold any information from Congress, and does not authorize the closing of any agency meeting or portion thereof required by any other provision of law to be open.

(m) Nothing in this section authorizes any agency to withhold from any individual any record, including transcripts, recordings, or minutes required by this section, which is otherwise accessible to such individual under section 552a of this title.

(Added Pub. L. 94–409, §3(a), Sept. 13, 1976, 90 Stat. 1241.)

REFERENCES IN TEXT

Section 552(e) of this title, referred to in subsec. (a)(1), was redesignated section 552(f) of this title by section 1802(b) of Pub. L. 99–570.

180 days after the date of enactment of this section, referred to in subsec. (g), means 180 days after the date of enactment of Pub. L. 94–409, which was approved Sept. 13, 1976.

EFFECTIVE DATE

Section 6 of Pub. L. 94–409 provided that:

''(a) Except as provided in subsection (b) of this section, the provisions of this Act [see Short Title note set out below] shall take effect 180 days after the date of its enactment [Sept. 13, 1976].

''(b) Subsection (g) of section 552b of title 5, United States Code, as added by section 3(a) of this Act, shall take effect upon enactment [Sept. 13, 1976].''

SHORT TITLE

Section 1 of Pub. L. 94–409 provided: ''That this Act [enacting this section, amending sections 551, 552, 556, and 557 of this title, section 10 of Pub. L. 92–463, set out in the Appendix to this title, and section 410 of Title 39, and enacting provisions set out as notes under this section] may be cited as the 'Government in the Sunshine Act'.''

DECLARATION OF POLICY AND STATEMENT OF PURPOSE

Section 2 of Pub. L. 94–409 provided that: ''It is hereby declared to be the policy of the United States that the public is entitled to the fullest practicable information regarding the decisionmaking processes of the Federal Government. It is the purpose of this Act [see Short Title note set out above] to provide the public with such information while protecting the rights of individuals and the ability of the Government to carry out its responsibilities.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 552 of this title; title 7 section 945; title 12 section 3502; title 19 section 2347; title 20 section 6021; title 22 section 4605, 4833; title 39 section 410; title 42 sections 2996c, 7171, 7234, 8103, 10703, 14195; title 44 section 2204; title 45 sections 1116, 1212; title 46 sections 7702, 9303; title 50 App. sections 2158, 2159.

§ 553. Rule making

(a) This section applies, according to the provisions thereof, except to the extent that there is involved—

(1) a military or foreign affairs function of the United States; or

(2) a matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts.

(b) General notice of proposed rule making shall be published in the Federal Register, unless persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law. The notice shall include—

(1) a statement of the time, place, and nature of public rule making proceedings;

(2) reference to the legal authority under which the rule is proposed; and

(3) either the terms or substance of the proposed rule or a description of the subjects and issues involved.

Except when notice or hearing is required by statute, this subsection does not apply—

(A) to interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice; or

(B) when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.

(c) After notice required by this section, the agency shall give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments with or without opportunity for oral presentation. After consideration of the relevant matter presented, the agency shall incorporate in the rules adopted a concise general statement of their basis and purpose. When rules are required by statute to be made on the record after opportunity for an agency hearing, sections 556 and 557 of this title apply instead of this subsection.

(d) The required publication or service of a substantive rule shall be made not less than 30 days before its effective date, except—

(1) a substantive rule which grants or recognizes an exemption or relieves a restriction;

(2) interpretative rules and statements of policy; or

(3) as otherwise provided by the agency for good cause found and published with the rule.

(e) Each agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 383.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 1003.	June 11, 1946, ch. 324, §4, 60 Stat. 238.

In subsection (a)(1), the words ''or naval'' are omitted as included in ''military''.

In subsection (b), the word ''when'' is substituted for ''in any situation in which''.

In subsection (c), the words ''for oral presentation'' are substituted for ''to present the same orally in any manner''. The words ''sections 556 and 557 of this title apply instead of this subsection'' are substituted for ''the requirements of sections 1006 and 1007 of this title shall apply in place of the provisions of this subsection''.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

CODIFICATION

Section 553 of former Title 5, Executive Departments and Government Officers and Employees, was transferred to section 2245 of Title 7, Agriculture.

EXECUTIVE ORDER NO. 12044

Ex. Ord. No. 12044, Mar. 23, 1978, 43 F.R. 12661, as amended by Ex. Ord. No. 12221, June 27, 1980, 45 F.R. 44249, which related to the improvement of Federal regulations, was revoked by Ex. Ord. No. 12291, Feb. 17, 1981, 46 F.R. 13193, formerly set out as a note under section 601 of this title.

CROSS REFERENCES

Federal Register Act, see section 1502 et seq. of Title 44, Public Printing and Documents.

Wildlife management areas, hunting game birds, see section 718d of Title 16, Conservation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 552a, 556, 561, 566, 601, 603, 604, 1103, 1105, 5304 of this title; title 2 sections 501, 502; title 7 sections 6j, 12e, 927, 944a, 950aaa–3, 1932, 2013, 2014, 2707, 4906, 6802, 6804; title 8 section 1288; title 9 section 306; title 12 sections 635, 1441a, 1735f–17, 1828, 3336, 4004, 4008, 4112, 4308, 4526, 4589, 4611; title 15 sections 18a, 45a, 57a, 78*l*, 78s, 78ggg, 789, 1193, 1203, 1262, 1277, 1474, 1476, 1604, 1693b, 2058, 2079, 2082, 2309, 2603, 2604, 2605, 2618, 2643, 2703, 2823, 3412, 3710c, 3803, 4017, 4404, 5624, 5711, 5721, 5724, 6004, 6102; title 16 sections 620a, 839b, 971d, 1379, 1381, 1383b, 1463, 1533, 1535, 1604, 1821, 1822, 3341, 3604, 3636; title 19 section 2561; title 20 sections 1221e–4, 1232, 2711, 6104; title 21 sections 358, 463; title 25 sections 450c, 450k; title 28 section 994; title 30 sections 811, 936, 1211, 1468, 1751; title 33 sections 1231, 1322, 1504; title 38 sections 501, 502; title 40 section 333; title 41 sections 43a, 47, 422; title 42 sections 289d, 290aa–10, 300g–1, 300h, 421, 902, 1395ff, 1395hh, 1437c, 1437d, 1437*l*, 1437u, 1437ee, 1796c, 1997e, 2210a, 2992b–1, 4029, 4905, 5403, 5506, 5918, 5919, 6239, 6306, 6392, 7191, 7407, 7502, 7511a, 7607, 8275, 8411, 9112, 9127, 9204, 9605, 10155, 10193, 11023, 11376, 11387, 12725, 12879, 12898, 12898a, 13603, 13643; title 43 section 1740; title 44 section 2206; title 46 sections 7702, 9303; title 46 App. sections 1241f, 1716; title 49 sections 5103, 10326, 10328, 10362, 11350, 20103, 24102, 24308, 31136, 31317, 32502, 32902, 40103; title 50 App. sections 2158, 2159, 2412.

§ 554. Adjudications

(a) This section applies, according to the provisions thereof, in every case of adjudication re-

quired by statute to be determined on the record after opportunity for an agency hearing, except to the extent that there is involved—

(1) a matter subject to a subsequent trial of the law and the facts de novo in a court;

(2) the selection or tenure of an employee, except a[1] administrative law judge appointed under section 3105 of this title;

(3) proceedings in which decisions rest solely on inspections, tests, or elections;

(4) the conduct of military or foreign affairs functions;

(5) cases in which an agency is acting as an agent for a court; or

(6) the certification of worker representatives.

(b) Persons entitled to notice of an agency hearing shall be timely informed of—

(1) the time, place, and nature of the hearing;

(2) the legal authority and jurisdiction under which the hearing is to be held; and

(3) the matters of fact and law asserted.

When private persons are the moving parties, other parties to the proceeding shall give prompt notice of issues controverted in fact or law; and in other instances agencies may by rule require responsive pleading. In fixing the time and place for hearings, due regard shall be had for the convenience and necessity of the parties or their representatives.

(c) The agency shall give all interested parties opportunity for—

(1) the submission and consideration of facts, arguments, offers of settlement, or proposals of adjustment when time, the nature of the proceeding, and the public interest permit; and

(2) to the extent that the parties are unable so to determine a controversy by consent, hearing and decision on notice and in accordance with sections 556 and 557 of this title.

(d) The employee who presides at the reception of evidence pursuant to section 556 of this title shall make the recommended decision or initial decision required by section 557 of this title, unless he becomes unavailable to the agency. Except to the extent required for the disposition of ex parte matters as authorized by law, such an employee may not—

(1) consult a person or party on a fact in issue, unless on notice and opportunity for all parties to participate; or

(2) be responsible to or subject to the supervision or direction of an employee or agent engaged in the performance of investigative or prosecuting functions for an agency.

An employee or agent engaged in the performance of investigative or prosecuting functions for an agency in a case may not, in that or a factually related case, participate or advise in the decision, recommended decision, or agency review pursuant to section 557 of this title, except as witness or counsel in public proceedings. This subsection does not apply—

(A) in determining applications for initial licenses;

(B) to proceedings involving the validity or application of rates, facilities, or practices of public utilities or carriers; or

(C) to the agency or a member or members of the body comprising the agency.

(e) The agency, with like effect as in the case of other orders, and in its sound discretion, may issue a declaratory order to terminate a controversy or remove uncertainty.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 384; Pub. L. 95–251, § 2(a)(1), Mar. 27, 1978, 92 Stat. 183.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 1004.	June 11, 1946, ch. 324, §5, 60 Stat. 239.

In subsection (a)(2), the word ''employee'' is substituted for ''officer or employee of the United States'' in view of the definition of ''employee'' in section 2105.

In subsection (a)(4), the word ''naval'' is omitted as included in ''military''.

In subsection (a)(5), the word ''or'' is substituted for ''and'' since the exception is applicable if any one of the factors are involved.

In subsection (a)(6), the word ''worker'' is substituted for ''employee'', since the latter is defined in section 2105 as meaning Federal employees.

In subsection (b), the word ''When'' is substituted for ''In instances in which''.

In subsection (c)(2), the comma after the word ''hearing'' is omitted to correct an editorial error.

In subsection (d), the words ''The employee'' and ''such an employee'' are substituted in the first two sentences for ''The same officers'' and ''such officers'' in view of the definition of ''employee'' in section 2105. The word ''officer'' is omitted in the third and fourth sentences as included in ''employee'' as defined in section 2105. The prohibition in the third and fourth sentences is restated in positive form. In paragraph (C) of the last sentence, the words ''in any manner'' are omitted as surplusage.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

CODIFICATION

Section 554 of former Title 5, Executive Departments and Government Officers and Employees, was transferred to section 2246 of Title 7, Agriculture.

AMENDMENTS

1978—Subsec. (a)(2). Pub. L. 95–251 substituted ''administrative law judge'' for ''hearing examiner''.

CROSS REFERENCES

Licenses for manufacture of narcotic drugs, actions of Attorney General when issuing or denying to conform to this section, see section 824 et seq. of Title 21, Food and Drugs.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 504, 552b, 556, 557, 8124 of this title; title 2 sections 501, 502, 1207, 1219, 1220; title 7 sections 86, 87e, 87f–1, 1359ii, 3804, 3805; title 8 sections 1324a, 1324c; title 12 sections 1817, 1818, 2268, 3413; title 15 sections 78d–1, 1274, 2064, 2066, 2605, 2615, 3412; title 16 sections 429b–1, 470ff, 773f, 796, 823b, 839f, 973f, 1174, 1437, 1536, 1540, 1856, 1858, 2407, 2437, 2602, 3142, 3373, 3636, 5010; title 18 section 3625; title 20 sections 1234, 6083; title 21 sections 321, 333, 342, 360e, 844a, 1041; title 29 sections 214, 216, 659, 1813, 1853; title 30 sections 185, 804, 811, 815, 817, 818, 821, 938, 1264, 1268, 1275, 1293, 1426, 1462; title 33 sections 919, 1319, 1321, 1367, 1504; title 38 sections 7101, 7101A; title 41 section 422; title 42 sec-

[1] So in original.

tions 262, 300g–3, 300h–2, 2000e–17, 2282a, 3783, 3789d, 4910, 6303, 6971, 7407, 7413, 7419, 7502, 7511a, 7524, 7607, 7920, 8433, 9112, 9152, 9609, 9610; title 43 sections 1656, 1766; title 45 section 905; title 46 sections 7702, 9303; title 47 sections 409, 503; title 49 sections 521, 20104; title 50 App. sections 16, 2159, 2410, 2412.

§ 555. Ancillary matters

(a) This section applies, according to the provisions thereof, except as otherwise provided by this subchapter.

(b) A person compelled to appear in person before an agency or representative thereof is entitled to be accompanied, represented, and advised by counsel or, if permitted by the agency, by other qualified representative. A party is entitled to appear in person or by or with counsel or other duly qualified representative in an agency proceeding. So far as the orderly conduct of public business permits, an interested person may appear before an agency or its responsible employees for the presentation, adjustment, or determination of an issue, request, or controversy in a proceeding, whether interlocutory, summary, or otherwise, or in connection with an agency function. With due regard for the convenience and necessity of the parties or their representatives and within a reasonable time, each agency shall proceed to conclude a matter presented to it. This subsection does not grant or deny a person who is not a lawyer the right to appear for or represent others before an agency or in an agency proceeding.

(c) Process, requirement of a report, inspection, or other investigative act or demand may not be issued, made, or enforced except as authorized by law. A person compelled to submit data or evidence is entitled to retain or, on payment of lawfully prescribed costs, procure a copy or transcript thereof, except that in a nonpublic investigatory proceeding the witness may for good cause be limited to inspection of the official transcript of his testimony.

(d) Agency subpenas authorized by law shall be issued to a party on request and, when required by rules of procedure, on a statement or showing of general relevance and reasonable scope of the evidence sought. On contest, the court shall sustain the subpena or similar process or demand to the extent that it is found to be in accordance with law. In a proceeding for enforcement, the court shall issue an order requiring the appearance of the witness or the production of the evidence or data within a reasonable time under penalty of punishment for contempt in case of contumacious failure to comply.

(e) Prompt notice shall be given of the denial in whole or in part of a written application, petition, or other request of an interested person made in connection with any agency proceeding. Except in affirming a prior denial or when the denial is self-explanatory, the notice shall be accompanied by a brief statement of the grounds for denial.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 385.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 1005.	June 11, 1946, ch. 324, §6, 60 Stat. 240.

In subsection (b), the words ''is entitled'' are substituted for ''shall be accorded the right''. The word ''officers'' is omitted as included in ''employees'' in view of the definition of ''employee'' in section 2105. The words ''With due regard for the convenience and necessity of the parties or their representatives and within a reasonable time'' are substituted for ''with reasonable dispatch'' and ''except that due regard shall be had for the convenience and necessity of the parties or their representatives''. The prohibition in the last sentence is restated in positive form and the words ''This subsection does not'' are substituted for ''Nothing herein shall be construed either to''.

In subsection (c), the words ''in any manner or for any purpose'' are omitted as surplusage.

In subsection (e), the word ''brief'' is substituted for ''simple''. The words ''of the grounds for denial'' are substituted for ''of procedural or other grounds'' for clarity.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

CODIFICATION

Section 555 of former Title 5, Executive Departments and Government Officers and Employees, was transferred to section 2247 of Title 7, Agriculture.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 2 sections 501, 502, 1207, 1219, 1220; title 16 sections 1536, 3636; title 18 section 3625; title 41 section 422; title 42 sections 7407, 7502, 7511a, 7607; title 46 sections 7702, 9303; title 50 App. sections 16, 2159, 2410, 2412.

§ 556. Hearings; presiding employees; powers and duties; burden of proof; evidence; record as basis of decision

(a) This section applies, according to the provisions thereof, to hearings required by section 553 or 554 of this title to be conducted in accordance with this section.

(b) There shall preside at the taking of evidence—

(1) the agency;

(2) one or more members of the body which comprises the agency; or

(3) one or more administrative law judges appointed under section 3105 of this title.

This subchapter does not supersede the conduct of specified classes of proceedings, in whole or in part, by or before boards or other employees specially provided for by or designated under statute. The functions of presiding employees and of employees participating in decisions in accordance with section 557 of this title shall be conducted in an impartial manner. A presiding or participating employee may at any time disqualify himself. On the filing in good faith of a timely and sufficient affidavit of personal bias or other disqualification of a presiding or participating employee, the agency shall determine the matter as a part of the record and decision in the case.

(c) Subject to published rules of the agency and within its powers, employees presiding at hearings may—

(1) administer oaths and affirmations;

(2) issue subpenas authorized by law;

(3) rule on offers of proof and receive relevant evidence;

(4) take depositions or have depositions taken when the ends of justice would be served;

(5) regulate the course of the hearing;

(6) hold conferences for the settlement or simplification of the issues by consent of the parties or by the use of alternative means of dispute resolution as provided in subchapter IV of this chapter;

(7) inform the parties as to the availability of one or more alternative means of dispute resolution, and encourage use of such methods;

(8) require the attendance at any conference held pursuant to paragraph (6) of at least one representative of each party who has authority to negotiate concerning resolution of issues in controversy;

(9) dispose of procedural requests or similar matters;

(10) make or recommend decisions in accordance with section 557 of this title; and

(11) take other action authorized by agency rule consistent with this subchapter.

(d) Except as otherwise provided by statute, the proponent of a rule or order has the burden of proof. Any oral or documentary evidence may be received, but the agency as a matter of policy shall provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence. A sanction may not be imposed or rule or order issued except on consideration of the whole record or those parts thereof cited by a party and supported by and in accordance with the reliable, probative, and substantial evidence. The agency may, to the extent consistent with the interests of justice and the policy of the underlying statutes administered by the agency, consider a violation of section 557(d) of this title sufficient grounds for a decision adverse to a party who has knowingly committed such violation or knowingly caused such violation to occur. A party is entitled to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. In rule making or determining claims for money or benefits or applications for initial licenses an agency may, when a party will not be prejudiced thereby, adopt procedures for the submission of all or part of the evidence in written form.

(e) The transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, constitutes the exclusive record for decision in accordance with section 557 of this title and, on payment of lawfully prescribed costs, shall be made available to the parties. When an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 386; Pub. L. 94–409, §4(c), Sept. 13, 1976, 90 Stat. 1247; Pub. L. 95–251, §2(a)(1), Mar. 27, 1978, 92 Stat. 183; Pub. L. 101–552, §4(a), Nov. 15, 1990, 104 Stat. 2737.)

AMENDMENT OF SECTION

For termination of amendment by section 11 of Pub. L. 101–552, see Termination Date of 1990 Amendment; Savings Provision note below.

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 1006.	June 11, 1946, ch. 324, §7, 60 Stat. 241.

In subsection (b), the words ''hearing examiners'' are substituted for ''examiners'' in paragraph (3) for clarity. The prohibition in the second sentence is restated in positive form and the words ''This subchapter does not'' are substituted for ''but nothing in this chapter shall be deemed to''. The words ''employee'' and ''employees'' are substituted for ''officer'' and ''officers'' in view of the definition of ''employee'' in section 2105. The sentence ''A presiding or participating employee may at any time disqualify himself.'' is substituted for the words ''Any such officer may at any time withdraw if he deems himself disqualified.''

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1990—Subsec. (c)(6). Pub. L. 101–552, §§4(a)(1), 11, temporarily inserted before semicolon at end ''or by the use of alternative means of dispute resolution as provided in subchapter IV of this chapter''. See Termination Date of 1990 Amendment; Savings Provision note below.

Subsec. (c)(7) to (11). Pub. L. 101–552, §§4(a)(2), 11, temporarily added pars. (7) and (8) and redesignated former pars. (7) to (9) as (9) to (11), respectively. See Termination Date of 1990 Amendment; Savings Provision note below.

1978—Subsec. (b)(3). Pub. L. 95–251 substituted ''administrative law judges'' for ''hearing examiners''.

1976—Subsec. (d). Pub. L. 94–409 inserted provisions relating to consideration by agency of a violation under section 557(d) of this title.

TERMINATION DATE OF 1990 AMENDMENT; SAVINGS PROVISION

For termination of amendments by Pub. L. 101–552 and authority to use dispute resolution proceedings Oct. 1, 1995, except with respect to certain pending proceedings, see section 11 of Pub. L. 101–552, set out as a Termination Date; Savings Provision note under section 571 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–409 effective 180 days after Sept. 13, 1976, see section 6 of Pub. L. 94–409, set out as an Effective Date note under section 552b of this title.

HEARING EXAMINERS EMPLOYED BY DEPARTMENT OF AGRICULTURE

Functions vested by this subchapter in hearing examiners employed by Department of Agriculture not included in functions of officers, agencies, and employees of that Department transferred to Secretary of Agriculture by 1953 Reorg. Plan No. 2, §1, eff. June 4, 1953, 18 F.R. 3219, 67 Stat. 633, set out in the Appendix to this title.

HEARING EXAMINERS EMPLOYED BY DEPARTMENT OF COMMERCE

Functions vested by this subchapter in hearing examiners employed by Department of Commerce not included in functions of officers, agencies, and employees of that Department transferred to Secretary of Commerce by 1950 Reorg. Plan No. 5, §1, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to this title.

HEARING EXAMINERS EMPLOYED BY DEPARTMENT OF THE INTERIOR

Functions vested by this subchapter in hearing examiners employed by Department of the Interior not in-

cluded in functions of officers, agencies, and employees of that Department transferred to Secretary of the Interior by 1950 Reorg. Plan No. 3, §1, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to this title.

HEARING EXAMINERS EMPLOYED BY DEPARTMENT OF JUSTICE

Functions vested by this subchapter in hearing examiners employed by Department of Justice not included in functions of officers, agencies, and employees of that Department transferred to Attorney General by 1950 Reorg. Plan No. 2, §1, eff. May 24, 1950, 15 F.R. 3173, 64 Stat. 1261, set out in the Appendix to this title.

HEARING EXAMINERS EMPLOYED BY DEPARTMENT OF LABOR

Functions vested by this subchapter in hearing examiners employed by Department of Labor not included in functions of officers, agencies, and employees of that Department transferred to Secretary of Labor by 1950 Reorg. Plan No. 6, §1, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to this title.

HEARING EXAMINERS EMPLOYED BY DEPARTMENT OF THE TREASURY

Functions vested by this subchapter in hearing examiners employed by Department of the Treasury not included in functions of officers, agencies, and employees of that Department transferred to Secretary of the Treasury by 1950 Reorg. Plan. No. 26, §1, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in the Appendix to this title.

CROSS REFERENCES

Secretary of Health and Human Services, advisory committee's report, regulations covering pesticides and color additives, see sections 346a and 379e of Title 21, Food and Drugs.

Secretary of Health and Human Services or his delegate, action in licensing manufacture of narcotic drugs, see section 822 et seq. of Title 21.

Securities and Exchange Commission, delegation of functions by, see section 78d–1 of Title 15, Commerce and Trade.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 553, 554, 557, 558, 706, 3105 of this title; title 2 sections 501, 502, 1207, 1219, 1220; title 7 sections 86, 87e, 87f–1, 1359ii, 2023, 2707, 3804, 3805, 4906, 6802, 6804; title 8 section 1182; title 15 sections 57a, 2605, 3412; title 16 sections 796, 839f, 1536, 2602, 3636; title 20 section 1234; title 21 sections 321, 342, 379e, 1041; title 22 sections 1037a, 4136; title 30 sections 811, 1415; title 33 sections 907, 1319, 1321; title 39 sections 404, 3624, 3661; title 41 sections 10b–1, 422; title 42 sections 300h–2, 2241, 7171, 7407, 7413, 7502, 7511a, 7524, 7607, 9612, 11504; title 46 sections 7702, 9303; title 47 section 155; title 49 sections 31136, 31317; title 50 App. sections 16, 2159, 2410, 2412.

§ 557. Initial decisions; conclusiveness; review by agency; submissions by parties; contents of decisions; record

(a) This section applies, according to the provisions thereof, when a hearing is required to be conducted in accordance with section 556 of this title.

(b) When the agency did not preside at the reception of the evidence, the presiding employee or, in cases not subject to section 554(d) of this title, an employee qualified to preside at hearings pursuant to section 556 of this title, shall initially decide the case unless the agency requires, either in specific cases or by general rule, the entire record to be certified to it for decision. When the presiding employee makes an initial decision, that decision then becomes the decision of the agency without further proceedings unless there is an appeal to, or review on motion of, the agency within time provided by rule. On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule. When the agency makes the decision without having presided at the reception of the evidence, the presiding employee or an employee qualified to preside at hearings pursuant to section 556 of this title shall first recommend a decision, except that in rule making or determining applications for initial licenses—

(1) instead thereof the agency may issue a tentative decision or one of its responsible employees may recommend a decision; or

(2) this procedure may be omitted in a case in which the agency finds on the record that due and timely execution of its functions imperatively and unavoidably so requires.

(c) Before a recommended, initial, or tentative decision, or a decision on agency review of the decision of subordinate employees, the parties are entitled to a reasonable opportunity to submit for the consideration of the employees participating in the decisions—

(1) proposed findings and conclusions; or

(2) exceptions to the decisions or recommended decisions of subordinate employees or to tentative agency decisions; and

(3) supporting reasons for the exceptions or proposed findings or conclusions.

The record shall show the ruling on each finding, conclusion, or exception presented. All decisions, including initial, recommended, and tentative decisions, are a part of the record and shall include a statement of—

(A) findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record; and

(B) the appropriate rule, order, sanction, relief, or denial thereof.

(d)(1) In any agency proceeding which is subject to subsection (a) of this section, except to the extent required for the disposition of ex parte matters as authorized by law—

(A) no interested person outside the agency shall make or knowingly cause to be made to any member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of the proceeding, an ex parte communication relevant to the merits of the proceeding;

(B) no member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of the proceeding, shall make or knowingly cause to be made to any interested person outside the agency an ex parte communication relevant to the merits of the proceeding;

(C) a member of the body comprising the agency, administrative law judge, or other employee who is or may reasonably be expected to be involved in the decisional process of such

proceeding who receives, or who makes or knowingly causes to be made, a communication prohibited by this subsection shall place on the public record of the proceeding:

(i) all such written communications;

(ii) memoranda stating the substance of all such oral communications; and

(iii) all written responses, and memoranda stating the substance of all oral responses, to the materials described in clauses (i) and (ii) of this subparagraph;

(D) upon receipt of a communication knowingly made or knowingly caused to be made by a party in violation of this subsection, the agency, administrative law judge, or other employee presiding at the hearing may, to the extent consistent with the interests of justice and the policy of the underlying statutes, require the party to show cause why his claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation; and

(E) the prohibitions of this subsection shall apply beginning at such time as the agency may designate, but in no case shall they begin to apply later than the time at which a proceeding is noticed for hearing unless the person responsible for the communication has knowledge that it will be noticed, in which case the prohibitions shall apply beginning at the time of his acquisition of such knowledge.

(2) This subsection does not constitute authority to withhold information from Congress.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 387; Pub. L. 94–409, § 4(a), Sept. 13, 1976, 90 Stat. 1246.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 1007.	June 11, 1946, ch. 324, §8, 60 Stat. 242.

In subsection (b), the word ''employee'' is substituted for ''officer'' and ''officers'' in view of the definition of ''employee'' in section 2105. The word ''either'' is added after the word ''requires'' in the first sentence to eliminate the need for parentheses. The words ''the presiding employee or an employee qualified to preside at hearings under section 556 of this title'' are substituted for ''such officers'' in the last sentence. The word ''initial'' is omitted before ''decision'', the final word in the first sentence and the sixth word of the fourth sentence, to avoid confusion between the ''initial decision'' of the presiding employee and the ''initial decision'' of the agency.

In subsection (c), the word ''employees'' is substituted for ''officers'' in view of the definition of ''employee'' in section 2105.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

CODIFICATION

Section 557 of former Title 5, Executive Departments and Government Officers and Employees, was transferred to section 2207 of Title 7, Agriculture.

Section 557a of former Title 5, Executive Departments and Government Officers and Employees, was transferred to section 2208 of Title 7.

AMENDMENTS

1976—Subsec. (d). Pub. L. 94–409 added subsec. (d).

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–409 effective 180 days after Sept. 13, 1976, see section 6 of Pub. L. 94–409, set out as an Effective Date note under section 552b of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 553, 554, 556, 558, 706, 3105 of this title; title 2 sections 501, 502, 1207, 1219, 1220; title 7 sections 86, 87e, 87f–1, 2023, 2707, 4906, 6802, 6804; title 15 sections 57a, 2605, 3412; title 16 sections 796, 839f, 2602, 3636; title 20 section 1234; title 21 section 321; title 30 sections 811, 823, 1415; title 39 sections 404, 3624, 3661; title 41 sections 10b–1, 422; title 42 sections 1395ww, 2241, 7407, 7502, 7511a, 7607, 11504; title 46 sections 7702, 9303; title 49 sections 10322, 10327, 31136, 31317; title 50 App. sections 16, 2159, 2410, 2412.

§ 558. Imposition of sanctions; determination of applications for licenses; suspension, revocation, and expiration of licenses

(a) This section applies, according to the provisions thereof, to the exercise of a power or authority.

(b) A sanction may not be imposed or a substantive rule or order issued except within jurisdiction delegated to the agency and as authorized by law.

(c) When application is made for a license required by law, the agency, with due regard for the rights and privileges of all the interested parties or adversely affected persons and within a reasonable time, shall set and complete proceedings required to be conducted in accordance with sections 556 and 557 of this title or other proceedings required by law and shall make its decision. Except in cases of willfulness or those in which public health, interest, or safety requires otherwise, the withdrawal, suspension, revocation, or annulment of a license is lawful only if, before the institution of agency proceedings therefor, the licensee has been given—

(1) notice by the agency in writing of the facts or conduct which may warrant the action; and

(2) opportunity to demonstrate or achieve compliance with all lawful requirements.

When the licensee has made timely and sufficient application for a renewal or a new license in accordance with agency rules, a license with reference to an activity of a continuing nature does not expire until the application has been finally determined by the agency.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 388.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 1008.	June 11, 1946, ch. 324, §9, 60 Stat. 242.

In subsection (b), the prohibition is restated in positive form.

In subsection (c), the words ''within a reasonable time'' are substituted for ''with reasonable dispatch''. The last two sentences are restated for conciseness and clarity and to restate the prohibition in positive form.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

CODIFICATION

Section 558 of former Title 5, Executive Departments and Government Officers and Employees, was transferred to section 2209 of Title 7, Agriculture.

CROSS REFERENCES

Federal Communications Commission, issuance of cease and desist orders in connection with revocation of licenses or permits by, see section 312 of Title 47, Telegraphs, Telephones, and Radiotelegraphs.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 2 sections 501, 502; title 16 section 1824; title 41 section 422; title 42 sections 2236, 7651g; title 45 section 312; title 46 sections 7702, 9303; title 50 App. sections 2159, 2412.

§ 559. Effect on other laws; effect of subsequent statute

This subchapter, chapter 7, and sections 1305, 3105, 3344, 4301(2)(E), 5372, and 7521 of this title, and the provisions of section 5335(a)(B) of this title that relate to administrative law judges, do not limit or repeal additional requirements imposed by statute or otherwise recognized by law. Except as otherwise required by law, requirements or privileges relating to evidence or procedure apply equally to agencies and persons. Each agency is granted the authority necessary to comply with the requirements of this subchapter through the issuance of rules or otherwise. Subsequent statute may not be held to supersede or modify this subchapter, chapter 7, sections 1305, 3105, 3344, 4301(2)(E), 5372, or 7521 of this title, or the provisions of section 5335(a)(B) of this title that relate to administrative law judges, except to the extent that it does so expressly.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 388; Pub. L. 90–623, § 1(1), Oct. 22, 1968, 82 Stat. 1312; Pub. L. 95–251, § 2(a)(1), Mar. 27, 1978, 92 Stat. 183; Pub. L. 95–454, title VIII, § 801(a)(3)(B)(iii), Oct. 13, 1978, 92 Stat. 1221.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 1011.	June 11, 1946, ch. 324, § 12, 60 Stat. 244.

In the first and last sentences, the words ''This subchapter, chapter 7, and sections 1305, 3105, 3344, 4301(2)(E), 5362, and 7521, and the provisions of section 5335(a)(B) of this title that relate to hearing examiners'' are substituted for ''this Act'' to reflect the codification of the Act in this title. The words ''to diminish the constitutional rights of any person or'' are omitted as surplusage as there is nothing in the Act that can reasonably be construed to diminish those rights and because a statute may not operate in derogation of the Constitution.

The third sentence of former section 1011 is omitted as covered by technical section 7. The sixth sentence of former section 1011 is omitted as executed.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1978—Pub. L. 95–454 substituted ''5372'' for ''5362'' wherever appearing.

Pub. L. 95–251 substituted ''administrative law judges'' for ''hearing examiners'' wherever appearing.

1968—Pub. L. 90–623 inserted ''of this title'' after ''7521'' wherever appearing.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective on first day of first applicable pay period beginning on or after the 90th day after Oct. 13, 1978, see section 801(a)(4) of Pub. L. 95–454, set out as an Effective Date note under section 5361 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–623 intended to restate without substantive change the law in effect on Oct. 22, 1968, see section 6 of Pub. L. 90–623, set out as a note under section 5334 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 2 sections 501, 502; title 30 sections 823, 956; title 41 section 422; title 46 sections 7702, 9303; title 50 App. sections 2159, 2412.

SUBCHAPTER III—NEGOTIATED RULEMAKING PROCEDURE

REPEAL OF SUBCHAPTER

Subchapter repealed effective six years after Nov. 29, 1990, see section 5 of Pub. L. 101–648, as amended, set out as an Effective Date of Repeal; Savings Provision note under section 561 of this title.

PRIOR PROVISIONS

A prior subchapter III (§ 571 et seq.) was redesignated subchapter V (§ 591 et seq.) of this chapter.

AMENDMENTS

1992—Pub. L. 102–354, § 3(a)(1), Aug. 26, 1992, 106 Stat. 944, redesignated subchapter IV of this chapter relating to negotiated rulemaking procedure as this subchapter.

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in title 20 section 6511; title 25 sections 450k, 458gg; title 42 section 1437g.

§ 561. Purpose

The purpose of this subchapter is to establish a framework for the conduct of negotiated rulemaking, consistent with section 553 of this title, to encourage agencies to use the process when it enhances the informal rulemaking process. Nothing in this subchapter should be construed as an attempt to limit innovation and experimentation with the negotiated rulemaking process or with other innovative rulemaking procedures otherwise authorized by law.

(Added Pub. L. 101–648, § 3(a), Nov. 29, 1990, 104 Stat. 4970, § 581; renumbered § 561, Pub. L. 102–354, § 3(a)(2), Aug. 26, 1992, 106 Stat. 944.)

REPEAL OF SECTION

Section repealed effective six years after Nov. 29, 1990, see section 5 of Pub. L. 101–648, as amended, set out as an Effective Date of Repeal; Savings Provision note below.

AMENDMENTS

1992—Pub. L. 102–354 renumbered section 581 of this title as this section.

EFFECTIVE DATE OF REPEAL; SAVINGS PROVISION

Section 5 of Pub. L. 101–648, as amended by Pub. L. 102–354, § 5(a)(2), Aug. 26, 1992, 106 Stat. 945, provided that: ''Subchapter III of chapter 5 of title 5, United States Code (enacted as subchapter IV of chapter 5 of title 5, United States Code, by section 3 of this Act and redesignated as subchapter III of such chapter 5 by section (3)(a) of the Administrative Procedure Technical Amendments Act of 1991 [Pub. L. 102–354]) and that portion of the table of sections at the beginning of chapter 5 of title 5, United States Code, relating to subchapter

III, are repealed, effective 6 years after the date of the enactment of this Act [Nov. 29, 1990], except that the provisions of such subchapter shall continue to apply after the date of the repeal with respect to then pending negotiated rulemaking proceedings initiated before the date of repeal which, in the judgment of the agencies which are convening or have convened such proceedings, require such continuation, until such negotiated rulemaking proceedings terminate pursuant to such subchapter.''

SHORT TITLE OF 1992 AMENDMENT

Section 1 of Pub. L. 102–354 provided that: ''This Act [amending sections 565, 568, 569, 571, 577, 580, 581, and 593 of this title, section 10 of Title 9, Arbitration, and section 173 of Title 29, Labor, renumbering sections 571 to 576, 581 to 590, and 581 to 593 as 591 to 596, 561 to 570, and 571 to 583, respectively, of this title, and amending provisions set out as notes under this section and section 571 of this title] may be cited as the 'Administrative Procedure Technical Amendments Act of 1991'.''

SHORT TITLE

Section 1 of Pub. L. 101–648 provided that: ''This Act [enacting this subchapter] may be cited as the 'Negotiated Rulemaking Act of 1990'.''

CONGRESSIONAL FINDINGS

Section 2 of Pub. L. 101–648 provided that: ''The Congress makes the following findings:

''(1) Government regulation has increased substantially since the enactment of the Administrative Procedure Act [see Short Title note set out preceding section 551 of this title].

''(2) Agencies currently use rulemaking procedures that may discourage the affected parties from meeting and communicating with each other, and may cause parties with different interests to assume conflicting and antagonistic positions and to engage in expensive and time-consuming litigation over agency rules.

''(3) Adversarial rulemaking deprives the affected parties and the public of the benefits of face-to-face negotiations and cooperation in developing and reaching agreement on a rule. It also deprives them of the benefits of shared information, knowledge, expertise, and technical abilities possessed by the affected parties.

''(4) Negotiated rulemaking, in which the parties who will be significantly affected by a rule participate in the development of the rule, can provide significant advantages over adversarial rulemaking.

''(5) Negotiated rulemaking can increase the acceptability and improve the substance of rules, making it less likely that the affected parties will resist enforcement or challenge such rules in court. It may also shorten the amount of time needed to issue final rules.

''(6) Agencies have the authority to establish negotiated rulemaking committees under the laws establishing such agencies and their activities and under the Federal Advisory Committee Act (5 U.S.C. App.). Several agencies have successfully used negotiated rulemaking. The process has not been widely used by other agencies, however, in part because such agencies are unfamiliar with the process or uncertain as to the authority for such rulemaking.''

AUTHORIZATION OF APPROPRIATIONS

Section 4 of Pub. L. 101–648, as amended by Pub. L. 102–354, § 5(a)(1), Aug. 26, 1992, 106 Stat. 945, provided that: ''In order to carry out this Act [see Short Title note above] and the amendments made by this Act, there are authorized to be appropriated to the Administrative Conference of the United States, in addition to amounts authorized by section 596 [formerly 576] of title 5, United States Code, not in excess of $500,000 for each of the fiscal years 1991, 1992, and 1993.''

§ 562. Definitions

For the purposes of this subchapter, the term—

(1) ''agency'' has the same meaning as in section 551(1) of this title;

(2) ''consensus'' means unanimous concurrence among the interests represented on a negotiated rulemaking committee established under this subchapter, unless such committee—

(A) agrees to define such term to mean a general but not unanimous concurrence; or

(B) agrees upon another specified definition;

(3) ''convener'' means a person who impartially assists an agency in determining whether establishment of a negotiated rulemaking committee is feasible and appropriate in a particular rulemaking;

(4) ''facilitator'' means a person who impartially aids in the discussions and negotiations among the members of a negotiated rulemaking committee to develop a proposed rule;

(5) ''interest'' means, with respect to an issue or matter, multiple parties which have a similar point of view or which are likely to be affected in a similar manner;

(6) ''negotiated rulemaking'' means rulemaking through the use of a negotiated rulemaking committee;

(7) ''negotiated rulemaking committee'' or ''committee'' means an advisory committee established by an agency in accordance with this subchapter and the Federal Advisory Committee Act to consider and discuss issues for the purpose of reaching a consensus in the development of a proposed rule;

(8) ''party'' has the same meaning as in section 551(3) of this title;

(9) ''person'' has the same meaning as in section 551(2) of this title;

(10) ''rule'' has the same meaning as in section 551(4) of this title; and

(11) ''rulemaking'' means ''rule making'' as that term is defined in section 551(5) of this title.

(Added Pub. L. 101–648, § 3(a), Nov. 29, 1990, 104 Stat. 4970, § 582; renumbered § 562, Pub. L. 102–354, § 3(a)(2), Aug. 26, 1992, 106 Stat. 944.)

REPEAL OF SECTION

Section repealed effective six years after Nov. 29, 1990, see section 5 of Pub. L. 101–648, as amended, set out as an Effective Date of Repeal; Savings Provision note under section 561 of this title.

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in par. (7), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to this title.

AMENDMENTS

1992—Pub. L. 102–354 renumbered section 582 of this title as this section.

§ 563. Determination of need for negotiated rulemaking committee

(a) DETERMINATION OF NEED BY THE AGENCY.—An agency may establish a negotiated rule-

making committee to negotiate and develop a proposed rule, if the head of the agency determines that the use of the negotiated rulemaking procedure is in the public interest. In making such a determination, the head of the agency shall consider whether—

(1) there is a need for a rule;

(2) there are a limited number of identifiable interests that will be significantly affected by the rule;

(3) there is a reasonable likelihood that a committee can be convened with a balanced representation of persons who—

(A) can adequately represent the interests identified under paragraph (2); and

(B) are willing to negotiate in good faith to reach a consensus on the proposed rule;

(4) there is a reasonable likelihood that a committee will reach a consensus on the proposed rule within a fixed period of time;

(5) the negotiated rulemaking procedure will not unreasonably delay the notice of proposed rulemaking and the issuance of the final rule;

(6) the agency has adequate resources and is willing to commit such resources, including technical assistance, to the committee; and

(7) the agency, to the maximum extent possible consistent with the legal obligations of the agency, will use the consensus of the committee with respect to the proposed rule as the basis for the rule proposed by the agency for notice and comment.

(b) USE OF CONVENERS.—

(1) PURPOSES OF CONVENERS.—An agency may use the services of a convener to assist the agency in—

(A) identifying persons who will be significantly affected by a proposed rule, including residents of rural areas; and

(B) conducting discussions with such persons to identify the issues of concern to such persons, and to ascertain whether the establishment of a negotiated rulemaking committee is feasible and appropriate in the particular rulemaking.

(2) DUTIES OF CONVENERS.—The convener shall report findings and may make recommendations to the agency. Upon request of the agency, the convener shall ascertain the names of persons who are willing and qualified to represent interests that will be significantly affected by the proposed rule, including residents of rural areas. The report and any recommendations of the convener shall be made available to the public upon request.

(Added Pub. L. 101–648, § 3(a), Nov. 29, 1990, 104 Stat. 4970, § 583; renumbered § 563, Pub. L. 102–354, § 3(a)(2), Aug. 26, 1992, 106 Stat. 944.)

REPEAL OF SECTION

Section repealed effective six years after Nov. 29, 1990, see section 5 of Pub. L. 101–648, as amended, set out as an Effective Date of Repeal; Savings Provision note under section 561 of this title.

AMENDMENTS

1992—Pub. L. 102–354 renumbered section 583 of this title as this section.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 42 section 1437g.

§ 564. Publication of notice; applications for membership on committees

(a) PUBLICATION OF NOTICE.—If, after considering the report of a convener or conducting its own assessment, an agency decides to establish a negotiated rulemaking committee, the agency shall publish in the Federal Register and, as appropriate, in trade or other specialized publications, a notice which shall include—

(1) an announcement that the agency intends to establish a negotiated rulemaking committee to negotiate and develop a proposed rule;

(2) a description of the subject and scope of the rule to be developed, and the issues to be considered;

(3) a list of the interests which are likely to be significantly affected by the rule;

(4) a list of the persons proposed to represent such interests and the person or persons proposed to represent the agency;

(5) a proposed agenda and schedule for completing the work of the committee, including a target date for publication by the agency of a proposed rule for notice and comment;

(6) a description of administrative support for the committee to be provided by the agency, including technical assistance;

(7) a solicitation for comments on the proposal to establish the committee, and the proposed membership of the negotiated rulemaking committee; and

(8) an explanation of how a person may apply or nominate another person for membership on the committee, as provided under subsection (b).

(b) APPLICATIONS FOR MEMBERSHIP OR[1] COMMITTEE.—Persons who will be significantly affected by a proposed rule and who believe that their interests will not be adequately represented by any person specified in a notice under subsection (a)(4) may apply for, or nominate another person for, membership on the negotiated rulemaking committee to represent such interests with respect to the proposed rule. Each application or nomination shall include—

(1) the name of the applicant or nominee and a description of the interests such person shall represent;

(2) evidence that the applicant or nominee is authorized to represent parties related to the interests the person proposes to represent;

(3) a written commitment that the applicant or nominee shall actively participate in good faith in the development of the rule under consideration; and

(4) the reasons that the persons specified in the notice under subsection (a)(4) do not adequately represent the interests of the person submitting the application or nomination.

(c) PERIOD FOR SUBMISSION OF COMMENTS AND APPLICATIONS.—The agency shall provide for a period of at least 30 calendar days for the submission of comments and applications under this section.

(Added Pub. L. 101–648, § 3(a), Nov. 29, 1990, 104 Stat. 4971, § 584; renumbered § 564, Pub. L. 102–354, § 3(a)(2), Aug. 26, 1992, 106 Stat. 944.)

[1] So in original. Probably should be ''on''.

REPEAL OF SECTION

Section repealed effective six years after Nov. 29, 1990, see section 5 of Pub. L. 101–648, as amended, set out as an Effective Date of Repeal; Savings Provision note under section 561 of this title.

AMENDMENTS

1992—Pub. L. 102–354 renumbered section 584 of this title as this section.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 565 of this title.

§ 565. Establishment of committee

(a) ESTABLISHMENT.—

(1) DETERMINATION TO ESTABLISH COMMITTEE.—If after considering comments and applications submitted under section 564, the agency determines that a negotiated rulemaking committee can adequately represent the interests that will be significantly affected by a proposed rule and that it is feasible and appropriate in the particular rulemaking, the agency may establish a negotiated rulemaking committee. In establishing and administering such a committee, the agency shall comply with the Federal Advisory Committee Act with respect to such committee, except as otherwise provided in this subchapter.

(2) DETERMINATION NOT TO ESTABLISH COMMITTEE.—If after considering such comments and applications, the agency decides not to establish a negotiated rulemaking committee, the agency shall promptly publish notice of such decision and the reasons therefor in the Federal Register and, as appropriate, in trade or other specialized publications, a copy of which shall be sent to any person who applied for, or nominated another person for membership on the negotiating[1] rulemaking committee to represent such interests with respect to the proposed rule.

(b) MEMBERSHIP.—The agency shall limit membership on a negotiated rulemaking committee to 25 members, unless the agency head determines that a greater number of members is necessary for the functioning of the committee or to achieve balanced membership. Each committee shall include at least one person representing the agency.

(c) ADMINISTRATIVE SUPPORT.—The agency shall provide appropriate administrative support to the negotiated rulemaking committee, including technical assistance.

(Added Pub. L. 101–648, §3(a), Nov. 29, 1990, 104 Stat. 4972, §585; renumbered §565 and amended Pub. L. 102–354, §3(a)(2), (3), Aug. 26, 1992, 106 Stat. 944.)

REPEAL OF SECTION

Section repealed effective six years after Nov. 29, 1990, see section 5 of Pub. L. 101–648, as amended, set out as an Effective Date of Repeal; Savings Provision note under section 561 of this title.

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (a)(1), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to this title.

AMENDMENTS

1992—Pub. L. 102–354, §3(a)(2), renumbered section 585 of this title as this section.

Subsec. (a)(1). Pub. L. 102–354, §3(a)(3), substituted ''section 564'' for ''section 584''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 25 section 458gg; title 42 section 1437g.

§ 566. Conduct of committee activity

(a) DUTIES OF COMMITTEE.—Each negotiated rulemaking committee established under this subchapter shall consider the matter proposed by the agency for consideration and shall attempt to reach a consensus concerning a proposed rule with respect to such matter and any other matter the committee determines is relevant to the proposed rule.

(b) REPRESENTATIVES OF AGENCY ON COMMITTEE.—The person or persons representing the agency on a negotiated rulemaking committee shall participate in the deliberations and activities of the committee with the same rights and responsibilities as other members of the committee, and shall be authorized to fully represent the agency in the discussions and negotiations of the committee.

(c) SELECTING FACILITATOR.—Notwithstanding section 10(e) of the Federal Advisory Committee Act, an agency may nominate either a person from the Federal Government or a person from outside the Federal Government to serve as a facilitator for the negotiations of the committee, subject to the approval of the committee by consensus. If the committee does not approve the nominee of the agency for facilitator, the agency shall submit a substitute nomination. If a committee does not approve any nominee of the agency for facilitator, the committee shall select by consensus a person to serve as facilitator. A person designated to represent the agency in substantive issues may not serve as facilitator or otherwise chair the committee.

(d) DUTIES OF FACILITATOR.—A facilitator approved or selected by a negotiated rulemaking committee shall—

(1) chair the meetings of the committee in an impartial manner;

(2) impartially assist the members of the committee in conducting discussions and negotiations; and

(3) manage the keeping of minutes and records as required under section 10(b) and (c) of the Federal Advisory Committee Act, except that any personal notes and materials of the facilitator or of the members of a committee shall not be subject to section 552 of this title.

(e) COMMITTEE PROCEDURES.—A negotiated rulemaking committee established under this subchapter may adopt procedures for the operation of the committee. No provision of section 553 of this title shall apply to the procedures of a negotiated rulemaking committee.

(f) REPORT OF COMMITTEE.—If a committee reaches a consensus on a proposed rule, at the conclusion of negotiations the committee shall

[1] So in original. Probably should be ''negotiated''.

transmit to the agency that established the committee a report containing the proposed rule. If the committee does not reach a consensus on a proposed rule, the committee may transmit to the agency a report specifying any areas in which the committee reached a consensus. The committee may include in a report any other information, recommendations, or materials that the committee considers appropriate. Any committee member may include as an addendum to the report additional information, recommendations, or materials.

(g) RECORDS OF COMMITTEE.—In addition to the report required by subsection (f), a committee shall submit to the agency the records required under section 10(b) and (c) of the Federal Advisory Committee Act.

(Added Pub. L. 101–648, § 3(a), Nov. 29, 1990, 104 Stat. 4973, § 586; renumbered § 566, Pub. L. 102–354, § 3(a)(2), Aug. 26, 1992, 106 Stat. 944.)

REPEAL OF SECTION

Section repealed effective six years after Nov. 29, 1990, see section 5 of Pub. L. 101–648, as amended, set out as an Effective Date of Repeal; Savings Provision note under section 561 of this title.

REFERENCES IN TEXT

Section 10 of the Federal Advisory Committee Act, referred to in subsecs. (c), (d)(3), and (g), is section 10 of Pub. L. 92–463, which is set out in the Appendix to this title.

AMENDMENTS

1992—Pub. L. 102–354 renumbered section 586 of this title as this section.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 569 of this title.

§ 567. Termination of committee

A negotiated rulemaking committee shall terminate upon promulgation of the final rule under consideration, unless the committee's charter contains an earlier termination date or the agency, after consulting the committee, or the committee itself specifies an earlier termination date.

(Added Pub. L. 101–648, § 3(a), Nov. 29, 1990, 104 Stat. 4974, § 587; renumbered § 567, Pub. L. 102–354, § 3(a)(2), Aug. 26, 1992, 106 Stat. 944.)

REPEAL OF SECTION

Section repealed effective six years after Nov. 29, 1990, see section 5 of Pub. L. 101–648, as amended, set out as an Effective Date of Repeal; Savings Provision note under section 561 of this title.

AMENDMENTS

1992—Pub. L. 102–354 renumbered section 587 of this title as this section.

§ 568. Services, facilities, and payment of committee member expenses

(a) SERVICES OF CONVENERS AND FACILITATORS.—

(1) IN GENERAL.—An agency may employ or enter into contracts for the services of an individual or organization to serve as a convener or facilitator for a negotiated rulemaking committee under this subchapter, or may use the services of a Government employee to act as a convener or a facilitator for such a committee.

(2) DETERMINATION OF CONFLICTING INTERESTS.—An agency shall determine whether a person under consideration to serve as convener or facilitator of a committee under paragraph (1) has any financial or other interest that would preclude such person from serving in an impartial and independent manner.

(b) SERVICES AND FACILITIES OF OTHER ENTITIES.—For purposes of this subchapter, an agency may use the services and facilities of other Federal agencies and public and private agencies and instrumentalities with the consent of such agencies and instrumentalities, and with or without reimbursement to such agencies and instrumentalities, and may accept voluntary and uncompensated services without regard to the provisions of section 1342 of title 31. The Federal Mediation and Conciliation Service may provide services and facilities, with or without reimbursement, to assist agencies under this subchapter, including furnishing conveners, facilitators, and training in negotiated rulemaking.

(c) EXPENSES OF COMMITTEE MEMBERS.—Members of a negotiated rulemaking committee shall be responsible for their own expenses of participation in such committee, except that an agency may, in accordance with section 7(d) of the Federal Advisory Committee Act, pay for a member's reasonable travel and per diem expenses, expenses to obtain technical assistance, and a reasonable rate of compensation, if—

(1) such member certifies a lack of adequate financial resources to participate in the committee; and

(2) the agency determines that such member's participation in the committee is necessary to assure an adequate representation of the member's interest.

(d) STATUS OF MEMBER AS FEDERAL EMPLOYEE.—A member's receipt of funds under this section or section 569 shall not conclusively determine for purposes of sections 202 through 209 of title 18 whether that member is an employee of the United States Government.

(Added Pub. L. 101–648, § 3(a), Nov. 29, 1990, 104 Stat. 4974, § 588; renumbered § 568 and amended Pub. L. 102–354, § 3(a)(2), (4), Aug. 26, 1992, 106 Stat. 944.)

REPEAL OF SECTION

Section repealed effective six years after Nov. 29, 1990, see section 5 of Pub. L. 101–648, as amended, set out as an Effective Date of Repeal; Savings Provision note under section 561 of this title.

REFERENCES IN TEXT

Section 7(d) of the Federal Advisory Committee Act, referred to in subsec. (c), is section 7(d) of Pub. L. 92–463, which is set out in the Appendix to this title.

AMENDMENTS

1992—Pub. L. 102–354, § 3(a)(2), renumbered section 588 of this title as this section.

Subsec. (d). Pub. L. 102–354, § 3(a)(4), substituted ''section 569'' for ''section 589''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 569 of this title.

§ 569. Role of the Administrative Conference of the United States and other entities

(a) CONSULTATION BY AGENCIES.—An agency may consult with the Administrative Conference of the United States or other public or private individuals or organizations for information and assistance in forming a negotiated rulemaking committee and conducting negotiations on a proposed rule.

(b) ROSTER OF POTENTIAL CONVENERS AND FACILITATORS.—The Administrative Conference of the United States, in consultation with the Federal Mediation and Conciliation Service, shall maintain a roster of individuals who have acted as or are interested in serving as conveners or facilitators in negotiated rulemaking proceedings. The roster shall include individuals from government agencies and private groups, and shall be made available upon request. Agencies may also use rosters maintained by other public or private individuals or organizations.

(c) PROCEDURES TO OBTAIN CONVENERS AND FACILITATORS.—

(1) PROCEDURES.—The Administrative Conference of the United States shall develop procedures which permit agencies to obtain the services of conveners and facilitators on an expedited basis.

(2) PAYMENT FOR SERVICES.—Payment for the services of conveners or facilitators shall be made by the agency using the services, unless the Chairman of the Administrative Conference agrees to pay for such services under subsection (f).

(d) COMPILATION OF DATA ON NEGOTIATED RULEMAKING; REPORT TO CONGRESS.—

(1) COMPILATION OF DATA.—The Administrative Conference of the United States shall compile and maintain data related to negotiated rulemaking and shall act as a clearinghouse to assist agencies and parties participating in negotiated rulemaking proceedings.

(2) SUBMISSION OF INFORMATION BY AGENCIES.—Each agency engaged in negotiated rulemaking shall provide to the Administrative Conference of the United States a copy of any reports submitted to the agency by negotiated rulemaking committees under section 566 and such additional information as necessary to enable the Administrative Conference of the United States to comply with this subsection.

(3) REPORTS TO CONGRESS.—The Administrative Conference of the United States shall review and analyze the reports and information received under this subsection and shall transmit a biennial report to the Committee on Governmental Affairs of the Senate and the appropriate committees of the House of Representatives that—

(A) provides recommendations for effective use by agencies of negotiated rulemaking; and

(B) describes the nature and amounts of expenditures made by the Administrative Conference of the United States to accomplish the purposes of this subchapter.

(e) TRAINING IN NEGOTIATED RULEMAKING.—The Administrative Conference of the United States is authorized to provide training in negotiated rulemaking techniques and procedures for personnel of the Federal Government either on a reimbursable or nonreimbursable basis. Such training may be extended to private individuals on a reimbursable basis.

(f) PAYMENT OF EXPENSES OF AGENCIES.—The Chairman of the Administrative Conference of the United States is authorized to pay, upon request of an agency, all or part of the expenses of establishing a negotiated rulemaking committee and conducting a negotiated rulemaking. Such expenses may include, but are not limited to—

(1) the costs of conveners and facilitators;

(2) the expenses of committee members determined by the agency to be eligible for assistance under section 568(c); and

(3) training costs.

Determinations with respect to payments under this section shall be at the discretion of such Chairman in furthering the use by Federal agencies of negotiated rulemaking.

(g) USE OF FUNDS OF THE CONFERENCE.—The Administrative Conference of the United States may apply funds received under section 595(c)(12) of this title to carry out the purposes of this subchapter.

(Added Pub. L. 101–648, §3(a), Nov. 29, 1990, 104 Stat. 4975, §589; renumbered §569 and amended Pub. L. 102–354, §3(a)(2), (5), Aug. 26, 1992, 106 Stat. 944.)

REPEAL OF SECTION

Section repealed effective six years after Nov. 29, 1990, see section 5 of Pub. L. 101–648, as amended, set out as an Effective Date of Repeal; Savings Provision note under section 561 of this title.

AMENDMENTS

1992—Pub. L. 102–354, §3(a)(2), renumbered section 589 of this title as this section.

Subsec. (d)(2). Pub. L. 102–354, §3(a)(5)(A), substituted ''section 566'' for ''section 586''.

Subsec. (f)(2). Pub. L. 102–354, §3(a)(5)(B), substituted ''section 568(c)'' for ''section 588(c)''.

Subsec. (g). Pub. L. 102–354, §3(a)(5)(C), substituted ''section 595(c)(12)'' for ''section 575(c)(12)''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 568 of this title.

§ 570. Judicial review

Any agency action relating to establishing, assisting, or terminating a negotiated rulemaking committee under this subchapter shall not be subject to judicial review. Nothing in this section shall bar judicial review of a rule if such judicial review is otherwise provided by law. A rule which is the product of negotiated rulemaking and is subject to judicial review shall not be accorded any greater deference by a court than a rule which is the product of other rulemaking procedures.

(Added Pub. L. 101–648, §3(a), Nov. 29, 1990, 104 Stat. 4976, §590; renumbered §570, Pub. L. 102–354, §3(a)(2), Aug. 26, 1992, 106 Stat. 944.)

REPEAL OF SECTION

Section repealed effective six years after Nov. 29, 1990, see section 5 of Pub. L. 101–648, as amended, set out as an Effective Date of Repeal; Savings Provision note under section 561 of this title.

AMENDMENTS

1992—Pub. L. 102–354 renumbered section 590 of this title as this section.

SUBCHAPTER IV—ALTERNATIVE MEANS OF DISPUTE RESOLUTION IN THE ADMINISTRATIVE PROCESS

TERMINATION OF SUBCHAPTER

For termination of subchapter by section 11 of Pub. L. 101–552, see Termination Date; Savings Provision note set out under section 571 of this title.

CODIFICATION

Another subchapter IV (§ 581 et seq.) relating to negotiated rulemaking procedure was redesignated subchapter III (§ 561 et seq.) of this chapter.

AMENDMENTS

1992—Pub. L. 102–354, § 3(b)(1), Aug. 26, 1992, 106 Stat. 944, transferred this subchapter so as to appear immediately after subchapter III of this chapter.

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 556 of this title; title 12 section 4806; title 25 sections 450j, 450*l*; title 28 section 2672; title 29 section 173; title 41 section 605.

§ 571. Definitions

For the purposes of this subchapter, the term—

(1) ''agency'' has the same meaning as in section 551(1) of this title;

(2) ''administrative program'' includes a Federal function which involves protection of the public interest and the determination of rights, privileges, and obligations of private persons through rule making, adjudication, licensing, or investigation, as those terms are used in subchapter II of this chapter;

(3) ''alternative means of dispute resolution'' means any procedure that is used, in lieu of an adjudication as defined in section 551(7) of this title, to resolve issues in controversy, including, but not limited to, settlement negotiations, conciliation, facilitation, mediation, factfinding, minitrials, and arbitration, or any combination thereof;

(4) ''award'' means any decision by an arbitrator resolving the issues in controversy;

(5) ''dispute resolution communication'' means any oral or written communication prepared for the purposes of a dispute resolution proceeding, including any memoranda, notes or work product of the neutral, parties or nonparty participant; except that a written agreement to enter into a dispute resolution proceeding, or final written agreement or arbitral award reached as a result of a dispute resolution proceeding, is not a dispute resolution communication;

(6) ''dispute resolution proceeding'' means any process in which an alternative means of dispute resolution is used to resolve an issue in controversy in which a neutral is appointed and specified parties participate;

(7) ''in confidence'' means, with respect to information, that the information is provided—

(A) with the expressed intent of the source that it not be disclosed; or

(B) under circumstances that would create the reasonable expectation on behalf of the source that the information will not be disclosed;

(8) ''issue in controversy'' means an issue which is material to a decision concerning an administrative program of an agency, and with which there is disagreement—

(A) between an agency and persons who would be substantially affected by the decision; or

(B) between persons who would be substantially affected by the decision,

except that such term shall not include any matter specified under section 2302 or 7121(c) of this title;

(9) ''neutral'' means an individual who, with respect to an issue in controversy, functions specifically to aid the parties in resolving the controversy;

(10) ''party'' means—

(A) for a proceeding with named parties, the same as in section 551(3) of this title; and

(B) for a proceeding without named parties, a person who will be significantly affected by the decision in the proceeding and who participates in the proceeding;

(11) ''person'' has the same meaning as in section 551(2) of this title; and

(12) ''roster'' means a list of persons qualified to provide services as neutrals.

(Added Pub. L. 101–552, § 4(b), Nov. 15, 1990, 104 Stat. 2738, § 581; renumbered § 571 and amended Pub. L. 102–354, §§ 3(b)(2), 5(b)(1), (2), Aug. 26, 1992, 106 Stat. 944, 946.)

TERMINATION OF SECTION

For termination of section by section 11 of Pub. L. 101–552, see Termination Date; Savings Provision note below.

CODIFICATION

Section 571 of former Title 5, Executive Departments and Government Officers and Employees, was transferred to section 2256 of Title 7, Agriculture.

PRIOR PROVISIONS

A prior section 571 was renumbered section 591 of this title.

AMENDMENTS

1992—Pub. L. 102–354, § 3(b)(2), renumbered section 581 of this title as this section.

Par. (3). Pub. L. 102–354, § 5(b)(1), inserted comma after ''including''.

Par. (8). Pub. L. 102–354, § 5(b)(2), amended par. (8) generally. Prior to amendment, par. (8) read as follows: '' 'issue in controversy' means an issue which is material to a decision concerning an administrative program of an agency, and with which there is disagreement between the agency and persons who would be substantially affected by the decision but shall not extend to matters specified under the provisions of sections 2302 and 7121(c) of title 5;''.

TERMINATION DATE; SAVINGS PROVISION

Section 11 of Pub. L. 101–552 provided that: ''The authority of agencies to use dispute resolution proceedings under this Act [see Short Title note below] and the amendments made by this Act shall terminate on October 1, 1995, except that such authority shall continue in effect with respect to then pending proceedings which, in the judgment of the agencies that are parties to the dispute resolution proceedings, require such continuation, until such proceedings terminate.''

SHORT TITLE

Section 1 of Pub. L. 101–552 provided that: ''This Act [enacting this subchapter, amending section 556 of this title, section 10 of Title 9, Arbitration, section 2672 of Title 28, Judiciary and Judicial Procedure, section 173 of Title 29, Labor, section 3711 of Title 31, Money and Finance, and sections 605 and 607 of Title 41, Public Contracts, and enacting provisions set out as notes under this section] may be cited as the 'Administrative Dispute Resolution Act'.''

CONGRESSIONAL FINDINGS

Section 2 of Pub. L. 101–552 provided that: ''The Congress finds that—

''(1) administrative procedure, as embodied in chapter 5 of title 5, United States Code, and other statutes, is intended to offer a prompt, expert, and inexpensive means of resolving disputes as an alternative to litigation in the Federal courts;

''(2) administrative proceedings have become increasingly formal, costly, and lengthy resulting in unnecessary expenditures of time and in a decreased likelihood of achieving consensual resolution of disputes;

''(3) alternative means of dispute resolution have been used in the private sector for many years and, in appropriate circumstances, have yielded decisions that are faster, less expensive, and less contentious;

''(4) such alternative means can lead to more creative, efficient, and sensible outcomes;

''(5) such alternative means may be used advantageously in a wide variety of administrative programs;

''(6) explicit authorization of the use of well-tested dispute resolution techniques will eliminate ambiguity of agency authority under existing law;

''(7) Federal agencies may not only receive the benefit of techniques that were developed in the private sector, but may also take the lead in the further development and refinement of such techniques; and

''(8) the availability of a wide range of dispute resolution procedures, and an increased understanding of the most effective use of such procedures, will enhance the operation of the Government and better serve the public.''

PROMOTION OF ALTERNATIVE MEANS OF DISPUTE RESOLUTION

Section 3 of Pub. L. 101–552 provided that:

''(a) PROMULGATION OF AGENCY POLICY.—Each agency shall adopt a policy that addresses the use of alternative means of dispute resolution and case management. In developing such a policy, each agency shall—

''(1) consult with the Administrative Conference of the United States and the Federal Mediation and Conciliation Service; and

''(2) examine alternative means of resolving disputes in connection with—

''(A) formal and informal adjudications;

''(B) rulemakings;

''(C) enforcement actions;

''(D) issuing and revoking licenses or permits;

''(E) contract administration;

''(F) litigation brought by or against the agency; and

''(G) other agency actions.

''(b) DISPUTE RESOLUTION SPECIALISTS.—The head of each agency shall designate a senior official to be the dispute resolution specialist of the agency. Such official shall be responsible for the implementation of—

''(1) the provisions of this Act [see Short Title note above] and the amendments made by this Act; and

''(2) the agency policy developed under subsection (a).

''(c) TRAINING.—Each agency shall provide for training on a regular basis for the dispute resolution specialist of the agency and other employees involved in implementing the policy of the agency developed under subsection (a). Such training should encompass the theory and practice of negotiation, mediation, arbitration, or related techniques. The dispute resolution specialist shall periodically recommend to the agency head agency employees who would benefit from similar training.

''(d) PROCEDURES FOR GRANTS AND CONTRACTS.—

''(1) Each agency shall review each of its standard agreements for contracts, grants, and other assistance and shall determine whether to amend any such standard agreements to authorize and encourage the use of alternative means of dispute resolution.

''(2)(A) Within 1 year after the date of the enactment of this Act [Nov. 15, 1990], the Federal Acquisition Regulation shall be amended, as necessary, to carry out this Act [see Short Title note above] and the amendments made by this Act.

''(B) For purposes of this section, the term 'Federal Acquisition Regulation' means the single system of Government-wide procurement regulation referred to in section 6(a) of the Office of Federal Procurement Policy Act (41 U.S.C. 405(a)).''

USE OF NONATTORNEYS

Section 9 of Pub. L. 101–552 provided that:

''(a) REPRESENTATION OF PARTIES.—Each agency, in developing a policy on the use of alternative means of dispute resolution under this Act [see Short Title note above], shall develop a policy with regard to the representation by persons other than attorneys of parties in alternative dispute resolution proceedings and shall identify any of its administrative programs with numerous claims or disputes before the agency and determine—

''(1) the extent to which individuals are represented or assisted by attorneys or by persons who are not attorneys; and

''(2) whether the subject areas of the applicable proceedings or the procedures are so complex or specialized that only attorneys may adequately provide such representation or assistance.

''(b) REPRESENTATION AND ASSISTANCE BY NONATTORNEYS.—A person who is not an attorney may provide representation or assistance to any individual in a claim or dispute with an agency, if—

''(1) such claim or dispute concerns an administrative program identified under subsection (a);

''(2) such agency determines that the proceeding or procedure does not necessitate representation or assistance by an attorney under subsection (a)(2); and

''(3) such person meets any requirement of the agency to provide representation or assistance in such a claim or dispute.

''(c) DISQUALIFICATION OF REPRESENTATION OR ASSISTANCE.—Any agency that adopts regulations under subchapter IV of chapter 5 of title 5, United States Code, to permit representation or assistance by persons who are not attorneys shall review the rules of practice before such agency to—

''(1) ensure that any rules pertaining to disqualification of attorneys from practicing before the agency shall also apply, as appropriate, to other persons who provide representation or assistance; and

''(2) establish effective agency procedures for enforcing such rules of practice and for receiving complaints from affected persons.''

DEFINITIONS

Section 10 of Pub. L. 101–552, as amended by Pub. L. 102–354, §5(b)(6), Aug. 26, 1992, 106 Stat. 946, provided

that: ''As used in this Act [see Short Title note above], the terms 'agency', 'administrative program', and 'alternative means of dispute resolution' have the meanings given such terms in section 571 of title 5, United States Code (enacted as section 581 of title 5, United States Code, by section 4(b) of this Act, and redesignated as section 571 of such title by section 3(b) of the Administrative Procedure Technical Amendments Act of 1991 [Pub. L. 102–354]).''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 12 section 4806.

§ 572. General authority

(a) An agency may use a dispute resolution proceeding for the resolution of an issue in controversy that relates to an administrative program, if the parties agree to such proceeding.

(b) An agency shall consider not using a dispute resolution proceeding if—

(1) a definitive or authoritative resolution of the matter is required for precedential value, and such a proceeding is not likely to be accepted generally as an authoritative precedent;

(2) the matter involves or may bear upon significant questions of Government policy that require additional procedures before a final resolution may be made, and such a proceeding would not likely serve to develop a recommended policy for the agency;

(3) maintaining established policies is of special importance, so that variations among individual decisions are not increased and such a proceeding would not likely reach consistent results among individual decisions;

(4) the matter significantly affects persons or organizations who are not parties to the proceeding;

(5) a full public record of the proceeding is important, and a dispute resolution proceeding cannot provide such a record; and

(6) the agency must maintain continuing jurisdiction over the matter with authority to alter the disposition of the matter in the light of changed circumstances, and a dispute resolution proceeding would interfere with the agency's fulfilling that requirement.

(c) Alternative means of dispute resolution authorized under this subchapter are voluntary procedures which supplement rather than limit other available agency dispute resolution techniques.

(Added Pub. L. 101–552, § 4(b), Nov. 15, 1990, 104 Stat. 2739, § 582; renumbered § 572, Pub. L. 102–354, § 3(b)(2), Aug. 26, 1992, 106 Stat. 944.)

TERMINATION OF SECTION

For termination of section by section 11 of Pub. L. 101–552, see Termination Date; Savings Provision note set out under section 571 of this title.

CODIFICATION

Section 572 of former Title 5, Executive Departments and Government Officers and Employees, was transferred to section 2257 of Title 7, Agriculture.

PRIOR PROVISIONS

A prior section 572 was renumbered section 592 of this title.

AMENDMENTS

1992—Pub. L. 102–354 renumbered section 582 of this title as this section.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 9 section 10; title 41 section 605.

§ 573. Neutrals

(a) A neutral may be a permanent or temporary officer or employee of the Federal Government or any other individual who is acceptable to the parties to a dispute resolution proceeding. A neutral shall have no official, financial, or personal conflict of interest with respect to the issues in controversy, unless such interest is fully disclosed in writing to all parties and all parties agree that the neutral may serve.

(b) A neutral who serves as a conciliator, facilitator, or mediator serves at the will of the parties.

(c) In consultation with the Federal Mediation and Conciliation Service, other appropriate Federal agencies, and professional organizations experienced in matters concerning dispute resolution, the Administrative Conference of the United States shall—

(1) establish standards for neutrals (including experience, training, affiliations, diligence, actual or potential conflicts of interest, and other qualifications) to which agencies may refer;

(2) maintain a roster of individuals who meet such standards and are otherwise qualified to act as neutrals, which shall be made available upon request;

(3) enter into contracts for the services of neutrals that may be used by agencies on an elective basis in dispute resolution proceedings; and

(4) develop procedures that permit agencies to obtain the services of neutrals on an expedited basis.

(d) An agency may use the services of one or more employees of other agencies to serve as neutrals in dispute resolution proceedings. The agencies may enter into an interagency agreement that provides for the reimbursement by the user agency or the parties of the full or partial cost of the services of such an employee.

(e) Any agency may enter into a contract with any person on a roster established under subsection (c)(2) or a roster maintained by other public or private organizations, or individual for services as a neutral, or for training in connection with alternative means of dispute resolution. The parties in a dispute resolution proceeding shall agree on compensation for the neutral that is fair and reasonable to the Government.

(Added Pub. L. 101–552, § 4(b), Nov. 15, 1990, 104 Stat. 2739, § 583; renumbered § 573, Pub. L. 102–354, § 3(b)(2), Aug. 26, 1992, 106 Stat. 944.)

TERMINATION OF SECTION

For termination of section by section 11 of Pub. L. 101–552, see Termination Date; Savings Provision note set out under section 571 of this title.

CODIFICATION

Section 573 of former Title 5, Executive Departments and Government Officers and Employees, was transferred to section 2258 of Title 7, Agriculture.

PRIOR PROVISIONS

A prior section 573 was renumbered section 593 of this title.

AMENDMENTS

1992—Pub. L. 102–354 renumbered section 583 of this title as this section.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 577 of this title; title 29 section 173.

§ 574. Confidentiality

(a) Except as provided in subsections (d) and (e), a neutral in a dispute resolution proceeding shall not voluntarily disclose or through discovery or compulsory process be required to disclose any information concerning any dispute resolution communication or any communication provided in confidence to the neutral, unless—

(1) all parties to the dispute resolution proceeding and the neutral consent in writing, and, if the dispute resolution communication was provided by a nonparty participant, that participant also consents in writing;

(2) the dispute resolution communication has already been made public;

(3) the dispute resolution communication is required by statute to be made public, but a neutral should make such communication public only if no other person is reasonably available to disclose the communication; or

(4) a court determines that such testimony or disclosure is necessary to—

(A) prevent a manifest injustice;

(B) help establish a violation of law; or

(C) prevent harm to the public health or safety,

of sufficient magnitude in the particular case to outweigh the integrity of dispute resolution proceedings in general by reducing the confidence of parties in future cases that their communications will remain confidential.

(b) A party to a dispute resolution proceeding shall not voluntarily disclose or through discovery or compulsory process be required to disclose any information concerning any dispute resolution communication, unless—

(1) the communication was prepared by the party seeking disclosure;

(2) all parties to the dispute resolution proceeding consent in writing;

(3) the dispute resolution communication has already been made public;

(4) the dispute resolution communication is required by statute to be made public;

(5) a court determines that such testimony or disclosure is necessary to—

(A) prevent a manifest injustice;

(B) help establish a violation of law; or

(C) prevent harm to the public health and safety,

of sufficient magnitude in the particular case to outweigh the integrity of dispute resolution proceedings in general by reducing the confidence of parties in future cases that their communications will remain confidential;

(6) the dispute resolution communication is relevant to determining the existence or meaning of an agreement or award that resulted from the dispute resolution proceeding or to the enforcement of such an agreement or award; or

(7) the dispute resolution communication was provided to or was available to all parties to the dispute resolution proceeding.

(c) Any dispute resolution communication that is disclosed in violation of subsection (a) or (b), shall not be admissible in any proceeding relating to the issues in controversy with respect to which the communication was made.

(d) The parties may agree to alternative confidential procedures for disclosures by a neutral. Upon such agreement the parties shall inform the neutral before the commencement of the dispute resolution proceeding of any modifications to the provisions of subsection (a) that will govern the confidentiality of the dispute resolution proceeding. If the parties do not so inform the neutral, subsection (a) shall apply.

(e) If a demand for disclosure, by way of discovery request or other legal process, is made upon a neutral regarding a dispute resolution communication, the neutral shall make reasonable efforts to notify the parties and any affected nonparty participants of the demand. Any party or affected nonparty participant who receives such notice and within 15 calendar days does not offer to defend a refusal of the neutral to disclose the requested information shall have waived any objection to such disclosure.

(f) Nothing in this section shall prevent the discovery or admissibility of any evidence that is otherwise discoverable, merely because the evidence was presented in the course of a dispute resolution proceeding.

(g) Subsections (a) and (b) shall have no effect on the information and data that are necessary to document an agreement reached or order issued pursuant to a dispute resolution proceeding.

(h) Subsections (a) and (b) shall not prevent the gathering of information for research or educational purposes, in cooperation with other agencies, governmental entities, or dispute resolution programs, so long as the parties and the specific issues in controversy are not identifiable.

(i) Subsections (a) and (b) shall not prevent use of a dispute resolution communication to resolve a dispute between the neutral in a dispute resolution proceeding and a party to or participant in such proceeding, so long as such dispute resolution communication is disclosed only to the extent necessary to resolve such dispute.

(j) This section shall not be considered a statute specifically exempting disclosure under section 552(b)(3) of this title.

(Added Pub. L. 101–552, § 4(b), Nov. 15, 1990, 104 Stat. 2740, § 584; renumbered § 574, Pub. L. 102–354, § 3(b)(2), Aug. 26, 1992, 106 Stat. 944.)

TERMINATION OF SECTION

For termination of section by section 11 of Pub. L. 101–552, see Termination Date; Savings

Provision note set out under section 571 of this title.

CODIFICATION

Section 574 of former Title 5, Executive Departments and Government Officers and Employees, was transferred to section 2255 of Title 7, Agriculture.

Section 574a of former Title 5, Executive Departments and Government Officers and Employees, was transferred to section 2226 of Title 7.

PRIOR PROVISIONS

A prior section 574 was renumbered section 594 of this title.

AMENDMENTS

1992—Pub. L. 102–354 renumbered section 584 of this title as this section.

§ 575. Authorization of arbitration

(a)(1) Arbitration may be used as an alternative means of dispute resolution whenever all parties consent. Consent may be obtained either before or after an issue in controversy has arisen. A party may agree to—

(A) submit only certain issues in controversy to arbitration; or

(B) arbitration on the condition that the award must be within a range of possible outcomes.

(2) Any arbitration agreement that sets forth the subject matter submitted to the arbitrator shall be in writing.

(3) An agency may not require any person to consent to arbitration as a condition of entering into a contract or obtaining a benefit.

(b) An officer or employee of an agency may offer to use arbitration for the resolution of issues in controversy, if such officer or employee—

(1) has authority to enter into a settlement concerning the matter; or

(2) is otherwise specifically authorized by the agency to consent to the use of arbitration.

(Added Pub. L. 101–552, § 4(b), Nov. 15, 1990, 104 Stat. 2742, § 585; renumbered § 575, Pub. L. 102–354, § 3(b)(2), Aug. 26, 1992, 106 Stat. 944.)

TERMINATION OF SECTION

For termination of section by section 11 of Pub. L. 101–552, see Termination Date; Savings Provision note set out under section 571 of this title.

CODIFICATION

Section 575 of former Title 5, Executive Departments and Government Officers and Employees, was transferred to section 2259 of Title 7, Agriculture.

PRIOR PROVISIONS

A prior section 575 was renumbered section 595 of this title.

AMENDMENTS

1992—Pub. L. 102–354 renumbered section 585 of this title as this section.

§ 576. Enforcement of arbitration agreements

An agreement to arbitrate a matter to which this subchapter applies is enforceable pursuant to section 4 of title 9, and no action brought to enforce such an agreement shall be dismissed nor shall relief therein be denied on the grounds that it is against the United States or that the United States is an indispensable party.

(Added Pub. L. 101–552, § 4(b), Nov. 15, 1990, 104 Stat. 2742, § 586; renumbered § 576, Pub. L. 102–354, § 3(b)(2), Aug. 26, 1992, 106 Stat. 944.)

TERMINATION OF SECTION

For termination of section by section 11 of Pub. L. 101–552, see Termination Date; Savings Provision note set out under section 571 of this title.

CODIFICATION

Section 576 of former Title 5, Executive Departments and Government Officers and Employees, was transferred to section 2260 of Title 7, Agriculture.

PRIOR PROVISIONS

A prior section 576 was renumbered section 596 of this title.

AMENDMENTS

1992—Pub. L. 102–354 renumbered section 586 of this title as this section.

§ 577. Arbitrators

(a) The parties to an arbitration proceeding shall be entitled to participate in the selection of the arbitrator.

(b) The arbitrator shall be a neutral who meets the criteria of section 573 of this title.

(Added Pub. L. 101–552, § 4(b), Nov. 15, 1990, 104 Stat. 2742, § 587; renumbered § 577 and amended Pub. L. 102–354, § 3(b)(2), (3), Aug. 26, 1992, 102 Stat. 944, 945.)

TERMINATION OF SECTION

For termination of section by section 11 of Pub. L. 101–552, see Termination Date; Savings Provision note set out under section 571 of this title.

AMENDMENTS

1992—Pub. L. 102–354, § 3(b)(2), renumbered section 587 of this title as this section.

Subsec. (b). Pub. L. 102–354, § 3(b)(3), substituted ''section 573'' for ''section 583''.

§ 578. Authority of the arbitrator

An arbitrator to whom a dispute is referred under this subchapter may—

(1) regulate the course of and conduct arbitral hearings;

(2) administer oaths and affirmations;

(3) compel the attendance of witnesses and production of evidence at the hearing under the provisions of section 7 of title 9 only to the extent the agency involved is otherwise authorized by law to do so; and

(4) make awards.

(Added Pub. L. 101–552, § 4(b), Nov. 15, 1990, 104 Stat. 2742, § 588; renumbered § 578, Pub. L. 102–354, § 3(b)(2), Aug. 26, 1992, 106 Stat. 944.)

TERMINATION OF SECTION

For termination of section by section 11 of Pub. L. 101–552, see Termination Date; Savings Provision note set out under section 571 of this title.

AMENDMENTS

1992—Pub. L. 102–354 renumbered section 588 of this title as this section.

§ 579. Arbitration proceedings

(a) The arbitrator shall set a time and place for the hearing on the dispute and shall notify the parties not less than 5 days before the hearing.

(b) Any party wishing a record of the hearing shall—

(1) be responsible for the preparation of such record;

(2) notify the other parties and the arbitrator of the preparation of such record;

(3) furnish copies to all identified parties and the arbitrator; and

(4) pay all costs for such record, unless the parties agree otherwise or the arbitrator determines that the costs should be apportioned.

(c)(1) The parties to the arbitration are entitled to be heard, to present evidence material to the controversy, and to cross-examine witnesses appearing at the hearing.

(2) The arbitrator may, with the consent of the parties, conduct all or part of the hearing by telephone, television, computer, or other electronic means, if each party has an opportunity to participate.

(3) The hearing shall be conducted expeditiously and in an informal manner.

(4) The arbitrator may receive any oral or documentary evidence, except that irrelevant, immaterial, unduly repetitious, or privileged evidence may be excluded by the arbitrator.

(5) The arbitrator shall interpret and apply relevant statutory and regulatory requirements, legal precedents, and policy directives.

(d) No interested person shall make or knowingly cause to be made to the arbitrator an unauthorized ex parte communication relevant to the merits of the proceeding, unless the parties agree otherwise. If a communication is made in violation of this subsection, the arbitrator shall ensure that a memorandum of the communication is prepared and made a part of the record, and that an opportunity for rebuttal is allowed. Upon receipt of a communication made in violation of this subsection, the arbitrator may, to the extent consistent with the interests of justice and the policies underlying this subchapter, require the offending party to show cause why the claim of such party should not be resolved against such party as a result of the improper conduct.

(e) The arbitrator shall make the award within 30 days after the close of the hearing, or the date of the filing of any briefs authorized by the arbitrator, whichever date is later, unless—

(1) the parties agree to some other time limit; or

(2) the agency provides by rule for some other time limit.

(Added Pub. L. 101–552, § 4(b), Nov. 15, 1990, 104 Stat. 2742, § 589; renumbered § 579, Pub. L. 102–354, § 3(b)(2), Aug. 26, 1992, 106 Stat. 944.)

TERMINATION OF SECTION

For termination of section by section 11 of Pub. L. 101–552, see Termination Date; Savings Provision note set out under section 571 of this title.

AMENDMENTS

1992—Pub. L. 102–354 renumbered section 589 of this title as this section.

§ 580. Arbitration awards

(a)(1) Unless the agency provides otherwise by rule, the award in an arbitration proceeding under this subchapter shall include a brief, informal discussion of the factual and legal basis for the award, but formal findings of fact or conclusions of law shall not be required.

(2) The prevailing parties shall file the award with all relevant agencies, along with proof of service on all parties.

(b) The award in an arbitration proceeding shall become final 30 days after it is served on all parties. Any agency that is a party to the proceeding may extend this 30-day period for an additional 30-day period by serving a notice of such extension on all other parties before the end of the first 30-day period.

(c) The head of any agency that is a party to an arbitration proceeding conducted under this subchapter is authorized to terminate the arbitration proceeding or vacate any award issued pursuant to the proceeding before the award becomes final by serving on all other parties a written notice to that effect, in which case the award shall be null and void. Notice shall be provided to all parties to the arbitration proceeding of any request by a party, nonparty participant or other person that the agency head terminate the arbitration proceeding or vacate the award. An employee or agent engaged in the performance of investigative or prosecuting functions for an agency may not, in that or a factually related case, advise in a decision under this subsection to terminate an arbitration proceeding or to vacate an arbitral award, except as witness or counsel in public proceedings.

(d) A final award is binding on the parties to the arbitration proceeding, and may be enforced pursuant to sections 9 through 13 of title 9. No action brought to enforce such an award shall be dismissed nor shall relief therein be denied on the grounds that it is against the United States or that the United States is an indispensable party.

(e) An award entered under this subchapter in an arbitration proceeding may not serve as an estoppel in any other proceeding for any issue that was resolved in the proceeding. Such an award also may not be used as precedent or otherwise be considered in any factually unrelated proceeding, whether conducted under this subchapter, by an agency, or in a court, or in any other arbitration proceeding.

(f) An arbitral award that is vacated under subsection (c) shall not be admissible in any proceeding relating to the issues in controversy with respect to which the award was made.

(g) If an agency head vacates an award under subsection (c), a party to the arbitration (other than the United States) may within 30 days of such action petition the agency head for an award of fees and other expenses (as defined in section 504(b)(1)(A) of this title) incurred in connection with the arbitration proceeding. The

agency head shall award the petitioning party those fees and expenses that would not have been incurred in the absence of such arbitration proceeding, unless the agency head or his or her designee finds that special circumstances make such an award unjust. The procedures for reviewing applications for awards shall, where appropriate, be consistent with those set forth in subsection (a)(2) and (3) of section 504 of this title. Such fees and expenses shall be paid from the funds of the agency that vacated the award.

(Added Pub. L. 101–552, § 4(b), Nov. 15, 1990, 104 Stat. 2743, § 590; renumbered § 580 and amended Pub. L. 102–354, §§ 3(b)(2), 5(b)(3), Aug. 26, 1992, 106 Stat. 944, 946.)

TERMINATION OF SECTION

For termination of section by section 11 of Pub. L. 101–552, see Termination Date; Savings Provision note set out under section 571 of this title.

AMENDMENTS

1992—Pub. L. 102–354, § 3(b)(2), renumbered section 590 of this title as this section.

Subsec. (g). Pub. L. 102–354, § 5(b)(3), substituted ''fees and other expenses'' for ''attorney fees and expenses''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 581 of this title; title 9 section 10.

§ 581. Judicial Review [1]

(a) Notwithstanding any other provision of law, any person adversely affected or aggrieved by an award made in an arbitration proceeding conducted under this subchapter may bring an action for review of such award only pursuant to the provisions of sections 9 through 13 of title 9.

(b)(1) A decision by an agency to use or not to use a dispute resolution proceeding under this subchapter shall be committed to the discretion of the agency and shall not be subject to judicial review, except that arbitration shall be subject to judicial review under section 10(b) of title 9.

(2) A decision by the head of an agency under section 580 to terminate an arbitration proceeding or vacate an arbitral award shall be committed to the discretion of the agency and shall not be subject to judicial review.

(Added Pub. L. 101–552, § 4(b), Nov. 15, 1990, 104 Stat. 2744, § 591; renumbered § 581 and amended Pub. L. 102–354, § 3(b)(2), (4), Aug. 26, 1992, 106 Stat. 944, 945.)

TERMINATION OF SECTION

For termination of section by section 11 of Pub. L. 101–552, see Termination Date; Savings Provision note set out under section 571 of this title.

PRIOR PROVISIONS

A prior section 581 was renumbered section 571 of this title.

Another prior section 581 was renumbered section 561 of this title.

AMENDMENTS

1992—Pub. L. 102–354, § 3(b)(2), renumbered section 591 of this title as this section.

Subsec. (b)(2). Pub. L. 102–354, § 3(b)(4), substituted ''section 580'' for ''section 590''.

§ 582. Compilation of information

The Chairman of the Administrative Conference of the United States shall compile and maintain data on the use of alternative means of dispute resolution in conducting agency proceedings. Agencies shall, upon the request of the Chairman of the Administrative Conference of the United States, supply such information as is required to enable the Chairman to comply with this section.

(Added Pub. L. 101–552, § 4(b), Nov. 15, 1990, 104 Stat. 2744, § 592; renumbered § 582, Pub. L. 102–354, § 3(b)(2), Aug. 26, 1992, 106 Stat. 944.)

TERMINATION OF SECTION

For termination of section by section 11 of Pub. L. 101–552, see Termination Date; Savings Provision note set out under section 571 of this title.

PRIOR PROVISIONS

A prior section 582 was renumbered section 572 of this title.

Another prior section 582 was renumbered section 562 of this title.

AMENDMENTS

1992—Pub. L. 102–354 renumbered section 592 of this title as this section.

§ 583. Support services

For the purposes of this subchapter, an agency may use (with or without reimbursement) the services and facilities of other Federal agencies, public and private organizations and agencies, and individuals, with the consent of such agencies, organizations, and individuals. An agency may accept voluntary and uncompensated services for purposes of this subchapter without regard to the provisions of section 1342 of title 31.

(Added Pub. L. 101–552, § 4(b), Nov. 15, 1990, 104 Stat. 2745, § 593; renumbered § 583, Pub. L. 102–354, § 3(b)(2), Aug. 26, 1992, 106 Stat. 944.)

TERMINATION OF SECTION

For termination of section by section 11 of Pub. L. 101–552, see Termination Date; Savings Provision note set out under section 571 of this title.

PRIOR PROVISIONS

Prior sections 583 to 590 were renumbered sections 573 to 580 of this title, respectively.

Other prior sections 583 to 590 were renumbered sections 563 to 570 of this title, respectively.

AMENDMENTS

1992—Pub. L. 102–354 renumbered section 593 of this title as this section.

SUBCHAPTER V—ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

AMENDMENTS

1992—Pub. L. 102–354, § 2(1), Aug. 26, 1992, 106 Stat. 944, redesignated subchapter III of this chapter as this subchapter.

§ 591. Purpose

It is the purpose of this subchapter to provide suitable arrangements through which Federal

[1] So in original. Probably should not be capitalized.

agencies, assisted by outside experts, may cooperatively study mutual problems, exchange information, and develop recommendations for action by proper authorities to the end that private rights may be fully protected and regulatory activities and other Federal responsibilities may be carried out expeditiously in the public interest.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 388, § 571; renumbered § 591, Pub. L. 102–354, § 2(2), Aug. 26, 1992, 106 Stat. 944.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 1045(e).	Aug. 30, 1964, Pub. L. 88–499, § 2(e), 78 Stat. 615.

The words ''this subchapter'' are substituted for ''this Act'' to reflect the codification of the Administrative Conference Act in this subchapter.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

PRIOR PROVISIONS

A prior section 591 was renumbered section 581 of this title.

AMENDMENTS

1992—Pub. L. 102–354 renumbered section 571 of this title as this section.

§ 592. Definitions

For the purpose of this subchapter—

(1) ''administrative program'' includes a Federal function which involves protection of the public interest and the determination of rights, privileges, and obligations of private persons through rule making, adjudication, licensing, or investigation, as those terms are used in subchapter II of this chapter, except that it does not include a military or foreign affairs function of the United States;

(2) ''administrative agency'' means an authority as defined by section 551(1) of this title; and

(3) ''administrative procedure'' means procedure used in carrying out an administrative program and is to be broadly construed to include any aspect of agency organization, procedure, or management which may affect the equitable consideration of public and private interests, the fairness of agency decisions, the speed of agency action, and the relationship of operating methods to later judicial review, but does not include the scope of agency responsibility as established by law or matters of substantive policy committed by law to agency discretion.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 388, § 572; renumbered § 592, Pub. L. 102–354, § 2(2), Aug. 26, 1992, 106 Stat. 944.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 1045a.	Aug. 30, 1964, Pub. L. 88–499, § 3, 78 Stat. 615.

In paragraph (1), the words ''subchapter II of this chapter'' are substituted for ''the Administrative Procedure Act (5 U.S.C. 1001–1011)'' to reflect the codification of the Act in this title. The word ''naval'' is omitted as included in ''military''.

In paragraph (2), the words ''section 551(1) of this title'' are substituted for ''section 2(a) of the Administrative Procedure Act (5 U.S.C. 1001(a))''.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

PRIOR PROVISIONS

A prior section 592 was renumbered section 582 of this title.

AMENDMENTS

1992—Pub. L. 102–354 renumbered section 572 of this title as this section.

§ 593. Administrative Conference of the United States

(a) The Administrative Conference of the United States consists of not more than 101 nor less than 75 members appointed as set forth in subsection (b) of this section.

(b) The Conference is composed of—

(1) a full-time Chairman appointed for a 5-year term by the President, by and with the advice and consent of the Senate. The Chairman is entitled to pay at the highest rate established by statute for the chairman of an independent regulatory board or commission, and may continue to serve until his successor is appointed and has qualified;

(2) the chairman of each independent regulatory board or commission or an individual designated by the board or commission;

(3) the head of each Executive department or other administrative agency which is designated by the President, or an individual designated by the head of the department or agency;

(4) when authorized by the Council referred to in section 595(b) of this title, one or more appointees from a board, commission, department, or agency referred to in this subsection, designated by the head thereof with, in the case of a board or commission, the approval of the board or commission;

(5) individuals appointed by the President to membership on the Council who are not otherwise members of the Conference; and

(6) not more than 40 other members appointed by the Chairman, with the approval of the Council, for terms of 2 years, except that the number of members appointed by the Chairman may at no time be less than one-third nor more than two-fifths of the total number of members. The Chairman shall select the members in a manner which will provide broad representation of the views of private citizens and utilize diverse experience. The members shall be members of the practicing bar, scholars in the field of administrative law or government, or others specially informed by knowledge and experience with respect to Federal administrative procedure.

(c) Members of the Conference, except the Chairman, are not entitled to pay for service. Members appointed from outside the Federal Government are entitled to travel expenses, including per diem instead of subsistence, as authorized by section 5703 of this title for individuals serving without pay.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 389, § 573; Pub. L. 99–470, § 1, Oct. 14, 1986, 100 Stat. 1198; renumbered § 593 and amended Pub. L. 102–354, § 2(2), (3), Aug. 26, 1992, 106 Stat. 944.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 1045b.	Aug. 30, 1964, Pub. L. 88–499, § 4, 78 Stat. 616.

In subsection (a), the words ''There is hereby established'' are omitted as executed. The words ''hereinafter referred to as the 'Conference' '' are omitted as unnecessary as the title ''Administrative Conference of the United States'' is fully set out the first time it is used in each section of this chapter.

In subsection (b)(4), the words ''referred to in section 575(b) of this title'' are inserted for clarity.

In subsection (c), the words ''by section 5703 of this title'' are substituted for ''by law (5 U.S.C. 73b–2)'' to reflect the codification of that section in title 5.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

PRIOR PROVISIONS

A prior section 593 was renumbered section 583 of this title.

AMENDMENTS

1992—Pub. L. 102–354, § 2(2), renumbered section 573 of this title as this section.

Subsec. (b)(4). Pub. L. 102–354, § 2(3), substituted ''section 595(b)'' for ''section 575(b)''.

1986—Subsec. (a). Pub. L. 99–470, § 1(a)(1), substituted ''101'' for ''91''.

Subsec. (b)(6). Pub. L. 99–470, § 1(a)(2), substituted ''40'' for ''36''.

DEVELOPMENT OF ADMINISTRATIVE CONFERENCE

The Administrative Conference of the United States, established as a permanent body by the Administrative Conference Act, Pub. L. 88–499, Aug. 30, 1964, 78 Stat. 615, was preceded by two temporary Conferences. The first was called by President Eisenhower in 1953 and adopted a final report which was transmitted to the President who acknowledged receipt of it on March 3, 1955. The second was established by President Kennedy by Executive Order No. 10934, Apr. 14, 1961, 26 F.R. 3233, which, by its terms, called for a final report to the President by December 31, 1962. The final report recommended a continuing Conference consisting of both government personnel and outside experts.

§ 594. Powers and duties of the Conference

To carry out the purpose of this subchapter, the Administrative Conference of the United States may—

(1) study the efficiency, adequacy, and fairness of the administrative procedure used by administrative agencies in carrying out administrative programs, and make recommendations to administrative agencies, collectively or individually, and to the President, Congress, or the Judicial Conference of the United States, in connection therewith, as it considers appropriate;

(2) arrange for interchange among administrative agencies of information potentially useful in improving administrative procedure;

(3) collect information and statistics from administrative agencies and publish such reports as it considers useful for evaluating and improving administrative procedure;

(4) enter into arrangements with any administrative agency or major organizational unit within an administrative agency pursuant to which the Conference performs any of the functions described in this section; and

(5) provide assistance in response to requests relating to the improvement of administrative procedure in foreign countries, subject to the concurrence of the Secretary of State, the Administrator of the Agency for International Development, or the Director of the United States Information Agency, as appropriate, except that—

(A) such assistance shall be limited to the analysis of issues relating to administrative procedure, the provision of training of foreign officials in administrative procedure, and the design or improvement of administrative procedure, where the expertise of members of the Conference is indicated; and

(B) such assistance may only be undertaken on a fully reimbursable basis, including all direct and indirect administrative costs.

Payment for services provided by the Conference pursuant to paragraph (4) shall be credited to the operating account for the Conference and shall remain available until expended.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 390, § 574; Pub. L. 101–422, § 2, Oct. 12, 1990, 104 Stat. 910; renumbered § 594, Pub. L. 102–354, § 2(2), Aug. 26, 1992, 106 Stat. 944; Pub. L. 102–403, Oct. 9, 1992, 106 Stat. 1968.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 1045c.	Aug. 30, 1964, Pub. L. 88–499, § 5, 78 Stat. 616.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1992—Pub. L. 102–354 renumbered section 574 of this title as this section.

Par. (4). Pub. L. 102–403 amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''enter into arrangements with any administrative agency or major organizational unit within an administrative agency pursuant to which the Conference performs any of the functions described in paragraphs (1), (2), and (3).''

Par. (5). Pub. L. 102–403 which directed addition of par. (5) at end of section, was executed by adding par. (5) after par. (4) and before concluding provisions, to reflect the probable intent of Congress.

1990—Pub. L. 101–422 added par. (4) and concluding provisions.

§ 595. Organization of the Conference

(a) The membership of the Administrative Conference of the United States meeting in plenary session constitutes the Assembly of the Conference. The Assembly has ultimate authority over all activities of the Conference. Specifically, it has the power to—

(1) adopt such recommendations as it considers appropriate for improving administrative procedure. A member who disagrees with a recommendation adopted by the Assembly is

entitled to enter a dissenting opinion and an alternate proposal in the record of the Conference proceedings, and the opinion and proposal so entered shall accompany the Conference recommendation in a publication or distribution thereof; and

(2) adopt bylaws and regulations not inconsistent with this subchapter for carrying out the functions of the Conference, including the creation of such committees as it considers necessary for the conduct of studies and the development of recommendations for consideration by the Assembly.

(b) The Conference includes a Council composed of the Chairman of the Conference, who is Chairman of the Council, and 10 other members appointed by the President, of whom not more than one-half shall be employees of Federal regulatory agencies or Executive departments. The President may designate a member of the Council as Vice Chairman. During the absence or incapacity of the Chairman, or when that office is vacant, the Vice Chairman shall serve as Chairman. The term of each member, except the Chairman, is 3 years. When the term of a member ends, he may continue to serve until a successor is appointed. However, the service of any member ends when a change in his employment status would make him ineligible for Council membership under the conditions of his original appointment. The Council has the power to—

(1) determine the time and place of plenary sessions of the Conference and the agenda for the sessions. The Council shall call at least one plenary session each year;

(2) propose bylaws and regulations, including rules of procedure and committee organization, for adoption by the Assembly;

(3) make recommendations to the Conference or its committees on a subject germane to the purpose of the Conference;

(4) receive and consider reports and recommendations of committees of the Conference and send them to members of the Conference with the views and recommendations of the Council;

(5) designate a member of the Council to preside at meetings of the Council in the absence or incapacity of the Chairman and Vice Chairman;

(6) designate such additional officers of the Conference as it considers desirable;

(7) approve or revise the budgetary proposals of the Chairman; and

(8) exercise such other powers as may be delegated to it by the Assembly.

(c) The Chairman is the chief executive of the Conference. In that capacity he has the power to—

(1) make inquiries into matters he considers important for Conference consideration, including matters proposed by individuals inside or outside the Federal Government;

(2) be the official spokesman for the Conference in relations with the several branches and agencies of the Federal Government and with interested organizations and individuals outside the Government, including responsibility for encouraging Federal agencies to carry out the recommendations of the Conference;

(3) request agency heads to provide information needed by the Conference, which information shall be supplied to the extent permitted by law;

(4) recommend to the Council appropriate subjects for action by the Conference;

(5) appoint, with the approval of the Council, members of committees authorized by the bylaws and regulations of the Conference;

(6) prepare, for approval of the Council, estimates of the budgetary requirements of the Conference;

(7) appoint and fix the pay of employees, define their duties and responsibilities, and direct and supervise their activities;

(8) rent office space in the District of Columbia;

(9) provide necessary services for the Assembly, the Council, and the committees of the Conference;

(10) organize and direct studies ordered by the Assembly or the Council, to contract for the performance of such studies with any public or private persons, firm, association, corporation, or institution under title III of the Federal Property and Administrative Services Act of 1949, as amended (41 U.S.C. 251–260), and to use from time to time, as appropriate, experts and consultants who may be employed in accordance with section 3109 of this title at rates not in excess of the maximum rate of pay for grade GS–15 as provided in section 5332 of this title;

(11) utilize, with their consent, the services and facilities of Federal agencies and of State and private agencies and instrumentalities with or without reimbursement;

(12) accept, hold, administer, and utilize gifts, devises, and bequests of property, both real and personal, for the purpose of aiding and facilitating the work of the Conference. Gifts and bequests of money and proceeds from sales of other property received as gifts, devises, or bequests shall be deposited in the Treasury and shall be disbursed upon the order of the Chairman. Property accepted pursuant to this section, and the proceeds thereof, shall be used as nearly as possible in accordance with the terms of the gifts, devises, or bequests. For purposes of Federal income, estate, or gift taxes, property accepted under this section shall be considered as a gift, devise, or bequest to the United States;

(13) accept voluntary and uncompensated services, notwithstanding the provisions of section 1342 of title 31;

(14) on request of the head of an agency, furnish assistance and advice on matters of administrative procedure;

(15) exercise such additional authority as the Council or Assembly delegates to him; and

(16) request any administrative agency to notify the Chairman of its intent to enter into any contract with any person outside the agency to study the efficiency, adequacy, or fairness of an agency proceeding (as defined in section 551(12) of this title).

The Chairman shall preside at meetings of the Council and at each plenary session of the Conference, to which he shall make a full report concerning the affairs of the Conference since

the last preceding plenary session. The Chairman, on behalf of the Conference, shall transmit to the President and Congress an annual report and such interim reports as he considers desirable.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 390, § 575; Pub. L. 92–526, § 1, Oct. 21, 1972, 86 Stat. 1048; Pub. L. 97–258, § 3(a)(1), Sept. 13, 1982, 96 Stat. 1062; Pub. L. 101–422, § 3, Oct. 12, 1990, 104 Stat. 910; renumbered § 595, Pub. L. 102–354, § 2(2), Aug. 26, 1992, 106 Stat. 944.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 1045d.	Aug. 30, 1964, Pub. L. 88–499, § 6, 78 Stat. 617.

In subsection (b), the words ''except that the Council members initially appointed shall serve for one, two, or three years, as designated by the President'' are omitted as executed, existing rights being preserved by technical section 8.

In subsection (b)(1), the words ''the sessions'' are substituted for ''such meetings'' for clarity as elsewhere the word ''sessions'' refers to sessions of the Conference and ''meetings'' refers to meetings of the Council.

In subsection (c)(7), the words ''subject to the civil service and classification laws'' are omitted as unnecessary inasmuch as appointments in the executive branch are made subject to the civil service laws and pay is fixed under classification laws unless specifically excepted. The words ''and fix the pay of'' are added for clarity.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

REFERENCES IN TEXT

The Federal Property and Administrative Services Act of 1949, referred to in subsec. (c)(10), is act June 30, 1949, ch. 288, 63 Stat. 377, as amended. Title III of that Act is classified generally to subchapter IV (§ 251 et seq.) of chapter 4 of Title 41, Public Contracts. For complete classification of this Act to the Code, see Short Title note set out under section 471 of Title 40, Public Buildings, Property, and Works, and Tables.

AMENDMENTS

1992—Pub. L. 102–354 renumbered section 575 of this title as this section.

1990—Subsec. (c)(16). Pub. L. 101–422 added par. (16).

1982—Subsec. (c)(13). Pub. L. 97–258 substituted ''section 1342 of title 31'' for ''section 3679(b) of the Revised Statutes (31 U.S.C. 665(b))''.

1972—Subsec. (c)(10). Pub. L. 92–526, § 1(a), inserted provisions authorizing contracts for the performance of such studies with any public or private persons, etc., under title III of the Federal Property and Administrative Services Act of 1949, as amended, and substituted provisions authorizing the payment of experts and consultants in accordance with rates not in excess of the maximum rate of pay for grade GS–15 as provided in section 5332 of this title, for provisions authorizing the payment of such individuals at rates not in excess of $100 a day.

Subsec. (c)(11) to (15). Pub. L. 92–526, § 1(b), added pars. (11) to (13) and redesignated former pars. (11) and (12) as (14) and (15), respectively.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 569, 593 of this title.

§ 596. Authorization of appropriations

There are authorized to be appropriated to carry out the purposes of this subchapter not more than $2,000,000 for fiscal year 1990, $2,100,000 for fiscal year 1991, $2,200,000 for fiscal year 1992, $2,300,000 for fiscal year 1993, and $2,400,000 for fiscal year 1994. Of any amounts appropriated under this section, not more than $1,500 may be made available in each fiscal year for official representation and entertainment expenses for foreign dignitaries.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 391, § 576; Pub. L. 91–164, Dec. 24, 1969, 83 Stat. 446; Pub. L. 92–526, § 2, Oct. 21, 1972, 86 Stat. 1048; Pub. L. 95–293, § 1(a), June 13, 1978, 92 Stat. 317; Pub. L. 97–330, Oct. 15, 1982, 96 Stat. 1618; Pub. L. 99–470, § 2(a), Oct. 14, 1986, 100 Stat. 1198; Pub. L. 101–422, § 1, Oct. 12, 1990, 104 Stat. 910; renumbered § 596, Pub. L. 102–354, § 2(2), Aug. 26, 1992, 106 Stat. 944.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 1045e.	Aug. 30, 1964, Pub. L. 88–499, § 7, 78 Stat. 618.

The word ''hereby'' is omitted as unnecessary.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1992—Pub. L. 102–354 renumbered section 576 of this title as this section.

1990—Pub. L. 101–422 amended section generally. Prior to amendment, section read as follows: ''There are authorized to be appropriated to carry out the purposes of this subchapter not more than $1,600,000 for fiscal year 1986 and not more than $2,000,000 for each fiscal year thereafter up to and including fiscal year 1990. Of any amounts appropriated under this section, not more than $1,000 may be made available in each fiscal year for official reception and entertainment expenses for foreign dignitaries.''

1986—Pub. L. 99–470 substituted ''Authorization of appropriations'' for ''Appropriations'' in section catchline and amended text generally. Prior to amendment, text read as follows: ''There are authorized to be appropriated to carry out the purposes of this subchapter sums not to exceed $2,300,000 for the fiscal year ending September 30, 1982, and not to exceed $2,300,000 for each fiscal year thereafter up to and including the fiscal year ending September 30, 1986.''

1982—Pub. L. 97–330 substituted provisions authorizing appropriations of not to exceed $2,300,000 for fiscal year ending Sept. 30, 1982, and not to exceed $2,300,000 for each fiscal year thereafter up to and including fiscal year ending Sept. 30, 1986, for provisions that had authorized appropriations of not to exceed $1,700,000 for fiscal year ending Sept. 30, 1979, $2,000,000 for fiscal year ending Sept. 30, 1980, $2,300,000 for fiscal year ending Sept. 30, 1981, and $2,300,000 for fiscal year ending Sept. 30, 1982.

1978—Pub. L. 95–293 substituted provisions authorizing appropriations for fiscal years ending Sept. 30, 1979, Sept. 30, 1980, Sept. 30, 1981, and Sept. 30, 1982, of $1,700,000, $2,000,000, $2,300,000, and $2,300,000, respectively, for provisions authorizing appropriations for fiscal years ending June 30, 1974, June 30, 1975, June 30, 1976, June 30, 1977, and June 30, 1978, of $760,000, $805,000, $850,000, $900,000, and $950,000, respectively, and provisions authorizing for each fiscal year thereafter such sums as may be necessary.

1972—Pub. L. 92–526 substituted provisions authorizing to be appropriated necessary sums not in excess of $760,000 for fiscal year ending June 30, 1974, $805,000 for fiscal year ending June 30, 1975, $850,000 for fiscal year ending June 30, 1976, $900,000 for fiscal year ending June 30, 1977, and $950,000 for fiscal year ending June 30, 1978,

and each fiscal year thereafter, for provisions authorizing to be appropriated necessary sums, not in excess of $450,000 per annum.

1969—Pub. L. 91–164 substituted ''$450,000 per annum'' for ''$250,000''.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 1(b) of Pub. L. 95–293 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect October 1, 1977.''

CHAPTER 6—THE ANALYSIS OF REGULATORY FUNCTIONS

Sec.
601. Definitions.
602. Regulatory agenda.
603. Initial regulatory flexibility analysis.
604. Final regulatory flexibility analysis.
605. Avoidance of duplicative or unnecessary analyses.
606. Effect on other law.
607. Preparation of analyses.
608. Procedure for waiver or delay of completion.
609. Procedures for gathering comments.
610. Periodic review of rules.
611. Judicial review.
612. Reports and intervention rights.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 16 sections 1379, 1855; title 42 sections 1302, 7661f.

§ 601. Definitions

For purposes of this chapter—

(1) the term ''agency'' means an agency as defined in section 551(1) of this title;

(2) the term ''rule'' means any rule for which the agency publishes a general notice of proposed rulemaking pursuant to section 553(b) of this title, or any other law, including any rule of general applicability governing Federal grants to State and local governments for which the agency provides an opportunity for notice and public comment, except that the term ''rule'' does not include a rule of particular applicability relating to rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services, or allowances therefor or to valuations, costs or accounting, or practices relating to such rates, wages, structures, prices, appliances, services, or allowances;

(3) the term ''small business'' has the same meaning as the term ''small business concern'' under section 3 of the Small Business Act, unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register;

(4) the term ''small organization'' means any not-for-profit enterprise which is independently owned and operated and is not dominant in its field, unless an agency establishes, after opportunity for public comment, one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register;

(5) the term ''small governmental jurisdiction'' means governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand, unless an agency establishes, after opportunity for public comment, one or more definitions of such term which are appropriate to the activities of the agency and which are based on such factors as location in rural or sparsely populated areas or limited revenues due to the population of such jurisdiction, and publishes such definition(s) in the Federal Register; and

(6) the term ''small entity'' shall have the same meaning as the terms ''small business'', ''small organization'' and ''small governmental jurisdiction'' defined in paragraphs (3), (4) and (5) of this section.

(Added Pub. L. 96–354, §3(a), Sept. 19, 1980, 94 Stat. 1165.)

REFERENCES IN TEXT

Section 3 of the Small Business Act, referred to in par. (3), is classified to section 632 of Title 15, Commerce and Trade.

EFFECTIVE DATE

Section 4 of Pub. L. 96–354 provided that: ''The provisions of this Act [enacting this chapter] shall take effect January 1, 1981, except that the requirements of sections 603 and 604 of title 5, United States Code (as added by section 3 of this Act) shall apply only to rules for which a notice of proposed rulemaking is issued on or after January 1, 1981.''

SHORT TITLE

Section 1 of Pub. L. 96–354 provided: ''That this Act [enacting this chapter] may be cited as the 'Regulatory Flexibility Act'.''

EFFECTS OF DEREGULATION ON RURAL AMERICA

Pub. L. 101–574, title III, §309, Nov. 15, 1990, 104 Stat. 2831, provided that:

''(a) STUDY.—The Office of Technology Assessment shall conduct a study of the effects of deregulation on the economic vitality of rural areas. Such study shall include, but not be limited to, a thorough analysis of the impact of deregulation on—

''(1) the number of loans made by financial institutions to small businesses located in rural areas, a change in the level of security interests required for such loans, and the cost of such loans to rural small businesses for creation and expansion;

''(2) airline service in cities and towns with populations of 100,000 or less, including airline fare, the number of flights available, number of seats available, scheduling of flights, continuity of service, number of markets being served by large and small airlines, availability of nonstop service, availability of direct service, number of economic cancellations, number of flight delays, the types of airplanes used, and time delays;

''(3) the availability and costs of bus, rail and trucking transportation for businesses located in rural areas;

''(4) the availability and costs of state-of-the-art telecommunications services to small businesses located in rural areas, including voice telephone service, private (not multiparty) telephone service, reliable facsimile document and data transmission, competitive long distance carriers, cellular (mobile) telephone service, multifrequency tone signaling services such as touchtone services, custom-calling services (including three-way calling, call forwarding, and call waiting), voicemail services, and 911 emergency services with automatic number identification;

''(5) the availability and costs to rural schools, hospitals, and other public facilities, of sending and receiving audio and visual signals in cases where such

ability will enhance the quality of services provided to rural residents and businesses; and

''(6) the availability and costs of services enumerated in paragraphs (1) through (5) in urban areas compared to rural areas.

''(b) REPORT.—Not later than 12 months after the date of enactment of this title [Nov. 15, 1990], the Office of Technology Assessment shall transmit to Congress a report on the results of the study conducted under subsection (a) together with its recommendations on how to address the problems facing small businesses in rural areas.''

CONGRESSIONAL FINDINGS AND DECLARATION OF PURPOSE

Section 2 of Pub. L. 96–354 provided that:

''(a) The Congress finds and declares that—

''(1) when adopting regulations to protect the health, safety and economic welfare of the Nation, Federal agencies should seek to achieve statutory goals as effectively and efficiently as possible without imposing unnecessary burdens on the public;

''(2) laws and regulations designed for application to large scale entities have been applied uniformly to small businesses, small organizations, and small governmental jurisdictions even though the problems that gave rise to government action may not have been caused by those smaller entities;

''(3) uniform Federal regulatory and reporting requirements have in numerous instances imposed unnecessary and disproportionately burdensome demands including legal, accounting and consulting costs upon small businesses, small organizations, and small governmental jurisdictions with limited resources;

''(4) the failure to recognize differences in the scale and resources of regulated entities has in numerous instances adversely affected competition in the marketplace, discouraged innovation and restricted improvements in productivity;

''(5) unnecessary regulations create entry barriers in many industries and discourage potential entrepreneurs from introducing beneficial products and processes;

''(6) the practice of treating all regulated businesses, organizations, and governmental jurisdictions as equivalent may lead to inefficient use of regulatory agency resources, enforcement problems, and, in some cases, to actions inconsistent with the legislative intent of health, safety, environmental and economic welfare legislation;

''(7) alternative regulatory approaches which do not conflict with the stated objectives of applicable statutes may be available which minimize the significant economic impact of rules on small businesses, small organizations, and small governmental jurisdictions;

''(8) the process by which Federal regulations are developed and adopted should be reformed to require agencies to solicit the ideas and comments of small businesses, small organizations, and small governmental jurisdictions to examine the impact of proposed and existing rules on such entities, and to review the continued need for existing rules.

''(b) It is the purpose of this Act [enacting this chapter] to establish as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.''

EXECUTIVE ORDER NO. 12291

Ex. Ord. No. 12291, Feb. 17, 1981, 46 F.R. 13193, which established requirements for agencies to follow in promulgating regulations, reviewing existing regulations, and developing legislative proposals concerning regulation, was revoked by Ex. Ord. No. 12866, §11, Sept. 30, 1993, 58 F.R. 51735, set out below.

EXECUTIVE ORDER NO. 12498

Ex. Ord. No. 12498, Jan. 4, 1985, 50 F.R. 1036, which established a regulatory planning process by which to develop and publish a regulatory program for each year, was revoked by Ex. Ord. No. 12866, §11, Sept. 30, 1993, 58 F.R. 51735, set out below.

EX. ORD. NO. 12606. FAMILY CONSIDERATIONS IN POLICY FORMULATION AND IMPLEMENTATION

Ex. Ord. No. 12606, Sept. 2, 1987, 52 F.R. 34188, provided:

By the authority vested in me as President by the Constitution and laws of the United States of America, and in order to ensure that the autonomy and rights of the family are considered in the formulation and implementation of policies by Executive departments and agencies, it is hereby ordered as follows:

SECTION 1. *Family Policymaking Criteria.* In formulating and implementing policies and regulations that may have significant impact on family formation, maintenance, and general well-being, Executive departments and agencies shall, to the extent permitted by law, assess such measures in light of the following questions:

(a) Does this action by government strengthen or erode the stability of the family and, particularly, the marital commitment?

(b) Does this action strengthen or erode the authority and rights of parents in the education, nurture, and supervision of their children?

(c) Does this action help the family perform its functions, or does it substitute governmental activity for the function?

(d) Does this action by government increase or decrease family earnings? Do the proposed benefits of this action justify the impact on the family budget?

(e) Can this activity be carried out by a lower level of government or by the family itself?

(f) What message, intended or otherwise, does this program send to the public concerning the status of the family?

(g) What message does it send to young people concerning the relationship between their behavior, their personal responsibility, and the norms of our society?

SEC. 2. *Governmentwide Family Policy Coordination and Review.*

(a) Executive departments and agencies shall identify proposed regulatory and statutory provisions that may have significant potential negative impact on the family well-being and provide adequate rationale on why such proposal should be submitted. The head of the department or agency, shall certify in writing that, to the extent permitted by law, such measure has been assessed in light of the criteria in Section 1 of this Order and how such measures will enhance family well-being. Such certification shall be transmitted to the Office of Management and Budget. Departments and agencies shall give careful consideration to family-related concerns and their impact in notices of proposed rulemaking and messages transmitting legislative proposals to the Congress.

(b) The Office of Management and Budget shall, to the extent permitted by law, take action to ensure that the policies of the Executive departments and agencies are applied in light of the criteria set forth in Section 1 of this Order.

(c) The Office of Policy Development shall assess existing and proposed policies and regulations that impact family well-being in light of the criteria established by Section 1 of this Order, provide evaluations on those measures that have significant potential impact on the family to the Office of Management and Budget, and advise the President on policy and regulatory actions that may be taken to strengthen the institutions of marriage and family in America.

SEC. 3. *Report*. The Office of Policy Development shall submit preliminary reports including specific recommendations to the Domestic Policy Council and shall submit a final report to the President no later than 180 days from the date of this Order. Each year thereafter, a report, including recommendations shall be submitted, through the Domestic Policy Council to the President.

SEC. 4. *Judicial Review*. This Order is intended to improve the internal management of the Executive branch and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

RONALD REAGAN.

EX. ORD. NO. 12612. FEDERALISM CONSIDERATIONS IN POLICY FORMULATION AND IMPLEMENTATION

Ex. Ord. No. 12612, Oct. 26, 1987, 52 F.R. 41685, provided:

By the authority vested in me as President by the Constitution and laws of the United States of America, and in order to restore the division of governmental responsibilities between the national government and the States that was intended by the Framers of the Constitution and to ensure that the principles of federalism established by the Framers guide the Executive departments and agencies in the formulation and implementation of policies, it is hereby ordered as follows:

SECTION 1. *Definitions*. For purposes of this Order:

(a) ''Policies that have federalism implications'' refers to regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

(b) ''State'' or ''States'' refer to the States of the United States of America, individually or collectively, and, where relevant, to State governments, including units of local government and other political subdivisions established by the States.

SEC. 2. *Fundamental Federalism Principles*. In formulating and implementing policies that have federalism implications, Executive departments and agencies shall be guided by the following fundamental federalism principles:

(a) Federalism is rooted in the knowledge that our political liberties are best assured by limiting the size and scope of the national government.

(b) The people of the States created the national government when they delegated to it those enumerated governmental powers relating to matters beyond the competence of the individual States. All other sovereign powers, save those expressly prohibited the States by the Constitution, are reserved to the States or to the people.

(c) The constitutional relationship among sovereign governments, State and national, is formalized in and protected by the Tenth Amendment to the Constitution.

(d) The people of the States are free, subject only to restrictions in the Constitution itself or in constitutionally authorized Acts of Congress, to define the moral, political, and legal character of their lives.

(e) In most areas of governmental concern, the States uniquely possess the constitutional authority, the resources, and the competence to discern the sentiments of the people and to govern accordingly. In Thomas Jefferson's words, the States are ''the most competent administrations for our domestic concerns and the surest bulwarks against antirepublican tendencies.''

(f) The nature of our constitutional system encourages a healthy diversity in the public policies adopted by the people of the several States according to their own conditions, needs, and desires. In the search for enlightened public policy, individual States and communities are free to experiment with a variety of approaches to public issues.

(g) Acts of the national government—whether legislative, executive, or judicial in nature—that exceed the enumerated powers of that government under the Constitution violate the principle of federalism established by the Framers.

(h) Policies of the national government should recognize the responsibility of—and should encourage opportunities for—individuals, families, neighborhoods, local governments, and private associations to achieve their personal, social, and economic objectives through cooperative effort.

(i) In the absence of clear constitutional or statutory authority, the presumption of sovereignty should rest with the individual States. Uncertainties regarding the legitimate authority of the national government should be resolved against regulation at the national level.

SEC. 3. *Federalism Policymaking Criteria*. In addition to the fundamental federalism principles set forth in section 2, Executive departments and agencies shall adhere, to the extent permitted by law, to the following criteria when formulating and implementing policies that have federalism implications:

(a) There should be strict adherence to constitutional principles. Executive departments and agencies should closely examine the constitutional and statutory authority supporting any Federal action that would limit the policymaking discretion of the States, and should carefully assess the necessity for such action. To the extent practicable, the States should be consulted before any such action is implemented. Executive Order No. 12372 (''Intergovernmental Review of Federal Programs'') [31 U.S.C. 6506 note] remains in effect for the programs and activities to which it is applicable.

(b) Federal action limiting the policymaking discretion of the States should be taken only where constitutional authority for the action is clear and certain and the national activity is necessitated by the presence of a problem of national scope. For the purposes of this Order:

(1) It is important to recognize the distinction between problems of national scope (which may justify Federal action) and problems that are merely common to the States (which will not justify Federal action because individual States, acting individually or together, can effectively deal with them).

(2) Constitutional authority for Federal action is clear and certain only when authority for the action may be found in a specific provision of the Constitution, there is no provision in the Constitution prohibiting Federal action, and the action does not encroach upon authority reserved to the States.

(c) With respect to national policies administered by the States, the national government should grant the States the maximum administrative discretion possible. Intrusive, Federal oversight of State administration is neither necessary nor desirable.

(d) When undertaking to formulate and implement policies that have federalism implications, Executive departments and agencies shall:

(1) Encourage States to develop their own policies to achieve program objectives and to work with appropriate officials in other States.

(2) Refrain, to the maximum extent possible, from establishing uniform, national standards for programs and, when possible, defer to the States to establish standards.

(3) When national standards are required, consult with appropriate officials and organizations representing the States in developing those standards.

SEC. 4. *Special Requirements for Preemption*. (a) To the extent permitted by law, Executive departments and agencies shall construe, in regulations and otherwise, a Federal statute to preempt State law only when the statute contains an express preemption provision or there is some other firm and palpable evidence compelling the conclusion that the Congress intended preemption of State law, or when the exercise of State authority directly conflicts with the exercise of Federal authority under the Federal statute.

(b) Where a Federal statute does not preempt State law (as addressed in subsection (a) of this section), Executive departments and agencies shall construe any authorization in the statute for the issuance of regulations as authorizing preemption of State law by rulemaking only when the statute expressly authorizes issuance of preemptive regulations or there is some other firm and palpable evidence compelling the conclusion that the Congress intended to delegate to the department or agency the authority to issue regulations preempting State law.

(c) Any regulatory preemption of State law shall be restricted to the minimum level necessary to achieve the objectives of the statute pursuant to which the regulations are promulgated.

(d) As soon as an Executive department or agency foresees the possibility of a conflict between State law and Federally protected interests within its area of regulatory responsibility, the department or agency shall consult, to the extent practicable, with appropriate officials and organizations representing the States in an effort to avoid such a conflict.

(e) When an Executive department or agency proposes to act through adjudication or rule-making to preempt State law, the department or agency shall provide all affected States notice and an opportunity for appropriate participation in the proceedings.

SEC. 5. *Special Requirements for Legislative Proposals.* Executive departments and agencies shall not submit to the Congress legislation that would:

(a) Directly regulate the States in ways that would interfere with functions essential to the States' separate and independent existence or operate to directly displace the States' freedom to structure integral operations in areas of traditional governmental functions;

(b) Attach to Federal grants conditions that are not directly related to the purpose of the grant; or

(c) Preempt State law, unless preemption is consistent with the fundamental federalism principles set forth in section 2, and unless a clearly legitimate national purpose, consistent with the federalism policymaking criteria set forth in section 3, cannot otherwise be met.

SEC. 6. *Agency Implementation.* (a) The head of each Executive department and agency shall designate an official to be responsible for ensuring the implementation of this Order.

(b) In addition to whatever other actions the designated official may take to ensure implementation of this Order, the designated official shall determine which proposed policies have sufficient federalism implications to warrant the preparation of a Federalism Assessment. With respect to each such policy for which an affirmative determination is made, a Federalism Assessment, as described in subsection (c) of this section, shall be prepared. The department or agency head shall consider any such Assessment in all decisions involved in promulgating and implementing the policy.

(c) Each Federalism Assessment shall accompany any submission concerning the policy that is made to the Office of Management and Budget pursuant to Executive Order No. 12291 [formerly set out above] or OMB Circular No. A–19, and shall:

(1) Contain the designated official's certification that the policy has been assessed in light of the principles, criteria, and requirements stated in sections 2 through 5 of this Order;

(2) Identify any provision or element of the policy that is inconsistent with the principles, criteria, and requirements stated in sections 2 through 5 of this Order;

(3) Identify the extent to which the policy imposes additional costs or burdens on the States, including the likely source of funding for the States and the ability of the States to fulfill the purposes of the policy; and

(4) Identify the extent to which the policy would affect the States' ability to discharge traditional State governmental functions, or other aspects of State sovereignty.

SEC. 7. *Government-wide Federalism Coordination and Review.* (a) In implementing Executive Order Nos. 12291 [formerly set out above] and 12498 [formerly set out above] and OMB Circular No. A–19, the Office of Management and Budget, to the extent permitted by law and consistent with the provisions of those authorities, shall take action to ensure that the policies of the Executive departments and agencies are consistent with the principles, criteria, and requirements stated in sections 2 through 5 of this Order.

(b) In submissions to the Office of Management and Budget pursuant to Executive Order No. 12291 [formerly set out above] and OMB Circular No. A–19, Executive departments and agencies shall identify proposed regulatory and statutory provisions that have significant federalism implications and shall address any substantial federalism concerns. Where the departments or agencies deem it appropriate, substantial federalism concerns should also be addressed in notices of proposed rule-making and messages transmitting legislative proposals to the Congress.

SEC. 8. *Judicial Review.* This Order is intended only to improve the internal management of the Executive branch, and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

RONALD REAGAN.

EX. ORD. NO. 12630. GOVERNMENTAL ACTIONS AND INTERFERENCE WITH CONSTITUTIONALLY PROTECTED PROPERTY RIGHTS

Ex. Ord. No. 12630, Mar. 15, 1988, 53 F.R. 8859, provided:

By the authority vested in me as President by the Constitution and laws of the United States of America, and in order to ensure that government actions are undertaken on a well-reasoned basis with due regard for fiscal accountability, for the financial impact of the obligations imposed on the Federal government by the Just Compensation Clause of the Fifth Amendment, and for the Constitution, it is hereby ordered as follows:

SECTION 1. *Purpose.* (a) The Fifth Amendment of the United States Constitution provides that private property shall not be taken for public use without just compensation. Government historically has used the formal exercise of the power of eminent domain, which provides orderly processes for paying just compensation, to acquire private property for public use. Recent Supreme Court decisions, however, in reaffirming the fundamental protection of private property rights provided by the Fifth Amendment and in assessing the nature of governmental actions that have an impact on constitutionally protected property rights, have also reaffirmed that governmental actions that do not formally invoke the condemnation power, including regulations, may result in a taking for which just compensation is required.

(b) Responsible fiscal management and fundamental principles of good government require that government decision-makers evaluate carefully the effect of their administrative, regulatory, and legislative actions on constitutionally protected property rights. Executive departments and agencies should review their actions carefully to prevent unnecessary takings and should account in decision-making for those takings that are necessitated by statutory mandate.

(c) The purpose of this Order is to assist Federal departments and agencies in undertaking such reviews and in proposing, planning, and implementing actions with due regard for the constitutional protections provided by the Fifth Amendment and to reduce the risk of undue or inadvertent burdens on the public fisc resulting from lawful governmental action. In furtherance of the purpose of this Order, the Attorney General shall, consistent with the principles stated herein and in consultation with the Executive departments and agencies, promulgate Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings to which each Executive department or agency shall refer in making the evaluations required by this Order or in

otherwise taking any action that is the subject of this Order. The Guidelines shall be promulgated no later than May 1, 1988, and shall be disseminated to all units of each Executive department and agency no later than July 1, 1988. The Attorney General shall, as necessary, update these guidelines to reflect fundamental changes in takings law occurring as a result of Supreme Court decisions.

SEC. 2. *Definitions.* For the purpose of this Order: (a) ''Policies that have takings implications'' refers to Federal regulations, proposed Federal regulations, proposed Federal legislation, comments on proposed Federal legislation, or other Federal policy statements that, if implemented or enacted, could effect a taking, such as rules and regulations that propose or implement licensing, permitting, or other condition requirements or limitations on private property use, or that require dedications or exactions from owners of private property. ''Policies that have takings implications'' does not include:

(1) Actions abolishing regulations, discontinuing governmental programs, or modifying regulations in a manner that lessens interference with the use of private property;

(2) Actions taken with respect to properties held in trust by the United States or in preparation for or during treaty negotiations with foreign nations;

(3) Law enforcement actions involving seizure, for violations of law, of property for forfeiture or as evidence in criminal proceedings;

(4) Studies or similar efforts or planning activities;

(5) Communications between Federal agencies or departments and State or local land-use planning agencies regarding planned or proposed State or local actions regulating private property regardless of whether such communications are initiated by a Federal agency or department or are undertaken in response to an invitation by the State or local authority;

(6) The placement of military facilities or military activities involving the use of Federal property alone; or

(7) Any military or foreign affairs functions (including procurement functions thereunder) but not including the U.S. Army Corps of Engineers civil works program.

(b) Private property refers to all property protected by the Just Compensation Clause of the Fifth Amendment.

(c) ''Actions'' refers to proposed Federal regulations, proposed Federal legislation, comments on proposed Federal legislation, applications of Federal regulations to specific property, or Federal governmental actions physically invading or occupying private property, or other policy statements or actions related to Federal regulation or direct physical invasion or occupancy, but does not include:

(1) Actions in which the power of eminent domain is formally exercised;

(2) Actions taken with respect to properties held in trust by the United States or in preparation for or during treaty negotiations with foreign nations;

(3) Law enforcement actions involving seizure, for violations of law, of property for forfeiture or as evidence in criminal proceedings;

(4) Studies or similar efforts or planning activities;

(5) Communications between Federal agencies or departments and State or local land-use planning agencies regarding planned or proposed State or local actions regulating private property regardless of whether such communications are initiated by a Federal agency or department or are undertaken in response to an invitation by the State or local authority;

(6) The placement of military facilities or military activities involving the use of Federal property alone; or

(7) Any military or foreign affairs functions (including procurement functions thereunder), but not including the U.S. Army Corps of Engineers civil works program.

SEC. 3. *General Principles.* In formulating or implementing policies that have takings implications, each Executive department and agency shall be guided by the following general principles:

(a) Governmental officials should be sensitive to, anticipate, and account for, the obligations imposed by the Just Compensation Clause of the Fifth Amendment in planning and carrying out governmental actions so that they do not result in the imposition of unanticipated or undue additional burdens on the public fisc.

(b) Actions undertaken by governmental officials that result in a physical invasion or occupancy of private property, and regulations imposed on private property that substantially affect its value or use, may constitute a taking of property. Further, governmental action may amount to a taking even though the action results in less than a complete deprivation of all use or value, or of all separate and distinct interests in the same private property and even if the action constituting a taking is temporary in nature.

(c) Government officials whose actions are taken specifically for purposes of protecting public health and safety are ordinarily given broader latitude by courts before their actions are considered to be takings. However, the mere assertion of a public health and safety purpose is insufficient to avoid a taking. Actions to which this Order applies asserted to be for the protection of public health and safety, therefore, should be undertaken only in response to real and substantial threats to public health and safety, be designed to advance significantly the health and safety purpose, and be no greater than is necessary to achieve the health and safety purpose.

(d) While normal governmental processes do not ordinarily effect takings, undue delays in decision-making during which private property use if interfered with carry a risk of being held to be takings. Additionally, a delay in processing may increase significantly the size of compensation due if a taking is later found to have occurred.

(e) The Just Compensation Clause is self-actuating, requiring that compensation be paid whenever governmental action results in a taking of private property regardless of whether the underlying authority for the action contemplated a taking or authorized the payment of compensation. Accordingly, governmental actions that may have a significant impact on the use or value of private property should be scrutinized to avoid undue or unplanned burdens on the public fisc.

SEC. 4. *Department and Agency Action.* In addition to the fundamental principles set forth in Section 3, Executive departments and agencies shall adhere, to the extent permitted by law, to the following criteria when implementing policies that have takings implications:

(a) When an Executive department or agency requires a private party to obtain a permit in order to undertake a specific use of, or action with respect to, private property, any conditions imposed on the granting of a permit shall:

(1) Serve the same purpose that would have been served by a prohibition of the use or action; and

(2) Substantially advance that purpose.

(b) When a proposed action would place a restriction on a use of private property, the restriction imposed on the use shall not be disproportionate to the extent to which the use contributes to the overall problem that the restriction is imposed to redress.

(c) When a proposed action involves a permitting process or any other decision-making process that will interfere with, or otherwise prohibit, the use of private property pending the completion of the process, the duration of the process shall be kept to the minimum necessary.

(d) Before undertaking any proposed action regulating private property use for the protection of public health or safety, the Executive department or agency involved shall, in internal deliberative documents and any submissions to the Director of the Office of Management and Budget that are required:

(1) Identify clearly, with as much specificity as possible, the public health or safety risk created by the private property use that is the subject of the proposed action;

(2) Establish that such proposed action substantially advances the purpose of protecting public health and safety against the specifically identified risk;

(3) Establish to the extent possible that the restrictions imposed on the private property are not disproportionate to the extent to which the use contributes to the overall risk; and

(4) Estimate, to the extent possible, the potential cost to the government in the event that a court later determines that the action constituted a taking.

In instances in which there is an immediate threat to health and safety that constitutes an emergency requiring immediate response, this analysis may be done upon completion of the emergency action.

SEC. 5. *Executive Department and Agency Implementation*. (a) The head of each Executive department and agency shall designate an official to be responsible for ensuring compliance with this Order with respect to the actions of the department or agency.

(b) Executive departments and agencies shall, to the extent permitted by law, identify the takings implications of proposed regulatory actions and address the merits of those actions in light of the identified takings implications, if any, in all required submissions made to the Office of Management and Budget. Significant takings implications should also be identified and discussed in notices of proposed rule-making and messages transmitting legislative proposals to the Congress stating the departments' and agencies' conclusions on the takings issues.

(c) Executive departments and agencies shall identify each existing Federal rule and regulation against which a takings award has been made or against which a takings claim is pending including the amount of each claim or award. A ''takings'' award has been made or a ''takings'' claim pending if the award was made, or the pending claim brought, pursuant to the Just Compensation Clause of the Fifth Amendment. An itemized compilation of all such awards made in Fiscal Years 1985, 1986, and 1987 and all such pending claims shall be submitted to the Director, Office of Management and Budget, on or before May 16, 1988.

(d) Each Executive department and agency shall submit annually to the Director, Office of Management and Budget, and to the Attorney General an itemized compilation of all awards of just compensation entered against the United States for takings, including awards of interest as well as monies paid pursuant to the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. 4601.

(e)(1) The Director, Office of Management and Budget, and the Attorney General shall each, to the extent permitted by law, take action to ensure that the policies of the Executive departments and agencies are consistent with the principles, criteria, and requirements stated in Sections 1 through 5 of this Order, and the Office of Management and Budget shall take action to ensure that all takings awards levied against agencies are properly accounted for in agency budget submissions.

(2) In addition to the guidelines required by Section 1 of this Order, the Attorney General shall, in consultation with each Executive department and agency to which this Order applies, promulgate such supplemental guidelines as may be appropriate to the specific obligations of that department or agency.

SEC. 6. *Judicial Review*. This Order is intended only to improve the internal management of the Executive branch and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

RONALD REAGAN.

EX. ORD. NO. 12803. INFRASTRUCTURE PRIVATIZATION

Ex. Ord. No. 12803, Apr. 30, 1992, 57 F.R. 19063, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to ensure that the United States achieves the most beneficial economic use of its resources, it is hereby ordered as follows:

SECTION 1. *Definitions*. For purposes of this order:

(a) ''Privatization'' means the disposition or transfer of an infrastructure asset, such as by sale or by long-term lease, from a State or local government to a private party.

(b) ''Infrastructure asset'' means any asset financed in whole or in part by the Federal Government and needed for the functioning of the economy. Examples of such assets include, but are not limited to: roads, tunnels, bridges, electricity supply facilities, mass transit, rail transportation, airports, ports, waterways, water supply facilities, recycling and wastewater treatment facilities, solid waste disposal facilities, housing, schools, prisons, and hospitals.

(c) ''Originally authorized purposes'' means the general objectives of the original grant program; however, the term is not intended to include every condition required for a grantee to have obtained the original grant.

(d) ''Transfer price'' means: (i) the amount paid or to be paid by a private party for an infrastructure asset, if the asset is transferred as a result of competitive bidding; or (ii) the appraised value of an infrastructure asset, as determined by the head of the executive department or agency and the Director of the Office of Management and Budget, if the asset is not transferred as a result of competitive bidding.

(e) ''State and local governments'' means the government of any State of the United States, the District of Columbia, any commonwealth, territory, or possession of the United States, and any county, municipality, city, town, township, local public authority, school district, special district, intrastate district, regional or interstate governmental entity, council of governments, and any agency or instrumentality of a local government, and any federally recognized Indian Tribe.

SEC. 2. *Fundamental Principles*. Executive departments and agencies shall be guided by the following objectives and principles: (a) Adequate and well-maintained infrastructure is critical to economic growth. Consistent with the principles of federalism enumerated in Executive Order No. 12612 [set out above], and in order to allow the private sector to provide for infrastructure modernization and expansion, State and local governments should have greater freedom to privatize infrastructure assets.

(b) Private enterprise and competitively driven improvements are the foundation of our Nation's economy and economic growth. Federal financing of infrastructure assets should not act as a barrier to the achievement of economic efficiencies through additional private market financing or competitive practices, or both.

(c) State and local governments are in the best position to assess and respond to local needs. State and local governments should, subject to assuring continued compliance with Federal requirements that public use be on reasonable and nondiscriminatory terms, have maximum possible freedom to make decisions concerning the maintenance and disposition of their federally financed infrastructure assets.

(d) User fees are generally more efficient than general taxes as a means to support infrastructure assets. Privatization transactions should be structured so as not to result in unreasonable increases in charges to users.

SEC. 3. *Privatization Initiative*. To the extent permitted by law, the head of each executive department and agency shall undertake the following actions:

(a) Review those procedures affecting the management and disposition of federally financed infrastructure assets owned by State and local governments and modify those procedures to encourage appropriate privatization of such assets consistent with this order;

(b) Assist State and local governments in their efforts to advance the objectives of this order; and

(c) Approve State and local governments' requests to privatize infrastructure assets, consistent with the cri-

teria in section 4 of this order and, where necessary, grant exceptions to the disposition requirements of the ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments'' common rule, or other relevant rules or regulations, for infrastructure assets; provided that the transfer price shall be distributed, as paid, in the following manner: (i) State and local governments shall first recoup in full the unadjusted dollar amount of their portion of total project costs (including any transaction and fix-up costs they incur) associated with the infrastructure asset involved; (ii) if proceeds remain, then the Federal Government shall recoup in full the amount of Federal grant awards associated with the infrastructure asset, less the applicable share of accumulated depreciation on such asset (calculated using the Internal Revenue Service accelerated depreciation schedule for the categories of assets in question); and (iii) finally, the State and local governments shall keep any remaining proceeds.

SEC. 4. *Criteria.* To the extent permitted by law, the head of an executive department or agency shall approve a request in accordance with section 3(c) of this order only if the grantee: (a) Agrees to use the proceeds described in section 3(c)(iii) of this order only for investment in additional infrastructure assets (after public notice of the proposed investment), or for debt or tax reduction; and

(b) Demonstrates that a market mechanism, legally enforceable agreement, or regulatory mechanism will ensure that: (i) the infrastructure asset or assets will continue to be used for their originally authorized purposes, as long as needed for those purposes, even if the purchaser becomes insolvent or is otherwise hindered from fulfilling the originally authorized purposes; and (ii) user charges will be consistent with any current Federal conditions that protect users and the public by limiting the charges.

SEC. 5. *Government-wide Coordination and Review.* In implementing Executive Order Nos. 12291 [formerly set out above] and 12498 [formerly set out above] and OMB Circular No. A–19, the Office of Management and Budget, to the extent permitted by law and consistent with the provisions of those authorities, shall take action to ensure that the policies of the executive department and agencies are consistent with the principles, criteria, and requirements of this order. The Office of Management and Budget shall review the results of implementing this order and report thereon to the President 1 year after the date of this order.

SEC. 6. *Preservation of Existing Authority.* Nothing in this order is in any way intended to limit any existing authority of the heads of executive departments and agencies to approve privatization proposals that are otherwise consistent with law.

SEC. 7. *Judicial Review.* This order is intended only to improve the internal management of the executive branch, and is not intended to create any right or benefit, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

GEORGE BUSH.

EX. ORD. NO. 12861. ELIMINATION OF ONE-HALF OF EXECUTIVE BRANCH INTERNAL REGULATIONS

Ex. Ord. No. 12861, Sept. 11, 1993, 58 F.R. 48255, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, and section 1111 of title 31, United States Code, and to cut 50 percent of the executive branch's internal regulations in order to streamline and improve customer service to the American people, it is hereby ordered as follows:

SECTION 1. *Regulatory Reductions.* Each executive department and agency shall undertake to eliminate not less than 50 percent of its civilian internal management regulations that are not required by law within 3 years of the effective date of this order. An agency internal management regulation, for the purposes of this order, means an agency directive or regulation that pertains to its organization, management, or personnel matters. Reductions in agency internal management regulations shall be concentrated in areas that will result in the greatest improvement in productivity, streamlining of operations, and improvement in customer service.

SEC. 2. *Coverage.* This order applies to all executive branch departments and agencies.

SEC. 3. *Implementation.* The Director of the Office of Management and Budget shall issue instructions regarding the implementation of this order, including exemptions necessary for the delivery of essential services and compliance with applicable law.

SEC. 4. *Independent Agencies.* All independent regulatory commissions and agencies are requested to comply with the provisions of this order.

WILLIAM J. CLINTON.

EX. ORD. NO. 12866. REGULATORY PLANNING AND REVIEW

Ex. Ord. No. 12866, Sept. 30, 1993, 58 F.R. 51735, provided:

The American people deserve a regulatory system that works for them, not against them: a regulatory system that protects and improves their health, safety, environment, and well-being and improves the performance of the economy without imposing unacceptable or unreasonable costs on society; regulatory policies that recognize that the private sector and private markets are the best engine for economic growth; regulatory approaches that respect the role of State, local, and tribal governments; and regulations that are effective, consistent, sensible, and understandable. We do not have such a regulatory system today.

With this Executive order, the Federal Government begins a program to reform and make more efficient the regulatory process. The objectives of this Executive order are to enhance planning and coordination with respect to both new and existing regulations; to reaffirm the primacy of Federal agencies in the regulatory decision-making process; to restore the integrity and legitimacy of regulatory review and oversight; and to make the process more accessible and open to the public. In pursuing these objectives, the regulatory process shall be conducted so as to meet applicable statutory requirements and with due regard to the discretion that has been entrusted to the Federal agencies.

Accordingly, by the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

SECTION 1. *Statement of Regulatory Philosophy and Principles.*

(a) *The Regulatory Philosophy.* Federal agencies should promulgate only such regulations as are required by law, are necessary to interpret the law, or are made necessary by compelling public need, such as material failures of private markets to protect or improve the health and safety of the public, the environment, or the well-being of the American people. In deciding whether and how to regulate, agencies should assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating. Costs and benefits shall be understood to include both quantifiable measures (to the fullest extent that these can be usefully estimated) and qualitative measures of costs and benefits that are difficult to quantify, but nevertheless essential to consider. Further, in choosing among alternative regulatory approaches, agencies should select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity), unless a statute requires another regulatory approach.

(b) *The Principles of Regulation.* To ensure that the agencies' regulatory programs are consistent with the philosophy set forth above, agencies should adhere to the following principles, to the extent permitted by law and where applicable:

(1) Each agency shall identify the problem that it intends to address (including, where applicable, the failures of private markets or public institutions that warrant new agency action) as well as assess the significance of that problem.

(2) Each agency shall examine whether existing regulations (or other law) have created, or contributed to, the problem that a new regulation is intended to correct and whether those regulations (or other law) should be modified to achieve the intended goal of regulation more effectively.

(3) Each agency shall identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

(4) In setting regulatory priorities, each agency shall consider, to the extent reasonable, the degree and nature of the risks posed by various substances or activities within its jurisdiction.

(5) When an agency determines that a regulation is the best available method of achieving the regulatory objective, it shall design its regulations in the most cost-effective manner to achieve the regulatory objective. In doing so, each agency shall consider incentives for innovation, consistency, predictability, the costs of enforcement and compliance (to the government, regulated entities, and the public), flexibility, distributive impacts, and equity.

(6) Each agency shall assess both the costs and the benefits of the intended regulation and, recognizing that some costs and benefits are difficult to quantify, propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs.

(7) Each agency shall base its decisions on the best reasonably obtainable scientific, technical, economic, and other information concerning the need for, and consequences of, the intended regulation.

(8) Each agency shall identify and assess alternative forms of regulation and shall, to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt.

(9) Wherever feasible, agencies shall seek views of appropriate State, local, and tribal officials before imposing regulatory requirements that might significantly or uniquely affect those governmental entities. Each agency shall assess the effects of Federal regulations on State, local, and tribal governments, including specifically the availability of resources to carry out those mandates, and seek to minimize those burdens that uniquely or significantly affect such governmental entities, consistent with achieving regulatory objectives. In addition, as appropriate, agencies shall seek to harmonize Federal regulatory actions with related State, local, and tribal regulatory and other governmental functions.

(10) Each agency shall avoid regulations that are inconsistent, incompatible, or duplicative with its other regulations or those of other Federal agencies.

(11) Each agency shall tailor its regulations to impose the least burden on society, including individuals, businesses of differing sizes, and other entities (including small communities and governmental entities), consistent with obtaining the regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations.

(12) Each agency shall draft its regulations to be simple and easy to understand, with the goal of minimizing the potential for uncertainty and litigation arising from such uncertainty.

SEC. 2. *Organization*. An efficient regulatory planning and review process is vital to ensure that the Federal Government's regulatory system best serves the American people.

(a) *The Agencies*. Because Federal agencies are the repositories of significant substantive expertise and experience, they are responsible for developing regulations and assuring that the regulations are consistent with applicable law, the President's priorities, and the principles set forth in this Executive order.

(b) *The Office of Management and Budget*. Coordinated review of agency rulemaking is necessary to ensure that regulations are consistent with applicable law, the President's priorities, and the principles set forth in this Executive order, and that decisions made by one agency do not conflict with the policies or actions taken or planned by another agency. The Office of Management and Budget (OMB) shall carry out that review function. Within OMB, the Office of Information and Regulatory Affairs (OIRA) is the repository of expertise concerning regulatory issues, including methodologies and procedures that affect more than one agency, this Executive order, and the President's regulatory policies. To the extent permitted by law, OMB shall provide guidance to agencies and assist the President, the Vice President, and other regulatory policy advisors to the President in regulatory planning and shall be the entity that reviews individual regulations, as provided by this Executive order.

(c) *The Vice President*. The Vice President is the principal advisor to the President on, and shall coordinate the development and presentation of recommendations concerning, regulatory policy, planning, and review, as set forth in this Executive order. In fulfilling their responsibilities under this Executive order, the President and the Vice President shall be assisted by the regulatory policy advisors within the Executive Office of the President and by such agency officials and personnel as the President and the Vice President may, from time to time, consult.

SEC. 3. *Definitions*. For purposes of this Executive order:

(a) ''Advisors'' refers to such regulatory policy advisors to the President as the President and Vice President may from time to time consult, including, among others: (1) the Director of OMB; (2) the Chair (or another member) of the Council of Economic Advisers; (3) the Assistant to the President for Economic Policy; (4) the Assistant to the President for Domestic Policy; (5) the Assistant to the President for National Security Affairs; (6) the Assistant to the President for Science and Technology; (7) the Assistant to the President for Intergovernmental Affairs; (8) the Assistant to the President and Staff Secretary; (9) the Assistant to the President and Chief of Staff to the Vice President; (10) the Assistant to the President and Counsel to the President; (11) the Deputy Assistant to the President and Director of the White House Office on Environmental Policy; and (12) the Administrator of OIRA, who also shall coordinate communications relating to this Executive order among the agencies, OMB, the other Advisors, and the Office of the Vice President.

(b) ''Agency,'' unless otherwise indicated, means any authority of the United States that is an ''agency'' under 44 U.S.C. 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(10).

(c) ''Director'' means the Director of OMB.

(d) ''Regulation'' or ''rule'' means an agency statement of general applicability and future effect, which the agency intends to have the force and effect of law, that is designed to implement, interpret, or prescribe law or policy or to describe the procedure or practice requirements of an agency. It does not, however, include:

(1) Regulations or rules issued in accordance with the formal rulemaking provisions of 5 U.S.C. 556, 557;

(2) Regulations or rules that pertain to a military or foreign affairs function of the United States, other than procurement regulations and regulations involving the import or export of non-defense articles and services;

(3) Regulations or rules that are limited to agency organization, management, or personnel matters; or

(4) Any other category of regulations exempted by the Administrator of OIRA.

(e) ''Regulatory action'' means any substantive action by an agency (normally published in the Federal

Register) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking.

(f) ''Significant regulatory action'' means any regulatory action that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order.

SEC. 4. *Planning Mechanism.* In order to have an effective regulatory program, to provide for coordination of regulations, to maximize consultation and the resolution of potential conflicts at an early stage, to involve the public and its State, local, and tribal officials in regulatory planning, and to ensure that new or revised regulations promote the President's priorities and the principles set forth in this Executive order, these procedures shall be followed, to the extent permitted by law:

(a) *Agencies' Policy Meeting.* Early in each year's planning cycle, the Vice President shall convene a meeting of the Advisors and the heads of agencies to seek a common understanding of priorities and to coordinate regulatory efforts to be accomplished in the upcoming year.

(b) *Unified Regulatory Agenda.* For purposes of this subsection, the term ''agency'' or ''agencies'' shall also include those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(10). Each agency shall prepare an agenda of all regulations under development or review, at a time and in a manner specified by the Administrator of OIRA. The description of each regulatory action shall contain, at a minimum, a regulation identifier number, a brief summary of the action, the legal authority for the action, any legal deadline for the action, and the name and telephone number of a knowledgeable agency official. Agencies may incorporate the information required under 5 U.S.C. 602 and 41 U.S.C. 402 into these agendas.

(c) *The Regulatory Plan.* For purposes of this subsection, the term ''agency'' or ''agencies'' shall also include those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(10). (1) As part of the Unified Regulatory Agenda, beginning in 1994, each agency shall prepare a Regulatory Plan (Plan) of the most important significant regulatory actions that the agency reasonably expects to issue in proposed or final form in that fiscal year or thereafter. The Plan shall be approved personally by the agency head and shall contain at a minimum:

(A) A statement of the agency's regulatory objectives and priorities and how they relate to the President's priorities;

(B) A summary of each planned significant regulatory action including, to the extent possible, alternatives to be considered and preliminary estimates of the anticipated costs and benefits;

(C) A summary of the legal basis for each such action, including whether any aspect of the action is required by statute or court order;

(D) A statement of the need for each such action and, if applicable, how the action will reduce risks to public health, safety, or the environment, as well as how the magnitude of the risk addressed by the action relates to other risks within the jurisdiction of the agency;

(E) The agency's schedule for action, including a statement of any applicable statutory or judicial deadlines; and

(F) The name, address, and telephone number of a person the public may contact for additional information about the planned regulatory action.

(2) Each agency shall forward its Plan to OIRA by June 1st of each year.

(3) Within 10 calendar days after OIRA has received an agency's Plan, OIRA shall circulate it to other affected agencies, the Advisors, and the Vice President.

(4) An agency head who believes that a planned regulatory action of another agency may conflict with its own policy or action taken or planned shall promptly notify, in writing, the Administrator of OIRA, who shall forward that communication to the issuing agency, the Advisors, and the Vice President.

(5) If the Administrator of OIRA believes that a planned regulatory action of an agency may be inconsistent with the President's priorities or the principles set forth in this Executive order or may be in conflict with any policy or action taken or planned by another agency, the Administrator of OIRA shall promptly notify, in writing, the affected agencies, the Advisors, and the Vice President.

(6) The Vice President, with the Advisors' assistance, may consult with the heads of agencies with respect to their Plans and, in appropriate instances, request further consideration or inter-agency coordination.

(7) The Plans developed by the issuing agency shall be published annually in the October publication of the Unified Regulatory Agenda. This publication shall be made available to the Congress; State, local, and tribal governments; and the public. Any views on any aspect of any agency Plan, including whether any planned regulatory action might conflict with any other planned or existing regulation, impose any unintended consequences on the public, or confer any unclaimed benefits on the public, should be directed to the issuing agency, with a copy to OIRA.

(d) *Regulatory Working Group.* Within 30 days of the date of this Executive order, the Administrator of OIRA shall convene a Regulatory Working Group (''Working Group''), which shall consist of representatives of the heads of each agency that the Administrator determines to have significant domestic regulatory responsibility, the Advisors, and the Vice President. The Administrator of OIRA shall chair the Working Group and shall periodically advise the Vice President on the activities of the Working Group. The Working Group shall serve as a forum to assist agencies in identifying and analyzing important regulatory issues (including, among others (1) the development of innovative regulatory techniques, (2) the methods, efficacy, and utility of comparative risk assessment in regulatory decision-making, and (3) the development of short forms and other streamlined regulatory approaches for small businesses and other entities). The Working Group shall meet at least quarterly and may meet as a whole or in subgroups of agencies with an interest in particular issues or subject areas. To inform its discussions, the Working Group may commission analytical studies and reports by OIRA, the Administrative Conference of the United States, or any other agency.

(e) *Conferences.* The Administrator of OIRA shall meet quarterly with representatives of State, local, and tribal governments to identify both existing and proposed regulations that may uniquely or significantly affect those governmental entities. The Administrator of OIRA shall also convene, from time to time, conferences with representatives of businesses, nongovernmental organizations, and the public to discuss regulatory issues of common concern.

SEC. 5. *Existing Regulations.* In order to reduce the regulatory burden on the American people, their families, their communities, their State, local, and tribal governments, and their industries; to determine whether regulations promulgated by the executive branch of the Federal Government have become unjustified or unnecessary as a result of changed circumstances; to confirm that regulations are both compatible with each other and not duplicative or inappropriately burdensome in the aggregate; to ensure that all regulations are consistent with the President's priorities and the principles set forth in this Executive order, within ap-

plicable law; and to otherwise improve the effectiveness of existing regulations: (a) Within 90 days of the date of this Executive order, each agency shall submit to OIRA a program, consistent with its resources and regulatory priorities, under which the agency will periodically review its existing significant regulations to determine whether any such regulations should be modified or eliminated so as to make the agency's regulatory program more effective in achieving the regulatory objectives, less burdensome, or in greater alignment with the President's priorities and the principles set forth in this Executive order. Any significant regulations selected for review shall be included in the agency's annual Plan. The agency shall also identify any legislative mandates that require the agency to promulgate or continue to impose regulations that the agency believes are unnecessary or outdated by reason of changed circumstances.

(b) The Administrator of OIRA shall work with the Regulatory Working Group and other interested entities to pursue the objectives of this section. State, local, and tribal governments are specifically encouraged to assist in the identification of regulations that impose significant or unique burdens on those governmental entities and that appear to have outlived their justification or be otherwise inconsistent with the public interest.

(c) The Vice President, in consultation with the Advisors, may identify for review by the appropriate agency or agencies other existing regulations of an agency or groups of regulations of more than one agency that affect a particular group, industry, or sector of the economy, or may identify legislative mandates that may be appropriate for reconsideration by the Congress.

SEC. 6. *Centralized Review of Regulations*. The guidelines set forth below shall apply to all regulatory actions, for both new and existing regulations, by agencies other than those agencies specifically exempted by the Administrator of OIRA:

(a) *Agency Responsibilities*. (1) Each agency shall (consistent with its own rules, regulations, or procedures) provide the public with meaningful participation in the regulatory process. In particular, before issuing a notice of proposed rulemaking, each agency should, where appropriate, seek the involvement of those who are intended to benefit from and those expected to be burdened by any regulation (including, specifically, State, local, and tribal officials). In addition, each agency should afford the public a meaningful opportunity to comment on any proposed regulation, which in most cases should include a comment period of not less than 60 days. Each agency also is directed to explore and, where appropriate, use consensual mechanisms for developing regulations, including negotiated rulemaking.

(2) Within 60 days of the date of this Executive order, each agency head shall designate a Regulatory Policy Officer who shall report to the agency head. The Regulatory Policy Officer shall be involved at each stage of the regulatory process to foster the development of effective, innovative, and least burdensome regulations and to further the principles set forth in this Executive order.

(3) In addition to adhering to its own rules and procedures and to the requirements of the Administrative Procedure Act [5 U.S.C. 551 et seq., 701 et seq.], the Regulatory Flexibility Act [5 U.S.C. 601 et seq.], the Paperwork Reduction Act [44 U.S.C. 3501 et seq.], and other applicable law, each agency shall develop its regulatory actions in a timely fashion and adhere to the following procedures with respect to a regulatory action:

(A) Each agency shall provide OIRA, at such times and in the manner specified by the Administrator of OIRA, with a list of its planned regulatory actions, indicating those which the agency believes are significant regulatory actions within the meaning of this Executive order. Absent a material change in the development of the planned regulatory action, those not designated as significant will not be subject to review under this section unless, within 10 working days of receipt of the list, the Administrator of OIRA notifies the agency that OIRA has determined that a planned regulation is a significant regulatory action within the meaning of this Executive order. The Administrator of OIRA may waive review of any planned regulatory action designated by the agency as significant, in which case the agency need not further comply with subsection (a)(3)(B) or subsection (a)(3)(C) of this section.

(B) For each matter identified as, or determined by the Administrator of OIRA to be, a significant regulatory action, the issuing agency shall provide to OIRA:

(i) The text of the draft regulatory action, together with a reasonably detailed description of the need for the regulatory action and an explanation of how the regulatory action will meet that need; and

(ii) An assessment of the potential costs and benefits of the regulatory action, including an explanation of the manner in which the regulatory action is consistent with a statutory mandate and, to the extent permitted by law, promotes the President's priorities and avoids undue interference with State, local, and tribal governments in the exercise of their governmental functions.

(C) For those matters identified as, or determined by the Administrator of OIRA to be, a significant regulatory action within the scope of section 3(f)(1), the agency shall also provide to OIRA the following additional information developed as part of the agency's decision-making process (unless prohibited by law):

(i) An assessment, including the underlying analysis, of benefits anticipated from the regulatory action (such as, but not limited to, the promotion of the efficient functioning of the economy and private markets, the enhancement of health and safety, the protection of the natural environment, and the elimination or reduction of discrimination or bias) together with, to the extent feasible, a quantification of those benefits;

(ii) An assessment, including the underlying analysis, of costs anticipated from the regulatory action (such as, but not limited to, the direct cost both to the government in administering the regulation and to businesses and others in complying with the regulation, and any adverse effects on the efficient functioning of the economy, private markets (including productivity, employment, and competitiveness), health, safety, and the natural environment), together with, to the extent feasible, a quantification of those costs; and

(iii) An assessment, including the underlying analysis, of costs and benefits of potentially effective and reasonably feasible alternatives to the planned regulation, identified by the agencies or the public (including improving the current regulation and reasonably viable nonregulatory actions), and an explanation why the planned regulatory action is preferable to the identified potential alternatives.

(D) In emergency situations or when an agency is obligated by law to act more quickly than normal review procedures allow, the agency shall notify OIRA as soon as possible and, to the extent practicable, comply with subsections (a)(3)(B) and (C) of this section. For those regulatory actions that are governed by a statutory or court-imposed deadline, the agency shall, to the extent practicable, schedule rulemaking proceedings so as to permit sufficient time for OIRA to conduct its review, as set forth below in subsection (b)(2) through (4) of this section.

(E) After the regulatory action has been published in the Federal Register or otherwise issued to the public, the agency shall:

(i) Make available to the public the information set forth in subsections (a)(3)(B) and (C);

(ii) Identify for the public, in a complete, clear, and simple manner, the substantive changes between the draft submitted to OIRA for review and the action subsequently announced; and

(iii) Identify for the public those changes in the regulatory action that were made at the suggestion or recommendation of OIRA.

(F) All information provided to the public by the agency shall be in plain, understandable language.

(b) *OIRA Responsibilities*. The Administrator of OIRA shall provide meaningful guidance and oversight so that each agency's regulatory actions are consistent with applicable law, the President's priorities, and the principles set forth in this Executive order and do not conflict with the policies or actions of another agency. OIRA shall, to the extent permitted by law, adhere to the following guidelines:

(1) OIRA may review only actions identified by the agency or by OIRA as significant regulatory actions under subsection (a)(3)(A) of this section.

(2) OIRA shall waive review or notify the agency in writing of the results of its review within the following time periods:

(A) For any notices of inquiry, advance notices of proposed rulemaking, or other preliminary regulatory actions prior to a Notice of Proposed Rulemaking, within 10 working days after the date of submission of the draft action to OIRA;

(B) For all other regulatory actions, within 90 calendar days after the date of submission of the information set forth in subsections (a)(3)(B) and (C) of this section, unless OIRA has previously reviewed this information and, since that review, there has been no material change in the facts and circumstances upon which the regulatory action is based, in which case, OIRA shall complete its review within 45 days; and

(C) The review process may be extended (1) once by no more than 30 calendar days upon the written approval of the Director and (2) at the request of the agency head.

(3) For each regulatory action that the Administrator of OIRA returns to an agency for further consideration of some or all of its provisions, the Administrator of OIRA shall provide the issuing agency a written explanation for such return, setting forth the pertinent provision of this Executive order on which OIRA is relying. If the agency head disagrees with some or all of the bases for the return, the agency head shall so inform the Administrator of OIRA in writing.

(4) Except as otherwise provided by law or required by a Court, in order to ensure greater openness, accessibility, and accountability in the regulatory review process, OIRA shall be governed by the following disclosure requirements:

(A) Only the Administrator of OIRA (or a particular designee) shall receive oral communications initiated by persons not employed by the executive branch of the Federal Government regarding the substance of a regulatory action under OIRA review;

(B) All substantive communications between OIRA personnel and persons not employed by the executive branch of the Federal Government regarding a regulatory action under review shall be governed by the following guidelines: (i) A representative from the issuing agency shall be invited to any meeting between OIRA personnel and such person(s);

(ii) OIRA shall forward to the issuing agency, within 10 working days of receipt of the communication(s), all written communications, regardless of format, between OIRA personnel and any person who is not employed by the executive branch of the Federal Government, and the dates and names of individuals involved in all substantive oral communications (including meetings to which an agency representative was invited, but did not attend, and telephone conversations between OIRA personnel and any such persons); and

(iii) OIRA shall publicly disclose relevant information about such communication(s), as set forth below in subsection (b)(4)(C) of this section.

(C) OIRA shall maintain a publicly available log that shall contain, at a minimum, the following information pertinent to regulatory actions under review:

(i) The status of all regulatory actions, including if (and if so, when and by whom) Vice Presidential and Presidential consideration was requested;

(ii) A notation of all written communications forwarded to an issuing agency under subsection (b)(4)(B)(ii) of this section; and

(iii) The dates and names of individuals involved in all substantive oral communications, including meetings and telephone conversations, between OIRA personnel and any person not employed by the executive branch of the Federal Government, and the subject matter discussed during such communications.

(D) After the regulatory action has been published in the Federal Register or otherwise issued to the public, or after the agency has announced its decision not to publish or issue the regulatory action, OIRA shall make available to the public all documents exchanged between OIRA and the agency during the review by OIRA under this section.

(5) All information provided to the public by OIRA shall be in plain, understandable language.

SEC. 7. *Resolution of Conflicts*. To the extent permitted by law, disagreements or conflicts between or among agency heads or between OMB and any agency that cannot be resolved by the Administrator of OIRA shall be resolved by the President, or by the Vice President acting at the request of the President, with the relevant agency head (and, as appropriate, other interested government officials). Vice Presidential and Presidential consideration of such disagreements may be initiated only by the Director, by the head of the issuing agency, or by the head of an agency that has a significant interest in the regulatory action at issue. Such review will not be undertaken at the request of other persons, entities, or their agents.

Resolution of such conflicts shall be informed by recommendations developed by the Vice President, after consultation with the Advisors (and other executive branch officials or personnel whose responsibilities to the President include the subject matter at issue). The development of these recommendations shall be concluded within 60 days after review has been requested.

During the Vice Presidential and Presidential review period, communications with any person not employed by the Federal Government relating to the substance of the regulatory action under review and directed to the Advisors or their staffs or to the staff of the Vice President shall be in writing and shall be forwarded by the recipient to the affected agency(ies) for inclusion in the public docket(s). When the communication is not in writing, such Advisors or staff members shall inform the outside party that the matter is under review and that any comments should be submitted in writing.

At the end of this review process, the President, or the Vice President acting at the request of the President, shall notify the affected agency and the Administrator of OIRA of the President's decision with respect to the matter.

SEC. 8. *Publication*. Except to the extent required by law, an agency shall not publish in the Federal Register or otherwise issue to the public any regulatory action that is subject to review under section 6 of this Executive order until (1) the Administrator of OIRA notifies the agency that OIRA has waived its review of the action or has completed its review without any requests for further consideration, or (2) the applicable time period in section 6(b)(2) expires without OIRA having notified the agency that it is returning the regulatory action for further consideration under section 6(b)(3), whichever occurs first. If the terms of the preceding sentence have not been satisfied and an agency wants to publish or otherwise issue a regulatory action, the head of that agency may request Presidential consideration through the Vice President, as provided under section 7 of this order. Upon receipt of this request, the Vice President shall notify OIRA and the Advisors. The guidelines and time period set forth in section 7 shall apply to the publication of regulatory actions for which Presidential consideration has been sought.

SEC. 9. *Agency Authority*. Nothing in this order shall be construed as displacing the agencies' authority or responsibilities, as authorized by law.

SEC. 10. *Judicial Review*. Nothing in this Executive order shall affect any otherwise available judicial review of agency action. This Executive order is intended only to improve the internal management of the Federal Government and does not create any right or bene-

fit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

SEC. 11. *Revocations.* Executive Orders Nos. 12291 and 12498; all amendments to those Executive orders; all guidelines issued under those orders; and any exemptions from those orders heretofore granted for any category of rule are revoked.

WILLIAM J. CLINTON.

EX. ORD. NO. 12875. ENHANCING THE INTERGOVERNMENTAL PARTNERSHIP

Ex. Ord. No. 12875, Oct. 26, 1993, 58 F.R. 58093, provided:

The Federal Government is charged with protecting the health and safety, as well as promoting other national interests, of the American people. However, the cumulative effect of unfunded Federal mandates has increasingly strained the budgets of State, local, and tribal governments. In addition, the cost, complexity, and delay in applying for and receiving waivers from Federal requirements in appropriate cases have hindered State, local, and tribal governments from tailoring Federal programs to meet the specific or unique needs of their communities. These governments should have more flexibility to design solutions to the problems faced by citizens in this country without excessive micromanagement and unnecessary regulation from the Federal Government.

THEREFORE, by the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to reduce the imposition of unfunded mandates upon State, local, and tribal governments; to streamline the application process for and increase the availability of waivers to State, local, and tribal governments; and to establish regular and meaningful consultation and collaboration with State, local, and tribal governments on Federal matters that significantly or uniquely affect their communities, it is hereby ordered as follows:

SECTION 1. *Reduction of Unfunded Mandates.* (a) To the extent feasible and permitted by law, no executive department or agency (''agency'') shall promulgate any regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government, unless:

(1) funds necessary to pay the direct costs incurred by the State, local, or tribal government in complying with the mandate are provided by the Federal Government; or

(2) the agency, prior to the formal promulgation of regulations containing the proposed mandate, provides to the Director of the Office of Management and Budget a description of the extent of the agency's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, any written communications submitted to the agency by such units of government, and the agency's position supporting the need to issue the regulation containing the mandate.

(b) Each agency shall develop an effective process to permit elected officials and other representatives of State, local, and tribal governments to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.

SEC. 2. *Increasing Flexibility for State and Local Waivers.* (a) Each agency shall review its waiver application process and take appropriate steps to streamline that process.

(b) Each agency shall, to the extent practicable and permitted by law, consider any application by a State, local, or tribal government for a waiver of statutory or regulatory requirements in connection with any program administered by that agency with a general view toward increasing opportunities for utilizing flexible policy approaches at the State, local, and tribal level in cases in which the proposed waiver is consistent with the applicable Federal policy objectives and is otherwise appropriate.

(c) Each agency shall, to the fullest extent practicable and permitted by law, render a decision upon a complete application for a waiver within 120 days of receipt of such application by the agency. If the application for a waiver is not granted, the agency shall provide the applicant with timely written notice of the decision and the reasons therefor.

(d) This section applies only to statutory or regulatory requirements of the programs that are discretionary and subject to waiver by the agency.

SEC. 3. *Responsibility for Agency Implementation.* The Chief Operating Officer of each agency shall be responsible for ensuring the implementation of and compliance with this order.

SEC. 4. *Executive Order No. 12866.* This order shall supplement but not supersede the requirements contained in Executive Order No. 12866 [set out above] (''Regulatory Planning and Review'').

SEC. 5. *Scope.* (a) Executive agency means any authority of the United States that is an ''agency'' under 44 U.S.C. 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(10).

(b) Independent agencies are requested to comply with the provisions of this order.

SEC. 6. *Judicial Review.* This order is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

SEC. 7. *Effective Date.* This order shall be effective 90 days after the date of this order.

WILLIAM J. CLINTON.

§ 602. Regulatory agenda

(a) During the months of October and April of each year, each agency shall publish in the Federal Register a regulatory flexibility agenda which shall contain—

(1) a brief description of the subject area of any rule which the agency expects to propose or promulgate which is likely to have a significant economic impact on a substantial number of small entities;

(2) a summary of the nature of any such rule under consideration for each subject area listed in the agenda pursuant to paragraph (1), the objectives and legal basis for the issuance of the rule, and an approximate schedule for completing action on any rule for which the agency has issued a general notice of proposed rulemaking,[1] and

(3) the name and telephone number of an agency official knowledgeable concerning the items listed in paragraph (1).

(b) Each regulatory flexibility agenda shall be transmitted to the Chief Counsel for Advocacy of the Small Business Administration for comment, if any.

(c) Each agency shall endeavor to provide notice of each regulatory flexibility agenda to small entities or their representatives through direct notification or publication of the agenda in publications likely to be obtained by such small entities and shall invite comments upon each subject area on the agenda.

(d) Nothing in this section precludes an agency from considering or acting on any matter not

[1] So in original. The comma probably should be a semicolon.

included in a regulatory flexibility agenda, or requires an agency to consider or act on any matter listed in such agenda.

(Added Pub. L. 96–354, §3(a), Sept. 19, 1980, 94 Stat. 1166.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 605 of this title.

§ 603. Initial regulatory flexibility analysis

(a) Whenever an agency is required by section 553 of this title, or any other law, to publish general notice of proposed rulemaking for any proposed rule, the agency shall prepare and make available for public comment an initial regulatory flexibility analysis. Such analysis shall describe the impact of the proposed rule on small entities. The initial regulatory flexibility analysis or a summary shall be published in the Federal Register at the time of the publication of general notice of proposed rulemaking for the rule. The agency shall transmit a copy of the initial regulatory flexibility analysis to the Chief Counsel for Advocacy of the Small Business Administration.

(b) Each initial regulatory flexibility analysis required under this section shall contain—

(1) a description of the reasons why action by the agency is being considered;

(2) a succinct statement of the objectives of, and legal basis for, the proposed rule;

(3) a description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply;

(4) a description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;

(5) an identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the proposed rule.

(c) Each initial regulatory flexibility analysis shall also contain a description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities. Consistent with the stated objectives of applicable statutes, the analysis shall discuss significant alternatives such as—

(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;

(2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities;

(3) the use of performance rather than design standards; and

(4) an exemption from coverage of the rule, or any part thereof, for such small entities.

(Added Pub. L. 96–354, §3(a), Sept. 19, 1980, 94 Stat. 1166.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 605, 606, 607, 608, 611 of this title; title 42 section 1302.

§ 604. Final regulatory flexibility analysis

(a) When an agency promulgates a final rule under section 553 of this title, after being required by that section or any other law to publish a general notice of proposed rulemaking, the agency shall prepare a final regulatory flexibility analysis. Each final regulatory flexibility analysis shall contain—

(1) a succinct statement of the need for, and the objectives of, the rule;

(2) a summary of the issues raised by the public comments in response to the initial regulatory flexibility analysis, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments; and

(3) a description of each of the significant alternatives to the rule consistent with the stated objectives of applicable statutes and designed to minimize any significant economic impact of the rule on small entities which was considered by the agency, and a statement of the reasons why each one of such alternatives was rejected.

(b) The agency shall make copies of the final regulatory flexibility analysis available to members of the public and shall publish in the Federal Register at the time of publication of the final rule under section 553 of this title a statement describing how the public may obtain such copies.

(Added Pub. L. 96–354, §3(a), Sept. 19, 1980, 94 Stat. 1167.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 605, 606, 607, 608, 611 of this title; title 42 section 1302.

§ 605. Avoidance of duplicative or unnecessary analyses

(a) Any Federal agency may perform the analyses required by sections 602, 603, and 604 of this title in conjunction with or as a part of any other agenda or analysis required by any other law if such other analysis satisfies the provisions of such sections.

(b) Sections 603 and 604 of this title shall not apply to any proposed or final rule if the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. If the head of the agency makes a certification under the preceding sentence, the agency shall publish such certification in the Federal Register, at the time of publication of general notice of proposed rulemaking for the rule or at the time of publication of the final rule, along with a succinct statement explaining the reasons for such certification, and provide such certification and statement to the Chief Counsel for Advocacy of the Small Business Administration.

(c) In order to avoid duplicative action, an agency may consider a series of closely related rules as one rule for the purposes of sections 602, 603, 604 and 610 of this title.

(Added Pub. L. 96–354, §3(a), Sept. 19, 1980, 94 Stat. 1167.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 608 of this title.

§ 606. Effect on other law

The requirements of sections 603 and 604 of this title do not alter in any manner standards otherwise applicable by law to agency action.

(Added Pub. L. 96–354, § 3(a), Sept. 19, 1980, 94 Stat. 1168.)

§ 607. Preparation of analyses

In complying with the provisions of sections 603 and 604 of this title, an agency may provide either a quantifiable or numerical description of the effects of a proposed rule or alternatives to the proposed rule, or more general descriptive statements if quantification is not practicable or reliable.

(Added Pub. L. 96–354, § 3(a), Sept. 19, 1980, 94 Stat. 1168.)

§ 608. Procedure for waiver or delay of completion

(a) An agency head may waive or delay the completion of some or all of the requirements of section 603 of this title by publishing in the Federal Register, not later than the date of publication of the final rule, a written finding, with reasons therefor, that the final rule is being promulgated in response to an emergency that makes compliance or timely compliance with the provisions of section 603 of this title impracticable.

(b) Except as provided in section 605(b), an agency head may not waive the requirements of section 604 of this title. An agency head may delay the completion of the requirements of section 604 of this title for a period of not more than one hundred and eighty days after the date of publication in the Federal Register of a final rule by publishing in the Federal Register, not later than such date of publication, a written finding, with reasons therefor, that the final rule is being promulgated in response to an emergency that makes timely compliance with the provisions of section 604 of this title impracticable. If the agency has not prepared a final regulatory analysis pursuant to section 604 of this title within one hundred and eighty days from the date of publication of the final rule, such rule shall lapse and have no effect. Such rule shall not be repromulgated until a final regulatory flexibility analysis has been completed by the agency.

(Added Pub. L. 96–354, § 3(a), Sept. 19, 1980, 94 Stat. 1168.)

§ 609. Procedures for gathering comments

When any rule is promulgated which will have a significant economic impact on a substantial number of small entities, the head of the agency promulgating the rule or the official of the agency with statutory responsibility for the promulgation of the rule shall assure that small entities have been given an opportunity to participate in the rulemaking for the rule through techniques such as—

(1) the inclusion in an advanced notice of proposed rulemaking, if issued, of a statement that the proposed rule may have a significant economic effect on a substantial number of small entities;

(2) the publication of general notice of proposed rulemaking in publications likely to be obtained by small entities;

(3) the direct notification of interested small entities;

(4) the conduct of open conferences or public hearings concerning the rule for small entities; and

(5) the adoption or modification of agency procedural rules to reduce the cost or complexity of participation in the rulemaking by small entities.

(Added Pub. L. 96–354, § 3(a), Sept. 19, 1980, 94 Stat. 1168.)

§ 610. Periodic review of rules

(a) Within one hundred and eighty days after the effective date of this chapter, each agency shall publish in the Federal Register a plan for the periodic review of the rules issued by the agency which have or will have a significant economic impact upon a substantial number of small entities. Such plan may be amended by the agency at any time by publishing the revision in the Federal Register. The purpose of the review shall be to determine whether such rules should be continued without change, or should be amended or rescinded, consistent with the stated objectives of applicable statutes, to minimize any significant economic impact of the rules upon a substantial number of such small entities. The plan shall provide for the review of all such agency rules existing on the effective date of this chapter within ten years of that date and for the review of such rules adopted after the effective date of this chapter within ten years of the publication of such rules as the final rule. If the head of the agency determines that completion of the review of existing rules is not feasible by the established date, he shall so certify in a statement published in the Federal Register and may extend the completion date by one year at a time for a total of not more than five years.

(b) In reviewing rules to minimize any significant economic impact of the rule on a substantial number of small entities in a manner consistent with the stated objectives of applicable statutes, the agency shall consider the following factors—

(1) the continued need for the rule;

(2) the nature of complaints or comments received concerning the rule from the public;

(3) the complexity of the rule;

(4) the extent to which the rule overlaps, duplicates or conflicts with other Federal rules, and, to the extent feasible, with State and local governmental rules; and

(5) the length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.

(c) Each year, each agency shall publish in the Federal Register a list of the rules which have a significant economic impact on a substantial number of small entities, which are to be reviewed pursuant to this section during the succeeding twelve months. The list shall include a brief description of each rule and the need for and legal basis of such rule and shall invite public comment upon the rule.

(Added Pub. L. 96–354, §3(a), Sept. 19, 1980, 94 Stat. 1169.)

REFERENCES IN TEXT

The effective date of this chapter, referred to in subsec. (a), is Jan. 1, 1981. See Effective Date note set out under section 601 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 605 of this title.

§ 611. Judicial review

(a) Except as otherwise provided in subsection (b), any determination by an agency concerning the applicability of any of the provisions of this chapter to any action of the agency shall not be subject to judicial review.

(b) Any regulatory flexibility analysis prepared under sections 603 and 604 of this title and the compliance or noncompliance of the agency with the provisions of this chapter shall not be subject to judicial review. When an action for judicial review of a rule is instituted, any regulatory flexibility analysis for such rule shall constitute part of the whole record of agency action in connection with the review.

(c) Nothing in this section bars judicial review of any other impact statement or similar analysis required by any other law if judicial review of such statement or analysis is otherwise provided by law.

(Added Pub. L. 96–354, §3(a), Sept. 19, 1980, 94 Stat. 1169.)

§ 612. Reports and intervention rights

(a) The Chief Counsel for Advocacy of the Small Business Administration shall monitor agency compliance with this chapter and shall report at least annually thereon to the President and to the Committees on the Judiciary of the Senate and House of Representatives, the Select Committee on Small Business of the Senate, and the Committee on Small Business of the House of Representatives.

(b) The Chief Counsel for Advocacy of the Small Business Administration is authorized to appear as amicus curiae in any action brought in a court of the United States to review a rule. In any such action, the Chief Counsel is authorized to present his views with respect to the effect of the rule on small entities.

(c) A court of the United States shall grant the application of the Chief Counsel for Advocacy of the Small Business Administration to appear in any such action for the purposes described in subsection (b).

(Added Pub. L. 96–354, §3(a), Sept. 19, 1980, 94 Stat. 1170.)

CHAPTER 7—JUDICIAL REVIEW

Sec.
701. Application; definitions.
702. Right of review.
703. Form and venue of proceeding.
704. Actions reviewable.
705. Relief pending review.
706. Scope of review.

SHORT TITLE

The provisions of sections 551 to 559 of this title and this chapter were originally enacted by act June 11, 1946, ch. 423, 60 Stat. 237, popularly known as the ''Administrative Procedure Act''. That Act was repealed as part of the general revision of this title by Pub. L. 89–554 and its provisions incorporated into sections 551 to 559 of this title and this chapter.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 559, 8902 of this title; title 2 sections 501, 502; title 7 sections 1642, 6999; title 8 section 1421; title 10 sections 2397, 2397a, 2397c, 2409, 2409a; title 12 sections 1441a, 1467a, 1749bbb–17, 1786, 1787, 1815, 1818, 1821, 1959, 2266, 2268, 4583, 4634; title 15 sections 57a, 78dd–1, 78dd–2, 266, 648, 687e, 1193, 1715, 2060, 2603, 2618, 2622, 3416, 5623, 6208; title 16 sections 460aa–3, 470q, 823b, 1374, 1536, 1855, 2404, 3636; title 17 sections 701, 908; title 18 sections 843, 3625; title 19 section 1337; title 20 sections 107d–2, 240, 641, 1683; title 21 sections 350b, 360e, 360g, 360kk; title 22 sections 277d–24, 1623, 1645n, 3794, 4140; title 25 sections 954, 1776b, 2713, 2714; title 26 section 9041; title 29 sections 214, 727, 792, 1137; title 30 sections 956, 1411, 1415, 1416; title 33 sections 524, 597; title 35 section 135; title 38 section 502; title 39 sections 404, 410, 3001, 3008, 3012, 3603; title 41 sections 43a, 265; title 42 sections 300j–9, 1395h, 1395*oo*, 1436c, 2000d–2, 2022, 2231, 2236, 2239, 2282a, 2286f, 4104, 5405, 5851, 6105, 6303, 6306, 6973, 6976, 7276, 7525, 7607, 7622, 7920, 8412, 8433, 8441, 10132, 10155, 10244; title 44 section 2203; title 45 sections 1116, 1212; title 47 sections 303, 305, 310, 409; title 49 sections 31102, 31141, 70110; title 50 sections 835, 2011; title 50 App. sections 463, 2159, 2412.

§ 701. Application; definitions

(a) This chapter applies, according to the provisions thereof, except to the extent that—

(1) statutes preclude judicial review; or

(2) agency action is committed to agency discretion by law.

(b) For the purpose of this chapter—

(1) ''agency'' means each authority of the Government of the United States, whether or not it is within or subject to review by another agency, but does not include—

(A) the Congress;

(B) the courts of the United States;

(C) the governments of the territories or possessions of the United States;

(D) the government of the District of Columbia;

(E) agencies composed of representatives of the parties or of representatives of organizations of the parties to the disputes determined by them;

(F) courts martial and military commissions;

(G) military authority exercised in the field in time of war or in occupied territory; or

(H) functions conferred by sections 1738, 1739, 1743, and 1744 of title 12; chapter 2 of title 41; subchapter II of chapter 471 of title 49; or sections 1884, 1891–1902, and former section 1641(b)(2), of title 50, appendix; and

(2) ''person'', ''rule'', ''order'', ''license'', ''sanction'', ''relief'', and ''agency action'' have the meanings given them by section 551 of this title.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 392; Pub. L. 103–272, §5(a), July 5, 1994, 108 Stat. 1373.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(a)	5 U.S.C. 1009 (introductory clause).	June 11, 1946, ch. 324, § 10 (introductory clause), 60 Stat. 243.

In subsection (a), the words ''This chapter applies, according to the provisions thereof,'' are added to avoid the necessity of repeating the introductory clause of former section 1009 in sections 702–706.

Subsection (b) is added on authority of section 2 of the Act of June 11, 1946, ch. 324, 60 Stat. 237, as amended, which is carried into section 551 of this title.

In subsection (b)(1)(G), the words ''or naval'' are omitted as included in ''military''.

In subsection (b)(1)(H), the words ''functions which by law expire on the termination of present hostilities, within any fixed period thereafter, or before July 1, 1947'' are omitted as executed. Reference to the ''Selective Training and Service Act of 1940'' is omitted as that Act expired on Mar. 31, 1947. Reference to the ''Sugar Control Extension Act of 1947'' is omitted as that Act expired on Mar. 31, 1948. References to the ''Housing and Rent Act of 1947, as amended'' and the ''Veterans' Emergency Housing Act of 1946'' have been consolidated as they are related. The reference to former section 1641(b)(2) of title 50, appendix, is retained notwithstanding its repeal by § 111(a)(1) of the Act of Sept. 21, 1961, Pub. L. 87–256, 75 Stat. 538, since § 111(c) of the Act provides that a reference in other Acts to a provision of law repealed by § 111(a) shall be considered to be a reference to the appropriate provisions of Pub. L. 87–256.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

REFERENCES IN TEXT

Sections 1891–1902 of title 50, appendix, referred to in subsec. (b)(1)(H), were omitted from the Code as executed.

AMENDMENTS

1994—Subsec. (b)(1)(H). Pub. L. 103–272 substituted ''subchapter II of chapter 471 of title 49; or sections'' for ''or sections 1622,''.

CROSS REFERENCES

Atomic Energy Community Act of 1955, administrative review only, see section 2309 of Title 42, The Public Health and Welfare.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 2 sections 501, 502; title 7 sections 1508, 2143; title 16 section 839f; title 18 sections 843, 3625; title 20 section 1683; title 25 section 954; title 30 section 956; title 41 section 422; title 42 sections 5405, 6105, 6976; title 50 App. section 2412.

§ 702. Right of review

A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof. An action in a court of the United States seeking relief other than money damages and stating a claim that an agency or an officer or employee thereof acted or failed to act in an official capacity or under color of legal authority shall not be dismissed nor relief therein be denied on the ground that it is against the United States or that the United States is an indispensable party. The United States may be named as a defendant in any such action, and a judgment or decree may be entered against the United States: *Provided*, That any mandatory or injunctive decree shall specify the Federal officer or officers (by name or by title), and their successors in office, personally responsible for compliance. Nothing herein (1) affects other limitations on judicial review or the power or duty of the court to dismiss any action or deny relief on any other appropriate legal or equitable ground; or (2) confers authority to grant relief if any other statute that grants consent to suit expressly or impliedly forbids the relief which is sought.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 392; Pub. L. 94–574, § 1, Oct. 21, 1976, 90 Stat. 2721.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 1009(a).	June 11, 1946, ch. 324, § 10(a), 60 Stat. 243.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1976—Pub. L. 94–574 removed the defense of sovereign immunity as a bar to judicial review of Federal administrative action otherwise subject to judicial review.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 2 sections 501, 502; title 7 section 2143; title 16 section 839f; title 18 sections 843, 3625; title 19 section 1677c; title 25 section 954; title 28 section 2631; title 41 section 422; title 42 section 5405; title 50 App. sections 16, 2412.

§ 703. Form and venue of proceeding

The form of proceeding for judicial review is the special statutory review proceeding relevant to the subject matter in a court specified by statute or, in the absence or inadequacy thereof, any applicable form of legal action, including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus, in a court of competent jurisdiction. If no special statutory review proceeding is applicable, the action for judicial review may be brought against the United States, the agency by its official title, or the appropriate officer. Except to the extent that prior, adequate, and exclusive opportunity for judicial review is provided by law, agency action is subject to judicial review in civil or criminal proceedings for judicial enforcement.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 392; Pub. L. 94–574, § 1, Oct. 21, 1976, 90 Stat. 2721.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 1009(b).	June 11, 1946, ch. 324, § 10(b), 60 Stat. 243.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1976—Pub. L. 94–574 provided that if no special statutory review proceeding is applicable, the action for ju-

dicial review may be brought against the United States, the agency by its official title, or the appropriate officer as defendant.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 2 sections 501, 502; title 7 section 2143; title 16 section 839f; title 18 sections 843, 3625; title 25 section 954; title 41 section 422; title 42 section 5405; title 50 App. section 2412.

§ 704. Actions reviewable

Agency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review. A preliminary, procedural, or intermediate agency action or ruling not directly reviewable is subject to review on the review of the final agency action. Except as otherwise expressly required by statute, agency action otherwise final is final for the purposes of this section whether or not there has been presented or determined an application for a declaratory order, for any form of reconsideration, or, unless the agency otherwise requires by rule and provides that the action meanwhile is inoperative, for an appeal to superior agency authority.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 392.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 1009(c).	June 11, 1946, ch. 324, §10(c), 60 Stat. 243.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface of this report.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 2 sections 501, 502; title 7 section 2143; title 15 sections 78*l*, 78ccc; title 16 section 839f; title 18 sections 843, 3625; title 25 section 954; title 41 section 422; title 42 sections 5405, 7174, 7194; title 50 App. section 2412.

§ 705. Relief pending review

When an agency finds that justice so requires, it may postpone the effective date of action taken by it, pending judicial review. On such conditions as may be required and to the extent necessary to prevent irreparable injury, the reviewing court, including the court to which a case may be taken on appeal from or on application for certiorari or other writ to a reviewing court, may issue all necessary and appropriate process to postpone the effective date of an agency action or to preserve status or rights pending conclusion of the review proceedings.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 393.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 1009(d).	June 11, 1946, ch. 324, §10(d), 60 Stat. 243.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface of this report.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 2 sections 501, 502; title 7 section 2143; title 15 sections 78y, 1262, 1474, 3416; title 16 sections 839f, 1855, 3636; title 18 sections 843, 3625; title 25 section 954; title 41 section 422; title 42 sections 5405, 7172; title 50 App. section 2412.

§ 706. Scope of review

To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall—

(1) compel agency action unlawfully withheld or unreasonably delayed; and

(2) hold unlawful and set aside agency action, findings, and conclusions found to be—

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) contrary to constitutional right, power, privilege, or immunity;

(C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;

(D) without observance of procedure required by law;

(E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or

(F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 393.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 1009(e).	June 11, 1946, ch. 324, §10(e), 60 Stat. 243.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface of this report.

ABBREVIATION OF RECORD

Pub. L. 85–791, Aug. 28, 1958, 72 Stat. 941, which authorized abbreviation of record on review or enforcement of orders of administrative agencies and review on the original papers, provided, in section 35 thereof, that: ''This Act [enacting section 2112 of Title 28, Judiciary and Judicial Procedure, and amending sections 1036 and 1037(c) of former Title 5 [now sections 2346 and 2347(c) of Title 28], sections 8, 9, 193(c), 194(b)–(d), (h), 1115(c), 1599(c), 1600, and 1601 of Title 7, Agriculture, section 1848 of Title 12, Banks and Banking, sections 21, 45(b)–(d), 77i(a), 78y(a), 79x(a), 80a–42(a), 80b–13(a), and 717r(a), (b) of Title 15. Commerce and Trade, section 825*l*(a), (b) of Title 16, Conservation, sections 81r(c) and 1641(b) of Title 19, Customs Duties, section 277(b) of Title 20, Education, sections 346a(i)(2), (3), 371(f)(1), (3) of Title 21, Food and Drugs, section 1631f(b) of Title 22, Foreign Relations and Intercourse, section 204(h), Title 27, Intoxicating Liquors, sections 160(d)–(f) and 210(a) of Title 29, Labor, section 576 of former Title 39, The Postal Service, section 291j(b)(1), (2) of Title 42, Public Health and Welfare, section 315(f) of Title 45, Railroads, section 1181(b) of Title 46, Appendix, Shipping, section 402(d) of Title 47, Telegraphs, Telephones, and Radiotelegraphs, section 646(c) of former Title 49, Transpor-

tation, and sections 793(a), 820(e), 821(c), (d) of Title 50, War and National Defense] shall not be construed to repeal or modify any provision of the Administrative Procedure Act.''

CROSS REFERENCES

Federal Communications Commission proceedings, applicability of section to, see section 402 of Title 47, Telegraphs, Telephones, and Radiotelegraphs.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7123 of this title; title 2 sections 501, 502; title 7 section 2143; title 11 section 1172; title 12 sections 1701q–1, 1723i, 1735f–14, 1735f–15, 3105; title 15 sections 57a, 78y, 1262, 1474, 2618, 5408; title 16 sections 773f, 839f, 973f, 1379, 1855, 1858, 2437, 3142, 3636, 5010; title 18 sections 843, 3625; title 19 section 1337; title 22 section 4140; title 25 section 954; title 28 section 2640; title 29 sections 727, 1813, 1853; title 30 sections 956, 1462; title 39 section 3628; title 41 section 422; title 42 sections 608, 3537a, 3537b, 3545, 5405, 5919, 6976, 7607, 9152; title 45 sections 726, 904, 915, 1105; title 47 section 402; title 49 sections 20104, 32904; title 50 App. section 2412.

CHAPTER 9—EXECUTIVE REORGANIZATION

Sec.
901. Purpose.
902. Definitions.
903. Reorganization plans.
904. Additional contents of reorganization plan.
905. Limitations on powers.[1]
906. Effective date and publication of reorganization plans.
907. Effect on other laws, pending legal proceedings, and unexpended appropriations.
908. Rules of Senate and House of Representatives on reorganization plans.
909. Terms of resolution.
910. Introduction and reference of resolution.
911. Discharge of committee considering resolution.
912. Procedure after report or discharge of committee; debate; vote on final passage.
[913. Omitted.]

AMENDMENTS

1984—Pub. L. 98–614, § 3(e)(3), Nov. 8, 1984, 98 Stat. 3193, substituted ''passage'' for ''disapproval'' in item 912.

1977—Pub. L. 95–17, § 2, Apr. 6, 1977, 91 Stat. 29, reenacted chapter heading and items 901 to 903, 905 to 909, and 911 without change, substituted ''plan'' for ''plans'' in item 904 and ''Introduction and reference of resolution'' for ''Reference of resolution to committee'' in item 910, inserted ''; vote on final disapproval'' in item 912, and omitted item 913 ''Decisions without debate on motion to postpone or proceed''.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 20 section 3463; title 42 sections 2000e–6, 3534, 7176, 8401, 8819; title 49 sections 103, 104, 106.

§ 901. Purpose

(a) The Congress declares that it is the policy of the United States—

(1) to promote the better execution of the laws, the more effective management of the executive branch and of its agencies and functions, and the expeditious administration of the public business;

(2) to reduce expenditures and promote economy to the fullest extent consistent with the efficient operation of the Government;

(3) to increase the efficiency of the operations of the Government to the fullest extent practicable;

(4) to group, coordinate, and consolidate agencies and functions of the Government, as nearly as may be, according to major purposes;

(5) to reduce the number of agencies by consolidating those having similar functions under a single head, and to abolish such agencies or functions thereof as may not be necessary for the efficient conduct of the Government; and

(6) to eliminate overlapping and duplication of effort.

(b) Congress declares that the public interest demands the carrying out of the purposes of subsection (a) of this section and that the purposes may be accomplished in great measure by proceeding under this chapter, and can be accomplished more speedily thereby than by the enactment of specific legislation.

(c) It is the intent of Congress that the President should provide appropriate means for broad citizen advice and participation in restructuring and reorganizing the executive branch.

(d) The President shall from time to time examine the organization of all agencies and shall determine what changes in such organization are necessary to carry out any policy set forth in subsection (a) of this section.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 394; Pub. L. 92–179, § 1, Dec. 10, 1971, 85 Stat. 574; Pub. L. 95–17, § 2, Apr. 6, 1977, 91 Stat. 29.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 133z.	June 20, 1949, ch. 226, § 2, 63 Stat. 203.

In subsection (a), the words ''from time to time examine'' are substituted for ''examine and from time to time reexamine'' since the initial examination has been executed. The words ''of the Government'' following ''agencies'' are omitted as unnecessary in view of the definition of ''agency'' in section 902. In subsection (a)(1), the words ''of the Government'' following ''executive branch'' are omitted as unnecessary and to conform to the style of this title.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

CODIFICATION

Section 901(c) of former Title 5, Executive Departments and Government Officers and Employees, was transferred to section 60e–2(a) of Title 2, The Congress.

AMENDMENTS

1977—Subsecs. (a) to (d). Pub. L. 95–17 reenacted subsecs. (a) and (b) without change, added subsec. (c), and redesignated former subsec. (c) as (d).

1971—Subsec. (a). Pub. L. 92–179, § 1(a), substituted ''The Congress declares that it is the policy of the United States'' for ''The President shall from time to time examine the organization of all agencies and shall determine what changes therein are necessary to accomplish the following purposes'' preceding par. (1).

Subsec. (c). Pub. L. 92–179, § 1(b), added subsec. (c) consisting of provisions formerly set out preceding par. (1) of subsec. (a).

[1] So in original. Does not conform to section catchline.

SHORT TITLE OF 1984 AMENDMENT

Pub. L. 98–614, §1, Nov. 8, 1984, 98 Stat. 3192, provided: ''That this Act [amending sections 903 to 906 and 908 to 912 of this title] may be cited as the 'Reorganization Act Amendments of 1984'.''

SHORT TITLE OF 1977 AMENDMENT

Section 1 of Pub. L. 95–17 provided: ''That this Act [amending this chapter] may be cited as the 'Reorganization Act of 1977'.''

NATIONAL COMMISSION ON EXECUTIVE ORGANIZATION

Pub. L. 100–527, §17, Oct. 25, 1988, 102 Stat. 2645, provided that:

''(a) ESTABLISHMENT.—(1) Within 30 days after the effective date of this Act [Mar. 15, 1989], the President shall make a determination as to whether the national interest would be served by the establishment of a commission to review the structural organization of the executive branch of the Federal Government. If the President makes a determination that such establishment is in the national interest, the President shall transmit to the Congress written notification of his intent to establish the National Commission on Executive Organization under this section.

''(2) If the President fails to transmit notification under paragraph (1), this section shall cease to be effective 30 days after the effective date of this Act [Mar. 15, 1989].

''(b) MEMBERSHIP OF THE COMMISSION.—A commission established under this section shall be composed of 16 members appointed not later than 90 days after the effective date of this Act [Mar. 15, 1989]. The members shall be appointed as follows:

''(1) Six citizens of the United States appointed by the President, one of whom shall be designated by the President to be the Chairman of the Commission. Not more than four of the members appointed by the President may be from the same political party as the President.

''(2) Two members of the Senate and one citizen of the United States appointed by the President pro tempore of the Senate upon the recommendation of the majority leader of the Senate.

''(3) One Member of the Senate and one citizen of the United States appointed by the President pro tempore of the Senate upon the recommendation of the minority leader of the Senate.

''(4) Two members of the House of Representatives and one citizen of the United States appointed by the Speaker of the House of Representatives upon the recommendation of the majority leader of the House of Representatives.

''(5) One Member of the House of Representatives and one citizen of the United States appointed by the Speaker of the House of Representatives upon the recommendation of the minority leader of the House of Representatives.

''(c) RESTRICTIONS ON PAY AND ALLOWANCES.—(1) Except as provided in paragraph (2), members of the Commission shall receive no pay, allowances, or benefits by reason of service on the Commission.

''(2) Members of the Commission appointed from among private citizens of the United States may be allowed travel expenses, including per diem, in lieu of subsistence, as authorized by law for persons serving intermittently in the Federal Government.

''(d) FUNCTIONS OF COMMISSION.—The Commission shall examine and make recommendations with respect to—

''(1) criteria for use by the President and Congress in evaluating proposals for changes in the structure of the executive branch of the Federal Government, including criteria for use by the President and Congress in evaluating and overseeing Government-sponsored enterprises and Government corporations;

''(2) the organization of the executive branch, including the number of departments and the organizational structure of each such department, the advisability of reorganizing or abolishing any such department, and the advisability of establishing any new executive department;

''(3) the most effective and practicable structure of the Executive Office of the President for conducting oversight of the executive branch, and criteria for use by such Office in evaluating and overseeing the performance of the executive branch; and

''(4) the most effective and practicable structure of the President's cabinet and means of operation of such cabinet, including recommendations concerning the number, composition, and duties of the members of such cabinet.

''(e) REPORT.—(1) Not later than 12 months after the completion of appointment of the members of the Commission, the Commission shall submit to the President, the Senate, and the House of Representatives a report which contains a detailed statement of the recommendations of the Commission.

''(2) The date on which the report is due may be extended to such date as the President may prescribe in an Executive order, except that such date may not be later than six months after the date on which such report is otherwise due under paragraph (1).

''(f) POWERS OF COMMISSION.—(1) The Commission may, for the purpose of carrying out this section, hold such hearings and sit and act at such times and places, as the Commission considers appropriate.

''(2) The Commission may adopt such rules and regulations as may be necessary to establish procedures and to govern the manner of the operation, organization, and personnel of the Commission.

''(3)(A) The Commission may request from the head of any department, agency, or other instrumentality of the Federal Government such information as the Commission may require for the purpose of carrying out this section. The head of such department, agency, or instrumentality shall, to the extent otherwise permitted by law, furnish such information to the Commission upon request made by the Chairman.

''(B) Upon request of the Chairman of the Commission, the head of any department, agency, or other instrumentality of the Federal Government shall, to the extent possible and subject to the discretion of such head—

''(i) make any of the facilities and services of such department, agency, or instrumentality available to the Commission; and

''(ii) detail any of the personnel of such department, agency, or instrumentality to the Commission, on a nonreimbursable basis, to assist the Commission in carrying out the duties of the Commission under this section.

''(4) The Commission may use the United States mails in the same manner and under the same conditions as the departments and agencies of the Federal Government.

''(5) The Commission may, to such extent and in such amounts as are provided in appropriations Acts, enter into contracts with State agencies, private firms, institutions, and individuals for the purpose of conducting research or surveys necessary to enable the Commission to discharge the duties of the Commission under this section.

''(6) Subject to such rules and regulations as may be adopted by the Commission, the Chairman of the Commission may appoint, terminate, and fix the pay of an Executive Director and of such additional staff as the Chairman considers appropriate to assist the Commission. The Chairman may fix the pay of personnel appointed under this paragraph without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code (relating to the number or classification of employees and to rates of pay), the provisions of such title governing appointments in the competitive service, and any other similar provision of law; except that no rate of pay fixed under this paragraph may exceed a rate equal to the rate of pay payable for grade GS–18 of the General Schedule under section 5332 of such title.

''(g) APPLICABILITY OF THE FEDERAL ADVISORY COMMITTEE ACT.—The Commission shall be an advisory committee for purposes of the Federal Advisory Committee Act (5 U.S.C. App. 2) [Pub. L. 92–463, set out in Appendix to this title].

''(h) TERMINATION OF COMMISSION.—The Commission shall cease to exist on the date that is 30 days after the date on which the Commission submits the report required under subsection (e).

''(i) PREPARATION FOR THE COMMISSION.—Not later than 90 days after the effective date of this Act [Mar. 15, 1989], the Comptroller General of the United States, the Director of the Congressional Research Service, the Director of the Congressional Budget Office, and the Director of the Office of Technology Assessment shall each submit to the Commission established under this section an index to and synopses of materials of the organization of the official that such official considers useful to the Commission. Subject to laws governing the disclosure of classified or otherwise restricted information, such materials may include reports, analyses, recommendations, and results of research of such organization.

''(j) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Commission not more than $1,500,000 for carrying out this section.''

EX. ORD. NO. 6166. REORGANIZATION OF EXECUTIVE AGENCIES GENERALLY

Ex. Ord. No. 6166, June 10, 1933, provided:

§1. PROCUREMENT

The function of determination of policies and methods of procurement, warehousing, and distribution of property, facilities, structures, improvements, machinery, equipment, stores, and supplies exercised by an agency is transferred to a Procurement Division in the Treasury Department, at the head of which shall be a Director of Procurement.

The Office of the Supervising Architect of the Treasury Department is transferred to the Procurement Division, except that the buildings of the Treasury Department shall be administered by the Treasury Department and the administration of post-office buildings is transferred to the Post Office Department. The General Supply Committee of the Treasury Department is abolished.

In respect of any kind of procurement, warehousing, or distribution for any agency the Procurement Division may, with the approval of the President, (a) undertake the performance of such procurement, warehousing, or distribution itself, or (b) permit such agency to perform such procurement, warehousing, or distribution, or (c) entrust such performance to some other agency, or (d) avail itself in part of any of these recourses, according as it may deem desirable in the interest of economy and efficiency. When the Procurement Division has prescribed the manner of procurement, warehousing, or distribution of any thing, no agency shall thereafter procure, warehouse, or distribute such thing in any manner other than so prescribed.

The execution of work now performed by the Corps of Engineers of the Army shall remain with said corps, subject to the responsibilities herein vested in the Procurement Division.

The Procurement Division shall also have control of all property, facilities, structures, machinery, equipment, stores, and supplies not necessary to the work of any agency; may have custody thereof or entrust custody to any other agency; and shall furnish the same to agencies as need therefor may arise.

The Fuel Yards of the Bureau of Mines of the Department of Commerce are transferred to the Procurement Office. (As amended by Ex. Ord. No. 6623 of Mar. 1, 1934.)

AMENDMENT OF SECTION BY EX. ORD. NO. 6623

Ex. Ord. No. 6623, Mar. 1, 1934, revoked a final paragraph of section 1 of Ex. Ord. No. 6166, which provided for the abolition of the Federal Employment Stabilization Board and the transfer of its functions to the Federal Emergency Administration of Public Works. Said Ex. Ord. No. 6623 also provided in part as follows:

''It is further ordered that the said Federal Employment Stabilization Board be, and it is hereby, abolished.

''There is hereby established in the Department of Commerce an office to be known as the 'Federal Employment Stabilization Office,' and there are hereby transferred to such office the functions of the Federal Employment Stabilization Board, together with its Director and other personnel, and records, supplies, equipment, and property of every kind.

''The unexpended balances of appropriations and/or allotments of appropriations of the Federal Employment Stabilization Board are hereby transferred to the Federal Employment Stabilization Office, Department of Commerce.''

EFFECTIVE DATE

The effective date of Ex. Ord. No. 6166, §1, as provided for in section 22, post, was extended to Dec. 31, 1933, by Ex. Ord. No. 6224, of July 27, 1933, and the effective date of the last paragraph, subsequently revoked by Ex. Ord. No. 6623, was deferred by Ex. Ord. No. 6624 of Mar. 1, 1934, until such revocation could become effective.

[Subsequent to the effective date of Ex. Ord. No. 6166, §1, certain functions affected thereby were again transferred as follows: The Public Buildings Branch of the Procurement Division was transferred to Public Buildings Administration within the Federal Works Administration by 1939 Reorg. Plan No. 1, §§301, 303, 4 Fed. Reg. 2729; 53 Stat. 1426, 1427; the Federal Employment Stabilization Office, created by Ex. Ord. No. 6166, §1, as amended by Ex. Ord. No. 6624, was abolished by 1939 Reorg. Plan No. 1, §4, 4 Fed. Reg. 2727, 53 Stat. 1423, and its functions transferred to the Executive Office of the President.]

SUPERSEDURE OF PARS. 1, 3, AND 5

Section 602(b) of act June 30, 1949, ch. 288, title VI, 63 Stat. 401, eff. July 1, 1949, as renumbered from title V, section 502(b) of said act June 30, 1949 by act Sept. 5, 1950, ch. 849, §§6(a), (b), 7(e), 64 Stat. 583, provided that: ''The provisions of the first, third, and fifth paragraphs of section 1 of Executive Order Numbered 6166 of June 10, 1933 [this Ex. Ord.], are hereby superseded, insofar as they relate to any function now administered by the Bureau of Federal Supply except functions with respect to standard contract forms.''

§2. NATIONAL PARKS, BUILDINGS, AND RESERVATIONS

All functions of administration of public buildings, reservations, national parks, national monuments, and national cemeteries are consolidated in the National Park Service in the Department of the Interior, at the head of which shall be a Director of the National Park Service; except that where deemed desirable there may be excluded from this provision any public building or reservation which is chiefly employed as a facility in the work of a particular agency. This transfer and consolidation of functions shall include, among others, those of the former National Park Service of the Department of the Interior and the following National Cemeteries and Parks of the War Department which are located within the continental limits of the United States:

NATIONAL MILITARY PARKS

Chickamauga and Chattanooga National Military Park, Georgia and Tennessee.
Fort Donelson National Military Park, Tennessee.
Fredericksburg and Spotsylvania County Battle Fields Memorial, Virginia.
Gettysburg National Military Park, Pennsylvania.
Guilford Courthouse National Military Park, North Carolina.
Kings Mountain National Military Park, South Carolina.

Moores Creek National Military Park, North Carolina.
Petersburg National Military Park, Virginia.
Shiloh National Military Park, Tennessee.
Stones River National Military Park, Tennessee.
Vicksburg National Military Park, Mississippi.

NATIONAL PARKS

Abraham Lincoln National Park, Kentucky.
Fort McHenry National Park, Maryland.

BATTLEFIELD SITES

Antietam Battlefield, Maryland.
Appomattox, Virginia.
Brice Cross Roads, Mississippi.
Chalmette Monument and Grounds, Louisiana.
Cowpens, South Carolina.
Fort Necessity, Wharton County, Pennsylvania.
Kenesaw Mountain, Georgia.
Monocacy, Maryland.
Tupelo, Mississippi.
White Plains, New York.

NATIONAL MONUMENTS

Big Hole Battlefield, Beaverhead County, Montana.
Cabrillo Monument, Fort Rosecrans, California.
Castle Pinckney, Charleston, South Carolina.
Father Millet Cross, Fort Niagara, New York.
Fort Marion, St. Augustine, Florida.
Fort Matanzas, Florida.
Fort Pulaski, Georgia.
Meriwether Lewis, Hardin County, Tennessee.
Mound City Group, Chillicothe, Ohio.
Statue of Liberty, Fort Wood, New York.

MISCELLANEOUS MEMORIALS

Camp Blount Tablets, Lincoln County, Tennessee.
Kill Devil Hill Monument, Kitty Hawk, North Carolina.
New Echota Marker, Georgia.
Lee Mansion, Arlington National Cemetery, Virginia.

NATIONAL CEMETERIES

Custer Battlefield, National Cemetery in the State of Montana.
Battleground, District of Columbia.
Antietam (Sharpsburg), Maryland.
Vicksburg, Mississippi.
Gettysburg, Pennsylvania.
Chattanooga, Tennessee.
Fort Donelson (Dover), Tennessee.
Shiloh (Pittsburg Landing), Tennessee.
Stones River (Murfreesboro), Tennessee.
Fredericksburg, Virginia.
Poplar Grove (Petersburg), Virginia.
Yorktown, Virginia.

National cemeteries located in insular possessions under the jurisdiction of the War Department shall be administered by the Bureau of Insular Affairs of the War Department.

The functions of the following agencies are transferred to the National Park Service of the Department of the Interior, and the agencies are abolished:

Arlington Memorial Bridge Commission
Public Buildings Commission
Public Buildings and Public Parks of the National Capital
National Memorial Commission
Rock Creek and Potomac Parkway Commission

Expenditures by the Federal Government for the purposes of the Commission of Fine Arts, the George Rogers Clark Sesquicentennial Commission, and the Rushmore National Commission shall be administered by the Department of the Interior. (As amended by Ex. Ord. No. 6228 of July 28, 1933; Ex. Ord. No. 6614 of Feb. 26, 1934; Ex. Ord. No. 8428 of June 3, 1940, 5 F.R. 2132; and act Mar. 2, 1934. ch. 39, §1, 48 Stat. 389.)

AMENDMENTS

The enumeration of the National Cemeteries and Parks of the War Department which were transferred to the Department of the Interior was added by Ex. Ord. No. 6228, §1, of July 28, 1933, and Ex. Ord. No. 8428 of June 3, 1940.

A provision of this section transferring the administration of national cemeteries located in foreign countries to the State Department was revoked by Ex. Ord. No. 6614 of Feb. 26, 1934.

EFFECTIVE DATE

See section 22 of this Ex. Ord. The transfer of national cemeteries located in the insular possessions to the Bureau of Insular Affairs, as provided in this section, was postponed until further order by Ex. Ord. No. 6228, §3, of July 28, 1933.

§3. INVESTIGATIONS

All functions now exercised by the Bureau of Prohibition of the Department of Justice with respect to the granting of permits under the national prohibition laws are transferred to the Division of Internal Revenue in the Treasury Department.

All functions now exercised by the Bureau of Prohibition with respect to investigations and all the functions now performed by the Bureau of Investigation of the Department of Justice are transferred to and consolidated in a Division of Investigation in the Department of Justice, at the head of which shall be a Director of Investigation.

All other functions now performed by the Bureau of Prohibition are transferred to such divisions in the Department of Justice as in the judgment of the Attorney General may be desirable.

§4. DISBURSEMENT

[Section, as amended by Ex. Ord. No. 6728, May 29, 1934; 1940 Reorg. Plan No. III, §1(a)(1), eff. June 30, 1940, 5 F.R. 2107, 54 Stat. 1231; and 1940 Reorg. Plan No. IV, §§3, 4, eff. June 30, 1940, 5 F.R. 2421, 54 Stat. 1234, which provided that the function of disbursement of moneys of the United States exercised by any agency [except United States marshals; the Post Office Department; the Postmaster General; the Board of Trustees of the Postal Savings System; and those disbursement functions of the War Department, Navy Department (including the Marine Corps), and the Panama Canal, not pertaining to departmental salaries in the District of Columbia] were transferred to the [Fiscal Service of the] Treasury Department and, together with the Office of Disbursing Clerk of that department, was consolidated in a Division of Disbursement, at the head of which was a Chief Disbursing Officer, that the Division of Disbursement of the Treasury Department was authorized to establish local offices, or to delegate the exercise of its functions locally to officers or employees of other agencies, according as the interests of efficiency and economy might require, that the Division of Disbursement would disburse moneys only upon the certification of persons by law duly authorized to incur obligations upon behalf of the United States and that the function of accountability for improper certification would be transferred to such persons, and no disbursing officer would be held accountable therefor, was repealed and reenacted as section 3321 of Title 31, Money and Finance, by Pub. L. 97–258, Sept. 13, 1982, 96 Stat. 877, the first section of which enacted Title 31.]

AMENDMENTS

The bracketed provisions in the first sentence of section 4 of Ex. Ord. No. 6166 reflect the changes effected by 1940 Reorg. Plan No. IV, §§3, 4, eff. June 30, 1940, 5 F.R. 2421, 54 Stat. 1234, 1235, Ex. Ord. No. 6728, and 1940 Reorg. Plan No. III, §1(a)(1), 5 F.R. 2107, 54 Stat. 1231, respectively.

EFFECTIVE DATE

The effective date of section 4 of Ex. Ord. No. 6166, originally fixed by section 22 of this Ex. Ord., was subsequently postponed as follows: to Dec. 31, 1933, by Ex. Ord. No. 6224 of July 27, 1933; to June 30, 1934 (insofar

as not already effected prior to Dec. 31, 1933), by Ex. Ord. No. 6540 of Dec. 28, 1933; to Dec. 31, 1934 (insofar as not already effected prior to June 30, 1934), by Ex. Ord. No. 6727 of May 29, 1934; to June 30, 1935, by Ex. Ord. No. 6927 of Dec. 31, 1934; to Dec. 31, 1935 (insofar as not already effected prior to June 30, 1934), by Ex. Ord. No. 7077 of June 15, 1935; to June 30, 1936 (insofar as not already effected prior to Dec. 31, 1935), by Ex. Ord. No. 7261 of Dec. 31, 1935. Each of these orders contained a provision that the changes therein delayed might be made sooner effective by order of the Secretary of the Treasury approved by the President.

§5. CLAIMS BY OR AGAINST THE UNITED STATES

The functions of prosecuting in the courts of the United States claims and demands by, and offenses against, the Government of the United States and of defending claims and demands against the Government, and of supervising the work of United States attorneys, marshals, and clerks in connection therewith, now exercised by any agency or officer, are transferred to the Department of Justice.

As to any case referred to the Department of Justice for prosecution or defense in the courts, the function of decision whether and in what manner to prosecute, or to defend, or to compromise, or to appeal, or to abandon prosecution or defense, now exercised by any agency or officer, is transferred to the Department of Justice.

For the exercise of such of his functions as are not transferred to the Department of Justice by the foregoing two paragraphs, the Solicitor of the Treasury is transferred from the Department of Justice to the Treasury Department.

Nothing in this section shall be construed to affect the function of any agency or officer with respect to cases at any stage prior to reference to the Department of Justice for prosecution or defense.

EFFECTIVE DATE

With regard to legal work performed by the Veterans' Administration in connection with suits against the United States arising under section 19 of the World War Veterans Act, 1924, the effective date of this section was postponed to Sept. 10, 1933, by Ex. Ord. No. 6222 of July 27, 1933.

The effective date of the first paragraph of this section, insofar as it affected the functions of the General Counsel for the Bureau of Internal Revenue, was postponed until Oct. 10, 1933, by Ex. Ord. No. 6244 of Aug. 8, 1933.

§6. INSULAR COURTS

The United States Court for China, the District Court of the United States for the Panama Canal Zone, and the District Court of the Virgin Islands of the United States are transferred to the Department of Justice.

EFFECTIVE DATE

Ex. Ord. No. 6243, Aug. 5, 1933, provided that ''the effective date of the transfer to the Department of Justice of the District Court of the United States for the Panama Canal Zone is hereby postponed to October 4, 1933.''

§7. SOLICITORS

The Solicitor for the Department of Commerce is transferred from the Department of Justice to the Department of Commerce.

The Solicitor for the Department of Labor is transferred from the Department of Justice to the Department of Labor.

§8. INTERNAL REVENUE

The Bureaus of Internal Revenue and or Industrial Alcohol of the Treasury Department are consolidated in a Division of Internal Revenue, at the head of which shall be a Commissioner of Internal Revenue.

EFFECTIVE DATE

The effective date of section 8 of Ex. Ord. No. 6166, originally fixed by section 22 of the same order, post, was subsequently postponed as follows: to Dec. 31, 1933, by Ex. Ord. No. 6224 of July 27, 1933; to June 30, 1934, by Ex. Ord. No. 6540 of Dec. 28, 1933. Said orders, however, contained a provision whereby the changes thereby delayed might be sooner effected by order of the Secretary of the Treasury approved by the President.

§9. ASSISTANT SECRETARY OF COMMERCE

The Assistant Secretary of Commerce for Aeronautics shall be an Assistant Secretary of Commerce and shall perform such functions as the Secretary of Commerce may designate.

§10. OFFICIAL REGISTER

The function of preparation of the Official Register is transferred from the Bureau of the Census to the Civil Service Commission.

§11. STATISTICS OF CITIES

The function of the Bureau of the Census of the Department of Commerce of compiling statistics of cities under 100,000 population is abolished for the period ending June 30, 1935.

§12. SHIPPING BOARD

The functions of the United States Shipping Board including those over and in respect to the United States Shipping Board Merchant Fleet Corporation are transferred to the Department of Commerce, and the United States Shipping Board is abolished.

§13. NATIONAL SCREW THREAD COMMISSION

The National Screw Thread Commission is abolished, and its records, property, facilities, equipment, and supplies are transferred to the Department of Commerce.

§14. IMMIGRATION AND NATURALIZATION

The Bureaus of Immigration and of Naturalization of the Department of Labor are consolidated as an Immigration and Naturalization Service of the Department of Labor, at the head of which shall be a Commissioner of Immigration and Naturalization.

§15. VOCATIONAL EDUCATION

The functions of the Federal Board for Vocational Education are transferred to the Department of the Interior, and the Board shall act in an advisory capacity without compensation.

§16. APPORTIONMENT OF APPROPRIATIONS

The functions of making, waiving, and modifying apportionments of appropriations are transferred to the Director of the Bureau of the Budget.

§17. COORDINATING SERVICE

The Federal Coordinating Service is abolished.

EFFECTIVE DATE

The effective date of this section originally fixed by section 22 of this Ex. Ord., was subsequently deferred to Oct. 10, 1933, by Ex. Ord. No. 6239 of Aug. 2, 1933.

§18. FUNCTIONS ABOLISHED

Section 18 of Ex. Ord. No. 6166, which provided for the partial abolition of cooperative vocational education payments for agricultural experiment stations; cooperative agricultural extension work; and endowment and maintenance of colleges for the benefit of agriculture and the mechanical arts, was revoked by Ex. Ord. No. 6536 of Feb. 6, 1934.

§19. GENERAL PROVISIONS

Each agency, all the functions of which are transferred to or consolidated with another agency, is abolished.

The records pertaining to an abolished agency or a function disposed of, disposition of which is not elsewhere herein provided for, shall be transferred to the successor. If there be no successor agency, and such abolished agency be within a department, said records shall be disposed of as the head of such department may direct.

The property, facilities, equipment, and supplies employed in the work of an abolished agency or the exercise of a function disposed of, disposition of which is not elsewhere herein provided for, shall, to the extent required, be transferred to the successor agency. Other such property, facilities, equipment, and supplies shall be transferred to the Procurement Division.

All personnel employed in connection with the work of an abolished agency or function disposed of shall be separated from the service of the United States, except that the head of any successor agency, subject to my approval, may, within a period of four months after transfer or consolidation, reappoint any of such personnel required for the work of the successor agency without reexamination or loss of civil-service status.

EFFECTIVE DATE

The effective date of the last paragraph of this section, originally fixed by section 22, post, was deferred as to employees separated from service under sections 2 and 15, ante, until Sept. 30, 1933, by Ex. Ord. No. 6227 of July 27, 1933. As to employees separated under section 12, ante, a similar deferment to Sept. 30, 1933, was made by Ex. Ord. No. 6245 of Aug. 9, 1933.

§ 20. APPROPRIATIONS

Such portions of the unexpended balances of appropriations for any abolished agency or function disposed of shall be transferred to the successor agency as the Director of the Budget shall deem necessary.

Unexpended balances of appropriations for an abolished agency or function disposed of, not so transferred by the Director of the Budget, shall, in accordance with law, be impounded and returned to the Treasury.

§ 21. DEFINITIONS

As used in this order—

''Agency'' means any commission, independent establishment, board, bureau, division, service, or office in the executive branch of the Government.

''Abolished agency'' means any agency which is abolished, transferred, or consolidated.

''Successor agency'' means any agency to which is transferred some other agency or function, or which results from the consolidation of other agencies or functions.

''Function disposed of'' means any function eliminated or transferred.

§ 22. EFFECTIVE DATE

In accordance with law, this order shall become effective 61 days from its date: *Provided,* That in case it shall appear to the President that the interests of economy require that any transfer, consolidation, or elimination be delayed beyond the date this order becomes effective, he may, in his discretion, fix a later date therefor, and he may for like cause further defer such date from time to time. (Promulgated June 10, 1933.)

[Postponements of effective date of certain transfers, etc., see notes under the various sections of this Executive Order effecting those transfers, etc.]

Executive Order No. 7261, promulgated December 31, 1935, provided that ''except as hereinafter provided, the transfers, consolidations, and eliminations contemplated by section 4 of Executive Order No. 6166 of June 10, 1933, as amended, which are not effected prior to December 31, 1935, pursuant to Executive Order No. 6224 of July 27, 1933, Executive Order No. 6540 of December 28, 1933, Executive Order No. 6727 of May 29, 1934, Executive Order No. 6927 of December 21, 1934, and Executive Order No. 7077 of June 15, 1935, together with the operation of all other provisions of Executive Order No. 6166 of June 10, 1933, as amended, in so far as they relate to said section 4, be further delayed until June 30, 1936: Provided, that any transfer, consolidation, or elimination, in whole or in part, under said section 4, including any other provisions of the said order of June 10, 1933, in so far as they relate to section 4 thereof, may be made operative and effective between December 31, 1935, and June 30, 1936, by order of the Secretary of the Treasury, approved by the President.''

Executive Order No. 7980, promulgated September 29, 1938, provided: ''That the transfers, consolidations, and eliminations contemplated by section 4 of Executive Order No. 6166 of June 10, 1933, as amended, together with the operation of all other provisions of Executive Order No. 6166 of June 10, 1933, as amended, so far as they relate to the said section 4, be further delayed until December 31, 1938, with respect to the function of disbursement now exercised by United States Marshals under the Department of Justice.''

Functions relating to disbursement by United States marshals which would otherwise have become functions of Treasury Department on July 1, 1940, by virtue of Ex. Ord. No. 6166, as amended, were transferred to and vested in Department of Justice to be exercised by United States marshals under supervision of Attorney General in accordance with existing statutes pertaining to such functions, by Reorg. Plan No. IV of 1940, § 3, eff. June 30, 1940. See, also, sections 13–15 of said plan for provisions relating to transfer of functions of department heads, records, property, personnel, and funds.

Functions relating to disbursement of postal revenues and all other funds under jurisdiction of Post Office Department, Postmaster General, and Board of Trustees of Postal Savings System which would otherwise have become functions of Treasury Department on July 1, 1940, by virtue of Ex. Ord. No. 6166, as amended, set out in note under this section, were transferred to and vested in (a) said Board of Trustees as to postal savings disbursements, and (b) Post Office Department as to all other disbursements involved, such functions to be exercised by postmasters and other authorized disbursing agents of Post Office Department and of Postal Savings System in accordance with existing statutes pertaining to such functions, by Reorg. Plan No. IV of 1940, § 4, eff. June 30, 1940. See, also, sections 13–15 of said plan for provisions relating to transfer of functions of department heads, records, property, personnel, and funds.

Public Buildings Branch of Procurement Division and its functions and personnel were transferred to Public Buildings Administration, and functions of Secretary of Agriculture and Director of Procurement Division relating to administration thereof and to selection of sites for public buildings were transferred to Federal Works Administrator by Reorg. Plan No. I of 1939, §§ 301, 303, effective July 1, 1939. See also sections 307–310 of said plan for provisions relating to transfer of records, property, funds, and personnel.

EXECUTIVE ORDER NO. 11007

Ex. Ord. No. 11007, Feb. 27, 1962, 27 F.R. 1875, which related to regulations for formation and use of advisory committees, was superseded by Ex. Ord. No. 11671, June 5, 1972, 37 F.R. 11307.

EXECUTIVE ORDER NO. 11671

Ex. Ord. No. 11671, June 5, 1972, 37 F.R. 11307, which related to committee management, was superseded by Ex. Ord. No. 11686, Oct. 7, 1972, 37 F.R. 21421, set out in the Appendix to this title.

CROSS REFERENCES

Text of Reorganization Plans, see Appendix to this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 903 of this title.

§ 902. Definitions

For the purpose of this chapter—

(1) ''agency'' means—

(A) an Executive agency or part thereof; and

(B) an office or officer in the executive branch;

but does not include the General Accounting Office or the Comptroller General of the United States;

(2) ''reorganization'' means a transfer, consolidation, coordination, authorization, or abolition, referred to in section 903 of this title; and

(3) ''officer'' is not limited by section 2104 of this title.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 394; Pub. L. 90–83, § 1(98), Sept. 11, 1967, 81 Stat. 220; Pub. L. 95–17, § 2, Apr. 6, 1977, 91 Stat. 30.)

HISTORICAL AND REVISION NOTES

1966 ACT

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(1)	5 U.S.C. 133z–5.	June 20, 1949, ch. 226, § 7, 63 Stat. 205.
(2)	5 U.S.C. 133z–6.	June 20, 1949, ch. 226, § 8, 63 Stat. 206.

In paragraph (1)(A), the words ''an Executive agency or part thereof'' are coextensive with and substituted for ''any executive department, commission, council, independent establishment, Government corporation, board, bureau, division, service, . . . authority, administration, or other establishment, in the executive branch of the Government'' and to conform to the definition in section 105.

In paragraph (1)(B), the words ''an office or officer in the civil service or uniformed services in or under an Executive agency'' are substituted for ''office, officer, . . . in the executive branch of the Government'' to conform to the definitions in sections 105, 2101, and 2104.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 ACT

This section amends section 902 of title 5, United States Code, so as to preserve the application of the source statute for section 902 (sec. 7 of the Reorganization Act of 1949). In the codification of title 5 by Public Law 89–554, that application was inadvertently restricted due to the operation of section 2104 of title 5, providing a title-wide definition of ''officer.'' Briefly, that section defines ''officer'' as a civil appointive officer of the Federal Government. In the Reorganization Act of 1949, the word ''officer'' was not defined, and has been construed to include not only civil appointive officers, but uniformed officers, the President, and officers of the government of the District of Columbia. Thus, this section amends section 902 of title 5 by inserting a paragraph providing that the title-wide definition of officer is inapplicable to chapter 9 of title 5. Also, paragraph (1)(B) of section 902 is amended so that the wording thereof is identical to that formerly appearing in section 7 of the Reorganization Act of 1949.

CODIFICATION

Section 902(a) of former Title 5, Executive Departments and Government Officers and Employees, was transferred to section 60e–2(b) of Title 2, The Congress.

AMENDMENTS

1977—Par. (1)(C). Pub. L. 95–17 struck out subpar. (C) which defined ''agency'' as any and all parts of the government of the District of Columbia other than the courts thereof.

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90–83 effective Sept. 6, 1966, for all purposes, see section 9(h) of Pub. L. 90–83, set out as a note under section 5102 of this title.

§ 903. Reorganization plans

(a) Whenever the President, after investigation, finds that changes in the organization of agencies are necessary to carry out any policy set forth in section 901(a) of this title, he shall prepare a reorganization plan specifying the reorganizations he finds are necessary. Any plan may provide for—

(1) the transfer of the whole or a part of an agency, or of the whole or a part of the functions thereof, to the jurisdiction and control of another agency;

(2) the abolition of all or a part of the functions of an agency, except that no enforcement function or statutory program shall be abolished by the plan;

(3) the consolidation or coordination of the whole or a part of an agency, or of the whole or a part of the functions thereof, with the whole or a part of another agency or the functions thereof;

(4) the consolidation or coordination of part of an agency or the functions thereof with another part of the same agency or the functions thereof;

(5) the authorization of an officer to delegate any of his functions; or

(6) the abolition of the whole or a part of an agency which agency or part does not have, or on the taking effect of the reorganization plan will not have, any functions.

The President shall transmit the plan (bearing an identification number) to the Congress together with a declaration that, with respect to each reorganization included in the plan, he has found that the reorganization is necessary to carry out any policy set forth in section 901(a) of this title.

(b) The President shall have a reorganization plan delivered to both Houses on the same day and to each House while it is in session, except that no more than three plans may be pending before the Congress at one time. In his message transmitting a reorganization plan, the President shall specify with respect to each abolition of a function included in the plan the statutory authority for the exercise of the function. The message shall also estimate any reduction or increase in expenditures (itemized so far as practicable), and describe any improvements in management, delivery of Federal services, execution of the laws, and increases in efficiency of Government operations, which it is expected will be realized as a result of the reorganizations included in the plan. In addition, the President's message shall include an implementation section which shall (1) describe in detail (A) the actions necessary or planned to complete the reorganization, (B) the anticipated nature and substance of any orders, directives, and other administrative and operational actions which are expected to be required for completing or implementing the reorganization, and (C) any preliminary actions which have been taken in the implementation process, and (2) contain a pro-

jected timetable for completion of the implementation process. The President shall also submit such further background or other information as the Congress may require for its consideration of the plan.

(c) Any time during the period of 60 calendar days of continuous session of Congress after the date on which the plan is transmitted to it, but before any resolution described in section 909 has been ordered reported in either House, the President may make amendments or modifications to the plan, consistent with sections 903–905 of this title, which modifications or revisions shall thereafter be treated as a part of the reorganization plan originally transmitted and shall not affect in any way the time limits otherwise provided for in this chapter. The President may withdraw the plan any time prior to the conclusion of 90 calendar days of continuous session of Congress following the date on which the plan is submitted to Congress.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 394; Pub. L. 90–83, §1(99), Sept. 11, 1967, 81 Stat. 220; Pub. L. 92–179, §2, Dec. 10, 1971, 85 Stat. 574; Pub. L. 95–17, §2, Apr. 6, 1977, 91 Stat. 30; Pub. L. 98–614, §§3(b)(1), (2), 4, Nov. 8, 1984, 98 Stat. 3192, 3193.)

HISTORICAL AND REVISION NOTES

1966 ACT

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 133z–1.	June 20, 1949, ch. 226, §3, 63 Stat. 203.

In subsection (a)(5), the words ''officer in the civil service or uniformed services'' are substituted for ''officer'' to conform to the definitions in sections 2101 and 2104.

In subsection (b), the words ''The President shall have a reorganization plan delivered'' as substituted for ''The delivery . . . shall be''.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 ACT

Section 1(99) amends section 903(a)(5) of title 5, United States Code, to conform to the wording formerly appearing in the source statute (sec. 3(5) of the Reorganization Act of 1949). In this regard, the explanation appearing in section 1(98) of this bill is equally applicable to this section.

AMENDMENTS

1984—Subsec. (b). Pub. L. 98–614, §4, inserted ''In addition, the President's message shall include an implementation section which shall (1) describe in detail (A) the actions necessary or planned to complete the reorganization, (B) the anticipated nature and substance of any orders, directives, and other administrative and operational actions which are expected to be required for completing or implementing the reorganization, and (C) any preliminary actions which have been taken in the implementation process, and (2) contain a projected timetable for completion of the implementation process. The President shall also submit such further background or other information as the Congress may require for its consideration of the plan.''

Subsec. (c). Pub. L. 98–614, §3(b)(1), (2), substituted ''60 calendar days'' for ''thirty calendar days'', and ''90 calendar days'' for ''sixty calendar days''.

1977—Subsec. (a)(2). Pub. L. 95–17 inserted provision that no enforcement function or statutory program shall be abolished by the plan.

Subsec. (b). Pub. L. 95–17 substituted provisions limiting to three the number of plans that may be pending before Congress at any one time for provisions limiting to one the number of plans that may be transmitted to Congress within any period of thirty consecutive days and provisions requiring that the President estimate any increase in expenditures and describe any improvements in management, delivery of Federal services, execution of laws, and increases in efficiency of Government operations expected as a result of the reorganizations included in the plan.

Subsec. (c). Pub. L. 95–17 added subsec. (c).

1971—Subsec. (a). Pub. L. 92–179, §2(a), restructured provisions covering requirements of findings of fact and certification by placing in a position preceding par. (1) provisions formerly set out following par. (6).

Subsec. (b). Pub. L. 92–179, §2(b), inserted provisions limiting to one plan within any period of thirty consecutive days the allowable number of plans submitted.

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90–83 effective Sept. 6, 1966, for all purposes, see section 9(h) of Pub. L. 90–83, set out as a note under section 5102 of this title.

CROSS REFERENCES

Text of reorganization plans, see Appendix to this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 902, 904, 905, 908, 909, 910 of this title.

§ 904. Additional contents of reorganization plan

A reorganization plan transmitted by the President under section 903 of this title—

(1) may, subject to section 905, change, in such cases as the President considers necessary, the name of an agency affected by a reorganization and the title of its head, and shall designate the name of an agency resulting from a reorganization and the title of its head;

(2) may provide for the appointment and pay of the head and one or more officers of any agency (including an agency resulting from a consolidation or other type of reorganization) if the President finds, and in his message transmitting the plan declares, that by reason of a reorganization made by the plan the provisions are necessary;

(3) shall provide for the transfer or other disposition of the records, property, and personnel affected by a reorganization;

(4) shall provide for the transfer of such unexpended balances of appropriations, and of other funds, available for use in connection with a function or agency affected by a reorganization, as the President considers necessary by reason of the reorganization for use in connection with the functions affected by the reorganization, or for the use of the agency which shall have the functions after the reorganization plan is effective; and

(5) shall provide for terminating the affairs of an agency abolished.

A reorganization plan transmitted by the President containing provisions authorized by paragraph (2) of this section may provide that the head of an agency be an individual or a commission or board with more than one member. In the case of an appointment of the head of such an agency, the term of office may not be fixed at more than four years, the pay may not be at a rate in excess of that found by the President to

be applicable to comparable officers in the executive branch, and if the appointment is not to a position in the competitive service, it shall be by the President, by and with the advice and consent of the Senate. Any reorganization plan transmitted by the President containing provisions required by paragraph (4) of this section shall provide for the transfer of unexpended balances only if such balances are used for the purposes for which the appropriation was originally made.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 395; Pub. L. 92–179, § 3, Dec. 10, 1971, 85 Stat. 575; Pub. L. 95–17, § 2, Apr. 6, 1977, 91 Stat. 31; Pub. L. 98–614, § 5(b), Nov. 8, 1984, 98 Stat. 3194.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 133z–2.	June 20, 1949, ch. 226, § 4, 63 Stat. 204.

In paragraph (1), the words ''may change'' are substituted for ''shall change'' in view of the discretionary grant of authority reflected by the words ''in such cases as the President considers necessary''.

In paragraph (2), the words ''competitive service'' are substituted for ''classified civil service'' to conform to the definition in section 2102.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1984—Par. (1). Pub. L. 98–614 inserted '', subject to section 905,''.

1977—Pub. L. 95–17 struck out in provisions following par. (5) exception that, in the case of an officer of the government of the District of Columbia, the appointment of the head of an agency may be by the Commissioner or other body of that government designated in the plan.

1971—Pub. L. 92–179 revised the form of the provisions covering the elements which a reorganization plan contains by moving provisions formerly set out in par. (2) to a position following par. (5).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 903 of this title.

§ 905. Limitation on powers

(a) A reorganization plan may not provide for, and a reorganization under this chapter may not have the effect of—

(1) creating a new executive department or renaming an existing executive department, abolishing or transferring an executive department or independent regulatory agency, or all the functions thereof, or consolidating two or more executive departments or two or more independent regulatory agencies, or all the functions thereof;

(2) continuing an agency beyond the period authorized by law for its existence or beyond the time when it would have terminated if the reorganization had not been made;

(3) continuing a function beyond the period authorized by law for its exercise or beyond the time when it would have terminated if the reorganization had not been made;

(4) authorizing an agency to exercise a function which is not expressly authorized by law at the time the plan is transmitted to Congress;

(5) creating a new agency which is not a component or part of an existing executive department or independent agency;

(6) increasing the term of an office beyond that provided by law for the office; or

(7) dealing with more than one logically consistent subject matter.

(b) A provision contained in a reorganization plan may take effect only if the plan is transmitted to Congress (in accordance with section 903(b)) on or before December 31, 1984.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 396; Pub. L. 91–5, Mar. 27, 1969, 83 Stat. 6; Pub. L. 92–179, § 4, Dec. 10, 1971, 85 Stat. 576; Pub. L. 95–17, § 2, Apr. 6, 1977, 91 Stat. 31; Pub. L. 96–230, Apr. 8, 1980, 94 Stat. 329; Pub. L. 98–614, §§ 2(a), 5(a), Nov. 8, 1984, 98 Stat. 3192, 3193.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(a)	5 U.S.C. 133z–3(a).	June 20, 1949, ch. 226, § 5(a), 63 Stat. 205. July 2, 1964, Pub. L. 88–351, § 2, 78 Stat. 240.
(b)	5 U.S.C. 133z–3(b).	June 20, 1949, ch. 226, § 5(b), 63 Stat. 205. Feb. 11, 1953, ch. 3, 67 Stat. 4. Mar. 25, 1955, ch. 16, 69 Stat. 14. Sept. 4, 1957, Pub. L. 85–286, § 1, 71 Stat. 611. Apr. 7, 1961, Pub. L. 87–18, 75 Stat. 41. July 2, 1964, Pub. L. 88–351, § 1, 78 Stat. 240. June 18, 1965, Pub. L. 89–43, 79 Stat. 135.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98–614, § 5(a)(1), inserted ''or renaming an existing executive department''.

Subsec. (a)(5) to (7). Pub. L. 98–614, § 5(a)(2), added par. (5) and redesignated former pars. (5) and (6) as (6) and (7), respectively.

Subsec. (b). Pub. L. 98–614, § 2(a), substituted ''(in accordance with section 903(b)) on or before December 31, 1984'' for ''within four years of the date of enactment of the Reorganization Act of 1977''.

1980—Subsec. (b). Pub. L. 96–230 substituted ''four years'' for ''three years''.

1977—Subsec. (a)(1). Pub. L. 95–17 substituted ''an executive department or independent regulatory agency,'' for ''an Executive department'' and ''or more executive departments or two or more independent regulatory agencies,'' for ''or more Executive departments''.

Subsec. (a)(6), (7). Pub. L. 95–17 redesignated par. (7) as (6). Former par. (6), which related to limitation on reorganization plans that have effect of transferring to or consolidating with another agency the government of the District of Columbia or all the functions thereof which are subject to this chapter, or abolishing that government or all those functions, was struck out.

Subsec. (b). Pub. L. 95–17 substituted ''within three years of the date of enactment of the Reorganization Act of 1977'' for ''before April 1, 1973''.

1971—Subsec. (a)(7). Pub. L. 92–179, § 4(a), added par. (7).

Subsec. (b). Pub. L. 92–179, § 4(b), substituted ''April 1, 1973'' for ''April 1, 1971''.

1969—Subsec. (b). Pub. L. 91–5 substituted ''April 1, 1971'' for ''December 31, 1968''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 903, 904 of this title.

§ 906. Effective date and publication of reorganization plans

(a) Except as provided under subsection (c) of this section, a reorganization plan shall be effective upon approval by the President of a resolution (as defined in section 909) with respect to such plan, if such resolution is passed by the House of Representatives and the Senate, within the first period of 90 calendar days of continuous session of Congress after the date on which the plan is transmitted to Congress. Failure of either House to act upon such resolution by the end of such period shall be the same as disapproval of the resolution.

(b) For the purpose of this chapter—

(1) continuity of session is broken only by an adjournment of Congress sine die; and

(2) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of any period of time in which Congress is in continuous session.

(c) Under provisions contained in a reorganization plan, any provision thereof may be effective at a time later than the date on which the plan otherwise is effective.

(d) A reorganization plan which is effective shall be printed (1) in the Statutes at Large in the same volume as the public laws and (2) in the Federal Register.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 396; Pub. L. 95–17, § 2, Apr. 6, 1977, 91 Stat. 32; Pub. L. 98–614, § 3(a), Nov. 8, 1984, 98 Stat. 3192.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(a)–(c)	5 U.S.C. 133z–4.	June 20, 1949, ch. 226, § 6, 63 Stat. 205. Sept. 4, 1957, Pub. L. 85–286, § 2, 71 Stat. 611.
(d)	5 U.S.C. 133z–9.	June 20, 1949, ch. 226, § 11, 63 Stat. 206.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98–614, § 3(a)(1), struck out ''otherwise'' before ''provided under subsection (c)'' substituted ''shall be'' for ''is'' before ''effective'' and further substituted ''upon approval by the President of a resolution (as defined in section 909) with respect to such plan, if such resolution is passed by the House of Representatives and the Senate, within the first period of 90 calendar days of continuous session of Congress after the date on which the plan is transmitted to Congress. Failure of either House to act upon such resolution by the end of such period shall be the same as disapproval of the resolution'' for ''at the end of the first period of sixty calendar days of continuous session of Congress after the date on which the plan is transmitted to it unless, between the date of transmittal and the end of the sixty-day period, either House passes a resolution stating in substance that the House does not favor the reorganization plan.''

Subsec. (c). Pub. L. 98–614, § 3(a)(2), struck out ''or, if both Houses of Congress have defeated a resolution of disapproval, may be effective at a time earlier than the expiration of the sixty-day period required by subsection (a)'' at end.

1977—Subsec. (a). Pub. L. 95–17 substituted ''sixty'' for ''60'' in two places.

Subsec. (b). Pub. L. 95–17 substituted in provisions preceding par. (1) ''this chapter'' for ''subsection (a) of this section'' and in par. (2) ''any period of time in which Congress is in continuous session'' for ''the 60-day period''.

Subsec. (c). Pub. L. 95–17 inserted provision that if both Houses of Congress have defeated a resolution of disapproval, the provision of a reorganization plan may be effective at a time earlier than the expiration of the sixty-day period required by subsec. (a).

Subsec. (d). Pub. L. 95–17 reenacted subsec. (d) without change.

RATIFICATION AND AFFIRMATION OF PRIOR REORGANIZATION PLANS AS LAW; ACTIONS TAKEN PURSUANT TO SUCH PLANS

Pub. L. 98–532, Oct. 19, 1984, 98 Stat. 2705, provided that:

''SECTION 1. The Congress hereby ratifies and affirms as law each reorganization plan that has, prior to the date of enactment of this Act [Oct. 19, 1984], been implemented pursuant to the provisions of chapter 9 of title 5, United States Code, or any predecessor Federal reorganization statute.

''SEC. 2. Any actions taken prior to the date of enactment of this Act [Oct. 19, 1984] pursuant to a reorganization plan that is ratified and affirmed by section 1 shall be considered to have been taken pursuant to a reorganization expressly approved by Act of Congress.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 22 section 5068.

§ 907. Effect on other laws, pending legal proceedings, and unexpended appropriations

(a) A statute enacted, and a regulation or other action made, prescribed, issued, granted, or performed in respect of or by an agency or function affected by a reorganization under this chapter, before the effective date of the reorganization, has, except to the extent rescinded, modified, superseded, or made inapplicable by or under authority of law or by the abolition of a function, the same effect as if the reorganization had not been made. However, if the statute, regulation, or other action has vested the functions in the agency from which it is removed under the reorganization plan, the function, insofar as it is to be exercised after the plan becomes effective, shall be deemed as vested in the agency under which the function is placed by the plan.

(b) For the purpose of subsection (a) of this section, ''regulation or other action'' means a regulation, rule, order, policy, determination, directive, authorization, permit, privilege, requirement, designation, or other action.

(c) A suit, action, or other proceeding lawfully commenced by or against the head of an agency or other officer of the United States, in his official capacity or in relation to the discharge of his official duties, does not abate by reason of the taking effect of a reorganization plan under this chapter. On motion or supplemental petition filed at any time within twelve months after the reorganization plan takes effect, showing a necessity for a survival of the suit, action, or other proceeding to obtain a settlement of the questions involved, the court may allow the

suit, action, or other proceeding to be maintained by or against the successor of the head or officer under the reorganization effected by the plan or, if there is no successor, against such agency or officer as the President designates.

(d) The appropriations or portions of appropriations unexpended by reason of the operation of the chapter may not be used for any purpose, but shall revert to the Treasury.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 396; Pub. L. 95–17, § 2, Apr. 6, 1977, 91 Stat. 32.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(a)–(c)	5 U.S.C. 133z–7.	June 20, 1949, ch. 226, § 9, 63 Stat. 206.
(d)	5 U.S.C. 133z–8.	June 20, 1949, ch. 226, § 10, 63 Stat. 206.

In subsections (a) and (c), the words ''the provisions of'' in the phrase ''under this chapter'' are omitted as unnecessary.

In subsection (c), the words ''the suit, action, or other proceeding'' are substituted for ''the same''.

In subsection (d), the words ''shall revert'' are substituted for ''shall be . . . returned'', and the words ''impounded and'' are omitted as unnecessary.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1977—Subsecs. (a), (b). Pub. L. 95–17 reenacted subsecs. (a) and (b) without change.

Subsec. (c). Pub. L. 95–17 substituted ''twelve months'' for ''12 months''.

Subsec. (d). Pub. L. 95–17 reenacted subsec. (d) without change.

§ 908. Rules of Senate and House of Representatives on reorganization plans

Sections 909 through 912 of this title are enacted by Congress—

(1) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they are deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of resolutions with respect to any reorganization plans transmitted to Congress (in accordance with section 903(b) of this chapter[1]) on or before December 31, 1984; and they supersede other rules only to the extent that they are inconsistent therewith; and

(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of that House.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 397; Pub. L. 95–17, § 2, Apr. 6, 1977, 91 Stat. 33; Pub. L. 98–614, § 2(b), Nov. 8, 1984, 98 Stat. 3192.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 133z–10.	June 20, 1949, ch. 226, § 201, 63 Stat. 206.

[1] So in original. Probably should be ''title''.

The words ''Sections 909–913 of this title'' are substituted for ''The following sections of this title'' to reflect the codification of sections 202–206 of Title II of the Act of June 20, 1949.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1984—Par. (1). Pub. L. 98–614 substituted ''with respect to any reorganization plans transmitted to Congress (in accordance with section 903(b) of this chapter) on or before December 31, 1984'' for ''described in section 909 of this title''.

1977—Pub. L. 95–17 substituted ''Sections 909 through 912 of this title'' for ''Sections 909–913 of this title'' in provisions preceding par. (1).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 909 of this title; title 22 section 2587.

§ 909. Terms of resolution

For the purpose of sections 908 through 912 of this title, ''resolution'' means only a joint resolution of the Congress, the matter after the resolving clause of which is as follows: ''That the Congress approves the reorganization plan numbered transmitted to the Congress by the President on , 19 .'', and includes such modifications and revisions as are submitted by the President under section 903(c) of this chapter. The blank spaces therein are to be filled appropriately. The term does not include a resolution which specifies more than one reorganization plan.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 397; Pub. L. 95–17, § 2, Apr. 6, 1977, 91 Stat. 33; Pub. L. 98–614, § 3(c), Nov. 8, 1984, 98 Stat. 3192.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 133z–11.	June 20, 1949, ch. 226, § 202, 63 Stat. 207.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

REFERENCES IN TEXT

Section 903(c) of this chapter, referred to in text, means section 903(c) of this title.

AMENDMENTS

1984—Pub. L. 98–614 substituted ''a joint resolution of the Congress'' for ''a resolution of either House of Congress'', and ''the Congress approves'' for ''the does not favor''.

1977—Pub. L. 95–17 substituted ''sections 908 through 912 of this title'' for ''sections 908–913 of this title'' and provision that the blank spaces are to be appropriately filled for provision that the first blank space is to be filled with the name of the resolving House and the other blank spaces are to be appropriately filled and inserted provision that ''resolution'' includes such modifications and revisions as are submitted by the President under section 903(c) of this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 903, 906, 908, 910 of this title; title 22 section 2587.

§ 910. Introduction and reference of resolution

(a) No later than the first day of session following the day on which a reorganization plan is

transmitted to the House of Representatives and the Senate under section 903, a resolution, as defined in section 909, shall be introduced (by request) in the House by the chairman of the Government Operations Committee of the House, or by a Member or Members of the House designated by such chairman; and shall be introduced (by request) in the Senate by the chairman of the Governmental Affairs Committee of the Senate, or by a Member or Members of the Senate designated by such chairman.

(b) A resolution with respect to a reorganization plan shall be referred to the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House (and all resolutions with respect to the same plan shall be referred to the same committee) by the President of the Senate or the Speaker of the House of Representatives, as the case may be. The committee shall make its recommendations to the House of Representatives or the Senate, respectively, within 75 calendar days of continuous session of Congress following the date of such resolution's introduction.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 397; Pub. L. 95–17, § 2, Apr. 6, 1977, 91 Stat. 33; Pub. L. 98–614, § 3(b)(3), Nov. 8, 1984, 98 Stat. 3192.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 133z–12.	June 20, 1949, ch. 226, § 203, 63 Stat. 207.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1984—Subsec. (b). Pub. L. 98–614 substituted ''75 calendar days'' for ''45 calendar days''.

1977—Pub. L. 95–17 substituted ''Introduction and reference of resolution'' for ''Reference of resolution to committee'' in section catchline, designated existing provisions as subsec. (b), substituted ''the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House'' for ''a committee'' and inserted requirement that the Committee shall make its recommendation to the House or Senate within 45 calendar days of continuous session of Congress following the date of a resolution's introduction, and added subsec. (a).

CHANGE OF NAME

Committee on Government Operations of House of Representatives changed to Committee on Government Reform and Oversight of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 908, 909, 911 of this title; title 22 section 2587.

§ 911. Discharge of committee considering resolution

If the committee to which is referred a resolution introduced pursuant to subsection (a) of section 910 (or, in the absence of such a resolution, the first resolution introduced with respect to the same reorganization plan) has not reported such resolution or identical resolution at the end of 75 calendar days of continuous session of Congress after its introduction, such committee shall be deemed to be discharged from further consideration of such resolution and such resolution shall be placed on the appropriate calendar of the House involved.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 397; Pub. L. 92–179, § 5, Dec. 10, 1971, 85 Stat. 576; Pub. L. 95–17, § 2, Apr. 6, 1977, 91 Stat. 34; Pub. L. 98–614, § 3(b)(4), Nov. 8, 1984, 98 Stat. 3192.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 133z–13.	June 20, 1949, ch. 226, § 204, 63 Stat. 207.

In subsection (a), the words ''at the end of 10 calendar days . . . it is'' are substituted for ''before the expiration of ten calendar days . . . it shall then (but not before) be''.

In subsection (b), the words ''A motion to discharge'' are substituted for ''Such motion''.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1984—Pub. L. 98–614 substituted ''75 calendar days'' for ''45 calendar days''.

1977—Pub. L. 95–17 substituted provisions deeming the committee discharged from further consideration of a resolution where that committee has not reported the resolution within 45 days of continuous session of Congress after the resolution's introduction for provisions permitting a motion to discharge a committee where the committee considering a resolution has not reported the resolution within 20 calendar days after the resolution's introduction, provisions permitting a motion to discharge to be made only by an individual favoring the resolution and limiting debate to 1 hour, and provisions prohibiting a renewal of a motion to discharge where the original motion was agreed to or disagreed to or the making of another motion with respect to a resolution from the same reorganization plan.

1971—Subsec. (a). Pub. L. 92–179 substituted ''20 calendar days'' for ''10 calendar days''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 908, 909, 912 of this title; title 22 section 2587.

§ 912. Procedure after report or discharge of committee; debate; vote on final passage

(a) When the committee has reported, or has been deemed to be discharged (under section 911) from further consideration of, a resolution with respect to a reorganization plan, it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) for any Member of the respective House to move to proceed to the consideration of the resolution. The motion is highly privileged and is not debatable. The motion shall not be subject to amendment, or to a motion to postpone, or a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the resolution is agreed to, the resolution shall remain the unfinished business of the respective House until disposed of.

(b) Debate on the resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than ten

hours, which shall be divided equally between individuals favoring and individuals opposing the resolution. A motion further to limit debate is in order and not debatable. An amendment to, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the resolution is not in order. A motion to reconsider the vote by which the resolution is passed or rejected shall not be in order.

(c) Immediately following the conclusion of the debate on the resolution with respect to a reorganization plan, and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the appropriate House, the vote on final passage of the resolution shall occur.

(d) Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution with respect to a reorganization plan shall be decided without debate.

(e) If, prior to the passage by one House of a resolution of that House, that House receives a resolution with respect to the same reorganization plan from the other House, then—

(1) the procedure in that House shall be the same as if no resolution had been received from the other House; but

(2) the vote on final passage shall be on the resolution of the other House.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 398; Pub. L. 95–17, § 2, Apr. 6, 1977, 91 Stat. 34; Pub. L. 98–614, § 3(d), (e)(1), (2), Nov. 8, 1984, 98 Stat. 3193.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 133z–14.	June 20, 1949, ch. 226, § 205, 63 Stat. 207.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1984—Pub. L. 98–614, § 3(e)(2), substituted ''passage'' for ''disapproval'' in section catchline.

Subsec. (b). Pub. L. 98–614, § 3(d)(1), substituted ''passed or rejected'' for ''agreed to or disagreed to''.

Subsec. (c). Pub. L. 98–614, § 3(d)(2), substituted ''final passage'' for ''final approval''.

Subsec. (e). Pub. L. 98–614, § 3(e)(1), added subsec. (e).

1977—Pub. L. 95–17 inserted ''; vote on final disapproval'' after ''debate'' in section catchline.

Subsec. (a). Pub. L. 95–17 inserted provisions that a motion to discharge a committee is not subject to a motion to postpone or to a motion to proceed to the consideration of other business and that if a motion to proceed to the consideration of the resolution is agreed to, the resolution shall remain the unfinished business of the respective House until disposed of.

Subsec. (b). Pub. L. 95–17 inserted provisions that a motion to postpone or a motion to proceed to the consideration of other business is not in order.

Subsec. (c). Pub. L. 95–17 added subsec. (c).

Subsec. (d). Pub. L. 95–17 added subsec. (d) which provisions were formerly set out in section 913(b) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 908, 909 of this title; title 22 section 2587; title 42 section 2941.

[§ 913. Omitted]

CODIFICATION

Section, Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 398, providing for decision without debate with respect to motions to postpone, motions to proceed to the consideration of other business, and appeals from decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, was omitted in the general amendment of this chapter by Pub. L. 95–17, § 2, Apr. 6, 1977, 91 Stat. 29. See section 912 of this title.

PART II—CIVIL SERVICE FUNCTIONS AND RESPONSIBILITIES

Chap.		Sec.
11.	**Office of Personnel Management ....**	**1101**
12.	**Merit Systems Protection Board, Office of Special Counsel, and Employee Right of Action .....**	**1201**
13.	**Special Authority .....**	**1301**
15.	**Political Activity of Certain State and Local Employees .....**	**1501**

AMENDMENTS

1992—Pub. L. 102–378, § 2(1), Oct. 2, 1992, 106 Stat. 1346, substituted ''Employee'' for ''Individual'' in item for chapter 12.

1989—Pub. L. 101–12, § 3(b)(1), Apr. 10, 1989, 103 Stat. 31, substituted '', Office of Special Counsel, and Individual Right of Action'' for ''and Special Counsel'' in item for chapter 12.

1978—Pub. L. 95–454, title II, § 201(c)(1), Oct. 13, 1978, 92 Stat. 1121, substituted ''CIVIL SERVICE FUNCTIONS AND RESPONSIBILITIES'' for ''THE UNITED STATES CIVIL SERVICE COMMISSION'' in heading for Part II.

Pub. L. 95–454, title II, § 201(c)(2), Oct. 13, 1978, 92 Stat. 1121, substituted ''Office of Personnel Management'' for ''Organization'' in item for chapter 11.

Pub. L. 95–454, title II, § 202(d), Oct. 13, 1978, 92 Stat. 1131, added item for chapter 12.

CHAPTER 11—OFFICE OF PERSONNEL MANAGEMENT

Sec.
1101. Office of Personnel Management.
1102. Director; Deputy Director; Associate Directors.
1103. Functions of the Director.
1104. Delegation of authority for personnel management.
1105. Administrative procedure.

AMENDMENTS

1978—Pub. L. 95–454, title II, § 201(a), Oct. 13, 1978, 92 Stat. 1119, substituted in chapter heading ''OFFICE OF PERSONNEL MANAGEMENT'' for ''ORGANIZATION'', in item 1101 ''Office of Personnel Management'' for ''Appointment of Commissioners'', in item 1102 ''Director; Deputy Director; Associate Directors'' for ''Term of office; filling vacancies; removal'', in item 1103 ''Functions of the Director'' for ''Chairman; Vice Chairman; Executive Director'', in item 1104 ''Delegation of authority for personnel management'' for ''Functions of Chairman'', and in item 1105 ''Administrative procedure'' for ''Boards of examiners''.

§ 1101. Office of Personnel Management

The Office of Personnel Management is an independent establishment in the executive branch. The Office shall have an official seal, which shall be judicially noticed, and shall have its principal office in the District of Columbia, and may have field offices in other appropriate locations.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 398; Pub. L. 95–454, title II, §201(a), Oct. 13, 1978, 92 Stat. 1119.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 632 (1st par.).	Jan. 16, 1883, ch. 27, §1 (1st par.), 22 Stat. 403.

The words ''official place under the United States'' are changed to ''another office or position in the Government'' of the ''United States'' to conform to the present legislative use of ''office'' and ''position''.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1978—Pub. L. 95–454 substituted ''Office of Personnel Management'' for ''Appointment of Commissioners'' in section catchline, and in text provisions relating to the establishment, etc., of the Office of Personnel Management for provisions relating to the appointment of members to the United States Civil Service Commission.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 907 of Pub. L. 95–454 provided that: ''Except as otherwise expressly provided in this Act, the provisions of this Act [see Tables for classification] shall take effect 90 days after the date of the enactment of this Act [Oct. 13, 1978].''

SHORT TITLE OF 1992 AMENDMENT

Pub. L. 102–378, §1(a), Oct. 2, 1992, 106 Stat. 1346, provided that: ''This Act [see Tables for classification] may be cited as the 'Technical and Miscellaneous Civil Service Amendments Act of 1992'.''

SHORT TITLE OF 1984 AMENDMENT

Pub. L. 98–224, §1, Mar. 2, 1984, 98 Stat. 47, provided that: ''This Act [amending sections 1304, 3323, 4108, 4109, 7104, and 7122 of this title] may be cited as the 'Civil Service Miscellaneous Amendments Act of 1983'.''

SHORT TITLE OF 1978 AMENDMENT

Section 1 of Pub. L. 95–454 provided that: ''This Act [see Tables for classification] may be cited as the 'Civil Service Reform Act of 1978'.''

COMBINED FEDERAL CAMPAIGN BROCHURE LIST AND GENERAL DESIGNATION OPTION FOR INTERNATIONAL AGENCIES

Pub. L. 102–393, title V, §532, Oct. 6, 1992, 106 Stat. 1763, provided that: ''Notwithstanding any other provision of law, beginning October 1, 1992, and thereafter, no funds made available to the Office of Personnel Management may be used to prepare, promulgate, or implement any rules or regulations relating to the Combined Federal Campaign unless such rules or regulations include a Combined Federal Campaign brochure list and general designation option solely for international agencies, which list (listed by Federation in the case of affiliated agencies) and option shall include only those international agencies that elect in their annual application to be included under such list and option rather than under the national agencies list and option: *Provided*, That such limitation on the use of funds shall not apply to any activities related to the 1992 Combined Federal Campaign.''

REPORT ON PRODUCTIVITY OF FEDERAL WORKFORCE; DEADLINE

Pub. L. 101–509, title V, §535, Nov. 5, 1990, 104 Stat. 1470, directed Office of Personnel Management to review and report to Congress, not later than 24 months after Nov. 5, 1990, on the productivity of the Federal workforce, such report to include recommendations with regard to (1) how productivity within the Federal workforce can be increased, the delivery of Government services improved, and the payroll costs of Government controlled through improved organization, training, advanced technology, and modern management practices, (2) the size, structure, and composition of the Federal workforce, (3) criteria for use by departments and agencies to determine the level of personnel necessary to accomplish their functions and goals, and (4) changes in Federal law, regulations, and administrative practices to promote economy, productivity, effectiveness, and managerial accountability within the Federal workforce.

FUNDS FOR PREPARATION, PROMULGATION, OR IMPLEMENTATION OF REGULATIONS RELATING TO COMBINED FEDERAL CAMPAIGN; ELIGIBILITY CRITERIA

Pub. L. 100–202, §101(m) [title VI, §618], Dec. 22, 1987, 101 Stat. 1329–390, 1329–423, provided that:

''(a) None of the funds appropriated by this Act, or any other Act in this or any fiscal year hereafter, may be used in preparing, promulgating, or implementing any regulations relating to the Combined Federal Campaign if such regulations are not in conformance with subsection (b).

''(b)(1)(A) Any requirements for eligibility to receive contributions through the Combined Federal Campaign shall not, to the extent that such requirements relate to litigation, public-policy advocacy, or attempting to influence legislation, be any more restrictive than any requirements established with respect to those subject matters under section 501(c)(3) or 501(h) of the Internal Revenue Code of 1986 [26 U.S.C. 501(c)(3), (h)].

''(B) Any requirements for eligibility to receive contributions through the Combined Federal Campaign shall, to the extent that such requirements relate to any subject matter other than one referred to in subparagraph (A), remain the same as the criteria in the 1984 regulations, except as otherwise provided in this section.

''(C) Notwithstanding any requirement referred to in subparagraph (A) or (B), for purposes of any Combined Federal Campaign—

''(i) any voluntary agency or federated group which was a named plaintiff as of September 1, 1987, in a case brought in the United States District Court for the District of Columbia, and designated as Civil Action No. 83–0928 or 86–1367, and

''(ii) The Federal Employee Education and Assistance Fund,

shall be considered to have national eligibility.

''(D) Public accountability standards shall remain similar to the standards which were by regulation established with respect to the 1984–1987 Combined Federal Campaigns, except that the Office of Personnel Management shall prescribe regulations under which a voluntary agency or federated group which does not exceed a certain size (as established under such regulations) may submit a copy of an appropriate Federal tax return, rather than complying with any independent auditing requirements which would otherwise apply.

''(2)(A) A voluntary agency or federated group shall, for purposes of any Combined Federal Campaign in any year, be considered to have national eligibility if such agency or group—

''(i) complies with all requirements for eligibility to receive contributions through the Combined Federal Campaign, without regard to any requirements relating to 'local presence'; and

''(ii) demonstrates that it provided services, benefits, or assistance, or otherwise conducted program activities, in—

''(I) 15 or more different States over the 3-year period immediately preceding the start of the year involved; or

''(II) several foreign countries or several parts of a foreign country.

For purposes of this subparagraph, an agency or federated group shall be considered to have conducted pro-

gram activities in the required number of States, countries, or parts of a country, over the period of years involved, if such agency or group conducted program activities in such number of States, countries, or parts either in any single year during such period or in the aggregate over the course of such period, provided that no State, country, or part of a country is counted more than once.

''(B) Notwithstanding any other provisions, eligibility requirements relating to International Services Agencies shall remain at least as inclusive as existing requirements. Any voluntary agency or federated group which attains national eligibility under subparagraph (A), and any voluntary agency which is a member of the International Services Agencies, shall be considered to have satisfied any requirements relating to 'local presence'.

''(3)(A) If a federated group is eligible to receive donations in a Combined Federal Campaign, whether on a national level (pursuant to certification by the Office) or a local level (pursuant to certification by the local Federal coordinating committee), each voluntary agency which is a member of such group may, upon certification by the federated group, be considered eligible to participate on such national or local level, as the case may be.

''(B) Notwithstanding any provision of subparagraph (A)—

''(i) the Office may require a voluntary agency to provide information to support any certification submitted by a federated group with respect to such agency under subparagraph (A); and

''(ii) if a determination is made, in writing after notice and opportunity to submit written comments, that the information submitted by the voluntary agency does not satisfy the applicable eligibility requirements, such agency may be barred from participating in the Combined Federal Campaign on a national or local level, as the case may be, for a period not to exceed 1 campaign year.

''(4) The Office shall exercise oversight responsibility to ensure that—

''(A) regulations are uniformly and equitably implemented in all local combined Federal campaigns;

''(B) federated groups participating in a local combined Federal campaign are allowed to compete fairly for the role of principal combined fund organization;

''(C) federated groups participating in a local combined Federal campaign are afforded—

''(i) adequate opportunity to consult with the PCFO for the area involved before any plans are made final relating to the design or conduct of such campaign (including plans pertaining to any materials to be printed as part of the campaign);

''(ii) adequate opportunity to participate in campaign events and other related activities; and

''(iii) timely access to all reports, budgets, audits, and other records in the possession of, or under the control of, the PCFO for the areas involved; and

''(D) a federated group or voluntary agency found by the Office, by a written decision issued after notice and opportunity to submit written comments, to have violated the regulations may be barred from serving as a PCFO for not to exceed 1 campaign year.

''(5) The Office shall prescribe regulations to ensure that PCFOs do not make inappropriate delegations of decisionmaking authority.

''(6)(A) The Office shall, in consultation with federated groups, establish a formula under which any undesignated contributions received in a local combined Federal campaign shall be allocated in any year.

''(B) Under the formula for the 1990 Combined Federal Campaign, all undesignated contributions received in a local campaign shall be allocated as follows:

''(i) 82 percent shall be allocated to the United Way.

''(ii) 7 percent shall be allocated to the International Services Agencies.

''(iii) 7 percent shall be allocated to the National Voluntary Health Agencies.

''(iv) 4 percent shall, after fair and careful consideration of all eligible federated groups and agencies, be allocated by the local Federal coordinating committee among any or all of the following:

''(I) National federated groups (other than any identified in clauses (i), (ii), or (iii)), except that a national federated group shall not be eligible under this subclause unless there are at least 15 members of such group participating in the local campaign, unless the members of such group collectively receive at least 4 percent of the designated contributions in the local campaign, and unless such group was granted national eligibility status for the 1987, 1988, 1989, or 1990 Combined Federal Campaign.

''(II) Local federated groups.

''(III) Any local, non-affiliated voluntary agency which receives at least 4 percent of the designated contributions in the local campaign.

''(C) The formula set forth in subparagraph (B)—

''(i) shall be phased in over the course of the 1988 and 1989 Combined Federal Campaigns;

''(ii) shall be fully implemented with respect to the 1990 Combined Federal Campaigns [sic]; and

''(iii) shall, with respect to any Combined Federal Campaign thereafter, be adjusted based on the experience gained in the Combined Federal Campaigns referred to in clauses (i) and (ii).

''(D) Nothing in this paragraph shall apply with respect to any campaign conducted in a foreign country.

''(E) All appropriate steps shall be taken to encourage donors to make designated contributions.

''(7) The option for a donor to write in the name of a voluntary agency or federated group not listed in the campaign brochure to receive that individual's contribution in a local campaign shall be eliminated.

''(8) The name of any individual making a designated contribution in a campaign shall, upon request of the recipient voluntary agency or federated group, be released to such agency or group, unless the contributor indicates that his or her name is not to be released. Under no circumstance may the names of contributors be sold or otherwise released by such agency or group.

''(9)(A) The name of each participating voluntary agency and federated group, together with a brief description of their respective programs, shall be published in any information leaflet distributed to employees in a local combined Federal campaign. Agencies shall be arranged by federated group, with combined Federal campaign organization code numbers corresponding to each such agency and group.

''(B) The requirement under subparagraph (A) relating to the inclusion of program descriptions may, at the discretion of a local Federal coordinating committee, be waived for a local campaign in any year if, in the immediately preceding campaign year, contributions received through the local campaign totalled less than $100,000.

''(10) Employee coercion is not to be tolerated in the Combined Federal Campaign, and protections against employee coercion shall be strengthened and clarified.

''(11) The Office—

''(A) may not, after the date of the enactment of this Act [Dec. 22, 1987], grant national eligibility status to any federated group unless such group has at least 15 member voluntary agencies, each of which meets the requirements for national eligibility under paragraph (2)(A); and

''(B) may withdraw federation status from any federated group for a period of not to exceed 1 campaign year if it is determined, on the record after opportunity for a hearing, that the federated group has not complied with the regulatory requirements.

''(12) The Office may bar from participation in the Combined Federal Campaign, for a period not to exceed 1 campaign year, any voluntary agency which the Office determines, in writing, and after notice and opportunity to submit written comments, did not comply with a reasonable request by the Office to furnish it with information relating to such agency's campaign accounting and auditing practices.

''(c) For purposes of this section, a voluntary agency or federated group having 'national eligibility' is one

which is eligible to participate in each local domestic combined Federal campaign.''

CIVIL SERVICE REFORM ACT OF 1978 FINDINGS AND STATEMENT OF PURPOSE

Section 3 of Pub. L. 95–454 provided that: ''It is the policy of the United States that—

''(1) in order to provide the people of the United States with a competent, honest, and productive Federal work force reflective of the Nation's diversity, and to improve the quality of public service, Federal personnel management should be implemented consistent with merit system principles and free from prohibited personnel practices;

''(2) the merit system principles which shall govern in the competitive service and in the executive branch of the Federal Government should be expressly stated to furnish guidance to Federal agencies in carrying out their responsibilities in administering the public business, and prohibited personnel practices should be statutorily defined to enable Federal employees to avoid conduct which undermines the merit system principles and the integrity of the merit system;

''(3) Federal employees should receive appropriate protection through increasing the authority and powers of the Merit Systems Protection Board in processing hearings and appeals affecting Federal employees;

''(4) the authority and power of the Special Counsel should be increased so that the Special Counsel may investigate allegations involving prohibited personnel practices and reprisals against Federal employees for the lawful disclosure of certain information and may file complaints against agency officials and employees who engage in such conduct;

''(5) the function of filling positions and other personnel functions in the competitive service and in the executive branch should be delegated in appropriate cases to the agencies to expedite processing appointments and other personnel actions, with the control and oversight of this delegation being maintained by the Office of Personnel Management to protect against prohibited personnel practices and the use of unsound management practices by the agencies;

''(6) a Senior Executive Service should be established to provide the flexibility needed by agencies to recruit and retain the highly competent and qualified executives needed to provide more effective management of agencies and their functions, and the more expeditious administration of the public business;

''(7) in appropriate instances, pay increases should be based on quality of performance rather than length of service;

''(8) research programs and demonstration projects should be authorized to permit Federal agencies to experiment, subject to congressional oversight, with new and different personnel management concepts in controlled situations to achieve more efficient management of the Government's human resources and greater productivity in the delivery of service to the public;

''(9) the training program of the Government should include retraining of employees for positions in other agencies to avoid separations during reductions in force and the loss to the Government of the knowledge and experience that these employees possess; and

''(10) the right of Federal employees to organize, bargain collectively, and participate through labor organizations in decisions which affect them, with full regard for the public interest and the effective conduct of public business, should be specifically recognized in statute.''

SAVINGS PROVISION

Section 902 of Pub. L. 95–454 provided that:

''(a) Except as otherwise provided in this Act [see Tables for classification], all executive orders, rules, and regulations affecting the Federal service shall continue in effect, according to their terms, until modified, terminated, superseded, or repealed by the President, the Office of Personnel Management, the Merit Systems Protection Board, the Equal Employment Opportunity Commission, or the Federal Labor Relations Authority with respect to matters within their respective jurisdictions.

''(b) No provision of this Act [see Tables for classification] shall affect any administrative proceedings pending at the time such provision takes effect. Orders shall be issued in such proceedings and appeals shall be taken therefrom as if this Act had not been enacted.

''(c) No suit, action, or other proceeding lawfully commenced by or against the Director of the Office of Personnel Management or the members of the Merit Systems Protection Board, or officers or employees thereof, in their official capacity or in relation to the discharge of their official duties, as in effect immediately before the effective date of this Act [see Effective Date of 1978 Amendment note above], shall abate by reason of the enactment of this Act [see Tables for classification]. Determinations with respect to any such suit, action, or other proceeding shall be made as if this Act had not been enacted.''

POWERS OF PRESIDENT UNAFFECTED EXCEPT BY EXPRESS PROVISIONS

Section 904 of Pub. L. 95–454 provided that:

''Except as otherwise expressly provided in this Act [see Tables for classification], no provision of this Act shall be construed to—

''(1) limit, curtail, abolish, or terminate any function of, or authority available to, the President which the President had immediately before the effective date of this Act [see Effective Date of 1978 Amendment note above]; or

''(2) limit, curtail, or terminate the President's authority to delegate, redelegate, or terminate any delegation of functions.''

REORGANIZATION PLANS NO. 1 AND 2 OF 1978 SUPERSEDED BY CIVIL SERVICE REFORM ACT OF 1978

Section 905 of Pub. L. 95–454 provided that: ''Any provision in either Reorganization Plan Numbered 1 [set out in the Appendix to this title] or 2 [set out below] of 1978 inconsistent with any provision in this Act [see Tables for classification] is hereby superseded.''

REORGANIZATION PLAN NO. 2 OF 1978

43 F.R. 36037, 92 Stat. 3783

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, May 23, 1978,[1] pursuant to the provisions of Chapter 9 of Title 5 of the United States Code.

PART I. OFFICE OF PERSONNEL MANAGEMENT

SECTION 101. ESTABLISHMENT OF THE OFFICE OF PERSONNEL MANAGEMENT AND ITS DIRECTOR AND OTHER MATTERS

There is hereby established as an independent establishment in the Executive Branch, the Office of Personnel Management (the ''Office''). The head of the Office shall be the Director of the Office of Personnel Management (the ''Director''), who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be compensated at the rate now or hereafter provided for level II of the Executive Schedule [5 U.S.C. 5313]. The position referred to in 5 U.S.C. 5109(b) is hereby abolished.

SEC. 102. TRANSFER OF FUNCTIONS

Except as otherwise specified in this Plan, all functions vested by statute in the United States Civil Service Commission, or the Chairman of said Commission, or the Boards of Examiners established by 5 U.S.C. 1105

[1] As amended July 11, 1978.

are hereby transferred to the Director of the Office of Personnel Management.

SEC. 103. DEPUTY DIRECTOR AND ASSOCIATE DIRECTORS

(a) There shall be within the Office a Deputy Director who shall be appointed by the President by and with the advice and consent of the Senate and who shall be compensated at the rate now or hereafter provided for level III of the Executive Schedule [5 U.S.C. 5314]. The Deputy Director shall perform such functions as the Director may from time to time prescribe and shall act as Director during the absence or disability of the Director or in the event of a vacancy in the Office of the Director.

(b) There shall be within the Office not more than five Associate Directors, who shall be appointed by the Director in the excepted service, shall have such titles as the Director shall from time to time determine, and shall receive compensation at the rate now or hereafter provided for level IV of the Executive Schedule [5 U.S.C. 5315].

SEC. 104. FUNCTIONS OF THE DIRECTOR

The functions of the Director shall include, but not be limited to, the following:

(a) Aiding the President, as the President may request, in preparing such rules as the President prescribes, for the administration of civilian employment now within the jurisdiction of the United States Civil Service Commission;

(b) Advising the President, as the President may request, on any matters pertaining to civilian employment now within the jurisdiction of the United States Civil Service Commission;

(c) Executing, administering and enforcing the Civil Service rules and regulations of the President and the Office and the statutes governing the same, and other activities of the Office including retirement and classification activities except to the extent such functions remain vested in the Merit Systems Protection Board pursuant to Section 202 of this Plan, or are transferred to the Special Counsel pursuant to Section 204 of this Plan. The Director shall provide the public, where appropriate, a reasonable opportunity to comment and submit written views on the implementation and interpretation of such rules and regulations;

(d) Conducting or otherwise providing for studies and research for the purpose of assuring improvements in personnel management, and recommending to the President actions to promote an efficient Civil Service and a systematic application of the merit system principles, including measures relating to the selection, promotion, transfer, performance, pay, conditions of service, tenure, and separations of employees; and

(e) Performing the training responsibilities now performed by the United States Civil Service Commission as set forth in 5 U.S.C. Chapter 41.

SEC. 105. AUTHORITY TO DELEGATE FUNCTIONS

The Director may delegate, from time to time, to the head of any agency employing persons in the competitive service, the performance of all or any part of those functions transferred under this Plan to the Director which relate to employees, or applicants for employment, of such agency.

PART II. MERIT SYSTEMS PROTECTION BOARD

SEC. 201. MERIT SYSTEMS PROTECTION BOARD

(a) The United States Civil Service Commission is hereby redesignated the Merit Systems Protection Board. The Commissioners of the United States Civil Service Commission are hereby redesignated as members of the Merit Systems Protection Board (the ''Board'').

(b) The Chairman of the Board shall be its chief executive and administrative officer. The position of Executive Director, established by 5 U.S.C. 1103(d), is hereby abolished.

SEC. 202. FUNCTIONS OF THE MERIT SYSTEMS PROTECTION BOARD AND RELATED MATTERS

(a) There shall remain with the Board the hearing, adjudication, and appeals functions of the United States Civil Service Commission specified in 5 U.S.C. 1104(b)(4) (except hearings, adjudications and appeals with respect to examination ratings), and also found in the following statutes:

(i) 5 U.S.C. 1504–1507, 7325, 5335, 7521, 7701 and 8347(d);

(ii) 38 U.S.C. 2023

(b) There shall remain with the Board the functions vested in the United States Civil Service Commission, or its Chairman, pursuant to 5 U.S.C. 1104(a)(5) and (b)(4) to enforce decisions rendered pursuant to the authorities described in Subsection (a) of this Section.

(c) Any member of the Board may request from the Director, in connection with a matter then pending before the Board for adjudication, an advisory opinion concerning interpretation of rules, regulations, or other policy directives promulgated by the Office of Personnel Management.

(d) Whenever the interpretation or application of a rule, regulation, or policy directive of the Office of Personnel Management is at issue in any hearing, adjudication, or appeal before the Board, the Board shall promptly notify the Director, and the Director shall have the right to intervene in such proceedings.

(e) The Board shall designate individuals to chair performance rating boards established pursuant to 5 U.S.C. 4305.

(f) The Chairman of the Board shall designate representatives to chair boards of review established pursuant to 5 U.S.C. 3383(b).

(g) The Board may from time to time conduct special studies relating to the Civil Service, and to other merit systems in the Executive Branch and report to the President and the Congress whether the public interest in a workforce free of personnel practices prohibited by law or regulations is being adequately protected. In carrying out this function the Board shall make such inquiries as may be necessary, and, to the extent permitted by law, shall have access to personnel records or information collected by the Office of Personnel Management and may require additional reports from other agencies as needed. The Board shall make such recommendations to the President and the Congress as it deems appropriate.

(h) The Board may delegate the performance of any of its administrative functions to any officer or employee of the Board.

(i) The Board shall have the authority to prescribe such regulations as may be necessary for the performance of its functions. The Board shall not issue advisory opinions. The Board may issue rules and regulations, consistent with statutory requirements, defining its review procedures, including the time limits within which an appeal must be filed and the rights and responsibilities of the parties to an appeal. All regulations of the Board shall be published in the FEDERAL REGISTER.

SEC. 203. SAVINGS PROVISION

The Board shall accept appeals from agency actions effected prior to the effective date of this Plan. On the effective date of Part II of this Plan, proceedings then before the Federal Employee Appeals Authority shall continue before the Board; proceedings then before the Appeals Review Board and proceedings then before the United States Civil Service Commission on appeal from decisions of the Appeals Review Board shall continue before the Board; other employee appeals before boards or other bodies pursuant to law or regulation shall continue to be processed pursuant to those laws or regulations. Nothing in this section shall affect the right of a Federal employee to judicial review under applicable law.

SEC. 204. THE SPECIAL COUNSEL

(a) There shall be a Special Counsel to the Board appointed for a term of four years by the President by and

with the advice and consent of the Senate, who shall be compensated as now or hereafter provided for level IV of the Executive Schedule [5 U.S.C. 5315].

(b) There are hereby transferred to the Special Counsel all functions with respect to investigations relating to violations of 5 U.S.C. Chapter 15; 5 U.S.C. Subchapter III of Chapter 73 (Political Activities); and 5 U.S.C. 552(a)(4)(F) (public information).

(c) The Special Counsel may investigate, pursuant to 5 U.S.C. 1303, allegations of personnel practices which are prohibited by law or regulation.

(d) When in the judgment of the Special Counsel, such personnel practices exist, he shall report his findings and recommendations to the Chairman of the Merit Systems Protection Board, the agency affected, and to the Office of Personnel Management, and may report such findings to the President.

(e) When in the judgment of the Special Counsel, the results of an investigation would warrant the taking of disciplinary action against an employee who is within the jurisdiction of the Board, the Special Counsel shall prepare charges against such employee and present them with supporting documentation to the Board. Evidence supporting the need for disciplinary action against a Presidential appointee shall be submitted by the Special Counsel to the President.

(f) The Special Counsel may appoint personnel necessary to assist in the performance of his functions.

(g) The Special Counsel shall have the authority to prescribe rules and regulations relating to the receipt and investigation of matters under his jurisdiction. Such regulations shall be published in the FEDERAL REGISTER.

(h) The Special Counsel shall not issue advisory opinions.

PART III. FEDERAL LABOR RELATIONS AUTHORITY

SEC. 301. ESTABLISHMENT OF THE FEDERAL LABOR RELATIONS AUTHORITY

(a) There is hereby established, as an independent establishment in the Executive Branch, the Federal Labor Relations Authority (the ''Authority''). The Authority shall be composed of three members, one of whom shall be Chairman, not more than two of whom may be adherents of the same political party, and none of whom may hold another office or position in the Government of the United States except where provided by law or by the President.

(b) Members of the Authority shall be appointed by the President, by and with the advice and consent of the Senate. The President shall designate one member to serve as Chairman of the Authority, who shall be compensated at the rate now or hereafter provided for level III of the Executive Schedule [5 U.S.C. 5314]. The other members shall be compensated at the rate now or hereafter provided for level IV of the Executive Schedule [5 U.S.C. 5315].

(c) The initial members of the Authority shall be appointed as follows: one member for a term of two years; one member for a term of three years; and the Chairman for a term of four years. Thereafter, each member shall be appointed for a term of four years. An individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced.

(d) The Authority shall make an annual report on its activities to the President for transmittal to Congress.

SEC. 302. ESTABLISHMENT OF THE GENERAL COUNSEL OF THE AUTHORITY

There shall be a General Counsel of the Authority, who shall be appointed by the President, by and with the advice and consent of the Senate for a term of four years, and who shall be compensated at the rate now or hereafter provided for level V of the Executive Schedule [5 U.S.C. 5316]. The General Counsel shall perform such duties as the Authority shall from time to time prescribe, including but not limited to the duty of determining and presenting facts required by the Authority in order to decide unfair labor practice complaints.

SEC. 303. THE FEDERAL SERVICE IMPASSES PANEL

The Federal Service Impasses Panel, established under Executive Order 11491, as amended [set out under 5 U.S.C. 7101], (the ''Panel'') shall continue, and shall be a distinct organizational entity within the Authority.

SEC. 304. FUNCTIONS

Subject to the provisions of Section 306, the following functions are hereby transferred:

(a) To the Authority—

(1) The functions of the Federal Labor Relations Council pursuant to Executive Order 11491, as amended [set out under 5 U.S.C. 7101];

(2) The functions of the Civil Service Commission under Sections 4(a) and 6(e) of Executive Order 11491, as amended;

(3) The functions of the Assistant Secretary of Labor for Labor-Management Relations, under Executive Order 11491, as amended, except for those functions related to alleged violations of the standards of conduct for labor organizations pursuant to Section 6(a)(4) of said Executive Order; and,

(b) to the Panel—the functions and authorities of the Federal Service Impasses Panel, pursuant to Executive Order 11491, as amended.

SEC. 305. AUTHORITY DECISIONS

The decisions of the Authority on any matter within its jurisdiction shall be final and not subject to judicial review.

SEC. 306. OTHER PROVISIONS

Unless and until modified, revised, or revoked, all policies, regulations, and procedures established, and decisions issued, under Executive Order 11491, as amended [set out under 5 U.S.C. 7101], shall remain in full force and effect. There is hereby expressly reserved to the President the power to modify the functions transferred to the Federal Labor Relations Authority and the Federal Service Impasses Panel pursuant to Section 304 of this Plan.

SEC. 307. SAVINGS PROVISION

All matters which relate to the functions transferred by Section 304 of this Plan, and which are pending on the effective date of the establishment of the Authority before the Federal Labor Relations Council, the Vice Chairman of the Civil Service Commission, or the Assistant Secretary of Labor for Labor-Management Relations shall continue before the Authority under such rules and procedures as the Authority shall prescribe. All such matters pending on the effective date of the establishment of the Authority before the Panel, shall continue before the Panel under such rules and procedures as the Panel shall prescribe.

PART IV. GENERAL PROVISIONS

SEC. 401. INCIDENTAL TRANSFER

So much of the personnel, property, records, and unexpended balances of appropriations, allocations and other funds employed, used, held, available, or to be made available in connection with the functions transferred under this Plan, as the Director of the Office of Management and Budget shall determine, shall be transferred to the appropriate agency, or component at such time or times as the Director of the Office of Management and Budget shall provide, except that no such unexpended balances transferred shall be used for purposes other than those for which the appropriation was originally made. The Director of the Office of Management and Budget shall provide for terminating the affairs of any agencies abolished herein and for such further measures and dispositions as such Director deems necessary to effectuate the purposes of this Reorganization Plan.

SEC. 402. INTERIM OFFICERS

(a) The President may authorize any persons who, immediately prior to the effective date of this Plan,

held positions in the Executive Branch of the Government, to act as Director of the Office of Personnel Management, the Deputy Director of the Office of Personnel Management, the Special Counsel, the Chairman and other members of the Federal Labor Relations Authority, the Chairman and other members of the Federal Service Impasses Panel, or the General Counsel of the Authority, until those offices are for the first time filled pursuant to the provisions of this Reorganization Plan or by recess appointment, as the case may be.

(b) The President may authorize any such person to receive the compensation attached to the Office in respect of which that person so serves, in lieu of other compensation from the United States.

SEC. 403. EFFECTIVE DATE

The provisions of this Reorganization Plan shall become effective at such time or times, on or before January 1, 1979, as the President shall specify, but not sooner than the earliest time allowable under Section 906 of Title 5, United States Code.

[Pursuant to Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, this Reorg. Plan is generally effective Jan. 1, 1979.]

MESSAGE OF THE PRESIDENT

To the Congress of the United States:

On March 2nd I sent to Congress a Civil Service Reform proposal to enable the Federal government to improve its service to the American people.

Today I am submitting another part of my comprehensive proposal to reform the Federal personnel management system through Reorganization Plan No. 2 of 1978. The plan will reorganize the Civil Service Commission and thereby create new institutions to increase the effectiveness of management and strengthen the protection of employee rights.

The Civil Service Commission has acquired inherently conflicting responsibilities: to help manage the Federal Government and to protect the rights of Federal employees. It has done neither job well. The Plan would separate the two functions.

OFFICE OF PERSONNEL MANAGEMENT

The positive personnel management tasks of the government—such as training, productivity programs, examinations, and pay and benefits administration—would be the responsibility of an Office of Personnel Management. Its Director, appointed by the President and confirmed by the Senate, would be responsible for administering Federal personnel matters except for Presidential appointments. The Director would be the government's principal representative in Federal labor relations matters.

MERIT SYSTEMS PROTECTION BOARD

The adjudication and prosecution responsibilities of the Civil Service Commission will be performed by the Merit Systems Protection Board. The Board will be headed by a bipartisan panel of three members appointed to six-year, staggered terms. This Board would be the first independent and institutionally impartial Federal agency solely for the protection of Federal employees.

The Plan will create, within the Board, a Special Counsel to investigate and prosecute political abuses and merit system violations. Under the civil service reform legislation now being considered by the Congress, the Counsel would have power to investigate and prevent reprisals against employees who report illegal acts—the so-called ''whistleblowers.'' The Council would be appointed by the President and confirmed by the Senate.

FEDERAL LABOR RELATIONS AUTHORITY

An Executive Order now vests existing labor-management relations in a part-time Federal Labor-Relations Council, comprised of three top government managers; other important functions are assigned to the Assistant Secretary of Labor for Labor-Management Relations. This arrangement is defective because the Council members are part-time, they come exclusively from the ranks of management and their jurisdiction is fragmented.

The Plan I submit today would consolidate the central policymaking functions in labor-management relations now divided between the Council and the Assistant Secretary into one Federal Labor Relations Authority. The Authority would be composed of three full-time members appointed by the President with the advice and consent of the Senate. Its General Counsel, also appointed by the President and confirmed by the Senate, would present unfair labor practice complaints. The Plan also provides for the continuance of the Federal Service Impasses Panel within the Authority to resolve negotiating impasses between Federal employee unions and agencies.

The cost of replacing the Civil Service Commission can be paid by our present resources. The reorganization itself would neither increase nor decrease the costs of personnel management throughout the government. But taken together with the substantive reforms I have proposed, this Plan will greatly improve the government's ability to manage programs, speed the delivery of Federal services to the public, and aid in executing other reorganizations I will propose to the Congress, by improving Federal personnel management.

Each of the provisions of this proposed reorganization would accomplish one or more of the purposes set forth in 5 U.S.C. 901(a). No functions are abolished by the Plan, but the offices referred to in 5 U.S.C. 5109(b) and 5 U.S.C. 1103(d) are abolished. The portions of the Plan providing for the appointment and pay for the head and one or more officers of the Office of Personnel Management, the Merit Systems Protection Board, the Federal Labor Relations Authority and the Federal Service Impasses Panel, are necessary to carry out the reorganization. The rates of compensation are comparable to those for similar positions within the Executive Branch.

I am confident that this Plan and the companion civil service reform legislation will both lead to more effective protection of Federal employees' legitimate rights and a more rewarding workplace. At the same time the American people will benefit from a better managed, more productive and more efficient Federal Government.

JIMMY CARTER.

THE WHITE HOUSE, May 23, 1978.

EXECUTIVE ORDER NO. 10729

Ex. Ord. No. 10729, Sept. 16, 1957, 22 F.R. 7449, which established the position of the Special Assistant to the President for Personnel Management, was revoked by Ex. Ord. No. 11205, Mar. 15, 1965, 30 F.R. 3513.

EX. ORD. NO. 11205. REVOCATION OF EXECUTIVE ORDER NO. 10729

Ex. Ord. No. 11205, Mar. 15, 1965, 30 F.R. 3513, provided:

By virtue of the authority vested in me as President of the United States, the position of Special Assistant to the President for Personnel Management, established by Executive Order No. 10729 of September 16, 1957, is abolished, and that Order is hereby revoked.

LYNDON B. JOHNSON.

EX. ORD. NO. 12107. IMPLEMENTATION OF REFORM OF PERSONNEL MANAGEMENT SYSTEM

Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, as amended by Ex. Ord. No. 12126, Mar. 29, 1979, 44 F.R. 18923; Ex. Ord. No. 12128, Apr. 4, 1979, 44 F.R. 20625, provided:

By virtue of the authority vested in me as President by the Constitution and statutes of the United States of America, and by Section 403 of Reorganization Plan No. 2 of 1978 (43 FR 36037) [set out above], it is hereby ordered as follows:

SECTION 1

IMPLEMENTATION OF REORGANIZATION PLAN NO. 2 OF 1978

1–1. OFFICE OF PERSONNEL MANAGEMENT

1–101. *Establishment of Office of Personnel Management.* The establishment of the Office of Personnel Management and of the positions of Director, Deputy Director, and Associate Directors of that Office, as provided in Sections 101 and 103 of Reorganization Plan No. 2 of 1978, shall be effective on January 1, 1979.

1–102. *Transfer of Functions.* Section 102 of Reorganization Plan No. 2 of 1978, transferring functions to the Director of the Office of Personnel Management, shall be effective on January 1, 1979.

1–2. MERIT SYSTEMS PROTECTION BOARD

1–201. *Redesignation of Civil Service Commission.* The redesignation of the Civil Service Commission as the Merit Systems Protection Board and of the Commissioners as Members of the Board as provided in Section 201 of Reorganization Plan No. 2 of 1978 shall be effective on January 1, 1979.

1–202. *Functions of the Merit Systems Protection Board.* The functions of the Merit Systems Protection Board as provided in Section 202 and the savings provisions of Section 203 of Reorganization Plan No. 2 of 1978 shall be effective on January 1, 1979.

1–3. THE SPECIAL COUNSEL

1–301. *Establishment of the Office of Special Counsel.* The establishment of the Office of Special Counsel to the Merit Systems Protection Board as provided in Section 204(a) of Reorganization Plan No. 2 of 1978 shall be effective on January 1, 1979.

1–302. *Functions of the Special Counsel.* The transfer of functions provided for in Section 204(b) and the performance of functions set forth in Section 204(c)–(g) of Reorganization Plan No. 2 of 1978 shall be effective on January 1, 1979.

1–4. THE FEDERAL LABOR RELATIONS AUTHORITY

1–401. *The Establishment of the Federal Labor Relations Authority and the Office of General Counsel.* The establishment of the Federal Labor Relations Authority as provided in Section 301 and of the Office of General Counsel of the Authority as provided in Section 302 of Reorganization Plan No. 2 of 1978 shall be effective on January 1, 1979.

1–402. *The Federal Service Impasses Panel.* The continuation of the Federal Service Impasses Panel established under Executive Order No. 11491, as amended [set out as a note under section 7101 of this title], as a distinct organizational entity within the Federal Labor Relations Authority as provided in Section 303 of Reorganization Plan No. 2 of 1978, shall be effective on January 1, 1979.

1–403. *Functions of the Federal Labor Relations Authority, the General Counsel, and the Federal Service Impasses Panel.* The transfer of functions provided for in Section 304 of Reorganization Plan No. 2 of 1978 shall be effective on January 1, 1979.

1–5. GENERAL

1–501. *General Effective Date.* All other provisions of Reorganization Plan No. 2 of 1978 shall be effective on January 1, 1979.

SECTION 2

REDESIGNATIONS, AMENDMENTS TO RULES AND EXECUTIVE ORDERS AND GENERAL PROVISIONS

2–1. REDESIGNATIONS

2–101. *Office of Personnel Management.* Each of the Executive orders, as amended, listed in this Section under subsections (a) and (b), as applicable, and any other order which relates to functions or areas of responsibility delegated to the Office of Personnel Management, is amended and revised by substituting the words ''Office of Personnel Management'' for the words ''Civil Service Commission'' or ''United States Civil Service Commission''; by substituting the word ''Office'' for the word ''Commission'' wherever the word ''Commission'' is used as a reference to United States Civil Service Commission; and by substituting the words ''Director, Office of Personnel Management'' for the words ''Chairman, Civil Service Commission'', ''Chairman, United States Civil Service Commission'', ''Commissioners'' or ''Commissioner'' wherever they appear.

(a) Executive orders relating to the Civil Service Rules, ethics and other matters of Presidential interest.

Executive Orders Numbered

8743
10577, as amended, except for Rules IV and V, as amended in this order,
10641
10717
10927
11183
11222
11315
11451
11570
11639
11648
11721
11935
12004
12014
12043

(b) Other Executive orders relating to Federal Personnel Management, and membership on Councils, Boards, and Committees.

Executive Orders Numbered

8744
9230
9712
9830
9932
9961
10000
10242
10422
10450
10459
10530
10549
10550
10552
10556
10647
10763
10774, except for Section 3(e)
10804
10826
10880
10903
10973
10982
11103
11171
11203
11219
11228
11264
11348
11355
11422
11434
11438
11490
11521
11552
11561

11579
11589
11603
11609
11639
11744
11817
11890
11895
11899
11938
11955
12008
12015
12027
12049
12067
12070
12089
12105

2–102. *Merit Systems Protection Board*. The provisions of Section 3(e) of Executive Order No. 10774 [set out as a note under section 2025 of Title 22, Foreign Relations and Intercourse], and Executive Order No. 11787 [formerly set out as a note under section 7701 of this title], are hereby amended and revised by substituting the words ''Merit Systems Protection Board'' for the words ''Civil Service Commission'' or ''Commission'' when used as a reference to the Civil Service Commission wherever such words appear.

2–103. *Amending the Civil Service Rules*. Section 101 of Executive Order No. 10577, as amended [set out as a note under section 3301 of this title], is further amended by substituting for Rule II—Appointment Through the Competitive System, a new Sec. 2.4 as follows:

''Sec. 2.4. *Probationary period*. Persons selected from registers of eligibles for career or career-conditional appointment and employees promoted, transferred, or otherwise assigned, for the first time, to supervisory or managerial positions shall be required to serve a probationary period under terms and conditions prescribed by the Office.'';

by deleting the last sentence under Rule IV—Prohibited Practices, Sec. 4.3; and

by substituting for Rule V—Regulations, Investigations, and Enforcement, a new Rule V as follows:

''RULE V—REGULATIONS, INVESTIGATIONS, EVALUATION, AND ENFORCEMENT''

''Sec. 5.1. *Civil Service Regulations*. The Director, Office of Personnel Management, shall promulgate and enforce regulations necessary to carry out the provisions of the Civil Service Act and the Veterans' Preference Act, as reenacted in Title 5, United States Code, the Civil Service Rules, and all other statutes and Executive orders imposing responsibilities on the Office. The Director is authorized, whenever there are practical difficulties and unnecessary hardships in complying with the strict letter of the regulation, to grant a variation from the strict letter of the regulation if such a variation is within the spirit of the regulations, and the efficiency of the Government and the integrity of the competitive service are protected and promoted. Whenever a variation is granted the Director shall note the official record to show: (1) the particular practical difficulty or hardship involved, (2) what is permitted in place of what is required by regulation, (3) the circumstances which protect or promote the efficiency of the Government and the integrity of the competitive service, and (4) a statement limiting the application of the variation to the continuation of the conditions which gave rise to it. Like variations shall be granted whenever like conditions exist. All such decisions and information concerning variations noted in the official record shall be published promptly in a Federal Personnel Manual, Letter or Bulletin and in the Director's next annual report.

''Sec. 5.2. *Investigation and Evaluations*. The Director may secure effective implementation of the civil service laws, rules, and regulations, and all Executive orders imposing responsibilities on the Office by:

(a) Investigating the qualifications and suitability of applicants for positions in the competitive service. The Director may require appointments to be made subject to investigation to enable the Director to determine, after appointment, that the requirements of law or the civil service rules and regulations have been met.

(b) Evaluating the effectiveness of: (1) personnel policies, programs, and operations of Executive and other Federal agencies subject to the jurisdiction of the Office, including their effectiveness with regard to merit selection and employee development; (2) agency compliance with and enforcement of applicable laws, rules, regulations and office directives; and (3) agency personnel management evaluation systems.

(c) Investigating, or directing an agency to investigate and report on, apparent violations of applicable laws, rules, regulations, or directives requiring corrective action, found in the course of an evaluation.

(d) Requiring agencies to report, in a manner and at times as the Director may prescribe, personnel information the Director requests relating to civilian employees in the Executive branch of the Government, as defined by Section 311 of the Civil Service Reform Act of 1978 [set out as a note under section 3101 of this title], including positions and officers and employees in the competitive, excepted and Senior Executive services, whether permanent, career-conditional, temporary or emergency.

''Sec. 5.3. *Enforcement*.

(a) The Director is authorized to ensure enforcement of the civil service laws, rules, and regulations, and all applicable Executive orders, by:

(1) Instructing an agency to separate or take other action against an employee serving an appointment subject to investigation when the Director finds that the employee is disqualified for Federal employment. Where the employee or the agency appeals the Director's finding that a separation or other action is necessary, the Director may instruct the agency as to whether or not the employee should remain on duty and continue to receive pay pending adjudication of the appeal: *Provided*, That when an agency separates or takes other action against an employee pursuant to the Director's instructions, and the Director, on the basis of new evidence, subsequently reverses the initial decision as to the employee's qualifications and suitability, the agency shall, upon request of the Director, restore the employee to duty or otherwise reverse any action taken.

(2) Reporting the results of evaluation or investigations to the head of the agency concerned with instructions for any corrective action necessary, including cancellation of personnel actions where appropriate. The Director's findings resulting from evaluations or investigations are binding unless changed as a result of agency evidence and arguments against them. If, during the course of any evaluation or investigation under this Section, the Director finds evidence of matters which come within the investigative and prosecutional jurisdiction of the Special Counsel of the Merit Systems Protection Board, the Director shall refer this evidence to the Special Counsel for appropriate disposition.

(b) Whenever the Director issues specific instructions as to separation or other corrective action with regard to an employee, including cancellation of a personnel action, the head of the agency concerned shall comply with the Director's instructions.

(c) If the agency head fails to comply with the specific instructions of the Director as to separation or other corrective action with regard to an employee, including cancellation of a personnel action, the Director may certify to the Comptroller General of the United States the agency's failure to act together with such additional information as the Comptroller General may require, and shall furnish a copy of such certification to the head of the agency concerned. The individual with respect to whom such separation or other corrective action was instructed shall be entitled thereafter to no pay or only to such pay as appropriate to effectuate the Director's instructions.

''Sec. 5.4. *Information and Testimony*. When required by the Office, the Merit Systems Protection Board, or the Special Counsel of the Merit Systems Protection Board, or by authorized representatives of these bodies, agencies shall make available to them, or to their authorized representatives, employees to testify in regard to matters inquired of under the civil service laws, rules, and regulations, and records pertinent to these matters. All such employees, and all applicants or eligibles for positions covered by these rules, shall give to the Office, the Merit Systems Protection Board, the Special Counsel, or to their authorized representatives, all information, testimony, documents, and material in regard to the above matters, the disclosure of which is not otherwise prohibited by law or regulation. These employees, applicants, and eligibles shall sign testimony given under oath or affirmation before an officer authorized by law to administer oaths. Employees are performing official duty when testifying or providing evidence pursuant to this section.''.

2–104. *Effectiveness of Rule Changes*. The amendments to rules shall be effective on January 1, 1979, to the extent provided by law on that date.

2–2. Revocation of Executive Orders and Delegation of Functions

2–201. *Revocation of Executive Orders and Delegation of Functions to the Director*. Executive Orders numbered 10540 and 10561 [set out as notes under sections 6301 and 1302, respectively, of this title] are revoked and the authority vested in the President by Section 202(c)(1)(C) of the Annual Sick Leave Act of 1951, as amended [section 6301(2)(XI) of this title], and the authority of the President, pursuant to the Civil Service Act of January 16, 1883, to designate official personnel folders in government agencies as records of the Office of Personnel Management and to prescribe regulations relating to the establishment, maintenance and transfers of official personnel folders, are delegated to the Director of the Office of Personnel Management. Any rules, regulations, directives, instructions or other actions taken pursuant to the authority delegated to the Director of the Office of Personnel Management shall remain in effect until amended, modified, or revoked pursuant to the delegations made by this Order.

2–202. *Savings Provision*. All personnel actions and decisions affecting employees or applicants for employment made on or before January 11, 1979 shall continue to be governed by the applicable Executive order, and the rules and regulations implementing that Order, to the same extent as if that Executive order had not been revoked effective January 11, 1979 unless amended, modified or revoked pursuant to this Order.

2–3. Labor Management Relations in the Federal Service

2–301. *Labor Management Relations*. Executive Order No. 11491 of October 29, 1969, as amended by Executive Orders numbered 11616, 11636, 11838, 11901, and 12027 [set out as a note under section 7101 of this title], relating to labor-management relations in the Federal service, is further amended as follows:

1. Subsections (g), (h) and (i) of Section 2 are amended and a new subsection (j) is added to read as follows:

''(g) 'Authority' means the Federal Labor Relations Authority;

''(h) 'Panel' means the Federal Service Impasses Panel;

''(i) 'Assistant Secretary' means the Assistant Secretary of Labor for Labor Management Relations; and

''(j) 'General Counsel' means the General Counsel of the Authority.''.

2. Section 3(b) is amended—

(a) by substituting for paragraph (6) the following:

''(6) The Tennessee Valley Authority; or''; and

(b) by adding the following:

''(7) Personnel of the Federal Labor Relations Authority (including the Office of the General Counsel and the Federal Service Impasses Panel).''.

3. Section (d) is amended to read as follows:

''(d) Employees engaged in administering a labor-management relations law or this Order who are otherwise authorized by this Order to be represented by a labor organization shall not be represented by a labor organization which also represents other groups of employees under the law or this Order, or which is affiliated directly or indirectly with an organization which represents such a group of employees.''.

4. Section 4 is amended to read as follows:

''Sec. 4. *Powers and Duties of the Federal Labor Relations Authority*.

''(a) [Revoked].

''(b) The Authority shall administer and interpret this Order, decide major policy issues, and prescribe regulations.

''(c) The Authority shall, subject to its regulations:

(1) decide questions as to the appropriate unit for the purpose of exclusive recognition and related issues submitted for its considerations;

(2) supervise elections to determine whether a labor organization is the choice of a majority of the employees in an appropriate unit as their exclusive representative, and certify the results;

(3) decide questions as to the eligibility of labor organizations for national consultation rights;

(4) decide unfair labor practice complaints; and

(5) decide questions as to whether a grievance is subject to a negotiated grievance procedure or subject to arbitration under an agreement as provided in Section 13(d) of this Order.

''(d) The Authority may consider, subject to its regulations:

(1) appeals on negotiability issues as provided in Section 11(c) of this Order;

(2) exceptions to arbitration awards;

(3) appeals from decisions of the Assistant Secretary of Labor for Labor-Management Relations issued pursuant to Section 6(b) this Order; and

(4) other matters it deems appropriate to assure the effectuation of the purposes of this Order.

''(e) In any matters arising under subsection (c) and (d)(3) of this Section, the Authority may require an agency or a labor organization to cease and desist from violations of this Order and require it to take such affirmative action as the Authority considers appropriate to effectuate the policies of this Order.

''(f) In performing the duties imposed on it by this Section, the Authority may request and use the services and assistance of employees of other agencies in accordance with Section 1 of the Act of March 4, 1915 (38 Stat. 1084, as amended; 31 U.S.C. 686) [31 U.S.C. 1535].''.

5. The caption of Section 5 is amended to read as follows:

''Sec. 5. *Powers and Duties of the Federal Service Impasses Panel.*''

6. Section 5(a) is amended:

(a) by substituting the words ''a distinct organizational entity within the Authority'' for the words ''an agency within the Council'' in the first sentence; and

(b) by substituting the word ''Authority'' for the word ''Council'' in the third sentence.

7. Section 6 is amended to read as follows:

''Sec. 6. *Powers and Duties of the Office of the General Counsel and the Assistant Secretary of Labor for Labor-Management Relations*.

''(a) The General Counsel is authorized, upon direction by the Authority, to:

(1) investigate complaints of violations of Section 19 of this Order;

(2) make final decisions as to whether to issue unfair labor practice complaints and prosecute such complaints before the Authority;

(3) direct and supervise all employees in the Office of General Counsel, including employees of the General Counsel in the regional office of the Authority;

(4) perform such other duties as the Authority may prescribe; and

(5) prescribe regulations needed to administer his functions under this Order.

''(b) The Assistant Secretary shall:

(1) decide alleged violations of the standards of conduct for labor organizations, established in Section 18 of this Order; and

(2) prescribe regulations needed to administer his functions under this Order.

''(c) In any matter arising under paragraph (b) of this Section, the Assistant Secretary may require a labor organization to cease and desist from violations of this Order and require it to take such affirmative action as he considers appropriate to effectuate the policies of this Order.

''(d) In performing the duties imposed on them by this Section, the General Counsel and the Assistant Secretary may request and use the services and assistance of employees of other agencies in accordance with Section 1 of the Act of March 4, 1915 (38 Stat. 1084, as amended; 31 U.S.C. 686) [31 U.S.C. 1535].''.

8. Section 9 is amended:

(a) by substituting the word ''Authority'' for the word ''Council'' in the first sentence of subsection (a); and

(b) by substituting the word ''Authority'' for the words ''Assistant Secretary'' in subsection (c).

9. Section 10 is amended:

(a) by substituting the word ''Authority'' for the words ''Assistant Secretary'' in the last sentence of subsection (b); and

(b) by substituting the word ''Authority'' for the words ''Assistant Secretary'' and the word ''it'' for the word ''him'', in the first sentence of subsection (d).

10. Section 11 is amended:

(a) by substituting the word ''Authority'' for the word ''Council'' in the first sentence of subsection (a); and

(b) by substituting the word ''Authority'' for the word ''Council'' in paragraph (4) of subsection (c).

11. Section 11(d) is revoked.

12. Section 13 is amended:

(a) by substituting the word ''Authority'' for the word ''Council'' in the third sentence of subsection (b); and

(b) by substituting the word ''Authority'' for the words ''Assistant Secretary'' in the first and second sentence of subsection (d).

13. Section 19(d) is amended by substituting the word ''Authority'' for the words ''Assistant Secretary'' in the last sentence.

14. Section 21(a) is amended by substituting the words ''Office of Personnel Management'' for the words ''Civil Service Commission'' in the second sentence.

15. Section 22 is amended:

(a) by substituting the words ''Office of Personnel Management'' for the words ''Civil Service Commission'' in the first sentence and

(b) by substituting the words ''Merit Systems Protection Board'' for the words ''Civil Service Commission'' in the second and third sentences.

16. Section 25(a) is amended:

(a) by substituting the words ''Office of Personnel Management'' for the words ''Civil Service Commission'' in the first, second and third sentences; and

(b) by substituting the word ''Authority'' for the word ''Council'' in the third sentence.

17. Section 25(b) is amended by substituting the words ''Office of Personnel Management'' for the words ''Department of Labor and Civil Service Commission.''.

2–4. GENERAL PROVISIONS

2–401. *Study and Report Provisions.* The Director of the Office of Personnel Management is directed to conduct a study of Executive orders listed in Section 2–101(a) and (b) and to coordinate the study with such other agencies as may be named in or affected by these orders. The Director of Personnel Management and the Director of the Office of Management and Budget are directed to submit a report on or before July 1, 1981 to the President concerning the performance of functions specified in these Executive orders and any other Executive orders affecting the functions or responsibilities of the Office of Personnel Management. The report shall contain specific detailed recommendations for the continuation, modification, revision or revocation of each Executive order.

2–402. *Continuing Effect of this Order.* Except as required by the Civil Service Reform Act of 1978 [Pub. L. 95–454] as its provisions become effective, in accord with Section 7135 of Title 5, United States Code, as amended, and in accord with Section 902(a) of that Act [set out as a Savings Provisions note above], the provisions of this Order shall continue in effect, according to its terms, until modified, terminated or suspended.

2–403. *Transfers and Determinations.*

(a) The records, property, personnel and positions, and unexpended balances of appropriations or funds related to Civil Service Commission functions reassigned by this Order that are available, or to be made available, and necessary to finance or discharge the reassigned functions are transferred to the Director of the Office of Personnel Management, the Federal Labor Relations Authority, or the Federal Service Impasses Panel, as appropriate.

(b) The Director of the Office of Management and Budget shall make such determinations, issue such Orders and take all actions necessary or appropriate to effectuate the transfers or reassignments provided by this Order, including the transfer of funds, records, property and personnel.

2–404. *Effective Date.* Except as otherwise specifically provided in this Order, this Order shall be effective on January 1, 1979.

JIMMY CARTER.

EXECUTIVE ORDER NO. 12157

Ex. Ord. No. 12157, Sept. 14, 1979, 44 F.R. 54035, which related to the President's Management Improvement Council, was revoked by Ex. Ord. No. 12258, Dec. 31, 1980, 46 F.R. 1251, set out as a note under section 14 of the Appendix to this title.

§ 1102. Director; Deputy Director; Associate Directors

(a) There is at the head of the Office of Personnel Management a Director of the Office of Personnel Management appointed by the President, by and with the advice and consent of the Senate. The term of office of any individual appointed as Director shall be 4 years.

(b) There is in the Office a Deputy Director of the Office of Personnel Management appointed by the President, by and with the advice and consent of the Senate. The Deputy Director shall perform such functions as the Director may from time to time prescribe and shall act as Director during the absence or disability of the Director or when the office of Director is vacant.

(c) No individual shall, while serving as Director or Deputy Director, serve in any other office or position in the Government of the United States except as otherwise provided by law or at the direction of the President. The Director and Deputy Director shall not recommend any individual for appointment to any position (other than Deputy Director of the Office) which requires the advice and consent of the Senate.

(d) There may be within the Office of Personnel Management not more than 5 Associate Directors, as determined from time to time by the Director. Each Associate Director shall be appointed by the Director.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 399; Pub. L. 95–454, title II, § 201(a), Oct. 13, 1978, 92 Stat. 1119.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 632 (2d–4th pars.).	Jan. 16, 1883, ch. 27, §1 (2d, 3d pars.), 22 Stat. 403. July 31, 1956, ch. 804, §201(a), 70 Stat. 742.

In subsection (a), the second sentence is substituted for original language concerning designation of Commissioners to serve six, four, and two years, respectively, as that provision is executed.

The section is reorganized to place the statutes relating to vacancies together, and redundancies are eliminated. Provisions relating to pay and travel expenses of Commissioners are omitted as superseded by the Act of Aug. 14, 1964, Pub. L. 88–426, §303(c)(18), (d)(66), 78 Stat. 417, 419, and Act of June 9, 1949, ch. 185, 63 Stat. 166, respectively, which are carried into this title.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1978—Pub. L. 95–454 substituted ''Director; Deputy Director; Associate Directors'' for ''Term of office; filling vacancies; removal'' in section catchline, and in text provisions relating to the Director, Deputy Director, and Associate Directors of the Office of Personnel Management for provisions relating to the term of office, vacancies, and removal of members of the United States Civil Service Commission.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

CROSS REFERENCES

Compensation of Director, Deputy Director, and Associate Directors, see sections 5313, 5314, and 5316 of this title.

§ 1103. Functions of the Director

(a) The following functions are vested in the Director of the Office of Personnel Management, and shall be performed by the Director, or subject to section 1104 of this title, by such employees of the Office as the Director designates:

(1) securing accuracy, uniformity, and justice in the functions of the Office;

(2) appointing individuals to be employed by the Office;

(3) directing and supervising employees of the Office, distributing business among employees and organizational units of the Office, and directing the internal management of the Office;

(4) directing the preparation of requests for appropriations for the Office and the use and expenditure of funds by the Office;

(5) executing, administering, and enforcing—

(A) the civil service rules and regulations of the President and the Office and the laws governing the civil service; and

(B) the other activities of the Office including retirement and classification activities;

except with respect to functions for which the Merit Systems Protection Board or the Special Counsel is primarily responsible;

(6) reviewing the operations under chapter 87 of this title;

(7) aiding the President, as the President may request, in preparing such civil service rules as the President prescribes, and otherwise advising the President on actions which may be taken to promote an efficient civil service and a systematic application of the merit system principles, including recommending policies relating to the selection, promotion, transfer, performance, pay, conditions of service, tenure, and separation of employees;

(8) conducting, or otherwise providing for the conduct of, studies and research under chapter 47 of this title into methods of assuring improvements in personnel management; and

(9) incurring official reception and representation expenses of the Office subject to any limitation prescribed in any law.

(b)(1) The Director shall publish in the Federal Register general notice of any rule or regulation which is proposed by the Office and the application of which does not apply solely to the Office or its employees. Any such notice shall include the matter required under section 553(b)(1), (2), and (3) of this title.

(2) The Director shall take steps to ensure that—

(A) any proposed rule or regulation to which paragraph (1) of this subsection applies is posted in offices of Federal agencies maintaining copies of the Federal personnel regulations; and

(B) to the extent the Director determines appropriate and practical, exclusive representatives of employees affected by such proposed rule or regulation and interested members of the public are notified of such proposed rule or regulation.

(3) Paragraphs (1) and (2) of this subsection shall not apply to any proposed rule or regulation which is temporary in nature and which is necessary to be implemented expeditiously as a result of an emergency.

(4) Paragraphs (1) and (2) of this subsection and section 1105 of this title shall not apply to the establishment of any schedules or rates of basic pay or allowances under subpart D of part III of this title. The preceding sentence does not apply to the establishment of the procedures, methodology, or criteria used to establish such schedules, rates, or allowances.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 399; Pub. L. 95–454, title II, §201(a), Oct. 13, 1978, 92 Stat. 1119; Pub. L. 99–251, title III, §§301, 302, Feb. 27, 1986, 100 Stat. 26.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	[Uncodified].	1949 Reorg. Plan No. 5, §§1, 2(a) (35th through 46th words), 3, eff. Aug. 20, 1949, 63 Stat. 1067, 1069.
.....	5 U.S.C. 632 (5th par.).	July 31, 1956, ch. 804, §201(b), 70 Stat. 742.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1986—Subsec. (a)(9). Pub. L. 99–251, § 301, added par. (9).

Subsec. (b)(4). Pub. L. 99–251, § 302, added par. (4).

1978—Pub. L. 95–454 substituted ''Functions of the Director'' for ''Chairman; Vice Chairman; Executive Director'' in section catchline, and in text provisions relating to the functions of the Director of the Office of Personnel Management for provisions relating to the Chairman, Vice Chairman, and Executive Director of the United States Civil Service Commission.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1105, 1204, 1212, 3133 of this title.

§ 1104. Delegation of authority for personnel management

(a) Subject to subsection (b)(3) of this section—

(1) the President may delegate, in whole or in part, authority for personnel management functions, including authority for competitive examinations, to the Director of the Office of Personnel Management; and

(2) the Director may delegate, in whole or in part, any function vested in or delegated to the Director, including authority for competitive examinations (except competitive examinations for administrative law judges appointed under section 3105 of this title), to the heads of agencies in the executive branch and other agencies employing persons in the competitive service;

except that the Director may not delegate authority for competitive examinations with respect to positions that have requirements which are common to agencies in the Federal Government, other than in exceptional cases in which the interests of economy and efficiency require such delegation and in which such delegation will not weaken the application of the merit system principles.

(b)(1) The Office shall establish standards which shall apply to the activities of the Office or any other agency under authority delegated under subsection (a) of this section.

(2) The Office shall establish and maintain an oversight program to ensure that activities under any authority delegated under subsection (a) of this section are in accordance with the merit system principles and the standards established under paragraph (1) of this subsection.

(3) Nothing in subsection (a) of this section shall be construed as affecting the responsibility of the Director to prescribe regulations and to ensure compliance with the civil service laws, rules, and regulations.

(c) If the Office makes a written finding, on the basis of information obtained under the program established under subsection (b)(2) of this section or otherwise, that any action taken by an agency pursuant to authority delegated under subsection (a)(2) of this section is contrary to any law, rule, or regulation, or is contrary to any standard established under subsection (b)(1) of this section, the agency involved shall take any corrective action the Office may require.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 399; Pub. L. 90–83, § 1(2), Sept. 11, 1967, 81 Stat. 195; Pub. L. 95–454, title II, § 201(a), Oct. 13, 1978, 92 Stat. 1120.)

HISTORICAL AND REVISION NOTES

1966 ACT

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	[Uncodified].	1949 Reorg. Plan No. 5, § 2(a) (less 35th through 46th words), (b), eff. Aug. 20, 1949, 63 Stat. 1067.
.....	5 U.S.C. 3013(a) (1st sentence, less 10th through 24th words).	Sept. 28, 1959, Pub. L. 86–382, § 14(a) (1st sentence, less 10th through 24th words), 73 Stat. 716.

In the first sentence, the word ''officers'' is omitted as included in ''employees''.

Subsection (a)(1) is added on authority of the words ''to secure accuracy, uniformity, and justice in all their proceedings'' in the first sentence of former section 635, which is carried into section 1105. The function in this paragraph was transferred from the chief examiner to the Chairman of the United States Civil Service Commission by 1949 Reorg. Plan No. 5, § 2(a)(2).

In subsection (a)(4), the words ''requests for appropriations'' are substituted for ''budget estimates'' on authority of the Act of Sept. 12, 1950, ch. 946, § 102(f), 64 Stat. 833; 31 U.S.C. 22.

In subsection (b)(2), the word ''prescription'' is substituted for ''promulgation'' and the words ''now vested in the Commission'' are omitted as surplusage.

In subsection (b)(4), the words ''as is now authorized to be taken by the Commission'' are omitted as surplusage.

In subsection (b)(5), the words ''civil service'' are substituted for ''Federal service''.

In subsection (b)(7), the words ''submission of requests for appropriations'' are substituted for ''revision and submission . . . of budget estimates'' on authority of the Act of Sept. 12, 1950, ch. 946, § 102(f), 64 Stat. 833; 31 U.S.C. 22.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 ACT

Section of title 5	*Source (U.S. Code)*	*Source (Statutes at Large)*
1104(a)(6) ...	5:8713(a). [Uncodified].	[None.] 1965 Reorg. Plan No. 4, §§ 11(a), (e) (as applicable to (a)), 12 (as applicable to § 11(a)), 13 (as applicable to § 11(a)), eff. July 27, 1965, 79 Stat. 1322.

The paragraph added by this section is based on 5 U.S.C. 8713(a), and is restated to reflect the effect of sections 11–13 of 1965 Reorganization Plan No. 4, effective July 27, 1965.

AMENDMENTS

1978—Pub. L. 95–454 substituted ''Delegation of authority for personnel management'' for ''Functions of Chairman'' in section catchline, and in text provisions relating to the delegation of authority for personnel management for provisions relating to functions of the Chairman of the United States Civil Service Commission.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1103 of this title.

§ 1105. Administrative procedure

Subject to section 1103(b) of this title, in the exercise of the functions assigned under this chapter, the Director shall be subject to subsections (b), (c), and (d) of section 553 of this title, notwithstanding subsection (a) of such section 553.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 400; Pub. L. 95–454, title II, §201(a), Oct. 13, 1978, 92 Stat. 1121.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 635 (less last 24 words of 6th sentence, and less 7th sentence).	Jan. 16, 1883, ch. 27, §3 (less last 24 words of 6th sentence, and less 7th sentence), 22 Stat. 404.
.....	[Uncodified].	1949 Reorg. Plan No. 5, §4, eff. Aug. 19, 1949, 63 Stat. 1069.

In subsection (a), the words ''the District of Columbia'' are substituted for ''Washington''. The words ''at least three individuals in the service of the United States'' are substituted for a ''a suitable number of persons, not less than three, in the official service of the United States''. So much of the first three sentences of former section 635 as related to the offices of the Chief Examiner and the Secretary are omitted because the offices were abolished by 1949 Reorg. Plan No. 5, §4. So much of the first sentence as imposed a duty on the Chief Examiner, under the Commission's direction, to act with the examining boards to secure accuracy, uniformity, and justice in all their proceedings is restated in section 1104(a)(1). The fourth sentence of former section 635, authorizing the Commission to employ a stenographer and a messenger, is omitted as obsolete. The remainder is rewritten for clarity. The text of 1949 Reorg. Plan No. 5, §4, is omitted as executed.

In subsection (b), the words ''Chairman, United States Civil Service Commission'' are substituted for ''chief examiner'' on authority of 1949 Reorg. Plan No. 5, §2(a)(2). The words ''at all times'' are omitted as surplusage.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1978—Pub. L. 95–454 substituted ''Administrative procedure'' for ''Boards of examiners'' in section catchline, and in text provisions relating to administrative procedure applicable to administration of this chapter for provisions relating to boards of examiners for the United States Civil Service Commission.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1103 of this title.

CHAPTER 12—MERIT SYSTEMS PROTECTION BOARD, OFFICE OF SPECIAL COUNSEL, AND EMPLOYEE RIGHT OF ACTION

SUBCHAPTER I—MERIT SYSTEMS PROTECTION BOARD

Sec.
1201. Appointment of members of the Merit Systems Protection Board.
1202. Term of office; filling vacancies; removal.
1203. Chairman; Vice Chairman.
1204. Powers and functions of the Merit Systems Protection Board.
1205. Transmittal of information to Congress.
1206. Annual report.

SUBCHAPTER II—OFFICE OF SPECIAL COUNSEL

1211. Establishment.
1212. Powers and functions of the Office of Special Counsel.
1213. Provisions relating to disclosures of violations of law, mismanagement, and certain other matters.[1]
1214. Investigation of prohibited personnel practices; corrective action.
1215. Disciplinary action.
1216. Other matters within the jurisdiction of the Office of Special Counsel.
1217. Transmittal of information to Congress.
1218. Annual report.
1219. Public information.

SUBCHAPTER III—INDIVIDUAL RIGHT OF ACTION IN CERTAIN REPRISAL CASES

1221. Individual right of action in certain reprisal cases.
1222. Availability of other remedies.

AMENDMENTS

1989—Pub. L. 101–12, §3(b)(2), (3), Apr. 10, 1989, 103 Stat. 31, substituted '', OFFICE OF SPECIAL COUNSEL, AND EMPLOYEE RIGHT OF ACTION'' for ''AND SPECIAL COUNSEL'' in chapter heading, and amended chapter analysis generally, inserting subchapter I heading, and in item 1204 substituting ''Powers and functions of the Merit Systems Protection Board'' for ''Special Counsel; appointment and removal'', in item 1205 substituting ''Transmittal of information to Congress'' for ''Powers and functions of the Merit Systems Protection Board and Special Counsel'', in item 1206 substituting ''Annual report'' for ''Authority and responsibilities of the Special Counsel'', omitting items 1207 ''Hearings and decisions on complaints filed by the Special Counsel'', 1208 ''Stays of certain personnel actions'', and 1209 ''Information'', and inserting subchapters II and III headings and items 1211 to 1219, 1221, and 1222.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 2302, 3352 of this title; title 22 section 4139.

SUBCHAPTER I—MERIT SYSTEMS PROTECTION BOARD

AMENDMENTS

1989—Pub. L. 101–12, §3(b)(4), Apr. 10, 1989, 103 Stat. 31, inserted subchapter heading.

§ 1201. Appointment of members of the Merit Systems Protection Board

The Merit Systems Protection Board is composed of 3 members appointed by the President, by and with the advice and consent of the Senate, not more than 2 of whom may be adherents of the same political party. The members of the Board shall be individuals who, by demonstrated ability, background, training, or experience are especially qualified to carry out the functions of the Board. No member of the Board may hold another office or position in the Government of the United States, except as otherwise provided by law or at the direction of the President. The

[1] So in original. Does not conform to section catchline.

Board shall have an official seal which shall be judicially noticed. The Board shall have its principal office in the District of Columbia and may have field offices in other appropriate locations.

(Added Pub. L. 95–454, title II, § 202(a), Oct. 13, 1978, 92 Stat. 1121; amended Pub. L. 101–12, § 3(a)(1), Apr. 10, 1989, 103 Stat. 16.)

AMENDMENTS

1989—Pub. L. 101–12 substituted ''The members'' for ''The Chairman and members'' in second sentence.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 11 of Pub. L. 101–12 provided that: ''This Act and the amendments made by this Act [see Short Title of 1989 Amendment note below] shall take effect 90 days following the date of enactment of this Act [Apr. 10, 1989].''

EFFECTIVE DATE

Subchapter effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

SHORT TITLE OF 1989 AMENDMENT

Section 1 of Pub. L. 101–12 provided that: ''This Act [enacting subchapters II and III of this chapter and section 3352 of this title, amending this section and sections 1202 to 1206, 1209, 1211, 2302, 2303, 3393, 7502, 7512, 7521, 7542, 7701, and 7703 of this title and section 4139 of Title 22, Foreign Relations and Intercourse, repealing sections 1207 and 1208 of this title, and enacting provisions set out as notes under this section and sections 1211 and 5509 of this title] may be cited as the 'Whistleblower Protection Act of 1989'.''

SAVINGS PROVISION

Section 7 of Pub. L. 101–12 provided that:

''(a) ORDERS, RULES, AND REGULATIONS.—All orders, rules, and regulations issued by the Merit Systems Protection Board or the Special Counsel before the effective date of this Act [see Effective Date of 1989 Amendment note above] shall continue in effect, according to their terms, until modified, terminated, superseded, or repealed.

''(b) ADMINISTRATIVE PROCEEDINGS.—No provision of this Act [see Short Title of 1989 Amendment note above] shall affect any administrative proceeding pending at the time such provisions take effect. Orders shall be issued in such proceedings, and appeals shall be taken therefrom, as if this Act had not been enacted.

''(c) SUITS AND OTHER PROCEEDINGS.—No suit, action, or other proceeding lawfully commenced by or against the members of the Merit Systems Protection Board, the Special Counsel, or officers or employees thereof, in their official capacity or in relation to the discharge of their official duties, as in effect immediately before the effective date of this Act [see Effective Date of 1989 Amendment note above], shall abate by reason of the enactment of this Act. Determinations with respect to any such suit, action, or other proceeding shall be made as if this Act had not been enacted.''

WHISTLEBLOWER PROTECTION; CONGRESSIONAL STATEMENT OF FINDINGS AND PURPOSE

Section 2 of Pub. L. 101–12 provided that:

''(a) FINDINGS.—The Congress finds that—

''(1) Federal employees who make disclosures described in section 2302(b)(8) of title 5, United States Code, serve the public interest by assisting in the elimination of fraud, waste, abuse, and unnecessary Government expenditures;

''(2) protecting employees who disclose Government illegality, waste, and corruption is a major step toward a more effective civil service; and

''(3) in passing the Civil Service Reform Act of 1978 [Pub. L. 95–454, see Tables for classification], Congress established the Office of Special Counsel to protect whistleblowers (those individuals who make disclosures described in such section 2302(b)(8)) from reprisal.

''(b) PURPOSE.—The purpose of this Act [see Short Title of 1989 Amendment note above] is to strengthen and improve protection for the rights of Federal employees, to prevent reprisals, and to help eliminate wrongdoing within the Government by—

''(1) mandating that employees should not suffer adverse consequences as a result of prohibited personnel practices; and

''(2) establishing—

''(A) that the primary role of the Office of Special Counsel is to protect employees, especially whistleblowers, from prohibited personnel practices;

''(B) that the Office of Special Counsel shall act in the interests of employees who seek assistance from the Office of Special Counsel; and

''(C) that while disciplining those who commit prohibited personnel practices may be used as a means by which to help accomplish that goal, the protection of individuals who are the subject of prohibited personnel practices remains the paramount consideration.''

TERMS OF OFFICE OF MEMBERS

Section 202(b) of Pub. L. 95–454 provided that: ''Any term of office of any member of the Merit Systems Protection Board serving on the effective date of this Act [see Effective Date of 1978 Amendment note set out under section 1101 of this title] shall continue in effect until the term would expire under section 1102 of title 5, United States Code, as in effect immediately before the effective date of this Act, and upon expiration of the term, appointments to such office shall be made under sections 1201 and 1202 of title 5, United States Code (as added by this section).''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1202 of this title.

§ 1202. Term of office; filling vacancies; removal

(a) The term of office of each member of the Merit Systems Protection Board is 7 years.

(b) A member appointed to fill a vacancy occurring before the end of a term of office of the member's predecessor serves for the remainder of that term. Any appointment to fill a vacancy is subject to the requirements of section 1201. Any new member serving only a portion of a seven-year term in office may continue to serve until a successor is appointed and has qualified, except that such member may not continue to serve for more than one year after the date on which the term of the member would otherwise expire, unless reappointed.

(c) Any member appointed for a 7-year term may not be reappointed to any following term but may continue to serve beyond the expiration of the term until a successor is appointed and has qualified, except that such member may not continue to serve for more than one year after the date on which the term of the member would otherwise expire under this section.

(d) Any member may be removed by the President only for inefficiency, neglect of duty, or malfeasance in office.

(Added Pub. L. 95–454, title II, § 202(a), Oct. 13, 1978, 92 Stat. 1122; amended Pub. L. 100–202, § 101(m) [title VI, § 620], Dec. 22, 1987, 101 Stat. 1329–390, 1329–427; Pub. L. 101–12, § 3(a)(2), (3), Apr. 10, 1989, 103 Stat. 17.)

AMENDMENTS

1989—Pub. L. 101–12, § 3(a)(2), substituted a semicolon for the comma after ''office'' in section catchline.

Subsec. (b). Pub. L. 101–12, §3(a)(3), substituted ''the member's'' for ''his'' in first sentence and struck out ''of this title'' after ''section 1201'' in second sentence.

1987—Subsec. (b). Pub. L. 100–202 inserted provision permitting any new member serving portion of seven-year term to continue serving until successor is appointed and has qualified, with exception limiting duration of such service.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–12 effective 90 days following Apr. 10, 1989, see section 11 of Pub. L. 101–12, set out as a note under section 1201 of this title.

§ 1203. Chairman; Vice Chairman

(a) The President shall from time to time appoint, by and with the advice and consent of the Senate, one of the members of the Merit Systems Protection Board as the Chairman of the Board. The Chairman is the chief executive and administrative officer of the Board.

(b) The President shall from time to time designate one of the members of the Board as Vice Chairman of the Board. During the absence or disability of the Chairman, or when the office of Chairman is vacant, the Vice Chairman shall perform the functions vested in the Chairman.

(c) During the absence or disability of both the Chairman and the Vice Chairman, or when the offices of Chairman and Vice Chairman are vacant, the remaining Board member shall perform the functions vested in the Chairman.

(Added Pub. L. 95–454, title II, §202(a), Oct. 13, 1978, 92 Stat. 1122; amended Pub. L. 101–12, §3(a)(4), (5), Apr. 10, 1989, 103 Stat. 17.)

AMENDMENTS

1989—Subsec. (a). Pub. L. 101–12, §3(a)(4), struck out the comma after ''time'' in first sentence.

Subsec. (c). Pub. L. 101–12, §3(a)(5), substituted ''the Chairman and the Vice Chairman'' for ''the Chairman and Vice Chairman'' after ''both''.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–12 effective 90 days following Apr. 10, 1989, see section 11 of Pub. L. 101–12, set out as a note under section 1201 of this title.

§ 1204. Powers and functions of the Merit Systems Protection Board

(a) The Merit Systems Protection Board shall—

(1) hear, adjudicate, or provide for the hearing or adjudication, of all matters within the jurisdiction of the Board under this title, chapter 43 of title 38, or any other law, rule, or regulation, and, subject to otherwise applicable provisions of law, take final action on any such matter;

(2) order any Federal agency or employee to comply with any order or decision issued by the Board under the authority granted under paragraph (1) of this subsection and enforce compliance with any such order;

(3) conduct, from time to time, special studies relating to the civil service and to other merit systems in the executive branch, and report to the President and to the Congress as to whether the public interest in a civil service free of prohibited personnel practices is being adequately protected; and

(4) review, as provided in subsection (f), rules and regulations of the Office of Personnel Management.

(b)(1) Any member of the Merit Systems Protection Board, any administrative law judge appointed by the Board under section 3105 of this title, and any employee of the Board designated by the Board may administer oaths, examine witnesses, take depositions, and receive evidence.

(2) Any member of the Board, any administrative law judge appointed by the Board under section 3105, and any employee of the Board designated by the Board may, with respect to any individual—

(A) issue subpoenas requiring the attendance and presentation of testimony of any such individual, and the production of documentary or other evidence from any place in the United States, any territory or possession of the United States, the Commonwealth of Puerto Rico, or the District of Columbia; and

(B) order the taking of depositions from, and responses to written interrogatories by, any such individual.

(3) Witnesses (whether appearing voluntarily or under subpoena) shall be paid the same fee and mileage allowances which are paid subpoenaed witnesses in the courts of the United States.

(c) In the case of contumacy or failure to obey a subpoena issued under subsection (b)(2)(A) or section 1214(b), upon application by the Board, the United States district court for the district in which the person to whom the subpoena is addressed resides or is served may issue an order requiring such person to appear at any designated place to testify or to produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt thereof.

(d) A subpoena referred to in subsection (b)(2)(A) may, in the case of any individual outside the territorial jurisdiction of any court of the United States, be served in such manner as the Federal Rules of Civil Procedure prescribe for service of a subpoena in a foreign country. To the extent that the courts of the United States can assert jurisdiction over such individual, the United States District Court for the District of Columbia shall have the same jurisdiction to take any action respecting compliance under this subsection by such individual that such court would have if such individual were personally within the jurisdiction of such court.

(e)(1)(A) In any proceeding under subsection (a)(1), any member of the Board may request from the Director of the Office of Personnel Management an advisory opinion concerning the interpretation of any rule, regulation, or other policy directive promulgated by the Office of Personnel Management.

(B)(i) The Merit Systems Protection Board may, during an investigation by the Office of Special Counsel or during the pendency of any proceeding before the Board, issue any order which may be necessary to protect a witness or other individual from harassment, except that an agency (other than the Office of Special Counsel) may not request any such order with regard to an investigation by the Office of Special Counsel from the Board during such investigation.

(ii) An order issued under this subparagraph may be enforced in the same manner as provided for under paragraph (2) with respect to any order under subsection (a)(2).

(2)(A) In enforcing compliance with any order under subsection (a)(2), the Board may order that any employee charged with complying with such order, other than an employee appointed by the President by and with the advice and consent of the Senate, shall not be entitled to receive payment for service as an employee during any period that the order has not been complied with. The Board shall certify to the Comptroller General of the United States that such an order has been issued and no payment shall be made out of the Treasury of the United States for any service specified in such order.

(B) The Board shall prescribe regulations under which any employee who is aggrieved by the failure of any other employee to comply with an order of the Board may petition the Board to exercise its authority under subparagraph (A).

(3) In carrying out any study under subsection (a)(3), the Board shall make such inquiries as may be necessary and, unless otherwise prohibited by law, shall have access to personnel records or information collected by the Office of Personnel Management and may require additional reports from other agencies as needed.

(f)(1) At any time after the effective date of any rule or regulation issued by the Director of the Office of Personnel Management in carrying out functions under section 1103, the Board shall review any provision of such rule or regulation—

(A) on its own motion;

(B) on the granting by the Board, in its sole discretion, of any petition for such review filed with the Board by any interested person, after consideration of the petition by the Board; or

(C) on the filing of a written complaint by the Special Counsel requesting such review.

(2) In reviewing any provision of any rule or regulation pursuant to this subsection, the Board shall declare such provision—

(A) invalid on its face, if the Board determines that such provision would, if implemented by any agency, on its face, require any employee to violate section 2302(b); or

(B) invalidly implemented by any agency, if the Board determines that such provision, as it has been implemented by the agency through any personnel action taken by the agency or through any policy adopted by the agency in conformity with such provision, has required any employee to violate section 2302(b).

(3) The Director of the Office of Personnel Management, and the head of any agency implementing any provision of any rule or regulation under review pursuant to this subsection, shall have the right to participate in such review.

(4) The Board shall require any agency—

(A) to cease compliance with any provisions of any rule or regulation which the Board declares under this subsection to be invalid on its face; and

(B) to correct any invalid implementation by the agency of any provision of any rule or regulation which the Board declares under this subsection to have been invalidly implemented by the agency.

(g) The Board may delegate the performance of any of its administrative functions under this title to any employee of the Board.

(h) The Board shall have the authority to prescribe such regulations as may be necessary for the performance of its functions. The Board shall not issue advisory opinions. All regulations of the Board shall be published in the Federal Register.

(i) Except as provided in section 518 of title 28, relating to litigation before the Supreme Court, attorneys designated by the Chairman of the Board may appear for the Board, and represent the Board, in any civil action brought in connection with any function carried out by the Board pursuant to this title or as otherwise authorized by law.

(j) The Chairman of the Board may appoint such personnel as may be necessary to perform the functions of the Board. Any appointment made under this subsection shall comply with the provisions of this title, except that such appointment shall not be subject to the approval or supervision of the Office of Personnel Management or the Executive Office of the President (other than approval required under section 3324 or subchapter VIII of chapter 33).

(k) The Board shall prepare and submit to the President, and, at the same time, to the appropriate committees of Congress, an annual budget of the expenses and other items relating to the Board which shall, as revised, be included as a separate item in the budget required to be transmitted to the Congress under section 1105 of title 31.

(*l*) The Board shall submit to the President, and, at the same time, to each House of the Congress, any legislative recommendations of the Board relating to any of its functions under this title.

(m)(1) Except as provided in paragraph (2) of this subsection, the Board, or an administrative law judge or other employee of the Board designated to hear a case arising under section 1215, may require payment by the agency involved of reasonable attorney fees incurred by an employee or applicant for employment if the employee or applicant is the prevailing party and the Board, administrative law judge, or other employee (as the case may be) determines that payment by the agency is warranted in the interest of justice, including any case in which a prohibited personnel practice was engaged in by the agency or any case in which the agency's action was clearly without merit.

(2) If an employee or applicant for employment is the prevailing party of a case arising under section 1215 and the decision is based on a finding of discrimination prohibited under section 2302(b)(1) of this title, the payment of attorney fees shall be in accordance with the standards prescribed under section 706(k) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5(k)).

(Added Pub. L. 95–454, title II, § 202(a), Oct. 13, 1978, 92 Stat. 1122, § 1205; amended Pub. L. 97–258, § 3(a)(2), Sept. 13, 1982, 96 Stat. 1063; renumbered § 1204 and amended Pub. L. 101–12, § 3(a)(7), Apr.

10, 1989, 103 Stat. 17; Pub. L. 102–568, title V, §506(c)(4), Oct. 29, 1992, 106 Stat. 4341; Pub. L. 103–353, §2(b)(2)(A), Oct. 13, 1994, 108 Stat. 3169; Pub. L. 103–424, §2, Oct. 29, 1994, 108 Stat. 4361; Pub. L. 103–446, title XII, §1203(c)(1), Nov. 2, 1994, 108 Stat. 4690.)

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (d), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

PRIOR PROVISIONS

A prior section 1204 was renumbered section 1211(b) of this title by Pub. L. 101–12, §3(a)(6). Pub. L. 102–378, §2(3), Oct. 2, 1992, 106 Stat. 1346, struck out section catchline of prior section 1204.

AMENDMENTS

1994—Subsec. (a)(1). Pub. L. 103–446, which directed the amendment of par. (1) by substituting ''section 4303'' for ''section 4323'' could not be executed because the phrase ''section 4323'' does not appear in text subsequent to the intervening amendment by Pub. L. 103–353 substituting ''chapter 43'' for ''section 4323''. See below.

Pub. L. 103–353 substituted ''chapter 43'' for ''section 4323''.

Subsec. (m). Pub. L. 103–424 added subsec. (m).

1992—Subsec. (a)(1). Pub. L. 102–568 substituted ''4323'' for ''2023''.

1989—Pub. L. 101–12, §3(a)(7), renumbered section 1205 of this title as this section.

Pub. L. 101–12, §3(a)(7)(A), struck out ''and Special Counsel'' after ''Board'' in section catchline.

Subsec. (a)(4). Pub. L. 101–12, §3(a)(7)(A), (C), substituted ''subsection (f)'' for ''subsection (e) of this section''.

Subsec. (b)(1). Pub. L. 101–12, §3(a)(7)(A), struck out ''the Special Counsel,'' after ''Board,''.

Subsec. (b)(2). Pub. L. 101–12, §3(a)(7)(D), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''Any member of the Board, the Special Counsel, and any administrative law judge appointed by the Board under section 3105 of this title may—

''(A) issue subpenas requiring the attendance and testimony of witnesses and the production of documentary or other evidence from any place in the United States or any territory or possession thereof, the Commonwealth of Puerto Rico, or the District of Columbia; and

''(B) order the taking of depositions and order responses to written interrogatories.''

Subsec. (b)(3). Pub. L. 101–12, §3(a)(7)(B), substituted ''subpoena'' for ''subpena'' and ''subpoenaed'' for ''subpenaed''.

Subsec. (c). Pub. L. 101–12, §3(a)(7)(B), (E), substituted ''subpoena'' for ''subpena'' in two places, ''(b)(2)(A) or section 1214(b), upon application by the Board'' for ''(b)(2) of this section'', and ''for the district'' for ''for the judicial district''.

Subsec. (d). Pub. L. 101–12, §3(a)(7)(F), added subsec. (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 101–12, §3(a)(7)(F), redesignated former subsec. (d) as (e). Former subsec. (e) redesignated (f).

Subsec. (e)(1). Pub. L. 101–12, §3(a)(7)(A), (G)(i), designated existing provisions as subpar. (A), struck out ''of this section'' after ''subsection (a)(1)'', and added subpar. (B).

Subsec. (e)(2). Pub. L. 101–12, §3(a)(7)(G)(ii), designated existing provisions as subpar. (A), struck out ''of this section'' after ''subsection (a)(2)'', and added subpar. (B).

Subsec. (e)(3). Pub. L. 101–12, §3(a)(7)(A), (G)(iii), struck out ''of this section'' after ''subsection (a)(3)'' and inserted ''of Personnel Management'' after ''Office''.

Subsec. (f). Pub. L. 101–12, §3(a)(7)(F), redesignated former subsec. (e) as (f). Former subsec. (f) redesignated (g).

Subsec. (f)(1). Pub. L. 101–12, §3(a)(7)(H)(i), inserted ''of the Office of Personnel Management'' after ''Director'' and struck out ''of this title'' after ''section 1103''.

Subsec. (f)(2). Pub. L. 101–12, §3(a)(7)(H)(ii), inserted comma after ''subsection'' and in subpars. (A) and (B) struck out ''of this title'' after ''section 2302(b)''.

Subsec. (f)(3), (4). Pub. L. 101–12, §3(a)(7)(H)(iii), struck out ''(A)'' before ''The Director'', struck out subpar. (B) which provided that any review conducted by the Board be limited to determining the validity on its face of the provision under review and whether the provision under review has been validly implemented, and redesignated former subpar. (C) and cls. (i) and (ii) of former subpar. (C) as par. (4) and subpars. (A) and (B), respectively, of par. (4).

Subsecs. (g) to (i). Pub. L. 101–12, §3(a)(7)(F), redesignated former subsecs. (f) to (h) as (g) to (i), respectively. Former subsec. (i) redesignated (j).

Subsec. (j). Pub. L. 101–12, §3(a)(7)(F), (I), redesignated former subsec. (i) as (j) and substituted ''chapter 33'' for ''chapter 33 of this title''. Former subsec. (j) redesignated (k).

Subsecs. (k), (*l*). Pub. L. 101–12, §3(a)(7)(F), redesignated former subsecs. (j) and (k) as (k) and (*l*), respectively.

1982—Subsec. (j). Pub. L. 97–258 substituted ''section 1105 of title 31'' for ''section 201 of the Budget and Accounting Act, 1921 (31 U.S.C. 11)''.

EFFECTIVE DATE OF 1994 AMENDMENTS

Section 14 of Pub. L. 103–424 provided that: ''The provisions of this Act [amending this section and sections 1211, 1212, 1214, 1218, 1221, 2105, 2302, 4313, 7121, and 8348 of this title, enacting provisions set out as notes under sections 1212 and 1214 of this title and section 1441a of Title 12, Banks and Banking, and amending provisions set out as a note under section 5509 of this title] and the amendments made by this Act shall be effective on and after the date of the enactment of this Act [Oct. 29, 1994].''

Amendment by Pub. L. 103–353 effective with respect to reemployments initiated on or after the first day after the 60-day period beginning Oct. 13, 1994, with transition rules, see section 8 of Pub. L. 103–353, set out as a note under section 4301 of Title 38, Veterans' Benefits.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–12 effective 90 days following Apr. 10, 1989, see section 11 of Pub. L. 101–12, set out as a note under section 1201 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1212, 1221 of this title.

§1205. Transmittal of information to Congress

Notwithstanding any other provision of law or any rule, regulation or policy directive, any member of the Board, or any employee of the Board designated by the Board, may transmit to the Congress on the request of any committee or subcommittee thereof, by report, testimony, or otherwise, information and views on functions, responsibilities, or other matters relating to the Board, without review, clearance, or approval by any other administrative authority.

(Added Pub. L. 95–454, title II, §202(a), Oct. 13, 1978, 92 Stat. 1131, §1209(a); renumbered §1205 and amended Pub. L. 101–12, §3(a)(9), Apr. 10, 1989, 103 Stat. 18.)

PRIOR PROVISIONS

A prior section 1205 was renumbered section 1204 of this title.

AMENDMENTS

1989—Pub. L. 101–12 renumbered section 1209(a) of this title as this section and inserted section catchline.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–12 effective 90 days following Apr. 10, 1989, see section 11 of Pub. L. 101–12, set out as a note under section 1201 of this title.

§ 1206. Annual report

The Board shall submit an annual report to the President and the Congress on its activities, which shall include a description of significant actions taken by the Board to carry out its functions under this title. The report shall also review the significant actions of the Office of Personnel Management, including an analysis of whether the actions of the Office of Personnel Management are in accord with merit system principles and free from prohibited personnel practices.

(Added Pub. L. 95–454, title II, § 202(a), Oct. 13, 1978, 92 Stat. 1131, § 1209(b); renumbered § 1206 and amended Pub. L. 101–12, § 3(a)(10), Apr. 10, 1989, 103 Stat. 18.)

PRIOR PROVISIONS

A prior section 1206, added Pub. L. 95–454, title II, § 202(a), Oct. 13, 1978, 92 Stat. 1125, which related to authority and responsibilities of Special Counsel, was repealed by Pub. L. 101–12, §§ 3(a)(8), 11, Apr. 10, 1989, 103 Stat. 18, effective 90 days following Apr. 10, 1989. See section 1212 of this title.

AMENDMENTS

1989—Pub. L. 101–12 renumbered section 1209(b) of this title as this section and inserted section catchline.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–12 effective 90 days following Apr. 10, 1989, see section 11 of Pub. L. 101–12, set out as a note under section 1201 of this title.

[§§ 1207, 1208. Repealed. Pub. L. 101–12, § 3(a)(8), Apr. 10, 1989, 103 Stat. 18]

Section 1207, added Pub. L. 95–454, title II, § 202(a), Oct. 13, 1978, 92 Stat. 1130, provided for hearings and decisions on complaints filed by Special Counsel. See section 1215(a)(2) to (5) of this title.

Section 1208, added Pub. L. 95–454, title II, § 202(a), Oct. 13, 1978, 92 Stat. 1130, related to stays of certain personnel actions. See section 1214(b) of this title.

EFFECTIVE DATE OF REPEAL

Repeal of sections effective 90 days following Apr. 10, 1989, see section 11 of Pub. L. 101–12, set out as an Effective Date of 1989 Amendment note under section 1201 of this title.

[§ 1209. Renumbered §§ 1205 and 1206]

CODIFICATION

Subsecs. (a) and (b) of this section were renumbered as sections 1205 and 1206, respectively, of this title by Pub. L. 101–12, § 3(a)(9), (10). Pub. L. 102–378, § 2(2), Oct. 2, 1992, 106 Stat. 1346, struck out section catchline of prior section 1209.

SUBCHAPTER II—OFFICE OF SPECIAL COUNSEL

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 1221, 4505a, 5754, 5755, 7121 of this title.

§ 1211. Establishment

(a) There is established the Office of Special Counsel, which shall be headed by the Special Counsel. The Office shall have an official seal which shall be judicially noticed. The Office shall have its principal office in the District of Columbia and shall have field offices in other appropriate locations.

(b) The Special Counsel shall be appointed by the President, by and with the advice and consent of the Senate, for a term of 5 years. The Special Counsel may continue to serve beyond the expiration of the term until a successor is appointed and has qualified, except that the Special Counsel may not continue to serve for more than one year after the date on which the term of the Special Counsel would otherwise expire under this subsection. The Special Counsel shall be an attorney who, by demonstrated ability, background, training, or experience, is especially qualified to carry out the functions of the position. A Special Counsel appointed to fill a vacancy occurring before the end of a term of office of the Special Counsel's predecessor serves for the remainder of the term. The Special Counsel may be removed by the President only for inefficiency, neglect of duty, or malfeasance in office. The Special Counsel may not hold another office or position in the Government of the United States, except as otherwise provided by law or at the direction of the President.

(Added Pub. L. 101–12, § 3(a)(11), Apr. 10, 1989, 103 Stat. 19, § 1211(a), and Pub. L. 95–454, title II, § 202(a), Oct. 13, 1978, 92 Stat. 1122, § 1204; renumbered § 1211(b) and amended Pub. L. 101–12, § 3(a)(6), (12), Apr. 10, 1989, 103 Stat. 17, 19; Pub. L. 103–424, § 3(a), Oct. 29, 1994, 108 Stat. 4361.)

AMENDMENTS

1994—Subsec. (b). Pub. L. 101–424 inserted after first sentence ''The Special Counsel may continue to serve beyond the expiration of the term until a successor is appointed and has qualified, except that the Special Counsel may not continue to serve for more than one year after the date on which the term of the Special Counsel would otherwise expire under this subsection.''

1989—Subsec. (b). Pub. L. 101–12, § 3(a)(6), (12), renumbered section 1204 of this title as subsec. (b) of this section, substituted ''Special Counsel shall be appointed by the President'' for ''Special Counsel of the Merit Systems Protection Board shall be appointed by the President from attorneys'', substituted ''The Special Counsel shall be an attorney who, by demonstrated ability, background, training, or experience, is especially qualified to carry out the functions of the position. A Special Counsel appointed to fill a vacancy occurring before the end of a term of office of the Special Counsel's predecessor serves for the remainder of the term.'' for ''A Special Counsel appointed to fill a vacancy occurring before the end of a term of office of his predecessor serves for the remainder of the term.'', and inserted at end ''The Special Counsel may not hold another office or position in the Government of the United States, except as otherwise provided by law or at the direction of the President.''

EFFECTIVE DATE

Subchapter effective 90 days following Apr. 10, 1989, see section 11 of Pub. L. 101–12, set out as a note under section 1201 of this title.

TRANSFER OF FUNDS

Section 8(c) of Pub. L. 101–12 provided that: ''The personnel, assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available or to be made available to

the Special Counsel of the Merit Systems Protection Board are, subject to section 1531 of title 31, United States Code, transferred to the Special Counsel referred to in section 1211 of title 5, United States Code (as added by section 3(a) of this Act), for appropriate allocation.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 38 section 4324.

§ 1212. Powers and functions of the Office of Special Counsel

(a) The Office of Special Counsel shall—

(1) in accordance with section 1214(a) and other applicable provisions of this subchapter, protect employees, former employees, and applicants for employment from prohibited personnel practices;

(2) receive and investigate allegations of prohibited personnel practices, and, where appropriate—

(A) bring petitions for stays, and petitions for corrective action, under section 1214; and

(B) file a complaint or make recommendations for disciplinary action under section 1215;

(3) receive, review, and, where appropriate, forward to the Attorney General or an agency head under section 1213, disclosures of violations of any law, rule, or regulation, or gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;

(4) review rules and regulations issued by the Director of the Office of Personnel Management in carrying out functions under section 1103 and, where the Special Counsel finds that any such rule or regulation would, on its face or as implemented, require the commission of a prohibited personnel practice, file a written complaint with the Board; and

(5) investigate and, where appropriate, bring actions concerning allegations of violations of other laws within the jurisdiction of the Office of Special Counsel (as referred to in section 1216).

(b)(1) The Special Counsel and any employee of the Office of Special Counsel designated by the Special Counsel may administer oaths, examine witnesses, take depositions, and receive evidence.

(2) The Special Counsel may—

(A) issue subpoenas; and

(B) order the taking of depositions and order responses to written interrogatories;

in the same manner as provided under section 1204.

(3)(A) In the case of contumacy or failure to obey a subpoena issued under paragraph (2)(A), the Special Counsel may apply to the Merit Systems Protection Board to enforce the subpoena in court pursuant to section 1204(c).

(B) A subpoena under paragraph (2)(A) may, in the case of any individual outside the territorial jurisdiction of any court of the United States, be served in the manner referred to in subsection (d) of section 1204, and the United States District Court for the District of Columbia may, with respect to any such individual, compel compliance in accordance with such subsection.

(4) Witnesses (whether appearing voluntarily or under subpoena) shall be paid the same fee and mileage allowances which are paid subpoenaed witnesses in the courts of the United States.

(c)(1) Except as provided in paragraph (2), the Special Counsel may as a matter of right intervene or otherwise participate in any proceeding before the Merit Systems Protection Board, except that the Special Counsel shall comply with the rules of the Board.

(2) The Special Counsel may not intervene in an action brought by an individual under section 1221, or in an appeal brought by an individual under section 7701, without the consent of such individual.

(d)(1) The Special Counsel may appoint the legal, administrative, and support personnel necessary to perform the functions of the Special Counsel.

(2) Any appointment made under this subsection shall be made in accordance with the provisions of this title, except that such appointment shall not be subject to the approval or supervision of the Office of Personnel Management or the Executive Office of the President (other than approval required under section 3324 or subchapter VIII of chapter 33).

(e) The Special Counsel may prescribe such regulations as may be necessary to perform the functions of the Special Counsel. Such regulations shall be published in the Federal Register.

(f) The Special Counsel may not issue any advisory opinion concerning any law, rule, or regulation (other than an advisory opinion concerning chapter 15 or subchapter III of chapter 73).

(g)(1) The Special Counsel may not respond to any inquiry or disclose any information from or about any person making an allegation under section 1214(a), except in accordance with the provisions of section 552a of title 5, United States Code, or as required by any other applicable Federal law.

(2) Notwithstanding the exception under paragraph (1), the Special Counsel may not respond to any inquiry concerning an evaluation of the work performance, ability, aptitude, general qualifications, character, loyalty, or suitability for any personnel action of any person described in paragraph (1)—

(A) unless the consent of the individual as to whom the information pertains is obtained in advance; or

(B) except upon request of an agency which requires such information in order to make a determination concerning an individual's having access to the information unauthorized disclosure of which could be expected to cause exceptionally grave damage to the national security.

(Added Pub. L. 101–12, §3(a)(13), Apr. 10, 1989, 103 Stat. 19; amended Pub. L. 103–424, §3(b), Oct. 29, 1994, 108 Stat. 4362.)

AMENDMENTS

1994—Subsec. (g)(1). Pub. L. 103–424, §3(b)(1) substituted ''disclose any information from or about'' for ''provide information concerning''.

Subsec. (g)(2). Pub. L. 103–424, §3(b)(2), substituted ''an evaluation of the work performance, ability, aptitude, general qualifications, character, loyalty, or suit-

ability for any personnel action of any'' for ''a matter described in subparagraph (A) or (B) of section 2302(b)(2) in connection with a''.

POLICY STATEMENT REGARDING IMPLEMENTATION OF WHISTLEBLOWER PROTECTION ACT

Section 12(a) of Pub. L. 103–424 provided that: ''No later than 6 months after the date of enactment of this Act [Oct. 29, 1994], the Special Counsel shall issue a policy statement regarding the implementation of the Whistleblower Protection Act of 1989 [see Short Title of 1989 Amendment note set out under section 1201 of this title]. Such policy statement shall be made available to each person alleging a prohibited personnel practice described under section 2302(b)(8) of title 5, United States Code, and shall include detailed guidelines identifying specific categories of information that may (or may not) be communicated to agency officials for an investigative purpose, or for the purpose of obtaining corrective action under section 1214 of title 5, United States Code, or disciplinary action under section 1215 of such title, the circumstances under which such information is likely to be disclosed, and whether or not the consent of any person is required in advance of any such communication.''

ANNUAL SURVEY OF INDIVIDUALS SEEKING ASSISTANCE

Section 13 of Pub. L. 103–424 provided that:

''(a) IN GENERAL.—The Office of Special Counsel shall, after consulting with the Office of Policy and Evaluation of the Merit Systems Protection Board, conduct an annual survey of all individuals who contact the Office of Special Counsel for assistance. The survey shall—

''(1) determine if the individual seeking assistance was fully apprised of their rights;

''(2) determine whether the individual was successful either at the Office of Special Counsel or the Merit Systems Protection Board; and

''(3) determine if the individual, whether successful or not, was satisfied with the treatment received from the Office of Special Counsel.

''(b) REPORT.—The results of the survey conducted under subsection (a) shall be published in the annual report of the Office of Special Counsel.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2105 of this title.

§ 1213. Provisions relating to disclosures of violations of law, gross mismanagement, and certain other matters

(a) This section applies with respect to—

(1) any disclosure of information by an employee, former employee, or applicant for employment which the employee, former employee, or applicant reasonably believes evidences—

(A) a violation of any law, rule, or regulation; or

(B) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;

if such disclosure is not specifically prohibited by law and if such information is not specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs; and

(2) any disclosure by an employee, former employee, or applicant for employment to the Special Counsel or to the Inspector General of an agency or another employee designated by the head of the agency to receive such disclosures of information which the employee, former employee, or applicant reasonably believes evidences—

(A) a violation of any law, rule, or regulation; or

(B) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

(b) Whenever the Special Counsel receives information of a type described in subsection (a) of this section, the Special Counsel shall review such information and, within 15 days after receiving the information, determine whether there is a substantial likelihood that the information discloses a violation of any law, rule, or regulation, or gross mismanagement, gross waste of funds, abuse of authority, or substantial and specific danger to public health and safety.

(c)(1) Subject to paragraph (2), if the Special Counsel makes a positive determination under subsection (b) of this section, the Special Counsel shall promptly transmit the information with respect to which the determination was made to the appropriate agency head and require that the agency head—

(A) conduct an investigation with respect to the information and any related matters transmitted by the Special Counsel to the agency head; and

(B) submit a written report setting forth the findings of the agency head within 60 days after the date on which the information is transmitted to the agency head or within any longer period of time agreed to in writing by the Special Counsel.

(2) The Special Counsel may require an agency head to conduct an investigation and submit a written report under paragraph (1) only if the information was transmitted to the Special Counsel by—

(A) an employee, former employee, or applicant for employment in the agency which the information concerns; or

(B) an employee who obtained the information in connection with the performance of the employee's duties and responsibilities.

(d) Any report required under subsection (c) shall be reviewed and signed by the head of the agency and shall include—

(1) a summary of the information with respect to which the investigation was initiated;

(2) a description of the conduct of the investigation;

(3) a summary of any evidence obtained from the investigation;

(4) a listing of any violation or apparent violation of any law, rule, or regulation; and

(5) a description of any action taken or planned as a result of the investigation, such as—

(A) changes in agency rules, regulations, or practices;

(B) the restoration of any aggrieved employee;

(C) disciplinary action against any employee; and

(D) referral to the Attorney General of any evidence of a criminal violation.

(e)(1) Any such report shall be submitted to the Special Counsel, and the Special Counsel

shall transmit a copy to the complainant, except as provided under subsection (f) of this section. The complainant may submit comments to the Special Counsel on the agency report within 15 days of having received a copy of the report.

(2) Upon receipt of any report of the head of an agency required under subsection (c) of this section, the Special Counsel shall review the report and determine whether—

(A) the findings of the head of the agency appear reasonable; and

(B) the report of the agency under subsection (c)(1) of this section contains the information required under subsection (d) of this section.

(3) The Special Counsel shall transmit any agency report received pursuant to subsection (c) of this section, any comments provided by the complainant pursuant to subsection (e)(1), and any appropriate comments or recommendations by the Special Counsel to the President, the congressional committees with jurisdiction over the agency which the disclosure involves, and the Comptroller General.

(4) Whenever the Special Counsel does not receive the report of the agency within the time prescribed in subsection (c)(2) of this section, the Special Counsel shall transmit a copy of the information which was transmitted to the agency head to the President, the congressional committees with jurisdiction over the agency which the disclosure involves, and the Comptroller General together with a statement noting the failure of the head of the agency to file the required report.

(f) In any case in which evidence of a criminal violation obtained by an agency in an investigation under subsection (c) of this section is referred to the Attorney General—

(1) the report shall not be transmitted to the complainant; and

(2) the agency shall notify the Office of Personnel Management and the Office of Management and Budget of the referral.

(g)(1) If the Special Counsel receives information of a type described in subsection (a) from an individual other than an individual described in subparagraph (A) or (B) of subsection (c)(2), the Special Counsel may transmit the information to the head of the agency which the information concerns. The head of such agency shall, within a reasonable time after the information is transmitted, inform the Special Counsel in writing of what action has been or is being taken and when such action shall be completed. The Special Counsel shall inform the individual of the report of the agency head. If the Special Counsel does not transmit the information to the head of the agency, the Special Counsel shall return any documents and other matter provided by the individual who made the disclosure.

(2) If the Special Counsel receives information of a type described in subsection (a) from an individual described in subparagraph (A) or (B) of subsection (c)(2), but does not make a positive determination under subsection (b), the Special Counsel may transmit the information to the head of the agency which the information concerns, except that the information may not be transmitted to the head of the agency without the consent of the individual. The head of such agency shall, within a reasonable time after the information is transmitted, inform the Special Counsel in writing of what action has been or is being taken and when such action will be completed. The Special Counsel shall inform the individual of the report of the agency head.

(3) If the Special Counsel does not transmit the information to the head of the agency under paragraph (2), the Special Counsel shall—

(A) return any documents and other matter provided by the individual who made the disclosure; and

(B) inform the individual of—

(i) the reasons why the disclosure may not be further acted on under this chapter; and

(ii) other offices available for receiving disclosures, should the individual wish to pursue the matter further.

(h) The identity of any individual who makes a disclosure described in subsection (a) may not be disclosed by the Special Counsel without such individual's consent unless the Special Counsel determines that the disclosure of the individual's identity is necessary because of an imminent danger to public health or safety or imminent violation of any criminal law.

(i) Except as specifically authorized under this section, the provisions of this section shall not be considered to authorize disclosure of any information by any agency or any person which is—

(1) specifically prohibited from disclosure by any other provision of law; or

(2) specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs.

(j) With respect to any disclosure of information described in subsection (a) which involves foreign intelligence or counterintelligence information, if the disclosure is specifically prohibited by law or by Executive order, the Special Counsel shall transmit such information to the National Security Advisor, the Permanent Select Committee on Intelligence of the House of Representatives, and the Select Committee on Intelligence of the Senate.

(Added Pub. L. 101–12, §3(a)(13), Apr. 10, 1989, 103 Stat. 21.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1212, 1219, 2105 of this title.

§ 1214. Investigation of prohibited personnel practices; corrective action

(a)(1)(A) The Special Counsel shall receive any allegation of a prohibited personnel practice and shall investigate the allegation to the extent necessary to determine whether there are reasonable grounds to believe that a prohibited personnel practice has occurred, exists, or is to be taken.

(B) Within 15 days after the date of receiving an allegation of a prohibited personnel practice under paragraph (1), the Special Counsel shall provide written notice to the person who made the allegation that—

(i) the allegation has been received by the Special Counsel; and

(ii) shall include the name of a person at the Office of Special Counsel who shall serve as a contact with the person making the allegation.

(C) Unless an investigation is terminated under paragraph (2), the Special Counsel shall—

(i) within 90 days after notice is provided under subparagraph (B), notify the person who made the allegation of the status of the investigation and any action taken by the Office of the Special Counsel since the filing of the allegation;

(ii) notify such person of the status of the investigation and any action taken by the Office of the Special Counsel since the last notice, at least every 60 days after notice is given under clause (i); and

(iii) notify such person of the status of the investigation and any action taken by the Special Counsel at such time as determined appropriate by the Special Counsel.

(D) No later than 10 days before the Special Counsel terminates any investigation of a prohibited personnel practice, the Special Counsel shall provide a written status report to the person who made the allegation of the proposed findings of fact and legal conclusions. The person may submit written comments about the report to the Special Counsel. The Special Counsel shall not be required to provide a subsequent written status report under this subparagraph after the submission of such written comments.

(2)(A) If the Special Counsel terminates any investigation under paragraph (1), the Special Counsel shall prepare and transmit to any person on whose allegation the investigation was initiated a written statement notifying the person of—

(i) the termination of the investigation;

(ii) a summary of relevant facts ascertained by the Special Counsel, including the facts that support, and the facts that do not support, the allegations of such person;

(iii) the reasons for terminating the investigation; and

(iv) a response to any comments submitted under paragraph (1)(D).

(B) A written statement under subparagraph (A) may not be admissible as evidence in any judicial or administrative proceeding, without the consent of the person who received such statement under subparagraph (A).

(3) Except in a case in which an employee, former employee, or applicant for employment has the right to appeal directly to the Merit Systems Protection Board under any law, rule, or regulation, any such employee, former employee, or applicant shall seek corrective action from the Special Counsel before seeking corrective action from the Board. An employee, former employee, or applicant for employment may seek corrective action from the Board under section 1221, if such employee, former employee, or applicant seeks corrective action for a prohibited personnel practice described in section 2302(b)(8) from the Special Counsel and—

(A)(i) the Special Counsel notifies such employee, former employee, or applicant that an investigation concerning such employee, former employee, or applicant has been terminated; and

(ii) no more than 60 days have elapsed since notification was provided to such employee, former employee, or applicant for employment that such investigation was terminated; or

(B) 120 days after seeking corrective action from the Special Counsel, such employee, former employee, or applicant has not been notified by the Special Counsel that the Special Counsel shall seek corrective action on behalf of such employee, former employee, or applicant.

(4) If an employee, former employee, or applicant seeks a corrective action from the Board under section 1221, pursuant to the provisions of paragraph (3)(B), the Special Counsel may continue to seek corrective action personal to such employee, former employee, or applicant only with the consent of such employee, former employee, or applicant.

(5) In addition to any authority granted under paragraph (1), the Special Counsel may, in the absence of an allegation, conduct an investigation for the purpose of determining whether there are reasonable grounds to believe that a prohibited personnel practice (or a pattern of prohibited personnel practices) has occurred, exists, or is to be taken.

(b)(1)(A)(i) The Special Counsel may request any member of the Merit Systems Protection Board to order a stay of any personnel action for 45 days if the Special Counsel determines that there are reasonable grounds to believe that the personnel action was taken, or is to be taken, as a result of a prohibited personnel practice.

(ii) Any member of the Board requested by the Special Counsel to order a stay under clause (i) shall order such stay unless the member determines that, under the facts and circumstances involved, such a stay would not be appropriate.

(iii) Unless denied under clause (ii), any stay under this subparagraph shall be granted within 3 calendar days (excluding Saturdays, Sundays, and legal holidays) after the date of the request for the stay by the Special Counsel.

(B) The Board may extend the period of any stay granted under subparagraph (A) for any period which the Board considers appropriate.

(C) The Board shall allow any agency which is the subject of a stay to comment to the Board on any extension of stay proposed under subparagraph (B).

(D) A stay may be terminated by the Board at any time, except that a stay may not be terminated by the Board—

(i) on its own motion or on the motion of an agency, unless notice and opportunity for oral or written comments are first provided to the Special Counsel and the individual on whose behalf the stay was ordered; or

(ii) on motion of the Special Counsel, unless notice and opportunity for oral or written comments are first provided to the individual on whose behalf the stay was ordered.

(2)(A)(i) Except as provided under clause (ii), no later than 240 days after the date of receiving an allegation of a prohibited personnel practice under paragraph (1), the Special Counsel shall make a determination whether there are reasonable grounds to believe that a prohibited personnel practice has occurred, exists, or is to be taken.

(ii) If the Special Counsel is unable to make the required determination within the 240-day period specified under clause (i) and the person submitting the allegation of a prohibited personnel practice agrees to an extension of time, the determination shall be made within such additional period of time as shall be agreed upon between the Special Counsel and the person submitting the allegation.

(B) If, in connection with any investigation, the Special Counsel determines that there are reasonable grounds to believe that a prohibited personnel practice has occurred, exists, or is to be taken which requires corrective action, the Special Counsel shall report the determination together with any findings or recommendations to the Board, the agency involved and to the Office of Personnel Management, and may report such determination, findings and recommendations to the President. The Special Counsel may include in the report recommendations for corrective action to be taken.

(C) If, after a reasonable period of time, the agency does not act to correct the prohibited personnel practice, the Special Counsel may petition the Board for corrective action.

(D) If the Special Counsel finds, in consultation with the individual subject to the prohibited personnel practice, that the agency has acted to correct the prohibited personnel practice, the Special Counsel shall file such finding with the Board, together with any written comments which the individual may provide.

(E) A determination by the Special Counsel under this paragraph shall not be cited or referred to in any proceeding under this paragraph or any other administrative or judicial proceeding for any purpose, without the consent of the person submitting the allegation of a prohibited personnel practice.

(3) Whenever the Special Counsel petitions the Board for corrective action, the Board shall provide an opportunity for—

(A) oral or written comments by the Special Counsel, the agency involved, and the Office of Personnel Management; and

(B) written comments by any individual who alleges to be the subject of the prohibited personnel practice.

(4)(A) The Board shall order such corrective action as the Board considers appropriate, if the Board determines that the Special Counsel has demonstrated that a prohibited personnel practice, other than one described in section 2302(b)(8), has occurred, exists, or is to be taken.

(B)(i) Subject to the provisions of clause (ii), in any case involving an alleged prohibited personnel practice as described under section 2302(b)(8), the Board shall order such corrective action as the Board considers appropriate if the Special Counsel has demonstrated that a disclosure described under section 2302(b)(8) was a contributing factor in the personnel action which was taken or is to be taken against the individual.

(ii) Corrective action under clause (i) may not be ordered if the agency demonstrates by clear and convincing evidence that it would have taken the same personnel action in the absence of such disclosure.

(c)(1) Judicial review of any final order or decision of the Board under this section may be obtained by any employee, former employee, or applicant for employment adversely affected by such order or decision.

(2) A petition for review under this subsection shall be filed with such court, and within such time, as provided for under section 7703(b).

(d)(1) If, in connection with any investigation under this subchapter, the Special Counsel determines that there is reasonable cause to believe that a criminal violation has occurred, the Special Counsel shall report the determination to the Attorney General and to the head of the agency involved, and shall submit a copy of the report to the Director of the Office of Personnel Management and the Director of the Office of Management and Budget.

(2) In any case in which the Special Counsel determines that there are reasonable grounds to believe that a prohibited personnel practice has occurred, exists, or is to be taken, the Special Counsel shall proceed with any investigation or proceeding unless—

(A) the alleged violation has been reported to the Attorney General; and

(B) the Attorney General is pursuing an investigation, in which case the Special Counsel, after consultation with the Attorney General, has discretion as to whether to proceed.

(e) If, in connection with any investigation under this subchapter, the Special Counsel determines that there is reasonable cause to believe that any violation of any law, rule, or regulation has occurred other than one referred to in subsection (b) or (d), the Special Counsel shall report such violation to the head of the agency involved. The Special Counsel shall require, within 30 days after the receipt of the report by the agency, a certification by the head of the agency which states—

(1) that the head of the agency has personally reviewed the report; and

(2) what action has been or is to be taken, and when the action will be completed.

(f) During any investigation initiated under this subchapter, no disciplinary action shall be taken against any employee for any alleged prohibited activity under investigation or for any related activity without the approval of the Special Counsel.

(g) If the Board orders corrective action under this section, such corrective action may include—

(1) that the individual be placed, as nearly as possible, in the position the individual would have been in had the prohibited personnel practice not occurred; and

(2) reimbursement for attorney's fees, back pay and related benefits, medical costs incurred, travel expenses, and any other reasonable and foreseeable consequential damages.

(Added Pub. L. 101–12, §3(a)(13), Apr. 10, 1989, 103 Stat. 23; amended Pub. L. 103–424, §§3(c), (d), 8(a), Oct. 29, 1994, 108 Stat. 4362, 4364.)

AMENDMENTS

1994—Subsec. (a)(1)(D). Pub. L. 103–424, §3(c)(1), added subpar. (D).

Subsec. (a)(2)(A)(iv). Pub. L. 103–424, §3(c)(2), added cl. (iv).

Subsec. (b)(2). Pub. L. 103–424, §3(d), added subpars. (A) and (E) and redesignated former subpars. (A) to (C) as (B) to (D), respectively.

Subsec. (g). Pub. L. 103–424, § 8(a), added subsec. (g).

TERMINATION STATEMENT

Section 12(b) of Pub. L. 103–424 provided that: ''The Special Counsel shall include in any letter terminating an investigation under section 1214(a)(2) of title 5, United States Code, the name and telephone number of an employee of the Special Counsel who is available to respond to reasonable questions from the person regarding the investigation or review conducted by the Special Counsel, the relevant facts ascertained by the Special Counsel, and the law applicable to the person's allegations.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1204, 1212, 1216, 1218, 1219, 1221, 2105, 2303, 7121 of this title; title 22 section 4139.

§ 1215. Disciplinary action

(a)(1) Except as provided in subsection (b), if the Special Counsel determines that disciplinary action should be taken against any employee for having—

(A) committed a prohibited personnel practice,

(B) violated the provisions of any law, rule, or regulation, or engaged in any other conduct within the jurisdiction of the Special Counsel as described in section 1216, or

(C) knowingly and willfully refused or failed to comply with an order of the Merit Systems Protection Board,

the Special Counsel shall prepare a written complaint against the employee containing the Special Counsel's determination, together with a statement of supporting facts, and present the complaint and statement to the employee and the Board, in accordance with this subsection.

(2) Any employee against whom a complaint has been presented to the Merit Systems Protection Board under paragraph (1) is entitled to—

(A) a reasonable time to answer orally and in writing, and to furnish affidavits and other documentary evidence in support of the answer;

(B) be represented by an attorney or other representative;

(C) a hearing before the Board or an administrative law judge appointed under section 3105 and designated by the Board;

(D) have a transcript kept of any hearing under subparagraph (C); and

(E) a written decision and reasons therefor at the earliest practicable date, including a copy of any final order imposing disciplinary action.

(3) A final order of the Board may impose disciplinary action consisting of removal, reduction in grade, debarment from Federal employment for a period not to exceed 5 years, suspension, reprimand, or an assessment of a civil penalty not to exceed $1,000.

(4) There may be no administrative appeal from an order of the Board. An employee subject to a final order imposing disciplinary action under this subsection may obtain judicial review of the order by filing a petition therefor with such court, and within such time, as provided for under section 7703(b).

(5) In the case of any State or local officer or employee under chapter 15, the Board shall consider the case in accordance with the provisions of such chapter.

(b) In the case of an employee in a confidential, policy-making, policy-determining, or policy-advocating position appointed by the President, by and with the advice and consent of the Senate (other than an individual in the Foreign Service of the United States), the complaint and statement referred to in subsection (a)(1), together with any response of the employee, shall be presented to the President for appropriate action in lieu of being presented under subsection (a).

(c)(1) In the case of members of the uniformed services and individuals employed by any person under contract with an agency to provide goods or services, the Special Counsel may transmit recommendations for disciplinary or other appropriate action (including the evidence on which such recommendations are based) to the head of the agency concerned.

(2) In any case in which the Special Counsel transmits recommendations to an agency head under paragraph (1), the agency head shall, within 60 days after receiving such recommendations, transmit a report to the Special Counsel on each recommendation and the action taken, or proposed to be taken, with respect to each such recommendation.

(Added Pub. L. 101–12, § 3(a)(13), Apr. 10, 1989, 103 Stat. 27.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1204, 1212, 1216, 1219, 1221, 2105, 3393, 7121, 7502, 7512, 7521, 7542 of this title.

§ 1216. Other matters within the jurisdiction of the Office of Special Counsel

(a) In addition to the authority otherwise provided in this chapter, the Special Counsel shall, except as provided in subsection (b), conduct an investigation of any allegation concerning—

(1) political activity prohibited under subchapter III of chapter 73, relating to political activities by Federal employees;

(2) political activity prohibited under chapter 15, relating to political activities by certain State and local officers and employees;

(3) arbitrary or capricious withholding of information prohibited under section 552, except that the Special Counsel shall make no investigation of any withholding of foreign intelligence or counterintelligence information the disclosure of which is specifically prohibited by law or by Executive order;

(4) activities prohibited by any civil service law, rule, or regulation, including any activity relating to political intrusion in personnel decisionmaking; and

(5) involvement by any employee in any prohibited discrimination found by any court or appropriate administrative authority to have occurred in the course of any personnel action.

(b) The Special Counsel shall make no investigation of any allegation of any prohibited activity referred to in subsection (a)(5), if the Special Counsel determines that the allegation may be resolved more appropriately under an administrative appeals procedure.

(c) If the Special Counsel receives an allegation concerning any matter under paragraph (1), (3), (4), or (5) of subsection (a), the Special Counsel may investigate and seek corrective action under section 1214 and disciplinary action under section 1215 in the same way as if a prohibited personnel practice were involved.

(Added Pub. L. 101–12, §3(a)(13), Apr. 10, 1989, 103 Stat. 28; amended Pub. L. 103–94, §3, Oct. 6, 1993, 107 Stat. 1004.)

AMENDMENTS

1993—Subsec. (c). Pub. L. 103–94 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows:

''(1) If an investigation by the Special Counsel under subsection (a)(1) substantiates an allegation relating to any activity prohibited under section 7324, the Special Counsel may petition the Merit Systems Protection Board for any penalties provided for under section 7325.

''(2) If the Special Counsel receives an allegation concerning any matter under paragraph (3), (4), or (5) of subsection (a), the Special Counsel may investigate and seek corrective action under section 1214 in the same way as if a prohibited personnel practice were involved.''

EFFECTIVE DATE OF 1993 AMENDMENT; SAVINGS PROVISION

Amendment by Pub. L. 103–94 effective 120 days after Oct. 6, 1993, but not to release or extinguish any penalty, forfeiture, or liability incurred under amended provision, which is to be treated as remaining in force for purpose of that penalty, forfeiture, or liability, and no provision of Pub. L. 103–94 to affect any proceedings with respect to which charges were filed on or before 120 days after Oct. 6, 1993, with orders to be issued in such proceedings and appeals taken therefrom as if Pub. L. 103–94 had not been enacted, see section 12 of Pub. L. 103–94, set out as an Effective Date; Savings Provision note under section 7321 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1212, 1215, 2105 of this title.

§ 1217. Transmittal of information to Congress

The Special Counsel or any employee of the Special Counsel designated by the Special Counsel, shall transmit to the Congress on the request of any committee or subcommittee thereof, by report, testimony, or otherwise, information and the Special Counsel's views on functions, responsibilities, or other matters relating to the Office. Such information shall be transmitted concurrently to the President and any other appropriate agency in the executive branch.

(Added Pub. L. 101–12, §3(a)(13), Apr. 10, 1989, 103 Stat. 28.)

§ 1218. Annual report

The Special Counsel shall submit an annual report to the Congress on the activities of the Special Counsel, including the number, types, and disposition of allegations of prohibited personnel practices filed with it, investigations conducted by it, cases in which it did not make a determination whether there are reasonable grounds to believe that a prohibited personnel practice has occurred, exists, or is to be taken within the 240-day period specified in section 1214(b)(2)(A)(i), and actions initiated by it before the Merit Systems Protection Board, as well as a description of the recommendations and reports made by it to other agencies pursuant to this subchapter, and the actions taken by the agencies as a result of the reports or recommendations. The report required by this section shall include whatever recommendations for legislation or other action by Congress the Special Counsel may consider appropriate.

(Added Pub. L. 101–12, §3(a)(13), Apr. 10, 1989, 103 Stat. 29; amended Pub. L. 103–424, §3(e), Oct. 29, 1994, 108 Stat. 4363.)

AMENDMENTS

1994—Pub. L. 103–424 inserted ''cases in which it did not make a determination whether there are reasonable grounds to believe that a prohibited personnel practice has occurred, exists, or is to be taken within the 240-day period specified in section 1214(b)(2)(A)(i),'' after ''investigations conducted by it,''.

§ 1219. Public information

(a) The Special Counsel shall maintain and make available to the public—

(1) a list of noncriminal matters referred to heads of agencies under subsection (c) of section 1213, together with reports from heads of agencies under subsection (c)(1)(B) of such section relating to such matters;

(2) a list of matters referred to heads of agencies under section 1215(c)(2);

(3) a list of matters referred to heads of agencies under subsection (e) of section 1214, together with certifications from heads of agencies under such subsection; and

(4) reports from heads of agencies under section 1213(g)(1).

(b) The Special Counsel shall take steps to ensure that any list or report made available to the public under this section does not contain any information the disclosure of which is prohibited by law or by Executive order requiring that information be kept secret in the interest of national defense or the conduct of foreign affairs.

(Added Pub. L. 101–12, §3(a)(13), Apr. 10, 1989, 103 Stat. 29.)

SUBCHAPTER III—INDIVIDUAL RIGHT OF ACTION IN CERTAIN REPRISAL CASES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 7121 of this title; title 12 sections 1441a, 1831j.

§ 1221. Individual right of action in certain reprisal cases

(a) Subject to the provisions of subsection (b) of this section and subsection 1214(a)(3), an employee, former employee, or applicant for employment may, with respect to any personnel action taken, or proposed to be taken, against such employee, former employee, or applicant for employment, as a result of a prohibited personnel practice described in section 2302(b)(8), seek corrective action from the Merit Systems Protection Board.

(b) This section may not be construed to prohibit any employee, former employee, or applicant for employment from seeking corrective

action from the Merit Systems Protection Board before seeking corrective action from the Special Counsel, if such employee, former employee, or applicant for employment has the right to appeal directly to the Board under any law, rule, or regulation.

(c)(1) Any employee, former employee, or applicant for employment seeking corrective action under subsection (a) may request that the Board order a stay of the personnel action involved.

(2) Any stay requested under paragraph (1) shall be granted within 10 calendar days (excluding Saturdays, Sundays, and legal holidays) after the date the request is made, if the Board determines that such a stay would be appropriate.

(3)(A) The Board shall allow any agency which would be subject to a stay under this subsection to comment to the Board on such stay request.

(B) Except as provided in subparagraph (C), a stay granted under this subsection shall remain in effect for such period as the Board determines to be appropriate.

(C) The Board may modify or dissolve a stay under this subsection at any time, if the Board determines that such a modification or dissolution is appropriate.

(d)(1) At the request of an employee, former employee, or applicant for employment seeking corrective action under subsection (a), the Board shall issue a subpoena for the attendance and testimony of any person or the production of documentary or other evidence from any person if the Board finds that the testimony or production requested is not unduly burdensome and appears reasonably calculated to lead to the discovery of admissible evidence.

(2) A subpoena under this subsection may be issued, and shall be enforced, in the same manner as applies in the case of subpoenas under section 1204.

(e)(1) Subject to the provisions of paragraph (2), in any case involving an alleged prohibited personnel practice as described under section 2302(b)(8), the Board shall order such corrective action as the Board considers appropriate if the employee, former employee, or applicant for employment has demonstrated that a disclosure described under section 2302(b)(8) was a contributing factor in the personnel action which was taken or is to be taken against such employee, former employee, or applicant. The employee may demonstrate that the disclosure was a contributing factor in the personnel action through circumstantial evidence, such as evidence that—

(A) the official taking the personnel action knew of the disclosure; and

(B) the personnel action occurred within a period of time such that a reasonable person could conclude that the disclosure was a contributing factor in the personnel action.

(2) Corrective action under paragraph (1) may not be ordered if the agency demonstrates by clear and convincing evidence that it would have taken the same personnel action in the absence of such disclosure.

(f)(1) A final order or decision shall be rendered by the Board as soon as practicable after the commencement of any proceeding under this section.

(2) A decision to terminate an investigation under subchapter II may not be considered in any action or other proceeding under this section.

(3) If, based on evidence presented to it under this section, the Merit Systems Protection Board determines that there is reason to believe that a current employee may have committed a prohibited personnel practice, the Board shall refer the matter to the Special Counsel to investigate and take appropriate action under section 1215.

(g)(1)(A) If the Board orders corrective action under this section, such corrective action may include—

(i) that the individual be placed, as nearly as possible, in the position the individual would have been in had the prohibited personnel practice not occurred; and

(ii) back pay and related benefits, medical costs incurred, travel expenses, and any other reasonable and foreseeable consequential changes.

(B) Corrective action shall include attorney's fees and costs as provided for under paragraphs (2) and (3).

(2) If an employee, former employee, or applicant for employment is the prevailing party before the Merit Systems Protection Board, and the decision is based on a finding of a prohibited personnel practice, the agency involved shall be liable to the employee, former employee, or applicant for reasonable attorney's fees and any other reasonable costs incurred.

(3) If an employee, former emloyee,[1] or applicant for employment is the prevailing party in an appeal from the Merit Systems Protection Board, the agency involved shall be liable to the employee, former employee, or applicant for reasonable attorney's fees and any other reasonable costs incurred, regardless of the basis of the decision.

(h)(1) An employee, former employee, or applicant for employment adversely affected or aggrieved by a final order or decision of the Board under this section may obtain judicial review of the order or decision.

(2) A petition for review under this subsection shall be filed with such court, and within such time, as provided for under section 7703(b).

(i) Subsections (a) through (h) shall apply in any proceeding brought under section 7513(d) if, or to the extent that, a prohibited personnel practice as defined in section 2302(b)(8) is alleged.

(j) In determining the appealability of any case involving an allegation made by an individual under the provisions of this chapter, neither the status of an individual under any retirement system established under a Federal statute nor any election made by such individual under any such system may be taken into account.

(Added Pub. L. 101–12, § 3(a)(13), Apr. 10, 1989, 103 Stat. 29; amended Pub. L. 103–424, §§ 4, 8(b), Oct. 29, 1994, 108 Stat. 4363, 4365.)

AMENDMENTS

1994—Subsec. (d)(1). Pub. L. 103–424, § 4(a), added par. (1) and struck out former par. (1) which read as follows:

[1] So in original. Probably should be ''employee,''.

''At the request of an employee, former employee, or applicant for employment seeking corrective action under subsection (a), the Board may issue a subpoena for the attendance and testimony of any person or the production of documentary or other evidence from any person if the Board finds that such subpoena is necessary for the development of relevant evidence.''

Subsec. (e)(1). Pub. L. 103–424, §4(b), which directed the amendment of section 1221(e)(1), without specifying the Code title to be amended, by inserting at end ''The employee may demonstrate that the disclosure was a contributing factor in the personnel action through circumstantial evidence, such as evidence that—

''(A) the official taking the personnel action knew of the disclosure; and

''(B) the personnel action occurred within a period of time such that a reasonable person could conclude that the disclosure was a contributing factor in the personnel action.'', was executed to subsec. (e)(1) of this section to reflect the probable intent of Congress.

Subsec. (f)(3). Pub. L. 103–424, §4(c), added par. (3).

Subsec. (g). Pub. L. 103–424, §8(b), added par. (1) and redesignated former pars. (1) and (2) as (2) and (3), respectively.

EFFECTIVE DATE

Subchapter effective 90 days following Apr. 10, 1989, see section 11 of Pub. L. 101–12, set out as an Effective Date of 1989 Amendment note under section 1201 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1212, 1214, 1222, 2105, 2303, 7121 of this title; title 10 section 2409a; title 22 section 4139.

§ 1222. Availability of other remedies

Except as provided in section 1221(i), nothing in this chapter or chapter 23 shall be construed to limit any right or remedy available under a provision of statute which is outside of both this chapter and chapter 23.

(Added Pub. L. 101–12, §3(a)(13), Apr. 10, 1989, 103 Stat. 31.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2105 of this title.

CHAPTER 13—SPECIAL AUTHORITY

Sec.
1301. Rules.
1302. Regulations.
1303. Investigations; reports.
1304. Loyalty investigations; reports; revolving fund.
1305. Administrative law judges.
1306. Oaths to witnesses.
1307. Minutes.
1308. Annual reports.

AMENDMENTS

1978—Pub. L. 95–251, §2(c)(1), Mar. 27, 1978, 92 Stat. 183, substituted ''Administrative law judges'' for ''Hearing examiners'' in item 1305.

§ 1301. Rules

The Office of Personnel Management shall aid the President, as he may request, in preparing the rules he prescribes under this title for the administration of the competitive service.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 401; Pub. L. 95–454, title IX, §906(a)(2), Oct. 13, 1978, 92 Stat. 1224.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 633(1) (function of Civil Service Commission).	Jan. 16, 1883, ch. 27, §2(1) (function of Civil Service Commission), 22 Stat. 403.

The authority of the President to prescribe rules is carried into sections 2951, 3302, 3304(a), 3306(a), 3321, 7152, 7153, 7321, and 7322 of this title.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1978—Pub. L. 95–454 substituted ''Office of Personnel Management'' for ''Civil Service Commission''.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

§ 1302. Regulations

(a) The Office of Personnel Management, subject to the rules prescribed by the President under this title for the administration of the competitive service, shall prescribe regulations for, control, supervise, and preserve the records of, examinations for the competitive service.

(b) The Office shall prescribe and enforce regulations for the administration of the provisions of this title, and Executive orders issued in furtherance thereof, that implement the Congressional policy that preference shall be given to preference eligibles in certification for appointment, and in appointment, reinstatement, reemployment, and retention, in the competitive service in Executive agencies, permanent or temporary, and in the government of the District of Columbia.

(c) The Office shall prescribe regulations for the administration of the provisions of this title that implement the Congressional policy that preference shall be given to preference eligibles in certification for appointment, and in appointment, reinstatement, reemployment, and retention, in the excepted service in Executive agencies, permanent or temporary, and in the government of the District of Columbia.

(d) The Office may prescribe reasonable procedure and regulations for the administration of its functions under chapter 15 of this title.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 401; Pub. L. 95–454, title IX, §906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(a)	5 U.S.C. 633(2)7 (last 17 words), (3) (less last 10 words).	Jan. 16, 1883, ch. 27, §§2(2)7 (last 17 words), (3) (less last 10 words), 22 Stat. 404.
(b)	5 U.S.C. 851 (1st 76 words), 868 (less proviso).	June 27, 1944, ch. 287, §§2 (1st 76 words), 19, 58 Stat. 387, 391.
(c)	5 U.S.C. 851 (1st 76 words), 860.	June 27, 1944, ch. 287, §§2 (1st 76 words), 11, 58 Stat. 387, 390.
(d)	5 U.S.C. 118k(d) (1st sentence).	July 19, 1940, ch. 640 §4 ''Sec. 12(d) (1st sentence)'', 54 Stat. 769.

Subsection (a) is based on former section 633(3) (less last 10 words). The regulation-making power conferred by that section covers the power conferred by former section 633(2)7 (last 17 words) which is, therefore, omitted. The requirement of notice is preserved in section 3304. The words ''through its members or the examiners'' are omitted as unnecessary in view of section 1104. The authority of the President to prescribe rules, based on former section 633(1) is carried into sections 2951, 3302, 3304(a), 3306(a), 3321, 7152, 7153, 7321, and 7322 of this title.

In subsections (b)–(d), the word ''rules'' is omitted as included in ''regulations''.

The provisions of the Veterans' Preference Act of 1944 (former sections 851–869) to which the regulation-making authority of subsections (b) and (c) apply are carried into sections 2108, 3305(b), 3306(a)(2), 3308–3320, 3351, 3363, 3364, and 7701, subchapter I of chapter 35, and subchapter II of chapter 75 of this title. The first 76 words of former section 851 are added here to preserve the general statement of policy in the light of which the substantive provisions that formerly comprised the Veterans' Preference Act of 1944 are to be interpreted. See *Elder* v. *Brannan*, 241 U.S. 277, 286. In subsection (b), the words ''in the competitive service in Executive agencies, permanent or temporary, and in the government of the District of Columbia'', and in subsection (c) the words ''in the excepted service in Executive agencies, permanent or temporary, and in the government of the District of Columbia'' are coextensive with and substituted for ''in civilian positions in all establishments, agencies, bureaus, administrations, projects, and departments of the Government, permanent or temporary, and in either (a) the classified civil service; (b) the unclassified civil service; (c) any temporary or emergency establishment, agency, bureau, administration, project, and department created by Acts of Congress or Presidential Executive order'', in view of the exclusion of positions in the legislative and judicial branches by former section 869.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1978—Subsecs. (a) to (d). Pub. L. 95–454 substituted ''Office of Personnel Management'' for ''Civil Service Commission'' and ''Office'' for ''Commission'' wherever appearing.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

EXECUTIVE ORDER NO. 10561

Ex. Ord. No. 10561, Sept. 13, 1954, 19 F.R. 5963, which related to official personnel folders, was revoked by section 2–201 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out as a note under section 1101 of this title.

EXECUTIVE ORDER NO. 11397

Ex. Ord. No. 11397, Feb. 9, 1968, 33 F.R. 2833, formerly set out as a note under this section, which related to transitional appointments of veterans who served during the Vietnam Era, was revoked by Ex. Ord. No. 11521, Mar. 26, 1970, 35 F.R. 5311, set out as a note under section 3302 of this title.

CROSS REFERENCES

Preference eligibles—
- Adverse actions, see section 7511 et seq. of this title.
- Back pay, reinstatement, or restoration after removal, suspension, or furlough, see section 5596 of this title.
- Competitive service, see section 3309 et seq. of this title.
- Definition, see section 2108 of this title.
- Retention preference, see section 3504 of this title.
- Transfers, see section 3351 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1303 of this title; title 18 section 1917; title 20 section 241; title 22 section 1438.

§ 1303. Investigations; reports

The Office of Personnel Management, Merit Systems Protection Board, and Special Counsel may investigate and report on matters concerning—

(1) the enforcement and effect of the rules prescribed by the President under this title for the administration of the competitive service and the regulations prescribed by the Office of Personnel Management under section 1302(a) of this title; and

(2) the action of an examiner, a board of examiners, and other employees concerning the execution of the provisions of this title that relate to the administration of the competitive service.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 401; Pub. L. 95–454, title IX, § 906(a)(4), (11), Oct. 13, 1978, 92 Stat. 1225.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 633(4).	Jan. 16, 1883, ch. 27, § 2(4), 22 Stat. 404.

The authority of the President to prescribe rules is carried into sections 2951, 3302, 3304(a), 3306(a), 3321, 7152, 7153, 7321, and 7322 of this title.

In paragraph (2), the words ''in respect to the execution of this act'' are changed to ''concerning the execution of the provisions of this title that relate to the administration of the competitive service'' to avoid having to refer in the text to the sections of this title into which the Civil Service Act, the act referred to, is codified. These sections are: 1101, 1102, 1105, 1302(a), 1303, 1307, 1308(a)(1), 2102, 2951, 3302, 3303, 3304(a), (d), 3305(a), 3306, 3318(a), 3319(a), 3321, 7152, 7153, 7321, 7322, and 7352. The words ''the provisions of this title that relate to the administration of the competitive service'' will include some of the sections derived from the Veterans' Preference Act of 1944 (former sections 851–869). They are based in part on former section 860 (codified in § 1302(c)). The authorization in that section to make and enforce regulations for the competitive service would include the authority to investigate and report. The words ''and other employees'' are substituted for ''and its own subordinates, and those in the public service'' in view of the definition of ''employee'' in section 2105.

Standard changes are made to conform with the definition applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1978—Pub. L. 95–454 substituted in opening par. ''Office of Personnel Management, Merit Systems Protection Board, and Special Counsel'' for ''Civil Service Commission'' and in par. (1) ''Office of Personnel Management'' for ''Commission''.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

§ 1304. Loyalty investigations; reports; revolving fund

(a) The Office of Personnel Management shall conduct the investigations and issue the reports required by the following statutes—

(1) sections 272b, 281b(e), and 290a of title 22;

(2) section 1874(c) of title 42; and

(3) section 1203(e) of title 6,[1] District of Columbia Code.

(b) When an investigation under subsection (a) of this section develops data indicating that the loyalty of the individual being investigated is questionable, the Office shall refer the matter to the Federal Bureau of Investigation for a full field investigation, a report of which shall be furnished to the Office for its information and appropriate action.

(c) When the President considers it in the national interest, he may have the investigations of a group or class, which are required by subsection (a) of this section, made by the Federal Bureau of Investigation rather than the Office.

(d) The investigation and report required by subsection (a) of this section shall be made by the Federal Bureau of Investigation rather than the Office for those specific positions which the Secretary of State certifies are of a high degree of importance or sensitivity.

(e)(1) A revolving fund is available, to the Office without fiscal year limitation, for financing investigations, training, and such other functions as the Office is authorized or required to perform on a reimbursable basis. However, the functions which may be financed in any fiscal year by the fund are restricted to those functions which are covered by the budget estimates submitted to the Congress for that fiscal year. To the maximum extent feasible, each individual activity shall be conducted generally on an actual cost basis over a reasonable period of time.

(2) The capital of the fund consists of the aggregate of—

(A) appropriations made to provide capital for the fund, which appropriations are hereby authorized, and

(B) the sum of the fair and reasonable value of such supplies, equipment, and other assets as the Office from time to time transfers to the fund (including the amount of the unexpended balances of appropriations or funds relating to activities the financing of which is transferred to the fund) less the amount of related liabilities, the amount of unpaid obligations, and the value of accrued annual leave of employees, which are attributable to the activities the financing of which is transferred to the fund.

(3) The fund shall be credited with—

(A) advances and reimbursements from available funds of the Office or other agencies, or from other sources, for those services and supplies provided at rates estimated by the Office as adequate to recover expenses of operation (including provision for accrued annual leave of employees and depreciation of equipment); and

(B) receipts from sales or exchanges of property, and payments for loss of or damage to property, accounted for under the fund.

(4) Any unobligated and unexpended balances in the fund which the Office determines to be in excess of amounts needed for activities financed by the fund shall be deposited in the Treasury of the United States as miscellaneous receipts.

(5) The Office shall prepare a business-type budget providing full disclosure of the results of operations for each of the functions performed by the Office and financed by the fund, and such budget shall be transmitted to the Congress and considered, in the manner prescribed by law for wholly owned Government corporations.

(6) The Comptroller General of the United States shall, as a result of his periodic reviews of the activities financed by the fund, report and make such recommendations as he deems appropriate to the Committee on Governmental Affairs of the Senate and the Committee on Post Office and Civil Service of the House of Representatives at least once every three years.

(f) An agency may use available appropriations to reimburse the Office or the Federal Bureau of Investigation for the cost of investigations, training, and functions performed for them under this section, or to make advances toward their cost. These advances and reimbursements shall be credited directly to the applicable appropriations of the Office or the Federal Bureau of Investigation.

(g) This section does not affect the responsibility of the Federal Bureau of Investigation to investigate espionage, sabotage, or subversive acts.

(Pub. L. 89– 554, Sept. 6, 1966, 80 Stat. 401; Pub. L. 91–189, §1, Dec. 30, 1969, 83 Stat. 851; Pub. L. 91–648, title V, §510, Jan. 5, 1971, 84 Stat. 1928; Pub. L. 95–454, title IX, §906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 96–60, title II, §203(a)(2), Aug. 15, 1979, 93 Stat. 398; Pub. L. 97–412, §1(a), Jan. 3, 1983, 96 Stat. 2047; Pub. L. 98–224, §5(b)(1), Mar. 2, 1984, 98 Stat. 48; Pub. L. 103–437, §3(a), Nov. 2, 1994, 108 Stat. 4581.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(b)–(d)	5 U.S.C. 655.	Apr. 5, 1952, ch. 159, §1 (provisos), 66 Stat. 44. July 31, 1953, ch. 283, §9, 67 Stat. 241.
(e)	5 U.S.C. 657.	June 5, 1952, ch. 369, §701 (par. under ''Civil Service Commission''), 66 Stat. 107.
(f)	[Uncodified].	Apr. 5, 1952, ch. 159, §4, 66 Stat. 44.
(g)	5 U.S.C. 656.	Apr. 5, 1952, ch. 159, §3, 66 Stat. 44.

Subsection (a) is based on section 1 of the Act of April 5, 1952, as amended, and is added for clarity. In subsection (a), the reference to section 10(b)(5)(B)(i) and (B)(ii) of the Act of August 1, 1946 (60 Stat. 766) is omitted because of the amendment of the Act of April 5, 1952, by the Act of July 31, 1953, ch. 283, 67 Stat. 240, and the reenactment of the provisions of the Act of April 5, 1952, insofar as they relate to the Atomic Energy Commission as section 145 of the Atomic Energy Act of 1954 (68 Stat. 942; 42 U.S.C. 2165). The references to section 1(2) of the Act of May 22, 1947 (61 Stat. 125), section 1 of the joint resolution of May 21, 1947 (61 Stat. 125), and

[1] See References in Text note below.

section 110(c) of the Act of April 3, 1948 (62 Stat. 137) are omitted as these Acts were repealed by the Act of Aug. 26, 1954, ch. 937 § 542(a) (1), (2), and (4), 68 Stat. 861. Reference to section 510 of the Mutual Security Act of 1951 (65 Stat. 381) is omitted because this section was replaced by section 531 of the Mutual Security Act of 1954 (68 Stat. 859) and the latter was repealed by the Act of Sept. 4, 1961, Pub. L. 87–195, § 642(2), 75 Stat. 460.

In subsection (d), the references to section 10(b)(5)(B)(i) and (ii) of the Atomic Energy Act of 1946, section 510 of the Mutual Security Act of 1951, a majority of the members of the Atomic Energy Commission, and the Director of Mutual Security (which was changed to Director of the International Cooperation Administration on authority of section 8 of 1953 Reorg. Plan No. 7, 67 Stat. 641, and Executive Order 10610 of May 9, 1955) are omitted because of the disposition of the two sections as explained with reference to subsection (a).

In subsection (e), the words ''There is established'' are omitted as executed.

In subsection (g), the reference to statutes other than this section is omitted because nothing in those statutes affect the responsibility in question.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

REFERENCES IN TEXT

Section 1874(c) of title 42, referred to in subsec. (a)(2), which related to clearance of National Science Foundation personnel, was repealed by Pub. L. 96–516, § 21(b)(1), Dec. 12, 1980, 94 Stat. 3010.

Section 1203(e) of title 6, District of Columbia Code, referred to in subsec. (a)(3), was amended and transferred to section 6–1405(5) of Title 6, Health and Safety, of the District of Columbia Code, and, as so amended, does not contain provisions relating to investigations and reports by the Office of Personnel Management.

AMENDMENTS

1994—Subsec. (e)(6). Pub. L. 103–437 substituted ''Committee on Governmental Affairs of the Senate and the Committee on Post Office and Civil Service of the House'' for ''Committees on Post Office and Civil Service of the Senate and House''.

1984—Subsec. (e)(1). Pub. L. 98–224 struck out cl. (i) designation and struck out cl. (ii) which provided that participation fees imposed by the President's Commission on Executive Exchange for private sector participation in its Executive Exchange Program be collected and credited to the fund, and be available for the costs of education and related travel of exchanged executives, for printing without regard to section 501 of title 44, and, in such amounts as specified in appropriations Acts, for entertainment expenses. See section 4109(d) of this title.

1983—Subsec. (e)(1). Pub. L. 97–412 designated existing provisions as cl. (i) and added cl. (ii).

1979—Subsec. (a)(1). Pub. L. 96–60 struck out reference to section 1434 of title 22.

1978—Subsecs. (a) to (f). Pub. L. 95–454 substituted ''Office of Personnel Management'' for ''Civil Service Commission'' and ''Office'' for ''Commission'' wherever appearing.

1971—Subsec. (e). Pub. L. 91–648 struck out in par. (1) ''of $4,000,000'' after ''revolving fund'' and inserted in par. (2)(A) '', which appropriations are hereby authorized''.

1969—Subsec. (e). Pub. L. 91–189, § 1(a), increased the scope of reimbursable services for which the fund may be used, restricted reimbursement to services which were included in the budget estimates submitted to Congress for that fiscal year, inserted a list of components which comprise the fund, specifically listed those items that would be credited directly to the capital fund, required that a budget be prepared by the Commission, and directed the Comptroller General as a result of the activities financed to make recommendations to the committees on Post Office and Civil Service of the Senate and House of Representatives at least once every three years.

Subsec. (f). Pub. L. 91–189, § 1(b), authorized an agency to use available appropriations to reimburse the Commission or the Federal Bureau of Investigation for the cost of training and functions performed.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 1(b) of Pub. L. 97–412 provided that: ''The authority granted in subsection (a) [amending this section] shall terminate on December 31, 1983.''

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–60 effective Oct. 1, 1979, see section 209 of Pub. L. 96–60, set out as an Effective Date note under section 1469 of Title 22, Foreign Relations and Intercourse.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

ABOLITION OF HOUSE COMMITTEE ON POST OFFICE AND CIVIL SERVICE

Committee on Post Office and Civil Service of House of Representatives abolished and its jurisdiction given primarily to Committee on Government Reform and Oversight by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

§ 1305. Administrative law judges

For the purpose of sections 3105, 3344, 4301(2)(D), and 5372 of this title and the provisions of section 5335(a)(B) of this title that relate to administrative law judges, the Office of Personnel Management may, and for the purpose of section 7521 of this title, the Merit Systems Protection Board may investigate, require reports by agencies, issue reports, including an annual report to Congress, prescribe regulations, appoint advisory committees as necessary, recommend legislation, subpena witnesses and records, and pay witness fees as established for the courts of the United States.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 402; Pub. L. 90–83, § 1(3), Sept. 11, 1967, 81 Stat. 196; Pub. L. 95–251, § 2(a)(1), (b)(1), Mar. 27, 1978, 92 Stat. 183; Pub. L. 95–454, title VIII, § 801(a)(3)(B)(iii), title IX, § 906(a)(12), Oct. 13, 1978, 92 Stat. 1221, 1225; Pub. L. 102–378, § 2(4), Oct. 2, 1992, 106 Stat. 1346.)

HISTORICAL AND REVISION NOTES

1966 ACT

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 1010 (5th sentence).	June 11, 1946, ch. 324, § 11 (5th sentence), 60 Stat. 244.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 ACT

This section amends 5 U.S.C. 1305 to correct a typographical error.

AMENDMENTS

1992—Pub. L. 102–378 substituted ''sections 3105'' for ''section 3105''.

1978—Pub. L. 95–454 substituted provisions respecting functions pursuant to specified sections of this title of

the Office of Personnel Management and the Merit Systems Protection Board for provisions respecting the functions pursuant to specified sections of this title of the Civil Service Commission.

Pub. L. 95–251 substituted ''Administrative law judges'' for ''Hearing examiners'' in section catchline and ''administrative law judges'' for ''hearing examiners'' in text.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 801(a)(3)(B)(iii) of Pub. L. 95–454 substituting ''5372'' for ''5362'' effective on first day of first applicable pay period beginning on or after the 90th day after Oct. 13, 1978, see section 801(a)(4) of Pub. L. 95–454, set out as an Effective Date note under section 5361 of this title.

Amendment by section 906(a)(12) of Pub. L. 95–454 respecting functions of the Office and the Board effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90–83 effective as of Sept. 6, 1966, for all purposes, see section 9(h) of Pub. L. 90–83, set out as a note under section 5102 of this title.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees in existence on Jan. 5, 1973, excluding committees composed wholly of full-time officers or employees of the Federal Government, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided for by law. See section 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to this title.

CROSS REFERENCES

Additional requirements imposed by statute or otherwise recognized by law not limited or repealed by this section, see section 559 of this title.

Subsequent statutes to supersede or modify this section only to the extent that they do so expressly, see section 559 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 559 of this title.

§ 1306. Oaths to witnesses

The Director of the Office of Personnel Management and authorized representatives of the Director may administer oaths to witnesses in matters pending before the Office.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 402; Pub. L. 95–454, title IX, §906(a)(13), Oct. 13, 1978, 92 Stat. 1226.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 634.	Aug. 23, 1912, ch. 350, §1 (last par. under ''Civil Service Commission''), 37 Stat. 372.
.....	[Uncodified].	1949 Reorg. Plan No. 5, §2(c), eff. Aug. 19, 1949, 63 Stat. 1069.

The section is rewritten to reflect expansion of authority of the Commission to include its Chairman under section 2(c) of 1949 Reorg. Plan No. 5.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1978—Pub. L. 95–454 substituted provisions respecting powers of the Director of the Office of Personnel Management in administering oaths in matters before the Office for provisions respecting powers of the Chairman of the Civil Service Commission and each Commissioner in administering oaths in matters before the Commission.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

§ 1307. Minutes

The Civil Service Commission shall keep minutes of its proceedings.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 402.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 633(3) (last 10 words).	Jan. 16, 1883, ch. 27, §2(3) (last 10 words), 22 Stat. 404.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

TRANSFER OF FUNCTIONS

Functions vested by statute in United States Civil Service Commission transferred to Director of Office of Personnel Management (except as otherwise specified) by Reorg. Plan No. 2 of 1978, §102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of this title, effective Jan. 1, 1979, as provided by section 1–102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of this title.

§ 1308. Annual reports

(a) The Office shall publish an annual report on the operation of subchapter III of chapter 83 of this title, including a statement concerning the status of the Civil Service Retirement and Disability Fund.

(b) The Office shall report annually to Congress on the operation of chapter 87 of this title.

(c) The Office shall report annually to Congress on the operation of chapter 89 of this title.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 402; Pub. L. 91–93, title I, §104, Oct. 20, 1969, 83 Stat. 138; Pub. L. 93–156, Nov. 21, 1973, 87 Stat. 623; Pub. L. 95–454, title IX, §906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 96–54, §2(a)(3), Aug. 14, 1979, 93 Stat. 381; Pub. L. 96–470, title I, §121, Oct. 19, 1980, 94 Stat. 2241.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(a)(1)	5 U.S.C. 633(5).	Jan. 16, 1883, ch. 27, §2(5), 22 Stat. 404.
(a)(2)	5 U.S.C. 2121 (less 1st 29 words).	Sept. 1, 1954, ch. 1208, §302 (less 1st 29 words), 68 Stat. 1112.
(a)(3)	5 U.S.C. 118i(c).	Aug. 25, 1950, ch. 784, §1 ''Sec. 9(c)'', 64 Stat. 475.
(a)(4)	5 U.S.C. 2317(b).	July 7, 1958, Pub. L. 85–507, §18(b), 72 Stat. 336.
(b)	5 U.S.C. 2317(c).	July 7, 1958, Pub. L. 85–507, §18(c), 72 Stat. 336.
(c)	5 U.S.C. 2266(f).	July 31, 1956, ch. 804, §401 ''Sec. 16(f)'', 70 Stat. 759.

HISTORICAL AND REVISION NOTES—CONTINUED

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(d)	5 U.S.C. 2102 (less applicability to 5 U.S.C. 2099).	Aug. 17, 1954, ch. 752, § 13 (less applicability to § 10) 68 Stat. 743.
(e)	5 U.S.C. 3011.	Sept. 28, 1959, Pub. L. 86–382. § 12, 73 Stat. 716.

In subsection (a)(1), the requirement of reasons for exceptions to the civil service rules and regulations is added on authority of former section 633(2)8 (last sentence), which is carried into section 3302.

In subsection (b), the words ''for his approval'' are omitted as unnecessary because the President has the inherent power, based on the Constitutional separation of powers, to approve or disapprove such a report.

Standard charges are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

REFERENCES IN TEXT

The Office, referred to in text, is the Office of Personnel Management.

AMENDMENTS

1980—Subsec. (a). Pub. L. 96–470 redesignated subsec. (c) as (a) and struck out former subsec. (a) which required the Office of Personnel Management to make an annual report to the President for transmittal to Congress on the Office's actions in the administration of the competitive service, the rules and regulations and exceptions to the rules and regulations, with reasons for the exceptions, in force, the practical effect of the rules and regulations, recommendations for better administration of the competitive service, results of the incentive awards program authorized by chapter 45 of this title, the names, addresses, and nature of employment of individuals on whom the Merit Systems Protection Board has imposed a penalty for prohibited political activity under section 7325 of this title, and a statement on the training of employees under chapter 41 of this title.

Subsec. (b). Pub. L. 96–470 redesignated subsec. (d) as (b) and struck out former subsec. (b) which required the Office of Personnel Management to provide annually to Congress an analysis of the administration and operation of chapter 41 of this title.

Subsecs. (c) to (e). Pub. L. 96–470 redesignated subsecs. (c) to (e) as (a) to (c), respectively.

1979—Subsec. (a)(3). Pub. L. 96–54 substituted ''Merit Systems Protection Board'' for ''Office''.

1978—Subsecs. (a) to (e). Pub. L. 95–454 substituted ''Office of Personnel Management'' and ''Office'' for ''Civil Service Commission'' and ''Commission'', respectively, wherever appearing.

1973—Subsec. (b). Pub. L. 93–156 substituted requirement that Commission provide annually an analysis to Congress of the administration and operation of chapter 41 of this title, for prior requirement that Commission report annually to the President for transmittal to Congress on the administration of chapter 41 of this title, including the information received by the Commission from the agencies under section 4113(b) (2) and (3) of this title.

1969—Subsec. (c). Pub. L. 91–93 struck out ''on a normal cost plus interest basis'' after ''Fund''.

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.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3407, 4705 of this title.

CHAPTER 15—POLITICAL ACTIVITY OF CERTAIN STATE AND LOCAL EMPLOYEES

Sec.
1501. Definitions.
1502. Influencing elections; taking part in political campaigns; prohibitions; exceptions.
1503. Nonpartisan candidacies permitted.
1504. Investigations; notice of hearing.
1505. Hearings; adjudications; notice of determinations.
1506. Orders; withholding loans or grants; limitations.
1507. Subpenas and depositions.
1508. Judicial review.

AMENDMENTS

1974—Pub. L. 93–443, title IV, § 401(b)(2), Oct. 15, 1974, 88 Stat. 1290, substituted ''candidacies'' for ''political activity'' in item 1503.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 1212, 1215, 1216, 1302, 4703 of this title; title 23 section 142; title 42 sections 2996e, 3056, 4728, 9851.

§ 1501. Definitions

For the purpose of this chapter—

(1) ''State'' means a State or territory or possession of the United States;

(2) ''State or local agency'' means the executive branch of a State, municipality, or other political subdivision of a State, or an agency or department thereof;

(3) ''Federal agency'' means an Executive agency or other agency of the United States, but does not include a member bank of the Federal Reserve System; and

(4) ''State or local officer or employee'' means an individual employed by a State or local agency whose principal employment is in connection with an activity which is financed in whole or in part by loans or grants made by the United States or a Federal agency, but does not include—

(A) an individual who exercises no functions in connection with that activity; or

(B) an individual employed by an educational or research institution, establishment, agency, or system which is supported in whole or in part by a State or political subdivision thereof, or by a recognized religious, philanthropic, or cultural organization.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 403; Pub. L. 93–443, title IV, § 401(c), Oct. 15, 1974, 88 Stat. 1290.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(1)	5 U.S.C. 118k–2.	July 19, 1940, ch. 640, § 4 ''Sec. 19'', 54 Stat. 772.
(2), (3)	5 U.S.C. 118k(f).	July 19, 1940, ch. 640, § 4 ''Sec. 12(f)'', 54 Stat. 770.
(4)	5 U.S.C. 118k(a) (1st 41 words), (e).	July 19, 1940, ch. 640, § 4 ''Sec 12(a) (1st 41 words), (e)'', 54 Stat. 767, 770.

HISTORICAL AND REVISION NOTES—CONTINUED

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
	5 U.S.C. 118k–1 (as applicable to 5 U.S.C. 118k).	Oct. 24, 1942, ch. 620 ''Sec. 21 (as applicable to §12 of the Act of Aug. 2, 1939; added July 19, 1940, ch. 640, §4, 54 Stat. 767)'', 56 Stat. 986.
(5)	5 U.S.C. 118*l* (as applicable to 5 U.S.C. 118k).	July 19, 1940, ch. 640, §4 ''Sec. 15 (as applicable to §12 of the Act of Aug. 2, 1939; added July 19, 1940, ch. 640, §4, 54 Stat. 767)'', 54 Stat. 771.

In paragraph (4)(B), the words ''or by any Territory or Territorial possession of the United States'' are omitted in view of the definition of ''State'' in paragraph (1).

In paragraph (5), the words ''July 19, 1940'' are substituted for ''at the time this section takes effect''.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1974—Par. (5). Pub. L. 93–443 struck out par. (5) which defined ''an active part in political management or in political campaigns''.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–443 effective Jan. 1, 1975, see section 410(a) of Pub. L. 93–443, set out as a note under section 431 of Title 2, The Congress.

CROSS REFERENCES

Political activities of certain Federal employees and employees of the government of the District of Columbia, see section 7321 et seq. of this title.

§ 1502. Influencing elections; taking part in political campaigns; prohibitions; exceptions

(a) A State or local officer or employee may not—

(1) use his official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for office;

(2) directly or indirectly coerce, attempt to coerce, command, or advise a State or local officer or employee to pay, lend, or contribute anything of value to a party, committee, organization, agency, or person for political purposes; or

(3) be a candidate for elective office.

(b) A State or local officer or employee retains the right to vote as he chooses and to express his opinions on political subjects and candidates.

(c) Subsection (a)(3) of this section does not apply to—

(1) the Governor or Lieutenant Governor of a State or an individual authorized by law to act as Governor;

(2) the mayor of a city;

(3) a duly elected head of an executive department of a State or municipality who is not classified under a State or municipal merit or civil-service system; or

(4) an individual holding elective office.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 404; Pub. L. 93–443, title IV, §401(a), Oct. 15, 1974, 88 Stat. 1290.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 118k(a) (less 1st 41 words).	July 19, 1940, ch. 640, §4 ''Sec. 12(a) (less 1st 41 words)'', 54 Stat. 767.

In subsection (a), the term ''State or local officer or employee'', defined in section 1501, is substituted for the first 41 words of former section 118k(a). The words ''any part of his salary or compensation'' are omitted as included in ''anything of value''.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1974—Subsec. (a)(3). Pub. L. 93–443 substituted ''be a candidate for elective office'' for ''take an active part in political management or in political campaigns''.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–443 effective Jan. 1, 1975, see section 410(a) of Pub. L. 93–443, set out as a note under section 431 of Title 2, The Congress.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1503, 1504, 1505, 1506 of this title; title 42 section 9851.

§ 1503. Nonpartisan candidacies permitted

Section 1502(a)(3) of this title does not prohibit any State or local officer or employee from being a candidate in any election if none of the candidates is to be nominated or elected at such election as representing a party any of whose candidates for Presidential elector received votes in the last preceding election at which Presidential electors were selected.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 404; Pub. L. 93–443, title IV, §401(b)(1), Oct. 15, 1974, 88 Stat. 1290.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 118n (as applicable to 5 U.S.C. 118k(a)).	July 19, 1940, ch. 640, §4 ''Sec. 18 (as applicable to §12 of the Act of Aug. 2, 1939; added July 19, 1940, ch. 640, §4, 54 Stat. 767)'', 54 Stat. 772.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1974—Pub. L. 93–443 substituted ''candidacies'' for ''political activity'' in section catchline and provision permitting nonpartisan candidacies for prior provision permitting political activity in connection with (1) an election and the preceding campaign if none of the candidates was to be nominated or elected at that election as representing a party any of whose candidates for presidential elector received votes in the last preceding election at which presidential electors were selected, or (2) a question which was not specifically identified with a National or State political party and deeming questions relating to constitutional amendments, referendums, approval of municipal ordinances, and others of a similar character as not specifically identified with a National or State political party.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–443 effective Jan. 1, 1975, see section 410(a) of Pub. L. 93–443, set out as a note under section 431 of Title 2, The Congress.

§ 1504. Investigations; notice of hearing

When a Federal agency charged with the duty of making a loan or grant of funds of the United States for use in an activity by a State or local officer or employee has reason to believe that the officer or employee has violated section 1502 of this title, it shall report the matter to the Special Counsel. On receipt of the report or on receipt of other information which seems to the Special Counsel to warrant an investigation, the Special Counsel shall investigate the report and such other information and present his findings and any charges based on such findings to the Merit Systems Protection Board, which shall—

(1) fix a time and place for a hearing; and

(2) send, by registered or certified mail, to the officer or employee charged with the violation and to the State or local agency employing him a notice setting forth a summary of the alleged violation and giving the time and place of the hearing.

The hearing may not be held earlier than 10 days after the mailing of the notice.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 405; Pub. L. 95–454, title IX, § 906(a)(7), Oct. 13, 1978, 92 Stat. 1225.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 118k(b) (1st and 2d sentences, and 4th through 17th words of 3d sentence).	July 19, 1940, ch. 640 § 4 ''Sec. 12(b) (1st and 2d sentences, and 4th through 17th words of 3d sentence)'', 54 Stat. 768. June 11, 1960, Pub. L. 86–507, § 1(1), 74 Stat. 200.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1978—Pub. L. 95–454 substituted provisions respecting the functions of the Special Counsel and the Merit Systems Protection Board for provisions respecting the functions of the Civil Service Commission.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1505, 1508 of this title.

§ 1505. Hearings; adjudications; notice of determinations

Either the State or local officer or employee or the State or local agency employing him, or both, are entitled to appear with counsel at the hearing under section 1504 of this title, and be heard. After this hearing, the Merit Systems Protection Board shall—

(1) determine whether a violation of section 1502 of this title has occurred;

(2) determine whether the violation warrants the removal of the officer or employee from his office or employment; and

(3) notify the officer or employee and the agency of the determination by registered or certified mail.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 405; Pub. L. 95–454, title IX, § 906(a)(6), Oct. 13, 1978, 92 Stat. 1225.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 118k(b) (3d sentence, less 4th, through 17th words, and 4th sentence).	July 19, 1940, ch. 640, § 4 ''Sec. 12(b) (3d sentence, less 4th through 17th words, and 4th sentence)'', 54 Stat. 768. June 11, 1960, Pub. L. 86–507, § 1(1), 74 Stat. 200.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1978—Pub. L. 95–454 substituted ''Merit Systems Protection Board'' for ''Civil Service Commission''.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1508 of this title.

§ 1506. Orders; withholding loans or grants; limitations

(a) When the Merit Systems Protection Board finds—

(1) that a State or local officer or employee has not been removed from his office or employment within 30 days after notice of a determination by the Board that he has violated section 1502 of this title and that the violation warrants removal; or

(2) that the State or local officer or employee has been removed and has been appointed within 18 months after his removal to an office or employment in the same State in a State or local agency which does not receive loans or grants from a Federal agency;

the Board shall make and certify to the appropriate Federal agency an order requiring that agency to withhold from its loans or grants to the State or local agency to which notice was given an amount equal to 2 years' pay at the rate the officer or employee was receiving at the time of the violation. When the State or local agency to which appointment within 18 months after removal has been made is one that receives loans or grants from a Federal agency, the Board order shall direct that the withholding be made from that State or local agency.

(b) Notice of the order shall be sent by registered or certified mail to the State or local agency from which the amount is ordered to be withheld. After the order becomes final, the Federal agency to which the order is certified shall withhold the amount in accordance with the terms of the order. Except as provided by

section 1508 of this title, a determination of order of the Board becomes final at the end of 30 days after mailing the notice of the determination or order.

(c) The Board may not require an amount to be withheld from a loan or grant pledged by a State or local agency as security for its bonds or notes if the withholding of that amount would jeopardize the payment of the principal or interest on the bonds or notes.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 405; Pub. L. 95–454, title IX, §906(a)(6), Oct. 13, 1978, 92 Stat. 1225.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 118k(b) (less 1st 4 sentences).	July 19, 1940, ch. 640, §4 ''Sec. 12(b) (less 1st 4 sentences)'', 54 Stat. 768. June 11, 1960, Pub. L. 86–507, §1(1), 74 Stat. 200.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1978—Subsec. (a). Pub. L. 95–454 substituted ''Merit Systems Protection Board'' for ''Civil Service Commission'' and ''Board'' for ''Commission'', respectively, wherever appearing.

Subsecs. (b), (c). Pub. L. 95–454 substituted ''Board'' for ''Commission''.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1508 of this title.

§ 1507. Subpenas and depositions

(a) The Merit Systems Protection Board may require by subpena the attendance and testimony of witnesses and the production of documentary evidence relating to any matter before it as a result of this chapter. Any member of the Board may sign subpenas, and members of the Board and its examiners when authorized by the Board may administer oaths, examine witnesses, and receive evidence. The attendance of witnesses and the production of documentary evidence may be required from any place in the United States at the designated place of hearing. In case of disobedience to a subpena, the Board may invoke the aid of a court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence. In case of contumacy or refusal to obey a subpena issued to a person, the United States District Court within whose jurisdiction the inquiry is carried on may issue an order requiring him to appear before the Board, or to produce documentary evidence if so ordered, or to give evidence concerning the matter in question; and any failure to obey the order of the court may be punished by the court as a contempt thereof.

(b) The Board may order testimony to be taken by deposition at any stage of a proceeding or investigation before it as a result of this chapter. Depositions may be taken before an individual designated by the Board and having the power to administer oaths. Testimony shall be reduced to writing by the individual taking the deposition, or under his direction, and shall be subscribed by the deponent. Any person may be compelled to appear and depose and to produce documentary evidence before the Board as provided by this section.

(c) A person may not be excused from attending and testifying or from producing documentary evidence or in obedience to a subpena on the ground that the testimony or evidence, documentary or otherwise required of him may tend to incriminate him or subject him to a penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled to testify, or produce evidence, documentary or otherwise, before the Board in obedience to a subpena issued by it. A person so testifying is not exempt from prosecution and punishment for perjury committed in so testifying.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 406; Pub. L. 95–454, title IX, §906(a)(6), Oct. 13, 1978, 92 Stat. 1225.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 118k(d) (less 1st sentence).	July 19, 1940, ch. 640, §4 ''Sec. 12(d) (less 1st sentence)'', 54 Stat. 769.

In subsection (a), the word ''affirmation'' is omitted as included in ''oath'' on authority of section 1 of title 1, United States Code. The title of the court is changed to conform to title 28.

In subsection (c), the prohibition is restated in positive form.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1978—Subsec. (a). Pub. L. 95–454 substituted ''Merit Systems Protection Board'' and ''Board'' for ''Civil Service Commission'' and ''Commission'', respectively, wherever appearing.

Subsecs. (b), (c). Pub. L. 95–454 substituted ''Board'' for ''Commission'' wherever appearing.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

§ 1508. Judicial review

A party aggrieved by a determination or order of the Merit Systems Protection Board under section 1504, 1505, or 1506 of this title may, within 30 days after the mailing of notice of the determination or order, institute proceedings for review thereof by filing a petition in the United States District Court for the district in which the State or local officer or employee resides. The institution of the proceedings does not operate as a stay of the determination or order unless—

(1) the court specifically orders a stay; and

(2) the officer or employee is suspended from his office or employment while the proceedings are pending.

A copy of the petition shall immediately be served on the Board, and thereupon the Board shall certify and file in the court a transcript of the record on which the determination or order was made. The court shall review the entire record including questions of fact and questions of law. If application is made to the court for leave to adduce additional evidence, and it is shown to the satisfaction of the court that the additional evidence may materially affect the result of the proceedings and that there were reasonable grounds for failure to adduce this evidence in the hearing before the Board, the court may direct that the additional evidence be taken before the Board in the manner and on the terms and conditions fixed by the court. The Board may modify its findings of fact or its determination or order in view of the additional evidence and shall file with the court the modified findings, determination, or order; or the modified findings of fact, if supported by substantial evidence, are conclusive. The court shall affirm the determination or order, or the modified determination or order, if the court determines that it is in accordance with law. If the court determines that the determination or order, or the modified determination or order, is not in accordance with law, the court shall remand the proceeding to the Board with directions either to make a determination or order determined by the court to be lawful or to take such further proceedings as, in the opinion of the court, the law requires. The judgment and decree of the court are final, subject to review by the appropriate United States Court of Appeals as in other cases, and the judgment and decree of the court of appeals are final, subject to review by the Supreme Court of the United States on certiorari or certification as provided by section 1254 of title 28. If a provision of this section is held to be invalid as applied to a party by a determination or order of the Board, the determination or order becomes final and effective as to that party as if the provision had not been enacted.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 406; Pub. L. 95–454, title IX, § 906(a)(6), Oct. 13, 1978, 92 Stat. 1225.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 118k(c).	July 19, 1940, ch. 640, § 4 ''Sec. 12(c)'', 54 Stat. 768.

Sections 346 and 347 of title 28 referred to in former section 118k(c) were repealed by the Act of June 25, 1948, ch. 646, § 39, 62 Stat. 862, and are now covered by section 1254 of title 28. The titles of the courts are changed to conform to title 28.

In the reference to filing a written petition, ''written'' is omitted as unnecessary.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1978—Pub. L. 95–454 substituted ''Merit Systems Protection Board'' and ''Board'' for ''Civil Service Commission'' and ''Commission'', respectively, wherever appearing.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1506 of this title.

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AMENDMENTS

1993—Pub. L. 103–89, §3(a)(2), Sept. 30, 1993, 107 Stat. 981, struck out item for chapter 54 ''Performance Management and Recognition System''.

1986—Pub. L. 99–335, title I, §101(b), June 6, 1986, 100 Stat. 588, added item for chapter 84.

1985—Pub. L. 99–169, title VIII, §801(b), Dec. 4, 1985, 99 Stat. 1010, added items for subpart H and chapter 91.

1984—Pub. L. 98–615, title II, §201(b), Nov. 8, 1984, 98 Stat. 3214, substituted ''Performance Management and Recognition System'' for ''Merit Pay and Cash Awards'' in item for chapter 54.

1978—Pub. L. 95–454, title I, §101(b)(1), title II, §203(b), title V, §503(i), title VI, §601(b), title VII, §703(b), title IX, §906(c)(5), Oct. 13, 1978, 92 Stat. 1118, 1134, 1184, 1188, 1217, 1227, added items for chapters 23, 34, 47, 54, and 72, substituted in item for chapter 43 ''Appraisal'' for ''Rating'' and in item for chapter 71 ''Labor-Management Relations'' for ''Policies'', and inserted in heading of subpart F ''Labor-Management and'' before ''Employee''.

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in title 28 section 996; title 29 section 795b; title 42 section 3056b; title 44 section 2105; title 45 section 719; title 47 sections 154, 332.

Subpart A—General Provisions

CHAPTER 21—DEFINITIONS

Sec.
2101. Civil service; armed forces; uniformed services.
2101a. The Senior Executive Service.
2102. The competitive service.
2103. The excepted service.
2104. Officer.
2105. Employee.
2106. Member of Congress.
2107. Congressional employee.
2108. Veteran; disabled veteran; preference eligible.
2109. Air traffic controller; Secretary.

AMENDMENTS

1980—Pub. L. 96–347, §1(d), Sept. 12, 1980, 94 Stat. 1150, substituted ''controller; Secretary'' for ''controller'' in item 2109.

1978—Pub. L. 95–454, title IV, §401(e), Oct. 13, 1978, 92 Stat. 1154, added item 2101a.

1972—Pub. L. 92–297, §1(b), May 16, 1972, 86 Stat. 141, added item 2109.

§ 2101. Civil service; armed forces; uniformed services

For the purpose of this title—

(1) the ''civil service'' consists of all appointive positions in the executive, judicial, and legislative branches of the Government of the United States, except positions in the uniformed services;

(2) ''armed forces'' means the Army, Navy, Air Force, Marine Corps, and Coast Guard; and

(3) ''uniformed services'' means the armed forces, the commissioned corps of the Public Health Service, and the commissioned corps of the National Oceanic and Atmospheric Administration.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 408; Pub. L. 90–83, §1(4), Sept. 11, 1967, 81 Stat. 196; Pub. L. 96–54, §2(a)(4), Aug. 14, 1979, 93 Stat. 381.)

HISTORICAL AND REVISION NOTES

1966 ACT

The section is supplied to establish basis of reference to employees in this title.

1967 ACT

This section amends various sections [§§2101, 4102, 4109, 5541, 8101] of title 5, United States Code, to reflect 1965 Reorganization Plan No. 2 (79 Stat. 1318), effective July 13, 1965, which consolidated the Coast and Geodetic Survey and the Weather Bureau to form a new agency in the Department of Commerce to be known as the Environmental Science Services Administration.

AMENDMENTS

1979—Par. (3). Pub. L. 96–54 substituted ''National Oceanic and Atmospheric'' for ''Environmental Science Services''.

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.

SHORT TITLE OF 1994 AMENDMENT

Pub. L. 103–226, §1, Mar. 30, 1994, 108 Stat. 111, provided that: ''This Act [amending sections 3381, 4101, 4103, 4105, 4107, 4108, 4113, 4118, 5597, 8351, 8433 to 8435, 8437, 8440a to 8440d of this title and section 1206 of Title 45, Railroads, repealing sections 4106 and 4114 of this title, enacting provisions set out as notes under sections 3101, 3381, 5597, 8331, and 8351 of this title, and amending provisions set out as a note under section 403–4 of Title 50, War and National Defense] may be cited as the 'Federal Workforce Restructuring Act of 1994'.''

SHORT TITLE OF 1990 AMENDMENT

Pub. L. 101–508, title VII, §7202(a), Nov. 5, 1990, 104 Stat. 1388–335, provided that: ''This section [amending sections 2105, 3502, 5334, 5335, 5365, 5551, 6308, 6312, 8331, 8347, 8401, 8461, and 8901 of this title and enacting provisions set out as notes under section 2105 of this title] may be cited as the 'Portability of Benefits for Nonappropriated Fund Employees Act of 1990'.''

COORDINATION OF TITLE VII OF PUB. L. 101–508 WITH SECTION 909 OF TITLE 2

Pub. L. 101–508, title VII, §7301, Nov. 5, 1990, 104 Stat. 1388–341, provided that: ''For purposes of section 202 of the Balanced Budget and Emergency Deficit Reaffirmation Act of 1987 [probably means section 202 of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987, Pub. L. 100–119, which was formerly classified to section 909 of Title 2, The Congress], this title and the amendments made by this title [amending sections 552a, 2105, 3502, 5334, 5335, 5365, 5551, 6308, 6312, 8331, 8334, 8339, 8342, 8343a, 8347, 8348, 8401, 8420a, 8461, 8901, 8902, 8904, 8906, 8909, and 8910 of this title, enacting provisions set out as notes under this section and sections 552a, 2105, 8334, 8343a, 8348, 8902, 8904, and 8906 of this title, amending provisions set out as notes under sections 8343a and 8906 of this title, and repealing provisions set out as notes under sections 8343a and 8348 of this title] shall be considered an exception under subsection (b) of such section.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 10 sections 4357, 6975, 9356; title 18 section 207; title 22 section 3641; title 41 section 423.

§ 2101a. The Senior Executive Service

The ''Senior Executive Service'' consists of Senior Executive Service positions (as defined in section 3132(a)(2) of this title).

(Added Pub. L. 95–454, title IV, §401(a), Oct. 13, 1978, 92 Stat. 1154.)

EFFECTIVE DATE

Section effective 9 months after Oct. 13, 1978, and congressional review of provisions of sections 401 through

412 of Pub. L. 95–454, see section 415 of Pub. L. 95–454, set out as a note under section 3131 of this title.

§ 2102. The competitive service

(a) The ''competitive service'' consists of—

(1) all civil service positions in the executive branch, except—

(A) positions which are specifically excepted from the competitive service by or under statute;

(B) positions to which appointments are made by nomination for confirmation by the Senate, unless the Senate otherwise directs; and

(C) positions in the Senior Executive Service;

(2) civil service positions not in the executive branch which are specifically included in the competitive service by statute; and

(3) positions in the government of the District of Columbia which are specifically included in the competitive service by statute.

(b) Notwithstanding subsection (a)(1)(B) of this section, the ''competitive service'' includes positions to which appointments are made by nomination for confirmation by the Senate when specifically included therein by statute.

(c) As used in other Acts of Congress, ''classified civil service'' or ''classified service'' means the ''competitive service''.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 408; Pub. L. 95–454, title IV, § 401(b), Oct. 13, 1978, 92 Stat. 1154.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(a)	5 U.S.C. 638 (less applicability to appointment and promotion).	Jan. 16, 1883, ch. 27, § 7 (less applicability to appointment and promotion), 22 Stat. 406.

Subsection (a) is restated in the form of a definition.

Subsection (a)(1) is based on former section 638, which placed positions in the executive branch of the Government generally in the competitive service by the requirement that employment be predicated on passing an examination or being exempted from examination, and section 1 of the Act of Nov. 26, 1940, ch. 919, title I, 54 Stat. 1211 (see table III), which authorized the President, subject to certain exceptions, to place in the classified civil service positions in the Executive departments, independent establishments, and other agencies of the Government. In that Act the word ''executive'' has been construed to modify ''departments'', ''independent establishments''; and ''other agency''. This construction is supported by the language of the Act of Jan. 16, 1883, and is embodied in Civil Service Rule I. Acting under this statute, the President has placed all but a comparatively few of the positions covered by the Act of Nov. 26, 1940, in the competitive service. The remainder are covered by the exceptions contained in the Civil Service Rules and Regulations. The authority of the President conferred by the Act of Nov. 26, 1940, has been superseded in part by exceptions created by statutes enacted after that date. The effect of these exceptions and the power conferred on the President by former section 633(2)8 (last sentence) to make exceptions to the Civil Service Rules are preserved by the words ''positions which are specifically excepted from the competitive service by or under statute''.

In subsection (a)(1)(B), the words ''or to pass an examination'' are omitted as covered by the exclusion from the ''competitive service''.

Subsection (a)(2) preserves the exception stated in former section 638 modified to recognize the several statutory exceptions to this exception that have been enacted. The language of former section 638 relative to examination is codified in sections 3304(b) and 3361. The reference to veterans' preference is omitted because the statute referred to, R.S. § 1754, was superseded by sections 3 and 21 of the Act of June 18, 1929, ch. 28, 46 Stat. 21. Section 3 of the Act of June 18, 1929, was superseded by the Act of June 27, 1944, ch. 287, 58 Stat. 387, as amended, which is carried into this title. Rights preserved by section 18 of the Act of June 27, 1944, are further preserved by technical section 8. The exception for laborers and workmen was superseded by the Act of Nov. 26, 1940.

Subsection (b) is added because of the provisions in section 3311 of title 39.

Subsection (c) is supplied for conformity inasmuch as the terms are coextensive by definition.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1978—Subsec. (a)(1)(C). Pub. L. 95–454 added cl. (C).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 9 months after Oct. 13, 1978, and congressional review of provisions of sections 401 through 412 of Pub. L. 95–454, see section 415 of Pub. L. 95–454, set out as an Effective Date note under section 3131 of this title.

CROSS REFERENCES

Employment of reading assistants for blind employees without regard to provisions governing appointments to the competitive service, see section 3102 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3132 of this title; title 10 section 1744; title 16 section 3198; title 22 section 3641; title 28 section 569; title 36 section 121; title 42 section 2000e; title 49 section 44506.

§ 2103. The excepted service

(a) For the purpose of this title, the ''excepted service'' consists of those civil service positions which are not in the competitive service or the Senior Executive Service.

(b) As used in other Acts of Congress, ''unclassified civil service'' or ''unclassified service'' means the ''excepted service''.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 408; Pub. L. 95–454, title IV, § 401(c), Oct. 13, 1978, 92 Stat. 1154.)

HISTORICAL AND REVISION NOTES

The section is supplied for convenience. The ''excepted service'' has come to mean all employees not in the competitive service, for whatever reason.

AMENDMENTS

1978—Subsec. (a). Pub. L. 95–454 inserted reference to Senior Executive Service.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 9 months after Oct. 13, 1978, and congressional review of provisions of sections 401 through 412 of Pub. L. 95–454, see section 415 of Pub. L. 95–454, set out as an Effective Date note under section 3131 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 10 sections 1744, 2164; title 49 section 44506.

§ 2104. Officer

(a) For the purpose of this title, ''officer'', except as otherwise provided by this section or when specifically modified, means a justice or judge of the United States and an individual who is—

(1) required by law to be appointed in the civil service by one of the following acting in an official capacity—

(A) the President;

(B) a court of the United States;

(C) the head of an Executive agency; or

(D) the Secretary of a military department;

(2) engaged in the performance of a Federal function under authority of law or an Executive act; and

(3) subject to the supervision of an authority named by paragraph (1) of this section, or the Judicial Conference of the United States, while engaged in the performance of the duties of his office.

(b) Except as otherwise provided by law, an officer of the United States Postal Service or of the Postal Rate Commission is deemed not an officer for purposes of this title.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 408; Pub. L. 91–375, § 6(c)(3), Aug. 12, 1970, 84 Stat. 775.)

HISTORICAL AND REVISION NOTES

The section is supplied for convenience.

AMENDMENTS

1970—Subsec. (a). Pub. L. 91–375, § 6(c)(3)(A), (B), designated existing provisions as subsec. (a) and inserted in introductory text ''as otherwise provided by this section or'' after ''except''.

Subsec. (b). Pub. L. 91–375, § 6(c)(3)(C), added subsec. (b).

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–375 effective within 1 year after Aug. 12, 1970, on date established therefor by Board of Governors of United States Postal Service and published by it in Federal Register, see section 15(a) of Pub. L. 91–375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 902 of this title; title 18 section 202; title 50 section 426.

§ 2105. Employee

(a) For the purpose of this title, ''employee'', except as otherwise provided by this section or when specifically modified, means an officer and an individual who is—

(1) appointed in the civil service by one of the following acting in an official capacity—

(A) the President;

(B) a Member or Members of Congress, or the Congress;

(C) a member of a uniformed service;

(D) an individual who is an employee under this section;

(E) the head of a Government controlled corporation; or

(F) an adjutant general designated by the Secretary concerned under section 709(c) of title 32;

(2) engaged in the performance of a Federal function under authority of law or an Executive act; and

(3) subject to the supervision of an individual named by paragraph (1) of this subsection while engaged in the performance of the duties of his position.

(b) An individual employed at the United States Naval Academy in the midshipmen's laundry, the midshipmen's tailor shop, the midshipmen's cobbler and barber shops, and the midshipmen's store, except an individual employed by the Academy dairy, is deemed an employee.

(c) An employee paid from nonappropriated funds of the Army and Air Force Exchange Service, Army and Air Force Motion Picture Service, Navy Ship's Stores Ashore, Navy exchanges, Marine Corps exchanges, Coast Guard exchanges, and other instrumentalities of the United States under the jurisdiction of the armed forces conducted for the comfort, pleasure, contentment, and mental and physical improvement of personnel of the armed forces is deemed not an employee for the purpose of—

(1) laws administered by the Office of Personnel Management, except—

(A) section 7204;

(B) as otherwise specifically provided in this title;

(C) the Fair Labor Standards Act of 1938;

(D) for the purpose of entering into an interchange agreement to provide for the noncompetitive movement of employees between such instrumentalities and the competitive service; or

(E) subchapter V of chapter 63, which shall be applied so as to construe references to benefit programs to refer to applicable programs for employees paid from nonappropriated funds; or

(2) subchapter I of chapter 81, chapter 84 (except to the extent specifically provided therein), and section 7902 of this title.

This subsection does not affect the status of these nonappropriated fund activities as Federal instrumentalities.

(d) A Reserve of the armed forces who is not on active duty or who is on active duty for training is deemed not an employee or an individual holding an office of trust or profit or discharging an official function under or in connection with the United States because of his appointment, oath, or status, or any duties or functions performed or pay or allowances received in that capacity.

(e) Except as otherwise provided by law, an employee of the United States Postal Service or of the Postal Rate Commission is deemed not an employee for purposes of this title.

(f) For purposes of sections 1212, 1213, 1214, 1215, 1216, 1221, 1222, 2302, and 7701, employees appointed under chapter 73 or 74 of title 38 shall be employees.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 409; Pub. L. 90–486, § 4, Aug. 13, 1968, 82 Stat. 757; Pub. L. 91–375, § 6(c)(4), Aug. 12, 1970, 84 Stat. 775; Pub. L. 92–392, § 2, Aug. 19, 1972, 86 Stat. 573; Pub. L. 95–454, title VII, § 703(c)(2), title IX, § 906(a)(2),

Oct. 13, 1978, 92 Stat. 1217, 1224; Pub. L. 96–54, § 2(a)(5), (6), Aug. 14, 1979, 93 Stat. 381; Pub. L. 99–335, title II, § 207(a), June 6, 1986, 100 Stat. 594; Pub. L. 99–638, § 2(b)(1), Nov. 10, 1986, 100 Stat. 3536; Pub. L. 101–508, title VII, § 7202(b), Nov. 5, 1990, 104 Stat. 1388–335; Pub. L. 103–3, title II, § 201(b), Feb. 5, 1993, 107 Stat. 23; Pub. L. 103–424, § 7, Oct. 29, 1994, 108 Stat. 4364.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(b)	[Uncodified].	Aug. 5, 1939, ch. 448, § 2, 53 Stat. 1210.
	[Uncodified].	Dec. 3, 1945, ch. 510, § 2, 59 Stat. 590.
	[Uncodified].	Dec. 28, 1945, ch. 593, § 2, 59 Stat. 660.
	[Uncodified].	Dec. 28, 1945, ch. 594, § 2, 59 Stat. 660.
	[Uncodified].	July 26, 1946, ch. 675, § 2 (last proviso), 60 Stat. 704.
(c)	5 U.S.C. 150k.	June 19, 1952, ch. 444, § 1, 66 Stat. 138.
(d)	5 U.S.C. 30r(d).	Aug. 10, 1956, ch. 1041, § 29(d), 70A Stat. 632.

Subsection (a) is supplied to avoid the necessity of defining ''employee'' each time it appears in this title. The subsection is based on a definition worked out independently by the Civil Service Commission and the Department of Labor and in use by both for more than a decade.

In subsection (b), the provisions of the source statutes which relate to credit for prior service and diminution of pay are executed, or, insofar as to be executed preserved by technical section 8.

In subsection (d), the words ''officer or'' are omitted as included within ''employee''.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

REFERENCES IN TEXT

The Fair Labor Standards Act of 1938, referred to in subsec. (c)(1)(C), is act June 25, 1938, ch. 676, 52 Stat. 1060, as amended, which is classified principally to chapter 8 (§ 201 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see section 201 of Title 29 and Tables.

AMENDMENTS

1994—Subsec. (f). Pub. L. 103–424 added subsec. (f).

1993—Subsec. (c)(1)(E). Pub. L. 103–3 added subpar. (E).

1990—Subsec. (c)(1). Pub. L. 101–508, § 7202(b)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''laws (other than subchapter IV of chapter 53 of this title, subchapter III of chapter 83 of this title to the extent provided in section 8332(b)(16) of this title, and sections 5550 and 7204 of this title) administered by the Office of Personnel Management; or''.

Subsec. (c)(2). Pub. L. 101–508, § 7202(b)(2), inserted ''(except to the extent specifically provided therein)'' after ''chapter 84''.

1986—Subsec. (c)(1). Pub. L. 99–638 inserted ''of this title, subchapter III of chapter 83 of this title to the extent provided in section 8332(b)(16) of this title,''.

Subsec. (c)(2). Pub. L. 99–335 substituted ''chapter 81, chapter 84,'' for ''chapter 81''.

1979—Subsec. (a)(1)(F). Pub. L. 96–54, § 2(a)(5), substituted ''an adjutant'' for ''the adjutants'' and struck out '', United States Code'' after ''32''.

Subsec. (c)(1). Pub. L. 96–54, § 2(a)(6), amended subsec. (c)(1) in same manner as amendment by section 703(c)(2) of Pub. L. 95–454. See 1978 Amendment note set out below.

1978—Subsec. (c)(1). Pub. L. 95–454 substituted ''7204'' for ''7154'', and ''Office of Personnel Management'' for ''Civil Service Commission''. Amendments by section 703(c)(1) and (c)(2) of Pub. L. 95–454 appear to have been inadvertently reversed. Subsec. (c)(1) purported to amend subsec. (c)(1) of this section, and subsec. (c)(2) purported to amend section 3302(2) of this title. However, the amendments specified by Pub. L. 95–454, § 703(c)(1) and (2), were impossible to execute literally. Thus, the amendment by Pub. L. 95–454, § 703(c)(2) was executed to this section, and the amendment by section 703(c)(1) was executed to section 3302(2) of this title as the probable intent of Congress.

1972—Subsec. (c)(1). Pub. L. 92–392 substituted ''laws (other than subchapter IV of chapter 53 and sections 5550 and 7154 of this title)'' for ''laws''.

1970—Subsec. (e). Pub. L. 91–375 added subsec. (e).

1968—Subsec. (a)(1)(F). Pub. L. 90–486 added subpar. (F).

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–3 effective 6 months after Feb. 5, 1993, see section 405(b)(1) of Pub. L. 103–3, set out as an Effective Date note under section 2601 of Title 29, Labor.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 7202(m) of Pub. L. 101–508 provided that:

''(1) The amendments made by this section [amending this section and sections 3502, 5334, 5335, 5365, 5551, 6308, 6312, 8331, 8347, 8401, 8461, and 8901 of this title] shall apply with respect to any individual who, on or after January 1, 1987—

''(A) moves without a break in service of more than 3 days from employment in a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard that is described in section 2105(c) of title 5, United States Code, to employment in the Department of Defense or the Coast Guard, respectively, that is not described in such section 2105(c); or

''(B) moves without a break in service from employment in the Department of Defense or the Coast Guard that is not described in such section 2105(c) to employment in a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard, respectively, that is described in such section 2105(c).

''(2) The Secretary of Defense, the Secretary of Transportation, the Director of the Office of Personnel Management, and the Executive Director of the Federal Retirement Thrift Investment Board, as applicable, shall take such actions as may be practicable to ensure that each individual who has moved as described under paragraph (1) on or after January 1, 1987, and before the date of enactment of this Act [Nov. 5, 1990], receives the benefit of the amendments made by this section as if such amendments had been in effect at the time such individual so moved. Each such individual who wishes to make an election of retirement coverage under the amendments made by subsection (j) or (k) of this section [amending sections 8331, 8347, 8401, and 8461 of this title] shall complete such election within 180 days after the date of enactment of this Act.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–335 effective Jan. 1, 1987, see section 702(a) of Pub. L. 99–335, set out as an Effective Date note under section 8401 of this title.

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.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92–392 effective on first day of first applicable pay period beginning on or after 90th

day after Aug. 19, 1972, see section 15(a) of Pub. L. 92–392, set out as an Effective Date note under section 5341 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–375 effective within 1 year after Aug. 12, 1970, on date established therefor by Board of Governors of United States Postal Service and published by it in Federal Register, see section 15(a) of Pub. L. 91–375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–486 effective Jan. 1, 1968, except that no deductions or withholding from salary which result therefrom shall commence before the first day of the first pay period that begins on or after Jan. 1, 1968, see section 11 of Pub. L. 90–486, set out as a note under section 709 of Title 32, National Guard.

TREATMENT OF INDIVIDUALS ELECTING TO REMAIN SUBJECT TO THEIR FORMER RETIREMENT SYSTEM

Section 7202(n) of Pub. L. 101–508, as amended by Pub. L. 102–378, §5(a)(2), Oct. 2, 1992, 106 Stat. 1358, provided that:

''(1) For the purpose of this section [amending this section and sections 3502, 5334, 5335, 5365, 5551, 6308, 6312, 8331, 8347, 8401, 8461, and 8901 of this title and enacting provisions set out as notes under this section and section 2101 of this title], the term 'nonappropriated fund instrumentality' means a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard, described in section 2105(c) of title 5, United States Code.

''(2)(A) If an individual makes an election under section 8347(q)(1) of title 5, United States Code, to remain covered by subchapter III of chapter 83 of such title, any nonappropriated fund instrumentality thereafter employing such individual shall deduct from such individual's pay and contribute to the Thrift Savings Fund such sums as are required for such individual in accordance with section 8351 of such title.

''(B) Notwithstanding subsection (a) or (b) of section 8432 of title 5, United States Code, any individual who, as of the date of enactment of this Act [Nov. 5, 1990], becomes eligible to make an election under section 8347(q)(1) of such title may, within 30 days after such individual makes an election thereunder in accordance with subsection (m)(2) [set out as a note above], make any election described in section 8432(b)(1)(A) of such title.

''(3)(A) If an individual makes an election under section 8461(n)(1) of title 5, United States Code, to remain covered by chapter 84 of such title, any nonappropriated fund instrumentality thereafter employing such individual shall deduct from such individual's pay and shall contribute to the Thrift Savings Fund the funds deducted, together with such other sums as are required for such individual under subchapter III of such chapter.

''(B) Notwithstanding subsection (a) or (b) of section 8432 of title 5, United States Code, any individual who, as of the date of enactment of this Act, becomes eligible to make an election under section 8461(n)(1) of such title may, within 30 days after such individual makes an election thereunder in accordance with subsection (m)(2), make any election described in section 8432(b)(1)(A) of such title.

''(4) If an individual makes an election under section 8347(q)(2) or 8461(n)(2) of title 5, United States Code, to remain covered by a retirement system established for employees described in section 2105(c) of such title, any Government agency thereafter employing such individual shall, in lieu of any deductions or contributions for which it would otherwise be responsible with respect to such individual under chapter 83 or 84 of such title, make such deductions from pay and such contributions as would be required (under the retirement system for nonappropriated fund employees involved) if it were a nonappropriated fund instrumentality. Any such deductions and contributions shall be remitted to the Department of Defense or the Coast Guard, as applicable, for transmission to the appropriate retirement system.''

[Amendment by Pub. L. 102–378 to section 7202(n) of Pub. L. 101–508, set out above, effective Nov. 5, 1990, see section 9(b)(6) of Pub. L. 102–378, set out as an Effective Date of 1992 Amendment note under section 6303 of this title.]

PROHIBITION OF DECREASE IN BASIC PAY RATE OF EMPLOYEES OF NONAPPROPRIATED FUND INSTRUMENTALITIES

Amendments by Pub. L. 92–392 not to decrease basic pay rate of subsec. (c) employees in service before effective date of the amendments as to such employees, see section 9(a)(2) of Pub. L. 92–392, set out as a note under section 5343 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3502, 5334, 5335, 5342, 5365, 5506, 5515, 5537, 5551, 5552, 5581, 5595, 5751, 5945, 5946, 6103, 6104, 6121, 6301, 6308, 6322, 6323, 6385, 7103, 7119, 7342, 7905, 8171, 8172, 8173, 8311, 8331, 8332, 8347, 8401, 8461, 8701, 8901 of this title; title 10 sections 975, 1587; title 18 section 202; title 19 section 2081; title 22 sections 4341, 4833; title 25 section 450i; title 26 section 7608; title 41 section 419; title 42 section 3374; title 50 section 426.

§ 2106. Member of Congress

For the purpose of this title, ''Member of Congress'' means the Vice President, a member of the Senate or the House of Representatives, a Delegate to the House of Representatives, and the Resident Commissioner from Puerto Rico.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 409; Pub. L. 91–405, title II, §204(b), Sept. 22, 1970, 84 Stat. 852; Pub. L. 96–54, §2(a)(7), Aug. 14, 1979, 93 Stat. 381.)

HISTORICAL AND REVISION NOTES

The section is supplied to avoid the necessity of defining ''Member of Congress'' each time the term is used in this title.

AMENDMENTS

1979—Pub. L. 96–54 substituted ''to the House of Representatives'' for ''from the District of Columbia''.

1970—Pub. L. 91–405 included Delegate from District of Columbia.

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.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–405 effective Sept. 22, 1970, see section 206(b) of Pub. L. 91–405, set out as an Effective Date note under section 25a of Title 2, The Congress.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5520a, 7342, 8311, 8331, 8401, 8701, 8901 of this title.

§ 2107. Congressional employee

For the purpose of this title, ''Congressional employee'' means—

(1) an employee of either House of Congress, of a committee of either House, or of a joint committee of the two Houses;

(2) an elected officer of either House who is not a Member of Congress;

(3) the Legislative Counsel of either House and an employee of his office;

(4) a member of the Capitol Police;

(5) an employee of a Member of Congress if the pay of the employee is paid by the Secretary of the Senate or the Clerk of the House of Representatives;

[(6) Repealed. Pub. L. 90–83, § 1(5)(A), Sept. 11, 1967, 81 Stat. 196.]

(7) the Architect of the Capitol and an employee of the Architect of the Capitol;

(8) an employee of the Botanic Garden; and

(9) an employee of the Capitol Guide Service.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 409; Pub. L. 90–83, § 1(5), Sept. 11, 1967, 81 Stat. 196; Pub. L. 91–510, title IV, § 442(a), Oct. 26, 1970, 84 Stat. 1191.)

HISTORICAL AND REVISION NOTES

1966 ACT

The section is supplied to avoid the necessity of defining ''Congressional employee'' each time the term is used in this title.

1967 ACT

Section of title 5	*Source (U.S. Code)*	*Source (Statutes at Large)*
2107(6)	2:126–1.	July 27, 1965, Pub. L. 89–90, § 101 (proviso on p. 265), 79 Stat. 265.
2107(8)	5 App.: 2251(c).	Sept. 26, 1966, Pub. L. 89–604, § 1(a), 80 Stat. 846.

Paragraph (6), relating to Official Reporters of Debates of the Senate and their employees, is eliminated as unnecessary on authority of the act of July 27, 1965 (2 U.S.C. 126–1). Pursuant to that act, the Official Reporters and their employees became employees of the Senate; accordingly, they are now included within the definition of ''Congressional employee'' under paragraph (1).

In paragraph (8), based on the act of September 26, 1966 (5 App. U.S.C. 2251(c)), the word ''officers'' is omitted as included in ''employees,'' and the words ''United States'' preceding the words ''Botanic Garden'' are omitted as unnecessary.

AMENDMENTS

1970—Par. (9). Pub. L. 91—510 added par. (9).

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–510 effective immediately prior to noon on June. 3, 1971, see section 601(1) of Pub. L. 91–510, set out as a note under section 72a of Title 2, The Congress.

TRANSFER OF FUNCTIONS

Certain functions of Clerk of House of Representatives transferred to Director of Non-legislative and Financial Services by section 7 of House Resolution No. 423, One Hundred Second Congress, Apr. 9, 1992. Director of Non-legislative and Financial Services replaced by Chief Administrative Officer of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5531, 8331, 8401, 8701, 8901 of this title; title 2 section 31b–5; title 22 section 3008; title 26 section 7448; title 31 section 774; title 38 section 7297.

§ 2108. Veteran; disabled veteran; preference eligible

For the purpose of this title–

(1) ''veteran'' means an individual who–

(A) served on active duty in the armed forces during a war, in a campaign or expedition for which a campaign badge has been authorized, or during the period beginning April 28, 1952, and ending July 1, 1955; or

(B) served on active duty as defined by section 101(21) of title 38 at any time in the armed forces for a period of more than 180 consecutive days any part of which occurred after January 31, 1955, and before the date of enactment of the Veterans' Education and Employment Assistance Act of 1976, not including service under section 511(d)[1] of title 10 pursuant to an enlistment in the Army National Guard or the Air National Guard or as a Reserve for service in the Army Reserve, Naval Reserve, Air Force Reserve, Marine Corps Reserve, or Coast Guard Reserve;

and who has been separated from the armed forces under honorable conditions;

(2) ''disabled veteran'' means an individual who has served on active duty in the armed forces, has been separated therefrom under honorable conditions, and has established the present existence of a service-connected disability or is receiving compensation, disability retirement benefits, or pension because of a public statute administered by the Department of Veterans Affairs or a military department;

(3) ''preference eligible'' means, except as provided in paragraph (4) of this section—

(A) a veteran as defined by paragraph (1)(A) of this section;

(B) a veteran as defined by paragraph (1)(B) of this section;

(C) a disabled veteran;

(D) the unmarried widow or widower of a veteran as defined by paragraph (1)(A) of this section;

(E) the wife or husband of a service-connected disabled veteran if the veteran has been unable to qualify for any appointment in the civil service or in the government of the District of Columbia;

(F) the mother of an individual who lost his life under honorable conditions while serving in the armed forces during a period named by paragraph (1)(A) of this section, if—

(i) her husband is totally and permanently disabled;

(ii) she is widowed, divorced, or separated from the father and has not remarried; or

(iii) she has remarried but is widowed, divorced, or legally separated from her husband when preference is claimed; and

(G) the mother of a service-connected permanently and totally disabled veteran, if—

(i) her husband is totally and permanently disabled;

(ii) she is widowed, divorced, or separated from the father and has not remarried; or

(iii) she has remarried but is widowed, divorced, or legally separated from her husband when preference is claimed;

[1] See References in Text note below.

but does not include applicants for, or members of, the Senior Executive Service, the Defense Intelligence Senior Executive Service, the Senior Cryptologic Executive Service, the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service, or the General Accounting Office;

(4) except for the purposes of chapters 43 and 75 of this title, ''preference eligible'' does not include a retired member of the armed forces unless—

(A) the individual is a disabled veteran; or

(B) the individual retired below the rank of major or its equivalent; and

(5) ''retired member of the armed forces'' means a member or former member of the armed forces who is entitled, under statute, to retired, retirement, or retainer pay on account of service as a member.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 410; Pub. L. 90–83, §1(6), Sept. 11, 1967, 81 Stat. 196; Pub. L. 90–623, §1(2), Oct. 22, 1968, 82 Stat. 1312; Pub. L. 92–187, §1, Dec. 15, 1971, 85 Stat. 644; Pub. L. 94–502, title VII, §702, Oct. 15, 1976, 90 Stat. 2405; Pub. L. 95–454, title III, §307(a), title IV, §401(d), Oct. 13, 1978, 92 Stat. 1147, 1154; Pub. L. 96–54, §2(a)(8), (9)(A), Aug. 14, 1979, 93 Stat. 381; Pub. L. 96–191, §8(a), Feb. 15, 1980, 94 Stat. 33; Pub. L. 97–89, title VIII, §801, Dec. 4, 1981, 95 Stat. 1161; Pub. L. 100–325, §2(a), May 30, 1988, 102 Stat. 581; Pub. L. 102–54, §13(b)(1), June 13, 1991, 105 Stat. 274.)

HISTORICAL AND REVISION NOTES

1966 ACT

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 851 (less 1st 76 words).	June 27, 1944, ch. 287, §2 (less 1st 76 words), 58 Stat. 387. Jan. 19, 1948, ch. 1, §1, 62 Stat. 3. July 2, 1948, ch. 816, 62 Stat. 1233. Aug. 26, 1949, ch. 513, 63 Stat. 666. Dec. 27, 1950, ch. 1151, §1, 64 Stat. 1117. July 14, 1952, ch. 728, §1, 66 Stat. 626.

In paragraph (2), the words ''a military department'' are substituted for ''the War Department or Navy Department'' (appearing in section 2 of the Act of June 27, 1944) because of the definition of ''military department'' in section 102. The Department of War was designated the Department of the Army by the Act of July 26, 1947, ch. 343, §205, 61 Stat. 501. ''Department of the Air Force'' is included on authority of the Act of July 26, 1947, ch. 343, §207 (a), (f), 61 Stat. 502.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 ACT

Section of title 5	*Source (U.S. Code)*	*Source (Statutes at Large)*
2108	5 App.: 851.	Mar. 3, 1966, Pub. L. 89–358, §11, 80 Stat. 28.

REFERENCES IN TEXT

The date of enactment of the Veterans' Education and Employment Assistance Act of 1976, referred to in par. (1)(B), means the date of enactment of Pub. L. 94–502, which was Oct. 15, 1976.

Section 511 of title 10, referred to in par. (1)(B), was renumbered section 12103 of Title 10, Armed Forces, by Pub. L. 103–337, div. A, title XVI, §1662(b)(2), Oct. 5, 1994, 108 Stat. 2989.

AMENDMENTS

1991—Par. (2). Pub. L. 102–54 substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

1988—Par. (3). Pub. L. 100–325 inserted reference to Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service in concluding provisions.

1981—Par. (3). Pub. L. 97–89 inserted reference to Defense Intelligence Senior Executive Service and Senior Cryptologic Executive Service in concluding provisions.

1980—Par. (3). Pub. L. 96–191 inserted reference to General Accounting Office in concluding provisions.

1979—Par. (3). Pub. L. 96–54, §2(a)(8), inserted provision excepting applicants for, or members of, Senior Executive Service.

Par. (5). Pub. L. 96–54, §2(a)(9)(A), struck out provision excepting applicants for, or members of, Senior Executive Service.

1978—Par. (2). Pub. L. 95–454, §307(a)(1), struck out ''and'' at end.

Par. (3). Pub. L. 95–454, §307(a)(2), (3), inserted '', except as provided in paragraph (4) of this section'' after ''means'', and substituted a semicolon for the period at end.

Pars. (4), (5). Pub. L. 95–454, §307(a)(4), added pars. (4) and (5) relating to retired members of the armed forces.

Par. (5). Pub. L. 95–454, §401(d), inserted ''; but does not include applicants for, or members of, the Senior Executive Service'' before the period at end.

1976—Par. (1)(B). Pub. L. 94–502 substituted ''any part of which occurred after January 31, 1955, and before the date of enactment of the Veterans' Education and Employment Assistance Act of 1976,'' for ''after January 31, 1955,''.

1971—Par. (3)(D). Pub. L. 92–187 inserted ''or widower'' after ''unmarried widow''.

Par. (3)(E). Pub. L. 92–187 inserted ''or husband'' after ''the wife''.

1968—Par. (3)(D). Pub. L. 90–623 inserted ''as defined by paragraph (1)(A) of this section'' after ''veteran''.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–89 effective Oct. 1, 1981, see section 806 of Pub. L. 97–89, set out as an Effective Date note under section 1601 of Title 10, Armed Forces.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–191 effective Oct. 1, 1980, see section 10(a) of Pub L. 96–191.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by section 2(a)(8) of 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.

Section 2(a)(9)(B) of Pub. L. 96–54 provided that: ''The amendment made by subparagraph (A) [amending this section] shall take effect October 1, 1980''.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 307(a) of Pub. L. 95–454 provided that the amendment made by that section is effective Oct. 1, 1980.

Amendment by section 401(d) of Pub. L. 95–454 effective 9 months after Oct. 13, 1978, and congressional review of provisions of sections 401 through 412 of Pub. L. 95–454, see section 415 of Pub. L. 95–454, set out as an Effective Date note under section 3131 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–623 effective Sept. 11, 1967, for all purposes, see section 6 of Pub. L. 90–623, set out as a note under section 5334 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3305, 3309, 3312, 3318, 3352, 3502, 3504 of this title; title 10 section 943; title 16 section 3198; title 20 section 241; title 22 sections 1438, 3941; title 25 section 2641; title 32 section 709; title 38 sections 106, 5303A, 7281, 7802; title 39 section 1005; title 42 sections 2992a–1, 9839; title 49 section 47112.

§ 2109. Air traffic controller; Secretary

For the purpose of this title—

(1) ''air traffic controller'' or ''controller'' means a civilian employee of the Department of Transportation or the Department of Defense who, in an air traffic control facility or flight service station facility—

(A) is actively engaged—

(i) in the separation and control of air traffic; or

(ii) in providing preflight, inflight, or airport advisory service to aircraft operators; or

(B) is the immediate supervisor of any employee described in subparagraph (A); and

(2) ''Secretary'', when used in connection with ''air traffic controller'' or ''controller'', means the Secretary of Transportation with respect to controllers in the Department of Transportation, and the Secretary of Defense with respect to controllers in the Department of Defense.

(Added Pub. L. 92–297, § 1(a), May 16, 1972, 86 Stat. 141; amended Pub. L. 96–347, § 1(a), Sept. 12, 1980, 94 Stat. 1150; Pub. L. 99–335, title II, § 207(b), June 6, 1986, 100 Stat. 594.)

AMENDMENTS

1986—Par. (1). Pub. L. 99–335 amended par. (1) generally including within term ''air traffic controller'' or ''controller'' references to a flight service station facility and to employment providing preflight, inflight, or airport advisory service to aircraft operators and striking out provision that regulations prescribed by the Secretary be used in determining who is an air traffic controller.

1980—Pub. L. 96–347 substituted ''controller; Secretary'' for ''controller'' in section catchline, and in text included employees of the Department of Defense within the meaning of air traffic controller or controller and defined ''Secretary'' to mean Secretary of Transportation with respect to controllers in the Department of Transportation and Secretary of Defense with respect to controllers in the Department of Defense.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–335 effective Jan. 1, 1987, see section 702(a) of Pub. L. 99–335, set out as an Effective Date note under section 8401 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 3 of Pub. L. 96–347 provided that: ''This Act [amending this section and sections 3307, 3381 to 3385, and 8335 of this title and enacting provisions set out as a note under section 8335 of this title] shall take effect on the later of—

''(1) October 1, 1980, or

''(2) the ninetieth day after the date of the enactment of this Act [Sept. 12, 1980].''

EFFECTIVE DATE

Section effective on 90th day after May 16, 1972, see, section 10 of Pub. L. 92–297, set out as a note under section 3381 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 49 section 44506.

CHAPTER 23—MERIT SYSTEM PRINCIPLES

Sec.
2301. Merit system principles.
2302. Prohibited personnel practices.
2303. Prohibited personnel practices in the Federal Bureau of Investigation.
2304. Responsibility of the General Accounting Office.
2305. Coordination with certain other provisions of law.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 1222, 4703 of this title.

§ 2301. Merit system principles

(a) This section shall apply to—

(1) an Executive agency; and

(2) the Government Printing Office.

(b) Federal personnel management should be implemented consistent with the following merit system principles:

(1) Recruitment should be from qualified individuals from appropriate sources in an endeavor to achieve a work force from all segments of society, and selection and advancement should be determined solely on the basis of relative ability, knowledge, and skills, after fair and open competition which assures that all receive equal opportunity.

(2) All employees and applicants for employment should receive fair and equitable treatment in all aspects of personnel management without regard to political affiliation, race, color, religion, national origin, sex, marital status, age, or handicapping condition, and with proper regard for their privacy and constitutional rights.

(3) Equal pay should be provided for work of equal value, with appropriate consideration of both national and local rates paid by employers in the private sector, and appropriate incentives and recognition should be provided for excellence in performance.

(4) All employees should maintain high standards of integrity, conduct, and concern for the public interest.

(5) The Federal work force should be used efficiently and effectively.

(6) Employees should be retained on the basis of the adequacy of their performance, inadequate performance should be corrected, and employees should be separated who cannot or will not improve their performance to meet required standards.

(7) Employees should be provided effective education and training in cases in which such education and training would result in better organizational and individual performance.

(8) Employees should be—

(A) protected against arbitrary action, personal favoritism, or coercion for partisan political purposes, and

(B) prohibited from using their official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for election.

(9) Employees should be protected against reprisal for the lawful disclosure of informa-

tion which the employees reasonably believe evidences—

(A) a violation of any law, rule, or regulation, or

(B) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

(c) In administering the provisions of this chapter—

(1) with respect to any agency (as defined in section 2302(a)(2)(C) of this title), the President shall, pursuant to the authority otherwise available under this title, take any action, including the issuance of rules, regulations, or directives; and

(2) with respect to any entity in the executive branch which is not such an agency or part of such an agency, the head of such entity shall, pursuant to authority otherwise available, take any action, including the issuance of rules, regulations, or directives;

which is consistent with the provisions of this title and which the President or the head, as the case may be, determines is necessary to ensure that personnel management is based on and embodies the merit system principles.

(Added Pub. L. 95–454, title I, §101(a), Oct. 13, 1978, 92 Stat. 1113; amended Pub. L. 101–474, §5(c), Oct. 30, 1990, 104 Stat. 1099.)

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–474 redesignated par. (3) as (2) and struck out former par. (2) which provided that this section is applicable to Administrative Office of United States Courts.

EFFECTIVE DATE

Chapter effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2302, 4107, 4313, 5379 of this title; title 10 section 1722; title 22 section 3902; title 31 section 732; title 42 section 2297b–4.

§ 2302. Prohibited personnel practices

(a)(1) For the purpose of this title, ''prohibited personnel practice'' means any action described in subsection (b) of this section.

(2) For the purpose of this section—

(A) ''personnel action'' means—

(i) an appointment;

(ii) a promotion;

(iii) an action under chapter 75 of this title or other disciplinary or corrective action;

(iv) a detail, transfer, or reassignment;

(v) a reinstatement;

(vi) a restoration;

(vii) a reemployment;

(viii) a performance evaluation under chapter 43 of this title;

(ix) a decision concerning pay, benefits, or awards, concerning education or training if the education or training may reasonably be expected to lead to an appointment, promotion, performance evaluation, or other action described in this subparagraph;

(x) a decision to order psychiatric testing or examination; and

(xi) any other significant change in duties, responsibilities, or working conditions;

with respect to an employee in, or applicant for, a covered position in an agency, and in the case of an alleged prohibited personnel practice described in subsection (b)(8), an employee or applicant for employment in a Government corporation as defined in section 9101 of title 31;

(B) ''covered position'' means, with respect to any personnel action, any position in the competitive service, a career appointee position in the Senior Executive Service, or a position in the excepted service, but does not include any position which is, prior to the personnel action—

(i) excepted from the competitive service because of its confidential, policy-determining, policy-making, or policy-advocating character; or

(ii) excluded from the coverage of this section by the President based on a determination by the President that it is necessary and warranted by conditions of good administration; and

(C) ''agency'' means an Executive agency and the Government Printing Office, but does not include—

(i) a Government corporation, except in the case of an alleged prohibited personnel practice described under subsection (b)(8);

(ii) the Federal Bureau of Investigation, the Central Intelligence Agency, the Defense Intelligence Agency, the Central Imagery Office, the National Security Agency, and, as determined by the President, any Executive agency or unit thereof the principal function of which is the conduct of foreign intelligence or counterintelligence activities; or

(iii) the General Accounting Office.

(b) Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority—

(1) discriminate for or against any employee or applicant for employment—

(A) on the basis of race, color, religion, sex, or national origin, as prohibited under section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16);

(B) on the basis of age, as prohibited under sections 12 and 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631, 633a);

(C) on the basis of sex, as prohibited under section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d));

(D) on the basis of handicapping condition, as prohibited under section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791); or

(E) on the basis of marital status or political affiliation, as prohibited under any law, rule, or regulation;

(2) solicit or consider any recommendation or statement, oral or written, with respect to any individual who requests or is under consideration for any personnel action except as provided under section 3303(f);

(3) coerce the political activity of any person (including the providing of any political contribution or service), or take any action against any employee or applicant for employment as a reprisal for the refusal of any person to engage in such political activity;

(4) deceive or willfully obstruct any person with respect to such person's right to compete for employment;

(5) influence any person to withdraw from competition for any position for the purpose of improving or injuring the prospects of any other person for employment;

(6) grant any preference or advantage not authorized by law, rule, or regulation to any employee or applicant for employment (including defining the scope or manner of competition or the requirements for any position) for the purpose of improving or injuring the prospects of any particular person for employment;

(7) appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a civilian position any individual who is a relative (as defined in section 3110(a)(3) of this title) of such employee if such position is in the agency in which such employee is serving as a public official (as defined in section 3110(a)(2) of this title) or over which such employee exercises jurisdiction or control as such an official;

(8) take or fail to take, or threaten to take or fail to take, a personnel action with respect to any employee or applicant for employment because of—

(A) any disclosure of information by an employee or applicant which the employee or applicant reasonably believes evidences—

(i) a violation of any law, rule, or regulation, or

(ii) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety,

if such disclosure is not specifically prohibited by law and if such information is not specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs; or

(B) any disclosure to the Special Counsel, or to the Inspector General of an agency or another employee designated by the head of the agency to receive such disclosures, of information which the employee or applicant reasonably believes evidences—

(i) a violation of any law, rule, or regulation, or

(ii) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;

(9) take or fail to take, or threaten to take or fail to take, any personnel action against any employee or applicant for employment because of—

(A) the exercise of any appeal, complaint, or grievance right granted by any law, rule, or regulation;

(B) testifying for or otherwise lawfully assisting any individual in the exercise of any right referred to in subparagraph (A);

(C) cooperating with or disclosing information to the Inspector General of an agency, or the Special Counsel, in accordance with applicable provisions of law; or

(D) for refusing to obey an order that would require the individual to violate a law;

(10) discriminate for or against any employee or applicant for employment on the basis of conduct which does not adversely affect the performance of the employee or applicant or the performance of others; except that nothing in this paragraph shall prohibit an agency from taking into account in determining suitability or fitness any conviction of the employee or applicant for any crime under the laws of any State, of the District of Columbia, or of the United States; or

(11) take or fail to take any other personnel action if the taking of or failure to take such action violates any law, rule, or regulation implementing, or directly concerning, the merit system principles contained in section 2301 of this title.

This subsection shall not be construed to authorize the withholding of information from the Congress or the taking of any personnel action against an employee who discloses information to the Congress.

(c) The head of each agency shall be responsible for the prevention of prohibited personnel practices, for the compliance with and enforcement of applicable civil service laws, rules, and regulations, and other aspects of personnel management, and for ensuring (in consultation with the Office of Special Counsel) that agency employees are informed of the rights and remedies available to them under this chapter and chapter 12 of this title. Any individual to whom the head of an agency delegates authority for personnel management, or for any aspect thereof, shall be similarly responsible within the limits of the delegation.

(d) This section shall not be construed to extinguish or lessen any effort to achieve equal employment opportunity through affirmative action or any right or remedy available to any employee or applicant for employment in the civil service under—

(1) section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16), prohibiting discrimination on the basis of race, color, religion, sex, or national origin;

(2) sections 12 and 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631, 633a), prohibiting discrimination on the basis of age;

(3) under section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)), prohibiting discrimination on the basis of sex;

(4) section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), prohibiting discrimination on the basis of handicapping condition; or

(5) the provisions of any law, rule, or regulation prohibiting discrimination on the basis of marital status or political affiliation.

(Added Pub. L. 95–454, title I, § 101(a), Oct. 13, 1978, 92 Stat. 1114; amended Pub. L. 101–12, § 4, Apr. 10, 1989, 103 Stat. 32; Pub. L. 101–474, § 5(d), Oct. 30, 1990, 104 Stat. 1099; Pub. L. 102–378, § 2(5),

Oct. 2, 1992, 106 Stat. 1346; Pub. L. 103–94, §8(c), Oct. 6, 1993, 107 Stat. 1007; Pub. L. 103–359, title V, §501(c), Oct. 14, 1994, 108 Stat. 3429; Pub. L. 103–424, §5, Oct. 29, 1994, 108 Stat. 4363.)

REFERENCES IN TEXT

The civil service laws, referred to in subsec. (c), are set out in this title. See, particularly, section 3301 et seq. of this title.

AMENDMENTS

1994—Subsec. (a)(2)(A). Pub. L. 103–424, §5(a)(3), in concluding provisions, inserted before semicolon '', and in the case of an alleged prohibited personnel practice described in subsection (b)(8), an employee or applicant for employment in a Government corporation as defined in section 9101 of title 31''.

Subsec. (a)(2)(A)(x), (xi). Pub. L. 103–424, §5(a)(1), (2), added cls. (x) and (xi) and struck out former cl. (x) which read as follows: ''any other significant change in duties or responsibilities which is inconsistent with the employee's salary or grade level;''.

Subsec. (a)(2)(B). Pub. L. 103–424, §5(b), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: '' 'covered position' means any position in the competitive service, a career appointee position in the Senior Executive Service, or a position in the excepted service, but does not include—

''(i) a position which is excepted from the competitive service because of its confidential, policy-determining, policy-making, or policy-advocating character; or

''(ii) any position excluded from the coverage of this section by the President based on a determination by the President that it is necessary and warranted by conditions of good administration.''

Subsec. (a)(2)(C)(i). Pub. L. 103–424, §5(c), inserted before semicolon '', except in the case of an alleged prohibited personnel practice described under subsection (b)(8)''.

Subsec. (a)(2)(C)(ii). Pub. L. 103–359 inserted ''the Central Imagery Office,'' after ''Defense Intelligence Agency,''.

Subsec. (c). Pub. L. 103–424, §5(d), inserted before period at end of first sentence '', and for ensuring (in consultation with the Office of Special Counsel) that agency employees are informed of the rights and remedies available to them under this chapter and chapter 12 of this title''.

1993—Subsec. (b)(2). Pub. L. 103–94 amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''solicit or consider any recommendation or statement, oral or written, with respect to any individual who requests or is under consideration for any personnel action unless such recommendation or statement is based on the personal knowledge or records of the person furnishing it and consists of—

''(A) an evaluation of the work performance, ability, aptitude, or general qualifications of such individual; or

''(B) an evaluation of the character, loyalty, or suitability of such individual;''.

1992—Subsec. (b)(8)(B). Pub. L. 102–378 substituted ''Special Counsel'' for ''Special Counsel of the Merit Systems Protection Board''.

1990—Subsec. (a)(2)(C). Pub. L. 101–474 struck out '', the Administrative Office of the United States Courts,'' after ''means an Executive agency''.

1989—Subsec. (b)(8). Pub. L. 101–12, §4(a), in introductory provision inserted '', or threaten to take or fail to take,'' after ''fail to'' and substituted ''because of'' for ''as a reprisal for'', in subpar. (A) substituted ''any disclosure'' for ''a disclosure'', in subpar. (A)(ii) inserted ''gross'' before ''mismanagement'', in subpar. (B) substituted ''any disclosure'' for ''a disclosure'', and in subpar. (B)(ii) inserted ''gross'' before ''mismanagement''.

Subsec. (b)(9). Pub. L. 101–12, §4(b), amended par. (9) generally. Prior to amendment, par. (9) read as follows: ''take or fail to take any personnel action against any employee or applicant for employment as a reprisal for the exercise of any appeal right granted by any law, rule, or regulation;''.

EFFECTIVE DATE OF 1993 AMENDMENT; SAVINGS PROVISION

Amendment by Pub. L. 103–94 effective 120 days after Oct. 6, 1993, but not to release or extinguish any penalty, forfeiture, or liability incurred under amended provision, which is to be treated as remaining in force for purpose of sustaining any proper proceeding or action for enforcement of that penalty, forfeiture, or liability, and no provision of Pub. L. 103–94 to affect any proceedings with respect to which charges were filed on or before 120 days after Oct. 6, 1993, with orders to be issued in such proceedings and appeals taken therefrom as if Pub. L. 103–94 had not been enacted, see section 12 of Pub. L. 103–94, set out as an Effective Date; Savings Provision note under section 7321 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–12 effective 90 days following Apr. 10, 1989, see section 11 of Pub. L. 101–12, set out as a note under section 1201 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 571, 1204, 1212, 1214, 1221, 2105, 2301, 2303, 3303, 3352, 4505a, 4703, 5754, 5755, 7116, 7121, 7701 of this title; title 7 sections 6932, 6962; title 22 sections 3905, 4115; title 31 section 732; title 38 sections 4303, 4315, 4331.

§ 2303. Prohibited personnel practices in the Federal Bureau of Investigation

(a) Any employee of the Federal Bureau of Investigation who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority, take or fail to take a personnel action with respect to any employee of the Bureau as a reprisal for a disclosure of information by the employee to the Attorney General (or an employee designated by the Attorney General for such purpose) which the employee or applicant reasonably believes evidences—

(1) a violation of any law, rule, or regulation, or

(2) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

For the purpose of this subsection, ''personnel action'' means any action described in clauses (i) through (x) of section 2302(a)(2)(A) of this title with respect to an employee in, or applicant for, a position in the Bureau (other than a position of a confidential, policy-determining, policymaking, or policy-advocating character).

(b) The Attorney General shall prescribe regulations to ensure that such a personnel action shall not be taken against an employee of the Bureau as a reprisal for any disclosure of information described in subsection (a) of this section.

(c) The President shall provide for the enforcement of this section in a manner consistent with applicable provisions of sections 1214 and 1221 of this title.

(Added Pub. L. 95–454, title I, §101(a), Oct. 13, 1978, 92 Stat. 1117; amended Pub. L. 101–12, §9(a)(1), Apr. 10, 1989, 103 Stat. 34.)

AMENDMENTS

1989—Subsec. (c). Pub. L. 101–12 substituted ''applicable provisions of sections 1214 and 1221'' for ''the provisions of section 1206''.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–12 effective 90 days following Apr. 10, 1989, see section 11 of Pub. L. 101–12, set out as a note under section 1201 of this title.

§ 2304. Responsibility of the General Accounting Office

(a) If requested by either House of the Congress (or any committee thereof), or if considered necessary by the Comptroller General, the General Accounting Office shall conduct audits and reviews to assure compliance with the laws, rules, and regulations governing employment in the executive branch and in the competitive service and to assess the effectiveness and soundness of Federal personnel management.

(b) The General Accounting Office shall prepare and submit an annual report to the President and the Congress on the activities of the Merit Systems Protection Board and the Office of Personnel Management. The report shall include a description of—

(1) significant actions taken by the Board to carry out its functions under this title; and

(2) significant actions of the Office of Personnel Management, including an analysis of whether or not the actions of the Office are in accord with merit system principles and free from prohibited personnel practices.

(Added Pub. L. 95–454, title I, § 101(a), Oct. 13, 1978, 92 Stat. 1118; amended Pub. L. 102–378, § 2(6), Oct. 2, 1992, 106 Stat. 1346.)

AMENDMENTS

1992—Subsec. (b). Pub. L. 102–378 substituted ''The'' for ''the'' at beginning of first sentence.

§ 2305. Coordination with certain other provisions of law

No provision of this chapter, or action taken under this chapter, shall be construed to impair the authorities and responsibilities set forth in section 102 of the National Security Act of 1947 (61 Stat. 495; 50 U.S.C. 403), the Central Intelligence Agency Act of 1949 (63 Stat. 208; 50 U.S.C. 403a and following), the Act entitled ''An Act to provide certain administrative authorities for the National Security Agency, and for other purposes'', approved May 29, 1959 (73 Stat. 63; 50 U.S.C. 402 note), and the Act entitled ''An Act to amend the Internal Security Act of 1950'', approved March 26, 1964 (78 Stat. 168; 50 U.S.C. 831–835).

(Added Pub. L. 95–454, title I, § 101(a), Oct. 13, 1978, 92 Stat. 1118.)

REFERENCES IN TEXT

The Central Intelligence Agency Act of 1949 (63 Stat. 208; 50 U.S.C. 403a and following), referred to in text, is act June 20, 1949, ch. 227, 63 Stat. 208, as amended, which is classified generally to section 403a et seq. of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 403a of Title 50 and Tables.

The Act entitled ''An Act to provide certain administrative authorities for the National Security Agency, and for other purposes'', approved May 29, 1959 (73 Stat. 63; 50 U.S.C. 402 note), referred to in text, is Pub. L. 86–36, May 29, 1959, 73 Stat. 63, as amended, and is set out as a note under section 402 of Title 50. For complete classification of this Act to the Code, see Tables.

The Act entitled ''An Act to amend the Internal Security Act of 1950'', approved March 26, 1964 (78 Stat. 168; 50 U.S.C. 831–835), referred to in text, is act Sept. 23, 1950, ch. 1024, title III, as added Mar. 26, 1964, Pub. L. 88–290, 78 Stat. 168, which is classified principally to subchapter III (§ 831 et seq.) of chapter 23 of Title 50. For complete classification of this Act to the Code, see Tables.

CHAPTER 29—COMMISSIONS, OATHS, RECORDS, AND REPORTS

SUBCHAPTER I—COMMISSIONS, OATHS, AND RECORDS

Sec.
2901. Commission of an officer.
2902. Commission; where recorded.
2903. Oath; authority to administer.
2904. Oath; administered without fees.
2905. Oath; renewal.
2906. Oath; custody.

SUBCHAPTER II—REPORTS

2951. Reports to the Office of Personnel Management.
2952. Time of making annual reports.
2953. Reports to Congress on additional employee requirements.
2954. Information to committees of Congress on request.

AMENDMENTS

1978—Pub. L. 95–454, title IX, § 906(a)(16), Oct. 13, 1978, 92 Stat. 1226, substituted ''Office of Personnel Management'' for ''Civil Service Commission'' in item 2951.

SUBCHAPTER I—COMMISSIONS, OATHS, AND RECORDS

§ 2901. Commission of an officer

The President may make out and deliver, after adjournment of the Senate, the commission of an officer whose appointment has been confirmed by the Senate.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 411.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 10.	R.S. § 1773.

The words ''confirmed by'' are substituted for ''advised and consented to''.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

§ 2902. Commission; where recorded

(a) Except as provided by subsections (b) and (c) of this section, the Secretary of State shall make out and record, and affix the seal of the United States to, the commission of an officer appointed by the President. The seal of the United States may not be affixed to the commission before the commission has been signed by the President.

(b) The commission of an officer in the civil service or uniformed services under the control of the Secretary of Agriculture, the Secretary of

Commerce, the Secretary of Defense, the Secretary of a military department, the Secretary of the Interior, or the Secretary of the Treasury shall be made out and recorded in the department in which he is to serve under the seal of that department. The departmental seal may not be affixed to the commission before the commission has been signed by the President.

(c) The commissions of judicial officers and United States attorneys and marshals, appointed by the President, by and with the advice and consent of the Senate, and other commissions which before August 8, 1888, were prepared at the Department of State on the requisition of the Attorney General, shall be made out and recorded in the Department of Justice under the seal of that department and countersigned by the Attorney General. The departmental seal may not be affixed to the commission before the commission has been signed by the President.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 411; Pub. L. 94–183, §2(3), Dec. 31, 1975, 89 Stat. 1057.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(a)	4 U.S.C. 42 (as applicable to civil commissions).	[None.]
(b)	5 U.S.C. 11.	Mar. 3, 1875, ch. 131, §14, 18 Stat. 420. Mar. 28, 1896, ch. 73, 29 Stat. 75. Mar. 3, 1905, ch. 1422, 33 Stat. 990.
(c)	5 U.S.C. 12.	Aug. 8, 1888, ch. 786, 25 Stat. 387.

In subsection (a), the words ''Except as provided by subsections (b) and (c) of this section,'' are added on authority of former sections 11 and 12, which are codified in subsections (b) and (c) of this section. The words ''the commission of an officer'' are substituted for ''all civil commissions for officers of the United States'' because of the definition of ''officer'' in section 2104. The words ''by the President'' are coextensive with and substituted for ''by the President, by and with the advice and consent of the Senate, or by the President alone''.

In subsection (b), the words ''officer in the civil service or uniformed services'' are substituted for ''officer'' because of the definition of ''officer'' in section 2104. The words ''direction and'' are omitted as included within ''the control''. The words ''the Secretary of Defense'' are added on authority of the Acts of July 26, 1947, ch. 343, §305(a), 61 Stat. 508, and Aug. 10, 1949, ch. 412, §12(g), 63 Stat. 591. The words ''the Secretary of a military department'' are substituted for ''the Secretary of War, the Secretary of the Navy'' (appearing in the Act of Mar. 28, 1896) because of the definition of ''military department'' in section 102. The title of the Secretary of War was changed to Secretary of the Army by the Act of July 26, 1947, ch. 343, §205, 61 Stat. 501. ''Secretary of the Air Force'' is included on authority of the Act of July 26, 1947, ch. 343, §207(a), (f), 61 Stat. 502. The words ''Secretary of Commerce'' are substituted for ''Secretary of Commerce and Labor'' on authority of the Act of Mar. 4, 1913, ch. 141, §1, 37 Stat. 736. The words ''under the departmental seal'' are substituted for ''and the departmental seal affixed thereto''. The words ''any laws to the contrary notwithstanding'' are omitted as unnecessary. The last sentence of section 14 of the Act of Mar. 3, 1875, is omitted as executed.

In subsection (c), the words ''and shall be'' and ''any laws to the contrary notwithstanding'' are omitted as unnecessary.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1975—Subsec. (b). Pub. L. 94–183 struck out ''the Postmaster General,'' after ''under the control of''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 4 section 42.

§ 2903. Oath; authority to administer

(a) The oath of office required by section 3331 of this title may be administered by an individual authorized by the laws of the United States or local law to administer oaths in the State, District, or territory or possession of the United States where the oath is administered.

(b) An employee of an Executive agency designated in writing by the head of the Executive agency, or the Secretary of a military department with respect to an employee of his department, may administer—

(1) the oath of office required by section 3331 of this title, incident to entrance into the executive branch; or

(2) any other oath required by law in connection with employment in the executive branch.

(c) An oath authorized or required under the laws of the United States may be administered by—

(1) the Vice President; or

(2) an individual authorized by local law to administer oaths in the State, District, or territory or possession of the United States where the oath is administered.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 411.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(a)	5 U.S.C. 18.	R.S. §1758.
(b)	5 U.S.C. 16a(a) (less 1st 9 words after last comma).	June 26, 1943, ch. 145, §206 (less 1st 9 words after last comma), 57 Stat. 196.
(c)	5 U.S.C. 16a(b).	Sept. 30, 1961, Pub. L. 87–322 (par. under ''General Provision''), 75 Stat. 743.
	5 U.S.C. 92a.	July 3, 1926, ch. 752, 44 Stat. 830.

In subsection (b), the words ''On and after June 26, 1943'' are omitted as executed, and the word ''officer'' is omitted as included in ''employee''. The words ''Executive agency'' are coextensive with and substituted for ''executive departments or independent establishments, including any agency the majority of the stock of which is owned by the Government of the United States'' because of the definition of ''Executive agency'' in section 105. The words ''or the Secretary of a military department with respect to an employee of his department'' are inserted to preserve the application of the source law. Before enactment of the National Security Act Amendments of 1949 (63 Stat. 578), the Department of the Army, the Department of the Navy, and the Department of the Air Force were Executive departments. The National Security Act Amendments of 1949 established the Department of Defense as an Executive Department including the Department of the Army, the Department of the Navy, and the Department of the Air Force as military departments, not as Executive departments. However, the source law for this section, which was in effect in 1949, remained ap-

plicable to the Secretaries of the military departments by virtue of section 12(g) of the National Security Act Amendments of 1949 (63 Stat. 591), which is set out in the reviser's note for section 301. The words ''of the Federal Government'' and ''and to have the same force and effect as oaths administered by officers having seals'' are omitted as unnecessary.

In subsection (c), the word ''Constitution'' is omitted because ''laws'', as used in this title, encompasses the Constitution. In subsection (c)(1), the words ''of the United States'' are omitted as unnecessary. In subsection (c)(2), the words ''an individual authorized by local law to administer oaths in the State, District, or territory, or possession of the United States where the oath is administered'' are coextensive with and substituted for ''notaries public duly appointed in any State, District, or Territory of the United States, by clerks and prothonotaries of courts of record of any such State, District, or Territory, by the deputies of such clerks and prothonotaries, and by all magistrates authorized by the laws of or pertaining to any such State, District, or Territory to administer oaths''.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 39 section 1011.

§ 2904. Oath; administered without fees

An employee of an Executive agency who is authorized to administer the oath of office required by section 3331 of this title, or any other oath required by law in connection with employment in the executive branch, may not charge or receive a fee or pay for administering the oath.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 412.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 16a(a) (1st 9 words after last comma).	June 26, 1943, ch. 145, § 206 (1st 9 words after last comma), 57 Stat. 196. Sept. 30, 1961, Pub. L. 87–332 (so much of par. under ''General Provision'' as inserted ''(a)''), 75 Stat. 743.
.....	5 U.S.C. 20.	Aug. 29, 1890, ch. 820, § 1 (2d sentence under ''Fourth Auditor's Office''), 26 Stat. 371.

The section is restated to combine former sections 16a(a) (1st 9 words after last comma) and 20. The prohibition is restated in positive form. The words ''officer'' and ''clerk'' are omitted as included in ''employee''. Reference to oaths taken on promotion is omitted as unnecessary.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

§ 2905. Oath; renewal

(a) An employee of an Executive agency or an individual employed by the government of the District of Columbia who, on original appointment, subscribed to the oath of office required by section 3331 of this title is not required to renew the oath because of a change in status so long as his service is continuous in the agency in which he is employed, unless, in the opinion of the head of the Executive agency, the Secretary of a military department with respect to an employee of his department, or the Commissioners of the District of Columbia, the public interest so requires.

(b) An individual who, on appointment as an employee of a House of Congress, subscribed to the oath of office required by section 3331 of this title is not required to renew the oath so long as his service as an employee of that House of Congress is continuous.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 412.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(a)	5 U.S.C. 17b.	Aug. 14, 1937, ch. 624, 50 Stat. 640. Nov. 22, 1943, ch. 303, 57 Stat. 591.
(b)	5 U.S.C. 17c.	Mar. 28, 1955, ch. 17, 69 Stat. 14.

In subsection (a), the word ''civilian'' is omitted as unnecessary because of the definition of ''employee'' in section 2105. The words ''Executive agency'' are coextensive with and substituted for ''executive departments and independent establishments of the United States'' because of the definition of ''Executive agency'' in section 105. The words ''the Secretary of a military department with respect to an employee of his department'' are inserted to preserve the application of the source law. Before enactment of the National Security Act Amendments of 1949 (63 Stat. 578), the Department of the Army, the Department of the Navy, and the Department of the Air Force were Executive departments. The National Security Act Amendments of 1949 established the Department of Defense as an Executive Department including the Department of the Army, the Department of the Navy, and the Department of the Air Force as military departments, not as Executive departments. However, the source law for this section, which was in effect in 1949, remained applicable to the Secretaries of the military departments by virtue of section 12(g) of the National Security Act Amendments of 1949 (63 Stat. 591), which is set out in the reviser's note for section 301.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

§ 2906. Oath; custody

The oath of office taken by an individual under section 3331 of this title shall be delivered by him to, and preserved by, the House of Congress, agency, or court to which the office pertains.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 412.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 21.	R.S. § 1759.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

SUBCHAPTER II—REPORTS

§ 2951. Reports to the Office of Personnel Management

The President may prescribe rules which shall provide, as nearly as conditions of good administration warrant, that—

(1) the appointing authority notify the Office of Personnel Management in writing of

the following actions and their dates as to each individual selected for appointment in the competitive service from among those who have been examined—

(A) appointment and residence of appointee;

(B) separation during probation;

(C) transfer;

(D) resignation;

(E) removal; and

(2) the Office keep records of these actions.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 412; Pub. L. 95–454, title IX, § 906(a)(2), (3), (16), Oct. 13, 1978, 92 Stat. 1224, 1226.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 633(2)8 (less last sentence).	Jan. 16, 1883, ch. 27, § 2(2)8 (less last sentence), 22 Stat. 404.

The authority of the President to prescribe rules is added on authority of former section 633(1), which is carried into section 3302.

In paragraph (1), the word ''authority'' is substituted for ''power''. The words ''or employment'' are omitted as included within ''appointment''.

In paragraph (1)(B), the words ''separation during probation'' are substituted for ''of the rejection of any such person after probation''. The words ''rejection . . . after probation'' refer to a rejection, i.e., separation, after a portion of the probationary period has been served but before the end of the probationary period. This is so because an individual can be rejected only during the probationary period. After he has completed the probationary period, he can be removed only under procedures governing removals from the competitive service, and removals of this nature are covered by paragraph (E).

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1978—Pub. L. 95–454, § 906(a)(16), substituted ''Office of Personnel Management'' for ''Civil Service Commission'' in section catchline.

Pars. (1), (2). Pub. L. 95–454 substituted ''Office of Personnel Management'' for ''Civil Service Commission'' and ''Office'' for ''Commission''.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

CROSS REFERENCES

President's power to grant exceptions from provisions of this section, see section 3302 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3302 of this title.

§ 2952. Time of making annual reports

Except when a different time is specifically prescribed by statute, the head of each Executive department or military department shall make the annual reports, required to be submitted to Congress, at the beginning of each regular session of Congress. The reports shall cover the transactions of the preceding year.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 413.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 106.	R.S. § 195.

The words ''Executive department'' are substituted for ''department'' as the definition of ''department'' applicable to this section is coextensive with the definition of ''Executive department'' in section 101.

The words ''or military department'' are inserted to preserve the application of the source law. Before enactment of the National Security Act Amendments of 1949 (63 Stat. 578), the Department of the Army, the Department of the Navy, and the Department of the Air Force were Executive departments. The National Security Act Amendments of 1949 established the Department of Defense as an Executive Department including the Department of the Army, the Department of the Navy, and the Department of the Air Force as military departments, not as Executive departments. However, the source law for this section, which was in effect in 1949, remained applicable to the Secretaries of the military departments by virtue of section 12(g) of the National Security Act Amendments of 1949 (63 Stat. 591), which is set out in the reviser's note for section 301.

This section was part of title IV of the Revised Statutes. The Act of July 26, 1947, ch. 343, 201(d), as added Aug. 10, 1949, ch. 412, § 4, 63 Stat. 579 (former 5 U.S.C. 171–1), which provides ''Except to the extent inconsistent with the provisions of this Act [National Security Act of 1947], the provisions of title IV of the Revised Statutes as now or hereafter amended shall be applicable to the Department of Defense'' is omitted from this title but is not repealed.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

§ 2953. Reports to Congress on additional employee requirements

(a) Each report, recommendation, or other communication, of an official nature, of an Executive agency which—

(1) relates to pending or proposed legislation which, if enacted, will entail an estimated annual expenditure of appropriated funds in excess of $1,000,000;

(2) is submitted or transmitted to Congress or a committee thereof in compliance with law or on the initiative of the appropriate authority of the executive branch; and

(3) officially proposes or recommends the creation or expansion, either by action of Congress or by administrative action, of a function, activity, or authority of the Executive agency to be in addition to those functions, activities, and authorities thereof existing when the report, recommendation, or other communication is so submitted or transmitted;

shall contain a statement, concerning the Executive agency, for each of the first 5 fiscal years during which each additional or expanded function, activity, or authority so proposed or recommended is to be in effect, setting forth the following information—

(A) the estimated maximum additional—

(i) man-years of civilian employment, by general categories of positions;

(ii) expenditures for personal services; and

(iii) expenditures for all purposes other than personal services;

which are attributable to the function, activity, or authority and which will be required to

be effected by the Executive agency in connection with the performance thereof; and

(B) such other statement, discussion, explanation, or other information as is considered advisable by the appropriate authority of the executive branch or that is required by Congress or a committee thereof.

(b) Subsection (a) of this section does not apply to—

(1) the Central Intelligence Agency;

(2) a Government controlled corporation; or

(3) the General Accounting Office.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 413.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 642a.	July 25, 1956, ch. 730, §1, 70 Stat. 652.

In subsection (a), the words, ''Executive agency'' are substituted for ''department, agency, or independent establishment of the executive branch of the Federal Government (including any corporation wholly owned by the United States)'' in view of the definition of ''Executive agency'' in section 105. The exception of ''a Government controlled corporation'' is subsection (b)(2) is added to preserve the application to corporations wholly owned by the United States.

The exception of ''the General Accounting Office'' in subsection (b)(3) is added to preserve application to the executive branch.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

§ 2954. Information to committees of Congress on request

An Executive agency, on request of the Committee on Government Operations of the House of Representatives, or of any seven members thereof, or on request of the Committee on Governmental Affairs of the Senate, or any five members thereof, shall submit any information requested of it relating to any matter within the jurisdiction of the committee.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 413; Pub. L. 103–437, §3(b), Nov. 2, 1994, 108 Stat. 4581.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 105a.	May 29, 1928, ch. 901, §2, 45 Stat. 996.

The words ''Executive agency'' are substituted for ''executive department and independent establishment'' in view of the definition of ''Executive agency'' in section 105.

The words ''Committee on Government Operations of the House of Representatives'' are substituted for ''Committee on Expenditures in the Executive Departments of the House of Representatives'' on authority of H. Res. 647 of the 82d Congress, adopted July 3, 1952.

The words ''Committee on Government Operations of the Senate'' are substituted for ''Committee on Expenditures in the Executive Departments of the Senate'' on authority of S. Res. 280 of the 82d Congress, adopted Mar. 3, 1952.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1994—Pub. L. 103–437 substituted ''Committee on Governmental Affairs of the Senate'' for ''Committee on Government Operations of the Senate''.

CHANGE OF NAME

Committee on Government Operations of House of Representatives changed to Committee on Government Reform and Oversight of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

Subpart B—Employment and Retention

CHAPTER 31—AUTHORITY FOR EMPLOYMENT

SUBCHAPTER I—EMPLOYMENT AUTHORITIES

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AMENDMENTS

1988—Pub. L. 100–325, §1(b), May 30, 1988, 102 Stat. 581, added subchapter III heading and items 3151 and 3152.

1980—Pub. L. 96–523, §1(b), Dec. 12, 1980, 94 Stat. 3040, substituted ''personal assistants for handicapped employees, including blind and'' for ''reading assistants for blind employees and interpreting assistants for'' in item 3102.

1978—Pub. L. 95–454, title III, §§301(b), 302(b)(1), 307(b)(3), title IV, §402(c), Oct. 13, 1978, 92 Stat. 1145, 1146, 1148, 1160, added heading for subchapter I, substituted ''reading assistants for blind employees and interpreting assistants for deaf employees'' for ''readers for blind employees'' in item 3102, and added items 3111, 3112, heading for subchapter II, and items 3131 to 3136.

Pub. L. 95–251, §2(c)(2), Mar. 27, 1978, 92 Stat. 184, substituted ''administrative law judges'' for ''hearing examiners'' in item 3105.

1967—Pub. L. 90–206, title II, § 221(b), Dec. 16, 1967, 81 Stat. 640, added item 3110.

SUBCHAPTER I—EMPLOYMENT AUTHORITIES

AMENDMENTS

1979—Pub. L. 96–54, § 2(a)(10), Aug. 14, 1979, 93 Stat. 381, added heading for subchapter I.

§ 3101. General authority to employ

Each Executive agency, military department, and the government of the District of Columbia may employ such number of employees of the various classes recognized by chapter 51 of this title as Congress may appropriate for from year to year.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 414.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 43.	R.S. § 169. June 26, 1930, ch. 618, 46 Stat. 817.
.....	5 U.S.C. 514d (2d par.).	Sept. 21, 1944, ch. 412, § 709, 58 Stat. 743.

The authorization is restated to conform to the style of this title. The word ''Executive agency'' are substituted for ''executive department, independent establishment'' in view of the definitions in sections 103, 104, and 105. The source statute (an act to authorize the appointment of employees in the executive branch etc.) applied to the entire executive branch, and government corporations as well as other agencies in the executive branch were included within the words ''independent establishment''. The words ''or a military department'' are inserted to preserve the application of the source statute. Before enactment of the National Security Act Amendments of 1949 (63 Stat. 578), the Department of the Army, the Department of the Navy, and the Department of the Air Force were Executive departments. The National Security Act Amendments of 1949 established the Department of Defense as an Executive department including the Department of the Army, the Department of the Navy, and the Department of the Air Force as military departments, not as Executive departments. However, the source statute for this subsection, which was in effect in 1949, remained applicable to the Secretaries of the military departments by virtue of section 12(g) of the National Security Act Amendments of 1949 (63 Stat. 591), which is set out in the reviser's note for section 301. The words ''for services in the District of Columbia or elsewhere'' are eliminated as surplusage. The reference to chapter 51 is substituted for the reference to the Classification Act of 1923 because the Act of Oct. 28, 1949, ch. 782, § 1106(a), 63 Stat. 972, amended the section to refer to the Classification Act of 1949, which is carried into this title. The proviso in former section 43 and former section 514d (2d par.) are omitted as superseded by former section 22a, which is carried into section 302. The last sentence of the Act of June 26, 1930, is omitted as executed.

This section was part of title IV of the Revised Statutes. The Act of July 26, 1947, ch. 343, § 201(d), as added Aug. 10, 1949, ch. 412, § 4, 63 Stat. 579 (former 5 U.S.C. 171–1), which provides ''Except to the extent inconsistent with the provisions of this Act [National Security Act of 1947], the provisions of title IV of the Revised Statutes as now or hereafter amended shall be applicable to the Department of Defense'' is omitted from this title but is not repealed.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

REDUCTION OF FEDERAL FULL-TIME EQUIVALENT POSITIONS

Pub. L. 103–226, § 5, Mar. 30, 1994, 108 Stat. 115, as amended by Pub. L. 103–329, title VI, § 631, Sept. 30, 1994, 108 Stat. 2424, provided that:

''(a) DEFINITION.—For the purpose of this section, the term 'agency' means an Executive agency (as defined by section 105 of title 5, United States Code), but does not include the General Accounting Office.

''(b) LIMITATIONS ON FULL-TIME EQUIVALENT POSITIONS.—The President, through the Office of Management and Budget (in consultation with the Office of Personnel Management), shall ensure that the total number of full-time equivalent positions in all agencies shall not exceed—

''(1) 2,084,600 during fiscal year 1994;
''(2) 2,043,300 during fiscal year 1995;
''(3) 2,003,300 during fiscal year 1996;
''(4) 1,963,300 during fiscal year 1997;
''(5) 1,922,300 during fiscal year 1998; and
''(6) 1,882,300 during fiscal year 1999.

''(c) MONITORING AND NOTIFICATION.—The Office of Management and Budget, after consultation with the Office of Personnel Management, shall—

''(1) continuously monitor all agencies and make a determination on the first date of each quarter of each applicable fiscal year of whether the requirements under subsection (b) are met; and

''(2) notify the President and the Congress on the first date of each quarter of each applicable fiscal year of any determination that any requirement of subsection (b) is not met.

''(d) COMPLIANCE.—If, at any time during a fiscal year, the Office of Management and Budget notifies the President and the Congress that any requirement under subsection (b) is not met, no agency may hire any employee for any position in such agency until the Office of Management and Budget notifies the President and the Congress that the total number of full-time equivalent positions for all agencies equals or is less than the applicable number required under subsection (b).

''(e) WAIVER.—

''(1) EMERGENCIES.—Any provision of this section may be waived upon a determination by the President that—

''(A) the existence of a state of war or other national security concern so requires; or

''(B) the existence of an extraordinary emergency threatening life, health, safety, property, or the environment so requires.

''(2) AGENCY EFFICIENCY OR CRITICAL MISSION.—

''(A) Subsection (d) may be waived, in the case of a particular position or category of positions in an agency, upon a determination of the President that the efficiency of the agency or the performance of a critical agency mission so requires.

''(B) Whenever the President grants a waiver pursuant to subparagraph (A), the President shall take all necessary actions to ensure that the overall limitations set forth in subsection (b) are not exceeded.

''(f) EMPLOYMENT BACKFILL PREVENTION.—

''(1) IN GENERAL.—The total number of funded employee positions in all agencies (excluding the Department of Defense and the Central Intelligence 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 section 3(a)–(e) [5 U.S.C. 5597 note]. For purposes of this subsection, positions and vacancies shall be counted on a full-time-equivalent basis.

''(2) RELATED RESTRICTION.—No funds budgeted for and appropriated by any Act for salaries or expenses of positions eliminated under this subsection may be used for any purpose other than authorized separation costs.

''(3) APPLICABILITY OF BACKFILL PREVENTION PROVISIONS TO AGENCIES OTHERWISE EXEMPTED FROM FTE REDUCTION.—

''(A) IN GENERAL.—If any agency is otherwise exempted by any law from the limitations on full-time equivalent positions or the restrictions on hiring established by this section—

''(i) paragraph (1) shall apply to vacancies created in such agency; and

''(ii) the reductions required pursuant to clause (i) shall be made in the number of funded employee positions in such agency.

''(B) WAIVER AUTHORITY.—In the case of a particular position in an agency, subparagraph (A) may be waived upon a determination by the head of the agency that the performance of a critical agency mission requires the waiver.

''(C) RELATION TO OTHER LAW.—No law may be construed as suspending or modifying this paragraph unless such law specifically amends this paragraph.

''(g) LIMITATION ON PROCUREMENT OF SERVICE CONTRACTS.—The President shall take appropriate action to ensure that there is no increase in the procurement of service contracts by reason of the enactment of this Act [see Tables for classification], except in cases in which a cost comparison demonstrates such contracts would be to the financial advantage of the Federal Government.''

LIMITATION ON NUMBER OF CIVILIAN EMPLOYEES IN EXECUTIVE BRANCH

Pub. L. 95–454, title III, §311, Oct. 13, 1978, 92 Stat. 1153, which provided that the total number of civilian employees in the executive branch, on Sept. 30, 1979, on Sept. 30, 1980, and Sept. 30, 1981, shall not exceed the number of such employees on Sept. 30, 1977, terminated by its own terms on Jan. 31, 1981.

Pub. L. 91–47, title V, §503, July 22, 1969, 83 Stat. 83, repealed section 201 of Pub. L. 90–364, title II, June 28, 1968, 82 Stat. 270, which provided for limitation on the number of civilian officers and employees in the executive branch and which was formerly set out under this section.

FREEZE ON HIRING OF FEDERAL CIVILIAN EMPLOYEES

Memorandum of the President of the United States, dated Jan. 20, 1981, 46 F.R. 9907, provided for a freeze on the hiring of Federal civilian employees in the executive branch.

CITIZENSHIP REQUIREMENT FOR EMPLOYEES COMPENSATED FROM APPROPRIATED FUNDS

Act Sept. 30, 1994, Pub. L. 103–329, title VI, §606, 108 Stat. 2416, provided that: ''Unless otherwise specified during the current fiscal year no part of any appropriation contained in this or any other Act shall be used to pay the compensation of any officer or employee of the Government of the United States (including any agency the majority of the stock of which is owned by the Government of the United States) whose post of duty is in the continental United States unless such person (1) is a citizen of the United States, (2) is a person in the service of the United States on the date of enactment of this Act [Sept. 30, 1994] who, being eligible for citizenship, has filed a declaration of intention to become a citizen of the United States prior to such date and is actually residing in the United States, (3) is a person who owes allegiance to the United States, (4) is an alien from Cuba, Poland, South Vietnam, the countries of the former Soviet Union, or the Baltic countries lawfully admitted to the United States for permanent residence, or (5) South Vietnamese, Cambodian, and Laotian refugees paroled in the United States after January 1, 1975, or (6) nationals of the People's Republic of China that qualify for adjustment of status pursuant to the Chinese Student Protection Act of 1992 [Pub. L. 102–404, 8 U.S.C. 1255 note]: *Provided*, That for the purpose of this section, an affidavit signed by any such person shall be considered prima facie evidence that the requirements of this section with respect to his or her status have been complied with: *Provided further*, That any person making a false affidavit shall be guilty of a felony, and, upon conviction, shall be fined no more than $4,000 or imprisoned for not more than one year, or both: *Provided further*, That the above penal clause shall be in addition to, and not in substitution for, any other provisions of existing law: *Provided further*, That any payment made to any officer or employee contrary to the provisions of this section shall be recoverable in action by the Federal Government. This section shall not apply to citizens of Ireland, Israel, the Republic of the Philippines or to nationals of those countries allied with the United States in the current defense effort, or to international broadcasters employed by the United States Information Agency, or to temporary employment of translators, or to temporary employment in the field service (not to exceed sixty days) as a result of emergencies.''

Similar provisions were contained in the following prior appropriation acts:

Oct. 28, 1993, Pub. L. 103–123, title VI, §606, 107 Stat. 1259.

Oct. 6, 1992, Pub. L. 102–393, title VI, §607, 106 Stat. 1766.

Oct. 28, 1991, Pub. L. 102–141, title VI, §607, 105 Stat. 868.

Nov. 5, 1990, Pub. L. 101–509, title VI, §603, 104 Stat. 1471.

Nov. 3, 1989, Pub. L. 101–136, title VI, §603, 103 Stat. 816.

Sept. 22, 1988, Pub. L. 100–440, title VI, §603, 102 Stat. 1751.

Dec. 22, 1987, Pub. L. 100–202, §101(m) [title VI, §603], 101 Stat. 1329–390, 1329–419.

Oct. 18, 1986, Pub. L. 99–500, §101(m) [title VI, §603], 100 Stat. 1783–308, 1783–328, and Oct. 30, 1986, Pub. L. 99–591, §101(m) [title VI, §603], 100 Stat. 3341–308, 3341–328.

Dec. 19, 1985, Pub. L. 99–190, title I, §101(h) [H.R. 3036, title VI, §603], 99 Stat. 1291.

Oct. 12, 1984, Pub. L. 98–473, title I, §101(j) [H.R. 5798, title VI, §604], 98 Stat. 1963.

Nov. 14, 1983, Pub. L. 98–151, §101(f) [H.R. 4139, title VI, §603], 97 Stat. 973.

Dec. 21, 1982, Pub. L. 97–377, title I, §101(a) [incorporating H.R. 4121, title VI, §603, for FY 1982], 96 Stat. 1830.

Dec. 15, 1981, Pub. L. 97–92, §101(a) [H.R. 4121, title VI, §603], 95 Stat. 1183.

Dec. 16, 1980, Pub. L. 96–536, §101(a) [incorporating Pub. L. 96–74, title VI, §602], 94 Stat. 3166.

Sept. 29, 1979, Pub. L. 96–74, title VI, §602, 93 Stat. 574.

Oct. 10, 1978, Pub. L. 95–429, title VI, §602, 92 Stat. 1015.

July 31, 1977, Pub. L. 95–81, title VI, §602, 91 Stat. 354.

Sept. 22, 1976, Pub. L. 94–419, title VII, §750, 90 Stat. 1299.

July 14, 1976, Pub. L. 94–363, title VI, §602, 90 Stat. 977.

Feb. 9, 1976, Pub. L. 94–212, title VII, §753, 90 Stat. 177.

Aug. 9, 1975, Pub. L. 94–91, title VI, §602, 89 Stat. 458.

Aug. 21, 1974, Pub. L. 93–381, title VI, §602, 88 Stat. 630.

Oct. 30, 1973, Pub. L. 93–143, title VI, §602, 87 Stat. 524.

July 13, 1972, Pub. L. 92–351, title VI, §602, 86 Stat. 487.

July 9, 1971, Pub. L. 92–49, title VI, §602, 85 Stat. 122.

Oct. 7, 1970, Pub. L. 91–439, title V, §502, 84 Stat. 902.

Dec. 11, 1969, Pub. L. 91–144, title V, §502, 83 Stat. 336.

Aug. 12, 1968, Pub. L. 90–479, title V, §502, 82 Stat. 717.

Nov. 20, 1967, Pub. L. 90–147, title V, §502, 81 Stat. 483.

Oct. 15, 1966, Pub. L. 89–689, title V, §502, 80 Stat. 1014.

Oct. 28, 1965, Pub. L. 89–299, title V, §502, 79 Stat. 1108.

Aug. 30, 1964, Pub. L. 88–511, title V, §502, 78 Stat. 693.

Dec. 31, 1963, Pub. L. 88–257, title V, §502, 77 Stat. 855.

Oct. 24, 1962, Pub. L. 87–880, title V, §502, 76 Stat. 1227.

Aug. 3, 1961, Pub. L. 87–125, title V, §502, 75 Stat. 282.

July 12, 1960, Pub. L. 86–642, title II, §202, 74 Stat. 476.

July 8, 1959, Pub. L. 86–79, title II, §202, 73 Stat. 165.

June 25, 1958, Pub. L. 85–468, title II, §202, 72 Stat. 224.

June 5, 1957, Pub. L. 85–48, title II, §202, 71 Stat. 53.

June 13, 1956, ch. 385, title II, §202, 70 Stat. 280.

June 29, 1955, ch. 226, title II, §202, 69 Stat. 195.

Aug. 26, 1954, ch. 935, Ch. XIII, §1302, 68 Stat. 828.

Aug. 7, 1953, ch. 340, Ch. XIII, § 1302, 67 Stat. 435.
July 15, 1952, ch. 758, Ch. XIV, § 1402, 66 Stat. 659.
Nov. 1, 1951, ch. 664, Ch. XIII, § 1302, 65 Stat. 755.
Sept. 6, 1950, ch. 897, Ch. XII, § 1202, 64 Stat. 763.
Aug. 24, 1949, ch. 506, title III, § 302, 63 Stat. 661.
Apr. 20, 1948, ch. 219, title II, § 202, 62 Stat. 193.
July 30, 1947, ch. 359, title II, § 202, 61 Stat. 608.
Mar. 28, 1946, ch. 113, title II, § 206, 60 Stat. 80.
May 3, 1945, ch. 106, title II, § 206, 59 Stat. 132.
June 27, 1944, ch. 286, title II, § 205, 58 Stat. 385.
June 26, 1943, ch. 145, title II, § 205, 57 Stat. 196.

Citizenship requirement for permanent officers and employees of Census Bureau, see section 22 of Title 13, Census.

Exceptions to citizenship requirement for—

Department of Defense personnel, see section 1584 of Title 10, Armed Forces.

Department of State employees, see sections 2669, 2672 of Title 22, Foreign Relations and Intercourse.

Department of the Navy personnel, see section 7473 of Title 10.

Library of Congress positions, see section 169 of Title 2, The Congress.

National Aeronautics and Space Administration employees, see section 2473 of Title 42, The Public Health and Welfare.

EMPLOYMENT OF PERSONNEL DURING NATIONAL EMERGENCY PROCLAIMED ON DEC. 16, 1950

Section 1310 of act Nov. 1, 1951, ch. 664, Ch. XIII, 65 Stat. 757, as amended June 5, 1952, ch. 369, Ch. XIII, § 1302, 66 Stat. 122; Sept. 1, 1954, ch. 1208, title VI, § 602, 68 Stat. 1115; Oct. 11, 1962, Pub. L. 87–793, § 717(b), 76 Stat. 858; Aug. 6, 1965, Pub. L. 89–114, 79 Stat. 448; Oct. 11, 1967, Pub. L. 90–105, § 3, 81 Stat. 274; Apr. 21, 1976, Pub. L. 94–273, § 4(5), 90 Stat. 377, provided that, upon the enactment of this Act [Nov. 1, 1951] and until termination of the national emergency proclaimed by the President on Dec. 16, 1950, agencies shall use their authority to require initial appointment be made on other than a permanent basis to limit the number of permanent employees, the Civil Service Commission facilitate the transfer of Federal employees from nondefense to defense activities with reemployment rights and make use of its authority to prohibit excessively rapid promotions, and agencies review certain positions annually and report to Congressional committees. All powers and authorities under section 1310 of act Nov. 1, 1951, as amended, terminated 2 years from Sept. 14, 1976, pursuant to Pub. L. 94–412, title I, § 101, Sept. 14, 1976, 90 Stat. 1255 (50 U.S.C. 1601).

EX. ORD. NO. 12839. REDUCTION OF 100,000 FEDERAL POSITIONS

Ex. Ord. No. 12839, Feb. 10, 1993, 58 F.R. 8515, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, section 3301 of title 5, United States Code, and section 1111 of title 31, United States Code, it is hereby ordered as follows:

SECTION 1. *Limits on Hiring Civilian Personnel*. Each executive department or agency with over 100 employees shall eliminate not less than 4 percent of its civilian personnel positions (measured on a full-time equivalent (FTE) basis) over the next 3 fiscal years. The positions shall be vacated through attrition or early out programs established at the discretion of the department and agency heads. At least 10 percent of the reductions shall come from the Senior Executive Service, GS–15 and GS–14 levels or equivalent.

SEC. 2. *Coverage*. This order applies to all executive branch departments and agencies with over 100 employees (measured on a FTE basis).

SEC. 3. *Target Dates*. Each department and agency shall achieve 25 percent of its total reductions by the end of fiscal year 1993, 62.5 percent by the end of fiscal year 1994, and 100 percent by the end of fiscal year 1995.

SEC. 4. *Implementation*. The Director of the Office of Management and Budget shall issue detailed instructions regarding the implementation of this order, including exemptions necessary for the delivery of essential services and compliance with applicable law.

SEC. 5. *Independent Agencies*. All independent regulatory commissions and agencies are requested to comply with the provisions of this order.

WILLIAM J. CLINTON.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 3 section 107; title 25 section 2a.

§ 3102. Employment of personal assistants for handicapped employees, including blind and deaf employees

(a) For the purpose of this section—

(1) ''agency'' means—

(A) an Executive agency; and

(B) the Library of Congress;

(2) ''handicapped employee'' means an individual employed by an agency who is blind or deaf or who otherwise qualifies as a handicapped individual within the meaning of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 794); and

(3) ''nonprofit organization'' means an organization determined by the Secretary of the Treasury to be an organization described in section 501(c) of the Internal Revenue Code of 1986 (26 U.S.C. 501(c)) which is exempt from taxation under section 501(a) of such Code.

(b)(1) The head of each agency may employ one or more personal assistants who the head of the agency determines are necessary to enable a handicapped employee of that agency to perform the employee's official duties and who shall serve without pay from the agency without regard to—

(A) the provisions of this title governing appointment in the competitive service;

(B) chapter 51 and subchapter III of chapter 53 of this title; and

(C) section 1342 of title 31.

Such employment may include the employing of a reading assistant or assistants for a blind employee or an interpreting assistant or assistants for a deaf employee.

(2) A personal assistant, including a reading or interpreting assistant, employed under this subsection may receive pay for services performed by the assistant from the handicapped employee or a nonprofit organization, without regard to section 209 of title 18.

(c) The head of each agency may also employ or assign one or more personal assistants who the head of the agency determines are necessary to enable a handicapped employee of that agency to perform the employee's official duties. Such employment may include the employing of a reading assistant or assistants for a blind employee or an interpreting assistant or assistants for a deaf employee.

(d)(1) In the case of any handicapped employee (including a blind or deaf employee) traveling on official business, the head of the agency may authorize the payment to an individual to accompany or assist (or both) the handicapped employee for all or a portion of the travel period

involved. Any payment under this subsection to such an individual may be made either directly to that individual or by advancement or reimbursement to the handicapped employee.

(2) With respect to any individual paid to accompany or assist a handicapped employee under paragraph (1) of this subsection—

(A) the amount paid to that individual shall not exceed the limit or limits which the Office of Personnel Management shall prescribe by regulation to ensure that the payment does not exceed amounts (including pay and, if appropriate, travel expenses and per diem allowances) which could be paid to an employee assigned to accompany or assist the handicapped employee; and

(B) that individual shall be considered an employee, but only for purposes of chapter 81 of this title (relating to compensation for injury) and sections 2671 through 2680 of title 28 (relating to tort claims).

(e) This section may not be held or considered to prevent or limit in any way the assignment to a handicapped employee (including a blind or deaf employee) by an agency of clerical or secretarial assistance, at the expense of the agency under statutes and regulations currently applicable at the time, if that assistance normally is provided, or authorized to be provided, in that manner under currently applicable statutes and regulations.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 414; Pub. L. 90–623, § 1(3), Oct. 22, 1968, 82 Stat. 1312; Pub. L. 95–454, title III, § 302(a), (b)(2), Oct. 13, 1978, 92 Stat. 1145, 1146; Pub. L. 96–54, § 2(a)(11), Aug. 14, 1979, 93 Stat. 382; Pub. L. 96–523, § 1(a), Dec. 12, 1980, 94 Stat. 3039; Pub. L. 97–258, § 3(a)(3), Sept. 13, 1982, 96 Stat. 1063; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 43a.	Aug. 29, 1962, Pub. L. 87–614, 76 Stat. 408.

In subsection (a)(1), the word ''agency'' is substituted for ''department''. The words ''Executive agency'' are coextensive with and substituted for ''each executive department of the Federal Government, each agency or independent establishment in the executive branch of such Government, each corporation wholly owned or controlled by such Government, and the General Accounting Office'' in view of the definition of ''Executive agency'' in section 105.

In subsection (a)(3), the words ''individual employed'' are substituted for ''employee'' so as to include individuals employed by the government of the District of Columbia who are not employees as defined by section 2105.

In subsection (b), the word ''may'' is substituted for ''is authorized'' and the words ''in his discretion'' are omitted as unnecessary in view of the permissive nature of the authority. The words ''in the provisions of this title governing appointment in the competitive service'' are substituted for ''the civil service rules''. The words ''section 209 of title 18'' are substituted for ''section 1914 of title 18'' on authority of the Act of Oct. 24, 1962, Pub. L. 87–849, § 2, 76 Stat. 1126.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

REFERENCES IN TEXT

Section 501 of the Rehabilitation Act of 1973, referred to in subsec. (a)(2), is classified to section 791 of Title 29, Labor, rather than to section 794 of Title 29 as shown in text.

AMENDMENTS

1986—Subsec. (a)(3). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

1982—Subsec. (b)(1)(C). Pub. L. 97–258 substituted ''section 1342 of title 31'' for ''section 3679(b) of the Revised Statutes (31 U.S.C. 665(b))''.

1980—Pub. L. 96–523 amended section generally and, among other changes, in section catchline substituted ''personal assistants for handicapped employees, including blind and'' for ''reading assistants for blind employees and interpreting assistants for'', in subsec. (a) substituted applicability to handicapped employees for applicability to blind and deaf employees omitted applicability to the government of the District of Columbia, in subsec. (b) substituted applicability to personal assistants for applicability to reading and interpreting assistants for blind and deaf employees, respectively, redesignated former subsec. (d) as (c) and made changes in phraseology, added subsec. (d), and redesignated former subsec. (c) as (e) and made changes in phraseology.

1979—Subsec. (a)(2). Pub. L. 96–54 substituted ''Mayor'' for ''Commissioner''.

1978—Pub. L. 95–454, § 302(b)(2), substituted ''reading assistants for blind employees and interpreting assistants for deaf employees'' for ''readers for blind employees'' in section catchline.

Subsec. (a)(4), (5). Pub. L. 95–454, § 302(a)(1), added par. (4) and redesignated former par. (4) as (5).

Subsec. (b). Pub. L. 95–454, § 302(a)(2), inserted provisions respecting applicability to employment and compensation for interpreting assistant or assistants for deaf employees.

Subsec. (c). Pub. L. 95–454, § 302(a)(3), inserted ''or deaf'' after ''blind''.

Subsec. (d). Pub. L. 95–454, § 302(a)(4), added subsec. (d).

1968—Subsec. (a)(2). Pub. L. 90–623 substituted ''Commissioner'' for ''Board of Commissioners''.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 3 of Pub. L. 96–523 provided that: ''The amendments made by this Act [amending this section, section 7 of the Federal Advisory Committee Act, set out in the Appendix to this title, section 604 of Title 28, Judiciary and Judicial Procedure, and section 410 of Title 39, Postal Service] shall take effect sixty days after the date of the enactment of this Act [Dec. 12, 1980].''

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.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–623 intended to restate without substantive change the law in effect on Oct. 22, 1968, see section 6 of Pub. L. 90–623, set out as a note under section 5334 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 28 section 604; title 38 section 7281; title 39 section 410.

§ 3103. Employment at seat of Government only for services rendered

An individual may be employed in the civil service in an Executive department at the seat of Government only for services actually rendered in connection with and for the purposes of the appropriation from which he is paid. An individual who violates this section shall be removed from the service.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 415.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 46.	Aug. 5, 1882, ch. 389, §4 (less 255th through 316th words), 22 Stat. 255. Sept. 23, 1950, ch. 1010, §7, 64 Stat. 986.
.....	5 U.S.C. 47 (so much as relates to removal).	Aug. 23, 1912, ch. 350, §5 (so much as relates to removal), 37 Stat. 414.

The words ''civil officer, draughtsman, copyist, messenger, assistant messenger, mechanic, watchman, laborer, or other employee'' are omitted as obsolete language and ''individual'' is substituted therefor. The words ''in the civil service'' are added to preserve the application of former section 46 to civilian employees. The words ''or subordinate bureaus or offices thereof'' are omitted as surplusage. The words ''and at the rate of pay usual and proper for the services'' are omitted as surplusage since all pay rates are governed by statute.

All after the 75th words of section 4 of the Act of Aug. 5, 1882, as amended by section 7(b) of the Act of Sept. 23, 1950, except the 255th through 316th words, are omitted as executed. The 255th through 296th words are scheduled for repeal as superseded (see Table II–b), and the 297th through 316th words are codified in section 5501. The Act of Aug. 15, 1876, ch. 287, §5, 19 Stat. 169, cited as authority for former section 46 was repealed by section 7(a) of the Act of Sept. 23, 1950.

In the last sentence, the word ''removed'' is substituted for ''summarily removed'' because of the provisions of the Lloyd-LaFollette Act, 37 Stat. 555, as amended, and the Veterans' Preference Act of 1944, 58 Stat. 387, as amended, which are carried into this title.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

CROSS REFERENCES

Provisions relating to compensation, see section 5101 et seq. of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 18 section 1916.

§ 3104. Employment of specially qualified scientific and professional personnel

(a) The Director of the Office of Personnel Management may establish, and from time to time revise, the maximum number of scientific or professional positions for carrying out research and development functions which require the services of specially qualified personnel which may be established outside of the General Schedule. Any such position may be established by action of the Director or, under such standards and procedures as the Office prescribes (including procedures under which the prior approval of the Director may be required), by agency action.

(b) The provisions of subsection (a) of this section shall not apply to any Senior Executive Service position (as defined in section 3132(a) of this title).

(c) In addition to the number of positions authorized by subsection (a) of this section, the Librarian of Congress may establish, without regard to the second sentence of subsection (a) of this section, not more than 8 scientific or professional positions to carry out the research and development functions of the Library of Congress which require the services of specially qualified personnel.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 415; Pub. L. 90–83, §1(7), Sept. 11, 1967, 81 Stat. 196; Pub. L. 91–375, §6(c)(5), Aug. 12, 1970, 84 Stat. 776; Pub. L. 95–454, title IV, §414(a)(2)(B), (C), title VIII, §801(a)(3)(C), Oct. 13, 1978, 92 Stat. 1178, 1221; Pub. L. 99–386, title I, §101(b), Aug. 22, 1986, 100 Stat. 821; Pub. L. 102–378, §2(7), Oct. 2, 1992, 106 Stat. 1346.)

HISTORICAL AND REVISION NOTES

1966 ACT

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(a)	5 U.S.C. 1161 (less 2d sentence of (g)).	Oct. 4, 1961, Pub. L. 87–367, §202 ''Sec. 1'', 75 Stat. 789. Oct. 11, 1962, Pub. L. 87–793, §1001(a)(2) ''(g) (less 2d sentence)'', 76 Stat. 863.
(b)	5 U.S.C. 1162(c).	Oct. 4, 1961, Pub. L. 87–367, §202 ''Sec. 2(c)'', 75 Stat. 790.
(c)	5 U.S.C. 1163.	Oct. 4, 1961, Pub. L. 87–367, §202 ''Sec. 3'', 75 Stat. 790.

In subsection (a), the authority to fix pay is omitted and carried into section 5361.

In subsection (b), the words ''subsequent to February 1, 1958'' appearing in former section 1162(c) are omitted as obsolete.

The Act of Aug. 1, 1947, ch. 433, 61 Stat. 715, as amended by the following Acts is omitted from the derivation and repealed (see Table II) as superseded by the Act of Oct. 4, 1961, Pub. L. 87–367, §202, 75 Stat. 789, which is carried into this section and sections 3325 and 5361:

June 24, 1948, ch. 624, 62 Stat. 604.
July 13, 1949, ch. 332, 63 Stat. 410.
July 31, 1956, ch. 804 §501(a), 70 Stat. 761.
Aug. 10, 1956, ch. 1041, §28, 70A Stat. 631.
June 20, 1958, Pub. L. 85–462, §12(a)–(d), 72 Stat. 213A.
Sept. 23, 1959, Pub. L. 86–370, §4, 73 Stat. 651.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 ACT

Section of title 5	*Source (U.S. Code)*	*Source (Statutes at Large)*
3104(a)(5). ..	5 App.: 1161(e).	July 5, 1966, Pub. L. 89–492 §5, 80 Stat. 262.

The amendment to 5 U.S.C. 3104(a)(5) reflects Public Law 89–492, section 5.

The other amendments to 5 U.S.C. 3104 are based on section 302 of the act of July 20, 1958, Public Law 85–568 (72 Stat. 433), 42 U.S.C. 2453, and transfer plan, effective March 15, 1960, 25 Federal Register 2151, section (2)(a)(2), (b) of which in effect transferred from the Department of Defense to the National Aeronautics and Space Administration 12 of the 450 scientific and professional positions authorized by section 2 of Public Law 86–377 (10 U.S.C. 1581). Provisions relating to the date for reporting to Congress are based on 10 U.S.C. 1582.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–378 struck out ''(not to exceed 517)'' after ''positions'' in first sentence and

amended second sentence generally, substituting provisions authorizing establishment of positions by Director and by agency action for provisions specifying that only Director may establish positions.

1986—Pub. L. 99–386 struck out subsec. (b) relating to reports to Congress, redesignated pars. (1), (2), and (3) of subsec. (a) as subsecs. (a), (b), and (c), respectively, and substituted ''subsection (a) of this section'' for ''paragraph (1) of this subsection'' wherever appearing in subsecs. (b) and (c) as redesignated.

1978—Subsec. (a). Pub. L. 95–454, § 414(a)(2)(B), substituted provisions authorizing the Director to establish the maximum number of scientific or professional positions, excepting Senior Executive Service positions, and authorizing the Librarian to establish not more than 8 such positions for provisions authorizing the head of certain named agencies to establish a specified number of scientific or professional positions.

Subsec. (b). Pub. L. 95–454, § 414(a)(2)(B), (C), struck out subsec. (b), redesignated subsec. (c) as (b), and substituted in subsec. (b), as redesignated, ''to fix under section 5361 of this title the pay for positions established under this section'' for ''to establish and fix the pay of positions under this section and section 5361 of this title''.

Pub. L. 95–454, § 801(a)(3)(C), substituted in subsec. (b), as redesignated, ''section 5371 of this title'' for ''section 5361 of this title''.

Subsec. (c). Pub. L. 95–454, § 414(a)(2)(C)(i), redesignated subsec. (c) as (b).

1970—Subsec. (a)(5). Pub. L. 91–375 repealed provision for employment in Post Office Department in scientific or professional positions of not more than 6 qualified individuals.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 801(a)(3)(C) of Pub. L. 95–454 effective on first day of first applicable pay period beginning on or after 90th day after Oct. 13, 1978, see section 801(a)(4) of Pub. L. 95–454, set out as an Effective Date note under section 5361 of this title.

Amendment by section 414(a)(2)(B), (C) of Pub. L. 95–454 effective 180 days after Oct. 13, 1978, see section 415(a)(3) of Pub. L. 95–454, set out as an Effective Date note under section 3131 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–375 effective within 1 year after Aug. 12, 1970, on date established therefor by Board of Governors of United States Postal Service and published by it in Federal Register, see section 15(a) of Pub. L. 91–375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

TERMINATION OF AUTHORITY TO ESTABLISH SCIENTIFIC OR PROFESSIONAL POSITIONS OUTSIDE THE GENERAL SCHEDULE

Section 414(a)(2)(A) of Pub. L. 95–454 provided that: ''Notwithstanding any other provision of law (other than section 3104 of title 5, United States Code), the authority granted to an agency (as defined in section 5102(a)(1) of such title 5) to establish scientific or professional positions outside of the General Schedule is hereby terminated.''

Section 415(a)(3) of Pub. L. 95–454 provided that the provisions of section 414(a)(2)(A) take effect 180 days after Oct. 13, 1978.

LIMITATIONS ON EXECUTIVE POSITIONS NOT TO APPLY TO INDIVIDUALS OCCUPYING THOSE POSITIONS ON OCTOBER 12, 1978

Section 414(a)(3) of Pub. L. 95–454 provided that:

''(A) The provisions of paragraphs (1) and (2) of this subsection [amending sections 3104 and 5108 of this title] shall not apply with respect to any position so long as the individual occupying such position on the day before the date of the enactment of this Act [Oct. 13, 1978] continues to occupy such position.

''(B) The Director—

''(i) in establishing under section 5108 of title 5, United States Code, the maximum number of positions which may be placed in GS–16, 17, and 18 of the General Schedule, and

''(ii) in establishing under section 3104 of such title 5 the maximum number of scientific or professional positions which may be established,

shall take into account positions to which subparagraph (A) of this paragraph applies.''

[Section 415(a)(3) of Pub. L. 95–454 provided that the provisions of section 414(a)(3) are effective 180 days after Oct. 13, 1978.]

[References in laws to rates of pay for GS–16, 17, or 18, or to maximum rates of pay under General Schedule, to be considered references to rates payable under specified sections of this title, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of this title.]

CROSS REFERENCES

Positions established under this section in the competitive service but without competitive examination, see section 3325 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3325, 5376, 5377 of this title; title 20 section 3461.

§ 3105. Appointment of administrative law judges

Each agency shall appoint as many administrative law judges as are necessary for proceedings required to be conducted in accordance with sections 556 and 557 of this title. Administrative law judges shall be assigned to cases in rotation so far as practicable, and may not perform duties inconsistent with their duties and responsibilities as administrative law judges.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 415; Pub. L. 95–251, § 2(a)(1), (b)(2), (d)(1), Mar. 27, 1978, 92 Stat. 183, 184.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 1010 (1st sentence).	June 11, 1946, ch. 324, § 11 (1st sentence), 60 Stat. 244.

The words ''Subject to the civil service'' are omitted as unnecessary inasmuch as appointments are made subject to the civil service laws unless specifically excepted. The words ''and other laws not inconsistent with this chapter'' are omitted as unnecessary because of the organization of this title.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1978—Pub. L. 95–251 substituted references to administrative law judges for references to hearing examiners in section catchline and wherever appearing in text.

REFERENCES TO HEARING EXAMINER DEEMED REFERENCES TO ADMINISTRATIVE LAW JUDGE

Section 3 of Pub. L. 95–251 provided that: ''Any reference in any law, regulation, or order to a hearing examiner appointed under section 3105 of title 5, United States Code, shall be deemed to be a reference to an administrative law judge.''

HEARING EXAMINERS EMPLOYED BY DEPARTMENT OF AGRICULTURE

Functions vested by section 551 et seq. of this title in hearing examiners employed by Department of Agri-

culture not included in functions of officers, agencies, and employees of that Department transferred to Secretary of Agriculture by 1953 Reorg. Plan No. 2, §1, eff. June 4, 1953, 18 F.R. 3219, 67 Stat. 633, set out in the Appendix to this title.

HEARING EXAMINERS EMPLOYED BY DEPARTMENT OF COMMERCE

Functions vested by section 551 et seq. of this title in hearing examiners employed by Department of Commerce not included in functions of officers, agencies, and employees of that Department transferred to Secretary of Commerce by 1950 Reorg. Plan No. 5, §1, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to this title.

HEARING EXAMINERS EMPLOYED BY DEPARTMENT OF THE INTERIOR

Functions vested by section 551 et seq. of this title in hearing examiners employed by Department of the Interior not included in functions of officers, agencies, and employees of that Department transferred to Secretary of the Interior by 1950 Reorg. Plan No. 3, §1, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, transferred set out in the Appendix to this title.

HEARING EXAMINERS EMPLOYED BY DEPARTMENT OF JUSTICE

Functions vested by section 551 et seq. of this title in hearing examiners employed by Department of Justice not included in functions of officers, agencies, and employees of that Department transferred to Attorney General by 1950 Reorg. Plan No. 2, §1, eff. May 24, 1950, 15 F.R. 3173, 64 Stat. 1261, set out in the Appendix to this title.

HEARING EXAMINERS EMPLOYED BY DEPARTMENT OF LABOR

Functions vested by section 551 et seq. of this title in hearing examiners employed by Department of Labor not included in functions of officers, agencies, and employees of Department transferred to Secretary of Labor by 1950 Reorg. Plan No. 6, §1, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to this title.

HEARING EXAMINERS EMPLOYED BY DEPARTMENT OF THE TREASURY

Functions vested by section 551 et seq. of this title in hearing examiners employed by Department of the Treasury not included in functions of officers, agencies, and employees of Department transferred to Secretary of the Treasury by 1950 Reorg. Plan No. 26, §1, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in the Appendix to this title.

HEARING EXAMINERS APPOINTED FOR INDIAN PROBATE WORK

Hearing examiners appointed for Indian probate work pursuant to former section 372–1 of Title 25, Indians, having met qualifications required for appointment pursuant to this section, deemed to have been appointed pursuant to this section, see section 12(b) of Pub. L. 101–301, set out as a Savings Provision note under former section 372–1 of Title 25.

CROSS REFERENCES

Additional requirements imposed by statute or otherwise recognized by law not limited or repealed by this section, see section 559 of this title.

Communications Act, joint boards as having the same jurisdiction and powers as is conferred upon examiner by this section, see section 410 of Title 47, Telegraphs, Telephones, and Radiotelegraphs.

Compensation, see section 5372 of this title.

Matters involving selection or tenure of employees exempt from application of adjudicatory provisions of section 554 of this title except as they involve administrative law judges appointed under this section, see section 554 of this title.

Office of Personnel Management, investigations, reports, and regulations for purposes of this section as relating to administrative law judges, see section 1305 of this title.

Removal, see section 7521 of this title.

Subsequent statutes to be held to supersede or modify this section only to the extent that they do so expressly, see section 559 of this title.

Use of administrative law judges from other agencies in case of temporary or occasional insufficiency in an agency, see section 3344 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 554, 556, 559, 1104, 1204, 1215, 1305, 3132, 3323, 3344, 4301, 5102, 5304, 5372, 7105, 7132, 7521, 7701 of this title; title 7 section 2023; title 15 sections 327, 1715; title 16 section 823b; title 19 section 1641; title 20 section 1234; title 29 sections 214, 661, 792; title 30 sections 804, 823, 932a; title 31 sections 3801, 6712, 6713, 6720; title 33 sections 873, 919; title 41 section 607; title 42 sections 2000e–4, 2282a, 3608, 3612, 6303, 8433; title 47 section 410; title 49 sections 10305, 10344, 11346, 46104; title 50 App. section 2412.

§ 3106. Employment of attorneys; restrictions

Except as otherwise authorized by law, the head of an Executive department or military department may not employ an attorney or counsel for the conduct of litigation in which the United States, an agency, or employee thereof is a party, or is interested, or for the securing of evidence therefor, but shall refer the matter to the Department of Justice. This section does not apply to the employment and payment of counsel under section 1037 of title 10.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 415.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 49.	R.S. §189. Sept. 2, 1958, Pub. L. 85–861, §7(a), 72 Stat. 1555.
.....	5 U.S.C. 314.	R.S. §365. Sept. 2, 1958, Pub. L. 85–861, §7(b), 72 Stat. 1555.

Sections 189 and 365 of the Revised Statutes, as amended, are combined and the section is revised to express the effect of the law since department heads have long employed, with the approval of Congress, attorneys to advise them in the conduct of their official duties. The law which concentrates the authority for the conduct of litigation in the Department of Justice is codified in section 516 of title 28 by this bill.

The words ''Executive department'' are substituted for ''department'' as the definition of ''department'' applicable to R.S. §189 is coextensive with the definition of ''Executive department'' in section 101. The words ''or military department'' are inserted to preserve the application of the source law. Before enactment of the National Security Act Amendments of 1949 (63 Stat. 578), the Department of the Army, the Department of the Navy, and the Department of the Air Force were Executive departments. The National Security Act Amendments of 1949 established the Department of Defense as an Executive Department including the Department of the Army, the Department of the Navy, and the Department of the Air Force as military departments, not as Executive departments. However, the source law for this section, which was in effect in 1949, remained applicable to the Secretaries of the military departments by virtue of section 12(g) of the National Security Act Amendments of 1949 (63 Stat. 591), which is set out in the reviser's note for section 301.

R.S. § 189 was part of title IV of the Revised Statutes. The Act of July 26, 1947, ch. 343, § 201(d), as added Aug. 1, 1949, ch. 412, § 4, 63 Stat. 579 (former 5 U.S.C. 171–1), which provides ''Except to the extent inconsistent with the provisions of this Act [National Security Act of 1947], the provisions of title IV of the Revised Statutes as now or hereafter amended shall be applicable to the Department of Defense'' is omitted from this title but is not repealed.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 22 section 2698.

§ 3107. Employment of publicity experts; restrictions

Appropriated funds may not be used to pay a publicity expert unless specifically appropriated for that purpose.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 416.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 54.	Oct. 22, 1913, ch. 32, § 1 (last par. under ''Interstate Commerce Commission''), 38 Stat. 212.

The prohibition is restated in positive form.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

§ 3108. Employment of detective agencies; restrictions

An individual employed by the Pinkerton Detective Agency, or similar organization, may not be employed by the Government of the United States or the government of the District of Columbia.

(Pub. L. 89– 554, Sept. 6, 1966, 80 Stat. 416.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 53.	Mar. 3, 1893, ch. 208 (5th par. under ''Public Buildings''), 27 Stat. 591.

The prohibition is restated in positive form.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

§ 3109. Employment of experts and consultants; temporary or intermittent

(a) For the purpose of this section—

(1) ''agency'' has the meaning given it by section 5721 of this title; and

(2) ''appropriation'' includes funds made available by statute under section 9104 of title 31.

(b) When authorized by an appropriation or other statute, the head of an agency may procure by contract the temporary (not in excess of 1 year) or intermittent services of experts or consultants or an organization thereof, including stenographic reporting services. Services procured under this section are without regard to—

(1) the provisions of this title governing appointment in the competitive service;

(2) chapter 51 and subchapter III of chapter 53 of this title; and

(3) section 5 of title 41, except in the case of stenographic reporting services by an organization.

However, an agency subject to chapter 51 and subchapter III of chapter 53 of this title may pay a rate for services under this section in excess of the daily equivalent of the highest rate payable under section 5332 of this title only when specifically authorized by the appropriation or other statute authorizing the procurement of the services.

(c) Positions in the Senior Executive Service or the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service may not be filled under the authority of subsection (b) of this section.

(d) The Office of Personnel Management shall prescribe regulations necessary for the administration of this section. Such regulations shall include—

(1) criteria governing the circumstances in which it is appropriate to employ an expert or consultant under the provisions of this section;

(2) criteria for setting the pay of experts and consultants under this section; and

(3) provisions to ensure compliance with such regulations.

(e) Each agency shall report to the Office of Personnel Management on an annual basis with respect to—

(1) the number of days each expert or consultant employed by the agency during the period was so employed; and

(2) the total amount paid by the agency to each expert and consultant for such work during the period.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 416; Pub. L. 95–454, title IV, § 402(b), Oct. 13, 1978, 92 Stat. 1160; Pub. L. 97–258, § 3(a)(4), Sept. 13, 1982, 96 Stat. 1063; Pub. L. 100–325, § 2(b), May 30, 1988, 102 Stat. 581; Pub. L. 102–378, § 2(8), Oct. 2, 1992, 106 Stat. 1347.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 55a.	Aug. 2, 1946, ch. 744, § 15, 60 Stat. 810.

In subsection (a), the definitions of ''agency'' and ''appropriation'' are added on authority of the Act of Aug. 2, 1946, ch. 744, § 18, 60 Stat. 811.

In subsection (b), the words ''the provisions of this title governing appointment in the competitive service'' are substituted for ''the civil-service laws''. The words ''chapter 51 and subchapter III of chapter 53 of this title'' are substituted for the reference to the classification laws which originally meant the Classification Act of 1923, as amended. Exception from the Classification Act of 1949 is based on sections 202(27) and 1106(a) of the Act of Oct. 28, 1949, ch. 782, 63 Stat. 956, 972.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1992—Subsecs. (d), (e). Pub. L. 102–378 added subsecs. (d) and (e).

1988—Subsec. (c). Pub. L. 100–325 inserted reference to Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service.

1982—Subsec. (a)(2). Pub. L. 97–258 substituted ''section 9104'' for ''section 849''.

1978—Subsec. (c). Pub. L. 95–454 added subsec. (c).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 9 months after Oct. 13, 1978, and congressional review of provisions of sections 401 through 412 of Pub. L. 95–454, see section 415 of Pub. L. 95–454, set out as an Effective Date note under section 3131 of this title.

APPROPRIATIONS RELATING TO LABOR, HEALTH AND HUMAN SERVICES, AND EDUCATION; PUBLIC DISCLOSURE OF CONSULTING SERVICE THROUGH PROCUREMENT CONTRACT

Pub. L. 102–394, title V, §501, Oct. 6, 1992, 106 Stat. 1825, provided that: ''The expenditure of any appropriation under this Act or subsequent Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Acts for any consulting service through procurement contract, pursuant to 5 U.S.C. 3109, shall be limited to those contracts where such expenditures are a matter of public record and available for public inspection, except where otherwise provided under existing law, or under existing Executive order issued pursuant to existing law.''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 102–170, title V, §501, Nov. 26, 1991, 105 Stat. 1140.

Pub. L. 101–517, title V, §501, Nov. 5, 1990, 104 Stat. 2220.

Pub. L. 101–166, title V, §501, Nov. 21, 1989, 103 Stat. 1189.

Pub. L. 100–202, §101(h) [title V, §501], Dec. 22, 1987, 101 Stat. 1329–256, 1329–287.

Pub. L. 99–500, §101(i) [H.R. 5233, title V, §501], Oct. 18, 1986, 100 Stat. 1783–287, and Pub. L. 99–591, §101(i) [H.R. 5233, title V, §501], Oct. 30, 1986, 100 Stat. 3341–287.

Pub. L. 99–178, title V, §501, Dec. 12, 1985, 99 Stat. 1132.

Pub. L. 98–619, title V, §501, Nov. 8, 1984, 98 Stat. 3332.

Pub. L. 98–139, title V, §501, Oct. 31, 1983, 97 Stat. 898.

Pub. L. 97–377, title I, §101(e)(1) [title V, §501], Dec. 21, 1982, 96 Stat. 1878, 1904.

AVAILABILITY OF APPROPRIATIONS FOR SERVICES

Pub. L. 102–394, title V, §503, Oct. 6, 1992, 106 Stat. 1825, provided that: ''Appropriations contained in this Act or subsequent Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Acts, available for salaries and expenses, shall be available for services as authorized by 5 U.S.C. 3109 but at rates for individuals not to exceed the per diem rate equivalent to the maximum rate payable for senior-level positions under 5 U.S.C. 5376.''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 102–170, title V, §503, Nov. 26, 1991, 105 Stat. 1140.

Pub. L. 101–517, title V, §503, Nov. 5, 1990, 104 Stat. 2221.

Pub. L. 101–166, title V, §503, Nov. 21, 1989, 103 Stat. 1189.

Pub. L. 100–202, §101(h) [title V, §503], Dec. 22, 1987, 101 Stat. 1329–256, 1329–287.

Pub. L. 99–500, §101(i) [H.R. 5233, title V, §503], Oct. 18, 1986, 100 Stat. 1783–287, and Pub. L. 99–591, §101(i) [H.R. 5233, title V, §503], Oct. 30, 1986, 100 Stat. 3341–287.

Pub. L. 99–178, title V, §503, Dec. 12, 1985, 99 Stat. 1132.

Pub. L. 98–619, title V, §503, Nov. 8, 1984, 98 Stat. 3333.

Pub. L. 98–139, title V, §503, Oct. 31, 1983, 97 Stat. 899.

Pub. L. 97–377, title I, §101(e)(1) [title V, §503], Dec. 21, 1982, 96 Stat. 1878, 1904.

APPROPRIATIONS RELATING TO ENERGY AND WATER DEVELOPMENT; PUBLIC DISCLOSURE OF CONSULTING SERVICE THROUGH PROCUREMENT CONTRACT

Pub. L. 102–377, title V, §504, Oct. 2, 1992, 106 Stat. 1342, provided that: ''The expenditure of any appropriation under this Act or subsequent Energy and Water Development Appropriations Acts for any consulting service through procurement contract, pursuant to section 3109 of title 5, United States Code, hereafter shall be limited to those contracts where such expenditures are a matter of public record and available for public inspection, except where otherwise provided under existing law, or under existing Executive Order issued pursuant to existing law.''

CROSS REFERENCES

Employment of experts or consultants by Director of the Administrative Office of the United States Courts, see note set out under section 602 of Title 28, Judiciary and Judicial Procedure.

General Accounting Office authorized to credit accounts of the special disbursing agent of Saint Elizabeths Hospital with certain amounts, notwithstanding this section, see section 168 of Title 24, Hospitals and Asylums.

International Health Research Act of 1960, application of section to, see sections 2102 and 2103 of Title 22, Foreign Relations and Intercourse, and section 242*l* of Title 42, The Public Health and Welfare.

Travel expenses of consultants or experts, see section 5703 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 595, 5102, 7342, 8474 of this title; title 2 sections 136c, 179h, 1108; title 3 sections 105, 106, 107, 108; title 7 sections 16, 2225a, 5902; title 10 section 129b; title 12 section 2405; title 15 sections 205i, 634d, 636, 2206, 2218, 2451, 4105, 4805; title 16 sections 410cc–36, 410ww–24, 410yy–8, 410ccc–22, 460zz–2, 469b, 469j, 470m, 825q–1, 1052, 1406; title 18 sections 3153, 3168, 4204, 4352; title 19 sections 1331, 2171; title 20 sections 959, 1098, 1213c, 1221e–1, 1233d, 1505, 2012, 2106, 2839, 3413, 3425, 3462, 3463, 3702, 4355, 4414, 4513, 4710, 5608, 5708, 5826, 5848, 5933, 6031; title 21 sections 1305, 1502; title 22 sections 272a, 277d–3, 280b, 280i, 280k, 290b, 290f, 290h–5, 1469, 1474, 1622d, 2024, 2083, 2102, 2103, 2386, 2512, 2581, 2669, 2873, 2905, 3106, 3712, 4308, 4341, 4832; title 25 sections 640d–11, 2707, 3505; title 28 sections 602, 625, 994; title 29 sections 656, 671, 676, 783, 1302, 1774; title 30 section 1807; title 31 sections 332, 731, 1352, 5112; title 36 section 1404; title 38 section 7281; title 40 sections 71a, 822, 873, 1106; title 41 section 422; title 42 sections 242b, 242*l*, 282, 285a–2, 285b–3, 290aa, 299c–4, 300v–2, 904, 1320b–9, 1962a–4, 1975b, 1975d, 2286b, 2473, 3211, 3788, 4276, 4343, 5149, 5612, 5816, 6616, 7171, 7211, 7233, 10163, 10248, 10267, 10412, 11314, 12651f, 14196; title 43 section 377b; title 44 sections 2105, 2706, 3319, 3520; title 47 section 154; title 49 sections 323, 1113, 10384, 31134; title 50 App. section 2158.

§ 3110. Employment of relatives; restrictions

(a) For the purpose of this section—

(1) agency means—

(A) an Executive agency;

(B) an office, agency, or other establishment in the legislative branch;

(C) an office, agency, or other establishment in the judicial branch; and

(D) the government of the District of Columbia;

(2) ''public official'' means an officer (including the President and a Member of Congress), a member of the uniformed service, an employee and any other individual, in whom is

vested the authority by law, rule, or regulation, or to whom the authority has been delegated, to appoint, employ, promote, or advance individuals, or to recommend individuals for appointment, employment, promotion, or advancement in connection with employment in an agency; and

(3) ''relative'' means, with respect to a public official, an individual who is related to the public official as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister.

(b) A public official may not appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a civilian position in the agency in which he is serving or over which he exercises jurisdiction or control any individual who is a relative of the public official. An individual may not be appointed, employed, promoted, or advanced in or to a civilian position in an agency if such appointment, employment, promotion, or advancement has been advocated by a public official, serving in or exercising jurisdiction or control over the agency, who is a relative of the individual.

(c) An individual appointed, employed, promoted, or advanced in violation of this section is not entitled to pay, and money may not be paid from the Treasury as pay to an individual so appointed, employed, promoted, or advanced.

(d) The Office of Personnel Management may prescribe regulations authorizing the temporary employment, in the event of emergencies resulting from natural disasters or similar unforeseen events or circumstances, of individuals whose employment would otherwise be prohibited by this section.

(e) This section shall not be construed to prohibit the appointment of an individual who is a preference eligible in any case in which the passing over of that individual on a certificate of eligibles furnished under section 3317(a) of this title will result in the selection for appointment of an individual who is not a preference eligible.

(Added Pub. L. 90–206, title II, § 221(a), Dec. 16, 1967, 81 Stat. 640; amended Pub. L. 95–454, title IX, § 906(a)(2), Oct. 13, 1978, 92 Stat. 1224.)

AMENDMENTS

1978—Subsec. (d). Pub. L. 95–454 substituted ''Office of Personnel Management'' for ''Civil Service Commission''.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

EFFECTIVE DATE

Section 220(a)(1) of title II of Pub. L. 90–206 provided, except as otherwise expressly provided, that: ''This section [enacting provisions set out as a note under section 8704 of this title] and sections 201 [enacting provisions set out as Short Title note under section 5332 of this title], 207 [amending section 5303 of this title], 212 [enacting provisions set out as a note under section 5303 of this title], 218 [enacting provisions set out as a note under section 5332 of this title], 221 [enacting this section and provisions set out as a note under this section], 224(a) and (b) [amending sections 4101 and 8339 of this title], and 225 [enacting sections 351–361 of Title 2, The Congress] shall become effective on the date of enactment of this title [Dec. 16, 1967].''

RETROACTIVE EFFECT

Section 221(c) of Pub. L. 90–206 provided that: ''The amendments made by this section [enacting this section] do not apply to an appointment, employment, advancement, or promotion made or advocated by a public official of any individual who is a relative of the public official if, prior to the effective date of this section [see Effective Date note above], the individual was appointed by the public official, or received an appointment advocated by the public official, and is serving under the appointment on such effective date.''

[Section 221(c) of Pub. L. 90–206 effective Dec. 16, 1967, see section 220(a)(1) of Pub. L. 90–206, set out as an Effective Date note above.]

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2302 of this title; title 39 section 410.

§ 3111. Acceptance of volunteer service

(a) For the purpose of this section, ''student'' means an individual who is enrolled, not less than half-time, in a high school, trade school, technical or vocational institute, junior college, college, university, or comparable recognized educational institution. An individual who is a student is deemed not to have ceased to be a student during an interim between school years if the interim is not more than 5 months and if such individual shows to the satisfaction of the Office of Personnel Management that the individual has a bona fide intention of continuing to pursue a course of study or training in the same or different educational institution during the school semester (or other period into which the school year is divided) immediately after the interim.

(b) Notwithstanding section 1342 of title 31, the head of an agency may accept, subject to regulations issued by the Office, voluntary service for the United States if the service—

(1) is performed by a student, with the permission of the institution at which the student is enrolled, as part of an agency program established for the purpose of providing educational experiences for the student;

(2) is to be uncompensated; and

(3) will not be used to displace any employee.

(c)(1) Except as provided in paragraph (2), any student who provides voluntary service under subsection (b) of this section shall not be considered a Federal employee for any purpose other than for purposes of chapter 81 of this title (relating to compensation for injury) and sections 2671 through 2680 of title 28 (relating to tort claims).

(2) In addition to being considered a Federal employee for the purposes specified in paragraph (1), any student who provides voluntary service as part of a program established under subsection (b) of this section in the Internal Revenue Service, Department of the Treasury, shall be considered an employee of the Department of the Treasury for purposes of—

(A) section 552a of this title (relating to disclosure of records);

(B) subsections (a)(1), (h)(1), (k)(6), and (*l*)(4) of section 6103 of title 26 (relating to confidentiality and disclosure of returns and return information);

(C) sections 7213(a)(1) and 7431 of title 26 (relating to unauthorized disclosures of returns and return information by Federal employees and other persons); and

(D) section 7423 of title 26 (relating to suits against employees of the United States);

except that returns and return information (as defined in section 6103(b) of title 26) shall be made available to students under such program only to the extent that the Secretary of the Treasury or his designee determines that the duties assigned to such students so require.

(Added Pub. L. 95–454, title III, § 301(a), Oct. 13, 1978, 92 Stat. 1144; amended Pub. L. 97–258, § 3(a)(5), Sept. 13, 1982, 96 Stat. 1063; Pub. L. 97–437, Jan. 8, 1983, 96 Stat. 2285.)

AMENDMENTS

1983—Subsec. (c)(1). Pub. L. 97–437, § 1(1), substituted ''(c)(1) Except as provided in par. (2), any'' for ''(c) Any''.

Subsec. (c)(2). Pub. L. 97–437, § 1(2), added par. (2).

1982—Subsec. (b). Pub. L. 97–258 substituted ''section 1342 of title 31'' for ''section 3679(b) of the Revised Statutes (31 U.S.C. 665(b))''.

EFFECTIVE DATE

Section effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

§ 3112. Disabled veterans; noncompetitive appointment

Under such regulations as the Office of Personnel Management shall prescribe, an agency may make a noncompetitive appointment leading to conversion to career or career-conditional employment of a disabled veteran who has a compensable service-connected disability of 30 percent or more.

(Added Pub. L. 95–454, title III, § 307(b)(1), Oct. 13, 1978, 92 Stat. 1147.)

EFFECTIVE DATE

Section effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

SUBCHAPTER II—THE SENIOR EXECUTIVE SERVICE

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in title 7 section 16; title 38 section 7425.

§ 3131. The Senior Executive Service

It is the purpose of this subchapter to establish a Senior Executive Service to ensure that the executive management of the Government of the United States is responsive to the needs, policies, and goals of the Nation and otherwise is of the highest quality. The Senior Executive Service shall be administered so as to—

(1) provide for a compensation system, including salaries, benefits, and incentives, and for other conditions of employment, designed to attract and retain highly competent senior executives;

(2) ensure that compensation, retention, and tenure are contingent on executive success which is measured on the basis of individual and organizational performance (including such factors as improvements in efficiency, productivity, quality of work or service, cost efficiency, and timeliness of performance and success in meeting equal employment opportunity goals);

(3) assure that senior executives are accountable and responsible for the effectiveness and productivity of employees under them;

(4) recognize exceptional accomplishment;

(5) enable the head of an agency to reassign senior executives to best accomplish the agency's mission;

(6) provide for severance pay, early retirement, and placement assistance for senior executives who are removed from the Senior Executive Service for nondisciplinary reasons;

(7) protect senior executives from arbitrary or capricious actions;

(8) provide for program continuity and policy advocacy in the management of public programs;

(9) maintain a merit personnel system free of prohibited personnel practices;

(10) ensure accountability for honest, economical, and efficient Government;

(11) ensure compliance with all applicable civil service laws, rules, and regulations, including those related to equal employment opportunity, political activity, and conflicts of interest;

(12) provide for the initial and continuing systematic development of highly competent senior executives;

(13) provide for an executive system which is guided by the public interest and free from improper political interference; and

(14) appoint career executives to fill Senior Executive Service positions to the extent practicable, consistent with the effective and efficient implementation of agency policies and responsibilities.

(Added Pub. L. 95–454, title IV, § 402(a), Oct. 13, 1978, 92 Stat. 1154.)

REFERENCES IN TEXT

The civil service laws, referred to in par. (11), are set out in this title. See, particularly, section 3301 et seq. of this title.

EFFECTIVE DATE

Section 415 of title IV of Pub. L. 95–454 provided that: ''(a)(1) The provisions of this title, other than sections 413 and 414(a) [enacting this subchapter and sections 2101a, 3391 to 3397, 3591 to 3595, 4311 to 4315, 4507, 5381 to 5385, 5752, and 7541 to 7543 of this title, amending sections 2102, 2103, 2108, 3109, 3501, 5311, 5331, 5504, 5541, 5595, 5723, 6304, 8336, and 8339 of this title, and enacting provisions set out as a note under section 5311 of this title], shall take effect 9 months after the date of the enactment of this Act [Oct. 13, 1978].

''(2) The provisions of section 413 of this title [set out as a note under section 3133 of this title] shall take effect on the date of the enactment of this Act [Oct. 13, 1978].

''(3) The provisions of section 414(a) of this title [amending sections 3104 and 5108 of this title and enacting provisions set out as notes under sections 3104 and 5108 of this title] shall take effect 180 days after the date of the enactment of this Act [Oct. 13, 1978].

''(b)(1) The amendments made by sections 401 through 412 of this title [enacting this subchapter and sections 2101a, 3391 to 3397, 3591 to 3595, 4311 to 4315, 4507, 5381 to 5385, 5752, and 7541 to 7543 of this title, amending sections 2102, 2103, 2108, 3109, 3501, 5311, 5331, 5504, 5541, 5595, 5723, 6304, 8336, and 8339 of this title] shall continue to have effect unless, during the first period of 60 calendar days of continuous session of the Congress beginning after 5 years after the effective date of such amendments, a concurrent resolution is introduced and adopted by the Congress disapproving the continuation of the Senior Executive Service. Such amendments shall cease to have effect on the first day of the first fiscal year beginning after the date of the adoption of such concurrent resolution.

''(2) The continuity of a session is broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of the 60-day period.

''(3) The provisions of subsections (d), (e), (f), (g), (h), (i), (j), and (k) of section 5305 of title 5, United States Code, shall apply with respect to any concurrent resolution referred to in paragraph (1) of this subsection, except that for the purpose of this paragraph the reference in such subsection (e) to 10 calendar days shall be considered a reference to 30 calendar days.

''(4) During the 5-year period referred to in paragraph (1) of this subsection, the Director of the Office of Personnel Management shall include in each report required under section 3135 of title 5, United States Code (as added by this title) an evaluation of the effectiveness of the Senior Executive Service and the manner in which such Service is administered.''

CONGRESSIONAL FINDINGS RESPECTING CONTINUATION OF SENIOR EXECUTIVE SERVICE

Pub. L. 98–615, title III, § 301, Nov. 8, 1984, 98 Stat. 3217, provided that: ''The Congress finds that the Senior Executive Service should be continued indefinitely.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3151, 3393a of this title; title 10 sections 1590, 1601; title 31 section 733.

§ 3132. Definitions and exclusions

(a) For the purpose of this subchapter—

(1) ''agency'' means an Executive agency, except a Government corporation and the General Accounting Office, but does not include—

(A) any agency or unit thereof excluded from coverage by the President under subsection (c) of this section; or

(B) the Federal Bureau of Investigation, the Drug Enforcement Administration, the Central Intelligence Agency, the Defense Intelligence Agency, the Central Imagery Office, the National Security Agency, Department of Defense intelligence activities the civilian employees of which are subject to section 1590 of title 10,,[1] and, as determined by the President, an Executive agency, or unit thereof, whose principal function is the conduct of foreign intelligence or counterintelligence activities;

(C) the Federal Election Commission; or

(D) the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Federal Housing Finance Board, the Resolution Trust Corporation, the Farm Credit Administration, the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development, and the National Credit Union Administration;

(2) ''Senior Executive Service position'' means any position in an agency which is classified above GS–15 pursuant to section 5108 or in level IV or V of the Executive Schedule, or an equivalent position, which is not required to be filled by an appointment by the President by and with the advice and consent of the Senate, and in which an employee—

(A) directs the work of an organizational unit;

(B) is held accountable for the success of one or more specific programs or projects;

(C) monitors progress toward organizational goals and periodically evaluates and makes appropriate adjustments to such goals;

(D) supervises the work of employees other than personal assistants; or

(E) otherwise exercises important policymaking, policy-determining, or other executive functions;

but does not include—

(i) any position in the Foreign Service of the United States; or

(ii) an administrative law judge position under section 3105 of this title;

(3) ''senior executive'' means a member of the Senior Executive Service;

(4) ''career appointee'' means an individual in a Senior Executive Service position whose appointment to the position or previous appointment to another Senior Executive Service position was based on approval by the Office of Personnel Management of the executive qualifications of such individual;

(5) ''limited term appointee'' means an individual appointed under a nonrenewable appointment for a term of 3 years or less to a Senior Executive Service position the duties of which will expire at the end of such term;

(6) ''limited emergency appointee'' means an individual appointed under a nonrenewable appointment, not to exceed 18 months, to a Senior Executive Service position established to meet a bona fide, unanticipated, urgent need;

(7) ''noncareer appointee'' means an individual in a Senior Executive Service position who is not a career appointee, a limited term appointee, or a limited emergency appointee;

(8) ''career reserved position'' means a position which is required to be filled by a career appointee and which is designated under subsection (b) of this section; and

(9) ''general position'' means any position, other than a career reserved position, which may be filled by either a career appointee, noncareer appointee, limited emergency appointee, or limited term appointee.

(b)(1) For the purpose of paragraph (8) of subsection (a) of this section, the Office shall prescribe the criteria and regulations governing the designation of career reserved positions. The criteria and regulations shall provide that a position shall be designated as a career reserved position only if the filling of the position by a career appointee is necessary to ensure impartiality, or the public's confidence in the impartiality, of the Government. The head of each agency shall be responsible for designating career reserved positions in such agency in accordance with such criteria and regulations.

[1] So in original.

(2) The Office shall periodically review general positions to determine whether the positions should be designated as career reserved. If the Office determines that any such position should be so designated, it shall order the agency to make the designation.

(3) Notwithstanding the provisions of any other law, any position to be designated as a Senior Executive Service position (except a position in the Executive Office of the President) which—

(A) is under the Executive Schedule, or for which the rate of basic pay is determined by reference to the Executive Schedule, and

(B) on the day before the date of the enactment of the Civil Service Reform Act of 1978 was specifically required under section 2102 of this title or otherwise required by law to be in the competitive service,

shall be designated as a career reserved position if the position entails direct responsibility to the public for the management or operation of particular government programs or functions.

(4) Not later than March 1 of each year, the head of each agency shall publish in the Federal Register a list of positions in the agency which were career reserved positions during the preceding calendar year.

(c) An agency may file an application with the Office setting forth reasons why it, or a unit thereof, should be excluded from the coverage of this subchapter. The Office shall—

(1) review the application and stated reasons,

(2) undertake a review to determine whether the agency or unit should be excluded from the coverage of this subchapter, and

(3) upon completion of its review, recommend to the President whether the agency or unit should be excluded from the coverage of this subchapter.

If the Office recommends that an agency or unit thereof be excluded from the coverage of this subchapter, the President may, on written determination, make the exclusion for the period determined by the President to be appropriate.

(d) Any agency or unit which is excluded from coverage under subsection (c) of this section shall make a sustained effort to bring its personnel system into conformity with the Senior Executive Service to the extent practicable.

(e) The Office may at any time recommend to the President that any exclusion previously granted to an agency or unit thereof under subsection (c) of this section be revoked. Upon recommendation of the Office, the President may revoke, by written determination, any exclusion made under subsection (c) of this section.

(f) If—

(1) any agency is excluded under subsection (c) of this section, or

(2) any exclusion is revoked under subsection (e) of this section,

the Office shall, within 30 days after the action, transmit to the Congress written notice of the exclusion or revocation.

(Added Pub. L. 95–454, title IV, §402(a), Oct. 13, 1978, 92 Stat. 1155; amended Pub. L. 96–54, §2(a)(12), Aug. 14, 1979, 93 Stat. 382; Pub. L. 96–187, title II, §203, Jan. 8, 1980, 93 Stat. 1368; Pub. L. 100–325, §2(c), May 30, 1988, 102 Stat. 581; Pub. L. 101–73, title VII, §742(c), Aug. 9, 1989, 103 Stat. 437; Pub. L. 101–509, title V, §529 [title I, §101(b)(9)(A)], Nov. 5, 1990, 104 Stat. 1427, 1441; Pub. L. 101–624, title XVIII, §1841, Nov. 28, 1990, 104 Stat. 3835; Pub. L. 102–496, title IV, §402(b), Oct. 24, 1992, 106 Stat. 3184; Pub. L. 102–550, title XIII, §1351(b), Oct. 28, 1992, 106 Stat. 3969; Pub. L. 103–359, title V, §501(d), Oct. 14, 1994, 108 Stat. 3429.)

REFERENCES IN TEXT

Level IV or V of the Executive Schedule, referred to in subsec. (a)(2), are set out in sections 5315 and 5316 of this title.

The date of the enactment of the Civil Service Reform Act of 1978, referred to in subsec. (b)(3), is the date of the enactment of Pub. L. 95–454, which was approved Oct. 13, 1978.

AMENDMENTS

1994—Subsec. (a)(1)(B). Pub. L. 103–359 inserted ''the Central Imagery Office,'' after ''Defense Intelligence Agency,''.

1992—Subsec. (a)(1)(B). Pub. L. 102–496 inserted '', Department of Defense intelligence activities the civilian employees of which are subject to section 1590 of title 10,'' after ''National Security Agency''.

Subsec. (a)(1)(D). Pub. L. 102–550 inserted ''the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development,'' after ''Farm Credit Administration,''.

1990—Subsec. (a)(1)(D). Pub. L. 101–624 inserted reference to Farm Credit Administration.

Subsec. (a)(2). Pub. L. 101–509 substituted ''classified above GS–15 pursuant to section 5108'' for ''in GS–16, 17, or 18 of the General Schedule''.

1989—Subsec. (a)(1)(D). Pub. L. 101–73 added subpar. (D).

1988—Subsec. (a)(1)(B). Pub. L. 100–325, §2(c)(1), inserted reference to Drug Enforcement Administration.

Subsec. (a)(2)(iii). Pub. L. 100–235, §2(c)(2), struck out cl. (iii) which read as follows: ''any position in the Drug Enforcement Administration which is excluded from the competitive service under section 201 of the Crime Control Act of 1976 (5 U.S.C. 5108 note; 90 Stat. 2425);''.

1980—Subsec. (a)(1)(C). Pub. L. 96–187 added subpar. (C).

1979—Subsec. (a)(1)(B). Pub. L. 96–54 inserted ''and,'' after ''Security Agency,''.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–509 effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title III, §305] of Pub. L. 101–509, set out as a note under section 5301 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–187 effective on Jan. 8, 1980, see section 301(a) of Pub. L. 96–187, set out as a note under section 431 of Title 2, The Congress.

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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2101a, 3104, 3133, 3135, 3151, 3372, 3391, 3591, 4311, 4507, 4508, 5304, 5347, 5376, 5381, 5724, 7323, 8432 of this title; title 10 sections 1590, 1601, 3014, 5014, 8014; title 20 section 1402; title 22 section 2664a; title 31 section 733; title 38 sections 308, 7281; title 42 section 904; title 44 section 2103.

§ 3133. Authorization of positions; authority for appointment

(a) During each even-numbered calendar year, each agency shall—

(1) examine its needs for Senior Executive Service positions for each of the 2 fiscal years beginning after such calendar year; and

(2) submit to the Office of Personnel Management a written request for a specific number of Senior Executive Service positions for each of such fiscal years.

(b) Each agency request submitted under subsection (a) of this section shall—

(1) be based on the anticipated type and extent of program activities and budget requests of the agency for each of the 2 fiscal years involved, and such other factors as may be prescribed from time to time by the Office; and

(2) identify, by position title, positions which are proposed to be designated as or removed from designation as career reserved positions, and set forth justifications for such proposed actions.

(c) The Office of Personnel Management, in consultation with the Office of Management and Budget, shall review the request of each agency and shall authorize, for each of the 2 fiscal years covered by requests required under subsection (a) of this section, a specific number of Senior Executive Service positions for each agency.

(d)(1) The Office of Personnel Management may, on a written request of an agency or on its own initiative, make an adjustment in the number of positions authorized for any agency. Each agency request under this paragraph shall be submitted in such form, and shall be based on such factors, as the Office shall prescribe.

(2) The total number of positions in the Senior Executive Service may not at any time during any fiscal year exceed 105 percent of the total number of positions authorized under subsection (c) of this section for such fiscal year.

(e)(1) Not later than July 1, 1979, and from time to time thereafter as the Director of the Office of Personnel Management finds appropriate, the Director shall establish, by rule issued in accordance with section 1103(b) of this title, the number of positions out of the total number of positions in the Senior Executive Service, as authorized by this section or section 413 of the Civil Service Reform Act of 1978, which are to be career reserved positions. Except as provided in paragraph (2) of this subsection, the number of positions required by this subsection to be career reserved positions shall not be less than the number of the positions then in the Senior Executive Service which before the date of such Act, were authorized to be filled only through competitive civil service examination.

(2) The Director may, by rule, designate a number of career reserved positions which is less than the number required by paragraph (1) of this subsection only if the Director determines such lesser number necessary in order to designate as general positions one or more positions (other than positions described in section 3132(b)(3) of this title) which—

(A) involve policymaking responsibilities which require the advocacy or management of programs of the President and support of controversial aspects of such programs;

(B) involve significant participation in the major political policies of the President; or

(C) require the senior executives in the positions to serve as personal assistants of, or advisers to, Presidential appointees.

The Director shall provide a full explanation for his determination in each case.

(Added Pub. L. 95–454, title IV, § 402(a), Oct. 13, 1978, 92 Stat. 1158.)

REFERENCES IN TEXT

Section 413 of the Civil Service Reform Act of 1978, referred to in subsec. (e)(1), is set out as a note below.

The date of such Act, referred to in subsec. (e)(1), probably means Oct. 13, 1978, the date of the enactment of the Civil Service Reform Act of 1978.

CONVERSION TO SENIOR EXECUTIVE SERVICE

Section 413 of Pub. L. 95–454 provided that:

''(a) For the purpose of this section, 'agency', 'Senior Executive Service position', 'career appointee', 'career reserved position', 'limited term appointee', 'noncareer appointee', and 'general position' have the meanings set forth in section 3132(a) of title 5, United States Code (as added by this title) and 'Senior Executive Service' has the meaning set forth in section 2101a of such title 5 (as added by this title).

''(b)(1) Under the guidance of the Office of Personnel Management, each agency shall—

''(A) designate those positions which it considers should be Senior Executive Service positions and designate which of those positions it considers should be career reserved positions; and

''(B) submit to the Office a written request for—

''(i) a specific number of Senior Executive Service positions; and

''(ii) authority to employ a specific number of noncareer appointees.

''(2) The Office of Personnel Management shall review the designations and requests of each agency under paragraph (1) of this subsection, and shall establish interim authorizations in accordance with sections 3133 and 3134 of title 5, United States Code (as added by this Act), and shall publish the titles of the authorized positions in the Federal Register.

''(c)(1) Each employee serving in a position at the time it is designated as a Senior Executive Service position under subsection (b) of this section shall elect to—

''(A) decline conversion and be appointed to a position under such employee's current type of appointment and pay system, retaining the grade, seniority, and other rights and benefits associated with such type of appointment and pay system; or

''(B) accept conversion and be appointed to a Senior Executive Service position in accordance with the provisions of subsections (d), (e), (f), (g), and (h) of this section.

The appointment of an employee in an agency because of an election under subparagraph (A) of this paragraph shall not result in the separation or reduction in grade of any other employee in such agency.

''(2) Any employee in a position which has been designated a Senior Executive Service position under this section shall be notified in writing of such designation, the election required under paragraph (1) of this subsection, and the provisions of subsections (d), (e), (f), (g), and (h) of this section. The employee shall be given 90 days from the date of such notification to make the election under paragraph (1) of this subsection.

''(d) Each employee who has elected to accept conversion to a Senior Executive Service position under subsection (c)(1)(B) of this section and who is serving under—

''(1) a career or career-conditional appointment; or

''(2) a similar type of appointment in an excepted service position, as determined by the Office;

in a position which is designated as a Senior Executive Service position shall be appointed as a career appointee to such Senior Executive Service position without regard to section 3393(b)–(e) of title 5, United States Code (as added by this title).

''(e) Each employee who has elected conversion to a Senior Executive Service position under subsection (c)(1)(B) of this section and who is serving under an excepted appointment in a position which is not designated a career reserved position in the Senior Executive Service, but is—

''(1) a position in Schedule C of subpart C of part 213 of title 5, Code of Federal Regulations;

''(2) a position filled by noncareer executive assignment under subpart F of part 305 of title 5, Code of Federal Regulations; or

''(3) a position in the Executive Schedule under subchapter II of chapter 53 of title 5, United States Code [section 5311 et seq. of this title], other than a career Executive Schedule position;

shall be appointed as a noncareer appointee to a Senior Executive Service position.

''(f) Each employee who has elected conversion to a Senior Executive Service position under subsection (c)(1)(B) of this section, who is serving in a position described in paragraph (1), (2), or (3) of subsection (e) of this section, and whose position is designated as a career reserved position under subsection (b) of this section shall be appointed as a noncareer appointee to an appropriate general position in the Senior Executive Service or shall be separated.

''(g) Each employee who has elected conversion to a Senior Executive Service position under subsection (c)(1)(B) of this section, who is serving in a position described in paragraph (1), (2), or (3) of subsection (e) of this section, and whose position is designated as a Senior Executive Service position and who has reinstatement eligibility to a position in the competitive service, may, on request to the Office, be appointed as a career appointee to a Senior Executive Service position. The name of, and basis for reinstatement eligibility for, each employee appointed as a career appointee under this subsection shall be published in the Federal Register.

''(h) Each employee who has elected conversion to a Senior Executive Service position under subsection (c)(1)(B) of this section and who is serving under a limited executive assignment under subpart F of part 305 of title 5, Code of Federal Regulations, shall—

''(1) be appointed as a limited term appointee to a Senior Executive Service position if the position then held by such employee will terminate within 3 years of the date of such appointment;

''(2) be appointed as a noncareer appointee to a Senior Executive Service position if the position then held by such employee is designated as a general position; or

''(3) be appointed as a noncareer appointee to a general position if the position then held by such employee is designated as a career reserved position.

''(i) The rate of basic pay for any employee appointed to a Senior Executive Service position under this section shall be greater than or equal to the rate of basic pay payable for the position held by such employee at the time of such appointment.

''(j) Any employee who is aggrieved by any action by any agency under this section is entitled to appeal to the Merit Systems Protection Board under section 7701 of title 5, United States Code (as added by this title). An agency shall take any corrective action which the Board orders in its decision on an appeal under this subsection.

''(k) The Office shall prescribe regulations to carry out the purpose of this section.''

Section 415(a)(2) of Pub. L. 95–454 provided that section 413 is effective Oct. 13, 1978.

CROSS REFERENCES

Inspector General as ''appointing authority'' for members or positions within Senior Executive Service within office of an Inspector General, see Inspector General Act of 1978, § 6(d), set out in the Appendix to this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3392 of this title; title 42 section 904.

§ 3134. Limitations on noncareer and limited appointments

(a) During each calendar year, each agency shall—

(1) examine its needs for employment of noncareer appointees for the fiscal year beginning in the following year; and

(2) submit to the Office of Personnel Management, in accordance with regulations prescribed by the Office, a written request for authority to employ a specific number of noncareer appointees for such fiscal year.

(b) The number of noncareer appointees in each agency shall be determined annually by the Office on the basis of demonstrated need of the agency. The total number of noncareer appointees in all agencies may not exceed 10 percent of the total number of Senior Executive Service positions in all agencies.

(c) Subject to the 10 percent limitation of subsection (b) of this section, the Office may adjust the number of noncareer positions authorized for any agency under subsection (b) of this section if emergency needs arise that were not anticipated when the original authorizations were made.

(d) The number of Senior Executive Service positions in any agency which are filled by noncareer appointees may not at any time exceed the greater of—

(1) 25 percent of the total number of Senior Executive Service positions in the agency; or

(2) the number of positions in the agency which were filled on the date of the enactment of the Civil Service Reform Act of 1978 by—

(A) noncareer executive assignments under subpart F of part 305 of title 5, Code of Federal Regulations, as in effect on such date, or

(B) appointments to level IV or V of the Executive Schedule which were not required on such date to be made by and with the advice and consent of the Senate.

This subsection shall not apply in the case of any agency having fewer than 4 Senior Executive Service positions.

(e) The total number of limited emergency appointees and limited term appointees in all agencies may not exceed 5 percent of the total number of Senior Executive Service positions in all agencies.

(Added Pub. L. 95–454, title IV, § 402(a), Oct. 13, 1978, 92 Stat. 1159.)

REFERENCES IN TEXT

The date of enactment of the Civil Service Reform Act of 1978, referred to in subsec. (d)(2), is the date of enactment of Pub. L. 95–454, which was approved Oct. 13, 1978.

Level IV or V of the Executive Schedule, referred to in subsec. (d)(2)(B), are set out in sections 5315 and 5316 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 20 section 3461; title 38 section 709.

§ 3135. Biennial report

(a) The Office of Personnel Management shall submit to each House of the Congress, at the time the budget is submitted by the President to the Congress during each odd-numbered calendar year, a report on the Senior Executive Service. The report shall include—

(1) the number of Senior Executive Service positions authorized for the then current fiscal year, in the aggregate and by agency, and the projected number of Senior Executive Service positions to be authorized for the next two fiscal years, in the aggregate and by agency;

(2) the authorized number of career appointees and noncareer appointees, in the aggregate and by agency, for the then current fiscal year;

(3) the position titles and descriptions of Senior Executive Service positions designated for the then current fiscal year;

(4) a description of each exclusion in effect under section 3132(c) of this title during the preceding fiscal year;

(5) the number of career appointees, limited term appointees, limited emergency appointees, and noncareer appointees, in the aggregate and by agency, employed during the preceding fiscal year;

(6) the percentage of senior executives at each pay rate, in the aggregate and by agency, employed at the end of the preceding fiscal year;

(7) for the preceding fiscal year, by agency—

(A) the number of performance awards, and the number of ranks, conferred, as well as the respective aggregate amounts paid for such awards and ranks;

(B) the percentage of career appointees in such agency who received any such award, and the percentage who received any such rank; and

(C) the name of each individual who received any such award or rank, the award or rank received, and a brief summary of the reasons why such individual was selected;

(8) the estimated number of career reserved positions which, during the two fiscal years following the then current fiscal year, will become general positions and the estimated number of general positions which during such two fiscal years, will become career reserved positions;

(9) the number of career appointees who have been placed in positions outside the Senior Executive Service under section 3594 of this title as a result of a removal under section 3595 of this title; and

(10) such other information regarding the Senior Executive Service as the Office considers appropriate.

(b) The Office of Personnel Management shall submit to each House of the Congress, at the time the budget is submitted to the Congress during each even-numbered calendar year, an interim report showing changes in matters required to be reported under subsection (a) of this section.

(Added Pub. L. 95–454, title IV, § 402(a), Oct. 13, 1978, 92 Stat. 1159; amended Pub. L. 98–168, title III, § 301(b), Nov. 29, 1983, 97 Stat. 1112; Pub. L. 98–615, title III, § 306(a), Nov. 8, 1984, 98 Stat. 3219.)

AMENDMENTS

1984—Subsec. (a)(9), (10). Pub. L. 98–615 added par. (9) and redesignated former par. (9) as (10).

1983—Subsec. (a)(7). Pub. L. 98–168 amended par. (7) generally, designating existing provisions as subpar. (A), inserting provisions relating to number of ranks conferred, and adding subpars. (B) and (C).

EFFECTIVE DATE OF 1984 AMENDMENT

Section 307 of title III of Pub. L. 98–615 provided that: ''The amendments made by this title [enacting section 3595a of this title, amending this section and sections 3393, 3593 to 3595, 4312, 5383, and 5384 of this title, and enacting provisions set out as a note under section 3131 of this title] shall be effective following the expiration of the 90-day period beginning on the date of enactment of this Act [Nov. 8, 1984], except that the amendments made by section 304 [amending sections 3395, 3595, 7543, and 8336 of this title] shall be effective as of such date of enactment.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4314 of this title.

§ 3136. Regulations

The Office of Personnel Management shall prescribe regulations to carry out the purpose of this subchapter.

(Added Pub. L. 95–454, title IV, § 402(a), Oct. 13, 1978, 92 Stat. 1160.)

SUBCHAPTER III—THE FEDERAL BUREAU OF INVESTIGATION AND DRUG ENFORCEMENT ADMINISTRATION SENIOR EXECUTIVE SERVICE

§ 3151. The Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service

(a) The Attorney General may by regulation establish a personnel system for senior personnel within the Federal Bureau of Investigation and the Drug Enforcement Administration to be known as the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service (hereinafter in this subchapter referred to as the ''FBI–DEA Senior Executive Service''). The regulations establishing the FBI–DEA Senior Executive Service shall—

(1) meet the requirements set forth in section 3131 for the Senior Executive Service;

(2) provide that positions in the FBI–DEA Senior Executive Service meet requirements that are consistent with the provisions of section 3132(a)(2);

(3) provide rates of pay for the FBI–DEA Senior Executive Service that are not in excess of the maximum rate or less than the minimum rate of basic pay established for the Senior Executive Service under section 5382 and that are adjusted at the same time and to the same extent as rates of basic pay for the Senior Executive Service are adjusted;

(4) provide a performance appraisal system for the FBI–DEA Senior Executive Service

that conforms to the provisions of subchapter II of chapter 43;

(5) provide for—

(A) removal consistent with section 3592;

(B) reduction-in-force procedures consistent with section 3595(a), together with measures to ensure that a member of the FBI–DEA Senior Executive Service may not be removed due to a reduction in force unless reasonable efforts to place such member in another such position are first taken;

(C) procedures in accordance with which any furlough affecting the FBI–DEA Senior Executive Service shall be carried out;

(D) removal or suspension consistent with subsections (a), (b), and (c) of section 7543 (except that any hearing or appeal to which a member of the FBI–DEA Senior Executive Service is entitled shall be held or decided pursuant to procedures established by regulations of the Attorney General); and

(E) recertification consistent with section 3393a;

(6) permit the payment of performance awards to members of the FBI–DEA Senior Executive Service consistent with the provisions applicable to performance awards under section 5384; and

(7) provide that members of the FBI–DEA Senior Executive Service may be granted sabbatical leaves consistent with the provisions of section 3396(c).

(b)(1) Except as provided in subsection (a), the Attorney General may—

(A) make applicable to the FBI–DEA Senior Executive Service any of the provisions of this title applicable to applicants for or members of the Senior Executive Service; and

(B) appoint, promote, and assign individuals to positions established within the FBI–DEA Senior Executive Service without regard to the provisions of this title governing appointments and other personnel actions in the competitive service.

(2)(A) Notwithstanding any other provision of this section, an individual may not be selected for the FBI–DEA Senior Executive Service unless such individual is a career employee in the civil service.

(B) For the purpose of subparagraph (A), ''career employee in the civil service'' shall have such meaning as the Attorney General, in consultation with the Director of the Office of Personnel Management, by regulation prescribes.

(c) The President, based on the recommendations of the Attorney General, may award ranks to members of the FBI–DEA Senior Executive Service in a manner consistent with the provisions of section 4507.

(d) Notwithstanding any other provision of this section, the Attorney General may detail or assign any member of the FBI–DEA Senior Executive Service to serve in a position outside the Federal Bureau of Investigation or the Drug Enforcement Administration (as the case may be) in which the member's expertise and experience may be of benefit to the Federal Bureau of Investigation or the Drug Enforcement Administration (as the case may be) or another Government agency. Any such member shall not by reason of such detail or assignment lose any entitlement or status associated with membership in the FBI–DEA Senior Executive Service.

(e) The Attorney General shall each year submit to Congress, at the time the budget is submitted by the President to the Congress for the next fiscal year, a report on the FBI–DEA Senior Executive Service. The report shall include, in the aggregate and by agency—

(1) the number of FBI–DEA Senior Executive Service positions established as of the end of the preceding fiscal year;

(2) the number of individuals being paid at each rate of basic pay for the FBI–DEA Senior Executive Service as of the end of the preceding fiscal year;

(3) the number, distribution, and amount of awards paid to members of the FBI–DEA Senior Executive Service during the preceding fiscal year; and

(4) the number of individuals removed from the FBI–DEA Senior Executive Service during the preceding fiscal year—

(A) for less than fully successful performance;

(B) due to a reduction in force; or

(C) for any other reason.

(Added Pub. L. 100–325, §1(a), May 30, 1988, 102 Stat. 579; amended Pub. L. 101–194, title V, §506(b)(1), Nov. 30, 1989, 103 Stat. 1758.)

REFERENCES IN TEXT

Provisions of this title governing appointments and other personnel actions in the competitive service, referred to in subsec. (b)(1)(B), are classified generally to section 3301 et seq. of this title.

AMENDMENTS

1989—Subsec. (a)(5)(E). Pub. L. 101–194 added subpar. (E).

EFFECTIVE DATE OF 1989 AMENDMENT

Section 506(d) of Pub. L. 101–194 provided that: ''The amendments made by this section [enacting section 3393a of this title and amending this section, sections 3393, 3592 to 3594, 7701, 8336, 8339, 8414, and 8421 of this title, section 1601 of Title 10, Armed Forces, section 3945 of Title 22, Foreign Relations and Intercourse, and provisions set out as a note under section 402 of Title 50, War and National Defense] shall take effect on January 1, 1991.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5304, 5376 of this title.

§ 3152. Limitation on pay

Members of the FBI–DEA Senior Executive Service shall be subject to the limitation under section 5307.

(Added Pub. L. 100–325, §1(a), May 30, 1988, 102 Stat. 581; amended Pub. L. 102–378, §2(9), Oct. 2, 1992, 106 Stat. 1347.)

AMENDMENTS

1992—Pub. L. 102–378 amended section generally. Prior to amendment, section read as follows: ''Nothing in this subchapter shall be construed to allow the aggregate amount payable to a member of the FBI–DEA Senior Executive Service under this subchapter during any fiscal year to exceed the annual rate payable for positions at level I of the Executive Schedule in effect at

the end of such year. This section shall be applied in a manner consistent with paragraphs (1) and (2) of section 5383(b).''

CHAPTER 33—EXAMINATION, SELECTION, AND PLACEMENT

SUBCHAPTER I—EXAMINATION, CERTIFICATION, AND APPOINTMENT

Sec.
3301. Civil service; generally.
3302. Competitive service; rules.
3303. Political recommendations.
3304. Competitive service; examinations.
3304a. Competitive service; career appointment after 3 years' temporary service.
3305. Competitive service; examinations; when held.
[3306. Repealed.]
3307. Competitive service; maximum-age entrance requirements; exceptions.
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3309. Preference eligibles; examinations; additional points for.
3310. Preference eligibles; examinations; guards, elevator operators, messengers, and custodians.
3311. Preference eligibles; examinations; crediting experience.
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3313. Competitive service; registers of eligibles.
3314. Registers; preference eligibles who resigned.
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[3315a. Repealed.]
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3317. Competitive service; certification from registers.
3318. Competitive service; selection from certificates.
[3319. Repealed.]
3320. Excepted service; government of the District of Columbia; selection.
3321. Competitive service; probationary period.
[3322. Repealed.]
3323. Automatic separations; reappointment; reemployment of annuitants.
3324. Appointments to positions classified above GS–15.
3325. Appointments to scientific and professional positions.
3326. Appointments of retired members of the armed forces to positions in the Department of Defense.
3327. Civil service employment information.
3328. Selective Service registration.
3329.[1] Government-wide list of vacant positions.
3329.[1] Appointments of military reserve technicians to positions in the competitive service.

SUBCHAPTER II—OATH OF OFFICE

3331. Oath of office.
3332. Officer affidavit; no consideration paid for appointment.
3333. Employee affidavit; loyalty and striking against the Government.

SUBCHAPTER III—DETAILS

3341. Details; within Executive or military departments.
[3342. Repealed.]
3343. Details; to international organizations.
3344. Details; administrative law judges.
3345. Details; to office of head of Executive agency or military department.
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3347. Details; Presidential authority.
3348. Details; limited in time.
3349. Details; to fill vacancies; restrictions.

SUBCHAPTER IV—TRANSFERS

3351. Preference eligibles; transfer; physical qualifications; waiver.
3352. Preference in transfers for employees making certain disclosures.

SUBCHAPTER V—PROMOTION

3361. Promotion; competitive service; examination.
3362. Promotion; effect of incentive award.
3363. Preference eligibles; promotion; physical qualifications; waiver.
[3364. Repealed.]

SUBCHAPTER VI—ASSIGNMENTS TO AND FROM STATES

3371. Definitions.
3372. General provisions.
3373. Assignments of employees to State or local governments.[2]
3374. Assignments of employees from State or local governments.
3375. Travel expenses.
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SUBCHAPTER VII—AIR TRAFFIC CONTROLLERS

3381. Training.
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3385. Effect on other authority.

SUBCHAPTER VIII—APPOINTMENT, REASSIGNMENT, TRANSFER, AND DEVELOPMENT IN THE SENIOR EXECUTIVE SERVICE

3391. Definitions.
3392. General appointment provisions.
3393. Career appointments.
3393a. Recertification.
3394. Noncareer and limited appointments.
3395. Reassignment and transfer within the Senior Executive Service.
3396. Development for and within the Senior Executive Service.
3397. Regulations.

AMENDMENTS

1993—Pub. L. 103–94, § 8(b), Oct. 6, 1993, 107 Stat. 1007, substituted ''Political recommendations'' for ''Competitive service; recommendations of Senators or Representatives'' in item 3303.

1992—Pub. L. 102–484, div. A, title V, § 544(b), div. D, title XLIV, § 4431(b), Oct. 23, 1992, 106 Stat. 2415, 2720, added two items 3329.

Pub. L. 102–378, § 2(13)(B), Oct. 2, 1992, 106 Stat. 1347, struck out item 3342 ''Federal participants in executive exchange programs''.

1990—Pub. L. 101–509, title V, § 529 [title I, § 101(b)(9)(C)(iii)], Nov. 5, 1990, 104 Stat. 1427, 1441, substituted ''Appointments to positions classified above GS–15'' for ''Appointments at GS–16, 17, and 18'' in item 3324.

Pub. L. 101–416, § 2(a)(2), Oct. 12, 1990, 104 Stat. 903, added item 3342.

1989—Pub. L. 101–194, title V, § 506(a)(2), Nov. 30, 1989, 103 Stat. 1758, added item 3393a.

Pub. L. 101–12, § 5(b), Apr. 10, 1989, 103 Stat. 33, added item 3352.

1988—Pub. L. 100–398, § 7(a)(3), Aug. 17, 1988, 102 Stat. 988, inserted ''agency'' after ''Executive'' in item 3345.

1985—Pub. L. 99–145, title XVI, § 1622(a)(2), Nov. 8, 1985, 99 Stat. 777, added item 3328.

[1] So in original. There are two items 3329 which do not conform to order of sections.

[2] So in original. Does not conform to section catchline.

1979—Pub. L. 96–54, §2(a)(13), Aug. 14, 1979, 93 Stat. 382, struck out item 3315a ''Registers; individuals receiving compensation for work injuries''.

1978—Pub. L. 95–454, title III, §§303(b), 307(h)(2), 309(b), title IV, §403(b), title IX, §906(c)(4), Oct. 13, 1978, 92 Stat. 1146, 1149, 1152, 1165, 1227, substituted ''probationary period'' for ''probation; period of'' in item 3321, struck out item 3319 ''Competitive service; selection; members of family restriction'', added items 3327 and 3391 to 3397, and struck out items 3391 to 3398.

Pub. L. 95–437, §3(b), Oct. 10, 1978, 92 Stat. 1058, added heading for subchapter VII and items 3391 to 3398.

Pub. L. 95–256, §5(b)(2), Apr. 6, 1978, 92 Stat. 191, struck out item 3322 ''Competitive service; temporary appointments after age 70''.

Pub. L. 95–251, §2(c)(3), Mar. 27, 1978, 92 Stat. 184, substituted ''administrative law judges'' for ''hearing examiners'' in item 3344.

Pub. L. 95–228, §2(a), Feb. 10, 1978, 92 Stat. 25, struck out item 3306 ''Competitive service; departmental service; apportionment''.

1975—Pub. L. 94–183, §2(7), Dec. 31, 1975, 89 Stat. 1057, struck out item 3364 ''Promotion; substitute employees in the postal field service''.

1972—Pub. L. 92–297, §§2(b), 3(b), May 16, 1972, 86 Stat. 142, 144, substituted ''maximum age entrance requirements, exceptions'' for ''maximum age requirement; restriction on use of appropriated funds'' in item 3307, and added subchapter VII and items 3381 to 3385.

1971—Pub. L. 91–648, title IV, §402(b), Jan. 5, 1971, 84 Stat. 1925, added heading for subchapter VI and items 3371 to 3376.

1970—Pub. L. 91–375, §6(c)(7)(B), Aug. 12, 1970, 84 Stat. 776, struck out item 3327 ''Postmasters; standards for determination of qualifications''.

1967—Pub. L. 90–105, §1(b), Oct. 11, 1967, 81 Stat. 273, added item 3304a.

Pub. L. 90–83, §1(9)(B), Sept. 11, 1967, 81 Stat. 197, added item 3315a.

1966—Pub. L. 89–762, §1(b), Nov. 5, 1966, 80 Stat. 1312, struck out item 3342 ''Details; field to departmental service prohibited''.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 31 section 3801; title 42 sections 290aa, 2297b–4.

SUBCHAPTER I—EXAMINATION, CERTIFICATION, AND APPOINTMENT

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in title 10 section 1744; title 16 section 3198; title 38 section 7403.

§ 3301. Civil service; generally

The President may—

(1) prescribe such regulations for the admission of individuals into the civil service in the executive branch as will best promote the efficiency of that service;

(2) ascertain the fitness of applicants as to age, health, character, knowledge, and ability for the employment sought; and

(3) appoint and prescribe the duties of individuals to make inquiries for the purpose of this section.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 417.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 631 (less last 16 words).	R.S. §1753 (less last 16 words).

The words ''civil service in the executive branch'' are substituted for ''civil service of the United States'' to confirm the grant of authority in view of the definition of ''civil service'' in section 2101. The word ''will'' is substituted for ''may''. The words ''for the employment sought'' are substituted for ''for the branch of service into which he seeks to enter'' as the latter are archaic since there are no ''branches'' within the executive branch. The word ''applicant'' is substituted for ''candidate''.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

SHORT TITLE OF 1991 AMENDMENT

Pub. L. 102–175, §1, Dec. 2, 1991, 105 Stat. 1222, provided that: ''This Act [amending sections 3395, 3396, 5383, and 7701 of this title] may be cited as the 'Senior Executive Service Improvements Act'.''

TEMPORARY MEASURES TO FACILITATE REEMPLOYMENT OF CERTAIN DISPLACED FEDERAL EMPLOYEES

Pub. L. 102–484, div. D, title XLIV, §4432, Oct. 23, 1992, 106 Stat. 2720, provided that:

''(a) DEFINITIONS.—For the purpose of this section—

''(1) the term 'agency' means an Executive agency (as defined by section 105 of title 5, United States Code), excluding the General Accounting Office and the Department of Defense; and

''(2) the term 'displaced employee' means any individual who is—

''(A) an employee of the Department of Defense who has been given specific notice that such employee is to be separated due to a reduction in force; or

''(B) a former employee of the Department of Defense who was involuntarily separated therefrom due to a reduction in force.

''(b) METHOD OF CONSIDERATION.—In accordance with regulations which the Office of Personnel Management shall prescribe, consistent with otherwise applicable provisions of law, an agency shall, in filling a vacant position for which a qualified displaced employee has applied in timely fashion, give full consideration to the application of the displaced employee before selecting any candidate from outside the agency for the position.

''(c) LIMITATION.—A displaced employee is entitled to consideration in accordance with this section for the 24-month period beginning on the date such employee receives the specific notice referred to in subsection (a)(2)(A), except that, if the employee is separated pursuant to such notice, the right to such consideration shall continue through the end of the 24-month period beginning on the date of separation.

''(d) APPLICABILITY.—(1) This section shall apply to any individual who—

''(A) became a displaced employee within the 12-month period ending immediately before the date of the enactment of this Act [Oct. 23, 1992]; or

''(B) becomes a displaced employee on or after the date of the enactment of this Act and before October 1, 1997.

''(2) In the case of a displaced employee described in paragraph (1)(A), for purposes of computing any period of time under subsection (c), the date of the specific notice described in subsection (a)(2)(A) (or, if the employee was separated as described in subsection (a)(2)(B) before the date of enactment of this Act, the date of separation) shall be deemed to have occurred on such date of enactment.

''(3) Nothing in this section shall be considered to apply with respect to any position—

''(A) which has been filled as of the date of enactment of this Act; or

''(B) which has been excepted from the competitive service because of its confidential, policy-determining, policy-making or policy-advocating character.''

NATIONAL ADVISORY COUNCIL ON THE PUBLIC SERVICE

Pub. L. 101–363, Aug. 14, 1990, 104 Stat. 424, provided that:

''SECTION 1. SHORT TITLE.

''This Act may be cited as the 'National Advisory Council on the Public Service Act of 1990'.

''SEC. 2. FINDINGS.

''The Congress finds that—

''(1) recognition of the services rendered by Federal employees (hereinafter in this Act referred to as 'national public service') should be accorded a high and continuing place on the national agenda;

''(2) the National Commission on the Public Service, through its good works, has documented the need for greater advocacy on behalf of those performing national public service;

''(3) although public service is an honorable profession, members of the public do not always perceive it favorably;

''(4) serious obstacles often hinder the Government's efforts to recruit and retain the best and the brightest for national public service;

''(5) just as the public has a right to expect Federal employees to adhere to the highest standards of excellence and ethicality, so Federal employees have a right to expect an atmosphere of trust and respect, and a sense of accomplishment from their work; and

''(6) an advisory council is needed to provide the President and the Congress with bipartisan, objective assessments of, and recommendations concerning, the Federal workforce.

''SEC. 3. ESTABLISHMENT.

''There shall be established a council to be known as the National Advisory Council on the Public Service (hereinafter in this Act referred to as the 'Council').

''SEC. 4. FUNCTIONS.

''The Council shall—

''(1) regularly assess the state of the Federal workforce;

''(2) in conjunction with the President, the Congress, and the Judiciary, seek to attract individuals of the highest caliber to careers involving national public service, and encourage them and others of similar distinction who are already part of the Federal workforce to make a continuing commitment to national public service;

''(3) promote better public understanding of the role of Federal employees in implementing Government programs and policies, and otherwise seek to improve the public perception of Federal employees;

''(4) encourage efforts to build student interest in performing national public service (whether those efforts are undertaken at the community level, in the classroom, or otherwise); and

''(5) develop methods for improving motivation and excellence among Federal employees.

''SEC. 5. MEMBERSHIP.

''(a) NUMBER AND APPOINTMENT.—The Council shall be composed of 15 members as follows:

''(1) 2 Members of the Senate, 1 of whom shall be appointed by the majority leader of the Senate and the other of whom shall be appointed by the minority leader of the Senate.

''(2) 2 Members of the House of Representatives, 1 of whom shall be appointed by the Speaker of the House of Representatives and the other of whom shall be appointed by the minority leader of the House of Representatives.

''(3) The Director of the Administrative Office of the United States Courts (or his delegate).

''(4) 10 individuals appointed by the President—

''(A) 4 of whom shall be chosen from among officers serving in the executive branch;

''(B) 1 of whom shall be chosen from among career employees in the civil service;

''(C) 1 of whom shall be a Federal employee who is a member of a labor organization (as defined by section 7103(a)(4) of title 5, United States Code); and

''(D) 4 of whom shall be chosen from among members of the public who do not hold any Government office or position.

''(b) CONTINUATION OF MEMBERSHIP.—If any member of the Council whose appointment is based on that individual's holding a Government office or position leaves such office or position, or if any member of the Council under subsection (a)(4)(D) is appointed or elected to a Government office or position, that individual may continue to serve as such a member for not longer than the 90-day period beginning on the date of leaving that office or position, or entering into that office or position, as the case may be.

''(c) TERMS.—Members of the Council shall be appointed for the life of the Council.

''(d) VACANCIES.—A vacancy in the Council shall be filled in the manner in which the original appointment was made.

''(e) COMPENSATION.—(1) Members of the Council shall not be entitled to pay (or, in the case of members holding any Government office or position, pay in addition to any to which they are otherwise entitled for service in such office or position) by virtue of membership on the Council.

''(2) While serving away from their homes or regular places of business in the performance of duties for the Council, members shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as authorized by section 5703 of title 5, United States Code, for persons employed intermittently in Government service.

''(f) QUORUM.—Eight members of the Council shall constitute a quorum.

''(g) CHAIRMAN.—The Chairman of the Council shall be designated by the President from among the members appointed under subsection (a)(4)(D).

''(h) MEETINGS.—The Council shall meet at the call of the Chairman or a majority of its members, and shall meet on at least a quarterly basis.

''SEC. 6. DIRECTOR AND STAFF; EXPERTS AND CONSULTANTS.

''(a) DIRECTOR.—With the approval of the Council, the Chairman may appoint a Director and fix the pay of such Director at a rate not to exceed the rate for level IV of the Executive Schedule [5 U.S.C. 5315]. The Director shall be a person who, by reason of demonstrated ability in the area of management, government, or public administration, is especially well qualified to serve.

''(b) STAFF.—With the approval of the Chairman, the Director may appoint and fix the pay of such personnel as may be necessary to carry out the functions of the Council. The staff of the Council shall be appointed subject to the provisions of title 5, United States Code, governing appointments in the competitive service, and shall be paid in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

''(c) EXPERTS AND CONSULTANTS.—The Council may procure temporary or intermittent services under section 3109(b) of title 5, United States Code, but at rates for individuals not to exceed the daily equivalent of the maximum rate payable under the General Schedule.

''(d) STAFF OF FEDERAL AGENCIES.—Upon the request of the Chairman, the head of a Federal agency may detail, on a reimbursable or nonreimbursable basis, any personnel of such agency to the Council to assist the Council in carrying out its functions under this Act.

''SEC. 7. POWERS.

''(a) MAILS.—The Council may use the United States mails in the same manner and under the same conditions as other Federal agencies.

''(b) ADMINISTRATIVE SUPPORT SERVICES.—The Administrator of General Services shall provide to the Council, on a reimbursable basis, such administrative support services as the Council may request.

''(c) OFFICIAL DATA.—The Council may secure directly from any Federal agency information necessary to carry out its functions under this Act. Each such agency is authorized and directed to furnish, to the extent permitted by law, any information requested by the Council.

''(d) GIFTS.—The Council—

''(1) may accept money and other property donated, bequeathed, or devised to the Council without condition or restriction (other than that it be used to carry out the work of the Council); and

''(2) may use, sell, or otherwise dispose of any such property to carry out its functions under this Act, except that, upon the termination of the Council, any such property shall be disposed of in accordance with applicable provisions of law governing the disposal of Federal property.

''SEC. 8. REPORTS.

''The Council shall transmit to the President and each House of the Congress—

''(1) within 1 and 2 years, respectively, after the date on which the Council first meets, reports containing its preliminary findings and recommendations; and

''(2) within 3 years after the date on which the Council first meets, a final report containing a detailed statement of the findings and conclusions of the Council, together with its recommendations for such legislation or administrative actions as it considers appropriate.

''SEC. 9. COMMENCEMENT; TERMINATION.

''(a) COMMENCEMENT.—Appointments under section 5 shall be made, and the Council shall first meet, within 90 days after the date of the enactment of this Act [Aug. 14, 1990].

''(b) TERMINATION.—The Council shall cease to exist upon transmitting its final report under section 8(2).

''SEC. 10. AUTHORIZATION.

''There is authorized to be appropriated such sums as may be necessary to carry out this Act.''

EX. ORD. NO. 8743. EXTENDING THE CLASSIFIED CIVIL SERVICE

Ex. Ord. No. 8743, Apr. 23, 1941, as amended by Ex. Ord. No. 9230, Aug. 20, 1942; Ex. Ord. No. 9678, Jan. 14, 1946; Ex. Ord. No. 9712, Apr. 13, 1946; Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, provided:

By virtue of the authority vested in me by section 1 of the act of November 26, 1940, entitled ''Extending the Classified Executive Civil Service of the United States'' (54 Stat. 1211), by the Civil Service Act (22 Stat. 403), and by section 1753 of the Revised Statutes of the United States [sections 3301 and 7301 of this title], it is hereby ordered as follows:

SECTION 1. All offices and positions in the executive civil service of the United States except (1) those that are temporary, (2) those expressly excepted from the provisions of section 1 of the said act of November 26, 1940, (3) those excepted from the classified service under Schedules A and B of the Civil Service Rules, and (4) those which now have a classified status, are hereby covered into the classified civil service of the Government.

SECTION 2. Section 1 of this order shall become effective on January 1, 1942, except that as to positions affected thereby which are vacant at any time after June 30, 1941, and before January 1, 1942, it shall become effective when the vacancies first exist during such period, and appointments to such vacant positions shall be made in accordance with the Civil Service Rules as amended by section 3 of this order, unless prior express permission is given by the Office of Personnel Management for appointment without regard thereto.

SECTION 3. (a) Upon consideration of the report of the Committee on Civil Service Improvement (House Document No. 118, 77th Congress) appointed by Executive Order No. 8044 of January 31, 1939, it is hereby found and determined that the regulations and procedures hereinafter prescribed in this section with respect to attorney positions in the classified civil service are required by the conditions of good administration.

(b) There is hereby created in the Office of Personnel Management (hereinafter referred to as the Office) a board to be known as the Board of Legal Examiners (hereinafter referred to as the Board). The Board shall consist of the Solicitor General of the United States and the chief law officer of the Office of Personnel Management, as members *ex officio*, and nine members to be appointed by the President, four of whom shall be attorneys chosen from the chief officers of the Executive departments, agencies or corporate instrumentalities of the Government, two from the law-teaching profession, and three from attorneys engaged in private practice. The President shall designate the chairman of the Board. Five members shall constitute a quorum, and the Board may transact business notwithstanding vacancies thereon. Members of the Board shall receive no salary as such, but shall be entitled to necessary expenses incurred in the performance of their duties hereunder.

(c) It shall be the duty of the Board to promote the development of a merit system for the recruitment, selection, appointment, promotion, and transfer of attorneys in the classified civil service in accordance with the general procedures outlined in Plan A of the report of the Committee on Civil Service Improvement, appointed by Executive Order No. 8044 of January 31, 1939.

(d) The Board, in consultation with the Office, shall determine the regulations and procedures under this section governing the recruitment and examination of applicants for attorney positions, and the selection, appointment, promotion and transfer of attorneys, in the classified service.

(e) The Office shall in the manner determined by the Board establish a register or registers for attorney positions in the classified service and such positions shall thereafter be filled from such registers as are designated by the Board. Unless otherwise determined by the Board, any register so established shall not be in effect for a period longer than one year from the date of its establishment. Upon request of the Board, the Office shall appoint regional or local boards of examiners composed of persons approved by the Board, within or without the Federal service, to interview and examine applicants as the Board shall direct.

(f) The number of names to be placed upon any register of eligibles for attorney positions shall be limited to the number recommended by the Board; and such registers shall not be ranked according to the ratings received by the eligibles, except that persons entitled to veterans' preference as defined in section 1 of Civil Service Rule VI shall be appropriately designated thereon.

(g) Any person whose name has been placed upon three registers of eligibles covering positions of the same grade, and who has not been appointed therefrom, shall not thereafter be eligible for placement upon any subsequently established register covering positions of such grade.

(h) So far as practicable and consistent with good administration, the eligibles on any register for attorney positions and appointments for such register shall be apportioned among the several States and Territories and the District of Columbia upon the basis of population as ascertained in the last preceding census. The Office shall certify to the appointing officer for each vacancy all the eligibles on the appropriate register except those whose appointment would, in the determination of the Board, be inconsistent with the apportionment policy herein prescribed. The appointing officer shall make selections for any vacancy or vacancies in attorney positions from the register so certified, with sole reference to merit and fitness.

(i) Any position affected by this section may be filled before appropriate registers have been established pursuant to this section only by a person whose appointment is approved by the Board. The Board may require as a condition of its approval that persons thus proposed for appointment pass a noncompetitive examination and may designate examining committees composed of persons within or without the Federal service to conduct such examinations. Persons whose appointment was approved by the Board prior to March 16, 1942, and who pass a noncompetitive examination prescribed by the Board shall be eligible for a classified

civil-service status after the expiration of six months from the date of appointment upon compliance with the provisions of Section 6 of Civil Service Rule II other than those provisions relating to examination. Effective March 16, 1942, all appointments to attorney and law clerk (trainee) positions shall be for the duration of the present war and for six months thereafter unless specifically limited to a shorter period.

(j) The incumbent of any attorney position covered into the classified service by section 1 of this order may acquire a classified civil-service status in accordance with the provisions of Section 2(a) of the act of November 26, 1940 (54 Stat. 1211) or, in the discretion of the Board and when applicable, Section 6, of Civil Service Rule II: *Provided,* That the noncompetitive examination required thereunder shall be prescribed by the Office with the approval of the Board.

(k) The Office with the approval of the Board shall appoint a competent person to act as Executive Secretary to the Board; and the Office shall furnish such further professionals, clerical, stenographic, and other assistants as may be necessary to carry out the provisions of this section.

(l) The Civil Service Rules are hereby amended to the extent necessary to give effect to the provisions of this section.

SECTION 4. The noncompetitive examinations prescribed pursuant to sections 3 and 6 of this order and section 2(a) of the said act of November 26, 1940, shall, among other things, require any person taking such examination to meet such reasonable standards of physical fitness and personal suitability as the Office of Personnel Management may prescribe.

SECTION 5. Persons who on the effective date of section 1 of this order are on furlough or leave without pay from any position covered into the classified service by that section may be recalled to duty within one year of the date that they are furloughed or given leave without pay, and may be continued in such positions thereafter but shall not thereby acquire a classified civil-service status. If they are not recalled to duty within the time specified herein, they shall be separated from the service.

SECTION 6. (a) Any person who, in order to perform active service with the military or naval forces of the United States, has left a position (other than a temporary position) which is covered into the classified civil service under section 1 of this order, shall be reinstated in such position or to a position of like seniority, status, and pay in the same department or agency, and may, upon reinstatement, acquire a classified civil-service status: *Provided,* (1) that he has been honorably discharged from the military or naval service, (2) that he makes application for reinstatement within 90 days after termination of his service with the armed forces or of hospitalization continuing after discharge for a period of not more than one year, and (3) that he qualifies in such suitable noncompetitive examination as the Office may prescribe.

(b) Any person who, in order to perform active service with the military or naval forces of the United States, has left a position in any department or agency (other than a temporary position) which is covered into the classified civil service under section 1 of this order, may, upon his applications and upon the request of the head of the same or any other department or agency, be reinstated in any position for which the Office finds he is qualified, and upon reinstatement shall acquire a classified civil-service status: *Provided,* (1) that he has been honorably discharged from the military or naval service, and (2) that he qualifies in such suitable noncompetitive examination as the Office may prescribe.

SECTION 7. Executive Order No. 8044 of January 31, 1939, is hereby revoked so far as it applies to positions covered into the classified civil service by this order.

EXECUTIVE ORDER NO. 9367

Ex. Ord. No. 9367, Aug. 4, 1943, 8 F.R. 11017, which prohibited, with certain exceptions, instructions of applicants for civil service and foreign service examinations by officers or employees of the government, was revoked by Ex. Ord. No. 11408, Apr. 25, 1968, 33 F.R. 6459.

EX. ORD. NO. 10577. CIVIL SERVICE RULES

Ex. Ord. No. 10577, Nov. 22, 1954, 19 F.R. 7521, eff. Jan. 23, 1955, as amended by Ex. Ord. No. 10641, Oct. 26, 1955, 20 F.R. 8137; Ex. Ord. No. 10675, Aug. 21, 1956, 21 F.R. 6327 Jan. 23, 1956; Ex. Ord. No. 10745, Dec. 12, 1957, 22 F.R. 10025; Ex. Ord. No. 10869, Mar. 9, 1960, 25 F.R. 2073; Ex. Ord. No. 11315, Nov. 17, 1966, 31 F.R. 14729; Ex. Ord. No. 11839, Feb. 15, 1975, 40 F.R. 7351; Ex. Ord. No. 11856, May 7, 1975, 40 F.R. 20259; Ex. Ord. No. 11887, Nov. 4, 1975, 40 F.R. 51411; Ex. Ord. No. 11935; Sept. 2, 1976, 41 F.R. 37301; Ex. Ord. No. 12021, Nov. 30, 1977, 42 F.R. 61237; Ex. Ord. No. 12043, Mar. 7, 1978, 43 F.R. 9773; Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055; Ex. Ord. No. 12125, Mar. 15, 1979, 44 F.R. 16879; Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43239; Ex. Ord. No. 12300, Mar. 23, 1981, 46 F.R. 18683; Ex. Ord. No. 12748, Feb. 1, 1991, 56 F.R. 4521; Ex. Ord. No. 12896, Feb. 3, 1994, 59 F.R. 5515; Ex. Ord. No. 12940, Nov. 28, 1994, 59 F.R. 61519, provided:

PART I—CIVIL SERVICE RULES

SECTION 101. The Civil Service Rules are hereby amended to read as follows:

RULE I—COVERAGE AND DEFINITIONS

§1.1. POSITIONS AND EMPLOYEES AFFECTED BY THESE RULES

These Rules shall apply to all positions in the competitive service and to all incumbents of such positions. Except as expressly provided in the Rule concerned, these Rules shall not apply to positions and employees in the excepted service.

§1.2. EXTENT OF THE COMPETITIVE SERVICE

The competitive service shall include: (a) All civilian positions in the executive branch of the Government unless specifically excepted therefrom by or pursuant to statute or by the Office of Personnel Management (hereafter referred to in these Rules as the Office) under section 6.1 of Rule VI; and (b) all positions in the legislative and judicial branches of the Federal Government and in the Government of the District of Columbia which are specifically made subject to the civil-service laws by statute. The Office is authorized and directed to determine finally whether a position is in the competitive service.

§1.3. DEFINITIONS

As used in these Rules:

(a) ''Competitive service'' shall have the same meaning as the words ''classified service'', or ''classified (competitive) service'', or ''classified civil service'' as defined in existing statutes and executive orders.

(b) ''Competitive position'' shall mean a position in the competitive service.

(c) ''Competitive status'' shall mean basic eligibility to be noncompetitively selected to fill a vacancy in a competitive position. A competitive status shall be acquired by career-conditional or career appointment through open competitive examination upon satisfactory completion of a probationary period, or may be granted by statute, executive order, or the Civil Service Rules without competitive examination. A person with competitive status may be promoted, transferred, reassigned, reinstated, or demoted without taking an open competitive examination, subject to the conditions prescribed by the Civil Service Rules and Regulations.

(d) An employee shall be considered as being in the competitive service when he has a competitive status and occupies a competitive position unless he is serving under a temporary appointment: *Provided,* That an employee who is in the competitive service at the time his position is first listed under Schedule A, B, or C shall be considered as continuing in the competitive service as long as he continues to occupy such position.

(e) ''Tenure'' shall mean the period of time an employee may reasonably expect to serve under his current appointment. Tenure shall be granted and governed by the type of appointment under which an employee is currently serving without regard to whether he has a competitive status or whether his appointment is to a competitive position or an excepted position.

§1.4. EXTENT OF THE EXCEPTED SERVICE

(a) The excepted service shall include all civilian positions in the executive branch of the Government which are specifically excepted from the requirements of the Civil Service Act or from the competitive service by or pursuant to statute or by the Office under section 6.1 of Rule VI.

(b) ''Excepted service'' shall have the same meaning as the words ''unclassified service'', or ''unclassified civil service'', or ''positions outside the competitive civil service'' as used in existing statutes and executive orders.

(c) ''Excepted position'' shall have the same meaning as ''unclassified position'', or ''position excepted by law'', or ''position excepted by executive order'', or ''position excepted by Civil Service Rule'', or ''position outside the competitive service'' as used in existing statutes and executive orders.

RULE II—APPOINTMENT THROUGH THE COMPETITIVE SYSTEM

§2.1. COMPETITIVE EXAMINATIONS AND ELIGIBLE REGISTERS

(a) The Office shall be responsible for open competitive examinations for admission to the competitive service which will fairly test the relative capacity and fitness of the persons examined for the position to be filled. The Office is authorized to establish standards with respect to citizenship, age, education, training and experience, suitability, and physical and mental fitness, and for residence or other requirements which applicants must meet to be admitted to or rated in examinations.

(b) In addition to the names of persons who qualify in competitive examinations, the names of persons who have lost eligibility on a career or career-conditional register because of service in the armed forces, and the names of persons who lost opportunity for certification or who have served under career or career-conditional appointment when the Office determines that they should be given certification, may also be entered at such places on appropriate registers and under such conditions as the Office may prescribe.

(c) Whenever the Office of Personnel Management (1) is unable to certify a sufficient number of names to permit the appointing officer to consider three eligibles for appointment to a fourth-class postmaster position in accordance with the regular procedure, or (2) finds that a particular rate of compensation for fourth-class postmaster positions is too low to warrant regular competitive examinations for such positions, it may authorize appointment to any such position or positions in accordance with such procedure as may be prescribed by the Office. Persons appointed under this subsection may acquire competitive status subject to satisfactory completion of a probationary period prescribed by the Office.

§2.2. APPOINTMENTS

(a) The Office shall establish and administer a career-conditional appointment system for positions subject to competitive examination which will permit adjustment of the career service to necessary fluctuations in Federal employment, and provide an equitable and orderly system for stabilizing the Federal work force. A competitive status shall be acquired by a career-conditional appointee upon satisfactory completion of a probationary period, but the appointee shall have career-conditional tenure for a period of service to be prescribed by regulation of the Office. When an employee has completed the required period of service his appointment shall be converted to a career appointment without time limitation: *Provided*, That his career-conditional appointment shall not be converted to a career appointment if the limitation on the number of permanent employees in the Federal civil service established under subsection (b) of this section would be exceeded thereby. Persons selected from competitive civil service registers for other than temporary appointment shall be given career-conditional appointments: *Provided*, That career appointments shall be given to the following classes of eligibles: (1) Persons whose appointments are required by statute to be made on a permanent basis; (2) employees serving under career appointments at the time of selections from such registers; (3) former employees who have eligibility for career appointments upon reinstatement; and (4) to the extent permitted by law, persons appointed to positions in the field service of the Post Office Department for which salary rates are fixed by the act of July 6, 1945, 59 Stat. 435, as heretofore or hereafter amended and supplemented.

(b) Under the career-conditional appointment system there shall be a limit on the number of permanent employees in the Federal civil service which shall be the ceiling established by section 1310 of the Supplemental Appropriation Act, 1952 (65 Stat. 757), as amended [set out as a note under section 3101 of this title]. In the event section 1310, supra, is repealed, the Office is authorized to fix such limitation on the number of permanent employees in the Federal civil service as it finds necessary to meet the needs of the service.

(c) The Office may determine the types, duration, and conditions of indefinite and temporary appointments, and may prescribe the method for replacing persons holding such appointments.

§2.3. APPORTIONMENT

Subject to such modifications as the Office finds to be necessary in the interest of good administration, appointments to positions in agencies' headquarters offices which are located within the metropolitan area of Washington, D.C., shall be made so as to maintain the apportionment of appointments among the several States, Territories, and the District of Columbia upon the basis of population.

§2.4. PROBATIONARY PERIOD

Persons selected from registers of eligibles for career or career-conditional appointment and employees promoted, transferred, or otherwise assigned, for the first time, to supervisory or managerial positions shall be required to serve a probationary period under terms and conditions prescribed by the Office.

RULE III—NONCOMPETITIVE ACQUISITION OF STATUS

§3.1. CLASSES OF PERSONS WHO MAY NONCOMPETITIVELY ACQUIRE STATUS

(a) Upon recommendation by the agency concerned, and subject to such noncompetitive examination, time limits, or other requirements as the Office may prescribe, the following classes of persons may acquire a competitive status without competitive examination:

(1) A person holding a permanent position when it is placed in the competitive service by statute or executive order or is otherwise made subject to competitive examination.

(2) A disabled veteran who, in a manner satisfactory to the Office, has completed a course of training in the executive branch of the Government prescribed by the Administrator of Veterans' Affairs in accordance with the act of March 24, 1943, 57 Stat. 43.

(3) An employee who has served at least two years in the immediate office of the President or on the White House Staff and who is transferred to a competitive position at the request of an agency.

(4) An employee who was serving when his name was reached for certification on a civil-service register ap-

propriate for the position in which he was serving: *Provided,* That the recommendation for competitive status is made prior to expiration of the register on which his name appears or is made during a period of continuous service since his name was reached: *Provided further,* That the register was being used for appointments conferring competitive status at the time his name was reached.

(b) Upon recommendation by the employing agency, and subject to such requirements as the Office of Personnel Management may prescribe, the following classes of handicapped employees may acquire competitive status without competitive examination:

(1) A severely physically handicapped employee who completes at least two years of satisfactory service in a position excepted from the competitive service.

(2) A mentally retarded employee who completes at least two years of satisfactory service in a position excepted from the competitive service.

§ 3.2. Appointments Without Competitive Examination in Rare Cases

Subject to receipt of satisfactory evidence of the qualifications of the person to be appointed, the Office may authorize an appointment in the competitive service without competitive examination whenever it finds that the duties or compensation of the position are such, or that qualified persons are so rare, that, in the interest of good civil-service administration, the position cannot be filled through open competitive examination. Any person heretofore or hereafter appointed under this section shall acquire a competitive status upon completion of at least one year of satisfactory service and compliance with such requirements as the Office may prescribe. Detailed statements of the reasons for the noncompetitive appointments made under this section shall be published in the Office's annual reports.

§ 3.3. Conversion of Appointments

Any person who acquires a competitive status under this Rule shall have his appointment converted to career-conditional appointment unless he meets the service requirement for career appointment prescribed under section 2.2 (a) of Rule II.

Rule IV—Prohibited Practices

§ 4.1. [Revoked by Ex. Ord. No. 12896, Feb. 3, 1994, 59 F.R. 5515.]

§ 4.2. Prohibition Against Racial, Political or Religious Discrimination

No person employed in the executive branch of the Federal Government who has authority to take or recommend any personnel action with respect to any person who is an employee in the competitive service or any eligible or applicant for a position in the competitive service shall make any inquiry concerning the race, political affiliation or religious beliefs of any such employee, eligible, or applicant. All disclosures concerning such matters shall be ignored, except as to such membership in political parties or organizations as constitutes by law a disqualification for Government employment. No discrimination shall be exercised, threatened, or promised by any person in the executive branch of the Federal Government against or in favor of any employee in the competitive service, or any eligible or applicant for a position in the competitive service because of his race, political affiliation or religious beliefs, except as may be authorized or required by law.

§ 4.3. Prohibition Against Securing Withdrawal From Competition

No person shall influence another person to withdraw from competition for any position in the competitive service for the purpose of either improving or injuring the prospects of any applicant for appointment.

Rule V—Regulations, Investigations, Evaluation, and Enforcement

§ 5.1. Civil Service Regulations

The Director, Office of Personnel Management, shall promulgate and enforce regulations necessary to carry out the provisions of the Civil Service Act and the Veterans' Preference Act, as reenacted in Title 5, United States Code [now covered by this chapter and chapter 35 of this title], the Civil Service Rules, and all other statutes and Executive orders imposing responsibilities on the Office. The Director is authorized, whenever there are practical difficulties and unnecessary hardships in complying with the strict letter of the regulation, to grant a variation from the strict letter of the regulation if such a variation is within the spirit of the regulations, and the efficiency of the Government and the integrity of the competitive service are protected and promoted. Whenever a variation is granted the Director shall note the official record to show: (1) the particular practical difficulty or hardship involved, (2) what is permitted in place of what is required by regulation, (3) the circumstances which protect or promote the efficiency of the Government and the integrity of the competitive service, and (4) a statement limiting the application of the variation to the continuation of the conditions which gave rise to it. Like variations shall be granted whenever like conditions exist. All such decisions and information concerning variations noted in the official record shall be published promptly in a Federal Personnel Manual, Letter or Bulletin and in the Director's next annual report.

§ 5.2. Investigation and Evaluations

The Director may secure effective implementation of the civil service laws, rules, and regulations, and all Executive orders imposing responsibilities on the Office by:

(a) Investigating the qualifications and suitability of applicants for positions in the competitive service. The Director may require appointments to be made subject to investigation to enable the Director to determine, after appointment, that the requirements of law or the civil service rules and regulations have been met.

(b) Evaluating the effectiveness of: (1) personnel policies, programs, and operations of Executive and other Federal agencies subject to the jurisdiction of the Office, including their effectiveness with regard to merit selection and employee development; (2) agency compliance with and enforcement of applicable laws, rules, regulations and office directives; and (3) agency personnel management evaluation systems.

(c) Investigating, or directing an agency to investigate and report on, apparent violations of applicable laws, rules, regulations, or directives requiring corrective action, found in the course of an evaluation.

(d) Requiring agencies to report, in a manner and at times as the Director may prescribe, personnel information the Director requests relating to civilian employees in the Executive branch of the Government, as defined by Section 311 of the Civil Service Reform Act of 1978 [set out as a note under section 3101 of this title], including positions and officers and employees in the competitive, excepted and Senior Executive services, whether permanent, career-conditional, temporary or emergency.

§ 5.3. Enforcement

(a) The Director is authorized to ensure enforcement of the civil service laws, rules, and regulations, and all applicable Executive orders, by:

(1) Instructing an agency to separate or take other action against an employee serving an appointment subject to investigation when the Director finds that the employee is disqualified for Federal employment. Where the employee or the agency appeals the Director's finding that a separation or other action is necessary, the Director may instruct the agency as to whether or not the employee should remain on duty

and continue to receive pay pending adjudication of the appeal: *Provided,* That when an agency separates or takes other action against an employee pursuant to the Director's instructions, and the Director, on the basis of new evidence, subsequently reverses the initial decision as to the employee's qualifications and suitability, the agency shall, upon request of the Director, restore the employee to duty or otherwise reverse any action taken.

(2) Reporting the results of evaluation or investigations to the head of the agency concerned with instructions for any corrective action necessary, including cancellation of personnel actions where appropriate. The Director's findings resulting from evaluations or investigations are binding unless changed as a result of agency evidence and arguments against them. If, during the course of any evaluation or investigation under this Section, the Director finds evidence of matters which come within the investigative and prosecutorial jurisdiction of the Special Counsel of the Merit Systems Protection Board, the Director shall refer this evidence to the Special Counsel for appropriate disposition.

(b) Whenever the Director issues specific instructions as to separation or other corrective action with regard to an employee, including cancellation of a personnel action, the head of the agency concerned shall comply with the Director's instructions.

(c) If the agency head fails to comply with the specific instructions of the Director as to separation or other corrective action with regard to an employee, including cancellation of a personnel action, the Director may certify to the Comptroller General of the United States the agency's failure to act together with such additional information as the Comptroller General may require, and shall furnish a copy of such certification to the head of the agency concerned. The individual with respect to whom such separation or other corrective action was instructed shall be entitled thereafter to no pay or only to such pay as appropriate to effectuate the Director's instructions.

§5.4. Information and Testimony

When required by the Office, the Merit Systems Protection Board, or the Special Counsel of the Merit Systems Protection Board, or by authorized representatives of these bodies, agencies shall make available to them, or to their authorized representatives, employees to testify in regard to matters inquired of under the civil service laws, rules, and regulations, and records pertinent to these matters. All such employees, and all applicants or eligibles for positions covered by these rules, shall give to the Office, the Merit Systems Protection Board, the Special Counsel, or to their authorized representatives, all information, testimony, documents, and material in regard to the above matters, the disclosure of which is not otherwise prohibited by law or regulation. These employees, applicants, and eligibles shall sign testimony given under oath or affirmation before an officer authorized by law to administer oaths. Employees are performing official duty when testifying or providing evidence pursuant to this section.

Rule VI—Exceptions From the Competitive Service

§6.1. Authority To Except Positions From the Competitive Service

(a) The Office may except positions from the competitive service when it determines that appointments thereto through competitive examination are not practicable. These positions shall be listed in the Office's annual report for the fiscal year in which the exceptions are made.

(b) The Office shall decide whether the duties of any particular position are such that it may be filled as an excepted position under the appropriate schedule.

(c) Notice of the Office's decision granting authority to make appointments to an excepted position under the appropriate schedule shall be published in the Federal Register.

§6.2. Schedules of Excepted Positions

The Office shall list positions that it excepts from the competitive service in Schedules A, B, and C, which schedules shall constitute parts of this Rule, as follows:

SCHEDULE A

Positions other than those of a confidential or policy-determining character for which it is not practicable to examine shall be listed in Schedule A.

SCHEDULE B

Positions other than those of a confidential or policy-determining character for which it is not practicable to hold a competitive examination shall be listed in Schedule B. Appointments to these positions shall be subject to such noncompetitive examinations as may be prescribed by the Office.

SCHEDULE C

Positions of a confidential or policy-determining character shall be listed in Schedule C.

§6.3. Method of Filling Excepted Positions and Status of Incumbents

(a) The head of an agency may fill excepted positions by the appointment of persons without civil service eligibility or competitive status and such persons shall not acquire competitive status by reason of such appointment: *Provided,* That the Office, in its discretion, may by regulation prescribe conditions under which excepted positions may be filled in the same manner as competitive positions are filled and conditions under which persons so appointed may acquire a competitive status in accordance with the Civil Service Rules and Regulations.

(b) To the extent permitted by law and the provisions of this Rule, appointments and position changes in the excepted service shall be made in accordance with such regulations and practices as the head of the agency concerned finds necessary.

§6.4. Removal of Incumbents of Excepted Positions

Except as may be required by statute, the Civil Service Rules and Regulations shall not apply to removals from positions listed in Schedules A and C or from positions excepted from the competitive service by statute. The Civil Service Rules and Regulations shall apply to removals from positions listed in Schedule B of persons who have competitive status.

§6.5. Assignment of Excepted Employees

No person who is serving under an excepted appointment shall be assigned to the work of a position in the competitive service without prior approval of the Office.

§6.6. Revocation of Exceptions

The Office may remove any position from or may revoke in whole or in part any provision of Schedule A, B, or C. Notice of the Office's decision making these changes shall be published in the Federal Register.

§6.7. Movement of Persons Between the Civil-Service System and Other Merit Systems

Whenever the Office and any Federal agency having an established merit system determine it to be in the interest of good administration and consistent with the intent of the civil-service laws and any other applicable laws, they may enter into an agreement prescribing conditions under which persons may be moved from one system to the other and defining the status and tenure that the persons affected shall acquire upon such movement.

§6.8. Specified Exceptions

(a) Positions in the Department of the Interior and in the Department of Commerce whose incumbents serve

as the principal representative of the Secretary in their respective regions shall be listed in Schedule C for grades not exceeding grade GS–15 of the General Schedule, and shall be designated Noncareer Executive Assignments for positions graded higher than GS–15. Incumbents of these positions who are, on February 15, 1975, in the competitive service shall not be affected by the foregoing provisions of this Section.

(b) Positions in the Community Services Administration and ACTION [now Corporation for National and Community Service] whose incumbents serve as regional director or regional administrator shall be listed in Schedule C for grades not exceeding GS–15 of the General Schedule and shall be designated Noncareer Executive Assignments for positions graded higher than GS–15. Incumbents of these positions who are, on November 29, 1977, in the competitive service shall not be affected by the foregoing provisions of this subsection.

(c) Within the Department of Agriculture, positions the incumbents of which serve as State Executive Directors of the Consolidated Farm Service Agency and positions the incumbents of which serve as State Directors or State Directors-at-Large for Rural Economic and Community Development shall be listed in Schedule C for all grades of the General Schedule.

RULE VII—GENERAL PROVISIONS

§ 7.1. DISCRETION IN FILLING VACANCIES

In his discretion, an appointing officer may fill any position in the competitive service either by competitive appointment from a civil-service register or by noncompetitive selection of a present or former Federal employee, in accordance with the Civil Service Regulations. He shall exercise his discretion in all personnel actions solely on the basis of merit and fitness and without regard to political or religious affiliations, marital status, or race.

§ 7.2. PERSONNEL REPORTS

Each agency shall report to the Office, in such manner and at such times as the Office may prescribe, such personnel information as it may request relating to positions and officers and employees in the competitive service and in the excepted service, whether permanent or career, career-conditional, indefinite, temporary, emergency, or subject to contract.

§ 7.3. REEMPLOYMENT RIGHTS

The Office, whenever it determines it to be necessary, shall prescribe regulations governing the release of employees (both within the competitive service and the excepted service) by any agency in the executive branch of the Government for employment in any other agency, and governing the establishment, granting, and exercise of rights to reemployment in the agencies from which employees are released.

§ 7.4. CITIZENSHIP

(a) No person shall be admitted to competitive examination unless such person is a citizen or national of the United States.

(b) No person shall be given any appointment in the competitive service unless such person is a citizen or national of the United States.

(c) The Office may, as an exception to this rule and to the extent permitted by law, authorize the appointment of aliens to positions in the competitive service when necessary to promote the efficiency of the service in specific cases or for temporary appointments.

RULE VIII—APPOINTMENTS TO OVERSEAS POSITIONS

§ 8.1. ADDITIONAL AUTHORITY OF THE OFFICE

In addition to authorizing the recruitment and appointment of persons to overseas positions under regulations issued under the preceding Rules, the Office may, by the regulations prescribed by it, authorize the recruitment and appointment of persons to such positions as provided in section 2 of this Rule. As used in this Rule, ''overseas positions'' means positions in foreign countries and in other areas beyond the continental limits of the United States, except as provided in section 8.4 hereof.

§ 8.2. APPOINTMENT OF UNITED STATES CITIZENS

United States citizens may be recruited overseas for appointment to overseas positions in the competitive service without regard to the competitive requirements of the Civil Service Act. Persons so recruited who meet the qualification standards and other requirements of the Office for overseas positions may be given appointments to be known as ''overseas limited appointments.'' Such appointments shall be of temporary or indefinite duration, and shall not confer the right to acquire a competitive status. The Office may authorize overseas limited appointments for United States citizens recruited within the continental limits of the United States whenever it determines that it is not feasible to appoint from a civil-service register. Persons serving under appointments made pursuant to this section are hereby excluded from the operation of the Civil Service Retirement Act of May 29, 1930, as amended [section 8301 et seq. of this title], unless eligible for retirement benefits by continuity of service or otherwise.

§ 8.3. APPOINTMENT OF PERSONS NOT CITIZENS OF THE UNITED STATES

Persons who are not citizens of the United States may be recruited overseas and appointed to overseas positions without regard to the Civil Service Act.

§ 8.4. POSITIONS EXCEPTED FROM THE APPLICATION OF THIS RULE

This Rule shall not apply to positions in Hawaii, Puerto Rico, the Virgin Islands, and Alaska, and on the Isthmus of Panama.

RULE IX—EXECUTIVE, ASSIGNMENT SYSTEM FOR POSITIONS IN GRADES GS–16, 17, AND 18 OF THE GENERAL SCHEDULE

[Revoked by Ex. Ord. No. 12748, Feb. 1, 1991, 56 F.R. 4521.]

PART II—SPECIAL PROVISIONS FOR TRANSITION FROM INDEFINITE APPOINTMENT SYSTEM TO CAREER-CONDITIONAL APPOINTMENT SYSTEM

§ 201

(a) Under such conditions as the Office of Personnel Management may prescribe, all employees serving under indefinite appointments in the competitive service on the effective date of this order who were appointed by selection in regular order from appropriate competitive civil-service registers established subsequent to February 4, 1946, shall, as of the effective date of this order, have their appointments converted to career-conditional appointments if they have had less than three years of creditable service, and to career appointments if they have had three or more years of such service since they were appointed: *Provided,* That any such employees who left their positions prior to the effective date of this order to enter the armed forces of the United States and are reemployed in the competitive service after the effective date of this order pursuant to application for employment made within ninety days after honorable discharge, or after hospitalization continuing after discharge for not more than one year, shall have their former indefinite appointments converted to career-conditional or career appointments in accordance with this section: *Provided further,* That employees serving in excepted positions who would meet the conditions for career-conditional or career appointments if they were serving in competitive positions shall be granted competitive status upon completion of a probationary period.

(b) The Office may prescribe the conditions under which employees who are serving under indefinite appointments in the competitive service on the effective date of this order and who were not appointed by selection in regular order from competitive civil-service registers may be examined and have their names entered on existing competitive civil-service registers. When such employees are within reach for appointment from such registers they shall be eligible for career-conditional appointments if, since they were given indefinite appointments, they have had less than three years of creditable service, and for career appointments if they have had three or more years of such service.

(c) All employees in the competitive service who on the effective date of this order are serving under indefinite appointments made noncompetitively based upon prior service with a competitive status shall, as of the effective date of this order, have their appointments converted to career-conditional appointments if they have had less than three years of creditable service and to career appointments if they have had three or more years of such service under either permanent or indefinite appointment: *Provided*, That any such employees who left their positions prior to the effective date of this order to enter the armed forces of the United States and are reemployed in the competitive service after the effective date of this order pursuant to application for employment made within ninety days after honorable discharge, or after hospitalization continuing after discharge for not more than one year, shall have their former indefinite appointments converted to career-conditional or career appointments in accordance with this section: *Provided further*, That any such employees in the field service of the Post Office Department whose salary rates are fixed by the act of July 6, 1945, 59 Stat. 435, as heretofore or hereafter amended and supplemented, shall have their appointments converted to career appointments if they are serving in positions in the authorized complement of permanent positions (consisting of regular positions and positions within the authorized quota of substitutes).

(d) The Office shall define ''creditable service'' and shall prescribe the conditions for completion of the period of creditable service required for career appointment.

(e) Except as provided in section 201(c) hereof, this section shall not apply to employees serving under indefinite appointments in the field service of the Post Office Department whose salary rates are fixed by the act of July 6, 1945, 59 Stat. 435, as heretofore or hereafter amended and supplemented.

§ 202

(a) Notwithstanding the provisions of section 201(a) of this order, and subject to such noncompetitive examination or other requirements as the Office may prescribe, any employee entitled to veteran preference who has a compensable service-connected disability of ten per centum or more may, upon recommendation of the agency concerned, noncompetitively acquire a competitive status subject to completion of a probationary period: *Provided*, That he is serving under an indefinite appointment, a temporary appointment pending establishment of a register, or a temporary appointment for job employment which has been continuous for more than one year: *Provided further*, That recommendation for acquisition of status under this section is made not later than December 31, 1957.

(b) Any employee who is recommended for noncompetitive acquisition of competitive status under section 202(a) hereof and who satisfies the noncompetitive examination and other requirements of the Office shall have the appointment under which he is serving converted to a career appointment if he has completed a probationary period or to a career-conditional appointment if he has not completed a probationary period. The career-conditional appointment of such an employee shall be converted to a career appointment upon completion of probation.

(c) An employee in the field service of the Post Office Department whose salary rate is fixed by the act of July 6, 1945, 59 Stat. 435, as heretofore or hereafter amended and supplemented, may not be recommended for competitive status under section 202(a) hereof unless he can be appointed to a vacancy in the authorized complement of permanent positions (consisting of regular positions and positions within the authorized quota of substitutes). When such an employee is recommended for noncompetitive acquisition of competitive status and satisfies the noncompetitive examination and other requirements of the Office, his appointment shall be converted to a career appointment subject to satisfactory completion of a probationary period.

§ 203

The career-conditional appointment of any employee entitled to veteran preference who has a compensable service-connected disability of ten per centum or more may be converted to a career appointment: *Provided*, That he received his career-conditional appointment prior to January 1, 1958, and that, not later than December 31, 1958, the agency in which he is employed recommends such conversion and certifies to the Office that he has satisfactorily completed a one-year probationary period: *Provided further*, That any such employee who is not certified for career appointment under this section shall have his career-conditional appointment converted to a career appointment when he has completed the service requirement for such appointment prescribed under section 2.2(a) of Civil Service Rule II.

§ 204

In order to effectuate the purposes of section 1310 of the Supplemental Appropriations Act, 1952 (65 Stat. 757), as amended [set out as a note under section 3101 of this title], the Office shall, after consultation with the agencies concerned, determine the division of allowable permanent appointments within and between the excepted service and the competitive service.

§ 205

The Office shall issue such regulations and instructions as may be necessary to effectuate the purposes of this part.

PART III

§ 301

The following-described executive orders and parts of executive orders are hereby revoked:

Part II of Executive Order No. 9830 of February 24, 1947, amending the Civil Service Rules: *Provided*, That the positions listed in Schedules A, B, and C as provided for in Civil Service Rule VI of that order, as amended, shall be considered as being listed in Schedules A, B, and C, respectively, as provided for in Civil Service Rule VI of this order, unless and until they are removed therefrom by the Office.

Executive Orders No. 9973 of June 28, 1948, No. 10440 of March 31, 1953, and No. 10463 of June 25, 1953, amending Civil Service Rule VI.

Executive Order No. 10180 of November 13, 1950, establishing special personnel procedures in the interest of national defense.

PART IV

§ 401

This order shall become effective on the first Sunday after the sixtieth day after the date hereof.

EXECUTIVE ORDER NO. 10590

Ex. Ord. No. 10590, Jan. 18, 1955, 20 F.R. 409, as amended by Ex. Ord. No. 10722, Aug. 7, 1957, 22 F.R. 6287; Ex. Ord. No. 10773, July 1, 1958, 23 F.R. 5061; Ex. Ord. No. 10782, Sept. 8, 1958, 23 F.R. 6971, which established the President's Committee on Government Employment Policy, was superseded by Ex. Ord. No. 11246, Sept. 24,

1965, 30 F.R. 12319, set out as a note under section 2000e of Title 42, The Public Health and Welfare.

EXECUTIVE ORDER NO. 10880

Ex. Ord. No. 10880, June 7, 1960, 25 F.R. 5131, as amended by Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, which provided for conversion of indefinite or temporary appointments to career or career-conditional appointments, was revoked by Ex. Ord. No. 12608, Sept. 9, 1987, 52 F.R. 34617.

EXECUTIVE ORDER NO. 10925

Ex. Ord. No. 10925, Mar. 7, 1961, 26 F.R. 1977, as amended by Ex. Ord. No. 11114, June 24, 1963, 28 F.R. 6485; Ex. Ord. No. 11162, July 28, 1964, 29 F.R. 10563, which established the President's Committee on Equal Employment Opportunity, was superseded by Ex. Ord. No. 11246, Sept. 24, 1965, 30 F.R. 12319, set out as a note under section 2000e of Title 42, The Public Health and Welfare.

EXECUTIVE ORDER NO. 11114

Ex. Ord. No. 11114, June 24, 1963, 28 F.R. 6485, as amended by Ex. Ord. No. 11162, July 28, 1964, 29 F.R. 10563, which extended the authority of the President's Committee on Equal Employment Opportunity, was superseded by Ex. Ord. No. 11246, Sept. 24, 1965, 30 F.R. 12319, set out as a note under section 2000e of Title 42, The Public Health and Welfare.

EX. ORD. NO. 11141. DISCRIMINATION ON THE BASIS OF AGE

Ex. Ord. No. 11141, Feb. 12, 1964, 29 F.R. 2477, provided:

WHEREAS the principle of equal employment opportunity is now an established policy of our Government and applies equally to all who wish to work and are capable of doing so; and

WHEREAS discrimination in employment because of age, except upon the basis of a *bona fide* occupational qualification, retirement plan, or statutory requirement, is inconsistent with that principle and with the social and economic objectives of our society; and

WHEREAS older workers are an indispensable source of productivity and experience which our Nation can ill afford to lose; and

WHEREAS President Kennedy, mindful that maximum national growth depends on the utilization of all manpower resources, issued a memorandum on March 14, 1963, reaffirming the policy of the Executive Branch of the Government of hiring and promoting employees on the basis of merit alone and emphasizing the need to assure that older people are not discriminated against because of their age and receive fair and full consideration for employment and advancement in Federal employment; and

WHEREAS, to encourage and hasten the acceptance of the principle of equal employment opportunity for older persons by all sectors of the economy, private and public, the Federal Government can and should provide maximum leadership in this regard by adopting that principle as an express policy of the Federal Government not only with respect to Federal employees but also with respect to persons employed by contractors and subcontractors engaged in the performance of Federal contracts:

NOW, THEREFORE, by virtue of the authority vested in me by the Constitution and statutes of the United States and as President of the United States, I hereby declare that it is the policy of the Executive Branch of the Government that (1) contractors and subcontractors engaged in the performance of Federal contracts shall not, in connection with the employment, advancement, or discharge of employees, or in connection with the terms, conditions, or privileges of their employment, discriminate against persons because of their age except upon the basis of a *bona fide* occupational qualification, retirement plan, or statutory requirement, and (2) that contractors and subcontractors, or persons acting on their behalf, shall not specify, in solicitations or advertisements for employees to work on Government contracts, a maximum age limit for such employment unless the specified maximum age limit is based upon a *bona fide* occupational qualification, retirement plan, or statutory requirement. The head of each department and agency shall take appropriate action to enunciate this policy, and to this end the Federal Procurement Regulations and the Armed Services Procurement Regulation shall be amended by the insertion therein of a statement giving continuous notice of the existence of the policy declared by this order.

LYNDON B. JOHNSON.

EXECUTIVE ORDER NO. 11162

Ex. Ord. No. 11162, July 28, 1964, 29 F.R. 10563, which related to membership of the President's Committee on Equal Employment Opportunity, was superseded by Ex. Ord. No. 11246, Sept. 24, 1965, 30 F.R. 12319, set out as a note under section 2000e of Title 42, The Public Health and Welfare.

EXECUTIVE ORDER NO. 11202

Ex. Ord. No. 11202, Mar. 5, 1965, 30 F.R. 3185, which established career or career-conditional appointments for student trainees, was revoked by Ex. Ord. No. 11813, Oct. 7, 1974, 39 F.R. 36317, formerly set out as a note under this section.

EX. ORD. NO. 11203. CAREER APPOINTMENTS TO CERTAIN QUALIFIED EMPLOYEES OF TREASURY DEPARTMENT

Ex. Ord No. 11203, Mar. 12, 1965; 30 F.R. 3417, as amended by Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, provided:

By virtue of the authority vested in me by Section 2 of the Civil Service Act (22 Stat. 403) and Section 1753 of the Revised Statutes of the United States (5 U.S.C. 631) [sections 3301 and 7301 of this title] and as President of the United States, it is hereby ordered as follows—

SECTION 1. Any employee of the Treasury Department serving under an appointment under Schedule B of the Civil Service Rules in a position concerned with the protection of the life and safety of the President, members of his immediate family, or other persons for whom similar protective services are provided by law (which responsibility is hereinafter referred to as the protective function) may have his appointment converted to a career appointment if:

(1) he has completed at least three years of full-time continuous service in a position concerned with the protective function;

(2) The Secretary of the Treasury, or his designee, recommends the conversion of the employee's appointment within 90 days after the employee meets the service requirements of this section, or within 90 days after the date of this Order, whichever is later;

(3) he shall have passed a competitive examination appropriate for the position he is occupying or meets noncompetitive examination standards the Office of Personnel Management prescribes for his position; and

(4) he meets all other requirements prescribed by the Office pursuant to Section 5 of this Order.

SEC. 2. For the purposes of Section 1—

(1) ''full-time continuous service'' means service without a break of more than 30 calendar days;

(2) except as provided in paragraph (3) of this section, active service in the Armed Forces of the United States shall be deemed to be full-time continuous service in a position concerned with the protective function if the employee concerned shall have left a position concerned with the protective function to enter the Armed Forces and shall have been re-employed in a position concerned with the protective function within 120 days after he shall have been discharged from the Armed Forces under honorable conditions; and

(3) active service in the Armed Forces shall not be deemed to be full-time continuous service in a position concerned with the protective function if such active service exceeds a total of four years plus any period of additional service imposed pursuant to law.

SEC. 3. Any employee who shall have left a position concerned with the protective function to enter active service in the Armed Forces of the United States, who is re-employed in such a position within 120 days after his discharge under honorable conditions from such service, and who meets the requirements of Section 1 as the result of being credited with his period of active service in the Armed Forces pursuant to Section 2(2), may have his appointment converted if the Secretary of the Treasury or his designee, recommends that conversion within 90 days after his re-employment.

SEC. 4. Whenever the Secretary of the Treasury, or his designee, decides not to recommend conversion of the appointment of an employee under this Order or whenever the Secretary, or his designee, recommends conversion and the employee fails to qualify, the employee shall be separated by the date on which his current Schedule B appointment expires.

SEC. 5. The Office of Personnel Management shall prescribe such regulations as may be necessary to carry out the purposes of this Order.

EX. ORD. NO. 11219. APPOINTMENT IN COMPETITIVE SERVICE OF FOREIGN SERVICE OFFICERS AND EMPLOYEES

Ex. Ord. No. 11219, May 6, 1965, 30 F.R. 6381, as amended by Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055; Ex. Ord. No. 12292, Feb. 23, 1981, 46 F.R. 13967, provided:

By virtue of the authority vested in me by section 1753 of the Revised Statutes [sections 3301 and 7301 of this title] and the Civil Service Act (22 Stat. 403), and as President of the United States, it is hereby ordered as follows:

SECTION 1. Under regulations and conditions prescribed by the Office of Personnel Management, a present or former member of the Foreign Service may be appointed in the competitive service if he:

(a) Is qualified for the position in the competitive service;

(b) Was appointed in the Foreign Service under authority of the Foreign Service Act of 1946 as amended [former section 801 et seq. of Title 22, Foreign Relations and Intercourse], the Foreign Service Act of 1980 [section 3901 et seq. of Title 22], or legislation that supplements or replaces the latter Act;

(c) Served in the Foreign Service under an unlimited, career-type appointment and, immediately before his separation from that appointment, he completed at least one year of continuous service under one or more nontemporary appointments in the Foreign Service which may include the service that made him eligible for his career-type appointment; and

(d) Is appointed within 3 years after his separation from the Foreign Service, or he completed at least 3 years of substantially continuous service under one or more nontemporary appointments in the Foreign Service immediately before his separation from the unlimited, career-type appointment in that Service which may include the service that made him eligible for such appointment, or he is entitled to preference under section 2 of the Veterans' Preference Act of 1944, as amended [sections 1302 and 2108 of this title].

SEC. 2. (a) Except as provided in paragraph (b) of this section, a person appointed under Section 1 of this Order becomes a career conditional employee.

(b) A person appointed under Section 1 of this Order becomes a career employee when he:

(1) Has completed at least 3 years of substantially continuous service under one or more nontemporary appointments in the Foreign Service immediately before his separation from the unlimited, career-type appointment in that Service which may include the service that made him eligible for such appointment;

(2) Is appointed to a position in the competitive service required by law or Executive order to be filled on a permanent or career basis; or

(3) Has completed the service requirement for career tenure in the competitive service.

For the purpose of subparagraph (3) of this paragraph, service in the Foreign Service is creditable in meeting the service requirement only if the person concerned is appointed to a nontemporary position in the competitive service under Section 1 of this Order within 30 days after his separation from the Foreign Service.

SEC. 3. A person appointed to a nontemporary position in the competitive service under Section 1 of this Order acquires a competitive status automatically on appointment.

SEC. 4. Any law, Executive order, or regulation that would disqualify an applicant for appointment in the competitive service shall also disqualify a person for appointment under Section 1 of this Order.

SEC. 5. For the purpose of this Order, a person is deemed to be a member of the ''Foreign Service'' if he was appointed in any agency under authority of the Foreign Service Act of 1946, as amended [former section 801 et seq. of Title 22, Foreign Relations and Intercourse], the Foreign Service Act of 1980 [section 3901 et seq. of Title 22], or legislation that supplements or replaces the latter Act.

EX. ORD. NO. 11315. AMENDING THE CIVIL SERVICE RULES TO AUTHORIZE AN EXECUTIVE ASSIGNMENT SYSTEM FOR POSITIONS IN GRADES 16, 17, AND 18 OF THE GENERAL SCHEDULE

Ex. Ord. No. 11315, Nov. 17, 1966, 31 F.R. 14729, as amended by Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, provided:

WHEREAS, the increasing complexities of Government require personnel of the highest attainable qualifications who are capable of assuming and discharging efficiently major and varied duties and responsibilities in the Executive Branch in response to present and future needs; and

WHEREAS, this need for high quality can best be met by the establishment of an executive assignment system for the top three grades of the General Schedule, extending and adapting merit principles in recruitment, selection, and development, combined with improvements in the identification, assignment and utilization of key personnel:

NOW, THEREFORE, by virtue of the authority vested in me by the Constitution of the United States, by 5 U.S.C. 3301 and 3302, and as President of the United States, it is ordered as follows:

PART I. CIVIL SERVICE RULES

SECTION 1. The Civil Service Rules are amended by the addition of Civil Service Rule IX reading as follows:

[Civil Service Rule IX, as established by Ex. Ord. No. 11315, as amended, was revoked by Ex. Ord. No. 12748, Feb. 1, 1991, 56 F.R. 4521. See Ex. Ord. No. 10577, as amended, set out above.]

CIVIL SERVICE RULE VI

SEC. 2. Civil Service Rule VI is amended in pertinent part as follows:

(a) Section 6.1(a) is amended to read as follows:

''(a) The Office may except positions from the competitive service when it determines that appointments thereto through competitive examination are not practicable. These positions shall be listed in the Office's annual report for the fiscal year in which the exceptions are made. The exception from the competitive service is effective on publication in the Federal Register.''

(b) Section 6.6 is amended to read as follows:

''Section 6.6 *Revocation of exceptions*. The Office may remove any position from or may revoke in whole or in part any provision of Schedule A, B, or C. These changes are effective on publication in the Federal Register.''

PART II. SPECIAL PROVISIONS FOR TRANSITION TO THE FULL ESTABLISHMENT OF EXECUTIVE ASSIGNMENTS UNDER RULE IX

SEC. 3. *Effective dates*. This order, except section 1, is effective upon filing for publication in the Federal Register. Section 1 of this order is effective not later than

one year from the date of this order, or at such earlier dates as the Office of Personnel Management may specify for individual agencies or positions.

SEC. 4. *Interim appointments.* After the date of this order and before Civil Service Rule IX has become effective as to a position, an appointing officer may fill the position in accordance with the appointment system in effect on the day of the appointment.

SEC. 5. *Conversion of incumbents.* On the day Civil Service Rule IX becomes effective as to a position, the appointment of the incumbent of that position shall be changed as follows:

(a) If he is serving under a career or career-conditional appointment in the competitive service, he shall be converted to a Career Executive Assignment;

(b) If he is serving in the excepted service under a nontemporary appointment, he shall be converted to a Noncareer Executive Assignment;

(c) If he is serving in the competitive service under an indefinite or temporary appointment without definite time limit and:

(1) if he has served under this type of appointment for at least five years, he shall be:

(i) converted to a Career Executive Assignment, or appointed to a continuing position in the competitive service in grade GS–15, or below;

(ii) converted to a Noncareer Executive Assignment; or

(iii) separated from the service; or

(2) if he has served under this type of appointment for less than five years, he shall be:

(i) converted to a Noncareer Executive Assignment;

(ii) separated from the service; or

(iii) allowed to continue to serve until he has served five years, at which time the appointing officer shall take one of the actions provided for in subparagraph (1) of this paragraph.

An incumbent who is serving under any other type of appointment shall continue under that appointment until it is terminated.

PART III. ADMINISTRATION

SEC. 6. *Office responsibilities.* The Office of Personnel Management is responsible to the President for the effective implementation and administration of the executive assignment system established by this Order. The Office shall continuously review operations under this system, shall recommend promptly to the President any changes that are necessary to improve this system, and shall report periodically to the President any significant developments in the operation of the system. The Office shall recommend to the President a program of special honors and awards for the recognition of persons assigned to Career Executive Assignments and a program for the development and training of persons assigned to Career Executive Assignments. The training program shall include the establishment of special training and educational facilities, and provide for the relevant use of outside training facilities.

SEC. 7. *Responsibilities of the agencies.* The head of each agency in which there are positions covered by Civil Service Rule IX shall periodically review with the Office of Personnel Management his plans for staffing. The head of a newly established agency shall initially review with the Office his plans for staffing as soon as practicable after the establishment of the agency. The head of each agency shall cooperate fully with the Office in the establishment of special facilities and special boards and panels that are required under Civil Service Rule IX as a means of recruiting persons of the highest quality.

SEC. 8. *Regulations.* The Office of Personnel Management shall prescribe such regulations as may be necessary to carry out the purpose and intent of this Order.

EXECUTIVE ORDER NO. 11598

Ex. Ord. No. 11598, June 16, 1971, 36 F.R. 11711, formerly set out as a note under this section, which related to the listing of certain job vacancies by federal agencies and government contractors and subcontractors, was superseded by Ex. Ord. No. 11701, Jan. 24, 1973, 38 F.R. 2675, set out as a note under section 4212 of Title 38, Veterans' Benefits.

EXECUTIVE ORDER NO. 11813

Ex. Ord. No. 11813, Oct. 7, 1974, 39 F.R. 36317, which related to career or career-conditional appointments for cooperative education students, was revoked by Ex. Ord. No. 12015, Oct. 26, 1977, 42 F.R. 56947, set out as a note below.

EX. ORD. NO. 11839. AMENDING THE CIVIL SERVICE RULES TO EXCEPT CERTAIN POSITIONS IN REGIONAL OFFICES FROM THE CAREER SERVICE

Ex. Ord. No. 11839, Feb. 15, 1975, 40 F.R. 7351, provided:

The program to decentralize Federal policy and decision making and to involve local governments and other interested parties in Federal, State, and local policy and program development requires a capability for deep involvement in the development and advocacy of Administration proposals and policies, and support of their controversial aspects, on the part of certain senior regional officials.

NOW, THEREFORE, by virtue of the authority vested in me by the Constitution of the United States and Sections 3301 and 3302 of Title 5 of the United States Code, and as President of the United States of America, it is hereby ordered as follows:

SECTION 1. Civil Service Rule VI is amended by adding the following Section:

''SECTION 6.8. SPECIFIED EXCEPTIONS

''Positions in the Department of the Interior whose incumbents serve as the principal representative of the Secretary in their respective regions shall be listed in Schedule C for grades not exceeding grade GS–15 of the General Schedule and shall be designated Noncareer Executive Assignments for positions graded higher than GS–15. Incumbents of these positions who are, on February 15, 1975, in the competitive service shall not be affected by the foregoing provisions of this Section.''

SEC. 2. Civil Service Rule IX is amended by adding the following:

''SEC. 9.11. SPECIFIED NONCAREER EXECUTIVE ASSIGNMENTS

''The regional director, regional administrator, or the Secretary's principal regional representative positions in the Department of Health, Education, and Welfare, Housing and Urban Development, Transportation and Labor, and those positions in the Environmental Protection Agency shall be designated Noncareer Executive Assignments; and, the Limited Executive Assignments of any incumbents of these positions on February 15, 1975, are converted to Noncareer Executive Assignments. Incumbents of these positions serving in Career Executive Assignments on February 15, 1975, shall not be affected by the foregoing provisions of this Section.''

GERALD R. FORD.

EX. ORD. NO. 11856. AMENDING THE CIVIL SERVICE RULES TO EXCEPT CERTAIN POSITIONS IN REGIONAL OFFICES FROM THE CAREER SERVICE

Ex. Ord. No. 11856, May 7, 1975, 40 F.R. 20259, provided:

By virtue of the authority vested in me by the Constitution of the United States of America and Sections 3301 and 3302 of Title 5 of the United States Code, and as President of the United States of America, Section 9.11 of Civil Service Rule IX is amended by adding ''and the Small Business Administration'' after ''Environmental Protection Agency.''

GERALD R. FORD.

EX. ORD. NO. 11887. AMENDING THE CIVIL SERVICE RULES TO EXCEPT CERTAIN POSITIONS FROM THE CAREER SERVICE

Ex. Ord. No. 11887, Nov. 4, 1975, 40 F.R. 51411, provided:

By virtue of the authority vested in me by the Constitution of the United States of America and Sections 3301 and 3302 of Title 5 of the United States Code, and as President of the United States of America, Section 6.8 of Civil Service Rule VI is amended by adding ''and in the Department of Commerce'' after ''Department of the Interior''.

GERALD R. FORD.

EX. ORD. NO. 11935. AMENDING THE CIVIL SERVICE RULES CONCERNING CITIZENSHIP REQUIREMENTS FOR FEDERAL EMPLOYMENT

Ex. Ord. No. 11935, Sept. 2, 1976, 41 F.R. 37301, as amended by Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, provided:

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, including Sections 3301 and 3302 of Title 5 of the United States Code, and as President of the United States of America, Civil Service Rule VII (5 CFR Part 7) is hereby amended by adding thereto the following new section:

''SECTION 7.4. CITIZENSHIP

''(a) No person shall be admitted to competitive examination unless such person is a citizen or national of the United States.

''(b) No person shall be given any appointment in the competitive service unless such person is a citizen or national of the United States.

''(c) The Office may, as an exception to this rule and to the extent permitted by law, authorize the appointment of aliens to positions in the competitive service when necessary to promote the efficiency of the service in specific cases or for temporary appointments.''.

EX. ORD. NO. 11955. CAREER OR CAREER-CONDITIONAL APPOINTMENT TO CERTAIN QUALIFIED EMPLOYEES OF NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Ex. Ord. No. 11955, Jan. 10, 1977, 42 F.R. 2499, as amended by Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, provided:

By virtue of the authority vested in me by section 3301 of title 5 of the United States Code [this section], and as President of the United States of America, it is hereby ordered as follows:

SECTION 1. The appointment of a Command Pilot, Pilot or Mission Specialist candidate to a position in the Space Shuttle Astronaut Program of the National Aeronautics and Space Administration, which is listed under Schedule B of the Schedule of Excepted Positions, may be converted to career or career-conditional appointment if:

(a) the candidate has successfully completed two years of service as a candidate in an appropriate training program;

(b) the Administrator of the National Aeronautics and Space Administration, or the Administrator's designee, recommends the conversion of the candidate's appointment within ninety days of completion of the requirements of section 1(a);

(c) the candidate meets noncompetitive examination standards prescribed by the Office of Personnel Management; and

(d) the candidate meets all other requirements prescribed by the Office of Personnel Management pursuant to section 3 of this order.

SEC. 2. Whenever the Administrator of the National Aeronautics and Space Administration, or the Administrator's designee, decides not to recommend conversion of an appointment under this order or whenever the Administrator, or the Administrator's designee, recommends conversion and the candidate fails to qualify, the candidate shall be separated not later than the date of expiration of the current Schedule B appointment, unless the appointment can be converted through appropriate competitive examination or the candidate can be assigned to a suitable position under another excepted authority prior to the expiration date.

SEC. 3. The Office of Personnel Management shall prescribe such regulations as may be necessary to carry out the purpose of this order.

EXECUTIVE ORDER NO. 12008

Ex. Ord. No. 12008, Aug. 25, 1977, 42 F.R. 43373, as amended by Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, which established a Presidential Management Intern Program, was revoked by Ex. Ord. No. 12364, May 24, 1982, 47 F.R. 22931, set out as a note below.

EX. ORD. NO. 12015. CAREER OR CAREER-CONDITIONAL APPOINTMENTS IN COMPETITIVE SERVICE FOR STUDENTS COMPLETING APPROVED CAREER-RELATED WORK-STUDY PROGRAMS

Ex. Ord. No. 12015, Oct. 26, 1977, 42 F.R. 56947, as amended by Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, provided:

By virtue of the authority vested in me by Sections 3301 and 3302 of Title 5 of the United States Code, and as President of the United States of America, it is hereby ordered as follows:

SECTION 1. As used in this order ''career-related work-study programs'' are those programs established by the Office of Personnel Management which provide for a formally-arranged schedule of periods of attendance at an accredited school combined with periods of career-related work in a Federal agency under a Schedule B appointment.

SEC. 2. The appointment of a student to a position in a career-related work-study program may be converted noncompetitively to a career or career-conditional appointment if the student:

(a) has completed within the preceding 120 days an educational program that meets the provisions established by the Office of Personnel Management;

(b) has satisfied all course requirements leading to completion of the related curriculum at an accredited school;

(c) is recommended for such an appointment by the employing agency in which the career-related work was performed; and,

(d) satisfies such other requirements and conditions as the Office of Personnel Management may prescribe for career or career-conditional appointment of an individual in career-related work-study programs.

SEC. 3. The Office of Personnel Management shall prescribe such regulations as it deems necessary to carry out the provisions of this order and to provide for the continuation of planning, implementation and evaluation of employment programs for students throughout the Government. These regulations shall provide for the periodic evaluation of the work of each student and require that each student's continuation in the program shall be dependent upon a finding of satisfactory performance.

SEC. 4. Executive Order No. 11813 of October 7, 1974, is hereby revoked.

JIMMY CARTER.

EX. ORD. NO. 12021. AMENDING THE CIVIL SERVICE RULES TO EXCEPT CERTAIN POSITIONS FROM THE CAREER SERVICE

Ex. Ord. No. 12021, Nov. 30, 1977, 42 F.R. 61237, provided:

By virtue of the authority vested in me by the Constitution of the United States of America, and Sections 3301 and 3302 of Title 5 of the United States Code, and as President of the United States of America, it is hereby ordered as follows:

SECTION 1. That portion of Section 6.8 of Civil Service Rule VI following the heading ''Specified Exceptions.'' (5 C.F.R. 6.8) is designated subsection (a) and a new subsection (b) is added as follows:

''(b) Positions in the Community Services Administration and ACTION [now Corporation for National and Community Service] whose incumbents serve as regional director or regional administrator shall be listed in Schedule C for grades not exceeding GS–15 of the

General Schedule and shall be designated Noncareer Executive Assignments for positions graded higher than GS–15. Incumbents of these positions who are, on November 29, 1977, in the competitive service shall not be affected by the foregoing provisions of this subsection.''.

SEC. 2. That portion of Section 9.11 of Civil Service Rule IX following the heading ''Career Executive Assignments; selection and assignment.'' (5 C.F.R. 9.11) is designated subsection (a) and a new subsection (b) is added as follows:

''(b) The regional director or regional administrator positions in the Defense Civil Preparedness Agency and the General Services Administration shall be designated as Noncareer Executive Assignments and the Limited Executive Assignments of any incumbents of these positions on November 29, 1977, are converted to Noncareer Executive Assignments. Incumbents of these positions who are, on November 29, 1977, serving in Career Executive Assignments shall not be affected by the foregoing provisions of this subsection.''.

JIMMY CARTER.

EXECUTIVE ORDER NO. 12026

For provisions relating to eligibility for reinstatement in the competitive civil service of certain employees of the Energy Department, see Ex. Ord. No. 12026, Dec. 5, 1977, 42 F.R. 61849, set out as a note under section 7292 of Title 42, The Public Health and Welfare.

EX. ORD. NO. 12043. AMENDING THE CIVIL SERVICE RULES REGARDING NOTICE OF EXEMPTIONS FROM THE COMPETITIVE SERVICE

Ex. Ord. No. 12043, Mar. 7, 1978, 43 F.R. 9773, as amended by Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, provided:

By virtue of the authority vested in me by the Constitution of the United States of America, and Sections 3301 and 3302 of Title 5 of the United States Code, and as President of the United States of America, it is hereby ordered as follows:

SECTION 1. Section 6.1 of Civil Service Rule VI (5 CFR 6.1) is amended by deleting the third sentence in subsection (a) thereof and by adding a new subsection (c) as follows:

''(c) Notice of the Office's decision granting authority to make appointments to an excepted position under the appropriate schedule shall be published in the FEDERAL REGISTER.''.

SEC. 2. Section 6.6 of the Civil Service Rule VI (5 CFR 6.6) is amended by deleting the second sentence thereof and substituting ''Notice of the Office's decision making these changes shall be published in the FEDERAL REGISTER.''.

SEC. 3. Section 9.6 of the Civil Service Rule IX (5 CFR 9.6) is amended by adding a new subsection (c) as follows:

''(c) The Office shall include in its annual report a current listing, by agency, of all positions authorized to be filled by Limited Executive Assignment.''.

SEC. 4. Section 9.20 of Civil Service Rule IX (5 CFR 9.20) is amended by adding a new subsection (f) as follows:

''(f) The Office shall include in its annual report a current listing, by agency, of all positions authorized to be filled by Noncareer Executive Assignment.''.

JIMMY CARTER.

EX. ORD. NO. 12125. AMENDING THE CIVIL SERVICE RULES RELATING TO COMPETITIVE STATUS FOR HANDICAPPED FEDERAL EMPLOYEES

Ex. Ord. No. 12125, Mar. 15, 1979, 44 F.R. 16879, provided:

By the authority vested in me as President of the United States of America by Sections 3301 and 3302 of Title 5 of the United States Code, and in order to permit severely physically handicapped and mentally retarded individuals to obtain civil service competitive status, Civil Service Rule 3.1 (5 CFR 3.1) is hereby amended by adding the following new subsection:

''(b) Upon recommendation by the employing agency, and subject to such requirements as the Office of Personnel Management may prescribe, the following classes of handicapped employees may acquire competitive status without competitive examination:

''(1) A severely physically handicapped employee who completes at least two years of satisfactory service in a position excepted from the competitive service.

''(2) A mentally retarded employee who completes at least two years of satisfactory service in a position excepted from the competitive service.''.

JIMMY CARTER.

EXECUTIVE ORDER NO. 12257

Ex. Ord. No. 12257, Dec. 18, 1980, 45 F.R. 84005, which provided for noncompetitive conversion of participants in the Comprehensive Employment and Training Act program to career or career-conditional Civil Service status, was revoked by Ex. Ord. No. 12553, Feb. 25, 1986, 51 F.R. 7237.

EXECUTIVE ORDER NO. 12300

Ex. Ord. No. 12300, Mar. 23, 1981, 46 F.R. 18683, which amended section 6.8 of Civil Service Rule VI by adding subsec. (c), excepting certain positions in Department of Agriculture from the competitive service, was superseded by Ex. Ord. No. 12940, Nov. 28, 1994, 59 F.R. 61519, set out below.

EXECUTIVE ORDER NO. 12362

Ex. Ord. No. 12362, May 12, 1982, 47 F.R. 21231, as amended by Ex. Ord. No. 12585, Mar. 3, 1987, 52 F.R. 6773, which related to appointment to competitive status of certain overseas employees upon return to the United States, was revoked by Ex. Ord. No. 12721, July 30, 1990, 55 F.R. 31349, set out below.

EX. ORD. NO. 12364. PRESIDENTIAL MANAGEMENT INTERN PROGRAM

Ex. Ord. No. 12364, May 24, 1982, 47 F.R. 22931, as amended by Ex. Ord. No. 12645, July 12, 1988, 53 F.R. 26750, provided:

By the authority vested in me as President by the Constitution and laws of the United States of America, including Sections 3301 and 3302 of Title 5 of the United States Code, and in order to provide for the recruitment and selection of outstanding employees for careers in public sector management, it is hereby ordered as follows:

SECTION 1. There is hereby reconstituted the Presidential Management Intern Program. The purpose of the Program is to attract to the Federal service outstanding men and women from a variety of academic disciplines who have a clear interest in, and commitment to, a career in the analysis and management of public policies and programs. Individuals selected for the Program will be known as Presidential Management Interns.

SEC. 2. Eligible individuals are those who have pursued a course of study at the graduate level which demonstrates both an exceptional ability and the commitment stated above. Such individuals at the time of application must have recently received or must expect to receive soon an appropriate advanced degree.

SEC. 3. (a) The Office of Personnel Management shall provide specific guidance as to what constitutes an appropriate advanced degree.

(b) The Office of Personnel Management shall develop appropriate procedures for the recruitment, nomination, screening, placement and continuing career development of outstanding individuals possessing the qualifications described above.

(c) In developing those procedures, the Office of Personnel Management shall be guided by the following principles and policies:

(1) The number of new Presidential Management Interns selected shall not exceed four hundred in any fiscal year.

(2) Final placement of Presidential Management Interns shall be made by the head of the department,

agency, or component within the Executive Office of the President in which the Intern is to be employed, or by the designee thereof.

(3) Universities and colleges participating in the Program shall make nominations for the Program. In making nominations, they shall establish competitive selection processes and procedures to ensure that all applicants receive careful and thorough review.

(4) The procedures so developed shall provide for such affirmative actions as the Office of Personnel Management deems appropriate to assure equal employment opportunity. The procedures shall also provide for the application of appropriate veterans preference criteria.

SEC. 4. (a) Successful candidates shall be appointed as Presidential Management Interns to positions in Schedule A of the excepted service. The appointment shall not exceed two years unless extended by the Federal department or agency, with the concurrence of the Office of Personnel Management, for up to one additional year.

(b) Tenure for the Presidential Management Interns shall be governed by the following principles and policies:

(1) Assigned responsibilities shall be consistent with an Intern's educational background and career interests, and the purposes of this Program.

(2) Continuation in the Program shall be contingent upon satisfactory performance by the Interns throughout the internship period.

(3) Except as provided in subsection (4) of this Section, service as an Intern shall confer no rights to further Federal employment in either the competitive or excepted service upon the expiration of the internship period.

(4) Competitive civil service status may be granted to Interns who satisfactorily complete their internships and meet all other requirements prescribed by the Office of Personnel Management.

SEC. 5. Those individuals who are currently undergoing the process of selection, or who were selected or appointed under the provisions of Executive Order No. 12008 [formerly set out as a note above] and who have not at this time completed their scheduled period of excepted service, may continue their internships under the terms of this Order.

SEC. 6. The Office of Personnel Management shall prescribe such regulations as may be necessary to carry out the purposes of this Order.

SEC. 7. Executive Order No. 12008 of August 25, 1977 is revoked.

RONALD REAGAN.

EX. ORD. NO. 12505. CAREER APPOINTMENTS TO CERTAIN OFFICE OF MANAGEMENT AND BUDGET EMPLOYEES

Ex. Ord. No. 12505, Feb. 12, 1985, 50 F.R. 6151, provided:

By the authority vested in me as President by the laws of the United States of America, including Section 3301 and 3302 of Title 5, and Section 521 of Title 31 of the United States Code, it is hereby ordered as follows:

SECTION 1. No later than April 1, 1985, any employee of the Office of Management and Budget serving under an appointment under Schedule A in a position not limited to one year or less, concerned with implementation of the President's paperwork reduction and regulatory review and planning programs, may have his or her appointment converted to a career or career-conditional appointment if the Director of the Office of Management and Budget determines that:

(a) The employee has completed at least one year of full-time continuous service in a position concerned with the paperwork reduction and regulatory program;

(b) There is a continuing need for the position filled by the employee;

(c) The employee's past performance has been satisfactory and the employee possesses the qualifications necessary to continue in the position; and

(d) The employee meets the citizenship requirements and qualification standards appropriate for the position.

SEC. 2. If the Director determines not to convert an employee's appointment to career or career-conditional status under the preceding Section, the employee shall be separated not later than the date of expiration of the current appointment.

SEC. 3. Employees whose appointments are converted under this Order shall become career-conditional employees, or career employees if they have completed the service requirements for career tenure, and all converted employees shall acquire a competitive status.

RONALD REAGAN.

EX. ORD. NO. 12596. NONCOMPETITIVE CONVERSION TO CAREER STATUS OF CERTAIN EMPLOYEES IN PROFESSIONAL AND ADMINISTRATIVE CAREER POSITIONS

Ex. Ord. No. 12596, May 7, 1987, 52 F.R. 17537, provided:

By the authority vested in me as President by the Constitution and laws of the United States of America, including sections 3301 and 3302 of title 5 of the United States Code, it is hereby ordered as follows:

SECTION 1. An individual who is employed in a Professional or Administrative Career position under Schedule B under the authority of 5 C.F.R. 213.3202(*l*) may be converted noncompetitively to a career or career-conditional appointment at GS–9, provided the individual meets the qualifications and other requirements established by the Director of the Office of Personnel Management, and further provided the individual's performance is determined by the employing agency, in a careful and formal evaluation, to warrant such conversion at GS–9.

SEC. 2. The Director of the Office of Personnel Management shall prescribe such regulations as may be necessary to implement this Order.

RONALD REAGAN.

EX. ORD. NO. 12685. NONCOMPETITIVE CONVERSION OF PERSONAL ASSISTANTS TO EMPLOYEES WITH DISABILITIES

Ex. Ord. No. 12685, July 28, 1989, 54 F.R. 31796, provided:

By the authority vested in me as President by the Constitution and laws of the United States of America, including sections 3301 and 3302 of title 5, United States Code, it is hereby ordered as follows:

SECTION 1. Upon recommendation by the employing agency, and subject to qualifications and other requirements prescribed by the Office of Personnel Management, an employee in a position in the excepted service under 5 C.F.R. 213.3102(11) as a reader, interpreter, or personal assistant for a handicapped employee, whose employment in such position is no longer necessary and who has completed at least 1 year of satisfactory service in such position under a non-temporary appointment, may be converted noncompetitively to a career or career-conditional appointment.

SEC. 2. This order shall be effective upon publication in the Federal Register.

GEORGE BUSH.

EX. ORD. NO. 12718. PRESIDENT'S ADVISORY COMMISSION ON THE PUBLIC SERVICE

Ex. Ord. No. 12718, June 29, 1990, 55 F.R. 27451, provided:

By the authority vested in me as President by the Constitution and laws of the United States of America, including the Federal Advisory Committee Act, as amended (5 U.S.C. App.), and in order to provide a continuing source of advice on the public service from outstanding leaders in various walks of private life, it is hereby ordered as follows:

SECTION 1. *Establishment*. The President's Advisory Commission on the Public Service (''Commission'') is hereby established. The Commission shall be comprised of 13 members to be appointed by the President from among leading citizens in private life. The members shall be appointed for 2-year terms, except that initial appointments shall include six members appointed to serve 1-year terms. Any vacancy in the Commission

shall be filled by an appointment for the remainder of the term for which the original appointment was made, and a member whose term has expired may serve until his or her successor has been appointed. The President shall designate one of the members of the Commission to serve as Chairperson.

SEC. 2. *Functions.* (a) The Commission shall meet from time to time at the request of the Chairperson and shall consider ways to enhance the public service in American life, including:

(1) improving the efficiency and attractiveness of the Federal civil service;

(2) increasing the interest among American students in pursuing careers in the public service; and

(3) strengthening the image of the public service in American life.

(b) The Commission shall submit a report on its activities to the Director of the Office of Personnel Management and the President each year.

SEC. 3. *Administrative Provisions.* (a) The members of the Commission shall serve without compensation, but may receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code.

(b) All executive agencies are directed, to the extent permitted by law, to provide such information, advice, and assistance to the Commission as the Commission may request.

(c) The Director of the Office of Personnel Management shall, to the extent permitted by law and subject to the availability of funds, provide the Commission with administrative services, staff support, and necessary expenses.

SEC. 4. *General.* Notwithstanding any other Executive order, the functions of the President under the Federal Advisory Committee Act, as amended [5 U.S.C. App.], except that of reporting to the Congress, which are applicable to the Commission, shall be performed by the Office of Personnel Management in accordance with the guidelines and procedures established by the Administrator of General Services.

GEORGE BUSH.

EX. ORD. NO. 12721. ELIGIBILITY OF OVERSEAS EMPLOYEES FOR NONCOMPETITIVE APPOINTMENTS

Ex. Ord. No. 12721, July 30, 1990, 55 F.R. 31349, provided:

By the authority vested in me as President by the Constitution and laws of the United States of America, including sections 3301 and 3302 of title 5 and section 301 of title 3 of the United States Code, and in order to permit certain overseas employees to acquire competitive status upon returning to the United States, it is hereby ordered as follows:

SECTION 1. A United States citizen who is a family member of a Federal civilian employee, of a nonappropriated fund employee, or of a member of a uniformed service and who meets the qualifications and other requirements established by the Director of the Office of Personnel Management, including an appropriate period of satisfactory service under one or more overseas appointments in the excepted or competitive civil service, may be appointed noncompetitively to a competitive service position in the executive branch within the United States (including Guam, Puerto Rico, and the Virgin Islands). The employing agency in the United States may waive a requirement for a written test for an individual appointed under this order if the agency determines that the duties and responsibilities of the position occupied overseas were similar enough to those of the position to which the individual is being appointed under this order to make the written test unnecessary.

SEC. 2. The Director of the Office of Personnel Management shall prescribe such regulations as may be necessary to implement this order.

SEC. 3. To the extent there is any conflict between this order and Civil Service Rule 8.2 (5 CFR 8.2) [set out above], the provisions of this order shall control.

SEC. 4. (a) Executive Order No. 12362 of May 12, 1982, as amended, and Executive Order No. 12585 of March 3, 1987, are revoked.

(b) Existing regulations prescribed by the Director of the Office of Personnel Management under Executive Order No. 12362, as amended, shall continue in effect until modified or superseded by the Director of the Office of Personnel Management.

SEC. 5. This order shall be effective upon publication in the Federal Register.

GEORGE BUSH.

EX. ORD. NO. 12940. AMENDMENT TO CIVIL SERVICE RULE VI

Ex. Ord. No. 12940, Nov. 28, 1994, 59 F.R. 61519, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 3301 and 3302 of title 5, United States Code, and having determined that it is necessary and warranted by conditions of good administration that certain positions in the Department of Agriculture continue to be excluded from the coverage of section 2302 of title 5, United States Code, and excepted from the competitive service because of their confidential, policy-determining, policy-making, or policy-advocating character, in order to ensure their deep involvement in the development and advocacy of Administration proposals and policies and to ensure their effective and vigorous implementation, and as a result of a reorganization of the Department of Agriculture carried out pursuant to Public Law 103–354 [7 U.S.C. 6901 et seq.], it is hereby ordered that subsection (c) of section 6.8 of Civil Service Rule VI (5 C.F.R. 6.8) is revised to read as follows:

''(c) Within the Department of Agriculture, positions the incumbents of which serve as State Executive Directors of the Consolidated Farm Service Agency and positions the incumbents of which serve as State Directors or State Directors-at-Large for Rural Economic and Community Development shall be listed in Schedule C for all grades of the General Schedule.''

This order supersedes Executive Order No. 12300.

WILLIAM J. CLINTON.

CROSS REFERENCES

President's authority to prescribe regulations for the conduct of employees in the executive branch, see section 7301 of this title.

Removal and suspension of individuals in the competitive service for cause to promote the efficiency of the service, see section 7501 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3304, 3361 of this title; title 25 section 2a.

§ 3302. Competitive service; rules

The President may prescribe rules governing the competitive service. The rules shall provide, as nearly as conditions of good administration warrant, for—

(1) necessary exceptions of positions from the competitive service; and

(2) necessary exceptions from the provisions of sections 2951, 3304(a), 3321, 7202, and 7203 of this title.

Each officer and individual employed in an agency to which the rules apply shall aid in carrying out the rules.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 417; Pub. L. 95–228, § 2(b), Feb. 10, 1978, 92 Stat. 25; Pub. L. 95–454, title VII, § 703(c)(1), Oct. 13, 1978, 92 Stat. 1217; Pub. L. 96–54, § 2(a)(16), Aug. 14, 1979, 93 Stat. 382; Pub. L. 103–94, § 2(b)(1), Oct. 6, 1993, 107 Stat. 1004.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 633(1) (less function of Civil Service Commission), (2)8 (last sentence).	Jan. 16, 1883, ch. 27, §2(1) (less function of Civil Service Commission), (2) 8 (last sentence), 22 Stat. 403, 404.

The reference to the competitive service is substituted for the reference to the Act creating that service. The reference to reasons for the exceptions is omitted as covered by section 1308 of this title. The words ''provide for'' are substituted for ''provide and declare''. Paragraph (1) is supplied to preserve the President's power to except positions from the competitive service, previously implied from the power to except from the first rule in former section 633(2). Authority to make exceptions to so much of former section 633(2) as is restated in this section and section 1302(a) is omitted as meaningless. Authority to make exceptions to so much of former section 633(2) as is restated in section 3318(a) is omitted as superseded by former section 857, which is carried into section 3318(a). In the last sentence, the words ''Each officer and individual employed in an agency'' are substituted for ''officers of the United States in the departments and offices'' because of the restrictive definition of ''officer'' in section 2104.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1993—Par. (2). Pub. L. 103–94 substituted ''and 7203'' for ''7203, 7321, and 7322''.

1979—Par. (2). Pub. L. 96–54 amended par. (2) in same manner as amendment by section 703(c)(1) of Pub. L. 95–454. See 1978 Amendment note below.

1978—Par. (2). Pub. L. 95–454 substituted ''7202, 7203'' for ''7152, 7153''.

Pub. L. 95–228 struck out reference to section 3306(a)(1) of this title. Amendments by section 703(c)(1) and (c)(2) of Pub. L. 95–454 appear to have been inadvertently reversed. Subsec. (c)(1) purported to amend subsec. (c)(1) of section 2105 of this title, and subsec. (c)(2) purported to amend par. (2) of this section. However, the amendments specified by Pub. L. 95–454, §703(c)(1) and (2), were impossible to execute literally. Thus, amendment by Pub. L. 95–454, §703(c)(2) was executed to section 2105 of this title, and amendment by section 703(c)(1) was executed to this section as the probable intent of Congress.

EFFECTIVE DATE OF 1993 AMENDMENT; SAVINGS PROVISION

Amendment by Pub. L. 103–94 effective 120 days after Oct. 6, 1993, but not to release or extinguish any penalty, forfeiture, or liability incurred under amended provision, which is to be treated as remaining in force for purpose of sustaining any proper proceeding or action for enforcement of that penalty, forfeiture, or liability, and no provision of Pub. L. 103–94 to affect any proceedings with respect to which charges were filed on or before 120 days after Oct. 6, 1993, with orders to be issued in such proceedings and appeals taken therefrom as if Pub. L. 103–94 had not been enacted, see section 12 of Pub. L. 103–94, set out as an Effective Date; Savings Provision note under section 7321 of this title.

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.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

EX. ORD. NO. 11521. VETERANS READJUSTMENT APPOINTMENT FOR VETERANS OF VIETNAM ERA

Ex. Ord. No. 11521, Mar. 26, 1970, 35 F.R. 5311, as amended by Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, provided:

WHEREAS this Nation has an obligation to assist veterans of the armed forces in readjusting to civilian life;

WHEREAS the Federal Government, as an employer, should reflect its recognition of this obligation in its personnel policies and practices;

WHEREAS veterans, by virtue of their military service, have lost opportunities to pursue education and training oriented toward civilian careers;

WHEREAS the Federal Government is continuously concerned with building an effective workforce, and veterans constitute a major recruiting source; and

WHEREAS the development of skills is most effectively achieved through a program combining employment with education or training:

NOW, THEREFORE, by virtue of the authority vested in me by the Constitution of the United States, by sections 3301 and 3302 of title 5, United States Code, and as President of the United States, it is ordered as follows:

SECTION 1. (a) Subject to paragraph (b) of this section, the head of an agency may make an excepted appointment, to be known as a ''veterans readjustment appointment'', to any position in the competitive service up to and including GS–5 or the equivalent thereof, of a veteran or disabled veteran as defined in section 2108(1), (2), of title 5, United States Code, who:

(1) served on active duty in the armed forces of the United States during the Vietnam era;

(2) at the time of his appointment has completed not more than fourteen years of education; and

(3) is found qualified to perform the duties of the position.

(b) Employment under paragraph (a) of this section is authorized only under a training or educational program developed by an agency in accordance with guidelines established by the Office of Personnel Management.

(c) An employee given a veterans readjustment appointment under paragraph (a) of this section shall serve subject to:

(1) the satisfactory performance of assigned duties; and

(2) participation in the training or educational program under which he is appointed.

(d) An employee who does not satisfactorily meet the conditions set forth in paragraph (c) of this section shall be removed in accordance with appropriate procedures.

(e) An employee serving under a veterans readjustment appointment may be promoted, reassigned, or transferred.

(f) An employee who completes the training or educational program and who has satisfactorily completed two years of substantially continuous service under a veterans readjustment appointment shall be converted to career-conditional or career employment. An employee converted under this paragraph shall automatically acquire a competitive status.

(g) In selecting an applicant for appointment under this section, an agency shall not discriminate because of race, color, religion, sex, national origin, or political affiliation.

SEC. 2. (a) A person eligible for appointment under section 1 of this order may be appointed only within one year after his separation from the armed forces, or one year following his release from hospitalization or treatment immediately following his separation from the armed forces, or one year after involuntary separation without cause from (i) a veterans readjustment appointment or (ii) a transitional appointment, or one year after the effective date of this order if he is serving under a transitional appointment.

(b) The Office of Personnel Management may determine the circumstances under which service under a

transitional appointment may be deemed service under a veterans readjustment appointment for the purpose of paragraph (f) of section 1 of this order.

SEC. 3. Any law, Executive order, or regulation which would disqualify an applicant for appointment in the competitive service shall also disqualify a person otherwise eligible for appointment under section 1 of this order.

SEC. 4. For the purpose of this order:

(a) ''agency'' means a military department as defined in section 102 of title 5, United States Code, an executive agency (other than the General Accounting Office) as defined in section 105 of title 5, United States Code, and those portions of the legislative and judicial branches of the Federal Government and of the government of the District of Columbia having positions in the competitive service; and

(b) ''Vietnam era'' means the period beginning August 5, 1964, and ending on such date thereafter as may be determined by Presidential proclamation or concurrent resolution of the Congress.

SEC. 5. The Office of Personnel Management shall prescribe such regulations as may be necessary to carry out the provisions of this order.

SEC. 6. Executive Order No. 11397 of February 9, 1968, is revoked. Such revocation shall not affect the right of an employee to be converted to career-conditional or career employment if he meets the requirements of section 1(d) of Executive Order No. 11397 after the effective date of this order.

SEC. 7. This order is effective 14 days after its date.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3304, 3361 of this title.

§ 3303. Political recommendations

(a) For the purposes of this section—

(1) ''agency'' means—

(A) an Executive agency; and

(B) an agency in the legislative branch with positions in the competitive service;

(2) ''applicant'' means an individual who has applied for appointment to be an employee;

(3) ''employee'' means an employee of an agency who is—

(A) in the competitive service;

(B) a career appointee in the Senior Executive Service or an employee under a similar appointment in a similar executive service; or

(C) in the excepted service other than—

(i) an employee who is appointed by the President; or

(ii) an employee whose position has been determined to be of a confidential, policy-determining, policy-making, or policy-advocating character; and

(4) ''personnel action'' means any action described under clauses (i) through (x) of section 2302(a)(2)(A).

(b) Except as provided under subsection (f), each personnel action with respect to an employee or applicant shall be taken without regard to any recommendation or statement, oral or written, with respect to any employee or applicant who requests or is under consideration for such personnel action, made by—

(1) any Member of Congress or congressional employee;

(2) any elected official of the government of any State (including the District of Columbia and the Commonwealth of Puerto Rico), county, city, or other subdivision thereof;

(3) any official of a political party; or

(4) any other individual or organization making such recommendation or statement on the basis of the party affiliation of the employee or applicant.

(c) Except as provided under subsection (f), a person or organization referred to under subsection (b)(1) through (4) is prohibited from making or transmitting to any officer or employee of an agency, any recommendation or statement, oral or written, with respect to any employee or applicant who requests or is under consideration for any personnel action in such agency. Except as provided under subsection (f), the agency, or any officer or employee of the agency—

(1) shall not solicit, request, consider, or accept any such recommendation or statement; and

(2) shall return any such written recommendation or statement, appropriately marked as in violation of this section, to the person or organization transmitting the same.

(d) Except as provided under subsection (f), an employee or applicant who requests or is under consideration for a personnel action in an agency is prohibited from requesting or soliciting from a person or organization referred to under subsection (b)(1) through (4) a recommendation or statement.

(e) Under regulations prescribed by the Office of Personnel Management, the head of each agency shall ensure that employees and applicants are given notice of the provisions of this section.

(f) An agency, or any authorized officer or employee of an agency, may solicit, accept, and consider, and any other individual or organization may furnish or transmit to the agency or such authorized officer or employee, any statement with respect to an employee or applicant who requests or is under consideration for a personnel action, if—

(1) the statement is furnished pursuant to a request or requirement of the agency and consists solely of an evaluation of the work performance, ability, aptitude, and general qualifications of the employee or applicant;

(2) the statement relates solely to the character and residence of the employee or applicant;

(3) the statement is furnished pursuant to a request made by an authorized representative of the Government of the United States solely in order to determine whether the employee or applicant meets suitability or security standards;

(4) the statement is furnished by a former employer of the employee or applicant pursuant to a request of an agency, and consists solely of an evaluation of the work performance, ability, aptitude, and general qualifications of such employee or applicant during employment with such former employer; or

(5) the statement is furnished pursuant to a provision of law or regulation authorizing consideration of such statement with respect to a specific position or category of positions.

(g) An agency shall take any action it determines necessary and proper under subchapter I

or II of chapter 75 to enforce the provisions of this section.

(h) The provisions of this section shall not affect the right of any employee to petition Congress as authorized by section 7211.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 418; Pub. L. 103–94, §8(a), Oct. 6, 1993, 107 Stat. 1006.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 642.	Jan. 16, 1883, ch. 27, §10, 22 Stat. 406.

The prohibition is restated in positive form. The words ''An individual concerned in examining an applicant for or appointing him in the competitive service'' are substituted for ''any person concerned in making any examination or appointment under this act''. The word ''applicant'' is substituted for ''person who shall apply for office or place under the provisions of this act''. The word ''Representative'' is substituted for ''Member of the House of Representatives''.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1993—Pub. L. 103–94 substituted ''Political recommendations'' for ''Competitive service; recommendations of Senators or Representatives'' as section catchline and amended text generally. Prior to amendment, text read as follows: ''An individual concerned in examining an applicant for or appointing him in the competitive service may not receive or consider a recommendation of the applicant by a Senator or Representative, except as to the character or residence of the applicant.''

EFFECTIVE DATE OF 1993 AMENDMENT; SAVINGS PROVISION

Amendment by Pub. L. 103–94 effective 120 days after Oct. 6, 1993, but not to release or extinguish any penalty, forfeiture, or liability incurred under amended provision, which is to be treated as remaining in force for purpose of sustaining any proper proceeding or action for enforcement of that penalty, forfeiture, or liability, and no provision of Pub. L. 103–94 to affect any proceedings with respect to which charges were filed on or before 120 days after Oct. 6, 1993, with orders to be issued in such proceedings and appeals taken therefrom as if Pub. L. 103–94 had not been enacted, see section 12 of Pub. L. 103–94, set out as an Effective Date; Savings Provision note under section 7321 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2302 of this title; title 38 section 7403.

§ 3304. Competitive service; examinations

(a) The President may prescribe rules which shall provide, as nearly as conditions of good administration warrant, for—

(1) open, competitive examinations for testing applicants for appointment in the competitive service which are practical in character and as far as possible relate to matters that fairly test the relative capacity and fitness of the applicants for the appointment sought; and

(2) noncompetitive examinations when competent applicants do not compete after notice has been given of the existence of the vacancy.

(b) An individual may be appointed in the competitive service only if he has passed an examination or is specifically excepted from examination under section 3302 of this title. This subsection does not take from the President any authority conferred by section 3301 of this title that is consistent with the provisions of this title governing the competitive service.

(c) Notwithstanding a contrary provision of this title or of the rules and regulations prescribed under this title for the administration of the competitive service, an individual who served—

(1) for at least 3 years in the legislative branch in a position in which he was paid by the Secretary of the Senate or the Clerk of the House of Representatives; or

(2) for at least 4 years as a secretary or law clerk, or both, to a justice or judge of the United States;

acquires a competitive status for transfer to the competitive service if he is involuntarily separated without prejudice from the legislative or judicial branch, passes a suitable noncompetitive examination, and transfers to the competitive service within 1 year of the separation from the legislative or judicial branch. For the purpose of this subsection, an individual who has served for at least 2 years in a position in the legislative branch described by paragraph (1) of this subsection and who is separated from that position to enter the armed forces is deemed to have held that position during his service in the armed forces.

(d)(1) For the purpose of this subsection, the term ''technician'' has the meaning given such term by section 8337(h)(1) of this title.

(2) Notwithstanding a contrary provision of this title or of the rules and regulations prescribed under this title for the administration of the competitive service, an individual who served for at least 3 years as a technician acquires a competitive status for transfer to the competitive service if such individual—

(A) is involuntarily separated from service as a technician other than by removal for cause on charges of misconduct or delinquency;

(B) passes a suitable noncompetitive examination; and

(C) transfers to the competitive service within 1 year after separating from service as a technician.

(e) Employees at any place outside the District of Columbia where the President or the Office of Personnel Management directs that examinations be held shall allow the reasonable use of public buildings for, and in all proper ways facilitate, holding the examinations.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 418; Pub. L. 95–454, title IX, §906(a)(5), Oct. 13, 1978, 92 Stat. 1225; Pub. L. 99–586, Oct. 29, 1986, 100 Stat. 3325.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(a)	5 U.S.C. 633(2)1.	Jan. 16, 1883, ch. 27, §2(2)1, 22 Stat. 403.
	5 U.S.C. 633(2)7 (less last 17 words).	Jan. 16, 1883, ch. 27, §2(2)7 (less last 17 words), 22 Stat. 404.
(b)	5 U.S.C. 638 (as applicable to appointment).	Jan. 16, 1883, ch. 27, §7 (as applicable to appointment), 22 Stat. 406.

HISTORICAL AND REVISION NOTES—CONTINUED

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(c)	5 U.S.C. 631b(b).	Nov. 26, 1940, ch. 919, § 2(b), 54 Stat. 1212. Feb. 12, 1946, ch. 3, 60 Stat. 3. May 29, 1958, Pub. L. 85–432, § 5, 72 Stat. 151.
	5 U.S.C. 631b(c).	June 24, 1952, ch. 456, 66 Stat. 155.
(d)	5 U.S.C. 635 (7th sentence).	Jan. 16, 1883, ch. 27, § 3 (7th sentence), 22 Stat. 404.

In subsection (a), the authority of the President to prescribe rules is added on authority of former section 633(1), which is carried into section 3302. The words ''competitive service'' are substituted for ''public service'' since the requirements do not apply to the excepted or uniformed service.

In subsection (b), the words ''That after the expiration of six months from the passage of this act'' are omitted as executed. The words ''in the competitive service'' are substituted for ''in either of the said classes now existing, or that may be arranged hereunder pursuant to said rules'' because of the definition of ''competitive service'' in section 2102. In the second sentence, the words ''the provisions of this title governing the competitive service'' are substituted for ''this act''.

In subsection (c), the provisions of former section 631b(b) and (c) are combined and restated for clarity. The words ''From and after the effective date of this Act'' and ''From and after the date of approval of this Act'' are omitted as executed. The words ''competitive service'' are substituted for ''classified civil service'' in view of the definition of ''competitive service'' in section 2102. The words ''or as a clerical employee of the Senate or House of Representatives'' are omitted as included in the reference to ''an individual . . . in the legislative branch in a position in which he was paid by the Secretary of the Senate or the Clerk of the House of Representatives''. The words ''and nothing in this Act shall be construed to impair any right of retransfer provided for under civil service laws or regulations made thereunder'' are omitted as unnecessary.

In subsection (d), the word ''Employees'' is substituted for ''collector, postmaster, and other officers of the United States''.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1986—Subsecs. (d), (e). Pub. L. 99–586 added subsec. (d) and redesignated former subsec. (d) as (e).

1978—Subsec. (d). Pub. L. 95–454 substituted ''the Office of Personnel Management'' for ''a Civil Service Commission board of examiners''.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

TRANSFER OF FUNCTIONS

Certain functions of Clerk of House of Representatives transferred to Director of Non-legislative and Financial Services by section 7 of House Resolution No. 423, One Hundred Second Congress, Apr. 9, 1992. Director of Non-legislative and Financial Services replaced by Chief Administrative Officer of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

CROSS REFERENCES

President's power to grant exceptions from provisions of subsec. (a) of this section, see section 3302 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3302 of this title; title 22 section 3008; title 38 section 4303; title 40 section 42.

§ 3304a. Competitive service; career appointment after 3 years' temporary service

(a) An individual serving in a position in the competitive service under an indefinite appointment or a temporary appointment pending establishment of a register (other than an individual serving under an overseas limited appointment, or in a position classified above GS–15 pursuant to section 5108) acquires competitive status and is entitled to have his appointment converted to a career appointment, without condition, when—

(1) he completes, without break in service of more than 30 days, a total of at least 3 years of service in such a position;

(2) he passes a suitable noncompetitive examination;

(3) the appointing authority (A) recommends to the Office of Personnel Management that the appointment of the individual be converted to a career appointment and (B) certifies to the Office that the work performance of the individual for the past 12 months has been satisfactory; and

(4) he meets Office qualification requirements for the position and is otherwise eligible for career appointment.

(b) The employing agency shall terminate the appointment of an individual serving in a position in the competitive service under an indefinite or temporary appointment described in subsection (a) of this section, not later than 90 days after he has completed the 3-year period referred to in subsection (a)(1) of this section, if, prior to the close of such 90-day period, such individual has not met the requirements and conditions of subparagraphs (2) to (4), inclusive, of subsection (a) of this section.

(c) In computing years of service under subsection (a)(1) of this section for an individual who leaves a position in the competitive service to enter the armed forces and is reemployed in such a position within 120 days after separation under honorable conditions, the period from the date he leaves his position to the date he is reemployed is included.

(d) The Office of Personnel Management may prescribe regulations necessary for the administration of this section.

(Added Pub. L. 90–105, § 1(a), Oct. 11, 1967, 81 Stat. 273; amended Pub. L. 91–375, § 6(c)(6), Aug. 12, 1970, 84 Stat. 776; Pub. L. 95–454, title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 101–509, title V, § 529 [title I, § 101(b)(9)(B)], Nov. 5, 1990, 104 Stat. 1427, 1441.)

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–509, which directed the substitution of ''in a position classified above GS–15 pursuant to section 5108)'' for ''in GS–16, 17, or 18)'', was executed by making the substitution for ''in GS–16, GS–17, or GS–18)'', as the probable intent of Congress.

1978—Subsec. (a). Pub. L. 95–454, § 906(a)(2), (3), substituted ''Office of Personnel Management'' and ''Office'' for ''Civil Service Commission'' and ''Commission'', respectively, wherever appearing.

Subsec. (d). Pub. L. 95–454, §906(a)(2), substituted ''Office of Personnel Management'' for ''Civil Service Commission''.

1970—Subsec. (a). Pub. L. 91–375 struck out '', in the postal field service,'' after ''limited appointment'' in introductory parenthetical text.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–509 effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title III, §305] of Pub. L. 101–509, set out as a note under section 5301 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–375 effective within 1 year after Aug. 12, 1970, on date established therefor by Board of Governors of United States Postal Service and published by it in Federal Register, see section 15(a) of Pub. L. 91–375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

EFFECTIVE DATE

Section 4 of Pub. L. 90–105 provided that:

''(a) This section and section 3 of this Act [amending provisions set out as a note under section 3101 of this title] shall become effective on the date of enactment of this Act [Oct. 11, 1967].

''(b) Subject to subsection (c) of this section, the first section and section 2 of this Act [enacting this section and section 3303 of former Title 39, The Postal Service] shall become effective on the one hundred and twentieth day following the date of enactment of this Act [Oct. 11, 1967].

''(c) For the purpose of the application of section 3304a(b) of title 5, United States Code, as enacted by this Act, in the case of an individual who, prior to the effective date prescribed by subsection (b) of this section, shall have completed the 3-year period referred to in such section 3304a(b), such individual shall be deemed to have completed such 3-year period on such effective date.''

§ 3305. Competitive service; examinations; when held

(a) The Office of Personnel Management shall hold examinations for the competitive service at least twice a year in each State and territory or possession of the United States where there are individuals to be examined.

(b) The Office shall hold an examination for a position to which an appointment has been made within the preceding 3 years, on the application of an individual who qualifies as a preference eligible under section 2108(3)(C)–(G) of this title. The examination shall be held during the quarter following the application.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 418; Pub. L. 90–83, §1(8), Sept. 11, 1967, 81 Stat. 197; Pub. L. 96–54, §2(a)(14), (15), Aug. 14, 1979, 93 Stat. 382.)

HISTORICAL AND REVISION NOTES

1966 ACT

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(a)	5 U.S.C. 635 (last 24 words of 6th sentence).	Jan. 16, 1883, ch. 27, §3 (last 24 words of 6th sentence), 22 Stat. 404.

HISTORICAL AND REVISION NOTES—CONTINUED

1966 ACT

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(b)	5 U.S.C. 859.	June 27, 1944, ch. 287, §10, 58 Stat. 390. Jan. 19, 1948, ch. 1, §3, 62 Stat. 3. Dec. 27, 1950, ch. 1151, §2(b), 64 Stat. 1117.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 ACT

This section amends various sections [§§3305, 3309, 3318] of title 5, United States Code, to reflect the redesignation of paragraphs (3)(B) through (F) of section 2108 of title 5 as paragraphs (3)(C) through (G) by section 1(6) of this bill.

AMENDMENTS

1979—Subsec. (a). Pub. L. 96–54, §2(a)(14), substituted ''Office of Personnel Management'' for ''Civil Service Commission''.

Subsec. (b). Pub. L. 96–54, §2(a)(15), substituted ''Office'' for ''Commission''.

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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 20 section 241; title 22 section 1438; title 40 section 42.

[§ 3306. Repealed. Pub. L. 95–228, § 1, Feb. 10, 1978, 92 Stat. 25]

Section, Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 419, related to apportionment of appointments in the departmental service in the District of Columbia among the States, territories, etc.

§ 3307. Competitive service; maximum-age entrance requirements; exceptions

(a) Except as provided in subsections (b), (c), and (d) of this section appropriated funds may not be used to pay an employee who establishes a maximum-age requirement for entrance into the competitive service.

(b) The Secretary may, with the concurrence of such agent as the President may designate, determine and fix the maximum limit of age within which an original appointment to a position as an air traffic controller may be made.

(c) The Secretary of the Interior may determine and fix the minimum and maximum limits of age within which original appointments to the United States Park Police may be made.

(d) The head of any agency may determine and fix the minimum and maximum limits of age within which an original appointment may be made to a position as a law enforcement officer or firefighter, as defined by section 8331(20) and (21), respectively, of this title.

(e) The head of an agency may determine and fix the maximum age limit for an original appointment to a position as a firefighter or law enforcement officer, as defined by section 8401(14) or (17), respectively, of this title.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 419; Pub. L. 92–297, §2(a), May 16, 1972, 86 Stat. 141; Pub. L.

93–350, §1, July 12, 1974, 88 Stat. 355; Pub. L. 96–347, §1(b), Sept. 12, 1980, 94 Stat. 1150; Pub. L. 100–238, title I, §103(a)(1), Jan. 8, 1988, 101 Stat. 1744.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 638b (less proviso).	June 27, 1956, ch. 452, §302 (less proviso), 70 Stat. 355.

The prohibition is restated in positive form. The word ''officers'' is omitted as included in ''employees'' in view of the definition of ''employee'' in section 2105.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

REFERENCES IN TEXT

For definition of Secretary, referred to in subsec. (b), see section 2109 of this title.

AMENDMENTS

1988—Subsec. (d). Pub. L. 100–238, §103(a)(1)(A), substituted ''may'' for ''may, with the concurrence of such agent as the President may designate,''.

Subsec. (e). Pub. L. 100–238, §103(a)(1)(B), added subsec. (e).

1980—Subsec. (b). Pub. L. 96–347 substituted ''Secretary'' for ''Secretary of Transportation''.

1974—Subsec. (a). Pub. L. 93–350, §1(1), inserted reference to subsec. (d).

Subsec. (d). Pub. L. 93–350, §1(2), added subsec. (d).

1972—Pub. L. 92–297 designated existing provisions as subsec. (a) and added subsecs. (b) and (c).

EFFECTIVE DATE OF 1988 AMENDMENT

Section 103(f) of Pub. L. 100–238 provided that: ''This section, and the amendments made by this section [amending this section and sections 8401 and 8704 of this title and enacting provisions set out as a note under section 8334 of this title], shall be effective as of January 1, 1987.''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–347 effective on 90th day after Sept. 12, 1980, see section 3 of Pub. L. 96–347, set out as a note under section 2109 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Section 7 of Pub. L. 93–350 provided that: ''The amendments made by the first section [amending this section], and sections 2(b), 5, and 6 [amending sections 8331, 8336, and 8339 of this title], of this Act shall become effective on the date of enactment of this Act [July 12, 1974]. The amendments made by sections 2(a) and 3 [amending sections 8331 and 8334 of this title] of this Act shall become effective at the beginning of the first applicable pay period which begins after December 31, 1974. The amendment made by section 4 of this Act [amending section 8335 of this title] shall become effective on January 1, 1978.''

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92–297 effective on 90th day after May 16, 1972, see section 10 of Pub. L. 92–297, set out as an Effective Date note under section 3381 of this title.

UNITED STATES PARK POLICE; AGE LIMITS FOR ORIGINAL APPOINTMENTS

Pub. L. 91–73, Sept. 26, 1969, 83 Stat. 116, which provided for age limits for appointments to the United States Park Police, was repealed by Pub. L. 92–297, §11, May 16, 1972, 86 Stat. 145, effective at the end of the 89th day after May 16, 1972. The Secretary of the Interior may fix age limits for appointment under subsec. (c) of this section.

EX. ORD. NO. 11817. OFFICE OF PERSONNEL MANAGEMENT DESIGNATED AGENT TO CONCUR WITH AGENCY DETERMINATION FIXING AGE LIMITS FOR MAKING ORIGINAL APPOINTMENTS RESPECTING LAW ENFORCEMENT OFFICER AND FIREFIGHTER POSITIONS

Ex. Ord. No. 11817, Nov. 5, 1974, 39 F.R. 39427, as amended by Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, provided:

By virtue of the authority vested in me by section 3307(d) of title 5 of the United States Code, as added by the first section of the Act of July 12, 1974 (Public Law 93–350; 88 Stat. 355), I hereby designate the Office of Personnel Management as the agency to concur with determinations made by agencies to fix the minimum and maximum limits of age within which an original appointment may be made to a position as a law enforcement officer or firefighter, as defined by section 8331(20) and (21), respectively, of title 5 of the United States Code. The designation made by this order shall be effective as of October 15, 1974.

§ 3308. Competitive service; examinations; educational requirements prohibited; exceptions

The Office of Personnel Management or other examining agency may not prescribe a minimum educational requirement for an examination for the competitive service except when the Office decides that the duties of a scientific, technical, or professional position cannot be performed by an individual who does not have a prescribed minimum education. The Office shall make the reasons for its decision under this section a part of its public records.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 419; Pub. L. 95–454, title IX, §906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 854 (less 1st 2 sentences).	June 27, 1944, ch. 287, §5 (less 1st 2 sentences), 58 Stat. 388.

The prohibition is restated in positive form. The words ''The Civil Service Commission or other examining agency'' are added because these are the only agencies to which the prohibition could apply.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1978—Pub. L. 95–454 substituted ''Office of Personnel Management'' and ''Office'' for ''Civil Service Commission'' and ''Commission'', respectively, wherever appearing.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3320 of this title; title 20 section 241; title 22 section 1438.

§ 3309. Preference eligibles; examinations; additional points for

A preference eligible who receives a passing grade in an examination for entrance into the competitive service is entitled to additional points above his earned rating, as follows—

(1) a preference eligible under section 2108(3)(C)–(G) of this title—10 points; and

(2) a preference eligible under section 2108(3)(A) of this title—5 points.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 419; Pub. L. 90–83, §1(8), Sept. 11, 1967, 81 Stat. 197.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 852 (1st sentence).	June 27, 1944, ch. 287, §3 (less proviso), 58 Stat. 388. Jan. 19, 1948, ch. 1, §2, 62 Stat. 3. Dec. 27, 1950, ch. 1151, §2(a), 64 Stat. 1117. July 14, 1952, ch. 728, §2, 66 Stat. 627. Aug. 14, 1953, ch. 485, §1(a) ''Sec. 3 (1st sentence)'', 67 Stat. 581.

The word ''competitive'' is added before ''service'' for clarity. Application of this section to the excepted service in the executive branch and to the government of the District of Columbia, as provided in former section 858, is carried into section 3320.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1967—Cl. (1). Pub. L. 90–83 substituted ''section 2108(3)(C)–(G)'' for ''section 2108(3)(B)–(F).'' See Historical and Revision Notes under section 3305 of this title.

CROSS REFERENCES

Definition of preference eligibles, see section 2108 of this title.

Points granted by this section to be included in determining order of entry on registers and lists of eligibles, see section 3313 of this title.

Regulations for administration of provisions giving preference to preference eligibles, see section 1302 of this title.

Seniority not affected by transfer of postal ten-point preference eligibles, see section 1005 of Title 39, Postal Service.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3313, 3320 of this title; title 20 section 241; title 22 section 1438.

§ 3310. Preference eligibles; examinations; guards, elevator operators, messengers, and custodians

In examinations for positions of guards, elevator operators, messengers, and custodians in the competitive service, competition is restricted to preference eligibles as long as preference eligibles are available.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 420.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 852 (2d sentence).	June 27, 1944, ch. 287, §3 (proviso), 58 Stat. 388. Aug. 14, 1953, ch. 485, §1(a) ''Sec. 3 (2d sentence)'', 67 Stat. 581.

The words ''in the competitive service'' are added for clarity. The reference to ''examinations held prior to December 31, 1954, for positions of apprentices'' is omitted as obsolete. Application of this section to the excepted service in the executive branch and to the government of the District of Columbia, as provided in former section 858, is carried into section 3320.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

CROSS REFERENCES

Restriction on contract for services, see section 490c of Title 40, Public Buildings, Property, and Works.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3320 of this title; title 20 section 241; title 22 section 1438.

§ 3311. Preference eligibles; examinations; crediting experience

In examinations for the competitive service in which experience is an element of qualification, a preference eligible is entitled to credit—

(1) for service in the armed forces when his employment in a similar vocation to that for which examined was interrupted by the service; and

(2) for all experience material to the position for which examined, including experience gained in religious, civic, welfare, service, and organizational activities, regardless of whether he received pay therefor.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 420.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 853.	June 27, 1944, ch. 287, §4, 58 Stat. 388.

The words ''for the competitive service'' are added after ''examinations'' for clarity. Application of this section to the excepted service in the executive branch and to the government of the District of Columbia, as provided in former section 858, is carried into section 3320.

In paragraph (1), the words ''service in the armed forces'' are substituted for ''in the military or naval service of the United States'' on authority of the Act of July 26, 1947, ch. 343, §305(a), 61 Stat. 508. The word ''actual'' is omitted as surplusage.

In paragraph (2), the words ''material to the position for which examined'' are substituted for ''valuable'' for clarity.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3320 of this title; title 20 section 241; title 22 section 1438.

§ 3312. Preference eligibles; physical qualifications; waiver

(a) In determining qualifications of a preference eligible for examination for, appointment in, or reinstatement in the competitive service, the Office of Personnel Management or other examining agency shall waive—

(1) requirements as to age, height, and weight, unless the requirement is essential to the performance of the duties of the position; and

(2) physical requirements if, in the opinion of the Office or other examining agency, after considering the recommendation of an accredited physician, the preference eligible is physically able to perform efficiently the duties of the position.

(b) If an examining agency determines that, on the basis of evidence before it, a preference eligible under section 2108(3)(C) of this title who has a compensable service-connected disability of 30 percent or more is not able to fulfill the physical requirements of the position, the examining agency shall notify the Office of the determination and, at the same time, the examining agency shall notify the preference eligible of the reasons for the determination and of the right to respond, within 15 days of the date of the notification, to the Office. The Office shall require a demonstration by the appointing authority that the notification was timely sent to the preference eligible's last known address and shall, before the selection of any other person for the position, make a final determination on the physical ability of the preference eligible to perform the duties of the position, taking into account any additional information provided in any such response. When the Office has completed its review of the proposed disqualification on the basis of physical disability, it shall send its findings to the appointing authority and the preference eligible. The appointing authority shall comply with the findings of the Office. The functions of the Office under this subsection may not be delegated.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 420; Pub. L. 95–454, title III, §307(c), title IX, §906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1148, 1224.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 854 (1st 2 sentences, less so much as relates to promotion, retention, and transfer).	June 27, 1944, ch. 287, §5 (1st 2 sentences, less so much as relates to promotion, retention, and transfer), 58 Stat. 388.

The section is restated for clarity and conciseness. The words ''for which examination is given'' and ''for which the examination is given'' are omitted as surplusage. The application of this section to the excepted service in the executive branch and the government of the District of Columbia is preserved by section 3320.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1978—Pub. L. 95–454 designated existing provisions as subsec. (a), substituted ''Office of Personnel Management'' and ''Office'' for ''Civil Service Commission'' and ''Commission'', respectively, and added subsec. (b).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3320 of this title; title 20 section 241; title 22 section 1438.

§ 3313. Competitive service; registers of eligibles

The names of applicants who have qualified in examinations for the competitive service shall be entered on appropriate registers or lists of eligibles in the following order—

(1) for scientific and professional positions in GS–9 or higher, in the order of their ratings, including points added under section 3309 of this title; and

(2) for all other positions—

(A) disabled veterans who have a compensable service-connected disability of 10 percent or more, in order of their ratings, including points added under section 3309 of this title; and

(B) remaining applicants, in the order of their ratings, including points added under section 3309 of this title.

The names of preference eligibles shall be entered ahead of others having the same rating.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 420.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 856.	June 27, 1944, 287, §7, 58 Stat. 389. Aug. 14, 1953, ch. 485, §1(b), 67 Stat. 581.

The section is restated for clarity and conciseness. The words ''for the competitive service'' are added for clarity. Application of this section to the excepted service in the executive branch and to the government of the District of Columbia is carried into section 3320. The words ''employment lists'' are omitted as included in ''appropriate registers or lists of eligibles''.

In paragraph (1), the words ''in GS–9 or higher'' are substituted for ''in grade 9 or higher of the General Schedule of the Classification Act of 1949, as amended'' in view of the codification of the Act in this title, and, in specific sections 5104 and 5332.

In paragraph (2)(A), the term ''disabled veterans'' is substituted for ''preference eligibles'' in view of the definition of ''disabled veteran'' in section 2108(2).

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3314, 3315, 3320 of this title; title 20 section 241; title 22 section 1438.

§ 3314. Registers; preference eligibles who resigned

A preference eligible who resigns, on request to the Office of Personnel Management, is entitled to have his name placed again on all registers for which he may have been qualified, in the order named by section 3313 of this title.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 420; Pub. L. 95–454, title IX, §906(a)(2), Oct. 13, 1978, 92 Stat. 1224.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 865.	June 27, 1944, ch. 287, §16, 58 Stat. 391.

The last 28 words of former section 865 relating to recertification and reappointments are omitted since under sections 3317 and 3318(a) certification and appointment follow from placing on registers.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1978—Pub. L. 95–454 substituted ''Office of Personnel Management'' for ''Civil Service Commission''.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3320 of this title; title 20 section 241; title 22 section 1438.

§ 3315. Registers; preference eligibles furloughed or separated

(a) A preference eligible who has been separated or furloughed without delinquency or misconduct, on request, is entitled to have his name placed on appropriate registers and employment lists for every position for which his qualifications have been established, in the order named by section 3313 of this title. This subsection applies to registers and employment lists maintained by the Office of Personnel Management, an Executive agency, or the government of the District of Columbia.

(b) The Office may declare a preference eligible who has been separated or furloughed without pay under section 7512 of this title to be entitled to the benefits of subsection (a) of this section.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 420; Pub. L. 96–54, § 2(a)(14), (15), Aug. 14, 1979, 93 Stat. 382.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(a)	5 U.S.C. 864 (1st sentence).	June 27, 1944, ch. 287 § 15 (1st sentence), 58 Stat. 391.
(b)	5 U.S.C. 863 (2d proviso).	June 27, 1944, ch. 287, § 14 (2d proviso), 58 Stat. 391.

In subsection (a), the term ''Executive agency'' is substituted for ''any agency or project of the Federal Government'' on authority of former section 869. The last 28 words of the 1st sentence of former section 864 relating to recertification and reappointment are omitted since under sections 3317 and 3318(a) certification and appointment follow from placing on registers.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1979—Subsec. (a). Pub. L. 96–54, § 2(a)(14), substituted ''Office of Personnel Management'' for ''Civil Service Commission''.

Subsec. (b). Pub. L. 96–54, § 2(a)(15), substituted ''Office'' for ''Commission''.

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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3320 of this title; title 20 section 241; title 22 section 1438.

[§ 3315a. Repealed. Pub. L. 93–416, § 22(c), Sept. 7, 1974, 88 Stat. 1150]

Section, added Pub. L. 90–83 § 1(9)(A), Sept. 11, 1967, 81 Stat. 197, related to registration by Civil Service Commission of employees receiving compensation for injuries for certification for appointment to vacant positions.

§ 3316. Preference eligibles; reinstatement

On request of an appointing authority, a preference eligible who has resigned or who has been dismissed or furloughed may be certified for, and appointed to, a position for which he is eligible in the competitive service, an Executive agency, or the government of the District of Columbia.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 421.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 862.	June 27, 1944, ch. 287, § 13, 58 Stat. 390.

The word ''authority'' is substituted for ''officer'' in recognition of the several appointing authorities named in section 2105(a)(1).

The words ''in the competitive service, an Executive agency, or the government of the District of Columbia'' are substituted for ''in the civil service, Federal, or District of Columbia, or in any establishment, agency, bureau, administration, project, or department, temporary or permanent'' on authority of former section 869.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3320 of this title; title 20 section 241; title 22 section 1438.

§ 3317. Competitive service; certification from registers

(a) The Office of Personnel Management shall certify enough names from the top of the appropriate register to permit a nominating or appointing authority who has requested a certificate of eligibles to consider at least three names for appointment to each vacancy in the competitive service.

(b) When an appointing authority, for reasons considered sufficient by the Office, has three times considered and passed over a preference eligible who was certified from a register, certification of the preference eligible for appointment may be discontinued. However, the preference eligible is entitled to advance notice of discontinuance of certification.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 421; Pub. L. 95–454, title IX, § 906(a)(3), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 96–54, § 2(a)(14), (15), Aug. 14, 1979, 93 Stat. 382.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 857 (1st sentence and 2d proviso).	June 27, 1944, ch. 287, § 8 (1st sentence and 2d proviso), 58 Stat. 389.

In subsection (a), the word ''authority'' is substituted for ''officer'' in recognition of the several appointing authorities named in section 2105(a)(1). The words ''in the competitive service'' have been added for clarity. Application of the section to the excepted service in the executive branch and to the government of the District of Columbia, as provided in former section 858, is carried into section 3320.

In subsection (b), the word ''thereafter'' is omitted as unnecessary.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1979—Subsec. (a). Pub. L. 96–54, §2(a)(14), substituted ''Office of Personnel Management'' for ''Civil Service Commission''.

Subsec. (b). Pub. L. 96–54, §2(a)(15), amended subsec. (b) in same manner as amendment by Pub. L. 95–454. See 1978 Amendment note set out below.

1978—Subsec. (b). Pub. L. 95–454 which purported to amend section 3317b of this title by substituting ''Office'' for ''Commission'' was executed to subsec. (b) of this section as the probable intent of Congress.

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.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3110, 3318, 3320 of this title; title 20 section 241; title 22 section 1438.

§ 3318. Competitive service; selection from certificates

(a) The nominating or appointing authority shall select for appointment to each vacancy from the highest three eligibles available for appointment on the certificate furnished under section 3317(a) of this title, unless objection to one or more of the individuals certified is made to, and sustained by, the Office of Personnel Management for proper and adequate reason under regulations prescribed by the Office.

(b)(1) If an appointing authority proposes to pass over a preference eligible on a certificate in order to select an individual who is not a preference eligible, such authority shall file written reasons with the Office for passing over the preference eligible. The Office shall make the reasons presented by the appointing authority part of the record of the preference eligible and may require the submission of more detailed information from the appointing authority in support of the passing over of the preference eligible. The Office shall determine the sufficiency or insufficiency of the reasons submitted by the appointing authority, taking into account any response received from the preference eligible under paragraph (2) of this subsection. When the Office has completed its review of the proposed passover, it shall send its findings to the appointing authority and to the preference eligible. The appointing authority shall comply with the findings of the Office.

(2) In the case of a preference eligible described in section 2108(3)(C) of this title who has a compensable service-connected disability of 30 percent or more, the appointing authority shall at the same time it notifies the Office under paragraph (1) of this subsection, notify the preference eligible of the proposed passover, of the reasons therefor, and of his right to respond to such reasons to the Office within 15 days of the date of such notification. The Office shall, before completing its review under paragraph (1) of this subsection, require a demonstration by the appointing authority that the passover notification was timely sent to the preference eligible's last known address.

(3) A preference eligible not described in paragraph (2) of this subsection, or his representative, shall be entitled, on request, to a copy of—

(A) the reasons submitted by the appointing authority in support of the proposed passover, and

(B) the findings of the Office.

(4) In the case of a preference eligible described in paragraph (2) of this subsection, the functions of the Office under this subsection may not be delegated.

(c) When three or more names of preference eligibles are on a reemployment list appropriate for the position to be filled, a nominating or appointing authority may appoint from a register of eligibles established after examination only an individual who qualifies as a preference eligible under section 2108(3)(C)–(G) of this title.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 421; Pub. L. 90–83, §1(8), Sept. 11, 1967, 81 Stat. 197; Pub. L. 95–454, title III, §307(d), title IX, §906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1148, 1224.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(a), (b)	5 U.S.C. 633(2)2.	Jan. 16, 1883, ch. 27, §2(2)2, 22 Stat. 404.
	5 U.S.C. 857 (less 1st sentence, 2d proviso, and last sentence).	June 27, 1944, ch. 287, §8 (less 1st sentence, 2d proviso, and last sentence), 58 Stat. 389.
		Aug. 14, 1953, ch. 485, §2, 67 Stat. 582.
(c)	5 U.S.C. 864 (less 1st sentence).	June 27, 1944, ch. 287, §15 (less 1st sentence), 58 Stat. 391.

The word ''authority'' is substituted for ''officer'' in recognition of the several appointing authorities named in section 2105(a)(1).

In subsection (a), the provisions of former section 633(2)2 are merged in the requirement of former section 857, since the certificate must be of the three highest on the register and the nominating or appointing employee may select one of the three.

In subsection (c), the prohibition in former section 864 is restated in positive form. The words ''an individual who qualifies as a preference eligible under section 2108(3)(B)–(F)'' are substituted for ''ten-point preference eligibles''.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1978—Subsec. (a). Pub. L. 95–454, §906(a)(2), (3), substituted ''Office of Personnel Management'' and ''Office'' for ''Civil Service Commission'' and ''Commission'', respectively.

Subsec. (b). Pub. L. 95–454, §307(d), designated existing provisions as par. (1), substituted provisions respecting authority of the Office with respect to the selection procedures applicable, for provisions respecting authority of the Commission with respect to the selection procedures applicable, and added pars. (2) to (4).

1967—Subsec. (c). Pub. L. 90–83 substituted ''section 2108(3)(C)–(G)'' for ''section 2108(3)(B)–(F).'' See Historical and Revision Notes under section 3305 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3320 of this title; title 20 section 241; title 22 section 1438.

[§ 3319. Repealed. Pub. L. 95–454, title III, § 307(h)(1), Oct. 13, 1978, 92 Stat. 1149]

Section, Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 421, related to prohibitions on employment of members of same family in the competitive service.

EFFECTIVE DATE OF REPEAL

Repeal effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

§ 3320. Excepted service; government of the District of Columbia; selection

The nominating or appointing authority shall select for appointment to each vacancy in the excepted service in the executive branch and in the government of the District of Columbia from the qualified applicants in the same manner and under the same conditions required for the competitive service by sections 3308–3318 of this title. This section does not apply to an appointment required by Congress to be confirmed by, or made with the advice and consent of, the Senate.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 422.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 858.	June 27, 1944, ch. 287, § 9, 58 Stat. 389.
.....	5 U.S.C. 869.	June 27, 1944, ch. 287, § 20, 58 Stat. 391.

Former sections 858 and 869 are combined and restated for clarity and to conform to section 3318(a). The word ''authority'' is substituted for ''officer'' in recognition of the several appointing authorities named in section 2105(a)(1). The words ''shall select for appointment to each vacancy in the expected service in the executive branch and in the government of the District of Columbia from the qualified applicants in the same manner and under the same conditions required for the competitive service by sections 3308–3318 of this title'' are substituted for ''In the unclassified Federal, and District of Columbia, civil service, and in all other positions and employment hereinbefore referred to in (c) of section 851 of this title . . . shall make selection from the qualified applicants in accordance with the provisions of this chapter''. The reference to the excepted service ''in the executive branch'' is substituted for the exception of the legislative and judicial branches in former section 869. Former section 869 did not prohibit the application of those provisions of the Act of June 27, 1944, which relate to the competitive service in the legislative or judicial branch by reason of the specific provisions of section 311 of the Act of June 10, 1921, as amended (31 U.S.C. 52); 28 U.S.C. 602; and Executive Order No. 67 of June 13, 1895. The reference to appointments of postmasters is omitted from this section since those referred to are in the competitive service. The application of former section 869 to the remainder of the Act of June 27, 1944, is covered by the sections into which the remainder is carried (see Table I).

This section merely continues, and does not in any way change, the requirements in former section 858 relative to the selection of applicants for positions in the excepted service. Under this section, the Federal Bureau of Investigation and other agencies having positions in the excepted service will continue to fill those positions in the same manner that they have been filled under former section 858. Such excepted appointments are appointments authorized to be made without regard to the statutes, rules, and regulations governing appointments in the competitive service and this is not changed.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

ASSISTANCE OF UNITED STATES CIVIL SERVICE COMMISSION IN DEVELOPING MERIT SYSTEM FOR DISTRICT OF COLUMBIA

Pub. L. 93–198, title VII, § 734, Dec. 24, 1973, 87 Stat. 823, authorized the United States Civil Service Commission to advise and assist the District of Columbia Mayor and Council in the further development of the merit system or systems required by the District of Columbia charter, which was approved on May 7, 1974, and authorized the Commission to enter into agreements with the District government to make available its registers of eligibles as a recruiting source to fill District positions as needed, with the costs of any specific services furnished by the Civil Service Commission to be compensated for under the provisions of section 685a of former Title 31, Money and Finance [31 U.S.C. 1537].

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 20 section 241; title 22 section 1438.

§ 3321. Competitive service; probationary period

(a) The President may take such action, including the issuance of rules, regulations, and directives, as shall provide as nearly as conditions of good administration warrant for a period of probation—

(1) before an appointment in the competitive service becomes final; and

(2) before initial appointment as a supervisor or manager becomes final.

(b) An individual—

(1) who has been transferred, assigned, or promoted from a position to a supervisory or managerial position, and

(2) who does not satisfactorily complete the probationary period under subsection (a)(2) of this section,

shall be returned to a position of no lower grade and pay than the position from which the individual was transferred, assigned, or promoted. Nothing in this section prohibits an agency from taking an action against an individual serving a probationary period under subsection (a)(2) of this section for cause unrelated to supervisory or managerial performance.

(c) Subsections (a) and (b) of this section shall not apply with respect to appointments in the Senior Executive Service or the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 422; Pub. L. 95–454, title III, § 303(a), Oct. 13, 1978, 92 Stat. 1146; Pub. L. 100–325, § 2(d), May 30, 1988, 102 Stat. 581.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 633(2)4.	Jan. 16, 1883, ch. 27. §2(2)4, 22 Stat. 404.

The authority of the President to prescribe rules is added on authority of former section 633(1), which is carried into section 3302. Wording is changed because in practice an appointment is not made after probation. The words ''or employment'' are omitted as included within ''appointment''.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1988—Subsec. (c). Pub. L. 100–325 inserted reference to Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service.

1978—Pub. L. 95–454 substituted ''probationary period'' for ''probation; period of'' in section catchline, designated existing provisions as subsec. (a), substituted provisions authorizing the President to take necessary action, for provisions authorizing the President to prescribe rules, and added subsecs. (b) and (c).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

CROSS REFERENCES

President's power to grant exceptions from provisions of this section, see section 3302 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3302, 4303, 7512 of this title.

[§ 3322. Repealed. Pub. L. 95–256, § 5(b)(1), Apr. 6, 1978, 92 Stat. 191]

Section, Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 422, related to temporary appointments after age 70 in the competitive service.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 30, 1978, see section 5(f) of Pub. L. 95–256, set out as an Effective Date of 1978 Amendment note under section 633a of Title 29, Labor.

§ 3323. Automatic separations; reappointment; reemployment of annuitants

(a) An individual who reaches the retirement age prescribed for automatic separation applicable to him may not be continued in the civil service or in the government of the District of Columbia. An individual separated on account of age under a statute or regulation providing for retirement on account of age is not eligible for appointment in the civil service or in the government of the District of Columbia. The President, when in his judgment the public interest so requires, may except an individual from this subsection by Executive order. This subsection does not apply to an individual named by a statute providing for the continuance of the individual in the civil service or in the government of the District of Columbia.

(b)(1) Notwithstanding other statutes, an annuitant, as defined by section 8331 or 8401, receiving annuity from the Civil Service Retirement and Disability Fund is not barred by reason of his retired status from employment in an appointive position for which the annuitant is qualified. An annuitant so reemployed, other than an annuitant reappointed under paragraph (2) of this subsection, serves at the will of the appointing authority.

(2) Subject to such regulations as the Director of the Office of Personnel Management may prescribe, any annuitant to whom the first sentence of paragraph (1) of this subsection applies and who has served as an administrative law judge pursuant to an appointment under section 3105 of this title may be reappointed an administrative law judge under such section for a specified period or for such period as may be necessary for such administrative law judge to conduct and complete the hearing and disposition of one or more specified cases. The provisions of this title that apply to or with respect to administrative law judges appointed under section 3105 of this title shall apply to or with respect to administrative law judges reappointed under such section pursuant to the first sentence of this paragraph.

(c) Notwithstanding subsection (a) of this section, a member of the Foreign Service retired under section 812 of the Foreign Service Act of 1980 is not barred by reason of his retired status from employment in a position in the civil service for which he is qualified. An annuitant so reemployed serves at the will of the appointing authority.

(d) Notwithstanding subsection (a) of this section, the Chief of Engineers of the Army, under section 569a of title 33, may employ a retired employee whose expert assistance is needed in connection with river and harbor or flood control works. There shall be deducted from the pay of an employee so reemployed an amount equal to the annuity or retired pay allocable to the period of actual employment.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 422; Pub. L. 96–465, title II, §2314(a), Oct. 17, 1980, 94 Stat. 2167; Pub. L. 98–224, §2, Mar. 2, 1984, 98 Stat. 47; Pub. L. 102–378, §2(10), Oct. 2, 1992, 106 Stat. 1347.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(a)	5 U.S.C. 715a.	June 30, 1932, ch. 314, §204, 47 Stat. 404.
(b)	5 U.S.C. 2263(a).	July 31, 1956, ch. 804, §401 ''Sec. 13(a)'', 70 Stat. 757.
(c)	22 U.S.C. 915(c).	Sept. 8, 1960, Pub. L. 86–723, §10(d), 74 Stat. 832.
(d)	33 U.S.C. 544a, 701*l*.	June 20, 1938, ch. 535, §5, 52 Stat. 805.

In subsection (a), the words ''On and after July 1, 1932'' are omitted as executed. The words ''heretofore or hereafter'' are omitted as unnecessary. The words ''in the civil service'' are substituted for ''civilian service in any branch or service of the United States Government'' and ''to any appointive office, position, or employment under the United States'' in view of the definition of ''civil service'' in section 2101.

In subsection (b), the words ''receiving annuity from the Civil Service Retirement and Disability Fund'' are substituted for ''heretofore or hereafter retired under this chapter''. The word ''authority'' is substituted for ''officer'' in recognition of the several appointing authorities named in section 2105(a)(1).

In subsection (c), the words ''Notwithstanding subsection (a) of this section'' are substituted for ''Not-

withstanding the provisions of sections 62 and 715a of title 5'' to reflect the codification of former section 715a in subsection (a) of this section and in view of the repeal of section 62 of title 5 by §402(a)(7) of the Act of Aug. 19, 1964, Pub. L. 88–448, 78 Stat. 492. The words ''heretofore or hereafter'' and ''hereafter'' are omitted as unnecessary. The words ''in a position in the civil service'' are substituted for ''in Federal Government service in any appointive position'' in view of the definition of ''civil service'' in section 2101. The word ''authority'' is substituted for ''officer'' in recognition of the several appointing authorities named in section 2105(a)(1).

In subsection (d), the words ''Notwithstanding subsection (a) of this section'' are substituted for ''The provisions of section 715a of title 5 shall not be so construed as to prevent'' to reflect the codification of former section 715a in subsection (a) of this section, and to conform to the style of this section. The words ''under section 569a of title 33'' are substituted for ''under agreement as authorized by sections 569a, 584a and 607a of title 33'' on authority of the provision contained in section 569a of title 33. The word ''employee'' is coextensive with and substituted for ''civilian employee'' in view of the definition of ''employee'' in section 2105. The last sentence is restated for clarity.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

REFERENCES IN TEXT

Section 812 of the Foreign Service Act of 1980, referred to in subsec. (c), is classified to section 4052 of Title 22, Foreign Relations and Intercourse.

AMENDMENTS

1992—Subsec. (b)(1). Pub. L. 102–378 substituted ''annuitant, as defined by section 8331 or 8401,'' for ''annuitant as defined by section 8331 of this title''.

1984—Subsec. (b). Pub. L. 98–224 designated existing provisions as par. (1), substituted ''the annuitant'' for ''he'' and inserted '', other than an annuitant reappointed under paragraph (2) of this subsection,'', and added par. (2).

1980—Subsec. (c). Pub. L. 96–465 substituted ''member of the Foreign Service retired under section 812 of the Foreign Service Act of 1980'' for ''Foreign Service officer retired under section 1001 or 1002 of title 22 or a Foreign Service staff officer or employee retired under section 1063 of title 22''.

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.

CROSS REFERENCES

Mandatory separation, see section 8335 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 22 sections 2386, 2512, 2584.

§ 3324. Appointments to positions classified above GS–15

(a) An appointment to a position classified above GS–15 pursuant to section 5108 may be made only on approval of the qualifications of the proposed appointee by the Office of Personnel Management. This section does not apply to a position—

(1) to which appointment is made by the Chief Judge of the United States Tax Court;

(2) to which appointment is made by the President;

(3) to which appointment is made by the Librarian of Congress; or

(4) the incumbent of which is paid from—

(A) appropriations for the Executive Office of the President under the heading ''The White House Office'', ''Special Projects'', ''Council of Economic Advisers'', or ''National Security Council''; or

(B) funds appropriated to the President under the heading ''Emergency Fund for the President'' by the Treasury, Post Office, and Executive Office Appropriation Act, 1966, or a later statute making appropriations for the same purpose.

(b) The Office may prescribe regulations necessary for the administration of this section.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 422; Pub. L. 90–83, §1(10), Sept. 11, 1967, 81 Stat. 197; Pub. L. 95–454, title IX, §906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 96–54, §2(a)(17), Aug. 14, 1979, 93 Stat. 382; Pub. L. 101–509, title V, §529 [title I, §101(b)(9)(C)(i), (ii)], Nov. 5, 1990, 104 Stat. 1427, 1441; Pub. L. 102–378, §2(11), Oct. 2, 1992, 106 Stat. 1347.)

HISTORICAL AND REVISION NOTES

1966 ACT

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 1105(i).	June 20, 1958, Pub. L. 85–462, §10 ''(i)'', 72 Stat. 213. Sept. 13, 1960, Pub. L. 86–768, 74 Stat. 910.

In subsection (a), the words ''in GS–16, 17, and 18'' are substituted for ''in grades 16, 17, and 18 of the General Schedule''.

In subsection (a)(2), the words ''by the President'' are coextensive with and substituted for ''by the President alone or by the President by and with the advice and consent of the Senate''.

In subsection (a)(4)(A), the words ''Office of Emergency Planning'' are substituted for ''Office of Defense Mobilization'' on authority of 1958 Reorg. Plan No. 1, §2(a), effective July 1, 1958, 72 Stat. 1799, as amended Aug. 26, 1958, Pub. L. 85–763, 72 Stat. 861, and Sept. 22, 1961, Pub. L. 87–296, 75 Stat. 630. Reference to ''President's Advisory Committee on Government Organization'' is omitted since the Committee was abolished by Executive Order No. 10917, February 10, 1961.

In subsection (a)(4)(B), the words '' 'Emergency Fund for the President' by the Treasury, Post Office, and Executive Office Appropriation Act, 1966'' are substituted for '' 'Emergency Fund for the President, National Defense' by the General Government Matters Appropriation Act, 1959'' to reflect the heading and title of the current appropriation Act.

Subsection (b) is added on authority of former sections 1072 and 1072a, which are carried into section 5115.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 ACT

This section amends 5 U.S.C. 3324(a)(4)(A) to correct typographical errors.

REFERENCES IN TEXT

The Treasury, Post Office, and Executive Office Appropriation Act, 1966, referred to in subsec. (a)(4)(B), is Pub. L. 89–57, June 30, 1965, 79 Stat. 196. For classification of this Act to the Code, see Tables.

AMENDMENTS

1992—Pub. L. 102–378, §2(11)(A), substituted ''GS–15'' for ''GA–15'' in section catchline.

Subsec. (a)(1). Pub. L. 102–378, §2(11)(B), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''provided for in section 5108(c)(2) of this title;''.

1990—Pub. L. 101–509, § 529 [title I, § 101(b)(9)(C)(ii)], which directed that ''to positions classified above GA–15'' be substituted for ''at GS–16, 17, or 18'' in section catchline, was executed by making the substitution for ''at GS–16, 17, and 18'', as the probable intent of Congress.

Subsec. (a). Pub. L. 101–509, § 529 [title I, § 101(b)(9)(C)(i)], substituted ''classified above GS–15 pursuant to section 5108'' for ''in GS–16, 17, or 18''.

1979—Subsec. (a)(4)(A). Pub. L. 96–54 struck out reference to Office of Emergency Planning.

1978—Subsecs. (a), (b). Pub. L. 95–454 substituted ''Office of Personnel Management'' for ''Civil Service Commission'' and ''Office'' for ''Commission''.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–378 effective May 4, 1991, see section 9(b)(4) of Pub. L. 102–378, set out as a note under section 6303 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–509 effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title III, § 305] of Pub. L. 101–509, set out as a note under section 5301 of this title.

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.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90–83 effective as of Sept. 6, 1966, for all purposes, see section 9(h) of Pub. L. 90–83, set out as a note under section 5102 of this title.

CROSS REFERENCES

Antidiscrimination in employment in administration of this section, see section 7201 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1204, 1212, 7204 of this title; title 10 sections 4540, 7212, 9540; title 20 section 3461; title 42 section 7231.

§ 3325. Appointments to scientific and professional positions

(a) Positions established under section 3104 of this title are in the competitive service. However, appointments to the positions are made without competitive examination on approval of the qualifications of the proposed appointee by the Office of Personnel Management or its designee for this purpose.

(b) This section does not apply to positions established under section 3104(c).

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 423; Pub. L. 95–454, title IX, § 906(a)(2), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 102–378, § 2(12), Oct. 2, 1992, 106 Stat. 1347.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(a)	5 U.S.C. 1162(a).	Oct. 4, 1961, Pub. L. 87–367, § 202 ''Sec. 2(a)'', 75 Stat. 790.
(b)	5 U.S.C. 1161 (g) (2d sentence).	Oct. 11, 1962, Pub. L. 87–793, § 1001(a)(2) ''(g) (2d sentence)'', 76 Stat. 863.

In subsection (a), the words ''or its designee'' are substituted for ''or such officers or agents as the Commission may designate''.

For repeal of the Act of Aug. 1, 1947, ch. 433, 61 Stat. 715, as amended, see revision note for section 3104.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1992—Subsec. (b). Pub. L. 102–378 substituted ''section 3104(c)'' for ''section 3104(a)(7) of this title''.

1978—Subsec. (a). Pub. L. 95–454 substituted ''Office of Personnel Management'' for ''Civil Service Commission''.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

§ 3326. Appointments of retired members of the armed forces to positions in the Department of Defense

(a) For the purpose of this section, ''member'' and ''Secretary concerned'' have the meanings given them by section 101 of title 37.

(b) A retired member of the armed forces may be appointed to a position in the civil service in or under the Department of Defense (including a nonappropriated fund instrumentality under the jurisdiction of the armed forces) during the period of 180 days immediately after his retirement only if—

(1) the proposed appointment is authorized by the Secretary concerned or his designee for the purpose, and, if the position is in the competitive service, after approval by the Office of Personnel Management;

(2) the minimum rate of basic pay for the position has been increased under section 5305 of this title; or

(3) a state of national emergency exists.

(c) A request by appropriate authority for the authorization, or the authorization and approval, as the case may be, required by subsection (b)(1) of this section shall be accompanied by a statement which shows the actions taken to assure that—

(1) full consideration, in accordance with placement and promotion procedures of the department concerned, was given to eligible career employees;

(2) when selection is by other than certification from an established civil service register, the vacancy has been publicized to give interested candidates an opportunity to apply;

(3) qualification requirements for the position have not been written in a manner designed to give advantage to the retired member; and

(4) the position has not been held open pending the retirement of the retired member.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 423; Pub. L. 96–54, § 2(a)(14), Aug. 14, 1979, 93 Stat. 382; Pub. L. 101–509, title V, § 529 [title I, § 101(b)(3)(A)], Nov. 5, 1990, 104 Stat. 1427, 1439.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(a)	5 U.S.C. 3101 (as applicable to 5 U.S.C. 3103).	Aug. 19, 1964, Pub. L. 88–448, § 101 (as applicable to § 204), 78 Stat. 484.

HISTORICAL AND REVISION NOTES—CONTINUED

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(b), (c)	5 U.S.C. 3103.	Aug. 19, 1964, Pub. L. 88–448, § 204, 78 Stat. 487.

In subsection (a), the definition of ''armed forces'' is omitted as unnecessary in view of the definition in section 2101.

In subsection (b), the words ''position in the civil service'' are substituted for ''civilian office'' in view of the definition of ''civil service'' in section 2101. The words ''(including a nonappropriated fund instrumentality under the jurisdiction of the armed forces)'' are added on authority of former section 3101(3).

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1990—Subsec. (b)(2). Pub. L. 101–509 substituted ''5305'' for ''5303''.

1979—Subsec. (b)(1). Pub. L. 96–54 substituted ''Office of Personnel Management'' for ''Civil Service Commission''.

SUSPENSION OF SECTION

Pub. L. 101–510, div. A, title XII, § 1206(f), Nov. 5, 1990, 104 Stat. 1661, provided that: ''Section 3326 of title 5, United States Code, shall not be in effect for the period beginning on the date of the enactment of this Act [Nov. 5, 1990] and ending two years after such date.''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–509 effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title III, § 305] of Pub. L. 101–509, set out as a note under section 5301 of this title.

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.

§ 3327. Civil service employment information

(a) The Office of Personnel Management shall provide that information concerning opportunities to participate in competitive examinations conducted by, or under authority delegated by, the Office of Personnel Management shall be made available to the employment offices of the United States Employment Service.

(b) Subject to such regulations as the Office may issue, each agency shall promptly notify the Office and the employment offices of the United States Employment Service of—

(1) each vacant position in the agency which is in the competitive service or the Senior Executive Service and for which the agency seeks applications from persons outside the Federal service, and

(2) the period during which applications will be accepted.

As used in this subsection, ''agency'' means an agency as defined in section 5102(a)(1) of this title other than an agency all the positions in which are excepted by statute from the competitive service.

(Added Pub. L. 95–454, title III, § 309(a), Oct. 13, 1978, 92 Stat. 1151.)

PRIOR PROVISIONS

A prior section 3327, Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 424, which prescribed standards for determination of qualifications of postmasters, including experience in postal field service, seniority, length of service, level of difficulty and responsibility of work, attendance, awards and commendations, and performance rating, was repealed by Pub. L. 91–375, § 6(c)(7)(A), Aug. 12, 1970, 84 Stat. 776. See section 1001 of Title 39, Postal Service.

EFFECTIVE DATE

Section effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3329 of this title.

§ 3328. Selective Service registration

(a) An individual—

(1) who was born after December 31, 1959, and is or was required to register under section 3 of the Military Selective Service Act (50 U.S.C. App. 453); and

(2) who is not so registered or knowingly and willfully did not so register before the requirement terminated or became inapplicable to the individual,

shall be ineligible for appointment to a position in an Executive agency.

(b) The Office of Personnel Management, in consultation with the Director of the Selective Service System, shall prescribe regulations to carry out this section. Such regulations shall include provisions prescribing procedures for the adjudication of determinations of whether a failure to register was knowing and willful. Such procedures shall require that such a determination may not be made if the individual concerned shows by a preponderance of the evidence that the failure to register was neither knowing nor willful. Such procedures may provide that determinations of eligibility under the requirements of this section shall be adjudicated by the Executive agency making the appointment for which the eligibility is determined.

(Added Pub. L. 99–145, title XVI, § 1622(a)(1), Nov. 8, 1985, 99 Stat. 777; amended Pub. L. 100–180, div. A, title XII, § 1249, Dec. 4, 1987, 101 Stat. 1167.)

AMENDMENTS

1987—Subsec. (b). Pub. L. 100–180 struck out ''within the Office'' after ''for the adjudication'' in second sentence and inserted at end ''Such procedures may provide that determinations of eligibility under the requirements of this section shall be adjudicated by the Executive agency making the appointment for which the eligibility is determined.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 38 section 7403.

§ 3329.[1] Appointments of military reserve technicians to positions in the competitive service

(a) For the purpose of this section, the term ''military reserve technician'' has the meaning given such term by section 8401(30).

(b) The Secretary of Defense shall take such steps as may be necessary to ensure that, except as provided in subsection (d), any military reserve technician who is involuntarily separated from technician service, after completing at

[1] Another section 3329 is set out following this section.

least 15 years of such service and 20 years of service creditable under section 1332[2] of title 10, by reason of ceasing to satisfy the condition described in section 8401(30)(B) shall, if appropriate written application is submitted within 1 year after the date of separation, be offered a position described in subsection (c) not later than 6 months after the date of the application.

(c) The position to be offered shall be a position—

(1) in the competitive service;

(2) within the Department of Defense;

(3) for which the individual is qualified; and

(4) the rate of basic pay for which is not less than the rate last received for technician service before separation.

(d) This section shall not apply in the case of—

(1) an involuntary separation for cause on charges of misconduct or delinquency; or

(2) a technician who, as of the date of application under this section, is eligible for immediate (including for disability) or early retirement under subchapter III of chapter 83 or under chapter 84.

(e) The Secretary of Defense shall, in consultation with the Director of the Office of Personnel Management, prescribe such regulations as may be necessary to carry out this section.

(Added Pub. L. 102–484, div. A, title V, § 544(a), Oct. 23, 1992, 106 Stat. 2415.)

REFERENCES IN TEXT

Section 1332 of title 10, referred to in subsec. (b), was renumbered section 12732 of Title 10, Armed Forces, by Pub. L. 103–337, div. A, title XVI, § 1662(j)(1), Oct. 5, 1994, 108 Stat. 2998.

§ 3329.[1] Government-wide list of vacant positions

(a) For the purpose of this section, the term ''agency'' means an Executive agency, excluding the General Accounting Office and any agency (or unit thereof) whose principal function is the conduct of foreign intelligence or counterintelligence activities, as determined by the President.

(b) The Office of Personnel Management shall establish and keep current a comprehensive list of all announcements of vacant positions in the competitive service within each agency that are to be filled by appointment for more than one year and for which applications are being (or will soon be) accepted from outside the agency's work force.

(c) Included for any position listed shall be—

(1) a brief description of the position, including its title, tenure, location, and rate of pay;

(2) application procedures, including the period within which applications may be submitted and procedures for obtaining additional information; and

(3) any other information which the Office considers appropriate.

(d) The list shall be available to members of the public.

(e) The Office shall prescribe such regulations as may be necessary to carry out this section. Any requirement under this section that agencies notify the Office as to the availability of any vacant positions shall be designed so as to avoid any duplication of information otherwise required to be furnished under section 3327 of this title or any other provision of law.

(Added Pub. L. 102–484, div. D, title XLIV, § 4431(a), Oct. 23, 1992, 106 Stat. 2719.)

[2] See References in Text note below.

[1] Another section 3329 is set out preceding this section.

SUBCHAPTER II—OATH OF OFFICE

§ 3331. Oath of office

An individual, except the President, elected or appointed to an office of honor or profit in the civil service or uniformed services, shall take the following oath: ''I, AB, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God.'' This section does not affect other oaths required by law.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 424.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 16.	R.S. § 1757. May 13, 1884, ch. 46, §§ 2, 3, 23 Stat. 22.

All but the quoted language in R.S. § 1757 is omitted as obsolete since R.S. § 1757 was originally an alternative oath to the oath prescribed in R.S. § 1756 which oath was repealed by the Act of May 13, 1884, ch. 46, § 2, 23 Stat. 22. The words ''An individual, except the President, . . . in the civil service or uniformed services'' are substituted for ''any person . . . either in the civil, military, or naval service, except the President of the United States''. The second sentence of former section 16 is changed to read, ''This section does not affect other oaths required by law.''.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2903, 2904, 2905, 2906, 3332 of this title; title 2 section 64–1; title 10 sections 578, 603, 626, 12201, 14309; title 14 sections 273, 735; title 22 section 2504; title 33 section 854a–2; title 42 sections 1971, 4954.

§ 3332. Officer affidavit; no consideration paid for appointment

An officer, within 30 days after the effective date of his appointment, shall file with the oath of office required by section 3331 of this title an affidavit that neither he nor anyone acting in his behalf has given, transferred, promised, or paid any consideration for or in the expectation or hope of receiving assistance in securing the appointment.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 424.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 21a.	Dec. 11, 1926, ch. 4, §1, 44 Stat. 918. Mar. 2, 1927, ch. 284, 44 Stat. 1346. Sept. 23, 1950, ch. 1010, §10, 64 Stat. 987.

The section is restated for clarity and conciseness. The term ''officer'' is coextensive with and substituted for ''Each individual appointed hereafter as a civil officer of the United States by the President, by and with the advice and consent of the Senate, or by the President alone, or by a court of law, or by the head of a department'' in view of the definition of ''officer'' in section 2104.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

CROSS REFERENCES

Withholding of pay from officer until affidavit required under this section is filed, see section 5507 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5507 of this title; title 22 section 4001; title 42 section 211.

§ 3333. Employee affidavit; loyalty and striking against the Government

(a) Except as provided by subsection (b) of this section, an individual who accepts office or employment in the Government of the United States or in the government of the District of Columbia shall execute an affidavit within 60 days after accepting the office or employment that his acceptance and holding of the office or employment does not or will not violate section 7311 of this title. The affidavit is prima facie evidence that the acceptance and holding of office or employment by the affiant does not or will not violate section 7311 of this title.

(b) An affidavit is not required from an individual employed by the Government of the United States or the government of the District of Columbia for less than 60 days for sudden emergency work involving the loss of human life or the destruction of property. This subsection does not relieve an individual from liability for violation of section 7311 of this title.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 424.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 118q.	Aug. 9, 1955, ch. 690, §2, 69 Stat. 624.
.....	[Uncodified].	June 29, 1956, ch. 479, §3 (as applicable to the Act of Aug. 9, 1955, ch. 690, §2, 69 Stat. 624), 70 Stat. 453.

The section is restated for clarity and to conform to the style of section 3332.

In subsection (a), the words ''after August 9, 1955'' are omitted as executed. The words ''if the affidavit is executed prior to acceptance of such office or employment'' are omitted as unnecessary. The words ''From and after July 1, 1956'', appearing in the Act of June 29, 1956, are omitted as executed.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 22 section 4001; title 39 section 410.

SUBCHAPTER III—DETAILS

ANNUAL REPORT TO CONGRESS ON EMPLOYEES OR MEMBERS OF ARMED SERVICES DETAILED TO EXECUTIVE AGENCIES; EXEMPTIONS

Pub. L. 103–329, title VI, §619, Sept. 30, 1993, 108 Stat. 2420, provided that:

''(a) Notwithstanding the provisions of sections 112 and 113 of title 3, United States Code, each Executive agency detailing any personnel shall submit a report on an annual basis in each fiscal year to the Senate and House Committees on Appropriations on all employees or members of the armed services detailed to Executive agencies, listing the grade, position, and offices of each person detailed and the agency to which each such person is detailed.

''(b) The provisions of this section shall not apply to Federal employees or members of the armed services detailed to or from—

''(1) the Central Intelligence Agency;

''(2) the National Security Agency;

''(3) the Defense Intelligence Agency;

''(4) the offices within the Department of Defense for the collection of specialized national foreign intelligence through reconnaissance programs;

''(5) the Bureau of Intelligence and Research of the Department of State;

''(6) any agency, office, or unit of the Army, Navy, Air Force, and Marine Corps, the Federal Bureau of Investigation and the Drug Enforcement Administration of the Department of Justice, the Department of the Treasury, the Department of Transportation, and the Department of Energy performing intelligence functions; and

''(7) the Director of Central Intelligence.

''(c) The exemptions in part (b) of this section are not intended to apply to information on the use of personnel detailed to or from the intelligence agencies which is currently being supplied to the Senate and House Intelligence and Appropriations Committees by the executive branch through budget justification materials and other reports.

''(d) For the purposes of this section, the term 'Executive agency' has the same meaning as defined under section 105 of title 5, United States Code (except that the provisions of section 104(2) of title 5, United States Code, shall not apply), and includes the White House Office, the Executive Residence, and any office, council, or organizational unit of the Executive Office of the President.''

Similar provisions were contained in the following prior appropriations acts:

Pub. L. 103–123, title VI, §617, Oct. 28, 1993, 107 Stat. 1263.

Pub. L. 102–393, title VI, §619, Oct. 6, 1992, 106 Stat. 1769.

Pub. L. 102–141, title VI, §619, Oct. 28, 1991, 105 Stat. 871.

Pub. L. 101–509, title VI, §616, Nov. 5, 1990, 104 Stat. 1474.

Pub. L. 101–136, title VI, §616, Nov. 3, 1989, 103 Stat. 819.

Pub. L. 100–440, title VI, §616, Sept. 22, 1988, 102 Stat. 1754.

Pub. L. 100–202, §101(m) [title VI, §621], Dec. 22, 1987, 101 Stat. 1329–390, 1329–427.

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in title 42 section 6635.

§ 3341. Details; within Executive or military departments

(a) The head of an Executive department or military department may detail employees

among the bureaus and offices of his department, except employees who are required by law to be exclusively engaged on some specific work.

(b) Details under subsection (a) of this section may be made only by written order of the head of the department, and may be for not more than 120 days. These details may be renewed by written order of the head of the department, in each particular case, for periods not exceeding 120 days.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 424.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 38.	R.S. §166. May 28, 1896, ch. 252, §3, 29 Stat. 179.

The words ''Executive department'' are substituted for ''department'' as the definition of ''department'' applicable to this section is coextensive with the definition of ''Executive department'' in section 101.

The words ''or military department'' are inserted to preserve the application of the source law. Before enactment of the National Security Act Amendments of 1949 (63 Stat. 578), the Department of the Army, the Department of the Navy, and the Department of the Air Force were Executive departments. The National Security Act Amendments of 1949 established the Department of Defense as an Executive Department including the Department of the Army, the Department of the Navy, and the Department of the Air Force as military departments, not as Executive departments. However, the source law for this section, which was in effect in 1949, remained applicable to the Secretaries of the military departments by virtue of section 12(g) of the National Security Act Amendments of 1949 (63 Stat. 591), which is set out in the reviser's note for section 301.

The word ''detail'' is coextensive with and is substituted for ''alter the distribution''. The word ''clerks'' is omitted as included in ''employees''. The words ''as he may find it necessary and proper to do'' and ''from time to time'' are omitted as surplusage.

This section was part of title IV of the Revised Statutes. The Act of July 26, 1947, ch. 343, §201(d), as added Aug. 10, 1949, ch. 412, §4, 63 Stat. 579 (former 5 U.S.C. 171–1), which provides ''Except to the extent inconsistent with the provisions of this Act [National Security Act of 1947], the provisions of title IV of the Revised Statutes as now or hereafter amended shall be applicable to the Department of Defense'' is omitted from this title but is not repealed.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

TRANSFER OF APPROPRIATED FUNDS; FUNDING OF DETAILED EMPLOYEES

For restriction on availability of funds for salaries of employees reassigned on temporary detail basis to another position without independent approval by head of employing department or agency, see section 515(3) of Pub. L. 103–333, set out as a note under section 1301 of Title 31, Money and Finance.

CROSS REFERENCES

Internal Revenue field personnel detailed to duty in District of Columbia, see section 7803 of Title 26, Internal Revenue Code.

Railroad Retirement Board employees, see section 362 of Title 45, Railroads.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 15 section 652; title 42 section 5667g–2.

[§ 3342. Repealed. Pub. L. 102–378, § 2(13)(A), Oct. 2, 1992, 106 Stat. 1347]

Section, added Pub. L. 101–416, §2(a)(1), Oct. 12, 1990, 104 Stat. 902, related to Federal participants in executive exchange programs.

A prior section 3342, Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 425, which prohibited details of employees from field service to Executive department in District of Columbia except for temporary duty, details specifically provided for by law, or detailing of one employee from Bureau of Customs for duty in District of Columbia, was repealed by Pub. L. 89–762, §1(a), Nov. 5, 1966, 80 Stat. 1312.

EFFECTIVE DATE OF REPEAL

Section repealed effective Oct. 1, 1991, see section 9(b)(3) of Pub. L. 102–378, set out as an Effective Date of 1992 Amendment note under section 6303 of this title.

§ 3343. Details; to international organizations

(a) For the purpose of this section—

(1) ''agency'', ''employee'', and ''international organization'' have the meanings given them by section 3581 of this title; and

(2) ''detail'' means the assignment or loan of an employee to an international organization without a change of position from the agency by which he is employed to an international organization.

(b) The head of an agency may detail, for a period of not more than 5 years, an employee of his agency to an international organization which requests services, except that under special circumstances, where the President determines it to be in the national interest, he may extend the 5-year period for up to an additional 3 years.

(c) An employee detailed under subsection (b) of this section is deemed, for the purpose of preserving his allowances, privileges, rights, seniority, and other benefits, an employee of the agency from which detailed, and he is entitled to pay, allowances, and benefits from funds available to that agency. The authorization and payment of these allowances and other benefits from appropriations available therefor is deemed to comply with section 5536 of this title.

(d) Details may be made under subsection (b) of this section—

(1) without reimbursement to the United States by the international organization; or

(2) with agreement by the international organization to reimburse the United States for all or part of the pay, travel expenses, and allowances payable during the detail, and the reimbursement shall be credited to the appropriation, fund, or account used for paying the amounts reimbursed.

(e) An employee detailed under subsection (b) of this section may be paid or reimbursed by an international organization for allowances or expenses incurred in the performance of duties required by the detail, without regard to section 209 of title 18.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 425; Pub. L. 91–175, pt. V, §502(a), Dec. 30, 1969, 83 Stat. 825.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(a)	5 U.S.C. 2331.	Aug. 28, 1958, Pub. L. 85–795, §2, 72 Stat. 959.

HISTORICAL AND REVISION NOTES—CONTINUED

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(b)–(e)	5 U.S.C. 2332.	Aug. 28, 1958, Pub. L. 85–795, §3, 72 Stat. 959.

In subsection (a)(2), the words ''without a change of position from the agency by which he is employed to an international organization'' are substituted for ''without the employee's transfer from the Federal agency by which he is employed'' to eliminate the necessity of carrying into this section the definition of ''transfer'' appearing in former section 2331(5).

In subsection (e), the words ''section 209 of title 18'' are substituted for ''section 1914 of title 18'' on authority of the Act of Oct. 23, 1962, Pub. L. 87–849, §2, 76 Stat. 1126.

Other definitions appearing in former section 2331 are omitted from this section as inappropriate but are carried into section 3581.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1969—Subsec. (b). Pub. L. 91–175 substituted ''5'' for ''3'' and inserted provision enabling President, regarding an agency employee detailed to an international organization for 5 years, to extend the 5-year period for up to an additional 3 years.

DETAILS TO INTERNATIONAL ORGANIZATIONS

For provisions concerning the providing for details of Federal employees to international organizations and the delegation of Presidential authority, concerning the extension of a detail under this section, to the Secretary of State, see Ex. Ord. No. 11552, Aug. 24, 1970, 35 F.R. 13569, set out as a note under section 3584 of this title.

CROSS REFERENCES

Authority of President to prescribe regulations necessary to carry out this section, see section 3584 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3582, 3584 of this title; title 26 section 3121; title 42 section 410.

§ 3344. Details; administrative law judges

An agency as defined by section 551 of this title which occasionally or temporarily is insufficiently staffed with administrative law judges appointed under section 3105 of this title may use administrative law judges selected by the Office of Personnel Management from and with the consent of other agencies.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 425; Pub. L. 95–251, §2(a)(1), (b)(2), Mar. 27, 1978, 92 Stat. 183; Pub. L. 95–454, title IX, §906(a)(2), Oct. 13, 1978, 92 Stat. 1224.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 1010 (4th sentence).	June 11, 1946, ch. 324, §11 (4th sentence), 60 Stat. 244.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1978—Pub. L. 95–454 substituted ''Office of Personnel Management'' for ''Civil Service Commission''.

Pub. L. 95–251 substituted references to administrative law judges for references to hearing examiners in section catchline and wherever appearing in text.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

CROSS REFERENCES

Additional requirements imposed by statute or otherwise recognized by law not limited or repealed by this section, see section 559 of this title.

Office of Personnel Management, investigations, reports, and regulations for purposes of this section as relating to administrative law judges, see section 1305 of this title.

Subsequent statutes to be held to supersede or modify this section only to the extent that they do so expressly, see section 559 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 559, 1305 of this title; title 15 section 1715; title 29 section 661; title 30 section 823; title 31 section 3801; title 42 sections 2000e–4, 3608, 3787.

§ 3345. Details; to office of head of Executive agency or military department

When the head of an Executive agency (other than the General Accounting Office) or military department dies, resigns, or is sick or absent, his first assistant, unless otherwise directed by the President under section 3347 of this title, shall perform the duties of the office until a successor is appointed or the absence or sickness stops.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 425; Pub. L. 100–398, §7(a)(1), (2), Aug. 17, 1988, 102 Stat. 988.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 4.	R.S. §177.

The words ''Executive department'' are substituted for ''department'' as the definition of ''department'' applicable to this section is coextensive with the definition of ''Executive department'' in section 101.

The words ''or military department'' are inserted to preserve the application of the source law. Before enactment of the National Security Act Amendments of 1949 (63 Stat. 578), the Department of the Army, the Department of the Navy, and the Department of the Air Force were Executive departments. The National Security Act Amendments of 1949 established the Department of Defense as an Executive Department including the Department of the Army, the Department of the Navy, and the Department of the Air Force as military departments, not as Executive departments. However, the source law for this section, which was in effect in 1949, remained applicable to the Secretaries of the military departments by virtue of section 12(g) of the National Security Act Amendments of 1949 (63 Stat. 591), which is set out in the reviser's note for section 301.

This section was part of title IV of the Revised Statutes. The Act of July 26, 1947, ch. 343, §201(d), as added Aug. 10, 1949, ch. 412, §4, 63 Stat. 579 (former 5 U.S.C. 171–1), which provides ''Except to the extent inconsistent with the provisions of this Act [National Security Act of 1947], the provisions of title IV of the Revised Statutes as now or hereafter amended shall be applicable to the Department of Defense'' is omitted from this title but is not repealed.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1988—Pub. L. 100–398 inserted ''agency'' after ''Executive'' in section catchline and substituted ''Executive agency (other than the General Accounting Office)'' for ''Executive department'' in text.

CROSS REFERENCES

Additional pay prohibited for officer performing duties of vacant office as authorized by this section, see section 5535 of this title.

Applicability to Deputy Secretary of Agriculture, see section 2211 of Title 7, Agriculture.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3347, 3348, 3349, 5535 of this title; title 7 section 2211; title 28 section 508.

§ 3346. Details; to subordinate offices

When an officer of a bureau of an Executive department or military department, whose appointment is not vested in the head of the department, dies, resigns, or is sick or absent, his first assistant, unless otherwise directed by the President under section 3347 of this title, shall perform the duties of the office until a successor is appointed or the absence or sickness stops.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 426.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 5.	R.S. §178.

The words ''his first assistant'' are substituted for ''the assistant or deputy of such chief or of such officer, or if there be none, then the chief clerk of such bureau''. A chief of a bureau is an officer within the meaning of this section. The words ''Executive department'' are substituted for ''department'' as the definition of ''department'' applicable to this section is coextensive with the definition of ''Executive department'' in section 101.

The words ''or military department'' are inserted to preserve the application of the source law. Before enactment of the National Security Act Amendments of 1949 (63 Stat. 578), the Department of the Army, the Department of the Navy, and the Department of the Air Force were Executive departments. The National Security Act Amendments of 1949 established the Department of Defense as an Executive Department including the Department of the Army, the Department of the Navy, and the Department of the Air Force as military departments, not as Executive departments. However, the source law for this section, which was in effect in 1949, remained applicable to the Secretaries of the military departments by virtue of section 12(g) of the National Security Act Amendments of 1949 (63 Stat. 591), which is set out in the reviser's note for section 301.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

CROSS REFERENCES

Additional pay prohibited for officer performing duties of vacant office as authorized by this section, see section 5535 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3347, 3348, 3349, 5535 of this title.

§ 3347. Details; Presidential authority

Instead of a detail under section 3345 or 3346 of this title, the President may direct the head of another Executive department or military department or another officer of an Executive department or military department, whose appointment is vested in the President, by and with the advice and consent of the Senate, to perform the duties of the office until a successor is appointed or the absence or sickness stops. This section does not apply to a vacancy in the office of Attorney General.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 426.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 6.	R.S. §179.

The words ''in his discretion'', ''vacant'', and ''incumbent'' are omitted as surplusage. The words ''Executive department'' are substituted for ''department'' as the definition of ''department'' applicable to this section is coextensive with the definition of ''Executive department'' in section 101. As used, the word ''an'' is coextensive with and substituted for ''either''.

The words ''or military department'' are inserted to preserve the application of the source law. Before enactment of the National Security Act Amendments of 1949 (63 Stat. 578), the Department of the Army, the Department of the Navy, and the Department of the Air Force were Executive departments. The National Security Act Amendments of 1949 established the Department of Defense as an Executive Department including the Department of the Army, the Department of the Navy, and the Department of the Air Force as military departments, not as Executive departments. However, the source law for this section, which was in effect in 1949, remained applicable to the secretaries of the military departments by virtue of section 12(g) of the National Security Act Amendments of 1949 (63 Stat. 591), which is set out in the reviser's note for section 301.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

EXECUTIVE ORDER NO. 9967

Ex. Ord. No. 9967, June 12, 1948, 13 F.R. 3249, which related to the designation of officers of the Department of Agriculture to act as Secretary of Agriculture, was superseded by Ex. Ord. No. 10481, Aug. 15, 1953, 18 F.R. 4944, formerly set out below.

EXECUTIVE ORDER NO. 10148

Ex. Ord. No. 10148, Aug. 5, 1950, 15 F.R. 5067, which related to the designation of officers of the Department of Commerce to act as Secretary of Commerce, was superseded by Ex. Ord. 11388, Jan. 15, 1968, 33 F.R. 563, formerly set out below.

EXECUTIVE ORDER NO. 10481

Ex. Ord. No. 10481, Aug. 15, 1953, 18 F.R. 4944, which provided for the designation of certain officers of the Department of Agriculture to act as Secretary of Agriculture, was revoked by Ex. Ord. No. 11793, July 10, 1974, 39 F.R. 25631, formerly set out below.

EX. ORD. NO. 10513. DESIGNATION OF OFFICERS TO ACT AS SECRETARY OF LABOR

Ex. Ord. No. 10513, Jan. 19, 1954, 19 F.R. 369, provided:

I hereby authorize and direct the Assistant Secretaries of Labor and the Solicitor of Labor, in the order designated as hereinafter provided, to perform the duties of the office of the Secretary of Labor in case of the absence, sickness, resignation, or death of both the Secretary of Labor and the Under [Deputy] Secretary of Labor.

The Assistant Secretaries of Labor and the Solicitor of Labor shall act as Secretary of Labor as herein pro-

vided (1) in such order as the Secretary of Labor (or the Under [Deputy] Secretary when acting as Secretary) may by order designate from time to time, or (2) if no such designation order is in effect at the time, in the order of the respective dates of their commissions, or in the event that two or more of their commissions bear the same date, in the order in which they shall have taken their oath of office.

This order supersedes Executive Order No. 9968 of June 17, 1948, entitled ''Designation of Certain Officers To Act as Secretary of Labor.''

EXECUTIVE ORDER NO. 10753

Ex. Ord. No. 10753, Feb. 15, 1958, 23 F.R. 1107, which related to the designation of officers of the Department of the Interior to act as Secretary of the Interior, was superseded by Ex. Ord. No. 11487, Oct. 6, 1969, 34 F.R. 15593, set out below.

EXECUTIVE ORDER NO. 10820

Ex. Ord. No. 10820, May 18, 1959, 24 F.R. 4045, which related to the order of succession to positions in the Department of Defense, was revoked by Ex. Ord. No. 12514, May 14, 1985, 50 F.R. 20383, formerly set out below.

EXECUTIVE ORDER NO. 10839

Ex. Ord. No. 10839, Sept. 30, 1959, 24 F.R. 7939, which provided for the order of succession in the Department of State, was revoked by Ex. Ord. No. 12343, Jan. 27, 1982, 47 F.R. 4225, set out below.

EXECUTIVE ORDER NO. 10941

Ex. Ord. No. 10941, May 16, 1961, 26 F.R. 4277, which provided for the order of succession in the Treasury Department, was revoked by Ex. Ord. No. 11680, Aug. 21, 1972, 37 F.R. 16907, formerly set out below.

EX. ORD. NO. 11274. ORDER OF SUCCESSION—DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Ex. Ord. No. 11274, Mar. 30, 1966, 31 F.R. 5243, as amended by Pub. L. 101–509, title V, §529 [title I, §112(c)], Nov. 5, 1990, 104 Stat. 1427, 1454, provided:

By virtue of the authority vested in me by Section 179 of the Revised Statutes (5 U.S.C. 6) [now this section] and Section 301 of Title 3 of the United States Code, and as President of the United States, it is ordered as follows:

1. In the event of a vacancy in the Office of the Secretary of Housing and Urban Development or during the absence or disability of the Secretary, the Deputy Secretary shall act as Secretary of Housing and Urban Development.

2. During any period when, by reason of absence, disability, or vacancy in office, neither the Secretary nor the Deputy Secretary is available to exercise the powers or perform the duties of the Office of the Secretary, an Assistant Secretary or the General Counsel, in such order as the Secretary may from time to time prescribe, shall act as Secretary of Housing and Urban Development. If no such order of succession is in effect at that time, then they shall act in the order in which they shall have taken office as Assistant Secretaries or General Counsel.

EXECUTIVE ORDER NO. 11313

Ex. Ord. No. 11313, Oct. 15, 1966, 31 F.R. 13417, provided for performance of duties of Postmaster General by certain officers of former Post Office Department. See 39 CFR §222.1.

EXECUTIVE ORDER NO. 11388

Ex. Ord. No. 11388, Jan. 15, 1968, 33 F.R. 563, which related to the designation of officers of the Department of Commerce to act as Secretary of Commerce, was superseded by Ex. Ord. No. 11880, Oct. 2, 1975, 40 F.R. 46089, set out below.

EX. ORD. NO. 11487. DESIGNATION OF OFFICERS OF THE DEPARTMENT OF THE INTERIOR TO ACT AS SECRETARY OF THE INTERIOR

Ex. Ord. No. 11487, Oct. 6, 1969, 34 F.R. 15593, as amended by Pub. L. 101–509, title V, §529 [title I, §112(c)], Nov. 5, 1990, 104 Stat. 1427, 1454, provided:

By virtue of the authority vested in me by section 3347 of title 5 of the United States Code [this section] and section 301 of title 3 of the United States Code, and as President of the United States, it is ordered as follows:

SECTION 1. During any period when by reason of absence, disability, or vacancy in office, neither the Secretary of the Interior nor the Deputy Secretary of the Interior is available to exercise the powers or perform the duties of the office of Secretary, an Assistant Secretary of the Interior or the Solicitor of the Department of the Interior, in such order as the Secretary of the Interior may from time to time prescribe, shall act as Secretary. If no such order of succession is in effect at that time, they shall act as Secretary in the order in which they shall have taken office as Assistant Secretaries or Solicitor.

SEC. 2. This order supersedes Executive Order No. 10753 of February 15, 1958, entitled ''Designation of certain officers of the Department of the Interior to act as Secretary of the Interior.''

EXECUTIVE ORDER NO. 11680

Ex. Ord. No. 11680, Aug. 21, 1972, 37 F.R. 16907, which provided for order of succession in Treasury Department, was revoked by Ex. Ord. No. 11822, Dec. 10, 1974, 39 F.R. 43275, set out below.

EXECUTIVE ORDER NO. 11793

Ex. Ord. No. 11793, July 10, 1974, 39 F.R. 25631, which provided for designation of certain officers of Agriculture Department to act as Secretary of Agriculture, was revoked by Ex. Ord. No. 11957, Jan. 13, 1977, 42 F.R. 3295, set out below.

EX. ORD. NO. 11822. DESIGNATION OF OFFICERS OF THE DEPARTMENT OF THE TREASURY TO ACT AS SECRETARY OF THE TREASURY

Ex. Ord. No. 11822, Dec. 10, 1974, 39 F.R. 43275, provided:

By virtue of the authority vested in me by section 3347 of title 5 [this section] and section 301 of title 3 of the United States Code and as President of the United States, it is ordered as follows:

SECTION 1. During any period when, by reason of absence, disability, or vacancy in office, either the Secretary of the Treasury or his Deputy Secretary is not available to exercise the powers or perform the duties of the office of Secretary, an officer from the Department of the Treasury appointed by the President—by and with the advice and consent of the Senate, in such order as the Secretary of the Treasury may from time to time prescribe—shall act as Secretary until the absence or the disability of the incumbent shall cease, or until a successor is appointed. If no such order of succession is in effect at that time, then such officers shall act as Secretary in the descending order of rank, as established by their offices being listed in sections 5314, 5315 or 5316 of title 5 of the United States Code and, at each level of the Executive Schedule, in the order which they shall have taken the oath as such officers.

SEC. 2. Executive Order No. 11680 of August 21, 1972, entitled ''Designation of Certain Officers to Act as Secretary of the Treasury'' is hereby revoked.

GERALD R. FORD.

EX. ORD. NO. 11880. DESIGNATION OF OFFICERS OF THE DEPARTMENT OF COMMERCE TO ACT AS SECRETARY OF COMMERCE

Ex. Ord. No. 11880, Oct. 2, 1975, 40 F.R. 46089, as amended by Ex. Ord. No. 12608, Sept. 9, 1987, 52 F.R. 34617, provided:

By virtue of the authority vested in me by section 3347 of Title 5 of the United States Code and section 301 of Title 3 of the United States Code, and as President of the United States, it is hereby ordered as follows:

SECTION 1. During any period when, by reason of absence, disability or vacancy in office, both the Secretary of Commerce and the Deputy Secretary of Commerce are not available to exercise the powers or perform the duties of the Office of Secretary, an Assistant Secretary of Commerce, the General Counsel of the Department of Commerce, or an officer of the Department of Commerce appointed by the President with the advice and consent of the Senate in such order as the Secretary of Commerce may from time to time prescribe, shall act as Secretary. If no such order of succession is in effect at that time, an Assistant Secretary or the General Counsel shall act as Secretary in the order in which they shall have taken office as Assistant Secretaries or General Counsel.

SEC. 2. This Order supersedes Executive Order No. 11388 of January 15, 1968.

EX. ORD. NO. 11957. DESIGNATION OF CERTAIN OFFICERS OF THE DEPARTMENT OF AGRICULTURE TO ACT AS SECRETARY OF AGRICULTURE.

Ex. Ord. No. 11957, Jan. 13, 1977, 42 F.R. 3295, provided:

By virtue of the authority vested in me by Section 3347 of Title 5 [this section] and section 301 of Title 3 of the United States Code, and as President of the United States of America, it is hereby ordered as follows:

SECTION 1. During any period when, by reason of absence, disability, or vacancy in office, both the Secretary of Agriculture and the Deputy Secretary of Agriculture are not available to exercise the powers or perform the duties of the Office of Secretary, the officers from the Department of Agriculture whose appointments are vested in the President, by and with the advice and consent of the Senate, shall act as Secretary in such order as the Secretary of Agriculture may from time to time prescribe. If no such order of succession is in effect at that time, then such officers shall act as Secretary in the descending order of rank, as established by the listing of their offices in Sections 5314, 5315 or 5316 of Title 5 of the United States Code and, at each level of the Executive Schedule, in the order in which they shall have taken oath as such officers.

SEC. 2. Executive Order No. 11793 of July 10, 1974, is hereby revoked.

GERALD R. FORD.

EX. ORD. NO. 12343. DESIGNATION OF CERTAIN OFFICERS TO ACT AS SECRETARY OF STATE

Ex. Ord. No. 12343, Jan. 27, 1982, 47 F.R. 4225, provided:

By the authority vested in me as President of the United States of America by Section 3347 of Title 5 and Section 301 of Title 3 of the United States Code, it is hereby ordered as follows:

SECTION 1. During any period when, by reason of absence, disability, or vacancy in office, neither the Secretary of State nor the Deputy Secretary of State, is available to exercise the powers or perform the duties of the Office of the Secretary, an officer from the Department of State who has been appointed by the President, by and with the advice and consent of the Senate, in such order as the Secretary of State may from time to time prescribe, shall act as Secretary. If no such order of succession is in effect at that time, then such officers shall act as Secretary in descending order of rank, as established by the listing of their offices in Sections 5314 or 5315 of Title 5 of the United States Code, and at each level of the Executive Schedule in the order in which they shall have taken the oath as such officers.

SEC. 2. The President may at any time, pursuant to law but without regard to the foregoing provisions of this Order, direct that an officer specified by the President shall act as Secretary of State.

SEC. 3. Executive Order No. 10839 is revoked.

RONALD REAGAN.

EXECUTIVE ORDER NO. 12514

Ex. Ord. No. 12514, May 14, 1985, 50 F.R. 20383, which provided for order of succession of officers to act as Secretary of Defense, Secretary of the Army, Secretary of the Navy, and Secretary of the Air Force, was revoked by Ex. Ord. No. 12787, Dec. 31, 1991, 57 F.R. 517, set out below.

EX. ORD. NO. 12787. ORDER OF SUCCESSION OF OFFICERS TO ACT AS SECRETARY OF DEFENSE

Ex. Ord. No. 12787, Dec. 31, 1991, 57 F.R. 517, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 3347 of title 5, United States Code, it is hereby ordered as follows:

SECTION 1. *Succession to the Authority of the Secretary of Defense.*

(a) In the event of the death, permanent disability, or resignation of the Secretary of Defense, the incumbents holding the Department of Defense positions designated below shall, in the order indicated, act for and exercise the powers of the Secretary of Defense:

(1) Deputy Secretary of Defense.

(2) Secretary of the Army.

(3) Secretary of the Navy.

(4) Secretary of the Air Force.

(5) Under Secretary of Defense for Acquisition [now Under Secretary of Defense for Acquisition and Technology].

(6) Under Secretary of Defense for Policy.

(7) Deputy Under Secretary of Defense for Acquisition [now Under Secretary of Defense for Acquisition and Technology].

(8) Director of Defense Research and Engineering, Assistant Secretaries of Defense, the Comptroller of the Department of Defense [now Under Secretary of Defense (Comptroller)], the Director of Operational Test and Evaluation, the Deputy Under Secretary of Defense for Policy, and the General Counsel of the Department of Defense, in the order fixed by their length of service as permanent appointees in such positions.

(9) Under Secretaries of the Army, the Navy, and the Air Force, in the order fixed by their length of service as permanent appointees in such positions.

(10) Assistant Secretaries and General Counsels of the Army, the Navy, and the Air Force, in the order fixed by their length of service as permanent appointees in such positions.

(b) In the event of the temporary absence or temporary disability of the Secretary of Defense, the incumbents holding the Department of Defense positions designated in paragraph (a) of this section shall, in the order indicated, act for and exercise the powers of the Secretary of Defense.

(1) In these instances, the designation of an Acting Secretary of Defense applies only for the duration of the Secretary's absence or disability, and does not affect the authority of the Secretary to resume the powers of his office upon his return.

(2) In the event that the Secretary of Defense is merely absent from his position, the Secretary may continue to exercise the powers and fulfill the duties of his office during his absence, notwithstanding the provisions of this order.

(c) Precedence among those officers designated in paragraph (a) of this section who have the same date of appointment shall be determined by the Secretary of Defense at the time that such appointments are made.

(d) Notwithstanding paragraphs (a) and (b) of this section, an officer shall not act for or exercise the powers of the Secretary of Defense under this order if that officer serves only in an acting capacity in the position that would otherwise entitle him to do so.

SEC. 2. *Temporary Nature of Succession.*

Succession to act for and exercise the powers of the Secretary of Defense pursuant to this order shall be on a temporary or interim basis and shall not have the effect of vacating the statutory appointment held by the successor.

SEC. 3. *Revocation of Prior Executive Order.*

Executive Order No. 12514 of May 14, 1985, is hereby revoked.

GEORGE BUSH.

EX. ORD. NO. 12879. ORDER OF SUCCESSION OF OFFICERS TO ACT AS SECRETARY OF THE NAVY

Ex. Ord. No. 12879, Nov. 8, 1993, 58 F.R. 59929, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 3347 of title 5, United States Code, it is hereby ordered as follows:

SECTION 1. *Succession to the Authority of the Secretary of the Navy.*

(a) In the event of the death, permanent disability, or resignation of the Secretary of the Navy, the incumbents holding the positions designated below, in the order indicated, shall act for and exercise the powers of the Secretary of the Navy:

(1) The Under Secretary of the Navy.

(2) The Assistant Secretaries and General Counsel of the Navy, in the order fixed by their length of services as permanent appointees in such positions.

(3) The Chief of Naval Operations.

(4) The Commandant of the Marine Corps.

(b) In the event of the temporary absence or temporary disability of the Secretary of the Navy, the incumbents holding the Department of the Navy positions designated in paragraph (a) of this section, in the order indicated, shall act for and exercise the powers of the Secretary of the Navy.

(1) In these instances, the designation of an Acting Secretary of the Navy applies only for the duration of the Secretary's absence or disability, and does not affect the authority of the Secretary to resume the powers of his office upon his return.

(2) In the event that the Secretary of the Navy is merely absent from this position, the Secretary of the Navy may continue to exercise the powers and fulfill the duties of his office during his absence, notwithstanding the provisions of this order.

(c) Precedence among those officers designated in paragraph (a) of this section who have the same date of appointment shall be determined by the Secretary of the Navy at the time that such appointments are made.

(d) Notwithstanding paragraph (a) and (b) of this section, an officer shall not act for or exercise the powers of the Secretary of the Navy under this order if that officer serves only in an acting capacity in the position that would otherwise entitle him to do so.

SEC. 2. *Temporary Nature of Succession.* Succession to act for and exercise the powers of the Secretary of the Navy pursuant to this order shall be on a temporary or interim basis and shall not have the effect of vacating the statutory appointment held by the successor.

WILLIAM J. CLINTON.

EX. ORD. NO. 12908. ORDER OF SUCCESSION OF OFFICERS TO ACT AS SECRETARY OF THE ARMY

Ex. Ord. No. 12908, Apr. 22, 1994, 59 F.R. 21907, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 3347 of title 5, United States Code, it is hereby ordered as follows:

SECTION 1. *Succession To Act as the Secretary of the Army.*

(a) In the event of the death, permanent disability, or resignation of the Secretary of the Army, the incumbents holding the positions designated below, in the order indicated, shall act for and exercise the powers of the Secretary of the Army:

(1) The Under Secretary of the Army.

(2) The Assistant Secretaries and General Counsel of the Army, in the order fixed by their length of service as permanent appointees in such positions.

(3) The Chief of Staff of the Army.

(b) In the event of the absence or temporary disability of the Secretary of the Army, the incumbents holding the Department of the Army positions designated in paragraph (a) of this section, in the order indicated, shall act for and exercise the powers of the Secretary of the Army.

(1) The designation of an Acting Secretary of the Army under this subsection applies only for the duration of the Secretary's absence or disability, and does not affect the authority of the Secretary to resume the powers of the Secretary's office.

(2) When the Secretary of the Army is temporarily absent from the position, the Secretary of the Army may continue to exercise the powers and fulfill the duties of his office during his absence, notwithstanding the provisions of this order.

(c) Precedence among those officers designated in paragraph (a) of this section who have the same date of appointment shall be determined by the Secretary of the Army at the time that such appointments are made.

(d) Notwithstanding paragraphs (a) and (b) of this section, an officer shall not act for or exercise the powers of the Secretary of the Army under this order if that officer serves only in an acting capacity in the position that would otherwise entitle him to do so.

SEC. 2. *Temporary Nature of Succession.* Succession to act for and exercise the powers of the Secretary of the Army pursuant to this order shall be on a temporary or interim basis and shall not have the effect of vacating the statutory appointment held by the successor.

WILLIAM J. CLINTON.

EX. ORD. NO. 12909. ORDER OF SUCCESSION OF OFFICERS TO ACT AS SECRETARY OF THE AIR FORCE

Ex. Ord. No. 12909, Apr. 22, 1994, 59 F.R. 21909, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 3347 of title 5, United States Code, it is hereby ordered as follows:

SECTION 1. *Succession To Act as the Secretary of the Air Force.*

(a) In the event of the death, permanent disability, or resignation of the Secretary of the Air Force, the incumbents holding the positions designated below, in the order indicated, shall act for and exercise the powers of the Secretary of the Air Force:

(1) The Under Secretary of the Air Force.

(2) The Assistant Secretaries and General Counsel of the Air Force, in the order fixed by their length of service as permanent appointees in such positions.

(3) The Chief of Staff of the Air Force.

(b) In the event of the absence or temporary disability of the Secretary of the Air Force, the incumbents holding the Department of the Air Force positions designated in paragraph (a) of this section, in the order indicated, shall act for and exercise the powers of the Secretary of the Air Force.

(1) The designation of an Acting Secretary of the Air Force applies only for the duration of the Secretary's absence or disability, and does not affect the authority of the Secretary to resume the powers of the Secretary's office.

(2) In the event that the Secretary of the Air Force is temporarily absent from the position, the Secretary of the Air Force may continue to exercise the powers and fulfill the duties of his office during the absence, notwithstanding the provisions of this order.

(c) Precedence among those officers designated in paragraph (a) of this section who have the same date of appointment shall be determined by the Secretary of the Air Force at the time that such appointments are made.

(d) Notwithstanding paragraphs (a) and (b) of this section, an officer shall not act for or exercise the powers of the Secretary of the Air Force under this order if that officer serves only in an acting capacity in the position that would otherwise entitle him to do so.

SEC. 2. *Temporary Nature of Succession.* Succession to act for and exercise the powers of the Secretary of the

Air Force pursuant to this order shall be on a temporary or interim basis and shall not have the effect of vacating the statutory appointment held by the successor.

WILLIAM J. CLINTON.

CROSS REFERENCES

Additional pay prohibited for officer performing duties of vacant office as authorized by this section, see section 5535 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3345, 3346, 3348, 5535 of this title; title 10 sections 3017, 5017, 8017.

§ 3348. Details; limited in time

(a) A vacancy caused by death or resignation may be filled temporarily under section 3345, 3346, or 3347 of this title for not more than 120 days, except that—

(1) if a first or second nomination to fill such vacancy has been submitted to the Senate, the position may be filled temporarily under section 3345, 3346, or 3347 of this title—

(A) until the Senate confirms the nomination; or

(B) until 120 days after the date on which either the Senate rejects the nomination or the nomination is withdrawn; or

(2) if the vacancy occurs during an adjournment of the Congress sine die, the position may be filled temporarily until 120 days after the Congress next convenes, subject thereafter to the provisions of paragraph (1) of this subsection.

(b) Any person filling a vacancy temporarily under section 3345, 3346, or 3347 of this title whose nomination to fill such vacancy has been submitted to the Senate may not serve after the end of the 120-day period referred to in paragraph (1)(B) or (2) of subsection (a) of this section, if the nomination of such person is rejected by the Senate or is withdrawn.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 426; Pub. L. 100–398, § 7(b), Aug. 17, 1988, 102 Stat. 988.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 7.	R.S. § 180. Feb. 6, 1891, ch. 113, 26 Stat. 733.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1988—Pub. L. 100–398 amended section generally. Prior to amendment, section read as follows: ''A vacancy caused by death or resignation may be filled temporarily under section 3345, 3346, or 3347 of this title for not more than 30 days.''

§ 3349. Details; to fill vacancies; restrictions

A temporary appointment, designation, or assignment of one officer to perform the duties of another under section 3345 or 3346 of this title may not be made otherwise than as provided by those sections, except to fill a vacancy occurring during a recess of the Senate.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 426.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 8.	R.S. § 181.

The prohibition is restated in positive form.

This section was part of title IV of the Revised Statutes. The Act of July 26, 1947, ch. 343, § 201(d), as added Aug. 10, 1949, ch. 412, § 4, 63 Stat. 579 (former 5 U.S.C. 171–1), which provides ''Except to the extent inconsistent with the provisions of this Act [National Security Act of 1947], the provisions of title IV of the Revised Statutes as now or hereafter amended shall be applicable to the Department of Defense'' is omitted from this title but is not repealed.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

SUBCHAPTER IV—TRANSFERS

§ 3351. Preference eligibles; transfer; physical qualifications; waiver

In determining qualifications of a preference eligible for transfer to another position in the competitive service, an Executive agency, or the government of the District of Columbia, the Office of Personnel Management or other examining agency shall waive—

(1) requirements as to age, height, and weight, unless the requirement is essential to the performance of the duties of the position; and

(2) physical requirements if, in the opinion of the Office or other examining agency, after considering the recommendation of an accredited physician, the preference eligible is physically able to perform efficiently the duties of the position.

This section does not apply to an appointment required by Congress to be confirmed by, or made with the advice and consent of, the Senate.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 426; Pub. L. 94–183, § 2(4), Dec. 31, 1975, 89 Stat. 1057; Pub. L. 95–454, title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 854 (1st 2 sentences, so much as relates to transfer).	June 27, 1944, ch. 287, § 5 (1st 2 sentences, so much as relates to transfer), 58 Stat. 388.

The section is restated to conform to section 3312.

The words ''in the competitive service, an Executive agency, or the government of the District of Columbia'' are added on authority of former sections 851, 858, and 869, which are carried into this title. The last sentence is added on authority of former section 869.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1978—Pub. L. 95–454 substituted ''Office of Personnel Management'' and ''Office'' for ''Civil Service Commission'' and ''Commission'', respectively.

1975—Pub. L. 94–183 struck out '', except an appointment made under section 3311 of title 39'' after ''or made with the advice and consent of, the Senate''.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

CROSS REFERENCES

Definition of preference eligible, see section 2108 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 20 section 241; title 22 section 1438.

§ 3352. Preference in transfers for employees making certain disclosures

(a) Subject to the provisions of subsections (d) and (e), in filling a position within any Executive agency, the head of such agency may give preference to any employee of such agency, or any other Executive agency, to transfer to a position of the same status and tenure as the position of such employee on the date of applying for a transfer under subsection (b) if—

(1) such employee is otherwise qualified for such position;

(2) such employee is eligible for appointment to such position; and

(3) the Merit Systems Protection Board makes a determination under the provisions of chapter 12 that a prohibited personnel action described under section 2302(b)(8) was taken against such employee.

(b) An employee who meets the conditions described under subsection (a)(1), (2), and (3) may voluntarily apply for a transfer to a position, as described in subsection (a), within the Executive agency employing such employee or any other Executive agency.

(c) If an employee applies for a transfer under the provisions of subsection (b) and the selecting official rejects such application, the selecting official shall provide the employee with a written notification of the reasons for the rejection within 30 days after receiving such application.

(d) An employee whose application for transfer is rejected under the provisions of subsection (c) may request the head of such agency to review the rejection. Such request for review shall be submitted to the head of the agency within 30 days after the employee receives notification under subsection (c). Within 30 days after receiving a request for review, the head of the agency shall complete the review and provide a written statement of findings to the employee and the Merit Systems Protection Board.

(e) The provisions of subsection (a) shall apply with regard to any employee—

(1) for no more than 1 transfer;

(2) for a transfer from or within the agency such employee is employed at the time of a determination by the Merit Systems Protection Board that a prohibited personnel action as described under section 2302(b)(8) was taken against such employee; and

(3) no later than 18 months after such a determination is made by the Merit Systems Protection Board.

(f) Notwithstanding the provisions of subsection (a), no preference may be given to any employee applying for a transfer under subsection (b), with respect to a preference eligible (as defined under section 2108(3)) applying for the same position.

(Added Pub. L. 101–12, §5(a), Apr. 10, 1989, 103 Stat. 32.)

EFFECTIVE DATE

Section effective 90 days following Apr. 10, 1989, see section 11 of Pub. L. 101–12, set out as an Effective Date of 1989 Amendment note under section 1201 of this title.

SUBCHAPTER V—PROMOTION

§ 3361. Promotion; competitive service; examination

An individual may be promoted in the competitive service only if he has passed an examination or is specifically excepted from examination under section 3302 of this title. This section does not take from the President any authority conferred by section 3301 of this title that is consistent with the provisions of this title governing the competitive service.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 426.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 638 (as applicable to promotion).	Jan. 16, 1883, ch. 27, §7 (as applicable to promotion), 22 Stat. 406.

The words ''That after the expiration of six months from the passage of this act'' are omitted as executed. The words ''in the competitive service'' are substituted for ''in either of the said classes now existing, or that may be arranged hereunder pursuant to said rules'' because of the definition of ''competitive service'' in section 2102. In the second sentence, the words ''the provisions of this title governing the competitive service'' are substituted for ''this act''.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

§ 3362. Promotion; effect of incentive award

An agency, in qualifying and selecting an employee for promotion, shall give due weight to an incentive award under chapter 45 of this title. For the purpose of this section, ''agency'' and ''employee'' have the meanings given them by section 4501 of this title.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 426.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 2123(f).	Sept. 1, 1954, ch. 1208, §304(f), 68 Stat. 1113.

The word ''incentive'' is added for clarification. The second sentence is added on authority of former section 2122, which is carried into section 4501.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

§ 3363. Preference eligibles; promotion; physical qualifications; waiver

In determining qualifications of a preference eligible for promotion to another position in the

competitive service, an Executive agency, or the government of the District of Columbia, the Office of Personnel Management or other examining agency shall waive—

(1) requirements as to age, height, and weight, unless the requirement is essential to the performance of the duties of the position; and

(2) physical requirements if, in the opinion of the Office or other examining agency, after considering the recommendation of an accredited physician, the preference eligible is physically able to perform efficiently the duties of the position.

This section does not apply to an appointment required by Congress to be confirmed by, or made with the advice and consent of, the Senate.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 427; Pub. L. 94–183, § 2(5), Dec. 31, 1975, 89 Stat. 1057; Pub. L. 95–454, title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 854 (1st 2 sentences, so much as relates to promotion).	June 27, 1944, ch. 287, § 5 (1st 2 sentences, so much as relates to promotion), 58 Stat. 388.

The section is restated to conform to section 3312.

The words ''in the competitive service, an Executive agency, or the government of the District of Columbia'' are added on authority of former sections 851, 858, and 869, which are carried into this title. The last sentence is added on authority of former section 869.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1978—Pub. L. 95–454 substituted ''Office of Personnel Management'' and ''Office'' for ''Civil Service Commission'' and ''Commission'', respectively.

1975—Pub. L. 94–183 struck out '', except an appointment made under section 3311 of title 39'' after ''or made with the advice and consent of, the Senate''.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 20 section 241; title 22 section 1438.

[§ 3364. Repealed. Pub. L. 94–183, § 2(6), Dec. 31, 1975, 89 Stat. 1057]

Section, Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 427, related to promotion to regular force of substitute employees in postal field service.

SUBCHAPTER VI—ASSIGNMENTS TO AND FROM STATES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in title 22 section 4081; title 41 section 419; title 42 section 11708.

§ 3371. Definitions

For the purpose of this subchapter—

(1) ''State'' means—

(A) a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, and a territory or possession of the United States; and

(B) an instrumentality or authority of a State or States as defined in subparagraph (A) of this paragraph (1) and a Federal-State authority or instrumentality;

(2) ''local government'' means—

(A) any political subdivision, instrumentality, or authority of a State or States as defined in subparagraph (A) of paragraph (1);

(B) any general or special purpose agency of such a political subdivision, instrumentality, or authority; and

(C) any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village as defined in the Alaska Native Claims Settlement Act (85 Stat. 688), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians and includes any tribal organization as defined in section 4 of the Indian Self-Determination and Education Assistance Act;

(3) ''Federal agency'' means an Executive agency, military department, a court of the United States, the Administrative Office of the United States Courts, the Library of Congress, the Botanic Garden, the Government Printing Office, the Congressional Budget Office, the United States Postal Service, the Postal Rate Commission, the Office of the Architect of the Capitol, the Office of Technology Assessment, and such other similar agencies of the legislative and judicial branches as determined appropriate by the Office of Personnel Management; and

(4) ''other organization'' means—

(A) a national, regional, State-wide, area-wide, or metropolitan organization representing member State or local governments;

(B) an association of State or local public officials;

(C) a nonprofit organization which has as one of its principal functions the offering of professional advisory, research, educational, or development services, or related services, to governments or universities concerned with public management; or

(D) a federally funded research and development center.

(Added Pub. L. 91–648, title IV, § 402(a), Jan. 5, 1971, 84 Stat. 1920; amended Pub. L. 93–638, title I, § 104(a), formerly § 105(a), Jan. 4, 1975, 88 Stat. 2208, renumbered § 104(a), Pub. L. 100–472, title II, § 203(a), Oct. 5, 1988, 102 Stat. 2290; Pub. L. 95–454, title VI, § 603(a), Oct. 13, 1978, 92 Stat. 1189; Pub. L. 100–472, title II, § 203(b), Oct. 5, 1988, 102 Stat. 2290; Pub. L. 101–301, § 2(c), May 24, 1990, 104 Stat. 207; Pub. L. 103–337, div. A, title X, § 1068(a), Oct. 5, 1994, 108 Stat. 2852.)

REFERENCES IN TEXT

The Alaska Native Claims Settlement Act, referred to in par. (2)(C), is Pub. L. 92–203, Dec. 18, 1971, 85 Stat.

688, as amended, which is classified generally to chapter 33 (§ 1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

Section 4 of the Indian Self-Determination and Education Assistance Act, referred to in par. (2)(C), is classified to section 450b of Title 25, Indians.

AMENDMENTS

1994—Par. (4)(D). Pub. L. 103–337 added subpar. (D).

1990—Par. (2)(C). Pub. L. 101–301 substituted ''section 4'' for ''section 4(m)''.

1988—Par. (2)(C). Pub. L. 100–472, § 203(b), amended Pub. L. 93–638, by substituting ''section 4(m)'' for ''section 4(c)'' in the provision it added as par. (2)(C) of this section. See 1975 Amendment note below.

1978—Par. (1)(A). Pub. L. 95–454, § 603(a)(1), inserted reference to the Trust Territory of the Pacific Islands.

Pars. (3), (4). Pub. L. 95–454, § 603(a)(2), added pars. (3) and (4).

1975—Par. (2)(C). Pub. L. 93–638, as amended by Pub. L. 100–472, § 203(b), added par. (2)(C).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

EFFECTIVE DATE

Section 404 of title IV of Pub. L. 91–648 provided that: ''This title [enacting this subchapter and repealing sections 1881 to 1888 of Title 7, Agriculture, section 869b of Title 20, Education, and section 246(f) of Title 42, The Public Health and Welfare, (less applicability to commissioned officers of the Public Health Service)] shall become effective sixty days after the date of enactment of this Act [Jan. 5, 1971].''

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

DECLARATION OF PURPOSE

Section 401 of title IV of Pub. L. 91–648, as amended by Pub. L. 95–454, title VI, § 602(b), Oct. 13, 1978, 92 Stat. 1189, provided that: ''The purpose of this title [see Effective Date note above] is to provide for the temporary assignment of personnel between the Federal Government and State and local governments, institutions of higher education, and other organizations.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3372 of this title; title 22 sections 2122, 2124c.

§ 3372. General provisions

(a) On request from or with the concurrence of a State or local government, and with the consent of the employee concerned, the head of a Federal agency may arrange for the assignment of—

(1) an employee of his agency, other than a noncareer appointee, limited term appointee, or limited emergency appointee (as such terms are defined in section 3132(a) of this title) in the Senior Executive Service and an employee in a position which has been excepted from the competitive service by reason of its confidential, policy-determining, policy-making, or policy-advocating character, to a State or local government; and

(2) an employee of a State or local government to his agency;

for work of mutual concern to his agency and the State or local government that he determines will be beneficial to both. The period of an assignment under this subchapter may not exceed two years. However, the head of a Federal agency may extend the period of assignment for not more than two additional years. In the case of assignments made to Indian tribes or tribal organizations as defined in section 3371(2)(C) of this subchapter,[1] the head of an executive agency may extend the period of assignment for any period of time where it is determined that this will continue to benefit both the executive agency and the Indian tribe or tribal organization. If the assigned employee fails to complete the period of assignment and there is another employee willing and available to do so, the Secretary may assign the employee to complete the period of assignment and may execute an agreement with the tribal organization with respect to the replacement employee. That agreement may provide for a different period of assignment as may be agreed to by the Secretary and the tribal organization.

(b) This subchapter is authority for and applies to the assignment of—

(1) an employee of a Federal agency to an institution of higher education;

(2) an employee of an institution of higher education to a Federal agency;

(3) an employee of a Federal agency to any other organization; and

(4) an employee of an other organization to a Federal agency.

(c)(1) An employee of a Federal agency may be assigned under this subchapter only if the employee agrees, as a condition of accepting an assignment under this subchapter, to serve in the civil service upon the completion of the assignment for a period equal to the length of the assignment.

(2) Each agreement required under paragraph (1) of this subsection shall provide that in the event the employee fails to carry out the agreement (except for good and sufficient reason, as determined by the head of the Federal agency from which assigned) the employee shall be liable to the United States for payment of all expenses (excluding salary) of the assignment. The amount shall be treated as a debt due the United States.

(d) Where the employee is assigned to a tribal organization, the employee shall be eligible for promotions, periodic step-increases, and additional step-increases, as defined in chapter 53 of this title, on the same basis as other Federal employees.

(e) Under regulations prescribed pursuant to section 3376 of this title—

(1) an assignment of an employee of a Federal agency to an other organization or an institution of higher education, and an employee so assigned, shall be treated in the same way as an assignment of an employee of a Federal agency to a State or local government, and an employee so assigned, is treated under the provisions of this subchapter governing an assignment of an employee of a Federal agency to a

[1] So in original. Probably should be ''this title,''.

State or local government, except that the rate of pay of an employee assigned to a federally funded research and development center may not exceed the rate of pay that such employee would be paid for continued service in the position in the Federal agency from which assigned; and

(2) an assignment of an employee of an other organization or an institution of higher education to a Federal agency, and an employee so assigned, shall be treated in the same way as an assignment of an employee of a State or local government to a Federal agency, and an employee so assigned, is treated under the provisions of this subchapter governing an assignment of an employee of a State or local government to a Federal agency.

(Added Pub. L. 91–648, title IV, § 402(a), Jan. 5, 1971, 84 Stat. 1921; amended Pub. L. 93–638, title I, § 104(k), (*l*), as added Pub. L. 100–472, title II, § 203(f), Oct. 5, 1988, 102 Stat. 2290; Pub. L. 95–454, title VI, § 603(b), (c), Oct. 13, 1978, 92 Stat. 1190; Pub. L. 98–146, title II, Nov. 4, 1983, 97 Stat. 946; Pub. L. 103–89, § 3(b)(1)(A), Sept. 30, 1993, 107 Stat. 981; Pub. L. 103–337, div. A, title X, § 1068(b), Oct. 5, 1994, 108 Stat. 2852.)

AMENDMENTS

1994—Subsec. (e). Pub. L. 103–337 added subsec. (e).

1993—Subsec. (d). Pub. L. 103–89 substituted ''and additional step-increases, as defined in chapter 53'' for ''additional step-increases, merit pay, and cash awards, as defined in chapters 53 and 54''.

1988—Subsecs. (a), (d). Pub. L. 100–472 added Pub. L. 93–638, § 104(k), (*l*). See 1975 Amendment note below.

1983—Subsec. (a). Pub. L. 98–146 inserted sentence providing that, in the case of assignments made to Indian tribes or tribal organizations as defined in section 3371(2)(C) of this title, the head of an executive agency may extend the period of assignment for any period of time where it is determined that this will continue to benefit both the executive agency and the Indian tribe or tribal organization.

1978—Subsec. (a). Pub. L. 95–454, § 603(b), (c)(1), substituted ''a Federal'' for ''an executive'' wherever appearing, and in cl. (1) inserted provisions relating to a noncareer appointee, limited term appointee, or limited emergency appointee, and an employee excepted from the competitive service.

Subsec. (b). Pub. L. 95–454, § 603(b), (c)(2)–(4), in cls. (1) and (2) substituted ''a Federal'' for ''an executive'', and added cls. (3) and (4).

Subsec. (c). Pub. L. 95–454, § 603(c)(5), added subsec. (c).

1975—Subsec. (a). Pub. L. 93–638, § 104(k), as added by Pub. L. 100–472, inserted at end ''If the assigned employee fails to complete the period of assignment and there is another employee willing and available to do so, the Secretary may assign the employee to complete the period of assignment and may execute an agreement with the tribal organization with respect to the replacement employee. That agreement may provide for a different period of assignment as may be agreed to by the Secretary and the tribal organization.''

Subsec. (d). Pub. L. 93–638, § 104(*l*), as added by Pub. L. 100–472, added subsec. (d).

EFFECTIVE DATE OF 1993 AMENDMENT

Section 3(c) of Pub. L. 103–89 provided that: ''The amendments made by this section [amending this section and sections 4501, 4502, 5302, 5332, 5334 to 5336, 5361 to 5363, 5948, and 8473 of this title, sections 1602, 1732, and 1733 of Title 10, Armed Forces, and section 731 of Title 31, Money and Finance, repealing sections 4302a and 5401 to 5410 of this title, and amending provisions set out as a note under section 5304 of this title] shall take effect as of November 1, 1993.''

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 25 section 450i.

§ 3373. Assignment of employees to State or local governments

(a) An employee of a Federal agency assigned to a State or local government under this subchapter is deemed, during the assignment, to be either—

(1) on detail to a regular work assignment in his agency; or

(2) on leave without pay from his position in the agency.

An employee assigned either on detail or on leave without pay remains an employee of his agency. The Federal Tort Claims Act and any other Federal tort liability statute apply to an employee so assigned. The supervision of the duties of an employee on detail may be governed by agreement between the Federal agency and the State or local government concerned.

(b) The assignment of an employee of a Federal agency either on detail or on leave without pay to a State or local government under this subchapter may be made with or without reimbursement by the State or local government for the travel and transportation expenses to or from the place of assignment and for the pay, or supplemental pay, or a part thereof, of the employee during assignment. Any reimbursements shall be credited to the appropriation of the Federal agency used for paying the travel and transportation expenses or pay.

(c) For any employee so assigned and on leave without pay—

(1) if the rate of pay for his employment by the State or local government is less than the rate of pay he would have received had he continued in his regular assignment in the agency, he is entitled to receive supplemental pay from the agency in an amount equal to the difference between the State or local government rate and the agency rate;

(2) he is entitled to annual and sick leave to the same extent as if he had continued in his regular assignment in the agency; and

(3) he is entitled, notwithstanding other statutes—

(A) to continuation of his insurance under chapter 87 of this title, and coverage under chapter 89 of this title or other applicable authority, so long as he pays currently into the Employee's Life Insurance Fund and the Employee's Health Benefits Fund or other applicable health benefits system (through his employing agency) the amount of the employee contributions;

(B) to credit the period of his assignment under this subchapter toward periodic step-increases, retention, and leave accrual purposes, and, on payment into the Civil Service Retirement and Disability Fund or other applicable retirement system of the percentage of his State or local government pay, and of his supplemental pay, if any, that

would have been deducted from a like agency pay for the period of the assignment and payment by the Federal agency into the fund or system of the amount that would have been payable by the agency during the period of the assignment with respect to a like agency pay, to treat his service during that period as service of the type performed in the agency immediately before his assignment; and

(C) for the purpose of subchapter I of chapter 85 of this title, to credit the service performed during the period of his assignment under this subchapter as Federal service, and to consider his State or local government pay (and his supplemental pay, if any) as Federal wages. To the extent that the service could also be the basis for entitlement to unemployment compensation under a State law, the employee may elect to claim unemployment compensation on the basis of the service under either the State law or subchapter I of chapter 85 of this title.

However, an employee or his beneficiary may not receive benefits referred to in subparagraphs (A) and (B) of this paragraph (3), based on service during an assignment under this subchapter for which the employee or, if he dies without making such an election, his beneficiary elects to receive benefits, under any State or local government retirement or insurance law or program, which the Office of Personnel Management determines to be similar. The Federal agency shall deposit currently in the Employee's Life Insurance Fund, the Employee's Health Benefits Fund or other applicable health benefits system, respectively, the amount of the Government's contributions on account of service with respect to which employee contributions are collected as provided in subparagraphs (A) and (B) of this paragraph (3).

(d)(1) An employee so assigned and on leave without pay who dies or suffers disability as a result of personal injury sustained while in the performance of his duty during an assignment under this subchapter shall be treated, for the purpose of subchapter I of chapter 81 of this title, as though he were an employee as defined by section 8101 of this title who had sustained the injury in the performance of duty. When an employee (or his dependents in case of death) entitled by reason of injury or death to benefits under subchapter I of chapter 81 of this title is also entitled to benefits from a State or local government for the same injury or death, he (or his dependents in case of death) shall elect which benefits he will receive. The election shall be made within one year after the injury or death, or such further time as the Secretary of Labor may allow for reasonable cause shown. When made, the election is irrevocable unless otherwise provided by law.

(2) An employee who elects to receive benefits from a State or local government may not receive an annuity under subchapter III of chapter 83 of this title and benefits from the State or local government for injury or disability to himself covering the same period of time. This provision does not—

(A) bar the right of a claimant to the greater benefit conferred by either the State or local government or subchapter III of chapter 83 of this title for any part of the same period of time;

(B) deny to an employee an annuity accruing to him under subchapter III of chapter 83 of this title on account of service performed by him; or

(C) deny any concurrent benefit to him from the State or local government on account of the death of another individual.

(Added Pub. L. 91–648, title IV, § 402(a), Jan. 5, 1971, 84 Stat. 1921; amended Pub. L. 95–454, title VI, § 603(b), title IX, § 906(a)(2), Oct. 13, 1978, 92 Stat. 1190, 1224; Pub. L. 102–378, § 2(14), Oct. 2, 1992, 106 Stat. 1347.)

REFERENCES IN TEXT

The Federal Tort Claims Act, referred to in subsec. (a), is classified to sections 1346(b) and 2671 et seq. of Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

1992—Pub. L. 102–378 substituted ''or local'' for ''and local'' in section catchline.

1978—Subsecs. (a), (b). Pub. L. 95–454, § 603(b), substituted ''a Federal'' for ''an executive'' and ''Federal agency'' for ''executive agency''.

Subsec. (c). Pub. L. 95–454, §§ 603(b), 906(a)(2), substituted ''Federal agency'' for ''executive agency'' wherever appearing, and ''Office of Personnel Management'' for ''Civil Service Commission''.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3396 of this title.

§ 3374. Assignments of employees from State or local governments

(a) An employee of a State or local government who is assigned to a Federal agency under an arrangement under this subchapter may—

(1) be appointed in the Federal agency without regard to the provisions of this title governing appointment in the competitive service for the agreed period of the assignment; or

(2) be deemed on detail to the Federal agency.

(b) An employee given an appointment is entitled to pay in accordance with chapter 51 and subchapter III of chapter 53 of this title or other applicable law, and is deemed an employee of the Federal agency for all purposes except—

(1) subchapter III of chapter 83 of this title or other applicable retirement system;

(2) chapter 87 of this title; and

(3) chapter 89 of this title or other applicable health benefits system unless his appointment results in the loss of coverage in a group health benefits plan the premium of which has been paid in whole or in part by a State or local government contribution.

The above exceptions shall not apply to non-Federal employees who are covered by chapters 83, 87, and 89 of this title by virtue of their non-Federal employment immediately before assignment and appointment under this section.

(c) During the period of assignment, a State or local government employee on detail to a Federal agency—

(1) is not entitled to pay from the agency, except to the extent that the pay received from the State or local government is less than the appropriate rate of pay which the duties would warrant under the applicable pay provisions of this title or other applicable authority;

(2) is deemed an employee of the agency for the purpose of chapter 73 of this title, sections 203, 205, 207, 208, 209, 602, 603, 606, 607, 643, 654, 1905, and 1913 of title 18, sections 1343, 1344, and 1349(b) of title 31, and the Federal Tort Claims Act and any other Federal tort liability statute; and

(3) is subject to such regulations as the President may prescribe.

The supervision of the duties of such an employee may be governed by agreement between the Federal agency and the State or local government concerned. A detail of a State or local government employee to a Federal agency may be made with or without reimbursement by the Federal agency for the pay, or a part thereof, of the employee during the period of assignment, or for the contribution of the State or local government, or a part thereof, to employee benefit systems.

(d) A State or local government employee who is given an appointment in a Federal agency for the period of the assignment or who is on detail to a Federal agency and who suffers disability or dies as a result of personal injury sustained while in the performance of his duty during the assignment shall be treated, for the purpose of subchapter I of chapter 81 of this title, as though he were an employee as defined by section 8101 of this title who had sustained the injury in the performance of duty. When an employee (or his dependents in case of death) entitled by reason of injury or death to benefits under subchapter I of chapter 81 of this title is also entitled to benefits from a State or local government for the same injury or death, he (or his dependents in case of death) shall elect which benefits he will receive. The election shall be made within 1 year after the injury or death, or such further time as the Secretary of Labor may allow for reasonable cause shown. When made, the election is irrevocable unless otherwise provided by law.

(e) If a State or local government fails to continue the employer's contribution to State or local government retirement, life insurance, and health benefit plans for a State or local government employee who is given an appointment in a Federal agency, the employer's contributions covering the State or local government employee's period of assignment, or any part thereof, may be made from the appropriations of the Federal agency concerned.

(Added Pub. L. 91–648, title IV, § 402(a), Jan. 5, 1971, 84 Stat. 1923; amended Pub. L. 95–454, title VI, § 603(b), (d), Oct. 13, 1978, 92 Stat. 1190; Pub. L. 97–258, § 3(a)(6), Sept. 13, 1982, 96 Stat. 1063.)

REFERENCES IN TEXT

The Federal Tort Claims Act, referred to in subsec. (c)(2), is classified to sections 1346(b) and 2671 et seq. of Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

1982—Subsec. (c)(2). Pub. L. 97–258 substituted ''sections 1343, 1344, and 1349(b)'' for ''section 638a''.

1978—Subsec. (a). Pub. L. 95–454, § 603(b), substituted ''a Federal'' for ''an executive'', and ''Federal agency'' for ''executive agency'' in two places.

Subsec. (b). Pub. L. 95–454, § 603(b), (d)(1), inserted provisions relating to nonapplicability of exceptions to non-Federal employees, and substituted ''Federal'' for ''executive''.

Subsec. (c). Pub. L. 95–454, § 603(b), (d)(2), (3), inserted provisions relating to pay received from the State or local government at less than the appropriate rate of pay, and provisions relating to contributions to employee benefit systems, and substituted ''a Federal'' for ''an executive'' and ''Federal agency'' for ''executive agency'' wherever appearing.

Subsec. (d). Pub. L. 95–454, § 603(b), substituted ''a Federal'' for ''an executive'' in two places.

Subsec. (e). Pub. L. 95–454, § 603(b), substituted ''a Federal'' for ''an executive'' and ''Federal'' for ''executive''.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 21 section 878; title 25 section 2804.

§ 3375. Travel expenses

(a) Appropriations of a Federal agency are available to pay, or reimburse, a Federal or State or local government employee in accordance with—

(1) subchapter I of chapter 57 of this title, for the expenses of—

(A) travel, including a per diem allowance, to and from the assignment location;

(B) a per diem allowance at the assignment location during the period of the assignment; and

(C) travel, including a per diem allowance, while traveling on official business away from his designated post of duty during the assignment when the head of the Federal agency considers the travel in the interest of the United States;

(2) section 5724 of this title, for the expenses of transportation of his immediate family and of his household goods and personal effects to and from the assignment location;

(3) section 5724a(a)(1) of this title, for the expenses of per diem allowances for the immediate family of the employee to and from the assignment location;

(4) section 5724a(a)(3) of this title, for subsistence expenses of the employee and his immediate family while occupying temporary quarters at the assignment location and on return to his former post of duty;

(5) section 5724a(b) of this title, to be used by the employee for miscellaneous expenses related to change of station where movement or storage of household goods is involved; and

(6) section 5726(c) of this title, for the expenses of nontemporary storage of household goods and personal effects in connection with assignment at an isolated location.

(b) Expenses specified in subsection (a) of this section, other than those in paragraph (1)(C),

may not be allowed in connection with the assignment of a Federal or State or local government employee under this subchapter, unless and until the employee agrees in writing to complete the entire period of his assignment or one year, whichever is shorter, unless separated or reassigned for reasons beyond his control that are acceptable to the Federal agency concerned. If the employee violates the agreement, the money spent by the United States for these expenses is recoverable from the employee as a debt due the United States. The head of the Federal agency concerned may waive in whole or in part a right of recovery under this subsection with respect to a State or local government employee on assignment with the agency.

(c) Appropriations of a Federal agency are available to pay expenses under section 5742 of this title with respect to a Federal or State or local government employee assigned under this subchapter.

(Added Pub. L. 91–648, title IV, § 402(a), Jan. 5, 1971, 84 Stat. 1924; amended Pub. L. 95–454, title VI, § 603(b), (e), Oct. 13, 1978, 92 Stat. 1190, 1191.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95–454, § 603(b), (e), substituted ''a Federal agency'' for ''an executive agency'' in introductory text, substituted ''Federal'' for ''executive'' in cl. (1), added cl. (5), and redesignated former cl. (5) as (6).

Subsec. (b). Pub. L. 95–454, § 603(b), substituted ''the Federal'' for ''the executive''.

Subsec. (c). Pub. L. 95–454, § 603(b), substituted ''a Federal agency'' for ''an executive agency''.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 22 section 4081.

§ 3376. Regulations

The President may prescribe regulations for the administration of this subchapter.

(Added Pub. L. 91–648, title IV, § 402(a), Jan. 5, 1971, 84 Stat. 1925.)

EX. ORD. NO. 11589. DELEGATION OF FUNCTIONS TO OFFICE OF PERSONNEL MANAGEMENT

Ex. Ord. No. 11589, Apr. 1, 1971, 36 F.R. 6343, as amended by Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, provided:

By virtue of the authority vested in me by section 301 of title 3 of the United States Code, and as President of the United States, it is ordered as follows:

SECTION 1. The Office of Personnel Management is hereby designated and empowered to exercise, without the approval, ratification, or other action of the President, the following:

(a) The authority of the President under section 3376 of title 5 of the United States Code [this section] to prescribe regulations for the administration of subchapter VI, ''Assignments to and from States,'' of chapter 33 of that title [this chapter].

(b) The authority of the President under section 205 (a)(4) of the Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2286(a)(4)), and as affected by Reorganization Plan No. 1 of 1958 (72 Stat. 1799) [set out in the Appendix to this title], relating to the establishment and maintenance of personnel standards on the merit basis.

SEC. 2. To the extent that section 1(b) of this order is inconsistent with the provisions of Executive Order No. 10952 of July 20, 1961, as amended [set out as a note under section 2271 of Title 50, Appendix, War and National Defense], section 1(b) shall control.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3372 of this title.

SUBCHAPTER VII—AIR TRAFFIC CONTROLLERS

§ 3381. Training

(a) An air traffic controller with 5 years of service as a controller who is to be removed as a controller because the Secretary has determined—

(1) he is medically disqualified for duties as a controller;

(2) he is unable to maintain technical proficiency as a controller; or

(3) such removal is necessary for the preservation of the physical or mental health of the controller;

is entitled to not more than the full-time equivalent of 2 years of training.

(b) During a period of training under this section, a controller shall be—

(1) retained at his last assigned grade and rate of basic pay as a controller;

(2) entitled to each increase in rate of basic pay provided under law; and

(3) excluded from staffing limitations otherwise applicable.

(c) Upon completion of training under this section, a controller may be—

(1) assigned to other duties in the Executive agency in which the controller is employed;

(2) released for transfer to another Executive agency; or

(3) involuntarily separated from the service.

The involuntary separation of a controller under this subsection is not a removal for cause on charges of misconduct, delinquency, or inefficiency for purposes of section 5595 or section 8336 of this title.

(d) The Secretary, without regard to section 3324(a) and (b) of title 31, may pay, or reimburse a controller for, all or part of the necessary expenses of training provided under this section, including expenses authorized to be paid under chapter 41 and subchapter I of chapter 57 of this title, and the costs of other services or facilities directly related to the training of a controller.

(e) Except as provided by subsection (d) of this section, the provisions of chapter 41 of this title, other than sections 4105, 4107(a) and (b),[1] and 4111, shall not apply to training under this section.

(f) The provisions of this section shall not otherwise affect the authority of the Secretary to provide training under chapter 41 of this title or under any other provision of law.

(Added Pub. L. 92–297, § 3(a), May 16, 1972, 86 Stat. 142; amended Pub. L. 96–347, § 1(b), (c)(1), Sept. 12, 1980, 94 Stat. 1150; Pub. L. 97–258, § 3(a)(7), Sept. 13, 1982, 96 Stat. 1063; Pub. L. 103–226, § 2(b)(1), Mar. 30, 1994, 108 Stat. 112.)

[1] See References in Text note below.

REFERENCES IN TEXT

For definition of Secretary, referred to in subsec. (a), see section 2109 of this title.

Subsecs. (a) and (b) of section 4107 of this title, referred to in subsec. (e), were struck out, and subsecs. (c) and (d) of section 4107 were redesignated (a) and (b), respectively, by Pub. L. 103–226, § 2(a)(5)(B), Mar. 30, 1994, 108 Stat. 112.

AMENDMENTS

1994—Subsec. (e). Pub. L. 103–226 substituted ''4105,'' for ''4105(a),''.

1982—Subsec. (d). Pub. L. 97–258 substituted ''section 3324(a) and (b)'' for ''section 529''.

1980—Subsec. (a). Pub. L. 96–347, § 1(b), substituted ''Secretary'' for ''Secretary of Transportation''.

Subsec. (c)(1). Pub. L. 96–347, § 1(c)(1), substituted ''in the Executive agency in which the controller is employed'' for ''in the Department of Transportation''.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 2(c) of Pub. L. 103–226 provided that: ''The amendments made by this section [amending this section and sections 4101, 4103, 4105, 4107, 4108, 4113, and 4118 of this title and repealing sections 4106 and 4114 of this title] shall become effective on the date of enactment of this Act [Mar. 30, 1994].

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–347 effective on 90th day after Sept. 12, 1980, see section 3 of Pub. L. 96–347, set out as a note under section 2109 of this title.

EFFECTIVE DATE

Section 10 of Pub. L. 92–297 provided that: ''This Act [enacting this subchapter and section 2109 of this title, amending sections 3307, 8332, 8334 to 8336, 8339, 8341, 8344 of this title, enacting provisions set out as notes under this section and section 8335 of this title, and repealing provisions set out as a note under section 3307 of this title] shall become effective at the beginning of the ninetieth day after the date of enactment of this Act [May 16, 1972].''

REPORT TO CONGRESS

Section 9 of Pub. L. 92–297 directed the Secretary of Transportation to report to Congress no later than 5 years after May 16, 1972, concerning his operations under the amendments made by Pub. L. 92–297, including a detailed statement of the effectiveness of Pub. L. 92–297 in meeting the needs of the Air Traffic Controller career program and of the air traffic control system plus recommendations for the management of the program or the system.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3382, 3383 of this title.

§ 3382. Involuntary separation for retirement

An air traffic controller who is eligible for immediate retirement under section 8336 of this title may be separated involuntarily from the service if the Secretary determines that the separation of the controller is necessary in the interest of—

(1) aviation safety;

(2) the efficient control of air traffic; or

(3) the preservation of the physical or mental health of the controller.

Chapter 75 of this title does not apply to a determination or action under this section. Separation under this section shall not become final, without the consent of the controller, until the last day of the second month following the day the controller receives a notification of the determination by the Secretary under this section, or, if a review is requested under section 3383 of this title, the last day of the month in which a final decision is issued by a board of review under section 3383(c) of this title, whichever is later. A controller who is to be separated under this section is entitled to training under section 3381 of this title. Separation of such a controller who elects to receive training under section 3381 shall not become final until the last day of the month following the completion of his training.

(Added Pub. L. 92–297, § 3(a), May 16, 1972, 86 Stat. 142; amended Pub. L. 96–347, § 1(b), Sept. 12, 1980, 94 Stat. 1150.)

REFERENCES IN TEXT

For definition of Secretary, referred to in text, see section 2109 of this title.

AMENDMENTS

1980—Pub. L. 96–347 in provisions preceding par. (1) substituted ''Secretary determines'' for ''Secretary of Transportation determines''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–347 effective on 90th day after Sept. 12, 1980, see section 3 of Pub. L. 96–347, set out as a note under section 2109 of this title.

EFFECTIVE DATE

Section effective on 90th day after May 16, 1972, see section 10 of Pub. L. 92–297, set out as a note under section 3381 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3383 of this title.

§ 3383. Determinations; review procedures

(a) An air traffic controller subject to a determination by the Secretary under section 3381(a) or section 3382 of this title, shall be furnished a written notice of the determination and the reasons therefor, and a notification that the controller has 15 days after the receipt of the notification within which to file a written request for reconsideration of the determination. Unless the controller files such a request within the 15 days, or unless the determination is rescinded by the Secretary within the 15 days, the determination shall be final.

(b) If the Secretary does not rescind his determination within 15 days after his receipt of the written request filed by the controller under subsection (a) of this section, the Secretary shall immediately convene a board of review, consisting of—

(1) a person designated by the controller;

(2) a representative of the Executive agency in which the controller is employed designated by the Secretary; and

(3) a representative of the Merit Systems Protection Board, designated by the Chairman, who shall serve as chairman of the board of review.

(c) The board of review shall review evidence supporting and inconsistent with the determination of the Secretary and, within a period of 30 days after being convened, shall issue its findings and furnish copies thereof to the Secretary and the controller. The board may approve or

rescind the determination of the Secretary. A decision by the board under this subsection is final. The Secretary shall take such action as may be necessary to carry out the decision of the board.

(d) Except as provided under section 3382 of this title, the review procedure of this section is in addition to any other review or appeal procedures provided under any other provision of law, but is the sole and exclusive administrative remedy available to a controller within the Executive agency in which such controller is employed.

(Added Pub. L. 92–297, §3(a), May 16, 1972, 86 Stat. 143; amended Pub. L. 95–454, title IX, §906(a)(6), Oct. 13, 1978, 92 Stat. 1225; Pub. L. 96–347, §1(b), (c)(2), (3), Sept. 12, 1980, 94 Stat. 1150.)

REFERENCES IN TEXT

For definition of Secretary, referred to in text, see section 2109 of this title.

AMENDMENTS

1980—Subsec. (a). Pub. L. 96–347, §1(b), substituted ''Secretary under'' for ''Secretary of Transportation under''.

Subsec. (b)(2). Pub. L. 96–347, §1(c)(2), substituted ''the Executive agency in which the controller is employed'' for ''the Department of Transportation''.

Subsec. (d). Pub. L. 96–347, §1(c)(3), substituted ''within the Executive agency in which such controller is employed'' for ''within the Department of Transportation''.

1978—Subsec. (b)(3). Pub. L. 95–454 substituted ''Merit Systems Protection Board'' for ''Civil Service Commission''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–347 effective on 90th day after Sept. 12, 1980, see section 3 of Pub. L. 96–347, set out as a note under section 2109 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

EFFECTIVE DATE

Section effective on 90th day after May 16, 1972, see section 10 of Pub. L. 92–297, set out as a note under section 3381 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3382 of this title.

§ 3384. Regulations

The Secretary is authorized to issue regulations to carry out the provisions of this subchapter.

(Added Pub. L. 92–297, §3(a), May 16, 1972, 86 Stat. 143; amended Pub. L. 96–347, §1(b), Sept. 12, 1980, 94 Stat. 1150.)

REFERENCES IN TEXT

For definition of Secretary, referred to in text, see section 2109 of this title.

AMENDMENTS

1980—Pub. L. 96–347 substituted ''Secretary'' for ''Secretary of Transportation''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–347 effective on 90th day after Sept. 12, 1980, see section 3 of Pub. L. 96–347, set out as a note under section 2109 of this title.

EFFECTIVE DATE

Section effective on 90th day after May 16, 1972, see section 10 of Pub. L. 92–297, set out as a note under section 3381 of this title.

§ 3385. Effect on other authority

This subchapter shall not limit the authority of the Secretary to reassign temporarily an air traffic controller to other duties with or without notice, in the interest of the safe or efficient separation and control of air traffic or the physical or mental health of a controller; or to reassign permanently or separate a controller under any other provision of law.

(Added Pub. L. 92–297, §3(a), May 16, 1972, 86 Stat. 143; amended Pub. L. 96–347, §1(b), Sept. 12, 1980, 94 Stat. 1150.)

REFERENCES IN TEXT

For definition of Secretary, referred to in text, see section 2109 of this title.

AMENDMENTS

1980—Pub. L. 96–347 substituted ''Secretary'' for ''Secretary of Transportation''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–347 effective on 90th day after Sept. 12, 1980, see section 3 of Pub. L. 96–347, set out as a note under section 2109 of this title.

EFFECTIVE DATE

Section effective on 90th day after May 16, 1972, see section 10 of Pub. L. 92–297, set out as a note under section 3381 of this title.

SUBCHAPTER VIII—APPOINTMENT, REASSIGNMENT, TRANSFER, AND DEVELOPMENT IN THE SENIOR EXECUTIVE SERVICE

PRIOR PROVISIONS

A prior subchapter VIII, added Pub. L. 95–437, §3(a), Oct. 10, 1978, 92 Stat. 1056, which related to part-time career employment opportunities, was redesignated as chapter 34 of this title by Pub. L. 95–454, title IX, §906(c)(1)(A), Oct. 13, 1978, 92 Stat. 1226.

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 1204, 1212 of this title; title 38 section 7425.

§ 3391. Definitions

For the purpose of this subchapter, ''agency'', ''Senior Executive Service position'', ''senior executive'', ''career appointee'', ''limited term appointee'', ''limited emergency appointee'', ''noncareer appointee'', and ''general position'' have the meanings set forth in section 3132(a) of this title.

(Added Pub. L. 95–454, title IV, §403(a), Oct. 13, 1978, 92 Stat. 1161.)

PRIOR PROVISIONS

A prior section 3391, added Pub. L. 95–437, §3(a), Oct. 10, 1978, 92 Stat. 1056, which related to definitions for part-time career employment opportunities, was renumbered as section 3401 of this title by Pub. L. 95–454, title IX, §906(c)(1)(B), Oct. 13, 1978, 92 Stat. 1226.

EFFECTIVE DATE

Subchapter effective 9 months after Oct. 13, 1978, and congressional review of provisions of sections 401

through 412 of Pub. L. 95–454, see section 415(a)(1), (b) of Pub. L. 95–454, set out as an Effective Date note under section 3131 of this title.

§ 3392. General appointment provisions

(a) Qualification standards shall be established by the head of each agency for each Senior Executive Service position in the agency—

(1) in accordance with requirements established by the Office of Personnel Management, with respect to standards for career reserved positions, and

(2) after consultation with the Office, with respect to standards for general positions.

(b) Not more than 30 percent of the Senior Executive Service positions authorized under section 3133 of this title may at any time be filled by individuals who did not have 5 years of current continuous service in the civil service immediately preceding their initial appointment to the Senior Executive Service, unless the President certifies to the Congress that the limitation would hinder the efficiency of the Government. In applying the preceding sentence, any break in service of 3 days or less shall be disregarded.

(c)(1) If a career appointee is appointed by the President, by and with the advice and consent of the Senate, to a civilian position in the executive branch which is not in the Senior Executive Service, and the rate of basic pay payable for which is equal to or greater than the rate payable for level V of the Executive Schedule, the career appointee may elect (at such time and in such manner as the Office may prescribe) to continue to have the provisions of this title relating to basic pay, performance awards, awarding of ranks, severance pay, leave, and retirement apply as if the career appointee remained in the Senior Executive Service position from which he was appointed. Such provisions shall apply in lieu of the provisions which would otherwise apply—

(A) to the extent provided under regulations prescribed by the Office, and

(B) so long as the appointee continues to serve under such Presidential appointment.

(2) An election under paragraph (1) may also be made by any career appointee who is appointed to a civilian position in the executive branch—

(A) which is not in the Senior Executive Service; and

(B) which is covered by the Executive Schedule, or the rate of basic pay for which is fixed by statute at a rate equal to 1 of the levels of the Executive Schedule.

An election under this paragraph shall remain effective so long as the appointee continues to serve in the same position.

(d) Appointment or removal of a person to or from any Senior Executive Service position in an independent regulatory commission shall not be subject, directly or indirectly, to review or approval by any officer or entity within the Executive Office of the President.

(Added Pub. L. 95–454, title IV, § 403(a), Oct. 13, 1978, 92 Stat. 1161; amended Pub. L. 101–335, § 7(a), July 17, 1990, 104 Stat. 325.)

References in Text

The Executive Schedule, referred to in subsec. (c), is set out as section 5311 et seq. of this title.

Prior Provisions

A prior section 3392, added Pub. L. 95–437, § 3(a), Oct. 10, 1978, 92 Stat. 1056, which related to the establishment of part-time career employment programs, was renumbered as section 3402 of this title by Pub. L. 95–454, title IX, § 906(c)(1)(B), Oct. 13, 1978, 92 Stat. 1226.

Amendments

1990—Subsec. (c). Pub. L. 101–335 designated existing provisions as par. (1), redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, and added par. (2).

Effective Date of 1990 Amendment

Section 7(b)(1) of Pub. L. 101–335 provided that: ''The amendments made by this section [amending this section] shall take effect on the date of enactment of this Act [July 17, 1990].''

Election by Persons Previously Appointed; Retroactive Performance Awards

Section 7(b)(2), (3) of Pub. L. 101–335, as amended by Pub. L. 102–378, § 7(a), Oct. 2, 1992, 106 Stat. 1359, provided that:

''(2) Election by persons previously appointed.—The Office of Personnel Management shall prescribe regulations (including procedures and deadlines) under which an election under section 3392(c)(2) of title 5, United States Code (as amended by this section) may be made by any individual who—

''(A) on the date of enactment of this Act [July 17, 1990], is serving in a civilian position in the executive branch which—

''(i) is not in the Senior Executive Service; and

''(ii) satisfies section 3392(c)(2)(B) of such title 5 (as so amended);

''(B) was appointed to that position on or after November 1, 1986, and has served continuously in such position since then;

''(C) was a career appointee (within the meaning of section 3132(a)(4) of such title 5) immediately before having been so appointed; and

''(D) was not, based on such individual's appointment to the position described in subparagraph (A), eligible to make an election under section 3392(c) of such title 5 (as then in effect).

An election under this paragraph shall be effective as of the date of appointment to the position described in subparagraph (A).

''(3) Retroactive performance awards.—If an individual elects under paragraph (2) to continue to be subject to performance awards, the head of the agency in which such individual is serving shall determine whether to grant retroactive performance awards for any fiscal years prior to fiscal year 1991 to such individual, and the amount of any such awards, without regard to the provisions of subsection (b) of section 5383 of title 5, United States Code, and subsections (b) and (c) of section 5384 of such title. Before granting an award, the head of the agency shall make a written determination that the individual's performance during the fiscal year for which the award is given was at least fully successful, and shall consider the recommendation of the agency's performance review board with respect to the award. No such award for performance during any fiscal year may be less than 5 percent nor more than 15 percent of the individual's rate of basic pay as of the end of such fiscal year.''

[Pub. L. 102–378, § 7(b), Oct. 2, 1992, 106 Stat. 1359, provided that: ''The amendment made by subsection (a) [enacting section 7(b)(3) of Pub. L. 101–335, set out above] shall be effective as if enacted as a part of section 7 of the Thrift Savings Plan Technical Amendments Act of 1990 [Pub. L. 101–335].'']

§ 3393. Career appointments

(a) Each agency shall establish a recruitment program, in accordance with guidelines which shall be issued by the Office of Personnel Management, which provides for recruitment of career appointees from—

(1) all groups of qualified individuals within the civil service; or

(2) all groups of qualified individuals whether or not within the civil service.

(b) Each agency shall establish one or more executive resources boards, as appropriate, the members of which shall be appointed by the head of the agency from among employees of the agency or commissioned officers of the uniformed services serving on active duty in such agency. The boards shall, in accordance with merit staffing requirements established by the Office, conduct the merit staffing process for career appointees, including—

(1) reviewing the executive qualifications of each candidate for a position to be filled by a career appointee; and

(2) making written recommendations to the appropriate appointing authority concerning such candidates.

(c)(1) The Office shall establish one or more qualifications review boards, as appropriate. It is the function of the boards to certify the executive qualifications of candidates for initial appointment as career appointees in accordance with regulations prescribed by the Office. Of the members of each board more than one-half shall be appointed from among career appointees. Appointments to such boards shall be made on a non-partisan basis, the sole selection criterion being the professional knowledge of public management and knowledge of the appropriate occupational fields of the intended appointee.

(2) The Office shall, in consultation with the various qualification review boards, prescribe criteria for establishing executive qualifications for appointment of career appointees. The criteria shall provide for—

(A) consideration of demonstrated executive experience;

(B) consideration of successful participation in a career executive development program which is approved by the Office; and

(C) sufficient flexibility to allow for the appointment of individuals who have special or unique qualities which indicate a likelihood of executive success and who would not otherwise be eligible for appointment.

(d) An individual's initial appointment as a career appointee shall become final only after the individual has served a 1-year probationary period as a career appointee.

(e) Each career appointee shall meet the executive qualifications of the position to which appointed, as determined in writing by the appointing authority.

(f) The title of each career reserved position shall be published in the Federal Register.

(g) A career appointee may not be removed from the Senior Executive Service or civil service except in accordance with the applicable provisions of sections 1215, 3393a, 3592, 3595, 7532, or 7543 of this title.

(Added Pub. L. 95–454, title IV, § 403(a), Oct. 13, 1978, 92 Stat. 1161; amended Pub. L. 97–35, title XVII, § 1704(c), Aug. 13, 1981, 95 Stat. 758; Pub. L. 98–615, title III, § 306(b)(1), Nov. 8, 1984, 98 Stat. 3220; Pub. L. 101–12, § 9(b), Apr. 10, 1989, 103 Stat. 35; Pub. L. 101–194, title V, § 506(b)(2), Nov. 30, 1989, 103 Stat. 1758; Pub. L. 101–280, § 6(d)(1), May 4, 1990, 104 Stat. 160.)

PRIOR PROVISIONS

A prior section 3393, added Pub. L. 95–437, § 3(a), Oct. 10, 1978, 92 Stat. 1057, which related to limitations concerning part-time career employment opportunities, was renumbered as section 3403 of this title by Pub. L. 95–454, title IX, § 906(c)(1)(B), Oct. 13, 1978, 92 Stat. 1226.

AMENDMENTS

1990—Subsec. (g). Pub. L. 101–280 made technical correction to directory language of Pub. L. 101–194, see 1989 Amendment below.

1989—Subsec. (g). Pub. L. 101–194, as amended by Pub. L. 101–280, inserted ''3393a,'' after ''1215,''.

Pub. L. 101–12 substituted ''1215'' for ''1207''.

1984—Subsec. (b). Pub. L. 98–615 inserted provision referring to commissioned officers of the uniformed services serving on active duty in such agency in provisions preceding par. (1).

1981—Subsec. (g). Pub. L. 97–35 added subsec. (g).

EFFECTIVE DATE OF 1989 AMENDMENTS

Amendment by Pub. L. 101–194 effective Jan. 1, 1991, see section 506(d) of Pub. L. 101–194, set out as a note under section 3151 of this title.

Amendment by Pub. L. 101–12 effective 90 days following Apr. 10, 1989, see section 11 of Pub. L. 101–12, set out as a note under section 1201 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–615 effective following expiration of 90-day period beginning on Nov. 8, 1984, see section 307 of Pub. L. 98–615, set out as a note under section 3135 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective June 1, 1981, with certain exceptions and conditions, see section 1704(e) of Pub. L. 97–35, set out as an Effective Date note under section 3595 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3393a, 3592, 3593, 3594, 3595, 7541 of this title.

§ 3393a. Recertification

(a)(1) In order to ensure that the performance of career appointees demonstrates the excellence needed to meet the goals of the Senior Executive Service, as set forth in section 3131, each career appointee shall be subject to recertification by the employing agency in accordance with the provisions of this section.

(2) Beginning in calendar year 1991, and recurring every third calendar year thereafter, the head of an agency shall determine a time during such calendar year when the performance of career appointees in the agency shall be subject to recertification. Recertification shall not be required of any career appointee who has not been continuously employed as a senior executive for the 156 weeks preceding the time determined for the recertification. For the purposes of the previous sentence, a break in service of 6 months shall be deemed not to interrupt the 156 weeks of continuous employment.

(b) The supervising official of each career appointee shall submit to a performance review board established by the agency under section 4314 a recommendation as to whether the career appointee's performance justifies recertification as a senior executive, based on such factors as the career appointee's performance ratings for the 3 preceding years under section 4314, any award or other recognition received by the career appointee, any developmental activities of the career appointee, and any other relevant factors. The supervising official's recommendation shall reflect that official's view as to whether the career appointee's overall performance over the 3 preceding years has demonstrated the excellence expected of a senior executive in relation to the written performance requirements for the career appointee's senior executive position as established under section 4312(b). The career appointee may submit to the performance review board a statement of accomplishments and other documentation giving evidence of the quality of the career appointee's performance.

(c)(1) After considering the recommendation and other information received under subsection (b), the performance review board shall submit to the appointing authority a recommendation as to whether the career appointee should be recertified, conditionally recertified, or not recertified as a senior executive. If the board proposes to recommend conditional recertification or nonrecertification, then the affected appointee shall be so notified and shall have the opportunity to appear before the performance review board. If the board is recommending that the career appointee be recertified, the board may also recommend that the career appointee's rate of basic pay be increased to a higher rate established under section 5382. If the board is recommending that the career appointee be conditionally recertified, the board may recommend that the career appointee's pay be reduced to the next lower rate established under section 5382. The board shall also provide to the appointing authority the recommendation and other information received under subsection (b).

(2) More than one-half of the members of a performance review board under this section shall consist of career appointees. The requirement of the preceding sentence shall not apply in any case in which the Office of Personnel Management determines that there exists an insufficient number of career appointees available to comply with the requirement.

(d)(1) If the appointing authority determines that the career appointee's performance during the preceding 3 years demonstrates the excellence expected of a senior executive, the appointing authority shall recommend to the head of the agency that the career appointee be recertified as a senior executive.

(2) If the appointing authority determines that the career appointee's performance has not demonstrated the excellence expected of a senior executive, the appointing authority shall recommend to the head of the agency that the career appointee be conditionally recertified as a senior executive or not be recertified as a senior executive.

(e)(1) If the head of the agency decides that the career appointee's performance warrants recertification as a senior executive, the career appointee shall continue in the Senior Executive Service. If a career appointee is recertified as a senior executive, the career appointee's rate of basic pay may not be reduced at the time of recertification.

(2) If the head of the agency decides that the career appointee's performance does not warrant full recertification, but does warrant conditional recertification, the career appointee—

(A) shall remain a career appointee in the Senior Executive Service;

(B) shall be subject to continuing close review of the career appointee's performance by the supervising official in coordination with an executive resources board established under section 3393, in accordance with a performance improvement plan developed by the supervising official and subject to the approval of the executive resources board;

(C) may, if the head of the agency so determines, be reduced to the next lower rate of basic pay established under section 5382; and

(D) shall be removed from the Senior Executive Service if the career appointee is not recertified as a senior executive at the end of the 12-month period following the conditional recertification.

If, at the end of the 12-month period following the conditional recertification, the career appointee is recertified as a senior executive, any reduction that was made in the career appointee's rate of basic pay under subparagraph (C) shall be restored prospectively.

(3) If the head of the agency decides that the career appointee's performance does not demonstrate that the career appointee qualifies for recertification or conditional recertification as a senior executive, the career appointee shall be removed from the Senior Executive Service in accordance with section 3592.

(f) The Office of Personnel Management shall prescribe standards and procedures to ensure consistency and fairness for the process of recertification under this section.

(Added Pub. L. 101–194, title V, § 506(a)(1), Nov. 30, 1989, 103 Stat. 1756.)

EFFECTIVE DATE

Section effective Jan. 1, 1991, see section 506(d) of Pub. L. 101–194, set out as an Effective Date of 1989 Amendment note under section 3151 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3151, 3393, 3592, 3593, 3594, 7701, 8336, 8414 of this title; title 10 sections 1590, 1601; title 22 section 3945.

§ 3394. Noncareer and limited appointments

(a) Each noncareer appointee, limited term appointee, and limited emergency appointee shall meet the qualifications of the position to which appointed, as determined in writing by the appointing authority.

(b) An individual may not be appointed as a limited term appointee or as a limited emergency appointee without the prior approval of the exercise of such appointing authority by the Office of Personnel Management.

(Added Pub. L. 95–454, title IV, § 403(a), Oct. 13, 1978, 92 Stat. 1162.)

PRIOR PROVISIONS

A prior section 3394, added Pub. L. 95–437, §3(a), Oct. 10, 1978, 92 Stat. 1057, which related to personnel ceilings, was renumbered as section 3404 of this title by Pub. L. 95–454, title IX, §906(c)(1)(B), Oct. 13, 1978, 92 Stat. 1226.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3395 of this title; title 20 section 3461.

§ 3395. Reassignment and transfer within the Senior Executive Service

(a)(1) A career appointee in an agency—

(A) may, subject to paragraph (2) of this subsection, be reassigned to any Senior Executive Service position in the same agency for which the appointee is qualified; and

(B) may transfer to a Senior Executive Service position in another agency for which the appointee is qualified, with the approval of the agency to which the appointee transfers.

(2)(A) Except as provided in subparagraph (B) of this paragraph, a career appointee may be reassigned to any Senior Executive Service position only if the career appointee receives written notice of the reassignment at least 15 days before the effective date of such reassignment.

(B)(i) A career appointee may not be reassigned to a Senior Executive Service position outside the career appointee's commuting area unless—

(I) before providing notice under subclause (II) of this clause (or seeking or obtaining the consent of the career appointee under clause (ii) of this subparagraph to waive such notice), the agency consults with the career appointee on the reasons for, and the appointee's preferences with respect to, the proposed reassignment; and

(II) the career appointee receives written notice of the reassignment, including a statement of the reasons for the reassignment, at least 60 days before the effective date of the reassignment.

(ii) Notice of reassignment under clause (i)(II) of this subparagraph may be waived with the written consent of the career appointee involved.

(b)(1) Notwithstanding section 3394(b) of this title, a limited emergency appointee may be reassigned to another Senior Executive Service position in the same agency established to meet a bona fide, unanticipated, urgent need, except that the appointee may not serve in one or more positions in such agency under such appointment in excess of 18 months.

(2) Notwithstanding section 3394(b) of this title, a limited term appointee may be reassigned to another Senior Executive Service position in the same agency the duties of which will expire at the end of a term of 3 years or less, except that the appointee may not serve in one or more positions in the agency under such appointment in excess of 3 years.

(c) A limited term appointee or a limited emergency appointee may not be appointed to, or continue to hold, a position under such an appointment if, within the preceding 48 months, the individual has served more than 36 months, in the aggregate, under any combination of such types of appointment.

(d) A noncareer appointee in an agency—

(1) may be reassigned to any general position in the agency for which the appointee is qualified; and

(2) may transfer to a general position in another agency with the approval of the agency to which the appointee transfers.

(e)(1) Except as provided in paragraph (2) of this subsection, a career appointee in an agency may not be involuntarily reassigned—

(A) within 120 days after an appointment of the head of the agency; or

(B) within 120 days after the appointment in the agency of the career appointee's most immediate supervisor who—

(i) is a noncareer appointee; and

(ii) has the authority to make an initial appraisal of the career appointee's performance under subchapter II of chapter 43.

(2) Paragraph (1) of this subsection does not apply with respect to—

(A) any reassignment under section 4314(b)(3) of this title; or

(B) any disciplinary action initiated before an appointment referred to in paragraph (1) of this subsection.

(3) For the purpose of applying paragraph (1) to a career appointee, any days (not to exceed a total of 60) during which such career appointee is serving pursuant to a detail or other temporary assignment apart from such appointee's regular position shall not be counted in determining the number of days that have elapsed since an appointment referred to in subparagraph (A) or (B) of such paragraph.

(Added Pub. L. 95–454, title IV, §403(a), Oct. 13, 1978, 92 Stat. 1163; amended Pub. L. 98–615, title III, §304(a), Nov. 8, 1984, 98 Stat. 3218; Pub. L. 102–175, §3, Dec. 2, 1991, 105 Stat. 1222.)

PRIOR PROVISIONS

A prior section 3395, added Pub. L. 95–437, §3(a), Oct. 10, 1978, 92 Stat. 1057, which related to nonapplicability of part-time career employment opportunities program was renumbered as section 3405 of this title by Pub. L. 95–454, title IX, §906(c)(1)(B), Oct. 13, 1978, 92 Stat. 1226.

AMENDMENTS

1991—Subsec. (e)(1)(B)(ii). Pub. L. 102–175, §3(1), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ''has the authority to reassign the career appointee.''

Subsec. (e)(3). Pub. L. 102–175, §3(2), added par. (3).

1984—Subsec. (a)(2). Pub. L. 98–615 designated existing provisions as subpar. (A), inserted exception relating to subpar. (B), and added subpar. (B).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–615 effective Nov. 8, 1984, see section 307 of Pub. L. 98–615, set out as a note under section 3135 of this title.

§ 3396. Development for and within the Senior Executive Service

(a) The Office of Personnel Management shall establish programs for the systematic development of candidates for the Senior Executive Service and for the continuing development of senior executives, or require agencies to estab-

lish such programs which meet criteria prescribed by the Office.

(b) The Office shall assist agencies in the establishment of programs required under subsection (a) of this section and shall monitor the implementation of the programs. If the Office finds that any agency's program under subsection (a) of this section is not in compliance with the criteria prescribed under such subsection, it shall require the agency to take such corrective action as may be necessary to bring the program into compliance with the criteria.

(c)(1) The head of an agency may grant a sabbatical to any career appointee for not to exceed 11 months in order to permit the appointee to engage in study or uncompensated work experience which will contribute to the appointee's development and effectiveness. A sabbatical shall not result in loss of, or reduction in, pay, leave to which the career appointee is otherwise entitled, credit for time or service, or performance or efficiency rating. The head of the agency may authorize in accordance with chapter 57 of this title such travel expenses (including per diem allowances) as the head of the agency may determine to be essential for the study or experience.

(2) A sabbatical under this subsection may not be granted to any career appointee—

(A) more than once in any 10-year period;

(B) unless the appointee has completed 7 years of service—

(i) in one or more positions in the Senior Executive Service;

(ii) in one or more other positions in the civil service the level of duties and responsibilities of which are equivalent to the level of duties and responsibilities of positions in the Senior Executive Service; or

(iii) in any combination of such positions, except that not less than 2 years of such 7 years of service must be in the Senior Executive Service; and

(C) if the appointee is eligible for voluntary retirement with a right to an immediate annuity under section 8336 of this title.

Any period of assignment under section 3373 of this title, relating to assignments of employees to State and local governments, shall not be considered a period of service for the purpose of subparagraph (B) of this paragraph.

(3)(A) Any career appointee in an agency may be granted a sabbatical under this subsection only if the appointee agrees, as a condition of accepting the sabbatical, to serve in the civil service upon the completion of the sabbatical for a period of 2 consecutive years.

(B) Each agreement required under subparagraph (A) of this paragraph shall provide that in the event the career appointee fails to carry out the agreement (except for good and sufficient reason as determined by the head of the agency who granted the sabbatical) the appointee shall be liable to the United States for payment of all expenses (including salary) of the sabbatical. The amount shall be treated as a debt due the United States.

(d)(1) The Office shall encourage and assist individuals to improve their skills and increase their contribution by service in a variety of agencies as well as by accepting temporary placements in State or local governments or in the private sector.

(2) In order to promote the professional development of career appointees and to assist them in achieving their maximum levels of proficiency, the Office shall, in a manner consistent with the needs of the Government provide appropriate informational services and otherwise encourage career appointees to take advantage of any opportunities relating to—

(A) sabbaticals;

(B) training; or

(C) details or other temporary assignments in other agencies, State or local governments, or the private sector.

(Added Pub. L. 95–454, title IV, § 403(a), Oct. 13, 1978, 92 Stat. 1163; amended Pub. L. 102–175, § 4, Dec. 2, 1991, 105 Stat. 1223.)

PRIOR PROVISIONS

A prior section 3396, added Pub. L. 95–437, § 3(a), Oct. 10, 1978, 92 Stat. 1057, which related to issuance of regulations, was renumbered as section 3406 of this title by Pub. L. 95–454, title IX, § 906(c)(1)(B), Oct. 13, 1978, 92 Stat. 1226.

AMENDMENTS

1991—Subsec. (d). Pub. L. 102–175 designated existing provisions as par. (1) and added par. (2).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3151 of this title; title 10 sections 1590, 1601; title 22 section 3984.

§ 3397. Regulations

The Office of Personnel Management shall prescribe regulations to carry out the purpose of this subchapter.

(Added Pub. L. 95–454, title IV, § 403(a), Oct. 13, 1978, 92 Stat. 1164.)

PRIOR PROVISIONS

A prior section 3397, added Pub. L. 95–437, § 3(a), Oct. 10, 1978, 92 Stat. 1058, which related to reports, was renumbered as section 3407 of this title by Pub. L. 95–454, title IX, § 906(c)(1)(B), Oct. 13, 1978, 92 Stat. 1226.

A prior section 3398, added Pub. L. 95–437, § 3(a), Oct. 10, 1978, 92 Stat. 1058, which related to representation by employee organizations of employees employed on a part-time career employment basis, was renumbered as section 3408 of this title by Pub. L. 95–454, title IX, § 906(c)(1)(B), Oct. 13, 1978, 92 Stat. 1226.

CHAPTER 34—PART-TIME CAREER EMPLOYMENT OPPORTUNITIES

Sec.
3401. Definitions.
3402. Establishment of part-time career employment programs.
3403. Limitations.
3404. Personnel ceilings.
3405. Nonapplicability.
3406. Regulations.
3407. Reports.
3408. Employee organization representation.

AMENDMENTS

1978—Pub. L. 95–437, § 3(b), Oct. 10, 1978, 92 Stat. 1058, added items 3391 to 3398, which were renumbered 3401 to 3408 by Pub. L. 95–454, title IX, § 906(c)(1)(A), Oct. 13, 1978, 92 Stat. 1226, which section also substituted ''CHAPTER 34'' for ''SUBCHAPTER VIII'' in heading.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 38 section 7407.

§ 3401. Definitions

For the purpose of this chapter—

(1) ''agency'' means—

(A) an Executive agency;

(B) a military department;

(C) an agency in the judicial branch;

(D) the Library of Congress;

(E) the Botanic Garden; and

(F) the Office of the Architect of the Capitol; but does not include—

(i) a Government controlled corporation;

(ii) the Tennessee Valley Authority;

(iii) the Virgin Islands Corporation;

(iv) the Panama Canal Company;

(v) the Federal Bureau of Investigation, Department of Justice;

(vi) the Central Intelligence Agency; and

(vii) the National Security Agency, Department of Defense; and

(2) ''part-time career employment'' means part-time employment of 16 to 32 hours a week (or 32 to 64 hours during a biweekly pay period in the case of a flexible or compressed work schedule under subchapter II of chapter 61 of this title) under a schedule consisting of an equal or varied number of hours per day, whether in a position which would be part-time without regard to this section or one established to allow job-sharing or comparable arrangements, but does not include employment on a temporary or intermittent basis.

(Added Pub. L. 95–437, § 3(a), Oct. 10, 1978, 92 Stat. 1056, § 3391; renumbered § 3401 and amended Pub. L. 95–454, title IX, § 906(c)(1)(B), (2)(A), Oct. 13, 1978, 92 Stat. 1226; Pub. L. 97–221, § 3, July 23, 1982, 96 Stat. 233; Pub. L. 97–468, title VI, § 615(b)(1)(B), Jan. 14, 1983, 96 Stat. 2578; Pub. L. 102–378, § 2(15), Oct. 2, 1992, 106 Stat. 1347.)

REFERENCES IN TEXT

For definition of Panama Canal Company, referred to in par. (1)(iv), see section 3602(b) of Title 22, Foreign Relations and Intercourse.

AMENDMENTS

1992—Par. (1)(iii). Pub. L. 102–378, which directed the amendment of cl. (iv) by substituting ''Virgin Islands'' for ''Virgin Island'', was executed by making the substitution in cl. (iii) to reflect the probable intent of Congress.

1983—Par. (1)(iii) to (viii). Pub. L. 97–468 struck out cl. (iii) which excluded the Alaska Railroad, and redesignated cls. (iv) to (viii) as (iii) to (vii), respectively.

1982—Par. (2). Pub. L. 97–221 inserted ''(or 32 to 64 hours during a biweekly pay period in the case of a flexible or compressed work schedule under subchapter II of chapter 61 of this title)'' after ''week''.

1978—Pub. L. 95–454, § 906(c)(1)(B), renumbered section 3391 of this title as this section.

Pub. L. 95–454, § 906(c)(2)(A), substituted ''chapter'' for ''subchapter''.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–468 effective on date of transfer of Alaska Railroad to the State [Jan. 5, 1985], pursuant to section 1203 of Title 45, Railroads, see section 615(b) of Pub. L. 97–468.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

SHORT TITLE OF 1978 AMENDMENT

Section 1 of Pub. L. 95–437 provided that: ''This Act [enacting this chapter, amending sections 8347, 8716, 8906, and 8913 of this title, and enacting provisions set out as notes under this section and sections 3407 and 8906 of this title] may be cited as the 'Federal Employees Part-Time Career Employment Act of 1978'.''

CONGRESSIONAL FINDINGS AND PURPOSE

Section 2 of Pub. L. 95–437 provided that:

''(a) The Congress finds that—

''(1) many individuals in our society possess great productive potential which goes unused because they cannot meet the requirements of a standard workweek; and

''(2) part-time permanent employment—

''(A) provides older individuals with a gradual transition into retirement;

''(B) provides employment opportunities to handicapped individuals or others who require a reduced workweek;

''(C) provides parents opportunities to balance family responsibilities with the need for additional income;

''(D) benefits students who must finance their own education or vocational training;

''(E) benefits the Government, as an employer, by increasing productivity and job satisfaction, while lowering turnover rates and absenteeism, offering management more flexibility in meeting work requirements, and filling shortages in various occupations; and

''(F) benefits society by offering a needed alternative for those individuals who require or prefer shorter hours (despite the reduced income), thus increasing jobs available to reduce unemployment while retaining the skills of individuals who have training and experience.

''(b) The purpose of this Act [enacting this chapter, amending sections 8347, 8716, 8906, and 8913 of this title, and enacting provisions set out as notes under this section and sections 3407 and 8906 of this title] is to provide increased part-time career employment opportunities throughout the Federal Government.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6323, 8347, 8402, 8716, 8906, 8913 of this title.

§ 3402. Establishment of part-time career employment programs

(a)(1) In order to promote part-time career employment opportunities in all grade levels, the head of each agency, by regulation, shall establish and maintain a program for part-time career employment within such agency. Such regulations shall provide for—

(A) the review of positions which, after such positions become vacant, may be filled on a part-time career employment basis (including the establishment of criteria to be used in identifying such positions);

(B) procedures and criteria to be used in connection with establishing or converting positions for part-time career employment, subject to the limitations of section 3403 of this title;

(C) annual goals for establishing or converting positions for part-time career employment, and a timetable setting forth interim and final deadlines for achieving such goals;

(D) a continuing review and evaluation of the part-time career employment program established under such regulations; and

(E) procedures for notifying the public of vacant part-time positions in such agency, uti-

lizing facilities and funds otherwise available to such agency for the dissemination of information.

(2) The head of each agency shall provide for communication between, and coordination of the activities of, the individuals within such agency whose responsibilities relate to the part-time career employment program established within that agency.

(3) Regulations established under paragraph (1) of this subsection may provide for such exceptions as may be necessary to carry out the mission of the agency.

(b)(1) The Office of Personnel Management, by regulation, shall establish and maintain a program under which it shall, on the request of an agency, advise and assist such agency in the establishment and maintenance of its part-time career employment program under this chapter.

(2) The Office shall conduct a research and demonstration program with respect to part-time career employment within the Federal Government. In particular, such program shall be directed to—

(A) determining the extent to which part-time career employment may be used in filling positions which have not traditionally been open for such employment on any extensive basis, such as supervisory, managerial, and professional positions;

(B) determining the extent to which job-sharing arrangements may be established for various occupations and positions; and

(C) evaluating attitudes, benefits, costs, efficiency, and productivity associated with part-time career employment, as well as its various sociological effects as a mode of employment.

(Added Pub. L. 95–437, § 3(a), Oct. 10, 1978, 92 Stat. 1056, § 3392; renumbered § 3402 and amended Pub. L. 95–454, title IX, § 906(c)(1)(B), (2)(B), Oct. 13, 1978, 92 Stat. 1226.)

AMENDMENTS

1978—Pub. L. 95–454, § 906(c)(1)(B), renumbered section 3392 of this title as this section.

Subsec. (a)(1)(B). Pub. L. 95–454, § 906(c)(2)(B)(i), substituted ''3403'' for ''3393''.

Subsec. (b)(1). Pub. L. 95–454, § 906(c)(2)(B)(ii), substituted ''Office of Personnel Management'' for ''Civil Service Commission'' and ''chapter'' for ''subchapter''.

Subsec. (b)(2). Pub. L. 95–454, § 906(c)(2)(B)(iii), substituted ''Office'' for ''Commission''.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3407 of this title.

§ 3403. Limitations

(a) An agency shall not abolish any position occupied by an employee in order to make the duties of such position available to be performed on a part-time career employment basis.

(b) Any person who is employed on a full-time basis in an agency shall not be required to accept part-time employment as a condition of continued employment.

(Added Pub. L. 95–437, § 3(a), Oct. 10, 1978, 92 Stat. 1057, § 3393; renumbered § 3403, Pub. L. 95–454, title IX, § 906(c)(1)(B), Oct. 13, 1978, 92 Stat. 1226.)

AMENDMENTS

1978—Pub. L. 95–454 renumbered section 3393 of this title as this section.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3402 of this title.

§ 3404. Personnel ceilings

In administering any personnel ceiling applicable to an agency (or unit therein), an employee employed by such agency on a part-time career employment basis shall be counted as a fraction which is determined by dividing 40 hours into the average number of hours of such employee's regularly scheduled workweek. This section shall become effective on October 1, 1980.

(Added Pub. L. 95–437, § 3(a), Oct. 10, 1978, 92 Stat. 1057, § 3394; renumbered § 3404, Pub. L. 95–454, title IX, § 906(c)(1)(B), Oct. 13, 1978, 92 Stat. 1226.)

AMENDMENTS

1978—Pub. L. 95–454 renumbered section 3394 of this title as this section.

§ 3405. Nonapplicability

(a) If, on the date of enactment of this chapter, there is in effect with respect to positions within an agency a collective-bargaining agreement which establishes the number of hours of employment a week, then this chapter shall not apply to those positions.

(b) This chapter shall not require part-time career employment in positions the rate of basic pay for which is fixed at a rate equal to or greater than the minimum rate payable under section 5376.

(Added Pub. L. 95–437, § 3(a), Oct. 10, 1978, 92 Stat. 1057, § 3395; renumbered § 3405 and amended Pub. L. 95–454, title IX, § 906(c)(1)(B), (2)(C), Oct. 13, 1978, 92 Stat. 1226, 1227; Pub. L. 101–509, title V, § 529 [title I, § 101(b)(9)(D)], Nov. 5, 1990, 104 Stat. 1427, 1441.)

REFERENCES IN TEXT

The date of enactment of this chapter, referred to in subsec. (a), is the date of the enactment of Pub. L. 95–437, which was approved Oct. 10, 1978.

AMENDMENTS

1990—Subsec. (b). Pub. L. 101–509 substituted ''payable under section 5376'' for ''fixed for GS–16 of the General Schedule''.

1978—Pub. L. 95–454, § 906(c)(1)(B), renumbered section 3395 of this title as this section.

Subsecs. (a), (b). Pub. L. 95–454, § 906(c)(2)(C), substituted ''chapter'' for ''subchapter'' wherever appearing.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–509 effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title III, § 305] of Pub. L. 101–509, set out as a note under section 5301 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

§ 3406. Regulations

Before any regulation is prescribed under this chapter, a copy of the proposed regulation shall

be published in the Federal Register and an opportunity provided to interested parties to present written comment and, where practicable, oral comment. Initial regulations shall be prescribed not later than 180 days after the date of the enactment of this chapter.

(Added Pub. L. 95–437, §3(a), Oct. 10, 1978, 92 Stat. 1057, §3396; renumbered §3406 and amended Pub. L. 95–454, title IX, §906(c)(1)(B), (2)(C), Oct. 13, 1978, 92 Stat. 1226, 1227.)

REFERENCES IN TEXT

The date of the enactment of this chapter, referred to in text, is the date of the enactment of Pub. L. 95–437, which was approved Oct. 10, 1978.

AMENDMENTS

1978—Pub. L. 95–453, §901(c)(1)(B), renumbered section 3396 of this title as this section.

Pub. L. 95–454, §906(c)(2)(C), substituted ''chapter'' for ''subchapter'' wherever appearing.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

§ 3407. Reports

(a) Each agency shall prepare and transmit on a biannual basis a report to the Office of Personnel Management on its activities under this subchapter, including—

(1) details on such agency's progress in meeting part-time career employment goals established under section 3402 of this title; and

(2) an explanation of any impediments experienced by such agency in meeting such goals or in otherwise carrying out the provisions of this chapter, together with a statement of the measures taken to overcome such impediments.

(b) The Office shall include in its annual report under section 1308 of this title a statement of its activities under this chapter, and a description and evaluation of the activities of agencies in carrying out the provisions of this chapter.

(Added Pub. L. 95–437, §3(a), Oct. 10, 1978, 92 Stat. 1058, §3397; renumbered §3407 and amended Pub. L. 95–454, title IX, §906(c)(1)(B), (2)(D), (E), Oct. 13, 1978, 92 Stat. 1226, 1227.)

REFERENCES IN TEXT

Section 1308 of this title, referred to in subsec. (b), was amended by section 121 of Pub. L. 96–470 which in part repealed section 1308(a) relating to the annual report of the Office of Personnel Management.

AMENDMENTS

1978—Pub. L. 95–454, §906(c)(1)(B), renumbered section 3397 of this title as this section.

Subsec. (a). Pub. L. 95–454, §906(c)(2)(D), substituted ''Office of Personnel Management'' for ''Civil Service Commission'', ''3402'' for ''3392'' in par. (1), and ''chapter'' for ''subchapter'' in par. (2).

Subsec. (b). Pub. L. 95–454, §906(c)(2)(E), substituted ''Office'' for ''Commission'' and ''chapter'' for ''subchapter'' wherever appearing.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

EXTENSION OF PART-TIME CAREER EMPLOYMENT OPPORTUNITIES TO OLDER INDIVIDUALS, HANDICAPPED INDIVIDUALS, PARENTS, AND STUDENTS

Section 5 of Pub. L. 95–437, as amended by Pub. L. 95–454, title IX, §906(c)(3), Oct. 13, 1978, 92 Stat. 1227, provided that: ''Each report prepared by an agency under section 3407(a) of title 5, United States Code (as added by this Act), shall, to the extent practicable, indicate the extent to which part-time career employment opportunities have been extended by such agency during the period covered by such report to each group referred to in subparagraphs (A), (B), (C), and (D) of section 2(a)(2) of this Act [set out as a note under section 3401 of this title].''

§ 3408. Employee organization representation

If an employee organization has been accorded exclusive recognition with respect to a unit within an agency, then the employee organization shall be entitled to represent all employees within that unit employed on a part-time career employment basis.

(Added Pub. L. 95–437, §3(a), Oct. 10, 1978, 92 Stat. 1058, §3398; renumbered §3408, Pub. L. 95–454, title IX, §906(c)(1)(B), Oct. 13, 1978, 92 Stat. 1226.)

AMENDMENTS

1978—Pub. L. 95–454 renumbered section 3398 of this title as this section.

CHAPTER 35—RETENTION PREFERENCE, RESTORATION, AND REEMPLOYMENT

SUBCHAPTER I—RETENTION PREFERENCE

Sec.
3501. Definitions; application.
3502. Order of retention.
3503. Transfer of functions.
3504. Preference eligibles; retention; physical qualifications; waiver.

[SUBCHAPTER II—REPEALED]

[3551. Repealed.]

SUBCHAPTER III—REINSTATEMENT OR RESTORATION AFTER SUSPENSION OR REMOVAL FOR NATIONAL SECURITY

3571. Reinstatement or restoration; individuals suspended or removed for national security.

SUBCHAPTER IV — REEMPLOYMENT AFTER SERVICE WITH AN INTERNATIONAL ORGANIZATION

3581. Definitions.
3582. Rights of transferring employees.
3583. Computations.
3584. Regulations.

SUBCHAPTER V—REMOVAL, REINSTATEMENT, AND GUARANTEED PLACEMENT IN THE SENIOR EXECUTIVE SERVICE

3591. Definitions.
3592. Removal from the Senior Executive Service.
3593. Reinstatement in the Senior Executive Service.
3594. Guaranteed placement in other personnel systems.
3595. Reduction in force in the Senior Executive Service.
3595a. Furlough in the Senior Executive Service.

Sec.
3596. Regulations.
SUBCHAPTER VI—REEMPLOYMENT FOLLOWING LIMITED APPOINTMENT IN THE FOREIGN SERVICE
3597. Reemployment following limited appointment in the Foreign Service.

AMENDMENTS

1994—Pub. L. 103–353, §2(b)(2)(C), Oct. 13, 1994, 108 Stat. 3169, struck out item for subchapter II ''RESTORATION AFTER ACTIVE DUTY OR TRAINING DUTY'' and item 3551 ''Restoration; Reserves and National Guardsmen''.

1984—Pub. L. 98–615, title III, §306(c)(2), Nov. 8, 1984, 98 Stat. 3220, added item 3595a.

1981—Pub. L. 97–35, title XVII, §1704(a)(2), Aug. 13, 1981, 95 Stat. 757, redesignated item 3595 as 3596, and added item 3595.

1980—Pub. L. 96–465, title II, §2301(b), Oct. 17, 1980, 94 Stat. 2164, added item for subchapter VI and item 3597.

1978—Pub. L. 95–454, title IV, §404(c), Oct. 13, 1978, 92 Stat. 1167, added item for subchapter V and items 3591 to 3595.

SUBCHAPTER I—RETENTION PREFERENCE

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in title 22 sections 3964, 4010a; title 42 section 237.

§ 3501. Definitions; application

(a) For the purpose of this subchapter, except section 3504—

(1) ''active service'' has the meaning given it by section 101 of title 37;

(2) ''a retired member of a uniformed service'' means a member or former member of a uniformed service who is entitled, under statute, to retired, retirement, or retainer pay on account of his service as such a member; and

(3) a preference eligible employee who is a retired member of a uniformed service is considered a preference eligible only if—

(A) his retirement was based on disability—

(i) resulting from injury or disease received in line of duty as a direct result of armed conflict; or

(ii) caused by an instrumentality of war and incurred in the line of duty during a period of war as defined by sections 101 and 1101 of title 38;

(B) his service does not include twenty or more years of full-time active service, regardless of when performed but not including period of active duty for training; or

(C) on November 30, 1964, he was employed in a position to which this subchapter applies and thereafter he continued to be so employed without a break in service of more than 30 days.

(b) Except as otherwise provided by this subsection and section 3504 of this title, this subchapter applies to each employee in or under an Executive agency. This subchapter does not apply to an employee whose appointment is required by Congress to be confirmed by, or made with the advice and consent of, the Senate or to a member of the Senior Executive Service or the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 428; Pub. L. 94–183, §2(8), Dec. 31, 1975, 89 Stat. 1057; Pub. L. 95–454, title IV, §404(a), Oct. 13, 1978, 92 Stat. 1165; Pub. L. 100–325, §2(e), May 30, 1988, 102 Stat. 581; Pub. L. 102–83, §5(c)(2), Aug. 6, 1991, 105 Stat. 406.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(a)(1), (2) ...	5 U.S.C. 3101 (as applicable to 5 U.S.C. 861).	Aug. 19, 1964, Pub. L. 88–448, §101 (as applicable to §202), 78 Stat. 484.
(a)(3)	5 U.S.C. 861(b).	June 27, 1944, ch. 287, §12(b); added Aug. 19, 1964, Pub. L. 88–448, §202(4) (''(b)''), 78 Stat. 486.

In subsection (a), the definitions of ''uniformed services'' and ''armed forces'' are omitted as unnecessary in view of the definitions in section 2101. The definition of ''civilian office'' is omitted as unnecessary as subsection (b) of this section states the application of this subchapter.

In subsection (a)(3), the words ''Notwithstanding any other provision of this Act'' are omitted as unnecessary. The words ''preference eligible employee'' are coextensive with and substituted for ''employee * * * included under section 2 of this Act'' in view of the definition of preference eligible in section 2108. In paragraph (3)(C), the words ''on November 30, 1964, he was employed in a position to which this subchapter applies and thereafter he continued to be so employed'' are substituted for ''immediately prior to the effective date of this subsection, he was employed in a civilian office to which this Act applies and, on and after such date, he continues to be employed in any such office''.

Subsection (b) is supplied on authority of sections 2, 12, and 20 of the Act of June 27, 1944, ch. 287, 58 Stat. 387, 391, which are carried into this title.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preference to the report.

AMENDMENTS

1991—Subsec. (a)(3)(A)(ii). Pub. L. 102–83 substituted reference to section 1101 of title 38 for reference to section 301 of title 38.

1988—Subsec. (b). Pub. L. 100–325 inserted reference to Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service.

1978—Subsec. (b). Pub. L. 95–454 inserted reference to a member of Senior Executive Service.

1975—Subsec. (b). Pub. L. 94–183 struck out '', except an employee whose appointment is made under section 3311 of title 39'' after ''or made with the advice and consent of, the Senate''.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 9 months after Oct. 13, 1978, and congressional review of provisions of sections 401 through 412 of Pub. L. 95–454, see section 415 of Pub. L. 95–454, set out as an Effective Date note under section 3131 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3502, 6303 of this title; title 10 section 1586; title 20 section 241; title 22 sections 1438, 4010a.

§ 3502. Order of retention

(a) The Office of Personnel Management shall prescribe regulations for the release of competing employees in a reduction in force which give due effect to—

(1) tenure of employment;

(2) military preference, subject to section 3501(a)(3) of this title;

(3) length of service; and
(4) efficiency or performance ratings.

In computing length of service, a competing employee—

(A) who is not a retired member of a uniformed service is entitled to credit for the total length of time in active service in the armed forces;

(B) who is a retired member of a uniformed service is entitled to credit for—

(i) the length of time in active service in the armed forces during a war, or in a campaign or expedition for which a campaign badge has been authorized; or

(ii) the total length of time in active service in the armed forces if he is included under section 3501(a)(3)(A), (B), or (C) of this title; and

(C) is entitled to credit for—

(i) service rendered as an employee of a county committee established pursuant to section 8(b) of the Soil Conservation and Allotment Act or of a committee or association of producers described in section 10(b) of the Agricultural Adjustment Act; and

(ii) service rendered as an employee described in section 2105(c) if such employee moves or has moved, on or after January 1, 1987, without a break in service of more than 3 days, from a position in a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard to a position in the Department of Defense or the Coast Guard, respectively, that is not described in section 2105(c).

(b) A preference eligible described in section 2108(3)(C) of this title who has a compensable service-connected disability of 30 percent or more and whose performance has not been rated unacceptable under a performance appraisal system implemented under chapter 43 of this title is entitled to be retained in preference to other preference eligibles.

(c) An employee who is entitled to retention preference and whose performance has not been rated unacceptable under a performance appraisal system implemented under chapter 43 of this title is entitled to be retained in preference to other competing employees.

(d)(1) Except as provided under subsection (e), an employee may not be released, due to a reduction in force, unless—

(A) such employee and such employee's exclusive representative for collective-bargaining purposes (if any) are given written notice, in conformance with the requirements of paragraph (2), at least 60 days before such employee is so released; and

(B) if the reduction in force would involve the separation of a significant number of employees, the requirements of paragraph (3) are met at least 60 days before any employee is so released.

(2) Any notice under paragraph (1)(A) shall include—

(A) the personnel action to be taken with respect to the employee involved;

(B) the effective date of the action;

(C) a description of the procedures applicable in identifying employees for release;

(D) the employee's ranking relative to other competing employees, and how that ranking was determined; and

(E) a description of any appeal or other rights which may be available.

(3) Notice under paragraph (1)(B)—

(A) shall be given to—

(i) the appropriate State dislocated worker unit or units (referred to in section 311(b)(2) of the Job Training Partnership Act); and

(ii) the chief elected official of such unit or each of such units of local government as may be appropriate; and

(B) shall consist of written notification as to—

(i) the number of employees to be separated from service due to the reduction in force (broken down by geographic area or on such other basis as may be required under paragraph (4));

(ii) when those separations will occur; and

(iii) any other matter which might facilitate the delivery of rapid response assistance or other services under the Job Training Partnership Act.

(4) The Office shall prescribe such regulations as may be necessary to carry out this subsection. The Office shall consult with the Secretary of Labor on matters relating to the Job Training Partnership Act.

(e)(1) Subject to paragraph (3), upon request submitted under paragraph (2), the President may, in writing, shorten the period of advance notice required under subsection (d)(1)(A) and (B), with respect to a particular reduction in force, if necessary because of circumstances not reasonably foreseeable.

(2) A request to shorten notice periods shall be submitted to the President by the head of the agency involved, and shall indicate the reduction in force to which the request pertains, the number of days by which the agency head requests that the periods be shortened, and the reasons why the request is necessary.

(3) No notice period may be shortened to less than 30 days under this subsection.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 428; Pub. L. 90–367, §3, June 29, 1968, 82 Stat. 278; Pub. L. 90–623, §1(23), Oct. 22, 1968, 82 Stat. 1313; Pub. L. 95–454, title III, §307(e), title IX, §906(a)(2), Oct. 13, 1978, 92 Stat. 1149, 1224; Pub. L. 99–251, title III, §306(a), Feb. 27, 1986, 100 Stat. 27; Pub. L. 101–508, title VII, §7202(c), Nov. 5, 1990, 104 Stat. 1388–335; Pub. L. 102–484, div. D, title XLIV, §4433(a)(1), Oct. 23, 1992, 106 Stat. 2721.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(a)	5 U.S.C. 861(a) (less 2d and 3d provisos), (c).	June 27, 1944, ch. 287, §12 (less 2d and 3d provisos), 58 Stat. 390. Aug. 19, 1964, Pub. L. 88–448, §202 (1)–(3), (4) (''(c)''), 78 78 Stat. 486.
(b)	5 U.S.C. 861(a) (2d proviso).	June 27, 1944, ch. 287, §12 (2d proviso), 58 Stat. 390.

In subsection (a), the words ''reduction in force'' are substituted for ''reduction in personnel''. The words ''in any civilian service of any Federal agency'' are omitted

as unnecessary because of the application stated in section 3501. In the second sentence, the word ''total'' in the phrase ''length of service'' is omitted for consistency with paragraph (3), and the words ''subject to subsection (c) of this section'' are omitted as unnecessary in view of the supplied distinction between a competing employee who is not a retired member of a uniformed service and such an employee who is a retired member of a uniformed service. In paragraph (A), the words ''total length of time in active service'' are substituted for ''length of time spent in active service'' for consistency with paragraph (B)(ii).

In subsections (a) and (b), the references to ''performance'' ratings and ratings of ''satisfactory'' are added on authority of former section 2005, which is carried into section 4304.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

REFERENCES IN TEXT

Section 8(b) of the Soil Conservation and Allotment Act, referred to in subsec. (a)(C)(i), probably means section 8(b) of the Soil Conservation and Domestic Allotment Act, which is classified to section 590h(b) of Title 16, Conservation.

Section 10(b) of the Agricultural Adjustment Act, referred to in subsec. (a)(C)(i), is classified to section 610(b) of Title 7, Agriculture.

The Job Training Partnership Act, referred to in subsec. (d)(3), (4), is Pub. L. 97–300, Oct. 13, 1982, 96 Stat. 1322, as amended, which is classified generally to chapter 19 (§1501 et seq.) of Title 29, Labor. Section 311(b)(2) of the Act is classified to section 1661(b)(2) of Title 29. For complete classification of this Act to the Code, see Short Title note set out under section 1501 of Title 29 and Tables.

AMENDMENTS

1992—Subsecs. (d), (e). Pub. L. 102–484 added subsecs. (d) and (e).

1990—Subsec. (a)(C). Pub. L. 101–508 amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''is entitled to credit for service rendered as an employee of a county committee established pursuant to section 590h(b) of title 16, or of a committee or an association of producers described in section 610(b) of title 7.''

1986—Subsec. (a)(C). Pub. L. 99–251 struck out ''who is an employee in or under the Department of Agriculture'' before ''is entitled to credit''.

1978—Subsec. (a). Pub. L. 95–454, §906(a)(2), substituted ''Office of Personnel Management'' for ''Civil Service Commission''.

Subsec. (b). Pub. L. 95–454, §307(e), substituted provisions relating to retention of a preference eligible with a compensable service-connected disability of 30 percent or more, for provisions relating to retention of preference eligible employees on the basis of ratings.

Subsec. (c). Pub. L. 95–454, §307(e), added subsec. (c).

1968—Subsec. (a). Pub. L. 90–623 made minor changes in form and punctuation in subpars. (A) and (B), and, in subpar. (C), substituted ''section 590h(b) of title 16'' and ''section 610(b) of title 7'' for ''section 8(b) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b))'' and ''section 10(b) of the Agricultural Adjustment Act of May 12, 1933 (48 Stat. 37)'' respectively.

Subsec. (a)(C). Pub. L. 90–367 added subsec. (a)(C).

EFFECTIVE DATE OF 1992 AMENDMENT

Section 4433(a)(2) of Pub. L. 102–484 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply with respect to any personnel action taking effect on or after the last day of the 90-day period beginning on the date of enactment of this Act [Oct. 23, 1992].''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable with respect to any individual who, on or after Jan. 1, 1987, moves from employment in nonappropriated fund instrumentality of Department of Defense or Coast Guard, that is described in section 2105(c) of this title, to employment in Department or Coast Guard, that is not described in section 2105(c), or who moves from employment in Department or Coast Guard, that is not described in section 2105(c), to employment in nonappropriated fund instrumentality of Department or Coast Guard, that is described in section 2105(c), see section 7202(m)(1) of Pub. L. 101–508, set out as a note under section 2105 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–623 intended to restate without substantive change the law in effect on Oct. 22, 1968, see section 6 of Pub. L. 90–623, set out as a note under section 5334 of this title.

INTERAGENCY PLACEMENT PROGRAM FOR FEDERAL EMPLOYEES AFFECTED BY REDUCTIONS IN FORCE

Pub. L. 103–337, div. A, title X, §1066, Oct. 5, 1994, 108 Stat. 2850, provided that:

''(a) STUDY AND REPORT.—(1) The Director of the Office of Personnel Management shall conduct a study on the feasibility of establishing a mandatory interagency placement program for Federal employees affected by reductions in force.

''(2) For purposes of paragraph (1), an interagency placement program is a program that provides a system to require the offering of a position in an agency to an employee of another agency affected by a reduction in force if—

''(A) the position cannot be filled through a placement program of the agency in which the position is located;

''(B) the employee to whom the offer is made is qualified for the offered position; and

''(C) the geographic location of the offered position is within the commuting area of—

''(i) the residence of the employee; or

''(ii) the employee's present or last-held position.

''(3) The Director shall carry out this subsection in consultation with the Secretary of Defense.

''(4) The Director shall seek comments from the heads of all appropriate Federal agencies in conducting the study required by paragraph (1).

''(5) Not later than six months after the date of the enactment of this Act [Oct. 5, 1994], the Director shall submit to Congress a report on the results of the study required by paragraph (1) and on any action taken by the Director under subsection (b).

''(b) AGREEMENTS TO ESTABLISH INTERAGENCY PLACEMENT PROGRAM.—(1) The Director may establish a Government-wide interagency placement program for Federal employees affected by reductions in force if, during the 6-month period beginning on the date of the enactment of this Act [Oct. 5, 1994], the Director, in consultation with the Secretary of Defense, determines that such a program is feasible. To carry out the program, the Director may enter into an agreement with the head of each agency that agrees to participate in the program. If the Director establishes a program under this subsection, it is not necessary that the program be an interagency placement program within the meaning of subsection (a)(2).

''(2) If the Director establishes a program pursuant to paragraph (1), the report required by subsection (a)(5) shall identify each agency that does not agree to participate in the program and the reasons of the head of that agency for not agreeing to participate.

''(c) DEFINITIONS.—For purposes of this section:

''(1) The term 'agency' means an Executive agency as defined in section 105 of title 5, United States Code, except that such term does not include the General Accounting Office.

''(2) The term 'Federal employees affected by reductions in force' means Federal employees who are separated, or are scheduled to be separated, from service under a reduction in force pursuant to—

''(A) regulations prescribed under section 3502 of title 5, United States Code; or

''(B) procedures established under section 3595 of such title.''

SPECIAL RULE ON APPLICATION OF SUBSECTIONS (d) AND (e)

Section 4433(b) of Pub. L. 102–484, as amended by Pub. L. 103–337, div. A, title III, §341(a), Oct. 5, 1994, 108 Stat. 2720, provided that:

''(1) The provisions of section 3502(d) and (e) of title 5, United States Code (as added by subsection (a)) shall apply to employees of the Department of Defense according to their terms, except that, with respect to any reduction in force within that agency that would involve the separation of a significant number of employees (as determined under paragraph (1)(B) of such section 3502(d)), any reference in such section 3502(d) to '60 days' shall, in the case of the employees described in paragraph (2), be deemed to read '120 days'.

''(2) The employees described in this paragraph are those employees of the Department of Defense who are to be separated, due to a reduction in force described in paragraph (1), effective on or after the last day of the 90-day period referred to in subsection (a)(2) [see Effective Date of 1992 Amendment note above] and before February 1, 2000.

''(3) Nothing in this subsection shall prevent the application of the amendment made by subsection (a) [amending this section] with respect to an employee if—

''(A) the preceding paragraphs of this subsection do not apply with respect to such employee; and

''(B) the amendment made by subsection (a) would otherwise apply with respect to such employee.

''(4) The Secretary of Defense shall prescribe such regulations as may be necessary to carry out this subsection.''

INDIAN PREFERENCE LAWS APPLICABLE TO BUREAU OF INDIAN AFFAIRS AND INDIAN HEALTH SERVICE POSITIONS

Applicability of Indian preference laws to Bureau of Indian Affairs and Indian Health Service positions for purposes of reduction-in-force procedures under subsec. (a) of this section, see section 472a(a) of Title 25, Indians.

EX. ORD. NO. 12828. DELEGATION OF CERTAIN PERSONNEL MANAGEMENT AUTHORITIES

Ex. Ord. No. 12828, Jan. 5, 1993, 58 F.R. 2965, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3 of the United States Code and sections 3502(e), 4505a(e), and 5377(i)(2) of title 5 of the United States Code, it is hereby ordered as follows:

SECTION 1. The Office of Personnel Management is designated and empowered to exercise, without the approval, ratification, or other action of the President, the following:

(1) The authority of the President under 5 U.S.C. 3502(e), as added by section 4433 of Public Law 102–484, to shorten the period of advance notice otherwise required by law with respect to reductions in force.

(2) The authority of the President under 5 U.S.C. 4505a(e), as added by section 2(19) of Public Law 102–378, to permit performance-based cash awards to be paid to categories of employees who would not otherwise be eligible.

SEC. 2. The Director of the Office of Management and Budget is designated and empowered to exercise, without the approval, ratification, or other action of the President, the authority of the President under 5 U.S.C. 5377(i)(2), as added by section 2(34) of Public Law 102–378, to designate one or more categories of positions within an agency to be treated as critical positions within the meaning of 5 U.S.C. 5377(a)(2).

SEC. 3. This order shall be effective immediately.

GEORGE BUSH.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7512, 7521 of this title; title 10 section 1586; title 20 section 241; title 22 section 1438; title 25 section 472a; title 32 section 709.

§ 3503. Transfer of functions

(a) When a function is transferred from one agency to another, each competing employee in the function shall be transferred to the receiving agency for employment in a position for which he is qualified before the receiving agency may make an appointment from another source to that position.

(b) When one agency is replaced by another, each competing employee in the agency to be replaced shall be transferred to the replacing agency for employment in a position for which he is qualified before the replacing agency may make an appointment from another source to that position.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 429; Pub. L. 95–454, title III, §307(f), Oct. 13, 1978, 92 Stat. 1149; Pub. L. 96–54, §2(a)(18), Aug. 14, 1979, 93 Stat. 382.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 861(a) (3d proviso).	June 27, 1944, ch. 287, §12 (3d proviso), 58 Stat. 390.

In subsection (a), the words ''a function'' are substituted for ''any or all of the functions''. The word ''receiving'' is substituted for ''replacing'' in the phrase ''receiving agency'' to avoid confusion with subsection (b).

In subsections (a) and (b), the word ''first'' in the phrase ''shall first be transferred'' is omitted as redundant in view of the subsequent limitation imposed by the words following ''before''. The words ''make an appointment from another source to that position'' are substituted for ''appoint additional employees from any other source for such position''.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1979—Subsecs. (a), (b). Pub. L. 96–54 substituted ''competing employee'' for ''preference eligible employed''.

1978—Subsecs. (a), (b). Pub. L. 95–454 which directed the substitution of ''competing employee'' for ''preference eligible employee'' was impossible to execute literally because the text contained reference to ''preference eligible employed''. See 1979 Amendment note above.

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.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3595 of this title; title 10 section 1586; title 20 section 241; title 22 section 1438; title 24 section 225d.

§ 3504. Preference eligibles; retention; physical qualifications; waiver

(a) In determining qualifications of a preference eligible for retention in a position in the competitive service, an Executive agency, or the government of the District of Columbia, the Office of Personnel Management or other examining agency shall waive—

(1) requirements as to age, height, and weight, unless the requirement is essential to the performance of the duties of the position; and

(2) physical requirements if, in the opinion of the Office or other examining agency, after considering the recommendation of an accredited physician, the preference eligible is physically able to perform efficiently the duties of the position.

(b) If an examining agency determines that, on the basis of evidence before it, a preference eligible described in section 2108(3)(C) of this title who has a compensable service-connected disability of 30 percent or more is not able to fulfill the physical requirements of the position, the examining agency shall notify the Office of the determination and, at the same time, the examining agency shall notify the preference eligible of the reasons for the determination and of the right to respond, within 15 days of the date of the notification, to the Office. The Office shall require a demonstration by the appointing authority that the notification was timely sent to the preference eligible's last known address and shall, before the selection of any other person for the position, make a final determination on the physical ability of the preference eligible to perform the duties of the position, taking into account any additional information provided in the response. When the Office has completed its review of the proposed disqualification on the basis of physical disability, it shall send its findings to the appointing authority and the preference eligible. The appointing authority shall comply with the findings of the Office. The functions of the Office under this subsection may not be delegated.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 429; Pub. L. 95–454, title III, § 307(g), title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1149, 1224.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 854 (1st 2 sentences, so much as relates to retention).	June 27, 1944, ch. 287, § 5 (1st 2 sentences, so much as relates to retention), 58 Stat. 388.

The words ''in the competitive service, an Executive agency, or the government of the District of Columbia'' are added on authority of former sections 851, 858, and 869 which are carried into this title. The words ''preference eligible'' are substituted for ''veteran''.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1978—Pub. L. 95–454 designated existing provisions as subsec. (a), substituted ''Office of Personnel Management'' for ''Civil Service Commission'' and ''Office'' for ''Commission'', and added subsec. (b).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3501 of this title; title 20 section 241; title 22 section 1438.

[SUBCHAPTER II—REPEALED]

[§ 3551. Repealed. Pub. L. 103–353, § 2(b)(2)(B), Oct. 13, 1994, 108 Stat. 3169]

Section, Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 429; Pub. L. 90–491, § 2, Aug. 17, 1968, 82 Stat. 791, provided that employee of Federal or District of Columbia government, ordered to active duty or to duty under sections 502–505 of Title 32, National Guard, as a Reserve of the armed forces or member of National Guard, was entitled, on release from duty within time limits specified in section 459(g) of Title 50, Appendix, War and National Defense, to be restored to position held by him when ordered to duty, and provided that a Reserve or member of National Guard who left position for which salary was disbursed by Secretary of the Senate or Clerk of the House of Representatives was entitled on release to be restored only under the provisions of section 459 of Title 50, Appendix.

EFFECTIVE DATE OF REPEAL

Repeal effective with respect to reemployments initiated on or after first day after 60-day period beginning Oct. 13, 1994, with transition rules, see section 8 of Pub. L. 103–353, set out as an Effective Date of 1994 Amendment note under section 4301 of Title 38, Veterans' Benefits.

SUBCHAPTER III—REINSTATEMENT OR RESTORATION AFTER SUSPENSION OR REMOVAL FOR NATIONAL SECURITY

§ 3571. Reinstatement or restoration; individuals suspended or removed for national security

An individual suspended or removed under section 7532 of this title may be restored to duty in the discretion of the head of the agency concerned.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 429.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 22–1 (1st 31 words of 3d proviso).	Aug. 26, 1950, ch. 803, § 1 (1st 31 words of 3d proviso), 64 Stat. 477.

The words ''suspended or removed under section 7532 of this title'' are coextensive with and substituted for ''whose employment is so suspended or terminated under the authority of said sections''.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

SUBCHAPTER IV — REEMPLOYMENT AFTER SERVICE WITH AN INTERNATIONAL ORGANIZATION

§ 3581. Definitions

For the purpose of this subchapter—

(1) ''agency'' means—

(A) an Executive agency;

(B) a military department; and

(C) an employing authority in the legislative branch;

(2) ''employee'' means an employee in or under an agency;

(3) ''international organization'' means a public international organization or international-organization preparatory commission in which the Government of the United States participates;

(4) ''transfer'' means the change of position by an employee from an agency to an international organization; and

(5) ''reemployment'' means—

(A) the reemployment of an employee under section 3582(b) of this title; or

(B) the reemployment of a Congressional employee within 90 days from his separation from an international organization;

following a term of employment not extending beyond the period named by the head of the agency at the time of consent to transfer or, in the absence of a named period, not extending beyond the first 5 consecutive years, or any extension thereof, after entering the employ of the international organization.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 429; Pub. L. 91–175, pt. V, § 502(b), Dec. 30, 1969, 83 Stat. 825; Pub. L. 94–183, § 2(9), Dec. 31, 1975, 89 Stat. 1057.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 2331.	Aug. 28, 1958, Pub. L. 85–795, § 2, 72 Stat. 959.

In paragraphs (1)(A) and (B), the terms ''Executive agency'' and ''military department'' are coextensive with and substituted for ''any department or agency in the executive branch of the United States Government including independent establishments and Government owned or controlled corporations'' in view of the definitions in sections 105 and 102.

In paragraph (2), the word ''employee'' is substituted for ''any civilian appointive officer or employee'' in view of the definition of ''employee'' in section 2105. The words ''in or under an agency'' are substituted for ''in or under the executive or the legislative branch of the United States Government''.

The definition of ''Congressional employee'' in former section 2331(4) is omitted as unnecessary because the term ''Congressional employee'', defined for the purpose of this title in section 2107, is coextensive with the definition in former section 2331(4).

The definition of ''Detail'' in former section 2331(6) is omitted from this section as inappropriate but is carried into section 3343.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1975—Subsec. (5)(A). Pub. L. 94–183 substituted ''3582(b)'' for ''3582(a)''.

1969—Par. (5). Pub. L. 91–175 substituted ''the first 5 consecutive years, or any extension thereof, after entering the employ of the international organization'' for ''the first 3 consecutive years after entering the employ of the international organization''.

DELEGATION OF AUTHORITY

Authority of President to extend a transfer of an employee under this section delegated to Secretary of State, see section 3 of Ex. Ord. No. 11552, Aug. 24, 1970, 35 F.R. 13569, set out as a note under section 3584 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3343 of this title; title 26 section 3121; title 42 section 410.

§ 3582. Rights of transferring employees

(a) An employee serving under an appointment not limited to 1 year or less who transfers to an international organization with the consent of the head of his agency is entitled—

(1) to retain coverage, rights, and benefits under any system established by law for the retirement of employees, if necessary employee deductions and agency contributions in payment for the coverage, rights, and benefits for the period of employment with the international organization are currently deposited in the system's fund or depository; and the period during which coverage, rights, and benefits are retained under this paragraph is deemed creditable service under the system, except that such service shall not be considered creditable service for the purpose of any retirement system for transferring personnel, if such service forms the basis, in whole or in part, for an annuity or pension under the retirement system of the international organization;

(2) to retain coverage, rights, and benefits under chapters 87 and 89 of this title, if necessary employee deductions and agency contributions in payment for the coverage, rights, and benefits for the period of employment with the international organization are currently deposited in the Employees' Life Insurance Fund and the Employees' Health Benefits Fund, as applicable, and the period during which coverage, rights, and benefits are retained under this paragraph is deemed service as an employee under chapters 87 and 89 of this title;

(3) to retain coverage, rights, and benefits under subchapter I of chapter 81 of this title, and for this purpose his employment with the international organization is deemed employment by the United States, but if he or his dependents receive from the international organization a payment, allowance, gratuity, payment under an insurance policy for which the premium is wholly paid by the international organization, or other benefit of any kind on account of the same injury or death, the amount thereof, is credited against disability or death compensation, as the case may be, payable under subchapter I of chapter 81 of this title; and

(4) to elect to retain to his credit all accumulated and current accrued annual leave to which entitled at the time of transfer which would otherwise be liquidated by a lump-sum payment. On his request at any time before reemployment, he shall be paid for the annual leave retained. If he receives a lump-sum payment and is reemployed within 6 months after transfer, he shall refund to the agency the amount of the lump-sum payment. This paragraph does not operate to cause a forfeiture of retained annual leave following reemployment or to deprive an employee of a lump-sum payment to which he would otherwise be entitled.

(b) An employee entitled to the benefits of subsection (a) of this section is entitled to be re-

employed within 30 days of his application for reemployment in his former position or a position of like seniority, status, and pay in the agency from which he transferred, if—

(1) he is separated from the international organization within 5 years, or any extension thereof, after entering on duty with the international organization or within such shorter period as may be named by the head of the agency at the time of consent to transfer; and

(2) he applies for reemployment not later than 90 days after the separation.

On reemployment, he is entitled to the rate of basic pay to which he would be entitled had he remained in the civil service. On reemployment, the agency shall restore his sick leave account, by credit or charge, to its status at the time of transfer. The period of separation caused by his employment with the international organization and the period necessary to effect reemployment are deemed creditable service for all appropriate civil service employment purposes. On reemployment, he is entitled to be paid, under such regulations as the President may prescribe and from appropriations or funds of the agency from which transferred, an amount equal to the difference between the pay, allowances, post differential, and other monetary benefits paid by the international organization and the pay, allowances, post differential, and other monetary benefits that would have been paid by the agency had he been detailed to the international organization under section 3343 of this title. Such a payment shall be made to an employee who is unable to exercise his reemployment right because of disability incurred while on transfer to an international organization under this subchapter and, in the case of any employee who dies while on such a transfer or during the period after separation from the international organization in which he is properly exercising or could exercise his reemployment right, in accordance with subchapter VIII of chapter 55 of this title. This subsection does not apply to a congressional employee nor may any payment provided for in the preceding two sentences of this subsection be based on a period of employment with an international organization occurring before the first day of the first pay period which begins after December 29, 1969.

(c) This section applies only with respect to so much of a period of employment with an international organization as does not exceed 5 years, or any extension thereof, or such shorter period named by the head of the agency at the time of consent to transfer, except that for retirement and insurance purposes this section continues to apply during the period after separation from the international organization in which—

(1) an employee, except a Congressional employee, is properly exercising or could exercise the reemployment right established by subsection (b) of this section; or

(2) a Congressional employee is effecting or could effect a reemployment.

During that reemployment period, the employee is deemed on leave without pay for retirement and insurance purposes.

(d) During the employee's period of service with the international organization, the agency from which the employee is transferred shall make contributions for retirement and insurance purposes from the appropriations or funds of that agency so long as contributions are made by the employee.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 430; Pub. L. 91–175, pt. V, § 502(c)–(f), Dec. 30, 1969, 83 Stat. 825, 826; Pub. L. 94–183, § 2(10), Dec. 31, 1975, 89 Stat. 1057.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 2333 (less (c)).	Aug. 28, 1958, Pub. L. 85–795 § 4 (less (c)), 72 Stat. 960.

In subsection (a), the words ''Notwithstanding the provisions of any law, Executive order, or regulation'' are omitted as unnecessary. In paragraph (2), the words ''an employee under chapter 87 of this title'' are substituted for ''an officer or employee of the United States''. In paragraph (4), the words ''under no circumstances'' are omitted as unnecessary.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1975—Subsec. (b). Pub. L. 94–183 substituted ''after December 29, 1969'' for ''on or after the date of enactment of the Foreign Assistance Act of 1969'' in last sentence.

1969—Subsec. (a). Pub. L. 91–175, § 502(c), inserted provision at end of cl. (1) excepting from creditable service, for the purpose of any retirement system, an agency employee who transfers to an international organization, if such service forms the basis for an annuity or pension under the retirement system of the international organization, and, in cl. (2), inserted references to chapter 89 and Employees' Health Benefits Fund.

Subsec. (b). Pub. L. 91–175, § 502(d), struck out '', except a Congressional employee,'' in provisions preceding cl. (1), substituted ''5 years or any extension thereof,'' for ''3 years'' in cl. (1), and, in provisions following cl. (2), inserted provision dealing with pay differentials to be received by former agency employee on reemployment with agency after service with international organization.

Subsec. (c). Pub. L. 91–175, § 502(e), substituted ''5 years, or any extension thereof,'' for ''3 years''.

Subsec. (d). Pub. L. 91–175, § 502(f), made contributions for retirement and insurance purposes mandatory by the agency from which employee is transferred, during employee's period of service with international organization, so long as contributions are made by employee.

DELEGATION OF AUTHORITY

Authority of President under subsec. (b) of this section delegated to Office of Personnel Management, and authority to define and specify pay, allowances, etc., to be paid by the agency, delegated to Secretary of State, see section 3 of Ex. Ord. No. 11552, Aug. 24, 1970, 35 F.R. 13569, set out as a note under section 3584 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3581 of this title; title 22 section 6103; title 26 section 3121; title 42 section 410.

§ 3583. Computations

A computation under this subchapter before reemployment is made in the same manner as if the employee had received basic pay, or basic pay plus additional pay in the case of a Congressional employee, at the rate at which it would

have been payable had the employee continued in the position in which he was serving at the time of transfer.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 431.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 2333(c).	Aug. 28, 1958, Pub. L. 85–795, § 4(c), 72 Stat. 961.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

§ 3584. Regulations

The President may prescribe regulations necessary to carry out this subchapter and section 3343 of this title and to protect and assure the retirement, insurance, leave, and reemployment rights and such other similar civil service employment rights as he finds appropriate. The regulations may provide for the exclusion of employees from the application of this subchapter and section 3343 of this title on the basis of the nature and type of employment including excepted appointments of a confidential or policy-determining character, or conditions pertaining to the employment including short-term appointments, seasonal or intermittent employment, and part-time employment.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 431.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 2334.	Aug. 28, 1958, Pub. L. 85–795, § 5, 72 Stat. 961.

The words ''civil service employment rights'' are substituted for ''Federal employment rights''. The word ''including'' is substituted for ''such as, but not limited to''.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

EXECUTIVE ORDER NO. 10804

Ex. Ord. No. 10804, Feb. 12, 1959, 24 F.R. 1147, which delegated to the United States Civil Service Commission the authority vested in the President by section 5 of the Federal Employees International Organization Service Act (72 Stat. 961) [now this section], was revoked by Ex. Ord. No. 11552, Aug. 24, 1970, 35 F.R. 13569, set out below.

EX. ORD. NO. 11552. PROVIDING FOR DETAILS AND TRANSFERS OF FEDERAL EMPLOYEES TO INTERNATIONAL ORGANIZATIONS

Ex. Ord. No. 11552, Aug. 24, 1970, 35 F.R. 13569, as amended by Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, provided:

By virtue of the authority vested in me by section 301 of title 3 and section 3584 of title 5 [this section], United States Code, and as President of the United States, it is ordered as follows:

SECTION 1. *Leadership and coordination.* The Secretary of State shall provide leadership and coordination for the effort of the Federal Government to increase and improve its participation in international organizations through transfers and details of well-qualified Federal employees, and shall develop policies, procedures, and programs consistent with this order to advance and encourage such participation.

SEC1. 2. *Federal agency cooperation.* Each agency in the executive branch of the Federal Government shall to the maximum extent feasible and with due regard to its manpower requirements assist and encourage details and transfers of employees to international organizations by observing the following policies and procedures:

(1) Vacancies in international organizations shall be brought to the notice of well-qualified agency employees whose abilities and levels of responsibility in the Federal service are commensurate with those required to fill such vacancies.

(2) Subject to prior approval of his agency, no leave shall be charged an employee who is absent for a maximum of three days for interview for a proposed detail or transfer at the formal request of an international organization of a Federal official; an agency may approve official travel for necessary travel within the United States in connection with such an interview.

(3) An agency, upon request of an appropriate authority, shall provide international organizations with detailed assessments of the technical or professional qualifications of individual employees being formally considered for details and transfers to specific positions.

(4) Upon return of an employee to his agency, the agency shall give due consideration to the employee's overall qualifications, including those which may have been acquired during his service with the international organization, in determining the position and grade in which he is reemployed.

SEC. 3. *Delegations.* (a) Except as otherwise provided in this order, there is hereby delegated to the Office of Personnel Management the authority vested in the President by sections 3582(b) and 3584 of title 5, United States Code.

(b) The following are hereby delegated to the Secretary of State:

(1) The authority vested in the President by sections 3343 and 3581 of title 5, United States Code, to determine whether it is in the national interest to extend a detail or transfer of an employee beyond five years.

(2) The authority vested in the President by section 3582(b) of title 5, United States Code, to define and specify ''pay, allowances, post differential, and other monetary benefits'' to be paid by the agency upon reemployment, disability, or death.

SEC. 4. *Revocation.* Executive Order No. 10804 of February 12, 1959, is hereby revoked.

SUBCHAPTER V—REMOVAL, REINSTATEMENT, AND GUARANTEED PLACEMENT IN THE SENIOR EXECUTIVE SERVICE

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 4314 of this title; title 38 section 7425.

§ 3591. Definitions

For the purpose of this subchapter, ''agency'', ''Senior Executive Service position'', ''senior executive'', ''career appointee'', ''limited term appointee'', ''limited emergency appointee'', ''noncareer appointee'', and ''general position'' have the meanings set forth in section 3132(a) of this title.

(Added Pub. L. 95–454, title IV, § 404(b), Oct. 13, 1978, 92 Stat. 1165.)

EFFECTIVE DATE

Subchapter effective 9 months after Oct. 13, 1978, and congressional review of provisions of sections 401 through 412 of Pub. L. 95–454, see section 415(a)(1), (b), of Pub. L. 95–454, set out as a note under section 3131 of this title.

§ 3592. Removal from the Senior Executive Service

(a) Except as provided in subsection (b) of this section, a career appointee may be removed from the Senior Executive Service to a civil service position outside of the Senior Executive Service—

(1) during the 1-year period of probation under section 3393(d) of this title,

(2) at any time for less than fully successful executive performance as determined under subchapter II of chapter 43 of this title, or

(3) if the career appointee is not recertified as a senior executive under section 3393a,

except that in the case of a removal under paragraph (2) of this subsection the career appointee shall, at least 15 days before the removal, be entitled, upon request, to an informal hearing before an official designated by the Merit Systems Protection Board at which the career appointee may appear and present arguments, but such hearing shall not give the career appointee the right to initiate an action with the Board under section 7701 of this title, nor need the removal action be delayed as a result of the granting of such hearing. In the case of a removal under paragraph (3) of this subsection, the career appointee shall have the right to appeal the removal from the Senior Executive Service to the Merit Systems Protection Board under section 7701.

(b)(1) Except as provided in paragraph (2) of this subsection, a career appointee in an agency may not be involuntarily removed—

(A) within 120 days after an appointment of the head of the agency; or

(B) within 120 days after the appointment in the agency of the career appointee's most immediate supervisor who—

(i) is a noncareer appointee; and

(ii) has the authority to remove the career appointee.

(2) Paragraph (1) of this subsection does not apply with respect to—

(A) any removal under section 4314(b)(3) of this title; or

(B) any disciplinary action initiated before an appointment referred to in paragraph (1) of this subsection.

(c) A limited emergency appointee, limited term appointee, or noncareer appointee may be removed from the service at any time.

(Added Pub. L. 95–454, title IV, § 404(b), Oct. 13, 1978, 92 Stat. 1165; amended Pub. L. 101–194, title V, § 506(b)(3), Nov. 30, 1989, 103 Stat. 1758.)

AMENDMENTS

1989—Subsec. (a). Pub. L. 101–194, § 506(b)(3)(D), inserted at end ''In the case of a removal under paragraph (3) of this subsection, the career appointee shall have the right to appeal the removal from the Senior Executive Service to the Merit Systems Protection Board under section 7701.''

Subsec. (a)(3). Pub. L. 101–194, § 506(b)(3)(A)–(C), added par. (3).

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–194 effective Jan. 1, 1991, see section 506(d) of Pub. L. 101–194, set out as a note under section 3151 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3151, 3393, 3393a, 7542 of this title; title 10 sections 1590, 1601; title 31 section 733.

§ 3593. Reinstatement in the Senior Executive Service

(a) A former career appointee may be reinstated, without regard to section 3393(b) and (c) of this title, to any Senior Executive Service position for which the appointee is qualified if—

(1) the appointee has successfully completed the probationary period established under section 3393(d) of this title; and

(2) the appointee left the Senior Executive Service for reasons other than misconduct, neglect of duty, malfeasance, less than fully successful executive performance as determined under subchapter II of chapter 43 of this title, or failure to be recertified as a senior executive under section 3393a.

(b) A career appointee who is appointed by the President to any civil service position outside the Senior Executive Service and who leaves the position for reasons other than misconduct, neglect of duty, or malfeasance shall be entitled to be placed in the Senior Executive Service if the appointee applies to the Office of Personnel Management within 90 days after separation from the Presidential appointment.

(c)(1) A former career appointee shall be reinstated, without regard to section 3393(b) and (c) of this title, to any vacant Senior Executive Service position in an agency for which the appointee is qualified if—

(A) the individual was a career appointee on May 31, 1981;

(B) the appointee was removed from the Senior Executive Service under section 3595 of this title before October 1, 1984, due to a reduction in force in that agency;

(C) before the removal occurred, the appointee successfully completed the probationary period established under section 3393(d) of this title; and

(D) the appointee applies for that vacant position within one year after the Office receives certification regarding that appointee pursuant to section 3595(b)(3)(B) of this title.

(2) A career appointee is entitled to appeal to the Merit Systems Protection Board under section 7701 of this title any determination by the agency that the appointee is not qualified for a position for which the appointee applies under paragraph (1) of this subsection.

(Added Pub. L. 95–454, title IV, § 404(b), Oct. 13, 1978, 92 Stat. 1166; amended Pub. L. 97–35, title XVII, § 1704(b), Aug. 13, 1981, 95 Stat. 757; Pub. L. 98–615, title III, § 303(a), Nov. 8, 1984, 98 Stat. 3217; Pub. L. 101–194, title V, § 506(b)(4), Nov. 30, 1989, 103 Stat. 1758.)

AMENDMENTS

1989—Subsec. (a)(2). Pub. L. 101–194 struck out ''or'' after ''malfeasance,'' and inserted '', or failure to be recertified as a senior executive under section 3393a'' before period at end.

1984—Subsec. (c)(1)(B). Pub. L. 98–615 inserted ''before October 1, 1984,''.

1981—Subsec. (c). Pub. L. 97–35 added subsec. (c).

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–194 effective Jan. 1, 1991, see section 506(d) of Pub. L. 101–194, set out as a note under section 3151 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–615 effective following expiration of 90-day period beginning on Nov. 8, 1984, see section 307 of Pub. L. 98–615, set out as a note under section 3135 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective June 1, 1981, with certain exceptions and conditions, see section 1704(e) of Pub. L. 97–35, set out as an Effective Date note under section 3595 of this title.

§ 3594. Guaranteed placement in other personnel systems

(a) A career appointee who was appointed from a civil service position held under a career or career-conditional appointment (or an appointment of equivalent tenure, as determined by the Office of Personnel Management) and who, for reasons other than misconduct, neglect of duty, or malfeasance, is removed from the Senior Executive Service during the probationary period under section 3393(d) of this title, shall be entitled to be placed in a civil service position (other than a Senior Executive Service position) in any agency.

(b) A career appointee who has completed the probationary period under section 3393(d) of this title, and who—

(1) is removed from the Senior Executive Service for less than fully successful executive performance as determined under subchapter II of chapter 43 of this title;

(2) is removed from the Senior Executive Service under paragraph (4) or (5) of section 3595(b) of this title; or

(3) is removed from the Senior Executive Service for failure to be recertified under section 3393a;

shall be entitled to be placed in a civil service position (other than a Senior Executive Service position) in any agency.

(c)(1) For purposes of subsections (a) and (b) of this section—

(A) the position in which any career appointee is placed under such subsections shall be a continuing position at GS–15 of the General Schedule or classified above GS–15 pursuant to section 5108, or an equivalent position, and, in the case of a career appointee referred to in subsection (a) of this section, the career appointee shall be entitled to an appointment of a tenure equivalent to the tenure of the appointment held in the position from which the career appointee was appointed;

(B) any career appointee placed under subsection (a) or (b) of this section shall be entitled to receive basic pay at the highest of—

(i) the rate of basic pay in effect for the position in which placed;

(ii) the rate of basic pay in effect at the time of the placement for the position the career appointee held in the civil service immediately before being appointed to the Senior Executive Service; or

(iii) the rate of basic pay in effect for the career appointee immediately before being placed under subsection (a) or (b) of this section; and

(C) the placement of any career appointee under subsection (a) or (b) of this section may not be made to a position which would cause the separation or reduction in grade of any other employee.

(2) An employee who is receiving basic pay under paragraph (1)(B)(ii) or (iii) of this subsection is entitled to have the basic pay rate of the employee increased by 50 percent of the amount of each increase in the maximum rate of basic pay for the grade of the position in which the employee is placed under subsection (a) or (b) of this section until the rate is equal to the rate in effect under paragraph (1)(B)(i) of this subsection for the position in which the employee is placed.

(Added Pub. L. 95–454, title IV, § 404(b), Oct. 13, 1978, 92 Stat. 1166; amended Pub. L. 98–615, title III, § 303(b), Nov. 8, 1984, 98 Stat. 3217; Pub. L. 101–194, title V, § 506(b)(5), Nov 30, 1989, 103 Stat. 1758; Pub. L. 101–509, title V, § 529 [title I, § 101(b)(9)(E)], Nov. 5, 1990, 104 Stat. 1427, 1441; Pub. L. 102–378, § 2(16), Oct. 2, 1992, 106 Stat. 1347.)

REFERENCES IN TEXT

GS–15 of the General Schedule, referred to in subsec. (c)(1)(A), is set out under section 5332 of this title.

AMENDMENTS

1992—Subsec. (c)(1)(A). Pub. L. 102–378 substituted ''section 5108,'' for ''section 5108,,''.

1990—Subsec. (c)(1)(A). Pub. L. 101–509 substituted ''at GS–15 of the General Schedule or classified above GS–15 pursuant to section 5108,'' for ''at GS–15 or above of the General Schedule''.

1989—Subsec. (b)(3). Pub. L. 101–194 added par. (3).

1984—Subsec. (b). Pub. L. 98–615 inserted provision relating to career appointees removed from the Senior Executive Service under section 3595(b)(4) or (5) of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–509 effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title III, § 305] of Pub. L. 101–509, set out as a note under section 5301 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–194 effective Jan. 1, 1991, see section 506(d) of Pub. L. 101–194, set out as a note under section 3151 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–615 effective following expiration of 90-day period beginning on Nov. 8, 1984, see section 307 of Pub. L. 98–615, set out as a note under section 3135 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3135 of this title.

§ 3595. Reduction in force in the Senior Executive Service

(a) An agency shall establish competitive procedures for determining who shall be removed from the Senior Executive Service in any reduction in force of career appointees within that agency. The competitive procedures shall be designed to assure that such determinations are

primarily on the basis of performance, as determined under subchapter II of chapter 43 of this title.

(b)(1) This subsection applies to any career appointee who has successfully completed the probationary period prescribed under section 3393(d) of this title.

(2) Except as provided in paragraphs (4) and (5), a career appointee may not be removed from the Senior Executive Service due to a reduction in force within an agency.

(3) A career appointee who, but for this subsection, would be removed from the Senior Executive Service due to a reduction in force within an agency—

(A) is entitled to be assigned by the head of that agency to a vacant Senior Executive Service position for which the career appointee is qualified; or

(B) if the agency head certifies, in writing, to the Office of Personnel Management that no such position is available in the agency, shall be placed by the Office in any agency in any vacant Senior Executive Service position unless the head of that agency determines that the career appointee is not qualified for that position.

The Office of Personnel Management shall take all reasonable steps to place a career appointee under subparagraph (B) and may require any agency to take any action which the Office considers necessary to carry out any such placement.

(4) A career appointee who is not assigned under paragraph (3)(A) may be removed from the Senior Executive Service due to a reduction in force if the career appointee declines a reasonable offer for placement in a Senior Executive Service position under paragraph (3)(B).

(5) A career appointee who is not assigned under paragraph (3)(A) may be removed from the Senior Executive Service due to a reduction in force if the career appointee is not placed in another Senior Executive Service position under paragraph (3)(B) within 45 days after the Office receives certification regarding that appointee under paragraph (3)(B).

(c) A career appointee is entitled to appeal to the Merit Systems Protection Board under section 7701 of this title whether the reduction in force complies with the competitive procedures required under subsection (a).

(d) For purposes of this section, ''reduction in force'' includes the elimination or modification of a position due to a reorganization, due to a lack of funds or curtailment of work, or due to any other factor.

(e) The Office shall prescribe regulations under which the rights accorded to a career appointee in the event of a transfer of function are comparable to the rights accorded to a competing employee under section 3503 of this title in the event of such a transfer.

(Added Pub. L. 97–35, title XVII, § 1704(a)(1), Aug. 13, 1981, 95 Stat. 756; amended Pub. L. 97–346, § 5(a), (b), Oct. 15, 1982, 96 Stat. 1650; Pub. L. 98–615, title III, §§ 303(c), (d), 304(b), Nov. 8, 1984, 98 Stat. 3218, 3219.)

PRIOR PROVISIONS

A prior section 3595, added Pub. L. 95–454, title IV, § 404(b), Oct. 13, 1978, 92 Stat. 1167, which related to prescribing regulations, was renumbered section 3596 by Pub. L. 97–35, title XVII, § 1704(a)(1), Aug. 13, 1981, 95 Stat. 756.

AMENDMENTS

1984—Subsec. (b)(3)(B). Pub. L. 98–615, § 303(c)(1), struck out the designation ''(i)'' before provisions relating to placement in any agency in any vacant Executive Service position, and struck out former cl. (ii), which had related to detailing by the Office of Personnel Management to any vacant Senior Executive Service position for which the Office deemed the employee to be qualified in any agency for a period not to exceed 60 days, and placement in such position by the Office after the period of such detail, unless the head of the agency determined that the career appointee was not qualified for such position.

Subsec. (b)(4). Pub. L. 98–615, § 303(c)(2), struck out ''and the civil service'' after ''removed from the Senior Executive Service'', struck out the designation ''(A)'' before ''the career appointee declines'', and substituted a period for the semicolon and ''or'' at the end thereof. Former subpar. (B) redesignated par. (5).

Subsec. (b)(5). Pub. L. 98–615, § 303(c)(2), redesignated former par. (4)(B) as (5), substituted ''A career appointee who is not assigned under paragraph (3)(A) may be removed from the Senior Executive Service due to a reduction in force if'' for ''subject to paragraph (5),'', substituted ''45 days'' for ''120 days'', and struck out former par. (5), which had provided that persons who were career appointees as of May 31, 1981, could only be removed from the Senior Executive Service and the civil service due to a reduction in force after the 120-day period if the Director of the Office of Personnel Management certified to certain Congressional committees that the Office had taken all reasonable steps to place the appointee but had been unable to do so due to the appointee's highly specialized skills and experience.

Subsec. (c). Pub. L. 98–615, § 303(d), struck out the designation ''(1)'' before ''whether the reduction'', and struck out pars. (2) and (3), which had provided, respectively, the right to appeal any removal under subsec. (b)(4)(A) and the right to appeal any nonappointment under subsec. (b)(3), and, in the event of such nonappointment, whether the Office of Personnel Management took all reasonable steps to achieve such placement and whether the agency correctly decided under subsec. (b)(3)(B) that the career appointee was not qualified for such placement.

Subsec. (e). Pub. L. 98–615, § 304(b), added subsec. (e).

1982—Subsec. (b)(3)(B). Pub. L. 97–346, § 5(a), designated as cl. (i) existing provisions relating to placement in any agency in any vacant Executive Service position, and added cl. (ii).

Subsec. (c)(3). Pub. L. 97–346, § 5(b), designated as subpar. (A) existing provisions relating to taking of all reasonable steps by Office of Personnel Management, and added subpar. (B).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 303(c), (d) of Pub. L. 98–615 effective following expiration of 90-day period beginning on Nov. 8, 1984, and amendment by section 304(b) of Pub. L. 98–615 effective Nov. 8, 1984, see section 307 of Pub. L. 98–615, set out as a note under section 3135 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Section 5(c) of Pub. L. 97–346 provided that:

''(1) Except as provided in paragraph (2), the amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Oct. 15, 1982].

''(2) The amendments made by this section [amending this section] shall apply to an individual who is a career appointee on or after September 30, 1982, except that any individual who is a career appointee on September 30, 1982, and who is described in section

3595(b)(3) of title 5, United States Code, may not be removed before December 15, 1982, due to a reduction in force, unless the removal is under section 3595(b)(4)(A) of such title on the grounds the individual declined a reasonable placement offer.''

EFFECTIVE DATE

Section 1704(e) of Pub. L. 97–35 provided that:

''(1) Subject to paragraph (2), the amendments made by this section [enacting this section, redesignating former section 3595 as section 3596 of this title, and amending sections 3393, 3593, 7542, and 7543 of this title] shall be effective as of June 1, 1981.

''(2)(A) Except as provided in subparagraph (B), the amendments made by this section shall apply to any career appointee removed from the civil service after May 31, 1981, and before the date of the enactment of this section [Aug. 13, 1981] if, not later than 14 days after such date of enactment, application therefor is made to the Office of Personnel Management and to the head of the Agency in which the appointee was employed.

''(B) The provisions of section 3595(a), as added by subsection (a)(1), shall take effect on the date of the enactment of this Act [Aug. 13, 1981].

''(3) The effectiveness of the amendments made by this section shall be subject to section 415(b) of the Civil Service Reform Act of 1978 [Pub. L. 95–454, title IV, Oct. 13, 1978, 92 Stat. 1154] (5 U.S.C. 3131 note) to the same extent and manner as the amendments made by title IV of that Act.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3135, 3151, 3393, 3593, 3594, 7542 of this title; title 10 section 1590.

§ 3595a. Furlough in the Senior Executive Service

(a) For the purposes of this section, ''furlough'' means the placement of a senior executive in a temporary status in which the senior executive has no duties and is not paid when the placement in such status is by reason of insufficient work or funds or for other nondisciplinary reasons.

(b) An agency may furlough a career appointee only in accordance with regulations issued by the Office of Personnel Management.

(c) A career appointee who is furloughed is entitled to appeal to the Merit Systems Protection Board under section 7701 of this title.

(Added Pub. L. 98–615, title III, §306(c)(1), Nov. 8, 1984, 98 Stat. 3220.)

EFFECTIVE DATE

Section effective following expiration of 90-day period beginning on Nov. 8, 1984, see section 307 of Pub. L. 98–615, set out as an Effective Date of 1984 Amendment note under section 3135 of this title.

§ 3596. Regulations

The Office of Personnel Management shall prescribe regulations to carry out the purpose of this subchapter.

(Added Pub. L. 95–454, title IV, §404(b), Oct. 13, 1978, 92 Stat. 1167, §3595; renumbered §3596, Pub. L. 97–35, title XVII, §1704(a)(1), Aug. 13, 1981, 95 Stat. 756.)

AMENDMENTS

1981—Pub. L. 97–35 renumbered section 3596 of this title as this section.

SUBCHAPTER VI—REEMPLOYMENT FOLLOWING LIMITED APPOINTMENT IN THE FOREIGN SERVICE

§ 3597. Reemployment following limited appointment in the Foreign Service

An employee of any agency who accepts, with the consent of the head of that agency, a limited appointment in the Foreign Service under section 309 of the Foreign Service Act of 1980 is entitled, upon the expiration of that appointment, to be reemployed in that employee's former position or in a corresponding or higher position in that agency. Upon reemployment under this section, an employee shall be entitled to any within-grade increases in pay which the employee would have received if the employee had remained in the former position in the agency.

(Added Pub. L. 96–465, title II, §2301(a), Oct. 17, 1980, 94 Stat. 2164.)

REFERENCES IN TEXT

Section 309 of the Foreign Service Act of 1980, referred to in text, is classified to section 3949 of Title 22, Foreign Relations and Intercourse.

EFFECTIVE DATE

Section effective Feb. 15, 1981, except as otherwise provided, see section 2403 of Pub. L. 96–465, set out as a note under section 3901 of Title 22, Foreign Relations and Intercourse.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 22 section 3950.

Subpart C—Employee Performance

CHAPTER 41—TRAINING

Sec.
4101. Definitions.
4102. Exceptions; Presidential authority.
4103. Establishment of training programs.
4104. Government facilities; use of.
4105. Non-Government facilities; use of.
[4106. Repealed.]
4107. Restriction on degree training.
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4110. Expenses of attendance at meetings.
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4115. Collection of training information.
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4119. Training for employees under the Office of the Architect of the Capitol and the Botanic Garden.

AMENDMENTS

1994—Pub. L. 103–226, §2(b)(2), Mar. 30, 1994, 108 Stat. 112, struck out item 4106 ''Non-Government facilities; amount of training limited'', substituted ''Restriction on degree training'' for ''Non-Government facilities; restrictions'' in item 4107, and struck out item 4114 ''Non-Government facilities; review of training programs''.

1982—Pub. L. 97–346, §1(b), Oct. 15, 1982, 96 Stat. 1647, added item 4119.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 3381 of this title; title 18 section 209; title 26 section 4941; title 38 section 3681.

§ 4101. Definitions

For the purpose of this chapter—

(1) ''agency'', subject to section 4102 of this title, means—

(A) an Executive department;

(B) an independent establishment;

(C) a Government corporation subject to chapter 91 of title 31;

(D) the Library of Congress;

(E) the Government Printing Office; and

(F) the government of the District of Columbia;

(2) ''employee'', subject to section 4102 of this title, means—

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

(B) a commissioned officer of the Environmental Science Services Administration;

(3) ''Government'' means the Government of the United States and the government of the District of Columbia;

(4) ''training'' means the process of providing for and making available to an employee, and placing or enrolling the employee in, a planned, prepared, and coordinated program, course, curriculum, subject, system, or routine of instruction or education, in scientific, professional, technical, mechanical, trade, clerical, fiscal, administrative, or other fields which will improve individual and organizational performance and assist in achieving the agency's mission and performance goals;

(5) ''Government facility'' means property owned or substantially controlled by the Government and the services of any civilian and military personnel of the Government; and

(6) ''non-Government facility'' means—

(A) the government of a State or of a territory or possession of the United States including the Commonwealth of Puerto Rico, and an interstate governmental organization, or a unit, subdivision, or instrumentality of any of the foregoing;

(B) a foreign government or international organization, or instrumentality of either, which is designated by the President as eligible to provide training under this chapter;

(C) a medical, scientific, technical, educational, research, or professional institution, foundation, or organization;

(D) a business, commercial, or industrial firm, corporation, partnership, proprietorship, or other organization;

(E) individuals other than civilian or military personnel of the Government; and

(F) the services and property of any of the foregoing furnishing the training.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 432; Pub. L. 90–206, title II, § 224(a), Dec. 16, 1967, 81 Stat. 642; Pub. L. 97–258, § 3(a)(8), Sept. 13, 1982, 96 Stat. 1063; Pub. L. 103–226, § 2(a)(1), Mar. 30, 1994, 108 Stat. 111.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 2302.	July 7, 1958, Pub. L. 85–507, § 3, 72 Stat. 328.

In paragraph (1), the word ''agency'' is substituted for ''department''. Reference to the ''General Accounting Office'' is omitted as included in ''independent establishment'' because of the definition in section 104.

In paragraph (2)(B), the words ''in the Department of Commerce'' are omitted as unnecessary.

In paragraph (6)(C), the word ''agency'' is omitted as unnecessary and to avoid confusion with the word ''agency'' defined by paragraph (1).

In paragraph (6)(E), the words ''individuals other than civilian or military personnel of the Government'' are substituted for ''an individual not a civilian or military officer or employee of the Government of the United States or of the municipal government of the District of Columbia'' to conform to paragraph (5).

The definition of ''Commission'' in former section 2302(4) is omitted as unnecessary as the title ''Civil Service Commission'' is fully set out the first time it is used in each section of this chapter.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1994—Par. (4). Pub. L. 103–226 substituted ''fields which will improve individual and organizational performance and assist in achieving the agency's mission and performance goals;'' for ''fields which are or will be directly related to the performance by the employee of official duties for the Government, in order to increase the knowledge, proficiency, ability, skill, and qualifications of the employee in the performance of official duties;''.

1982—Par. (1)(C). Pub. L. 97–258 substituted ''chapter 91'' for ''sections 846–852 or 856–859''.

1967—Par. (2)(B). Pub. L. 90–206 substituted ''Environmental Science Services Administration'' for ''Coast and Geodetic Survey''.

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90–206 effective Dec. 16, 1967, see section 220(a)(1) of Pub. L. 90–206, set out as an Effective Date note under section 3110 of this title.

TRANSFER OF FUNCTIONS

For transfer of Environmental Science Services Administration to National Oceanic and Atmospheric Administration, see Transfer of Functions note set out under section 5541 of this title.

DELEGATION OF FUNCTIONS

Functions of President under subsec. (6)(B) of this section delegated to head of each agency concerned, see section 402 of Ex. Ord. No. 11348, Apr. 20, 1967, 32 F.R. 6335, set out as a note under section 4103 of this title.

CROSS REFERENCES

Executive departments, see section 101 of this title.

Government corporation, see section 103 of this title.

Independent establishment, see section 104 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5379 of this title.

§ 4102. Exceptions; Presidential authority

(a)(1) This chapter does not apply to—

(A) a corporation supervised by the Farm Credit Administration if private interests elect or appoint a member of the board of directors;

(B) the Tennessee Valley Authority; or

(C) an individual (except a commissioned officer of the National Oceanic and Atmospheric Administration) who is a member of a uniformed service during a period in which he is entitled to pay under section 204 of title 37.

(2) This chapter (except sections 4110 and 4111) does not apply to—

(A) the Foreign Service of the United States; or

(B) an individual appointed by the President, unless the individual is specifically designated by the President for training under this chapter.

(b) The President, at any time in the public interest, may—

(1) except an agency or part thereof, or an employee or group or class of employees therein, from this chapter or a provision thereof (except this section); and

(2) withdraw an exception made under this subsection.

However, the President may not except the Office of Personnel Management from a provision of this chapter which vests in or imposes on the Office a function, duty, or responsibility concerning any matter except the establishment, operation, and maintenance, in the same capacity as other agencies, of training programs and plans for its employees.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 433; Pub. L. 90–83, §1(4), Sept. 11, 1967, 81 Stat. 196; Pub. L. 94–183, §2(11), Dec. 31, 1975, 89 Stat. 1057; Pub. L. 95–454, title IX, §906(a)(2), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 96–54, §2(a)(15), (19), Aug. 14, 1979, 93 Stat. 382.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 2303.	July 7, 1958, Pub. L. 85–507, §4, 72 Stat. 329. May 26, 1959, Pub. L. 86–33, 73 Stat. 62. Aug. 2, 1962, Pub. L. 87–566, 76 Stat. 264.

In subsection (a)(1), the exception for the President and Vice President is omitted as surplusage as these elected officers are not employed in or under an agency and thus are not included in the definition of ''employee'' in section 4101(2).

In subsection (a)(1)(C), the words ''as defined by section 231(a) of Title 37'' are omitted as unnecessary in view of the definition of ''uniformed services'' in section 2101(b). The words ''section 204 of title 37'' are substituted for ''sections 232–234, 235, 236, 237, 238, and 239 of Title 37'' on authority of section 12(b) of the Act of Sept. 7, 1962, Pub. L. 87–649, 76 Stat. 497.

In subsection (a)(2)(B), the words ''by the President'' are coextensive with and substituted for ''by the President by and with the advice and consent of the Senate or by the President alone''.

In subsection (b)(1), reference to ''section 21, and section 22'' is omitted as unnecessary since the sections are not carried into this title, but are scheduled for repeal, see Table II.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1979—Subsec. (a)(1)(C). Pub. L. 96–54, §2(a)(19), substituted ''National Oceanic and Atmospheric'' for ''Environmental Science Services''.

Subsec. (b). Pub. L. 96–54, §2(a)(15), substituted ''Office'' for ''Commission''.

1978—Subsec. (b). Pub. L. 95–454 substituted ''Office of Personnel Management'' for ''Civil Service Commission''.

1975—Subsec. (a)(2)(B). Pub. L. 94–183 struck out ''(except a Postmaster)'' after ''an individual appointed by the President''.

1967—Subsec. (a)(1)(C). Pub. L. 90–83 substituted ''Environmental Science Services Administration'' for ''Coast and Geodetic Survey.'' See Historical and Revision Notes under section 2101 of this title.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendments 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.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

DELEGATION OF FUNCTIONS

Functions of President under subsec. (b)(1) of this section delegated to Office of Personnel Management, see section 401(a) of Ex. Ord. No. 11348, Apr. 20, 1967, 32 F.R. 6335, set out as a note under section 4103 of this title.

EX. ORD. NO. 10805. CENTRAL INTELLIGENCE AGENCY

Ex. Ord. No. 10805, Feb. 18, 1959, 24 F.R. 1301, provided:

SECTION 1. The Central Intelligence Agency is hereby designated as excepted from the following-described provisions of the Government Employees Training Act [this chapter and section 1308 of this title]:

(a) Section 2(4), 6, 9(b)(1), 11, 12, 15, 16, and 18 [sections 4117, 4118, 4105(b)(1), 4108, 4106, 4114, 4115, and 1308(a)(4)(A)–(C), (b) and 4113(b) respectively of this title].

(b) The last sentence of section 5 [section 4113(a) of this title].

(c) That part of section 7 [section 4103(1) of this title] which reads ''shall conform, on or after the effective date of the regulations prescribed by the Commission under section 6 of this Act [section 4118 of this title], to the principles, standards, and related requirements contained in such regulations then current,''.

(d) That part of section 10 [section 4109(a) of this title] which reads ''in accordance with regulations issued by the Commission under authority of section 6(a)(8) [section 4118(a)(8) of this title].''

SEC. 2. Section 2 of Executive Order No. 10800, of January 15, 1959, is hereby amended by deleting the reference to ''section 5'' and the reference to ''section 5(b)'' and by inserting in lieu thereof ''section 4'' and ''section 4(b)'', respectively.

EXECUTIVE ORDER NO. 11531

Ex. Ord. No. 11531, May 26, 1970, 35 F.R. 8337, which related to the delegation of Presidential authority to designate United States Marshals and United States Attorneys for training, was superseded by Ex. Ord. No. 11895, Jan. 6, 1976, 41 F.R. 1465, set out below.

EX. ORD. NO. 11895. DELEGATION OF PRESIDENTIAL AUTHORITY TO DESIGNATE INDIVIDUALS APPOINTED BY THE PRESIDENT TO RECEIVE TRAINING

Ex. Ord. No. 11895, Jan. 6, 1976, 41 F.R. 1465, as amended by Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, provided:

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

SECTION 1. Except as provided in Section 2 of this Order, the Office of Personnel Management is hereby designated and empowered to exercise the authority vested in the President by Section 4102(a)(2)(B) of Title 5, United States Code, to designate individuals appointed by the President for training under Chapter 41 of Title 5, United States Code.

SEC. 2. The Attorney General is hereby designated and empowered to exercise the authority vested in the President by Section 4102(a)(2)(B) to designate individuals appointed by the President as United States Attor-

neys and United States Marshals for training under Chapter 41 of Title 5, United States Code.

SEC. 3. Executive Order No. 11531 of May 26, 1970, is hereby superseded.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4101, 4108 of this title.

§ 4103. Establishment of training programs

(a) In order to assist in achieving an agency's mission and performance goals by improving employee and organizational performance, the head of each agency, in conformity with this chapter, shall establish, operate, maintain, and evaluate a program or programs, and a plan or plans thereunder, for the training of employees in or under the agency by, in, and through Government facilities and non-Government facilities. Each program, and plan thereunder, shall—

(1) conform to the principles, standards, and related requirements contained in the regulations prescribed under section 4118 of this title;

(2) provide for adequate administrative control by appropriate authority;

(3) provide that information concerning the selection and assignment of employees for training and the applicable training limitations and restrictions be made available to employees of the agency; and

(4) provide for the encouragement of self-training by employees by means of appropriate recognition of resultant increases in proficiency, skill, and capacity.

Two or more agencies jointly may operate under a training program.

(b)(1) Notwithstanding any other provision of this chapter, an agency may train any employee of the agency to prepare the employee for placement in another agency if the head of the agency determines that such training would be in the interests of the Government.

(2) In selecting an employee for training under this subsection, the head of the agency shall consider—

(A) the extent to which the current skills, knowledge, and abilities of the employee may be utilized in the new position;

(B) the employee's capability to learn skills and acquire knowledge and abilities needed in the new position; and

(C) the benefits to the Government which would result from such training.

(Pub. L. 89–554, Sept. 6, 1966. 80 Stat. 433; Pub. L. 95–454, title III, § 304, Oct. 13, 1978, 92 Stat. 1146; Pub. L. 103–226, § 2(a)(2), Mar. 30, 1994, 108 Stat. 111.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 2306.	July 7, 1958, Pub. L. 85–507, § 7, 72 Stat. 331.

The words ''Within two hundred and seventy days after the date of enactment of this Act [July 7, 1958]'' are omitted as obsolete.

In paragraph (1), reference to the effective date of the regulations is omitted as obsolete.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–226, § 2(a)(2)(A)(i), in introductory provisions, substituted ''In order to assist in achieving an agency's mission and performance goals by improving employee and organizational performance, the head of each agency, in conformity with this chapter, shall establish, operate, maintain, and evaluate'' for ''In order to increase economy and efficiency in the operations of the agency and to raise the standards of performance by employees of their official duties to the maximum possible level of proficiency, the head of each agency, in conformity with this chapter, shall establish, operate, and maintain''.

Subsec. (a)(3), (4). Pub. L. 103–226, § 2(a)(2)(A)(ii)–(iv), added par. (3) and redesignated former par. (3) as (4).

Subsec. (b)(1). Pub. L. 103–226, § 2(a)(2)(B)(i), substituted ''determines that such training would be in the interests of the Government.'' for ''determines that the employee will otherwise be separated under conditions which would entitle the employee to severance pay under section 5595 of this title.''

Subsec. (b)(2). Pub. L. 103–226, § 2(a)(2)(B)(ii), (iii), redesignated par. (3) as (2), in subpar. (C) substituted ''such training'' for ''retaining the employee in the Federal service'', and struck out former par. (2) which read as follows: ''Before undertaking any training under this subsection, the head of the agency shall obtain verification from the Office of Personnel Management that there exists a reasonable expectation of placement in another agency.''

Subsec. (b)(3). Pub. L. 103–226, § 2(a)(2)(B)(ii), redesignated par. (3) as (2).

1978—Pub. L. 95–454 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

EXPERIMENTAL PROGRAM RELATING TO ACCEPTANCE OF VOLUNTARY SERVICES FROM PARTICIPANTS IN EXECUTIVE EXCHANGE PROGRAM

Pub. L. 101–416, § 1, Oct. 12, 1990, 104 Stat. 902, authorized a 90-day extension of programs established under Pub. L. 99–424 for individuals who were participating in the program on the expiration date.

Pub. L. 99–424, Sept. 30, 1986, 100 Stat. 964, as amended by Pub. L. 101–87, Aug. 16, 1989, 103 Stat. 595, authorized President to establish an experimental program, to be conducted during fiscal years 1987 through 1990, under which voluntary services could be accepted by the Government, without regard to 31 U.S.C. 1342.

CENTRAL INTELLIGENCE AGENCY

Exception of Central Intelligence Agency from provisions of cl. (1) of this section and certain other provisions of this chapter, and section 1308 of this title, see Ex. Ord. No. 10805, Feb. 18, 1959, 24 F.R. 1301 set out as a note under section 4102 of this title.

EX. ORD. NO. 11348. FURTHER TRAINING OF GOVERNMENT EMPLOYEES

Ex. Ord. No. 11348, Apr. 20, 1967, 32 F.R. 6335, as amended by Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, provided:

By virtue of the authority vested in me by section 301 of Title 3 of the United States Code and by section 2 of the Act of July 7, 1958 (72 Stat. 327), it is ordered as follows:

PART I—GENERAL

SECTION 101. (a) As used in this order, the terms ''agency'', ''employee'', ''Government'', and ''training'', have meanings given to those terms, respectively, by section 4101 of Title 5, United States Code.

(b) ''Interagency training'' means training provided by one agency for other agencies or shared by two or more agencies.

SEC. 102. It is the policy of the Government of the United States to develop its employees through the establishment and operation of progressive and efficient training programs, thereby improving public service, increasing efficiency and economy, building and retaining a force of skilled and efficient employees, and installing and using the best modern practices and techniques in the conduct of the Government's business.

SEC. 103. The Office of Personnel Management shall provide leadership and guidance to insure that the policy set forth in section 102 is carried out.

PART II—OFFICE OF PERSONNEL MANAGEMENT RESPONSIBILITIES

SEC. 201. The Office of Personnel Management shall plan and promote the development, improvement, coordination, and evaluation of training in accordance with chapter 41 of Title 5, United States Code, and with the policy set forth in section 102 of this order.

SEC. 202. In carrying out its responsibilities under chapter 41 of Title 5, United States Code, and section 201 of this order, the Office shall:

(a) Advise the President on means for furthering and strengthening programs of training;

(b) Counsel heads of agencies and other agency officials on the improvement of training;

(c) Assist agencies to develop sound programs and financial plans for training and provide advice, information, and assistance to agencies on planning, programming, budgeting, operating, and evaluating training programs;

(d) Identify functional areas in which new or expanded interagency training activity is needed and either conduct such training or arrange for agencies having the substantive competence to do so;

(e) Coordinate interagency training conducted by and for agencies (including agencies and portions of agencies excepted by section 4102(a) of Title 5, United States Code);

(f) Encourage agencies to make appropriate use of non-Government training resources;

(g) Develop, install, and maintain a system to provide the training data needed to carry out its own functions and to provide staff assistance to the President; and

(h) Provide for identification and dissemination of findings of research into training technology and undertake or assign to other agencies, such research projects as may be needed.

PART III—AGENCY RESPONSIBILITIES AND OPERATIONS

SEC. 301. The head of each agency shall plan, program, budget, operate, and evaluate training programs in accordance with chapter 41 of Title 5, United States Code, and with the policy set forth in section 102 of this order.

SEC. 302. The head of each agency shall:

(a) Foster employee self-development by creating a work environment in which self-development is encouraged, by assuring that opportunities for training and self-study materials are reasonably available, where the employee is stationed, and by recognizing self-initiated improvement in performance;

(b) Provide training for employees without regard to race, creed, color, national origin, sex, or other factors unrelated to the need for training;

(c) Establish and make full use of agency facilities for training employees;

(d) Extend agency training programs to employees of other agencies (including agencies and portions of agencies excepted by section 4102(a) of Title 5, United States Code) and assign his employees to interagency training whenever this will result in better training, improved service, or savings to the Government;

(e) Establish interagency training facilities in areas of substantive competence as arranged by the Office of Personnel Management; and

(f) Use non-Government training resources as appropriate.

SEC. 303. In carrying out his responsibilities, the head of each agency shall, consonant with chapter 41 of Title 5, United States Code, this order, and regulations of the Office of Personnel Management:

(a) Review periodically, but not less often than annually, the agency's program to identify training needed to bring about more effective performance at the least possible cost;

(b) Conduct periodic reviews of individual employee's training needs as related to program objectives;

(c) Conduct research related to training objectives and required for program improvement and effectiveness;

(d) Plan, program, and evaluate training for both short and longrange program needs by occupations, organizations, or other appropriate groups;

(e) Establish priorities for needed training, and provide for the use of funds and manhours in accordance with these priorities;

(f) Utilize the flexibility of work assignments to provide work experience which promotes growth leading to higher quality and greater quantity of work done;

(g) Establish training facilities and services as needed;

(h) Monitor the effectiveness with which self-development is encouraged and on-the-job training is provided at all levels; and

(i) Establish criteria for the selection of employees for training; and

(j) Approve the acceptance of any contributions, awards, or payments to employees authorized by section 401(b) of this order and regulations issued by the Office of Personnel Management.

PART IV—DELEGATIONS

SEC. 401. The following functions vested in the President are hereby delegated to the Office of Personnel Management:

(a) The authority under section 4102(b)(1) of Title 5, United States Code, to designate any agency or part thereof, or any employee or employees therein, as excepted from any provision of chapter 41, of Title 5, United States Code, other than sections 4102, 4111(b), and 4112; and to designate any such agency or part thereof, or any employee or employees therein previously excepted, as again subject to chapter 41 of Title 5, United States Code, or any provision of that chapter.

(b) The authority under section 4111(a) of Title 5, United States Code, to fix by regulation the extent to which the contributions, awards, and payments referred to in that section may be made to and accepted by employees.

SEC. 402. The authority vested in the President by section 4101(6)(B) of Title 5, United States Code, to designate a foreign government or international organization or instrumentality of either as eligible to provide training, is hereby delegated to the head of each agency for his employees except that each such designation shall be made only after the agency head concerned has obtained and given due consideration to the advice of the Department of State thereon prior to the first use of such training facility and thereafter periodically but not less often than once every three years.

PART V—REVOCATION OF PRIOR ORDER

SEC. 501. Executive Order No. 10800 of January 15, 1959, is hereby revoked.

EXECUTIVE ORDER NO. 11451

Ex. Ord. No. 11451, Jan. 19, 1969, 34 F.R. 921, as amended by Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, which established the President's Commission on Personnel Interchange, was superseded by Ex. Ord. No. 12136, May 15, 1979, 44 F.R. 28771, formerly set out below.

EXECUTIVE ORDER NO. 12136

Ex. Ord. No. 12136, May 15, 1979, 44 F.R. 28771, which continued the President's Commission on Personnel Interchange and renamed it the President's Commission on Executive Exchange, was revoked by Ex. Ord. No. 12493, Dec. 5, 1984, 49 F.R. 47819, formerly set out below.

EXECUTIVE ORDER NO. 12493

Ex. Ord. No. 12493, Dec. 5, 1984, 49 F.R. 47819, as amended by Ex. Ord. No. 12516, May 21, 1985, 50 F.R. 21417; Ex. Ord. No. 12602, July 15, 1987, 52 F.R. 27187, which continued the President's Commission on Executive Exchange, was revoked by Ex. Ord. No. 12760, § 2, May 2, 1991, 56 F.R. 21062, set out below.

EX. ORD. NO. 12574. ESTABLISHING EXPERIMENTAL PROGRAM WITHIN PRESIDENT'S COMMISSION ON EXECUTIVE EXCHANGE

Ex. Ord. No. 12574, Nov. 20, 1986, 51 F.R. 42199, provided:

By the authority vested in me as President by the Constitution and statutes of the United States of America, including the Executive Exchange Program Voluntary Services Act of 1986 (5 U.S.C. 4103 note, 100 Stat. 964), it is hereby ordered as follows:

SECTION 1. *Establishment of the Program.* Effective October 1, 1986, there is established, within the Executive Exchange Program of the President's Commission on Executive Exchange, an experimental program under which Executive agencies of the government may accept voluntary services for the United States from private sector participants in the Executive Exchange Program.

SEC. 2. *Program Limits.* The experimental program shall be conducted during the fiscal years 1987 through 1989, and not more than ten individuals may commence participation in the program during any fiscal year. Acceptance of voluntary services from such individuals may not result in the displacement of any employee of the government.

SEC. 3. *Participant Restrictions.* An individual participating in the experimental program shall be considered an employee of the agency to which assigned for purposes of any laws, rules, and regulations of the United States, except that such individual shall not be covered by chapters 51, 53, 63, 83, 87, or 89 of title 5, United States Code, or any comparable provisions relating to classification, pay, leave, retirement, life insurance, or health benefits for employees of the government.

RONALD REAGAN.

EX. ORD. NO. 12760. PRESIDENT'S COMMISSION ON EXECUTIVE EXCHANGE

Ex. Ord. No. 12760, May 2, 1991, 56 F.R. 21062, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

SECTION 1. The President's Commission on Executive Exchange is hereby abolished. The Director of the Office of Personnel Management shall be responsible for terminating the functions of the Commission, which shall be completed no later than September 30, 1991.

SEC. 2. Executive Order No. 12493 of December 5, 1984 is revoked.

GEORGE BUSH.

§ 4104. Government facilities; use of

An agency program for the training of employees by, in, and through Government facilities under this chapter shall—

(1) provide for training, insofar as practicable, by, in, and through Government facilities under the jurisdiction or control of the agency; and

(2) provide for the making by the agency, to the extent necessary and appropriate, of agreements with other agencies in any branch of the Government, on a reimbursable basis when requested by the other agencies, for—

(A) use of Government facilities under the jurisdiction or control of the other agencies in any branch of the Government; and

(B) extension to employees of the agency of training programs of other agencies.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 434.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 2307.	July 7, 1958, Pub. L. 85–507, § 8, 72 Stat. 331.

In paragraph (2), the words ''other agencies in any branch of the Government'' and ''the other agencies'' are coextensive with and substituted for ''other departments, and with other agencies in any branch of the Government'' and ''such other departments and agencies''. This is so because ''other agencies in any branch of the Government'' is broader than ''agency'' as defined for the purpose of this chapter in section 4101(1).

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 7 section 5922.

§ 4105. Non-Government facilities; use of

The head of an agency, without regard to section 5 of title 41, may make agreements or other arrangements for the training of employees of the agency by, in, or through non-Government facilities under this chapter.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 434; Pub. L. 103–226, § 2(a)(3), Mar. 30, 1994, 108 Stat. 111.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 2308.	July 7, 1958, Pub. L. 85–507, § 9, 72 Stat. 331.

In subsection (a), the word ''appropriate'' is omitted as unnecessary.

In subsection (b)(1), the words ''by, in, and through non-Government facilities'' are omitted as unnecessary in view of the previous reference in the subsection.

In subsection (b)(2), the word ''appropriate'' is omitted as unnecessary.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1994—Pub. L. 103–226 struck out subsec. (a) designation and subsecs. (b) and (c), which read as follows:

''(b) An agency program for the training of employees by, in, and through non-Government facilities under this chapter shall—

''(1) provide that information concerning the selection and assignment of employees for training and the applicable training limitations and restrictions be made available to employees of the agency; and

''(2) give consideration to the needs and requirements of the agency in recruiting and retaining scientific, professional, technical, and administrative employees.

''(c) In order to protect the Government concerning payment and reimbursement of training expenses, each agency shall prescribe such regulations as it considers necessary to implement the regulations prescribed under section 4118(a)(8) of this title.''

CENTRAL INTELLIGENCE AGENCY

Exception of Central Intelligence Agency from provisions of subsec. (b)(1) of this section and certain other provisions of this chapter, and section 1308 of this title, see Ex. Ord. No. 10805, Feb. 18, 1959, 24 F.R. 1301, set out as a note under section 4102 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3381 of this title.

[§ 4106. Repealed. Pub. L. 103–226, § 2(a)(4), Mar. 30, 1994, 108 Stat. 112]

Section, Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 434; Pub. L. 95–454, title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224, related to limitations on amount of training of employees through non-Government facilities.

§ 4107. Restriction on degree training

(a) Except as provided in subsection (b) of this section, this chapter does not authorize the selection and assignment of an employee for training, or the payment or reimbursement of the costs of training, for—

(1) the purpose of providing an opportunity to an employee to obtain an academic degree in order to qualify for appointment to a particular position for which the academic degree is a basic requirement; or

(2) the sole purpose of providing an opportunity to an employee to obtain one or more academic degrees.

(b)(1) The regulations prescribed under section 4118 of this title shall include provisions under which the head of an agency may provide training, or payment or reimbursement for the costs of any training, not otherwise allowable under subsection (a) of this section, if necessary to assist in the recruitment or retention of employees in occupations in which the Government has or anticipates a shortage of qualified personnel, especially in occupations involving critical skills (as defined under such regulations).

(2) In exercising any authority under this subsection, an agency shall, consistent with the merit system principles set forth in paragraphs (1) and (2) of section 2301(b) of this title, take into consideration the need to maintain a balanced workforce in which women and members of racial and ethnic minority groups are appropriately represented in Government service.

(3) No authority under this subsection may be exercised on behalf of any employee occupying or seeking to qualify for appointment to any position which is excepted from the competitive service because of its confidential, policy-determining, policy-making, or policy-advocating character.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 435; Pub. L. 101–510, div. A, title XII, § 1206(a), Nov. 5, 1990, 104 Stat. 1659; Pub. L. 103–226, § 2(a)(5), Mar. 30, 1994, 108 Stat. 112.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(a)	5 U.S.C. 2313.	July 7, 1958, Pub. L. 85–507, § 14, 72 Stat. 334.
(b)	5 U.S.C. 2318(d).	July 7, 1958, Pub. L. 85–507, § 19(d), 72 Stat. 336.
(c)	5 U.S.C. 2312.	July 7, 1958, Pub. L. 85–507, § 13, 72 Stat. 334.

The prohibitions are restated in positive form.

In subsection (a)(2), the words ''Executive order'' are substituted for ''Executive orders of the President''.

In subsection (c), the words ''under authority of this chapter'' and ''by the Government'' are omitted as unnecessary.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1994—Pub. L. 103–226, § 2(a)(5)(A), substituted ''Restriction on degree training'' for ''Non-Government facilities; restrictions'' in section catchline.

Subsec. (a). Pub. L. 103–226, § 2(a)(5)(B), (C), redesignated subsec. (c) as (a), in introductory provisions substituted ''subsection (b)'' for ''subsection (d)'' and struck out ''by, in, or through a non-Government facility'' after ''employee for training'', and struck out former subsec. (a) which read as follows: ''Appropriations or other funds available to an agency are not available for payment for training an employee—

''(1) by, in or through a non-Government facility which teaches or advocates the overthrow of the Government of the United States by force or violence; or

''(2) by or through an individual concerning whom determination has been made by a proper Government administrative or investigatory authority that, on the basis of information or evidence developed in investigations and procedures authorized by law or Executive order, there exists a reasonable doubt of his loyalty to the United States.''

Subsec. (b). Pub. L. 103–226, § 2(a)(5)(B), (D), redesignated subsec. (d) as (b), substituted ''subsection (a)'' for ''subsection (c)'' in par. (1), and struck out former subsec. (b) which read as follows: ''This chapter does not authorize training an employee by, in, or through a non-Government facility a substantial part of the activities of which is—

''(1) carrying on propaganda, or otherwise attempting, to influence legislation; or

''(2) participating or intervening, including publishing or distributing statements, in a political campaign on behalf of a candidate for public office.''

Subsecs. (c), (d). Pub. L. 103–226, § 2(a)(5)(B), redesignated subsecs. (c) and (d) as (a) and (b), respectively.

1990—Subsec. (c). Pub. L. 101–510, § 1206(a)(1), substituted ''Except as provided in subsection (d) of this section, this'' for ''This'' in introductory provisions.

Subsec. (d). Pub. L. 101–510, § 1206(a)(2), added subsec. (d).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3381 of this title; title 10 section 1745.

§ 4108. Employee agreements; service after training

(a) An employee selected for training for more than a minimum period prescribed by the head of the agency shall agree in writing with the Government before assignment to training that he will—

(1) continue in the service of his agency after the end of the training period for a period at least equal to three times the length of the training period unless he is involuntarily separated from the service of his agency; and

(2) pay to the Government the amount of the additional expenses incurred by the Government in connection with his training if he is voluntarily separated from the service of his agency before the end of the period for which he has agreed to continue in the service of his agency.

(b) The payment agreed to under subsection (a)(2) of this section may not be required of an employee who leaves the service of his agency to enter into the service of another agency in any branch of the Government unless the head of the agency that authorized the training notifies the

employee before the effective date of his entrance into the service of the other agency that payment will be required under this section.

(c) If an employee, except an employee relieved of liability under subsection (b) of this section or section 4102(b) of this title, fails to fulfill his agreement to pay to the Government the additional expenses incurred by the Government in connection with his training, a sum equal to the amount of the additional expenses of training is recoverable by the Government from the employee or his estate by—

(1) setoff against accrued pay, compensation, amount of retirement credit, or other amount due the employee from the Government; and

(2) such other method as is provided by law for the recovery of amounts owing to the Government.

The head of the agency concerned, under the regulations prescribed under section 4118 of this title, may waive in whole or in part a right of recovery under this subsection, if it is shown that the recovery would be against equity and good conscience or against the public interest.

(d) For purposes of this section, ''training'' includes a private sector assignment of an employee participating in the Executive Exchange Program of the President's Commission on Executive Exchange.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 435; Pub. L. 98–224, § 5(a), Mar. 2, 1984, 98 Stat. 48; Pub. L. 103–226, § 2(a)(6), Mar. 30, 1994, 108 Stat. 112.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 2310.	July 7, 1958, Pub. L. 85–507, § 11, 72 Stat. 332.

In subsection (a), the last sentence of former section 2310(a) is omitted as included in the first sentence of the revised subsection.

In subsection (b), the words, ''another agency in any branch of the Government'' are coextensive with and substituted for ''another department or of any other agency in any branch of the Government''. This is so because ''agency in any branch of the Government'' is broader than ''agency'' as defined for the purpose of this chapter in section 4101(1).

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–226 substituted ''for more than a minimum period prescribed by the head of the agency'' for ''by, in, or through a non-Government facility under this chapter''.

1984—Subsec. (d). Pub. L. 98–224 added subsec. (d).

CENTRAL INTELLIGENCE AGENCY

Exception of Central Intelligence Agency from provisions of this section and certain other provisions of this chapter, see Ex. Ord. No. 10805, Feb. 18, 1959, 24 F.R. 1301, set out as a note under section 4102 of this title.

§ 4109. Expenses of training

(a) The head of an agency, under the regulations prescribed under section 4118(a)(8) of this title and from appropriations or other funds available to the agency, may—

(1) pay all or a part of the pay (except overtime, holiday, or night differential pay) of an employee of the agency selected and assigned for training under this chapter, for the period of training; and

(2) pay, or reimburse the employee for, all or a part of the necessary expenses of the training, without regard to section 3324(a) and (b) of title 31, including among the expenses the necessary costs of—

(A) travel and per diem instead of subsistence under subchapter I of chapter 57 of this title or, in the case of commissioned officers of the National Oceanic and Atmospheric Administration, sections 404 and 405 of title 37, and the Joint Travel Regulations for the Uniformed Services;

(B) transportation of immediate family, household goods and personal effects, packing, crating, temporarily storing, draying, and unpacking under section 5724 of this title or, in the case of commissioned officers of the National Oceanic and Atmospheric Administration, sections 406 and 409 of title 37, and the Joint Travel Regulations for the Uniformed Services, when the estimated costs of transportation and related services are less than the estimated aggregate per diem payments for the period of training;

(C) tuition and matriculation fees;

(D) library and laboratory services;

(E) purchase or rental of books, materials, and supplies; and

(F) other services or facilities directly related to the training of the employee.

(b) The expenses of training do not include membership fees except to the extent that the fee is a necessary cost directly related to the training itself or that payment of the fee is a condition precedent to undergoing the training.

(c) Notwithstanding subsection (a)(1) of this section, the Administrator, Federal Aviation Administration, may pay an individual training to be an air traffic controller of such Administration, and the Secretary of Defense may pay an individual training to be an air traffic controller of the Department of Defense, during the period of such training, at the applicable rate of basic pay for the hours of training officially ordered or approved in excess of forty hours in an administrative workweek.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 436; Pub. L. 90–83, § 1(4), Sept. 11, 1967, 81 Stat. 196; Pub. L. 96–54, § 2(a)(19), Aug. 14, 1979, 93 Stat. 382; Pub. L. 97–258, § 3(a)(9), Sept. 13, 1982, 96 Stat. 1063; Pub. L. 97–276, § 151(a), Oct. 2, 1982, 96 Stat. 1200; Pub. L. 98–224, § 5(b)(2), Mar. 2, 1984, 98 Stat. 48; Pub. L. 98–525, title XV, § 1537(a), Oct. 19, 1984, 98 Stat. 2635; Pub. L. 102–378, § 2(17), Oct. 2, 1992, 106 Stat. 1347.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 2309.	July 7, 1958, Pub. L. 85–507, § 10, 72 Stat. 332.

In subsection (a)(1) and (2), the words ''training under this chapter'' and ''the training'' are substituted for ''training by, in, or through Government facilities or non-Government facilities under authority of this chapter'' and ''such training'', respectively.

In subsection (a)(2)(A), the words ''and the Standardized Government Travel Regulations'' are omitted as

included by the reference to ''subchapter I of chapter 57 of this title''.

In subsection (a)(2)(A) and (B), the words ''sections 404 and 405 of title 37'' and ''sections 406 and 409 of title 37'' are substituted for the references to ''section 253 of title 37'' on authority of section 12(b) of the Act of Sept. 7, 1962, Pub. L. 87–649, 76 Stat. 497.

In subsection (a)(2)(B), the words ''under section 5724 of this title'' are substituted for ''in accordance with section 73b–1 of this title, and Executive Order Numbered 9805, as amended'' to reflect the codification of former section 73b–1 in this title and in view of the revocation of Executive Order No. 9805 by Executive Order No. 11012 of Mar. 27, 1962. The reference only to section 5724 is sufficient since that section contains the applicable substantive law, including the authority of the President to prescribe regulations.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1992—Subsec. (d). Pub. L. 102–378 struck out subsec. (d) which made revolving fund referred to in section 1304(e)(1) of this title available for costs of education and related travel of participants in such program, for printing, and for entertainment expenses, and which required crediting of participation fees to revolving fund.

1984—Subsec. (c). Pub. L. 98–525 inserted ''and the Secretary of Defense may pay an individual training to be an air traffic controller of the Department of Defense,''.

Subsec. (d). Pub. L. 98–224 added subsec. (d).

1982—Subsec. (a)(2). Pub. L. 97–258 substituted ''section 3324(a) and (b)'' for ''section 529''.

Subsec. (c). Pub. L. 97–276 added subsec. (c).

1979—Subsec. (a)(2). Pub. L. 96–54 substituted ''National Oceanic and Atmospheric'' for ''Environmental Science Services'' in cls. (A) and (B).

1967—Subsec. (a)(2). Pub. L. 90–83 substituted ''Environmental Science Services Administration'' for ''Coast and Geodetic Survey'' in cls. (A) and (B). See Historical and Revision Notes under section 2101 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–378 effective Oct. 1, 1991, see section 9(b)(3) of Pub. L. 102–378, set out as a note under section 6303 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 1537(f) of Pub. L. 98–525 provided that: ''The amendments made by this section [amending this section and sections 5532, 5546a, 5547, and 8344 of this title] shall take effect on October 1, 1984.''

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–276 effective on first day of first applicable pay period beginning after Oct. 2, 1982, see section 151(h)(2) of Pub. L. 97–276, set out as an Effective Date note under section 5546a of this title.

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.

CENTRAL INTELLIGENCE AGENCY

Exception of Central Intelligence Agency from introductory provisions of subsec. (a) of this section and certain other provisions of this chapter, and section 1308 of this title, see Ex. Ord. No. 10805, Feb. 18, 1959, 24 F.R. 1301, set out as a note under section 4102 of this title.

CROSS REFERENCES

Use of appropriated funds for membership dues or fees or for expenses of attendance at meetings prohibited except as authorized by this section, see section 5946 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4118, 5946 of this title.

§ 4110. Expenses of attendance at meetings

Appropriations available to an agency for travel expenses are available for expenses of attendance at meetings which are concerned with the functions or activities for which the appropriation is made or which will contribute to improved conduct, supervision, or management of the functions or activities.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 436.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 2318(b).	July 7, 1958, Pub. L. 85–507, §19(b), 72 Stat. 336.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

CROSS REFERENCES

Use of appropriated funds for membership dues or fees or for expenses of attendance at meetings prohibited except as authorized by this section, see section 5946 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4102, 5946 of this title; title 33 section 540a.

§ 4111. Acceptance of contributions, awards, and other payments

(a) To the extent authorized by regulation of the President, contributions and awards incident to training in non-Government facilities, and payment of travel, subsistence, and other expenses incident to attendance at meetings, may be made to and accepted by an employee, without regard to section 209 of title 18, if the contributions, awards, and payments are made by an organization determined by the Secretary of the Treasury to be an organization described by section 501(c)(3) of title 26 which is exempt from taxation under section 501(a) of title 26.

(b) When a contribution, award, or payment, in cash or in kind, is made to an employee for travel, subsistence, or other expenses under subsection (a) of this section, an appropriate reduction, under regulations of the President, shall be made from payment by the Government to the employee for travel, subsistence, or other expenses incident to training in a non-Government facility or to attendance at a meeting.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 437; Pub. L. 96–54, §2(a)(2), Aug. 14, 1979, 93 Stat. 381.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(a)	5 U.S.C. 2318(a).	July 7, 1958, Pub. L. 85–507, §19(a), 72 Stat. 336.
(b)	5 U.S.C. 2318(c).	July 7, 1958, Pub. L. 85–507, §19(c), 72 Stat. 336.

In subsection (a), the words ''section 209 of title 18'' are substituted for ''section 1914 of title 18'' on authority of the Act of Oct. 23, 1962, Pub. L. 87–849, §2, 76 Stat. 1126.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1979—Subsec. (b). Pub. L. 96–54 substituted ''President'' for ''Director of the Bureau of the Budget''.

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.

TRANSFER OF FUNCTIONS

Functions vested by law (including reorganization plan) in Bureau of the Budget or Director of Bureau of the Budget transferred to President by section 101 of 1970 Reorg. Plan No. 2, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085, set out in the Appendix to this title. Section 102 of 1970 Reorg. Plan No. 2, redesignated Bureau of the Budget as Office of Management and Budget.

DELEGATION OF FUNCTIONS

Functions of President under subsec. (a) of this section delegated to Office of Personnel Management, see section 401(b) of Ex. Ord. No. 11348, Apr. 20, 1967, 32 F.R. 6335, set out as a note under section 4103 of this title.

Functions of President under subsec. (b) of this section delegated to Director of Office of Management and Budget, see Ex. Ord. No. 12152, Aug. 14, 1979, 44 F.R. 48143, set out as a note under section 301 of Title 3, The President.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3381, 4102 of this title; title 31 section 1353; title 38 section 7423.

§ 4112. Absorption of costs within funds available

(a) The President, to the extent he considers practicable, shall provide by regulation for the absorption of the costs of the training programs and plans under this chapter by the respective agencies from applicable appropriations or funds available for each fiscal year.

(b) Subsection (a) of this section may not be held or considered to require—

(1) the separation of an individual from the service by reduction in force or other personnel action; or

(2) the placement of an individual in a leave-without-pay status.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 437; Pub. L. 96–54, § 2(a)(2), Aug. 14, 1979, 93 Stat. 381.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 2319.	July 7, 1958, Pub. L. 85–507, § 23, 72 Stat. 338.

In subsection (a), the words ''for each fiscal year'' are substituted for ''for the fiscal year in which this chapter is enacted and for each succeeding fiscal year''.

In subsection (b), the prohibition is restated in positive form.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1979—Subsec. (a). Pub. L. 96–54 substituted ''President'' for ''Director of the Bureau of the Budget''.

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.

DELEGATION OF FUNCTIONS

Functions of President under subsec. (a) of this section delegated to Director of Office of Management and Budget, see Ex. Ord. No. 12152, Aug. 14, 1979, 44 F.R. 48143, set out as a note under section 301 of Title 3, The President.

§ 4113. Agency review of training needs; annual program reports

(a) The head of each agency, at least once every 3 years, shall review the needs and requirements of the agency for the training of employees under its jurisdiction. The Office of Personnel Management, on request of an agency, may assist the agency with the review. Information obtained or developed in a review shall be made available to the Office at its request.

(b) Each agency shall report to the Office, at least once every 3 years, and at such times and in such form as the Office prescribes, on its programs and plans for the training of employees under this chapter. The report shall set forth—

(1) information needed to determine that training is being provided in a manner which is in compliance with applicable laws intended to protect or promote equal employment opportunity; and

(2) information concerning the expenditures of the agency in connection with training and such other information as the Office considers appropriate.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 437; Pub. L. 95–454, title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 103–226, § 2(a)(7), Mar. 30, 1994, 108 Stat. 112.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(a)	5 U.S.C. 2304.	July 7, 1958, Pub. L. 85–507, § 5, 72 Stat. 329.
(b)	5 U.S.C. 2317(a).	July 7, 1958, Pub. L. 85–507, § 18(a), 72 Stat. 335.

In subsection (a), the words ''Within ninety days after the date of enactment of this Act [July 7, 1958]'' are omitted as obsolete.

In subsection (b), the words ''training of employees under this chapter'' are substituted for ''training of employees by, in, and through Government facilities and non-Government facilities under authority of this chapter.''

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1994—Subsec. (b). Pub. L. 103–226 substituted ''to the Office, at least once every 3 years, and'' for ''annually to the Office,'' and substituted pars. (1) and (2) for former pars. (1) to (6), which read as follows:

''(1) such information concerning the expenditures of the agency in connection with training as the Office considers appropriate;

''(2) the name of each employee of the agency, except a student participating in a cooperative educational program, who, during the period covered by the report, received training by, in, or through a non-Government facility for more than 120 days; the grade, title, and primary duties of the position held by the employee; the name of the non-Government facility from which the training was received; the nature, length, and cost of the training to the Government; and the relationship of the training to official duties;

''(3) the name of each employee of the agency who received a contribution or award under section 4111(a) of this title during the period covered by the report;

''(4) a statement concerning the value of the training to the agency;

''(5) estimates of the extent to which economies and improved operations have resulted from the training; and

''(6) such other information as the agency or the Office considers appropriate.''

1978—Subsecs. (a), (b). Pub. L. 95–454 substituted ''Office of Personnel Management'' and ''Office'' for ''Civil Service Commission'' and ''Commission'', respectively, wherever appearing.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

CENTRAL INTELLIGENCE AGENCY

Exceptions of Central Intelligence Agency from provisions of this section and certain other provisions of this chapter and section 1308 of this title, see Ex. Ord. No. 10805, Feb. 18, 1959, 24 F.R. 1301, set out as a note under section 4102 of this title.

CROSS REFERENCES

Report to President on training of employees under this chapter to include summary of information received under subsec. (b) of this section, see section 1308 of this title.

[§ 4114. Repealed. Pub. L. 103–226, § 2(a)(8), Mar. 30, 1994, 108 Stat. 112]

Section, Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 438; Pub. L. 95–454, title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224, related to review of employee training programs at non-Government facilities.

§ 4115. Collection of training information

The Office of Personnel Management, to the extent it considers appropriate in the public interest, may collect information concerning training programs, plans, and the methods inside and outside the Government. The Office, on request, may make the information available to an agency and to Congress.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 438; Pub. L. 95–454, title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 2315.	July 7, 1958, Pub. L. 85–507. § 16, 72 Stat. 335.

In the first sentence, the words ''from time to time'' are omitted as unnecessary. In the second sentence, the word ''appropriate'' is omitted as unnecessary.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1978—Pub. L. 95–454 substituted ''Office of Personnel Management'' and ''Office'' for ''Civil Service Commission'' and ''Commission'', respectively.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

CENTRAL INTELLIGENCE AGENCY

Exception of Central Intelligence Agency from provisions of this section and certain other provisions of this chapter and section 1308 of this title, see Ex. Ord. No. 10805, Feb. 18, 1959, 24 F.R. 1301, set out as a note under section 4102 of this title.

§ 4116. Training program assistance

The Office of Personnel Management, on request of an agency, shall advise and assist in the establishment, operation, and maintenance of the training programs and plans of the agency under this chapter, to the extent of its facilities and personnel available for that purpose.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 438; Pub. L. 95–454, title IX, § 906(a)(2), Oct. 13, 1978, 92 Stat. 1224.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 2316.	July 7, 1958, Pub. L. 85–507, § 17, 72 Stat. 335.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1978—Pub. L. 95–454 substituted ''Office of Personnel Management'' for ''Civil Service Commission''.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

§ 4117. Administration

The Office of Personnel Management has the responsibility and authority for effective promotion and coordination of the training programs under this chapter and training operations thereunder. The functions, duties, and responsibilities of the Office under this chapter are subject to supervision and control by the President and review by Congress.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 438; Pub. L. 95–454, title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 2301(4).	July 7, 1958, Pub. L. 85–507, § 2(4), 72 Stat. 328.
.....	5 U.S.C. 2318(e).	July 7, 1958, Pub. L. 85–507, § 19(e), 72 Stat. 336.

Former sections 2301(4) and 2318(e) are combined and restated for clarity.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1978—Pub. L. 95–454 substituted ''Office of Personnel Management'' and ''Office'' for ''Civil Service Commission'' and ''Commission'', respectively.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

CENTRAL INTELLIGENCE AGENCY

Exception of Central Intelligence Agency from provisions of subd. (4) of this section and certain other provisions of this chapter and section 1308 of this title, see Ex. Ord. No. 10805, Feb. 18, 1959, 24 F.R. 1301, set out as a note under section 4102 of this title.

§ 4118. Regulations

(a) The Office of Personnel Management, after considering the needs and requirements of each agency for training its employees and after consulting with the agencies principally concerned, shall prescribe regulations containing the principles, standards, and related requirements for the programs, and plans thereunder, for the training of employees under this chapter, including requirements for coordination of and reasonable uniformity in the agency training programs and plans. The regulations shall provide for the maintenance of necessary information concerning the general conduct of the training activities of each agency, and such other information as is necessary to enable the President and Congress to discharge effectively their respective duties and responsibilities for supervision, control, and review of these training programs. The regulations also shall cover—

(1) requirements concerning the determination and continuing review by each agency of its training needs and requirements;

(2) the scope and conduct of the agency training programs and plans;

(3) the selection and assignment of employees of each agency for training;

(4) the use in each agency of the services of employees who have undergone training;

(5) the evaluation of the results and effects of the training programs and plans;

(6) the interchange of training information among the agencies;

(7) the submission of reports by the agencies on results and effects of training programs and plans and economies resulting therefrom, including estimates of costs of training;

(8) requirements and limitations necessary with respect to payments and reimbursements in accordance with section 4109 of this title; and

(9) other matters considered appropriate or necessary by the Office to carry out the provisions of this chapter.

(b) The Office, in accordance with this chapter, may revise, supplement, or abolish regulations prescribed under this section, and prescribe additional regulations.

(c) This section does not authorize the Office to prescribe the types and methods of intra-agency training or to regulate the details of intra-agency training programs.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 438; Pub. L. 95–454, title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 103–226, § 2(a)(9), Mar. 30, 1994, 108 Stat. 112.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 2305.	July 7, 1958, Pub. L. 85–507, § 6, 72 Stat. 329.

In subsection (a), the word ''appropriate'' is omitted as unnecessary. The words ''with respect to training by, in, and through Government facilities and non-Government facilities'' are omitted as unnecessary.

In subsection (b)(2) and (3), the words ''by, in, or through a non-Government facility'' are omitted as unnecessary in view of the previous reference in the subsection.

In subsection (c), the words ''From time to time'' are omitted as unnecessary.

In subsection (d), the prohibition is restated in positive form.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1994—Subsec. (a)(7). Pub. L. 103–226, § 2(a)(9)(A), struck out before semicolon at end ''by, in, and through non-Government facilities''.

Subsecs. (b) to (d). Pub. L. 103–226, § 2(a)(9)(B), (C), redesignated subsecs. (c) and (d) as (b) and (c), respectively, and struck out former subsec. (b) which read as follows: ''In addition to the matters set forth by subsection (a) of this section, the regulations, concerning training of employees by, in, or through non-Government facilities, shall—

''(1) prescribe general policies governing the selection of a non-Government facility to provide training;

''(2) authorize training of employees only after the head of the agency concerned determines that adequate training for employees by, in, or through a Government facility is not reasonably available, and that consideration has been given to the existing or reasonably foreseeable availability and use of fully trained employees; and

''(3) prohibit training an employee for the purpose of filling a position by promotion if there is in the agency concerned another employee, of equal ability and suitability, fully qualified to fill the position and available at, or within a reasonable distance from, the place where the duties of the position are to be performed.''

1978—Subsecs. (a), (c), (d). Pub. L. 95–454 substituted ''Office of Personnel Management'' and ''Office'' for ''Civil Service Commission'' and ''Commission'', respectively, wherever appearing.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

CENTRAL INTELLIGENCE AGENCY

Exception of Central Intelligence Agency from provisions of this section and certain other provisions of this chapter and section 1308 of this title, see Ex. Ord. No. 10805, Feb. 18, 1959, 24 F.R. 1301, set out as a note under section 4102 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4103, 4107, 4108, 4109 of this title.

§ 4119. Training for employees under the Office of the Architect of the Capitol and the Botanic Garden

(a) The Architect of the Capitol may, by regulation, make applicable such provisions of this chapter as the Architect determines necessary to provide for training of (1) individuals employed under the Office of the Architect of the Capitol and the Botanic Garden and (2) other congressional employees who are subject to the administrative control of the Architect. The regulations shall provide for training which, in

the determination of the Architect, is consistent with the training provided by agencies under the preceding sections of this chapter.

(b) The Office of Personnel Management shall provide the Architect of the Capitol with such advice and assistance as the Architect may request in order to enable the Architect to carry out the purposes of this section.

(Added Pub. L. 97–346, §1(a), Oct. 15, 1982, 96 Stat. 1647.)

CHAPTER 43—PERFORMANCE APPRAISAL

SUBCHAPTER I—GENERAL PROVISIONS

Sec.
4301. Definitions.
4302. Establishment of performance appraisal systems.
[4302a. Repealed.]
4303. Actions based on unacceptable performance.
4304. Responsibilities of[1] Office of Personnel Management.
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SUBCHAPTER II—PERFORMANCE APPRAISAL IN THE SENIOR EXECUTIVE SERVICE

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AMENDMENTS

1993—Pub. L. 103–89, §3(b)(1)(B)(ii), Sept. 30, 1993, 107 Stat. 981, struck out item 4302a ''Establishment of performance appraisal systems for performance management and recognition system employees''.

1984—Pub. L. 98–615, title II, §202(b), Nov. 8, 1984, 98 Stat. 3216, added item 4302a.

1978—Pub. L. 95–454, title II, §203(a), title IV, §405(b), Oct. 13, 1978, 92 Stat. 1131, 1170, in chapter heading substituted ''APPRAISAL'' for ''RATING'', added heading for subchapter I, in item 4302 substituted ''Establishment of performance appraisal systems'' for ''Performance-rating plans; establishment of'', in item 4303 substituted ''Actions based on unacceptable performance'' for ''Performance-rating plans; requirements for'', in item 4304 substituted ''Responsibilities of Office of Personnel Management'' for ''Ratings for performance'', in item 4305 substituted ''Regulations'' for ''Review of ratings'', struck out items 4306 to 4308 ''Performance-rating plans; inspection of'', ''Other rating procedures prohibited'', and ''Regulations'', respectively, and added item for subchapter II and items 4311 to 4315.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 2108, 2302, 3502 of this title; title 20 section 241; title 21 section 1502; title 31 section 3801; title 42 section 237.

SUBCHAPTER I—GENERAL PROVISIONS

AMENDMENTS

1979—Pub. L. 96–54, §2(a)(20), Aug. 14, 1979, 93 Stat. 382, added heading for subchapter I.

§ 4301. Definitions

For the purpose of this subchapter—

(1) ''agency'' means—

(A) an Executive agency; and

(B) the Government Printing Office;

but does not include—

(i) a Government corporation;

(ii) the Central Intelligence Agency, the Defense Intelligence Agency, the Central Imagery Office, the National Security Agency, or any Executive agency or unit thereof which is designated by the President and the principal function of which is the conduct of foreign intelligence or counterintelligence activities; or

(iii) the General Accounting Office;

(2) ''employee'' means an individual employed in or under an agency, but does not include—

(A) an employee outside the United States who is paid in accordance with local native prevailing wage rates for the area in which employed;

(B) an individual in the Foreign Service of the United States;

(C) a physician, dentist, nurse, or other employee in the Veterans Health Administration of the Department of Veterans Affairs whose pay is fixed under chapter 73 of title 38;

(D) an administrative law judge appointed under section 3105 of this title;

(E) an individual in the Senior Executive Service or the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service;

(F) an individual appointed by the President;

(G) an individual occupying a position not in the competitive service excluded from coverage of this subchapter by regulations of the Office of Personnel Management; or

(H) an individual who (i) is serving in a position under a temporary appointment for less than one year, (ii) agrees to serve without a performance evaluation, and (iii) will not be considered for a reappointment or for an increase in pay based in whole or in part on performance; and

(3) ''unacceptable performance'' means performance of an employee which fails to meet established performance standards in one or more critical elements of such employee's position.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 440; Pub. L. 91–375, §6(c)(8), Aug. 12, 1970, 84 Stat. 776; Pub. L. 95–251, §2(a)(1), Mar. 27, 1978, 92 Stat. 183; Pub. L. 95–454, title II, §203(a), Oct. 13, 1978, 92 Stat. 1131; Pub. L. 100–325, §2(f), May 30, 1988, 102 Stat. 581; Pub. L. 101–474, §5(e), Oct. 30, 1990, 104 Stat. 1100; Pub. L. 101–510, div. A, title XII, §1206(e), Nov. 5, 1990, 104 Stat. 1661; Pub. L. 102–54, §13(b)(2), June 13, 1991, 105 Stat. 274; Pub. L. 103–359, title V, §501(e), Oct. 14, 1994, 108 Stat. 3429.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 2001.	Sept. 30, 1950, ch. 1123, §2, 64 Stat. 1098. Sept. 1, 1954, ch. 1208, §601(a), 68 Stat. 1115. June 17, 1957, Pub. L. 85–56, §2201(21), 71 Stat. 159. July 11, 1957, Pub. L. 85–101, 71 Stat. 293. Sept. 2, 1958, Pub. L. 85–857, §13(p), 72 Stat. 1266.

[1] So in original. Does not conform to section catchline.

HISTORICAL AND REVISION NOTES—CONTINUED

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
		Mar. 26, 1964, Pub. L. 88–290, ''Sec. 306(b)'', 78 Stat. 170.

In paragraph (1), the term ''Executive agency'' is substituted for the reference to ''executive departments, the independent establishments and agencies in the executive branch, including corporations wholly owned by the United States'' and ''the General Accounting Office''. The exception of ''a Government controlled corporation'' is added in subparagraph (vii) to preserve the application of this chapter to ''corporations wholly owned by the United States''. The exceptions for Production credit corporations and Federal intermediate credit banks in former section 2001(b)(5), (6) are omitted as they are no longer ''corporations wholly owned by the United States''. Under the Farm Credit Act of 1956, 70 Stat. 659, the production credit corporations were merged in the Federal intermediate credit banks, and pursuant to that Act the Federal intermediate credit banks have ceased to be corporations owned by the United States. The exceptions for Federal land banks and banks for cooperatives in former section 2001(b)(7), (8) are omitted as included within the exception of ''a Government controlled corporation'' in subparagraph (vii).

Paragraph (2) is supplied because the definition of ''employee'' in section 2105 does not encompass individuals employed by the government of the District of Columbia. The definition in paragraph (2) does not encompass members of the uniformed services as they are not ''employed'' in or under an agency.

Paragraph (2)(E) is based on the third and fifth sentences, respectively, of former sections 1010 and 1011, which are carried into sections 5362 and 559, respectively, and section 1106(a) of the Act of Oct. 28, 1949, ch. 782, 63 Stat. 972.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1994—Par. (1)(B)(ii). Pub. L. 103–359 inserted ''the Central Imagery Office,'' after ''Defense Intelligence Agency,''.

1991—Par. (2)(C). Pub. L. 102–54 substituted ''Veterans Health Administration of the Department of Veterans Affairs'' for ''Department of Medicine and Surgery, Veterans' Administration''.

1990—Par. (1). Pub. L. 101–474 redesignated subpar. (C) as (B) and struck out former subpar. (B) which included Administrative Office of United States Courts within definition of ''agency''.

Par. (2)(H). Pub. L. 101–510 added subpar. (H).

1988—Par. (2)(E). Pub. L. 100–325 inserted reference to Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service.

1978—Pub. L. 95–454 substituted provisions defining ''agency'', ''employee'', and ''unacceptable performance'' for provisions defining ''agency'' and ''employee''.

Par. (2)(E). Pub. L. 95–251 substituted ''administrative law judge'' for ''hearing examiner''.

1970—Par. (1)(ii). Pub. L. 91–375 repealed cl. (ii) which excluded postal field service from definition of ''agency''.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–375 effective within 1 year after Aug. 12, 1970, on date established therefor by Board of Governors of United States Postal Service and published by it in Federal Register, see section 15(a) of Pub. L. 91–375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

CROSS REFERENCES

Additional requirements imposed by statute or otherwise recognized by law not limited or repealed by par. (2)(E) of this section, see section 559 of this title.

Executive agency, see section 105 of this title.

Office of Personnel Management, investigations, reports, and regulations for purposes of par. (2)(E) of this section as relating to administrative law judges, see section 1305 of this title.

Subsequent statutes to be held to supersede or modify par. (2)(E) of this section only to the extent that they do so expressly, see section 559 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 559, 1305 of this title.

§ 4302. Establishment of performance appraisal systems

(a) Each agency shall develop one or more performance appraisal systems which—

(1) provide for periodic appraisals of job performance of employees;

(2) encourage employee participation in establishing performance standards; and

(3) use the results of performance appraisals as a basis for training, rewarding, reassigning, promoting, reducing in grade, retaining, and removing employees.

(b) Under regulations which the Office of Personnel Management shall prescribe, each performance appraisal system shall provide for—

(1) establishing performance standards which will, to the maximum extent feasible, permit the accurate evaluation of job performance on the basis of objective criteria (which may include the extent of courtesy demonstrated to the public) related to the job in question for each employee or position under the system;

(2) as soon as practicable, but not later than October 1, 1981, with respect to initial appraisal periods, and thereafter at the beginning of each following appraisal period, communicating to each employee the performance standards and the critical elements of the employee's position;

(3) evaluating each employee during the appraisal period on such standards;

(4) recognizing and rewarding employees whose performance so warrants;

(5) assisting employees in improving unacceptable performance; and

(6) reassigning, reducing in grade, or removing employees who continue to have unacceptable performance but only after an opportunity to demonstrate acceptable performance.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 440; Pub. L. 95–454, title II, § 203(a), Oct. 13, 1978, 92 Stat. 1132; Pub. L. 102–378, § 2(18), Oct. 2, 1992, 106 Stat. 1347.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 2002.	Sept. 30, 1950, ch. 1123, § 3, 64 Stat. 1098.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1992—Subsec. (a)(3). Pub. L. 102–378 substituted a period for semicolon at end.

1978—Pub. L. 95–454 substituted ''Establishment of performance appraisal systems'' for ''Performance-rating plans; establishment of'' in section catchline and in text substituted provisions relating to the establishment of a performance appraisal system, for provisions relating to the establishment of performance-rating plans.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 12 section 1441a; title 31 section 732.

[§ 4302a. Repealed. Pub. L. 103–89, § 3(b)(1)(B)(i), Sept. 30, 1993, 107 Stat. 981]

Section, added Pub. L. 98–615, title II, § 202(a), Nov. 8, 1984, 98 Stat. 3214; amended Pub. L. 101–103, § 5(a), Sept. 30, 1989, 103 Stat. 671; Pub. L. 102–22, § 2(a), Mar. 28, 1991, 105 Stat. 71, related to the establishment of performance appraisal systems for performance management and recognition system employees.

EFFECTIVE DATE OF REPEAL

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

§ 4303. Actions based on unacceptable performance

(a) Subject to the provisions of this section, an agency may reduce in grade or remove an employee for unacceptable performance.

(b)(1) An employee whose reduction in grade or removal is proposed under this section is entitled to—

(A) 30 days' advance written notice of the proposed action which identifies—

(i) specific instances of unacceptable performance by the employee on which the proposed action is based; and

(ii) the critical elements of the employee's position involved in each instance of unacceptable performance;

(B) be represented by an attorney or other representative;

(C) a reasonable time to answer orally and in writing; and

(D) a written decision which—

(i) in the case of a reduction in grade or removal under this section, specifies the instances of unacceptable performance by the employee on which the reduction in grade or removal is based, and

(ii) unless proposed by the head of the agency, has been concurred in by an employee who is in a higher position than the employee who proposed the action.

(2) An agency may, under regulations prescribed by the head of such agency, extend the notice period under subsection (b)(1)(A) of this section for not more than 30 days. An agency may extend the notice period for more than 30 days only in accordance with regulations issued by the Office of Personnel Management.

(c) The decision to retain, reduce in grade, or remove an employee—

(1) shall be made within 30 days after the date of expiration of the notice period, and

(2) in the case of a reduction in grade or removal, may be based only on those instances of unacceptable performance by the employee—

(A) which occurred during the 1-year period ending on the date of the notice under subsection (b)(1)(A) of this section in connection with the decision; and

(B) for which the notice and other requirements of this section are complied with.

(d) If, because of performance improvement by the employee during the notice period, the employee is not reduced in grade or removed, and the employee's performance continues to be acceptable for 1 year from the date of the advance written notice provided under subsection (b)(1)(A) of this section, any entry or other notation of the unacceptable performance for which the action was proposed under this section shall be removed from any agency record relating to the employee.

(e) Any employee who is—

(1) a preference eligible;

(2) in the competitive service; or

(3) in the excepted service and covered by subchapter II of chapter 75,

and who has been reduced in grade or removed under this section is entitled to appeal the action to the Merit Systems Protection Board under section 7701.

(f) This section does not apply to—

(1) the reduction to the grade previously held of a supervisor or manager who has not completed the probationary period under section 3321(a)(2) of this title,

(2) the reduction in grade or removal of an employee in the competitive service who is serving a probationary or trial period under an initial appointment or who has not completed 1 year of current continuous employment under other than a temporary appointment limited to 1 year or less, or

(3) the reduction in grade or removal of an employee in the excepted service who has not completed 1 year of current continuous employment in the same or similar positions.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 440; Pub. L. 95–454, title II, § 203(a), Oct. 13, 1978, 92 Stat. 1133; Pub. L. 101–376, § 2(b), Aug. 17, 1990, 104 Stat. 462.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 2004.	Sept. 30, 1950, ch. 1123, § 5, 64 Stat. 1098.

The words ''required by this chapter'' are omitted as unnecessary.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1990—Subsec. (e). Pub. L. 101–376 amended subsec. (e) generally. Prior to amendment, subsec. (e) read as fol-

lows: ''Any employee who is a preference eligible or is in the competitive service and who has been reduced in grade or removed under this section is entitled to appeal the action to the Merit Systems Protection Board under section 7701 of this title.''

1978—Pub. L. 95–454 substituted ''Actions based on unacceptable performance'' for ''Performance-rating plans; requirements for'' in section catchline and in text substituted provisions relating to actions based on unacceptable performance, for provisions relating to requirements for performance-rating plans.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 2(c) of Pub. L. 101–376 provided that: ''The amendments made by this section [amending this section and section 7511 of this title] shall apply with respect to any personnel action taking effect on or after the effective date of this Act [see below].''

Section 4 of Pub. L. 101–376 provided that: ''This Act and the amendments made by this Act [amending this section, sections 7511 and 7701 of this title, and enacting provisions set out as notes under this section and section 7501 of this title] shall become effective on the date of the enactment of this Act [Aug. 17, 1990], and, except as provided in section 2(c) [set out above], shall apply with respect to any appeal or other proceeding brought on or after such date.''

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7121, 7512, 7701 of this title; title 31 section 732.

§ 4304. Responsibilities of the Office of Personnel Management

(a) The Office of Personnel Management shall make technical assistance available to agencies in the development of performance appraisal systems.

(b)(1) The Office shall review each performance appraisal system developed by any agency under this section and determine whether the performance appraisal system meets the requirements of this subchapter.

(2) The Comptroller General shall from time to time review on a selected basis performance appraisal systems established under this subchapter to determine the extent to which any such system meets the requirements of this subchapter and shall periodically report its findings to the Office and to the Congress.

(3) If the Office determines that a system does not meet the requirements of this subchapter (including regulations prescribed under section 4305), the Office shall direct the agency to implement an appropriate system or to correct operations under the system, and any such agency shall take any action so required.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 440; Pub. L. 95–454, title II, §203(a), Oct. 13, 1978, 92 Stat. 1134.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 2005.	Sept. 30, 1950, ch. 1123, §6, 64 Stat. 1099.

In subsection (a)(1), the words ''corresponding to an efficiency rating of 'good' under the Veterans' Preference Act of 1944, as amended, and under laws superseded by this chapter'' in clause (1) of former section 2005 are omitted, but are carried into section 3502.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1978—Pub. L. 95–454 substituted ''Responsibilities of the Office of Personnel Management'' for ''Ratings for performance'' in section catchline and in text substituted provisions relating to the responsibilities of the Office of Personnel Management under this subchapter, for provisions relating to ratings for performance.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 12 section 1441a.

§ 4305. Regulations

The Office of Personnel Management may prescribe regulations to carry out the purpose of this subchapter.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 441; Pub. L. 95–454, title II, §203(a), Oct. 13, 1978, 92 Stat. 1134.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 2006.	Sept. 30, 1950, ch. 1123, §7, 64 Stat. 1099.

In subsection (c), the words ''as a matter of right'' are omitted as unnecessary.

In subsection (d), the words ''are entitled'' are substituted for ''shall be afforded an opportunity''. The word ''considers'' is substituted for ''deems to be''.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1978—Pub. L. 95–454 substituted ''Regulations'' for ''Review of ratings'' in section catchline and in text substituted provisions relating to regulations to carry out this subchapter, for provisions relating to review of ratings.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4304 of this title.

[§§ 4306 to 4308. Omitted]

CODIFICATION

Sections 4306 to 4308, Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 441, 442, were omitted in the general revision of this chapter by the Civil Service Reform Act of 1978, Pub. L. 95–454, §203(a), Oct. 13, 1978, 92 Stat. 1131.

Section 4306 related to inspection of performance-rating plans.

Section 4307 related to prohibition of other rating procedures.

Section 4308 related to regulations for administration of the chapter, and is covered by revised section 4305.

SUBCHAPTER II—PERFORMANCE APPRAISAL IN THE SENIOR EXECUTIVE SERVICE

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 3151, 3395, 3592, 3593, 3594, 3595, 5384, 8336, 8414 of this title; title 10 sections 1590, 1601; title 31 section 733; title 38 section 7425.

§ 4311. Definitions

For the purpose of this subchapter, ''agency'', ''senior executive'', and ''career appointee'' have the meanings set forth in section 3132(a) of this title.

(Added Pub. L. 95–454, title IV, § 405(a), Oct. 13, 1978, 92 Stat. 1167.)

EFFECTIVE DATE

Subchapter effective 9 months after Oct. 13, 1978, and congressional review of provisions of sections 401 through 412 of Pub. L. 95–454, see section 415(a)(1), (b), of Pub. L. 95–454, set out as a note under section 3131 of this title.

§ 4312. Senior Executive Service performance appraisal systems

(a) Each agency shall, in accordance with standards established by the Office of Personnel Management, develop one or more performance appraisal systems designed to—

(1) permit the accurate evaluation of performance in any position on the basis of criteria which are related to the position and which specify the critical elements of the position;

(2) provide for systematic appraisals of performance of senior executives;

(3) encourage excellence in performance by senior executives; and

(4) provide a basis for making eligibility determinations for retention in the Senior Executive Service and for Senior Executive Service performance awards.

(b) Each performance appraisal system established by an agency under subsection (a) of this section shall provide—

(1) that, on or before the beginning of each rating period, performance requirements for each senior executive in the agency are established in consultation with the senior executive and communicated to the senior executive;

(2) that written appraisals of performance are based on the individual and organizational performance requirements established for the rating period involved; and

(3) that each senior executive in the agency is provided a copy of the appraisal and rating under section 4314 of this title and is given an opportunity to respond in writing and have the rating reviewed by an employee, or (with the consent of the senior executive) a commissioned officer in the uniformed services serving on active duty, in a higher level in the agency before the rating becomes final.

(c)(1) The Office shall review each agency's performance appraisal system under this section, and determine whether the agency performance appraisal system meets the requirements of this subchapter.

(2) The Comptroller General shall from time to time review performance appraisal systems under this section to determine the extent to which any such system meets the requirements under this subchapter and shall periodically report its findings to the Office and to each House of the Congress.

(3) If the Office determines that an agency performance appraisal system does not meet the requirements under this subchapter (including regulations prescribed under section 4315), the agency shall take such corrective action as may be required by the Office.

(d) A senior executive may not appeal any appraisal and rating under any performance appraisal system under this section.

(Added Pub. L. 95–454, title IV, § 405(a), Oct. 13, 1978, 92 Stat. 1167; amended Pub. L. 98–615, title III, § 306(b)(2), Nov. 8, 1984, 98 Stat. 3220.)

AMENDMENTS

1984—Subsec. (b)(3). Pub. L. 98–615 inserted '', or (with the consent of the senior executive) a commissioned officer in the uniformed services serving on active duty,'' and directed that ''executive'' be struck out which was executed by striking ''executive'' only where it appeared before ''level in the agency''.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–615 effective following expiration of 90-day period beginning on Nov. 8, 1984, see section 307 of Pub. L. 98–615, set out as a note under section 3135 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3393a of this title.

§ 4313. Criteria for performance appraisals

Appraisals of performance in the Senior Executive Service shall be based on both individual and organizational performance, taking into account such factors as—

(1) improvements in efficiency, productivity, and quality of work or service, including any significant reduction in paperwork;

(2) cost efficiency;

(3) timeliness of performance;

(4) other indications of the effectiveness, productivity, and performance quality of the employees for whom the senior executive is responsible; and

(5) meeting affirmative action goals, achievement of equal employment opportunity requirements, and compliance with the merit systems principles set forth under section 2301 of this title.

(Added Pub. L. 95–454, title IV, § 405(a), Oct. 13, 1978, 92 Stat. 1168; amended Pub. L. 103–424, § 6, Oct. 29, 1994, 108 Stat. 4364.)

AMENDMENTS

1994—Par. (5). Pub. L. 103–424 amended par. (5) generally. Prior to amendment, par. (5) read as follows: ''meeting affirmative action goals and achievement of equal employment opportunity requirements.''

§ 4314. Ratings for performance appraisals

(a) Each performance appraisal system shall provide for annual summary ratings of levels of performance as follows:

(1) one or more fully successful levels,
(2) a minimally satisfactory level, and
(3) an unsatisfactory level.

(b) Each performance appraisal system shall provide that—

(1) any appraisal and any rating under such system—

(A) are made only after review and evaluation by a performance review board established under subsection (c) of this section;

(B) are conducted at least annually, subject to the limitation of subsection (c)(3) of this section;

(C) in the case of a career appointee, may not be made within 120 days after the beginning of a new Presidential administration; and

(D) are based on performance during a performance appraisal period the duration of which shall be determined under guidelines established by the Office of Personnel Management, but which may be terminated in any case in which the agency making an appraisal determines that an adequate basis exists on which to appraise and rate the senior executive's performance;

(2) any career appointee receiving a rating at any of the fully successful levels under subsection (a)(1) of this section may be given a performance award under section 5384 of this title;

(3) any senior executive receiving an unsatisfactory rating under subsection (a)(3) of this section shall be reassigned or transferred within the Senior Executive Service, or removed from the Senior Executive Service, but any senior executive who receives 2 unsatisfactory ratings in any period of 5 consecutive years shall be removed from the Senior Executive Service; and

(4) any senior executive who twice in any period of 3 consecutive years receives less than fully successful ratings shall be removed from the Senior Executive Service.

(c)(1) Each agency shall establish, in accordance with regulations prescribed by the Office, one or more performance review boards, as appropriate. It is the function of the boards to make recommendations to the appropriate appointing authority of the agency relating to the performance of senior executives in the agency.

(2) The supervising official of the senior executive shall provide to the performance review board, an initial appraisal of the senior executive's performance. Before making any recommendation with respect to the senior executive, the board shall review any response by the senior executive to the initial appraisal and conduct such further review as the board finds necessary.

(3) Performance appraisals under this subchapter with respect to any senior executive shall be made by the appointing authority only after considering the recommendations by the performance review board with respect to such senior executive under paragraph (1) of this subsection.

(4) Members of performance review boards shall be appointed in such a manner as to assure consistency, stability, and objectivity in performance appraisal. Notice of the appointment of an individual to serve as a member shall be published in the Federal Register.

(5) In the case of an appraisal of a career appointee, more than one-half of the members of the performance review board shall consist of career appointees. The requirement of the preceding sentence shall not apply in any case in which the Office determines that there exists an insufficient number of career appointees available to comply with the requirement.

(d) The Office shall include in each report submitted to each House of the Congress under section 3135 of this title a report of—

(1) the performance of any performance review board established under this section,

(2) the number of individuals removed from the Senior Executive Service under subchapter V of chapter 35 of this title for less than fully successful executive performance, and

(3) the number of performance awards under section 5384 of this title.

(Added Pub. L. 95–454, title IV, § 405(a), Oct. 13, 1978, 92 Stat. 1169.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3393a, 3395, 3592, 4312, 5384 of this title.

§ 4315. Regulations

The Office of Personnel Management shall prescribe regulations to carry out the purpose of this subchapter.

(Added Pub. L. 95–454, title IV, § 405(a), Oct. 13, 1978, 92 Stat. 1170.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4312 of this title.

CHAPTER 45—INCENTIVE AWARDS

SUBCHAPTER I—AWARDS FOR SUPERIOR ACCOMPLISHMENTS

Sec.
4501. Definitions.
4502. General provisions.
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4505. Awards to former employees.
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4507. Awarding of ranks in the Senior Executive Service.
4508. Limitation of awards during a Presidential election year.
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SUBCHAPTER II—AWARDS FOR COST SAVINGS DISCLOSURES

4511. Definition and general provisions.
4512. Agency awards for cost savings disclosures.
4513. Presidential awards for cost savings disclosures.
[4514. Repealed.]

SUBCHAPTER III—AWARDS TO LAW ENFORCEMENT OFFICERS FOR FOREIGN LANGUAGE CAPABILITIES[1]

4521. Definition.
4522. General provision.

[1] So in original. Does not conform to subchapter heading.

Sec.
4523. Award authority.

AMENDMENTS

1994—Pub. L. 103–425, §2(b), Oct. 31, 1994, 108 Stat. 4370, added items 4508 and 4509.

1992—Pub. L. 102–487, §1(b), Oct. 24, 1992, 106 Stat. 3134, struck out item 4514 ''Expiration of authority''.

1990—Pub. L. 101–509, title V, §529 [title II, §207(b), title IV, §408(b)], Nov. 5, 1990, 104 Stat. 1427, 1458, 1468, added item 4505a and heading for subchapter III and items 4521 to 4523.

1988—Pub. L. 100–611, §1(b), Nov. 5, 1988, 102 Stat. 3179, struck out ''; reporting requirement'' after ''authority'' in item 4514.

1985—Pub. L. 99–145, title XII, §1225(b)(1)(B), Nov. 8, 1985, 99 Stat. 730, inserted ''; reporting requirement'' in item 4514.

1981—Pub. L. 97–35, title XVII, §1703(b)(3), Aug. 13, 1981, 95 Stat. 756, added heading for subchapter I and subchapter II and items 4511 to 4514.

1978—Pub. L. 95–454, title IV, §406(b), Oct. 13, 1978, 92 Stat. 1171, added item 4507.

CROSS REFERENCES

Incentive awards program for judicial branch employees, see section 604 of Title 28, Judiciary and Judicial Procedure.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 3362 of this title; title 10 section 1124; title 28 sections 995, 996.

SUBCHAPTER I—AWARDS FOR SUPERIOR ACCOMPLISHMENTS

AMENDMENTS

1981—Pub. L. 97–35, title XVII, §1703(b)(1), Aug. 13, 1981, 95 Stat. 756, added heading for subchapter I.

§ 4501. Definitions

For the purpose of this subchapter—

(1) ''agency'' means—

(A) an Executive agency;

(B) the Library of Congress;

(C) the Office of the Architect of the Capitol;

(D) the Botanic Garden;

(E) the Government Printing Office;

(F) the government of the District of Columbia; and

(G) the United States Sentencing Commission;

but does not include—

(i) the Tennessee Valley Authority; or

(ii) the Central Bank for Cooperatives;

(2) ''employee'' means—

(A) an employee as defined by section 2105; and

(B) an individual employed by the government of the District of Columbia; and

(3) ''Government'' means the Government of the United States and the government of the District of Columbia.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 442; Pub. L. 95–454, title V, §503(a), Oct. 13, 1978, 92 Stat. 1183; Pub. L. 97–35, title XVII, §1703(b)(2), Aug. 13, 1981, 95 Stat. 756; Pub. L. 98–615, title II, §204(a)(1), Nov. 8, 1984, 98 Stat. 3216; Pub. L. 100–690, title VII, §7106(a), Nov. 18, 1988, 102 Stat. 4418; Pub. L. 101–474, §5(f), Oct. 30, 1990, 104 Stat. 1100; Pub. L. 103–89, §3(b)(1)(C), Sept. 30, 1993, 107 Stat. 981.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 2122.	Sept. 1, 1954, ch. 1208, §303, 68 Stat. 1113. Aug. 18, 1959, Pub. L. 86–168, §202(d), 73 Stat. 389.

In paragraph (1), the term ''Executive agency'' is coextensive with and substituted for ''executive department or independent agency in the executive branch of the Government including a Government-owned or controlled corporation'' in view of the definition of ''Executive agency'' in section 105. Application to the General Accounting Office (included in the term ''Executive agency'') is based on former section 933a.

Paragraph (2) is supplied because the definition of ''employee'' in section 2105 does not encompass individuals employed by the government of the District of Columbia.

Paragraph (3) is supplied for clarity and convenience.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1993—Par. (2)(A). Pub. L. 103–89 amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''an employee as defined by section 2105 of this title, but does not include an employee covered by the performance management and recognition system established under chapter 54 of this title; and''.

1990—Par. (1). Pub. L. 101–474 redesignated subpars. (C) to (H) as (B) to (G), respectively, and struck out former subpar. (B) which included Administrative Office of United States Courts within definition of ''agency''.

1988—Par. (1)(H). Pub. L. 100–690 added subpar. (H).

1984—Par. (2)(A). Pub. L. 98–615 substituted ''the performance management and recognition system established under chapter 54'' for ''the merit pay system established under section 5402''.

1981—Pub. L. 97–35 substituted ''subchapter'' for ''chapter'' in provision preceding par. (1).

1978—Par. (2)(A). Pub. L. 95–454 inserted reference to an employee covered by merit pay system established under section 5402 of this title.

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 1981 AMENDMENT

Section 1703(c) of Pub. L. 97–35 provided that: ''The amendments made by this section [enacting subchapter II of this chapter, designating sections 4501 to 4507 of this title as subchapter I, and amending sections 4501, 4502, 4505, and 4506 of this title] shall take effect on October 1, 1981.''

EFFECTIVE DATE OF 1978 AMENDMENT

Section 504(a) of Pub. L. 95–454 provided that amendment by Pub. L. 95–454 was effective on first day of first applicable pay period which began on or after Oct. 1, 1981, except it could take effect with respect to any category or categories of positions before such day to extent prescribed by Director of Office of Personnel Management.

CROSS REFERENCES

Executive agency, see section 105 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3362 of this title.

§ 4502. General provisions

(a) Except as provided by subsection (b) of this section, a cash award under this subchapter may not exceed $10,000.

(b) When the head of an agency certifies to the Office of Personnel Management that the suggestion, invention, superior accomplishment, or other meritorious effort for which the award is proposed is highly exceptional and unusually outstanding, a cash award in excess of $10,000 but not in excess of $25,000 may be granted with the approval of the Office.

(c) A cash award under this subchapter is in addition to the regular pay of the recipient. Acceptance of a cash award under this subchapter constitutes an agreement that the use by the Government of an idea, method, or device for which the award is made does not form the basis of a further claim of any nature against the Government by the employee, his heirs, or assigns.

(d) A cash award to, and expense for the honorary recognition of, an employee may be paid from the fund or appropriation available to the activity primarily benefiting or the various activities benefiting. The head of the agency concerned determines the amount to be paid by each activity for an agency award under section 4503 of this title. The President determines the amount to be paid by each activity for a Presidential award under section 4504 of this title.

(e) The Office of Personnel Management may by regulation permit agencies to grant employees time off from duty, without loss of pay or charge to leave, as an award in recognition of superior accomplishment or other personal effort that contributes to the quality, efficiency, or economy of Government operations.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 442; Pub. L. 95–454, title V, § 503(b), (c), Oct. 13, 1978, 92 Stat. 1183; Pub. L. 97–35, title XVII, § 1703(b)(2), Aug. 13, 1981, 95 Stat. 756; Pub. L. 101–509, title V, § 529 [title II, § 201], Nov. 5, 1990, 104 Stat. 1427, 1455; Pub. L. 103–89, § 3(b)(1)(D), Sept. 30, 1993, 107 Stat. 981.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 2123(d), (e), (g).	Sept. 1, 1954, ch. 1208, § 304(d), (e), (g), 68 Stat. 1113.

In subsections (a) and (b), the words ''cash award'' are substituted for ''monetary award'' and ''such award'' to conform to the remainder of the chapter.

In subsection (c), the word ''Government'' is substituted for ''Government of the United States or the government of the District of Columbia'' in view of the definition of ''Government'' in section 4501.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1993—Subsec. (e). Pub. L. 103–89 struck out par. (2) designation and struck out par. (1) which read as follows: ''Notwithstanding section 4501(2), for the purpose of this subsection, 'employee' includes an employee covered by the performance management and recognition system established under chapter 54.''

1990—Subsec. (e). Pub. L. 101–509 added subsec. (e).

1981—Subsecs. (a), (c). Pub. L. 97–35 substituted ''subchapter'' for ''chapter''.

1978—Subsec. (a). Pub. L. 95–454, § 503(b), substituted ''$10,000'' for ''$5,000''.

Subsec. (b). Pub. L. 95–454, § 503(c), substituted ''Office of Personnel Management'' for ''Civil Service Commission'', ''$10,000'' for ''$5,000'', and ''Office'' for ''Commission''.

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 1990 AMENDMENT

Amendment by Pub. L. 101–509 effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title III, § 305] of Pub. L. 101–509, set out as a note under section 5301 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 1703(c) of Pub. L. 97–35, set out as a note under section 4501 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 504(a) of Pub. L. 95–454 provided that amendment by Pub. L. 95–454 was effective on first day of first applicable pay period which began on or after Oct. 1, 1981, except it could take effect with respect to any category or categories of positions before such day to extent prescribed by Director of Office of Personnel Management.

DELEGATION OF FUNCTIONS

Functions of President under former section 2123(e) [now subsec. (d)] of this section delegated to Director of Office of Personnel Management, see section 2 of Ex. Ord. No. 11228, June 14, 1965, 30 F.R. 7739, set out as a note under section 301 of Title 3, The President.

CROSS REFERENCES

Weight to be accorded incentive awards under this chapter in selecting employees for promotions, see section 3362 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 12 section 1441a.

§ 4503. Agency awards

The head of an agency may pay a cash award to, and incur necessary expense for the honorary recognition of, an employee who—

(1) by his suggestion, invention, superior accomplishment, or other personal effort contributes to the efficiency, economy, or other improvement of Government operations or achieves a significant reduction in paperwork; or

(2) performs a special act or service in the public interest in connection with or related to his official employment.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 443; Pub. L. 95–454, title V, § 502(a), Oct. 13, 1978, 92 Stat. 1183.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 2123(a).	Sept. 1, 1954, ch. 1208, § 304(a), 68 Stat. 1113.

The word ''employee'' is substituted for ''civilian officers and employees of the Government'' in view of the definition of ''employee'' in section 4501.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1978—Par. (1). Pub. L. 95–454 inserted ''or achieves a significant reduction in paperwork''.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 504(a) of Pub. L. 95–454 provided that amendment by Pub. L. 95–454 was effective on first day of first applicable pay period which began on or after Oct. 1, 1981, except it could take effect with respect to any category or categories of positions before such day to extent prescribed by Director of Office of Personnel Management.

CROSS REFERENCES

Cash awards for suggestions, inventions or scientific achievements, see section 1124 of Title 10, Armed Forces.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4502, 4504 of this title; title 12 section 1441a; title 50 section 403e–1.

§ 4504. Presidential awards

The President may pay a cash award to, and incur necessary expense for the honorary recognition of, an employee who—

(1) by his suggestion, invention, superior accomplishment, or other personal effort contributes to the efficiency, economy, or other improvement of Government operations or achieves a significant reduction in paperwork; or

(2) performs an exceptionally meritorious special act or service in the public interest in connection with or related to his official employment.

A Presidential award may be in addition to an agency award under section 4503 of this title.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 443; Pub. L. 95–454, title V, §502(b), Oct. 13, 1978, 92 Stat. 1183.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 2123(b).	Sept. 1, 1954, ch. 1208, §304(b), 68 Stat. 1113.

The words ''In instances determined by the President to warrant such action'' are omitted as surplusage. The word ''employee'' is substituted for ''civilian officers and employees of the Government'' in view of the definition of ''employee'' in section 4501.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1978—Par. (1). Pub. L. 95–454 inserted ''or achieves a significant reduction in paperwork''.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 504(a) of Pub. L. 95–454 provided that amendment by Pub. L. 95–454 was effective on first day of first applicable pay period which began on or after Oct. 1, 1981, except it could take effect with respect to any category or categories of positions before such day to extent prescribed by Director of Office of Personnel Management.

DELEGATION OF FUNCTIONS

Functions vested in Director of Office of Personnel Management under this section insofar as it affects officers and employees in or under executive branch of Government to be performed without approval of President, see section 2 of Ex. Ord. No. 11228, June 14, 1965, 30 F.R. 7739, set out as a note under section 301 of Title 3, The President.

EX. ORD. NO. 9586. THE PRESIDENTIAL MEDAL OF FREEDOM

Ex. Ord. No. 9586, July 6, 1945, 10 F.R. 8523, as amended by Ex. Ord. No. 10336, Apr. 3, 1952, 17 F.R. 2957; Ex. Ord. No. 11085, Feb. 22, 1963, 28 F.R. 1759; Ex. Ord. No. 11515, Mar. 13, 1970, 35 F.R. 4543, provided:

By virtue of the authority vested in me as President of the United States and as Commander in Chief of the armed forces of the United States, it is ordered as follows:

SECTION 1. *Medal established.* The Medal of Freedom is hereby reestablished as the Presidential Medal of Freedom, with accompanying ribbons and appurtenances. The Presidential Medal of Freedom, hereinafter referred to as the Medal, shall be in two degrees.

SEC. 2. *Award of the Medal.* (a) The Medal may be awarded by the President as provided in this order to any person who has made an especially meritorious contribution to (1) the security or national interests of the United States, or (2) world peace, or (3) cultural or other significant public or private endeavors.

(b) The President may select for the award of the Medal any person recommended to the President for award of the Medal or any person selected by the President upon his own initiative.

(c) The principal announcement of awards of the Medal shall normally be made annually, on or about July 4 of each year; but such awards may be made at other times, as the President may deem appropriate.

(d) Subject to the provision of this Order, the Medal may be awarded posthumously.

SEC. 3. *Distinguished Civilian Service Awards Board.* (a) The Distinguished Civilian Service Awards Board, established by Executive Order No. 10717 of June 27, 1957, hereinafter referred to as the Board, is hereby expanded, for the purpose of carrying out the objectives of this Order, to include five additional members appointed by the President from outside the Executive Branch of the Government. The terms of service of the members of the Board appointed under this paragraph shall be five years, except that the first five members so appointed shall have terms of service expiring on the 31st day of July 1964, 1965, 1966, 1967, and 1968, respectively. Any person appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall serve for the remainder of such term.

(b) A chairman of the Board shall be designated by the President from time to time from among the membership of the Board appointed from the Executive Branch.

(c) For purposes of recommending to the President persons to receive the President's Award for Distinguished Federal Civilian Service, and to carry out the other purposes of Executive Order No. 10717, only the members of the Board from the Executive Branch will sit. The names of persons so recommended will be submitted to the President without reference to the other members of the Board.

SEC. 4. *Functions of the Board.* (a) Any individual or group may make recommendations to the Board with respect to the award of the Medal, and the Board shall consider such recommendations.

(b) With due regard for the provisions of Section 2 of this Order, the Board shall screen such recommendations and, on the basis of such recommendations or upon its own motion, shall from time to time submit to

the President nominations of individuals for award of the Medal, in appropriate degrees.

SEC. 5. *Expenses*. Necessary administrative expenses of the Board incurred in connection with the recommendation of persons to receive the Presidential Medal of Freedom, including expenses of travel of members of the Board appointed under Section 3(a) of this Order, during the fiscal year 1963, may be paid from the appropriation provided under the heading ''Special Projects'' in the Executive Office Appropriation Act, 1963, 76 Stat. 315, and during subsequent fiscal years, to the extent permitted by law, from any corresponding or like appropriation made available for such fiscal years. Such payments shall be without regard to the provisions of section 3681 of the Revised Statutes and section 9 of the Act of March 4, 1909, 35 Stat. 1027 (31 U.S.C. 672 and 673) [31 U.S.C. 1346(a) and (c)]. Members of the Board appointed under Section 3(a) of this Order shall serve without compensation.

SEC. 6. *Design of the Medal*. The Army Institute of Heraldry shall prepare for the approval of the President a design of the Medal in each of its degrees.

EX. ORD. NO. 10717. PRESIDENT'S AWARD FOR DISTINGUISHED FEDERAL CIVILIAN SERVICE

Ex. Ord. No. 10717, June 27, 1957, 22 F.R. 4632, as amended by Ex. Ord. No. 10979, Dec. 12, 1961, 26 F.R. 11937; Ex. Ord. No. 11085, Feb. 22, 1963, 28 F.R. 1759; Ex. Ord. No. 12014, Oct. 19, 1977, 42 F.R. 56105; Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, provided:

SECTION 1. There is hereby established an honorary award for the recognition of distinguished service by civilian officers and employees of the Federal Government. The award shall be known as the President's Award for Distinguished Federal Civilian Service, and shall consist of a gold medal, the design of which accompanies and is hereby made a part of this order, suspended on a ribbon of appropriate material and color, and accompanying appurtenances. Each medal shall be suitably inscribed, and an appropriate citation shall accompany each award.

SEC. 2. (a) The President's Award for Distinguished Federal Civilian Service shall be presented by the President to civilian officers or employees of the Federal Government for the best achievements having current impact in improving Government operations or serving the public interest. These achievements shall exemplify one or more of the following:

(1) Imagination in developing creative solutions to problems of government.

(2) Courage in persevering against great odds and difficulties.

(3) High ability in accomplishing extraordinary scientific or technological achievement, in providing outstanding leadership in planning, organizing, or directing a major program of unusual importance and complexity, or in performing an extraordinary act of credit to the Government and the country.

(4) Long and distinguished career service.

(b) The importance of the achievements to the Government and to the public interest shall be so outstanding that the officer or employee is deserving of greater public recognition than that which can be accorded by the head of the department or agency in which he is employed. Generally, not more than five awards shall be made in any one year. Presentation of the award shall be made at such times as the President may determine.

SEC. 3. The Director of the Office of Personnel Management shall advise and assist the President in selecting persons to receive this award. In performing this function, the Director shall carefully review nominations submitted pursuant to the provisions of Section 4 of this Order and decide which of them, if any, warrant presentation to the President. The Director shall thereupon transmit to the President the names of those persons who, in the opinion of the Director, merit the award, together with a statement of the reasons therefor. Recipients for the award shall be selected by the President.

SEC. 4. The form and procedures for making nominations for this award shall be prescribed by the Director of the Office of Personnel Management, in accord with the following principles:

(a) The Director shall be guided in the performance of this function by the provisions of Section 4504 and 4505 of Title 5 of the United States Code, and by additional criteria which the Director may prescribe.

(b) The Director shall not recommend any person for the award without the concurrence of the head of the agency in which that person was employed at the time of the achievement for which the award is recommended.

(c) Persons appointed by the President are not eligible for this award unless, in the opinion of the Office, they are currently serving in a career position.

CROSS REFERENCES

Cash awards for suggestions, inventions or scientific achievements, see section 1124 of Title 10, Armed Forces.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4502 of this title; title 15 section 3710c.

§ 4505. Awards to former employees

An agency may pay or grant an award under this subchapter notwithstanding the death or separation from the service of the employee concerned, if the suggestion, invention, superior accomplishment, other personal effort, or special act or service in the public interest for which the award is proposed was made or performed while the employee was in the employ of the Government.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 443; Pub. L. 97–35, title XVII, § 1703(b)(2), Aug. 13, 1981, 95 Stat. 756.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 2123(c).	Sept. 1, 1954, ch. 1208 § 304(c), 68 Stat. 1113.

The words ''or grant'' are added for clarity.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1981—Pub. L. 97–35 substituted ''subchapter'' for ''chapter''.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 1703(c) of Pub. L. 97–35, set as a note under section 4501 of this title.

§ 4505a. Performance-based cash awards

(a)(1) An employee whose most recent performance rating was at the fully successful level or higher (or the equivalent thereof) may be paid a cash award under this section.

(2)(A) A cash award under this section shall be equal to an amount determined appropriate by the head of the agency, but may not be more than 10 percent of the employee's annual rate of basic pay. Notwithstanding the preceding sentence, the agency head may authorize a cash award equal to an amount exceeding 10 percent of the employee's annual rate of basic pay if the

agency head determines that exceptional performance by the employee justifies such an award, but in no case may an award under this section exceed 20 percent of the employee's annual rate of basic pay.

(B) For purposes of computing a percentage of a rate of basic pay under subparagraph (A), the rate of basic pay used shall be determined without taking into account any comparability payment under section 5304.

(b)(1) A cash award under this section shall be paid as a lump sum, and may not be considered to be part of the basic pay of an employee.

(2) The failure to pay a cash award under this section, or the amount of such an award, may not be appealed. The preceding sentence shall not be construed to extinguish or lessen any right or remedy under subchapter II of chapter 12, chapter 71, or any of the laws referred to in section 2302(d).

(c) The Office of Personnel Management shall prescribe such regulations as it considers necessary for the administration of subsections (a) and (b).

(d) The preceding provisions of this section shall be applicable with respect to any employee to whom subchapter III of chapter 53 applies, and to any category of employees provided for under subsection (e).

(e) At the request of the head of an Executive agency, the President may authorize the application of subsections (a) through (c) with respect to any category of employees within such agency who would not otherwise be covered by this section.

(Added Pub. L. 101–509, title V, §529 [title II, §207(a)], Nov. 5, 1990, 104 Stat. 1427, 1457; amended Pub. L. 102–378, §2(19), Oct. 2, 1992, 106 Stat. 1347.)

AMENDMENTS

1992—Subsec. (b)(2). Pub. L. 102–378, §2(19)(A), inserted reference to chapter 71.

Subsec. (c). Pub. L. 102–378, §2(19)(B), inserted ''of Personnel Management'' after ''Office''.

Subsecs. (d), (e). Pub. L. 102–378, §2(19)(C), added subsecs. (d) and (e) and struck out former subsec. (d) which read as follows: ''At the request of the head of an Executive agency, the President may authorize the application of the preceding provisions of this section with respect to 1 or more categories of employees within such agency who would not otherwise be covered by this section (including authority under subsection (c) to prescribe any necessary regulations).''

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–378 effective May 4, 1991, see section 9(b)(4) of Pub. L. 102–378, set out as a note under section 6303 of this title.

EFFECTIVE DATE

Section effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title III, §305] of Pub. L. 101–509, set out as an Effective Date of 1990 Amendment note under section 5301 of this title.

DELEGATION OF FUNCTIONS

Authority of President under subsec. (e) of this section delegated to Director of Office of Personnel Management by Ex. Ord. No. 12828, §1(2), Jan. 5, 1993, 58 F.R. 2965, set out as a note under section 3502 of this title.

Authority of President under subsec. (d) [now (e)] of this section delegated to Office of Personnel Management by section 6(a) of Ex. Ord. No. 12748, Feb. 1, 1991, 56 F.R. 4521, eff. May 4, 1991, set out as a note under section 5301 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 12 section 1441a.

§ 4506. Regulations

The Office of Personnel Management shall prescribe regulations and instructions under which the agency awards program set forth by this subchapter shall be carried out.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 443; Pub. L. 95–454, title V, §503(d), Oct. 13, 1978, 92 Stat. 1184; Pub. L. 97–35, title XVII, §1703(b)(2), Aug. 13, 1981, 95 Stat. 756.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 2121 (1st 29 words).	Sept. 1, 1954, ch. 1208, §302 (1st 29 words), 68 Stat. 1112.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1981—Pub. L. 97–35 substituted ''subchapter'' for ''chapter''.

1978—Pub. L. 95–454 substituted ''Office of Personnel Management shall'' for ''Civil Service Commission may''.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 1703(c) of Pub. L. 97–35, set out as a note under section 4501 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 504(a) of Pub. L. 95–454 provided that amendment by Pub. L. 95–454 was effective on first day of first applicable pay period which began on or after Oct. 1, 1981, except it could take effect with respect to any category or categories of positions before such day to extent prescribed by Director of Office of Personnel Management.

§ 4507. Awarding of ranks in the Senior Executive Service

(a) For the purpose of this section, ''agency'', ''senior executive'', and ''career appointee'' have the meanings set forth in section 3132(a) of this title.

(b) Each agency shall submit annually to the Office recommendations of career appointees in the agency to be awarded the rank of Meritorious Executive or Distinguished Executive. The recommendations may take into account the individual's performance over a period of years. The Office shall review such recommendations and provide to the President recommendations as to which of the agency recommended appointees should receive such rank.

(c) During any fiscal year, the President may, subject to subsection (d) of this section, award to any career appointee recommended by the Office the rank of—

(1) Meritorious Executive, for sustained accomplishment, or

(2) Distinguished Executive, for sustained extraordinary accomplishment.

A career appointee awarded a rank under paragraph (1) or (2) of this subsection shall not be entitled to be awarded that rank during the following 4 fiscal years.

(d) During any fiscal year—

(1) the number of career appointees awarded the rank of Meritorious Executive may not exceed 5 percent of the Senior Executive Service; and

(2) the number of career appointees awarded the rank of Distinguished Executive may not exceed 1 percent of the Senior Executive Service.

(e)(1) Receipt by a career appointee of the rank of Meritorious Executive entitles such individual to a lump-sum payment of $10,000, which shall be in addition to the basic pay paid under section 5382 of this title or any award paid under section 5384 of this title.

(2) Receipt by a career appointee of the rank of Distinguished Executive entitles the individual to a lump-sum payment of $20,000, which shall be in addition to the basic pay paid under section 5382 of this title or any award paid under section 5384 of this title.

(Added Pub. L. 95–454, title IV, § 406(a), Oct. 13, 1978, 92 Stat. 1170.)

EFFECTIVE DATE

Section effective 9 months after Oct. 13, 1978, and congressional review of provisions of sections 401 through 412 of Pub. L. 95–454, see section 415(a)(1), (b), of Pub. L. 95–454, set out as a note under section 3131 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3151, 5384 of this title; title 22 section 3965; title 10 sections 1590, 1601; title 31 section 733; title 38 sections 7404, 7425.

§ 4508. Limitation of awards during a Presidential election year

(a) For purposes of this section, the term—

(1) ''Presidential election period'' means any period beginning on June 1 in a calendar year in which the popular election of the President occurs, and ending on January 20 following the date of such election; and

(2) ''senior politically appointed officer'' means any officer who during a Presidential election period serves—

(A) in a Senior Executive Service position and is not a career appointee as defined under section 3132(a)(4); or

(B) in a position of a confidential or policy-determining character under schedule C of subpart C of part 213 of title 5 of the Code of Federal Regulations.

(b) No senior politically appointed officer may receive an award under the provisions of this subchapter during a Presidential election period.

(Added Pub. L. 103–425, § 2(a), Oct. 31, 1994, 108 Stat. 4369.)

§ 4509. Prohibition of cash award to Executive Schedule officers

No officer may receive a cash award under the provisions of this subchapter, if such officer—

(1) serves in—

(A) an Executive Schedule position under subchapter II of chapter 53; or

(B) a position for which the compensation is set in statute by reference to a section or level under subchapter II of chapter 53; and

(2) was appointed to such position by the President, by and with the advice and consent of the Senate.

(Added Pub. L. 103–425, § 2(a), Oct. 31, 1994, 108 Stat. 4370.)

SUBCHAPTER II—AWARDS FOR COST SAVINGS DISCLOSURES

AMENDMENTS

1981—Pub. L. 97–35, title XVII, § 1703(a), Aug. 13, 1981, 95 Stat. 755, added subchapter II.

§ 4511. Definition and general provisions

(a) For purposes of this subchapter, the term ''agency'' means any Executive agency.

(b) A cash award under this subchapter is in addition to the regular pay of the recipient. Acceptance of a cash award under this subchapter constitutes an agreement that the use by the Government of an idea, method, or device for which the award is made does not form the basis of a further claim of any nature against the Government by the employee, his heirs, or assigns.

(Added Pub. L. 97–35, title XVII, § 1703(a), Aug. 13, 1981, 95 Stat. 755.)

EFFECTIVE DATE

Subchapter effective Oct. 1, 1981, see section 1703(c) of Pub. L. 97–35, set out as an Effective Date of 1981 Amendment note under section 4501 of this title.

AUTHORITY TO MAKE AWARDS

Pub. L. 102–487, § 1(c), Oct. 24, 1992, 106 Stat. 3134, provided that: ''Awards may be made under subchapter II of chapter 45 of title 5, United States Code, on and after the date of the enactment of this Act [Oct. 24, 1992].''

§ 4512. Agency awards for cost savings disclosures

(a) The Inspector General of an agency, or any other agency employee designated under subsection (b), may pay a cash award to any employee of such agency whose disclosure of fraud, waste, or mismanagement to the Inspector General of the agency, or to such other designated agency employee, has resulted in cost savings for the agency. The amount of an award under this section may not exceed the lesser of—

(1) $10,000; or

(2) an amount equal to 1 percent of the agency's cost savings which the Inspector General, or other employee designated under subsection (b), determines to be the total savings attributable to the employee's disclosure.

For purposes of paragraph (2), the Inspector General or other designated employee may take into account agency cost savings projected for subsequent fiscal years which will be attributable to such disclosure.

(b) In the case of an agency for which there is no Inspector General, the head of the agency shall designate an agency employee who shall have the authority to make the determinations

and grant the awards permitted under this section.

(Added Pub. L. 97–35, title XVII, §1703(a), Aug. 13, 1981, 95 Stat. 755; amended Pub. L. 99–145, title XII, §1225(b)(2), Nov. 8, 1985, 99 Stat. 730.)

AMENDMENTS

1985—Subsec. (c). Pub. L. 99–145 struck out subsec. (c) which provided that the Inspector General, or other employee designated under subsection (b), shall submit to the Comptroller General documentation substantiating any award made under this section and that the Comptroller General shall, from time to time, review awards made under this section and procedures used in making such awards to verify the cost savings for which the awards were made.

§ 4513. Presidential awards for cost savings disclosures

The President may pay a cash award in the amount of $20,000 to any employee whose disclosure of fraud, waste, or mismanagement has resulted in substantial cost savings for the Government. In evaluating the significance of a cost savings disclosure made by an employee for purposes of determining whether to make an award to such employee under this section, the President may take into account cost savings projected for subsequent fiscal years which will be attributable to the disclosure. During any fiscal year, the President may not make more than 50 awards under this section.

(Added Pub. L. 97–35, title XVII, §1703(a), Aug. 13, 1981, 95 Stat. 755.)

[§ 4514. Repealed. Pub. L. 102–487, § 1(a), Oct. 24, 1992, 106 Stat. 3134]

Section, added Pub. L. 97–35, title XVII, §1703(a), Aug. 13, 1981, 95 Stat. 756; amended Pub. L. 99–145, title XII, §1225(b)(1)(A), Nov. 8, 1985, 99 Stat. 730; Pub. L. 100–611, §1(a), Nov. 5, 1988, 102 Stat. 3179, provided that no award could be made under this subchapter after Sept. 30, 1990.

SUBCHAPTER III—AWARD TO LAW ENFORCEMENT OFFICERS FOR FOREIGN LANGUAGE CAPABILITIES

AMENDMENTS

1992—Pub. L. 102–378, §2(20), Oct. 2, 1992, 106 Stat. 1348, substituted ''OFFICERS'' for ''OFFICER''.

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in title 19 section 267a.

§ 4521. Definition

For the purpose of this subchapter, the term ''law enforcement officer'' means—

(1) a law enforcement officer within the meaning of section 5541(3) and to whom the provisions of chapter 51 apply;

(2) a member of the United States Secret Service Uniformed Division;

(3) a member of the United States Park Police;

(4) a special agent in the Diplomatic Security Service;

(5) a probation officer (referred to in section 3672 of title 18); and

(6) a pretrial services officer (referred to in section 3153 of title 18).

(Added Pub. L. 101–509, title V, §529 [title IV, §408(a)], Nov. 5, 1990, 104 Stat. 1427, 1467; amended Pub. L. 102–141, title VI, §627, Oct. 28, 1991, 105 Stat. 874; Pub. L. 102–378, §2(21), Oct. 2, 1992, 106 Stat. 1348.)

AMENDMENTS

1992—Pub. L. 102–378 amended section generally, substituting in par. (1) ''section 5541(3)'' for ''section 8331(20) or section 8401(17)''.

1991—Pub. L. 102–141 amended section generally. Prior to amendment, section read as follows: ''For the purpose of this subchapter, the term 'law enforcement officer' has the same meaning as under section 5949(a).''

EFFECTIVE DATE

Section 529 [title IV, §408(d)] of Pub. L. 101–509 provided that: ''The amendments made by this section [enacting this subchapter and amending provisions set out as a note under section 5541 of this title] shall be effective on January 1, 1992.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 19 section 267a.

§ 4522. General provision

An award under this subchapter is in addition to the basic pay of the recipient.

(Added Pub. L. 101–509, title V, §529 [title IV, §408(a)], Nov. 5, 1990, 104 Stat. 1427, 1467.)

§ 4523. Award authority

(a) An agency may pay a cash award, up to 5 percent of basic pay, to any law enforcement officer employed in or under such agency who possesses and makes substantial use of 1 or more foreign languages in the performance of official duties.

(b) Awards under this section shall be paid under regulations prescribed by the head of the agency involved (or designee thereof). Regulations prescribed by an agency head (or designee) under this subsecton[1] shall include—

(1) procedures under which foreign language proficiency shall be ascertained;

(2) criteria for the selection of individuals for recognition under this section; and

(3) any other provisions which may be necessary to carry out the purposes of this subchapter.

(Added Pub. L. 101–509, title V, §529 [title IV, §408(a)], Nov. 5, 1990, 104 Stat. 1427, 1467.)

CHAPTER 47—PERSONNEL RESEARCH PROGRAMS AND DEMONSTRATION PROJECTS

Sec.
4701. Definitions.
4702. Research programs.
4703. Demonstration projects.
4704. Allocation of funds.
4705. Reports.
4706. Regulations.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 1103 of this title.

§ 4701. Definitions

(a) For the purpose of this chapter—

(1) ''agency'' means an Executive agency and the Government Printing Office, but does not include—

[1] So in original. Probably should be ''subsection''.

(A) a Government corporation;

(B) the Federal Bureau of Investigation, the Central Intelligence Agency, the Defense Intelligence Agency, the Central Imagery Office, the National Security Agency, and, as determined by the President, any Executive agency or unit thereof which is designated by the President and which has as its principal function the conduct of foreign intelligence or counterintelligence activities; or

(C) the General Accounting Office;

(2) ''employee'' means an individual employed in or under an agency;

(3) ''eligible'' means an individual who has qualified for appointment in an agency and whose name has been entered on the appropriate register or list of eligibles;

(4) ''demonstration project'' means a project conducted by the Office of Personnel Management, or under its supervision, to determine whether a specified change in personnel management policies or procedures would result in improved Federal personnel management; and

(5) ''research program'' means a planned study of the manner in which public management policies and systems are operating, the effects of those policies and systems, the possibilities for change, and comparisons among policies and systems.

(b) This chapter shall not apply to any position in the Drug Enforcement Administration which is excluded from the competitive service under section 201 of the Crime Control Act of 1976 (28 U.S.C. 509 note; 90 Stat. 2425).

(Added Pub. L. 95–454, title VI, § 601(a), Oct. 13, 1978, 92 Stat. 1185; amended Pub. L. 96–54, § 2(a)(21), Aug. 14, 1979, 93 Stat. 382; Pub. L. 101–474, § 5(g), Oct. 30, 1990, 104 Stat. 1100; Pub. L. 103–359, title V, § 501(f), Oct. 14, 1994, 108 Stat. 3429.)

AMENDMENTS

1994—Subsec. (a)(1)(B). Pub. L. 103–359 inserted ''the Central Imagery Office,'' after ''Defense Intelligence Agency,''.

1990—Subsec. (a)(1). Pub. L. 101–474 struck out '', the Administrative Office of the United States Courts,'' after ''means an Executive agency''.

1979—Subsec. (b). Pub. L. 96–54 substituted ''chapter'' for ''subchapter'' and ''28 U.S.C. 509'' for ''5 U.S.C. 5108''.

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.

EFFECTIVE DATE

Chapter effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

§ 4702. Research programs

The Office of Personnel Management shall—

(1) establish and maintain (and assist in the establishment and maintenance of) research programs to study improved methods and technologies in Federal personnel management;

(2) evaluate the research programs established under paragraph (1) of this section;

(3) establish and maintain a program for the collection and public dissemination of information relating to personnel management research and for encouraging and facilitating the exchange of information among interested persons and entities; and

(4) carry out the preceding functions directly or through agreement or contract.

(Added Pub. L. 95–454, title VI, § 601(a), Oct. 13, 1978, 92 Stat. 1185.)

§ 4703. Demonstration projects

(a) Except as provided in this section, the Office of Personnel Management may, directly or through agreement or contract with one or more agencies and other public and private organizations, conduct and evaluate demonstration projects. Subject to the provisions of this section, the conducting of demonstration projects shall not be limited by any lack of specific authority under this title to take the action contemplated, or by any provision of this title or any rule or regulation prescribed under this title which is inconsistent with the action, including any law or regulation relating to—

(1) the methods of establishing qualification requirements for, recruitment for, and appointment to positions;

(2) the methods of classifying positions and compensating employees;

(3) the methods of assigning, reassigning, or promoting employees;

(4) the methods of disciplining employees;

(5) the methods of providing incentives to employees, including the provision of group or individual incentive bonuses or pay;

(6) the hours of work per day or per week;

(7) the methods of involving employees, labor organizations, and employee organizations in personnel decisions; and

(8) the methods of reducing overall agency staff and grade levels.

(b) Before conducting or entering into any agreement or contract to conduct a demonstration project, the Office shall—

(1) develop a plan for such project which identifies—

(A) the purposes of the project;

(B) the types of employees or eligibles, categorized by occupational series, grade, or organizational unit;

(C) the number of employees or eligibles to be included, in the aggregate and by category;

(D) the methodology;

(E) the duration;

(F) the training to be provided;

(G) the anticipated costs;

(H) the methodology and criteria for evaluation;

(I) a specific description of any aspect of the project for which there is a lack of specific authority; and

(J) a specific citation to any provision of law, rule, or regulation which, if not waived under this section, would prohibit the conducting of the project, or any part of the project as proposed;

(2) publish the plan in the Federal Register;

(3) submit the plan so published to public hearing;

(4) provide notification of the proposed project, at least 180 days in advance of the date any project proposed under this section is to take effect—

(A) to employees who are likely to be affected by the project; and

(B) to each House of the Congress;

(5) obtain approval from each agency involved of the final version of the plan; and

(6) provide each House of the Congress with a report at least 90 days in advance of the date the project is to take effect setting forth the final version of the plan as so approved.

(c) No demonstration project under this section may provide for a waiver of—

(1) any provision of chapter 63 or subpart G of this title;

(2)(A) any provision of law referred to in section 2302(b)(1) of this title; or

(B) any provision of law implementing any provision of law referred to in section 2302(b)(1) of this title by—

(i) providing for equal employment opportunity through affirmative action; or

(ii) providing any right or remedy available to any employee or applicant for employment in the civil service;

(3) any provision of chapter 15 or subchapter III of chapter 73 of this title;

(4) any rule or regulation prescribed under any provision of law referred to in paragraph (1), (2), or (3) of this subsection; or

(5) any provision of chapter 23 of this title, or any rule or regulation prescribed under this title, if such waiver is inconsistent with any merit system principle or any provision thereof relating to prohibited personnel practices.

(d)(1) Each demonstration project shall—

(A) involve not more than 5,000 individuals other than individuals in any control groups necessary to validate the results of the project; and

(B) terminate before the end of the 5-year period beginning on the date on which the project takes effect, except that the project may continue beyond the date to the extent necessary to validate the results of the project.

(2) Not more than 10 active demonstration projects may be in effect at any time.

(e) Subject to the terms of any written agreement or contract between the Office and an agency, a demonstration project involving the agency may be terminated by the Office, or the agency, if either determines that the project creates a substantial hardship on, or is not in the best interests of, the public, the Federal Government, employees, or eligibles.

(f) Employees within a unit with respect to which a labor organization is accorded exclusive recognition under chapter 71 of this title shall not be included within any project under subsection (a) of this section—

(1) if the project would violate a collective bargaining agreement (as defined in section 7103(8) of this title) between the agency and the labor organization, unless there is another written agreement with respect to the project between the agency and the organization permitting the inclusion; or

(2) if the project is not covered by such a collective bargaining agreement, until there has been consultation or negotiation, as appropriate, by the agency with the labor organization.

(g) Employees within any unit with respect to which a labor organization has not been accorded exclusive recognition under chapter 71 of this title shall not be included within any project under subsection (a) of this section unless there has been agency consultation regarding the project with the employees in the unit.

(h) The Office shall provide for an evaluation of the results of each demonstration project and its impact on improving public management.

(i) Upon request of the Director of the Office of Personnel Management, agencies shall cooperate with and assist the Office, to the extent practicable, in any evaluation undertaken under subsection (h) of this section and provide the Office with requested information and reports relating to the conducting of demonstration projects in their respective agencies.

(Added Pub. L. 95–454, title VI, § 601(a), Oct. 13, 1978, 92 Stat. 1186.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5392 of this title.

§ 4704. Allocation of funds

Funds appropriated to the Office of Personnel Management for the purpose of this chapter may be allocated by the Office to any agency conducting demonstration projects or assisting the Office in conducting such projects. Funds so allocated shall remain available for such period as may be specified in appropriation Acts. No contract shall be entered into under this chapter unless the contract has been provided for in advance in appropriation Acts.

(Added Pub. L. 95–454, title VI, § 601(a), Oct. 13, 1978, 92 Stat. 1188.)

§ 4705. Reports

The Office of Personnel Management shall include in the annual report required by section 1308(a)[1] of this title a summary of research programs and demonstration projects conducted during the year covered by the report, the effect of the programs and projects on improving public management and increasing Government efficiency, and recommendations of policies and procedures which will improve such management and efficiency.

(Added Pub. L. 95–454, title VI, § 601(a), Oct. 13, 1978, 92 Stat. 1188.)

REFERENCES IN TEXT

Section 1308(a) of this title, referred to in text, which related to the annual report of the Office of Personnel Management, was repealed by section 121 of Pub. L. 96–470.

[1] See References in Text note below.

§ 4706. Regulations

The Office of Personnel Management shall prescribe regulations to carry out the purpose of this chapter.

(Added Pub. L. 95–454, title VI, § 601(a), Oct. 13, 1978, 92 Stat. 1188.)

Subpart D—Pay and Allowances

SUBPART REFERRED TO IN OTHER SECTIONS

This subpart is referred to in section 1103 of this title.

CHAPTER 51—CLASSIFICATION

Sec.
5101. Purpose.
5102. Definitions; application.
5103. Determination of applicability.
5104. Basis for grading positions.
5105. Standards for classification of positions.
5106. Basis for classifying positions.
5107. Classification of positions.
5108. Classification of positions above GS–15.
5109. Positions classified by statute.
5110. Review of classification of positions.
5111. Revocation and restoration of authority to classify positions.
5112. General authority of the Office of Personnel Management.
5113. Classification records.
[5114. Repealed.]
5115. Regulations.

AMENDMENTS

1992—Pub. L. 102–378, § 2(22), Oct. 2, 1992, 106 Stat. 1348, substituted ''above GS–15'' for ''at GS–16, 17, and 18'' in item 5108.

1986—Pub. L. 99–386, title I, § 110(b), Aug. 22, 1986, 100 Stat. 822, struck out item 5114 ''Reports; positions in GS–16, 17, and 18''.

1978—Pub. L. 95–454, title IX, § 906(a)(17), Oct. 13, 1978, 92 Stat. 1226, substituted ''Office of Personnel Management'' for ''Civil Service Commission'' in item 5112.

CROSS REFERENCES

Antidiscrimination in employment in administration of this chapter, see section 7204 of this title.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 3101, 3102, 3109, 3374, 4521, 5307, 5331, 5334, 5342, 5348, 5361, 5363, 5371, 5377, 5380, 5392, 5541, 5544, 5545, 7204 of this title; title 2 sections 60e–2, 60e–2a, 60e–2b, 60e–6, 162a, 166, 197, 293, 353, 356, 437c; title 4 section 142; title 7 sections 511m, 610, 1507, 1642, 1765a, 6981; title 10 sections 2903, 4540, 7212, 9540; title 12 sections 482, 1441a, 1462a, 1701c, 1766, 2245, 2405, 3012, 4515, 4703; title 13 section 23; title 14 section 432; title 15 sections 78d, 78s, 205i, 278, 278a, 327, 634d, 648, 714g, 714h, 715h, 717q, 1023, 2053, 2451; title 16 sections 81c, 410cc–36, 410pp–4, 410ww–24, 410ccc–22, 450jj–1, 460m, 469j, 470m, 583j–1, 590d, 793, 825i, 832i, 833h, 916*l*, 3702, 4604; title 18 section 4001; title 20 sections 74, 75f, 76dd, 80g, 80g–4, 80*o*, 241, 964, 1089, 1098, 1102, 1134, 1135a–1, 1135d–3, 1145, 1213c, 1221e, 1221e–1, 1417, 2106, 2839, 3413, 3425, 4416, 4831, 5509, 5826, 5848, 5933, 6011, 9011; title 21 sections 393, 394; title 22 sections 272a, 277d–3, 277d–19, 280b, 280i, 280k, 287e, 287r, 289b, 290b, 2024, 2083, 2124c, 2421, 2454, 2581, 2873, 3008, 3981, 4154, 4606, 6204; title 25 sections 2a, 305a, 633, 640d–11, 2011, 2012, 2707; title 26 sections 7471, 9010, 9040; title 28 sections 625, 626; title 29 sections 172, 661, 676, 761a, 783, 797a, 1774; title 30 sections 556, 664, 823; title 31 section 3801; title 33 sections 569a, 939, 940, 984, 1325, 1374; title 35 sections 3, 7; title 36 sections 1405, 5202; title 38 sections 4103, 7281, 7802; title 40 sections 13b, 166b–1f, 166b–3, 174j–8, 609, 873, 1106; title 41 sections 38, 46, 104, 422; title 42 sections 204, 217a, 237, 282, 290aa, 299c–1, 300v–2, 907a, 1320a–4, 1320b–9, 1563, 1731, 1855f, 1863, 1873, 1962a–4, 2000e–4, 2000g, 2201, 2473, 4276, 4365, 4372, 5149, 5667g–2, 6063, 7231, 10266, 12373, 12619, 12651f, 14196; title 43 sections 316n, 1731; title 44 section 2503; title 45 sections 154, 362; title 46 App. sections 1111, 1295e, 1295g; title 47 section 154; title 49 sections 10363, 10383, 11161, 32306; title 50 sections 402, 404; title 50 App. sections 460, 1989b–5, 2001, 2153, 2253.

§ 5101. Purpose

It is the purpose of this chapter to provide a plan for classification of positions whereby—

(1) in determining the rate of basic pay which an employee will receive—

(A) the principle of equal pay for substantially equal work will be followed; and

(B) variations in rates of basic pay paid to different employees will be in proportion to substantial differences in the difficulty, responsibility, and qualification requirements of the work performed and to the contributions of employees to efficiency and economy in the service; and

(2) individual positions will, in accordance with their duties, responsibilities, and qualification requirements, be so grouped and identified by classes and grades, as defined by section 5102 of this title, and the various classes will be so described in published standards, as provided by section 5105 of this title, that the resulting position-classification system can be used in all phases of personnel administration.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 443.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 1071.	Oct. 28, 1949, ch. 782, § 101, 63 Stat. 954.

The words ''and for rates of basic compensation'' are omitted as inapplicable to this chapter since the provisions of former chapter 21 relating to rates of basic compensation are carried into subchapter III of chapter 53. The word ''officer'' is omitted as included in ''employee'' is defined in section 5102.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface of the report.

REFERENCES IN OTHER LAWS TO CHAPTER 51 AND SUBCHAPTER III OF CHAPTER 53

References in laws to fix pay in accordance with this chapter and subchapter III of chapter 53 of this title considered to include authority under section 5376 of this title, if applicable, but not to include any authority under section 5304 of this title or section 529 [title III, § 302] of Pub. L. 101–509, set out as a note under section 5304 of this title, see section 529 [title I, § 101(c)(2)] of Pub. L. 101–509, set out in a References in Other Laws to GS–16, 17, or 18 Pay Rates; Regulations note under section 5376 of this title.

CROSS REFERENCES

Employment of reading assistants for blind employees without regard to the provisions of this chapter, see section 3102 of this title.

General authority for employment, see section 3101 of this title.

§ 5102. Definitions; application

(a) For the purpose of this chapter—

(1) ''agency'' means—

(A) an Executive agency;

(B) the Library of Congress;
(C) the Botanic Garden;
(D) the Government Printing Office;
(E) the Office of the Architect of the Capitol; and
(F) the government of the District of Columbia;

but does not include—
(i) a Government controlled corporation;
(ii) the Tennessee Valley Authority;
(iii) the Virgin Islands Corporation;
(iv) the Atomic Energy Commission;
(v) the Central Intelligence Agency;
(vi) the Panama Canal Commission;
(vii) the National Security Agency, Department of Defense;
(viii) the General Accounting Office; or[1]
(x)[2] the Defense Intelligence Agency, Department of Defense; or
(xi) the Central Imagery Office, Department of Defense.[3]

(2) ''employee'' means an individual employed in or under an agency;
(3) ''position'' means the work, consisting of the duties and responsibilities, assignable to an employee;
(4) ''class'' or ''class of positions'' includes all positions which are sufficiently similar, as to—
(A) kind or subject-matter of work;
(B) level of difficulty and responsibility; and
(C) the qualification requirements of the work;

to warrant similar treatment in personnel and pay administration; and
(5) ''grade'' includes all classes of positions which, although different with respect to kind or subject-matter of work, are sufficiently equivalent as to—
(A) level of difficulty and responsibility; and
(B) level of qualification requirements of the work;

to warrant their inclusion within one range of rates of basic pay in the General Schedule.

(b) Except as provided by subsections (c) and (d) of this section, this chapter applies to all civilian positions and employees in or under an agency, including positions in local boards and appeal boards within the Selective Service System and employees occupying those positions.
(c) This chapter does not apply to—
[(1) Repealed. Pub. L. 91–375, §6(c)(9), Aug. 12, 1970, 84 Stat. 776.]
(2) members of the Foreign Service whose pay is fixed under the Foreign Service Act of 1980; and positions in or under the Department of State which are—
(A) connected with the representation of the United States to international organizations; or
(B) specifically exempted by statute from this chapter or other classification or pay statute;

(3) physicians, dentists, nurses, and other employees in the Veterans Health Administration of the Department of Veterans Affairs whose pay is fixed under chapter 73 of title 38;
(4) teachers, school officials, and employees of the Board of Education of the District of Columbia whose pay is fixed under chapter 15 of title 31, District of Columbia Code; the chief judges and the associate judges of the Superior Court of the District of Columbia and the District of Columbia Court of Appeals; and nonjudicial employees of the District of Columbia court system whose pay is fixed under title 11 of the District of Columbia Code;
(5) members of the Metropolitan Police, the Fire Department of the District of Columbia, the United States Park Police, and the Executive Protective Service; members of the police force of the National Zoological Park whose pay is fixed under section 5375 of this title; and members of the police forces of the Bureau of Engraving and Printing and the United States Mint whose pay is fixed under section 5378 of this title;
(6) lighthouse keepers and civilian employees on lightships and vessels of the Coast Guard whose pay is fixed under section 432 (f) and (g) of title 14;
(7) employees in recognized trades or crafts, or other skilled mechanical crafts, or in unskilled, semiskilled, or skilled manual-labor occupations, and other employees including foremen and supervisors in positions having trade, craft, or laboring experience and knowledge as the paramount requirement, and employees in the Bureau of Engraving and Printing whose duties are to perform or to direct manual or machine operations requiring special skill or experience, or to perform or direct the counting, examining, sorting, or other verification of the product of manual or machine operations;
(8) officers and members of crews of vessels;
(9) employees of the Government Printing Office whose pay is fixed under section 305 of title 44;
(10) civilian professors, instructors, and lecturers at a professional military education school (and, in the case of the George C. Marshall European Center for Security Studies, the Director and the Deputy Director) whose pay is fixed under section 1595, 4021, 7478, or 9021 of title 10; civilian professors, lecturers, and instructors at the Military Academy, the Naval Academy, and the Air Force Academy whose pay is fixed under sections 4338, 6952, and 9338, respectively, of title 10; senior professors, professors, associate and assistant professors, and instructors at the Naval Postgraduate School whose pay is fixed under section 7044 of title 10; the Academic Dean of the Postgraduate School of the Naval Academy whose pay is fixed under section 7043 of title 10; civilian professors, instructors, and lecturers in the defense acquisition university structure (including the Defense Systems Management College) whose pay is fixed under section 1746(b) of title 10;
(11) aliens or noncitizens of the United States who occupy positions outside the United States;

[1] So in original. The word ''or'' probably should not appear.
[2] So in original. Subsec. (a)(1) does not contain a cl. (ix).
[3] So in original. The period probably should be a semicolon.

(12) any Executive agency to the extent of any election under section 1212(b)(2) (relating to the Panama Canal Employment System) of the Panama Canal Act of 1979;

(13) employees who serve without pay or at nominal rates of pay;

(14) employees whose pay is not wholly from appropriated funds of the United States (other than employees of the Federal Retirement Thrift Investment Management System appointed under section 8474(c)(2) of this title), except that with respect to the Veterans' Canteen Service, Department of Veterans Affairs this paragraph applies only to employees necessary for the transaction of the business of the Service at canteens, warehouses, and storage depots whose employment is authorized by section 7802 of title 38;

(15) employees whose pay is fixed under a cooperative agreement between the United States and—

(A) a State or territory or possession of the United States, or political subdivision thereof; or

(B) an individual or organization outside the service of the Government of the United States;

(16) student nurses, medical or dental interns, residents-in-training, student dietitians, student physical therapists, student occupational therapists, and other student employees, assigned or attached to a hospital, clinic, or laboratory primarily for training purposes, whose pay is fixed under subchapter V of chapter 53 of this title or sections 7405 and 7406 of title 38;

(17) inmates, patients, or beneficiaries receiving care or treatment or living in Government agencies or institutions;

(18) experts or consultants, when employed temporarily or intermittently in accordance with section 3109 of this title;

(19) emergency or seasonal employees whose employment is of uncertain or purely temporary duration, or who are employed for brief periods at intervals;

(20) employees employed on a fee, contract, or piece work basis;

(21) employees who may lawfully perform their duties concurrently with their private profession, business, or other employment, and whose duties require only a portion of their time, when it is impracticable to ascertain or anticipate the proportion of time devoted to the service of the Government of the United States;

(22) ''teachers'' and ''teaching positions'' as defined by section 901 of title 20;

(23) examiners-in-chief and designated examiners-in-chief in the Patent and Trademark Office, Department of Commerce;

(24) temporary positions in the Bureau of the Census established under section 23 of title 13, and enumerator positions in the Bureau of the Census;

(25) positions for which rates of basic pay are individually fixed, or expressly authorized to be fixed, by other statute, at or in excess of the rate for level V of the Executive Schedule;

(26) civilian members of the faculty of the Coast Guard Academy whose pay is fixed under section 186 of title 14;

(27) members of the police of the Library of Congress whose pay is fixed under section 167 of title 2;

(28) civilian members of the faculty of the Air Force Institute of Technology whose pay is fixed under section 9314 of title 10;

(29) administrative law judges appointed under section 3105; or

(30) members of agency boards of contract appeals appointed under section 8 of the Contract Disputes Act of 1978.

(d) This chapter does not apply to an employee of the Office of the Architect of the Capitol whose pay is fixed by other statute. Subsection (c) of this section, except paragraph (7), does not apply to the Office of the Architect of the Capitol.

(Pub. L 89–554, Sept. 6, 1966, 80 Stat. 444; Pub. L. 90–83, § 1(11), Sept. 11, 1967, 81 Stat. 197; Pub. L. 90–610, § 2, Oct. 21, 1968, 82 Stat. 1201; Pub. L. 91–34, § 2(a), June 30, 1969, 83 Stat. 41; Pub. L. 91–358, title I, § 172(f), July 29, 1970, 84 Stat. 591; Pub. L. 91–375, § 6(c)(9), Aug. 12, 1970, 84 Stat. 776; Pub. L. 93–176, § 1, Dec. 5, 1973, 87 Stat. 693; Pub. L. 94–183, § 2(12), (13), Dec. 31, 1975, 89 Stat. 1057; Pub. L. 95–454, title VIII, § 801(a)(3)(D), title IX, § 906(a)(2), Oct. 13, 1978, 92 Stat. 1221, 1224; Pub. L. 96–54, § 2(a)(22), Aug. 14, 1979, 93 Stat. 382; Pub. L. 96–70, title III, § 3302(e)(1), (6), Sept. 27, 1979, 93 Stat. 498; Pub. L. 96–191, § 8(b), Feb. 15, 1980, 94 Stat. 33; Pub. L. 96–465, title II, § 2314(b), Oct. 17, 1980, 94 Stat. 2167; Pub. L. 97–468, title VI, § 615(b)(1)(C), Jan. 14, 1983, 96 Stat. 2578; Pub. L. 98–618, title V, § 502(a), Nov. 8, 1984, 98 Stat. 3302; Pub. L. 99–145, title V, § 504(b), Nov. 8, 1985, 99 Stat. 622; Pub. L. 99–335, title II, § 207(n), June 6, 1986, 100 Stat. 598; Pub. L. 100–135, § 1(b)(2), Oct. 16, 1987, 101 Stat. 811; Pub. L. 101–189, div. A, title XI, § 1124(e), Nov. 29, 1989, 103 Stat. 1560; Pub. L. 101–474, § 5(h), Oct. 30, 1990, 104 Stat. 1100; Pub. L. 101–509, title V, § 529 [title I, §§ 101(b)(9)(F), 104(d)(1), 109(a)(2)], Nov. 5, 1990, 104 Stat. 1427, 1441, 1447, 1451; Pub. L. 101–510, div. A, title XII, § 1209(h)(2), Nov. 5, 1990, 104 Stat. 1667; Pub. L. 102–40, title IV, § 403(c)(1), May 7, 1991, 105 Stat. 240; Pub. L. 102–54, § 13(b)(1), (2), June 13, 1991, 105 Stat. 274; Pub. L. 103–160, div. A, title V, § 533(c), title IX, § 923(b), Nov. 30, 1993, 107 Stat. 1658, 1731; Pub. L. 103–359, title V, § 501(g), Oct. 14, 1994, 108 Stat. 3429; Pub. L. 103–446, title XII, § 1203(b), Nov. 2, 1994, 108 Stat. 4689.)

HISTORICAL AND REVISION NOTES
1966 ACT

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(a)(1)	5 U.S.C. 1081(a).	Oct. 28, 1949, ch. 782, § 201(a), 63 Stat. 954.
	5 U.S.C. 1082 (12)–(20), (32).	Oct. 28, 1949, ch. 782, § 202 (12)–(20), 63 Stat. 954. May 29, 1959, Pub. L. 86–36, § 1, 73 Stat. 63. Sept. 23, 1959, Pub. L. 86–370, § 6(a) (less (4)), 73 Stat. 652.
(a)(3)–(5)	5 U.S.C. 1091.	Oct. 28, 1949, ch. 782, § 301, 63 Stat. 957.
(b)	5 U.S.C. 1081(b).	Oct. 28, 1949, ch. 782, § 201(b), 63 Stat. 954.
(c)	5 U.S.C. 1082(1)–(6), (7) (less provisos), (8) (less last 31 words), (9)–(11), (21)–(31), (33)–(35).	Oct. 28, 1949, ch. 782, § 202 (1)–(6), (7) (less last 25 words), (8) (less last 31 words), (9)–(11), (21)– (31), 63 Stat. 954.

HISTORICAL AND REVISION NOTES—CONTINUED
1966 ACT

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
		Sept. 1, 1954, ch. 1208, §105(a) ''(7) (less provisos)'', 68 Stat. 1106. June 17, 1957, Pub. L. 85–56, §2201(20), 71 Stat. 159. July 25, 1958, Pub. L. 85–550, §16(a), (b)(1), 72 Stat. 411. Sept. 2, 1958, Pub. L. 85–857, §13(o), 72 Stat. 1266. July 17, 1959, Pub. L. 86–91, §3, 73 Stat. 213. Sept. 23, 1959, Pub. L. 86–370, §6(a)(4), 73 Stat. 652. Sept. 13, 1960, Pub. L. 86–769, §4, 74 Stat. 912.
(d)	5 U.S.C. 1084(b).	Oct. 28, 1949, ch. 782, §204(b), 63 Stat. 957.

The section is reorganized and restated for clarity.

In subsection (a)(1)(i), the exception of ''a Government controlled corporation'' is added to preserve the application of this chapter to ''corporations wholly owned by the United States''. This is necessary as the defined term ''Executive agency'' includes the defined term ''Government corporation'' and the latter includes both Government owned and controlled corporations. Thus the exclusion of Government controlled corporations, which are distinct from wholly owned corporations, operates to preserve the application of the chapter to wholly owned corporations.

In subsection (a)(1)(vii), the words ''Panama Canal Company'' are substituted for ''Panama Railroad Company'' on authority of the Act of Sept. 26, 1950, ch. 1049, §2(a)(2), 64 Stat. 1038.

The exception for the Inland Waterways Corporation in former section 1082(13) is omitted on authority of the Act of July 19, 1963, Pub. L. 88–67, 77 Stat. 81.

The exceptions for Production Credit Corporations and Federal Intermediate Credit Banks in former section 1082(18) and (19) are omitted as they are no longer ''corporations wholly owned by the United States''. Under the Farm Credit Act of 1956, 70 Stat. 659, the Production Credit Corporations were merged in the Federal Intermediate Credit Banks, and pursuant to that Act the Federal Intermediate Credit Banks have ceased to be corporations wholly owned by the United States.

Subsection (a)(2) is added for clarity. The reference to ''an individual employed in or under an agency'' includes both officers and employees of an agency.

In subsection (a)(5), the words ''in the General Schedule'' are substituted for the reference in former section 1091(3) to ''as specified in subchapter V of this chapter''.

In subsection (b), the reference to former section 1085 is omitted as unnecessary. Former section 1085 which exempted certain agencies from former sections 1151–1153 is carried into section 305.

In subsection (c)(1), the words ''chapter 45 of title 39'' are substituted for the reference in former section 1082(1) to ''chapter 23 of title 39'' on authority of the Act of July 10, 1955, ch. 137, §805, 69 Stat. 130, and the Act of Sept. 2, 1960, Pub. L. 86–682, §5, 74 Stat. 705.

In subsection (c)(2)(B), the words ''this chapter'' are substituted for the reference in former section 1082(2)(B) to ''the Classification Act of 1923, as amended,'' on authority of section 1106 of the Act of Oct. 28, 1949, 63 Stat. 972, and technical section 7(b).

In subsection (c)(4), the words ''chapter 15 of title 31, District of Columbia Code'' are substituted for the reference in former section 1082(4) to ''the District of Columbia Teachers Salary Act of 1947, as supplemented by Public Law 151, Eighty-first Congress, approved June 30, 1949'' on authority of the provisions contained therein. The words ''District of Columbia Court of General Sessions'' and ''District of Columbia Court of Appeals'' are substituted for ''Municipal Court for the District of Columbia'' and ''Municipal Court of Appeals for the District of Columbia'', respectively, on authority of D.C. Code §§11–902 and 11–702. The exception for judges of the Juvenile Court of the District of Columbia is based on D.C. Code §11–1502.

In subsection (c)(5), the word ''officers'' is omitted as included in ''member''.

In subsection (c)(10), the words ''sections 6952 and 7478 of title 10'', ''section 7044 of title 10'', and ''section 7043 of title 10'' are substituted for the references in former section 1082(10) to ''section 1071 of title 34'', ''sections 1076–1076f of title 34'', and ''section 1074 of title 34'', respectively, on authority of the Act of Aug. 10, 1956, ch. 1041, §49(b), 70A Stat. 640.

In subsection (c)(11), the words ''the United States'' are substituted for ''the several States and the District of Columbia''.

In subsection (c)(14), the words ''employees necessary for the transaction of the business of the Service at canteens, warehouses, and storage depots whose employment is authorized by section 4202 of title 38'' are substituted for the reference in former section 1082(23) to ''positions which are exempt from this chapter, pursuant to section 4202 of title 38''.

In subsection (c)(16), the reference to ''section 4114 of title 38'' is substituted for the reference in former section 1082(25) to ''section 4114(b) of title 38'' to reflect the pay fixing authority contained in subsection (a)(1) of section 4114.

In subsection (c)(22), the words ''as defined by section 901 of title 20'' are substituted for ''as defined in the Defense Department Overseas Teachers Pay and Personnel Practices Act'' on authority of former section 2351, which is scheduled for transfer to section 901 of title 20.

In subsection (c)(25), the word ''schedule'' is omitted since section 603 of the Act of Oct. 11, 1962, Pub. L. 87–793, 76 Stat. 847, eliminated the necessity of referring to rates as scheduled or longevity. The words ''for GS–18'' are substituted for ''of the highest grade established by this chapter''.

The second sentence of subsection (d) is based on former section 1084(c), which is carried into section 5103.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 ACT

Section of title 5	*Source (U.S. Code)*	*Source (Statutes at Large)*
5102(c)(26) ..	5 App.: 1082(36).	June 9, 1966, Pub. L. 89–444, §4, 80 Stat. 198.

The amendment to 5 U.S.C. 5102(c)(15) is made to correct a typographical error.

The amendment to 5 U.S.C. 5102(c)(26) reflects Public Law 89–444, section 4.

REFERENCES IN TEXT

The Foreign Service Act of 1980, referred to in subsec. (c)(2), is Pub. L. 96–465, Oct. 17, 1980, 94 Stat. 2071, as amended, which is classified principally to chapter 52 (§3901 et seq.) 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.

Chapter 15 of title 31, District of Columbia Code, referred to in subsec. (c)(4), was transferred to chapter 11 (§31–1101 et seq.) of Title 31, Education and Cultural Institutions, of the District of Columbia Code.

Section 1212(b)(2) of the Panama Canal Act of 1979, referred to in subsec. (c)(12), is classified to section 3652(b)(2) of Title 22, Foreign Relations and Intercourse.

Level V of the Executive Schedule, referred to in subsec. (c)(25), is set out in section 5316 of this title.

Section 8 of the Contract Disputes Act of 1978, referred to in subsec. (c)(30), is classified to section 607 of Title 41, Public Contracts.

AMENDMENTS

1994—Subsec. (a)(1)(ix) to (xi). Pub. L. 103–359 directed the amendment of cl. (ix) by striking ''or'' at end which

could not be executed because par. (1) does not contain a cl. (ix), directed the substitution of ''; or'' for period at end of cl. (x) which was executed by inserting ''or'' at end of cl. (x) to reflect the probable intent of Congress because a semicolon already exists at end of cl. (x), and added cl. (xi).

Subsec. (c)(3). Pub. L. 103–446 struck out comma after ''Department of Veterans Affairs''.

1993—Subsec. (c)(10). Pub. L. 103–160, § 923(b), inserted ''(and, in the case of the George C. Marshall European Center for Security Studies, the Director and the Deputy Director)'' after ''professional military education school''.

Pub. L. 103–160, § 533(c), substituted ''at the Military Academy, the Naval Academy, and the Air Force Academy whose pay is fixed under sections 4338, 6952, and 9338, respectively, of title 10'' for ''at the Naval Academy whose pay is fixed under section 6952 of title 10''.

1991—Subsec. (c)(3). Pub. L. 102–54, § 13(b)(2), substituted ''Veterans Health Administration of the Department of Veterans Affairs'' for ''Department of Medicine and Surgery, Veterans' Administration''.

Subsec. (c)(14). Pub. L. 102–54, § 13(b)(1), substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

Pub. L. 102–40, § 403(c)(1)(A), substituted ''section 7802 of title 38'' for ''section 4202 of title 38''.

Subsec. (c)(16). Pub. L. 102–40, § 403(c)(1)(B), substituted ''sections 7405 and 7406'' for ''section 4114''.

1990—Subsec. (a)(1). Pub. L. 101–474 redesignated subpars. (C) to (G) as (B) to (F), respectively, and struck out former subpar. (B) which included Administrative Office of United States Courts within definition of ''agency''.

Subsec. (c)(5). Pub. L. 101–509, § 529 [title I, § 109(a)(2)], substituted ''members'' for ''and members'' after ''Protective Service;'' and inserted at end ''and members of the police forces of the Bureau of Engraving and Printing and the United States Mint whose pay is fixed under section 5378 of this title;''.

Subsec. (c)(10). Pub. L. 101–510 struck out ''and'' before ''the Academic Dean'' and inserted at end ''civilian professors, instructors, and lecturers in the defense acquisition university structure (including the Defense Systems Management College) whose pay is fixed under section 1746(b) of title 10;''.

Subsec. (c)(25). Pub. L. 101–509, § 529 [title I, § 101(b)(9)(F)], substituted ''rate for level V of the Executive Schedule'' for ''maximum rate for GS–18''.

Subsec. (c)(29), (30). Pub. L. 101–509, § 529 [title I, § 104(d)(1)], added pars. (29) and (30).

1989—Subsec. (c)(10). Pub. L. 101–189 inserted ''civilian professors, instructors, and lecturers at a professional military education school whose pay is fixed under section 1595, 4021, 7478, or 9021 of title 10;'', struck out ''the Naval War College and'' after ''instructors at'', and substituted ''section 6952'' for ''sections 6952 and 7478''.

1987—Subsec. (c)(27). Pub. L. 100–135 substituted ''police'' for ''special police force''.

1986—Subsec. (c)(14). Pub. L. 99–335 inserted ''(other than employees of the Federal Retirement Thrift Investment System appointed under section 8474(c)(2) of this title)''.

1985—Subsec. (c)(28). Pub. L. 99–145 added par. (28).

1984—Subsec. (a)(1)(viii) to (x). Pub. L. 98–618 struck out ''or'' at end of cl. (viii), inserted ''or'' at end of cl. (ix), and added cl. (x).

1983—Subsec. (a)(1)(iii) to (ix). Pub. L. 97–468, eff. Jan. 5, 1985, struck out cl. (iii) which excluded the Alaska Railroad and redesignated cls. (iv) to (ix) as (iii) to (viii), respectively. See Effective Date of 1983 Amendment note below.

1980—Subsec. (a)(1)(ix). Pub. L. 96–191 added cl. (ix).

Subsec. (c)(2). Pub. L. 96–465 substituted ''members of the Foreign Service whose pay is fixed under the Foreign Service Act of 1980'' for ''employees in the Foreign Service of the United States whose pay is fixed under chapter 14 of title 22''.

1979—Subsec. (a)(1)(vii). Pub. L. 96–70, § 3302(e)(1), substituted ''Commission'' for ''Company''.

Subsec. (c)(12). Pub. L. 96–70, § 3302(e)(6), substituted provisions relating to any Executive agency to the extent of any election under section 1212(b)(2) of the Panama Canal Act of 1979 for provisions relating to employees of an agency who are stationed in the Canal Zone or in the Republic of Panama.

Subsec. (c)(23). Pub. L. 96–54 inserted ''and Trademark'' after ''Patent''.

1978—Subsec. (c)(5). Pub. L. 95–454, § 801(a)(3)(D), substituted ''5375'' for ''5365''.

Subsec. (c)(12)(B). Pub. L. 95–454, § 906(a)(2), substituted ''Office of Personnel Management'' for ''Civil Service Commission''.

1975—Subsec. (c)(5). Pub. L. 94–183, § 2(12), substituted ''Executive Protective Service'' for ''White House Police''.

Subsec. (c)(9). Pub. L. 94–183, § 2(13), substituted ''305'' for ''40''.

1973—Subsec. (b). Pub. L. 93–176 extended this chapter to include positions in local boards and appeal boards within the Selective Service System and employees occupying those positions.

1970—Subsec. (c)(1). Pub. L. 91–375 repealed provision declaring this chapter inapplicable to employees in the postal field service whose pay is fixed under chapter 45 of title 39.

Subsec. (c)(4). Pub. L. 91–358 expanded reference to include chief judges, substituted reference to the Superior Court of the District of Columbia for references to the District of Columbia Court of General Sessions and the Juvenile Court of the District of Columbia, and provided that chapter not apply to nonjudicial employees of the District of Columbia court system whose pay is fixed under title 11 of the District of Columbia Code.

1969—Subsec. (c)(5). Pub. L. 91–34 extended provisions to include members of the National Zoological Park police force whose pay is fixed under section 5365 of this title.

1968—Subsec. (c). Pub. L. 90–610 inserted par. (27).

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 529 [title I, §§ 101(b)(9)(F), 104(d)(1)] of Pub. L. 101–509 effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title III, § 305] of Pub. L. 101–509, set out as a note under section 5301 of this title.

Amendment by section 529 [title I, § 109(a)(2)] of Pub. L. 101–509 effective on first day of first applicable pay period beginning on or after the 30th day following Nov. 5, 1990, see section 529 [title I, § 109(c)] of Pub. L. 101–509, set out as an Effective Date note under section 5378 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–135 applicable with respect to pay periods beginning after Sept. 30, 1987, except that any pay increase for employees of Library of Congress, pursuant to such amendment, to be subject to appropriation and to be implemented in four approximately equal annual increments, so that pay parity with Capitol Police occurs beginning with first pay period beginning after Sept. 30, 1990, see section 3 of Pub. L. 100–135, set out as a note under section 167 of Title 2, The Congress.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–335 effective Jan. 1, 1987, see section 702(a) of Pub. L. 99–335, set out as an Effective Date note under section 8401 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–468 effective on date of transfer of Alaska Railroad to the State [Jan. 5, 1985], pursuant to section 1203 of Title 45, Railroads, see section 615(b) of Pub. L. 97–468.

EFFECTIVE DATE OF 1980 AMENDMENTS

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.

Amendment by Pub. L. 96–191 effective Oct. 1, 1980, see section 10(a) of Pub. L. 96–191.

EFFECTIVE DATE OF 1979 AMENDMENTS

Amendment by Pub. L. 96–70 effective Oct. 1, 1979, see section 3304 of Pub. L. 96–70, set out as an Effective Date note under section 3601 of Title 22, Foreign Relations and Intercourse.

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.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 801(a)(3)(D) of Pub. L. 95–454 effective on first day of first applicable pay period beginning on or after 90th day after Oct. 13, 1978, see section 801(a)(4) of Pub. L. 95–454, set out as an Effective Date note under section 5361 of this title.

Amendment by section 906(2)(2) of Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1973 AMENDMENT

Amendment by Pub. L. 93–176 effective not later than beginning of first pay period which begins on or after 90th day following Dec. 5, 1973, see section 4 of Pub. L. 93–176, set out as a note under section 460 of the Appendix to Title 50, War and National Defense.

EFFECTIVE DATE OF 1970 AMENDMENTS

Amendment by Pub. L. 91–375 effective within 1 year after Aug. 12, 1970, on date established therefor by Board of Governors of United States Postal Service and published by it in Federal Register, see section 15(a) of Pub. L. 91–375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

Amendment by Pub. L. 91–358 effective first day of seventh calendar month which begins after July 29, 1970, see section 199(a) of Pub. L. 91–358, set out as a note under section 1257 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–34 effective at beginning of first pay period which commences on or after June 30, 1969, see section 3(a) of Pub. L. 91–34, set out as an Effective Date note under section 5375 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–610 effective on first day of first pay period which begins on or after Oct. 21, 1968, see section 3 of Pub. L. 90–610, set out as a note under section 167 of Title 2, The Congress.

EFFECTIVE DATE OF 1967 AMENDMENT

Section 9(h) of Pub. L. 90–83 provided that: ''Section 1(3) [amending section 1305 of this title], (10) [amending section 3324 of this title], (11) [amending this section], (12) [amending section 5108 of this title], (22) [enacting section 5534a of this title], (23) [amending the analysis for chapter 55 of this title], (83)(a) and (d) [amending section 8344 of this title], (89) [amending section 8521 of this title], (98) [amending section 902 of this title], (99) [amending section 903 of this title], and (100) [amending section 8113 of this title] of this Act is effective as of September 6, 1966, for all purposes.''

REPEALS

General repealer of provisions inconsistent with Pub. L. 92–392 as not repealing or affecting subsec. (d) of this section, see section 13 of Pub. L. 92–392, Aug. 19, 1972, 86 Stat. 575, set out as a note under section 5341 of this title.

ABOLITION OF ATOMIC ENERGY COMMISSION

Atomic Energy Commission abolished and functions transferred by sections 5814 and 5841 of Title 42, The Public Health and Welfare. See, also, Transfer of Functions notes set out under those sections.

DISSOLUTION OF VIRGIN ISLANDS CORPORATION

Virgin Islands Corporation established to have succession until June 30, 1969, unless sooner dissolved by Act of Congress, by act June 30, 1949, ch. 285, 63 Stat. 350, as amended (48 U.S.C. 1407 et seq.). Corporation terminated its program June 30, 1965, and dissolved July 1, 1966. Act June 30, 1949, was repealed by Pub. L. 97–357, title III, §308(e), Oct. 19, 1982, 96 Stat. 1710.

CIVILIAN MEMBERS OF FACULTY OF AIR FORCE INSTITUTE OF TECHNOLOGY ON NOVEMBER 8, 1985

Section 504(c) of Pub. L. 99–145 provided that: ''Section 9314(b)(2) of title 10, United States Code (as added by subsection (a)(1)(B)), and section 5102(c)(28) of title 5, United States Code (as added by subsection (b)), shall not apply to any person who on the date of the enactment of this Act [Nov. 8, 1985]—

''(1) is a civilian member of the faculty of the United States Air Force Institute of Technology;

''(2) is paid a rate of basic pay under the General Schedule; and

''(3) elects, under procedures prescribed by the Secretary of the Air Force, to continue to be paid under the General Schedule.''

PROHIBITION OF DECREASE IN BASIC PAY RATE OF SUBSEC. (c)(7), (8), OR (14) EMPLOYEES

Amendments by Pub. L. 92–392 not to decrease basic pay rate of subsec. (c)(7), (8), or (14) employees in service before effective date of the amendments as to such employees, see section 9(a)(2) of Pub. L. 92–392, Aug. 19, 1972, 86 Stat. 574, set out as a note under section 5343 of this title.

REDUCTION OF BASIC PAY RATE

Rate of basic pay not to be reduced by reason of the enactment of Pub. L. 91–34, which amended this section, see section 3(b) of Pub. L. 91–34, set out as a note under section 5365 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3327, 5101, 5103, 5331, 5342, 5348, 5349, 5361, 5377, 5380, 5391, 5753, 5754, 5755, 7511 of this title; title 20 section 903; title 29 section 218.

§ 5103. Determination of applicability

The Office of Personnel Management shall determine finally the applicability of section 5102 of this title to specific positions and employees, except for positions and employees in the Office of the Architect of the Capitol.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 446; Pub. L. 95–454, title IX, §906(a)(2), Oct. 13, 1978, 92 Stat. 1224.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 1083.	Oct. 28, 1949, ch. 782, §203, 63 Stat. 956.
.....	5 U.S.C. 1084(c).	Oct. 28, 1949, ch. 782, §204(c), 63 Stat. 957. Sept. 1, 1954, ch. 1208, §105(b), 68 Stat. 1106.

Former sections 1083 and 1084(c) are combined and restated for clarity. The words ''hereinafter referred to as the Commission'' in former section 1083 are omitted as unnecessary. The exception from ''section 1082 (except paragraph (7) thereof)'' in former section 1084(c) is carried into section 5102(d).

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1978—Pub. L. 95–454 substituted ''Office of Personnel Management'' for ''Civil Service Commission''.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 20 section 903.

§ 5104. Basis for grading positions

The General Schedule, the symbol for which is ''GS'', is the basic pay schedule for positions to which this chapter applies. The General Schedule is divided into grades of difficulty and responsibility of work, as follows:

(1) Grade GS–1 includes those classes of positions the duties of which are to perform, under immediate supervision, with little or no latitude for the exercise of independent judgment—

(A) the simplest routine work in office, business, or fiscal operations; or

(B) elementary work of a subordinate technical character in a professional, scientific, or technical field.

(2) Grade GS–2 includes those classes of positions the duties of which are—

(A) to perform, under immediate supervision, with limited latitude for the exercise of independent judgment, routine work in office, business, or fiscal operations, or comparable subordinate technical work of limited scope in a professional, scientific, or technical field, requiring some training or experience; or

(B) to perform other work of equal importance, difficulty, and responsibility, and requiring comparable qualifications.

(3) Grade GS–3 includes those classes of positions the duties of which are—

(A) to perform, under immediate or general supervision, somewhat difficult and responsible work in office, business, or fiscal operations, or comparable subordinate technical work of limited scope in a professional, scientific, or technical field, requiring in either case—

(i) some training or experience;

(ii) working knowledge of a special subject matter; or

(iii) to some extent the exercise of independent judgment in accordance with well-established policies, procedures, and techniques; or

(B) to perform other work of equal importance, difficulty, and responsibility, and requiring comparable qualifications.

(4) Grade GS–4 includes those classes of positions the duties of which are—

(A) to perform, under immediate or general supervision, moderately difficult and responsible work in office, business, or fiscal operations, or comparable subordinate technical work in a professional, scientific, or technical field, requiring in either case—

(i) a moderate amount of training and minor supervisory or other experience;

(ii) good working knowledge of a special subject matter or a limited field of office, laboratory, engineering, scientific, or other procedure and practice; and

(iii) the exercise of independent judgment in accordance with well-established policies, procedures, and techniques; or

(B) to perform other work of equal importance, difficulty, and responsibility, and requiring comparable qualifications.

(5) Grade GS–5 includes those classes of positions the duties of which are—

(A) to perform, under general supervision, difficult and responsible work in office, business, or fiscal administration, or comparable subordinate technical work in a professional, scientific, or technical field, requiring in either case—

(i) considerable training and supervisory or other experience;

(ii) broad working knowledge of a special subject matter or of office, laboratory, engineering, scientific, or other procedure and practice; and

(iii) the exercise of independent judgment in a limited field;

(B) to perform, under immediate supervision, and with little opportunity for the exercise of independent judgment, simple and elementary work requiring professional, scientific, or technical training; or

(C) to perform other work of equal importance, difficulty, and responsibility, and requiring comparable qualifications.

(6) Grade GS–6 includes those classes of positions the duties of which are—

(A) to perform, under general supervision, difficult and responsible work in office, business, or fiscal administration, or comparable subordinate technical work in a professional, scientific, or technical field, requiring in either case—

(i) considerable training and supervisory or other experience;

(ii) broad working knowledge of a special and complex subject matter, procedure, or practice, or of the principles of the profession, art, or science involved; and

(iii) to a considerable extent the exercise of independent judgment; or

(B) to perform other work of equal importance, difficulty, and responsibility, and requiring comparable qualifications.

(7) Grade GS–7 includes those classes of positions the duties of which are—

(A) to perform, under general supervision, work of considerable difficulty and responsibility along special technical or supervisory lines in office, business, or fiscal administration, or comparable subordinate technical work in a professional, scientific, or technical field, requiring in either case—

(i) considerable specialized or supervisory training and experience;

(ii) comprehensive working knowledge of a special and complex subject matter; procedure, or practice, or of the principles of the profession, art, or science involved; and

(iii) to a considerable extent the exercise of independent judgment;

(B) under immediate or general supervision, to perform somewhat difficult work requiring—

(i) professional, scientific, or technical training; and

(ii) to a limited extent, the exercise of independent technical judgment; or

(C) to perform other work of equal importance, difficulty, and responsibility, and requiring comparable qualifications.

(8) Grade GS–8 includes those classes of positions the duties of which are—

(A) to perform, under general supervision, very difficult and responsible work along special technical or supervisory lines in office, business, or fiscal administration, requiring—

(i) considerable specialized or supervisory training and experience;

(ii) comprehensive and thorough working knowledge of a specialized and complex subject matter, procedure, or practice, or of the principles of the profession, art, or science involved; and

(iii) to a considerable extent the exercise of independent judgment; or

(B) to perform other work of equal importance, difficulty, and responsibility, and requiring comparable qualifications.

(9) Grade GS–9 includes those classes of positions the duties of which are—

(A) to perform, under general supervision, very difficult and responsible work along special technical, supervisory, or administrative lines in office, business, or fiscal administration, requiring—

(i) somewhat extended specialized training and considerable specialized, supervisory, or administrative experience which has demonstrated capacity for sound independent work;

(ii) thorough and fundamental knowledge of a special and complex subject matter, or of the profession, art, or science involved; and

(iii) considerable latitude for the exercise of independent judgment;

(B) with considerable latitude for the exercise of independent judgment, to perform moderately difficult and responsible work, requiring—

(i) professional, scientific, or technical training equivalent to that represented by graduation from a college or university of recognized standing; and

(ii) considerable additional professional, scientific, or technical training or experience which has demonstrated capacity for sound independent work; or

(C) to perform other work of equal importance, difficulty, and responsibility, and requiring comparable qualifications.

(10) Grade GS–10 includes those classes of positions the duties of which are—

(A) to perform, under general supervision, highly difficult and responsible work along special technical, supervisory, or administrative lines in office, business, or fiscal administration, requiring—

(i) somewhat extended specialized, supervisory, or administrative training and experience which has demonstrated capacity for sound independent work;

(ii) thorough and fundamental knowledge of a specialized and complex subject matter, or of the profession, art, or science involved; and

(iii) considerable latitude for the exercise of independent judgment; or

(B) to perform other work of equal importance, difficulty, and responsibility, and requiring comparable qualifications.

(11) Grade GS–11 includes those classes of positions the duties of which are—

(A) to perform, under general administrative supervision and with wide latitude for the exercise of independent judgment, work of marked difficulty and responsibility along special technical, supervisory, or administrative lines in office, business, or fiscal administration, requiring—

(i) extended specialized, supervisory, or administrative training and experience which has demonstrated important attainments and marked capacity for sound independent action or decision; and

(ii) intimate grasp of a specialized and complex subject matter, or of the profession, art, or science involved, or of administrative work of marked difficulty;

(B) with wide latitude for the exercise of independent judgment, to perform responsible work of considerable difficulty requiring somewhat extended professional, scientific, or technical training and experience which has demonstrated important attainments and marked capacity for independent work; or

(C) to perform other work of equal importance, difficulty, and responsibility, and requiring comparable qualifications.

(12) Grade GS–12 includes those classes of positions the duties of which are—

(A) to perform, under general administrative supervision, with wide latitude for the exercise of independent judgment, work of a very high order of difficulty and responsibility along special technical, supervisory, or administrative lines in office, business, or fiscal administration, requiring—

(i) extended specialized, supervisory, or administrative training and experience which has demonstrated leadership and attainments of a high order in specialized or administrative work; and

(ii) intimate grasp of a specialized and complex subject matter or of the profession, art, or science involved;

(B) under general administrative supervision, and with wide latitude for the exercise of independent judgment, to perform professional, scientific, or technical work of marked difficulty and responsibility requiring extended professional, scientific, or technical training and experience which has

demonstrated leadership and attainments of a high order in professional, scientific, or technical research, practice, or administration; or

(C) to perform other work of equal importance, difficulty, and responsibility, and requiring comparable qualifications.

(13) Grade GS–13 includes those classes of positions the duties of which are—

(A) to perform, under administrative direction, with wide latitude for the exercise of independent judgment, work of unusual difficulty and responsibility along special technical, supervisory, or administrative lines, requiring extended specialized, supervisory, or administrative training and experience which has demonstrated leadership and marked attainments;

(B) to serve as assistant head of a major organization involving work of comparable level within a bureau;

(C) to perform, under administrative direction, with wide latitude for the exercise of independent judgment, work of unusual difficulty and responsibility requiring extended professional, scientific, or technical training and experience which has demonstrated leadership and marked attainments in professional, scientific, or technical research, practice, or administration; or

(D) to perform other work of equal importance, difficulty, and responsibility, and requiring comparable qualifications.

(14) Grade GS–14 includes those classes of positions the duties of which are—

(A) to perform, under general administrative direction, with wide latitude for the exercise of independent judgment, work of exceptional difficulty and responsibility along special technical, supervisory, or administrative lines which has demonstrated leadership and unusual attainments;

(B) to serve as head of a major organization within a bureau involving work of comparable level;

(C) to plan and direct or to plan and execute major professional, scientific, technical, administrative, fiscal, or other specialized programs, requiring extended training and experience which has demonstrated leadership and unusual attainments in professional, scientific, or technical research, practice, or administration, or in administrative, fiscal, or other specialized activities; or

(D) to perform consulting or other professional, scientific, technical, administrative, fiscal, or other specialized work of equal importance, difficulty, and responsibility, and requiring comparable qualifications.

(15) Grade GS–15 includes those classes of positions the duties of which are—

(A) to perform, under general administrative direction, with very wide latitude for the exercise of independent judgment, work of outstanding difficulty and responsibility along special technical, supervisory, or administrative lines which has demonstrated leadership and exceptional attainments;

(B) to serve as head of a major organization within a bureau involving work of comparable level;

(C) to plan and direct or to plan and execute specialized programs of marked difficulty, responsibility, and national significance, along professional, scientific, technical, administrative, fiscal, or other lines, requiring extended training and experience which has demonstrated leadership and unusual attainments in professional, scientific, or technical research, practice, or administration, or in administrative, fiscal, or other specialized activities; or

(D) to perform consulting or other professional, scientific, technical, administrative, fiscal, or other specialized work of equal importance, difficulty, and responsibility, and requiring comparable qualifications.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 446; Pub. L. 101–509, title V, § 529 [title I, § 102(b)(1)], Nov. 5, 1990, 104 Stat. 1427, 1443.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 1111.	Oct. 28, 1949, ch. 782, § 601, 63 Stat. 959. Sept. 1, 1954, ch. 1208, § 107, 68 Stat. 1108.
.....	5 U.S.C. 1112.	Oct. 28, 1949, ch. 782, § 602, 63 Stat. 959. Sept. 1, 1954, ch. 1208, § 108, 68 Stat. 1108. June 20, 1958, Pub. L. 85–462, § 13(a), 72 Stat. 214.

Former sections 1111 and 1112 are combined and restated.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

REFERENCES IN TEXT

The General Schedule, referred to in text, is set out under section 5332 of this title.

AMENDMENTS

1990—Pub. L. 101–509 struck out ''18'' before ''grades'' in introductory provisions and struck out pars. (16) to (18) which described grades GS–16 to GS–18.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–509 effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title III, § 305] of Pub. L. 101–509, set out as a note under section 5301 of this title.

JOB EVALUATION POLICY ACT OF 1970

Pub. L. 91–216, May 17, 1970, 84 Stat. 72, provided: ''That this Act may be cited as the 'Job Evaluation Policy Act of 1970'.

''TITLE I—CONGRESSIONAL FINDINGS WITH RESPECT TO JOB EVALUATION AND RANKING IN THE EXECUTIVE BRANCH

''SEC. 101. The Congress hereby finds that—

''(1) the tremendous growth required in the activities of the Federal Government in order to meet the country's needs during the past several decades has led to the need for employees in an ever-increasing and changing variety of occupations and professions, many of which did not exist when the basic principles of job evaluation and ranking were established by the

Classification Act of 1923 [Act Mar. 4, 1923, ch. 265, 42 Stat. 1488]. The diverse and constantly changing nature of these occupations and professions requires that the Federal Government reassess its approach to job evaluation and ranking better to fulfill its role as an employer and assure efficient economical administration;

''(2) the large number and variety of job evaluation and ranking systems in the executive branch have resulted in significant inequities in selection, promotion, and pay of employees in comparable positions among these systems;

''(3) little effort has been made by Congress or the executive branch to consolidate or coordinate the various job evaluation and ranking systems, and there has been no progress toward the establishment of a coordinated system in which job evaluation and ranking, regardless of the methods used, is related to a unified set of principles providing coherence and equity throughout the executive branch;

''(4) within the executive branch, there has been no significant study of, or experimentation with the several recognized methods of job evaluation and ranking to determine which of those methods are most appropriate for use and application to meet the present and future needs of the Federal Government; and

''(5) notwithstanding the recommendations resulting from the various studies conducted during the last twenty years, the Federal Government has not taken the initiative to implement those recommendations with respect to the job evaluation and ranking systems within the executive branch, with the result that such systems have not, in many cases, been adapted or administered to meet the rapidly changing needs of the Federal Government.

''TITLE II—STATEMENT OF POLICY

''SEC. 201. It is the sense of Congress that—

''(1) the executive branch shall, in the interest of equity, efficiency, and good administration, operate under a coordinated job evaluation and ranking system for all civilian positions, to the greatest extent practicable;

''(2) the system shall be designed so as to utilize such methods of job evaluation and ranking as are appropriate for use in the executive branch, taking into account the various occupational categories of positions therein; and

''(3) the United States Civil Service Commission shall be authorized to exercise general supervision and control over such a system.

''TITLE III—PREPARATION OF A JOB EVALUATION AND RANKING PLAN BY THE CIVIL SERVICE COMMISSION AND REPORTS AND RECOMMENDATIONS TO CONGRESS

''SEC. 301. The Civil Service Commission, through such organizational unit which it shall establish within the Commission and which shall report directly to the Commission, shall prepare a comprehensive plan for the establishment of a coordinated system of job evaluation and ranking for civilian positions, in the executive branch. The plan shall include, among other things—

''(1) provision for the establishment of a method or methods for evaluating jobs and alining them by level;

''(2) a time schedule for the conversion of existing job evaluation and ranking systems into the coordinated system;

''(3) provision that the Civil Service Commission shall have general supervision of and control over the coordinated job evaluation and ranking system, including, if the Commission deems it appropriate, the authority to approve or disapprove the adoption, use and administration in the executive branch of the method or methods established under that system;

''(4) provision for the establishment of procedures for the periodic review by the Civil Service Commission of the effectiveness of the method or methods adopted for use under the system; and

''(5) provision for maintenance of the system to meet the changing needs of the executive branch in the future.

''SEC. 302. In carrying out its functions under section 301 of this Act, the Commission shall consider all recognized methods of job evaluation and ranking.

''SEC. 303. The Civil Service Commission is authorized to secure directly from any executive agency, as defined by section 105 of title 5, United States Code, or any bureau, office, or part thereof, information, suggestions, estimates, statistics, and technical assistance for the purposes of this Act; and each such executive agency or bureau, office, or part thereof is authorized and directed to furnish such information, suggestions, estimates, statistics, and technical assistance directly to the Civil Service Commission upon request by the Commission.

''SEC. 304. (a) Within one year after the date of enactment of this Act, the Commission shall submit to the President and the Congress an interim progress report on the current status and results of its activities under this Act, together with its current findings.

''(b) Within two years after the date of enactment of this Act [Mar. 17, 1970]—

''(1) the Civil Service Commission shall complete its functions under this Act and shall transmit to the President a comprehensive report of the result of its activities, together with its recommendations (including its draft of proposed legislation to carry out such recommendations), and

''(2) the President shall transmit that report (including the recommendations and draft of proposed legislation of the Commission) to the Congress, together with such recommendations as the President deems appropriate.

''(c) The Commission shall submit to the Committees on Post Office and Civil Service of the Senate and House of Representatives once each calendar month, or at such other intervals as may be directed by those committees, or either of them, an interim progress report on the then current status and results of the activities of the Commission under this Act, together with the then current findings of the Commission.

''(d) The Commission shall periodically consult with, and solicit the views of, appropriate employee and professional organizations.

''(e) The organizational unit established under section 301 of this Act shall cease to exist upon the submission of the report to the Congress under subsection (b) of this section.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7201 of this title; title 10 section 1586; title 20 section 1402; title 25 section 2802.

§ 5105. Standards for classification of positions

(a) The Office of Personnel Management, after consulting the agencies, shall prepare standards for placing positions in their proper classes and grades. The Office may make such inquiries or investigations of the duties, responsibilities, and qualification requirements of positions as it considers necessary for this purpose. The agencies, on request of the Office, shall furnish information for and cooperate in the preparation of the standards. In the standards, which shall be published in such form as the Office may determine, the Office shall—

(1) define the various classes of positions in terms of duties, responsibilities, and qualification requirements;

(2) establish the official class titles; and

(3) set forth the grades in which the classes have been placed by the Office.

(b) The Office, after consulting the agencies to the extent considered necessary, shall revise,

supplement, or abolish existing standards, or prepare new standards, so that, as nearly as may be practicable, positions existing at any given time will be covered by current published standards.

(c) The official class titles established under subsection (a)(2) of this section shall be used for personnel, budget, and fiscal purposes. However, this requirement does not prevent the use of organizational or other titles for internal administration, public convenience, law enforcement, or similar purposes.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 452; Pub. L. 95–454, title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 1094.	Oct. 28, 1949, ch. 782, § 401, 63 Stat. 957.

The section is restated for clarity.

In subsection (b), the requirement that the Commission keep the standards up to date is omitted as included in the requirement that the Commission revise, supplement, or abolish existing standards, or prepare new standards so as to keep them current as nearly as practicable.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1978—Subsecs. (a), (b). Pub. L. 95–454 substituted ''Office of Personnel Management'' and ''Office'' for ''Civil Service Commission'' and ''Commission'', respectively, wherever appearing.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5101 of this title.

§ 5106. Basis for classifying positions

(a) Each position shall be placed in its appropriate class. The basis for determining the appropriate class is the duties and responsibilities of the position and the qualifications required by the duties and responsibilities.

(b) Each class shall be placed in its appropriate grade. The basis for determining the appropriate grade is the level of difficulty, responsibility, and qualification requirements of the work of the class.

(c) Appropriated funds may not be used to pay an employee who places a supervisory position in a class and grade solely on the basis of the size of the organization unit or the number of subordinates supervised. These factors may be given effect only to the extent warranted by the work load of the organization unit and then only in combination with other factors, such as the kind, difficulty, and complexity of work supervised, the degree and scope of responsibility delegated to the supervisor, and the kind, degree, and character of the supervision exercised.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 453.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(a), (b)	5 U.S.C. 1092.	Oct. 28, 1949, ch. 782, § 302, 63 Stat. 957.
(c)	5 U.S.C. 1093.	Oct. 28, 1949, ch. 782, § 303, 63 Stat. 957.

In subsection (c), the prohibition is restated in positive form. The words ''to pay'' are substituted for the words ''to pay the compensation of''. The words ''the group, section, bureau'' are omitted as included in the words ''the organization unit''. The word ''actually'' in the phrase ''of the supervision exercised'' is omitted as unnecessary.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

§ 5107. Classification of positions

Except as otherwise provided by this chapter, each agency shall place each position under its jurisdiction in its appropriate class and grade in conformance with standards published by the Office of Personnel Management or, if no published standards apply directly, consistently with published standards. When facts warrant, an agency may change a position which it has placed in a class or grade under this section from that class or grade to another class or grade. Subject to subchapter VI of chapter 53 of this title, these actions of an agency are the basis for pay and personnel transactions until changed by certificate of the Office.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 453; Pub. L. 95–454, title VIII, § 801(a)(3)(E), title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1222, 1224.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 1102(a).	Oct. 28, 1949, ch. 782, § 502(a), 63 Stat. 958.

The words ''to which this chapter applies'' are omitted as unnecessary in view of section 5102. The words ''Subject to section 5337 of this title'' are added to reflect the qualification imposed by that section.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1978—Pub. L. 95–454 substituted ''Office of Personnel Management'' for ''Civil Service Commission'', ''Office'' for ''Commission'', and ''subchapter VI of chapter 53'' for ''section 5337''.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 803(a)(3)(E) of Pub. L. 95–454, substituting reference to subchapter VI of chapter 53 for reference to section 5337, effective on first day of first applicable pay period beginning on or after 90th day after Oct. 13, 1978, see section 801(a)(4) of Pub. L. 95–454, set out as an Effective Date note under section 5361 of this title.

Amendment by section 906(a)(2), (3) of Pub. L. 95–454, substituting reference to Office of Personnel Management for reference to Civil Service Commission, effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5111, 5112 of this title; title 12 section 4523; title 36 section 5202.

§ 5108. Classification of positions above GS–15

(a) The Office of Personnel Management may, for any Executive agency—

(1) establish, and from time to time revise, the maximum number of positions which may at any one time be classified above GS–15; and

(2) establish standards and procedures (including requiring agencies, where necessary in the judgment of the Office, to obtain the prior approval of the Office) in accordance with which positions may be classified above GS–15.

(b) The President, rather than the Office, shall exercise the authority under subsection (a) in the case of positions proposed to be placed in the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 453; Pub. L. 89–632, §1(a)–(d), Oct. 8, 1966, 80 Stat. 878; Pub. L. 90–83, §1(12), Sept. 11, 1967, 81 Stat. 197; Pub. L. 91–187, §1, Dec. 30, 1969, 83 Stat. 850; Pub. L. 91–206, §5(a), Mar. 10, 1970, 84 Stat. 51; Pub. L. 91–596, §30, Dec. 29, 1970, 84 Stat. 1619; Pub. L. 91–644, title I, §11, Jan. 2, 1971, 84 Stat. 1889; Pub. L. 91–656, §9, Jan. 8, 1971, 84 Stat. 1955; Pub. L. 91–261, §12, Mar. 24, 1972, 86 Stat. 112; Pub. L. 90–351, title I, §506(c), as added Pub. L. 93–83, §2, Aug. 6, 1973, 87 Stat. 211; Pub. L. 93–282, title III, §301, May 14, 1974, 88 Stat. 137; Pub. L. 93–406, title I, §507(b), title II, §1051(b)(2), title IV, §4002(c), Sept. 2, 1974, 88 Stat. 894, 951, 1005; Pub. L. 93–415, title II, §201(g), Sept. 7, 1974, 88 Stat. 1113; Pub. L. 93–463, title IV, §410, Oct. 23, 1974, 88 Stat. 1414; Pub. L. 93–516, title II, §208(b), Dec. 7, 1974, 88 Stat. 1629; Pub. L. 93–651, title II, §208(b), Nov. 21, 1974, 89 Stat. 2–14; Pub. L. 94–183, §2(14), (15), Dec. 31, 1975, 89 Stat. 1057; Pub. L. 94–233, §13, Mar. 15, 1976, 90 Stat. 233; Pub. L. 94–503, title II, §202(a), Oct. 15, 1976, 90 Stat. 2426; Pub. L. 95–91, title VII, §710(b), Aug. 4, 1977, 91 Stat. 609; Pub. L. 95–190, §11(a), Nov. 16, 1977, 91 Stat. 1398; Pub. L. 95–219, §3(c), Dec. 28, 1977, 91 Stat. 1614; Pub. L. 95–251, §1, Mar. 27, 1978, 92 Stat. 183; Pub. L. 95–454, title IV, §414(a)(1)(A), (C), (D), Oct. 13, 1978, 92 Stat. 1177; Pub. L. 95–486, §10, Oct. 20, 1978, 92 Stat. 1634; Pub. L. 95–563, §14(g), Nov. 1, 1978, 92 Stat. 2390; Pub. L. 95–612, §3(b), Nov. 8, 1978, 92 Stat. 3091; Pub. L. 95–624, §22, Nov. 9, 1978, 92 Stat. 3466; Pub. L. 95–630, title V, §502(c), Nov. 10, 1978, 92 Stat. 3681; Pub. L. 96–54, §2(a)(23), Aug. 14, 1979, 93 Stat. 382; Pub. L. 96–191, §8(c), Feb. 15, 1980, 94 Stat. 33; Pub. L. 100–325, §2(g), May 30, 1988, 102 Stat. 581; Pub. L. 100–702, title I, §104(c)(2), Nov. 19, 1988, 102 Stat. 4645; Pub. L. 101–474, §5(i), Oct. 30, 1990, 104 Stat. 1100; Pub. L. 101–509, title V, §529 [title I, §102(b)(2)], Nov. 5, 1990, 104 Stat. 1427, 1443; Pub. L. 102–378, §2(23), Oct. 2, 1992, 106 Stat. 1348.)

HISTORICAL AND REVISION NOTES
1966 ACT

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(a), (b), (c) (1)–(7), (d).	5 U.S.C. 1105 (a)–(h), (j)–(*l*).	Oct. 28, 1949, ch. 782, §505, 63 Stat. 959. Sept. 1, 1954, ch. 1208, §101(a), 68 Stat. 1105. June 28, 1955, ch. 189, §12(a), 69 Stat. 179. July 31, 1956, ch. 804, §502, 70 Stat. 762. Aug. 14, 1957, Pub. L. 85–136, 71 Stat. 352. June 20, 1958, Pub. L. 85–462, §§10 (less ''(i)''), 11, 72 Stat. 213, 213A. Sept. 23, 1959, Pub. L. 86–370, §2(a), (b), 73 Stat. 650. Sept. 23, 1959, Pub. L. 86–377, §1(a), 73 Stat. 700. July 1, 1960, Pub. L. 86–568, §203, 74 Stat. 305. Sept. 26, 1961, Pub. L. 87–322, §1, 75 Stat. 685. Oct. 4, 1961, Pub. L. 87–367, §§102(a), (b), 103(1), 75 Stat. 786, 787. Oct. 11, 1962, Pub. L. 87–793, §606, 76 Stat. 848. Aug. 14, 1964, Pub. L. 88–426, §103(b), 78 Stat. 402.
(c)(8)	5 U.S.C. 298a.	July 7, 1955, ch. 279, §201 (2d proviso on p. 273), 69 Stat. 273. Oct. 11, 1962, Pub. L. 87–793, §607(b), 76 Stat. 850.
(c)(9)	45 U.S.C. 228j(b)(4) (4th sentence).	Sept. 6, 1958, Pub. L. 85–927, §3, 72 Stat. 1781.

HISTORICAL AND REVISION NOTES—CONTINUED
1966 ACT

The section is reorganized for clarity.

In subsection (a)(2), the date ''October 4, 1961'' is substituted for ''the date of enactment of this subparagraph''.

Subsection (c)(6) is added on authority of section 302 of the Act of July 29, 1958, Pub. L. 85–568, 72 Stat. 433, 42 U.S.C. 2453, and Transfer Plan, effective March 15, 1960, 25 F.R. 2151, section 2(c) of which in effect transferred from the Department of Defense to the National Aeronautics and Space Administration 5 of the 372 positions authorized to be placed in GS–16, 17, and 18 pursuant to section 1(a) of the Act of Sept. 23, 1959, Pub. L. 86–377, 73 Stat. 700.

In subsection (c)(8), the words ''on and after July 7, 1955'' are omitted as obsolete.

In subsection (d), the words ''subsequent to February 1, 1958'' are omitted as obsolete and the words ''of the Government'' are omitted as unnecessary.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 ACT

The amendment to 5 U.S.C. 5108(c)(5) corrects a typographical error and conforms to the source law (act of October 11, 1962, Public Law 87–793, section 606(b), 76 Stat. 849; former 5 U.S.C. 1105(j)).

AMENDMENTS

1992—Subsec. (a)(2). Pub. L. 102–378 substituted a period for semicolon at end.

1990—Pub. L. 101–509 amended section generally, substituting provisions relating to classification of positions above GS–15, consisting of subsecs. (a) and (b), for provisions relating to classification of provisions at GS–16, 17, and 18, consisting of subsecs. (a) to (c).

Subsec. (c). Pub. L. 101–474 redesignated pars. (2) and (3) as (1) and (2), respectively, and struck out former par. (1), which read as follows: ''the Director of the Administrative Office of the United States Courts, subject to the standards and procedures prescribed by this chapter, may place a total of 17 positions in GS–16, 17, and 18; and''.

1988—Subsec. (a). Pub. L. 100–325 added cl. (iii) and substituted ''the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service'' for ''GS–16, 17, and 18 in the Federal Bureau of Investigation'' in last sentence.

Subsec. (c)(1). Pub. L. 100–702 substituted ''17 positions'' for ''15 positions''.

1980—Subsec. (c). Pub. L. 96–191 struck out par. (1) which authorized Comptroller General, subject to procedures prescribed by this section, to place a total of 90 positions in General Accounting Office in GS–16, 17, and 18, and redesignated pars. (2) to (4) as (1) to (3), respectively.

1979—Subsec. (c)(4), (17). Pub. L. 96–54 redesignated par. (17), relating to executive departments or agencies in which boards of contracts appeals are established, as par. (4).

1978—Subsec. (a). Pub. L. 95–630 substituted ''3,310'' for ''3,301''.

Pub. L. 95–612 substituted ''3362'' for ''3301''.

Pub. L. 95–454, § 414(a)(1)(C), substituted provisions authorizing Director of Office of Personnel Management to establish the maximum number of positions, not to exceed 10,777, which may be placed in GS–16, 17, and 18, and the Senior Executive Service and to place positions in GS–16, 17, or 18, and requiring the President to carry out the Director's authority for proposed positions in the Federal Bureau of Investigation for provisions authorizing a majority of the Civil Service Commissioners to establish the maximum number of positions, not to exceed 3362 (in addition to certain specified positions), which may be placed in GS–16, 17, and 18, placing a percentage limitation on the number of positions placed in GS–17 and 18, and requiring the approval of a majority of the Commissioners to place positions in GS–16, 17, or 18.

Pub. L. 95–251 substituted ''340 administrative law judge'' for ''240 hearing examiner''.

Subsec. (c)(2). Pub. L. 95–454, § 414(a)(1)(A)(i), (D)(i), redesignated par. (3), relating to the Director of the Administrative Office of the United States, as (2) and repealed former par. (2) relating to the Federal Bureau of Investigation.

Subsec. (c)(3). Pub. L. 95–486 inserted provision subjecting the Director of the Administrative Office of the United States Courts to the standards and procedures prescribed by this chapter and substituted provision authorizing placement of 15 positions in GS–16, 17, and 18 for provision authorizing placement of 4 positions in GS–17.

Pub. L. 95–454, § 414(a)(1)(D), redesignated par. (12), relating to the Chief Judge of the United States Tax Court, as par. (3). Former par. (3) redesignated (2).

Subsec. (c)(4) to (11). Pub. L. 95–454, § 414(a)(1)(A)(i), repealed par. (4) relating to the Commissioner of Immigration and Naturalization, par. (5) relating to the Secretary of Defense, par. (6) relating to the Administrator of the National Aeronautics and Space Administration, pars. (7) and (8) relating to the Attorney General, par. (9) relating to the Railroad Retirement Board, par. (10) relating to the Secretary of Labor and the Occupational Safety and Health Review Commission, and par. (11) relating to the Law Enforcement Assistance Administration.

Subsec. (c)(8). Pub. L. 95–624 substituted ''45'' for ''32''.

Subsec. (c)(12). Pub. L. 95–454, § 414(a)(1)(D)(i), redesignated par. (12) relating to the Chief Judge of the United States Tax Court, as (3).

Subsec. (c)(13) to (16). Pub. L. 95–454, § 414(a)(1)(A)(i), repealed par. (13) relating to the Commodity Futures Trading Commission, par. (14) relating to the Secretary of Health, Education, and Welfare, par. (15) relating to the Chairman of the Equal Employment Opportunity Commission, and par. (16) relating to the Secretary of Health, Education, and Welfare.

Subsec. (c)(17). Pub. L. 95–563 added par. (17).

Subsec. (d). Pub. L. 95–454, § 414(a)(1)(A)(ii), repealed subsec. (d) which provided the order for reducing the positions authorized to be placed in grades GS–16, 17, and 18 under this section when a general authorization statute authorized additional positions in these grades.

Subsec. (e). Pub. L. 95–454, § 414(a)(1)(A)(ii), repealed subsec. (e) which authorized Commissioner of Internal Revenue to place 20 additional positions in grades GS–16 and 17.

Subsec. (f). Pub. L. 95–454, § 414(a)(1)(A)(ii), repealed subsec. (f) which authorized Secretary of Labor to place additional positions in grades GS–16, 17, and 18.

Subsec. (g). Pub. L. 95–454, § 414(a)(1)(A)(ii), repealed subsec. (g) which authorized Pension Benefit Guaranty Corporation to place additional positions in grades GS–16, 17, and 18.

1977—Subsec. (a). Pub. L. 95–219 substituted ''3301'' for ''3293''.

Pub. L. 95–190 substituted ''3293'' for ''3243''.

Pub. L. 95–91 substituted ''3243'' for ''2754''.

1976—Subsec. (c)(7). Pub. L. 94–233 restructured provisions and, as restructured, deleted authority relating to 8 positions of Member of the Board of Parole in GS–17.

Subsec. (c)(8). Pub. L. 94–503 substituted provision that the Attorney General, without regard to any other provision of this section, may place a total of 32 positions in GS–16, 17, and 18 for provision that the Attorney General, without regard to this chapter (except section 5114), may place 1 position in GS–16.

1975—Subsec. (c)(11). Pub. L. 94–183, § 2(14), increased to twenty-five the number of positions which the Law Enforcement Assistance Administration may place in GS–16, 17, and 18. The increase required no change in text in view of the 1974 amendment by Pub. L. 93–415, which called for an identical increase.

Subsec. (c)(13) to (16). Pub. L. 94–183, § 2(15), redesignated par. (12) relating to the Commodity Futures Trading Commission, par. (12) relating to the Secretary of Health, Education, and Welfare and the Office for the Blind and Visually Handicapped of the Rehabilitation Services Administration, par. (13) relating to the Chairman of the Equal Employment Opportunity Commission, and par. (14) relating to the Secretary of Health, Education, and Welfare and the National Institute on Alcohol Abuse and Alcoholism, as pars. (13) to (16), respectively.

1974—Subsec. (c)(11). Pub. L. 93–415 increased from twenty-two to twenty-five the number of positions which the Law Enforcement Assistance Administration may place in GS–16, 17, and 18. Amendment has been executed to subsec. (c)(11) as the probable intent of Congress notwithstanding direction in section 210 (g) of Pub. L. 93–415 that the amendment be executed to subsec. (c) (10).

Subsec. (c)(11) to (14). Pub. L. 93–282 redesignated par. (10) relating to Law Enforcement Assistance Administration, par. (10) relating to Chief Judge of the United States Tax Court, par. (11) relating to Chairman of the Equal Employment Opportunity Commission, as pars. (11) to (13), respectively, and added par. (14) relating to GS–16, 17, and 18 positions in the National Institute on Alcohol Abuse and Alcoholism.

Subsec. (c)(12). Pub. L. 93–651 and Pub. L. 93–516 amended section identically, adding par. (12) relating to Secretary of Health, Education, and Welfare and the Office for the Blind and Visually Handicapped of the Rehabilitation Services Administration.

Subsec. (c)(12). Pub. L. 93–463 added par. (12) relating to Commodity Futures Trading Commission.

Subsec. (e). Pub. L. 93–406, § 1051(b)(2), added subsec. (e).

Subsec. (f). Pub. L. 93–406, § 507(b), added subsec. (f).

Subsec. (g). Pub. L. 93–406, § 4002(c), added subsec. (g).

1973—Subsec. (c)(10). Pub. L. 93–83 substituted in par. (10) as added by Pub. L. 91–644 ''twenty-two'' for ''twenty''.

1972—Subsec. (c). Pub. L. 92–261 added par. (11).

1971—Subsec. (a). Pub. L. 91–656, § 9(b), substituted ''2,754'' for ''2,734''.

Subsec. (c)(10). Pub. L. 91–656, § 9(a), added par. (10) relating to Chief Judge of the United States Tax Court.

Pub. L. 91–644 added par. (10) relating to Law Enforcement Assistance Administration.

1970—Subsec. (a). Pub. L. 91–206 substituted ''2,734'' for ''2,727''.

Subsec. (c)(10). Pub. L. 91–596 added par. (10) relating to positions in the Department of Labor.

1969—Subsec. (a). Pub. L. 91–187, § 1(a), substituted ''2,727'' for ''2,577''.

Subsec. (b)(2). Pub. L. 91–187, § 1(b), increased number of positions in Library of Congress from 28 to 44.

Subsec. (c)(1). Pub. L. 91–187, §1(c), increased number of positions in GAO from 64 to 90.

Subsec. (c)(2). Pub. L. 91–187, §1(d), increased number of positions in FBI from 110 to 140.

1966—Subsec. (a). Pub. L. 89–632, §1(a), increased number of positions authorized to be established from 2,400 to 2,577, struck out cl. (1) designation preceding the provision limiting number of positions to be placed in GS–17 and GS–18, and struck out cls. (2) to (5), which made positions available only for allocation as follows: 50, with Presidential approval, for an agency or function created after Oct. 4, 1961, 14 to the United States Arms Control and Disarmament Agency, 6 to the Immigration and Naturalization Service, and 4 to the Federal Home Loan Bank Board, respectively.

Subsec. (b). Pub. L. 89–632, §1(b), designated existing provisions as par. (1) and added par. (2).

Subsec. (c)(1). Public L. 89–632, §1(c), increased number of positions in GAO from 39 to 64.

Subsec. (c)(2). Pub. L. 89–632, §1(d), increased number of positions in FBI from 75 to 110.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–509 effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title III, §305] of Pub. L. 101–509, set out as a note under section 5301 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–702 effective Jan. 1, 1989, see section 109 of title I of Pub. L. 100–702, set out as a Federal Courts Study Committee note under section 331 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–191 effective Oct. 1, 1980, see section 10(a) of Pub. L. 96–191.

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.

EFFECTIVE DATE OF 1978 AMENDMENTS

Amendment by Pub. L. 95–630 effective on expiration of 120 days after Nov. 10, 1978, see section 509 of Pub. L. 95–630, set out as a note under section 1752 of Title 12, Banks and Banking.

Amendment by Pub. L. 95–612 effective Oct. 1, 1978, or some later date related to availability of funds under appropriation acts authorized by appropriations authorization, see section 7 of Pub. L. 95–612, set out as a note under section 276c–2 of Title 22, Foreign Relations and Intercourse.

Amendment by Pub. L. 95–563 effective with respect to contracts entered into 120 days after Nov. 1, 1978 and, at the election of the contractor, with respect to any claim pending at such time before the contracting officer or initiated thereafter, see section 16 of Pub. L. 95–563, set out as an Effective Date note under section 601 of Title 41, Public Contracts.

Amendment by Pub. L. 95–454 effective 180 days after Oct. 13, 1978, see section 415(a)(3) of Pub. L. 95–454, set out as an Effective Date note under section 3131 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–233 effective on sixtieth day following Mar. 15, 1976, see section 16(b) of Pub. L. 94–233, set out as an Effective Date note under section 4201 of Title 18, Crimes and Criminal Procedure.

EFFECTIVE DATE OF 1974 AMENDMENTS

Amendment by Pub. L. 93–463 effective Oct. 23, 1974, see section 418 of Pub. L. 93–463, set out as a note under section 2 of Title 7, Agriculture.

Amendment by Pub. L. 93–415 effective Sept. 7, 1974, see section 263(a) of Pub. L. 93–415, set out as an Effective Date note under section 5601 of Title 42, The Public Health and Welfare.

Amendment by Pub. L. 93–406, §1051(b)(2), effective on 90th day after Sept. 2, 1974, see section 1051(d) of Pub. L. 93–406, set out as a note under section 7802 of Title 26, Internal Revenue Code.

Amendment by Pub. L. 93–406, §4002(c), effective Sept. 2, 1974, see section 4082(a) of Pub. L. 93–406, which is classified to section 1461(a) of Title 29, Labor.

EFFECTIVE DATE OF 1973 AMENDMENT

Offices and salaries modified under amendment by Pub. L. 93–83, prospectively only, effective on and after Aug. 6, 1973, see section 3 of Pub. L. 93–83.

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90–83 effective as of Sept. 6, 1966, for all purposes, see section 9(h) of Pub. L. 90–83, set out as a note under section 5102 of this title.

REPEALS

Pub. L. 95–612, §3(b), Nov. 8, 1978, 92 Stat. 3091, cited as a credit to this section, was repealed by Pub. L. 97–258, §5(b), Sept. 13, 1982, 96 Stat. 1068.

ADDITIONAL GS–16, GS–17, AND GS–18 POSITIONS; SOURCE FOR APPOINTMENTS; ELIGIBILITY OF APPOINTEES; TERMINATION OF AUTHORITY ON LEAVING POSITIONS; DETERMINATION OF AGGREGATE NUMBER OF POSITIONS AUTHORIZED FOR PLACEMENT IN SUCH GRADES

Pub. L. 95–612, §3(a), (c), Nov. 8, 1978, 92 Stat. 3091, 3092, relating to the appointment of GS–16, GS–17, and GS–18 positions, was repealed by Pub. L. 97–258, §5(b), Sept. 13, 1982, 96 Stat. 1068.

TERMINATION OF AUTHORITY TO PLACE POSITIONS IN GS–16, 17, OR 18 OF THE GENERAL SCHEDULE

Section 414(a)(1)(B) of Pub. L. 95–454 provided that: ''Notwithstanding any other provision of law (other than section 5108 of such title 5), the authority granted to an agency (as defined in section 5102(a)(1) of such title 5 under any such provision to place one or more positions in GS–16, 17, or 18 of the General Schedule, is hereby terminated.''

LIMITATIONS ON EXECUTIVE POSITIONS NOT TO APPLY TO INDIVIDUALS OCCUPYING THOSE POSITIONS ON OCTOBER 12, 1978

Section 414(a)(3) of Pub. L. 95–454 provided that:

''(A) The provisions of paragraphs (1) and (2) of this subsection [amending sections 3104 and 5108 of this title] shall not apply with respect to any position so long as the individual occupying such position on the day before the date of the enactment of this Act [Oct. 13, 1978] continues to occupy such position.

''(B) The Director—

''(i) in establishing under section 5108 of title 5, United States Code, the maximum number of positions which may be placed in GS–16, 17, and 18 of the General Schedule, and

''(ii) in establishing under section 3104 of such title 5 the maximum number of scientific or professional positions which may be established,

shall take into account positions to which subparagraph (A) of this paragraph applies.''

[References in laws to rates of pay for GS–16, 17, or 18, or to maximum rates of pay under General Schedule, to be considered references to rates payable under specified sections of this title, see section 529 [title I, §101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of this title.]

ADDITIONAL POSITIONS IN OFFICE OF MANAGEMENT AND BUDGET

Pub. L. 95–26, title I, May 4, 1977, 91 Stat. 94, authorizing the Director of the Office of Management and Budget to place a total of five positions on GS–16, 17, and 18

in addition to the positions authorized by section 5108 of this title, was repealed by Pub. L. 97–258, § 5(b), Sept. 13, 1982, 96 Stat. 1068.

PREFERENCE TO BLIND IN SELECTION OF PERSONNEL

Preference to be given to blind individuals in selection of additional personnel under subsec. (c)(12) of this section, see section 208(c) of Pub. L. 93–516, set out as a note under section 702 of Title 29, Labor.

CROSS REFERENCES

Chairman of Consumer Product Safety Commission authorized to place twelve positions in GS–16, GS–17, and GS–18, see section 2053 of Title 15, Commerce and Trade.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3132, 3304, 3324, 3594, 5109, 5376, 5723 of this title; title 2 section 166; title 15 section 2053; title 20 section 3461; title 22 sections 2193, 2385, 2454; title 25 sections 640d–11, 2641; title 29 sections 661, 1137; title 30 section 1211; title 42 section 7231; title 45 section 231f.

§ 5109. Positions classified by statute

(a) The position held by an employee of the Department of Agriculture while he, under section 450d of title 7, is designated and vested with a delegated regulatory function or part thereof shall be classified in accordance with this chapter, but not lower than GS–14.

(b) The position held by the employee appointed under section 7802(b) of the Internal Revenue Code of 1986 shall be considered a position classified above GS–15 pursuant to section 5108.

(c)(1) The position held by a fully experienced and qualified railroad safety inspector of the Department of Transportation shall be classified in accordance with this chapter, but not lower than GS–12.

(2) The position held by a railroad safety specialist of the Department shall be classified in accordance with this chapter, but not lower than GS–13.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 455; Pub. L. 91–34, § 2(b), June 30, 1969, 83 Stat. 41; Pub. L. 93–406, title II, § 1051(b)(1), Sept. 2, 1974, 88 Stat. 951; Pub. L. 95–454, title IX, § 906(b), Oct. 13, 1978, 92 Stat. 1226; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 101–509, title V, § 529 [title I, § 101(b)(9)(G)], Nov. 5, 1990, 104 Stat. 1427, 1441; Pub. L. 103–272, § 4(b)(1), July 5, 1994, 108 Stat. 1361.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(a)	5 U.S.C. 516b (3d sentence).	Apr. 4, 1940, ch. 75, § 2 (3d sentence), 54 Stat. 81.
(b)	5 U.S.C. 3013(a) (10th through 24th words of 1st sentence, and 2d sentence).	Sept. 28, 1959, Pub. L. 86–382, § 14(a) (10th through 24th words of 1st sentence, and 2d sentence), 73 Stat. 716.
(c)	40 U.S.C. 193w.	Sept. 23, 1959, Pub. L. 86–379, § 1, 73 Stat. 702.

In subsection (a), the words ''section 450d of title 7'' are substituted for ''this section'' to reflect the scheduled transfer of former section 516b to title 7.

In subsection (c), the words ''Notwithstanding any other law'' were omitted as unnecessary.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1994—Subsec. (c). Pub. L. 103–272 added subsec. (c).

1990—Subsec. (b). Pub. L. 101–509 substituted ''shall be considered a position classified above GS–15 pursuant to section 5108'' for ''is classified at GS–18, and is in addition to the number of positions authorized by section 5108(a) of this title''.

1986—Subsec. (b). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

1978—Subsecs. (b), (c). Pub. L. 95–454, § 906(b), redesignated subsec. (c) as (b). Former subsec. (b), which related to classification of position held by an employee appointed under section 1104(a)(2) of this title, was struck out.

1974—Subsec. (c). Pub. L. 93–406 added subsec. (c). A prior subsec. (c) was repealed by Pub. L. 91–34.

1969—Subsec. (c). Pub. L. 91–34 repealed subsec. (c) provisions classifying positions on National Zoological Park police force authorized pursuant to section 193n of title 40.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–509 effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title III, § 305] of Pub. L. 101–509, set out as a note under section 5301 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–406 effective on 90th day after Sept. 2, 1974, see section 1051(d) of Pub. L. 93–406, set out as a note under section 7802 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–34 effective at beginning of first pay period which commences on or after June 30, 1969, see section 3(a) of Pub. L. 91–34, set out as an Effective Date note under section 5375 of this title.

REDUCTION OF BASIC PAY RATE

Rate of basic pay not to be reduced by reason of enactment of Pub. L. 91–34, which amended this section, see section 3(b) of Pub. L. 91–34, set out as a note under section 5365 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5115 of this title.

§ 5110. Review of classification of positions

(a) The Office of Personnel Management, from time to time, shall review such number of positions in each agency as will enable the Office to determine whether the agency is placing positions in classes and grades in conformance with or consistently with published standards.

(b) When the Office finds under subsection (a) of this section that a position is not placed in its proper class and grade in conformance with published standards or that a position for which there is no published standard is not placed in the class and grade consistently with published standards, it shall, after consultation with appropriate officials of the agency concerned, place the position in its appropriate class and grade and shall certify this action to the agency. The agency shall act in accordance with the certificate, and the certificate is binding on all administrative, certifying, payroll, disbursing, and accounting officials.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 455; Pub. L. 95–454, title IX, §906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(a)	5 U.S.C. 1102(b).	Oct. 28, 1949, ch. 782, §502(b), 63 Stat. 958.
(b)	5 U.S.C. 1103.	Oct. 28, 1949, ch. 782, §503, 63 Stat. 958.

In subsection (b), the words ''to which this chapter applies'' are omitted as unnecessary in view of section 5102. The words ''appropriate officials'' and ''administrative, certifying, payroll, disbursing, and accounting officials'' are substituted for ''appropriate officers and employees'' and ''administrative, certifying, payroll, disbursing, and accounting officers'', respectively, to preserve the application to members of the uniformed services who are excluded from the definition of ''officer'' and ''employee''.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1978—Subsecs. (a), (b). Pub. L. 95–454 substituted ''Office of Personnel Management'' and ''Office'' for ''Civil Service Commission'' and ''Commission'', respectively.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

§ 5111. Revocation and restoration of authority to classify positions

(a) When the Office of Personnel Management finds that an agency is not placing positions in classes and grades in conformance with or consistently with published standards, it may revoke or suspend the authority granted to the agency by section 5107 of this title and require that prior approval of the Office be secured before an action placing a position in a class and grade becomes effective for payroll and other personnel purposes. The Office may limit the revocation or suspension to—

(1) the departmental or field service, or any part thereof;

(2) a geographic area;

(3) an organization unit or group of organization units;

(4) certain types of classification actions;

(5) classes in particular occupational groups or grades; or

(6) classes for which standards have not been published.

(b) After revocation or suspension, the Office may restore the authority to the extent that it is satisfied that later actions placing positions in classes and grades will be in conformance with or consistent with published standards.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 455; Pub. L. 95–454, title IX, §906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 1104.	Oct. 28, 1949, ch. 782, §504, 63 Stat. 959.

In subsection (a), the words ''in whole or in part'' are omitted as unnecessary in view of the specific authority to limit the revocation or suspension. The words ''The Commission may limit the revocation or suspension to'' are substituted for ''Such revocations or suspensions may be limited, in the discretion of the Commission, to'' to eliminate redundancy.

In subsection (b), the words ''After revocation or suspension'' are substituted for ''After all or part of the authority of the department has been revoked or suspended''. The words ''may restore'' are substituted for ''may at any time restore'' to eliminate redundancy.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1978—Subsecs. (a), (b). Pub. L. 95–454 substituted ''Office of Personnel Management'' and ''Office'' for ''Civil Service Commission'' and ''Commission'', respectively, wherever appearing.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

§ 5112. General authority of the Office of Personnel Management

(a) Notwithstanding section 5107 of this title, the Office of Personnel Management may—

(1) ascertain currently the facts as to the duties, responsibilities, and qualification requirements of a position;

(2) place in an appropriate class and grade a newly created position or a position coming initially under this chapter;

(3) decide whether a position is in its appropriate class and grade; and

(4) change a position from one class or grade to another class or grade when the facts warrant.

The Office shall certify to the agency concerned its action under paragraph (2) or (4) of this subsection. The agency shall act in accordance with the certificate, and the certificate is binding on all administrative, certifying, payroll, disbursing, and accounting officials.

(b) An employee affected or an agency may request at any time that the Office exercise the authority granted to it by subsection (a) of this section and the Office shall act on the request.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 456; Pub. L. 95–454, title IX, §906(a)(2), (3), (17), Oct. 13, 1978, 92 Stat. 1224, 1226.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 1101.	Oct. 28, 1949, ch. 782, §501, 63 Stat. 958.

In subsection (a), the words ''which may be exercised at any time in its discretion'' are omitted as redundant. The words ''is binding on all administrative, certifying, payroll, disbursing, and accounting officials'' are substituted for ''shall be binding on all administrative, certifying, payroll, disbursing, and accounting officers of the Government'' to preserve the application to members of the uniformed services.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1978—Pub. L. 95–454, § 906(a)(17), substituted ''Office of Personnel Management'' for ''Civil Service Commission'' in section catchline.

Subsecs. (a), (b). Pub. L. 95–454, § 906(a)(2), (3), substituted ''Office of Personnel Management'' and ''Office'' for ''Civil Service Commission'' and ''Commission'', respectively, wherever appearing.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5366 of this title.

§ 5113. Classification records

The Office of Personnel Management may—

(1) prescribe the form in which each agency shall record the duties and responsibilities of positions and the places where these records shall be maintained;

(2) examine these or other pertinent records of the agency; and

(3) interview employees of the agency who have knowledge of the duties and responsibilities of positions and information as to the reasons for placing a position in a class or grade.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 456; Pub. L. 95–454, title IX, § 906(a)(2), Oct. 13, 1978, 92 Stat. 1224.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 1106.	Oct. 28, 1949, ch. 782, § 506, 63 Stat. 959.

In paragraph (1), the words ''to which this chapter applies'' are omitted as unnecessary in view of section 5102.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1978—Pub. L. 95–454 substituted ''Office of Personnel Management'' for ''Civil Service Commission''.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

[§ 5114. Repealed. Pub. L. 99–386, title I, § 110(a), Aug. 22, 1986, 100 Stat. 822]

Section, Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 456; Pub. L. 95–454, title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224, related to reports to Congress on positions in GS–16, 17, and 18.

§ 5115. Regulations

The Office of Personnel Management may prescribe regulations necessary for the administration of this chapter, except sections 5109 and 5114.[1]

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 457; Pub. L. 95–454, title IX, § 906(a)(2), Oct. 13, 1978, 92 Stat. 1224.)

[1] See References in Text note below.

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 1072.	Oct. 28, 1949, ch. 782, § 1101, 63 Stat. 971.
.....	5 U.S.C. 1072a.	Sept. 1, 1954, ch. 1208, § 113, 68 Stat. 1108.

Former sections 1072 and 1072a are combined and restated for clarity. The remainder of the authority is carried into sections 3324, 5338, and 7154.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

REFERENCES IN TEXT

Section 5114, referred to in text, was repealed by Pub. L. 99–386, title I, § 110(a), Aug. 22, 1986, 100 Stat. 822.

AMENDMENTS

1978—Pub. L. 95–454 substituted ''Office of Personnel Management'' for ''Civil Service Commission''.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

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AMENDMENTS

1992—Pub. L. 102–378, §8(a), Oct. 2, 1992, 106 Stat. 1359, repealed Pub. L. 100–510, §1206(i)(2). See 1990 Amendment note below.

Pub. L. 102–378, §2(24), Oct. 2, 1992, 106 Stat. 1348, substituted ''repayments'' for ''repayment'' in item 5379 and struck out ''Sec.'' before item 5391.

1990—Pub. L. 101–510, div. A, title XII, §1206(i)(2), Nov. 5, 1990, 104 Stat. 1663, which added item 5380 ''Pay authority for critical positions'', was repealed by Pub. L. 102–378, §8(a), Oct. 2, 1992, 106 Stat. 1359, which provided that this title shall read as if such section 1206(i)(2) had not been enacted.

Pub. L. 101–510, div. A, title XII, §1206(b)(2), Nov. 5, 1990, 104 Stat. 1661, added item 5379.

Pub. L. 101–509, title V, §529 [title I, §§101(a)(2), 102(a)(2), 103(b), 104(b), 105(a)(2), 109(a)(1)(B), title II, §§205(b), 211(b)(2)], Nov. 5, 1990, 104 Stat. 1427, 1439, 1443, 1445, 1446, 1448, 1451, 1457, 1461, struck out items 5301 ''Policy'', 5303 ''Higher minimum rates; Presidential authority'', 5304 ''Presidential policies and regulations'', 5305 ''Annual pay reports and adjustments'', 5306 ''Advisory Committee on Federal Pay'', 5307 ''Pay fixed by administrative action'', and 5308 ''Pay limitation'', and added items 5301 to 5307, struck out ''; higher rates for supervisors of prevailing rate employees'' after ''appointments'' in item 5333, substituted ''Health care positions'' for ''Scientific and professional positions'' in item 5371, and added items 5372a, 5376 to 5378, item for subchapter IX, and items 5391 and 5392.

Pub. L. 101–263, §1(b), Apr. 4, 1990, 104 Stat. 125, inserted ''the'' before ''National'' in item 5375.

1979—Pub. L. 96–54, §2(a)(26)(B), Aug. 14, 1979, 93 Stat. 382, substituted ''prevailing rate'' for ''wage-board'' in item 5333.

1978—Pub. L. 95–454, title IV, §407(b), title VIII, §801(a)(3)(B)(i), (ii), Oct. 13, 1978, 92 Stat. 1172, 1221, struck out items 5337 ''Pay saving'' and 5345 ''Retained rate of pay on reduction in grade or reassignment'', added item for subchapter VI and items 5361 to 5366, redesignated former item for subchapter VI and items 5361 to 5365 as subchapter VII and items 5371 to 5375, respectively, and added item for subchapter VIII and items 5381 to 5385.

Pub. L. 95–251, §2(c)(4), Mar. 27, 1978, 92 Stat. 184, substituted ''Administrative law judges'' for ''Hearing examiners'' in item 5362.

1975—Pub. L. 94–82, title II, §202(b)(6), Aug. 9, 1975, 89 Stat. 420, added item 5318.

1972—Pub. L. 92–392, §1(b), Aug. 19, 1972, 86 Stat. 572, substituted items 5341, 5343, 5344, and 5345 relating to ''Policy'', ''Prevailing rate determinations; wage schedules; night differentials'', ''Effective date of wage increase; retroactive pay'' and ''Retained rate of pay on reduction in grade or reassignment'', for such former items relating to ''Trades and crafts'', ''Effective date of pay increase'', ''Retroactive pay'' and ''Position classification appeals'', added items 5342, 5346, 5347, and 5349, and renumbered former item 5342 as 5348.

1971—Pub. L. 91–656, §§2(b)(2), 3(b), Jan. 8, 1971, 84 Stat. 1946, 1951, struck out item 5302 ''Annual reports on pay comparability'' and added items 5305–5308.

1969—Pub. L. 91–34, §1(b), June 30, 1969, 83 Stat. 41, added item 5365.

1967—Pub. L. 90–206, title II, §223(b), Dec. 16, 1967, 81 Stat. 642, added item 5345.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 3372, 5363 of this title; title 10 section 9314; title 15 section 770; title 20 section 3502; title 22 sections 2124c, 2385, 3963, 4606; title 38 sections 7404, 7451; title 42 sections 5872, 7292.

SUBCHAPTER I—PAY COMPARABILITY SYSTEM

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 8340 of this title; title 22 sections 3963, 4606; title 31 section 325; title 42 section 7211; title 50 section 2131.

§ 5301. Policy

It is the policy of Congress that Federal pay fixing for employees under the General Schedule be based on the principles that—

(1) there be equal pay for substantially equal work within each local pay area;

(2) within each local pay area, pay distinctions be maintained in keeping with work and performance distinctions;

(3) Federal pay rates be comparable with non-Federal pay rates for the same levels of work within the same local pay area; and

(4) any existing pay disparities between Federal and non-Federal employees should be completely eliminated.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 458; Pub. L. 91–656, §2(a), Jan. 8, 1971, 84 Stat. 1946; Pub. L. 96–465, title II, §2314(c)(1), Oct. 17, 1980, 94 Stat. 2167; Pub. L. 101–509, title V, §529 [title I, §101(a)(1)], Nov. 5, 1990, 104 Stat. 1427, 1429.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 1171.	Oct. 11, 1962, Pub. L. 87–793, § 502, 76 Stat. 841.

The words ''It is the policy of Congress'' are substituted for ''The Congress hereby declares''. The words ''whereas the functions of a Federal salary system are to fix salary rates for the services rendered by Federal employees so as to make possible the employment of persons well qualified to conduct the Government's programs and to control expenditures of public funds for personal services with equity to the employee and to the taxpayer, and whereas fulfillment of these functions is essential to the development and maintenance of maximum proficiency in the civilian services of Government, then, accordingly'' are omitted as unnecessary.

In the last sentence, the words ''and henceforth'' are omitted as executed.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1990—Pub. L. 101–509 amended section generally. Prior to amendment, section read as follows:

''(a) It is the policy of Congress that Federal pay fixing for employees under statutory pay systems be based on the principles that—

''(1) there be equal pay for substantially equal work;

''(2) pay distinctions be maintained in keeping with work and performance distinctions;

''(3) Federal pay rates be comparable with private enterprise pay rates for the same levels of work; and

''(4) pay levels for the statutory pay systems be interrelated.

''(b) The pay rates of each statutory pay system shall be fixed and adjusted in accordance with the principles under subsection (a) of this section and the provisions of sections 5305, 5306, and 5308 of this title.

''(c) For the purpose of this subchapter, 'statutory pay system' means a pay system under—

''(1) subchapter III of this chapter, relating to the General Schedule;

''(2) section 403 of the Foreign Service Act of 1980, relating to the Foreign Service of the United States; or

''(3) chapter 73 of title 38, relating to the Department of Medicine and Surgery, Veterans' Administration.''

1980—Subsec. (c)(2). Pub. L. 96–465 substituted ''section 403 of the Foreign Service Act of 1980'' for ''subchapter IV of chapter 14 of title 22''.

1971—Pub. L. 91–656 designated provisions of first sentence as subsec. (a), incorporating former cl. (1) in cls. (1) and (2), and former cl. (2) in cl. (3), and inserted ''for employees under statutory pay systems'' after ''Federal pay fixing''; substituted subsec. (b) reading ''The pay rates of each statutory pay system shall be fixed and adjusted in accordance with the principles under subsection (a) of this section and the provisions of sections 5305, 5306, and 5308 of this title'' for former second sentence providing ''Pay levels for the several Federal statutory pay systems shall be interrelated, and pay levels shall be set and adjusted in accordance with these principles''; and added subsec. (c).

EFFECTIVE DATE OF 1990 AMENDMENT

Section 529 [title III, § 305] of Pub. L. 101–509 provided that:

''(a) GENERALLY.—Except as otherwise provided in this Act, this Act and the amendments made by this Act [this Act means section 529 [titles I–III, §§ 1–306] of Pub. L. 101–509, but does not include section 529 [title IV, §§ 401–412] of Pub. L. 101–509, see Short Title of 1990 Amendment; Rules of Construction note below, and see Tables for classification] shall take effect on such date as the President shall determine [see Ex. Ord. No. 12748, Feb. 1, 1991, 56 F.R. 4521, set out below], but not earlier than 90 days, and not later than 180 days, after the date of enactment of this Act [Nov. 5, 1990].

''(b) SPECIAL RULE.—The first calendar year in which comparability payments under section 5304 of title 5, United States Code (as amended by this Act), are paid shall be the calendar year beginning on January 1, 1994.''

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.

SHORT TITLE OF 1993 AMENDMENT

Pub. L. 103–89, § 1, Sept. 30, 1993, 107 Stat. 981, provided that: ''This Act [amending sections 3372, 4501, 4502, 5302, 5332, 5334 to 5336, 5361 to 5363, 5410, 5948, and 8473 of this title, sections 1602, 1732, and 1733 of Title 10, Armed Forces, and section 731 of Title 31, Money and Finance, repealing sections 4302a and 5401 to 5410 of this title, enacting provisions set out as notes under sections 3372, 5335, 5401, and 5410 of this title, and amending provisions set out as a note under section 5304 of this title] may be cited as the 'Performance Management and Recognition System Termination Act'.''

SHORT TITLE OF 1990 AMENDMENT; RULES OF CONSTRUCTION

Section 529 [§ 1] of Pub. L. 101–509 provided that:

''(a) SHORT TITLE.—This section, and the sections immediately following this section through section 412, inclusive [section 529 [§§ 1–412] of Pub. L. 101–509, see Tables for classification], may be cited as the 'Federal Employees Pay Comparability Act of 1990' (hereinafter in this section referred to as 'FEPCA').

''(b) RULES OF CONSTRUCTION.—(1) Except as otherwise expressly provided, any reference (actual or implicit) in FEPCA (outside of this section) to 'this Act' (or to any title, section, or other designated provision of 'this Act') shall be construed to be a reference to FEPCA (or the corresponding provision within FEPCA).

''(2) Except as otherwise expressly provided, any reference (actual or implicit) in any provision of this Act outside of FEPCA to 'this Act' (or to any title, section, or other designated provision of 'this Act'), and any reference made in any provision of law outside of this Act to the 'Treasury, Postal Service and General Government Appropriations Act, 1991' [Pub. L. 101–509] (or to any title, section, or other designated provision of such Act), shall be construed disregarding the provisions of FEPCA.''

Section 529 [title III, § 306] of Pub. L. 101–509 provided that: ''Notwithstanding section 1(b) [section 529 [§ 1(b)] of Pub. L. 101–509, set out above], a reference in any of the preceding provisions of this title [section 529 [title III, §§ 301–305] of Pub. L. 101–509, enacting section 237 of Title 42, The Public Health and Welfare, amending section 212 of Title 42, and enacting provisions set out as notes under this section, section 5304 of this title, and section 212 of Title 42] to 'this Act' [section 529 of Pub. L. 101–509] (other than a reference in section 301) [section 529 [title III, § 301] of Pub. L. 101–509, set out below] shall not be considered to include any provision of title IV [section 529 [title IV, §§ 401–412] of Pub. L. 101–509, enacting sections 4521 to 4523 of this title, amending sections 5541, 5542, 5547, 8335, and 8425 of this title, enacting provisions set out as notes under sections 4521, 5305, 5541, and 8335 of this title, and amending provisions set out as a note under section 5541 of this title].''

SHORT TITLE

Section 1 of Pub. L. 91–656 provided that: ''This Act [enacting sections 5305 to 5308 and 5947 of this title, amending sections 5108, 5301, and 5942 of this title and

section 410 of Title 39, Postal Service, repealing section 5302 of this title, and enacting provisions set out as notes under sections 5303 and 5942 of this title, section 60a of Title 2, The Congress, and section 410 of Title 39] may be cited as the 'Federal Pay Comparability Act of 1970'.''

PAY-FOR-PERFORMANCE LABOR-MANAGEMENT COMMITTEE

Section 529 [title I, §111] of Pub. L. 101–509 provided that:

''(a) POLICY.—It is the policy of Congress that—

''(1) the Federal Government should institute systems for determining pay for its General Schedule employees under which the linkage between their performance and their pay will be strengthened;

''(2) the design of such systems should be developed by the Office of Personnel Management, in conjunction with the Pay-for-Performance Labor-Management Committee;

''(3) the systems should provide flexibility to adapt to the different needs of different agencies and organizational components in the Federal Government; and

''(4) any legislation needed to implement the systems should be enacted in a timely fashion so as to permit implementation of the system by October 1, 1993.

''(b) ESTABLISHMENT.—The Office of Personnel Management shall establish a Pay-for-Performance Labor-Management Committee to advise the Office on the design and establishment of systems for strengthening the linkage between the performance of General Schedule employees and their pay.

''(c) MEMBERSHIP.—The members of the Committee shall be—

''(1) a Chairman, who shall be appointed by the Director of the Office of Personnel Management on the basis of the appointee's education, training, and experience as an expert in compensation practices, and after consultation with the Committee on Governmental Affairs of the Senate and the Committee on Post Office and Civil Service of the House of Representatives, respectively;

''(2) an employee of the Office of Personnel Management, designated by the Director of such Office;

''(3) an employee of the Department of Defense, designated by the Secretary of Defense;

''(4) 3 individuals, each of whom shall be an employee designated by the head of each of 3 other departments or agencies selected by the Director of the Office of Personnel Management from among departments and agencies having substantial numbers of General Schedule employees; and

''(5) 6 individuals appointed by the Director of the Office of Personnel Management to serve as representatives of employee organizations which represent substantial numbers of General Schedule employees, and who shall be selected with due consideration to such factors as the relative numbers of General Schedule employees represented by the various organizations, except that not more than 3 members of the Committee at any one time shall be from a single employee organization, council, federation, alliance, association, or affiliation of employee organizations.

''(d) PAY FOR MEMBERS.—The Chairman shall be paid at a rate of basic pay for the Senior Executive Service, to be determined by the Director of the Office of Personnel Management. The members of the Committee who are otherwise employees of the Federal Government shall not receive any additional pay by reason of their service on the Committee. The members of the Committee who are not otherwise employees of the Federal Government shall not be paid for their service on the Committee and shall not be considered employees of the Federal Government for any purpose by reason of their service on the Committee.

''(e) ADMINISTRATIVE SUPPORT.—The Office of Personnel Management may provide staff and administrative support for the Committee.

''(f) FUNCTIONS.—The Committee shall review available reports and studies on performance evaluation and performance-based pay systems (including a report to be prepared by the National Academy of Sciences) and any other pertinent information.

''(g) REPORT TO THE OFFICE OF PERSONNEL MANAGEMENT.—No later than 1 year after the date of enactment of this Act [Nov. 5, 1990], the Committee shall submit a report to the Director of the Office of Personnel Management, which shall include recommendations as to—

''(1) the types of pay raises to be covered;

''(2) guidelines for pay-for-performance systems, including the criteria to be used in determining eligibility for and the amount of increases in basic pay above the midpoint of the pay range;

''(3) the role organization performance should play in pay-for-performance systems;

''(4) any differences in pay-for-performance systems for different categories of employees;

''(5) the role for employee organizations in the implementation and operation of pay-for-performance systems; and

''(6) whether demonstration projects on pay-for-performance are desirable.''

BUDGET ACT COMPLIANCE

Section 529 [title III, §301] of Pub. L. 101–509 provided that: ''For purposes of the Congressional Budget Act of 1974 [titles I through IX, of Pub. L. 93–344, July 12, 1974, 88 Stat. 297, see Tables for classification], any authority to make payments under this Act or any amendment made by this Act [see Short Title of 1990 Amendment note above] shall be effective only to the extent provided for in advance in appropriation Acts.''

PAY RATES FOR CURRENT EMPLOYEES

Section 529 [title III, §303] of Pub. L. 101–509 provided that: ''Nothing in this Act or in any amendment made by this Act [see Short Title of 1990 Amendment note above] shall have the effect of diminishing the rate of basic pay payable to any individual employed by the United States on the date of the enactment of this Act [Nov. 5, 1990] to a rate below the rate payable to such individual on such date, so long as that individual continues in such position without a break in service.''

EX. ORD. NO. 12748. PROVIDING FOR FEDERAL PAY ADMINISTRATION

Ex. Ord. No. 12748, Feb. 1, 1991, 56 F.R. 4521, as amended by Ex. Ord. No. 12883, Nov. 29, 1993, 58 F.R. 63281, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Employees Pay Comparability Act of 1990 (hereinafter ''FEPCA''), as incorporated in section 529 of Public Law 101–509 [see Short Title of 1990 Amendment note above], and sections 3301 and 3302 of title 5, United States Code, it is hereby ordered as follows:

SECTION 1. *Annual Adjustments to Pay Schedules.* The following agencies are designated under section 5303(g) of title 5, United States Code, as amended by FEPCA, to prescribe conversion rules for the initial adjustment of rates of pay to be applied during each annual adjustment of pay schedules under section 5303 of title 5, United Stated Code:

(a) the Office of Personnel Management, for the General Schedule;

(b) the Department of State, for the Foreign Service Schedule; and

(c) the Department of Veterans Affairs, for the Veterans Health Services and Research Administration Schedules.

SEC. 2. *Locality-based Comparability Payments.* (a) The Secretary of Labor, the Director of the Office of Management and Budget, and the Director of the Office of Personnel Management are hereby designated under section 5304(d)(1) of title 5, United States Code, as amended by FEPCA, to serve jointly as the President's

agent under section 5304 of title 5, United States Code, and shall be known in this capacity as the President's Pay Agent.

(b) The head of each executive agency employing personnel under a statutory pay system, as defined in section 5302(1) of title 5, United States Code, as amended by FEPCA, shall provide such information and assistance as may be requested by the President's Pay Agent in carrying out the provisions of section 5304 of title 5, United States Code.

(c) The President's Pay Agent, as designated in subsection (a), is hereby authorized and designated to exercise the authorities of the President under section 5304(h) [5 U.S.C. 5304(h)] concerning the extension of locality-based comparability payments to certain categories of positions not otherwise covered.

SEC. 3. *Special Pay Authority*. (a) The Office of Personnel Management is hereby authorized and designated, pursuant to section 5305(a) of title 5, United States Code, as amended by section 101 of FEPCA, to exercise the authorities of the President under section 5305 of title 5, United States Code, concerning higher rates of pay.

(b) Before exercising the delegated authorities under subsection (a) regarding employees in positions other than those covered by the General Schedule, the Office of Personnel Management shall consult with the head of the agency employing such employees.

SEC. 4. *Previous Order Revoked*. Executive Order No. 11721, as amended, is revoked.

SEC. 5. *Advance Payments for New Appointees*. Section 2(b) of Executive Order No. 10982, as amended [5 U.S.C. 5527 note], is further amended to read as follows:

''(b) The Office of Personnel Management is hereby designated and empowered to perform the functions conferred upon the President by the provisions of section 5527 of title 5, United States Code, with respect to allotments and assignments authorized by section 5525 of title 5, United States Code, and advance payments to new appointees authorized by section 5524a of title 5, United States Code, as added by section 107(a) of the Federal Employees Pay Comparability Act of 1990, as incorporated in section 529 of Public Law 101–509.''

SEC. 6. *Extension of Cash Awards, Recruitment and Relocation Bonuses, and Retention Allowances*. The Office of Personnel Management is hereby designated and empowered to exercise the authority of the President under:

(a) section 4505a(d) of title 5, United States Code, as added by section 207(a) of FEPCA, concerning the application of performance-based cash awards to noncovered categories of employees;

(b) section 5753(e) of title 5, United States Code, as added by section 208 of FEPCA, concerning the application of recruitment and relocation bonuses to noncovered categories of employees; and

(c) section 5754(e) of title 5, United States Code, as added by section 208 of FEPCA, concerning the application of retention allowances to noncovered categories of employees.

SEC. 7. *Staffing Differentials*. The Office of Personnel Management is hereby designated and empowered to exercise the authority of the President under section 209 of FEPCA [5 U.S.C. 5305 note] to establish staffing differentials.

SEC. 8. *Executive Assignment System*. (a) Civil Service Rule 9 (5 CFR Part 9), as established by Executive Order No. 11315, as amended [5 U.S.C. 3301 note], is revoked.

(b) The Office of Personnel Management shall take such actions as the Office may determine to be necessary to provide for the orderly termination of the Executive Assignment System.

SEC. 9. *Effective Dates*. (a) Except as otherwise provided by Public Law 101–509, the provisions of subchapter I of chapter 53 of title 5, United States Code, as amended by section 101 of FEPCA [this subchapter], and the provisions of sections 1 through 4 of this order shall take effect on February 3, 1991.

(b) Except as otherwise provided by Public Law 101–509, the remaining provisions of FEPCA and of this order shall take effect on May 4, 1991, except that the Office of Personnel Management may establish an earlier effective date, but not earlier than February 3, 1991, for any such provisions with respect to which the Office determines an earlier effective date is appropriate. [For effective dates of certain provisions of FEPCA as established by the Office of Personnel Management, see notices and rules issued by the Office of Personnel Management and published in the Federal Register at 56 F.R. 6212, 11059, 12833, 20339, and 20343.]

ACT REFERRED TO IN OTHER SECTIONS

The Federal Pay Comparability Act of 1970 is referred to in title 19 sections 2075, 2171.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 31 section 732; title 42 sections 2297b–4, 12651f.

§ 5302. Definitions

For the purpose of this subchapter—

(1) the term ''statutory pay system'' means a pay system under—

(A) subchapter III, relating to the General Schedule;

(B) section 403 of the Foreign Service Act of 1980, relating to the Foreign Service of the United States; or

(C) chapter 74 of title 38, relating to the Veterans Health Administration (other than a position subject to section 7451 of title 38);

(2) the term ''ECI'' means the Employment Cost Index (wages and salaries, private industry workers) published quarterly by the Bureau of Labor Statistics;

(3) the ''base quarter'' for any year is the 3-month period ending on September 30 of such year;

(4) the term ''pay agent'' means the agent designated by the President under section 5304(d)(1);

(5) the term ''locality'' or ''pay locality'' means any locality, as established or modified under section 5304;

(6) the term ''pay disparity'', as used with respect to a locality, means the extent to which rates of pay payable under the General Schedule are generally lower than the rates paid for the same levels of work by non-Federal workers in the same locality; except as otherwise required in this subchapter, a pay disparity shall be expressed as a single percentage which, if uniformly applied to employees within the locality who are receiving rates of pay under the General Schedule, would cause the rates payable to such employees to become substantially equal (when considered in the aggregate) to the rates paid to non-Federal workers for the same levels of work in the same locality;

(7) the term ''comparability payment'' means a payment payable under section 5304;

(8) the term ''rates of pay under the General Schedule'', ''rates of pay for the General Schedule'', or ''scheduled rates of basic pay'' means—

(A) the rates of basic pay set forth in the General Schedule; and

(B) in the case of an employee receiving a retained rate of basic pay under section 5363, the rate of basic pay payable under such section; and

(9) the term ''General Schedule position'' means any position to which subchapter III applies.

(Added Pub. L. 101–509, title V, §529 [title I, §101(a)(1)], Nov. 5, 1990, 104 Stat. 1427, 1429; amended Pub. L. 102–378, §2(25), Oct. 2, 1992, 106 Stat. 1348; Pub. L. 103–89, §3(b)(1)(E), Sept. 30, 1993, 107 Stat. 981.)

REFERENCES IN TEXT

Section 403 of the Foreign Service Act of 1980, referred to in par. (1)(B), is classified to section 3963 of Title 22, Foreign Relations and Intercourse.

PRIOR PROVISIONS

A prior section 5302, Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 458, which provided for annual reports on pay comparability, was repealed by Pub. L. 91–656, §2(b)(1), Jan. 8, 1971, 84 Stat. 1946.

AMENDMENTS

1993—Par. (8). Pub. L. 103–89, §3(b)(1)(E)(i), redesignated subpar. (C) as (B) and struck out former subpar. (B) which read as follows: ''in the case of an employee covered by the performance management and recognition system, the rates of basic pay under chapter 54; and''.

Par. (9). Pub. L. 103–89, §3(b)(1)(E)(ii), substituted ''applies'' for ''applies (including any position under the performance management and recognition system)''.

1992—Par. (1)(C). Pub. L. 102–378, §2(25)(A), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''chapter 73 of title 38, relating to the Veterans Health Services and Research Administration;''.

Par. (8)(C). Pub. L. 102–378, §2(25)(B), added subpar. (C).

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 1992 AMENDMENT

Amendment by Pub. L. 102–378 effective Feb. 3, 1991, see section 9(b)(5) of Pub. L. 102–378, set out as a note under section 6303 of this title.

EFFECTIVE DATE

Section effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title III, §305] of Pub. L. 101–509, set out as an Effective Date of 1990 Amendment note under section 5301 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5304 of this title; title 2 section 906; title 18 section 207.

§ 5303. Annual adjustments to pay schedules

(a) Effective as of the first day of the first applicable pay period beginning on or after January 1 of each calendar year, the rates of basic pay for each statutory pay system shall be increased by the percentage (rounded to the nearest one-tenth of 1 percent) equal to one-half of 1 percentage point less than the percentage by which the ECI for the base quarter of the year before the preceding calendar year exceeds the ECI for the base quarter of the second year before the preceding calendar year (if at all).

(b)(1) If, because of national emergency or serious economic conditions affecting the general welfare, the President should consider the pay adjustment which would otherwise be required by subsection (a) in any year to be inappropriate, the President shall—

(A) prepare and transmit to Congress before September 1 of the preceding calendar year a plan for such alternative pay adjustments as he considers appropriate, together with the reasons therefor; and

(B) adjust the rates of pay of each statutory pay system, in accordance with such plan, effective on the same day as the increase under subsection (a) would otherwise take effect.

(2) In evaluating an economic condition affecting the general welfare under this subsection, the President shall consider pertinent economic measures including, but not limited to, the Indexes of Leading Economic Indicators, the Gross National Product, the unemployment rate, the budget deficit, the Consumer Price Index, the Producer Price Index, the Employment Cost Index, and the Implicit Price Deflator for Personal Consumption Expenditures.

(3) The President shall include in the report to Congress under paragraph (1)(A) his assessment of the impact that the alternative pay adjustments under this subsection will have on the Government's ability to recruit and retain well-qualified employees.

(c) The rates of basic pay that take effect under this section—

(1) shall modify, supersede, or render inapplicable, as the case may be, to the extent inconsistent therewith, any prior rates of basic pay under the statutory pay system involved (as last adjusted under this section or prior provisions of law); and

(2) shall be printed in the Federal Register and the Code of Federal Regulations.

(d) An increase in rates of basic pay that takes effect under this section is not an equivalent increase in pay within the meaning of section 5335.

(e) This section does not impair any authority pursuant to which rates of basic pay may be fixed by administrative action.

(f) Pay may not be paid, by reason of any provision of this section (disregarding any comparability payment payable), at a rate in excess of the rate of basic pay payable for level V of the Executive Schedule.

(g) Any rate of pay under this section shall be initially adjusted, effective on the effective date of the rate of pay, under conversion rules prescribed by the President or by such agency or agencies as the President may designate.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 458; Pub. L. 90–206, title II, §207, Dec. 16, 1967, 81 Stat. 631; Pub. L. 91–375, §6(c)(10), Aug. 12, 1970, 84 Stat. 776; Pub. L. 94–183, §2(16), Dec. 31, 1975, 89 Stat. 1057; Pub. L. 95–454, title IX, §906(a)(2), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 96–465, title II, §2314(c)(2), Oct. 17, 1980, 94 Stat. 2167; Pub. L. 101–509, title V, §529 [title I, §101(a)(1)], Nov. 5, 1990, 104 Stat. 1427, 1430.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 1173.	Oct. 11, 1962, Pub. L. 87–793, § 504, 76 Stat. 842. Aug. 14, 1964, Pub. L. 88–426, § 123, 78 Stat. 412.

In subsection (a), the words ''the provisions of this title governing appointment in the competitive service'' are substituted for ''the civil service laws and regulations''.

In subsections (a), (b), and (d), the word ''agency'' is substituted for ''agency or agencies'' because the singular imports the plural, see 1 U.S.C. 1.

In subsection (d), the word ''officer'' is omitted as included in ''employee'', ''agency'' is substituted for ''department'', and ''rules'' is omitted as included in ''regulations''.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

REFERENCES IN TEXT

Level V of the Executive Schedule, referred to in subsec. (f), is set out in section 5316 of this title.

AMENDMENTS

1990—Pub. L. 101–509 amended section generally, substituting provisions relating to annual adjustments to pay schedules for provisions relating to President's authority to set higher minimum rates of basic pay.

1980—Subsec. (a)(4). Pub. L. 96–465 substituted ''section 403 of the Foreign Service Act of 1980'' for ''sections 867 and 870 of title 22''.

1978—Subsec. (a). Pub. L. 95–454 substituted ''Office of Personnel Management'' for ''Civil Service Commission''.

1975—Subsec. (c). Pub. L. 94–183 struck out ''and section 3552 of title 39'' after ''of section 5335(a) of this title''.

1970—Subsec. (a)(2). Pub. L. 91–375 repealed cl. (2) making positions paid under provisions of part III of title 39 relating to employees in the postal field service subject to higher minimum rates established by the President.

1967—Subsec. (a). Pub. L. 90–206, § 207(a), substituted ''maximum pay rate'' for ''seventh pay rate''.

Subsec. (d). Pub. L. 90–206, § 207(b), inserted provisions that permitted an initial adjustment to be made to statutory increases which become effective prior to, on, or after the date of enactment of the statute.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–509 effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title III, § 305] of Pub. L. 101–509, set out as a note under section 5301 of this title.

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 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–375 effective within 1 year after Aug. 12, 1970, on date established therefor by Board of Governors of United States Postal Service and published by it in Federal Register, see section 15(a) of Pub. L. 91–375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90–206 effective Dec. 16, 1967, see section 220(a)(1) of Pub. L. 90–206, set out as an Effective Date note under section 3110 of this title.

DELEGATION OF FUNCTIONS

For designation of agencies to perform functions of President under subsec. (g) of this section, see Ex. Ord. No. 12748, § 1, Feb. 1, 1991, 56 F.R. 4521, eff. Feb. 3, 1991, set out as a note under section 5301 of this title.

PAY RAISES FOR PROGRAMS FUNDED BY ENERGY AND WATER DEVELOPMENT APPROPRIATIONS ACTS TO BE ABSORBED WITHIN SUCH ACTS

Pub. L. 102–377, title V, § 506, Oct. 2, 1992, 106 Stat. 1343, provided that: ''Such sums as may be necessary for Federal employee pay raises for programs funded by this Act or subsequent Energy and Water Development Appropriations Acts hereafter shall be absorbed within the levels appropriated in such Acts.''

SENSE OF CONGRESS

Section 529 [title I, § 101(e)] of Pub. L. 101–509 provided that: ''It is the sense of the Congress that the total funds dedicated to adjustments under sections 5303 and 5304 [of this title] for any year be no less than the total funds that would have been dedicated to adjustments under such section 5303 for such year had the full change in the ECI been applied to pay rates for such year.''

FEDERAL EMPLOYEE PAY ADJUSTMENTS

1994—Pub. L. 103–329, title VI, § 630(a), Sept. 30, 1994, 108 Stat. 2424, provided that:

''(1) The adjustment in rates of basic pay for the statutory pay systems that takes effect in fiscal year 1995 under section 5303 of title 5, United States Code, shall be an increase of 2 percent.

''(2) For purposes of each provision of law amended by section 704(a)(2) of the Ethics Reform Act of 1989 [Pub. L. 101–194] (5 U.S.C. 5318 note), no adjustment under section 5303 of title 5, United States Code, shall be considered to have taken effect in fiscal year 1995 in the rates of basic pay for the statutory pay systems.

''(3) For purposes of this subsection, the term 'statutory pay system' shall have the meaning given such term by section 5302(1) of title 5, United States Code.''

1993—Pub. L. 103–123, title V, § 517B, Oct. 28, 1993, 107 Stat. 1253, provided that:

''(a) Any adjustment required by section 5303 of title 5, United States Code, to become effective in fiscal year 1994 in the rates of basic pay for the statutory pay systems shall not be made.

''(b) For the purpose of this section, the term 'statutory pay system' has the meaning given such term by section 5302(1) of title 5, United States Code.''

1990—Pub. L. 101–509, title VI, § 618, Nov. 5, 1990, 104 Stat. 1475, provided that:

''(a) Notwithstanding any other provision of law, in the case of fiscal year 1991, the overall average percentage of the adjustment under section 5305 of title 5, United States Code, in the rates of pay under the General Schedule, and in the rates of pay under the other statutory pay systems (as defined by section 5301(c) of such title), shall be an increase of 4.1 percent.

''(b) Any increase in a pay rate or schedule which takes effect under such section 5305 in fiscal year 1991 (in accordance with subsection (a)) shall, to the maximum extent practicable, be of the same percentage, and shall take effect as of the first day of the first applicable pay period commencing on or after January 1, 1991.''

Pub. L. 101–509, title VI, § 633, Nov. 5, 1990, 104 Stat. 633, provided that:

''(a) IN GENERAL.—Notwithstanding any other provision of law (including any provision of the Federal Employees Pay Comparability Act of 1990 [see Short Title of 1990 Amendment note set out under section 5301 of

this title] and any provision of law amended by such Act), for purposes of any adjustment scheduled to take effect under section 5303 of title 5, United States Code (as amended by section 101 [section 529 [title I, §101] of Pub. L. 101–509]) during the period beginning on October 1, 1991, and ending on September 30, 1994, the provisions of section 5303 of such title (as so amended) shall be applied in accordance with the following:

''(1) For purposes of the adjustment taking effect in each of fiscal years 1992 and 1993, respectively, deem subsection (a) to be amended by striking 'one-half of 1 percentage point less than'.

''(2) Deem subsection (b) to be amended as follows:

''(A) In paragraph (1), strike 'if' and all that follows thereafter through 'welfare,' and insert 'Subject to paragraph (2), if'.

''(B) Redesignate paragraphs (2) and (3) as paragraphs (3) and (4), respectively.

''(C) Insert after paragraph (1) the following:

'''(2) Authority to provide alternative pay adjustments under this subsection in any year may not be exercised except in accordance with the following:

'''(A) If the adjustment which (but for this subsection) would otherwise take effect under this section in a fiscal year would be 5 percent or less, no reduction may be made unless necessary because a state of war or severe economic conditions exist.

'''(B) If the adjustment which (but for this subsection) would otherwise take effect under this section in a fiscal year would be greater than 5 percent, no reduction may be made—

'''(i) to a level of 5 percent or greater, unless necessary because of national emergency or serious economic conditions affecting the general welfare; or

'''(ii) to a level of less than 5 percent, unless necessary because of either of the reasons set forth in subparagraph (A).'

''(D) Add after paragraph (4) (as so redesignated by subparagraph (B) the following:

'''(5) For the purpose of this subsection, ''severe economic conditions'' shall be considered to exist relative to an adjustment scheduled to take effect on a given date if, during the 12-month period ending 2 calendar quarters before such date, there occurred 2 consecutive quarters of negative growth in the GNP.'

''(b) REFERENCES.—Notwithstanding any other provision of law (including any provision of the Federal Employees Pay Comparability Act of 1990 [see Short Title of 1990 Amendment note set out under section 5301 of this title] and any provision of law amended made by such Act), effective for purposes of any pay adjustment scheduled to take effect during the period described in subsection (a), any reference in a provision of law to section 5303 of title 5, United States Code, as amended by section 101 [section 529 [title I, §101] of Pub. L. 101–509] (or to the effective date of a pay adjustment, the size of an adjustment, a rate payable after an adjustment, or other related matter under such section 5303) shall be considered a reference to such section as applied in accordance with this section (or to the corresponding matter, as determined under such section 5303, as applied in accordance with this section).''

1989—Pub. L. 101–194, title VII, §702, Nov. 30, 1989, 103 Stat. 1767, provided that:

''(a) RESTORATION.—

''(1) IN GENERAL.—Effective for pay periods beginning on or after the date of enactment of this Act [Nov. 30, 1989], the rate of basic pay for any office or position in the executive, legislative, or judicial branch of the Government or in the government of the District of Columbia shall be determined as if the provisions of law cited in paragraph (2) had never been enacted.

''(2) CITATIONS.—The provisions of law referred to in paragraph (1) are as follows:

''(A) Section 620(b) of the Treasury, Postal Service and General Government Appropriations Act, 1989 (2 U.S.C. 5305 note) [Pub. L. 100–440, set out below].

''(B) Section 619(b) of the Treasury, Postal Service and General Government Appropriations Act, 1990 (Public Law 101–136) [set out below].

''(b) EXCEPTIONS.—Notwithstanding any other provision of this section, the rate of basic pay for a Senator, the President pro tempore of the Senate, and the majority leader and the minority leader of the Senate shall be determined as if subsection (a) had not been enacted.

''(c) SPECIFIC AUTHORITY.—For purposes of section 140 of Public Law 97–92 (28 U.S.C. 461 note), appropriate salary increases are hereby authorized for Federal judges and Justices of the Supreme Court pursuant to subsection (a).

''(d) SPECIAL RULE.—Notwithstanding any other provision of this section, no adjustment in any rate of pay shall become effective, as a result of the enactment of this section, before the first applicable pay period beginning on or after the date as of which the order issued by the President on October 16, 1989, pursuant to section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 [2 U.S.C. 901] is rescinded.''

Pub. L. 101–194, title XI, §1101(a), Nov. 30, 1989, 103 Stat. 1781, provided that:

''(1) ADJUSTMENTS IN RATES OF PAY.—Notwithstanding any other provision of law (including any provision of this Act or amendment made by this Act), effective as provided in paragraph (2), the rate of pay of each office and position of United States Senator, the President pro tempore of the Senate, and the majority and minority leaders of the Senate shall be increased by—

''(A) the percentage increase that would have taken effect in fiscal year 1988 if the provisions of section 601(a)(2) of the Legislative Reorganization Act of 1946 (2 U.S.C. 31(2)) were applied to the rate of pay of each such office and position in effect on January 1, 1988 without regard to section 108 of the resolution entitled 'Joint resolution making further continuing appropriations for the fiscal year 1988, and for other purposes', approved December 22, 1987 [Pub. L. 100–202]; (101 Stat. 1329–434; 5 U.S.C. 5305 note [set out below]);

''(B) the percentage increase that would have taken effect in fiscal year 1989 if the provisions of section 601(a)(2) of the Legislative Reorganization Act of 1946 (2 U.S.C. 31(2)) were applied to the rate of pay of each such office and position in effect on January 1, 1989 (as adjusted under subparagraph (A) of this paragraph) without regard to subsection (b) of section 620 of the Treasury, Postal Service and General Government Appropriations Act, 1989 (Public Law 100–440; 102 Stat. 1756; 5 U.S.C. 5305 note [set out below]); and

''(C) the percentage increase that would take effect in fiscal year 1990 by the application of section 601(a)(2) of the Legislative Reorganization Act of 1946 (2 U.S.C. 31(2)) (as adjusted under subparagraphs (A) and (B) of this paragraph) without regard to subsection (b) of section 619 of the Treasury, Postal Service and General Government Appropriations Act, 1990 (Public Law 101–136) [set out below].

''(2) The increase in the rates of pay for each office and position described under paragraph (1) shall be effective on the first day of the first pay period beginning on or after January 1, 1990.''

Pub. L. 101–136, title VI, §619, Nov. 3, 1989, 103 Stat. 820, provided that:

''(a)(1) Notwithstanding any other provision of law, in the case of fiscal year 1990, the overall average percentage of the adjustment under section 5305 of title 5, United States Code, in the rates of pay under the General Schedule, and in the rates of pay under the other statutory pay systems (as defined by section 5301(c) of such title), shall be an increase of 3.6 percent.

''(2) Each increase in a pay rate or schedule which takes effect pursuant to paragraph (1) shall, to the maximum extent practicable, be of the same percentage, and shall take effect as of the first day of the first applicable pay period commencing on or after January 1, 1990.

''(b)(1) Notwithstanding any other provision of this Act or any other law, no adjustment in rates of pay

under section 5305 of title 5, United States Code, which becomes effective on or after October 1, 1989, and before October 1, 1990, shall have the effect of increasing the rate of salary or basic pay for any office or position in the legislative, executive, or judicial branch or in the government of the District of Columbia—

''(A) if the rate of salary or basic pay payable for that office or position as of September 30, 1989, was equal to or greater than the rate of basic pay described in paragraph (3); or

''(B) to a rate exceeding the rate of basic pay described in paragraph (3) if, as of September 30, 1989, the rate of salary or basic pay payable for that office or position was less than the rate described in such paragraph.

''(2) For purposes of paragraph (1), the rate of salary or basic pay payable as of September 30, 1989, for any office or position which was not in existence on such date shall be deemed to be the rate of salary or basic pay payable to individuals in comparable offices or positions on such date, as determined under regulations prescribed—

''(A) by the President, in the case of any office or position within the executive branch or in the government of the District of Columbia;

''(B) jointly by the Speaker of the House of Representatives and the President pro tempore of the Senate, in the case of any office or position within the legislative branch; or

''(C) by the Chief Justice of the United States, in the case of any office or position within the judicial branch.

''(3) The rate of basic pay described in this paragraph is the rate equal to the rate of basic pay payable for level III of the Executive Schedule under section 5314 of title 5, United States Code, as of September 30, 1989, increased by 3.6 percent.''

1988—Pub. L. 100–440, title VI, §620, Sept. 22, 1988, 102 Stat. 1756, provided that:

''(a)(1) Notwithstanding any other provision of law, in the case of fiscal year 1989, the overall percentage of the adjustment under section 5305 of title 5, United States Code, in the rates of pay under the General Schedule, and in the rates of pay under the other statutory pay systems (as defined by section 5301(c) of such title), shall be an increase of 4.1 percent.

''(2) Each increase in a pay rate or schedule which takes effect pursuant to paragraph (1) shall, to the maximum extent practicable, be of the same percentage, and shall take effect as of the first day of the first applicable pay period commencing on or after January 1, 1989.

''(b)(1) Notwithstanding any other provision of this Act or any other law, no adjustment in rates of pay under section 5305 of title 5, United States Code, which becomes effective on or after October 1, 1988, and before October 1, 1989, shall have the effect of increasing the rate of salary or basic pay for any office or position in the legislative, executive, or judicial branch or in the government of the District of Columbia—

''(A) if the rate of salary or basic pay payable for that office or position as of September 30, 1988, was equal to or greater than the rate of basic pay then payable for level III of the Executive Schedule under section 5314 of title 5, United States Code; or

''(B) to a rate exceeding the rate of basic pay payable for level III of the Executive Schedule under such section 5314 as of September 30, 1988, if, as of that date, the rate of salary or basic pay payable for that office or position was less than the rate of basic pay then payable for such level III.

''(2) For purposes of paragraph (1), the rate of salary or basic pay payable as of September 30, 1988, for any office or position which was not in existence on such date shall be deemed to be the rate of salary or basic pay payable to individuals in comparable offices or positions on such date, as determined under regulations prescribed—

''(A) by the President, in the case of any office or position within the executive branch or in the government of the District of Columbia;

''(B) jointly by the Speaker of the House of Representatives and the President pro tempore of the Senate, in the case of any office or position within the legislative branch; or

''(C) by the Chief Justice of the United States, in the case of any office or position within the judicial branch.''

1987—Pub. L. 100–202, §108, Dec. 22, 1987, 101 Stat. 1329–434, provided that:

''(a) Notwithstanding any other provision of this resolution or any other law, no adjustment in rates of pay under section 5305 of title 5, United States Code, which becomes effective on or after October 1, 1987, and before October 1, 1988, shall have the effect of increasing the rate of salary or basic pay for any office or position in the legislative, executive, or judicial branch or in the government of the District of Columbia—

''(1) if the rate of salary or basic pay payable for that office or position as of September 30, 1987, was equal to or greater than the rate of basic pay then payable for level V of the Executive Schedule under section 5316 of title 5, United States Code; or

''(2) to a rate exceeding the rate of basic pay payable for level V of the Executive Schedule under such section 5316 as of September 30, 1987, if, as of that date, the rate of salary or basic pay payable for that office or position was less than the rate of basic pay then payable for such level V.

''(b) For purposes of subsection (a), the rate of salary or basic pay payable as of September 30, 1987, for any office or position which was not in existence on such date shall be deemed to be the rate of salary or basic pay payable to individuals in comparable offices or positions on such date, as determined under regulations prescribed—

''(1) by the President, in the case of any office or position within the executive branch or in the government of the District of Columbia;

''(2) jointly by the Speaker of the House of Representatives and the President pro tempore of the Senate, in the case of any office or position within the legislative branch; or

''(3) by the Chief Justice of the United States, in the case of any office or position within the judicial branch.''

Pub. L. 100–202, §110(a), Dec. 22, 1987, 101 Stat. 1329–436, provided that:

''(1) TWO-PERCENT INCREASE.—Notwithstanding any other provision of law, in the case of fiscal year 1988, the overall percentage of the adjustment under section 5305 of title 5, United States Code, in the rates of pay under the General Schedule, and in the rates of pay under the other statutory pay systems (as defined by section 5301(c) of such title), shall be an increase of 2 percent.

''(2) UNIFORM ADJUSTMENTS; DELAYED EFFECTIVE DATE.—Each increase in a pay rate or schedule which takes effect pursuant to paragraph (1) shall, to the maximum extent practicable, be of the same percentage and shall take effect as of the beginning of the first applicable pay period beginning on or after January 1, 1988.''

1986—Pub. L. 99–500, §144(a), Oct. 18, 1986, 100 Stat. 1783–350, and Pub. L. 99–591, §144(a), Oct. 30, 1986, 100 Stat. 3341–353, provided that:

''(1) Notwithstanding any other provision of law, in the case of fiscal year 1987, the overall percentage of the adjustment under section 5305 of title 5, United States Code, in the rates of pay under the General Schedule, and in the rates of pay under the other statutory pay systems, shall be an increase of 3 percent.

''(2) Each increase in a pay rate or schedule which takes effect pursuant to paragraph (1) shall, to the maximum extent practicable, be of the same percentage, and shall take effect as of the first day of the first applicable pay period commencing on or after January 1, 1987.

''(3)(A) Notwithstanding any other provision of law, determinations relating to amounts to be appropriated in order to provide for the adjustment described in

paragraph (1) shall be made based on the assumption that the various departments and agencies of the Government will, in the aggregate, absorb 50 percent of the increase in total pay for fiscal year 1987.

''(B) Subparagraph (A) does not apply with respect to the Department of Defense or pay for employees of the Department of Defense.

''(4) For purposes of this subsection—

''(A) the term 'total pay' means, with respect to a fiscal year, the total amount of basic pay which will be payable to employees covered by statutory pay systems for service performed during such fiscal year;

''(B) the term 'increase in total pay' means, with respect to a fiscal year, that part of total pay for such year which is attributable to the adjustment taking effect under this section during such year; and

''(C) the term 'statutory pay system' has the meaning given such term by section 5301(c) of title 5, United States Code.''

Pub. L. 99–272, title XV, §15201(a), Apr. 7, 1986, 100 Stat. 332, provided that:

''(1) The rates of pay under the General Schedule and the rates of pay under the other statutory pay systems referred to in section 5301(c) of title 5, United States Code, shall not be adjusted under section 5305 of such title during fiscal year 1986.

''(2)(A)(i) For fiscal years 1987 and 1988, the President shall provide for the adjustment of rates of pay under section 5305 of title 5, United States Code, as appropriate to reduce outlays, relating to pay of officers and employees of the Federal Government, by at least $746,000,000 in fiscal year 1987 and $1,264,000,000 in fiscal year 1988 (without regard to reductions in outlays which result by reason of subparagraph (B)(ii) of this paragraph, paragraph (1) of this subsection, subsection (b) of this section, and the application of section 1009 of title 37, United States Code), computed using the baseline used for the First Concurrent Resolution on the Budget for Fiscal Year 1986 (S. Con. Res. 32, 99th Congress), agreed to on August 1, 1985.

''(ii) Clause (i) of this subparagraph shall not be construed to suspend the requirements of section 5305 of title 5, United States Code, with respect to fiscal years 1987 and 1988.

''(B) Each adjustment in a pay rate or schedule which takes effect pursuant to subparagraph (A) of this paragraph—

''(i) shall, to the maximum extent practicable, be of the same percentage; and

''(ii) shall be effective with respect to pay periods beginning on or after January 1 of the fiscal year involved.''

1984—Pub. L. 98–270, title II, §202(a), Apr. 18, 1984, 98 Stat. 158, provided that:

''(1) Notwithstanding any other provision of law, in the case of fiscal year 1984, the overall percentage of the adjustment under section 5305 of title 5, United States Code, in the rates of pay under the General Schedule, and in the rates of pay under the other statutory pay systems, shall be an increase of 4 percent.

''(2) Each increase in a pay rate or schedule which takes effect pursuant to paragraph (1) shall, to the maximum extent practicable, be of the same percentage, and shall take effect as of the first day of the first applicable pay period commencing on or after January 1 of such fiscal year.''

1982—Pub. L. 97–253, title III, §310(a), Sept. 8, 1982, 96 Stat. 799, provided that:

''(1) Notwithstanding any other provision of law, if—

''(A) before September 1, 1982, the President transmits to the Congress pursuant to section 5305(c)(1) of title 5, United States Code, an alternative plan which provides for an overall percentage pay adjustment which is less than 4 percent, and

''(B) the alternative plan referred to in subparagraph (A) is disapproved pursuant to such section 5305,

the rates of pay under the General Schedule and the rates of pay under the other statutory pay systems shall be increased under the provisions of such section 5305 by 4 percent in the case of fiscal year 1983.

''(2) Each increase in a pay rate or schedule which takes effect pursuant to paragraph (1) shall, to the maximum extent practicable, be of the same percentage, and shall take effect on the first day of the first applicable pay period commencing on or after October 1 of such fiscal year.''

1981—Pub. L. 97–35, title XVII, §1701(a), Aug. 13, 1981, 95 Stat. 753, provided that: ''Notwithstanding any other provision of law, the overall percentage of the adjustment of the rates of pay under the General Schedule or any other statutory pay system under section 5305 of title 5, United States Code, which is to become effective with the first applicable pay period commencing on or after October 1, 1981, shall not exceed 4.8 percent.''

1978—Pub. L. 95–429, title VI, §614, Oct. 10, 1978, 92 Stat. 1018, provided that:

''(a) No part of any of the funds appropriated for the fiscal year ending September 30, 1979, by this Act or any other Act, may be used to pay the salary or pay of any individual in any office or position in an amount which exceeds the rate of salary or basic pay payable for such office or position on September 30, 1978, by more than 5.5 percent, as a result of any adjustments which take effect during such fiscal year under—

''(1) section 5305 of title 5, United States Code;

''(2) any other provision of law if such adjustment is determined by reference to such section 5305; or

''(3) section 5343 of title 5, United States Code, if such adjustment is granted pursuant to a wage survey (but only with respect to prevailing rate employees described in section 5342(a)(2)(A) of that title).

''(b) For the purpose of administering any provision of law, rule, or regulation which provides premium pay, retirement, life insurance, or other employee benefit, which requires any deduction or contribution, or which imposes any requirement or limitation, on the basis of a rate of salary or basic pay, the rate of salary or basic pay payable after the application of this section shall be treated as the rate of salary or basic pay.''

1971—Pub. L. 92–210, §3, Dec. 22, 1971, 85 Stat. 753, provided that: ''Notwithstanding any provision of section 3(c) of the Federal Pay Comparability Act of 1970 (Public Law 91–656), or of section 5305 of title 5, United States Code, as added by section 3(a) of Public Law 91–656, and the provisions of the alternative plan submitted by the President to the Congress pursuant thereto on August 31, 1971, such comparability adjustments in the rates of pay of each Federal statutory pay system as may be required under such sections 5305 and 3(c), based on the 1971 Bureau of Labor Statistics survey—

''(1) shall not be greater than the guidelines established for the wage and salary adjustments for the private sector that may be authorized under authority of any statute of the United States, including the Economic Stabilization Act of 1970 (Public Law 91–379; 84 Stat. 799), as amended [set out as a note under section 1904 of Title 12, Banks and Banking], and that may be in effect on December 31, 1971; and

''(2) shall be placed into effect on the first day of the first pay period that begins on or after January 1, 1972.

Nothing in this section shall be construed to provide any adjustments in rates of pay of any Federal statutory pay system which are greater than the adjustments based on the 1971 Bureau of Labor Statistics survey.''

Section 3(c) of Pub. L. 91–656 provided that: ''The President may make the initial adjustment required by subchapter I of chapter 53 of title 5, United States Code, as amended by this Act, without regard to the provisions of such subchapter relating to the Advisory Committee on Federal Pay and the Federal Employees Pay Council. Notwithstanding any provision of such subchapter I prescribing an effective date of October 1 for any pay adjustment made by the President, the initial adjustment based on the 1970 Bureau of Labor Statistics survey and the adjustment based on the 1971 Bureau of Labor Statistics survey shall become effective

on the first day of the first applicable pay period that begins on or after January 1, 1971, and January 1, 1972, respectively. Notwithstanding the provisions of such subchapter I, the President's agent for purposes of the 1971 and 1972 adjustments shall be the Director, Office of Management and Budget and the Chairman, United States Civil Service Commission. Adjustments under the provisions of such subchapter I shall not apply to employees of the Post Office Department whose basic pay is fixed under the General Schedule.''

1967—Pub. L. 90–206, title II, § 212, Dec. 16, 1967, 81 Stat. 634, provided that: ''In order to complete the implementation of the policy of the Congress set forth in paragraph (2) of section 5301 of title 5, United States Code, the President, after seeking the views of such employee organizations as he considers appropriate and in such manner as he may provide, shall—

''(1) effective on the first day of the first pay period beginning on or after July 1, 1968, adjust the rates of basic pay, basic compensation, and salary, as in effect by reason of the enactment of the provisions of this title [see Short Title note under section 5332 of this title] other than this section and sections 205, 210, 213, 214, 215, and 219—

''(A) by amounts equal, as nearly as may be practicable, to one-half of the amounts by which such rates are exceeded by rates of pay paid for the same levels of work in private enterprise as determined on the basis of the 1967 annual survey conducted by the Bureau of Labor Statistics in accordance with the provisions of section 5302 of title 5, United States Code, or

''(B) by 3 per centum,

whichever is greater; and

''(2) effective on the first day of the first pay period beginning on or after July 1, 1969, adjust the rates he has established under subparagraph (1) of this section, and the rates established by Postal Field Service Schedule II, and Rural Carrier Schedule II (contained in the amendments made by subsections (a) and (b) of section 205 [amending sections 3542 and 3543 of Title 39, Postal Service], by amounts equal, as nearly as may be practicable, to the amounts by which such rates are exceeded by rates of pay paid for the same levels of work in private enterprise as determined on the basis of the 1968 annual survey conducted by the Bureau of Labor Statistics in accordance with the provisions of section 5302 of title 5, United States Code.

Adjustments made by the President under this section shall have the force and effect of statute. The rates of pay of personnel subject to sections 210, 213 (except subsections (d) and (e)), and 214 of this title [see Short Title note under section 5332 of this title], and any minimum or maximum rate, limitation, or allowance applicable to any such personnel, shall be adjusted, by amounts which are equal, insofar as practicable and with such exceptions as may be necessary to provide for appropriate relationships between positions, to the amounts of the adjustments made by the President under subparagraphs (1) and (2) of this section, by the following authorities—

''(i) the President pro tempore of the Senate, with respect to the United States Senate;

''(ii) the Speaker of the House of Representatives with respect to the United States House of Representatives;

''(iii) the Architect of the Capitol, with respect to the Office of the Architect of the Capitol;

''(iv) the Director of the Administrative Office of the United States Courts, with respect to the judicial branch of the Government; and

''(v) the Secretary of Agriculture, with respect to persons employed by the county committees established pursuant to section 8(b) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)).

Such adjustments shall be made in such manner as the appropriate authority concerned deems advisable and shall have the force and effect of statute. Nothing in this section shall impair any authority pursuant to which rates of pay may be fixed by administrative action.'' [Section 212 of Pub. L. 90–206 effective Dec. 16, 1967, see section 220(a)(1) of Pub. L. 90–206, set out as a note under section 3110 of this title.]

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5304, 5304a, 5306, 5318, 5332, 5376, 5382, 5392, 8431 of this title; title 2 sections 31, 60a–1, 60a–1b, 60a–2, 60a–2a, 84a–1, 906; title 3 section 104; title 22 section 3963; title 28 section 461; title 31 section 325; title 42 section 254*l*.

§ 5304. Locality-based comparability payments

(a) Pay disparities shall be identified and reduced as follows:

(1) Comparability payments shall be payable within each locality determined to have a pay disparity greater than 5 percent.

(2)(A) The localities having pay disparities, and the size of those disparities, shall, for purposes of any comparability payment scheduled to take effect in any calendar year, be determined in accordance with the appropriate report, as prepared and submitted to the President under subsection (d)(1) for purposes of such calendar year.

(B) Any computation necessary to determine the size of the comparability payment to become payable for any locality in a year (as well as any determination as to the size of any pay disparity remaining after that comparability payment is made) shall likewise be made using data contained in the appropriate report (described in subparagraph (A)) so prepared and submitted for purposes of such calendar year.

(3) Subject to paragraph (4), the amount of the comparability payments payable under this subsection in a calendar year within any locality in which a comparability payment is payable shall be computed using such percentage as the President determines for such locality under subsection (d)(2), except that—

(A) the percentage for the first calendar year in which any amounts are payable under this section may not be less than ⅕ of the amount needed to reduce the pay disparity of the locality involved to 5 percent;

(B) the percentage for the second calendar year in which any amounts are payable under this section may not be less than ³⁄₁₀ of the amount needed to reduce the pay disparity of the locality involved to 5 percent;

(C) the percentage for the third calendar year in which any amounts are payable under this section may not be less than ⅖ of the amount needed to reduce the pay disparity of the locality involved to 5 percent;

(D) the percentage for the fourth calendar year in which any amounts are payable under this section may not be less than ½ of the amount needed to reduce the pay disparity of the locality involved to 5 percent;

(E) the percentage for the fifth calendar year in which any amounts are payable under this section may not be less than ⅗ of the amount needed to reduce the pay disparity of the locality involved to 5 percent;

(F) the percentage for the sixth calendar year in which any amounts are payable under this section may not be less than ⁷⁄₁₀ of the amount needed to reduce the pay disparity of the locality involved to 5 percent;

(G) the percentage for the seventh calendar year in which any amounts are payable under this section may not be less than ⅘ of the amount needed to reduce the pay disparity of the locality involved to 5 percent;

(H) the percentage for the eighth calendar year in which any amounts are payable under this section may not be less than ⁹⁄₁₀ of the amount needed to reduce the pay disparity of the locality involved to 5 percent; and

(I) the percentage for the ninth calendar year in which any amounts are payable under this section, and any year thereafter, may not be less than the full amount necessary to reduce the pay disparity of the locality involved to 5 percent.

(4) Nothing in this section shall be considered to preclude the President, in his discretion, from adjusting comparability payments to a level higher than the minimum level otherwise required in a calendar year, including to the level necessary to eliminate a locality's pay disparity completely.

(b) After the ninth calendar year (referred to in subsection (a)(3)(I)), the level of comparability payments payable within such locality may be reduced for any subsequent calendar year, but only if, or to the extent that, the reduction would not immediately create another pay disparity in excess of 5 percent within the locality (taking into consideration any comparability payments remaining payable).

(c)(1) The amount of the comparability payment payable within any particular locality during a calendar year—

(A) shall be stated as a single percentage, which shall be uniformly applicable to General Schedule positions within the locality; and

(B) shall, for any employee entitled to receive a comparability payment, be computed by applying that percentage to such employee's scheduled rate of basic pay (or, if lower due to a limitation on the rate payable, the rate actually payable), subject to subsection (g).

(2) A comparability payment—

(A) shall be considered to be part of basic pay for purposes of retirement under chapter 83 or 84, as applicable, life insurance under chapter 87, and premium pay under subchapter V of chapter 55, and for such other purposes as may be expressly provided for by law or as the Office of Personnel Management may by regulation prescribe; and

(B) shall be paid in the same manner and at the same time as the basic pay payable to such employee pursuant to any provision of law outside of this section.

(3) Nothing in this subchapter shall be considered to permit or require that any portion of a comparability payment be taken into account for purposes of any adjustment under section 5303.

(4)(A) Only employees receiving scheduled rates of basic pay (subject to any pay limitation which may apply) shall be eligible for comparability payments under this section.

(B) Comparability payments shall not be payable for service performed in any position which may not, under subsection (f)(1)(A), be included within a pay locality.

(d) In order to carry out this section, the President shall—

(1) direct such agent as he considers appropriate to prepare and submit to him annually, after considering such views and recommendations as may be submitted under subsection (e) (but not later than 13 months before the start of the calendar year for purposes of which it is prepared), a report that—

(A) compares the rates of pay under the General Schedule (disregarding any described in section 5302(8)(C))[1] with the rates of pay generally paid to non-Federal workers for the same levels of work within each pay locality, as determined on the basis of appropriate surveys that shall be conducted by the Bureau of Labor Statistics;

(B) based on data from such surveys, identifies each locality in which a pay disparity exists and specifies the size of each such pay disparity (before and after taking into consideration any comparability payments payable);

(C) makes recommendations for appropriate comparability payments, in conformance with applicable requirements of this section; and

(D) includes the views and recommendations submitted under subsection (e);

(2) after considering the report of his agent (including the views and recommendations referred to in subsection (e)(2)(C), provide for or adjust comparability payments in conformance with applicable requirements of this section, effective as of the beginning of the first applicable pay period commencing on or after January 1 of the applicable year; and

(3) transmit to Congress a report of the actions taken under paragraph (2) (together with a copy of the report submitted to him by his agent, including the views and recommendations referred to in subsection (e)(2)(C)) which shall—

(A) identify each pay locality;

(B) specify which localities have pay disparities in excess of 5 percent, and the size of the disparity existing in each of those localities, according to the pay agent's most recent report under paragraph (1) (before and after taking into consideration any comparability payments payable); and

(C) indicate the size of the respective comparability payments (expressed as percentages) which will be in effect under paragraph (2) for the various pay localities specified under subparagraph (B) for the applicable calendar year.

(e)(1) The President shall establish a Federal Salary Council of 9 members, of whom—

(A) 3 shall be chosen from among persons generally recognized for their impartiality, knowledge, and experience in the field of labor relations and pay policy; and

(B) 6 shall be representatives of employee organizations which represent substantial numbers of employees holding General Schedule

[1] See References in Text note below.

positions, and who shall be selected giving due consideration to such factors as the relative numbers of employees represented by the various organizations, except that not more than 3 members of the Council at any one time shall be from a single employee organization, council, federation, alliance, association, or affiliation of employee organizations.

Members of the Council shall not receive pay by reason of their service on the Council, nor shall members who are not otherwise employees of the United States be considered employees by reason of any such service. However, members under subparagraph (A) may be paid expenses in accordance with section 5703. The President shall designate one of the members to serve as Chairman of the Federal Salary Council. One of the 3 members under subparagraph (A) may be the Chairman of the Federal Prevailing Rate Advisory Committee, notwithstanding the restriction under section 5347(a)(1), and such individual may also be designated to serve as Chairman of the Federal Salary Council.

(2) The pay agent shall—

(A) provide for meetings with the Council and give thorough consideration to the views and recommendations of the Council and the individual views and recommendations, if any, of the members of the Council regarding—

(i) the establishment or modification of pay localities;

(ii) the coverage of the surveys of pay localities conducted by the Bureau of Labor Statistics under subsection (d)(1)(A) (including, but not limited to, the occupations, establishment sizes, and industries to be surveyed, and how pay localities are to be surveyed);

(iii) the process of comparing the rates of pay payable under the General Schedule with rates of pay for the same levels of work performed by non-Federal workers; and

(iv) the level of comparability payments that should be paid in order to eliminate or reduce pay disparities in accordance with the requirements of this section;

(B) give thorough consideration to the views and recommendations of employee organizations not represented on the Council regarding the subjects in subparagraph (A)(i)–(iv); and

(C) include in its report to the President the views and recommendations submitted as provided in this subsection by the Council, by any member of the Council, and by employee organizations not represented on the Council.

(f)(1) The pay agent may provide for such pay localities as the pay agent considers appropriate, except that—

(A) each General Schedule position (excluding any outside the continental United States, as defined in section 5701(6)) shall be included with a pay locality; and

(B) the boundaries of pay localities shall be determined based on appropriate factors which may include local labor market patterns, commuting patterns, and practices of other employers.

(2)(A) The establishment or modification of any such boundaries shall be effected by regulations which, notwithstanding subsection (a)(2) of section 553, shall be promulgated in accordance with the notice and comment requirements of such section.

(B) Judicial review of any regulation under this subsection shall be limited to whether or not it was promulgated in accordance with the requirements referred to in subparagraph (A).

(g)(1) Except as provided in paragraph (2), comparability payments may not be paid at a rate which, when added to the rate of basic pay otherwise payable to the employee involved, would cause the total to exceed the rate of basic pay payable for level IV of the Executive Schedule.

(2) The applicable maximum under this subsection shall be level III of the Executive Schedule for—

(A) positions under subparagraphs (A)–(E) of subsection (h)(1); and

(B) any positions under subsection (h)(1)(F) which the President may determine.

(h)(1) For the purpose of this subsection, the term ''position'' means—

(A) a position to which section 5376 applies (relating to certain senior-level positions);

(B) a Senior Executive Service position under section 3132;

(C) a position in the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service under section 3151;

(D) a position to which section 5372 applies (relating to administrative law judges appointed under section 3105);

(E) a position to which section 5372a applies (relating to contract appeals board members); and

(F) a position within an Executive agency not covered under the General Schedule or any of the preceding subparagraphs, the rate of basic pay for which is (or, but for this section, would be) no more than the rate payable for level IV of the Executive Schedule;

but does not include—

(i) a position to which subchapter IV applies (relating to prevailing rate systems);

(ii) a position as to which a rate of pay is authorized under section 5377 (relating to critical positions); or

(iii) a position to which subchapter II applies (relating to the Executive Schedule).

(2)(A) Notwithstanding subsection (c)(4) or any other provision of this section, but subject to subparagraph (B) and paragraph (3), upon the request of the head of an Executive agency with respect to 1 or more categories of positions, the President may provide that each employee of such agency who holds a position within such category, and within the particular locality involved, shall be entitled to receive comparability payments.

(B) A request by an agency head or exercise of authority by the President under subparagraph (A) shall cover—

(i) with respect to the positions under subparagraphs (A) through (E) of paragraph (1), all positions described in the subparagraph or subparagraphs involved (excluding any under clause (i) or (ii) of such paragraph); and

(ii) with respect to positions under paragraph (1)(F), such positions as may be considered appropriate (excluding any under clause (i) or (ii) of paragraph (1)).

(C) Notwithstanding subsection (c)(4) or any other provision of law, but subject to paragraph (3), in the case of a category with positions that are in more than 1 Executive agency, the President may, on his own initiative, provide that each employee who holds a position within such category, and in the locality involved, shall be entitled to receive comparability payments. No later than 30 days before an employee receives comparability payments under this subparagraph, the President or the President's designee shall submit a detailed report to the Congress justifying the reasons for the extension, including consideration of recruitment and retention rates and the expense of extending locality pay.

(3) Comparability payments under this subsection—

(A) may be paid only in any calendar year in which comparability payments under the preceding provisions of this section are payable with respect to General Schedule positions within the same locality;

(B) shall take effect, within the locality involved, on the first day of the first applicable pay period commencing on or after such date as the President designates (except that no date may be designated which would require any retroactive payments), and shall remain in effect through the last day of the last applicable pay period commencing during that calendar year;

(C) shall be computed using the same percentage as is applicable, for the calendar year involved, with respect to General Schedule positions within the same locality; and

(D) shall be subject to the applicable limitation under subsection (g).

(i) The Office of Personnel Management may prescribe regulations, consistent with the provisions of this section, governing the payment of comparability payments to employees.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 459; Pub. L. 91–375, §6(c)(11), Aug. 12, 1970, 84 Stat. 776; Pub. L. 95–454, title IX, §906(a)(2), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 96–465, title II, §2314(c)(3), Oct. 17, 1980, 94 Stat. 2168; Pub. L. 101–509, title V, §529 [title I, §101(a)(1)], Nov. 5, 1990, 104 Stat. 1427, 1431; Pub. L. 102–378, §2(26), Oct. 2, 1992, 106 Stat. 1348.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 1174.	Oct. 11, 1962, Pub. L. 87–793, §505, 76 Stat. 842.

The words ''agencies'' and ''regulations'' are substituted for ''departments'' and ''rules'', respectively.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

REFERENCES IN TEXT

The General Schedule, referred to in text, is set out under section 5332 of this title.

Section 5302(8)(C), referred to in subsec. (d)(1)(A), was redesignated 5302(8)(B) of this title by Pub. L. 103–89, §3(b)(1)(E)(i)(II), Sept. 30, 1993, 107 Stat. 981.

Levels III and IV of the Executive Schedule, referred to in subsecs. (g) and (h)(1)(F), are set out in sections 5314 and 5315, respectively, of this title.

AMENDMENTS

1992—Subsec. (a)(3). Pub. L. 102–378, §2(26)(A)(i), substituted ''Subject to paragraph (4),'' for ''Subject to paragraphs (4) and (5),'' and ''a comparability payment'' for ''a comparative payment''.

Subsec. (a)(3)(H). Pub. L. 102–378, §2(26)(A)(ii), inserted ''and'' after semicolon at end.

Subsec. (a)(3)(I). Pub. L. 102–378, §2(26)(A)(iii), substituted a period for semicolon at end.

Subsec. (d)(1)(A). Pub. L. 102–378, §2(26)(B), inserted ''(disregarding any described in section 5302(8)(C))'' after ''General Schedule'' and struck out ''annual'' before ''surveys''.

Subsec. (e)(1). Pub. L. 102–378, §2(26)(C)(i), inserted after second sentence ''However, members under subparagraph (A) may be paid expenses in accordance with section 5703.''

Subsec. (e)(2)(A)(ii). Pub. L. 102–378, §2(26)(C)(ii), substituted ''surveys of pay localities'' for ''annual survey'' and ''industries'' for ''industries,''.

Subsec. (g)(2). Pub. L. 102–378, §2(26)(D), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''For positions under subparagraphs (A)–(E) of subsection (h)(1), the applicable maximum under this subsection shall be level III of the Executive Schedule.''

Subsec. (h)(1)(F). Pub. L. 102–378, §2(26)(E)(i)(I), amended subpar. (F) generally. Prior to amendment, subpar. (F) read as follows: ''a position within an Executive agency not covered under any of the preceding subparagraphs, the rate of basic pay for which is (or, but for this section, would be) less than the rate payable for level V of the Executive Schedule;''.

Subsec. (h)(1)(iii). Pub. L. 102–378, §2(26)(E)(i)(II)–(IV), added cl. (iii).

Subsec. (h)(2)(C). Pub. L. 102–378, §2(26)(E)(ii), added subpar. (C).

Subsec. (h)(3)(B). Pub. L. 102–378, §2(26)(E)(iii), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''shall be payable, within the locality involved, for the entirety of each calendar year for which authority is granted by the President;''.

1990—Pub. L. 101–509 amended section generally, substituting provisions relating to locality-based comparability payments for provisions making functions, duties, and regulations of agencies and Office of Personnel Management with respect to this subchapter subject to Presidential policies and regulations.

1980—Pub. L. 96–465 substituted ''the Foreign Service Act of 1980'' for ''chapter 14 of title 22'' in provisions preceding par. (1).

1978—Pub. L. 95–454 substituted ''Office of Personnel Management'' for ''Civil Service Commission''.

1970—Pub. L. 91–375 struck out provisions making functions, duties and regulations of the agencies and the Civil Service Commission with respect to the provisions of part III of title 39 relating to employees in the postal field service subject to Presidential policies and regulations.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–509 effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, with provision that first calendar year in which comparability payments under this section are paid shall be calendar year beginning Jan. 1, 1994, see section 529 [title III, §305] of Pub. L. 101–509, set out as a note under section 5301 of this title.

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 an Effective Date note under section 3901 of Title 22, Foreign Relations and Intercourse.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–375 effective within 1 year after Aug. 12, 1970, on date established therefor by Board of Governors of United States Postal Service and published by it in Federal Register, see section 15(a) of Pub. L. 91–375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

DELEGATION OF FUNCTIONS

For designation of agents of President under subsecs. (d)(1) and (h) of this section, see Ex. Ord. No. 12748, §2(a), Feb. 1, 1991, 56 F.R. 4521, eff. Feb. 3, 1991, set out as a note under section 5301 of this title.

COMPARABILITY PAYMENTS IN 1994 AND 1995

Pub. L. 103–329, title VI, §630(b), (c), Sept. 30, 1994, 108 Stat. 2424, provided that:

''(b) For purposes of any locality-based comparability payments taking effect in fiscal year 1995 under subchapter I of chapter 53 of title 5, United States Code (whether by adjustment or otherwise), section 5304(a) of such title shall be deemed to be without force or effect.

''(c) Notwithstanding section 5304(a)(3)(B) of title 5, United States Code, the annualized cost of pay adjustments made under section 5304 of such title in calendar year 1995 shall be equal to 0.6 percent of the estimated aggregate fiscal year 1995 executive branch civilian payroll—

''(1) as determined by the pay agent (within the meaning of section 5302 of such title); and

''(2) determined as if the rates of pay and comparability payments payable on September 30, 1994, had remained in effect.''

Section 8(b) of Pub. L. 102–378 provided that: ''Notwithstanding section 5304 of title 5, United States Code, for purposes of any comparability payments scheduled to take effect under such section during calendar years 1994 and 1995, respectively—

''(1) the report required by subsection (d)(1) of such section may be submitted not later than 1 month before the start of the calendar year for purposes of which it is prepared; and

''(2) the surveys conducted by the Bureau of Labor Statistics for use in preparing any such report may be other than annual surveys, and shall, to the greatest extent practicable, be completed not later than 4 months before the start of the calendar year for purposes of which the surveys are conducted.''

INTERIM GEOGRAPHIC ADJUSTMENTS

Section 529 [title III, §302] of Pub. L. 101–509, as amended by Pub. L. 102–378, §3(4), Oct. 2, 1992, 106 Stat. 1356; Pub. L. 103–89, §3(b)(2), Sept. 30, 1993, 107 Stat. 982, provided that:

''(a) DEFINITIONS.—For the purpose of this section—

''(1) the term 'area' means any consolidated metropolitan statistical area, primary metropolitan statistical area, or metropolitan statistical area, with at least 5,000 General Schedule employees; and

''(2) the term 'pay relative' shall have the meaning given such term under regulations prescribed by the Bureau of Labor Statistics.

''(b) AUTHORITY.—(1) The President may establish geographic adjustments of up to 8 percent of basic pay which may be paid to each General Schedule employee whose duty station is within any area where such adjustment is needed (as determined under paragraph (2)).

''(2) In determining areas where an interim geographic adjustment is needed, the President shall consider available evidence of significant pay disparities, including BLS information on pay relatives and relevant commercial surveys, and recruitment or retention problems.

''(c) ADMINISTRATION.—(1) An adjustment under this section shall be administered, to the extent practicable, in the same manner as locality-based comparability payments under subchapter I of chapter 53 of title 5, United States Code (as amended by this Act), including in terms of—

''(A) the basic pay to which a percentage is applied in computing an amount payable under this section;

''(B) the purposes for which any amount under this section is to be considered part of basic pay;

''(C) the time and manner in which amounts under this section are to be paid (including any maximum rate limitation); and

''(D) the authority of the President, upon request of an agency head, to extend this section to employees who would not otherwise be covered.

''(2) No amount payable under this section shall be taken into account in any survey or computation under, or for any other purpose in the administration of, section 5304 of title 5, United States Code (as so amended).

''(d) COMMENCEMENT AND TERMINATION RULES.—(1) The effective date of an adjustment under this section shall be as determined by the President, but not later than January 1, 1994.

''(2)(A) The size of any payments under this section may be reduced or terminated after the amendments made by section 101 of this Act [section 529 [title I, §101] of Pub. L. 101–509, see Tables for classification] take effect [see Effective Date of 1990 Amendment note set out under section 5301 of this title], except that the reduction or termination of a payment under this section may not have the effect of reducing, for the individual involved, the total rate at which additional forms of basic pay (as defined in subparagraph (B)) are payable to such individual.

''(B) The total rate to which subparagraph (A) applies is the sum of—

''(i) the rate at which comparability payments (under section 5304 of title 5, United States Code, as amended by such Act), are payable; and

''(ii) the rate at which payments under this section are payable.

''(e) EMPLOYEES RECEIVING SPECIAL PAY RATES.—The President (or his designated agent) shall determine what, if any, geographic adjustment shall be payable under this section in the case of an employee whose rate of pay is fixed under section 5303 of title 5, United States Code (as in effect before the date of enactment of this Act [Nov. 5, 1990]), section 5305 of title 5, United States Code (as amended by section 101 of this Act), or any similar provision of law.

''(f) EFFECTIVE DATE.—This section shall take effect on the date of enactment of this Act [Nov. 5, 1990].''

[Amendment by Pub. L. 103–89 to section 529 [title III, §302] of Pub. L. 101–509, set out above, effective Nov. 1, 1993, see section 3(c) of Pub. L. 103–89, set out as an Effective Date of 1993 Amendment note under section 3372 of this title.]

[Amendment by Pub. L. 102–378 to section 529 [title III, §302] of Pub. L. 101–509, set out above, effective Nov. 5, 1990, see section 9(b)(6) of Pub. L. 102–378, set out as an Effective Date of 1992 Amendment note under section 6303 of this title.]

Interim geographic adjustments pursuant to section 529 [title III, §302] of Pub. L. 101–509, set out above, were provided by the following executive orders, set out as notes under section 5332 of this title, effective on the first day of first pay period beginning on or after the effective date shown:

Ex. Ord. No. 12944, Dec. 28, 1994, 60 F.R. 309, effective Jan. 1, 1995.

Ex. Ord. No. 12826, Dec. 30, 1992, 57 F.R. 62909, effective Jan. 1, 1993.

Ex. Ord. No. 12786, Dec. 26, 1991, 56 F.R. 67453, effective Jan. 1, 1992.

Ex. Ord. No. 12736, Dec. 12, 1990, 55 F.R. 51385, effective Jan. 1, 1991.

EXECUTIVE ORDER NO. 11073

Ex. Ord. No. 11073, Jan. 7, 1963, 28 F.R. 203, as amended by Ex. Ord. No. 11173, Aug. 20, 1964, 29 F.R. 11999, which

provided for Federal salary administration, was superseded by Ex. Ord. No. 11721, May 23, 1973, 38 F.R. 13717, formerly set out below.

EXECUTIVE ORDER NO. 11721

Ex. Ord. No. 11721, May 23, 1973, 38 F.R. 13717, as amended by Ex. Ord. No. 12004, July 20, 1977, 42 F.R. 37527; Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, which provided for administration of the Federal pay system, was revoked by Ex. Ord. No. 12748, Feb. 1, 1991, 56 F.R. 4521, eff. Feb. 3, 1991, set out under section 5301 of this title.

EX. ORD. NO. 12764. FEDERAL SALARY COUNCIL

Ex. Ord. No. 12764, June 5, 1991, 56 F.R. 26587, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 5304(e) of title 5, United States Code, as amended, and in order to establish, in accordance with the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), an advisory committee on locality-based comparability payments for General Schedule employees, it is hereby ordered as follows:

SECTION 1. *Establishment*. There is established a Federal Salary Council (the ''Council''). The Council shall be composed of nine members appointed by the President in accordance with section 5304(e)(1) of title 5, United States Code. The President shall designate one of the members to serve as Chairman of the Council and shall designate another member to serve as Vice Chairman of the Council. The Vice Chairman shall act as Chairman in the absence of the Chairman.

SEC. 2. *Function*. The Council shall meet with the President's Pay Agent, as designated under section 2(a) of Executive Order No. 12748 of February 1, 1991 [5 U.S.C. 5301 note], to provide views and recommendations regarding:

(a) the establishment or modification of pay localities;

(b) the coverage of annual surveys conducted by the Bureau of Labor Statistics under subsection 5304(d)(1)(A) of title 5, United States Code (including, but not limited to, the occupations, establishment sizes, and industries to be surveyed, and how pay localities are to be surveyed);

(c) the process of comparing the rates of pay payable under the General Schedule with rates of pay for the same levels of work performed by non-Federal workers; and

(d) the level of comparability payments that should be paid in order to eliminate or reduce pay disparities in accordance with the requirements of section 5304 of title 5, United States Coce.

SEC. 3. *Administration*. (a) Members of the Council shall receive no pay by reason of their service on the Council.

(b) To the extent permitted by law and subject to the availability of appropriations, the Office of Personnel Management (the ''Office'') shall provide such facilities and administrative support to the Council as the Director of the Office determines appropriate.

(c) Notwithstanding the provisions of any other Executive order, the functions of the President under the Federal Advisory Committee Act, as amended [5 App. U.S.C.], except that of reporting to the Congress, which are applicable to the Council, shall be performed by the Director of the Office, in accordance with the guidelines and procedures established by the Administrator of General Services.

GEORGE BUSH.

LOCALITY-BASED COMPARABILITY PAYMENTS

Memorandum of President of the United States, Nov. 30, 1994, 59 F.R. 62549, provided:

Memorandum for the President's Pay Agent:

The Secretary of Labor

The Director of the Office of Management and Budget

The Director of the Office of Personnel Management

I have reviewed your report concerning recommended locality-based comparability payments for General Schedule employees, submitted in accordance with section 5304 of title 5, United States Code. I approve the recommended payments as set forth in Table 4 of the report, and I direct the Director of the Office of Personnel Management to implement those payments, effective as of the beginning of the first applicable pay period commencing on or after January 1, 1995. I further authorize and direct the Director of the Office of Personnel Management to ensure that this memorandum and a schedule of the attached comparability payment rates and localities be published in the Federal Register.

WILLIAM J. CLINTON.

LOCALITY-BASED COMPARABILITY PAYMENTS EFFECTIVE JANUARY 1995

Pay Locality	Comparability Payment
Atlanta MSA	4.66%
Boston CMSA	6.97%
Chicago CMSA	6.92%
Cincinnati CMSA	5.33%
Cleveland CMSA	4.23%
Columbus, OH, MSA	5.30%
Dallas CMSA	5.65%
Dayton MSA	5.19%
Denver CMSA	5.75%
Detroit CMSA	6.59%
Houston CMSA	8.53%
Huntsville MSA	4.39%
Indianapolis MSA	4.58%
Kansas City MSA	3.97%
Los Angeles CMSA[1]	7.39%
Miami CMSA	5.39%
New York CMSA	7.30%
Philadelphia CMSA	6.26%
Portland, OR, CMSA	4.71%
Richmond MSA	4.00%
Sacramento CMSA	5.27%
St. Louis MSA	4.28%
San Diego MSA	6.14%
San Francisco CMSA	8.14%
Seattle CMSA	5.84%
Washington CMSA[2]	5.48%
Rest of United States[3]	3.74%

NOTE: MSA means Metropolitan Statistical Area and CMSA means Consolidated Metropolitan Statistical Area, both as defined by the Office of Management and Budget (OMB) in OMB Bulletin Number 94–07, July 5, 1994.

[1] Pay locality also includes Santa Barbara County and Edwards Air Force Base, CA.

[2] Pay locality also includes St. Marys County, MD.

[3] Does not include Alaska, Hawaii, or U.S. territories or possessions.

Prior approval of locality-based comparability payments was contained in the following:

Memorandum of President of the United States, Dec. 1, 1993, 58 F.R. 64097.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4505a, 5302, 5304a, 5305, 5392, 5542, 5543, 5545, 5547, 5753, 5754, 5755, 8431 of this title; title 2 section 906; title 21 section 379h; title 28 section 594.

§ 5304a. Authority to fix an alternative level of comparability payments

(a) If, because of national emergency or serious economic conditions affecting the general welfare, the President should consider the level of comparability payments which would otherwise be payable under section 5304 in any year to be inappropriate, the President shall—

(1) prepare and transmit to Congress, at least 1 month before those comparability payments (disregarding this section) would otherwise become payable, a report describing the alternative level of payments which the President instead intends to provide, including the reasons why such alternative level is considered necessary; and

(2) implement the alternative level of payments beginning on the same date as would otherwise apply, for the year involved, under section 5304.

(b) The requirements set forth in paragraphs (2) and (3), respectively, of section 5303(b) shall apply with respect to any decision to exercise any authority to fix an alternative level of comparability payments under this section.

(Added Pub. L. 101–509, title V, § 529 [title I, § 101(a)(1)], Nov. 5, 1990, 104 Stat. 1427, 1436.)

EFFECTIVE DATE

Section effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title III, § 305] of Pub. L. 101–509, set out as an Effective Date of 1990 Amendment note under section 5301 of this title.

SPECIAL RULE RELATING TO COMPARABILITY PAYMENTS IN 1994

Section 634 of Pub. L. 101–509 provided that:

''Notwithstanding any other provision of law (including any provision of the Federal Employees Pay Comparability Act of 1990 [see Short Title of 1990 Amendment note set out under section 5301 of this title] and any provision of law amended by such Act), for purposes of any comparability payments scheduled to take effect under section 5304 of title 5, United States Code (as amended by such Act) during calendar year 1994—

''(1) deem section 5304a of such title (as so amended) to be amended as follows:

''(A) in subsection (a), strike 'If' and all that follows thereafter through 'welfare,' and insert 'Subject to subsection (c), if'; and

''(B) add after subsection (b) the following:

''(c)(1) For the purpose of this section—

''(A) the ''threshold amount'' is $1,800,000,000; and

''(B) ''severe economic conditions'' shall be considered to exist relative to comparability payments scheduled to take effect on a given date if, during the 12-month period ending 2 calendar quarters before such date, there occurred 2 consecutive quarters of negative growth in the GNP.

''(2) Authority under this section to provide an alternative level of comparability payments in any year may not be exercised except in accordance with the following:

''(A) If the estimated cost of the comparability payments which (but for this section) would otherwise be payable in such year would be equal to the threshold amount or less, no alternative level may be fixed under this section unless necessary because a state of war or severe economic conditions exist.

''(B) If the estimated cost of the comparability payments which (but for this section) would otherwise be payable in such year would be greater than the threshold amount, no alternative level may be fixed—

''(i) at a level which would result in an estimated cost equal to or greater than the threshold amount, unless necessary because of national emergency or serious economic conditions affecting the general welfare; or

''(ii) at a level which would result in an estimated cost less than the threshold amount, unless necessary because of either of the reasons set forth in subparagraph (A).

''(d)(1) The President's agent (as referred to in section 5304(d)) shall develop and include in the appropriate report under section 5304(d)(1) the methodology for estimating any costs under this section, and any estimate under this section shall be in accordance with such methodology.

''(2) In making any estimate under this section, costs attributable to any authority under section 5304(h) may not be taken into account.'; and

''(2) the President's pay agent (referred to in section 5304(d) of such title, as so amended) may use appropriate estimates in lieu of BLS survey data if such data is not available for use in preparing the agent's report with respect to comparability payments payable during calendar year 1994.''

§ 5305. Special pay authority

(a) Whenever the President finds that the Government's recruitment or retention efforts with respect to 1 or more occupations in 1 or more areas or locations are, or are likely to become, significantly handicapped, due to any of the circumstances described in subsection (b), he may establish for the areas or locations involved, with respect to individuals in positions paid under any of the pay systems referred to in subsection (c), higher minimum rates of basic pay for 1 or more grades or levels, occupational groups, series, classes, or subdivisions thereof, and may make corresponding increases in all step rates of the pay range for each such grade or level. However, a minimum rate so established may not exceed the maximum pay rate prescribed by statute for the grade or level by more than 30 percent, and no rate may be established under this section (disregarding any amount payable under subsection (g)) in excess of the rate of basic pay payable for level V of the Executive Schedule. The President may authorize the exercise of the authority conferred on him by this section by the Office of Personnel Management or, in the case of individuals not subject to the provisions of this title governing appointment in the competitive service, by such other agency as he may designate.

(b) The circumstances referred to in subsection (a) are—

(1) rates of pay offered by non-Federal employers being significantly higher than those payable by the Government within the area, location, occupational group, or other class of positions under the pay system involved;

(2) the remoteness of the area or location involved;

(3) the undesirability of the working conditions or the nature of the work involved (including exposure to toxic substances or other occupational hazards); or

(4) any other circumstances which the President (or an agency duly authorized or designated by the President in accordance with the last sentence of subsection (a)) considers appropriate.

(c) Authority under subsection (a) may be exercised with respect to positions paid under—

(1) a statutory pay system; or

(2) any other pay system established by or under Federal statute for civilian positions within the executive branch.

(d) Within the limitations applicable under the preceding provisions of this section, rates of pay

established under this section may be revised from time to time by the President or by such agency as he may designate. The actions and revisions have the force and effect of statute.

(e) An increase in a rate of basic pay established under this section is not an equivalent increase in pay within the meaning of section 5335.

(f) The rate of basic pay established under this section and received by an individual immediately before a statutory increase, which becomes effective prior to, on, or after the date of enactment of the statute, in the pay schedule applicable to such individual of any pay system specified in subsection (c) of this section, shall be initially adjusted, effective on the effective date of the statutory increase, under conversion rules prescribed by the President or by such agency as the President may designate.

(g)(1) The benefit of any comparability payments under section 5304 shall be available to individuals receiving rates of basic pay established under this section to such extent as the President (or his designated agency) considers appropriate, subject to paragraph (2) and subsection (h).

(2) Payments under this subsection may not be made if, or to the extent that, when added to basic pay otherwise payable, such payments would cause the total to exceed the rate of basic pay payable for level IV of the Executive Schedule.

(h) The rate of basic pay payable to an individual under this section may not, at any time, be less than the rate which would then be payable to such individual (taking comparability payments under section 5304 into account) if this section had never been enacted.

(Added Pub. L. 91–656, §3(a), Jan. 8, 1971, 84 Stat. 1946; amended Pub. L. 94–82, title II, §202(c), Aug. 9, 1975, 89 Stat. 420; Pub. L. 101–509, title V, §529 [title I, §101(a)(1)], Nov. 5, 1990, 104 Stat. 1427, 1436.)

REFERENCES IN TEXT

Levels IV and V of the Executive Schedule, referred to in subsecs. (a) and (g)(2), are set out in sections 5315 and 5316, respectively, of this title.

The provisions of this title governing appointment in the competitive service, referred to in subsec. (a), are classified generally to section 3301 et seq. of this title.

AMENDMENTS

1990—Pub. L. 101–509 amended section generally, substituting provisions authorizing President to make special pay increases whenever recruitment or retention efforts are handicapped for provisions requiring annual pay reports and adjustments, authorizing alternative plan in years of emergency or when economic conditions affect the general welfare, and setting forth procedure where Congressional committee disapproves such alternative plan.

1975—Subsec. (a)(3). Pub. L. 94–82, §202(c)(1), inserted provision relating to specification in the report to the Congress of the overall percentage of the adjustment in the rates of pay under the General Schedule and under other statutory pay systems.

Subsec. (c)(1). Pub. L. 94–82, §202(c)(2), inserted provision relating to specification in the report to the Congress of the overall percentage of the adjustment in the rates of pay under the General Schedule and under other statutory pay systems.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–509 effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title III, §305] of Pub. L. 101–509, set out as a note under section 5301 of this title.

DELEGATION OF FUNCTIONS

For delegation of authorities of President under this section, see Ex. Ord. No. 12748, §3, Feb. 1, 1991, 56 F.R. 4521, eff. Feb. 3, 1991, set out as a note under section 5301 of this title.

STAFFING DIFFERENTIALS

Section 529 [title II, §209] of Pub. L. 101–509, as amended by Pub. L. 102–378, §3(3), Oct. 2, 1992, 106 Stat. 1355, provided that:

''(a) IN GENERAL.—Effective on the first day of the first applicable pay period beginning on or after January 1, 1991, the President may establish staffing differentials equal to 5 percent of basic pay, which may be paid to each General Schedule employee whose position is in—

''(1) grade GS–5 or 7 of the General Schedule;

''(2) a 2-grade-interval occupational series, as determined by the Office of Personnel Management; or

''(3) any combination of classes of positions described in paragraph (1) or (2) for which the President determines a recruiting difficulty exists.

''(b) MANNER OF PAYMENT; REDUCTION OR ELIMINATION.—A staffing differential under this section—

''(1) shall be paid in the same manner and at the same time as the employee's basic pay is paid, but may not be considered to be part of basic pay for any purpose; and

''(2) may be reduced or eliminated by the Office of Personnel Management in its sole discretion as the amendments made by this Act take effect [see Effective Date of 1990 Amendment and Short Title of 1990 Amendment notes set out under section 5301 of this title], except that no such reduction or elimination shall have the effect of reducing the total amount of pay (determined by adding basic pay and staffing differential) which any employee is receiving.''

[Authority of President under section 529 [title II, §209] of Pub. L. 101–509, set out above, delegated to Office of Personnel Management by Ex. Ord. No. 12748, Feb. 1, 1991, 56 F.R. 4521, eff. May 4, 1991, set out as a note under section 5301 of this title.]

FEDERAL LAW ENFORCEMENT PAY REFORM

Section 529 [title IV, §§401–407] of Pub. L. 101–509, as amended by Pub. L. 102–378, §3(5)–(9), Oct. 2, 1992, 106 Stat. 1356; Pub. L. 103–123, title VI, §628, Oct. 28, 1993, 107 Stat. 1266; Pub. L. 103–178, title III, §303(a), Dec. 3, 1993, 107 Stat. 2034, provided that:

''SEC. 401. SHORT TITLE.

''This title [section 529 [title IV, §§401–412] of Pub. L. 101–509, enacting sections 4521 to 4523 of this title, amending sections 5541, 5542, 5547, 8335, and 8425 of this title, enacting provisions set out as notes under this section and sections 4521, 5541, and 8335 of this title, and amending provisions set out as a note under section 5541 of this title] may be cited as the 'Federal Law Enforcement Pay Reform Act of 1990'.

''SEC. 402. DEFINITION.

''For the purposes of this title, except as otherwise provided, the term 'law enforcement officer' means any law enforcement officer within the meaning of section 5541(3) of title 5, United States Code, with respect to whom the provisions of chapter 51 of such title apply.

''SEC. 403. SPECIAL RATES FOR LAW ENFORCEMENT OFFICERS.

''(a) Notwithstanding the procedures of section 5305 of title 5, United States Code, as amended by section 101 of this Act, or similar provision of law, higher minimum rates and corresponding increases in all step rates of each designated General Schedule grade shall be established for law enforcement officers in accordance with the provisions of this section.

''(b)(1) Effective on the first day of the first applicable pay period beginning on or after January 1, 1992, the higher minimum rates to be established are as follows:

''GS–3	Step 4
''GS–4	Step 4
''GS–5	Step 4
''GS–6	Step 3
''GS–7	Step 3
''GS–8	Step 3
''GS–9	Step 2
''GS–10	Step 2

''(2) Effective on the first day of the first applicable pay period beginning on or after January 1, 1993, the higher minimum rates to be established are as follows:

''GS–3	Step 7
''GS–4	Step 7
''GS–5	Step 8
''GS–6	Step 6
''GS–7	Step 5
''GS–8	Step 3
''GS–9	Step 2
''GS–10	Step 2

''(c) The higher minimum rates and corresponding higher rates for each step rate of each designated grade shall apply to every law enforcement officer in the designated grades (except in the case of any law enforcement officer for whom a higher rate is authorized under section 5305 of title 5, United States Code, as amended by section 101 of this Act, or similar provision of law) in the same manner as rates established under section 5305 of such title, as so amended, and may be increased in accordance with subsection (f) of such section 5305.

''(d) Any interim entry-level adjustment under section 209 of this Act [section 529 [title II, §209] of Pub. L. 101–509, set out as a note above] which a law enforcement officer is receiving shall be eliminated on the day before the effective date of the higher minimum rates under subsection (b)(1).

''SEC. 404. SPECIAL PAY ADJUSTMENTS FOR LAW ENFORCEMENT OFFICERS IN SELECTED CITIES.

''(a) A law enforcement officer shall be paid any applicable special pay adjustment in accordance with the provisions of this section, but such special pay adjustment shall be reduced by the amount of any applicable interim geographic adjustment under section 302 of this Act [section 529 [title III, §302] of Pub. L. 101–509, set out as a note under section 5304 of this title], any applicable locality-based comparability payment under section 5304 of title 5, United States Code, as amended by section 101 of this Act, and, to the extent determined appropriate by the Office of Personnel Management, any applicable special rate of pay under section 5305 of such title, as so amended, or any similar provision of law (other than section 403).

''(b)(1) Except as provided in subsection (a), effective on the first day of the first applicable pay period beginning on or after January 1, 1992, each law enforcement officer whose post of duty is in one of the following areas shall receive an adjustment, which shall be a percentage of the officer's rate of basic pay, as follows:

''Area	Differential
Boston-Lawrence-Salem, MA–NH Consolidated Metropolitan Statistical Area	16%
Chicago-Gary-Lake County, IL–IN–WI Consolidated Metropolitan Statistical Area	4%
Los Angeles-Anaheim-Riverside, CA Consolidated Metropolitan Statistical Area	16%
New York-Northern New Jersey-Long Island, NY–NJ–CT Consolidated Metropolitan Statistical Area	16%
Philadelphia-Wilmington-Trenton, PA–NJ–DE–MD Consolidated Metropolitan Statistical Area	4%
San Francisco-Oakland-San Jose, CA Consolidated Metropolitan Statistical Area	16%
San Diego, CA Metropolitan Statistical Area	8%
Washington-Baltimore DC–MD–VA–WV Consolidated Metropolitan Statistical Area	4%

''(2) In the case of any area specified in paragraph (1) that includes a portion, but not all, of a county, the Office of Personnel Management may, at the request of the head of 1 or more law enforcement agencies, extend the area specified in paragraph (1) to include, for the purposes of this section, the entire county, if the Office determines that such extension would be in the interests of good personnel administration. Any such extension shall be applicable to each law enforcement officer whose post of duty is in the area of the extension.

''(c)(1) A special pay adjustment under this section shall be administered, to the extent practicable, in the same manner as a locality-based comparability payment under section 5304 of title 5, United States Code, as amended by section 101 of this Act, and shall be considered part of basic pay to the same degree as such a locality-based comparability payment.

''(2) The Office of Personnel Management may prescribe such regulations as it considers necessary concerning the payment of special pay adjustments to law enforcement officers under this section.

''SEC. 405. SAME BENEFITS FOR OTHER LAW ENFORCEMENT OFFICERS.

''(a) The appropriate agency head (as defined in subsection (c)) shall prescribe regulations under which the purposes of sections 403, 404, and 407 shall be carried out with respect to individuals holding positions described in subsection (b).

''(b) This subsection applies with respect to any—

''(1) member of the United States Secret Service Uniformed Division;

''(2) member of the United States Park Police;

''(3) special agent within the Diplomatic Security Service;

''(4) probation officer (referred to in section 3672 of title 18, United States Code); or

''(5) pretrial services officer (referred to in section 3153 of title 18, United States Code).

''(c) For the purposes of this section, the term 'appropriate agency head' means—

''(1) with respect to any individual under subsection (b)(1), the Secretary of the Treasury;

''(2) with respect to any individual under subsection (b)(2), the Secretary of the Interior;

''(3) with respect to any individual under subsection (b)(3), the Secretary of State;

''(4) with respect to any individual under subsection (b)(4) or (b)(5), the Director of the Administrative Office of the United States Courts.

''SEC. 406. FBI NEW YORK FIELD DIVISION.

''(a) The total pay of an employee of the Federal Bureau of Investigation assigned to the New York Field Division before the date of September 29, 1993, in a position covered by the demonstration project conducted under section 601 of the Intelligence Authorization Act for Fiscal Year 1989 (Public Law 100–453) [102 Stat. 1911] shall not be reduced as a result of the termination of the demonstration project during the period that employee remains employed after that date in a position covered by the demonstration project.

''(b) Beginning on September 30, 1993, any periodic payment under section 601(a)(2) of the Intelligence Authorization Act for Fiscal Year 1989 [Pub. L. 100–453, 102 Stat. 1911] for any such employee shall be reduced by the amount of any increase in basic pay under title 5, United States Code, including the following provisions: an annual adjustment under section 5303, locality-based comparability payment under section 5304, initiation or increase in a special pay rate under section 5305, promotion under section 5334, periodic step increase under section 5335, merit increase under section 5404, or other increase to basic pay under any provision of law.

''SEC. 407. RELOCATION PAYMENTS.

''Notwithstanding section 5753(b)(1)(A) of title 5, United States Code, as added by this Act, a law enforcement officer whose rate of basic pay is less than $60,000 may receive a relocation payment of up to $15,000 under section 5753.''

[Section 303(b) of Pub. L. 103–178 provided that: ''The amendment made by subsection (a) [amending section 529 [title IV, § 406] of Pub. L. 101–509, set out above] shall take effect as of September 30, 1993, and shall apply to the pay of employees to whom the amendment applies that is earned on or after that date.'']

[For effective dates of amendments by section 3(5)–(9) of Pub. L. 102–378 to section 529 [title IV, §§ 402, 403(d), 404(a), (b), 405(a)] of Pub. L. 101–509, set out above, see section 9(a), (b)(6), (9) of Pub. L. 102–378, set out as an Effective Date of 1992 Amendment note under section 6303 of this title.]

REPORTING REQUIREMENT

Section 529 [title IV, § 412] of Pub. L. 101–509 provided that: ''Not later than January 1, 1993, the Office of Personnel Management, in consultation with Federal law enforcement agencies and law enforcement employee groups, shall submit to Congress, in writing, a plan to establish a separate pay and classification system for law enforcement officers and specifications for legislation to implement such plan.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3326, 5363, 5542, 5543, 5545, 5547 of this title; title 18 section 3006A; title 31 section 325; title 38 section 7451.

§ 5306. Pay fixed by administrative action

(a) Notwithstanding sections 1341, 1342, and 1349–1351 and subchapter II of chapter 15 of title 31—

(1) the rates of pay of—

(A) employees in the legislative, executive, and judicial branches of the Government of the United States (except employees whose pay is disbursed by the Secretary of the Senate or the Clerk of the House of Representatives) and of the government of the District of Columbia, whose rates of pay are fixed by administrative action under law and are not otherwise adjusted under this subchapter;

(B) employees under the Architect of the Capitol, whose rates of pay are fixed under section 166b–3a of title 40, and the Superintendent of Garages, House office buildings; and

(C) persons employed by the county committees established under section 590h(b) of title 16; and

(2) and minimum or maximum rate of pay (other than a maximum rate equal to or greater than the maximum rate then currently being paid under the General Schedule as a result of a pay adjustment under section 5303 (or prior corresponding provision of law)), and any monetary limitation on or monetary allowance for pay, applicable to employees described in subparagraphs (A), (B), and (C) of paragraph (1);

may be adjusted, by the appropriate authority concerned, effective at the beginning of the first applicable pay period commencing on or after the day on which a pay adjustment becomes effective under section 5303 (or prior provision of law), by whichever of the following methods the appropriate authority concerned considers appropriate—

(i) by an amount or amounts not in excess of the pay adjustment provided under section 5303 for corresponding rates of pay in the appropriate schedule or scale of pay;

(ii) if there are no corresponding rates of pay, by an amount or amounts equal or equivalent, insofar as practicable and with such exceptions and modifications as may be necessary to provide for appropriate pay relationships between positions, to the amount of the pay adjustment provided under section 5303; or

(iii) in the case of minimum or maximum rates of pay, or monetary limitations of allowances with respect to pay, by an amount rounded to the nearest $100 and computed on the basis of a percentage equal or equivalent, insofar as practicable and with such variations as may be appropriate, to the percentage of the pay adjustment provided under section 5303.

(b) An adjustment under subsection (a) in rates of pay, minimum or maximum rates of pay, the monetary limitations or allowances with respect to pay, shall be made in such manner as the appropriate authority concerned considers appropriate.

(c) This section does not authorize any adjustment in the rates of pay of employees whose rates of pay are fixed and adjusted from time to time as nearly as is consistent with the public interest in accordance with prevailing rates or practices.

(d) This section does not impair any authority under which rates of pay may be fixed by administrative action.

(e) Pay may not be paid, by reason of any exercise of authority under this section, at a rate in excess of the rate of basic pay payable for level V of the Executive Schedule.

(Added Pub. L. 91–656, § 3(a), Jan. 8, 1971, 84 Stat. 1949; amended Pub. L. 101–509, title V, § 529 [title I, § 101(a)(1)], Nov. 5, 1990, 104 Stat. 1427, 1437; Pub. L. 102–378, § 2(27), Oct. 2, 1992, 106 Stat. 1350.)

REFERENCES IN TEXT

The General Schedule, referred to in subsec. (a)(2), is set out under section 5332 of this title.

Level V of the Executive Schedule, referred to in subsec. (e), is set out in section 5316 of this title.

AMENDMENTS

1992—Subsec. (a)(1)(B). Pub. L. 102–378 substituted ''section 166b–3a'' for ''section 166b–3''.

1990—Pub. L. 101–509 amended section generally, substituting provisions authorizing adjustments in rates of pay, minimum or maximum rates of pay, and monetary limitations or allowances with respect to pay of certain Federal employees for provisions establishing Advisory Committee on Federal Pay and setting forth its duties.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–509 effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title III, § 305] of Pub. L. 101–509, set out as a note under section 5301 of this title.

TRANSFER OF FUNCTIONS

Certain functions of Clerk of House of Representatives transferred to Director of Non-legislative and Financial Services by section 7 of House Resolution No. 423, One Hundred Second Congress, Apr. 9, 1992. Direc-

tor of Non-legislative and Financial Services replaced by Chief Administrative Officer of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5376, 5382 of this title; title 10 section 9314; title 40 section 174j–8.

§ 5307. Limitation on certain payments

(a)(1) Except as otherwise permitted by or under law, no allowance, differential, bonus, award, or other similar cash payment under this title may be paid to an employee in a calendar year if, or to the extent that, when added to the total basic pay paid or payable to such employee for service performed in such calendar year as an employee in the executive branch (or as an employee outside the executive branch to whom chapter 51 applies), such payment would cause the total to exceed the annual rate of basic pay payable for level I of the Executive Schedule, as of the end of such calendar year.

(2) This section shall not apply to any payment under—

(A) subchapter III or VII of chapter 55 or section 5596;

(B) chapter 57 (other than section 5753, 5754, or 5755); or

(C) chapter 59 (other than section 5925, 5928, 5941(a)(2), or 5948).

(b)(1) Any amount which is not paid to an employee in a calendar year because of the limitation under subsection (a) shall be paid to such employee in a lump sum at the beginning of the following calendar year.

(2) Any amount paid under this subsection in a calendar year shall be taken into account for purposes of appying[1] the limitations under subsection (a) with respect to such calendar year.

(c) The Office of Personnel Management shall prescribe such regulations as may be necessary to carry out this section, including regulations (consistent with section 5582) concerning how a lump-sum payment under subsection (b) shall be made with respect to any employee who dies before an amount payable to such employee under subsection (b) is made.

(Added Pub. L. 91–656, § 3(a), Jan. 8, 1971, 84 Stat. 1950; amended Pub. L. 97–258, § 3(a)(10), Sept. 13, 1982, 96 Stat. 1063; Pub. L. 101–509, title V, § 529 [title I, § 101(a)(1)], Nov. 5, 1990, 104 Stat. 1427, 1438; Pub. L. 102–77, § 2, July 26, 1991, 105 Stat. 369.)

REFERENCES IN TEXT

Level I of the Executive Schedule, referred to in subsec. (a)(1), is set out in section 5312 of this title.

AMENDMENTS

1991—Subsec. (a). Pub. L. 102–77, § 2(1)–(3), designated existing provisions as par. (1), substituted ''cause the'' for ''cause to the'', and added par. (2).

Subsec. (b)(3). Pub. L. 102–77, § 2(4), struck out par. (3) which read as follows: ''Paragraph (1) shall not apply to an amount if, or to the extent that, it is attributable to a payment the authority for which would derive from section 4505a(d), 5753(e), or 5754(e).''

1990—Pub. L. 101–509 amended section generally, substituting provisions prohibiting cash payments to employees in excess of annual rate of basic pay payable for level I of Executive Schedule in a calendar year, for provisions authorizing adjustments in rates of pay, minimum or maximum rates of pay, and monetary limitations or allowances with respect to pay of certain Federal employees.

1982—Subsec. (a). Pub. L. 97–258 substituted ''sections 1341, 1342, and 1349–1351 and subchapter II of chapter 15'' for ''section 665''.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–509 effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title III, § 305] of Pub. L. 101–509, set out as a note under section 5301 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3152, 5383, 5948 of this title; title 22 section 3965.

[§ 5308. Omitted]

CODIFICATION

Section, added Pub. L. 91–656, § 3(a), Jan. 8, 1971, 84 Stat. 1951, relating to pay limitation, was omitted in the general revision of this subchapter by Pub. L. 101–509.

SUBCHAPTER II—EXECUTIVE SCHEDULE PAY RATES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 4509, 5304, 5374, 5377, 5380 of this title; title 18 section 207; title 40 App. section 102; title 42 sections 3535, 4276; title 44 section 303.

§ 5311. The Executive Schedule

The Executive Schedule, which is divided into five pay levels, is the basic pay schedule for positions, other than Senior Executive Service positions and positions in the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service, to which this subchapter applies.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 459; Pub. L. 95–454, title IV, §§ 408(b)(1), 414(b)(1), Oct. 13, 1978, 92 Stat. 1173, 1178; Pub. L. 96–54, § 2(a)(24), Aug. 14, 1979, 93 Stat. 382; Pub. L. 100–325, § 2(h)(1), (2), May 30, 1988, 102 Stat. 582; Pub. L. 101–509, title V, § 529 [title I, § 104(c)], Nov. 5, 1990, 104 Stat. 1427, 1447.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 2210.	Aug. 14, 1964, Pub. L. 88–426, § 302, 78 Stat. 415.

The words ''There is hereby established'' are omitted as executed. The word ''offices'' is omitted as included in ''positions''. The words ''Executive Schedule'' are substituted for ''Federal Executive Salary Schedule''.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1990—Pub. L. 101–509 struck out ''(a)'' before ''The Executive Schedule, which'' and struck out subsec. (b) which read as follows:

''(1) Not later than 180 days after the date of the enactment of the Civil Service Reform Act of 1978, the Director of the Office of Personnel Management shall de-

[1] So in original. Probably should be ''applying''.

termine the number and classification of executive level positions in existence in the executive branch on that date of enactment, and shall publish the determination in the Federal Register. Effective beginning on the date of the publication, the number of executive level positions within the executive branch may not exceed the number published under this subsection.

''(2) For the purpose of this subsection, 'executive level position' means—

''(A) any office or position in the civil service the rate of pay for which is equal to or greater than the rate of basic pay payable for positions under section 5316 of this title, or

''(B) any such office or position the rate of pay for which may be fixed by administrative action at a rate equal to or greater than the rate of basic pay payable for positions under section 5316 of this title;

but does not include any Senior Executive Service position (as defined in section 3132(a) of this title) or any position in the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service.''

1988—Subsec. (a). Pub. L. 100–325, §2(h)(1), inserted reference to positions in Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service.

Subsec. (b)(2). Pub. L. 100–325, §2(h)(2), substituted ''(as defined in section 3132(a) of this title) or any position in the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service'' for '', as defined in section 3132(a) of this title'' in concluding provision.

1979—Subsec. (b)(1). Pub. L. 96–54 inserted ''of the Office of Personnel Management'' after ''Director''.

1978—Pub. L. 95–454, §408(b)(1), inserted reference to Senior Executive Service positions.

Pub. L. 95–454, §414(b)(1), designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–509 effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title III, §305] of Pub. L. 101–509, set out as a note under section 5301 of this title.

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.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 9 months after Oct. 13, 1978, and congressional review of provisions of sections 401 through 412 of Pub. L. 95–454, see section 415 of Pub. L. 95–454, set out as an Effective Date note under section 3131 of this title.

PLAN FOR AUTHORIZING EXECUTIVE LEVEL POSITIONS IN EXECUTIVE BRANCH; PRESIDENTIAL SUBMISSION TO CONGRESS

Section 414(b)(2) of Pub. L. 95–454 required President to transmit by Jan. 1, 1980, a plan to Congress for authorizing executive level positions in executive branch.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 33 section 2309.

§ 5312. Positions at level I

Level I of the Executive Schedule applies to the following positions for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

Secretary of State.
Secretary of the Treasury.
Secretary of Defense.
Attorney General.
Secretary of the Interior.
Secretary of Agriculture.
Secretary of Commerce.
Secretary of Labor.
Secretary of Health and Human Services.
Secretary of Housing and Urban Development.
Secretary of Transportation.
United States Trade Representative.
Secretary of Energy.
Secretary of Education.
Secretary of Veterans Affairs.
Director of the Office of Management and Budget.
Commissioner of Social Security, Social Security Administration.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 460; Pub. L. 89–670, §10(d)(1), Oct. 15, 1966, 80 Stat. 948; Pub. L. 91–375, §6(c)(12), Aug. 12, 1970, 84 Stat. 776; Pub. L. 93–618, title I, §141(b)(3)(A), Jan. 3, 1975, 88 Stat. 1999; Pub. L. 94–82, title II, §202(b)(1), Aug. 9, 1975, 89 Stat. 419; Pub. L. 95–91, title VII, §710(c), Aug. 4, 1977, 91 Stat. 609; Pub. L. 96–54, §2(a)(25)(A), Aug. 14, 1979, 93 Stat. 382; Pub. L. 96–88, title V, §508(c), (g), Oct. 17, 1979, 93 Stat. 692; Pub. L. 97–456, §3(d)(1), (5), Jan. 12, 1983, 96 Stat. 2505; Pub. L. 99–198, title XI, §1113(d), Dec. 23, 1985, 99 Stat. 1480; Pub. L. 99–260, §4(c), Mar. 20, 1986, 100 Stat. 49; Pub. L. 100–527, §13(c), Oct. 25, 1988, 102 Stat. 2643; Pub. L. 100–679, §11(a), Nov. 17, 1988, 102 Stat. 4070; Pub. L. 100–690, title I, §1003(a)(4)(A), Nov. 18, 1988, 102 Stat. 4182; Pub. L. 103–296, title I, §108(e)(1), Aug. 15, 1994, 108 Stat. 1486.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 2211(a).	Aug. 14, 1964, Pub. L. 88–426, §303(a), 78 Stat. 416.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

CODIFICATION

Paragraph designation for the position added by Pub. L. 96–88 has been omitted in view of the deletion of all paragraph designations in this section by Pub. L. 96–54.

AMENDMENTS

1994—Pub. L. 103–296 inserted item relating to Commissioner of Social Security, Social Security Administration.

1988—Pub. L. 100–690, §§1003(a)(4)(A), 1009, temporarily inserted item relating to Director of National Drug Control Policy. See Effective and Termination Dates of 1988 Amendments note below.

Pub. L. 100–679 inserted item relating to Director of Office of Management and Budget.

Pub. L. 100–527 inserted item relating to Secretary of Veterans Affairs.

1986—Pub. L. 99–260 struck out item relating to Special Assistant for Agricultural Trade and Food Aid.

1985—Pub. L. 99–198 inserted item relating to Special Assistant for Agricultural Trade and Food Aid.

1983—Pub. L. 97–456, §3(d)(5), substituted ''United States Trade Representative'' for ''Special Representative for Trade Negotiations''.

1979—Pub. L. 96–88, §508(g), substituted ''Health and Human Services'' for ''Health, Education, and Welfare'' in item relating to the Secretary of Health and Human Services.

Pars. (1) to (14). Pub. L. 96–54 struck out paragraph designations for positions listed herein.

Par. (15). Pub. L. 96–88, § 508(c), added par. (15) relating to Secretary of Education. See Codification note set out above.

1977—Par. (14). Pub. L. 95–91 added par. (14) relating to Secretary of Energy.

1975—Pub. L. 94–82 substituted provisions applying level I of Executive Schedule to positions for which annual rate of basic pay shall be rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title for provisions applying such level I to positions for which annual rate of basic pay is $35,000.

Par. (13). Pub. L. 93–618 added par. (13) relating to Special Representative for Trade Negotiations.

1970—Par. (5). Pub. L. 91–375 struck out par. (5) relating to Postmaster General.

1966—Pub. L. 89–670 added par. (11) relating to Secretary of Housing and Urban Development, and par. (12) relating to Secretary of Transportation.

EFFECTIVE AND TERMINATION DATES OF 1988 AMENDMENTS

Amendment by Pub. L. 100–690 effective Jan. 21, 1989, and repealed on date 5 years after Nov. 18, 1988, see section 1506 of Title 21, Food and Drugs, and section 1012 of Pub. L. 100–690, set out as an Effective Date note under section 1501 of Title 21.

Section 11(e) of Pub. L. 100–679 provided that: ''The amendments made by this section [amending sections 5312 to 5315 of this title] shall be effective on January 20, 1989.''

Amendment by Pub. L. 100–527 effective Mar. 15, 1989, see section 18(a) of Pub. L. 100–527, set out as a Department of Veterans Affairs Act note under section 301 of Title 38, Veterans' Benefits.

EFFECTIVE DATE OF 1979 AMENDMENTS

Amendment by Pub. L. 96–88 effective May 4, 1980, with specified exceptions, see section 601 of Pub. L. 96–88, set out as an Effective Date note under section 3401 of Title 20, Education.

Section 2(a)(25)(B) of Pub. L. 96–54 provided that: The amendments made by subparagraph (A) [amending sections 5312 to 5316 of this title] shall take effect January 1, 1980''.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–375 effective within 1 year after Aug. 12, 1970, on date established therefor by Board of Governors of United States Postal Service and published by it in Federal Register, see section 15(a) of Pub. L. 91–375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–670 effective 90 days after Secretary of Transportation first takes office, or on any earlier date after Oct. 15, 1966, as President prescribes and publishes in Federal Register, see section 16(a), formerly § 15(a), of Pub. L. 89–670.

SHORT TITLE OF 1975 AMENDMENT

Section 201 of title II of Pub. L. 94–82 provided that: ''This title [enacting section 5318 of this title and section 461 of Title 28, Judiciary and Judicial Procedure, amending sections 5305, 5312, 5313, 5314, 5315 and 5316 of this title, sections 31, 60a note, 136a, 136a–1 and 356 of Title 2. The Congress, section 104 of Title 3, The President, section 68 of Title 11, Bankruptcy, sections 5, 44, 135, 173, 213, 252 and 792 of Title 28, sections 42a and 51a of former Title 31, Money and Finance, sections 162a and 166b of Title 40, Public Buildings, Property, and Works, and section 303 of Title 44, Public Printing and Documents, and enacting provisions set out as a note under section 356 of Title 2] may be cited as the 'Executive Salary Cost-of-Living Adjustment Act'.''

SALARY INCREASES

1995—Salaries of positions at level I continued at $148,400 per annum by Ex. Ord. No. 12944, Dec. 28, 1994, 60 F.R. 309, set out as a note under section 5332 of this title.

1993—Salaries of positions at level I increased to $148,400 per annum, effective on the first day of the first pay period beginning on or after Jan. 1, 1993, as provided by Ex. Ord. No. 12826, Dec. 30, 1992, 57 F.R. 62909.

1992—Salaries of positions at level I increased to $143,800 per annum, effective on the first day of the first pay period beginning on or after Jan. 1, 1992, as provided by Ex. Ord. No. 12786, Dec. 26, 1991, 56 F.R. 67453.

1991—Salaries of positions at level I increased to $138,900 per annum, effective on the first day of the first pay period beginning on or after Jan. 1, 1991, as provided by Ex. Ord. No. 12736, Dec. 12, 1990, 55 F.R. 51385.

1990—Salaries of positions at level I continued at $99,500 per annum, and increased to $107,300 per annum, effective on the first day of the first pay period beginning on or after Jan. 31, 1990, as provided by Ex. Ord. No. 12698, Dec. 23, 1989, 54 F.R. 53473.

1989—Salaries of positions at level I continued at $99,500 per annum, see Ex. Ord. No. 12663, Jan. 6, 1989, 54 F.R. 791.

1988—Salaries of positions at level I continued at $99,500 per annum by Ex. Ord. No. 12622, Dec. 31, 1987, 53 F.R. 222.

1987—Salaries of positions at level I increased to $99,500 per annum, on recommendation of the President of the United States, see note set out under section 358 of Title 2, The Congress.

Salaries of positions at level I increased to $88,800 per annum, effective on the first day of the first pay period beginning on or after Jan. 1, 1987, as provided by Ex. Ord. No. 12578, Dec. 31, 1986, 52 F.R. 505.

1985—Salaries of positions at level I increased to $86,200 per annum, effective on the first day of the first pay period beginning on or after Jan. 1, 1985, as provided by Ex. Ord. No. 12496, Dec. 28, 1984, 50 F.R. 211, as amended by Ex. Ord. No. 12540, Dec. 30, 1985, 51 F.R. 577.

1984—Salaries of positions at level I increased to $83,300 per annum, effective on the first day of the first pay period beginning on or after Jan. 1, 1984, as provided by Ex. Ord. No. 12456, Dec. 30, 1983, 49 F.R. 347, as amended Ex. Ord. No. 12477, May 23, 1984, 49 F.R. 22041; Ex. Ord. No. 12487, Sept. 14, 1984, 49 F.R. 36493.

1982—Salaries of positions at level I increased to $88,600 per annum, effective on the first day of the first pay period beginning on or after Oct. 1, 1982, as provided by Ex. Ord. No. 12387, Oct. 8, 1982, 47 F.R. 44981. Ex. Ord. No. 12387 further provided that pursuant to section 101(e) of Pub. L. 97–276 funds are not available to pay a salary at a rate which exceeds the rate in effect on Sept. 30, 1982, which was $69,630.00.

Maximum rate payable after Dec. 17, 1982, increased from $69,630.00 to $80,100.00, see Pub. L. 97–377, title I, § 129(b)–(d), Dec. 21, 1982, 96 Stat. 1914, set out as a note under section 5318 of this title.

Limitations on use of funds for fiscal year ending Sept. 30, 1983, appropriated by any Act to pay the salary or pay of any individual in legislative, executive, or judicial branch in position equal to or above level V of the Executive Schedule, see section 101(e) of Pub. L. 97–276, as amended, set out as a note under section 5318 of this title.

1981—Salaries of positions at level I increased to $85,200 per annum, effective on the first day of the first pay period beginning on or after Oct. 1, 1981, as provided by Ex. Ord. No. 12330, Oct. 15, 1981, 46 F.R. 50921. Ex. Ord. No. 12330 further provided that pursuant to section 101(c) of Pub. L. 97–51 funds are not available to pay a salary at a rate which exceeds the rate in effect on Sept. 30, 1981, which was $69,630.00.

Limitations on use of funds for fiscal year ending Sept. 30, 1982, appropriated by any Act to pay the salary or pay of any individual in legislative, executive, or judicial branch in position equal to or above level V of the Executive Schedule, see sections 101(g) and 141 of

Pub. L. 97–92, set out as a note under section 5318 of this title.

1980—Salaries of positions at level I increased to $81,300 per annum, effective on the first day of the first pay period beginning on or after Oct. 1, 1980, as provided by Ex. Ord. No. 12248, Oct. 16, 1980, 45 F.R. 69199. Ex. Ord. No. 12248, further provided that pursuant to section 101(c) of Pub. L. 96–369, funds are not available to pay a salary at a rate which exceeds the rate in effect on Sept. 30, 1980, which was $69,630.

Limitations on use of funds for fiscal year ending Sept. 30, 1981, appropriated by any Act to pay the salary or pay of any individual in legislative, executive, or judicial branch in position equal to or above level V of the Executive Schedule, see section 101(c) of Pub. L. 96–536, as amended, set out as a note under section 5318 of this title.

1979—Salaries of positions at level I increased to $74,500 per annum, effective on the first day of the first pay period beginning on or after Oct. 1, 1979, as provided by Ex. Ord. No. 12165, Oct. 9, 1979, 44 F.R. 58671, as amended by Ex. Ord. No. 12200, Mar. 12, 1980, 45 F.R. 16443. Ex. Ord. No. 12165 further provided that pursuant to section 101(c) of Pub. L. 96–86 funds appropriated for fiscal year 1980 may not be used to pay a salary at a rate which exceeds an increase of 5.5 percent over the rate in effect on Sept. 30, 1978, which is a maximum rate payable of $69,630.

Applicability to funds appropriated by any Act for fiscal year ending Sept. 3, 1980, of limitation of section 304 of Pub. L. 95–391 on use of funds to pay the salary or pay of any individual in legislative, executive, or judicial branch in position equal to or above level V of the Executive Schedule, see section 101 of Pub. L. 96–86, set out as a note under section 5318 of this title.

1978—Salaries of positions at level I increased to $69,600 per annum, effective in the first pay period beginning on or after Oct. 1, 1978, as provided by Ex. Ord. No. 12087, Oct. 7, 1978, 43 F.R. 46823. Ex. Ord. No. 12087, further provided that pursuant to the Legislative Branch Appropriation Act, 1979, funds are not available to pay a salary at a rate which exceeds the rate in effect on Sept. 30, 1978, which was $66,000.

Limitations on use of funds for fiscal year ending Sept. 30, 1979, appropriated by any Act to pay the salary or pay of any individual in legislative, executive, or judicial branch in position equal or above level V of the Executive Schedule, see section 304 of Pub. L. 95–391 and section 613 of Pub. L. 95–429, set out as a note under section 5318 of this title.

1977—Salaries of positions at level I increased to $66,000 per annum, on recommendation of the President of the United States, see note set out under section 358 of Title 2, The Congress.

1976—Salaries of positions at level I increased to $66,000 per annum, effective on the first day of the first pay period beginning on or after Oct. 1, 1976, see Ex. Ord. No. 11941, Oct. 1, 1976, 41 F.R. 43889. Ex. Ord. No. 11941, further provided that pursuant to the Legislative Branch Appropriation Act, 1977, funds are not available to pay a salary at a rate which exceeds the rate in effect on Sept. 30, 1976, which was $63,000.

1975—Salaries of positions at level I increased to $63,000 per annum, effective on the first day of the first pay period beginning on or after Oct. 1, 1975, by Ex. Ord. No. 11883, Oct. 6, 1975, 40 F.R. 47091.

1969—Salaries of positions at level I increased from $35,000 to $60,000 per annum, commencing on the first day of the pay period which begins after February 14, 1969, on recommendation of the President of the United States, see note set out under section 358 of Title 2, The Congress.

COMPENSATION AND EMOLUMENTS OF SECRETARY OF THE TREASURY AT LEVEL IN EFFECT ON JANUARY 1, 1989

For provisions limiting compensation and emoluments of Secretary of the Treasury at levels in effect on Jan. 1, 1989, see section 1(a) of Pub. L. 103–2, set out as a note under section 301 of Title 31, Money and Finance.

COMPENSATION AND EMOLUMENTS OF SECRETARY OF STATE; FIXING AT LEVEL IN EFFECT ON JANUARY 1, 1977

Pub. L. 96–241, §1, May 3, 1980, 94 Stat. 343, limited the compensation and other emoluments attached to the office of Secretary of State to those in effect Jan. 1, 1977, during the period beginning May 3, 1980, and ending on the date on which the first individual appointed to that office after May 3, 1980, ceases to hold that office.

COMPENSATION AND EMOLUMENTS OF ATTORNEY GENERAL; FIXING AT LEVEL IN EFFECT ON JANUARY 1, 1969

Provisions of Pub. L. 93–178, §1, Dec. 10, 1973, 87 Stat. 697, which fixed the compensation and other emoluments attached to the Office of Attorney General at level in effect on Jan. 1, 1969, notwithstanding any other provision of law enacted or becoming effective during period from noon, Jan. 3, 1969, through noon, Jan. 2, 1975, were repealed by Pub. L. 94–2, Feb. 18, 1975, 89 Stat. 4, effective as of Feb. 4, 1975.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5377, 5380, 8432 of this title; title 2 section 362; title 10 sections 973, 1603; title 12 section 1723a; title 18 section 207; title 22 section 4606; title 26 sections 162, 3121; title 28 section 591; title 31 section 1344; title 38 section 7432; title 39 section 1003; title 42 sections 410, 7211, 7291; title 47 section 396; title 49 section 24315; title 50 App. section 2074.

§ 5313. Positions at level II

Level II of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

Deputy Secretary of Defense.

Deputy Secretary of State.

Administrator, Agency for International Development.

Administrator of the National Aeronautics and Space Administration.

Deputy Secretary of Veterans Affairs.

Deputy Secretary of the Treasury.

Deputy Secretary of Transportation.

Chairman, Nuclear Regulatory Commission.

Chairman, Council of Economic Advisers.

Chairman, Board of Governors of the Federal Reserve System.

Director of the Office of Science and Technology.

Director of the United States Arms Control and Disarmament Agency.

Director of the United States Information Agency.

Director of Central Intelligence.

Secretary of the Air Force.

Secretary of the Army.

Secretary of the Navy.

Administrator, Federal Aviation Administration.

Director of the National Science Foundation.

Deputy Attorney General.

Deputy Secretary of Energy.

Deputy Secretary of Agriculture.

Director of the Office of Personnel Management.

Administrator, Federal Highway Administration.

Administrator of the Environmental Protection Agency.

Under Secretary of Defense for Acquisition and Technology.

Deputy Secretary of Labor.

Deputy Director of the Office of Management and Budget.

Independent Members, Thrift Depositor Protection Oversight Board.

Deputy Secretary of Health and Human Services.

Deputy Secretary of the Interior.

Deputy Secretary of Education.

Deputy Secretary of Housing and Urban Development.

Deputy Director for Management, Office of Management and Budget.

Director of the Office of Federal Housing Enterprise Oversight, Department of Housing and Urban Development.

Deputy Commissioner of Social Security, Social Security Administration.

Administrator of the Community Development Financial Institutions Fund.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 460; Pub. L. 89–670, § 10(d)(2), Oct. 15, 1966, 80 Stat. 948; Pub. L. 90–83, § 1(13), Sept. 11, 1967, 81 Stat. 198; Pub. L. 90–407, § 15(a)(1), July 18, 1968, 82 Stat. 366; Pub. L. 91–644, title I, § 8(b), Jan. 2, 1971, 84 Stat. 1888; Pub. L. 92–255, title II, § 212(a), Mar. 21, 1972, 86 Stat. 69; Pub. L. 92–302, § 2(a), May 18, 1972, 86 Stat. 149; Pub. L. 92–352, title I, § 104(1), July 13, 1972, 86 Stat. 490; Pub. L. 92–596, § 6, Oct. 27, 1972, 86 Stat. 1318; Pub. L. 93–438, title III, § 310(1), Oct. 11, 1974, 88 Stat. 1252; Pub. L. 93–496, § 16(c), Oct. 28, 1974, 88 Stat. 1533; Pub. L. 94–82, title II, § 202(b)(2), Aug. 9, 1975, 89 Stat. 419; Pub. L. 94–237, § 4(c)(6), Mar. 19, 1976, 90 Stat. 244; Pub. L. 94–561, § 1(a), Oct. 19, 1976, 90 Stat. 2643; Pub. L. 95–91, title VII, § 710(d), Aug. 4, 1977, 91 Stat. 609; Pub. L. 95–140, § 3(d)(1), Oct. 21, 1977, 91 Stat. 1173; Pub. L. 95–454, title II, § 201(b)(1), Oct. 13, 1978, 92 Stat. 1121; Pub. L. 96–54, § 2(a)(25)(A), Aug. 14, 1979, 93 Stat. 382; Pub. L. 96–465, title II, § 2302, Oct. 17, 1980, 94 Stat. 2164; Pub. L. 97–449, §§ 3(1), 7(b), Jan. 12, 1983, 96 Stat. 2441, 2444; Pub. L. 98–80, § 2(a)(1), Aug. 23, 1983, 97 Stat. 485; Pub. L. 98–216, § 3(a)(1), Feb. 14, 1984, 98 Stat. 6; Pub. L. 99–348, title V, § 501(d)(1), July 1, 1986, 100 Stat. 708; Pub. L. 99–619, § 2(a)(2), Nov. 6, 1986, 100 Stat. 3491; Pub. L. 100–204, title I, § 178(a)(1), Dec. 22, 1987, 101 Stat. 1362; Pub. L. 100–527, § 13(d), Oct. 25, 1988, 102 Stat. 2643; Pub. L. 100–679, § 11(b), Nov. 17, 1988, 102 Stat. 4070; Pub. L. 101–73, title V, § 501(c), Aug. 9, 1989, 103 Stat. 394; Pub. L. 101–509, title V, § 529 [title I, § 112(b)], Nov. 5, 1990, 104 Stat. 1427, 1454; Pub. L. 101–576, title II, § 207(a), Nov. 15, 1990, 104 Stat. 2846; Pub. L. 102–233, title III, § 315(b), Dec. 12, 1991, 105 Stat. 1772; Pub. L. 102–550, title XIII, § 1351(a), Oct. 28, 1992, 106 Stat. 3969; Pub. L. 103–160, div. A, title IX, § 904(e)(1), Nov. 30, 1993, 107 Stat. 1728; Pub. L. 103–296, title I, § 108(e)(2), Aug. 15, 1994, 108 Stat. 1486; Pub. L. 103–325, title I, § 104(i), Sept. 23, 1994, 108 Stat. 2169.)

HISTORICAL AND REVISION NOTES

1966 ACT

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 2211(b) (less (15)).	Aug. 14, 1964, Pub. L. 88–426, § 303(b) (less (15)), 78 Stat. 416.

The proviso in paragraph (15) of former section 2211(b) is carried into section 5314. The remainder of paragraph (15) is omitted but not repealed, see table III. The part of paragraph (15) that is omitted but not repealed provides that the position of Director of the Federal Bureau of Investigation shall be in Level II of the Federal Executive Salary Schedule so long as the position is held by the incumbent of the position on August 14, 1964. The omission of this provision from title 5, without repealing the corresponding provision of the source statute, in effect leaves existing statute unchanged insofar as it relates to the present incumbent of the position of Director of the Federal Bureau of Investigation.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 ACT

The deletion of paragraph (6) of 5 U.S.C. 5313 reflects the abolition of the position of ''Administrator of the Housing and Home Finance Agency'' by the act of September 9, 1965, Public Law 89–174, sections 5(a), 9(c), 79 Stat. 669, 671.

AMENDMENTS

1994—Pub. L. 103–325 inserted item relating to Administrator of the Community Development Financial Institutions Fund.

Pub. L. 103–296 inserted item relating to Deputy Commissioner of Social Security, Social Security Administration.

1993—Pub. L. 103–160 substituted ''Under Secretary of Defense for Acquisition and Technology'' for ''Under Secretary of Defense for Acquisition''.

1992—Pub. L. 102–550 inserted item relating to Director of the Office of Federal Housing Enterprise Oversight, Department of Housing and Urban Development.

1991—Pub. L. 102–233 substituted ''Independent Members, Thrift Depositor Protection Oversight Board'' for ''Independent Members, Oversight Board, Resolution Trust Corporation''.

1990—Pub. L. 101–576 inserted item relating to Deputy Director for Management, Office of Management and Budget.

Pub. L. 101–509 inserted items relating to Deputy Secretary of Health and Human Services, Deputy Secretary of the Interior, Deputy Secretary of Education, and Deputy Secretary of Housing and Urban Development.

1989—Pub. L. 101–73 inserted item relating to Independent Members, Oversight Board, Resolution Trust Corporation.

1988—Pub. L. 100–679 inserted item relating to Deputy Director of Office of Management and Budget and struck out item relating to Director of Office of Management and Budget.

Pub. L. 100–527 substituted ''Deputy Secretary of Veterans Affairs'' for ''Administrator of Veterans' Affairs''.

1987—Pub. L. 100–204 struck out item relating to Ambassadors at Large.

1986—Pub. L. 99–619 inserted item relating to Deputy Secretary of Labor.

Pub. L. 99–348 inserted item relating to Under Secretary of Defense for Acquisition.

1984—Pub. L. 98–216 substituted ''Director of the Office of Management and Budget'' for ''Director of the Bureau of the Budget''.

1983—Pub. L. 98–80 inserted item relating to Administrator of Environmental Protection Agency.

Pub. L. 97–499, § 3(1), inserted item relating to Administrator, Federal Highway Administration.

1980—Pub. L. 96–465 inserted item relating to Ambassadors at Large.

1979—Pars. (1)–(24). Pub. L. 96–54 struck out paragraph designations for positions listed herein.

1978—Par. (24). Pub. L. 95–454 added par. (24) relating to Director of Office of Personnel Management.

1977—Par. (1). Pub. L. 95–140 substituted ''Deputy Secretary of Defense'' for ''Deputy Secretaries of Defense (2)''.

Par. (22). Pub. L. 95–91 substituted ''Deputy Secretary of Energy'' for ''Administrator of Energy Research and Development Administration''.

1976—Par. (21). Pub. L. 94–237 struck out par. (21) relating to Director of Special Action Office for Drug Abuse Prevention.

Par. (23). Pub. L. 94–561 added par. (23) relating to Deputy Secretary of Agriculture.

1975—Pub. L. 94–82 substituted provisions applying level II of Executive Schedule to positions for which annual rate of basic pay shall be rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title, for provisions applying such level II to positions for which annual rate of basic pay is $30,000.

1974—Par. (7). Pub. L. 93–496 substituted ''Deputy Secretary of Transportation'' for ''Under Secretary for Transportation''.

Par. (8). Pub. L. 93–438 substituted ''Chairman, Nuclear Regulatory Commission'' for ''Chairman, Atomic Energy Commission''.

Par. (22). Pub. L. 93–438 added par. (22) relating to Deputy Secretary of Energy.

1972—Par. (1). Pub. L. 92–596 substituted ''Deputy Secretaries of Defense (2)'' for ''Deputy Secretary of Defense''.

Par. (2). Pub. L. 92–352 substituted ''Deputy Secretary of State'' for ''Under Secretary of State''.

Par. (6). Pub. L. 92–302 added par. (6) relating to Deputy Secretary of the Treasury. A prior par. (6), ''Administrator of the Housing and Home Finance Agency,'' was repealed by Pub. L. 90–83, § 1(13), Sept. 11, 1967, 81 Stat. 198.

Par. (21). Pub. L. 92–255 added par. (21) relating to Director of Special Action Office for Drug Abuse Prevention.

1971—Par. (20). Pub. L. 91–644 added par. (20) relating to position of Deputy Attorney General being formerly level III under former section 5314(1) of this title.

1968—Par. (19). Pub. L. 90–407 added par. (19) relating to Director of National Science Foundation.

1966—Pub. L. 89–670 substituted ''Under Secretary of Transportation'' for ''Administrator of the Federal Aviation Agency'' in item (7), and inserted item (19) relating to Administrator, Federal Aviation Administration.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–233 effective Feb. 1, 1992, see section 318 of Pub. L. 102–233, set out as a note under section 1441 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–509 effective on first day of first pay period beginning on or after Nov. 5, 1990, with continued service by incumbent Under Secretary of Health and Human Services, Under Secretary of the Interior, Under Secretary of Education, and Under Secretary of Housing and Urban Development, see section 529 [title I, § 112(e)] of Pub. L. 101–509, set out as a note under section 3404 of Title 20, Education.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–679 effective Jan. 20, 1989, see section 11(e) of Pub. L. 100–679, set out as a note under section 5312 of this title.

Amendment by Pub. L. 100–527 effective Mar. 15, 1989, see section 18(a) of Pub. L. 100–527, set out as a Department of Veterans Affairs Act note under section 301 of Title 38, Veterans' Benefits.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 178(b) of Pub. L. 100–204 provided that: ''The amendments made by subsection (a) [amending sections 5313 and 5315 of this title] shall take effect 30 days after the date of enactment of this Act [Dec. 22, 1987] and shall not affect the salary of any individual holding the rank of Ambassador at Large immediately before the date of enactment of this Act during the period such individual continues to serve in such position.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–619 applicable to incumbent Under Secretary of Labor on Nov. 6, 1986, serving after such date, see section 2(f)(1) of Pub. L. 99–619, set out as a Present Incumbent note under section 552 of Title 29, Labor.

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 Jan. 1, 1980, see section 2(a)(25)(B) of Pub. L. 96–54, set out as a note under section 5312 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 5 of Pub. L. 94–561 provided that:

''(a) Except as otherwise provided in this section, this Act [enacting section 2212b of Title 7, Agriculture, amending sections 5313 to 5316 of this title, sections 2210 and 2211 of Title 7, and section 714g of Title 15, Commerce and Trade, and enacting provisions set out as a note under section 2210 of Title 7] shall take effect on its date of enactment [Oct. 19, 1976].

''(b) Subsection (b)(1) of section 3 of this Act [amending section 5316 of this title] shall take effect upon appointment of a Presidential appointee to fill the successor position created by section 2 of this Act [section 2212b of Title 7].''

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment of Pub. L. 93–438 effective 120 days after Oct. 11, 1974, or on such earlier date as President may prescribe and publish in Federal Register, except that officers provided for in sections 5811 to 5820 of Title 42, The Public Health and Welfare, may be nominated and appointed at any time after Oct. 11, 1974, see section 312(a) of Pub. L. 93–438, set out as an Effective Date; Interim Appointments note under section 5801 of Title 42.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92–302 effective May 18, 1972, see section 3 of Pub. L. 92–302, May 18, 1972, 86 Stat. 149.

EFFECTIVE DATE OF 1968 AMENDMENT

Section 15(a)(4) of Pub. L. 90–407 provided that: ''The amendments made by this subsection [amending sections 5313, 5314, and 5316 of this title] (and the amendments made by sections 3 and 4 of this Act [amending section 1864 and enacting section 1864a of Title 42, The Public Health and Welfare] insofar as they relate to rates of basic pay) shall take effect on the first day of the first calendar month which begins on or after the date of the enactment of this Act [July 18, 1968].''

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–670 effective April 1, 1967, see section 16(a), formerly § 15(a), of Pub. L. 89–670, and Ex. Ord. No. 11340, Mar. 30, 1967, 32 F.R. 5453.

TRANSFER OF FUNCTIONS

Office of Director of Office of Science and Technology abolished and functions vested by law in such office transferred to Director of the National Science Foundation by sections 2 and 3(a)(5) of 1973 Reorg. Plan No. 1, effective July 1, 1973, set out in the Appendix to this title.

UNITED STATES INFORMATION AGENCY

United States Information Agency, including the Office of Director, referred to in text, abolished and replaced by International Communication Agency pursuant to Reorg. Plan No. 2 of 1977, 42 F.R. 62461, 91 Stat. 1636, set out in the Appendix to this title, effective on or before July 1, 1978, at such time as specified by the President. International Communication Agency redesignated United States Information Agency by section 303 of Pub. L. 97–241, title III, Aug. 24, 1982, 96 Stat. 291, set out as a note under section 1461 of Title 22, Foreign Relations and Intercourse.

SALARY INCREASES

1995—Salaries of positions at level II continued at $133,600 per annum by Ex. Ord. No. 12944, Dec. 28, 1994, 60 F.R. 309, set out as a note under section 5332 of this title.

1993—Salaries of positions at level II increased to $133,600 per annum, effective on the first day of the first pay period beginning on or after Jan. 1, 1993, as provided by Ex. Ord. No. 12826, Dec. 30, 1992, 57 F.R. 62909.

1992—Salaries of positions at level II increased to $129,500 per annum, effective on the first day of the first pay period beginning on or after Jan. 1, 1992, as provided by Ex. Ord. No. 12786, Dec. 26, 1991, 56 F.R. 67453.

1991—Salaries of positions at level II increased to $125,100 per annum, effective on the first day of the first pay period beginning on or after Jan. 1, 1991, as provided by Ex. Ord. No. 12736, Dec. 12, 1990, 55 F.R. 51385.

1990—Salaries of positions at level II continued at $89,500 per annum, and increased to $96,600 per annum, effective on the first day of the first pay period beginning on or after Jan. 31, 1990, as provided by Ex. Ord. No. 12698, Dec. 23, 1989, 54 F.R. 53473.

1989—Salaries of positions at level II continued at $89,500 per annum, see Ex. Ord. No. 12663, Jan. 6, 1989, 54 F.R. 791.

1988—Salaries of positions at level II continued at $89,500 per annum by Ex. Ord. No. 12622, Dec. 31, 1987, 53 F.R. 222.

1987—Salaries of positions at level II increased to $89,500 per annum, on recommendation of the President of the United States, see note set out under section 358 of Title 2, The Congress.

Salaries of positions at level II increased to $77,400 per annum, effective on the first day of the first pay period beginning on or after Jan. 1, 1987, as provided by Ex. Ord. No. 12578, Dec. 31, 1986, 52 F.R. 505.

1985—Salaries of positions at level II increased to $75,100 per annum, effective on the first day of the first pay period beginning on or after Jan. 1, 1985, as provided by Ex. Ord. No. 12496, Dec. 28, 1984, 50 F.R. 211, as amended by Ex. Ord. No. 12540, Dec. 30, 1985, 51 F.R. 577.

1984—Salaries of positions at level II increased to $72,600 per annum, effective on the first day of the first pay period beginning on or after Jan. 1, 1984, as provided by Ex. Ord. No. 12456, Dec. 30, 1983, 49 F.R. 347, as amended Ex. Ord. No. 12477, May 23, 1984, 49 F.R. 22041; Ex. Ord. No. 12487, Sept. 14, 1984, 49 F.R. 36493.

1982—Salaries of positions at level II increased to $77,300 per annum, effective on the first day of the first pay period beginning on or after Oct. 1, 1982, as provided by Ex. Ord. No. 12387, Oct. 8, 1982, 47 F.R. 44981. Ex. Ord. No. 12387 further provided that pursuant to section 101(e) of Pub. L. 97–276 funds are not available to pay a salary at a rate which exceeds the rate in effect on Sept. 30, 1982, which was $60,662.50.

Maximum rate payable after Dec. 17, 1982, increased from $60,662.50 to $69,800.00, see Pub. L. 97–377, title I, § 129(b)–(d), Dec. 21, 1982, 96 Stat. 1914, set out as a note under section 5318 of this title.

Limitations on use of funds for fiscal year ending Sept. 30, 1983, appropriated by any Act to pay the salary or pay of any individual in legislative, executive, or judicial branch in position equal to or above level V of the Executive Schedule, see section 101(e) of Pub. L. 97–276, as amended, set out as a note under section 5318 of this title.

1981—Salaries of positions at level II increased to $74,300 per annum, effective on the first day of the first pay period beginning on or after Oct. 1, 1981, as provided by Ex. Ord. No. 12330, Oct. 15, 1981, 46 F.R. 50921. Ex. Ord. No. 12330 further provided that pursuant to section 101(c) of Pub. L. 97–51 funds are not available to pay a salary at a rate which exceeds the rate in effect on Sept. 30, 1981, which was $60,662.50.

Limitations on use of funds for fiscal year ending Sept. 30, 1982, appropriated by any Act to pay the salary or pay of any individual in legislative, executive, or judicial branch in position equal to or above level V of the Executive Schedule, see sections 101(g) and 141 of Pub. L. 97–92, set out as a note under section 5318 of this title.

1980—Salaries of positions at level II increased to $70,900 per annum, effective on the first day of the first pay period beginning on or after Oct. 1, 1980, as provided by Ex. Ord. No. 12248, Oct. 16, 1980, 45 F.R. 69199. Ex. Ord. No. 12248, further provided that pursuant to section 101(c) of Pub. L. 96–369, funds are not available to pay a salary at a rate which exceeds the rate in effect on Sept. 30, 1980, which was $60,662.50.

Limitations on use of funds for fiscal year ending Sept. 30, 1981, appropriated by any Act to pay the salary or pay of any individual in legislative, executive, or judicial branch in position equal to or above level V of the Executive Schedule, see section 101(c) of Pub. L. 96–536, as amended, set out as a note under section 5318 of this title.

1979—Salaries of positions at level II increased to $65,000 per annum, effective on the first day of the first pay period beginning on or after Oct. 1, 1979, as provided by Ex. Ord. No. 12165, Oct. 9, 1979, 44 F.R. 58671, as amended by Ex. Ord. No. 12200, Mar. 12, 1980, 45 F.R. 16443. Ex. Ord. No. 12165 further provided that pursuant to section 101(c) of Pub. L. 96–86 funds appropriated for fiscal year 1980 may not be used to pay a salary at a rate which exceeds an increase of 5.5 percent over the rate in effect on Sept. 30, 1978, which is a maximum rate payable of $60,662.50.

Applicability to funds appropriated by any Act for fiscal year ending Sept. 30, 1980, of limitation of section 304 of Pub. L. 95–391 on use of funds to pay the salary or pay of any individual in legislative, executive, or judicial branch in position equal to or above level V of the Executive Schedule, see section 101 of Pub. L. 96–86, set out as a note under section 5318 of this title.

1978—Salaries of positions at level II increased to $60,700 per annum, effective in the first pay period beginning on or after Oct. 1, 1978, as provided by Ex. Ord. No. 12087, Oct. 7, 1978, 43 F.R. 46823. Ex. Ord. No. 12087, further provided that pursuant to the Legislative Branch Appropriation Act, 1979, funds are not available to pay a salary at a rate which exceeds the rate in effect on Sept. 30, 1978, which was $57,500.

Limitations on use of funds for fiscal year ending Sept. 30, 1979, appropriated by any Act to pay the salary or pay of any individual in legislative, executive, or judicial branch in position equal or above level V of the Executive Schedule, see section 304 of Pub. L. 95–391 and section 613 of Pub. L. 95–429, set out as a note under section 5318 of this title.

1977—Salaries of positions at level II increased to $57,500 per annum, on recommendation of the President of the United States, see note set out under section 358 of Title 2, The Congress.

1976—Salaries of positions at level II increased to $46,800 per annum, effective on the first day of the first pay period beginning on or after Oct. 1, 1976, see Ex. Ord. No. 11941, Oct. 1, 1976, 41 F.R. 43889. Ex. Ord. No. 11941, further provided that pursuant to the Legislative Branch Appropriation Act, 1977, funds are not available

to pay a salary at a rate which exceeds the rate in effect on Sept. 30, 1976, which was $44,600.

1975—Salaries of positions at level II increased to $44,600 per annum, effective on the first day of the first pay period beginning on or after Oct. 1, 1975, by Ex. Ord. No. 11883, Oct. 6, 1975, 40 F.R. 47091.

1969—Salaries of positions at level II increased from $30,000 to $42,500 per annum, commencing on the first day of the pay period which begins after February 14, 1969, on recommendation of the President of the United States, see note set out under section 358 of Title 2, The Congress.

PAY INCREASE; EFFECTIVE DATE

Persons occupying a position under the Executive Schedule on May 18, 1972, and later appointed to a position created or authorized by Pub. L. 92–302, not eligible to an increase on basic pay until Jan. 21, 1973, see section 3(c) of Pub. L. 92–302, May 18, 1972, 86 Stat. 149.

DIRECTOR OF THE FEDERAL BUREAU OF INVESTIGATION, DEPARTMENT OF JUSTICE

Director of Federal Bureau of Investigation, Department of Justice to receive compensation at rate prescribed for level II of Federal Executive Salary Schedule [this section], effective as of day following date on which person holding such office on June 19, 1968, ceases to serve as Director, see section 1101(a) of Pub. L. 90–351, June 19, 1968, 82 Stat. 236, set out as a note under section 532 of Title 28, Judiciary and Judicial Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5377, 5380, 8432, 8701, 8714b of this title; title 2 section 362; title 3 sections 105, 106, 108; title 10 section 973; title 18 section 207; title 22 section 3961; title 25 section 4042; title 26 section 3121; title 28 section 591; title 31 section 703; title 42 sections 210, 410, 1864, 4346, 5871, 5872, 6612, 7132, 7211, 7291, 7293.

§ 5314. Positions at level III

Level III of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

Solicitor General of the United States.

Under Secretary of Commerce, Under Secretary of Commerce for Economic Affairs, Under Secretary of Commerce for Export Administration, and Under Secretary of Commerce for Travel and Tourism.

Under Secretaries of State (5).

Under Secretaries of the Treasury (3).

Administrator of General Services.

Administrator of the Small Business Administration.

Deputy Administrator, Agency for International Development.

Chairman of the Merit Systems Protection Board.

Chairman, Federal Communications Commission.

Chairman, Board of Directors, Federal Deposit Insurance Corporation.

Chairman, Federal Energy Regulatory Commission.

Chairman, Federal Trade Commission.

Chairman, Interstate Commerce Commission.

Chairman, National Labor Relations Board.

Chairman, Securities and Exchange Commission.

Chairman, Board of Directors of the Tennessee Valley Authority.

Chairman, National Mediation Board.

Chairman, Railroad Retirement Board.

Chairman, Federal Maritime Commission.

Comptroller of the Currency.

Commissioner of Internal Revenue.

Under Secretary of Defense for Policy.

Under Secretary of Defense (Comptroller).

Under Secretary of Defense for Personnel and Readiness.

Deputy Administrator of the National Aeronautics and Space Administration.

Deputy Director of Central Intelligence.

Director of the Office of Emergency Planning.

Director of the Peace Corps.

Deputy Director, National Science Foundation.

President of the Export-Import Bank of Washington.

Members, Nuclear Regulatory Commission.

Members, Defense Nuclear Facilities Safety Board.

Members, Board of Governors of the Federal Reserve System.

Director of the Federal Bureau of Investigation, Department of Justice.

Administrator of the National Highway Traffic Safety Administration.

Administrator, Federal Railroad Administration.

Chairman, National Transportation Safety Board.

Chairman of the National Endowment for the Arts the incumbent of which also serves as Chairman of the National Council on the Arts.

Chairman of the National Endowment for the Humanities.

Director of the Federal Mediation and Conciliation Service.

Federal Transit Administrator.

President, Overseas Private Investment Corporation.

Chairman, Postal Rate Commission.

Chairman, Occupational Safety and Health Review Commission.

Governor of the Farm Credit Administration.

Chairman, Equal Employment Opportunity Commission.

Chairman, Consumer Product Safety Commission.

Under Secretary, Department of Energy.

Chairman, Commodity Futures Trading Commission.

Deputy United States Trade Representatives (3).

Chairman, United States International Trade Commission.

Under Secretary of Commerce for Oceans and Atmosphere, the incumbent of which also serves as Administrator of the National Oceanic and Atmospheric Administration.

Associate Attorney General.

Chairman, Federal Mine Safety and Health Review Commission.

Chairman, National Credit Union Administration Board.

Deputy Director of the Office of Personnel Management.

Under Secretary of Agriculture for Farm and Foreign Agricultural Services.

Under Secretary of Agriculture for Food, Nutrition, and Consumer Services.

Under Secretary of Agriculture for Natural Resources and Environment.

Under Secretary of Agriculture for Research, Education, and Economics.

Under Secretary of Agriculture for Food Safety.

Director, Institute for Scientific and Technological Cooperation.

Under Secretary of Agriculture for Rural Economic and Community Development.

Administrator, Maritime Administration.

Executive Director Property Review Board.

Deputy Administrator of the Environmental Protection Agency.

Archivist of the United States.

Deputy Director of the United States Arms Control and Disarmament Agency.

Executive Director, Federal Retirement Thrift Investment Board.

Deputy Under Secretary of Defense for Acquisition and Technology.

Director, Trade and Development Agency.

Under Secretary of Commerce for Technology.

Under Secretary for Health, Department of Veterans Affairs.

Under Secretary for Benefits, Department of Veterans Affairs.

Director of the Office of Government Ethics.

Administrator for Federal Procurement Policy.

Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget.

Director of the Office of Thrift Supervision.

Chairperson of the Federal Housing Finance Board.

Executive Secretary, National Space Council.

Controller, Office of Federal Financial Management, Office of Management and Budget.

Administrator, Research and Special Programs Administration.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 460; Pub. L. 89–670, § 10(d)(3), (e), Oct. 15, 1966, 80 Stat. 948; Pub. L. 90–83, § 1(14), Sept. 11, 1967, 81 Stat. 198; Pub. L. 90–206, title II, § 215(a), Dec. 16, 1967, 81 Stat. 638; Pub. L. 90–351, title I, § 505, June 19, 1968, 82 Stat. 205, as amended by Pub. L. 91–644, title I, § 7(1), Jan. 2, 1971, 84 Stat. 1887; Pub. L. 90–407, § 15(a)(2), July 18, 1968, 82 Stat. 367; Pub. L. 90–623, § 1(26), Oct. 22, 1968, 82 Stat. 1314; Pub. L. 91–175, pt. V, § 503(1), Dec. 30, 1969, 83 Stat. 826; Pub. L. 91–375, § 6(c)(13), Aug. 12, 1970, 84 Stat. 776; Pub. L. 91–596, § 12(c)(1), Dec. 29, 1970, 84 Stat. 1604; Pub. L. 91–644, title I, §§ 7(1), 8(a), Jan. 2, 1971, 84 Stat. 1887, 1888; Pub. L. 92–181, title V, § 5.41(a), formerly § 5.27(a), Dec. 10, 1971, 85 Stat. 625, as renumbered Pub. L. 99–205, title II, § 205(a)(2), Dec. 23, 1985, 99 Stat. 1703; Pub. L. 92–226, pt. IV, § 403, Feb. 7, 1972, 86 Stat. 34; Pub. L. 92–261, § 9(a), Mar. 24, 1972, 86 Stat. 110; Pub. L. 92–302, § 2(b), May 18, 1972, 86 Stat. 149; Pub. L. 92–352, title I, § 104(2), July 13, 1972, 86 Stat. 490; Pub. L. 92–573, § 4(h)(1), Oct. 27, 1972, 86 Stat. 1211; Pub. L. 93–83, § 2, Aug. 6, 1973, 87 Stat. 211; Pub. L. 93–438, title III, § 310(2), Oct. 11, 1974, 88 Stat. 1252; Pub. L. 93–463, title I, § 102(a), Oct. 23, 1974, 88 Stat. 1391; Pub. L. 93–618, title I, §§ 141(b)(3)(B), 172(c)(1), Jan. 3, 1975, 88 Stat. 1999, 2010; Pub. L. 94–82, title II, § 202(b)(3), Aug. 9, 1975, 89 Stat. 420; Pub. L. 94–123, § 2(c)(1), Oct. 22, 1975, 89 Stat. 670; Pub. L. 94–183, § 2(17), Dec. 31, 1975, 89 Stat. 1057; Pub. L. 92–255, title II, § 209(a), as added Pub. L. 94–237, § 4(b), Mar. 19, 1976, 90 Stat. 243; Pub. L. 94–461, § 4(a), Oct. 8, 1976, 90 Stat. 1969; Pub. L. 94–561, § 1(b), Oct. 19, 1976, 90 Stat. 2643; Pub. L. 95–91, title VII, § 710(e), Aug. 4, 1977, 91 Stat. 609; Pub. L. 95–139, § 3, Oct. 19, 1977, 91 Stat. 1171; Pub. L. 95–140, § 3(d)(2), Oct. 21, 1977, 91 Stat. 1173; Pub. L. 95–164, title III, § 302(c)(1), Nov. 9, 1977, 91 Stat. 1320; Pub. L. 95–426, title I, § 114(b)(1), Oct. 7, 1978, 92 Stat. 969; Pub. L. 95–454, title II, §§ 201(b)(2), 202(c)(1), Oct. 13, 1978, 92 Stat. 1121, 1131; Pub. L. 95–501, title V, § 501(b), Oct. 21, 1978, 92 Stat. 1691; Pub. L. 95–630, title V, § 502(d), Nov. 10, 1978, 92 Stat. 3681; Pub. L. 96–53, title IV, § 412(a), Aug. 14, 1979, 93 Stat. 377; Pub. L. 96–54, § 2(a)(25)(A), Aug. 14, 1979, 93 Stat. 382; Pub. L. 96–88, title V, § 508(d), (g), Oct. 17, 1979, 93 Stat. 692; Pub. L. 90–351, title I, § 808, as added Pub. L. 96–157, § 2, Dec. 27, 1979, 93 Stat. 1204; Pub. L. 96–355, § 3(b), Sept. 24, 1980, 94 Stat. 1173; Pub. L. 97–31, § 12(1)(A), Aug. 6, 1981, 95 Stat. 153; Pub. L. 97–63, § 4(a)(4), Oct. 16, 1981, 95 Stat. 1014; Pub. L. 97–195, § 1(b)(1), June 16, 1982, 96 Stat. 115; Pub. L. 97–377, title I, § 123, Dec. 21, 1982, 96 Stat. 1913; Pub. L. 97–449, § 3(2), Jan. 12, 1983, 96 Stat. 2441; Pub. L. 97–456, § 3(d)(1), (6), Jan. 12, 1983, 96 Stat. 2505, 2506; Pub. L. 98–80, § 2(b)(1), Aug. 23, 1983, 97 Stat. 485; Pub. L. 98–164, title I, § 125(b)(1), Nov. 22, 1983, 97 Stat. 1026; Pub. L. 98–216, § 3(a)(2), Feb. 14, 1984, 98 Stat. 6; Pub. L. 98–443, § 9(e), Oct. 4, 1984, 98 Stat. 1707; Pub. L. 98–473, title II, § 609J(a), Oct. 12, 1984, 98 Stat. 2102; Pub. L. 98–497, title I, § 107(h), Oct. 19, 1984, 98 Stat. 2292; Pub. L. 99–64, title I, § 116(b), July 12, 1985, 99 Stat. 153; Pub. L. 99–93, title I, § 116(b), title VII, § 704(a)(1), Aug. 16, 1985, 99 Stat. 412, 445; Pub. L. 99–335, title II, § 203, June 6, 1986, 100 Stat. 591; Pub. L. 99–348, title V, § 501(d)(2), July 1, 1986, 100 Stat. 708; Pub. L. 99–500, § 101(c) [title X, §§ 902(b), 903(b)(2)(A)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–132, and Pub. L. 99–591, § 101(c) [title X, §§ 902(b), 903(b)(2)(A)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–132; Pub. L. 99–619, § 2(a)(3), Nov. 6, 1986, 100 Stat. 3491; Pub. L. 99–659, title IV, § 407(e)(1), Nov. 14, 1986, 100 Stat. 3740; Pub. L. 99–661, div. A, title IX, formerly title IV, §§ 902(b), 903(b)(2)(A), Nov. 14, 1986, 100 Stat. 3911, 3912, as renumbered Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 100–418, title II, § 2204(d)(1), Aug. 23, 1988, 102 Stat. 1331; Pub. L. 100–456, div. A, title XIV, § 1441(b), Sept. 29, 1988, 102 Stat. 2084; Pub. L. 100–519, title II, § 201(d)(4), Oct. 24, 1988, 102 Stat. 2594; Pub. L. 100–527, § 13(e), Oct. 25, 1988, 102 Stat. 2643; Pub. L. 100–598, § 8, Nov. 3, 1988, 102 Stat. 3035; Pub. L. 100–679, § 11(c), Nov. 17, 1988, 102 Stat. 4070; Pub. L. 100–690, title I, §§ 1003(a)(4)(B), 1007(c)(3), Nov. 18, 1988, 102 Stat. 4182, 4188; Pub. L. 101–73, title VII, § 742(a)(1), Aug. 9, 1989, 103 Stat. 436; Pub. L. 101–328, § 3(b), July 8, 1990, 104 Stat. 308; Pub. L. 101–509, title V, § 529 [title I, § 112(d)], Nov. 5, 1990, 104 Stat. 1427, 1455; Pub. L. 101–576, title II, § 207(b), Nov. 15, 1990, 104 Stat. 2846; Pub. L. 102–103, title II, § 202, Aug. 17, 1991, 105 Stat. 498; Pub. L. 102–233, title III, § 315(c), Dec. 12, 1991, 105

Stat. 1772; Pub. L. 102–240, title III, §3004(d)(1), Dec. 18, 1991, 105 Stat. 2088; Pub. L. 102–378, §2(28), Oct. 2, 1992, 106 Stat. 1350; Pub. L. 102–405, title III, §302(d), Oct. 9, 1992, 106 Stat. 1985; Pub. L. 102–508, title IV, §401(c), Oct. 24, 1992, 106 Stat. 3310; Pub. L. 102–549, title II, §202(d), Oct. 28, 1992, 106 Stat. 3658; Pub. L. 102–552, title II, §201(b)(1), Oct. 28, 1992, 106 Stat. 4105; Pub. L. 103–160, div. A, title IX, §§901(b), 903(b), 904(e)(2), Nov. 30, 1993, 107 Stat. 1726, 1727, 1729; Pub. L. 103–204, §5(b)(1), Dec. 17, 1993, 107 Stat. 2382; Pub. L. 103–211, title II, §2003(b), Feb. 12, 1994, 108 Stat. 24; Pub. L. 103–236, title I, §162(d)(1), Apr. 30, 1994, 108 Stat. 405; Pub. L. 103–337, div. A, title IX, §903(c), Oct. 5, 1994, 108 Stat. 2823; Pub. L. 103–354, title II, §§225(e)(2), 231(f)(2), 241(e), 245(e), 251(e), 261(c), Oct. 13, 1994, 108 Stat. 3214, 3219, 3222, 3223, 3226, 3227.)

AMENDMENT OF SECTION

Pub. L. 102–552, title II, §201(b)(1), (c)(1), Oct. 28, 1992, 106 Stat. 4105, provided that, effective Jan. 1, 1996, this section is amended by adding at the end the following new item: ''Chairperson, Board of Directors of the Farm Credit System Insurance Corporation.''

HISTORICAL AND REVISION NOTES

1966 ACT

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(1)–(44)	5 U.S.C. 2211(c) (less (39) and (46)).	Aug. 14, 1964, Pub. L. 88–426, §303(c) (less (39) and (46)), 78 Stat. 416.
(45)	5 U.S.C. 2211(b)(15) (proviso).	Aug. 14, 1964, Pub. L. 88–426, §303(b)(15) (proviso), 78 Stat. 416.

The provisos in paragraphs (39) and (46) of former section 2211(c) are carried into section 5315. The remainders of paragraphs (39) and (46) are omitted but not repealed, see table III. The parts of paragraphs (39) and (46) that are omitted but not repealed provide that the positions of Director of Selective Service and Associate Director of the Federal Bureau of Investigation shall be in Level III so long as the positions are held by the incumbents of the positions on August 14, 1964. The omission of these provisions from title 5, without repealing the corresponding provisions of the source statute, in effect, leaves existing statute unchanged insofar as it relates to the present incumbents of the positions of Director of Selective Service and Associate Director of the Federal Bureau of Investigation.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 ACT

Section of title 5	*Source (U.S. Code)*	*Source (Statutes at Large)*
5314(49)	20: 954(d) (2d sentence).	Sept. 29, 1965, Pub. L. 89–209, §5(d)(1) (2d sentence), 79 Stat. 847.
5314(50)	20:956(b)(1) (2d sentence).	Sept. 29, 1965, Pub. L. 89–209, §7(b)(1) (2d sentence), 79 Stat. 850.
5314(51)	5 App.: 2211(c)(47).	July 18, 1966, Pub. L. 89–504, §408(a), 80 Stat. 299.
5314(52)	42:3533(a) (as applicable to compensation of Under Secretary).	Sept. 9, 1965, Pub. L. 89–174, §4(a) (as applicable to compensation of Under Secretary), 79 Stat. 668.

The deletion of paragraph (41) of 5 U.S.C. 5314 reflects the abolition of the position of ''Deputy Administrator of the Housing and Home Finance Agency'' by the act of September 9, 1965, Public Law 89–174, sections 5(a), 9(c), 79 Stat. 669, 671.

In paragraph (49), the words ''In lieu of receiving compensation at the rate prescribed by section 785(c) of this title'' are omitted since the provisions of 20 U.S.C. 785(c) relating to compensation are repealed by this bill; also see table II. The wording further reflects the first sentence of 20 U.S.C. 954(d), and conforms to 5 U.S.C. 5314 which applies to positions rather than individuals.

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

Paragraph designation for the position added by Pub. L. 96–88 has been omitted in view of the deletion of all paragraph designations in this section by Pub. L. 96–54.

AMENDMENTS

1994—Pub. L. 103–354 substituted ''Under Secretary of Agriculture for Farm and Foreign Agricultural Services'' for ''Under Secretary of Agriculture for International Affairs and Commodity Programs'', inserted items relating to Under Secretaries of Agriculture for Food, Nutrition, and Consumer Services; for Natural Resources and Environment; for Research, Education, and Economics; and for Food Safety, and substituted ''Under Secretary of Agriculture for Rural Economic and Community Development'' for ''Under Secretary of Agriculture for Small Community and Rural Development''.

Pub. L. 103–337 substituted ''Under Secretary of Defense (Comptroller)'' for ''Comptroller of the Department of Defense''.

Pub. L. 103–236 inserted item relating to Under Secretaries of State (5) and struck out items relating to Under Secretary of State for Political Affairs and Under Secretary of State for Economic and Agricultural Affairs and an Under Secretary of State for Coordinating Security Assistance Programs and Under Secretary of State for Management and Counselor of the Department of State.

Pub. L. 103–211 inserted item relating to Under Secretary of the Treasury (3) and struck out items relating to Under Secretary of the Treasury (or Counselor) and Under Secretary of the Treasury for Monetary Affairs.

1993—Pub. L. 103–204, which directed striking out of ''chief executive officer of the Resolution Trust Corporation.'', was executed by striking ''chief executive officer, Resolution Trust Corporation.'' to reflect the probable intent of Congress.

Pub. L. 103–160 inserted items relating to Comptroller of the Department of Defense and Under Secretary of Defense for Personnel and Readiness and substituted ''Deputy Under Secretary of Defense for Acquisition and Technology'' for ''Deputy Under Secretary of Defense for Acquisition''.

1992—Pub. L. 102–549 substituted ''Director, Trade and Development Agency'' for ''Director, Trade and Development Program''.

Pub. L. 102–508 inserted item relating to Administrator, Research and Special Programs Administration.

Pub. L. 102–405 substituted ''Under Secretary for Health, Department of Veterans Affairs'' for ''Chief Medical Director, Department of Veterans Affairs'' and ''Under Secretary for Benefits, Department of Veterans Affairs'' for ''Chief Benefits Director, Department of Veterans Affairs''.

Pub. L. 102–378 struck out each of the items relating to Under Secretary of Education, Under Secretary of Health and Human Services, Under Secretary of the Interior, and Under Secretary of Housing and Urban Development.

1991—Pub. L. 102–240 substituted ''Federal Transit Administrator'' for ''Urban Mass Transportation Administrator''.

Pub. L. 102–233 inserted item relating to chief executive officer, Resolution Trust Corporation.

Pub. L. 102–103 inserted item relating to Under Secretary of Education.

1990—Pub. L. 101–576 inserted item relating to Controller, Office of Federal Financial Management, Office of Management and Budget.

Pub. L. 101–509 directed the amendment of this section by striking the following:

''Under Secretary of Health and Human Services.

''Under Secretary of the Interior.

''Under Secretary of Education.

''Under Secretary of Housing and Urban Development.

Section did not contain the positions in the order referred to in Pub. L. 101–509. See 1992 Amendment note above for Pub. L. 102–378.

Pub. L. 101–328 inserted item relating to Executive Secretary, National Space Council.

1989—Pub. L. 101–73 inserted items relating to Director of the Office of Thrift Supervision and Chairperson of the Federal Housing Finance Board, and struck out item relating to Chairman of the Federal Home Loan Bank Board.

1988—Pub. L. 100–690, § 1007(c)(3), struck out item relating to Director of Office of Drug Abuse Policy.

Pub. L. 100–690, §§ 1003(a)(4)(B), 1009, temporarily inserted items relating to Deputy Director for Demand Reduction, Office of National Drug Control Policy, and Deputy Director for Supply Reduction, Office of National Drug Control Policy. See Effective and Termination Dates of 1988 Amendments note below.

Pub. L. 100–679 inserted items relating to Administrator for Federal Procurement Policy and to Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget, and struck out item relating to Deputy Director of Office of Management and Budget.

Pub. L. 100–598 inserted item relating to Director of Office of Government Ethics.

Pub. L. 100–527 inserted items relating to Chief Medical Director, Department of Veterans Affairs, and Chief Benefits Director, Department of Veterans Affairs, and struck out item relating to Deputy Administrator of Veterans' Affairs.

Pub. L. 100–519 inserted item relating to Under Secretary of Commerce for Technology.

Pub. L. 100–456 inserted item relating to Members, Defense Nuclear Facilities Safety Board after item relating to Members, Nuclear Regulatory Commission.

Pub. L. 100–418 inserted item relating to Director, Trade and Development Program.

1986—Pub. L. 99–659 substituted ''Under Secretary of Commerce for Oceans and Atmosphere, the incumbent of which also serves as Administrator of the National Oceanic and Atmospheric Administration'' for ''Administrator, National Oceanic and Atmospheric Administration''.

Pub. L. 99–619 struck out item relating to Under Secretary of Labor.

Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661, amended section identically, inserting item relating to Deputy Under Secretary of Defense for Acquisition and striking out item relating to Director of Defense Research and Engineering.

Pub. L. 99–348 substituted ''Under Secretary of Defense for Policy'' for ''Under Secretaries of Defense (2)'' and inserted item relating to Director of Defense Research and Engineering.

Pub. L. 99–335 inserted item relating to Executive Director, Federal Retirement Thrift Investment Board.

1985—Pub. L. 99–93, § 116(b), substituted ''Under Secretary of State for Economic and Agricultural Affairs'' for ''Under Secretary of State for Economic Affairs''.

Pub. L. 99–93, § 704(a)(1), inserted item relating to Deputy Director of United States Arms Control and Disarmament Agency.

Pub. L. 99–64 inserted item relating to Under Secretary of Commerce for Export Administration.

1984—Pub. L. 98–497 inserted item relating to Archivist of United States.

Pub. L. 98–473 struck out item relating to Director of Office of Justice Assistance, Research, and Statistics.

Pub. L. 98–443 struck out item relating to Chairman of Civil Aeronautics Board.

Pub. L. 98–216 substituted ''Deputy Director of the Office of Management and Budget'' for ''Deputy Director of the Bureau of the Budget''.

1983—Pub. L. 98–164 inserted item relating to Counselor of Department of State.

Pub. L. 98–80 inserted item relating to Deputy Administrator of Environmental Protection Agency.

Pub. L. 97–456, § 3(d)(6), substituted ''Deputy United States Trade Representatives (3)'' for ''Deputy Special Representatives for Trade Negotiations (2)''.

Pub. L. 97–449 substituted ''Administrator of the National Highway Traffic Safety Administration'' for ''Administrator, Federal Highway Administration''.

1982—Pub. L. 97–377 inserted item relating to Executive Director of Property Review Board.

Pub. L. 97–195 substituted ''Under Secretary of Commerce, Under Secretary of Commerce for Economic Affairs, and Under Secretary of Commerce for Travel and Tourism'' for ''Under Secretary of Commerce and Under Secretary of Commerce for Travel and Tourism''.

1981—Pub. L. 97–63 substituted ''Under Secretary of Commerce and Under Secretary of Commerce for Travel and Tourism'' for ''Under Secretary of Commerce''.

Pub. L. 97–31 inserted item relating to Administrator, Maritime Administration.

1980—Pub. L. 96–355 inserted item relating to Under Secretary of Agriculture for Small Community and Rural Development.

1979—Pub. L. 96–157 inserted item relating to Director, Office of Justice Assistance, Research, and Statistics, and struck out item relating to Administrator of Law Enforcement Assistance.

Pub. L. 96–88, § 508(g), substituted ''Health and Human Services'' for ''Health, Education, and Welfare'' in item relating to Under Secretary of Health and Human Services.

Par. (5). Pub. L. 96–88, § 508(d), added par. (5) relating to Under Secretary of Education. See Codification note above.

Pars. (1) to (70). Pub. L. 96–54 struck out paragraph designations for positions listed herein.

Par. (70). Pub. L. 96–53 added par. (70) relating to Director, Institute for Scientific and Technological Cooperation.

1978—Par. (9). Pub. L. 95–426 inserted ''and Under Secretary of State for Management''.

Par. (17). Pub. L. 95–454, § 202(c)(1), substituted ''Merit Systems Protection Board'' for ''United States Civil Service Commission''.

Par. (66). Pub. L. 95–630 added par. (66) relating to Chairman, National Credit Union Administration Board.

Par. (68). Pub. L. 95–454, § 201(b)(2), added par. (68) relating to Deputy Director of Office of Personnel Management.

Par. (69). Pub. L. 95–501 added par. (69) relating to Under Secretary of Agriculture for International Affairs and Commodity Programs.

1977—Par. (21). Pub. L. 95–91 substituted ''Federal Energy Regulatory Commission'' for ''Federal Power Commission''.

Par. (32). Pub. L. 95–140 substituted ''Under Secretaries of Defense (2)'' for ''Director of Defense Research and Engineering, Department of Defense''.

Par. (60). Pub. L. 95–91 substituted ''Under Secretary, Department of Energy'' for ''Deputy Administrator, Energy Research and Development Administration''.

Par. (66). Pub. L. 95–164 added par. (66) relating to Chairman, Federal Mine Safety and Health Review Commission.

Pub. L. 95–139 added par. (66) relating to Associate Attorney General.

1976—Par. (3). Pub. L. 94–561 repealed par. (3) relating to Under Secretary of Agriculture.

Par. (64). Pub. L. 94–237 added par. (64) relating to Director of Office of Drug Abuse Policy.

Par. (65). Pub. L. 94–461 added par. (65) relating to Administrator, National Oceanic and Atmospheric Administration.

1975—Pub. L. 94–82 substituted provisions applying level III of Executive Schedule to positions for which annual rate of basic pay shall be rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title, for provisions applying such level III to positions for which annual rate of basic pay is $29,500.

Par. (38). Pub. L. 94–123 repealed par. (38) relating to Chief Medical Director in Department of Medicine and Surgery, Veterans' Administration.

Par. (54). Pub. L. 94–183 redesignated par. (55), relating to Chairman, Postal Rate Commission, as par. (54).

Pars. (56), (57). Pub. L. 94–183 redesignated par. (57) relating to Chairman, Occupational Safety and Health Review Commission, and par. (58) relating to Governor of the Farm Credit Administration, as pars. (56) and (57), respectively.

Par. (60). Pub. L. 93–618, §141(b)(3)(B), added par. (60) relating to Deputy Special Representative for Trade Negotiations. For renumbering by Pub. L. 94–183, see item relating to par. (62) hereunder.

Par. (61). Pub. L. 94–183 redesignated par. (60), relating to Chairman, Commodity Futures Trading Commission, as par. (61).

Pub. L. 93–618, §172(c)(1), added par. (61). For renumbering by Pub. L. 94–183, see item relating to par. (63) hereunder.

Pars. (62), (63). Pub. L. 94–183 redesignated par. (60) relating to Deputy Special Representatives for Trade Negotiations, and par. (61) relating to Chairman, United States International Trade Commission, as pars. (62) and (63), respectively.

1974—Par. (42). Pub. L. 93–438 substituted ''Members, Nuclear Regulatory Commission'' for ''Members, Atomic Energy Commission''.

Par. (60). Pub. L. 93–463 added par. (60) relating to Chairman, Commodity Futures Trading Commission.

Pub. L. 93–438 added par. (60) relating to Deputy Administrator, Energy Research and Development Administration.

1973—Par. (55). Pub. L. 93–83 reenacted par. (55) relating to Administrator of Law Enforcement Assistance.

1972—Par. (9). Pub. L. 92–352 substituted ''and'' for ''or'', after ''Political Affairs''.

Pub. L. 92–226 included position of an Under Secretary of State for Coordinating Security Assistance Programs.

Par. (10). Pub. L. 92–302 substituted ''Under Secretary of the Treasury (or Counselor)'' for ''Under Secretary of the Treasury''.

Par. (58). Pub. L. 92–261 added par. (58) relating to Chairman, Equal Employment Opportunity Commission.

Par. (59). Pub. L. 92–573 added par. (59) relating to Chairman, Consumer Product Safety Commission.

1971—Pars. (1) to (54). Pub. L. 91–644, §8(a), struck out par. (1) relating to Deputy Attorney General, now a level II position under section 5313 of this title, renumbered pars. (2) through (54) as (1) through (53), respectively.

Par. (55). Pub. L. 91–644, §7(1), in amending section 505 of Pub. L. 90–351, renumbered par. (90) ''Administrator of Law Enforcement Assistance'' of section 5315 of this title as par. (55) of this section.

Par. (58). Pub. L. 92–181 added par. (58) relating to Governor of Farm Credit Administration.

1970—Par. (3). Pub. L. 91–375, §6(c)(13)(A), struck out par. (3) relating to Deputy Postmaster General.

Par. (55). Pub. L. 91–375, §6(c)(13)(B), added par. (55) relating to Chairman, Postal Rate Commission.

Par. (57). Pub. L. 91–596 added par. (57) relating to Chairman, Occupational Safety and Health Review Commission.

1969—Par. (54). Pub. L. 91–175 added par. (54) relating to President, Overseas Private Investment Corporation.

1968—Par. (40). Pub. L. 90–407 substituted ''Deputy Director, National Science Foundation'' for ''Director of the National Science Foundation''.

Par. (53). Pub. L. 90–623 added par. (53) relating to Urban Mass Transportation Administrator.

1967—Pub. L. 90–206 increased annual rate of basic pay from $28,500 to $29,500.

1966—Pub. L. 89–670 added pars. (46) to (48), relating to Administrator of Federal Highway Administration, Administrator of the Federal Railroad Administration, and Chairman of National Transportation Safety Board, respectively, and repealed par. (6) which provided for Under Secretary of Commerce for Transportation, subject to the provisions of section 1657 of former Title 49, Transportation.

CHANGE OF NAME

''Export-Import Bank of Washington'', referred to in text, was changed to ''Export-Import Bank of the United States'' in the Export-Import Bank Act of 1945, section 635 et seq. of Title 12, Banks and Banking, as provided for in section 1(a) of Pub. L. 90–267, Mar. 13, 1968, 82 Stat. 47.

EFFECTIVE DATE OF 1992 AMENDMENTS

Amendment by Pub. L. 102–552 effective Jan. 1, 1996, see section 201(c)(1) of Pub. L. 102–552, set out as an Effective Date of 1992 Amendment; Transitional Provision note under section 2277a–2 of Title 12, Banks and Banking.

Amendment by Pub. L. 102–378 effective as of the first day of the first applicable pay period beginning on or after Nov. 5, 1990, see section 9(b)(10) of Pub. L. 102–378, set out as a note under section 6303 of this title.

EFFECTIVE DATE OF 1991 AMENDMENTS

Amendment by Pub. L. 102–233 effective Feb. 1, 1992, see section 318 of Pub. L. 102–233, set out as a note under section 1441 of Title 12, Banks and Banking.

Amendment by Pub. L. 102–103 effective on first day of first pay period beginning on or after Aug. 17, 1991, see section 203 of Pub. L. 102–103, set out as a note under section 3412 of Title 20, Education.

EFFECTIVE DATE OF 1990 AMENDMENTS

Amendment by Pub. L. 101–509 effective on first day of first pay period beginning on or after Nov. 5, 1990, with continued service by incumbent Under Secretary of Health and Human Services, Under Secretary of the Interior, Under Secretary of Education, and Under Secretary of Housing and Urban Development, see section 529 [title I, §112(e)] of Pub. L. 101–509, set out as a note under section 3404 of Title 20, Education.

Section 6 of Pub. L. 101–328 provided that: ''The provisions of this Act [amending this section and enacting provisions set out as notes under section 2471 of Title 42, The Public Health and Welfare] are effective as of October 1, 1989.''

EFFECTIVE AND TERMINATION DATES OF 1988 AMENDMENTS

Amendment by Pub. L. 100–690 effective Jan. 21, 1989, and amendment by section 1003(a)(4)(B) of Pub. L. 100–690 repealed on date 5 years after Nov. 18, 1988, see section 1506 of Title 21, Food and Drugs, and section 1012 of Pub. L. 100–690, set out as an Effective Date note under section 1501 of Title 21.

Amendment by Pub. L. 100–679 effective Jan. 20, 1989, see section 11(e) of Pub. L. 100–679, set out as a note under section 5312 of this title.

Amendment by Pub. L. 100–527 effective Mar. 15, 1989, see section 18(a) of Pub. L. 100–527, set out as a Department of Veterans Affairs Act note under section 301 of Title 38, Veterans' Benefits.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–335 effective Jan. 1, 1987, see section 702(a) of Pub. L. 99–335, set out as an Effective Date note under section 8401 of this title.

EFFECTIVE DATE OF 1985 AMENDMENT

Section 116(d) of Pub. L. 99–64, as amended by Pub. L. 99–441, §5, Oct. 3, 1986, 100 Stat. 1118, provided that:

''The provisions of section 15(a) of the Export Administration Act of 1979 [50 App. U.S.C. 2414(a)], as amended by subsection (a) of this section, and the amendments made by subsections (b) and (c) of this section [amending sections 5314 and 5315 of this title] shall take effect on October 1, 1987.''

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by Pub. L. 98–497 effective Apr. 1, 1985, see section 301 of Pub. L. 98–497, set out as a note under section 2102 of Title 44, Public Printing and Documents.

Amendment by section 609J of Pub. L. 98–473 effective Oct. 12, 1984, see section 609AA of Pub. L. 98–473, set out as an Effective Date note under section 3711 of Title 42, The Public Health and Welfare.

Section 9(v) of Pub. L. 98–443 provided that: ''The amendments made by this section [amending sections 5314 and 5315 of this title, sections 1622 and 2145 of Title 7, Agriculture, sections 4746 and 9746 of Title 10, Armed Forces, sections 18, 21, 1607, 1681s, 1691c, and 1692*l* of Title 15, Commerce and Trade, section 18b of Title 16, Conservation, sections 47 and 7701 of Title 26, Internal Revenue Code, section 3726 of Title 31, Money and Finance, sections 3401, 5005, 5401, and 5402 of Title 39, Postal Service, section 3502 of Title 44, Public Printing and Documents, and sections 1159a, 1159b, 1301, 1305, 1377, 1382, 1388, 1389, and 1537 of former Title 49, Transportation] shall take effect on January 1, 1985.''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–63 effective Oct. 1, 1981, see section 6 of Pub. L. 97–63, set out as a note under section 2121 of Title 22, Foreign Relations and Intercourse.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–355 effective Oct. 1, 1980, see section 10 of Pub. L. 96–355, set out as an Effective Date note under section 2204b of Title 7, Agriculture.

EFFECTIVE DATE OF 1979 AMENDMENTS

Amendment by Pub. L. 96–88 effective May 4, 1980, with specified exceptions, see section 601 of Pub. L. 96–88, set out as an Effective Date note under section 3401 of Title 20, Education.

Amendment by Pub. L. 96–54 effective Jan. 1, 1980, see section 2(a)(25)(B) of Pub. L. 96–54, set out as a note under section 5312 of this title.

Amendment by Pub. L. 96–53 effective Oct. 1, 1979, see section 512(a) of Pub. L. 96–53, set out as a note under section 2151 of Title 22, Foreign Relations and Intercourse.

EFFECTIVE DATE OF 1978 AMENDMENTS

Amendment by Pub. L. 95–630 effective on expiration of 120 days after Nov. 10, 1978, see section 509 of Pub. L. 95–630, set out as a note under section 1752 of Title 12, Banks and Banking.

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

Section 114(c) of Pub. L. 95–426 provided that: ''The amendments made by this section [amending sections 5314 and 5315 of this title and section 2652 of Title 22, Foreign Relations and Intercourse, and enacting provisions set out as a note under section 2652 of Title 22] shall take effect on October 1, 1978.''

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–164 effective 120 days after Nov. 9, 1977, except as otherwise provided, see section 307 of Pub. L. 95–164, set out as a note under section 801 of Title 30, Mineral Lands and Mining.

EFFECTIVE DATE OF 1975 AMENDMENT

Section 6(a), formerly section 6(a)(1), of Pub. L. 94–123, as renumbered Pub. L. 96–330, title I, § 101, Aug. 26, 1980, 94 Stat. 1030, provided that: ''The amendments made by section 2 of this Act [enacting former section 4118 of Title 38, Veterans' Benefits, amending this section, section 5315 of this title, and former section 4107 of Title 38, and enacting provisions set out as notes under former section 4118 of Title 38] shall become effective on October 12, 1975.''

EFFECTIVE DATE OF 1974 AMENDMENTS

Amendment by Pub. L. 93–463 effective Oct. 23, 1974, see section 418 of Pub. L. 93–463, set out as a note under section 2 of Title 7, Agriculture.

Amendment by Pub. L. 93–438 effective 120 days after Oct. 11, 1974, or on such earlier date as President may prescribe and publish in Federal Register, except that officers provided for in sections 5811 to 5820 of Title 42, The Public Health and Welfare, may be nominated and appointed at any time after Oct. 11, 1974, see section 312(a) of Pub. L. 93–438, set out as an Effective Date; Interim Appointments note under section 5801 of Title 42.

EFFECTIVE DATE OF 1973 AMENDMENT

Offices and salaries modified under amendment by Pub. L. 93–83, prospectively only, effective on and after Aug. 6, 1973, see section 3 of Pub. L. 93–83, Aug. 6, 1973, 83 Stat. 218.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92–302 effective May 18, 1972, see section 3 of Pub. L. 92–302, May 18, 1972, 86 Stat. 149.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–375 effective within 1 year after Aug. 12, 1970, on date established therefor by Board of Governors of United States Postal Service and published by it in Federal Register, see section 15(a) of Pub. L. 91–375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

EFFECTIVE DATE OF 1968 AMENDMENTS

Amendment by Pub. L. 90–623 intended to restate without substantive change the law in effect on Oct. 22, 1968, see section 6 of Pub. L. 90–623, set out as a note under section 5334 of this title.

Amendment by Pub. L. 90–407 effective on first day of first calendar month which begins on or after July 18, 1968, see section 15 (a)(4) of Pub. L. 90–407, set out as a note under section 5313 of this title.

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90–206 effective at beginning of first pay period which begins on or after Dec. 16, 1967, see section 220(a)(3) of Pub. L. 90–206, set out as a note under section 603 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–670 effective Apr. 1, 1967 as prescribed by President and published in Federal Register, see section 16(a), formerly § 15(a), of Pub. L. 89–670 and Ex. Ord. No. 11340, Mar. 30, 1967, 32 F.R. 5453.

TRANSFER OF FUNCTIONS

Office of Emergency Preparedness, including offices of Director, Deputy Director, Assistant Directors, and Regional Directors, abolished and functions vested by law in Office of Emergency Preparedness or Director of Office of Emergency Preparedness transferred to President by sections 1 and 3(a)(1) of 1973 Reorg. Plan No. 1, effective July 1, 1973, set out in the Appendix to this title.

SALARY INCREASES

1995—Salaries of positions at level III continued at $123,100 per annum by Ex. Ord. No. 12944, Dec. 28, 1994, 60 F.R. 309, set out as a note under section 5332 of this title.

1993—Salaries of positions at level III increased to $123,100 per annum, effective on the first day of the first pay period beginning on or after Jan. 1, 1993, as provided by Ex. Ord. No. 12826, Dec. 30, 1992, 57 F.R. 62909.

1992—Salaries of positions at level III increased to $119,300 per annum, effective on the first day of the first pay period beginning on or after Jan. 1, 1992, as provided by Ex. Ord. No. 12786, Dec. 26, 1991, 56 F.R. 67453.

1991—Salaries of positions at level III increased to $115,300 per annum, effective on the first day of the first pay period beginning on or after Jan. 1, 1991, as provided by Ex. Ord. No. 12736, Dec. 12, 1990, 55 F.R. 51385.

1990—Salaries of positions at level III increased to $85,500 per annum, effective on the first day of the first pay period beginning on or after Jan. 1, 1990, and increased to $89,000 per annum, effective on the first day of the first pay period beginning on or after Jan. 31, 1990, as provided by Ex. Ord. No. 12698, Dec. 23, 1989, 54 F.R. 53473.

1989—Salaries of positions at level III continued at $82,500 per annum, see Ex. Ord. No. 12663, Jan. 6, 1989, 54 F.R. 791.

1988—Salaries of positions at level III continued at $82,500 per annum by Ex. Ord. No. 12622, Dec. 31, 1987, 53 F.R. 222.

1987—Salaries of positions at level III increased to $82,500 per annum, on recommendation of the President of the United States, see note set out under section 358 of Title 2, The Congress.

Salaries of positions at level III increased to $75,800 per annum, effective on the first day of the first pay period beginning on or after Jan. 1, 1987, as provided by Ex. Ord. No. 12578, Dec. 31, 1986, 52 F.R. 505.

1985—Salaries of positions at level III increased to $73,600 per annum, effective on the first day of the first pay period beginning on or after Jan. 1, 1985, as provided by Ex. Ord. No. 12496, Dec. 28, 1984, 50 F.R. 211, as amended by Ex. Ord. No. 12540, Dec. 30, 1985, 51 F.R. 577.

1984—Salaries of positions at level III increased to $71,100 per annum, effective on the first day of the first pay period beginning on or after Jan. 1, 1984, as provided by Ex. Ord. No. 12456, Dec. 30, 1983, 49 F.R. 347, as amended Ex. Ord. No. 12477, May 23, 1984, 49 F.R. 22041; Ex. Ord. No. 12487, Sept. 14, 1984, 49 F.R. 36493.

1982—Salaries of positions at level III increased to $70,500 per annum, effective on the first day of the first pay period beginning on or after Oct. 1, 1982, as provided by Ex. Ord. No. 12387, Oct. 8, 1982, 47 F.R. 44981. Ex. Ord. No. 12387 further provided that pursuant to section 101(e) of Pub. L. 97–276 funds are not available to pay a salary at a rate which exceeds the rate in effect on Sept. 30, 1982, which was $59,500.00.

Maximum rate payable after Dec. 17, 1982, increased from $59,500.00 to $68,400.00, see Pub. L. 97–377, title I, §129(b)–(d), Dec. 21, 1982, 96 Stat. 1914, set out as a note under section 5318 of this title.

Limitations on use of funds for fiscal year ending Sept. 30, 1983, appropriated by any Act to pay the salary or pay of any individual in legislative, executive, or judicial branch in position equal to or above level V of the Executive Schedule, see section 101(e) of Pub. L. 97–276, as amended, set out as a note under section 5318 of this title.

1981—Salaries of positions at level III increased to $67,800 per annum, effective on the first day of the first pay period beginning on or after Oct. 1, 1981, as provided by Ex. Ord. No. 12330, Oct. 15, 1981, 46 F.R. 50921. Ex. Ord. No. 12330 further provided that pursuant to section 101(c) of Pub. L. 97–51 funds are not available to pay a salary at a rate which exceeds the rate in effect on Sept. 30, 1981, which was $55,387.50.

Limitations on use of funds for fiscal year ending Sept. 30, 1982, appropriated by any Act to pay the salary or pay of any individual in legislative, executive, or judicial branch in position equal to or above level V of the Executive Schedule, see sections 101(g) and 141 of Pub. L. 97–92, set out as a note under section 5318 of this title.

1980—Salaries of positions at level III increased to $64,700 per annum, effective on the first day of the first pay period beginning on or after Oct. 1, 1980, as provided by Ex. Ord. No. 12248, Oct. 16, 1980, 45 F.R. 69199. Ex. Ord. No. 12248, further provided that pursuant to section 101(c) of Pub. L. 96–369, funds are not available to pay a salary at a rate which exceeds the rate in effect on Sept. 30, 1980, which was $55,387.50.

Limitations on use of funds for fiscal year ending Sept. 30, 1981, appropriated by an Act to pay the salary or pay of any individual in legislative, executive, or judicial branch in position equal to or above level V of the Executive Schedule, see section 101(c) of Pub. L. 96–536, as amended, set out as a note under section 5318 of this title.

1979—Salaries of positions at level III increased to $59,300 per annum, effective on the first day of the first pay period beginning on or after Oct. 1, 1979, as provided by Ex. Ord. No. 12165, Oct. 9, 1979, 44 F.R. 58671, as amended by Ex. Ord. No. 12200, Mar. 12, 1980, 45 F.R. 16443. Ex. Ord. No. 12165 further provided that pursuant to section 101(c) of Pub. L. 96–86 funds appropriated for fiscal year 1980 may not be used to pay a salary at a rate which exceeds an increase of 5.5 percent over the rate in effect on Sept. 30, 1978, which is a maximum rate payable of $55,387.50.

Applicability to funds appropriated by any Act for fiscal year ending Sept. 30, 1980, of limitation of section 304 of Pub. L. 95–391 on use of funds to pay the salary or pay of any individual in legislative, executive, or judicial branch in position equal to or above level V of the Executive Schedule, see section 101 of Pub. L. 96–86, set out as a note under section 5318 of this title.

1978—Salaries of positions at level III increased to $55,400 per annum, effective in the first pay period beginning on or after Oct. 1, 1978, as provided by Ex. Ord. No. 12087, Oct. 7, 1978, 43 F.R. 46823. Ex. Ord. No. 12087, further provided that pursuant to the Legislative Branch Appropriation Act, 1979, funds are not available to pay a salary at a rate which exceeds the rate in effect on Sept. 30, 1978, which was $52,500.

Limitations on use of funds for fiscal year ending Sept. 30, 1979, appropriated by any Act to pay the salary or pay of any individual in legislative, executive, or judicial branch in position equal or above level V of the Executive Schedule, see section 304 of Pub. L. 95–391 and section 613 of Pub. L. 95–429, set out as a note under section 5318 of this title.

1977—Salaries of positions at level III increased to $52,500 per annum, on recommendation of the President of the United States, see note set out under section 358 of Title 2, The Congress.

1976—Salaries of positions at level III increased to $44,000 per annum, effective on the first day of the first pay period beginning on or after Oct. 1, 1976, see Ex. Ord. No. 11941, Oct. 1, 1976, 41 F.R. 43889, set out as a note under section 5332 of this title. Ex. Ord. No. 11941, further provided that pursuant to the Legislative Branch Appropriation Act, 1977, funds are not available to pay a salary at a rate which exceeds the rate in effect on Sept. 30, 1976, which was $42,000.

1975—Salaries of positions at level III increased to $42,000 per annum, effective on the first day of the first pay period beginning on or after Oct. 1, 1975, by Ex. Ord. No. 11883, Oct. 6, 1975, 40 F.R. 47091.

1969—Salaries of positions at level III increased from $29,500 to $40,000 per annum, commencing on the first day of the pay period which begins after February 14, 1969, on recommendation of the President of the United States, see note set out under section 358 of Title 2, The Congress.

PAY INCREASE; EFFECTIVE DATE

Persons occupying a position under the Executive Schedule on May 18, 1972, and later appointed to a position created or authorized by Pub. L. 92–302, not eligible to an increase in basic pay until Jan. 21, 1973, see section 3(c) of Pub. L. 92–302, May 18, 1972, 86 Stat. 149.

DIRECTOR OF FEDERAL BUREAU OF INVESTIGATION, DEPARTMENT OF JUSTICE

Director of Federal Bureau of Investigation, Department of Justice to receive compensation at rate prescribed for level II of Federal Executive Salary Schedule [section 5313 of this title], effective as of day follow-

ing date on which person holding such office on June 19, 1968 ceases to serve as Director, see section 1101(a) of Pub. L. 90–351, set out as a note under section 532 of Title 28, Judiciary and Judicial Procedure.

Position of Director of Federal Bureau of Investigation, referred to in text, placed temporarily in level II during incumbency of incumbent on Aug. 14, 1964, by Pub. L. 88–426, Aug. 14, 1964, § 303(b)(15), 78 Stat. 416.

Section 1101(a) of the Omnibus Crime Control and Safe Streets Act of 1968 (Pub. L. 90–351, June 19, 1968, 82 Stat. 236), which is set out as a note under section 532 of Title 28, Judiciary and Judicial Procedure, provided in part that when present incumbent of position of Director leaves office, his successors will be paid at rate prescribed for level II.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5377, 5380, 8432 of this title; title 2 sections 60a–1, 136a–2, 282b, 288, 474, 601; title 3 sections 105, 106, 107; title 7 section 2007b; title 10 section 973; title 12 sections 1422b, 2242, 2277a–2, 2278a–2, 2278a–3; title 15 sections 205i, 1503b, 3704; title 18 section 207; title 19 section 2171; title 20 section 4512; title 22 sections 2651a, 3505, 3961; title 26 section 3121; title 28 section 591; title 31 section 703; title 40 section 162a; title 42 sections 410, 1864a, 5871, 5872, 6612, 7132, 7134, 7211, 7291, 7293, 10242, 12651c; title 44 section 2103.

§ 5315. Positions at level IV

Level IV of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

Deputy Administrator of General Services.

Associate Administrator of the National Aeronautics and Space Administration.

Assistant Administrators, Agency for International Development (6).

Regional Assistant Administrators, Agency for International Development (4).

Under Secretary of the Air Force.

Under Secretary of the Army.

Under Secretary of the Navy.

Assistant Secretaries of Agriculture (3).

Assistant Secretaries of Commerce (11).

Assistant Secretaries of Defense (11).

Assistant Secretaries of the Air Force (4).

Assistant Secretaries of the Army (5).

Assistant Secretaries of the Navy (4).

Assistant Secretaries of Health and Human Services (6).

Assistant Secretaries of the Interior (6).

Assistant Attorneys General (10).

Assistant Secretaries of Labor (10), one of whom shall be the Assistant Secretary of Labor for Veterans' Employment and Training.

20 Assistant Secretaries of State and 4 other State Department officials to be appointed by the President, by and with the advice and consent of the Senate.

Assistant Secretaries of the Treasury (7).

Members, United States International Trade Commission (5).

Assistant Secretaries of Education (10).

General Counsel, Department of Education.

Inspector General, Department of Education.

Director of Civil Defense, Department of the Army.

Deputy Director of the Office of Emergency Planning.

Deputy Director of the Office of Science and Technology.

Deputy Director of the Peace Corps.

Deputy Director of the United States Information Agency.

Assistant Directors of the Office of Management and Budget (3).

General Counsel of the Department of Agriculture.

General Counsel of the Department of Commerce.

General Counsel of the Department of Defense.

General Counsel of the Department of Health and Human Services.

Solicitor of the Department of the Interior.

Solicitor of the Department of Labor.

General Counsel of the National Labor Relations Board.

General Counsel of the Department of the Treasury.

First Vice President of the Export-Import Bank of Washington.

Members, Council of Economic Advisers.

Members, Board of Directors of the Export-Import Bank of Washington.

Members, Federal Communications Commission.

Member, Board of Directors of the Federal Deposit Insurance Corporation.

Directors, Federal Housing Finance Board.

Members, Federal Energy Regulatory Commission.

Members, Federal Trade Commission.

Members, Interstate Commerce Commission.

Members, National Labor Relations Board.

Members, Securities and Exchange Commission.

Members, Board of Directors of the Tennessee Valley Authority.

Members, Merit Systems Protection Board.

Members, Federal Maritime Commission.

Members, National Mediation Board.

Members, Railroad Retirement Board.

Director of Selective Service.

Associate Director of the Federal Bureau of Investigation, Department of Justice.

Members, Equal Employment Opportunity Commission (4).

Director, Community Relations Service.

Members, National Transportation Safety Board.

General Counsel, Department of Transportation.

Deputy Administrator, Federal Aviation Administration.

Assistant Secretaries of Transportation (4).

Deputy Federal Highway Administrator.

Administrator of the Saint Lawrence Seaway Development Corporation.

Assistant Secretary for Science, Smithsonian Institution.

Assistant Secretary for History and Art, Smithsonian Institution.

Deputy Administrator of the Small Business Administration.

Assistant Secretaries of Housing and Urban Development (8).

General Counsel of the Department of Housing and Urban Development.

Commissioner of Interama.

Federal Insurance Administrator, Federal Emergency Management Agency.

Executive Vice President, Overseas Private Investment Corporation.

Members, National Credit Union Administration Board (2).

Members, Postal Rate Commission (4).

Members, Occupational Safety and Health Review Commission.

Deputy Under Secretaries of the Treasury (or Assistant Secretaries of the Treasury) (2).

Members, Consumer Product Safety Commission (4).

Members, Commodity Futures Trading Commission.

Director of Nuclear Reactor Regulation, Nuclear Regulatory Commission.

Director of Nuclear Material Safety and Safeguards, Nuclear Regulatory Commission.

Director of Nuclear Regulatory Research, Nuclear Regulatory Commission.

Executive Director for Operations, Nuclear Regulatory Commission.

President, Government National Mortgage Association, Department of Housing and Urban Development.

Assistant Secretary of Commerce for Oceans and Atmosphere, the incumbent of which also serves as Deputy Administrator of the National Oceanic and Atmospheric Administration.

Commissioner of Immigration and Naturalization, Department of Justice.

Director, Bureau of Prisons, Department of Justice.

Assistant Secretaries of Energy (8).

General Counsel of the Department of Energy.

Administrator, Economic Regulatory Administration, Department of Energy.

Administrator, Energy Information Administration, Department of Energy.

Inspector General, Department of Energy.

Director, Office of Energy Research, Department of Energy.

Assistant Secretary of Labor for Mine Safety and Health.

Members, Federal Mine Safety and Health Review Commission.

President, National Consumer Cooperative Bank.

Inspector General, Department of Health and Human Services.

Inspector General, Department of Agriculture.

Special Counsel of the Merit Systems Protection Board.

Inspector General, Department of Housing and Urban Development.

Chairman, Federal Labor Relations Authority.

Inspector General, Department of Labor.

Inspector General, Department of Transportation.

Inspector General, Department of Veterans Affairs.

Deputy Director, Institute for Scientific and Technological Cooperation.

Director of the National Institute of Justice.

Director of the Bureau of Justice Statistics.

Chief Counsel for Advocacy, Small Business Administration.

Inspector General, Department of Defense.

Assistant Administrator for Toxic Substances, Environmental Protection Agency.

Assistant Administrator, Office of Solid Waste, Environmental Protection Agency.

Assistant Administrators, Environmental Protection Agency (8).

Director of Operational Test and Evaluation, Department of Defense.

Special Representatives of the President for arms control, nonproliferation, and disarmament matters, United States Arms Control and Disarmament Agency.

Administrator of the Health Care Financing Administration.

Director, National Institute of Standards and Technology, Department of Commerce.

Assistant Directors, United States Arms Control and Disarmament Agency (4).

Inspector General, United States Information Agency.

Inspector General, Department of State.

Director of Defense Research and Engineering.

Ambassadors at Large.

Commissioner, National Center for Education Statistics.

Assistant Secretary of Commerce and Director General of the United States and Foreign Commercial Service.

Inspector General, Department of Commerce.

Inspector General, Department of the Interior.

Inspector General, Department of Justice.

Inspector General, Department of the Treasury.

Inspector General, Agency for International Development.

Inspector General, Environmental Protection Agency.

Inspector General, Federal Emergency Management Agency.

Inspector General, General Services Administration.

Inspector General, National Aeronautics and Space Administration.

Inspector General, Nuclear Regulatory Commission.

Inspector General, Office of Personnel Management.

Inspector General, Railroad Retirement Board.

Inspector General, Small Business Administration.

Inspector General, Federal Deposit Insurance Corporation.

Assistant Secretaries, Department of Veterans Affairs (6).

General Counsel, Department of Veterans Affairs.

Director of the National Cemetery System.

Commissioner of Food and Drugs, Department of Health and Human Services[1]

Chairman, Board of Veterans' Appeals.

Administrator, Office of Juvenile Justice and Delinquency Prevention.

Director, United States Marshals Service.

Inspector General, Resolution Trust Corporation.

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[1] So in original. Probably should be followed by a period.

Chairman, United States Parole Commission.

Director, Bureau of the Census, Department of Commerce.

Director of the Institute of Museum Services.

Chief Financial Officer, Department of Agriculture.

Chief Financial Officer, Department of Commerce.

Chief Financial Officer, Department of Education.

Chief Financial Officer, Department of Energy.

Chief Financial Officer, Department of Health and Human Services.

Chief Financial Officer, Department of Housing and Urban Development.

Chief Financial Officer, Department of the Interior.

Chief Financial Officer, Department of Justice.

Chief Financial Officer, Department of Labor.

Chief Financial Officer, Department of State.

Chief Financial Officer, Department of Transportation.

Chief Financial Officer, Department of the Treasury.

Chief Financial Officer, Department of Veterans Affairs.

Chief Financial Officer, Environmental Protection Agency.

Chief Financial Officer, National Aeronautics and Space Administration.

Commissioner, Office of Navajo and Hopi Indian Relocation.

Inspector General, Central Intelligence Agency[1]

Deputy Under Secretary of Defense for Policy.

General Counsel of the Department of the Army.

General Counsel of the Department of the Navy.

General Counsel of the Department of the Air Force.

Administrator of the Panama Canal Commission.

Liaison for Community and Junior Colleges, Department of Education[1]

Commissioner of Customs, Department of the Treasury.

Director of the Office of Educational Technology.

Director of the International Broadcasting Bureau, the United States Information Agency.

Inspector General, Social Security Administration.

The[2] Commissioner of Labor Statistics, Department of Labor.

Administrator, Rural Utilities Service, Department of Agriculture.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 461; Pub. L. 89–670, § 10(d)(4), (e), Oct. 15, 1966, 80 Stat. 948; Pub. L. 89–734, § 1(1), Nov. 2, 1966, 80 Stat. 1163; Pub. L. 89–779, § 8(c)(1), Nov. 6, 1966, 80 Stat. 1364; Pub. L. 90–83, § 1(15), Sept. 11, 1967, 81 Stat. 198; Pub. L. 90–206, title II, § 215(b), Dec. 16, 1967, 81 Stat. 638; Pub. L. 90–351, title I, § 505, June 19, 1968, 82 Stat. 205; Pub. L. 90–448, title XI, § 1105(b), title XVII, § 1708(b), Aug. 1, 1968, 82 Stat. 567, 606; Pub. L. 90–623, § 1(4), Oct. 22, 1968, 82 Stat. 1312; Pub. L. 91–121, title IV, § 404(b), Nov. 19, 1969, 83 Stat. 207; Pub. L. 91–175, pt. V, § 503(2), Dec. 30, 1969, 83 Stat. 826; Pub. L. 91–206, § 5(b), Mar. 10, 1970, 84 Stat. 51; Pub. L. 91–375, § 6(c)(14), Aug. 12, 1970, 84 Stat. 776; Pub. L. 91–469, § 42(b), Oct. 21, 1970, 84 Stat. 1038; Pub. L. 91–477, § 3(b), Oct. 21, 1970, 84 Stat. 1072; Pub. L. 91–596, §§ 12(c)(2), 29(b), Dec. 29, 1970, 84 Stat. 1604, 1619; Pub. L. 91–611, title II, § 211(b), Dec. 31, 1970, 84 Stat. 1829; Pub. L. 91–644, title I, § 7 (1), (2), Jan. 2, 1971, 84 Stat. 1887; Pub. L. 92–22, § 2, June 1, 1971, 85 Stat. 76; Pub. L. 92–181, title V, § 5.41(a), formerly § 5.27(a), Dec. 10, 1971, 85 Stat. 625, renumbered Pub. L. 99–205, title II, § 205(a)(2), Dec. 23, 1985, 99 Stat. 1703; Pub. L. 92–215, § 2, Dec. 22, 1971, 85 Stat. 777; Pub. L. 92–255, title II, § 212(b), Mar. 21, 1972, 86 Stat. 69; Pub. L. 92–261, § 9(b), Mar. 24, 1972, 86 Stat. 110; Pub. L. 92–302, § 2(c), May 18, 1972, 86 Stat. 149; Pub. L. 92–352, title I, § 104(3), July 13, 1972, 86 Stat. 490; Pub. L. 92–419, title VI, § 604(b), Aug. 30, 1972, 86 Stat. 676; Pub. L. 92–573, § 4(h)(2), Oct. 27, 1972, 86 Stat. 1211; Pub. L. 92–603, title IV, § 404(b), Oct. 30, 1972, 86 Stat. 1488; Pub. L. 90–351, title I, § 506(a), as added Pub. L. 93–83, § 2, Aug. 6, 1973, 87 Stat. 211; Pub. L. 93–126, § 9(b), as added Pub. L. 93–312, § 9, June 8, 1974, 88 Stat. 238; Pub. L. 93–383, title VIII, § 818(c), Aug. 22, 1974, 88 Stat. 740; Pub. L. 93–400, § 13, Aug. 30, 1974, 88 Stat. 799; Pub. L. 93–438, title III, § 310(3), Oct. 11, 1974, 88 Stat. 1253; Pub. L. 93–463, title I, § 102(b), Oct. 23, 1974, 88 Stat. 1391; Pub. L. 93–618, title I, § 172(c)(2), Jan. 3, 1975, 88 Stat. 2010; Pub. L. 94–82, title II, § 202(b)(4), Aug. 9, 1975, 89 Stat. 420; Pub. L. 94–123, § 2(c)(2), Oct. 22, 1975, 89 Stat. 670; Pub. L. 94–183, § 2(18), Dec. 31, 1975, 89 Stat. 1057; Pub. L. 92–255, title II, § 209(b), as added Pub. L. 94–237, § 4(b), Mar. 19, 1976, 90 Stat. 243; Pub. L. 94–375, § 17(c), Aug. 3, 1976, 90 Stat. 1077; Pub. L. 94–461, § 4(b), Oct. 8, 1976, 90 Stat. 1969; Pub. L. 94–503, title II, § 202(b), Oct. 15, 1976, 90 Stat. 2426; Pub. L. 94–561, § 3(a), Oct. 19, 1976, 90 Stat. 2643; Pub. L. 95–88, title I, § 124(b), Aug. 3, 1977, 91 Stat. 542; Pub. L. 95–91, title VII, § 710(f), Aug. 4, 1977, 91 Stat. 609; Pub. L. 95–105, title I, § 109(d), Aug. 17, 1977, 91 Stat. 847; Pub. L. 95–108, § 2(b), Aug. 17, 1977, 91 Stat. 871; Pub. L. 95–164, title III, § 302(b), Nov. 9, 1977, 91 Stat. 1319; Pub. L. 95–173, § 9(b), Nov. 12, 1977, 91 Stat. 1360; Pub. L. 95–351, title III, § 302, Aug. 20, 1978, 92 Stat. 514; Pub. L. 95–426, title I, §§ 114(b)(2), 115(b)(1), Oct. 7, 1978, 92 Stat. 969; Pub. L. 95–452, § 10(a), Oct. 12, 1978, 92 Stat. 1108; Pub. L. 95–454, title II, §§ 202(c)(2), (3), title VII, § 703(d), Oct. 13, 1978, 92 Stat. 1131, 1217; Pub. L. 95–630, title V, § 502(e), Nov. 10, 1978, 92 Stat. 3681; Pub. L. 96–39, title XI, § 1106(c)(4), July 26, 1979, 93 Stat. 312; Pub. L. 96–53, title IV, § 412(b), Aug. 14, 1979, 93 Stat. 377; Pub. L. 96–54, § 2(a)(25)(A), Aug. 14, 1979, 93 Stat. 382; Pub. L. 96–88, title V, § 508(e), (g), Oct. 17, 1979, 93 Stat. 692; Pub. L. 96–107, title VIII, § 820(e)(1), Nov. 9, 1979, 93 Stat. 819; Pub. L. 96–132, § 5, Nov. 30, 1979, 93 Stat. 1045; Pub. L. 96–153, title VI, § 603(b), Dec. 21, 1979, 93 Stat. 1138; Pub. L. 90–351, title I,

[2] The word ''The'' probably should not appear.

§ 809, as added Pub. L. 96–157, § 2, Dec. 27, 1979, 93 Stat. 1204; Pub. L. 96–302, title IV, § 403, July 2, 1980, 94 Stat. 850; Pub. L. 96–511, § 4(d), Dec. 11, 1980, 94 Stat. 2826; Pub. L. 97–31, § 12(1)(B), Aug. 6, 1981, 95 Stat. 153; Pub. L. 97–35, title III, § 396(h)(4), Aug. 13, 1981, 95 Stat. 441; Pub. L. 97–98, title XIV, § 1414(b), Dec. 22, 1981, 95 Stat. 1303; Pub. L. 97–195, § 1(b)(2), June 16, 1982, 96 Stat. 115; Pub. L. 97–252, title XI, § 1117(d), Sept. 8, 1982, 96 Stat. 753; Pub. L. 97–325, § 8(b), Oct. 15, 1982, 96 Stat. 1605; Pub. L. 97–449, § 3(3), Jan. 12, 1983, 96 Stat. 2441; Pub. L. 98–80, § 2(c)(1), Aug. 23, 1983, 97 Stat. 485; Pub. L. 98–94, title XII, §§ 1211(b), 1212(d), Sept. 24, 1983, 97 Stat. 686, 687; Pub. L. 98–164, title I, § 125(b)(2), Nov. 22, 1983, 97 Stat. 1026; Pub. L. 98–202, § 6(b), Dec. 2, 1983, 97 Stat. 1382; Pub. L. 98–216, § 3(a)(3), Feb. 14, 1984, 98 Stat. 6; Pub. L. 98–369, title III, § 2332(b), July 18, 1984, 98 Stat. 1089; Pub. L. 98–443, § 9(e), Oct. 4, 1984, 98 Stat. 1707; Pub. L. 98–473, title II, §§ 609J(b), 1701(b), Oct. 12, 1984, 98 Stat. 2102, 2185; Pub. L. 98–594, § 1(b), Oct. 30, 1984, 98 Stat. 3129; Pub. L. 99–64, title I, § 116(c), July 12, 1985, 99 Stat. 153; Pub. L. 99–73, § 6(b)(1), July 29, 1985, 99 Stat. 173; Pub. L. 99–93, title I, § 115(b), title VII, § 704(a)(2), Aug. 16, 1985, 99 Stat. 411, 445; Pub. L. 99–399, title I, § 104(c), title IV, §§ 412(c), 413(e), formerly 413(a)(5), Aug. 27, 1986, 100 Stat. 856, 867, 868, as renumbered Pub. L. 100–204, title I, § 134(b), Dec. 22, 1987, 101 Stat. 1344; Pub. L. 99–500, § 101(c) [title X, § 903(b)(2)(B)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–132, and Pub. L. 99–591, § 101(c) [title X, § 903(b)(2)(B)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–132; Pub. L. 99–619, § 2(b)(2), Nov. 6, 1986, 100 Stat. 3491; Pub. L. 99–659, title IV, § 407(e)(2), Nov. 14, 1986, 100 Stat. 3740; Pub. L. 99–661, div. A, title IX, formerly title IV, § 903(b)(2)(B), Nov. 14, 1986, 100 Stat. 3912, as renumbered Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 100–204, title I, § 178(a)(2), Dec. 22, 1987, 101 Stat. 1362; Pub. L. 100–297, title III, § 3001(b)(2), Apr. 28, 1988, 102 Stat. 331; Pub. L. 100–418, title II, § 2301(i), formerly § 2301(h), title V, § 5112(c)(2), Aug. 23, 1988, 102 Stat. 1341, 1431, as renumbered Pub. L. 102–429, title II, § 203(b)(1), Oct. 21, 1992, 106 Stat. 2201; Pub. L. 100–485, title VI, § 603(b), Oct. 13, 1988, 102 Stat. 2409; Pub. L. 100–504, title I, § 103(a), Oct. 18, 1988, 102 Stat. 2521; Pub. L. 100–527, § 13(f), Oct. 25, 1988, 102 Stat. 2643; Pub. L. 100–607, title V, § 503(b)(2), Nov. 4, 1988, 102 Stat. 3121; Pub. L. 100–679, § 11(d), Nov. 17, 1988, 102 Stat. 4070; Pub. L. 100–687, div. A, title II, § 201(b)(1), Nov. 18, 1988, 102 Stat. 4109; Pub. L. 100–690, title I, §§ 1003(a)(4)(C), 1007(c)(4), title VII, §§ 7252(b)(3), 7608(e), Nov. 18, 1988, 102 Stat. 4182, 4188, 4436, 4517; Pub. L. 101–73, title V, § 501(b)(2)(A), title VII, § 742(a)(2), Aug. 9, 1989, 103 Stat. 393, 436; Pub. L. 101–189, div. A, title XI, § 1112, Nov. 29, 1989, 103 Stat. 1554; Pub. L. 101–319, § 3(a), July 3, 1990, 104 Stat. 290; Pub. L. 101–509, title V, § 529 [title I, § 113(2)], Nov. 5, 1990, 104 Stat. 1427, 1455; Pub. L. 101–512, title III, § 318 [title II, § 202(a)(2)], Nov. 5, 1990, 104 Stat. 1960, 1975; Pub. L. 101–576, title II, § 207(c), Nov. 15, 1990, 104 Stat. 2846; Pub. L. 102–138, title I, § 122(d)(1), Oct. 28, 1991, 105 Stat. 659; Pub. L. 102–180, § 3(g), Dec. 2, 1991, 105 Stat. 1231; Pub. L. 102–183, title IV, § 404, Dec. 4, 1991, 105 Stat. 1267; Pub. L. 102–190, div. A, title IX, §§ 901(b), 903(a)(1), div. C, title XXXV, § 3504(a), Dec. 5, 1991, 105 Stat. 1450, 1451, 1586; Pub. L. 102–325, title XV, § 1553(b), July 23, 1992, 106 Stat. 839; Pub. L. 102–359, § 2(b)(1), Aug. 26, 1992, 106 Stat. 962; Pub. L. 102–552, title II, § 201(b)(2), Oct. 28, 1992, 106 Stat. 4105; Pub. L. 103–123, title I, § 108(a)(2), Oct. 28, 1993, 107 Stat. 1234; Pub. L. 103–160, div. A, title IX, §§ 902(a)(2), 903(c)(2), Nov. 30, 1993, 107 Stat. 1727, 1728; Pub. L. 103–171, § 3(b)(1), Dec. 2, 1993, 107 Stat. 1991; Pub. L. 103–204, § 23(b), Dec. 17, 1993, 107 Stat. 2408; Pub. L. 103–227, title II, § 233(b), Mar. 31, 1994, 108 Stat. 155; Pub. L. 103–236, title I, § 162(d)(2), title III, § 307(b)(2), title VII, § 708(b), Apr. 30, 1994, 108 Stat. 405, 436, 494; Pub. L. 103–272, § 4(b)(2), July 5, 1994, 108 Stat. 1361; Pub. L. 103–296, title I, §§ 106(a)(7)(B), 108(e)(3), Aug. 15, 1994, 108 Stat. 1476, 1486; Pub. L. 103–333, title I, § 106, Sept. 30, 1994, 108 Stat. 2548; Pub. L. 103–337, div. A, title IX, § 901(b), Oct. 5, 1994, 108 Stat. 2822; Pub. L. 103–354, title II, §§ 218(d), 232(b)(3), Oct. 13, 1994, 108 Stat. 3212, 3219.)

AMENDMENT OF SECTION

Pub. L. 102–552, title II, § 201(b)(2), (c)(1), Oct. 28, 1992, 106 Stat. 4105, provided that, effective Jan. 1, 1996, this section is amended by adding at the end the following new item: ''Members, Board of Directors of the Farm Credit System Insurance Corporation.''

HISTORICAL AND REVISION NOTES

1966 ACT

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(1)–(69)	5 U.S.C. 2211(d).	Aug. 14, 1964, Pub. L. 88–426, § 303(d), 78 Stat. 417.
(70), (71)	5 U.S.C. 2211(c)(39) (proviso), (46) (proviso).	Aug. 14, 1964, Pub. L. 88–426, § 303(c)(39) (proviso), (46) (proviso), 78 Stat. 417.
(72)–(77)	5 U.S.C. 2211(g).	Aug. 14, 1964, Pub. L. 88–426, § 303(g), 78 Stat. 422.

Paragraphs (72)–(77) are added on authority of former section 2211(g) which authorized the President to place, from Aug. 15, 1964, to Feb. 1, 1965, not more than 30 positions in Levels IV and V of the Federal Executive Salary Schedule. Pursuant to this authority, the President by Executive Order No. 11189, Nov. 23, 1964, as amended by Executive Order No. 11195, Jan. 30, 1965, placed the positions listed in paragraphs (72)–(77) in Level IV.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 ACT

Section of title 5	*Source (U.S. Code)*	*Source (Statutes at Large)*
5315(12)	5 App.: 2211(d)(12).	Aug. 26, 1965, Pub. L. 89–136, § 601(b), 79 Stat. 569.
5315(17)	5 App.: 2211(d)(17).	Aug. 9, 1965, Pub. L. 89–115, § 4(c) (words before semicolon), 79 Stat. 449.
		Oct. 2, 1965, Pub. L. 89–234, § 1(b) (last sentence), 79 Stat. 903.
	[Uncodified].	1966 Reorg. Plan No. 2, § 5(a), eff. May 10, 1966, 80 Stat. 1609.
5315(18)	[Uncodified].	1966 Reorg. Plan No. 2, § 2 (last 20 words), eff. May 10, 1966, 80 Stat. 1609.
5315(21)	5 App.: 2211(d)(21).	July 5, 1966, Pub. L. 89–492, § 3, 80 Stat. 262.
5315(30)	5 App.: 2211(d)(30).	July 18, 1966, Pub. L. 89–504, § 408(b), 80 Stat. 299.

1967 ACT—CONTINUED

Section of title 5	*Source (U.S. Code)*	*Source (Statutes at Large)*
5315(87), (88).	42: 3533(a) (as applicable to compensation of four Assistant Secretaries and General Counsel).	Sept. 9, 1965, Pub. L. 89–174, §4(a) (as applicable to compensation of four Assistant Secretaries and General Counsel), 79 Stat. 668.
5315(89)	22: 2083(a) (1st sentence, less 1st 20 words).	Feb. 19, 1966, Pub. L. 89–355, §3(a) (1st sentence, less 1st 20 words), 80 Stat. 6.

The deletion of paragraphs (25)–(28) of 5 U.S.C. 5315 reflects the abolition of the positions of ''Commissioner, Community Facilities Administration'', ''Commissioner, Federal Housing Administration'', ''Commissioner, Public Housing Administration'', and ''Commissioner, Urban Renewal Administration'' by the act of September 9, 1965, Public Law 89–174, sections 5(a), 9(c), 79 Stat. 669, 671.

The redesignation of paragraphs (78) and (79), added by Public Law 89–734, and of paragraph (78), added by Public Law 89–779, as paragraphs ''(84)'', ''(85)'', and ''(86)'', respectively, reflects the addition of paragraphs (78)–(83) by section 10(d)(4) of Public Law 89–670.

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

The paragraph designation for the positions added or amended by Pub. L. 96–88 and Pub. L. 96–302 has been omitted in view of the deletion of all paragraph designations in this section by Pub. L. 96–54.

Amendment by Pub. L. 94–237 to formerly designated par. (95) of this section has been editorially made to formerly designated par. (96) of this section relating to the Deputy Director, Office of Drug Abuse Policy, in view of redesignation of par. (95) as (96) by Pub. L. 94–183 as the probable intent of Congress.

AMENDMENTS

1994—Pub. L. 103–354 substituted ''(3)'' for ''(7)'' in item relating to Assistant Secretaries of Agriculture and inserted item relating to Administrator, Rural Utilities Service, Department of Agriculture.

Pub. L. 103–337 substituted ''(11)'' for ''(10)'' in item relating to Assistant Secretaries of Defense.

Pub. L. 103–333 inserted item relating to Commissioner of Labor Statistics, Department of Labor.

Pub. L. 103–296, §108(e)(3), inserted item relating to Inspector General, Social Security Administration.

Pub. L. 103–296, §106(a)(7)(B), struck out item relating to Commissioner of Social Security, Department of Health and Human Services.

Pub. L. 103–272 substituted ''Saint'' for ''St.'' in item relating to Administrator of Saint Lawrence Seaway Development Corporation.

Pub. L. 103–236, §708(b), substituted ''Special Representatives of the President for arms control, nonproliferation, and disarmament matters, United States Arms Control and Disarmament Agency'' for ''Special Representatives for Arms Control and Disarmament Negotiations, United States Arms Control and Disarmament Agency (2)''.

Pub. L. 103–236, §307(b)(2), inserted item relating to Director of the International Broadcasting Bureau, United States Information Agency.

Pub. L. 103–236, §162(d)(2), directed insertion of item relating to 20 Assistant Secretaries of State and 4 other State Department Officials to be appointed by the President, and struck out ''Assistant Secretaries of State (15).'', ''Legal Adviser of the Department of State.'', ''Chief of Protocol, Department of State.'', ''Assistant Secretary for Oceans and International Environmental and Scientific Affairs, Department of State.'', ''Assistant Secretary for International Narcotics Matters, Department of State.'', and ''Assistant Secretary for South Asian Affairs, Department of State.'' New item was inserted in lieu of ''Assistant Secretaries of State (15).'' to reflect the probable intent of Congress.

Pub. L. 103–227 inserted item relating to Director of the Office of Educational Technology.

1993—Pub. L. 103–204 inserted item relating to Inspector General, Federal Deposit Insurance Corporation.

Pub. L. 103–171 substituted ''(6)'' for ''(5)'' in item relating to Assistant Secretaries of Health and Human Services.

Pub. L. 103–160 substituted ''(10)'' for ''(11)'' in item relating to Assistant Secretaries of Defense and struck out item relating to Chief Financial Officer, Department of Defense.

Pub. L. 103–123 inserted item relating to Commissioner of Customs, Department of the Treasury.

1992—Pub. L. 102–359 substituted ''(10)'' for ''(6)'' in item relating to Assistant Secretaries of Education.

Pub. L. 102–325 inserted item relating to Liaison for Community and Junior Colleges, Department of Education.

1991—Pub. L. 102–190, §3504(a), inserted item relating to Administrator of the Panama Canal Commission.

Pub. L. 102–190, §903(a)(1), inserted items relating to General Counsels of the Departments of the Army, Navy, and Air Force.

Pub. L. 102–190, §901(b), inserted item relating to Deputy Under Secretary of Defense for Policy.

Pub. L. 102–183 inserted item relating to Inspector General of Central Intelligence Agency.

Pub. L. 102–180 inserted item relating to Commissioner, Office of Navajo and Hopi Indian Relocation.

Pub. L. 102–138 inserted item relating to Assistant Secretary for South Asian Affairs, Department of State.

1990—Pub. L. 101–576 inserted items relating to Chief Financial Officers of Departments of Agriculture, Commerce, Defense, Education, Energy, Health and Human Services, Housing and Urban Development, the Interior, Justice, Labor, State, Transportation, the Treasury, and Veterans Affairs and Chief Financial Officers of Environmental Protection Agency and National Aeronautics and Space Administration.

Pub. L. 101–512 inserted item relating to Director of the Institute of Museum Services.

Pub. L. 101–509 inserted item relating to Director, Bureau of the Census, Department of Commerce.

Pub. L. 101–319 inserted item relating to Chairman, United States Parole Commission.

1989—Pub. L. 101–189 substituted ''(4)'' for ''(3)'' in item relating to Assistant Secretaries of the Air Force.

Pub. L. 101–73, §742(a)(2), substituted ''Directors, Federal Housing Finance Board'' for ''Members, Federal Home Loan Bank Board''.

Pub. L. 101–73, §501(b)(2)(A), inserted item relating to Inspector General, Resolution Trust Corporation.

1988—Pub. L. 100–690, §7608(e), inserted item relating to Director, United States Marshals Service.

Pub. L. 100–690, §7252(b)(3), inserted item relating to Administrator, Office of Juvenile Justice and Delinquency Prevention.

Pub. L. 100–690, §1007(c)(4), struck out item relating to Deputy Director of Office of Drug Abuse Policy.

Pub. L. 100–690, §§1003(a)(4)(C), 1009, temporarily inserted item relating to Associate Director for National Drug Control Policy, Office of National Drug Control Policy. See Effective and Termination Dates of 1988 Amendments note below.

Pub. L. 100–687 inserted item relating to Chairman, Board of Veterans' Appeals.

Pub. L. 100–679 struck out items relating to Administrator for Federal Procurement Policy and Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget.

Pub. L. 100–607 inserted item relating to Commissioner of Food and Drugs, Department of Health and Human Services.

Pub. L. 100–527 substituted ''Inspector General, Department of Veterans Affairs'' for ''Inspector General, Veterans' Administration'' and inserted items relating to Assistant Secretaries, Department of Veterans Af-

fairs (6), General Counsel, Department of Veterans Affairs, and Director of the National Cemetery System.

Pub. L. 100–504 inserted items relating to Inspectors General for Departments of Commerce, Interior, Justice, and Treasury and for following agencies: Agency for International Development, Environmental Protection Agency, Federal Emergency Management Agency, General Services Administration, National Aeronautics and Space Administration, Nuclear Regulatory Commission, Office of Personnel Management, Railroad Retirement Board, and Small Business Administration.

Pub. L. 100–485 substituted ''(5)'' for ''(4)'' in item relating to Assistant Secretaries of Health and Human Services.

Pub. L. 100–418, §5112(c)(2), substituted ''Director, National Institute of Standards and Technology, Department of Commerce'' for ''Director, National Bureau of Standards, Department of Commerce''.

Pub. L. 100–418, §2301(h), inserted item relating to Assistant Secretary of Commerce and Director General of United States and Foreign Commercial Service.

Pub. L. 100–297 inserted item relating to Commissioner, National Center for Education Statistics.

1987—Pub. L. 100–204 inserted item relating to Ambassadors at Large.

1986—Pub. L. 99–619 substituted ''Assistant Secretaries of Labor (10), one of whom shall be the Assistant Secretary of Labor for Veterans' Employment and Training'' for ''Assistant Secretaries of Labor (5)''.

Pub. L. 99–659 substituted ''Assistant Secretary of Commerce for Oceans and Atmosphere, the incumbent of which also serves as Deputy Administrator of the National Oceanic and Atmospheric Administration'' for ''Deputy Administrator, National Oceanic and Atmospheric Administration'' and struck out item relating to Associate Administrator, National Oceanic and Atmospheric Administration.

Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661, amended section identically, inserting item relating to Director of Defense Research and Engineering.

Pub. L. 99–399, §104(c), substituted ''(15)'' for ''(14)'' in item relating to Assistant Secretaries of State.

Pub. L. 99–399, §§412(c), 413(e), formerly §413(a)(5), as renumbered by Pub. L. 100–204, §134(b), inserted items relating to Inspector General, United States Information Agency, and Inspector General, Department of State.

1985—Pub. L. 99–93, §704(a)(2)(A), struck out item relating to Deputy Director of United States Arms Control and Disarmament Agency.

Pub. L. 99–93, §704(a)(2)(B), inserted item relating to Assistant Directors, United States Arms Control and Disarmament Agency (4).

Pub. L. 99–93, §115(b)(1), struck out item relating to Director, Bureau of Intelligence and Research, Department of State.

Pub. L. 99–93, §115(b)(2), substituted ''(14)'' for ''(13)'' in item relating to Assistant Secretaries of State.

Pub. L. 99–73 inserted item relating to Director, National Bureau of Standards, Department of Commerce.

Pub. L. 99–64 substituted ''(11)'' for ''(8)'' in item relating to Assistant Secretaries of Commerce.

1984—Pub. L. 98–594 substituted ''(7)'' for ''(5)'' in item relating to Assistant Secretaries of the Treasury.

Pub. L. 98–473, §1701(b), struck out items relating to United States Attorney for Southern District of New York, United States Attorney for District of Columbia, United States Attorney for Northern District of Illinois, and United States Attorney for Central District of California.

Pub. L. 98–473, §609J(b), struck out item relating to Administrator of Law Enforcement Assistance.

Pub. L. 98–443 struck out item relating to members of Civil Aeronautics Board.

Pub. L. 98–369 inserted item relating to Administrator of Health Care Financing Administration.

Pub. L. 98–216 substituted ''Assistant Directors of Office of Management and Budget (3)'' for ''Assistant Directors of the Bureau of the Budget (3)''.

1983—Pub. L. 98–202, §6(b)(1), inserted item relating to two Special Representatives for Arms Control and Disarmament Negotiations, United States Arms Control and Disarmament Agency.

Pub. L. 98–202, §6(b)(2), struck out item relating to Special Representative for Arms Control and Disarmament Negotiations, United States Arms Control and Disarmament Agency.

Pub. L. 98–164 struck out item relating to Counselor of Department of State.

Pub. L. 98–94, §1212(d)(1), substituted ''(11)'' for ''(7)'' in item relating to Assistant Secretaries of Defense.

Pub. L. 98–94, §1212(d)(2), substituted ''(5)'' for ''(4)'' in item relating to Assistant Secretaries of the Army.

Pub. L. 98–94, §1212(d)(3), substituted ''(4)'' for ''(3)'' in item relating to Assistant Secretaries of the Navy.

Pub. L. 98–94, §1211(b), inserted item relating to Director of Operational Test and Evaluation, Department of Defense.

Pub. L. 98–80 inserted items relating to Assistant Administrator for Toxic Substances, Environmental Protection Agency, Assistant Administrator, Office of Solid Waste, Environmental Protection Agency, and eight Assistant Administrators, Environmental Protection Agency.

Pub. L. 97–449 substituted ''Deputy Federal Highway Administrator'' for ''Director of Public Roads''.

1982—Pub. L. 97–325 substituted ''(7)'' for ''(6)'' in item relating to Assistant Secretaries of Agriculture.

Pub. L. 97–252 inserted item relating to Inspector General, Department of Defense.

Pub. L. 97–195 substituted ''(8)'' for ''(7)'' in item relating to Assistant Secretaries of Commerce.

1981—Pub. L. 97–98 substituted ''(6)'' for ''(5)'' in item relating to Assistant Secretaries of Agriculture.

Pub. L. 97–35 struck out item relating to Director, Office of Self-Help Development and Technical Assistance, National Consumer Cooperative Bank.

Pub. L. 97–31 substituted ''(7)'' for ''(8)'' in item relating to Assistant Secretaries of Commerce.

1980—Pub. L. 96–511 inserted item relating to Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget.

Pub. L. 96–302 inserted item relating to Chief Counsel for Advocacy, Small Business Administration.

1979—Pub. L. 96–157 inserted items relating to Administrator of Law Enforcement Assistance, Director of National Institute of Justice, and Director of Bureau of Justice Statistics, and struck out items relating to Deputy Administrator for Policy Development and Deputy Administrator for Administration of Law Enforcement Assistance Administration.

Pub. L. 96–88, §508(g), substituted ''Health and Human Services'' for ''Health, Education, and Welfare'' in items relating to General Counsel of Department of Health and Human Services, Commissioner of Social Security, Department of Health and Human Services, and Inspector General, Department of Health and Human Services.

Pars. (1) to (128). Pub. L. 96–54 struck out paragraph designations for positions listed herein.

Pars. (13) to (16). Pub. L. 96–107 in par. (13), relating to Assistant Secretaries of Defense, substituted ''(7)'' for ''(9)'', par. (14), relating to Assistant Secretaries of the Air Force, ''(3)'' for ''(4)'', par. (15), relating to Assistant Secretaries of the Army, ''(4)'' for ''(5)'', and par. (16), relating to Assistant Secretaries of the Navy, ''(3)'' for ''(4)''.

Par. (17). Pub. L. 96–88, §508(e)(1), substituted ''(4)'' for ''(5)'' and ''Health and Human Services'' for ''Health, Education, and Welfare'' in par. (17) relating to Assistant Secretaries of Health and Human Services. See Codification note above.

Par. (19). Pub. L. 96–132 in par. (19), relating to Assistant Attorneys General, increased authorized number from nine to ten.

Par. (24). Pub. L. 96–39 inserted ''(5)'' at end of par. (24) relating to Members, United States International Trade Commission.

Pars. (25) to (27). Pub. L. 96–88, §508(e)(2), added pars. (25) to (27) relating to Assistant Secretaries of Education (6), General Counsel, Department of Education,

and Inspector General, Department of Education, respectively. See Codification note above.

Par. (91). Pub. L. 96–153 substituted ''Federal Emergency Management Agency'' for ''Department of Housing and Urban Development'' in par. (91), relating to Federal Insurance Administrator, Federal Emergency Management Agency.

Par. (128). Pub. L. 96–53 added par. (128) relating to Deputy Director, Institute for Scientific and Technological Cooperation.

1978—Par. (10). Pub. L. 95–426, §114(b)(2), struck out par. (10) relating to Deputy Under Secretary of State.

Par. (66). Pub. L. 95–454, §202(c)(2), substituted ''Merit Systems Protection Board'' for ''United States Civil Service Commission''.

Par. (93). Pub. L. 95–630 substituted ''Members, National Credit Union Administration Board (2)'' for ''Administrator of the National Credit Union Administration''.

Par. (122). Pub. L. 95–452 added par. (122) relating to Inspector General, Department of Health, Education, and Welfare.

Pub. L. 95–426, §115(b)(1), added par. (122) relating to Assistant Secretary for International Narcotics Matters, Department of State.

Pub. L. 95–351 added par. (122) relating to President, National Consumer Cooperative Bank.

Par. (123). Pub. L. 95–454, §202(c)(3), added par. (123) relating to Special Counsel of Merit Systems Protection Board.

Pub. L. 95–452 added par. (123) relating to Inspector General, Department of Agriculture.

Pub. L. 95–351 added par. (123) relating to Director, Office of Self-Help Development and Technical Assistance, National Consumer Cooperative Bank.

Par. (124). Pub. L. 95–454, §703(d), added par. (124) relating to Chairman of Federal Labor Relations Authority.

Pub. L. 95–452 added par. (124) relating to Inspector General, Department of Housing and Urban Development.

Pars. (125) to (127). Pub. L. 95–452 added pars. (125) to (127) relating to Inspectors General for Department of Labor, Department of Transportation, and Veterans' Administration, respectively.

1977—Par. (1). Pub. L. 95–105, §109(d)(1), struck out par. (1) relating to Administrator, Bureau of Security and Consular Affairs, Department of State.

Par. (12). Pub. L. 95–173 substituted ''(8)'' for ''(6)'' in par. (12) relating to Assistant Secretaries of Commerce.

Par. (22). Pub. L. 95–105, §109(d)(2), substituted ''(13)'' for ''(11)'' in par. (22) relating to Assistant Secretaries of State.

Par. (50). Pub. L. 95–108 added par. (50) relating to Special Representative for Arms Control and Disarmament Negotiations, United States Arms Control and Disarmament Agency. A prior par. (50), relating to General Manager of Atomic Energy Commission, was repealed by Pub. L. 93–438, title III, §310(3), Oct. 11, 1974, 88 Stat. 1253.

Pars. (52), (53). Pub. L. 95–88 struck out par. (52) relating to Inspector General, Foreign Assistance, and par. (53) relating to Deputy Inspector General, Foreign Assistance.

Par. (60). Pub. L. 95–91 substituted ''Federal Energy Regulatory Commission'' for ''Federal Power Commission'' in par. (60) relating to Members, Federal Energy Regulatory Commission.

Par. (102). Pub. L. 95–91 struck out par. (102) relating to Assistant Administrators, Energy Research and Development Administration (6).

Pars. (114) to (119). Pub. L. 95–91 added pars. (114) to (119) relating to Assistant Secretaries of Energy (8), General Counsel of Department of Energy, Administrator, Economic Regulatory Administration, Department of Energy, Administrator, Energy Information Administration, Department of Energy, Inspector General, Department of Energy, and Director, Office of Energy Research, Department of Energy, respectively.

Pars. (120), (121). Pub. L. 95–164 added pars. (120) and (121) relating to Assistant Secretary of Labor for Mine Safety and Health and Members, Federal Mine Safety and Health Review Commission, respectively.

1976—Par. (11). Pub. L. 94–561 substituted ''(5)'' for ''(4)'' in par. (11) relating to Assistant Secretaries of Agriculture.

Par. (96). Pub. L. 94–237 substituted ''Deputy Director of the Office of Drug Abuse Policy'' for ''Deputy Director of the Special Action Office for Drug Abuse Prevention''.

Par. (108). Pub. L. 94–375 added par. (108) relating to President, Government National Mortgage Association, Department of Housing and Urban Development.

Par. (109). Pub. L. 94–461 added par. (109) relating to Deputy Administrator, National Oceanic and Atmospheric Administration.

Pub. L. 94–503 added par. (109) relating to Commissioner of Immigration and Naturalization.

Par. (110). Pub. L. 94–461 added par. (110) relating to Associate Administrator, National Oceanic and Atmospheric Administration.

Pub. L. 94–503 added par. (110) relating to United States Attorney for Northern District of Illinois.

Pars. (111) to (113). Pub. L. 94–503 added pars. (111) to (113) relating to United States Attorney for Central District of California, Director, Bureau of Prisons, Department of Justice, and Deputy Administrator for Administration of the Law Enforcement Assistance Administration, respectively.

1975—Pub. L. 94–82 substituted provisions applying level IV of Executive Schedule to positions for which annual rate of basic pay shall be rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title, for provisions applying such level IV to positions for which annual rate of basic pay is $28,750.

Par. (24). Pub. L. 93–618 substituted ''Members, United States International Trade Commission'' for ''Chairman of the United States Tariff Commission''.

Par. (31). Pub. L. 94–123 repealed par. (31) relating to Deputy Chief Medical Director in Department of Medicine and Surgery, Veterans' Administration.

Pars. (93) to (107). Pub. L. 94–183 redesignated par. (92) Administrator of the National Credit Union Administration, par. (93) Members, Postal Rate Commission, par. (94) Members, Occupational Safety and Health Review Commission, par. (95) Deputy Director of the Special Action Office for Drug Abuse Prevention, par. (96) Deputy Under Secretaries of the Treasury (or Assistant Secretaries of the Treasury), par. (97) Members, Consumer Product Safety Commission, par. (97) Commissioner of Social Security, Department of Health, Education, and Welfare, par. (99) Assistant Secretary for Oceans and International Environmental and Scientific Affairs, Department of State, par. (100) Administrator for Federal Procurement Policy, par. (100) Assistant Administrators, Energy Research and Development Administration, par. (100) Members, Commodity Futures Trading Commission, par. (101) Director of Nuclear Reactor Regulation, Nuclear Regulatory Commission, par. (102) Director of Nuclear Material Safety and Safeguards, Nuclear Regulatory Commission, par. (103) Director of Nuclear Regulatory Research, Nuclear Regulatory Commission, par. (104) Executive Director for Operations, Nuclear Regulatory Commission, as pars. (93) to (107), respectively.

1974—Par. (50). Pub. L. 93–438 struck out par. (50) relating to General Manager of Atomic Energy Commission.

Par. (87). Pub. L. 93–383 increased number of Assistant Secretaries of Housing and Urban Development from 6 to 8.

Par. (99). Pub. L. 93–126, §9(b), as added by Pub. L. 93–312, added par. (99) relating to Assistant Secretary for Oceans and International Environmental and Scientific Affairs, Department of State.

Par. (100). Pub. L. 93–463 added par. (100) relating to Members, Commodity Futures Trading Commission.

Pub. L. 93–438 added par. (100) relating to Assistant Administrators, Energy Research and Development Administration.

Pub. L. 93–400 added par. (100) relating to Administrator for Federal Procurement Policy.

Pars. (101) to (104). Pub. L. 93–438 added pars. (101) to (104) relating to Director of Nuclear Reactor Regulation, Director of Nuclear Material Safety and Safeguards, Director of Nuclear Regulatory Research, and Executive Director for Operations, respectively, of Nuclear Regulatory Commission.

1973—Par. (90). Pub. L. 93–83 substituted ''Deputy Administrator for Policy Development of the Law Enforcement Assistance Administration'' for ''Associate Administrator of Law Enforcement Assistance (2)''.

1972—Par. (10). Pub. L. 92–352 substituted ''Secretary of State'' for ''Secretaries of State (2)''.

Par. (11). Pub. L. 92–419 substituted ''(4)'' for ''(3)'' in par. (11) relating to Assistant Secretaries of Agriculture.

Par. (23). Pub. L. 92–302, §2(c)(1), substituted ''(5)'' for ''(4)'' in par. (23) relating to Assistant Secretaries of the Treasury.

Par. (72). Pub. L. 92–261 substituted ''Members, Equal Employment Opportunity Commission (4)'' for ''Chairman, Equal Employment Opportunity Commission''.

Par. (95). Pub. L. 92–255 added par. (95) relating to Deputy Director of Special Action Office for Drug Abuse Prevention.

Par. (96). Pub. L. 92–302, §2(c)(2), added par. (96) relating to Deputy Under Secretaries of the Treasury (or Assistant Secretaries of the Treasury) (2).

Par. (97). Pub. L. 92–603 added par. (97) relating to Commissioner of Social Security, Department of Health, Education, and Welfare.

Pub. L. 92–573 added par. (97) relating to Members, Consumer Product Safety Commission (4).

1971—Par. (13). Pub. L. 92–215 substituted ''(9)'' for ''(8)'' in par. (13) relating to Assistant Secretaries of Defense.

Par. (18). Pub. L. 92–22 substituted ''(6)'' for ''(5)'' in par. (18) relating to Assistant Secretaries of the Interior.

Par. (51). Pub. L. 92–181 struck out par. (51) relating to Governor of Farm Credit Administration.

Par. (90). Pub. L. 91–644, §7(1), (2), in amending section 505 of Pub. L. 90–351, struck out par. (90) ''Administrator of Law Enforcement Assistance'', renumbered as par. (55) of section 5314 of this title, and renumbered par. (126) ''Associate Administrator of Law Enforcement Assistance (2)'' of section 5316 of this title as par. (90) of this section, respectively.

1970—Par. (12). Pub. L. 91–477 substituted ''(6)'' for ''(5)'' in par. (12) relating to Assistant Secretaries of Commerce. Pub. L. 91–469 also substituted ''(6)'' for ''(5)'' in par. (12). Thus, the correct figure in par. (12) presumably should be seven. See amendment of par. (12) by Pub. L. 95–173 above.

Par. (15). Pub. L. 91–611 substituted ''(5)'' for ''(4)'' in par. (15) relating to Assistant Secretaries of the Army.

Par. (20). Pub. L. 91–596, §29(b), substituted ''(5)'' for ''(4)'' in par. (20) relating to Assistant Secretaries of Labor.

Pars. (21), (45). Pub. L. 91–375, §6(c)(14)(A), struck out pars. (21) and (45) relating to Assistant Postmasters General (6) and General Counsel of Post Office Department, respectively.

Par. (92). Pub. L. 91–206 added par. (92) relating to Administrator of National Credit Union Administration.

Par. (93). Pub. L. 91–375, §6(c)(14)(B), added par. (93) relating to Members, Postal Rate Commission (4).

Par. (94). Pub. L. 91–596, §12(c)(2), added par. (94) relating to Members, Occupational Safety and Health Review Commission.

1969—Par. (13). Pub. L. 91–121 substituted ''(8)'' for ''(7)'' in par. (13) relating to Assistant Secretaries of Defense.

Par. (92). Pub. L. 91–175 added par. (92) relating to Executive Vice President, Overseas Private Investment Corporation.

1968—Pars. (14) to (16). Pub. L. 90–623 substituted ''(4)'' for ''(3)'' in pars. (14) to (16) relating to Assistant Secretaries of Air Force, Army, and Navy respectively.

Par. (87). Pub. L. 90–448, §1708(b), substituted ''(6)'' for ''(4)'' in par. (87) relating to Assistant Secretaries of Housing and Urban Development.

Par. (90). Pub. L. 90–351 added par. (90) relating to Administrator of Law Enforcement Assistance.

Par. (91). Pub. L. 90–448, §1105(b), added par. (91) relating to Federal Insurance Administrator, Department of Housing and Urban Development.

1967—Pub. L. 90–206 increased annual rate of basic pay from $27,000 to $28,750.

1966—Pub. L. 89–779 added par. (78) relating to Deputy Administrator of Small Business Administration.

Pub. L. 89–734 added par. (78) relating to Assistant Secretary for Science, Smithsonian Institution, and par. (79) relating to Assistant Secretary for History and Art, Smithsonian Institution.

Pub. L. 89–670 added par. (78) relating to Members, National Transportation Safety Board, par. (79) relating to General Counsel, Department of Transportation, and pars. (80) to (83), and repealed par. (2) which provided for Deputy Administrator of Federal Aviation Agency, subject to the provisions of section 1657 of former Title 49, Transportation.

CHANGE OF NAME

''Export-Import Bank of Washington'', referred to in items relating to First Vice President and Members, was changed to ''Export-Import Bank of the United States'' in the Export-Import Bank Act of 1945, section 635 et seq. of Title 12, Banks and Banking, as provided for in section 1(a) of Pub. L. 90–267, Mar. 13, 1968, 82 Stat. 47.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 108(b) of Pub. L. 103–123 provided that: ''The amendments made by this section [amending this section and section 5316 of this title] shall take effect on the first applicable pay period after enactment [Oct. 28, 1993].''

EFFECTIVE DATE OF 1992 AMENDMENTS

Amendment by Pub. L. 102–552 effective Jan. 1, 1996, see section 201(c)(1) of Pub. L. 102–552, set out as an Effective Date of 1992 Amendment; Transitional Provision note under section 2277a–2 of Title 12, Banks and Banking.

Section 2(b)(3) of Pub. L. 102–359 provided that: ''The amendments made by paragraphs (1) and (2) [amending this section and section 5316 of this title] shall take effect on the first day of the first pay period that begins on or after the date of the enactment of this Act [Aug. 26, 1992].''

Amendment by Pub. L. 102–325 effective Oct. 1, 1992, see section 2 of Pub. L. 102–325, set out as a note under section 1001 of Title 20, Education.

EFFECTIVE DATE OF 1991 AMENDMENT

Section 122(d)(2) of Pub. L. 102–138 provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect on October 1, 1991.''

EFFECTIVE DATE OF 1990 AMENDMENTS

Amendment by Pub. L. 101–512 effective Oct. 1, 1990, see section 318 [title IV, §403(a)] of Pub. L. 101–512, set out as a note under section 951 of Title 20, Education.

Amendment by Pub. L. 101–509 effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title III, §305] of Pub. L. 101–509, set out as a note under section 5301 of this title.

EFFECTIVE AND TERMINATION DATES OF 1988 AMENDMENTS

Amendment by sections 1003(a)(4)(C) and 1007(c)(4) of Pub. L. 100–690 effective Jan. 21, 1989, and amendment by section 1003(a)(4)(C) of Pub. L. 100–690 repealed on date 5 years after Nov. 18, 1988, see section 1506 of Title 21, Food and Drugs, and section 1012 of Pub. L. 100–690,

set out as an Effective Date note under section 1501 of Title 21.

Amendment by section 7252(b)(3) of Pub. L. 100–690 effective Oct. 1, 1988, see section 7296(a) of Pub. L. 100–690, set out as a note under section 5601 of Title 42, The Public Health and Welfare.

Section 201(b)(2) of Pub. L. 100–687 provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect when the President first appoints an individual as Chairman of the Board of Veterans' Appeals under section 4001(b)(1) [now 7101(b)(1)] of title 38, United States Code (as amended by subsection (a)).''

Amendment by Pub. L. 100–679 effective Jan. 20, 1989, see section 11(e) of Pub. L. 100–679, set out as a note under section 5312 of this title.

Amendment by Pub. L. 100–527 effective Mar. 15, 1989, see section 18(a) of Pub. L. 100–527, set out as a Department of Veterans Affairs Act note under section 301 of Title 38, Veterans' Benefits.

Amendment by Pub. L. 100–504 effective 180 days after Oct. 18, 1988, see section 113 of Pub. L. 100–504, set out as a note under section 5 of Pub. L. 95–452 [Inspector General Act of 1978] in the Appendix to this title.

Amendment by Pub. L. 100–485 effective Feb. 1, 1989, see section 603(c) of Pub. L. 100–485, set out as an Effective Date note under section 617 of Title 42, The Public Health and Welfare.

Amendment by Pub. L. 100–297 effective July 1, 1988, but with amendments authorizing appropriations for fiscal year 1988 effective Apr. 28, 1988, see section 6303 of Pub. L. 100–297, set out as an Effective Date note under section 2701 of Title 20, Education.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–204 effective 30 days after Dec. 22, 1987, but not to affect salary of any individual holding rank of Ambassador at Large immediately before Dec. 22, 1987, during the period such individual continues to serve in such position, see section 178(b) of Pub. L. 100–204, set out as a note under section 5313 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–619 applicable to incumbent Assistant Secretary of Labor for Veterans' Employment on Nov. 6, 1986, serving after such date, see section 2(f)(2) of Pub. L. 99–619, set out as a Present Incumbent note under section 553 of Title 29, Labor.

EFFECTIVE DATE OF 1985 AMENDMENTS

Section 6(c) of Pub. L. 99–73 provided that: ''The amendments made by this section [amending this section and section 5316 of this title and section 274 of Title 15, Commerce and Trade] shall be effective October 1, 1985.''

Amendment by Pub. L. 99–64 effective Oct. 1, 1987, see section 116(d) of Pub. L. 99–64, set out as a note under section 5314 of this title.

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by section 609J of Pub. L. 98–473 effective Oct. 12, 1984, see section 609AA of Pub. L. 98–473, set out as an Effective Date note under section 3711 of Title 42, The Public Health and Welfare.

Amendment by Pub. L. 98–443 effective Jan. 1, 1985, see section 9(v) of Pub. L. 98–443, set out as a note under section 5314 of this title.

Amendment by Pub. L. 98–369 applicable to appointments made after July 18, 1984, see section 2332(c) of Pub. L. 98–369, set out as an Effective Date note under section 1317 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 1211(b) of Pub. L. 98–94 effective Nov. 1, 1983, see section 1211(c) of Pub. L. 98–94, set out as an Effective Date note under section 139 of Title 10, Armed Forces.

Amendment by section 1212(d) of Pub. L. 98–94 effective Oct. 1, 1983, see section 1212(e) of Pub. L. 98–94, set out as a note under section 138 of Title 10.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–325 effective Oct. 15, 1982, see section 8(e) of Pub. L. 97–325.

EFFECTIVE DATE OF 1981 AMENDMENTS

Amendment by Pub. L. 97–98 effective Dec. 22, 1981, see section 1801 of Pub. L. 97–98, set out as an Effective Date note under section 4301 of Title 7, Agriculture.

Amendment by Pub. L. 97–35 effective on day after Final Government Equity Redemption Date, see section 396(i) of Pub. L. 97–35, set out as a note under section 3011 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1980 AMENDMENTS

Amendment by Pub. L. 96–511 effective Apr. 1, 1981, see section 5 of Pub. L. 96–511, set out as an Effective Date note under section 3501 of Title 44, Public Printing and Documents.

Amendment by Pub. L. 96–302 effective Oct. 1, 1980, see section 507 of Pub. L. 96–302, set out as a note under section 631 of Title 15, Commerce and Trade.

EFFECTIVE DATE OF 1979 AMENDMENTS

Amendment by Pub. L. 96–88 effective May 4, 1980, with specified exceptions, see section 601 of Pub. L. 96–88, set out as an Effective Date note under section 3401 of Title 20, Education.

Amendment by Pub. L. 96–54 effective Jan. 1, 1980, see section 2(a)(25)(B) of Pub. L. 96–54, set out as a note under section 5312 of this title.

Amendment by Pub. L. 96–53 effective Oct. 1, 1979, see section 512(a) of Pub. L. 96–53, set out as a note under section 2151 of Title 22, Foreign Relations and Intercourse.

Amendment by Pub. L. 96–39 effective July 26, 1979, see section 1114 of Pub. L. 96–39, set out as an Effective Date note under section 2581 of Title 19, Customs Duties.

EFFECTIVE DATE OF 1978 AMENDMENTS

Amendment by Pub. L. 95–630 effective on expiration of 120 days after Nov. 10, 1978, see section 509 of Pub. L. 95–630, set out as a note under section 1752 of Title 12, Banks and Banking.

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

Amendment by Pub. L. 95–452 effective Oct. 1, 1978, see section 12 of Pub. L. 95–452 set out in the Appendix to this title.

Amendment by section 114(b)(2) of Pub. L. 95–426 effective Oct. 1, 1978, see section 114(c) of Pub. L. 95–426, set out as a note under section 5314 of this title.

Section 115(b)(2) of Pub. L. 95–426 provided that: ''The amendment made by paragraph (1) of this subsection [amending this section] shall take effect on October 1, 1978.''

EFFECTIVE DATE OF 1977 AMENDMENTS

Amendment by Pub. L. 95–164 effective 120 days after Nov. 9, 1977, except as otherwise provided, see section 307 of Pub. L. 95–164, set out as a note under section 801 of Title 30, Mineral Lands and Mining.

Amendment by Pub. L. 95–88 effective July 1, 1978, see section 124(c) of Pub. L. 95–88, set out as a note under section 2384 of Title 22, Foreign Relations and Intercourse.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–123 effective Oct. 12, 1975, see section 6(a) of Pub. L. 94–123, set out as a note under section 5314 of this title.

EFFECTIVE DATE OF 1974 AMENDMENTS

Amendment by Pub. L. 93–463 effective Oct. 23, 1974, see section 418 of Pub. L. 93–463, set out as a note under section 2 of Title 7, Agriculture.

Amendment by Pub. L. 93–438 effective 120 days after Oct. 11, 1974, or on such earlier date as President may

prescribe and publish in Federal Register, except that officers provided for in sections 5811–5820 of Title 42, The Public Health and Welfare, may be nominated and appointed at any time after Oct. 11, 1974, see section 312(a) of Pub. L. 93–438, set out as an Effective Date; Interim Appointments note under section 5801 of Title 42.

EFFECTIVE DATE OF 1973 AMENDMENT

Offices and salaries modified under amendment by Pub. L. 93–83, prospectively only, effective on and after Aug. 6, 1973, see section 3 of Pub. L. 93–83, Aug. 6, 1973, 83 Stat. 218.

EFFECTIVE DATE OF 1972 AMENDMENTS

Section 404(c) of Pub. L. 92–603 provided that: ''The amendments made by the preceding provisions of this section [amending this section and section 5316 of this title] shall take effect on the first day of the first pay period of the Commissioner of Social Security, Department of Health, Education, and Welfare, which commences on or after the first day of the month which follows the month in which this Act is enacted [Oct. 30, 1972].''

Amendment by Pub. L. 92–302 effective May 18, 1972, see section 3 of Pub. L. 92–302, May 18, 1972, 86 Stat. 149.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–375 effective within 1 year after Aug. 12, 1970, on date established therefor by Board of Governors of United States Postal Service and published by it in Federal Register, see section 15(a) of Pub. L. 91–375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–623 intended to restate without substantive change the law in effect on Oct. 22, 1968, see section 6 of Pub. L. 90–623, set out as a note under section 5334 of this title.

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90–206 effective at beginning of first pay period which begins on or after Dec. 16, 1967, see section 220(a)(3) of Pub. L. 90–206, set out as a note under section 603 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–670 effective Apr. 1, 1967, as prescribed by President and published in Federal Register, see section 16(a), formerly §15(a), of Pub. L. 89–670 and Ex. Ord. No. 11340, Mar. 30, 1967, 32 F.R. 5453.

REPEALS

Pub. L. 93–496, §16(c), Oct. 28, 1974, 88 Stat. 1533, cited as a credit to this section, was repealed by Pub. L. 97–449, §7(b), Jan. 12, 1983, 96 Stat. 2444.

TRANSFER OF FUNCTIONS

Office of Emergency Preparedness, including offices of Director, Deputy Director, Assistant Directors, and Regional Directors, abolished and functions, vested by law in Office of Emergency Preparedness or Director of Office of Emergency Preparedness transferred to President by sections 1 and 3(a)(1) of 1973 Reorg. Plan No. 1, effective July 1, 1973, set out in the Appendix to this title.

Office of Deputy Director of Office of Science and Technology abolished and functions vested by law in such office transferred to Director of National Science Foundation by sections 2 and 3(a)(5) of 1973 Reorg. Plan No. 1, effective July 1, 1973, set out in the Appendix to this title.

UNITED STATES INFORMATION AGENCY

United States Information Agency, including Office of Deputy Director, referred to in text, abolished and replaced by International Communication Agency pursuant to Reorg. Plan No. 2 of 1977, 42 F.R. 62461, 91 Stat. 1636, set out in Appendix to this title, effective on or before July 1, 1978, at such time as specified by the President. International Communication Agency redesignated United States Information Agency by section 303 of Pub. L. 97–241, title III, Aug. 24, 1982, 96 Stat. 291, set out as a note under section 1461 of Title 22, Foreign Relations and Intercourse.

ABOLITION OF ONE POSITION OF ASSISTANT ADMINISTRATOR, AGENCY FOR INTERNATIONAL DEVELOPMENT

One of the 6 positions of Assistant Administrator, Agency for International Development, provided for in this section, was abolished by Reorg. Plan No. 2 of 1979, §7, 44 F.R. 41165, 93 Stat. 1378, set out in the Appendix to this title.

COMPENSATION OF DEPUTY ADMINISTRATOR OF DRUG ENFORCEMENT ADMINISTRATION

Section 6153(c) of Pub. L. 100–690 provided that: ''The Deputy Administrator of the Drug Enforcement Administration shall receive compensation at the rate now or hereafter prescribed by law for positions of Level IV of the Executive Schedule Pay Rate (5 U.S.C. 5315).''

TEMPORARY INCREASE IN NUMBER OF ASSISTANT SECRETARIES OF DEFENSE

Number of Assistant Secretaries of Defense authorized at level IV of Executive Schedule under this section to be increased by one (to a total of 12) until Jan. 20, 1989, see section 1311 of Pub. L. 100–180, set out as a note under section 138 of Title 10, Armed Forces.

ASSOCIATE DIRECTOR OF FEDERAL BUREAU OF INVESTIGATION

Position of Associate Director of Federal Bureau of Investigation placed temporarily in level III during incumbency of incumbent on Aug. 14, 1964, by Pub. L. 88–426, Aug. 14, 1964, §303(c)(46), 78 Stat. 417.

SALARY INCREASES

1995—Salaries of positions at level IV continued at $115,700 per annum by Ex. Ord. No. 12944, Dec. 28, 1994, 60 F.R. 309, set out as a note under section 5332 of this title.

1993—Salaries of positions at level IV increased to $115,700 per annum, effective on the first day of the first pay period beginning on or after Jan. 1, 1993, as provided by Ex. Ord. No. 12826, Dec. 30, 1992, 57 F.R. 62909.

1992—Salaries of positions at level IV increased to $112,100 per annum, effective on the first day of the first pay period beginning on or after Jan. 1, 1992, as provided by Ex. Ord. No. 12786, Dec. 26, 1991, 56 F.R. 67453.

1991—Salaries of positions at level IV increased to $108,300 per annum, effective on the first day of the first pay period beginning on or after Jan. 1, 1991, as provided by Ex. Ord. No. 12736, Dec. 12, 1990, 55 F.R. 51385.

1990—Salaries of positions at level IV increased to $83,600 per annum, effective on the first day of the first pay period beginning on or after Jan. 1, 1990, and continued at that rate by Ex. Ord. No. 12698, Dec. 23, 1989, 54 F.R. 53473.

1989—Salaries of positions at level IV increased to $80,700 per annum, effective on the first day of the first pay period beginning on or after Jan. 1, 1989, see Ex. Ord. No. 12663, Jan. 6, 1989, 54 F.R. 791.

1988—Salaries of positions at level IV continued at $77,500 per annum by Ex. Ord. No. 12622, Dec. 31, 1987, 53 F.R. 222.

1987—Salaries of positions at level IV increased to $77,500 per annum, on recommendation of the President of the United States, see note set out under section 358 of Title 2, The Congress.

Salaries of positions at level IV increased to $74,500 per annum, effective on the first day of the first pay period beginning on or after Jan. 1, 1987, as provided by Ex. Ord. No. 12578, Dec. 31, 1986, 52 F.R. 505.

1985—Salaries of positions at level IV increased to $72,300 per annum, effective on the first day of the first

pay period beginning on or after Jan. 1, 1985, as provided by Ex. Ord. No. 12496, Dec. 28, 1984, 50 F.R. 211, as amended by Ex. Ord. No. 12540, Dec. 30, 1985, 51 F.R. 577.

1984—Salaries of positions at level IV increased to $69,900 per annum, effective on the first day of the first pay period beginning on or after Jan. 1, 1984, as provided by Ex. Ord. No. 12456, Dec. 30, 1983, 49 F.R. 347, as amended Ex. Ord. No. 12477, May 23, 1984, 49 F.R. 22041; Ex. Ord. No. 12487, Sept. 14, 1984, 49 F.R. 36493.

1982—Salaries of positions at level IV increased to $67,200 per annum, effective on the first day of the first pay period beginning on or after Oct. 1, 1982, as provided by Ex. Ord. No. 12387, Oct. 8, 1982, 47 F.R. 44981. Ex. Ord. No. 12387 further provided that pursuant to section 101(e) of Pub. L. 97–276 funds are not available to pay a salary at a rate which exceeds the rate in effect on Sept. 30, 1982, which was $58,500.00

Maximum rate payable after Dec. 17, 1982, increased from $58,500.00 to $67,200.00, see Pub. L. 97–377, title I, § 129(b)–(d), Dec. 21, 1982, 96 Stat. 1914, set out as a note under section 5318 of this title.

Limitations on use of funds for fiscal year ending Sept. 30, 1983, appropriated by any Act to pay the salary or pay of any individual in legislative, executive, or judicial branch in position equal to or above level V of the Executive Schedule, see section 101(e) of Pub. L. 97–276, as amended, set out as a note under section 5318 of this title.

1981—Salaries of positions at level IV increased to $64,600 per annum, effective on the first day of the first pay period beginning on or after Oct. 1, 1981, as provided by Ex. Ord. No. 12330, Oct. 15, 1981, 46 F.R. 50921. Ex. Ord. No. 12330 further provided that pursuant to section 101(c) of Pub. L. 97–51 funds are not available to pay a salary at a rate which exceeds the rate in effect on Sept. 30, 1981, which was $52,750.00.

Limitations on use of funds for fiscal year ending Sept. 30, 1982, appropriated by any Act to pay the salary or pay of any individual in legislative, executive, or judicial branch in position equal to or above level V of the Executive Schedule, see sections 101(g) and 141 of Pub. L. 97–92, set out as a note under section 5318 of this title.

1980—Salaries of positions at level IV increased to $61,600 per annum, effective on the first day of the first pay period beginning on or after Oct. 1, 1980, as provided by Ex. Ord. No. 12248, Oct. 16, 1980, 45 F.R. 69199. Ex. Ord. No. 12248, further provided that pursuant to section 101(c) of Pub. L. 96–369, funds are not available to pay a salary at a rate which exceeds the rate in effect on Sept. 30, 1980, which was $52,750.

Limitations on use of funds for fiscal year ending Sept. 30, 1981, appropriated by any Act to pay the salary or pay of any individual in legislative, executive, or judicial branch in position equal to or above level V of the Executive Schedule, see section 101(c) of Pub. L. 96–536, as amended, set out as a note under section 5318 of this title.

1979—Salaries of positions at level IV increased to $56,500 per annum, effective on the first day of the first pay period beginning on or after Oct. 1, 1979, as provided by Ex. Ord. No. 12165, Oct. 9, 1979, 44 F.R. 58671, as amended by Ex. Ord. No. 12200, Mar. 12, 1980, 45 F.R. 16443. Ex. Ord. No. 12165 further provided that pursuant to section 101(c) of Pub. L. 96–86 funds appropriated for fiscal year 1980 may not be used to pay a salary at a rate which exceeds an increase of 5.5 percent over the rate in effect on Sept. 30, 1978, which is a maximum rate payable of $52,750.

Applicability to funds appropriated by any Act for fiscal year ending Sept. 30, 1980, of limitation of section 304 of Pub. L. 95–391 on use of funds to pay the salary or pay of any individual in legislative, executive, or judicial branch in position equal to or above level V of the Executive Schedule, see section 101 of Pub. L. 96–86, set out as a note under section 5318 of this title.

1978—Salaries of positions at level IV increased to $52,800 per annum, effective in the first pay period beginning on or after Oct. 1, 1978, as provided by Ex. Ord. No. 12087, Oct. 7, 1978, 43 F.R. 46823. Ex. Ord. No. 12087, further provided that pursuant to the Legislative Branch Appropriation Act, 1979, funds are not available to pay a salary at a rate which exceeds the rate in effect on Sept. 30, 1978, which was $50,000.

Limitations on use of funds for fiscal year ending Sept. 30, 1979, appropriated by any Act to pay the salary or pay of any individual in legislative, executive, or judicial branch in position equal or above level V of the Executive Schedule, see section 304 of Pub. L. 95–391 and section 613 of Pub. L. 95–429, set out as a note under section 5318 of this title.

1977—Salaries of positions at level IV increased to $50,000 per annum, on recommendation of the President of the United States, see note set out under section 358 of Title 2, The Congress.

1976—Salaries of positions at level IV increased to $41,800 per annum, effective on the first day of the first pay period beginning on or after Oct. 1, 1976, see Ex. Ord. No. 11941, Oct. 1, 1976, 41 F.R. 43889. Ex. Ord. No. 11941, further provided that pursuant to the Legislative Branch Appropriation Act, 1977, funds are not available to pay a salary at a rate which exceeds the rate in effect on Sept. 30, 1976, which was $39,900.

1975—Salaries of positions at level IV increased to $39,900 per annum, effective on the first day of the first pay period beginning on or after Oct. 1, 1975, by Ex. Ord. No. 11883, Oct. 6, 1975, 40 F.R. 47091.

1969—Salaries of positions at level IV increased from $28,750 to $38,000 per annum, commencing on the first day of the pay period which begins after February 14, 1969, on recommendation of the President of the United States, see note set out under section 358 of Title 2, The Congress.

PAY INCREASE; EFFECTIVE DATE

Persons occupying a position under the Executive Schedule on May 18, 1972, and later appointed to a position created or authorized by Pub. L. 92–302, not eligible to an increase in basic pay until Jan. 21, 1973, see section 3(c) of Pub. L. 92–302, May 18, 1972, 86 Stat. 149.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5317, 5377, 5380, 8432 of this title; title 2 sections 61d, 136a–2, 285e, 286e, 288, 437c, 474, 601; title 7 section 5902; title 10 sections 973, 2359, 2837; title 12 sections 1422b, 2242, 2277a–2; title 15 sections 274, 790b, 1507c, 2204; title 16 section 3181; title 17 section 701; title 18 section 207; title 19 section 2171; title 20 sections 76k, 1221e–1, 3501, 3503, 5603, 5608, 9002; title 22 sections 286a, 290f, 290h–5, 2651a, 2882, 3506, 3961, 6203, 6207; title 25 sections 2704, 3505; title 26 section 3121; title 28 sections 332, 548, 587, 594, 603; title 29 sections 792, 2215; title 30 sections 1121, 1211; title 31 section 731; title 36 section 169j–5; title 38 section 7404; title 40 section 206–1; title 42 sections 300aa–12, 410, 1395ww, 1975b, 4346, 5553, 5871, 5872, 7132, 7133, 7134, 7135, 7136, 7139, 7141, 7211, 7291, 7293, 8820, 10224, 12651e, 12651f; title 44 section 303; title 49 section 11161.

§ 5316. Positions at level V

Level V of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

Administrator, Bonneville Power Administration, Department of the Interior.

Administrator of the National Capital Transportation Agency.

Associate Administrators of the Small Business Administration (4).

Associate Administrators, National Aeronautics and Space Administration (7).

Associate Deputy Administrator, National Aeronautics and Space Administration.

Deputy Associate Administrator, National Aeronautics and Space Administration.

Archivist of the United States.

Assistant Secretary of Health and Human Services for Administration.

Assistant Attorney General for Administration.

Assistant and Science Adviser to the Secretary of the Interior.

Chairman, Foreign Claims Settlement Commission of the United States, Department of Justice.

Assistant to the Secretary of Defense for Atomic Energy, Department of Defense.

Chairman of the Renegotiation Board.

Chairman of the Subversive Activities Control Board.

Chief Counsel for the Internal Revenue Service, Department of the Treasury.

Commissioner, Federal Supply Service, General Services Administration.

Director, United States Fish and Wildlife Service, Department of the Interior.

Commissioner of Indian Affairs, Department of the Interior.

Commissioners, Indian Claims Commission (5).

Commissioner of Patents, Department of Commerce.

Commissioner, Public Buildings Service, General Services Administration.

Commissioner of Reclamation, Department of the Interior.

Commissioner of Vocational Rehabilitation, Department of Health and Human Services.

Commissioner of Welfare, Department of Health and Human Services.

Director, Advanced Research Projects Agency, Department of Defense.

Director, Bureau of Mines, Department of the Interior.

Director, Geological Survey, Department of the Interior.

Deputy Commissioner of Internal Revenue, Department of the Treasury.

Deputy Director, Policy and Plans, United States Information Agency.

Deputy General Counsel, Department of Defense.

Associate Director of the Federal Mediation and Conciliation Service.

Associate Director for Volunteers, Peace Corps.

Associate Director for Program Development and Operations, Peace Corps.

Assistants to the Director of the Federal Bureau of Investigation, Department of Justice (2).

Assistant Directors, Office of Emergency Planning (3).

Fiscal Assistant Secretary of the Treasury.

General Counsel of the Agency for International Development.

General Counsel of the Nuclear Regulatory Commission.

General Counsel of the United States Arms Control and Disarmament Agency.

General Counsel of the National Aeronautics and Space Administration.

Manpower Administrator, Department of Labor.

Members, Renegotiation Board.

Members, Subversive Activities Control Board.

Deputy Under Secretaries of Defense for Research and Engineering, Department of Defense (4).

Assistant Administrator of General Services.

Director, United States Travel Service, Department of Commerce.

Administrator, Wage and Hour and Public Contracts Division, Department of Labor.

Assistant Director (Program Planning, Analysis and Research), Office of Economic Opportunity.

Associate Director (Policy and Plans), United States Information Agency.

Deputy Director, National Security Agency.

Director, Bureau of Land Management, Department of the Interior.

Director, National Park Service, Department of the Interior.

National Export Expansion Coordinator, Department of Commerce.

Special Assistant to the Secretary of Defense.

Staff Director, Commission on Civil Rights.

Assistant Secretary for Administration, Department of Transportation.

Director, United States National Museum, Smithsonian Institution.

Director, Smithsonian Astrophysical Observatory, Smithsonian Institution.

Administrator for Economic Development.

Administrator of the Environmental Science Services Administration.

Associate Directors of the Office of Personnel Management (5).

Assistant Federal Highway Administrator.

Deputy Administrator of the National Highway Traffic Safety Administration.

Director, Bureau of Narcotics and Dangerous Drugs, Department of Justice.

Vice Presidents, Overseas Private Investment Corporation (3).

Deputy Administrator, Federal Transit Administration, Department of Transportation.

General Counsel of the Equal Employment Opportunity Commission.

Executive Director, Advisory Council on Historic Preservation.

Additional Officers, Department of Energy (14).

General Counsel, Commodity Futures Trading Commission.

Additional officers, Nuclear Regulatory Commission (5).

Executive Director, Commodity Futures Trading Commission.

Assistant Administrator for Coastal Zone Management, National Oceanic and Atmospheric Administration.

Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration.

Assistant Administrators (3), National Oceanic and Atmospheric Administration.

General Counsel, National Oceanic and Atmospheric Administration.

Members, Federal Labor Relations Authority (2) and its General Counsel.

Additional officers, Institute for Scientific and Technological Cooperation (2).

Additional officers, Office of Management and Budget (6).

Associate Deputy Secretary, Department of Transportation.

Chief Scientist, National Oceanic and Atmospheric Administration.

Director, Indian Health Service, Department of Health and Human Services.

Commissioners, United States Parole Commission (8).

Deputy Commissioner of Patents and Trademarks.

Assistant Commissioner for Patents.

Assistant Commissioner for Trademarks.

Commissioner, Administration on Children, Youth, and Families.

Director, Bureau of Transportation Statistics.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 463; Pub. L. 89–670, § 10(d)(5), (e), Oct. 15, 1966, 80 Stat. 948; Pub. L. 89–734, § 1(2), Nov. 2, 1966, 80 Stat. 1163; Pub. L. 89–779, § 8(c)(2), Nov. 6, 1966, 80 Stat. 1364; Pub. L. 90–9, § 6, Apr. 10, 1967, 81 Stat. 12; Pub. L. 90–83, § 1(16), Sept. 11, 1967, 81 Stat. 198; Pub. L. 90–206, title II, § 215(c), Dec. 16, 1967, 81 Stat. 638; Pub. L. 90–351, title I, § 506, June 19, 1968, 82 Stat. 205; Pub. L. 90–407, § 15(a)(3), July 18, 1968, 82 Stat. 367; Pub. L. 90–623, § 1(4), (5), Oct. 22, 1968, 82 Stat. 1312; Pub. L. 91–175, pt. V, § 503(3), Dec. 30, 1969, 83 Stat. 826; Pub. L. 91–375, § 6(c)(15), Aug. 12, 1970, 84 Stat. 776; Pub. L. 91–453, § 12, Oct. 15, 1970, 84 Stat. 968; Pub. L. 91–644, title I, § 7(2), Jan. 2, 1971, 84 Stat. 1887; Pub. L. 92–22, § 3, June 1, 1971, 85 Stat. 76; Pub. L. 92–255, title II, § 212(c), Mar. 21, 1972, 86 Stat. 69; Pub. L. 92–261, § 9(c), (d), Mar. 24, 1972, 86 Stat. 110; Pub. L. 92–302, § 2(d), May 18, 1972, 86 Stat. 149; Pub. L. 92–603, title IV, § 404(a), Oct. 30, 1972, 86 Stat. 1488; Pub. L. 93–43, § 2(c), June 18, 1973, 87 Stat. 78; Pub. L. 93–74, § 8, July 23, 1973, 87 Stat. 175; Pub. L. 90–351, title I, § 506(b), as added Pub. L. 93–83, § 2, Aug. 6, 1973, 87 Stat. 211; Pub. L. 93–271, § 2, Apr. 22, 1974, 88 Stat. 92; Pub. L. 93–126, § 9(c), as added Pub. L. 93–312, § 9, June 8, 1974, 88 Stat. 238; Pub. L. 93–383, title VIII, § 818(b), Aug. 22, 1974, 88 Stat. 740; Pub. L. 93–438, title III, § 310(4), Oct. 11, 1974, 88 Stat. 1253; Pub. L. 93–463, title I, § 102(c), Oct. 23, 1974, 88 Stat. 1392; Pub. L. 93–618, title I, § 172(c)(3), Jan. 3, 1975, 88 Stat. 2010; Pub. L. 94–82, title II, § 202(b)(5), Aug. 9, 1975, 89 Stat. 420; Pub. L. 94–183, § 2(19), Dec. 31, 1975, 89 Stat. 1058; Pub. L. 94–237, § 4(c)(6), Mar. 19, 1976, 90 Stat. 244; Pub. L. 94–307, § 7, June 4, 1976, 90 Stat. 681; Pub. L. 94–370, § 15(b), July 26, 1976, 90 Stat. 1032; Pub. L. 94–422, title II, § 202, Sept. 28, 1976, 90 Stat. 1323; Pub. L. 94–503, title II, § 202(c), Oct. 15, 1976, 90 Stat. 2427; Pub. L. 94–561, § 3(b), Oct. 19, 1976, 90 Stat. 2643; Pub. L. 94–582, § 26, Oct. 21, 1976, 90 Stat. 2889; Pub. L. 95–89, title II, § 209, Aug. 4, 1977, 91 Stat. 558; Pub. L. 95–91, title VII, § 710(g), Aug. 4, 1977, 91 Stat. 609; Pub. L. 95–115, § 3(a)(6), Oct. 3, 1977, 91 Stat. 1049; Pub. L. 95–219, § 3(b), Dec. 28, 1977, 91 Stat. 1614; Pub. L. 95–452, § 10(b), Oct. 12, 1978, 92 Stat. 1108; Pub. L. 95–454, title II, §§ 201(b)(3), 202(c)(4), title VII, § 703(e), Oct. 13, 1978, 92 Stat. 1121, 1131, 1217; Pub. L. 95–521, title IV, § 406, Oct. 26, 1978, 92 Stat. 1864; Pub. L. 96–53, title IV, § 412(c), Aug. 14, 1979, 93 Stat. 377; Pub. L. 96–54, § 2(a)(25)(A), Aug. 14, 1979, 93 Stat. 382; Pub. L. 96–70, title III, § 3302(e)(11), Sept. 27, 1979, 93 Stat. 499; Pub. L. 96–88, title V, § 508(f), (g), Oct. 17, 1979, 93 Stat. 692; Pub. L. 96–107, title VIII, § 820(e)(2), Nov. 9, 1979, 93 Stat. 819; Pub. L. 96–209, title I, § 109, Mar. 14, 1980, 94 Stat. 97; Pub. L. 96–466, title V, § 504(d), Oct. 17, 1980, 94 Stat. 2203; Pub. L. 97–31, § 12(1)(C), Aug. 6, 1981, 95 Stat. 153; Pub. L. 97–113, title VII, § 705(b)(3), Dec. 29, 1981, 95 Stat. 1545; Pub. L. 97–258, § 2(a), Sept. 13, 1982, 96 Stat. 1052; Pub. L. 97–325, § 8(c), Oct. 15, 1982, 96 Stat. 1605; Pub. L. 97–449, § 3(4), (5), Jan. 12, 1983, 96 Stat. 2441; Pub. L. 98–557, § 26(b), Oct. 30, 1984, 98 Stat. 2873; Pub. L. 99–73, § 6(b)(2), July 29, 1985, 99 Stat. 173; Pub. L. 99–93, title VII, § 704(a)(3), Aug. 16, 1985, 99 Stat. 446; Pub. L. 99–145, title XII, § 1204(c), Nov. 8, 1985, 99 Stat. 721; Pub. L. 99–383, § 7(b)(2), Aug. 21, 1986, 100 Stat. 814; Pub. L. 99–619, § 2(c)(2), (d), Nov. 6, 1986, 100 Stat. 3491; Pub. L. 99–659, title IV, § 407(e)(3), Nov. 14, 1986, 100 Stat. 3740; Pub. L. 100–180, div. A, title XII, § 1245(c), Dec. 4, 1987, 101 Stat. 1165; Pub. L. 100–504, title I, § 103(b), Oct. 18, 1988, 102 Stat. 2522; Pub. L. 100–527, § 13(g), Oct. 25, 1988, 102 Stat. 2643; Pub. L. 100–598, § 8, Nov. 3, 1988, 102 Stat. 3035; Pub. L. 100–607, title V, § 503(b)(1), Nov. 4, 1988, 102 Stat. 3121; Pub. L. 100–690, title VII, § 7252(b)(4), Nov. 18, 1988, 102 Stat. 4436; Pub. L. 100–713, title VI, § 601(d), Nov. 23, 1988, 102 Stat. 4826; Pub. L. 101–319, §§ 3(b), 4, July 3, 1990, 104 Stat. 290, 291; Pub. L. 101–501, title IX, § 915(b)(1)(B), Nov. 3, 1990, 104 Stat. 1263; Pub. L. 101–509, title V, § 529 [title I, § 113(1)], Nov. 5, 1990, 104 Stat. 1427, 1455; Pub. L. 102–190, div. A, title IX, § 903(a)(2), div. C, title XXXV, § 3504(b), Dec. 5, 1991, 105 Stat. 1451, 1586; Pub. L. 102–240, title III, § 3004(d)(2), title VI, § 6006(d), Dec. 18, 1991, 105 Stat. 2088, 2174; Pub. L. 102–359, § 2(b)(2), Aug. 26, 1992, 106 Stat. 962; Pub. L. 103–123, title I, § 108(a)(1), Oct. 28, 1993, 107 Stat. 1234; Pub. L. 103–333, title I, § 106, Sept. 30, 1994, 108 Stat. 2549; Pub. L. 103–354, title II, § 294, Oct. 13, 1994, 108 Stat. 3237.)

HISTORICAL AND REVISION NOTES

1966 ACT

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(1)–(99)	5 U.S.C. 2211(e).	Aug. 14, 1964, Pub. L. 88–426, § 303(e), 78 Stat. 419.
(100)–(116) ..	5 U.S.C. 2211(g).	Aug. 14, 1964, Pub. L. 88–426, § 303(g), 78 Stat. 422.

Paragraphs (100)–(116) are added on authority of former section 2211(g) which authorized the President to place, from Aug. 15, 1964, to Feb. 1, 1965, not more than 30 positions in Levels IV and V of the Federal Executive Salary Schedule. Pursuant to this authority, the President by Executive Order No. 11189, Nov. 23, 1964, as amended by Executive Order No. 11195, Jan. 30, 1965, placed the positions listed in paragraphs (100)–(116) in Level V.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 ACT

Section of title 5	*Source (U.S. Code)*	*Source (Statutes at Large)*
5316(60)	5 App.: 2211(e)(60).	July 5, 1966, Pub. L. 89–492, § 4(1), 80 Stat. 262.
5316(94)	5 App.: 2211(e)(94).	Sept. 9, 1965, Pub. L. 89–174, § 5(b)(as applicable to § 303(e)(94) of the Federal Executive Salary Act of 1964), 79 Stat. 669.
5316(95)	5 App.: 2211(e)(95).	Aug. 9, 1965, Pub. L. 89–115, § 4(c)(words after semicolon), 79 Stat. 449.

1967 ACT—CONTINUED

Section of title 5	*Source (U.S. Code)*	*Source (Statutes at Large)*
5316(120)	5 App.: 2211(e)(100).	Aug. 26, 1965, Pub. L. 89–136, §601(c), 79 Stat. 570.
5316(121)	[Uncodified].	1965 Reorg. Plan No. 2, §4(a)(2d sentence, less 1st 18 words), eff. July 13, 1965, 79 Stat. 1318.
5316(122)	42:3533(b) (last 29 words).	Sept. 9, 1965, Pub. L. 89–174, §4(b)(last 29 words), 79 Stat. 668.
5316(123)	5 App.: 2211(e)(101).	July 5, 1966, Pub. L. 89–492, §4(2), 80 Stat. 262.
5316(124)	49: 1652(f)(2) (last 15 words in 2d sentence).	Oct. 15, 1966, Pub. L. 89–670, §3(f)(2)(last 15 words in 2d sentence), 80 Stat. 932.
5316(125)	49: 1652(f)(1) (last 15 words in 2d sentence).	Oct. 15, 1966, Pub. L. 89–670, §3(f)(1)(last 15 words in 2d sentence), 80 Stat. 932.

The deletion of paragraphs (22), (38), and (83) of 5 U.S.C. 5316 reflects (1) the termination, effective June 30, 1965, of the position of ''Area Redevelopment Administrator, Department of Commerce'' pursuant to Public Law 87–27 (sec. 29, 75 Stat. 63; 42 U.S.C. 2525); (2) the abolition of the position of ''Chief, Weather Bureau, Department of Commerce'' by 1965 Reorganization Plan No. 2 (sec. 2(a), 79 Stat. 1318); and (3) the abolition of the position of ''General Counsel of the Housing and Home Finance Agency'' by Public Law 89–174 (sec. 5(a), 9(c), 79 Stat. 669, 671).

The redesignation of paragraphs (117) and (118) as paragraphs ''(118)'' and ''(119)'', respectively, eliminates duplicate paragraph numbering effected by section 10(d)(5) of Public Law 89–670 and section 1(2) of Public Law 89–734.

CODIFICATION

The paragraph designations for the positions added by Pub. L. 96–88 have been omitted in view of the deletion of all paragraph designations in this section by Pub. L. 96–54.

AMENDMENTS

1994—Pub. L. 103–354 struck out following items relating to Department of Agriculture: Administrator, Agricultural Marketing Service, Administrator, Agricultural Research Service, Administrator, Agricultural Stabilization and Conservation Service, Administrator, Farmers Home Administration, Administrator, Foreign Agricultural Service, Administrator, Rural Electrification Administration, Administrator, Soil Conservation Service, Chief Forester of the Forest Service, Director of Science and Education, Administrator, Animal and Plant Health Inspection Service, and Administrator, Federal Grain Inspection Service.

Pub. L. 103–333 struck out item relating to Commissioner of Labor Statistics, Department of Labor.

1993—Pub. L. 103–123 struck out item relating to Commissioner of Customs, Department of the Treasury.

1992—Pub. L. 102–359 struck out item relating to Additional Officers, Department of Education.

1991—Pub. L. 102–240, §6006(d), inserted item relating to Director, Bureau of Transportation Statistics.

Pub. L. 102–240, §3004(d)(2), substituted ''Deputy Administrator, Federal Transit Administration'' for ''Deputy Administrator, Urban Mass Transportation Administration''.

Pub. L. 102–190, §3504(b), struck out item relating to Administrator of the Panama Canal Commission.

Pub. L. 102–190, §903(a)(2), struck out items relating to General Counsels of the Departments of the Air Force, Army, and Navy.

1990—Pub. L. 101–509 struck out item relating to Director, Bureau of the Census, Department of Commerce.

Pub. L. 101–501 inserted item relating to Commissioner, Administration on Children, Youth, and Families.

Pub. L. 101–319, §4, inserted items relating to Deputy Commissioner of Patents and Trademarks, Assistant Commissioner for Patents, and Assistant Commissioner for Trademarks.

Pub. L. 101–319, §3(b), inserted item relating to Commissioners, United States Parole Commission.

1988—Pub. L. 100–713 inserted item relating to Director, Indian Health Service, Department of Health and Human Services.

Pub. L. 100–690 struck out item relating to Associate Administrator, Office of Juvenile Justice and Delinquency Prevention of Law Enforcement Assistance Administration.

Pub. L. 100–607 struck out item relating to Commissioner of Food and Drugs, Department of Health and Human Services.

Pub. L. 100–598 struck out item relating to Director of Office of Government Ethics.

Pub. L. 100–527 struck out items relating to Associate Deputy Administrator of Veterans' Affairs, Chief Benefits Director, Veterans' Administration, General Counsel of the Veterans' Administration, and Director, National Cemetery System, Veterans' Administration.

Pub. L. 100–504 struck out items relating to Inspectors General for Departments of Commerce and Interior and for Agency for International Development, Community Services Administration, Environmental Protection Agency, General Services Administration, National Aeronautics and Space Administration, and Small Business Administration and relating to Deputy Inspectors General for Departments of Energy and Health and Human Services.

1987—Pub. L. 100–180 substituted ''Assistant to the Secretary of Defense for Atomic Energy, Department of Defense'' for ''Chairman of the Military Liaison Committee to the Atomic Energy Commission, Department of Defense''.

1986—Pub. L. 99–659 inserted item relating to Chief Scientist, National Oceanic and Atmospheric Administration.

Pub. L. 99–619, §2(c)(2), struck out item relating to Assistant Secretary of Labor for Administration.

Pub. L. 99–619, §2(d), struck out item relating to Assistant Secretary of Labor for Veterans' Employment.

Pub. L. 99–383 struck out item relating to Assistant Directors, National Science Foundation (4).

1985—Pub. L. 99–145 struck out item relating to Administrator of Education for Overseas Dependents, Department of Education.

Pub. L. 99–93 struck out item relating to Assistant Directors, United States Arms Control and Disarmament Agency (4).

Pub. L. 99–73 struck out item relating to Director, National Bureau of Standards, Department of Commerce.

1984—Pub. L. 98–557 inserted item relating to Associate Deputy Secretary, Department of Transportation.

1983—Pub. L. 97–449, §3(4), substituted ''Assistant Federal Highway Administrator'' for ''Director, National Highway Safety Bureau''.

Pub. L. 97–449, §3(5), substituted ''Deputy Administrator of the National Highway Traffic Safety Administration'' for ''Director, National Traffic Safety Bureau''.

1982—Pub. L. 97–325 struck out item relating to Assistant Secretary of Agriculture for Administration.

Pub. L. 97–258 inserted item relating to Additional officers, Office of Management and Budget (6).

1981—Pub. L. 97–113 substituted ''Inspector General, Agency for International Development'' for ''Auditor General of the Agency for International Development''.

Pub. L. 97–31 purported to strike out ''Maritime Administration, Department of Commerce'' which was executed by striking out ''Maritime Administrator, Department of Commerce.'' as the probable intent of Congress.

1980—Pub. L. 96–466 inserted item relating to Assistant Secretary of Labor for Veterans' Employment.

Pub. L. 96–209, §109(1), which provided for striking out par. (31) and inserting in lieu thereof ''(31) Chairman,

Foreign Claims Settlement Commission of the United States, Department of Justice.'' was executed by striking out the item relating to the Chairman, Foreign Claims Settlement Commission of the United States which was designated par. (31) prior to amendment of this section by Pub. L. 96–54 and inserting the item relating to the Chairman, Foreign Claims Settlement Commission of the United States, Department of Justice. See 1979 Amendment note below.

Pub. L. 96–209, § 109(2), which provided for striking out par. (90) was executed by striking out item relating to Members, Foreign Claims Settlement Commission of United States which was designated par. (90) prior to amendment of this section by Pub. L. 96–54. See 1979 Amendment note below.

1979—Pub. L. 96–88, § 508(f)(1), which provided for striking out par. (41) was executed by striking out item relating to Commissioner of Education, Department of Health, Education, and Welfare which was designated par. (41) prior to amendment of this section by Pub. L. 96–54. See 1979 Amendment note below.

Pub. L. 96–88, § 508(g), substituted ''Health and Human Services'' for ''Health, Education, and Welfare'' in items relating to the Assistant Secretary of Health and Human Services for Administration, the Commissioner of Food and Drugs, the Commissioner of Vocational Rehabilitation, the Commissioner of Welfare, and the Deputy Inspector General of the Department of Health and Human Services.

Pars. (1) to (152). Pub. L. 96–54 struck out paragraph designations for positions listed herein.

Pars. (37), (38). Pub. L. 96–88, § 508(f)(2), added pars. (37) and (38) relating to additional officers and Administrator of Education for Overseas Dependents in Department of Education, respectively. See Codification note set out above.

Par. (87). Pub. L. 96–70 substituted ''Administrator of the Panama Canal Commission'' for ''Governor of the Canal Zone''.

Par. (96). Pub. L. 96–107 substituted ''Deputy Under Secretaries of Defense for Research and Engineering, Department of Defense'' for ''Deputy Directors of Defense Research and Engineering, Department of Defense''.

Par. (152). Pub. L. 96–53 added par. (152) relating to two additional officers in Institute for Scientific and Technological Cooperation.

1978—Par. (99). Pub. L. 95–454, § 202(c)(4), struck out par. (99) relating to Executive Director of United States Civil Service Commission.

Par. (122). Pub. L. 95–454, § 201(b)(3), added par. (122) relating to five Associate Directors of Office of Personnel Management.

Par. (144). Pub. L. 95–452, § 10(b), added par. (144) relating to Deputy Inspector General, Department of Health, Education, and Welfare.

Par. (145). Pub. L. 95–454, § 703(e), added par. (145) relating to Members and General Counsel of Federal Labor Relations Authority.

Pub. L. 95–452 added par. (145) relating to Inspector General, Department of Commerce.

Par. (146). Pub. L. 95–521 added par. (146) relating to Director of Office of Government Ethics.

Pub. L. 95–452 added par. (146) relating to Inspector General, Department of the Interior.

Pars. (147) to (151). Pub. L. 95–452 added pars. (147) to (151) relating to Inspector General, Community Services Administration, Inspector General, Environmental Protection Agency, Inspector General, General Services Administration, Inspector General, National Aeronautics and Space Administration, and Inspector General, Small Business Administration, respectively.

1977—Par. (11). Pub. L. 95–89 substituted ''(4)'' for ''(3)'' in par. (11) relating to Associate Administrators of the Small Business Administration.

Par. (135). Pub. L. 95–91 substituted ''Deputy Inspector General, Department of Energy'' for ''General Counsel, Energy Research and Development Administration'', covered in section 5315 by item relating to General Counsel of the Department of Energy.

Par. (136). Pub. L. 95–91 substituted ''Department of Energy (14)'' for ''Energy Research and Development Administration (8)''.

Par. (140). Pub. L. 95–219 substituted ''Assistant'' for ''Associate'', relating to Assistant Administrator for Coastal Zone Management, National Oceanic and Atmospheric Administration.

Par. (141). Pub. L. 95–219 added par. (141) relating to Assistant Administrator for Fisheries.

Pub. L. 95–115 added par. (141) relating to Associate Administrator Office of Juvenile Justice and Delinquency Prevention.

Pars. (142), (143). Pub. L. 95–219 added pars. (142) and (143) relating to three Assistant Administrators, National Oceanic and Atmospheric Administration and General Counsel, National Oceanic and Atmospheric Administration, respectively.

1976—Par. (15). Pub. L. 94–307 substituted ''(7)'' for ''(6)'' in par. (15) relating to Associate Administrators, National Aeronautics and Space Administration.

Par. (44). Pub. L. 94–503 struck out par. (44) relating to Commissioner of Immigration and Naturalization, Department of Justice.

Par. (55). Pub. L. 94–561, § 3(b)(1), struck out par. (55) relating to Director of Agricultural Economics, Department of Agriculture.

Par. (58). Pub. L. 94–503 struck out par. (58) relating to Director, Bureau of Prisons, Department of Justice.

Pars. (115), (116). Pub. L. 94–503 struck out par. (115) relating to United States Attorney for Northern District of Illinois, and par. (116) relating to United States Attorney for Southern District of California.

Par. (131). Pub. L. 94–237 struck out par. (131) relating to Assistant Directors, Special Action Office for Drug Abuse Prevention (6).

Par. (134). Pub. L. 94–503 struck out par. (134) relating to Deputy Administrator for Administration of Law Enforcement Assistance Administration.

Par. (135). Pub. L. 94–422 added par. (135) relating to Executive Director, Advisory Council on Historic Preservation.

Par. (137). Pub. L. 94–582 added par. (137) relating to Administrator, Federal Grain Inspection Service, Department of Agriculture.

Pub. L. 94–561 added par. (137) relating to Administrator, Animal and Plant Health Inspection Service, Department of Agriculture.

Par. (140). Pub. L. 94–370 added par. (140) relating to Associate Administrator for Coastal Zone Management, National Oceanic and Atmospheric Administration.

1975—Pub. L. 94–82 substituted provisions applying level V of Executive Schedule to positions for which annual rate of basic pay shall be rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title, for provisions applying such level V to positions for which annual rate of basic pay is $28,000.

Par. (93). Pub. L. 93–613 struck out par. (93) relating to Members, United States Tariff Commission.

Pars. (134) to (139). Pub. L. 94–183 redesignated par. (133), Deputy Administrator for Administration of the Law Enforcement Assistance Administration, par. (134), General Counsel, Energy Research and Development Administration, par. (135), Additional officers, Energy Research and Development Administration (8), par. (135), General Counsel, Commodity Futures Trading Commission, par. (136), Additional officers, Nuclear Regulatory Commission (5), and par. (136), Executive Director, Commodity Futures Trading Commission, as pars. (134) to (139), respectively.

1974—Par. (29). Pub. L. 93–438 struck out par. (29) relating to Assistant General Manager, Atomic Energy Commission.

Par. (42). Pub. L. 93–271, § 2, substituted ''Director, United States Fish and Wildlife'' for ''Commissioner of Fish and Wildlife''.

Par. (62). Pub. L. 93–438 struck out par. (62) relating to Director of Regulation, Atomic Energy Commission. See section 5315 of this title.

Par. (69). Pub. L. 93–438 struck out par. (69) relating to Deputy General Manager, Atomic Energy Commission.

Par. (81). Pub. L. 93–438 substituted ''General Counsel of the Nuclear Regulatory Commission'' for ''General Counsel of the Atomic Energy Commission''.

Par. (102). Pub. L. 93–438 struck out par. (102) relating to Assistant General Managers, Atomic Energy Commission (2).

Par. (109). Pub. L. 93–126, §9(c), as added by Pub. L. 93–312, repealed par. (109) relating to Director of International Scientific Affairs, Department of State.

Par. (122). Pub. L. 93–383 struck out par. (122) relating to Assistant Secretary of Housing and Urban Development for Administration.

Par. (134). Pub. L. 93–438 added par. (134) relating to General Counsel, Energy Research and Development Administration.

Pars. (135), (136), Pub. L. 93–463 added pars. (135) and (136) relating, respectively, to General Counsel, Commodity Futures Trading Commission, and Executive Director, Commodity Futures Trading Commission.

Pub. L. 93–438 added pars. (135) and (136) relating, respectively, to additional officers, Nuclear Regulatory Commission, and additional officers, Energy Research and Development Administration.

1973—Pars. (15) to (17). Pub. L. 93–74 added par. (15), Associate Administrators, National Aeronautics and Space Administration (6), and repealed provisions of former pars. (15) for an Associate Administrator for Advanced Research and Technology, (16) for Associate Administrator for Space Science and Applications, and (17) for Associate Administrator for Manned Space Flight, National Aeronautics and Space Administration.

Pars. (131) to (133). Pub. L. 93–43 redesignated par. (131) relating to General Counsel of the Equal Employment Opportunity Commission as par. (132), and added par. (133) relating to Director, National Cemetery System.

Par. (133). Pub. L. 93–83 added par. (133) relating to Deputy Administrator for Administration of the Law Enforcement Assistance Administration.

1972—Pars. (28), (64). Pub. L. 92–302 struck out pars. (28) and (64) relating to an Assistant Secretary of the Treasury for Administration and a Deputy Under Secretary for Monetary Affairs, Department of the Treasury, respectively.

Par. (51). Pub. L. 92–603 struck out par. (51) relating to Commissioner of Social Security, Department of Health, Education, and Welfare. See section 5315 of this title.

Par. (111). Pub. L. 92–261, §9(c), struck out par. (111) relating to Members, Equal Employment Opportunity Commission (4). See section 5315 of this title.

Par. (131). Pub. L. 92–261, §9(d), added par. (131) relating to General Counsel of the Equal Employment Opportunity Commission.

Pub. L. 92–255 added par. (131) relating to Assistant Directors, Special Action Office for Drug Abuse Prevention.

1971—Par. (25). Pub. L. 92–22 struck out position of Assistant Secretary of the Interior for Administration. See section 1453a of Title 43 and section 5315 of this title.

Par. (126). Pub. L. 91–644 struck out par. (126) relating to Associate Administrator of Law Enforcement Assistance (2). See section 5315 of this title.

1970—Pars. (37), (60), (123). Pub. L. 91–375 struck out pars. (37), (60), and (123) relating to Chief Postal Inspector; Director, Research and Development; and Director, Construction Engineering, respectively.

Par. (130). Pub. L. 91–453 added par. (130) relating to Deputy Administrator, Urban Mass Transportation Administration, Department of Transportation.

1969—Pars. (128), (129). Pub. L. 91–175 added pars. (128) and (129) relating to Auditor-General of the Agency for International Development, and Vice Presidents, Overseas Private Investment Corporation (3), respectively.

1968—Par. (66). Pub. L. 90–407 substituted ''Assistant Directors, National Science Foundation (4)'' for ''Deputy Director, National Science Foundation''.

Par. (126). Pub. L. 90–623, §1(4), inserted ''(2)'' at end of par. (126) relating to Associate Administrator of Law Enforcement Assistance.

Pub. L. 90–351 added par. (126) relating to Associate Administrator of Law Enforcement Assistance.

Par. (127). Pub. L. 90–623, §1(5), added par. (127) relating to Director, Bureau of Narcotics and Dangerous Drugs, Department of Justice.

1967—Pub. L. 90–206 increased annual rate of basic pay from $26,000 to $28,000.

Pars. (46), (47). Pub. L. 90–9 struck out par. (46) relating to Chief Commissioner, Indian Claims Commission, and substituted ''Commissioners, Indian Claims Commission (5)'' for ''Associate Commissioners, Indian Claims Commission (2)'' in par. (47).

1966—Pub. L. 89–779 substituted ''Associate Administrators of the Small Business Administration (3)'' for ''Deputy Administrators of the Small Business Administration (4)'' in par. (11).

Pub. L. 89–734 added par. (117) relating to Director, United States National Museum, Smithsonian Institution, and par. (118).

Pub. L. 89–670 added par. (117) relating to Assistant Secretary for Administration, Department of Transportation, and struck out pars. (10) Administrator of the Saint Lawrence Seaway Development Corporation, (12) Associate Administrator for Administration, Federal Aviation Agency, (13) Associate Administrator for Development, Federal Aviation Agency, (14) Associate Administrator for Programs, Federal Aviation Agency, (76) Federal Highway Administrator, Department of Commerce, and (82) General Counsel of the Federal Aviation Agency, subject to the provisions of section 1657 of former Title 49, Transportation.

CHANGE OF NAME

Bureau of Mines redesignated United States Bureau of Mines by section 10(b) of Pub. L. 102–285, set out as a note under section 1 of Title 30, Mineral Lands and Mining.

Geological Survey redesignated United States Geological Survey by provision of title I of Pub. L. 102–154, set out as a note under section 31 of Title 43, Public Lands.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–123 effective on first applicable pay period after Oct. 28, 1993, see section 108(b) of Pub. L. 103–123, set out as a note under section 5315 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–359 effective on first day of first pay period that begins on or after Aug. 26, 1992, see section 2(b)(3) of Pub. L. 102–359, set out as a note under section 5315 of this title.

EFFECTIVE DATE OF 1990 AMENDMENTS

Amendment by Pub. L. 101–509 effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title III, §305] of Pub. L. 101–509, set out as a note under section 5301 of this title.

Amendment by Pub. L. 101–501 effective Oct. 1, 1990, see section 1001(a) of Pub. L. 101–501, set out as a note under section 8621 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–690 effective Oct. 1, 1988, see section 7296(a) of Pub. L. 100–690, set out as a note under section 5601 of Title 42, The Public Health and Welfare.

Amendment by Pub. L. 100–527 effective Mar. 15, 1989, see section 18(a) of Pub. L. 100–527, set out as a Department of Veterans Affairs Act note under section 301 of Title 38, Veterans' Benefits.

Amendment by Pub. L. 100–504 effective 180 days after Oct. 18, 1988, see section 113 of Pub. L. 100–504, set out

as a note under section 5 of Pub. L. 95–452 [Inspector General Act of 1978] in the Appendix to this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 2(e) of Pub. L. 99–619 provided that: ''Subsection (c) of this section [amending this section and Reorg. Plan No. 6 of 1950, set out in the Appendix to this title] shall become effective on the day upon which the individual who is the incumbent of the position abolished by such subsection, as of the date of enactment [Nov. 6, 1986], ceases to hold the position.''

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–73 effective Oct. 1, 1985, see section 6(c) of Pub. L. 99–73, set out as a note under section 5315 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–325 to take effect on the appointment of a person to fill successor position created by section 2212c of Title 7, Agriculture, see section 8(e) of Pub. L. 97–325.

EFFECTIVE DATE OF 1980 AMENDMENTS

Amendment by Pub. L. 96–466 effective Oct. 1, 1980, see section 802(e) of Pub. L. 96–466, set out as a note under section 4101 of Title 38, Veterans' Benefits.

Amendment by Pub. L. 96–209 effective Mar. 14, 1980, see title VI of Pub. L. 96–209, set out as an Effective Date note under section 1622a of Title 22, Foreign Relations and Intercourse.

EFFECTIVE DATE OF 1979 AMENDMENTS

Amendment by Pub. L. 96–88 effective May 4, 1980, with specified exceptions, see section 601 of Pub. L. 96–88, set out as an Effective Date note under section 3401 of Title 20, Education.

Amendment by Pub. L. 96–70 effective Oct. 1, 1979, see section 3304 of Pub. L. 96–70, set out as an Effective Date note under section 3601 of Title 22, Foreign Relations and Intercourse.

Amendment by Pub. L. 96–54 effective Jan. 1, 1980, see section 2(a)(25)(B) of Pub. L. 96–54, set out as a note under section 5312 of this title.

Amendment by Pub. L. 96–53 effective Oct. 1, 1979, see section 512(a) of Pub. L. 96–53, set out as a note under section 2151 of Title 22, Foreign Relations and Intercourse.

EFFECTIVE DATE OF 1978 AMENDMENTS

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

Amendment by Pub. L. 95–452 effective Oct. 1, 1978, see section 12 of Pub. L. 95–452 set out in the Appendix to this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–115 effective Oct. 1, 1977, see section 263(c) of Pub. L. 93–415, as added by Pub. L. 95–115, set out as a note under section 5601 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1974 AMENDMENTS

Amendment by Pub. L. 93–463 effective Oct. 23, 1974, see section 418 of Pub. L. 93–463, set out as a note under section 2 of Title 7, Agriculture.

Amendment by Pub. L. 93–438 effective 120 days after Oct. 11, 1974, or on such earlier date as President may prescribe and publish in Federal Register, except that officers provided for in sections 5811–5820 of Title 42, The Public Health and Welfare, may be nominated and appointed at any time after Oct. 11, 1974, see section 312(a) of Pub. L. 93–438, set out as an Effective Date; Interim Appointments note under section 5801 of Title 42.

Amendment by Pub. L. 93–271 effective July 1, 1974, see section 3 of Pub. L. 93–271, set out as a note under section 742b of Title 16, Conservation.

EFFECTIVE DATE OF 1973 AMENDMENTS

Offices and salaries modified under amendment by Pub. L. 93–83, prospectively only, effective on and after Aug. 6, 1973, see section 3 of Pub. L. 93–83, Aug. 6, 1973, 83 Stat. 218.

Amendment by Pub. L. 93–43 effective June 18, 1973, see section 10(a) of Pub. L. 93–43, set out as an Effective Date note under section 2400 of Title 38, Veterans' Benefits.

EFFECTIVE DATE OF 1972 AMENDMENTS

Amendment by Pub. L. 92–603 effective on first day of first pay period of Commissioner of Social Security, Department of Health, Education, and Welfare, which commences on or after first day of month which follows month in which Pub. L. 92–603 was enacted, see section 404(c) of Pub. L. 92–603, set out as a note under section 5315 of this title.

Amendment by Pub. L. 92–302, abolishing offices of Assistant Secretary of the Treasury for Administration and Deputy Under Secretary for Monetary Affairs, Department of the Treasury, effective on confirmation by Senate of Presidential appointees to fill the successor positions created by Pub. L. 92–302, see, section 3(b) of Pub. L. 92–302, May 18, 1972, 86 Stat. 149.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92–22 effective on Senate confirmation of Presidential appointment under section 1453a of Title 43 and section 5315(18) of this title, see note set out under section 1453a of Title 43, Public Lands.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–375 effective within 1 year after Aug. 12, 1970, on date established therefor by Board of Governors of United States Postal Service and published by it in Federal Register, see section 15(a) of Pub. L. 91–375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

EFFECTIVE DATE OF 1968 AMENDMENTS

Amendment by Pub. L. 90–623 intended to restate without substantive change the law in effect on Oct. 22, 1968, see section 6 of Pub. L. 90–623, set out as a note under section 5334 of this title.

Amendment by Pub. L. 90–407 effective on first day of first calendar month which begins on or after July 18, 1968, see section 15(a)(4) of Pub. L. 90–407, set out as a note under section 5313 of this title.

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90–206 effective as of beginning of first pay period which begins on or after Dec. 16, 1967, see section 220(a)(3) of Pub. L. 90–206, set out as a note under section 603 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–670 effective Apr. 1, 1967, as prescribed by President and published in Federal Register, see section 16(a), formerly § 15(a), of Pub. L. 89–670 and Ex. Ord. No. 11340, Mar. 30, 1967, 32 F.R. 5453.

TRANSFER OF FUNCTIONS

Office of Emergency Preparedness, including offices of Director, Deputy Director, Assistant Directors, and Regional Directors, abolished and functions vested by law in Office of Emergency Preparedness or Director of Office of Emergency Preparedness transferred to President by sections 1 and 3(a)(1) of 1973 Reorg. Plan No. 1, set out in the Appendix to this title.

Environmental Science Services Administration in Department of Commerce, including offices of Administrator and Deputy Administrator thereof, abolished by Reorg. Plan No. 4 of 1970, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090, set out in the Appendix to this title, which created National Oceanic and Atmospheric Ad-

ministration in Department of Commerce and transferred personnel, property, records, and unexpended balances of funds of Environmental Science Services Administration to such newly created National Oceanic and Atmospheric Administration. Components of Environmental Science Services Administration thus transferred included Weather Bureau [now National Weather Service], Coast and Geodetic Survey [now National Ocean Survey], Environmental Data Service, National Environmental Satellite Center, and ESSA Research Laboratories.

Bureau of Narcotics and Dangerous Drugs, including office of Director thereof, in Department of Justice abolished by 1973 Reorg. Plan No. 2, eff. July 1, 1973, 38 FR 15932, 87 Stat. 1091, set out in the Appendix to this title, 1973 Reorg. Plan No. 2 also created in Department of Justice an agency to be known as Drug Enforcement Administration, with an Administrator and Deputy Administrator appointed by President with advice and consent of Senate.

UNITED STATES INFORMATION AGENCY

United States Information Agency, including offices of Director, Deputy Director, Deputy Director (Policy and Plans), referred to in this section, Associate Director (Policy and Plans), referred to in this section, and additional offices created by Reorg. Plan No. 8 of 1953, §1(d), eff. Aug. 1, 1953, 18 F.R. 4542, 67 Stat. 642, set out in the Appendix to this title, abolished and replaced by International Communication Agency pursuant to Reorg. Plan No. 2 of 1977, 42 F.R. 62461, 91 Stat. 1636, set out in the Appendix to this title, effective on or before July 1, 1978, at such times as specified by President. International Communication Agency redesignated United States Information Agency by section 303 of Pub. L. 97–241, title III, Aug. 24, 1982, 96 Stat. 291, set out as a note under section 1461 of Title 22, Foreign Relations and Intercourse.

INDIAN CLAIMS COMMISSION

Indian Claims Commission terminated on Sept. 30, 1978, pursuant to Pub. L. 94–465, §2, Oct. 8, 1976, 90 Stat. 1990.

COMMISSIONER OF PATENTS

Commissioner of Patents redesignated Commissioner of Patents and Trademarks by Pub. L. 93–596, §3, Jan. 2, 1975, 88 Stat. 1949, set out as a note under section 1 of Title 35, Patents.

ADMINISTRATOR OF BONNEVILLE POWER ADMINISTRATION

Bonneville Power Administration transferred to Department of Energy by section 7152 of Title 42, The Public Health and Welfare.

GENERAL COUNSEL OF MILITARY DEPARTMENTS

Pub. L. 100–456, div. A, title VII, §703(b), Sept. 29, 1988, 102 Stat. 1996, which provided that, notwithstanding this section, the General Counsel of each of the military departments was to be paid at the highest rate of basic pay payable under section 5382 of this title, to a member of the Senior Executive Service, was repealed by Pub. L. 102–190, div. A, title IX, §903(b), Dec. 5, 1991, 105 Stat. 1451.

COMPENSATION OF DEPUTY ASSISTANT SECRETARY OF COMMERCE FOR COMMUNICATIONS AND INFORMATION

Pub. L. 95–567, title I, §106(c), Nov. 2, 1978, 92 Stat. 2409, provided that: ''The position of Deputy Assistant Secretary of Commerce for Communications and Information, established in Department of Commerce Organization Order Numbered 10–10 (effective March 26, 1978), shall be compensated at the rate of pay in effect from time to time for level V of the Executive Schedule under section 5316 of title 5, United States Code.''

SUBVERSIVE ACTIVITIES CONTROL BOARD

Subversive Activities Control Board, Chairman and Members of which were compensated under this section, ceased operation on June 3, 1973, as unfunded by Congress.

SALARY INCREASES

1995—Salaries of positions at level V continued at $108,200 per annum by Ex. Ord. No. 12944, Dec. 28, 1994, 60 F.R. 309, set out as a note under section 5332 of this title.

1993—Salaries of positions at level V increased to $108,200 per annum, effective on the first day of the first pay period beginning on or after Jan. 1, 1993, as provided by Ex. Ord. No. 12826, Dec. 30, 1992, 57 F.R. 62909.

1992—Salaries of positions at level V increased to $104,800 per annum, effective on the first day of the first pay period beginning on or after Jan. 1, 1992, as provided by Ex. Ord. No. 12786, Dec. 26, 1991, 56 F.R. 67453.

1991—Salaries of positions at level V increased to $101,300 per annum, effective on the first day of the first pay period beginning on or after Jan. 1, 1991, as provided by Ex. Ord. No. 12736, Dec. 12, 1990, 55 F.R. 51385.

1990—Salaries of positions at level V increased to $78,200 per annum, effective on the first day of the first pay period beginning on or after Jan. 1, 1990, and continued at that rate by Ex. Ord. No. 12698, Dec. 23, 1989, 54 F.R. 53473.

1989—Salaries of positions at level V increased to $75,500 per annum, effective on the first day of the first pay period beginning on or after Jan. 1, 1989, as provided by Ex. Ord. No. 12663, Jan. 6, 1989, 54 F.R. 791.

1988—Salaries of positions at level V continued at $72,500 per annum by Ex. Ord. No. 12622, Dec. 31, 1987, 53 F.R. 222.

1987—Salaries of positions at level V increased to $72,500 per annum, on recommendation of the President of the United States, see note set out under section 358 of Title 2, The Congress.

Salaries of positions at level V increased to $70,800 per annum, effective on the first day of the first pay period beginning on or after Jan. 1, 1987, as provided by Ex. Ord. No. 12578, Dec. 31, 1986, 52 F.R. 505.

1985—Salaries of positions at level V increased to $68,700 per annum, effective on the first day of the first pay period beginning on or after Jan. 1, 1985, as provided by Ex. Ord. No. 12496, Dec. 28, 1984, 50 F.R. 211, as amended by Ex. Ord. No. 12540, Dec. 30, 1985, 51 F.R. 577.

1984—Salaries of positions at level V increased to $66,400 per annum, effective on the first day of the first pay period beginning on or after Jan. 1, 1984, as provided by Ex. Ord. No. 12456, Dec. 30, 1983, 49 F.R. 347, as amended Ex. Ord. No. 12477, May 23, 1984, 49 F.R. 22041; Ex. Ord. No. 12487, Sept. 14, 1984, 49 F.R. 36493.

1982—Salaries of positions at level V increased to $63,800 per annum, effective on the first day of the first pay period beginning on or after Oct. 1, 1982, as provided by Ex. Ord. No. 12387, Oct. 8, 1982, 47 F.R. 44981. Ex. Ord. No. 12387 further provided that pursuant to section 101(e) of Pub. L. 97–276 funds are not available to pay a salary at a rate which exceeds the rate in effect on Sept. 30, 1982, which was $57,500.00.

Maximum rate payable after Dec. 17, 1982, increased from $57,500.00 to $63,800.00, see Pub. L. 97–377, title I, §129(b)–(d), Dec. 21, 1982, 96 Stat. 1914, set out as a note under section 5318 of this title.

Limitations on use of funds for fiscal year ending Sept. 30, 1983, appropriated by any Act to pay the salary or pay of any individual in legislative, executive, or judicial branch in position equal to or above level V of the Executive Schedule, see section 101(e) of Pub. L. 97–276, as amended, set out as a note under section 5318 of this title.

1981—Salaries of positions at level V increased to $61,300 per annum, effective on the first day of the first pay period beginning on or after Oct. 1, 1981, as provided by Ex. Ord. No. 12330, Oct. 15, 1981, 46 F.R. 50921. Ex. Ord. No. 12330 further provided that pursuant to section 101(c) of Pub. L. 97–51 funds are not available to pay a salary at a rate which exceeds the rate in effect on Sept. 30, 1981, which was $50,112.50.

Limitations on use of funds for fiscal year ending Sept. 30, 1982, appropriated by any Act to pay the sal-

ary or pay of any individual in legislative, executive, or judicial branch in position equal to or above level V of the Executive Schedule, see sections 101(g) and 141 of Pub. L. 97–92, set out as a note under section 5318 of this title.

1980—Salaries of positions at level V increased to $58,500 per annum, effective on the first day of the first pay period beginning on or after Oct. 1, 1980, as provided by Ex. Ord. No. 12248, Oct. 16, 1980, 45 F.R. 69199. Ex. Ord. No. 12248, further provided that pursuant to section 101(c) of Pub. L. 96–369, funds are not available to pay a salary at a rate which exceeds the rate in effect on Sept. 30, 1980, which was $50,112.50.

Limitations on use of funds for fiscal year ending Sept. 30, 1981, appropriated by any Act to pay the salary or pay of any individual in legislative, executive, or judicial branch in position equal to or above level V of the Executive Schedule, see section 101(c) of Pub. L. 96–536, as amended, set out as a note under section 5318 of this title.

1979—Salaries of positions at level V increased to $53,600 per annum, effective on the first day of the first pay period beginning on or after Oct. 1, 1979, as provided by Ex. Ord. No. 12165, Oct. 9, 1979, 44 F.R. 58671, as amended by Ex. Ord. No. 12200, Mar. 12, 1980, 45 F.R. 16443. Ex. Ord. No. 12165 further provided that pursuant to section 101(c) of Pub. L. 96–86 funds appropriated for fiscal year 1980 may not be used to pay a salary at a rate which exceeds an increase of 5.5 percent over the rate in effect on Sept. 30, 1978, which is a maximum rate payable of $50,112.50.

Applicability to funds appropriated by any Act for fiscal year ending Sept. 30, 1980, of limitation of section 304 of Pub. L. 95–391 on use of funds to pay the salary or pay of any individual in legislative, executive, or judicial branch in position equal to or above level V of the Executive Schedule, see section 101 of Pub. L. 96–86, set out as a note under section 5318 of this title.

1978—Salaries of positions at level V increased to $50,100 per annum, effective in the first pay period beginning on or after Oct. 1, 1978, as provided by Ex. Ord. No. 12087, Oct. 7, 1978, 43 F.R. 46823. Ex. Ord. No. 12087, further provided that pursuant to the Legislative Branch Appropriation Act, 1979, funds are not available to pay a salary at a rate which exceeds the rate in effect on Sept. 30, 1978, which was $47,500.

Limitations on use of funds for fiscal year ending Sept. 30, 1979, appropriated by any Act to pay the salary or pay of any individual in legislative, executive, or judicial branch in position equal or above level V of the Executive Schedule, see section 304 of Pub. L. 95–391 and section 613 of Pub. L. 95–429, set out as a note under section 5318 of this title.

1977—Salaries of positions at level V increased to $47,500 per annum, on recommendation of the President of the United States, see note set out under section 358 of Title 2, The Congress.

1976—Salaries of positions at level V increased to $39,600 per annum, effective on the first day of the first pay period beginning on or after Oct. 1, 1976, see Ex. Ord. No. 11941, Oct. 1, 1976, 41 F.R. 43889. Ex Ord. No. 11941, further provided that pursuant to the Legislative Branch Appropriation Act, 1977, funds are not available to pay a salary at a rate which exceeds the rate in effect on Sept. 30, 1976, which was $37,800.

1975—Salaries of positions at level V increased to $37,800 per annum, effective on the first day of the first pay period beginning on or after Oct. 1, 1975, by Ex. Ord. No. 11883, Oct. 6, 1975, 40 F.R. 47091.

1969—Salaries of positions at level V increased from $28,000 to $36,000 per annum, commencing on the first day of the pay period which begins after February 14, 1969, on recommendation of the President of the United States, see note set out under section 358 of Title 2, The Congress.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5317, 5377, 5380, 8432 of this title; title 2 sections 60a–2, 74a–3, 84a–1, 166, 282b, 288, 353, 437c; title 3 section 113; title 10 section 973; title 12 sections 1723a, 4703; title 15 section 2204; title 18 section 207; title 20 sections 1145a, 1221e, 3501, 3503, 5826, 5848, 5933, 6021; title 21 section 1305; title 22 sections 286a, 1465c, 1622c, 2872, 3506, 3612, 3961, 4106, 5510; title 25 section 3505; title 26 sections 3121, 6103; title 28 sections 537, 548, 625; title 29 section 761a; title 31 section 731; title 38 sections 7404, 7451; title 39 section 206; title 41 section 422; title 42 sections 300aa–12, 410, 907a, 1108, 1320b–9, 2996d, 3015, 3201, 5871, 5872, 7211, 7232, 7291, 7293, 10704, 11314; title 44 sections 303, 3319; title 47 section 155.

§ 5317. Presidential authority to place positions at levels IV and V

In addition to the positions listed in sections 5315 and 5316 of this title, the President, from time to time, may place in levels IV and V of the Executive Schedule positions held by not to exceed 34 individuals when he considers that action necessary to reflect changes in organization, management responsibilities, or workload in an Executive agency. Such an action with respect to a position to which appointment is made by the President by and with the advice and consent of the Senate is effective only at the time of a new appointment to the position. Notice of each action taken under this section shall be published in the Federal Register, except when the President determines that the publication would be contrary to the interest of national security. The President may not take action under this section with respect to a position the pay for which is fixed at a specific rate by this subchapter or by statute enacted after August 14, 1964.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 467; Pub. L. 89–670, § 10(d)(6), Oct. 15, 1966, 80 Stat. 948; Pub. L. 90–83, § 1(17), Sept. 11, 1967, 81 Stat. 199.)

HISTORICAL AND REVISION NOTES

1966 ACT

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 2211(f).	Aug. 14, 1964, Pub. L. 88–426, § 303(f), 78 Stat. 421.

The word ''offices'' is omitted as included in ''positions''. The term ''Executive agency'' is substituted for ''Federal department or agency'' in view of the definition in section 105. The words ''after August 14, 1964'' are substituted for ''subsequent to the date of enactment of this Act''.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 ACT

The amendment to 5 U.S.C. 5317 conforms to the style of title 5.

AMENDMENTS

1966—Pub. L. 89–670 increased from thirty to thirty-four the number of additional level IV and V positions authorized when necessary.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–670 effective Apr. 1, 1967, as prescribed by President and published in Federal Register, see section 16(a), formerly § 15(a), of Pub. L. 89–670 and Ex. Ord. No. 11340, Mar. 30, 1967, 32 F.R. 5453.

EXECUTIVE ORDER NO. 11189

Ex. Ord. No. 11189, Nov. 23, 1964, 29 F.R. 15855, which placed certain positions in levels IV and V of the Exec-

utive Schedule, was revoked by Ex. Ord. No. 12060, May 15, 1978, 43 F.R. 21315.

EXECUTIVE ORDER NO. 11195

Ex. Ord. No. 11195, Jan. 30, 1965, 30 F.R. 1169, which placed certain positions in levels IV and V of the Executive Schedule, was revoked by Ex. Ord. No. 12060, May 15, 1978, 43 F.R. 21315.

EXECUTIVE ORDER NO. 11861

Ex. Ord. 11861, May 21, 1975, 40 F.R. 22531, as amended by Ex. Ord. No. 11864, June 13, 1975, 40 F.R. 25579; Ex. Ord. No. 11872, July 21, 1975, 40 F.R. 30619; Ex. Ord. No. 11877, Sept. 2, 1975, 40 F.R. 40797; Ex. Ord. No. 11885, Oct. 15, 1975, 40 F.R. 48491; Ex. Ord. No. 11893, Dec. 31, 1975, 41 F.R. 1040; Ex. Ord. No. 11898, Jan. 14, 1976, 41 F.R. 2365; Ex. Ord. No. 11908, Mar. 18, 1976, 41 F.R. 11805; Ex. Ord. No. 11927, July 22, 1976, 41 F.R. 30583; Ex. Ord. No. 11976, Mar. 11, 1977, 42 F.R. 14081; Ex. Ord. No. 11983, May 4, 1977, 42 F.R. 23127; Ex. Ord. No. 11986, May 20, 1977, 42 F.R. 26407; Ex. Ord. No. 11995, June 8, 1977, 42 F.R. 29841; Ex. Ord. No. 11999, June 27, 1977, 42 F.R. 33255; Ex. Ord. No. 12025, Dec. 1, 1977, 42 F.R. 61447; Ex. Ord. No. 12035, Jan. 20, 1978, 43 F.R. 3073; Ex. Ord. No. 12060, May 15, 1978, 43 F.R. 21315; Ex. Ord. No. 12069, June 30, 1978, 43 F.R. 28973, which related to the placement of certain positions in levels IV and V, was revoked by Ex. Ord. No. 12076, Aug. 18, 1978, 43 F.R. 37161, formerly set out below.

EXECUTIVE ORDER NO. 11864

Ex. Ord. No. 11864, June 13, 1975, 40 F.R. 25579, which placed the position of Adviser to the Secretary (Counselor, Economic Policy Board), Department of the Treasury, to terminate effective August 1, 1975, in level IV of the Executive Schedule was superseded by Ex. Ord. No. 11877, Sept. 2, 1975, 40 F.R. 40797.

EXECUTIVE ORDER NO. 11995

Ex. Ord. No. 11995, June 8, 1977, 42 F.R. 29841, which placed the position of Executive Director, Federal Personnel Management Systems Study, United States Civil Service Commission, in level V of the Executive Schedule, was revoked by Ex. Ord. No. 12060, May 15, 1978, 43 F.R. 21315.

EXECUTIVE ORDER NO. 12076

Ex. Ord. No. 12076, Aug. 18, 1978, 43 F.R. 37161, as amended by Ex. Ord. No. 12099, Nov. 17, 1978, 43 F.R. 54191; Ex. Ord. No. 12111, Jan. 2, 1979, 44 F.R. 1071; Ex. Ord. No. 12119, Feb. 14, 1979, 44 F.R. 10039, which related to the placement of positions in levels IV and V of the Federal Executive Salary Schedule, was revoked by Ex. Ord. No. 12154, Sept. 4, 1979, 44 F.R. 51965, set out below.

EX. ORD. NO. 12154. PLACEMENT OF POSITIONS IN LEVELS IV AND V

Ex. Ord. No. 12154, Sept. 4, 1979, 44 F.R. 51965, as amended by Ex. Ord. No. 12199, Mar. 12, 1980, 45 F.R. 16441; Ex. Ord. No. 12236, Sept. 3, 1980, 45 F.R. 58805; Ex. Ord. No. 12237, Sept. 3, 1980, 45 F.R. 58807; Ex. Ord. No. 12422, May 20, 1983, 48 F.R. 23157; Ex. Ord. No. 12431, July 8, 1983, 48 F.R. 31849; Ex. Ord. No. 12608, Sept. 9, 1987, 52 F.R. 34617; Ex. Ord. No. 12678, Apr. 28, 1989, 54 F.R. 18872; Ex. Ord. No. 12679, June 23, 1989, 54 F.R. 27149; Ex. Ord. No. 12749, Feb. 4, 1991, 56 F.R. 4711; Ex. Ord. No. 12758, Apr. 5, 1991, 56 F.R. 14631; Ex. Ord. No. 12814, Sept. 10, 1992, 57 F.R. 42483; Ex. Ord. No. 12833, Jan. 19, 1993, 58 F.R. 5907; Ex. Ord. No. 12841, Mar. 9, 1993, 58 F.R. 13529; Ex. Ord. No. 12942, Dec. 12, 1994, 59 F.R. 64551, provided:

By the authority vested in me as President by Section 5317 of Title 5 of the United States Code it is hereby ordered as follows:

1–1. EXECUTIVE SCHEDULE POSITIONS

1–101. The following positions are placed in level IV of the Executive Schedule:

(a) Counselor to the Secretary, Department of the Treasury.

(b) Deputy Under Secretary for International Labor Affairs, Department of Labor.

(c) Administrator, Alcohol, Drug Abuse and Mental Health Administration, Department of Health and Human Services.

(d) Executive Secretary of the National Security Council.

(e) Administrator, Office of Juvenile Justice and Delinquency Prevention, Department of Justice.

(f) Comptroller of the Department of Defense [now Under Secretary of Defense (Comptroller)].

(g) Assistant Secretary of the Air Force (1).

(h) Director, Office for Victims of Crime, Department of Justice.

(i) Director, Bureau of Justice Assistance, Department of Justice.

(j) Director of the National Institutes of Health.

(k) Members, Chemical Safety and Hazard Investigation Board (5).

(k)[(*l*)] Commissioner on Aging [now Assistant Secretary for Aging], Department of Health and Human Services[.]

1–102. The following positions are placed in level V of the Executive Schedule:

(a) Deputy Assistant Secretary of Defense for Reserve Affairs, Department of Defense.

(b) Executive Director, Pension Benefit Guaranty Corporation, Department of Labor.

(c) Executive Assistant and Counselor to the Secretary of Labor, Department of Labor.

(d) Deputy Under Secretary for Education, Department of Education.

(e) Deputy Under Secretary for Education, Department of Education.

(f) Commissioner, Administration for Native Americans[.]

1–2. GENERAL PROVISIONS

1–201. Nothing in this Order shall be deemed to terminate or otherwise affect the appointment, or to require the reappointment, of any occupant of any position listed in Section 1–1 of this Order who was the occupant of that position immediately prior to the issuance of this Order.

1–202. Executive Order No. 12076, as amended, is hereby revoked.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5377, 5380, 8432 of this title; title 10 section 973; title 26 section 3121; title 28 sections 548, 587; title 42 section 410.

§ 5318. Adjustments in rates of pay

(a) Subject to subsection (b), effective at the beginning of the first applicable pay period commencing on or after the first day of the month in which an adjustment takes effect under section 5303 of this title in the rates of pay under the General Schedule, the annual rate of pay for positions at each level of the Executive Schedule shall be adjusted by an amount, rounded to the nearest multiple of $100 (or if midway between multiples of $100, to the next higher multiple of $100), equal to the percentage of such annual rate of pay which corresponds to the most recent percentage change in the ECI (relative to the date described in the next sentence), as determined under section 704(a)(1) of the Ethics Reform Act of 1989. The appropriate date under this sentence is the first day of the fiscal year in which such adjustment in the rates of pay under the General Schedule takes effect.

(b) In no event shall the percentage adjustment taking effect under subsection (a) in any calendar year (before rounding), in any rate of pay, exceed the percentage adjustment taking

effect in such calendar year under section 5303 in the rates of pay under the General Schedule.

(Added Pub. L. 94–82, title II, § 202(a), Aug. 9, 1975, 89 Stat. 419; amended Pub. L. 101–194, title VII, § 704(a)(2)(A), Nov. 30, 1989, 103 Stat. 1769; Pub. L. 101–509, title V, § 529 [title I, § 101(b)(4)(A)], Nov. 5, 1990, 104 Stat. 1427, 1439; Pub. L. 103–356, title I, § 101(3), Oct. 13, 1994, 108 Stat. 3411.)

REFERENCES IN TEXT

The General Schedule, referred to in text, is set out under section 5332 of this title.

Section 704(a)(1) of the Ethics Reform Act of 1989, referred to in subsec. (a), is section 704(a)(1) of Pub. L. 101–194, which is set out below.

AMENDMENTS

1994—Pub. L. 103–356 designated existing provisions as subsec. (a), substituted ''Subject to subsection (b), effective'' for ''Effective'', and added subsec. (b).

1990—Pub. L. 101–509 substituted ''5303'' for ''5305''.

1989—Pub. L. 101–194 substituted ''corresponds to the most recent percentage change in the ECI (relative to the date described in the next sentence), as determined under section 704(a)(1) of the Ethics Reform Act of 1989. The appropriate date under this sentence is the first day of the fiscal year in which such adjustment in the rates of pay under the General Schedule takes effect'' for ''corresponds to the overall average percentage (as set forth in the report transmitted to the Congress under such section 5305) of the adjustment in the rates of pay under the General Schedule''.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 101 of Pub. L. 103–356 provided that the amendment made by that section is effective as of Dec. 31, 1994.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–509 effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title III, § 305] of Pub. L. 101–509, set out as a note under section 5301 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 704(b) of Pub. L. 101–194 provided that: ''This section and the amendments made by this section [amending this section, section 31 of Title 2, The Congress, section 104 of Title 3, The President, and section 461 of Title 28, Judiciary and Judicial Procedure, and enacting provisions set out as a note under this section] shall take effect on January 1, 1991.''

SALARY LEVELS OF SENIOR GOVERNMENT OFFICIALS

Pub. L. 102–90, title I, § 6(a), Aug. 14, 1991, 105 Stat. 450, provided that: ''The rate of pay for the offices referred to under section 703(a)(2)(B) of the Ethics Reform Act of 1989 [Pub. L. 101–194] (5 U.S.C. 5318 note) shall be the rate of pay that would be payable for each such office if the provisions of sections 703(a)(2)(B) and 1101(a)(1)(A) of such Act (5 U.S.C. 5318 note and 5305 note) had not been enacted.''

Section 703 of Pub. L. 101–194 provided that:

''(a) SALARY LEVELS.—

''(1) EXECUTIVE POSITIONS.—Effective the first day of the first applicable pay period that begins on or after January 1, 1991, the rate of basic pay for positions in the Executive Schedule shall be increased in the amount of 25 percent of their respective rates (as last in effect before the increase), rounded to the nearest multiple of $100 (or, if midway between multiples of $100, to the next higher multiple of $100).

''(2) LEGISLATIVE POSITIONS; OFFICE OF THE VICE PRESIDENT.—

''(A) GENERALLY.—Effective the first day of the first applicable pay period that begins on or after January 1, 1991, the rate of basic pay for the offices and positions under subparagraphs (A) and (B) of section 225(f) of the Federal Salary Act of 1967 (2 U.S.C. 356(A) and (B)) shall be increased in the amount of 25 percent of their respective rates (as last in effect before the increase), rounded to the nearest multiple of $100 (or, if midway between multiples of $100, to the next higher multiple of $100), except as provided in subparagraph (B).

''(B) EXCEPTIONS.—Nothing in subparagraph (A) shall affect the rate of basic pay for a Senator, the President pro tempore of the Senate, or the majority leader or the minority leader of the Senate.

''(3) JUDICIAL POSITIONS.—Effective the first day of the first applicable pay period that begins on or after January 1, 1991, the rate of basic pay for the Chief Justice of the United States, an associate justice of the Supreme Court of the United States, a judge of a United States circuit court, a judge of a district court of the United States, and a judge of the United States Court of International Trade shall be increased in the amount of 25 percent of their respective rates (as last in effect before the increase), rounded to the nearest multiple of $100 (or, if midway between multiples of $100, to the next higher multiple of $100).

''(b) COORDINATION RULE.—If a pay adjustment under subsection (a) is to be made for an office or position as of the same date as any other pay adjustment affecting such office or position, the adjustment under subsection (a) shall be made first.''

REVISION IN METHOD BY WHICH ANNUAL PAY ADJUSTMENTS FOR CERTAIN EXECUTIVE, LEGISLATIVE, AND JUDICIAL POSITIONS ARE TO BE MADE

Section 704(a) of Pub. L. 101–194 provided that:

''(a) PERCENT CHANGE IN THE EMPLOYMENT COST INDEX.—

''(1) METHOD FOR COMPUTING PERCENT CHANGE IN THE ECI.—

''(A) DEFINITIONS.—For purposes of this paragraph—

''(i) the term 'Employment Cost Index' or 'ECI' means the Employment Cost Index (wages and salaries, private industry workers) published quarterly by the Bureau of Labor Statistics; and

''(ii) the term 'base quarter' means the 3-month period ending on December 31 of a year.

''(B) METHOD.—For purposes of the provisions of law amended by paragraph (2), the 'most recent percentage change in the ECI', as of any date, shall be one-half of 1 percent less than the percentage (rounded to the nearest one-tenth of 1 percent) derived by—

''(i) reducing—

''(I) the ECI for the last base quarter prior to that date, by

''(II) the ECI for the second to last base quarter prior to that date,

''(ii) dividing the difference under clause (i) by the ECI for the base quarter referred to in clause (i)(II), and

''(iii) multiplying the quotient under clause (ii) by 100, except that no percentage change determined under this paragraph shall be—

''(I) less than zero; or

''(II) greater than 5 percent.

''(2) PROVISIONS THROUGH WHICH NEW METHOD IS TO BE IMPLEMENTED.—

''(A) AMENDMENT TO TITLES 3, 5, AND 28 OF THE UNITED STATES CODE.—Section 104 of title 3, United States Code, section 5318 of title 5, United States Code, and section 461(a) of title 28, United States Code, are amended by striking 'corresponds to' and all that follows thereafter through the period, and inserting the following:

'corresponds to the most recent percentage change in the ECI (relative to the date described in the next sentence), as determined under section 704(a)(1) of the Ethics Reform Act of 1989. The appropriate date under this

sentence is the first day of the fiscal year in which such adjustment in the rates of pay under the General Schedule takes effect.'.

''(B) AMENDMENT TO THE LEGISLATIVE REORGANIZATION ACT OF 1946.—Section 601(a)(2) of the Legislative Reorganization Act of 1946 (2 U.S.C. 31(2)) is amended by striking 'corresponds to' and all that follows thereafter through the period and inserting the following:

'corresponds to the most recent percentage change in the ECI (relative to the date described in the next sentence), as determined under section 704(a)(1) of the Ethics Reform Act of 1989. The appropriate date under this sentence is the first day of the fiscal year in which such adjustment in the rates of pay under the General Schedule takes effect.'.''

REDUCTION OF RATE OF SALARY OR BASIC PAY OF OFFICES OR POSITIONS IN THE EXECUTIVE, LEGISLATIVE, AND JUDICIAL BRANCHES TO THE SALARY OR BASIC PAY RATE PAYABLE AS OF JULY 14, 1983

Pub. L. 98–51, title III, §304, July 14, 1983, 97 Stat. 279, provided that:

''(a) Except as provided in subsection (b), the rate of salary or basic pay prescribed by law as of the date of the enactment of this Act [July 14, 1983] shall be reduced to the salary or basic pay rate payable as of such date in the case of—

''(1) any office or position at level I, II, or III of the Executive Schedule,

''(2) any Member of Congress, and

''(3) any other office or position in the legislative, executive, or judicial branch, or in the government of the District of Columbia, for which the rate of salary or basic pay that is payable on such date of enactment is less than the rate then prescribed by law.

''(b) In the case of any office or position in the legislative, executive, or judicial branch, or in the government of the District of Columbia, for which the maximum rate of salary or basic pay that is payable on the date of the enactment of this Act [July 14, 1983] is less than the maximum rate then prescribed by law, the maximum rate prescribed by law as of such date of enactment shall be reduced to the maximum rate payable as of such date.

''(c) In determining the amount of the reduction under this section in the case of any Senator, the provisions of section 129, of Public Law 97–377 [set out as a note below] shall be applied without regard to subsection (c) of such section.''

LIMITATION ON MAXIMUM RATE OF SALARY INCREASES FOR SENIOR EXECUTIVE, JUDICIAL, AND LEGISLATIVE POSITIONS (INCLUDING MEMBERS OF CONGRESS); SERVICES PERFORMED AFTER DECEMBER 17, 1982; APPLICABILITY TO SENATORS; CONSTRUCTION WITH PROVISIONS RELATING TO ANNUAL RATES OF COMPENSATION OF OFFICERS AND EMPLOYEES OF THE SENATE

Pub. L. 97–377, title I, §129(b)–(d), Dec. 21, 1982, 96 Stat. 1914, provided that:

''(b) In lieu of payment of salary increases of up to 27.2 percent as authorized by law for senior executive, judicial, and legislative positions (including Members of Congress), it is the purpose of this section [enacting this provision and amending section 101(e) of Pub. L. 97–276, set out below] to limit such increases to 15 percent. Notwithstanding the provisions of section 306 of S. 2939 [set out below] made applicable by subsection (a) of this section, nothing in subsection (a) shall (or be construed to) require that the rate of salary or pay payable to any individual for or on account of services performed after December 17, 1982, be limited to an amount less than the rate (or maximum rate, if higher) of salary or pay payable as of such date for the position involved increased by 15 percent and rounded in accordance with section 5318 of title 5, United States Code.

''(c) Subsection (b) shall not apply to Senators.

''(d) For the purposes of any rule, regulation, or order having the force and effect of law and limiting the annual rates of compensation of officers and employees of the Senate by reference to the annual rate of pay of Senators, the annual rate of pay of Senators shall be deemed to be the annual rate of pay that would be payable to Senators without regard to subsection (c) of this section.''

FISCAL YEAR 1983 LIMITATION ON USE OF FUNDS FOR PAY ADJUSTMENTS FOR CERTAIN POSITIONS

Pub. L. 97–276, §101(e), Oct. 2, 1982, 96 Stat. 1189, as amended by Pub. L. 97–377, title I, §129(a), Dec. 21, 1982, 96 Stat. 1914, provided in part that: ''the provisions of section 306(a), (b), and (d) of S. 2939 [Ninety-seventh Congress, 2nd Session, as reported Sept. 22, 1982] shall apply to any appropriation, fund, or authority made available for the period October 1, 1982, through September 30, 1983, by this or any other Act.'' Section 306(a), (b), and (d) of S. 2939, Ninety-seventh Congress, 2nd Session, as reported Sept. 22, 1982, provided that:

''(a) No part of the funds appropriated for the fiscal year ending September 30, 1983, by this Act or any other Act may be used to pay the salary or pay of any individual in an office or position in the legislative, executive, or judicial branch, or in the government of the District of Columbia, at a rate which exceeds the rate (or maximum rate, if higher) of salary or basic pay payable for such office or position for September 30, 1982, if the rate of salary or basic pay for that office or position is—

''(1) fixed at a rate which is equal to or greater than the rate of basic pay for level V of the Executive Schedule under section 5316 of title 5, United States Code, or

''(2) limited to a maximum rate which is equal to or greater than the rate of basic pay for such level V (or to a percentage of such a maximum rate) by reason of section 5308 of title 5, United States Code, or any other provision of law or congressional resolution.

''(b) For purposes of subsection (a), the rate or maximum rate (as the case may be) of salary or basic pay payable for September 30, 1982, for any office or position which was not in existence on such date shall be deemed to be the rate or maximum rate (as the case may be) of salary or basic pay payable to individuals in comparable offices or positions for such date, as determined under regulations prescribed—

''(1) by the President, in the case of any office or position within the executive branch or in the government of the District of Columbia;

''(2) jointly by the Speaker of the House of Representatives and the President pro tempore of the Senate, in the case of any office or position within the legislative branch; or

''(3) by the Chief Justice of the United States, in the case of any office or position within the judicial branch.

''(d) For purposes of administering any provisions of law, rule, or regulation which provides retirement, life insurance, or other employee benefit, which requires any deduction or contribution, or which imposes any requirement or limitation, on the basis of a rate of salary or basic pay, the rate of salary or basic pay payable after the application of this section shall be treated as the rate of salary or basic pay.''

FISCAL YEAR 1982 LIMITATION ON USE OF FUNDS FOR PAY ADJUSTMENTS FOR CERTAIN POSITIONS

Pub. L. 97–92, §101(g), Dec. 15, 1981, 95 Stat. 1190, provided that: ''The provisions of section 305(a), (b), and (d) of H.R. 4120, entitled the Legislative Branch Appropriation Act, 1982, shall apply to any appropriation, fund, or authority made available for the period October 1, 1981, through September 30, 1982, by this or any other Act.'' Section 305(a), (b), and (d) of H.R. 4120, as reported July 9, 1981, provided that:

''(a) No part of the funds appropriated for the fiscal year ending September 30, 1982, by this Act or any other Act may be used to pay the salary or pay of any individual in any office or position in the legislative,

executive, or judicial branch, or in the government of the District of Columbia, at a rate which exceeds the rate (or maximum rate, if higher) of salary or basic pay payable for such office or position for September 30, 1981, if the rate of salary or basic pay for that office or position is—

''(1) fixed at a rate which is equal to or greater than the rate of basic pay for level V of the executive Schedule under section 5316 of title 5, United States Code, or

''(2) limited to a maximum rate which is equal to or greater than the rate of basic pay for such level V (or to a percentage of such a maximum rate) by reason of section 5308 of title 5, United States Code, or any other provision of law or congressional resolution.

''(b) For purposes of subsection (a), the rate or maximum rate (as the case may be) of salary or basic pay payable for September 30, 1981, for any office or position which was not in existence on such date shall be deemed to be the rate or maximum rate (as the case may be) of salary or basic pay payable to individuals in comparable offices or positions for such date, as determined under regulations prescribed—

''(1) by the President, in the case of any office or position within the executive branch or in the government of the District of Columbia;

''(2) jointly by the Speaker of the House of Representatives and the President pro tempore of the Senate, in the case of any office or position within the legislative branch; or

''(3) by the Chief Justice of the United States, in the case of any office or position within the judicial branch.

''(d) For purposes of administering any provision of law, rule, or regulation which provides retirement, life insurance, or other employee benefit, which requires any deduction or contribution, or which imposes any requirement or limitation, on the basis of a rate of salary or basic pay, the rate of salary or basic pay payable after the application of this section shall be treated as the rate of salary or basic pay.''

Similar provisions were contained in Pub. L. 97–51, § 101(c), Oct. 1, 1981, 95 Stat. 959, as amended Pub. L. 97–85, Nov. 23, 1981, 95 Stat. 1098.

Pub. L. 97–92, § 141, Dec. 15, 1981, 95 Stat. 1200, provided that:

''(a) Notwithstanding the provisions of section 305 of H.R. 4120 made applicable by section 101(g) of this joint resolution [set out above], but subject to subsection (b) of this section, nothing in section 101(g) shall (or shall be construed to) require that the rate of salary or basic pay, payable to any individual for or on account of services performed after December 31, 1981, be limited to or reduced to an amount which is less than—

''(1) $59,500, if such individual has an office or position the salary or pay for which corresponds to the rate of basic pay for level III of the Executive Schedule under section 5314 of title 5, United States Code;

''(2) $58,500, if such individual has an office or position the salary or pay for which corresponds to the rate of basic pay for level IV of the Executive Schedule under section 5315 of title 5, United States Code; or

''(3) $57,500, if such individual has an office or position the salary or pay for which corresponds to the rate of basic pay for level V of the Executive Schedule under section 5316 of title 5, United States Code.

''(b)(1) For purposes of subsection (a), any rate of salary or pay shall be considered to correspond to the basic pay for a level of the Executive Schedule if the rate of salary or pay for that office or position is (i) fixed at a rate which is equal to or greater than the rate of basic pay for that level of the Executive Schedule or (ii) limited to a maximum rate which is equal to or greater than the rate of basic pay for such level (or to a percentage of such a maximum rate) by reason of section 5308 of title 5, United States Code, or any other provision of law (other than the provisions of such section 305, as made applicable by section 101(g) of this joint resolution) or congressional resolution.

''(2) In applying subsection (a) for any office or position for which the rate of salary or basic pay is limited to a percentage of such a maximum rate, there shall be substituted, in lieu of the amount specified in subsection (a) for that office or position, an amount equal to such percentage of the specified amount.

''(c) Any adjustment pursuant to this section made to the pay of any employee or class of employees whose pay is disbursed by the Clerk of the House should be of such amount as to assure, to the maximum extent practicable, that such employees are not paid at rates at less than employees or classes of employees whose pay is disbursed by the Secretary of the Senate and who hold equivalent positions.''

FISCAL YEAR 1981 LIMITATION ON USE OF FUNDS FOR PAY ADJUSTMENTS FOR CERTAIN POSITIONS

Pub. L. 96–536, § 101(c), Dec. 16, 1980, 94 Stat. 3167, as amended Pub. L. 97–12, title IV, § 401, June 5, 1981, 95 Stat. 95, making further continuing appropriations for fiscal year 1981, provided in part that: ''the provisions of section 306(a), (b), and (d) of H.R. 7593 (providing salary pay cap limitations for executive, legislative, and judicial employees and officials) [as passed the House of Representatives, July 21, 1980] shall apply to any appropriation, fund, or authority made available for the period October 1, 1980, through September 30, 1981, by this or any other Act.'' Section 306(a), (b), and (d) of H.R. 7593, as passed the House of Representatives on July 21, 1980, provided that:

''(a) No part of the funds appropriated for the fiscal year ending September 30, 1981, by this Act or any other Act may be used to pay the salary or pay of any individual in any office or position in the legislative, executive, or judicial branch, or in the government of the District of Columbia, at a rate which exceeds the rate (or maximum rate, if higher) of salary or basic pay payable for such office or position for September 30, 1980, if the rate of salary or basic pay for that office or position is—

''(1) fixed at a rate which is equal to or greater than the rate of basic pay for level V of the Executive Schedule under section 5316 of title 5, United States Code, or

''(2) limited to a maximum rate which is equal to or greater than the rate of basic pay for such level V (or to a percentage of such a maximum rate) by reason of section 5308 of title 5, United States Code, or any other provision of law or congressional resolution.

''(b) For purposes of subsection (a), the rate or maximum rate (as the case may be) of salary or basic pay payable for September 3, 1980, for any office or position which was not in existence on such date shall be deemed to be the rate or maximum rate (as the case may be) of salary or basic pay payable to individuals in comparable offices or positions for such date, as determined under regulations prescribed—

''(1) by the President, in the case of any office or position within the executive branch or in the government of the District of Columbia;

''(2) jointly by the Speaker of the House of Representatives and the President pro tempore of the Senate, in the case of any office or position within the legislative branch; or

''(3) by the Chief Justice of the United States, in the case of any office or position within the judicial branch.

''(d) For purposes of administering any provision of law, rule, or regulation which provides retirement, life insurance, or other employee benefit, which requires any deduction or contribution, or which imposes any requirement or limitation, on the basis of a rate of salary or basic pay, the rate of salary or basic pay payable after the application of this section shall be treated as the rate of salary or basic pay.''

Similar provisions were contained in Pub. L. 96–369, § 101(c), Oct. 1, 1980, 94 Stat. 1352.

FISCAL YEAR 1980 LIMITATION ON USE OF FUNDS FOR PAY ADJUSTMENTS FOR CERTAIN POSITIONS

Pub. L. 96–86, § 101(c), Oct. 12, 1979, 93 Stat. 657, provided in part that:

''For the fiscal year 1980, funds available for payment to executive employees, which includes Members of Congress, who under existing law are entitled to approximately 12.9 percent increase in pay, shall not be used to pay any such employee or elected or appointed official any sum in excess of 5.5 percent increase in existing pay and such sum if accepted shall be in lieu of the 12.9 percent due for such fiscal year.

''*Provided, further,* That for the purpose of carrying out this provision and notwithstanding the provisions of the Federal Pay Comparability Act of 1970 [Pub. L. 91–656], the Executive Salary Cost-Of-Living Adjustment Act [Pub. L. 94–82], or any other related provision of law, which would provide an approximate 12.9 percent increase in pay for certain Federal officials for pay periods beginning on or after October 1, 1979, and notwithstanding section 102 of this joint resolution, the provisions of section 304 of the Legislative Branch Appropriation Act, 1979 [set out below], which limit the pay for certain Federal offices and positions, shall apply to funds appropriated by this joint resolution or any Act for the fiscal year 1980, except that in applying such limitation the term 'at a rate which exceeds by more than 5.5 percent the rate' shall be substituted for the term 'at a rate which exceeds the rate' where it appears in subsection (a) of such section for the purpose of limiting pay increases to 5.5 percent.''

FISCAL YEAR 1979 LIMITATION ON USE OF FUNDS FOR PAY ADJUSTMENTS FOR CERTAIN POSITIONS

Pub. L. 95–429, title VI, §613, Oct. 10, 1978, 92 Stat. 1017, provided that:

''(a) No part of the funds appropriated for the fiscal year ending September 30, 1979, by this Act or any other Act may be used to pay the salary or pay of any individual in any office or position in the legislative, executive, or judicial branch, or in the government of the District of Columbia, at a rate which exceeds the rate (or maximum rate, if higher) of salary or basic pay payable for such office or position for September 30, 1978, if the rate of salary or basic pay for such office or position is—

''(1) fixed at a rate which is equal to or greater than the rate of basic pay for level V of the Executive Schedule under section 5316 of title 5, United States Code, or

''(2) limited to a maximum rate which is equal to or greater than the rate of basic pay for such level V (or to a percentage of such a maximum rate) by reason of section 5308 of title 5, United States Code or any other provision of law or congressional resolution.

''(b) For purposes of subsection (a), the rate or maximum rate (as the case may be) of salary or basic pay payable for September 30, 1978, for any office or position which was not in existence on such date shall be deemed to be the rate or maximum rate (as the case may be) of salary or basic pay payable to individuals in comparable offices or positions for such date, as determined under regulations prescribed—

''(1) by the President, in the case of any office or position within the executive branch or in the government of the District of Columbia;

''(2) jointly by the Speaker of the House and the President pro tempore of the Senate, in the case of any office or position within the legislative branch; or

''(3) by the Chief Justice of the United States, in the case of any office or position within the judicial branch.

''(c) For purposes of administering any provision of law, rule, or regulation which provides retirement, life insurance, or other employee benefit, which requires any deduction or contribution, or which imposes any requirement or limitation, on the basis of a rate of salary or basic pay, the rate of salary or basic pay payable after the application of this section shall be treated as the rate of salary or basic pay.''

Identical provisions were enacted by Pub. L. 95–391, title III, §304, Sept. 30, 1978, 92 Stat. 788.

1977 COMPARABILITY ADJUSTMENT NOT EFFECTIVE FOR CERTAIN POSITIONS

Pub. L. 95–66, July 11, 1977, 91 Stat. 270, provided that: ''The first adjustment which, but for this Act, would be made after the date of enactment of this Act under the following provisions of law in the salary or rate of pay of positions or individuals to which such provisions apply, shall not take effect:

''(1) the second sentence of section 104 of title 3, United States Code, relating to comparability adjustments in the salary of the Vice President of the United States;

''(2) paragraph (2) of section 601(a) of the Legislative Reorganization Act of 1946 (2 U.S.C. 31), relating to comparability adjustments in the annual rate of pay of Members of Congress;

''(3) section 461 of title 28, United States Code, relating to comparability adjustments in the salary and rate of pay of justices, judges, commissioners, and referees; and

''(4) section 5318 of title 5, United States Code, relating to comparability adjustments in the annual rate of pay for positions in the Executive Schedule.''

FISCAL YEAR 1977 LIMITATION ON USE OF FUNDS FOR PAY ADJUSTMENTS FOR CERTAIN POSITIONS

Pub. L. 94–440, title II, §100, Oct. 1, 1976, 90 Stat. 1446, provided that: ''No part of the funds appropriated in this Act or any other Act shall be used to pay the salary of an individual in a position or office referred to in section 225(f) of the Federal Salary Act of 1967, as amended (2 U.S.C. 356), including a Delegate to the House of Representatives, at a rate which exceeds the salary rate in effect on September 30, 1976, for such position or office except increases submitted by the President pursuant to section 225 of the Federal Salary Act of 1967.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5312, 5313, 5314, 5315, 5316 of this title.

SUBCHAPTER III—GENERAL SCHEDULE PAY RATES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 3102, 3109, 3374, 4505a, 5302, 5379, 5392, 5541, 5544, 5545, 5753, 5754, 5755, 7204 of this title; title 2 sections 60e–2, 60e–2a, 60e–2b, 60e–6, 162a, 166, 197, 293, 353, 356, 437c; title 4 section 142; title 7 sections 511m, 610, 1507, 1642, 1765a, 6981; title 10 sections 1464, 2006, 2903, 4540, 7212, 9540; title 12 sections 482, 1441a, 1462a, 1701c, 1766, 2245, 2405, 3012, 4515, 4703; title 13 section 23; title 14 section 432; title 15 sections 78d, 78s, 205i, 278e, 327, 634d, 648, 714g, 714h, 715h, 717q, 1023, 2451, 4105; title 16 sections 18c, 410cc–36, 410pp–4, 410ww–24, 410ccc–22, 450jj–1, 469j, 470m, 583j–1, 590d, 793, 825i, 832i, 833h, 916*l*, 3702, 4604; title 18 section 4001; title 20 sections 74, 75f, 76dd, 80g, 80*o*, 80q–4, 241, 964, 1089, 1098, 1102, 1134, 1135a–1, 1135d–3, 1145, 1213c, 1221e, 1221e–1, 1417, 2106, 2839, 3413, 3425, 4512, 4831, 5509, 5826, 5848, 5933, 6011, 9011; title 21 section 393; title 22 sections 272a, 277d–3, 277d–19, 280b, 280i, 280k, 287e, 287r, 289b, 290b, 2024, 2083, 2421, 2454, 2581, 2873, 3008, 4154, 4606, 6204; title 25 sections 2a, 305a, 633, 640d–11, 2011, 2012, 2707; title 26 sections 7471, 9010, 9040; title 28 sections 625, 626; title 29 sections 172, 661, 676, 761a, 783, 797a, 1774; title 30 sections 556, 664, 823; title 31 section 3801; title 33 sections 569a, 984, 1325, 1374; title 35 sections 3, 7; title 36 sections 1405, 5202; title 38 sections 4103, 7281, 7631, 7802; title 40 sections 13b, 166b–1f, 166b–3, 174j–8, 609, 873, 1106; title 40 App. section 109; title 41 sections 38, 46, 104, 422; title 42 sections 204, 217a, 237, 282, 290aa, 299c–1, 300v–2, 907a, 1320a–4, 1320b–9, 1563, 1731, 1855f, 1873, 1962a–4, 2000e–4, 2000g, 2201, 2473, 4276, 4365, 4372, 5149, 5667g–2, 6063, 10266, 12373, 12619, 12651f, 14196; title 43 sections 316n, 1731; title 45 sections 154, 362; title 46 App. sections 1111, 1295e, 1295g; title 47 section 154; title 49 sections 10363, 10383,

11161, 32306; title 50 sections 402, 404; title 50 App. sections 460, 1989b–5, 2001, 2153, 2253.

§ 5331. Definitions; application

(a) For the purpose of this subchapter, ''agency'', ''employee'', ''position'', ''class'', and ''grade'' have the meanings given them by section 5102 of this title.

(b) This subchapter applies to employees and positions to which chapter 51 applies, other than Senior Executive Service positions, positions in the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service, and positions to which section 5376 applies.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 467; Pub. L. 95–454, title IV, § 408(b)(2), Oct. 13, 1978, 92 Stat. 1173; Pub. L. 100–325, § 2(h)(3), May 30, 1988, 102 Stat. 582; Pub. L. 101–509, title V, § 529 [title I, § 102(c)], Nov. 5, 1990, 104 Stat. 1427, 1444.)

HISTORICAL AND REVISION NOTES

The section is added on authority of former sections 1081, 1082, 1084, and 1091, which are carried into section 5102.

AMENDMENTS

1990—Subsec. (b). Pub. L. 101–509 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''This subchapter applies to employees and positions, other than Senior Executive Service positions and positions in the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service, to which chapter 51 of this title applies.''

1988—Subsec. (b). Pub. L. 100–325 inserted reference to positions in Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service.

1978—Subsec. (b). Pub. L. 95–454 inserted reference to Senior Executive Service positions.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–509 effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title III, § 305] of Pub. L. 101–509, set out as a note under section 5301 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 9 months after Oct. 13, 1978, and congressional review of provisions of sections 401 through 412 of Pub. L. 95–454, see section 415 of Pub. L. 95–454, set out as an Effective Date note under section 3131 of this title.

REFERENCES IN OTHER LAWS TO CHAPTER 51 AND SUBCHAPTER III OF CHAPTER 53

References in laws to fix pay in accordance with this subchapter and chapter 51 of this title considered to include authority under section 5376 of this title, if applicable, but not to include any authority under section 5304 of this title or section 529 [title III, § 302] of Pub. L. 101–509, set out as a note under section 5304 of this title, see section 529 [title I, § 101(c)(2)] of Pub. L. 101–509, set out in a References in Other Laws to GS–16, 17, or 18 Pay Rates; Regulations note under section 5376 of this title.

CROSS REFERENCES

Employment of reading assistants for blind employees without regard to the provisions of this subchapter, see section 3102 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 50 App. section 2153.

§ 5332. The General Schedule

(a)(1) The General Schedule, the symbol for which is ''GS'', is the basic pay schedule for positions to which this subchapter applies. Each employee to whom this subchapter applies is entitled to basic pay in accordance with the General Schedule.

(2) The General Schedule is a schedule of annual rates of basic pay, consisting of 15 grades, designated ''GS–1'' through ''GS–15'', consecutively, with 10 rates of pay for each such grade. The rates of pay of the General Schedule are adjusted in accordance with section 5303.

(b) When payment is made on the basis of an hourly, daily, weekly, or biweekly rate, the rate is computed from the appropriate annual rate of basic pay named by subsection (a) of this section in accordance with the rules prescribed by section 5504(b) of this title.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 467; Pub. L. 90–83, § 1(18), Sept. 11, 1967, 81 Stat. 199; Pub. L. 90–206, title II, § 202(a), Dec. 16, 1967, 81 Stat. 624; Pub. L. 95–454, title V, § 503(e), Oct. 13, 1978, 92 Stat. 1184; Pub. L. 98–615, title II, § 204(a)(1), Nov. 8, 1984, 98 Stat. 3216; Pub. L. 102–378, § 2(29), Oct. 2, 1992, 106 Stat. 1350; Pub. L. 103–89, § 3(b)(1)(F), Sept. 30, 1993, 107 Stat. 982.)

HISTORICAL AND REVISION NOTES

1966 ACT

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(a)	5 U.S.C. 1113 (less (c)).	Oct. 28, 1949, ch. 782, § 603 (less (d)), 63 Stat. 965. Oct. 24, 1951, ch. 554, § 1(a), 65 Stat. 612. Sept. 1, 1954, ch. 1208, § 109 (less (c)), 68 Stat. 1108. June 28, 1955, ch. 189, § 2(a), 69 Stat. 172. June 20, 1958, Pub. L. 85–462, § 2(a), 72 Stat. 203. July 1, 1960, Pub. L. 86–568, § 112(a), 74 Stat. 298. Oct. 11, 1962, Pub. L. 87–793, § 602(a), 76 Stat. 843. Aug. 14, 1964, Pub. L. 88–426, § 102(a), 78 Stat. 400.
(b)	5 U.S.C. 1113(c).	Oct. 28, 1949, ch. 782, § 603 (d), 63 Stat. 965. Sept. 1, 1954, ch. 1208, § 109(c), 68 Stat. 1108.

In subsection (a), the words ''the symbol for which is 'GS'\'' are added on authority of former section 1111 which is carried into section 5104. So much as related to the Crafts, Protective, and Custodial Schedule is omitted as repealed effective not later than Sept. 11, 1955, by the Act of Sept. 1, 1954, §§ 109(b), 110(b), 68 Stat. 1108.

In subsection (b), reference to payment made on the basis of a ''monthly'' rate is omitted since section 5504(b), former section 944(c), no longer provides for converting a basic annual rate to a basic monthly rate.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 ACT

Section of title 5	*Source (U.S. Code)*	*Source (Statutes at Large)*
5332(a)	5 App.: 1113(b).	Oct. 29, 1965, Pub. L. 89–301, § 2(a), 79 Stat. 1111. July 18, 1966, Pub. L. 89–504, § 102(a), 80 Stat. 288.

AMENDMENTS

1993—Subsec. (a)(1). Pub. L. 103–89 struck out '', except an employee covered by the performance management and recognition system established under chapter 54,'' after ''whom this subchapter applies''.

1992—Subsec. (a). Pub. L. 102–378 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''The General Schedule, the symbol for which is 'GS', is the basic pay schedule for positions to which this subchapter applies. Each employee to whom this subchapter applies, except an employee covered by the performance management and recognition system established under chapter 54 of this title, is entitled to basic pay in accordance with the General Schedule.''

1984—Subsec. (a). Pub. L. 98–615 substituted ''the performance management and recognition system established under chapter 54'' for ''the merit pay system established under section 5402''.

1978—Subsec. (a). Pub. L. 95–454 inserted in second sentence reference to an employee covered by the merit pay system established under section 5402 of this title.

1967—Subsec. (a). Pub. L. 90–206 increased the compensation in each step of each grade.

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 1992 AMENDMENT

Amendment by Pub. L. 102–378 effective May 4, 1991, see section 9(b)(4) of Pub. L. 102–378, set out as a note under section 6303 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 1978 AMENDMENT

Section 504(a) of Pub. L. 95–454 provided that amendment by Pub. L. 95–454 was effective on first day of first applicable pay period which began on or after Oct. 1, 1981, except it could take effect with respect to any category or categories of positions before such day to extent prescribed by Director of Office of Personnel Management.

EFFECTIVE DATE OF 1967 AMENDMENT

Section 220(a)(2) of Pub. L. 90–206 provided, except as otherwise expressly provided, that: ''Sections 202 [amending this section and enacting provisions set out as a note under this section], 203 [amending section 3301 of Title 39, The Postal Service], 204 [enacting section 3512A of Title 39, amending sections 3512, and 3513–3531 of Title 39, and enacting provisions set out as a note under section 3512A of Title 39], 205 [amending sections 3542–3544 of Title 39, and enacting provisions set out as notes under sections 3542, 3544, 3552, and 3560 of Title 39], 206 [amending sections 3560, 3573, and 3575 of Title 39, and enacting provisions set out as a note under section 3542 of Title 39], 208 [amending former section 4107 of Title 38, Veterans' Benefits], 209 [amending sections 867 and 870 of Title 22, Foreign Relations and Intercourse, and enacting provisions set out as a note under section 867 of Title 22], 210 [enacting provisions set out as a note under section 590h of Title 16, Conservation], 211 [enacting provisions set out as a note under this section and section 548 of Title 28, Judiciary and Judicial Procedure], 213 (except subsections (d) and (e)) [enacting provisions set out as notes under sections 603, 604, and 753 of Title 28], 214 (except subsections (j), (k), (*l*), (n), and (*o*)) [enacting sections 60e–14, 61–2, 74a–2, and 293c of Title 2, The Congress, amending section 166b–3 of Title 40, Public Buildings, Property and Works and enacting provisions set out as a note under section 8339 of this title], and 216 [enacting provisions set out as a note under section 60e–14 of Title 2] shall become effective as of the beginning of the first pay period which began on or after October 1, 1967.''

SHORT TITLE

Section 1 of Pub. L. 90–206 provided: ''That this Act [see Tables for classification] may be cited as the 'Postal Revenue and Federal Salary Act of 1967'.''

Section 201 of title II of Pub. L. 90–206 provided that: ''This title [see Tables for classification] may be cited as the 'Federal Salary Act of 1967'.''

ADJUSTMENT OF PAY RATES EFFECTIVE OCTOBER 1, 1972

Pub. L. 93–549, Dec. 26, 1974, 88 Stat. 1743, provided: ''That notwithstanding the provisions of any other law or any regulation issued thereunder, no officer or employee of the United States shall have his pay reduced by reason of Executive Order 11777, dated April 12, 1974, relating to the effective date of the 1972 Federal pay comparability adjustment.

''SEC. 2. The Civil Service Commission shall issue regulations necessary to implement this Act.''

1970 INCREASE IN PAY RATES

Pub. L. 91–231, Apr. 15, 1970, 84 Stat. 195, provided that:

''SEC. 1. [Short Title]. This Act may be cited as the 'Federal Employees Salary Act of 1970'.''

''SEC. 2. [Adjustment of Pay Rates]. (a) (1) The President shall increase the rates of basic pay, basic compensation, and salaries (as such rates were increased by Executive Order Numbered 11474, dated June 16, 1969) [formerly set out as a note under this section] contained in the schedules listed in paragraph (2) of this subsection by amounts equal, as nearly as may be practicable and with regard to maintaining approximately equal increments within any grade, level, or class of any such schedule, to 6 percent.

''(2) The schedules referred to in paragraph (1) of this subsection are as follows: the General Schedule contained in section 5332(a) of title 5, United States Code [subsec. (a) of this section]; the Postal Field Service Schedule and the Rural Carrier Schedule contained in sections 3542(a) and 3543(a), respectively, of title 39, United States Code; the schedules relating to certain positions within the Department of Medicine and Surgery of the Veterans' Administration and contained in [former] section 4107 of title 38, United States Code; and the Foreign Service schedules contained in sections 412 and 415 of the Foreign Service Act of 1946 [sections 867 and 870, respectively, of Title 22, Foreign Relations and Intercourse].

''(b) Rates of basic pay, basic compensation, and salaries of officers and employees paid under the schedules referred to in subsection (a) of this section shall be increased initially under conversion rules prescribed by the President or by such agency as the President may designate.

''(c) The increases made by the President under this section shall have the force and effect of law and shall be printed in (1) the Statutes at Large in the same volume as public laws, (2) the Federal Register, and (3) the Code of Federal Regulations.

''SEC. 3. [Employees of ASCS County Committees, Legislative and Judicial Branches; United States Attorneys: Salaries Fixed by Administrative Action]. (a) The rates of pay of personnel subject to sections 210 and 214 of the Federal Salary Act of 1967 (81 Stat. 633, 635; Public Law 90–206) [which, respectively, were set out as a note under section 590h of Title 16, Conservation, and amended sections 60e–14, 60j, 61–1, 61–2, 74a–2, 84–1, 84–2, and 293c of Title 2, The Congress, sections 5533 and 8339 note of this title, and section 166b–3 of Title 40, Public Buildings, Property, and Works], relating to Agricultural Stabilization and Conservation County Committee employees and to certain employees of the legislative branch of the Government, respec-

tively, and any minimum or maximum rate, limitation, or allowance applicable to any such personnel, shall be adjusted, effective on the first day of the first pay period which begins on or after December 27, 1969, by amounts which are identical, insofar as practicable, to the amounts of the adjustments under section 2 of this Act for corresponding rates of pay for employees subject to the General Schedule, by the following authorities—

''(1) the Secretary of Agriculture, with respect to individuals employed by the county committees established under section 590h(b) of title 16;

''(2) the President pro tempore of the Senate, with respect to the United States Senate;

''(3) the Finance Clerk of the House of Representatives, with respect to the United States House of Representatives; and

''(4) the Architect of the Capitol, with respect to the Office of the Architect of the Capitol.

The provisions of this section shall not be construed to allow adjustments in the rates of pay of the following officers of the United States House of Representatives: Parliamentarian, Chaplain, Clerk, Sergeant at Arms, Doorkeeper, Postmaster, and the four Floor Assistants to the Minority whose position titles formerly were Minority Clerk, Minority Sergeant at Arms, Minority Doorkeeper, and Minority Postmaster.

''(b) Notwithstanding section 665 of title 31 [sections 1341, 1342, and 1349–1351 and subchapter II of chapter 15 of Title 31, Money and Finance], the rates of pay of employees in and under the judicial branch of the Government, whose rates of pay are fixed by administrative action pursuant to law and are not otherwise adjusted under this section may be adjusted, effective on the first day of the first pay period which begins on or after December 27, 1969, by amounts not to exceed the amounts of the adjustments under section 2(a) of this Act for corresponding rates of pay. The limitations fixed by law with respect to the aggregate salaries payable to secretaries and law clerks of circuit and district judges shall be adjusted, effective on the first day of the first pay period which begins on or after the date on which adjustments become effective under this section, by amounts not to exceed the amounts of the adjustments under this section for corresponding rates of pay.

''(c) The rates of pay of the United States attorneys and assistant United States attorneys whose annual salaries are fixed pursuant to section 548 of title 28, United States Code, shall be increased, effective on the first day of the first pay period which begins on or after December 27, 1969, by amounts equal, as nearly as may be practicable, to the increases provided pursuant to section 2 of this Act for corresponding rates of pay.

''(d) Notwithstanding section 665 of title 31 [sections 1341, 1342, and 1349–1351 and subchapter II of chapter 15 of Title 31, Money and Finance], the rates of pay of employees of the Federal Government and of the government of the District of Columbia whose rates of pay are fixed by administrative action pursuant to law and are not otherwise increased pursuant to this section are hereby authorized to be increased, effective on the first day of the first pay period which begins on or after December 27, 1969, by amounts not to exceed the increases provided pursuant to section 2 of this Act for corresponding rates of pay in the appropriate schedule or scale of pay.

''SEC. 4. [Stop Increases; Administrative Action; Level V Limitations]. (a) An increase in pay, compensation, or salary which becomes effective under section 2 of this Act is not an equivalent increase in pay within the meaning of section 5335 of title 5, United States Code, or section 3552 of title 39, United States Code.

''(b) Nothing in this Act shall impair any authority pursuant to which rates of pay, compensation, or salary may be fixed by administrative action.

''(c) Notwithstanding any provisions other than section 6 of this Act—

''(1) any officer or employee of the United States Government receiving pay, compensation, or salary which is less than the basic pay for level V of the Executive Schedule in section 5316 of title 5, United States Code, in effect on the date of enactment of this Act [Apr. 15, 1970], shall not have his pay, compensation, or salary increased, by reason of the enactment of this Act, to a rate in excess of the basic pay for such level V; and

''(2) any officer or employee of the United States Government receiving pay, compensation, or salary equal to or in excess of the basic pay for such level V shall not have his pay, compensation, or salary increased.

''SEC. 5. [Retroactive Pay]. (a) Retroactive pay, compensation, or salary shall be paid by reason of this Act only in the case of an individual in the service of the United States (including service in the Armed Forces of the United States) or the municipal government of the District of Columbia on the date of enactment of this Act [Apr. 15, 1970], except that such retroactive pay, compensation, or salary shall be paid—

''(1) to an officer or employee who retired, during the period beginning on the first day of the first pay period which began on or after December 27, 1969, and ending on the date of enactment of this Act [Apr. 15, 1970], for services rendered during such period; and

''(2) in accordance with subchapter VIII of chapter 55 of title 5, United States Code, relating to settlement of accounts, for services rendered, during the period beginning on the first day of the first pay period which began on or after December 27, 1969, and ending on the date of enactment of this Act [Apr. 15, 1970], by an officer or employee who died during such period.

Such retroactive pay, compensation, or salary shall not be considered as basic pay for the purposes of subchapter III of chapter 83 of title 5, United States Code, relating to civil service retirement, or any other retirement law or retirement system, in the case of any such retired or deceased officer or employee.

''(b) For the purposes of this section, service in the Armed Forces of the United States, in the case of an individual relieved from training and service in the Armed Forces of the United States or discharged from hospitalization following such training and service, shall include the period provided by law for the mandatory restoration of such individual to a position in or under the United States Government or the municipal government of the District of Columbia.

''SEC. 6. [District of Columbia Judges; Board of Tax Appeals]. [Section amended sections 11–702(d). 11–902 (d), and 47–2402 of the District of Columbia Code and is therefore not set out herein.]

''SEC. 7. [Former Presidents' Staffs] [Section amended section 1(b) of Pub. L. 85–745, Aug. 25, 1958, 72 Stat. 838, as amended, which is set out as a note under section 102 of Title 3, The President. This section is therefore not set out herein.]

''SEC. 8. [Premium Pay]. [Section amended section 5545(c)(2) of this title, and is therefore not set out herein.]

''SEC. 9. [Effective Date]. (a) Sections 1 to 6, inclusive, of this Act shall become effective on the first day of the first pay period which begins on or after December 27, 1969.

''(b) This section and sections 7 and 8 of this Act shall become effective on the date of enactment of this Act [Apr. 15, 1970].

''(c) For purposes of determining the amount of insurance for which an individual is eligible under chapter 87 of title 5, United States Code, relating to group life insurance for Government employees, all changes in rates of pay, compensation, and salary which result from the enactment of this Act shall be held and considered to become effective as of the date of such enactment [Apr. 15, 1970].

''(d) Any deduction to be made as the result of the enactment of this Act from the pay, compensation, or salary of an officer or employee enrolled in a retirement system of the United States Government, and the contribution of the agency employing the officer or em-

ployee, shall be made at the rates of deductions and contributions in effect for that system on the date of such enactment [Apr. 15, 1970].''

INITIAL ADJUSTMENT OF 1967 PAY INCREASES

Section 202(b) of Pub. L. 90–206 provided that: ''Except as provided in section 5303 of title 5, United States Code [section 5303 of this title], the rates of basic pay of officers and employees to whom the General Schedule set forth in the amendment made by subsection (a) of this section [amending this section] applies shall be initially adjusted as of the effective date of this section, as follows:

''(1) If the officer or employee is receiving basic pay immediately prior to the effective date of this section [see Effective Date of 1967 Amendment note under this section] at one of the rates of a grade in the General Schedule, he shall receive a rate of basic pay at the corresponding rate in effect on and after such date.

''(2) If the officer or employee is receiving basic pay immediately prior to the effective date of this section [see Effective Date of 1967 Amendment note under this section] at a rate between two rates of a grade in the General Schedule, he shall receive a rate of basic pay at the higher of the two corresponding rates in effect on and after such date.

''(3) If the officer or employee is receiving basic pay immediately prior to the effective date of this section [see Effective Date of 1967 Amendment note under this section] at a rate in excess of the maximum rate for his grade, he shall receive (A) the maximum rate for his grade in the new schedule, or (B) his existing rate of basic pay increased by 4.5 per centum, rounded to the next highest dollar, if such existing rate as so increased is higher.

''(4) If the officer or employee, immediately prior to the effective date of this section [see Effective Date of 1967 Amendment note under this section], is receiving, pursuant to section 2(b)(4) of the Federal Employees Salary Increase Act of 1955, an existing aggregate rate of pay determined under section 208(b) of the Act of September 1, 1954, (68 Stat. 1111), plus subsequent increases authorized by law, he shall receive an aggregate rate of pay equal to the sum of his existing aggregate rate of pay on the day preceding the effective date of this section, plus the amount of increase made by this section in the maximum rate of his grade, until (i) he leaves his position, or (ii) he is entitled to receive aggregate pay at a higher rate by reason of the operation of this Act or any other provision of law; but, when such position becomes vacant, the aggregate rate of pay of any subsequent appointee thereto shall be fixed in accordance with applicable provisions of law. Subject to clauses (i) and (ii) of the immediately preceding sentence of this subparagraph, the amount of the increase provided by this section shall be held and considered for the purposes of section 208(b) of the Act of September 1, 1954, to constitute a part of the existing rate of pay of the employee.

''(5) If the officer or employee, at any time during the period beginning on the effective date of this section [see Effective Date of 1967 Amendment note under this section], and ending on the date of enactment of this title [Dec. 16, 1967], was promoted from one grade under the General Schedule contained in section 5332(a) of title 5, United States Code [subsec. (a) of this section] to another such grade at a rate which is above the minimum rate thereof, his rate of basic pay shall be adjusted retroactively from the effective date of this section to the date on which he was so promoted, on the basis of the rate which he was receiving during the period from such effective date to the date of such promotion and, from the date of such promotion, on the basis of the rate for that step of the appropriate grade of the General Schedule contained in the amendment made by subsection (a) of this section [amending the section] which corresponds numerically to the step of the grade of the General Schedule to which such officer or employee was promoted as in effect (without regard to this title) at the time of such promotion.

''(6) If the officer or employee, at any time during the period beginning on the effective date of this section and ending on the date of enactment of this title [Dec. 16, 1967] became subject to the General Schedule and his rate of basic pay was set above the minimum rate of the grade on the basis of a previously earned rate above such minimum rate, his rate of basic pay shall be adjusted retroactively to the date on which he became subject to the General Schedule on the basis of the rate of the appropriate grade of the General Schedule contained in this section which corresponds numerically to the rate of the grade at which the pay of such officer or employee was set at the time he became subject to the General Schedule.''

Section 202(b) of Pub. L. 90–206 effective as of the beginning of the first pay period which begins on or after Oct. 1, 1967, see section 220(a)(2) of Pub. L. 90–206, set out as a note under this section.

1967 SALARY INCREASE FOR PERSONS WHOSE COMPENSATION RATES ARE FIXED BY ADMINISTRATIVE ACTION

Section 211(b)–(d) of Pub. L. 90–206 provided that:

''(b) Notwithstanding section 3679 of the Revised Statutes, as amended (31 U.S.C. 665) [sections 1341, 1342, and 1349–1351 and subchapter II of chapter 15 of Title 31, Money and Finance], the rates of pay of officers and employees of the Federal Government and of the municipal government of the District of Columbia whose rates of pay are fixed by administrative action pursuant to law and are not otherwise increased by this title are hereby authorized to be increased, effective on the effective date of section 202 of this title [see Effective Date of 1967 Amendment note under this section], by amounts not to exceed the increases provided by this title for corresponding rates of pay in the appropriate schedule or scale of pay.

''(c) Nothing contained in this section shall be held or considered to authorize any increase in the rates of pay of officers and employees whose rates of pay are fixed and adjusted from time to time as nearly as is consistent with the public interest in accordance with prevailing rates or practices.

''(d) Nothing contained in this section shall affect the authority contained in any law pursuant to which rates of pay may be fixed by administrative action.''

Sections 211(b)–(d) of Pub. L. 90–206 effective as of the beginning of the first pay period which begins on or after Oct. 1, 1967, see section 220(a)(2) of Pub. L. 90–206, set out as a note under this section.

RETROACTIVE COMPENSATION UNDER 1967 PAY INCREASES

Section 218 of Pub. L. 90–206 provided that:

''(a) Retroactive pay, compensation, or salary shall be paid by reason of this title only in the case of an individual in the service of the United States (including service in the Armed Forces of the United States) or the municipal government of the District of Columbia on the date of enactment of this title [Dec. 16, 1967] except that such retroactive pay, compensation, or salary shall be paid—

''(1) to an officer or employee who retired, during the period beginning on the first day of the first pay period which began on or after October 1, 1967, and ending on the date of enactment of this title [Dec. 16, 1967], for services rendered during such period, and

''(2) in accordance with subchapter VIII of chapter 55 of title 5, United States Code, relating to settlement of accounts, for services rendered, during the period beginning on the first day of the first pay period which began on or after October 1, 1967, and ending on the date of enactment of this title [Dec. 16, 1967], by an officer or employee who died during such period.

Such retroactive pay, compensation, or salary shall not be considered as basic pay for the purposes of sub-

chapter III of chapter 83 of title 5, United States Code, relating to civil service retirement, or any other retirement law or retirement system, in the case of any such retired or deceased officer or employee.

''(b) For the purposes of this section, service in the Armed Forces of the United States, in the case of an individual relieved from training and service in the Armed Forces of the United States or discharged from hospitalization following such training and service, shall include the period provided by law for the mandatory restoration of such individual to a position in or under the Federal Government or the municipal government of the District of Columbia.''

Section 218 of Pub. L. 90–206 effective Dec. 16, 1967, see section 220(a)(1) of Pub. L. 90–206, set out as a note under section 3110 of this title.

EXECUTIVE ORDER NO. 11413

Ex. Ord. No. 11413, June 11, 1968, 33 F.R. 8641, which provided for adjustment of pay rates effective July 1, 1968, was superseded by Ex. Ord. No. 11811, Oct. 7, 1974, 39 F.R. 36302, formerly set out below.

EXECUTIVE ORDER NO. 11474

Ex. Ord. No. 11474, June 16, 1969, 34 F.R. 9605, which provided for adjustment of pay rates effective July 1, 1969, was superseded by Ex. Ord. No. 11811, Oct. 7, 1974, 39 F.R. 36302, formerly set out below.

EXECUTIVE ORDER NO. 11524

Ex. Ord. No. 11524, Apr. 15, 1970, 35 F.R. 6247, which provided for adjustment of pay rates effective first pay period on or after Dec. 27, 1969, was superseded by Ex. Ord. No. 11811, Oct. 7, 1974, 39 F.R. 36302, formerly set out below.

EXECUTIVE ORDER NO. 11576

Ex. Ord. No. 11576, Jan. 8, 1971, 36 F.R. 347, which provided for adjustment of pay rates effective Jan. 1, 1971, was superseded by Ex. Ord. No. 11811, Oct. 7, 1974, 39 F.R. 36302, formerly set out below.

EXECUTIVE ORDER NO. 11637

Ex. Ord. No. 11637, Dec. 22, 1971, 36 F.R. 24911, which provided for adjustment of pay rates effective Jan. 1, 1972, was superseded by Ex. Ord. No. 11811, Oct. 7, 1974, 39 F.R. 36302, formerly set out below.

EXECUTIVE ORDER NO. 11691

Ex. Ord. No. 11691, Dec. 15, 1972, 37 F.R. 27607, as amended by Ex. Ord. No. 11777, Apr. 12, 1974, 39 F.R. 13519, which provided for adjustment of pay rates effective Oct. 1, 1972, was superseded by Ex. Ord. No. 11811, Oct. 7, 1974, 39 F.R. 36302, formerly set out below.

EXECUTIVE ORDER NO. 11739

Ex. Ord. No. 11739, Oct. 3, 1973, 38 F.R. 27581, which provided for adjustment of pay rates effective Oct. 1, 1973, was superseded by Ex. Ord. No. 11811, Oct. 7, 1974, 39 F.R. 36302, formerly set out below.

EXECUTIVE ORDER NO. 11811

Ex. Ord. No. 11811, Oct. 7, 1974, 39 F.R. 36302, which provided for adjustment of pay rates effective Oct. 1, 1974, was superseded by Ex. Ord. No. 11883, Oct. 6, 1975, 40 F.R. 47091, formerly set out below.

EXECUTIVE ORDER NO. 11883

Ex. Ord. No. 11883, Oct. 6, 1975, 40 F.R. 47091, which provided for adjustment of pay rates effective Oct. 1, 1975, was superseded by Ex. Ord. No. 11941, Oct. 1, 1976, 41 F.R. 43889, formerly set out below.

EXECUTIVE ORDER NO. 11941

Ex. Ord. No. 11941, Oct. 1, 1976, 41 F.R. 43899, as amended by Ex. Ord. No. 11943, Oct. 25, 1976, 41 F.R. 47213, which provided for adjustment of pay rates effective Oct. 1, 1976, was superseded by Ex. Ord. No. 12010, Sept. 28, 1977, 42 F.R. 52365, formerly set out below.

EXECUTIVE ORDER NO. 12010

Ex. Ord. No. 12010, Sept. 28, 1977, 42 F.R. 52365, which provided for adjustment of pay rates effective Oct. 1, 1977, was superseded by Ex. Ord. No. 12087, Oct. 7, 1978, 43 F.R. 46823, formerly set out below.

EXECUTIVE ORDER NO. 12087

Ex. Ord. No. 12087, Oct. 7, 1978, 43 F.R. 46823, which provided for adjustment of pay rates effective Oct. 1, 1978, was superseded by Ex. Ord. No. 12165, Oct. 9, 1979, 44 F.R. 58671, formerly set out below.

EXECUTIVE ORDER NO. 12165

Ex. Ord. No. 12165, Oct. 9, 1979, 44 F.R. 58671, as amended by Ex. Ord. No. 12200, Mar. 12, 1980, 44 F.R. 16443, which provided for adjustment of pay rates effective Oct. 1, 1979, was superseded by Ex. Ord. No. 12248, Oct. 16, 1980, 45 F.R. 69199, formerly set out below.

EXECUTIVE ORDER NO. 12248

Ex. Ord. No. 12248, Oct. 16, 1980, 45 F.R. 69199, which provided for adjustment of pay rates effective Oct. 1, 1980, was superseded by Ex. Ord. No. 12330, Oct. 15, 1981, 46 F.R. 50921, formerly set out below.

EXECUTIVE ORDER NO. 12330

Ex. Ord. No. 12330, Oct. 15, 1981, 46 F.R. 50921, which provided for adjustment of pay rates effective Oct. 1, 1981, was superseded by Ex. Ord. No. 12387, Oct. 8, 1982, 47 F.R. 44981, formerly set out below.

EXECUTIVE ORDER NO. 12387

Ex. Ord. No. 12387, Oct. 8, 1982, 47 F.R. 44981, which provided for adjustment of pay rates effective Oct. 1, 1982, was superseded by Ex. Ord. No. 12456, Dec. 30, 1983, 49 F.R. 347, as amended by Ex. Ord. No. 12477, May 23, 1984, 49 F.R. 22041, formerly set out below.

EXECUTIVE ORDER NO. 12456

Ex. Ord. No. 12456, Dec. 30, 1983, 49 F.R. 347, as amended by Ex. Ord. No. 12477, May 23, 1984, 49 F.R. 22041; Ex. Ord. No. 12487, Sept. 14, 1984, 49 F.R. 36493, which provided for adjustment of pay rates effective Jan. 1, 1984, was superseded by Ex. Ord. No. 12496, Dec. 28, 1984, 50 F.R. 211, as amended by Ex. Ord. No. 12540, Dec. 30, 1985, 51 F.R. 577, formerly set out below.

EXECUTIVE ORDER NO. 12496

Ex. Ord. No. 12496, Dec. 28, 1984, 50 F.R. 211, as amended by Ex. Ord. No. 12540, Dec. 30, 1985, 51 F.R. 577, which provided for adjustment of pay rates effective Jan. 1, 1985, was superseded by Ex. Ord. No. 12578, Dec. 31, 1986, 52 F.R. 505, formerly set out below.

EXECUTIVE ORDER NO. 12578

Ex. Ord. No. 12578, Dec. 31, 1986, 52 F.R. 505, which provided for adjustment of pay rates effective Jan. 1, 1987, was superseded by Ex. Ord. No. 12622, Dec. 31, 1987, 53 F.R. 222, formerly set out below.

EXECUTIVE ORDER NO. 12622

Ex. Ord. No. 12622, Dec. 31, 1987, 53 F.R. 222, which provided for adjustment of pay rates effective Jan. 1, 1988, was superseded by Ex. Ord. No. 12663, Jan. 6, 1989, 54 F.R. 791, formerly set out below.

EXECUTIVE ORDER NO. 12663

Ex. Ord. No. 12663, Jan. 6, 1989, 54 F.R. 791, which provided for adjustment of pay rates effective Jan. 1, 1989, was superseded by Ex. Ord. No. 12698, Dec. 23, 1989, 54 F.R. 53473, formerly set out below.

EXECUTIVE ORDER NO. 12698

Ex. Ord. No. 12698, Dec. 23, 1989, 54 F.R. 53473, which provided for adjustment of pay rates effective Jan. 1

and 31, 1990, was superseded by Ex. Ord. No. 12736, Dec. 12, 1990, 55 F.R. 51385, formerly set out below.

EXECUTIVE ORDER NO. 12736

Ex. Ord. No. 12736, Dec. 12, 1990, 55 F.R. 51385, which provided for adjustment of pay rates effective Jan. 1, 1991, was superseded by Ex. Ord. No. 12786, Dec. 26, 1991, 56 F.R. 67453, formerly set out below.

EXECUTIVE ORDER NO. 12786

Ex. Ord. No. 12786, Dec. 26, 1991, 56 F.R. 67453, which provided for adjustment of pay rates effective Jan. 1, 1992, was superseded by Ex. Ord. No. 12826, Dec. 30, 1992, 57 F.R. 62909, formerly set out below.

EXECUTIVE ORDER NO. 12826

Ex. Ord. No. 12826, Dec. 30, 1992, 57 F.R. 62909, as amended by Ex. Ord. No. 12886, §3, Dec. 23, 1993, 58 F.R. 68709, which provided for adjustment of pay rates effective Jan. 1, 1993, was superseded by Ex. Ord. No. 12944, Dec. 28, 1994, 60 F.R. 309, set out below.

EXECUTIVE ORDER NO. 12886

Ex. Ord. No. 12886, Dec. 23, 1993, 58 F.R. 68709, which provided for adjustment of pay rates for the uniformed services effective Jan. 1, 1994, was superseded by Ex. Ord. No. 12944, Dec. 28, 1994, 60 F.R. 309, set out below.

EX. ORD. NO. 12944. ADJUSTMENTS OF CERTAIN RATES OF PAY AND ALLOWANCES

Ex. Ord. No. 12944, Dec. 28, 1994, 60 F.R. 309, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 704 of Public Law 101–194 [enacting provisions set out as notes under section 5318 of this title]; section 302 of the Federal Employees Pay Comparability Act of 1990, as incorporated in section 529 of Public Law 101–509 [enacting provisions set out as a note under section 5304 of this title]; section 301(a) of Public Law 102–40 [enacting provisions set out as a note under section 7451 of Title 38, Veterans' Benefits]; section 630(a) of Public Law 103–329 [enacting provisions set out as a note under section 5303 of this title]; section 601 of Public Law 103–337 [amending section 203 of Title 37, Pay and Allowances of the Uniformed Services, and enacting provisions set out as notes under sections 203 and 1009 of Title 37]; section 31 of title 2, United States Code; section 104 of title 3, United States Code; sections 5303, 5318, and 5382 of title 5, United States Code; section 3963 of title 22, United States Code; and section 461(a) of title 28, United States Code, it is hereby ordered as follows:

SECTION 1. *Statutory pay systems*. The rates of basic pay or salaries of the statutory pay systems (as defined in 5 U.S.C. 5302(1)) are set forth on the schedules attached hereto and made a part hereof:

(a) The General Schedule (5 U.S.C. 5332(a)) at Schedule 1;

(b) The Foreign Service Schedule (22 U.S.C. 3963) at Schedule 2; and

(c) The schedules for the Veterans Health Administration of the Department of Veterans Affairs (38 U.S.C. 7306, 7404; section 301(a) of Public Law 102–40) at Schedule 3.

SEC. 2. *Senior Executive Service*. Pursuant to section 5382 of title 5, United States Code, the rates of basic pay for senior executives in the Senior Executive Service are set forth on Schedule 4 attached hereto and made a part hereof.

SEC. 3. *Executive salaries*. The rates of pay or salaries for the following offices and positions are set forth on the schedules attached hereto and made a part hereof:

(a) The Executive Schedule (5 U.S.C. 5312–5318) at Schedule 5;

(b) The Vice President (3 U.S.C. 104) and the Congress (2 U.S.C. 31) at Schedule 6; and

(c) Justices and judges (28 U.S.C. 5, 44(d), 135, 252, and 461(a)) at Schedule 7.

SEC. 4. *Uniformed services*. Pursuant to section 601 of Public Law 103–337, the rates of monthly basic pay (37 U.S.C. 203(a)), the rates of basic allowances for subsistence (37 U.S.C. 402), the rates of basic allowances for quarters (37 U.S.C. 403(a)) for members of the uniformed services, and the rate of monthly cadet or midshipman pay (37 U.S.C. 203(c)(1), as amended by section 601(c) of Public Law 103–337) are set forth on Schedule 8 attached hereto and made a part hereof.

SEC. 5. *Interim geographic adjustments*. (a) Pursuant to section 302 of the Federal Employees Pay Comparability Act of 1990, as incorporated in section 529 of Public Law 101–509, employees under statutory pay systems covered under section 1 of this order and members of the United States Park Police who are assigned to a duty station located in one of the geographical areas listed in Schedule 9 shall be entitled, except as may be provided under subsection (b) of this section, to receive an interim geographic adjustment at the rate shown on Schedule 9, which is attached hereto and made a part hereof.

(b)(1) The Office of Personnel Management shall prescribe regulations governing the application of interim geographic adjustments to General Schedule employees, including the determination of what, if any, geographic adjustments shall be payable in the case of employees receiving special pay rates.

(2) The Secretary of State shall prescribe regulations governing the application of interim geographic adjustments to employees under the Foreign Service Schedule, consistent with the regulations and determinations prescribed under paragraph (1) of this subsection.

(3) The Secretary of Veterans Affairs shall prescribe regulations governing the application of interim geographic adjustments to employees under the schedules for the Veterans Health Administration of the Department of Veterans Affairs, consistent with the regulations and determinations prescribed under paragraph (1) of this subsection.

(4) The Secretary of the Interior shall prescribe regulations governing the application of interim geographic adjustments to members of the United States Park Police, consistent with the regulations and determinations prescribed under paragraph (1) of this subsection.

(c) The Office of Personnel Management is hereby designated and empowered to exercise the authority of the President under section 302(c)(1)(D) of the Federal Employees Pay Comparability Act of 1990, as incorporated in section 529 of Public Law 101–509, to extend the application of interim geographic adjustments shown on Schedule 9, upon the request of an agency head, to employees who would not otherwise be covered.

SEC. 6. *Effective dates*. The rates of monthly basic pay and allowances for subsistence and quarters for members of the uniformed services provided for at Schedule 8 are effective on January 1, 1995. The other schedules provided for herein are effective on the first day of the first applicable pay period beginning on or after January 1, 1995.

SEC. 7. Executive Order No. 12826 of December 30, 1992, and Executive Order No. 12886 of December 23, 1993, are superseded.

WILLIAM J. CLINTON.

SCHEDULE 1

General Schedule

(Effective on the first day of the first applicable pay period beginning on or after January 1, 1995)

	1	2	3	4	5	6	7	8	9	10
GS–1	$12,141	$12,546	$12,949	$13,352	$13,757	$13,994	$14,391	$14,793	$14,811	$15,183
GS–2	13,650	13,975	14,428	14,811	14,974	15,414	15,854	16,294	16,734	17,174

SCHEDULE 1—Continued

General Schedule

(Effective on the first day of the first applicable pay period beginning on or after January 1, 1995)

	1	2	3	4	5	6	7	8	9	10
GS–3	14,895	15,392	15,889	16,386	16,883	17,380	17,877	18,374	18,871	19,368
GS–4	16,721	17,278	17,835	18,392	18,949	19,506	20,063	20,620	21,177	21,734
GS–5	18,707	19,331	19,955	20,579	21,203	21,827	22,451	23,075	23,699	24,323
GS–6	20,852	21,547	22,242	22,937	23,632	24,327	25,022	25,717	26,412	27,107
GS–7	23,171	23,943	24,715	25,487	26,259	27,031	27,803	28,575	29,347	30,119
GS–8	25,662	26,517	27,372	28,227	29,082	29,937	30,792	31,647	32,502	33,357
GS–9	28,345	29,290	30,235	31,180	32,125	33,070	34,015	34,960	35,905	36,850
GS–10	31,215	32,256	33,297	34,338	35,379	36,420	37,461	38,502	39,543	40,584
GS–11	34,295	35,438	36,581	37,724	38,867	40,010	41,153	42,296	43,439	44,582
GS–12	41,104	42,474	43,844	45,214	46,584	47,954	49,324	50,694	52,064	53,434
GS–13	48,878	50,507	52,136	53,765	55,394	57,023	58,652	60,281	61,910	63,539
GS–14	57,760	59,685	61,610	63,535	65,460	67,385	69,310	71,235	73,160	75,085
GS–15	67,941	70,206	72,471	74,736	77,001	79,266	81,531	83,796	86,061	88,326

SCHEDULE 2

Foreign Service Schedule

(Effective on the first day of the first applicable pay period beginning on or after January 1, 1995)

Step	Class 1	Class 2	Class 3	Class 4	Class 5	Class 6	Class 7	Class 8	Class 9
1	$67,941	$55,053	$44,609	$36,147	$29,290	$26,184	$23,408	$20,926	$18,707
2	69,979	56,705	45,947	37,231	30,169	26,970	24,110	21,554	19,268
3	72,079	58,406	47,326	38,348	31,074	27,779	24,834	22,200	19,846
4	74,241	60,158	48,745	39,499	32,006	28,612	25,579	22,866	20,442
5	76,468	61,963	50,208	40,684	32,966	29,470	26,346	23,552	21,055
6	78,762	63,822	51,714	41,904	33,955	30,354	27,136	24,259	21,687
7	81,125	65,736	53,265	43,161	34,974	31,265	27,950	24,987	22,337
8	83,559	67,708	54,863	44,456	36,023	32,203	28,789	25,736	23,007
9	86,066	69,739	56,509	45,790	37,104	33,169	29,653	26,508	23,697
10	88,326	71,832	58,205	47,164	38,217	34,164	30,542	27,304	24,408
11	88,326	73,987	59,951	48,579	39,363	35,189	31,458	28,123	25,141
12	88,326	76,206	61,749	50,036	40,544	36,245	32,402	28,966	25,895
13	88,326	78,492	63,602	51,537	41,761	37,332	33,374	29,835	26,672
14	88,326	80,847	65,510	53,083	43,013	38,452	34,375	30,731	27,472

SCHEDULE 3

Veterans Health Administration Schedules, Department of Veterans Affairs

(Effective on the first day of the first applicable pay period beginning on or after January 1, 1995)

	Minimum	Maximum
Schedule for the Office of the Under Secretary for Health (38 U.S.C. 7306)[1]		
Deputy Under Secretary for Health		$115,384
Associate Deputy Under Secretary for Health		[2]110,516
Assistant Under Secretaries for Health		107,259
Medical Directors	$91,514	$103,718
Service Directors	79,684	98,960
Director, National Center for Preventive Health	67,941	98,960
Physician and Dentist Schedule		
Director Grade	$79,684	$98,960
Executive Grade	73,579	93,774
Chief Grade	67,941	88,326
Senior Grade	57,760	75,085
Intermediate Grade	48,878	63,539
Full Grade	41,104	53,434
Associate Grade	34,295	44,582
Clinical Podiatrist and Optometrist Schedule		
Chief Grade	$67,941	$88,326
Senior Grade	57,760	75,085
Intermediate Grade	48,878	63,539
Full Grade	41,104	53,434
Associate Grade	34,295	44,582
Physician Assistant and Expanded-Function Dental Auxiliary Schedule[3]		
Director Grade	$67,941	$88,326
Assistant Director Grade	57,760	75,085
Chief Grade	48,878	63,539
Senior Grade	41,104	53,434
Intermediate Grade	34,295	44,582
Full Grade	28,345	36,850
Associate Grade	24,392	31,709
Junior Grade	20,852	27,107

[1] This schedule does not apply to the Assistant Under Secretary for Nursing Programs or the Director of Nursing Service. Pay for these positions is set by the Under Secretary for Health under 38 U.S.C. 7451.

[2] Pursuant to section 7404(d)(2) of title 38, United States Code, the rate of basic pay payable to this employee is limited to the rate for level V of the Executive Schedule, which is $108,200.

[3] Pursuant to section 301(a) of Public Law 102–40, these positions are paid according to the Nurse Schedule in 38 U.S.C. 4107(b) [former section 4107(b) of Title 38, Veterans' Benefits] as in effect on August 14, 1990, with subsequent adjustments.

SCHEDULE 4

Senior Executive Service

(Effective on the first day of the first applicable pay period beginning on or after January 1, 1995)

ES–1	$92,900
ES–2	97,400
ES–3	101,800
ES–4	107,300
ES–5	111,800
ES–6	115,700

SCHEDULE 5

Executive Schedule

(Effective on the first day of the first applicable pay period beginning on or after January 1, 1995)

level I	$148,400
level II	133,600
level III	123,100
level IV	115,700
level V	108,200

SCHEDULE 6

Vice President and Members of Congress

(Effective on the first day of the first applicable pay period beginning on or after January 1, 1995)

Vice President	$171,500
Senators	133,600
Members of the House of Representatives	133,600
Delegates to the House of Representatives	133,600
Resident Commissioner from Puerto Rico	133,600
President pro tempore of the Senate	148,400
Majority leader and minority leader of the Senate	148,400
Majority leader and minority leader of the House of Representatives	148,400
Speaker of the House of Representatives	171,500

SCHEDULE 7

Judicial Salaries

(Effective on the first day of the first applicable pay period beginning on or after January 1, 1995)

Chief Justice of the United States	$171,500
Associate Justices of the Supreme Court	164,100

SCHEDULE 7

Circuit Judges	141,700

SCHEDULE 7

District Judges	133,600
Judges of the Court of International Trade	133,600

SCHEDULE 8

Pay and Allowances of the Uniformed Services

(Effective on January 1, 1995)

PART I—MONTHLY BASIC PAY

Years of Service (computed under 37 U.S.C. 205)

Commissioned Officers

Pay Grade	2 or less	Over 2	Over 3	Over 4	Over 6
O–10[1]	$6,978.30	$7,223.70	$7,223.70	$7,223.70	$7,223.70
O–9	6,184.50	6,346.50	6,481.80	6,481.80	6,481.80
O–8	5,601.60	5,769.60	5,906.40	5,906.40	5,906.40
O–7	4,654.50	4,971.00	4,971.00	4,971.00	5,193.90
O–6	3,449.70	3,790.20	4,038.60	4,038.60	4,038.60
O–5	2,759.10	3,239.70	3,463.80	3,463.80	3,463.80
O–4	2,325.60	2,832.00	3,021.00	3,021.00	3,077.10
O–3[2]	2,161.20	2,416.50	2,583.30	2,858.10	2,994.90
O–2[2]	1,884.60	2,058.00	2,472.90	2,556.00	2,608.80
O–1[2]	1,636.20	1,703.10	2,058.00	2,058.00	2,058.00
	Over 8	Over 10	Over 12	Over 14	Over 16
O–10[1]	$7,501.20	$7,501.20	$7,916.70	$7,916.70	$8,482.80
O–9	6,646.50	6,646.50	6,923.10	6,923.10	7,501.20
O–8	6,346.50	6,346.50	6,646.50	6,646.50	6,923.10
O–7	5,193.90	5,494.80	5,494.80	5,769.60	6,346.50
O–6	4,038.60	4,038.60	4,038.60	4,176.00	4,836.30
O–5	3,463.80	3,568.50	3,760.80	4,012.80	4,313.10
O–4	3,212.70	3,432.00	3,624.90	3,790.20	3,956.70
O–3[2]	3,102.30	3,270.30	3,432.00	3,516.30	3,516.30
O–2[2]	2,608.80	2,608.80	2,608.80	2,608.80	2,608.80
O–1[2]	2,058.00	2,058.00	2,058.00	2,058.00	2,058.00
	Over 18	Over 20	Over 22	Over 24	Over 26
O–10[1]	$8,482.80	*$9,051.00	*$9,051.00	*$9,051.00	*$9,614.70
O–9	7,501.20	7,916.70	7,916.70	7,916.70	8,482.80
O–8	7,223.70	7,501.20	7,686.00	7,686.00	7,686.00
O–7	6,783.00	6,783.00	6,783.00	6,783.00	6,783.00
O–6	5,082.90	5,193.90	5,494.80	5,680.80	5,959.50
O–5	4,560.00	4,698.60	4,862.70	4,862.70	4,862.70
O–4	4,065.60	4,065.60	4,065.60	4,065.60	4,065.60
O–3[2]	3,516.30	3,516.30	3,516.30	3,516.30	3,516.30
O–2[2]	2,608.80	2,608.80	2,608.80	2,608.80	2,608.80
O–1[2]	2,058.00	2,058.00	2,058.00	2,058.00	2,058.00

[1] While serving as Chairman or Vice Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, Commandant of the Marine Corps, or Commandant of the Coast Guard, basic pay for this grade is calculated to be $10,608.90, regardless of cumulative years of service computed under section 205 of title 37, United States Code. Nevertheless, actual basic pay for these officers is limited to the rate of basic pay for level V of the Executive Schedule, which is $9,016.80 per month.

[2] Does not apply to commissioned officers who have been credited with over 4 years of active duty service as an enlisted member or warrant officer.

* Basic pay for these officers is limited to the rate of basic pay for level V of the Executive Schedule, which is $9,016.80 per month.

Commissioned officers with over 4 years of active duty service as an enlisted member or warrant officer

Pay Grade	Over 4	Over 6	Over 8	Over 10
O–3E	$2,858.10	$2,994.90	$3,102.30	$3,270.30
O–2E	2,556.00	2,608.80	2,691.60	2,832.00
O–1E	2,058.00	2,199.00	2,280.00	2,362.50
	Over 12	Over 14	Over 16	Over 18
O–3E	$3,432.00	$3,568.50	$3,568.50	$3,568.50
O–2E	2,940.60	3,021.00	3,021.00	3,021.00

Commissioned officers with over 4 years of active duty service as an enlisted member or warrant officer—Continued

Pay Grade	Over 4	Over 6	Over 8	Over 10
O–1E	2,444.40	2,556.00	2,556.00	2,556.00
	Over 20	Over 22	Over 24	Over 26
O–3E	$3,568.50	$3,568.50	$3,568.50	$3,568.50
O–2E	3,021.00	3,021.00	3,021.00	3,021.00
O–1E	2,556.00	2,556.00	2,556.00	2,556.00

Warrant Officers

Pay Grade	2 or less	Over 2	Over 3	Over 4	Over 6
W–5	.....	.....	.....	.....	.....
W–4	$2,202.00	$2,362.50	$2,362.50	$2,416.50	$2,526.30
W–3	2,001.30	2,170.80	2,170.80	2,199.00	2,224.50
W–2	1,752.90	1,896.30	1,896.30	1,951.50	2,058.00
W–1	1,460.10	1,674.30	1,674.30	1,814.10	1,896.30
	Over 8	Over 10	Over 12	Over 14	Over 16
W–5	.....	.....	.....	.....	.....
W–4	$2,637.60	$2,748.30	$2,940.60	$3,077.10	$3,185.10
W–3	2,387.40	2,526.30	2,608.80	2,691.60	2,772.00
W–2	2,170.80	2,253.30	2,335.80	2,416.50	2,501.40
W–1	1,977.60	2,058.00	2,143.20	2,224.50	2,307.30
	Over 18	Over 20	Over 22	Over 24	Over 26
W–5	.....	$3,757.80	$3,900.30	$4,013.10	$4,182.00
W–4	$3,270.30	3,375.90	3,489.00	3,597.60	3,760.80
W–3	2,858.10	2,969.70	3,077.10	3,077.10	3,185.10
W–2	2,583.30	2,664.60	2,772.00	2,772.00	2,772.00
W–1	2,387.40	2,472.90	2,472.90	2,472.90	2,472.90

Enlisted Members

Pay Grade	2 or less	Over 2	Over 3	Over 4	Over 6
E–9[1]	.....	.....	.....	.....	.....
E–8	.....	.....	.....	.....	.....
E–7	$1,499.70	$1,619.10	$1,678.80	$1,737.90	$1,797.00
E–6	1,290.30	1,406.40	1,464.90	1,527.30	1,584.60
E–5	1,132.20	1,232.40	1,292.40	1,348.50	1,437.30
E–4	1,056.00	1,115.40	1,181.10	1,272.00	1,322.40
E–3	995.10	1,049.70	1,091.40	1,134.60	1,134.60
E–2	957.60	957.60	957.60	957.60	957.60
E–1[2]	854.40	854.40	854.40	854.40	854.40
E–1[3]	790.20	.....	.....	.....	.....
	Over 8	Over 10	Over 12	Over 14	Over 16
E–9[1]	.....	$2,561.70	$2,619.00	$2,678.40	$2,739.90
E–8	$2,148.00	2,209.80	2,268.00	2,326.80	2,388.30
E–7	1,854.30	1,913.70	1,973.40	2,062.50	2,121.00
E–6	1,641.60	1,701.90	1,789.50	1,845.60	1,905.30
E–5	1,495.80	1,554.90	1,612.20	1,641.60	1,641.60
E–4	1,322.40	1,322.40	1,322.40	1,322.40	1,322.40
E–3	1,134.60	1,134.60	1,134.60	1,134.60	1,134.60
E–2	957.60	957.60	957.60	957.60	957.60
E–1[2]	854.40	854.40	854.40	854.40	854.40
E–1[3]	.....	.....	.....	.....	.....
	Over 18	Over 20	Over 22	Over 24	Over 26
E–9[1]	$2,801.40	$2,855.70	$3,005.40	$3,122.40	$3,297.90
E–8	2,442.90	2,502.90	2,649.90	2,768.10	2,945.10
E–7	2,179.80	2,208.30	2,356.50	2,473.80	2,649.90
E–6	1,934.10	1,934.10	1,934.10	1,934.10	1,934.10
E–5	1,641.60	1,641.60	1,641.60	1,641.60	1,641.60
E–4	1,322.40	1,322.40	1,322.40	1,322.40	1,322.40
E–3	1,134.60	1,134.60	1,134.60	1,134.60	1,134.60
E–2	957.60	957.60	957.60	957.60	957.60
E–1[2]	854.40	854.40	854.40	854.40	854.40
E–1[3]	.....	.....	.....	.....	.....

[1] While serving as Sergeant Major of the Army, Master Chief Petty Officer of the Navy or Coast Guard, Chief Master Sergeant of the Air Force, or Sergeant Major of the Marine Corps, basic pay for this grade is $4,008.60, regardless of cumulative years of service computed under section 205 of title 37, United States Code.
[2] Applies to personnel who have served 4 months or more on active duty.
[3] Applies to personnel who have served less than 4 months on active duty.

PART II—BASIC ALLOWANCE FOR QUARTERS RATES

Pay Grade	Without dependents		With dependents
	Full rate[1]	Partial rate[2]	
Commissioned officers			
O–10	$749.40	$50.70	$922.50
O–9	749.40	50.70	922.50
O–8	749.40	50.70	922.50
O–7	749.40	50.70	922.50
O–6	687.60	39.60	830.70
O–5	662.10	33.00	800.70
O–4	613.80	26.70	705.90
O–3	492.00	22.20	584.10
O–2	390.00	17.70	498.90
O–1	328.50	13.20	445.80
Commissioned officers with over 4 years of active duty service as an enlisted member or warrant officer			
O–3E	$531.00	$22.20	$627.60
O–2E	451.50	17.70	566.40
O–1E	388.20	13.20	523.20
Warrant officers			
W–5	$623.40	$25.20	$681.30
W–4	553.80	25.20	624.60
W–3	465.30	20.70	572.40
W–2	413.10	15.90	526.50
W–1	345.90	13.80	455.40
Enlisted members			
E–9	$454.80	$18.60	$599.40
E–8	417.60	15.30	552.60
E–7	356.40	12.00	513.00
E–6	322.80	9.90	474.30
E–5	297.60	8.70	426.30
E–4	258.90	8.10	370.80
E–3	254.10	7.80	345.00
E–2	206.40	7.20	328.50
E–1	183.90	6.90	328.50

[1] Payment of the full rate of basic allowance for quarters at these rates to members of the uniformed services without dependents is authorized by section 403 of title 37, United States Code, and Part IV of Executive Order 11157, as amended.
[2] Payment of the partial rate of basic allowance for quarters at these rates to members of the uniformed services without dependents who, under section 403(b) or (c) of title 37, United States Code, are not entitled to the full rate of basic allowance for quarters, is authorized by section 1009(c)(2) of title 37, United States Code, and Part IV of Executive Order 11157, as amended.

PART III—BASIC ALLOWANCE FOR SUBSISTENCE RATES

Officers (per month)	$146.16

PART III—BASIC ALLOWANCE FOR SUBSISTENCE RATES—CONTINUED

	E–1 (less than 4 months of active duty)	All Other Enlisted
Enlisted members (per day):		
When on leave or authorized to mess separately	$6.44	$6.98
When rations in-kind are not available	7.26	7.87
When assigned to duty under emergency conditions where no messing facilities of the United States are available	9.63	10.42

PART IV—RATE OF MONTHLY CADET OR MIDSHIPMAN PAY

The rate of monthly cadet or midshipman pay authorized by section 203(c)(1) of title 37, United States Code, as amended by section 601(c) of Public Law 103–337, is $558.04.

SCHEDULE 9

Interim Geographic Adjustments for Certain Employees in Specified Areas

(Effective on the first day of the first applicable pay period beginning on or after January 1, 1995)

Area	Adjustment Rate
New York-Northern New Jersey-Long Island, NY-NJ-CT-PA Consolidated Metropolitan Statistical Area	8%
Los Angeles-Riverside-Orange County, CA Consolidated Metropolitan Statistical Area	8%

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 595, 3109, 5374, 5948, 6301, 8141, 8143 of this title; title 2 sections 60a–1, 60a–2, 166, 353, 414, 416, 437c, 476, 601, 1107, 1108; title 3 sections 105, 106, 107, 113, 114; title 7 sections 16, 1505, 1765a, 2007b, 3127, 5927; title 8 section 1324b; title 10 sections 180, 1482a, 1584, 1590, 1604, 2195, 7043; title 12 sections 634, 636, 1749bbb–1, 2405, 3013; title 15 sections 205h, 205i, 278, 1275, 2218, 2412, 2451, 4102; title 16 sections 79*l*, 469j, 470m, 825q–1, 1401, 1403; title 17 section 701; title 18 sections 207, 3153, 4202, 4204, 4351, 4352; title 19 sections 1331, 2171; title 20 sections 80q–10, 929, 955, 957, 963, 964,

1102, 1145a, 1221e–1, 1233c, 1233d, 1505, 2011, 2012, 2103, 3413, 3462, 4512, 4513, 4710, 5093, 5608; title 21 sections 113a, 376, 379h, 1502; title 22 sections 290n–3, 1469, 1622d, 2385, 2386, 2456, 2511, 2512, 2669, 2903, 2905, 3507, 3508, 3614, 3963, 4110, 4135, 4155, 4356, 4605; title 25 sections 2641, 2707; title 26 section 4946; title 28 sections 548, 602, 625; title 29 sections 183, 656, 661, 676; title 30 sections 812, 1229, 1315; title 31 section 731; title 32 section 709; title 33 sections 1128, 1320, 1325, 1374; title 35 sections 3, 7; title 37 section 1009; title 38 section 7455; title 41 section 351; title 42 sections 242q–1, 300j–10, 1320a–1, 1320c–2, 1395*oo*, 1395ww, 1863, 1873, 1962a–4, 1962b–4, 1975b, 1975d, 3788, 4365, 4372, 4845, 5055, 5101, 5102, 5841, 6614, 6616, 6632, 7211, 7213, 7231, 7233, 8103, 10248, 11221, 12374, 12651f; title 44 sections 2706, 3319; title 46 section 4508; title 46 App. section 1717; title 50 sections 405, 2051; title 50 App. section 1989b–5.

§ 5333. Minimum rate for new appointments

New appointments shall be made at the minimum rate of the appropriate grade. However, under regulations prescribed by the Office of Personnel Management which provide for such considerations as the existing pay or unusually high or unique qualifications of the candidate, or a special need of the Government for his services, the head of an agency may appoint, with the approval of the Office in each specific case, an individual to a position at such a rate above the minimum rate of the appropriate grade as the Office may authorize for this purpose. The approval of the Office in each specific case is not required with respect to an appointment made by the Librarian of Congress.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 467; Pub. L. 90–83, §1(19), Sept. 11, 1967, 81 Stat. 199; Pub. L. 95–454, title IX, §906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 96–54, §2(a)(26)(A), Aug. 14, 1979, 93 Stat. 382; Pub. L. 101–509, title V, §529 [title I, §106, title II, §211(b)(1)], Nov. 5, 1990, 104 Stat. 1427, 1449, 1461.)

HISTORICAL AND REVISION NOTES

1966 ACT

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(a)	5 U.S.C. 1131.	Oct. 28, 1949, ch. 782, §801, 63 Stat. 969. Aug. 14, 1964, Pub. L. 88–426, §103(a), 78 Stat. 401.
(b)	5 U.S.C. 1133.	Oct. 28, 1949, ch. 782, §803, 63 Stat. 970. Sept. 1, 1954, ch. 1208, §104, 68 Stat. 1106. Oct. 11, 1962, Pub. L. 87–793, §604(c), 76 Stat. 848.

In subsection (b), the word ''scheduled'' is omitted since section 603 of the Act of Oct. 11, 1962, Pub. L. 87–793, 76 Stat. 847, eliminated the necessity of referring to rates as scheduled or longevity.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 ACT

Section of title 5	*Source (U.S. Code)*	*Source (Statutes at Large)*
5333(a)	5 App.: 1131.	July 18, 1966, Pub. L. 89–504, §103, 80 Stat. 289.

AMENDMENTS

1990—Pub. L. 101–509 struck out ''; higher rates for supervisors of prevailing rate employees'' after ''appointments'' in section catchline, struck out ''(a)'' before ''New appointments shall'', struck out ''in GS–11 or above'' after ''individual to a position'', and struck out subsec. (b) which read as follows: ''Under regulations prescribed by the Office of Personnel Management, an employee in a position to which this subchapter applies, who regularly has responsibility for supervision (including supervision over the technical aspects of the work concerned) over employees whose pay is fixed and adjusted from time to time by wage boards or similar administrative authority as nearly as is consistent with the public interest in accordance with prevailing rates, may be paid at one of the rates for his grade which is above the highest rate of basic pay being paid to any such prevailing-rate employee regularly supervised, or at the maximum rate for his grade, as provided by the regulations.''

1979—Pub. L. 96–54 substituted ''prevailing rate'' for ''wage-board'' in section catchline.

1978—Subsecs. (a), (b). Pub. L. 95–454 substituted ''Office of Personnel Management'' and ''Office'' for ''Civil Service Commission'' and ''Commission'', respectively, wherever appearing.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–509 effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title III, §305] of Pub. L. 101–509, set out as a note under section 5301 of this title.

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.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 7 section 84.

§ 5334. Rate on change of position or type of appointment; regulations

(a) The rate of basic pay to which an employee is entitled is governed by regulations prescribed by the Office of Personnel Management in conformity with this subchapter and chapter 51 of this title when—

(1) he is transferred from a position in the legislative, judicial, or executive branch to which this subchapter does not apply;

(2) he is transferred from a position in the legislative, judicial, or executive branch to which this subchapter applies to another such position;

(3) he is demoted to a position in a lower grade;

(4) he is reinstated, reappointed, or reemployed in a position to which this subchapter applies following service in any position in the legislative, judicial, or executive branch;

(5) his type of appointment is changed;

(6) his employment status is otherwise changed; or

(7) his position is changed from one grade to another grade.

For the purpose of this subsection, an individual employed by the Appalachian Regional Commission under section 106(2) of title 40, appendix, or by a regional commission established pursuant to section 3182 of title 42, under section 3186(a)(2)

of that title, who was a Federal employee immediately prior to such employment by a commission and within 6 months after separation from such employment is employed in a position to which this subchapter applies, shall be treated as if transferred from a position in the executive branch to which this subchapter does not apply.

(b) An employee who is promoted or transferred to a position in a higher grade is entitled to basic pay at the lowest rate of the higher grade which exceeds his existing rate of basic pay by not less than two step-increases of the grade from which he is promoted or transferred. If, in the case of an employee so promoted or transferred who is receiving basic pay at a rate in excess of the maximum rate of his grade, there is no rate in the higher grade which is at least two step-increases above his existing rate of basic pay, he is entitled to—

(1) the maximum rate of the higher grade; or

(2) his existing rate of basic pay, if that rate is the higher.

If an employee so promoted or transferred is receiving basic pay at a rate saved to him under subchapter VI of this chapter on reduction in grade, he is entitled to—

(A) basic pay at a rate two steps above the rate which he would be receiving if subchapter VI of this chapter were not applicable to him; or

(B) his existing rate of basic pay, if that rate is the higher.

(c) An employee in the legislative branch who is paid by the Secretary of the Senate or the Clerk of the House of Representatives, and who has completed two or more years of service as such an employee, and a Member of the Senate or House of Representatives who has completed two or more years of service as such a Member, may, on appointment to a position to which this subchapter applies, have his initial rate of pay fixed—

(1) at the minimum rate of the appropriate grade; or

(2) at a step of the appropriate grade that does not exceed the highest previous rate of pay received by him during that service in the legislative branch.

(d) The rate of pay established for a teaching position as defined by section 901 of title 20 held by an individual who becomes subject to subsection (a) of this section is deemed increased by 20 percent to determine the yearly rate of pay of the position.

(e) An employee of a county committee established pursuant to section 590h(b) of title 16 may, upon appointment to a position subject to this subchapter, have his initial rate of basic pay fixed at the minimum rate of the appropriate grade, or at any step of such grade that does not exceed the highest previous rate of basic pay received by him during service with such county committee.

(f) An employee of a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard described in section 2105(c) who moves, without a break in service of more than 3 days, to a position in the Department of Defense or the Coast Guard, respectively, that is subject to this subchapter, may have such employee's initial rate of basic pay fixed at the minimum rate of the appropriate grade or at any step of such grade that does not exceed the highest previous rate of basic pay received by that employee during the employee's service described in section 2105(c). In the case of a nonappropriated fund employee who is moved involuntarily from such nonappropriated fund instrumentality without a break in service of more than 3 days and without substantial change in duties to a position that is subject to this subchapter, the employee's pay shall be set at a rate (not above the maximum for the grade, except as may be provided for under section 5365) that is not less than the employee's rate of basic pay under the nonappropriated fund instrumentality immediately prior to so moving.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 468; Pub. L. 90–103, title I, § 105, Oct. 11, 1967, 81 Stat. 257; Pub. L. 90–367, § 1, June 29, 1968, 82 Stat. 277; Pub L. 90–623, § 1(6), (24), Oct. 22, 1968, 82 Stat. 1312, 1314; Pub. L. 95–454, title V, § 503(f), title VIII, § 801(a)(2), (3)(F), (G), title IX, § 906(a)(2), Oct. 13, 1978, 92 Stat. 1184, 1221, 1222, 1224; Pub. L. 96–54, § 2(a)(27), Aug. 14, 1979, 93 Stat. 383; Pub. L. 98–615, title II, § 204(a)(1), Nov. 8, 1984, 98 Stat. 3216; Pub. L. 99–251, title III, § 306(b), Feb. 27, 1986, 100 Stat. 27; Pub. L. 101–508, title VII, § 7202(d), Nov. 5, 1990, 104 Stat. 1388–335; Pub. L. 103–89, § 3(b)(1)(G), Sept. 30, 1993, 107 Stat. 982.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(a)–(d)	5 U.S.C. 1132.	Oct. 28, 1949, ch. 782, § 802, 63 Stat. 969. Sept. 1, 1954, ch. 1208, § 112 (as applicable to § 802(b)), 68 Stat. 1108. May 29, 1958, Pub. L. 85–432, § 4(a), (b), 72 Stat. 151. July 31, 1959, Pub. L. 86–122, § 2(a), 73 Stat. 268. Oct. 11, 1962, Pub. L. 87–793, § 604(a), (b), 76 Stat. 847.
(e)	5 U.S.C. 2357.	July 17, 1959, Pub. L. 86–91. § 9, 73 Stat. 216.

In subsection (b), the words ''under any provision of law'' are omitted from the second sentence as unnecessary.

In subsection (e), the words ''as defined by section 901 of title 20'' are added on authority of former section 2351, which section is scheduled for transfer to section 901 of title 20.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

REFERENCES IN TEXT

Sections 3182 and 3186(a)(2) of title 42, referred to in subsec. (a), were repealed by Pub. L. 97–35, title XVIII, § 1821(a)(8), Aug. 13, 1981, 95 Stat. 766.

AMENDMENTS

1993—Subsec. (c)(2). Pub. L. 103–89, § 3(b)(1)(G)(i), substituted ''step'' for ''step, or for an employee appointed to a position covered by the performance management and recognition system established under chapter 54 of this title, any dollar amount,''.

Subsecs. (f), (g). Pub. L. 103–89, § 3(b)(1)(G)(ii), redesignated subsec. (g) as (f) and struck out former subsec. (f) which read as follows: ''In the case of an employee covered by the performance management and recognition system established under chapter 54 of this title, all references in this section to 'two steps' or 'two step-increases' shall be deemed to mean 6 percent.''

1990—Subsec. (g). Pub. L. 101–508 added subsec. (g).

1986—Subsec. (e). Pub. L. 99–251 substituted ''may, upon appointment to a position'' for ''may upon appointment to a position under the Department of Agriculture,''.

1984—Subsecs. (c)(2), (f). Pub. L. 98–615 substituted ''the performance management and recognition system established under chapter 54'' for ''the merit pay system established under section 5402''.

1979—Subsec. (a). Pub. L. 96–54 substituted ''106(2)'' for ''106(a)'' and ''3186(a)(2)'' for ''3186(2)''.

1978—Subsec. (a). Pub. L. 95–454, § 906(a)(2), substituted ''Office of Personnel Management'' for ''Civil Service Commission''.

Subsec. (b). Pub. L. 95–454, § 801(a)(3)(F), substituted ''subchapter VI of this chapter'' for ''section 5337 of this title'' wherever appearing.

Subsec. (c). Pub. L. 95–454, § 503(f)(1), in par. (2) inserted reference to an employee appointed to a position covered by the merit pay system established under section 5402 of this title.

Subsecs. (d) to (f). Pub. L. 95–454, § 801(a)(2), (3)(G), redesignated subsecs. (e) and (f) as (d) and (e), respectively. Former subsec. (d), which related to regulations governing the retention of the rate of basic pay of an employee and his position covered by this subchapter and chapter 51 of this title, was struck out.

Pub. L. 95–454, § 503(f)(2), added a new subsec. (f).

1968—Subsec. (a). Pub. L. 90–623, § 1(6), substituted ''title 40, appendix'' for ''the Appalachian Regional Development Act of 1965'', ''section 3182 of title 42, under section 3186(2) of that title'' for ''section 502 of the Public Works and Economic Development Act of 1965, under section 506(2) of such Act'', and ''6'' for ''six''.

Subsec. (f). Pub. L. 90–623, § 1(24), substituted ''section 590h(b) of title 16'' for ''section 8(b) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b))''.

Pub. L. 90–367 added subsec. (f).

1967—Subsec. (a). Pub. L. 90–103 provided for treatment as a transfer from a position in the executive branch to which this subchapter does not apply of certain regional commission employees who were Federal employees immediately prior to employment by a commission and were employed within six months after separation from the commission in a position subject to this subchapter.

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 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable with respect to any individual who, on or after Jan. 1, 1987, moves from employment in nonappropriated fund instrumentality of Department of Defense or Coast Guard, that is described in section 2105(c) of this title, to employment in Department or Coast Guard, that is not described in section 2105(c), or who moves from employment in Department or Coast Guard, that is not described in section 2105(c), to employment in nonappropriated fund instrumentality of Department or Coast Guard, that is described in section 2105(c), see section 7202(m)(1) of Pub. L. 101–508, set out as a note under section 2105 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 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.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 504(a) of Pub. L. 95–454 provided that amendment by section 503(f) of Pub. L. 95–454 was effective on first day of first applicable pay period which began on or after Oct. 1, 1981, except it could take effect with respect to any category or categories of positions before such day to extent prescribed by Director of Office of Personnel Management.

Amendment by section 801(a)(2), (3)(F), (G) of Pub. L. 95–454 effective on first day of first applicable pay period beginning on or after 90th day after Oct. 13, 1978, see section 801(a)(4) of Pub. L. 95–454, set out as an Effective Date note under section 5361 of this title.

Amendment by section 906(a)(2) of Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Section 6 of Pub. L. 90–623 provided that:

''(a) Sections 1–5 of this Act [amending this section, sections 559, 2108, 3102, 3502, 5314, 5315, 5316, 5352, 5353, 5516, 5521, 5527, 5537, 5546, 5724, 6104, 6305, 6312, 6323, 6324, 8143, 8191, 8331, and 8347 of this title, sections 101, 510 [now 12102], 815, 1124, 3534, 4342, 5149, 6483, 6954, and 9342 of Title 10, Armed Forces, sections 101, 212, 205, 305, 306, 307, 308, 311, 406, 417, 554, 703, 904, 1001, and 1006 of Title 37, Pay and Allowances of the Uniformed Services, and sections 2727 and 2994b of Title 42, The Public Health and Welfare, and repealing section 8339 note of this title] restate, without substantive change, the laws replaced by those sections on the effective date of this Act. Laws effective after June 30, 1968, that are inconsistent with this Act [Oct. 22, 1968] supersede it to the extent of the inconsistency.

''(b) References made by other laws, regulations, and orders to the laws restated by this Act are deemed to refer to the corresponding provisions of this Act.

''(c) Actions taken under the laws restated by this Act are deemed to have been taken under the corresponding provisions of this Act.

''(d) Sections 1(2) and 1(14) of this Act [amending sections 2108 and 5724 of this title] are effective as of September 11, 1967, for all purposes.

''(e) Sections 1(13)(B) and 1(17) of this Act [amending sections 5546 and 6323 of this title] are effective as of September 6, 1966, for all purposes.''

TRANSFER OF FUNCTIONS

Certain functions of Clerk of House of Representatives transferred to Director of Non-legislative and Financial Services by section 7 of House Resolution No. 423, One Hundred Second Congress, Apr. 9, 1992. Director of Non-legislative and Financial Services replaced by Chief Administrative Officer of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 40 App. section 109.

§ 5335. Periodic step-increases

(a) An employee paid on an annual basis, and occupying a permanent position within the scope of the General Schedule, who has not reached the maximum rate of pay for the grade in which his position is placed, shall be advanced in pay successively to the next higher rate within the grade at the beginning of the next pay period following the completion of—

(1) each 52 calendar weeks of service in pay rates 1, 2, and 3;

(2) each 104 calendar weeks of service in pay rates 4, 5, and 6; or

(3) each 156 calendar weeks of service in pay rates 7, 8, and 9;

subject to the following conditions:

(A) the employee did not receive an equivalent increase in pay from any cause during that period; and

(B) the work of the employee is of an acceptable level of competence as determined by the head of the agency.

(b) Under regulations prescribed by the Office of Personnel Management, the benefit of successive step-increases shall be preserved for employees whose continuous service is interrupted in the public interest by service with the armed forces or by service in essential non-Government civilian employment during a period of war or national emergency.

(c) When a determination is made under subsection (a) of this section that the work of an employee is not of an acceptable level of competence, the employee is entitled to prompt written notice of that determination and an opportunity for reconsideration of the determination within his agency under uniform procedures prescribed by the Office of Personnel Management. If the determination is affirmed on reconsideration, the employee is entitled to appeal to the Merit Systems Protection Board. If the reconsideration or appeal results in a reversal of the earlier determination, the new determination supersedes the earlier determination and is deemed to have been made as of the date of the earlier determination. The authority of the Office to prescribe procedures and the entitlement of the employee to appeal to the Board do not apply to a determination of acceptable level of competence made by the Librarian of Congress.

(d) An increase in pay granted by statute is not an equivalent increase in pay within the meaning of subsection (a) of this section.

(e) This section does not apply to the pay of an individual appointed by the President, by and with the advice and consent of the Senate.

(f) In computing periods of service under subsection (a) in the case of an employee who moves without a break in service of more than 3 days from a position under a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard described in section 2105(c) to a position under the Department of Defense or the Coast Guard, respectively, that is subject to this subchapter, service under such instrumentality shall, under regulations prescribed by the Office, be deemed service in a position subject to this subchapter.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 469; Pub. L. 90–83, §1(20), Sept. 11, 1967, 81 Stat. 199; Pub. L. 95–251, §2(a)(1), Mar. 27, 1978, 92 Stat. 183; Pub. L. 95–454, title V, §503(g), title IX, §906(a)(2), (8), Oct. 13, 1978, 92 Stat. 1184, 1224, 1225; Pub. L. 96–54, §2(a)(28), Aug. 14, 1979, 93 Stat. 383; Pub. L. 98–615, title II, §§203, 204(a)(1), Nov. 8, 1984, 98 Stat. 3216; Pub. L. 101–508, title VII, §7202(e), Nov. 5, 1990, 104 Stat. 1388–336; Pub. L. 101–509, title V, §529 [title I, §104(d)(2)], Nov. 5, 1990, 104 Stat. 1427, 1447; Pub. L. 103–89, §3(b)(1)(H), Sept. 30, 1993, 107 Stat. 982.)

HISTORICAL AND REVISION NOTES

1966 ACT

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(a)–(c)	5 U.S.C. 1121.	Oct. 11, 1962, Pub. L. 87–793, §603 ''Sec. 701'', 76 Stat. 847.
(d)	5 U.S.C. 1123 (as applicable to 5 U.S.C. 1121).	Oct. 11, 1962, Pub. L. 87–793, §603 ''Sec. 703 (as applicable to §701)'', 76 Stat. 847.

In subsection (a), the words ''General Schedule'' are substituted for ''compensation schedules fixed by this chapter'' since the General Schedule is now the only compensation schedule in that chapter. The word ''scheduled'' is omitted since section 603 of the Act of Oct. 11, 1962, Pub. L. 87–793, 76 Stat. 847, eliminated the necessity of referring to rates as scheduled or longevity.

In subsection (a)(B), the words ''except a hearing examiner appointed under section 3105 of this title'' are added on authority of the third sentence of former section 1010 and the fifth sentence of former section 1011, which are carried into sections 5362 and 559, respectively, and of section 1106(a) of the Act of Oct. 28, 1949, ch. 782, 63 Stat. 972.

Title VII (sections 701–705) of the Act of Oct. 28, 1949, ch. 782, 63 Stat. 967–969, as amended by the following Acts is omitted from the derivation and repealed (see Table II) as superseded by the Act of Oct. 11, 1962, Pub. L. 87–793, §603, 76 Stat. 847, which is carried into this section and section 5336:

June 28, 1950, ch. 382, §2, 64 Stat. 262.
Sept. 30, 1950, ch. 1123, §§9, 10, 64 Stat. 1100.
Oct. 24, 1951, ch. 554, §1(e), 65 Stat. 613.
Sept. 1, 1954, ch. 1208, §§102(a), 103(a), 112 (less applicability to §802(b)), 305(a), 68 Stat. 1105, 1108, 1113.
June 28, 1955, ch. 189, §2(e), 69 Stat. 175.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 ACT

Section of title 5	*Source (U.S. Code)*	*Source (Statutes at Large)*
5335(c)	5 App.: 1121(c).	Oct. 29, 1965, Pub. L. 89–301, §3, 79 Stat. 1112.

The word ''officer'' is omitted as included in ''employee'', and the word ''agency'' is substituted for ''department'' to conform to the definition in 5 U.S.C. 5331.

AMENDMENTS

1993—Subsec. (e). Pub. L. 103–89, §3(b)(1)(H)(i), struck out ''covered by the performance management and recognition system established under chapter 54 of this title, or,'' after ''individual''.

Subsecs. (f), (g). Pub. L. 103–89, §3(b)(1)(H)(ii), redesignated subsec. (g) as (f) and struck out former subsec. (f) which read as follows: ''Notwithstanding subsection (b) or (e) of this section, an increase in pay granted under section 5404 of this title is an equivalent increase in pay within the meaning of subsection (a) of this section and shall be taken into account in the case of any employee who, before becoming subject to this section, was granted such an increase while covered by the performance management and recognition system established under chapter 54 of this title.''

1990—Subsec. (a)(B). Pub. L. 101–509 struck out '', except an administrative law judge appointed under section 3105 of this title,'' after ''work of the employee''.

Subsec. (g). Pub. L. 101–508 added subsec. (g).

1984—Subsec. (e). Pub. L. 98–615, §204(a)(1), substituted ''the performance management and recognition system established under chapter 54'' for ''the merit pay system established under section 5402''.

Subsec. (f). Pub. L. 98–615, §203, added subsec. (f).

1979—Subsec. (a)(3)(B). Pub. L. 96–54 substituted ''an administrative law judge'' for ''a administrative law judge''.

1978—Subsec. (a). Pub. L. 95–251 substituted ''administrative law judge'' for ''hearing examiner''.

Subsec. (b). Pub. L. 95–454, § 906(a)(2), substituted ''Office of Personnel Management'' for ''Civil Service Commission''.

Subsec. (c). Pub. L. 95–454, § 906(a)(8), substituted references to Office of Personnel Management and Merit Systems Protection Board and Office and Board, respectively, for references to Civil Service Commission wherever appearing in text.

Subsec. (e). Pub. L. 95–454, § 503(g), inserted reference to merit pay system established under section 5402 of this title.

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 1990 AMENDMENTS

Amendment by Pub. L. 101–509 effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title III, § 305] of Pub. L. 101–509, set out as a note under section 5301 of this title.

Amendment by Pub. L. 101–508 applicable with respect to any individual who, on or after Jan. 1, 1987, moves from employment in nonappropriated fund instrumentality of Department of Defense or Coast Guard, that is described in section 2105(c) of this title, to employment in Department or Coast Guard, that is not described in section 2105(c), or who moves from employment in Department or Coast Guard, that is not described in section 2105(c), to employment in nonappropriated fund instrumentality of Department or Coast Guard, that is described in section 2105(c), see section 7202(m)(1) of Pub. L. 101–508, set out as a note under section 2105 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 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.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 504(a) of Pub. L. 95–454 provided that amendment by section 503(g) of Pub. L. 95–454 was effective on first day of first applicable pay period which began on or after Oct. 1, 1981, except it could take effect with respect to any category or categories of positions before such day to extent prescribed by Director of Office of Personnel Management.

Amendment by section 906(a)(2), (8) of Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

PAY INCREASES DEEMED EQUIVALENT INCREASES IN PAY

Section 5(a) of Pub. L. 103–89 provided that: ''Notwithstanding the amendment made by section 3(b)(1)(H)(ii) [amending this section], an increase in pay granted under section 5404 of title 5, United States Code, before November 1, 1993, shall be deemed to be an equivalent increase in pay within the meaning of section 5335(a) of such title.''

CROSS REFERENCES

Administrative law judges—

Additional requirements imposed by statute or otherwise recognized by law not limited or repealed by subsec. (a)(B) of this section, see section 559 of this title.

Office of Personnel Management, investigations, reports, and regulations for purposes of subsec. (a)(B) of this section, see section 1305 of this title.

Subsequent statutes to be held to supersede or modify subsec. (a)(B) of this section only to the extent that they do so expressly, see section 559 of this title.

Performance ratings, see section 4301 et seq. of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 559, 1305, 5303, 5305, 5336 of this title; title 13 section 24.

§ 5336. Additional step-increases

(a) Within the limit of available appropriations and under regulations prescribed by the Office of Personnel Management, the head of each agency may grant additional step-increases in recognition of high quality performance above that ordinarily found in the type of position concerned. However, an employee is eligible under this section for only one additional step-increase within any 52-week period.

(b) A step-increase under this section is in addition to those under section 5335 of this title and is not an equivalent increase in pay within the meaning of section 5335(a) of this title.

(c) This section does not apply to the pay of an individual appointed by the President, by and with the advice and consent of the Senate.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 469; Pub. L. 95–454, title V, § 503(h), title IX, § 906(a)(2), Oct. 13, 1978, 92 Stat. 1184, 1224; Pub. L. 98–615, title II, § 204(a)(1), Nov. 8, 1984, 98 Stat. 3216; Pub. L. 103–89, § 3(b)(1)(I), Sept. 30, 1993, 107 Stat. 982.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(a), (b)	5 U.S.C. 1122.	Oct. 11, 1962, Pub. L. 87–793, § 603 ''Sec. 702'', 76 Stat. 847.
(c)	5 U.S.C. 1123 (less applicability to 5 U.S.C. 1121).	Oct. 11, 1962, Pub. L. 87–793, § 603 ''Sec. 703 (less applicability to § 701)'', 76 Stat. 847.

For repeal of Title VII (sections 701–705) of the Act of Oct. 28, 1949, ch. 782, 63 Stat. 967–969, as amended, see revision note for section 5335.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1993—Subsec. (c). Pub. L. 103–89 struck out ''covered by the performance management and recognition system established under chapter 54 of this title, or,'' after ''individual''.

1984—Subsec. (c). Pub. L. 98–615 substituted ''the performance management and recognition system established under chapter 54'' for ''the merit pay system established under section 5402''.

1978—Subsec. (a). Pub. L. 95–454, § 906(a)(2), substituted ''Office of Personnel Management'' for ''Civil Service Commission''.

Subsec. (c). Pub. L. 95–454, § 503(h), inserted reference to merit pay system established under section 5402 of this title.

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 1978 AMENDMENT

Section 504(a) of Pub. L. 95–454 provided that amendment by section 503(h) of Pub. L. 95–454 was effective on first day of first applicable pay period which began on or after Oct. 1, 1981, except it could take effect with respect to any category or categories of positions before such day to extent prescribed by Director of Office of Personnel Management.

Amendment by section 906(a)(2) of Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

CROSS REFERENCES

Incentive awards, see section 4501 et seq. of this title.

Performance ratings, see section 4301 et seq. of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 13 section 24.

[§ 5337. Repealed. Pub. L. 95–454, title VIII, § 801(a)(2), Oct. 13, 1978, 92 Stat. 1221]

Section, Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 470; Pub. L. 92–392, § 3, Aug. 19, 1972, 86 Stat. 573, set forth provisions relating to pay saving for employees reduced in grade from a grade in the General Schedule. See section 5361 et seq. of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective on first day of first applicable pay period beginning on or after 90th day after Oct. 13, 1978, and an employee receiving pay on day before such effective date not to have such pay reduced or terminated and, unless section 5362 applies, employee is entitled to continuation of such pay, etc., see section 801(a)(4) of Pub. L. 95–454, set out as an Effective Date note under section 5361 of this title.

§ 5338. Regulations

The Office of Personnel Management may prescribe regulations necessary for the administration of this subchapter.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 470; Pub. L. 95–454, title IX, § 906(a)(2), Oct. 13, 1978, 92 Stat. 1224.)

HISTORICAL AND REVISION NOTES

The section is added on authority of former sections 1072 and 1072a, which are carried into section 5115.

AMENDMENTS

1978—Pub. L. 95–454 substituted ''Office of Personnel Management'' for ''Civil Service Commission''.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

SUBCHAPTER IV—PREVAILING RATE SYSTEMS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 5304, 5361, 5541, 7201, 7204 of this title; title 10 sections 4540, 7212, 9540; title 31 section 1515; title 40 section 174j–8.

§ 5341. Policy

It is the policy of Congress that rates of pay of prevailing rate employees be fixed and adjusted from time to time as nearly as is consistent with the public interest in accordance with prevailing rates and be based on principles that—

(1) there will be equal pay for substantially equal work for all prevailing rate employees who are working under similar conditions of employment in all agencies within the same local wage area;

(2) there will be relative differences in pay within a local wage area when there are substantial or recognizable differences in duties, responsibilities, and qualification requirements among positions;

(3) the level of rates of pay will be maintained in line with prevailing levels for comparable work within a local wage area; and

(4) the level of rates of pay will be maintained so as to attract and retain qualified prevailing rate employees.

(Added Pub. L. 92–392, § 1(a), Aug. 19, 1972, 86 Stat. 564.)

PRIOR PROVISIONS

A prior section 5341, Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 471; Pub. L. 90–83, § 1(97), Sept. 11, 1967, 81 Stat. 220; Pub. L. 90–560, § 4, Oct. 12, 1968, 82 Stat. 997, provided prevailing rate system for trades and crafts and is covered by sections 5343(c), (d) and 5349(a) of this title.

EFFECTIVE DATE

Section 15(a) of Pub. L. 92–392 provided that: ''The provisions of this Act [enacting this subchapter and section 5550 of this title, amending sections 2105, 5337, 5541, 5544, 5548, 6101, 7154, and 8704 of this title, repealing section 6102 of this title, and enacting provisions set out as notes under sections 5341 and 5343 of this title and sections 60a–1 and 60a–2 of Title 2, The Congress] are effective on the first day of the first applicable pay period which begins on or after the ninetieth day after the date of enactment of this Act [Aug. 19, 1972], except that, in the case of those employees referred to in section 5342(a)(2)(B) and (C) of title 5, United States Code (as amended by the first section of this Act), such provisions are effective on the first day of the first applicable pay period which begins on or after the one hundred and eightieth day after such date of enactment or on such earlier date (not earlier than the ninetieth day after such date of enactment) as the Civil Service Commission may prescribe. Notwithstanding the provisions of this subsection, section 5343(e)(1)(D) and (E) and (e)(2)(C), as enacted by the first section of this Act, shall not be effective until the first day of the first pay period commencing after (1) the date on which the President ceases to exercise his authority under the Economic Stabilization Act of 1970 [set out as note under section 1904 of Title 12, Banks and Banking] to stabilize wages and salaries, or (2) April 30, 1973, whichever occurs first.''

REPEALS

Section 13 of Pub. L. 92–392 provided that:

''(a) All laws or parts of laws inconsistent with this Act [see Effective Date note above] are hereby repealed to the extent of such inconsistency.

''(b) Subsection (a) of this section does not repeal or otherwise affect section 5102(d) of title 5, United States Code, section 305 of title 44 of such Code, or the provisions contained in section 180 of former title 31, United States Code.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 10 sections 1590, 1604; title 41 section 351.

§ 5342. Definitions; application

(a) For the purpose of this subchapter—

(1) ''agency'' means an Executive agency; but does not include—

(A) a Government controlled corporation;

(B) the Tennessee Valley Authority;

(C) the Virgin Islands Corporation;

(D) the Atomic Energy Commission;

(E) the Central Intelligence Agency;

(F) the Panama Canal Commission;

(G) the National Security Agency, Department of Defense;

(H) the Bureau of Engraving and Printing, except for the purposes of section 5349 of this title;

(I) the General Accounting Office; or[1]

(K)[2] the Defense Intelligence Agency, Department of Defense; or

(L) the Central Imagery Office, Department of Defense;

(2) ''prevailing rate employee'' means—

(A) an individual employed in or under an agency in a recognized trade or craft, or other skilled mechanical craft, or in an unskilled, semiskilled, or skilled manual labor occupation, and any other individual, including a foreman and a supervisor, in a position having trade, craft, or laboring experience and knowledge as the paramount requirement;

(B) an employee of a nonappropriated fund instrumentality described by section 2105(c) of this title who is employed in a recognized trade or craft, or other skilled mechanical craft, or in an unskilled, semiskilled, or skilled manual labor occupation, and any other individual, including a foreman and a supervisor, in a position having trade, craft, or laboring experience and knowledge as the paramount requirement; and

(C) an employee of the Veterans' Canteen Service, Department of Veterans Affairs, excepted from chapter 51 of this title by section 5102 (c)(14) of this title who is employed in a recognized trade or craft, or other skilled mechanical craft, or in an unskilled, semiskilled, or skilled manual labor occupation, and any other individual, including a foreman and a supervisor, in a position having trade, craft, or labor experience and knowledge as the paramount requirement; and

(3) ''position'' means the work, consisting of duties and responsibilities, assignable to a prevailing rate employee.

(b)(1) Except as provided by paragraphs (2) and (3) of this subsection, this subchapter applies to all prevailing rate employees and positions in or under an agency.

(2) This subchapter does not apply to employees and positions described by section 5102(c) of this title other than by—

(A) paragraph (7) of that section to the extent that such paragraph (7) applies to employees and positions other than employees and positions of the Bureau of Engraving and Printing; and

(B) paragraph (14) of that section.

(3) This subchapter, except section 5348, does not apply to officers and members of crews of vessels excepted from chapter 51 of this title by section 5102(c)(8) of this title.

(c) Each prevailing rate employee employed within any of the several States or the District of Columbia shall be a United States citizen or a bona fide resident of one of the several States or the District of Columbia unless the Secretary of Labor certifies that no United States citizen or bona fide resident of one of the several States or the District of Columbia is available to fill the particular position.

(Added Pub. L. 92–392, §1(a), Aug. 19, 1972, 86 Stat. 564; amended Pub. L. 96–70, title III, §3302(e)(1), Sept. 27, 1979, 93 Stat. 498; Pub. L. 96–191, §8(d), Feb. 15, 1980, 94 Stat. 33; Pub. L. 97–468, title VI, §615(b)(1)(D), Jan. 14, 1983, 96 Stat. 2578; Pub. L. 98–618, title V, §502(b), Nov. 8, 1984, 98 Stat. 3303; Pub. L. 102–54, §13(b)(1), June 13, 1991, 105 Stat. 274; Pub. L. 103–359, title V, §501(h), Oct. 14, 1994, 108 Stat. 3429.)

PRIOR PROVISIONS

A prior section 5342, Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 471, provided for crews of vessels and is covered by section 5348(a), (b) of this title.

Provisions similar to those comprising subsec. (b) of this section were contained in Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 471 (formerly classified to section 5342 of this title) prior to the general amendment of this subchapter by section 1(a) of Pub. L. 92–392.

AMENDMENTS

1994—Subsec. (a)(1)(J) to (L). Pub. L. 103–359 directed the amendment of subpar. (J) by striking out ''or'' at end which could not be executed because par. (1) does not contain a subpar. (J), added ''or'' at end of subpar. (K), and added subpar. (L).

1991—Subsec. (a)(2)(C). Pub. L. 102–54 substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

1984—Subsec. (a)(1)(I) to (K). Pub. L. 98–618 struck out ''or'' at end of subpar. (I), inserted ''or'' at end of subpar. (J), and added subpar. (K).

1983—Subsec. (a)(1)(C) to (J). Pub. L. 97–468, eff. Jan. 5, 1985, struck out subpar. (C) which excluded the Alaska Railroad and redesignated subpars. (D) to (J) as (C) to (I), respectively. See Effective Date of 1983 Amendment note below.

1980—Subsec. (a)(1)(J). Pub. L. 96–191 added subpar. (J).

1979—Subsec. (a)(1)(G). Pub. L. 96–70 substituted ''Commission'' for ''Company''.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–468 effective on date of transfer of Alaska Railroad to the State [Jan. 5, 1985], pursuant to section 1203 of Title 45, Railroads, see section 615(b) of Pub. L. 97–468.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–191 effective Oct. 1, 1980, see section 10(a) of Pub. L. 96–191.

[1] So in original. The word ''or'' probably should not appear.

[2] So in original. Subsec. (a)(1) does not contain a subpar. (J).

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–70 effective Oct. 1, 1979, see section 3304 of Pub. L. 96–70, set out as an Effective Date note under section 3601 of Title 22, Foreign Relations and Intercourse.

EFFECTIVE DATE

Section effective on first day of first applicable pay period beginning on or after 90th day after Aug. 19, 1972, except that in the case of employees referred to in subsec. (a)(2)(B) and (C) section effective on first day of first applicable pay period beginning on or after 180th day after Aug. 19, 1972, or on such earlier date (not earlier than 90th day after Aug. 19, 1972) as Civil Service Commission may prescribe, see section 15(a) of Pub. L. 92–392, set out as a note under section 5341 of this title.

ABOLITION OF ATOMIC ENERGY COMMISSION

Atomic Energy Commission abolished and functions transferred by sections 5814 and 5841 of Title 42, The Public Health and Welfare. See, also, Transfer of Functions notes set out under those sections.

DISSOLUTION OF VIRGIN ISLANDS CORPORATION

Virgin Islands Corporation established to have succession until June 30, 1969, unless sooner dissolved by Act of Congress, by act June 30, 1949, ch. 285, 63 Stat. 350, as amended (48 U.S.C. 1407 et seq.). Corporation terminated its program June 30, 1965, and dissolved July 1, 1966. Act June 30, 1949, was repealed by Pub. L. 97–357, title III, § 308(e), Oct. 19, 1982, 96 Stat. 1710.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5343, 5361, 5544 of this title; title 10 sections 1590, 1604.

§ 5343. Prevailing rate determinations; wage schedules; night differentials

(a) The pay of prevailing rate employees shall be fixed and adjusted from time to time as nearly as is consistent with the public interest in accordance with prevailing rates. Subject to section 213(f) of title 29, the rates may not be less than the appropriate rates provided by section 206(a)(1) of title 29. To carry out this subsection—

(1) the Office of Personnel Management shall define, as appropriate—

(A) with respect to prevailing rate employees other than prevailing rate employees under paragraphs (B) and (C) of section 5342(a)(2) of this title, the boundaries of—

(i) individual local wage areas for prevailing rate employees having regular wage schedules and rates; and

(ii) wage areas for prevailing rate employees having special wage schedules and rates;

(B) with respect to prevailing rate employees under paragraphs (B) and (C) of section 5342(a)(2) of this title, the boundaries of—

(i) individual local wage areas for prevailing rate employees under such paragraphs having regular wage schedules and rates (but such boundaries shall not extend beyond the immediate locality in which the particular prevailing rate employees are employed); and

(ii) wage areas for prevailing rate employees under such paragraphs having special wage schedules and rates;

(2) the Office of Personnel Management shall designate a lead agency for each wage area;

(3) subject to paragraph (5) of this subsection, and subsections (c)(1)–(3) and (d) of this section, a lead agency shall conduct wage surveys, analyze wage survey data, and develop and establish appropriate wage schedules and rates for prevailing rate employees;

(4) the head of each agency having prevailing rate employees in a wage area shall apply, to the prevailing rate employees of that agency in that area, the wage schedules and rates established by the lead agency, or by the Office of Personnel Management, as appropriate, for prevailing rate employees in that area; and

(5) the Office of Personnel Management shall establish wage schedules and rates for prevailing rate employees who are United States citizens employed in any area which is outside the several States, the District of Columbia, the Commonwealth of Puerto Rico, 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), the territories and possessions of the United States, and the Trust Territory of the Pacific Islands.

(b) The Office of Personnel Management shall schedule full-scale wage surveys every 2 years and shall schedule interim surveys to be conducted between each 2 consecutive full-scale wage surveys. The Office may schedule more frequent surveys when conditions so suggest.

(c) The Office of Personnel Management, by regulation, shall prescribe practices and procedures for conducting wage surveys, analyzing wage survey data, developing and establishing wage schedules and rates, and administering the prevailing rate system. The regulations shall provide—

(1) that, subject to subsection (d) of this section, wages surveyed be those paid by private employers in the wage area for similar work performed by regular full-time employees, except that, for prevailing rate employees under paragraphs (B) and (C) of section 5342(a)(2) of this title, the wages surveyed shall be those paid by private employers to full-time employees in a representative number of retail, wholesale, service, and recreational establishments similar to those in which such prevailing rate employees are employed;

(2) for participation at all levels by representatives of organizations accorded recognition as the representatives of prevailing rate employees in every phase of providing an equitable system for fixing and adjusting the rates of pay for prevailing rate employees, including the planning of the surveys, the drafting of specifications, the selection of data collectors, the collection and the analysis of the data, and the submission or recommendations to the head of the lead agency for wage schedules and rates and for special wage schedules and rates where appropriate;

(3) for requirements for the accomplishment of wage surveys and for the development of wage schedules and rates for prevailing rate employees, including, but not limited to—

(A) nonsupervisory and supervisory prevailing rate employees paid under regular wage schedules and rates;

(B) nonsupervisory and supervisory prevailing rate employees paid under special wage schedules and rates; and

(C) nonsupervisory and supervisory prevailing rate employees described under paragraphs (B) and (C) of section 5342(a)(2) of this title;

(4) for proper differentials, as determined by the Office, for duty involving unusually severe working conditions or unusually severe hazards;

(5) rules governing the administration of pay for individual employees on appointment, transfer, promotion, demotion, and other similar changes in employment status; and

(6) for a continuing program of maintenance and improvement designed to keep the prevailing rate system fully abreast of changing conditions, practices, and techniques both in and out of the Government of the United States.

(d)(1) A lead agency, in making a wage survey, shall determine whether there exists in the local wage area a number of comparable positions in private industry sufficient to establish wage schedules and rates for the principal types of positions for which the survey is made. The determination shall be in writing and shall take into consideration all relevant evidence, including evidence submitted by employee organizations recognized as representative of prevailing rate employees in that area.

(2) When the lead agency determines that there is a number of comparable positions in private industry insufficient to establish the wage schedules and rates, such agency shall—

(A) establish the wage schedules and rates to be applicable to prevailing rate employees other than prevailing rate employees of the Department of Defense on the basis of—

(i) local private industry rates; and

(ii) rates paid for comparable positions in private industry in the nearest wage area that such agency determines is most similar in the nature of its population, employment, manpower, and industry to the local wage area for which the wage survey is being made; and

(B) establish the wage schedules and rates to be applicable to prevailing rate employees of the Department of Defense only on the basis of local private industry rates.

(e)(1) Each grade of a regular wage schedule for nonsupervisor prevailing rate employees shall have 5 steps with—

(A) the first step at 96 percent of the prevailing rate;

(B) the second step at 100 percent of the prevailing rate;

(C) the third step at 104 percent of the prevailing rate;

(D) the fourth step at 108 percent of the prevailing rate; and

(E) the fifth step at 112 percent of the prevailing rate.

(2) A prevailing rate employee under a regular wage schedule who has a work performance rating of satisfactory or better, as determined by the head of the agency, shall advance automatically to the next higher step within the grade at the beginning of the first applicable pay period following his completion of—

(A) 26 calendar weeks of service in step 1;

(B) 78 calendar weeks of service in step 2; and

(C) 104 calendar weeks of service in each of steps 3 and 4.

(3) Under regulations prescribed by the Office of Personnel Management, the benefits of successive step increases shall be preserved for prevailing rate employees under a regular wage schedule whose continuous service is interrupted in the public interest by service with the armed forces or by service in essential non-Government civilian employment during a period of war or national emergency.

(4) Supervisory wage schedules and special wage schedules authorized under subsection (c)(3) of this section may have single or multiple rates or steps according to prevailing practices in the industry on which the schedule is based.

(f) A prevailing rate employee is entitled to pay at his scheduled rate plus a night differential—

(1) amounting to 7½ percent of that scheduled rate for regularly scheduled nonovertime work a majority of the hours of which occur between 3 p.m. and midnight; and

(2) amounting to 10 percent of that scheduled rate for regularly scheduled nonovertime work a majority of the hours of which occur between 11 p.m. and 8 a.m.

A night differential under this subsection is a part of basic pay.

(Added Pub. L. 92–392, §1(a), Aug. 19, 1972, 86 Stat. 566; amended Pub. L. 95–454, title IX, §906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 96–70, title III, §3302(e)(10), Sept. 27, 1979, 93 Stat. 499; Pub. L. 99–145, title XII, §1242(a), Nov. 8, 1985, 99 Stat. 735.)

REFERENCES IN TEXT

Section 3(a) of the Panama Canal Act of 1979, referred to in subsec. (a)(5), is classified to section 3602(a) of Title 22, Foreign Relations and Intercourse.

PRIOR PROVISIONS

A prior section 5343, Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 471, related to effective date of pay increases and is covered by section 5344(a) of this title.

Provisions similar to those comprising part of first sentence of subsec. (c) and subsec. (d) of this section were contained in Pub. L. 90–560, §4, Oct. 12, 1968, 82 Stat. 997 (formerly classified to section 5341(c) of this title) prior to the general amendment of this subchapter by section 1(a) of Pub. L. 92–392.

AMENDMENTS

1985—Subsec. (d)(2). Pub. L. 99–145 amended par. (2) generally, designating existing provisions as subpar. (A), inserting ''to be applicable to prevailing rate employees other than prevailing rate employees of the Department of Defense'', redesignating as cls. (i) and (ii) provisions previously designated subpars. (A) and (B), and adding subpar. (B).

1979—Subsec. (a)(5). 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''.

1978—Subsecs. (a) to (c), (e)(3). Pub. L. 95–454 substituted ''Office of Personnel Management'' for ''Civil

Service Commission'' and ''Office'' for ''Commission'' wherever appearing.

EFFECTIVE DATE OF 1985 AMENDMENT

Section 1242(b) of Pub. L. 99–145 provided that: ''The rate of pay payable to a prevailing rate employee employed by the Department of Defense on the day before the date of enactment of this Act [Nov. 8, 1985] may not be reduced by reason of the amendment made by subsection (a) [amending this section].''

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–70 effective Oct. 1, 1979, see section 3304 of Pub. L. 96–70, set out as an Effective Date note under section 3601 of Title 22, Foreign Relations and Intercourse.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

EFFECTIVE DATE

Section other than subsec. (e)(1)(D), (E), (2)(C) of this section effective on first day of first applicable pay period beginning on or after 90th day after Aug. 19, 1972, and such subsec. (a)(1)(D), (E), (2)(C) not effective until first day of first pay period commencing after date on which President ceases to exercise his authority under Economic Stabilization Act of 1970 to stabilize wages and salaries, or Apr. 30, 1973, whichever occurs first, see section 15(a) of Pub. L. 92–392, set out as a note under section 5341 of this title.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

LIMITATION ON PAY ADJUSTMENTS FOR PREVAILING RATE EMPLOYEES AND CREWS OF VESSELS

Pub. L. 103–329, title VI, § 617, Sept. 30, 1994, 108 Stat. 2419, provided that:

''(a) Notwithstanding any other provision of law, and except as otherwise provided in this section, no part of any of the funds appropriated for the fiscal year ending on September 30, 1995, by this or any other Act, may be used to pay any prevailing rate employee described in section 5342(a)(2)(A) of title 5, United States Code—

''(1) during the period from the date of expiration of the limitation imposed by section 615 of the Treasury, Postal Service and General Government Appropriations Act, 1994 [Pub. L. 103–123, 107 Stat. 1261], until the normal effective date of the applicable wage survey adjustment that is to take effect in fiscal year 1995, in an amount that exceeds the rate payable for the applicable grade and step of the applicable wage schedule in accordance with such section 615; and

''(2) during the period consisting of the remainder of fiscal year 1995, in an amount that exceeds, as a result of a wage survey adjustment, the rate payable under paragraph (1) by more than the sum of—

''(A) the percentage adjustment taking effect in fiscal year 1995 under section 5303 of title 5, United States Code, in the rates of pay under the General Schedule; and

''(B) the difference between the overall average percentage of the locality-based comparability payments taking effect in fiscal year 1995 under section 5304 of such title (whether by adjustment or otherwise), and the overall average percentage of such payments which was effective in fiscal year 1994 under such section.

''(b) Notwithstanding any other provision of law, no prevailing rate employee described in subparagraph (B) or (C) of section 5342(a)(2) of title 5, United States Code, and no employee covered by section 5348 of such title, may be paid during the periods for which subsection (a) is in effect at a rate that exceeds the rates that would be payable under subsection (a) were subsection (a) applicable to such employee.

''(c) For the purposes of this section, the rates payable to an employee who is covered by this section and who is paid from a schedule not in existence on September 30, 1994, shall be determined under regulations prescribed by the Office of Personnel Management.

''(d) Notwithstanding any other provision of law, rates of premium pay for employees subject to this section may not be changed from the rates in effect on September 30, 1994, except to the extent determined by the Office of Personnel Management to be consistent with the purpose of this section.

''(e) This section shall apply with respect to pay for service performed after September 30, 1994.

''(f) For the purpose of administering any provision of law (including section 8431 of title 5, United States Code, and any rule or regulation that provides premium pay, retirement, life insurance, or any other employee benefit) that requires any deduction or contribution, or that imposes any requirement or limitation on the basis of a rate of salary or basic pay, the rate of salary or basic pay payable after the application of this section shall be treated as the rate of salary or basic pay.

''(g) Nothing in this section shall be considered to permit or require the payment to any employee covered by this section at a rate in excess of the rate that would be payable were this section not in effect.

''(h) The Office of Personnel Management may provide for exceptions to the limitations imposed by this section if the Office determines that such exceptions are necessary to ensure the recruitment or retention of qualified employees.''

Similar provisions were contained in the following prior acts:

Pub. L. 103–123, title VI, § 615, Oct. 28, 1993, 107 Stat. 1261.

Pub. L. 102–393, title VI, § 616, Oct. 6, 1992, 106 Stat. 1768.

Pub. L. 102–141, title VI, § 616, Oct. 28, 1991, 105 Stat. 870.

Pub. L. 101–509, title VI, § 612, Nov. 5, 1990, 104 Stat. 1473.

Pub. L. 101–136, title VI, § 612, Nov. 3, 1989, 103 Stat. 818.

Pub. L. 100–440, title VI, § 612, Sept. 22, 1988, 102 Stat. 1753.

Pub. L. 100–202, § 101(m) [title VI, § 613], Dec. 22, 1987, 101 Stat. 1329–390, 1329–421.

Pub. L. 99–500, § 101(m) [title VI, § 613], Oct. 18, 1986, 100 Stat. 1783–308, 1783–330, and Pub. L. 99–591, § 101(m) [title VI, § 613], Oct. 30, 1986, 100 Stat. 3341–308, 3341–330.

Pub. L. 99–272, title XV, § 15201(b), Apr. 7, 1986, 100 Stat. 332.

Pub. L. 99–190, § 101(h) [H.R. 3036, title VI, § 613], Dec. 19, 1985, 99 Stat. 1291.

Pub. L. 98–473, § 101(j) [H.R. 5798, title VI, § 616], Oct. 12, 1984, 98 Stat. 1963.

Pub. L. 98–369, div. B, title II, § 2202, July 18, 1984, 98 Stat. 1058.

Pub. L. 98–270, title II, § 202(b), Apr. 18, 1984, 98 Stat. 158.

Pub. L. 98–151, § 101(f) [H.R. 4139, title VI, § 616], Nov. 14, 1983, 97 Stat. 973.

Pub. L. 98–107, § 110, Oct. 1, 1983, 97 Stat. 741.

Pub. L. 97–377, title I, § 107, Dec. 21, 1982, 96 Stat. 1909.

Pub. L. 97–276, § 109, Oct. 2, 1982, 96 Stat. 1191.

Pub. L. 97–35, title XVII, § 1701(b), Aug. 13, 1981, 95 Stat. 754.

Pub. L. 96–536, § 101(a) [incorporating Pub. L. 96–74, title VI, § 613], Dec. 16, 1980, 94 Stat. 3166.

Pub. L. 96–369, § 114, Oct. 1, 1980, 94 Stat. 1356.

Pub. L. 96–74, title VI, § 613, Sept. 29, 1979, 93 Stat. 576.

Pub. L. 95–429, title VI, § 614, Oct. 10, 1978, 92 Stat. 1018.

WAGE RATE FOR CERTAIN CORPS OF ENGINEERS EMPLOYEES

Pub. L. 99–661, div. A, title XIII, § 1358, Nov. 14, 1986, 100 Stat. 3999, provided that:

''(a) WAGE DETERMINATIONS.—Notwithstanding any other provision of law, in the administration of the last undesignated paragraph preceding chapter 6 of title I of Public Law 97–257 (96 Stat. 832) [set out below], the individuals described in subsection (b) shall be paid wages determined in the same manner as that established in such undesignated paragraph with respect to United States Army Corps of Engineers employees paid from Corps of Engineers Special Power Rate Schedules.

''(b) COVERED INDIVIDUALS.—The individuals described in subsection (a) are electric powerplant controllers and powerplant shift operators (as defined under regulations prescribed by the Secretary of Defense) assigned to the Soo Locks Power Plant in the Detroit District in the North Central Region of the United States Army Corps of Engineers.

''(c) EFFECTIVE DATE.—Subsection (a) applies with respect to pay periods commencing on or after the date of the enactment of this Act [Nov. 14, 1986].''

EMPLOYEES OF UNITED STATES CORPS OF ENGINEERS PAID FROM CORPS OF ENGINEERS SPECIAL POWER RATE SCHEDULES; CONSISTENCY OF WAGES WITH WAGES OF ENERGY AND INTERIOR DEPARTMENT EMPLOYEES

Pub. L. 97–257, title I, §100, Sept. 10, 1982, 96 Stat. 832, provided in part that: ''Without regard to any other provision of law limiting the amounts payable to prevailing wage rate employees, United States Army Corps of Engineers employees paid from Corps of Engineers Special Power Rate Schedules shall be paid, beginning the effective date of each annual wage survey in the region after the date of enactment of this Act [Sept. 10, 1982], wages as determined by the Department of Defense Wage Fixing Authority to be consistent with wages of the Department of Energy and the Department of the Interior employees performing similar work in the corresponding area whose wage rates are established in accordance with section 9(b) of Public Law 92–392 or section 704 of Public Law 95–454 [set out as notes under this section].''

NEGOTIATING REQUIREMENTS FOR LABOR CONTRACTS, ETC., ON AND AFTER OCTOBER 13, 1978, AND NEGOTIATED UNDER PREVAILING RATES AND PRACTICES PRIOR TO AUGUST 19, 1972

Section 704 of Pub. L. 95–454 provided that:

''(a) Those terms and conditions of employment and other employment benefits with respect to Government prevailing rate employees to whom section 9(b) of Public Law 92–392 [set out as a note under this section] applies which were the subject of negotiation in accordance with prevailing rates and practices prior to August 19, 1972, shall be negotiated on and after the date of the enactment of this Act [Oct. 13, 1978] in accordance with the provisions of section 9(b) of Public Law 92–392 without regard to any provision of chapter 71 of title 5, United States Code (as amended by this title [title VII of Pub. L. 95–454]), to the extent that any such provision is inconsistent with this paragraph.

''(b) The pay and pay practices relating to employees referred to in paragraph (1) of this subsection shall be negotiated in accordance with prevailing rates and pay practices without regard to any provision of—

''(A) chapter 71 of title 5, United States Code (as amended by this title), to the extent that any such provision is inconsistent with this paragraph;

''(B) subchapter IV of chapter 53 and subchapter V of chapter 55 of title 5, United States Code; or

''(C) any rule, regulation, decision, or order relating to rates of pay or pay practices under subchapter IV of chapter 53 or subchapter V of chapter 55 of title 5, United States Code.''

CONVERSION RULES FOR WAGE SCHEDULE; SERVICE FOR ONE STEP INCREASE; PROHIBITION OF DECREASE IN BASIC PAY RATE; RETAINED PAY CONTINUED

Section 9(a) of Pub. L. 92–392 provided that:

''(1) Except as provided by this subsection, an employee's initial rate of pay on conversion to a wage schedule established pursuant to the amendments made by this Act [see Effective Date note under section 5341 of this title] shall be determined under conversion rules prescribed by the Civil Service Commission. Service by an employee in a grade of a wage schedule performed before the effective date of the conversion of the employee to a wage schedule established pursuant to the amendments made by this Act shall be counted toward not to exceed one step increase under the time in step provisions of section 5343(e)(2) of title 5, United States Code, as amended by the first section of this Act [subsec. (e)(2) of this section].

''(2) In the case of any employee described in section 2105(c), 5102(c)(7), (8), or (14) of title 5, United States Code, who is in the service as such an employee immediately before the effective date, with respect to him, of the amendments made by this Act [see Effective Date note under section 5341 of this title], such amendments shall not be construed to decrease his rate of basic pay in effect immediately before the date [see Effective Date note under section 5341 of this title] on which such amendments become effective with respect to him. In addition, if an employee is receiving retained pay by virtue of law or agency policy immediately before the date on which the first wage schedule applicable to him under this Act is effective, he shall continue to retain that pay in accordance with the specific instructions under which the retained pay was granted until he leaves his position or until he becomes entitled to a higher rate.''

LABOR CONTRACTS PERTAINING TO WAGES, TERMS AND CONDITIONS OF EMPLOYMENT, AND OTHER EMPLOYMENT BENEFITS

Section 9(b) of Pub. L. 92–392 provided that: ''The amendments made by this Act [enacting this subchapter and section 5550 of this title, amending sections 2105(c)(1), 5337, 5541(2)(xi), 5544(a), 5548, 6101(a)(1), 7154(b), and 8704(d)(2) of this title, repealing section 6102 of this title, and enacting provisions set out as notes under sections 5341 and 5343 of this title and section 60a of Title 2, The Congress] shall not be construed to—

''(1) abrogate, modify, or otherwise affect in any way the provisions of any contract in effect on the date of enactment of this Act [Aug. 19, 1972] pertaining to the wages, the terms and conditions of employment, and other employment benefits, or any of the foregoing matters, for Government prevailing rate employees and resulting from negotiations between Government agencies and organizations of Government employees;

''(2) nullify, curtail, or otherwise impair in any way the right of any party to such contract to enter into negotiations after the date of enactment of this Act [Aug. 19, 1972] for the renewal, extension, modification, or improvement of the provisions of such contract or for the replacement of such contract with a new contract; or

''(3) nullify, change, or otherwise affect in any way after such date of enactment [Aug. 19, 1972] any agreement, arrangement, or understanding in effect on such date [Aug. 19, 1972] with respect to the various items of subject matter of the negotiations on which any such contract in effect on such date [Aug. 19, 1972] is based or prevent the inclusion of such items of subject matter in connection with the renegotiation of any such contract, or the replacement of such contract with a new contract, after such date [Aug. 19, 1972].''

WAGE SURVEY

Section 15(b) of Pub. L. 92–392 provided that: ''A wage survey conducted by an agency before the effective date (with respect to employees covered by that wage survey) of this Act [see note under section 5341 of this title], for a wage schedule which becomes effective after that effective date [Aug. 19, 1972], is deemed to meet the requirement in this Act for a survey by a lead agency.''

EQUITABLE WAGE ADJUSTMENTS FOR CERTAIN PREVAILING RATE EMPLOYEES

Pub. L. 92–298, §§1, 2, May 17, 1972, 86 Stat. 146, provided: ''That this Act [enacting this note and amending sections 60a–1 and 60a–2 of Title 2, The Congress] may be cited as the 'Prevailing Rate Equalization Adjustment Act of 1972'.

''SEC. 2. (a) Notwithstanding any other provision of law or any provision of an Executive order or regulation, a wage schedule adjustment for employees of the Government of the United States whose pay is fixed and adjusted from time to time in accordance with prevailing rates—

''(1) if based on a wage survey ordered to be made on or after August 15, 1971, but not placed into effect before November 14, 1971, by reason of the provisions of Executive Order 11615 or Executive Order 11627 [formerly set out as notes under section 1904 of Title 12]; or

''(2) if based on a wage survey which had been scheduled to be made during the period beginning on September 1, 1971, and ending on January 12, 1972, and which was ordered to be made on or after January 23, 1972;

shall be effective on the date on which such wage schedule adjustment would have been effective under section 5343 of title 5, United States (Code), had the fiscal year 1972 schedule for wage surveys for such employees been followed.

''(b) Retroactive pay made under the provisions of this section will be made in accordance with section 5344 of title 5, United States Code.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5361, 5544, 6101, 6123 of this title.

§ 5344. Effective date of wage increase; retroactive pay

(a) Each increase in rates of basic pay granted, pursuant to a wage survey, to prevailing rate employees is effective not later than the first day of the first pay period which begins on or after the 45th day, excluding Saturdays and Sundays, following the date the wage survey is ordered to be made.

(b) Retroactive pay is payable by reason of an increase in rates of basic pay referred to in subsection (a) of this section only when—

(1) the individual is in the service of the Government of the United States, including service in the armed forces, or the government of the District of Columbia on the date of the issuance of the order granting the increase; or

(2) the individual retired or died during the period beginning on the effective date of the increase and ending on the date of issuance of the order granting the increase, and only for services performed during that period.

For the purpose of this subsection, service in the armed forces includes the period provided by statute for the mandatory restoration of the individual to a position in or under the Government of the United States or the government of the District of Columbia after he is relieved from training and service in the armed forces or discharged from hospitalization following that training and service.

(Added Pub. L. 92–392, §1(a), Aug. 19, 1972, 86 Stat. 568.)

PRIOR PROVISIONS

Provisions similar to those comprising subsec. (a) of this section were contained in Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 471 (formerly classified to section 5343 of this title) prior to the general amendment of this subchapter by section 1(a) of Pub. L. 92–392.

CROSS REFERENCES

Settlement of accounts, money due as including retroactive pay under subsec. (a)(2) of this section, see section 5581 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5349, 5581, 8331, 8704 of this title.

[§ 5345. Repealed. Pub. L. 95–454, title VIII, § 801(a)(2), Oct. 13, 1978, 92 Stat. 1221]

Section, added Pub. L. 92–392, §1(a), Aug. 19, 1972, 86 Stat. 569, related to retained rate of pay on reduction in grade or reassignment.

A prior section 5345, added Pub. L. 90–206, title II, §223(a), Dec. 16, 1967, 81 Stat. 641, which provided for position classification appeals, was omitted in the general amendment of this subchapter, and is covered by section 5346(c) of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective on first day of first applicable pay period beginning on or after 90th day after Oct. 13, 1978, and an employee receiving pay on day before such effective date not to have such pay reduced or terminated and, unless section 5362 applies, employee is entitled to continuation of such pay, etc., see section 801(a)(4) of Pub. L. 95–454, set out as an Effective Date note under section 5361 of this title.

§ 5346. Job grading system

(a) The Office of Personnel Management, after consulting with the agencies and with employee organizations, shall establish and maintain a job grading system for positions to which this subchapter applies. In carrying out this subsection, the Office shall—

(1) establish the basic occupational alinement and grade structure or structures for the job grading system;

(2) establish and define individual occupations and the boundaries of each occupation;

(3) establish job titles within occupations;

(4) develop and publish job grading standards; and

(5) provide a method to assure consistency in the application of job standards.

(b) The Office, from time to time, shall review such numbers of positions in each agency as will enable the Office to determine whether the agency is placing positions in occupations and grades in conformance with or consistently with published job standards. When the Office finds that a position is not placed in its proper occupation and grade in conformance with published standards or that a position for which there is no published standard is not placed in the occupation and grade consistently with published standards, it shall, after consultation with appropriate officials of the agency concerned, place the position in its appropriate occupation and grade and shall certify this action to the agency. The agency shall act in accordance with the certificate, and the certificate is binding on all administrative, certifying, payroll, disbursing, and accounting officials.

(c) On application, made in accordance with regulations prescribed by the Office, by a pre-

vailing rate employee for the review of the action of an employing agency in placing his position in an occupation and grade for pay purposes, the Office shall—

(1) ascertain currently the facts as to the duties, responsibilities, and qualification requirements of the position;

(2) decide whether the position has been placed in the proper occupation and grade; and

(3) approve, disapprove, or modify, in accordance with its decision, the action of the employing agency in placing the position in an occupation and grade.

The Office shall certify to the agency concerned its action under paragraph (3) of this subsection. The agency shall act in accordance with the certificate, and the certificate is binding on all administrative, certifying, payroll, disbursing, and accounting officials.

(Added Pub. L. 90–206, title II, §223(a), Dec. 16, 1967, 81 Stat. 641, §5345; renumbered §5346 and amended Pub. L. 92–392, §1(a), Aug. 19, 1972, 86 Stat. 570, and amended Pub. L. 95–454, title IX, §906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224.)

AMENDMENTS

1978—Subsecs. (a) to (c). Pub. L. 95–454 substituted ''Office of Personnel Management'' and ''Office'' for ''Civil Service Commission'' and ''Commission'', respectively, wherever appearing.

1972—Subsecs. (a), (b). Pub. L. 92–392 added subsecs. (a) and (b).

Subsec. (c). Pub. L. 92–392 designated existing provisions as subsec. (c) and substituted in introductory text ''Commission'', ''a prevailing rate of employee'' and ''in placing his position in an occupation and grade'' for ''Civil Service Commission'', ''an employee subject to section 5341(a) of this title'' and ''in classifying his position'', respectively, in par. (2) ''placed in the proper occupation and grade'' for ''properly classified'', in par. (3) ''in placing the position in an occupation and grade'' for ''in classifying the position'' and in last sentence ''subsection'' for ''section''.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92–392 effective on first day of first applicable pay period beginning on or after 90th day after Aug. 19, 1972, see section 15(a) of Pub. L. 92–392, set out as an Effective Date note under section 5341 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5366 of this title.

§ 5347. Federal Prevailing Rate Advisory Committee

(a) There is established a Federal Prevailing Rate Advisory Committee composed of—

(1) the Chairman, who shall not hold any other office or position in the Government of the United States or the government of the District of Columbia, and who shall be appointed by the Director of the Office of Personnel Management for a 4-year term;

(2) one member from the Office of the Secretary of Defense, designated by the Secretary of Defense;

(3) two members from the military departments, designated by the Director of the Office of Personnel Management;

(4) one member, designated by the Director of the Office of Personnel Management from time to time from an agency (other than the Department of Defense, a military department, and the Office of Personnel Management);

(5) an employee of the Office of Personnel Management, designated by the Director of the Office of Personnel Management; and

(6) five members, designated by the Director of the Office of Personnel Management, from among the employee organizations representing, under exclusive recognition of the Government of the United States, the largest numbers of prevailing rate employees.

(b) In designating members from among employee organizations under subsection (a)(6) of this section, the Director of the Office of Personnel Management shall designate, as nearly as practicable, a number of members from a particular employee organization in the same proportion to the total number of employee representatives appointed to the Committee under subsection (a)(6) of this section as the number of prevailing rate employees represented by such organization is to the total number of prevailing rate employees. However, there shall not be more than two members from any one employee organization nor more than four members from a single council, federation, alliance, association, or affiliation of employee organizations.

(c) Every 2 years the Director of the Office of Personnel Management shall review employee organization representation to determine adequate or proportional representation under the guidelines of subsection (b) of this section.

(d) The members from the employee organizations serve at the pleasure of the Director of the Office of Personnel Management.

(e) The Committee shall study the prevailing rate system and other matters pertinent to the establishment of prevailing rates under this subchapter and, from time to time, advise the Office of Personnel Management thereon. Conclusions and recommendations of the Committee shall be formulated by majority vote. The Chairman of the Committee may vote only to break a tie vote of the Committee. The Committee shall make an annual report to the Office and the President for transmittal to Congress, including recommendations and other matters considered appropriate. Any member of the Committee may include in the annual report recommendations and other matters he considers appropriate.

(f) The Committee shall meet at the call of the Chairman. However, a special meeting shall be called by the Chairman if 5 members make a written request to the Chairman to call a special meeting to consider matters within the purview of the Committee.

(g)(1) Except as provided in paragraph (2), members of the Committee described in paragraphs (2)–(5) of subsection (a) of this section serve without additional pay. Members who represent employee organizations are not entitled to pay from the Government of the United States for services rendered to the Committee.

(2) The position of Chairman shall be considered to be a Senior Executive Service position within the meaning of section 3132(a), and shall

be subject to all provisions of this title relating to Senior Executive Service positions, including section 5383.

(h) The Office of Personnel Management shall provide such clerical and professional personnel as the Chairman of the Committee considers appropriate and necessary to carry out its functions under this subchapter. Such personnel shall be responsible to the Chairman of the Committee.

(Added Pub. L. 92–392, § 1(a), Aug. 19, 1972, 86 Stat. 571; amended Pub. L. 95–454, title IX, § 906(a)(1), (2), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 96–54, § 2(a)(15), Aug. 14, 1979, 93 Stat. 382; Pub. L. 102–378, § 2(30), Oct. 2, 1992, 106 Stat. 1350.)

AMENDMENTS

1992—Subsec. (g). Pub. L. 102–378 designated existing provisions as par. (1), substituted ''Except as provided in paragraph (2), members'' for ''Members'', struck out second sentence which read as follows: ''The Chairman is entitled to a rate of pay equal to the maximum rate currently paid, from time to time, under the General Schedule.'', and added par. (2).

1979—Subsec. (e). Pub. L. 96–54 substituted ''Office'' for ''Commission''.

1978—Subsecs. (a) to (e), (h). Pub. L. 95–454 substituted ''Director of the Office of Personnel Management'' for ''Chairman of the Civil Service Commission'' and ''Office of Personnel Management'' for ''Civil Service Commission'', wherever appearing.

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.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

EFFECTIVE DATE

Section effective on first day of first applicable pay period beginning on or after 90th day after Aug. 19, 1972, see section 15(a) of Pub. L. 92–392, set out as a note under section 5341 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5304 of this title.

§ 5348. Crews of vessels

(a) Except as provided by subsections (b) and (c) of this section, the pay of officers and members of crews of vessels excepted from chapter 51 of this title by section 5102(c)(8) of this title shall be fixed and adjusted from time to time as nearly as is consistent with the public interest in accordance with prevailing rates and practices in the maritime industry.

(b) Vessel employees of the Panama Canal Commission may be paid in accordance with the wage practices of the maritime industry.

(c) Vessel employees in an area where inadequate maritime industry practice exists and vessel employees of the Corps of Engineers shall have their pay fixed and adjusted under the provisions of this subchapter other than this section, as appropriate.

(Pub. L. 89–544, Sept. 6, 1966, 80 Stat. 471, § 5348, formerly § 5342; renumbered and amended Pub. L. 92–392, § 1(a), Aug. 19, 1972, 86 Stat. 572; Pub. L. 96–70, title III, § 3302(e)(1), Sept. 27, 1979, 93 Stat. 498.)

AMENDMENTS

1979—Subsec. (b). Pub. L. 96–70 substituted ''Commission'' for ''Company''.

1972—Subsec. (a). Pub. L. 92–392 inserted reference to subsection (c) of this section.

Subsec. (c). Pub. L. 92–392 added subsec. (c).

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–70 effective Oct. 1, 1979, see section 3304 of Pub. L. 96–70, set out as an Effective Date note under section 3601 of Title 22, Foreign Relations and Intercourse.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92–392 effective on first day of first applicable pay period beginning on or after 90th day after Aug. 19, 1972, see section 15(a) of Pub. L. 92–392, set out as an Effective Date note under section 5341 of this title.

LIMITATION ON PAY ADJUSTMENTS

For provisions limiting the adjustment of salary or basic pay of employees covered by this section, see provisions set out as notes under section 5343 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5342 of this title.

§ 5349. Prevailing rate employees; legislative, judicial, Bureau of Engraving and Printing, and government of the District of Columbia

(a) The pay of employees, described under section 5102(c)(7) of this title, in the Library of Congress, the Botanic Garden, the Government Printing Office, the General Accounting Office, the Office of the Architect of the Capitol, the Bureau of Engraving and Printing, and the government of the District of Columbia, shall be fixed and adjusted from time to time as nearly as is consistent with the public interest in accordance with prevailing rates and in accordance with such provisions of this subchapter, including the provisions of section 5344, relating to retroactive pay, and subchapter VI of this chapter, relating to grade and pay retention, as the pay-fixing authority of each such agency may determine. Subject to section 213(f) of title 29, the rates may not be less than the appropriate rates provided for by section 206(a)(1) of title 29. If the pay-fixing authority concerned determines that the provisions of subchapter VI of this chapter should apply to any employee under his jurisdiction, then the employee concerned shall be deemed to have satisfied the requirements of section 5361(1) of this title if the tenure of his appointment is substantially equivalent to the tenure of any appointment referred to in such paragraph.

(b) Subsection (a) of this section does not modify or otherwise affect section 5102(d) of this title, section 305 of title 44, and section 5141 of title 31.

(Added Pub. L. 92–392, § 1(a), Aug. 19, 1972, 86 Stat. 572; amended Pub. L. 95–454, title VIII, § 801(a)(3)(H), Oct. 13, 1978, 92 Stat. 1222; Pub. L. 97–258, § 3(a)(11), Sept. 13, 1982, 96 Stat. 1063; Pub. L. 100–426, title III, § 301, Sept. 9, 1988, 102 Stat. 1602; Pub. L. 101–474, § 5(j), Oct. 30, 1990, 104 Stat. 1100.)

PRIOR PROVISIONS

Provisions similar to those comprising subsec. (a) of this section were contained in Pub. L. 89–554, Sept. 6,

1966, 80 Stat. 471; Pub. L. 90–83, §1(97), Sept. 11, 1967, 81 Stat. 220 (formerly classified to section 5341(a) of this title) prior to the general amendment of this subchapter by section 1(a) of Pub. L. 92–392.

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–474 struck out ''the Administrative Office of the United States Courts,'' before ''the Library of Congress''.

1988—Subsec. (a). Pub. L. 100–426 inserted reference to General Accounting Office.

1982—Subsec. (b). Pub. L. 97–258 substituted ''section 5141'' for ''section 180''.

1978—Subsec. (a). Pub. L. 95–454 substituted ''subchapter VI of this chapter, relating to grade and pay retention,'' for ''section 5345, relating to retention of pay,'', ''subchapter VI of this chapter'' for ''section 5345 of this title'', and ''section 5361(1)'' for ''paragraph (2) of section 5345(a)''.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective on first day of first applicable pay period beginning on or after 90th day after Oct. 13, 1978, see section 801(a)(4) of Pub. L. 95–454, set out as an Effective Date note under section 5361 of this title.

EFFECTIVE DATE

Section effective on first day of first applicable pay period beginning on or after 90th day after Aug. 19, 1972, see section 15(a) of Pub. L. 92–392, set out as a note under section 5341 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5342, 5544, 6101, 8704 of this title; title 31 section 732.

SUBCHAPTER V—STUDENT-EMPLOYEES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 5102 of this title.

§ 5351. Definitions

For the purpose of this subchapter—

(1) ''agency'' means an Executive agency, a military department, and the government of the District of Columbia; and

(2) ''student-employee'' means—

(A) a student nurse, medical or dental intern, resident-in-training, student dietitian, student physical therapist, and student occupational therapist, assigned or attached to a hospital, clinic, or medical or dental laboratory operated by an agency; and

(B) any other student-employee, assigned or attached primarily for training purposes to a hospital, clinic, or medical or dental laboratory operated by an agency, who is designated by the head of the agency with the approval of the Office of Personnel Management.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 472; Pub. L. 95–454, title IX, §906(a)(2), Oct. 13, 1978, 92 Stat. 1224.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 1052.	Aug. 4, 1947, ch. 452, §2, 61 Stat. 727.

The section is restated in definition form. In paragraph (1), the words ''an Executive agency, a military department'' are coextensive with and substituted for ''department, agency, or instrumentality of the Federal Government'' in view of the definitions in sections 105 and 102.

The exception from the Classification Act of 1923, as amended, is omitted as obsolete and superseded by the Classification Act of 1949, as amended, which is carried into this title. The present exception from the Classification Act of 1949, as amended, is carried into section 5102(c)(16).

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1978—Par. (2)(B). Pub. L. 95–454 substituted ''Office of Personnel Management'' for ''Civil Service Commission''.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

CROSS REFERENCES

Premium pay employee, exclusion of student-employee, see section 5541 of this title.

Retirement, creditable service of student-employees as defined by this section, see section 8332 of this title.

Student employees covered by program of compensation for work injuries suffered by government employees, see section 8144 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5541, 8144, 8331, 8332, 8501 of this title; title 26 section 3121; title 42 section 410.

§ 5352. Stipends

The head of each agency, and the District of Columbia Council with respect to the government of the District of Columbia, shall fix the stipends of its student-employees. The stipend may not exceed the applicable maximum prescribed by the Office of Personnel Management.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 472; Pub. L. 90–623, §1(7), Oct. 22, 1968, 82 Stat. 1312; Pub. L. 95–454, title IX, §906(a)(2), Oct. 13, 1978, 92 Stat. 1224.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 1051 (1st sentence).	Aug. 4, 1947, ch. 452, §3 (1st sentence), 61 Stat. 727.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1978—Pub. L. 95–454 substituted ''Office of Personnel Management'' for ''Civil Service Commission''.

1968—Pub. L. 90–623 inserted '', and the District of Columbia Council with respect to the government of the District of Columbia,'' after ''head of each agency'' and substituted ''its'' for ''his''.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–623 intended to restate without substantive change the law in effect on Oct. 22,

1968, see section 6 of Pub. L. 90–623, set out as a note under section 5334 of this title.

TRANSFER OF FUNCTIONS

District of Columbia Council, as established by Reorg. Plan No. 3 of 1967, abolished as of noon Jan. 2, 1975, by Pub. L. 93–198, title VII, § 711, Dec. 24, 1973, 87 Stat. 818, classified to section 1–211 of the District of Columbia Code, and replaced by Council of District of Columbia, as provided by Pub. L. 93–198, title IV, § 401, Dec. 24, 1973, 87 Stat. 785, classified to section 1–221 of the District of Columbia Code.

§ 5353. Quarters, subsistence, and laundry

An agency may provide living quarters, subsistence, and laundering to student-employees while at the hospitals, clinics, or laboratories. The reasonable value of the accommodations, when furnished, shall be deducted from the stipend of the student-employee. The head of the agency concerned, and the District of Columbia Council with respect to the government of the District of Columbia, shall fix the reasonable value of the accommodations at an amount not less than the lowest deduction applicable to regular employees at the same hospital, clinic, or laboratory for similar accommodations.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 472; Pub. L. 90–623, § 1(8), Oct. 22, 1968, 82 Stat. 1312.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 1051 (less 1st sentence).	Aug. 4, 1947, ch. 452, § 3 (less 1st sentence), 61 Stat. 727.

The section is restated for clarity.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1968—Pub. L. 90–623 inserted ‘‘, and the District of Columbia Council with respect to the government of the District of Columbia,’’ after ‘‘head of the agency concerned’’.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–623 intended to restate without substantive change the law in effect on Oct. 22, 1968, see section 6 of Pub. L. 90–623, set out as a note under section 5334 of this title.

TRANSFER OF FUNCTIONS

District of Columbia Council, as established by Reorg. Plan No. 3 of 1967, abolished as of noon Jan. 2, 1975, by Pub. L. 93–198, title VII, § 711, Dec. 24, 1973, 87 Stat. 818, classified to section 1–211 of the District of Columbia Code, and replaced by Council of District of Columbia, as provided by Pub. L. 93–198, title IV, § 401, Dec. 24, 1973, 87 Stat. 785, classified to section 1–221 of the District of Columbia Code.

§ 5354. Effect of detail or affiliation; travel expenses

(a) Status as a student-employee is not terminated by a temporary detail to, or affiliation with another Government or non-Government institution to procure necessary supplementary training or experience pursuant to an order of the head of the agency. A student-employee may receive his stipend and other perquisites provided under this subchapter from the hospital, clinic, or laboratory to which he is assigned or attached for not more than 60 days of a detail or affiliation for each training year, as defined by the head of the agency.

(b) When the detail or affiliation under subsection (a) of this section is to or with another Federal institution, the student-employee is entitled to necessary expenses of travel to and from the institution in accordance with subchapter I of chapter 57 of this title.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 472.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 1055.	Aug. 4, 1947, ch. 452, § 6, 61 Stat. 728.

In subsection (b), the reference to ‘‘subchapter I of chapter 57 of this title’’ is substituted for the reference to ‘‘the Standardized Government Travel Regulations and the provisions of the Subsistence Expense Act of 1926, as amended’’ as the Subsistence Expense Act of 1926 was repealed by section 9(a) of the Travel Expense Act of 1949, 63 Stat. 167, part of which appeared in former section 842 and is carried into section 5708, and as the authority for the Standardized Government Travel Regulations in former section 840 is carried into section 5707 of subchapter I of chapter 57.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

§ 5355. Effect on other statutes

This subchapter does not limit the authority conferred on the Secretary of Veterans Affairs by chapter 73 of title 38.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 472; Pub. L. 102–54, § 13(b)(3), June 13, 1991, 105 Stat. 274.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 1057.	Aug. 4, 1947, ch. 452, § 8, 61 Stat. 728. June 17, 1957, Pub. L. 85–56, § 2201(19), 71 Stat. 159. Sept. 2, 1958, Pub. L. 85–857, § 13(m), 72 Stat. 1265.

The prohibition is restated in positive form.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1991—Pub. L. 102–54 substituted ‘‘Secretary of Veterans Affairs’’ for ‘‘Administrator of Veterans’ Affairs’’.

§ 5356. Appropriations

Funds appropriated to an agency for expenses of its hospitals, clinics, and laboratories to which student-employees are assigned or attached are available to carry out the provisions of this subchapter.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 472.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 1058.	Aug. 4, 1947, ch. 452, § 9, 61 Stat. 728.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

SUBCHAPTER VI—GRADE AND PAY RETENTION

PRIOR PROVISIONS

A prior subchapter VI was renumbered VII by Pub. L. 95–454, title VIII, § 801(a)(3)(A)(i), Oct. 13, 1978, 92 Stat. 1221.

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 5107, 5334, 5349, 8336, 8414, 8704 of this title; title 10 sections 4540, 7212, 9540; title 22 section 3964; title 31 section 732.

§ 5361. Definitions

For the purpose of this subchapter—

(1) ''employee'' means an employee to whom chapter 51 of this title applies, and a prevailing rate employee, as defined by section 5342(a)(2) of this title, whose employment is other than on a temporary or term basis;

(2) ''agency'' has the meaning given it by section 5102 of this title;

(3) ''retained grade'' means the grade used for determining benefits to which an employee to whom section 5362 of this title applies is entitled;

(4) ''rate of basic pay'' means, in the case of a prevailing rate employee, the scheduled rate of pay determined under section 5343 of this title;

(5) ''covered pay schedule'' means the General Schedule, any prevailing rate schedule established under subchapter IV of this chapter, or a special occupational pay system under subchapter IX;

(6) ''position subject to this subchapter'' means any position under a covered pay schedule; and

(7) ''reduction-in-force procedures'' means procedures applied in carrying out any reduction in force due to a reorganization, due to lack of funds or curtailment of work, or due to any other factor.

(Added Pub. L. 95–454, title VIII, § 801(a)(1), Oct. 13, 1978, 92 Stat. 1218; amended Pub. L. 98–615, title II, § 204(a)(2), Nov. 8, 1984, 98 Stat. 3216; Pub. L. 101–509, title V, § 529 [title I, § 105(b)(1)], Nov. 5, 1990, 104 Stat. 1427, 1448; Pub. L. 103–89, § 3(b)(1)(J), Sept. 30, 1993, 107 Stat. 982.)

PRIOR PROVISIONS

A prior section 5361, Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 473, which related to scientific and professional positions, was renumbered section 5371 of this title by Pub. L. 95–454, title VIII, § 801(a)(3)(A)(ii), Oct. 13, 1978, 92 Stat. 1221.

AMENDMENTS

1993—Par. (5). Pub. L. 103–89 substituted ''or a special occupational pay system under subchapter IX'' for ''a special occupational pay system under subchapter IX, or the performance management and recognition system under chapter 54 of this title''.

1990—Par. (5). Pub. L. 101–509 inserted ''a special occupational pay system under subchapter IX,'' before ''or the performance''.

1984—Par. (5). Pub. L. 98–615 substituted ''performance management and recognition system'' for ''merit pay system''.

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 1990 AMENDMENT

Amendment by Pub. L. 101–509 effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title III, § 305] of Pub. L. 101–509, set out as a note under section 5301 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

Section 801(a)(4) of Pub. L. 95–454 provided that:

''(A) The amendments made by this subsection [enacting sections 5361 to 5366 of this title and redesignating former sections 5361 to 5366 as sections 5371 to 5375 of this title, amending sections 559, 1305, 3104, 5102, 5107, 5334, 5349, and 8704 of this title, sections 4540, 7212, and 9540 of Title 10, Armed Forces, section 1715 of Title 15, Commerce and Trade, and section 3608 of Title 42, The Public Health and Welfare, and repealing sections 5337 and 5345 of this title] shall take effect on the first day of the first applicable pay period beginning on or after the 90th day after the date of the enactment of this Act [Oct. 13, 1978].

''(B) An employee who was receiving pay under the provisions of section 5334(d), 5337, or 5345 of title 5, United States Code, on the day before the effective date prescribed in subparagraph (A) of this paragraph shall not have such pay reduced or terminated by reason of the amendments made by this subsection and, unless section 5362 of such title 5 (as amended by subsection (a)(1) of this section) applies, such an employee is entitled to continue to receive pay as authorized by those provisions (as in effect on such date).''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5349 of this title.

§ 5362. Grade retention following a change of positions or reclassification

(a) Any employee—

(1) who is placed as a result of reduction-in-force procedures from a position subject to this subchapter to another position which is subject to this subchapter and which is in a lower grade than the previous position, and

(2) who has served for 52 consecutive weeks or more in one or more positions subject to this subchapter at a grade or grades higher than that of the new position,

is entitled, to the extent provided in subsection (c) of this section, to have the grade of the position held immediately before such placement be considered to be the retained grade of the employee in any position he holds for the 2-year period beginning on the date of such placement.

(b)(1) Any employee who is in a position subject to this subchapter and whose position has been reduced in grade is entitled, to the extent provided in subsection (c) of this section, to have the grade of such position before reduction be treated as the retained grade of such employee for the 2-year period beginning on the date of the reduction in grade.

(2) The provisions of paragraph (1) of this subsection shall not apply with respect to any re-

duction in the grade of a position which had not been classified at the higher grade for a continuous period of at least one year immediately before such reduction.

(c) For the 2-year period referred to in subsections (a) and (b) of this section, the retained grade of an employee under such subsection (a) or (b) shall be treated as the grade of the employee's position for all purposes (including pay and pay administration under this chapter and chapter 55 of this title, retirement and life insurance under chapters 83, 84, and 87 of this title, and eligibility for training and promotion under this title) except—

(1) for purposes of subsection (a) of this section,

(2) for purposes of applying any reduction-in-force procedures, or

(3) for such other purposes as the Office of Personnel Management may provide by regulation.

(d) The foregoing provisions of this section shall cease to apply to an employee who—

(1) has a break in service of one workday or more;

(2) is demoted (determined without regard to this section) for personal cause or at the employee's request;

(3) is placed in, or declines a reasonable offer of, a position the grade of which is equal to or higher than the retained grade; or

(4) elects in writing to have the benefits of this section terminate.

(Added Pub. L. 95–454, title VIII, § 801(a)(1), Oct. 13, 1978, 92 Stat. 1219; amended Pub. L. 98–615, title II, § 204(a)(1), Nov. 8, 1984, 98 Stat. 3216; Pub. L. 103–89, § 3(b)(1)(K), Sept. 30, 1993, 107 Stat. 982.)

PRIOR PROVISIONS

A prior section 5362, Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 473, Pub. L. 95–251, § 2(a)(1), (b)(1), Mar. 27, 1978, 92 Stat. 183, which related to hearing examiners, was renumbered section 5372 of this title by Pub. L. 95–454, title VIII, § 801(a)(3)(A)(ii), Oct. 13, 1978, 92 Stat. 1221.

AMENDMENTS

1993—Subsec. (c). Pub. L. 103–89 substituted ''chapter 55 of this title, retirement and life insurance under chapters 83, 84, and 87'' for ''chapters 54 and 55 of this title, retirement and life insurance under chapters 83 and 87'' in introductory provisions, redesignated par. (4) as (3), and struck out former par. (3) which read as follows: ''for purposes of determining whether the employee is covered by the performance management and recognition system established under chapter 54 of this title, or''.

1984—Subsec. (c)(3). Pub. L. 98–615 substituted ''performance management and recognition system established under chapter 54'' for ''merit pay system established under section 5402''.

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.

ADDITIONAL PAY AND BENEFITS FOR EMPLOYEES REDUCED IN GRADE ON OR AFTER JANUARY 1, 1977, ETC.

Section 801(b) of Pub. L. 95–454 provided that:

''(1) Under regulations prescribed by the Office of Personnel Management, any employee—

''(A) whose grade was reduced on or after January 1, 1977, and before the effective date of the amendments made by subsection (a) of this section [see Effective Date note set out under section 5361 of this title] under circumstances which would have entitled the employee to coverage under the provisions of section 5362 of title 5, United States Code (as amended by subsection (a) of this section) if such amendments had been in effect at the time of the reduction; and

''(B) who has remained employed by the Federal Government from the date of the reduction in grade to the effective date of the amendments made by subsection (a) of this section without a break in service of one workday or more;

shall be entitled—

''(i) to receive the additional pay and benefits which such employee would have been entitled to receive if the amendments made by subsection (a) of this section had been in effect during the period beginning on the effective date of such reduction in grade and ending on the day before the effective date of such amendments, and

''(ii) to have the amendments made by subsection (a), of this section apply to such employee as if the reduction in grade had occurred on the effective date of such amendments.

''(2) No employee covered by this subsection whose reduction in grade resulted in an increase in pay shall have such pay reduced by reason of the amendments made by subsection (a) of this section.

''(3)(A) For purposes of this subsection, the requirements under paragraph (1)(B) of this subsection, relating to continuous employment following reduction in grade, shall be considered to be met in the case of any employee—

''(i) who separated from service with a right to an immediate annuity under chapter 83 of title 5, United States Code, or under another retirement system for Federal employees; or

''(ii) who died.

''(B) Amounts payable by reason of subparagraph (A) of this paragraph in the case of the death of an employee shall be paid in accordance with the provisions of subchapter VIII of chapter 55 of title 5, United States Code, relating to settlement of accounts in the case of deceased employees.

''(4) The Office of Personnel Management shall have the same authority to prescribe regulations under this subsection as it has under section 5365 of title 5, United States Code, with respect to subchapter VI of chapter 53 of such title, as added by subsection (a) of this section.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5361, 5363, 5364 of this title.

§ 5363. Pay retention

(a) Any employee—

(1) who ceases to be entitled to the benefits of section 5362 of this title by reason of the expiration of the 2-year period of coverage provided under such section;

(2) who is in a position subject to this subchapter and who is subject to a reduction or termination of a special rate of pay established under section 5305 of this title (or corresponding prior provision of this title);

(3) who is in a position subject to this subchapter and who (but for this section) would be subject to a reduction in pay under circumstances prescribed by the Office of Personnel Management by regulation to warrant the application of this section; or

(4) who is in a position subject to this subchapter and who is subject to a reduction or

termination of a rate of pay established under subchapter IX of chapter 53;

is entitled to basic pay at a rate equal to (A) the employee's allowable former rate of basic pay, plus (B) 50 percent of the amount of each increase in the maximum rate of basic pay payable for the grade of the employee's position immediately after such reduction in pay if such allowable former rate exceeds such maximum rate for such grade.

(b) For the purpose of subsection (a) of this section, ''allowable former rate of basic pay'' means the lower of—

(1) the rate of basic pay payable to the employee immediately before the reduction in pay; or

(2) 150 percent of the maximum rate of basic pay payable for the grade of the employee's position immediately after such reduction in pay.

(c) The preceding provisions of this section shall cease to apply to an employee who—

(1) has a break in service of one workday or more;

(2) is entitled by operation of this subchapter or chapter 51 or 53 of this title to a rate of basic pay which is equal to or higher than, or declines a reasonable offer of a position the rate of basic pay for which is equal to or higher than, the rate to which the employee is entitled under this section; or

(3) is demoted for personal cause or at the employee's request.

(Added Pub. L. 95–454, title VIII, § 801(a)(1), Oct. 13, 1978, 92 Stat. 1219; amended Pub. L. 101–509, title V, § 529 [title I, §§ 101(b)(3)(B), 105(b)(2)], Nov. 5, 1990, 104 Stat. 1427, 1439, 1448; Pub. L. 103–89, § 3(b)(1)(L), Sept. 30, 1993, 107 Stat. 982.)

PRIOR PROVISIONS

A prior section 5363, Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 473, which related to limitation on pay fixed by administrative action, was renumbered section 5373 of this title by Pub. L. 95–454, title VIII, § 801(a)(3)(A)(ii), Oct. 13, 1978, 92 Stat. 1221.

AMENDMENTS

1993—Subsec. (c)(2). Pub. L. 103–89 substituted ''chapter 51 or 53'' for ''chapter 51, 53, or 54''.

1990—Subsec. (a)(2) to (4). Pub. L. 101–509 substituted ''5305 of this title (or corresponding prior provision of this title);'' for ''5303 of this title; or'' in par. (2), inserted ''or'' at end of par. (3), and added par. (4).

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 1990 AMENDMENT

Amendment by Pub. L. 101–509 effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title III, § 305] of Pub. L. 101–509, set out as a note under section 5301 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5302, 5364 of this title.

§ 5364. Remedial actions

Under regulations prescribed by the Office of Personnel Management, the Office may require any agency—

(1) to report to the Office information with respect to vacancies (including impending vacancies);

(2) to take such steps as may be appropriate to assure employees receiving benefits under section 5362 or 5363 of this title have the opportunity to obtain necessary qualifications for the selection to positions which would minimize the need for the application of such sections;

(3) to establish a program under which employees receiving benefits under section 5362 or 5363 of this title are given priority in the consideration for or placement in positions which are equal to their retained grade or pay; and

(4) to place certain employees, notwithstanding the fact their previous position was in a different agency, but only in circumstances in which the Office determines the exercise of such authority is necessary to carry out the purpose of this section.

(Added Pub. L. 95–454, title VIII, § 801(a)(1), Oct. 13, 1978, 92 Stat. 1220.)

PRIOR PROVISIONS

A prior section 5364, Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 473, which related to miscellaneous positions in the executive branch, was renumbered section 5374 of this title by Pub. L. 95–454, title VIII, § 801(a)(3)(A)(ii), Oct. 13, 1978, 92 Stat. 1221.

§ 5365. Regulations

(a) The Office of Personnel Management shall prescribe regulations to carry out the purpose of this subchapter.

(b) Under such regulations, the Office may provide for the application of all or portions of the provisions of this subchapter—

(1) to any individual reduced to a grade of a covered pay schedule from a position not subject to this subchapter;

(2) to individuals to whom such provisions do not otherwise apply; and

(3) to situations the application to which is justified for purposes of carrying out the mission of the agency or agencies involved.

Individuals with respect to whom authority under paragraph (2) may be exercised include individuals who are moved without a break in service of more than 3 days from employment in nonappropriated fund instrumentalities of the Department of Defense or the Coast Guard described in section 2105(c) to employment in the Department of Defense or the Coast Guard, respectively, that is not described in section 2105(c).

(Added Pub. L. 95–454, title VIII, § 801(a)(1), Oct. 13, 1978, 92 Stat. 1220; amended Pub. L. 101–508, title VII, § 7202(f), Nov. 5, 1990, 104 Stat. 1388–336.)

PRIOR PROVISIONS

A prior section 5365, added Pub. L. 91–34, § 1(a), June 30, 1969, 83 Stat. 41; amended Pub. L. 94–183, § 2(20), Dec. 31, 1975, 89 Stat. 1058, which related to the police force of National Zoological Park, was renumbered section 5375 of this title by Pub. L. 95–454, title VIII, § 801(a)(3)(A)(ii), Oct. 13, 1978, 92 Stat. 1221.

AMENDMENTS

1990—Subsec. (b). Pub. L. 101–508 inserted at end ''Individuals with respect to whom authority under para-

graph (2) may be exercised include individuals who are moved without a break in service of more than 3 days from employment in nonappropriated fund instrumentalities of the Department of Defense or the Coast Guard described in section 2105(c) to employment in the Department of Defense or the Coast Guard, respectively, that is not described in section 2105(c).''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable with respect to any individual who, on or after Jan. 1, 1987, moves from employment in nonappropriated fund instrumentality of Department of Defense or Coast Guard, that is described in section 2105(c) of this title, to employment in Department or Coast Guard, that is not described in section 2105(c), or who moves from employment in Department or Coast Guard, that is not described in section 2105(c), to employment in nonappropriated fund instrumentality of Department or Coast Guard, that is described in section 2105(c), see section 7202(m)(1) of Pub. L. 101–508, set out as a note under section 2105 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5334 of this title.

§ 5366. Appeals

(a)(1) In the case of the termination of any benefits available to an employee under this subchapter on the grounds such employee declined a reasonable offer of a position the grade or pay of which was equal to or greater than his retained grade or pay, such termination may be appealed to the Office of Personnel Management under procedures prescribed by the Office.

(2) Nothing in this subchapter shall be construed to affect the right of any employee to appeal—

(A) under section 5112(b) or 5346(c) of this title, or otherwise, any reclassification of a position; or

(B) under procedures prescribed by the Office of Personnel Management, any reduction-in-force action.

(b) For purposes of any appeal procedures (other than those described in subsection (a) of this section) or any grievance procedure negotiated under the provisions of chapter 71 of this title—

(1) any action which is the basis of an individual's entitlement to benefits under this subchapter, and

(2) any termination of any such benefits under this subchapter,

shall not be treated as appealable under such appeals procedures or grievable under such grievance procedure.

(Added Pub. L. 95–454, title VIII, § 801(a)(1), Oct. 13, 1978, 92 Stat. 1221.)

SUBCHAPTER VII—MISCELLANEOUS PROVISIONS

AMENDMENTS

1978—Pub. L. 95–454, title VIII, § 801(a)(3)(A)(i), Oct. 13, 1978, 92 Stat. 1221, redesignated former subchapter VI as VII.

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in title 42 section 1320a–4.

§ 5371. Health care positions

(a) For the purposes of this section, ''health care'' means direct patient-care services or services incident to direct patient-care services.

(b) The Office of Personnel Management may, with respect to any employee described in subsection (c), provide that 1 or more provisions of chapter 74 of title 38 shall apply—

(1) in lieu of any provision of chapter 51 or 61, subchapter V of chapter 55, or any other provision of this chapter; or

(2) notwithstanding any lack of specific authority for a matter with respect to which chapter 51 or 61, subchapter V of chapter 55, or this chapter, relates.

(c) Authority under subsection (b) may be exercised with respect to any employee holding a position—

(1) to which chapter 51 applies, excluding any Senior Executive Service position and any position in the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service; and

(2) which involves health care responsibilities.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 473, § 5361; renumbered § 5371 and amended Pub. L. 95–454, title VIII, § 801(a)(3)(A)(ii), title IX, § 906(a)(2), Oct. 13, 1978, 92 Stat. 1221, 1224; Pub. L. 101–509, title V, § 529 [title II, § 205(A)], Nov. 5, 1990, 104 Stat. 1427, 1456; Pub. L. 102–378, § 2(31), Oct. 2, 1992, 106 Stat. 1350.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 1162(b).	Oct. 4, 1961, Pub. L. 87–367, § 202 ''Sec. 2(b)'', 75 Stat. 790. Oct. 11, 1962, Pub. L. 87–793, § 1001(a)(1), 76 Stat. 863.

The authority to fix rates of pay is added on authority of former section 1161, which is carried into section 3104.

For repeal of the Act of Aug. 1, 1947, ch. 433, 61 Stat. 715, as amended, see revision note for section 3104.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1992—Subsec. (b). Pub. L. 102–378 substituted ''chapter 74'' for ''chapter 73'' in introductory provisions and inserted ''subchapter V of chapter 55,'' after ''61,'' in pars. (1) and (2).

1990—Pub. L. 101–509 amended section generally, substituting designated provisions directing that Office of Personnel Management may provide that chapter 73 of title 38 provisions apply to certain health care professionals for undesignated text authorizing agency heads to fix pay rates for scientific and professional positions at between GS–16 and GS–18 rates.

1978—Pub. L. 95–454, § 906(a)(2), substituted ''Office of Personnel Management'' for ''Civil Service Commission''.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–509 effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title III, § 305] of Pub. L. 101–509, set out as a note under section 5301 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 906(a)(2) of Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub.

L. 95–454, set out as a note under section 1101 of this title.

CROSS REFERENCES

Annual reports by agency heads covering positions for scientific and professional personnel, see section 3104 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5948 of this title.

§ 5372. Administrative law judges

(a) For the purposes of this section, the term ''administrative law judge'' means an administrative law judge appointed under section 3105.

(b)(1) There shall be 3 levels of basic pay for administrative law judges (designated as AL–1, 2, and 3, respectively), and each such judge shall be paid at 1 of those levels, in accordance with the provisions of this section. The rates of basic pay for those levels shall be as follows:

AL–3, rate A	65 percent of the rate of basic pay for level IV of the Executive Schedule.
AL–3, rate B	70 percent of the rate of basic pay for level IV of the Executive Schedule.
AL–3, rate C	75 percent of the rate of basic pay for level IV of the Executive Schedule.
AL–3, rate D	80 percent of the rate of basic pay for level IV of the Executive Schedule.
AL–3, rate E	85 percent of the rate of basic pay for level IV of the Executive Schedule.
AL–3, rate F	90 percent of the rate of basic pay for level IV of the Executive Schedule.
AL–2	95 percent of the rate of basic pay for level IV of the Executive Schedule.
AL–1	The rate of basic pay for level IV of the Executive Schedule.

(2) The Office of Personnel Management shall determine, in accordance with procedures which the Office shall by regulation prescribe, the level in which each administrative-law-judge position shall be placed and the qualifications to be required for appointment to each level.

(3)(A) Upon appointment to a position in AL–3, an administrative law judge shall be paid at rate A of AL–3, and shall be advanced successively to rates B, C, and D of that level upon completion of 52 weeks of service in the next lower rate, and to rates E and F of that level upon completion of 104 weeks of service in the next lower rate.

(B) The Office of Personnel Management may provide for appointment of an administrative law judge in AL–3 at an advanced rate under such circumstances as the Office may determine appropriate.

(c) The Office of Personnel Management shall prescribe regulations necessary to administer this section.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 473, § 5362; Pub. L. 95–251, § 2(a)(1), (b)(1), Mar. 27, 1978, 92 Stat. 183; renumbered § 5372 and amended Pub. L. 95–454, title VIII, § 801(a)(3)(A)(ii), title IX, § 906(a)(2), Oct. 13, 1978, 92 Stat. 1221, 1224; Pub. L. 101–509, title V, § 529 [title I, § 104(a)(1)], Nov. 5, 1990, 104 Stat. 1427, 1445; Pub. L. 102–378, § 2(32), Oct. 2, 1992, 106 Stat. 1350.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 1010 (3d sentence).	June 11, 1946, ch. 324, § 11 (3d sentence), 60 Stat. 244.

The exception from the operation of the efficiency rating system is omitted as covered by sections 4301(2)(E) and 5335(a)(B). The reference to ''subchapter III of this chapter and chapter 51 of this title'' is substituted for ''the Classification Act of 1923, as amended'' on authority of section 1106(a) of the Act of Oct. 28, 1949, ch. 782, 63 Stat. 972.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

REFERENCES IN TEXT

Level IV of the Executive Schedule, referred to in subsec. (b)(1), is set out in section 5315 of this title.

AMENDMENTS

1992—Subsec. (c). Pub. L. 102–378 substituted ''shall'' for ''shall,''.

1990—Pub. L. 101–509 amended section generally. Prior to amendment, section read as follows: ''Administrative law judges appointed under section 3105 of this title are entitled to pay prescribed by the Office of Personnel Management independently of agency recommendations or ratings and in accordance with subchapter III of this chapter and chapter 51 of this title.''

1978—Pub. L. 95–454, § 906(a)(2), substituted ''Office of Personnel Management'' for ''Civil Service Commission''.

Pub. L. 95–251 substituted ''Administrative law judges'' for ''Hearing examiners'' in section catchline and text.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–509 effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title III, § 305] of Pub. L. 101–509, set out as a note under section 5301 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 906(a)(2) of Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

CONVERSION RULE FOR ADMINISTRATIVE LAW JUDGES

Section 529 [title I, § 104(e)] of Pub. L. 101–509 provided that: ''In making initial pay adjustments for administrative law judges after this section and the amendments made by this section [enacting section 5372a of this title, amending this section, sections 5102, 5311, and 5335 of this title, section 938 of Title 30, Mineral Lands and Mining, and section 607 of Title 41, Public Contracts] take effect [see Effective Date of 1990 Amendment note set out under section 5301 of this title], the rate of basic pay for any such judge shall, upon conversion to the new pay system, be at least equal to the rate which was payable to that individual immediately before such conversion.''

CROSS REFERENCES

Additional requirements imposed by statute or otherwise recognized by law not limited or repealed by this section, see section 559 of this title.

Subsequent statutes to be held to supersede or modify this section only to the extent that they do so expressly, see section 559 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 559, 1305, 5304, 5377, 5380, 7323 of this title; title 15 section 1715; title 29 section 661; title 30 section 938; title 38 section 7101A; title 42 sections 2000e–4, 3608.

§ 5372a. Contract appeals board members

(a) For the purpose of this section—

(1) the term ''contract appeals board member'' means a member of an agency board of

contract appeals appointed under section 8 of the Contract Disputes Act of 1978; and

(2) the term ''appeals board'' means an agency board of contract appeals established pursuant to section 8 of the Contract Disputes Act of 1978.

(b) Rates of basic pay for contract appeals board members shall be as follows:

(1) Chairman of an appeals board—the rate of basic pay payable for level IV of the Executive Schedule.

(2) Vice chairman of an appeals board—97 percent of the rate under paragraph (1).

(3) Other members of an appeals board—94 percent of the rate under paragraph (1).

(c) Rates of pay taking effect under this section shall be printed in the Federal Register and the Code of Federal Regulations.

(Added Pub. L. 101–509, title V, § 529 [title I, § 104(a)(2)], Nov. 5, 1990, 104 Stat. 1427, 1446.)

REFERENCES IN TEXT

Section 8 of the Contract Disputes Act of 1978, referred to in subsec. (a), is classified to section 607 of Title 41, Public Contracts.

Level IV of the Executive Schedule, referred to in subsec. (b)(1), is set out in section 5315 of this title.

EFFECTIVE DATE

Section effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title III, § 305] of Pub. L. 101–509, set out as an Effective Date of 1990 Amendment note under section 5301 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5304, 5377, 5380, 7323 of this title; title 41 section 607.

§ 5373. Limitation on pay fixed by administrative action

Except as provided by the Government Employees Salary Reform Act of 1964 (78 Stat. 400) and notwithstanding the provisions of other statutes, the head of an Executive agency or military department who is authorized to fix by administrative action the annual rate of basic pay for a position or employee may not fix the rate at more than the rate for level IV of the Executive Schedule. This section does not impair the authorities provided by—

(1) section 1202 of the Panama Canal Act of 1979;

(2) sections 248, 482, 1766, and 1819 of title 12, section 206 of the Bank Conservation Act, sections 2B(b) and 21A(e)(4) of the Federal Home Loan Bank Act, section 2A(i)[1] of the Home Owners' Loan Act, and sections 5.11 and 5.58 of the Farm Credit Act of 1971;

(3) section 831b of title 16; or

(4) sections 403a–403c, 403e–403h, and 403j of title 50.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 473, § 5363; renumbered § 5373, Pub. L. 95–454, title VIII, § 801(a)(3)(A)(ii), Oct. 13, 1978, 92 Stat. 1221; Pub. L. 96–70, title III, § 3302(e)(4), Sept. 27, 1979, 93 Stat. 498; Pub. L. 101–73, title VII, § 742(b), title XII, § 1209, Aug. 9, 1989, 103 Stat. 437, 523; Pub. L. 101–509, title V, § 529 [title I, § 101(b)(9)(H)], Nov. 5, 1990, 104 Stat. 1427, 1441.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 2212.	Aug. 14, 1964, Pub. L. 88–426, § 308, 78 Stat. 432. Oct. 6, 1964, Pub. L. 88–631, § 3(e), 78 Stat. 1008.

The words ''head of an Executive agency or military department'' are coextensive with and substituted for ''head of any executive department, independent establishment, or agency in the executive branch'' because of the definitions in sections 102 and 105.

Standard changes are made to conform to the definitions applicable and the style of this title as outlined in the preface to the report.

REFERENCES IN TEXT

The Government Employees Salary Reform Act of 1964 (78 Stat. 400), referred to in text, is Pub. L. 88–426, Aug. 14, 1964, 78 Stat. 400, as amended. For complete classification of this Act to the Code, see Tables.

Level IV of the Executive Schedule, referred to in text, is set out in section 5315 of this title.

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

Section 206 of the Bank Conservation Act, referred to in par. (2), is classified to section 206 of Title 12, Banks and Banking.

Sections 2B(b) and 21A(e)(4) of the Federal Home Loan Bank Act, referred to in par. (2), are classified to sections 1422b(b) and 1441a(e)(4), respectively, of Title 12.

Section 2A(i) of the Home Owners' Loan Act, referred to in par. (2), probably should be a reference to section 3(g) of the Home Owners' Loan Act, act June 13, 1933, ch. 64, as amended by Pub. L. 101–73, title III, § 301, Aug. 9, 1989, 103 Stat. 278, which is classified to section 1462a(g) of Title 12.

Sections 5.11 and 5.58 of the Farm Credit Act of 1971, referred to in par. (2), are classified to sections 2245 and 2277a–7, respectively, of Title 12.

Sections 403a–403c, 403e–403h, and 403j of title 50, referred to in par. (4), was in the original (78 Stat. 432) a reference to ''the Central Intelligence Agency Act of 1949, as amended (50 U.S.C. 403a and the following''. Subsequent to the enactment of Title 5, Government Organization and Employees, by Pub. L. 89–554, additional sections have been added to the 1949 Act and are classified to sections 403k to 403r and 403s of Title 50, War and National Defense.

AMENDMENTS

1990—Pub. L. 101–509 substituted ''rate for level IV of the Executive Schedule.'' for ''maximum rate for GS–18.''

1989—Par. (2). Pub. L. 101–73, § 1209, amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''sections 248, 481, 1437, 1439, and 1819 of title 12;''.

Pub. L. 101–73, § 742(b), inserted references to sections 1437 and 1439 of title 12.

1979—Par. (1). Pub. L. 96–70 substituted ''section 1202 of the Panama Canal Act of 1979'' for ''section 121 of title 2, Canal Zone Code (76A Stat. 15)''.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–509 effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title III, § 305] of Pub. L. 101–509, set out as a note under section 5301 of this title.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–70 effective Oct. 1, 1979, see section 3304 of Pub. L. 96–70, set out as an Effective

[1] See References in Text note below.

Date note under section 3601 of Title 22, Foreign Relations and Intercourse.

CROSS REFERENCES

Secretary of Defense authorized to prescribe salary schedules for civilian faculty and staff of Uniformed Services University of the Health Sciences so as to place employees of the University on a comparable basis with employees of fully accredited schools of the health professions in vicinity of District of Columbia, see section 2113 of Title 10, Armed Forces.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5376, 5382 of this title; title 38 section 7281.

§ 5374. Miscellaneous positions in the executive branch

The head of the agency concerned shall fix the annual rate of basic pay for each position in the executive branch specifically referred to in, or covered by, a conforming change in statute made by section 305 of the Government Employees Salary Reform Act of 1964 (78 Stat. 422), or other position in the executive branch for which the annual pay is fixed at a rate of $18,500 or more under special provision of statute enacted before August 14, 1964, which is not placed in a level of the Executive Schedule set forth in subchapter II of this chapter, at a rate equal to the pay rate of a grade and step of the General Schedule set forth in section 5332 of this title. The head of the agency concerned shall report each action taken under this section to the Office of Personnel Management and publish a notice thereof in the Federal Register, except when the President determines that the report and publication would be contrary to the interest of national security.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 473, § 5364; renumbered § 5374 and amended Pub. L. 95–454, title VIII, § 801(a)(3)(A)(ii), title IX, § 906(a)(2), Oct. 13, 1978, 92 Stat. 1221, 1224.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 2213.	Aug. 14, 1964, Pub. L. 88–426, § 309, 78 Stat. 433.

The word ''office'' is omitted as included in ''position''. The words ''before August 14, 1964'' are substituted for ''prior to the date of enactment of this Act''. The words ''pursuant to section 303 of this Act'' are omitted as surplusage.

Standard changes are made to conform to the definitions applicable and the style of this title as outlined in the preface to the report.

REFERENCES IN TEXT

Section 305 of the Government Employees Salary Reform Act of 1964, referred to in text, means section 305 of Pub. L. 88–426, Aug. 14, 1964. For complete classification of this section to the Code, see Tables.

AMENDMENTS

1978—Pub. L. 95–454, § 906(a)(2), substituted ''Office of Personnel Management'' for ''Civil Service Commission''.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 906(a)(2) of Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

§ 5375. Police force of the National Zoological Park

The Secretary of the Smithsonian Institution shall fix the annual rates of basic pay for positions on the police force of the National Zoological Park as follows:

(1) Private, not more than the maximum annual rate of basic pay payable for grade GS–7 of the General Schedule.

(2) Sergeant, not more than the maximum annual rate of basic pay payable for grade GS–8 of the General Schedule.

(3) Lieutenant, not more than the maximum annual rate of basic pay payable for grade GS–9 of the General Schedule.

(4) Captain, not more than the maximum annual rate of basic pay payable for grade GS–10 of the General Schedule.

(Added Pub. L. 91–34, § 1(a), June 30, 1969, 83 Stat. 41, § 5365; amended Pub. L. 94–183, § 2(20), Dec. 31, 1975, 89 Stat. 1058; renumbered § 5375, Pub. L. 95–454, title VIII, § 801(a)(3)(A)(ii), Oct. 13, 1978, 92 Stat. 1221; Pub. L. 101–263, § 1(a), Apr. 4, 1990, 104 Stat. 125; Pub. L. 102–378, § 2(33), Oct. 2, 1992, 106 Stat. 1350.)

REFERENCES IN TEXT

General Schedule, referred to in text, is set out under section 5332 of this title.

AMENDMENTS

1992—Par. (2). Pub. L. 102–378 substituted ''GS–8'' for ''GS–8,''.

1990—Pub. L. 101–263 inserted ''the'' before ''National'' in section catchline and amended text generally. Prior to amendment, text read as follows: ''The Secretary of the Smithsonian Institution shall fix the per annum rates of basic pay of positions on the police force of the National Zoological Park in accordance with the following provisions:

''(1) Private—not more than the rate for GS–7, Step 5;

''(2) Sergeant—not more than the rate for GS–8, Step 5;

''(3) Lieutenant—not more than the rate for GS–9, Step 5;

''(4) Captain—not more than the rate for GS–10, Step 5.''

1975—Pub. L. 94–183 struck out designation ''(a)'' at beginning.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 2 of Pub. L. 101–263 provided that: ''The amendments made by section 1 [amending this section] shall apply with respect to pay periods beginning after the date of the enactment of this Act [Apr. 4, 1990].''

EFFECTIVE DATE

Section 3(a) of Pub. L. 91–34 provided that: ''The foregoing provisions of this Act [enacting this section and amending sections 5102 and 5109 of this title and section 193n of Title 40, Public Buildings, Property, and Works] shall become effective at the beginning of the first pay period which commences on or after the date of enactment of this Act [June 30, 1969].''

REDUCTION OF BASIC PAY RATE

Section 3(b) of Pub. L. 91–34 provided that: ''No rate of basic pay shall be reduced by reason of the enactment of this Act [enacting this section and amending sections 5102 and 5109 of this title and section 193n of Title 40, Public Buildings, Property, and Works].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5102 of this title; title 40 section 193n.

§ 5376. Pay for certain senior-level positions

(a) This section applies to—

(1) positions that are classified above GS–15 pursuant to section 5108; and

(2) scientific or professional positions established under section 3104;

but does not apply to—

(A) any Senior Executive Service position under section 3132; or

(B) any position in the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service under section 3151.

(b)(1) Subject to such regulations as the Office of Personnel Management prescribes, the head of the agency concerned shall fix the rate of basic pay for any position within such agency to which this section applies. A rate fixed under this section shall be—

(A) not less than 120 percent of the minimum rate of basic pay payable for GS–15 of the General Schedule; and

(B) not greater than the rate of basic pay payable for level IV of the Executive Schedule.

The payment of a rate of basic pay under this section shall not be subject to the pay limitation of section 5306(e) or 5373.

(2) Subject to paragraph (1), effective at the beginning of the first applicable pay period commencing on or after the first day of the month in which an adjustment takes effect under section 5303 in the rates of pay under the General Schedule, each rate of pay established under this section for positions within an agency shall be adjusted by such amount as the head of such agency considers appropriate.

(Added Pub. L. 101–509, title V, § 529 [title I, § 102(a)(1)], Nov. 5, 1990, 104 Stat. 1427, 1443.)

REFERENCES IN TEXT

The General Schedule, referred to in subsec. (b), is set out under section 5332 of this title.

Level IV of the Executive Schedule, referred to in subsec. (b)(1)(B), is set out in section 5315 of this title.

EFFECTIVE DATE

Section effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title III, § 305] of Pub. L. 101–509, set out as an Effective Date of 1990 Amendment note under section 5301 of this title.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES; REGULATIONS

Section 529 [title I, § 101(c), (d)] of Pub. L. 101–509 provided that:

''(c) OTHER REFERENCES.—Until otherwise provided by law—

''(1) any reference in a provision of law (which is outside title 5, United States Code, and in effect immediately before this section takes effect [see Effective Date of 1990 Amendment note set out under section 5301 of this title], excluding any reference in a provision of law amended by this Act [see Short Title of 1990 Amendment note set out under section 5301 of this title])—

''(A)(i) to the rate of pay for grade GS–18 of the General Schedule, or to the maximum rate of pay under the General Schedule, shall be considered a reference to the maximum rate payable under section 5376 of such title (as amended by section 102(a));

''(ii) to the minimum rate of pay for grade GS–16 of the General Schedule shall be considered a reference to the minimum rate payable under section 5376 of such title (as amended by section 102(a)); and

''(iii) to a rate of pay for grade GS–16 or 17 of the General Schedule shall (except as provided in clause (ii)) be considered a reference to a rate of pay for a position classified above GS–15 pursuant to section 5108 of such title (as amended by section 102(b)(2)); and

''(B) to a rate of pay under the General Schedule shall not include any comparability payment payable under section 5304 of such title (as amended by this section) or any geographic adjustment payable under section 302 [section 529 [title III, § 302] of Pub. L. 101–509, set out as a note under section 5304 of this title]; and

''(2) any authority granted by a provision of law (which is outside such title, and in effect immediately before this section takes effect) to fix pay in accordance with chapter 51 and subchapter III of chapter 53 of such title—

''(A) shall not be considered to include any authority under section 5304 of such title (as amended by this section) or section 302; but

''(B) shall be considered to include authority under section 5376 of such title (as amended by section 102(a)), if applicable.

''(d) REGULATIONS.—The Office of Personnel Management may prescribe regulations, consistent with subsection (c)(1)(B) and section 303 [section 529 [title III, § 303] of Pub. L. 101–509, set out as a note under section 5301 of this title], governing the conversion or adjustment of rates of pay, where necessary because of the abolishment of grades GS–16, 17, and 18 of the General Schedule.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3405, 5304, 5331, 5382, 5595, 5948 of this title; title 20 section 6011; title 42 sections 5612, 5651; title 49 sections 10363, 10383, 60115.

§ 5377. Pay authority for critical positions

(a) For the purpose of this section—

(1) the term ''agency'' has the meaning given it by section 5102; and

(2) the term ''position'' means—

(A) a position to which chapter 51 applies, including a position in the Senior Executive Service or the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service;

(B) a position under the Executive Schedule under sections 5312–5317;

(C) a position to which section 5372 applies (or would apply, but for this section);

(D) a position to which section 5372a applies (or would apply, but for this section);

(E) a position established under section 3104; and

(F) a position in a category as to which a designation is in effect under subsection (i).

(b) Authority under this section—

(1) may be granted or exercised only with respect to a position—

(A) which requires expertise of an extremely high level in a scientific, technical, professional, or administrative field; and

(B) which is critical to the agency's successful accomplishment of an important mission; and

(2) may be granted or exercised only to the extent necessary to recruit or retain an individual exceptionally well qualified for the position.

(c) The Office of Management and Budget, in consultation with the Office of Personnel Management, may, upon the request of the head of an agency, grant authority to fix the rate of basic pay for 1 or more positions in such agency in accordance with this section.

(d)(1) The rate of basic pay fixed under this section by an agency head may not be less than the rate of basic pay (including any comparability payments) which would then otherwise be payable for the position involved if this section had never been enacted.

(2) Basic pay may not be fixed under this section at a rate greater than the rate payable for level I of the Executive Schedule, except upon written approval of the President.

(e) The authority to fix the rate of basic pay under this section for a position shall terminate—

(1) whenever the Office of Management and Budget determines (in accordance with such procedures and subject to such terms or conditions as such Office by regulation prescribes) that 1 or more of the requirements of subsection (b) are no longer met; or

(2) as of such date as such Office may otherwise specify, except that termination under this paragraph may not take effect before the authority has been available for such position for at least 1 calendar year.

(f) The Office of Management and Budget may not authorize the exercise of authority under this section with respect to more than 800 positions at any time, of which not more than 30 may, at any such time, be positions the rate of basic pay for which would otherwise be determined under subchapter II.

(g) The Office of Management and Budget shall consult with the Office of Personnel Management before prescribing regulations under this section or making any decision to grant or terminate any authority under this section.

(h) The Office of Management and Budget shall report to the Committee on Post Office and Civil Service of the House of Representatives and the Committee on Governmental Affairs of the Senate each year, in writing, on the operation of this section. Each report under this subsection shall include—

(1) the number of positions, in the aggregate and by agency, for which higher rates of pay were authorized or paid under this section during any part of the period covered by such report; and

(2) the name of each employee to whom a higher rate of pay was paid under this section during any portion of the period covered by such report, the rate on rates paid under this section during such period, the dates between which each such higher rate was paid, and the rate or rates that would have been paid but for this section.

(i)(1) For the purpose of this subsection, the term ''position'' means the work, consisting of the duties and responsibilities, assignable to an employee, except that such term does not include any position under subsection (a)(2)(A)–(E).

(2) At the request of an agency head, the President may designate 1 or more categories of positions within such agency to be treated, for purposes of this section, as positions within the meaning of subsection (a)(2).

(Added Pub. L. 101–509, title V, § 529 [title I, § 103(a)], Nov. 5, 1990, 104 Stat. 1427, 1444; amended Pub. L. 102–378, § 2(34), Oct. 2, 1992, 106 Stat. 1350.)

REFERENCES IN TEXT

Level I of the Executive Schedule, referred to in subsec. (d)(2), is set out in section 5312 of this title.

AMENDMENTS

1992—Subsec. (a)(2)(E), (F). Pub. L. 102–378, § 2(34)(A), added subpars. (E) and (F).

Subsec. (i). Pub. L. 102–378, § 2(34)(B), added subsec. (i).

EFFECTIVE DATE

Section effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title III, § 305] of Pub. L. 101–509, set out as an Effective Date of 1990 Amendment note under section 5301 of this title.

ABOLITION OF HOUSE COMMITTEE ON POST OFFICE AND CIVIL SERVICE

Committee on Post Office and Civil Service of House of Representatives abolished and its jurisdiction given primarily to Committee on Government Reform and Oversight by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

DELEGATION OF FUNCTIONS

Authority of President under subsec. (i)(2) of this section delegated to Director of Office of Management and Budget by Ex. Ord. No. 12828, § 2, Jan. 5, 1993, 58 F.R. 2965, set out as a note under section 3502 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5304, 5948 of this title; title 42 section 237.

§ 5378. Police forces of the Bureau of Engraving and Printing and the United States Mint

(a) The Secretary of the Treasury shall fix the rates of basic pay for positions within the police forces of the Bureau of Engraving and Printing and the United States Mint in accordance with the following:

(1) Entry-level police officer—not more than the maximum rate payable for GS–6.

(2) Journeyman-level police officer—not more than the maximum rate payable for GS–7.

(3) Corporal—not more than the maximum rate payable for GS–8.

(4) Sergeant—not more than the maximum rate payable for GS–9.

(5) Lieutenant—not more than the maximum rate payable for GS–10.

(6) Deputy Inspector—not more than the maximum rate payable for GS–11.

(7) Inspector—not more than the maximum rate payable for GS–12.

(b) For the purpose of this section, the term ''police forces of the Bureau of Engraving and Printing and the United States Mint'' means the employees of the Department of the Treasury who are appointed, under the authority of the Secretary of the Treasury, as police officers for the protection of the Bureau of Engraving and Printing and the United States Mint buildings and property.

(Added Pub. L. 101–509, title V, § 529 [title I, § 109(a)(1)(A)], Nov. 5, 1990, 104 Stat. 1427, 1451.)

REFERENCES IN TEXT

GS–6 to GS–12, referred to in subsec. (a), are contained in the General Schedule which is set out under section 5332 of this title.

EFFECTIVE DATE; CONVERSION AND SAVINGS PROVISIONS

Section 529 [title I, § 109(c)] of Pub. L. 101–509 provided that:

''(1) This section and the amendments made by this section [enacting this section, amending section 5102 of this title, and enacting provisions set out as a note below] shall become effective on the first day of the first applicable pay period beginning on or after the 30th day following the date of enactment of this Act [Nov. 5, 1990].

''(2)(A) A special pay rate (as defined in subparagraph (B)) shall apply to an individual holding a position if—

''(i) as a result of the initial exercise of authority with respect to such position under the amendment made by subsection (a)(1)(A) [enacting this section], such individual would (but for this paragraph) be paid—

''(I) at the step of the grade for which such special pay rate is then in effect; or

''(II) at a level which is between steps for which special pay rates are then in effect; and

''(ii) such position is within the area or location with respect to which that special pay rate or those special pay rates, as applicable, are then in effect.

The Secretary of the Treasury shall prescribe regulations for determining which special pay rate shall apply in a situation described in clause (i)(II).

''(B) For the purpose of this paragraph, the term 'special pay rate' means a rate which—

''(i) is established under section 5303 of title 5, United States Code (or a succeeding provision of law);

''(ii) is applicable to positions within the police forces of the Bureau of Engraving and Printing and the United States Mint; and

''(iii) has been in effect (including any adjustments under section 5303(d) of such title) since on or before the effective date of this section.

''(3) No rate of basic pay in effect immediately before this section takes effect shall be reduced by reason of the enactment of this section.''

SPECIAL PAY RATES NOT AFFECTED

Section 529 [title I, § 109(b)] of Pub. L. 101–509, as amended by Pub. L. 102–378, § 3(1), Oct. 2, 1992, 106 Stat. 1355, provided that: ''Nothing in this section or in any amendment made by this section [enacting this section, amending section 5102 of this title, and enacting provisions set out as a note above] shall—

''(1) affect any special pay rate under section 5303 of title 5, United States Code, established before this section takes effect; or

''(2) impair any authority to fix or adjust special pay rates under such section 5303 (or a succeeding provision of law) for positions within the police forces of the Bureau of Engraving and Printing and the United States Mint.''

[Amendment by Pub. L. 102–378 to section 529 [title I, § 109(b)] of Pub. L. 101–509, set out above, effective Nov. 5, 1990, see section 9(b)(6) of Pub. L. 102–378, set out as an Effective Date of 1992 Amendment note under section 6303 of this title.]

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5102 of this title.

§ 5379. Student loan repayments

(a)(1) For the purpose of this section—

(A) the term ''agency'' means an agency under subparagraph (A), (B), (C), (D), or (E) of section 4101(1) of this title; and

(B) the term ''student loan'' means—

(i) a loan made, insured, or guaranteed under part B of title IV of the Higher Education Act of 1965;

(ii) a loan made under part E of title IV of the Higher Education Act of 1965; and

(iii) a health education assistance loan made or insured under part C[1] of title VII of Public Health Service Act or under part B of title VIII of such Act.

(2) An employee shall be ineligible for benefits under this section if such employee occupies a position which—

(A) is excepted from the competitive service because of its confidential, policy-determining, policy-making, or policy-advocating character; or

(B) is not subject to subchapter III of this chapter.

(b)(1) The head of an agency may, in order to recruit or retain highly qualified professional, technical, or administrative personnel, establish a program under which the agency may agree to repay (by direct payments on behalf of the employee) any student loan previously taken out by such employee.

(2) Payments under this section shall be made subject to such terms, limitations, or conditions as may be mutually agreed to by the agency and employee concerned, except that the amount paid by an agency under this section may not exceed—

(A) $6,000 for any employee in any calendar year; or

(B) a total of $40,000 in the case of any employee.

(3) Nothing in this section shall be considered to authorize an agency to pay any amount to reimburse an employee for any repayments made by such employee prior to the agency's entering into an agreement under this section with such employee.

(c)(1) An employee selected to receive benefits under this section must agree in writing, before receiving any such benefit, that the employee will—

(A) remain in the service of the agency for a period specified in the agreement (not less than 3 years), unless involuntarily separated; and

(B) if separated involuntarily on account of misconduct, or voluntarily, before the end of the period specified in the agreement, repay to the Government the amount of any benefits received by such employee from that agency under this section.

(2) The payment agreed to under paragraph (1)(B) of this subsection may not be required of an employee who leaves the service of such employee's agency voluntarily to enter into the service of any other agency unless the head of the agency that authorized the benefits notifies the employee before the effective date of such employee's entrance into the service of the other agency that payment will be required under this subsection.

(3) If an employee who is involuntarily separated on account of misconduct or who (exclud-

[1] See References in Text note below.

ing any employee relieved of liability under paragraph (2) of this subsection) is voluntarily separated before completing the required period of service fails to repay the amount agreed to under paragraph (1)(B) of this subsection, a sum equal to the amount outstanding is recoverable by the Government from the employee (or such employee's estate, if applicable) by—

(A) setoff against accrued pay, compensation, amount of retirement credit, or other amount due the employee from the Government; and

(B) such other method as is provided by law for the recovery of amounts owing to the Government.

The head of the agency concerned may waive, in whole or in part, a right of recovery under this subsection if it is shown that recovery would be against equity and good conscience or against the public interest.

(4) Any amount repaid by, or recovered from, an individual (or an estate) under this subsection shall be credited to the appropriation account from which the amount involved was originally paid. Any amount so credited shall be merged with other sums in such account and shall be available for the same purposes and period, and subject to the same limitations (if any), as the sums with which merged.

(d) An employee receiving benefits under this section from an agency shall be ineligible for continued benefits under this section from such agency if the employee—

(1) separates from such agency; or

(2) does not maintain an acceptable level of performance, as determined under standards and procedures which the agency head shall by regulation prescribe.

(e) In selecting employees to receive benefits under this section, an agency shall, consistent with the merit system principles set forth in paragraphs (1) and (2) of section 2301(b) of this title, take into consideration the need to maintain a balanced workforce in which women and members of racial and ethnic minority groups are appropriately represented in Government service.

(f) Any benefit under this section shall be in addition to basic pay and any other form of compensation otherwise payable to the employee involved.

(g) The Director of the Office of Personnel Management, after consultation with heads of a representative number and variety of agencies and any other consultation which the Director considers appropriate, shall prescribe regulations containing such standards and requirements as the Director considers necessary to provide for reasonable uniformity among programs under this section.

(Added Pub. L. 101–510, div. A, title XII, §1206(b)(1), Nov. 5, 1990, 104 Stat. 1659.)

REFERENCES IN TEXT

The Higher Education Act of 1965, referred to in subsec. (a)(1)(B)(i), (ii), is Pub. L. 89–329, Nov. 8, 1965, 79 Stat. 1219, as amended. Parts B and E of title IV of the Act are classified to parts B (§1071 et seq.) and D (§1087aa et seq.), respectively, of subchapter IV of chapter 28 of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

The Public Health Service Act, referred to in subsec. (a)(1)(B)(iii), is act July 1, 1944, ch. 373, 58 Stat. 682, as amended. Part C of title VII of the Act was classified generally to part C (§294 et seq.) of subchapter V of chapter 6A of Title 42, The Public Health and Welfare, and was omitted in the general revision of subchapter V by Pub. L. 102–408, title I, §102, Oct. 13, 1992, 106 Stat. 1994. Pub. L. 102–408 enacted a new part C, relating to training in primary health care, which is classified to part C (§293j et seq.) of subchapter V of chapter 6A of Title 42. For provisions relating to student loans, see part A (§292 et seq.) of subchapter V of chapter 6A of Title 42. Part B of title VIII of the Act is classified generally to part B (§297 et seq.) of subchapter VI of chapter 6A of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 201 of Title 42 and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 10 section 1745.

[§ 5380. Repealed. Pub. L. 102–378, § 8(a), Oct. 2, 1992, 106 Stat. 1359]

Section, added Pub. L. 101–510, div. A, title XII, §1206(i)(1), Nov. 5, 1990, 104 Stat. 1662, related to pay authority for critical positions. See section 5377 of this title. Pub. L. 102–378, §8(a), repealed Pub. L. 101–510, §1206(i)(1), and provided that this title shall read as if section 1206(i)(1) had not been enacted.

Pub. L. 101–510, §1206(i)(3), provided that (A) unless section 5380 of this title did not take effect as provided in subpar. (B), such section would cease to be in effect on the earlier of Oct. 1, 1992, or the date of the enactment of the Federal Employees Pay Comparability Act of 1990 [Nov. 5, 1990], and (B) section 5380 of this title would not take effect if the Federal Employees Pay Comparability Act of 1990 [Pub. L. 101–509] was enacted before the date of the enactment of this Act [Nov. 5, 1990]. Pub. L. 102–378, §8(a), repealed Pub. L. 101–510, §1206(i)(3), and provided that this title shall read as if section 1206(i)(3) had not been enacted.

EFFECTIVE DATE OF REPEAL

Repeal effective Nov. 5, 1990, see section 9(b)(6) of Pub. L. 102–378, set out as an Effective Date of 1992 Amendment note under section 6303 of this title.

SUBCHAPTER VIII—PAY FOR THE SENIOR EXECUTIVE SERVICE

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 5948 of this title; title 38 section 7425.

§ 5381. Definitions

For the purpose of this subchapter, ''agency'', ''Senior Executive Service position'', ''career appointee'', and ''senior executive'' have the meanings set forth in section 3132(a) of this title.

(Added Pub. L. 95–454, title IV, §407(a), Oct. 13, 1978, 92 Stat. 1171; amended Pub. L. 101–136, title VI, §625(b), Nov. 3, 1989, 103 Stat. 823.)

AMENDMENTS

1989—Pub. L. 101–136 inserted '' 'career appointee','' before ''and''.

EFFECTIVE DATE

Subchapter effective 9 months after Oct. 13, 1978, and congressional review of provisions of sections 401 through 412 of Pub. L. 95–454, see section 415(a)(1), (b) of Pub. L. 95–454, set out as a note under section 3131 of this title.

§ 5382. Establishment and adjustment of rates of pay for the Senior Executive Service

(a) There shall be 5 or more rates of basic pay for the Senior Executive Service, and each senior executive shall be paid at one of the rates. The rates of basic pay shall be initially established and thereafter adjusted by the President subject to subsection (b) of this section.

(b) In setting rates of basic pay, the lowest rate for the Senior Executive Service shall not be less than the minimum rate of basic pay payable under section 5376 and the highest rate shall not exceed the rate for level IV of the Executive Schedule. The payment of the rates shall not be subject to the pay limitation of section 5306(e) or 5373 of this title.

(c) Subject to subsection (b) of this section, effective at the beginning of the first applicable pay period commencing on or after the first day of the month in which an adjustment takes effect under section 5303 of this title in the rates of pay under the General Schedule, each rate of basic pay for the Senior Executive Service shall be adjusted by an amount determined by the President to be appropriate.

(d) The rates of basic pay that are established and adjusted under this section shall be printed in the Federal Register and shall supersede any prior rates of basic pay for the Senior Executive Service.

(Added Pub. L. 95–454, title IV, § 407(a), Oct. 13, 1978, 92 Stat. 1171; amended Pub. L. 101–509, title V, § 529 [title I, § 101(b)(4)(B), (6)(A), (9)(I)], Nov. 5, 1990, 104 Stat. 1427, 1439, 1440, 1442.)

REFERENCES IN TEXT

Level IV of the Executive Schedule, referred to in subsec. (b), is set out in section 5315 of this title.

The General Schedule, referred to in subsec. (c), is set out under section 5332 of this title.

AMENDMENTS

1990—Subsec. (b). Pub. L. 101–509, § 529 [title I, § 101(b)(6)(A), (9)(I)], substituted ''under section 5376'' for ''for GS–16 of the General Schedule'' and ''5306(e)'' for ''5308''.

Subsec. (c). Pub. L. 101–509, § 529 [title I, § 101(b)(4)(B)], substituted ''5303'' for ''5305'' and struck out at end ''The adjusted rates of basic pay for the Senior Executive Service shall be included in the report transmitted to the Congress by the President under section 5305(a)(3) or (c)(1) of this title.''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–509 effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title III, § 305] of Pub. L. 101–509, set out as a note under section 5301 of this title.

PAY INCREASES

1995—The President, under Ex. Ord. No. 12944, Dec. 28, 1994, 60 F.R. 309, set out as a note under section 5332 of this title, continued the rates of basic pay for the Senior Executive Service as follows:

ES–1	$92,900
ES–2	97,400
ES–3	101,800
ES–4	107,300
ES–5	111,800
ES–6	115,700.

1993—Ex. Ord. No. 12826, Dec. 30, 1992, 57 F.R. 62909, which provided for adjustment of pay rates effective Jan. 1, 1993, was superseded by Ex. Ord. No. 12944, Dec. 28, 1994, 60 F.R. 309, set out as a note under section 5332 of this title.

1992—Ex. Ord. No. 12786, Dec. 26, 1991, 56 F.R. 67453, which provided for adjustment of pay rates effective Jan. 1, 1992, was superseded by Ex. Ord. No. 12826, Dec. 30, 1992, 57 F.R. 62909.

1991—Ex. Ord. No. 12736, Dec. 12, 1990, 55 F.R. 51385, which provided for adjustment of pay rates effective Jan. 1, 1991, was superseded by Ex. Ord. No. 12786, Dec. 26, 1991, 56 F.R. 67453.

1990—Ex. Ord. No. 12698, Dec. 23, 1989, 54 F.R. 53473, which provided for adjustment of pay rates effective Jan. 1, 1990, was superseded by Ex. Ord. No. 12736, Dec. 12, 1990, 55 F.R. 51385.

1989—Ex. Ord. No. 12663, Jan. 6, 1989, 54 F.R. 791, which provided for adjustment of pay rates effective Jan. 1, 1989, was superseded by Ex. Ord. No. 12698, Dec. 23, 1989, 54 F.R. 53473.

1988—Ex. Ord. No. 12622, Dec. 31, 1987, 53 F.R. 222, which provided for adjustment of pay rates effective Jan. 1, 1988, was superseded by Ex. Ord. No. 12663, Jan. 6, 1989, 54 F.R. 791.

1987—Ex. Ord. No. 12578, Dec. 31, 1986, 52 F.R. 505, which provided for adjustment of pay rates effective Jan. 1, 1987, was superseded by Ex. Ord. No. 12622, Dec. 31, 1987, 53 F.R. 222.

1985—Ex. Ord. No. 12496, Dec. 28, 1984, 50 F.R. 211, as amended by Ex. Ord. No. 12540, Dec. 30, 1985, 51 F.R. 577, which provided for adjustment of pay rates effective Jan. 1, 1985, was superseded by Ex. Ord. No. 12578, Dec. 31, 1986, 52 F.R. 505.

1984—Ex. Ord. No. 12456, Dec. 30, 1983, 49 F.R. 347, as amended by Ex. Ord. No. 12477, May 23, 1984, 49 F.R. 22041; Ex. Ord. No. 12487, Sept. 14, 1984, 49 F.R. 36493, which provided for adjustment of pay rates effective Jan. 1, 1984, was superseded by Ex. Ord. No. 12496, Dec. 28, 1984, 50 F.R. 211, as amended by Ex. Ord. No. 12540, Dec. 30, 1985, 51 F.R. 577.

1982—Ex. Ord. No. 12387, Oct. 8, 1982, 47 F.R. 44981, which provided for adjustment of pay rates effective Oct. 1, 1982, was superseded by Ex. Ord. No. 12456, Dec. 30, 1983, 49 F.R. 347, as amended Ex. Ord. No. 12477, May 23, 1984, 49 F.R. 22041; Ex. Ord. No. 12487, Sept. 14, 1984, 49 F.R. 36493.

Maximum rate payable after Dec. 17, 1982, increased from $58,500 to $67,200, see Pub. L. 97–377, title I, § 129(b)–(d), set out as a note under section 5318 of this title.

Limitations on use of funds for fiscal year ending Sept. 30, 1983, appropriated by any Act to pay salary or pay of any individual in legislative, executive, or judicial branch in position equal to or above level V of Executive Schedule, see section 101(e) of Pub. L. 97–276, as amended, set out as a note under section 5318 of this title.

1981—Ex. Ord. No. 12330, Oct. 15, 1981, 46 F.R. 50921, which provided for adjustment of pay rates effective Oct. 1, 1981, was superseded by Ex. Ord. No. 12387, Oct. 8, 1982, 47 F.R. 44981.

Limitations on use of funds for fiscal year ending Sept. 30, 1982, appropriated by any Act to pay salary or pay of any individual in legislative, executive, or judicial branch in position equal to or above level V of Executive Schedule, see sections 101(g) and 141 of Pub. L. 97–92, set out as a note under section 5318 of this title.

1980—Ex. Ord. No. 12248, Oct. 16, 1980, 45 F.R. 69199, which provided for adjustment of pay rates effective Oct. 1, 1980, was superseded by Ex. Ord. No. 12330, Oct. 15, 1981, 46 F.R. 50921.

Limitations on use of funds for fiscal year ending Sept. 30, 1981, appropriated by any Act to pay salary or pay of any individual in legislative, executive, or judicial branch in position equal to or above level V of Executive Schedule, see section 101(c) of Pub. L. 96–536, as amended, set out as a note under section 5318 of this title.

1979—Ex. Ord. No. 12165, Oct, 9, 1979, 44 F.R. 58671, as amended by Ex. Ord. No. 12200, Mar. 12, 1980, 45 F.R. 16443, which provided for adjustment of pay rates effec-

tive Oct. 1, 1979, was superseded by Ex. Ord. No. 12248, Oct. 16, 1980, 45 F.R. 69199.

Applicability to funds appropriated by any Act for fiscal year ending Sept. 30, 1980, of limitation of section 304 of Pub. L. 95–391 on use of funds to pay salary or pay of any individual in legislative, executive, or judicial branch in position equal to or above level V of Executive Schedule, see section 101 of Pub. L. 96–86, set out as a note under section 5318 of this title.

EXECUTIVE ORDER NO. 12592

Ex. Ord. No. 12592, Apr. 10, 1987, 52 F.R. 13417, as amended by Ex. Ord. No. 12609, Sept. 23, 1987, 52 F.R. 36211, which related to the establishment, functions, administration, and termination of the President's Commission on Compensation of Career Federal Executives, was revoked by Ex. Ord. No. 12692, Sept. 29, 1989, 54 F.R. 40627, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3151, 3393a, 4507, 5383, 5384, 8431 of this title; title 10 sections 1590, 1601; title 22 sections 3962, 4154; title 28 sections 594, 995; title 29 sections 717, 761a, 771a, 782, 783, 792, 794b, 797a; title 31 sections 325, 733; title 40 section 166b–3b; title 42 sections 903, 14196.

§ 5383. Setting individual senior executive pay

(a) Each appointing authority shall determine, in accordance with criteria established by the Office of Personnel Management, which of the rates established under section 5382 of this title shall be paid to each senior executive under such appointing authority.

(b) Members of the Senior Executive Service shall be subject to the limitation under section 5307.

(c) Except for any pay adjustment under section 5382 of this title, the rate of basic pay for any senior executive may not be adjusted more than once during any 12-month period.

(d) The rate of basic pay for any career appointee may be reduced from any rate of basic pay to any lower rate of basic pay only if the career appointee receives a written notice of the reduction at least 15 days in advance of the reduction.

(e)(1) This subsection applies to—

(A) any individual who, after serving at least 5 years of current continuous service in 1 or more positions in the competitive service, is appointed, without any break in service, as a career appointee; and

(B) any individual who—

(i) holds a position which is converted from the competitive service to a career reserved position in the Senior Executive Service; and

(ii) as of the conversion date, has at least 5 years of current continuous service in 1 or more positions in the competitive service.

(2)(A) The initial rate of pay for a career appointee who is appointed under the circumstances described in paragraph (1)(A) may not be less than the rate of basic pay last payable to that individual immediately before being so appointed.

(B) The initial rate of pay for a career appointee following the position's conversion (as described in paragraph (1)(B)) may not be less than the rate of basic pay last payable to that individual immediately before such position's conversion.

(Added Pub. L. 95–454, title IV, § 407(a), Oct. 13, 1978, 92 Stat. 1171; amended Pub. L. 96–166, § 3, Dec. 29, 1979, 93 Stat. 1273; Pub. L. 98–615, title III, § 305, Nov. 8, 1984, 98 Stat. 3219; Pub. L. 101–509, title V, § 529 [title I, § 101(b)(7)], Nov. 5, 1990, 104 Stat. 1427, 1440; Pub. L. 102–175, § 2, Dec. 2, 1991, 105 Stat. 1222; Pub. L. 102–378, § 2(35), Oct. 2, 1992, 106 Stat. 1351.)

AMENDMENTS

1992—Subsec. (b). Pub. L. 102–378 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows:

''(1) In no event may the aggregate amount paid to a senior executive during any fiscal year under sections 4507, 5382, 5384, and 5948 of this title exceed the annual rate payable for positions at level I of the Executive Schedule in effect at the end of such fiscal year.

''(2)(A) Any amount which is not paid to a senior executive during a fiscal year because of the limitation under paragraph (1) of this subsection shall be paid to that individual in a lump sum at the beginning of the following fiscal year.

''(B) Any amount paid under this paragraph during a fiscal year shall be taken into account for purposes of applying the limitation under paragraph (1) of this subsection with respect to such fiscal year.

''(C) The Office of Personnel Management shall prescribe regulations, consistent with section 5582 of this title, under which payment under this paragraph shall be made in the case of any individual whose death precludes payment under subparagraph (A) of this paragraph.''

1991—Subsec. (e). Pub. L. 102–175 added subsec. (e).

1990—Subsec. (b)(1). Pub. L. 101–509, which directed that ''5304(j),'' be struck out after the reference to section 4507, could not be executed because ''5304(j),'' does not appear in text.

1984—Subsec. (b). Pub. L. 98–615 designated existing provisions as par. (1) and added par. (2).

1979—Subsec. (b). Pub. L. 96–166 inserted reference to section 5948.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–615 effective following expiration of 90-day period beginning on Nov. 8, 1984, see section 307 of Pub. L. 98–615, set out as a note under section 3135 of this title.

SENIOR EXECUTIVE SERVICE; MAXIMUM AGGREGATE AMOUNT PAYABLE, ETC.; REPORT

Pub. L. 98–168, title III, § 301(a), Nov. 29, 1983, 97 Stat. 1112, required Office of Personnel Management to study and, within 12 months after Nov. 29, 1983, submit to each House of Congress a report on effect which 5 U.S.C. 5383(b) (relating to maximum aggregate amount payable to a member of Senior Executive Service in a fiscal year) has had with respect to recruitment, retention, and morale of career appointees in Senior Executive Service.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5347 of this title; title 20 section 4709.

§ 5384. Performance awards in the Senior Executive Service

(a)(1) To encourage excellence in performance by career appointees, performance awards shall be paid to career appointees in accordance with the provisions of this section.

(2) Such awards shall be paid in a lump sum and shall be in addition to the basic pay paid under section 5382 of this title or any award paid under section 4507 of this title.

(b)(1) No performance award under this section shall be paid to any career appointee whose performance was determined to be less than fully successful at the time of the appointee's most recent performance appraisal and rating under subchapter II of chapter 43 of this title.

(2) The amount of a performance award under this section shall be determined by the agency head but may not be less than 5 percent nor more than 20 percent of the career appointee's rate of basic pay.

(3) The aggregate amount of performance awards paid under this section by an agency during any fiscal year may not exceed the greater of—

(A) an amount equal to 3 percent of the aggregate amount of basic pay paid to career appointees in such agency during the preceding fiscal year; or

(B) an amount equal to 15 percent of the average of the annual rates of basic pay paid to career appointees in such agency during the preceding fiscal year.

(c)(1) Performance awards paid by any agency under this section shall be based on recommendations by performance review boards established by such agency under section 4314 of this title.

(2) not[1] less than a majority of the members of any review board referred to in paragraph (1) shall be career appointees whenever making recommendations under such paragraph with respect to a career appointee. The requirement of the preceding sentence shall not apply in any case in which the Office of Personnel Management determines that there exists an insufficient number of career appointees available to comply with the requirement.

(d) The Office of Personnel Management may issue guidance to agencies concerning the proportion of Senior Executive Service salary expenses that may be appropriately applied to payment of performance awards and the distribution of awards.

(Added Pub. L. 95–454, title IV, § 407(a), Oct. 13, 1978, 92 Stat. 1172; amended Pub. L. 98–615, title III, § 302, Nov. 8, 1984, 98 Stat. 3217; Pub. L. 101–136, title VI, § 625(a), Nov. 3, 1989, 103 Stat. 822.)

AMENDMENTS

1989—Subsec. (c). Pub. L. 101–136 designated existing provisions as par. (1) and added par. (2).

1984—Subsec. (b)(2). Pub. L. 98–615, § 302(1), substituted ''but may not be less than 5 percent nor more than 20 percent'' for ''but may not exceed 20 percent''.

Subsec. (b)(3). Pub. L. 98–615, § 302(2), substituted provisions limiting the aggregate amount of performance awards paid under this section by an agency during any fiscal year to the greater of 3 percent of the aggregate basic pay of career appointees in that agency during the preceding fiscal year or 15 percent of the average of the annual rates of basic pay of such appointees during such fiscal year for provisions limiting the number of career appointees paid performance awards under this section during any fiscal year to 50 percent of the number of Senior Executive Service positions in such agency, except for an agency having less than 4 such positions.

[1] So in original. Probably should be capitalized.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–615 effective following expiration of 90-day period beginning on Nov. 8, 1984, see section 307 of Pub. L. 98–615, set out as a note under section 3135 of this title.

LIMITATION ON NUMBER OF PERFORMANCE AWARDS FOR CAREER APPOINTEES

Section 306(c) of S. 2939, Ninety-seventh Congress, 2nd Session, as reported Sept. 22, 1982, and incorporated by reference in Pub. L. 97–276, § 101(e), Oct. 2, 1982, 96 Stat. 1189, to be effective as if enacted into law, provided that: ''None of the funds appropriated by this Act or any other Act shall be used by any agency to pay performance awards in fiscal year 1983 under section 5384 of title 5, United States Code, or any comparable personnel system established on or after October 13, 1978, to more than 20 per centum of the number of Senior Executive Service or comparable personnel system positions in such agency: *Provided*, That an agency with less than five Senior Executive Service employees or equivalent positions may grant one such performance award.''

Similar provisions were contained in the following acts:

Pub. L. 97–51, §§ 101(c), 124, Oct. 1, 1981, 95 Stat. 959, 965.

Pub. L. 96–536, § 101(c), Dec. 16, 1980, 94 Stat. 3167.

Pub. L. 96–369, § 101(c), Oct. 1, 1980, 94 Stat. 1352.

Pub. L. 96–304, title III, § 303, July 8, 1980, 94 Stat. 927.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3151, 4314, 4507 of this title; title 10 sections 1590, 1601; title 22 section 3965; title 31 section 733; title 38 section 7404.

§ 5385. Regulations

The Office of Personnel Management shall prescribe regulations to carry out the purpose of this subchapter.

(Added Pub. L. 95–454, title IV, § 407(a), Oct. 13, 1978, 92 Stat. 1172.)

SUBCHAPTER IX—SPECIAL OCCUPATIONAL PAY SYSTEMS

AMENDMENTS

1992—Pub. L. 102–378, § 2(36), Oct. 2, 1992, 106 Stat. 1351, struck out subchapter analysis, consisting of item 5391 ''Definitions'' and item 5392 ''Establishment of special occupational pay systems''.

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 5361, 5363, 5948 of this title.

§ 5391. Definitions

For the purposes of this subchapter, ''agency'', ''employee'', and ''position'' have the meanings given them by section 5102.

(Added Pub. L. 101–509, title V, § 529 [title I, § 105(a)(1)], Nov. 5, 1990, 104 Stat. 1427, 1447.)

EFFECTIVE DATE

Subchapter effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title III, § 305] of Pub. L. 101–509, set out as an Effective Date of 1990 Amendment note under section 5301 of this title.

§ 5392. Establishment of special occupational pay systems

(a) Authority under this section may be exercised with respect to any occupation or group of

occupations to which subchapter III applies (or would apply but for this section).

(b) Subject to subsection (a), the President's pay agent (as referred to in section 5304(d)) may establish one or more special occupational pay systems for any positions within occupations or groups of occupations that the pay agent determines, for reasons of good administration, should not be classified under chapter 51 or subject to subchapter III.

(c) In establishing special occupational pay systems, the pay agent shall—

(1) identify occupations or groups of occupations for which chapter 51 and subchapter III do not function adequately;

(2) consider alternative approaches for determining the pay for employees in positions in such occupations or groups of occupations;

(3) give thorough consideration to the views of agencies employing such employees and labor organizations representing such employees, as well as other interested parties;

(4) publish a proposed plan for determining the pay of such employees in the Federal Register;

(5) conduct one or more public hearings;

(6) provide each House of Congress with a report at least 90 days in advance of the date the system is to take effect setting forth the details of the proposed plan; and

(7) not later than 30 days before the date the system is to take effect, publish in the Federal Register the details of the final plan for the special occupational pay system.

(d) A special occupational pay system may not—

(1) provide for a waiver of any law, rule, or regulation that could not be waived under section 4703(c); or

(2) provide a rate of basic pay for any employee in excess of the rate payable for level V of the Executive Schedule.

(e) Subject to subsection (d)(2), effective at the beginning of the first applicable pay period commencing on or after the first day of the month in which an adjustment takes effect under section 5303 in the rates of pay under the General Schedule, each rate of pay established under this section shall be adjusted by such amount as the Office considers appropriate.

(Added Pub. L. 101–509, title V, §529 [title I, §105(a)(1)], Nov. 5, 1990, 104 Stat. 1427, 1448.)

REFERENCES IN TEXT

Level V of the Executive Schedule, referred to in subsec. (d)(2), is set out in section 5316 of this title.

The General Schedule, referred to in subsec. (e), is set out under section 5332 of this title.

[CHAPTER 54—REPEALED]

[§§ 5401 to 5410. Repealed. Pub. L. 103–89, §3(a)(1), Sept. 30, 1993, 107 Stat. 981]

Section 5401, added Pub. L. 95–454, title V, §501, Oct. 13, 1978, 92 Stat. 1180; amended Pub. L. 97–346, §2, Oct. 15, 1982, 96 Stat. 1647; Pub. L. 98–615, title II, §201(a), Nov. 8, 1984, 98 Stat. 3208; Pub. L. 102–378, §2(37), Oct. 2, 1992, 106 Stat. 1351, stated purpose of chapter to provide a performance management and recognition system.

Section 5402, added Pub. L. 95–454, title V, §501, Oct. 13, 1978, 92 Stat. 1181; amended Pub. L. 98–615, title II, §201(a), Nov. 8, 1984, 98 Stat. 3208, related to applicability of chapter.

Section 5403, added Pub. L. 95–454, title V, §501, Oct. 13, 1978, 92 Stat. 1182; amended Pub. L. 98–615, title II, §201(a), Nov. 8, 1984, 98 Stat. 3209; Pub. L. 101–509, title V, §529 [title I, §101(b)(4)(C)], Nov. 5, 1990, 104 Stat. 1427, 1439; Pub. L. 102–378, §2(38), Oct. 2, 1992, 106 Stat. 1351, related to general pay increases.

Section 5404, added Pub. L. 95–454, title V, §501, Oct. 13, 1978, 92 Stat. 1183; amended Pub. L. 98–615, title II, §201(a), Nov. 8, 1984, 98 Stat. 3210; Pub. L. 101–103, §3(a), Sept. 30, 1989, 103 Stat. 670, related to merit increases.

Section 5405, added Pub. L. 95–454, title V, §501, Oct. 13, 1978, 92 Stat. 1183; amended Pub. L. 98–615, title II, §201(a), Nov. 8, 1984, 98 Stat. 3211; Pub. L. 101–509, title V, §529 [title I, §101(b)(3)(C)], Nov. 5, 1990, 104 Stat. 1427, 1439, related to pay administration.

Section 5406, added Pub. L. 98–615, title II, §201(a), Nov. 8, 1984, 98 Stat. 3211; amended Pub. L. 101–103, §4, Sept. 30, 1989, 103 Stat. 671; Pub. L. 102–22, §2(b), Mar. 28, 1991, 105 Stat. 71, related to performance awards.

Section 5407, added Pub. L. 98–615, title II, §201(a), Nov. 8, 1984, 98 Stat. 3213, related to cash award program.

Section 5408, added Pub. L. 98–615, title II, §201(a), Nov. 8, 1984, 98 Stat. 3214, required annual reports by Office of Personnel Management.

Section 5409, added Pub. L. 98–615, title II, §201(a), Nov. 8, 1984, 98 Stat. 3214, directed Office of Personnel Management to prescribe regulations.

Section 5410, added Pub. L. 98–615, title II, §201(a), Nov. 8, 1984, 98 Stat. 3214; amended Pub. L. 101–103, §2, Sept. 30, 1989, 103 Stat. 670; Pub. L. 102–22, §2(c), Mar. 28, 1991, 105 Stat. 71; Pub. L. 103–89, §2, Sept. 30, 1993, 107 Stat. 981, related to termination of chapter and accompanying regulations.

EFFECTIVE DATE OF REPEAL

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

TREATMENT OF EMPLOYEES COVERED BY SYSTEM AS OF TERMINATION DATE

Section 4 of Pub. L. 103–89 provided that:

''(a) DEFINITIONS.—For purposes of this section—

''(1) the term 'employee' means an individual employed by an agency (within the meaning of section 7103(a)(3) of title 5, United States Code);

''(2) the term 'performance management and recognition system' means the performance management and recognition system under chapter 54 of title 5, United States Code;

''(3) the term 'basic pay' does not include any amount payable under section 302 [set out as a note under section 5304 of this title] or title IV [see Short Title set out in a note under section 5305 of this title] of FEPCA or section 5304 or 5304a of title 5, United States Code;

''(4) the term 'pay rate', as used in clauses (iii) through (v) of subsection (c)(2)(B), is used in the same way as such term is used under section 5335(a) of title 5, United States Code; and

''(5) the term 'FEPCA' means the Federal Employees Pay Comparability Act of 1990 [section 529 [§§1–412] of Pub. L. 101–509, see Short Title of 1990 Amendment; Rules of Construction note set out under section 5301 of this title] (contained in the Treasury, Postal Service and General Government Appropriations Act, 1991 (Public Law 101–509; 104 Stat. 1427)).

''(b) APPLICABILITY.—Notwithstanding section 5332(a)(1) of title 5, United States Code (as amended by section 3(b)(1)(F)), or any other provision of law, the rate of basic pay for an employee covered by the performance management and recognition system on October 31, 1993, shall be determined in accordance with this section so long as such employee continues, without a break in service of more than 3 days, to occupy any position—

''(1) which is in the same grade of the General Schedule, and the same agency, as the position which such employee occupied on October 31, 1993; and

''(2) to which the provisions of chapter 54 of title 5, United States Code (as in effect on October 31, 1993) would apply if such provisions had remained in effect.

''(c) SPECIAL RULES.—

''(1) IN GENERAL.—The rate of basic pay for an employee who is subject to this section shall be the rate payable to such employee on October 31, 1993, subject to paragraph (2).

''(2) ADJUSTMENTS.—Adjustments in the rate of basic pay for an employee who is subject to this section shall be made in accordance with the relevant provisions of title 5, United States Code, or otherwise applicable provisions of law, subject to the following:

''(A) DEEM RATES AND POSITIONS TO BE UNDER THE GENERAL SCHEDULE.—For purposes of applying subchapters I and III of chapter 53 of such title (and the provisions of section 302 [set out as a note under section 5304 of this title] and title IV [see Short Title set out in a note under section 5305 of this title] of FEPCA with respect to any payment under any of those provisions)—

''(i) the rate of basic pay determined under this section for an employee shall be treated as a rate of basic pay described in section 5302(8) of such title;

''(ii) the position then currently occupied by an employee who is subject to this section shall be deemed to be a 'General Schedule position' within the meaning of section 5302(9) of such title; and

''(iii) any employee who is subject to this section shall be considered to be a 'General Schedule employee' (as referred to in section 302(b) of FEPCA).

''(B) SPECIAL RULES RELATING TO PROVISIONS GOVERNING STEP-INCREASES.—For purposes of applying the provisions of sections 5335 and 5336 of title 5, United States Code, with respect to any employee who is subject to this section—

''(i) any reference in such provisions to a 'step-increase' shall be considered to mean an increase equal to one-ninth of the difference between the minimum and maximum rates of pay for the applicable grade of the General Schedule;

''(ii) any reference in such provisions to the 'next higher rate within the grade' shall be considered to mean the rate of basic pay which exceeds such employee's then current rate of basic pay by the amount of a step-increase;

''(iii) if the employee's rate of basic pay is less than the rate for pay rate 4 of the applicable grade, such employee's rate of basic pay shall be governed by paragraph (1) of section 5335(a) of such title;

''(iv) if the employee's rate of basic pay is equal to or greater than the rate for pay rate 4 but less than the rate for pay rate 7 of the applicable grade, such employee's rate of basic pay shall be governed by paragraph (2) of section 5335(a) of such title; and

''(v) if the employee's rate of basic pay is equal to or greater than the rate for pay rate 7 but less than the maximum rate of the applicable grade, such employee's rate of basic pay shall be governed by paragraph (3) of section 5335(a) of such title.

No rate of basic pay for an employee may be increased, as a result of this subparagraph (or any provision of law to which any clause of this subparagraph relates), if or to the extent that the resulting rate would exceed the maximum rate for the grade of the position occupied by such employee.

''(d) REGULATIONS.—The Office of Personnel Management shall prescribe any regulations which may be necessary for the administration of this section.''

PERFORMANCE AWARDS FOR FISCAL YEAR 1994

Section 5(b) of Pub. L. 103–89 provided that: ''Notwithstanding section 2 [amending former section 5410 of this title to extend termination date of this chapter], for purposes of applying section 5406 of title 5, United States Code, the amount under subsection (c)(1)(A)(ii) of such section 5406 with respect to awards for work performed during fiscal year 1994 shall, for each agency subject to such section 5406, be deemed to be zero.''

CHAPTER 55—PAY ADMINISTRATION

SUBCHAPTER I—GENERAL PROVISIONS

Sec.
5501. Disposition of money accruing from lapsed salaries or unused appropriations for salaries.
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5509. Appropriations.

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5511. Withholding pay; employees removed for cause.
5512. Withholding pay; individuals in arrears.
5513. Withholding pay; credit disallowed or charge raised for payment.
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5518. Deductions for State retirement systems; National Guard employees.
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SUBCHAPTER IV—DUAL PAY AND DUAL EMPLOYMENT

5531. Definitions.
5532. Employment of retired members of the uniformed services; reduction in retired or retainer pay.
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5534. Dual employment and pay of Reserves and National Guardsmen.
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5535. Extra pay for details prohibited.
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SUBCHAPTER V—PREMIUM PAY

5541. Definitions.

[1] Section catchline amended by Pub. L. 97–365 without corresponding amendment of chapter analysis.

5542. Overtime rates; computation.
5543. Compensatory time off.
5544. Wage-board overtime and Sunday rates; computation.
5545. Night, standby, irregular, and hazardous duty differential.
5545a. Availability pay for criminal investigators.
5546. Pay for Sunday and holiday work.
5546a. Differential pay for certain employees of the Federal Aviation Administration and the Department of Defense.
5547. Limitation on premium pay.
5548. Regulations.
5549. Effect on other statutes.
[5550. Repealed.]
5550a. Compensatory time off for religious observances.

SUBCHAPTER VI—PAYMENT FOR ACCUMULATED AND ACCRUED LEAVE

5551. Lump-sum payment for accumulated and accrued leave on separation.
5552. Lump-sum payment for accumulated and accrued leave on entering active duty; election.
5553. Regulations.

SUBCHAPTER VII—PAYMENTS TO MISSING EMPLOYEES

5561. Definitions.
5562. Pay and allowances; continuance while in a missing status; limitations.
5563. Allotments; continuance, suspension, initiation, resumption, or increase while in a missing status; limitations.
5564. Travel and transportation; dependents; household and personal effects; motor vehicles; sale of bulky items; claims for proceeds; appropriation chargeable.
5565. Agency review.
5566. Agency determinations.
5567. Settlement of accounts.
5568. Income tax deferment.
5569. Benefits for captives.
5570. Compensation for disability or death.

SUBCHAPTER VIII—SETTLEMENT OF ACCOUNTS

5581. Definitions.
5582. Designation of beneficiary; order of precedence.
5583. Payment of money due; settlement of accounts.
5584. Claims for overpayment of pay and allowances, and of travel, transportation and relocation expenses and allowances.

SUBCHAPTER IX—SEVERANCE PAY AND BACK PAY

[5591 to 5594. Repealed.]
5595. Severance pay.
5596. Back pay due to unjustified personnel action.
5597. Separation pay.

AMENDMENTS

1994—Pub. L. 103–329, title VI, §633(b)(3), Sept. 30, 1994, 108 Stat. 2427, added item 5545a.

1993—Pub. L. 103–94, §9(b)(1), Oct. 6, 1993, 107 Stat. 1010, which directed amendment of table of chapters for chapter 55 of this title by adding item 5520a, was executed by adding item 5520a to table of sections for this chapter to reflect the probable intent of Congress.

1992—Pub. L. 102–484, div. D, title XLIV, §4436(a)(2), Oct. 23, 1992, 106 Stat. 2724, added item 5597.

Pub. L. 102–378, §2(44)(B), (45)(B), Oct. 2, 1992, 106 Stat. 1352, 1353, struck out item 5550 ''Pay for Sunday and overtime work; employees of nonappropriated fund instrumentalities'' and added item 5553.

1990—Pub. L. 101–509, title V, §529 [title I, §107(b)], Nov. 5, 1990, 104 Stat. 1427, 1449, added item 5524a.

1986—Pub. L. 99–399, title VIII, §803(b), Aug. 27, 1986, 100 Stat. 883, added items 5569 and 5570.

1985—Pub. L. 99–224, §1(b), Dec. 28, 1985, 99 Stat. 1741, substituted ''and of travel, transportation and relocation expenses and allowances'' for ''other than travel and transportation expenses and allowances and relocation expenses'' in item 5584.

1984—Pub. L. 98–525, title XV, §1537(c)(6)(B), Oct. 19, 1984, 98 Stat. 2636, inserted ''and the Department of Defense'' in item 5546a.

1982—Pub. L. 97–276, §151(c)(2), Oct. 2, 1982, 96 Stat. 1201, added item 5546a.

1978—Pub. L. 95–454, title III, §308(f)(2), Oct. 13, 1978, 92 Stat. 1151, substituted ''members of the uniformed services; reduction in retired or retainer pay'' for ''officers of the uniformed services; reduction in retired or retirement pay; exceptions'' in item 5532.

Pub. L. 95–390, title IV, §401(b), Sept. 29, 1978, 92 Stat. 762, added item 5550a.

1977—Pub. L. 95–30, title IV, §408(b), May 23, 1977, 91 Stat. 157, substituted ''city or county'' for ''city'' in item 5520.

1975—Pub. L. 94–183, §2(24), Dec. 31, 1975, 89 Stat. 1058, struck out ''Sunday,'' after ''Night,'' in item 5545.

1974—Pub. L. 93–340, §1(b), July 10, 1974, 88 Stat. 294, added item 5520.

1972—Pub. L. 92–453, §3(2), Oct. 2, 1972, 86 Stat. 760, substituted ''overpayment of pay and allowances, other than travel and transportation expenses and allowances and relocation expenses'' for ''overpayment of pay'' in item 5584.

Pub. L. 92–392, §10(b), Aug. 19, 1972, 86 Stat. 574, added item 5550.

1970—Pub. L. 91–563, §§2(b), 3(b), Dec. 19, 1970, 84 Stat. 1477, substituted ''jury or witness service'' for ''jury service in State courts'' in item 5515, and ''jury and witness service'' for ''jury service in courts of the United States'' in item 5537.

1968—Pub. L. 90–616, §1(b), Oct. 21, 1968, 82 Stat. 1212, added item 5584.

Pub. L. 90–588, §2(c), Oct. 17, 1968, 82 Stat. 1152, added item 5519.

1967—Pub. L. 90–83, §1(23), (26)(B), (28), (30), (35), Sept. 11, 1967, 81 Stat. 200, 201, 203, inserted items 5534a, 5595 and 5596, included Sunday rates in item 5544, Sunday and hazardous duty differential in item 5545 and Sundays in item 5546, substituted ''Severance Pay and Back Pay'' for ''Back Pay'' in heading of subchapter IX, and struck out items 5591 to 5594.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 5362 of this title.

SUBCHAPTER I—GENERAL PROVISIONS

§ 5501. Disposition of money accruing from lapsed salaries or unused appropriations for salaries

Money accruing from lapsed salaries or from unused appropriations for salaries shall be covered into the Treasury of the United States. An individual who violates this section shall be removed from the service.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 475.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 50 (1st sentence; and 2d sentence, so much as relates to removal).	Aug. 5, 1882, ch. 389, §4 (297th through 316th words), 22 Stat. 255. Aug. 23, 1912, ch. 350, §5 (so much as relates to removal), 37 Stat. 414.

In the last sentence, the word ''removed'' is substituted for ''summarily removed'' because of the provisions of the Lloyd-LaFollette Act 37 Stat. 555, as amended, and the Veterans' Preference Act of 1944, 58 Stat. 387, as amended, which are carried into this title.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 18 section 1916.

§ 5502. Unauthorized office; prohibition on use of funds

(a) Payment for services may not be made from the Treasury of the United States to an individual acting or assuming to act as an officer in the civil service or uniformed services in an office which is not authorized by existing law, unless the office is later sanctioned by law.

(b) Except as otherwise provided by statute, public money and appropriations may not be used for pay or allowance for an individual employed by an official of the United States retired from active service.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 475.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(a)	5 U.S.C. 52.	R.S. §1760.
(b)	5 U.S.C. 85.	July 1, 1898, ch. 546, §1 (3d proviso on p. 644), 30 Stat. 644.

In subsection (a), the words ''in the civil service or uniformed services'' are substituted for ''civil, military, or naval''.

In subsection (b), the words ''Except as otherwise provided by statute'' are added in recognition of the Act of Aug. 25, 1958, Pub. L. 85–745, 72 Stat. 838, which authorizes an office staff for former Presidents. The reference to ''public money and appropriations'' is added for clarity.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

§ 5503. Recess appointments

(a) Payment for services may not be made from the Treasury of the United States to an individual appointed during a recess of the Senate to fill a vacancy in an existing office, if the vacancy existed while the Senate was in session and was by law required to be filled by and with the advice and consent of the Senate, until the appointee has been confirmed by the Senate. This subsection does not apply—

(1) if the vacancy arose within 30 days before the end of the session of the Senate;

(2) if, at the end of the session, a nomination for the office, other than the nomination of an individual appointed during the preceding recess of the Senate, was pending before the Senate for its advice and consent; or

(3) if a nomination for the office was rejected by the Senate within 30 days before the end of the session and an individual other than the one whose nomination was rejected thereafter receives a recess appointment.

(b) A nomination to fill a vacancy referred to by paragraph (1), (2), or (3) of subsection (a) of this section shall be submitted to the Senate not later than 40 days after the beginning of the next session of the Senate.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 475.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 56.	R.S. §1761. July 11, 1940, ch. 580, 54 Stat. 751.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

§ 5504. Biweekly pay periods; computation of pay

(a) The pay period for an employee covers two administrative workweeks. For the purpose of this subsection, ''employee'' means—

(1) an employee in or under an Executive agency;

(2) an employee in or under the Office of the Architect of the Capitol, the Botanic Garden, and the Library of Congress, for whom a basic administrative workweek is established under section 6101(a)(5) of this title; and

(3) an individual employed by the government of the District of Columbia;

but does not include—

(A) an employee on the Isthmus of Panama in the service of the Panama Canal Commission; or

(B) an employee or individual excluded from the definition of employee in section 5541(2) of this title other than an employee or individual excluded by section 5541(2)(xvi) of this title.

(b) When, in the case of an employee, it is necessary for computation of pay under this subsection to convert an annual rate of basic pay to a basic hourly, daily, weekly, or biweekly rate, the following rules govern:

(1) To derive an hourly rate, divide the annual rate by 2,087.

(2) To derive a daily rate, multiply the hourly rate by the number of daily hours of service required.

(3) To derive a weekly or biweekly rate, multiply the hourly rate by 40 or 80, as the case may be.

Rates are computed to the nearest cent, counting one-half and over as a whole cent. For the purpose of this subsection, ''employee'' means—

(A) an employee in or under an Executive agency;

(B) an employee in or under the judicial branch;

(C) an employee in or under the Office of the Architect of the Capitol, the Botanic Garden, and the Library of Congress, for whom a basic administrative workweek is established under section 6101(a)(5) of this title; and

(D) an individual employed by the government of the District of Columbia;

but does not include an employee or individual excluded from the definition of employee in section 5541(2) of this title other than an employee or individual excluded by section 5541(2)(xvi) of this title.

(c) The Office of Personnel Management may prescribe regulations, subject to the approval of the President, necessary for the administration of this section insofar as this section affects employees in or under an Executive agency.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 475; Pub. L. 90–83, §1(21), Sept. 11, 1967, 81 Stat. 199; Pub. L. 95–454, title IV, §408(a)(1), title IX, §906(a)(2), Oct. 13, 1978, 92 Stat. 1173, 1224; Pub. L. 96–54, §2(a)(29), Aug. 14, 1979, 93 Stat. 383; Pub. L. 96–70, title III, §3302(e)(2), Sept. 27, 1979, 93 Stat. 498; Pub. L. 99–272, title XV, §15203(a), Apr. 7, 1986, 100 Stat. 334.)

HISTORICAL AND REVISION NOTES

1966 ACT

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(a)	5 U.S.C. 944(b), (d) (last 27 words, as applicable to subsection (b)).	June 30, 1945, ch. 212, §604(b), (e) (last 27 words, as applicable to subsection (b)), 59 Stat. 303, 304. July 31, 1959, Pub. L. 86–122, §1, 73 Stat. 268.
(b)	5 U.S.C. 944(c), (d) (last 27 words, less applicability to subsection (b)).	June 30, 1945, ch. 212, §604(d), (e) (last 27 words, less applicability to subsection (b)), 59 Stat. 303, 304. Oct. 28, 1949, ch. 782, §1203, 63 Stat. 973. June 20, 1958, Pub. L. 85–462, §15, 72 Stat. 214. Aug. 14, 1964, Pub. L. 88–426, §103(c), 78 Stat. 402.

In subsection (a), the words ''Beginning not later than October 1, 1945'' are omitted as executed. Paragraphs (1) and (3) are substituted for the words ''all officers and employees of the organizations referred to in subsection (a) of this section''. In paragraph (A), the words ''Canal Zone Government'' and ''Panama Canal Company'' are substituted for ''The Panama Canal'' and ''Panama Railroad Company'' on authority of the Act of Sept. 26, 1950, ch. 1049, §2(a), 64 Stat. 1038. Paragraph (B) is added on authority of former section 902, which is carried into section 5541.

In subsection (b), the exception in the last sentence is added on authority of former section 902, which is carried into section 5541.

Subsection (c) is added on authority of former section 945, which is carried into section 5548. The words ''an Executive agency'' are substituted for ''the executive branch of the Government'' to conform to the definition in section 105. Applicability of this section to employees of the General Accounting Office is based on former section 933a.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 ACT

This section amends 5 U.S.C. 5504 to reflect the amendment to 5 U.S.C. 6101 by section 1(43) of this bill.

AMENDMENTS

1986—Subsec. (b). Pub. L. 99–272 struck out first sentence which provided that for pay computation purposes affecting an employee, the annual rate of basic pay established by or under statute is deemed payment for employment during 52 basic administrative workweeks of 40 hours, inserted '', in the case of an employee,'' after ''When'' in second sentence, substituted ''2,087'' for ''2,080'' in par. (1), and inserted ''other than an employee or individual excluded by section 5541(2)(xvi) of this title'' at end of last sentence.

1979—Subsec. (a)(A). Pub. L. 96–70 substituted ''Panama Canal Commission'' for ''Canal Zone Government or the Panama Canal Company''.

Subsec. (a)(B). Pub. L. 96–54 substituted ''(xvi) of this title'' for ''(xvi) of this section''.

1978—Subsec. (a). Pub. L. 95–454, §408(a)(1), in par. (B) inserted reference to an employee or individual excluded by section 5541(2)(xvi).

Subsec. (c). Pub. L. 95–454, §906(a)(2), substituted ''Office of Personnel Management'' for ''Civil Service Commission''.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 15203(b) of Pub. L. 99–272 provided that: ''The amendments made by subsection (a) [amending this section] shall be effective with respect to pay periods commencing on or after March 1, 1986.''

EFFECTIVE DATE OF 1979 AMENDMENTS

Amendment by Pub. L. 96–70 effective Oct. 1, 1979, see section 3304 of Pub. L. 96–70, set out as an Effective Date note under section 3601 of Title 22, Foreign Relations and Intercourse.

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.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 408(a)(1) of Pub. L. 95–454 effective 9 months after Oct. 13, 1978, and congressional review of provisions of sections 401 through 415 of Pub. L. 95–454, see section 415 of Pub. L. 95–454, set out as an Effective Date note under section 3131 of this title.

Amendment by section 906(a)(2) of Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

DELEGATION OF FUNCTIONS

Functions vested in Office of Personnel Management under this section insofar as it affects officers and employees in or under executive branch of government to be performed without approval of President, see section 1(1) of Ex. Ord. No. 11228, June 14, 1965, 30 F.R. 7739, set out as a note under section 301 of Title 3, The President.

DETERMINATION OF HOURLY RATE

Pub. L. 97–253, title III, §310(b), Sept. 8, 1982, 96 Stat. 799, as amended by Pub. L. 97–346, §3(*l*), Oct. 15, 1982, 96 Stat. 1649; Pub. L. 98–117, §1, Oct. 11, 1983, 97 Stat. 802, provided that:

''(1) Notwithstanding any other provision of law, effective with respect to pay periods beginning in fiscal years 1984 and 1985, and applicable in the case of an employee as defined in section 5504(b) of title 5, United States Code [subsection (b) of this section], any hourly rate derived under section 5504(b)(1) of title 5, United States Code, shall be derived by dividing the annual rate of basic pay by 2,087.

''(2) Paragraph (1) shall not apply in determining basic pay for purposes of subchapter III of chapter 83 of title 5, United States Code.

''(3) The Office of Personnel Management may prescribe regulations necessary for the administration of this subsection insofar as this subsection affects employees in or under an Executive agency.

''(4) Notwithstanding any other provision of this subsection, paragraph (1) shall not be effective with respect to pay periods beginning before the effective date of any increase under section 5305 of title 5, United States Code, in the rates of pay under the General Schedule and the rates of pay under the other statutory pay systems for fiscal year 1984.''

[Section 2 of Pub. L. 98–117 provided that: ''The amendment made by this Act [enacting par. (4) of this note] shall be effective as of October 1, 1983.'']

CROSS REFERENCES

Annual leave to include only work days exclusive of Sunday and holidays, see section 6302 of this title.

Exemption of certain corporations under supervision of Farm Credit Administration, see section 6301 of this title.

Permanent organization in customs service with definite terms of service and compensation for employees, see section 1 et seq. of Title 19, Customs Duties.

Working hours of laborers and mechanics in military departments not to exceed forty hours weekly without overtime pay, see sections 4025 and 9025 of Title 10, Armed Forces.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5332, 5505 of this title; title 2 sections 142e, 142f, 142g; title 20 section 241; title 38 section 7423; title 40 sections 166b–1d, 166b–1e.

§ 5505. Monthly pay periods; computation of pay

The pay period for an individual in the service of the United States whose pay is monthly or annual covers one calendar month, and the following rules for division of time and computation of pay for services performed govern:

(1) A month's pay is one-twelfth of a year's pay.

(2) A day's pay is one-thirtieth of a month's pay.

(3) The 31st day of a calendar month is ignored in computing pay, except that one day's pay is forfeited for one day's unauthorized absence on the 31st day of a calendar month.

(4) For each day of the month elapsing before entering the service, one day's pay is deducted from the first month's pay of the individual.

This section does not apply to an employee whose pay is computed under section 5504(b) of this title.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 476.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 84.	June 30, 1906, ch. 3914, §6, 34 Stat. 763. June 30, 1945, ch. 212, §604(c) (2d sentence), 59 Stat. 303.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 2 section 142e; title 26 section 7443.

§ 5506. Computation of extra pay based on standard or daylight saving time

When an employee as defined by section 2105 of this title or an individual employed by the government of the District of Columbia is entitled to extra pay for services performed between or after certain named hours of the day or night, the extra pay is computed on the basis of either standard or daylight saving time, depending on the time observed by law, custom, or practice where the services are performed.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 476.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 914.	Sept. 7, 1949, ch. 538, §2, 63 Stat. 690.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

§ 5507. Officer affidavit; condition to pay

An officer required by section 3332 of this title to file an affidavit may not be paid until the affidavit has been filed.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 477.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 21b.	Dec. 11, 1926, ch. 4, §2, 44 Stat. 919.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

§ 5508. Officer entitled to leave; effect on pay status

An officer in the executive branch and an officer of the government of the District of Columbia to whom subchapter I of chapter 63 of this title applies are not entitled to the pay of their offices solely because of their status as officers.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 477.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 2061(c)(1) (last sentence).	July 2, 1953, ch. 178, §1 ''(c)(1) (last sentence)'', 67 Stat. 136.

The words ''including an officer of a corporation wholly owned or controlled by the United States'' are omitted as unnecessary in view of the definition of ''officer'' in section 2104.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

§ 5509. Appropriations

There are authorized to be appropriated sums necessary to carry out the provisions of this title.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 477.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	[Uncodified].	June 30, 1945, ch. 212, §609, 59 Stat. 306.
.....	[Uncodified].	Oct. 28, 1949, ch. 782, §1107, 63 Stat. 972.
.....	[Uncodified].	Sept. 30, 1950, ch. 1123, §13, 64 Stat. 1100.
.....	42 U.S.C. 1370.	Sept. 1, 1954, ch. 1212, §4(a) ''Sec. 1510'', 68 Stat. 1135.
.....	[Uncodified].	Sept. 6, 1960, Pub. L. 86–707, §501(a), 74 Stat. 800.

The remainder of the authority for this section is implied from the statutes from which this title is derived.

MERIT SYSTEMS PROTECTION BOARD AND OFFICE OF SPECIAL COUNSEL; AUTHORIZATION OF APPROPRIATIONS; RESTRICTION ON APPROPRIATIONS

Pub. L. 101–12, §8(a), (b), Apr. 10, 1989, 103 Stat. 34, as amended by Pub. L. 103–424, §1, Oct. 29, 1994, 108 Stat. 4361, provided that:

''(a) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated, out of any moneys in the Treasury not otherwise appropriated—

''(1) for each of fiscal years 1993, 1994, 1995, 1996, and 1997, such sums as necessary to carry out subchapter

I of chapter 12 of title 5, United States Code (as amended by this Act); and

''(2) for each of fiscal years 1993, 1994, 1995, 1996, and 1997, such sums as necessary to carry out subchapter II of chapter 12 of title 5, United States Code (as amended by this Act).

''(b) RESTRICTION RELATING TO APPROPRIATIONS UNDER THE CIVIL SERVICE REFORM ACT OF 1978.—No funds may be appropriated to the Merit Systems Protection Board or the Office of Special Counsel pursuant to section 903 of the Civil Service Reform Act of 1978 [Pub. L. 95–454] (5 U.S.C. 5509 note).''

AUTHORIZATION OF APPROPRIATIONS

Pub. L. 95–454, title IX, § 903, Oct. 13, 1978, 92 Stat. 1224, provided that: ''There are authorized to be appropriated, out of any moneys in the Treasury not otherwise appropriated, such sums as may be necessary to carry out the provisions of this Act [For classification of Pub. L. 95–454, see Tables].''

SUBCHAPTER II—WITHHOLDING PAY

CROSS REFERENCES

Enforcement of legal obligations to provide child support and make alimony payments, see section 659 of Title 42, The Public Health and Welfare.

§ 5511. Withholding pay; employees removed for cause

(a) Except as provided by subsection (b) of this section, the earned pay of an employee removed for cause may not be withheld or confiscated.

(b) If an employee indebted to the United States is removed for cause, the pay accruing to the employee shall be applied in whole or in part to the satisfaction of any claim or indebtedness due the United States.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 477.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 46a.	Feb. 24, 1931, ch. 287, 46 Stat. 1415.

In subsection (a), the words ''From and after February 24, 1931'' are omitted as executed. The word ''employee'' is coextensive with and substituted for ''civil employee of the United States'' in view of the definition of ''employee'' in section 2105.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

§ 5512. Withholding pay; individuals in arrears

(a) The pay of an individual in arrears to the United States shall be withheld until he has accounted for and paid into the Treasury of the United States all sums for which he is liable.

(b) When pay is withheld under subsection (a) of this section, the General Accounting Office, on request of the individual, his agent, or his attorney, shall report immediately to the Attorney General the balance due; and the Attorney General, within 60 days, shall order suit to be commenced against the individual.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 477; Pub. L. 92–310, title II, § 202, June 6, 1972, 86 Stat. 202.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 82.	R.S. § 1766.

In subsection (b), reference to the ''General Accounting Office'' is substituted for ''accounting officers of the Treasury'' on authority of the Act of June 10, 1921, ch. 18, title III, 42 Stat. 23. The words ''on request of'' are substituted for ''if required to do so by'' as more accurately reflecting the intent. Reference to the ''Attorney General'' is substituted for ''Solicitor of the Treasury'' and ''Solicitor'' on authority of section 16 of the Act of March 3, 1933, ch. 212, 47 Stat. 1517; section 5 of E.O. 6166, June 10, 1933; and section 1 of 1950 Reorg. Plan No. 2, 64 Stat. 1261.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1972—Subsec. (b). Pub. L. 92–310 struck out ''and his sureties'' after ''against the individual''.

CROSS REFERENCES

Armed Forces, withholding pay of officers, see section 1007 of Title 37, Pay and Allowances of the Uniformed Services.

Coast Guard, pay of enlisted men indebted to United States, see section 461 of Title 14, Coast Guard.

Deductions from military and civilian pay for recovery of erroneous payments, see section 5514 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 37 section 1007.

§ 5513. Withholding pay; credit disallowed or charge raised for payment

When the General Accounting Office, on a statement of the account of a disbursing or certifying official of the United States, disallows credit or raises a charge for a payment to an individual in or under an Executive agency otherwise entitled to pay, the pay of the payee shall be withheld in whole or in part until full reimbursement is made under regulations prescribed by the head of the Executive agency from which the payee is entitled to receive pay. This section does not repeal or modify existing statutes relating to the collection of the indebtedness of an accountable, certifying, or disbursing official.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 477.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 46b.	May 26, 1936, ch. 452, 49 Stat. 1374. Aug. 3, 1950, ch. 515, 64 Stat. 393.

The words ''On and after May 26, 1936'' are omitted as executed. The word ''official'' is substituted for ''officer'' and ''officers'' as the definition of ''officer'' in section 2104 excludes a member of a uniformed service. The words ''from the United States or from an agency or instrumentality thereof'' are omitted as unnecessary.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

§ 5514. Installment deduction for indebtedness to the United States

(a)(1) When the head of an agency or his designee determines that an employee, member of the Armed Forces or Reserve of the Armed Forces, is indebted to the United States for debts to which the United States is entitled to

be repaid at the time of the determination by the head of an agency or his designee, or is notified of such a debt by the head of another agency or his designee the amount of indebtedness may be collected in monthly installments, or at officially established pay intervals, by deduction from the current pay account of the individual. The deductions may be made from basic pay, special pay, incentive pay, retired pay, retainer pay, or, in the case of an individual not entitled to basic pay, other authorized pay. The amount deducted for any period may not exceed 15 percent of disposable pay, except that a greater percentage may be deducted upon the written consent of the individual involved. If the individual retires or resigns, or if his employment or period of active duty otherwise ends, before collection of the amount of the indebtedness is completed, deduction shall be made from subsequent payments of any nature due the individual from the agency concerned.

(2) Except as provided in paragraph (3) of this subsection, prior to initiating any proceedings under paragraph (1) of this subsection to collect any indebtedness of an individual, the head of the agency holding the debt or his designee, shall provide the individual with—

(A) a minimum of thirty days written notice, informing such individual of the nature and amount of the indebtedness determined by such agency to be due, the intention of the agency to initiate proceedings to collect the debt through deductions from pay, and an explanation of the rights of the individual under this subsection;

(B) an opportunity to inspect and copy Government records relating to the debt;

(C) an opportunity to enter into a written agreement with the agency, under terms agreeable to the head of the agency or his designee, to establish a schedule for the repayment of the debt; and

(D) an opportunity for a hearing on the determination of the agency concerning the existence or the amount of the debt, and in the case of an individual whose repayment schedule is established other than by a written agreement pursuant to subparagraph (C), concerning the terms of the repayment schedule.

A hearing, described in subparagraph (D), shall be provided if the individual, on or before the fifteenth day following receipt of the notice described in subparagraph (A), and in accordance with such procedures as the head of the agency may prescribe, files a petition requesting such a hearing. The timely filing of a petition for hearing shall stay the commencement of collection proceedings. A hearing under subparagraph (D) may not be conducted by an individual under the supervision or control of the head of the agency, except that nothing in this sentence shall be construed to prohibit the appointment of an administrative law judge. The hearing official shall issue a final decision at the earliest practicable date, but not later than sixty days after the filing of the petition requesting the hearing.

(3) The collection of any amount under this section shall be in accordance with the standards promulgated pursuant to sections 3711 and 3716–3718 of title 31 or in accordance with any other statutory authority for the collection of claims of the United States or any agency thereof.

(4) For purposes of this subsection—

(A) ''disposable pay'' means that part of pay of any individual remaining after the deduction from those earnings of any amounts required by law to be withheld; and

(B) ''agency'' includes the United States Postal Service and the Postal Rate Commission.

(b)(1) The head of each agency shall prescribe regulations, subject to the approval of the President, to carry out this section and section 3530(d) of title 31. Regulations prescribed by the Secretaries of the military departments shall be uniform for the military services insofar as practicable.

(2) For purposes of section 7117(a) of this title, no regulation prescribed to carry out subsection (a)(2) of this section shall be considered to be a Government-wide rule or regulation.

(c) Subsection (a) of this section does not modify existing statutes which provide for forfeiture of pay or allowances. This section and section 3530(d) of title 31 do not repeal, modify, or amend section 4837(d) or 9837(d) of title 10 or section 1007(b), (c) of title 37.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 477; Pub. L. 96–54, § 2(a)(2), Aug. 14, 1979, 93 Stat. 381; Pub. L. 97–258, § 3(a)(12), Sept. 13, 1982, 96 Stat. 1063; Pub. L. 97–365, § 5, Oct. 25, 1982, 96 Stat. 1751; Pub. L. 97–452, § 2(a)(2), Jan. 12, 1983, 96 Stat. 2478; Pub. L. 98–216, § 3(a)(4), Feb. 14, 1984, 98 Stat. 6.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 46d.	July 15, 1954, ch. 509, §§1, 2, 4, 68 Stat. 482, 483.
.....	5 U.S.C. 46e.	

In subsection (a), the words ''head of the agency concerned'' are substituted for ''Secretary of the department concerned or the head of the agency or independent establishment concerned, or one of their designees''. The words ''an employee, a member of the armed forces, or a Reserve of the armed forces'' are coextensive with and substituted for ''an employee of the United States or any member of the Army, Navy, Air Force, Marine Corps, or Coast Guard, or a reserve component thereof'' in view of the definitions in sections 2101 and 2105. The words ''basic compensation'' are omitted as included in ''basic pay''.

In subsection (b), the words ''head of each agency'' are substituted for ''Each Secretary of a department, or head of an agency or independent establishment, as appropriate''. The words ''Secretaries of the military departments'' are substituted for ''Secretaries of the Army, Navy, and Air Force'' to conform to the definition of ''military department'' in section 102.

In subsection (c), the words ''section 4837(d) or 9837(d) of title 10 or section 1007(b), (c) of title 37'' are substituted for ''the provisions of the Act of May 22, 1928 (ch. 676, 45 Stat. 698)'' in section 4 of the Act of July 15, 1954, on authority of the Acts of Aug. 10, 1956, ch. 1041, § 49(b), 70A Stat. 640, and Sept. 7, 1962, Pub. L. 87–649, § 12(b), 76 Stat. 497.

AMENDMENTS

1984—Subsec. (c). Pub. L. 98–216 substituted ''section 3530(d)'' for ''section 581d''.

1983—Subsec. (a)(3). Pub. L. 97–452 substituted ''sections 3711 and 3716–3718 of title 31'' for ''the Federal Claims Collection Act of 1966 (31 U.S.C. 951 et seq.)''.

1982—Pub. L. 97–365, § 5(c), substituted ''indebtedness to the United States'' for ''indebtedness because of erroneous payment'' in section catchline.

Subsec. (a). Pub. L. 97–365, § 5(a), designated existing provisions as par. (1), in par. (1) as so designated substituted provisions relating to debts to which the United States is entitled to be repaid for provisions which had related to an indebtedness to the United States because of an erroneous payment made by an agency to or on behalf of an individual, inserted provisions relating to the notification of a debt by the head of another agency or his designee, substituted provisions authorizing the deduction of not to exceed 15 percent of disposable pay for provisions which had authorized the deduction of not to exceed two-thirds of the pay from which the deduction was made, and added pars. (2), (3), and (4).

Subsec. (b). Pub. L. 97–365, § 5(b), designated existing provisions as par. (1) and added par. (2).

Pub. L. 97–258 substituted ''section 3530(d)'' for ''section 581d''.

1979—Subsec. (b). Pub. L. 96–54 substituted ''President'' for ''Director of the Bureau of the Budget''.

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.

SHORT TITLE OF 1982 AMENDMENT

Section 1 of Pub. L. 97–365 provided: ''That this Act [enacting sections 954 and 955 of former Title 31, Money and Finance, amending this section and section 552a of this title, section 1114 of Title 18, Crimes and Criminal Procedure, sections 6103 and 7213 of Title 26, Internal Revenue Code, section 2415 of Title 28, Judiciary and Judicial Procedure, and sections 484, 951, and 952 of former Title 31, and enacting provisions set out as notes under this section and section 6103 of Title 26] may be cited as the 'Debt Collection Act of 1982'.''

DELEGATION OF FUNCTIONS

Authority of President under subsec. (b) of this section to approve regulations prescribed by head of each agency to carry out this section and section 581d of Title 31, Money and Finance [31 U.S.C. 3530(d)], relating to installment deductions from pay for indebtedness because of erroneous payment, delegated to Office of Personnel Management, see section 8(1) of Ex. Ord. No. 11609, July 22, 1971, 36 F.R. 13747, set out as a note under section 301 of Title 3, The President.

IMPROVEMENTS IN DEBT COLLECTION PROCEDURES UNDER 1982 AMENDMENTS AS CONTAINED IN DEBT COLLECTION ACT OF 1982 INAPPLICABLE TO CLAIMS OR INDEBTEDNESS UNDER INTERNAL REVENUE CODE, SOCIAL SECURITY ACT, OR TARIFF LAWS

Section 8(e) of Pub. L. 97–365, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''Except as otherwise provided in section 4 or 7 or the foregoing provisions of this section [amending sections 6103 and 7213 of Title 26, Internal Revenue Code, and enacting provisions set out as notes under section 6103 of Title 26], nothing in this Act (or in the amendments made by this Act) [see Short Title of 1982 Amendment note above] shall apply to claims or indebtedness arising under, or amounts payable under, the Internal Revenue Code of 1986 [Title 26], the Social Security Act [section 301 et seq. of Title 42, The Public Health and Welfare], or the tariff laws of the United States [Title 19, Customs Duties].''

COLLECTION OF INDEBTEDNESS OF EMPLOYEES OF FEDERAL GOVERNMENT RESULTING FROM ACTION OR SUIT BROUGHT AGAINST EMPLOYEE BY UNITED STATES

Pub. L. 97–276, § 124, Oct. 2, 1982, 96 Stat. 1195, provided that: ''Notwithstanding any other provision of this joint resolution [Pub. L. 97–276], in the case of any employee of the Federal Government who is indebted to the United States, as determined by a court of the United States in an action or suit brought against such employee by the United States, the amount of the indebtedness may be collected in monthly installments, or at officially established regular pay period intervals, by deduction in reasonable amounts from the current pay account of the individual. The deductions may be made only from basic pay, special pay, incentive pay, or, in the case of an individual not entitled to basic pay, other authorized pay. Collection shall be made over a period not greater than the anticipated period of employment. The amount deducted for any period may not exceed one-fourth of the pay from which the deduction is made, unless the deduction of a greater amount is necessary to make the collection within the period of anticipated employment. If the individual retires or resigns, or if his employment otherwise ends, before collection of the amount of the indebtedness is completed, deduction shall be made from later payments of any nature due to the individual from the United States Treasury.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 7 sections 2020, 2022; title 10 section 1055; title 16 section 470m; title 42 sections 292r, 297b.

§ 5515. Crediting amounts received for jury or witness service

An amount received by an employee as defined by section 2105 of this title (except an individual whose pay is disbursed by the Secretary of the Senate or the Clerk of the House of Representatives) or an individual employed by the government of the District of Columbia for service as a juror or witness during a period for which he is entitled to leave under section 6322(a) of this title, or is performing official duty under section 6322(b) of this title, shall be credited against pay payable to him by the United States or the District of Columbia with respect to that period.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 478; Pub. L. 91–563, § 2(a), Dec. 19, 1970, 84 Stat. 1476.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 30p.	June 29, 1940, ch. 446, § 3, 54 Stat. 689.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1970—Pub. L. 91–563 substituted ''jury or witness service'' for ''jury service in State courts'' in section catchline.

Pub. L. 91–563 authorized crediting of amounts received for jury service in courts in the District of Columbia and in territories or possessions of the United States, included amounts received for service as a witness or when performing official duty under section 6322(b) of this title, and excepted individuals whose pay is disbursed by the Secretary of the Senate or the Clerk of the House of Representatives.

TRANSFER OF FUNCTIONS

Certain functions of Clerk of House of Representatives transferred to Director of Non-legislative and Financial Services by section 7 of House Resolution No. 423, One Hundred Second Congress, Apr. 9, 1992. Director of Non-legislative and Financial Services replaced by Chief Administrative Officer of House of Representa-

tives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

§ 5516. Withholding District of Columbia income taxes

(a) The Secretary of the Treasury, under regulations prescribed by the President, shall enter into an agreement with the Mayor of the District of Columbia within 120 days of a request for agreement from the Mayor. The agreement shall provide that the head of each agency of the United States shall comply with the requirements of subchapter II of chapter 15 of title 47, District of Columbia Code, in the case of employees of the agency who are subject to income taxes imposed by that subchapter and whose regular place of employment is within the District of Columbia. The agreement may not apply to pay of an employee who is not a resident of the District of Columbia as defined in subchapter II of chapter 15 of title 47, District of Columbia Code. In the case of pay for service as a member of the armed forces, the second sentence of this subsection shall be applied by substituting ''who are residents of the District of Columbia'' for ''whose regular place of employment is within the District of Columbia''. For the purpose of this subsection, ''employee'' has the meaning given it by section 1551c(z) of title 47, District of Columbia Code.

(b) This section does not give the consent of the United States to the application of a statute which imposes more burdensome requirements on the United States than on other employers, or which subjects the United States or its employees to a penalty or liability because of this section.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 478; Pub. L. 90–623, § 1(9), Oct. 22, 1968, 82 Stat. 1312; Pub. L. 94–455, title XII, § 1207(a)(2), Oct. 4, 1976, 90 Stat. 1705; Pub. L. 96–54, § 2(a)(30), Aug. 14, 1979, 93 Stat. 383.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	[Uncodified].	Mar. 31, 1956, ch. 154, § 11 ''(k)'', 70 Stat. 77.

Section 2(c) ''(z)'' of the Act of Mar. 31, 1956, 70 Stat. 68 (section 1551c(z) of title 47, District of Columbia Code) contains a definition of ''employee'' that is applicable to this section. Accordingly, the last sentence of subsection (a) is added to preserve the application of the source law.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

REFERENCES IN TEXT

Subchapter II of chapter 15 of title 47, District of Columbia Code, referred to in subsec. (a), was transferred to chapter 18 (§ 47–1801.1 et seq.) of Title 47, Taxation and Fiscal Affairs, of the District of Columbia Code.

Section 1551c(z) of title 47, District of Columbia Code, referred to in subsec. (a), was transferred to section 47–1801.4(24) of Title 47 of the District of Columbia Code.

AMENDMENTS

1979—Subsec. (a). Pub. L. 96–54 substituted ''Mayor'' for ''Commissioner'' wherever appearing.

1976—Pub. L. 94–455 struck out ''pay for service as a member of the armed forces, or to'' after ''The agreement may not apply to'' and inserted provision that in the case of service as a member of the armed forces, the second sentence shall be applied by substituting ''who are residents of the District of Columbia'' for ''whose regular place of employment is within the District of Columbia''.

1968—Subsec. (a). Pub. L. 90–623 substituted ''Commissioner'' for ''Commissioners'' in two places.

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.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 1207(f)(1) of Pub. L. 94–455 provided that: ''The amendments made by subsection (a) [amending this section and section 5517 of this title] shall apply to wages withheld after the 120-day period following any request for an agreement after the date of the enactment of this Act [Oct. 4, 1976].''

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–623 intended to restate without substantive change the law in effect on Oct. 22, 1968, see section 6 of Pub. L. 90–623, set out as a note under section 5334 of this title.

CROSS REFERENCES

Withholding of District of Columbia income taxes by Secretary of Senate, see section 60c–3 of Title 2, The Congress.

Withholding of District of Columbia income taxes by Clerk and Sergeant at Arms of the House of Representatives, see sections 60e–1a and 60e–1b of Title 2.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5517 of this title.

§ 5517. Withholding State income taxes

(a) When a State statute—

(1) provides for the collection of a tax either by imposing on employers generally the duty of withholding sums from the pay of employees and making returns of the sums to the State, or by granting to employers generally the authority to withhold sums from the pay of employees if any employee voluntarily elects to have such sums withheld; and

(2) imposes the duty or grants the authority to withhold generally with respect to the pay of employees who are residents of the State;

the Secretary of the Treasury, under regulations prescribed by the President, shall enter into an agreement with the State within 120 days of a request for agreement from the proper State official. The agreement shall provide that the head of each agency of the United States shall comply with the requirements of the State withholding statute in the case of employees of the agency who are subject to the tax and whose regular place of Federal employment is within the State with which the agreement is made. In the case of pay for service as a member of the armed forces, the preceding sentence shall be applied by substituting ''who are residents of the State with which the agreement is made'' for ''whose regular place of Federal employment is within the State with which the agreement is made''.

(b) This section does not give the consent of the United States to the application of a statute which imposes more burdensome requirements

on the United States than on other employers, or which subjects the United States or its employees to a penalty or liability because of this section. An agency of the United States may not accept pay from a State for services performed in withholding State income taxes from the pay of the employees of the agency.

(c) For the purpose of this section, ''State'' means a State or territory or possession of the United States.

(d) For the purpose of this section and sections 5516 and 5520, the terms ''serve as a member of the armed forces'' and ''service as a member of the Armed Forces'' include—

(1) participation in exercises or the performance of duty under section 502 of title 32, United States Code, by a member of the National Guard; and

(2) participation in scheduled drills or training periods, or service on active duty for training, under section 10147 of title 10, United States Code, by a member of the Ready Reserve.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 478; Pub. L. 94–455, title XII, §1207(a)(1), (b), (c), Oct. 4, 1976, 90 Stat. 1704, 1705; Pub. L. 100–180, div. A, title V, §505(1), Dec. 4, 1987, 101 Stat. 1086; Pub. L. 103–337, div. A, title XVI, §1677(a)(1), Oct. 5, 1994, 108 Stat. 3019.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 84b.	July 17, 1952, ch. 940, §1, 66 Stat. 765. Sept. 23, 1959, Pub. L. 86–371 ''Sec. 1'', 73 Stat. 653.
.....	5 U.S.C. 84c.	July 17, 1952, ch. 940, §2, 66 Stat. 766. Sept. 23, 1959, Pub. L. 86–371 ''Sec. 2'', 73 Stat. 653.

In subsection (b), the words ''after March 31, 1959'' are omitted as executed.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1994—Subsec. (d)(2). Pub. L. 103–337 substituted ''section 10147'' for ''section 270(a)''.

1987—Subsec. (d). Pub. L. 100–180 struck out ''do not'' before ''include''.

1976—Subsec. (a). Pub. L. 94–455, §1207(a)(1), (c), inserted in par. (1) provision relating to the grant to employers of the authority to withhold sums from the pay of employees if any employee voluntarily elects to have such sums withheld, inserted in par. (2) ''or grants the authority'' after ''imposes the duty'', and substituted in text following par. (2) provisions that in the case of pay for service as a member of the armed forces, the preceding sentence shall be applied by substituting ''who are residents of the State with which the agreement is made'' for ''whose regular place of Federal employment is within the State with which the agreement is made'' for provision that the agreement may not apply to pay for service as a member of the armed forces.

Subsec. (d). Pub. L. 94–455, §1207(b), added subsec. (d).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of Title 10, Armed Forces.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1207(a)(1) of Pub. L. 94–455 applicable to wages withheld after the 120-day period following any request for an agreement after Oct. 4, 1976, see section 1207(f)(1) of Pub. L. 94–455, set out as a note under section 5516 of this title.

Section 1207(f)(2) of Pub. L. 94–455 provided that: ''The amendments made by subsections (b) and (c) [amending this section] shall apply to wages withheld after the 120-day period following the date of the enactment of this Act [Oct. 4, 1976].''

EXECUTIVE ORDER NO. 10407

Ex. Ord. No. 10407, Nov. 7, 1952, 17 F.R. 10132, which related to regulations governing agreements concerning withholding of state or territorial income taxes, was revoked by Ex. Ord. No. 11968, Jan. 31, 1977, 42 F.R. 6787, formerly set out as a note under section 5520 of this title.

CROSS REFERENCES

Withholding of State income taxes by Secretary of Senate, see section 60c–3 of Title 2, The Congress.

Withholding of State income taxes by Clerk and Sergeant at Arms of the House of Representatives, see sections 60e–1a and 60e–1b of Title 2.

Withholding of State income taxes by Architect of the Capitol, see section 166b–5 of Title 40, Public Buildings, Property, and Works.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5520 of this title.

§ 5518. Deductions for State retirement systems; National Guard employees

When—

(1) a State statute provides for the payment of employee contributions to a State employee retirement system or to a State sponsored plan providing retirement, disability, or death benefits, by withholding sums from the pay of State employees and making returns of the sums withheld to State authorities or to the person or organization designated by State authorities to receive sums withheld for the program; and

(2) individuals employed by the Army National Guard and the Air National Guard, except employees of the National Guard Bureau, are eligible for membership in a State employee retirement system or other State sponsored plan;

the Secretary of Defense, under regulations prescribed by the President, shall enter into an agreement with the State within 120 days of a request for agreement from the proper State official. The agreement shall provide that the Department of Defense shall comply with the requirements of State statute as to the individuals named by paragraph (2) of this section who are eligible for membership in the State employee retirement system. The disbursing officials paying these individuals shall withhold and pay to the State employee retirement system or to the person or organization designated by State authorities to receive sums withheld for the program the employee contributions for these individuals. For the purpose of this section, ''State'' means a State or territory or possession of the United States including the Commonwealth of Puerto Rico.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 479.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 84d.	June 15, 1956, ch. 390, 70 Stat. 283. Sept. 13, 1961, Pub. L. 87–224, § 1, 75 Stat. 496.

The words ''individuals employed by'' and the word ''individuals'' are substituted for ''civilian employees of'' and ''employees'', respectively, in view of the definition of ''employee'' in section 2105 which is limited to those employed by the Government of the United States. The word ''civilian'' is omitted as unnecessary as military personnel are not ''employed''. The words ''disbursing officials'' are substituted for ''disbursing officers'' as the definition of ''officer'' in section 2104 excludes a member of a uniformed service.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

EX. ORD. NO. 10996. WITHHOLDING OF COMPENSATION FOR STATE AND STATE-SPONSORED EMPLOYEE RETIREMENT, DISABILITY, OR DEATH BENEFITS PROGRAMS

Ex. Ord. No. 10996, Feb. 16, 1962, 27 F.R. 1521, provided: By virtue of the authority vested in me by the act of June 15, 1956, as amended, 75 Stat. 496 (5 U.S.C. 84d) [now this section], and by section 301 of title 3 of the United States Code, and as President of the United States, it is ordered as follows:

SECTION 1. As used in this order, the term:

(a) ''Employees'' means civilian employees of the Army National Guard or Air National Guard of a State who are employed pursuant to section 709 of title 32 of the United States Code, and paid from Federal, appropriated funds.

(b) ''State'' means one of the United States, the Commonwealth of Puerto Rico, and any territory of the United States.

SEC. 2. Each agreement between the Secretary of Defense and the Governor or other proper official of a State, pursuant to the provisions of the act of June 15, 1956, as amended, with respect to withholding of compensation of certain civilian employees of the Army National Guard and the Air National Guard for purposes of State or State-sponsored employee retirement, disability, or death benefits systems, shall be entered into by the Secretary of Defense within one hundred and twenty days of the receipt of a request therefor by the Secretary from the Governor or any other proper official of any State; *Provided*, that—

(a) the law of such State provides for the payment of employee contributions to such State or State-sponsored employee retirement, disability, or death benefits systems by withholding sums from the compensation of such State employees and making returns of such sums to officials of such State or organization designated by such officials to receive sums withheld for such programs;

(b) civilian employees of the Army National Guard and the Air National Guard, other than those employed by the National Guard Bureau, are eligible for membership in a State retirement, disability, or death benefits system; and

(c) each such agreement is consistent with the provisions of the said act of June 15, 1956, as amended, and of rules and regulations issued thereunder, and contains a clause that it shall be subject to any amendments of the said act, including amendments occurring after the effective date of such agreement.

SEC. 3. Each such agreement shall:

(a) Provide that the Secretary of the Army with respect to civilian employees of the Army National Guard, and the Secretary of the Air Force with respect to civilian employees of the Air National Guard, shall comply with the requirements of such State law in the case of employee subject to the said act of June 15, 1956, as amended, who are eligible for membership in such retirement, disability, or death benefits system for State employees;

(b) Specify when the withholding of sums from the compensation of such State employees shall commence; and

(c) Provide for procedures for the withholding, the filing of the returns, and the payment of the sums withheld from compensation to the officials of the State, or organization designated by such officials to receive sums withheld for such programs, which procedures shall conform, so far as practicable, to the usual fiscal practices of the Department of the Army and the Department of the Air Force, respectively.

SEC. 4. The Secretary of the Army with respect to civilian employees of the Army National Guard, and the Secretary of the Air Force with respect to civilian employees of the Air National Guard, shall designate, or provide for the designation of, the officers or employees whose duty it shall be to withhold sums from compensation, file required returns, and direct the payment of sums so withheld, in accordance with the terms of the agreements entered into between the Secretary of Defense and the States.

SEC. 5. Nothing in this order, or in rules or regulations issued thereunder, or in any agreement entered into pursuant thereto, shall be construed as giving consent to the application of any provision of law of any State which has the effect of imposing more burdensome requirements upon the United States than it imposes upon departments, agencies, or political subdivisions of the State concerned, with respect to employees thereof who are members of the State or State-sponsored retirement, disability, or death benefits system, or which has the effect of subjecting the United States or any of its officers or employees to any penalty or liability.

SEC. 6. I hereby delegate to the Secretary of Defense authority to prescribe such rules and regulations, not inconsistent herewith, as may be necessary to effectuate further the provisions of the said act of June 15, 1956, as amended, or of this order.

SEC. 7. Except to the extent that they may be inconsistent with this order, all determinations, authorizations, regulations, rulings, certificates, orders, directives, contracts, agreements, and other actions made, issued, or entered into with respect to any function affected by this order and not revoked, superseded, or otherwise made inapplicable before the date of this order, shall continue in full force and effect until amended, modified, or terminated by appropriate authority.

SEC. 8. This order supersedes Executive Order No. 10679 of September 20, 1956.

JOHN F. KENNEDY.

§ 5519. Crediting amounts received for certain Reserve or National Guard service

An amount (other than a travel, transportation, or per diem allowance) received by an employee or individual for military service as a member of the Reserve or National Guard for a period for which he is entitled to leave under section 6323(b) or (c) shall be credited against the pay payable to the employee or individual with respect to his civilian position for that period.

(Added Pub. L. 90–588, § 2(b), Oct. 17, 1968, 82 Stat. 1152; amended Pub. L. 102–378, § 2(39), Oct. 2, 1992, 106 Stat. 1351.)

AMENDMENTS

1992—Pub. L. 102–378 substituted ''6323(b) or (c)'' for ''6323(c) or (d) of this title''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6323 of this title.

§ 5520. Withholding of city or county income or employment taxes

(a) When a city or county ordinance—

(1) provides for the collection of a tax by imposing on employers generally the duty of withholding sums from the pay of employees and making returns of the sums to a designated city or county officer, department, or instrumentality; and

(2) imposes the duty to withhold generally on the payment of compensation earned within the jurisdiction of the city or county in the case of employees whose regular place of employment is within such jurisdiction;

the Secretary of the Treasury, under regulations prescribed by the President, shall enter into an agreement with the city or county within 120 days of a request for agreement by the proper city or county official. The agreement shall provide that the head of each agency of the United States shall comply with the requirements of the city or county ordinance in the case of any employee of the agency who is subject to the tax and (i) whose regular place of Federal employment is within the jurisdiction of the city or county with which the agreement is made or (ii) is a resident of such city or county. The agreement may not apply to pay for service as a member of the Armed Forces (other than service described in section 5517(d) of this title). The agreement may not permit withholding of a city or county tax from the pay of an employee who is not a resident of, or whose regular place of Federal employment is not within, the State in which that city or county is located unless the employee consents to the withholding.

(b) This section does not give the consent of the United States to the application of an ordinance which imposes more burdensome requirements on the United States than on other employers or which subjects the United States or its employees to a penalty or liability because of this section. An agency of the United States may not accept pay from a city or county for services performed in withholding city or county income or employment taxes from the pay of employees of the agency.

(c) For the purpose of this section—

(1) ''city'' means any unit of general local government which—

(A) is classified as a municipality by the Bureau of the Census, or

(B) is a town or township which, in the determination of the Secretary of the Treasury—

(i) possesses powers and performs functions comparable to those associated with municipalities,

(ii) is closely settled, and

(iii) contains within its boundaries no incorporated places, as defined by the Bureau of the Census,

within the political boundaries of which 500 or more persons are regularly employed by all agencies of the Federal Government;

(2) ''county'' means any unit of local general government which is classified as a county by the Bureau of the Census and within the political boundaries of which 500 or more persons are regularly employed by all agencies of the Federal Government;

(3) ''ordinance'' means an ordinance, order, resolution, or similar instrument which is duly adopted and approved by a city or county in accordance with the constitution and statutes of the State in which it is located and which has the force of law within such city or county; and

(4) ''agency'' means—

(A) an Executive agency;

(B) the judicial branch; and

(C) the United States Postal Service.

(Added Pub. L. 93–340, §1(a), July 10, 1974, 88 Stat. 294; amended Pub. L. 94–358, §1, July 12, 1976, 90 Stat. 910; Pub. L. 95–30, title IV, §408(a), May 23, 1977, 91 Stat. 157; Pub. L. 95–365, §1, Sept. 15, 1978, 92 Stat. 599; Pub. L. 100–180, div. A, title V, §505(2), Dec. 4, 1987, 101 Stat. 1086.)

AMENDMENTS

1987—Subsec. (a). Pub. L. 100–180 inserted ''(other than service described in section 5517(d) of this title)'' after ''Armed Forces'' in penultimate sentence.

1978—Subsec. (a). Pub. L. 95–365 designated existing provisions as cl. (i), inserted '', or whose regular place of Federal employment is not within,'' after ''not a resident of'', and added cl. (ii).

1977—Pub. L. 95–30, §408(a)(1), inserted ''or county'' after ''city'' in section catchline.

Subsec. (a). Pub. L. 95–30, §408(a)(2), (3), substituted ''city or county'' for ''city'' in introductory provisions preceding par. (1), in par. (2), and in provisions following par. (2), and, in par. (1), substituted ''a designated city or county officer, department, or instrumentality'' for ''the city''.

Subsec. (b). Pub. L. 95–30, §408(a)(2), substituted ''city or county'' for ''city''.

Subsec. (c). Pub. L. 95–30, §408(a)(4), (5), added pars. (2) and (3) and redesignated former par. (2) as (4).

1976—Subsec. (c)(1). Pub. L. 94–358 substituted provision defining a city, for purposes of this section, as any unit of general local government which is classified a municipality by the Bureau of the Census, or is a town or township which in the opinion of the Secretary of the Treasury possesses powers and performs functions comparable to those associated with municipalities, is closely settled, and contains within its boundaries no incorporated places, as defined by the Bureau of the Census, within the political boundaries of which five hundred or more persons are regularly employed by all agencies of the Federal Government, for provision defining a city, for purposes of this section, as a city which is duly incorporated under the laws of a State and within the political boundaries of which five hundred or more persons are regularly employed by all agencies of the Federal Government.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 2 of Pub. L. 95–365 provided that: ''The amendments made by the first section of this Act [amending this section] shall take effect on the 90th day after the date of the enactment of this Act [Sept. 15, 1978].''

EFFECTIVE DATE OF 1977 AMENDMENT

Section 408(c) of Pub. L. 95–30 provided that: ''The amendments made by this section [amending this section] shall take effect on the date of enactment of this Act [May 23, 1977].''

EFFECTIVE DATE OF 1976 AMENDMENT

Section 2 of Pub. L. 94–358 provided that: ''The amendment made by the first section of this Act [amending this section] shall take effect on the date of the enactment of this Act [July 12, 1976].''

EFFECTIVE DATE

Section 3 of Pub. L. 93–340 provided that: ''This section shall become effective on the date of enactment of

this Act [July 10, 1974]. The provisions of the first section and section 2 of this Act [enacting this section and amending section 410 of Title 39, Postal Service] shall become effective on the ninetieth day following the date of enactment.''

EXECUTIVE ORDER NO. 11833

Ex. Ord. No. 11833, Jan. 13, 1975, 40 F.R. 2673, which related to the withholding of city income or employment taxes by Federal agencies, was revoked by Ex. Ord. No. 11863, June 12, 1975, 40 F.R. 25413, formerly set out below.

EXECUTIVE ORDER NO. 11863

Ex. Ord. No. 11863, June 12, 1975, 40 F.R. 25431, which related to the withholding of city income or employment taxes by Federal agencies, was revoked by Ex. Ord. No. 11968, Jan. 31, 1977, 42 F.R. 6787, formerly set out below.

EXECUTIVE ORDER NO. 11968

Ex. Ord. No. 11968, Jan. 31, 1977, 42 F.R. 6787, which related to the withholding of District of Columbia, State and city income or employment taxes, was revoked by Ex. Ord. No. 11997, June 22, 1977, 42 F.R. 31759, set out below.

EX. ORD. NO. 11997. WITHHOLDING OF DISTRICT OF COLUMBIA, STATE, CITY AND COUNTY INCOME OR EMPLOYMENT TAXES

Ex. Ord. No. 11997, June 22, 1977, 42 F.R. 31759, provided:

By virtue of the authority vested in me by Sections 5516, 5517 and 5520 of Title 5 of the United States Code, and Section 301 of Title 3 of the United States Code, and as President of the United States of America, in order to authorize the Secretary of the Treasury to provide for the withholding of county income or employment taxes as authorized by Section 5520 of Title 5 of the United States Code as amended by Section 408 of Public Law 95–30, as well as to provide for the withholding of District of Columbia, State and city income or employment taxes, it is hereby ordered as follows:

SECTION 1. Whenever the Secretary of the Treasury enters into an agreement pursuant to Sections 5516, 5517 or 5520 of Title 5 of the United States Code, with the District of Columbia, a State, a city or a county, as the case may be, with regard to the withholding, by an agency of the United States, hereinafter referred to as an agency, of income or employment taxes from the pay of Federal employees or members of the Armed Forces, the Secretary of the Treasury shall ensure that each agreement is consistent with those sections and regulations, including this Order, issued thereunder.

SEC. 2. Each agreement shall provide (a) when tax withholding shall begin, (b) that the head of an agency may rely on the withholding certificate of an employee or a member of the Armed Forces in withholding taxes, (c) that the method for calculating the amount to be withheld for District of Columbia, State, city or county income or employment taxes shall produce approximately the tax required to be withheld by the District of Columbia or State law; or city or county ordinance, whichever is applicable, and (d) that procedures for the withholding, filing of returns, and payment of the withheld taxes to the District of Columbia, a State, a city or a county shall conform to the usual fiscal practices of agencies. Any agreement affecting members of the Armed Forces shall also provide that the head of an agency may rely on the certificate of legal residence of a member of the Armed Forces in determining his or her residence for tax withholding purposes. No agreement shall require the collection by an agency of delinquent tax liabilities of an employee or a member of the Armed Forces.

SEC. 3. The head of each agency shall designate, or provide for the designation of, the officers or employees whose duty it shall be to withhold taxes, file required returns, and direct payment of the taxes withheld, in accordance with this Order, any regulations prescribed by the Secretary of the Treasury, and the new applicable agreement.

SEC. 4. The Secretary of the Treasury is authorized to prescribe additional regulations to implement Sections 5516, 5517 and 5520 of Title 5 of the United States Code, and this Order.

SEC. 5. Executive Order No. 11968 of January 31, 1977, is hereby revoked. However, all actions heretofore taken by the President or his delegates in respect of the matters affected by this Order and in force at the time of the issuance of this Order, including any regulations prescribed or approved by the President or his delegates in respect of such matters and any existing agreements approved by his delegates, shall, except as they may be inconsistent with the provisions of this Order, remain in effect until amended, modified, or revoked pursuant to the authority conferred by this Order, unless sooner terminated by operation of law.

JIMMY CARTER.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5517 of this title; title 39 section 410.

§ 5520a. Garnishment of pay

(a) For purposes of this section—

(1) ''agency'' means each agency of the Federal Government, including—

(A) an executive agency, except for the General Accounting Office;

(B) the United States Postal Service and the Postal Rate Commission;

(C) any agency of the judicial branch of the Government; and

(D) any agency of the legislative branch of the Government, including the General Accounting Office, each office of a Member of Congress, a committee of the Congress, or other office of the Congress;

(2) ''employee'' means an employee of an agency (including a Member of Congress as defined under section 2106);

(3) ''legal process'' means any writ, order, summons, or other similar process in the nature of garnishment, that—

(A) is issued by a court of competent jurisdiction within any State, territory, or possession of the United States, or an authorized official pursuant to an order of such a court or pursuant to State or local law; and

(B) orders the employing agency of such employee to withhold an amount from the pay of such employee, and make a payment of such withholding to another person, for a specifically described satisfaction of a legal debt of the employee, or recovery of attorney's fees, interest, or court costs; and

(4) ''pay'' means—

(A) basic pay, premium pay paid under subchapter V, any payment received under subchapter VI, VII, or VIII, severance and back pay paid under subchapter IX, sick pay, incentive pay, and any other compensation paid or payable for personal services, whether such compensation is denominated as wages, salary, commission, bonus pay or otherwise; and

(B) does not include awards for making suggestions.

(b) Subject to the provisions of this section and the provisions of section 303 of the Con-

sumer Credit Protection Act (15 U.S.C. 1673) pay from an agency to an employee is subject to legal process in the same manner and to the same extent as if the agency were a private person.

(c)(1) Service of legal process to which an agency is subject under this section may be accomplished by certified or registered mail, return receipt requested, or by personal service, upon—

(A) the appropriate agent designated for receipt of such service of process pursuant to the regulations issued under this section; or

(B) the head of such agency, if no agent has been so designated.

(2) Such legal process shall be accompanied by sufficient information to permit prompt identification of the employee and the payments involved.

(d) Whenever any person, who is designated by law or regulation to accept service of process to which an agency is subject under this section, is effectively served with any such process or with interrogatories, such person shall respond thereto within thirty days (or within such longer period as may be prescribed by applicable State law) after the date effective service thereof is made, and shall, as soon as possible but not later than fifteen days after the date effective service is made, send written notice that such process has been so served (together with a copy thereof) to the affected employee at his or her duty station or last-known home address.

(e) No employee whose duties include responding to interrogatories pursuant to requirements imposed by this section shall be subject to any disciplinary action or civil or criminal liability or penalty for, or on account of, any disclosure of information made by such employee in connection with the carrying out of any of such employee's duties which pertain directly or indirectly to the answering of any such interrogatory.

(f) Agencies affected by legal process under this section shall not be required to vary their normal pay and disbursement cycles in order to comply with any such legal process.

(g) Neither the United States, an agency, nor any disbursing officer shall be liable with respect to any payment made from payments due or payable to an employee pursuant to legal process regular on its face, provided such payment is made in accordance with this section and the regulations issued to carry out this section. In determining the amount of any payment due from, or payable by, an agency to an employee, there shall be excluded those amounts which would be excluded under section 462(g) of the Social Security Act (42 U.S.C. 662(g)).

(h)(1) Subject to the provisions of paragraph (2), if an agency is served under this section with more than one legal process with respect to the same payments due or payable to an employee, then such payments shall be available, subject to section 303 of the Consumer Credit Protection Act (15 U.S.C. 1673), to satisfy such processes in priority based on the time of service, with any such process being satisfied out of such amounts as remain after satisfaction of all such processes which have been previously served.

(2) A legal process to which an agency is subject under sections 459, 461, and 462 of the Social Security Act (42 U.S.C. 659, 661, and 662) for the enforcement of the employee's legal obligation to provide child support or make alimony payments, shall have priority over any legal process to which an agency is subject under this section.

(i) The provisions of this section shall not modify or supersede the provisions of sections 459, 461, and 462 of the Social Security Act (42 U.S.C. 659, 661, and 662) concerning legal process brought for the enforcement of an individual's legal obligations to provide child support or make alimony payments.

(j)(1) Regulations implementing the provisions of this section shall be promulgated—

(A) by the President or his designee for each executive agency, except with regard to employees of the United States Postal Service, the President or, at his discretion, the Postmaster General shall promulgate such regulations;

(B) jointly by the President pro tempore of the Senate and the Speaker of the House of Representatives, or their designee, for the legislative branch of the Government; and

(C) by the Chief Justice of the United States or his designee for the judicial branch of the Government.

(2) Such regulations shall provide that an agency's administrative costs in executing a garnishment action may be added to the garnishment, and that the agency may retain costs recovered as offsetting collections.

(k)(1) No later than 180 days after the date of the enactment of this Act, the Secretaries of the Executive departments concerned shall promulgate regulations to carry out the purposes of this section with regard to members of the uniformed services.

(2) Such regulations shall include provisions for—

(A) the involuntary allotment of the pay of a member of the uniformed services for indebtedness owed a third party as determined by the final judgment of a court of competent jurisdiction, and as further determined by competent military or executive authority, as appropriate, to be in compliance with the procedural requirements of the Soldiers' and Sailors' Civil Relief Act of 1940 (50 App. U.S.C. 501 et seq.); and

(B) consideration for the absence of a member of the uniformed service from an appearance in a judicial proceeding resulting from the exigencies of military duty.

(3) The Secretaries of the Executive departments concerned shall promulgate regulations under this subsection that are, as far as practicable, uniform for all of the uniformed services. The Secretary of Defense shall consult with the Secretary of Transportation with regard to the promulgation of such regulations that might affect members of the Coast Guard when the Coast Guard is operating as a service in the Navy.

(Added Pub. L. 103–94, §9(a), Oct. 6, 1993, 107 Stat. 1007.)

REFERENCES IN TEXT

The date of the enactment of this Act, referred to in subsec. (k)(1), probably means the date of enactment of

Pub. L. 103–94, which enacted this section and was approved Oct. 6, 1993.

The Soldiers' and Sailors' Relief Act of 1940, referred to in subsec. (k)(2)(A), is act Oct. 17, 1940, ch. 888, 54 Stat. 1178, as amended, which is classified to section 501 et seq. of Title 50, App., War and National Defense. For complete classification of this Act to the Code, see section 501 of Title 50, App., and Tables.

EFFECTIVE DATE; SAVINGS PROVISION

Section effective 120 days after Oct. 6, 1993, and not to affect any proceedings with respect to which charges were filed on or before 120 days after Oct. 6, 1993, with orders to be issued in such proceedings and appeals taken therefrom as if Pub. L. 103–94 had not been enacted, see section 12 of Pub. L. 103–94, set out as a note under section 7321 of this title.

EX. ORD. NO. 12897. GARNISHMENT OF FEDERAL EMPLOYEES' PAY

Ex. Ord. No. 12897, Feb. 3, 1994, 59 F.R. 5517, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 5520a(j)(1)(A) of title 5, United States Code, as added by section 9 of Public Law 103–94, it is hereby ordered as follows:

SECTION 1. The Office of Personnel Management, in consultation with the Attorney General, is designated to promulgate regulations for the implementation of section 5520a of title 5, United States Code, with respect to civilian employees and agencies in the executive branch, except as provided in section 2 of this order.

SEC. 2. The Postmaster General is designated to promulgate regulations for the implementation of section 5520a of title 5, United States Code, with respect to employees of the United States Postal Service.

WILLIAM J. CLINTON.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 39 section 410.

SUBCHAPTER III—ADVANCEMENT, ALLOTMENT, AND ASSIGNMENT OF PAY

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 5307, 5527 of this title.

§ 5521. Definitions

For the purpose of this subchapter—

(1) ''agency'' means—

(A) an Executive agency;

(B) the judicial branch;

(C) the Library of Congress;

(D) the Government Printing Office; and

(E) the government of the District of Columbia;

(2) ''employee'' means an individual employed in or under an agency;

(3) ''head of each agency'' means—

(A) the Director of the Administrative Office of the United States Courts with respect to the judicial branch; and

(B) the Mayor of the District of Columbia with respect to the government of the District of Columbia; and

(4) ''United States'', when used in a geographical sense, means the several States and the District of Columbia.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 479; Pub. L. 90–623, § 1(10), Oct. 22, 1968, 82 Stat. 1312; Pub. L. 96–54, § 2(a)(31), Aug. 14, 1979, 93 Stat. 383.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 3071.	Sept. 26, 1961, Pub. L. 87–304, § 1, 75 Stat. 662. June 24, 1965, Pub. L. 89–47, 79 Stat. 171.

In paragraph (1), the word ''agency'' is substituted for ''department''. The term ''Executive agency'' is substituted for the reference to ''each executive department of the Government of the United States of America; each agency or independent establishment in the executive branch of such Government; each corporation wholly owned or controlled by such Government'' in former section 3071(1)(A)–(C).

Paragraph (2) is added for clarity and in view of the fact that the definition of ''employee'' in section 2105 does not include individuals employed by the government of the District of Columbia.

In paragraph (3), the term ''department head'' is omitted as unnecessary.

In paragraph (4), the words ''of the United States of America'' are omitted as unnecessary.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1979—Par. (3)(B). Pub. L. 96–54 substituted ''Mayor'' for ''Commissioner''.

1968—Par. (3)(B). Pub. L. 90–623 substituted ''Commissioner'' for ''Board of Commissioners''.

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.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–623 intended to restate without substantive change the law in effect on Oct. 22, 1968, see section 6 of Pub. L. 90–623, set out as a note under section 5334 of this title.

§ 5522. Advance payments; rates; amounts recoverable

(a) The head of each agency may provide for the advance payment of the pay, allowances, and differentials, or any of them, covering a period of not more than 30 days, to or for the account of each employee of the agency (or, under emergency circumstances and on a reimbursable basis, an employee of another agency) whose departure (or that of his dependents or immediate family, as the case may be) from a place inside or outside the United States is officially authorized or ordered—

(1) from a place outside the United States from which the Secretary of State determines it is in the national interest to require the departure of some or all employees, their dependents, or both; or

(2) from any place where there is imminent danger to the life of the employee or the lives of the dependents or immediate family of the employee.

(b) Subject to adjustment of the account of an employee under section 5524 of this title and other applicable statute, the advance payment of pay, allowances, and differentials is at rates currently authorized with respect to the employee on the date the advance payment is made under agency procedures governing advance pay-

ments under this subsection. The rates so authorized may not exceed the rates to which the employee was entitled immediately before issuance of the departure order.

(c) An advance of funds under subsection (a) of this section is recoverable by the Government of the United States or the government of the District of Columbia, as the case may be, from the employee or his estate by—

(1) setoff against accrued pay, amount of retirement credit, or other amount due to the employee from the Government of the United States or the government of the District of Columbia; and

(2) such other method as is provided by law.

The head of the agency concerned may waive in whole or in part a right of recovery of an advance of funds under subsection (a) of this section, if it is shown that the recovery would be against equity and good conscience or against the public interest.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 480; Pub. L. 96–465, title II § 2303(a), (b), Oct. 17, 1980, 94 Stat. 2164, 2165.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 3072.	Sept. 26, 1961, Pub. L. 87–304, § 2, 75 Stat. 662.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1980—Subsec. (a). Pub. L. 96–465, § 2303(a), substituted ''departure'' for ''evacuation'', substituted ''is officially authorized or ordered'' for ''is ordered for military or other reasons which create imminent danger to the life or lives of the employee or of his dependents or immediate family'', and added pars. (1) and (2).

Subsec. (b). Pub. L. 96–465, § 2303(b), substituted ''departure'' for ''evacuation'' after ''issuance of the''.

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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5523, 5524 of this title; title 31 section 3721.

§ 5523. Duration of payments; rates; active service period

(a) The head of each agency may provide for—

(1) the payment of monetary amounts covering a period of not more than 60 days to or for the account of each employee of the agency (or, under emergency circumstances and on a reimbursable basis, an employee of another agency) whose departure (or that of the employee's dependents or immediate family, as the case may be) is authorized or ordered under section 5522(a); and

(2) the termination of payment of the monetary amounts.

The President, with respect to the Executive agencies, may extend the 60-day period for not more than 120 additional days if he determines that the extension of the period is in the interest of the United States.

(b) Subject to adjustment of the account of an employee under section 5524 of this title and other applicable statute, each payment under this section is at rates of pay, allowances, and differentials, or any of them, currently authorized with respect to the employee on the date payment is made under agency procedures governing payments under this section. The rates so authorized may not exceed the rates to which the employee was entitled immediately before issuance of the departure order. An employee in an Executive agency may be granted such additional allowance payments as the President determines necessary to offset the direct added expenses incident to the departure.

(c) Each period for which payment of amounts is made under this section to or for the account of an employee is deemed, for all purposes with respect to the employee, a period of active service, without break in service, performed by the employee in the employment of the Government of the United States or the government of the District of Columbia.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 480; Pub. L. 96–465, title II, § 2303(c), (d), Oct. 17, 1980, 94 Stat. 2165; Pub. L. 102–138, title I, § 147(a), Oct. 28, 1991, 105 Stat. 669.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 3073.	Sept. 26, 1961, Pub. L. 87–304, § 3, 75 Stat. 663.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1991—Subsec. (a)(1). Pub. L. 102–138 substituted ''agency) whose departure (or that of the employee's dependents or immediate family, as the case may be) is authorized or ordered under section 5522(a); and'' for ''agency)—

''(A) whose departure is authorized or ordered under section 5522(a) of this title; and

''(B) who is prevented, by circumstances beyond his control and beyond the control of the Government of the United States or the government of the District of Columbia, or both, as the case may be, from performing the duties of the position which he held immediately before issuance of the departure order; and''.

1980—Subsec. (a)(1). Pub. L. 96–465, § 2303(c), in subpar. (A) substituted ''whose departure is authorized or ordered under section 5522(a) of this title; and'' for ''whose evacuation from a place inside or outside the United States is ordered for military or other reasons which create imminent danger to the life of the employee; and'', and in subpar. (B) substituted ''departure'' for ''evacuation'' after ''issuance of the''.

Subsec. (b). Pub. L. 96–465, § 2303(d), substituted ''departure'' for ''evacuation'' in two places.

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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5524 of this title.

§ 5524. Review of accounts

The head of each agency shall provide for—

(1) the review of the account of each employee of the agency in receipt of payments under section 5522 or 5523 of this title, or both, as the case may be; and

(2) the adjustment of the amounts of the payments on the basis of—

(A) the rates of pay, allowances, and differentials to which the employee would have been entitled under applicable statute other than this subchapter for the respective periods covered by the payments, if he had performed active service under the terms of his appointment during each period in the position he held immediately before the issuance of the applicable evacuation order; and

(B) such additional amounts as the employee is authorized to receive in accordance with a determination of the President under section 5523(b) of this title.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 481.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 3074.	Sept. 26, 1961, Pub. L. 87–304, § 4, 75 Stat. 663.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5522, 5523 of this title.

§ 5524a. Advance payments for new appointees

(a) The head of each agency may provide for the advance payment of basic pay, covering not more than 2 pay periods, to any individual who is newly appointed to a position in the agency.

(b)(1) Subject to adjustment of the account of an employee under paragraph (2) and other applicable statutes, the advance payment of basic pay shall be made, under agency procedures governing advance payments under this section, at the initial rate of basic pay to be payable to the employee upon the commencement of service in the position to which appointed.

(2) The head of each agency shall provide for—

(A) the review of the account of each employee of the agency in receipt of any payment under this section; and

(B) the adjustment of the amount of any such payment on the basis of the rate of basic pay to which the employee would have been entitled under applicable statute other than this section for the respective periods covered by the payments, if the employee had performed active service under the terms of such employee's appointment during each period in the position to which appointed.

(c) An advance payment under this section is recoverable by the Government of the United States or the government of the District of Columbia, as the case may be, from the employee or such employee's estate by—

(1) setoff against accrued pay, amount of retirement credit, or other amount due to the employee from the Government of the United States or the government of the District of Columbia; and

(2) such other method as is provided by law.

The head of the agency concerned may waive in whole or in part a right of recovery of an advance payment under this section if it is shown that the recovery would be against equity and good conscience or against the public interest.

(Added Pub. L. 101–509, title V, § 529 [title I, § 107(a)], Nov. 5, 1990, 104 Stat. 1427, 1449.)

EFFECTIVE DATE

Section effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title III, § 305] of Pub. L. 101–509, set out as an Effective Date of 1990 Amendment note under section 5301 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 38 section 7410.

§ 5525. Allotment and assignment of pay

The head of each agency may establish procedures under which each employee of the agency is permitted to make allotments and assignments of amounts out of his pay for such purpose as the head of the agency considers appropriate.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 481.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 3075.	Sept. 26, 1961, Pub. L. 87–304, § 5, 75 Stat. 663.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

§ 5526. Funds available on reimbursable basis

Funds available to an agency for payment of pay, allowances, and differentials to or for the accounts of employees of the agency are available on a reimbursable basis for payment of pay, allowances, and differentials to or for the accounts of employees of another agency under this subchapter.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 481.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 3078.	Sept. 26, 1961, Pub. L. 87–304, § 8, 75 Stat. 664.

The word ''civilian'' is omitted as unnecessary in view of the definition of ''employee'' in section 5521(2), and the fact that military personnel are not ''employed''.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

§ 5527. Regulations

(a) To the extent practicable in the public interest, the President shall coordinate the policies and procedures of the respective Executive agencies under this subchapter.

(b) The President, with respect to the Executive agencies, the head of the agency concerned, with respect to the appropriate agency outside the executive branch, and the District of Columbia Council, with respect to the government of the District of Columbia, shall prescribe and issue, or provide for the formulation and issuance of, regulations necessary and appropriate to carry out the provisions, accomplish the purposes, and govern the administration of this subchapter.

(c) The head of each Executive agency may prescribe and issue regulations, not inconsistent with the regulations of the President issued under subsection (b) of this section, necessary and appropriate to carry out his functions under this subchapter.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 481; Pub. L. 90–623, § 1(11), Oct. 22, 1968, 82 Stat. 1312.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 3076.	Sept. 26, 1961, Pub. L. 87–304, § 6, 75 Stat. 664.

In subsection (b), the last sentence of former section 3076, which provided for the issuance of the regulations not later than December 25, 1961, and the effective date of the regulations as not later than March 25, 1962, is omitted as executed.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1968—Subsec. (b). Pub. L. 90–623 inserted reference to the District of Columbia Council, with respect to the government of the District of Columbia.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–623 intended to restate without substantive change the law in effect on Oct. 22, 1968, see section 6 of Pub. L. 90–623, set out as a note under section 5334 of this title.

TRANSFER OF FUNCTIONS

District of Columbia Council, as established by Reorg. Plan No. 3 of 1967, abolished as of noon Jan. 2, 1975, by Pub. L. 93–198, title VII, § 711, Dec. 24, 1973, 87 Stat. 818, classified to section 1–211 of District of Columbia Code, and replaced by Council of District of Columbia, as provided by Pub. L. 93–198, title IV, § 401, Dec. 24, 1973, 87 Stat. 785, classified to section 1–221 of the District of Columbia Code.

EX. ORD. NO. 10982. ADMINISTRATION OF PROVISIONS OF CHAPTER

Ex. Ord. No. 10982, Dec. 25, 1961, 27 F.R. 3, as amended by Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055; Ex. Ord. No. 12748, Feb. 1, 1991, 56 F.R. 4521, provided:

By virtue of the authority vested in me by the act of September 26, 1961 (75 Stat. 662) [this subchapter] and by section 301 of title 3 of the United States Code, and as President of the United States, it is ordered as follows:

SECTION 1. As used in this order:

(a) The term ''the act'' means the act of September 26, 1961 (Public Law 87–304), 75 Stat. 662 [now this subchapter].

(b) The term ''Federal agency'' means any executive department of the Government of the United States of America, any agency or independent establishment in the executive branch of the Government, and any corporation wholly owned or controlled by the Government.

(c) The term ''foreign area'' means any area (including the Trust Territory of the Pacific Islands) situated outside (1) the United States (including the District of Columbia), (2) the Commonwealth of Puerto Rico, (3) the Canal Zone, and (4) any territory or possession of the United States.

SEC. 2. (a) Except as otherwise provided by section 2(b) and section 3(c) of this order, the Secretary of State in respect of civilian employees of Federal agencies who are located in foreign areas immediately prior to an emergency evacuation, and the Office of Personnel Management in respect of all other civilian employees of Federal agencies, are hereby designated and empowered, without the approval, ratification, or other action of the President, to perform the functions conferred upon the President by section 3(a), section 3(b), and section 6(a) of the act [sections 5523(a), 5523(b), and 5527(a) of this title].

(b) The Office of Personnel Management is hereby designated and empowered to perform the functions conferred upon the President by the provisions of section 5527 of title 5, United States Code, with respect to allotments and assignments authorized by section 5525 of title 5, United States Code, and advance payments to new appointees authorized by section 5524a of title 5, United States Code, as added by section 107(a) of the Federal Employees Pay Comparability Act of 1990, as incorporated in section 529 of Public Law 101–509.

SEC. 3. The following regulations are hereby prescribed as necessary and appropriate to carry out the provisions, accomplish the purposes, and govern the administration of the act:

(a) To the maximum extent practicable, the Secretary of State, the Office of Personnel Management, and the heads of other Federal agencies shall exercise their authority under the act and this order so that employees of different Federal agencies evacuated from the same geographic area under the same general circumstances may be treated uniformly.

(b) Advance payments of compensation, allowances, and differentials, as authorized by section 2 of the act [section 5522 of this title], shall be held to the minimum period during which the order for evacuation is anticipated to continue, and shall in no event be made for a period of more than thirty days.

(c) It is hereby determined to be in the interest of the United States that payments of monetary amounts as authorized by section 3 of the act [section 5523 of this title] to and for the account of an employee whose evacuation is ordered and who is prevented from performing the duties of his position, under the circumstances set forth in section 3 of the act, should be extended beyond sixty days for not more than one hundred and twenty additional days only upon determination, pursuant to regulations of the head of the Federal agency concerned, that such additional payments are reasonably necessary to maintain a civilian staff available for performance of duty. Such payments of monetary amounts under the authority of section 3 of the act shall be terminated as of such dates as may be determined by the Secretary of State or the Office of Personnel Management, as appropriate, but not later than the date on which an employee resumes his duties at the post from which he has been evacuated or is assigned to another position.

SEC. 4. (a) The head of each Federal agency shall issue as soon as practicable such regulations as may be necessary and appropriate to carry out his functions under the act and this order.

(b) In order to coordinate the policies and procedures of the executive branch of the Government, all regulations of any Federal agency prepared for issuance under the provisions of section 6(c) of the act [section 5527(c) of this title] and section 4(a) of this order shall be submitted for prior approval to the Secretary of State, or to the Office of Personnel Management, as may be appropriate, under section 2 of this order. The Secretary of State and the Office of Personnel Management shall review such regulations for conformance with the purpose and intent of the act and of the regulations con-

tained in section 3 of this order. No Federal agency shall make any payment under the provisions of the act or this order until such regulations have been approved by the Secretary of State, or the Office of Personnel Management, as appropriate.

SUBCHAPTER IV—DUAL PAY AND DUAL EMPLOYMENT

§ 5531. Definitions

For the purpose of sections 5532 and 5533 of this title—

(1) ''member'' has the meaning given such term by section 101(23) of title 37;

(2) ''position'' means a civilian office or position (including a temporary, part-time, or intermittent position), appointive or elective, in the legislative, executive, or judicial branch of the Government of the United States (including a Government corporation and a nonappropriated fund instrumentality under the jurisdiction of the armed forces) or in the government of the District of Columbia;

(3) ''retired or retainer pay'' means retired pay, as defined in section 8311(3) of this title, determined without regard to subparagraphs (B) through (D) of such section 8311(3); except that such term does not include an annuity payable to an eligible beneficiary of a member or former member of a uniformed service under chapter 73 of title 10;

(4) ''agency in the legislative branch'' means the General Accounting Office, the Government Printing Office, the Library of Congress, the Office of Technology Assessment, the Office of the Architect of the Capitol, the United States Botanic Garden, and the Congressional Budget Office;

(5) ''employee of the House of Representatives'' means a congressional employee whose pay is disbursed by the Clerk of the House of Representatives;

(6) ''employee of the Senate'' means a congressional employee whose pay is disbursed by the Secretary of the Senate; and

(7) ''congressional employee'' has the meaning given that term by section 2107 of this title, excluding an employee of an agency in the legislative branch.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 482; Pub. L. 95–454, title III, § 308(b), Oct. 13, 1978, 92 Stat. 1150; Pub. L. 102–190, div. A, title VI, § 655(a)(2), Dec. 5, 1991, 105 Stat. 1391.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 3101 (as applicable to 5 U.S.C. 3102(a)–(e) and 3105 (less (e))).	Aug. 19, 1964, Pub. L. 88–448, § 101 (as applicable to §§ 201 (a)–(e) and 301 (less (e))), 78 Stat. 484.

In paragraph (2), the defined word ''position'' is substituted for ''civilian office.'' The words ''Government corporation'' are substituted for ''corporation owned or controlled by such Government'' in view of the definition in section 103.

The definitions of ''uniformed services'' and ''armed forces'' are omitted as unnecessary in view of the definitions in section 2101.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1991—Pars. (4) to (7). Pub. L. 102–190 added pars. (4) to (7).

1978—Pub. L. 95–454 substituted '' 'member' '' for '' 'officer' '' in par. (1) and added par. (3).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

TRANSFER OF FUNCTIONS

Certain functions of Clerk of House of Representatives transferred to Director of Non-legislative and Financial Services by section 7 of House Resolution No. 423, One Hundred Second Congress, Apr. 9, 1992. Director of Non-legislative and Financial Services replaced by Chief Administrative Officer of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

CROSS REFERENCES

Time limitation on claims against Government employees who received dual compensation in violation of the dual compensation laws, see section 3712 of Title 31, Money and Finance.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8344, 8468 of this title; title 24 section 421.

§ 5532. Employment of retired members of the uniformed services; reduction in retired or retainer pay

(a) For the purpose of this section, ''period for which he receives pay'' means the full calendar period for which a retired officer of a regular component of a uniformed service receives the pay of a position when employed on a full-time basis, but only the days for which he actually receives that pay when employed on a part-time or intermittent basis.

(b) A retired officer of a regular component of a uniformed service who holds a position is entitled to receive the full pay of the position, but during the period for which he receives pay, his retired or retainer pay shall be reduced to an annual rate equal to the first $2,000 of the retired or retainer pay plus one-half of the remainder, if any. In the operation of the formula for the reduction of retired or retainer pay under this subsection, the amount of $2,000 shall be increased, from time to time, by appropriate percentage, in direct proportion to each increase in retired or retainer pay under section 1401a(b) of title 10 to reflect changes in the Consumer Price Index.

(c)(1) If any member or former member of a uniformed service is receiving retired or retainer pay and is employed in a position the annual rate of basic pay for which, when combined with the member's annual rate of retired or retainer pay (reduced as provided under subsection (b) of this section), exceeds the rate of basic pay then currently paid for level V of the Executive Schedule, such member's retired or retainer pay shall be reduced by an amount computed under paragraph (2) of this subsection. The amounts of the reductions shall be deposited to the general fund of the Treasury of the United States.

(2) The amount of each reduction under paragraph (1) of this subsection allocable for any pay period in connection with employment in a position shall be equal to the retired or retainer pay

allocable to the pay period (reduced as provided under subsection (b) of this section), except that the amount of the reduction may not result in—

(A) the amount of retired or retainer pay allocable to the pay period after being reduced, when combined with the basic pay for the employment during the pay period, being at a rate less than the rate of basic pay then currently paid for level V of the Executive Schedule; or

(B) the amount of retired pay or retainer pay being reduced to an amount less than the amount deducted from the retired or retainer pay as a result of participation in any survivor's benefits in connection with the retired or retainer pay or veterans insurance programs.

(d) The reduction in retired or retainer pay required by this section does not apply to a member or former member of a uniformed service who is receiving retired or retainer pay—

(1) whose retired or retainer pay is computed, in whole or in part, based on disability—

(A) resulting from injury or disease received in line of duty as a direct result of armed conflict; or

(B) caused by an instrumentality of war and incurred in line of duty during a period of war as defined by sections 101 and 1101 of title 38; or

(2) employed on a temporary (full-time or part-time) basis, any other part-time basis, or an intermittent basis, for the first 30-day period for which he receives pay.

The exemption from reduction in retired or retainer pay under paragraph (2) of this subsection does not apply longer than—

(i) the first 30-day period for which he receives pay under one appointment from the position in which he is employed, if he is serving under not more than one appointment; and

(ii) the first period for which he receives pay under more than one appointment, in a fiscal year, which consists in the aggregate of 30 days, from all positions in which he is employed, if he is serving under more than one appointment in that fiscal year.

(e) The Office of Personnel Management may, during the 5-year period after the effective date of the Civil Service Reform Act of 1978 authorize exceptions to the restrictions in subsections (a), (b), and (c) of this section only when necessary to meet special or emergency employment needs which result from a severe shortage of well qualified candidates in positions of medical officers which otherwise cannot be readily met. An exception granted by the Office with respect to any individual shall terminate upon a break in service of 3 days or more.

(f)(1) Notwithstanding any other provision of law, the retired or retainer pay of a former member of a uniformed service shall not be reduced while such former member is temporarily employed, during the period described in paragraph (2) or any portion thereof, under the administrative authority of the Administrator, Federal Aviation Administration, or of the Secretary of Defense to perform duties in the operation of the air traffic control system or to train others to perform such duties.

(2) The provisions of paragraph (1) of this subsection shall be in effect for any period ending not later than December 31, 1989, during which the Administrator, Federal Aviation Administration, or the Secretary of Defense determines that there is an unusual shortage of air traffic controllers performing duties under the administrative authority of such Administrator or such Secretary, respectively.

(g)(1) The Director of the Office of Personnel Management may, at the request of the head of an Executive agency—

(A) waive the application of the preceding provisions of this section on a case-by-case basis for employees in positions for which there is exceptional difficulty in recruiting or retaining a qualified employee; or

(B) grant authority to the head of such agency to waive the application of the preceding provisions of this section, on a case-by-case basis, for an employee serving on a temporary basis, but only if, and for so long as, the authority is necessary due to an emergency involving a direct threat to life or property or other unusual circumstances.

(2) The Office shall prescribe regulations for the exercise of any authority under this subsection, including criteria for any exercise of authority and procedures for terminating a delegation of authority under paragraph (1)(B).

(h)(1) If warranted by circumstances described in subsection (g)(1)(A) or (B) (as applicable), the Director of the Administrative Office of the United States Courts shall, with respect to an employee in the judicial branch, have the same waiver authority as would be available to the Director of the Office of Personnel Management, or a duly authorized agency head, under subsection (g) with respect to an employee of an Executive agency.

(2) Authority under this subsection may not be exercised with respect to a justice or judge of the United States, as defined in section 451 of title 28.

(i)(1) If warranted by circumstances described in subsection (g)(1)(A) or (B) (as applicable), an official or committee designated in paragraph (2) shall, with respect to the employees specified in the applicable subparagraph of such paragraph, have the same waiver authority as would be available to the Director of the Office of Personnel Management, or a duly authorized agency head, under subsection (g) with respect to an employee of an Executive agency.

(2) Authority under this subsection may be exercised—

(A) with respect to an employee of an agency in the legislative branch, by the head of such agency;

(B) with respect to an employee of the House of Representatives, by the Speaker of the House of Representatives; and

(C) with respect to an employee of the Senate, by the Committee on Rules and Administration of the Senate.

(3) Any exercise of authority under this subsection shall be in conformance with such written policies and procedures as the agency head,

the Speaker of the House of Representatives, or the Committee on Rules and Administration of the Senate (as applicable) shall prescribe, consistent with the provisions of this subsection.

(j) For the purpose of subsections (g) through (i), ''Executive agency'' shall not include the General Accounting Office.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 482; Pub. L. 95–454, title III, § 308(a), (c)–(f)(1), Oct. 13, 1978, 92 Stat. 1149–1151; Pub. L. 97–276, § 151(b), Oct. 2, 1982, 96 Stat. 1200; Pub. L. 98–396, title III, § 306, Aug. 22, 1984, 98 Stat. 1424; Pub. L. 98–525, title XV, § 1537(b), Oct. 19, 1984, 98 Stat. 2635; Pub. L. 99–88, title I, § 100, Aug. 15, 1985, 99 Stat. 351; Pub. L. 99–500, § 101(*l*), Oct. 18, 1986, 100 Stat. 1783–308, and Pub. L. 99–591, § 101(*l*), Oct. 30, 1986, 100 Stat. 3341–308; Pub. L. 100–202, §§ 101(*l*) [title I, § 101], 106, Dec. 22, 1987, 101 Stat. 1329–358, 1329–362, 1329–433; Pub. L. 100–457, title I, Sept. 30, 1988, 102 Stat. 2129; Pub. L. 101–509, title V, § 529 [title I, § 108(a)], Nov. 5, 1990, 104 Stat. 1427, 1449; Pub. L. 101–510, div. A, title XII, § 1206(j)(1), Nov. 5, 1990, 104 Stat. 1663; Pub. L. 102–83, § 5(c)(2), Aug. 6, 1991, 105 Stat. 406; Pub. L. 102–190, div. A, title VI, § 655(a)(1), Dec. 5, 1991, 105 Stat. 1390; Pub. L. 102–378, § 8(a), Oct. 2, 1992, 106 Stat. 1359.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 3102(a)–(e).	Aug. 19, 1964, Pub. L. 88–448, § 201(a)–(e), 78 Stat. 484.

The word ''position'' is substituted for ''civilian office'' throughout the section to conform to the definition in section 5531.

In subsection (d), the words ''and issue'' are omitted as surplusage.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

REFERENCES IN TEXT

Level V of the Executive Schedule, referred to in subsec. (c)(1), (2)(A), is set out in section 5316 of this title.

The effective date of the Civil Service Reform Act of 1978, referred to in subsec. (e), is 90 days after the date of the enactment of Pub. L. 95–454, which was approved Oct. 13, 1978.

CODIFICATION

Amendment of subsec. (f)(2) by Pub. L. 99–500 and 99–591 is based on provisions under the subheading ''Federal Aviation Administration, Operations'', in title I of H.R. 5205 (Department of Transportation and Related Agencies Appropriations Act, 1987), as incorporated by reference by section 101(*l*) of Pub. L. 99–500 and 99–591, and enacted into law by section 106 of Pub. L. 100–202.

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

AMENDMENTS

1992—Subsec. (g). Pub. L. 102–378 repealed Pub. L. 101–510, § 1206(j)(1). See 1990 Amendment note below.

1991—Subsec. (d)(1)(B). Pub. L. 102–83 substituted reference to section 1101 of title 38 for reference to section 301 of title 38.

Subsecs. (h) to (j). Pub. L. 102–190 added subsecs. (h) to (j).

1990—Subsec. (g). Pub. L. 101–510, § 1206(j)(1), which added a subsec. (g) identical to that added by Pub. L. 101–509, see below, was repealed by Pub. L. 102–378, § 8(a). See Elimination of Duplicative Amendments note below.

Subsec. (g). Pub. L. 101–509 added subsec. (g).

1988—Subsec. (f)(2). Pub. L. 100–457 substituted ''1989'' for ''1988''.

1987—Subsec. (f)(2). Pub. L. 100–202, § 101(*l*) [title I, § 101], substituted ''1988'' for ''1987''.

For amendment by section 106 of Pub. L. 100–202, see 1986 Amendment note below.

1986—Subsec. (f)(2). Pub. L. 99–500 and Pub. L. 99–591, § 101(*l*), as enacted by Pub. L. 100–202, § 106, substituted ''December 31, 1987'' for ''December 31, 1986''. See Codification note above.

1985—Subsec. (f)(2). Pub. L. 99–88 substituted ''December 31, 1986'' for ''December 31, 1985''.

1984—Subsec. (f)(1). Pub. L. 98–525, § 1537(b)(1), inserted ''or of the Secretary of Defense''.

Subsec. (f)(2). Pub. L. 98–525, § 1537(b)(2), inserted ''or the Secretary of Defense'' and ''or such Secretary, respectively''.

Pub. L. 98–396 substituted ''December 31, 1985'' for ''December 31, 1984''.

1982—Subsec. (f). Pub. L. 97–276 added subsec. (f).

1978—Pub. L. 95–454, § 308(f)(1), substituted ''members of the uniformed services; reduction in retired or retainer pay'' for ''officers of the uniformed services; reduction in retired or retirement pay; exceptions'' in section catchline.

Subsec. (b). Pub. L. 95–454, § 308(e), substituted ''or retainer'' for ''or retirement'' wherever appearing.

Subsec. (c). Pub. L. 95–454, § 308(a), added subsec. (c) and redesignated former subsec. (c) as (d).

Subsec. (d). Pub. L. 95–454, § 308(a), (c), redesignated former subsec. (c) as (d), substituted provisions respecting retainer pay, for provisions respecting retirement pay, struck out reference to requirements under subsec. (b) of this section, and redesignated former subsec. (d) as (e).

Subsec. (e). Pub. L. 95–454, § 308(a), (d), redesignated former subsec. (d) as (e) and substituted provisions relating to functions of the Office of Personnel Management under this section with respect to exceptions from restrictions, for provisions relating to functions of the Civil Service Commission under this section with respect to exceptions from restrictions under former subsec. (b) of this section.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–378 effective Nov. 5, 1990, see section 9(b)(6) of Pub. L. 102–378, set out as a note under section 6303 of this title.

EFFECTIVE AND TERMINATION DATES OF 1990 AMENDMENTS

Section 1206(j)(4) of Pub. L. 101–510 provided that (A) unless sections 5532(g), 8344(i), and 8468(f) of this title did not take effect as provided in subpar. (B), such sections would cease to be in effect on the earlier of Oct. 1, 1992, or the date of the enactment of the Federal Employees Pay Comparability Act of 1990 [Nov. 5, 1990], and (B) sections 5532(g), 8344(i), and 8468(f) of this title would not take effect if the Federal Employees Pay Comparability Act of 1990 [Pub. L. 101–509] was enacted before the date of the enactment of this Act [Nov. 5, 1990]. Pub. L. 102–378, § 8(a), repealed Pub. L. 101–510, § 1206(j)(4), and provided that this title shall read as if section 1206(j)(4) had not been enacted.

Amendment by Pub. L. 101–509 effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title III, § 305] of Pub. L. 101–509, set out as an Effective Date of 1990 Amendment note under section 5301 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 106 of Pub. L. 100–202 provided that the amendment made by Pub. L. 99–500 and 99–591 is effective on date of enactment [Oct. 18, 1986] of the ''pertinent joint resolution'' making continuing appropriations for fiscal year 1987 [Pub. L. 99–500 and 99–591].

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–525 effective Oct. 1, 1984, see section 1537(f) of Pub. L. 98–525, set out as a note under section 4109 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–276 effective at 5 o'clock ante meridian eastern daylight time, Aug. 3, 1981, see section 151(h)(1) of Pub. L. 97–276, set out as an Effective Date note under section 5546a of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

ELIMINATION OF DUPLICATIVE AMENDMENTS

Section 8(a) of Pub. L. 102–378 provided that: ''Subsections (i) and (j) of section 1206 of the Defense Acquisition Workforce Improvement Act, as contained in the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101–510; 104 Stat. 1662, 1663) [enacting section 5380 of this title, amending this section and sections 8344 and 8468 of this title, and enacting provisions set out as a note under this section and section 5380 of this title], are repealed, and title 5, United States Code, shall read as if such subsections had not been enacted.''

ANNUAL REPORT TO CONGRESS

Section 655(d) of Pub. L. 102–190 provided that:

''(1) For the purpose of this subsection, the term 'agency in the legislative branch' has the meaning given such term by section 5531(4) of title 5, United States Code, as amended by subsection (a).

''(2) Each agency in the legislative branch shall submit to the Speaker of the House of Representatives and the Committee on Rules and Administration of the Senate, for each calendar year, a written report on how any authority made available as a result of the enactment of this section [amending this section and sections 5531, 8344, and 8468 of this title] was used by such agency during the period covered by such report.

''(3) A report under this subsection—

''(A) shall include the number of instances in which each type of authority was exercised, the circumstances justifying the exercise of authority, and, unless previously submitted, a description of the policies and procedures governing each type of authority exercised; and

''(B) shall be submitted not later than 30 days after the end of the calendar year to which it relates.''

REDUCTION IN PAY OF MEMBERS OF A UNIFORMED SERVICE HOLDING CIVILIAN POSITIONS WHILE RECEIVING RETIRED OR RETAINER PAY

Pub. L. 97–253, title III, §301(d), Sept. 8, 1982, 96 Stat. 791, as amended by Pub. L. 97–346, §3(h), Oct. 15, 1982, 96 Stat. 1648, which provided that in the case of any member or former member of a uniformed service who, during any period in fiscal year 1983, 1984, or 1985, was receiving retired or retainer pay and held a civilian position, there would be deducted from the pay for such position, in accordance with regulations issued by the Office of Personnel Management, an amount equal to the amount of any increase in such individual's retired or retainer pay pursuant to section 1401a(b) of Title 10, Armed Forces, which took effect during any of such fiscal years in which he held such a civilian position and which was allocable to the period of actual employment in such civilian position, was repealed by Pub. L. 98–369, div. B, title II, §2203, July 18, 1984, 98 Stat. 1059, effective with respect to pay periods beginning after July 18, 1984.

DUAL PAY REQUIREMENTS FOR PAY PERIODS SUBSEQUENT TO ENACTMENT OF CIVIL SERVICE ACT OF 1978

Section 308(g) of Pub. L. 95–454 provided that:

''(1) Except as provided in paragraph (2) of this subsection, the amendments made by this section [amending sections 5531 and 5532 of this title] shall apply only with respect to pay periods beginning after the effective date of this Act [see Effective Date note set out under section 1101 of this title] and only with respect to members of the uniformed services who first receive retired or retainer pay (as defined in section 5531(3) of title 5, United States Code (as amended by this section)), after the effective date of this Act.

''(2) Such amendments shall not apply to any individual employed in a position on the date of the enactment of this Act [Oct. 13, 1978] so long as the individual continues to hold any such position (disregarding any break in service of 3 days or less) if the individual, on that date, would have been entitled to retired or retainer pay but for the fact the individual does not satisfy any applicable age requirement.

''(3) The provisions of section 5532 of title 5, United States Code, as in effect immediately before the effective date of this Act, shall apply with respect to any retired officer of a regular component of the uniformed services who is receiving retired pay on or before such date, or any individual to whom paragraph (2) applies, in the same manner and to the same extent as if the preceding subsections of this section had not been enacted.''

CROSS REFERENCES

Restrictions on performance of civil functions by regular officers on active duty, see section 973 of Title 10, Armed Forces.

Time limitation on claims against Government employees who received dual compensation in violation of the dual compensation laws, see section 3712 of Title 31, Money and Finance.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5531, 8116, 8339, 8344 of this title; title 10 section 2113; title 20 section 4512; title 22 sections 2584, 4048; title 24 sections 417, 421; title 28 section 371; title 38 section 7426; title 39 sections 410, 1005; title 42 sections 2038, 12619.

§ 5533. Dual pay from more than one position; limitations; exceptions

(a) Except as provided by subsections (b), (c), and (d) of this section, an individual is not entitled to receive basic pay from more than one position for more than an aggregate of 40 hours of work in one calendar week (Sunday through Saturday).

(b) Except as otherwise provided by subsection (c) of this section, the Office of Personnel Management, subject to the supervision and control of the President, may prescribe regulations under which exceptions may be made to the restrictions in subsection (a) of this section when appropriate authority determines that the exceptions are warranted because personal services otherwise cannot be readily obtained.

(c)(1) Unless otherwise authorized by law and except as otherwise provided by paragraph (2) or (4) of this subsection, appropriated funds are not available for payment to an individual of pay from more than one position if the pay of one of the positions is paid by the Secretary of the Senate or the Clerk of the House of Representatives, or one of the positions is under the Office of the Architect of the Capitol, and if the aggregate gross pay from the positions exceeds $7,724 a year ($10,540, in the case of pay disbursed by the Secretary of the Senate).

(2) Notwithstanding paragraph (1) of this subsection, appropriated funds are not available for payment to an individual of pay from more than one position, for each of which the pay is dis-

bursed by the Clerk of the House of Representatives, if the aggregate gross pay from those positions exceeds the maximum per annum gross rate of pay authorized to be paid to an employee out of the clerk hire allowance of a Member of the House.

(3) For the purposes of this subsection, ''gross pay'' means the annual rate of pay (or equivalent thereof in the case of an individual paid on other than an annual basis) received by an individual.

(4) Paragraph (1) of this subsection does not apply to pay on a when-actually-employed basis received from more than one consultant or expert position if the pay is not received for the same day.

(d) Subsection (a) of this section does not apply to—

(1) pay on a when-actually-employed basis received from more than one consultant or expert position if the pay is not received for the same hours of the same day;

(2) pay consisting of fees paid on other than a time basis;

(3) pay received by a teacher of the public schools of the District of Columbia for employment in a position during the summer vacation period;

(4) pay paid by the Tennessee Valley Authority to an employee performing part-time or intermittent work in addition to his normal duties when the Authority considers it to be in the interest of efficiency and economy;

(5) pay received by an individual holding a position—

(A) the pay of which is paid by the Secretary of the Senate or the Clerk of the House of Representatives; or

(B) under the Architect of the Capitol;

(6) pay paid by the United States Coast Guard to an employee occupying a part-time position of lamplighter; and

(7) pay within the purview of any of the following statutes:

(A) section 162 of title 2;

(B) section 23(b) of title 13;

(C) section 327 of title 15;

(D) section 907 of title 20;

(E) section 873 of title 33; or

(F) section 631 or 631a of title 31, District of Columbia Code.

[(G) Repealed. Pub. L. 96–70, title III, § 3302(e)(8), Sept. 27, 1979, 93 Stat. 498.]

(e)(1) This section does not apply to an individual employed under sections 174j–1 to 174j–7 or 174k of title 40.

(2) Subsection (c) of this section does not apply to pay received by a teacher of the public schools of the District of Columbia for employment in a position during the summer vacation period.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 483; Pub. L. 90–57, § 105(h), July 28, 1967, 81 Stat. 143; Pub. L. 90–206, title II, § 214(*o*), Dec. 16, 1967. 81 Stat. 637; Pub. L. 91–510, title IV, § 477(d), Oct. 26, 1970, 84 Stat. 1195; Pub. L. 93–140, § 23, Oct. 26, 1973, 87 Stat. 508; Pub. L. 93–145, § 101, Nov. 1, 1973, 87 Stat. 532; Pub. L. 94–183, § 2(21), Dec. 31, 1975, 89 Stat. 1058; Pub. L. 94–440, title I, § 103, Oct. 1, 1976, 90 Stat. 1443; Pub. L. 95–454, title IX, § 906(a)(2), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 96–70, title III, § 3302(e)(8), Sept. 27, 1979, 93 Stat. 498.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 3105 (less (e)).	Aug. 19, 1964, Pub. L. 88–448, § 301 (less (e)), 78 Stat. 488.

In subsection (a), the words ''an individual'' are substituted for ''civilian personnel''.

In subsection (b), the words ''and issue'' are omitted as surplusage.

In subsection (c), the words ''appropriated funds are not'' are substituted for ''no funds appropriated by any Act shall be''. The words ''$2,000 a year'' are substituted for ''the sum of $2,000 per annum''.

In subsection (d)(7)(D), reference to ''section 907 of title 20'' is substituted for 5 U.S.C. 3105(d)(7)(F) to reflect the scheduled transfer of 5 U.S.C. 2358(b) to title 20.

In subsection (d)(7)(H), the words ''of chapter 7'' are omitted as surplusage.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

REFERENCES IN TEXT

Sections 631 and 631a of title 31, District of Columbia Code, referred to in subsec. (d)(7)(F), were transferred to sections 31–1009 and 31–1010, respectively, of Title 31, Education and Cultural Institutions, of the District of Columbia Code.

AMENDMENTS

1979—Subsec. (d)(7). Pub. L. 96–70 struck out subpar. (G) which made reference to section 102 of title 2, Canal Zone Code.

1978—Subsec. (b). Pub. L. 95–454 substituted ''Office of Personnel Management'' for ''Civil Service Commission''.

1976—Subsec. (c)(1). Pub. L. 94–440 inserted ''($10,540, in the case of pay disbursed by the Secretary of the Senate)'' after ''exceeds $7,724 a year''.

1975—Subsec. (d)(7). Pub. L. 94–183 struck out subpar. (F) relating to section 3335 (a) or (c) of title 39, and redesignated subpars. (G) and (H) as (F) and (G), respectively.

1973—Subsec. (c)(1), (4). Pub. L. 93–145 inserted reference to par. (4) in par. (1) and added par. (4).

Subsec. (e). Pub. L. 93–140 designated existing provisions as par. (1) and added par. (2).

1970—Subsec. (c)(1). Pub. L. 91–510 inserted ''and except as otherwise provided by paragraph (2) of this section'' after ''authorized by law'' and substituted ''if the aggregate gross pay from the positions exceeds $7,724 a year'' for ''if—

''(A) the pay of one or more of the positions is fixed at a single gross per annum rate, and the aggregate gross pay from the positions exceeds $6,256 a year, or

''(B) the pay of each such position is fixed at a basic rate plus additional compensation authorized by law, and the aggregate basic pay of the positions exceeds $2,000 a year''.

Subsec. (c)(2). Pub. L. 91–510 substituted provision making appropriated funds unavailable for payment to an individual of pay from more than one position, for each of which pay is disbursed by the Clerk of the House, if the aggregate gross pay from those positions exceeds the maximum per annum gross rate of pay authorized to be paid to an employee out of clerk hire allowance of a Member of the House for definition of ''gross pay'', now incorporated in cl. (3).

Subsec. (c)(3). Pub. L. 91–510 redesignated former cl. (2) as (3) and deleted provision which included in gross pay of an individual receiving basic pay plus additional compensation provided by law the aggregate amount

received as basic and additional compensation, but excluded sums received as premium pay under subchapter V of this chapter.

1967—Subsec. (c). Pub. L. 90–206 provided for an increase in the aggregate gross pay allowed to certain specified congressional employees on two payrolls as dual office compensation.

Pub. L. 90–57 designated existing dual pay limitation provisions relating to basic compensation as par. (1), redesignated cls. (1) and (2) as (A) and (B), eliminated from cl. (A) provision for pay for one of the positions by the Secretary of the Senate and restricted such cl. (A) to payments in case of employees receiving basic rates of compensation and added par. (2) dual pay limitations applicable to aggregate gross compensation of employees receiving single per annum rates of compensation.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–70 effective Oct. 1, 1979, see section 3304 of Pub. L. 96–70, set out as an Effective Date note under section 3601 of Title 22, Foreign Relations and Intercourse.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–510 effective immediately prior to noon on Jan. 3, 1971, see section 601(1) of Pub. L. 91–510, set out as a note under section 72a of Title 2, The Congress.

EFFECTIVE DATE OF 1967 AMENDMENTS

Amendment by Pub. L. 90–206 effective at beginning of first pay period which begins on or after Dec. 16, 1967, see section 220(a)(3) of Pub. L. 90–206, set out as a note under section 603 of Title 28, Judiciary and Judicial Procedure.

Amendment by Pub. L. 90–57, effective Aug. 1, 1967, see section 105(k) of Pub. L. 90–57, set out as an Effective Date note under section 61–1 of Title 2, The Congress.

TRANSFER OF FUNCTIONS

Certain functions of Clerk of House of Representatives transferred to Director of Non-legislative and Financial Services by section 7 of House Resolution No. 423, One Hundred Second Congress, Apr. 9, 1992. Director of Non-legislative and Financial Services replaced by Chief Administrative Officer of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

INCREASE IN COMPENSATION OF INDIVIDUALS WHOSE PAY IS DISBURSED BY SECRETARY OF SENATE

1995—The figure ''$10,540'' in subsec. (c)(1) of this section to be deemed to refer, effective Jan. 1, 1995, to the figure ''$22,200'', see section 9 of Salary Directive of President pro tempore of the Senate, Dec. 28, 1994, set out as a note under section 60a–1 of Title 2, The Congress.

1993—The figure ''$10,540'' in subsec. (c)(1) of this section to be deemed to refer, effective Jan. 1, 1993, to the figure ''$21,764'', see section 9 of Salary Directive of President pro tempore of the Senate, Dec. 17, 1992, formerly set out as a note under section 60a–1 of Title 2.

1992—The figure ''$10,540'' in subsec. (c)(1) of this section to be deemed to refer, effective Jan. 1, 1992, to the figure ''$20,987'', see section 9 of Salary Directive of President pro tempore of the Senate, Dec. 18, 1991, formerly set out as a note under section 60a–1 of Title 2.

1991—The figure ''$10,540'' in subsec. (c)(1) of this section to be deemed to refer, effective Jan. 1, 1991, to the figure ''$20,141'', see section 9 of Salary Directive of President pro tempore of the Senate, Dec. 20, 1990, formerly set out as a note under section 60a–1 of Title 2.

1990—The figure ''$10,540'' in subsec. (c)(1) of this section to be deemed to refer, effective Jan. 1, 1990, to the figure ''$19,347'', see section 9 of Salary Directive of President pro tempore of the Senate, Dec. 21, 1989, formerly set out as a note under section 60a–1 of Title 2.

1989—The figure ''$10,540'' in subsec. (c)(1) of this section to be deemed to refer, effective Jan. 1, 1989, to the figure ''$18,674'', see section 9 of Salary Directive of President pro tempore of the Senate, Dec. 9, 1988, formerly set out as a note under section 60a–1 of Title 2.

1988—The figure ''$10,540'' in subsec. (c)(1) of this section to be deemed to refer, effective Jan. 1, 1988, to the figure ''$17,938'', see section 9 of Salary Directive of President pro tempore of the Senate, Jan. 4, 1988, formerly set out as a note under section 60a–1 of Title 2.

1987—The figure ''$10,540'' in subsec. (c)(1) of this section to be deemed to refer, effective Jan. 1, 1987, to the figure ''$17,586'', see section 9 of Salary Directive of President pro tempore of the Senate, Dec. 19, 1986, formerly set out as a note under section 60a–1 of Title 2.

1985—The figure ''$10,540'' in subsec. (c)(1) of this section to be deemed to refer, effective Jan. 1, 1985, to the figure ''$17,073'', see section 9 of Salary Directive of President pro tempore of the Senate, Jan. 4, 1985, formerly set out as a note under section 60a–1 of Title 2.

1984—The figure ''$10,540'' in subsec. (c)(1) of this section to be deemed to refer, effective Jan. 1, 1984, to the figure ''$16,495'', see section 9 of Salary Directive of President pro tempore of the Senate, Dec. 20, 1983, formerly set out as a note under section 60a–1 of Title 2.

1982—The figure ''$10,540'' in subsec. (c)(1) of this section to be deemed to refer, effective Oct. 1, 1982, to the figure ''$15,860'', see section 9 of Salary Directive of President pro tempore of the Senate, Oct. 1, 1982, formerly set out as a note under section 60a–1 of Title 2.

1980—The figure ''$10,540'' in subsec. (c)(1) of this section to be deemed to refer, effective Oct. 1, 1980, to the figure ''$14,551'', see section 9 of Salary Directive of President pro tempore of the Senate, Oct. 1, 1980, formerly set out as a note under section 60a–1 of Title 2.

1979—The figure ''$10,540'' in subsec. (c)(1) of this section to be deemed to refer, effective Oct. 1, 1979, to the figure ''$13,337'', see section 9 of Salary Directive of President pro tempore of the Senate, Oct. 13, 1979, formerly set out as a note under section 60a–1 of Title 2.

1978—The figure ''$10,540'' in subsec. (c)(1) of this section to be deemed to refer, effective Oct. 1, 1978, to the figure ''$12,480'', see section 9 of Salary Directive of President pro tempore of the Senate, Oct. 9, 1978, formerly set out as a note under section 60a–1 of Title 2.

1977—The figure ''$10,540'' in subsec. (c)(1) of this section to be deemed to refer, effective Oct. 1, 1977, to the figure ''$11,830'', see section 9 of Salary Directive of President pro tempore of the Senate, Sept. 27, 1977, formerly set out as a note under section 60a–1 of Title 2.

1976—The figure ''$10,540'' in subsec. (c)(1) of this section to be deemed to refer, effective Oct. 1, 1976, to the figure ''$11,050'', see section 9 of Salary Directive of President pro tempore of the Senate, Oct. 8, 1976, formerly set out as a note under section 60a–1 of Title 2.

1973—The figure ''7,724'' in subsection (c)(1) of this section, deemed to refer, effective Jan. 1, 1973, to the figure ''9,080'', see section 9 of Salary Directive of President pro tempore of the Senate, Dec. 16, 1972, formerly set out as a note under section 60a–1 of Title 2.

1972—The figure ''7,724'' in subsection (c)(1) of this section, deemed to refer, effective Jan. 1, 1972, to the figure ''8,637'', see section 9 of Salary Directive of President pro tempore of the Senate, Dec. 23, 1971, formerly set out as a note under section 60a–1 of Title 2.

1971—The figure ''7,724'' in subsection (c)(1) of this section, deemed to refer, effective Feb. 1, 1971, to the figure ''8,187'', see section 9 of Salary Directive of President pro tempore of the Senate, Jan. 15, 1971, formerly set out as a note under section 60a–1 of Title 2.

1970—Adjustment by President pro tempore of the Senate with respect to Senate, by Finance Clerk of House with respect to House of Representatives, and by Architect of Capitol with respect to Office of Architect of Capitol, effective on the first day of the first pay pe-

riod which begins on or after Dec. 27, 1969, of rates of pay of employees of legislative branch subject to section 214 of Pub. L. 90–206 with certain exceptions, by amounts of adjustment for corresponding rates for employees subject to the General Schedule, set out in section 5332 of this title, which had been made by section 2 of Pub. L. 91–231 raising such rates by 6 percent, see Pub. L. 91–231, set out as a note under section 5332 of this title.

1969—The figure ''6,662'' in subsection (c)(1)(A) of this section, as increased by Order of June 12, 1968, deemed, on and after July 1, 1969, to refer to the figure ''7,287'', see section 4(d) of Salary Directive of President pro tempore of the Senate, June 17, 1969, formerly set out as a note under section 60a–1 of Title 2.

1968—The figure ''6,256'' in subsection (c)(1)(A) of this section deemed to refer, on and after July 1, 1968, to the figure ''6,622'', see section 1(i) of Salary Directive of President pro tempore of the Senate, June 12, 1968, formerly set out as a note under section 60a–1 of Title 2.

CROSS REFERENCES

Time limitation on claims against Government employees who received dual compensation in violation of the dual compensation laws, see section 3712 of Title 31, Money and Finance.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5531 of this title; title 2 section 162; title 13 section 23; title 15 section 327; title 20 section 907; title 22 section 2396; title 25 sections 2011, 2012; title 33 section 873; title 39 section 1001.

§ 5534. Dual employment and pay of Reserves and National Guardsmen

A Reserve of the armed forces or member of the National Guard may accept a civilian office or position under the Government of the United States or the government of the District of Columbia, and he is entitled to receive the pay of that office or position in addition to pay and allowances as a Reserve or member of the National Guard.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 484.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 30r(c) (1st sentence).	Aug. 10, 1956, ch. 1041, § 29(c) (1st sentence), 70A Stat. 632.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

§ 5534a. Dual employment and pay during terminal leave from uniformed services

A member of a uniformed service who has performed active service and who is on terminal leave pending separation from, or release from active duty in, that service under honorable conditions may accept a civilian office or position in the Government of the United States, its territories or possessions, or the government of the District of Columbia, and he is entitled to receive the pay of that office or position in addition to pay and allowances from the uniformed service for the unexpired portion of the terminal leave.

(Added Pub. L. 90–83, § 1(22), Sept. 11, 1967, 81 Stat. 199.)

HISTORICAL AND REVISION NOTES

This section amends chapter 55 of title 5, United States Code, by inserting a new section 5534a. This section is based on subsections (a) and (f) of former 5 U.S.C. 61a–1 the source statute for which (act of Nov. 21, 1945, ch. 489, 59 Stat. 584) was repealed by the act of September 6, 1966, Public Law 89–554 (sec. 8, 80 Stat. 653). Senate Report 1380, 89th Congress, second session, pages 449, 511, explains that the source was repealed since it had been rendered obsolete by section 4(c) of the Armed Forces Leave Act of 1946, as amended (37 U.S.C. 501), and section 219(c) of the Public Health Service Act, as added August 9, 1950 (ch. 654, sec. 2, 64 Stat. 426; 42 U.S.C. 210–1(c)), and that any existing rights are preserved by section 8 of Public Law 89–554.

At the time of enactment of the act of November 21, 1945, there was no authority to make lump-sum leave payments to members of the uniformed services who were being separated from or released from active duty in the uniformed services. Accordingly, they were placed on terminal leave until the expiration of the unused portion of their accumulated and current accrued leave, and only then separated or released. The act of November 21, 1945, in part, authorized the employment of these members during terminal leave and provided they were entitled to receive, in addition to the payment from the employment, military pay and allowances for the unexpired portion of the terminal leave. The Armed Forces Leave Act of 1946 authorized lump-sum leave payments of unused accumulated and current accrued leave. Generally, thereafter, members of the uniformed services were not placed on terminal leave, but were separated and paid a lump-sum leave payment. However, in certain instances a member may be placed on terminal leave. Such a case was considered recently by the Comptroller General of the United States (see B–157500, Oct. 13, 1965, 45 Comp. Gen. 180. In view of the foregoing, it is concluded that subsection (a) of former 5 U.S.C. 61a–1 had prospective effect and should have been reenacted in title 5, U.S.C., by Public Law 89–554.

In section 5534a, the words ''A member of a uniformed service who has performed active service'' are substituted for ''Any person, who, shall have performed active service in the Armed Forces'' to conform to the style of title 5 and the definition of ''uniformed services'' in 5 U.S.C. 2101 which is coextensive with the definition of ''armed forces'' in subsection (f) of former 5 U.S.C. 61a–1. Reorganization Plan No. 2 of 1965 (79 Stat. 1318), effective July 13, 1965, consolidated the Coast and Geodetic Survey and the Weather Bureau to form a new agency in the Department of Commerce to be known as the Environmental Science Services Administration. The words ''subsequent to May 1, 1940'' are omitted as executed. The word ''territories'' is substituted for ''Territories'' inasmuch as there now are no incorporated territories. The words ''(including any corporation created under authority of an act of Congress which is either wholly controlled or wholly owned by the Government of the United States, or any department, agency, or establishment thereof, whether or not the employees thereof are paid from funds appropriated by Congress)'' are omitted as included in ''a civilian office or position in the Government of the United States''. The word ''pay'' is substituted for ''compensation.''

EFFECTIVE DATE

Section effective Sept. 6, 1966, for all purposes, see section 9(h) of Pub. L. 90–83, set out as an Effective Date of 1967 Amendment note under section 5102 of this title.

§ 5535. Extra pay for details prohibited

(a) An officer may not receive pay in addition to the pay for his regular office for performing the duties of a vacant office as authorized by sections 3345–3347 of this title.

(b) An employee may not receive—

(1) additional pay or allowances for performing the duties of another employee; or

(2) pay in addition to the regular pay received for employment held before his appointment or designation as acting for or instead of an occupant of another position or employment.

This subsection does not prevent a regular and permanent appointment by promotion from a lower to a higher grade of employment.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 484.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(a)	5 U.S.C. 9.	R.S. §182.
(b)	5 U.S.C. 69 (1st 34 words).	R.S. §1764 (1st 34 words).
	5 U.S.C. 72.	Aug. 1, 1914, ch. 223, §12, 38 Stat. 680.

Subsection (a) was part of title IV of the Revised Statutes. The Act of July 26, 1947, ch. 343, §201(d), as added Aug. 10, 1949, ch. 412, §4, 63 Stat. 579 (former 5 U.S.C. 171–1), which provides ''Except to the extent inconsistent with the provisions of this Act [National Security Act of 1947], the provisions of title IV of the Revised Statutes as now or hereafter amended shall be applicable to the Department of Defense'' is omitted from this title but is not repealed.

In subsection (a), the words ''regular office'' are coextensive with and substituted for ''proper office''.

In subsection (b), former sections 69 (1st 34 words) and 72 are combined and restated for clarity and conciseness. The word ''employee'' is coextensive with and substituted for ''officer or clerk'', ''officer or clerk in the same or any other department'', and ''person employed in the service of the United States''. The words ''under any general or lump-sum appropriation'' are omitted as unnecessary.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

CROSS REFERENCES

Time limitation on claims against Government employees who received dual compensation in violation of the dual compensation laws, see section 3712 of Title 31, Money and Finance.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 22 section 3971; title 39 section 1001.

§ 5536. Extra pay for extra services prohibited

An employee or a member of a uniformed service whose pay or allowance is fixed by statute or regulation may not receive additional pay or allowance for the disbursement of public money or for any other service or duty, unless specifically authorized by law and the appropriation therefor specifically states that it is for the additional pay or allowance.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 484.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 51.	R.S. §170.
.....	5 U.S.C. 69 (less 1st 34 words).	R.S. §1764 (less 1st 34 words).
.....	5 U.S.C. 70.	R.S. §1765.
.....	5 U.S.C. 71.	June 20, 1874, ch. 328, §3, 18 Stat. 109. Sept. 3, 1954, ch. 1263, §7, 68 Stat. 1228.

Sections are consolidated as R.S. §1765 includes the scope of R.S. §170, R.S. §1764, and the Act of June 20, 1874, as amended. So much of R.S. §1764 as relates to details is covered by section 5535.

R.S. §170 was part of title IV of the Revised Statutes. The Act of July 26, 1947, ch. 343, §201(d), as added Aug. 10, 1949, ch. 412, §4, 63 Stat. 579 (former 5 U.S.C. 171–1), which provides ''Except to the extent inconsistent with the provisions of this Act [National Security Act of 1947], the provisions of title IV of the Revised Statutes as now or hereafter amended shall be applicable to the Department of Defense'' is omitted from his title but is not repealed.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

CROSS REFERENCES

Allowance of living quarters, including heat, fuel, and light, to employees having permanent stations in a foreign country, see section 5912 of this title, and section 291 of Title 22, Foreign Relations and Intercourse.

Authorization and payment of benefits to employees detailed to international organizations deemed to comply with this section, see section 3343 of this title.

Time limitation on claims against Government employees who received dual compensation in violation of the dual compensation laws, see section 3712 of Title 31, Money and Finance.

Dual employment and extra duties imposed by Postmaster General, compensation without regard to this section, see section 1001 of Title 39, Postal Service.

Peace Corps program, benefits of personnel detailed to foreign governments or international organizations as meeting requirements of this section, see section 2513 of Title 22, Foreign Relations and Intercourse.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5942a of this title; title 22 sections 3971, 4085, 6104; title 39 section 1001; title 50 section 403e–1.

§ 5537. Fees for jury and witness service

(a) An employee as defined by section 2105 of this title (except an individual whose pay is disbursed by the Secretary of the Senate or the Clerk of the House of Representatives) or an individual employed by the government of the District of Columbia may not receive fees for service—

(1) as a juror in a court of the United States or the District of Columbia; or

(2) as a witness on behalf of the United States or the District of Columbia.

(b) An official of a court of the United States or the District of Columbia may not receive witness fees for attendance before a court, commissioner, or magistrate where he is officiating.

(c) For the purpose of this section, ''court of the United States'' has the meaning given it by section 451 of title 28 and includes the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 484; Pub. L. 90–623, §1(12), Oct. 22, 1968, 82 Stat. 1312; Pub. L. 91–563, §3(a), Dec. 19, 1970, 84 Stat. 1477.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 30*o*.	June 29, 1940, ch. 446, §2, 54 Stat. 689.

The words ''fees for jury service'' are coextensive with and substituted for ''compensation for such service''.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1970—Pub. L. 91–563 substituted ''jury and witness service'' for ''jury service in courts of the United States'' in section catchline, designated existing provisions as subsec. (a), inserted provisions prohibiting payment of fees for jury service in a court of the District of Columbia or for service as a witness on behalf of the United States or the District of Columbia and excepting employees whose pay is disbursed by the Secretary of the Senate or the Clerk of the House of Representatives, and added subsecs. (b) and (c).

1968—Pub. L. 90–623 inserted '', who is entitled to leave under section 6322 of this title,'' after ''individual employed by the government of the District of Columbia''.

CHANGE OF NAME

Reference to United States magistrate or to magistrate deemed to refer to United States magistrate judge pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–623 intended to restate without substantive change the law in effect on Oct. 22, 1968, see section 6 of Pub. L. 90–623, set out as a note under section 5334 of this title.

TRANSFER OF FUNCTIONS

Certain functions of Clerk of House of Representatives transferred to Director of Non-legislative and Financial Services by section 7 of House Resolution No. 423, One Hundred Second Congress, Apr. 9, 1992. Director of Non-legislative and Financial Services replaced by Chief Administrative Officer of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

TERMINATION OF UNITED STATES DISTRICT COURT FOR THE DISTRICT OF THE CANAL ZONE

For termination of the United States District Court for the District of the Canal Zone at end of the ''transition period'', being the 30-month period beginning Oct. 1, 1979, and ending midnight Mar. 31, 1982, see Paragraph 5 of Article XI of the Panama Canal Treaty of 1977 and sections 3831 and 3841 to 3843 of Title 22, Foreign Relations and Intercourse.

SUBCHAPTER V—PREMIUM PAY

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 5304, 5371, 5520a, 5926 of this title; title 19 section 58c; title 22 section 3972.

§ 5541. Definitions

For the purpose of this subchapter—

(1) ''agency'' means—

(A) an Executive agency;

(B) a military department;

(C) an agency in the judicial branch;

(D) the Library of Congress;

(E) the Botanic Garden;

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

(G) the government of the District of Columbia;

(2) ''employee'' means—

(A) an employee in or under an Executive agency;

(B) an individual employed by the government of the District of Columbia; and

(C) an employee in or under the judicial branch, the Library of Congress, the Botanic Garden, and the Office of the Architect of the Capitol, who occupies a position subject to chapter 51 and subchapter III of chapter 53 of this title;

but does not include—

(i) a justice or judge of the United States;

(ii) the head of an agency other than the government of the District of Columbia;

(iii) a teacher, school official, or employee of the Board of Education of the District of Columbia, whose pay is fixed under chapter 15 of title 31, District of Columbia Code;

(iv) a member of—

(I) the Metropolitan Police or the Fire Department of the District of Columbia; or

(II) a member of the United States Secret Service Uniformed Division, a member of the United States Park Police, other than for purposes of section[1] 5545(a) and 5546;

(v) a student-employee as defined by section 5351 of this title;

[(vi) Repealed. Pub. L. 91–375, §6(c)(16), Aug. 12, 1970, 84 Stat. 776;]

(vii) an employee outside the continental United States or in Alaska who is paid in accordance with local native prevailing wage rates for the area in which employed;

(viii) an employee of the Tennessee Valley Authority;

(ix) an individual to whom section 1291(a) of title 50, appendix, applies;

(x) an employee of a Federal land bank, a Federal intermediate credit bank, or a bank for cooperatives;

(xi) an employee whose pay is fixed and adjusted from time to time in accordance with prevailing rates under subchapter IV of chapter 53 of this title, or by a wage board or similar administrative authority serving the same purpose, except as provided by section 5544 of this title;

(xii) an employee of the Transportation Corps of the Army on a vessel operated by the United States, a vessel employee of the Environmental Science Services Administration, a vessel employee of the Department of the Interior, or a vessel employee of the Panama Canal Commission;

(xiii) a ''teacher'' or an individual holding a ''teaching position'' as defined by section 901 of title 20;

(xiv) a Foreign Service officer;

(xv) a member of the Senior Foreign Service;

(xvi) member of the Senior Executive Service; or

[1] So in original. Probably should be ''sections''.

(xvii) a member of the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service; and

(3) ''law enforcement officer'' means an employee who—

(A) is a law enforcement officer within the meaning of section 8331(20) or 8401(17);

(B) in the case of an employee who holds a supervisory or administrative position and is subject to subchapter III of chapter 83, but who does not qualify to be considered a law enforcement officer within the meaning of section 8331(20), would so qualify if such employee had transferred directly to such position after serving as a law enforcement officer within the meaning of such section;

(C) in the case of an employee who holds a supervisory or administrative position and is subject to chapter 84, but who does not qualify to be considered a law enforcement officer within the meaning of section 8401(17), would so qualify if such employee had transferred directly to such position after performing duties described in section 8401(17)(A) and (B) for at least 3 years; and

(D) in the case of an employee who is not subject to subchapter III of chapter 83 or chapter 84—

(i) holds a position that the Office of Personnel Management determines would satisfy subparagraph (A), (B), or (C) if the employee were subject to subchapter III of chapter 83 or chapter 84; or

(ii) is a special agent in the Diplomatic Security Service.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 485; Pub. L. 90–83, §1(4), Sept. 11, 1967, 81 Stat. 196; Pub. L. 91–375, §6(c)(16), Aug. 12, 1970, 84 Stat. 776; Pub. L. 92–392, §4, Aug. 14, 1972, 86 Stat. 573; Pub. L. 94–183, §2(22), Dec. 31, 1975, 89 Stat. 1058; Pub. L. 95–105, title IV, §412(a)(1), Aug. 17, 1977, 91 Stat. 855; Pub. L. 95–426, title II, §204(b)(5)(B), Oct. 7, 1978, 92 Stat. 974; Pub. L. 95–454, title IV, §408(a)(2), Oct. 13, 1978, 92 Stat. 1173; Pub. L. 96–70, title III, §3302(e)(1), Sept. 27, 1979, 93 Stat. 498; Pub. L. 96–465, title II, §2304, Oct. 17, 1980, 94 Stat. 2165; Pub. L. 100–325, §2(i)(1), May 30, 1988, 102 Stat. 582; Pub. L. 101–509, title V, §529 [title IV, §411(a)], Nov. 5, 1990, 104 Stat. 1427, 1469; Pub. L. 102–378, §2(40)(A)–(C), Oct. 2, 1992, 106 Stat. 1351.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 901(a), (d), (e).	June 30, 1945, ch. 212 §101(a), (d), (e), 59 Stat. 295, 296. Sept. 1, 1954, ch. 1208, §202(a), 68 Stat. 1109.
.....	5 U.S.C. 902 (less clause (1) and last sentence of (a)).	June 30, 1945, ch. 212, §102 (less clause (1) and last sentence of (a)), 59 Stat. 296. May 24, 1946, ch. 270, §8(a), 60 Stat. 218. Aug. 4, 1947, ch. 452, §1, 61 Stat. 727. Aug. 18, 1959, Pub. L. 86–168, §202(c) 73 Stat. 389.
.....	5 U.S.C. 2358(a) (as applicable to the Federal Employees Pay Act of 1945, as amended).	July 17, 1959, Pub. L. 86–91, §10(a) (as applicable to the Federal Employees Pay Act of 1945, as amended), 73 Stat. 217.

The section is revised as a definition section. The provisions of former section 901(d) are omitted as unnecessary because the sections referred to state their application and there is no need to restate the application here.

In paragraph (1), the terms ''Executive agency'' and ''military department'' are substituted for the references in former section 901(a) and (e) to the executive branch, including Government-owned or controlled corporations, and the General Accounting Office in view of the definitions in sections 105 and 102.

In paragraph (2)(iii), the words ''chapter 15 of title 31, District of Columbia Code'' are substituted for the reference in former section 902(a)(4) to ''the Teachers Salary Act of June 4, 1924, as amended'' on authority of the provisions contained therein. Enumeration of the individuals to which the provisions apply are added.

In paragraph (2)(iv), the provisions of former section 902(a)(5) and (b)(6) are combined.

In paragraph (2)(v), the words ''student-employee as defined by section 5351 of this title'' are coextensive with and substituted for the enumeration of the employees in former section 902(a)(6).

In paragraph (2)(iv), (vi), (vii), (viii), (ix), (xi), and (xii), the reference to former section 947 is omitted as that section was repealed by the Act of Sept. 12, 1950, ch. 946, §301(85), 64 Stat. 843.

In paragraph (2)(xii), the reference to former section 946 is omitted as unnecessary since that section is not carried into this subchapter. The words ''Panama Canal Company'' are substituted for ''Panama Railroad Company'' on authority of the Act of Sept. 2, 1950, ch. 1049, §2(a)(2), 64 Stat. 1038.

In paragraph (2)(xiii), the words ''as defined by section 901 of title 20'' are added on authority of former section 2351, which section is scheduled for transfer to section 901 of title 20.

The exception for officers and employees of the Inland Waterways Corporation in former section 902(b)(3) is omitted on authority of the Act of July 19, 1963, Pub. L. 88–67, 77 Stat. 81.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

REFERENCES IN TEXT

Chapter 15 of title 31, District of Columbia Code, referred to in par. (2)(iii), was transferred to chapter 11 (§31–1101 et seq.) of Title 31, Education and Cultural Institutions, of the District of Columbia Code.

AMENDMENTS

1992—Par. (3). Pub. L. 102–378 added par. (3).

1990—Par. (2)(iv). Pub. L. 101–509 amended cl. (iv) generally. Prior to amendment, cl. (iv) read as follows: ''a member of the Metropolitan Police, the Fire Department of the District of Columbia, the United States Park Police, or the Executive Protective Service;''.

1988—Par. (2)(xvii). Pub. L. 100–325 added cl. (xvii).

1980—Par. (2)(xiv). Pub. L. 96–465 struck out ''within the meaning of section 401 of the Foreign Service Act of 1946'' after ''officer''.

Par. (2)(xv). Pub. L. 96–465 substituted ''a member of the Senior Foreign Service'' for ''a 'Foreign Service information officer' as provided for by the first section of the Act entitled 'An Act to promote the foreign policy of the United States by strengthening and improving the Foreign Service personnel system of the International Communication Agency through establishment of a Foreign Service Information Officer Corps', approved August 20, 1968''.

1979—Par. (2)(xii). Pub. L. 96–70 substituted ''Commission'' for ''Company''.

1978—Par. (2)(xvi). Pub. L. 95–454 added cl. (xvi).

Par. (2)(xv). Pub. L. 95–426 substituted ''International Communication Agency'' for ''United States Information Agency''.

1977—Par. (2)(xiv), (xv). Pub. L. 95–105 added cls. (xiv) and (xv).

1975—Par. (2)(iv). Pub. L. 94–183 substituted ''Executive Protective Service'' for ''White House Police''.

1972—Par. (2)(xi). Pub. L. 92–392 substituted ''pay'' for ''basic pay'' and provided for determination of pay under subchapter IV of chapter 53 of this title.

1970—Par. (2)(vi). Pub. L. 91–375 repealed cl. (vi) which excluded an employee in the postal field service from definition of ''employee''.

1967—Par. (2)(xii). Pub. L. 90–83 substituted ''Environmental Science Services Administration'' for ''Coast and Geodetic Survey''. See Historical and Revision Notes under section 2101 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–378 effective as of first day of first applicable pay period beginning on or after Oct. 2, 1992, see section 9(b)(9) of Pub. L. 102–378, set out as a note under section 6303 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 529 [title IV, § 411(b)] of Pub. L. 101–509 provided that: ''The amendment made by this section [amending this section] shall be effective on January 1, 1992.''

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. 96–70 effective Oct. 1, 1979, see section 3304 of Pub. L. 96–70, set out as an Effective Date note under section 3601 of Title 22, Foreign Relations and Intercourse.

EFFECTIVE DATE OF 1978 AMENDMENTS

Amendment by Pub. L. 95–454 effective 9 months after Oct. 13, 1978, and congressional review of provisions of sections 401 through 412 of Pub. L. 95–454, see section 415 of Pub. L. 95–454, set out as an Effective Date note under section 3131 of this title.

Section 204(b)(5)(B) of Pub. L. 95–426 provided that the amendment made by such section 204(b)(5)(B) is effective Oct. 1, 1978.

EFFECTIVE DATE OF 1977 AMENDMENT

Section 412(a)(2) of Pub. L. 95–105 provided that: ''The amendments made by paragraph (1) [amending this section] shall take effect on October 1, 1978.''

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92–392 effective on first day of first applicable pay period beginning on or after 90th day after Aug. 19, 1972, see section 15(a) of Pub. L. 92–392, set out as an Effective Date note under section 5341 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–375 effective within 1 year after Aug. 12, 1970, on date established therefor by Board of Governors of United States Postal Service and published by it in Federal Register, see section 15(a) of Pub. L. 91–375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

SHORT TITLE OF 1994 AMENDMENT

Pub. L. 103–329, title VI, § 633(a), Sept. 30, 1994, 108 Stat. 2425, provided that: ''This section [enacting section 5545a of this title, amending sections 5542 and 5547 of this title and section 213 of Title 29, Labor, and enacting provisions set out as notes under section 5545a of this title] may be cited as the 'Law Enforcement Availability Pay Act of 1994'.''

TRANSFER OF FUNCTIONS

Environmental Science Services Administration in Department of Commerce, including offices of Administrator and Deputy Administrator thereof, abolished by Reorg. Plan No. 4 of 1970, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090, set out in the Appendix to this title, which created National Oceanic and Atmospheric Administration in Department of Commerce and transferred personnel, property, records, and unexpended balances of funds of Environmental Science Services Administration to such newly created National Oceanic and Atmospheric Administration. Components of Environmental Science Services Administration thus transferred included Weather Bureau [now National Weather Service], Coast and Geodetic Survey [now National Ocean Survey], Environmental Data Service, National Environmental Satellite Center, and ESSA Research Laboratories.

AUTHORITY OF SECRETARY OF STATE

Except as otherwise provided, Secretary of State to have and exercise any authority vested by law in any official or office of Department of State and references to such officials or offices deemed to refer to Secretary of State or Department of State, as appropriate, see section 2651a of Title 22, Foreign Relations and Intercourse, and section 161(d) of Pub. L. 103–236, set out as a note under section 2651a of Title 22.

SENSE OF CONGRESS RELATING TO LAW ENFORCEMENT OFFICER PROVISIONS

Section 2(40)(D) of Pub. L. 102–378 provided that: ''It is the sense of the Congress that—

''(i) the provisions of section 5541(3) of title 5, United States Code (as added by section 2(40)(C) of this Act)—

''(I) are enacted only for the purposes of pay and not for the purposes of retirement;

''(II) do not reflect any intent of the Congress to change retirement eligibility standards for law enforcement officers; and

''(ii) law enforcement officers in primary positions have different retirement eligibility standards than employees in supervisory or administrative positions because of the different requirements in their responsibilities.''

PAYMENT OF BONUSES FOR FOREIGN LANGUAGE CAPABILITIES

Pub. L. 100–690, title VI, § 6401, Nov. 18, 1988, 102 Stat. 4370, as amended by Pub. L. 101–509, title V, § 529 [title IV, § 408(c)], Nov. 5, 1990, 104 Stat. 1427, 1468, provided that:

''(a) IN GENERAL.—Notwithstanding any other provision of law, the Drug Enforcement Administration and the Federal Bureau of Investigation are authorized on and after October 1, 1988, to pay bonuses up to 25 percent of base pay to employees of the Drug Enforcement Administration and the Federal Bureau of Investigation who possess and make substantial use of one or more languages, other than English, in the performance of their official duties. The Administrator of the Drug Enforcement Administration and the Director of the Federal Bureau of Investigation shall develop such policies as necessary to implement the payment of these bonuses.

''(b) LIMITATION.—The provisions of this section shall apply only to an employee who has received a bonus under this section before January 1, 1992. The provisions of subchapter III of chapter 45 of title 5, United States Code, shall apply to any employee who would otherwise be eligible to receive a bonus under this section, on and after such date.''

CROSS REFERENCES

Pay of Federal judges, see sections 5, 44, 135, 172, and 252 of Title 28, Judiciary and Judicial Procedure.

Pay of officers and employees of the Tennessee Valley Authority, see sections 831a, 831b of Title 16, Conservation.

Pay of Executive Protective Service, see section 204 of Title 3, The President.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4521, 5504, 5545a, 5550a, 6101 of this title; title 20 section 241.

§ 5542. Overtime rates; computation

(a) For full-time, part-time and intermittent tours of duty, hours of work officially ordered or approved in excess of 40 hours in an administrative workweek, or (with the exception of an employee engaged in professional or technical engineering or scientific activities for whom the first 40 hours of duty in an administrative workweek is the basic workweek and an employee whose basic pay exceeds the minimum rate for GS–10 (including any applicable locality-based comparability payment under section 5304 or similar provision of law and any applicable special rate of pay under section 5305 or similar provision of law) for whom the first 40 hours of duty in an administrative workweek is the basic workweek) in excess of 8 hours in a day, performed by an employee are overtime work and shall be paid for, except as otherwise provided by this subchapter, at the following rates:

(1) For an employee whose basic pay is at a rate which does not exceed the minimum rate of basic pay for GS–10 (including any applicable locality-based comparability payment under section 5304 or similar provision of law and any applicable special rate of pay under section 5305 or similar provision of law), the overtime hourly rate of pay is an amount equal to one and one-half times the hourly rate of basic pay of the employee, and all that amount is premium pay.

(2) For an employee whose basic pay is at a rate which exceeds the minimum rate of basic pay for GS–10 (including any applicable locality-based comparability payment under section 5304 or similar provision of law and any applicable special rate of pay under section 5305 or similar provision of law), the overtime hourly rate of pay is an amount equal to one and one-half times the hourly rate of the minimum rate of basic pay for GS–10 (including any applicable locality-based comparability payment under section 5304 or similar provision of law and any applicable special rate of pay under section 5305 or similar provision of law), and all that amount is premium pay.

(3) Notwithstanding paragraphs (1) and (2) of this subsection for an employee of the Department of Transportation who occupies a nonmanagerial position in GS–14 or under and, as determined by the Secretary of Transportation,

(A) the duties of which are critical to the immediate daily operation of the air traffic control system, directly affect aviation safety, and involve physical or mental strain or hardship;

(B) in which overtime work is therefore unusually taxing; and

(C) in which operating requirements cannot be met without substantial overtime work;

the overtime hourly rate of pay is an amount equal to one and one-half times the hourly rate of basic pay of the employee, and all that amount is premium pay.

(4) Notwithstanding paragraph (2) of this subsection, for an employee who is a law enforcement officer, and whose basic pay is at a rate which exceeds the minimum rate of basic pay for GS–10 (including any applicable locality-based comparability payment under section 5304 or similar provision of law and any applicable special rate of pay under section 5305 or similar provision of law), the overtime hourly rate of pay is an amount equal to the greater of—

(A) one and one-half times the minimum hourly rate of basic pay for GS–10 (including any applicable locality-based comparability payment under section 5304 or similar provision of law and any applicable special rate of pay under section 5305 or similar provision of law); or

(B) the hourly rate of basic pay of the employee,

and all that amount is premium pay.

(b) For the purpose of this subchapter—

(1) unscheduled overtime work performed by an employee on a day when work was not scheduled for him, or for which he is required to return to his place of employment, is deemed at least 2 hours in duration; and

(2) time spent in a travel status away from the official-duty station of an employee is not hours of employment unless—

(A) the time spent is within the days and hours of the regularly scheduled administrative workweek of the employee, including regularly scheduled overtime hours; or

(B) the travel (i) involves the performance of work while traveling, (ii) is incident to travel that involves the performance of work while traveling, (iii) is carried out under arduous conditions, or (iv) results from an event which could not be scheduled or controlled administratively, including travel by an employee to such an event and the return of such employee from such event to his or her official-duty station.

(c) Subsection (a) shall not apply to an employee who is subject to the overtime pay provisions of section 7 of the Fair labor[1] Standards Act of 1938. In the case of an employee who would, were it not for the preceding sentence, be subject to this section, the Office of Personnel Management shall by regulation prescribe what hours shall be deemed to be hours of work and what hours of work shall be deemed to be overtime hours for the purpose of such section 7 so as to ensure that no employee receives less pay by reason of the preceding sentence.

(d) In applying subsection (a) of this section with respect to any criminal investigator who is paid availability pay under section 5545a—

(1) such investigator shall be compensated under such subsection (a), at the rates there provided, for overtime work which is scheduled in advance of the administrative workweek—

(A) in excess of 10 hours on a day during such investigator's basic 40 hour workweek; or

(B) on a day outside such investigator's basic 40 hour workweek; and

[1] So in original. Probably should be capitalized.

(2) such investigator shall be compensated for all other overtime work under section 5545a.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 485; Pub. L. 90–83, §1(24), Sept. 11, 1967, 81 Stat. 200; Pub. L. 90–206, title II, §222(a), Dec. 16, 1967, 81 Stat. 641; Pub. L. 90–556, §1, Oct. 10, 1968, 82 Stat. 969; Pub. L. 92–194, Dec. 15, 1971, 85 Stat. 648; Pub. L. 98–473, title I, §101(c) [title III, §322], Oct. 12, 1984, 98 Stat. 1837, 1874; Pub. L. 101–509, title V, §529 [title I, §101(b)(3)(E), title II, §210(1), title IV, §410(a)], Nov. 5, 1990, 104 Stat. 1427, 1439, 1460, 1468; Pub. L. 102–378, §2(41), Oct. 2, 1992, 106 Stat. 1352; Pub. L. 103–329, title VI, §633(c), Sept. 30, 1994, 108 Stat. 2427.)

HISTORICAL AND REVISION NOTES
1966 ACT

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(a)	5 U.S.C. 911.	June 30, 1945, ch. 212, §201, 59 Stat. 296. Sept. 1, 1954, ch. 1208, §203, 68 Stat. 1109.
(b)	5 U.S.C. 912a. 5 U.S.C. 912b.	Sept. 1, 1954, ch. 1208, §205(b), 68 Stat. 1110.

In subsection (a)(1), and (2), the word ''officer'' is omitted as included in ''employee''. The word ''scheduled'' is omitted since section 603 of the Act of Oct. 11, 1962, Pub. L. 87–793, 76 Stat. 847, eliminated the necessity of referring to rates as scheduled or longevity. References to the ''Classification Act of 1949, as amended'' are omitted as unnecessary.

In subsection (b), former sections 912a and 912b are combined and restated.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 ACT

Section of title 5	*Source (U.S. Code)*	*Source (Statutes at Large)*
5542(a)	5 App.: 911.	July 18, 1966, Pub. L. 89–504, §404(a), 80 Stat. 297.

The words ''of the Classification Act of 1949, as amended'' are omitted as unnecessary.

REFERENCES IN TEXT

GS–10 and GS–14, referred to in subsec. (a), are contained in the General Schedule which is set out under section 5332 of this title.

Section 7 of the Fair Labor Standards Act of 1938, referred to in subsec. (c), is classified to section 207 of Title 29, Labor.

AMENDMENTS

1994—Subsec. (d). Pub. L. 103–329 added subsec. (d).

1992—Subsec. (a)(4). Pub. L. 102–378, §2(41)(A), substituted ''officer,'' for ''officer (within the meaning of section 8331(20) or 8401(17)),'' and realigned margin of closing provision.

Subsec. (c). Pub. L. 102–378, §2(41)(B), amended second sentence generally. Prior to amendment, second sentence read as follows: ''In the case of an employee who would, were it not for the preceding sentence, be subject to this section, hours of work in excess of 8 hours in a day shall be deemed to be overtime hours for the purposes of such section 7 and hours in a paid nonwork status shall be deemed to be hours of work.''

1990—Subsec. (a). Pub. L. 101–509, §529 [title I, §101(b)(3)(E)], inserted ''(including any applicable locality-based comparability payment under section 5304 or similar provision of law and any applicable special rate of pay under section 5305 or similar provision of law)'' after ''GS–10'' wherever appearing.

Subsec. (a)(4). Pub. L. 101–509, §529 [title IV, §410(a)], added par. (4).

Subsec. (c). Pub. L. 101–509, §529 [title II, §210(1)], added subsec. (c).

1984—Subsec. (b)(2)(B)(iv). Pub. L. 98–473 inserted '', including travel by an employee to such an event and the return of such employee from such event to his or her official-duty station''.

1971—Subsec. (a). Pub. L. 92–194 substituted ''For full-time, part-time and intermittent tours of duty, hours'' for ''Hours''.

1968—Subsec. (a)(3). Pub. L. 90–556 added par. (3).

1967—Subsec. (b)(2)(B). Pub. L. 90–206 designated existing provisions as cls. (i) and (iii) and added cls. (ii) and (iv).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–329 effective first day of first applicable pay period beginning on or after 30th day following Sept. 30, 1994, with exceptions relating to criminal investigators employed in Offices of Inspectors General, see section 633(e) of Pub. L. 103–329, set out as an Effective Date note under section 5545a of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–378 effective as of first day of first applicable pay period beginning on or after Oct. 2, 1992, see section 9(b)(9) of Pub. L. 102–378, set out as a note under section 6303 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 529 [title I, §101(b)(3)(E), title II, §210(1)] of Pub. L. 101–509 effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title III, §305] of Pub. L. 101–509, set out as a note under section 5301 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Section 3 of Pub. L. 90–556 provided that: ''The amendments made by this Act [amending this section and section 5545 of this title] shall take effect on the first day of the first pay period which begins on or after the thirtieth day after the date of enactment of this Act [Oct. 10, 1968].''

EFFECTIVE DATE OF 1967 AMENDMENT

Section 220(a)(4) of title II of Pub. L. 90–206 provided that, except as otherwise expressly provided: ''Sections 222 [enacting section 5733 of this title and amending sections 5542 and 5544 of this title and section 3571 of Title 39, The Postal Service], and 223 [enacting section 5345 of this title] shall become effective thirty days after the date of enactment of this title [Dec. 16, 1967].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5543, 5545, 5545a, 5546, 5547, 6123, 6128 of this title; title 14 section 432; title 15 section 278e; title 20 section 241; title 32 section 709.

§ 5543. Compensatory time off

(a) The head of an agency may—

(1) on request of an employee, grant the employee compensatory time off from his scheduled tour of duty instead of payment under section 5542 or section 7 of the Fair Labor Standards Act of 1938 for an equal amount of time spent in irregular or occasional overtime work; and

(2) provide that an employee whose rate of basic pay is in excess of the maximum rate of basic pay for GS–10 (including any applicable locality-based comparability payment under section 5304 or similar provision of law and

any applicable special rate of pay under section 5305 or similar provision of law) shall be granted compensatory time off from his scheduled tour of duty equal to the amount of time spent in irregular or occasional overtime work instead of being paid for that work under section 5542 of this title.

(b) The Architect of the Capitol may grant an employee paid on an annual basis compensatory time off from duty instead of overtime pay for overtime work.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 486; Pub. L. 90–83, § 1(25), Sept. 11, 1967, 81 Stat. 200; Pub. L. 101–509, title V, § 529 [title I, § 101(b)(3)(E), title II, § 210(2)], Nov. 5, 1990, 104 Stat. 1427, 1439, 1460.)

HISTORICAL AND REVISION NOTES

1966 ACT

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 912.	June 30, 1945, ch. 212, § 202, 59 Stat. 297. May 24, 1946, ch. 270, § 9, 60 Stat. 218. Sept. 1, 1954, ch. 1208, § 204, 68 Stat. 1109.

In subsection (a), the words ''head of an agency'' are substituted for ''head of any department, independent establishment, or agency, including Government-owned or controlled corporations, or of the municipal government of the District of Columbia, or the head of any legislative or judicial agency to which this subchapter applies'' because of the definition of ''agency'' and the application stated in section 5541.

In subsection (a)(1), the word ''officer'' is omitted as included in ''employee''.

In subsection (a)(2), the words ''at his own discretion'' are omitted as unnecessary in view of the permissive nature of the authority. The word ''officer'' is omitted as included in ''employee''. The word ''scheduled'' is omitted since section 603 of the Act of Oct. 11, 1962, Pub. L. 87–793, 76 Stat. 847, eliminated the necessity of referring to rates as scheduled or longevity. Reference to the ''Classification Act of 1949, as amended'' is omitted as unnecessary.

In subsection (b), the words ''in his discretion'' are omitted as unnecessary in view of the permissive nature of the authority. The words ''overtime work'' are substituted for ''any work in excess of forty hours in any regularly scheduled administrative workweek'' because of the definition of ''overtime work'' in section 5542(a).

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 ACT

Section of title 5	*Source (U.S. Code)*	*Source (Statutes at Large)*
5543(a)(2) ...	5 App.: 912.	July 18, 1966, Pub. L. 89–504, § 404(b), 80 Stat. 297.

REFERENCES IN TEXT

Section 7 of the Fair Labor Standards Act of 1938, referred to in subsec. (a)(1), is classified to section 207 of Title 29, Labor.

GS–10, referred to in subsec. (a)(2), is contained in the General Schedule which is set out under section 5332 of this title.

AMENDMENTS

1990—Subsec. (a)(1). Pub. L. 101–509, § 529 [title II, § 210(2)], inserted ''under section 5542 or section 7 of the Fair Labor Standards Act of 1938'' after ''payment''.

Subsec. (a)(2). Pub. L. 101–509, § 529 [title I, § 101(b)(3)(E)], inserted ''(including any applicable locality-based comparability payment under section 5304 or similar provision of law and any applicable special rate of pay under section 5305 or similar provision of law)'' after ''GS–10''.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–509 effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title III, § 305] of Pub. L. 101–509, set out as a note under section 5301 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6123 of this title; title 14 section 432; title 15 section 278e; title 20 section 241; title 32 section 709.

§ 5544. Wage-board overtime and Sunday rates; computation

(a) An employee whose pay is fixed and adjusted from time to time in accordance with prevailing rates under section 5343 or 5349 of this title, or by a wage board or similar administrative authority serving the same purpose, is entitled to overtime pay for overtime work in excess of 8 hours a day or 40 hours a week. However, an employee subject to this subsection who regularly is required to remain at or within the confines of his post of duty in excess of 8 hours a day in a standby or on-call status is entitled to overtime pay only for hours of duty, exclusive of eating and sleeping time, in excess of 40 a week. The overtime hourly rate of pay is computed as follows:

(1) If the basic rate of pay of the employee is fixed on a basis other than an annual or monthly basis, multiply the basic hourly rate of pay by not less than one and one-half.

(2) If the basic rate of pay of the employee is fixed on an annual basis, divide the basic annual rate of pay by 2,087, and multiply the quotient by one and one-half.

(3) If the basic rate of pay of the employee is fixed on a monthly basis, multiply the basic monthly rate of pay by 12 to derive a basic annual rate of pay, divide the basic annual rate of pay by 2,087, and multiply the quotient by one and one-half.

An employee subject to this subsection whose regular work schedule includes an 8-hour period of service a part of which is on Sunday is entitled to additional pay at the rate of 25 percent of his hourly rate of basic pay for each hour of work performed during that 8-hour period of service. Time spent in a travel status away from the official duty station of an employee subject to this subsection is not hours of work unless the travel (i) involves the performance of work while traveling, (ii) is incident to travel that involves the performance of work while traveling, (iii) is carried out under arduous conditions, or (iv) results from an event which could not be scheduled or controlled administratively. The first and third sentences of this subsection shall not be applicable to an employee who is subject to the overtime pay provisions of section 7 of the Fair Labor Standards Act of 1938. In the case of an employee who would, were it not for the preceding sentence, be subject to the first and third sentences of this subsection, the Office of

Personnel Management shall by regulation prescribe what hours shall be deemed to be hours of work and what hours of work shall be deemed to be overtime hours for the purpose of such section 7 so as to ensure that no employee receives less pay by reason of the preceding sentence.

(b) An employee under the Office of the Architect of the Capitol who is paid on a daily or hourly basis and who is not subject to chapter 51 and subchapter III of chapter 53 of this title is entitled to overtime pay for overtime work in accordance with subsection (a) of this section. The overtime hourly rate of pay is computed in accordance with subsection (a)(1) of this section.

(c) The provisions of this section, including the last two sentences of subsection (a), shall apply to a prevailing rate employee described in section 5342(a)(2)(B).

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 486; Pub. L. 90–83, §1(26)(A), Sept. 11, 1967, 81 Stat. 200; Pub. L. 90–206, title II, §222(d), Dec. 16, 1967, 81 Stat. 641; Pub. L. 92–392, §5, Aug. 19, 1972, 86 Stat. 573; Pub. L. 101–509, title V, §529 [title II, §210(3)], Nov. 5, 1990, 104 Stat. 1427, 1460; Pub. L. 102–378, §2(42), Oct. 2, 1992, 106 Stat. 1352.)

HISTORICAL AND REVISION NOTES

1966 ACT

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(a)	5 U.S.C. 673c (2d proviso).	Mar. 28, 1934, ch. 102, §23 (proviso), 48 Stat. 522. Aug. 13, 1962, Pub. L. 87–581, §201 (2d proviso), 76 Stat. 360.
	5 U.S.C. 913.	June 30, 1945, ch. 212, §203, 59 Stat. 297. Sept. 1, 1954, ch. 1208, §205(a), 68 Stat. 1109.
(b)	5 U.S.C. 933 (as applicable to 5 U.S.C. 673c).	June 30, 1945, ch. 212, §503 (as applicable to §23 of the Act of Mar. 28, 1934, ch. 102, 48 Stat. 522, as amended), 59 Stat. 301.

In subsection (a), former sections 673c (2d proviso) and 913 are combined and restated for clarity and conciseness. The last 28 words of section 205(a) of the Act of Sept. 1, 1954, 68 Stat. 1109, are omitted as executed and covered by technical section 8.

Subsection (b) is restated to conform to subsection (a). In former section 933, the words ''Classification Act of 1949'' were substituted for ''Classification Act of 1923'' on authority of section 1106(a) of the Act of Oct. 28, 1949, ch. 782, 63 Stat. 972.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 ACT

Section of title 5	*Source (U.S. Code)*	*Source (Statutes at Large)*
5544(a)	5 App.: 673c (last proviso of 1st par.).	July 18, 1966, Pub. L. 89–504, §405(f), 80 Stat. 298.

The words ''a part of which is on Sunday'' are coextensive with and substituted for ''any part of which is within the period commencing at midnight Saturday and ending at midnight Sunday.'' The words ''is entitled to additional pay'' are coextensive with and substituted for ''shall be paid extra compensation.''

REFERENCES IN TEXT

Section 7 of the Fair Labor Standards Act of 1938, referred to in subsec. (a), is classified to section 207 of Title 29, Labor.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–378, §2(42)(B), amended last two sentences generally. Prior to amendment, last two sentences read as follows: ''This section, other than the sixth sentence, shall not be applicable to an employee who is subject to the overtime pay provisions of section 7 of the Fair Labor Standards Act of 1938. In the case of an employee who would, were it not for the preceding sentence, be subject to this section, hours of work in excess of 8 hours in a day shall be deemed to be overtime hours for the purposes of such section 7 and hours in a paid nonwork status shall be deemed to be hours of work.''

Subsec. (a)(2), (3). Pub. L. 102–378, §2(42)(A), substituted ''2,087'' for ''2,080''.

Subsec. (c). Pub. L. 102–378, §2(42)(C), added subsec. (c).

1990—Subsec. (a). Pub. L. 101–509 inserted at end ''This section, other than the sixth sentence, shall not be applicable to an employee who is subject to the overtime pay provisions of section 7 of the Fair Labor Standards Act of 1938. In the case of an employee who would, were it not for the preceding sentence, be subject to this section, hours of work in excess of 8 hours in a day shall be deemed to be overtime hours for the purposes of such section 7 and hours in a paid nonwork status shall be deemed to be hours of work.''

1972—Subsec. (a). Pub. L. 92–392 substituted ''pay'' for ''basic pay'' and provided for determination of pay under section 5343 or 5349 of this title.

1967—Subsec. (a). Pub. L. 90–206 provided that time spent in a travel status away from the official duty station could not qualify as hours of work unless the travel involved the performance of work while traveling, was incident to travel involving the performance of work while traveling, carried out under arduous conditions, or resulting from an event which could not be scheduled or controlled administratively.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–378 effective as of first day of first applicable pay period beginning on or after Oct. 2, 1992, see section 9(b)(9) of Pub. L. 102–378, set out as a note under section 6303 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–509 effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title III, §305] of Pub. L. 101–509, set out as a note under section 5301 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92–392 effective on first day of first applicable pay period beginning on or after 90th day after Aug. 19, 1972, see section 15(a) of Pub. L. 92–392, set out as an Effective Date note under section 5341 of this title.

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90–206 effective thirty days after Dec. 16, 1967, see section 220(a)(4) of Pub. L. 90–206, set out as a note under section 5542 of this title.

CANAL ZONE EMPLOYEES

Section 17(3) of Pub. L. 85–550, July 25, 1958, 72 Stat. 411, provided that nothing in Pub. L. 85–550, which related to wage and employment practices of the Government of the United States in the Canal Zone, should affect the applicability of former sections 673c and 913 of this title [covered by this section] to those classes of employees, within the scope of former sections 673c and 913 of this title [covered by this section] on July 25, 1958.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5541, 6123, 6128 of this title; title 2 section 60e–2b; title 14 section 432;

title 15 section 278e; title 20 section 241; title 22 section 3664; title 32 section 709.

§ 5545. Night, standby, irregular, and hazardous duty differential

(a) Except as provided by subsection (b) of this section, nightwork is regularly scheduled work between the hours of 6:00 p.m. and 6:00 a.m., and includes—

(1) periods of absence with pay during these hours due to holidays; and

(2) periods of leave with pay during these hours if the periods of leave with pay during a pay period total less than 8 hours.

Except as otherwise provided by subsection (c) of this section, an employee is entitled to pay for nightwork at his rate of basic pay plus premium pay amounting to 10 percent of that basic rate. This subsection and subsection (b) of this section do not modify section 5141 of title 31, or other statute authorizing additional pay for nightwork.

(b) The head of an agency may designate a time after 6:00 p.m. and a time before 6:00 a.m. as the beginning and end, respectively, of nightwork for the purpose of subsection (a) of this section, at a post outside the United States where the customary hours of business extend into the hours of nightwork provided by subsection (a) of this section.

(c) The head of an agency, with the approval of the Office of Personnel Management, may provide that—

(1) an employee in a position requiring him regularly to remain at, or within the confines of, his station during longer than ordinary periods of duty, a substantial part of which consists of remaining in a standby status rather than performing work, shall receive premium pay for this duty on an annual basis instead of premium pay provided by other provisions of this subchapter, except for irregular, unscheduled overtime duty in excess of his regularly scheduled weekly tour. Premium pay under this paragraph is determined as an appropriate percentage, not in excess of 25 percent, of such part of the rate of basic pay for the position as does not exceed the minimum rate of basic pay for GS–10 (including any applicable locality-based comparability payment under section 5304 or similar provision of law and any applicable special rate of pay under section 5305 or similar provision of law) (or, for a position described in section 5542(a)(3) of this title, of the basic pay of the position), by taking into consideration the number of hours of actual work required in the position, the number of hours required in a standby status at or within the confines of the station, the extent to which the duties of the position are made more onerous by night, Sunday, or holiday work, or by being extended over periods of more than 40 hours a week, and other relevant factors; or

(2) an employee in a position in which the hours of duty cannot be controlled administratively, and which requires substantial amounts of irregular, unscheduled overtime duty with the employee generally being responsible for recognizing, without supervision, circumstances which require the employee to remain on duty, shall receive premium pay for this duty on an annual basis instead of premium pay provided by other provisions of this subchapter, except for regularly scheduled overtime, night, and Sunday duty, and for holiday duty. Premium pay under this paragraph is an appropriate percentage, not less than 10 percent nor more than 25 percent, of the rate of basic pay for the position, as determined by taking into consideration the frequency and duration of irregular, unscheduled overtime duty required in the position.

(d) The Office shall establish a schedule or schedules of pay differentials for duty involving unusual physical hardship or hazard. Under such regulations as the Office may prescribe, and for such minimum periods as it determines appropriate, an employee to whom chapter 51 and subchapter III of chapter 53 of this title applies is entitled to be paid the appropriate differential for any period in which he is subjected to physical hardship or hazard not usually involved in carrying out the duties of his position. However, the pay differential—

(1) does not apply to an employee in a position the classification of which takes into account the degree of physical hardship or hazard involved in the performance of the duties thereof, except in such circumstances as the Office may by regulation prescribe; and

(2) may not exceed an amount equal to 25 percent of the rate of basic pay applicable to the employee.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 487; Pub. L. 90–83, §1(27), Sept. 11, 1967, 81 Stat. 200; Pub. L. 90–206, title II, §217, Dec. 16, 1967, 81 Stat. 638; Pub. L. 90–556, §2, Oct. 10, 1968, 82 Stat. 969; Pub. L. 91–231, §8, Apr. 15, 1970, 84 Stat. 198; Pub. L. 94–183, §2(23), Dec. 31, 1975, 89 Stat. 1058; Pub. L. 95–454, title IX, §906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 96–54, §2(a)(32), Aug. 14, 1979, 93 Stat. 383; Pub. L. 97–258, §3(a)(13), Sept. 13, 1982, 96 Stat. 1063; Pub. L. 101–173, §1(a), Nov. 27, 1989, 103 Stat. 1292; Pub. L. 101–509, title V, §529 [title I, §101(b)(3)(E), title II, §203], Nov. 5, 1990, 104 Stat. 1427, 1439, 1456; Pub. L. 102–378, §3(2), Oct. 2, 1992, 106 Stat. 1355.)

HISTORICAL AND REVISION NOTES
1966 ACT

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(a), (b)	5 U.S.C. 921.	June 30, 1945, ch. 212, §301, 59 Stat. 298. May 24, 1946, ch. 270, §10, 60 Stat. 218. Sept. 1, 1954, ch. 1208, §206, 68 Stat. 1110.
(c)	5 U.S.C. 926.	Sept. 1, 1954, ch. 1208, §208(a), 68 Stat. 1111. July 18, 1958, Pub. L. 85–525, 72 Stat. 363.

In subsection (b), the words ''head of an agency'' are substituted for ''head of any department, independent establishment, or agency, including Government-owned or controlled corporations'' because of the definition of ''agency'' and the application stated in section 5541. The words ''the United States'' are substituted for ''the several States and the District of Columbia''.

In subsection (c), the words ''head of an agency'' are substituted for ''head of any department, independent establishment, or agency, including Government-owned

or controlled corporations, or of the municipal government of the District of Columbia'' because of the definition of ''agency'' and the application stated in section 5541. The word ''officer'' is omitted as included in ''employee''. The word ''scheduled'' is omitted since section 603 of the Act of Oct. 11, 1962, Pub. L. 87–793, 76 Stat. 847, eliminated the necessity of referring to rates as scheduled or longevity. Reference to the ''Classification Act of 1949, as amended'' is omitted as unnecessary.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 ACT

Section of title 5	*Source (U.S. Code)*	*Source (Statutes at Large)*
5545(c)	5 App.: 926.	July 18, 1966, Pub. L. 89–504 §§404(c), 405(d), (e), 80 Stat. 297, 298.
5545(d)	5 App.: 1134.	July 19, 1966, Pub. L. 89–512, §1, 80 Stat. 318.

In the second sentence of subsection (d), the words ''Under such regulations as the Commission may prescribe, and for such minimum periods as it determines appropriate'' are substituted for clauses (3) and (4) of the third sentence of 5 App. U.S.C. 1134. That requirement in clause (4) that the Commission prescribe regulations is codified in 5 U.S.C. 5548(b) by section 1 (32) of this bill. The words ''an employee to whom chapter 51 and subchapter III of chapter 53 of this title applies is entitled to be paid the appropriate differential'' are substituted for ''The appropriate differential shall be paid to any officer or employee to whom this Act applies'' to reflect the codification of that act (Classification Act of 1949) in title 5, United States Code, and to conform with the definitions applicable.

In subsection (d)(1), the words ''does not apply to an employee'' are substituted for ''shall not be applicable with respect to any officer or employee.''

In subsection (d)(2), the words ''may not . . . applicable to the employee'' are substituted for ''shall not . . . applicable with respect to such officer or employee''.

REFERENCES IN TEXT

GS–10, referred to in subsec. (c)(1), is contained in the General Schedule which is set out under section 5332 of this title.

AMENDMENTS

1992—Subsec. (d). Pub. L. 102–378 made technical correction to directory language of Pub. L. 101–509, §529 [title II, §203]. See 1990 Amendment note below.

1990—Subsec. (c)(1). Pub. L. 101–509, §529 [title I, §101(b)(3)(E)], inserted ''(including any applicable locality-based comparability payment under section 5304 or similar provision of law and any applicable special rate of pay under section 5305 or similar provision of law)'' after ''GS–10''.

Subsec. (d). Pub. L. 101–509, §529 [title II, §203], as amended by Pub. L. 102–378, struck out ''irregular or intermittent'' before ''duty involving unusual'' in first sentence and inserted '', except in such circumstances as the Office may by regulation prescribe'' after ''thereof'' in par. (1).

1989—Subsec. (c)(2). Pub. L. 101–173 amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''an employee in a position in which the hours of duty cannot be controlled administratively, and which requires substantial amounts of irregular, unscheduled, overtime duty with the employee generally being responsible for recognizing, without supervision, circumstances which require him to remain on duty, shall receive premium pay for this duty on an annual basis instead of premium pay provided by other provisions of this subchapter, except for regularly scheduled overtime, night, and Sunday duty, and for holiday duty. Premium pay under this paragraph is determined as an appropriate percentage, not less than 10 percent nor more than 25 percent, of such part of the rate of basic pay for the position as does not exceed the minimum rate of basic pay for GS–10, by taking into consideration the frequency and duration of irregular unscheduled overtime duty required in the position.''

1982—Subsec. (a). Pub. L. 97–258 substituted ''section 5141'' for ''section 180''.

1979—Subsec. (c)(2). Pub. L. 96–54 substituted ''percent'' for ''per centum'' wherever appearing.

1978—Subsecs. (c), (d). Pub. L. 95–454 substituted ''Office of Personnel Management'' for ''Civil Service Commission'' and ''Office'' for ''Commission'' wherever appearing.

1975—Pub. L. 94–183 struck out ''Sunday,'' after ''Night,'' in section catchline.

1970—Subsec. (c)(2). Pub. L. 91–231 corrected the system of premium compensation of employees whose work schedules cannot be administratively controlled by providing for separate treatment for irregular, unscheduled, and overtime duty on one hand and for duty at night, on Sundays, and on holidays on the other.

1968—Subsec. (c)(1). Pub. L. 90–556 inserted ''(or, for a position described in section 5542(a)(3) of this title, of the basic pay of the position)'' after ''GS–10''.

1967—Subsec. (e)(2). Pub. L. 90–206 substituted ''not less than 10 percent nor more than 25 percent'' for ''not in excess of 15 percent''.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–509 effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title III, §305] of Pub. L. 101–509, set out as a note under section 5301 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 1(b) of Pub. L. 101–173 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to overtime duty performed on or after the first day of the first applicable pay period beginning after September 30, 1990.''

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.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–231 effective Apr. 15, 1970, see section 9(b) of Pub. L. 91–231, set out in a 1970 Increase in Pay Rates note under section 5332 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–556 effective on first day of first pay period beginning on or after thirtieth day after Oct. 10, 1968, see section 3 of Pub. L. 90–556, set out as a note under section 5542 of this title.

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90–206 effective at beginning of first pay period which begins on or after Dec. 16, 1967, see section 220(a)(3) of Pub. L. 90–206, set out as a note under section 603 of Title 28, Judiciary and Judicial Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5541, 5545a, 5546, 5547, 5548, 5595, 6123, 8114, 8331, 8704 of this title; title 14 section 432; title 15 section 278e; title 20 section 241; title 38 section 7457.

§ 5545a. Availability pay for criminal investigators

(a) For purposes of this section—

(1) the term ''available'' refers to the availability of a criminal investigator and means that an investigator shall be considered generally and reasonably accessible by the agency employing such investigator to perform unscheduled duty based on the needs of an agency;

(2) the term ''criminal investigator'' means a law enforcement officer as defined under section 5541(3) (other than an officer occupying a position under title II of Public Law 99–399) is required to—

(A) possess a knowledge of investigative techniques, laws of evidence, rules of criminal procedure, and precedent court decisions concerning admissibility of evidence, constitutional rights, search and seizure, and related issues;

(B) recognize, develop, and present evidence that reconstructs events, sequences and time elements for presentation in various legal hearings and court proceedings;

(C) demonstrate skills in applying surveillance techniques, undercover work, and advising and assisting the United States Attorney in and out of court;

(D) demonstrate the ability to apply the full range of knowledge, skills, and abilities necessary for cases which are complex and unfold over a long period of time (as distinguished from certain other occupations that require the use of some investigative techniques in short-term situations that may end in arrest or detention);

(E) possess knowledge of criminal laws and Federal rules of procedure which apply to cases involving crimes against the United States, including—

(i) knowledge of the elements of a crime;
(ii) evidence required to prove the crime;
(iii) decisions involving arrest authority;
(iv) methods of criminal operations; and
(v) availability of detection devices;[1]

(F) possess the ability to follow leads that indicate a crime will be committed rather than initiate an investigation after a crime is committed;

(3) the term ''unscheduled duty'' means hours of duty a criminal investigator works, or is determined to be available for work, that are not—

(A) part of the 40 hours in the basic work week of the investigator; or

(B) overtime hours paid under section 5542; and

(4) the term ''regular work day'' means each day in the investigator's basic work week during which the investigator works at least 4 hours that are not overtime hours paid under section 5542 or hours considered part of section 5545a.

(b) The purpose of this section is to provide premium pay to criminal investigators to ensure the availability of criminal investigators for unscheduled duty in excess of a 40 hour work week based on the needs of the employing agency.

(c) Each criminal investigator shall be paid availability pay as provided under this section. Availability pay shall be paid to ensure the availability of the investigator for unscheduled duty. The investigator is generally responsible for recognizing, without supervision, circumstances which require the investigator to be on duty or be available for unscheduled duty based on the needs of the agency. Availability pay provided to a criminal investigator for such unscheduled duty shall be paid instead of premium pay provided by other provisions of this subchapter, except premium pay for regularly scheduled overtime work as provided under section 5542, night duty, Sunday duty, and holiday duty.

(d)(1) A criminal investigator shall be paid availability pay, if the average of hours described under paragraph (2)(A) and (B) is equal to or greater than 2 hours.

(2) The hours referred to under paragraph (1) are—

(A) the annual average of unscheduled duty hours worked by the investigator in excess of each regular work day; and

(B) the annual average of unscheduled duty hours such investigator is available to work on each regular work day upon request of the employing agency.

(3) Unscheduled duty hours which are worked by an investigator on days that are not regular work days shall be considered in the calculation of the annual average of unscheduled duty hours worked or available for purposes of certification.

(4) An investigator shall be considered to be available when the investigator cannot reasonably and generally be accessible due to a status or assignment which is the result of an agency direction, order, or approval as provided under subsection (f)(1).

(e)(1) Each criminal investigator receiving availability pay under this section and the appropriate supervisory officer, to be designated by the head of the agency, shall make an annual certification to the head of the agency that the investigator has met, and is expected to meet, the requirements of subsection (d). The head of a law enforcement agency may prescribe regulations necessary to administer this subsection.

(2) Involuntary reduction in pay resulting from a denial of certification under paragraph (1) shall be a reduction in pay for purposes of section 7512(4) of this title.

(f)(1) A criminal investigator who is eligible for availability pay shall receive such pay during any period such investigator is—

(A) attending agency sanctioned training;

(B) on agency approved sick leave or annual leave;

(C) on agency ordered travel status; or

(D) on excused absence with pay for relocation purposes.

(2) Notwithstanding paragraph (1)(A), agencies or departments may provide availability pay to investigators during training which is considered initial, basic training usually provided in the first year of service.

(3) Agencies or departments may provide availability pay to investigators when on excused absence with pay, except as provided in paragraph (1)(D).

(g) Section 5545(c) shall not apply to any criminal investigator who is paid availability pay under this section.

[1] So in original. Probably should be followed by ''and''.

(h) Availability pay under this section shall be—

(1) 25 percent of the rate of basic pay for the position; and

(2) treated as part of the basic pay for purposes of—

(A) sections 5595(c), 8114(e), 8331(3), 8431, and 8704(c); and

(B) such other purposes as may be expressly provided for by law or as the Office of Personnel Management may by regulation prescribe.

(Added Pub. L. 103–329, title VI, § 633(b)(1), Sept. 30, 1994, 108 Stat. 2425.)

REFERENCES IN TEXT

Title II of Public Law 99–399, referred to in subsec. (a)(2), is title II of Pub. L. 99–399, Aug. 27, 1986, 100 Stat. 858, as amended, which is classified generally to subchapter II (§ 4821 et seq.) of chapter 58 of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 4801 of Title 22 and Tables.

EFFECTIVE DATE

Section 633(e) of Pub. L. 103–329 provided that: ''The amendments made by this section [enacting this section and amending sections 5542 and 5547 of this title and section 213 of Title 29, Labor] shall take effect on the first day of the first applicable pay period which begins on or after the later of October 1, 1994, or the 30th day following the date of enactment of this Act [Sept. 30, 1994], except that:

''(1) Criminal investigators, employed in Offices of Inspectors General, who are not receiving administratively uncontrollable overtime compensation or who are receiving such premium pay at a rate less than 25 percent prior to the date of enactment of this Act, may implement availability pay at any time prior to September 30, 1995, after which date availability pay as authorized under this section shall be provided to such criminal investigators.

''(2) Criminal investigators, employed by Offices of Inspectors General, who are receiving administratively uncontrollable overtime at a rate less than 25 percent, shall continue to receive this compensation at the same rate or higher until availability pay compensation is provided, which shall be no later than the last pay period ending on or before September 30, 1995.''

CERTIFICATION OF CRIMINAL INVESTIGATORS

Section 633(f) of Pub. L. 103–329 provided that: ''Not later than the effective date of this section [see Effective Date note above], each criminal investigator under section 5545a of title 5, United States Code, as added by this section, and the appropriate supervisory officer, to be designated by the head of the agency, shall make an initial certification to the head of the agency that the criminal investigator is expected to meet the requirements of subsection (d) of such section 5545a. The head of a law enforcement agency may prescribe procedures necessary to administer this paragraph.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5542, 5547 of this title; title 29 section 213.

§ 5546. Pay for Sunday and holiday work

(a) An employee who performs work during a regularly scheduled 8-hour period of service which is not overtime work as defined by section 5542(a) of this title a part of which is performed on Sunday is entitled to pay for the entire period of service at the rate of his basic pay, plus premium pay at a rate equal to 25 percent of his rate of basic pay.

(b) An employee who performs work on a holiday designated by Federal Statute, Executive order, or with respect to an employee of the government of the District of Columbia, by order of the District of Columbia Council, is entitled to pay at the rate of his basic pay, plus premium pay at a rate equal to the rate of his basic pay, for that holiday work which is not—

(1) in excess of 8 hours; or

(2) overtime work as defined by section 5542(a) of this title.

(c) An employee who is required to perform any work on a designated holiday is entitled to pay for at least 2 hours of holiday work.

(d) An employee who performs overtime work as defined by section 5542(a) of this title on a Sunday or a designated holiday is entitled to pay for that overtime work in accordance with section 5542(a) of this title.

(e) Premium pay under this section is in addition to premium pay which may be due for the same work under section 5545(a) and (b) of this title, providing premium pay for nightwork.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 488; Pub. L. 90–83, § 1(29), Sept. 11, 1967, 81 Stat. 201; Pub. L. 90–623, § 1(13), Oct. 22, 1968, 82 Stat. 1312.)

HISTORICAL AND REVISION NOTES

1966 ACT

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 922.	June 30, 1945, ch. 212, § 302, 59 Stat. 298. May 24, 1946, ch. 270, § 11, 60 Stat. 218. Sept. 1, 1954, ch. 1208, § 207, 68 Stat. 1110. July 18, 1958, Pub. L. 85–533, § 1, 72 Stat. 377.

In subsections (a) and (b), the word ''officer'' is omitted as included in ''employee''.

In subsections (b) and (c), the word ''designated'' is substituted for ''such a'' and ''such'' in former section 922(b) and (c) to identify the holiday as one designated by statute, Executive order, or the Board of Commissioners of the District of Columbia.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 ACT

Section of title 5	*Source (U.S. Code)*	*Source (Statutes at Large)*
5546(a)	5 App.: 921a.	July 18, 1966, Pub. L. 89–504, § 405(b)(1), (c), 80 Stat. 297.

In subsection (a), the words ''An employee who performs work . . . is entitled to pay . . . at the rate of his basic pay'' are coextensive with and substituted for ''Any . . . service . . . performed . . . shall be compensated . . . at the rate of basic compensation of the officer or employee performing such work.'' The words ''section 5542(a) of this title'' are substituted for ''section 201 of this Act'' to reflect the codification of that section in title 5, United States Code. The words ''between midnight Saturday and midnight Sunday'' are coextensive with and substituted for ''within the period commencing at midnight Saturday and ending at midnight Sunday''.

AMENDMENTS

1968—Subsec. (b). Pub. L. 90–623, §1(13)(A), substituted ''District of Columbia Council'' for ''Board of Commissioners of the District of Columbia''.

Subsec. (d). Pub. L. 90–623, §1(13)(B), substituted ''5542(a)'' for ''5442(a)''.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–623 intended to restate without substantive change the law in effect on Oct. 22, 1968, but amendment of subsec. (d) of this section by section 1(13)(B) of Pub. L. 90–623 effective as of Sept. 6, 1966, for all purposes, see section 6 of Pub. L. 90–623, set out as a note under section 5334 of this title.

TRANSFER OF FUNCTIONS

District of Columbia Council, as established by Reorg. Plan No. 3 of 1967, abolished as of noon Jan. 2, 1975, by Pub. L. 93–198, title VII, §711, Dec. 24, 1973, 87 Stat. 818, classified to section 1–211 of the District of Columbia Code, and replaced by Council of District of Columbia, as provided by Pub. L. 93–198, title IV, §401, Dec. 24, 1973, 87 Stat. 785, classified to section 1–221 of the District of Columbia Code.

CROSS REFERENCES

Legal public holidays, see section 6103 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5541, 5547, 6128 of this title; title 14 section 432; title 15 section 278e; title 20 section 241.

§ 5546a. Differential pay for certain employees of the Federal Aviation Administration and the Department of Defense

(a) The Administrator of the Federal Aviation Administration (hereafter in this section referred to as the ''Administrator'') and the Secretary of Defense (hereafter in this section referred to as the ''Secretary'') may pay premium pay at the rate of 5 per centum of the applicable rate of basic pay to—

(1) any employee of the Federal Aviation Administration or the Department of Defense who is—

(A) occupying a position in the air traffic controller series classified not lower than GS–9 and located in an air traffic control center or terminal or in a flight service station;

(B) assigned to a position classified not lower than GS–09 or WG–10 located in an airway facilities sector; or

(C) assigned to a flight inspection crewmember position classified not lower than GS–11 located in a flight inspection field office,

the duties of whose position are determined by the Administrator or the Secretary to be directly involved in or responsible for the operation and maintenance of the air traffic control system; and

(2) any employee of the Federal Aviation Administration or the Department of Defense who is assigned to a flight test pilot position classified not lower than GS-12 located in a region or center, the duties of whose position are determined by the Administrator or the Secretary to be unusually taxing, physically or mentally, and to be critical to the advancement of aviation safety; and

(3) any employee of the Federal Aviation Administration who occupies a position at the Federal Aviation Administration Academy, Oklahoma City, Oklahoma, the duties of which are determined by the Administrator to require the individual to be actively engaged in or directly responsible for training employees to perform the duties of a position described in subparagraph (a); (b); or (c) or paragraph (1) of this subsection, and who, immediately prior to assuming such position at such Academy, occupied a position referred to in subparagraph (a), (b), or (c) of paragraph (1) of this subsection.

(b) The premium pay payable under any subsection of this section is in addition to basic pay and to premium pay payable under any other subsection of this section and any other provision of this subchapter.

(c)(1) The Administrator or the Secretary may pay premium pay to any employee of the Federal Aviation Administration or the Department of Defense who—

(A) is an air traffic controller located in an air traffic control center or terminal;

(B) is not required as a condition of employment to be certified by the Administrator or the Secretary as proficient and medically qualified to perform duties including the separation and control of air traffic; and

(C) is so certified.

(2) Premium pay paid under paragraph (1) of this subsection shall be paid at the rate of 1.6 per centum of the applicable rate of basic pay for so long as such employee is so certified.

(d)(1) The Administrator or the Secretary may pay premium pay to any air traffic controller of the Federal Aviation Administration or the Department of Defense who is assigned by the Administrator or the Secretary to provide on-the-job training to another air traffic controller while such other air traffic controller is directly involved in the separation and control of live air traffic.

(2) Premium pay paid under paragraph (1) of this subsection shall be paid at the rate of 10 per centum of the applicable hourly rate of basic pay times the number of hours and portion of an hour during which the air traffic controller of the Federal Aviation Administration or the Department of Defense provides on-the-job training.

(e)(1) The Administrator or the Secretary may pay premium pay to any air traffic controller or flight service station specialist of the Federal Aviation Administration or the Department of Defense who, while working a regularly scheduled eight-hour period of service, is required by his supervisor to work during the fourth through sixth hour of such period without a break of thirty minutes for a meal.

(2) Premium pay paid under paragraph (1) of this subsection shall be paid at the rate of 50 per centum of one-half of the applicable hourly rate of basic pay.

(f)(1) The Administrator or the Secretary shall prescribe standards for determining which air traffic controllers and other employees of the Federal Aviation Administration or the Department of Defense are to be paid premium pay under this section.

(2) The Administrator and the Secretary may prescribe such rules as he determines are necessary to carry out the provisions of this section.

(Added Pub. L. 97–276, § 151(c)(1), (d), Oct. 2, 1982, 96 Stat. 1200, 1201; amended Pub. L. 97–377, title I, § 145(a), formerly § 145, Dec. 21, 1982, 96 Stat. 1917, renumbered Pub. L. 98–78, title III, § 320(1), Aug. 15, 1983, 97 Stat. 473; Pub. L. 98–525, title XV, § 1537(c)(1)–(6)(A), Oct. 19, 1984, 98 Stat. 2635, 2636.)

AMENDMENTS

1984—Pub. L. 98–525, § 1537(c)(6)(A), inserted ''and the Department of Defense'' in section catchline.

Subsec. (a). Pub. L. 98–525, § 1537(c)(1)(A), inserted ''and the Secretary of Defense (hereafter in this section referred to as the 'Secretary')'' in provisions preceding par. (1).

Subsec. (a)(1). Pub. L. 98–525, § 1537(c)(1)(B), inserted ''or the Department of Defense'' in provisions preceding subpar. (A) and ''or the Secretary'' in provisions following subpar. (C).

Subsec. (a)(2). Pub. L. 98–525, § 1537(c)(1)(C), inserted ''or the Department of Defense'' and ''or the Secretary''.

Subsecs. (c)(1), (d), (e)(1), (f)(1). Pub. L. 98–525, § 1537(c)(2)–(5)(A), inserted ''or the Secretary'' after ''Administrator'' wherever appearing, and ''or the Department of Defense'' after ''Administration'' wherever appearing.

Subsec. (f)(2). Pub. L. 98–525, § 1537(c)(5)(B), inserted ''and the Secretary''.

1982—Subsec. (a)(3). Pub. L. 97–377 added par. (3).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–525 effective Oct. 1, 1984, see section 1537(f) of Pub. L. 98–525, set out as a note under section 4109 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Section 145(b) of Pub. L. 97–377, as added by Pub. L. 98–78, title III, § 320(2), Aug. 15, 1983, 97 Stat. 473, provided that: ''The amendment made by subsection (a) of this section [amending this section] shall be effective as of 5 o'clock ante meridian eastern daylight time, August 3, 1981.''

EFFECTIVE DATE

Section 151(h)(1), (2) of Pub. L. 97–276 provided that:

''(1) The amendments made by subsections 152 [151] (b), (c), (e), and (g) of this joint resolution [enacting subsecs. (a) and (b) of this section and amending sections 5532, 5547, and 8344 of this title] shall take effect at 5 o'clock ante meridian eastern daylight time, August 3, 1981.

''(2) The amendments made by subsection 152 [151] (a) and subsection 152 [151] (d) of this joint resolution [enacting subsecs. (c)–(f) of this section and amending section 4109 of this title] shall take effect on the first day of the first applicable pay period beginning after the date of the enactment of this joint resolution [Oct. 2, 1982].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5547 of this title; title 20 section 241.

§ 5547. Limitation on premium pay

(a) An employee may be paid premium pay under sections 5542, 5545(a), (b), and (c), 5545a, and 5546(a) and (b) of this title only to the extent that the payment does not cause his aggregate rate of pay for any pay period to exceed the maximum rate for GS–15 (including any applicable locality-based comparability payment under section 5304 or similar provision of law and any applicable special rate of pay under section 5305 or similar provision of law). The first sentence of this subsection shall not apply to any employee of the Federal Aviation Administration or the Department of Defense who is paid premium pay under section 5546a of this title.

(b)(1) Subject to regulations prescribed by the Office of Personnel Management, the first sentence of subsection (a) shall not apply to an employee who is paid premium pay by reason of work in connection with an emergency which involves a direct threat to life or property, including a forest wildfire emergency.

(2) Notwithstanding paragraph (1), no employee referred to in such paragraph may be paid premium pay under the provisions of law cited in the first sentence of subsection (a) if, or to the extent that, the aggregate of such employee's basic pay and premium pay under those provisions would, in any calendar year, exceed the maximum rate payable for GS–15 in effect at the end of such calendar year.

(c)(1) Subsections (a) and (b) shall not apply to a law enforcement officer.

(2) A law enforcement officer may be paid premium pay under the provisions of law cited in the first sentence of subsection (a) only to the extent that the payment does not cause the officer's aggregate rate of pay for any pay period to exceed the lesser of—

(A) 150 percent of the minimum rate payable for GS–15 (including any applicable locality-based comparability payment under section 5304 or similar provision of law and any applicable special rate of pay under section 5305 or similar provision of law); or

(B) the rate payable for level V of the Executive Schedule.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 488; Pub. L. 90–83, § 1(31), Sept. 11, 1967, 81 Stat. 201; Pub. L. 97–276, § 151(e), Oct. 2, 1982, 96 Stat. 1201; Pub. L. 98–525, title XV, § 1537(d), Oct. 19, 1984, 98 Stat. 2636; Pub. L. 100–523, § 2, Oct. 24, 1988, 102 Stat. 2605; Pub. L. 101–509, title V, § 529 [title II, § 204, title IV, § 410(b)], Nov. 5, 1990, 104 Stat. 1427, 1456, 1469; Pub. L. 102–378, § 2(43), Oct. 2, 1992, 106 Stat. 1352; Pub. L. 103–329, title VI, § 633(b)(2), Sept. 30, 1994, 108 Stat. 2427.)

HISTORICAL AND REVISION NOTES
1966 ACT

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 943.	June 30, 1945, ch. 212, § 603, 59 Stat. 302. May 24, 1946, ch. 270, § 7(a), 60 Stat. 218. July 3, 1948, ch. 830, § 303(a), 62 Stat. 1268. Sept. 1, 1954, ch. 1208, § 209, 68 Stat. 1112.

Former section 943(a), (b) is combined and restated for clarity and conciseness. The word ''officer'' is omitted as included in ''employee''. The word ''scheduled'' is omitted since section 603 of the Act of Oct. 11, 1962, Pub. L. 87–793, 76 Stat. 847, eliminated the necessity of referring to rates as scheduled or longevity. Reference to the ''Classification Act of 1949, as amended'' is omitted as unnecessary.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 ACT

In the codification of 5 U.S.C. 5547, the words ''premium pay under this subchapter'' were substituted for ''premium compensation provided by this Act'' appearing in the source statute—section 603 of the Federal Employees Pay Act of 1945, as amended (former 5 U.S.C. 943). This amendment of 5 U.S.C. 5547 is made for clarity and precision of reference and in recognition that the source statutes for certain sections of subchapter V of chapter 55 of title 5 include statutes that were not a part of the Federal Employees Pay Act of 1949. Specifically, 5 U.S.C. 5544(a) is based in part on section 23 (2d proviso) of the act of March 28, 1934, as amended by 76 Stat. 360; and 5 U.S.C. 5545(d) is based on section 804 of the Classification Act of 1949, as added by Public Law 89–512, 80 Stat. 318. Also, 5 U.S.C. 5541(2)(xi) in effect excludes employees subject to 5 U.S.C. 5544 from the operation of 5 U.S.C. 5547.

REFERENCES IN TEXT

GS–15, referred to in subsecs. (a), (b)(2), and (c)(2)(A), is contained in the General Schedule which is set out under section 5332 of this title.

Level V of the Executive Schedule, referred to in subsec. (c)(2)(B), is set out in section 5316 of this title.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–329 inserted ''5545a,'' after ''5545(a), (b), and (c),''.

1992—Subsec. (c)(3). Pub. L. 102–378 struck out par. (3) which read as follows: ''For the purposes of this subsection, 'law enforcement officer' means any law enforcement officer within the meaning of section 8331(20) or section 8401(17).''

1990—Subsec. (a). Pub. L. 101–509, §529 [title II, §204(1)], inserted ''(including any applicable locality-based comparability payment under section 5304 or similar provision of law and any applicable special rate of pay under section 5305 or similar provision of law)'' after ''GS–15''.

Subsec. (b). Pub. L. 101–509, §529 [title II, §204(2)], amended subsec. (b) generally, substituting present provisions for former provisions consisting of pars. (1) to (3) that related to pay of forest firefighters working on forest wildfire emergencies.

Subsec. (c). Pub. L. 101–509, §529 [title IV, §410(b)], added subsec. (c).

1988—Pub. L. 100–523 amended section generally, designating existing provisions as subsec. (a) and adding subsec. (b).

1984—Pub. L. 98–525 inserted ''or the Department of Defense''.

1982—Pub. L. 97–276 inserted provision directing that first sentence of this section not apply to any employee of Federal Aviation Administration who is paid premium pay under section 5546a of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–329 effective first day of first applicable pay period beginning on or after 30th day following Sept. 30, 1994, with exceptions relating to criminal investigators employed in Offices of Inspectors General, see section 633(e) of Pub. L. 103–329, set out as an Effective Date note under section 5545a of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–378 effective as of first day of first applicable pay period beginning on or after Oct. 2, 1992, see section 9(b)(9) of Pub. L. 102–378, set out as a note under section 6303 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 529 [title II, §204] of Pub. L. 101–509 effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title III, §305] of Pub. L. 101–509, set out as a note under section 5301 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–525 effective Oct. 1, 1984, see section 1537(f) of Pub. L. 98–525, set out as a note under section 4109 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–276 effective at 5 o'clock ante meridian eastern daylight time, Aug. 3, 1981, see section 151(h)(1) of Pub. L. 97–276, set out as an Effective Date note under section 5546a of this title.

SHORT TITLE OF 1988 AMENDMENT

Section 1 of Pub. L. 100–523 provided: ''That this Act [amending this section] may be cited as the 'Forest Wildfire Emergency Pay Equity Act of 1988'.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 20 section 241.

§ 5548. Regulations

(a) The Office of Personnel Management may prescribe regulations, subject to the approval of the President, necessary for the administration of this subchapter, except section 5545(d) insofar as this subchapter affects employees in or under an Executive agency.

(b) The Office shall prescribe regulations necessary for the administration of section 5545(d).

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 488; Pub. L. 90–83, §1(32), Sept. 11, 1967, 81 Stat. 201; Pub. L. 92–392, §12, Aug. 19, 1972, 86 Stat. 575; Pub. L. 95–454, title IX, §906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 102–378, §2(44)(C), Oct. 2, 1992, 106 Stat. 1352.)

HISTORICAL AND REVISION NOTES

1966 ACT

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 945.	June 30, 1945, ch. 212, §605, 59 Stat. 304.

The words ''an Executive agency'' are substituted for ''the executive branch of the Government'' to conform to the definition in section 105. Applicability of this section to employees of the General Accounting Office is based on former section 933a.

The remainder of the authority is covered by sections 5504 and 6101.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 ACT

Section of title 5	*Source (U.S. Code)*	*Source (Statutes at Large)*
5548(b)	5 App.: 1072 (as applicable to 5 App.: 1134.)	Oct. 28, 1949, ch. 782, §1101 (as applicable to §804, added July 19, 1966, Pub. L. 89–512, §1, 80 Stat. 318), 63 Stat. 971.
	5 App.: 1134(4) (6th through 9th words).	July 19, 1966, Pub. L. 89–512, §1 ''Sec. 804(4) (6th through 9th words)'', 80 Stat. 318.

This section consolidates into 5 U.S.C. 5548(b) general regulatory authority granted to the Civil Service Commission by section 1101 of the Classification Act of 1949 (as applicable to sec. 804 of that act, added by Public

Law 89–512) and the specific requirement in section 804 (4) of that act that the Commission prescribe regulations.

AMENDMENTS

1992—Subsec. (b). Pub. L. 102–378 substituted ''section 5545(d)'' for ''sections 5545(d) and 5550 of this title''.

1978—Subsecs. (a), (b). Pub. L. 95–454 substituted ''Office of Personnel Management'' for ''Civil Service Commission'' and ''Office'' for ''Commission''.

1972—Subsec. (a). Pub. L. 92–392, § 12(a), struck out reference to section 5544 of this title.

Subsec. (b). Pub. L. 92–392, § 12(b), inserted reference to section 5550 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92–392 effective on first day of first applicable pay period beginning on or after 90th day after Aug. 19, 1972, see section 15(a) of Pub. L. 92–392, set out as an Effective Date note under section 5341 of this title.

DELEGATION OF FUNCTIONS

Function vested in Office of Personnel Management under this section to be performed without approval of President, see section 1(1) of Ex. Ord. No. 11228, June 14, 1965, 30 F.R. 7739, set out as a note under section 301 of Title 3, The President.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 20 section 241.

§ 5549. Effect on other statutes

This subchapter does not prevent payment for overtime services or for Sunday or holiday work under any of the following statutes—

(1) section 394 of title 7;

(2) sections 1353a and 1353b of title 8;

(3) sections 261,[1] 267, 1450, 1451, 1451a,[1] and 1452 of title 19;

(4) sections 2111 and 2112 of title 46; and

(5) section 154(f)(3) of title 47.

However, an employee may not receive premium pay under this subchapter for the same services for which he is paid under one of these statutes.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 488; Pub. L. 98–89, § 3(a), Aug. 26, 1983, 97 Stat. 599.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 941.	June 30, 1945, ch. 212, § 601, 59 Stat. 302.

In paragraph (2), the words ''sections 1353a and 1353b of title 8'' are substituted for ''sections 342c and 342d of this title'' to reflect the scheduled transfer of those sections to title 8.

In paragraph (5), the words ''section 154(f)(3) of title 47'' are substituted for ''section 154(f)(2) of title 47'' on authority of the Act of July 16, 1952, ch. 879, § 3(b), 66 Stat. 711, which redesignated subsection (f)(2) as (f)(3).

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

REFERENCES IN TEXT

Section 261 of title 19, referred to in par. (3), was omitted from the Code in the general revision of section 5 of act Feb. 13, 1911, ch. 46, by Pub. L. 103–66, title XIII, § 13811(a), Aug. 10, 1993, 107 Stat. 668.

Section 1451a of title 19, referred to in par. (3), was repealed by Pub. L. 103–66, title XIII, § 13811(b)(1), Aug. 10, 1993, 107 Stat. 670.

AMENDMENTS

1983—Par. (4). Pub. L. 98–89 substituted ''sections 2111 and 2112 of title 46'' for ''section 382b of title 46''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 20 section 241.

[§ 5550. Repealed. Pub. L. 102–378, § 2(44)(A), Oct. 2, 1992, 106 Stat. 1352]

Section, added Pub. L. 92–392, § 10(a), Aug. 19, 1972, 86 Stat. 574, related to pay for Sunday and overtime work for employees of nonappropriated fund instrumentalities.

§ 5550a. Compensatory time off for religious observances

(a) Not later than 30 days after the date of the enactment of this section, the Office of Personnel Management shall prescribe regulations providing for work schedules under which an employee whose personal religious beliefs require the abstention from work during certain periods of time, may elect to engage in overtime work for time lost for meeting those religious requirements. Any employee who so elects such overtime work shall be granted equal compensatory time off from his scheduled tour of duty (in lieu of overtime pay) for such religious reasons, notwithstanding any other provision of law.

(b) In the case of any agency described in subparagraphs (C) through (G) of section 5541(1) of this title, the head of such agency (in lieu of the Office) shall prescribe the regulations referred to in subsection (a) of this section.

(c) Regulations under this section may provide for such exceptions as may be necessary to efficiently carry out the mission of the agency or agencies involved.

(Added Pub. L. 95–390, title IV, § 401(a), Sept. 29, 1978, 92 Stat. 762; amended Pub. L. 96–54, § 2(a)(14), (15), Aug. 14, 1979, 93 Stat. 382.)

REFERENCES IN TEXT

The date of enactment of this section, referred to in subsec. (a), is the date of enactment of Pub. L. 95–390, which was approved Sept. 29, 1978.

AMENDMENTS

1979—Subsecs. (a), (b). Pub. L. 96–54 substituted ''Office of Personnel Management'' for ''Civil Service Commission'' and ''Office'' for ''Commission''.

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 VI—PAYMENT FOR ACCUMULATED AND ACCRUED LEAVE

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 5520a, 5948, 8331 of this title; title 38 section 7453.

§ 5551. Lump-sum payment for accumulated and accrued leave on separation

(a) An employee as defined by section 2105 of this title or an individual employed by the gov-

[1] See References in Text note below.

ernment of the District of Columbia, who is separated from the service or elects to receive a lump-sum payment for leave under section 5552 of this title, is entitled to receive a lump-sum payment for accumulated and current accrued annual or vacation leave to which he is entitled by statute. The lump-sum payment shall equal the pay (excluding any differential under section 5925 and any allowance under section 5928) the employee or individual would have received had he remained in the service until expiration of the period of the annual or vacation leave. The lump-sum payment is considered pay for taxation purposes only. The period of leave used for calculating the lump-sum payment shall not be extended due to any holiday occurring after separation. For the purposes of this subsection, movement to employment described in section 2105(c) shall not be deemed separation from the service in the case of an employee whose annual leave is transferred under section 6308(b).

(b) The accumulated and current accrued annual leave to which an officer excepted from subchapter I of chapter 63 of this title by section 6301(2)(x)–(xiii) of this title, is entitled immediately before the date he is excepted under that section shall be liquidated by a lump-sum payment in accordance with subsection (a) of this section or subchapter VIII of this chapter, except that the payment is based on the rate of pay which he was receiving, immediately before the date on which section 6301(2)(x)–(xiii) of this title became applicable to him.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 488; Pub. L. 93–181, §1, Dec. 14, 1973, 87 Stat. 705; Pub. L. 95–519, §2, Oct. 25, 1978, 92 Stat. 1819; Pub. L. 96–499, title IV, §402(a), Dec. 5, 1980, 94 Stat. 2605; Pub. L. 101–508, title VII, §7202(g), Nov. 5, 1990, 104 Stat. 1388–336; Pub. L. 102–138, title I, §147(b)(1), Oct. 28, 1991, 105 Stat. 669.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(a)	5 U.S.C. 61b (1st, 2d, and 6th sentences).	Dec. 21, 1944, ch. 632, §1 (less 1st proviso, and less so much of last sentence as precedes 2d proviso), 58 Stat. 845. July 2, 1953, ch. 178, §4(a) (1st and 5th sentences), 67 Stat. 137.
(b)	5 U.S.C. 2061a(a).	July 2, 1953, ch. 178, §2(a), 67 Stat. 136.

In subsection (a), the words ''An employee as defined by section 2105 of this title'' are coextensive with and substituted for ''civilian officer or employee of the Federal Government''. Reference to ''section 1474 of Appendix to Title 50, is omitted in view of the repeal of that section by the Act of July 24, 1956, ch. 671, §5(a)(3), 70 Stat. 606. The words ''and shall not be subject to retirement deductions'' are omitted and carried into section 8331(3).

In subsection (b)(2), reference to the limitation imposed by section 5 of the Act of July 2, 1953, ch. 178, 67 Stat. 138, is omitted as obsolete since the limitation was eliminated by the Act of Sept. 2, 1958, Pub. L. 85–914, §1, 72 Stat. 1761.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1991—Subsec. (a). Pub. L. 102–138 inserted ''(excluding any differential under section 5925 and any allowance under section 5928)'' after ''pay'' in second sentence.

1990—Subsec. (a). Pub. L. 101–508 inserted at end ''For the purposes of this subsection, movement to employment described in section 2105(c) shall not be deemed separation from the service in the case of an employee whose annual leave is transferred under section 6308(b).''

1980—Subsec. (a). Pub. L. 96–499 provided that the period of leave used for calculating the lump-sum payment was not to be extended due to any holiday occurring after separation.

1978—Subsec. (b). Pub. L. 95–519 substituted ''6301(2)(x)–(xiii)'' for ''6301(2)(x)–(xii)'' in two places.

1973—Subsec. (a). Pub. L. 93–181 struck out exception clause that the lump-sum payment may not exceed pay for a period of annual or vacation leave in excess of 30 days or the number of days carried over to his credit at the beginning of the leave year in which entitlement to payment occurs, whichever is greater.

Subsec. (b). Pub. L. 93–181 struck out second exception clause that the payment is made without regard to the limitation in subsec. (a) of this section on the amount of leave compensable.

EFFECTIVE DATE OF 1991 AMENDMENT

Section 147(b)(2) of Pub. L. 102–138 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply with respect to service as part of a tour of duty or extension thereof commencing on or after the date of enactment of this Act [Oct. 28, 1991].''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable with respect to any individual who, on or after Jan. 1, 1987, moves from employment in nonappropriated fund instrumentality of Department of Defense or Coast Guard, that is described in section 2105(c) of this title, to employment in Department or Coast Guard, that is not described in section 2105(c), or who moves from employment in Department or Coast Guard, that is not described in section 2105(c), to employment in nonappropriated fund instrumentality of Department or Coast Guard, that is described in section 2105(c), see section 7202(m)(1) of Pub. L. 101–508, set out as a note under section 2105 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 402(b) of Pub. L. 96–499 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Dec. 5, 1980] and shall apply to employees separating from the service on or after such date.''

EFFECTIVE DATE OF 1978 AMENDMENT

Section 4 of Pub. L. 95–519 provided that:

''(a) The amendments made by the first section and section 2 of this Act [amending sections 5551, 6301, 6302, and 6306 of this title] shall take effect beginning on the first day of the first applicable pay period beginning on or after the date of the enactment of this Act [Oct. 25, 1978].

''(b) The amendment made by section 3 of this Act [amending section 8339 of this title] shall apply only with respect to employees who retire or die on or after the date of the enactment of this Act [Oct. 25, 1978].''

CROSS REFERENCES

Members of armed forces, payments for unused accrued leave, see section 501 of Title 37, Pay and Allowances of the Uniformed Services.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5552, 5596, 6304, 6306, 6335, 6368, 8344, 8468 of this title; title 15 section 2081; title 20 sections 904, 4416; title 25 sections 2011, 2012; title 38 section 7458; title 45 section 1206.

§ 5552. Lump-sum payment for accumulated and accrued leave on entering active duty; election

An employee as defined by section 2105 of this title or an individual employed by a territory or possession of the United States or the government of the District of Columbia who enters on active duty in the armed forces is entitled to—

(1) receive, in addition to his pay and allowances from the armed forces, a lump-sum payment for accumulated and current accrued annual or vacation leave in accordance with section 5551 of this title; or

(2) elect to have the leave remain to his credit until his return from active duty.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 489.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 61a.	Aug. 1, 1941, ch. 348, 55 Stat. 616. Apr. 7, 1942, ch. 220, 56 Stat. 200.

The words ''An employee as defined by section 2105 of this title'' are coextensive with and substituted for ''Employees of the United States Government, . . . (including employees of any corporation created under authority of an Act of Congress which is either wholly controlled or wholly owned by the United States Government, or any corporation, all the stock of which is owned or controlled by the United States Government, or any department, agency, or establishment thereof, whether or not the employees thereof are paid from funds appropriated by Congress)''.

The words ''subsequent to May 1, 1940'' are omitted as obsolete. The words ''active duty in the armed forces'' and ''active duty'' are substituted for ''active military or naval service in the land or naval forces of the United States'' and ''active military or naval service'', respectively, on authority of the National Security Act of 1947, 61 Stat. 495, as amended. The words ''by voluntary enlistment or otherwise'' are omitted as unnecessary.

In paragraph (1), the words ''in accordance with section 5551 of this title'' are added on authority of former section 61b, which is carried into section 5551.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5551, 5596, 6304, 6335, 6368 of this title; title 38 section 7458.

§ 5553. Regulations

The Office of Personnel Management may prescribe regulations necessary for the administration of this subchapter.

(Added Pub. L. 102–378, § 2(45)(A), Oct. 2, 1992, 106 Stat. 1353.)

SUBCHAPTER VII—PAYMENTS TO MISSING EMPLOYEES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 5307, 5520a of this title; title 18 section 1923; title 22 section 3970; title 50 App. section 1291.

§ 5561. Definitions

For the purpose of this subchapter—

(1) ''agency'' means an Executive agency and a military department;

(2) ''employee'' means an employee in or under an agency who is a citizen or national of the United States or an alien admitted to the United States for permanent residence, but does not include a part-time or intermittent employee or native labor casually hired on an hourly or daily basis. However, such an employee who enters a status listed in paragraph (5)(A)–(E) of this section—

(A) inside the continental United States; or

(B) who is a resident at or in the vicinity of his place of employment in a territory or possession of the United States or in a foreign country and who was not living there solely as a result of his employment;

is an employee for the purpose of this subchapter only on a determination by the head of the agency concerned that this status is the proximate result of employment by the agency;

(3) ''dependent'' means—

(A) a wife;

(B) an unmarried child (including an unmarried dependent stepchild or adopted child) under 21 years of age;

(C) a dependent mother or father;

(D) a dependent designated in official records; and

(E) an individual determined to be dependent by the head of the agency concerned or his designee;

(4) ''active service'' means active Federal service by an employee;

(5) ''missing status'' means the status of an employee who is in active service and is officially carried or determined to be absent in a status of—

(A) missing;

(B) missing in action;

(C) interned in a foreign country;

(D) captured, beleaguered, or besieged by a hostile force; or

(E) detained in a foreign country against his will;

but does not include the status of an employee for a period during which he is officially determined to be absent from his post of duty without authority; and

(6) ''pay and allowances'' means—

(A) basic pay;

(B) special pay;

(C) incentive pay;

(D) basic allowance for quarters;

(E) basic allowance for subsistence; and

(F) station per diem allowances for not more than 90 days.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 489.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(1)–(4)	50A U.S.C. 1001.	Mar. 7, 1942, ch. 166, §1, 56 Stat. 143. July 1, 1944, ch. 371, §1, 58 Stat. 679. May 16, 1947, ch. 70, §1, 61 Stat. 96.

HISTORICAL AND REVISION NOTES—CONTINUED

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
		Aug. 29, 1957, Pub. L. 85–217, §1(a), 71 Stat. 491. Aug. 14, 1964, Pub. L. 88–428, §1(1), (2), 78 Stat. 437.
(5)	50A U.S.C. 1002(a) (3d through 66th words of 1st sentence, and 1st 28 words of 3d sentence, for definition purposes).	Mar. 7, 1942, ch. 166, §2(a) (3d through 66th words and 96th through 120th words of 1st sentence, and 1st 28 words of 3d sentence, for definition purposes); added July 1, 1944, ch. 371, §2, 58 Stat. 679. Apr. 4, 1953, ch. 17, §1(a), 67 Stat. 21. Aug. 29, 1957, Pub. L. 85–217, §1(b) (1st par.), 71 Stat. 491. Aug. 14, 1964, Pub. L. 88–428, §1(3)(A), (C), 78 Stat. 437.
(5)	50A U.S.C. 1014 (as applicable to §1002(a) (1st sentence)).	Mar. 7, 1942, ch. 166, §14 (as applicable to §2(a) (1st sentence)), 56 Stat. 147. Apr. 4, 1953, ch. 17, §1(e), 67 Stat. 21.
(6)	50A U.S.C. 1002(a) (96th through 120th words of 1st sentence, for definition purposes).	

Only that portion of the source law which is applicable to civilian officers and employees and their dependents is codified in this section.

In paragraph (1), the word ''agency'' is substituted for ''department''. The words ''including such term when used in the amendment made by section 16'' are omitted as surplusage. The words ''an Executive agency and a military department'' are coextensive with and substituted for ''any executive department, independent establishment, or agency (including corporations) in the executive branch of the Federal Government'' in view of the definitions in sections 105 and 102, and on authority of 5 U.S.C. 933a which provides that general legislation governing employment, compensation, and the status of employees of the United States applies to employees of the General Accounting Office in the same manner as if they were in the executive branch.

In paragraph (3)(A), the word ''lawful'' is omitted as unnecessary in view of the accepted recognition of the fact that the word ''wife'' means a lawful wife. In paragraph (3)(E), the words ''head of the agency concerned or his designee'' are substituted for ''head of the department concerned, or subordinate designated by him''.

The definitions in paragraphs (5) and (6), which do not appear in, but are based on, the source law are created for legislative convenience.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

BENEFITS FOR UNITED STATES HOSTAGES IN IRAQ AND KUWAIT AND UNITED STATES HOSTAGES CAPTURED IN LEBANON

Pub. L. 101–513, title V, §599C, Nov. 5, 1990, 104 Stat. 2064, as amended by Pub. L. 102–138, title III, §302(a), Oct. 28, 1991, 105 Stat. 707; Pub. L. 102–499, §5(a), Oct. 24, 1992, 106 Stat. 3266, provided for payment of benefits during fiscal year 1991 and thereafter for United States hostages in Iraq and Kuwait and United States hostages captured in Lebanon.

HOSTAGE RELIEF

Pub. L. 96–449, Oct. 14, 1980, 94 Stat. 1967, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 102–83, §5(c)(2), Aug. 6, 1991, 105 Stat. 406, known as the ''Hostage Relief Act of 1980'', provided for benefits for United States civil service and uniformed service personnel who were placed in a captive status during a hostage period beginning on Nov. 4, 1979, due to the seizure of the United States Embassy in Iran.

EXECUTIVE ORDER NO. 12268

Ex. Ord. No. 12268, Jan. 15, 1981, 46 F.R. 4671, provided for the implementation of the Hostage Relief Act of 1980 (Pub. L. 96–449).

EXECUTIVE ORDER NO. 12313

Ex. Ord. No. 12313, July 13, 1981, 46 F.R. 36689, designated Jan. 11, 1981, as date on which all citizens and resident aliens of the United States who had been placed in captive status as a result of seizure of United States Embassy in Iran were returned to United States or otherwise accounted for and were no longer under foreign control.

CROSS REFERENCES

Payments to missing members of the uniformed services, see section 551 et seq. of Title 37, Pay and Allowances of the Uniformed Services.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5564, 5569 of this title; title 10 sections 4342, 6954, 9342; title 26 sections 112, 6013.

§ 5562. Pay and allowances; continuance while in a missing status; limitations

(a) An employee in a missing status is entitled to receive or have credited to his account, for the period he is in that status, the same pay and allowances to which he was entitled at the beginning of that period or may become entitled thereafter. Notwithstanding any other provision of law, an employee in a missing status on or after January 1, 1965, is entitled—

(1) to payment for annual leave which accrued to his account on or after January 1, 1965, but which was forfeited under section 6304 of this title because he was unable to use that leave by virtue of his missing status; or

(2) to have all of that leave restored to him and credited to a separate leave account in accordance with the provisions of section 6304(d)(2) of this title.

An employee shall elect in writing, within 90 days immediately following December 14, 1973, or within 90 days immediately following the termination of his missing status, whichever is later, whether he desires payment for the leave under clause (1) of this subsection or credit of the leave under clause (2) of this subsection. Payment under clause (1) of this subsection shall be at the employee's rate of basic pay in effect at the time the leave was forfeited.

(b) Entitlement to pay and allowances under subsection (a) of this section ends on the date of—

(1) receipt by the head of the agency concerned of evidence that the employee is dead; or

(2) death prescribed or determined under section 5565 of this title.

That entitlement does not end—

(A) on the expiration of the term of service or employment of an employee while he is in a missing status; or

(B) earlier than the dates prescribed in paragraphs (1) and (2) of this subsection if the employee dies while he is in a missing status.

(c) An employee who is officially determined to be absent from his post of duty without authority is indebted to the United States for payments of amounts credited to his account under subsection (a) of this section for the period of that absence.

(d) When an employee in a missing status is continued in that status under section 5565 of this title, he continues to be entitled to have pay and allowances credited under subsection (a) of this section.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 490; Pub. L. 93–181, § 7(a), Dec. 14, 1973, 87 Stat. 707; Pub. L. 96–54, § 2(a)(33), Aug. 14, 1979, 93 Stat. 383.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(a)	50A U.S.C. 1002(a) (1st sentence, less last 46 words).	Mar. 7, 1942, ch. 166, § 2(a) (1st 2 sentences and 3d sentence, less 1st 28 words); added July 1, 1944, ch. 371, § 2, 58 Stat. 679. Apr. 4, 1953, ch. 17, § 1(a), 67 Stat. 21. Aug. 29, 1957, Pub. L. 85–217, § 1(b), 71 Stat. 491. Aug. 14, 1964, Pub. L. 88–428, § 1(3)(A), (B), 78 Stat. 437.
	50A U.S.C. 1014 (as applicable to § 1002(a) (1st sentence)).	Mar. 7, 1942, ch. 166, § 14 (as applicable to § 2(a) (1st sentence)), 56 Stat. 147. Apr. 4, 1953, ch. 17, § 1(e), 67 Stat. 21.
(b)	50A U.S.C. 1002(a) (last 46 words of 1st sentence, and 2d sentence).	
(c)	50A U.S.C. 1002(a) (3d sentence, less 1st 28 words).	
(d)	50A U.S.C. 1006 (2d sentence, as applicable to pay and allowances).	Mar. 7, 1942, ch. 166, § 6 (2d sentence, as applicable to pay and allowances); added Dec. 24, 1942, ch. 828, § 1 (4th par.), 56 Stat. 1093. Aug. 14, 1964, Pub. L. 88–428, § 1(5)(B), 78 Stat. 437.

Only that portion of the source law which is applicable to civilian officers and employees and their dependents is codified in this section.

In subsection (a), the words ''An employee in a missing status'' are substituted for the first 66 words of 50A U.S.C. 1002(a) to conform to the definitions in section 5561(2) and (5). The words ''pay and allowances'' are substituted for the enumeration of pay and allowances in the first sentence of 50A U.S.C. 1002(a) to conform to the definition in sections 5561(6). The words ''or is performing full-time training duty, other full-time duty, or inactive duty training'' and ''except that the pay and allowances for a person who is performing full-time training duty or other full-time duty without pay, or inactive duty training with or without pay, shall be that to which he would have been entitled if he had been performing full-time active duty with pay;'' are omitted as inapplicable to civilian officers and employees.

In subsection (b), the words ''under subsection (a) of this section'' are inserted for clarity.

In subsection (c), the words ''United States'' are substituted for ''Government'' to conform to the style of this title. The words ''under subsection (a) of this section'' are inserted for clarity.

In subsection (d), the words ''an employee in a missing status'' are substituted for ''a person missing under the conditions specified in section 2 of this Act'' to conform to the definitions in section 5561(2) and (5).

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1979—Subsec. (a). Pub. L. 96–54 substituted ''December 14, 1973,'' for ''the date of enactment of this sentence''.

1973—Subsec. (a). Pub. L. 93–181 inserted provisions relating to employees in missing status on or after January 1, 1965.

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.

FORMER EMPLOYEES OR THEIR BENEFICIARIES

Section 7(b) of Pub. L. 93–181 provided that: ''The amendment made by subsection (a) of this section [amending subsec. (a) of this section] shall apply to former employees or their beneficiaries.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5563, 5567, 5569, 6304 of this title; title 26 section 6013.

§ 5563. Allotments; continuance, suspension, initiation, resumption, or increase while in a missing status; limitations

(a) An allotment (including one for the purchase of United States savings bonds) made by an employee before he was in a missing status may be continued for the period he is in that status, notwithstanding the end of the period for which the allotment was made.

(b) In the absence of an allotment or when an allotment is insufficient for a purpose authorized by the head of the agency concerned, he or his designee may authorize such a new or increased allotment as circumstances warrant, which is payable for the period the employee concerned is in a missing status.

(c) All allotments from the pay and allowances of an employee in a missing status may not total more than the amount of pay and allowances he is permitted to allot under regulations prescribed by the head of the agency concerned.

(d) A premium paid by the United States on insurance issued on the life of an employee, which is unearned because it covers a period after his death, reverts to the appropriation of the agency concerned.

(e) Subject to subsections (f) and (g) of this section, the head of the agency concerned or his designee may direct the initiation, continuance, discontinuance, increase, decrease, suspension, or resumption of an allotment from the pay and allowances of an employee in a missing status when that action is in the interests of the employee, his dependents, or the United States.

(f) When the head of the agency concerned officially reports that an employee in a missing status is alive, an allotment under subsections (a)–(d) of this section may be paid, subject to section 5562 of this title, until the date the head of the agency concerned receives evidence that the employee is dead or has returned to the controllable jurisdiction of the agency concerned.

(g) When an employee in a missing status is continued in that status under section 5565 of this title, an allotment under subsections (a)–(d) of this section may be continued, increased, or initiated.

(h) When the head of the agency concerned considers it essential for the well-being and protection of the dependents of an employee in active service (other than an employee in a missing status), he may, with or without the consent of the employee and subject to termination on specific request of the employee—

(1) direct the payment of a new allotment from the pay of the employee;

(2) increase or decrease the amount of an allotment made by the employee; and

(3) continue payment of an allotment of the employee which has expired.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 490.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(a)	50A U.S.C. 1003 (1st sentence).	Mar. 7, 1942, ch. 166, §3, 56 Stat. 144. Dec. 24, 1942, ch. 828, §1 (1st par.), 56 Stat. 1092. July 1, 1944, ch. 371, §3, 58 Stat. 680.
(b)	50A U.S.C. 1003 (2d sentence, less proviso).	
(c)	50A U.S.C. 1003 (1st proviso of 2d sentence).	
(d)	50A U.S.C. 1003 (2d proviso of 2d sentence).	
(e)	50A U.S.C. 1004	Mar. 7, 1942, ch. 166, §4, 56 Stat. 144. Dec. 24, 1942, ch. 828, §1 (2d par.), 56 Stat. 1093. July 1, 1944, ch. 371, §4, 58 Stat. 680.
(f)	50A U.S.C. 1006 (1st sentence).	Mar. 7, 1942, ch. 166, §6 (1st sentence and 2d sentence, as applicable to allotments); added Dec. 24, 1942, ch. 828, §1 (4th par.), 56 Stat. 1093. Apr. 4, 1953, ch. 17, §1(b), 67 Stat. 21. Aug. 14, 1964, Pub. L. 88–428, §1(5), 78 Stat. 437.
	50A U.S.C. 1014 (as applicable to §1006 (1st sentence)).	Mar. 7, 1942, ch. 166, §14 (as applicable to §6 (1st sentence)), 56 Stat. 147. Apr. 4, 1953, ch. 17, §1(e), 67 Stat. 21.
(g)	50A U.S.C. 1006 (2d sentence, as applicable to allotments).	
(h)	50A U.S.C. 1007.	Mar. 7, 1942, ch. 166 §7, 56 Stat. 145. Aug. 14, 1964, Pub. L. 88–428, §1(6), 78 Stat. 437.

Only that portion of the source law which is applicable to civilian officers and employees and their dependents is codified in this section.

In subsection (a), the words ''employee . . . in a missing status'' are substituted for the reference to ''person . . . entitled under section 2 of this Act to receive or be credited with pay and allowances'' to conform to the definitions in section 5561(2) and (5). The words ''except as otherwise provided herein'' are omitted as unnecessary.

In subsection (b), the words ''head of the agency concerned, he or his designee'' are substituted for ''head of the department concerned . . . head of the department concerned, or such subordinate as he may designate''. The word ''employee'' is substituted for ''person'' to conform to the definition in section 5561(2).

In subsection (c), the words ''in effect'' are omitted as surplusage. The words ''employee in a missing status'' are substituted for ''absent person'' to conform to the definitions in section 5561(2) and (5).

In subsection (d), the words ''United States'' are substituted for ''Government'' to conform to the style of this title. The word ''employee'' is substituted for ''person'' to conform to the definition in section 5561(2).

In subsection (e), the words ''head of the agency concerned or his designee'' are substituted for ''head of the department concerned, or such subordinates as he may designate''. The words ''employee in a missing status'' are substituted for ''person entitled to receive or be credited with pay and allowances under section 2 of this Act'' to conform to the definitions in section 5561(2) and (5). The words ''United States'' are substituted for ''Government'' to conform to the style of this title.

In subsections (f) and (g), the words ''employee in a missing status'' are substituted for ''person missing under the conditions specified in section 2 of this Act'' to conform to the definitions in section 5561(2) and (5).

In subsection (h), the words ''employee in a missing status'' are substituted for ''persons entitled under section 2 or 14 of this Act to receive pay and allowances'' to conform to the definitions in section 5561(2) and (5). In paragraph (2), the words ''heretofore or hereafter'' are omitted as unnecessary.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5567, 5569 of this title.

§ 5564. Travel and transportation; dependents; household and personal effects; motor vehicles; sale of bulky items; claims for proceeds; appropriation chargeable

(a) For the purpose of this section, ''household and personal effects'' and ''household effects'' may include, in addition to other authorized weight allowances, one privately owned motor vehicle which may be shipped at United States expense.

(b) Transportation (including packing, crating, draying, temporarily storing, and unpacking of household and personal effects) may be provided for the dependents and household and personal effects of an employee in active service (without regard to pay grade) who is officially reported as dead, injured, or absent for more than 29 days in a status listed in section 5561(5)(A)–(E) of this title to—

(1) the official residence of record for the employee;

(2) the residence of his dependent, next of kin, or other person entitled to the effects under regulations prescribed by the head of the agency concerned; or

(3) another location determined in advance or later approved by the head of the agency concerned or his designee on request of the employee (if injured) or his dependent, next of kin, or other person described in paragraph (2) of this subsection.

(c) When an employee described in subsection (b) of this section is in an injured status, transportation of dependents and household and personal effects may be provided under this section only when prolonged hospitalization or treatment is anticipated.

(d) Transportation on request of a dependent may be authorized under this section only when there is a reasonable relationship between the circumstances of the dependent and the destination requested.

(e) Instead of providing transportation for dependents under this section, when the travel has been completed the head of the agency concerned may authorize—

(1) reimbursement for the commercial cost of the transportation; or

(2) a monetary allowance, instead of transportation, as authorized by statute for the whole or that part of the travel for which transportation in kind was not furnished.

(f) The head of the agency concerned may store the household and personal effects of an employee described in subsection (b) of this section until proper disposition can be made. The cost of the storage and transportation (including packing, crating, draying, temporarily storing, and unpacking) of household and personal effects shall be charged against appropriations currently available.

(g) When the head of the agency concerned determines that an emergency exists and that a sale would be in the best interests of the United States, he may provide for the public or private sale of motor vehicles and other bulky items of the household and personal effects of an employee described in subsection (b) of this section. Before a sale, and if practicable, a reasonable effort shall be made to determine the desires of interested persons. The net proceeds from the sale shall be sent to the owner or other person entitled thereto under regulations prescribed by the head of the agency concerned. If there is no owner or other person entitled thereto, or if the owner or other person or their addresses are not ascertained within 1 year from the date of sale, the net proceeds may be covered into the Treasury of the United States as miscellaneous receipts.

(h) A claim for net proceeds covered into the Treasury under subsection (g) of this section may be filed with the General Accounting Office by the owner, his heir or next of kin, or his legal representative at any time before the end of 5 years from the date the proceeds are covered into the Treasury. When a claim is filed, the General Accounting Office shall allow or disallow it. A claim that is allowed shall be paid from the appropriation for refunding money erroneously received and covered. If a claim is not filed before the end of 5 years from the date the proceeds are covered into the Treasury, it is barred from being acted on by the General Accounting Office or the courts.

(i) This section does not amend or repeal—

(1) section 2575, 2733, 4712, 6522, or 9712 of title 10;

(2) section 507 of title 14; or

(3) chapter 171 of title 28.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 491; Pub. L. 90–83, §1(33), Sept. 11, 1967, 81 Stat. 201; Pub. L. 102–190, div. A, title X, §1063(a), Dec. 5, 1991, 105 Stat. 1476.)

HISTORICAL AND REVISION NOTES
1966 ACT

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(a)	50A U.S.C. 1012 (14th sentence).	Mar. 7, 1942, ch. 166, §12, 56 Stat. 146. Feb. 12, 1946, ch. 6, §1(a), 60 Stat. 5. Aug. 29, 1951, ch. 356, §1, 65 Stat. 207. Apr. 4, 1953, ch. 17, §1(d), 67 Stat. 21. Aug. 29, 1957, Pub. L. 85–217, §1(d), 71 Stat. 492.
(b)	50A U.S.C. 1012 (1st sentence). 50A U.S.C. 1014 (as applicable to §1012 (1st sentence)).	Aug. 14, 1964, Pub. L. 88–428, §1(8), 78 Stat. 437. Mar. 7, 1942, ch. 166, §14 (as applicable to §12 (1st sentence)), 56 Stat. 147. Apr. 4, 1953, ch. 17, §1(e), 67 Stat. 21.
(c)	50A U.S.C. 1012 (12th sentence).	
(d)	50A U.S.C. 1012 (13th sentence).	
(e)	50A U.S.C. 1012 (11th sentence).	
(f)	50A U.S.C. 1012 (9th and 10th sentences).	
(g)	50A U.S.C. 1012 (2d–4th sentences).	
(h)	50A U.S.C. 1012 (5th–7th sentences).	
(i)	50A U.S.C. 1012 (8th sentence).	

HISTORICAL AND REVISION NOTES—CONTINUED
1966 ACT

Only that portion of the source law which is applicable to civilian officers and employees and their dependents is codified in this section.

In subsection (a), the words ''Beginning June 25, 1950, and'' are omitted as executed. The words ''not to exceed'' are omitted as unnecessary. The words ''outside the United States, or in Alaska or Hawaii'' are substituted for ''outside the continental limits of the United States or in Alaska''.

In subsection (b), the words ''Transportation . . . may be provided'' are substituted for ''may be moved''. The words ''an employee . . . for more than 28 days in a status listed in section 5561(5)(A)–(E) of this title'' are substituted for ''person . . . for a period of thirty days or more in any status listed in section 2 of this Act'' for clarity and to conform to the definitions in section 5561(2) and (5). In paragraph (1), the words ''the employee'' are substituted for ''any such person''. In paragraph (3), the words ''head of the agency concerned or his designee'' are substituted for ''head of the department concerned or by such person as he may designate''.

In subsection (c), the word ''employee'' is substituted for ''person''. The words ''transportation . . . may be provided under this section only when'' are substituted for ''movement . . . provided for herein may be authorized only in cases where''.

In subsection (d), the words ''on request of a dependent may be provided under . . . only'' are substituted for ''No . . . shall be authorized pursuant to . . . upon application by dependents unless''. The words ''condition and'' are omitted as surplusage.

In subsection (e)(1), the words ''reimbursement for'' are substituted for ''the payment in money of amounts equal to''.

In subsection (f), the word ''employee'' is substituted for ''person''. The words ''such time as'' are omitted as surplusage.

In subsection (g), the words ''United States'' are substituted for ''Government'' to conform to the style of this title. The word ''employee'' is substituted for ''person''. The words ''under . . . prescribed'' are substituted for ''in accordance with . . . issued''.

In subsection (h), the words ''under subsection (g) of this section'' are substituted for ''under authority of this section''.

In subsection (i), the words ''the provisions of'' are omitted as surplusage. Paragraph (3) is substituted for

''the Federal Tort Claims Act (60 Stat. 842–847), as amended;'' to reflect the correct citation of that Act.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 ACT

Section of title 5	*Source (U.S. Code)*	*Source (Statutes at Large)*
5564(a)	50 App.: 1012.	Oct. 19, 1965, Pub. L. 89–271, 79 Stat. 992.

Only that portion of the source law applicable to civilian officers and employees and their dependents is codified in this section. That portion of the source law applicable to members of the uniformed services and their dependents is codified in 37 U.S.C. 554(a) by section 5(2) of this bill.

AMENDMENTS

1991—Subsec. (i)(1). Pub. L. 102–190 substituted ''6522, or 9712'' for ''4713, 6522, 9712, or 9713''.

§ 5565. Agency review

(a) When an employee has been in a missing status almost 12 months and no official report of his death or the circumstances of his continued absence has been received by the head of the agency concerned, he shall have the case fully reviewed. After that review and the end of 12 months in a missing status, or after any later review which shall be made when warranted by information received or other circumstances, the head of the agency concerned or his designee may—

(1) direct the continuance of his missing status, if there is a reasonable presumption that the employee is alive; or

(2) make a finding of death.

(b) When a finding of death is made under subsection (a) of this section, it shall include the date death is presumed to have occurred for the purpose of the ending of crediting pay and allowances and settlement of accounts. That date is—

(1) the day after the day on which the 12 months in a missing status ends; or

(2) a day determined by the head of the agency concerned or his designee when the missing status has been continued under subsection (a) of this section.

(c) For the purpose of determining status under this section, a dependent of an employee in active service is deemed an employee. A determination under this section made by the head of the agency concerned or his designee is conclusive on all other agencies of the United States. This section does not entitle a dependent to pay, allowances, or other compensation to which he is not otherwise entitled.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 492.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(a)	50A U.S.C. 1005 (1st and 2d sentences).	Mar. 7, 1942, ch. 166, §5, 56 Stat. 145. Dec. 24, 1942, ch. 828, §1 (3d par.), 56 Stat. 1093. Aug. 14, 1964, Pub. L. 88–428, §1(4), 78 Stat. 437.
	50A U.S.C. 1014 (as applicable to §1005 (1st sentence)).	Mar. 7, 1942, ch. 166, §14 (as applicable to §5 (1st sentence)), 56 Stat. 147. Apr. 4, 1953, ch. 17, §1(e), 67 Stat. 21.
(b)	50A U.S.C. 1005 (less 1st and 2d sentences).	
(c)	50A U.S.C. 1009(b) (as applicable to §1005).	Mar. 7, 1942, ch. 166, §9(b) (as applicable to §5); added Aug. 29, 1957, Pub. L. 85–217, §1(c), 71 Stat. 492.

Only that portion of the source law which is applicable to civilian officers and employees and their dependents is codified in this section.

In subsection (a), the words ''When an employee has been in a missing status almost 12 months'' are substituted for ''When the twelve months' period from the date of commencement of absence is about to expire in any case of a person entitled under section 2 of this Act to receive or be credited with pay and allowances'' for clarity and to conform to the definitions in section 5561(2) and (5). For the same reasons, the words ''the end of 12 months in a missing status'' are substituted for ''the twelve months' absence shall have expired''. The words ''or his designee'' are supplied on authority of 50A U.S.C. 1009(a) which is codified in part in section 5566(a). In paragraph (1), the words ''his'' and ''employee'' are substituted for ''person's'' and ''person''.

In subsection (b), the words ''under subsection (a) of this section'' are inserted for clarity. The words ''and payment of death gratuities'' are omitted as inapplicable to civilian officers and employees. In paragraph (1), the words ''the day on which the 12 months in a missing status ends'' are substituted for ''the day of expiration of an absence of twelve months'' for consistency with subsection (a) of this section and in view of the definition in section 5561(5). In paragraph (2), the words ''or his designee'' are supplied on authority of 50A U.S.C. 1009(a) which is in part codified in section 5566(a). The words ''under subsection (a) of this section'' are substituted for ''as hereinbefore authorized''.

In subsection (c), the word ''sole'' is omitted as surplusage and in view of the provisions of section 5566(h). The word ''deemed'' is supplied to evidence the legal fiction provided by the words ''is a 'person' under this Act'' in 50A U.S.C. 1009(a). The words ''or his designee'' are supplied on authority of 50A U.S.C. 1009(a) which is in part codified in section 5566(a). The words ''agencies of the United States'' are substituted for ''departments of the Government''. The words ''This section does not entitle'' are substituted for ''*Provided*, That nothing in this section shall be construed as conferring . . . any right''.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5562, 5563, 5566, 5567 of this title.

§ 5566. Agency determinations

(a) The head of the agency concerned or his designee may make any determination necessary to administer this subchapter, and when so made it is conclusive as to—

(1) death or finding of death;

(2) the fact of dependency under this subchapter;

(3) any other status covered by this subchapter;

(4) an essential date, including one on which evidence or information is received by the head of the agency concerned; and

(5) whether information received concerning an employee is to be construed and acted on as an official report of death.

(b) When the head of the agency concerned receives information that he considers to conclusively establish the death of an employee, he shall take action thereon as an official report of death, notwithstanding an earlier action relating to death or status of the employee. After the end of 12 months in a missing status prescribed by section 5565 of this title, the head of the agency concerned or his designee shall make a finding of death when he considers that the information received, or a lapse of time without information, establishes a reasonable presumption that an employee in a missing status is dead.

(c) The head of the agency concerned or his designee may determine the entitlement of an employee to pay and allowances under this subchapter, including credits and charges in his account, and that determination is conclusive. An account may not be charged or debited with an amount that an employee captured, beleaguered, or besieged by a hostile force may receive or be entitled to receive from, or have placed to his credit by, the hostile force as pay, allowances, or other compensation.

(d) When circumstances warrant the reconsideration of a determination made under this subchapter, the head of the agency concerned or his designee may change or modify it.

(e) When the account of an employee has been charged or debited with an allotment paid under this subchapter, the amount so charged or debited shall be recredited to the account of the employee if the head of the agency concerned or his designee determines that the payment was induced by fraud or misrepresentation to which the employee was not a party.

(f) Except an allotment for an unearned insurance premium, an allotment paid from the pay and allowances of an employee for the period he is in a missing status may not be collected from the allottee as an overpayment when payment was caused by delay in receiving evidence of death. An allotment paid for a period after the end, under this subchapter or otherwise, of entitlement to pay and allowances may not be collected from the allottee or charged against the pay of a deceased employee when payment was caused by delay in receiving evidence of death.

(g) The head of the agency concerned or his designee may waive the recovery of an erroneous payment or overpayment of an allotment to a dependent if he considers recovery is against equity and good conscience.

(h) For the purpose of determining status under this section, a dependent of an employee in active service is deemed an employee. A determination under this section made by the head of the agency concerned or his designee is conclusive on all other agencies of the United States. This section does not entitle a dependent to pay, allowances, or other compensation to which he is not otherwise entitled.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 493.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(a)	50A U.S.C. 1009(a) (1st and 2d sentences).	Mar. 7, 1942, ch. 166, §9(a) (less 5th and last sentences); added July 1, 1944, ch. 371, §5, 58 Stat. 680. Apr. 4, 1953, ch. 17, §1(c), 67 Stat. 21. Aug. 29, 1957, Pub. L. 85–217, §1(c), 71 Stat. 492.
	50A U.S.C. 1010.	Mar. 7, 1942, ch. 166, §10, 56 Stat. 145. July 1, 1944, ch. 371, §6, 58 Stat. 681. Aug. 14, 1964, Pub. L. 88–428, §1(7), 78 Stat. 437.
(b)	50A U.S.C. 1009(a) (3d and 4th sentences).	
(c)	50A U.S.C. 1009(a) (6th sentence, less last proviso).	
	50A U.S.C. 1014 (as applicable to §1009(a) (1st proviso of 6th sentence)).	Mar. 7, 1942, ch. 166, §14 (as applicable to §9(a) (1st proviso of 6th sentence)), 56 Stat. 147. Apr. 4, 1953, ch. 17, §1(e), 67 Stat. 21.
(d)	50A U.S.C. 1009(a) (7th sentence).	
(e)	50A U.S.C. 1009(a) (last proviso of 6th sentence).	
(f)	50A U.S.C. 1009(a) (8th sentence).	
(g)	50A U.S.C. 1009(a) (9th sentence).	
(h)	50A U.S.C. 1009(b) (as applicable to §1009).	Mar. 7, 1942, ch. 166, §9(b) (as applicable to §9); added Aug. 29, 1957, Pub. L. 85–217, §1(c), 71 Stat. 492.

Only that portion of the source law which is applicable to civilian officers and employees and their dependents is codified in this section.

In subsection (a), the words ''head of the agency concerned or his designee'' are substituted for ''head of the department concerned, or such subordinate as he may designate''. The words ''for the purposes of this Act'' are omitted as surplusage. The words ''final and'' in 50A U.S.C. 1010 are omitted as surplusage and for consistency with 50A U.S.C. 1009(a) (1st sentence). The words ''the determination of the fact of dependency for the purpose of payment of all six months' death gratuities as authorized by law, and the determination of the fact of dependency under the provisions of any and all other laws providing for the payment of pay, allowances, or other emoluments to enlisted personnel in the Army, Navy, Air Force, Marine Corps, and Coast Guard of the United States where such payments are contingent upon dependency'' in 50A U.S.C. 1010 are omitted as inapplicable to civilian officers and employees and their dependents. In paragraph (2), the words ''under this subchapter'' are substituted for ''under the provisions of this Act''. In paragraph (3), the words ''covered by this subchapter'' are substituted for ''dealt with by this Act''. In paragraph (4), the words ''by the head of the agency concerned'' are substituted for ''in such department or by the head thereof''. In paragraph (5), the word ''employee'' is substituted for ''person''.

In subsection (b), the words ''head of the agency concerned'' are substituted for ''department concerned''. The word ''employee'' is substituted for ''person''. In the second sentence, the words ''the head of the agency concerned or his designee'' are inserted for clarity. The words ''is dead'' are substituted for ''is no longer alive'' for consistency with references in this section to ''death''.

In subsection (c), the words ''or his designee'' are substituted for ''or by such subordinate as he may designate''. The words ''captured, beleaguered, or besieged

by a hostile force'' are substituted for ''in the hands of a hostile force'' on authority of 50A U.S.C. 1014.

In subsection (d), the words ''under this subchapter'' are substituted for ''authorized to be made by this Act''. The words ''or his designee'' are substituted for ''or such subordinate as he may designate''.

In subsection (e), the words ''an employee . . . allotment paid under this subchapter'' are substituted for ''any person . . . allotments paid pursuant to this Act''. The words ''the employee if the head of the agency concerned or his designee'' are substituted for ''such person's . . . in any case in which . . . the head of the department concerned, or such subordinate as he may designate.''

In subsection (f), the words ''may not be collected'' are substituted for ''shall not be subject to collection'' in two places. The word ''employee'' is substituted for ''person''.

In subsection (g), the words ''or his designee'' are substituted for ''or such subordinate as he may designate''.

In subsection (h), the word ''sole'' is omitted as surplusage and in view of the provisions of section 5565(c). The word ''deemed'' is supplied to evidence the legal fiction provided by the words ''is a 'person' under this Act'' in 50A U.S.C. 1009(a). The words ''or his designee'' are supplied on authority of 50A U.S.C. 1009(a) which is codified in part in subsection (a) of this section. The words ''agencies of the United States'' are substituted for ''departments of the Government''. The words ''This section does not entitle'' are substituted for ''*Provided*, That nothing in this section shall be construed as conferring . . . any right''.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5569 of this title; title 26 section 2.

§ 5567. Settlement of accounts

(a) The head of the agency concerned or his designee may settle the accounts of—

(1) an employee for whose account payment has been made under sections 5562, 5563, and 5565 of this title; and

(2) a survivor of a casualty to a ship, station, or military installation which results in the loss or destruction of disbursing records.

That settlement is conclusive on the accounting officials of the United States in settling the accounts of disbursing officials.

(b) Payment or settlement of an account made pursuant to a report, determination, or finding of death may not be recovered or reopened because of a later report or determination which fixes a date of death. However, an account shall be reopened and settled on the basis of a date of death so fixed which is later than that used as a basis for earlier settlement.

(c) In settling the accounts of a disbursing official, he is entitled to credit for an erroneous payment or overpayment made by him in carrying out this subchapter, except section 5568, if there is no fraud or criminality by him. Recovery may not be made from an individual who authorizes a payment under this subchapter, except section 5568, if there is no fraud or criminality by him.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 494.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(a)	50A U.S.C. 1011.	Mar. 7, 1942, ch. 166, §11, 56 Stat. 146.
(b)	50A U.S.C. 1009(a) (5th sentence).	Mar. 7, 1942, ch. 166, §9(a) (5th and last sentences); added July 1, 1944, ch. 371, §5, 58 Stat. 680. Aug. 29, 1957, Pub. L. 85–217, §1(c), 71 Stat. 492.
(c)	50A U.S.C. 1009(a) (last sentence).	

HISTORICAL AND REVISION NOTES—CONTINUED

Only that portion of the source law which is applicable to civilian officers and employees and their dependents is codified in this section.

In subsection (a), the words ''or his designee'' are substituted for ''or such person as he may designate''. The word ''employee'' is substituted for ''persons''. The words ''United States'' are substituted for ''Government'' to conform to the style of this title.

In subsection (c), the words ''in carrying out this subchapter, except section 5568'' are substituted for ''in carrying out the provisions of this Act, except sections 13, 16, 17, and 18'', since sections 16 and 17 are scheduled for repeal (see Table II) and section 18 was previously repealed. The words ''under this subchapter, except section 5568'' are substituted for ''under such provisions'' for the reasons stated in the preceding sentence.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

§ 5568. Income tax deferment

Notwithstanding other statutes, any Federal income tax return of, or the payment of any Federal income tax by, an employee who, at the time the return or payment would otherwise become due, is in a missing status does not become due until the earlier of the following dates:

(1) the fifteenth day of the third month in which he ceased (except because of death or incompetency) being in a missing status, unless before the end of that fifteenth day he is again in a missing status; or

(2) the fifteenth day of the third month after the month in which an executor, administrator, or conservator of the estate of the taxpayer is appointed.

That due date is prescribed subject to the power of the Secretary of the Treasury or his delegate to extend the time for filing the return or paying the tax, as in other cases, and to assess and collect the tax as provided by sections 6851, 6861, and 6871 of title 26 in cases in which the assessment or collection is jeopardized and in cases of bankruptcy or receivership.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 494.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	50A U.S.C. 1013.	Mar. 7, 1942, ch. 166, §13, 56 Stat. 146. Aug. 8, 1947, ch. 515, §6, 61 Stat. 918. Aug. 14, 1964, Pub. L. 88–428, §1(9), 78 Stat. 437.

Only that portion of the source law which is applicable to civilian officers and employees and their dependents is codified in this section.

The words ''in the case of any taxable year beginning after December 31, 1940'' are omitted as unnecessary.

The words ''an employee'' are substituted for ''any civilian officer or employee of any department'' to con-

form to the definition in section 5561(2). The words ''in a missing status'' are substituted for ''absent from his duty station under the conditions specified in section 2 of this Act'' to conform to the definition in section 5561(5) and in view of the provisions of section 5562 establishing the entitlement of an employee in a missing status to receive pay and allowances or to have them credited to his account. Reference to ''title 26'' is substituted for ''Internal Revenue Code of 1954''.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5567 of this title.

§ 5569. Benefits for captives

(a) For the purpose of this section—

(1) ''captive'' means any individual in a captive status commencing while such individual is—

(A) in the Civil Service, or

(B) a citizen, national, or resident alien of the United States rendering personal service to the United States similar to the service of an individual in the Civil Service (other than as a member of the uniformed services);

(2) ''captive status'' means a missing status which, as determined by the President, arises because of a hostile action and is a result of the individual's relationship with the Government;

(3) ''missing status''—

(A) in the case of an employee, has the meaning provided under section 5561(5) of this title; and

(B) in the case of an individual other than an employee, has a similar meaning; and

(4) ''family member'', as used with respect to a person, means—

(A) any dependent of such person; and

(B) any individual (other than a dependent under subparagraph (A)) who is a member of such person's family or household.

(b)(1) The Secretary of the Treasury shall establish a savings fund to which the head of an agency may allot all or any portion of the pay and allowances of any captive to the extent that such pay and allowances are not subject to an allotment under section 5563 of this title or any other provision of law.

(2) Amounts so allotted to the savings fund shall bear interest at a rate which, for any calendar quarter, shall be equal to the average rate paid on United States Treasury bills with 3-month maturities issued during the preceding calendar quarter. Such interest shall be compounded quarterly.

(3) Amounts in the savings fund credited to a captive shall be considered as pay and allowances for purposes of section 5563 of this title and shall otherwise be subject to withdrawal under procedures which the Secretary of the Treasury shall establish.

(4) Any interest accruing under this subsection on—

(A) any amount for which an individual is indebted to the United States under section 5562(c) of this title shall be deemed to be part of the amount due under such section 5562(c); and

(B) any amount referred to in section 5566(f) of this title shall be deemed to be part of such amount for purposes of such section 5566(f).

(5) An allotment under this subsection may be made without regard to section 5563(c) of this title.

(c) The head of an agency shall pay (by advancement or reimbursement) any individual who is a captive, and any family member of such individual, for medical and health care, and other expenses related to such care, to the extent that such care—

(1) is incident to such individual being a captive; and

(2) is not covered—

(A) by any Government medical or health program; or

(B) by insurance.

(d)(1) Except as provided in paragraph (3), the President shall make a cash payment, computed under paragraph (2), to any individual who became or becomes a captive commencing on or after November 4, 1979. Such payment shall be made before the end of the one-year period beginning on the date on which the captive status of such individual terminates or, in the case of any individual whose status as a captive terminated before the date of the enactment of the Victims of Terrorism Compensation Act, before the end of the one-year period beginning on such date.

(2) Except as provided in section 802 of the Victims of Terrorism Compensation Act, the amount of the payment under this subsection with respect to an individual held as a captive shall be not less than one-half of the amount of the world-wide average per diem rate under section 5702 of this title which was in effect for each day that individual was so held.

(3) The President—

(A) may defer a payment under this subsection in the case of any individual who, during the one-year period described in paragraph (1), is charged with an offense described in subparagraph (B), until final disposition of such charge; and

(B) may deny such payment in the case of any individual who is convicted of an offense described in subsection (b) or (c) of section 8312 of this title committed—

(i) during the period of captivity of such individual; and

(ii) related to the captive status of such individual.

(4) A payment under this subsection shall be in addition to any other amount provided by law.

(5) The provisions of subchapter VIII of this chapter (or, in the case of any person not covered by such subchapter, similar provisions prescribed by the President) shall apply with respect to any amount due an individual under paragraph (1) after such individual's death.

(6) Any payment made under paragraph (1) which is later denied under paragraph (3)(B) is a claim of the United States Government for purposes of section 3711 of title 31.

(e)(1) Under regulations prescribed by the President, the benefits provided by the Soldiers' and Sailors' Civil Relief Act of 1940, including the benefits provided by section 701 of such Act

but excluding the benefits provided by sections 104, 105, 106, 400 through 408,[1] 501 through 512, and 514 of such Act, shall be provided in the case of any individual who is a captive.

(2) In applying such Act under this subsection—

(A) the term ''person in the military service'' is deemed to include any such captive;

(B) the term ''period of military service'' is deemed to include the period during which the individual is in a captive status; and

(C) references to the Secretary of the Army, the Secretary of the Navy, the Adjutant General of the Army, the Chief of Naval Personnel, and the Commandant, United States Marine Corps, are deemed, in the case of any captive, to be references to an individual designated for that purpose by the President.

(f)(1)(A) Under regulations prescribed by the President, the head of an agency shall pay (by advancement or reimbursement) a spouse or child of a captive for expenses incurred for subsistence, tuition, fees, supplies, books, and equipment, and other educational expenses, while attending an educational or training institution.

(B) Except as provided in subparagraph (C), payments shall be available under this paragraph for a spouse or child of an individual who is a captive for education or training which occurs—

(i) after that individual has been in captive status for 90 days or more, and

(ii) on or before—

(I) the end of any semester or quarter (as appropriate) which begins before the date on which the captive status of that individual terminates, or

(II) if the educational or training institution is not operated on a semester or quarter system, the earlier of the end of any course which began before such date or the end of the 16-week period following that date.

In order to respond to special circumstances, the appropriate agency head may specify a date for purposes of cessation of assistance under clause (ii) which is later than the date which would otherwise apply under such clause.

(C) In the event a captive dies and the death is incident to that individual being a captive, payments shall be available under this paragraph for a spouse or child of such individual for education or training which occurs after the date of such individual's death.

(D) The preceding provisions of this paragraph shall not apply with respect to any spouse or child who is eligible for assistance under chapter 35 of title 38 or similar assistance under any other provision of law.

(E) For the purpose of this paragraph, ''child'' means a dependent under section 5561(3)(B) of this title.

(2)(A) In order to respond to special circumstances, the head of an agency may pay (by advancement or reimbursement) a captive for expenses incurred for subsistence, tuition, fees, supplies, books, and equipment, and other educational expenses, while attending an educational or training institution.

(B) Payments shall be available under this paragraph for a captive for education or training which occurs—

(i) after the termination of that individual's captive status, and

(ii) on or before—

(I) the end of any semester or quarter (as appropriate) which begins before the date which is 10 years after the day on which the captive status of that individual terminates, or

(II) if the educational or training institution is not operated on a semester or quarter system, the earlier of the end of any course which began before such date or the end of the 16-week period following that date, and

shall be available only to the extent that such payments are not otherwise authorized by law.

(3) Assistance under this subsection—

(A) shall be discontinued for any individual whose conduct or progress is unsatisfactory under standards consistent with those established pursuant to section 3524 of title 38; and

(B) may not be provided for any individual for a period in excess of 45 months (or the equivalent thereof in other than full-time education or training).

(4) Regulations prescribed to carry out this subsection shall provide that the program under this subsection shall be consistent with the assistance program under chapters 35 and 36 of title 38.

(g) Any benefit provided under subsection (c) or (d) may, under regulations prescribed by the President, be provided to a family member of an individual if—

(1) such family member is held in captive status; and

(2) such individual is performing service for the United States as described in subsection (a)(1)(A) when the captive status of such family member commences.

(h) Except as provided in subsection (d), this section applies with respect to any individual in a captive status commencing after January 21, 1981.

(i) Notwithstanding any other provision of this subchapter, any determination by the President under subsection (a)(2) or (d) shall be conclusive and shall not be subject to judicial review.

(j) The President may prescribe regulations necessary to administer this section.

(k) Any benefit or payment pursuant to this section shall be paid out of funds available for salaries and expenses of the relevant agency of the United States.

(Added Pub. L. 99–399, title VIII, § 803(a), Aug. 27, 1986, 100 Stat. 879; amended Pub. L. 102–83, § 5(c)(2), Aug. 6, 1991, 105 Stat. 406.)

REFERENCES IN TEXT

The date of the enactment of the Victims of Terrorism Compensation Act [title VIII of Pub. L. 99–399], referred to in subsec. (d)(1), is Aug. 27, 1986.

Section 802 of the Victims of Terrorism Compensation Act [Pub. L. 99–399], referred to in subsec. (d)(2), is set out as a note below.

The Soldiers' and Sailors' Relief Act of 1940, referred to in subsec. (e)(1), is act Oct. 17, 1940, ch. 888, 54 Stat. 1178, as amended, which is classified to section 501 et

[1] See References in Text note below.

seq. of the Appendix to Title 50, War and National Defense. Sections 104, 105, 106, 400 through 408, 501 through 512, 514, and 701 of the Act are classified to sections 514, 515, 516, 540 through 548, 561 through 572, 574, and 591, respectively, of the Appendix to Title 50. For complete classification of this Act to the Code, see section 501 of Appendix to Title 50 and Tables.

Section 408, referred to in subsec. (e)(1), is section 408 of act Oct. 17, 1940, ch. 888, 54 Stat. 1185, as amended, which was classified to section 548 of the Appendix to Title 50, War and National Defense, and was repealed by Pub. L. 102–12, § 9(18), Mar. 18, 1991, 105 Stat. 40.

AMENDMENTS

1991—Subsec. (f)(3)(A). Pub. L. 102–83 substituted ''section 3524 of title 38'' for ''section 1724 of title 38''.

SHORT TITLE

Section 801 of title VIII of Pub. L. 99–399 provided that: ''This title [enacting sections 5569 and 5570 of this title, sections 1051, 1095, and 2181 to 2185 of Title 10, Armed Forces, sections 559 and 1013 of Title 37, Pay and Allowances of the Uniformed Services, amending section 6325 of this title, and enacting provisions set out as notes under section 5569 of this title, sections 1051, 1095, and 2181 of Title 10, and section 559 of Title 37] may be cited as the 'Victims of Terrorism Compensation Act'.''

PAYMENT TO INDIVIDUALS HELD IN CAPTIVE STATUS BETWEEN NOVEMBER 4, 1979, AND JANUARY 21, 1981

Section 802 of title VIII of Pub. L. 99–399 provided that: ''The amount of the payment for individuals in the Civil Service referred to in section 5569(d) of title 5, United States Code (as added by section 803 of this title), or for individuals in the uniformed services referred to in section 559(c) of title 37, United States Code (as added by section 806 of this title), as the case may be, shall be $50 for each day any such individual was held in captive status during a period commencing on or after November 4, 1979, and ending on or before January 21, 1981.''

TRANSITION PROVISIONS

Section 805 of title VIII of Pub. L. 99–399 provided that:

''(a) SAVINGS FUND.—(1) Amounts may be allotted to the savings fund under subsection (b) of section 5569 of title 5, United States Code (as added by section 803(a) of this Act) from pay and allowances for any pay period ending after January 21, 1981, and before the establishment of such fund.

''(2) Interest on amounts so allotted with respect to any such pay period shall be calculated as if the allotment had occurred at the end of such pay period.

''(b) MEDICAL AND HEALTH CARE; EDUCATIONAL EXPENSES.—Subsections (c) and (f) of such section 5569 (as so added) shall be carried out with respect to the period after January 21, 1981, and before the effective date of those subsections, under regulations prescribed by the President.

''(c) DEFINITION.—For the purpose of this subsection, 'pay and allowances' has the meaning provided under section 5561 of title 5, United States Code.''

REGULATIONS

Section 807 of title VIII of Pub. L. 99–399 provided that: ''Any regulation required by this title or by any amendment made by this title [see Short Title note above] shall take effect not later than 6 months after the date of enactment of this Act [Aug. 27, 1986].''

EFFECTIVE DATE OF ENTITLEMENTS

Section 808 of title VIII of Pub. L. 99–399 provided that: ''Provisions enacted by this title [see Short Title note above] which provide new spending authority described in section 401(c)(2)(C) of the Congressional Budget Act of 1974 [2 U.S.C. 651(c)(2)(C)] shall not be effective until October 1, 1986.''

EXECUTIVE ORDER NO. 12576

Ex. Ord. No. 12576, Dec. 2, 1986, 51 F.R. 43721, relating to victims of terrorism compensation, was superseded by Ex. Ord. No. 12598, June 17, 1987, 52 F.R. 23421, set out as a note below.

EX. ORD. NO. 12598. VICTIMS OF TERRORISM COMPENSATION

Ex. Ord. No. 12598, June 17, 1987, 52 F.R. 23421, provided:

By the authority vested in me as President by the Constitution and laws of the United States of America, including Title VIII of the Omnibus Diplomatic Security and Antiterrorism Act of 1986 (Public Law 99–399, 100 Stat. 853) (''the Act'') [see Short Title note set out above], and in order to provide for the implementation of that Act, it is hereby ordered as follows:

SECTION 1. The functions vested in the President by that part of section 803(a) of the Act to be codified at 5 U.S.C. 5569 are delegated to the Secretary of State.

SEC. 2. The functions vested in the President by that part of section 803(a) of the Act to be codified at 5 U.S.C. 5570 are delegated to the Secretary of State, to be exercised in consultation with the Secretary of Labor.

SEC. 3. The functions vested in the President by section 806(a) (to be codified at 37 U.S.C. 559), section 806(c) (to be codified at 10 U.S.C. 1095 [now 10 U.S.C. 1095a]), and section 806(d) (to be codified at 10 U.S.C. 2181–2185) are delegated to the Secretary of Defense.

SEC. 4. The functions vested in the President by section 806(b) (to be codified at 10 U.S.C. 1051 [now 10 U.S.C. 1032]) are delegated to the Secretary of Defense, to be exercised in consultation with the Secretary of Labor.

SEC. 5. The Secretaries of State and Defense shall consult with each other and with the heads of other appropriate Executive departments and agencies in carrying out their functions under this Order.

SEC. 6. Executive Order No. 12576 of December 2, 1986, is hereby superseded.

RONALD REAGAN.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5570 of this title; title 37 section 559.

§ 5570. Compensation for disability or death

(a) For the purpose of this section—

(1) ''employee'' means—

(A) any individual in the Civil Service; and

(B) any individual rendering personal service to the United States similar to the service of an individual in the Civil Service (other than as a member of the uniformed services); and

(2) ''family member'', as used with respect to an employee, means—

(A) any dependent of such employee; and

(B) any individual (other than a dependent under subparagraph (A)) who is a member of the employee's family or household.

(b) The President shall prescribe regulations under which an agency head may pay compensation for the disability or death of an employee or a family member of an employee if, as determined by the President, the disability or death was caused by hostile action and was a result of the individual's relationship with the Government.

(c) Any compensation otherwise payable to an individual under this section in connection with any disability or death shall be reduced by any amounts payable to such individual under any

other program funded in whole or in part by the United States (excluding any amount payable under section 5569(d) of this title) in connection with such disability or death, except that nothing in this subsection shall result in the reduction of any amount below zero.

(d) A determination by the President under subsection (b) shall be conclusive and shall not be subject to judicial review.

(e) Compensation under this section may include payment (whether by advancement or reimbursement) for any medical or health expenses relating to the death or disability involved to the extent that such expenses are not covered under subsection (c) of section 5569 of this title (other than because of paragraph (2) of such subsection).

(f) This section applies with respect to any disability or death resulting from an injury which occurs after January 21, 1981.

(g) Any benefit or payment pursuant to this section shall be paid out of funds available for salaries and expenses of the relevant agency of the United States.

(Added Pub. L. 99–399, title VIII, § 803(a), Aug. 27, 1986, 100 Stat. 882.)

DELEGATION OF FUNCTIONS

Functions of the President under this section delegated to the Secretary of State to be exercised in consultation with the Secretary of Labor, see Ex. Ord. No. 12598, June 17, 1987, 52 F.R. 23421, set out as a note under section 5569 of this title.

SUBCHAPTER VIII—SETTLEMENT OF ACCOUNTS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 3582, 5520a, 5551, 5569 of this title.

§ 5581. Definitions

For the purpose of this subchapter—

(1) ''employee'' means—

(A) an employee as defined by section 2105 of this title; and

(B) an individual employed by the government of the District of Columbia;

but does not include the employee of—

(i) a Federal land bank;

(ii) a Federal intermediate credit bank;

(iii) a regional bank for cooperatives; or

(iv) the Senate within the purview of section 36a of title 2; and

(2) ''money due'' means the pay and allowances due on account of the services of a deceased employee for the Government of the United States or the government of the District of Columbia. It includes, but is not limited to—

(A) per diem instead of subsistence, mileage, and amounts due in reimbursement of travel expenses, including incidental and miscellaneous expenses in connection therewith for which reimbursement is due;

(B) allowances on change of official station;

(C) quarters and cost-of-living allowances and overtime or premium pay;

(D) amounts due for payment of cash awards for employees' suggestions;

(E) amounts due as refund of pay deductions for United States savings bonds;

(F) payment for accumulated and current accrued annual or vacation leave equal to the pay the decreased employee would have received had he lived and remained in the service until the end of the period of annual or vacation leave;

(G) amounts of checks drawn for pay and allowances which were not delivered by the Government to the employee during his lifetime;

(H) amounts of unnegotiated checks returned to the Government because of the death of the employee; and

(I) retroactive pay under section 5344(a) (2) of this title.

It does not include benefits, refunds, or interest payable under subchapter III of chapter 83 of this title applicable to the service of the deceased employee, or amounts the disposition of which is otherwise expressly prescribed by Federal statute.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 495; Pub. L. 96–54, § 2(a)(34), Aug. 14, 1979, 93 Stat. 383.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(1)	5 U.S.C. 61k.	Aug. 3, 1950, ch. 518, §7, 64 Stat. 396. Apr. 30, 1954, ch. 177, §2, 68 Stat. 65.
(2)	5 U.S.C. 61g.	Aug. 3, 1950, ch. 518, §2, 64 Stat. 396. July 2, 1953, ch. 178, §5, 67 Stat. 138. Sept. 1, 1954, ch. 1208, §501, 68 Stat. 1115. Sept. 2, 1958, Pub. L. 85–914, §1, 72 Stat. 1761.
	5 U.S.C. 61i.	Aug. 3, 1950, ch. 518, §4, 64 Stat. 396.

Paragraph (1) is supplied for convenience and is based on the first 35 words of former section 61f, which is carried into section 5582, and former section 61k.

The exception for production credit corporations in section 7 of the Act of Aug. 3, 1950, is omitted as they were merged in the Federal intermediate credit banks by the Farm Credit Act of 1956, 70 Stat. 659.

The exception in paragraph (1)(iv) for employees of the Senate is added on authority of the Act of Jan. 6, 1951, ch. 1213, 64 Stat. 1124; 2 U.S.C. 36a.

In paragraph (2), the definition of ''money due'' is substituted for ''unpaid compensation''. Paragraph (2)(I) is added on authority of former section 1182(a)(2), which is carried into section 5344.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

REFERENCES IN TEXT

Section 5344 of this title, referred to in par. (2)(I), was amended generally by Pub. L. 92–392 and provisions relating to retroactive pay formerly contained in section 5344(a)(2) are contained in section 5344(b)(2).

AMENDMENTS

1979—Par. (1). Pub. L. 96–54 inserted ''and'' after cl. (iv).

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.

§ 5582. Designation of beneficiary; order of precedence

(a) The employing agency shall notify each employee of his right to designate a beneficiary or beneficiaries to receive money due, and of the disposition of money due if a beneficiary is not designated. An employee may change or revoke a designation at any time under such regulations as the Comptroller General of the United States may prescribe.

(b) In order to facilitate the settlement of the accounts of deceased employees, money due an employee at the time of his death shall be paid to the person or persons surviving at the date of death, in the following order of precedence, and the payment bars recovery by another person of amounts so paid:

First, to the beneficiary or beneficiaries designated by the employee in a writing received in the employing agency before his death.

Second, if there is no designated beneficiary, to the widow or widower of the employee.

Third, if none of the above, to the child or children of the employee and descendants of deceased children by representation.

Fourth, if none of the above, to the parents of the employee or the survivor of them.

Fifth, if none of the above, to the duly appointed legal representative of the estate of the employee.

Sixth, if none of the above, to the person or persons entitled under the laws of the domicile of the employee at the time of his death.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 495.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(a)	5 U.S.C. 61j.	Aug. 3, 1950, ch. 518, §5, 64 Stat. 396.
(b)	5 U.S.C. 61f.	Aug. 3, 1950, ch. 518, §1, 64 Stat. 395.

Subsection (a) is restated for clarity. The word ''officers'' is omitted as included in ''employee''.

In subsection (b), so much of the first 35 words of former section 61f as states the application is carried into the definition of ''employee'' in section 5581(1). The word ''officer'' is omitted as included in ''employee''.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5307, 5583, 5595 of this title; title 22 sections 2504, 3965; title 29 section 1699; title 42 section 4955.

§ 5583. Payment of money due; settlement of accounts

(a) Under such regulations as the Comptroller General of the United States may prescribe, the employing agency shall pay money due a deceased employee to the beneficiary designated by the employee under section 5582(b) of this title, or, if none, to the widow or widower of the employee.

(b) Except as the Comptroller General may by regulation otherwise authorize or direct, accounts not payable under subsection (a) of this section are payable on settlement of the General Accounting Office. However—

(1) accounts of employees of the government of the District of Columbia shall be paid by the District of Columbia; and

(2) accounts of employees of Government corporations or mixed ownership Government corporations may be paid by the corporations.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 496; Pub. L. 96–70, title III, §3302(e)(7), Sept. 27, 1979, 93 Stat. 498.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 61h.	Aug. 3, 1950, ch. 518, §3, 64 Stat. 396. Apr. 30, 1954, ch. 177, §1, 68 Stat. 64.

In subsection (a), the word ''officer'' is omitted as included in ''employee''.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1979—Subsec. (b). Pub. L. 96–70 struck out par. (2) providing that accounts of the employees of the Canal Zone Government be paid by the Canal Zone Government, and redesignated par. (3) as (2).

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–70 effective Oct. 1, 1979, see section 3304 of Pub. L. 96–70, set out as an Effective Date note under section 3601 of Title 22, Foreign Relations and Intercourse.

CROSS REFERENCES

Disposition of unpaid salary and other sums upon death of Representative or Resident Commissioner, see section 38a of Title 2, The Congress.

§ 5584. Claims for overpayment of pay and allowances, and of travel, transportation and relocation expenses and allowances

(a) A claim of the United States against a person arising out of an erroneous payment of pay or allowances made on or after July 1, 1960, or arising out of an erroneous payment of travel, transportation or relocation expenses and allowances, to an employee of an agency, the collection of which would be against equity and good conscience and not in the best interests of the United States, may be waived in whole or in part by—

(1) the Comptroller General of the United States;

(2) the head of an agency when—

(A) the claim is in an amount aggregating not more than $1,500;

(B) the claim is not the subject of an exception made by the Comptroller General in the account of any accountable official; and

(C) the waiver is made in accordance with standards which the Comptroller General shall prescribe; or

(3) the Director of the Administrative Office of the United States Courts when the claim is in an amount aggregating not more than $10,000 and involves an officer or employee of the Administrative Office of the United States Courts, the Federal Judicial Center, or any of the courts set forth in section 610 of title 28.

(b) The Comptroller General or the head of the agency, as the case may be, may not exercise his authority under this section to waive any claim—

(1) if, in his opinion, there exists, in connection with the claim, an indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee or any other person having an interest in obtaining a waiver of the claim;

(2) except in the case of employees of the Government Printing Office, the Library of Congress, the Office of the Architect of the Capitol, or the Botanic Garden, if application for waiver is received in his office, after the expiration of three years immediately following the date on which the erroneous payment of pay was discovered or three years immediately following October 21, 1968, whichever is later;

(3) except in the case of employees of the Government Printing Office, the Library of Congress, the Office of the Architect of the Capitol, or the Botanic Garden, if application for waiver is received in his office after the expiration of three years immediately following the date on which the erroneous payment of allowances was discovered or three years immediately following October 2, 1972, whichever is later;

(4) in the case of employees of the Government Printing Office, the Library of Congress, the Office of the Architect of the Capitol, or the Botanic Garden, if application for waiver is received in his office after the expiration of 3 years immediately following the date on which the erroneous payment of pay or allowances was discovered or 3 years immediately following July 25, 1974, whichever is later; or

(5) in the case of a claim involving an erroneous payment of travel, transportation or relocation expenses and allowances, if application for waiver is received in his office after the expiration of 3 years immediately following the date on which the erroneous payment was discovered.

(c) A person who has repaid to the United States all or part of the amount of a claim, with respect to which a waiver is granted under this section, is entitled, to the extent of the waiver, to refund, by the employing agency at the time of the erroneous payment, of the amount repaid to the United States, if he applies to that employing agency for that refund within two years following the effective date of the waiver. The employing agency shall pay that refund in accordance with this section.

(d) In the audit and settlement of the accounts of any accountable official, full credit shall be given for any amounts with respect to which collection by the United States is waived under this section.

(e) An erroneous payment, the collection of which is waived under this section, is deemed a valid payment for all purposes.

(f) This section does not affect any authority under any other statute to litigate, settle, compromise, or waive any claim of the United States.

(g) For the purpose of this section, ''agency'' means—

(1) an Executive agency;

(2) the Government Printing Office;

(3) the Library of Congress;

(4) the Office of the Architect of the Capitol;

(5) the Botanic Garden; and

(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.

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.

(Added Pub. L. 90–616, §1(a), Oct. 21, 1968, 82 Stat. 1212; amended Pub. L. 92–453, §3(1), Oct. 2, 1972, 86 Stat. 760; Pub. L. 93–359, §1, July 25, 1974, 88 Stat. 393; Pub. L. 96–54, §2(a)(35), Aug. 14, 1979, 93 Stat. 383; Pub. L. 99–224, §1(a), Dec. 28, 1985, 99 Stat. 1741; Pub. L. 100–702, title X, §1009(a), Nov. 19, 1988, 102 Stat. 4667; Pub. L. 102–190, div. A, title VI, §657(a), Dec. 5, 1991, 105 Stat. 1393.)

AMENDMENTS

1991—Subsec. (a)(2)(A). Pub. L. 102–190 substituted ''$1,500'' for ''$500''.

1988—Subsec. (a)(3). Pub. L. 100–702, §1009(a)(1), added par. (3).

Subsec. (g). Pub. L. 100–702, §1009(a)(2), added par. (6) and last sentence.

1985—Pub. L. 99–224, §1(a)(1), substituted ''and of travel, transportation and relocation expenses and allowances'' for ''other than travel and transportation expenses and allowances and relocation expenses'' in section catchline.

Subsec. (a). Pub. L. 99–224, §1(a)(2), substituted ''made on or after July 1, 1960, or arising out of an erroneous payment of travel, transportation or relocation expenses and allowances'' for '', other than travel and transportation expenses and allowances and relocation expenses payable under section 5724a of this title, on or after July 1, 1960''.

Subsec. (b). Pub. L. 99–224, §1(a)(3), added par. (5).

1979—Subsec. (b)(4). Pub. L. 96–54 substituted ''July 25, 1974'' for ''the date on which this clause (4) is enacted into law''.

1974—Subsec. (a). Pub. L. 93–359, §1(1), substituted ''agency'' for ''executive agency'' in provisions preceding cl. (1) and in cl. (2) preceding subcl. (A).

Subsec. (b). Pub. L. 93–359, §1(1)–(4), substituted ''agency'' for ''executive agency'' in provisions preceding cl. (1), inserted ''except in the case of employees of the Government Printing Office, the Library of Congress, the Office of the Architect of the Capitol, or the Botanic Garden,'' immediately following the designation ''(2)'' in cl. (2) and immediately following the designation ''(3)'' in cl. (3), struck out ''or'' at end of cl. (2), substituted ''October 2, 1972, whichever is later; or'' for ''the effective date of the amendment authorizing the waiver of allowances, whichever is later'' in cl. (3) and struck out the period at end of cl. (3), and added cl. (4).

Subsec. (g). Pub. L. 93–359, §1(5), added subsec. (g).

1972—Pub. L. 92–453 inserted ''and allowances, other than travel and transportation expenses and allowances and relocation expenses'' in section catchline, and substituted ''payment of pay or allowances, other than travel and transportation expenses and allowances and relocation expenses payable under section 5724a of this title'' for ''payment of pay'' in subsec. (a).

Subsec. (b)(2). Pub. L. 92–453 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 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 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.

CROSS REFERENCES

Claims for overpayment of pay or allowances to the Vice President, Senators, officers and employees whose pay is disbursed by the Secretary of the Senate, and officers and employees whose pay is disbursed by the Clerk of the House of Representatives, see sections 130c and 130d of Title 2, The Congress.

Compromise and collection of Federal claims generally, see section 3701 et seq. of Title 31, Money and Finance.

Waiver by Secretary of Senate and Speaker of House of claims for erroneous payment of pay or allowances, see sections 130c and 130d of Title 2, The Congress.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6302, 8118 of this title; title 22 section 2504; title 42 section 5055.

SUBCHAPTER IX—SEVERANCE PAY AND BACK PAY

AMENDMENTS

1967—Pub. L. 90–83, §1(34)(A), Sept. 11, 1967, 81 Stat. 201, inserted ''SEVERANCE PAY AND'' before ''BACK PAY'' in subchapter heading.

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 5520a of this title.

[§§ 5591 to 5594. Repealed. Pub. L. 90–83, § 1(34)(B), Sept. 11, 1967, 81 Stat. 201]

HISTORICAL AND REVISION NOTES

This section deletes sections 5591, 5592, 5593, and 5594 of title 5, United States Code, to reflect the repeal of the source statutes of those sections by the act of March 30, 1966, Public Law 89–380, section 5, 80 Stat. 95.

[Sections, Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 496, 497, related to back pay for individuals or preference eligibles reinstated or restored, and are covered by section 5596 of this title.]

§ 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; and

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

(viii) 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.

(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 to—

(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 Transportation, 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) of this title.

(Added Pub. L. 90–83, §1(34)(C), Sept. 11, 1967, 81 Stat. 201; amended Pub. L. 95–454, title IV, §408(a)(3), Oct. 13, 1978, 92 Stat. 1173; Pub. L. 96–70, title I, §1231(d), Sept. 27, 1979, 93 Stat. 470; Pub. L. 96–465, title II, §2305, Oct. 17, 1980, 94 Stat. 2165; Pub. L. 100–325, §2(i)(2), May 30, 1988, 102 Stat. 582; Pub. L. 101–474, §5(k), Oct. 30, 1990, 104 Stat. 1100; Pub. L. 101–509, title V, §529 [title I, §101(b)(9)(J)], Nov. 5, 1990, 104 Stat. 1427, 1442;

Pub. L. 103–337, div. A, title III, § 343(a), Oct. 5, 1994, 108 Stat. 2721.)

HISTORICAL AND REVISION NOTES

Section of title 5	*Source (U.S. Code)*	*Source (Statutes at Large)*
5595	5 App.: 1117.	Oct. 29, 1965, Pub. L. 89–301, § 9, 79 Stat. 1118. Nov. 2, 1966, Pub. L. 89–737, § 2, 80 Stat. 1164.

In subsection (a), subsections (a) and (b) of 5 App. U.S.C. 1117 are restated as definitions.

In subsection (a)(1)(A), the term ''Executive agency'' is substituted for ''the executive branch of the Government of the United States, including each corporation wholly owned or controlled by the United States'' and ''the General Accounting Office'' to conform to the definition in 5 U.S.C. 105.

The definition in subsection (a)(2) continues the application of the section to only civilian officers and employees, and does not encompass members of the uniformed services as they are not ''employed'' in or under an agency. Throughout the section, the word ''officer'', in the phrase ''officer or employee'', is omitted as included within ''employee''. The last 40 words of 5 App. U.S.C. 1117(a) are codified in subsection (g).

In subsection (a)(2)(i), the words ''Executive Schedule'' are substituted for ''Federal Executive Salary Schedule'' to reflect the provisions of 5 U.S.C. 5311. The words ''of the General Schedule of the Classification Act of 1949, as amended'' are omitted as unnecessary.

In subsection (a)(2)(ii), the words ''without a break in service of more than 3 days'' are coextensive with and substituted for ''without a break in service or after a separation of three days or less''.

In subsection (a)(2)(iv), the words ''subchapter III of chapter 83 of this title'' are substituted for ''the Civil Service Retirement Act, as amended'' to reflect the codification of the act in title 5 U.S.C. The words ''employees as defined by section 2105 of this title'' are coextensive with and substituted for ''Federal officers and employees''.

In subsection (a)(2)(v), the words ''subchapter I of chapter 81 of this title'' are substituted for ''the Federal Employees' Compensation Act, as amended'' to reflect the codification of the act in title 5, U.S.C.

In subsection (b) the word ''agency'' is substituted for ''department, independent establishment, corporation, or other governmental unit'' to conform to the definition in subsection (a)(1). Subsection (b)(1) is substituted for 5 App. U.S.C. 1117(e).

In subsection (e), the words ''section 5582(b) of this title'' are substituted for ''the first section of the Act of August 3, 1950 (5 U.S.C. 61f)'' to reflect the codification of the section in title 5, United States Code.

REFERENCES IN TEXT

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

Section 3(a) of the Panama Canal Act of 1979, referred to in subsec. (a)(2)(iii), 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 4009(b)(1) of Title 22.

AMENDMENTS

1994—Subsec. (h). Pub. L. 103–337 added subsec. (h).

1990—Subsec. (a)(1)(E). Pub. L. 101–474, § 5(k)(1), added subpar. (E).

Subsec. (a)(2)(i). Pub. L. 101–509 substituted ''employee (other'' for ''employee, other'', inserted ''or an employee whose pay is fixed under section 5376)'' before ''whose rate'', and substituted ''the Executive Schedule'' for ''GS–18''.

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.''

1988—Subsec. (a)(2)(i). Pub. L. 100–325 inserted reference to Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service.

1980—Subsec. (a)(2)(vi). Pub. L. 96–465 inserted ''benefits under section 609(b)(1) of the Foreign Service Act of 1980 or any'' after ''to receive''.

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''.

1978—Subsec. (a)(2)(i). Pub. L. 95–454 inserted reference to a member of the Senior Executive Service.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 343(b) of Pub. L. 103–337 provided that: ''Subsection (h) of section 5595 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].''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–509 effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title III, § 305] of Pub. L. 101–509, set out as a note under section 5301 of this title.

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. 96–70 effective Oct. 1, 1979, see section 3304 of Pub. L. 96–70, set out as an Effective Date note under section 3601 of Title 22, Foreign Relations and Intercourse.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 9 months after Oct. 13, 1978, and congressional review of provisions of sections 401 through 412 of Pub. L. 95–454, see section 415 of Pub. L. 95–454, set out as a note under section 3131 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3381, 5545a, 5597, 5948 of this title; title 15 section 2081; title 22 section 3691; title 38 sections 7453, 7458.

§ 5596. Back pay due to unjustified personnel action

(a) For the purpose of this section, ''agency'' means—

(1) an Executive agency;

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

(3) the Library of Congress;

(4) the Government Printing Office; and

(5) the government of the District of Columbia.

(b)(1) An employee of an agency who, on the basis of a timely appeal or an administrative determination (including a decision relating to an unfair labor practice or a grievance) is found by appropriate authority under applicable law, rule, regulation, or collective bargaining agree-

ment, to have been affected by an unjustified or unwarranted personnel action which has resulted in the withdrawal or reduction of all or part of the pay, allowances, or differentials of the employee—

(A) is entitled, on correction of the personnel action, to receive for the period for which the personnel action was in effect—

(i) an amount equal to all or any part of the pay, allowances, or differentials, as applicable which the employee normally would have earned or received during the period if the personnel action had not occurred, less any amounts earned by the employee through other employment during that period; and

(ii) reasonable attorney fees related to the personnel action which, with respect to any decision relating to an unfair labor practice or a grievance processed under a procedure negotiated in accordance with chapter 71 of this title, or under chapter 11 of title I of the Foreign Service Act of 1980, shall be awarded in accordance with standards established under section 7701(g) of this title; and

(B) for all purposes, is deemed to have performed service for the agency during that period, except that—

(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 30 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) 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.

(Added Pub. L. 90–83, §1(34)(C), Sept. 11, 1967, 81 Stat. 203; amended Pub. L. 94–172, §1(a), Dec. 23, 1975, 89 Stat. 1025; Pub. L. 95–454, title VII, §702, Oct. 13, 1978, 92 Stat. 1216; Pub. L. 96–54, §2(a)(14), Aug. 14, 1979, 93 Stat. 382; Pub. L. 96–465, title II, §2306, Oct. 17, 1980, 94 Stat. 2165; Pub. L. 100–202, §101(m) [title VI, §623(a)], Dec. 22, 1987, 101 Stat. 1329–390, 1329–428; Pub. L. 101–474, §5(*l*), Oct. 30, 1990, 104 Stat. 1100.)

HISTORICAL AND REVISION NOTES

Section of title 5	*Source (U.S. Code)*	*Source (Statutes at Large)*
5596(a)	5 App.: 652a.	Mar. 30, 1966, Pub. L. 89–380, §§2–4, 80 Stat. 94, 95.
5596(b)	5 App.: 652b.	
5596(c)	5 App.: 652c.	

In subsection (a)(1), the term ''an 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. 2105. The words ''on or after the date of enactment of this Act'' and ''taken prior to, on, or after the date of enactment of his Act'' are omitted as executed and unnecessary, since title 5 is restated prospectively and as any existing rights are preserved by section 7 of this bill.

In subsection (c), the word ''employees'' is substituted for ''officers and employees'' to conform to the definition in 5 U.S.C. 2105.

REFERENCES IN TEXT

The Foreign Service Act of 1980, referred to in subsec. (b)(1)(A)(ii), is Pub. L. 96–465, Oct. 17, 1980, 94 Stat. 2071. Chapter 11 of title I of the Act is classified generally to subchapter XI (§4131 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. (b)(2)(B)(ii), 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)(4), are classified to sections 4131, 4102, and 4115, respectively, of Title 22, Foreign Relations and Intercourse.

AMENDMENTS

1990—Subsec. (a)(2). Pub. L. 101–474, §5(*l*)(1), substituted ''Courts, the Federal Judicial Center, and the courts named by section 610 of title 28'' for ''Courts''.

Subsec. (c). Pub. L. 101–474, §5(*l*)(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.

1980—Subsec. (b)(1). Pub. L. 96–465, § 2306(1), inserted in subpar. (A)(ii) ''or under chapter 11 of title I of the Foreign Service Act of 1980'' after ''chapter 71 of this title,''.

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''.

1979—Subsec. (c). Pub. L. 96–54 substituted ''Office of Personnel Management'' for ''Civil Service Commission''.

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 1987 AMENDMENT

Section 101(m) [title VI, § 623(b)] of Pub. L. 100–202 provided that:

''(1) GENERALLY.—Except as provided in paragraph (2), the amendments made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Dec. 22, 1987], and shall apply with respect to any employee found, in a final judgment entered 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 entitles 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 entered or a final decision 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 1304 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 305 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as an Effective Date note under section 1101 of this title.

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 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 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 within three years immediately following the date of the 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 salary rate 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 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 his 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 within 3 years immediately following the date of enactment of this Act with the Postal Service. Payment shall be by the Postal Service at the salary rate 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 Postal Service who had prior Federal civilian service with 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 au-

thorized 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 the enactment of this Act [Dec. 23, 1975]. Payment shall be by the Postal Service at the salary rate in effect on the date of the enactment of this Act.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5307, 7118, 7122 of this title; title 22 sections 4116, 4137.

§ 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, 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 limitations or conditions, as the Secretary may require.

(d) Such separation pay—

(1) shall be paid in a lump sum;

(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; and

(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.

(e) No amount shall be payable under this section based on any separation occurring after September 30, 1999.

(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 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.

(Added Pub. L. 102–484, div. D, title XLIV, § 4436(a)(1), Oct. 23, 1992, 106 Stat. 2723; amended Pub. L. 103–226, § 8(a), Mar. 30, 1994, 108 Stat. 118; Pub. L. 103–337, div. A, title III, § 341(b)(1), Oct. 5, 1994, 108 Stat. 2720.)

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.

AMENDMENTS

1994—Subsec. (e). Pub. L. 103–337 substituted ''September 30, 1999'' for ''September 30, 1997''.

Subsec. (g). Pub. L. 103–226 added subsec. (g).

VOLUNTARY SEPARATION INCENTIVES

Section 3 of Pub. L. 103–226 provided that:

''(a) DEFINITIONS.—For the purpose of this section—

''(1) the term 'agency' means an Executive agency (as defined by section 105 of title 5, United States Code), but does not include the Department of Defense, the Central Intelligence Agency, or the General Accounting Office; and

''(2) the term 'employee' means an employee (as defined by section 2105 of title 5, United States Code) who is employed by an agency, is serving under an appointment without time limitation, and has been currently employed for a continuous period of at least 12 months; such term includes an individual employed by a county committee established under section 8(b) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)), but does not include—

''(A) a reemployed annuitant under subchapter III of chapter 83 or chapter 84 of title 5, United States Code, 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 the applicable retirement system referred to in subparagraph (A).

''(b) AUTHORITY.—

''(1) IN GENERAL.—In order to avoid or minimize the need for involuntary separations due to a reduction in force, reorganization, transfer of function, or other similar action, and subject to paragraph (2), the head of an agency may pay, or authorize the payment of, voluntary separation incentive payments to agency employees—

''(A) in any component of the agency;

''(B) in any occupation;

''(C) in any geographic location; or

''(D) on the basis of any combination of factors under subparagraphs (A) through (C).

''(2) CONDITION.—

''(A) IN GENERAL.—In order to receive an incentive payment, an employee must separate from service with the agency (whether by retirement or resignation) before April 1, 1995.

''(B) EXCEPTION.—An employee who does not separate from service before the date specified in subparagraph (A) shall be ineligible for an incentive payment under this section unless—

''(i) the agency head determines that, in order to ensure the performance of the agency's mission, it is necessary to delay such employee's separation; and

''(ii) the employee separates after completing any additional period of service required (but not later than March 31, 1997).

''(c) AMOUNT AND TREATMENT OF PAYMENTS.—A voluntary separation incentive payment—

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

''(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) of title 5, United States Code, 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 in determining the amount of any severance pay to which an employee may be entitled under section 5595 of title 5, United States Code, based on any other separation; and

''(5) shall be paid from appropriations or funds available for the payment of the basic pay of the employee.

''(d) EFFECT OF SUBSEQUENT EMPLOYMENT WITH THE GOVERNMENT.—

''(1) IN GENERAL.—An employee who has received a voluntary separation incentive payment under this section and accepts employment with the Government of the United States within 5 years after the date of the separation on which the payment is based shall be required to repay the entire amount of the incentive payment to the agency that paid the incentive payment.

''(2) WAIVER AUTHORITY.—

''(A) EXECUTIVE AGENCY.—If the employment is with an Executive agency (as defined by section 105 of title 5, United States Code), 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.

''(B) LEGISLATIVE BRANCH.—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.

''(C) JUDICIAL BRANCH.—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.

''(3) DEFINITION.—For purposes of paragraph (1) (but not paragraph (2)), the term 'employment' includes employment under a personal services contract with the United States.

''(e) REGULATIONS.—The Director of the Office of Personnel Management may prescribe any regulations necessary for the administration of subsections (a) through (d).

''(f) EMPLOYEES OF THE JUDICIAL BRANCH.—The Director of the Administrative Office of the United States Courts may, by regulation, establish a program consistent with the program established by subsections (a) through (d) 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 Committee on Governmental Affairs of the Senate and the Committee on Post Office and Civil Service of the House of Representatives 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 provisions set out as a note under section 403–4 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.''

[Committee on Post Office and Civil Service of House of Representatives abolished and its jurisdiction given primarily to Committee on Government Reform and Oversight by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.]

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 1993 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].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 10 section 1598.

CHAPTER 57—TRAVEL, TRANSPORTATION, AND SUBSISTENCE

SUBCHAPTER I—TRAVEL AND SUBSISTENCE EXPENSES; MILEAGE ALLOWANCES

Sec.
5701. Definitions.

Sec.
5702. Per diem; employees traveling on official business.
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5704. Mileage and related allowances.
5705. Advancements and deductions.
5706. Allowable travel expenses.
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5729. Transportation expenses; prior return of family.
5730. Funds available.
5731. Expenses limited to lowest first-class rate.
5732. General average contribution; payment or reimbursement.
5733. Expeditious travel.
5734. Travel, transportation, and relocation expenses of employees transferred from the Postal Service.
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SUBCHAPTER III—TRANSPORTATION OF REMAINS, DEPENDENTS, AND EFFECTS

5741. General prohibition.
5742. Transportation of remains, dependents, and effects; death occurring away from official station or abroad.

SUBCHAPTER IV—MISCELLANEOUS PROVISIONS

5751. Travel expenses of witnesses.
5752. Travel expenses of Senior Executive Service candidates.
5753. Recruitment and relocation bonuses.
5754. Retention allowances.
5755. Supervisory differentials.

AMENDMENTS

1994—Pub. L. 103–337, div. A, title III, §345(a)(2), Oct. 5, 1994, 108 Stat. 2724, added item 5735.

1992—Pub. L. 102–378, §2(46), Oct. 2, 1992, 106 Stat. 1353, struck out ''; manpower shortage positions'' after ''trainees'' in item 5723 and added item 5755.

1990—Pub. L. 101–509, title V, §529 [title II, §§206(a)(2), 208(b)], Nov. 5, 1990, 104 Stat. 1427, 1457, 1460, added items 5706b, 5753, and 5754.

Pub. L. 101–391, §4(b), Sept. 25, 1990, 104 Stat. 750, added item 5707a.

1986—Pub. L. 99–234, title I, §§103(b), 106(b), Jan. 2, 1986, 99 Stat. 1758, 1759, added items 5706a and 5734.

1983—Pub. L. 98–151, §118(a)(7)(A)(ii), Nov. 14, 1983, 97 Stat. 979, added items 5724b and 5724c.

1978—Pub. L. 95–454, title IV, §409(c), Oct. 13, 1978, 92 Stat. 1173, added item 5752.

1975—Pub. L. 94–22, §7, May 19, 1975, 89 Stat. 86, inserted ''and reports'' after ''Regulations'' in item 5707.

1970—Pub. L. 91–563, §4(b), Dec. 19, 1970, 84 Stat. 1477, added heading of Subchapter IV and item 5751.

Pub. L. 91–481, §1(2), Oct. 21, 1970, 84 Stat. 1081, added item 5709.

1967—Pub. L. 90–206, title II, §222(c)(2), Dec. 16, 1967, 81 Stat. 641, added item 5733.

Pub. L. 90–83 §1(37)(B), Sept. 11, 1967, 81 Stat. 205, added item 5724a.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 3396, 5307 of this title; title 14 section 193; title 18 section 3168; title 22 section 3671; title 26 section 7471; title 42 section 5816.

SUBCHAPTER I—TRAVEL AND SUBSISTENCE EXPENSES; MILEAGE ALLOWANCES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 3375, 3381, 4109, 5354, 5723, 5751, 8476 of this title; title 2 section 476; title 7 sections 2007b, 2229; title 10 sections 180, 2516, 9441; title 12 sections 635, 1441a, 2278a–2; title 15 sections 278g–4, 634, 4632, 4804; title 16 sections 916*l*, 961; title 19 section 2171; title 20 section 5933; title 21 section 874; title 22 sections 290n–3, 1754, 2024, 2511, 2672, 4356, 4832; title 26 sections 7456, 7471; title 28 section 594; title 29 section 1671; title 33 section 2309; title 38 section 4110; title 41 section 420; title 42 sections 1314a, 1395ww, 1975b, 2477, 4276, 4277, 5196, 11609, 12651b; title 44 section 2705; title 46 App. section 1717; title 50 App. section 2281.

§5701. Definitions

Except as otherwise provided in section 5707(d), for the purpose of this subchapter—

(1) ''agency'' means—

(A) an Executive agency;

(B) a military department;

(C) an office, agency, or other establishment in the legislative branch;

(D) an office, agency, or other establishment in the judicial branch; and

(E) the government of the District of Columbia;

but does not include—

(i) a Government controlled corporation;

(ii) a Member of Congress; or

(iii) an office or committee of either House of Congress or of the two Houses;

(2) ''employee'' means an individual employed in or under an agency including an individual employed intermittently in the Government service as an expert or consultant and paid on a daily when-actually-employed basis and an individual serving without pay or at $1 a year;

(3) ''subsistence'' means lodging, meals, and other necessary expenses for the personal sustenance and comfort of the traveler;

(4) ''per diem allowance'' means a daily payment instead of actual expenses for subsistence and fees or tips to porters and stewards;

(5) ''Government'' means the Government of the United States and the government of the District of Columbia; and

(6) ''continental United States'' means the several States and the District of Columbia, but does not include Alaska or Hawaii.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 498; Pub. L. 94–22, § 2(a), May 19, 1975, 89 Stat. 84; Pub. L. 99–234, title I, § 101, Jan. 2, 1986, 99 Stat. 1756; Pub. L. 101–391, § 5(a)(2), Sept. 25, 1990, 104 Stat. 751.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(1)–(5)	5 U.S.C. 835.	June 9, 1949, ch. 185, § 2, 63 Stat. 166.
(6)	[Uncodified].	Aug. 14, 1961, Pub. L. 87–139, § 8(c), 75 Stat. 340.

In paragraph (1), the word ''agency'' is substituted for ''departments and establishments''. The terms ''Executive agency'' and ''military department'' are substituted for ''any executive department, independent commission, board, bureau, office, agency, or other establishment in the executive branch of the Government, including wholly owned Government corporations'' in view of the definitions in sections 105 and 102. The exception of ''a Government controlled corporation'' is added in subparagraph (i) to preserve the application of this subchapter to ''wholly owned Government corporations''.

Paragraph (2) is added for convenience and to eliminate the necessity of referring to ''civilian officers and employees of the agencies'' elsewhere in the text of the subchapter.

In paragraph (4), the words ''for subsistence and fees or tips to porters and stewards'' are added on authority of the words ''in lieu of their actual expenses of subsistence and all fees or tips to porters and stewards'' and ''in lieu of subsistence'' in former sections 836 and 73b–2, which are carried into sections 5702 and 5703, respectively.

Paragraph (5) is added for convenience and is based in part on former section 835(1)(A) and, insofar as concerns section 5703, on section 18 of the Act of Aug. 2, 1946, ch. 744, 60 Stat. 811.

Paragraph (6), insofar as concerns section 5703, is based in part on section 18 of the Act of Aug. 2, 1946, ch. 744, 60 Stat. 811.

The definition of ''Member of Congress'' in former section 835(4) is omitted as unnecessary in view of the definition of ''Member of Congress'' in section 2106.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1990—Pub. L. 101–391 substituted ''Except as otherwise provided in section 5707(d), for the purpose'' for ''For the purpose''.

1986—Par. (4). Pub. L. 99–234 amended par. (4) generally, striking out ''flat rate'' before ''payment''.

1975—Par. (2). Pub. L. 94–22 redefined ''employee'' to include individuals employed intermittently as experts or consultants and paid on a daily when-actually-employed basis, and individuals serving without pay at $1 a year.

EFFECTIVE DATE OF 1986 AMENDMENT; REGULATIONS

Section 301 of Pub. L. 99–234 provided that:

''(a) The Administrator of General Services shall promulgate regulations implementing the amendments made by sections 101, 102, 103, 104, and 106 of this Act [enacting sections 5706a and 5734 of this title and amending sections 5701, 5702, and 5707 of this title] not later than 150 days after the date of enactment of this Act [Jan. 2, 1986]. The amendments made by title I of this Act [enacting sections 5706a and 5734 of this title and amending sections 5701, 5702, 5707, and 5724a of this title, section 476 of Title 2, The Congress, section 2396 of Title 22, Foreign Relations and Intercourse, section 4941 of Title 26, Internal Revenue Code, section 456 of Title 28, Judiciary and Judicial Procedure, section 326 of Title 31, Money and Finance, and section 2477 of Title 42, The Public Health and Welfare] shall take effect on the effective date of such regulations, or 180 days after the date of enactment of this Act [Jan. 2, 1986], whichever occurs first.

''(b) The amendments made by section 201 of this Act [enacting section 420 of Title 41, Public Contracts] shall take effect 30 days after the effective date of the amendments made by title I.''

SHORT TITLE OF 1986 AMENDMENT

Section 1 of Pub. L. 99–234 provided that: ''This Act [enacting sections 5706a and 5734 of this title and section 420 of Title 41, Public Contracts, amending sections 5701, 5702, 5707, and 5724a of this title, section 476 of Title 2, The Congress, section 2396 of Title 22, Foreign Relations and Intercourse, section 4941 of Title 26, Internal Revenue Code, section 456 of Title 28, Judiciary and Judicial Procedure, section 326 of Title 31, Money and Finance, and section 2477 of Title 42, The Public Health and Welfare, and enacting provisions set out as notes under this section and section 420 of Title 41] may be cited as the 'Federal Civilian Employee and Contractor Travel Expenses Act of 1985'.''

SHORT TITLE OF 1975 AMENDMENT

Section 1 of Pub. L. 94–22 provided: ''That this Act [amending sections 5701, 5702, 5703, 5704, 5705, and 5707 of this title and section 68b of Title 2, The Congress, and enacting provisions set out as a note under section 5707 of this title] may be cited as the ''Travel Expense Amendments Act of 1975'.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5304 of this title; title 2 sections 68b, 179b; title 7 sections 3128, 3194, 3335, 4108, 5843; title 15 section 2224; title 16 sections 971a, 971b, 2443, 3608, 3641; title 22 section 1474; title 24 section 415; title 42 section 12653h; title 46 App. section 1717.

§ 5702. Per diem; employees traveling on official business

(a)(1) Under regulations prescribed pursuant to section 5707 of this title, an employee, when traveling on official business away from the employee's designated post of duty, or away from the employee's home or regular place of business (if the employee is described in section 5703 of this title), is entitled to any one of the following:

(A) a per diem allowance at a rate not to exceed that established by the Administrator of General Services for travel within the continental United States, and by the President or his designee for travel outside the continental United States;

(B) reimbursement for the actual and necessary expenses of official travel not to exceed an amount established by the Administrator for travel within the continental United States or an amount established by the President or his designee for travel outside the continental United States; or

(C) a combination of payments described in subparagraphs (A) and (B) of this paragraph.

(2) Any per diem allowance or maximum amount of reimbursement shall be established, to the extent feasible, by locality.

(3) For travel consuming less than a full day, the payment prescribed by regulation shall be allocated in such manner as the Administrator may prescribe.

(b)(1) Under regulations prescribed pursuant to section 5707 of this title, an employee who is described in subsection (a) of this section and who abandons the travel assignment prior to its completion—

(A) because of an incapacitating illness or injury which is not due to the employee's own misconduct is entitled to reimbursement for expenses of transportation to the employee's designated post of duty, or home or regular place of business, as the case may be, and to payments pursuant to subsection (a) of this section until that location is reached; or

(B) because of a personal emergency situation (such as serious illness, injury, or death of a member of the employee's family, or an emergency situation such as fire, flood, or act of God), may be allowed, with the approval of an appropriate official of the agency concerned, reimbursement for expenses of transportation to the employee's designated post of duty, or home or regular place of business, as the case may be, and payments pursuant to subsection (a) of this section until that location is reached.

(2)(A) Under regulations prescribed pursuant to section 5707 of this title, an employee who is described in subsection (a) of this section and who, with the approval of an appropriate official of the agency concerned, interrupts the travel assignment prior to its completion for a reason specified in subparagraph (A) or (B) of paragraph (1) of this subsection, may be allowed (subject to the limitation provided in subparagraph (B) of this paragraph)—

(i) reimbursement for expenses of transportation to the location where necessary medical services are provided or the emergency situation exists,

(ii) payments pursuant to subsection (a) of this section until that location is reached, and

(iii) such reimbursement and payments for return to such assignment.

(B) The reimbursement which an employee may be allowed pursuant to subparagraph (A) of this paragraph shall be the employee's actual costs of transportation to the location where necessary medical services are provided or the emergency exists, and return to assignment from such location, less the costs of transportation which the employee would have incurred had such travel begun and ended at the employee's designated post of duty, or home or regular place of business, as the case may be. The payments which an employee may be allowed pursuant to subparagraph (A) of this paragraph shall be based on the additional time (if any) which was required for the employee's transportation as a consequence of the transportation's having begun and ended at a location on the travel assignment (rather than at the employee's designated post of duty, or home or regular place of business, as the case may be).

(3) Subject to the limitations contained in regulations prescribed pursuant to section 5707 of this title, an employee who is described in subsection (a) of this section and who interrupts the travel assignment prior to its completion because of an incapacitating illness or injury which is not due to the employee's own misconduct is entitled to payments pursuant to subsection (a) of this section at the location where the interruption occurred.

(c) This section does not apply to a justice or judge, except to the extent provided by section 456 of title 28.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 498; Pub. L. 91–114, §1, Nov. 10, 1969, 83 Stat. 190; Pub. L. 94–22, §3, May 19, 1975, 89 Stat. 84; Pub. L. 96–54, §2(a)(36), Aug. 14, 1979, 93 Stat. 383; Pub. L. 96–346, §1, Sept. 10, 1980, 94 Stat. 1148; Pub. L. 99–234, title I, §102, Jan. 2, 1986, 99 Stat. 1756; Pub. L. 102–378, §2(47), Oct. 2, 1992, 106 Stat. 1353.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 836.	June 9, 1949, ch. 185, §3, 63 Stat. 166. Apr. 26, 1950, ch. 108, 64 Stat. 89. July 28, 1955, ch. 424, §1, 69 Stat. 393. Aug. 14, 1961, Pub. L. 87–139, §§1, 8(a), 75 Stat. 339, 340.

In subsection (a), the term ''employee'' is substituted for ''civilian officers and employees of the departments and establishments'' in view of the definition of ''employee'' in sections 5701 and 2105. The words ''in lieu of their actual expenses for subsistence and all fees or tips to porters and stewards'' are omitted as unnecessary in view of the definition of ''per diem allowance'' in section 5701(4).

In subsection (b), the words ''Under regulations prescribed under section 5707 of this title'' are substituted for ''in accordance with regulations promulgated and approved under sections 835–842 of this title''.

In subsection (c), the words ''Under regulations prescribed under section 5707 of this title'' are substituted for ''in accordance with regulations promulgated by the Director, Bureau of the Budget, pursuant to section 840 of this title.''

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1992—Pub. L. 102–378 substituted ''employees'' for ''employee'' in section catchline.

1986—Subsec. (a). Pub. L. 99–234, §102(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''Under regulations prescribed under section 5707 of this title, an employee while traveling on official business away from his designated post of duty, or in the case of an individual described under section 5703 of this title, his home or regular place of business, is entitled to (1) a per diem allowance for travel inside the continental United States at a rate not to exceed $50, and (2) a per diem allowance for travel outside the continental United States, that may not exceed the rate established by the President, or his designee, for each locality where travel is to be performed. For travel consuming less than a full day, such rate may be allocated proportionately.''

Subsec. (b). Pub. L. 99–234, §102(a), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''Under regulations prescribed under section 5707 of this title, an employee who, while traveling on official business away from his designated post of duty or, in the case of an individual described under section 5703 of this title, his home or regular place of business, becomes incapacitated by illness or injury not due to

his own misconduct, is entitled to the per diem allowance and appropriate transportation expenses to his designated post of duty, or home or regular place of business, as the case may be.''

Subsec. (c). Pub. L. 99–234, § 102, redesignated subsec. (e) as (c) and struck out former subsec. (c) which read as follows: ''Under regulations prescribed under section 5707 of this title, the Administrator of General Services, or his designee, may prescribe conditions under which an employee may be reimbursed for the actual and necessary expenses of official travel when the maximum per diem allowance would be less than these expenses, except that such reimbursement shall not exceed $75 for each day in a travel status within the continental United States when the per diem otherwise allowable is determined to be inadequate (1) due to the unusual circumstances of the travel assignment, or (2) for travel to high rate geographical areas designated as such in regulations prescribed under section 5707 of this title.''

Subsec. (d). Pub. L. 99–234, § 102(a), struck out subsec. (d) which read as follows: ''Under regulations prescribed under section 5707 of this title, for travel outside the continental United States, the Administrator of General Services or his designee, may prescribe conditions under which an employee may be reimbursed for the actual and necessary expenses of official travel when the per diem allowance would be less than these expenses, except that such reimbursement shall not exceed $33 for each day in a travel status outside the continental United States plus the locality per diem rate prescribed for such travel.''

Subsec. (e). Pub. L. 99–234, § 102(b), redesignated subsec. (e) as (c).

1980—Subsec. (a). Pub. L. 96–346, § 1(1), increased to $50 from $35 the maximum per diem allowance for travel inside the continental United States.

Subsec. (c). Pub. L. 96–346, § 1(2), increased to $75 from $50 the maximum reimbursement for actual and necessary expenses for travel within the continental United States.

Subsec. (d). Pub. L. 96–346, § 1(3), increased to $33 from $21 the maximum reimbursement for travel outside the continental United States.

1979—Subsec. (c). Pub. L. 96–54 substituted ''(1)'' for ''(A)'' and ''(2)'' for ''(B)''.

1975—Subsec. (a). Pub. L. 94–22 substituted provision relating to determination of per diem allowance under regulations prescribed under section 5707 for provision allowing for such determination by agency concerned, inserted provisions relating to an individual described under section 5703 and to proportionate allocation of rates for travel consuming less than a full day, struck out provision relating to Director of Bureau of Budget or another officer of Government of the United States as persons who may be designees, and raised maximum allowance from $25 to $35.

Subsec. (b). Pub. L. 94–22 inserted provision relating to an individual described under section 5703, inserted ''appropriate'' before ''transportation'', and ''or home or regular place of business, as the case may be.'' after ''expenses to his designated post of duty''.

Subsec. (c). Pub. L. 94–22 substituted the Administrator of General Services, or his designee, for the head of the agency concerned, as the party who may prescribe conditions for reimbursement for actual and necessary expenses, raised from $40 to $50 the maximum reimbursement for travel within the continental United States when the rate otherwise allowable is inadequate due to unusual circumstances or due to travel to areas designated as high rate areas, and struck out a provision, now covered by subsec. (d), for a maximum allowance per day for travel outside the continental United States.

Subsecs. (d), (e). Pub. L. 94–22 transferred from subsec. (c) to (d) provisions for reimbursement for actual and necessary expenses for travel outside the continental United States and raised from $18 to $21 the maximum reimbursement for such expenses, and redesignated former subsec. (d) as (e).

1969—Subsec. (a). Pub. L. 91–114 increased the per diem allowance for travel inside the continental United States from not to exceed the rate of $16 to not to exceed the rate of $25.

Subsec. (c). Pub. L. 91–114 in cl. (1) increased the amount authorized to be named in the travel authorization for each day in a travel status inside the continental United States from not to exceed $30 to not to exceed $40, and in cl. (2) increased the amount authorized to be named in the travel authorization for each day in a travel status outside the continental United States from not to exceed the maximum per diem allowance plus $10 to not to exceed the maximum per diem allowance plus $18.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–234 effective (1) on effective date of regulations to be promulgated not later than 150 days after Jan. 2, 1986, or (2) 180 days after Jan. 2, 1986, whichever occurs first, see section 301(a) of Pub. L. 99–234, set out as a note under section 5701 of this title.

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.

DELEGATION OF FUNCTIONS

Authority of President under subsec. (a) of this section to establish maximum rates of per diem allowances to extent that such authority pertains to travel status of employees while enroute to, from, or between localities situated outside 48 contiguous States of United States and District of Columbia delegated to Administrator of General Services, see section 1(2) of Ex. Ord. No. 11609, July 22, 1971, 36 F.R. 13747, set out as a note under section 301 of Title 3, The President.

Authority of President under subsec. (a) of this section to establish maximum rates of per diem allowances and reimbursements for actual and necessary expenses of official travel for employees of Government to extent that such authority pertains to travel status in localities in Alaska, Hawaii, the Commonwealth of Puerto Rico, and possessions of United States delegated to Secretary of Defense, see section 1(h) of Ex. Ord. No. 10621, set out as a note under section 301 of Title 3.

COST SAVINGS FOR OFFICIAL TRAVEL

Pub. L. 103–355, title VI, § 6008, Oct. 13, 1994, 108 Stat. 3367, provided that:

''(a) GUIDELINES.—The Administrator of the General Services Administration shall issue guidelines to ensure that agencies promote, encourage, and facilitate the use of frequent traveler programs offered by airlines, hotels, and car rental vendors by Federal employees who engage in official air travel, for the purpose of realizing to the maximum extent practicable cost savings for official travel.

''(b) REQUIREMENT.—Any awards granted under such a frequent traveler program accrued through official travel shall be used only for official travel.

''(c) REPORT.—Not later than one year after the date of the enactment of this Act [Oct. 13, 1994], the Administrator shall report to Congress on efforts to promote the use of frequent traveler programs by Federal employees.''

REPORTS TO CONGRESS OF PER DIEM AND MILEAGE ALLOWANCE PAYMENTS FOR FISCAL YEARS 1979 THROUGH 1981; RULES AND REGULATIONS

Section 3 of Pub. L. 96–346, for fiscal years 1979 to 1981, directed the Administrator of General Services to collect by fiscal year information with respect to agencies spending more than $5,000,000 annually on transportation of people, identifying general causes and purposes of travel and estimates of total payments, average cost and duration of trip, and identifying by specific agency of travel practices which appear to be inefficient and recommendations to Congress on the appli-

cability of alternatives to travel as well as other techniques to improve use of travel in carrying out program objectives relating travel to mission.

EX. ORD. NO. 12561. DELEGATION OF FUNCTIONS RELATING TO TRAVEL OUTSIDE CONTINENTAL UNITED STATES

Ex. Ord. No. 12561, July 1, 1986, 51 F.R. 24299, provided:

By the authority vested in me as President by the Constitution and laws of the United States of America, including Section 102(a) of the Federal Civilian Employee and Contractor Travel Expenses Act of 1985 (Public Law 99–234) (''the Act'') [amending this section] and Section 301 of Title 3 of the United States Code, it is ordered as follows:

SECTION 1. Section 1 of Executive Order No. 10621 of July 1, 1955, as amended [3 U.S.C. 301 note], is further amended by redesignating the current subsection (i) as subsection (g); by revoking the current subsection (*o*); and by adding the following new subsection (h):

''(h) The authority vested in the President by Section 102(a) of the Federal Civilian Employee and Contractor Travel Expenses Act of 1985, 5 U.S.C. 5702(a), to establish maximum rates of per diem allowances and reimbursements for the actual and necessary expenses of official travel for employees of the Government to the extent that such authority pertains to travel status in localities in Alaska, Hawaii, the Commonwealth of Puerto Rico, and possessions of the United States.''

SEC. 2. There is hereby delegated to the Secretary of State the authority vested in the President by Section 102(a) of the Act (5 U.S.C. 5702(a)) to establish maximum rates of per diem allowances and reimbursements for the actual and necessary expenses of official travel for employees of the Government to the extent that such authority pertains to travel status in localities (including the Trust Territories of the Pacific Islands) in any area situated outside the United States, the Commonwealth of Puerto Rico, and possessions of the United States.

SEC. 3. Executive Order No. 11294 of August 4, 1966, is revoked.

RONALD REAGAN.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5569, 5707, 5724a, 8474 of this title; title 2 section 476; title 7 sections 3128, 3194, 3335, 4108, 5843; title 10 section 2837; title 12 section 1834a; title 15 sections 1341, 4603; title 16 sections 971a, 971b, 2443, 3608, 3641; title 18 section 4285; title 22 sections 1474, 2396, 2704; title 24 section 415; title 25 sections 3006, 3505; title 26 section 4941; title 28 sections 456, 604, 1821; title 29 section 2215; title 31 section 326; title 33 section 2732; title 36 section 121; title 38 section 111; title 42 sections 1873, 2210, 2477, 10163, 10265, 11221, 13458, 14195.

§ 5703. Per diem, travel, and transportation expenses; experts and consultants; individuals serving without pay

An employee serving intermittently in the Government service as an expert or consultant and paid on a daily when-actually-employed basis, or serving without pay or at $1 a year, may be allowed travel or transportation expenses, under this subchapter, while away from his home or regular place of business and at the place of employment or service.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 499; Pub. L. 91–114, § 2, Nov. 10, 1969, 83 Stat. 190; Pub. L. 94–22, § 4, May 19, 1975, 89 Stat. 85.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 73b–2.	Aug. 2, 1946, ch. 744, § 5, 60 Stat. 808.

HISTORICAL AND REVISION NOTES—CONTINUED

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
		July 28, 1955, ch. 424, § 2, 69 Stat. 394. Aug. 14, 1961, Pub. L. 87–139, §§ 2, 8(b), 75 Stat. 339, 340.

Subsection (a) is added on authority of section 18 of the Act of Aug. 2, 1946, ch. 744, 60 Stat. 811.

In subsection (b), the words ''in lieu of subsistence'' are omitted as unnecessary in view of the definition of ''per diem allowance'' in section 5701(4). The words ''this subchapter'' are substituted for ''the Standardized Government Travel Regulations, Subsistence Expense Act of 1926, as amended (5 U.S.C. 821–833) and the Act of February 14, 1931, as amended by this Act'' as the Subsistence Expense Act of 1926 and the Act of February 14, 1931, were repealed by section 9(a) of the Travel Expense Act of 1949, 63 Stat. 167, part of which appeared in former section 842 and is carried into section 5708, and as the authority for the Standardized Government Travel Regulations in former section 840 is carried into section 5707.

In subsection (c), the words ''this subchapter'' are substituted for ''said regulations and said Act of February 14, 1931, as so amended'' as the Act of February 14, 1931, was repealed by section 9(a) of the Travel Expense Act of 1949, 63 Stat. 167, part of which appeared in former section 842 and is carried into section 5708, and as the authority for the Standardized Government Travel Regulations in former section 840 is carried into section 5707. The words ''in lieu of subsistence'' are omitted as unnecessary in view of the definition of ''per diem allowance'' in section 5701(4).

In subsection (d), the words ''Under regulations prescribed under section 5707 of this title'' are substituted for ''in accordance with regulations promulgated by the Director, Bureau of the Budget, pursuant to section 840 of this title''.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1975—Pub. L. 94–22 struck out separate provisions for per diem allowances of employees serving as experts, consultants, or serving without pay or at $1 a year.

1969—Subsec. (c)(1). Pub. L. 91–114 increased the per diem allowance for travel inside continental United States from not to exceed the rate of $16 to not to exceed the rate of $25.

Subsec. (d). Pub. L. 91–114 in cl. (1) increased amount authorized to be named in travel authorization for each day in a travel status inside continental United States from not to exceed $30 to not to exceed $40, and in cl. (2) increased amount authorized to be named in travel authorization for each day in a travel status outside continental United States from not to exceed maximum per diem allowance plus $10 to not to exceed the maximum per diem allowance plus $18.

CROSS REFERENCES

Advisory panels of experts for research and demonstration projects in education of handicapped children, travel and per diem expenses, see section 1443 of Title 20, Education.

Coast Guard, travel expenses of Advisory Committee to Academy, see section 193 of Title 14, Coast Guard.

Temporary employment of experts and consultants, see section 3109 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 593, 5304, 5702, 7119, 8474 of this title; title 2 sections 175, 352, 475, 1108; title 7 sections 87j, 499t, 1388, 1505, 1736bb, 2007b, 2233, 3128, 3194, 3335, 4108, 5331, 5843, 5853, 5927, 6204, 6518; title 10 sections 1464, 1589, 2006, 2837; title 12 sections 1701j–2,

1701y, 1749bbb–1, 1834a, 3013; title 15 sections 637, 652, 1275, 1341, 4102, 4105, 4603; title 16 sections 1a–2, 410cc–31, 410nn–3, 410pp–4, 410tt–4, 410ww–21, 410yy–8, 410bbb–5, 410ccc–22, 450jj–6, 460ss–2, 460ss–3, 460zz–2, 469j, 583j–1, 839b, 972a, 1105, 1157, 1401, 1403, 1447b, 1536, 1537a, 1604, 2443, 3181, 4004, 5404; title 18 section 4351; title 19 section 2171; title 20 sections 80q–3, 80q–10, 929, 955, 957, 959, 963, 1098, 1134i, 1145a, 1233c, 1505, 2012, 2103, 2106, 2839, 3602, 3701, 4412, 4414, 4513, 4710, 5508, 5608, 5708, 5822, 5842, 6031; title 21 sections 360c, 360d, 360e, 360j, 379e, 1115, 1303; title 22 sections 287*o*, 287q, 290f, 290h–5, 1465c, 1471, 1474, 1622c, 2102, 2103, 2124b, 2351, 2456, 2581, 2672b, 2872, 2873, 2903, 2905, 3106, 3507, 3617, 4110, 4605, 4902, 6203; title 24 section 415; title 25 sections 305, 3006, 3505; title 28 sections 594, 2077; title 29 sections 656, 765, 774, 782, 792, 794b, 797a, 1142, 1302, 2215, 2634; title 30 sections 663, 812, 1315; title 31 section 751; title 33 sections 426, 857–16, 1320, 2073, 2251, 2732; title 36 sections 121, 1403; title 40 sections 333, 486, 822, 872, 1106; title 41 sections 46, 422; title 42 sections 210, 242*l*, 242q–1, 254j, 300j–5, 300v, 300aa–19, 903, 907, 1108, 1314, 1320a–1, 1870, 1873, 1975b, 2210, 2473, 2495, 3015, 3211, 3535, 3609, 3788, 4025, 4768, 4914, 5102, 5404, 5651, 5661, 6007, 6614, 6632, 7234, 7417, 9511, 10163, 10265, 12314, 12374, 12619, 12851, 13458, 14195; title 44 sections 2104, 2503, 3318; title 46 sections 4508, 9307, 13110; title 46 App. section 1295b; title 47 section 394; title 49 sections 325, 31134, 44508, 60115; title 50 section 98h–1; title 50 App. sections 1989b–5, 2160.

§ 5704. Mileage and related allowances

(a)(1) Under regulations prescribed under section 5707 of this title, an employee who is engaged on official business for the Government is entitled to a rate per mile established by the Administrator of General Services, instead of the actual expenses of transportation, for the use of a privately owned automobile when that mode of transportation is authorized or approved as more advantageous to the Government. In any year in which the Internal Revenue Service establishes a single standard mileage rate for optional use by taxpayers in computing the deductible costs of operating their automobiles for business purposes, the rate per mile established by the Administrator shall not exceed the single standard mileage rate established by the Internal Revenue Service.

(2) Under regulations prescribed under section 5707 of this title, an employee who is engaged on official business for the Government is entitled to a rate per mile established by the Administrator of General Services, instead of the actual expenses of transportation, for the use of a privately owned airplane or a privately owned motorcycle when that mode of transportation is authorized or approved as more advantageous to the Government.

(b) A determination that travel by a privately owned vehicle is more advantageous to the Government is not required under subsection (a) of this section when payment on a mileage basis is limited to the cost of travel by common carrier including per diem.

(c) Notwithstanding the provisions of subsections (a) and (b) of this section, in any case in which an employee who is engaged on official business for the Government chooses to use a privately owned vehicle in lieu of a Government vehicle, payment on a mileage basis is limited to the cost of travel by a Government vehicle.

(d) In addition to the rate per mile authorized under subsection (a) of this section, the employee may be reimbursed for—

(1) parking fees;

(2) ferry fees;

(3) bridge, road, and tunnel costs; and

(4) airplane landing and tie-down fees.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 499; Pub. L. 94–22, § 5, May 19, 1975, 89 Stat. 85; Pub. L. 96–346, § 2, Sept. 10, 1980, 94 Stat. 1148; Pub. L. 103–329, title VI, § 634(a), Sept. 30, 1994, 108 Stat. 2428.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 837.	June 9, 1949, ch. 185, § 4, 63 Stat. 166. July 28, 1955, ch. 424, § 4, 69 Stat. 394. Aug. 14, 1961, Pub. L. 87–139, §§ 3, 4, 75 Stat. 339, 340.

The word ''employee'' is substituted for ''Civilian officers and employees of departments and establishments'' in view of the definition of ''employee'' in sections 5701 and 2105.

In subsection (a), the words ''Under regulations prescribed under section 5707 of this title'' are substituted for ''under regulations prescribed by the Director of the Bureau of the Budget''.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1994—Pub. L. 103–329 amended text generally. Prior to amendment, text read as follows:

''(a) Under regulations prescribed under section 5707 of this title, an employee who is engaged on official business for the Government is entitled to not in excess of—

''(1) 20 cents a mile for the use of a privately owned motorcycle;

''(2) 25 cents a mile for the use of a privately owned automobile; or

''(3) 45 cents a mile for the use of a privately owned airplane;

instead of actual expenses of transportation when that mode of transportation is authorized or approved as more advantageous to the Government. A determination of such advantage is not required when payment on a mileage basis is limited to the cost of travel by common carrier including per diem. Notwithstanding the preceding provisions of this subsection, in any case in which an employee who is engaged on official business for the Government chooses to use a privately owned vehicle in lieu of a Government vehicle, payment on a mileage basis is limited to the cost of travel by a Government vehicle.

''(b) In addition to the mileage allowance authorized under subsection (a) of this section, the employee may be reimbursed for—

''(1) parking fees;

''(2) ferry fees;

''(3) bridge, road, and tunnel costs; and

''(4) airplane landing and tie-down fees.''

1980—Subsec. (a)(1). Pub. L. 96–346, § 2(1), substituted ''20 cents'' for ''11 cents''.

Subsec. (a)(2). Pub. L. 96–346, § 2(2), substituted ''25 cents'' for ''20 cents''.

Subsec. (a)(3). Pub. L. 96–346, § 2(3), substituted ''45 cents'' for ''24 cents''.

1975—Subsec. (a). Pub. L. 94–22 struck out ''or other individual performing services for the Government'' after ''employee'', substituted ''for the Government'' for ''inside or outside his designated post of duty or place of service'', increased from 8 to 11 cents the allowance for use of a motorcycle, from 12 to 20 cents the allowance for use of an automobile, and from 12 to 24 cents the allowance for use of an airplane, and inserted provision relating to the limitation of an allowance to the cost of travel by Government vehicle when an em-

ployee chooses a privately owned vehicle in lieu of a Government vehicle.

Subsec. (b). Pub. L. 94–22 inserted ''authorized'' after ''allowance'', struck out ''or other individual performing service for the Government'' after ''employee'', and provided for reimbursement of airplane landing and tiedown fee.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5707, 5724 of this title; title 2 section 476; title 7 sections 3128, 3194, 3335, 4108, 5843; title 13 sections 24, 26; title 16 sections 971a, 971b, 2443, 3608, 3641; title 22 section 1474; title 24 section 415; title 28 section 1821; title 30 section 812; title 33 section 1320; title 37 section 404; title 38 section 111; title 42 section 2477.

§ 5705. Advancements and deductions

An agency may advance, through the proper disbursing official, to an employee entitled to per diem or mileage allowances under this subchapter, a sum considered advisable with regard to the character and probable duration of the travel to be performed. A sum advanced and not used for allowable travel expenses is recoverable from the employee or his estate by—

(1) setoff against accrued pay, retirement credit, or other amount due the employee;

(2) deduction from an amount due from the United States; and

(3) such other method as is provided by law.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 500; Pub. L. 94–22, § 2(b), May 19, 1975, 89 Stat. 84.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 838.	June 9, 1949, ch. 185, §5, 63 Stat. 166.

The words ''disbursing official'' are substituted for ''disbursing officer'' because of the definition of ''officer'' in section 2104 which excludes a member of a uniformed service. Application to section 5703 is based on former section 73b–2, which is carried into section 5703.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1975—Pub. L. 94–22 struck out ''or individual'' after ''employee'' wherever appearing.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5724 of this title; title 7 sections 3128, 3194, 3335, 4108, 5843; title 16 sections 971a, 971b, 2443, 3608, 3641; title 22 section 1474; title 24 section 415.

§ 5706. Allowable travel expenses

Except as otherwise permitted by this subchapter or by statutes relating to members of the uniformed services, only actual and necessary travel expenses may be allowed to an individual holding employment or appointment under the United States.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 500.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 839.	June 9, 1949, ch. 185, §6, 63 Stat. 167.

The words ''members of the uniformed services'' are substituted for ''military personnel''.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 7 sections 3128, 3194, 3335, 4108, 5843; title 16 sections 971a, 971b, 2443, 3608, 3641; title 22 section 1474; title 24 section 415.

§ 5706a. Subsistence and travel expenses for threatened law enforcement personnel

(a) Under regulations prescribed pursuant to section 5707 of this title, when the life of an employee who serves in a law enforcement, investigative, or similar capacity, or members of such employee's immediate family, is threatened as a result of the employee's assigned duties, the head of the agency concerned may approve appropriate subsistence payments for the employee or members of the employee's family (or both) while occupying temporary living accommodations at or away from the employee's designated post of duty.

(b) When a situation described in subsection (a) of this section requires the employee or members of the employee's family (or both) to be temporarily relocated away from the employee's designated post of duty, the head of the agency concerned may approve transportation expenses to and from such alternate location.

(Added Pub. L. 99–234, title I, § 103(a), Jan. 2, 1986, 99 Stat. 1757.)

EFFECTIVE DATE

Section effective (1) on effective date of regulations to be promulgated not later than 150 days after Jan. 2, 1986, or (2) 180 days after Jan. 2, 1986, whichever occurs first, see section 301(a) of Pub. L. 99–234, set out as an Effective Date of 1986 Amendment note under section 5701 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5707 of this title; title 7 sections 3128, 3194, 3335, 4108, 5843; title 16 sections 971a, 971b, 2443, 3608, 3641; title 22 section 1474; title 24 section 415.

§ 5706b. Interview expenses

An individual being considered for employment by an agency may be paid travel or transportation expenses under this subchapter for travel to and from pre-employment interviews determined necessary by the agency.

(Added Pub. L. 101–509, title V, § 529 [title II, § 206(a)(1)], Nov. 5, 1990, 104 Stat. 1427, 1457.)

EFFECTIVE DATE

Section effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title III, § 305] of Pub. L. 101–509, set out as an Effective Date of 1990 Amendment note under section 5301 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 7 sections 3128, 3194, 3335, 4108, 5843; title 16 sections 971a, 971b, 2443, 3608, 3641; title 22 section 1474; title 24 section 415; title 38 section 7410.

§ 5707. Regulations and reports

(a)(1) The Administrator of General Services shall prescribe regulations necessary for the ad-

ministration of this subchapter, except that the Director of the Administrative Office of the United States Courts shall prescribe such regulations with respect to official travel by employees of the judicial branch of the Government.

(2) Regulations promulgated to implement section 5702 or 5706a of this title shall be transmitted to the appropriate committees of the Congress and shall not take effect until 30 days after such transmittal.

(b) The Administrator of General Services shall prescribe the mileage reimbursement rates for use on official business of privately owned airplanes, privately owned automobiles, and privately owned motorcycles while engaged on official business as provided for in section 5704 of this title as follows:

(1)(A) The Administrator of General Services, in consultation with the Comptroller General of the United States, the Secretary of Transportation, the Secretary of Defense, and representatives of organizations of employees of the Government, shall conduct periodic investigations of the cost of travel and the operation of privately owned vehicles to employees while engaged on official business, and shall report the results of such investigations to Congress at least once a year.

(B) In conducting the periodic investigations, the Administrator shall review and analyze among other factors—

(i) depreciation of original vehicle cost;

(ii) gasoline and oil (excluding taxes);

(iii) maintenance, accessories, parts, and tires;

(iv) insurance; and

(v) State and Federal taxes.

(2)(A) The Administrator shall issue regulations under this section which—

(i) shall prescribe a mileage reimbursement rate which reflects the current costs as determined by the Administrator of operating privately owned automobiles, and which shall not exceed, as provided in section 5704(a)(1) of this title, the single standard mileage rate established by the Internal Revenue Service, and

(ii) shall prescribe mileage reimbursement rates which reflect the current costs as determined by the Administrator of operating privately owned airplanes and motorcycles.

(B) At least once each year after the issuance of the regulations described in subparagraph (A) of this paragraph, the Administrator shall determine, based upon the results of the cost investigation, specific figures, each rounded to the nearest half cent, of the average, actual cost per mile during the period for the use of a privately owned airplane, automobile, and motorcycle.

(C) The Administrator shall report the specific figures to Congress not later than five working days after the Administrator makes the cost determination. Each such report shall be printed in the Federal Register.

(D) The mileage reimbursement rates contained in the regulations prescribed under this section shall be adjusted within thirty days following the submission of the report under subparagraph (C) of this paragraph.

(c) The Administrator of General Services shall periodically, but at least every 2 years, submit to the Director of the Office of Management and Budget an analysis of estimated total agency payments for such items as travel and transportation of people, average costs and duration of trips, and purposes of official travel; and of estimated total agency payments for employee relocation. This analysis shall be based on a sampling survey of agencies each of which spent more than $5,000,000 during the previous fiscal year on travel and transportation payments, including payments for employee relocation. Agencies shall provide to the Administrator the necessary information in a format prescribed by the Administrator and approved by the Director.

(d)(1) Each agency shall ensure that its approved accommodations percentage for a fiscal year shall be not less than—

(A) 65 percent, for the first fiscal year that begins 4 years after the date of enactment of this subsection;

(B) 75 percent, for the fiscal year that begins 5 years after the date of enactment of this subsection; and

(C) 90 percent, for the fiscal year that begins 6 years after the date of enactment of this subsection and for each subsequent fiscal year.

(2) In this subsection, an agency's ''approved accommodations percentage'' for a fiscal year is the percentage determined by multiplying 100 by the quotient of—

(A) the total number of nights spent by civilian employees of the agency (as described in section 5702(a)) for which payment was made under this chapter for lodging expenses incurred in any State at any approved hotel, motel, or other place of public accommodation not owned by the Federal Government; divided by

(B) the total number of nights spent by such employees for which payment was made under this chapter for lodging expenses incurred in any State at any hotel, motel, or other place of public accommodation not owned by the Federal Government.

(3) For purposes of this subsection, a hotel, motel, or other place of public accommodation is approved if it meets the requirements of the fire prevention and control guidelines described in section 29 of the Federal Fire Prevention and Control Act of 1974.

(4) For purposes of this subsection—

(A) the term ''agency'' does not include the government of the District of Columbia; and

(B) the term ''State'' means any State, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, the Virgin Islands, the Canal Zone, Guam, American Samoa, or any other territory or possession.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 500; Pub. L. 94–22, § 6(a), May 19, 1975, 89 Stat. 85; Pub. L. 99–234, title I, § 104, Jan. 2, 1986, 99 Stat. 1758; Pub. L. 101–391, § 5(a)(1), Sept. 25, 1990, 104 Stat. 750; Pub. L. 103–329, title VI, § 634(b), (c), Sept. 30, 1994, 108 Stat. 2429, 2430.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 840.	June 9, 1949, ch. 185, §7, 63 Stat. 167.

The first sentence is based in part on former sections 73b–2, 836, and 837, which are carried into this subchapter. Application of the second sentence to section 5703, and the third sentence, are based on former section 73b–2, which is carried into section 5703.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

REFERENCES IN TEXT

The date of enactment of this subsection, referred to in subsec. (d)(1), is the date of enactment of Pub. L. 101–391, which was approved Sept. 25, 1990.

Section 29 of the Federal Fire Prevention and Control Act of 1974, referred to in subsec. (d)(3), is classified to section 2225 of Title 15, Commerce and Trade.

For definition of Canal Zone, referred to in subsec. (d)(4)(B), see section 3602(b) of Title 22, Foreign Relations and Intercourse.

AMENDMENTS

1994—Subsec. (b). Pub. L. 103–329, §634(b), amended subsec. (b) generally, revising and restructuring text.

Subsec. (c). Pub. L. 103–329, §634(c), redesignated par. (1) as entire subsec. and struck out par. (2) which read as follows: ''The requirements of paragraph (1) of this subsection shall expire upon the Administrator's submission of the analysis that includes the fiscal year that ends September 30, 1991.''

1990—Subsec. (d). Pub. L. 101–391 added subsec. (d).

1986—Subsec. (a). Pub. L. 99–234 designated existing provisions as par. (1) and added par. (2).

Subsec. (c). Pub. L. 99–234 added subsec. (c).

1975—Pub. L. 94–22 inserted ''and reports'' in section catchline, designated existing provisions as subsec. (a), substituted ''Administrator of General Services'' for ''Director of the Bureau of the Budget'', struck out provision for fixing, payment, advancement and recovery of travel allowances and expenses in accordance with the regulations and provision for the non-applicability of this section to per diem allowances under section 5703(c), and inserted provision for regulations for travel by employees of the judicial branch of the Government by the Director of the Administrative Office of the United States Courts, and added subsec. (b).

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–234 effective (1) on effective date of regulations to be promulgated not later than 150 days after Jan. 2, 1986, or (2) 180 days after Jan. 2, 1986, whichever occurs first, see section 301(a) of Pub. L. 99–234, set out as a note under section 5701 of this title.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

GAO AUDIT OF AGENCY COMPLIANCE

Section 5(b) of Pub. L. 101–391 provided that: ''Not later than 6 months after the last day of the first fiscal year during which lodging expenses are subject to the requirements of section 5707(d) of title 5, United States Code, as added by subsection (a), and not later than 6 months after the last day of every fiscal year thereafter, the Comptroller General shall conduct an audit of the compliance of agencies with the requirements of section 5707(d) of title 5, United States Code (as added by subsection (a)), and shall submit a report to Congress describing the results of such audit.''

REGULATIONS; TIME FOR ISSUANCE

Section 6(b) of Pub. L. 94–22 provided that regulations required under the first sentence of subsec. (b)(2) of this section, as amended by subsec. (a) of section 6 of Pub. L. 94–22, were to be issued no later than 30 days after May 19, 1975.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5701, 5702, 5704, 5706a, 5709 of this title; title 7 sections 3128, 3194, 3335, 4108, 5843; title 16 sections 971a, 971b, 2443, 3608, 3641; title 22 section 1474; title 24 section 415; title 28 section 456; title 40 section 872.

§ 5707a. Adherence to fire safety guidelines in establishing rates and discounts for lodging expenses

(a) Studies or surveys conducted for the purposes of establishing per diem rates for lodging expenses under this chapter shall be limited to places of public accommodation that meet the requirements of the fire prevention and control guidelines described in section 29 of the Federal Fire Prevention and Control Act of 1974. The provisions of this subsection shall not apply with respect to studies and surveys that are conducted in any jurisdiction that is not a State as defined in section 4 of the Federal Fire Prevention and Control Act of 1974.

(b) The Administrator of General Services may not include in any directory which lists lodging accommodations any hotel, motel, or other place of public accommodation that does not meet the requirements of the fire prevention and control guidelines described in section 29 of the Federal Fire Prevention and Control Act of 1974.

(c) The Administrator of General Services shall include in each directory which lists lodging accommodations a description of the access and safety devices, including appropriate emergency alerting devices, which each listed place of public accommodation provides for guests who are hearing-impaired or visually or physically handicapped.

(d) The Administrator of General Services may take any additional actions the Administrator determines appropriate to encourage employees traveling on official business to stay at places of public accommodation that meet the requirements of the fire prevention and control guidelines described in section 29 of the Federal Fire Prevention and Control Act of 1974.

(Added Pub. L. 101–391, §4(a), Sept. 25, 1990, 104 Stat. 749.)

REFERENCES IN TEXT

Sections 4 and 29 of the Federal Fire Prevention and Control Act of 1974, referred to in subsections (a), (b), and (d), are classified to sections 2203 and 2225, respectively, of Title 15, Commerce and Trade.

EFFECTIVE DATE

Section 4(c) of Pub. L. 101–391 provided that: ''The amendments made by this section [enacting this section] shall take effect 60 days after the date of the publication in the Federal Register [Nov. 24, 1992, 57 F.R. 55314] of the master list of certified places of public accommodation maintained by the Director of the Federal Emergency Management Agency pursuant to section 28(b) of the Federal Fire Prevention and Control Act of 1974 [15 U.S.C. 2224(b)] (as added by section 3 of this Act).''

§ 5708. Effect on other statutes

This subchapter does not modify or repeal—

(1) any statute providing for the traveling expenses of the President;

(2) any statute providing for mileage allowances for Members of Congress;

(3) any statute fixing or permitting rates higher than the maximum rates established under this subchapter; or

(4) any appropriation statute item for examination of estimates in the field.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 500.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(1), (2)	5 U.S.C. 841.	June 9, 1949, ch. 185, §8, 63 Stat. 167.
(3), (4)	5 U.S.C. 842.	June 9, 1949, ch. 185, §9, 63 Stat. 167.

In paragraph (2), the words ''Members of Congress'' are substituted for ''the President of the Senate or Members of Congress'' in view of the definition of ''Member of Congress'' in section 2106.

The first sentence of section 9 of the Act of June 9, 1949, which repealed the Subsistence Act of 1926 and the Auto Mileage Act of February 14, 1931, is omitted as executed.

The first proviso of former section 842, which related to appropriation Acts for the years 1949 and 1950, is omitted as obsolete. The remainder of former section 842, other than the parenthetical expressions, is omitted as executed and existing rights are preserved by technical section 8.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 16 sections 971a, 971b, 2443, 3608, 3641; title 22 section 1474.

§ 5709. Air evacuation patients: furnished subsistence

Notwithstanding any other provision of law, and under regulations prescribed under section 5707 of this title, an employee and his dependents may be furnished subsistence without charge while being evacuated as a patient by military aircraft of the United States.

(Added Pub. L. 91–481, §1(1), Oct. 21, 1970, 84 Stat. 1081.)

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

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in title 8 section 1353; title 22 section 3650; title 46 App. section 1717.

§ 5721. Definitions

For the purpose of this subchapter—

(1) ''agency'' means—

(A) an Executive agency;

(B) a military department;

(C) a court of the United States;

(D) the Administrative Office of the United States Courts;

(E) the Library of Congress;

(F) the Botanic Garden;

(G) the Government Printing Office; and

(H) the government of the District of Columbia;

but does not include a Government controlled corporation;

(2) ''employee'' means an individual employed in or under an agency;

(3) ''continental United States'' means the several States and the District of Columbia, but does not include Alaska or Hawaii;

(4) ''Government'' means the government of the United States and the government of the District of Columbia; and

(5) ''appropriation'' includes funds made available by statute under section 9104 of title 31.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 500; Pub. L. 97–258, §3(a)(14), Sept. 13, 1982, 96 Stat. 1063.)

HISTORICAL AND REVISION NOTES

The section is based on sections 18 and 19 of the Act of Aug. 2, 1946, ch. 744, 60 Stat. 811, 812. Sections 18 and 19 of the Act of Aug. 2, 1946, are omitted from this title and transferred to other titles of the United States Code since such sections apply also to sections 9, 11, and 16(a) of the Act of Aug. 2, 1946, which sections appear in titles 31 and 41 of the United States Code.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1982—Par. (5). Pub. L. 97–258 substituted ''section 9104'' for ''section 849''.

CROSS REFERENCES

Definition of agency—

Applicability to provisions covering delegation of authority by agency heads, see section 302 of this title.

Applicability to provisions covering witness fees and allowances, see section 503 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 302, 503, 3109, 5734, 5913 of this title; title 26 section 912; title 42 section 8241.

§ 5722. Travel and transportation expenses of new appointees; posts of duty outside the continental United States

(a) Under such regulations as the President may prescribe and subject to subsections (b) and (c) of this section, an agency may pay from its appropriations—

(1) travel expenses of a new appointee and transportation expenses of his immediate family and his household goods and personal effects from the place of actual residence at the time of appointment to the place of employment outside the continental United States; and

(2) these expenses on the return of an employee from his post of duty outside the continental United States to the place of his actual residence at the time of assignment to duty outside the United States.

(b) An agency may pay expenses under subsection (a)(1) of this section only after the individual selected for appointment agrees in writing to remain in the Government service for a minimum period of—

(1) one school year as determined under chapter 25 of title 20, if selected for appointment to a teaching position, except as a substitute, in the Department of Defense under that chapter; or

(2) 12 months after his appointment, if selected for appointment to any other position;

unless separated for reasons beyond his control which are acceptable to the agency concerned. If the individual violates the agreement, the money spent by the United States for the expenses is recoverable from the individual as a debt due the United States.

(c) An agency may pay expenses under subsection (a)(2) of this section only after the individual has served for a minimum period of—

(1) one school year as determined under chapter 25 of title 20, if employed in a teaching position, except as a substitute, in the Department of Defense under that chapter; or

(2) not less than one nor more than 3 years prescribed in advance by the head of the agency, if employed in any other position;

unless separated for reasons beyond his control which are acceptable to the agency concerned. These expenses are payable whether the separation is for Government purposes or for personal convenience.

(d) This section does not apply to appropriations for the Foreign Service of the United States.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 501.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 73b–3(a) (less 3d–6th proviso).	Aug. 2, 1946, ch. 744, §7, 60 Stat. 808. Sept. 23, 1950, ch. 1010, §2, 64 Stat. 985. Aug. 30, 1961, Pub. L. 87–172, §2, 75 Stat. 409.

In subsections (b)(1) and (c)(1), the words ''under chapter 25 of title 20'' are substituted for ''under the Defense Department Overseas Teachers Pay and Personnel Practices Act'' to reflect the scheduled transfer of that Act from chapter 34 of title 5 to chapter 25 of title 20.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

DELEGATION OF FUNCTIONS

Authority of President under subsec. (a) of this section to prescribe regulations with respect to payment of travel expenses and transportation expenses of household goods and personal effects delegated to Administrator of General Services, see section 1(4) of Ex. Ord. No. 11609, July 22, 1971, 36 F.R. 13747, set out as a note under section 301 of Title 3, The President.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5724, 5726, 5727 of this title; title 22 section 3650.

§ 5723. Travel and transportation expenses of new appointees and student trainees

(a) Under such regulations as the President may prescribe and subject to subsections (b) and (c) of this section, an agency may pay from its appropriations—

(1) travel expenses (A) of a new appointee, or a student trainee when assigned on completion of college work, to any position, (B) of a new appointee to the Senior Executive Service or the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service, or (C) of any person appointed by the President to a position the rate of pay for which is equal to or higher than the minimum rate of pay payable for a position classified above GS–15 pursuant to section 5108; and

(2) transportation expenses of his immediate family and his household goods and personal effects to the extent authorized by section 5724 of this title;

from his place of residence at the time of selection or assignment to his duty station. If the travel and transportation expenses of a student trainee were paid when he was appointed, they may not be paid when he is assigned after completion of college work. Travel expenses payable under this subsection may include the per diem and mileage allowances authorized for employees by subchapter I of this chapter. Advances of funds may be made for the expenses authorized by this subsection to the extent authorized by section 5724(f) of this title. In the case of an appointee described in paragraph (1) who has performed transition activities under section 3 of the Presidential Transition Act of 1963 (3 U.S.C. 102 note), the provisions of paragraphs (1) and (2) may apply to travel and transportation expenses from the place of residence of such appointee (at the time of relocation following the most recent general elections held to determine the electors of the President) to the assigned duty station of such appointee.

(b) An agency may pay travel and transportation expenses under subsection (a) of this section only after the individual selected or assigned agrees in writing to remain in the Government service for 12 months after his appointment or assignment, unless separated for reasons beyond his control which are acceptable to the agency concerned. If the individual violates the agreement, the money spent by the United States for the expenses is recoverable from the individual as a debt due the United States.

(c) An agency may pay travel and transportation expenses under subsection (a) of this section whether or not the individual selected has been appointed at the time of the travel. In the case of an appointee described in subsection (a)(1) who has performed transition activities under section 3 of the Presidential Transition Act of 1963 (3 U.S.C. 102 note), the travel or transportation shall take place at any time after the most recent general elections held to determine the electors of the President.

(d) This section does not impair or otherwise affect the authority of an agency under existing statute to pay travel and transportation expenses of individuals named by subsection (a) of this section.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 502; Pub. L. 95–454, title III, §305, title IV, §409(a), title IX, §906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1147, 1173, 1224; Pub. L. 98–151, §118(a)(1), Nov. 14, 1983, 97 Stat. 977; Pub. L. 98–473, title I, §120(a), Oct. 12, 1984, 98 Stat. 1968; Pub. L. 100–325, §2(j), May 30,

1988, 102 Stat. 582; Pub. L. 100–398, § 6, Aug. 17, 1988, 102 Stat. 987; Pub. L. 101–509, title V, § 529 [title II, § 206(b)], Nov. 5, 1990, 104 Stat. 1427, 1457; Pub. L. 102–378, § 2(48), Oct. 2, 1992, 106 Stat. 1353.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 73b–3 (less (a)).	Aug. 25, 1958, Pub. L. 85–749, 72 Stat. 843. July 5, 1960, Pub. L. 86–587, § 1, 74 Stat. 327. Oct. 16, 1963, Pub. L. 88–146, 77 Stat. 252.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

REFERENCES IN TEXT

Section 3 of the Presidential Transition Act of 1963, referred to in subsecs. (a) and (c), is section 3 of Pub. L. 88–277, which is set out as a note under section 102 of Title 3, The President.

AMENDMENTS

1992—Pub. L. 102–378, § 2(48)(A), struck out ''; manpower shortage positions'' after ''trainees'' in section catchline.

Subsecs. (d), (e). Pub. L. 102–378, § 2(48)(B), redesignated subsec. (e) as (d) and struck out former subsec. (d) which authorized Office to delegate its authority to determine positions for which there was a manpower shortage for purposes of this section.

1990—Subsec. (a)(1)(A). Pub. L. 101–509, § 529 [title II, § 206(b)(1)], substituted ''any position'' for ''a position in the United States for which the Office of Personnel Management determines there is a manpower shortage''.

Subsec. (a)(1)(C). Pub. L. 101–509, § 529 [title II, § 206(b)(2)], substituted ''the minimum rate of pay payable for a position classified above GS–15 pursuant to section 5108; and'' for ''the minimum rate of pay prescribed for GS–16; and''.

1988—Subsec. (a). Pub. L. 100–398, § 6(2), inserted at end ''In the case of an appointee described in paragraph (1) who has performed transition activities under section 3 of the Presidential Transition Act of 1963 (3 U.S.C. 102 note), the provisions of paragraphs (1) and (2) may apply to travel and transportation expenses from the place of residence of such appointee (at the time of relocation following the most recent general elections held to determine the electors of the President) to the assigned duty station of such appointee.''

Subsec. (a)(1). Pub. L. 100–398, § 6(1), which directed that par. (1) be amended by striking out ''or (B)'' and inserting ''or (C)'', could not be executed because phrase ''or (B)'' did not appear in par. (1) after the intervening amendment by Pub. L. 100–325, see below.

Pub. L. 100–325 inserted reference to Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service in cl. (B) and redesignated a second cl. (B) as (C).

Subsec. (c). Pub. L. 100–398, § 6(3), inserted at end ''In the case of an appointee described in subsection (a)(1) who has performed transition activities under section 3 of the Presidential Transition Act of 1963 (3 U.S.C. 102 note), the travel or transportation shall take place at any time after the most recent general elections held to determine the electors of the President.''

1984—Subsec. (a)(1). Pub. L. 98–473 directed amendment of subpar. (C) by striking out '', by and with the advice and consent of the Senate,'' which was executed to second subpar. (B) by striking out that phrase following ''appointed by the President'', as probable intent of Congress.

1983—Subsec. (a)(1). Pub. L. 98–151, designated existing provisions as subpars. (A) and (B), and added a second subpar. (B) relating to any person appointed by President.

1978—Subsec. (a)(1). Pub. L. 95–454, § 906(a)(2), substituted ''Office of Personnel Management'' for ''Civil Service Commission''.

Pub. L. 95–454, § 409(a), inserted reference to a new appointee to the Senior Executive Service.

Subsec. (d). Pub. L. 95–454, §§ 305, 906(a)(3), struck out ''not'' before ''delegate'', and substituted ''Office'' for ''Commission''.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–509 effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title III, § 305] of Pub. L. 101–509, set out as a note under section 5301 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT; REGULATIONS

Amendment by Pub. L. 98–151 and promulgation of regulations for amendments by Pub. L. 98–151 effective Nov. 14, 1983, see section 118(c) of Pub. L. 98–151, set out as a note under section 5724 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by sections 305 and 906(a)(2), (3) of Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

Amendment by section 409(a) of Pub. L. 95–454 effective 9 months after Oct. 13, 1978, and congressional review of provisions of sections 401 through 412 of Pub. L. 95–454, see section 415 of Pub. L. 95–454, set out as an Effective Date note under section 3131 of this title.

DELEGATION OF FUNCTIONS

Authority of President under subsec. (a) of this section to prescribe regulations with respect to payment of travel expenses and transportation expenses delegated to Administrator of General Services, see section 1(5) of Ex. Ord. No. 11609, July 22, 1971, 36 F.R. 13747, set out as a note under section 301 of Title 3, The President.

FUNDING OF AMENDMENTS BY PUB. L. 98–151

Amendments by Pub. L. 98–151 to be carried out by agencies by use of funds appropriated or otherwise available for administrative expenses of such agencies, and do not authorize appropriation of funds in amounts exceeding sums already authorized to be appropriated for such agencies, see section 118(b) of Pub. L. 98–151, set out as a note under section 5724 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5726, 5727 of this title; title 28 section 530; title 42 section 1873.

§ 5724. Travel and transportation expenses of employees transferred; advancement of funds; reimbursement on commuted basis

(a) Under such regulations as the President may prescribe and when the head of the agency concerned or his designee authorizes or approves, the agency shall pay from Government funds—

(1) the travel expenses of an employee transferred in the interest of the Government from one official station or agency to another for permanent duty, and the transportation expenses of his immediate family, or a commutation thereof under section 5704 of this title;

(2) the expenses of transporting, packing, crating, temporarily storing, draying, and unpacking his household goods and personal effects not in excess of 18,000 pounds net weight; and

(3) upon the separation (or death in service) of a career appointee, as defined in section 3132(a)(4) of this title, the travel expenses of that individual (if applicable), the transportation expenses of the immediate family of such individual, and the expenses of moving (including transporting, packing, crating, temporarily storing, draying, and unpacking) the household goods of such individual and personal effects not in excess of eighteen thousand pounds net weight, to the place where the individual will reside (or, in the case of a career appointee who dies in service or who dies after separating but before the travel, transportation, and moving is completed, to the place where the family will reside) within the United States, its territories or possessions, the Commonwealth of Puerto Rico, or 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, if such individual—

(A) during or after the five years preceding eligibility to receive an annuity under subchapter III of chapter 83, or of chapter 84 of this title, has been transferred in the interest of the Government from one official station to another for permanent duty as a career appointee in the Senior Executive Service or as a director under section 4103(a)(8) of title 38 (as in effect on November 17, 1988); and

(B) is eligible to receive an annuity upon such separation (or, in the case of death in service, met the requirements for being considered eligible to receive an annuity, as of date of death) under the provisions of subchapter III of chapter 83 or chapter 84 of this title.

(b) Under such regulations as the President may prescribe, an employee who transports a house trailer or mobile dwelling inside the continental United States, inside Alaska, or between the continental United States and Alaska, for use as a residence, and who otherwise would be entitled to transportation of household goods and personal effects under subsection (a) of this section, is entitled, instead of that transportation, to—

(1) a reasonable allowance for transportation of the house trailer or mobile dwelling, if the trailer or dwelling is transported by the employee; or

(2) commercial transportation of the house trailer or mobile dwelling, at Government expense, or reimbursement to the employee therefor, including the payment of necessary tolls, charges, and permit fees, if the trailer or dwelling is not transported by the employee.

However, payment under this subsection may not exceed the maximum payment to which the employee otherwise would be entitled under subsection (a) of this section for transportation and temporary storage of his household goods and personal effects in connection with this transfer.

(c) Under such regulations as the President may prescribe, an employee who transfers between points inside the continental United States, instead of being paid for the actual expenses of transporting, packing, crating, temporarily storing, draying, and unpacking of household goods and personal effects, shall be reimbursed on a commuted basis at the rates per 100 pounds that are fixed by zones in the regulations. The reimbursement may not exceed the amount which would be allowable for the authorized weight allowance. However, under regulations prescribed by the President, payment of actual expenses may be made when the head of the agency determines that payment of actual expenses is more economical to the Government.

(d) When an employee transfers to a post of duty outside the continental United States, his expenses of travel and transportation to and from the post shall be allowed to the same extent and with the same limitations prescribed for a new appointee under section 5722 of this title.

(e) When an employee transfers from one agency to another, the agency to which he transfers pays the expenses authorized by this section. However, under regulations prescribed by the President, in a transfer from one agency to another because of a reduction in force or transfer of function, expenses authorized by this section and sections 5726(b) and 5727 of this title (other than expenses authorized in connection with a transfer to a foreign country) and by section 5724a(a), (b) of this title may be paid in whole or in part by the agency from which the employee transfers or by the agency to which he transfers, as may be agreed on by the heads of the agencies concerned.

(f) An advance of funds may be made to an employee under the regulations of the President with the same safeguards required under section 5705 of this title.

(g) The allowances authorized by this section do not apply to an employee transferred under the Foreign Service Act of 1980.

(h) When a transfer is made primarily for the convenience or benefit of an employee, including an employee in the Foreign Service of the United States, or at his request, his expenses of travel and transportation and the expenses of transporting, packing, crating, temporarily storing, draying, and unpacking of household goods and personal effects may not be allowed or paid from Government funds.

(i) An agency may pay travel and transportation expenses (including storage of household goods and personal effects) and other relocation allowances under this section and sections 5724a, 5724b, and 5726(c) of this title when an employee is transferred within the continental United States only after the employee agrees in writing to remain in the Government service for 12 months after his transfer, unless separated for reasons beyond his control that are acceptable to the agency concerned. If the employee violates the agreement, the money spent by the United States for the expenses and allowances is recoverable from the employee as a debt due the United States.

(j) The regulations prescribed under this section shall provide that the reassignment or transfer of any employee, for permanent duty, from one official station or agency to another which is outside the employee's commuting area

shall take effect only after the employee has been given advance notice for a reasonable period. Emergency circumstances shall be taken into account in determining whether the period of advance notice is reasonable.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 502; Pub. L. 90–83, § 1(36), Sept. 11, 1967, 81 Stat. 204; Pub. L. 90–623, § 1(14), Oct. 22, 1968, 82 Stat. 1313; Pub. L. 96–465, title II, § 2314(d), Oct. 17 1980, 94 Stat. 2168; Pub. L. 98–151, § 118(a)(2)–(4), (7)(B), Nov. 14, 1983, 97 Stat. 977, 979; Pub. L. 100–440, title VI, § 629(a), Sept. 22, 1988, 102 Stat. 1758; Pub. L. 100–566, § 3, Oct. 31, 1988, 102 Stat. 2845; Pub. L. 102–378, § 2(49), Oct. 2, 1992, 106 Stat. 1353; Pub. L. 103–338, §§ 3(a), 4, Oct. 6, 1994, 108 Stat. 3114.)

HISTORICAL AND REVISION NOTES

1966 ACT

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 73b–1(a), (b).	Aug. 2, 1946, ch. 744, § 1(a), (b), 60 Stat. 806. Sept. 23, 1950, ch. 1010, §§ 1(a), (b), 3(b), 64 Stat. 985, 986. Feb. 12, 1958, Pub. L. 85–326, 72 Stat. 14. Sept. 6, 1960, Pub. L. 86–707, § 301(c)(1), 74 Stat. 796. Oct. 9, 1962, Pub. L. 87–776, 76 Stat. 777.

In subsections (a)(1) and (f), the words ''section 5704 of this title'' and ''section 5705 of this title'', respectively, are substituted for ''the Act of February 14, 1931 (5 U.S.C. 73a)'' and ''the Subsistence Expense Act of 1926 (5 U.S.C. 828)'', respectively, on authority of sections 4, 5, and 9(a) of the Travel Expense Act of 1949, as amended, which are carried into sections 5704, 5705, and 5708.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 ACT

Section of title 5	*Source (U.S. Code)*	*Source (Statutes at Large)*
5724(a)(2) ...	5 App.: 73b–1(a).	July 21, 1966, Pub. L. 89–516, § 1(a), 80 Stat. 323.
5724(c)	5 App.: 73b–1(b).	July 21, 1966, Pub. L. 89–516, § 1(b), 80 Stat. 323.
5724(e)	5 App.: 73b–4d.	July 21, 1966, Pub. L. 89–516, § 2 ''Sec. 26'', 80 Stat. 324.
5724(i)	5 App.: 73b–4f.	July 21, 1966, Pub. L. 89–516, § 2 ''Sec. 28'', 80 Stat. 325.

Subsection (a)(1), (3) of section 1 of the act of July 21, 1966, was effected in the codification of 5 U.S.C. 5724(a)(1), (f); accordingly, no further amendments to 5 U.S.C. 5724 are necessary.

In subsection (e), the word ''However'' is substituted for ''and notwithstanding the provisions of the fourth proviso of section 1(a) of this Act'' to reflect the codification of that proviso in 5 U.S.C. 5724(e). The words ''agency'' and ''agencies'' are substituted for ''department'' and ''departments'', respectively, to conform to the definition in 5 U.S.C. 5721(1). The words ''this section and sections 5726(b) and 5727 of this title'' and ''section 5724a (a), (b) of this title'' are substituted for ''section 1, subsections (a) and (b) and subsections (e) and (f)'' and ''sections 23 and 24 of this Act'', respectively, to reflect the codification of the cited sections in 5 U.S.C. The word ''employee'' is substituted for ''officer or employee'' to conform to the definitions in 5 U.S.C. 5721(2) and 2105.

In subsection (i), the words ''An agency may pay * * * expenses * * * and allowances under this section and sections 5724a and 5726(c) of this title * * * only after'' are substituted for ''Notwithstanding the provisions of subsections (a) and (b) of section 1, and of sections 23, 24, 25, and 27 of this Act, the * * * expenses * * * and * * * allowances shall not be allowed thereunder * * * unless and until'' for clarity and to conform to the style of 5 U.S.C., and to reflect the codification of the cited sections in 5 U.S.C. The word ''employee'' is substituted for ''civilian officer or employee'' and ''such officer or employee'' to conform to the definitions in 5 U.S.C. 5721(2) and 2105. The words ''continental United States'' are substituted for ''continental United States, excluding Alaska'' to conform to the definition in 5 U.S.C. 5721(3). The word ''agency'' is substituted for ''department or agency'' to conform to the definition in 5 U.S.C. 5721(1). In the last sentence, the words ''money spent by the United States for the expenses and allowances'' are substituted for ''moneys expended by the United States under said sections of this act on account of such officer or employee.''

REFERENCES IN TEXT

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

Section 4103 of title 38, referred to in subsec. (a)(3)(A), was repealed by Pub. L. 102–40, title IV, § 401(a)(3), May 7, 1991, 105 Stat. 210. See section 7306 of Title 38, Veterans' Benefits.

The Foreign Service Act of 1980, referred to in subsec. (g), is Pub. L. 96–465, Oct. 17, 1980, 94 Stat. 2071, which is classified principally to chapter 52 (§ 3901 et seq.) of Title 22. For complete classification of this Act to the Code, see Short Title note set out under section 3901 of Title 22 and Tables.

AMENDMENTS

1994—Subsec. (a)(3). Pub. L. 103–338, § 4, amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''upon the separation of a career appointee (as defined in section 3132(a)(4) of this title), the travel expenses of that individual, the transportation expenses of the immediate family of such individual, and the expenses of moving (including transporting, packing, crating, temporarily storing, draying, and unpacking) the household goods of such individual and personal effects not in excess of eighteen thousand pounds net weight, to the place where the individual will reside within the United States, its territories or possessions, the Commonwealth of Puerto Rico, or 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 (or, if the individual dies before the travel, transportation, and moving is completed, to the place where the family will reside) if such individual—

''(A) during or after the five years preceding eligibility to receive an annuity under subchapter III of chapter 83, or of chapter 84 of this title, has been transferred in the interest of the Government from one official station to another for permanent duty as a career appointee in the Senior Executive Service or as a director under section 4103(a)(8) of title 38 (as in effect on November 17, 1988); and

''(B) is eligible to receive an annuity upon such separation under the provisions of subchapter III of chapter 83 or chapter 84 of this title.''

Subsec. (a)(3)(A). Pub. L. 103–338, § 3(a), substituted ''November 17, 1988'' for ''November 27, 1988''.

1992—Subsec. (a)(3)(A). Pub. L. 102–378 substituted ''Service or as a director under section 4103(a)(8) of title 38 (as in effect on November 27, 1988)'' for ''Service''.

1988—Subsec. (a)(3). Pub. L. 100–440 added par. (3).

Subsec. (a)(3)(A). Pub. L. 100–566 substituted ''during or after the five'' for ''during the five'' and struck out '', and thereafter'' after ''of this title''.

1983—Subsec. (a)(2). Pub. L. 98–151, § 118(a)(2), substituted ''18,000'' for ''11,000''.

Subsec. (b)(1). Pub. L. 98–151, § 118(a)(3), struck out ''not in excess of 20 cents a mile'' after ''allowance''.

Subsec. (i). Pub. L. 98–151, § 118(a)(7)(B), inserted reference to section 5724b of this title.

Subsec. (j). Pub. L. 98–151, § 118(a)(4), added subsec. (j).

1980—Subsec. (g). Pub. L. 96–465 substituted ''the Foreign Service Act of 1980'' for ''chapter 14 of title 22''.

1968—Subsec. (e). Pub. L. 90–623 substituted ''section 5724a(a), (b)'' for ''section 5724(a), (b)''.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 3(b) of Pub. L. 103–338 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect as if included in the Technical and Miscellaneous Civil Service Amendments Act of 1992 (Public Law 102–378; 106 Stat. 1346; 5 U.S.C. 1101 note).''

Section 5(a) of Pub. L. 103–338 provided that: ''This Act [amending this section and enacting provisions set out as notes under this section] and the amendment made by this Act shall take effect on October 1, 1994, or, if later, the date of the enactment of this Act [Oct. 6, 1994].''

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–378 applicable with respect to a separation that takes effect on or after Oct. 2, 1992, see section 9(b)(11) of Pub. L. 102–378, set out as a note under section 6303 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT; PROMULGATION OF REGULATIONS

Section 118(c) of Pub. L. 98–151 provided that:

''(1) The amendments made by subsection (a) [enacting sections 5724b and 5724c of this title and amending sections 5723, 5724, 5724a, and 5726 of this title] shall take effect on the date of the enactment of this joint resolution [Nov. 14, 1983].''

''(2) Not later than thirty days after the date of the enactment of this joint resolution, the President shall prescribe the regulations required under the amendments made by subsection (a). Such regulations shall take effect as of such date of enactment.''

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 1968 AMENDMENT

Amendment by Pub. L. 90–623 effective as of Sept. 11, 1967, for all purposes, see section 6 of Pub. L. 90–623, set out as a note under section 5334 of this title.

DELEGATION OF FUNCTIONS

Authority of President under this section to prescribe regulations provided for in this section (relating to travel and transportation expenses and other matters) delegated to Administrator of General Services, see section 1(6) of Ex. Ord. No. 11609, July 22, 1971, 36 F.R. 13747, set out as a note under section 301 of Title 3, The President.

MOVING EXPENSES FOR FAMILY OF CAREER APPOINTEES DYING IN SERVICE BETWEEN JANUARY 1, 1994, AND OCTOBER 6, 1994

Section 5(b) of Pub. L. 103–338 provided that:

''(1) IN GENERAL.—Under regulations prescribed by the President or his designee, an agency shall, as appropriate, pay or make reimbursement for any moving expenses which would be payable under the provisions of section 5724(a)(3) of title 5, United States Code, as amended by section 4 (but which would not have been payable under such provisions, as last in effect before being so amended).

''(2) APPLICABILITY.—The moving expenses to which this subsection applies are those incurred by the family of an individual who died—

''(i) before separating from Government service; and

''(ii) during the period beginning on January 1, 1994, and ending on the effective date of this Act [Oct. 6, 1994].

''(3) CONDITION.—Payment or reimbursement under this subsection may not be made except upon appropriate written application submitted within 12 months after the date on which the regulations referred to in paragraph (1) take effect.''

FUNDING OF AMENDMENTS BY PUB. L. 100–440

Section 629(b) of Pub. L. 100–440 provided that: ''The amendments made by subsection (a) [amending this section] shall be carried out by agencies by the use of funds appropriated or otherwise available for the administrative expenses of each of such respective agencies. The amendments made by such subsection do not authorize the appropriation of funds in amounts exceeding the sums otherwise authorized to be appropriated for such agencies.''

FUNDING OF AMENDMENTS BY PUB. L. 98–151

Section 118(b) of Pub. L. 98–151 provided that: ''The amendments made by subsection (a) [enacting sections 5724b and 5724c of this title and amending sections 5723, 5724, 5724a, and 5726 of this title] shall be carried out by agencies by the use of funds appropriated or otherwise available for the administrative expenses of each of such respective agencies. The amendments made by such subsection do not authorize the appropriation of funds in amounts exceeding the sums already authorized to be appropriated for such agencies.''

RATES OF REIMBURSEMENT

Administrator of General Services empowered to prescribe regulations relating to establishment of rates used in reimbursing civilian officers or employees of Government on a commuted basis in lieu of payment of actual expenses of transportation, etc., of their household goods and personal effects upon transfer from one official station to another, see Ex. Ord. No. 11012, Mar. 28, 1962, 27 F.R. 2983, set out as a note under section 301 of Title 3, The President.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3375, 4109, 5723, 5724a, 5724b, 5726 of this title; title 16 section 3378; title 42 sections 290aa, 299c–4; title 50 section 403e.

§ 5724a. Relocation expenses of employees transferred or reemployed

(a) Under such regulations as the President may prescribe and to the extent considered necessary and appropriate, as provided therein, appropriations or other funds available to an agency for administrative expenses are available for the reimbursement of all or part of the following expenses of an employee for whom the Government pays expenses of travel and transportation under section 5724(a) of this title:

(1) Expenses of per diem allowance or the subsistence expenses of the immediate family of the employee while en route between his old and new official stations, not in excess of the maximum payment permitted under regulations which implement section 5702 of this title.

(2) Expenses of per diem allowance or subsistence of the employee and his spouse, not in excess of the maximum payment permitted under regulations which implement section 5702 of this title. Expenses of transportation to seek permanent residence quarters at a new official station when both the old and new sta-

tions are located within the United States. However, expenses under this paragraph may be allowed only for one round trip in connection with each change of station of the employee.

(3) Subsistence expenses of the employee and his immediate family for a period of 60 days while occupying temporary quarters when the new official station is located within the United States, its territories or possessions, the Commonwealth of Puerto Rico, or 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). The period of residence in temporary quarters may be extended for an additional 60 days if the head of the agency concerned or his designee determines that there are compelling reasons for the continued occupancy of temporary quarters. The regulations shall prescribe daily rates and amounts for subsistence expenses per individual, not in excess of the maximum payment permitted under regulations which implement section 5702 of this title, for the location in which the temporary quarters are located.

(4)(A) Expenses of the sale of the residence (or the settlement of an unexpired lease) of the employee at the old station and purchase of a home at the new official station required to be paid by him when the old and new official stations are located within the United States, its territories or possessions, the Commonwealth of Puerto Rico, or 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); and expenses, required to be paid by the employee, (i) of the sale of the residence (or the settlement of an unexpired lease) of the employee at the official station from which the employee was transferred when he was assigned to a post of duty located outside the United States, its territories or possessions, the Commonwealth of Puerto Rico, or 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) and (ii) of the purchase of a residence at the new official station when the employee is transferred in the interest of the Government from a post of duty located outside the United States, its territories or possessions, the Commonwealth of Puerto Rico, or 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), to an official station (other than the official station from which he was transferred when assigned to the foreign tour of duty) within the United States, its territories or possessions, the Commonwealth of Puerto Rico, or such areas and installations in the Republic of Panama. However, reimbursement for brokerage fees on the sale of the residence and other expenses under this paragraph may not exceed those customarily charged in the locality where the residence is located, and reimbursement may not be made for losses on the sale of the residence. This paragraph applies regardless of whether title to the residence or the unexpired lease is in the name of the employee alone, in the joint names of the employee and a member of his immediate family, or in the name of a member of his immediate family alone. Reimbursement of expenses prescribed under this paragraph in connection with transfers from a post of duty located outside the United States, its territories or possessions, the Commonwealth of Puerto Rico, or 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), shall not be allowed for any sale or settlement of unexpired lease or purchase transaction that occurs prior to official notification that the employee's return to the United States would be to an official station other than the official station from which the employee was transferred when assigned to the foreign post of duty.

(B)(i) In connection with the sale of the residence at the old official station, reimbursement under this paragraph shall not exceed 10 percent of the sale price or $15,000, whichever is the lesser amount.

(ii) In connection with the purchase of a residence at the new official station, reimbursement under this paragraph shall not exceed 5 percent of the purchase price or $7,500, whichever is the lesser amount.

(iii) Effective October 1 of each year, the respective maximum dollar amounts applicable under clauses (i) and (ii) shall be increased by the percent change, if any, in the Consumer Price Index published for December of the preceding year over that published for December of the second preceding year, adjusted to the nearest one-tenth of 1 percent. For the purpose of this clause, ''Consumer Price Index'' means the Consumer Price Index for All Urban Consumers, United States City Average, Housing Component (1967=100), prepared by the Bureau of Labor Statistics, Department of Labor.

(b) Under such regulations as the President may prescribe and to the extent considered necessary and appropriate, as provided therein, and notwithstanding other reimbursement authorized under this subchapter, an employee who is reimbursed under subsection (a) of this section or section 5724(a) of this title is entitled to—

(1) an amount not to exceed 2 weeks' basic pay, if he has an immediate family; or

(2) an amount not to exceed 1 week's basic pay, if he does not have an immediate family.

However, the amounts may not exceed amounts determined from the maximum rate for GS–13.

(c) Under such regulations as the President may prescribe, a former employee separated by reason of reduction in force or transfer of function who within 1 year after the separation is reemployed by a nontemporary appointment at a

different geographical location from that where the separation occurred may be allowed and paid the expenses authorized by sections 5724, 5725, 5726(b), and 5727 of this title, and may receive the benefits authorized by subsections (a) and (b) of this section, in the same manner as though he had been transferred in the interest of the Government without a break in service to the location of reemployment from the location where separated.

(Added Pub. L. 90–83, §1(37)(A), Sept. 11, 1967, 81 Stat. 204; amended Pub. L. 96–70, title I, §1231(d), Sept. 27, 1979, 93 Stat. 470; Pub. L. 98–151, §118(a)(5), (6), Nov. 14, 1983, 97 Stat. 977, 978; Pub. L. 99–234, title I, §105, Jan. 2, 1986, 99 Stat. 1758; Pub. L. 100–202, §101(m) [title VI, §628(a)(1)], Dec. 22, 1987, 101 Stat. 1329–390, 1329–430; Pub. L. 101–510, div. A, title XII, §1206(c), Nov. 5, 1990, 104 Stat. 1661.)

HISTORICAL AND REVISION NOTES

Section of title 5	*Source (U.S. Code)*	*Source (Statutes at Large)*
5724a(a)	5 App.: 73b–4a.	July 21, 1966, Pub. L. 89–516, §2 ''Sec. 23'', 80 Stat. 323.
5724a(b)	5 App.: 73b–4b.	July 21, 1966, Pub. L. 89–516, §2 ''Sec. 24'', 80 Stat. 324.
5724a(c)	5 App.: 73b–4e.	July 21, 1966, Pub. L. 89–516, §2 ''Sec. 27'', 80 Stat. 325.

In subsection (a), the word ''agency'' is substituted for ''department'' to conform to the definition in 5 U.S.C. 5721(1). The word ''employee'' is substituted for ''officers or employees'' and ''officer or employee'' to conform to the definitions in 5 U.S.C. 5721(2) and 2105. The words ''section 5724(a) of this title'' and ''section 5702 of this title'' are substituted for ''subsection (a) of section 1 of this Act'' and ''section 3 of the Travel Expense Act of 1949 (63 Stat. 166, as amended; 5 U.S.C. 836)'' to reflect the codification of the cited acts in 5 U.S.C. In subsection (a)(2), the words ''within the continental United States'' are coextensive with and substituted for ''within the continental United States, excluding Alaska'' on authority of the definition of ''continental United States'' in 5 U.S.C. 5721(3).

In subsection (b), the words ''this subchapter'' and ''subsection (a) of this section or section 5724(a) of this title'' are substituted for ''this Act'' and ''section 1(a) or section 23 of this Act'', respectively, to reflect the codification of the act in 5 U.S.C. The word ''officer'' is omitted as included in ''employee''. The words ''in the General Schedule of the Classification Act of 1949, as amended'' are omitted as unnecessary.

In subsection (c), the word ''officer'' is omitted as included in ''employee''. The words ''sections 5724, 5725, 5726(b), and 5727 of this title'' and ''subsections (a) and (b) of this section'' are substituted for ''section 1 of this Act'' and ''sections 23 and 24 of this Act'', respectively, to reflect the codification of the act in title 5, United States Code.

REFERENCES IN TEXT

Section 3(a) of the Panama Canal Act of 1979, referred to in subsec. (a)(3), (4)(A), is classified to section 3602(a) of Title 22, Foreign Relations and Intercourse.

AMENDMENTS

1990—Subsec. (a)(2). Pub. L. 101–510 struck out ''continental'' before ''United States'' in second sentence.

1987—Subsec. (a)(4)(A). Pub. L. 100–202 inserted provisions authorizing reimbursement of expenses of selling residence of employee at official station from which employee was transferred when assigned to duty outside United States, its territories or possessions, Puerto Rico, or parts of Panama, provisions authorizing reimbursement of expenses of purchasing residence at new official station in United States, its territories or possessions, Puerto Rico, or parts of Panama, and provisions disallowing reimbursement of expenses in connection with transfers from a post of duty located outside the United States, its territories or possessions, Puerto Rico, or parts of Panama, for any transaction that occurs prior to official notification that employee's return to the United States would be to official station other than official station from which employee was transferred.

1986—Subsec. (a)(1). Pub. L. 99–234, §105(1), (2), substituted ''allowance or'' for ''allowance instead of'' and ''maximum payment permitted under regulations which implement section 5702 of this title'' for ''maximum per diem rates prescribed by or under section 5702 of this title''.

Subsec. (a)(2). Pub. L. 99–234, §105(1), (2), substituted ''allowance or'' for ''allowance instead of'' and ''maximum payment permitted under regulations which implement section 5702 of this title'' for ''maximum per diem rates prescribed by or under section 5702 of this title''.

Subsec. (a)(3). Pub. L. 99–234, §105(2), (3), substituted ''maximum payment permitted under regulations which implement section 5702 of this title'' for ''maximum per diem rates prescribed by or under section 5702 of this title'' and ''daily rates and amounts'' for ''average daily rates''.

1983—Subsec. (a)(3). Pub. L. 98–151, §118(a)(5)(A), in first sentence substituted ''60 days'' for ''30 days''.

Pub. L. 98–151, §118(a)(5)(B), substituted provisions authorizing extension for an additional 60 days if agency head or designee determines existence of compelling reasons for continued occupancy, for provisions authorizing extension for an additional 30 days if the employee moves to or from Alaska, Hawaii, the territories or possessions, etc., and struck out provisions relating to additional limitations on daily rates for reimbursement for subsistence expenses.

Subsec. (a)(4). Pub. L. 98–151, §118(a)(6), redesignated existing provisions as subpar. (A) and added subpar. (B).

1979—Subsec. (a)(3), (4). Pub. L. 96–70 substituted in pars. (3) and (4) ''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'' wherever appearing.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 101(m) [title VI, §628(a)(2)] of Pub. L. 100–202 provided that: ''The amendments made by paragraph (2) [probably means par. (1) which amended this section] shall be applicable with respect to any employee transferred to or from a post of duty on or after 60 days after the date of enactment of this section [Dec. 22, 1987].''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–234 effective (1) on effective date of regulations to be promulgated not later than 150 days after Jan. 2, 1986, or (2) 180 days after Jan. 2, 1986, whichever occurs first, see section 301(a) of Pub. L. 99–234, set out as a note under section 5701 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT; PROMULGATION OF REGULATIONS

Amendment by Pub. L. 98–151 and promulgation of regulations for amendments by Pub. L. 98–151 effective Nov. 14, 1983, see section 118(c) of Pub. L. 98–151, set out as a note under section 5724 of this title.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–70 effective Oct. 1, 1979, see section 3304 of Pub. L. 96–70, set out as an Effective Date note under section 3601 of Title 22, Foreign Relations and Intercourse.

DELEGATION OF FUNCTIONS

Authority of President under this section to prescribe regulations provided for in this section, relating to (i)

availability of appropriations or other funds of agencies for reimbursement of described expenses of employees for whom Government pays expenses of travel and transportation under section 5724(a) of this title, (ii) entitlement of employees to amounts related to their basic pay, and (iii) allowance, payment, and receipt of expenses and benefits to former employees who are reemployed by nontemporary appointments delegated to Administrator of General Services, see section 1(7)(a) of Ex. Ord. No. 11609, July 22, 1971, 36 F.R. 13747, set out as a note under section 301 of Title 3, The President.

FUNDING OF AMENDMENTS BY PUB. L. 98–151

Amendments by Pub. L. 98–151 to be carried out be agencies by use of funds appropriated or otherwise available for administrative expenses of such agencies, and do not authorize appropriation of funds in amounts exceeding sums already authorized to be appropriated for such agencies, see section 118(b) of Pub. L. 98–151, set out as a note under section 5724 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3375, 5724, 5724b of this title; title 22 section 3691; title 38 section 707; title 42 sections 290aa, 299c–4; title 50 section 403e.

§ 5724b. Taxes on reimbursements for travel, transportation, and relocation expenses of employees transferred

(a) Under such regulations as the President may prescribe and to the extent considered necessary and appropriate, as provided therein, appropriations or other funds available to an agency for administrative expenses are available for the reimbursement of substantially all of the Federal, State, and local income taxes incurred by an employee, or by an employee and such employee's spouse (if filing jointly), for any moving or storage expenses furnished in kind, or for which reimbursement or an allowance is provided (but only to the extent of the expenses paid or incurred). Reimbursements under this subsection shall also include an amount equal to all income taxes for which the employee and spouse, as the case may be,[1] would be liable due to the reimbursement for the taxes referred to in the first sentence of this subsection.

(b) For the purposes of this section, ''moving or storage expenses'' means travel and transportation expenses (including storage of household goods and personal effects under section 5724 of this title) and other relocation expenses under sections 5724a and 5724c of this title.

(Added Pub. L. 98–151, § 118(a)(7)(A)(i), Nov. 14, 1983, 97 Stat. 978; amended Pub. L. 98–473, title I, § 120(b), Oct. 12, 1984, 98 Stat. 1969.)

CODIFICATION

Prior to amendment by Pub. L. 98–473, the words ''as the case may be'' were preceded by ''the employee, or the employee and spouse,''.

AMENDMENTS

1984—Pub. L. 98–473 amended section generally, substituting ''reimbursement of substantially all of the Federal, State, and local income taxes'' for ''reimbursement of all or part of the Federal, State, and city income taxes'' and ''for which the employee and spouse, as the case may be'' for ''for which the employee, or the employee and spouse, as the case may be'' in subsec. (a) and ''5724c'' for ''5726(c)'' in subsec. (b).

[1] See Codification note below.

EFFECTIVE DATE; PROMULGATION OF REGULATIONS

Enactment by Pub. L. 98–151 and promulgation of regulations for amendments by Pub. L. 98–151 effective Nov. 14, 1983, see section 118(c) of Pub. L. 98–151, set out as an Effective Date of 1983 Amendment; Promulgation of Regulations note under section 5724 of this title.

DELEGATION OF FUNCTIONS

Authority of President under this section to prescribe regulations, relating to reimbursement of Federal, State, and city income taxes for travel, transportation, and relocation expenses of employees, transferred at Government expense, furnished in kind or for which reimbursement or an allowance is provided, delegated to Administrator of General Services, in consultation with Secretary of the Treasury, see section 1(7)(b) of Ex. Ord. No. 11609, July 22, 1971, 36 F.R. 13747, set out as a note under section 301 of Title 3, The President.

FUNDING OF AMENDMENTS BY PUB. L. 98–151

Amendments by Pub. L. 98–151 to be carried out by agencies by use of funds appropriated or otherwise available for administrative expenses of such agencies, and do not authorize appropriation of funds in amounts exceeding sums already authorized to be appropriated for such agencies, see section 118(b) of Pub. L. 98–151, set out as a note under section 5724 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5724 of this title.

§ 5724c. Relocation services

Under such regulations as the President may prescribe, each agency is authorized to enter into contracts to provide relocation services to agencies and employees for the purpose of carrying out the provisions of this subchapter. Such services include but need not be limited to arranging for the purchase of a transferred employee's residence.

(Added Pub. L. 98–151, § 118(a)(7)(A)(i), Nov. 14, 1983, 97 Stat. 978; amended Pub. L. 98–473, title I, § 120(b), Oct. 12, 1984, 98 Stat. 1969.)

AMENDMENTS

1984—Pub. L. 98–473 amended section generally, adding authority of the President to prescribe regulations.

EFFECTIVE DATE; PROMULGATION OF REGULATIONS

Enactment by Pub. L. 98–151 and promulgation of regulations for amendments by Pub. L. 98–151 effective Nov. 14, 1983, see section 118(c) of Pub. L. 98–151, set out as an Effective Date of 1983 Amendment; Promulgation of Regulations note under section 5724 of this title.

DELEGATION OF FUNCTIONS

Authority of President to prescribe regulations under this section delegated to Administrator of General Services, except with respect to Central Intelligence Agency, see section 1(7)(c) of Ex. Ord. No. 11609, July 22, 1971, 36 F.R. 13747, as amended, set out as a note under section 301 of Title 3, The President.

FUNDING OF AMENDMENTS BY PUB. L. 98–151

Amendments by Pub. L. 98–151 to be carried out by agencies by use of funds appropriated or otherwise available for administrative expenses of such agencies, and do not authorize appropriation of funds in amounts exceeding sums already authorized to be appropriated for such agencies, see section 118(b) of Pub. L. 98–151, set out as a note under section 5724 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5724b of this title.

§ 5725. Transportation expenses; employees assigned to danger areas

(a) When an employee of the United States is on duty, or is transferred or assigned to duty, at a place designated by the head of the agency concerned as inside a zone—

(1) from which his immediate family should be evacuated; or

(2) to which they are not permitted to accompany him;

because of military or other reasons which create imminent danger to life or property, or adverse living conditions which seriously affect the health, safety, or accommodations of the immediate family, Government funds may be used to transport his immediate family and household goods and personal effects, under regulations prescribed by the head of the agency, to a location designated by the employee. When circumstances prevent the employee from designating a location, or it is administratively impracticable to determine his intent, the immediate family may designate the location. When the designated location is inside a zone to which movement of families is prohibited under this subsection, the employee or his immediate family may designate an alternate location.

(b) When the employee is assigned to a duty station from which his immediate family is not excluded by the restrictions in subsection (a) of this section, Government funds may be used to transport his immediate family and household goods and personal effects from the designated or alternate location to the duty station.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 503.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 73b–1(d).	Sept. 23, 1960, ch. 1010, §1(c), 64 Stat. 985.

The word ''employee'' is substituted for ''civilian officers and employees'' in view of the definition of ''employee'' in sections 5721 and 2105.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5724a of this title.

§ 5726. Storage expenses; household goods and personal effects

(a) For the purpose of subsection (b) of this section, ''household goods and personal effects'' means such personal property of an employee and his dependents as the President may be regulation authorize to be transported or stored, including, in emergencies, motor vehicles authorized to be shipped at Government expense.

(b) Under such regulations as the President may prescribe, an employee, including a new appointee and a student trainee to the extent authorized by sections 5722 and 5723 of this title, assigned to a permanent duty station outside the continental United States may be allowed storage expenses and related transportation and other expenses for his household goods and personal effects when—

(1) the duty station is one to which he cannot take or at which he is unable to use his household goods and personal effects; or

(2) the head of the agency concerned authorizes storage of the household goods and personal effects in the public interest or for reasons of economy.

The weight of the household goods and personal effects stored under this subsection, together with the weight of property transported under section 5724(a), may not exceed 18,000 pounds net weight, excluding a motor vehicle described by subsection (a) of this section.

(c) Under such regulations as the President may prescribe, when an employee, including a new appointee and a student trainee to the extent authorized by section 5723 of this title, is assigned to a permanent duty station at an isolated location in the continental United States to which he cannot take or at which he is unable to use his household goods and personal effects because of the absence of residence quarters at the location, nontemporary storage expenses or storage at Government expense in Government-owned facilities (including related transportation and other expenses), whichever is more economical, may be allowed the employee under regulations prescribed by the head of the agency concerned. The weight of property stored under this subsection, together with the weight of property transported under sections 5723(a) and 5724(a) of this title, may not exceed the total maximum weight the employee would be entitled to have moved. The period of nontemporary storage under this subsection may not exceed 3 years.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 504; Pub. L. 90–83, §1(38), Sept. 11, 1967, 81 Stat. 205; Pub. L. 98–151, §118(a)(2), Nov. 14, 1983, 97 Stat. 977.)

HISTORICAL AND REVISION NOTES

1966 ACT

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 73b–1(e).	Sept. 6, 1960, Pub. L. 86–707, §301(c)(2), (d) (as applicable to the Administrative Expenses Act of 1946, as amended), 74 Stat. 796.

The word ''employee'' is substituted for ''civilian officer or employee'' in view of the definition of ''employee'' in sections 5721 and 2105.

In subsection (b), the words ''including a new appointee and a student trainee to the extent authorized by sections 5722 and 5723 of this title'' are substituted for ''including any new appointee in accordance with section 73b–3 of this title'' for clarity and reflect the codification of former section 73b–3 in this title.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 ACT

Section of title 5	*Source (U.S. Code)*	*Source (Statutes at Large)*
5726(c)	5 App.: 73b–4c.	July 21, 1966, Pub. L. 89–516, §2 ''Sec. 25'', 80 Stat. 324.

The amendment of subsection (a) of 5 U.S.C. 5726 reflects the addition of a new subsection (c).

Subsection (b) of 5 U.S.C. 5726 was derived from subsection (e) of section 1 of the Administrative Expenses

Act of 1946, as amended (74 Stat. 796). In the codification of subsection (e), the words ''7,000 pounds net weight'' were substituted for ''the maximum weight limitation provided by subsection (a)''. During the pendency of the codification bill, section 1(a)(2) of Public Law 89–516, amended subsection (a) of section 1 of the Administrative Expenses Act of 1946 to increase the maximum weight limitation from 7,000 to 11,000 pounds. Thus, the amendment of subsection (b) is necessary to reflect the current weight limitation applicable.

In subsection (c), the word ''employee'' is substituted for ''civilian officer or employee'' to conform to the definitions in 5 U.S.C. 5721(2) and 2105. The words ''including a new appointee and a student trainee to the extent authorized by section 5723 of this title'' are substituted for ''including any new appointee in accordance with section 7(b) of this Act, as amended'' for clarity and to reflect the codification of section 7(b) in 5 U.S.C. 5723. The words ''continental United States'' are coextensive with and substituted for ''continental United States, excluding Alaska'' on authority of the definition of ''continental United States'' in 5 U.S.C. 5721(3). The words ''head of the agency concerned'' are substituted for ''head of the Executive Department or agency concerned'' to conform to the definition in 5 U.S.C. 5721(1). In the penultimate sentence, the words ''sections 5723(a) and 5724(a) of this title'' are substituted for ''section 1 or 7(b) of this Act'' to reflect the codification of sections 1 and 7(b) in 5 U.S.C. 5723(a) and 5724(a); and the word ''officer'' is omitted as included in ''employee''. In the last sentence, the words ''under this subsection'' are inserted for clarity.

Subsection (b) of section 25 of the Administrative Expenses Act of 1946 (added by section 2 of Public Law 89–516) is omitted as executed.

AMENDMENTS

1983—Subsec. (b). Pub. L. 98–151 substituted ''18,000'' for ''11,000''.

DELEGATION OF FUNCTIONS

Authority of President under this section to prescribe regulations provided for in this section relating to (i) definition of ''household goods and personal effects'', (ii) allowable storage expenses and related transportation, and (iii) allowance of nontemporary storage expenses or storage at Government expense in Government-owned facilities (including related transportation and other expenses) delegated to Administrator of General Services, see section 1(8) of Ex. Ord. No. 11609, July 22, 1971, 36 F.R. 13747, set out as a note under section 301 of Title 3, The President.

EFFECTIVE DATE OF 1983 AMENDMENT; PROMULGATION OF REGULATIONS

Amendment by Pub. L. 98–151 and promulgation of regulations for amendments by Pub. L. 98–151 effective Nov. 14, 1983, see section 118(c) of Pub. L. 98–151, set out as a note under section 5724 of this title.

FUNDING OF AMENDMENTS BY PUB. L. 98–151

Amendments by Pub. L. 98–151 to be carried out by agencies by use of funds appropriated or otherwise available for administrative expenses of such agencies, and do not authorize appropriation of funds in amounts exceeding sums already authorized to be appropriated for such agencies, see section 118(b) of Pub. L. 98–151, set out as a note under section 5724 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3735, 5724, 5724a of this title; title 26 section 912; title 42 sections 290aa, 299c–4.

§ 5727. Transportation of motor vehicles

(a) Except as specifically authorized by statute, an authorization in a statute or regulation to transport the effects of an employee or other individual at Government expense is not an authorization to transport an automobile.

(b) Under such regulations as the President may prescribe, the privately owned motor vehicle of an employee, including a new appointee and a student trainee to the extent authorized by sections 5722 and 5723 of this title, may be transported at Government expense to, from, and between the continental United States and a post of duty outside the continental United States, or between posts of duty outside the continental United States, when—

(1) the employee is assigned to the post of duty for other than temporary duty; and

(2) the head of the agency concerned determines that it is in the interest of the Government for the employee to have the use of a motor vehicle at the post of duty.

(c) An employee may transport only one motor vehicle under subsection (b) of this section during a 4-year period, except when the head of the agency concerned determines that replacement of the motor vehicle during the period is necessary for reasons beyond the control of the employee and is in the interest of the Government, and authorizes in advance the transportation under subsection (b) of this section of one additional privately owned motor vehicle as a replacement. When an employee has remained in continuous service outside the United States during the 4-year period after the date of transportation under subsection (b) of this section of his motor vehicle, the head of the agency concerned may authorize transportation under subsection (b) of this section of a replacement for that motor vehicle.

(d) When the head of an agency authorizes transportation under subsection (b) of this section of a privately owned motor vehicle, the transportation may be by—

(1) commercial means, if available at reasonable rates and under reasonable conditions; or

(2) Government means on a space-available basis.

(e)(1) This section, except subsection (a), does not apply to—

(A) the Foreign Service of the United States; or

(B) the Central Intelligence Agency.

(2) This section, except subsection (a), does not affect section 403e(4) of title 50.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 504; Pub. L. 96–465, title II, § 2314(e), Oct. 17, 1980, 94 Stat. 2168.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(a)	5 U.S.C. 73c.	June 30, 1932, ch. 314, § 209, 47 Stat. 405. Apr. 30, 1940, ch. 172, 54 Stat. 174. Aug. 13, 1946, ch. 957, § 1131(64), 60 Stat. Stat. 1040.
(b)–(e)	5 U.S.C. 73b–1(f).	Sept. 6, 1960, Pub. L. 86–707, § 321, 74 Stat. 797. Feb. 5, 1964, Pub. L. 88–266, 78 Stat. 8.

In subsection (a), the proviso in former section 73c is omitted as superseded by section 2634 of title 10, and by

former section 73b–1(f), which is carried into subsections (b)–(e).

In subsection (b), the words ''including a new appointee and a student trainee to the extent authorized by sections 5722 and 5723 of this title'' are substituted for ''including any new appointee, in accordance with section 73b–3 of this title'' for clarity and reflect the codification of former section 73b–3 in this title. The words ''at Government expense'' are inserted for clarity.

The last sentence of subsection (f) of former section 73b–1 which provided that for the purposes of that subsection and subsection (e), which is carried into section 5726, Alaska shall be considered to be outside the continental limits of the United States is omitted as unnecessary in view of the definition of ''continental United States'' in section 5721(4).

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1980—Subsec. (e)(2). Pub. L. 96–465 substituted ''section 403e(4) of title 50'' for ''(A) section 1138 of title 22; or'' and struck out ''(B) section 403e(4) of title 50''.

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.

DELEGATION OF FUNCTIONS

Authority of President under this section to prescribe regulations provided for in this section relating to transportation at Government expense of privately owned motor vehicles delegated to Administrator of General Services, see section 1(9) of Ex. Ord. No. 11609, July 22, 1971, 36 F.R. 13747, set out as a note under section 301 of Title 3, The President.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5724, 5724a of this title; title 26 section 912.

§ 5728. Travel and transportation expenses; vacation leave

(a) Under such regulations as the President may prescribe, an agency shall pay from its appropriations the expenses of round-trip travel of an employee, and the transportation of his immediate family, but not household goods, from his post of duty outside the continental United States, Alaska, and Hawaii to the place of his actual residence at the time of appointment or transfer to the post of duty, after he has satisfactorily completed an agreed period of service outside the continental United States, Alaska, and Hawaii and is returning to his actual place of residence to take leave before serving another tour of duty at the same or another post of duty outside the continental United States, Alaska, and Hawaii under a new written agreement made before departing from the post of duty.

(b) Under such regulations as the President may prescribe, an agency shall pay from its appropriations the expenses of round-trip travel of an employee of the United States appointed by the President, by and with the advice and consent of the Senate, for a term fixed by statute, and of transportation of his immediate family, but not household goods, from his post of duty outside the continental United States, Alaska, and Hawaii to the place of his actual residence at the time of appointment to the post of duty, after he has satisfactorily completed each 2 years of service outside the continental United States, Alaska, and Hawaii and is returning to his actual place of residence to take leave before serving at least 2 more years of duty outside the continental United States, Alaska, and Hawaii.

(c)(1) Under such regulations as the President may prescribe, an agency may pay, subject to paragraph (3) of this subsection, the expenses described in paragraph (2) of this subsection in any case in which the head of the agency determines that the payment of such expenses is necessary for the purpose of recruiting or retaining an employee for service of a tour of duty at a post of duty in Alaska or Hawaii.

(2) The expenses payable under paragraph (1) of this subsection are the expenses of round-trip travel of an employee, and the transportation of his immediate family, but not household goods, from his post of duty in Alaska or Hawaii to the place of his actual residence at the time of appointment or transfer to the post of duty, incurred after he has satisfactorily completed an agreed period of service in Alaska or Hawaii and in returning to his actual place of residence to take leave before serving another tour of duty at the same or another post of duty in Alaska or Hawaii under a new written agreement made before departing from the post of duty.

(3) The payment of expenses of any employee and the transportation of his family under paragraph (1) of this subsection is limited to the expenses of travel and transportation incurred for not more than two round trips commenced within 5 years after the date the employee first commences any period of consecutive tours of duty in Alaska or Hawaii.

(d) This section does not apply to appropriations for the Foreign Service of the United States.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 505; Pub. L. 97–253, title III, § 351(a), (b), Sept. 8, 1982, 96 Stat. 800.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(a)	5 U.S.C. 73b–3(a) (3d proviso).	Aug. 31, 1954, ch. 1155 (1st proviso), 68 Stat. 1008.
(b)	5 U.S.C. 73b–3(a) (4th proviso).	Sept. 2, 1958, Pub. L. 85–858, 72 Stat. 1274.

The first 14 words of subsections (a) and (b), and subsection (c), are added on authority of former section 73b–3(a) (less 3d–6th provisos), which is carried into section 5722.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1982—Subsecs. (a), (b). Pub. L. 97–253, § 351(a), inserted '', Alaska, and Hawaii'' after ''continental United States'' wherever appearing.

Subsecs. (c), (d). Pub. L. 97–253, § 351(b), added subsec. (c) and redesignated former subsec. (c) as (d).

EFFECTIVE DATE OF 1982 AMENDMENT

Section 351(c), (d) of Pub. L. 97–253, as amended by Pub. L. 97–346, § 3(m), Oct. 15, 1982, 96 Stat. 1649, provided that:

''(c)(1) Except as provided in paragraph (2), the amendments made by subsection (a) [amending this

section] shall take effect with respect to expenses incurred after the date of enactment of this Act [Sept. 8, 1982] for round-trip travel (commenced after such date) of an employee or transportation of his immediate family from his post of duty to the place of his actual residence at the time of appointment or transfer to the post of duty.

''(2) The amendments made by this section [amending this section] shall not apply to any employee who is serving a tour of duty at a post of duty in Alaska or Hawaii on the date of the enactment of this Act [Sept. 8, 1982] during—

''(A) such tour of duty, and

''(B) any other consecutive tour of duty following such tour of duty.

''(d) For the purposes of subsection (c), the term 'employee' shall have the same meaning as provided in section 5721(2) of title 5, United States Code.''

DELEGATION OF FUNCTIONS

Authority of President under subsecs. (a) and (b) of this section to prescribe regulations provided for in this section relating to payment by an agency from its appropriations of expenses of round trip travel of an employee, and transportation of his immediate family, in described circumstances delegated to Administrator of General Services, see section 1(10) of Ex. Ord. No. 11609, July 22, 1971, 36 F.R. 13747, set out as a note under section 301 of Title 3, The President.

§ 5729. Transportation expenses; prior return of family

(a) Under such regulations as the President may prescribe, an agency shall pay from its appropriations, not more than once before the return to the United States or its territories or possessions of an employee whose post of duty is outside the continental United States, the expenses of transporting his immediate family and of shipping his household goods and personal effects from his post of duty to his actual place of residence when—

(1) he has acquired eligibility for that transportation; or

(2) the public interest requires the return of the immediate family for compelling personal reasons of a humanitarian or compassionate nature, such as may involve physical or mental health, death of a member of the immediate family, or obligation imposed by authority or circumstances over which the individual has no control.

(b) Under such regulations as the President may prescribe, an agency shall reimburse from its appropriations an employee whose post of duty is outside the continental United States for the proper transportation expenses of returning his immediate family and his household goods and personal effects to the United States or its territories or possessions, when—

(1) their return was made at the expense of the employee before his return and for other than reasons of public interest; and

(2) he acquires eligibility for those transportation expenses.

(c) This section does not apply to appropriations for the Foreign Service of the United States.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 505.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 73b–3(a) (5th and 6th provisos).	Aug. 31, 1954, ch. 1155 (less 1st proviso), 68 Stat. 1008.

The first 14 words of subsections (a) and (b), and subsection (c), are added on authority of former section 73b–3(a) (less 3d–6th provisos), which is carried into section 5722. The words ''household effects'' and ''household goods'' in the 5th and 6th provisos of former section 73b–3(a) are changed to ''household goods and personal effects'' for clarity and consistency in the use of the words elsewhere in this subchapter.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

DELEGATION OF FUNCTIONS

Authority of President under subsecs. (a) and (b) of this section to prescribe regulations provided for therein, relating to (i) payment by an agency from its appropriations of expenses of transporting immediate family of an employee and of shipping his household goods and personal effects, and (ii) reimbursement from its appropriations by an agency of an employee for proper transportation expense of returning his immediate family and household goods and personal effects, both in described circumstances, delegated to Administrator of General Services, see section 1(11) of Ex. Ord. No. 11609, July 22, 1971, 36 F.R. 13747, set out as a note under section 301 of Title 3, The President.

§ 5730. Funds available

Funds available for travel expenses of an employee are available for expenses of transportation of his immediate family, and funds available for transportation of things are available for transportation of household goods and personal effects, as authorized by this subchapter.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 506.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 73b–1(c).	Aug. 2, 1946, ch. 744, §1(c). 60 Stat. 807.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

§ 5731. Expenses limited to lowest first-class rate

(a) The allowance for actual expenses for transportation may not exceed the lowest first-class rate by the transportation facility used unless it is certified, in accordance with regulations prescribed by the President, that—

(1) lowest first-class accommodations are not available; or

(2) use of a compartment or other accommodation authorized or approved by the head of the agency concerned or his designee is required for security purposes.

(b) Instead of the maximum fixed by subsection (a) of this section, the allowance to an employee of the United States for actual expenses for transportation on an inter-island steamship in Hawaii may not exceed the rate for accommodations on the steamship that is equivalent as nearly as possible to the rate for the lowest first-class accommodations on trans-pacific steamships.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 506.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(a)	5 U.S.C. 73b.	Mar. 3, 1933, ch. 212, §10, 47 Stat. 1516. Aug. 2, 1946, ch. 744, §6, 60 Stat. 808.
(b)	5 U.S.C. 73e.	May 28, 1938, ch. 289, §811, 52 Stat. 577.

In subsection (a), the words ''by or under authority of law'' are omitted as surplusage.

In subsection (b), the words ''by or under authority of law'' are omitted as surplusage. The words ''after the date of the enactment of this Act'' are omitted as obsolete.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

DELEGATION OF FUNCTIONS

Authority of President under subsec. (a) of this section to prescribe regulations provided for therein, relating to certifications respecting transportation accommodations, delegated to Administrator of General Services, see section 1(12) of Ex. Ord. No. 11609, July 22, 1971, 36 F.R. 13747, set out as a note under section 301 of Title 3, The President.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 2 section 476; title 16 sections 916*l*, 961, 971a, 971b, 2443, 3608, 3641; title 22 sections 287e, 287r, 2024; title 42 sections 2477, 4277; title 50 section 403e.

§ 5732. General average contribution; payment or reimbursement

Under such regulations as the President may prescribe, appropriations chargeable for the transportation of baggage and household goods and personal effects of employees of the United States, volunteers as defined by section 8142(a) of this title, and members of the uniformed services are available for the payment or reimbursement of general average contributions required. Appropriations are not available for the payment or reimbursement of general average contributions—

(1) required in connection with and applicable to quantities of baggage and household goods and personal effects in excess of quantities authorized by statute or regulation to be transported;

(2) when the individual concerned is allowed under statute or regulation a commutation instead of actual transportation expenses; or

(3) when the individual concerned selected the means of shipment.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 506.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 73b–5.	June 4, 1954, ch. 264, §4, 68 Stat. 176.
.....	22 U.S.C. 2504(h) (as applicable to 5 U.S.C. 73b–5).	Dec. 13, 1963, Pub. L. 88–200, §2(e) (as applicable to the Act of June 4, 1954, ch. 264, §4 (5 U.S.C. 73b–5)), 77 Stat. 360.

The word ''personal'' is added before the word ''effects'' for clarity and to preserve consistency throughout this subchapter. The words ''employees of the United States . . . and members of the uniformed services'' are substituted for ''military personnel and civilian employees of departments and agencies of the Federal Government''. The words ''a volunteer as defined by section 8142(a) of this title'' are based on sections 2504(a), 2505, and 2507 (a) of title 22. The words ''pursuant to law'' are omitted as unnecessary.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

EX. ORD. NO. 10614. PAYMENT OF GENERAL-AVERAGE CONTRIBUTIONS IN CONNECTION WITH TRANSPORTATION OF EFFECTS

Ex. Ord. No. 10614, May 25, 1955, 20 F.R. 3699, provided:

SECTION 1. *Definitions.* As used in these regulations:

(a) The term ''military personnel'' means members and former and deceased members of the uniformed services as defined in section 102 of the Career Compensation Act of 1949 (63 Stat. 804) [37 U.S.C. 101].

(b) The term ''civilian employees'' means civilian officers and employees of a department, including Foreign Service personnel, and former and deceased civilian officers and employees.

(c) The terms ''military personnel'' and ''civilian employees'' shall also include those individuals enumerated under the term ''person'' as defined in section 1 of the Missing Persons Act, as amended [now section 5561 of this title].

(d) The term ''department'' means an executive department, independent establishment, or other agency of the Federal Government, including wholly-owned or controlled Government corporations.

(e) The term ''general-average contribution'' means the contribution by all parties to a sea venture (1) to make good the loss sustained by any one of their number on account of voluntary sacrifices made of part of the ship or cargo to save the residue or the lives of those on board from impending peril, or (2) for extraordinary expenses necessarily incurred for the common benefit and safety of all.

(f) The term ''household goods'' means such baggage, household goods, and effects, including privately-owned automobiles and professional books, papers, and equipment, of military personnel and civilian employees as are authorized to be transported at Government expense by law or regulations pursuant to law.

SEC. 2. *Allowance of general-average contributions.* Whenever military personnel or civilian employees of a department are liable for general-average contributions arising out of shipments of household goods (as defined in section 1 (f) hereof), authorized or approved under law or regulations pursuant to law, disbursements shall be made, under rules and regulations prescribed by the head of the department concerned, from appropriations chargeable for the transportation of baggage and household goods and effects (a) for the payment of the general-average contributions for which such military personnel or civilian employees are liable, or (b) for the reimbursement of such military personnel or civilian employees in the amounts of their general-average liability paid by them and for which receipts are furnished, subject to the limitations set forth in section 3 hereof.

SEC. 3. *Limitations.* The provisions of section 2 hereof shall not apply:

(a) In case the shipment of household goods is made under law or regulation pursuant to law which provides for reimbursement to the military person or civilian employee concerned on a commuted basis in lieu of payment by the Government of the actual costs of the shipment; or

(b) In case the military person or civilian employee concerned has himself selected the means of shipment; or

(c) To quantities of household goods (excluding automobiles) shipped in excess of quantities authorized to be transported by law or regulation pursuant to law. In any case of such excess shipment, the liability of the

Government for the employee's general-average contribution shall not exceed the proportion that the applicable limitation, by weight or volume, bears to the total quantity, by weight or volume, of the household goods shipped.

SEC. 4. *Effective date.* This order shall be effective in any case in which the loss involved occurs, or has occurred, on or after June 4, 1954.

DWIGHT D. EISENHOWER.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 12 section 1701h; title 22 section 2504.

§ 5733. Expeditious travel

The travel of an employee shall be by the most expeditious means of transportation practicable and shall be commensurate with the nature and purpose of the duties of the employee requiring such travel.

(Added Pub. L. 90–206, title II, § 222(c)(1), Dec. 16, 1967, 81 Stat. 641.)

EFFECTIVE DATE

Section effective thirty days after Dec. 16, 1967, see section 220(a)(4) of Pub. L. 90–206, set out as an Effective Date of 1967 Amendment note under section 5542 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 16 section 2443; title 46 App. section 1717.

§ 5734. Travel, transportation, and relocation expenses of employees transferred from the Postal Service

Notwithstanding the provisions of any other law, officers and employees of the United States Postal Service promoted or transferred under section 1006 of title 39, United States Code, from the Postal Service to an agency (as defined in section 5721 of this title), for permanent duty may be authorized travel, transportation, and relocation expenses and allowances under the same conditions and to the same extent authorized by this subchapter for other transferred employees within the meaning of this chapter.

(Added Pub. L. 99–234, title I, § 106(a), Jan. 2, 1986, 99 Stat. 1758.)

EFFECTIVE DATE

Section effective (1) on effective date of regulations to be promulgated not later than 150 days after Jan. 2, 1986, or (2) 180 days after Jan. 2, 1986, whichever occurs first, see section 301(a) of Pub. L. 99–234, set out as an Effective Date of 1986 Amendment note under section 5701 of this title.

§ 5735. Travel, transportation, and relocation expenses of employees transferring to the United States Postal Service

(a) IN GENERAL.—Notwithstanding any other provision of law, employees of the Department of Defense described in subsection (b) may be authorized travel, transportation, and relocation expenses and allowances in connection with appointments referred to in such subsection under the same conditions and to the same extent authorized by this subchapter for transferred employees.

(b) COVERED EMPLOYEES.—Subsection (a) applies to any employee of the Department of Defense who—

(1) is scheduled for separation from the Department, other than for cause;

(2) is selected for appointment to a continuing position with the United States Postal Service; and

(3) accepts the appointment.

(Added Pub. L. 103–337, div. A, title III, § 345(a)(1), Oct. 5, 1994, 108 Stat. 2723.)

EFFECTIVE DATE

Section 345(b) of Pub. L. 103–337 provided that: ''The amendments made by subsection (a) [enacting this section] shall apply to persons separated from employment with the Department of Defense on or after the date of the enactment of this Act [Oct. 5, 1994].''

SUBCHAPTER III—TRANSPORTATION OF REMAINS, DEPENDENTS, AND EFFECTS

§ 5741. General prohibition

Except as specifically authorized by statute, the head of an Executive department or military department may not authorize an expenditure in connection with the transportation of remains of a deceased employee.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 506.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 103.	June 7, 1897, ch. 3, §1 (last proviso on p. 86), 30 Stat. 86.

The words ''a military department'' are inserted to preserve the application of the source law. Before enactment of the National Security Act Amendments of 1949 (63 Stat. 578), the Department of the Army, the Department of the Navy, and the Department of the Air Force were Executive departments. The National Security Act Amendments of 1949 established the Department of Defense as an Executive Department including the Department of the Army, the Department of the Navy, and the Department of the Air Force as military departments, not as Executive departments. However, the source law for this section, which was in effect in 1949, remained applicable to the Secretaries of the military departments by virtue of section 12(g) of the National Security Act Amendments of 1949 (63 Stat. 591), which is set out in the reviser's note for section 301.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

§ 5742. Transportation of remains, dependents, and effects; death occurring away from official station or abroad

(a) For the purpose of this section, ''agency'' means—

(1) an Executive agency;

(2) a military department;

(3) an agency in the legislative branch; and

(4) an agency in the judicial branch.

(b) When an employee dies, the head of the agency concerned, under regulations prescribed by the President and, except as otherwise provided by law, may pay from appropriations available for the activity in which the employee was engaged—

(1) the expense of preparing and transporting the remains to the home or official station of the employee, or such other place appropriate

for interment as is determined by the head of the agency concerned, if death occurred while the employee was in a travel status away from his official station in the United States or while performing official duties outside the continental United States or in transit thereto or therefrom; and

(2) the expense of transporting his dependents, including expenses of packing, crating, draying, and transporting household effects and other personal property to his former home or such other place as is determined by the head of the agency concerned, if death occurred while the employee was performing official duties outside the continental United States or in transit thereto or therefrom.

(c) When a dependent of an employee dies while residing with the employee performing official duties outside the continental United States or in Alaska or in transit thereto or therefrom, the head of the agency concerned may pay the necessary expenses of transporting the remains to the home of the dependent, or such other place appropriate for interment as is determined by the head of the agency concerned. If practicable, the agency concerned in respect of the deceased may furnish mortuary services and supplies on a reimbursable basis when—

(1) local commercial mortuary facilities and supplies are not available; or

(2) the cost of available mortuary facilities and supplies are prohibitive in the opinion of the head of the agency.

Reimbursement for the cost of mortuary services and supplies furnished under this subsection shall be collected and credited to current appropriations available for the payment of these costs.

(d) The benefits of this section may not be denied because the deceased was temporarily absent from duty when death occurred.

(e) Employees covered by this section include an employee who has been reassigned away from the employee's home of record pursuant to a mandatory mobility agreement executed as a condition of employment.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 507; Pub. L. 101–510, div. A, title XII, §1206(d), Nov. 5, 1990, 104 Stat. 1661.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(a)–(c)	5 U.S.C. 103a.	July 8, 1940, ch. 551, §1, 54 Stat. 743. July 15, 1954, ch. 507, §7(b), 68 Stat. 479.
(d)	5 U.S.C. 103b.	July 8, 1940, ch. 551, §2, 54 Stat. 744.

Subsection (a) is based on the words ''department, independent establishment, agency, or federally owned or controlled corporation, hereinafter called department'' in former section 103a. The terms ''Executive agency'' and ''military department'' include a department, independent establishment, agency, or federally owned or controlled corporation in the executive branch because of the definitions in sections 105 and 102.

The words ''a military department'' are included to preserve the application of the source law. Before enactment of the National Security Act Amendments of 1949 (63 Stat. 578), the Department of the Army, the Department of the Navy, and the Department of the Air Force were Executive departments. The National Security Act Amendments of 1949 established the Department of Defense as an Executive Department including the Department of the Army, the Department of the Navy, and the Department of the Air Force, as military departments, not as Executive departments. However, the source law for this section, which was in effect in 1949, remained applicable to the Secretaries of the military departments by virtue of section 12(g) of the National Security Act Amendments of 1949 (63 Stat. 591), which is set out in the reviser's note for section 301.

Subsection (b) is restated for clarity and conciseness and to eliminate redundancy. In paragraphs (1) and (2), the words ''outside the United States'' are coextensive with and substituted for ''in a Territory or possession of the United States or in a foreign country''.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1990—Subsec. (b)(1), (2). Pub. L. 101–510, §1206(d)(1), inserted ''continental'' after ''outside the''.

Subsec. (e). Pub. L. 101–510, §1206(d)(2), added subsec. (e).

DELEGATION OF FUNCTIONS

Authority of President under subsec. (b) of this section to prescribe regulations with respect to payment of expenses when an employee dies delegated to Administrator of General Services, see section 1(13) of Ex. Ord. No. 11609, July 22, 1971, 36 F.R. 13747, set out as a note under section 301 of Title 3, The President.

Authority of President under subsec. (e) of this section delegated to Office of Personnel Management by section 6(b) of Ex. Ord. No. 12748, Feb. 1, 1991, 56 F.R. 4521, eff. May 4, 1991, set out as a note under section 5301 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3375 of this title; title 10 section 1482a.

SUBCHAPTER IV—MISCELLANEOUS PROVISIONS

AMENDMENTS

1970—Pub. L. 91–563, §4(a), Dec. 19, 1970, 84 Stat. 1477, added heading of Subchapter IV.

§ 5751. Travel expenses of witnesses

(a) Under such regulations as the Attorney General may prescribe, an employee as defined by section 2105 of this title (except an individual whose pay is disbursed by the Secretary of the Senate or the Clerk of the House of Representatives) summoned, or assigned by his agency, to testify or produce official records on behalf of the United States is entitled to travel expenses under subchapter I of this chapter. If the case involves the activity in connection with which he is employed, the travel expenses are paid from the appropriation otherwise available for travel expenses of the employee under proper certification by a certifying official of the agency concerned. If the case does not involve its activity, the employing agency may advance or pay the travel expenses of the employee, and later obtain reimbursement from the agency properly chargeable with the travel expenses.

(b) An employee as defined by section 2105 of this title (except an individual whose pay is disbursed by the Secretary of the Senate or the

Clerk of the House of Representatives) summoned, or assigned by his agency, to testify in his official capacity or produce official records, on behalf of a party other than the United States, is entitled to travel expenses under subchapter I of this chapter, except to the extent that travel expenses are paid to the employee for his appearance by the court, authority, or party which caused him to be summoned.

(Added Pub. L. 91–563, § 4(a), Dec. 19, 1970, 84 Stat. 1477.)

TRANSFER OF FUNCTIONS

Certain functions of Clerk of House of Representatives transferred to Director of Non-legislative and Financial Services by section 7 of House Resolution No. 423, One Hundred Second Congress, Apr. 9, 1992. Director of Non-legislative and Financial Services replaced by Chief Administrative Officer of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

§ 5752. Travel expenses of Senior Executive Service candidates

Employing agencies may pay candidates for Senior Executive Service positions travel expenses incurred incident to preemployment interviews requested by the employing agency.

(Added Pub. L. 95–454, title IV, § 409(b), Oct. 13, 1978, 92 Stat. 1173.)

EFFECTIVE DATE

Section effective 9 months after Oct. 13, 1978, and congressional review of provisions of sections 401 through 412 of Pub. L. 95–454, see section 415(a)(1), (b) of Pub. L. 95–454, set out as an Effective Date note under section 3131 of this title.

§ 5753. Recruitment and relocation bonuses

(a) The Office of Personnel Management may authorize the head of an agency to pay a bonus to an employee who is newly appointed to a position under the General Schedule, or to an employee under the General Schedule or under any other pay authority in the executive, legislative, or judicial branch who must relocate to accept a position under the General Schedule, if the Office determines that the agency would be likely, in the absence of such a bonus, to encounter difficulty in filling the position.

(b)(1)(A) The amount of a bonus under this section shall be determined by regulations of the Office, but may not exceed 25 percent of the annual rate of basic pay of the position to which the employee is being appointed or relocated.

(B) For purposes of computing a percentage of a rate of basic pay under subparagraph (A), the rate of basic pay used shall be determined without taking into account any comparability payment under section 5304.

(2) Payment of a bonus under this section shall be contingent upon the employee entering into an agreement with the agency to complete a period of employment with the agency, with the required period determined pursuant to regulations of the Office. If the employee voluntarily fails to complete such period of service or is separated from the service before completion of such period of service for cause on charges of misconduct or delinquency, the employee shall repay the bonus on a pro rata basis.

(3) A bonus under this section shall be paid as a lump sum, and may not be considered to be part of the basic pay of an employee.

(4) Under regulations of the Office, a recruitment bonus may be paid to a newly-hired employee before the employee enters on duty.

(c) For the purpose of this section—

(1) the terms ''agency'' and ''employee'' have the meanings given them by section 5102; and

(2) any reference to ''a position under the General Schedule'' or ''an employee under the General Schedule'' shall be considered to be a reference to any position or employee to which subchapter III of chapter 53 applies.

(d) The Office shall prescribe such regulations as it considers necessary for the administration of subsections (a) through (c).

(e) At the request of the head of an Executive agency, the President may authorize the application of the preceding provisions of this section with respect to 1 or more categories of employees within such agency who would not otherwise be covered by this section (including authority under subsection (d) to prescribe any necessary regulations).

(Added Pub. L. 101–509, title V, § 529 [title II, § 208(a)], Nov. 5, 1990, 104 Stat. 1427, 1458.)

EFFECTIVE DATE

Section effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title III, § 305] of Pub. L. 101–509, set out as an Effective Date of 1990 Amendment note under section 5301 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5307 of this title; title 38 section 7410.

§ 5754. Retention allowances

(a) The Office of Personnel Management may authorize the head of an agency to pay an allowance to an employee under the General Schedule if—

(1) the unusually high or unique qualifications of the employee or a special need of the agency for the employee's services makes it essential to retain the employee; and

(2) the agency determines that the employee would be likely to leave in the absence of a retention allowance.

(b)(1) A retention allowance, which shall be stated as a percentage of the rate of basic pay (excluding any comparability payments under section 5304) of the employee, may not exceed 25 percent of such rate of basic pay.

(2) A retention allowance may not be considered to be part of the basic pay of an employee, and the reduction or elimination of a retention allowance may not be appealed. The preceding sentence shall not be construed to extinguish or lessen any right or remedy under subchapter II of chapter 12 or under any of the laws referred to in section 2302(d).

(3) A retention allowance shall be paid at the same time and in the same manner as the employee's basic pay is paid.

(c) For the purpose of this section—

(1) the terms ''agency'' and ''employee'' have the meanings given them by section 5102; and

(2) any reference to ''an employee under the General Schedule'' shall be considered to be a reference to any employee holding a position to which subchapter III of chapter 53 applies.

(d) The Office shall prescribe such regulations as it considers necessary for the administration of subsections (a) through (c).

(e) At the request of the head of an Executive agency, the President may authorize the application of the preceding provisions of this section with respect to 1 or more categories of employees within such agency who would not otherwise be covered by this section (including authority under subsection (d) to prescribe any necessary regulations).

(Added Pub. L. 101–509, title V, § 529 [title II, § 208(a)], Nov. 5, 1990, 104 Stat. 1427, 1459.)

EFFECTIVE DATE

Section effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title III, § 305] of Pub. L. 101–509, set out as an Effective Date of 1990 Amendment note under section 5301 of this title.

DELEGATION OF FUNCTIONS

Authority of President under subsec. (e) of this section delegated to Office of Personnel Management by section 6(c) of Ex. Ord. No. 12748, Feb. 1, 1991, 56 F.R. 4521, eff. May 4, 1991, set out as a note under section 5301 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5307 of this title; title 38 section 7410.

§ 5755. Supervisory differentials

(a)(1) The Office of Personnel Management may authorize the head of an agency to pay a differential to an employee under the General Schedule who has supervisory responsibility for 1 or more employees not under the General Schedule, if 1 or more of the subordinate employees would, in the absence of such a differential, be paid more than the supervisory employee.

(2) For the purposes of comparing the pay of a supervisory employee under the General Schedule with the pay of a subordinate employee not under the General Schedule, comparability payments under section 5304, differentials, and allowances that are not a part of basic pay may be taken into consideration, as provided by regulations of the Office.

(b)(1) A supervisory differential, which shall be stated as a percentage of the supervisory employee's rate of basic pay (excluding any comparability payments under section 5304) or as a dollar amount, may not cause the supervisory employee's pay to exceed the pay of the highest paid subordinate employee by more than 3 percent.

(2) A supervisory differential may not be considered to be part of the basic pay of an employee, and the reduction or elimination of a supervisory differential may not be appealed. The preceding sentence shall not be construed to extinguish or lessen any right or remedy under subchapter II of chapter 12 or under any of the laws referred to in section 2302(d).

(3) A supervisory differential shall be paid in the same manner and at the same time as the employee's basic pay is paid.

(c) For the purpose of this section—

(1) the terms ''agency'' and ''employee'' have the meanings given them by section 5102; and

(2) any reference to ''an employee under the General Schedule'' shall be considered to be a reference to any employee holding a position to which subchapter III of chapter 53 applies.

(d) The Office shall prescribe such regulations as it considers necessary for the administration of this section.

(Added Pub. L. 101–509, title V, § 529 [title II, § 211(a)], Nov. 5, 1990, 104 Stat. 1427, 1461.)

EFFECTIVE DATE

Section effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title III, § 305] of Pub. L. 101–509, set out as an Effective Date of 1990 Amendment note under section 5301 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5307 of this title.

CHAPTER 59—ALLOWANCES

SUBCHAPTER I—UNIFORMS

Sec.
5901. Uniform allowances.
5902. Increase in maximum uniform allowance.
5903. Regulations.

SUBCHAPTER II—QUARTERS

5911. Quarters and facilities; employees in the United States.
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5921. Definitions.
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SUBCHAPTER IV—MISCELLANEOUS ALLOWANCES

5941. Allowances based on living costs and conditions of environment; employees stationed outside continental United States or in Alaska.
5942. Allowance based on duty at remote worksites.
5942a. Separate maintenance allowance for duty at Johnston Island.
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[5944. Repealed.]
5945. Notary public commission expenses.
5946. Membership fees; expenses of attendance at meetings; limitations.
5947. Quarters, subsistence, and allowances for employees of the Corps of Engineers, Department of the Army, engaged in floating plant operations.
5948. Physicians comparability allowances.

AMENDMENTS

1991—Pub. L. 102–190, div. A, title X, § 1092(a)(2), Dec. 5, 1991, 105 Stat. 1487, added item 5942a.

1983—Pub. L. 98–164, title I, § 127(b)(2), Nov. 22, 1983, 97 Stat. 1027, struck out item 5944 ''Illness and burial expenses; native employees in foreign countries''.

1980—Pub. L. 96–465, title II, §§ 2310(b), 2311(b), Oct. 17, 1980, 94 Stat. 2166, added items 5927 and 5928.

1978—Pub. L. 95–603, § 2(b), Nov. 6, 1978, 92 Stat. 3020, added item 5948.

Pub. L. 95–426, title IV, § 411(b), Oct. 7, 1978, 92 Stat. 981, added item 5926.

1971—Pub. L. 91–656, §§ 6(c), 7(b), Jan. 8, 1971, 84 Stat. 1954, substituted ''duty at remote worksites'' for ''duty on California offshore islands or at Nevada Test Site'' in item 5942 and added item 5947.

1967—Pub. L. 90–83, § 1(40)(B), (42), Sept. 11, 1967, 81 Stat. 206, 207, added items 5902 and 5903, and inserted ''or at Nevada Test Site'' in item 5942.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 5307 of this title.

SUBCHAPTER I—UNIFORMS

§ 5901. Uniform allowances

(a) There is authorized to be appropriated annually to each agency of the Government of the United States, including a Government owned corporation, and of the government of the District of Columbia, on a showing of necessity or desirability, such sums as may be necessary to carry out this subchapter. The head of the agency concerned, out of funds made available by the appropriation, shall—

(1) furnish to each of these employees a uniform at a cost not to exceed $400 a year (or such higher maximum amount as the Office of Personnel Management may establish under section 5902); or

(2) pay to each of these employees an allowance for a uniform not to exceed $400 a year (or such higher maximum amount as the Office of Personnel Management may establish under section 5902).

The allowance may be paid only at the times and in the amounts authorized by the regulations prescribed under section 5903 of this title. When the agency pays direct to the uniform vendor, the head of the agency may deduct a service charge of not more than 4 percent.

(b) When the furnishing of a uniform or the payment of a uniform allowance is authorized under another statute or regulation existing on September 1, 1954, the head of the agency concerned may continue the furnishing of the uniform or the payment of the uniform allowance under that statute or regulation, but in that event a uniform may not be furnished or allowance paid under this section.

(c) An allowance paid under this section is not wages within the meaning of section 409 of title 42 or chapters 21 and 24 of title 26.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 508; Pub. L. 90–83, § 1(39), Sept. 11, 1967, 81 Stat. 206; Pub. L. 101–509, title V, § 529 [title II, § 202(a)], Nov. 5, 1990, 104 Stat. 1427, 1456; Pub. L. 102–378, § 2(50), Oct. 2, 1992, 106 Stat. 1353.)

HISTORICAL AND REVISION NOTES

1966 ACT

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(a), (b)	5 U.S.C. 2131.	Sept. 1, 1954, ch. 1208, § 402, 68 Stat. 1114. May 13, 1955, ch. 40, 69 Stat. 49.
(c)	5 U.S.C. 2132 (less applicability to the Civil Service Retirement Act, as amended).	Sept. 1, 1954, ch. 1208, § 403 (less applicability to the Civil Service Retirement Act, as amended), 68 Stat. 1115.

HISTORICAL AND REVISION NOTES—CONTINUED

1966 ACT

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(d)	5 U.S.C. 2133.	Sept. 1, 1954, ch. 1208, § 404, 68 Stat. 1115.

In subsection (a), the word ''concerned'' is substituted for ''to which any such appropriation is made''.

In subsection (b), the words ''in his discretion'' are omitted as unnecessary in view of the permissive nature of the authority.

In subsections (b) and (d), the word ''rules'' is omitted as covered by the word ''regulations''.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 ACT

Section of title 5	*Source (U.S. Code)*	*Source (Statutes at Large)*
5901(a)	5 App.: 2131.	Oct. 29, 1965, Pub. L. 89–301 § 13, 79 Stat. 1122. July 18, 1966, Pub. L. 89–504, § 407(a), 80 Stat. 299.

The amendment to the third sentence of subsection (a) of 5 U.S.C. 5901, and the deletion of subsection (d) thereof, reflect the recodification of subsection (d) in 5 U.S.C. 5903 by section 1(40)(A) of this bill. In the last sentence of subsection (a), the words ''When'' and ''pays'' are substituted for ''In those instances where'' and ''makes reimbursement'', respectively.

AMENDMENTS

1992—Subsec. (a)(1), (2). Pub. L. 102–378 substituted ''5902)'' for ''5902).''

1990—Subsec. (a). Pub. L. 101–509, § 529 [title II, § 202(a)(1)], substituted ''such sums as may be necessary to carry out this subchapter.'' for ''an amount not to exceed $125 multiplied by the number of employees of the agency who are required by regulation or statute to wear a prescribed uniform in the performance of official duties and who are not being furnished with the uniform.''

Subsec. (a)(1), (2). Pub. L. 101–509, § 529 [title II, § 202(a)(2)], substituted ''$400 a year (or such higher maximum amount as the Office of Personnel Management may establish under section 5902).'' for ''$125 a year''.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–509 effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title III, § 305] of Pub. L. 101–509, set out as a note under section 5301 of this title.

AVAILABILITY OF APPROPRIATIONS FOR UNIFORMS AND UNIFORM ALLOWANCES

Pub. L. 102–394, title V, § 504, Oct. 6, 1992, 106 Stat. 1825, provided that: ''Appropriations contained in this Act or subsequent Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Acts, available for salaries and expenses, shall be available for uniforms or allowances therefor as authorized by law (5 U.S.C. 5901–5902).''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 102–170, title V, § 504, Nov. 26, 1991, 105 Stat. 1141.

Pub. L. 101–517, title V, § 504, Nov. 5, 1990, 104 Stat. 2221.

Pub. L. 101–166, title V, § 504, Nov. 21, 1989, 103 Stat. 1189.

Pub. L. 100–202, § 101(h) [title V, § 504], Dec. 22, 1987, 101 Stat. 1329–256, 1329–287.

Pub. L. 99–500, §101(i) [H.R. 5233, title V, §504], Oct. 18, 1986, 100 Stat. 1783–287, and Pub. L. 99–591, §101(i) [H.R. 5233, title V, §504], Oct. 30, 1986, 100 Stat. 3341–287.
Pub. L. 99–178, title V, §504, Dec. 12, 1985, 99 Stat. 1132.
Pub. L. 98–619, title V, §504, Nov. 8, 1984, 98 Stat. 3333.
Pub. L. 98–139, title V, §504, Oct. 31, 1983, 97 Stat. 889.
Pub. L. 97–377, title I, §101(e)(1) [title V, §504], Dec. 21, 1982, 96 Stat. 1878, 1904.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5902, 8331 of this title; title 10 sections 1593, 1606; title 16 sections 1a–4, 742j–2; title 22 section 3712; title 25 section 2807; title 33 section 540a; title 38 section 903; title 43 section 1468.

§ 5902. Increase in maximum uniform allowance

The Office of Personnel Management may, from time to time, by regulation adjust the maximum amount for the cost of uniforms and the maximum allowance for uniforms under section 5901.

(Added Pub. L. 90–83, §1(40)(A), Sept. 11, 1967, 81 Stat. 206; amended Pub. L. 101–509, title V, §529 [title II, §202(b)], Nov. 5, 1990, 104 Stat. 1427, 1456.)

HISTORICAL AND REVISION NOTES

Section of title 5	*Source (U.S. Code)*	*Source (Statutes at Large)*
5902	5 App.: 2134.	July 18, 1966, Pub. L. 89–504, §407(b), 80 Stat. 299.

The words ''any other provision of'' following ''Notwithstanding'' are omitted as unnecessary. The words ''section 5901 of this title'' are substituted for ''this title'' in three places to reflect the codification of that title in title 5, United States Code.

AMENDMENTS

1990—Pub. L. 101–509 amended section generally. Prior to amendment, section read as follows: ''Notwithstanding section 5901 of this title, each of the respective maximum uniform allowances in effect on April 1, 1966, for the respective categories of employees to whom uniform allowances are paid under section 5901 of this title are increased, subject to the maximum allowance authorized by section 5901 of this title, as follows:

''(1) If the maximum uniform allowance is $100 or more, it is increased by 25 percent.

''(2) If the maximum uniform allowance is $75 or more but less than $100, it is increased by 30 percent.

''(3) If the maximum uniform allowance is $50 or more but less than $75, it is increased by 35 percent.

''(4) If the maximum uniform allowance is less than $50, it is increased by 40 percent.

The maximum uniform allowances, as in effect on April 1, 1966, and as increased by this section, may not be reduced.''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–509 effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title III, §305] of Pub. L. 101–509, set out as a note under section 5301 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5901 of this title; title 22 section 3712; title 33 section 540a.

§ 5903. Regulations

The Office of Personnel Management may prescribe such regulations as it considers necessary for the administration of this subchapter.

(Added Pub. L. 90–83, §1(40)(A), Sept. 11, 1967, 81 Stat. 206; amended Pub. L. 96–54, §2(a)(2), Aug. 14, 1979, 93 Stat. 381; Pub. L. 101–509, title V, §529 [title II, §202(b)], Nov. 5, 1990, 104 Stat. 1427, 1456.)

HISTORICAL AND REVISION NOTES

Section of title 5	*Source (U.S. Code)*	*Source (Statutes at Large)*
5903	5: 5901(d).	[None.]

The regulatory authority contained in 5 U.S.C. 5901(d), the source statute for which was section 404 of the act of September 1, 1954, ch. 1208, 68 Stat. 1115, applies also to section 405 of that act (added by section 407 of the act of July 18, 1966, Public Law 89–504, 80 Stat. 299). Section 405 is codified as 5 U.S.C. 5902 by this bill.

AMENDMENTS

1990—Pub. L. 101–509 amended section generally. Prior to amendment, section read as follows: ''The President shall prescribe regulations necessary for the uniform administration of this subchapter.''

1979—Pub. L. 96–54 substituted ''President'' for ''Director of the Bureau of the Budget''.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–509 effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title III, §305] of Pub. L. 101–509, set out as a note under section 5301 of this title.

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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5901 of this title.

SUBCHAPTER II—QUARTERS

§ 5911. Quarters and facilities; employees in the United States

(a) For the purpose of this section—

(1) ''Government'' means the Government of the United States;

(2) ''agency'' means an Executive agency, but does not include the Tennessee Valley Authority;

(3) ''employee'' means an employee of an agency;

(4) ''United States'' means the several States, the District of Columbia, and the territories and possessions of the United States including the Commonwealth of Puerto Rico;

(5) ''quarters'' means quarters owned or leased by the Government; and

(6) ''facilities'' means household furniture and equipment, garage space, utilities, subsistence, and laundry service.

(b) The head of an agency may provide, directly or by contract, an employee stationed in the United States with quarters and facilities, when conditions of employment or of availability of quarters warrant the action.

(c) Rental rates for quarters provided for an employee under subsection (b) of this section or occupied on a rental basis by an employee or member of a uniformed service under any other provision of statute, and charges for facilities made available in connection with the occupancy of the quarters, shall be based on the reasonable value of the quarters and facilities to

the employee or member concerned, in the circumstances under which the quarters and facilities are provided, occupied, or made available. The amounts of the rates and charges shall be paid by, or deducted from the pay of, the employee or member of a uniformed service, or otherwise charged against him in accordance with law. The amounts of payroll deductions for the rates and charges shall remain in the applicable appropriation or fund. When payment of the rates and charges is made by other than payroll deductions, the amounts of payment shall be credited to the Government as provided by law.

(d) When, as an incidental service in support of a program of the Government, quarters and facilities are provided by appropriate authority of the Government to an individual other than an employee or member of a uniformed service, the rates and charges therefor shall be determined in accordance with this section. The amounts of payment of the rates and charges shall be credited to the Government as provided by law.

(e) The head of an agency may not require an employee or member of a uniformed service to occupy quarters on a rental basis, unless the agency head determines that necessary service cannot be rendered, or that property of the Government cannot adequately be protected, otherwise.

(f) The President may prescribe regulations governing the provision, occupancy, and availability of quarters and facilities, the determination of rates and charges therefor, and other related matters, necessary and appropriate to carry out this section. The head of each agency may prescribe regulations, not inconsistent with the regulations of the President, necessary and appropriate to carry out the functions of the agency head under this section.

(g) Subsection (c) of this section does not repeal or modify any provision of statute authorizing the provision of quarters or facilities, either without charge or at rates or charges specifically fixed by statute.

(h) A member of the uniformed service on a permanent change of duty station or temporary duty orders and occupying unaccompanied personnel housing—

(1) is exempt from the requirement of subsection (c) to pay a rental rate or charge based on the reasonable value of the quarters and facilities provided; and

(2) shall pay such lesser rate or charge as the Secretary of Defense establishes by regulation.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 508; Pub. L. 99–145, title VIII, § 809(c), Nov. 8, 1985, 99 Stat. 681.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(a)	5 U.S.C. 3121.	Aug. 20, 1964, Pub. L. 88–459, § 1, 78 Stat. 557.
(b)	5 U.S.C. 3122.	Aug. 20, 1964, Pub. L. 88–459, § 2, 78 Stat. 557.
(c)	5 U.S.C. 3123.	Aug. 20, 1964, Pub. L. 88–459, § 3, 78 Stat. 557.
(d)	5 U.S.C. 3124.	Aug. 20, 1964, Pub. L. 88–459, § 4, 78 Stat. 557.
(e)	5 U.S.C. 3125.	Aug. 20, 1964, Pub. L. 88–459, § 5, 78 Stat. 557.

HISTORICAL AND REVISION NOTES—CONTINUED

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(f)	5 U.S.C. 3126.	Aug. 20, 1964, Pub. L. 88–459, § 6, 78 Stat. 558.
(g)	5 U.S.C. 3127.	Aug. 20, 1964, Pub. L. 88–459, § 7, 78 Stat. 558.

In subsection (a)(2), the term ''Executive agency'' is coextensive with and substituted for ''each executive department of the Government'', ''each agency or independent establishment in the executive branch of the Government'', ''each corporation owned or controlled by the Government'', and ''the General Accounting Office'' in view of the definition of ''Executive agency'' in section 105.

In subsection (a)(3), the term ''employee'' is substituted for ''civilian officer or employee'' in view of the definition of ''employee'' in section 2105.

Subsection (a)(7) of former section 3121 is omitted as unnecessary in view of the definition of ''uniformed services'' in section 2101.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1985—Subsec. (h). Pub. L. 99–145 added subsec. (h).

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–145 effective Oct. 1, 1985, see section 813 of Pub. L. 99–145, set out in a Military Family Policy and Programs note under section 113 of Title 10, Armed Forces.

DELEGATION OF FUNCTIONS

Authority of President under subsec. (f) of this section to issue regulations provided for therein (relating to provision, occupancy, and availability of quarters and facilities, determination of rates and charges therefor, and other related matters, as are necessary and appropriate to carry out provisions of this section) delegated to Director of Office of Management and Budget, see section 9(1) of Ex. Ord. No. 11609, July 22, 1971, 36 F.R. 13747, set out as a note under section 301 of Title 3, The President.

DEPOSIT IN SPECIAL FUND OF RENTS AND CHARGES COLLECTED FOR USE OR OCCUPANCY OF QUARTERS

Pub. L. 98–473, title I, § 101(c) [title III, § 320], Oct. 12, 1984, 98 Stat. 1837, 1874, as amended by Pub. L. 100–446, title III, § 316, Sept. 27, 1988, 102 Stat. 1826; Pub. L. 101–121, title III, § 317, Oct. 23, 1989, 103 Stat. 745, provided that: ''Notwithstanding title 5 of the United States Code or any other provision of law, after September 30, 1984, rents and charges collected by payroll deduction or otherwise for the use or occupancy of quarters of agencies funded by this Act [probably means Department of the Interior and Related Agencies Appropriation Act, 1985, as set forth in section 101(c) of Pub. L. 98–473] shall thereafter be deposited in a special fund in each agency, to remain available until expended, for the maintenance and operation of the quarters of that agency: *Provided*, That nothing contained herein shall prohibit an agreement between an Indian tribe or tribal organization and the Secretary of the Interior or the Secretary of Health and Human Services, pursuant to the Indian Self-Determination Act, as amended (25 U.S.C. 450 et seq.), under which such tribe or tribal organization may retain rents and charges for the operation, maintenance, and repair of such quarters.''

CROSS REFERENCES

Deductions from salaries of officers and crews of vessels of the Fish and Wildlife Service for quarters and rations as unauthorized by this section, see section 754 of Title 16, Conservation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 16 section 754; title 25 section 450j; title 42 section 12655n.

§ 5912. Quarters in Government owned or rented buildings; employees in foreign countries

Under regulations prescribed by the head of the agency concerned and approved by the President, an employee who is a citizen of the United States permanently stationed in a foreign country may be furnished, without cost to him, living quarters, including heat, fuel, and light, in a Government owned or rented building. The rented quarters may be furnished only within the limits of appropriations made therefor.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 509.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 118a.	June 26, 1930, ch. 622, 46 Stat. 818. Sept. 6, 1960, Pub. L. 86–707, §511(c)(6), 74 Stat. 801.

The words ''which appropriations are hereby authorized'' are omitted as unnecessary in view of section 5509.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5922 of this title; title 20 section 905; title 22 sections 287e, 287r, 1474.

§ 5913. Official residence expenses

(a) For the purpose of this section, ''agency'' has the meaning given it by section 5721 of this title.

(b) Under such regulations as the President may prescribe, funds available to an agency for administrative expenses may be allotted to posts in foreign countries to defray the unusual expenses incident to the operation and maintenance of official residences suitable for—

(1) the chief representatives of the United States at the posts; and

(2) such other senior officials of the Government of the United States as the President may designate.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 510.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 3039.	Aug. 2, 1946, ch. 744, §22, added Sept. 6, 1960, Pub. L. 86–707, §311(a), 74 Stat. 796.

The word ''agency'' is substituted for ''department'' and defined to conform to the definition of ''department'' in section 18 of the Act of Aug. 2, 1946, ch. 744, 60 Stat. 811.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

DELEGATION OF FUNCTIONS

Secretary of State empowered to prescribe regulations governing allotment to posts in foreign countries, for purpose stated in this section, of funds available to the departments for administrative expenses, and to designate senior officials of this Government in foreign countries, see section 1(c) of Ex. Ord. No. 10903, Jan. 11, 1961, 26 F.R. 217, set out as a note under section 5921 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 22 sections 287e, 287e–1, 2687; title 26 section 912.

SUBCHAPTER III—OVERSEAS DIFFERENTIALS AND ALLOWANCES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in title 22 section 3657.

§ 5921. Definitions

For the purpose of this subchapter—

(1) ''Government'' means the Government of the United States;

(2) ''agency'' means an Executive agency and the Library of Congress, but does not include a Government controlled corporation;

(3) ''employee'' means an employee in or under an agency and more specifically defined by regulations prescribed by the President;

(4) ''United States'', when used in a geographical sense, means the several States and the District of Columbia;

(5) ''continental United States'' means the several States and the District of Columbia, but does not include Alaska or Hawaii; and

(6) ''foreign area'' means—

(A) the Trust Territory of the Pacific Islands; and

(B) any other area outside the United States, the Commonwealth of Puerto Rico, the Canal Zone, and territories and possessions of the United States.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 510.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 3032.	Sept. 6, 1960, Pub. L. 86–707, §111, 74 Stat. 792.

In paragraph (1), the words ''of America'' are omitted as unnecessary.

In paragraph (2), the word ''agency'' is substituted for ''Government agency''. The term ''Executive agency'' is substituted for the reference to ''each executive department of the Government, each independent establishment or agency in the executive branch of the Government, including each corporation wholly owned (either directly or through one or more corporations) by the Government''. The exception of ''a Government controlled corporation'' is added to preserve the application of this subchapter to corporations wholly owned by the Government.

In paragraph (3), the word ''employee'' is substituted for ''individual in the civilian service'' in view of the definition of ''employee'' in section 2105. Reference to ''ambassadors, ministers, and officers of the Foreign Service under the Department of State'' is omitted as included in the definition of ''employee''.

In paragraph (4), the words ''of the United States of America'' are omitted as unnecessary.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

REFERENCES IN TEXT

For definition of Canal Zone, referred to in text, see section 3602(b) of Title 22, Foreign Relations and Intercourse.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

LIMITATION ON HOUSING BENEFITS

Pub. L. 101–246, title I, § 156, Feb. 16, 1990, 104 Stat. 46, provided that:

''(a) IN GENERAL.—The Secretary of State shall establish and implement an appropriate housing policy and space standards in consultation with all agencies with employees outside the United States who are under the authority of the chief of mission or with other agencies or employees who participate in the overseas housing program. Such policy may not provide housing or related benefits based solely on the representational status of the employee, except if such individual is the ambassador, deputy chief of mission, permanent charge, or the consul general when serving as the principal officer.

''(b) WAIVER.—The Secretary of State may grant exceptions to the restriction on providing housing or related benefits on a representational basis under subsection (a) on a case-by-case basis where a documented need for such exception is established. The Secretary of State shall prepare a comprehensive list annually of all such exceptions granted under this subsection.''

AMENDMENT, MODIFICATION, OR SUPERSEDURE OF PROVISIONS INCONSISTENT WITH THE OVERSEAS DIFFERENTIALS AND ALLOWANCES ACT

Section 511(b) of Pub. L. 86–707, Sept. 6, 1960, 74 Stat. 800, Overseas Differentials and Allowances Act, provided that: ''Any provision of law which is not repealed by subsection (a) of this section but is inconsistent with any provision of this Act or of any amendment made by this Act [enacting chapter 37 of former title 5 (now covered by this subchapter), amending other sections as shown in the Tables, and enacting provisions set out as notes under this section and section 912 of Title 26, Internal Revenue Code] shall be held and considered to be amended, modified, or superseded to the extent necessary to carry out the purposes of and conform to such provision of this Act or of such amendment.''

APPROPRIATIONS

Section 501(a) of Pub. L. 86–707, Sept. 6, 1960, 74 Stat. 800, Overseas Differentials and Allowances Act, provided that: ''There are hereby authorized to be appropriated such sums as may be necessary to carry out the purposes of this Act and the amendments made by this Act [enacting chapter 37 of former title 5 (now covered by this subchapter), amending other sections as shown in the Tables, and enacting provisions set out as notes under this section and section 912 of Title 26, Internal Revenue Code].''

REFERENCES TO PROVISIONS AFFECTED BY THE OVERSEAS DIFFERENTIALS AND ALLOWANCES ACT

Section 521 of Pub. L. 86–707, Sept. 6, 1960, 74 Stat. 802, Overseas Differentials and Allowances Act, provided that: ''Whenever reference is made in any other law or in any regulation to any provision of law which is repealed, modified, amended, or superseded by reason of section 511 of this Act [repealing sections 170g(b), 170r, and 170s of former title 5, sections 888, 1132, 1133 and 1136(9) of Title 22, Foreign Relations and Intercourse, and sections 403a(d) and 403e(b) of Title 50, War and National Defense, amending section 118a of former title 5, section 1131 of Title 22, and sections 403a(c) and 403e(1)(A), (3) (A–C) of Title 50, and enacting provisions set out as a note under this section], such reference, unless inconsistent with this Act shall be held and considered to refer to this Act or the appropriate provision of, or amendment made by, this Act.''

TRANSITIONAL PROVISIONS FOR PAYMENT OF ALLOWANCES AND DIFFERENTIALS

Section 522 of Pub. L. 86–707, Sept. 6, 1960, 74 Stat. 802. Overseas Differentials and Allowances Act, provided that: ''Notwithstanding any provision of this Act [enacting chapter 37 of former title 5 (now covered by this subchapter), amending other sections as shown in the Tables, and enacting provisions set out as notes under this section and section 912 of Title 26, Internal Revenue Code] and until such time as regulations are issued under this Act, employees shall continue to be paid allowances and differentials in accordance with rules and regulations issued pursuant to the laws in effect immediately prior to the enactment of this Act [Sept. 6, 1960] and such rules and regulations may be amended or revoked in accordance with the provision of such laws.''

EX. ORD. NO. 10903. DELEGATION OF REGULATORY AUTHORITY

Ex. Ord. No. 10903, Jan. 11, 1961, 26 F.R. 217, as amended by Ex. Ord. No. 11228, June 14, 1965, 30 F.R. 7739; Ex. Ord. No. 11230, June 28, 1965, 30 F.R. 8447; Ex. Ord. No. 11380, Nov. 8, 1967, 32 F.R. 15627; Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055; Ex. Ord. No. 12292, Feb. 23, 1981, 46 F.R. 13967; Ex. Ord. No. 12608, Sept. 9, 1987, 52 F.R. 34617, provided:

By virtue of the authority vested in me by section 301 of title 3 of the United States Code, and various provisions of law cited in the body of this order, and as President of the United States, it is hereby ordered as follows:

SECTION 1. The Secretary of State is hereby designated and empowered to perform the following-described functions without the approval, ratification, or other action of the President:

(a) The authority vested in the President by section 5921(3) of title 5, United States Code, to prescribe regulations defining the term ''employee''.

(b) The authority vested in the President by subchapter III of chapter 59 of title 5 of the United States Code, to prescribe regulations, including the regulations referred to in sections 5922(b), 5922(c), and 5924(4)(B) of that title (governing, respectively, (1) certain waivers of recovery, (2) the payment of allowances and differentials authorized by said subchapter and certain other matters, and (3) travel expenses for dependents of certain employees).

(c) The authority vested in the President by section 5913 of title 5 of the United States Code, (1) to prescribe regulations governing the allotment to posts in foreign countries, for the purpose stated in that section, of funds available to the departments for administrative expenses, and (2) to designate senior officials of this Government in foreign countries.

(d) The authority vested in the President by other provisions of law (including section 235(2) [now 707(a)(2)] of title 38 of the United States Code) to prescribe regulations governing representation allowances similar to those authorized by section 905 of the Foreign Service Act of 1980 (22 U.S.C. 4085).

(e) The authority vested in the President by section 5912 of title 5 of the United States Code to approve regulations prescribed by heads of agencies (under which employees who are citizens of the United States permanently stationed in foreign countries may be furnished, without cost to them, living quarters, including heat, fuel, and light, in government-owned or rented buildings).

(f) [Repealed by Ex. Ord. No. 12292, § 4(f), Feb. 23, 1981, 46 F.R. 13967]

(g) [Redesignated (e) by Ex. Ord. No. 12292, § 4(f), Feb. 23, 1981, 46 F.R. 13967]

SEC. 2. (1) [Superseded by Ex. Ord. No. 11230, § 2(8). June 28, 1965, 30 F.R. 8447]

SEC. 2. (2) [Superseded by Ex. Ord. No. 11228, § 3(5), June 14, 1965, 30 F.R. 7739]

SEC. 3. That portion of section 2 of Executive Order No. 10624 of July 28, 1955 [set out as a note under section 1762 of Title 7, Agriculture], which precedes the proviso thereof, is hereby amended to read as follows:

''SEC. 2. In addition to rules and regulations, pertaining to allowances and benefits, otherwise applicable to personnel assigned abroad under Title VI of the Act of August 28, 1954 [chapter 43 of Title 7, Agriculture], there shall be applicable to the personnel rules and regulations prescribed by the Secretary of State in pursuance of (1) so much of the authority vested in the President by Title II of the Overseas Differentials and Allowances Act [sections 5922–5925, of this title], or by any amendment thereof, as relates to quarters allowances of cost-of-living allowances, and (2) so much of the authority vested in the President and the Secretary of State by Title IX of the Foreign Service Act of 1946 [subchapter IX of chapter 14 of Title 22, Foreign Relations and Intercourse], or by any amendment thereof, as relates to allowances and benefits under the said Title IX [subchapter IX of chapter 14 of Title 22.]:''

SEC. 4. (a) Section 2 of Executive Order No. 10853 of November 27, 1959, is hereby amended to read as follows:

''SEC. 2. The Secretary of State is hereby authorized and directed to exercise the following-described statutory powers of the President:

''(a) That part of the functions vested in the President by section 7(a) of the Defense Department Overseas Teachers Pay and Personnel Practices Act (73 Stat. 216; 5 U.S.C. 2355(a)) [section 905(a) of Title 20, Education] which consists of authority to prescribe regulations relating to quarters and quarters allowance.

''(b) The authority vested in the President by section 8(a)(1) of the Defense Department Overseas and Teachers Pay and Personnel Practices Act (73 Stat. 216; 5 U.S.C. 2356(a)(1)) [section 906(a)(1) of Title 20, Education] to prescribe regulations relating to cost-of-living allowances.

''(c) The authority vested in the President by section 235(a) [now 707(a)(5)] of title 38 of the United States Code to prescribe rules and regulations with respect to allowances and benefits similar to those provided for in section 941 of the Foreign Service Act of 1946, as amended (22 U.S.C. 1156).''

(b) The reference in section 1 of Executive Order No. 10853 of November 27, 1959, to the regulations contained in Executive Order No. 10000 of September 16, 1948, shall be deemed to include a reference to the corresponding regulations prescribed in pursuance of the provisions of this order.

SEC. 5. (a) The following-described Executive order and parts thereof are hereby revoked, subject to the provisions of section 5(b) of this order:

1. Parts I, III, IV, and V of Executive Order No. 10000 of September 16, 1948.
2. Executive Order No. 10011 of October 22, 1948.
3. Executive Order No. 10085 of October 28, 1949.
4. Executive Order No. 10100 of January 28, 1950.
5. Executive Order No. 10187 of December 4, 1950.
6. Executive Order No. 10261 of June 27, 1951.
7. Executive Order No. 10313 of December 14, 1951.
8. Executive Order No. 10391 of September 3, 1952.
9. Executive Order No. 10503 of December 1, 1953.
10. Executive Order No. 10623 of July 23, 1955.
11. Section 1 and, to the extent that it pertains to Executive Order No. 10000, section 3 of Executive Order No. 10636 of September 16, 1955.

(b) Existing rules and regulations prescribed in or pursuant to the Executive order provisions revoked by section 5(a) of this order, other existing rules and regulations pertaining to allowances, differentials, and other benefits corresponding to those authorized by the provisions of law referred to in this order and actions heretofore taken in pursuance of any thereof shall remain in effect until hereafter superseded in pursuance of the provisions of this order.

SEC. 6. This order and such of the regulations prescribed by the Secretary of State, the Director of the Office of Management and Budget, and the Office of Personnel Management thereunder as the Secretary, Director, and Office shall, respectively, determine, shall be published in the FEDERAL REGISTER.

EX. ORD. NO. 11137. ALLOWANCES AND BENEFITS

Ex. Ord. No. 11137, Jan. 7, 1964, 29 F.R. 223, as amended by Ex. Ord. No. 11382, Nov. 28, 1967, 32 F.R. 16247; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided:

By virtue of the authority vested in me by section 301 of title 3 of the United States Code and by the various provisions of law cited in the body of this order, and as President of the United States it is ordered as follows:

PART I—ALLOWANCES AND DIFFERENTIALS IN FOREIGN AREAS

SECTION 101. The term ''employee'', as defined in 5 U.S.C. 5921(3), is hereby further defined as including civilian employees, compensated from non-appropriated funds, of the instrumentalities of the United States under the jurisdiction of the armed forces covered by 5 U.S.C. 2105(c).

SEC. 102. The Secretary of each military department with respect to his department, and the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, are hereby designated and empowered to exercise, without the approval, ratification, or other action of the President, the authority vested in the President by 5 U.S.C. 5922(c) to prescribe regulations governing payments of allowances and differentials in foreign areas to the extent that the said authority is in respect of employees referred to in section 101 of this order whose rates of basic compensation from nonappropriated funds are fixed in accordance with regulations prescribed by the Secretary concerned.

SEC. 103. Regulations prescribed under authority delegated by the provisions of Section 102 hereof:

(a) Shall, so far as practicable, be uniform.

(b) In the case of regulations prescribed by the Secretaries of the military departments, shall require the approval of the Secretary of Defense.

(c) Shall not, with respect to any locality, authorize allowances or differentials which exceed those prescribed under Executive Order No. 10903 of January 9, 1961, [set out as a note under this section], for other employees of the United States in the same locality.

SEC. 104. Executive Order No. 10903 of January 9, 1961, [set out as a note under this section], is hereby modified to the extent of the definition and the delegations of authority contained in Sections 101 and 102 hereof.

PART II—COST OF LIVING ALLOWANCES IN CERTAIN NON-FOREIGN AREAS

SEC. 201. The Secretary of Defense with respect to the military departments, and the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, are hereby designated and empowered to exercise, without the approval, ratification, or other action of the President, the authority vested in the President by paragraph (2) of Section 912 of the Internal Revenue Code of 1986, as amended (26 U.S.C. 912(2)), to approve the regulations there contemplated to the extent that the said regulations are in respect of the payment of cost-of-living allowances to employees, compensated from nonappropriated funds, of instrumentalities of the United States under the jurisdiction of the armed forces covered by 5 U.S.C. 2105(c), who are stationed outside the continental United States or in Alaska.

SEC. 202. Regulations approved under authority delegated by the provisions of Section 201 hereof:

(a) Shall, so far as practicable, be uniform.

(b) Shall not apply to employees who are stationed in either the Canal Zone or in any ''foreign area'' as defined in 5 U.S.C. 5921(6).

(c) Shall be limited to employees whose rates of basic compensation are fixed in conformity with rates paid by the Government for work of a comparable level of difficulty and responsibility to employees stationed in the continental United States, exclusive of Alaska.

(d) Shall not, with respect to any locality, authorize allowances which exceed those prescribed under Executive Order No. 10000 of September 16, 1948, as amended,

for other employees of the United States in the same locality.

PART III—GENERAL PROVISIONS

SEC. 301. All actions heretofore taken by the President or his delegate with respect to the matters affected by this order, and in effect at the time of the issuance of this order, including any regulations prescribed or approved by the President or his delegate with respect to such matters, shall, except as they are inconsistent with the provisions of this order, remain in effect until amended, modified, or revoked pursuant to appropriate authority.

SEC. 302. This order, and the regulations prescribed or approved under the authority thereof, shall be published in the FEDERAL REGISTER.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5924 of this title; title 22 section 1474.

§ 5922. General provisions

(a) Notwithstanding section 5536 of this title and except as otherwise provided by this subchapter, the allowances and differentials authorized by this subchapter may be granted to an employee officially stationed in a foreign area—

(1) who is a citizen of the United States; and

(2) whose rate of basic pay is fixed by statute or, without taking into consideration the allowances and differentials provided by this subchapter, is fixed by administrative action pursuant to law or is fixed administratively in conformity with rates paid by the Government for work of a comparable level of difficulty and responsibility in the continental United States.

To the extent authorized by a provision of statute other than this subchapter, the allowances and differentials provided by this subchapter may be paid to an employee officially stationed in a foreign area who is not a citizen of the United States.

(b) Allowances granted under this subchapter may be paid in advance, or advance of funds may be made therefor, through the proper disbursing official in such sums as are considered advisable in consideration of the need and the period of time during which expenditures must be made in advance by the employee. An advance of funds not subsequently covered by allowances accrued to the employee under this subchapter is recoverable by the Government by—

(1) setoff against accrued pay, compensation, amount of retirement credit, or other amount due the employee from the Government; and

(2) such other method as is provided by law for the recovery of amounts owing to the Government.

The head of the agency concerned, under regulations of the President, may waive in whole or in part a right of recovery under this subsection, if it is shown that the recovery would be against equity and good conscience or against the public interest.

(c) The allowances and differentials authorized by this subchapter shall be paid under regulations prescribed by the President governing—

(1) payments of the allowances and differentials and the respective rates at which the payments are made;

(2) the foreign areas, the groups of positions, and the categories of employees to which the rates apply; and

(3) other related matters.

(d) When a quarters allowance or allowance related to education under this subchapter, or quarters furnished in Government-owned or controlled buildings under section 5912, would be furnished to an employee but for the death of the employee, such allowances or quarters may be furnished or continued for the purpose of allowing any child of the employee to complete the current school year at post or away from post notwithstanding the employee's death.

(e) When an allowance related to education away from post under this subchapter would be authorized with respect to an employee but for the evacuation or authorized departure status of the post, such an allowance may be furnished or continued for the purpose of allowing any dependent children of such employee to complete the current school year.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 510; Pub. L. 102–138, title I, § 147(c), Oct. 28, 1991, 105 Stat. 669.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(a)	5 U.S.C. 3033.	Sept. 6, 1960, Pub. L. 86–707, § 201, 74 Stat. 793.
(b)	5 U.S.C. 3034.	Sept. 6, 1960, Pub. L. 86–707, § 202, 74 Stat. 793.
(c)	5 U.S.C. 3035.	Sept. 6, 1960, Pub. L. 86–707, § 203, 74 Stat. 793.

In subsection (a), the word ''only'' is omitted as surplusage.

In subsection (b), the words ''disbursing official'' are substituted for ''disbursing officer'' because of the definition of ''officer'' in section 2104 which excludes a member of a uniformed service.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1991—Subsecs. (d), (e). Pub. L. 102–138 added subsecs. (d) and (e).

DELEGATION OF FUNCTIONS

Secretary of State empowered to prescribe regulations, see section 1(b) of Ex. Ord. No. 10903, Jan. 11, 1961, 26 F.R. 217, set out as a note under section 5921 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 22 section 1474; title 26 section 912.

§ 5923. Quarters allowances

(a) When Government owned or rented quarters are not provided without charge for an employee in a foreign area, one or more of the following quarters allowances may be granted when applicable:

(1) A temporary subsistence allowance for the reasonable cost of temporary quarters (including meals and laundry expenses) incurred by the employee and his family—

(A) for a period not in excess of 90 days after first arrival at a new post of assignment in a foreign area or a period ending with the occupation of residence quarters, whichever is shorter; and

(B) for a period of not more than 30 days immediately before final departure from the

post after the necessary evacuation of residence quarters.

(2) A living quarters allowance for rent, heat, light, fuel, gas, electricity, and water, without regard to section 3324(a) and (b) of title 31.

(3) Under unusual circumstances, payment or reimbursement for extraordinary, necessary, and reasonable expenses, not otherwise compensated for, incurred in initial repairs, alterations, and improvements to the privately leased residence of an employee at a post of assignment in a foreign area, if—

(A) the expenses are administratively approved in advance; and

(B) the duration and terms of the lease justify payment of the expenses by the Government.

(b) The 90-day period under subsection (a)(1)(A) and the 30-day period under subsection (a)(1)(B) may each be extended for not more than 60 additional days if the head of the agency concerned or his designee determines that there are compelling reasons beyond the control of the employee for the continued occupancy of temporary quarters.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 511; Pub. L. 97–258, § 3(a)(15), Sept. 13, 1982, 96 Stat. 1063; Pub. L. 102–138, title I, § 147(d), Oct. 28, 1991, 105 Stat. 669.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 3036.	Sept. 6, 1960, Pub. L. 86–707, § 211, 74 Stat. 793.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1991—Pub. L. 102–138 designated existing provisions as subsec. (a), substituted ''subsistence'' for ''lodging'' and inserted ''(including meals and laundry expenses)'' after ''quarters'' in par. (1), substituted ''90 days'' for ''3 months'' in par. (1)(A), substituted ''30 days'' for ''1 month'' in par. (1)(B), and added subsec. (b).

1982—Par. (2). Pub. L. 97–258 substituted ''section 3324(a) and (b)'' for ''section 529''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5924 of this title; title 22 sections 1474, 2506; title 26 section 912.

§ 5924. Cost-of-living allowances

The following cost-of-living allowances may be granted, when applicable, to an employee in a foreign area:

(1) A post allowance to offset the difference between the cost of living at the post of assignment of the employee in a foreign area and the cost of living in the District of Columbia, except that employees receiving the temporary subsistence allowance under section 5923(1) are ineligible for a post allowance under this paragraph.

(2) A transfer allowance for extraordinary, necessary, and reasonable subsistence and other relocation expenses (including unavoidable lease penalties), not otherwise compensated for, incurred by an employee incident to establishing himself at a post of assignment in—

(A) a foreign area (including costs incurred in the United States, its territories or possessions, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, or 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 prior to departure for a post of assignment in a foreign area); or

(B) the United States after the employee agrees in writing to remain in Government service for 12 months after transfer, unless separated for reasons beyond the control of the employee that are acceptable to the agency concerned.

(3) A separate maintenance allowance to assist an employee who is compelled or authorized, because of dangerous, notably unhealthful, or excessively adverse living conditions at the employee's post of assignment in a foreign area, or for the convenience of the Government, or who requests such an allowance because of special needs or hardship involving the employee or the employee's spouse or dependents, to meet the additional expenses of maintaining, elsewhere than at the post, the employee's spouse or dependents, or both. Notwithstanding section 1217(d) of the Panama Canal Act of 1979 (22 U.S.C. 3657(d)), for the purposes of this paragraph, the term ''foreign area'' includes the Republic of Panama.

(4) An education allowance or payment of travel costs to assist an employee with the extraordinary and necessary expenses, not otherwise compensated for, incurred because of his service in a foreign area or foreign areas in providing adequate education for his dependents (or, to the extent education away from post is involved, official assignment to service in such area or areas), as follows:

(A) An allowance not to exceed the cost of obtaining such kindergarten, elementary and secondary educational services as are ordinarily provided without charge by the public schools in the United States (including such educational services as are provided by the States under the Individuals with Disabilities Education Act), plus, in those cases when adequate schools are not available at the post of the employee, board and room, and periodic transportation between that post and the nearest locality where adequate schools are available, without regard to section 3324(a) and (b) of title 31. When travel from school to post is infeasible, travel may be allowed between the school attended and the home of a designated relative or family friend or to join a parent at any location, with the allowable travel expense not to exceed the cost of travel between the school and the post. The amount of the allowance granted shall be determined on the basis of the educational facility used.

(B) The travel expenses of dependents of an employee to and from a school in the United States (or to and from a school outside the United States if the dependent is attending

that school for less than one year under a program approved by the school in the United States at which the dependent is enrolled, with the allowable travel expense not to exceed the cost of travel to and from the school in the United States) to obtain an American secondary or postsecondary educational institution education (other than a program of post-baccalaureate education), not to exceed one annual trip each way for each dependent. An allowance payment under subparagraph (A) of this paragraph (4) may not be made for a dependent during the 12 months following his arrival in the United States for secondary education under authority contained in this subparagraph (B). Notwithstanding section 5921(6) of this title, travel expenses, for the purpose of obtaining postsecondary educational institution education (other than a program of post-baccalaureate education), may be authorized under this subparagraph (B), under such regulations as the President may prescribe, for dependents of employees who are citizens of the United States stationed in the Canal Zone. For the purposes of this subparagraph, the term ''educational institution'' has the meaning defined under section 1701(a)(6)[1] of title 38.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 511; Pub. L. 92–187, § 2, Dec. 15, 1971, 85 Stat. 644; Pub. L. 93–126, § 12, Oct. 18, 1973, 87 Stat. 454; Pub. L. 93–475, § 13, Oct. 26, 1974, 88 Stat. 1443; Pub. L. 94–141, title IV, § 405, Nov. 29, 1975, 89 Stat. 770; Pub. L. 96–53, title V, § 510, Aug. 14, 1979, 93 Stat. 380; Pub. L. 96–100, title V, § 502, Nov. 2, 1979, 93 Stat. 734; Pub. L. 96–132, § 4(h), Nov. 30, 1979, 93 Stat. 1045; Pub. L. 96–465, title II, §§ 2307, 2308, Oct. 17, 1980, 94 Stat. 2165; Pub. L. 97–258, § 3(a)(15), Sept. 13, 1982, 96 Stat. 1063; Pub. L. 99–251, title III, § 303, Feb. 27, 1986, 100 Stat. 26; Pub. L. 101–510, div. A, title XII, § 1206(h), Nov. 5, 1990, 104 Stat. 1662; Pub. L. 102–138, title I, § 147(e), Oct. 28, 1991, 105 Stat. 670; Pub. L. 103–236, title I, § 176, Apr. 30, 1994, 108 Stat. 413.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 3037.	Sept. 6, 1960, Pub. L. 86–707, § 221, 74 Stat. 794.

In paragraph (1), the word ''Washington'' is omitted as covered by ''District of Columbia''.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

REFERENCES IN TEXT

The Individuals with Disabilities Education Act, referred to in par. (4)(A), is title VI of Pub. L. 91–230, Apr. 13, 1970, 84 Stat. 175, as amended, which is classified generally to chapter 33 (§ 1400 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see section 1400 of Title 20 and Tables.

Section 1701(a)(6) of title 38, referred to in par. (4)(B), was renumbered section 3501(a)(6) of title 38 by Pub. L. 102–83, § 5(a), Aug. 6, 1991, 105 Stat. 406.

For definition of Canal Zone, referred to in par. (4)(B), see section 3602(b) of Title 22, Foreign Relations and Intercourse.

[1] See References in Text note below.

AMENDMENTS

1994—Par. (4)(A). Pub. L. 103–236, § 176(a), inserted after first sentence ''When travel from school to post is infeasible, travel may be allowed between the school attended and the home of a designated relative or family friend or to join a parent at any location, with the allowable travel expense not to exceed the cost of travel between the school and the post.''

Par. (4)(B). Pub. L. 103–236, § 176(b), inserted ''(or to and from a school outside the United States if the dependent is attending that school for less than one year under a program approved by the school in the United States at which the dependent is enrolled, with the allowable travel expense not to exceed the cost of travel to and from the school in the United States)'' after ''in the United States''.

1991—Par. (1). Pub. L. 102–138, § 147(e)(1), substituted ''Columbia, except that employees receiving the temporary subsistence allowance under section 5923(1) are ineligible for a post allowance under this paragraph'' for ''Columbia''.

Par. (2). Pub. L. 102–138, § 147(e)(2), in introductory provisions substituted ''subsistence and other relocation expenses (including unavoidable lease penalties)'' for ''expenses'', in subpar. (A) inserted ''the Commonwealth of the Northern Mariana Islands,'' after ''Puerto Rico,'' and in subpar. (B) substituted ''after the employee agrees in writing to remain in Government service for 12 months after transfer, unless separated for reasons beyond the control of the employee that are acceptable to the agency concerned'' for ''between assignments to posts in foreign areas''.

Par. (4). Pub. L. 102–138, § 147(e)(3), in introductory provisions substituted ''dependents (or, to the extent education away from post is involved, official assignment to service in such area or areas)'' for ''dependents'', in subpar. (A) substituted ''United States (including such educational services as are provided by the States under the Individuals with Disabilities Education Act)'' for ''United States'', and in subpar. (B) substituted ''postsecondary educational institution education (other than a program of post-baccalaureate education)'' for ''undergraduate college education'' in two places and inserted at end provision defining ''educational institution'' for purposes of subpar. (B).

1990—Par. (3). Pub. L. 101–510 inserted at end ''Notwithstanding section 1217(d) of the Panama Canal Act of 1979 (22 U.S.C. 3657(d)), for the purposes of this paragraph, the term 'foreign area' includes the Republic of Panama.''

1986—Par. (2)(A). Pub. L. 99–251 inserted '', its territories or possessions, the Commonwealth of Puerto Rico, or 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''.

1982—Par. (4)(A). Pub. L. 97–258 substituted ''section 3324(a) and (b)'' for ''section 529''.

1980—Par. (3). Pub. L. 96–465, § 2307, inserted ''or authorized'' after ''compelled'' and ''or who requests such an allowance because of special needs or hardship involving the employee or the employee's spouse or dependents'' after ''of the Government,''.

Par. (4)(B). Pub. L. 96–465, § 2308, substituted ''one annual trip each way for each dependent'' for ''(i) in the case of dependents traveling to obtain secondary education, one annual trip, or in the case of dependents traveling to obtain undergraduate college education, two annual trips, each way for each dependent of an employee of the Department of State, of the International Communication Agency, of the Department of Justice, of the Agency for International Development, of the Central Intelligence Agency, or of the National Security Agency, or (ii) or one trip each way for each dependent of any other employee, for the purpose of obtaining each type of education''.

1979—Par. (4)(B). Pub. L. 96–132 inserted reference to the Department of Justice.

Pub. L. 96–100 inserted provisions relating to applicability to dependents of employees of the Central Intelligence Agency and the National Security Agency.

Pub. L. 96–53 substituted ''(i) in the case of dependents traveling to obtain secondary education, one annual trip, or in the case of dependents traveling to obtain undergraduate college education, two annual trips, each way for each dependent of an employee of the Department of State, of the International Communication Agency, or of the Agency for International Development, or (ii)'' for ''one annual trip each way for each dependent of an employee of the Department of State or the United States Information Agency, or''.

1975—Par. (2)(A). Pub. L. 94–141 expanded applicability to include costs incurred in the United States prior to departure for a post of assignment in a foreign area.

1974—Par. (4)(B). Pub. L. 93–475 substituted ''one annual trip each way for each dependent of an employee of the Department of State or the United States Information Agency, or one trip each way for each dependent of any other employee,'' for ''one trip each way for each dependent''.

1973—Par. (4)(A). Pub. L. 93–126 inserted ''kindergarten,'' before ''elementary''.

1971—Par. (3). Pub. L. 92–187 substituted ''the employee's post'' for ''his post'' and ''the employee's spouse or'' for ''his wife or his''.

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. 96–53 effective Oct. 1, 1979, see section 512(a) of Pub. L. 96–53, set out as a note under section 2151 of Title 22, Foreign Relations and Intercourse.

DELEGATION OF FUNCTIONS

Secretary of State empowered to prescribe regulations governing travel expenses for dependents of certain employees, see section 1(b) of Ex. Ord. No. 10903, Jan. 11, 1961, 26 F.R. 217, set out as a note under section 5921 of this title.

CROSS REFERENCES

Employee entitled to cost-of-living allowance under this section ineligible for allowance under subsec. (a) of this section based on living costs substantially higher than in District of Columbia, see section 5941 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5941 of this title; title 10 section 1605; title 20 section 906; title 22 sections 1474, 2506, 4081; title 26 section 912; title 37 section 431.

§ 5925. Post differentials

(a) A post differential may be granted on the basis of conditions of environment which differ substantially from conditions of environment in the continental United States and warrant additional pay as a recruitment and retention incentive. A post differential may be granted to an employee officially stationed in the United States who is on extended detail in a foreign area. A post differential under this subsection may not exceed 25 percent of the rate of basic pay.

(b) Any employee granted a differential under subsection (a) of this section may be granted an additional differential for an assignment to a post determined to have especially adverse conditions of environment which warrant additional pay as a recruitment and retention incentive for the filling of positions at that post. An additional differential for any employee under this subsection—

(1) may be paid for each assignment to a post determined to have such conditions;

(2) may be paid periodically or in a lump sum; and

(3) may not exceed 15 percent of the rate of basic pay of that employee for the period served under that assignment.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 512; Pub. L. 96–465, title II, §2309, Oct. 17, 1980, 94 Stat. 2165.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 3038.	Sept. 6, 1960, Pub. L. 86–707, §231, 74 Stat. 795.

In the last sentence, the words ''Additional compensation paid as'' are omitted as surplusage.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1980—Pub. L. 96–465 designated existing provisions as subsec. (a), inserted ''under this subsection'' before ''may not exceed'', and added subsec. (b).

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.

EXTENSION OF FOREIGN POST DIFFERENTIALS TO CERTAIN FEDERAL EMPLOYEES WHO SERVED IN CONNECTION WITH OPERATION DESERT STORM

Pub. L. 102–190, div. A, title X, §1093, Dec. 5, 1991, 105 Stat. 1487, provided that:

''(a) WAIVER OF REQUIREMENT THAT EMPLOYEE BE DETAILED TO A POST FOR AN 'EXTENDED' PERIOD.—An individual who performed service of a type described in subsection (b) shall, upon appropriate written application, be granted the total amount to which such individual would have been entitled for such service under section 5925(a) of title 5, United States Code, disregarding any eligibility requirement relating to the minimum period of time for which an individual must serve at, or be detailed to, a post.

''(b) DESCRIPTION OF SERVICE INVOLVED.—This section applies with respect to any period of service if, or to the extent that—

''(1) it was performed as an employee—

''(A) in connection with Operation Desert Storm;

''(B) during the Persian Gulf conflict;

''(C) at a post within the area designated by the President, in Executive Order 12744 [26 U.S.C. 112 note], as a 'combat zone' for purposes of section 112 of the Internal Revenue Code of 1986 [26 U.S.C. 112]; and

''(D) while a differential under section 5925(a) of title 5, United States Code, was authorized with respect to such post; and

''(2) no differential under such section 5925(a) was granted to such employee for such service.

''(c) REGULATIONS.—The President may prescribe any regulations necessary to carry out this section.

''(d) DEFINITIONS.—For the purpose of this section—

''(1) the term 'employee' has the meaning given such term by section 5921(3) of title 5, United States Code;

''(2) the term 'Operation Desert Storm' has the meaning given such term by section 3(1) of the Persian Gulf Conflict Supplemental Authorization and Personnel Benefits Act of 1991 [Pub. L. 102–25] (10 U.S.C. 101 note); and

''(3) the term 'Persian Gulf conflict' means the period beginning on August 2, 1990, and ending on June 2, 1991.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5307, 5551, 5928 of this title; title 22 sections 1474, 2506, 4057; title 26 section 912; title 50 section 2081.

§ 5926. Compensatory time off at certain posts in foreign areas

(a) Under regulations prescribed pursuant to this subchapter, and notwithstanding subchapter V of chapter 55 of this title or any other law, the head of an agency may, on request of an employee serving in a foreign area—

(1) at an isolated post performing functions required to be maintained on a substantially continuous basis, grant the employee compensatory time off for an equal amount of time spent in regularly scheduled overtime work; or

(2) at a post in a locality that customarily observes irregular hours of work or where other special conditions are present, in order to cope with those special circumstances, grant the employee compensatory time off for an equal amount of time spent in regularly scheduled overtime work for use during the pay period in which it is earned.

Credit for compensatory time off earned under paragraph (2) shall not form the basis for any additional compensation.

(b) Compensatory time earned under this section shall be for use only while the employee is assigned to the post where it is earned. Any such compensatory time not used at the time the employee is reassigned to another post shall be forfeited.

(Added Pub. L. 95–426, title IV, § 411(a), Oct. 7, 1978, 92 Stat. 980.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 22 section 1474.

§ 5927. Advances of pay

Up to three months' pay may be paid in advance to an employee upon the assignment of the employee to a post in a foreign area.

(Added Pub. L. 96–465, title II, § 2310(a), Oct. 17, 1980, 94 Stat. 2166.)

EFFECTIVE DATE

Section effective Feb. 15, 1981, except as otherwise provided, see section 2403 of Pub. L. 96–465, set out as a note under section 3901 of Title 22, Foreign Relations and Intercourse.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 22 section 1474.

§ 5928. Danger pay allowance

An employee serving in a foreign area may be granted a danger pay allowance on the basis of civil insurrection, civil war, terrorism, or wartime conditions which threaten physical harm or imminent danger to the health or well-being of the employee. A danger pay allowance may not exceed 25 percent of the basic pay of the employee, except that if an employee is granted an additional differential under section 5925(b) of this title with respect to an assignment, the sum of that additional differential and any danger pay allowance granted to the employee with respect to that assignment may not exceed 25 percent of the basic pay of the employee. The presence of nonessential personnel or dependents shall not preclude payment of an allowance under this section. In each instance where an allowance under this section is initiated or terminated, the Secretary of State shall inform the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate of the action taken and the circumstances justifying it.

(Added Pub. L. 96–465, title II, § 2311(a), Oct. 17, 1980, 94 Stat. 2166; amended Pub. L. 98–164, title I, § 131, Nov. 22, 1983, 97 Stat. 1028.)

AMENDMENTS

1983—Pub. L. 98–164 inserted provision that presence of nonessential personnel or dependents shall not preclude payment of an allowance under this section, and that each instance where an allowance under this section is initiated or terminated, the Secretary of State shall inform the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate of action taken and circumstances justifying it.

EFFECTIVE DATE

Section effective Feb. 15, 1981, except as otherwise provided, see section 2403 of Pub. L. 96–465, set out as a note under section 3901 of Title 22, Foreign Relations and Intercourse.

DANGER PAY ALLOWANCE; DEA EMPLOYEE

Pub. L. 101–246, title I, § 151, Feb. 16, 1990, 104 Stat. 42, provided that: ''The Secretary of State may not deny a request by the Drug Enforcement Administration to authorize a danger pay allowance (under section 5928 of title 5, United States Code) for any employee of such agency.''

GREATER UTILIZATION OF DANGER PAY ALLOWANCE

Pub. L. 98–533, title III, § 304, Oct. 19, 1984, 98 Stat. 2711, provided that: ''In recognition of the current epidemic of worldwide terrorist activity and the courage and sacrifice of employees of United States agencies overseas, civilian as well as military, it is the sense of Congress that the provisions of section 5928 of title 5, United States Code, relating to the payment of danger pay allowance, should be more extensively utilized at United States missions abroad.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5307, 5551 of this title; title 22 sections 1474, 4057; title 50 section 2081.

SUBCHAPTER IV—MISCELLANEOUS ALLOWANCES

§ 5941. Allowances based on living costs and conditions of environment; employees stationed outside continental United States or in Alaska

(a) Appropriations or funds available to an Executive agency, except a Government controlled corporation, for pay of employees stationed outside the continental United States or in Alaska whose rates of basic pay are fixed by statute, are available for allowances to these employees. The allowance is based on—

(1) living costs substantially higher than in the District of Columbia;

(2) conditions of environment which differ substantially from conditions of environment in the continental United States and warrant an allowance as a recruitment incentive; or

(3) both of these factors.

The allowance may not exceed 25 percent of the rate of basic pay. Except as otherwise specifically authorized by statute, the allowance is paid only in accordance with regulations prescribed by the President establishing the rates and defining the area, groups of positions, and classes of employees to which each rate applies.

(b) An employee entitled to a cost-of-living allowance under section 5924 of this title may not be paid an allowance under subsection (a) of this section based on living costs substantially higher than in the District of Columbia.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 512.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 118h.	Apr. 20, 1948, ch. 219, §207, 62 Stat. 194. June 30, 1948, ch. 775, §104, 62 Stat. 1205.

The section is reorganized and restated for clarity and conciseness.

The word ''allowances'' is substituted for ''additional compensation'' as a more apt term and for consistency.

In subsection (a), the words ''Executive agency'' are substituted for ''executive departments, independent establishments, and wholly owned Government corporations'' in view of the definition of ''Executive agency'' in section 105. The exception of a ''Government controlled corporation'' is added to preserve the application to ''wholly owned Government corporation''.

Subsection (b) is based on the second proviso of former section 118h and is restated to reflect the provisions of sections 511(b), (c)(7) and 521 of the Act of Sept. 6, 1960, Pub. L. 86–707, 74 Stat. 800–802. The reference to section 204 of the Act of Apr. 20, 1948, is omitted as obsolete, since the section was applicable only to fiscal year 1949.

The last proviso of former section 118h which provided the effective date of the section is omitted as executed.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

PROHIBITION OF REDUCTION OF ALLOWANCE; STUDY AND REPORT ON ADJUSTING CALCULATION OF GEOGRAPHIC FACTORS

Pub. L. 102–141, title IV, §1, Oct. 28, 1991, 105 Stat. 861, as amended by Pub. L. 103–329, title V, §532, Sept. 30, 1994, 108 Stat. 2413, provided that: ''The allowances provided to employees at rates set under section 5941 of title 5, United States Code, and Executive Order Numbered 10000 [set out below] as in effect on the date of the enactment of this Act [Oct. 28, 1991] may not be reduced during the period beginning on the date of the enactment of this Act through December 31, 1996: *Provided*, That no later than March 1, 1996, the Office of Personnel Management shall conduct a study and submit a report to the Congress proposing appropriate changes in the method of fixing compensation for affected employees, including any necessary legislative changes. Such study shall include—

''(1) an examination of the pay practices of other employers in the affected areas;

''(2) a consideration of alternative approaches to dealing with the unusual and unique circumstances of the affected areas, including modifications to the current methodology for calculating allowances to take into account all cost of living in the geographic areas of the affected employee; and

''(3) an evaluation of the likely impact of the different approaches on the Government's ability to recruit and retain a well-qualified workforce.

For the purpose of conducting such study and preparing such report, the Office may accept and utilize (without regard to any restriction on unanticipated travel expenses imposed in an Appropriations Act) funds made available to the Office pursuant to court approval.''

EX. ORD. NO. 10000. REGULATIONS GOVERNING ADDITIONAL COMPENSATION AND CREDIT GRANTED CERTAIN FEDERAL EMPLOYEES SERVING OUTSIDE THE UNITED STATES

Ex. Ord. No. 10000, Sept. 16, 1948, 13 F.R. 5453, as amended by Ex. Ord. No. 10636, Sept. 16, 1955, 20 F.R. 7025; Ex. Ord. No. 11938, Sept. 29, 1976, 41 F.R. 43383; Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055; Ex. Ord. No. 12510, Apr. 17, 1985, 50 F.R. 15535, provided:

By virtue of the authority vested in me by section 207 of the Independent Offices Appropriation Act, 1949, approved April 20, 1948 (Public Law 491, 80th Congress), as amended by section 104 of the Supplemental Independent Offices Appropriation Act, 1949, approved June 30, 1948 (Public Law 862, 80th Congress), and by sections 303, 443, and 853 of the Foreign Service Act of 1946 (60 Stat. 1002, 1006, 1024), and as President of the United States, I hereby prescribe the following regulations (1) governing the payment of additional compensation to personnel of the United States employed outside the continental United States or in Alaska, under the provisions of the said section 207, as amended, (2) governing the payment of salary differentials to Foreign Service staff officers and employees serving at certain posts, pursuant to the said section 443, and (3) relating to unhealthful foreign posts, pursuant to the said section 853:

PART I—ADDITIONAL COMPENSATION IN FOREIGN AREAS

SECTION 101. DEFINITIONS. As used in this Part, (a) the words ''foreign areas'' mean all areas exclusive of (1) the forty-eight states of the United States, (2) the District of Columbia, and (3) non-foreign areas as defined in section 201 of this order, and (b) the words ''section 207 of the Act'' mean section 207 of the Independent Offices Appropriation Act, 1949, approved April 20, 1948, Public Law 491, 80th Congress, as amended by section 104 of the Supplemental Independent Offices Appropriation Act, 1949, approved June 30, 1948, Public Law 862, 80th Congress.

SEC. 102. ADDITIONAL COMPENSATION BY REASON OF ENVIRONMENT. The Secretary of State shall from time to time, subject to applicable law, (a) designate places in foreign areas having conditions of environment which differ substantially from conditions of environment in the United States and warrant additional compensation as a recruitment incentive, (b) fix for each such place the additional rate or rates of compensation to be paid by reason of such environment pursuant to section 207 of the Act, after giving due consideration to the degree of environmental difference, and (c) prescribe such further regulations, governing such compensation, as may be necessary. Additional compensation so fixed is hereafter in this Part referred to as ''foreign post differential.''

SEC. 103. BASIS FOR FOREIGN POST DIFFERENTIAL. The Secretary of State may establish a foreign post differential for any place when, and only when, the place involves any one or more of the following: (a) extraordinarily difficult living conditions, (b) excessive physical hardship, or (c) notably unhealthful conditions.

SEC. 104. AGENCIES COVERED. Subject to the provisions of section 207 of the Act and of this Part, every executive department, independent establishment, and wholly owned Government corporation shall pay a foreign post differential fixed under section 102 hereof to each of its employees whose basic compensation is fixed by statute and who is located at the post for which that differential has been fixed.

SEC. 105. PERSONS ELIGIBLE TO RECEIVE FOREIGN POST DIFFERENTIAL. (a) In order that an employee be eligible to receive a foreign post differential under this Part, (1) he shall be a citizen or national of the United States,

(2) his residence in the place to which the foreign post differential applies, at the time of receipt thereof, shall be fairly attributable to his employment by the United States, and (3) his residence at such place over an appropriate prior period of time must not be fairly attributable to reasons other than employment by the United States or by United States firms, interests, or organizations.

(b) Subject to the provisions of section 105(a) hereof, the classes of persons eligible to receive the foreign post differentials fixed pursuant to section 102 hereof shall include:

(1) Persons recruited or transferred from the United States.

(2) Persons employed locally but (a) who were originally recruited from the United States and have been in substantially continuous employment by other Federal agencies, United States firms, interests, or organizations, international organizations in which the United States Government participates, or foreign governments, and whose conditions of employment provide for their return transportation to the United States, or (b) who were at the time of employment temporarily absent from the United States for purposes of travel or formal study and maintained residence in the United States during such temporary absence. When used in a geographical sense in section 105(b) hereof, ''United States'' includes the areas included within the definition of non-foreign areas as set forth in section 201 hereof.

(3) Persons who are not normally residents of the area concerned and who are discharged from the military service of the United States in such area to accept employment therein with an agency of the Federal Government.

SEC. 106. PAYMENT OF FOREIGN POST DIFFERENTIALS.

(a) The following regulations shall govern the payment of foreign post differentials under this Part:

(1) Payments shall begin as of the date of arrival at the post on assignment or transfer and shall end as of the date of departure from the post for separation or transfer, except that in case of local recruitment such payments shall begin and end as of the beginning and the end of employment, respectively.

(2) Payments for periods of leave and of detail shall begin and end as determined in regulations prescribed under section 102(c) hereof.

(3) Payments to persons serving on a part-time basis shall be pro-rated to cover only those periods of time for which such persons receive basic compensation.

(4) Payment shall not be made for any time for which an employee does not receive basic compensation.

SEC. 107. PERSONS SERVING UNDER CONTRACT. Any other provision of this Part notwithstanding, any person who would otherwise be eligible to receive a foreign post differential under this Part shall, if he is serving under contract, be compensated according to the terms of such contract for the period thereof and shall, during such period, be ineligible to receive a foreign post differential.

SEC. 108. PERIODIC REVIEW. The Secretary of State shall periodically, but at least annually, review the places designated, the rates fixed, and the regulations prescribed pursuant to section 102 hereof, with a view to making such changes therein as will insure that the payment of additional compensation under the provisions of this Part shall continue only during the continuance of conditions justifying such payment and shall not in any instance exceed the amount justified.

SEC. 109. ADDITIONAL LIVING COST COMPENSATION. No executive department, independent establishment, or wholly owned Government corporation shall pay, pursuant to section 207 of the Act, additional compensation to any employee located in any foreign area by reason of living costs which are substantially higher than those in the District of Columbia: *Provided*, That this section shall not be construed to prevent any payment, under section 204 of said Independent Offices Appropriation Act, 1949, or under other appropriate authority.

PART II—ADDITIONAL COMPENSATION IN NON-FOREIGN AREAS

SEC. 201. DEFINITION. As used in this Part, (a) the term ''non-foreign areas'' includes Alaska, Hawaii, the territories and possessions of the United States, the Trust Territory of the Pacific Islands, and such additional areas located outside the continental United States as the Secretary of State shall designate as being within the scope of the provisions of this Part, and (b) the words ''section 207 of the Act'' have the meaning set forth in section 101 hereof.

SEC. 202. ADDITIONAL COMPENSATION BY REASON OF ENVIRONMENT. The Office of Personnel Management shall from time to time, subject to applicable law, (a) designate places in non-foreign areas having conditions of environment which differ substantially from conditions of environment in the United States and warrant additional compensation as a recruitment incentive, (b) fix for each such place the additional rate or rates of compensation to be paid by reason of such environment pursuant to section 207 of the Act, after giving due consideration to the degree of environmental difference, and (c) prescribe such further regulations, governing such compensation, as may be necessary. Additional compensation so fixed is hereafter in this Part referred to as ''non-foreign area post differential.''

SEC. 203. BASIS FOR NON-FOREIGN AREA POST DIFFERENTIAL. The Office of Personnel Management may establish a non-foreign area post differential for any place in the non-foreign areas when, and only when, the place involves any one or more of the following: (a) extraordinarily difficult living conditions, (b) excessive physical hardship, or (c) notably unhealthful conditions.

SEC. 204. PERSONS ELIGIBLE TO RECEIVE NON-FOREIGN AREA POST DIFFERENTIAL. (a) In order that an employee be eligible to receive a non-foreign area post differential under this Part, (1) he shall be a citizen or national of the United States, (2) his residence in the place to which the non-foreign area post differential applies, at the time of receipt thereof, shall be fairly attributable to his employment by the United States, and (3) his residence at such place over an appropriate prior period of time must not be fairly attributable to reasons other than employment by the United States or by United States firms, interests, or organizations.

(b) Subject to the provisions of section 204(a) hereof, the classes of persons eligible to receive the non-foreign area post differentials fixed pursuant to section 202 hereof shall include:

(1) Persons recruited or transferred from outside the area concerned.

(2) Persons employed in the area concerned but (a) who were originally recruited from outside such area and have been in substantially continuous employment by other Federal agencies, contractors of Federal agencies, or international organizations in which the U. S. Government participates, and whose conditions of employment provide for their return transportation to places outside the area concerned, or (b) who were at the time of employment temporarily present in the area concerned for purposes of travel or formal study and maintained residence outside such area during the period so present.

(3) Persons who are not normally residents of the area concerned and who are discharged from the military service of the United States in such area to accept employment therein with an agency of the Federal Government.

SEC. 205. ADDITIONAL LIVING COST COMPENSATION. (a) The Office of Personnel Management shall from time to time, subject to applicable law, (1) designate places in non-foreign areas eligible to receive additional compensation by virtue of living costs that are substantially higher than in the Washington, D.C., area, (2) fix for each place so designated an additional rate or rates of compensation by reason of such higher living costs, and (3) prescribe by regulation such additional policies or procedures as may be necessary to administer such

compensation. Additional compensation under this section is referred to as a ''non-foreign area cost-of-living allowance''.

(b) In fixing the non-foreign area cost-of-living allowances, the Office of Personnel Management shall make appropriate deductions when quarters or subsistence, or commissary or other purchasing privileges are furnished as a result of Federal civilian employment at a cost substantially lower than the prevailing costs in the allowance area concerned.

SEC. 206. COORDINATION. The Office of Personnel Management shall define the extent to which and the conditions under which an employee serving within the non-foreign areas may receive both a non-foreign area post differential and a non-foreign area cost-of-living allowance, pursuant to section 207 of the Act. In carrying out its functions under this Part the Office may take due notice if any special allowances, other than under section 207 of the act, granted to personnel employed by the United States in non-foreign areas.

SEC. 207. AGENCIES COVERED. Subject to the provisions of section 207 of the Act and of this Part, every Executive department, independent establishment, and wholly owned Government corporation shall pay (a) a non-foreign area post differential fixed under section 202 hereof to each of its employees whose basic compensation is fixed by statute and who is located at the post for which that differential has been fixed, and (b) a non-foreign area cost-of-living allowance fixed under section 205 hereof to each of its employees whose basic compensation is fixed by statute and who is located at the post for which that allowance has been fixed.

SEC. 208. PAYMENT OF NON-FOREIGN AREA POST DIFFERENTIALS AND COST-OF-LIVING ALLOWANCES.

(a) The following regulations shall govern the payment of non-foreign area post differentials and non-foreign area cost-of-living allowances under this Part:

(1) Payments shall begin as of the date of arrival at the post on assignment or transfer and shall end as of the date of departure from the post for separation or transfer, except that in case of local recruitment such payments shall begin and end as of the beginning and end of employment, respectively.

(2) Payments for periods of leave and of detail shall begin and end as determined in regulations prescribed under section 202(c) hereof.

(3) Payments to persons serving on a part-time basis shall be prorated to cover only those periods of time for which such persons receive basic compensation.

(4) Payment shall not be made for any time for which an employee does not receive basic compensation.

SEC. 209. PERSONS SERVING UNDER CONTRACT. Any other provision of this Part notwithstanding, any person who would otherwise be eligible to receive a non-foreign area post differential or a non-foreign area cost-of-living allowance under this Part shall, if he is serving under a contract, be compensated according to the terms of such contract for the period thereof and shall, during such period, be ineligible to receive said differential and allowance.

SEC. 210. PERIODIC REVIEW. The Office of Personnel Management shall periodically, but at least annually, review the places designated, the rates fixed, and the regulations prescribed pursuant to this Part, with a view to making such changes therein as will insure that payment of additional compensation under the provisions of this Part shall continue only during the continuance of conditions justifying such payment and shall not in any instance exceed the amount justified: *Provided,* That if program or methodology revisions would substantially reduce an established differential or allowance rate, then the rate of such additional compensation may be reduced gradually.

PART III—INTERIM ARRANGEMENTS

SEC. 301. TEMPORARY REGULATIONS. During the period commencing with the date of this order or the effective date of section 207 of the Act (as defined in section 101 hereof), whichever shall occur earlier, and ending on a date or dates fixed by the Secretary of State and the Office of Personnel Management, respectively, as the effective dates of the designation of places and of the fixing of additional rates of compensation, under Parts I and II of this order, but in no event later than January 1, 1949, and notwithstanding the provisions of Parts I and II of this order, the payment of salaries and compensation (including the payment of additional compensation) of persons subject to the provisions of said section 207 shall be governed by the regulations and practices in effect in the respective Executive departments, independent establishments, and wholly owned government corporations immediately prior to April 20, 1948. Executive Order No. 9962 of May 24, 1948 is hereby revoked.

PART IV—FOREIGN SERVICE SALARY DIFFERENTIALS

[Part IV relating to Foreign Service salary differentials terminated June 30, 1951, pursuant to section 404 of this Executive Order.]

PART V—UNHEALTHFUL POSTS

[Part V relating to Unhealthful Posts terminated June 30, 1951, pursuant to section 503 of this Executive Order.]

PART VI—GENERAL PROVISIONS

SEC. 601. PUBLICATION. This order, and the places designated, the rates fixed, and the regulations prescribed by the Secretary of State and the Office of Personnel Management pursuant to Parts I and II of this order, shall be published in the Federal Register.

EXECUTIVE ORDER NO. 12070

Ex. Ord. No. 12070, June 30, 1978, 43 F.R. 28977, as amended by Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, which related to suspension of certain requirements in determination of cost of living allowance rates, was superseded by Ex. Ord. No. 12510, Apr. 17, 1985, 50 F.R. 15535.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5307 of this title; title 10 sections 1590, 1604; title 20 section 906; title 22 section 2506; title 39 section 1005.

§ 5942. Allowance based on duty at remote worksites

(a) Notwithstanding section 5536 of this title, an employee of an Executive department or an independent establishment who is assigned to duty, except temporary duty, at a site so remote from the nearest established communities or suitable places of residence as to require an appreciable degree of expense, hardship, and inconvenience, beyond that normally encountered in metropolitan commuting, on the part of the employee in commuting to and from his residence and such worksite, is entitled, in addition to pay otherwise due him, to an allowance of not to exceed $10 a day. The allowance shall be paid under regulations prescribed by the President establishing the rates at which the allowance will be paid and defining and designating those sites, areas, and groups of positions to which the rates apply.

(b) Under procedures prescribed by the President, the maximum allowance specified in subsection (a) may be adjusted from time to time in the interest of recruiting and retaining employees for performance of duty at remote worksites.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 513; Pub. L. 90–83, § 1(41), Sept. 11, 1967, 81 Stat. 207; Pub. L. 91–656, § 6(a), Jan. 8, 1971, 84 Stat. 1953; Pub. L. 101–510, div. A, title XII, § 1206(g), Nov. 5, 1990, 104 Stat. 1662.)

HISTORICAL AND REVISION NOTES
1966 ACT

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 70c.	Aug. 31, 1964, Pub. L. 88–538, § 1, 78 Stat. 745.

The words ''of the United States'' are omitted as unnecessary because of the definition of ''employee'' in section 2105.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 ACT

Section of title 5	*Source (U.S. Code)*	*Source (Statutes at Large)*
5942	5 App.: 70c.	Mar. 31, 1966, Pub. L. 89–383, § 1, 80 Stat. 98.

AMENDMENTS

1990—Pub. L. 101–510 designated existing provisions as subsec. (a) and added subsec. (b).

1971—Pub. L. 91–656 substituted ''duty at remote worksites'' for ''duty on California offshore islands or at Nevada Test Site'' in section catchline and assignment to duty ''at a site so remote from the nearest established communities or suitable places of residence as to require an appreciable degree of expense, hardship, and inconvenience, beyond that normally encountered in metropolitan commuting, on the part of the employee in commuting to and from his residence and such worksite'' for assignment to duty ''on one of the California offshore islands or at the United States Atomic Energy Commission Nevada Test Site, including the Nuclear Rocket Development Station'', inserted reference to employee ''of an Executive department or an independent establishment'' and provision for designation by regulation of sites to which the rates apply.

EFFECTIVE DATE OF 1971 AMENDMENT

Section 6(b) of Pub. L. 91–656 provided that: ''Notwithstanding section 5536 of title 5, United States Code, and the amendment made by subsection (a) of this section [amending this section], and until the effective date of regulations prescribed by the President under such amendment—

''(1) allowances may be paid to employees under section 5942 of title 5, United States Code, and the regulations prescribed by the President under such section, as in effect immediately prior to the effective date of this section [Jan. 8, 1971]; and

''(2) such regulations may be amended or revoked in accordance with such section 5942 as in effect immediately prior to the effective date of this section [Jan. 8, 1971].''

DELEGATION OF FUNCTIONS

Authority of President under this section to prescribe regulations establishing rates at which an allowance based on duty (except temporary duty) at remote worksites will be paid and defining and designating sites, areas, and groups of positions to which rates apply delegated to Office of Personnel Management, see section 8(3) of Ex. Ord. No. 11609, July 22, 1971, 36 F.R. 13747, set out as a note under section 301 of Title 3, The President.

§ 5942a. Separate maintenance allowance for duty at Johnston Island

(a) Notwithstanding section 5536 of this title, and under regulations prescribed by the President, an employee of an Executive agency (other than a Government corporation) who is assigned to a post of duty at Johnston Island, a possession of the United States in the Pacific Ocean, is entitled to receive a separate maintenance allowance if the head of the employing agency finds that—

(1) it is necessary for the employee to maintain the employee's spouse or dependents, or both, at a location other than Johnston Island—

(A) by reason of dangerous or adverse living conditions at Johnston Island; or

(B) for the convenience of the Federal Government; and

(2) the allowance is needed to help the employee meet the additional expenses involved in maintaining the employee's spouse or dependents, or both, at such other location rather than at the post.

(b) The regulations prescribed by the President shall include provisions for determining the rate at which an allowance under this section shall be paid.

(Added Pub. L. 102–190, div. A, title X, § 1092(a)(1), Dec. 5, 1991, 105 Stat. 1486.)

EFFECTIVE DATE

Section 1092(b) of Pub. L. 102–190 provided that: ''The amendments made by subsection (a) [enacting this section] shall take effect on the first day of the first month beginning on or after the date of the enactment of this Act [Dec. 5, 1991].''

DELEGATION OF FUNCTIONS

Authority of President under this section to prescribe regulations delegated to the Office of Personnel Management by section 8(4) of Ex. Ord. No. 11609, set out as a note under section 301 of Title 3, The President.

§ 5943. Foreign currency appreciation allowances

(a) The President, under such regulations as he may prescribe, may meet losses sustained by employees and members of the uniformed services while serving in a foreign country due to the appreciation of foreign currency in its relation to the American dollar. Allowances and expenditures under this section are not subject to income taxes.

(b) Annual appropriations are authorized to carry out subsection (a) of this section and to cover any deficiency in the accounts of the Secretary of the Treasury, including interest, arising out of the arrangement approved by the President on July 27, 1933, for the conversion into foreign currency of checks and drafts of employees and members of the uniformed services for pay and expenses.

(c) Payment under subsection (a) of this section may not be made to an employee or member of a uniformed service for a period during which his check or draft was converted into foreign currency under the arrangement referred to by subsection (b) of this section.

(d) The President shall report annually to Congress all expenditures made under this section.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 513; Pub. L. 96–54, § 2(a)(37), Aug. 14, 1979, 93 Stat. 383.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 118c.	Mar. 26, 1934, ch. 87, 48 Stat. 466. Aug. 14, 1937, ch. 627, 50 Stat. 641. Sept. 12, 1950, ch. 946, §301(87), 64 Stat. 843.

The section is reorganized and restated for clarity and conciseness.

In subsection (a), the words ''notwithstanding the provisions of any other Act'' are omitted as unnecessary. The words ''Secretary of the Treasury'' are substituted for ''Treasurer of the United States'' on authority of 1950 Reorg. Plan No. 26 §§1, 2, eff. July 31, 1950, 64 Stat. 1280. The words ''Provided, That such action as the President may take shall be binding upon all executive officers of the Government'' are omitted as surplusage.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1979—Subsec. (a). Pub. L. 96–54, §2(a)(37)(A), struck out provision relating to recommendation of the Director of the Bureau of the Budget to the President.

Subsec. (d). Pub. L. 96–54, §2(a)(37)(B), substituted ''President'' for ''Director of the Bureau of the Budget''.

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.

DELEGATION OF FUNCTIONS

Authority of President under subsec. (a) of this section to make recommendations concerning meeting of losses sustained by employees and members of uniformed services while serving in a foreign country due to appreciation of foreign currency in its relation to American dollar and under subsec. (d) of this section to report annually to Congress on expenditures made under subsec. (d) of this section, delegated to Secretary of the Treasury, see section 2 of Ex. Ord. No. 11609, July 22, 1971, 36 F.R. 13747, set out as a note under section 301 of Title 3, The President.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 26 section 137.

[§ 5944. Repealed. Pub. L. 98–164, title I, § 127(b)(1), Nov. 22, 1983, 97 Stat. 1027]

Section, Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 513, authorized head of Executive department or military department which maintained a permanent staff of employees in foreign countries to pay burial expenses and expenses in connection with last illness and death of a native employee of his department in a country in which Secretary of State determined it was customary for employers to pay these expenses, and in foreign countries in which custom did not exist, on finding that immediate family of deceased was destitute, he could pay such of expenses as employee in charge of the office abroad in which deceased was employed considered proper. See section 3968(a)(1) of Title 22, Foreign Relations and Intercourse.

§ 5945. Notary public commission expenses

An employee as defined by section 2105 of this title or an individual employed by the government of the District of Columbia who is required to serve as a notary public in connection with the performance of official business is entitled to an allowance, established by the agency concerned, not in excess of the expense required to obtain the commission. Funds available to an agency concerned for personal services or general administrative expenses are available to carry out this section.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 514.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 70a.	July 11, 1956, ch. 554, §1, 70 Stat. 519.
.....	5 U.S.C. 70b.	July 11, 1956, ch. 554, §2, 70 Stat. 520.

In the first sentence, the words ''to be incurred by them in order'' are omitted as surplusage. The words ''from and after January 1, 1955'' are omitted as obsolete.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

§ 5946. Membership fees; expenses of attendance at meetings; limitations

Except as authorized by a specific appropriation, by express terms in a general appropriation, or by sections 4109 and 4110 of this title, appropriated funds may not be used for payment of—

(1) membership fees or dues of an employee as defined by section 2105 of this title or an individual employed by the government of the District of Columbia in a society or association; or

(2) expenses of attendance of an individual at meetings or conventions of members of a society or association.

This section does not prevent the use of appropriations for the Department of Agriculture for expenses incident to the delivery of lectures, the giving of instructions, or the acquiring of information at meetings by its employees on subjects relating to the authorized work of the Department.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 514.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 83.	June 26, 1912, ch. 182, §8, 37 Stat. 184. Mar. 4, 1913, ch. 145 (3d full par. on p. 854), 37 Stat. 854.

The words ''or by sections 4109 and 4110 of this title'' are added on authority of former sections 2309 and 2318(b), which are carried into sections 4109 and 4110, respectively.

In the last sentence, the words ''This section does not'' are substituted for ''That nothing contained in the Act making appropriations to provide for the expenses of the Government of the District of Columbia for the fiscal year ending June thirtieth, nineteen hundred and thirteen, and for other purposes, approved June twenty-sixth, nineteen hundred and twelve, shall be so construed as to'' appearing in the Act of Mar. 4, 1913, 37 Stat. 854.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

CROSS REFERENCES

Payment of expenses of government employees incident to attendance at meetings, see section 4110 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 22 section 1474.

§ 5947. Quarters, subsistence, and allowances for employees of the Corps of Engineers, Department of the Army, engaged in floating plant operations

(a) An employee of the Corps of Engineers, Department of the Army, engaged in floating plant operations may be furnished quarters or subsistence, or both, on vessels, without charge, when the furnishing of the quarters or subsistence, or both, is determined to be equitable to the employee concerned, and necessary in the public interest, in connection with such operations.

(b) Notwithstanding section 5536 of this title, an employee entitled to the benefits of subsection (a) of this section while on a vessel, may be paid, in place of these benefits, an allowance for quarters or subsistence, or both, when—

(1) adverse weather conditions or similar circumstances beyond the control of the employee or the Corps of Engineers prevent transportation of the employee from shore to the vessel; or

(2) quarters or subsistence, or both, are not available on the vessel while it is undergoing repairs.

(c) The quarters or subsistence, or both, or allowance in place thereof, may be furnished or paid only under regulations prescribed by the Secretary of the Army.

(Added Pub. L. 91–656, § 7(a), Jan. 8, 1971, 84 Stat. 1954.)

§ 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) $20,000 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[1] 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. 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.

(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;

[1] See References in Text note below.

(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 (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, 83, 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)(1) 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—

(A) which agencies entered into agreements under this section;

(B) the nature and extent of the recruitment or retention problems justifying the use of authority by each agency under this section;

(C) the number of physicians with whom agreements were entered into by each agency;

(D) the size of the allowances and the duration of the agreements entered into; and

(E) the degree to which the recruitment or retention problems referred to in subparagraph (B) were alleviated under this section.

(2) 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, 1997, and, if so, by what period of time; and

(B) the reasons for those recommendations.

(Added Pub. L. 95–603, §2(a), Nov. 6, 1978, 92 Stat. 3018; amended Pub. L. 96–166, §2, Dec. 29, 1979, 93 Stat. 1273; Pub. L. 97–141, §2, Dec. 29, 1981, 95 Stat. 1719; Pub. L. 98–168, title I, §102(a), Nov. 29, 1983, 97 Stat. 1105; Pub. L. 98–615, title II, §204(a)(3), Nov. 8, 1984, 98 Stat. 3216; Pub. L. 100–140, §1, Oct. 26, 1987, 101 Stat. 830; Pub. L. 101–420, §1(a), formerly §1, Oct. 12, 1990, 104 Stat. 908, renumbered §1(a), Pub. L. 103–114, §1(b)(2)(A), Oct. 26, 1993, 107 Stat. 1115; Pub. L. 102–378, §2(51), Oct. 2, 1992, 106 Stat. 1353; Pub. L. 103–89, §3(b)(1)(M), Sept. 30, 1993, 107 Stat. 982; Pub. L. 103–114, §§1(a)(1), 2(a), Oct. 26, 1993, 107 Stat. 1115, 1116.)

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.

The Foreign Service Act of 1980, referred to in subsec. (g)(1)(E), is Pub. L. 96–465, Oct. 17, 1980, 94 Stat. 2071, as amended. Chapter 4 of title I of the Act is classified generally to subchapter IV (§3961 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 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

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;''.

Subsec. (j). Pub. L. 103–114, §2(a), added subsec. (j).

1992—Subsec. (a). Pub. L. 102–378, §2(51)(A), inserted '', section 5307,'' after ''provisions of this section'' in first sentence.

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;''.

Subsec. (g)(1)(J) to (L). Pub. L. 102–378, §2(51)(B)(ii)–(iv), added subpars. (J) to (L).

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.''

1987—Subsec. (a). Pub. L. 100–140, §1(a)(3), inserted last sentence.

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. (d). Pub. L. 100–140, §1(b), substituted ''September 30, 1990'' for ''September 30, 1987'' and ''September 30, 1992'' for ''September 30, 1989''.

1984—Subsec. (g)(1)(C). Pub. L. 98–615 substituted ''performance management and recognition system'' for ''Merit Pay System''.

1983—Subsec. (d). Pub. L. 98–168 substituted ''1987'' for ''1983'', and ''1989'' for ''1985''.

1981—Subsec. (d). Pub. L. 97–141, § 2(1), substituted ''September 30, 1983, nor shall any agreement cover a period of service extending beyond September 30, 1985'' for ''September 30, 1981, nor shall any agreement cover a period of service extending beyond September 30, 1983''.

Subsec. (g)(1). Pub. L. 97–141, § 2(2), (3), reenacted provisions preceding subpar. (A) without change, and in subpar. (F), substituted ''chapter 4 of title I of the Foreign Service Act of 1980 (22 U.S.C. 3961 and following)'' for ''title 4 of the Foreign Service Act of 1946 (22 U.S.C. 861–890)''.

1979—Subsec. (d). Pub. L. 96–166, § 2(1), substituted ''September 30, 1981'' for ''September 30, 1979'' and ''September 30, 1983'' for ''September 30, 1981''.

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, ''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''.

Subsec. (g)(2). Pub. L. 96–166, § 2(3), inserted reference to the Library of Congress.

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

Section 3 of Pub. L. 95–603, as amended by Pub. L. 96–166, § 4, Dec. 29, 1979, 93 Stat. 1273; Pub. L. 97–141, § 3, Dec. 29, 1981, 95 Stat. 1719; Pub. L. 98–168, title I, § 102(b), Nov. 29, 1983, 97 Stat. 1105; Pub. L. 100–140, § 1(c), as added Pub. L. 103–114, § 1(b)(1), Oct. 26, 1993, 107 Stat. 1115; Pub. L. 101–420, § 1(b), as added Pub. L. 103–114, § 1(b)(2)(B), Oct. 26, 1993, 107 Stat. 1115; Pub. L. 103–114, § 1(a)(2), Oct. 26, 1993, 107 Stat. 1115, provided that: ''The amendments made by this Act [enacting this section] are repealed, unless specifically extended by Act of Congress, effective on September 30, 1999.''

[Section 1(b)(1) of Pub. L. 103–114 provided that amendment by that section [adding subsec. (c) to section 1 of Pub. L. 100–140, which amended section 3 of Pub. L. 95–603, set out above] is effective as of Oct. 27, 1987.]

[Section 1(b)(2) of Pub. L. 103–114 provided that amendment by that section [adding subsec. (b) to section 1 of Pub. L. 101–420, which amended section 3 of Pub. L. 95–603, set out above] is effective as of Oct. 13, 1990.]

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 as a note 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 and section 8344 of this title and provisions set out as a note 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 as a note under this section] 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 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 as a note 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].''

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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5307 of this title; title 24 section 225e; title 42 section 1395ww.

Subpart E—Attendance and Leave

CHAPTER 61—HOURS OF WORK

SUBCHAPTER I—GENERAL PROVISIONS

Sec.
6101. Basic 40-hour workweek; work schedules; regulations.
[6102. Repealed.]
6103. Holidays.
6104. Holidays; daily, hourly, and piece-work basis employees.
6105. Closing of Executive departments.
6106. Time clocks; restrictions.

SUBCHAPTER II—FLEXIBLE AND COMPRESSED WORK SCHEDULES

6120. Purpose.
6121. Definitions.
6122. Flexible schedules; agencies authorized to use.
6123. Flexible schedules; computation of premium pay.
6124. Flexible schedules; holidays.
6125. Flexible schedules; time-recording devices.
6126. Flexible schedules; credit hours; accumulation and compensation.
6127. Compressed schedules; agencies authorized to use.
6128. Compressed schedules; computation of premium pay.
6129. Administration of leave and retirement provisions.
6130. Application of programs in the case of collective bargaining agreements.
6131. Criteria and review.
6132. Prohibition of coercion.
6133. Regulations; technical assistance; program review.

AMENDMENTS

1982—Pub. L. 97–221, §2(b), July 23, 1982, 96 Stat. 233, inserted ''SUBCHAPTER I—GENERAL PROVISIONS'' before item 6101 and inserted ''SUBCHAPTER II—FLEXIBLE AND COMPRESSED WORK SCHEDULES'' and items 6120 to 6133 after item 6106.
1972—Pub. L. 92–392, §7(b), Aug. 19, 1972, 86 Stat. 573, struck out item 6102 ''Eight-hour day; 40-hour work week; wage-board employees''.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 5371 of this title.

SUBCHAPTER I—GENERAL PROVISIONS

AMENDMENTS

1982—Pub. L. 97–221, §2(a)(1), July 23, 1982, 96 Stat. 227, added subchapter I heading so as to designate existing provisions as ''SUBCHAPTER I—GENERAL PROVISIONS''.

§ 6101. Basic 40-hour workweek; work schedules; regulations

(a)(1) For the purpose of this subsection, ''employee'' includes an employee of the government of the District of Columbia and an employee whose pay is fixed and adjusted from time to time under section 5343 or 5349 of this title, or by a wage board or similar administrative authority serving the same purpose, but does not include an employee or individual excluded from the definition of employee in section 5541(2) of this title, except as specifically provided under this paragraph.

(2) The head of each Executive agency, military department, and of the government of the District of Columbia shall—

(A) establish a basic administrative workweek of 40 hours for each full-time employee in his organization; and

(B) require that the hours of work within that workweek be performed within a period of not more than 6 of any 7 consecutive days.

(3) Except when the head of an Executive agency, a military department, or of the government of the District of Columbia determines that his organization would be seriously handicapped in carrying out its functions or that costs would be substantially increased, he shall provide, with respect to each employee in his organization, that—

(A) assignments to tours of duty are scheduled in advance over periods of not less than 1 week

(B) the basic 40-hour workweek is scheduled on 5 days, Monday through Friday when possible, and the 2 days outside the basic workweek are consecutive;

(C) the working hours in each day in the basic workweek are the same;

(D) the basic nonovertime workday may not exceed 8 hours;

(E) the occurrence of holidays may not affect the designation of the basic workweek; and

(F) breaks in working hours of more than 1 hour may not be scheduled in a basic workday.

(4) Notwithstanding paragraph (3) of this subsection, the head of an Executive agency, a military department, or of the government of the District of Columbia may establish special tours of duty, of not less than 40 hours, to enable employees to take courses in nearby colleges, universities, or other educational institutions that will equip them for more effective work in the agency. Premium pay may not be paid to an employee solely because his special tour of duty established under this paragraph results in his working on a day or at a time of day for which premium pay is otherwise authorized.

(5) The Architect of the Capitol may apply this subsection to employees under the Office of the Architect of the Capitol or the Botanic Garden. The Librarian of Congress may apply this subsection to employees under the Library of Congress.

(b)(1) For the purpose of this subsection, ''agency'' and ''employee'' have the meanings given them by section 5541 of this title.

(2) To the maximum extent practicable, the head of an agency shall schedule the time to be spent by an employee in a travel status away from his official duty station within the regularly scheduled workweek of the employee.

(c) The Office of Personnel Management may prescribe regulations, subject to the approval of the President, necessary for the administration of this section insofar as this section affects employees in or under an Executive agency.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 514; Pub. L. 90–83, § 1(43), Sept. 11, 1967, 81 Stat. 207; Pub. L. 92–392, § 6, Aug. 19, 1972, 86 Stat. 573; Pub. L. 94–183, § 2(25), Dec. 31, 1975, 89 Stat. 1058; Pub. L. 95–454, title IX, § 906(a)(2), Oct. 13, 1978, 92 Stat. 1224.)

HISTORICAL AND REVISION NOTES

1966 ACT

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(a), (b)	5 U.S.C. 944(a).	June 30, 1945, ch. 212, § 604(a), 59 Stat. 303. Sept. 1, 1954, ch. 1208, § 210, 68 Stat. 1112.
(c)	5 U.S.C. 944(d) (less last 27 words).	June 30, 1945, ch. 212, § 604(e) (less last 27 words), 59 Stat. 304.

In subsection (a), the words ''in the departmental and the field services'' are omitted as unnecessary.

In subsections (a) and (b), the words ''an Executive agency, a military department'' are coextensive with and substituted for ''the several departments and independent establishments and agencies in the executive branch, including Government-owned or controlled corporations'' and ''such department, establishment, or agency'' in view of the definitions in sections 105 and 102. The words ''a military department'' are included to preserve the application of the source law. Before enactment of the National Security Act Amendments of 1949 (63 Stat. 578), the Department of the Army, the Department of the Navy, and the Department of the Air Force were Executive departments. The National Security Act Amendments of 1949 established the Department of Defense as an Executive Department including the Department of the Army, the Department of the Navy, and the Department of the Air Force as military departments, not as Executive departments. However, the source law for this section which was in effect in 1949, remained applicable to the Secretaries of the military departments by virtue of section 12(g) of the National Security Act Amendments of 1949 (63 Stat. 591), which is set out in the reviser's note for section 301.

Subsection (d) is added on authority of former sections 901(d) and 2358(a) (as applicable to the Federal Employees Pay Act of 1945, as amended) which are carried into section 5541, and to include individuals employed by the government of the District of Columbia as they are not included in the definition of ''employee'' in section 2105.

Subsection (e) is added on authority of former section 945, which is carried into section 5548. The words ''an Executive agency'' are substituted for ''the executive branch of the Government'' to conform to the definition in section 105. Applicability of this section to employees of the General Accounting Office is based on former section 933a.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 ACT

Section of title 5	*Source (U.S. Code)*	*Source (Statutes at Large)*
6101(a) (1)–(3), (5).	5:6101(a)–(d).	[None.]
6101(a)(4) ...	5 App.: 944(a)(3).	June 29, 1966, Pub. L. 89–478, 80 Stat. 231.
6101(b)	5 App.: 912b (last sentence).	Oct. 29, 1965, Pub. L. 89–301, § 16, 79 Stat. 1123.
6101(c)	5:6101(e).	[None.]

In subsection (a)(4), the words ''without regard to the requirements of such paragraph'' are omitted as redundant in view of the words ''notwithstanding paragraph (3) of this subsection'' at the beginning thereof. The words ''an Executive agency, a military department'' are coextensive with and substituted for ''each such department, establishment, or agency'' and to conform to subsections (a)(2) and (a)(3). The words ''officers'' and ''officer'' are omitted as included in ''employees'' and ''employee''. The word ''pay'' is substituted for ''compensation'' to conform to the style of title 5, United States Code.

Subsection (b)(1) is added on authority of former sections 901 and 902 of title 5, which are now codified in 5 U.S.C. 5541.

In subsection (b)(2), the words ''head of an agency'' are substituted for ''head of any department, independent establishment, or agency, including Government-owned or controlled corporations, or of the municipal government of the District of Columbia, or the head of any legislative or judicial agency to which this title applies'' to conform to the definition of ''agency'' in 5 U.S.C. 5541, which is made applicable to this subsection by subsection (b)(1). The word ''officer'' is omitted as included in ''employee''.

AMENDMENTS

1978—Subsec. (c). Pub. L. 95–454 substituted ''Office of Personnel Management'' for ''Civil Service Commission''.

1975—Subsec. (a)(4). Pub. L. 94–183 substituted ''educational'' for ''education''.

1972—Subsec. (a)(1). Pub. L. 92–392 defined ''employee'' to include an employee whose pay is fixed and adjusted from time to time under section 5343 or 5349 of this title or by a wage board or similar administrative authority serving the same purpose and exclude certain employees ''except as specifically provided under this paragraph''.

TERMINATION DATE OF 1982 AMENDMENT

Pub. L. 97–221, § 5, July 23, 1982, 96 Stat. 234, as amended by Pub. L. 99–69, July 22, 1985, 99 Stat. 167; Pub. L. 99–109, Sept. 30, 1985, 99 Stat. 482; Pub. L. 99–140, Oct. 31, 1985, 99 Stat. 563, which had provided that enactment of subchapter II of this chapter, amendment of sections 3401 and 6106 of this title, and enactment of provisions set out as notes under sections 6101 and 6106 of this title, should not be in effect after Dec. 31, 1985, was repealed by Pub. L. 99–190, § 140, Dec. 19, 1985, 99 Stat. 1324, and also by Pub. L. 99–196, Dec. 23, 1985, 99 Stat. 1350.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92–392 effective on first day of first applicable pay period beginning on or after 90th day after Aug. 19, 1972, see section 15(a) of Pub. L. 92–392, set out as an Effective Date note under section 5341 of this title.

SHORT TITLE OF 1982 AMENDMENT

Pub. L. 97–221, § 1, July 23, 1982, 96 Stat. 227, provided: ''That this Act [enacting subchapter II of this chapter, amending sections 3401 and 6106 of this title, and enacting provisions set out as notes under this section and section 6106 of this title] may be cited as the 'Federal Employees Flexible and Compressed Work Schedules Act of 1982'.''

DELEGATION OF FUNCTIONS

Functions vested in Office of Personnel Management under this section insofar as it affects officers and employees in or under the executive branch of the government to be performed without approval of President, see section 1(1) of Ex. Ord. No. 11228, June 14, 1965, 30 F.R. 7739, set out as a note under section 301 of Title 3, The President.

FEDERAL EMPLOYEES FLEXIBLE AND COMPRESSED WORK SCHEDULES

Pub. L. 95–390, §§ 1–306, Sept. 29, 1978, 92 Stat. 755–762, as amended Pub. L. 97–160, Mar. 26, 1982, 96 Stat. 21, provided that:

''SHORT TITLE

''SECTION 1. This Act [enacting section 5550a of this title and this note] may be cited as the 'Federal Employees Flexible and Compressed Work Schedules Act of 1978'.

''CONGRESSIONAL FINDINGS

''SEC. 2. The Congress finds that new trends in the usage of 4-day workweeks, flexible work hours, and other variations in workday and workweek schedules in the private sector appear to show sufficient promise to warrant carefully designed, controlled, and evaluated experimentation by Federal agencies to determine whether and in what situations such varied work schedules can be successfully used by Federal agencies on a permanent basis. The Congress also finds that there should be sufficient flexibility in the work schedules of Federal employees to allow such employees to meet the obligations of their faith.

''DEFINITIONS

''SEC. 3. For purposes of this Act (other than title IV) [this note]—

''(1) the term 'agency' means an Executive agency and a military department (as such terms are defined in sections 105 and 102, respectively, of title 5, United States Code);

''(2) the term 'employ' has the meaning given it by section 2105 of title 5, United States Code;

''(3) the term 'Commission' means the United States Civil Service Commission; and

''(4) the term 'basic work requirement' means the number of hours, excluding overtime hours, which an employee is required to work or is required to account for by leave or otherwise.

''EXPERIMENTAL PROGRAMS

''SEC. 4. (a)(1) Within 180 days after the effective date of this section, and subject to the requirements of section 302 and the terms of any written agreement referred to in section 302(a), the Commission shall establish a program which provides for the conducting of experiments by the Commission under titles I and II of this Act. Such experimental program shall cover a sufficient number of positions throughout the executive branch, and a sufficient range of worktime alternatives, as to provide an adequate basis on which to evaluate the effectiveness and desirability of permanently maintaining flexible or compressed work schedules within the executive branch.

''(2) Each agency may conduct one or more experiments under titles I and II of this Act. Such experiments shall be subject to such regulations as the Commission may prescribe under section 305 of this Act.

''(b) The Commission shall, not later than 90 days after the effective date of this section, establish a master plan which shall contain guidelines and criteria by which the Commission will study and evaluate experiments conducted under titles I and II of this Act. Such master plan shall provide for the study and evaluation of experiments within a sample of organizations of different size, geographic location, and functions and activities, sufficient to insure adequate evaluation of the impact of varied work schedules on—

''(1) the efficiency of Government operations;

''(2) mass transit facilities and traffic;

''(3) levels of energy consumption;

''(4) service to the public;

''(5) increased opportunities for full-time and part-time employment; and

''(6) individuals and families generally.

''(c) The Commission shall provide educational material, and technical aids and assistance, for use by an agency before and during the period such agency is conducting experiments under this Act [enacting section 5550a of this title and this note].

''(d) If the head of an agency determines that the implementation of an experimental program referred to in subsection (a) would substantially disrupt the agency in carrying out its functions, such agency head shall request the Commission to exempt such agency from the requirements of any experiment conducted by the Commission under subsection (a). Such request shall be accompanied by a report detailing the reasons for such determination. The Commission shall exempt an agency from such requirements only if it finds that including the agency within the experiment would not be in the best interest of the public, the Government, or the employees. The filing of such a request with the Commission shall exclude the agency from the experiment until the Commission has made its determination or until 180 days after the date the request is filed, whichever first occurs.

''TITLE I—FLEXIBLE SCHEDULING OF WORK HOURS

''DEFINITIONS

''SEC. 101. For purposes of this title—

''(1) the term 'credit hours' means any hours, within a flexible schedule established under this title, which are in excess of an employee's basic work requirement and which the employee elects to work so as to vary the length of a workweek or a workday; and

''(2) the term 'overtime hours' means all hours in excess of 8 hours in a day or 40 hours in a week which are officially ordered in advance, but does not include credit hours.

''FLEXIBLE SCHEDULING EXPERIMENTS

''SEC. 102. (a) Notwithstanding section 6101 of title 5, United States Code, experiments may be conducted in agenices [agencies] to test flexible schedules which include—

''(1) designated hours and days during which an employee on such a schedule must be present for work; and

''(2) designated hours during which an employee on such a schedule may elect the time of such employee's arrival at and departure from work, solely for such purpose or, if and to the extent permitted, for the purpose of accumulating credit hours to reduce the length of the workweek or another workday.

An election by an employee referred to in paragraph (2) shall be subject to limitations generally prescribed to ensure that the duties and requirements of the employee's position are fulfilled.

''(b) Notwithstanding any other provision of this Act [enacting section 5550a of this title and this note], but subject to the terms of any written agreement under section 302(a)—

''(1) any experiment under subsection (a) of this section may be terminated by the Commission if it determines that the experiment is not in the best interest of the public, the Government, or the employees; or

''(2) if the head of an agency determines that any organization within the agency which is participating in an experiment under subsection (a) is being substantially disrupted in carrying out its functions or is incurring additional costs because of such participation, such agency head may—

''(A) restrict the employees' choice of arrival and departure time,

''(B) restrict the use of credit hours, or

''(C) exclude from such experiment any employee or group of employees.

''(c) Experiments under subsection (a) shall terminate not later than the first day of the second pay period beginning after July 4, 1982.

''COMPUTATION OF PREMIUM PAY

''SEC. 103. (a) For purposes of determining compensation for overtime hours in the case of an employee participating in an experiment under section 102—

''(1) the head of an agency may, on request of the employee, grant the employee compensatory time off in lieu of payment for such overtime hours, whether or not irregular or occasional in nature and notwithstanding the provisions of sections 5542(a), 5543(a)(1), 5544(a), and 5550 of title 5, United States Code, section 4107(e)(5) of title 38, United States Code section 7 of the Fair Labor Standards Act, as amended [section 207 of Title 29, Labor], or any other provision of law; or

''(2) the employee shall be compensated for such overtime hours in accordance with such provisions, as applicable.

''(b) Notwithstanding the provisions of law referred to in paragraph (1) of subsection (a), an employee shall not be entitled to be compensated for credit hours worked except to the extent authorized under section 106 or to the extent such employee is allowed to have such hours taken into account with respect to the employee's basic work requirement.

''(c)(1) Notwithstanding section 5545(a) of title 5, United States Code, premium pay for nightwork will not be paid to an employee otherwise subject to such section solely because the employee elects to work credit hours, or elects a time of arrival or departure, at a time of day from which such premium pay is otherwise authorized; except that—

''(A) if an employee is on a flexible schedule under which—

''(i) the number of hours during which such employee must be present for work, plus

''(ii) the number of hours during which such employee may elect to work credit hours or elect the time of arrival at and departure from work,

which occur outside of the night work hours designated in or under such section 5545(a) total less than 8 hours, such premium pay shall be paid for those hours which, when combined with such total, do not exceed 8 hours, and

''(B) if an employee is on a flexible schedule under which the hours that such employee must be present for work include any hours designated in or under such section 5545(a), such premium pay shall be paid for such hours so designated.

''(2) Notwithstanding section 5343(f) of title 5, United States Code, and 4107(e)(2) of title 38, United States Code, night differential will not be paid to any employee otherwise subject to either of such sections solely because such employee elects to work credit hours, or elects a time of arrival or departure, at a time of day for which night differential is otherwise authorized; except that such differential shall be paid to an employee on a flexible schedule under this title—

''(A) in the case of an employee subject to such section 5343(f), for which all or a majority of the hours of such schedule for any day fall between the hours specified in such section, or

''(B) in the case of an employee subject to such section 4107(e)(2), for which 4 hours of such schedule fall between the hours specified in such section.

''HOLIDAYS

''SEC. 104. Notwithstanding sections 6103 and 6104 of title 5, United States Code, if any employee on a flexible schedule under this title is relieved or prevented from working on a day designated as a holiday by Federal statute or Executive order, such employee is entitled to pay with respect to that day for 8 hours (or, in the case of a part-time employee, an appropriate portion of the employee's biweekly basic work requirement as determined under regulations prescribed by the Commission).

''TIME-RECORDING DEVICES

''SEC. 105. Notwithstanding section 6106 of title 5, United States Code, the Commission or an agency may use recording clocks as part of its experiments under this title.

''CREDIT HOURS; ACCUMULATION AND COMPENSATION

''SEC. 106. (a) Subject to any limitation prescribed by the Commission or the agency, a full-time employee on a flexible schedule can accumulate not more than 10 credit hours, and a part-time employee can accumulate not more than one-eighth of the hours in such employee's biweekly basic work requirement, for carryover from a biweekly pay period to a succeeding biweekly pay period for credit to the basic work requirement for such period.

''(b) Any employee who is on a flexible schedule experiment under this title and who is no longer subject to such an experiment shall be paid at such employee's then current rate of basic pay for—

''(1) in the case of a full-time employee, not more than 10 credit hours accumulated by such employee, or

''(2) in the case of a part-time employee, the number of credit hours (not in excess of one-eighth of the hours in such employee's biweekly basic work requirement) accumulated by such employee.

''TITLE II—4-DAY WEEK AND OTHER COMPRESSED WORK SCHEDULES

''DEFINITIONS

''SEC. 201. For purposes of this title—

''(1) the term 'compressed schedule' means—

''(A) in the case of a full-time employee, an 80-hour biweekly basic work requirement which is scheduled for less than 10 workdays, and

''(B) in the case of a part-time employee, a biweekly basic work requirement of less than 80 hours which is scheduled for less than 10 workdays; and

''(2) the term 'overtime hours' means any hours in excess of those specified hours which constitute the compressed schedule.

''COMPRESSED SCHEDULE EXPERIMENTS

''SEC. 202. (a) Notwithstanding section 6101 of title 5, United States Code, experiments may be conducted in agencies to test a 4-day work-week or other compressed schedule.

''(b)(1) An employee in a unit with respect to which an organization of Government employees has not been accorded exclusive recognition shall not be required to participate in any experiment under subsection (a) unless a majority of the employees in such unit who, but for this paragraph, would be included in such experiment have voted to be so included.

''(2) Upon written request to any agency by an employee, the agency, if it determines that participation in an experiment under subsection (a) would impose a personal hardship on such employee, shall—

''(A) except such employee from such experiment; or

''(B) reassign such employee to the first position within the agency—

''(i) which becomes vacant after such determination,

''(ii) which is not included within such experiment,

''(iii) for which such employee is qualified, and

''(iv) which is acceptable to the employee.

A determination by an agency under this paragraph shall be made not later than 10 days after the day on which a written request for such determination is received by the agency.

''(c) Notwithstanding any other provision of this Act [enacting section 5550a of this title and this note], but subject to the terms of any written agreement under section 302(a), any experiment under subsection (a) may be terminated by the Commission, or the agency, if it determines that the experiment is not in the best interest of the public, the Government, or the employees.

''(d) Experiments under subsection (a) shall terminate not later than the end of the first day of the second pay period beginning after July 4, 1982.

''COMPUTATION OF PREMIUM PAY

''SEC. 203. (a) The provisions of sections 5542(a), 5544(a), and 5550(2) of title 5, United States Code, section 4107(e)(5) of title 38, United States Code, section 7 of the Fair Labor Standards Act, as amended [section 207 of Title 29, Labor], or any other law, which relate to premium pay for overtime work, shall not apply to the hours which constitute a compressed schedule.

''(b) In the case of any full-time employee, hours worked in excess of the compressed schedule shall be overtime hours and shall be paid for as provided by whichever statutory provisions referred to in subsection (a) are applicable to the employee. In the case of any part-time employee on a compressed schedule, overtime pay shall begin to be paid after the same number of hours of work after which a full-time employee on a similar schedule would begin to receive overtime pay.

''(c) Notwithstanding section 5544(a), 5546(a), or 5550(1) of title 5, United States Code, or any other applicable provision of law, in the case of any full-time employee on a compressed schedule who performs work (other than overtime work) on a tour of duty for any workday a part of which is performed on a Sunday, such employee is entitled to pay for work performed during the entire tour of duty at the rate of such employee's basic pay, plus premium pay at a rate equal to 25 percent of such basic pay rate.

''(d) Notwithstanding section 5546(b) of title 5, United States Code, an employee on a compressed schedule who performs work on a holiday designated by Federal statute or Executive order is entitled to pay at the rate of such employee's basic pay, plus premium pay at a rate equal to such basic pay rate, for such work which is not in excess of the basic work requirement of such employee for such day. For hours worked on such a holiday in excess of the basic work requirement for such day, the employee is entitled to premium pay in accordance with the provisions of section 5542(a) or 5544(a) of title 5, United States Code, as applicable, or the provisions of section 7 of the Fair Labor Standards Act, as amended [section 207 of Title 29, Labor], whichever provisions are more beneficial to the employee.

''TITLE III—ADMINISTRATIVE PROVISIONS

''ADMINISTRATION OF LEAVE AND RETIREMENT PROVISIONS

''SEC. 301. For purposes of administering sections 6303(a), 6304, 6307(a) and (c), 6323, 6326, and 8339(m) of title 5, United States Code, in the case of an employee who is in any experiment under title I or II, references to a day or workday (or to multiples or parts thereof) contained in such sections shall be considered to be references to 8 hours (or to the respective multiples or parts thereof).

''APPLICATION OF EXPERIMENTS IN THE CASE OF NEGOTIATED CONTRACTS

''SEC. 302. (a) Employees within a unit with respect to which an organization of Government employees has been accorded exclusive recognition shall not be included within any experiment under title I or II of this Act except to the extent expressly provided under a written agreement between the agency and such organization.

''(b) The Commission or an agency may not participate in a flexible or compressed schedule experiment under a negotiated contract which contains premium pay provisions which are inconsistent with the provisions of section 103 or 203 of this Act, as applicable.

''PROHIBITION OF COERCION

''SEC. 303. (a) An employee may not directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any other employee for the purpose of interfering with—

''(1) such employee's rights under title I to elect a time of arrival or departure, to work or not to work credit hours, or to request or not to request compensatory time off in lieu of payment for overtime hours; or

''(2) such employee's right under section 202(b)(1) to vote whether or not to be included within a compressed schedule experiment or such employee's right to request an agency determination under section 202(b)(2).

For the purpose of the preceding sentence, the term 'intimidate, threaten, or coerce' includes, but is not limited to, promising to confer or conferring any benefit (such as appointment, promotion, or compensation), or effecting or threatening to effect any reprisal (such as deprivation of appointment, promotion, or compensation).

''(b) Any employee who violates the provisions of subsection (a) shall, upon a final order of the Commission, be—

''(1) removed from such employee's position, in which event that employee may not thereafter hold any position as an employee for such period as the Commission may prescribe;

''(2) suspended without pay from such employee's position for such period as the Commission may prescribe; or

''(3) disciplined in such other manner as the Commission shall deem appropriate.

The commission shall prescribe procedures to carry out this subsection under which an employee subject to removal, suspension, or other disciplinary action shall have rights comparable to the rights afforded an employee subject to removal or suspension under subchapter III of chapter 73 of title 5, United States Code, relating to certain prohibited political activities.

''REPORTS

''SEC. 304. Not later than 2½ years after the effective date of titles I and II of this Act, the Commission shall—

''(1) prepare an interim report containing recommendations as to what, if any, legislative or administrative action shall be taken based upon the results of experiments conducted under this Act [enacting section 5550a of this title and this note], and

''(2) submit copies of such report to the President, the Speaker of the House, and the President pro tempore of the Senate.

The Commission shall prepare a final report with regard to experiments conducted under this Act [enacting section 5550a of this title and this note] and shall submit copies of such report to the President, the Speaker of the House, and the President pro tempore of the Senate not later than 3 years after such effective date.

''REGULATIONS

''SEC. 305. The Commission shall prescribe regulations necessary for the administration of the foregoing provisions of this Act [enacting section 5550a of this title and this note].

''EFFECTIVE DATE

''SEC. 306. The provisions of section 4 and titles I and II of this Act shall take effect on the 180th day after—

''(1) the date of the enactment of this Act [Sept. 29, 1978], or

''(2) October 1, 1978,

whichever date is later.''

SAVINGS PROVISIONS; 1982 AMENDMENT

Pub. L. 97–221, § 4, July 23, 1982, 96 Stat. 234, provided that:

''(a) Except as provided in subsection (b), each flexible or compressed work schedule established by any agency under the Federal Employees Flexible and Compressed Work Schedules Act of 1978 (5 U.S.C. 6101 note) in existence on the date of enactment of this Act [July 23, 1982] shall be continued by the agency concerned.

''(b)(1) During the 90-day period after the date of the enactment of this Act [July 23, 1982] any flexible or compressed work schedule referred to in subsection (a) may be reviewed by the agency concerned. If, in reviewing the schedule, the agency determines in writing that—

''(A) the schedule has reduced the productivity of the agency or the level of services to the public, or has increased the cost of the agency operations, and

''(B) termination of the schedule will not result in an increase in the cost of the agency operations (other than a reasonable administrative cost relating to the process of terminating a schedule),

the agency shall, notwithstanding any provision of a negotiated agreement, immediately terminate such schedule and such termination shall not be subject to negotiation or to administrative review (except as the President may provide) or to judicial review.

''(2) If a schedule established pursuant to a negotiated agreement is terminated under paragraph (1), either the agency or the exclusive representative concerned may, by written notice to the other party within 90 days after the date of such termination, initiate collective bargaining pertaining to the establishment of another flexible or compressed work schedule under subchapter II of chapter 61 of title 5, United States Code, which would be effective for the unexpired portion of the term of the negotiated agreement.''

CROSS REFERENCES

Contract Work Hours Standards Act, see section 327 et seq. of Title 40, Public Buildings, Property, and Works.

Overtime and other premium pay, see section 5541 et seq. of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5504, 6122, 6127 of this title; title 20 section 241; title 32 section 709; title 40 sections 166b–1d, 166b–1e.

[§ 6102. Repealed. Pub. L. 92–392, § 7(a), Aug. 19, 1972, 86 Stat. 573]

Section, Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 515, provided for eight-hour day and 40-hour workweek for wage-board employees. See sections 5544(a) and 6101(a)(1) of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective on first day of first applicable pay period beginning on or after 90th day after Aug. 19, 1972, see section 15(a) of Pub. L. 92–392, set out as an Effective Date note under section 5341 of this title.

§ 6103. Holidays

(a) The following are legal public holidays:

New Year's Day, January 1.

Birthday of Martin Luther King, Jr., the third Monday in January.

Washington's Birthday, the third Monday in February.

Memorial Day, the last Monday in May.

Independence Day, July 4.

Labor Day, the first Monday in September.

Columbus Day, the second Monday in October.

Veterans Day, November 11.

Thanksgiving Day, the fourth Thursday in November.

Christmas Day, December 25.

(b) For the purpose of statutes relating to pay and leave of employees, with respect to a legal public holiday and any other day declared to be a holiday by Federal statute or Executive order, the following rules apply:

(1) Instead of a holiday that occurs on a Saturday, the Friday immediately before is a legal holiday for—

(A) employees whose basic workweek is Monday through Friday; and

(B) the purpose of section 6309[1] of this title.

(2) Instead of a holiday that occurs on a regular weekly non-workday of an employee whose basic workweek is other than Monday through Friday, except the regular weekly non-workday administratively scheduled for the employee instead of Sunday, the workday immediately before that regular weekly non-workday is a legal public holiday for the employee.

This subsection, except subparagraph (B) of paragraph (1), does not apply to an employee whose basic workweek is Monday through Saturday.

(c) January 20 of each fourth year after 1965, Inauguration Day, is a legal public holiday for the purpose of statutes relating to pay and leave of employees as defined by section 2105 of this title and individuals employed by the government of the District of Columbia employed in the District of Columbia, Montgomery and Prince Georges Counties in Maryland, Arlington and Fairfax Counties in Virginia, and the cities

[1] See References in Text note below.

of Alexandria and Falls Church in Virginia. When January 20 of any fourth year after 1965 falls on Sunday, the next succeeding day selected for the public observance of the inauguration of the President is a legal public holiday for the purpose of this subsection.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 515; Pub. L. 90–363, §1(a), June 28, 1968, 82 Stat. 250; Pub. L. 94–97, Sept. 18, 1975, 89 Stat. 479; Pub. L. 98–144, §1, Nov. 2, 1983, 97 Stat. 917.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(a)	5 U.S.C. 87.	June 28, 1894, ch. 118, 28 Stat. 96.
	5 U.S.C. 87a.	May 13, 1938, ch. 210, 52 Stat. 351. June 1, 1954, ch. 250, 68 Stat. 168.
	5 U.S.C. 87b.	Dec. 26, 1941, ch. 631, 55 Stat. 862.
(b)	5 U.S.C. 87c.	Sept. 22, 1959, Pub. L. 86–362, §§1, 2, 73 Stat. 643, 644.
(c)	[Uncodified].	Jan. 11, 1957, Pub. L. 85–1, 71 Stat. 3.

In subsection (a), former sections 87, 87a, and 87b are combined and restated for clarity. The names of all holidays are inserted for ready reference in a like manner to that used in former section 87c.

In subsection (c), the year ''1965'' is substituted for ''1957''.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

REFERENCES IN TEXT

Section 6309 of this title, referred to in subsec. (b)(1)(B), was repealed by Pub. L. 94–183, §2(26), Dec. 31, 1975, 89 Stat. 1058.

AMENDMENTS

1983—Subsec. (a). Pub. L. 98–144 inserted item relating to birthday of Martin Luther King, Jr.

1975—Subsec. (a). Pub. L. 94–97 changed Veterans Day from fourth Monday in October to November 11.

1968—Subsec. (a). Pub. L. 90–363 added Columbus Day, the second Monday in October, to the enumerated legal public holidays, and substituted provisions that Washington's Birthday, Memorial Day, and Veterans Day are to be celebrated on the third Monday in February, the last Monday in May, and the fourth Monday in October, respectively, for provisions that the above mentioned public holidays are to be celebrated on February 22, May 30, and November 11, respectively.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 2 of Pub. L. 98–144 provided that: ''The amendment made by the first section of this Act [amending this section] shall take effect on the first January 1 that occurs after the two-year period following the date of the enactment of this Act [Nov. 2, 1983].''

EFFECTIVE DATE OF 1975 AMENDMENT

Pub. L. 94–97 provided that the amendment made by Pub. L. 94–97 is effective Jan. 1, 1978.

EFFECTIVE DATE OF 1968 AMENDMENT

Section 2 of Pub. L. 90–363 provided that: ''The amendment made by subsection (a) of the first section of this Act [amending this section] shall take effect on January 1, 1971.''

REFERENCES IN LAWS OF THE UNITED STATES TO OBSERVANCES OF LEGAL PUBLIC HOLIDAYS

Section 1(b) of Pub. L. 90–363 provided that: ''Any reference in a law of the United States (in effect on the effective date of the amendment made by subsection (a) of this section) [January 1, 1971] to the observance of a legal public holiday on a day other than the day prescribed for the observance of such holiday by section 6103(a) of title 5, United States Code, as amended by subsection (a), shall on and after such effective date be considered a reference to the day for the observance of such holiday prescribed in such amended section 6103(a).''

EXECUTIVE ORDER NO. 10358

Ex. Ord. No. 10358, June 9, 1952, 17 F.R. 1529, as amended by Ex. Ord. No. 11226, May 27, 1965, 30 F.R. 7213; Ex. Ord. No. 11272, Feb. 23, 1966, 31 F.R. 3111, which related to the observance of holidays, was revoked by Ex. Ord. No. 11582, Feb. 11, 1971, 36 F.R. 2957, set out below.

EX. ORD. NO. 11582. OBSERVANCE OF HOLIDAYS

Ex. Ord. No. 11582, Feb. 11, 1971, 36 F.R. 2957, provided:

By virtue of the authority vested in me as President of the United States, it is hereby ordered as follows:

SECTION 1. Except as provided in section 7, this order shall apply to all executive departments, independent agencies, and Government corporations, including their field services.

SEC. 2. As used in this order:

(a) *Holiday* means the first day of January, the third Monday of February, the last Monday of May, the fourth day of July, the first Monday of September, the second Monday of October, the fourth Monday of October, the fourth Thursday of November, the twenty-fifth day of December, or any other calendar day designated as a holiday by Federal statute or Executive order.

(b) *Workday* means those hours which comprise in sequence the employee's regular daily tour of duty within any 24-hour period, whether falling entirely within one calendar day or not.

SEC. 3. (a) Any employee whose basic workweek does not include Sunday and who would ordinarily be excused from work on a holiday falling within his basic workweek shall be excused from work on the next workday of his basic workweek whenever a holiday falls on Sunday.

(b) Any employee whose basic workweek includes Sunday and who would ordinarily be excused from work on a holiday falling within his basic workweek shall be excused from work on the next workday of his basic workweek whenever a holiday falls on a day that has been administratively scheduled as his *regular* weekly nonworkday in lieu of Sunday.

SEC. 4. The holiday for a full-time employee for whom the head of a department has established the first 40 hours of duty performed within a period of not more than six days of the administrative workweek as his basic workweek because of the impracticability of prescribing a regular schedule of definite hours of duty for each workday, shall be determined as follows:

(a) If a holiday occurs on Sunday, the head of the department shall designate in advance either Sunday or Monday as the employee's holiday and the employee's basic 40-hour tour of duty shall be deemed to include eight hours on the day designated as the employee's holiday.

(b) If a holiday occurs on Saturday, the head of the department shall designate in advance either the Saturday or the preceding Friday as the employee's holiday and the employee's basic 40-hour tour of duty shall be deemed to include eight hours on the day designated as the employee's holiday.

(c) If a holiday occurs on any other day of the week, that day shall be the employee's holiday, and the employee's basic 40-hour tour of duty shall be deemed to include eight hours on that day.

(d) When a holiday is less than a full day, proportionate credit will be given under paragraph (a), (b), or (c) of this section.

SEC. 5. Any employee whose workday covers portions of two calendar days and who would, except for this section, ordinarily be excused from work scheduled for

the hours of any calendar day on which a holiday falls, shall instead be excused from work on his entire workday which commences on any such calendar day.

SEC. 6. In administering the provisions of law relating to pay and leave of absence, the workdays referred to in sections 3, 4, and 5 shall be treated as holidays in lieu of the corresponding calendar holidays.

SEC. 7. The provisions of this order shall apply to officers and employees of the Post Office Department and the United States Postal Service (except that sections 3, 4, 5, and 6 shall not apply to the Postal Field Service) until changed by the Postal Service in accordance with the Postal Reorganization Act.

SEC. 8. Executive Order No. 10358 of June 9, 1952, entitled *Observance of Holidays by Government Agencies* and amendatory Executive Orders No. 11226 of May 27, 1965, and No. 11272 of February 23, 1966, are revoked.

SEC. 9. This order is effective as of January 1, 1971.

RICHARD NIXON.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6104, 6124 of this title; title 12 section 3710; title 21 section 1053; title 29 section 1201; title 38 section 5120; title 42 section 909.

§ 6104. Holidays; daily, hourly, and piece-work basis employees

When a regular employee as defined by section 2105 of this title or an individual employed regularly by the government of the District of Columbia, whose pay is fixed at a daily or hourly rate, or on a piece-work basis, is relieved or prevented from working on a day—

(1) on which agencies are closed by Executive order, or, for individuals employed by the government of the District of Columbia, by order of the Mayor;

(2) by administrative order under regulations issued by the President, or, for individuals employed by the government of the District of Columbia, by the Council of the District of Columbia; or

(3) solely because of the occurrence of a legal public holiday under section 6103 of this title, or a day declared a holiday by Federal statute, Executive order, or, for individuals employed by the government of the District of Columbia, by order of the Mayor;

he is entitled to the same pay for that day as for a day on which an ordinary day's work is performed.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 516; Pub. L. 90–623, § 1(15), Oct. 22, 1968, 82 Stat. 1313; Pub. L. 96–54, § 2(a)(38), Aug. 14, 1979, 93 Stat. 383.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 86a.	June 29, 1938, ch. 818, § 1, 52 Stat. 1246. June 11, 1954, ch. 283, 68 Stat. 249. July 18, 1958, Pub. L. 85–533, § 2, 72 Stat. 377.

The enumeration of holidays is eliminated as unnecessary in view of section 6103.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1979—Pub. L. 96–54 substituted ''Mayor'' for ''Commissioner'' in pars. (1) and (3), and ''Council of the District of Columbia'' for ''District of Columbia Council'' in par. (2).

1968—Pub. L. 90–623 substituted ''Commissioner'' for ''Board of Commissioners'' in pars. (1) and (3), and ''District of Columbia Council'' for ''Board of Commissioners'' in par. (2).

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.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–623 intended to restate without substantive change the law in effect on Oct. 22, 1968, see section 6 of Pub. L. 90–623, set out as a note under section 5334 of this title.

EX. ORD. NO. 10552. DELEGATION OF AUTHORITY TO PROMULGATE REGULATIONS

Ex. Ord. No. 10552, Aug. 10, 1954, 19 F.R. 5079, as amended by Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, provided:

By virtue of the authority vested in me by section 301 of title 3 of the United States Code, 65 Stat. 713, it is declared that the Office of Personnel Management be, and it is hereby, designated and empowered to exercise, without the approval, ratification, or other action of the President, the authority vested in the President by the joint resolution of June 29, 1938, 52 Stat. 1246, as amended by the act of June 11, 1954, 68 Stat. 249 [this section], to promulgate regulations under which certain employees of the Government may be prevented or relieved from working by administrative order.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6124 of this title.

§ 6105. Closing of Executive departments

An Executive department may not be closed as a mark to the memory of a deceased former official of the United States.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 516.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 28.	Mar. 3, 1893, ch. 211, § 4, 27 Stat. 715.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

§ 6106. Time clocks; restrictions

A recording clock may not be used to record time of an employee of an Executive department in the District of Columbia, except that the Bureau of Engraving and Printing may use such recording clocks.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 516; Pub. L. 97–221, § 6(a), July 23, 1982, 96 Stat. 234.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 27.	Feb. 24, 1899, ch. 187, § 1 (14th par. on p. 864), 30 Stat. 864.

The words ''District of Columbia'' are substituted for ''Washington'' as a clearer statement.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1982—Pub. L. 97–221 substituted ''District of Columbia, except that the Bureau of Engraving and Printing may use such recording clocks'' for ''District of Columbia''.

EFFECTIVE DATE OF 1982 AMENDMENT

Section 6(b) of Pub. L. 97–221 provided that: ''The amendment made by this section [amending this section] shall take effect October 1, 1982. Section 5 of this Act [set out in the Termination Date of 1982 Amendment note under section 6101 of this title] shall not apply to the amendment made by this section.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6125 of this title.

SUBCHAPTER II—FLEXIBLE AND COMPRESSED WORK SCHEDULES

AMENDMENTS

1982—Pub. L. 97–221, § 2(a)(2), July 23, 1982, 96 Stat. 227, added subchapter II heading as part of enactment of sections 6120 to 6133 of this title.

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 3401 of this title; title 25 section 1616i.

§ 6120. Purpose

The Congress finds that the use of flexible and compressed work schedules has the potential to improve productivity in the Federal Government and provide greater service to the public.

(Added Pub. L. 97–221, § 2(a)(2), July 23, 1982, 96 Stat. 227.)

EXPANDING FAMILY-FRIENDLY WORK ARRANGEMENTS IN EXECUTIVE BRANCH

Memorandum of President of the United States, July 11, 1994, 59 F.R. 36017, provided:

Memorandum for the Heads of Executive Departments and Agencies

In order to recruit and retain a Federal work force that will provide the highest quality of service to the American people, the executive branch must implement flexible work arrangements to create a ''family-friendly'' workplace. Broad use of flexible work arrangements to enable Federal employees to better balance their work and family responsibilities can increase employee effectiveness and job satisfaction, while decreasing turnover rates and absenteeism. I therefore adopt the National Performance Review's recommendation that a more family-friendly workplace be created by expanding opportunities for Federal workers to participate in flexible work arrangements, consistent with the mission of the executive branch to serve the public.

The head of each executive department or agency (hereafter collectively ''agency'' or ''agencies'') is hereby directed to establish a program to encourage and support the expansion of flexible family-friendly work arrangements, including: job sharing; career part-time employment; alternative work schedules; telecommuting and satellite work locations. Such a program shall include:

(1) identifying agency positions that are suitable for flexible work arrangements;

(2) adopting appropriate policies to increase the opportunities for employees in suitable positions to participate in such flexible work arrangements;

(3) providing appropriate training and support necessary to implement flexible work arrangements; and

(4) identifying barriers to implementing this directive and providing recommendations for addressing such barriers to the President's Management Council.

I direct the Director of the Office of Personnel Management (''OPM'') and the Administrator of General Services (''GSA'') to take all necessary steps to support and encourage the expanded implementation of flexible work arrangements. The OPM and GSA shall work in concert to promptly review and revise regulations that are barriers to such work arrangements and develop legislative proposals, as needed, to achieve the goals of this directive. The OPM and GSA also shall assist agencies, as requested, to implement this directive.

The President's Management Council, in conjunction with the Office of Management and Budget, shall ensure that any guidance necessary to implement the actions set forth in this directive is provided.

Independent agencies are requested to adhere to this directive to the extent permitted by law.

This directive is for the internal management of the executive branch and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

The Director of the Office of Management and Budget is authorized and directed to publish this directive in the Federal Register.

WILLIAM J. CLINTON.

§ 6121. Definitions

For purposes of this subchapter—

(1) ''agency'' means any Executive agency, any military department, the Government Printing Office, and the Library of Congress;

(2) ''employee'' has the meaning given it by section 2105 of this title;

(3) ''basic work requirement'' means the number of hours, excluding overtime hours, which an employee is required to work or is required to account for by leave or otherwise;

(4) ''credit hours'' means any hours, within a flexible schedule established under section 6122 of this title, which are in excess of an employee's basic work requirement and which the employee elects to work so as to vary the length of a workweek or a workday;

(5) ''compressed schedule'' means—

(A) in the case of a full-time employee, an 80-hour biweekly basic work requirement which is scheduled for less than 10 workdays, and

(B) in the case of a part-time employee, a biweekly basic work requirement of less than 80 hours which is scheduled for less than 10 workdays;

(6) ''overtime hours'', when used with respect to flexible schedule programs under sections 6122 through 6126 of this title, means all hours in excess of 8 hours in a day or 40 hours in a week which are officially ordered in advance, but does not include credit hours;

(7) ''overtime hours'', when used with respect to compressed schedule programs under sections 6127 and 6128 of this title, means any hours in excess of those specified hours which constitute the compressed schedule; and

(8) ''collective bargaining'', ''collective bargaining agreement'', and ''exclusive representative'' have the same meanings given such terms—

(A) by section 7103(a)(12), (8), and (16) of this title, respectively, in the case of any unit covered by chapter 71 of this title; and

(B) in the case of any other unit, by the corresponding provisions applicable under the personnel system covering this unit.

(Added Pub. L. 97–221, § 2(a)(2), July 23, 1982, 96 Stat. 227; amended Pub. L. 101–163, title III, § 312, Nov. 21, 1989, 103 Stat. 1065.)

AMENDMENTS

1989—Par. (1). Pub. L. 101–163 inserted ''the Government Printing Office,'' after ''military department,''.

§ 6122. Flexible schedules; agencies authorized to use

(a) Notwithstanding section 6101 of this title, each agency may establish, in accordance with this subchapter, programs which allow the use of flexible schedules which include—

(1) designated hours and days during which an employee on such a schedule must be present for work; and

(2) designated hours during which an employee on such a schedule may elect the time of such employee's arrival at and departure from work, solely for such purpose or, if and to the extent permitted, for the purpose of accumulating credit hours to reduce the length of the workweek or another workday.

An election by an employee referred to in paragraph (2) shall be subject to limitations generally prescribed to ensure that the duties and requirements of the employee's position are fulfilled.

(b) Notwithstanding any other provision of this subchapter, but subject to the terms of any written agreement referred to in section 6130(a) of this title, if the head of an agency determines that any organization within the agency which is participating in a program under subsection (a) is being substantially disrupted in carrying out its functions or is incurring additional costs because of such participation, such agency head may—

(1) restrict the employees' choice of arrival and departure time,

(2) restrict the use of credit hours, or

(3) exclude from such program any employee or group of employees.

(Added Pub. L. 97–221, § 2(a)(2), July 23, 1982, 96 Stat. 228.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6121, 6123, 6124, 6125, 6126, 6132 of this title.

§ 6123. Flexible schedules; computation of premium pay

(a) For purposes of determining compensation for overtime hours in the case of an employee participating in a program under section 6122 of this title—

(1) the head of an agency may, on request of the employee, grant the employee compensatory time off in lieu of payment for such overtime hours, whether or not irregular or occasional in nature and notwithstanding the provisions of sections 5542(a), 5543(a)(1) and section[1] 5544(a) of this title, section 7453(e) of title 38, section 7 of the Fair Labor Standards Act (29 U.S.C. 207), or any other provision of law; or

(2) the employee shall be compensated for such overtime hours in accordance with such provisions, as applicable.

(b) Notwithstanding the provisions of law referred to in subsection (a)(1) of this section, an employee shall not be entitled to be compensated for credit hours worked except to the extent authorized under section 6126 of this title or to the extent such employee is allowed to have such hours taken into account with respect to the employee's basic work requirement.

(c)(1) Notwithstanding section 5545(a) of this title, premium pay for nightwork will not be paid to an employee otherwise subject to such section solely because the employee elects to work credit hours, or elects a time of arrival or departure, at a time of day for which such premium pay is otherwise authorized, except that—

(A) if an employee is on a flexible schedule under which—

(i) the number of hours during which such employee must be present for work, plus

(ii) the number of hours during which such employee may elect to work credit hours or elect the time of arrival at and departure from work,

which occur outside of the nightwork hours designated in or under such section 5545(a) total less than 8 hours, such premium pay shall be paid for those hours which, when combined with such total, do not exceed 8 hours, and

(B) if an employee is on a flexible schedule under which the hours that such employee must be present for work include any hours designated in or under such section 5545(a), such premium pay shall be paid for such hours so designated.

(2) Notwithstanding section 5343(f) of this title, and section 7453(b) of title 38, night differential will not be paid to any employee otherwise subject to either of such sections solely because such employee elects to work credit hours, or elects a time of arrival or departure, at a time of day for which night differential is otherwise authorized, except that such differential shall be paid to an employee on a flexible schedule under this subchapter—

(A) in the case of an employee subject to subsection (f) of such section 5343, for which all or a majority of the hours of such schedule for any day fall between the hours specified in such subsection, or

(B) in the case of an employee subject to subsection (b) of such section 7453, for which 4 hours of such schedule fall between the hours specified in such subsection.

(Added Pub. L. 97–221, § 2(a)(2), July 23, 1982, 96 Stat. 228; amended Pub. L. 102–40, title IV, § 403(c)(2), May 7, 1991, 105 Stat. 240; Pub. L. 102–378, § 2(44)(D), Oct. 2, 1992, 106 Stat. 1352.)

AMENDMENTS

1992—Subsec. (a)(1). Pub. L. 102–378 substituted ''5543(a)(1) and section 5544(a)'' for ''5543(a)(1), 5544(a), and 5550''.

1991—Subsec. (a)(1). Pub. L. 102–40, § 403(c)(2)(A), substituted ''section 7453(e)'' for ''section 4107(e)(5)''.

[1] So in original. The word ''section'' probably should not appear.

Subsec. (c)(2). Pub. L. 102–40, § 403(c)(2)(B), in introductory provisions substituted ''section 7453(b)'' for ''section 4107(e)(2)'' and in subpar. (B) substituted ''subsection (b) of such section 7453'' for ''subsection (e)(2) of such section 4107''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6121, 6130, 6132 of this title.

§ 6124. Flexible schedules; holidays

Notwithstanding sections 6103 and 6104 of this title, if any employee on a flexible schedule under section 6122 of this title is relieved or prevented from working on a day designated as a holiday by Federal statute or Executive order, such employee is entitled to pay with respect to that day for 8 hours (or, in the case of a part-time employee, an appropriate portion of the employee's biweekly basic work requirement as determined under regulations prescribed by the Office of Personnel Management).

(Added Pub. L. 97–221, § 2(a)(2), July 23, 1982, 96 Stat. 229.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6121, 6132 of this title.

§ 6125. Flexible schedules; time-recording devices

Notwithstanding section 6106 of this title, the Office of Personnel Management or any agency may use recording clocks as part of programs under section 6122 of this title.

(Added Pub. L. 97–221, § 2(a)(2), July 23, 1982, 96 Stat. 229.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6121, 6132 of this title.

§ 6126. Flexible schedules; credit hours; accumulation and compensation

(a) Subject to any limitation prescribed by the Office of Personnel Management or the agency, a full-time employee on a flexible schedule can accumulate not more than 24 credit hours, and a part-time employee can accumulate not more than one-fourth of the hours in such employee's biweekly basic work requirement, for carryover from a biweekly pay period to a succeeding biweekly pay period for credit to the basic work requirement for such period.

(b) Any employee who is on a flexible schedule program under section 6122 of this title and who is no longer subject to such a program shall be paid at such employee's then current rate of basic pay for—

(1) in the case of a full-time employee, not more than 24 credit hours accumulated by such employee, or

(2) in the case of a part-time employee, the number of credit hours (not in excess of one-fourth of the hours in such employee's biweekly basic work requirement) accumulated by such employee.

(Added Pub. L. 97–221, § 2(a)(2), July 23, 1982, 96 Stat. 230.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6121, 6123, 6132 of this title.

§ 6127. Compressed schedules; agencies authorized to use

(a) Notwithstanding section 6101 of this title, each agency may establish programs which use a 4-day workweek or other compressed schedule.

(b)(1) An employee in a unit with respect to which an organization of Government employees has not been accorded exclusive recognition shall not be required to participate in any program under subsection (a) unless a majority of the employees in such unit who, but for this paragraph, would be included in such program have voted to be so included.

(2) Upon written request to any agency by an employee, the agency, if it determines that participation in a program under subsection (a) would impose a personal hardship on such employee, shall—

(A) except such employee from such program; or

(B) reassign such employee to the first position within the agency—

(i) which becomes vacant after such determination,

(ii) which is not included within such program,

(iii) for which such employee is qualified, and

(iv) which is acceptable to the employee.

A determination by an agency under this paragraph shall be made not later than 10 days after the day on which a written request for such determination is received by the agency.

(Added Pub. L. 97–221, § 2(a)(2), July 23, 1982, 96 Stat. 230.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6121, 6132 of this title.

§ 6128. Compressed schedules; computation of premium pay

(a) The provisions of sections 5542(a) and 5544(a) of this title, section 7453(e) of title 38, section 7 of the Fair Labor Standards Act (29 U.S.C. 207), or any other law, which relate to premium pay for overtime work, shall not apply to the hours which constitute a compressed schedule.

(b) In the case of any full-time employee, hours worked in excess of the compressed schedule shall be overtime hours and shall be paid for as provided by the applicable provisions referred to in subsection (a) of this section. In the case of any part-time employee on a compressed schedule, overtime pay shall begin to be paid after the same number of hours of work after which a full-time employee on a similar schedule would begin to receive overtime pay.

(c) Notwithstanding section 5544(a) or 5546(a) of this title, or any other applicable provision of law, in the case of any full-time employee on a compressed schedule who performs work (other than overtime work) on a tour of duty for any workday a part of which is performed on a Sunday, such employee is entitled to pay for work performed during the entire tour of duty at the rate of such employee's basic pay, plus premium pay at a rate equal to 25 percent of such basic pay rate.

(d) Notwithstanding section 5546(b) of this title, an employee on a compressed schedule who performs work on a holiday designated by Federal statute or Executive order is entitled to pay at the rate of such employee's basic pay, plus premium pay at a rate equal to such basic pay rate, for such work which is not in excess of the basic work requirement of such employee for such day. For hours worked on such a holiday in excess of the basic work requirement for such day, the employee is entitled to premium pay in accordance with the provisions of section 5542(a) or 5544(a) of this title, as applicable, or the provisions of section 7 of the Fair Labor Standards Act (29 U.S.C. 207) whichever provisions are more beneficial to the employee.

(Added Pub. L. 97–221, § 2(a)(2), July 23, 1982, 96 Stat. 230; amended Pub. L. 102–40, title IV, § 403(c)(3), May 7, 1991, 105 Stat. 240; Pub. L. 102–378, § 2(44)(E), Oct. 2, 1992, 106 Stat. 1352.)

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–378, § 2(44)(E)(i), substituted ''5542(a) and 5544(a)'' for ''5542(a), 5544(a), and 5550(2)''.

Subsec. (c). Pub. L. 102–378, § 2(44)(E)(ii), substituted ''5544(a) or 5546(a)'' for ''5544(a), 5546(a), or 5550(1)''.

1991—Subsec. (a). Pub. L. 102–40 substituted ''section 7453(e)'' for ''section 4107(e)(5)''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6121, 6130 of this title.

§ 6129. Administration of leave and retirement provisions

For purposes of administering sections 6303(a), 6304, 6307(a) and (d), 6323, 6326, 6327,[1] and 8339(m) of this title, in the case of an employee who is in any program under this subchapter, references to a day or workday (or to multiples or parts thereof) contained in such sections shall be considered to be references to 8 hours (or to the respective multiples or parts thereof).

(Added Pub. L. 97–221, § 2(a)(2), July 23, 1982, 96 Stat. 231; amended Pub. L. 103–329, title VI, § 629(a)(2)(A), (b)(2), Sept. 30, 1994, 108 Stat. 2423.)

REFERENCES IN TEXT

Section 6327 of this title, referred to in text, probably means the section 6327 added by section 629(a)(1) of Pub. L. 103–329.

AMENDMENTS

1994—Pub. L. 103–329 substituted ''6307(a) and (d)'' for ''6307(a) and (c)'' and inserted ''6327,'' after ''6326,''.

§ 6130. Application of programs in the case of collective bargaining agreements

(a)(1) In the case of employees in a unit represented by an exclusive representative, any flexible or compressed work schedule, and the establishment and termination of any such schedule, shall be subject to the provisions of this subchapter and the terms of a collective bargaining agreement between the agency and the exclusive representative.

(2) Employees within a unit represented by an exclusive representative shall not be included within any program under this subchapter except to the extent expressly provided under a collective bargaining agreement between the agency and the exclusive representative.

(b) An agency may not participate in a flexible or compressed schedule program under a collective bargaining agreement which contains premium pay provisions which are inconsistent with the provisions of section 6123 or 6128 of this title, as applicable.

(Added Pub. L. 97–221, § 2(a)(2), July 23, 1982, 96 Stat. 231.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6122 of this title.

§ 6131. Criteria and review

(a) Notwithstanding the preceding provisions of this subchapter or any collective bargaining agreement and subject to subsection (c) of this section, if the head of an agency finds that a particular flexible or compressed schedule under this subchapter has had or would have an adverse agency impact, the agency shall promptly determine not to—

(1) establish such schedule; or

(2) continue such schedule, if the schedule has already been established.

(b) For purposes of this section, ''adverse agency impact'' means—

(1) a reduction of the productivity of the agency;

(2) a diminished level of services furnished to the public by the agency; or

(3) an increase in the cost of agency operations (other than a reasonable administrative cost relating to the process of establishing a flexible or compressed schedule).

(c)(1) This subsection shall apply in the case of any schedule covering employees in a unit represented by an exclusive representative.

(2)(A) If an agency and an exclusive representative reach an impasse in collective bargaining with respect to an agency determination under subsection (a)(1) not to establish a flexible or compressed schedule, the impasse shall be presented to the Federal Service Impasses Panel (hereinafter in this section referred to as the ''Panel'').

(B) The Panel shall promptly consider any case presented under subparagraph (A), and shall take final action in favor of the agency's determination if the finding on which it is based is supported by evidence that the schedule is likely to cause an adverse agency impact.

(3)(A) If an agency and an exclusive representative have entered into a collective bargaining agreement providing for use of a flexible or compressed schedule under this subchapter and the head of the agency determines under subsection (a)(2) to terminate a flexible or compressed schedule, the agency may reopen the agreement to seek termination of the schedule involved.

(B) If the agency and exclusive representative reach an impasse in collective bargaining with respect to terminating such schedule, the impasse shall be presented to the Panel.

(C) The Panel shall promptly consider any case presented under subparagraph (B), and shall

[1] See References in Text note below.

rule on such impasse not later than 60 days after the date the Panel is presented the impasse. The Panel shall take final action in favor of the agency's determination to terminate a schedule if the finding on which the determination is based is supported by evidence that the schedule has caused an adverse agency impact.

(D) Any such schedule may not be terminated until—

(i) the agreement covering such schedule is renegotiated or expires or terminates pursuant to the terms of that agreement; or

(ii) the date of the Panel's final decision, if an impasse arose in the reopening of the agreement under subparagraph (A) of this paragraph.

(d) This section shall not apply with respect to flexible schedules that may be established without regard to the authority provided under this subchapter.

(Added Pub. L. 97–221, §2(a)(2), July 23, 1982, 96 Stat. 231.)

§ 6132. Prohibition of coercion

(a) An employee may not directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any other employee for the purpose of interfering with—

(1) such employee's rights under sections 6122 through 6126 of this title to elect a time of arrival or departure, to work or not to work credit hours, or to request or not to request compensatory time off in lieu of payment for overtime hours; or

(2) such employee's right under section 6127(b)(1) of this title to vote whether or not to be included within a compressed schedule program or such employee's right to request an agency determination under section 6127(b)(2) of this title.

(b) For the purpose of subsection (a), the term ''intimidate, threaten, or coerce'' includes, but is not limited to, promising to confer or conferring any benefit (such as appointment, promotion, or compensation), or effecting or threatening to effect any reprisal (such as deprivation of appointment, promotion, or compensation).

(Added Pub. L. 97–221, §2(a)(2), July 23, 1982, 96 Stat. 232.)

§ 6133. Regulations; technical assistance; program review

(a) The Office of Personnel Management shall prescribe regulations necessary for the administration of the programs established under this subchapter.

(b)(1) The Office shall provide educational material, and technical aids and assistance, for use by an agency in connection with establishing and maintaining programs under this subchapter.

(2) In order to provide the most effective materials, aids, and assistance under paragraph (1), the Office shall conduct periodic reviews of programs established by agencies under this subchapter particularly insofar as such programs may affect—

(A) the efficiency of Government operations;

(B) mass transit facilities and traffic;

(C) levels of energy consumption;

(D) service to the public;

(E) increased opportunities for full-time and part-time employment; and

(F) employees' job satisfaction and nonwork-life.

(c)(1) With respect to employees in the Library of Congress, the authority granted to the Office of Personnel Management under this subchapter shall be exercised by the Librarian of Congress.

(2) With respect to employees in the Government Printing Office, the authority granted to the Office of Personnel Management under this subchapter shall be exercised by the Public Printer.

(Added Pub. L. 97–221, §2(a)(2), July 23, 1982, 96 Stat. 233; amended Pub. L. 101–163, title III, §312, Nov. 21, 1989, 103 Stat. 1065.)

AMENDMENTS

1989—Subsec. (c). Pub. L. 101–163 designated existing provisions as par. (1) and added par. (2).

CHAPTER 63—LEAVE

SUBCHAPTER I—ANNUAL AND SICK LEAVE

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6305. Home leave; leave for Chiefs of Missions; leave for crews of vessels.
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[6309. Repealed.]
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6327.[1] Absence in connection with funerals of fellow Federal law enforcement officers.[2]

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6337. Accrual of leave.
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[1] So in original. Two sections 6327 have been enacted.

[2] Editorially supplied. Section added by Pub. L. 103–329 without corresponding amendment of chapter analysis.

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6383. Certification.
6384. Employment and benefits protection.
6385. Prohibition of coercion.
6386. Health insurance.
6387. Regulations.

AMENDMENTS

1994—Pub. L. 103–329, title VI, § 629(a)(2)(B), Sept. 30, 1994, 108 Stat. 2423, added item 6327 relating to absence in connection with serving as a bone-marrow or organ donor.

1993—Pub. L. 103–103, § 5(a)(2), Oct. 8, 1993, 107 Stat. 1023, substituted ''Authority to participate in both programs'' for ''Limitation on employee participation'' in item 6373.

Pub. L. 103–3, title II, § 201(a)(2), Feb. 5, 1993, 107 Stat. 23, added heading of subchapter V and items 6381 to 6387.

1990—Pub. L. 101–508, title VII, § 7202(i)(2), Nov. 5, 1990, 104 Stat. 1388–337, inserted ''and nonappropriated fund'' after ''office'' in item 6312.

1988—Pub. L. 100–566, § 2(d)(1)(B), Oct. 31, 1988, 102 Stat. 2844, which provided that the table of sections for subchapters III and IV were to be repealed effective 5 years after Oct. 31, 1988, was repealed by Pub. L. 103–103, § 2, Oct. 8, 1993, 107 Stat. 1022, effective Oct. 30, 1993.

Pub. L. 100–566, § 2(b), Oct. 31, 1988, 102 Stat. 2843, added heading of subchapter III and items 6331 to 6340 and heading of subchapter IV and items 6361 to 6373.

1975—Pub. L. 94–183, § 2(27), Dec. 31, 1975, 89 Stat. 1058, struck out item 6309 ''Leave of absence; rural carriers''.

1970—Pub. L. 91–563, § 1(b), Dec. 19, 1970, 84 Stat. 1476, included witness service and official duty status for certain witness service in item 6322.

1968—Pub. L. 90–588, § 1(b), Oct. 17, 1968, 82 Stat. 1151, added item 6326.

Pub. L. 90–367, § 2(b), June 29, 1968, 82 Stat. 277, added item 6312.

1967—Pub. L. 90–221, § 3(b), Dec. 23, 1967, 81 Stat. 671, added item 6325.

1966—Pub. L. 89–747, § 1(3), Nov. 2, 1966, 80 Stat. 1179, inserted reference to leave for crews of vessels in item 6305.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 4703 of this title; title 20 section 241; title 24 section 225e; title 25 sections 2011, 2012.

SUBCHAPTER I—ANNUAL AND SICK LEAVE

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 5508, 5551, 6332, 6337, 6362, 6382, 8339 of this title; title 7 section 1766c; title 20 section 241; title 22 section 3942; title 28 sections 153, 156, 603, 631, 634, 712, 752, 794; title 42 section 242*l*.

§ 6301. Definitions

For the purpose of this subchapter—

(1) ''United States'', when used in a geographical sense means the several States and the District of Columbia; and

(2) ''employee'' means—

(A) an employee as defined by section 2105 of this title; and

(B) an individual first employed by the government of the District of Columbia before October 1, 1987;

but does not include—

(i) a teacher or librarian of the public schools of the District of Columbia;

(ii) a part-time employee who does not have an established regular tour of duty during the administrative workweek;

(iii) a temporary employee engaged in construction work at an hourly rate;

(iv) an employee of the Panama Canal Commission when employed on the Isthmus of Panama;

(v) a physician, dentist, or nurse in the Veterans Health Administration of the Department of Veterans Affairs;

(vi) an employee of either House of Congress or of the two Houses;

(vii) an employee of a corporation supervised by the Farm Credit Administration if private interests elect or appoint a member of the board of directors;

(viii) an alien employee who occupies a position outside the United States, except as provided by section 6310 of this title;

(ix) a ''teacher'' or an individual holding a ''teaching position'' as defined by section 901 of title 20;

(x) an officer in the executive branch or in the government of the District of Columbia who is appointed by the President and whose rate of basic pay exceeds the highest rate payable under section 5332 of this title;

(xi) an officer in the executive branch or in the government of the District of Columbia who is designated by the President, except a postmaster, United States attorney, or United States marshal;

(xii) a chief of mission (as defined in section 102(a)(3) of the Foreign Service Act of 1980); or

(xiii) an officer in the legislative or judicial branch who is appointed by the President.

Notwithstanding clauses (x)–(xii) of paragraph (2), the term ''employee'' includes any member of the Senior Foreign Service or any Foreign Service officer (other than a member or officer serving as chief of mission or in a position which requires appointment by and with the advice and consent of the Senate) and any member of the Foreign Service commissioned as a diplomatic or consular officer, or both, under section 312 of the Foreign Service Act of 1980.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 517; Pub. L. 91–375, § 6(c)(17), Aug. 12, 1970, 84 Stat. 776; Pub. L. 95–519, § 1, Oct. 25, 1978, 92 Stat. 1819; Pub. L. 96–70, title III, § 3302(e)(2), Sept. 27, 1979, 93 Stat. 498; Pub. L. 96–465, title II, §§ 2312(a), 2314(f)(1), Oct. 17, 1980, 94 Stat. 2166, 2168; Pub. L. 99–335,

title II, § 207(c)(1), formerly § 207(c), June 6, 1986, 100 Stat. 595, renumbered § 207(c)(1), Pub. L. 99–556, title II, § 201(1), Oct. 27, 1986, 100 Stat. 3135; Pub. L. 102–54, § 13(b)(2), June 13, 1991, 105 Stat. 274.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(1)	5 U.S.C. 2061(d).	Sept. 6, 1960, Pub. L. 86–707, § 402(c), 74 Stat. 800.
(2)	5 U.S.C. 2061(a), (b), (c)(1) (less last sentence).	Oct. 30, 1951, ch. 631, § 202, 65 Stat. 679. July 2, 1953, ch. 178, § 1 ''(c)(1) (less last sentence)'', 67 Stat. 136. Sept. 6, 1960, Pub. L. 86–707, § 402(a), 74 Stat. 800. Aug. 21, 1964, Pub. L. 88–471, § 6(a), 78 Stat. 583.
	5 U.S.C. 2067.	Aug. 21, 1964, Pub. L. 88–471, § 1, 78 Stat. 582.
	5 U.S.C. 2358(a) (less applicability to the Federal Employees Pay Act of 1945, as amended).	July 17, 1959, Pub. L. 86–91, § 10(a) (less applicability to the Federal Employees Pay Act of 1945, as amended), 73 Stat. 217.

In paragraph (1), the words ''when used in a geographical sense'' are added for clarity.

In paragraph (2), the words ''an employee as defined by section 2105 of this title'' are coextensive with and substituted for ''civilian officers and employees of the United States . . . including officers and employees of corporations wholly owned or controlled by the United States''. Specific reference to officers and members of the Metropolitan Police force of the District of Columbia, the Fire Department of the District of Columbia, the United States Park Police force, and the White House Police force, as set forth in former section 2067, is omitted as unnecessary in view of the provisions of paragraph (2)(A), (B). The exception for ''commissioned officers of the Public Health Service'' and ''commissioned officers of the Coast and Geodetic Survey'' in former section 2061(b)(1)(E), (F) is omitted as unnecessary since these officers are excluded by the definition of the word ''employee'' in section 2105.

In paragraph (2)(ix), the words ''as defined by section 901 of title 20'' are added on authority of former section 2351, which section is scheduled for transfer to section 901 of title 20.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

REFERENCES IN TEXT

Section 102(a)(3) of the Foreign Service Act of 1980, referred to in par. (2)(xii), was redesignated section 102(3) of that Act by Pub. L. 98–164, which struck out the designation ''(a)'' and struck out subsec. (b) of section 102. Section 102 is classified to section 3902 of Title 22, Foreign Relations and Intercourse.

Section 312 of the Foreign Service Act of 1980, referred to in text, is classified to section 3952 of Title 22.

AMENDMENTS

1991—Par. (2)(v). Pub. L. 102–54 substituted ''Veterans Health Administration of the Department of Veterans Affairs'' for ''Department of Medicine and Surgery, Veterans' Administration''.

1986—Par. (2)(B). Pub. L. 99–335 amended subpar. (B) generally, substituting ''first employed'' for ''employed'' and inserting ''before October 1, 1987''.

1980—Pub. L. 96–465, § 2312(a), inserted provision at end of par. (2) extending definition of ''employee'' notwithstanding cls. (x) to (xii) of par. (2).

Par. (2)(xii). Pub. L. 96–465, § 2314(f)(1), substituted ''a chief of mission (as defined in section 102(a)(3) of the Foreign Service Act of 1980)'' for ''an officer who receives pay under section 866 of title 22''.

1979—Par. (2)(iv). Pub. L. 96–70 substituted ''Panama Canal Commission'' for ''Canal Zone Government or the Panama Canal Company''.

1978—Par. (2)(xiii). Pub. L. 95–519 added cl. (xiii).

1970—Par. (2)(ii). Pub. L. 91–375 struck out '', except an hourly employee in the postal field service,'' after ''part-time employee''.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–335 effective Jan. 1, 1987, see section 702(a) of Pub. L. 99–335, set out as an Effective Date note under section 8401 of this title.

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. 96–70 effective Oct. 1, 1979, see section 3304 of Pub. L. 96–70, set out as an Effective Date note under section 3601 of Title 22, Foreign Relations and Intercourse.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–519 effective beginning on first day of first applicable pay period beginning on or after Oct. 25, 1978, see section 4(a) of Pub. L. 95–519, set out as a note under section 5551 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–375 effective within 1 year after Aug. 12, 1970, on date established therefor by Board of Governors of United States Postal Service and published by it in Federal Register, see section 15(a) of Pub. L. 91–375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

SHORT TITLE OF 1994 AMENDMENT

Pub. L. 103–388, § 1, Oct. 22, 1994, 108 Stat. 4079, provided that: ''This Act [amending section 6307 of this title] may be cited as the 'Federal Employees Family Friendly Leave Act'.''

SHORT TITLE OF 1993 AMENDMENT

Pub. L. 103–103, § 1, Oct. 8, 1993, 107 Stat. 1022, provided that: ''This Act [amending sections 6331, 6337, 6361, 6362, and 6373 of this title, enacting provisions set out as notes under section 6331 of this title, and repealing provisions set out as a note under section 6331 of this title] may be cited as the 'Federal Employees Leave Sharing Amendments Act of 1993'.''

SHORT TITLE OF 1988 AMENDMENT

Pub. L. 100–566, § 1, Oct. 31, 1988, 102 Stat. 2834, provided that: ''This Act [enacting subchapters III and IV of this chapter, amending sections 5724 and 8112 of this title, and enacting provisions set out as notes under section 6331 of this title] may be cited as the 'Federal Employees Leave Sharing Act of 1988'.''

EMPLOYEES OF THE DISTRICT OF COLUMBIA

Pub. L. 99–335, title II, § 207(c)(2), as added Pub. L. 99–556, title II, § 201, Oct. 27, 1986, 100 Stat. 3135, provided that: ''The amendment made by paragraph (1) [amending this section] shall not result in the coverage, under subchapter I of chapter 63 of title 5, United States Code, of any individual (or class of individuals) employed by the government of the District of Columbia who would not have been covered under such subchapter if such amendment had not been made.''

EXECUTIVE ORDER NO. 10540

Ex. Ord. No. 10540, June 29, 1954, 19 F.R. 3983, which related to the designation of certain officers as exempt from the Annual and Sick Leave Act of 1951, was re-

voked by section 2–201 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out as a note under section 1101 of this title.

CROSS REFERENCES

Leave, members of armed forces, entitlement and accumulation, see section 701 et seq. of Title 10, Armed Forces.

Leaves of absence in United States to personnel of Department of Veterans Affairs assigned to the Republic of the Philippines, see section 707 of Title 38, Veterans' Benefits.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5551, 6302, 6305, 6306, 6308, 6325, 6331, 6361, 6381, 8339 of this title.

§ 6302. General provisions

(a) The days of leave provided by this subchapter are days on which an employee would otherwise work and receive pay and are exclusive of holidays and nonworkdays established by Federal statute, Executive order, or administrative order.

(b) For the purpose of this subchapter an employee is deemed employed for a full biweekly pay period if he is employed during the days within that period, exclusive of holidays and nonworkdays established by Federal statute, Executive order, or administrative order, which fall within his basic administrative workweek.

(c) A part-time employee, unless otherwise excepted, is entitled to the benefits provided by subsection (d) of this section and sections 6303, 6304(a), (b), 6305(a), 6307, and 6310 of this title on a pro rata basis.

(d) The annual leave provided by this subchapter, including annual leave that will accrue to an employee during the year, may be granted at any time during the year as the head of the agency concerned may prescribe.

(e) If an officer excepted from this subchapter by section 6301(2)(x)–(xiii) of this title, without a break in service, again becomes subject to this subchapter on completion of his service as an excepted officer, the unused annual and sick leave standing to his credit when he was excepted from this subchapter is deemed to have remained to his credit.

(f) An employee who uses excess annual leave credited because of administrative error may elect to refund the amount received for the days of excess leave by lump-sum or installment payments or to have the excess leave carried forward as a charge against later-accruing annual leave, unless repayment is waived under section 5584 of this title.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 517; Pub. L. 93–181, § 4, Dec. 14, 1973, 87 Stat. 706; Pub. L. 95–519, § 2, Oct. 25, 1978, 92 Stat. 1819.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(a)–(c)	5 U.S.C. 2064 (less (d), (e)).	Oct. 30, 1951, ch. 631, § 205 (less (d)), 65 Stat. 681.
(d)	5 U.S.C. 2062(h).	Oct. 30, 1951, ch. 631, § 203(h), 65 Stat. 681.
(e)	5 U.S.C. 2061a(b).	July 2, 1953, ch. 178, § 2(b), 67 Stat. 137.

In subsection (d), the words ''the head of the agency concerned'' are substituted for ''the heads of the various departments and independent establishments''.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1978—Subsec. (e). Pub. L. 95–519 substituted ''6301(2)(x)–(xiii)'' for ''6301(2)(x)–(xii)''.

1973—Subsec. (f). Pub. L. 93–181 added subsec. (f).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–519 effective beginning on first day of first applicable pay period beginning on or after Oct. 25, 1978, see section 4(a) of Pub. L. 95–519, set out as a note under section 5551 of this title.

TEMPORARY AUTHORITY TO TRANSFER LEAVE

Pub. L. 101–237, title II, § 206(b)(2), Dec. 18, 1989, 103 Stat. 2068, provided that: ''The authority of the Department of Veterans Affairs under section 618 of the Treasury, Postal Service and General Government Appropriations Act, 1989 [Pub. L. 100–440, set out below], to operate a leave-transfer program for employees subject to section 4108 of title 38, United States Code, is extended until the programs provided for in subsection (e) of such section 4108 (as added by subsection (a) of this section) are implemented, but not later than October 1, 1990.''

Similar provisions were contained in the following acts:

Pub. L. 101–144, title V, § 518, Nov. 9, 1989, 103 Stat. 874.

Pub. L. 101–110, § 1(d), Oct. 6, 1989, 103 Stat. 682.

Pub. L. 100–440, title VI, § 618, Sept. 22, 1988, 102 Stat. 1755, provided that: ''In order to ensure that the experimental use of voluntary leave transfers established under Public Laws 99–500, 99–591 [Pub. L. 99–500, § 101(m) [title VII], Oct. 18, 1986, 100 Stat. 1783–308, 1783–334, and Pub. L. 99–591, § 101(m) [title VII], Oct. 30, 1986, 100 Stat. 3341–308, 3341–334], and 100–202 [Pub. L. 100–202, § 101(m) [title VI, § 625], Dec. 22, 1987, 101 Stat. 1329–390, 1329–430] may continue and may cover additional employees in fiscal year 1989, the Office of Personnel Management may continue to operate by regulation, notwithstanding chapter 63 of title 5, United States Code, a program under which the unused accrued annual leave of officers or employees of the Federal Government may be transferred for use by other officers or employees who need such leave due to a personal emergency as defined in the regulations. The Office may provide by regulation for such exceptions from the provisions of section 7351 of title 5 as the Office may determine appropriate for the transfer of leave under this section. The Veterans' Administration may operate a similar program for employees subject to section 4108 of title 38, United States Code. The programs operated under this section shall expire at the end of fiscal year 1989, but any leave that has been transferred to an officer or employee under the programs shall remain available for use until the personal emergency has ended, and any remaining unused transferred leave shall, to the extent administratively feasible, be restored to the leave accounts of the officers or employees from whose accounts it was originally transferred.''

Similar provisions were contained in the following prior appropriations act:

Pub. L. 100–202, § 101(m) [title VI, § 625], Dec. 22, 1987, 101 Stat. 1329–390, 1329–430.

For provisions ratifying any actions of the Secretary of Veterans Affairs in carrying out section 618 of Pub. L. 100–440, set out above, during the period Dec. 1, 1989 to Dec. 18, 1989, see section 604 of Pub. L. 101–237, set out as a note under section 1720B of Title 38, Veterans' Benefits.

Similar provisions for the period Oct. 1, 1989 to Oct. 6, 1989, were contained in section 3(b) of Pub. L. 101–110, set out as a note under section 1720B of Title 38.

CROSS REFERENCES

Officers to whom this subchapter applies not entitled to pay solely because of their status as officers, see section 5508 of this title.

§ 6303. Annual leave; accrual

(a) An employee is entitled to annual leave with pay which accrues as follows—

(1) one-half day for each full biweekly pay period for an employee with less than 3 years of service;

(2) three-fourths day for each full biweekly pay period, except that the accrual for the last full biweekly pay period in the year is one and one-fourth days, for an employee with 3 but less than 15 years of service; and

(3) one day for each full biweekly pay period for an employee with 15 or more years of service.

In determining years of service, an employee is entitled to credit for all service of a type that would be creditable under section 8332, regardless of whether or not the employee is covered by subchapter III of chapter 83. However, an employee who is a retired member of a uniformed service as defined by section 3501 of this title is entitled to credit for active military service only if—

(A) his retirement was based on disability—

(i) resulting from injury or disease received in line of duty as a direct result of armed conflict; or

(ii) caused by an instrumentality of war and incurred in line of duty during a period of war as defined by sections 101 and 1101 of title 38;

(B) that service was performed in the armed forces during a war, or in a campaign or expedition for which a campaign badge has been authorized; or

(C) on November 30, 1964, he was employed in a position to which this subchapter applies and thereafter he continued to be so employed without a break in service of more than 30 days.

The determination of years of service may be made on the basis of an affidavit of the employee. Leave provided by this subchapter accrues to an employee who is not paid on the basis of biweekly pay periods on the same basis as it would accrue if the employee were paid on the basis of biweekly pay periods.

(b) Notwithstanding subsection (a) of this section, an employee whose current employment is limited to less than 90 days is entitled to annual leave under this subchapter only after being currently employed for a continuous period of 90 days under successive appointments without a break in service. After completing the 90-day period, the employee is entitled to be credited with the leave that would have accrued to him under subsection (a) of this section except for this subsection.

(c) A change in the rate of accrual of annual leave by an employee under this section takes effect at the beginning of the pay period after the pay period, or corresponding period for an employee who is not paid on the basis of biweekly pay periods, in which the employee completed the prescribed period of service.

(d) Leave granted under this subchapter is exclusive of time actually and necessarily occupied in going to or from a post of duty and time necessarily occupied awaiting transportation, in the case of an employee—

(1) to whom section 6304(b) of this title applies;

(2) whose post of duty is outside the United States; and

(3) who returns on leave to the United States, or to his place of residence, which is outside the area of employment, in its territories or possessions including the Commonwealth of Puerto Rico.

This subsection does not apply to more than one period of leave in a prescribed tour of duty at a post outside the United States.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 518; Pub. L. 93–181, §2, Dec. 14, 1973, 87 Stat. 705; Pub. L. 99–335, title II, §207(d), June 6, 1986, 100 Stat. 595; Pub. L. 102–83, §5(c)(2), Aug. 6, 1991, 105 Stat. 406; Pub. L. 102–378, §2(52), Oct. 2, 1992, 106 Stat. 1353.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 2062(a), (b), (e), (i).	Oct. 30, 1951, ch. 631, §203(a), (b), (e), (i), 65 Stat. 679–681. Sept. 6, 1960, Pub. L. 86–707, §401 ''(e)'', 74 Stat. 799. Aug. 19, 1964, Pub. L. 88–448, §203, 78 Stat. 487.
.....	5 U.S.C. 3101 (as applicable to 5 U.S.C. 2062(a)).	Aug. 19, 1964, Pub. L. 88–448, §101 (as applicable to §203), 78 Stat. 484.

In subsection (a), the words ''Except as otherwise provided in this subsection'' are omitted as unnecessary in view of the specific inclusion of the exception in the third sentence. The words ''for the purposes of this subsection'' are omitted as surplusage. The reference to ''section 8332 of this title for the purpose of an annuity under subchapter III of chapter 83 of this title'' is substituted for ''section 3 of the Civil Service Retirement Act for the purposes of an annuity under such Act to reflect the codification of that Act in this title. In paragraph (B), the words ''on November 30, 1964, he was employed in a position to which this subchapter applies and thereafter he continued to be so employed'' are substituted for ''immediately prior to the effective date of this sentence he was employed in a civilian office to which this Act applies and, on and after such date, he continued to be employed in any such office''.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–378 amended second sentence generally. Prior to amendment, second sentence read as follows: ''In determining years of service, an employee is entitled to credit for all service creditable under section 8332 of this title for the purpose of an annuity under subchapter III of chapter 83 of this title and all service creditable under section 8411 of this title for the purpose of chapter 84 of this title.''

1991—Subsec. (a)(A)(ii). Pub. L. 102–83 substituted reference to section 1101 of title 38 for reference to section 301 of title 38.

1986—Subsec. (a). Pub. L. 99–335 inserted ''and all service creditable under section 8411 of this title for the purpose of chapter 84 of this title'' at end of second sentence.

1973—Subsec. (b). Pub. L. 93–181 substituted ''an employee whose current employment is limited to less than 90 days is entitled'' and ''under successive appointments'' for ''an employee is entitled'' and ''under one or more appointments'' respectively.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 9 of Pub. L. 102–378 provided that:

''(a) IN GENERAL.—Except as otherwise provided in this section, this Act and the amendments made by this Act [see Tables for classification] shall take effect as of the date of enactment of this Act [Oct. 2, 1992].

''(b) EXCEPTIONS.—(1) The amendment made by section 4(c) [amending provisions set out as a note under section 31–2 of Title 2, The Congress] shall be effective as of December 31, 1991.

''(2) The amendments made by section 5(d) [amending section 8440d of this title] shall be effective as of December 9, 1991.

''(3) The amendments made by sections 2(13) and 2(17) [amending section 4109 of this title and repealing section 3342 of this title] shall be effective as of October 1, 1991.

''(4) The amendments made by sections 2(11), 2(19), 2(29), and 2(38) [amending sections 3324, 4505a, 5332, and 5403 of this title] shall be effective as of May 4, 1991.

''(5) The amendments made by section 2(25) [amending section 5302 of this title] shall be effective as of February 3, 1991.

''(6) The provisions of section 8(a) and the amendments made by sections 2(57)(A), 2(60), 2(64), 2(67), 2(71), 2(75)(A), 3(1), 3(4), 3(6), and 5(a) [amending sections 5532, 8331, 8335, 8344, 8347, 8425, 8461, 8468, and 8901 of this title, repealing section 5380 of this title, enacting provisions set out as a note under section 5532 of this title, amending provisions set out as notes under sections 2105, 5304, 5305, 5378, and 8348 of this title, and repealing provisions set out as notes under sections 5380 and 5532 of this title] shall be effective as of November 5, 1990.

''(7) The amendment made by section 2(52) [amending this section] shall be effective as of January 1, 1989, except that no amount shall become payable, as a result of the enactment of such amendment, under—

''(A) subchapter VI of chapter 55 of title 5, United States Code, based on a separation that takes effect or an election that is made before the date of enactment of this Act [Oct. 2, 1992]; or

''(B) section 5551(b) of title 5, United States Code, which is attributable to an individual's being excepted from subchapter I of chapter 63 of such title before the date of enactment of this Act.

''(8) The amendment made by section 2(69) [amending section 8440 of this title] shall be effective as of November 10, 1988.

''(9) The amendments made by sections 2(40), 2(41), 2(42), 2(43), and 3(5) [amending sections 5541, 5542, 5544, and 5547 of this title and provisions set out as a note under section 5305 of this title] shall be effective as of the first day of the first applicable pay period beginning on or after the date of enactment of this Act [Oct. 2, 1992].

''(10) The amendments made by section 2(28) [amending section 5314 of this title] shall be effective as of the first day of the first applicable pay period beginning on or after November 5, 1990.

''(11) The amendment made by section 2(49) [amending section 5724 of this title] shall apply with respect to a separation that takes effect on or after the date of enactment of this Act [Oct. 2, 1992].

''(12) The amendment made by section 5(e) [amending section 1441a of Title 12, Banks and Banking] shall apply with respect to any action (described in subclause (I) or (II) of the provisions struck by such amendment) occurring on or after the date of enactment of this Act [Oct. 2, 1992].''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–335 effective Jan. 1, 1987, see section 702(a) of Pub. L. 99–335, set out as an Effective Date note under section 8401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6129, 6302, 6304, 6312, 6333, 6367 of this title; title 42 section 237.

§ 6304. Annual leave; accumulation

(a) Except as provided by subsections (b), (d), (e), (f), and (g) of this section, annual leave provided by section 6303 of this title, which is not used by an employee, accumulates for use in succeeding years until it totals not more than 30 days at the beginning of the first full bi-weekly pay period, or corresponding period for an employee who is not paid on the basis of biweekly pay periods, occurring in a year.

(b) Annual leave not used by an employee of the Government of the United States in one of the following classes of employees stationed outside the United States accumulates for use in succeeding years until it totals not more than 45 days at the beginning of the first full biweekly pay period, or corresponding period for an employee who is not paid on the basis of biweekly pay periods, occurring in a year:

(1) Individuals directly recruited or transferred by the Government of the United States from the United States or its territories or possessions including the Commonwealth of Puerto Rico for employment outside the area of recruitment or from which transferred.

(2) Individuals employed locally but—

(A)(i) who were originally recruited from the United States or its territories or possessions including the Commonwealth of Puerto Rico but outside the area of employment;

(ii) who have been in substantially continuous employment by other agencies of the United States, United States firms, interests, or organizations, international organizations in which the United States participates, or foreign governments; and

(iii) whose conditions of employment provide for their return transportation to the United States or its territories or possessions including the Commonwealth of Puerto Rico; or

(B)(i) who were at the time of employment temporarily absent, for the purpose of travel or formal study, from the United States, or from their respective places of residence in its territories or possessions including the Commonwealth of Puerto Rico; and

(ii) who, during the temporary absence, have maintained residence in the United States or its territories or possessions including the Commonwealth of Puerto Rico but outside the area of employment.

(3) Individuals who are not normally residents of the area concerned and who are discharged from service in the armed forces to accept employment with an agency of the Government of the United States.

(c) Annual leave in excess of the amount allowable—

(1) under subsection (a) or (b) of this section which was accumulated under earlier statute; or

(2) under subsection (a) of this section which was accumulated under subsection (b) of this section by an employee who becomes subject to subsection (a) of this section;

remains to the credit of the employee until used. The excess annual leave is reduced at the beginning of the first full biweekly pay period, or corresponding period for an employee who is not paid on the basis of biweekly pay periods, occurring in a year, by the amount of annual leave the employee used during the preceding

year in excess of the amount which accrued during that year, until the employee's accumulated leave does not exceed the amount allowed under subsection (a) or (b) of this section, as appropriate.

(d)(1) Annual leave which is lost by operation of this section because of—

(A) administrative error when the error causes a loss of annual leave otherwise accruable after June 30, 1960;

(B) exigencies of the public business when the annual leave was scheduled in advance; or

(C) sickness of the employee when the annual leave was scheduled in advance;

shall be restored to the employee.

(2) Annual leave restored under paragraph (1) of this subsection, or under clause (2) of section 5562(a) of this title, 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. Leave credited under this paragraph but unused and still available to the employee under the 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.

(3)(A) For the purpose of this subsection, the closure of, and any realignment with respect to, an installation of the Department of Defense pursuant to the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note) during any period, and the closure of any other installation of the Department of Defense, during the period beginning on October 1, 1992, and ending on December 31, 1997, shall be deemed to create an exigency of the public business and any leave that is lost by an employee of such installation by operation of this section (regardless of whether such leave was scheduled) shall be restored to the employee and shall be credited and available in accordance with paragraph (2).

(B) For the purpose of subparagraph (A), the term ''realignment'' means a base realignment (as defined in subsection (e)(3) of section 2687 of title 10) that meets the requirements of subsection (a)(2) of such section.

(e) Annual leave otherwise accruable after June 30, 1960, which is lost by operation of this section because of administrative error and which is not credited under subsection (d)(2) of this section because the employee is separated before the error is discovered, is subject to credit and liquidation by lump-sum payment only if a claim therefor is filed within 3 years immediately following the date of discovery of the error. Payment shall be made by the agency of employment when the lump-sum payment provisions of section 5551 of this title last became applicable to the employee at the rate of basic pay in effect on the date the lump-sum provisions became applicable.

(f)(1) This subsection applies with respect to annual leave accrued by an individual while serving in a position in—

(A) the Senior Executive Service;

(B) the Senior Foreign Service;

(C) the Defense Intelligence Senior Executive Service;

(D) the Senior Cryptologic Executive Service; or

(E) the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service.

(2) For purposes of applying any limitation on accumulation under this section with respect to any annual leave described in paragraph (1)—

(A) ''30 days'' in subsection (a) shall be deemed to read ''90 days''; and

(B) ''45 days'' in subsection (b) shall be deemed to read ''90 days''.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 519; Pub. L. 93–181, §3, Dec. 14, 1973, 87 Stat. 705; Pub. L. 95–454, title IV, §410, title IX, §906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1173, 1224; Pub. L. 96–54, §2(a)(39), Aug. 14, 1979, 93 Stat. 383; Pub. L. 96–465, title II, §2312(b), Oct. 17, 1980, 94 Stat. 2166; Pub. L. 97–89, title VIII, §802, Dec. 4, 1981, 95 Stat. 1161; Pub. L. 100–325, §2(k), May 30, 1988, 102 Stat. 582; Pub. L. 102–378, §2(53), Oct. 2, 1992, 106 Stat. 1354; Pub. L. 102–484, div. D, title XLIV, §4434, Oct. 23, 1992, 106 Stat. 2722; Pub. L. 103–337, div. A, title III, §341(c), div. B, title XXVIII, §2816(a), Oct. 5, 1994, 108 Stat. 2720, 3056; Pub. L. 103–356, title II, §201(a), Oct. 13, 1994, 108 Stat. 3411.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(a)	5 U.S.C. 2062(c).	Oct. 30, 1951, ch. 631, §203(c), 65 Stat. 680. July 2, 1953, ch. 178, §3(a), 67 Stat. 137.
(b)	5 U.S.C. 2602(d).	Oct. 30, 1951, ch. 631, §203(d), 65 Stat. 680. July 2, 1953, ch. 178, §3(b), 67 Stat. 137. Sept. 6, 1960, Pub. L. 86–707, §401 ''(d)'', 74 Stat. 799.
(c)	5 U.S.C. 2066(a).	Oct. 30, 1951, ch. 631, §208(a), 65 Stat. 682. July 2, 1953, ch. 178, §3(c), 67 Stat. 137.

The words ''Except as provided by subsection (b) of this section'' are added to subsection (a), and the words ''Notwithstanding the provisions of subsection (c)'' in former section 2062(d) are omitted as unnecessary because of the exception added to subsection (a).

The words ''full biweekly pay period'' are substituted for ''complete biweekly pay period'' to conform to section 6303.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

REFERENCES IN TEXT

The Defense Base Closure and Realignment Act of 1990, referred to in subsec. (d)(3)(A), is part A of title XXIX of div. B of Pub. L. 101–510, Nov. 5, 1990, 104 Stat. 1808, as amended, which is set out as a note under section 2687 of Title 10, Armed Forces. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1994—Subsec. (d)(3). Pub. L. 103–337, §2816(a), designated existing provisions as subpar. (A), substituted ''closure of, and any realignment with respect to,'' for ''closure of'', and added subpar. (B).

Pub. L. 103–337, §341(c), substituted ''the closure of an installation of the Department of Defense pursuant to

the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note) during any period, and the closure of any other installation'' for ''the closure of an installation''.

Subsec. (f). Pub. L. 103–356 amended subsec. (f) generally. Prior to amendment, subsec. (f) read as follows: ''Annual leave accrued shall not be subject to the limitation on accumulation otherwise imposed by this section if such leave is accrued by an individual while serving in a position in—

''(1) the Senior Executive Service;

''(2) the Senior Foreign Service;

''(3) the Defense Intelligence Senior Executive Service;

''(4) the Senior Cryptologic Executive Service; or

''(5) the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service.''

1992—Subsec. (d)(3). Pub. L. 102–484 added par. (3).

Subsec. (e). Pub. L. 102–378 substituted ''date'' for ''date of'' in last sentence.

1988—Subsec. (f)(5). Pub. L. 100–325 added par. (5).

1981—Subsec. (f). Pub. L. 97–89 amended subsec. (f) generally, transferring from former subsec. (g) provisions excepting from the limitation on accumulation otherwise imposed by this section any annual leave accrued by members of the Senior Foreign Service and inserting provisions relating to annual leave accrued by individuals while serving in positions in the Defense Intelligence Senior Executive Service or the Senior Cryptologic Executive Service.

Subsec. (g). Pub. L. 97–89 struck out subsec. (g). Provisions formerly set out in subsec. (g), relating to annual leave accrued by members of the Senior Foreign service, were incorporated in subsec. (f).

1980—Subsec. (a). Pub. L. 96–465, § 2312(b)(1), inserted reference to subsec. (g).

Subsec. (g). Pub. L. 96–465, § 2312(b)(2), added subsec. (g).

1979—Subsec. (e). Pub. L. 96–54 substituted ''rate of basic pay'' for ''salary rate''.

1978—Subsec. (a). Pub. L. 95–454, § 410(1), inserted reference to subsec. (f).

Subsec. (d)(2). Pub. L. 95–454, § 906(a)(2), (3), substituted ''Office of Personnel Management'' and ''Office'' for ''Civil Service Commission'' and ''Commission'', respectively.

Subsec. (f). Pub. L. 95–454, § 410(2), added subsec. (f).

1973—Subsec. (a). Pub. L. 93–181, § 3(1), substituted ''subsections (b), (d), and (e) of this section'' for ''subsection (b) of this section''.

Subsecs. (d), (e). Pub. L. 93–181, § 3(2), added subsecs. (d) and (e).

EFFECTIVE DATE OF 1994 AMENDMENTS

Section 201(a) of Pub. L. 103–356 provided that the amendment made by that section is effective on the first day of the first applicable pay period beginning after Oct. 13, 1994.

Section 2816(b) of Pub. L. 103–337 provided that: ''The amendments made by subsection (a) [amending this section] shall apply only with respect to the restoration of annual leave of employees at military installations undergoing realignment if such leave is lost by operation of section 6304 of title 5, United States Code, on or after the date of the enactment of this Act [Oct. 5, 1994].''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–89 effective Oct. 1, 1981, see section 806 of Pub. L. 97–89, set out as an Effective Date note under section 1601 of Title 10, Armed Forces.

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 305 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 410 of Pub. L. 95–454 effective 9 months after Oct. 13, 1978, and congressional review of provisions of sections 401 through 412 of Pub. L. 95–454, see section 415 of Pub. L. 95–454, set out as an Effective Date note under section 3131 of this title.

Amendment by section 906(a)(2), (3) of Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

USE OF EXCESS LEAVE

Section 201(b) of Pub. L. 103–356 provided that: ''Notwithstanding the amendment made by subsection (a) [amending this section], in the case of an employee who, on the effective date of subsection (a) [see Effective Date of 1994 Amendments note above], is subject to subsection (f) of section 6304 of title 5, United States Code, and who has to such employee's credit annual leave in excess of the maximum accumulation otherwise permitted by subsection (a) or (b) of section 6304 (determined applying the amendment made by subsection (a)), such excess annual leave shall remain to the credit of the employee and be subject to reduction, in the same manner as provided in subsection (c) of section 6304.''

LUMP-SUM PAYMENT FOR ACCRUED ANNUAL LEAVE TO FORMER EMPLOYEES

Section 5 of Pub. L. 93–181 provided that where former employees (other than former employees of Post Office Department or United States Postal Service) had accrued annual leave after June 30, 1960, but had not been on the rolls on Dec. 14, 1973, and where annual leave thus accrued had been lost because of administrative error, such accrued annual leave was subject to credit and liquidation by lump-sum payment but only if a claim therefor was filed within three years after Dec. 14, 1973, with agency by which the employees had been employed when lump-sum payment provision of section 5551 of this title had last become applicable to them.

Section 6 of Pub. L. 93–181 provided that where former employees of Post Office Department or United States Postal Service with prior civilian service with Post Office Department or other Federal agency had accrued annual leave after June 30, 1960, and before July 1, 1971, but had not on the rolls on Dec. 14, 1973, and where annual leave thus accrued had been lost because of administrative error, such accrued annual leave was subject to credit and liquidation by lump-sum payment, but only if a claim therefor was filed within three years after Dec. 14, 1973, with Postal Service, at salary rate in effect on date these employees had been employed when lump-sum payment provision of section 5551 of this title or comparable provisions of regulations of Postal Service had last become applicable to them. With respect to present employees of Postal Service who had prior Federal civilian service with Post Office Department or other Federal agency, annual leave which had accrued after June 30, 1960, and before July 1, 1971, but, because of administrative error had been lost, was subject to credit and liquidation by lump-sum payment only if a claim therefor was filed within three years of Dec. 14, 1973, with Postal Service, at salary rate in effect on Dec. 14, 1973.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5562, 6129, 6302, 6303, 6305, 6333, 6334, 6365, 6367 of this title; title 10 section 1590; title 40 section 174j–8.

§ 6305. Home leave; leave for Chiefs of Missions; leave for crews of vessels

(a) After 24 months of continuous service outside the United States (or after a shorter period

of such service if the employee's assignment is terminated for the convenience of the Government), an employee may be granted leave of absence, under regulations of the President, at a rate not to exceed 1 week for each 4 months of that service without regard to other leave provided by this subchapter. Leave so granted—

(1) is for use in the United States, or if the employee's place of residence is outside the area of employment, in its territories or possessions including the Commonwealth of Puerto Rico;

(2) accumulates for future use without regard to the limitation in section 6304(b) of this title; and

(3) may not be made the basis for terminal leave or for a lump-sum payment.

(b) The President may authorize leave of absence to a chief of mission excepted from this subchapter by section 6301(2)(xii) of this title for use in the United States and its territories or possessions. Leave so authorized does not constitute a leave system and may not be made the basis for a lump-sum payment.

(c) An officer, crewmember, or other employee serving aboard an oceangoing vessel on an extended voyage may be granted leave of absence, under regulations of the Office of Personnel Management, at a rate not to exceed 2 days for each 30 calendar days of that service without regard to other leave provided by this subchapter. Leave so granted—

(1) accumulates for future use without regard to the limitation in section 6304(b) of this title;

(2) may not be made the basis for a lump-sum payment; and

(3) may not be made the basis for terminal leave except under such special or emergency circumstances as may be prescribed under the regulations of the Office.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 520; Pub. L. 89–747, §1(1), (2), Nov. 2, 1966, 80 Stat. 1179; Pub. L. 90–623, §1(16), Oct. 22, 1968, 82 Stat. 1313; Pub. L. 95–454, title IX, §906(a)(2), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 96–54, §2(a)(15), Aug. 14, 1979, 93 Stat. 382; Pub. L. 96–465, title II, §§2312(c), 2314(f)(2), Oct. 17, 1980, 94 Stat. 2167, 2168.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(a)	5 U.S.C. 2062(f).	Oct. 30, 1951, ch. 631, §203(f), 65 Stat. 680. Sept. 6, 1960, Pub. L. 86–707, §401 ''(f)'', 74 Stat. 799.
(b)	5 U.S.C. 2061(c)(2).	July 2, 1953, ch. 178, §1 ''(c)(2)'', 67 Stat. 136.

The words ''in his discretion'' are omitted as unnecessary in view of the permissive grant of authority.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1980—Subsec. (a). Pub. L. 96–465, §2312(c), inserted ''(or after a shorter period of such service if the employee's assignment is terminated for the convenience of the Government)'' after ''outside the United States''.

Subsec. (b). Pub. L. 96–465, §2314(f)(2), substituted ''a chief of mission'' for ''an officer'' after ''leave of absence to''.

1979—Subsec. (c)(3). Pub. L. 96–54 substituted ''Office'' for ''Commission''.

1978—Subsec. (c). Pub. L. 95–454 substituted ''Office of Personnel Management'' for ''Civil Service Commission''.

1968—Subsec. (c). Pub. L. 90–623 substituted ''2'' and ''30'' for ''two'' and ''thirty'', respectively.

1966—Pub. L. 89–747 added subsec. (c) and inserted reference to leave for crews of vessels in section catchline.

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 305 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–623 intended to restate without substantive change the law in effect on Oct. 22, 1968, see section 6 of Pub. L. 90–623, set out as a note under section 5334 of this title.

DELEGATION OF FUNCTIONS

Functions of President under subsec. (a) of this section delegated to Office of Personnel Management, see section 1(2) of Ex. Ord. No. 11228, June 14, 1965, 30 F.R. 7739, set out as a note under section 301 of Title 3, The President.

EX. ORD. NO. 10471. AUTHORIZATION TO GRANT LEAVES OF ABSENCE

Ex. Ord. No. 10471, July 17, 1953, 18 F.R. 4231, as amended by Ex. Ord. No. 12292, Feb. 23, 1981, 46 F.R. 13967, provided:

1. The heads of the several departments and agencies of the Government are hereby authorized and empowered, without the approval, ratification, or other action of the President, to exercise, with respect to personnel in their respective department or agency, the authority conferred upon the President by section 6305(b) of title 5 of the United States Code, to authorize leaves of absence in accordance with the said section 6305(b) to persons who receive compensation in accordance with section 401 of the Foreign Service Act of 1980 (22 U.S.C. 3961).

2. This order shall be effective as of July 5, 1953.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6302 of this title; title 22 section 4083.

§ 6306. Annual leave; refund of lump-sum payment; recredit of annual leave

(a) When an individual who received a lump-sum payment for leave under section 5551 of this title is reemployed before the end of the period covered by the lump-sum payment in or under the Government of the United States or the government of the District of Columbia, except in a position excepted from this subchapter by section 6301(2)(ii), (iii), (vi), or (vii) of this title, he shall refund to the employing agency an amount equal to the pay covering the period between the date of reemployment and the expiration of the lump-sum period.

(b) An amount refunded under subsection (a) of this section shall be deposited in the Treasury

of the United States to the credit of the employing agency. When an individual is reemployed under the same leave system, an amount of leave equal to the leave represented by the refund shall be recredited to him in the employing agency. When an individual is reemployed under a different leave system, an amount of leave equal to the leave represented by the refund shall be recredited to him in the employing agency on an adjusted basis under regulations prescribed by the Office of Personnel Management. When an individual is reemployed in a position excepted from this subchapter by section 6301(2)(x)–(xiii) of this title, an amount of leave equal to the leave represented by the refund is deemed, on separation from the service, death, or transfer to another position in the service, to have remained to his credit.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 520; Pub. L. 95–454, title IX, § 906(a)(2), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 95–519, § 2, Oct. 25, 1978, 92 Stat. 1819.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 61b (3d–5th sentences).	Dec. 21, 1944, ch. 632, § 1 (1st proviso and so much of last sentence as precedes 2d proviso), 58 Stat. 845. July 2, 1953, ch. 178, § 4(a) (2d–4th sentences), 67 Stat. 137. Aug. 18, 1959, Pub. L. 86–168, § 202(e), 73 Stat. 389.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1978—Subsec. (b). Pub. L. 95–519 substituted ''6301(2)(x)–(xiii)'' for ''6301(2)(x)–(xii)''.

Pub. L. 95–454 substituted ''Office of Personnel Management'' for ''Civil Service Commission''.

EFFECTIVE DATE OF 1978 AMENDMENTS

Amendment by Pub. L. 95–519 effective beginning on first day of first applicable pay period beginning on or after Oct. 25, 1978, see section 4(a) of Pub. L. 95–519, set out as a note under section 5551 of this title.

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6335, 6368 of this title; title 20 section 4416; title 25 sections 2011, 2012.

§ 6307. Sick leave; accrual and accumulation

(a) An employee is entitled to sick leave with pay which accrues on the basis of one-half day for each full biweekly pay period, except that sick leave with pay accrues to a member of the Firefighting Division of the Fire Department of the District of Columbia on the basis of two-fifths of a day for each full biweekly pay period.

(b) Sick leave provided by this section, which is not used by an employee, accumulates for use in succeeding years.

(c) Sick leave provided by this section may be used for purposes relating to the adoption of a child.

(d) When required by the exigencies of the situation, a maximum of 30 days sick leave with pay may be advanced for serious disability or ailment, or for purposes relating to the adoption of a child, except that a maximum of 24 days sick leave with pay may be advanced to a member of the Firefighting Division of the Fire Department of the District of Columbia.

(d)(1)[1] For the purpose of this subsection, the term ''family member'' shall have such meaning as the Office of Personnel Management shall by regulation prescribe, except that such term shall include any individual who meets the definition given that term, for purposes of the leave transfer program under subchapter III, under regulations prescribed by the Office (as in effect on January 1, 1993).

(2) Subject to paragraph (3) and in addition to any other allowable purpose, sick leave may be used by an employee—

(A) to give care or otherwise attend to a family member having an illness, injury, or other condition which, if an employee had such condition, would justify the use of sick leave by such an employee; or

(B) for purposes relating to the death of a family member, including to make arrangements for or attend the funeral of such family member.

(3)(A) Sick leave may be used by an employee for the purposes provided under paragraph (2) only to the extent the amount used for such purposes does not exceed—

(i) 40 hours in any year, plus

(ii) up to an additional 64 hours in any year, but only to the extent the use of such additional hours does not cause the amount of sick leave to the employee's credit to fall below 80 hours.

(B) In the case of a part-time employee or an employee on an uncommon tour of duty, the Office of Personnel Management shall establish limitations that are proportional to those prescribed under subparagraph (A).

(4)(A) This subsection shall be effective during the 3-year period that begins upon the expiration of the 2-month period that begins on the date of the enactment of this subsection.

(B) Not later than 6 months before the date on which this subsection is scheduled to cease to be effective, the Office shall submit a report to Congress in which it shall evaluate the operation of this subsection and make recommendations as to whether or not this subsection should be continued beyond such date.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 520; Pub. L. 103–329, title VI, § 629(b)(1), Sept. 30, 1994, 108 Stat. 2423; Pub. L. 103–388, § 2, Oct. 22, 1994, 108 Stat. 4079.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 2063.	Oct. 30, 1951, ch. 631, § 204, 65 Stat. 681. Aug. 21, 1964, Pub. L. 88–471, § 6(b), (c), 78 Stat. 583.

The word ''officer'', referring to an officer of the Firefighting Division, is omitted as covered by the words ''a member of the Firefighting Division''.

[1] So in original. Probably should be ''(e)(1)''.

In subsection (c), the words ''with pay'' are added for clarity.

Standard changes are made to conform with the definitions applicable and style of this title as outlined in the preface to the report.

REFERENCES IN TEXT

The date of the enactment of this subsection, referred to in subsec. (d)(4)(A), is the date of enactment of Pub. L. 103–388, which was approved Oct. 22, 1994.

AMENDMENTS

1994—Subsec. (c). Pub. L. 103–329, § 629(b)(1)(B), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 103–388 added subsec. (d) relating to use of sick leave for purposes relating to family member.

Pub. L. 103–329, § 629(b)(1)(A), (C), redesignated subsec. (c) as (d) and inserted ''or for purposes relating to the adoption of a child,'' after ''ailment,''.

REGULATIONS

Section 629(b)(3) of Pub. L. 103–329 provided that:

''(3)(A) The Office of Personnel Management shall prescribe regulations under which any employee who used or uses annual leave for an adoption-related purpose, after September 30, 1991, and before the date as of which sick leave first becomes available for such purpose as a result of the enactment of this subsection may, upon appropriate written application, elect to have such employee's leave accounts adjusted to reflect the amount of annual leave and sick leave, respectively, which would remain had sick leave been used instead of all or any portion of the annual leave actually used, as designated by the employee.

''(B) An application under this paragraph may not be approved unless it is submitted—

''(i) within 1 year after the date of the enactment of this Act [September 30, 1994] or such later date as the Office may prescribe;

''(ii) in such form and manner as the Office shall require; and

''(iii) by an individual who is an employee as of the time of application.

''(C) For the purpose of this paragraph, the term 'employee' has the meaning given such term by section 6301(2) of title 5, United States Code.''

ADOPTIONS DURING FISCAL YEAR 1991

Pub. L. 101–509, title V, § 536, Nov. 5, 1990, 104 Stat. 1470, for fiscal year 1991, authorized sick leave provided by section 6307 of this title to be approved for purposes related to the adoption of a child.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6129, 6302 of this title.

§ 6308. Transfers between positions under different leave systems

(a) The annual and sick leave to the credit of an employee who transfers between positions under different leave systems without a break in service shall be transferred to his credit in the employing agency on an adjusted basis under regulations prescribed by the Office of Personnel Management, unless the individual is excepted from this subchapter by section 6301(2)(ii), (iii), (vi), or (vii) of this title. However, when a former member receiving a retirement annuity under sections 521–535 of title 4, District of Columbia Code, is reemployed in a position to which this subchapter applies, his sick leave balance may not be recredited to his account on the later reemployment.

(b) The annual leave, sick leave, and home leave to the credit of a nonappropriated fund employee of the Department of Defense or the Coast Guard described in section 2105(c) who moves without a break in service of more than 3 days to a position in the Department of Defense or the Coast Guard, respectively, that is subject to this subchapter shall be transferred to the employee's credit. The annual leave, sick leave, and home leave to the credit of an employee of the Department of Defense or the Coast Guard who is subject to this subchapter and who moves without a break in service of more than 3 days to a position under a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard, respectively, described in section 2105(c), shall be transferred to the employee's credit under the nonappropriated fund instrumentality. The Secretary of Defense or the Secretary of Transportation, as appropriate, may provide for a transfer of funds in an amount equal to the value of the transferred annual leave to compensate the gaining entity for the cost of a transfer of annual leave under this subsection.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 521; Pub. L. 95–454, title IX, § 906(a)(2), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 101–508, title VII, § 7202(h), Nov. 5, 1990, 104 Stat. 1388–336.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 2064(e).	July 2, 1953, ch. 178, § 4(b), 67 Stat. 138. Aug. 18, 1959, Pub. L. 86–168, § 202(e), 73 Stat. 389. Aug. 21, 1964, Pub. L. 88–471, § 6(d), 78 Stat. 583.

In the last sentence, the word ''officer'' is omitted as covered by the word ''member'', and the words ''sections 521–535 of title 4, District of Columbia Code'' are substituted for ''the Policemen and Firemen's Retirement and Disability Act, as amended''.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

REFERENCES IN TEXT

Sections 521–535 of title 4, District of Columbia Code, referred to in subsec. (a), were transferred to sections 4–607, 4–609, 4–610, 4–612, 4–613, 4–615, 4–616, 4–618 to 4–620, 4–622, 4–626, 4–627, 4–629, and 4–630, respectively, of Title 4, Police and Fire Departments, of the District of Columbia Code.

AMENDMENTS

1990—Pub. L. 101–508 designated existing provisions as subsec. (a) and added subsec. (b).

1978—Pub. L. 95–454 substituted ''Office of Personnel Management'' for ''Civil Service Commission''.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable with respect to any individual who, on or after Jan. 1, 1987, moves from employment in nonappropriated fund instrumentality of Department of Defense or Coast Guard, that is described in section 2105(c) of this title, to employment in Department or Coast Guard, that is not described in section 2105(c), or who moves from employment in Department or Coast Guard, that is not described in section 2105(c), to employment in nonappropriated fund instrumentality of Department or Coast Guard, that is described in section 2105(c), see section 7202(m)(1) of Pub. L. 101–508, set out as a note under section 2105 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

ELECTION OF LEAVE OR LUMP-SUM PAYMENT FOR CERTAIN EMPLOYEES

Pub. L. 102–484, div. A, title X, § 1077, Oct. 23, 1992, 106 Stat. 2512, authorized an employee referred to in section 6308(b) of this title, who made an employment move described in such subsection after Dec. 31, 1986, and before Apr. 16, 1991, to elect to repay the lump-sum payment received based on such employment move in lieu of annual leave and have the annual leave recredited to the employee's leave account, or to keep the lump-sum payment in lieu of that annual leave.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5551, 6312 of this title.

[§ 6309. Repealed. Pub. L. 94–183, § 2(26), Dec. 31, 1975, 89 Stat. 1058]

Section, Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 521, related to authorized leave of absence of a rural postal carrier which occurred at beginning, during, or at end of a period of annual or sick leave.

§ 6310. Leave of absence; aliens

The head of the agency concerned may grant leave of absence with pay, not in excess of the amount of annual and sick leave allowable to citizen employees under this subchapter, to alien employees who occupy positions outside the United States.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 521.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 2062(g).	Oct. 30, 1951, ch. 631, § 203 (g), 65 Stat. 681. Sept. 6, 1960, Pub. L. 86–707. § 402(b), 74 Stat. 800.

The words ''head of the agency concerned'' are substituted for ''head of the department or agency concerned''.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6301, 6302, 6325 of this title; title 22 section 3968.

§ 6311. Regulations

The Office of Personnel Management may prescribe regulations necessary for the administration of this subchapter.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 521; Pub. L. 95–454, title IX, § 906(a)(2), Oct. 13, 1978, 92 Stat. 1224.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 2065.	Oct. 30, 1951, ch. 631, § 206, 65 Stat. 681.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1978—Pub. L. 95–454 substituted ''Office of Personnel Management'' for ''Civil Service Commission''.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

§ 6312. Accrual and accumulation for former ASCS county office and nonappropriated fund employees

(a) Credit shall be given in determining years of service for the purpose of section 6303(a) for—

(1) service as an employee of a county committee established pursuant to section 8(b) of the Soil Conservation and Allotment Act or of a committee or an association of producers described in section 10(b) of the Agricultural Adjustment Act; and

(2) service under a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard described in section 2105(c) by an employee who has moved without a break in service of more than 3 days to a position subject to this subchapter in the Department of Defense or the Coast Guard, respectively.

(b) The provisions of subsections (a) and (b) of section 6308 for transfer of leave between leave systems shall apply to the leave systems established for such county office employees and employees of such Department of Defense and Coast Guard nonappropriated fund instrumentalities, respectively.

(Added Pub. L. 90–367, § 2(a), June 29, 1968, 82 Stat. 277; amended Pub. L. 90–623, § 1(25), Oct. 22, 1968, 82 Stat. 1314; Pub. L. 99–251, title III, § 306(c), Feb. 27, 1986, 100 Stat. 27; Pub. L. 101–508, title VII, § 7202(i)(1), Nov. 5, 1990, 104 Stat. 1388–337.)

REFERENCES IN TEXT

Section 8(b) of the Soil Conservation and Allotment Act, referred to in subsec. (a)(1), probably means section 8(b) of the Soil Conservation and Domestic Allotment Act, which is classified to section 590h(b) of Title 16, Conservation.

Section 10(b) of the Agricultural Adjustment Act, referred to in subsec. (a)(1), is classified to section 610(b) of Title 7, Agriculture.

AMENDMENTS

1990—Pub. L. 101–508 inserted ''and nonappropriated fund'' after ''office'' in section catchline and amended text generally. Prior to amendment, text read as follows: ''Service rendered as an employee of a county committee established pursuant to section 590h(b) of title 16, or of a committee or an association of producers described in section 610(b) of title 7, shall be included in determining years of service for the purpose of section 6303(a) of this title. The provisions of section 6308 of this title for transfer of annual and sick leave between leave systems shall apply to the leave system established for such employees.''

1986—Pub. L. 99–251 struck out ''in the case of any officer or employee in or under the Department of Agriculture'' at end of first sentence.

1968—Pub. L. 90–623 substituted ''section 590h(b) of title 16'' and ''section 610(b) of title 7'' for ''section 8(b) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b))'' and ''section 10(b) of the Agricultural Adjustment Act of May 12, 1933 (48 Stat. 37)'' respectively.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable with respect to any individual who, on or after Jan. 1, 1987, moves from employment in nonappropriated fund instrumentality of Department of Defense or Coast Guard, that is described in section 2105(c) of this title, to employment in Department or Coast Guard, that is not described in section 2105(c), or who moves from employment in Department or Coast Guard, that is not described in section 2105(c), to employment in nonappropriated fund instrumentality of Department or Coast Guard, that is described in section 2105(c), see section 7202(m)(1) of Pub. L. 101–508, set out as a note under section 2105 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–623 intended to restate without substantive change the law in effect on Oct. 22, 1968, see section 6 of Pub. L. 90–623, set out as a note under section 5334 of this title.

SUBCHAPTER II—OTHER PAID LEAVE

§ 6321. Absence of veterans to attend funeral services

An employee in or under an Executive agency who is a veteran of a war, or of a campaign or expedition for which a campaign badge has been authorized, or a member of an honor or ceremonial group of an organization of those veterans, may be excused from duty without loss of pay or deduction from annual leave for the time necessary, not to exceed 4 hours in any one day, to enable him to participate as an active pallbearer or as a member of a firing squad or a guard of honor in a funeral ceremony for a member of the armed forces whose remains are returned from abroad for final interment in the United States.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 521.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 30q.	Aug. 16, 1949, ch. 441, 63 Stat. 608. July 17, 1952, ch. 932, §1, 66 Stat. 758.

The words ''Executive agency'' are coextensive with and substituted for ''executive branch of the Government'' in view of the definition of ''Executive agency'' in section 105. Applicability to the General Accounting Office is based on former section 933a.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

§ 6322. Leave for jury or witness service; official duty status for certain witness service

(a) An employee as defined by section 2105 of this title (except an individual whose pay is disbursed by the Secretary of the Senate or the Clerk of the House of Representatives) or an individual employed by the government of the District of Columbia is entitled to leave, without loss of, or reduction in, pay, leave to which he otherwise is entitled, credit for time or service, or performance of efficiency rating, during a period of absence with respect to which he is summoned, in connection with a judicial proceeding, by a court or authority responsible for the conduct of that proceeding, to serve—

(1) as a juror; or

(2) other than as provided in subsection (b) of this section, as a witness on behalf of any party in connection with any judicial proceeding to which the United States, the District of Columbia, or a State or local government is a party;

in the District of Columbia, a State, territory, or possession of the United States including the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, or the Republic of Panama. For the purpose of this subsection, ''judicial proceeding'' means any action, suit, or other judicial proceeding, including any condemnation, preliminary, informational, or other proceeding of a judicial nature, but does not include an administrative proceeding.

(b) An employee as defined by section 2105 of this title (except an individual whose pay is disbursed by the Secretary of the Senate or the Clerk of the House of Representatives) or an individual employed by the government of the District of Columbia is performing official duty during the period with respect to which he is summoned, or assigned by his agency, to—

(1) testify or produce official records on behalf of the United States or the District of Columbia; or

(2) testify in his official capacity or produce official records on behalf of a party other than the United States or the District of Columbia.

(c) The Office of Personnel Management may prescribe regulations for the administration of this section.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 522; Pub. L. 91–563, §1(a), Dec. 19, 1970, 84 Stat. 1476; Pub. L. 94–310, §1, June 15, 1976, 90 Stat. 687; Pub. L. 95–454, title IX, §906(a)(2), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 96–70, title I, §1251, Sept. 27, 1979, 93 Stat. 476.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 30n.	June 29, 1940, ch. 446, §1, 54 Stat. 689.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1979—Subsec. (a). Pub. L. 96–70 substituted ''the Trust Territory of the Pacific Islands, or the Republic of Panama'' for ''the Canal Zone, or the Trust Territory of the Pacific Islands''.

1978—Subsec. (c). Pub. L. 95–454 substituted ''Office of Personnel Management'' for ''Civil Service Commission''.

1976—Subsec. (a)(2). Pub. L. 94–310 substituted ''other than as provided in subsection (b) of this section, as a witness on behalf of any party in connection with any judicial proceeding to which the United States, the District of Columbia, or a State or local government is a party'' for ''as a witness on behalf of a party other than the United States, the District of Columbia, or a private party''.

1970—Pub. L. 91–563 included witness service and official duty status for certain witness service in section catchline.

Subsec. (a). Pub. L. 91–563 designated existing provisions as subsec. (a) and expanded such provisions to authorize leave for jury service in courts in the District

of Columbia and in territories and possessions of the United States, to permit leave for persons summoned as witnesses in behalf of a party other than the United States, the District of Columbia, or a private party, defined ''judicial proceeding'', and excepted individuals whose pay is disbursed by the Secretary of the Senate or the Clerk of the House of Representatives.

Subsecs. (b), (c). Pub. L. 91–563 added subsecs. (b) and (c).

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–70 effective Oct. 1, 1979, see section 3304 of Pub. L. 96–70, set out as an Effective Date note under section 3601 of Title 22, Foreign Relations and Intercourse.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–310 effective Oct. 1, 1976, see section 4 of Pub. L. 94–310, set out as a note under section 130b of Title 2, The Congress.

TRANSFER OF FUNCTIONS

Certain functions of Clerk of House of Representatives transferred to Director of Non-legislative and Financial Services by section 7 of House Resolution No. 423, One Hundred Second Congress, Apr. 9, 1992. Director of Non-legislative and Financial Services replaced by Chief Administrative Officer of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

CROSS REFERENCES

Jury and witness service by employees of the Senate and the House, see section 130b of Title 2, The Congress.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5515 of this title.

§ 6323. Military leave; Reserves and National Guardsmen

(a)(1) Subject to paragraph (2) of this subsection, an employee as defined by section 2105 of this title or an individual employed by the government of the District of Columbia, permanent or temporary indefinite, is entitled to leave without loss in pay, time, or performance or efficiency rating for active duty or engaging in field or coast defense training under sections 502–505 of title 32 as a Reserve of the armed forces or member of the National Guard. Leave under this subsection accrues for an employee or individual at the rate of 15 days per fiscal year and, to the extent that it is not used in a fiscal year, accumulates for use in the succeeding fiscal year until it totals 15 days at the beginning of a fiscal year.

(2) In the case of an employee or individual employed on a part-time career employment basis (as defined in section 3401(2) of this title), the rate at which leave accrues under this subsection shall be a percentage of the rate prescribed under paragraph (1) which is determined by dividing 40 into the number of hours in the regularly scheduled workweek of that employee or individual during that fiscal year.

(b) Except as provided by section 5519 of this title, an employee as defined by section 2105 of this title or an individual employed by the government of the District of Columbia, permanent or temporary indefinite, who—

(1) is a member of a Reserve component of the Armed Forces, as described in section 10101 of title 10, or the National Guard, as described in section 101 of title 32; and

(2) performs, for the purpose of providing military aid to enforce the law or for the purpose of providing assistance to civil authorities in the protection or saving of life or property or the prevention of injury—

(A) Federal service under section 331, 332, 333, or 12406 of title 10, or other provision of law, as applicable, or

(B) full-time military service for his State, the District of Columbia, the Commonwealth of Puerto Rico, or a territory of the United States;

is entitled, during and because of such service, to leave without loss of, or reduction in, pay, leave to which he otherwise is entitled, credit for time or service, or performance or efficiency rating. Leave granted by this subsection shall not exceed 22 work-days in a calendar year.

(c) An employee as defined by section 2105 of this title or an individual employed by the government of the District of Columbia, who is a member of the National Guard of the District of Columbia, is entitled to leave without loss in pay or time for each day of a parade or encampment ordered or authorized under title 39, District of Columbia Code. This subsection covers each day of service the National Guard, or a portion thereof, is ordered to perform by the commanding general.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 522; Pub. L. 90–588, § 2(a), Oct. 17, 1968, 82 Stat. 1151; Pub. L. 90–623, § 1(17), Oct. 22, 1968, 82 Stat. 1313; Pub. L. 91–375, § 6(c)(18), Aug. 12, 1970, 84 Stat. 776; Pub. L. 96–54, § 2(a)(40), Aug. 14, 1979, 93 Stat. 383; Pub. L. 96–70, title III, § 3302(e)(5), Sept. 27, 1979, 93 Stat. 498; Pub. L. 96–431, § 1, Oct. 10, 1980, 94 Stat. 1850; Pub. L. 102–190, div. A, title V, § 528, Dec. 5, 1991, 105 Stat. 1364; Pub. L. 103–337, div. A, title XVI, § 1677(a)(2), Oct. 5, 1994, 108 Stat. 3019.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 30r(a).	Aug. 10, 1956, ch. 1041, § 29 (a), 70A Stat. 632. Sept. 2, 1958, Pub. L. 85–861, § 13, 72 Stat. 1557. June 30, 1960, Pub. L. 86–559, § 7, 74 Stat. 282. Oct. 4, 1961, Pub. L. 87–378, § 7(a), 75 Stat. 809.

In subsection (a), the words ''without regard to classification or terminology peculiar to the Civil Service system'' are omitted as unnecessary. The word ''performance'' is added on authority of the Performance Rating Act of 1950, which is carried into chapter 43 of this title.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1994—Subsec. (b)(1). Pub. L. 103–337, §1677(a)(2)(A), substituted ''section 10101'' for ''section 261''.

Subsec. (b)(2)(A). Pub. L. 103–337, §1677(a)(2)(B), substituted ''or 12406 of title 10'' for ''3500, or 8500 of title 10''.

1991—Subsec. (b)(2). Pub. L. 102–190 substituted ''law or for the purpose of providing assistance to civil authorities in the protection or saving of life or property or the prevention of injury—'' for ''law—'' in introductory provisions.

1980—Subsec. (a). Pub. L. 96–431 designated existing provisions as par. (1), substituted ''Subject to paragraph (2) of this subsection, an employee'' for ''An employee'' and ''for active duty or engaging in field or coast defense training'' for ''for each day, not in excess of 15 days in a calendar year, in which he is on active duty or is engaged in field or coast defense training'', inserted provision relating to accrual and accumulation of leave, and added par. (2).

1979—Subsec. (b)(2)(B). Pub. L. 96–70 which directed the amendment of subsec. (c)(2)(B) by striking out ''the Canal Zone,'' was executed to subsec. (b)(2)(B) in view of the redesignation of subsec. (c) as (b) by Pub. L. 96–54. See 1979 Amendment note below.

Subsec. (b). Pub. L. 96–54 redesignated subsec. (c), as added by Pub. L. 90–588, as (b). Former subsec. (b), relating to military leave, was repealed by Pub. L. 91–375, §6(c)(18)(B), Aug. 12, 1970, 84 Stat. 776.

Subsec. (c). Pub. L. 96–54 redesignated subsec. (c), as added by Pub. L. 90–588, as (b).

1970—Subsec. (a). Pub. L. 91–375, §6(c)(18)(A), struck out ''(except a substitute in the postal field service)'' after ''section 2105 of this title''.

Subsec. (b). Pub. L. 91–375, §6(c)(18)(B), struck out subsec. (b) relating to military leave, without loss in pay, time, or efficiency rating, of substitute employees of the postal service, not in excess of 80 hours in a calendar year, for National Guard training as Reserves of the Armed Forces or members of the National Guard, on basis of 1 hour for 26 hours of work, including minimum working period of 1,040 hours in the prior calendar year.

Subsec. (c). Pub. L. 91–375, §6(c)(18)(A), struck out ''(except a substitute in the postal field service)'' after ''section 2105 of this title''.

Subsec. (d). Pub. L. 91–375, §6(c)(18)(B), struck out subsec. (d) relating to military leave, without loss of or reduction in pay, leave, service credit, or efficiency rating, of substitute employees of the postal service, not in excess of 160 hours in a calendar year, for service as members of Reserve components of the Armed Forces or the National Guard, for Federal service under insurrection provisions of sections 331, 332, and 333 and in the Army National Guard and Air National Guard under sections 3500 and 8500 of Title 10 and non-Federal service (in the States, District of Columbia, Puerto Rico, Canal Zone, and the territories) for purpose of providing military aid to enforce the law, on basis of 1 hour for 13 hours of work, including minimum working period of 1,040 hours in the prior calendar year.

1968—Subsecs. (a), (b). Pub. L. 90–623, §1(17)(A), substituted ''loss in'' for ''loss of''.

Subsec. (c). Pub. L. 90–623, §1(17)(B), added subsec. (c), set out second.

Subsec. (c). Pub. L. 90–588 added subsec. (c), set out first.

Subsec. (d). Pub. L. 90–588 added subsec. (d).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of Title 10, Armed Forces.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 2 of Pub. L. 96–431 provided that: ''The amendments made by the first section of this Act [amending this section] shall take effect October 1, 1980.''

EFFECTIVE DATE OF 1979 AMENDMENTS

Amendment by Pub. L. 96–70 effective Oct. 1, 1979, see section 3304 of Pub. L. 96–70, set out as an Effective Date note under section 3601 of Title 22, Foreign Relations and Intercourse.

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.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–375 effective within 1 year after Aug. 12, 1970, on date established therefor by Board of Governors of United States Postal Service and Published by it in Federal Register, see section 15(a) of Pub. L. 91–375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–623 effective as of Sept. 6, 1966, for all purposes, see section 6 of Pub. L. 90–623, set out as a note under section 5334 of this title.

DEFINITION OF OFFICERS AND EMPLOYEES

Section 4 of act July 1, 1947, ch. 192, 61 Stat. 239, as amended by act June 22, 1956, ch. 428, 70 Stat. 331, provided that: ''The words 'officers and employees of the United States or of the District of Columbia' as used in the third paragraph, subheading 'Ordinance Stores and Equipment for Reserve Officers Training Corps', of the Act of May 12, 1917 (40 Stat. 72; 10 U.S.C. Annotated 371) [covered by this section], as now or hereafter amended, as used in that part of section 80 of the Act of June 3, 1916 (39 Stat. 203; 32 U.S.C. 75) [covered by this section], as now or hereafter amended, which precedes the proviso, and as used in the first proviso of section 9 of the Naval Reserve Act of 1938 (52 Stat. 1177; 34 U.S.C. 853g) [covered by this section], as now or hereafter amended, shall be construed to mean all officers and employees of the United States or of the District of Columbia, permanent or temporary indefinite, without regard to classifications or terminology peculiar to the Federal Civil Service System. The words 'officers and employees of the United States or of the District of Columbia', as used in such provisions of law, as now or hereafter amended, also shall be construed to mean substitute employees in the postal field service; such substitute employees shall be entitled to military leave of absence on the basis of one hour of such leave for each period or periods aggregating twenty-six hours of work performed in the calendar year immediately preceding the year in which they are ordered to duty by proper authority: *Provided*, That the number of hours worked during the preceding calendar year shall not be less than one thousand forty hours before such substitute employee shall be entitled to military leave of absence, pay for such leave not to exceed eighty hours in each calendar year.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5519, 6129 of this title.

§ 6324. Absence of certain police and firemen

(a) Sick leave may not be charged to the account of a member of the Metropolitan Police force or the Fire Department of the District of Columbia, the United States Park Police force, or the Executive Protective Service force for an absence due to injury or illness resulting from the performance of duty.

(b) The determination of whether an injury or illness resulted from the performance of duty shall be made under regulations prescribed by—

(1) the District of Columbia Council for members of the Metropolitan Police force and the Fire Department of the District of Columbia;

(2) the Secretary of the Interior for the United States Park Police force; and

(3) The Secretary of the Treasury for the Executive Protective Service force.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 522; Pub. L. 90–623, § 1(18), Oct. 22, 1968, 82 Stat. 1313; Pub. L. 94–183, § 2(28), (29), Dec. 31, 1975, 89 Stat. 1058.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 2071.	Aug. 21, 1964, Pub. L. 88–471, § 5, 78 Stat. 583.

The word ''officer'' is omitted as covered by ''member''.

In subsection (b), the words ''injury or illness'' are substituted for ''injury or disease'' to conform to subsection (a).

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1975—Subsecs. (a), (b)(3). Pub. L. 94–183 substituted ''Executive Protective Service'' for ''White House Police''.

1968—Subsec. (b)(1). Pub. L. 90–623 substituted ''District of Columbia Council'' for ''Commissioners of the District of Columbia''.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–623 intended to restate without substantive change the law in effect on Oct. 22, 1968, see section 6 of Pub. L. 90–623, set out as a note under section 5334 of this title.

TRANSFER OF FUNCTIONS

District of Columbia Council, as established by Reorg. Plan No. 3 of 1967, abolished as of noon Jan. 2, 1975, by Pub. L. 93–198, title VII, § 711, Dec. 24, 1973, 87 Stat. 818, classified to section 1–211 of the District of Columbia Code, and replaced by Council of District of Columbia, as provided by Pub. L. 93–198, title IV, § 401, Dec. 24, 1973, 87 Stat. 785, classified to section 1–221 of the District of Columbia Code.

§ 6325. Absence resulting from hostile action abroad

Leave may not be charged to the account of an employee for absence, not to exceed one year, due to an injury—

(1) incurred while serving abroad and resulting from war, insurgency, mob violence, or similar hostile action; and

(2) not due to vicious habits, intemperance, or willful misconduct on the part of the employee.

The preceding provisions of this section shall apply in the case of an alien employee referred to in section 6301(2)(viii) of this title with respect to any leave granted to such alien employee under section 6310 of this title or section 408 of the Foreign Service Act of 1980.

(Added Pub. L. 90–221, § 3(a), Dec. 23, 1967, 81 Stat. 671; amended Pub. L. 96–54, § 2(a)(41), Aug. 14, 1979, 93 Stat. 383; Pub. L. 99–399, title VIII, § 804, Aug. 27, 1986, 100 Stat. 883.)

REFERENCES IN TEXT

Section 408 of the Foreign Service Act of 1980, referred to in text, is classified to section 3968 of Title 22, Foreign Relations and Intercourse.

AMENDMENTS

1986—Pub. L. 99–399 inserted sentence at end relating to alien employees.

1979—Pub. L. 96–54 substituted provisions relating to leave charged to an account of an employee for absence, for provisions relating to leave charged to an account of any officer or employee for absence, and designated qualifying provisions as cls. (1) and (2).

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.

EFFECTIVE DATE

Section 3(c) of Pub. L. 90–221 provided that: ''The amendment made by subsection (a) of this section [enacting this section] shall take effect as of the first day of the first pay period which began on or after January 1, 1965.''

§ 6326. Absence in connection with funerals of immediate relatives in the Armed Forces

(a) An employee of an executive agency or an individual employed by the government of the District of Columbia is entitled to not more than three days of leave without loss of, or reduction in, pay, leave to which he is otherwise entitled, credit for time or service, or performance or efficiency rating, to make arrangements for, or attend the funeral of, or memorial service for, an immediate relative who died as a result of wounds, disease, or injury incurred while serving as a member of the Armed Forces in a combat zone (as determined by the President in accordance with section 112 of the Internal Revenue Code).

(b) The Office of Personnel Management is authorized to issue regulations for the administration of this section.

(c) This section shall not be considered as affecting the authority of an Executive agency, except to the extent and under the conditions covered under this section, to grant administrative leave excusing an employee from work when it is in the public interest.

(Added Pub. L. 90–588, § 1(a), Oct. 17, 1968, 82 Stat. 1151; amended Pub. L. 95–454, title IX, § 906(a)(2), Oct. 13, 1978, 92 Stat. 1224.)

REFERENCES IN TEXT

Section 112 of the Internal Revenue Code, referred to in subsec. (a), is classified to section 112 of Title 26, Internal Revenue Code.

AMENDMENTS

1978—Subsec. (b). Pub. L. 95–454 substituted ''Office of Personnel Management'' for ''Civil Service Commission''.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6129 of this title.

§ 6327.[1] Absence in connection with serving as a bone-marrow or organ donor

(a) An employee in or under an Executive agency is entitled to leave without loss of or re-

[1] Another section 6327 is set out after this section.

duction in pay, leave to which otherwise entitled, credit for time or service, or performance or efficiency rating, for the time necessary to permit such employee to serve as a bone-marrow or organ donor.

(b) Not to exceed 7 days of leave may be used under this section by an employee in a calendar year.

(c) The Office of Personnel Management may prescribe regulations for the administration of this section.

(Added Pub. L. 103–329, title VI, § 629(a)(1), Sept. 30, 1994, 108 Stat. 2423.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6129 of this title.

§ 6327.[1] Absence in connection with funerals of fellow Federal law enforcement officers

A Federal law enforcement officer or a Federal firefighter may be excused from duty without loss of, or reduction in, pay or leave to which such officer is otherwise entitled, or credit for time or service, or performance or efficiency rating, to attend the funeral of a fellow Federal law enforcement officer or Federal firefighter, who was killed in the line of duty. When so excused from duty, attendance at such service shall for the purposes of section 1345(a) of title 31, be considered to be an official duty of the officer or firefighter.

(Added Pub. L. 103–329, title VI, § 642, Sept. 30, 1994, 108 Stat. 2432.)

CODIFICATION

Section 642 of Pub. L. 103–329, which directed that this section 6327 be added ''following the word 'Forces' in section 6326'' was executed by adding the section after section 6327, as added by section 629(a)(1) of Pub. L. 103–329, to reflect the probable intent of Congress.

SUBCHAPTER III—VOLUNTARY TRANSFERS OF LEAVE

REPEAL OF SUBCHAPTER

Subchapter repealed effective five years after October 31, 1988, see section 2(d) of Pub. L. 100–566 set out as an Effective Date of Repeal note under section 6331 of this title.

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 6307, 6373 of this title; title 20 section 904; title 22 section 3968; title 38 section 7423.

§ 6331. Definitions

For the purpose of this subchapter—

(1) the term ''employee'' means an employee as defined by section 6301(2), excluding an individual employed by the government of the District of Columbia;

(2) the term ''leave recipient'' means an employee whose application to receive donations of leave under this subchapter is approved;

(3) the term ''leave donor'' means an employee whose application to make 1 or more donations of leave under this subchapter is approved; and

(4) the term ''medical emergency'' means a medical condition of an employee or a family member of such employee that is likely to require the prolonged absence of such employee from duty and to result in a substantial loss of income to such employee because of the unavailability of paid leave (disregarding any advanced leave).

(Added Pub. L. 100–566, § 2(a), Oct. 31, 1988, 102 Stat. 2834; amended Pub. L. 103–103, § 3, Oct. 8, 1993, 107 Stat. 1022.)

AMENDMENTS

1993—Par. (4). Pub. L. 103–103 inserted ''the term'' after par. designation and inserted before period at end ''(disregarding any advanced leave)''.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 6 of Pub. L. 103–103 provided that: ''Except as provided in section 2 [enacting and repealing provisions set out as notes under this section], this Act [amending this section and sections 6337, 6361, 6362, and 6373 of this title and enacting provisions set out as a note under section 6301 of this title] and the amendments made by this Act shall take effect as of the 120th day after the date of the enactment of this Act [Oct. 8, 1993] or such earlier date as the Office of Personnel Management may by regulation prescribe.''

REPEALS

Section 2(d) of Pub. L. 100–566, which provided for the repeal of subchapters III (§ 6331 et seq.) and IV (§ 6361 et seq.) of this chapter effective 5 years after Oct. 31, 1988, and which also contained savings provisions for continued availability of certain leave as if such program had not been terminated, was repealed by Pub. L. 103–103, § 2, Oct. 8, 1993, 107 Stat. 1022, effective Oct. 30, 1993.

[Section 2 of Pub. L. 103–103 provided that the repeal made by that section is effective Oct. 30, 1993.]

IMPLEMENTATION OF LEAVE TRANSFER AND LEAVE BANK PROGRAMS

Section 2(c) of Pub. L. 100–566 provided that:

''(1) No later than 3 months after the date of the enactment of this Act [Oct. 31, 1988], the Office of Personnel Management shall prescribe regulations to implement leave transfer programs pursuant to the amendments made by this Act [see Short Title of 1988 Amendment note set out under section 6301 of this title].

''(2) No later than 6 months after the date of the enactment of this Act—

''(A) the head of each agency involved under sections 6332 and 6339 of title 5, United States Code, shall establish and begin operating a leave transfer program in accordance with applicable provisions of subchapter III of chapter 63 of title 5, United States Code, and applicable regulations prescribed by the Office; and

''(B) the Office of Personnel Management shall prescribe regulations to implement leave bank programs pursuant to the amendments made by this Act.

''(3) No later than 9 months after the date of the enactment of this Act, the head of each agency involved under section 6362 of title 5, United States Code, shall establish and begin operating a leave bank in accordance with subchapter IV of chapter 63 of title 5, United States Code, and applicable regulations prescribed by the Office.''

REPORT TO CONGRESS

Section 2(e) of Pub. L. 100–566 provided that:

''(1)(A) Within 2 years after the date of the enactment of this Act [Oct. 31, 1988] and again no later than 6 months before the scheduled termination date of any program under subchapter III or subchapter IV of chapter 63 of title 5, United States Code (excluding any program under sections 6339 and 6372 of such chapter) the Office of Personnel Management shall submit a written

[1] Another section 6327 is set out preceding this section.

report to the Congress with respect to the operations of such programs.

''(B) The Office of Personnel Management may require agencies to maintain such records and to provide such information as the Office may need to carry out subparagraph (A).

''(2) The excepted agencies that establish programs under sections 6339 and 6372 of title 5, United States Code, shall report to the Congress on the operation of such programs within 2 years after the date of the enactment of this Act and again no later than 6 months before the scheduled termination of any such programs.''

CONTINUATION OF TEMPORARY LEAVE TRANSFER PROGRAMS

Section 2(f) of Pub. L. 100–566 provided that: ''Any temporary program allowing for transfers of leave among officers or employees of the Federal Government may, if such program is being implemented with respect to an agency (or any unit thereof) as of the date of the enactment of this Act [Oct. 31, 1988], continue to be implemented with respect to such agency (or unit), notwithstanding any provision of law which would otherwise terminate the authority for such program, pending the commencement of a leave transfer program with respect to such agency pursuant to amendments made by this Act [see Short Title of 1988 Amendment note set out under section 6301 of this title]. The Office of Personnel Management (or, in the case of a program established by another agency, such other agency) shall prescribe regulations to ensure that any leave which has been transferred to the credit of an officer or employee and which remains unused as of the date on which any such temporary program terminates (and a successor program commences pursuant to amendments made by this Act) shall not be lost by reason of that termination.''

§ 6332. General authority

Notwithstanding any provision of subchapter I, and subject to the provisions of this subchapter, the Office of Personnel Management shall establish a program under which annual leave accrued or accumulated by an employee may be transferred to the annual leave account of any other employee if such other employee requires additional leave because of a medical emergency.

(Added Pub. L. 100–566, § 2(a), Oct. 31, 1988, 102 Stat. 2834.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6334 of this title.

§ 6333. Receipt and use of transferred leave

(a)(1) An application to receive donations of leave under this subchapter, whether submitted by or on behalf of an employee—

(A) shall be submitted to the employing agency of the proposed leave recipient; and

(B) shall include—

(i) the name, position title, and grade or pay level of the proposed leave recipient;

(ii) the reasons why transferred leave is needed, including a brief description of the nature, severity, anticipated duration, and, if it is a recurring one, the approximate frequency of the medical emergency involved;

(iii) if the employing agency so requires, certification from 1 or more physicians, or other appropriate experts, with respect to any matter under clause (ii); and

(iv) any other information which the employing agency may reasonably require.

(2) If an agency requires that an employee obtain certification under paragraph (1)(B)(iii) from 2 or more sources, the agency shall ensure, either by direct payment to the expert involved or by reimbursement, that the employee is not required to pay for the expenses associated with obtaining certification from more than 1 of such sources.

(3) An employing agency shall approve or disapprove an application of a proposed leave recipient for leave under this subchapter, and, to the extent practicable, shall notify the proposed leave recipient (or other person acting on behalf of the proposed recipient, if appropriate) of the decision of the agency, in writing, within 10 days (excluding Saturdays, Sundays, and legal public holidays) after receiving such application.

(b) A leave recipient may use annual leave received under this subchapter in the same manner and for the same purposes as if such leave recipient had accrued that leave under section 6303, except that any annual leave, and any sick leave, accrued or accumulated by the leave recipient and available for the purpose involved must be exhausted before any transferred annual leave may be used.

(c) Transferred annual leave—

(1) may accumulate without regard to any limitation under section 6304; and

(2) may be substituted retroactively for any period of leave without pay, or used to liquidate an indebtedness for any period of advanced leave, which began on or after a date fixed by the employing agency of the employee as the beginning of the medical emergency involved.

(Added Pub. L. 100–566, § 2(a), Oct. 31, 1988, 102 Stat. 2834.)

§ 6334. Donations of leave

(a) An employee may, by written application to the employing agency of such employee, request that a specified number of hours be transferred from the annual leave account of such employee to the annual leave account of a leave recipient in accordance with section 6332.

(b)(1) In any one leave year, a leave donor may donate no more than a total of one-half of the amount of annual leave such donor would be entitled to accrue during the leave year in which the donation is made.

(2) A leave donor who is projected to have annual leave that otherwise would be subject to forfeiture at the end of the leave year under section 6304(a) may donate no more than the number of hours remaining in the leave year (as of the date of the transfer) for which the leave donor is scheduled to work and receive pay.

(3) The employing agency of a leave donor may waive the limitation under paragraphs (1) and (2). Any such waiver shall be made in writing.

(c) The Office of Personnel Management shall prescribe regulations to include procedures to carry out this subchapter when the leave donor and the leave recipient are employed by different agencies.

(Added Pub. L. 100–566, § 2(a), Oct. 31, 1988, 102 Stat. 2835.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6336 of this title.

§ 6335. Termination of medical emergency

(a) The medical emergency affecting a leave recipient shall, for purposes of this subchapter, be considered to have terminated on the date as of which—

(1) the leave recipient notifies the employing agency of such leave recipient, in writing, that the medical emergency no longer exists;

(2) the employing agency of such leave recipient determines, after written notice and opportunity for the leave recipient (or, if appropriate, another person acting on behalf of the leave recipient) to answer orally or in writing, that the medical emergency no longer exists; or

(3) the leave recipient is separated from service.

(b)(1) The employing agency of a leave recipient shall, consistent with guidelines prescribed by the Office of Personnel Management, establish procedures to ensure that a leave recipient is not permitted to use or receive any transferred leave under this subchapter after the medical emergency terminates.

(2) Nothing in section 5551, 5552, or 6306 shall apply with respect to any annual leave transferred to a leave recipient under this subchapter.

(Added Pub. L. 100–566, § 2(a), Oct. 31, 1988, 102 Stat. 2836.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6337 of this title.

§ 6336. Restoration of transferred leave

(a)(1) The Office of Personnel Management shall establish procedures under which, except as provided in paragraph (2), any transferred leave remaining to the credit of a leave recipient when the medical emergency affecting the leave recipient terminates shall be restored on a prorated basis by transfer to the appropriate accounts of the respective leave donors.

(2) Nothing in paragraph (1) shall require the restoration of leave to a leave donor—

(A) if the amount of leave which would be restored to such donor would be less than 1 hour or any other shorter period of time which the Office may by regulation prescribe;

(B) if such donor retires, dies, or is otherwise separated from service, before the date on which such restoration would otherwise be made; or

(C) if such restoration is not administratively feasible, as determined under regulations prescribed by the Office.

(b) At the election of the leave donor, transferred annual leave restored to such leave donor under subsection (a) may be restored by—

(1) crediting such leave to the leave donor's annual leave account in the then current leave year;

(2) crediting such leave to the leave donor's annual leave account, effective as of the first day of the first leave year beginning after the date of the election; or

(3) donating such leave in whole or part to another leave recipient; if a leave donor elects to donate only part of restored leave to another recipient, the donor may elect to have the remaining leave credited to the donor's annual leave account in accordance with paragraph (1) or (2).

(c) The Office shall prescribe regulations under which this section shall be applied in the case of an employee who is paid other than on the basis of biweekly pay periods.

(d) Restorations of leave under this section shall be carried out in a manner consistent with regulations prescribed to carry out section 6334(c), if applicable.

(Added Pub. L. 100–566, § 2(a), Oct. 31, 1988, 102 Stat. 2836.)

§ 6337. Accrual of leave

(a) For the purpose of this section—

(1) the term ''paid leave status under subchapter I'', as used with respect to an employee, means the administrative status of such employee while such employee is using sick leave, or annual leave, accrued or accumulated under subchapter I; and

(2) the term ''transferred leave status'', as used with respect to an employee, means the administrative status of such employee while such employee is using transferred leave under this subchapter.

(b)(1) Except as otherwise provided in this section, while an employee is in a transferred leave status, annual leave and sick leave shall accrue to the credit of such employee at the same rate as if such employee were then in a paid leave status under subchapter I, except that—

(A) the maximum amount of annual leave which may be accrued by an employee while in transferred leave status in connection with any particular medical emergency may not exceed 5 days; and

(B) the maximum amount of sick leave which may be accrued by an employee while in transferred leave status in connection with any particular medical emergency may not exceed 5 days.

(2) Any annual or sick leave accrued by an employee under this section—

(A) shall be credited to an annual leave or sick leave account, as appropriate, separate from any leave account of such employee under subchapter I; and

(B) shall not become available for use by such employee, and may not otherwise be taken into account under subchapter I, until, in accordance with subsection (c), it is transferred to the appropriate leave account of such employee under subchapter I.

(c)(1) Any annual or sick leave accrued by an employee under this section shall be transferred to the appropriate leave account of such employee under subchapter I, and shall be available for use—

(A) as of the beginning of the first applicable pay period beginning after the date on which the employee's medical emergency terminates as described in paragraph (1) or (2) of section 6335(a); or

(B) if the employee's medical emergency has not yet terminated, once the employee has ex-

hausted all transferred leave made available to such employee under this subchapter.

(2) In the event that the employee's medical emergency terminates as described in section 6335(a)(3)—

(A) any leave accrued but not yet transferred under this section shall not be credited to such employee; or

(B) if there remains, as of the date the emergency so terminates, any leave which became available to such employee under paragraph (1)(B), such leave shall cease to be available for any purpose.

(d) Nothing in this section shall be considered to prevent, with respect to a continuing medical emergency, further transfers of leave for use after leave accrued under this section has been exhausted by the employee.

(Added Pub. L. 100–566, § 2(a), Oct. 31, 1988, 102 Stat. 2837; amended Pub. L. 103–103, § 4, Oct. 8, 1993, 107 Stat. 1022.)

AMENDMENTS

1993—Subsecs. (c), (d). Pub. L. 103–103 amended subsec. (c) generally and added subsec. (d). Prior to amendment, subsec. (c) read as follows:

''(1) Any annual or sick leave accrued by an employee under this section shall be transferred to the appropriate leave account of such employee under subchapter I, effective as of the beginning of the first applicable pay period beginning after the date on which the employee's medical emergency terminates as described in paragraph (1) or (2) of section 6335(a).

''(2) If the employee's medical emergency terminates as described in section 6335(a)(3), no leave shall be credited to such employee under this section.''

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–103 effective as of the 120th day after Oct. 8, 1993, or such earlier date as the Office of Personnel Management may by regulation prescribe, see section 6 of Pub. L. 103–103, set out as a note under section 6331 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6371, 6373 of this title.

§ 6338. Prohibition of coercion

(a) An employee may not directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any other employee for the purpose of interfering with any right which such employee may have with respect to contributing, receiving, or using annual leave under this subchapter.

(b) For the purpose of subsection (a), the term ''intimidate, threaten, or coerce'' includes promising to confer or conferring any benefit (such as an appointment, promotion, or compensation), or effecting or threatening to effect any reprisal (such as deprivation of appointment, promotion, or compensation).

(Added Pub. L. 100–566, § 2(a), Oct. 31, 1988, 102 Stat. 2837.)

§ 6339. Additional leave transfer programs

(a) For the purpose of this section—

(1) the term ''excepted agency'' means—

(A) the Central Intelligence Agency;

(B) the Defense Intelligence Agency;

(C) the National Security Agency;

(D) the Federal Bureau of Investigation;

(E) the Central Imagery Office; and

(F) as determined by the President, any Executive agency or unit thereof, the principal function of which is the conduct of foreign intelligence or counterintelligence activities; and

(2) the term ''head of an excepted agency'' means—

(A) with respect to the Central Intelligence Agency, the Director of Central Intelligence;

(B) with respect to the Defense Intelligence Agency, the Director of the Defense Intelligence Agency;

(C) with respect to the National Security Agency, the Director of the National Security Agency;

(D) with respect to the Federal Bureau of Investigation, the Director of the Federal Bureau of Investigation;

(E) with respect to the Central Imagery Office, the Director of the Central Imagery Office; and

(F) with respect to an Executive agency designated under paragraph (1)(F), the head of such Executive agency, and with respect to a unit of an Executive agency designated under paragraph (1)(F), such individual as the President may determine.

(b) Notwithstanding any other provision of this subchapter, neither an excepted agency nor any individual employed in or under an excepted agency may be included in a leave transfer program established under any of the preceding provisions of this subchapter.

(c)(1) The head of an excepted agency shall, by regulation, establish a program under which annual leave accrued or accumulated by an employee of such agency may be transferred to the annual leave account of any other employee of such agency if such other employee requires additional leave because of a medical emergency.

(2) To the extent practicable, and consistent with the protection of intelligence sources and methods (if applicable), each program under this section shall be established—

(A) in a manner consistent with the provisions of this subchapter applicable to the program; and

(B) without regard to any provisions relating to transfers or restorations of leave between employees in different agencies.

(d) The Office of Personnel Management shall provide the head of an excepted agency with such advice and assistance as the head of such agency may request in order to carry out the purposes of this section.

(Added Pub. L. 100–566, § 2(a), Oct. 31, 1988, 102 Stat. 2838; amended Pub. L. 103–359, title V, § 501(i), Oct. 14, 1994, 108 Stat. 3429.)

AMENDMENTS

1994—Subsec. (a)(1)(E), (F). Pub. L. 103–359, § 501(i)(1), added subpar. (E) and redesignated former subpar. (E) as (F).

Subsec. (a)(2)(E), (F). Pub. L. 103–359, § 501(i)(2), added subpar. (E), redesignated former subpar. (E) as (F), and substituted ''paragraph (1)(F)'' for ''paragraph (1)(E)'' in two places in subpar. (F).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6372 of this title.

§ 6340. Inapplicability of certain provisions

Except to the extent that the Office of Personnel Management may prescribe regulations, nothing in section 7351 shall apply with respect to a solicitation, donation, or acceptance of leave under this subchapter.

(Added Pub. L. 100–566, § 2(a), Oct. 31, 1988, 102 Stat. 2838.)

SUBCHAPTER IV—VOLUNTARY LEAVE BANK PROGRAM

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in title 22 section 3968; title 38 section 7423.

§ 6361. Definitions

For the purpose of this subchapter the term—

(1) ''employee'' means an employee as defined by section 6301(2), but shall exclude any individual employed by the government of the District of Columbia;

(2) ''executive agency'' means any executive agency or any administrative unit thereof;

(3) ''leave bank'' means a leave bank established under section 6363;

(4) ''leave contributor'' means an employee who contributes leave to an agency leave bank under section 6365;

(5) ''leave recipient'' means an employee whose application under section 6367 to receive contributions of leave from a leave bank is approved; and

(6) ''medical emergency'' means a medical condition of an employee or a family member of such employee that is likely to require the prolonged absence of such employee from duty and to result in a substantial loss of income to such employee because of the unavailability of paid leave (disregarding any advanced leave).

(Added Pub. L. 100–566, § 2(a), Oct. 31, 1988, 102 Stat. 2839; amended Pub. L. 103–103, § 3(a), Oct. 8, 1993, 107 Stat. 1022.)

AMENDMENTS

1993—Par. (6). Pub. L. 103–103 inserted before period at end ''(disregarding any advanced leave)''.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–103 effective as of the 120th day after Oct. 8, 1993, or such earlier date as the Office of Personnel Management may by regulation prescribe, see section 6 of Pub. L. 103–103, set out as a note under section 6331 of this title.

LEAVE BANK FOR JUDICIAL BRANCH EMPLOYEES OF FEDERAL GOVERNMENT IN RESERVES WHO WERE ACTIVATED DURING PERSIAN GULF WAR

Pub. L. 102–58, § 3, June 18, 1991, 105 Stat. 299, provided that:

''(a) JUDICIAL BRANCH EMPLOYEES.—The Director of the Administrative Office of the United States Courts shall establish a leave bank program under which—

''(1) an employee of the Judicial Branch may (during a period specified by the Director of the Administrative Office) donate any unused annual leave from the employee's annual leave account to a leave bank established by the Director;

''(2) the total amount of annual leave that has been donated under paragraph (1) shall be divided equally among the annual leave accounts of all employees who have been members of the Armed Forces serving on active duty during the Persian Gulf conflict pursuant to an order issued under section 672(a) [now 12301(a)], 672(g) [now 12301(g)], 673 [now 12302], 673b [now 12304], 674 [now 12306], 675 [now 12307], or 688 of title 10, United States Code, and who return to employment with the Judicial Branch; and

''(3) such Persian Gulf conflict participants who have returned to Judicial Branch employment may use such annual leave, after it is credited to their leave accounts, in the same manner as any other annual leave to their credit.

''(b) DEFINITIONS.—For purposes of subsection (a), the term 'employee' means an employee as defined in section 6301(2) of title 5, United States Code.

''(c) DEADLINE FOR REGULATIONS.—Within 30 days after the date of the enactment of this Act [June 18, 1991], the Director of the Administration [Administrative] Office shall prescribe regulations necessary for the administration of subsection (a).''

LEAVE BANK FOR FEDERAL CIVILIAN EMPLOYEES IN RESERVES WHO WERE ACTIVATED DURING PERSIAN GULF WAR

Pub. L. 102–25, title III, § 361, Apr. 6, 1991, 105 Stat. 92, as amended by Pub. L. 102–484, div. A, title X, § 1054(c)(1), Oct. 23, 1992, 106 Stat. 2502, provided that:

''(a) CIVIL SERVICE EMPLOYEES.—The Office of Personnel Management shall establish a leave bank program under which—

''(1) an employee in any executive agency may (during a period specified by the Office of Personnel Management) donate any unused annual leave from the employee's annual leave account to a leave bank established by the Office of Personnel Management;

''(2) the total annual leave that has been donated under paragraph (1) shall be divided equally among the annual leave accounts of all employees who have been members of the Armed Forces serving on active duty during the Persian Gulf conflict pursuant to an order issued under section 672(a) [now 12301(a)], 672(g) [now 12301(g)], 673 [now 12302], 673b [now 12304], 674 [now 12306], 675 [now 12307], or 688 of title 10, United States Code, and who return to civilian employment with their agencies; and

''(3) such Persian Gulf concflict [sic] participants who have returned to civilian employment may use such annual leave, after it is credited to their leave accounts, in the same manner as any other annual leave to their credit.

''(b) DEFINITIONS.—For purposes of subsection (a), the term 'employee' means an employee as defined in section 6361(1) of title 5, United States Code.

''(c) DEADLINE FOR REGULATIONS.—Within 30 days after the date of the enactment of this Act [Apr. 6, 1991], the Office of Personnel Management shall prescribe regulations necessary for the administration of subsection (a).

''(d) DEPARTMENT OF VETERANS AFFAIRS HEALTH-CARE PROFESSIONALS.—The Secretary of Veterans Affairs shall establish a program similar to that established under subsection (a) for the benefit of health-care professionals covered under section 7423(e) of title 38, United States Code. Such program shall be as similar and [as] practicable to the program established under subsection (a).''

§ 6362. General authority

Notwithstanding any provision of subchapter I, and subject to the provisions of this subchapter, the Office of Personnel Management shall establish a program under which—

(1) annual leave accrued or accumulated by an employee may be contributed to a leave bank established by the employing agency of such employee; and

(2) leave from such a leave bank may be made available to an employee who requires such leave because of a medical emergency.

(Added Pub. L. 100–566, § 2(a), Oct. 31, 1988, 102 Stat. 2839; amended Pub. L. 103–103, § 5(b), Oct. 8, 1993, 107 Stat. 1023.)

AMENDMENTS

1993—Pub. L. 103–103 struck out subsec. (a) designation and struck out subsec. (b) which read as follows: ''To test voluntary leave bank programs under the provisions of this subchapter, the Office of Personnel Management shall establish a demonstration project in at least 3 Executive agencies, of which—

''(1) one such agency shall include approximately, but not less than, the equivalent of 100,000 full-time positions;

''(2) one such agency shall include approximately, but not less than, the equivalent of 25,000 full-time positions; and

''(3) one such agency shall include approximately, but not less than, the equivalent of 1,000 full-time positions.''

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–103 effective as of the 120th day after Oct. 8, 1993, or such earlier date as the Office of Personnel Management may by regulation prescribe, see section 6 of Pub. L. 103–103, set out as a note under section 6331 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6363 of this title.

§ 6363. Establishment of leave banks

Each agency that establishes a leave bank program under section 6362 shall establish 1 or more leave banks in accordance with regulations prescribed by the Office of Personnel Management.

(Added Pub. L. 100–566, § 2(a), Oct. 31, 1988, 102 Stat. 2839.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6361 of this title.

§ 6364. Establishment of Leave Bank Boards

(a)(1) Each agency that establishes a leave bank shall establish a Leave Bank Board consisting of 3 members, at least one of whom shall represent a labor organization or employee group, to administer the leave bank under the provisions of this subchapter, in consultation with the Office of Personnel Management.

(2) An agency may establish more than 1 Leave Bank Board based upon the administrative units within the agency. No more than 1 board may be established for each leave bank.

(b) Each such Board shall—

(1) review and approve applications to the leave bank under section 6367;

(2) monitor each case of a leave recipient; and

(3) monitor the amount of leave in the leave bank and the number of applications for use of leave from the bank; and

(4) maintain an adequate amount of leave in the leave bank to the greatest extent practicable.

(Added Pub. L. 100–566, § 2(a), Oct. 31, 1988, 102 Stat. 2839.)

§ 6365. Contributions of annual leave

(a)(1) An employee may, by written application to the Leave Bank Board, request that a specified number of hours be transferred from the annual leave account of such employee to the leave bank established by such agency.

(2) An employee may state a concern and desire to aid a specified proposed leave recipient or a leave recipient in the application filed under paragraph (1).

(b)(1) Upon approving an application under subsection (a), the employing agency of the leave contributor may transfer all or any part of the number of hours requested for transfer, except that the number of hours so transferred may not exceed the limitations under paragraph (2).

(2)(A) In any one leave year, a leave contributor may contribute no more than a total of one-half of the amount of annual leave such contributor would be entitled to accrue during the leave year in which the contribution is made.

(B) A leave contributor who is projected to have annual leave that otherwise would be subject to forfeiture at the end of the leave year under section 6304(a) may contribute no more than the number of hours remaining in the leave year (as of the date of the contribution) for which the leave contributor is scheduled to work and receive pay.

(c) The Leave Bank Board of a leave contributor may waive the limitations under subsection (b)(2). Any such waiver shall be in writing.

(d) The Office of Personnel Management shall prescribe regulations establishing an open enrollment period during which an employee may contribute leave under subsection (a) for a leave year.

(Added Pub. L. 100–566, § 2(a), Oct. 31, 1988, 102 Stat. 2840.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6361, 6366 of this title.

§ 6366. Eligibility for leave recipients

(a) An employee is eligible to be a leave recipient if such employee—

(1) experiences a medical emergency and submits an application pursuant to section 6367(a); and

(2)(A) contributes the minimum number of hours as required under subsection (b) of accrued or accumulated annual leave to the leave bank of the employing agency of such employee, in the leave year (beginning in and including any part of a leave year in which such leave bank is established) that such employee submits an application to be a leave recipient under section 6367(a); and

(B) such contribution is made before such employee submits an application under section 6367(a).

(b)(1) An employee shall contribute the minimum number of hours required under subsection (a)(2)(A), if such employee is an employee—

(A) for less than 3 years of service and contributes a minimum of 4 hours;

(B) for between 3 years and less than 15 years of service and contributes a minimum of 6 hours; or

(C) for 15 years or more of service and contributes a minimum of 8 hours.

(2) Notwithstanding the provisions of paragraph (1), the Leave Bank Board of an agency,

after consultation with the Office of Personnel Management, may—

(A) reduce the minimum number of hours required under paragraph (1) for any leave year, if such Board determines there is a surplus of leave in the leave bank; and

(B) increase the number of minimum hours required under paragraph (1) for the succeeding leave year, in any leave year in which the Board determines there is a shortage of leave in the leave bank.

(c) An employee shall meet the requirements of subsection (a)(2)(A) if such employee contributes the minimum number of hours as required under subsection (b) of accrued or accumulated annual leave to the leave bank with which such employee submits an application to be a leave recipient under section 6367(a).

(d) The provisions of subsection (a) may not be construed to limit the amount of the voluntary contribution of annual leave to a leave bank, which does not exceed the limitations of section 6365(b).

(Added Pub. L. 100–566, §2(a), Oct. 31, 1988, 102 Stat. 2840.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6361, 6364, 6366 of this title.

§ 6367. Receipt and use of leave from a leave bank

(a) An application to receive contributions of leave from a leave bank, whether submitted by or on behalf of an employee—

(1) shall be submitted to the Leave Bank Board of the employing agency of the proposed leave recipient; and

(2) shall include—

(A) the name, position title, and grade or pay level of the proposed leave recipient;

(B) the reasons why leave is needed, including a brief description of the nature, severity, anticipated duration, and, if it is a recurring one, the approximate frequency of the medical emergency involved;

(C) if such Board so requires, certification from 1 or more physicians, or other appropriate experts, with respect to any matter under subparagraph (B); and

(D) any other information which such Board may reasonably require.

If a Board requires that an employee obtain certification under paragraph (2)(C) from 2 or more sources, the agency shall ensure, either by direct payment to the expert involved or by reimbursement, that the employee is not required to pay for the expenses associated with obtaining certification from more than 1 of such sources.

(b) The Leave Bank Board of an employing agency may approve an application submitted under subsection (a).

(c) A leave recipient may use annual leave received from the leave bank established by the employing agency of such employee under this subchapter in the same manner and for the same purposes as if such leave recipient had accrued such leave under section 6303, except that any annual leave and, if applicable, any sick leave accrued or accumulated to the leave recipient shall be used before any leave from the leave bank may be used.

(d) Transferred annual leave—

(1) may accumulate without regard to any limitation under section 6304; and

(2) may be substituted retroactively for any period of leave without pay, or used to liquidate an indebtedness for any period of advanced leave, which began on or after a date fixed by the employing agency of the employee as the beginning of the medical emergency involved.

(e) Except to the extent that the Office of Personnel Management may prescribe regulations, nothing in the provisions of section 7351 shall apply to any solicitation, contribution, or use of leave to or from a leave bank under this subchapter.

(Added Pub. L. 100–566, §2(a), Oct. 31, 1988, 102 Stat. 2841.)

§ 6368. Termination of medical emergency

(a) The medical emergency affecting a leave recipient shall, for purposes of this subchapter, be considered to have terminated on the date as of which—

(1) the leave recipient notifies the Leave Bank Board in writing, that the medical emergency no longer exists;

(2) the Leave Bank Board of such leave recipient determines, after written notice and opportunity for the leave recipient (or, if appropriate, another person acting on behalf of the leave recipient) to answer orally or in writing, that the medical emergency no longer exists; or

(3) the leave recipient is separated from service.

(b)(1) The Leave Bank Board of a recipient shall, consistent with guidelines prescribed by the Office of Personnel Management, establish procedures to ensure that a leave recipient is not permitted to use or receive any transferred leave under this subchapter after the medical emergency terminates.

(2) Nothing in section 5551, 5552, or 6306 shall apply with respect to any annual leave transferred to a leave recipient under this subchapter.

(Added Pub. L. 100–566, §2(a), Oct. 31, 1988, 102 Stat. 2842.)

§ 6369. Restoration of transferred leave

The Office of Personnel Management shall establish procedures under which any transferred leave remaining to the credit of a leave recipient when the medical emergency affecting the leave recipient terminates, shall be restored to the leave bank.

(Added Pub. L. 100–566, §2(a), Oct. 31, 1988, 102 Stat. 2842.)

§ 6370. Prohibition of coercion

(a) An employee may not directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any other em-

ployee for the purpose of interfering with any right which such employee may have with respect to contributing, receiving, or using annual leave under this subchapter.

(b) For the purpose of subsection (a), the term ''intimidate, threaten, or coerce'' includes promising to confer or conferring any benefit (such as an appointment, promotion, or compensation), or effecting or threatening to effect any reprisal (such as deprivation of appointment, promotion, or compensation).

(Added Pub. L. 100–566, § 2(a), Oct. 31, 1988, 102 Stat. 2842.)

§ 6371. Accrual of leave

While using leave made available to an employee from a leave bank, annual and sick leave shall accrue to the credit of such employee and shall become available for use by such employee in the same manner as provided for under section 6337.

(Added Pub. L. 100–566, § 2(a), Oct. 31, 1988, 102 Stat. 2843.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6373 of this title.

§ 6372. Additional leave bank programs

(a) For the purpose of this section—

(1) the term ''excepted agency'' has the same meaning as such term is defined under section 6339(a)(1) of this title; and

(2) the term ''head of an excepted agency'' has the same meaning as such term is defined under section 6339(a)(2) of this title.

(b) Notwithstanding any other provision of this subchapter, neither an excepted agency nor any individual employed in or under an excepted agency may be included in a leave bank program established under any of the preceding provisions of this subchapter.

(c)(1) The head of an excepted agency may, by regulation, establish a voluntary leave bank program under which annual leave accrued or accumulated by an employee of such agency may be contributed to a leave bank, and any other employee of such agency may receive additional leave from such leave bank because of a medical emergency.

(2) To the extent practicable, and consistent with the protection of intelligence sources and methods (if applicable), each program under this section shall be established in a manner consistent with the provisions of this subchapter applicable to the program.

(d) The Office of Personnel Management shall provide the head of an excepted agency with such advice and assistance as the head of such agency may request in order to carry out the purposes of this section.

(Added Pub. L. 100–566, § 2(a), Oct. 31, 1988, 102 Stat. 2843.)

§ 6373. Authority to participate in both programs

(a) The Office of Personnel Management shall prescribe regulations under which an employee participating in a leave bank program under this subchapter may, subject to such terms or conditions as the Office may establish, also make or receive donations of leave under subchapter III.

(b) Notwithstanding any provision of section 6337 or 6371, if an employee uses leave transferred to such employee under subchapter III and leave made available to such employee under this subchapter in connection with the same medical emergency, the maximum number of days of annual leave and sick leave, respectively, which may accrue to such employee in connection with such medical emergency shall be the same as if all of that leave had been made available to such employee under this subchapter.

(Added Pub. L. 100–566, § 2(a), Oct. 31, 1988, 102 Stat. 2843; amended Pub. L. 103–103, § 5(a)(1), Oct. 8, 1993, 107 Stat. 1023.)

AMENDMENTS

1993—Pub. L. 103–103 substituted ''Authority to participate in both programs'' for ''Limitation on employee participation'' in section catchline and amended text generally. Prior to amendment, text read as follows: ''An employee in a unit of an agency that establishes a leave bank program under the provisions of this subchapter may not participate in a leave transfer program under the provisions of subchapter III.''

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–103 effective as of the 120th day after Oct. 8, 1993, or such earlier date as the Office of Personnel Management may by regulation prescribe, see section 6 of Pub. L. 103–103, set out as a note under section 6331 of this title.

SUBCHAPTER V—FAMILY AND MEDICAL LEAVE

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 2105 of this title; title 29 section 2611; title 42 section 12631.

§ 6381. Definitions

For the purpose of this subchapter—

(1) the term ''employee'' means any individual who—

(A) is an ''employee'', as defined by section 6301(2), including any individual employed in a position referred to in clause (v) or (ix) of section 6301(2), but excluding any individual employed by the government of the District of Columbia and any individual employed on a temporary or intermittent basis; and

(B) has completed at least 12 months of service as an employee (within the meaning of subparagraph (A));

(2) the term ''health care provider'' means—

(A) a doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices; and

(B) any other person determined by the Director of the Office of Personnel Management to be capable of providing health care services;

(3) the term ''parent'' means the biological parent of an employee or an individual who stood in loco parentis to an employee when the employee was a son or daughter;

(4) the term ''reduced leave schedule'' means a leave schedule that reduces the usual num-

ber of hours per workweek, or hours per workday, of an employee;

(5) the term ''serious health condition'' means an illness, injury, impairment, or physical or mental condition that involves—

(A) inpatient care in a hospital, hospice, or residential medical care facility; or

(B) continuing treatment by a health care provider; and

(6) the term ''son or daughter'' means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is—

(A) under 18 years of age; or

(B) 18 years of age or older and incapable of self-care because of a mental or physical disability.

(Added Pub. L. 103–3, title II, § 201(a)(1), Feb. 5, 1993, 107 Stat. 19.)

EFFECTIVE DATE

Subchapter effective 6 months after Feb. 5, 1993, see section 405(b)(1) of Pub. L. 103–3, set out as a note under section 2601 of Title 29, Labor.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 42 section 12631.

§ 6382. Leave requirement

(a)(1) Subject to section 6383, an employee shall be entitled to a total of 12 administrative workweeks of leave during any 12-month period for one or more of the following:

(A) Because of the birth of a son or daughter of the employee and in order to care for such son or daughter.

(B) Because of the placement of a son or daughter with the employee for adoption or foster care.

(C) In order to care for the spouse, or a son, daughter, or parent, of the employee, if such spouse, son, daughter, or parent has a serious health condition.

(D) Because of a serious health condition that makes the employee unable to perform the functions of the employee's position.

(2) The entitlement to leave under subparagraph (A) or (B) of paragraph (1) based on the birth or placement of a son or daughter shall expire at the end of the 12-month period beginning on the date of such birth or placement.

(b)(1) Leave under subparagraph (A) or (B) of subsection (a)(1) shall not be taken by an employee intermittently or on a reduced leave schedule unless the employee and the employing agency of the employee agree otherwise. Subject to paragraph (2), subsection (e)(2), and section 6383(b)(5), leave under subparagraph (C) or (D) of subsection (a)(1) may be taken intermittently or on a reduced leave schedule when medically necessary. In the case of an employee who takes leave intermittently or on a reduced leave schedule pursuant to this paragraph, any hours of leave so taken by such employee shall be subtracted from the total amount of leave remaining available to such employee under subsection (a), for purposes of the 12-month period involved, on an hour-for-hour basis.

(2) If an employee requests intermittent leave, or leave on a reduced leave schedule, under subparagraph (C) or (D) of subsection (a)(1), that is foreseeable based on planned medical treatment, the employing agency may require such employee to transfer temporarily to an available alternative position offered by the employing agency for which the employee is qualified and that—

(A) has equivalent pay and benefits; and

(B) better accommodates recurring periods of leave than the regular employment position of the employee.

(c) Except as provided in subsection (d), leave granted under subsection (a) shall be leave without pay.

(d) An employee may elect to substitute for leave under subparagraph (A), (B), (C), or (D) of subsection (a)(1) any of the employee's accrued or accumulated annual or sick leave under subchapter I for any part of the 12-week period of leave under such subsection, except that nothing in this subchapter shall require an employing agency to provide paid sick leave in any situation in which such employing agency would not normally provide any such paid leave.

(e)(1) In any case in which the necessity for leave under subparagraph (A) or (B) of subsection (a)(1) is foreseeable based on an expected birth or placement, the employee shall provide the employing agency with not less than 30 days' notice, before the date the leave is to begin, of the employee's intention to take leave under such subparagraph, except that if the date of the birth or placement requires leave to begin in less than 30 days, the employee shall provide such notice as is practicable.

(2) In any case in which the necessity for leave under subparagraph (C) or (D) of subsection (a)(1) is foreseeable based on planned medical treatment, the employee—

(A) shall make a reasonable effort to schedule the treatment so as not to disrupt unduly the operations of the employing agency, subject to the approval of the health care provider of the employee or the health care provider of the son, daughter, spouse, or parent of the employee, as appropriate; and

(B) shall provide the employing agency with not less than 30 days' notice, before the date the leave is to begin, of the employee's intention to take leave under such subparagraph, except that if the date of the treatment requires leave to begin in less than 30 days, the employee shall provide such notice as is practicable.

(Added Pub. L. 103–3, title II, § 201(a)(1), Feb. 5, 1993, 107 Stat. 20.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6383, 6384, 6386 of this title.

§ 6383. Certification

(a) An employing agency may require that a request for leave under subparagraph (C) or (D) of section 6382(a)(1) be supported by certification issued by the health care provider of the employee or of the son, daughter, spouse, or parent of the employee, as appropriate. The employee shall provide, in a timely manner, a copy of such certification to the employing agency.

(b) A certification provided under subsection (a) shall be sufficient if it states—

(1) the date on which the serious health condition commenced;

(2) the probable duration of the condition;

(3) the appropriate medical facts within the knowledge of the health care provider regarding the condition;

(4)(A) for purposes of leave under section 6382(a)(1)(C), a statement that the employee is needed to care for the son, daughter, spouse, or parent, and an estimate of the amount of time that such employee is needed to care for such son, daughter, spouse, or parent; and

(B) for purposes of leave under section 6382(a)(1)(D), a statement that the employee is unable to perform the functions of the position of the employee; and

(5) in the case of certification for intermittent leave, or leave on a reduced leave schedule, for planned medical treatment, the dates on which such treatment is expected to be given and the duration of such treatment.

(c)(1) In any case in which the employing agency has reason to doubt the validity of the certification provided under subsection (a) for leave under subparagraph (C) or (D) of section 6382(a)(1), the employing agency may require, at the expense of the agency, that the employee obtain the opinion of a second health care provider designated or approved by the employing agency concerning any information certified under subsection (b) for such leave.

(2) Any health care provider designated or approved under paragraph (1) shall not be employed on a regular basis by the employing agency.

(d)(1) In any case in which the second opinion described in subsection (c) differs from the original certification provided under subsection (a), the employing agency may require, at the expense of the agency, that the employee obtain the opinion of a third health care provider designated or approved jointly by the employing agency and the employee concerning the information certified under subsection (b).

(2) The opinion of the third health care provider concerning the information certified under subsection (b) shall be considered to be final and shall be binding on the employing agency and the employee.

(e) The employing agency may require, at the expense of the agency, that the employee obtain subsequent recertifications on a reasonable basis.

(Added Pub. L. 103–3, title II, § 201(a)(1), Feb. 5, 1993, 107 Stat. 21.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6382 of this title.

§ 6384. Employment and benefits protection

(a) Any employee who takes leave under section 6382 for the intended purpose of the leave shall be entitled, upon return from such leave—

(1) to be restored by the employing agency to the position held by the employee when the leave commenced; or

(2) to be restored to an equivalent position with equivalent benefits, pay, status, and other terms and conditions of employment.

(b) The taking of leave under section 6382 shall not result in the loss of any employment benefit accrued prior to the date on which the leave commenced.

(c) Except as otherwise provided by or under law, nothing in this section shall be construed to entitle any restored employee to—

(1) the accrual of any employment benefits during any period of leave; or

(2) any right, benefit, or position of employment other than any right, benefit, or position to which the employee would have been entitled had the employee not taken the leave.

(d) As a condition to restoration under subsection (a) for an employee who takes leave under section 6382(a)(1)(D), the employing agency may have a uniformly applied practice or policy that requires each such employee to receive certification from the health care provider of the employee that the employee is able to resume work.

(e) Nothing in this section shall be construed to prohibit an employing agency from requiring an employee on leave under section 6382 to report periodically to the employing agency on the status and intention of the employee to return to work.

(Added Pub. L. 103–3, title II, § 201(a)(1), Feb. 5, 1993, 107 Stat. 22.)

§ 6385. Prohibition of coercion

(a) An employee shall not directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any other employee for the purpose of interfering with the exercise of any rights which such other employee may have under this subchapter.

(b) For the purpose of this section—

(1) the term ''intimidate, threaten, or coerce'' includes promising to confer or conferring any benefit (such as appointment, promotion, or compensation), or taking or threatening to take any reprisal (such as deprivation of appointment, promotion, or compensation); and

(2) the term ''employee'' means any ''employee'', as defined by section 2105.

(Added Pub. L. 103–3, title II, § 201(a)(1), Feb. 5, 1993, 107 Stat. 22.)

§ 6386. Health insurance

An employee enrolled in a health benefits plan under chapter 89 who is placed in a leave status under section 6382 may elect to continue the health benefits enrollment of the employee while in such leave status and arrange to pay currently into the Employees Health Benefits Fund (described in section 8909), the appropriate employee contributions.

(Added Pub. L. 103–3, title II, § 201(a)(1), Feb. 5, 1993, 107 Stat. 23.)

§ 6387. Regulations

The Office of Personnel Management shall prescribe regulations necessary for the administration of this subchapter. The regulations prescribed under this subchapter shall, to the extent appropriate, be consistent with the regula-

tions prescribed by the Secretary of Labor to carry out title I of the Family and Medical Leave Act of 1993.

(Added Pub. L. 103–3, title II, § 201(a)(1), Feb. 5, 1993, 107 Stat. 23.)

REFERENCES IN TEXT

The Family and Medical Leave Act of 1993, referred to in text, is Pub. L. 103–3, Feb. 5, 1993, 107 Stat. 6. Title I of the Act is classified generally to subchapter I (§ 2611 et seq.) of chapter 28 of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 2601 of Title 29 and Tables.

Subpart F—Labor-Management and Employee Relations

CHAPTER 71—LABOR-MANAGEMENT RELATIONS

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AMENDMENTS

1978—Pub. L. 95–454, title VII, §§ 701, 703(a)(2), Oct. 13, 1978, 92 Stat. 1191, 1217, in heading for Subpart F inserted ''Labor-Management and'' before ''Employee'', in heading for chapter 71 substituted ''LABOR-MANAGEMENT RELATIONS'' for ''POLICIES'', in heading for subchapter I substituted ''GENERAL PROVISIONS'' for ''EMPLOYEE ORGANIZATIONS'', in item 7101 substituted ''Findings and purpose'' for ''Right to organize; postal employees'', in item 7102 substituted ''Employees' rights'' for ''Right to petition Congress; employees'', added items 7103 to 7106, and added subchapter II and items 7111 to 7120, subchapter III and items 7121 to 7123, and subchapter IV and items 7131 to 7135. Former subchapter II heading ''ANTIDISCRIMINATION IN EMPLOYMENT'' and items 7151 to 7154, ''Policy'', ''Marital status'', ''Physical handicap'', and ''Other prohibitions'', respectively, were transferred to subchapter I of chapter 72 and renumbered and amended.

CROSS REFERENCES

Labor-management relations in the Foreign Service, see section 4101 et seq. of Title 22, Foreign Relations and Intercourse.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 4505a, 4703, 5366, 5596, 6121, 8473 of this title; title 7 section 7011; title 20 section 4416; title 22 sections 3701, 4107, 4109; title 31 section 732; title 38 sections 7422, 7461, 7463; title 45 section 1203.

SUBCHAPTER I—GENERAL PROVISIONS

§ 7101. Findings and purpose

(a) The Congress finds that—

(1) experience in both private and public employment indicates that the statutory protection of the right of employees to organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them—

(A) safeguards the public interest,

(B) contributes to the effective conduct of public business, and

(C) facilitates and encourages the amicable settlements of disputes between employees and their employers involving conditions of employment; and

(2) the public interest demands the highest standards of employee performance and the continued development and implementation of modern and progressive work practices to facilitate and improve employee performance and the efficient accomplishment of the operations of the Government.

Therefore, labor organizations and collective bargaining in the civil service are in the public interest.

(b) It is the purpose of this chapter to prescribe certain rights and obligations of the employees of the Federal Government and to establish procedures which are designed to meet the special requirements and needs of the Government. The provisions of this chapter should be interpreted in a manner consistent with the requirement of an effective and efficient Government.

(Added Pub. L. 95–454, title VII, § 701, Oct. 13, 1978, 92 Stat. 1192.)

PRIOR PROVISIONS

A prior section 7101, Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 523; Pub. L. 91–375, § 6(c)(19), Aug. 12, 1970, 84 Stat. 776, related to right of postal employees to organize, prior to the general amendment of this chapter by Pub. L. 94–454.

EFFECTIVE DATE

Chapter effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

EXECUTIVE ORDER NO. 10988

Ex. Ord. No. 10988, Jan. 17, 1962, 27 F.R. 551, which related to employee-management cooperation in the Federal service, was revoked by Ex. Ord. No. 11491, Oct. 29, 1969, 34 F.R. 17605, set out below.

EX. ORD. NO. 11491. LABOR-MANAGEMENT RELATIONS IN THE FEDERAL SERVICE

Ex. Ord. No. 11491, Oct. 29, 1969, 34 F.R. 17605, as amended by Ex. Ord. No. 11616, Aug. 26, 1971, 36 F.R. 17319; Ex. Ord. No. 11636, Dec. 17, 1971, 36 F.R. 24901; Ex. Ord. No. 11838, Feb. 6, 1975, 40 F.R. 5743; Ex. Ord. No. 11901, Jan. 30, 1976, 41 F.R. 4807; Ex. Ord. No. 12027, Dec. 5, 1977, 42 F.R. 61851; Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, provided:

WHEREAS the public interest requires high standards of employee performance and the continual development and implementation of modern and progressive work practices to facilitate improved employee performance and efficiency; and

WHEREAS the well-being of employees and efficient administration of the Government are benefited by providing employees an opportunity to participate in the formulation and implementation of personnel policies and practices affecting the conditions of their employment; and

WHEREAS the participation of employees should be improved through the maintenance of constructive and cooperative relationships between labor organizations and management officials; and

WHEREAS subject to law and the paramount requirements of public service, effective labor-management relations within the Federal service require a clear statement of the respective rights and obligations of labor organizations and agency management:

NOW, THEREFORE, by virtue of the authority vested in me by the Constitution and statutes of the United States, including sections 3301 and 7301 of title 5 of the United States Code and as President of the United States, I hereby direct that the following policies shall govern officers and agencies of the executive branch of the Government in all dealings with Federal employees and organizations representing such employees.

GENERAL PROVISIONS

SECTION 1. *Policy*. (a) Each employee of the executive branch of the Federal Government has the right, freely and without fear of penalty or reprisal, to form, join, and assist a labor organization or to refrain from any such activity, and each employee shall be protected in the exercise of this right. Except as otherwise expressly provided in this Order, the right to assist a labor organization extends to participation in the management of the organization and acting for the organization in the capacity of an organization representative, including presentation of its views to officials of the executive branch, the Congress, or other appropriate authority. The head of each agency shall take the action required to assure that employees in the agency are apprised of their rights under this section and that no interference, restraint, coercion, or discrimination is practiced within his agency to encourage or discourage membership in a labor organization.

(b) Paragraph (a) of this section does not authorize participation in the management of a labor organization or acting as a representative of such an organization by a supervisor, except as provided in section 24 of this Order, or by an employee when the participation or activity would result in a conflict or apparent conflict of interest or otherwise be incompatible with law or with the official duties of the employee.

SEC. 2. *Definitions*. When used in this Order, the term—

(a) ''Agency'' means an executive department, a Government corporation, and an independent establishment as defined in section 104 of title 5, United States Code, except the General Accounting Office;

(b) ''Employee'' means an employee of an agency and an employee of a nonappropriated fund instrumentality of the United States but does not include, for the purpose of exclusive recognition or national consultation rights, a supervisor, except as provided in section 24 of this Order;

(c) ''Supervisor'' means an employee having authority, in the interest of an agency, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of authority is not of a merely routine or clerical nature, but requires the use of independent judgment;

(d) [Revoked by Ex. Ord. No. 11838, Feb. 6, 1975, 40 F.R. 5743.]

(e) ''Labor organization'' means a lawful organization of any kind in which employees participate and which exists for the purpose, in whole or in part, of dealing with agencies concerning grievances, personnel policies and practices, or other matters affecting the working conditions of their employees; but does not include an organization which—

(1) consists of management officials or supervisors, except as provided in section 24 of this Order;

(2) assists or participates in a strike against the Government of the United States or any agency thereof, or imposes a duty or obligation to conduct, assist, or participate in such a strike;

(3) advocates the overthrow of the constitutional form of government in the United States; or

(4) discriminates with regard to the terms or conditions of membership because of race, color, creed, sex, age, or national origin;

(f) ''Agency management'' means the agency head and all management officials, supervisors, and other representatives of management having authority to act for the agency on any matters relating to the implementation of the agency labor-management relations program established under this Order;

(g) ''Authority'' means the Federal Labor Relations Authority;

(h) ''Panel'' means the Federal Service Impasses Panel;

(i) ''Assistant Secretary'' means the Assistant Secretary of Labor for Labor Management Relations; and

(j) ''General Counsel'' means the General Counsel of the Authority.

SEC. 3. *Application*. (a) This Order applies to all employees and agencies in the executive branch, except as provided in paragraphs (b), (c) and (d) of this section.

(b) This Order (except section 22) does not apply to—

(1) the Federal Bureau of Investigation;

(2) the Central Intelligence Agency;

(3) any other agency, or office, bureau, or entity within an agency, which has as a primary function intelligence, investigative, or security work, when the head of the agency determines, in his sole judgment, that the Order cannot be applied in a manner consistent with national security requirements and considerations; or

(4) any office, bureau or entity, within an agency which has as a primary function investigation or audit of the conduct or work of officials or employees of the agency for the purpose of ensuring honesty and integrity in the discharge of their official duties, when the head of the agency determines, in his sole judgment, that the Order cannot be applied in a manner consistent with the internal security of the agency.

(5) The Foreign Service of the United States: Department of State, United States Information Agency and Agency for International Development and its successor agency or agencies.

(6) The Tennessee Valley Authority; or

(7) Personnel of the Federal Labor Relations Authority (including the Office of the General Counsel and the Federal Service Impasses Panel).

(c) The head of an agency may, in his sole judgment, suspend any provision of this Order (except section 22) with respect to any agency installation or activity located outside the United States, when he determines that this is necessary in the national interest, subject to the conditions he prescribes.

(d) Employees engaged in administering a labor-management relations law or this Order who are otherwise authorized by this Order to be represented by a labor organization shall not be represented by a labor organi-

zation which also represents other groups of employees under the law or this Order, or which is affiliated directly or indirectly with an organization which represents such a group of employees.

ADMINISTRATION

SEC. 4. *Powers and Duties of the Federal Labor Relations Authority*.

(a) [Revoked].

(b) The Authority shall administer and interpret this Order, decide major policy issues, and prescribe regulations.

(c) The Authority shall, subject to its regulations:

(1) decide questions as to the appropriate unit for the purpose of exclusive recognition and related issues submitted for its considerations;

(2) supervise elections to determine whether a labor organization is the choice of a majority of the employees in an appropriate unit as their exclusive representative, and certify the results;

(3) decide questions as to the eligibility of labor organizations for national consultation rights;

(4) decide unfair labor practice complaints; and

(5) decide questions as to whether a grievance is subject to a negotiated grievance procedure or subject to arbitration under an agreement as provided in Section 13(d) of this Order.

(d) The Authority may consider, subject to its regulations:

(1) appeals on negotiability issues as provided in Section 11(c) of this Order;

(2) exceptions to arbitration awards;

(3) appeals from decisions of the Assistant Secretary of Labor for Labor-Management Relations issued pursuant to Section 6(b) of this Order; and

(4) other matters it deems appropriate to assure the effectuation of the purposes of this Order.

(e) In any matters arising under subsection (c) and (d)(3) of this Section, the Authority may require an agency or a labor organization to cease and desist from violations of this Order and require it to take such affirmative action as the Authority considers appropriate to effectuate the policies of this Order.

(f) In performing the duties imposed on it by this Section, the Authority may request and use the services and assistance of employees of other agencies in accordance with Section 1 of the Act of March 4, 1915 (38 Stat. 1084, as amended; 31 U.S.C. 686) [31 U.S.C. 1535].

SEC. 5. *Powers and Duties of the Federal Service Impasses Panel*. (a) There is hereby established the Federal Service Impasses Panel as a distinct organizational entity within the Authority. The Panel consists of at least three members appointed by the President, one of whom he designates as chairman. The Authority shall provide the services and staff assistance needed by the Panel.

(b) The Panel may consider negotiation impasses as provided in section 17 of this Order and may take any action it considers necessary to settle an impasse.

(c) The Panel shall prescribe regulations needed to administer its function under this Order.

SEC. 6. *Powers and Duties of the Office of the General Counsel and the Assistant Secretary of Labor for Labor-Management Relations*.

(a) The General Counsel is authorized, upon direction by the Authority, to:

(1) investigate complaints of violations of Section 19 of this Order;

(2) make final decisions as to whether to issue unfair labor practice complaints and prosecute such complaints before the Authority;

(3) direct and supervise all employees in the Office of General Counsel, including employees of the General Counsel in the regional office of the Authority;

(4) perform such other duties as the Authority may prescribe; and

(5) prescribe regulations needed to administer his functions under this Order.

(b) The Assistant Secretary shall:

(1) decide alleged violations of the standards of conduct for labor organizations, established in Section 18 of this Order; and

(2) prescribe regulations needed to administer his functions under this Order.

(c) In any matter arising under paragraph (b) of this Section, the Assistant Secretary may require a labor organization to cease and desist from violations of this Order and require it to take such affirmative action as he considers appropriate to effectuate the policies of this Order.

(d) In performing the duties imposed on them by this Section, the General Counsel and the Assistant Secretary may request and use the services and assistance of employees of other agencies in accordance with Section 1 of the Act of March 4, 1915 (38 Stat. 1084, as amended; 31 U.S.C. 686) [31 U.S.C. 1535].

RECOGNITION

SEC. 7. *Recognition in general*. (a) An agency shall accord exclusive recognition or national consultation rights at the request of a labor organization which meets the requirements for the recognition or consultation rights under this Order.

(b) A labor organization seeking recognition shall submit to the agency a roster of its officers and representatives, a copy of its constitution and by-laws, and a statement of its objectives.

(c) When recognition of a labor organization has been accorded, the recognition continues as long as the organization continues to meet the requirements of this Order applicable to that recognition, except that this section does not require an election to determine whether an organization should become, or continue to be recognized as, exclusive representative of the employees in any unit or subdivision thereof within 12 months after a prior valid election with respect to such unit.

(d) Recognition of a labor organization does not—

(1) preclude an employee, regardless of whether he is in a unit of exclusive recognition, from exercising grievance or appellate rights established by law or regulation, or from choosing his own representative in a grievance or appellate action, except when the grievance is covered under a negotiated procedure as provided in section 13;

(2) preclude or restrict consultations and dealings between an agency and a veterans organization with respect to matters of particular interest to employees with veterans preference; or

(3) preclude an agency from consulting or dealing with a religious, social, fraternal, professional or other lawful association, not qualified as a labor organization, with respect to matters or policies which involve individual members of the association or are of particular applicability to it or its members. Consultations and dealings under subparagraph (3) of this paragraph shall be so limited that they do not assume the character of formal consultation on matters of general employee-management policy covering employees in that unit or extend to areas where recognition of the interests of one employee group may result in discrimination against or injury to the interests of other employees.

(e) [Revoked by Ex. Ord. No. 11838, Feb. 6, 1975, 40 F.R. 5743.]

(f) Informal recognition or formal recognition shall not be accorded.

SEC. 8. [Revoked by Ex. Ord. No. 11616, Aug. 26, 1971, 36 F.R. 17319.]

SEC. 9. *National consultation rights*. (a) An agency shall accord national consultation rights to a labor organization which qualifies under criteria established by the Federal Labor Relations Authority as the representative of a substantial number of employees of the agency. National consultation rights shall not be accorded for any unit where a labor organization already holds exclusive recognition at the national level for that unit. The granting of national consultation rights does not preclude an agency from appropriate dealings at the national level with other organizations on matters affecting their members. An agency shall terminate national consultation rights when the labor organization ceases to qualify under the established criteria.

(b) When a labor organization has been accorded national consultation rights, the agency, through appropriate officials, shall notify representatives of the organization of proposed substantive changes in personnel policies that affect employees it represents and provide an opportunity for the organization to comment on the proposed changes. The labor organization may suggest changes in the agency's personnel policies and have its views carefully considered. It may consult in person at reasonable times, on request, with appropriate officials on personnel policy matters, and at all times present its views thereon in writing. An agency is not required to consult with a labor organization on any matter on which it would not be required to meet and confer if the organization were entitled to exclusive recognition.

(c) Questions as to the eligibility of labor organizations for national consultation rights may be referred to the Authority for decision.

SEC. 10. *Exclusive recognition.* (a) An agency shall accord exclusive recognition to a labor organization when the organization has been selected, in a secret ballot election, by a majority of the employees in an appropriate unit as their representative; provided that this section shall not preclude an agency from according exclusive recognition to a labor organization, without an election, where the appropriate unit is established through the consolidation of existing exclusively recognized units represented by that organization.

(b) A unit may be established on a plant or installation, craft, functional, or other basis which will ensure a clear and identifiable community of interest among the employees concerned and will promote effective dealings and efficiency of agency operations. A unit shall not be established solely on the basis of the extent to which employees in the proposed unit have organized, nor shall a unit be established if it includes—

(1) any management official or supervisor, except as provided in section 24;

(2) an employee engaged in Federal personnel work in other than a purely clerical capacity; or

(3) [Revoked by Ex. Ord. No. 11838, Feb. 6, 1975, 40 F.R. 5743.]

(4) both professional and nonprofessional employees, unless a majority of the professional employees vote for inclusion in the unit. Questions as to the appropriate unit and related issues may be referred to the Authority for decision.

(c) [Revoked by Ex. Ord. No. 11838, Feb. 6, 1975, 40 F.R. 5743.]

(d) All elections shall be conducted under the supervision of the Authority, or persons designated by it, and shall be by secret ballot. Each employee eligible to vote shall be provided the opportunity to choose the labor organization he wishes to represent him, from among those on the ballot, or ''no union'', except as provided in subparagraph (4) of this paragraph. Elections may be held to determine whether—

(1) a labor organization should be recognized as the exclusive representative of employees in a unit;

(2) a labor organization should replace another labor organization as the exclusive representative;

(3) a labor organization should cease to be the exclusive representative; or

(4) a labor organization should be recognized as the exclusive representative of employees in a unit composed of employees in units currently represented by that labor organization or continue to be recognized in the existing separate units.

(e) When a labor organization has been accorded exclusive recognition, it is the exclusive representative of employees in the unit and is entitled to act for and to negotiate agreements covering all employees in the unit. It is responsible for representing the interests of all employees in the unit without discrimination and without regard to labor organization membership. The labor organization shall be given the opportunity to be represented at formal discussions between management and employees or employee representatives concerning grievances, personnel policies and practices, or other matters affecting general working conditions of employees in the unit.

AGREEMENTS

SEC. 11. *Negotiation of agreements.* (a) An agency and a labor organization that has been accorded exclusive recognition, through appropriate representatives, shall meet at reasonable times and confer in good faith with respect to personnel policies and practices and matters affecting working conditions, so far as may be appropriate under applicable laws and regulations, including policies set forth in the Federal Personnel Manual; published agency policies and regulations for which a compelling need exists under criteria established by the Federal Labor Relations Authority and which are issued at the agency headquarters level or at the level of a primary national subdivision; a national or other controlling agreement at a higher level in the agency; and this order. They may negotiate an agreement, or any question arising thereunder; determine appropriate techniques, consistent with section 17 of this order, to assist in such negotiation; and execute a written agreement or memorandum of understanding.

(b) In prescribing regulations relating to personnel policies and practices and working conditions, an agency shall have due regard for the obligation imposed by paragraph (a) of this section. However, the obligation to meet and confer does not include matters with respect to the mission of an agency; its budget; its organization; the number of employees; and the numbers, types, and grades of positions or employees assigned to an organizational unit, work project or tour of duty; the technology of performing its work; or its internal security practices. This does not preclude the parties from negotiating agreements providing appropriate arrangements for employees adversely affected by the impact of realignment of work forces or technological change.

(c) If, in connection with negotiations, an issue develops as to whether a proposal is contrary to law, regulation, controlling agreement, or this order and therefore not negotiable, it shall be resolved as follows:

(1) An issue which involves interpretation of a controlling agreement at a higher agency level is resolved under the procedures of the controlling agreement, or, if none, under agency regulations;

(2) An issue other than as described in subparagraph (1) of this paragraph which arises at a local level may be referred by either party to the head of the agency for determination;

(3) An agency head's determination as to the interpretation of the agency's regulations with respect to a proposal is final;

(4) A labor organization may appeal to the Authority for a decision when—

(i) it disagrees with an agency head's determination that a proposal would violate applicable law, regulation of appropriate authority outside the agency, or this order, or

(ii) it believes that an agency's regulations, as interpreted by the agency head, violate applicable law, regulation of appropriate authority outside the agency, or this order, or are not otherwise applicable to bar negotiations under paragraph (a) of this section.

(d) [Revoked by Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055.]

SEC. 12. *Basic provisions of agreements.* Each agreement between an agency and a labor organization is subject to the following requirements—

(a) in the administration of all matters covered by the agreement, officials and employees are governed by existing or future laws and the regulations of appropriate authorities, including policies set forth in the Federal Personnel Manual; by published agency policies and regulations in existence at the time the agreement was approved; and by subsequently published agency policies and regulations required by law or by the regulations of appropriate authorities, or authorized by the terms of a controlling agreement at a higher agency level;

(b) management officials of the agency retain the right, in accordance with applicable laws and regulations—

(1) to direct employees of the agency;
(2) to hire, promote, transfer, assign, and retain employees in positions within the agency, and to suspend, demote, discharge, or take other disciplinary action against employees;
(3) to relieve employees from duties because of lack of work or for other legitimate reasons;
(4) to maintain the efficiency of the Government operations entrusted to them;
(5) to determine the methods, means, and personnel by which such operations are to be conducted; and
(6) to take whatever actions may be necessary to carry out the mission of the agency in situations of emergency; and
(c) nothing in the agreement shall require an employee to become or to remain a member of a labor organization, or to pay money to the organization except pursuant to a voluntary written authorization by a member for the payment of dues through payroll deductions. The requirements of this section shall be expressly stated in the initial or basic agreement and apply to all supplemental, implementing, subsidiary, or informal agreements between the agency and the organization.

SEC. 13. *Grievance and arbitration procedures.* (a) An agreement between an agency and a labor organization shall provide a procedure, applicable only to the unit, for the consideration of grievances. The coverage and scope of the procedure shall be negotiated by the parties to the agreement with the exception that it may not cover matters for which a statutory appeal procedure exists and so long as it does not otherwise conflict with statute or this order. It shall be the exclusive procedure available to the parties and the employees in the unit for resolving grievances which fall within its coverage. However, any employee or group of employees in the unit may present such grievances to the agency and have them adjusted, without the intervention of the exclusive representative, as long as the adjustment is not inconsistent with the terms of the agreement and the exclusive representative has been given opportunity to be present at the adjustment.
(b) A negotiated procedure may provide for arbitration of grievances. Arbitration may be invoked only by the agency or the exclusive representative. Either party may file exceptions to an arbitrator's award with the Authority, under regulations prescribed by the Authority.
(c) [Revoked.]
(d) Questions that cannot be resolved by the parties as to whether or not a grievance is on a matter for which a statutory appeal procedure exists, shall be referred to the Authority for decision. Other questions as to whether or not a grievance is on a matter subject to the grievance procedure in an existing agreement, or is subject to arbitration under that agreement, may by agreement of the parties be submitted to arbitration or may be referred to the Authority for decision.
(e) [Revoked.]

SEC. 14. [Revoked by Ex. Ord. No. 11616, Aug. 26, 1971, 36 F.R. 17319.]

SEC. 15. *Approval of agreements.* An agreement with a labor organization as the exclusive representative of employees in a unit is subject to the approval of the head of the agency or an official designated by him. An agreement shall be approved within forty-five days from the date of its execution if it conforms to applicable laws, the order, existing published agency policies and regulations (unless the agency has granted an exception to a policy or regulation) and regulations of other appropriate authorities. An agreement which has not been approved or disapproved within forty-five days from the date of its execution shall go into effect without the required approval of the agency head and shall be binding on the parties subject to the provisions of law, the order and the regulations of appropriate authorities outside the agency. A local agreement subject to a national or other controlling agreement at a higher level shall be approved under the procedures of the controlling agreement, or, if none, under agency regulations.

NEGOTIATION DISPUTES AND IMPASSES

SEC. 16. *Negotiation disputes.* The Federal Mediation and Conciliation Service shall provide services and assistance to Federal agencies and labor organizations in the resolution of negotiation disputes. The Service shall determine under what circumstances and in what manner it shall proffer its services.

SEC. 17. *Negotiation impasses.* When voluntary arrangements, including the services of the Federal Mediation and Conciliation Service or other third-party mediation, fail to resolve a negotiation impasse, either party may request the Federal Service Impasses Panel to consider the matter. The Panel, in its discretion and under the regulations it prescribes, may consider the matter and may recommend procedures to the parties for the resolution of the impasse or may settle the impasse by appropriate action. Arbitration or third-party fact finding with recommendations to assist in the resolution of an impasse may be used by the parties only when authorized or directed by the Panel.

CONDUCT OF LABOR ORGANIZATIONS AND MANAGEMENT

SEC. 18. *Standards of conduct for labor organizations.*
(a) An agency shall accord recognition only to a labor organization that is free from corrupt influences and influences opposed to basic democratic principles. Except as provided in paragraph (b) of this section, an organization is not required to prove that it has the required freedom when it is subject to governing requirements adopted by the organization or by a national or international labor organization or federation of labor organizations with which it is affiliated or in which it participates, containing explicit and detailed provisions to which it subscribes calling for—
(1) the maintenance of democratic procedures and practices, including provisions for periodic elections to be conducted subject to recognized safeguards and provisions defining and securing the right of individual members to participation in the affairs of the organization, to fair and equal treatment under the governing rules of the organization, and to fair process in disciplinary proceedings;
(2) the exclusion from office in the organization of persons affiliated with Communist or other totalitarian movements and persons identified with corrupt influences;
(3) the prohibition of business or financial interests on the part of organization officers and agents which conflict with their duty to the organization and its members; and
(4) the maintenance of fiscal integrity in the conduct of the affairs of the organization, including provision for accounting and financial controls and regular financial reports or summaries to be made available to members.
(b) Notwithstanding the fact that a labor organization has adopted or subscribed to standards of conduct as provided in paragraph (a) of this section, the organization is required to furnish evidence of its freedom from corrupt influences or influences opposed to basic democratic principles when there is reasonable cause to believe that—
(1) the organization has been suspended or expelled from or is subject to other sanction by a parent labor organization or federation of organizations with which it had been affiliated because it has demonstrated an unwillingness or inability to comply with governing requirements comparable in purpose to those required by paragraph (a) of this section; or
(2) the organization is in fact subject to influences that would preclude recognition under this Order.
(c) A labor organization which has or seeks recognition as a representative of employees under this Order shall file financial and other reports, provide for bonding of officials and employees of the organization, and comply with trusteeship and election standards.
(d) The Assistant Secretary shall prescribe the regulations needed to effectuate this section. These regulations shall conform generally to the principles applied

to unions in the private sector. Complaints of violations of this section shall be filed with the Assistant Secretary.

SEC. 19. *Unfair labor practices.* (a) Agency management shall not—

(1) interfere with, restrain, or coerce an employee in the exercise of the rights assured by this Order;

(2) encourage or discourage membership in a labor organization by discrimination in regard to hiring, tenure, promotion, or other conditions of employment;

(3) sponsor, control, or otherwise assist a labor organization, except that an agency may furnish customary and routine services and facilities under section 23 of this Order when consistent with the best interests of the agency, its employees, and the organization, and when the services and facilities are furnished, if requested, on an impartial basis to organizations having equivalent status;

(4) discipline or otherwise discriminate against an employee because he has filed a complaint or given testimony under this Order;

(5) refuse to accord appropriate recognition to a labor organization qualified for such recognition; or

(6) refuse to consult, confer, or negotiate with a labor organization as required by this Order.

(b) A labor organization shall not—

(1) interfere with, restrain, or coerce an employee in the exercise of his rights assured by this Order;

(2) attempt to induce agency management to coerce an employee in the exercise of his rights under this Order;

(3) coerce, attempt to coerce, or discipline, fine, or take other economic sanction against a member of the organization as punishment or reprisal for, or for the purpose of hindering or impeding his work performance, his productivity, or the discharge of his duties owed as an officer or employee of the United States;

(4) call or engage in a strike, work stoppage, or slowdown; picket an agency in a labor-management dispute; or condone any such activity by failing to take affirmative action to prevent or stop it;

(5) discriminate against an employee with regard to the terms or conditions of membership because of race, color, creed, sex, age, or national origin; or

(6) refuse to consult, confer, or negotiate with an agency as required by this Order.

(c) A labor organization which is accorded exclusive recognition shall not deny membership to any employee in the appropriate unit except for failure to meet reasonable occupational standards uniformly required for admission, or for failure to tender initiation fees and dues uniformly required as a condition of acquiring and retaining membership. This paragraph does not preclude a labor organization from enforcing discipline in accordance with procedures under its constitution or by-laws which conform to the requirements of this Order.

(d) Issues which can properly be raised under an appeals procedure may not be raised under this section. Issues which can be raised under a grievance procedure may, in the discretion of the aggrieved party, be raised under that procedure or the complaint procedure under this section, but not under both procedures. Appeals or grievance decisions shall not be construed as unfair labor practice decisions under this Order nor as precedent for such decisions. All complaints under this section that cannot be resolved by the parties shall be filed with the Authority.

MISCELLANEOUS PROVISIONS

SEC. 20. *Use of official time.* Solicitation of membership or dues, and other internal business of a labor organization, shall be conducted during the non-duty hours of the employees concerned. Employees who represent a recognized labor organization shall not be on official time when negotiating an agreement with agency management, except to the extent that the negotiating parties agree to other arrangements which may provide that the agency will either authorize official time for up to 40 hours or authorize up to one-half the time spent in negotiations during regular working hours, for a reasonable number of employees, which number normally shall not exceed the number of management representatives.

SEC. 21. *Allotment of dues.* (a) When a labor organization holds formal or exclusive recognition, and the agency and the organization agree in writing to this course of action, an agency may deduct the regular and periodic dues of the organization from the pay of members of the organization in the unit of recognition who make a voluntary allotment for that purpose, and shall recover the costs of making the deductions. Such an allotment is subject to the regulations of the Office of Personnel Management, which shall include provision for the employee to revoke his authorization at stated six-month intervals. Such an allotment terminates when—

(1) the dues withholding agreement between the agency and the labor organization is terminated or ceases to be applicable to the employee; or

(2) the employee has been suspended or expelled from the labor organization.

(b) [Revoked by Ex. Ord. No. 11838, Feb. 6, 1975, 40 F.R. 5743.]

SEC. 22. *Adverse action appeals.* The head of each agency, in accordance with the provisions of this Order and regulations prescribed by the Office of Personnel Management, shall extend to all employees in the competitive civil service rights identical in adverse action cases to those provided preference eligibles under sections 7511–7512 of title 5 of the United States Code. Each employee in the competitive service shall have the right to appeal to the Merit Systems Protection Board from an adverse decision of the administrative officer so acting, such appeal to be processed in an identical manner to that provided for appeals under section 7701 of title 5 of the United States Code. Any recommendation by the Merit Systems Protection Board submitted to the head of an agency on the basis of an appeal by an employee in the competitive service shall be complied with by the head of the agency.

SEC. 23. *Agency implementation.* No later than April 1, 1970, each agency shall issue appropriate policies and regulations consistent with this Order for its implementation. This includes but is not limited to a clear statement of the rights of its employees under this Order; procedures with respect to recognition of labor organizations, determination of appropriate units, consultation and negotiation with labor organizations, approval of agreements, mediation, and impasse resolution; policies with respect to the use of agency facilities by labor organizations; and policies and practices regarding consultation with other organizations and associations and individual employees. Insofar as practicable, agencies shall consult with representatives of labor organizations in the formulation of these policies and regulations.

SEC. 24. *Savings clauses.* (a) This Order does not preclude—

(1) the renewal or continuation of a lawful agreement between an agency and a representative of its employees entered into before the effective date of Executive Order No. 10988 (January 17, 1962); or

(2) the renewal, continuation, or initial according of recognition for units of management officials or supervisors represented by labor organizations which historically or traditionally represent the management officials or supervisors in private industry and which hold exclusive recognition for units of such officials or supervisors in any agency on the date of this Order.

(b) All grants of informal recognition under Executive Order No. 10988 terminate on July 1, 1970.

(c) All grants of formal recognition under Executive Order No. 10988 terminate under regulations which the Federal Labor Relations Council shall issue before October 1, 1970.

(d) By not later than December 31, 1970, all supervisors shall be excluded from units of formal and exclusive recognition and from coverage by negotiated agreements, except as provided in paragraph (a) of this section.

SEC. 25. *Guidance, training, review and information.* (a) The Office of Personnel Management, in conjunction with the Director of the Office of Management and Budget, shall establish and maintain a program for the policy guidance of agencies on labor-management relations in the Federal service and shall periodically review the implementation of these policies. The Office of Personnel Management shall be responsible for the day-to-day policy guidance under that program. The Office of Personnel Management also shall continuously review the operation of the Federal labor-management relations program to assist in assuring adherence to its provisions and merit system requirements; implement technical advice and information programs for the agencies; assist in the development of programs for training agency personnel and management officials in labor-management relations; and, from time to time, report to the Authority on the state of the program with any recommendations for its improvement.

(b) The Office of Personnel Management shall develop programs for the collection and dissemination of information appropriate to the needs of agencies, organizations and the public.

SEC. 26. *Effective date.* This Order is effective on January 1, 1970, except sections 7(f) and 8 which are effective immediately. Effective January 1, 1970, Executive Order No. 10988 and the President's Memorandum of May 21, 1963, entitled Standards of Conduct for Employee Organizations and Code of Fair Labor Practices, are revoked.

EX. ORD. NO. 12871. LABOR-MANAGEMENT PARTNERSHIPS

Ex. Ord. No. 12871, Oct. 1, 1993, 58 F.R. 52201, provided:

The involvement of Federal Government employees and their union representatives is essential to achieving the National Performance Review's Government reform objectives. Only by changing the nature of Federal labor-management relations so that managers, employees, and employees' elected union representatives serve as partners will it be possible to design and implement comprehensive changes necessary to reform Government. Labor-management partnerships will champion change in Federal Government agencies to transform them into organizations capable of delivering the highest quality services to the American people.

By the authority vested in me as President by the Constitution and the laws of the United States, including section 301 of title 3, United States Code, and in order to establish a new form of labor-management relations throughout the executive branch to promote the principles and recommendations adopted as a result of the National Performance Review, it is hereby ordered:

SECTION 1. THE NATIONAL PARTNERSHIP COUNCIL. (a) *Establishment and Membership.* There is established the National Partnership Council (''Council''). The Council shall comprise the following members appointed by the President:

(1) Director of the Office of Personnel Management (''OPM'');

(2) Deputy Secretary of Labor;

(3) Deputy Director for Management, Office of Management and Budget;

(4) Chair, Federal Labor Relations Authority;

(5) Federal Mediation and Conciliation Director;

(6) President, American Federation of Government Employees, AFL–CIO;

(7) President, National Federation of Federal Employees;

(8) President, National Treasury Employees Union;

(9) Secretary-Treasurer of the Public Employees Department, AFL–CIO; and

(10) A deputy Secretary or other officer with department- or agency-wide authority from two executive departments or agencies (hereafter collectively ''agency''), not otherwise represented on the Council.

Members shall have 2-year terms on the Council, which may be extended by the President.

(b) *Responsibilities and Functions.* The Council shall advise the President on matters involving labor-management relations in the executive branch. Its activities shall include:

(1) supporting the creation of labor-management partnerships and promoting partnership efforts in the executive branch, to the extent permitted by law;

(2) proposing to the President by January 1994 statutory changes necessary to achieve the objectives of this order, including legislation consistent with the National Performance Review's recommendations for the creation of a flexible and responsive hiring system and the reform of the General Schedule classification system;

(3) collecting and disseminating information about, and providing guidance on, partnership efforts in the executive branch, including results achieved, to the extent permitted by law;

(4) utilizing the expertise of individuals both within and outside the Federal Government to foster partnership arrangements; and

(5) working with the President's Management Council toward reform consistent with the National Performance Review's recommendations throughout the executive branch.

(c) *Administration.* (1) The President shall designate a member of the Council who is a full-time Federal employee to serve as Chairperson. The responsibilities of the Chairperson shall include scheduling meetings of the Council.

(2) Council shall seek input from nonmember Federal agencies, particularly smaller agencies. It also may, from time to time, invite experts from the private and public sectors to submit information. The Council shall also seek input from companies, nonprofit organizations, State and local governments, Federal Government employees, and customers of Federal Government services, as needed.

(3) To the extent permitted by law and subject to the availability of appropriations, OPM shall provide such facilities, support, and administrative services to the Council as the Director of OPM deems appropriate.

(4) Members of the Council shall serve without compensation for their work on the Council, but shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law, for persons serving intermittently in Government service.

(5) All agencies shall, to the extent permitted by law, provide to the Council such assistance, information, and advice as the Council may request.

(d) *General.* (1) I have determined that the Council shall be established in compliance with the Federal Advisory Committee Act, as amended (5 U.S.C. App.).

(2) Notwithstanding any other executive order, the functions of the President under the Federal Advisory Committee Act, as amended, except that of reporting to the Congress, that are applicable to the Council, shall be performed by the Director of OPM, in accordance with guidelines and procedures issued by the Administrator of General Services.

(3) The Council shall exist for a period of 2 years from the date of this order, unless extended.

(4) Members of the Council who are not otherwise officers or employees of the Federal Government shall serve in a representative capacity and shall not be considered special Government employees for any purpose.

SEC. 2. IMPLEMENTATION OF LABOR-MANAGEMENT PARTNERSHIPS THROUGHOUT THE EXECUTIVE BRANCH. The head of each agency subject to the provisions of chapter 71 of title 5, United States Code shall:

(a) create labor-management partnerships by forming labor-management committees or councils at appropriate levels, or adapting existing councils or committees if such groups exist, to help reform Government;

(b) involve employees and their union representatives as full partners with management representatives to identify problems and craft solutions to better serve the agency's customers and mission;

(c) provide systematic training of appropriate agency employees (including line managers, first line supervisors, and union representatives who are Federal employees) in consensual methods of dispute resolution,

such as alternative dispute resolution techniques and interest-based bargaining approaches;

(d) negotiate over the subjects set forth in 5 U.S.C. 7106(b)(1), and instruct subordinate officials to do the same; and

(e) evaluate progress and improvements in organizational performance resulting from the labor-management partnerships.

SEC. 3. NO ADMINISTRATIVE OR JUDICIAL REVIEW. This order is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right to administrative or judicial review, or any other right, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

WILLIAM J. CLINTON.

§ 7102. Employees' rights

Each employee shall have the right to form, join, or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal, and each employee shall be protected in the exercise of such right. Except as otherwise provided under this chapter, such right includes the right—

(1) to act for a labor organization in the capacity of a representative and the right, in that capacity, to present the views of the labor organization to heads of agencies and other officials of the executive branch of the Government, the Congress, or other appropriate authorities, and

(2) to engage in collective bargaining with respect to conditions of employment through representatives chosen by employees under this chapter.

(Added Pub. L. 95–454, title VII, § 701, Oct. 13, 1978, 92 Stat. 1192.)

PRIOR PROVISIONS

A prior section 7102, Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 523, related to right of employees to petition Congress, prior to the general amendment of this chapter by Pub. L. 95–454. See section 7211 of this title.

PARTIAL SUSPENSION OF FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS

Par. (2) of this section suspended with respect to any matter proposed for bargaining which would substantially impair the implementation by the United States Forces of any treaty or agreement, including any minutes or understandings thereto, between the United States and the Government of the host nation, see section 1(b) of Ex. Ord. No. 12391, Nov. 4, 1982, 47 F.R. 50457, set out as a note under section 7103 of this title.

§ 7103. Definitions; application

(a) For the purpose of this chapter—

(1) ''person'' means an individual, labor organization, or agency;

(2) ''employee'' means an individual—

(A) employed in an agency; or

(B) whose employment in an agency has ceased because of any unfair labor practice under section 7116 of this title and who has not obtained any other regular and substantially equivalent employment, as determined under regulations prescribed by the Federal Labor Relations Authority;

but does not include—

(i) an alien or noncitizen of the United States who occupies a position outside the United States;

(ii) a member of the uniformed services;

(iii) a supervisor or a management official;

(iv) an officer or employee in the Foreign Service of the United States employed in the Department of State, the International Communication Agency, the United States International Development Cooperation Agency, the Department of Agriculture, or the Department of Commerce; or

(v) any person who participates in a strike in violation of section 7311 of this title;

(3) ''agency'' means an Executive agency (including a nonappropriated fund instrumentality described in section 2105(c) of this title and the Veterans' Canteen Service, Department of Veterans Affairs), the Library of Congress, and the Government Printing Office, but does not include—

(A) the General Accounting Office;

(B) the Federal Bureau of Investigation;

(C) the Central Intelligence Agency;

(D) the National Security Agency;

(E) the Tennessee Valley Authority;

(F) the Federal Labor Relations Authority;

(G) the Federal Service Impasses Panel; or

(H) the Central Imagery Office;

(4) ''labor organization'' means an organization composed in whole or in part of employees, in which employees participate and pay dues, and which has as a purpose the dealing with an agency concerning grievances and conditions of employment, but does not include—

(A) an organization which, by its constitution, bylaws, tacit agreement among its members, or otherwise, denies membership because of race, color, creed, national origin, sex, age, preferential or nonpreferential civil service status, political affiliation, marital status, or handicapping condition;

(B) an organization which advocates the overthrow of the constitutional form of government of the United States;

(C) an organization sponsored by an agency; or

(D) an organization which participates in the conduct of a strike against the Government or any agency thereof or imposes a duty or obligation to conduct, assist, or participate in such a strike;

(5) ''dues'' means dues, fees, and assessments;

(6) ''Authority'' means the Federal Labor Relations Authority described in section 7104(a) of this title;

(7) ''Panel'' means the Federal Service Impasses Panel described in section 7119(c) of this title;

(8) ''collective bargaining agreement'' means an agreement entered into as a result of collective bargaining pursuant to the provisions of this chapter;

(9) ''grievance'' means any complaint—

(A) by any employee concerning any matter relating to the employment of the employee;

(B) by any labor organization concerning any matter relating to the employment of any employee; or

(C) by any employee labor organization, or agency concerning—

(i) the effect or interpretation, or a claim of breach, of a collective bargaining agreement; or

(ii) any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment;

(10) ''supervisor'' means an individual employed by an agency having authority in the interest of the agency to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove employees, to adjust their grievances, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature but requires the consistent exercise of independent judgment, except that, with respect to any unit which includes firefighters or nurses, the term ''supervisor'' includes only those individuals who devote a preponderance of their employment time to exercising such authority;

(11) ''management official'' means an individual employed by an agency in a position the duties and responsibilities of which require or authorize the individual to formulate, determine, or influence the policies of the agency;

(12) ''collective bargaining'' means the performance of the mutual obligation of the representative of an agency and the exclusive representative of employees in an appropriate unit in the agency to meet at reasonable times and to consult and bargain in a good-faith effort to reach agreement with respect to the conditions of employment affecting such employees and to execute, if requested by either party, a written document incorporating any collective bargaining agreement reached, but the obligation referred to in this paragraph does not compel either party to agree to a proposal or to make a concession;

(13) ''confidential employee'' means an employee who acts in a confidential capacity with respect to an individual who formulates or effectuates management policies in the field of labor-management relations;

(14) ''conditions of employment'' means personnel policies, practices, and matters, whether established by rule, regulation, or otherwise, affecting working conditions, except that such term does not include policies, practices, and matters—

(A) relating to political activities prohibited under subchapter III of chapter 73 of this title;

(B) relating to the classification of any position; or

(C) to the extent such matters are specifically provided for by Federal statute;

(15) ''professional employee'' means—

(A) an employee engaged in the performance of work—

(i) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital (as distinguished from knowledge acquired by a general academic education, or from an apprenticeship, or from training in the performance of routine mental, manual, mechanical, or physical activities);

(ii) requiring the consistent exercise of discretion and judgment in its performance;

(iii) which is predominantly intellectual and varied in character (as distinguished from routine mental, manual, mechanical, or physical work); and

(iv) which is of such character that the output produced or the result accomplished by such work cannot be standardized in relation to a given period of time; or

(B) an employee who has completed the courses of specialized intellectual instruction and study described in subparagraph (A)(i) of this paragraph and is performing related work under appropriate direction or guidance to qualify the employee as a professional employee described in subparagraph (A) of this paragraph;

(16) ''exclusive representative'' means any labor organization which—

(A) is certified as the exclusive representative of employees in an appropriate unit pursuant to section 7111 of this title; or

(B) was recognized by an agency immediately before the effective date of this chapter as the exclusive representative of employees in an appropriate unit—

(i) on the basis of an election, or

(ii) on any basis other than an election,

and continues to be so recognized in accordance with the provisions of this chapter;

(17) ''firefighter'' means any employee engaged in the performance of work directly connected with the control and extinguishment of fires or the maintenance and use of firefighting apparatus and equipment; and

(18) ''United States'' means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, the Trust Territory of the Pacific Islands, and any territory or possession of the United States.

(b)(1) The President may issue an order excluding any agency or subdivision thereof from coverage under this chapter if the President determines that—

(A) the agency or subdivision has as a primary function intelligence, counterintelligence, investigative, or national security work, and

(B) the provisions of this chapter cannot be applied to that agency or subdivision in a manner consistent with national security requirements and considerations.

(2) The President may issue an order suspending any provision of this chapter with respect to any agency, installation, or activity located outside the 50 States and the District of Columbia, if the President determines that the suspension is necessary in the interest of national security.

(Added Pub. L. 95–454, title VII, §701, Oct. 13, 1978, 92 Stat. 1192; amended Pub. L. 96–465, title

II, § 2314(g), Oct. 17, 1980, 94 Stat. 2168; Pub. L. 102–54, § 13(b)(1), June 13, 1991, 105 Stat. 274; Pub. L. 103–359, title V, § 501(j), Oct. 14, 1994, 108 Stat. 3430.)

AMENDMENTS

1994—Subsec. (a)(3)(H). Pub. L. 103–359 added subpar. (H).

1991—Subsec. (a)(3). Pub. L. 102–54 substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

1980—Subsec. (a)(2)(iv). Pub. L. 96–465 struck out ''the Agency for International Development, or'' after ''Department of State,'' and inserted ''the United States International Development Cooperation Agency, the Department of Agriculture, or the Department of Commerce'' after ''Communication Agency''.

CHANGE OF NAME

International Communication Agency, referred to in subsec. (a)(2)(B)(iv), redesignated United States Information Agency and Director or any other official of International Communication Agency redesignated as Director or other official, as appropriate, of United States Information Agency by section 303 of Pub. L. 97–241, title III, Aug. 24, 1982, 96 Stat. 291, set out as a note under section 1461 of Title 22, Foreign Relations and Intercourse.

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.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

EX. ORD. NO. 12171. EXCLUSIONS FROM COVERAGE OF PROGRAM

Ex. Ord. No. 12171, Nov. 19, 1979, 44 F.R. 66565, as amended by Ex. Ord. No. 12338, Jan. 11, 1982, 47 F.R. 1369; Ex. Ord. No. 12410, Mar. 28, 1983, 48 F.R. 13143; Ex. Ord. No. 12559, May 20, 1986, 51 F.R. 18761; Ex. Ord. No. 12632, Mar. 23, 1988, 53 F.R. 9852; Ex. Ord. No. 12666, Jan. 12, 1989, 54 F.R. 1921; Ex. Ord. No. 12671, Mar. 14, 1989, 54 F.R. 11157; Ex. Ord. No. 12681, July 6, 1989, 54 F.R. 28997; Ex. Ord. No. 12693, Sept. 29, 1989, 54 F.R. 40629, provided:

By the authority vested in me as President by the Constitution and statutes of the United States of America, including Section 7103(b) of Title 5 of the United States Code, and in order to exempt certain agencies or subdivisions thereof from coverage of the Federal Labor-Management Relations Program, it is hereby ordered as follows:

1–1. DETERMINATIONS

1–101. The agencies or subdivisions thereof set forth in Section 1–2 of this Order are hereby determined to have as a primary function intelligence, counterintelligence, investigative, or national security work. It is also hereby determined that Chapter 71 of Title 5 of the United States Code cannot be applied to those agencies or subdivisions in a manner consistent with national security requirements and considerations. The agencies or subdivisions thereof set forth in Section 1–2 of this Order are hereby excluded from coverage under Chapter 71 of Title 5 of the United States Code.

1–102. Having determined that it is necessary in the interest of national security, the provisions of Chapter 71 of Title 5 of the United States Code are suspended with respect to any agency, installation, or activity listed in Section 1–3 of this Order. However, such suspension shall be applicable only to that portion of the agency, installation, or activity which is located outside the 50 States and the District of Columbia.

1–2. EXCLUSIONS

1–201. The Information Security Oversight Office, General Services Administration.

1–202. The Federal Research Division, Research Services, the Library of Congress.

1–203. Agencies or subdivisions of the Department of the Treasury:

(a) The U.S. Secret Service.

(b) The U.S. Secret Service Uniformed Division.

(c) The Office of Special Assistant to the Secretary (National Security).

(d) The Office of Intelligence Support (OIS).

(e) The Office of the Assistant Secretary (Enforcement and Operations) (OEO).

(f) The Office of Criminal Enforcement, Bureau of Alcohol, Tobacco, and Firearms.

(g) The Office of Enforcement (Headquarters and Regional Components), U.S. Customs Service.

(h) The Criminal Investigation Division, Internal Revenue Service.

1–204. Agencies or subdivisions of the Department of the Army, Department of Defense:

(a) Office of Assistant Chief of Staff for Intelligence.

(b) U.S. Army Intelligence and Security Command.

(c) U.S. Army Foreign Science and Technology Center.

(d) U.S. Army Intelligence Center and School.

(e) U.S. Army Missile Intelligence Agency.

(f) Foreign Intelligence Office, U.S. Army Missile Research and Development Command.

1–205. Agencies or subdivisions of the Department of the Navy, Department of Defense:

(a) Office of Naval Intelligence.

(b) Naval Intelligence Command Headquarters and Subordinate Commands.

(c) Headquarters, Naval Security Group Command.

(d) Naval Security Group Activities and Detachments.

(e) Fleet Intelligence Center, Europe and Atlantic (FICEURLANT).

(f) Fleet Intelligence Center, Pacific (FICPAC).

(g) Units composed primarily of employees engaged in the operation, repair, and/or maintenance of ''off line'' or ''on line'' cryptographic equipment.

(h) Units composed primarily of employees of naval telecommunications activities in positions which require a cryptographic authorization.

1–206. Agencies or subdivisions of the Department of the Air Force, Department of Defense:

(a) Office of Space Systems, Office of the Secretary of the Air Force.

(b) Office of Special Projects, Office of the Secretary of the Air Force.

(c) Engineering Office, Space and Missile Systems Organization (Air Force Systems Command).

(d) Program Control Office, Space and Missile Systems Organization (Air Force Systems Command).

(e) Detachment 3, Space and Missile Systems Organization (Air Force Systems Command).

(f) Defense Dissemination Systems Program Office, Space and Missile Systems Organization (Air Force Systems Command).

(g) Satellite Data System Program Office, Space and Missile Systems Organization (Air Force Systems Command).

(h) Project Office at El Segundo, California, Office of the Secretary of the Air Force.

(i) Project Office at Patrick Air Force Base, Florida, Office of the Secretary of the Air Force.

(j) Project Office at Fort Myer, Virginia, Office of the Secretary of the Air Force.

(k) Air Force Office of Special Investigations.

(l) U.S. Air Force Security Service.

(m) Foreign Technology Division, Air Force Systems Command, Wright-Patterson Air Force Base.

(n) 1035 Technical Operations Group (Air Force Technical Applications Center), Air Force Systems Command, and subordinate units.

(o) 3480 Technical Training Wing, Air Training Command, Goodfellow Air Force Base, Texas.

(p) Office of the Assistant Chief of Staff, Intelligence.
(q) Air Force Intelligence Service.
1–207. The Defense Intelligence Agency, Department of Defense.
1–208. The Defense Investigative Service, Department of Defense.
1–209. Agencies or subdivisions of the Department of Justice:
a. The Office of Enforcement and the Office of Intelligence, including all domestic field offices and intelligence units, of the Drug Enforcement Administration.
b. The Office of Special Operations, the Threat Analysis Group, the Enforcement Operations Division, the Witness Security Division and the Court Security Division in the Office of the Director and the Enforcement Division in Offices of the United States Marshals in the United States Marshals Service.
1–210. Agencies or subdivisions of the Department of Energy.
(a) The Albuquerque, Nevada and Savannah River operations offices under the Under Secretary of Energy.
(b) Offices of the Assistant Secretary for Defense Programs.
1–211. Offices within the Agency for International Development:
(a) The Immediate Office of the Auditor General.
(b) The Office of Inspections and Investigations.
(c) The Office of Security.
(d) The Office of the Area Auditor General/Washington.
1–212. Agencies or subdivisions under the operational jurisdiction of the Joint Chiefs of Staff (JCS).
(a) Intelligence Division (J–2), Headquarters Atlantic Command (LANTCOM).
(b) Atlantic Command Electronic Intelligence Center.
(c) Intelligence Directorate (J–2), Headquarters U.S. European Command (USEUCOM).
(d) Special Security Office (SSO), Headquarters U.S. European Command (USEUCOM).
(e) European Defense Analysis Center (EUDAC).
(f) Intelligence Directorate (J–2), Headquarters Pacific Command (PACOM).
(g) Intelligence Center Pacific (IPAC).
(h) Intelligence Directorate (J–2), Headquarters U.S. Southern Command (USSOUTHCOM).
(i) Intelligence Directorate (J–2), Headquarters U.S. Readiness Command (USREDCOM)/Joint Deployment Agency.
(j) Deputy Chief of Staff/Intelligence, Headquarters Strategic Air Command (SAC).
(k) 544th Strategic Intelligence Wing, Strategic Air Command (SAC).
(l) Deputy Chief of Staff/Intelligence, Headquarters 15th Air Force, Strategic Air Command (SAC).
(m) Deputy Chief of Staff/Intelligence, Headquarters 8th Air Force, Strategic Air Command (SAC).
(n) Strategic Reconnaissance Center, Headquarters Strategic Air Command (SAC).
(o) 6th Strategic Wing, Strategic Air Command (SAC).
(p) 9th Strategic Reconnaissance Wing, Strategic Air Command (SAC).
(q) 55th Strategic Reconnaissance Wing, Strategic Air Command (SAC).
(r) 306th Strategic Wing, Strategic Air Command (SAC).
(s) 376th Strategic Wing, Strategic Air Command (SAC).
(t) Deputy Chief of Staff/Operations Plans, Headquarters Strategic Air Command (SAC).
(u) The Joint Strategic Target Planning Staff (JSTPS).
(v) The Joint Special Operations Command (JSOC) and all elements under its operational control.
1–213. The subdivisions of the Federal Aviation Administration, Department of Transportation:
(a) Federal Air Marshal Branch, International Civil Aviation Security Division, Office of Civil Aviation Security.
(b) Units composed of Civil Aviation Security Inspectors in Civil Aviation Security divisions whose responsibilities require Federal air marshal functions.
1–214. Subdivisions of the National Preparedness Directorate of the Federal Emergency Management Agency.
(a) Office of Associate Director.
(b) Office of Analysis and Support.
(c) Office of Mobilization Preparedness.
(d) The following offices of the Office of Systems Engineering.
(1) Office of the Assistant Associate Director.
(2) NEMS–DCWS Program Office.
(3) Systems Design Division.
(4) Telecommunications Systems Development Division.
(5) Systems Support Division.
(e) The following offices of the Office of Operations.
(1) Office of the Assistant Associate Director.
(2) Planning Division.
(3) The following branches of the Readiness Division.
(A) Exercise Branch.
(B) Operations Branch.
(C) National Warning Center.
(D) Alternate National Warning Center.
(4) Mobile Emergency Response Support Operations Divisions.
(5) Federal Agency Support and Coordination Division.
(f) The following offices in the Office of Information Resource Management.
(1) Office of the Assistant Associate Director.
(2) Information Systems Policy, Planning and Evaluation Policy and Planning Branch.
(3) Information Systems Application Branch.
(4) EICC Support Center.
1–215. The Defense Mapping Agency Reston Center, Department of Defense.

1–3. Units Outside the 50 States and the District of Columbia

1–301. The Drug Enforcement Administration, Department of Justice.

Ex. Ord. No. 12391. Partial Suspension of Federal Service Labor-Management Relations

Ex. Ord. No. 12391, Nov. 4, 1982, 47 F.R. 50457, provided:
By the authority vested in me as President by the Constitution and statutes of the United States of America, including Section 7103(b)(2) of Title 5 and Section 301 of Title 3 of the United States Code, and having determined that it is necessary in the interest of national security to suspend certain labor-management relations provisions with respect to overseas activities of the Department of Defense, it is hereby ordered as follows:
Section 1. *Suspensions.* With regard to United States citizen employees of the Department of Defense, including the Military Departments, who are employed outside the United States as defined in 5 U.S.C. 7103(a)(18), with the exception of those employed in the Republic of Panama:
(a) The provisions of 5 U.S.C. 7105(a)(2)(D), (E), (G), and (H) and of 5 U.S.C. 7123(b) are suspended with respect to any matter which substantially impairs the implementation by the United States Forces of any treaty or agreement, including any minutes or understandings thereto, between the United States and the Government of the host nation;
(b) The provisions of 5 U.S.C. 7102(2), 7114(a)(1), 7114(a)(4), 7116(a)(5), and 7117(c) are suspended with respect to any matter proposed for bargaining which would substantially impair the implementation by the United States Forces of any treaty or agreement, including any minutes or understandings thereto, between the United States and the Government of the host nation;
(c) The provisions of 5 U.S.C. 7116(a)(7) and 7117(b) are suspended with regard to any regulation governing the implementation by the United States Forces of any treaty or agreement, including any minutes or understandings thereto, between the United States and the Government of the host nations; and

(d) The provisions of 5 U.S.C. 7121(b)(3)(C) are suspended with respect to any grievance involving the implementation by the United States Forces of any treaty or agreement, including any minutes or understandings thereto, between the United States and the Government of the host nation.

SEC. 2. *Disputes.* Disputes between a labor organization and the United States Forces as to whether a particular matter is covered by one or more of the suspensions set forth in this Order shall be referred to the Secretary of Defense. The decision of the Secretary in such disputes shall be made after consultation with the Secretary of State and shall be final. The Secretary of Defense may delegate this authority, but only to the Deputy Secretary of Defense, an Under Secretary of Defense, or an Assistant Secretary of Defense. The functions assigned to the Secretary of State may not be delegated or assigned to anyone below the rank of an Assistant Secretary of State.

RONALD REAGAN.

EX. ORD. NO. 12632. EXCLUSIONS FROM FEDERAL LABOR-MANAGEMENT RELATIONS PROGRAM

Ex. Ord. No. 12632, Mar. 23, 1988, 53 F.R. 9852, provided:

By virtue of the authority vested in me as President by the Constitution and laws of the United States of America, including Section 7103(b) of Title 5 of the United States Code, and in order to exempt certain agencies or subdivisions thereof from coverage of the Federal Labor-Management Relations Program, it is hereby ordered as follows:

SECTION 1. *Determinations.* The agencies or subdivisions thereof set forth in Section 3 of this Order are hereby determined to have as a primary function intelligence, counterintelligence, investigative, or national security work. It is also hereby determined that Chapter 71 of Title 5 of the United States Code cannot be applied to these agencies or subdivisions in a manner consistent with national security requirements and considerations. These agencies or subdivisions thereof are hereby excluded from coverage under Chapter 71 of Title 5 of the United States Code.

SEC. 2. *Relationship to Executive Order No. 12559.* The determinations set forth in Section 1 of this Order are the same determinations that I made at the time of and as a predicate to my issuance on May 20, 1986, of Executive Order No. 12559 [amending Ex. Ord. No. 12171, set out as a note above], which was issued for the same purpose as this Order. On July 10, 1987, Executive Order No. 12559 was held by a United States District Court to be incomplete as a matter of form, and therefore invalid, because it did not expressly set forth these determinations. *AFGE v. Reagan*, Civil No. 86–1587 (D.D.C.). These determinations were not expressly set forth in the text of Executive Order No. 12559 because all that Order did was amend Executive Order No. 12171 [set out as a note above] by adding the agencies or subdivisions referred to in Section 1 of this Order to the list in Executive Order No. 12171 of entities excluded from coverage of the Federal Labor-Management Relations Program, and these determinations were already expressly set forth in the text of Executive Order No. 12171, which remains in effect (as amended). This Order is not intended to reflect any belief that the form of Executive Order No. 12559 was invalid, but is intended solely to accomplish the purpose of that Order.

SEC. 3. *Amendment of Executive Order No. 12171.* Executive Order No. 12171 is amended by deleting Section 1–209 and inserting in its place:

SEC. 1–209. *Agencies or subdivisions of the Department of Justice.* (a) The Office of Enforcement and the Office of Intelligence, including all domestic field offices and intelligence units, of the Drug Enforcement Administration.

(b) The Office of Special Operations, the Threat Analysis Group, the Enforcement Operations Division, the Witness Security Division and the Court Security Division in the Office of the Director and the Enforcement Division in Offices of the United States Marshals in the United States Marshals Service.

RONALD REAGAN.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4703, 5596, 6121, 7323, 8473 of this title; title 7 section 7011; title 22 section 3701; title 38 section 711.

§ 7104. Federal Labor Relations Authority

(a) The Federal Labor Relations Authority is composed of three members, not more than 2 of whom may be adherents of the same political party. No member shall engage in any other business or employment or hold another office or position in the Government of the United States except as otherwise provided by law.

(b) Members of the Authority shall be appointed by the President by and with the advice and consent of the Senate, and may be removed by the President only upon notice and hearing and only for inefficiency, neglect of duty, or malfeasance in office. The President shall designate one member to serve as Chairman of the Authority. The Chairman is the chief executive and administrative officer of the Authority.

(c) A member of the Authority shall be appointed for a term of 5 years. An individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced. The term of any member shall not expire before the earlier of—

(1) the date on which the member's successor takes office, or

(2) the last day of the Congress beginning after the date on which the member's term of office would (but for this paragraph) expire.

(d) A vacancy in the Authority shall not impair the right of the remaining members to exercise all of the powers of the Authority.

(e) The Authority shall make an annual report to the President for transmittal to the Congress which shall include information as to the cases it has heard and the decisions it has rendered.

(f)(1) The General Counsel of the Authority shall be appointed by the President, by and with the advice and consent of the Senate, for a term of 5 years. The General Counsel may be removed at any time by the President. The General Counsel shall hold no other office or position in the Government of the United States except as provided by law.

(2) The General Counsel may—

(A) investigate alleged unfair labor practices under this chapter,

(B) file and prosecute complaints under this chapter, and

(C) exercise such other powers of the Authority as the Authority may prescribe.

(3) The General Counsel shall have direct authority over, and responsibility for, all employees in the office of General Counsel, including employees of the General Counsel in the regional offices of the Authority.

(Added Pub. L. 95–454, title VII, § 701, Oct. 13, 1978, 92 Stat. 1196; amended Pub. L. 98–224, § 3, Mar. 2, 1984, 98 Stat. 47.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98–224, § 3(a), inserted provision directing that Chairman be chief executive and administrative officer.

Subsec. (c). Pub. L. 98–224, § 3(b), substituted provision that a member of Authority be appointed for a

term of 5 years and an individual chosen to fill a vacancy be appointed for unexpired term of member replaced for provision that one original member of Authority be appointed for a term of 1 year, one for a term of 3 years, and Chairman for a term of 5 years, and thereafter each member be appointed for a term of 5 years.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7103 of this title; title 22 section 4102.

§ 7105. Powers and duties of the Authority

(a)(1) The Authority shall provide leadership in establishing policies and guidance relating to matters under this chapter, and, except as otherwise provided, shall be responsible for carrying out the purpose of this chapter.

(2) The Authority shall, to the extent provided in this chapter and in accordance with regulations prescribed by the Authority—

(A) determine the appropriateness of units for labor organization representation under section 7112 of this title;

(B) supervise or conduct elections to determine whether a labor organization has been selected as an exclusive representative by a majority of the employees in an appropriate unit and otherwise administer the provisions of section 7111 of this title relating to the according of exclusive recognition to labor organizations;

(C) prescribe criteria and resolve issues relating to the granting of national consultation rights under section 7113 of this title;

(D) prescribe criteria and resolve issues relating to determining compelling need for agency rules or regulations under section 7117(b) of this title;

(E) resolves issues relating to the duty to bargain in good faith under section 7117(c) of this title;

(F) prescribe criteria relating to the granting of consultation rights with respect to conditions of employment under section 7117(d) of this title;

(G) conduct hearings and resolve complaints of unfair labor practices under section 7118 of this title;

(H) resolve exceptions to arbitrator's awards under section 7122 of this title; and

(I) take such other actions as are necessary and appropriate to effectively administer the provisions of this chapter.

(b) The Authority shall adopt an official seal which shall be judicially noticed.

(c) The principal office of the Authority shall be in or about the District of Columbia, but the Authority may meet and exercise any or all of its powers at any time or place. Except as otherwise expressly provided by law, the Authority may, by one or more of its members or by such agents as it may designate, make any appropriate inquiry necessary to carry out its duties wherever persons subject to this chapter are located. Any member who participates in the inquiry shall not be disqualified from later participating in a decision of the Authority in any case relating to the inquiry.

(d) The Authority shall appoint an Executive Director and such regional directors, administrative law judges under section 3105 of this title, and other individuals as it may from time to time find necessary for the proper performance of its functions. The Authority may delegate to officers and employees appointed under this subsection authority to perform such duties and make such expenditures as may be necessary.

(e)(1) The Authority may delegate to any regional director its authority under this chapter—

(A) to determine whether a group of employees is an appropriate unit;

(B) to conduct investigations and to provide for hearings;

(C) to determine whether a question of representation exists and to direct an election; and

(D) to supervise or conduct secret ballot elections and certify the results thereof.

(2) The Authority may delegate to any administrative law judge appointed under subsection (d) of this section its authority under section 7118 of this title to determine whether any person has engaged in or is engaging in an unfair labor practice.

(f) If the Authority delegates any authority to any regional director or administrative law judge to take any action pursuant to subsection (e) of this section, the Authority may, upon application by any interested person filed within 60 days after the date of the action, review such action, but the review shall not, unless specifically ordered by the Authority, operate as a stay of action. The Authority may affirm, modify, or reverse any action reviewed under this subsection. If the Authority does not undertake to grant review of the action under this subsection within 60 days after the later of—

(1) the date of the action; or

(2) the date of the filing of any application under this subsection for review of the action;

the action shall become the action of the Authority at the end of such 60-day period.

(g) In order to carry out its functions under this chapter, the Authority may—

(1) hold hearings;

(2) administer oaths, take the testimony or deposition of any person under oath, and issue subpenas as provided in section 7132 of this title; and

(3) may require an agency or a labor organization to cease and desist from violations of this chapter and require it to take any remedial action it considers appropriate to carry out the policies of this chapter.

(h) Except as provided in section 518 of title 28, relating to litigation before the Supreme Court, attorneys designated by the Authority may appear for the Authority and represent the Authority in any civil action brought in connection with any function carried out by the Authority pursuant to this title or as otherwise authorized by law.

(i) In the exercise of the functions of the Authority under this title, the Authority may request from the Director of the Office of Personnel Management an advisory opinion concerning the proper interpretation of rules, regulations, or policy directives issued by the Office of Per-

sonnel Management in connection with any matter before the Authority.

(Added Pub. L. 95–454, title VII, § 701, Oct. 13, 1978, 92 Stat. 1196.)

PARTIAL SUSPENSION OF FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS

Subsec. (a)(2)(D), (E), (G), and (H) of this section suspended with respect to any matter which substantially impairs the implementation by the United States Forces of any treaty or agreement, including any minutes or understandings thereto, between the United States and the Government of the host nation, see section 1(a) of Ex. Ord. No. 12391, Nov. 4, 1982, 47 F.R. 50457, set out as a note under section 7103 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7118 of this title; title 7 section 7011.

§ 7106. Management rights

(a) Subject to subsection (b) of this section, nothing in this chapter shall affect the authority of any management official of any agency—

(1) to determine the mission, budget, organization, number of employees, and internal security practices of the agency; and

(2) in accordance with applicable laws—

(A) to hire, assign, direct, layoff, and retain employees in the agency, or to suspend, remove, reduce in grade or pay, or take other disciplinary action against such employees;

(B) to assign work, to make determinations with respect to contracting out, and to determine the personnel by which agency operations shall be conducted;

(C) with respect to filling positions, to make selections for appointments from—

(i) among properly ranked and certified candidates for promotion; or

(ii) any other appropriate source; and

(D) to take whatever actions may be necessary to carry out the agency mission during emergencies.

(b) Nothing in this section shall preclude any agency and any labor organization from negotiating—

(1) at the election of the agency, on the numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods, and means of performing work;

(2) procedures which management officials of the agency will observe in exercising any authority under this section; or

(3) appropriate arrangements for employees adversely affected by the exercise of any authority under this section by such management officials.

(Added Pub. L. 95–454, title VII, § 701, Oct. 13, 1978, 92 Stat. 1198.)

SUBCHAPTER II—RIGHTS AND DUTIES OF AGENCIES AND LABOR ORGANIZATIONS

§ 7111. Exclusive recognition of labor organizations

(a) An agency shall accord exclusive recognition to a labor organization if the organization has been selected as the representative, in a secret ballot election, by a majority of the employees in an appropriate unit who cast valid ballots in the election.

(b) If a petition is filed with the Authority—

(1) by any person alleging—

(A) in the case of an appropriate unit for which there is no exclusive representative, that 30 percent of the employees in the appropriate unit wish to be represented for the purpose of collective bargaining by an exclusive representative, or

(B) in the case of an appropriate unit for which there is an exclusive representative, that 30 percent of the employees in the unit allege that the exclusive representative is no longer the representative of the majority of the employees in the unit; or

(2) by any person seeking clarification of, or an amendment to, a certification then in effect or a matter relating to representation;

the Authority shall investigate the petition, and if it has reasonable cause to believe that a question of representation exists, it shall provide an opportunity for a hearing (for which a transcript shall be kept) after a reasonable notice. If the Authority finds on the record of the hearing that a question of representation exists, the Authority shall supervise or conduct an election on the question by secret ballot and shall certify the results thereof. An election under this subsection shall not be conducted in any appropriate unit or in any subdivision thereof within which, in the preceding 12 calendar months, a valid election under this subsection has been held.

(c) A labor organization which—

(1) has been designated by at least 10 percent of the employees in the unit specified in any petition filed pursuant to subsection (b) of this section;

(2) has submitted a valid copy of a current or recently expired collective bargaining agreement for the unit; or

(3) has submitted other evidence that it is the exclusive representative of the employees involved;

may intervene with respect to a petition filed pursuant to subsection (b) of this section and shall be placed on the ballot of any election under such subsection (b) with respect to the petition.

(d) The Authority shall determine who is eligible to vote in any election under this section and shall establish rules governing any such election, which shall include rules allowing employees eligible to vote the opportunity to choose—

(1) from labor organizations on the ballot, that labor organization which the employees wish to have represent them; or

(2) not to be represented by a labor organization.

In any election in which no choice on the ballot receives a majority of the votes cast, a runoff election shall be conducted between the two choices receiving the highest number of votes. A labor organization which receives the majority of the votes cast in an election shall be certified

by the Authority as the exclusive representative.

(e) A labor organization seeking exclusive recognition shall submit to the Authority and the agency involved a roster of its officers and representatives, a copy of its constitution and bylaws, and a statement of its objectives.

(f) Exclusive recognition shall not be accorded to a labor organization—

(1) if the Authority determines that the labor organization is subject to corrupt influences or influences opposed to democratic principles;

(2) in the case of a petition filed pursuant to subsection (b)(1)(A) of this section, if there is not credible evidence that at least 30 percent of the employees in the unit specified in the petition wish to be represented for the purpose of collective bargaining by the labor organization seeking exclusive recognition;

(3) if there is then in effect a lawful written collective bargaining agreement between the agency involved and an exclusive representative (other than the labor organization seeking exclusive recognition) covering any employees included in the unit specified in the petition, unless—

(A) the collective bargaining agreement has been in effect for more than 3 years, or

(B) the petition for exclusive recognition is filed not more than 105 days and not less than 60 days before the expiration date of the collective bargaining agreement; or

(4) if the Authority has, within the previous 12 calendar months, conducted a secret ballot election for the unit described in any petition under this section and in such election a majority of the employees voting chose a labor organization for certification as the unit's exclusive representative.

(g) Nothing in this section shall be construed to prohibit the waiving of hearings by stipulation for the purpose of a consent election in conformity with regulations and rules or decisions of the Authority.

(Added Pub. L. 95–454, title VII, § 701, Oct. 13, 1978, 92 Stat. 1199.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7103, 7105 of this title; title 7 section 7011; title 10 section 2467.

§ 7112. Determination of appropriate units for labor organization representation

(a) The Authority shall determine the appropriateness of any unit. The Authority shall determine in each case whether, in order to ensure employees the fullest freedom in exercising the rights guaranteed under this chapter, the appropriate unit should be established on an agency, plant, installation, functional, or other basis and shall determine any unit to be an appropriate unit only if the determination will ensure a clear and identifiable community of interest among the employees in the unit and will promote effective dealings with, and efficiency of the operations of the agency involved.

(b) A unit shall not be determined to be appropriate under this section solely on the basis of the extent to which employees in the proposed unit have organized, nor shall a unit be determined to be appropriate if it includes—

(1) except as provided under section 7135(a)(2) of this title, any management official or supervisor;

(2) a confidential employee;

(3) an employee engaged in personnel work in other than a purely clerical capacity;

(4) an employee engaged in administering the provisions of this chapter;

(5) both professional employees and other employees, unless a majority of the professional employees vote for inclusion in the unit;

(6) any employee engaged in intelligence, counterintelligence, investigative, or security work which directly affects national security; or

(7) any employee primarily engaged in investigation or audit functions relating to the work of individuals employed by an agency whose duties directly affect the internal security of the agency, but only if the functions are undertaken to ensure that the duties are discharged honestly and with integrity.

(c) Any employee who is engaged in administering any provision of law relating to labor-management relations may not be represented by a labor organization—

(1) which represents other individuals to whom such provision applies; or

(2) which is affiliated directly or indirectly with an organization which represents other individuals to whom such provision applies.

(d) Two or more units which are in an agency and for which a labor organization is the exclusive representative may, upon petition by the agency or labor organization, be consolidated with or without an election into a single larger unit if the Authority considers the larger unit to be appropriate. The Authority shall certify the labor organization as the exclusive representative of the new larger unit.

(Added Pub. L. 95–454, title VII, § 701, Oct. 13, 1978, 92 Stat. 1200; amended Pub. L. 102–378, § 2(54), Oct. 2, 1992, 106 Stat. 1354.)

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–378 struck out ''(1)'' after subsec. (a) designation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7105, 7123 of this title; title 7 section 7011.

§ 7113. National consultation rights

(a) If, in connection with any agency, no labor organization has been accorded exclusive recognition on an agency basis, a labor organization which is the exclusive representative of a substantial number of the employees of the agency, as determined in accordance with criteria prescribed by the Authority, shall be granted national consultation rights by the agency. National consultation rights shall terminate when the labor organization no longer meets the criteria prescribed by the Authority. Any issue relating to any labor organization's eligibility for, or continuation of, national consultation rights shall be subject to determination by the Authority.

(b)(1) Any labor organization having national consultation rights in connection with any agency under subsection (a) of this section shall—

(A) be informed of any substantive change in conditions of employment proposed by the agency, and

(B) be permitted reasonable time to present its views and recommendations regarding the changes.

(2) If any views or recommendations are presented under paragraph (1) of this subsection to an agency by any labor organization—

(A) the agency shall consider the views or recommendations before taking final action on any matter with respect to which the views or recommendations are presented; and

(B) the agency shall provide the labor organization a written statement of the reasons for taking the final action.

(c) Nothing in this section shall be construed to limit the right of any agency or exclusive representative to engage in collective bargaining.

(Added Pub. L. 95–454, title VII, § 701, Oct. 13, 1978, 92 Stat. 1201; amended Pub. L. 102–378, § 2(55), Oct. 2, 1992, 106 Stat. 1354.)

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–378 struck out ''(1)'' after subsec. (a) designation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7105 of this title.

§ 7114. Representation rights and duties

(a)(1) A labor organization which has been accorded exclusive recognition is the exclusive representative of the employees in the unit it represents and is entitled to act for, and negotiate collective bargaining agreements covering, all employees in the unit. An exclusive representative is responsible for representing the interests of all employees in the unit it represents without discrimination and without regard to labor organization membership.

(2) An exclusive representative of an appropriate unit in an agency shall be given the opportunity to be represented at—

(A) any formal discussion between one or more representatives of the agency and one or more employees in the unit or their representatives concerning any grievance or any personnel policy or practices or other general condition of employment; or

(B) any examination of an employee in the unit by a representative of the agency in connection with an investigation if—

(i) the employee reasonably believes that the examination may result in disciplinary action against the employee; and

(ii) the employee requests representation.

(3) Each agency shall annually inform its employees of their rights under paragraph (2)(B) of this subsection.

(4) Any agency and any exclusive representative in any appropriate unit in the agency, through appropriate representatives, shall meet and negotiate in good faith for the purposes of arriving at a collective bargaining agreement. In addition, the agency and the exclusive representative may determine appropriate techniques, consistent with the provisions of section 7119 of this title, to assist in any negotiation.

(5) The rights of an exclusive representative under the provisions of this subsection shall not be construed to preclude an employee from—

(A) being represented by an attorney or other representative, other than the exclusive representative, of the employee's own choosing in any grievance or appeal action; or

(B) exercising grievance or appellate rights established by law, rule, or regulation;

except in the case of grievance or appeal procedures negotiated under this chapter.

(b) The duty of an agency and an exclusive representative to negotiate in good faith under subsection (a) of this section shall include the obligation—

(1) to approach the negotiations with a sincere resolve to reach a collective bargaining agreement;

(2) to be represented at the negotiations by duly authorized representatives prepared to discuss and negotiate on any condition of employment;

(3) to meet at reasonable times and convenient places as frequently as may be necessary, and to avoid unnecessary delays;

(4) in the case of an agency, to furnish to the exclusive representative involved, or its authorized representative, upon request and, to the extent not prohibited by law, data—

(A) which is normally maintained by the agency in the regular course of business;

(B) which is reasonably available and necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining; and

(C) which does not constitute guidance, advice, counsel, or training provided for management officials or supervisors, relating to collective bargaining; and

(5) if agreement is reached, to execute on the request of any party to the negotiation a written document embodying the agreed terms, and to take such steps as are necessary to implement such agreement.

(c)(1) An agreement between any agency and an exclusive representative shall be subject to approval by the head of the agency.

(2) The head of the agency shall approve the agreement within 30 days from the date the agreement is executed if the agreement is in accordance with the provisions of this chapter and any other applicable law, rule, or regulation (unless the agency has granted an exception to the provision).

(3) If the head of the agency does not approve or disapprove the agreement within the 30-day period, the agreement shall take effect and shall be binding on the agency and the exclusive representative subject to the provisions of this chapter and any other applicable law, rule, or regulation.

(4) A local agreement subject to a national or other controlling agreement at a higher level shall be approved under the procedures of the controlling agreement or, if none, under regulations prescribed by the agency.

(Added Pub. L. 95–454, title VII, §701, Oct. 13, 1978, 92 Stat. 1202.)

PARTIAL SUSPENSION OF FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS

Subsec. (a)(1) and (4) of this section suspended with respect to any matter proposed for bargaining which would substantially impair the implementation by the United States Forces of any treaty or agreement, including any minutes or understandings thereto, between the United States and the Government of the host nation, see section 1(b) of Ex. Ord. No. 12391, Nov. 4, 1982, 47 F.R. 50457, set out as a note under section 7103 of this title.

§ 7115. Allotments to representatives

(a) If an agency has received from an employee in an appropriate unit a written assignment which authorizes the agency to deduct from the pay of the employee amounts for the payment of regular and periodic dues of the exclusive representative of the unit, the agency shall honor the assignment and make an appropriate allotment pursuant to the assignment. Any such allotment shall be made at no cost to the exclusive representative or the employee. Except as provided under subsection (b) of this section, any such assignment may not be revoked for a period of 1 year.

(b) An allotment under subsection (a) of this section for the deduction of dues with respect to any employee shall terminate when—

(1) the agreement between the agency and the exclusive representative involved ceases to be applicable to the employee; or

(2) the employee is suspended or expelled from membership in the exclusive representative.

(c)(1) Subject to paragraph (2) of this subsection, if a petition has been filed with the Authority by a labor organization alleging that 10 percent of the employees in an appropriate unit in an agency have membership in the labor organization, the Authority shall investigate the petition to determine its validity. Upon certification by the Authority of the validity of the petition, the agency shall have a duty to negotiate with the labor organization solely concerning the deduction of dues of the labor organization from the pay of the members of the labor organization who are employees in the unit and who make a voluntary allotment for such purpose.

(2)(A) The provisions of paragraph (1) of this subsection shall not apply in the case of any appropriate unit for which there is an exclusive representative.

(B) Any agreement under paragraph (1) of this subsection between a labor organization and an agency with respect to an appropriate unit shall be null and void upon the certification of an exclusive representative of the unit.

(Added Pub. L. 95–454, title VII, §701, Oct. 13, 1978, 92 Stat. 1203.)

§ 7116. Unfair labor practices

(a) For the purpose of this chapter, it shall be an unfair labor practice for an agency—

(1) to interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this chapter;

(2) to encourage or discourage membership in any labor organization by discrimination in connection with hiring, tenure, promotion, or other conditions of employment;

(3) to sponsor, control, or otherwise assist any labor organization, other than to furnish, upon request, customary and routine services and facilities if the services and facilities are also furnished on an impartial basis to other labor organizations having equivalent status;

(4) to discipline or otherwise discriminate against an employee because the employee has filed a complaint, affidavit, or petition, or has given any information or testimony under this chapter;

(5) to refuse to consult or negotiate in good faith with a labor organization as required by this chapter;

(6) to fail or refuse to cooperate in impasse procedures and impasse decisions as required by this chapter;

(7) to enforce any rule or regulation (other than a rule or regulation implementing section 2302 of this title) which is in conflict with any applicable collective bargaining agreement if the agreement was in effect before the date the rule or regulation was prescribed; or

(8) to otherwise fail or refuse to comply with any provision of this chapter.

(b) For the purpose of this chapter, it shall be an unfair labor practice for a labor organization—

(1) to interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this chapter;

(2) to cause or attempt to cause an agency to discriminate against any employee in the exercise by the employee of any right under this chapter;

(3) to coerce, discipline, fine, or attempt to coerce a member of the labor organization as punishment, reprisal, or for the purpose of hindering or impeding the member's work performance or productivity as an employee or the discharge of the member's duties as an employee;

(4) to discriminate against an employee with regard to the terms or conditions of membership in the labor organization on the basis of race, color, creed, national origin, sex, age, preferential or nonpreferential civil service status, political affiliation, marital status, or handicapping condition;

(5) to refuse to consult or negotiate in good faith with an agency as required by this chapter;

(6) to fail or refuse to cooperate in impasse procedures and impasse decisions as required by this chapter;

(7)(A) to call, or participate in, a strike, work stoppage, or slowdown, or picketing of an agency in a labor-management dispute if such picketing interferes with an agency's operations, or

(B) to condone any activity described in subparagraph (A) of this paragraph by failing to take action to prevent or stop such activity; or

(8) to otherwise fail or refuse to comply with any provision of this chapter.

Nothing in paragraph (7) of this subsection shall result in any informational picketing which

does not interfere with an agency's operations being considered as an unfair labor practice.

(c) For the purpose of this chapter it shall be an unfair labor practice for an exclusive representative to deny membership to any employee in the appropriate unit represented by such exclusive representative except for failure—

(1) to meet reasonable occupational standards uniformly required for admission, or

(2) to tender dues uniformly required as a condition of acquiring and retaining membership.

This subsection does not preclude any labor organization from enforcing discipline in accordance with procedures under its constitution or bylaws to the extent consistent with the provisions of this chapter.

(d) Issues which can properly be raised under an appeals procedure may not be raised as unfair labor practices prohibited under this section. Except for matters wherein, under section 7121(e) and (f) of this title, an employee has an option of using the negotiated grievance procedure or an appeals procedure, issues which can be raised under a grievance procedure may, in the discretion of the aggrieved party, be raised under the grievance procedure or as an unfair labor practice under this section, but not under both procedures.

(e) The expression of any personal view, argument, opinion or the making of any statement which—

(1) publicizes the fact of a representational election and encourages employees to exercise their right to vote in such election,

(2) corrects the record with respect to any false or misleading statement made by any person, or

(3) informs employees of the Government's policy relating to labor-management relations and representation,

shall not, if the expression contains no threat of reprisal or force or promise of benefit or was not made under coercive conditions, (A) constitute an unfair labor practice under any provision of this chapter, or (B) constitute grounds for the setting aside of any election conducted under any provisions of this chapter.

(Added Pub. L. 95–454, title VII, § 701, Oct. 13, 1978, 92 Stat. 1204.)

PARTIAL SUSPENSION OF FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS

Subsec. (a)(5) of this section suspended with respect to any matter proposed for bargaining which would substantially impair the implementation by the United States Forces, and subsec. (a)(7) of this section suspended with regard to any regulation governing the implementation by the United States Forces, of any treaty or agreement, including any minutes or understandings thereto, between the United States and the Government of the host nation, see section 1(b), (c) of Ex. Ord. No. 12391, Nov. 4, 1982, 47 F.R. 50457, set out as a note under section 7103 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5596, 7103, 7120 of this title.

§ 7117. Duty to bargain in good faith; compelling need; duty to consult

(a)(1) Subject to paragraph (2) of this subsection, the duty to bargain in good faith shall, to the extent not inconsistent with any Federal law or any Government-wide rule or regulation, extend to matters which are the subject of any rule or regulation only if the rule or regulation is not a Government-wide rule or regulation.

(2) The duty to bargain in good faith shall, to the extent not inconsistent with Federal law or any Government-wide rule or regulation, extend to matters which are the subject of any agency rule or regulation referred to in paragraph (3) of this subsection only if the Authority has determined under subsection (b) of this section that no compelling need (as determined under regulations prescribed by the Authority) exists for the rule or regulation.

(3) Paragraph (2) of the subsection applies to any rule or regulation issued by any agency or issued by any primary national subdivision of such agency, unless an exclusive representative represents an appropriate unit including not less than a majority of the employees in the issuing agency or primary national subdivision, as the case may be, to whom the rule or regulation is applicable.

(b)(1) In any case of collective bargaining in which an exclusive representative alleges that no compelling need exists for any rule or regulation referred to in subsection (a)(3) of this section which is then in effect and which governs any matter at issue in such collective bargaining, the Authority shall determine under paragraph (2) of this subsection, in accordance with regulations prescribed by the Authority, whether such a compelling need exists.

(2) For the purpose of this section, a compelling need shall be determined not to exist for any rule or regulation only if—

(A) the agency, or primary national subdivision, as the case may be, which issued the rule or regulation informs the Authority in writing that a compelling need for the rule or regulation does not exist; or

(B) the Authority determines that a compelling need for a rule or regulation does not exist.

(3) A hearing may be held, in the discretion of the Authority, before a determination is made under this subsection. If a hearing is held, it shall be expedited to the extent practicable and shall not include the General Counsel as a party.

(4) The agency, or primary national subdivision, as the case may be, which issued the rule or regulation shall be a necessary party at any hearing under this subsection.

(c)(1) Except in any case to which subsection (b) of this section applies, if an agency involved in collective bargaining with an exclusive representative alleges that the duty to bargain in good faith does not extend to any matter, the exclusive representative may appeal the allegation to the Authority in accordance with the provisions of this subsection.

(2) The exclusive representative may, on or before the 15th day after the date on which the agency first makes the allegation referred to in paragraph (1) of this subsection, institute an appeal under this subsection by—

(A) filing a petition with the Authority; and

(B) furnishing a copy of the petition to the head of the agency.

(3) On or before the 30th day after the date of the receipt by the head of the agency of the copy of the petition under paragraph (2)(B) of this subsection, the agency shall—

(A) file with the Authority a statement—

(i) withdrawing the allegation; or

(ii) setting forth in full its reasons supporting the allegation; and

(B) furnish a copy of such statement to the exclusive representative.

(4) On or before the 15th day after the date of the receipt by the exclusive representative of a copy of a statement under paragraph (3)(B) of this subsection, the exclusive representative shall file with the Authority its response to the statement.

(5) A hearing may be held in the discretion of the Authority, before a determination is made under this subsection. If a hearing is held, it shall not include the General Counsel as a party.

(6) The Authority shall expedite proceedings under this subsection to the extent practicable and shall issue to the exclusive representative and to the agency a written decision on the allegation and specific reasons therefore at the earliest practicable date.

(d)(1) A labor organization which is the exclusive representative of a substantial number of employees, determined in accordance with criteria prescribed by the Authority, shall be granted consultation rights by any agency with respect to any Government-wide rule or regulation issued by the agency effecting any substantive change in any condition of employment. Such consultation rights shall terminate when the labor organization no longer meets the criteria prescribed by the Authority. Any issue relating to a labor organization's eligibility for, or continuation of, such consultation rights shall be subject to determination by the Authority.

(2) A labor organization having consultation rights under paragraph (1) of this subsection shall—

(A) be informed of any substantive change in conditions of employment proposed by the agency, and

(B) shall be permitted reasonable time to present its views and recommendations regarding the changes.

(3) If any views or recommendations are presented under paragraph (2) of this subsection to an agency by any labor organization—

(A) the agency shall consider the views or recommendations before taking final action on any matter with respect to which the views or recommendations are presented; and

(B) the agency shall provide the labor organization a written statement of the reasons for taking the final action.

(Added Pub. L. 95–454, title VII, §701, Oct. 13, 1978, 92 Stat. 1205.)

PARTIAL SUSPENSION OF FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS

Subsec. (b) of this section suspended with regard to any regulation governing the implementation by the United States Forces, and subsec. (c) of this section suspended with respect to any matter proposed for bargaining which would substantially impair the implementation by the United States Forces, of any treaty or agreement, including any minutes or understandings thereto, between the United States and the Government of the host nation, see section 1(b), (c) of Ex. Ord. No. 12391, Nov. 4, 1982, 47 F.R. 50457, set out as a note under section 7103 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5514, 7105 of this title.

§ 7118. Prevention of unfair labor practices

(a)(1) If any agency or labor organization is charged by any person with having engaged in or engaging in an unfair labor practice, the General Counsel shall investigate the charge and may issue and cause to be served upon the agency or labor organization a complaint. In any case in which the General Counsel does not issue a complaint because the charge fails to state an unfair labor practice, the General Counsel shall provide the person making the charge a written statement of the reasons for not issuing a complaint.

(2) Any complaint under paragraph (1) of this subsection shall contain a notice—

(A) of the charge;

(B) that a hearing will be held before the Authority (or any member thereof or before an individual employed by the authority and designated for such purpose); and

(C) of the time and place fixed for the hearing.

(3) The labor organization or agency involved shall have the right to file an answer to the original and any amended complaint and to appear in person or otherwise and give testimony at the time and place fixed in the complaint for the hearing.

(4)(A) Except as provided in subparagraph (B) of this paragraph, no complaint shall be issued based on any alleged unfair labor practice which occurred more than 6 months before the filing of the charge with the Authority.

(B) If the General Counsel determines that the person filing any charge was prevented from filing the charge during the 6-month period referred to in subparagraph (A) of this paragraph by reason of—

(i) any failure of the agency or labor organization against which the charge is made to perform a duty owed to the person, or

(ii) any concealment which prevented discovery of the alleged unfair labor practice during the 6-month period,

the General Counsel may issue a complaint based on the charge if the charge was filed during the 6-month period beginning on the day of the discovery by the person of the alleged unfair labor practice.

(5) The General Counsel may prescribe regulations providing for informal methods by which the alleged unfair labor practice may be resolved prior to the issuance of a complaint.

(6) The Authority (or any member thereof or any individual employed by the Authority and designated for such purpose) shall conduct a hearing on the complaint not earlier than 5 days

after the date on which the complaint is served. In the discretion of the individual or individuals conducting the hearing, any person involved may be allowed to intervene in the hearing and to present testimony. Any such hearing shall, to the extent practicable, be conducted in accordance with the provisions of subchapter II of chapter 5 of this title, except that the parties shall not be bound by rules of evidence, whether statutory, common law, or adopted by a court. A transcript shall be kept of the hearing. After such a hearing the Authority, in its discretion, may upon notice receive further evidence or hear argument.

(7) If the Authority (or any member thereof or any individual employed by the Authority and designated for such purpose) determines after any hearing on a complaint under paragraph (5) of this subsection that the preponderance of the evidence received demonstrates that the agency or labor organization named in the complaint has engaged in or is engaging in an unfair labor practice, then the individual or individuals conducting the hearing shall state in writing their findings of fact and shall issue and cause to be served on the agency or labor organization an order—

(A) to cease and desist from any such unfair labor practice in which the agency or labor organization is engaged;

(B) requiring the parties to renegotiate a collective bargaining agreement in accordance with the order of the Authority and requiring that the agreement, as amended, be given retroactive effect;

(C) requiring reinstatement of an employee with backpay in accordance with section 5596 of this title; or

(D) including any combination of the actions described in subparagraphs (A) through (C) of this paragraph or such other action as will carry out the purpose of this chapter.

If any such order requires reinstatement of an employee with backpay, backpay may be required of the agency (as provided in section 5596 of this title) or of the labor organization, as the case may be, which is found to have engaged in the unfair labor practice involved.

(8) If the individual or individuals conducting the hearing determine that the preponderance of the evidence received fails to demonstrate that the agency or labor organization named in the complaint has engaged in or is engaging in an unfair labor practice, the individual or individuals shall state in writing their findings of fact and shall issue an order dismissing the complaint.

(b) In connection with any matter before the Authority in any proceeding under this section, the Authority may request, in accordance with the provisions of section 7105(i) of this title, from the Director of the Office of Personnel Management an advisory opinion concerning the proper interpretation of rules, regulations, or other policy directives issued by the Office of Personnel Management.

(Added Pub. L. 95–454, title VII, § 701, Oct. 13, 1978, 92 Stat. 1207.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7105, 7123 of this title.

§ 7119. Negotiation impasses; Federal Service Impasses Panel

(a) The Federal Mediation and Conciliation Service shall provide services and assistance to agencies and exclusive representatives in the resolution of negotiation impasses. The Service shall determine under what circumstances and in what manner it shall provide services and assistance.

(b) If voluntary arrangements, including the services of the Federal Mediation and Conciliation Service or any other third-party mediation, fail to resolve a negotiation impasse—

(1) either party may request the Federal Service Impasses Panel to consider the matter, or

(2) the parties may agree to adopt a procedure for binding arbitration of the negotiation impasse, but only if the procedure is approved by the Panel.

(c)(1) The Federal Service Impasses Panel is an entity within the Authority, the function of which is to provide assistance in resolving negotiation impasses between agencies and exclusive representatives.

(2) The Panel shall be composed of a Chairman and at least six other members, who shall be appointed by the President, solely on the basis of fitness to perform the duties and functions involved, from among individuals who are familiar with Government operations and knowledgeable in labor-management relations.

(3) Of the original members of the Panel, 2 members shall be appointed for a term of 1 year, 2 members shall be appointed for a term of 3 years, and the Chairman and the remaining members shall be appointed for a term of 5 years. Thereafter each member shall be appointed for a term of 5 years, except that an individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced. Any member of the Panel may be removed by the President.

(4) The Panel may appoint an Executive Director and any other individuals it may from time to time find necessary for the proper performance of its duties. Each member of the Panel who is not an employee (as defined in section 2105 of this title) is entitled to pay at a rate equal to the daily equivalent of the maximum annual rate of basic pay then currently paid under the General Schedule for each day he is engaged in the performance of official business of the Panel, including travel time, and is entitled to travel expenses as provided under section 5703 of this title.

(5)(A) The Panel or its designee shall promptly investigate any impasse presented to it under subsection (b) of this section. The Panel shall consider the impasse and shall either—

(i) recommend to the parties procedures for the resolution of the impasse; or

(ii) assist the parties in resolving the impasse through whatever methods and procedures, including factfinding and recommendations, it may consider appropriate to accomplish the purpose of this section.

(B) If the parties do not arrive at a settlement after assistance by the Panel under subparagraph (A) of this paragraph, the Panel may—

(i) hold hearings;

(ii) administer oaths, take the testimony or deposition of any person under oath, and issue subpenas as provided in section 7132 of this title; and

(iii) take whatever action is necessary and not inconsistent with this chapter to resolve the impasse.

(C) Notice of any final action of the Panel under this section shall be promptly served upon the parties, and the action shall be binding on such parties during the term of the agreement, unless the parties agree otherwise.

(Added Pub. L. 95–454, title VII, § 701, Oct. 13, 1978, 92 Stat. 1208.)

REFERENCES IN TEXT

The General Schedule, referred to in subsec. (c)(4), is set out under section 5332 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7103, 7114, 7133 of this title; title 22 section 4110.

§ 7120. Standards of conduct for labor organizations

(a) An agency shall only accord recognition to a labor organization that is free from corrupt influences and influences opposed to basic democratic principles. Except as provided in subsection (b) of this section, an organization is not required to prove that it is free from such influences if it is subject to governing requirements adopted by the organization or by a national or international labor organization or federation of labor organizations with which it is affiliated, or in which it participates, containing explicit and detailed provisions to which it subscribes calling for—

(1) the maintenance of democratic procedures and practices including provisions for periodic elections to be conducted subject to recognized safeguards and provisions defining and securing the right of individual members to participate in the affairs of the organization, to receive fair and equal treatment under the governing rules of the organization, and to receive fair process in disciplinary proceedings;

(2) the exclusion from office in the organization of persons affiliated with communist or other totalitarian movements and persons identified with corrupt influences;

(3) the prohibition of business or financial interests on the part of organization officers and agents which conflict with their duty to the organization and its members; and

(4) the maintenance of fiscal integrity in the conduct of the affairs of the organization, including provisions for accounting and financial controls and regular financial reports or summaries to be made available to members.

(b) Notwithstanding the fact that a labor organization has adopted or subscribed to standards of conduct as provided in subsection (a) of this section, the organization is required to furnish evidence of its freedom from corrupt influences or influences opposed to basic democratic principles if there is reasonable cause to believe that—

(1) the organization has been suspended or expelled from, or is subject to other sanction, by a parent labor organization, or federation of organizations with which it had been affiliated, because it has demonstrated an unwillingness or inability to comply with governing requirements comparable in purpose to those required by subsection (a) of this section; or

(2) the organization is in fact subject to influences that would preclude recognition under this chapter.

(c) A labor organization which has or seeks recognition as a representative of employees under this chapter shall file financial and other reports with the Assistant Secretary of Labor for Labor Management Relations, provide for bonding of officials and employees of the organization, and comply with trusteeship and election standards.

(d) The Assistant Secretary shall prescribe such regulations as are necessary to carry out the purposes of this section. Such regulations shall conform generally to the principles applied to labor organizations in the private sector. Complaints of violations of this section shall be filed with the Assistant Secretary. In any matter arising under this section, the Assistant Secretary may require a labor organization to cease and desist from violations of this section and require it to take such actions as he considers appropriate to carry out the policies of this section.

(e) This chapter does not authorize participation in the management of a labor organization or acting as a representative of a labor organization by a management official, a supervisor, or a confidential employee, except as specifically provided in this chapter, or by an employee if the participation or activity would result in a conflict or apparent conflict of interest or would otherwise be incompatible with law or with the official duties of the employee.

(f) In the case of any labor organization which by omission or commission has willfully and intentionally, with regard to any strike, work stoppage, or slowdown, violated section 7116(b)(7) of this title, the Authority shall, upon an appropriate finding by the Authority of such violation—

(1) revoke the exclusive recognition status of the labor organization, which shall then immediately cease to be legally entitled and obligated to represent employees in the unit; or

(2) take any other appropriate disciplinary action.

(Added Pub. L. 95–454, title VII, § 701, Oct. 13, 1978, 92 Stat. 1210.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 7 section 7011.

SUBCHAPTER III—GRIEVANCES, APPEALS, AND REVIEW

AMENDMENTS

1979—Pub. L. 96–54, § 2(a)(42), Aug. 14, 1979, 93 Stat. 383, inserted ‘‘, APPEALS, AND REVIEW’’ after ‘‘GRIEVANCES’’.

§ 7121. Grievance procedures

(a)(1) Except as provided in paragraph (2) of this subsection, any collective bargaining agree-

ment shall provide procedures for the settlement of grievances, including questions of arbitrability. Except as provided in subsections (d), (e), and (g) of this section, the procedures shall be the exclusive administrative procedures for resolving grievances which fall within its coverage.

(2) Any collective bargaining agreement may exclude any matter from the application of the grievance procedures which are provided for in the agreement.

(b)(1) Any negotiated grievance procedure referred to in subsection (a) of this section shall—

(A) be fair and simple,

(B) provide for expeditious processing, and

(C) include procedures that—

(i) assure an exclusive representative the right, in its own behalf or on behalf of any employee in the unit represented by the exclusive representative, to present and process grievances;

(ii) assure such an employee the right to present a grievance on the employee's own behalf, and assure the exclusive representative the right to be present during the grievance proceeding; and

(iii) provide that any grievance not satisfactorily settled under the negotiated grievance procedure shall be subject to binding arbitration which may be invoked by either the exclusive representative or the agency.

(2)(A) The provisions of a negotiated grievance procedure providing for binding arbitration in accordance with paragraph (1)(C)(iii) shall, if or to the extent that an alleged prohibited personnel practice is involved, allow the arbitrator to order—

(i) a stay of any personnel action in a manner similar to the manner described in section 1221(c) with respect to the Merit Systems Protection Board; and

(ii) the taking, by an agency, of any disciplinary action identified under section 1215(a)(3) that is otherwise within the authority of such agency to take.

(B) Any employee who is the subject of any disciplinary action ordered under subparagraph (A)(ii) may appeal such action to the same extent and in the same manner as if the agency had taken the disciplinary action absent arbitration.

(c) The preceding subsections of this section shall not apply with respect to any grievance concerning—

(1) any claimed violation of subchapter III of chapter 73 of this title (relating to prohibited political activities);

(2) retirement, life insurance, or health insurance;

(3) a suspension or removal under section 7532 of this title;

(4) any examination, certification, or appointment; or

(5) the classification of any position which does not result in the reduction in grade or pay of an employee.

(d) An aggrieved employee affected by a prohibited personnel practice under section 2302(b)(1) of this title which also falls under the coverage of the negotiated grievance procedure may raise the matter under a statutory procedure or the negotiated procedure, but not both. An employee shall be deemed to have exercised his option under this subsection to raise the matter under either a statutory procedure or the negotiated procedure at such time as the employee timely initiates an action under the applicable statutory procedure or timely files a grievance in writing, in accordance with the provisions of the parties' negotiated procedure, whichever event occurs first. Selection of the negotiated procedure in no manner prejudices the right of an aggrieved employee to request the Merit Systems Protection Board to review the final decision pursuant to section 7702 of this title in the case of any personnel action that could have been appealed to the Board, or, where applicable, to request the Equal Employment Opportunity Commission to review a final decision in any other matter involving a complaint of discrimination of the type prohibited by any law administered by the Equal Employment Opportunity Commission.

(e)(1) Matters covered under sections 4303 and 7512 of this title which also fall within the coverage of the negotiated grievance procedure may, in the discretion of the aggrieved employee, be raised either under the appellate procedures of section 7701 of this title or under the negotiated grievance procedure, but not both. Similar matters which arise under other personnel systems applicable to employees covered by this chapter may, in the discretion of the aggrieved employee, be raised either under the appellate procedures, if any, applicable to those matters, or under the negotiated grievance procedure, but not both. An employee shall be deemed to have exercised his option under this subsection to raise a matter either under the applicable appellate procedures or under the negotiated grievance procedure at such time as the employee timely files a notice of appeal under the applicable appellate procedures or timely files a grievance in writing in accordance with the provisions of the parties' negotiated grievance procedure, whichever event occurs first.

(2) In matters covered under sections 4303 and 7512 of this title which have been raised under the negotiated grievance procedure in accordance with this section, an arbitrator shall be governed by section 7701(c)(1) of this title, as applicable.

(f) In matters covered under sections 4303 and 7512 of this title which have been raised under the negotiated grievance procedure in accordance with this section, section 7703 of this title pertaining to judicial review shall apply to the award of an arbitrator in the same manner and under the same conditions as if the matter had been decided by the Board. In matters similar to those covered under sections 4303 and 7512 of this title which arise under other personnel systems and which an aggrieved employee has raised under the negotiated grievance procedure, judicial review of an arbitrator's award may be obtained in the same manner and on the same basis as could be obtained of a final decision in such matters raised under applicable appellate procedures.

(g)(1) This subsection applies with respect to a prohibited personnel practice other than a pro-

hibited personnel practice to which subsection (d) applies.

(2) An aggrieved employee affected by a prohibited personnel practice described in paragraph (1) may elect not more than one of the remedies described in paragraph (3) with respect thereto. For purposes of the preceding sentence, a determination as to whether a particular remedy has been elected shall be made as set forth under paragraph (4).

(3) The remedies described in this paragraph are as follows:

(A) An appeal to the Merit Systems Protection Board under section 7701.

(B) A negotiated grievance procedure under this section.

(C) Procedures for seeking corrective action under subchapters II and III of chapter 12.

(4) For the purpose of this subsection, a person shall be considered to have elected—

(A) the remedy described in paragraph (3)(A) if such person has timely filed a notice of appeal under the applicable appellate procedures;

(B) the remedy described in paragraph (3)(B) if such person has timely filed a grievance in writing, in accordance with the provisions of the parties' negotiated procedure; or

(C) the remedy described in paragraph (3)(C) if such person has sought corrective action from the Office of Special Counsel by making an allegation under section 1214(a)(1).

(Added Pub. L. 95–454, title VII, §701, Oct. 13, 1978, 92 Stat. 1211; amended Pub. L. 103–424, §9, Oct. 29, 1994, 108 Stat. 4365.)

PARTIAL SUSPENSION OF FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS

Subsec. (b)(3)(C) of this section suspended with respect to any grievance involving the implementation by the United States Forces of any treaty or agreement, including any minutes or understandings thereto, between the United States and the Government of the host nation, see section 1(d) of Ex. Ord. No. 12391, Nov. 4, 1982, 47 F.R. 50457, set out as a note under section 7103 of this title.

AMENDMENTS

1994—Subsec. (a)(1). Pub. L. 103–424, §9(c), substituted ''(d), (e), and (g)'' for ''(d) and (e)'' and inserted ''administrative'' after ''exclusive''.

Subsec. (b). Pub. L. 103–424, §9(a), designated existing provisions as par. (1) and redesignated former pars. (1) to (3) as subpars. (A) to (C), respectively, and subpars. (A) to (C) of former par. (3) as cls. (i) to (iii) of subpar. (a)(1)(C), respectively, and added par. (2).

Subsec. (g). Pub. L. 103–424, §9(b), added subsec. (g).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 571, 7116, 7122 of this title; title 22 section 3701.

§ 7122. Exceptions to arbitral awards

(a) Either party to arbitration under this chapter may file with the Authority an exception to any arbitrator's award pursuant to the arbitration (other than an award relating to a matter described in section 7121(f) of this title). If upon review the Authority finds that the award is deficient—

(1) because it is contrary to any law, rule, or regulation; or

(2) on other grounds similar to those applied by Federal courts in private sector labor-management relations;

the Authority may take such action and make such recommendations concerning the award as it considers necessary, consistent with applicable laws, rules, or regulations.

(b) If no exception to an arbitrator's award is filed under subsection (a) of this section during the 30-day period beginning on the date the award is served on the party, the award shall be final and binding. An agency shall take the actions required by an arbitrator's final award. The award may include the payment of backpay (as provided in section 5596 of this title).

(Added Pub. L. 95–454, title VII, §701, Oct. 13, 1978, 92 Stat. 1212; amended Pub. L. 98–224, §4, Mar. 2, 1984, 98 Stat. 48.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98–224 amended subsec. (b) generally, substituting ''beginning on the date the award is served on the party'' for ''beginning on the date of such award''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7105, 7123 of this title.

§ 7123. Judicial review; enforcement

(a) Any person aggrieved by any final order of the Authority other than an order under—

(1) section 7122 of this title (involving an award by an arbitrator), unless the order involves an unfair labor practice under section 7118 of this title, or

(2) section 7112 of this title (involving an appropriate unit determination),

may, during the 60-day period beginning on the date on which the order was issued, institute an action for judicial review of the Authority's order in the United States court of appeals in the circuit in which the person resides or transacts business or in the United States Court of Appeals for the District of Columbia.

(b) The Authority may petition any appropriate United States court of appeals for the enforcement of any order of the Authority and for appropriate temporary relief or restraining order.

(c) Upon the filing of a petition under subsection (a) of this section for judicial review or under subsection (b) of this section for enforcement, the Authority shall file in the court the record in the proceedings, as provided in section 2112 of title 28. Upon the filing of the petition, the court shall cause notice thereof to be served to the parties involved, and thereupon shall have jurisdiction of the proceeding and of the question determined therein and may grant any temporary relief (including a temporary restraining order) it considers just and proper, and may make and enter a decree affirming and enforcing, modifying and enforcing as so modified, or setting aside in whole or in part the order of the Authority. The filing of a petition under subsection (a) or (b) of this section shall not operate as a stay of the Authority's order unless the court specifically orders the stay. Review of the Authority's order shall be on the record in accordance with section 706 of this title. No objection that has not been urged before the Authority, or its designee, shall be considered by

the court, unless the failure or neglect to urge the objection is excused because of extraordinary circumstances. The findings of the Authority with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. If any person applies to the court for leave to adduce additional evidence and shows to the satisfaction of the court that the additional evidence is material and that there were reasonable grounds for the failure to adduce the evidence in the hearing before the Authority, or its designee, the court may order the additional evidence to be taken before the Authority, or its designee, and to be made a part of the record. The Authority may modify its findings as to the facts, or make new findings by reason of additional evidence so taken and filed. The Authority shall file its modified or new findings, which, with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. The Authority shall file its recommendations, if any, for the modification or setting aside of its original order. Upon the filing of the record with the court, the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the judgment and decree shall be subject to review by the Supreme Court of the United States upon writ of certiorari or certification as provided in section 1254 of title 28.

(d) The Authority may, upon issuance of a complaint as provided in section 7118 of this title charging that any person has engaged in or is engaging in an unfair labor practice, petition any United States district court within any district in which the unfair labor practice in question is alleged to have occurred or in which such person resides or transacts business for appropriate temporary relief (including a restraining order). Upon the filing of the petition, the court shall cause notice thereof to be served upon the person, and thereupon shall have jurisdiction to grant any temporary relief (including a temporary restraining order) it considers just and proper. A court shall not grant any temporary relief under this section if it would interfere with the ability of the agency to carry out its essential functions or if the Authority fails to establish probable cause that an unfair labor practice is being committed.

(Added Pub. L. 95–454, title VII, § 701, Oct. 13, 1978, 92 Stat. 1213.)

PARTIAL SUSPENSION OF FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS

Subsec. (b) of this section suspended with respect to any matter which substantially impairs the implementation by the United States Forces of any treaty or agreement, including any minutes or understandings thereto, between the United States and the Government of the host nation, see section 1(a) of Ex. Ord. No. 12391, Nov. 4, 1982, 47 F.R. 50457, set out as a note under section 7103 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 22 section 4109; title 38 section 7422.

SUBCHAPTER IV—ADMINISTRATIVE AND OTHER PROVISIONS

§ 7131. Official time

(a) Any employee representing an exclusive representative in the negotiation of a collective bargaining agreement under this chapter shall be authorized official time for such purposes, including attendance at impasse proceeding, during the time the employee otherwise would be in a duty status. The number of employees for whom official time is authorized under this subsection shall not exceed the number of individuals designated as representing the agency for such purposes.

(b) Any activities performed by any employee relating to the internal business of a labor organization (including the solicitation of membership, elections of labor organization officials, and collection of dues) shall be performed during the time the employee is in a non-duty status.

(c) Except as provided in subsection (a) of this section, the Authority shall determine whether any employee participating for, or on behalf of, a labor organization in any phase of proceedings before the Authority shall be authorized official time for such purpose during the time the employee otherwise would be in a duty status.

(d) Except as provided in the preceding subsections of this section—

(1) any employee representing an exclusive representative, or

(2) in connection with any other matter covered by this chapter, any employee in an appropriate unit represented by an exclusive representative,

shall be granted official time in any amount the agency and the exclusive representative involved agree to be reasonable, necessary, and in the public interest.

(Added Pub. L. 95–454, title VII, § 701, Oct. 13, 1978, 92 Stat. 1214.)

§ 7132. Subpenas

(a) Any member of the Authority, the General Counsel, or the Panel, any administrative law judge appointed by the Authority under section 3105 of this title, and any employee of the Authority designated by the Authority may—

(1) issue subpenas requiring the attendance and testimony of witnesses and the production of documentary or other evidence from any place in the United States; and

(2) administer oaths, take or order the taking of depositions, order responses to written interrogatories, examine witnesses, and receive evidence.

No subpena shall be issued under this section which requires the disclosure of intramanagement guidance, advice, counsel, or training within an agency or between an agency and the Office of Personnel Management.

(b) In the case of contumacy or failure to obey a subpena issued under subsection (a)(1) of this section, the United States district court for the judicial district in which the person to whom the subpena is addressed resides or is served may issue an order requiring such person to appear at any designated place to testify or to

produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt thereof.

(c) Witnesses (whether appearing voluntarily or under subpena) shall be paid the same fee and mileage allowances which are paid subpenaed witnesses in the courts of the United States.

(Added Pub. L. 95–454, title VII, §701, Oct. 13, 1978, 92 Stat. 1214.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7105, 7119 of this title; title 22 section 4110.

§ 7133. Compilation and publication of data

(a) The Authority shall maintain a file of its proceedings and copies of all available agreements and arbitration decisions, and shall publish the texts of its decisions and the actions taken by the Panel under section 7119 of this title.

(b) All files maintained under subsection (a) of this section shall be open to inspection and reproduction in accordance with the provisions of sections 552 and 552a of this title.

(Added Pub. L. 95–454, title VII, §701, Oct. 13, 1978, 92 Stat. 1215.)

§ 7134. Regulations

The Authority, the General Counsel, the Federal Mediation and Conciliation Service, the Assistant Secretary of Labor for Labor Management Relations, and the Panel shall each prescribe rules and regulations to carry out the provisions of this chapter applicable to each of them, respectively. Provisions of subchapter II of chapter 5 of this title shall be applicable to the issuance, revision, or repeal of any such rule or regulation.

(Added Pub. L. 95–454, title VII, §701, Oct. 13, 1978, 92 Stat. 1215.)

§ 7135. Continuation of existing laws, recognitions, agreements, and procedures

(a) Nothing contained in this chapter shall preclude—

(1) the renewal or continuation of an exclusive recognition, certification of an exclusive representative, or a lawful agreement between an agency and an exclusive representative of its employees, which is entered into before the effective date of this chapter; or

(2) the renewal, continuation, or initial according of recognition for units of management officials or supervisors represented by labor organizations which historically or traditionally represent management officials or supervisors in private industry and which hold exclusive recognition for units of such officials or supervisors in any agency on the effective date of this chapter.

(b) Policies, regulations, and procedures established under and decisions issued under Executive Orders 11491, 11616, 11636, 11787, and 11838, or under any other Executive order, as in effect on the effective date of this chapter, shall remain in full force and effect until revised or revoked by the President, or unless superseded by specific provisions of this chapter or by regulations or decisions issued pursuant to this chapter.

(Added Pub. L. 95–454, title VII, §701, Oct. 13, 1978, 92 Stat. 1215.)

REFERENCES IN TEXT

For the effective date of this chapter, referred to in text, as 90 days after the date of the enactment of Pub. L. 95–454, which was approved Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

Executive Orders 11491, 11616, 11636, and 11838, referred to in subsec. (b), are set out as notes under section 7101 of this title.

Executive Order 11787, referred to in subsec. (b), which was set out as a note under section 7701 of this title, was revoked by Ex. Ord. No. 12553, Feb. 25, 1986, 51 F.R. 7237.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7112 of this title.

[§§ 7151 to 7154. Transferred]

CODIFICATION

Section 7151, Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 523, which related to antidiscrimination policy of United States with respect to employment, was renumbered section 7201 of this title by Pub. L. 95–454, title VII, §703(a)(1), Oct. 13, 1978, 92 Stat. 1216.

Section 7152, Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 523; Pub. L. 92–187, §3, Dec. 15, 1971, 85 Stat. 644, which related to prohibition respecting employment discrimination because of marital status, was renumbered section 7202 of this title by Pub. L. 95–454, title VII, §703(a)(1), Oct. 13, 1978, 92 Stat. 1216.

Section 7153, Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 523, which related to prohibition respecting employment discrimination because of physical handicap, was renumbered section 7203 of this title by Pub. L. 95–454, title VII, 703(a)(1), Oct. 13, 1978, 92 Stat. 1216.

Section 7154, Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 523; Pub. L. 90–83, §1(44), Sept. 11, 1967, 81 Stat. 208; Pub. L. 92–392, §8, Aug. 19, 1972, 86 Stat. 573, which related to prohibition respecting discrimination because of race, color, creed, sex, or marital status in administration of chapter 51, subchapter III and IV of chapter 53, and sections 305 and 3324 of this title, was renumbered section 7204 of this title by Pub. L. 95–454, title VII, §703(a)(1), Oct. 13, 1978, 92 Stat. 1216.

CHAPTER 72—ANTIDISCRIMINATION; RIGHT TO PETITION CONGRESS

SUBCHAPTER I—ANTIDISCRIMINATION IN EMPLOYMENT

Sec.
7201. Antidiscrimination policy; minority recruitment program.
7202. Marital status.
7203. Handicapping condition.
7204. Other prohibitions.

SUBCHAPTER II—EMPLOYEES' RIGHT TO PETITION CONGRESS

7211. Employees' right to petition Congress

AMENDMENTS

1978—Pub. L. 95–454, title VII, §703(a)(2), Oct. 13, 1978, 92 Stat. 1217, struck out heading ''SUBCHAPTER II—ANTIDISCRIMINATION IN EMPLOYMENT'' and substituted therefor a chapter heading ''CHAPTER 72—ANTIDISCRIMINATION; RIGHT TO PETITION CONGRESS'' together with the analysis of chapter 72 containing subchapters I, consisting of items 7201 to 7204, and subchapter II, consisting of item 7211.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 39 section 410.

SUBCHAPTER I—ANTIDISCRIMINATION IN EMPLOYMENT

AMENDMENTS

1979—Pub. L. 96–54, § 2(a)(43), Aug. 14, 1979, 93 Stat. 383, added heading for subchapter I.

§ 7201. Antidiscrimination policy; minority recruitment program

(a) For the purpose of this section—

(1) ''underrepresentation'' means a situation in which the number of members of a minority group designation (determined by the Equal Employment Opportunity Commission in consultation with the Office of Personnel Management, on the basis of the policy set forth in subsection (b) of this section) within a category of civil service employment constitutes a lower percentage of the total number of employees within the employment category than the percentage that the minority constituted within the labor force of the United States, as determined under the most recent decennial or mid-decade census, or current population survey, under title 13, and

(2) ''category of civil service employment'' means—

(A) each grade of the General Schedule described in section 5104 of this title;

(B) each position subject to subchapter IV of chapter 53 of this title;

(C) such occupational, professional, or other groupings (including occupational series) within the categories established under subparagraphs (A) and (B) of this paragraph as the Office determines appropriate.

(b) It is the policy of the United States to insure equal employment opportunities for employees without discrimination because of race, color, religion, sex, or national origin. The President shall use his existing authority to carry out this policy.

(c) Not later than 180 days after the date of the enactment of the Civil Service Reform Act of 1978, the Office of Personnel Management shall, by regulation, implement a minority recruitment program which shall provide, to the maximum extent practicable—

(1) that each Executive agency conduct a continuing program for the recruitment of members of minorities for positions in the agency to carry out the policy set forth in subsection (b) in a manner designed to eliminate underrepresentation of minorities in the various categories of civil service employment within the Federal service, with special efforts directed at recruiting in minority communities, in educational institutions, and from other sources from which minorities can be recruited; and

(2) that the Office conduct a continuing program of—

(A) assistance to agencies in carrying out programs under paragraph (1) of this subsection, and

(B) evaluation and oversight and such recruitment programs to determine their effectiveness in eliminating such minority underrepresentation.

(d) Not later than 60 days after the date of the enactment of the Civil Service Reform Act of 1978, the Equal Employment Opportunity Commission shall—

(1) establish the guidelines proposed to be used in carrying out the program required under subsection (c) of this section; and

(2) make determinations of underrepresentation which are proposed to be used initially under such program; and

(3) transmit to the Executive agencies involved, to the Office of Personnel Management, and to the Congress the determinations made under paragraph (2) of this subsection.

(e) Not later than January 31 of each year, the Office shall prepare and transmit to each House of the Congress a report on the activities of the Office and of Executive agencies under subsection (c) of this section, including the affirmative action plans submitted under section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16), the personnel data file maintained by the Office of Personnel Management, and any other data necessary to evaluate the effectiveness of the program for each category of civil service employment and for each minority group designation, for the preceding fiscal year, together with recommendations for administrative or legislative action the Office considers appropriate.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 523, § 7151; renumbered § 7201 and amended Pub. L. 95–454, title III, § 310, title VII, § 703(a)(1), Oct. 13, 1978, 92 Stat. 1152, 1216.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	42 U.S.C. 2000e(b) (2d proviso).	July 2, 1964, Pub. L. 88–352, § 701(b) (2d proviso), 78 Stat. 254.

The word ''Federal'' is omitted as unnecessary in view of the definition of ''employee'' in section 2105.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

REFERENCES IN TEXT

The date of the enactment of the Civil Service Reform Act of 1978, referred to in subsecs. (c) and (d), is the date of the enactment of Pub. L. 95–454, which was approved Oct. 13, 1978.

AMENDMENTS

1978—Pub. L. 95–454, § 703(a)(1), renumbered section 7151 of this title as this section.

Pub. L. 95–454, § 310(1), substituted ''Antidiscrimination policy; minority recruitment program'' for ''Policy'' in section catchline.

Subsecs. (a) to (e). Pub. L. 95–454, § 310(2)–(4), added subsec. (a), designated existing provisions as subsec. (b), and added subsecs. (c) to (e).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 310 of Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

DISCRIMINATION PROHIBITED IN EMPLOYMENT OF CIVILIAN PERSONNEL AT FACILITIES OPERATED BY THE DEPARTMENT OF DEFENSE IN FOREIGN COUNTRIES

Pub. L. 92–129, title I, § 106, Sept. 28, 1971, 85 Stat. 355, provided that: ''Unless prohibited by treaty, no person shall be discriminated against by the Department of Defense or by any officer or employee thereof, in the

employment of civilian personnel at any facility or installation operated by the Department of Defense in any foreign country because such person is a citizen of the United States or is a dependent of a member of the Armed Forces of the United States. As used in this section, the term 'facility or installation operated by the Department of Defense' shall include, but shall not be limited to, any officer's club, non-commissioned officers' club, post exchange, or commissary store.''

CROSS REFERENCES

Nondiscrimination on account of age in Federal Government employment, see section 633a of Title 29, Labor.

Nondiscrimination on account of age in Federally assisted programs, see section 6101 et seq. of Title 42, The Public Health and Welfare.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 22 sections 3905, 3922a; title 31 section 732.

§ 7202. Marital status

(a) The President may prescribe rules which shall prohibit, as nearly as conditions of good administration warrant, discrimination because of marital status in an Executive agency or in the competitive service.

(b) Regulations prescribed under any provision of this title, or under any other provision of law, granting benefits to employees, shall provide the same benefits for a married female employee and her spouse and children as are provided for a married male employee and his spouse and children.

(c) Notwithstanding any other provision of law, any provision of law providing a benefit to a male Federal employee or to his spouse or family shall be deemed to provide the same benefit to a female Federal employee or to her spouse or family.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 523, § 7152; Pub. L. 92–187, § 3, Dec. 15, 1971, 85 Stat. 644; renumbered § 7202, Pub. L. 95–454, title VII, § 703(a)(1), Oct. 13, 1978, 92 Stat. 1216.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 633(2)6 (less 1st sentence).	July 26, 1937, ch. 522, 50 Stat. 533.

The authority of the President to prescribe rules is added on authority of former section 633(1), which is carried into section 3302. The section is rewritten as a general prohibition instead of specifying each of the personnel actions to which the prohibition applies. The words ''in an Executive agency or in the competitive service'' are added for clarity. The sentence ''All Acts or parts of Acts inconsistent herewith are repealed.'' is omitted as unnecessary.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1978—Pub. L. 95–454, renumbered section 7152 of this title as this section.

1971—Pub. L. 92–187 designated existing provisions as subsec. (a) and added subsecs. (b) and (c).

CROSS REFERENCES

President's power to grant exceptions from provisions of this section, see section 3302 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3302 of this title.

§ 7203. Handicapping condition

The President may prescribe rules which shall prohibit, as nearly as conditions of good administration warrant, discrimination because of handicapping condition in an Executive agency or in the competitive service with respect to a position the duties of which, in the opinion of the Office of Personnel Management, can be performed efficiently by an individual with a handicapping condition, except that the employment may not endanger the health or safety of the individual or others.

(Pub. L. 89–544, Sept. 6, 1966, 80 Stat. 523, § 7153; renumbered § 7203 and amended Pub. L. 95–454, title I, § 101(b)(2), title VII, § 703(a)(1), title IX, § 906(a)(2), Oct. 13, 1978, 92 Stat. 1118, 1216, 1224.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 633(2)9.	June 10, 1948, ch. 434, 62 Stat. 351.

The authority of the President to prescribe rules is added on authority of former section 633(1), which is carried into section 3302. The section is rewritten as a general prohibition instead of specifying the personnel actions included in former section 633(2)9. The words ''in an Executive agency or in the competitive service'' are added for clarity.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1978—Pub. L. 95–454, § 703(a)(1), renumbered section 7153 of this title as this section.

Pub. L. 95–454, §§ 101(b)(2), 906(a)(2), substituted ''Handicapping condition'' for ''Physical handicap'' in section catchline, ''handicapping condition'' for ''physical handicap'' wherever appearing in text, and ''Office of Personnel Management'' for ''Civil Service Commission''.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by sections 101(b)(2) and 906(a)(2) of Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

CROSS REFERENCES

President's power to grant exceptions from provisions of this section, see section 3302 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3302 of this title.

§ 7204. Other prohibitions

[(a) Repealed. Pub. L. 90–83, § 1(44), Sept. 11, 1967, 81 Stat. 208.]

(b) In the administration of chapter 51, subchapters III and IV of chapter 53, and sections 305 and 3324 of this title, discriminations because of race, color, creed, sex, or marital status is prohibited with respect to an individual or a position held by an individual.

(c) The Office of Personnel Management may prescribe regulations necessary for the administration of subsection (b) of this section.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 523, § 7154; Pub. L. 90–83, § 1(44), Sept. 11, 1967, 81 Stat. 208;

Pub. L. 92–392, § 8, Aug. 19, 1972, 86 Stat. 573; renumbered § 7204 and amended Pub. L. 95–454, title VII, § 703(a)(1), title IX, § 906(a)(2), Oct. 13, 1978, 92 Stat. 1216, 1224.)

HISTORICAL AND REVISION NOTES
1966 ACT

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(a)	5 U.S.C. 33.	R.S. § 165.
(b)	5 U.S.C. 1074.	Oct. 28, 1949, ch. 782, § 1103, 63 Stat. 972.

In subsection (a), the words ''Executive department'' are substituted for ''department'' as the definition of ''department'' applicable to this section is coextensive with the definition of ''Executive department'' in section 101. The words ''or military department'' are inserted to preserve the application of the source law. Before enactment of the National Security Act Amendments of 1949 (63 Stat. 578), the Department of the Army, the Department of the Navy, and the Department of the Air Force were Executive departments. The National Security Act Amendments of 1949 established the Department of Defense as an Executive department including the Department of the Army, the Department of the Navy, and the Department of the Air Force as military departments, not as Executive departments. However, the source law for this subsection, which was in effect in 1949, remained applicable to the Secretaries of the military departments by virtue of section 12(g) of the National Security Act Amendments of 1949 (63 Stat. 591), which is set out in the reviser's note for section 301. The words ''in the discretion of'' are omitted as unnecessary in view of the permissive grant of authority. The words ''positions in the department'' are substituted for ''any of the clerkships therein authorized by law''. The words ''upon the same requisites and conditions'' are omitted as unnecessary. The words ''legal pay of the position to which appointed'' are substituted for ''same compensations, as are prescribed for men''.

This subsection was part of title IV of the Revised Statutes. The Act of July 26, 1947, ch. 343, § 201(d), as added Aug. 10, 1949, ch. 412, § 4, 63 Stat. 579 (former 5 U.S.C. 171–1), which provides ''Except to the extent inconsistent with the provisions of this Act [National Security Act of 1947], the provisions of title IV of the Revised Statutes as now or hereafter amended shall be applicable to the Department of Defense'' is omitted from this title, but is not repealed.

Subsection (c) is added on authority of former sections 1072 and 1072a, which are codified in section 5115.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 ACT

This section deletes subsection (a) of 5 U.S.C. 7154 to reflect the repeal of the source statute of that subsection by Public Law 89–261, 79 Stat. 987.

AMENDMENTS

1978—Pub. L. 95–454, § 703(a)(1), renumbered section 7154 of this title as this section.

Subsec. (c). Pub. L. 95–454, § 906(a)(2), substituted ''Office of Personnel Management'' for ''Civil Service Commission''.

1972—Subsec. (b). Pub. L. 92–392 inserted reference to subchapter IV of chapter 53 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 906(a)(2) of Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92–392 effective on first day of first applicable pay period beginning on or after 90th day after Aug. 19, 1972, see section 15(a) of Pub. L. 92–392, set out as an Effective Date note under section 5341 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2105 of this title; title 10 sections 4540, 7212, 9540.

SUBCHAPTER II—EMPLOYEES' RIGHT TO PETITION CONGRESS

§ 7211. Employees' right to petition Congress

The right of employees, individually or collectively, to petition Congress or a Member of Congress, or to furnish information to either House of Congress, or to a committee or Member thereof, may not be interfered with or denied.

(Added Pub. L. 95–454, title VII, § 703(a)(3), Oct. 13, 1978, 92 Stat. 1217.)

PRIOR PROVISIONS

Provisions of this section were contained in section 7102 of this title prior to the general amendment of chapter 71 of this title by Pub. L. 95–454, title VII, § 701, Oct. 13, 1978, 92 Stat. 1191.

EFFECTIVE DATE

Section effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3303 of this title; title 39 section 1002.

CHAPTER 73—SUITABILITY, SECURITY, AND CONDUCT

SUBCHAPTER I—REGULATION OF CONDUCT

Sec.
7301. Presidential regulations.

SUBCHAPTER II—EMPLOYMENT LIMITATIONS

7311. Loyalty and striking.
7312. Employment and clearance; individuals removed for national security.
7313. Riots and civil disorders.

SUBCHAPTER III—POLITICAL ACTIVITIES

7321. Political participation.
7322. Definitions.
7323. Political activity authorized; prohibitions.
7324. Political activities on duty; prohibition.
7325. Political activity permitted; employees residing in certain municipalities.
7326. Penalties.

SUBCHAPTER IV—FOREIGN GIFTS AND DECORATIONS

[7341. Repealed.]
7342. Receipt and disposition of foreign gifts and decorations.

SUBCHAPTER V—MISCONDUCT

7351. Gifts to superiors.
7352. Excessive and habitual use of intoxicants.
7353. Gifts to Federal employees.

SUBCHAPTER VI—DRUG ABUSE, ALCOHOL ABUSE, AND ALCOHOLISM

7361. Drug abuse.
7362. Alcohol abuse and alcoholism.
7363. Reports to Congress.

AMENDMENTS

1993—Pub. L. 103–94, § 2(b)(2), Oct. 6, 1993, 107 Stat. 1004, amended analysis for subchapter III generally, re-

enacting subchapter III heading without change, substituting ''participation'' for ''contributions and services'' in item 7321, ''Definitions'' for ''Political use of authority or influence; prohibition'' in item 7322, ''activity authorized; prohibitions'' for ''contributions; prohibition'' in item 7323, ''Political activities on duty; prohibition'' for ''Influencing elections; taking part in political campaigns; prohibitions; exceptions'' in item 7324, ''Political activity permitted; employees residing in certain municipalities'' for ''Penalties'' in item 7325, and ''Penalties'' for ''Nonpartisan political activity permitted'' in item 7326, and striking out item 7327 ''Political activity permitted; employees residing in certain municipalities'' and item 7328 ''General Accounting Office employees''.

1989—Pub. L. 101–194, title III, §303(b), Nov. 30, 1989, 103 Stat. 1747, added item 7353.

1986—Pub. L. 99–570, title VI, §6002(a)(2), Oct. 27, 1986, 100 Stat. 3207–158, added subchapter VI heading and items 7361 to 7363.

1980—Pub. L. 96–191, §8(e)(2), Feb. 15, 1980, 94 Stat. 33, added item 7328.

1968—Pub. L. 90–351, title V, §1001(b), June 19, 1968, 82 Stat. 235, substituted ''EMPLOYMENT LIMITATIONS'' for ''LOYALTY, SECURITY, AND STRIKING'' in subchapter II heading and added item 7313.

1967—Pub. L. 90–83, §1(46), Sept. 11, 1967, 81 Stat. 209, inserted ''GIFTS AND'' before ''DECORATIONS'' in subchapter IV heading, struck out item 7341 ''Receipt and display of foreign decorations'', and added item 7342.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 3374 of this title; title 39 section 410; title 42 sections 2991c, 3522.

SUBCHAPTER I—REGULATION OF CONDUCT

§ 7301. Presidential regulations

The President may prescribe regulations for the conduct of employees in the executive branch.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 524.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 631 (last 16 words).	R.S. §1753 (last 16 words).

The words ''employees in the executive branch'' are substituted for ''persons who may receive appointments in the civil service''.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

SHORT TITLE OF 1993 AMENDMENT

Pub. L. 103–94, §1, Oct. 6, 1993, 107 Stat. 1001, provided: ''That this Act [enacting sections 5520a and 7321 to 7326 of this title and section 610 of Title 18, Crimes and Criminal Procedure, amending sections 1216, 2302, 3302 and 3303 of this title, sections 602 and 603 of Title 18, section 410 of Title 39, Postal Service, and sections 1973d and 9904 of Title 42, The Public Health and Welfare, omitting former sections 7321 to 7328 of this title, and enacting provisions set out as notes under section 7321 of this title and section 410 of Title 39] may be cited as the 'Hatch Act Reform Amendments of 1993'.''

SHORT TITLE OF 1986 AMENDMENT

Pub. L. 99–570, title VI, §6001, Oct. 27, 1986, 100 Stat. 3207–157, provided that: ''This title [enacting sections 7361 to 7363 and 7904 of this title, amending sections 290dd–1 and 290ee–1 of Title 42, The Public Health and Welfare, and enacting provisions set out as notes under section 7361 of this title and section 801 of Title 21, Food and Drugs] may be cited as the 'Federal Employee Substance Abuse Education and Treatment Act of 1986'.''

EMERGENCY PREPAREDNESS FUNCTIONS

For assignment of certain emergency preparedness functions to the Director of the Office of Personnel Management, see Parts 1, 2, and 22 of Ex. Ord. No. 12656, Nov. 18, 1988, 53 F.R. 47491, set out as a note under section 2251 of Title 50, Appendix, War and National Defense.

ANNUAL CERTIFICATION OF DRUG-FREE WORKPLACE PLAN ADMINISTRATORS

Pub. L. 103–329, title VI, §638, Sept. 30, 1994, 108 Stat. 2432, provided that: ''Notwithstanding any provision of law, the President, or his designee, must certify to Congress, annually, that no person or persons with direct or indirect responsibility for administering the Executive Office of the President's Drug-Free Workplace Plan are themselves subject to a program of individual random drug testing.''

DESIGNATION OF DIRECTOR OF THE BUREAU OF THE BUDGET AS MEMBER OF FEDERAL LABOR RELATIONS COUNCIL

Presidential Order of December 8, 1969, provided that: Pursuant to the provisions of section 4 of Executive Order 11491 [set out as a note under this section], I hereby designate the Director of the Bureau of the Budget [now the Office of Management and Budget] as a member of the Federal Labor Relations Council. This order of designation shall be published in the Federal Register.

RICHARD NIXON.

CODE OF ETHICS FOR GOVERNMENT SERVICE

House Concurrent Resolution No. 175, July 11, 1958, 72 Stat. B12, provided for a Code of Ethics for all Government employees, including officeholders. See Pub. L. 96–303, set out below.

DISPLAY IN FEDERAL BUILDINGS OF CODE OF ETHICS FOR GOVERNMENT SERVICE

Pub. L. 96–303, July 3, 1980, 94 Stat. 855, provided: ''That, under such regulations as the Administrator shall prescribe, each agency shall display in appropriate areas of Federal buildings copies of the Code of Ethics for Government Service.

''SEC. 2. (a) The Administrator shall provide for the publication of copies of such Code of Ethics and for their distribution to agencies for use under the first section of this Act.

''(b) The Administrator may accept on behalf of the United States any unconditional gift made for purposes of this Act.

''SEC. 3. For purposes of this Act—

''(1) the term 'agency' means an Executive agency (as defined by section 105 of title 5, United States Code), the United States Postal Service, and the Postal Rate Commission;

''(2) the term 'Administrator' means the Administrator of the General Services Administration;

''(3) the Code of Ethics for Government Service shall read as follows—

''CODE OF ETHICS FOR GOVERNMENT SERVICE

''Any person in Government service should:

''I. Put loyalty to the highest moral principles and to country above loyalty to persons, party, or Government department.

''II. Uphold the Constitution, laws, and regulations of the United States and of all governments therein and never be a party to their evasion.

''III. Give a full day's labor for a full day's pay; giving earnest effort and best thought to the performance of duties.

''IV. Seek to find and employ more efficient and economical ways of getting tasks accomplished.

''V. Never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not; and never accept, for himself or herself or for family members, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of governmental duties.

''VI. Make no private promises of any kind binding upon the duties of office, since a Government employee has no private word which can be binding on public duty.

''VII. Engage in no business with the Government, either directly or indirectly, which is inconsistent with the conscientious performance of governmental duties.

''VIII. Never use any information gained confidentially in the performance of governmental duties as a means of making a private profit.

''IX. Expose corruption wherever discovered.

''X. Uphold these principles, ever conscious that public office is a public trust.

Your agency ethics official and the Office of Government Ethics are available to answer questions on conflicts of interest; and

''(4) the term 'Federal building' means any building in which at least 20 individuals are regularly employed by an agency as civilian employees.

''SEC. 4. The provisions of this Act shall take effect October 1, 1980. There shall be no costs imposed on the Federal Government for the printing, framing or other preparation of the Code of Ethics for Government Service under this Act.''

AGENCY ACCEPTANCE OF DONATIONS FOR FEDERAL EMPLOYEES

Pub. L. 102–368, title XI, §901, Sept. 23, 1992, 106 Stat. 1156, effective through Sept. 30, 1993, authorized Federal agencies to accept gifts of property, money, or anything else of value from non-Federal sources for extraordinary and unanticipated expenses incurred by agency employees in their personal capacity within areas designated as disaster areas pursuant to President's declaration of a disaster resulting from Hurricane Andrew, Typhoon Omar, and Hurricane Iniki, directed agencies to establish written procedures to implement this program, and authorized agencies to accept gifts designated for individual employees.

RESTRICTION ON AVAILABILITY OF FUNDS TO ADMINISTER OR IMPLEMENT DRUG TESTING

Pub. L. 100–71, title V, §503, July 11, 1987, 101 Stat. 468, as amended by Pub. L. 102–54, §13(b)(6), June 13, 1991, 105 Stat. 274, provided:

''(a)(1) Except as provided in subsection (b) or (c), none of the funds appropriated or made available by this Act, or any other Act, with respect to any fiscal year, shall be available to administer or implement any drug testing pursuant to Executive Order Numbered 12564 (dated September 15, 1986) [set out as a note below], or any subsequent order, unless and until—

''(A) the Secretary of Health and Human Services certifies in writing to the Committees on Appropriations of the House of Representatives and the Senate, and other appropriate committees of the Congress, that—

''(i) each agency has developed a plan for achieving a drug-free workplace in accordance with Executive Order Numbered 12564 and applicable provisions of law (including applicable provisions of this section);

''(ii) the Department of Health and Human Services, in addition to the scientific and technical guidelines dated February 13, 1987, and any subsequent amendments thereto, has, in accordance with paragraph (3), published mandatory guidelines which—

''(I) establish comprehensive standards for all aspects of laboratory drug testing and laboratory procedures to be applied in carrying out Executive Order Numbered 12564, including standards which require the use of the best available technology for ensuring the full reliability and accuracy of drug tests and strict procedures governing the chain of custody of specimens collected for drug testing;

''(II) specify the drugs for which Federal employees may be tested; and

''(III) establish appropriate standards and procedures for periodic review of laboratories and criteria for certification and revocation of certification of laboratories to perform drug testing in carrying out Executive Order Numbered 12564; and

''(iii) all agency drug-testing programs and plans established pursuant to Executive Order Numbered 12564 comply with applicable provisions of law, including applicable provisions of the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.), title 5 of the United States Code, and the mandatory guidelines under clause (ii);

''(B) the Secretary of Health and Human Services has submitted to the Congress, in writing, a detailed, agency-by-agency analysis relating to—

''(i) the criteria and procedures to be applied in designating employees or positions for drug testing, including the justification for such criteria and procedures;

''(ii) the position titles designated for random drug testing; and

''(iii) the nature, frequency, and type of drug testing proposed to be instituted; and

''(C) the Director of the Office of Management and Budget has submitted in writing to the Committees on Appropriations of the House of Representatives and the Senate a detailed, agency-by-agency analysis (as of the time of certification under subparagraph (A)) of the anticipated annual costs associated with carrying out Executive Order Numbered 12564 and all other requirements under this section during the 5-year period beginning on the date of the enactment of this Act [July 11, 1987].

''(2) Notwithstanding subsection (g), for purposes of this subsection, the term ''agency'' means—

''(A) the Executive Office of the President;

''(B) an Executive department under section 101 of title 5, United States Code;

''(C) the Environmental Protection Agency;

''(D) the General Services Administration;

''(E) the National Aeronautics and Space Administration;

''(F) the Office of Personnel Management;

''(G) the Small Business Administration;

''(H) the United States Information Agency; and

''(I) the Department of Veterans Affairs;

except that such term does not include the Department of Transportation or any other entity (or component thereof) covered by subsection (b).

''(3) Notwithstanding any provision of chapter 5 of title 5, United States Code, the mandatory guidelines to be published pursuant to subsection (a)(1)(A)(ii) shall be published and made effective exclusively according to the provisions of this paragraph. Notice of the mandatory guidelines proposed by the Secretary of Health and Human Services shall be published in the Federal Register, and interested persons shall be given not less than 60 days to submit written comments on the proposed mandatory guidelines. Following review and consideration of written comments, final mandatory guidelines shall be published in the Federal Register and shall become effective upon publication.

''(b)(1) Nothing in subsection (a) shall limit or otherwise affect the availability of funds for drug testing by—

''(A) the Department of Transportation;

''(B) Department of Energy, for employees specifically involved in the handling of nuclear weapons or nuclear materials;

''(C) any agency with an agency-wide drug-testing program in existence as of September 15, 1986; or

''(D) any component of an agency if such component had a drug-testing program in existence as of September 15, 1986.

''(2) The Departments of Transportation and Energy and any agency or component thereof with a drug-testing program in existence as of September 15, 1986—

''(A) shall be brought into full compliance with Executive Order Numbered 12564 [set out as a note below] no later than the end of the 6-month period beginning on the date of the enactment of this Act [July 11, 1987]; and

''(B) shall take such actions as may be necessary to ensure that their respective drug-testing programs or plans are brought into full compliance with the mandatory guidelines published under subsection (a)(1)(A)(ii) no later than 90 days after such mandatory guidelines take effect, except that any judicial challenge that affects such guidelines should not affect drug-testing programs or plans subject to this paragraph.

''(c) In the case of an agency (or component thereof) other than an agency as defined by subsection (a)(2) or an agency (or component thereof) covered by subsection (b), none of the funds appropriated or made available by this Act, or any other Act, with respect to any fiscal year, shall be available to administer or implement any drug testing pursuant to Executive Order Numbered 12564 [set out as a note below], or any subsequent order, unless and until—

''(1) the Secretary of Health and Human Services provides written certification with respect to that agency (or component) in accordance with clauses (i) and (iii) of subsection (a)(1)(A);

''(2) the Secretary of Health and Human Services has submitted a written, detailed analysis with respect to that agency (or component) in accordance with subsection (a)(1)(B); and

''(3) the Director of the Office of Management and Budget has submitted a written, detailed analysis with respect to that agency (or component) in accordance with subsection (a)(1)(C).

''(d) Any Federal employee who is the subject of a drug test under any program or plan shall, upon written request, have access to—

''(1) any records relating to such employee's drug test; and

''(2) any records relating to the results of any relevant certification, review, or revocation-of-certification proceedings, as referred to in subsection (a)(1)(A)(ii)(III).

''(e) The results of a drug test of a Federal employee may not be disclosed without the prior written consent of such employee, unless the disclosure would be—

''(1) to the employee's medical review official (as defined in the scientific and technical guidelines referred to in subsection (a)(1)(A)(ii));

''(2) to the administrator of any Employee Assistance Program in which the employee is receiving counseling or treatment or is otherwise participating;

''(3) to any supervisory or management official within the employee's agency having authority to take the adverse personnel action against such employee; or

''(4) pursuant to the order of a court of competent jurisdiction where required by the United States Government to defend against any challenge against any adverse personnel action.

''(f) Each agency covered by Executive Order Numbered 12564 [set out as a note below] shall submit to the Committees on Appropriations of the House of Representatives and the Senate, and other appropriate committees of the Congress, an annual report relating to drug-testing activities conducted by such agency pursuant to such executive order. Each such annual report shall be submitted at the time of the President's budget submission to the Congress under section 1105(a) of title 31, United States Code.

''(g) For purposes of this section, the terms 'agency' and 'Employee Assistance Program' each has the meaning given such term under section 7(b) of Executive Order Numbered 12564 [set out as a note below], as in effect on September 15, 1986.''

LIMITATION ON GRATUITIES AT NAVAL SHIPBUILDING CEREMONIES

Pub. L. 99–145, title XIV, §1461, Nov. 8, 1985, 99 Stat. 765, provided that:

''(a) GENERAL RULE.—A Federal officer, employee, or Member of Congress may not accept, directly or indirectly, any tangible thing of value as a gift or memento in connection with a ceremony to mark the completion of a naval shipbuilding milestone.

''(b) EXCLUSION.—Subsection (a) does not apply to a gift or memento that has a value of less than $100.

''(c) DEFINITIONS.—For purposes of this section, the terms 'officer', 'employee', and 'Member of Congress' have the meanings given those terms in sections 2104, 2105, and 2106, respectively, of title 5, United States Code.''

EXECUTIVE ORDER NO. 9845

Ex. Ord. No. 9845, Apr. 28, 1947, 12 F.R. 2799, which permitted Bureau of Reclamation employees to accept appointments as constables or deputy sheriffs under state or territorial laws, was revoked by Ex. Ord. No. 11408, Apr. 25, 1968, 33 F.R. 6459.

EX. ORD. NO. 12564. DRUG-FREE FEDERAL WORKPLACE

Ex. Ord. No. 12564, Sept. 15, 1986, 51 F.R. 32889, provided:

I, RONALD REAGAN, President of the United States of America, find that:

Drug use is having serious adverse effects upon a significant proportion of the national work force and results in billions of dollars of lost productivity each year;

The Federal government, as an employer, is concerned with the well-being of its employees, the successful accomplishment of agency missions, and the need to maintain employee productivity;

The Federal government, as the largest employer in the Nation, can and should show the way towards achieving drug-free workplaces through a program designed to offer drug users a helping hand and, at the same time, demonstrating to drug users and potential drug users that drugs will not be tolerated in the Federal workplace;

The profits from illegal drugs provide the single greatest source of income for organized crime, fuel violent street crime, and otherwise contribute to the breakdown of our society;

The use of illegal drugs, on or off duty, by Federal employees is inconsistent not only with the law-abiding behavior expected of all citizens, but also with the special trust placed in such employees as servants of the public;

Federal employees who use illegal drugs, on or off duty, tend to be less productive, less reliable, and prone to greater absenteeism than their fellow employees who do not use illegal drugs;

The use of illegal drugs, on or off duty, by Federal employees impairs the efficiency of Federal departments and agencies, undermines public confidence in them, and makes it more difficult for other employees who do not use illegal drugs to perform their jobs effectively. The use of illegal drugs, on or off duty, by Federal employees also can pose a serious health and safety threat to members of the public and to other Federal employees;

The use of illegal drugs, on or off duty, by Federal employees in certain positions evidences less than the complete reliability, stability, and good judgment that is consistent with access to sensitive information and creates the possibility of coercion, influence, and irresponsible action under pressure that may pose a serious risk to national security, the public safety, and the effective enforcement of the law; and

Federal employees who use illegal drugs must themselves be primarily responsible for changing their be-

havior and, if necessary, begin the process of rehabilitating themselves.

By the authority vested in me as President by the Constitution and laws of the United States of America, including section 3301(2) of Title 5 of the United States Code, section 7301 of Title 5 of the United States Code, section 290ee–1 of Title 42 of the United States Code, deeming such action in the best interests of national security, public health and safety, law enforcement and the efficiency of the Federal service, and in order to establish standards and procedures to ensure fairness in achieving a drug-free Federal workplace and to protect the privacy of Federal employees, it is hereby ordered as follows:

SECTION 1. *Drug-Free Workplace*. (a) Federal employees are required to refrain from the use of illegal drugs.

(b) The use of illegal drugs by Federal employees, whether on duty or off duty, is contrary to the efficiency of the service.

(c) Persons who use illegal drugs are not suitable for Federal employment.

SEC. 2. *Agency Responsibilities*. (a) The head of each Executive agency shall develop a plan for achieving the objective of a drug-free workplace with due consideration of the rights of the government, the employee, and the general public.

(b) Each agency plan shall include:

(1) A statement of policy setting forth the agency's expectations regarding drug use and the action to be anticipated in response to identified drug use;

(2) Employee Assistance Programs emphasizing high level direction, education, counseling, referral to rehabilitation, and coordination with available community resources;

(3) Supervisory training to assist in identifying and addressing illegal drug use by agency employees;

(4) Provision for self-referrals as well as supervisory referrals to treatment with maximum respect for individual confidentiality consistent with safety and security issues; and

(5) Provision for identifying illegal drug users, including testing on a controlled and carefully monitored basis in accordance with this Order.

SEC. 3. *Drug Testing Programs*. (a) The head of each Executive agency shall establish a program to test for the use of illegal drugs by employees in sensitive positions. The extent to which such employees are tested and the criteria for such testing shall be determined by the head of each agency, based upon the nature of the agency's mission and its employees' duties, the efficient use of agency resources, and the danger to the public health and safety or national security that could result from the failure of an employee adequately to discharge his or her position.

(b) The head of each Executive agency shall establish a program for voluntary employee drug testing.

(c) In addition to the testing authorized in subsections (a) and (b) of this section, the head of each Executive agency is authorized to test an employee for illegal drug use under the following circumstances:

(1) When there is a reasonable suspicion that any employee uses illegal drugs;

(2) In an examination authorized by the agency regarding an accident or unsafe practice; or

(3) As part of or as a follow-up to counseling or rehabilitation for illegal drug use through an Employee Assistance Program.

(d) The head of each Executive agency is authorized to test any applicant for illegal drug use.

SEC. 4. *Drug Testing Procedures*. (a) Sixty days prior to the implementation of a drug testing program pursuant to this Order, agencies shall notify employees that testing for use of illegal drugs is to be conducted and that they may seek counseling and rehabilitation and inform them of the procedures for obtaining such assistance through the agency's Employee Assistance Program. Agency drug testing programs already ongoing are exempted from the 60-day notice requirement. Agencies may take action under section 3(c) of this Order without reference to the 60-day notice period.

(b) Before conducting a drug test, the agency shall inform the employee to be tested of the opportunity to submit medical documentation that may support a legitimate use for a specific drug.

(c) Drug testing programs shall contain procedures for timely submission of requests for retention of records and specimens; procedures for retesting; and procedures, consistent with applicable law, to protect the confidentiality of test results and related medical and rehabilitation records. Procedures for providing urine specimens must allow individual privacy, unless the agency has reason to believe that a particular individual may alter or substitute the specimen to be provided.

(d) The Secretary of Health and Human Services is authorized to promulgate scientific and technical guidelines for drug testing programs, and agencies shall conduct their drug testing programs in accordance with these guidelines once promulgated.

SEC. 5. *Personnel Actions*. (a) Agencies shall, in addition to any appropriate personnel actions, refer any employee who is found to use illegal drugs to an Employee Assistance Program for assessment, counseling, and referral for treatment or rehabilitation as appropriate.

(b) Agencies shall initiate action to discipline any employee who is found to use illegal drugs, *provided that* such action is not required for an employee who:

(1) Voluntarily identifies himself as a user of illegal drugs or who volunteers for drug testing pursuant to section 3(b) of this Order, prior to being identified through other means;

(2) Obtains counseling or rehabilitation through an Employee Assistance Program; and

(3) Thereafter refrains from using illegal drugs.

(c) Agencies shall not allow any employee to remain on duty in a sensitive position who is found to use illegal drugs, prior to successful completion of rehabilitation through an Employee Assistance Program. However, as part of a rehabilitation or counseling program, the head of an Executive agency may, in his or her discretion, allow an employee to return to duty in a sensitive position if it is determined that this action would not pose a danger to public health or safety or the national security.

(d) Agencies shall initiate action to remove from the service any employee who is found to use illegal drugs and:

(1) Refuses to obtain counseling or rehabilitation through an Employee Assistance Program; or

(2) Does not thereafter refrain from using illegal drugs.

(e) The results of a drug test and information developed by the agency in the course of the drug testing of the employee may be considered in processing any adverse action against the employee or for other administrative purposes. Preliminary test results may not be used in an administrative proceeding unless they are confirmed by a second analysis of the same sample or unless the employee confirms the accuracy of the initial test by admitting the use of illegal drugs.

(f) The determination of an agency that an employee uses illegal drugs can be made on the basis of any appropriate evidence, including direct observation, a criminal conviction, administrative inquiry, or the results of an authorized testing program. Positive drug test results may be rebutted by other evidence that an employee has not used illegal drugs.

(g) Any action to discipline an employee who is using illegal drugs (including removal from the service, if appropriate) shall be taken in compliance with otherwise applicable procedures, including the Civil Service Reform Act [Pub. L. 95–454, see Tables for classification].

(h) Drug testing shall not be conducted pursuant to this Order for the purpose of gathering evidence for use in criminal proceedings. Agencies are not required to report to the Attorney General for investigation or prosecution any information, allegation, or evidence relating to violations of Title 21 of the United States Code received as a result of the operation of drug testing programs established pursuant to this Order.

SEC. 6. *Coordination of Agency Programs.* (a) The Director of the Office of Personnel Management shall:

(1) Issue government-wide guidance to agencies on the implementation of the terms of this Order;

(2) Ensure that appropriate coverage for drug abuse is maintained for employees and their families under the Federal Employees Health Benefits Program;

(3) Develop a model Employee Assistance Program for Federal agencies and assist the agencies in putting programs in place;

(4) In consultation with the Secretary of Health and Human Services, develop and improve training programs for Federal supervisors and managers on illegal drug use; and

(5) In cooperation with the Secretary of Health and Human Services and heads of Executive agencies, mount an intensive drug awareness campaign throughout the Federal work force.

(b) The Attorney General shall render legal advice regarding the implementation of this Order and shall be consulted with regard to all guidelines, regulations, and policies proposed to be adopted pursuant to this Order.

(c) Nothing in this Order shall be deemed to limit the authorities of the Director of Central Intelligence under the National Security Act of 1947, as amended [50 U.S.C. 401 et seq.], or the statutory authorities of the National Security Agency or the Defense Intelligence Agency. Implementation of this Order within the Intelligence Community, as defined in Executive Order No. 12333 [50 U.S.C. 401 note], shall be subject to the approval of the head of the affected agency.

SEC. 7. *Definitions.* (a) This Order applies to all agencies of the Executive Branch.

(b) For purposes of this Order, the term ''agency'' means an Executive agency, as defined in 5 U.S.C. 105; the Uniformed Services, as defined in 5 U.S.C. 2101(3) (but excluding the armed forces as defined by 5 U.S.C. 2101(2)); or any other employing unit or authority of the Federal government, except the United States Postal Service, the Postal Rate Commission, and employing units or authorities in the Judicial and Legislative Branches.

(c) For purposes of this Order, the term ''illegal drugs'' means a controlled substance included in Schedule I or II, as defined by section 802(6) of Title 21 of the United States Code, the possession of which is unlawful under chapter 13 of that Title. The term ''illegal drugs'' does not mean the use of a controlled substance pursuant to a valid prescription or other uses authorized by law.

(d) For purposes of this Order, the term ''employee in a sensitive position'' refers to:

(1) An employee in a position that an agency head designates Special Sensitive, Critical-Sensitive, or Noncritical-Sensitive under Chapter 731 of the Federal Personnel Manual or an employee in a position that an agency head designates as sensitive in accordance with Executive Order No. 10450, as amended [5 U.S.C. 7311 note];

(2) An employee who has been granted access to classified information or may be granted access to classified information pursuant to a determination of trustworthiness by an agency head under Section 4 of Executive Order No. 12356 [50 U.S.C. 401 note];

(3) Individuals serving under Presidential appointments;

(4) Law enforcement officers as defined in 5 U.S.C. 8331(20); and

(5) Other positions that the agency head determines involve law enforcement, national security, the protection of life and property, public health or safety, or other functions requiring a high degree of trust and confidence.

(e) For purposes of this Order, the term ''employee'' means all persons appointed in the Civil Service as described in 5 U.S.C. 2105 (but excluding persons appointed in the armed services as defined in 5 U.S.C. 2102(2)).

(f) For purposes of this Order, the term ''Employee Assistance Program'' means agency-based counseling programs that offer assessment, short-term counseling, and referral services to employees for a wide range of drug, alcohol, and mental health programs that affect employee job performance. Employee Assistance Programs are responsible for referring drug-using employees for rehabilitation and for monitoring employees' progress while in treatment.

SEC. 8. *Effective Date.* This Order is effective immediately.

RONALD REAGAN.

EX. ORD. NO. 12674. PRINCIPLES OF ETHICAL CONDUCT FOR GOVERNMENT OFFICERS AND EMPLOYEES

Ex. Ord. No. 12674, Apr. 12, 1989, 54 F.R. 15159, as amended by Ex. Ord. No. 12731, Oct. 17, 1990, 55 F.R. 42547, provided:

By virtue of the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to establish fair and exacting standards of ethical conduct for all executive branch employees, it is hereby ordered as follows:

PART I—PRINCIPLES OF ETHICAL CONDUCT

SECTION 101. *Principles of Ethical Conduct.* To ensure that every citizen can have complete confidence in the integrity of the Federal Government, each Federal employee shall respect and adhere to the fundamental principles of ethical service as implemented in regulations promulgated under sections 201 and 301 of this order:

(a) Public service is a public trust, requiring employees to place loyalty to the Constitution, the laws, and ethical principles above private gain.

(b) Employees shall not hold financial interests that conflict with the conscientious performance of duty.

(c) Employees shall not engage in financial transactions using nonpublic Government information or allow the improper use of such information to further any private interest.

(d) An employee shall not, except pursuant to such reasonable exceptions as are provided by regulation, solicit or accept any gift or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the employee's agency, or whose interests may be substantially affected by the performance or nonperformance of the employee's duties.

(e) Employees shall put forth honest effort in the performance of their duties.

(f) Employees shall make no unauthorized commitments or promises of any kind purporting to bind the Government.

(g) Employees shall not use public office for private gain.

(h) Employees shall act impartially and not give preferential treatment to any private organization or individual.

(i) Employees shall protect and conserve Federal property and shall not use it for other than authorized activities.

(j) Employees shall not engage in outside employment or activities, including seeking or negotiating for employment, that conflict with official Government duties and responsibilities.

(k) Employees shall disclose waste, fraud, abuse, and corruption to appropriate authorities.

(*l*) Employees shall satisfy in good faith their obligations as citizens, including all just financial obligations, especially those—such as Federal, State, or local taxes—that are imposed by law.

(m) Employees shall adhere to all laws and regulations that provide equal opportunity for all Americans regardless of race, color, religion, sex, national origin, age, or handicap.

(n) Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards promulgated pursuant to this order.

SEC. 102. *Limitations on Outside Earned Income.*

(a) No employee who is appointed by the President to a full-time noncareer position in the executive branch (including full-time noncareer employees in the White House Office, the Office of Policy Development, and the Office of Cabinet Affairs), shall receive any earned income for any outside employment or activity performed during that Presidential appointment.

(b) The prohibition set forth in subsection (a) shall not apply to any full-time noncareer employees employed pursuant to 3 U.S.C. 105 and 3 U.S.C. 107(a) at salaries below the minimum rate of basic pay then paid for GS–9 of the General Schedule. Any outside employment must comply with relevant agency standards of conduct, including any requirements for approval of outside employment.

PART II—OFFICE OF GOVERNMENT ETHICS AUTHORITY

SEC. 201. *The Office of Government Ethics.* The Office of Government Ethics shall be responsible for administering this order by:

(a) Promulgating, in consultation with the Attorney General and the Office of Personnel Management, regulations that establish a single, comprehensive, and clear set of executive-branch standards of conduct that shall be objective, reasonable, and enforceable.

(b) Developing, disseminating, and periodically updating an ethics manual for employees of the executive branch describing the applicable statutes, rules, decisions, and policies.

(c) Promulgating, with the concurrence of the Attorney General, regulations interpreting the provisions of the post-employment statute, section 207 of title 18, United States Code; the general conflict-of-interest statute, section 208 of title 18, United States Code; and the statute prohibiting supplementation of salaries, section 209 of title 18, United States Code.

(d) Promulgating, in consultation with the Attorney General and the Office of Personnel Management, regulations establishing a system of nonpublic (confidential) financial disclosure by executive branch employees to complement the system of public disclosure under the Ethics in Government Act of 1978 [Pub. L. 95–521, see Tables for classification]. Such regulations shall include criteria to guide agencies in determining which employees shall submit these reports.

(e) Ensuring that any implementing regulations issued by agencies under this order are consistent with and promulgated in accordance with this order.

SEC. 202. *Executive Office of the President.* In that the agencies within the Executive Office of the President (EOP) currently exercise functions that are not distinct and separate from each other within the meaning and for the purposes of section 207(e) of title 18, United States Code, those agencies shall be treated as one agency under section 207(c) of title 18, United States Code.

PART III—AGENCY RESPONSIBILITIES

SEC. 301. *Agency Responsibilities.* Each agency head is directed to:

(a) Supplement, as necessary and appropriate, the comprehensive executive branch-wide regulations of the Office of Government Ethics, with regulations of special applicability to the particular functions and activities of that agency. Any supplementary agency regulations shall be prepared as addenda to the branch-wide regulations and promulgated jointly with the Office of Government Ethics, at the agency's expense, for inclusion in Title 5 of the Code of Federal Regulations.

(b) Ensure the review by all employees of this order and regulations promulgated pursuant to the order.

(c) Coordinate with the Office of Government Ethics in developing annual agency ethics training plans. Such training shall include mandatory annual briefings on ethics and standards of conduct for all employees appointed by the President, all employees in the Executive Office of the President, all officials required to file public or nonpublic financial disclosure reports, all employees who are contracting officers and procurement officials, and any other employees designated by the agency head.

(d) Where practicable, consult formally or informally with the Office of Government Ethics prior to granting any exemption under section 208 of title 18, United States Code, and provide the Director of the Office of Government Ethics a copy of any exemption granted.

(e) Ensure that the rank, responsibilities, authority, staffing, and resources of the Designated Agency Ethics Official are sufficient to ensure the effectiveness of the agency ethics program. Support should include the provision of a separate budget line item for ethics activities, where practicable.

PART IV—DELEGATIONS OF AUTHORITY

SEC. 401. *Delegations to Agency Heads.* Except in the case of the head of an agency, the authority of the President under sections 203(d), 205(e), and 208(b) of title 18, United States Code, to grant exemptions or approvals to individuals, is delegated to the head of the agency in which an individual requiring an exemption or approval is employed or to which the individual (or the committee, commission, board, or similar group employing the individual) is attached for purposes of administration.

SEC. 402. *Delegations to the Counsel to the President.*

(a) Except as provided in section 401, the authority of the President under sections 203(d), 205(e), and 208(b) of title 18, United States Code, to grant exemptions or approvals for Presidential appointees to committees, commissions, boards, or similar groups established by the President is delegated to the Counsel to the President.

(b) The authority of the President under sections 203(d), 205(e), and 208(b) of title 18, United States Code, to grant exemptions or approvals for individuals appointed pursuant to 3 U.S.C. 105 and 3 U.S.C. 107(a), is delegated to the Counsel to the President.

SEC. 403. *Delegation Regarding Civil Service.* The Office of Personnel Management and the Office of Government Ethics, as appropriate, are delegated the authority vested in the President by 5 U.S.C. 7301 to establish general regulations for the implementation of this Executive order.

PART V—GENERAL PROVISIONS

SEC. 501. *Revocations.* The following Executive orders are hereby revoked:

(a) Executive Order No. 11222 of May 8, 1965.

(b) Executive Order No. 12565 of September 25, 1986.

SEC. 502. *Savings Provision.*

(a) All actions already taken by the President or by his delegates concerning matters affected by this order and in force when this order is issued, including any regulations issued under Executive Order 11222, Executive Order 12565, or statutory authority, shall, except as they are irreconcilable with the provisions of this order or terminate by operation of law or by Presidential action, remain in effect until properly amended, modified, or revoked pursuant to the authority conferred by this order or any regulations promulgated under this order. Notwithstanding anything in section 102 of this order, employees may carry out preexisting contractual obligations entered into before April 12, 1989.

(b) Financial reports filed in confidence (pursuant to the authority of Executive Order No. 11222, 5 C.F.R. Part 735, and individual agency regulations) shall continue to be held in confidence.

SEC. 503. *Definitions.* For purposes of this order, the term:

(a) ''Contracting officers and procurement officials'' means all such officers and officials as defined in the Office of Federal Procurement Policy Act Amendments of 1988 [see 41 U.S.C. 423].

(b) ''Employee'' means any officer or employee of an agency, including a special Government employee.

(c) ''Agency'' means any executive agency as defined in 5 U.S.C. 105, including any executive department as defined in 5 U.S.C. 101, Government corporation as de-

fined in 5 U.S.C. 103, or an independent establishment in the executive branch as defined in 5 U.S.C. 104 (other than the General Accounting Office), and the United States Postal Service and Postal Rate Commission.

(d) ''Head of an agency'' means, in the case of an agency headed by more than one person, the chair or comparable member of such agency.

(e) ''Special Government employee'' means a special Government employee as defined in 18 U.S.C. 202(a).

SEC. 504. *Judicial Review.* This order is intended only to improve the internal management of the executive branch and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

EX. ORD. NO. 12820. FACILITATING FEDERAL EMPLOYEES' PARTICIPATION IN COMMUNITY SERVICE ACTIVITIES

Ex. Ord. No. 12820, Nov. 5, 1992, 57 F.R. 53429, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including Public Law 101–610, as amended [42 U.S.C. 12501 et seq.], and in order to ensure that the Federal Government encourages its employees' participation in community service, it is hereby ordered as follows:

SECTION 1. *Charge to the Cabinet and Members of the Executive Branch Departments and Agencies.*

(a) The head of each Executive department and agency shall encourage agency employees to participate voluntarily in direct and consequential community service. Community service participation may include, among other things, participation in programs, activities and initiatives designed to address problems such as drug abuse, crime, homelessness, illiteracy, AIDS, teenage pregnancy, and hunger, and problems associated with low-income housing, education, health care and the environment. The White House Office of National Service and the Commission on National and Community Service shall serve as a resource to provide information and support.

(b) The head of each Executive department and agency shall designate a senior official of his or her department or agency to provide leadership in and support for the Federal commitment to community service through employee awareness and participation within his or her department and agency. The senior official shall report to his or her department or agency head to ensure that community service activities receive a high level of visibility and promotion.

(c) The head of each Executive department and agency shall designate an existing office in his or her department or agency to perform the functions listed below. The office shall serve as the Office of Community Service and will be responsible for:

(1) Providing information to employees of the department or agency concerning community service opportunities;

(2) Working with the White House Office of National Service and the Office of Personnel Management to consider any appropriate changes in department or agency policies or practices that would encourage employee participation in community service activities; and

(3) Acting as a liaison with the White House Office of National Service and the Commission on National and Community Service.

SEC. 2. *Administrative Provisions.*

The White House Office of National Service and the Commission on National and Community Service shall provide such information with respect to community service programs and activities and such advice and assistance as may be required by the departments and agencies for the purpose of carrying out their functions under this order.

SEC. 3. *Reporting Provisions.*

The head of each Executive department or agency, or his or her designee, shall submit an annual report on the actions the department or agency has taken to encourage its employees to participate in community service to the White House Office of National Service not later than December 30 each year.

GEORGE BUSH.

EX. ORD. NO. 12834. ETHICS COMMITMENTS BY EXECUTIVE BRANCH APPOINTEES

Ex. Ord. No. 12834, Jan. 20, 1993, 58 F.R. 5911, provided:

By the authority vested in me as President of the United States by the Constitution and laws of the United States of America, including section 301 of title 3, United States Code, and sections 3301 and 7301 of title 5, United States Code, it is hereby ordered as follows:

SECTION 1. *Ethics Pledges.* (a) Every senior appointee in every executive agency appointed on or after January 20, 1993, shall sign, and upon signing shall be contractually committed to, the following pledge (''senior appointee pledge'') upon becoming a senior appointee:

''As a condition, and in consideration, of my employment in the United States Government in a senior appointee position invested with the public trust, I commit myself to the following obligations, which I understand are binding on me and are enforceable under law:

''1. I will not, within five years after the termination of my employment as a senior appointee in any executive agency in which I am appointed to serve, lobby any officer or employee of that agency.

''2. In the event that I serve as a senior appointee in the Executive Office of the President ('EOP'), I also will not, within five years after I cease to be a senior appointee in the EOP, lobby any officer or employee of any other executive agency with respect to which I had personal and substantial responsibility as a senior appointee in the EOP.

''3. I will not, at any time after the termination of my employment in the United States Government, engage in any activity on behalf of any foreign government or foreign political party which, if undertaken on January 20, 1993, would require me to register under the Foreign Agents Registration Act of 1938, as amended.

''4. I will not, within five years after termination of my personal and substantial participation in a trade negotiation, represent, aid or advise any foreign government, foreign political party or foreign business entity with the intent to influence a decision of any officer or employee of any executive agency, in carrying out his or her official duties.

''5. I acknowledge that the Executive order entitled 'Ethics Commitments by Executive Branch Appointees,' issued by the President on January 20, 1993, which I have read before signing this document, defines certain of the terms applicable to the foregoing obligations and sets forth the methods for enforcing them. I expressly accept the provisions of that Executive order as a part of this agreement and as binding on me. I understand that the terms of this pledge are in addition to any statutory or other legal restrictions applicable to me by virtue of Federal Government service.''

(b) Every trade negotiator who is not a senior appointee and is appointed to a position in an executive agency on or after January 20, 1993, shall (prior to personally and substantially participating in a trade negotiation) sign, and upon signing be contractually committed to, the following pledge (''trade negotiator pledge''):

''As a condition, and in consideration, of my employment in the United States Government as a trade negotiator, which is a position invested with the public trust, I commit myself to the following obligations, which I understand are binding on me and are enforceable under law:

''1. I will not, within five years after termination of my personal and substantial participation in a trade negotiation, represent, aid or advise any foreign government, foreign political party or foreign business entity with the intent to influence a decision of any officer or employee of any executive agency, in carrying out his or her official duties.

''2. I acknowledge that the Executive order entitled 'Ethics Commitments by Executive Branch Ap-

pointees,' issued by the President on January 20, 1993, which I have read before signing this document, defines certain of the terms applicable to the foregoing obligations and sets forth the methods for enforcing them. I expressly accept the provisions of that Executive order as a part of this agreement and as binding on me. I understand that the terms of this pledge are in addition to any statutory or other legal restrictions applicable to me by virtue of Federal Government service.''

SEC. 2. *Definitions.* As used herein and in the pledges:

(a) ''Senior appointee'' means every full-time, non-career Presidential, Vice-presidential or agency head appointee in an executive agency whose rate of basic pay is not less than the rate for level V of the Executive Schedule (5 U.S.C. 5316) but does not include any person appointed as a member of the senior foreign service or solely as a uniformed service commissioned officer.

(b) ''Trade negotiator'' means a full-time, non-career Presidential, Vice-presidential or agency head appointee (whether or not a senior appointee) who personally and substantially participates in a trade negotiation as an employee of an executive agency.

(c) ''Lobby'' means to knowingly communicate to or appear before any officer or employee of any executive agency on behalf of another (except the United States) with the intent to influence official action, except that the term ''lobby'' does not include:

(1) communicating or appearing on behalf of and as an officer or employee of a State or local government or the government of the District of Columbia, a Native American tribe or a United States territory or possession;

(2) communicating or appearing with regard to a judicial proceeding, or a criminal or civil law enforcement inquiry, investigation or proceeding (but not with regard to an administrative proceeding) or with regard to an administrative proceeding to the extent that such communications or appearances are made after the commencement of and in connection with the conduct or disposition of a judicial proceeding;

(3) communicating or appearing with regard to any government grant, contract or similar benefit on behalf of and as an officer or employee of:

(A) an accredited, degree-granting institution of higher education, as defined in section 1201(a) of title 20, United States Code; or

(B) a hospital; a medical, scientific or environmental research institution; or a charitable or educational institution; provided that such entity is a not-for-profit organization exempted from Federal income taxes under sections 501(a) and 501(c)(3) of title 26, United States Code;

(4) communicating or appearing on behalf of an international organization in which the United States participates, if the Secretary of State certifies in advance that such activity is in the interest of the United States;

(5) communicating or appearing solely for the purpose of furnishing scientific or technological information, subject to the procedures and conditions applicable under section 207(j)(5) of title 18, United States Code; or

(6) giving testimony under oath, subject to the conditions applicable under section 207(j)(6) of title 18, United States Code.

(d) ''On behalf of another'' means on behalf of a person or entity other than the individual signing the pledge or his or her spouse, child or parent.

(e) ''Administrative proceeding'' means any agency process for rulemaking, adjudication or licensing, as defined in and governed by the Administrative Procedure Act, as amended (5 U.S.C. 551, *et seq.*).

(f) ''Executive agency'' and ''agency'' mean ''Executive agency'' as defined in section 105 of title 5, United States Code, except that the term includes the Executive Office of the President, the United States Postal Service and the Postal Rate Commission and excludes the General Accounting Office. As used in paragraph 1 of the senior appointee pledge, ''executive agency'' means the entire agency in which the senior appointee is appointed to serve, except that:

(1) with respect to those senior appointees to whom such designations are applicable under section 207(h) of title 18, United States Code, the term means an agency or bureau designated by the Director of the Office of Government Ethics under section 207(h) as a separate department or agency at the time the senior appointee ceased to serve in that department or agency; and

(2) a senior appointee who is detailed from one executive agency to another for more than sixty days in any calendar year shall be deemed to be an officer or employee of both agencies during the period such person is detailed.

(g) ''Personal and substantial responsibility'' ''with respect to'' an executive agency, as used in paragraph 2 of the senior appointee pledge, means ongoing oversight of, or significant ongoing decision-making involvement in, the agency's budget, major programs or personnel actions, when acting both ''personally'' and ''substantially'' (as those terms are defined for purposes of sections 207(a) and (b) of title 18, United States Code).

(h) ''Personal and substantial participation'' and ''personally and substantially participates'' mean acting both ''personally'' and ''substantially'' (as those terms are defined for purposes of sections 207(a) and (b) of title 18, United States Code) as an employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation or other such action.

(i) ''Trade negotiation'' means a negotiation that the President determines to undertake to enter into a trade agreement with one or more foreign governments, and does not include any action taken before that determination.

(j) ''Foreign Agents Registration Act of 1938, as amended'' means sections 611-621 of title 22, United States Code.

(k) ''Foreign government'' means ''the government of a foreign country,'' as defined in section 1(e) of the Foreign Agents Registration Act of 1938, as amended (22 U.S.C. 611(e)).

(*l*) ''Foreign political party'' has the same meaning as that term in section 1(f) of the Foreign Agents Registration Act of 1938, as amended (22 U.S.C. 611(f)).

(m) ''Foreign business entity'' means a partnership, association, corporation, organization or other combination of persons organized under the laws of or having its principal place of business in a foreign country.

(n) Terms that are used herein and in the pledges, and also used in section 207 of title 18, United States Code, shall be given the same meaning as they have in section 207 and any implementing regulations issued or to be issued by the Office of Government Ethics, except to the extent those terms are otherwise defined in this order.

SEC. 3. *Waiver.* (a) The President may grant to any person a waiver of any restrictions contained in the pledge signed by such person if, and to the extent that, the President certifies in writing that it is in the public interest to grant the waiver.

(b) A waiver shall take effect when the certification is signed by the President.

(c) The waiver certification shall be published in the Federal Register, identifying the name and executive agency position of the person covered by the waiver and the reasons for granting it.

(d) A copy of the waiver certification shall be furnished to the person covered by the waiver and filed with the head of the agency in which that person is or was appointed to serve.

SEC. 4. *Administration.* (a) The head of every executive agency shall establish for that agency such rules or procedures (conforming as nearly as practicable to the agency's general ethics rules and procedures, including those relating to designated agency ethics officers) as are necessary or appropriate:

(1) to ensure that every senior appointee in the agency signs the senior appointee pledge upon assuming the appointed office or otherwise becoming a senior appointee;

(2) to ensure that every trade negotiator in the agency who is not a senior appointee signs the trade nego-

tiator pledge prior to personally and substantially participating in a trade negotiation;

(3) to ensure that no senior appointee or trade negotiator in the agency personally and substantially participates in a trade negotiation prior to signing the pledge; and

(4) generally to ensure compliance with this order within the agency.

(b) With respect to the Executive Office of the President, the duties set forth in section 4(a), above, shall be the responsibility of the White House Counsel or such other official or officials to whom the President delegates those duties.

(c) The Director of the Office of Government Ethics shall:

(1) subject to the prior approval of the White House Counsel, develop a form of the pledges to be completed by senior appointees and trade negotiators and see that the pledges and a copy of this Executive order are made available for use by agencies in fulfilling their duties under section 4(a) above;

(2) in consultation with the Attorney General or White House Counsel, when appropriate, assist designated agency ethics officers in providing advice to current or former senior appointees and trade negotiators regarding the application of the pledges; and

(3) subject to the prior approval of the White House Counsel, adopt such rules or procedures (conforming as nearly as practicable to its generally applicable rules and procedures) as are necessary or appropriate to carry out the foregoing responsibilities.

(d) In order to promote clarity and fairness in the application of paragraph 3 of the senior appointee pledge:

(1) the Attorney General shall, within six months after the issuance of this order, publish in the Federal Register a ''Statement of Covered Activities,'' based on the statute, applicable regulations and published guidelines, and any other material reflecting the Attorney General's current interpretation of the law, describing in sufficient detail to provide adequate guidance the activities on behalf of a foreign government or foreign political party which, if undertaken as of January 20, 1993, would require a person to register as an agent for such foreign government or political party under the Foreign Agents Registration Act of 1938, as amended; and

(2) the Attorney General's ''Statement of Covered Activities'' shall be presumed to be the definitive statement of the activities in which the senior appointee agrees not to engage under paragraph 3 of the pledge.

(e) A senior appointee who has signed the senior appointee pledge is not required to sign the pledge again upon appointment to a different office, except that a person who has ceased to be a senior appointee, due to termination of employment in the executive branch or otherwise, shall sign the senior appointee pledge prior to thereafter assuming office as a senior appointee.

(f) A trade negotiator who is not also a senior appointee and who has once signed the trade negotiator pledge is not required to sign the pledge again prior to personally and substantially participating in a subsequent trade negotiation, except that a person who has ceased employment in the executive branch shall, after returning to such employment, be obligated to sign a pledge as provided herein notwithstanding the signing of any previous pledge.

(g) All pledges signed by senior appointees and trade negotiators, and all waiver certifications with respect thereto, shall be filed with the head of the appointee's agency for permanent retention in the appointee's official personnel folder or equivalent folder.

SEC. 5. *Enforcement.* (a) The contractual, fiduciary and ethical commitments in the pledges provided for herein are enforceable by any legally available means, including any or all of the following: debarment proceedings within any affected executive agency or judicial civil proceedings for declaratory, injunctive or monetary relief.

(b) Any former senior appointee or trade negotiator who is determined, after notice and hearing, by the duly designated authority within any agency, to have violated his or her pledge not to lobby any officer or employee of that agency, or not to represent, aid or advise a foreign entity specified in the pledge with the intent to influence the official decision of that agency, may be barred from lobbying any officer or employee of that agency for up to five years in addition to the five-year time period covered by the pledge.

(1) The head of every executive agency shall, in consultation with the Director of the Office of Government Ethics, establish procedures to implement the foregoing subsection, which shall conform as nearly as practicable to the procedures for debarment of former employees found to have violated section 207 of title 18, United States Code (1988 ed.), set forth in section 2637.212 of title 5, Code of Federal Regulations (revised as of January 1, 1992).

(2) Any person who is debarred from lobbying following an agency proceeding pursuant to the foregoing subsection may seek judicial review of the administrative determination, which shall be subject to established standards for judicial review of comparable agency actions.

(c) The Attorney General is authorized:

(1) upon receiving information regarding the possible breach of any commitment in a signed pledge, to request any appropriate federal investigative authority to conduct such investigations as may be appropriate; and

(2) upon determining that there is a reasonable basis to believe that a breach of a commitment has occurred or will occur or continue, if not enjoined, to commence a civil action against the former employee in any United States District Court with jurisdiction to consider the matter.

(d) In such civil action, the Attorney General is authorized to request any and all relief authorized by law, including but not limited to:

(1) such temporary restraining orders and preliminary and permanent injunctions as may be appropriate to restrain future, recurring or continuing conduct by the former employee in breach of the commitments in the pledge he or she signed; and

(2) establishment of a constructive trust for the benefit of the United States, requiring an accounting and payment to the United States Treasury of all money and other things of value received by, or payable to, the former employee arising out of any breach or attempted breach of the pledge signed by the former employee.

SEC. 6. *General Provisions.* (a) No prior Executive orders are repealed by this order. To the extent that this order is inconsistent with any provision of any prior Executive order, this order shall control.

(b) If any provision of this order or the application of such provision is held to be invalid, the remainder of this order and other dissimilar applications of such provision shall not be affected.

(c) Except as expressly provided in section 5(b)(2) of this order, nothing in the pledges or in this order is intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

WILLIAM J. CLINTON.

SUBCHAPTER II—EMPLOYMENT LIMITATIONS

AMENDMENTS

1968—Pub. L. 90–351, title V, §1001(c), June 19, 1968, 82 Stat. 235, substituted ''EMPLOYMENT LIMITATIONS'' for ''LOYALTY, SECURITY, AND STRIKING'' in subchapter heading.

§ 7311. Loyalty and striking

An individual may not accept or hold a position in the Government of the United States or the government of the District of Columbia if he—

(1) advocates the overthrow of our constitutional form of government;

(2) is a member of an organization that he knows advocates the overthrow of our constitutional form of government;

(3) participates in a strike, or asserts the right to strike, against the Government of the United States or the government of the District of Columbia; or

(4) is a member of an organization of employees of the Government of the United States or of individuals employed by the government of the District of Columbia that he knows asserts the right to strike against the Government of the United States or the government of the District of Columbia.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 524.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 118p.	Aug. 9, 1955, ch. 690, §1, 69 Stat. 624.
.....	[Uncodified].	June 29, 1956, ch. 479, §3, (as applicable to the Act of Aug. 9, 1955, ch. 690, §1, 69 Stat. 624), 70 Stat. 453.

The word ''position'' is coextensive with and is substituted for ''office or employment''.

In paragraphs (1) and (2), the words ''in the United States'' in former section 118p(1), (2) are omitted as unnecessary in view of the reference to ''our constitutional form of government''.

In paragraphs (3) and (4), the reference to the ''government of the District of Columbia'' is added on authority of the Act of June 29, 1956, in order to make these paragraphs meaningful with respect to individuals employed by the government of the District of Columbia. The words ''From and after July 1, 1956'', appearing in the Act of June 29, 1956, are omitted as executed.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

EX. ORD. NO. 10450. SECURITY REQUIREMENTS FOR GOVERNMENT EMPLOYEES

Ex. Ord. No. 10450, Apr. 27, 1953, 18 F.R. 2489, as amended by Ex. Ord. No. 10491, Oct. 15, 1953, 18 F.R. 6583; Ex. Ord. No. 10531, May 27, 1954, 19 F.R. 3069; Ex. Ord. No. 10548, Aug. 3, 1954, 19 F.R. 4871; Ex. Ord. No. 10550, Aug. 6, 1954, 19 F.R. 4981; Ex. Ord. No. 11605, July 2, 1971, 36 F.R. 12831; Ex. Ord. No. 11785, June 4, 1974, 39 F.R. 20053; Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, provided:

WHEREAS the interests of the national security require that all persons privileged to be employed in the departments and agencies of the Government shall be reliable, trustworthy, of good conduct and character, and of complete and unswerving loyalty to the United States; and

WHEREAS the American tradition that all persons should receive fair, impartial, and equitable treatment at the hands of the Government requires that all persons seeking the privilege of employment or privileged to be employed in the departments and agencies of the Government be adjudged by mutually consistent and no less than minimum standards and procedures among the departments and agencies governing the employment and retention in employment of persons in the Federal service:

NOW, THEREFORE, by virtue of the authority vested in me by the Constitution and statutes of the United States, including section 1753 of the Revised Statutes of the United States (5 U.S.C. 631) [sections 3301 and 7301 of this title]; the Civil Service Act of 1883 (22 Stat. 403; 5 U.S.C. 632, et seq.) [section 1101 et seq. of this title]; section 9A of the act of August 2, 1939, 53 Stat. 1148 (5 U.S.C. 118j) [sections 3333 and 7311 of this title]; and the act of August 26, 1950, 64 Stat. 476 (5 U.S.C. 22–1, et seq.) [section 7501 et seq. of this title], and as President of the United States, and deeming such action necessary in the best interests of the national security it is hereby ordered as follows:

SECTION 1. In addition to the departments and agencies specified in the said act of August 26, 1950, and Executive Order No. 10237 of April 26, 1951 the provisions of that act shall apply to all other departments and agencies of the Government.

SEC. 2. The head of each department and agency of the Government shall be responsible for establishing and maintaining within his department or agency an effective program to insure that the employment and retention in employment of any civilian officer or employee within the department or agency is clearly consistent with the interests of the national security.

SEC. 3. (a) The appointment of each civilian officer or employee in any department or agency of the Government shall be made subject to investigation. The scope of the investigation shall be determined in the first instance according to the degree of adverse effect the occupant of the position sought to be filled could bring about, by virtue of the nature of the position, on the national security, but in no event shall the investigation include less than a national agency check (including a check of the fingerprint files of the Federal Bureau of Investigation), and written inquiries to appropriate local law enforcement agencies, former employers and supervisors, references, and schools attended by the person under investigation: Provided, that upon request of the head of the department or agency concerned, the Office of Personnel Management may, in its discretion, authorize such less investigation as may meet the requirements of the national security with respect to per-diem, intermittent, temporary, or seasonal employees, or aliens employed outside the United States. Should there develop at any stage of investigation information indicating that the employment of any such person may not be clearly consistent with the interests of the national security, there shall be conducted with respect to such person a full field investigation, or such less investigation as shall be sufficient to enable the head of the department or agency concerned to determine whether retention of such person is clearly consistent with the interests of the national security.

(b) The head of any department or agency shall designate, or cause to be designated, any position within his department or agency the occupant of which could bring about, by virtue of the nature of the position, a material adverse effect on the national security as a sensitive position. Any position so designated shall be filled or occupied only by a person with respect to whom a full field investigation has been conducted: Provided, that a person occupying a sensitive position at the time it is designated as such may continue to occupy such position pending the completion of a full field investigation, subject to the other provisions of this order: And provided further, that in case of emergency a sensitive position may be filled for a limited period by a person with respect to whom a full field pre-appointment investigation has not been completed if the head of the department or agency concerned finds that such action is necessary in the national interest, which finding shall be made a part of the records of such department or agency.

SEC. 4. The head of each department and agency shall review, or cause to be reviewed, the cases of all civilian officers and employees with respect to whom there has been conducted a full field investigation under Executive Order No. 9835 of March 21, 1947, and, after such further investigation as may be appropriate, shall readjudicate, or cause to be re-adjudicated, in accordance with the said act of August 26, 1950, such of those cases as have not been adjudicated under a security standard commensurate with that established under this order.

SEC. 5. Whenever there is developed or received by any department or agency information indicating that the retention in employment of any officer or employee of the Government may not be clearly consistent with the interests of the national security, such information shall be forwarded to the head of the employing department or agency or his representative, who, after such investigation as may be appropriate, shall review, or cause to be reviewed, and, where necessary, re-adjudicate, or cause to be re-adjudicated, in accordance with the said act of August 26, 1950, the case of such officer or employee.

SEC. 6. Should there develop at any stage of investigation information indicating that the employment of any officer or employees of the Government may not be clearly consistent with the interests of the national security, the head of the department or agency concerned or his representative shall immediately suspend the employment of the person involved if he deems such suspension necessary in the interests of the national security and, following such investigation and review as he deems necessary the head of the department or agency concerned shall terminate the employment of such suspended officer in the interests of the national security, or employee whenever he shall determine such termination necessary or advisable in accordance with the said act of August 26, 1950.

SEC. 7. Any person whose employment is suspended or terminated under the authority granted to heads of departments and agencies by or in accordance with the said act of August 26, 1950, or pursuant to the said Executive Order No. 9835 or any other security or loyalty program relating to officers or employees of the Government, shall not be reinstated or restored to duty or reemployed in the same department or agency and shall not be reemployed in any other department or agency, unless the head of the department or agency concerned finds that such reinstatement, restoration, or reemployment is clearly consistent with the interests of the national security, which finding shall be made a part of the records of such department or agency: Provided, that no person whose employment has been terminated under such authority thereafter may be employed by any other department or agency except after a determination by the Office of Personnel Management that such person is eligible for such employment.

SEC. 8. (a) The investigations conducted pursuant to this order shall be designed to develop information as to whether the employment or retention in employment in the Federal service of the person being investigated is clearly consistent with the interests of the national security. Such information shall relate, but shall not be limited, to the following:

(1) Depending on the relation of the Government employment to the national security:

(i) Any behavior, activities, or associations which tend to show that the individual is not reliable or trustworthy.

(ii) Any deliberate misrepresentations, falsifications or omissions of material facts.

(iii) Any criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, habitual use of intoxicants to excess, drug addiction or sexual perversion.

(iv) Any illness, including any mental condition, of a nature which in the opinion of competent medical authority may cause significant defect in the judgment or reliability of the employee, with due regard to the transient or continuing effect of the illness and the medical findings in such case.

(v) Any facts which furnish reason to believe that the individual may be subjected to coercion, influence, or pressure which may cause him to act contrary to the best interests of the national security.

(2) Commission of any act of sabotage, espionage, treason, or sedition, or attempts thereat or preparation therefor, or conspiring with, or aiding or abetting another to commit or attempt to commit any act of sabotage, espionage, treason, or sedition.

(3) Establishing or continuing a sympathetic association with a saboteur, spy, traitor, seditionist, anarchist, or revolutionist, or with any espionage or other secret agent or representative of a foreign nation, or any representative of a foreign nation whose interests may be inimical to the interests of the United States, or with any person who advocates the use of force or violence to overthrow the government of the United States or the alteration of the form of government of the United States by unconstitutional means.

(4) Advocacy of use of force or violence to overthrow the government of the United States, or of the alteration of the form of government of the United States by unconstitutional means.

(5) Knowing membership with the specific intent of furthering the aims of, or adherence to and active participation in, any foreign or domestic organization, association, movement, group, or combination of persons (hereinafter referred to as organizations) which unlawfully advocates or practices the commission of acts of force or violence to prevent others from exercising their rights under the Constitution or laws of the United States or of any State, or which seeks to overthrow the Government of the United States or any State or subdivision thereof by unlawful means.

(6) Intentional unauthorized disclosure to any person of security information, or of other information disclosure of which is prohibited by law, or willful violation or disregard of security regulations.

(7) Performing or attempting to perform his duties, or otherwise acting, so as to serve the interests of another government in preference to the interests of the United States.

(8) Refusal by the individual, upon the ground of constitutional privilege against self-incrimination, to testify before a congressional committee regarding charges of his alleged disloyalty or other misconduct.

(b) The investigation of persons entering or employed in the competitive service shall primarily be the responsibility of the Office of Personnel Management, except in cases in which the head of a department or agency assumes that responsibility pursuant to law or by agreement with the Office. The Office shall furnish a full investigative report to the department or agency concerned.

(c) The investigation of persons (including consultants, however employed), entering employment of, or employed by, the Government other than in the competitive service shall primarily be the responsibility of the employing department or agency. Departments and agencies without investigative facilities may use the investigative facilities of the Office of Personnel Management, and other departments and agencies may use such facilities under agreement with the Office.

(d) There shall be referred promptly to the Federal Bureau of Investigation all investigations being conducted by any other agencies which develop information indicating that an individual may have been subjected to coercion, influence, or pressure to act contrary to the interests of the national security, or information relating to any of the matters described in subdivisions (2) through (8) of subsection (a) of this section. In cases so referred to it, the Federal Bureau of Investigation shall make a full field investigation.

SEC. 9. (a) There shall be established and maintained in the Office of Personnel Management a security-investigations index covering all persons as to whom security investigations have been conducted by any department or agency of the Government under this order. The central index established and maintained by the Office under Executive Order No. 9835 of March 21, 1947, shall be made a part of the security-investigations index. The security-investigations index shall contain the name of each person investigated, adequate identifying information concerning each such person, and a reference to each department and agency which has conducted an investigation concerning the person involved or has suspended or terminated the employment of such person under the authority granted to heads of departments and agencies by or in accordance with the said act of August 26, 1950.

(b) The heads of all departments and agencies shall furnish promptly to the Office of Personnel Manage-

ment information appropriate for the establishment and maintenance of the security-investigations index.

(c) The reports and other investigative material and information developed by investigations conducted pursuant to any statute, order, or program described in section 7 of this order shall remain the property of the investigative agencies conducting the investigations, but may, subject to considerations of the national security, be retained by the department or agency concerned. Such reports and other investigative material and information shall be maintained in confidence, and no access shall be given thereto except with the consent of the investigative agency concerned, to other departments and agencies conducting security programs under the authority granted by or in accordance with the said act of August 26, 1950, as may be required for the efficient conduct of Government business.

SEC. 10. Nothing in this order shall be construed as eliminating or modifying in any way the requirement for any investigation or any determination as to security which may be required by law.

SEC. 11. On and after the effective date of this order the Loyalty Review Board established by Executive Order No. 9835 of March 21, 1947, shall not accept agency findings for review, upon appeal or otherwise. Appeals pending before the Loyalty Review Board on such date shall be heard to final determination in accordance with the provisions of the said Executive Order No. 9835, as amended. Agency determinations favorable to the officer or employee concerned pending before the Loyalty Review Board on such date shall be acted upon by such Board, and whenever the Board is not in agreement with such favorable determination the case shall be remanded to the department or agency concerned for determination in accordance with the standards and procedures established pursuant to this order. Cases pending before the regional loyalty boards of the Office of Personnel Management on which hearings have not been initiated on such date shall be referred to the department or agency concerned. Cases being heard by regional loyalty boards on such date shall be heard to conclusion, and the determination of the board shall be forwarded to the head of the department or agency concerned: Provided, that if no specific department or agency is involved, the case shall be dismissed without prejudice to the applicant. Investigations pending in the Federal Bureau of Investigation or the Office of Personnel Management on such date shall be completed, and the reports thereon shall be made to the appropriate department or agency.

SEC. 12. Executive Order No. 9835 of March 21, 1947, as amended, is hereby revoked.

SEC. 13. The Attorney General is requested to render to the heads of departments and agencies such advice as may be requisite to enable them to establish and maintain an appropriate employee-security program.

SEC. 14. (a) The Office of Personnel Management, with the continuing advice and collaboration of representatives of such departments and agencies as the National Security Council may designate, shall make a continuing study of the manner in which this order is being implemented by the departments and agencies of the Government for the purpose of determining:

(1) Deficiencies in the department and agency security programs established under this order which are inconsistent with the interests of or directly or indirectly weaken, the national security.

(2) Tendencies in such programs to deny to individual employees fair, impartial and equitable treatment at the hands of the Government, or rights under the Constitution and laws of the United States or this order.

Information affecting any department or agency developed or received during the course of such continuing study shall be furnished immediately to the head of the department or agency concerned. The Office of Personnel Management shall report to the National Security Council, at least semiannually, on the results of such study, shall recommend means to correct any such deficiencies or tendencies, and shall inform the National Security Council immediately of any deficiency which is deemed to be of major importance.

(b) All departments and agencies of the Government are directed to cooperate with the Office of Personnel Management to facilitate the accomplishment of the responsibilities assigned to it by subsection (a) of this section.

(c) To assist the Office of Personnel Management in discharging its responsibilities under this order, the head of each department and agency shall, as soon as possible and in no event later than ninety days after receipt of the final investigative report on a civilian officer or employee subject to a full field investigation under the provisions of this order, advise the Office as to the action taken with respect to such officer or employee. The information furnished by the heads of departments and agencies pursuant to this section shall be included in the reports which the Office of Personnel Management is required to submit to the National Security Council in accordance with subsection (a) of this section. Such reports shall set forth any deficiencies on the part of the heads of departments and agencies in taking timely action under this order, and shall mention specifically any instances of noncompliance with this subsection.

SEC. 15. This order shall become effective thirty days after the date hereof.

EXECUTIVE ORDER NO. 11605

Ex. Ord. No. 11605. July 2, 1971, 36 F.R. 12831, which amended Ex. Ord. No. 10450, Apr. 27, 1953, 18 F.R. 2489, which related to security requirements for government employees, was revoked by Ex. Ord. No. 11785, June 4, 1974, 39 F.R. 20053, set out below.

EX. ORD. NO. 11785. SECURITY REQUIREMENTS FOR GOVERNMENTAL EMPLOYEES

Ex. Ord. No. 11785, June 4, 1974, 39 F.R. 20053, provided:

By virtue of the authority vested in me by the Constitution and statutes of the United States, including 5 U.S.C. 1101 *et seq.*, 3301, 3571, 7301, 7313, 7501(c), 7512, 7532, and 7533; and as President of the United States, and finding such action necessary in the best interests of national security, it is hereby ordered as follows:

SECTION 1. Section 12 of Executive Order No. 10450 of April 27, 1953, as amended [set out as a note under this section], is revised to read in its entirety as follows:

''SEC. 12. Executive Order No. 9835 of March 21, 1947, as amended, is hereby revoked.''

SEC. 2. Neither the Attorney General, nor the Subversive Activities Control Board, nor any other agency shall designate organizations pursuant to section 12 of Executive Order No. 10450, as amended, nor circulate nor publish a list of organizations previously so designated. The list of organizations previously designated is hereby abolished and shall not be used for any purpose.

SEC. 3. Subparagraph (5) of paragraph (a) of section 8 of Executive Order No. 10450, as amended, is revised to read as follows:

''Knowing membership with the specific intent of furthering the aims of, or adherence to and active participation in, any foreign or domestic organization, association, movement, group, or combination of persons (hereinafter referred to as organizations) which unlawfully advocates or practices the commission of acts of force or violence to prevent others from exercising their rights under the Constitution or laws of the United States or of any State, or which seeks to overthrow the Government of the United States or any State or subdivision thereof by unlawful means.''

SEC. 4. Executive Order No. 11605 of July 2, 1971, is revoked.

RICHARD NIXON.

CROSS REFERENCES

Affidavit that acceptance of office will not violate this section, see section 3333 of this title.

Disloyalty and asserting the right to strike against the Government, public officers and employees, see section 1918 of Title 18, Crimes and Criminal Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3333, 7103 of this title; title 18 section 1918; title 22 section 4102.

§ 7312. Employment and clearance; individuals removed for national security

Removal under section 7532 of this title does not affect the right of an individual so removed to seek or accept employment in an agency of the United States other than the agency from which removed. However, the appointment of an individual so removed may be made only after the head of the agency concerned has consulted with the Office of Personnel Management. The Office, on written request of the head of the agency or the individual so removed, may determine whether the individual is eligible for employment in an agency other than the agency from which removed.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 524; Pub. L. 95–454, title IX, §906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 22–1 (4th and 5th provisos).	Aug. 26, 1950, ch. 803, §1 (4th and 5th provisos), 64 Stat. 477.

The words ''Removal under section 7532 of this title'' and ''so removed'' are coextensive with and substituted for ''termination of employment herein provided'' and ''whose employment has been terminated under the provisions of said sections'', respectively.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1978—Pub. L. 95–454 substituted ''Office of Personnel Management'' and ''Office'' for ''Civil Service Commission'' and ''Commission'', respectively.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

§ 7313. Riots and civil disorders

(a) An individual convicted by any Federal, State, or local court of competent jurisdiction of—

(1) inciting a riot or civil disorder;

(2) organizing, promoting, encouraging, or participating in a riot or civil disorder;

(3) aiding or abetting any person in committing any offense specified in clause (1) or (2); or

(4) any offense determined by the head of the employing agency to have been committed in furtherance of, or while participating in, a riot or civil disorder;

shall, if the offense for which he is convicted is a felony, be ineligible to accept or hold any position in the Government of the United States or in the government of the District of Columbia for the five years immediately following the date upon which his conviction becomes final. Any such individual holding a position in the Government of the United States or the government of the District of Columbia on the date his conviction becomes final shall be removed from such position.

(b) For the purposes of this section, ''felony'' means any offense for which imprisonment is authorized for a term exceeding one year.

(Added Pub. L. 90–351, title V, §1001(a), June 19, 1968, 82 Stat. 235.)

EFFECTIVE DATE

Section 1002 of Pub. L. 90–351 provided that: ''The provisions of section 1001(a) of this title [enacting this section] shall apply only with respect to acts referred to in section 7313(a)(1)–(4) of title 5, United States Code, as added by section 1001 of this title, which are committed after the date of enactment of this title [June 19, 1968].''

RECEIPT OF BENEFITS UNDER LAWS PROVIDING RELIEF FOR DISASTER VICTIMS

Section 1106(e) of Pub. L. 90–448, title XI, Aug. 1, 1968, 82 Stat. 567, provided that: ''No person who has been convicted of committing a felony during and in connection with a riot or civil disorder shall be permitted, for a period of one year after the date of his conviction, to receive any benefit under any law of the United States providing relief for disaster victims.''

SUBCHAPTER III—POLITICAL ACTIVITIES

AMENDMENTS

1993—Pub. L. 103–94, §2(a), Oct. 6, 1993, 107 Stat. 1001, reenacted subchapter heading without change.

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 1212, 1216, 4703, 7103, 7121 of this title; title 22 section 4102; title 31 section 732; title 42 sections 1973d, 5055.

§ 7321. Political participation

It is the policy of the Congress that employees should be encouraged to exercise fully, freely, and without fear of penalty or reprisal, and to the extent not expressly prohibited by law, their right to participate or to refrain from participating in the political processes of the Nation.

(Added Pub. L. 103–94, §2(a), Oct. 6, 1993, 107 Stat. 1001.)

PRIOR PROVISIONS

A prior section 7321, Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 525, related to political contributions and services of employees in Executive agencies or competitive service, prior to the general revision of this subchapter by Pub. L. 103–94.

EFFECTIVE DATE; SAVINGS PROVISION

Section 12 of Pub. L. 103–94 provided that:

''(a) The amendments made by this Act [enacting sections 5520a and 7321 to 7326 of this title and section 610 of Title 18, Crimes and Criminal Procedure, amending sections 1216, 2302, 3302 and 3303 of this title, sections 602 and 603 of Title 18, section 410 of Title 39, Postal Service, and sections 1973d and 9904 of Title 42, The Public Health and Welfare, and omitting former sections 7321 to 7328 of this title] shall take effect 120 days after the date of the enactment of this Act [Oct. 6, 1993], except that the authority to prescribe regulations granted under section 7325 of title 5, United States Code (as added by section 2 of this Act), shall take effect on the date of the enactment of this Act.

''(b) Any repeal or amendment made by this Act of any provision of law shall not release or extinguish any penalty, forfeiture, or liability incurred under that provision, and that provision shall be treated as remaining

in force for the purpose of sustaining any proper proceeding or action for the enforcement of that penalty, forfeiture, or liability.

''(c) No provision of this Act shall affect any proceedings with respect to which the charges were filed on or before the effective date of the amendments made by this Act. Orders shall be issued in such proceedings and appeals shall be taken therefrom as if this Act had not been enacted.''

DELEGATION OF AUTHORITY

Memorandum of President of the United States, Oct. 27, 1994, 59 F.R. 54515, provided:

Memorandum for the Secretary of Defense

Pursuant to authority vested in me as the Chief Executive Officer of the United States, and consistent with the provisions of the Hatch Act Reform Amendment regulations, 5 CFR 734.104, and section 301 of title 3, United States Code, I delegate to you the authority to limit the political activities of political appointees of the Department of Defense, including Presidential appointees, Presidential appointees with Senate confirmation, noncareer SES appointees, and Schedule C appointees.

You are authorized and directed to publish this memorandum in the Federal Register.

WILLIAM J. CLINTON.

Memorandum of President of the United States, Oct. 24, 1994, 59 F.R. 54121, provided:

Memorandum for the Secretary of State

Pursuant to authority vested in me as the Chief Executive Officer of the United States, and consistent with the provisions of the Hatch Act Reform Amendment regulations, 5 CFR 734.104, and section 301 of title 3, United States Code, I delegate to you the authority to limit the political activities of political appointees of the Department of State, including Presidential appointees, Presidential appointees with Senate confirmation, noncareer SES appointees, and Schedule C appointees.

You are authorized and directed to publish this memorandum in the Federal Register.

WILLIAM J. CLINTON.

Memorandum of President of the United States, Sept. 30, 1994, 59 F.R. 50809, provided:

Memorandum for the Attorney General

Pursuant to authority vested in me as the Chief Executive Officer of the United States, and consistent with the provisions of the Hatch Act Reform Amendment regulations, 5 CFR 734.104, and section 301 of title 3, United States Code, I delegate to you the authority to limit the political activities of political appointees of the Department of Justice, including Presidential appointees, Presidential appointees with Senate confirmation, noncareer SES appointees, and Schedule C appointees.

You are authorized and directed to publish this memorandum in the Federal Register.

WILLIAM J. CLINTON.

§ 7322. Definitions

For the purpose of this subchapter—

(1) ''employee'' means any individual, other than the President and the Vice President, employed or holding office in—

(A) an Executive agency other than the General Accounting Office;

(B) a position within the competitive service which is not in an Executive agency; or

(C) the government of the District of Columbia, other than the Mayor or a member of the City Council or the Recorder of Deeds;

but does not include a member of the uniformed services;

(2) ''partisan political office'' means any office for which any candidate is nominated or elected as representing a party any of whose candidates for Presidential elector received votes in the last preceding election at which Presidential electors were selected, but shall exclude any office or position within a political party or affiliated organization; and

(3) ''political contribution''—

(A) means any gift, subscription, loan, advance, or deposit of money or anything of value, made for any political purpose;

(B) includes any contract, promise, or agreement, express or implied, whether or not legally enforceable, to make a contribution for any political purpose;

(C) includes any payment by any person, other than a candidate or a political party or affiliated organization, of compensation for the personal services of another person which are rendered to any candidate or political party or affiliated organization without charge for any political purpose; and

(D) includes the provision of personal services for any political purpose.

(Added Pub. L. 103–94, § 2(a), Oct. 6, 1993, 107 Stat. 1001.)

PRIOR PROVISIONS

A prior section 7322, Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 525, prohibited employees in Executive agencies or competitive service from using official authority or influence to coerce political actions of persons or bodies, prior to the general revision of this subchapter by Pub. L. 103–94.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 18 sections 602, 603, 610.

§ 7323. Political activity authorized; prohibitions

(a) Subject to the provisions of subsection (b), an employee may take an active part in political management or in political campaigns, except an employee may not—

(1) use his official authority or influence for the purpose of interfering with or affecting the result of an election;

(2) knowingly solicit, accept, or receive a political contribution from any person, unless such person is—

(A) a member of the same Federal labor organization as defined under section 7103(4) of this title or a Federal employee organization which as of the date of enactment of the Hatch Act Reform Amendments of 1993 had a multicandidate political committee (as defined under section 315(a)(4) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a(a)(4)));

(B) not a subordinate employee; and

(C) the solicitation is for a contribution to the multicandidate political committee (as defined under section 315(a)(4) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a(a)(4))) of such Federal labor organization as defined under section 7103(4) of this title or a Federal employee organization which as of the date of the enactment of the Hatch Act Reform Amendments of 1993 had a multicandidate political committee (as defined under section 315(a)(4) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a(a)(4))); or

(3) run for the nomination or as a candidate for election to a partisan political office; or

(4) knowingly solicit or discourage the participation in any political activity of any person who—

(A) has an application for any compensation, grant, contract, ruling, license, permit, or certificate pending before the employing office of such employee; or

(B) is the subject of or a participant in an ongoing audit, investigation, or enforcement action being carried out by the employing office of such employee.

(b)(1) An employee of the Federal Election Commission (except one appointed by the President, by and with the advice and consent of the Senate), may not request or receive from, or give to, an employee, a Member of Congress, or an officer of a uniformed service a political contribution.

(2)(A) No employee described under subparagraph (B) (except one appointed by the President, by and with the advice and consent of the Senate), may take an active part in political management or political campaigns.

(B) The provisions of subparagraph (A) shall apply to—

(i) an employee of—

(I) the Federal Election Commission;

(II) the Federal Bureau of Investigation;

(III) the Secret Service;

(IV) the Central Intelligence Agency;

(V) the National Security Council;

(VI) the National Security Agency;

(VII) the Defense Intelligence Agency;

(VIII) the Merit Systems Protection Board;

(IX) the Office of Special Counsel;

(X) the Office of Criminal Investigation of the Internal Revenue Service;

(XI) the Office of Investigative Programs of the United States Customs Service;

(XII) the Office of Law Enforcement of the Bureau of Alcohol, Tobacco, and Firearms; or

(XIII) the Central Imagery Office; or

(ii) a person employed in a position described under section 3132(a)(4), 5372, or 5372a of title 5, United States Code.

(3) No employee of the Criminal Division of the Department of Justice (except one appointed by the President, by and with the advice and consent of the Senate), may take an active part in political management or political campaigns.

(4) For purposes of this subsection, the term ''active part in political management or in a political campaign'' means those acts of political management or political campaigning which were prohibited for employees of the competitive service before July 19, 1940, by determinations of the Civil Service Commission under the rules prescribed by the President.

(c) An employee retains the right to vote as he chooses and to express his opinion on political subjects and candidates.

(Added Pub. L. 103–94, §2(a), Oct. 6, 1993, 107 Stat. 1002; amended Pub. L. 103–359, title V, §501(k), Oct. 14, 1994, 108 Stat. 3430.)

REFERENCES IN TEXT

The date of enactment of the Hatch Act Reform Amendments of 1993, referred to in subsec. (a)(2)(A), (C), is the date of enactment of Pub. L. 103–94, which was approved Oct. 6, 1993.

PRIOR PROVISIONS

A prior section 7323, Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 525, prohibited employee in Executive agency from requesting, receiving from, or giving to, an employee, a Member of Congress, or an officer of a uniformed service, a thing of value for political purposes and provided for removal from service of employee for violation, prior to the general revision of this subchapter by Pub. L. 103–94.

AMENDMENTS

1994—Subsec. (b)(2)(B)(i)(XIII). Pub. L. 103–359 added subcl. (XIII).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7325, 7326 of this title; title 18 sections 602, 603.

§ 7324. Political activities on duty; prohibition

(a) An employee may not engage in political activity—

(1) while the employee is on duty;

(2) in any room or building occupied in the discharge of official duties by an individual employed or holding office in the Government of the United States or any agency or instrumentality thereof;

(3) while wearing a uniform or official insignia identifying the office or position of the employee; or

(4) using any vehicle owned or leased by the Government of the United States or any agency or instrumentality thereof.

(b)(1) An employee described in paragraph (2) of this subsection may engage in political activity otherwise prohibited by subsection (a) if the costs associated with that political activity are not paid for by money derived from the Treasury of the United States.

(2) Paragraph (1) applies to an employee—

(A) the duties and responsibilities of whose position continue outside normal duty hours and while away from the normal duty post; and

(B) who is—

(i) an employee paid from an appropriation for the Executive Office of the President; or

(ii) an employee appointed by the President, by and with the advice and consent of the Senate, whose position is located within the United States, who determines policies to be pursued by the United States in relations with foreign powers or in the nationwide administration of Federal laws.

(Added Pub. L. 103–94, §2(a), Oct. 6, 1993, 107 Stat. 1003.)

PRIOR PROVISIONS

A prior section 7324, Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 525; Pub. L. 93–268, §4(a), Apr. 17, 1974, 88 Stat. 87, prohibited Executive agency employees and employees of the District of Columbia from influencing elections or taking part in political campaigns, prior to the general revision of this subchapter by Pub. L. 103–94.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7326 of this title; title 18 sections 602, 603; title 42 section 2000e–4; title 50 App. section 463.

§ 7325. Political activity permitted; employees residing in certain municipalities

The Office of Personnel Management may prescribe regulations permitting employees, without regard to the prohibitions in paragraphs (2) and (3) of section 7323(a) of this title, to take an active part in political management and political campaigns involving the municipality or other political subdivision in which they reside, to the extent the Office considers it to be in their domestic interest, when—

(1) the municipality or political subdivision is in Maryland or Virginia and in the immediate vicinity of the District of Columbia, or is a municipality in which the majority of voters are employed by the Government of the United States; and

(2) the Office determines that because of special or unusual circumstances which exist in the municipality or political subdivision it is in the domestic interest of the employees and individuals to permit that political participation.

(Added Pub. L. 103–94, § 2(a), Oct. 6, 1993, 107 Stat. 1004.)

PRIOR PROVISIONS

A prior section 7325, Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 526; Pub. L. 96–54, § 2(a)(44), Aug. 14, 1979, 93 Stat. 384, related to penalties, prior to the general revision of this subchapter by Pub. L. 103–94.

§ 7326. Penalties

An employee or individual who violates section 7323 or 7324 of this title shall be removed from his position, and funds appropriated for the position from which removed thereafter may not be used to pay the employee or individual. However, if the Merit System Protection Board finds by unanimous vote that the violation does not warrant removal, a penalty of not less than 30 days' suspension without pay shall be imposed by direction of the Board.

(Added Pub. L. 103–94, § 2(a), Oct. 6, 1993, 107 Stat. 1004.)

PRIOR PROVISIONS

A prior section 7326, Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 526, authorized nonpartisan political activities, prior to the general revision of this subchapter by Pub. L. 103–94.

A prior section 7327, Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 526; Pub. L. 96–54, § 2(a)(14), (15), Aug. 14, 1979, 93 Stat. 382; Pub. L. 97–468, title VI, § 615(b)(1)(E), Jan. 14, 1983, 96 Stat. 2578, related to permitted political activity in certain municipalities where employees reside, prior to the general revision of this subchapter by Pub. L. 103–94.

A prior section 7328, added Pub. L. 96–191, § 8(e)(1), Feb. 15, 1980, 94 Stat. 33, exempted employees of the General Accounting Office from provisions of this subchapter, prior to the general revision of this subchapter by Pub. L. 103–94.

SUBCHAPTER IV—FOREIGN GIFTS AND DECORATIONS

AMENDMENTS

1967—Pub. L. 90–83, § 1(45)(A), Sept. 11, 1967, 81 Stat. 208, substituted ''FOREIGN GIFTS AND DECORATIONS'' for ''FOREIGN DECORATIONS'' in subchapter heading.

[§ 7341. Repealed. Pub. L. 90–83, § 1(45)(B), Sept. 11, 1967, 81 Stat. 208]

Section, Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 526, related to receipt and display of foreign decorations. See section 7342 of this title.

§ 7342. Receipt and disposition of foreign gifts and decorations

(a) For the purpose of this section—

(1) ''employee'' means—

(A) an employee as defined by section 2105 of this title and an officer or employee of the United States Postal Service or of the Postal Rate Commission;

(B) an expert or consultant who is under contract under section 3109 of this title with the United States or any agency, department, or establishment thereof, including, in the case of an organization performing services under such section, any individual involved in the performance of such services;

(C) an individual employed by, or occupying an office or position in, the government of a territory or possession of the United States or the government of the District of Columbia;

(D) a member of a uniformed service;

(E) the President and the Vice President;

(F) a Member of Congress as defined by section 2106 of this title (except the Vice President) and any Delegate to the Congress; and

(G) the spouse of an individual described in subparagraphs (A) through (F) (unless such individual and his or her spouse are separated) or a dependent (within the meaning of section 152 of the Internal Revenue Code of 1986) of such an individual, other than a spouse or dependent who is an employee under subparagraphs (A) through (F);

(2) ''foreign government'' means—

(A) any unit of foreign governmental authority, including any foreign national, State, local, and municipal government;

(B) any international or multinational organization whose membership is composed of any unit of foreign government described in subparagraph (A); and

(C) any agent or representative of any such unit or such organization, while acting as such;

(3) ''gift'' means a tangible or intangible present (other than a decoration) tendered by, or received from, a foreign government;

(4) ''decoration'' means an order, device, medal, badge, insignia, emblem, or award tendered by, or received from, a foreign government;

(5) ''minimal value'' means a retail value in the United States at the time of acceptance of $100 or less, except that—

(A) on January 1, 1981, and at 3 year intervals thereafter, ''minimal value'' shall be redefined in regulations prescribed by the Administrator of General Services, in consultation with the Secretary of State, to reflect changes in the consumer price index for the immediately preceding 3-year period; and

(B) regulations of an employing agency may define ''minimal value'' for its employ-

ees to be less than the value established under this paragraph; and

(6) ''employing agency'' means—

(A) the Committee on Standards of Official Conduct of the House of Representatives, for Members and employees of the House of Representatives, except that those responsibilities specified in subsections (c)(2)(A), (e)(1), and (g)(2)(B) shall be carried out by the Clerk of the House;

(B) the Select Committee on Ethics of the Senate, for Senators and employees of the Senate, except that those responsibilities (other than responsibilities involving approval of the employing agency) specified in subsections (c)(2), (d), and (g)(2)(B) shall be carried out by the Secretary of the Senate;

(C) the Administrative Office of the United States Courts, for judges and judicial branch employees; and

(D) the department, agency, office, or other entity in which an employee is employed, for other legislative branch employees and for all executive branch employees.

(b) An employee may not—

(1) request or otherwise encourage the tender of a gift or decoration; or

(2) accept a gift or decoration, other than in accordance with the provisions of subsections (c) and (d).

(c)(1) The Congress consents to—

(A) the accepting and retaining by an employee of a gift of minimal value tendered and received as a souvenir or mark of courtesy; and

(B) the accepting by an employee of a gift of more than minimal value when such gift is in the nature of an educational scholarship or medical treatment or when it appears that to refuse the gift would likely cause offense or embarrassment or otherwise adversely affect the foreign relations of the United States, except that—

(i) a tangible gift of more than minimal value is deemed to have been accepted on behalf of the United States and, upon acceptance, shall become the property of the United States; and

(ii) an employee may accept gifts of travel or expenses for travel taking place entirely outside the United States (such as transportation, food, and lodging) of more than minimal value if such acceptance is appropriate, consistent with the interests of the United States, and permitted by the employing agency and any regulations which may be prescribed by the employing agency.

(2) Within 60 days after accepting a tangible gift of more than minimal value (other than a gift described in paragraph (1)(B)(ii)), an employee shall—

(A) deposit the gift for disposal with his or her employing agency; or

(B) subject to the approval of the employing agency, deposit the gift with that agency for official use.

Within 30 days after terminating the official use of a gift under subparagraph (B), the employing agency shall forward the gift to the Administrator of General Services in accordance with subsection (e)(1) or provide for its disposal in accordance with subsection (e)(2).

(3) When an employee deposits a gift of more than minimal value for disposal or for official use pursuant to paragraph (2), or within 30 days after accepting travel or travel expenses as provided in paragraph (1)(B)(ii) unless such travel or travel expenses are accepted in accordance with specific instructions of his or her employing agency, the employee shall file a statement with his or her employing agency or its delegate containing the information prescribed in subsection (f) for that gift.

(d) The Congress consents to the accepting, retaining, and wearing by an employee of a decoration tendered in recognition of active field service in time of combat operations or awarded for other outstanding or unusually meritorious performance, subject to the approval of the employing agency of such employee. Without this approval, the decoration is deemed to have been accepted on behalf of the United States, shall become the property of the United States, and shall be deposited by the employee, within sixty days of acceptance, with the employing agency for official use, for forwarding to the Administrator of General Services for disposal in accordance with subsection (e)(1), or for disposal in accordance with subsection (e)(2).

(e)(1) Except as provided in paragraph (2), gifts and decorations that have been deposited with an employing agency for disposal shall be (A) returned to the donor, or (B) forwarded to the Administrator of General Services for transfer, donation, or other disposal in accordance with the provisions of the Federal Property and Administrative Services Act of 1949. However, no gift or decoration that has been deposited for disposal may be sold without the approval of the Secretary of State, upon a determination that the sale will not adversely affect the foreign relations of the United States. Gifts and decorations may be sold by negotiated sale.

(2) Gifts and decorations received by a Senator or an employee of the Senate that are deposited with the Secretary of the Senate for disposal, or are deposited for an official use which has terminated, shall be disposed of by the Commission on Arts and Antiquities of the United States Senate. Any such gift or decoration, may be returned by the Commission to the donor or may be transferred or donated by the Commission, subject to such terms and conditions as it may prescribe, (A) to an agency or instrumentality of (i) the United States, (ii) a State, territory, or possession of the United States, or a political subdivision of the foregoing, or (iii) the District of Columbia, or (B) to an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 which is exempt from taxation under section 501(a) of such Code. Any such gift or decoration not disposed of as provided in the preceding sentence shall be forwarded to the Administrator of General Services for disposal in accordance with paragraph (1). If the Administrator does not dispose of such gift or decoration within one year, he shall, at the request of the Commission, return it to the Commission and the Commission may dispose of such gift or decoration in such manner as it considers proper, ex-

cept that such gift or decoration may be sold only with the approval of the Secretary of State upon a determination that the sale will not adversely affect the foreign relations of the United States.

(f)(1) Not later than January 31 of each year, each employing agency or its delegate shall compile a listing of all statements filed during the preceding year by the employees of that agency pursuant to subsection (c)(3) and shall transmit such listing to the Secretary of State who shall publish a comprehensive listing of all such statements in the Federal Register.

(2) Such listings shall include for each tangible gift reported—

(A) the name and position of the employee;

(B) a brief description of the gift and the circumstances justifying acceptance;

(C) the identity, if known, of the foreign government and the name and position of the individual who presented the gift;

(D) the date of acceptance of the gift;

(E) the estimated value in the United States of the gift at the time of acceptance; and

(F) disposition or current location of the gift.

(3) Such listings shall include for each gift of travel or travel expenses—

(A) the name and position of the employee;

(B) a brief description of the gift and the circumstances justifying acceptance; and

(C) the identity, if known, of the foreign government and the name and position of the individual who presented the gift.

(4) In transmitting such listings for the Central Intelligence Agency, the Director of Central Intelligence may delete the information described in subparagraphs (A) and (C) of paragraphs (2) and (3) if the Director certifies in writing to the Secretary of State that the publication of such information could adversely affect United States intelligence sources.

(g)(1) Each employing agency shall prescribe such regulations as may be necessary to carry out the purpose of this section. For all employing agencies in the executive branch, such regulations shall be prescribed pursuant to guidance provided by the Secretary of State. These regulations shall be implemented by each employing agency for its employees.

(2) Each employing agency shall—

(A) report to the Attorney General cases in which there is reason to believe that an employee has violated this section;

(B) establish a procedure for obtaining an appraisal, when necessary, of the value of gifts; and

(C) take any other actions necessary to carry out the purpose of this section.

(h) The Attorney General may bring a civil action in any district court of the United States against any employee who knowingly solicits or accepts a gift from a foreign government not consented to by this section or who fails to deposit or report such gift as required by this section. The court in which such action is brought may assess a penalty against such employee in any amount not to exceed the retail value of the gift improperly solicited or received plus $5,000.

(i) The President shall direct all Chiefs of a United States Diplomatic Mission to inform their host governments that it is a general policy of the United States Government to prohibit United States Government employees from receiving gifts or decorations of more than minimal value.

(j) Nothing in this section shall be construed to derogate any regulation prescribed by any employing agency which provides for more stringent limitations on the receipt of gifts and decorations by its employees.

(k) The provisions of this section do not apply to grants and other forms of assistance to which section 108A of the Mutual Educational and Cultural Exchange Act of 1961 applies.

(Added Pub. L. 90–83, § 1(45)(C), Sept. 11, 1967, 81 Stat. 208; amended Pub. L. 95–105, title V, § 515(a)(1), Aug. 17, 1977, 91 Stat. 862; Pub. L. 95–426, title VII, § 712(a)–(c), Oct. 7, 1978, 92 Stat. 994; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095.)

HISTORICAL AND REVISION NOTES

Section of title 5	*Source (U.S.Code)*	*Source (Statutes at Large)*
7342(a)	22:2621.	Oct. 15, 1966, Pub. L. 89–673, § 2, 80 Stat. 952.
7342(b)	22:2622.	Oct. 15, 1966, Pub. L. 89–673, § 3, 80 Stat. 952.
7342(c)	22:2623.	Oct. 15, 1966, Pub. L. 89–673, § 4, 80 Stat. 952.
7342(d)	22:2624.	Oct. 15, 1966, Pub. L. 89–673, § 5, 80 Stat. 952.
7342(e)	22:2626.	Oct. 15, 1966, Pub. L. 89–673, § 7, 80 Stat. 952.

The definitions of ''employee'' and ''uniformed services'' in 5 U.S.C. 2105 and 2101 are broad enough to cover the persons included in 22 U.S.C. 2621(1) with the exception of (1) individuals employed by, or occupying an office or position in, the government of a territory or possession of the United States or of the District of Columbia, (2) the President, and (3) Members of Congress, who, accordingly, are covered in paragraphs (B), (D), and (E). As the Canal Zone Government is an independent agency of the United States, see section 31 of title 2, Canal Zone Code, an employee thereof is an ''employee'' as defined in 5 U.S.C. 2105.

In subsection (b), the words ''An employee may not'' are substituted for ''No person shall'' to conform to the definition applicable and style of title 5, United States Code.

In subsection (c), the words ''under regulations prescribed under this section'' are substituted for ''in accordance with the rules and regulations issued pursuant to this Act''.

In subsection (e), the words ''The President may prescribe regulations to carry out the purpose of this section'' are substituted for ''Rules and regulations to carry out the purposes of this Act may be prescribed by or under the authority of the President''. Under 3 U.S.C. 301, the President may delegate the authority vested in him by this subsection.

REFERENCES IN TEXT

Section 152 of the Internal Revenue Code of 1986, referred to in subsec. (a)(1)(G), is classified to section 152 of Title 26, Internal Revenue Code.

The Federal Property and Administrative Services Act of 1949, as amended, referred to in subsec. (e)(1), is act June 30, 1949, ch. 288, 63 Stat. 377, as amended. Provisions of that act relating to disposal of government property are classified to chapter 10 (§ 471 et seq.) of Title 40, Public Buildings, Property, and Works. For complete classification of this Act to the Code, see Short Title note set out under section 471 of Title 40 and Tables.

Section 501 of the Internal Revenue Code of 1986, referred to in subsec. (e)(2), is classified to section 501 of Title 26, Internal Revenue Code.

Section 108A of the Mutual Educational and Cultural Exchange Act of 1961, referred to in subsec. (k), is classified to section 2458a of Title 22, Foreign Relations and Intercourse.

AMENDMENTS

1986—Subsecs. (a)(1)(G), (e)(2). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

1978—Subsec. (a)(6)(A). Pub. L. 95–426, §712(a)(1), substituted ''(e)(1)'' for ''(e)''.

Subsec. (a)(6)(B). Pub. L. 95–426, §712(a)(2), inserted '', except that those responsibilities (other than responsibilities involving approval of the employing agency) specified in subsection (c)(2), (d), and (g)(2)(B) shall be carried out by the Secretary of the Senate''.

Subsec. (c)(2). Pub. L. 95–426, §712(b)(1), substituted ''subsection (e)(1) or provide for its disposal in accordance with subsection (e)(2)'' for ''subsection (e)''.

Subsec. (d). Pub. L. 95–426, §712(b)(2), substituted ''official use, for forwarding'', for ''official use, or forwarding'', and ''subsection (e)(1), or for disposal in accordance with subsection (e)(2)'' for ''subsection (e)''.

Subsec. (e). Pub. L. 95–426, §712(c), designated existing provisions as par. (1), substituted ''Except as provided in paragraph (2), gifts'' for ''Gifts'', ''(A)'' and ''(B)'' for ''(1)'' and ''(2)'', respectively, and added par. (2).

1977—Subsec. (a). Pub. L. 95–105 in par. (1) inserted provisions expanding definition of ''employee'' to include an officer or employee of the United States Postal Service or Postal Rate Commission, certain experts and consultants, the Vice President, and any Delegate to Congress, in par. (2) incorporated existing provisions into subpars. (A) and (C) and added subpar. (B), in par. (3) substituted reference to tangible or intangible present for reference to present, in par. (4) inserted reference to award, and added pars. (5) and (6).

Subsec. (b). Pub. L. 95–105 designated existing provisions as par. (1) and added par. (2).

Subsec. (c). Pub. L. 95–105 incorporated existing provisions of pars. (1) and (2) into par. (1), inserted provisions giving congressional consent to acceptance of a gift in the nature of an educational scholarship, medical treatment, or travel or travel expenses, and added pars. (2) and (3).

Subsec. (d). Pub. L. 95–105 struck out provisions requiring the Secretary of State to concur with the approval of the employing agency and substituted provisions requiring the employee to deposit property within 60 days of acceptance with the employing agency for official use or forwarding to the Administrator of General Services for disposal for provisions requiring the employee to deposit the decoration for use and disposal as the property of the United States under regulations prescribed under this section.

Subsec. (e). Pub. L. 95–105 substituted provisions relating to the disposal of decorations for provisions authorizing the President to prescribe regulations to carry out the purposes of this section.

Subsecs. (f) to (k). Pub. L. 95–105 added subsecs. (f) to (k).

EFFECTIVE DATE OF 1977 AMENDMENT

Section 515(a)(2) of Pub. L. 95–105 provided that: ''The amendment made by paragraph (1) of this subsection [amending this section] shall take effect on January 1, 1978.''

TRANSFER OF FUNCTIONS

Certain functions of Clerk of House of Representatives transferred to Director of Non-legislative and Financial Services by section 7 of House Resolution No. 423, One Hundred Second Congress, Apr. 9, 1992. Director of Non-legislative and Financial Services replaced by Chief Administrative Officer of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

LEASING OF SPACE AND FACILITIES FOR STORING AND SAFEGUARDING PROPERTY

Section 712(d) of Pub. L. 95–426 provided that: ''In the event that the space and facilities available to the Secretary of the Senate for carrying out his responsibilities in storing and safeguarding property in his custody under section 7342 of title 5, United States Code, are insufficient for such purpose, he may, with the approval of the Committee on Rules and Administration of the Senate, lease such space and facilities as may be necessary for such purpose. Rental payments under any such lease and expenses incurred in connection therewith shall be paid from the contingent fund of the Senate upon vouchers approved by the Secretary of the Senate.''

WEARING OF CERTAIN DECORATIONS

Section 33A of act Aug. 10, 1956, ch. 1041, as added by Pub. L. 85–861, Sept. 2, 1958, §33(e), 72 Stat. 1567, provided: ''A member or former member of an armed force of the United States holding any office of profit or trust under the United States may wear any decoration, order, medal, or emblem accepted (1) under the Act of July 20, 1942, chapter 508 (56 Stat. 662), or (2) before August 1, 1947, from the government of a cobelligerent or neutral nation or an American Republic.''

EXECUTIVE ORDER NO. 11320

Ex. Ord. No. 11320, Dec. 12, 1966, 31 F.R. 15789, which delegated to the Secretary of State the authority of the President under 22 U.S.C. 2626 to prescribe rules and regulations to carry out the Foreign Gifts and Decorations Act of 1966, was revoked by Ex. Ord. No. 12553, Feb. 25, 1986, 51 F.R. 7237.

EX ORD. NO. 11446. ACCEPTANCE OF SERVICE MEDALS AND RIBBONS FROM MULTILATERAL ORGANIZATIONS OTHER THAN UNITED NATIONS

Ex. Ord. No. 11446, Jan. 16, 1969, 34 F.R. 803, provided: By virtue of the authority vested in me as President of the United States and as Commander in Chief of the Armed Forces of the United States, I hereby authorize the Secretary of Defense, with respect to members of the Army, Navy, Air Force, and Marine Corps, and the Secretary of Transportation, with respect to members of the Coast Guard when it is not operating as a service in the Navy, to prescribe regulations for the acceptance of medals and ribbons which are offered by multilateral organizations, other than the United Nations, to members of the Armed Forces of the United States in recognition of service conducted under the auspices of those organizations. A determination that service for a multilateral organization in a particular geographical area or for a particular purpose constitutes a justifiable basis for authorizing acceptance of the medal or ribbon offered to eligible members of the Armed Forces of the United States shall be made with the concurrence of the Secretary of State.

LYNDON B. JOHNSON.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 2 section 31–2; title 15 section 278g; title 22 sections 2458a, 2694; title 31 section 1353.

SUBCHAPTER V—MISCONDUCT

§ 7351. Gifts to superiors

(a) An employee may not—

(1) solicit a contribution from another employee for a gift to an official superior;

(2) make a donation as a gift or give a gift to an official superior; or

(3) accept a gift from an employee receiving less pay than himself.

(b) An employee who violates this section shall be subject to appropriate disciplinary action by the employing agency or entity.

(c) Each supervising ethics office (as defined in section 7353(d)(1)) is authorized to issue regulations implementing this section, including regulations exempting voluntary gifts or contributions that are given or received for special occasions such as marriage or retirement or under other circumstances in which gifts are traditionally given or exchanged.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 527; Pub. L. 101–194, title III, § 301, Nov. 30, 1989, 103 Stat. 1745; Pub. L. 101–280, § 4(a), May 4, 1990, 104 Stat. 157.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 113.	R.S. § 1784.

The application of the section is confined to employees, since the President and Members of Congress, though officers, could not have been intended to be ''summarily discharged'', and members of uniformed services are not covered by this statute. In the last sentence, the word ''removed'' is substituted for ''summarily discharged'' because of the provisions of the Lloyd-LaFollette Act, 37 Stat. 555, as amended, and the Veterans' Preference Act of 1944, 58 Stat. 387, as amended, which are carried into this title.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1990—Subsec. (a)(2). Pub. L. 101–280, § 4(a)(1), inserted ''or give a gift'' after ''donation as a gift''.

Subsec. (c). Pub. L. 101–280, § 4(a)(2), substituted ''Each supervising ethics office (as defined in section 7353(d)(1))'' for ''The Office of Government Ethics'' and ''circumstances in which gifts are traditionally given or exchanged'' for ''similar circumstances''.

1989—Pub. L. 101–194 designated existing provisions as subsec. (a), struck out ''An employee who violates this section shall be removed from the service.'' at end, and added subsecs. (b) and (c).

INAPPLICABILITY TO TRANSFERS OF UNUSED ACCRUED ANNUAL LEAVE BY FEDERAL EMPLOYEES; EXCEPTION

Pub. L. 100–284, Apr. 7, 1988, 102 Stat. 81, provided: ''That, except as the Office of Personnel Management may by regulation prescribe, nothing in section 7351 of title 5, United States Code, shall apply with respect to a solicitation, donation, or acceptance of leave under any program under which, during the fiscal year ending on September 30, 1988, unused accrued annual leave of officers or employees of the Federal Government may be transferred for use by other officers or employees who need such leave due to a personal emergency.''

CROSS REFERENCES

Removals from competitive civil service only for cause, see section 7501 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6340, 6367 of this title.

§ 7352. Excessive and habitual use of intoxicants

An individual who habitually uses intoxicating beverages to excess may not be employed in the competitive service.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 527.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 640.	Jan. 16, 1883, ch. 27, § 8, 22 Stat. 406.

The word ''employed'' is substituted for ''appointed to, or retained in'' because it includes both.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 22 section 3622.

§ 7353. Gifts to Federal employees

(a) Except as permitted by subsection (b), no Member of Congress or officer or employee of the executive, legislative, or judicial branch shall solicit or accept anything of value from a person—

(1) seeking official action from, doing business with, or (in the case of executive branch officers and employees) conducting activities regulated by, the individual's employing entity; or

(2) whose interests may be substantially affected by the performance or nonperformance of the individual's official duties.

(b)(1) Each supervising ethics office is authorized to issue rules or regulations implementing the provisions of this section and providing for such reasonable exceptions as may be appropriate.

(2)(A) Subject to subparagraph (B), a Member, officer, or employee may accept a gift pursuant to rules or regulations established by such individual's supervising ethics office pursuant to paragraph (1).

(B) No gift may be accepted pursuant to subparagraph (A) in return for being influenced in the performance of any official act.

(3) Nothing in this section precludes a Member, officer, or employee from accepting gifts on behalf of the United States Government or any of its agencies in accordance with statutory authority.

(c) A Member of Congress or an officer or employee who violates this section shall be subject to appropriate disciplinary and other remedial action in accordance with any applicable laws, Executive orders, and rules or regulations.

(d) For purposes of this section—

(1) the term ''supervising ethics office'' means—

(A) the Committee on Standards of Official Conduct of the House of Representatives or the House of Representatives as a whole, for Members, officers, and employees of the House of Representatives;

(B) the Select Committee on Ethics of the Senate, or the Senate as a whole, for Senators, officers, and employees of the Senate;

(C) the Judicial Conference of the United States for judges and judicial branch officers and employees;

(D) the Office of Government Ethics for all executive branch officers and employees; and

(E) in the case of legislative branch officers and employees other than those specified in subparagraphs (A) and (B), the com-

mittee referred to in either such subparagraph to which reports filed by such officers and employees under title I of the Ethics in Government Act of 1978 are transmitted under such title, except that the authority of this section may be delegated by such committee with respect to such officers and employees; and

(2) the term ''officer or employee'' means an individual holding an appointive or elective position in the executive, legislative, or judicial branch of Government, other than a Member of Congress.

(Added Pub. L. 101–194, title III, §303(a), Nov. 30, 1989, 103 Stat. 1746; amended Pub. L. 101–280, §4(d), May 4, 1990, 104 Stat. 158.)

REFERENCES IN TEXT

The Ethics in Government Act of 1978, referred to in subsec. (d)(1)(E), is Pub. L. 95–521, Oct. 26, 1978, 92 Stat. 1824, as amended. Title I of the Act, which was classified principally to chapter 18 (§701 et seq.) of Title 2, The Congress, was amended generally by Pub. L. 101–194, title II, §202, Nov. 30, 1989, 103 Stat. 1724, and as so amended, is set out in the Appendix to this title. For complete classification of this Act to the Code, see Short Title note set out under section 101 of Pub. L. 95–521 in the Appendix to this title and Tables.

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–280, §4(d)(1)(A), substituted ''branch'' for ''branches'' in introductory provisions.

Subsec. (a)(1). Pub. L. 101–280, §4(d)(1)(B), substituted ''by, the'' for ''by the'' and ''entity'' for ''agency''.

Subsec. (c). Pub. L. 101–280, §4(d)(2), substituted ''A Member of Congress or an officer or employee'' for ''An employee''.

Subsec. (d)(1)(B). Pub. L. 101–280, §4(d)(3)(A)(i), substituted ''officers,'' for ''officers''.

Subsec. (d)(1)(E). Pub. L. 101–280, §4(d)(3)(A)(ii), amended subpar. (E) generally. Prior to amendment, subpar. (E) read as follows: ''the ethics committee with which the officer or employee is required to file financial disclosure forms, for all legislative branch officers and employees other than those specified in subparagraphs (A) and (B), except that such authority may be delegated; and''.

Subsec. (d)(2). Pub. L. 101–280, §4(d)(3)(B), substituted ''Government,'' for ''Government''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7351 of this title.

SUBCHAPTER VI—DRUG ABUSE, ALCOHOL ABUSE, AND ALCOHOLISM

§ 7361. Drug abuse

(a) The Office of Personnel Management shall be responsible for developing, in cooperation with the President, with the Secretary of Health and Human Services (acting through the National Institute on Drug Abuse), and with other agencies, and in accordance with applicable provisions of this subchapter, appropriate prevention, treatment, and rehabilitation programs and services for drug abuse among employees. Such agencies are encouraged to extend, to the extent feasible, such programs and services to the families of employees and to employees who have family members who are drug abusers. Such programs and services shall make optimal use of existing governmental facilities, services, and skills.

(b) Section 527[1] of the Public Health Service Act (42 U.S.C. 290ee–3), relating to confidentiality of records, and any regulations prescribed thereunder, shall apply with respect to records maintained for the purpose of carrying out this section.

(c) Each agency shall, with respect to any programs or services provided by such agency, submit such written reports as the Office may require in connection with any report required under section 7363 of this title.

(d) For the purpose of this section, the term ''agency'' means an Executive agency.

(Added Pub. L. 99–570, title VI, §6002(a)(1), Oct. 27, 1986, 100 Stat. 3207–157.)

REFERENCES IN TEXT

Section 527 of the Public Health Service Act, referred to in subsec. (b) and formerly classified to section 290ee–3 of Title 42, The Public Health and Welfare, was renumbered section 548 of that Act by Pub. L. 100–77, title VI, §611(2), July 22, 1987, 101 Stat. 516 and then omitted in the general revision of Part D of Subchapter III–A of Chapter 6A of Title 42 by Pub. L. 102–321, title I, §131, July 10, 1992, 106 Stat. 366. Provisions relating to the confidentiality of patient records are now classified to section 290dd–2 of Title 42.

EDUCATIONAL PROGRAM FOR FEDERAL EMPLOYEES RELATING TO DRUG AND ALCOHOL ABUSE

Section 6003 of Pub. L. 99–570 provided that:

''(a) ESTABLISHMENT.—The Director of the Office of Personnel Management shall, in consultation with the Secretary of Health and Human Services, establish a Government-wide education program, using seminars and such other methods as the Director considers appropriate, to carry out the purposes prescribed in subsection (b).

''(b) PURPOSES.—The program established under this section shall be designed to provide information to Federal Government employees with respect to—

''(1) the short-term and long-term health hazards associated with alcohol abuse and drug abuse;

''(2) the symptoms of alcohol abuse and drug abuse;

''(3) the availability of any prevention, treatment, or rehabilitation programs or services relating to alcohol abuse or drug abuse, whether provided by the Federal Government or otherwise;

''(4) confidentiality protections afforded in connection with any prevention, treatment, or rehabilitation programs or services;

''(5) any penalties provided under law or regulation, and any administrative action (permissive or mandatory), relating to the use of alcohol or drugs by a Federal Government employee or the failure to seek or receive appropriate treatment or rehabilitation services; and

''(6) any other matter which the Director considers appropriate.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7363 of this title.

§ 7362. Alcohol abuse and alcoholism

(a) The Office of Personnel Management shall be responsible for developing, in cooperation with the Secretary of Health and Human Services and with other agencies, and in accordance with applicable provisions of this subpart, appropriate prevention, treatment, and rehabilitation programs and services for alcohol abuse and alcoholism among employees. Such agencies are encouraged to extend, to the extent feasible,

[1] See References in Text note below.

such programs and services to the families of alcoholic employees and to employees who have family members who are alcoholics. Such programs and services shall make optimal use of existing governmental facilities, services, and skills.

(b) Section 523[1] of the Public Health Service Act (42 U.S.C. 290dd–3), relating to confidentiality of records, and any regulations prescribed thereunder, shall apply with respect to records maintained for the purpose of carrying out this section.

(c) Each agency shall, with respect to any programs or services provided by such agency, submit such written reports as the Office may require in connection with any report required under section 7363 of this title.

(d) For the purpose of this section, the term ''agency'' means an Executive agency.

(Added Pub. L. 99–570, title VI, § 6002(a)(1), Oct. 27, 1986, 100 Stat. 3207–157.)

REFERENCES IN TEXT

Section 523 of the Public Health Service Act, referred to in subsec. (b) and formerly classified to section 290dd–3 of Title 42, The Public Health and Welfare, was renumbered section 544 of that Act by Pub. L. 100–77, title VI, § 611(2), July 22, 1987, 101 Stat. 516 and then omitted in the general revision of Part D of Subchapter III–A of Chapter 6A of Title 42 by Pub. L. 102–321, title I, § 131, July 10, 1992, 106 Stat. 366. Provisions relating to the confidentiality of patient records are now classified to section 290dd–2 of Title 42.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7363 of this title.

§ 7363. Reports to Congress

(a) The Office of Personnel Management shall, within 6 months after the date of the enactment of the Federal Employee Substance Abuse Education and Treatment Act of 1986 and annually thereafter, submit to each House of Congress a report containing the matters described in subsection (b).

(b) Each report under this section shall include—

(1) a description of any programs or services provided under section 7361 or 7362 of this title, including the costs associated with each such program or service and the source and adequacy of any funding[1] such program or service;

(2) a description of the levels of participation in each program and service provided under section 7361 or 7362 of this title, and the effectiveness of such programs and services;

(3) a description of the training and qualifications required of the personnel providing any program or service under section 7361 or 7362 of this title;

(4) a description of the training given to supervisory personnel in connection with recognizing the symptoms of drug or alcohol abuse and the procedures (including those relating to confidentiality) under which individuals are referred for treatment, rehabilitation, or other assistance;

(5) any recommendations for legislation considered appropriate by the Office and any proposed administrative actions; and

(6) information describing any other related activities under section 7904 of this title, and any other matter which the Office considers appropriate.

(Added Pub. L. 99–570, title VI, § 6002(a)(1), Oct. 27, 1986, 100 Stat. 3207–158.)

REFERENCES IN TEXT

The date of the enactment of the Federal Employee Substance Abuse Education and Treatment Act of 1986, referred to in subsec. (a), is the date of enactment of title VI of Pub. L. 99–570 which was approved Oct. 27, 1986.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7361, 7362 of this title.

CHAPTER 75—ADVERSE ACTIONS

SUBCHAPTER I—SUSPENSION OF[1] 14 DAYS OR LESS

Sec.
7501. Definitions.
7502. Actions covered.
7503. Cause and procedure.
7504. Regulations.

SUBCHAPTER II—REMOVAL, SUSPENSION FOR MORE THAN 14 DAYS, REDUCTION IN GRADE OR PAY, OR FURLOUGH FOR 30 DAYS OR LESS

7511. Definitions; application.
7512. Actions covered.
7513. Cause and procedure.
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SUBCHAPTER III—ADMINISTRATIVE LAW JUDGES

7521. Actions against administrative law judges.

SUBCHAPTER IV—NATIONAL SECURITY

7531. Definitions.
7532. Suspension and removal.
7533. Effect on other statutes.

SUBCHAPTER V—SENIOR EXECUTIVE SERVICE

7541. Definitions.
7542. Actions covered.
7543. Cause and procedure.

AMENDMENTS

1978—Pub. L. 95–454, title II, § 204(b), title IV, § 411(1), Oct. 13, 1978, 92 Stat. 1137, 1173, substituted ''SUSPENSION OF 14 DAYS OR LESS'' for ''COMPETITIVE SERVICE'' in subchapter I heading, substituted ''Definitions'' for ''Cause; procedure; exception'' in item 7501, added items 7502 to 7504, substituted ''REMOVAL, SUSPENSION FOR MORE THAN 14 DAYS, REDUCTION IN GRADE OR PAY, OR FURLOUGH FOR 30 DAYS OR LESS'' for ''PREFERENCE ELIGIBLES'' in subchapter II heading, inserted ''; application'' in item 7511, substituted ''Actions covered'' for ''Cause; procedure; exception'' in item 7512, added items 7513 and 7514, substituted ''ADMINISTRATIVE LAW JUDGES'' for ''HEARING EXAMINERS'' in subchapter III heading, substituted ''Actions against administrative law judges'' for ''Removal'' in item 7521, and added subchapter V heading and items 7541 to 7543.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 2108, 2302, 3382 of this title; title 31 section 732; title 39 section 1005; title 41 section 423; title 42 section 237.

[1] See References in Text note below.

[1] So in original. Probably should be followed by ''of''.

[1] So in original. Does not conform to subchapter heading.

SUBCHAPTER I—SUSPENSION FOR 14 DAYS OR LESS

AMENDMENTS

1978—Pub. L. 95–454, title II, §204(a), Oct. 13, 1978, 92 Stat. 1134, substituted ''SUSPENSION FOR 14 DAYS OR LESS'' for ''COMPETITIVE SERVICE'' in subchapter heading.

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 3303 of this title.

§ 7501. Definitions

For the purpose of this subchapter—

(1) ''employee'' means an individual in the competitive service who is not serving a probationary or trial period under an initial appointment or who has completed 1 year of current continuous employment in the same or similar positions under other than a temporary appointment limited to 1 year or less; and

(2) ''suspension'' means the placing of an employee, for disciplinary reasons, in a temporary status without duties and pay.

(Added Pub. L. 95–454, title II, §204(a), Oct. 13, 1978, 92 Stat. 1134.)

PRIOR PROVISIONS

A prior section 7501, Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 527, related to removal or suspension without pay of an individual in the competitive service and procedures applicable to such removal or suspension, prior to repeal by Pub. L. 95–454, §204(a).

EFFECTIVE DATE

Subchapter effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

SHORT TITLE OF 1990 AMENDMENT

Pub. L. 101–376, §1, Aug. 17, 1990, 104 Stat. 461, provided that: ''This Act [amending sections 4303, 7511, and 7701 of this title and enacting provisions set out as notes under section 4303 of this title] may be cited as the 'Civil Service Due Process Amendments'.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7511, 7541 of this title.

§ 7502. Actions covered

This subchapter applies to a suspension for 14 days or less, but does not apply to a suspension under section 7521 or 7532 of this title or any action initiated under section 1215 of this title.

(Added Pub. L. 95–454, title II, §204(a), Oct. 13, 1978, 92 Stat. 1135; amended Pub. L. 101–12, §9(a)(2), Apr. 10, 1989, 103 Stat. 35.)

AMENDMENTS

1989—Pub. L. 101–12 substituted ''1215'' for ''1206''.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–12 effective 90 days following Apr. 10, 1989, see section 11 of Pub. L. 101–12, set out as a note under section 1201 of this title.

§ 7503. Cause and procedure

(a) Under regulations prescribed by the Office of Personnel Management, an employee may be suspended for 14 days or less for such cause as will promote the efficiency of the service (including discourteous conduct to the public confirmed by an immediate supervisor's report of four such instances within any one-year period or any other pattern of discourteous conduct).

(b) An employee against whom a suspension for 14 days or less is proposed is entitled to—

(1) an advance written notice stating the specific reasons for the proposed action;

(2) a reasonable time to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer;

(3) be represented by an attorney or other representative; and

(4) a written decision and the specific reasons therefor at the earliest practicable date.

(c) Copies of the notice of proposed action, the answer of the employee if written, a summary thereof if made orally, the notice of decision and reasons therefor, and any order effecting[1] the suspension, together with any supporting material, shall be maintained by the agency and shall be furnished to the Merit Systems Protection Board upon its request and to the employee affected upon the employee's request.

(Added Pub. L. 95–454, title II, §204(a), Oct. 13, 1978, 92 Stat. 1135.)

§ 7504. Regulations

The Office of Personnel Management may prescribe regulations to carry out the purpose of this subchapter.

(Added Pub. L. 95–454, title II, §204(a), Oct. 13, 1978, 92 Stat. 1135.)

SUBCHAPTER II—REMOVAL, SUSPENSION FOR MORE THAN 14 DAYS, REDUCTION IN GRADE OR PAY, OR FURLOUGH FOR 30 DAYS OR LESS

AMENDMENTS

1978—Pub. L. 95–454, title II, §204(a), Oct. 13, 1978, 92 Stat. 1135, substituted ''REMOVAL, SUSPENSION FOR MORE THAN 14 DAYS, REDUCTION IN GRADE OR PAY, OR FURLOUGH FOR 30 DAYS OR LESS'' for ''PREFERENCE ELIGIBLES'' in subchapter heading.

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 3303, 4303, 7541, 7701 of this title; title 22 section 3701; title 39 section 1005.

§ 7511. Definitions; application

(a) For the purpose of this subchapter—

(1) ''employee'' means—

(A) an individual in the competitive service—

(i) who is not serving a probationary or trial period under an initial appointment; or

(ii) who has completed 1 year of current continuous service under other than a temporary appointment limited to 1 year or less;

(B) a preference eligible in the excepted service who has completed 1 year of current

[1] So in original. Probably should be ''affecting''.

continuous service in the same or similar positions—

(i) in an Executive agency; or

(ii) in the United States Postal Service or Postal Rate Commission; and

(C) an individual in the excepted service (other than a preference eligible)—

(i) who is not serving a probationary or trial period under an initial appointment pending conversion to the competitive service; or

(ii) who has completed 2 years of current continuous service in the same or similar positions in an Executive agency under other than a temporary appointment limited to 2 years or less;

(2) ''suspension'' has the same meaning as set forth in section 7501(2) of this title;

(3) ''grade'' means a level of classification under a position classification system;

(4) ''pay'' means the rate of basic pay fixed by law or administrative action for the position held by an employee; and

(5) ''furlough'' means the placing of an employee in a temporary status without duties and pay because of lack of work or funds or other nondisciplinary reasons.

(b) This subchapter does not apply to an employee—

(1) whose appointment is made by and with the advice and consent of the Senate;

(2) whose position has been determined to be of a confidential, policy-determining, policy-making or policy-advocating character by—

(A) the President for a position that the President has excepted from the competitive service;

(B) the Office of Personnel Management for a position that the Office has excepted from the competitive service; or

(C) the President or the head of an agency for a position excepted from the competitive service by statute;

(3) whose appointment is made by the President;

(4) who is receiving an annuity from the Civil Service Retirement and Disability Fund, or the Foreign Service Retirement and Disability Fund, based on the service of such employee;

(5) who is described in section 8337(h)(1), relating to technicians in the National Guard;

(6) who is a member of the Foreign Service, as described in section 103 of the Foreign Service Act of 1980;

(7) whose position is within the Central Intelligence Agency or the General Accounting Office;

(8) whose position is within the United States Postal Service, the Postal Rate Commission, the Panama Canal Commission, the Tennessee Valley Authority, the Federal Bureau of Investigation, the National Security Agency, the Defense Intelligence Agency, the Central Imagery Office, or an intelligence activity of a military department covered under section 1590 of title 10, unless subsection (a)(1)(B) of this section or section 1005(a) of title 39 is the basis for this subchapter's applicability;

(9) who is described in section 5102(c)(11) of this title; or

(10) who holds a position within the Veterans Health Administration which has been excluded from the competitive service by or under a provision of title 38, unless such employee was appointed to such position under section 7401(3) of such title.

(c) The Office may provide for the application of this subchapter to any position or group of positions excepted from the competitive service by regulation of the Office which is not otherwise covered by this subchapter.

(Added Pub. L. 95–454, title II, § 204(a), Oct. 13, 1978, 92 Stat. 1135; amended Pub. L. 101–376, § 2(a), Aug. 17, 1990, 104 Stat. 461; Pub. L. 102–378, § 6(a), Oct. 2, 1992, 106 Stat. 1358; Pub. L. 103–359, title V, § 501(*l*), Oct. 14, 1994, 108 Stat. 3430.)

REFERENCES IN TEXT

Section 103 of the Foreign Service Act of 1980, referred to in subsec. (b)(6), is classified to section 3903 of Title 22, Foreign Relations and Intercourse.

PRIOR PROVISIONS

A prior section 7511, Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 528; Pub. L. 94–183, § 2(30), Dec. 31, 1975, 89 Stat. 1058, defined ''preference eligible employee'' and ''adverse action'' for purposes of this subchapter, prior to repeal by Pub. L. 95–454, § 204(a).

AMENDMENTS

1994—Subsec. (b)(8). Pub. L. 103–359 inserted ''the Central Imagery Office,'' after ''Defense Intelligence Agency,''.

1992—Subsec. (b)(7). Pub. L. 102–378, § 6(a)(1), amended par. (7) generally. Prior to amendment, par. (7) read as follows: ''whose position is with the Central Intelligence Agency, the General Accounting Office, or the Veterans Health Services and Research Administration;''.

Subsec. (b)(10). Pub. L. 102–378, § 6(a)(2)–(4), added par. (10).

1990—Pub. L. 101–376 amended section generally. Prior to amendment, section read as follows:

''(a) For the purpose of this subchapter—

''(1) 'employee' means—

''(A) an individual in the competitive service who is not serving a probationary or trial period under an initial appointment or who has completed 1 year of current continuous employment under other than a temporary appointment limited to 1 year or less; and

''(B) a preference eligible in an Executive agency in the excepted service, and a preference eligible in the United States Postal Service or the Postal Rate Commission, who has completed 1 year of current continuous service in the same or similar positions;

''(2) 'suspension' has the meaning as set forth in section 7501(2) of this title;

''(3) 'grade' means a level of classification under a position classification system;

''(4) 'pay' means the rate of basic pay fixed by law or administrative action for the position held by an employee; and

''(5) 'furlough' means the placing of an employee in a temporary status without duties and pay because of lack of work or funds or other nondisciplinary reasons.

''(b) This subchapter does not apply to an employee—

''(1) whose appointment is made by and with the advice and consent of the Senate;

''(2) whose position has been determined to be of a confidential, policy-determining, policy-making or policy-advocating character by—

''(A) the Office of Personnel Management for a position that it has excepted from the competitive service; or

''(B) the President or the head of an agency for a position which is excepted from the competitive service by statute.

''(c) The Office may provide for the application of this subchapter to any position or group of positions excepted from the competitive service by regulation of the Office.''

EFFECTIVE DATE OF 1992 AMENDMENT

Section 6(b) of Pub. L. 102–378 provided that:

''(1) The amendments made by subsection (a) [amending this section] shall apply with respect to any personnel action taking effect on or after the date of enactment of this Act [Oct. 2, 1992].

''(2) In the case of an employee or former employee of the Veterans Health Administration (or predecessor agency in name)—

''(A) against whom an adverse personnel action was taken before the date of enactment of this Act,

''(B) who, as a result of the enactment of the Civil Service Due Process Amendments (5 U.S.C. 7501 note) [Pub. L. 101–376], became ineligible to appeal such action to the Merit Systems Protection Board,

''(C) as to whom that appeal right is restored as a result of the enactment of subsection (a), or would have been restored but for the passage of time, and

''(D) who is not precluded, by section 7121(e)(1) of title 5, United States Code, from appealing to the Merit Systems Protection Board,

the deadline for bringing an appeal under section 7513(d) or section 4303(e) of such title with respect to such action shall be the latter of—

''(i) the 60th day after the date of enactment of this Act; or

''(ii) the deadline which would otherwise apply if this paragraph had not been enacted.''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–376 applicable with respect to any personnel action taking effect on or after Aug. 17, 1990, see section 2(c) of Pub. L. 101–376, set out as a note under section 4303 of this title.

EFFECTIVE DATE

Subchapter effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 20 section 241; title 22 sections 1438, 3701; title 25 sections 2011, 2012; title 32 section 709; title 39 section 1005; title 49 section 44506.

§ 7512. Actions covered

This subchapter applies to—

(1) a removal;

(2) a suspension for more than 14 days;

(3) a reduction in grade;

(4) a reduction in pay; and

(5) a furlough of 30 days or less;

but does not apply to—

(A) a suspension or removal under section 7532 of this title,

(B) a reduction-in-force action under section 3502 of this title,

(C) the reduction in grade of a supervisor or manager who has not completed the probationary period under section 3321(a)(2) of this title if such reduction is to the grade held immediately before becoming such a supervisor or manager,

(D) a reduction in grade or removal under section 4303 of this title, or

(E) an action initiated under section 1215 or 7521 of this title.

(Added Pub. L. 95–454, title II, § 204(a), Oct. 13, 1978, 92 Stat. 1136; amended Pub. L. 101–12, § 9(a)(2), Apr. 10, 1989, 103 Stat. 35.)

PRIOR PROVISIONS

A prior section 7512, Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 528, related to adverse action against a preference eligible employee and procedures applicable to such adverse action, prior to repeal by Pub. L. 95–454, § 204(a).

AMENDMENTS

1989—Par. (E). Pub. L. 101–12 substituted ''1215'' for ''1206''.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–12 effective 90 days following Apr. 10, 1989, see section 11 of Pub. L. 101–12, set out as a note under section 1201 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3315, 5545a, 7121 of this title; title 20 section 241; title 22 sections 1438, 3701; title 32 section 709; title 50 sections 832, 833.

§ 7513. Cause and procedure

(a) Under regulations prescribed by the Office of Personnel Management, an agency may take an action covered by this subchapter against an employee only for such cause as will promote the efficiency of the service.

(b) An employee against whom an action is proposed is entitled to—

(1) at least 30 days' advance written notice, unless there is reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed, stating the specific reasons for the proposed action;

(2) a reasonable time, but not less than 7 days, to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer;

(3) be represented by an attorney or other representative; and

(4) a written decision and the specific reasons therefor at the earliest practicable date.

(c) An agency may provide, by regulation, for a hearing which may be in lieu of or in addition to the opportunity to answer provided under subsection (b)(2) of this section.

(d) An employee against whom an action is taken under this section is entitled to appeal to the Merit Systems Protection Board under section 7701 of this title.

(e) Copies of the notice of proposed action, the answer of the employee when written, a summary thereof when made orally, the notice of decision and reasons therefor, and any order effecting an action covered by this subchapter, together with any supporting material, shall be maintained by the agency and shall be furnished to the Board upon its request and to the employee affected upon the employee's request.

(Added Pub. L. 95–454, title II, § 204(a), Oct. 13, 1978, 92 Stat. 1136.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1221 of this title; title 38 sections 7101, 7101A.

§ 7514. Regulations

The Office of Personnel Management may prescribe regulations to carry out the purpose of

this subchapter, except as it concerns any matter with respect to which the Merit Systems Protection Board may prescribe regulations.

(Added Pub. L. 95–454, title II, §204(a), Oct. 13, 1978, 92 Stat. 1137.)

SUBCHAPTER III—ADMINISTRATIVE LAW JUDGES

AMENDMENTS

1978—Pub. L. 95–454, title II, §204(a), Oct. 13, 1978, 92 Stat. 1137, substituted ''ADMINISTRATIVE LAW JUDGES'' for ''HEARING EXAMINERS'' in subchapter heading.

§ 7521. Actions against administrative law judges

(a) An action may be taken against an administrative law judge appointed under section 3105 of this title by the agency in which the administrative law judge is employed only for good cause established and determined by the Merit Systems Protection Board on the record after opportunity for hearing before the Board.

(b) The actions covered by this section are—

(1) a removal;
(2) a suspension;
(3) a reduction in grade;
(4) a reduction in pay; and
(5) a furlough of 30 days or less;

but do not include—

(A) a suspension or removal under section 7532 of this title;

(B) a reduction-in-force action under section 3502 of this title; or

(C) any action initiated under section 1215 of this title.

(Added Pub. L. 95–454, title II, §204(a), Oct. 13, 1978, 92 Stat. 1137; amended Pub. L. 101–12, §9(a)(2), Apr. 10, 1989, 103 Stat. 35.)

PRIOR PROVISIONS

A prior section 7521, Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 528; Pub. L. 95–251, §2(a)(1), Mar. 27, 1978, 92 Stat. 183, related to removal of an administrative law judge appointed under section 3105 of this title, prior to repeal by Pub. L. 95–454, §204(a).

AMENDMENTS

1989—Subsec. (b)(C). Pub. L. 101–12 substituted ''1215'' for ''1206''.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–12 effective 90 days following Apr. 10, 1989, see section 11 of Pub. L. 101–12, set out as a note under section 1201 of this title.

EFFECTIVE DATE

Section effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 559, 1305, 7502, 7512 of this title; title 15 section 1715; title 29 section 661; title 30 section 823; title 38 sections 7101, 7101A; title 39 section 3601; title 42 sections 2000e–4, 3608.

SUBCHAPTER IV—NATIONAL SECURITY

§ 7531. Definitions

For the purpose of this subchapter, ''agency'' means—

(1) the Department of State;
(2) the Department of Commerce;
(3) the Department of Justice;
(4) the Department of Defense;
(5) a military department;
(6) the Coast Guard;
(7) the Atomic Energy Commission;
(8) the National Aeronautics and Space Administration; and
(9) such other agency of the Government of the United States as the President designates in the best interests of national security.

The President shall report any designation to the Committees on the Armed Services of the Congress.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 528.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 22–3.	Aug. 26, 1950, ch. 823, §3, 64 Stat. 477.

Paragraphs (1)–(8) are supplied on authority of former section 22–1, which is carried in part into section 7532. The references to ''the Foreign Service of the United States'' and ''several field services'' are omitted as unnecessary since they are within the agencies concerned. The words ''military departments'' are substituted for the enumeration of the military departments in view of the definition of ''military department'' in section 102.

The reference to the National Security Resources Board is omitted as the Board was abolished by 1953 Reorg. Plan No. 3, §6, eff. June 12, 1953, 67 Stat. 636.

Paragraph (9) is restated to conform to the style of this title.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

CHANGE OF NAME

Committee on Armed Services of House of Representatives changed to Committee on National Security of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

ABOLITION OF ATOMIC ENERGY COMMISSION

Atomic Energy Commission abolished and functions transferred by sections 5814 and 5841 of Title 42, The Public Health and Welfare. See, also, Transfer of Functions notes set out under those sections.

PANAMA CANAL AND PANAMA RAILROAD COMPANY

Ex. Ord. No. 10237, Apr. 27, 1951, 16 F.R. 3627, made the provisions of former sections 22–1 and 22–3 of this title [see Disposition Table preceding section 101 of this title] applicable to the Panama Canal Government and to the Panama Canal Company.

DESIGNATION OF NATIONAL SECURITY AGENCY, DEFENSE INTELLIGENCE AGENCY, AND DEFENSE MAPPING AGENCY AS ''AGENCIES''

Memorandum of the President of the United States, May 23, 1988, 53 F.R. 26023, provided:

Memorandum for the Secretary of Defense

I have reviewed the personnel security requirements of the National Security Agency, the Defense Intelligence Agency, and the Defense Mapping Agency and the termination provisions of 5 U.S.C. Section 7532. I have determined that these Agencies are sensitive agencies and that it is in the best interests of national security that they be designated ''agencies'' within the meaning of that section.

Therefore, pursuant to the authority set forth in 5 U.S.C. Section 7531(9), I hereby designate the National

Security Agency, the Defense Intelligence Agency, and the Defense Mapping Agency as ''agencies'' within the meaning of 5 U.S.C. Section 7532.

You are hereby authorized and directed to report these designations to the Committees on Armed Services of the Congress and to publish this memorandum in the Federal Register.

RONALD REAGAN.

§ 7532. Suspension and removal

(a) Notwithstanding other statutes, the head of an agency may suspend without pay an employee of his agency when he considers that action necessary in the interests of national security. To the extent that the head of the agency determines that the interests of national security permit, the suspended employee shall be notified of the reasons for the suspension. Within 30 days after the notification, the suspended employee is entitled to submit to the official designated by the head of the agency statements or affidavits to show why he should be restored to duty.

(b) Subject to subsection (c) of this section, the head of an agency may remove an employee suspended under subsection (a) of this section when, after such investigation and review as he considers necessary, he determines that removal is necessary or advisable in the interests of national security. The determination of the head of the agency is final.

(c) An employee suspended under subsection (a) of this section who—

(1) has a permanent or indefinite appointment;

(2) has completed his probationary or trial period; and

(3) is a citizen of the United States;

is entitled, after suspension and before removal, to—

(A) a written statement of the charges against him within 30 days after suspension, which may be amended within 30 days thereafter and which shall be stated as specifically as security considerations permit;

(B) an opportunity within 30 days thereafter, plus an additional 30 days if the charges are amended, to answer the charges and submit affidavits;

(C) a hearing, at the request of the employee, by an agency authority duly constituted for this purpose;

(D) a review of his case by the head of the agency or his designee, before a decision adverse to the employee is made final; and

(E) a written statement of the decision of the head of the agency.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 529.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 22–1 (less 3d–5th provisos).	Aug. 26, 1950, ch. 803, §1 (less 3d–5th provisos), 64 Stat. 476. July 29, 1958, Pub. L. 85–568, §301(c), 72 Stat. 432.

The application of this section is covered by the definition in section 7531.

In subsection (a), the words ''Notwithstanding the provisions of section 652 of this title'' are omitted but are carried into section 7501(c). The words ''in his absolute discretion'' are omitted as unnecessary in view of the permissive grant of authority. The word ''reinstated'' is omitted as it is commonly used in other statutes to denote action different from that referred to here.

In subsections (b) and (c), the words ''remove'' and ''removal'' are coextensive with and substituted for ''terminate the employment'', ''termination'', and ''employment is terminated'', as appropriate.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

CROSS REFERENCES

National Security Agency—

Board of appraisal, personnel appraisal not prerequisite to action under this section, see section 832 of Title 50, War and National Defense.

Employment, termination notwithstanding this section, see section 833 of Title 50.

Restoration to duty of persons suspended or removed under this section, see section 3571 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3393, 3571, 7121, 7312, 7502, 7512, 7521, 7542 of this title; title 50 sections 832, 833.

§ 7533. Effect on other statutes

This subchapter does not impair the powers vested in the Atomic Energy Commission by chapter 23 of title 42, or the requirement in section 2201(d) of title 42 that adequate provision be made for administrative review of a determination to dismiss an employee of the Atomic Energy Commission.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 529.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 22–2.	Aug. 26, 1950, ch. 803, §2, 64 Stat. 477.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

TRANSFER OF FUNCTIONS

Atomic Energy Commission abolished and functions transferred by sections 5814 and 5841 of Title 42, The Public Health and Welfare. See, also, Transfer of Functions notes set out under those sections.

SUBCHAPTER V—SENIOR EXECUTIVE SERVICE

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 7701 of this title; title 38 section 7425.

§ 7541. Definitions

For the purpose of this subchapter—

(1) ''employee'' means a career appointee in the Senior Executive Service who—

(A) has completed the probationary period prescribed under section 3393(d) of this title; or

(B) was covered by the provisions of subchapter II of this chapter immediately before appointment to the Senior Executive Service; and

(2) ''suspension'' has the meaning set forth in section 7501(2) of this title.

(Added Pub. L. 95–454, title IV, § 411(2), Oct. 13, 1978, 92 Stat. 1174.)

EFFECTIVE DATE

Subchapter effective 9 months after Oct. 13, 1978, and congressional review of provisions of sections 401 through 412 of Pub. L. 95–454, see section 415 of Pub. L. 95–454, set out as a note under section 3131 of this title.

§ 7542. Actions covered

This subchapter applies to a removal from the civil service or suspension for more than 14 days, but does not apply to an action initiated under section 1215 of this title, to a suspension or removal under section 7532 of this title, or to a removal under section 3592 or 3595 of this title.

(Added Pub. L. 95–454, title IV, § 411(2), Oct. 13, 1978, 92 Stat. 1174; amended Pub. L. 97–35, title XVII, § 1704(d)(1), Aug. 13, 1981, 95 Stat. 758; Pub. L. 101–12, § 9(a)(2), Apr. 10, 1989, 103 Stat. 35.)

AMENDMENTS

1989—Pub. L. 101–12 substituted ''1215'' for ''1206''.

1981—Pub. L. 97–35 inserted reference to section 3595 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–12 effective 90 days following Apr. 10, 1989, see section 11 of Pub. L. 101–12, set out as a note under section 1201 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective June 1, 1981, with certain exceptions and conditions, see section 1704(e) of Pub. L. 97–35, set out as an Effective Date note under section 3595 of this title.

§ 7543. Cause and procedure

(a) Under regulations prescribed by the Office of Personnel Management, an agency may take an action covered by this subchapter against an employee only for misconduct, neglect of duty, malfeasance, or failure to accept a directed reassignment or to accompany a position in a transfer of function.

(b) An employee against whom an action covered by this subchapter is proposed is entitled to—

(1) at least 30 days' advance written notice, unless there is reasonable cause to believe that the employee has committed a crime for which a sentence of imprisonment can be imposed, stating specific reasons for the proposed action;

(2) a reasonable time, but not less than 7 days, to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer;

(3) be represented by an attorney or other representative; and

(4) a written decision and specific reasons therefor at the earliest practicable date.

(c) An agency may provide, by regulation, for a hearing which may be in lieu of or in addition to the opportunity to answer provided under subsection (b)(2) of this section.

(d) An employee against whom an action is taken under this section is entitled to appeal to the Merit Systems Protection Board under section 7701 of this title.

(e) Copies of the notice of proposed action, the answer of the employee when written, and a summary thereof when made orally, the notice of decision and reasons therefor, and any order effecting an action covered by this subchapter, together with any supporting material, shall be maintained by the agency and shall be furnished to the Merit Systems Protection Board upon its request and to the employee affected upon the employee's request.

(Added Pub. L. 95–454, title IV, § 411(2), Oct. 13, 1978, 92 Stat. 1174; amended Pub. L. 97–35, title XVII, § 1704(d)(2), Aug. 13, 1981, 95 Stat. 758; Pub. L. 98–615, title III, § 304(c), Nov. 8, 1984, 98 Stat. 3219.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98–615 inserted reference to failure to accept a directed reassignment or to accompany a position in a transfer of function.

1981—Subsec. (a). Pub. L. 97–35 substituted ''misconduct, neglect of duty, or malfeasance'' for ''such cause as will promote the efficiency of the service''.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–615 effective Nov. 8, 1984, see section 307 of Pub. L. 98–615, set out as a note under section 3135 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective June 1, 1981, with certain exceptions and conditions, see section 1704(e) of Pub. L. 97–35, set out as an Effective Date note under section 3595 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3151, 3393 of this title; title 10 sections 1590, 1601; title 31 section 733.

CHAPTER 77—APPEALS

Sec.
7701. Appellate procedures.
7702. Actions involving discrimination.
7703. Judicial review of decisions of the Merit Systems Protection Board.

AMENDMENTS

1978—Pub. L. 95–454, title II, § 205, Oct. 13, 1978, 92 Stat. 1138, substituted ''Appellate procedures'' for ''Appeals of preference eligibles'' in item 7701, and added items 7702 and 7703.

§ 7701. Appellate procedures

(a) An employee, or applicant for employment, may submit an appeal to the Merit Systems Protection Board from any action which is appealable to the Board under any law, rule, or regulation. An appellant shall have the right—

(1) to a hearing for which a transcript will be kept; and

(2) to be represented by an attorney or other representative.

Appeals shall be processed in accordance with regulations prescribed by the Board.

(b)(1) The Board may hear any case appealed to it or may refer the case to an administrative law judge appointed under section 3105 of this title or other employee of the Board designated by the Board to hear such cases, except that in any case involving a removal from the service, the case shall be heard by the Board, an employee experienced in hearing appeals, or an administrative law judge. The Board, administrative law judge, or other employee (as the case

may be) shall make a decision after receipt of the written representations of the parties to the appeal and after opportunity for a hearing under subsection (a)(1) of this section. A copy of the decision shall be furnished to each party to the appeal and to the Office of Personnel Management.

(2)(A) If an employee or applicant for employment is the prevailing party in an appeal under this subsection, the employee or applicant shall be granted the relief provided in the decision effective upon the making of the decision, and remaining in effect pending the outcome of any petition for review under subsection (e), unless—

(i) the deciding official determines that the granting of such relief is not appropriate; or

(ii)(I) the relief granted in the decision provides that such employee or applicant shall return or be present at the place of employment during the period pending the outcome of any petition for review under subsection (e); and

(II) the employing agency, subject to the provisions of subparagraph (B), determines that the return or presence of such employee or applicant is unduly disruptive to the work environment.

(B) If an agency makes a determination under subparagraph (A)(ii)(II) that prevents the return or presence of an employee at the place of employment, such employee shall receive pay, compensation, and all other benefits as terms and conditions of employment during the period pending the outcome of any petition for review under subsection (e).

(C) Nothing in the provisions of this paragraph may be construed to require any award of back pay or attorney fees be paid before the decision is final.

(3) With respect to an appeal from an adverse action covered by subchapter V of chapter 75, authority to mitigate the personnel action involved shall be available, subject to the same standards as would apply in an appeal involving an action covered by subchapter II of chapter 75 with respect to which mitigation authority under this section exists.

(c)(1) Subject to paragraph (2) of this subsection, the decision of the agency shall be sustained under subsection (b) only if the agency's decision—

(A) in the case of an action based on unacceptable performance described in section 4303 or a removal from the Senior Executive Service for failure to be recertified under section 3393a, is supported by substantial evidence; or

(B) in any other case, is supported by a preponderance of the evidence.

(2) Notwithstanding paragraph (1), the agency's decision may not be sustained under subsection (b) of this section if the employee or applicant for employment—

(A) shows harmful error in the application of the agency's procedures in arriving at such decision;

(B) shows that the decision was based on any prohibited personnel practice described in section 2302(b) of this title; or

(C) shows that the decision was not in accordance with law.

(d)(1) In any case in which—

(A) the interpretation or application of any civil service law, rule, or regulation, under the jurisdiction of the Office of Personnel Management is at issue in any proceeding under this section; and

(B) the Director of the Office of Personnel Management is of the opinion that an erroneous decision would have a substantial impact on any civil service law, rule, or regulation under the jurisdiction of the Office;

the Director may as a matter of right intervene or otherwise participate in that proceeding before the Board. If the Director exercises his right to participate in a proceeding before the Board, he shall do so as early in the proceeding as practicable. Nothing in this title shall be construed to permit the Office to interfere with the independent decisionmaking of the Merit Systems Protection Board.

(2) The Board shall promptly notify the Director whenever the interpretation of any civil service law, rule, or regulation under the jurisdiction of the Office is at issue in any proceeding under this section.

(e)(1) Except as provided in section 7702 of this title, any decision under subsection (b) of this section shall be final unless—

(A) a party to the appeal or the Director petitions the Board for review within 30 days after the receipt of the decision; or

(B) the Board reopens and reconsiders a case on its own motion.

The Board, for good cause shown, may extend the 30-day period referred to in subparagraph (A) of this paragraph. One member of the Board may grant a petition or otherwise direct that a decision be reviewed by the full Board. The preceding sentence shall not apply if, by law, a decision of an administrative law judge is required to be acted upon by the Board.

(2) The Director may petition the Board for a review under paragraph (1) of this subsection only if the Director is of the opinion that the decision is erroneous and will have a substantial impact on any civil service law, rule, or regulation under the jurisdiction of the Office.

(f) The Board, or an administrative law judge or other employee of the Board designated to hear a case, may—

(1) consolidate appeals filed by two or more appellants, or

(2) join two or more appeals filed by the same appellant and hear and decide them concurrently,

if the deciding official or officials hearing the cases are of the opinion that the action could result in the appeals' being processed more expeditiously and would not adversely affect any party.

(g)(1) Except as provided in paragraph (2) of this subsection, the Board, or an administrative law judge or other employee of the Board designated to hear a case, may require payment by the agency involved of reasonable attorney fees incurred by an employee or applicant for employment if the employee or applicant is the prevailing party and the Board, administrative law judge, or other employee (as the case may be) determines that payment by the agency is warranted in the interest of justice, including

any case in which a prohibited personnel practice was engaged in by the agency or any case in which the agency's action was clearly without merit.

(2) If an employee or applicant for employment is the prevailing party and the decision is based on a finding of discrimination prohibited under section 2302(b)(1) of this title, the payment of attorney fees shall be in accordance with the standards prescribed under section 706(k) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5(k)).

(h) The Board may, by regulation, provide for one or more alternative methods for settling matters subject to the appellate jurisdiction of the Board which shall be applicable at the election of an applicant for employment or of an employee who is not in a unit for which a labor organization is accorded exclusive recognition, and shall be in lieu of other procedures provided for under this section. A decision under such a method shall be final, unless the Board reopens and reconsiders a case at the request of the Office of Personnel Management under subsection (e) of this section.

(i)(1) Upon the submission of any appeal to the Board under this section, the Board, through reference to such categories of cases, or other means, as it determines appropriate, shall establish and announce publicly the date by which it intends to complete action on the matter. Such date shall assure expeditious consideration of the appeal, consistent with the interests of fairness and other priorities of the Board. If the Board fails to complete action on the appeal by the announced date, and the expected delay will exceed 30 days, the Board shall publicly announce the new date by which it intends to complete action on the appeal.

(2) Not later than March 1 of each year, the Board shall submit to the Congress a report describing the number of appeals submitted to it during the preceding fiscal year, the number of appeals on which it completed action during that year, and the number of instances during that year in which it failed to conclude a proceeding by the date originally announced, together with an explanation of the reasons therefor.

(3) The Board shall by rule indicate any other category of significant Board action which the Board determines should be subject to the provisions of this subsection.

(4) It shall be the duty of the Board, an administrative law judge, or employee designated by the Board to hear any proceeding under this section to expedite to the extent practicable that proceeding.

(j) In determining the appealability under this section of any case involving a removal from the service (other than the removal of a reemployed annuitant), neither an individual's status under any retirement system established by or under Federal statute nor any election made by such individual under any such system may be taken into account.

(k) The Board may prescribe regulations to carry out the purpose of this section.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 530; Pub. L. 95–454, title II, §205, Oct. 13, 1978, 92 Stat. 1138; Pub. L. 96–54, §2(a)(45), Aug. 14, 1979, 93 Stat. 384; Pub. L. 99–386, title II, §208, Aug. 22, 1986, 100 Stat. 824; Pub. L. 101–12, §6, Apr. 10, 1989, 103 Stat. 33; Pub. L. 101–194, title V, §506(b)(6), Nov. 30, 1989, 103 Stat. 1758; Pub. L. 101–280, §6(d)(2), May 4, 1990, 104 Stat. 160; Pub. L. 101–376, §3, Aug. 17, 1990, 104 Stat. 462; Pub. L. 102–175, §5, Dec. 2, 1991, 105 Stat. 1223; Pub. L. 102–378, §2(56), Oct. 2, 1992, 106 Stat. 1354.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 863 (less 1st 168 words, and less 2d proviso).	June 27, 1944, ch. 287, §14 (less 1st 168 words, and less 2d proviso), 58 Stat. 390. Aug. 4, 1947, ch. 447, 61 Stat. 723.
.....	5 U.S.C. 868 (proviso).	June 22, 1948, ch. 604, 62 Stat. 575.

The application of the section is established by the words ''A preference eligible employee as defined by section 7511 of this title''. Specific mention of the actions appealable are covered by the reference to ''an adverse decision under section 7512 of this title''. The words ''administrative authority'' are substituted for ''administrative officer'' to avoid conflict with the definitions of ''employee'' and ''officer'' in chapter 21 of this title and to include an individual who is employed by the government of the District of Columbia or who is a member of a uniformed service as such an individual could have been an ''administrative officer'' under former section 863. The words ''the date of'' in the phrase ''after the date of receipt of notice'' are omitted as unnecessary. The words ''reasonable rules and'' in the phrase ''reasonable rules and regulations'' are omitted as unnecessary. The word ''proper'' in the phrase ''proper administrative officer'' is omitted as unnecessary. The word ''designated'' in the phrase ''designated representative'' is omitted as unnecessary.

Standard changes are made to conform with the definitions applicable and the style of this title outlined in preface to the report.

REFERENCES IN TEXT

The civil service law, referred to in subsecs. (d) and (e)(2), is set out in this title. See, particularly, section 3301 et seq. of this title.

AMENDMENTS

1992—Subsec. (c)(1)(A). Pub. L. 102–378 amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''in the case of an action based on unacceptable performance described in section 4303 or a removal from the Senior Executive Service for failure to be recertified under section 3393a of this title, is supported by substantial evidence, or''.

1991—Subsec. (b)(3). Pub. L. 102–175 added par. (3).

1990—Subsec. (c)(1)(A). Pub. L. 101–280 amended Pub. L. 101–194, see 1989 Amendment note below.

Subsecs. (j), (k). Pub. L. 101–376 added subsec. (j) and redesignated former subsec. (j) as (k).

1989—Subsec. (b). Pub. L. 101–12 designated existing provisions as par. (1) and added par. (2).

Subsec. (c)(1)(A). Pub. L. 101–194, as amended by Pub. L. 101–280, which directed the substitution of ''or a removal from the Senior Executive Service for failure to be recertified under section 3393a of'' for ''of'', was executed by making the substitution for the second reference to ''of'' as the probable intent of Congress.

1986—Subsec. (i)(2). Pub. L. 99–386 substituted ''fiscal'' for ''calendar''.

1979—Subsec. (e)(1). Pub. L. 96–54, §2(a)(45)(A), substituted ''administrative'' for ''administration''.

Subsec. (g)(1). Pub. L. 96–54, §2(a)(45)(B), substituted ''(as the case may be)'' for '', as the case may be,''.

Subsec. (h). Pub. L. 96–54, §2(a)(45)(C), substituted ''subsection (e)'' for ''subsection (d)''.

1978—Pub. L. 95–454 substituted ''Appellate procedures'' for ''Appeals of preference eligibles'' in section catchline, and in text substituted provisions relating to procedures applicable with respect to the Merit Systems Protection Board for an employee or applicant for employment, for provisions relating to appeals of preference eligible employees.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–376 effective Aug. 17, 1990, and applicable with respect to any appeal or other proceeding brought on or after such date, see section 4 of Pub. L. 101–376, set out as a note under section 4303 of this title.

EFFECTIVE DATE OF 1989 AMENDMENTS

Amendment by Pub. L. 101–194 effective Jan. 1, 1991, see section 506(d) of Pub. L. 101–194, set out as a note under section 3151 of this title.

Amendment by Pub. L. 101–12 effective 90 days following Apr. 10, 1989, see section 11 of Pub. L. 101–12, set out as a note under section 1201 of this title.

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.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

SAVINGS PROVISION

For effect of Pub. L. 101–12 on orders, rules, and regulations issued before effective date of Pub. L. 101–12, administrative proceedings pending at time provisions of Pub. L. 101–12 take effect, and suits and other proceedings as in effect immediately before effective date of Pub. L. 101–12, see section 7 of Pub. L. 101–12, set out as a note under section 1201 of this title.

EXECUTIVE ORDER NO. 11787

Ex. Ord. No. 11787, June 11, 1974, 39 F.R. 20675; Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, which provided that the appeals system established by the Merit Systems Protection Board is the sole system of appeal for an employee covered by that appeal system, was revoked by Ex. Ord. No. 12553, Feb. 25, 1986, 51 F.R. 7237.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1212, 2105, 3395a, 3592, 3593, 3595, 4303, 5596, 7121, 7513, 7543, 7702, 7703, 8347, 8451, 8461 of this title; title 20 section 241; title 22 sections 1438, 4137; title 28 section 569; title 31 section 753.

§ 7702. Actions involving discrimination

(a)(1) Notwithstanding any other provision of law, and except as provided in paragraph (2) of this subsection, in the case of any employee or applicant for employment who—

(A) has been affected by an action which the employee or applicant may appeal to the Merit Systems Protection Board, and

(B) alleges that a basis for the action was discrimination prohibited by—

(i) section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16),

(ii) section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)),

(iii) section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791),

(iv) sections 12 and 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631, 633a), or

(v) any rule, regulation, or policy directive prescribed under any provision of law described in clauses (i) through (iv) of this subparagraph,

the Board shall, within 120 days of the filing of the appeal, decide both the issue of discrimination and the appealable action in accordance with the Board's appellate procedures under section 7701 of this title and this section.

(2) In any matter before an agency which involves—

(A) any action described in paragraph (1)(A) of this subsection; and

(B) any issue of discrimination prohibited under any provision of law described in paragraph (1)(B) of this subsection;

the agency shall resolve such matter within 120 days. The decision of the agency in any such matter shall be a judicially reviewable action unless the employee appeals the matter to the Board under paragraph (1) of this subsection.

(3) Any decision of the Board under paragraph (1) of this subsection shall be a judicially reviewable action as of—

(A) the date of issuance of the decision if the employee or applicant does not file a petition with the Equal Employment Opportunity Commission under subsection (b)(1) of this section, or

(B) the date the Commission determines not to consider the decision under subsection (b)(2) of this section.

(b)(1) An employee or applicant may, within 30 days after notice of the decision of the Board under subsection (a)(1) of this section, petition the Commission to consider the decision.

(2) The Commission shall, within 30 days after the date of the petition, determine whether to consider the decision. A determination of the Commission not to consider the decision may not be used as evidence with respect to any issue of discrimination in any judicial proceeding concerning that issue.

(3) If the Commission makes a determination to consider the decision, the Commission shall, within 60 days after the date of the determination, consider the entire record of the proceedings of the Board and, on the basis of the evidentiary record before the Board, as supplemented under paragraph (4) of this subsection, either—

(A) concur in the decision of the Board; or

(B) issue in writing another decision which differs from the decision of the Board to the extent that the Commission finds that, as a matter of law—

(i) the decision of the Board constitutes an incorrect interpretation of any provision of any law, rule, regulation, or policy directive referred to in subsection (a)(1)(B) of this section, or

(ii) the decision involving such provision is not supported by the evidence in the record as a whole.

(4) In considering any decision of the Board under this subsection, the Commission may refer the case to the Board, or provide on its own, for the taking (within such period as permits the Commission to make a decision within

the 60-day period prescribed under this subsection) of additional evidence to the extent it considers necessary to supplement the record.

(5)(A) If the Commission concurs pursuant to paragraph (3)(A) of this subsection in the decision of the Board, the decision of the Board shall be a judicially reviewable action.

(B) If the Commission issues any decision under paragraph (3)(B) of this subsection, the Commission shall immediately refer the matter to the Board.

(c) Within 30 days after receipt by the Board of the decision of the Commission under subsection (b)(5)(B) of this section, the Board shall consider the decision and—

(1) concur and adopt in whole the decision of the Commission; or

(2) to the extent that the Board finds that, as a matter of law, (A) the Commission decision constitutes an incorrect interpretation of any provision of any civil service law, rule, regulation or policy directive, or (B) the Commission decision involving such provision is not supported by the evidence in the record as a whole—

(i) reaffirm the initial decision of the Board; or

(ii) reaffirm the initial decision of the Board with such revisions as it determines appropriate.

If the Board takes the action provided under paragraph (1), the decision of the Board shall be a judicially reviewable action.

(d)(1) If the Board takes any action under subsection (c)(2) of this section, the matter shall be immediately certified to a special panel described in paragraph (6) of this subsection. Upon certification, the Board shall, within 5 days (excluding Saturdays, Sundays, and holidays), transmit to the special panel the administrative record in the proceeding, including—

(A) the factual record compiled under this section,

(B) the decisions issued by the Board and the Commission under this section, and

(C) any transcript of oral arguments made, or legal briefs filed, before the Board or the Commission.

(2)(A) The special panel shall, within 45 days after a matter has been certified to it, review the administrative record transmitted to it and, on the basis of the record, decide the issues in dispute and issue a final decision which shall be a judicially reviewable action.

(B) The special panel shall give due deference to the respective expertise of the Board and Commission in making its decision.

(3) The special panel shall refer its decision under paragraph (2) of this subsection to the Board and the Board shall order any agency to take any action appropriate to carry out the decision.

(4) The special panel shall permit the employee or applicant who brought the complaint and the employing agency to appear before the panel to present oral arguments and to present written arguments with respect to the matter.

(5) Upon application by the employee or applicant, the Commission may issue such interim relief as it determines appropriate to mitigate any exceptional hardship the employee or applicant might otherwise incur as a result of the certification of any matter under this subsection, except that the Commission may not stay, or order any agency to review on an interim basis, the action referred to in subsection (a)(1) of this section.

(6)(A) Each time the Board takes any action under subsection (c)(2) of this section, a special panel shall be convened which shall consist of—

(i) an individual appointed by the President, by and with the advice and consent of the Senate, to serve for a term of 6 years as chairman of the special panel each time it is convened;

(ii) one member of the Board designated by the Chairman of the Board each time a panel is convened; and

(iii) one member of the Commission designated by the Chairman of the Commission each time a panel is convened.

The chairman of the special panel may be removed by the President only for inefficiency, neglect of duty, or malfeasance in office.

(B) The chairman is entitled to pay at a rate equal to the maximum annual rate of basic pay payable under the General Schedule for each day he is engaged in the performance of official business on the work of the special panel.

(C) The Board and the Commission shall provide such administrative assistance to the special panel as may be necessary and, to the extent practicable, shall equally divide the costs of providing the administrative assistance.

(e)(1) Notwithstanding any other provision of law, if at any time after—

(A) the 120th day following the filing of any matter described in subsection (a)(2) of this section with an agency, there is not judicially reviewable action under this section or an appeal under paragraph (2) of this subsection;

(B) the 120th day following the filing of an appeal with the Board under subsection (a)(1) of this section, there is no judicially reviewable action (unless such action is not as the result of the filing of a petition by the employee under subsection (b)(1) of this section); or

(C) the 180th day following the filing of a petition with the Equal Employment Opportunity Commission under subsection (b)(1) of this section, there is no final agency action under subsection (b), (c), or (d) of this section;

an employee shall be entitled to file a civil action to the same extent and in the same manner as provided in section 717(c) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16(c)), section 15(c) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 633a(c)), or section 16(b) of the Fair Labor Standards Act of 1938 (29 U.S.C. 216(b)).

(2) If, at any time after the 120th day following the filing of any matter described in subsection (a)(2) of this section with an agency, there is no judicially reviewable action, the employee may appeal the matter to the Board under subsection (a)(1) of this section.

(3) Nothing in this section shall be construed to affect the right to trial de novo under any provision of law described in subsection (a)(1) of this section after a judicially reviewable action,

including the decision of an agency under subsection (a)(2) of this section.

(f) In any case in which an employee is required to file any action, appeal, or petition under this section and the employee timely files the action, appeal, or petition with an agency other than the agency with which the action, appeal, or petition is to be filed, the employee shall be treated as having timely filed the action, appeal, or petition as of the date it is filed with the proper agency.

(Added Pub. L. 95–454, title II, § 205, Oct. 13, 1978, 92 Stat. 1140; amended Pub. L. 96–54, § 2(a)(46), Aug. 14, 1979, 93 Stat. 384.)

REFERENCES IN TEXT

The civil service law, referred to in subsec. (c)(2), is set out in this title. See, particularly, section 3301 et seq. of this title. The General Schedule, referred to in subsec. (d)(6)(B), is set out under section 5332 of this title.

AMENDMENTS

1979—Subsec. (a)(1)(A). Pub. L. 96–54, § 2(a)(46)(A), substituted ''affected'' for ''effected''.

Subsec. (a)(1)(B)(i). Pub. L. 96–54, § 2(a)(46)(B), substituted ''2000e–16'' for ''2000e–16c''.

Subsec. (e)(1). Pub. L. 96–54, § 2(a)(46)(C), (D), substituted ''of this section'' for ''of this title'' in subpar. (C), and ''216(b)'' for ''216(d)'' in provision following subpar. (C).

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.

EFFECTIVE DATE

Section effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7121, 7701, 7703 of this title; title 31 section 753.

§ 7703. Judicial review of decisions of the Merit Systems Protection Board

(a)(1) Any employee or applicant for employment adversely affected or aggrieved by a final order or decision of the Merit Systems Protection Board may obtain judicial review of the order or decision.

(2) The Board shall be named respondent in any proceeding brought pursuant to this subsection, unless the employee or applicant for employment seeks review of a final order or decision on the merits on the underlying personnel action or on a request for attorney fees, in which case the agency responsible for taking the personnel action shall be the respondent.

(b)(1) Except as provided in paragraph (2) of this subsection, a petition to review a final order or final decision of the Board shall be filed in the United States Court of Appeals for the Federal Circuit. Notwithstanding any other provision of law, any petition for review must be filed within 30 days after the date the petitioner received notice of the final order or decision of the Board.

(2) Cases of discrimination subject to the provisions of section 7702 of this title shall be filed under section 717(c) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16(c)), section 15(c) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 633a(c)), and section 16(b) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 216(b)), as applicable. Notwithstanding any other provision of law, any such case filed under any such section must be filed within 30 days after the date the individual filing the case received notice of the judicially reviewable action under such section 7702.

(c) In any case filed in the United States Court of Appeals for the Federal Circuit, the court shall review the record and hold unlawful and set aside any agency action, findings, or conclusions found to be—

(1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(2) obtained without procedures required by law, rule, or regulation having been followed; or

(3) unsupported by substantial evidence;

except that in the case of discrimination brought under any section referred to in subsection (b)(2) of this section, the employee or applicant shall have the right to have the facts subject to trial de novo by the reviewing court.

(d) The Director of the Office of Personnel Management may obtain review of any final order or decision of the Board by filing a petition for judicial review in the United States Court of Appeals for the Federal Circuit if the Director determines, in his discretion, that the Board erred in interpreting a civil service law, rule, or regulation affecting personnel management and that the Board's decision will have a substantial impact on a civil service law, rule, regulation, or policy directive. If the Director did not intervene in a matter before the Board, the Director may not petition for review of a Board decision under this section unless the Director first petitions the Board for a reconsideration of its decision, and such petition is denied. In addition to the named respondent, the Board and all other parties to the proceedings before the Board shall have the right to appear in the proceeding before the Court of Appeals. The granting of the petition for judicial review shall be at the discretion of the Court of Appeals.

(Added Pub. L. 95–454, title II, § 205, Oct. 13, 1978, 92 Stat. 1143; amended Pub. L. 97–164, title I, § 144, Apr. 2, 1982, 96 Stat. 45; Pub. L. 101–12, § 10, Apr. 10, 1989, 103 Stat. 35.)

REFERENCES IN TEXT

The civil service law, referred to in subsec. (d), is set out in this title. See, particularly, section 3301 et seq. of this title.

AMENDMENTS

1989—Subsec. (a)(2). Pub. L. 101–12 amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''The Board shall be the named respondent in any proceeding brought pursuant to this subsection, unless the employee or applicant for employment seeks review of a final order or decision issued by the Board under section 7701. In review of a final order or decision issued under section 7701, the agency responsible for taking the action appealed to the Board shall be the named respondent.''

1982—Subsec. (b)(1). Pub. L. 97–164, § 144(1), substituted ''United States Court of Appeals for the Federal Circuit'' for ''Court of Claims or a United States court of

appeals as provided in chapters 91 and 158, respectively, of title 28''.

Subsec. (c). Pub. L. 97–164, § 144(2), substituted ''Court of Appeals for the Federal Circuit'' for ''Court of Claims or a United States court of appeals''.

Subsec. (d). Pub. L. 97–164, § 144(3), substituted ''United States Court of Appeals for the Federal Circuit'' for ''United States Court of Appeals for the District of Columbia''.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–12 effective 90 days following Apr. 10, 1989, see section 11 of Pub. L. 101–12, set out as a note under section 1201 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–164 effective Oct. 1, 1982, see section 402 of Pub. L. 97–164, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE

Section effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

SAVINGS PROVISION

For effect of Pub. L. 101–12 on orders, rules, and regulations issued before effective date of Pub. L. 101–12, administrative proceedings pending at time provisions of Pub. L. 101–12 take effect, and suits and other proceedings as in effect immediately before effective date of Pub. L. 101–12, see section 7 of Pub. L. 101–12 set out as a note under section 1201 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1214, 1215, 1221, 7121, 8347, 8461 of this title; title 28 section 1295; title 38 section 4324.

CHAPTER 79—SERVICES TO EMPLOYEES

Sec.
7901. Health service programs.
7902. Safety programs.
7903. Protective clothing and equipment.
7904. Employee assistance programs relating to drug abuse and alcohol abuse.
7905. Programs to encourage commuting by means other than single-occupancy motor vehicles.

AMENDMENTS

1993—Pub. L. 103–172, § 2(b), Dec. 2, 1993, 107 Stat. 1996, added item 7905.

1986—Pub. L. 99–570, title VI, § 6004(b), Oct. 27, 1986, 100 Stat. 3207–159, added item 7904.

STATE OR LOCAL GOVERNMENT PROGRAMS ENCOURAGING EMPLOYEE USE OF PUBLIC TRANSPORTATION; FEDERAL AGENCY PARTICIPATION

Pub. L. 102–241, § 44, Dec. 19, 1991, 105 Stat. 2226, provided that: ''The Department of Transportation may include military personnel of the Coast Guard in any program in which the Department participates under section 629 of the Treasury, Postal Service and General Government Appropriations Act, 1991, Public Law 101–509 [set out below], notwithstanding section 629(c)(2) of that Act.''

Pub. L. 101–509, title VI, § 629, Nov. 5, 1990, 104 Stat. 1478, authorized Federal agencies and employees to participate in State or local government programs encouraging employees to use public transportation, directed General Accounting Office, not later than June 30, 1993, to conduct a study and submit a report on the implementation of such programs, and provided that this section was repealed effective Dec. 31, 1993.

§ 7901. Health service programs

(a) The head of each agency of the Government of the United States may establish, within the limits of appropriations available, a health service program to promote and maintain the physical and mental fitness of employees under his jurisdiction.

(b) A health service program may be established by contract or otherwise, but only—

(1) after consultation with the Secretary of Health, Education, and Welfare and consideration of its recommendations; and

(2) in localities where there are a sufficient number of employees to warrant providing the service.

(c) A health service program is limited to—

(1) treatment of on-the-job illness and dental conditions requiring emergency attention;

(2) preemployment and other examinations;

(3) referral of employees to private physicians and dentists; and

(4) preventive programs relating to health.

(d) The Secretary of Health, Education, and Welfare, on request, shall review a health service program conducted under this section and shall submit comment and recommendations to the head of the agency concerned.

(e) When this section authorizes the use of the professional services of physicians, that authorization includes the use of the professional services of surgeons and osteopathic practitioners within the scope of their practice as defined by State law.

(f) The health programs conducted by the following agencies are not affected by this section—

(1) the Tennessee Valley Authority;

(2) the Canal Zone Government; and

(3) the Panama Canal Company.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 530; Pub. L. 90–83, § 1(47), Sept. 11, 1967, 81 Stat. 209.)

HISTORICAL AND REVISION NOTES

1966 ACT

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 150.	Aug. 8, 1946, ch. 865, 60 Stat. 903. Sept. 23, 1950, ch. 1010, § 8, 64 Stat. 986.

In subsection (a), the words ''agency of the Government of the United States'' are coextensive with and substituted for ''departments and agencies including Government-owned and controlled corporations'' to avoid confusion with the definitions in sections 101–105.

In subsection (d) the word ''appropriate'' in the phrase ''appropriate comment and recommendations'' is omitted as unnecessary. The words ''to the head of the agency concerned'' are added for clarity.

In subsection (e), the substance of the definition of ''physician'' in former section 790 is substituted for the reference to that section.

In subsection (f)(2) and (3), the words ''Canal Zone Government'' and ''Panama Canal Company'' are substituted for ''Panama Canal'' and ''Panama Railroad'', respectively, on the authority of the Act of Sept. 26, 1950, ch. 1049, § 2(a), 64 Stat. 1038.

The last proviso of the first sentence of the Act of Aug. 8, 1946, is omitted as executed.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 ACT

This section amends 5 U.S.C. 7901 to reflect 1966 Reorganization Plan No. 3, effective June 25, 1966, 80 Stat.

1610, section 1 of which transferred all functions of the Public Health Service to the Secretary of Health, Education, and Welfare.

REFERENCES IN TEXT

For definition of Canal Zone Government and Panama Canal Company, referred to in text, see section 3602(b) of Title 22, Foreign Relations and Intercourse.

CHANGE OF NAME

Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 3508 of Title 20, Education.

SHORT TITLE OF 1993 AMENDMENT

Pub. L. 103–172, §1(a), Dec. 2, 1993, 107 Stat. 1995, provided that: ''This Act [enacting section 7905 of this title and provisions set out as notes under section 7905 of this title] may be cited as the 'Federal Employees Clean Air Incentives Act'.''

DEMONSTRATION PROJECT: HEALTH PROTECTION; HEALTH PROMOTION; DISEASE PREVENTION; AND SECONDARY PREVENTION

Pub. L. 99–251, title I, §110, Feb. 27, 1986, 100 Stat. 17, directed Director of Office of Personnel Management to conduct a demonstration project to determine most effective method of furnishing health protection, health promotion, disease prevention, and secondary prevention services to Federal Government employees, with Director to report to Congress no later than 60 days after termination of project on Feb. 27, 1988.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 50 section 403j.

§ 7902. Safety programs

(a) For the purpose of this section—

(1) ''employee'' means an employee as defined by section 8101 of this title; and

(2) ''agency'' means an agency in any branch of the Government of the United States, including an instrumentality wholly owned by the United States, and the government of the District of Columbia.

(b) The Secretary of Labor shall carry out a safety program under section 941(b)(1) of title 33 covering the employment of each employee of an agency.

(c) The President may—

(1) establish by Executive order a safety council composed of representatives of the agencies and of labor organizations representing employees to serve as an advisory body to the Secretary in furtherance of the safety program carried out by the Secretary under subsection (b) of this section; and

(2) undertake such other measures as he considers proper to prevent injuries and accidents to employees of the agencies.

(d) The head of each agency shall develop and support organized safety promotion to reduce accidents and injuries among employees of his agency, encourage safe practices, and eliminate work hazards and health risks.

(e) Each agency shall—

(1) keep a record of injuries and accidents to its employees whether or not they result in loss of time or in the payment or furnishing of benefits; and

(2) make such statistical or other reports on such forms as the Secretary may prescribe by regulation.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 530; Pub. L. 91–596, §19(c), Dec. 29, 1970, 84 Stat. 1610.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 784 (less (a)).	Sept. 16, 1916, ch. 458, §33 (less (a)); added Dec. 22, 1944, ch. 664, 58 Stat. 887. Oct. 14, 1949, ch. 691, §209, 63 Stat. 865.

Subsection (a) is added on authority of former sections 790(b) and 794 (1st sentence), which are carried into section 8101.

The words ''Secretary of Labor'' and ''Secretary'' are substituted for ''Administrator'' on authority of section 1 of 1950 Reorg. Plan No. 19, eff. May 24, 1950, 64 Stat. 1271.

Subsection (b) is restated for clarity. The words ''under section 941(b)(1) of title 33'' are substituted for ''The provisions of section 941 of title 33 shall, insofar as not inapplicable, apply'' on authority of section 941(g)(2) of title 33. The reference to ''a safety program'' is based in part on the words ''in furtherance of the safety program carried out by the Secretary pursuant to this section'' in former section 784(c).

In subsection (d), the word ''foster'' is omitted as included in ''develop and support''. The words ''and reduce compensable injuries'' are omitted as unnecessary.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1970—Subsec. (c)(1). Pub. L. 91–596 included representatives of labor organizations representing employees.

EXECUTIVE ORDER NO. 10990

Ex. Ord. No. 10990, Feb. 5, 1962, 27 F.R. 1065, which provided for the establishment of a Federal Safety Council, was superseded by Ex. Ord. No. 11612, July 26, 1971, 36 F.R. 13891, formerly set out below.

EXECUTIVE ORDER NO. 11612

Ex. Ord. No. 11612, July 26, 1971, 36 F.R. 13891, which related to occupational safety and health programs for federal employees, was superseded by Ex. Ord. 11807, Sept. 28, 1974, 39 F.R. 35559, formerly set out below.

EXECUTIVE ORDER NO. 11807

Ex. Ord. No. 11807, Sept. 28, 1974, 39 F.R. 35559, which related to occupational safety and health programs for federal employees and continued the Federal Advisory Council on Occupational Safety and Health, was revoked by Ex. Ord. No. 12196, Feb. 26, 1980, 45 F.R. 12769, set out below.

EX. ORD. NO. 12196. OCCUPATIONAL SAFETY AND HEALTH PROGRAMS FOR FEDERAL EMPLOYEES

Ex. Ord. No. 12196, Feb. 26, 1980, 45 F.R. 12769, as amended by Ex. Ord. No. 12223, June 30, 1980, 45 F.R. 45235; Ex. Ord. No. 12608, Sept. 9, 1987, 52 F.R. 34617, provided:

By the authority vested in me as President by the Constitution and statutes of the United States of America, including Section 7902(c) of Title 5 of the United States Code and in accord with Section 19 of the Occupational Safety and Health Act of 1970, as amended (29 U.S.C 668), it is ordered:

1–1. SCOPE OF THIS ORDER

1–101. This order applies to all agencies of the Executive Branch except military personnel and uniquely military equipment, systems, and operations.

1–102. For the purposes of this order, the term ''agency'' means an Executive department, as defined in 5

U.S.C. 101, or any employing unit or authority of the Federal government, other than those of the judicial and legislative branches. Since section 19 [29 U.S.C. 668] of the Occupational Safety and Health Act (''the Act'') [29 U.S.C. 651 et seq.] covers all Federal employees, however, the Secretary of Labor (''the Secretary'') shall cooperate and consult with the heads of agencies in the legislative and judicial branches of the government to help them adopt safety and health programs.

1–2. HEADS OF AGENCIES

1–201. The head of each agency shall:

(a) Furnish to employees places and conditions of employment that are free from recognized hazards that are causing or are likely to cause death or serious physical harm.

(b) Operate an occupational safety and health program in accordance with the requirements of this order and basic program elements promulgated by the Secretary.

(c) Designate an agency official with sufficient authority to represent the interest and support of the agency head to be responsible for the management and administration of the agency occupational safety and health program.

(d) Comply with all standards issued under section 6 of the Act [29 U.S.C. 655], except where the Secretary approves compliance with alternative standards. When an agency head determines it necessary to apply a different standard, that agency head shall, after consultation with appropriate occupational safety and health committees where established, notify the Secretary and provide justification that equivalent or greater protection will be assured by the alternate standard.

(e) Assure prompt abatement of unsafe or unhealthy working conditions. Whenever an agency cannot promptly abate such conditions, it shall develop an abatement plan setting forth a timetable for abatement and a summary of interim steps to protect employees. Employees exposed to the conditions shall be informed of the provisions of the plan. When a hazard cannot be abated without assistance of the General Services Administration or other Federal lessor agency, an agency shall act with the lessor agency to secure abatement.

(f) Establish procedures to assure that no employee is subject to restraint, interference, coercion, discrimination or reprisal for filing a report of an unsafe or unhealthy working condition, or other participation in agency occupational safety and health program activities.

(g) Assure that periodic inspections of all agency workplaces are performed by personnel with equipment and competence to recognize hazards.

(h) Assure response to employee reports of hazardous conditions and require inspections within twenty-four hours for imminent dangers, three working days for potential serious conditions, and twenty working days for other conditions. Assure the right to anonymity of those making the reports.

(i) Assure that employee representatives accompany inspections of agency workplaces.

(j) Operate an occupational safety and health management information system, which shall include the maintenance of such records as the Secretary may require.

(k) Provide safety and health training for supervisory employees, employees responsible for conducting occupational safety and health inspections, all members of occupational safety and health committees where established, and other employees.

(*l*) Submit to the Secretary an annual report on the agency occupational safety and health program that includes information the Secretary prescribes.

1–3. OCCUPATIONAL SAFETY AND HEALTH COMMITTEES

1–301. Agency heads may establish occupational safety and health committees. If committees are established, they shall be established at both the national level and, for agencies with field or regional offices, other appropriate levels. The committees shall be composed of representatives of management and an equal number of nonmanagement employees or their representatives. Where there are exclusive bargaining representatives for employees at the national or other level in an agency, such representatives shall select the appropriate nonmanagement members of the committee.

1–302. The committees shall, except where prohibited by law,

(a) Have access to agency information relevant to their duties, including information on the nature and hazardousness of substances in agency workplaces.

(b) Monitor performance, including agency inspections, of the agency safety and health programs at the level they are established.

(c) Consult and advise the agency on the operation of the program.

1–303. A Committee may request the Secretary of Labor to conduct an evaluation or inspection pursuant to this order if half of a Committee is not substantially satisfied with an agency's response to a report of hazardous working conditions.

1–4. DEPARTMENT OF LABOR

1–401. The Secretary of Labor shall:

(a) Provide leadership and guidance to the heads of agencies to assist them with their occupational safety and health responsibilities.

(b) Maintain liaison with the Office of Management and Budget in matters relating to this order and coordinate the activities of the Department with those of other agencies that have responsibilities or functions related to Federal employee safety and health, including the Office of Personnel Management, the Department of Health and Human Services, and the General Services Administration.

(c) Issue, subject to the approval of the Director of the Office of Management and Budget, and in consultation with the Federal Advisory Council on Occupational Safety and Health, a set of basic program elements. The program elements shall help agency heads establish occupational safety and health committees and operate effective occupational safety and health programs, and shall provide flexibility to each agency head to implement a program consistent with its mission, size and organization. Upon request of an agency head, and after consultation with the Federal Advisory Council on Occupational Safety and Health, the Secretary may approve alternate program elements.

(d) Prescribe recordkeeping and reporting requirements.

(e) Assist agencies by providing training materials, and by conducting training programs upon request and with reimbursement.

(f) Facilitate the exchange of ideas and information throughout the government about occupational safety and health.

(g) Provide technical services to agencies upon request, where the Secretary deems necessary, and with reimbursement. These services may include studies of accidents, causes of injury and illness, identification of unsafe and unhealthful working conditions, and means to abate hazards.

(h) Evaluate the occupational safety and health programs of agencies and promptly submit reports to the agency heads. The evaluations shall be conducted through such scheduled headquarters or field reviews, studies or inspections as the Secretary deems necessary, at least annually for the larger or more hazardous agencies or operations, and as the Secretary deems appropriate for the smaller or less hazardous agencies.

(i) Conduct unannounced inspections of agency workplaces when the Secretary determines necessary if an agency does not have occupational safety and health committees; or in response to reports of unsafe or unhealthful working conditions, upon request of occupational safety and health committees under Section 1–3; or, in the case of a report of an imminent danger, when

such a committee has not responded to an employee who has alleged to it that the agency has not adequately responded to a report as required in 1–201(h). When the Secretary or his designee performs an inspection and discovers unsafe or unhealthy conditions, a violation of any provisions of this order, or any safety or health standards adopted by an agency pursuant to this order, or any program element approved by the Secretary, he shall promptly issue a report to the head of the agency and to the appropriate occupational safety and health committee, if any. The report shall describe the nature of the findings and may make recommendations for correcting the violation.

(j) Submit to the President each year a summary report of the status of the occupational safety and health of Federal employees, and, together with agency responses, evaluations of individual agency progress and problems in correcting unsafe and unhealthful working conditions, and recommendations for improving their performance.

(k) Submit to the President unresolved disagreements between the Secretary and agency heads, with recommendations.

(l) Enter into agreements or other arrangements as necessary or appropriate with the National Institute for Occupational Safety and Health and delegate to it the inspection and investigation authority provided under this section.

1–5. The Federal Advisory Council on Occupational Safety and Health

1–501. The Federal Advisory Council on Occupational Safety and Health, established pursuant to Executive Order No. 11612, is continued. It shall advise the Secretary in carrying out responsibilities under this order. The Council shall consist of sixteen members appointed by the Secretary, of whom eight shall be representatives of Federal agencies and eight shall be representatives of labor organizations representing Federal employees. The members shall serve three-year terms with the terms of five or six members expiring each year, provided this Council is renewed every two years in accordance with the Federal Advisory Committee Act [5 U.S.C. App.]. The members currently serving on the Council shall be deemed to be its initial members under this order and their terms shall expire in accordance with the terms of their appointment.

1–502. The Secretary, or a designee, shall serve as the Chairman of the Council, and shall prescribe rules for the conduct of its business.

1–503. The Secretary shall make available necessary office space and furnish the Council necessary equipment, supplies, and staff services, and shall perform such functions with respect to the Council as may be required by the Federal Advisory Committee Act, as amended (5 U.S.C. App.).

1–6. General Services Administration

1–601. Within six months of the effective date of this order the Secretary of Labor and the Administrator of the General Services Administration shall initiate a study of conflicts that may exist in their standards and other requirements affecting Federal employee safety and health, and shall establish a procedure for resolving conflicting standards for space leased by the General Services Administration.

1–602. In order to assist the agencies in carrying out their duties under Section 19 of the Act [29 U.S.C. 668] and this order the Administrator shall:

(a) Upon request, require personnel of the General Services Administration to accompany the Secretary or an agency head on any inspection or investigation conducted pursuant to this order of a facility subject to the authority of the General Services Administration.

(b) Assure prompt attention to reports from agencies of unsafe or unhealthy conditions of facilities subject to the authority of the General Services Administration; where abatement cannot be promptly effected, submit to the agency head a timetable for action to correct the conditions; and give priority in the allocation of resources available to the Administrator for prompt abatement of the conditions.

(c) Procure and provide safe supplies, devices, and equipment, and establish and maintain a product safety program for those supplies, devices, equipment and services furnished to agencies, including the issuance of Material Safety Data Sheets when hazardous substances are furnished them.

1–7. General Provisions

1–701. Employees shall be authorized official time to participate in the activities provided for by this order.

1–702. Nothing in this order shall be construed to impair or alter the powers and duties of the Secretary or heads of other Federal agencies pursuant to Section 19 of the Occupational Safety and Health Act of 1970 [29 U.S.C. 668]. Chapter 71 of Title 5 of the United States Code, Sections 7901, 7902, and 7903 of Title 5 of the United States Code, nor shall it be construed to alter any other provisions of law or Executive Order providing for collective bargaining agreements and related procedures, or affect the responsibilities of the Director of Central Intelligence to protect intelligence sources and methods (50 U.S.C. 403(d)(3)).

1–703. Executive Order No. 11807 of September 28, 1974, is revoked.

1–704. This order is effective October 1, 1980.

Ex. Ord. No. 12566. Safety Belt Use Requirements for Federal Employees

Ex. Ord. No. 12566, Sept. 26, 1986, 51 F.R. 34575, provided:

Each year, thousands of lives could be saved and injuries prevented if motorists would use their safety belts. The annual cost to society of these needless deaths and injuries is currently in excess of $32 billion. Taxpayers bear a large share of this cost. The estimated annual cost to Federal, State, and local governments as a result of auto accidents is $11 billion. I have determined that an on-the-job safety belt use policy for Federal employees will reduce human pain and suffering, set an example for the private sector, and reduce the burden on the taxpayers caused by motor vehicle accidents.

Accordingly, by the authority vested in me as President by the Constitution and laws of the United States of America, including Section 7902(c) of Title 5 of the United States Code and Section 19 of the Occupational Safety and Health Act of 1970, as amended (29 U.S.C. 668), it is hereby ordered as follows:

Section 1. *Policy*. Each Federal employee occupying the front seat of a motor vehicle on official business, whose seat is equipped with a safety belt, shall have the safety belt properly fastened at all times when the vehicle is in motion.

Sec. 2. *Scope of Order*. All agencies of the Executive branch are directed to promulgate rules and take all appropriate measures within their existing employee occupational safety and health programs to carry out the purposes of this Order. This includes, but is not limited to, conducting an education program for employees about the requirements of this Order. The term ''agency'' as used in this Order means an Executive Department, as defined in 5 U.S.C. 101, or any employing unit or authority of the Federal government, other than those of the Legislative and Judicial branches. The Secretary of Labor shall cooperate and consult with the heads of agencies in the Legislative and Judicial branches of the Government to encourage and help them adopt safety belt use programs. The Secretary of Labor shall also submit an annual report to the President that includes the status of on-the-job belt use by Federal employees.

Sec. 3. *Coordination*. The Secretary of Transportation shall provide leadership and guidance to the heads of agencies to assist them with the employee safety belt programs established pursuant to this Order.

Sec. 4. *Other Powers and Duties*. (a) Nothing in this Order shall be construed to impair or alter the powers

and duties of the heads of the various Federal agencies pursuant to Section 19 of the Occupational Safety and Health Act of 1970 [29 U.S.C. 668], or to Sections 7901, 7902, and 7903 of Title 5 of the United States Code, nor shall it be construed to affect any right, duty, or procedure under the National Labor Relations Act [29 U.S.C. 151 et seq.].

(b) The Secretary of Defense shall be responsible for implementation of all provisions of this Order insofar as they apply to military personnel of the Department of Defense.

SEC. 5. *Causes of Action*. Nothing in this Order shall be construed to create a new cause of action against the United States or to alter in any way the United States' liability under the Federal Tort Claims Act [28 U.S.C. 2671 et seq.].

RONALD REAGAN.

EXTENSION OF TERM OF FEDERAL ADVISORY COUNCIL ON OCCUPATIONAL SAFETY AND HEALTH

Term of the Federal Advisory Council on Occupational Safety and Health extended until Dec. 31, 1978, by Ex. Ord. No. 11948, Dec. 20, 1976, 41 F.R. 55705, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to this title.

Term of the Federal Advisory Council on Occupational Safety and Health extended until Dec. 31, 1980, by Ex. Ord. No. 12110, Dec. 28, 1978, 44 F.R. 1069, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to this title.

Term of the Federal Advisory Council on Occupational Safety and Health extended until Dec. 31, 1982, by Ex. Ord. No. 12258, Dec. 31, 1980, 46 F.R. 1251, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to this title.

Term of the Federal Advisory Council on Occupational Safety and Health extended until Sept. 30, 1984, by Ex. Ord. No. 12399, Dec. 31, 1982, 48 F.R. 379, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to this title.

Term of the Federal Advisory Council on Occupational Safety and Health extended until Sept. 30, 1985, by Ex. Ord. No. 12489, Sept. 28, 1984, 49 F.R. 38927, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to this title.

Term of the Federal Advisory Council on Occupational Safety and Health extended until Sept. 30, 1987, by Ex. Ord. No. 12534, Sept. 30, 1985, 50 F.R. 40319, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to this title.

Term of the Federal Advisory Council on Occupational Safety and Health extended until Sept. 30, 1989, by Ex. Ord. No. 12610, Sept. 30, 1987, 52 F.R. 36901, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to this title.

Term of the Federal Advisory Council on Occupational Safety and Health extended until Sept. 30, 1991, by Ex. Ord. No. 12692, Sept. 29, 1989, 54 F.R. 40627, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to this title.

Term of the Federal Advisory Council on Occupational Safety and Health extended until Sept. 30, 1993, by Ex. Ord. No. 12774, Sept. 27, 1991, 56 F.R. 49835, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to this title.

Term of the Federal Advisory Council on Occupational Safety and Health extended until Sept. 30, 1995, by Ex. Ord. No. 12869, Sept. 30, 1993, 58 F.R. 51751, set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2105 of this title; title 29 section 668.

§ 7903. Protective clothing and equipment

Appropriations available for the procurement of supplies and material or equipment are available for the purchase and maintenance of special clothing and equipment for the protection of personnel in the performance of their assigned tasks. For the purpose of this section, ''appropriations'' includes funds made available by statute under section 9104 of title 31.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 531; Pub. L. 97–258, § 3(a)(16), Sept. 13, 1982, 96 Stat. 1063.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 118g.	Aug. 2, 1946, ch. 744, § 13, 60 Stat. 809.

The definition of the word ''appropriations'' is added on authority of section 18 of the Act of Aug. 2, 1946, ch. 744, 60 Stat. 811.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1982—Pub. L. 97–258 substituted ''section 9104'' for ''section 849''.

§ 7904. Employee assistance programs relating to drug abuse and alcohol abuse

(a) The head of each Executive agency shall, in a manner consistent with guidelines prescribed under subsection (b) of this section and applicable provisions of law, establish appropriate prevention, treatment, and rehabilitation programs and services for drug abuse and alcohol abuse for employees in or under such agency.

(b) The Office of Personnel Management shall, after such consultations as the Office considers appropriate, prescribe guidelines for programs and services under this section.

(c) The Secretary of Health and Human Services, on request of the head of an Executive agency, shall review any program or service provided under this section and shall submit comments and recommendations to the head of the agency concerned.

(Added Pub. L. 99–570, title VI, § 6004(a), Oct. 27, 1986, 100 Stat. 3207–159.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7363 of this title.

§ 7905. Programs to encourage commuting by means other than single-occupancy motor vehicles

(a) For the purpose of this section—

(1) the term ''employee'' means an employee as defined by section 2105 and a member of a uniformed service;

(2) the term ''agency'' means—

(A) an Executive agency;

(B) an entity of the legislative branch; and

(C) the judicial branch;

(3) the term ''entity of the legislative branch'' means the House of Representatives, the Senate, the Office of the Architect of the Capitol (including the Botanic Garden), the Capitol Police, the Congressional Budget Office, the Copyright Royalty Tribunal, the Government Printing Office, the Library of Congress, and the Office of Technology Assessment; and

(4) the term ''transit pass'' means a transit pass as defined by section 132(f)(5) of the Internal Revenue Code of 1986.

(b)(1) The head of each agency may establish a program to encourage employees of such agency to use means other than single-occupancy motor vehicles to commute to or from work.

(2) A program established under this section may involve such options as—

(A) transit passes (including cash reimbursements therefor, but only if a voucher or similar item which may be exchanged only for a transit pass is not readily available for direct distribution by the agency);

(B) furnishing space, facilities, or services to bicyclists; and

(C) any non-monetary incentive which the agency head may otherwise offer under any other provision of law or other authority.

(c) The functions of an agency head under this section shall—

(1) with respect to the judicial branch, be carried out by the Director of the Administrative Office of the United States Courts;

(2) with respect to the House of Representatives, be carried out by the Committee on House Administration of the House of Representatives; and

(3) with respect to the Senate, be carried out by the Committee on Rules and Administration of the Senate.

(d) The President shall designate 1 or more agencies which shall—

(1) prescribe guidelines for programs under this section;

(2) on request, furnish information or technical advice on the design or operation of any program under this section; and

(3) submit to the President and the Congress, before January 1, 1995, and at least every 2 years thereafter, a written report on the operation of this section, including, with respect to the period covered by the report—

(A) the number of agencies offering programs under this section;

(B) a brief description of each of the various programs;

(C) the extent of employee participation in, and the costs to the Government associated with, each of the various programs;

(D) an assessment of any environmental or other benefits realized as a result of programs established under this section; and

(E) any other matter which may be appropriate.

(Added Pub. L. 103–172, §2(a), Dec. 2, 1993, 107 Stat. 1995.)

REFERENCES IN TEXT

Section 132(f)(5) of the Internal Revenue Code of 1986, referred to in subsec. (a)(4), is classified to section 132(f)(5) of Title 26, Internal Revenue Code.

CHANGE OF NAME

Committee on House Administration of House of Representatives changed to Committee on House Oversight of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

EFFECTIVE DATE

Section 3 of Pub. L. 103–172 provided that: ''This Act [enacting this section and provisions set out as notes under this section and section 7901 of this title] and the amendments made by this Act shall take effect on January 1, 1994.''

PURPOSE OF PUB. L. 103–172

Section 1(b) of Pub. L. 103–172 provided that: ''The purpose of this Act [enacting this section and provisions set out as notes under this section and section 7901 of this title] is to improve air quality and to reduce traffic congestion by providing for the establishment of programs to encourage Federal employees to commute by means other than single-occupancy motor vehicles.''

Subpart G—Insurance and Annuities

SUBPART REFERRED TO IN OTHER SECTIONS

This subpart is referred to in section 4703 of this title.

CHAPTER 81—COMPENSATION FOR WORK INJURIES

SUBCHAPTER I—GENERALLY

Sec.

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[1] So in original. Does not conform to section catchline.

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AMENDMENTS

1994—Pub. L. 103–333, title I, §101(a)(2), Sept. 30, 1994, 108 Stat. 2547, added item 8148.

1979—Pub. L. 96–70, title III, §3302(e)(12), Sept. 27, 1979, 93 Stat. 499, substituted ''Panama Canal Commission'' for ''Canal Zone'' in item 8146.

1974—Pub. L. 93–416, §§12(b), 23(a), Sept. 7, 1974, 88 Stat. 1146, 1150, substituted ''Notice of injury or death'' for ''Notice of injury; failure to give'' in item 8119, and added item 8151.

1968—Pub. L. 90–291, §1(b), Apr. 19, 1968, 82 Stat. 100, added subchapter III consisting of items 8191, 8192, and 8193.

1967—Pub. L. 90–83, §1(59), (66)(B), (67)(B), (70), Sept. 11, 1967, 81 Stat. 211, 212, 213, inserted ''; hearings'' in item 8124, added item 8143a relating to members of the National Teachers Corps and item 8146a relating to cost-of-living adjustment of compensation, and struck out item 8148 relating to reports.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 3102, 3111, 5948 of this title; title 7 section 2272; title 10 sections 1588, 1802, 2113, 2360, 2904, 7086; title 14 section 93; title 15 section 4102; title 16 sections 565a–2, 831b–1, 1703, 3602, 3640; title 18 section 4126; title 20 sections 76*l*, 4416; title 22 sections 2124c, 2391, 3508, 3715a, 3715d, 3649, 3658; title 24 section 225e; title 25 sections 2020, 3115, 3733; title 28 sections 376, 995, 996; title 33 section 569c; title 38 sections 3115, 3485, 7453, 7458; title 40 section 216c; title 42 sections 405, 3788, 9843a; title 43 section 1475; title 50 section 2081.

SUBCHAPTER I—GENERALLY

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 2105, 3373, 3374, 3582, 5595, 8191, 8192, 8332, 8337, 8347, 8411, 8464a, 8705, 8706, 8707, 8708, 8714a, 8714b, 8714c, 8901 of this title; title 2 sections 31b–5, 905; title 7 section 1507; title 10 section 1588; title 15 section 637; title 16 sections 1a–6, 18i, 558c, 580j, 742f, 773a, 831b, 4604; title 18 sections 292, 1920, 1922; title 22 sections 3970, 4048, 4606, 5422; title 25 section 450i; title 28 section 1877; title 29 section 1706; title 33 section 941; title 38 sections 106, 1316, 1317, 7802; title 39 section 1005; title 40 section 290; title 42 sections 251, 1654, 1701, 1702, 1706, 1856c, 2996d, 5055, 7142, 10704, 12620, 12651g, 12655n; title 43 section 1737; title 50 sections 2031, 2051; title 50 App. sections 1291, 1292, 2004.

§ 8101. Definitions

For the purpose of this subchapter—

(1) ''employee'' means—

(A) a civil officer or employee in any branch of the Government of the United States, including an officer or employee of an instrumentality wholly owned by the United States;

(B) an individual rendering personal service to the United States similar to the service of a civil officer or employee of the United States, without pay or for nominal pay, when a statute authorizes the acceptance or use of the service, or authorizes payment of travel or other expenses of the individual;

(C) an individual, other than an independent contractor or an individual employed by an independent contractor, employed on the Menominee Indian Reservation in Wisconsin in operations conducted under a statute relating to tribal timber and logging operations on that reservation;

(D) an individual employed by the government of the District of Columbia; and

(E) an individual appointed to a position on the office staff of a former President under section 1(b) of the Act of August 25, 1958 (72 Stat. 838);

but does not include—

(i) a commissioned officer of the Regular Corps of the Public Health Service;

(ii) a commissioned officer of the Reserve Corps of the Public Health Service on active duty;

(iii) a commissioned officer of the Environmental Science Services Administration; or

(iv) a member of the Metropolitan Police or the Fire Department of the District of Columbia who is pensioned or pensionable under sections 521–535 of title 4, District of Columbia Code; and

(F)[1] an individual selected pursuant to chapter 121 of title 28, United States Code, and serving as a petit or grand juror;

(2) ''physician'' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. The term ''physician'' includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist, and subject to regulation by the Secretary;

(3) ''medical, surgical, and hospital services and supplies'' includes services and supplies by podiatrists, dentists, clinical psychologists, optometrists, chiropractors, osteopathic practitioners and hospitals within the scope of their practice as defined by State law. Reimbursable chiropractic services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist, and subject to regulation by the Secretary;

(4) ''monthly pay'' means the monthly pay at the time of injury, or the monthly pay at

[1] So in original. Pub. L. 93–416 added par. (F) immediately after par. (iv), rather than after par. (E).

the time disability begins, or the monthly pay at the time compensable disability recurs, if the recurrence begins more than 6 months after the injured employee resumes regular full-time employment with the United States, whichever is greater, except when otherwise determined under section 8113 of this title with respect to any period;

(5) ''injury'' includes, in addition to injury by accident, a disease proximately caused by the employment, and damage to or destruction of medical braces, artificial limbs, and other prosthetic devices which shall be replaced or repaired, and such time lost while such device or appliance is being replaced or repaired; except that eyeglasses and hearing aids would not be replaced, repaired, or otherwise compensated for, unless the damages or destruction is incident to a personal injury requiring medical services;

(6) ''widow'' means the wife living with or dependent for support on the decedent at the time of his death, or living apart for reasonable cause or because of his desertion;

(7) ''parent'' includes stepparents and parents by adoption;

(8) ''brother'' and ''sister'' mean one who at the time of the death of the employee is under 18 years of age or over that age and incapable of self-support, and include stepbrothers and stepsisters, half brothers and half sisters, and brothers and sisters by adoption, but do not include married brothers or married sisters;

(9) ''child'' means one who at the time of the death of the employee is under 18 years of age or over that age and incapable of self-support, and includes stepchildren, adopted children, and posthumous children, but does not include married children;

(10) ''grandchild'' means one who at the time of the death of the employee is under 18 years of age or over that age and incapable of self-support;

(11) ''widower'' means the husband living with or dependent for support on the decedent at the time of her death, or living apart for reasonable cause or because of her desertion;

(12) ''compensation'' includes the money allowance payable to an employee or his dependents and any other benefits paid for from the Employees' Compensation Fund, but this does not in any way reduce the amount of the monthly compensation payable for disability or death;

(13) ''war-risk hazard'' means a hazard arising during a war in which the United States is engaged; during an armed conflict in which the United States is engaged, whether or not war has been declared; or during a war or armed conflict between military forces of any origin, occurring in the country in which an individual to whom this subchapter applies is serving; from—

(A) the discharge of a missile, including liquids and gas, or the use of a weapon, explosive, or other noxious thing by a hostile force or individual or in combating an attack or an imagined attack by a hostile force or individual;

(B) action of a hostile force or individual, including rebellion or insurrection against the United States or any of its allies;

(C) the discharge or explosion of munitions intended for use in connection with a war or armed conflict with a hostile force or individual;

(D) the collision of vessels on convoy or the operation of vessels or aircraft without running lights or without other customary peacetime aids to navigation; or

(E) the operation of vessels or aircraft in a zone of hostilities or engaged in war activities;

(14) ''hostile force or individual'' means a nation, a subject of a foreign nation, or an individual serving a foreign nation—

(A) engaged in a war against the United States or any of its allies;

(B) engaged in armed conflict, whether or not war has been declared, against the United States or any of its allies; or

(C) engaged in a war or armed conflict between military forces of any origin in a country in which an individual to whom this subchapter applies is serving;

(15) ''allies'' means any nation with which the United States is engaged in a common military effort or with which the United States has entered into a common defensive military alliance;

(16) ''war activities'' includes activities directly relating to military operations;

(17) ''student'' means an individual under 23 years of age who has not completed 4 years of education beyond the high school level and who is regularly pursuing a full-time course of study or training at an institution which is—

(A) a school or college or university operated or directly supported by the United States, or by a State or local government or political subdivision thereof;

(B) a school or college or university which has been accredited by a State or by a State-recognized or nationally recognized accrediting agency or body;

(C) a school or college or university not so accredited but whose credits are accepted, on transfer, by at least three institutions which are so accredited, for credit on the same basis as if transferred from an institution so accredited; or

(D) an additional type of educational or training institution as defined by the Secretary of Labor.

Such an individual is deemed not to have ceased to be a student during an interim between school years if the interim is not more than 4 months and if he shows to the satisfaction of the Secretary that he has a bona fide intention of continuing to pursue a full-time course of study or training during the semester or other enrollment period immediately after the interim or during periods of reasonable duration during which, in the judgment of the Secretary, he is prevented by factors beyond his control from pursuing his education. A student whose 23rd birthday occurs during a semester or other enrollment period is deemed a student until the end of the semester or other enrollment period;

(18) ''price index'' means the Consumer Price Index (all items—United States city average)

published monthly by the Bureau of Labor Statistics; and

(19) ''organ'' means a part of the body that performs a special function, and for purposes of this subchapter excludes the brain, heart, and back; and

(20) ''United States medical officers and hospitals'' includes medical officers and hospitals of the Army, Navy, Air Force, Department of Veterans Affairs, and United States Public Health Service, and any other medical officer or hospital designated as a United States medical officer or hospital by the Secretary of Labor.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 532; Pub. L. 90–83, §1(4), (48), Sept. 11, 1967, 81 Stat. 196, 209; Pub. L. 93–416, §1, Sept. 7, 1974, 88 Stat. 1143; Pub. L. 96–499, title IV, §421(b), Dec. 5, 1980, 94 Stat. 2608; Pub. L. 97–463, §4, Jan. 12, 1983, 96 Stat. 2532; Pub. L. 102–54, §13(b)(1), June 13, 1991, 105 Stat. 274.)

HISTORICAL AND REVISION NOTES

1966 ACT

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(1)–(5), (12)–(16).	5 U.S.C. 790.	Sept. 7, 1916, ch. 458, §40, 39 Stat. 750. June 5, 1924, ch. 261, §2, 43 Stat. 389. May 31, 1938, ch. 293, 52 Stat. 586. Apr. 11, 1940, ch. 79, §1, 54 Stat. 105. July 1, 1944, ch. 373, §605(b), 58 Stat. 712. Aug. 13, 1946, ch. 958, §5, 60 Stat. 1049. Oct. 14, 1949, ch. 691, §108, 63 Stat. 860. July 30, 1956, ch. 779, §3(b), 70 Stat. 721. Aug. 1, 1956, ch. 837, §501(e), 70 Stat. 883. Aug. 8, 1958, Pub. L. 85–608, §302, 72 Stat. 539. Sept. 13, 1960, Pub. L. 86–767, §208, 74 Stat. 908. Sept. 4, 1964, Pub. L. 88–581, §4(b), 78 Stat. 919.
	5 U.S.C. 794 (1st sentence). [Uncodified].	July 11, 1919, ch. 7, §11 (1st sentence), 41 Stat. 104. Aug. 25, 1958, Pub. L. 85–745, §1(b) (last sentence, as applicable to the Federal Employees' Compensation Act), 72 Stat. 838.
(6)–(10)	5 U.S.C. 760(H).	Sept. 7, 1916, ch. 458, §10(H), 39 Stat. 745. Feb. 12, 1927, ch. 110, §2, 44 Stat. 1087.
(11)	5 U.S.C. 760(B) (last 23 words of 1st sentence).	Sept. 7, 1916, ch. 458, §10(B) (last 15 words of 1st sentence), 39 Stat. 744. Oct. 14, 1949, ch. 691, §106(c) ''(B) (last 23 words of 1st sentence)'', 63 Stat. 859.

Former section 790(a) is omitted as unnecessary in view of section 1 of title 1, United States Code.

Former section 790(c) is omitted as unnecessary as the term ''commission'' is not used in this subchapter.

Former section 790(i) is omitted as unnecessary as the title ''Secretary of Labor'' (substituted for ''Federal Security Administrator'' by 1950 Reorg. Plan No. 19, §1, eff. May 24, 1950, 64 Stat. 1271) is fully set out the first time it is used in each section.

In paragraph (1)(B), the words ''to the United States'' are substituted for ''to any department, independent establishment, or agency thereof (including instrumentalities of the United States wholly owned by it)''.

In paragraph (1)(C), the words ''subsequent to September 7, 1916'' are omitted as obsolete.

In paragraph (1)(iv), the words ''under sections 521–535 of title 4, District of Columbia Code'' are substituted for ''under the provisions of the District of Columbia Appropriation Act approved September 1, 1916''.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 ACT

Section of title 5	*Source (U.S.Code)*	*Source (Statutes at Large)*
8101(17)	5 App.: 760(M).	July 4, 1966, Pub. L. 89–488, §§7(c), 14 ''Sec. 43(c)'', 80 Stat. 254, 256.
8101(18)	5 App.: 793a(c)(1).	
8101(19)	5 App.: 793a(c)(2).	

Paragraph (17) is reorganized and restated for clarity and to conform to the style of title 5, United States Code. In clause (D), the words ''Secretary of Labor'' are substituted for ''Secretary'' on authority of section 40(i) of the Federal Employees' Compensation Act.

In paragraph (19), the words ''July 1966 and each later month'' are substituted for ''the month this section becomes effective and each month thereafter''. The words ''section 8146a of this title'' are substituted for ''this section'' to reflect the codification of section 43 in title 5.

REFERENCES IN TEXT

Act of August 25, 1958, 72 Stat. 838, referred to in par. (1)(E), is set out as a note under section 102 of Title 3, The President.

Sections 521–535 of title 4, District of Columbia Code, referred to in par. (1)(iv), were transferred to sections 4–607, 4–609, 4–610, 4–612, 4–613, 4–615, 4–616, 4–618 to 4–620, 4–622, 4–626, 4–627, 4–629, and 4–630, respectively, of Title 4, Police and Fire Departments, of the District of Columbia Code.

AMENDMENTS

1991—Par. (20). Pub. L. 102–54 substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

1983—Par. (1)(F). Pub. L. 97–463 struck out ''and who is otherwise an employee for the purposes of this subchapter as defined by paragraph (A), (B), (C), (D), and (E) of this subsection'' after ''petit or grand juror''.

1980—Pars. (19) to (21). Pub. L. 96–499 struck out par. (19) which defined ''base month'' as the month of July 1966 and each later month which was used as a basis for calculating an increase under section 8146a of this title, and redesignated pars. (20) and (21) as (19) and (20), respectively.

1974—Par. (1)(D). Pub. L. 93–416, §1(g), struck out ''and'' after the semicolon.

Par. (1)(F). Pub. L. 93–416, §1(a), added par. (1)(F).

Par. (2). Pub. L. 93–416, §1(b), expanded definition of ''physician'' to include podiatrists, dentists, clinical psychologists, optometrists, and chiropractors and inserted provision limiting the extent to which chiropractors are included.

Par. (3). Pub. L. 93–416, §1(c), included within ''medical, surgical, and hospital services and supplies'' those supplied by podiatrists, dentists, clinical psychologists, optometrists, and chiropractors and limited the reimbursable services of chiropractors.

Par. (5). Pub. L. 93–416, §1(d), added to definition of ''injury'' damage to or destruction of medical braces, artificial limbs, and other prosthetic devices and excepted eyeglasses and hearing aids unless damage or destruction is incidental to a personal injury requiring medical services.

Par. (11). Pub. L. 93–416, §1(e), substituted ''the husband living with or dependent for support on the decedent at the time of her death, or living apart for reasonable cause because of her desertion'' for ''one who, because of physical or mental disability, was wholly dependent for support on the employee at the time of her death'' as definition of ''widower''.

Pars. (20), (21). Pub. L. 93–416, §1(f), added pars. (20) and (21).

1967—Par. (1)(iii). Pub. L. 90–83, §1(4), substituted ''Environmental Science Services Administration'' for ''Coast and Geodetic Survey''. See Historical and Revision Notes under section 2101 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 422 of Pub. L. 96–499 provided that: ''The amendments made by section 421 [amending this section and section 8146a of this title] shall take effect on the date of the enactment of this Act [Dec. 5, 1980] with respect to any adjustments which are to be made on or after that date; except that the period specified in such section as extending from December to December shall, with respect to the adjustment to be made on March 1, 1981, extend instead from the last month in which the price index resulted in an adjustment prior to enactment to December of 1980.''

EFFECTIVE DATE OF 1974 AMENDMENT

Section 28(a) of Pub. L. 93–416 provided that: ''Except as otherwise provided by this section this Act [enacting section 8151 of this title, amending this section and sections 8103, 8104, 8107, 8110, 8111, 8113, 8116, 8117, 8118, 8119, 8121, 8122, 8132, 8135, 8142, 8143, 8146a of this title, repealing section 3315a of this title, and enacting provisions set out as notes under this section and section 8116 of this title] shall take effect on the date of enactment [Sept. 7, 1974] and be applicable to any injury or death occurring on or after such effective date [Sept. 7, 1974]. The amendments made by sections 1(b) and (c) [amending this section], 2 [amending section 8103 of this title], 3 [amending section 8104 of this title], 7(a) and (b) [amending section 8111 of this title], 8(a) [amending section 8113 of this title], 8(b) [amending section 8143 of this title], 9 [amending section 8116 of this title], 16(a) [amending section 8133 of this title], 16(b) [amending section 8135 of this title], 17 [amending section 8133 of this title], 19 [amending section 8135 of this title], 20 [amending section 8135 of this title], 21 [amending section 8146a of this title], 22 [enacting section 8151 of this title], 24 [amending section 8146a of this title], and 25 [amending section 8147 of this title], shall be applicable to cases where the injury or death occurred prior to the date of enactment [Sept. 7, 1974] but the provisions of these sections shall be applicable only to a period beginning on or after the date of enactment [Sept. 7, 1974].''

SHORT TITLE OF 1990 AMENDMENT

Pub. L. 101–534, §1, Nov. 7, 1990, 104 Stat. 2352, provided that: ''This Act [amending section 8111 of this title and enacting provisions set out as a note under section 8111 of this title] may be cited as the 'Attendant Allowance Adjustment Act'.''

TRANSFER OF FUNCTIONS

Environmental Science Services Administration in Department of Commerce, including offices of Administrator and Deputy Administrator thereof, abolished by Reorg. Plan No. 4 of 1970, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090, set out in the Appendix to this title, which created National Oceanic and Atmospheric Administration in Department of Commerce and transferred personnel, property, records, and unexpended balances of funds of Environmental Science Services Administration to such newly created National Oceanic and Atmospheric Administration. Components of Environmental Science Services Administration thus transferred included Weather Bureau [now National Weather Service], Coast and Geodetic Survey [now National Ocean Survey], Environmental Data Services, National Environmental Satellite Center, and ESSA Research Laboratories.

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service, transferred to Secretary of Health, Education, and Welfare by 1966 Reorg. Plan No. 3, 31 F.R. 8855, 80 Stat. 1610, effective June 25, 1966, set out in the Appendix to this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 3508 of Title 20, Education.

PROCESSING OF CLAIMS FILED BY DISTRICT OF COLUMBIA EMPLOYEES

Pub. L. 93–198, title II, §204(e), Dec. 24, 1973, 87 Stat. 783, provided that: ''All functions of the Secretary under chapter 81 of title 5 of the United States Code, with respect to the processing of claims filed by employees of the government of the District for compensation for work injuries, are transferred to and shall be exercised by the Commissioner, effective the day after the day on which the District establishes an independent personnel system or systems.'' An independent personnel system was established for the District by D.C. Law 2–139, Mar. 3, 1979, 25 DCR 5740, which appears in chapter 6 (§1–601 et seq.) of Title 1, Administration, of the District of Columbia Code.

STUDY AND REPORT TO CONGRESS BY SECRETARY OF LABOR OF PROVISIONS AND PROGRAMS UNDER SUBCHAPTER

Section 27 of Pub. L. 93–416 directed Secretary of Labor to conduct a study of the provisions of this subchapter and its programs which was to include: hearings, research, and other activities necessary to formulate recommendations; an examination of need for authority to increase allowances for services of attendants above the maximum fixed by section 8111 of this title in exceptional circumstances; an examination of the effectiveness of this subchapter; and recommendations as to survivor benefits; report results of the study together with his findings and recommendations not later than 12 months after Sept. 7, 1974.

CROSS REFERENCES

Applicability of this subchapter to compensation for injury, death, or detention of employees of contractors with United States outside of the United States, see sections 1701 to 1706 and 1711 to 1717 of Title 42, The Public Health and Welfare.

Civil Service disability retirement annuity and compensation for injury or disability under this subchapter covering the same period of time as mutually exclusive, see sections 8337 and 8451 of this title.

Compensation for injury or death of temporary members of Reserve and Auxiliary members of Coast Guard, see section 707 of Title 14, Coast Guard.

Compensation under Defense Base Act for disability or death to persons employed at Military, Air, and Naval Bases outside the United States not to include employees covered by this subchapter, see section 1654 of Title 42, The Public Health and Welfare.

Dependency and indemnity compensation for service connected deaths, see section 1316 of Title 38, Veterans' Benefits.

International organizations, coverage of employees transferring to, see section 3582 of this title.

Internees under War Claims Act, see section 2004 of Title 50, Appendix, War and National Defense.

Saint Lawrence Seaway Development Corporation, contributions to fund, see section 987 of Title 33, Navigation and Navigable Waters.

Third party tort liability to United States for hospital and medical care, see section 2651 et seq. of Title 42, The Public Health and Welfare.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3373, 3374, 7902, 8110, 8118, 8133, 8191, 8192 of this title; title 16 sections 1a–6, 18i, 558c, 742f, 773a, 4604; title 20 section 76*l*; title 22 section 3973; title 29 section 1706; title 30 section 902; title 42 sections 3796b, 5055, 12620, 12651g, 12655n.

§ 8102. Compensation for disability or death of employee

(a) The United States shall pay compensation as specified by this subchapter for the disability or death of an employee resulting from personal injury sustained while in the performance of his duty, unless the injury or death is—

(1) caused by willful misconduct of the employee;

(2) caused by the employee's intention to bring about the injury or death of himself or of another; or

(3) proximately caused by the intoxication of the injured employee.

(b) Disability or death from a war-risk hazard or during or as a result of capture, detention, or other restraint by a hostile force or individual, suffered by an employee who is employed outside the continental United States or in Alaska or in 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), is deemed to have resulted from personal injury sustained while in the performance of his duty, whether or not the employee was engaged in the course of employment when the disability or disability resulting in death occurred or when he was taken by the hostile force or individual. This subsection does not apply to an individual—

(1) whose residence is at or in the vicinity of the place of his employment and who was not living there solely because of the exigencies of his employment, unless he was injured or taken while engaged in the course of his employment; or

(2) who is a prisoner of war or a protected individual under the Geneva Conventions of 1949 and is detained or utilized by the United States.

This subsection does not affect the payment of compensation under this subchapter derived otherwise than under this subsection, but compensation for disability or death does not accrue for a period for which pay, other benefit, or gratuity from the United States accrues to the disabled individual or his dependents on account of detention by the enemy or because of the same disability or death, unless that pay, benefit, or gratuity is refunded or renounced.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 534; Pub. L. 96–70, title I, § 1231(d), Sept. 27, 1979, 93 Stat. 470.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 751.	Sept. 7, 1916, ch. 458, § 1, 39 Stat. 742. Aug. 8, 1958, Pub. L. 85–608, § 301, 72 Stat. 538.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

REFERENCES IN TEXT

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

AMENDMENTS

1979—Subsec. (b). 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 1979 AMENDMENT

Amendment by Pub. L. 96–70 effective Oct. 1, 1979, see section 3304 of Pub. L. 96–70, set out as an Effective Date note under section 3601 of Title 22, Foreign Relations and Intercourse.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 22 section 3691.

§ 8103. Medical services and initial medical and other benefits

(a) The United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances, and supplies prescribed or recommended by a qualified physician, which the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of the monthly compensation. These services, appliances, and supplies shall be furnished—

(1) whether or not disability has arisen;

(2) notwithstanding that the employee has accepted or is entitled to receive benefits under subchapter III of chapter 83 of this title or another retirement system for employees of the Government; and

(3) by or on the order of United States medical officers and hospitals, or, at the employee's option, by or on the order of physicians and hospitals designated or approved by the Secretary.

The employee may initially select a physician to provide medical services, appliances, and supplies, in accordance with such regulations and instructions as the Secretary considers necessary, and may be furnished necessary and reasonable transportation and expenses incident to the securing of such services, appliances, and supplies. These expenses, when authorized or approved by the Secretary, shall be paid from the Employees' Compensation Fund.

(b) The Secretary, under such limitations or conditions as he considers necessary, may authorize the employing agencies to provide for the initial furnishing of medical and other benefits under this section. The Secretary may certify vouchers for these expenses out of the Employees' Compensation Fund when the immediate superior of the employee certifies that the expense was incurred in respect to an injury which was accepted by the employing agency as probably compensable under this subchapter. The Secretary shall prescribe the form and content of the certificate.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 535; Pub. L. 90–83, § 1(49), Sept. 11, 1967, 81 Stat. 209; Pub. L. 93–416, § 2, Sept. 7, 1974, 88 Stat. 1144.)

HISTORICAL AND REVISION NOTES
1966 ACT

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 759(a).	Sept. 7, 1916, ch. 458, §9, 39 Stat. 743. June 26, 1926, ch. 695, §1, 44 Stat. 772. Oct. 14, 1949, ch. 691, §202(b), 63 Stat. 862. Sept. 13, 1960, Pub. L. 86–767, §203, 74 Stat. 907.

In subsection (b), the words ''when the immediate superior of the employee certifies'' are substituted for ''upon certification by the person required by section 774 of this title to make reports of injury''.

The last sentence of former section 759(a) is omitted as executed.

Administration of this subchapter was transferred to the Secretary of Labor by section 1 of 1950 Reorg. Plan No. 19, 64 Stat. 1271 (see section 8145).

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 ACT

Section of title 5	*Source (U.S. Code)*	*Source (Statutes at Large)*
8103(a)(2) ...	5 App.: 759(a).	July 4, 1966, Pub. L. 89–488, §5(b), 80 Stat. 253.

The words ''another retirement system for employees of the Government'' are substituted for ''any other Federal Act or program providing retirement benefits for employees''.

AMENDMENTS

1974—Subsec. (a). Pub. L. 93–416 substituted ''at the employee's option'' for ''when this is not practicable'', struck out ''private'' before ''physicians and hospitals'' in par. (3), and, in provision following par. (3), added authorization for the employee to initially select a physician in accordance with such regulations and instructions considered necessary by the Secretary.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–416 applicable to cases where injury or death occurred prior to Sept. 7, 1974, but only to a period beginning on or after Sept. 7, 1974, see section 28(a) of Pub. L. 93–416, set out as a note under section 8101 of this title.

PERSONNEL NOT AFFECTED BY 1967 INCREASE

Section 7 of Pub. L. 90–83 provided that: ''Nothing in this or any other Act makes the increases authorized by section 1(49)—(52) [amending this section and sections 8107, 8108, and 8109 of this title], 53(B) and (C) [amending section 8110 of this title], (54)—(58) [amending section 8111, 8112, 8116, 8122, and 8124 of this title], (60) [amending section 8131 of this title], (61) [amending section 8132 of this title], (62) (B) [amending section 8133(e) of this title], (63) [amending section 8135 of this title], (67) [adding section 8146a of this title], (68) [amending section 8147 of this title], and (71) [amending section 8149 of this title] of this Act applicable to—

''(1) an employee or individual not within the definition of 'employee' in section 8101(1)(A), (B), or (D) of title 5, United States Code;

''(2) a member of the Metropolitan Police or the Fire Department of the District of Columbia who is pensioned or pensionable under sections 521—535 of title 4, District of Columbia Code; or

''(3) a member of a uniformed service.''

CROSS REFERENCES

Medical examination and treatment of Federal employees by Public Health Service, see section 251 of Title 42, The Public Health and Welfare.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8104, 8117, 8146 of this title.

§ 8104. Vocational rehabilitation

(a) The Secretary of Labor may direct a permanently disabled individual whose disability is compensable under this subchapter to undergo vocational rehabilitation. The Secretary shall provide for furnishing the vocational rehabilitation services. In providing for these services, the Secretary, insofar as practicable, shall use the services or facilities of State agencies and corresponding agencies which cooperate with the Secretary of Health, Education, and Welfare in carrying out the purposes of chapter 4 of title 29, except to the extent that the Secretary of Labor provides for furnishing these services under section 8103 of this title. The cost of providing these services to individuals undergoing vocational rehabilitation under this section shall be paid from the Employees' Compensation Fund. However, in reimbursing a State or corresponding agency under an arrangement pursuant to this section the cost to the agency reimbursable in full under section 32(b)(1) of title 29 is excluded.

(b) Notwithstanding section 8106, individuals directed to undergo vocational rehabilitation by the Secretary shall, while undergoing such rehabilitation, receive compensation at the rate provided in sections 8105 and 8110 of this title, less the amount of any earnings received from remunerative employment, other than employment undertaken pursuant to such rehabilitation.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 535; Pub. L. 93–416, §3, Sept. 7, 1974, 88 Stat. 1144.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 759(b).	Oct. 14, 1949, ch. 691, §202(a), 63 Stat. 862.

In the third sentence, the words ''the Secretary of Health, Education, and Welfare'' are substituted for ''him'', referring to the Administrator, on authority of section 1 (proviso) of 1950 Reorg. Plan No. 19, 64 Stat. 1271, and section 5 of 1953 Reorg. Plan No. 1, 67 Stat. 632.

The words ''State agencies or corresponding agencies'' are substituted for ''State agencies (or corresponding agencies in Territories or possessions)'' as the agencies available for cooperation are set out in the Vocational Rehabilitation Act (chapter 4 of title 29).

The words ''section 32(b)(1) of title 29'' are substituted for ''section 33(a) (4) of title 29'' on authority of the Act of Aug. 3, 1954, ch. 655, §2, 68 Stat. 652. Reference is limited to section 32(b)(1) since section 32(b)(2), (3) is obsolete.

Administration of this subchapter was transferred to the Secretary of Labor by section 1 of 1950 Reorg. Plan No. 19, 64 Stat. 1271 (see section 8145).

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

REFERENCES IN TEXT

Chapter 4 of title 29, referred to in subsec. (a), refers to the Vocational Rehabilitation Act, act June 2, 1920, ch. 219, 41 Stat. 735, as amended. Section 32(b)(1) of title 29, also referred to in subsec. (a) (enacted Sept. 6, 1966), did not reflect amendment of section 32(b) by Pub. L.

89–333 § 2(a), Nov. 8, 1965, 79 Stat. 1282, which eliminated obsolete pars. (2) and (3) and redesignated par. (1) provisions as subsec. (b) and amended such subsection. Section 32(b) of title 29, refers to section 2(b) of act June 2, 1920, as amended. Such provisions were repealed by section 500(a) of Pub. L. 93–112, title V, Sept. 26, 1973, 87 Stat. 390, and pursuant to section 500(a) of Pub. L. 93–112, which also provides that references to the Vocational Rehabilitation Act in other provisions of law shall be deemed a reference to the Rehabilitation Act of 1973, and are covered by sections 701 et seq. and 731(a), respectively, of Title 29, Labor.

AMENDMENTS

1974—Pub. L. 93–416 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–416 applicable to cases where injury or death occurred prior to Sept. 7, 1974, but only to a period beginning on or after Sept. 7, 1974, see section 28(a) of Pub. L. 93–416, set out as a note under section 8101 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions and offices (relating to Rehabilitation Act of 1973) of Secretary and Department of Health, Education, and Welfare to Secretary and Department of Education, see section 3441 of Title 20, Education.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8111, 8113, 8117 of this title.

§ 8105. Total disability

(a) If the disability is total, the United States shall pay the employee during the disability monthly monetary compensation equal to 66⅔ percent of his monthly pay, which is known as his basic compensation for total disability.

(b) The loss of use of both hands, both arms, both feet, or both legs, or the loss of sight of both eyes, is prima facie permanent total disability.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 535.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 753.	Sept. 7, 1916, ch. 458, § 3, 39 Stat. 743. Oct. 14, 1949, ch. 691, § 102, 63 Stat. 855.

In subsection (a), the words ''Except as otherwise provided in sections 751–756, 757–781, 783–791, and 793 of this title'' are omitted as surplusage.

In subsection (b), the words ''Loss, or'' are omitted as included in ''loss of use of''. The words ''or the loss of sight of both eyes'' are substituted for ''or both eyes or the sight thereof''.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8104, 8107, 8110 of this title.

§ 8106. Partial disability

(a) If the disability is partial, the United States shall pay the employee during the disability monthly monetary compensation equal to 66⅔ percent of the difference between his monthly pay and his monthly wage-earning capacity after the beginning of the partial disability, which is known as his basic compensation for partial disability.

(b) The Secretary of Labor may require a partially disabled employee to report his earnings from employment or self-employment, by affidavit or otherwise, in the manner and at the times the Secretary specifies. The employee shall include in the affidavit or report the value of housing, board, lodging, and other advantages which are part of his earnings in employment or self-employment and which can be estimated in money. An employee who—

(1) fails to make an affidavit or report when required; or

(2) knowingly omit or understates any part of his earnings;

forfeits his right to compensation with respect to any period for which the affidavit or report was required. Compensation forfeited under this subsection, if already paid, shall be recovered by a deduction from the compensation payable to the employee or otherwise recovered under section 8129 of this title, unless recovery is waived under that section.

(c) A partially disabled employee who—

(1) refuses to seek suitable work; or

(2) refuses or neglects to work after suitable work is offered to, procured by, or secured for him;

is not entitled to compensation.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 536.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 754.	Sept. 7, 1916, ch. 458, § 4, 39 Stat. 743. Oct. 14, 1949, ch. 691, § 103(a), 63 Stat. 855.

In subsection (a), the words ''Except as otherwise provided in sections 751–756, 757–781, 783–791, and 793 of this title'' are omitted as surplusage.

In subsection (b), the word ''remuneration'' is omitted as covered by the word ''earnings''.

Administration of this subchapter was transferred to the Secretary of Labor by section 1 of 1950 Reorg. Plan No. 19, 64 Stat. 1271 (see section 8145).

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8104, 8107, 8110, 8148 of this title.

§ 8107. Compensation schedule

(a) If there is permanent disability involving the loss, or loss of use, of a member or function of the body or involving disfigurement, the employee is entitled to basic compensation for the disability, as provided by the schedule in subsection (c) of this section, at the rate of 66⅔ percent of his monthly pay. The basic compensation is—

(1) payable regardless of whether the cause of the disability originates in a part of the body other than that member;

(2) payable regardless of whether the disability also involves another impairment of the body; and

(3) in addition to compensation for temporary total or temporary partial disability.

(b) With respect to any period after payments under subsection (a) of this section have ended, an employee is entitled to compensation as provided by—

(1) section 8105 of this title if the disability is total; or

(2) section 8106 of this title if the disability is partial.

(c) The compensation schedule is as follows:

(1) Arm lost, 312 weeks' compensation.

(2) Leg lost, 288 weeks' compensation.

(3) Hand lost, 244 weeks' compensation.

(4) Foot lost, 205 weeks' compensation.

(5) Eye lost, 160 weeks' compensation.

(6) Thumb lost, 75 weeks' compensation.

(7) First finger lost, 46 weeks' compensation.

(8) Great toe lost, 38 weeks' compensation.

(9) Second finger lost, 30 weeks' compensation.

(10) Third finger lost, 25 weeks' compensation.

(11) Toe other than great toe lost, 16 weeks' compensation.

(12) Fourth finger lost, 15 weeks' compensation.

(13) Loss of hearing—

(A) complete loss of hearing of one ear, 52 weeks' compensation; or

(B) complete loss of hearing of both ears, 200 weeks' compensation.

(14) Compensation for loss of binocular vision or for loss of 80 percent or more of the vision of an eye is the same as for loss of the eye.

(15) Compensation for loss of more than one phalanx of a digit is the same as for loss of the entire digit. Compensation for loss of the first phalanx is one-half of the compensation for loss of the entire digit.

(16) If, in the case of an arm or a leg, the member is amputated above the wrist or ankle, compensation is the same as for loss of the arm or leg, respectively.

(17) Compensation for loss of use of two or more digits, or one or more phalanges of each of two or more digits, of a hand or foot, is proportioned to the loss of use of the hand or foot occasioned thereby.

(18) Compensation for permanent total loss of use of a member is the same as for loss of the member.

(19) Compensation for permanent partial loss of use of a member may be for proportionate loss of use of the member. The degree of loss of vision or hearing under this schedule is determined without regard to correction.

(20) In case of loss of use of more than one member or parts of more than one member as enumerated by this schedule, the compensation is for loss of use of each member or part thereof, and the awards run consecutively. However, when the injury affects only two or more digits of the same hand or foot, paragraph (17) of this subsection applies, and when partial bilateral loss of hearing is involved, compensation is computed on the loss as affecting both ears.

(21) For serious disfigurement of the face, head, or neck of a character likely to handicap an individual in securing or maintaining employment, proper and equitable compensation not to exceed $3,500 shall be awarded in addition to any other compensation payable under this schedule.

(22) For permanent loss or loss of use of any other important external or internal organ of the body as determined by the Secretary, proper and equitable compensation not to exceed 312 weeks' compensation for each organ so determined shall be paid in addition to any other compensation payable under this schedule.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 536; Pub. L. 90–83, §1(50), Sept. 11, 1967, 81 Stat. 210; Pub. L. 93–416, §§4, 5, Sept. 7, 1974, 88 Stat. 1144, 1145.)

HISTORICAL AND REVISION NOTES

1966 ACT

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 755(a), (b).	Sept. 7, 1916, ch. 458, §5, 39 Stat. 743. Oct. 14, 1949, ch. 691, §104 ''Sec. 5(a), (b)'', 63 Stat. 855. Sept. 13, 1960, Pub. L. 86–767, §201, 74 Stat. 907.

The words ''loss, or'' are omitted throughout this section as included in ''loss of use of''.

In subsection (a)(B), the words ''under sections 751–754 of this title'' are omitted as surplusage.

In subsection (b)(1), the words ''(including paragraphs (16) and (20) thereof)'' are omitted as surplusage.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 ACT

Section of title 5	*Source (U.S.Code)*	*Source (Statutes at Large)*
8107(a), (b).	5 App.: 755(a), (b).	July 4, 1966, Pub. L. 89–488, §2(a), (b), 80 Stat. 252.

In subsection (a), the words ''If there is'' are substituted for ''In any case of''. The words ''loss, or'' are omitted as included in ''loss of use of'' and to conform to the remainder of the section. The words ''the employee is entitled to basic compensation for the disability'' are substituted for ''basic compensation for such disability shall be payable to the disabled employee''. The words ''by the schedule in subsection (c) of this section'' are substituted for ''in the following schedule'' to reflect the codification of the schedule in subsection (c). The words ''The schedule referred to in the first sentence is as follows:'' are omitted as unnecessary in view of the codification of that schedule in subsection (c).

In subsection (b), the words ''an employee is entitled to compensation'' are substituted for ''compensation shall be paid'' for consistency with subsection (a). In subsections (b) (1) and (2), the words ''section 8105 of this title'' and ''section 8106 of this title'' are substituted for ''section 3'' and ''subsection (a) of section 4'', respectively, to reflect the codification of title 5.

AMENDMENTS

1974—Subsec. (a). Pub. L. 93–416, §4, substituted ''involving the loss, or loss of use'' for ''involving the loss of use''.

Subsec. (c)(22). Pub. L. 93–416, §5, added par. (22).

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–416 effective Sept. 7, 1974, and applicable to any injury or death occurring on or

after such effective date, see section 28(a) of Pub. L. 93–416, set out as a note under section 8101 of this title.

PERSONNEL NOT AFFECTED BY 1967 INCREASE

Increases authorized under amendment by Pub. L. 90–83 not applicable to specified personnel, see section 7 of Pub. L. 90–83, set out as a note under section 8103 of this title.

CROSS REFERENCES

Right to compensation for scheduled disabilities specified by subsec. (c) of this section not impaired by eligibility for benefits under subchapter III of chapter 83 of this title or another retirement system for Government employees, see section 8116 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8108, 8109, 8110, 8115, 8116, 8337, 8464a of this title; title 18 section 1921; title 22 section 4048; title 50 section 2051.

§ 8108. Reduction of compensation for subsequent injury to same member

The period of compensation payable under the schedule in section 8107(c) of this title is reduced by the period of compensation paid or payable under the schedule for an earlier injury if—

(1) compensation in both cases is for disability of the same member or function or different parts of the same member or function or for disfigurement; and

(2) the Secretary of Labor finds that compensation payable for the later disability in whole or in part would duplicate the compensation payable for the preexisting disability.

In such a case, compensation for disability continuing after the scheduled period starts on expiration of that period as reduced under this section.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 538; Pub. L. 90–83, § 1(51), Sept. 11, 1967, 81 Stat. 210.)

HISTORICAL AND REVISION NOTES
1966 ACT

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 755(c).	Oct. 14, 1949, ch. 691, § 104 ''Sec. 5(c)'', 63 Stat. 857.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 ACT

Section of title 5	*Source (U.S.Code)*	*Source (Statutes at Large)*
8108	5 App.: 755(c).	July 4, 1966, Pub. L. 89–488, § 2(c), 80 Stat. 252.

PERSONNEL NOT AFFECTED BY 1967 INCREASE

Increases authorized under amendment by Pub. L. 90–83 not applicable to specified personnel, see section 7 of Pub. L. 90–83, set out as a note under section 8103 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8115 of this title; title 18 section 1921.

§ 8109. Beneficiaries of awards unpaid at death; order of precedence

(a) If an individual—

(1) has sustained disability compensable under section 8107(a) of this title;

(2) has filed a valid claim in his lifetime; and

(3) dies from a cause other than the injury before the end of the period specified by the schedule;

the compensation specified by the schedule that is unpaid at his death, whether or not accrued or due at his death, shall be paid—

(A) under an award made before or after the death;

(B) for the period specified by the schedule;

(C) to and for the benefit of the persons then in being within the classes and proportions and on the conditions specified by this section; and

(D) in the following order of precedence:

(i) If there is no child, to the widow or widower.

(ii) If there are both a widow or widower and a child or children, one-half to the widow or widower and one-half to the child or children.

(iii) If there is no widow or widower, to the child or children.

(iv) If there is no survivor in the above classes, to the parent or parents wholly or partly dependent for support on the decedent, or to other wholly dependent relatives listed by section 8133(a)(5) of this title, or to both in proportions provided by regulation.

(v) If there is no survivor in the above classes and no burial allowance is payable under section 8134 of this title, an amount not exceeding that which would be expendable under section 8134 of this title if applicable shall be paid to reimburse a person equitably entitled thereto to the extent and in the proportion that he has paid the burial expenses, but a compensated insurer or other person obligated by law or contract to pay the burial expenses or a State or political subdivision or entity is deemed not equitably entitled.

(b) Payments under subsection (a) of this section, except for an amount payable for a period preceding the death of the individual, are at the basic rate of compensation for permanent disability specified by section 8107(a) of this title even if at the time of death the individual was entitled to the augmented rate specified by section 8110 of this title.

(c) A surviving beneficiary under subsection (a) of this section, except one under subsection (a)(D)(v), does not have a vested right to payment and must be alive to receive payment.

(d) A beneficiary under subsection (a) of this section, except one under subsection (a)(D)(v), ceases to be entitled to payment on the happening of an event which would terminate his right to compensation for death under section 8133 of this title. When that entitlement ceases, compensation remaining unpaid under subsection (a) of this section is payable to the surviving beneficiary in accordance with subsection (a) of this section.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 538; Pub. L. 90–83, § 1(52), Sept. 11, 1967, 81 Stat. 210.)

HISTORICAL AND REVISION NOTES
1966 ACT

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 755(d).	Oct. 14, 1949, ch. 691, §104 ''Sec. 5(d)'', 63 Stat. 857.

The references in former section 755(d) to definitions in former section 760(B), (H) are omitted as unnecessary as the definitions are included in section 8101 for the entire subchapter.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 ACT

Section of title 5	*Source (U.S.Code)*	*Source (Statutes at Large)*
8109(a)(1) ...	5 App.: 755(d)(1).	July 4, 1966, Pub. L. 89–488, §2(d), 80 Stat. 252.

PERSONNEL NOT AFFECTED BY 1967 INCREASE

Increases authorized under amendment by Pub. L. 90–83 not applicable to specified personnel, see section 7 of Pub. L. 90–83, set out as a note under section 8103 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8115 of this title; title 18 section 1921.

§ 8110. Augmented compensation for dependents

(a) For the purpose of this section, ''dependent'' means—

(1) a wife, if—

(A) she is member of the same household as the employee;

(B) she is receiving regular contributions from the employee for her support; or

(C) the employee has been ordered by a court to contribute to her support;

(2) a husband, if—

(A) he is a member of the same household as the employee; or

(B) he is receiving regular contributions from the employee for his support; or

(C) the employee has been ordered by a court to contribute to his support;

(3) an unmarried child, while living with the employee or receiving regular contributions from the employee toward his support, and who is—

(A) under 18 years of age; or

(B) over 18 years of age and incapable of self-support because of physical or mental disability; and

(4) a parent, while wholly dependent on and supported by the employee.

Notwithstanding paragraph (3) of this subsection, compensation payable for a child that would otherwise end because the child has reached 18 years of age shall continue if he is a student as defined by section 8101 of this title at the time he reaches 18 years of age for so long as he continues to be such a student or until he marries.

(b) A disabled employee with one or more dependents is entitled to have his basic compensation for disability augmented—

(1) at the rate of 8⅓ percent of his monthly pay if that compensation is payable under section 8105 or 8107(a) of this title; and

(2) at the rate of 8⅓ percent of the difference between his monthly pay and his monthly wage-earning capacity if that compensation is payable under section 8106(a) of this title.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 539; Pub. L. 90–83, §1(53), Sept. 11, 1967, 81 Stat. 210; Pub. L. 93–416, §6, Sept. 7, 1974, 88 Stat. 1145.)

HISTORICAL AND REVISION NOTES
1966 ACT

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 756(a).	Sept. 7, 1916, ch. 458, §6, 39 Stat. 743. Feb. 12, 1927, ch. 110, §1, 44 Stat. 1086. May 13, 1936, ch. 382, 49 Stat. 1270. Oct. 14, 1949, ch. 691, §105 ''Sec. 6(a)'', 63 Stat. 858.

The references in former section 756(a)(2) to definitions in former section 760(H) are omitted as unnecessary as the definitions are included in section 8101 for the entire subchapter.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 ACT

Section of title 5	*Source (U.S.Code)*	*Source (Statutes at Large)*
8110(a)	5 App.: 756(a)(2) (C).	July 4, 1966, Pub. L. 89–488, §7(b), 80 Stat. 254.
8110(b)	5 App.: 756(a)(1).	July 4, 1966, Pub. L. 89–488 §§2(e), 3(a), 80 Stat. 252.

In subsection (a), the words ''Notwithstanding paragraph (3) of this subsection'' are substituted for ''Notwithstanding any other provision of this section'' for clarity. The word ''he'' is substituted for ''he or she'' in two places on authority of 1 U.S.C. 1. The words ''section 8101 of this title'' are substituted for ''section 10(M) of this Act'' to reflect the codification of that section in title 5.

AMENDMENTS

1974—Subsec. (a)(2). Pub. L. 93–416 substituted provisions of subpars. (A), (B) and (C) for ''wholly dependent on the employee for support because of his own physical or mental disability''.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–416 effective Sept. 7, 1974, and applicable to any injury or death occurring on or after such effective date, see section 28(a) of Pub. L. 93–416, set out as a note under section 8101 of this title.

PERSONNEL NOT AFFECTED BY 1967 INCREASE

Increases authorized under amendment by section 1(53)(B), (C) of Pub. L. 90–83 not applicable to specified personnel, see section 7 of Pub. L. 90–83, set out as a note under section 8103 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8104, 8109, 8112, 8148 of this title; title 18 section 1921.

§ 8111. Additional compensation for services of attendants or vocational rehabilitation

(a) The Secretary of Labor may pay an employee who has been awarded compensation an

additional sum of not more than $1,500 a month, as the Secretary considers necessary, when the Secretary finds that the service of an attendant is necessary constantly because the employee is totally blind, or has lost the use of both hands or both feet, or is paralyzed and unable to walk, or because of other disability resulting from the injury making him so helpless as to require constant attendance.

(b) The Secretary may pay an individual undergoing vocational rehabilitation under section 8104 of this title additional compensation necessary for his maintenance, but not to exceed $200 a month.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 539; Pub. L. 90–83, §1(54), Sept. 11, 1967, 81 Stat. 210; Pub. L. 93–416, §7, Sept. 7, 1974, 88 Stat. 1145; Pub. L. 101–534, §2, Nov. 7, 1990, 104 Stat. 2352.)

HISTORICAL AND REVISION NOTES
1966 ACT

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 756(b).	Oct. 14, 1949, ch. 691, §105 ''Sec. 6(b)'', 63 Stat. 858. Sept. 13, 1960, Pub. L. 86–767, §101 (less last 13 words), 74 Stat. 906.

In subsection (a), the words ''In addition to the monthly compensation otherwise specified in sections 751–756, 757–871, 783–791, and 793 of this title'' are omitted as surplusage.

In subsection (b), the words ''pursuant to the Secretary's direction'' are omitted as unnecessary.

Administration of this subchapter was transferred to the Secretary of Labor by section 1 of 1950 Reorg. Plan No. 19, 64 Stat. 1271 (see section 8145).

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 ACT

Section of title 5	*Source (U.S.Code)*	*Source (Statutes at Large)*
8111(a)	5 App.: 756(b)(1).	July 4, 1966, Pub. L. 89–488, §4(a), 80 Stat. 253.

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–534 substituted ''$1,500'' for ''$500''.

1974—Subsec. (a). Pub. L. 93–416, §7(a), substituted ''$500'' for ''$300''.

Subsec. (b). Pub. L. 93–416, §7(b), substituted ''$200'' for ''$100''.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 3 of Pub. L. 101–534 provided that: ''The amendment made by section 2 [amending this section] shall take effect October 1, 1990.''

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–416 applicable to cases where injury or death occurred prior to Sept. 7, 1974, but only to a period beginning on or after Sept. 7, 1974, see section 28(a) of Pub. L. 93–416, set out as a note under section 8101 of this title.

PERSONNEL NOT AFFECTED BY 1967 INCREASE

Increases authorized under amendment by section 1(54) of Pub. L. 90–83 not applicable to specified personnel, see section 7 of Pub. L. 90–83, set out as a note under section 8103 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8112 of this title; title 18 section 1921.

§ 8112. Maximum and minimum monthly payments

(a) Except as provided by section 8138 of this title, the monthly rate of compensation for disability, including augmented compensation under section 8110 of this title but not including additional compensation under section 8111 of this title, may not be more than 75 percent of the monthly pay of the maximum rate of basic pay for GS–15, and in case of total disability may not be less than 75 percent of the monthly pay of the minimum rate of basic pay for GS–2 or the amount of the monthly pay of the employee, whichever is less.

(b) The provisions of subsection (a) shall not apply to any employee whose disability is a result of an assault which occurs during an assassination or attempted assassination of a Federal official described under section 351(a) or 1751(a) of title 18, and was sustained in the performance of duty.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 540; Pub. L. 90–83, §1(55), Sept. 11, 1967, 81 Stat. 210; Pub. L. 100–566, §5, Oct. 31, 1988, 102 Stat. 2845.)

HISTORICAL AND REVISION NOTES
1966 ACT

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 756(c).	Oct. 14, 1949, ch. 691, §105 ''Sec. 6(c)'', 63 Stat. 859. Sept. 13, 1960, Pub. L. 86–767, §101 (last 13 words), 74 Stat. 906.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 ACT

Section of title 5	*Source (U.S.Code)*	*Source (Statutes at Large)*
8112	5 App.: 756(c).	July 4, 1966, Pub. L. 89–488, §3(b), 80 Stat. 252.

The words ''maximum rate of basic pay for GS–15'' and ''minimum rate of basic pay for GS–2'' are substituted for ''highest rate of basic compensation provided for grade 15 of the General Schedule of the Classification Act of 1949'' and ''lowest rate of basic compensation provided for grade 2 by such General Schedule'', respectively, for consistency of style within title 5 and to reflect the codification of the Classification Act of 1949 in title 5.

AMENDMENTS

1988—Pub. L. 100–566 designated existing provisions as subsec. (a) and added subsec. (b).

PERSONNEL NOT AFFECTED BY 1967 INCREASE

Increases authorized under amendment by section 1(55) of Pub. L. 90–83 not applicable to specified personnel, see section 7 of Pub. L. 90–83, set out as a note under section 8103 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8138 of this title; title 18 section 1921.

§ 8113. Increase or decrease of basic compensation

(a) If an individual—

(1) was a minor or employed in a learner's capacity at the time of injury; and

(2) was not physically or mentally handicapped before the injury;

the Secretary of Labor, on review under section 8128 of this title after the time the wage-earning capacity of the individual would probably have increased but for the injury, shall recompute prospectively the monetary compensation payable for disability on the basis of an assumed monthly pay corresponding to the probable increased wage-earning capacity.

(b) If an individual without good cause fails to apply for and undergo vocational rehabilitation when so directed under section 8104 of this title, the Secretary, on review under section 8128 of this title and after finding that in the absence of the failure the wage-earning capacity of the individual would probably have substantially increased, may reduce prospectively the monetary compensation of the individual in accordance with what would probably have been his wage-earning capacity in the absence of the failure, until the individual in good faith complies with the direction of the Secretary.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 540; Pub. L. 90–83, § 1(100), Sept. 11, 1967, 81 Stat. 220; Pub. L. 93–416, § 8(a), Sept. 7, 1974, 88 Stat. 1145.)

HISTORICAL AND REVISION NOTES

1966 ACT

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 756(d).	Oct. 14, 1949, ch. 691, § 105 ''Sec. 6(d)'', 63 Stat. 859.

Administration of this subchapter was transferred to the Secretary of Labor by section 1 of 1950 Reorg. Plan No. 19, 64 Stat. 1271 (see section 8145).

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 ACT

This section amends section 8113(b) of title 5, United States Code, to conform to the source statute (sec. 6(d)(1) of the Federal Employees' Compensation Act, as amended (63 Stat. 859)).

AMENDMENTS

1974—Subsecs. (b), (c). Pub. L. 93–416 struck out subsec. (b) which authorized the Secretary to prospectively recompute compensation because of decreased wage earning power after age 70, aside from injury, and redesignated subsec. (c) as (b).

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–416 applicable to case where injury or death occurred prior to Sept. 7, 1974, but only to a period beginning on or after Sept. 7, 1974, see section 28(a) of Pub. L. 93–416, set out as a note under section 8101 of this title.

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90–83 effective as of Sept. 6, 1966, for all purposes, see section 9(h) of Pub. L. 90–83, set out as a note under section 5102 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8101, 8143 of this title; title 18 section 1921; title 29 section 1706; title 42 section 5055.

§ 8114. Computation of pay

(a) For the purpose of this section—

(1) ''overtime pay'' means pay for hours of service in excess of a statutory or other basic workweek or other basic unit of worktime, as observed by the employing establishment; and

(2) ''year'' means a period of 12 calendar months, or the equivalent thereof as specified by regulations prescribed by the Secretary of Labor.

(b) In computing monetary compensation for disability or death on the basis of monthly pay, that pay is determined under this section.

(c) The monthly pay at the time of injury is deemed one-twelfth of the average annual earnings of the employee at that time. When compensation is paid on a weekly basis, the weekly equivalent of the monthly pay is deemed one-fifty-second of the average annual earnings. However, for so much of a period of total disability as does not exceed 90 calendar days from the date of the beginning of compensable disability, the compensation, in the discretion of the Secretary of Labor, may be computed on the basis of the actual daily wage of the employee at the time of injury in which event he may be paid compensation for the days he would have worked but for the injury.

(d) Average annual earnings are determined as follows:

(1) If the employee worked in the employment in which he was employed at the time of his injury during substantially the whole year immediately preceding the injury and the employment was in a position for which an annual rate of pay—

(A) was fixed, the average annual earnings are the annual rate of pay; or

(B) was not fixed, the average annual earnings are the product obtained by multiplying his daily wage for the particular employment, or the average thereof if the daily wage has fluctuated, by 300 if he was employed on the basis of a 6-day workweek, 280 if employed on the basis of a 5½-day week, and 260 if employed on the basis of a 5-day week.

(2) If the employee did not work in employment in which he was employed at the time of his injury during substantially the whole year immediately preceding the injury, but the position was one which would have afforded employment for substantially a whole year, the average annual earnings are a sum equal to the average annual earnings of an employee of the same class working substantially the whole immediately preceding year in the same or similar employment by the United States in the same or neighboring place, as determined under paragraph (1) of this subsection.

(3) If either of the foregoing methods of determining the average annual earnings cannot be applied reasonably and fairly, the average annual earnings are a sum that reasonably represents the annual earning capacity of the injured employee in the employment in which he was working at the time of the injury having regard to the previous earnings of the employee in Federal employment, and of other employees of the United States in the same or

most similar class working in the same or most similar employment in the same or neighboring location, other previous employment of the employee, or other relevant factors. However, the average annual earnings may not be less than 150 times the average daily wage the employee earned in the employment during the days employed within 1 year immediately preceding his injury.

(4) If the employee served without pay or at nominal pay, paragraphs (1), (2), and (3) of this subsection apply as far as practicable, but the average annual earnings of the employee may not exceed the minimum rate of basic pay for GS–15. If the average annual earnings cannot be determined reasonably and fairly in the manner otherwise provided by this section, the average annual earnings shall be determined at the reasonable value of the service performed but not in excess of $3,600 a year.

(e) The value of subsistence and quarters, and of any other form of remuneration in kind for services if its value can be estimated in money, and premium pay under section 5545(c)(1) of this title are included as part of the pay, but account is not taken of—

(1) overtime pay;

(2) additional pay or allowance authorized outside the United States because of differential in cost of living or other special circumstances; or

(3) bonus or premium pay for extraordinary service including bonus or pay for particularly hazardous service in time of war.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 540; Pub. L. 89–737, § 1(1), Nov. 2, 1966, 80 Stat. 1164.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 762.	Sept. 7, 1916, ch. 458, § 12, 39 Stat. 746. Oct. 14, 1949, ch. 691, § 203, 63 Stat. 862.

In subsection (d)(4), the words ''the minimum rate of basic pay for GS–15'' are substituted for ''the basic rate of annual compensation specified under the Classification Act of 1949, as amended, for positions in grade GS–15 at the bottom of such grade''. In former section 762, the words ''Classification Act of 1949'' were substituted for ''Classification Act of 1923'' on authority of § 1106(a) of the Act of Oct. 28, 1949, ch. 782, 63 Stat. 972.

Administration of this subchapter was transferred to the Secretary of Labor by section 1 of 1950 Reorg. Plan No. 19, 64 Stat. 1271 (see section 8145).

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1966—Subsec. (e). Pub. L. 89–737 inserted reference to premium pay under section 5545(c)(1) of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Section 4 of Pub. L. 89–737, which provided that the amendments made by this Act [amending this section and sections 8331 and 8704 of this title] apply with respect to premium pay payable from and after the first day of the first pay period which begins after the date of enactment of this Act [Nov. 2, 1966], was repealed by Pub. L. 90–83, § 10(b), Sept. 11, 1967, 81 Stat. 223.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5545a, 8115, 8133 of this title; title 28 section 1877.

§ 8115. Determination of wage-earning capacity

(a) In determining compensation for partial disability, except permanent partial disability compensable under sections 8107–8109 of this title, the wage-earning capacity of an employee is determined by his actual earnings if his actual earnings fairly and reasonably represent his wage-earning capacity. If the actual earnings of the employee do not fairly and reasonably represent his wage-earning capacity or if the employee has no actual earnings, his wage-earning capacity as appears reasonable under the circumstances is determined with due regard to—

(1) the nature of his injury;

(2) the degree of physical impairment;

(3) his usual employment;

(4) his age;

(5) his qualifications for other employment;

(6) the availability of suitable employment; and

(7) other factors or circumstances which may affect his wage-earning capacity in his disabled condition.

(b) Section 8114(d) of this title is applicable in determining the wage-earning capacity of an employee after the beginning of partial disability.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 542.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 763.	Sept. 7, 1916, ch. 458, § 13, 39 Stat. 746. Oct. 14, 1949, ch. 691, § 204, 63 Stat. 864. Sept. 13, 1960, Pub. L. 86–767, § 204, 74 Stat. 908.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

§ 8116. Limitations on right to receive compensation

(a) While an employee is receiving compensation under this subchapter, or if he has been paid a lump sum in commutation of installment payments until the expiration of the period during which the installment payments would have continued, he may not receive salary, pay, or remuneration of any type from the United States, except—

(1) in return for service actually performed;

(2) pension for service in the Army, Navy, or Air Force;

(3) other benefits administered by the Department of Veterans Affairs unless such benefits are payable for the same injury or the same death; and

(4) retired pay, retirement pay, retainer pay, or equivalent pay for service in the Armed Forces or other uniformed services, subject to the reduction of such pay in accordance with section 5532(b) of title 5, United States Code.

However, eligibility for or receipt of benefits under subchapter III of chapter 83 of this title,

or another retirement system for employees of the Government, does not impair the right of the employee to compensation for scheduled disabilities specified by section 8107(c) of this title.

(b) An individual entitled to benefits under this subchapter because of his injury, or because of the death of an employee, who also is entitled to receive from the United States under a provision of statute other than this subchapter payments or benefits for that injury or death (except proceeds of an insurance policy), because of service by him (or in the case of death, by the deceased) as an employee or in the armed forces, shall elect which benefits he will receive. The individual shall make the election within 1 year after the injury or death or within a further time allowed for good cause by the Secretary of Labor. The election when made is irrevocable, except as otherwise provided by statute.

(c) The liability of the United States or an instrumentality thereof under this subchapter or any extension thereof with respect to the injury or death of an employee is exclusive and instead of all other liability of the United States or the instrumentality to the employee, his legal representative, spouse, dependents, next of kin, and any other person otherwise entitled to recover damages from the United States or the instrumentality because of the injury or death in a direct judicial proceeding, in a civil action, or in admiralty, or by an administrative or judicial proceeding under a workmen's compensation statute or under a Federal tort liability statute. However, this subsection does not apply to a master or a member of a crew of a vessel.

(d) Notwithstanding the other provisions of this section, an individual receiving benefits for disability or death under this subchapter who is also receiving benefits under subchapter III of chapter 84 of this title or benefits under title II of the Social Security Act shall be entitled to all such benefits, except that—

(1) benefits received under section 223 of the Social Security Act (on account of disability) shall be subject to reduction on account of benefits paid under this subchapter pursuant to the provisions of section 224 of the Social Security Act; and

(2) in the case of benefits received on account of age or death under title II of the Social Security Act, compensation payable under this subchapter based on the Federal service of an employee shall be reduced by the amount of any such social security benefits payable that are attributable to Federal service of that employee covered by chapter 84 of this title. However, eligibility for or receipt of benefits under chapter 84 of this title, or benefits under title II of the Social Security Act by virtue of service covered by chapter 84 of this title, does not affect the right of the employee to compensation for scheduled disabilities specified by section 8107(c) of this title.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 542; Pub. L. 90–83, §1(56), Sept. 11, 1967, 81 Stat. 210; Pub. L. 93–416, §9(a), Sept. 7, 1974, 88 Stat. 1145; Pub. L. 99–335, title II, §207(e), June 6, 1986, 100 Stat. 595; Pub. L. 102–54, §13(b)(1), June 13, 1991, 105 Stat. 274.)

HISTORICAL AND REVISION NOTES

1966 ACT

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 757.	Sept. 7, 1916, ch. 458, §7, 39 Stat. 743. July 1, 1944, ch. 373, §605(a), 58 Stat. 712. Aug. 13, 1946, ch. 958, §5, 60 Stat. 1049. Oct. 14, 1949, ch. 691, §201, 63 Stat. 861. July 30, 1956, ch. 779, §3(b), 70 Stat. 721. Sept. 13, 1960, Pub. L. 86–767, §202, 74 Stat. 907. Sept. 4, 1964, Pub. L. 88–581, §4(b), 78 Stat. 919.

In subsection (a)(2), ''Air Force'' is added on authority of the Act of July 26, 1947, ch. 343, §207(a), (f), 61 Stat. 502, and sections 8010—8013 of title 10, United States Code. This does not affect the operation of this subsection insofar as it concerns members of the Coast Guard whose pension is based in whole or in part on service with the Coast Guard when it operated as a part of the Navy.

In subsection (b), the reference to the definition of ''employee'' in former section 790 is omitted as unnecessary as the definition is included in section 8101 for the entire subchapter.

Administration of this subchapter was transferred to the Secretary of Labor by section 1 of 1950 Reorg. Plan No. 19, 64 Stat. 1271 (see section 8145).

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 ACT

Section of title 5	*Source (U.S.Code)*	*Source (Statutes at Large)*
8116(a)	5 App.: 757(a).	July 4, 1966, Pub. L. 89–488, §5(a), 80 Stat. 253.

The words ''another retirement system for employees of the Government'' are substituted for ''any other Federal Act or program providing retirement benefits for employees''.

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (d), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title II of the Social Security Act is classified generally to subchapter II (§401 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. Sections 223 and 224 are classified to sections 423 and 424a, respectively, of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

1991—Subsec. (a)(3). Pub. L. 102–54 substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

1986—Subsec. (d). Pub. L. 99–335 added subsec. (d).

1974—Subsec. (a). Pub. L. 93–416 struck out ''and'' in cl. (1), substituted a semicolon for a period in cl. (2), and added cls. (3) and (4).

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–335 effective Jan. 1, 1987, see section 702(a) of Pub. L. 99–335, set out as an Effective Date note under section 8401 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Section 9(b) of Pub. L. 93–416 provided that: ''The amendment made by this section [amending this section] shall be effective with respect to disability or death occurring before or after the date of enactment

of this Act [Sept. 7, 1974] and without regard to any election under section 8116(b) of the Act [subsec. (b) of this section]; but no payment shall be made by reason of such amendment for any period prior to the date of enactment of this Act.''

PERSONNEL NOT AFFECTED BY 1967 INCREASE

Increases authorized under amendment by section 1(56) of Pub. L. 90–83 not applicable to specified personnel, see section 7 of Pub. L. 90–83, set out as a note under section 8103 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 22 section 3715d.

§ 8117. Time of accrual of right

An employee is not entitled to compensation for the first 3 days of temporary disability, except—

(1) when the disability exceeds 14 days;

(2) when the disability is followed by permanent disability; or

(3) as provided by sections 8103 and 8104 of this title.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 543; Pub. L. 93–416, § 10, Sept. 7, 1974, 88 Stat. 1145.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 752.	Sept. 7, 1916, ch. 458, § 2, 39 Stat. 743. Oct. 14, 1949, ch. 691, § 101(a), 63 Stat. 854.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1974—Pub. L. 93–416 substituted ''14 days'' for ''21 days''.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–416 effective Sept. 7, 1974, and applicable to any injury or death occurring on or after Sept. 7, 1974, see section 28(a) of Pub. L. 93–416, set out as a note under section 8101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8118 of this title.

§ 8118. Continuation of pay; election to use annual or sick leave

(a) The United States shall authorize the continuation of pay of an employee, as defined in section 8101(1) of this title (other than those referred to in clause (B) or (E), who has filed a claim for a period of wage loss due to a traumatic injury with his immediate superior on a form approved by the Secretary of Labor within the time specified in section 8122(a)(2) of this title.

(b) Continuation of pay under this subchapter shall be furnished—

(1) without a break in time unless controverted under regulations of the Secretary;

(2) for a period not to exceed 45 days; and

(3) under accounting procedures and such other regulations as the Secretary may require.

(c) An employee may use annual or sick leave to his credit at the time the disability begins, but his compensation for disability does not begin, and the time periods specified by section 8117 of this title do not begin to run, until termination of pay as set forth in subsections (a) and (b) or the use of annual or sick leave ends.

(d) If a claim under subsection (a) is denied by the Secretary, payments under this section shall, at the option of the employee, be charged to sick or annual leave or shall be deemed overpayments of pay within the meaning of section 5584 of title 5, United States Code.

(e) Payments under this section shall not be considered as compensation as defined by section 8101(12) of this title.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 543; Pub. L. 93–416, § 11, Sept. 7, 1974, 88 Stat. 1145.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 758.	Sept. 7, 1916, ch. 458, § 8, 39 Stat. 743. Oct. 14, 1949, ch. 691, § 101(b), 63 Stat. 854.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1974—Pub. L. 93–416 inserted in section catchline the reference to continuation of pay, added subsecs. (a), (b), (d) and (e), designated existing provisions as subsec. (c), and in subsec. (c) as so designated, substituted ''until termination of pay as set forth in subsections (a) and (b) or the use of annual or sick leave ends'' for ''until the use of the annual or sick leave ends''.

EFFECTIVE DATE OF 1974 AMENDMENT

Section 28(b) of Pub. L. 93–416 provided that: ''Section 11 of this Act [amending this section] shall become effective 60 days from enactment [Sept. 7, 1974] and be applicable to any injury occurring on or after such effective date.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 22 section 3715a.

§ 8119. Notice of injury or death

An employee injured in the performance of his duty, or someone on his behalf, shall give notice thereof. Notice of a death believed to be related to the employment shall be given by an eligible beneficiary specified in section 8133 of this title, or someone on his behalf. A notice of injury or death shall—

(a) be given within 30 days after the injury or death;

(b) be given to the immediate superior of the employee by personal delivery or by depositing it in the mail properly stamped and addressed;

(c) be in writing;

(d) state the name and address of the employee;

(e) state the year, month, day, and hour when and the particular locality where the injury or death occurred;

(f) state the cause and nature of the injury, or, in the case of death, the employment factors believed to be the cause; and

(g) be signed by and contain the address of the individual giving the notice.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 543; Pub. L. 93–416, § 12(a), Sept. 7, 1974, 88 Stat. 1146.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(a)	5 U.S.C. 765.	Sept. 7, 1916, ch. 458, § 15, 39 Stat. 746.
	5 U.S.C. 766.	Sept. 7, 1916, ch. 458, § 16, 39 Stat. 746.
(b)	5 U.S.C. 767.	Sept. 7, 1916, ch. 458, § 17, 39 Stat. 746.

Subsection (b)(2) is added on authority of former section 770, which is carried into section 8122, to complete the coverage of this section.

Administration of this subchapter was transferred to the Secretary of Labor by section 1 of 1950 Reorg. Plan No. 19, 64 Stat. 1271 (see section 8145).

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1974—Pub. L. 93–416 substituted ''or death'' for ''; failure to give'' in section catchline, struck out designation of subsec. (a), redesignated cls. (1) to (7) as (a) to (g), and, as so redesignated, inserted provisions relating to notice of death and substituted ''30 days'' for ''48 hours'' in cl. (a), and struck out subsec. (b) relating to allowance of compensation.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–416 effective Sept. 7, 1974, and applicable to any injury or death occurring on or after Sept. 7, 1974, see section 28(a) of Pub. L. 93–416, set out as a note under section 8101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8122 of this title.

§ 8120. Report of injury

Immediately after an injury to an employee which results in his death or probable disability, his immediate superior shall report to the Secretary of Labor. The Secretary may—

(1) prescribe the information that the report shall contain;

(2) require the immediate superior to make supplemental reports; and

(3) obtain such additional reports and information from employees as are agreed on by the Secretary and the head of the employing agency.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 543.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 774(a).	Sept. 7, 1916, ch. 458, § 24, 39 Stat. 747.
.....	5 U.S.C. 779.	Sept. 7, 1916, ch. 458, § 28a, 39 Stat. 748. Oct. 14, 1949, ch. 691, § 205(b), 63 Stat. 864.

Administration of this subchapter was transferred to the Secretary of Labor by section 1 of 1950 Reorg. Plan No. 19, 64 Stat. 1271 (see section 8145).

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8141 of this title; title 18 section 1922.

§ 8121. Claim

Compensation under this subchapter may be allowed only if an individual or someone on his behalf makes claim therefor. The claim shall—

(1) be made in writing within the time specified by section 8122 of this title;

(2) be delivered to the office of the Secretary of Labor or to an individual whom the Secretary may designate by regulation, or deposited in the mail properly stamped and addressed to the Secretary or his designee;

(3) be on a form approved by the Secretary;

(4) contain all information required by the Secretary;

(5) be sworn to by the individual entitled to compensation or someone on his behalf; and

(6) except in case of death, be accompanied by a certificate of the physician of the employee stating the nature of the injury and the nature and probable extent of the disability.

The Secretary may waive paragraphs (3)–(6) of this section for reasonable cause shown.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 543; Pub. L. 93–416, § 13, Sept. 7, 1974, 88 Stat. 1147.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 768.	Sept. 7, 1916, ch. 458, § 18, 39 Stat. 746.
.....	5 U.S.C. 769.	Sept. 7, 1916, ch. 458, § 19, 39 Stat. 746.

The words ''except as provided in section 788'' in former section 768 are omitted as unnecessary as former section 788 dealt with recovery of overpayments after claims were made.

Administration of this subchapter was transferred to the Secretary of Labor by section 1 of 1950 Reorg. Plan No. 19, 64 Stat. 1271 (see section 8145).

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1974—Par. (3). Pub. L. 93–416 substituted ''approved'' for ''furnished''.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–416 effective Sept. 7, 1974, and applicable to any injury or death occurring on or after Sept. 7, 1974, see section 23(a) of Pub. L. 93–416, set out as a note under section 8101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8146 of this title.

§ 8122. Time for making claim

(a) An original claim for compensation for disability or death must be filed within 3 years after the injury or death. Compensation for disability or death, including medical care in disability cases, may not be allowed if claim is not filed within that time unless—

(1) the immediate superior had actual knowledge of the injury or death within 30 days. The knowledge must be such to put the immediate superior reasonably on notice of an on-the-job injury or death; or

(2) written notice of injury or death as specified in section 8119 of this title was given within 30 days.

(b) In a case of latent disability, the time for filing claim does not begin to run until the employee has a compensable disability and is aware, or by the exercise of reasonable diligence should have been aware, of the causal relationship of the compensable disability to his employment. In such a case, the time for giving notice of injury begins to run when the employee is aware, or by the exercise of reasonable diligence should have been aware, that his condition is causally related to his employment, whether or not there is a compensable disability.

(c) The timely filing of a disability claim because of injury will satisfy the time requirements for a death claim based on the same injury.

(d) The time limitations in subsections (a) and (b) of this section do not—

(1) begin to run against a minor until he reaches 21 years of age or has had a legal representative appointed; or

(2) run against an incompetent individual while he is incompetent and has no duly appointed legal representative; or

(3) run against any individual whose failure to comply is excused by the Secretary on the ground that such notice could not be given because of exceptional circumstances.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 544; Pub. L. 90–83, §1(57), Sept. 11, 1967, 81 Stat. 210; Pub. L. 93–416, §14, Sept. 7, 1974, 88 Stat. 1147.)

HISTORICAL AND REVISION NOTES

1966 ACT

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 770.	Sept. 7, 1916, ch. 458, §20, 39 Stat. 747. June 13, 1922, ch. 219, 42 Stat. 650. July 28, 1945, ch. 328, §1, 59 Stat. 503. Sept. 13, 1960, Pub. L. 86–767, §205, 74 Stat. 908.

The last sentence of the Act of June 13, 1922, 42 Stat. 650, is omitted as obsolete.

Administration of this subchapter was transferred to the Secretary of Labor by section 1 of 1950 Reorg. Plan No. 19, 64 Stat. 1271 (see section 8145).

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 ACT

Section of title 5	*Source (U.S. Code)*	*Source (Statutes at Large)*
8122(b), (d)	5 App.: 770.	July 4, 1966, Pub. L. 89–488, §9, 80 Stat. 254.

AMENDMENTS

1974—Subsec. (a). Pub. L. 93–416, §14(1), substituted provisions requiring filing of claims for compensation within three years after death or disability, and setting forth conditions for waiver of filing within required time periods, for provisions requiring claim for death to be made within one year after death and for disability to be made within 60 days after injury and authorizing extension of time for good cause.

Subsec. (c). Pub. L. 93–416, §14(2), substituted provisions relating to timeliness of claim for death when claim for injury was timely filed and death was based on same injury, for provisions relating to waiver of compliance with requirements for giving notice of injury and filing claim for compensation.

Subsec. (d). Pub. L. 93–416, §14(3), substituted ''(a) and (b)'' for ''(a)–(c)'', and added cl. (3).

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–416 effective Sept. 7, 1974, and applicable to any injury or death occurring on or after Sept. 7, 1974, see section 23(a) of Pub. L. 93–416, set out as a note under section 8101 of this title.

PERSONNEL NOT AFFECTED BY 1967 INCREASE

Increases authorized under amendment by section 1(57) of Pub. L. 90–83 not applicable to specified personnel, see section 7 of Pub. L. 90–83, set out as a note under section 8103 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8118, 8121 of this title.

§ 8123. Physical examinations

(a) An employee shall submit to examination by a medical officer of the United States, or by a physician designated or approved by the Secretary of Labor, after the injury and as frequently and at the times and places as may be reasonably required. The employee may have a physician designated and paid by him present to participate in the examination. If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.

(b) An employee is entitled to be paid expenses incident to an examination required by the Secretary which in the opinion of the Secretary are necessary and reasonable, including transportation and loss of wages incurred in order to be examined. The expenses, when authorized or approved by the Secretary, are paid from the Employees' Compensation Fund.

(c) The Secretary shall fix the fees for examinations held under this section by physicians not employed by or under contract to the United States to furnish medical services to employees. The fees, when authorized or approved by the Secretary, are paid from the Employees' Compensation Fund.

(d) If an employee refuses to submit to or obstructs an examination, his right to compensation under this subchapter is suspended until the refusal or obstruction stops. Compensation is not payable while a refusal or obstruction continues, and the period of the refusal or obstruction is deducted from the period for which compensation is payable to the employee.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 544.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 771.	Sept. 7, 1916, ch. 458, §21, 39 Stat. 747. June 26, 1926, ch. 695, §2, 44 Stat. 772.
.....	5 U.S.C. 772.	Sept. 7, 1916, ch. 458, §22, 39 Stat. 747.
.....	5 U.S.C. 773(a).	Sept. 7, 1916, ch. 458, §23, 39 Stat. 747. June 26, 1926, ch. 695, §3, 44 Stat. 772.

HISTORICAL AND REVISION NOTES—CONTINUED

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
		Oct. 14, 1949, ch. 691, §208 ''Sec. 23(a)'', 63 Stat. 865.

In subsections (a) and (c), the words ''duly qualified'' in former sections 771 and 772 are omitted as unnecessary in view of the definition of ''physician'' in section 8101.

In subsection (c) the words ''fees for examinations'' in former section 773(a) are substituted for ''fees or examinations'' since the word ''or'' was erroneously in the 1949 amendment. The words ''any sum payable to the employee under section 771 of this title'' in former section 773(a) are omitted as unnecessary because the same provision appeared in former section 771, which is carried into subsection (b).

Administration of this subchapter was transferred to the Secretary of Labor by section 1 of 1950 Reorg. Plan No. 19, 64 Stat. 1271 (see section 8145).

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8146 of this title.

§ 8124. Findings and award; hearings

(a) The Secretary of Labor shall determine and make a finding of facts and make an award for or against payment of compensation under this subchapter after—

(1) considering the claim presented by the beneficiary and the report furnished by the immediate superior; and

(2) completing such investigation as he considers necessary.

(b)(1) Before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary under subsection (a) of this section is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his claim before a representative of the Secretary. At the hearing, the claimant is entitled to present evidence in further support of his claim. Within 30 days after the hearing ends, the Secretary shall notify the claimant in writing of his further decision and any modifications of the award he may make and of the basis of his decision.

(2) In conducting the hearing, the representative of the Secretary is not bound by common law or statutory rules of evidence, by technical or formal rules of procedure, or by section 554 of this title except as provided by this subchapter, but may conduct the hearing in such manner as to best ascertain the rights of the claimant. For this purpose, he shall receive such relevant evidence as the claimant adduces and such other evidence as he determines necessary or useful in evaluating the claim.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 545; Pub. L. 90–83, §1(58), Sept. 11, 1967, 81 Stat. 210.)

HISTORICAL AND REVISION NOTES

1966 ACT

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 786.	Sept. 7, 1916, ch. 458, §36, 39 Stat. 749.

The last sentence of former section 786 is omitted as surplusage because it is covered by section 8147.

Administration of this subchapter was transferred to the Secretary of Labor by section 1 of 1950 Reorg. Plan No. 19, 64 Stat. 1271 (see section 8145).

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 ACT

Section of title 5	*Source (U.S. Code)*	*Source (Statutes at Large)*
8124(b)	5 App.: 786(b).	July 4, 1966, Pub. L. 89–488, §11(b), 80 Stat. 255.

In subsection (b)(1), the words ''section 8128(a) of this title'' are substituted for ''section 37'' to reflect the codification of section 37 in title 5, United States Code. The words ''a claimant * * * is entitled * * * to a hearing'' are substituted for ''any claimant * * * shall * * * be afforded an opportunity for a hearing''. The words ''under subsection (a) of this section'' are substituted for ''under this section'' for clarity. In the second sentence, the words ''is entitled to present evidence'' are substituted for ''shall be afforded an opportunity to present evidence''.

In subsection (b)(2), the words ''section 554 of this title * * * this subchapter'' are substituted for ''section 5 of the Administrative Procedure Act * * * this Act'' to reflect the codification of the cited section and act in title 5. In the second sentence, the words ''shall, in addition, receive'' are omitted as unnecessary.

PERSONNEL NOT AFFECTED BY 1967 INCREASE

Increases authorized under amendment by section 1(58) of Pub. L. 90–83 not applicable to specified personnel, see section 7 of Pub. L. 90–83, set out as a note under section 8103 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8149 of this title.

§ 8125. Misbehavior at proceedings

If an individual—

(1) disobeys or resists a lawful order or process in proceedings under this subchapter before the Secretary of Labor or his representative; or

(2) misbehaves during a hearing or so near the place of hearing as to obstruct it;

the Secretary or his representative shall certify the facts to the district court having jurisdiction in the place where he is sitting. The court, in a summary manner, shall hear the evidence as to the acts complained of and if the evidence warrants, punish the individual in the same manner and to the same extent as for a contempt committed before the court, or commit the individual on the same conditions as if the forbidden act had occurred with reference to the process of or in the presence of the court.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 545.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 773(c).	Oct. 14, 1949, ch. 691, §208 ''Sec. 23(c)'', 63 Stat. 865.

The words ''the district court of the United States for the District of Columbia'' are omitted as included in ''district court''. The words ''under this subchapter'' are added for clarity since this section which was formerly a subsection referred to the subsection preceding it which identified the proceedings.

Administration of this subchapter was transferred to the Secretary of Labor by section 1 of 1950 Reorg. Plan No. 19, 64 Stat. 1271 (see section 8145).

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

§ 8126. Subpenas; oaths; examination of witnesses

The Secretary of Labor, on any matter within his jurisdiction under this subchapter, may—

(1) issue subpenas for and compel the attendance of witnesses within a radius of 100 miles;

(2) administer oaths;

(3) examine witnesses; and

(4) require the production of books, papers, documents, and other evidence.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 545.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 780.	Sept. 7, 1916, ch. 458, §29, 39 Stat. 748. Oct. 14, 1949, ch. 691, §205(c)(2), 63 Stat. 864.

The words ''under this subchapter'' are added to preserve the original grant of power in the Act of Sept. 7, 1916.

Administration of this subchapter was transferred to the Secretary of Labor by section 1 of 1950 Reorg. Plan No. 19, 64 Stat. 1271 (see section 8145).

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

§ 8127. Representation; attorneys' fees

(a) A claimant may authorize an individual to represent him in any proceeding under this subchapter before the Secretary of Labor.

(b) A claim for legal or other services furnished in respect to a case, claim, or award for compensation under this subchapter is valid only if approved by the Secretary.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 545.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 773(b) (less last sentence).	Oct. 14, 1949, ch. 691, §208 ''Sec. 23(b) (less last sentence)'', 63 Stat. 865.

Administration of this subchapter was transferred to the Secretary of Labor by section 1 of 1950 Reorg. Plan No. 19, 64 Stat. 1271 (see section 8145).

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

§ 8128. Review of award

(a) The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. The Secretary, in accordance with the facts found on review, may—

(1) end, decrease, or increase the compensation previously awarded; or

(2) award compensation previously refused or discontinued.

(b) The action of the Secretary or his designee in allowing or denying a payment under this subchapter is—

(1) final and conclusive for all purposes and with respect to all questions of law and fact; and

(2) not subject to review by another official of the United States or by a court by mandamus or otherwise.

Credit shall be allowed in the accounts of a certifying or disbursing official for payment in accordance with that action.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 545.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(a)	5 U.S.C. 787.	Sept. 7, 1916, ch. 458, §37, 39 Stat. 749. June 5, 1924, ch. 261, §1, 43 Stat. 389.
(b)	5 U.S.C. 793 (penultimate sentence of 5th par.).	July 28, 1945, ch. 328, §4 (penultimate sentence), 59 Stat. 504.

In subsection (a), the words ''If the original claim for compensation has been made within the time specified in section 770 of this title'' are omitted as surplusage. The words ''an award for or against payment of compensation'' are coextensive with and, for clarity and consistency with section 8124, substituted for ''the award''. The second sentence of former section 787 is omitted as included in the penultimate sentence of former section 793, which is carried into subsection (b). The last sentence of former section 787 is omitted as executed.

In subsection (b), the word ''official'' is substituted for ''officer'' because of the definition of ''officer'' in section 2104 which excludes a member of a uniformed service.

Administration of this subchapter was transferred to the Secretary of Labor by section 1 of 1950 Reorg. Plan No. 19, 64 Stat. 1271 (see section 8145).

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface of the report.

FEDERAL RULES OF CIVIL PROCEDURE

Writ of mandamus abolished in United States district courts, but relief available by appropriate action or motion, see rule 81, Title 28, Appendix, Judiciary and Judicial Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8113, 8124, 8146 of this title.

§ 8129. Recovery of overpayments

(a) When an overpayment has been made to an individual under this subchapter because of an error of fact or law, adjustment shall be made under regulations prescribed by the Secretary of Labor by decreasing later payments to which the individual is entitled. If the individual dies before the adjustment is completed, adjustment shall be made by decreasing later benefits payable under this subchapter with respect to the individual's death.

(b) Adjustment or recovery by the United States may not be made when incorrect payment has been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of this subchapter or would be against equity and good conscience.

(c) A certifying or disbursing official is not liable for an amount certified or paid by him when—

(1) adjustment or recovery of the amount is waived under subsection (b) of this section; or

(2) adjustment under subsection (a) of this section is not completed before the death of all individuals against whose benefits deductions are authorized.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 546.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 788.	Sept. 7, 1916, ch. 458, §38, 39 Stat. 749. Oct. 14, 1949, ch. 691, §206, 63 Stat. 864.

In subsection (a), the words ''Subject to the provisions of sections 786 and 787 of this title'' and ''if any'' are omitted as surplusage.

In subsection (c), the word ''official'' is substituted for ''officer'' as the definition of ''officer'' in section 2104 excludes a member of a uniformed service.

Administration of this subchapter was transferred to the Secretary of Labor by section 1 of 1950 Reorg. Plan No. 19, 64 Stat. 1271 (see section 8145).

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8106, 8148 of this title.

§ 8130. Assignment of claim

An assignment of a claim for compensation under this subchapter is void. Compensation and claims for compensation are exempt from claims of creditors.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 546.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 775.	Sept. 7, 1916, ch. 458, §25, 39 Stat. 747.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

§ 8131. Subrogation of the United States

(a) If an injury or death for which compensation is payable under this subchapter is caused under circumstances creating a legal liability on a person other than the United States to pay damages, the Secretary of Labor may require the beneficiary to—

(1) assign to the United States any right of action he may have to enforce the liability or any right he may have to share in money or other property received in satisfaction of that liability; or

(2) prosecute the action in his own name.

An employee required to appear as a party or witness in the prosecution of such an action is in an active duty status while so engaged.

(b) A beneficiary who refuses to assign or prosecute an action in his own name when required by the Secretary is not entitled to compensation under this subchapter.

(c) The Secretary may prosecute or compromise a cause of action assigned to the United States. When the Secretary realizes on the cause of action, he shall deduct therefrom and place to the credit of the Employees' Compensation Fund the amount of compensation already paid to the beneficiary and the expense of realization or collection. Any surplus shall be paid to the beneficiary and credited on future payments of compensation payable for the same injury. However, the beneficiary is entitled to not less than one-fifth of the net amount of a settlement or recovery remaining after the expenses thereof have been deducted.

(d) If an injury or death for which compensation is payable under this subchapter is caused under circumstances creating a legal liability in the Panama Canal Company to pay damages under the law of a State, a territory or possession of the United States, the District of Columbia, or a foreign country, compensation is not payable until the individual entitled to compensation—

(1) releases to the Panama Canal Company any right of action he may have to enforce the liability of the Panama Canal Company; or

(2) assigns to the United States any right he may have to share in money or other property received in satisfaction of the liability of the Panama Canal Company.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 546; Pub. L. 90–83, §1(60), Sept. 11, 1967, 81 Stat. 211.)

HISTORICAL AND REVISION NOTES

1966 ACT

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(a)–(c)	5 U.S.C. 776.	Sept. 7, 1916, ch. 458, §26, 39 Stat. 747. Sept. 13, 1960, Pub. L. 86–767, §207, 74 Stat. 908.
(d)	5 U.S.C. 791.	Sept. 7, 1916, ch. 458, §41, 39 Stat. 750.

In subsection (d), the first 45 words of section 41 of the Act of Sept. 7, 1916, are omitted as executed. The words ''Panama Canal Company'' are substituted for ''Panama Railroad Company'' on authority of the Act of Sept. 26, 1950, ch. 1049, §2(a) (2), 64 Stat. 1038.

Administration of this subchapter was transferred to the Secretary of Labor by section 1 of 1950 Reorg. Plan. No. 19, 64 Stat. 1271 (see section 8145).

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 ACT

Section of title 5	*Source (U.S. Code)*	*Source (Statutes at Large)*
8131(c)	5 App.: 776 (proviso).	July 4, 1966, Pub. L. 89–488, §10(a), 80 Stat. 255.

REFERENCES IN TEXT

For definition of Panama Canal Company, referred to in text, see section 3602(b) of Title 22, Foreign Relations and Intercourse.

PERSONNEL NOT AFFECTED BY 1967 INCREASE

Increases authorized under amendment by Pub. L. 90–83 not applicable to specified personnel, see section 7 of Pub. L. 90–83, set out as a note under section 8103 of this title.

CROSS REFERENCES

Third party tort liability to United States for hospital and medical care, see section 2651 et seq. of Title 42, The Public Health and Welfare.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8147 of this title.

§ 8132. Adjustment after recovery from a third person

If an injury or death for which compensation is payable under this subchapter is caused under circumstances creating a legal liability in a person other than the United States to pay damages, and a beneficiary entitled to compensation from the United States for that injury or death receives money or other property in satisfaction of that liability as the result of suit or settlement by him or in his behalf, the beneficiary, after deducting therefrom the costs of suit and a reasonable attorney's fee, shall refund to the United States the amount of compensation paid by the United States and credit any surplus on future payments of compensation payable to him for the same injury. No court, insurer, attorney, or other person shall pay or distribute to the beneficiary or his designee the proceeds of such suit or settlement without first satisfying or assuring satisfaction of the interest of the United States. The amount refunded to the United States shall be credited to the Employees' Compensation Fund. If compensation has not been paid to the beneficiary, he shall credit the money or property on compensation payable to him by the United States for the same injury. However, the beneficiary is entitled to retain, as a minimum, at least one-fifth of the net amount of the money or other property remaining after the expenses of a suit or settlement have been deducted; and in addition to this minimum and at the time of distribution, an amount equivalent to a reasonable attorney's fee proportionate to the refund to the United States.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 547; Pub. L. 90–83, § 1(61), Sept. 11, 1967, 81 Stat. 211; Pub. L. 93–416, § 15, Sept. 7, 1974, 88 Stat. 1147.)

HISTORICAL AND REVISION NOTES

1966 ACT

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 777.	Sept. 7, 1916, ch. 458, § 27, 39 Stat. 747.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 ACT

Section of title 5	*Source (U.S. Code)*	*Source (Statutes at Large)*
8132	5 App.: 777(b) (proviso).	July 4, 1966, Pub. L. 89–488, § 10(b), 80 Stat. 255.

The words ''However, * * * is entitled to retain * * * plus'' are substituted for ''*Provided*, That * * * shall have the right to retain * * * and, in addition, to retain''.

AMENDMENTS

1974—Pub. L. 93–416 made minor changes in phraseology and inserted provision prohibiting a court, etc., from distributing proceeds of suit or settlement without satisfying or assuring satisfaction of the interests of the United States.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–416 effective Sept. 7, 1974, and applicable to any injury or death occurring on or after Sept. 7, 1974, see section 28(a) of Pub. L. 93–416, set out as a note under section 8101 of this title.

PERSONNEL NOT AFFECTED BY 1967 INCREASE

Increases authorized under amendment by Pub. L. 90–83 not applicable to specified personnel, see section 7 of Pub. L. 90–83, set out as a note under section 8103 of this title.

CROSS REFERENCES

Third party tort liability to United States for hospital and medical care, see section 2651 et seq. of Title 42, The Public Health and Welfare.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8147 of this title.

§ 8133. Compensation in case of death

(a) If death results from an injury sustained in the performance of duty, the United States shall pay a monthly compensation equal to a percentage of the monthly pay of the deceased employee in accordance with the following schedule:

(1) To the widow or widower, if there is no child, 50 percent.

(2) To the widow or widower, if there is a child, 45 percent and in addition 15 percent for each child not to exceed a total of 75 percent for the widow or widower and children.

(3) To the children, if there is no widow or widower, 40 percent for one child and 15 percent additional for each additional child not to exceed a total of 75 percent, divided among the children share and share alike.

(4) To the parents, if there is no widow, widower, or child, as follows—

(A) 25 percent if one parent was wholly dependent on the employee at the time of death and the other was not dependent to any extent;

(B) 20 percent to each if both were wholly dependent; or

(C) a proportionate amount in the discretion of the Secretary of Labor if one or both were partly dependent.

If there is a widow, widower, or child, so much of the percentages are payable as, when added to the total percentages payable to the widow, widower, and children, will not exceed a total of 75 percent.

(5) To the brothers, sisters, grandparents, and grandchildren, if there is no widow, widower, child, or dependent parent, as follows—

(A) 20 percent if one was wholly dependent on the employee at the time of death;

(B) 30 percent if more than one was wholly dependent, divided among the dependents share and share alike; or

(C) 10 percent if no one is wholly dependent but one or more is partly dependent, divided among the dependents share and share alike.

If there is a widow, widower, child, or dependent parent, so much of the percentages are payable as, when added to the total percentages payable to the widow, widower, children, and dependent parents, will not exceed a total of 75 percent.

(b) The compensation payable under subsection (a) of this section is paid from the time of death until—

(1) a widow, or widower dies or remarries before reaching age 55;

(2) a child, a brother, a sister, or a grandchild dies, marries, or becomes 18 years of age, or if over age 18 and incapable of self-support becomes capable of self-support; or

(3) a parent or grandparent dies, marries, or ceases to be dependent.

Notwithstanding paragraph (2) of this subsection, compensation payable to or for a child, a brother or sister, or grandchild that would otherwise end because the child, brother or sister, or grandchild has reached 18 years of age shall continue if he is a student as defined by section 8101 of this title at the time he reaches 18 years of age for so long as he continues to be such a student or until he marries. A widow or widower who has entitlements to benefits under this title derived from more than one husband or wife shall elect one entitlement to be utilized.

(c) On the cessation of compensation under this section to or on account of an individual, the compensation of the remaining individuals entitled to compensation for the unexpired part of the period during which their compensation is payable, is that which they would have received if they had been the only individuals entitled to compensation at the time of the death of the employee.

(d) When there are two or more classes of individuals entitled to compensation under this section and the apportionment of compensation under this section would result in injustice, the Secretary may modify the apportionment to meet the requirements of the case.

(e) In computing compensation under this section, the monthly pay is deemed not less than the minimum rate of basic pay for GS–2. However, the total monthly compensation may not exceed—

(1) the monthly pay computed under section 8114 of this title, except for increases authorized by section 8146a of this title; or

(2) 75 percent of the monthly pay of the maximum rate of basic pay for GS–15.

(f) Notwithstanding any funeral and burial expenses paid under section 8134, there shall be paid a sum of $200 to the personal representative of a deceased employee within the meaning of section 8101(1) of this title for reimbursement of the costs of termination of the decedent's status as an employee of the United States.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 547; Pub. L. 90–83, §1(62), Sept. 11, 1967, 81 Stat. 211; Pub. L. 93–416, §§16(a), 17, 18, Sept. 7, 1974, 88 Stat. 1147, 1149; Pub. L. 101–303, §3(1), May 29, 1990, 104 Stat. 251.)

HISTORICAL AND REVISION NOTES

1966 ACT

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 760 (less last 23 words of 1st sentence in (B); and less (H) and (L)).	Sept. 7, 1916, ch. 458, §10 (less last 15 words of 1st sentence in (B); and less (H) and (L)), 39 Stat. 744. Feb. 12, 1927, ch. 110, §3, 44 Stat. 1087. July 28, 1945, ch. 328, §§2 (less last 24 words), 3, 59 Stat. 503. Oct. 14, 1949, ch. 691, §106 (less last 23 words of 1st sentence in ''(B)'' of (c); and less (e)), 63 Stat. 859. Sept. 13, 1960, Pub. L. 86–767, §102, 74 Stat. 906.

In subsection (a), the words ''an injury sustained in the performance of duty'' are substituted for ''the injury'' to clearly identify the type of injury to which the section refers.

Administration of this subchapter was transferred to the Secretary of Labor by section 1 of 1950 Reorg. Plan. No. 19, 64 Stat. 1271 (see section 8145).

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 ACT

Section of title 5	*Source (U.S. Code)*	*Source (Statutes at Large)*
8133(b)	5 App.: 760(G) (last sentence).	July 4, 1966, Pub. L. 89–488, §7(a), 80 Stat. 253.
8133(e)	5 App.: 760(K).	July 4, 1966, Pub. L. 89–488, §3(c), 80 Stat. 252.

In subsection (b), the words ''Notwithstanding paragraph (3) of this subsection'' are substituted for ''Notwithstanding any other provision of this section'' for clarity. The words ''section 8101 of this title'' are substituted for ''section 10(M) of this Act'' to reflect the codification of that section in title 5.

In subsection (e), the words ''is deemed'' are substituted for ''shall be considered to be''. The words ''minimum rate of basic pay for GS–2'' and ''maximum rate of basic pay for GS–15'' are substituted for ''lowest rate of basic compensation provided for grade 2 by the General Schedule of the Classification Act of 1949'' and ''highest rate of basic compensation provided for grade 15 of the General Schedule of the Classification Act of 1949,'' respectively, for consistency of style and to reflect the codification of the Classification Act of 1949 in title 5. The words ''under section 8114 of this title'' are substituted for ''as provided in section 12'' to reflect the codification of that section in title 5.

AMENDMENTS

1990—Subsec. (b)(1). Pub. L. 101–303 substituted ''age 55'' for ''age 60''.

1974—Subsec. (a)(1). Pub. L. 93–416, §16(a), substituted ''50'' for ''45''.

Subsec. (a)(2). Pub. L. 93–416, §16(a), substituted ''45'' for ''40''.

Subsec. (a)(3). Pub. L. 93–416, §16(a), substituted ''40'' for ''35''.

Subsec. (b). Pub. L. 93–416, §16(a), inserted ''before reaching age 60'' after ''remarries'' in par. (1), struck out par. (2) referring to widower who dies, remarries or becomes capable of self-support, redesignated pars. (3) and (4) as (2) and (3), respectively, changed the reference in closing paragraph from paragraph (3) of this subsection to paragraph (2) of this subsection, and inserted provision for election by widower or widow of benefits derived from more than one husband or wife.

Subsec. (e)(1). Pub. L. 93–416, §17, inserted '', except for increases authorized by section 8146a of this title'' before ''; or''.

Subsec. (f). Pub. L. 93–416, §18, added subsec. (f).

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by sections 16(a) and 17 of Pub. L. 93–416 applicable to cases where injury or death occurred

prior to Sept. 7, 1974 but only to a period beginning on or after Sept. 7, 1974, see section 28(a) of Pub. L. 93–416, set out as a note under section 8101 of this title.

Amendment by section 18 of Pub. L. 93–416 effective on Sept. 7, 1974, and applicable to any injury or death occurring on or after Sept. 7, 1974, see section 28(a) of Pub. L. 93–416, set out as a note under section 8101 of this title.

PERSONNEL NOT AFFECTED BY 1967 INCREASE

Increases authorized under amendment by section 1(62)(B) of Pub. L. 90–83 not applicable to specified personnel, see section 7 of Pub. L. 90–83, set out as a note under section 8103 of this title.

CROSS REFERENCES

Minimum limits on monthly pay on which death compensation is computed under this section, noncitizen employees sustaining injury outside the continental United States, see section 8138 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8109, 8119, 8135, 8138, 8141, 8148 of this title; title 14 sections 707, 760; title 18 section 1921; title 22 section 3973.

§ 8134. Funeral expenses; transportation of body

(a) If death results from an injury sustained in the performance of duty, the United States shall pay, to the personal representative of the deceased or otherwise, funeral and burial expenses not to exceed $800, in the discretion of the Secretary of Labor.

(b) The body of an employee whose home is in the United States, in the discretion of the Secretary, may be embalmed and transported in a hermetically sealed casket to his home or last place of residence at the expense of the Employees' Compensation Fund if—

(1) the employee dies from—

(A) the injury while away from his home or official station or outside the United States; or

(B) from other causes while away from his home or official station for the purpose of receiving medical or other services, appliances, supplies, or examination under this subchapter; and

(2) the relatives of the employee request the return of his body.

If the relatives do not request the return of the body of the employee, the Secretary may provide for its disposition and incur and pay from the Employees' Compensation Fund the necessary and reasonable transportation, funeral, and burial expenses.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 548.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 761.	Sept. 7, 1916, ch. 458, §11, 39 Stat. 745. Feb. 12, 1927, ch. 110, §4, 44 Stat. 1087. July 28, 1945, ch. 328, §2 (last 24 words), 59 Stat. 503. Oct. 14, 1949, ch. 691, §107, 63 Stat. 860. Sept. 13, 1960, Pub. L. 86–767, §103, 74 Stat. 906.

In subsection (a), the words ''an injury sustained in the performance of duty'' are substituted for ''the injury'' to clearly identify the type of injury to which the section refers.

Administration of this subchapter was transferred to the Secretary of Labor by section 1 of 1950 Reorg. Plan. No. 19, 64 Stat. 1271 (see section 8145).

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AVAILABILITY OF DEPARTMENT OF THE INTERIOR AND RELATED AGENCIES APPROPRIATIONS TO REIMBURSE REPRESENTATIVES OF EMPLOYEES KILLED IN LINE OF DUTY

Pub. L. 103–332, title III, §312, Sept. 30, 1994, 108 Stat. 2537, provided that: ''Notwithstanding any other provision of law in fiscal year 1995 and thereafter, appropriations made available to any department or agency in a Department of the Interior and Related Agencies Appropriations Act shall be available to that department or agency to reimburse the representative (as that term is defined by applicable law) of employees killed in the line of duty after January 1, 1994, and in subsequent fiscal years, for burial costs and related out-of-pocket expenses: *Provided*, That the amount of such reimbursement may exceed the $800 limitation in 5 U.S.C. 8134(a): *Provided further*, That funds provided pursuant to this authority may not exceed $10,000 per employee.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8109, 8133, 8146 of this title; title 38 section 2307.

§ 8135. Lump-sum payment

(a) The liability of the United States for compensation to a beneficiary in the case of death or of permanent total or permanent partial disability may be discharged by a lump-sum payment equal to the present value of all future payments of compensation computed at 4 percent true discount compounded annually if—

(1) the monthly payment to the beneficiary is less than $50 a month;

(2) the beneficiary is or is about to become a nonresident of the United States; or

(3) the Secretary of Labor determines that it is for the best interest of the beneficiary.

The probability of the death of the beneficiary before the expiration of the period during which he is entitled to compensation shall be determined according to the most current United States Life Tables, as developed by the United States Department of Health, Education, and Welfare, which shall be updated from time to time, but the lump-sum payment to a widow or widower of the deceased employee may not exceed 60 months' compensation. The probability of the happening of any other contingency affecting the amount or duration of compensation shall be disregarded.

(b) On remarriage before reaching age 55 a widow or widower entitled to compensation under section 8133 of this title, shall be paid a lump sum equal to twenty-four times the monthly compensation payment (excluding compensation on account of another individual) to which he was entitled immediately before the remarriage.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 548; Pub. L. 90–83, §1(63), Sept. 11, 1967, 81 Stat. 211; Pub. L. 93–416, §§16(b), 19, 20, Sept. 7, 1974, 88 Stat. 1149; Pub. L. 101–303, §3(2), May 29, 1990, 104 Stat. 251.)

HISTORICAL AND REVISION NOTES
1966 ACT

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 764.	Sept. 7, 1916, ch. 458, §14, 39 Stat. 746.

Administration of this subchapter was transferred to the Secretary of Labor by section 1 of 1950 Reorg. Plan No. 19, 64 Stat. 1271 (see section 8145).

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 ACT

Section of title 5	*Source (U.S. Code)*	*Source (Statutes at Large)*
8135(b)	5 App.: 764(b).	July 4, 1966, Pub. L. 89–488, §8, 80 Stat. 254.

The word ''widower'' is substituted for ''dependent widower'' to conform to the definition in 5 U.S.C. 8101(11). The words ''section 8133 of title 5'' are substituted for ''section 10'' to reflect the codification of that section in title 5, United States Code.

AMENDMENTS

1990—Subsec. (b). Pub. L. 101–303 substituted ''age 55'' for ''age 60''.

1974—Subsec. (a). Pub. L. 93–416, §20, substituted provisions relating to use of the most current United States Life Tables, for provisions relating to determination by the American Experience Tables of Mortality.

Subsec. (a)(1). Pub. L. 93–416, §19, substituted ''$50'' for ''$5''.

Subsec. (b). Pub. L. 93–416, §16(b), inserted ''before reaching age 60'' after ''On remarriage''.

CHANGE OF NAME

United States Department of Health, Education, and Welfare redesignated the United States Department of Health and Human Services by section 3508 of Title 20, Education.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–416 applicable to cases where injury or death occurred prior to Sept. 7, 1974, but only to a period beginning on or after Sept. 7, 1974, see section 28(a) of Pub. L. 93–416, set out as a note under section 8101 of this title.

PERSONNEL NOT AFFECTED BY 1967 INCREASE

Increases authorized under amendment by section 1(63) of Pub. L. 90–83 not applicable to specified personnel, see section 7 of Pub. L. 90–83, set out as a note under section 8103 of this title.

CROSS REFERENCES

Entitlement to civil service retirement annuity, effect of lump sum payment for compensation under this section, see sections 8337 and 8464a of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8137, 8337, 8464a of this title; title 22 section 4048; title 50 section 2051.

§ 8136. Initial payments outside the United States

If an employee is injured outside the continental United States, the Secretary of Labor may arrange and provide for initial payment of compensation and initial furnishing of other benefits under this subchapter by an employee or agent of the United States designated by the Secretary for that purpose in the locality in which the employee was employed or the injury incurred.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 549.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 793 (2d sentence of 4th par.)	July 29, 1942, ch. 533 (2d sentence), 56 Stat. 725.

The word ''continental'' is added on authority of the last sentence of the fifth paragraph of former section 793, which is carried into section 8137.

Administration of this subchapter was transferred to the Secretary of Labor by section 1 of 1950 Reorg. Plan. No. 19, 64 Stat. 1271 (see section 8145).

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

§ 8137. Compensation for noncitizens and nonresidents

(a) When the Secretary of Labor finds that the amount of compensation payable to an employee who is neither a citizen nor resident of the United States or Canada, or payable to a dependent of such an employee, is substantially disproportionate to compensation for disability or death payable in similar cases under local statute, regulations, custom, or otherwise at the place outside the continental United States or Canada where the employee is working at the time of injury, he may provide for payment of compensation on a basis reasonably in accord with prevailing local payments in similar cases by—

(1) the adoption or adaption of the substantive features, by a schedule or otherwise, of local workmen's compensation provisions or other local statute, regulation, or custom applicable in cases of personal injury or death; or

(2) establishing special schedules of compensation for injury, death, and loss of use of members and functions of the body for specific classes of employees, areas, and places.

Irrespective of the basis adopted, the Secretary may at any time—

(A) modify or limit the maximum monthly and total aggregate payments for injury, death, and medical or other benefits;

(B) modify or limit the percentages of the wage of the employee payable as compensation for the injury or death; and

(C) modify, limit, or redesignate the class or classes of beneficiaries entitled to death benefits, including the designation of persons, representatives, or groups entitled to payment under local statute or custom whether or not included in the classes of beneficiaries otherwise specified by this subchapter.

(b) In a case under this section, the Secretary or his designee may—

(1) make a lump-sum award in the manner prescribed by section 8135 of this title when he or his designee considers it to be for the best interest of the United States; and

(2) compromise and pay a claim for benefits, including a claim in which there is a dispute as to jurisdiction or other fact or a question of law.

Compensation paid under this subsection is instead of all other compensation from the United States for the same injury or death, and a payment made under this subsection is deemed compensation under this subchapter and is satisfaction of all liability of the United States in respect to the particular injury or death.

(c) The Secretary may delegate to an employee or agency of the United States, with such limitations and right of review as he considers advisable, authority to process, adjudicate, commute by lump-sum award, compromise, and pay a claim or class of claims for compensation, and to provide other benefits, locally, under this section, in accordance with such regulations and instructions as the Secretary considers necessary. For this purpose, the Secretary may provide or transfer funds, including reimbursement of amounts paid under this subchapter.

(d) The Secretary may waive the application of this subchapter in whole or in part and for such period or periods as he may fix if he finds that—

(1) conditions prevent the establishment of facilities for processing and adjudicating claims under this section; or

(2) claimants under this section are alien enemies.

(e) The Secretary may apply this section retrospectively with adjustment of compensation and benefits as he considers necessary and proper.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 549.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 793 (5th par., less penultimate sentence).	July 28, 1945, ch. 328, § 4 (less penultimate sentence), 59 Stat. 503.

The last sentence of former section 793 is omitted as it consists of a definition which is fully spelled out when the words ''United States'' are used as a geographical reference.

Administration of this subchapter was transferred to the Secretary of Labor by section 1 of 1950 Reorg. Plan. No. 19, 64 Stat. 1271 (see section 8145).

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

§ 8138. Minimum limit modification for noncitizens and aliens

(a) Except as provided by subsection (b) of this section, the minimum limit on monthly compensation for disability under section 8112 of this title and the minimum limit on monthly pay on which death compensation is computed under section 8133 of this title do not apply in the case of a noncitizen employee, or a class or classes of noncitizen employees, who sustain injury outside the continental United States. The Secretary of Labor may establish a minimum monthly pay on which death compensation is computed in the case of a class or classes of such noncitizen employees.

(b) The President may remove or modify the minimum limit on monthly compensation for disability under section 8112 of this title and the minimum limit on monthly pay on which death compensation is computed under section 8133 of this title in the case of an alien employee, or a class or classes of alien employees, of the Canal Zone Government or the Panama Canal Company.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 550.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(a)	5 U.S.C. 793 (4th par., less 2d sentence).	July 29, 1942, ch. 533 (less 2d sentence), 56 Stat. 725. Sept. 13, 1960, Pub. L. 86–767, § 210, 74 Stat. 910.
(b)	5 U.S.C. 793 (2d sentence of 2d par.).	Sept. 7, 1916, ch. 458, § 42 (2d sentence of 2d par.), 39 Stat. 750. Apr. 6, 1938, ch. 79 ''Sec. 42 (2d sentence of 2d par.)'', 52 Stat. 201.

In subsection (a), the words ''in his discretion'' are omitted as unnecessary in view of the permissive nature of the authority. The word ''continental'' is added on authority of the last sentence of the fifth paragraph of former section 793, which is carried into section 8137.

In subsection (b), the words ''Canal Zone Government'' and ''Panama Canal Company'' are substituted for ''Panama Canal'' and ''Panama Railroad Company'', respectively, on authority of the Act of Sept. 26, 1950, ch. 1049, § 2(a), 64 Stat. 1038.

Administration of this subchapter was transferred to the Secretary of Labor by section 1 of 1950 Reorg. Plan No. 19, 64 Stat. 1271 (see section 8145).

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

REFERENCES IN TEXT

For definition of Canal Zone Government and Panama Canal Company, referred to in text, see section 3602(b) of Title 22, Foreign Relations and Intercourse.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8112 of this title.

§ 8139. Employees of the District of Columbia

Compensation awarded to an employee of the government of the District of Columbia shall be paid in the manner provided by statute for the payment of the general expenses of the government of the District of Columbia.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 550.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 794 (less 1st sentence).	July 11, 1919, ch. 7, § 11 (less 1st sentence), 41 Stat. 104.

The words ''Compensation awarded'' are substituted for ''Such compensation as the Secretary may award''.

The last sentence of former section 794, requiring that the Commissioners of the District of Columbia submit to Congress through the Bureau of the Budget estimates of appropriations, is omitted as obsolete. The Budget and Accounting Act, 1921, as amended, 31 U.S.C. 2 et seq., prescribes the procedures for presenting all budget estimates for the government of the District of Columbia and provides that the budget submission to Congress be made by the President.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

PROCESSING OF CLAIMS FILED BY DISTRICT OF COLUMBIA EMPLOYEES

See Pub. L. 93–198, title II, §204(e), Dec. 24, 1973, 87 Stat. 783, set out as a note under section 8101 of this title.

§ 8140. Members of the Reserve Officers' Training Corps

(a) Subject to the provisions of this section, this subchapter applies to a member of, or applicant for membership in, the Reserve Officers' Training Corps of the Army, Navy, or Air Force who suffers an injury, disability, or death incurred in line of duty—

(1) while engaged in a flight or in flight instruction under chapter 103 of title 10; or

(2) while performing authorized travel to or from, or while attending, training or a practice cruise under chapter 103 of title 10.

(b) For the purpose of this section, an injury is incurred in line of duty only if it is the proximate result of the performance of military training by the member concerned, or of his travel to or from that training, during the periods specified by subsection (a)(2) of this section. A member or applicant for membership who contracts a disease or illness which is the proximate result of the performance of training during the periods specified by subsection (a)(2) of this section is considered for the purpose of this section to have been injured in line of duty during that period. Subject to review by the Secretary of Labor, the Secretary of the military department concerned, under regulations prescribed by him, shall determine whether or not an injury, disease, or illness was incurred or contracted in line of duty and was the proximate result of the performance of military training by the member concerned or of his travel to or from that military training.

(c) In computing the compensation payable under this section, the monthly pay received by the injured or deceased individual, in cash and kind, is deemed $150.

(d) The Secretary of the military department concerned shall cooperate fully with the Department of Labor in the prompt investigation and prosecution of a case involving the legal liability of a third party other than the United States.

(e) An individual may not receive disability benefits under this section while on active duty with the armed forces, but these benefits may be reinstated when the individual is released from that active duty.

(f) Expenses incurred by a military department in providing hospitalization, medical and surgical care, necessary transportation incident to that hospitalization or medical and surgical care, or in connection with a funeral and burial on behalf of an individual covered by subsection (a) of this section shall be reimbursed by the Secretary of Labor from the Employees' Compensation Fund in accordance with this subchapter. However, reimbursement may not be made for hospitalization or medical or surgical care provided an individual by a military department in a facility of a military department.

(g) For purposes of this section, the term ''applicant for membership'' includes a student enrolled, during a semester or other enrollment term, in a course which is part of Reserve Officers' Training Corps instruction at an educational institution.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 550; Pub. L. 100–456, div. A, title VI, §633(b), Sept. 29, 1988, 102 Stat. 1986.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 802.	Aug. 1, 1956, ch. 830, §4, 70 Stat. 805. Oct. 13, 1964, Pub. L. 88–647, §302, 78 Stat. 1073.

In subsection (a), the words ''Subject to the provisions of this section'' are added for clarity.

In subsection (c), the last sentence of former section 802(b) is omitted as unnecessary.

In subsection (d), the words ''Nothing in this section shall be construed to hinder the prompt action authorized by sections 776 and 777 of this title in any case involving the legal liability of a third party other than the United States'' are omitted as unnecessary as there is nothing in the section that reasonably could be so construed.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–456, §633(b)(1)(A), substituted ''who suffers an injury, disability, or death'' for ''who suffers disability or death from an injury'' in introductory provisions.

Subsec. (a)(2). Pub. L. 100–456, §633(b)(1)(B), struck out ''field'' before ''training''.

Subsec. (f). Pub. L. 100–456, §633(b)(2), substituted ''by a military department in a facility of a military department'' for ''while attending field training or a practice cruise under chapter 103 of title 10''.

Subsec. (g). Pub. L. 100–456, §633(b)(3), added subsec. (g).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–456 applicable only with respect to training performed after Sept. 30, 1988, see section 633(e) of Pub. L. 100–456, set out as a note under section 2109 of Title 10, Armed Forces.

DIFFERENT COVERAGE FOR RESERVE OFFICER TRAINING CORPS MEMBERS

Pub. L. 97–306, title I, §113(c), Oct. 14, 1982, 96 Stat. 1432, provided that: ''Notwithstanding section 8140 of title 5, United States Code, subchapter I of chapter 81 of such title does not apply in the case of a disability suffered by a member of the Reserve Officers' Training Corps of the Army, Navy, or Air Force that is compensable under chapter 11 of title 38, United States Code, or a death suffered by such a member for which dependency and indemnity compensation is payable under chapter 13 of such title [section 401 et seq. of Title 38].''

[Section 113(d) of Pub. L. 97–306 provided that these provisions shall apply only with respect to deaths and disabilities resulting from diseases or injuries incurred or aggravated after September 30, 1982.]

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 38 section 101.

§ 8141. Civil Air Patrol volunteers

(a) Subject to the provisions of this section, this subchapter applies to a volunteer civilian member of the Civil Air Patrol, except a Civil Air Patrol Cadet under 18 years of age.

(b) In administering this subchapter for a member of the Civil Air Patrol covered by this section—

(1) the monthly pay of a member is deemed the rate of basic pay payable for step 1 of grade GS–9 in the General Schedule under section 5332 of this title for the purpose of computing compensation for disability or death;

(2) the percentages applicable to payments under section 8133 of this title are—

(A) 45 percent for section 8133(a)(2) of this title, if the member dies fully or currently insured under subchapter II of chapter 7 of title 42, with no additional payments for a child or children while the widow or widower remains eligible for payments under section 8133(a)(2) of this title;

(B) 20 percent for section 8133(a)(3) of this title for one child and 10 percent additional for each additional child, but not to exceed a total of 75 percent, if the member died fully or currently insured under subchapter II of chapter 7 of title 42; and

(C) 25 percent for section 8133(a)(4) of this title, if one parent was wholly dependent on the deceased member at the time of his death and the other was not dependent to any extent; 16 percent to each, if both were wholly dependent; and if one was or both were partly dependent, a proportionate amount in the discretion of the Secretary of Labor;

(3) a payment may not be made under section 8133(a)(5) of this title;

(4) ''performance of duty'' means only active service, and travel to and from that service, rendered in performance or support of operational missions of the Civil Air Patrol under direction of the Department of the Air Force and under written authorization by competent authority covering a specific assignment and prescribing a time limit for the assignment; and

(5) the Secretary of Labor or his designee shall inform the Commissioner of Social Security when a claim is filed and eligibility for compensation is established under section 8133(a)(2) or (3) of this title, and the Commissioner of Social Security shall certify to the Secretary of Labor as to whether or not the member concerned was fully or currently insured under subchapter II of chapter 7 of title 42 at the time of his death.

(c) The Secretary of Labor or his designee may inform the Secretary of the Air Force or his designee when a claim is filed. The Secretary of the Air Force, on request of the Secretary of Labor, shall advise him of the facts concerning the injury and whether or not the member was rendering service, or engaged in travel to or from service, in performance or support of an operational mission of the Civil Air Patrol at the time of injury. This subsection does not dispense with the report of the immediate superior of the member required by section 8120 of this title, or other reports agreed on under that section.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 551; Pub. L. 98–94, title XII, §1258(a), Sept. 24, 1983, 97 Stat. 702; Pub. L. 103–296, title I, §108(e)(4), Aug. 15, 1994, 108 Stat. 1486.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 803 (less (d)).	Aug. 3, 1956, ch. 926, §1 ''Sec. 3 (less (d))'', 70 Stat. 980.

Subsection (d) of former section 803, providing for retroactive applicability, is omitted as executed (see Table II).

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

REFERENCES IN TEXT

Subchapter II of chapter 7 of title 42, referred to in text, is section 401 et seq. of Title 42, The Public Health and Welfare.

AMENDMENTS

1994—Subsec. (b)(5). Pub. L. 103–296 substituted ''Commissioner of Social Security'' for ''Secretary of Health, Education, and Welfare'' in two places.

1983—Subsec. (a). Pub. L. 98–94, §1258(a)(1), inserted ''under 18 years of age'' after ''Civil Air Patrol Cadet''.

Subsec. (b)(1). Pub. L. 98–94, §1258(a)(2), substituted ''the rate of basic pay payable for step 1 of grade GS–9 in the General Schedule under section 5332 of this title'' for ''$300''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 1258(b) of Pub. L. 98–94 provided that:

''(1) The amendments made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Sept. 24, 1983].

''(2) The amendment made by subsection (a)(1) [amending this section] shall apply only to deaths or injuries occurring on or after the date of the enactment of this Act [Sept. 24, 1983].

''(3) The amendment made by subsection (a)(2) [amending this section] shall apply only to the computation of compensation payable for periods commencing on or after the date of the enactment of this Act [Sept. 24, 1983].''

CROSS REFERENCES

Veteran status or military status not conferred by this section, see section 8150 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8150 of this title.

§ 8142. Peace Corps volunteers

(a) For the purpose of this section, ''volunteer'' means—

(1) a volunteer enrolled in the Peace Corps under section 2504 of title 22;

(2) a volunteer leader enrolled in the Peace Corps under section 2505 of title 22; and

(3) an applicant for enrollment as a volunteer or volunteer leader during a period of training under section 2507(a) of title 22 before enrollment.

(b) Subject to the provisions of this section, this subchapter applies to a volunteer, except that entitlement to disability compensation payments does not commence until the day after the date of termination of his service as a volunteer.

(c) For the purpose of this subchapter—

(1) a volunteer is deemed receiving monthly pay at the minimum rate for GS–7;

(2) a volunteer leader referred to by section 2505 of title 22, or a volunteer with one or more minor children as defined in section 2504 of title 22, is deemed receiving monthly pay at the minimum rate for GS–11;

(3) an injury suffered by a volunteer when he is outside the several States and the District of Columbia is deemed proximately caused by his employment, unless the injury or disease is—

(A) caused by willful misconduct of the volunteer;

(B) caused by the volunteer's intention to bring about the injury or death of himself or of another; or

(C) proximately caused by the intoxication of the injured volunteer; and

(4) the period of service of an individual as a volunteer includes—

(A) any period of training under section 2507(a) of title 22 before enrollment as a volunteer; and

(B) the period between enrollment as a volunteer and the termination of service as a volunteer by the President or by death or resignation.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 552; Pub. L. 90–83, §1(64), Sept. 11, 1967, 81 Stat. 212; Pub. L. 93–416, §23(b), Sept. 7, 1974, 88 Stat. 1150.)

HISTORICAL AND REVISION NOTES

1966 ACT

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	22 U.S.C. 2504(d).	Sept. 22, 1961, Pub. L. 87–293, §5(d), 75 Stat. 613.

Subsection (a) is based on sections 2504(a), 2505, and 2507(a) of title 22.

In subsection (b), the words ''Subject to the provisions of this section'' are added for clarity and to conform to the style of sections 8140 and 8141. The words ''of the United States Government'' are omitted as unnecessary in view of the definition of ''employee'' in section 8101(1).

In subsection (c), the words ''outside the several States, territories and possessions of the United States, and the District of Columbia'' are substituted for ''abroad'' on authority of section 2522(a), (b) of title 22. References to ''the general schedule established by the Classification Act of 1949, as amended'' are omitted as unnecessary.

Subsection (c)(4) is added on authority of section 2522(e) of title 22.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 ACT

Section 8142 of title 5 was derived from section 2504(d) of title 22. This amendment reflects changes, effected by the act of Sept. 13, 1966, Public Law 89–572, section 4, 80 Stat. 765, in the definitions applicable to section 2504(d) by virtue of section 2522(a), (b) of title 22.

AMENDMENTS

1974—Subsec. (c)(2). Pub. L. 93–416 inserted provision relating to a volunteer with one or more minor children.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–416 effective on Sept. 7, 1974, and applicable to any injury or death occurring on or after such effective date, see section 23(a) of Pub. L. 93–416, set out as a note under section 8101 of this title.

CROSS REFERENCES

Transportation of baggage and household goods, appropriations for payment or reimbursement of volunteers, see section 5732 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5732 of this title.

§ 8143. Job Corps enrollees; volunteers in service to America

(a) Subject to the provisions of this subsection, this subchapter applies to an enrollee in the Job Corps, except that compensation for disability does not begin to accrue until the day after the date on which the injured enrollee is terminated. In administering this subchapter for an enrollee covered by this subsection—

(1) the monthly pay of an enrollee is deemed that received at the minimum rate for GS–2;

(2) section 8113(a) of this title applies to an enrollee; and

(3) ''performance of duty'' does not include an act of an enrollee while absent from his assigned post of duty, except while participating in an activity (including an activity while on pass or during travel to or from the post of duty) authorized by or under the direction and supervision of the Job Corps.

(b) This subchapter applies to a volunteer in service to America who receives either a living allowance or a stipend under part A of subchapter VIII of chapter 34 of title 42, with respect to that service and training, to the same extent as enrollees of the Job Corps under subsection (a) of this section. However, for the purpose of the computation described in subsection (a)(1) of this section, the monthly pay of a volunteer is deemed that received at the minimum rate for GS–5 of the General Schedule under section 5332 of title 5, United States Code.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 553; Pub. L. 90–83, §1(65), Sept. 11, 1967, 81 Stat. 212; Pub. L. 90–623, §1(19), Oct. 22, 1968, 82 Stat. 1313; Pub. L. 93–416, §8(b), Sept. 7, 1974, 88 Stat. 1145; Pub. L. 103–82, title III, §384, Sept. 21, 1993, 107 Stat. 915.)

HISTORICAL AND REVISION NOTES

1966 ACT

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(a)	42 U.S.C. 2716(c).	Aug. 20, 1964, Pub. L. 88–452, §106(c), 78 Stat. 510.
(b)	42 U.S.C. 2943(d) (words after 6th comma, as applicable to 42 U.S.C. 2716(c)).	Aug. 20, 1964, Pub. L. 88–452, §603(d) (words after 6th comma, as applicable to §106(c)), 78 Stat. 531.

In subsection (a)(1), reference to ''the Classification Act of 1949 (5 U.S.C. 1071 et seq.)'' is omitted as unnecessary. In subsection (a)(3)(B), the word ''his'' is substituted for ''his or her'' on authority of 1 U.S.C. 1.

In subsection (b), the words ''in service to America'' are inserted after ''volunteer'' for clarity.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 ACT

Section of title 5	*Source (U.S. Code)*	*Source (Statutes at Large)*
8143(a)(1) ...	42: 2716(c)(2)(B).	Nov. 8, 1966, Pub. L. 89–794, § 109, 80 Stat. 1453.
8143(a)(3) ...	42: 2716(c)(2)(A).	Oct. 9, 1965, Pub. L. 89–253, § 6, 79 Stat. 973.
8143(b)	42: 2991c(b) (as applicable to 42: 2716(c)).	Nov. 8, 1966, Pub. L. 89–794, § 801 ''Sec. 804(b) (as applicable to § 106(c) of the Economic Opportunity Act of 1964)'', 80 Stat. 1474.

In subsection (a)(3), the words ''in the Federal Employees' Compensation Act'' are omitted as unnecessary since that act is codified in that subchapter of title 5, United States Code, in which section 8143 is a part. The word ''his'' is substituted for ''his or hers'' on authority of 1 U.S.C. 1. The words ''Job Corps'' are substituted for ''Corps'' on authority of 42 U.S.C. 2712.

In subsection (b), the words ''in service to America'' are inserted after ''volunteer'' in two places for clarity. The words ''subsection (a)(2) of this section'' are substituted for ''paragraph (2)(B) of section 106(c)'' to reflect the codification of that paragraph in title 5. The words ''at the minimum rate for GS–7'' are substituted for ''under the entrance salary for GS–7 of the General Schedule for section 5332, title 5, United States Code'' to conform to the style of title 5.

REFERENCES IN TEXT

Part A of subchapter VIII of chapter 34 of title 42, referred to in subsec. (b), is part A of title VIII of Pub. L. 88–452, Aug. 20, 1964, 73 Stat. 508, as amended, known as the Economic Opportunity Act of 1964. Part A of title VIII of that Act, as added by Pub. L. 90–222, title I, § 110, Dec. 23, 1967, 81 Stat. 722, was classified generally to part A (§ 2992 et seq.) of subchapter VIII of chapter 34 of Title 42, The Public Health and Welfare, prior to its repeal by Pub. L. 93–113, title VI, § 603, Oct. 1, 1973, 87 Stat. 417. See sections 4951 et seq. and 5055 of Title 42.

AMENDMENTS

1993—Subsec. (b). Pub. L. 103–82 substituted ''GS–5 of the General Schedule under section 5332 of title 5, United States Code'' for ''GS–7''.

1974—Pub. L. 93–416 struck out '', (b)'' after ''section 8113(a)''.

1968—Pub. L. 90–623 reenacted section in its entirety making minor changes in phraseology.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–82 effective Oct. 1, 1993, see section 392 of Pub. L. 103–82, set out as a note under section 4951 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–416 applicable to case where injury or death occurred prior to Sept. 7, 1974, but only to a period beginning on or after Sept. 7, 1974, see section 28(a) of Pub. L. 93–416, set out as a note under section 8101 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–623 intended to restate without substantive change the law in effect on Oct. 22, 1968, see section 6 of Pub. L. 90–623, set out as a note under section 5334 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 29 section 1706.

§ 8143a. Members of the National Teacher Corps

Subject to the provisions of this section, this subchapter applies to a member of the National Teacher Corps. In administering this subchapter for a member covered by this section—

(1) ''performance of duty'' does not include an act of a member while—

(A) on authorized leave; or

(B) absent from his assigned post of duty, except while participating in an activity authorized by or under the direction or supervision of the Commissioner of Education; and

(2) In computing compensation for disability or death, the monthly pay of a member is deemed his actual pay or that received at the minimum rate for GS–6, whichever is greater.

(Added Pub. L. 90–83, § 1(66)(A), Sept. 11, 1967, 81 Stat. 212.)

HISTORICAL AND REVISION NOTES

Section of title 5	*Source (U.S. Code)*	*Source (Statutes at Large)*
8143a	20: 1105(b).	Nov. 8, 1965, Pub. L. 89–329, § 515(b), 79 Stat. 1257.

The words ''a member of the National Teacher Corps'' are substituted for ''such members'' on authority of 20 U.S.C. 1102, 1105(a). In paragraph (1)(B), the words ''Commissioner of Education'' are substituted for ''Commissioner'' on authority of 20 U.S.C. 1141(f). In paragraph (2), the words ''at the minimum rate for GS–6'' are substituted for ''under the entrance salary for grade 6,'' and the reference to the General Schedule of the Classification Act of 1949 is omitted as unnecessary.

TRANSFER OF FUNCTIONS

Functions of Commissioner of Education of Department of Health, Education, and Welfare transferred to Secretary of Education by section 3441(a)(1) of Title 20, Education.

§ 8144. Student-employees

A student-employee as defined by section 5351 of this title who suffers disability or death as a result of personal injury arising out of and in the course of training, or incurred in the performance of duties in connection with that training, is considered for the purpose of this subchapter an employee who incurred the injury in the performance of duty.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 553.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 1053.	Aug. 4, 1947, ch. 452, § 4, 61 Stat. 727.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

§ 8145. Administration

The Secretary of Labor shall administer, and decide all questions arising under, this subchapter. He may—

(1) appoint employees to administer this subchapter; and

(2) delegate to any employee of the Department of Labor any of the powers conferred on him by this subchapter.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 553.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 778.	Sept. 7, 1916, ch. 458, §28, 39 Stat. 748. Oct. 14, 1949, ch. 691, §205(a), (c)(1), 63 Stat. 864.
.....	[Uncodified].	1946 Reorg. Plan No. 2, §3 (less 2d sentence), eff. July 16, 1946, 60 Stat. 1095.
.....	[Uncodified].	1950 Reorg. Plan No. 19, §1, eff. May 24, 1950, 64 Stat. 1271.
.....	5 U.S.C. 781.	Sept. 7, 1916, ch. 458, §30, 39 Stat. 748.
.....	5 U.S.C. 783 (last 9 words).	Sept. 7, 1916, ch. 458, §32 (last 9 words), 39 Stat. 749.

The last 20 words of former section 781 are omitted as unnecessary in view of the definition of ''competitive service'' in section 2102 and the provisions of subchapter I of chapter 33 concerning examination and certification for and appointment in the competitive service.

Administration of this subchapter was transferred to the Secretary of Labor by section 1 of 1950 Reorg. Plan No. 19, 64 Stat. 1271.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

PROCESSING OF CLAIMS FILED BY DISTRICT OF COLUMBIA EMPLOYEES

See Pub. L. 93–198, title II, §204(e), Dec. 24, 1973, 87 Stat. 783, set out as a note under section 8101 of this title.

§ 8146. Administration for the Panama Canal Commission and The Alaska Railroad

(a) The President, from time to time, may transfer the administration of this subchapter—

(1) so far as employees of the Panama Canal Commission are concerned to the Commission; and

(2) so far as employees of The Alaska Railroad are concerned to the general manager of The Alaska Railroad.

(b) When administration is transferred under subsection (a) of this section, the expenses incident to physical examinations which are payable under section 8123 of this title shall be paid from appropriations for the Panama Canal Commission or for The Alaska Railroad, as the case may be, instead of from the Employees' Compensation Fund. The President may authorize the Panama Canal Commission and the general manager of The Alaska Railroad to pay the compensation provided by this subchapter, including medical, surgical, and hospital services and supplies under section 8103 of this title and the transportation and burial expenses under sections 8103 and 8134 of this title, from appropriations for the Panama Canal Commission and for The Alaska Railroad, and these appropriations shall be reimbursed for the payments by transfer of funds from the Employees' Compensation Fund.

(c) The President may authorize the Panama Canal Commission to waive, at its discretion, the making of the claim required by section 8121 of this title in the case of compensation to an employee of the Panama Canal Commission for temporary disability, either total or partial.

(d) When administration is transferred under subsection (a) of this section to the general manager of The Alaska Railroad, the Secretary of Labor is not divested of jurisdiction and a claimant is entitled to appeal from the decision of the general manager of The Alaska Railroad to the Secretary of Labor. The Secretary on receipt of an appeal shall, or on his own motion may, review the decision of the general manager of The Alaska Railroad, and in accordance with the facts found on review may proceed under section 8128 of this title. The Secretary shall provide the form and manner of taking an appeal.

(e) The same right of appeal exists with respect to claims filed by employees of the Panama Canal Commission or their dependents in case of death, as is provided with respect to the claims of other employees to whom this subchapter applies, under section 8149 of this title. The Employees' Compensation Appeals Board referred to by section 8149 of this title has jurisdiction, under regulations prescribed by the Secretary, over appeals relating to claims of the employees or their dependents.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 553; Pub. L. 96–70, title III, §3302(e)(9), Sept. 27, 1979, 93 Stat. 498.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 793 (1st 3 pars., less 2d sentence of 2d par.).	Sept. 7, 1916, ch. 458, §42 (less 2d sentence of 2d par.), 39 Stat. 750. Apr. 6, 1938, ch. 79 ''Sec. 42 (less 2d sentence of 2d par.)'', 52 Stat. 200. Aug. 30, 1964, Pub. L. 88–508, 78 Stat. 666.

In subsection (a), the words ''in which cases the words 'Secretary' and 'his' wherever they appear in sections 751–756, 757–781, 783–791, and 793 of this title shall, so far as necessary to give effect to such transfer, be read, 'Governor of the Canal Zone' or 'the general manager of The Alaska Railroad', as the case may be, and 'his' '' are omitted as surplusage.

In subsection (b), the words ''the Employees' Compensation Fund'' are substituted for ''appropriation for the work of the Secretary'' in view of former section 771, which is carried into section 8123, which provides that all such expenses shall be paid from the Fund.

In subsections (b) and (c), the words ''Canal Zone Government'', ''Panama Canal Company'', and ''Governor of the Canal Zone'' are substituted for ''Panama Canal'', ''Panama Railroad Company'', and ''Governor of the Panama Canal'', respectively, on authority of the Act of Sept. 26, 1950, ch. 1049, §2, 64 Stat. 1038.

In subsection (e), the words ''of other employees to whom this subchapter applies'' are substituted for ''of other employees of the Federal Government'' for clarity and in view of the provisions of section 8149. The words ''Employees' Compensation Appeals Board'' are substituted for ''Appeals Board'' to reflect the full title of the Board

Administration of this subchapter was transferred to the Secretary of Labor by section 1 of 1950 Reorg. Plan No. 19, 64 Stat. 1271 (see section 8145).

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1979—Pub. L. 96–70, §3302(e)(9)(A), substituted ''Panama Canal Commission'' for ''Canal Zone'' in section catchline.

Subsec. (a)(1). Pub. L. 96–70, §3302(e)(9)(B), substituted ''Panama Canal Commission are concerned to the Com-

mission'' for ''Canal Zone Government and of the Panama Canal Company are concerned to the Governor of the Canal Zone''.

Subsec. (b). Pub. L. 96–70, § 3302(e)(9)(C)–(E), substituted ''Panama Canal Commission'' for ''Canal Zone Government'' in two places and ''Panama Canal Commission'' for ''Governor of the Canal Zone'' and struck out ''or from funds from the Panama Canal Company'' after ''The Alaska Railroad''.

Subsec. (c). Pub. L. 96–70, § 3302(e)(9)(F), substituted ''Panama Canal Commission'' for ''Governor of the Canal Zone'' and ''employee of the Panama Canal Commission'' for ''employee of the Canal Zone Government or the Panama Canal Company''.

Subsec. (e). Pub. L. 96–70, § 3302(e)(9)(G), substituted ''Panama Canal Commission'' for ''Canal Zone Government and of the Panama Canal Company''.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–70 effective Oct. 1, 1979, see section 3304 of Pub. L. 96–70, set out as an Effective Date note under section 3601 of Title 22, Foreign Relations and Intercourse.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8149 of this title.

§ 8146a. Cost-of-living adjustment of compensation

(a) Compensation payable on account of disability or death which occurred more than one year before March 1 of each year shall be annually increased on that date by the amount determined by the Secretary of Labor to represent the percent change in the price index published for December of the preceding year over the price index published for the December of the year prior to the preceding year, adjusted to the nearest one-tenth of 1 percent.

(b) The regular periodic compensation payments after adjustment under this section shall be fixed at the nearest dollar. However, the regular periodic compensation after adjustment shall reflect an increase of at least $1.

(c) This section shall be applicable to persons excluded by section 15 of the Federal Employees' Compensation Act Amendments of 1966 (Public Law 89–488) under the following statutes: Act of February 15, 1934 (48 Stat. 351); Act of June 26, 1936 (49 Stat. 2035); Act of April 8, 1935 (49 Stat. 115); Act of July 25, 1942 (56 Stat. 710); Public Law 84–955 (August 3, 1956); Public Law 77–784 (December 2, 1942); Public Law 84–879 (August 1, 1956); Public Law 80–896 (July 3, 1948); Act of September 8, 1959 (73 Stat. 469). Benefit payments to these persons shall initially be increased by the total percentage of the increases in the price index from the base month of July 1966, to the next most recent base month following the effective date of this subsection.

(Added Pub. L. 90–83, § 1(67)(A), Sept. 11, 1967, 81 Stat. 212; amended Pub. L. 93–416, §§ 21, 24, Sept. 7, 1974, 88 Stat. 1149, 1150; Pub. L. 96–499, title IV, § 421(a), Dec. 5, 1980, 94 Stat. 2608.)

HISTORICAL AND REVISION NOTES

Section of title 5	*Source (U.S. Code)*	*Source (Statutes at Large)*
8146a(a)	5 App.: 793a(a).	July 4, 1966, Pub. L. 89–488, § 14 ''Sec. 43(a), (b)'', 80 Stat. 256.
8146a(b)	5 App.: 793a(b).	

In subsection (a), the words ''After the month during which this section becomes effective,'' following ''Each month,'' are omitted as executed and unnecessary. The words ''Secretary of Labor'' are substituted for ''Secretary'' on authority of section 40(i) of the Federal Employees' Compensation Act. In the second sentence, the words ''latest base month'' are substituted for ''most recent base month.''

So much of section 14 of Public Law 89–488 as redesignated section 43 of the Federal Employees' Compensation Act as section 44 is omitted as unnecessary in view of the codification of that act in title 5, United States Code.

REFERENCES IN TEXT

''Persons excluded by section 15 of the Federal Employees' Compensation Act Amendments of 1966'', referred to in subsec. (c), means persons excluded by section 15 of Pub. L. 89–488, July 4, 1966, 80 Stat. 256, which was set out as a note under section 756 of former Title 5, Executive Departments and Government Officers and Employees, prior to the 1966 revision of Title 5 by Pub. L. 89–554. Such section 15 of the Federal Employees' Compensation Act Amendments of 1966 directed that benefit increases mandated by the Federal Employees' Compensation Act Amendments of 1966 not apply to employees unless such employees fell within the definition of ''employees'' in section 40(b) (1) or (2) of the Federal Employees' Compensation Act [section 790(b)(1) or (2) of former Title 5]. As a result section 15 of the Federal Employees' Compensation Act Amendments of 1966 served to prohibit increases to persons to whom the benefits of the Federal Employees' Compensation Act had been extended over the years by Acts described in subsec. (c) as follows:

Act of February 15, 1934 (48 Stat. 351) which extended coverage to employees of the Federal Civil Works Administration and was classified to section 796 of former Title 5.

Act of June 26, 1936 (49 Stat. 2035) probably means Act of June 29, 1936 which extended coverage to certain W.W. I veterans and was set out as a note under section 134 of former Title 38, Pensions, Bonuses, and Veterans' Relief.

Act of April 8, 1935 (49 Stat. 115) which extended coverage to certain emergency relief personnel, is act April 8, 1935, ch. 48, 49 Stat. 115, which was enacted as legislation supplementary to the Federal Emergency Relief Act of 1933, was classified to sections 721 and 728 of Title 15, Commerce and Trade, and was omitted from the Code as temporary.

Act of July 25, 1942 (56 Stat. 710) which extended coverage to certain personnel of the War Relocation Authority, was set out as a note under section 796 of former Title 5, Executive Departments and Government Officers and Employees.

Public Law 84–955 (Aug. 3, 1956) which extended coverage to certain Civil Air Patrol personnel was set out as a note under section 760 of former Title 5.

Public Law 77–784 (December 2, 1942), which extended coverage to war risk hazards of certain employees of federal contractors, is act Dec. 2, 1942, ch. 668, 56 Stat. 1028, as amended, titles I and II of which are popularly known as the War Hazards Compensation Act, and is classified principally to chapter 12 (§ 1701 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Tables.

Public Law 84–879 (August 1, 1956), which extended coverage to certain members of the Reserve Officers Training Corps of the Army, Navy, and Air Force, was classified to section 802 of former Title 5, Executive Departments and Government Officers and Employees.

Public Law 80–896 (July 3, 1948), which extended coverage to certain persons entitled to war claims, is act July 3, 1948, ch. 826, 62 Stat. 1240, as amended, popularly known as the War Claims Act of 1948, which is classified generally to section 2001 et seq. of Title 50, Appendix, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 2001 of Title 50, Appendix, and Tables.

Act of September 8, 1959 (73 Stat. 469) which transferred from the Department of Commerce to the De-

partment of Labor certain functions in respect to insurance benefits and disability payments to seamen for W.W. II service-connected injuries, death, or disability, was not classified to the Code.

AMENDMENTS

1980—Subsec. (a). Pub. L. 96–499 substituted ''Compensation'' for ''Each month the Secretary of Labor shall determine the percent change in the price index. Effective the first day of the month which begins after the price index change equals a rise of at least 3 percent for 3 consecutive months over the price index for the latest base month, compensation'', ''March 1 of each year shall be annually increased'' for ''that first day shall be increased'' and ''amount determined by the Secretary of Labor to represent the percent change in the price index published for December of the preceding year over the price index published for the December of the year prior to the preceding year,'' for ''percent rise in the price index (calculated on the highest level of the price index during the 3 consecutive months)''.

1974—Subsec. (a). Pub. L. 93–416, §21, substituted ''Effective the first day of the month'' for ''Effective the first day of the third month''.

Subsec. (b). Pub. L. 93–416, §21, substituted ''regular periodic compensation payments'' for ''monthly compensation''.

Subsec. (c). Pub. L. 93–416, §24, added subsec. (c).

EFFECTIVE DATE OF 1980 AMENDMENT

For effective date of amendment by Pub. L. 96–499, see section 422 of Pub. L. 96–499, set out as a note under section 8101 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–416 applicable to cases where injury or death occurred prior to Sept. 7, 1974 but only to the period beginning on or after Sept. 7, 1974, see section 28(a) of Pub. L. 93–416, set out as a note under section 8101 of this title.

PERSONNEL NOT AFFECTED BY COST-OF-LIVING ADJUSTMENT

Increases authorized by this section not applicable to employees and individuals not within the definition of ''employee'' in section 8101(1)(A), (B), or (D) of this title, members of the Metropolitan Police or the Fire Department of the District of Columbia who are pensioned or pensionable under sections 521 to 535 of title 4, District of Columbia Code, or members of a uniformed service, see section 7 of Pub. L. 90–83, set out as a note under section 8103 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8133 of this title; title 22 section 3715a.

§ 8147. Employees' Compensation Fund

(a) There is in the Treasury of the United States the Employees' Compensation Fund which consists of sums that Congress, from time to time, may appropriate for or transfer to it, and amounts that otherwise accrue to it under this subchapter or other statute. The Fund is available without time limit for the payment of compensation and other benefits and expenses, except administrative expenses, authorized by this subchapter or any extension or application thereof, except as otherwise provided by this subchapter or other statute. The Secretary of Labor shall submit annually to the Office of Management and Budget estimates of appropriations necessary for the maintenance of the Fund. For the purpose of this subsection, ''administrative expenses'' does not include expenses for legal services performed by or for the Secretary under sections 8131 and 8132 of this title.

(b) Before August 15 of each year, the Secretary shall furnish to each agency and instrumentality of the United States having an employee who is or may be entitled to compensation benefits under this subchapter or any extension or application thereof a statement showing the total cost of benefits and other payments made from the Employees' Compensation Fund during the preceding July 1 through June 30 expense period on account of the injury or death of employees or individuals under the jurisdiction of the agency or instrumentality. Each agency and instrumentality shall include in its annual budget estimates for the fiscal year beginning in the next calendar year a request for an appropriation in an amount equal to the costs. Sums appropriated pursuant to the request shall be deposited in the Treasury to the credit of the Fund within 30 days after they are available. An agency or instrumentality not dependent on an annual appropriation shall make the deposit required by this subsection from funds under its control during the first fifteen days of October following the furnishing of the statement. If an agency or instrumentality (or part or function thereof) is transferred to another agency or instrumentality, the cost of compensation benefits and other expenses paid from the Fund on account of the injury or death of employees of the transferred agency or instrumentality (or part or function) shall be included in costs of the receiving agency or instrumentality.

(c) In addition to the contributions for the maintenance of the Employees' Compensation Fund required by this section, the United States Postal Service, or a mixed ownership corporation as defined by section 9101(2) of title 31, or any other corporation or agency or instrumentality (or activity thereof) which is required by statute to submit an annual budget pursuant to or as provided by chapter 91 of title 31, shall pay an additional amount for its fair share of the cost of administration of this subchapter as determined by the Secretary. With respect to these corporations, agencies, and instrumentalities, the charges billed by the Secretary under this section shall include an additional amount for these costs, which shall be paid into the Treasury as miscellaneous receipts from the sources authorized and in the manner otherwise provided by this section.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 554; Pub. L. 90–83, §1(68), Sept. 11, 1967, 81 Stat. 213; Pub. L. 93–416, §§25, 26, Sept. 7, 1974, 88 Stat. 1150; Pub. L. 94–273, §42, Apr. 21, 1976, 90 Stat. 381; Pub. L. 97–258, §3(a)(17), Sept. 13, 1982, 96 Stat. 1063.)

HISTORICAL AND REVISION NOTES
1966 ACT

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 785.	Sept. 7, 1916, ch. 458, §35, 39 Stat. 749. Sept. 12, 1950, ch. 946, §301(92), 64 Stat. 844. Sept. 13, 1960, Pub. L. 86–767, §209, 74 Stat. 909.

In subsection (b), the words ''each agency and instrumentality of the United States'' are substituted for ''each executive department and each agency or instrumentality of the United States or other establishment''. The words ''(hereinafter called 'agency')'' are omitted as unnecessary because ''agency or instrumentality'' is substituted for ''agency'' in the remainder of this subsection and in subsection (c). The words ''occurring after December 1, 1960'' are omitted as executed.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 ACT

Section of title 5	*Source (U.S. Code)*	*Source (Statutes at Large)*
8147(a)	5 App.: 785(d).	July 4, 1966, Pub. L. 89–488, § 10(c), 80 Stat. 255.

The word ''performed'' is substituted for ''rendered'' to conform to the style of title 5. The words ''sections 8131 and 8132 of this title'' are substituted for ''sections 26 and 27'' to reflect the codification of those sections in title 5.

AMENDMENTS

1982—Subsec. (c). Pub. L. 97–258 substituted ''section 9101(2)'' for ''section 856'', and ''chapter 91'' for ''sections 841–869''.

1976—Subsec. (b). Pub. L. 94–273 inserted ''during the first fifteen days of October following the furnishing of the statement'' after ''its control'' and substituted ''July 1 through June 30 expense period'' for ''fiscal year'' and ''the fiscal year beginning in the next calendar year'' for ''the next fiscal year''.

1974—Subsec. (a). Pub. L. 93–416, § 26, substituted ''Office of Management and Budget'' for ''Bureau of the Budget''.

Subsec. (c). Pub. L. 93–416, § 25, inserted reference to the United States Postal Service.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by section 25 of Pub. L. 93–416 applicable to cases where injury or death occurred prior to Sept. 7, 1974 but only to a period beginning on or after Sept. 7, 1974, see section 28(a) of Pub. L. 93–416, set out as a note under section 8101 of this title.

Amendment by section 26 of Pub. L. 93–416 effective Sept. 7, 1974, and applicable to any death or injury occurring on or after Sept. 7, 1974, see section 28(a) of Pub. L. 93–416, set out as a note under section 8101 of this title.

FISCAL YEAR 1994 PROHIBITION ON PAYMENTS TO INDIVIDUALS CONVICTED OF ISSUING FALSE STATEMENTS OR FRAUD

Pub. L. 103–112, title I, § 102, Oct. 21, 1993, 107 Stat. 1089, Department of Labor Appropriation Act, 1994, provided that: ''None of the funds in the Employees' Compensation Fund under 5 U.S.C. 8147 shall be expended for payment of compensation, benefits, and expenses to any individual convicted of a violation of 18 U.S.C. 1920, or of any felony fraud related to the application for or receipt of benefits under subchapters I or III of chapter 81 of title 5, United States Code.''

DEPOSIT INTO FUND BETWEEN JULY 1, AND JULY 15, 1976, OF SPECIFIED PART OF AUGUST 15, 1975, STATEMENT

Pub. L. 94–274, title I, § 120, Apr. 21, 1976, 90 Stat. 389, provided that for the purposes of 5 U.S.C. 8147(b), each agency and instrumentality of the United States dependent upon an annual appropriation and having an employee who is or may be entitled to compensation benefits under this subchapter or any extension or application thereof shall deposit in the Treasury to the credit of the Employees' Compensation Fund, no later than July 15, 1976, but no earlier than July 1, 1976, 25 per centum of the amount stated in the August 15, 1975, statement.

PERSONNEL NOT AFFECTED BY 1967 INCREASE

Increases authorized under amendment by section 1(71) of Pub. L. 90–83 not applicable to specified personnel, see section 7 of Pub. L. 90–83, set out as a note under section 8103 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 39 section 2003; title 42 sections 1701, 1704, 1705.

§ 8148. Forfeiture of benefits by convicted felons

(a) Any individual convicted of a violation of section 1920 of title 18, or any other Federal or State criminal statute relating to fraud in the application for a receipt of any benefit under this subchapter or subchapter III of this chapter, shall forfeit (as of the date of such conviction) any entitlement to any benefit such individual would otherwise be entitled to under this subchapter or subchapter III for any injury occurring on or before the date of such conviction. Such forfeiture shall be in addition to any action the Secretary may take under section 8106 or 8129.

(b)(1) Notwithstanding any other provision of this chapter (except as provided under paragraph (3)), no benefits under this subchapter or subchapter III of this chapter shall be paid or provided to any individual during any period during which such individual is confined in a jail, prison, or other penal institution or correctional facility, pursuant to that individual's conviction of an offense that constituted a felony under applicable law.

(2) Such individual shall not be entitled to receive the benefits forfeited during the period of incarceration under paragraph (1), after such period of incarceration ends.

(3) If an individual has one or more dependents as defined under section 8110(a), the Secretary of Labor may, during the period of incarceration, pay to such dependents a percentage of the benefits that would have been payable to such individual computed according to the percentages set forth in section 8133(a)(1) through (5).

(c) Notwithstanding the provision of section 552a of this title, or any other provision of Federal or State law, any agency of the United States Government or of any State (or political subdivision thereof) shall make available to the Secretary of Labor, upon written request, the names and Social Security account numbers of individuals who are confined in a jail, prison, or other penal institution or correctional facility under the jurisdiction of such agency, pursuant to such individuals' conviction of an offense that constituted a felony under applicable law, which the Secretary of Labor may require to carry out the provisions of this section.

(Added Pub. L. 103–333, title I, § 101(a)(1), Sept. 30, 1994, 108 Stat. 2546.)

PRIOR PROVISIONS

A prior section 8148, Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 555, provided for a report to Congress by Secretary of Labor at beginning of each regular session covering work for preceding fiscal year under this subchapter, prior to repeal by Pub. L. 90–83, § 1(69), Sept. 11, 1967, 81 Stat. 213.

EFFECTIVE DATE

Section 101(c) of Pub. L. 103–333 provided that: ''The amendments made by this section [enacting this section and amending section 1920 of Title 18, Crimes and Criminal Procedure] shall take effect on the date of the enactment of this Act [Sept. 30, 1994]. The amendments made by subsection (a) [enacting this section] shall apply to claims filed before, on, or after the date of enactment of this Act, and shall apply only to individuals convicted after such date of enactment.''

§ 8149. Regulations

The Secretary of Labor may prescribe rules and regulations necessary for the administration and enforcement of this subchapter including rules and regulations for the conduct of hearings under section 8124 of this title. The rules and regulations shall provide for an Employee's Compensation Appeals Board of three individuals designated or appointed by the Secretary with authority to hear and, subject to applicable law and the rules and regulations of the Secretary, make final decisions on appeals taken from determinations and awards with respect to claims of employees. In adjudicating claims under section 8146 of this title, the Secretary may determine the nature and extent of the proof and evidence required to establish the right to benefits under this subchapter without regard to the date of injury or death for which claim is made.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 555; Pub. L. 90–83, § 1(71), Sept. 11, 1967, 81 Stat. 213.)

HISTORICAL AND REVISION NOTES

1966 ACT

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 783 (less last 9 words).	Sept. 7, 1916, ch. 458, § 32 (less last 9 words), 39 Stat. 749.
.....	[Uncodified].	1946 Reorg. Plan No. 2, § 3 (2d sentence), eff. July 16, 1946, 60 Stat. 1095.
.....	[Uncodified].	1950 Reorg. Plan No. 19, § 2, eff. May 24, 1950, 64 Stat. 1272.

The words ''administration and'' are added for clarity.

Administration of this subchapter was transferred to the Secretary of Labor by section 1 of 1950 Reorg. Plan No. 19, 64 Stat. 1271 (see section 8145).

The first sentence of section 2 of 1950 Reorg. Plan No. 19 is omitted as executed. The word ''employees'' is coextensive with and substituted for ''employees of the Federal Government or of the District of Columbia'' in view of the definition of ''employee'' in section 8101.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 ACT

Section of title 5	*Source (U.S. Code)*	*Source (Statutes at Large)*
8149	5 App.: 783.	July 4, 1966, Pub. L. 89–488, §§ 11(a), 12, 80 Stat. 255.

In the first sentence, the words ''section 8124 of this title'' are substituted for ''section 36'' to reflect the codification of that section in title 5, United States Code.

In the second sentence, the word ''adjudicating'' is substituted for ''in the adjudication of''. The words ''section 8146 of this title'' and ''this subchapter'' are substituted for ''section 42 of this Act'' and ''this Act'', respectively, to reflect the codification of the Federal Employees' Compensation Act in title 5, United States Code.

PERSONNEL NOT AFFECTED BY 1967 INCREASE

Increases authorized under amendment by section 1(71) of Pub. L. 90–83 not applicable to specified personnel, see section 7 of Pub. L. 90–83, set out as a note under section 8103 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8146 of this title.

§ 8150. Effect on other statutes

(a) This subchapter does not affect the maritime rights and remedies of a master or member of the crew of a vessel.

(b) Section 8141 of this title and section 9441 of title 10 do not confer military or veteran status on any individual.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 555.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(a)	5 U.S.C. 791–4(b).	Oct. 14, 1949, ch. 691, § 305(b), 63 Stat. 868.
(b)	5 U.S.C. 803a.	Aug. 3, 1956, ch. 926, § 1 ''Sec. 4'', 70 Stat. 981.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

§ 8151. Civil service retention rights

(a) In the event the individual resumes employment with the Federal Government, the entire time during which the employee was receiving compensation under this chapter shall be credited to the employee for the purposes of within-grade step increases, retention purposes, and other rights and benefits based upon length of service.

(b) Under regulations issued by the Office of Personnel Management—

(1) the department or agency which was the last employer shall immediately and unconditionally accord the employee, if the injury or disability has been overcome within one year after the date of commencement of compensation or from the time compensable disability recurs if the recurrence begins after the injured employee resumes regular full-time employment with the United States, the right to resume his former or an equivalent position, as well as all other attendant rights which the employee would have had, or acquired, in his former position had he not been injured or disabled, including the rights to tenure, promotion, and safeguards in reductions-in-force procedures, and

(2) the department or agency which was the last employer shall, if the injury or disability is overcome within a period of more than one year after the date of commencement of compensation, make all reasonable efforts to place, and accord priority to placing, the employee in his former or equivalent position within such department or agency, or within any other department or agency.

(Added Pub. L. 93–416, § 22, Sept. 7, 1974, 88 Stat. 1149; amended Pub. L. 95–454, title IX, § 906(a)(2), Oct. 13, 1978, 92 Stat. 1224.)

AMENDMENTS

1978—Subsec. (b). Pub. L. 95–454 substituted ''Office of Personnel Management'' for ''Civil Service Commission''.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

EFFECTIVE DATE

Section applicable to cases where injury or death occurred prior to Sept. 7, 1974, but only to a period beginning on or after Sept. 7, 1974, see section 28(a) of Pub. L. 93–416, set out as an Effective Date of 1974 Amendment note under section 8101 of this title.

SUBCHAPTER II—EMPLOYEES OF NONAPPROPRIATED FUND INSTRUMENTALITIES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in title 10 section 1588.

§ 8171. Compensation for work injuries; generally

(a) The Longshore and Harbor Workers' Compensation Act (33 U.S.C. 901 et seq.) applies with respect to disability or death resulting from injury, as defined by section 2(2) of such Act (33 U.S.C. 902(2)), occurring to an employee of a nonappropriated fund instrumentality described by section 2105(c) of this title, or to a volunteer providing such an instrumentality with services accepted under section 1588 of title 10, who is—

(1) a United States citizen or a permanent resident of the United States or a territory or possession of the United States employed outside the continental United States; or

(2) employed inside the continental United States.

However, that part of section 3(a) of such Act (33 U.S.C. 903(3))[1] which follows the second comma does not apply to such an employee.

(b) For the purpose of this subchapter, the term ''employer'' in section 2(4) of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 902(4)) includes the nonappropriated fund instrumentalities described by section 2105(c) of this title.

(c) The Secretary of Labor may—

(1) extend compensation districts established under 39(b)[2] of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 939(b)), or establish new districts to include the areas outside the continental United States; and

(2) assign to each district one or more deputy commissioners as the Secretary considers advisable.

(d) Judicial proceedings under sections 18 and 21 of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 18 and 21, respectively)[3] with respect to an injury or death occurring outside the continental United States shall be instituted in the district court within the territorial jurisdiction of which is located the office of the deputy commissioner having jurisdiction with respect to the injury or death.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 555; Pub. L. 103–337, div. A, title X, §§ 1061(c), 1070(d)(8)(A), Oct. 5, 1994, 108 Stat. 2847, 2858.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 150k–1(a).	June 19, 1952, ch. 444, § 2, 66 Stat. 139. July 18, 1958, Pub. L. 85–538, § 1 ''Sec. 2(a)'', 72 Stat. 397.

In subsection (a), the word ''civilian'' is omitted as unnecessary as the definition of ''employee'' in section 2105 includes only civilians.

In subsection (d), the reference to ''the United States District Court for the District of Columbia'' is omitted as included in the words ''district court''.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

REFERENCES IN TEXT

The Longshore and Harbor Workers' Compensation Act, referred to in subsec. (a), is act Mar. 4, 1927, ch. 509, 44 Stat. 1424, as amended, which is classified generally to chapter 18 (§ 901 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see section 901 of Title 33 and Tables.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–337, § 1070(d)(8)(A)(i)(III), substituted ''section 3(a) of such Act (33 U.S.C. 903(3)) which follows the second comma'' for ''section 903(a) of title 33 which follows the first comma'' in second sentence.

Pub. L. 103–337, § 1070(d)(8)(A)(i)(I), (II), substituted ''The Longshore and Harbor Workers' Compensation Act (33 U.S.C. 901 et seq.)'' for ''Chapter 18 of title 33'' and ''section 2(2) of such Act (33 U.S.C. 902(2))'' for ''section 902(2) of title 33'', in introductory provisions.

Pub. L. 103–337, § 1061(c), inserted '', or to a volunteer providing such an instrumentality with services accepted under section 1588 of title 10,'' after ''described by section 2105(c) of this title'' in introductory provisions.

Subsec. (b). Pub. L. 103–337, § 1070(d)(8)(A)(ii), substituted ''section 2(4) of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 902(4))'' for ''section 902(4) of title 33''.

Subsec. (c)(1). Pub. L. 103–337, § 1070(d)(8)(A)(iii), substituted ''39(b) of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 939(b))'' for ''section 939(b) of title 33''.

Subsec. (d). Pub. L. 103–337, § 1070(d)(8)(A)(iv), substituted ''sections 18 and 21 of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 18 and 21, respectively)'' for ''sections 918 and 921 of title 33''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8173 of this title.

§ 8172. Employees not citizens or residents of the United States

In case of disability or death, resulting from injury, as defined by section 2(2) of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 2(2)),[1] occurring to an employee of a

[1] So in original. Probably should be ''(33 U.S.C. 903(a))''.

[2] So in original. Probably should be preceded by ''section''.

[3] So in original. Probably should be ''(33 U.S.C. 918 and 921, respectively)''.

[1] So in original. Probably should be ''(33 U.S.C. 902(2)),''.

nonappropriated fund instrumentality described by section 2105(c) of this title who is—

(1) not a citizen or permanent resident of the United States or a territory or possession of the United States; and

(2) employed outside the continental United States;

compensation shall be provided in accordance with regulations prescribed by the Secretary of the military department concerned and approved by the Secretary of Defense or regulations prescribed by the Secretary of Transportation, as the case may be.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 556; Pub. L. 103–272, § 4(b)(3), July 5, 1994, 108 Stat. 1361; Pub. L. 103–337, div. A, title X, § 1070(d)(8)(B), Oct. 5, 1994, 108 Stat. 2859.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 150k–1(b).	July 18, 1958, Pub. L. 85–538, § 1 ''Sec. 2(b)'', 72 Stat. 397.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1994—Pub. L. 103–337 substituted ''section 2(2) of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 2(2))'' for ''section 902(2) of title 33'' in introductory provisions.

Pub. L. 103–272 substituted ''Secretary of Transportation'' for ''Secretary of the Treasury'' in concluding provisions.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8173 of this title.

§ 8173. Liability under this subchapter exclusive

The liability of the United States or of a nonappropriated fund instrumentality described by section 2105(c) of this title, with respect to the disability or death resulting from injury, as defined by section 2(2) of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 2(2)),[1] of an employee referred to by sections 8171 and 8172 of this title, shall be determined as provided by this subchapter. This liability is exclusive and instead of all other liability of the United States or the instrumentality to the employee, his legal representative, spouse, dependents, next of kin, and any other person otherwise entitled to recover damages from the United States or the instrumentality because of the disability or death in a direct judicial proceeding, in a civil action, or in admiralty, or by an administrative or judicial proceeding under a workmen's compensation statute or under a Federal tort liability statute.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 556; Pub. L. 103–337, div. A, title X, § 1070(d)(8)(B), Oct. 5, 1994, 108 Stat. 2859.)

[1] So in original. Probably should be ''(33 U.S.C. 902(2)),''.

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 150k–1(c).	July 18, 1958, Pub. L. 85–538, § 1 ''Sec. 2(c)'', 72 Stat. 397.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1994—Pub. L. 103–337 substituted ''section 2(2) of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 2(2))'' for ''section 902(2) of title 33''.

SUBCHAPTER III—LAW ENFORCEMENT OFFICERS NOT EMPLOYED BY THE UNITED STATES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 8148 of this title; title 16 section 742*l*; title 18 section 1920; title 25 section 2804.

§ 8191. Determination of eligibility

The benefits of this subchapter are available as provided in this subchapter to eligible law enforcement officers (referred to in this subchapter as ''eligible officers'') and their survivors. For the purposes of this subchapter, an eligible officer is any person who is determined by the Secretary of Labor in his discretion to have been on any given occasion—

(1) a law enforcement officer and to have been engaged on that occasion in the apprehension or attempted apprehension of any person—

(A) for the commission of a crime against the United States, or

(B) who at that time was sought by a law enforcement authority of the United States for the commission of a crime against the United States, or

(C) who at that time was sought as a material witness in a criminal proceeding instituted by the United States; or

(2) a law enforcement officer and to have been engaged on that occasion in protecting or guarding a person held for the commission of a crime against the United States or as a material witness in connection with such a crime; or

(3) a law enforcement officer and to have been engaged on that occasion in the lawful prevention of, or lawful attempt to prevent, the commission of a crime against the United States;

and to have been on that occasion not an employee as defined in section 8101(1), and to have sustained on that occasion a personal injury for which the United States would be required under subchapter I of this chapter to pay compensation if he had been on that occasion such an employee engaged in the performance of his duty. No person otherwise eligible to receive a benefit under this subchapter because of the disability or death of an eligible officer shall be barred from the receipt of such benefit because the person apprehended or attempted to be apprehended by such officer was then sought for the commis-

sion of a crime against a sovereignty other than the United States.

(Added Pub. L. 90–291, §1(a), Apr. 19, 1968, 82 Stat. 98; amended Pub. L. 90–623, §1(20), Oct. 22, 1968, 82 Stat. 1313.)

AMENDMENTS

1968—Pub. L. 90–623 substituted ''For the purposes of this subchapter'' for ''For the purposes of this Act''.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–623 intended to restate without substantive change the law in effect on Oct. 22, 1968, see section 6 of Pub. L. 90–623, set out as a note under section 5334 of this title.

EFFECTIVE DATE

Section 2 of Pub. L. 90–291 provided that: ''The amendments made by section 1 of this Act [enacting sections 8191 to 8193 of this title] are effective only with respect to personal injuries sustained on or after the date of enactment of this Act [Apr. 19, 1968].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8193 of this title; title 42 section 3796.

§ 8192. Benefits

(a) BENEFITS IN EVENT OF INJURY.—The Secretary of Labor shall furnish to any eligible officer the benefits to which he would have been entitled under subchapter I of this chapter if, on the occasion giving rise to his eligibility, he had been an employee as defined in section 8101(1) engaged in the performance of his duty, reduced or adjusted as the Secretary of Labor in his discretion may deem appropriate to reflect comparable benefits, if any, received by the officer (or which he would have been entitled to receive but for this subchapter) by virtue of his actual employment on that occasion. When an enforcement officer has contributed to a disability compensation fund, the reduction of Federal benefits provided for in this subsection is to be limited to the amount of the State or local government benefits which bears the same proportion to the full amount of such benefits as the cost or contribution paid by the State or local government bears to the cost of disability coverage for the individual officer.

(b) BENEFITS IN EVENT OF DEATH.—The Secretary of Labor shall pay to any survivor of an eligible officer the difference, as determined by the Secretary in his discretion, between the benefits to which that survivor would be entitled if the officer had been an employee as defined in section 8101(1) engaged in the performance of his duty on the occasion giving rise to his eligibility, and the comparable benefits, if any, received by the survivor (or which that survivor would have been entitled to receive but for this subchapter) by virtue of the officer's actual employment on that occasion. When an enforcement officer has contributed to a survivor's benefit fund, the reduction of Federal benefits provided for in this subsection is to be limited to the amount of the State or local government benefits which bears the same proportion to the full amount of such benefits as the cost or contribution paid by the State or local government bears to the cost of survivor's benefits coverage for the individual officer.

(Added Pub. L. 90–291, §1(a), Apr. 19, 1968, 82 Stat. 99.)

EFFECTIVE DATE

Section effective only with respect to personal injuries sustained on or after Apr. 19, 1968, see section 2 of Pub. L. 90–291, set out as a note under section 8191 of this title.

§ 8193. Administration

(a) DEFINITIONS AND RULES OF CONSTRUCTION.—For the purpose of this subchapter—

(1) The term ''Attorney General'' includes any person to whom the Attorney General has delegated any function pursuant to subsection (b) of this section.

(2) The term ''Secretary of Labor'' includes any person to whom the Secretary of Labor has delegated any function pursuant to subsection (b) of this section.

(b) DELEGATION.—

(1) The Attorney General may delegate to any division, officer, or employee of the Department of Justice any function conferred upon the Attorney General by this subchapter.

(2) The Secretary of Labor may delegate to any bureau, officer, or employee of the Department of Labor any function conferred upon the Secretary of Labor by this subchapter.

(c) APPLICATIONS.—An application for any benefit under this subchapter may be made only—

(1) to the Secretary of Labor

(2) by

(A) any eligible officer or survivor of an eligible officer,

(B) any guardian, personal representative, or other person legally authorized to act on behalf of an eligible officer, his estate, or any of his survivors, or

(C) any association of law enforcement officers which is acting on behalf of an eligible officer or any of his survivors;

(3) within five years after the injury or death; and

(4) in such form as the Secretary of Labor may require.

(d) CONSULTATION WITH ATTORNEY GENERAL AND OTHER AGENCIES.—The Secretary of Labor may refer any application received by him pursuant to this subchapter to the Attorney General for his assistance, comments and advice as to any determination required to be made pursuant to paragraph (1), (2), or (3) of section 8191. To insure that all Federal assistance under this subchapter is carried out in a coordinated manner, the Secretary of Labor is authorized to request any Federal department or agency to supply any statistics, data, or any other materials he deems necessary to carry out his functions under this subchapter. Each such department or agency is authorized to cooperate with the Secretary of Labor and, to the extent permitted by law, to furnish such materials to him.

(e) COOPERATION WITH STATE AGENCIES.—The Secretary of Labor shall cooperate fully with the appropriate State and local officials, and shall take all other practicable measures, to assure that the benefits of this subchapter are made available to eligible officers and their survivors with a minimum of delay and difficulty.

(f) APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this subchapter.

(Added Pub. L. 90–291, §1(a), Apr. 19, 1968, 82 Stat. 99; amended Pub. L. 94–183, §2(31), Dec. 31, 1975, 89 Stat. 1058.)

AMENDMENTS

1975—Subsec. (f). Pub. L. 94–183 redesignated subsec. (e), relating to appropriations, as subsec. (f).

EFFECTIVE DATE

Section effective only with respect to personal injuries sustained on or after Apr. 19, 1968, see section 2 of Pub. L. 90–291, set out as a note under section 8191 of this title.

CHAPTER 83—RETIREMENT

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AMENDMENTS

1986—Pub. L. 99–335, title II, §§201(b)(2), 204(b)(1), 205(b), 206(a)(2), June 6, 1986, 100 Stat. 591–594, added items 8343a, 8349, 8350, and 8351.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 3374, 5304, 5362, 5948, 8468, 8473 of this title; title 15 section 4105; title 22 sections 2391, 3649, 3681, 3951, 4071c, 4606; title 24 section 225e; title 25 section 450i; title 26 section 6103; title 28 sections 178, 375, 611, 627, 996; title 38 sections 7438, 7453, 7458; title 39 section 1005; title 42 sections 426, 2996d, 3035r, 10704; title 50 sections 403r, 403s.

SUBCHAPTER I—GENERAL PROVISIONS

§ 8301. Uniform retirement date

(a) Except as otherwise specifically provided by this title or other statute, retirement authorized by statute is effective on the first day of the month following the month in which retirement would otherwise be effective.

(b) Notwithstanding subsection (a) of this section, the rate of active or retired pay or allowance is computed as of the date retirement would have occurred but for subsection (a) of this section.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 557.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 47a.	Apr. 23, 1930, ch. 209, §1, 46 Stat. 253.

In subsection (a), the words ''Except as otherwise specifically provided by this title or other statute'' are added because of the statutes carried into subchapter III of chapter 83. The words ''of Federal personnel of whatever class, civil, military, naval, judicial, legislative, or otherwise, and for whatever cause retired'' are omitted as unnecessary. The words ''and said first day of the month for retirements made after July 1, 1930, shall be for all purposes in lieu of such date for retirement as was on April 23, 1930, authorized'' are omitted as executed.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 10 sections 580, 1164, 1210, 1221, 1263, 1305, 1404, 12731.

SUBCHAPTER II—FORFEITURE OF ANNUITIES AND RETIRED PAY

§ 8311. Definitions

For the purpose of this subchapter—

(1) ''employee'' means—

(A) an employee as defined by section 2105 of this title:

(B) a Member of Congress as defined by section 2106 of this title and a Delegate to Congress;

(C) a member or former member of a uniformed service; and

(D) an individual employed by the government of the District of Columbia;

(2) ''annuity'' means a retirement benefit, including a disability insurance benefit and a dependent's or survivor's benefit under subchapter II of chapter 7 of title 42, and a monthly annuity under section 228b or 228e of title 45, payable by an agency of the Government of the United States or the government of the District of Columbia on the basis of service as a civilian employee and other service which is creditable to an employee toward the benefit under the statute, regulation, or agreement

which provides the benefit, but does not include—

(A) a benefit provided under statutes administered by the Department of Veterans Affairs;

(B) pay or compensation which may not be diminished under section 1 of Article III of the Constitution of the United States;

(C) that portion of a benefit payable under subchapter II of chapter 7 of title 42 which would be payable without taking into account, for any of the purposes of that subchapter, including determinations of periods of disability under section 416(i) of title 42, pay for services as an employee;

(D) monthly annuity awarded under section 228b or 228e of title 45 before September 26, 1961, whether or not computed under section 228c(e) of title 45;

(E) that portion of an annuity awarded under section 228b or 228e of title 45 after September 25, 1961, which would be payable without taking into account military service creditable under section 228c–1 of title 45;

(F) a retirement benefit, including a disability insurance benefit and a dependent's or survivor's benefit under subchapter II of chapter 7 of title 42, awarded before September 1, 1954, to an individual or his survivor or beneficiary, insofar as the individual, before September 1, 1954—

(i) was convicted of an offense named by subsection (b) of section 8312 of this title, to the extent provided by that subsection; or

(ii) violated section 8314 or 8315(a)(1) of this title; or

(G) a retirement benefit, including a disability insurance benefit and a dependent's or survivor's benefit under subchapter II of chapter 7 of title 42, awarded before September 26, 1961, to an individual or his survivor or beneficiary, insofar as the individual, before September 26, 1961—

(i) was convicted of an offense named by subsection (c) of section 8312 of this title, to the extent provided by that subsection; or

(ii) violated section 8315(a)(2) of this title; and

(3) ''retired pay'' means retired pay, retirement pay, retainer pay, or equivalent pay, payable under a statute to a member or former member of a uniformed service, and an annuity payable to an eligible beneficiary of the member or former member under chapter 73 of title 10 or section 5 of the Uniformed Services Contingency Option Act of 1953 (67 Stat. 504), but does not include—

(A) a benefit provided under statutes administered by the Department of Veterans Affairs;

(B) retired pay, retirement pay, retainer pay, or equivalent pay, awarded before September 1, 1954, to an individual, insofar as the individual, before September 1, 1954—

(i) was convicted of an offense named by subsection (b) of section 8312 of this title, to the extent provided by that subsection; or

(ii) violated section 8314 or 8315(a)(1) of this title;

(C) retired pay, retirement pay, retainer pay, or equivalent pay, awarded before September 26, 1961, to an individual, insofar as the individual, before September 26, 1961—

(i) was convicted of an offense named by subsection (c) of section 8312 of this title, to the extent provided by that subsection; or

(ii) violated section 8315(a)(2) of this title; or

(D) an annuity payable to an eligible beneficiary of an individual under chapter 73 of title 10 or section 5 of the Uniformed Services Contingency Option Act of 1953 (67 Stat. 504), if the annuity was awarded to the beneficiary, or if retired pay was awarded to the individual, before September 26, 1961, insofar as the individual, on the basis of whose service the annuity was awarded, before September 26, 1961—

(i) was convicted of an offense named by section 8312 of this title, to the extent provided by that section; or

(ii) violated section 8314 or 8315 of this title.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 557; Pub. L. 102–54, § 13(b)(1), June 13, 1991, 105 Stat. 274.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 2281.	Sept. 26, 1961, Pub. L. 87–299, § 1 ''Sec. 10'', 75 Stat. 646.

The words ''and section 3282 of Title 18'' are omitted as unnecessary.

In paragraph (1)(A), the words ''an employee as defined by section 2105 of this title'' are coextensive with and substituted for ''an officer or employee in or under the legislative, executive, or judicial branch of the Government of the United States''.

In paragraph (1)(B), the reference to ''Resident Commissioner'' is omitted as included in ''Member of Congress'' in view of the definition of ''Member of Congress'' in section 2106.

In paragraph (1)(C), the words ''uniformed service'' are coextensive with and substituted for ''armed forces, the Coast and Geodetic Survey, or the Public Health Service'' in view of the definition of ''uniformed services'' in section 2101.

In paragraph (3), the words ''uniformed service'' are coextensive with and substituted for ''armed forces, the Coast and Geodetic Survey, and the Public Health Service'' in view of the definition of ''uniformed services'' in section 2101.

The definition of ''armed forces'' in former section 2281(4) is omitted as unnecessary in view of the definition of ''armed forces'' in section 2101.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

REFERENCES IN TEXT

Subchapter II of chapter 7 of title 42, referred to in par. (2), is classified to section 401 et seq. of Title 42, The Public Health and Welfare.

Sections 228b, 228c(e), 228c–1, and 228e of title 45, referred to in par. (2), are references to sections 2, 3(e), 4, and 5 of the Railroad Retirement Act of 1937. That Act was amended in its entirety and completely revised by Pub. L. 93–445, Oct. 16, 1974, 88 Stat. 1305. The Act, as thus amended and revised, was redesignated the Rail-

road Retirement Act of 1974, and is classified to subchapter IV (section 231 et seq.) of chapter 9 of Title 45, Railroads.

Section 5 of the Uniformed Services Contingency Option Act of 1953 (67 Stat. 504), referred to in text, is covered by section 1438 of Title 10, Armed Forces.

AMENDMENTS

1991—Pars. (2)(A), (3)(A). Pub. L. 102–54 substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5531, 8312, 8313, 8314, 8315 of this title.

§ 8312. Conviction of certain offenses

(a) An individual, or his survivor or beneficiary, may not be paid annuity or retired pay on the basis of the service of the individual which is creditable toward the annuity or retired pay, subject to the exceptions in section 8311(2) and (3) of this title, if the individual—

(1) was convicted, before, on, or after September 1, 1954, of an offense named by subsection (b) of this section, to the extent provided by that subsection; or

(2) was convicted, before, on, or after September 26, 1961, of an offense named by subsection (c) of this section, to the extent provided by that subsection.

The prohibition on payment of annuity or retired pay applies—

(A) with respect to the offenses named by subsection (b) of this section, to the period after the date of the conviction or after September 1, 1954, whichever is later; and

(B) with respect to the offenses named by subsection (c) of this section, to the period after the date of conviction or after September 26, 1961, whichever is later.

(b) The following are the offenses to which subsection (a) of this section applies if the individual was convicted before, on, or after September 1, 1954:

(1) An offense within the purview of—

(A) section 792 (harboring or concealing persons), 793 (gathering, transmitting, or losing defense information), 794 (gathering or delivering defense information to aid foreign government), or 798 (disclosure of classified information), of chapter 37 (relating to espionage and censorship) of title 18;

(B) chapter 105 (relating to sabotage) of title 18;

(C) section 2381 (treason), 2382 (misprision of treason), 2383 (rebellion or insurrection), 2384 (seditious conspiracy), 2385 (advocating overthrow of government), 2387 (activities affecting armed forces generally), 2388 (activities affecting armed forces during war), 2389 (recruiting for service against United States), or 2390 (enlistment to serve against United States), of chapter 115 (relating to treason, sedition, and subversive activities) of title 18;

(D) section 10(b)(2), (3), or (4) of the Atomic Energy Act of 1946 (60 Stat. 766, 767), as in effect August 30, 1954;

(E) section 16(a) or (b) of the Atomic Energy Act of 1946 (60 Stat. 773), as in effect before August 30, 1954, insofar as the offense is committed with intent to injure the United States or with intent to secure an advantage to a foreign nation; or

(F) an earlier statute on which a statute named by subparagraph (A), (B), or (C) of this paragraph (1) is based.

(2) An offense within the purview of—

(A) article 104 (aiding the enemy), article 106 (spies), or article 106a (espionage) of the Uniform Code of Military Justice (chapter 47 of title 10) or an earlier article on which article 104 or article 106, as the case may be, is based; or

(B) a current article of the Uniform Code of Military Justice (or an earlier article on which the current article is based) not named by subparagraph (A) of this paragraph (2) on the basis of charges and specifications describing a violation of a statute named by paragraph (1), (3), or (4) of this subsection, if the executed sentence includes death, dishonorable discharge, or dismissal from the service, or if the defendant dies before execution of that sentence as finally approved.

(3) Perjury committed under the statutes of the United States or the District of Columbia—

(A) in falsely denying the commission of an act which constitutes an offense within the purview of—

(i) a statute named by paragraph (1) of this subsection; or

(ii) an article or statute named by paragraph (2) of this subsection insofar as the offense is within the purview of an article or statute named by paragraph (1) or (2)(A) of this subsection;

(B) in falsely testifying before a Federal grand jury, court of the United States, or court-martial with respect to his service as an employee in connection with a matter involving or relating to an interference with or endangerment of, or involving or relating to a plan or attempt to interfere with or endanger, the national security or defense of the United States; or

(C) in falsely testifying before a congressional committee in connection with a matter under inquiry before the congressional committee involving or relating to an interference with or endangerment of, or involving or relating to a plan or attempt to interfere with or endanger, the national security or defense of the United States.

(4) Subornation of perjury committed in connection with the false denial or false testimony of another individual as specified by paragraph (3) of this subsection.

(c) The following are the offenses to which subsection (a) of this section applies if the individual was convicted before, on, or after September 26, 1961:

(1) An offense within the purview of—

(A) section 2272 (violation of specific sections) or 2273 (violation of sections generally of chapter 23 of title 42) of title 42 insofar as the offense is committed with intent to in-

jure the United States or with intent to secure an advantage to a foreign nation;

(B) section 2274 (communication of restricted data), 2275 (receipt of restricted data), or 2276 (tampering with restricted data) of title 42; or

(C) section 783 (conspiracy and communication or receipt of classified information) of title 50 or section 601 of the National Security Act of 1947 (50 U.S.C. 421) (relating to intelligence identities).

(2) An offense within the purview of a current article of the Uniform Code of Military Justice (chapter 47 of title 10) or an earlier article on which the current article is based, as the case may be, on the basis of charges and specifications describing a violation of a statute named by paragraph (1), (3), or (4) of this subsection, if the executed sentence includes death, dishonorable discharge, or dismissal from the service, or if the defendant dies before execution of that sentence as finally approved.

(3) Perjury committed under the statutes of the United States or the District of Columbia in falsely denying the commission of an act which constitutes an offense within the purview of a statute named by paragraph (1) of this subsection.

(4) Subornation of perjury committed in connection with the false denial of another individual as specified by paragraph (3) of this subsection.

(d)(1) For purposes of subsections (b)(1) and (c)(1), an offense within the meaning of such subsections is established if the Attorney General of the United States certifies to the agency administering the annuity or retired pay concerned—

(A) that an individual subject to this chapter has been convicted by an impartial court of appropriate jurisdiction within a foreign country in circumstances in which the conduct violates the provisions of law enumerated in subsections (b)(1) and (c)(1), or would violate such provisions had such conduct taken place within the United States, and that such conviction is not being appealed or that final action has been taken on such appeal;

(B) that such conviction was obtained in accordance with procedures that provided the defendant due process rights comparable to such rights provided by the United States Constitution, and such conviction was based upon evidence which would have been admissible in the courts of the United States; and

(C) that such conviction occurred after the date of enactment of this subsection.

(2) Any certification made pursuant to this subsection shall be subject to review by the United States Court of Claims based upon the application of the individual concerned, or his or her attorney, alleging that any of the conditions set forth in subparagraphs[1] (A), (B), or (C) of paragraph (1), as certified by the Attorney General, have not been satisfied in his or her particular circumstances. Should the court determine that any of these conditions has not been satisfied in such case, the court shall order any annuity or retirement benefit to which the person concerned is entitled to be restored and shall order that any payments which may have been previously denied or withheld to be paid by the department or agency concerned.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 559; Pub. L. 92–128, § 2(b), Sept. 25, 1971, 85 Stat. 348; Pub. L. 99–569, title VI, § 603, Oct. 27, 1986, 100 Stat. 3204; Pub. L. 103–337, div. A, title VI, § 639(a), Oct. 5, 1994, 108 Stat. 2791; Pub. L. 103–359, title VIII, § 805, Oct. 14, 1994, 108 Stat. 3441.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 2282.	Sept. 26, 1961, Pub. L. 87–299, § 1 ''Sec. 1'', 75 Stat. 640.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

REFERENCES IN TEXT

Pars. (2), (3) and (4) of subsec. (b) of section 10 of the Atomic Energy Act of 1946 (60 Stat. 766, 767), as in effect before August 30, 1954, referred to in subsec. (b)(1)(D), are covered by sections 2274, 2275 and 2276, respectively, of Title 42, The Public Health and Welfare.

Subsecs. (a) and (b) of section 16 of the Atomic Energy Act of 1946 (60 Stat. 773), as in effect before August 30, 1954, referred to in subsec. (b)(1)(E), are covered by sections 2272 and 2273, respectively, of Title 42.

Articles 104, 106, and 106a of the Uniform Code of Military Justice, referred to in subsec. (b)(2)(A), are sections 904, 906, and 906a, respectively, of Title 10, Armed Forces. The Uniform Code of Military Justice, in its entirety, is set out in section 801 et seq. of Title 10.

The date of enactment of this subsection, referred to in subsec. (d)(1)(C), is the date of enactment of Pub. L. 103–359, which was approved Oct. 14, 1994.

AMENDMENTS

1994—Subsec. (b)(2)(A). Pub. L. 103–337 substituted '', article 106 (spies), or article 106a (espionage)'' for ''or article 106 (spies)''.

Subsec. (d). Pub. L. 103–359 added subsec. (d).

1986—Subsec. (c)(1)(C). Pub. L. 99–569 inserted provisions relating to section 601 of the National Security Act of 1947.

1971—Subsec. (c)(1)(C). Pub. L. 92–128 struck out '', 822 (conspiracy or evasion of apprehension during internal security emergency), or 823 (aiding evasion or apprehension during internal security emergency)'' after ''classified information)''.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 639(b) of Pub. L. 103–337 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Oct. 5, 1994] and shall apply to persons convicted of espionage under section 906a of title 10, United States Code (article 106a of the Uniform Code of Military Justice), on or after the date of the enactment of this Act.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5569, 8311, 8313, 8315, 8316, 8318, 8320 of this title; title 37 section 559.

§ 8313. Absence from the United States to avoid prosecution

(a) An individual, or his survivor or beneficiary, may not be paid annuity or retired pay on the basis of the service of the individual

[1] So in original. Probably should be ''subparagraph''.

which is creditable toward the annuity or retired pay, subject to the exceptions in section 8311(2) and (3) of this title, if the individual—

(1) is under indictment, or has outstanding against him charges preferred under the Uniform Code of Military Justice—

(A) after July 31, 1956, for an offense named by section 8312(b) of this title; or

(B) after September 26, 1961, for an offense named by section 8312(c) of this title; and

(2) willfully remains outside the United States, or its territories and possessions including the Commonwealth of Puerto Rico, for more than 1 year with knowledge of the indictment or charges, as the case may be.

(b) The prohibition on payment of annuity or retired pay under subsection (a) of this section applies to the period after the end of the 1-year period and continues until—

(1) a nolle prosequi to the entire indictment is entered on the record or the charges are dismissed by competent authority;

(2) the individual returns and thereafter the indictment or charges is or are dismissed; or

(3) after trial by court or court-martial, the accused is found not guilty of the offense or offenses.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 561.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 2283a.	Sept. 26, 1961, Pub. L. 87–299, §1, ''Sec. 3'', 75 Stat. 643.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

REFERENCES IN TEXT

The Uniform Code of Military Justice, referred to in text, is classified to chapter 47 (§ 801 et seq.) of Title 10, Armed Forces.

§ 8314. Refusal to testify

(a) An individual, or his survivor or beneficiary, may not be paid annuity or retired pay on the basis of the service of the individual which is creditable toward the annuity or retired pay, subject to the exceptions in section 8311(2) and (3) of this title, if the individual, before, on, or after September 1, 1954, refused or refuses, or knowingly and willfully failed or fails, to appear, testify, or produce a book, paper, record, or other document, relating to his service as an employee, before a Federal grand jury, court of the United States, court-martial, or congressional committee, in a proceeding concerning—

(1) his past or present relationship with a foreign government; or

(2) a matter involving or relating to an interference with or endangerment of, or involving or relating to a plan or attempt to interfere with or endanger, the national security or defense of the United States.

(b) The prohibition on payment of annuity or retired pay under subsection (a) of this section applies to the period after the date of the failure or refusal of the individual, or after September 1, 1954, whichever is later.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 561.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 2283(a).	Sept. 26, 1961, Pub. L. 87–299, §1 ''Sec. 2(a)'', 75 Stat. 642.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8311, 8315, 8316, 8318, 8320 of this title.

§ 8315. Falsifying employment applications

(a) An individual, or his survivor or beneficiary, may not be paid annuity or retired pay on the basis of the service of the individual which is creditable toward the annuity or retired pay, subject to the exceptions in section 8311(2) and (3) of this title, if the individual knowingly and willfully made or makes a false, fictitious, or fraudulent statement or representation, or knowingly and willfully concealed or conceals a material fact—

(1) before, on, or after September 1, 1954, concerning his—

(A) past or present membership in, affiliation or association with, or support of the Communist Party, or a chapter, branch, or subdivision thereof, in or outside the United States, or other organization, party, or group advocating—

(i) the overthrow, by force, violence, or other unconstitutional means, of the Government of the United States;

(ii) the establishment, by force, violence, or other unconstitutional means, of a Communist totalitarian dictatorship in the United States; or

(iii) the right to strike against the United States;

(B) conviction of an offense named by subsection (b) of section 8312 of this title, to the extent provided by that subsection; or

(C) failure or refusal to appear, testify, or produce a book, paper, record, or other document, as specified by section 8314 of this title; or

(2) before, on, or after September 26, 1961, concerning his conviction of an offense named by subsection (c) of section 8312 of this title, to the extent provided by that subsection;

in a document executed by the individual in connection with his employment in, or application for, a civilian or military office or position in or under the legislative, executive, or judicial branch of the Government of the United States or the government of the District of Columbia.

(b) The prohibition on the payment of annuity or retired pay applies—

(1) with respect to matters specified by subsection (a)(1) of this section, to the period after the statement, representation, or concealment of fact is made or occurs, or after September 1, 1954, whichever is later; and

(2) with respect to matters specified by subsection (a)(2) of this section, to the period

after the statement, representation, or concealment of fact is made or occurs, or after September 26, 1961, whichever is later.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 562.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 2283(b), (c).	Sept. 26, 1961, Pub. L. 87–299, §1 ''Sec. 2(b), (c)'', 75 Stat. 642.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8311, 8316, 8318, 8320 of this title.

§ 8316. Refund of contributions and deposits

(a) When payment of annuity or retired pay is denied under this subchapter because an individual was convicted of an offense named by section 8312 of this title, to the extent provided by that section, or violated section 8314 or 8315 of this title—

(1) the amount, except employment taxes, contributed by the individual toward the annuity, less the amount previously refunded or paid as annuity benefits; and

(2) deposits made under section 1438 of title 10 or section 5 of the Uniformed Services Contingency Option Act of 1953 (67 Stat. 504) to provide the eligible beneficiary with annuity for any period, less the amount previously paid as retired pay benefits;

shall be refunded, on appropriate application therefor—

(A) to the individual;

(B) if the individual is dead, to the beneficiary designated to receive refunds by or under the statute, regulation, or agreement under which the annuity, the benefits of which are denied under this subchapter, would have been payable; or

(C) if a beneficiary is not designated, in the order of precedence prescribed by section 8342(c) of this title or section 2771 of title 10, as the case may be.

(b) A refund under subsection (a) of this section shall be made with interest at the rate and for the period provided under the statute, regulation, or agreement under which the annuity would have been payable. However, interest may not be computed—

(1) if the individual was convicted of an offense named by section 8312(b) of this title, or violated section 8314 or 8315(a)(1) of this title, for the period after the conviction or commission of the violation, or after September 1, 1954, whichever is later; or

(2) if the individual was convicted of an offense named by section 8312(c) of this title, or violated section 8315(a)(2) of this title, for the period after the conviction or commission of the violation, or after September 26, 1961, whichever is later.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 563.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 2284(a), (b).	Sept. 26, 1961, Pub. L. 87–299, §1 ''Sec. 4(a), (b)'', 75 Stat. 644.
.....	5 U.S.C. 2284a(b).	Sept. 26, 1961, Pub. L. 87–299, §1 ''Sec. 5(b)'', 75 Stat. 645.

This section is reorganized for clarity and conciseness.

The words ''and section 3282 of Title 18'' in former section 2284(a) are omitted as unnecessary.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

REFERENCES IN TEXT

Section 5 of the Uniform Services Contingency Option Act of 1953 (67 Stat. 504), referred to in text, is covered by section 1438 of Title 10, Armed Forces.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8318 of this title.

§ 8317. Repayment of annuity or retired pay properly paid; waiver

(a) An individual, or his survivor or beneficiary, to whom payment of annuity is denied under this subchapter is not thereafter required to repay that part of the annuity otherwise properly paid to the individual, or to his survivor or beneficiary on the basis of the service of the individual, which is in excess of the aggregate amount of the contributions of the individual toward the annuity, with applicable interest.

(b) An individual, including an eligible beneficiary under chapter 73 of title 10 or section 5 of the Uniformed Services Contingency Option Act of 1953 (67 Stat. 504), to whom payment of retired pay is denied under this subchapter is not thereafter required to repay retired pay otherwise properly paid to the individual or beneficiary which is paid in violation of this subchapter.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 563.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(a)	5 U.S.C. 2284(c), (d).	Sept. 26, 1961, Pub. L. 87–299, §1 ''Sec. 4(c), (d)'', 75 Stat. 644.
(b)	5 U.S.C. 2284a(a).	Sept. 26, 1961, Pub. L. 87–299, §1 ''Sec. 5(a)'', 75 Stat. 645.

The words ''and section 3282 of Title 18'' are omitted as unnecessary.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

REFERENCES IN TEXT

Section 5 of the Uniformed Services Contingency Option Act of 1953 (67 Stat. 504), referred to in text, is covered by section 1438 of Table 10, Armed Forces.

§ 8318. Restoration of annuity or retired pay

(a) If an individual who was convicted, before, on, or after September 1, 1954, of—

(1) an offense named by section 8312 of this title; or

(2) an offense constituting a violation of section 8314 or 8315 of this title;

is pardoned by the President, the right of the individual and his survivor or beneficiary to receive annuity or retired pay previously denied under this subchapter is restored as of the date of the pardon.

(b) The President may restore, effective as of the date he prescribes, the right to receive annuity or retired pay which is denied, before, on, or after September 1, 1954, under section 8314 or 8315 of this title, to the individual and to his survivor or beneficiary.

(c) Payment of annuity or retired pay which results from pardon or restoration by the President under subsection (a) or (b) of this section may not be made for a period before—

(1) the date of pardon referred to by subsection (a) of this section; or

(2) the effective date of restoration referred to by subsection (b) of this section.

(d) Credit for a period of service covered by a refund under section 8316 of this title is allowed only after the amount refunded has been redeposited.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 563.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 2285(a), (b).	Sept. 26, 1961, Pub. L. 87–299, §1 ''Sec. 6(a), (b)'', 75 Stat. 645.

The section is reorganized for clarity and conciseness.

The words ''and section 3282 of Title 18'' are omitted as unnecessary.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

§ 8319. Removal of members of the uniformed services from rolls; restoration; reappointment

(a) The President may drop from the rolls a member of a uniformed service who is deprived of retired pay under this subchapter.

(b) The President may restore—

(1) military status to an individual dropped from the rolls to whom retired pay is restored under this subchapter or under section 2 of the Act of September 26, 1961 (75 Stat. 648); and

(2) all rights and privileges to the individual and his beneficiaries of which he or they were deprived because his name was dropped from the rolls.

(c) If the individual restored was a commissioned officer, the President alone may reappoint him to the grade and position on the retired list held when his name was dropped from the rolls.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 564.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 2287.	Sept. 26, 1961, Pub. L. 87–299, §1 ''Sec. 8'', 75 Stat. 646.

The words ''and section 3282 of Title 18'' are omitted as unnecessary.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

REFERENCES IN TEXT

Section 2 of the Act of September 26, 1961 (75 Stat. 648), referred to in subsec. (b)(1), is set out as a note under section 8318 of this title.

§ 8320. Offense or violation committed in compliance with orders

When it is established by satisfactory evidence that an individual—

(1) was convicted of an offense named by section 8312 of this title; or

(2) violated section 8314 or 8315 of this title;

as a result of proper compliance with orders issued, in a confidential relationship, by an agency or other authority of the Government of the United States or the government of the District of Columbia, the right to receive annuity or retired pay may not be denied.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 564.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 2285(c).	Sept. 26, 1961, Pub. L. 87–299, §1 ''Sec. 6(c)'', 75 Stat. 645.

The reference to conviction of an offense which constitutes a violation of former section 2283 (which is carried into this title as sections 8314 and 8315) is omitted as being covered by the words ''violated section 8314 or 8315 of this title'' which are added on authority of the words ''conviction or violation'' in former section 2285(c).

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

§ 8321. Liability of accountable employees

An accountable employee may not be held responsible for a payment made in violation of this subchapter when the payment made is in due course and without fraud, collusion, or gross negligence.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 564.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 2286.	Sept. 26, 1961, Pub. L. 87–299, §1 ''Sec. 7'', 75 Stat. 645.

The words ''and section 3282 of Title 18'' are omitted as unnecessary.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

§ 8322. Effect on other statutes

This subchapter does not restrict authority under a statute, other than this subchapter, to deny or withhold benefits authorized by statute.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 564.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 2288.	Sept. 26, 1961, Pub. L. 87–299, §1 ''Sec. 9'', 75 Stat. 646.

The words ''and section 3282 of Title 18'' are omitted as unnecessary.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

RETROACTIVE RESTORATION OF ANNUITY AND RETIRED PAY; REDEPOSITS OF CONTRIBUTIONS AND OFFSETS

Section 2 of Pub. L. 87–299, Sept. 26, 1961, 75 Stat. 648, provided that:

''(a) Subject to subsection (b) of this section, any person, including his survivor or beneficiary, to whom annuity or retired pay is not payable under the Act of September 1, 1954 [this subchapter], as in effect at any time prior to the date of enactment of this Act [Sept. 26, 1961], by reason of any conviction of an offense, any commission of a violation, any refusal to answer, or any absence under indictment, or under charges, for any offense, shall be restored the right to receive such annuity or retired pay for any and all periods for which he would have had the right to receive such annuity or retired pay if the Act of September 1, 1954 [this subchapter], had not been enacted, unless, under the amendment made by the first section of this Act [amending former chapter 31 of this title, now this subchapter, and section 3282 of Title 18, Crimes and Criminal Procedure], such annuity or retired pay remains nonpayable to such person, including his survivor or beneficiary.

''(b) No annuity accrued or accruing, prior to, on, or after the date of enactment of this Act [Sept. 26, 1961], on account of the restoration, by reason of the amendment made by the first section of this Act [amending former chapter 31 of this title, now this subchapter, and section 3282 of Title 18] and by reason of subsection (a) of this section, of the right to receive such annuity, shall be paid until any sum refunded under section 3 of the Act of September 1, 1954 [former section 2284 of this title, now section 8316 of this title, prior to amendment Sept. 26, 1961], as in effect prior to the date of enactment of such amendment [Sept. 26, 1961], is deposited or is collected by offset against the annuity.''

SUBCHAPTER III—CIVIL SERVICE RETIREMENT

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 1308, 3329, 3373, 3374, 5541, 5581, 5595, 5597, 5724, 6303, 8103, 8116, 8402, 8411, 8442, 8443, 8462, 8501, 8901 of this title; title 2 sections 31b–5, 60e–3, 72a; title 7 section 331; title 10 sections 942, 945, 1450, 1452, 2467; title 12 section 1723a; title 16 section 1168; title 20 sections 125, 4416; title 22 sections 2025, 3658, 3682, 3968, 3970, 4045, 4067, 4069, 4071b, 4071c, 4071d, 4071i; title 26 section 3121; title 28 sections 155, 178, 332, 376, 377, 611, 625, 627, 634, 636, 797; title 31 section 772; title 38 sections 7426, 7802; title 40 section 13b; title 42 sections 212, 410, 415, 417, 1395s, 4276; title 45 section 1206; title 50 sections 403r, 403s, 2082, 2141, 2151, 2154; title 50 App. section 1291.

§ 8331. Definitions

For the purpose of this subchapter—

(1) ''employee'' means—

(A) an employee as defined by section 2105 of this title;

(B) the Architect of the Capitol, an employee of the Architect of the Capitol, and an employee of the Botanic Garden;

(C) a Congressional employee as defined by section 2107 of this title (other than the Architect of the Capitol, an employee of the Architect of the Capitol, and an employee of the Botanic Garden), after he gives notice in writing to the official by whom he is paid of his desire to become subject to this subchapter;

(D) a temporary Congressional employee appointed at an annual rate of pay, after he gives notice in writing to the official by whom he is paid of his desire to become subject to this subchapter;

(E) a United States Commissioner whose total pay for services performed as Commissioner is not less than $3,000 in each of the last 3 consecutive calendar years ending after December 31, 1954;

(F) an individual employed by a county committee established under section 590h(b) of title 16;

(G) an individual first employed by the government of the District of Columbia before October 1, 1987;

(H) an individual employed by Gallaudet College;

(I) an individual appointed to a position on the office staff of a former President under section 1(b) of the Act of August 25, 1958 (72 Stat. 838);

(J) an alien (i) who was previously employed by the Government, (ii) who is employed full time by a foreign government for the purpose of protecting or furthering the interests of the United States during an interruption of diplomatic or consular relations, and (iii) for whose services reimbursement is made to the foreign government by the United States;

(K) an individual appointed to a position on the office staff of a former President, or a former Vice President under section 4 of the Presidential Transition Act of 1963, as amended (78 Stat. 153), who immediately before the date of such appointment was an employee as defined under any other subparagraph of this paragraph; and

(L) an employee described in section 2105(c) who has made an election under section 8347(q)(1) to remain covered under this subchapter;

but does not include—

(i) a justice or judge of the United States as defined by section 451 of title 28;

(ii) an employee subject to another retirement system for Government employees (besides any employee excluded by clause (x), but including any employee who has made an election under section 8347(q)(2) to remain covered by a retirement system established for employees described in section 2105(c));

(iii) an employee or group of employees in or under an Executive agency excluded by the Office of Personnel Management under section 8347(g) of this title;

(iv) an individual or group of individuals employed by the government of the District of Columbia excluded by the Office under section 8347(h) of this title;

(v) an employee of the Administrative Office of the United States Courts, the Federal Judicial Center, or a court named by section

610 of title 28, excluded by the Director of the Administrative Office under section 8347(*o*) of this title;

(vi) a construction employee or other temporary, part-time, or intermittent employee of the Tennessee Valley Authority;

(vii) an employee under the Office of the Architect of the Capitol excluded by the Architect of the Capitol under section 8347(i) of this title;

(viii) an employee under the Library of Congress excluded by the Librarian of Congress under section 8347(j) of this title;

(ix) a student-employee as defined by section 5351 of this title;

(x) an employee subject to the Federal Employees' Retirement System;

(xi) an employee under the Botanic Garden excluded by the Director or Acting Director of the Botanic Garden under section 8347(*l*) of this title; or

(xii) a member of the Foreign Service (as described in section 103(6) of the Foreign Service Act of 1980), appointed after December 31, 1987.

Notwithstanding this paragraph, the employment of a teacher in the recess period between two school years in a position other than a teaching position in which he served immediately before the recess period does not qualify the individual as an employee for the purpose of this subchapter. For the purpose of the preceding sentence, ''teacher'' and ''teaching position'' have the meanings given them by section 901 of title 20;

(2) ''Member'' means a Member of Congress as defined by section 2106 of this title, after he gives notice in writing to the official by whom he is paid of his desire to become subject to this subchapter, but does not include any such Member of Congress who is subject to the Federal Employees' Retirement System or who makes an election under section 8401(20) of this title not to be subject to such System;

(3) ''basic pay'' includes—

(A) the amount a Member received from April 1, 1954, to February 28, 1955, as expense allowance under section 601(b) of the Legislative Reorganization Act of 1946 (60 Stat. 850), as amended; and that amount from January 3, 1953, to March 31, 1954, if deposit is made therefor as provided by section 8334 of this title;

(B) additional pay provided by—

(i) subsection (a) of section 60e–7 of title 2 and the provisions of law referred to by that subsection; and

(ii) sections 60e–8, 60e–9, 60e–10, 60e–11, 60e–12, 60e–13, and 60e–14 of title 2;

(C) premium pay under section 5545(c)(1) of this title;

(D) with respect to a law enforcement officer, premium pay under section 5545(c)(2) of this title; and

(E) with respect to a customs officer (referred to in subsection (e)(1) of section 5 of the Act of February 13, 1911), compensation for overtime inspectional services provided for under subsection (a) of such section 5, but not to exceed 50 percent of any statutory maximum in overtime pay for customs officers which is in effect for the year involved;

but does not include bonuses, allowances, overtime pay, military pay, pay given in addition to the base pay of the position as fixed by law or regulation except as provided by subparagraphs (B), (C), (D), and (E) of this paragraph[1] retroactive pay under section 5344 of this title in the case of a retired or deceased employee, uniform allowances under section 5901 of this title, or lump-sum leave payments under subchapter VI of chapter 55 of this title. For an employee paid on a fee basis, the maximum amount of basic pay which may be used is $10,000;

(4) ''average pay'' means the largest annual rate resulting from averaging an employee's or Member's rates of basic pay in effect over any 3 consecutive years of creditable service or, in the case of an annuity under subsection (d) or (e)(1) of section 8341 of this title based on service of less than 3 years, over the total service, with each rate weighted by the time it was in effect;

(5) ''Fund'' means the Civil Service Retirement and Disability Fund;

[(6) Repealed. Pub. L. 96–499, title IV, § 403(b), Dec. 5, 1980, 94 Stat. 2606]

(7) ''Government'' means the Government of the United States, the government of the District of Columbia, Gallaudet University, and, in the case of an employee described in paragraph (1)(L), a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard described in section 2105(c);

(8) ''lump-sum credit'' means the unrefunded amount consisting of—

(A) retirement deductions made from the basic pay of an employee or Member;

(B) amounts deposited by an employee or Member covering earlier service, including any amounts deposited under section 8334(j) of this title; and

(C) interest on the deductions and deposits at 4 percent a year to December 31, 1947, and 3 percent a year thereafter compounded annually to December 31, 1956, or, in the case of an employee or Member separated or transferred to a position in which he does not continue subject to this subchapter before he has completed 5 years of civilian service, to the date of the separation or transfer;

but does not include interest—

(i) if the service covered thereby aggregates 1 year or less; or

(ii) for the fractional part of a month in the total service;

(9) ''annuitant'' means a former employee or Member who, on the basis of his service, meets all requirements of this subchapter for title to annuity and files claim therefor;

(10) ''survivor'' means an individual entitled to annuity under this subchapter based on the service of a deceased employee, Member, or annuitant;

(11) ''survivor annuitant'' means a survivor who files claim for annuity;

(12) ''service'' means employment creditable under section 8332 of this title;

[1] So in original. Probably should be followed by a comma.

(13) ''military service'' means honorable active service—

(A) in the armed forces;

(B) in the Regular or Reserve Corps of the Public Health Service after June 30, 1960; or

(C) as a commissioned officer of the Environmental Science Services Administration after June 30, 1961;

but does not include service in the National Guard except when ordered to active duty in the service of the United States or full-time National Guard duty (as such term is defined in section 101(d) of title 10) if such service interrupts creditable civilian service under this subchapter and is followed by reemployment in accordance with chapter 43 of title 38 that occurs on or after August 1, 1990;

(14) ''Member service'' means service as a Member and includes the period from the date of the beginning of the term for which elected or appointed to the date on which he takes office as a Member;

(15) ''price index'' means the Consumer Price Index (all items—United States city average) published monthly by the Bureau of Labor Statistics;

(16) ''base month'' means the month for which the price index showed a percent rise forming the basis for a cost-of-living annuity increase;

(17) ''normal cost'' means the entry-age normal cost computed by the Office of Personnel Management in accordance with generally accepted actuarial practice and expressed as a level percentage of aggregate basic pay;

(18) ''Fund balance'' means the sum of—

(A) the investments of the Fund calculated at par value; and

(B) the cash balance of the Fund on the books of the Treasury;

but does not include any amount attributable to—

(i) the Federal Employees' Retirement System; or

(ii) contributions made under the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983 by or on behalf of any individual who became subject to the Federal Employees' Retirement System;

(19) ''unfunded liability'' means the estimated excess of the present value of all benefits payable from the Fund to employees and Members, and former employees and Members, subject to this subchapter, and to their survivors, over the sum of—

(A) the present value of deductions to be withheld from the future basic pay of employees and Members currently subject to this subchapter and of future agency contributions to be made in their behalf; plus

(B) the present value of Government payments to the Fund under section 8348(f) of this title; plus

(C) the Fund balance as of the date the unfunded liability is determined;

(20) ''law enforcement officer'' means an employee, the duties of whose position are primarily the investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws of the United States, including an employee engaged in this activity who is transferred to a supervisory or administrative position. For the purpose of this paragraph, ''detention'' includes the duties of—

(A) employees of the Bureau of Prisons and Federal Prison Industries, Incorporated;

(B) employees of the Public Health Service assigned to the field service of the Bureau of Prisons or of the Federal Prison Industries, Incorporated;

(C) employees in the field service at Army or Navy disciplinary barracks or at confinement and rehabilitation facilities operated by any of the armed forces; and

(D) employees of the Department of Corrections of the District of Columbia, its industries and utilities;

whose duties in connection with individuals in detention suspected or convicted of offenses against the criminal laws of the United States or of the District of Columbia or offenses against the punitive articles of the Uniformed Code of Military Justice (chapter 47 of title 10) require frequent (as determined by the appropriate administrative authority with the concurrence of the Office) direct contact with these individuals in their detention, direction, supervision, inspection, training, employment, care, transportation, or rehabilitation;

(21) ''firefighter'' means an employee, the duties of whose position are primarily to perform work directly connected with the control and extinguishment of fires or the maintenance and use of firefighting apparatus and equipment, including an employee engaged in this activity who is transferred to a supervisory or administrative position;

(22) ''bankruptcy judge'' means an individual—

(A) who is appointed under section 34 of the Bankruptcy Act (11 U.S.C. 62) or under section 404(d) of the Act of November 6, 1978 (Public Law 95–598; 92 Stat. 2549), and—

(i) who is serving as a United States bankruptcy judge on March 31, 1984; or

(ii) whose service as a United States bankruptcy judge at any time in the period beginning on October 1, 1979, and ending on July 10, 1984, is terminated by reason of death or disability; or

(B) who is appointed as a bankruptcy judge under section 152 of title 28;

(23) ''former spouse'' means a former spouse of an individual—

(A) if such individual performed at least 18 months of civilian service covered under this subchapter as an employee or Member, and

(B) if the former spouse was married to such individual for at least 9 months;

(24) ''Indian court'' means an Indian court as defined by section 201(3) of the Act entitled ''An Act to prescribe penalties for certain acts of violence or intimidation, and for other purposes'', approved April 11, 1968 (25 U.S.C. 1301(3); 82 Stat. 77);

(25) ''magistrate'' or ''United States magistrate'' means an individual appointed under section 631 of title 28; and

(26) ''Court of Federal Claims judge'' means a judge of the United States Court of Federal Claims who is appointed under chapter 7 of title 28 or who has served under section 167 of the Federal Courts Improvement Act of 1982.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 564; Pub. L. 89–737, §1(2), Nov. 2, 1966, 80 Stat. 1164; Pub. L. 90–83, §1(72), Sept. 11, 1967, 81 Stat. 213; Pub. L. 90–623, §1(21), Oct. 22, 1968, 82 Stat. 1313; Pub. L. 91–93, title I, §101, title II, §201(a), Oct. 20, 1969, 83 Stat. 136, 138; Pub. L. 92–352, title I, §105(a), July 13, 1972, 86 Stat. 490; Pub. L. 93–350, §2, July 12, 1974, 88 Stat. 355; Pub. L. 94–183, §2(38), Dec. 31, 1975, 89 Stat. 1058; Pub. L. 95–454, title IX, §906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 95–598, title III, §338(e), Nov. 6, 1978, 92 Stat. 2681; Pub. L. 96–54, §2(a)(47), Aug. 14, 1979, 93 Stat. 384; Pub. L. 96–499, title IV, §403(b), Dec. 5, 1980, 94 Stat. 2606; Pub. L. 97–253, title III, §306(a), Sept. 8, 1982, 96 Stat. 795; Pub. L. 98–249, §3(b), Mar. 31, 1984, 98 Stat. 117; Pub. L. 98–271, §3(b), Apr. 30, 1984, 98 Stat. 163; Pub. L. 98–299, §3(b), May 25, 1984, 98 Stat. 214; Pub. L. 98–325, §3(b), June 20, 1984, 98 Stat. 268; Pub. L. 98–353, title I, §§116(a), 121(g), July 10, 1984, 98 Stat. 343, 346; Pub. L. 98–531, §2(a), Oct. 19, 1984, 98 Stat. 2704; Pub. L. 98–615, §2(1), Nov. 8, 1984, 98 Stat. 3195; Pub. L. 99–335, title II, §§202, 207(f), June 6, 1986, 100 Stat. 591, 595; Pub. L. 100–53, §2(a), June 18, 1987, 101 Stat. 367; Pub. L. 100–238, title I, §§112, 123, Jan. 8, 1988, 101 Stat. 1750, 1754; Pub. L. 100–679, §13(a)(1), Nov. 17, 1988, 102 Stat. 4071; Pub. L. 101–474, §5(m), Oct. 30, 1990, 104 Stat. 1100; Pub. L. 101–508, title VII, §7202(j)(1), Nov. 5, 1990, 104 Stat. 1388–337; Pub. L. 101–650, title III, §306(c)(1), Dec. 1, 1990, 104 Stat. 5110; Pub. L. 102–378, §2(57), Oct. 2, 1992, 106 Stat. 1354; Pub. L. 102–572, title IX, §902(b), Oct. 29, 1992, 106 Stat. 4516; Pub. L. 103–66, title XIII, §13812(a), Aug. 10, 1993, 107 Stat. 670; Pub. L. 103–353, §5(a), Oct. 13, 1994, 108 Stat. 3173.)

HISTORICAL AND REVISION NOTES
1966 ACT

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 2251 (less (h)–(j)).	July 31, 1956, ch. 804, §401 ''Sec. 1 (less (h)–(j))'', 70 Stat. 743. Apr. 8, 1960, Pub. L. 86–415, §6(c), 74 Stat. 35. July 7, 1960, Pub. L. 86–604, §1(a), 74 Stat. 358. Sept. 14, 1961, Pub. L. 87–233, §2, 75 Stat. 507. Oct. 11, 1962, Pub. L. 87–793, §1102(a), 76 Stat. 869. Feb. 7, 1964, Pub. L. 88–267, §1(a), 78 Stat. 8.
.....	5 U.S.C. 2252 (less (e), (f) (words after semicolon), (g) (2d sentence), (h) (words after colon)).	July 31, 1956, ch. 804, §401 ''Sec. 2 (less (e), (f) (words after semicolon), (g) (2d sentence))'', 70 Stat. 745. July 1, 1960, Pub. L. 86–568, §115(b)(1) ''(h) (less words after colon)'', 74 Stat. 302. Feb. 7, 1964, Pub. L. 88–267, §1(b), (c), 78 Stat. 9.
.....	5 U.S.C. 1054 (1st 27 words).	Aug. 4, 1947, ch. 452, §5 (1st 27 words), 61 Stat. 728.
.....	[Uncodified].	Aug. 25, 1958, Pub. L. 85–745, §1(b) (last sentence, as applicable to the Civil Service Retirement Act), 72 Stat. 838.

HISTORICAL AND REVISION NOTES—CONTINUED
1966 ACT

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 2358(c) (as applicable to the Civil Service Retirement Act).	July 17, 1959, Pub. L. 86–91, §10(c) (as applicable to the Civil Service Retirement Act), 73 Stat. 217.
.....	5 U.S.C. 932c(d).	June 28, 1955, ch. 189, §4(i), 69 Stat. 178.
.....	5 U.S.C. 932d(d).	June 20, 1958, Pub. L. 85–462, §4(g), 72 Stat. 208.
.....	5 U.S.C. 932e(f).	July 1, 1960, Pub. L. 86–568, §117(i), 74 Stat. 304.
.....	5 U.S.C. 932f(e).	Oct. 11, 1962, Pub. L. 87–793, §1005(h), 76 Stat. 867.
.....	5 U.S.C. 932g(d).	Aug. 14, 1964, Pub. L. 88–426, §202(d), 78 Stat. 413.
.....	5 U.S.C. 1182(b).	Sept. 2, 1958, Pub. L. 85–872, §2(b), 72 Stat. 1696.
.....	5 U.S.C. 2132 (as applicable to the Civil Service Retirement Act, as amended).	Sept. 1, 1954, ch. 1208, §403 (as applicable to the Civil Service Retirement Act, as amended), 68 Stat. 1115.

In paragraph (1), the specific exception of the President, appearing in former section 2252(b), is omitted as unnecessary because he is not included in the definition of ''employee''.

In paragraph (1)(B), the definition of ''Congressional employee'' in former section 2251(c) is omitted as unnecessary in view of the definition of the term in section 2107.

In paragraph (1)(E), the words ''Notwithstanding any other provision of law or any Executive order'' are omitted as unnecessary.

In paragraph (1)(i), the words ''justice or'' are added on authority of section 371 and 372 of title 28.

Paragraph (1)(iii) and (iv) is based on former section 2252(e), which is carried into section 8347(g) and (h).

Paragraph (1)(vii) and (viii) is based on former section 2252(f), which is carried in part into section 8347(i) and (j).

In paragraph (1), the last sentence is added on authority of former section 2351, which is scheduled for transfer to section 901 of title 20.

In paragraph (3), the words ''or lump-sum leave payments under subchapter VI of chapter 55 of this title'' are added on authority of former section 61b (6th sentence), which is carried into section 5551.

In paragraph (4)(B), references to sections 60e–7, 60e–8, 60e–9, 60e–10, and 60e–11 of title 2 are substituted for the words ''this section'', appearing in former sections 932c(d), 932d(d), 932e(f), 932f(e), and 932g(d), to reflect the scheduled transfer of those sections to title 2.

In paragraph (5), the words ''the Civil Service Retirement and Disability Fund'' are substituted for ''the civil service retirement and disability fund created by the Act of May 22, 1920''.

In paragraph (7), the words ''Government of the United States'' are coextensive with and substituted for ''the executive, judicial, and legislative branches of the United States Government, including Government-owned or controlled corporation''.

In paragraph (13), the words ''armed forces'' are coextensive with and substituted for ''Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States'' in view of the definition of ''armed forces'' in section 2101.

The definition of ''Commission'' in former section 2251(m) is omitted as unnecessary as the title ''Civil Service Commission'' is fully set out the first time it is used in each section.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 ACT

Section of title 5	*Source (U.S. Code)*	*Source (Statutes at Large)*
8331(1)(B), (C).	5 App.: 2252(c).	Sept. 26, 1966, Pub. L. 89–604, §1(b), 80 Stat. 846.
8331(3)(B) (ii).	5 App.: 932h(c).	Oct. 29, 1965, Pub. L. 89–301, §11(d), 79 Stat. 1120.
	5 App.: 932i(c).	July 18, 1966, Pub. L. 89–504, §302(d), 80 Stat. 295.
8331(13)	[No source].	[No source].
8331(15), (16)	5 App.: 2251(t).	Sept. 27, 1965, Pub. L. 89–205, §1(a), 79 Stat. 840.

In paragraphs (1)(C), (D) and (2), the words ''become subject to'' are substituted for ''come within the purview of'' for consistency within the subchapter.

In paragraph (3)(B)(ii), references to sections 60e–12 and 60e–13 of title 2 are substituted for the words ''this section'' appearing in 5 U.S.C. App. 932h(c) and 932i(c), to reflect the scheduled transfer of those sections to title 2 (See table IV).

In paragraph (8)(C), the words ''in which he does not continue subject to'' are substituted for ''not within the purview of'' for consistency within the subchapter and to reflect that it is the individual, rather than the position, that is subject to this subchapter.

The amendment to paragraph (13) reflects Reorganization Plan No. 2 of 1965 (79 Stat. 1318), effective July 13, 1965, which consolidated the Coast and Geodetic Survey and the Weather Bureau to form a new agency in the Department of Commerce to be known as the Environmental Science Services Administration.

REFERENCES IN TEXT

Section 1(b) of the act of August 25, 1958 (72 Stat. 838), referred to in par. (1)(I), is set out as a note under section 102 of Title 3, The President.

Section 4 of the Presidential Transition Act of 1963, referred to in par. (1)(K), is section 4 of Pub. L. 88–277, which is set out as a note under section 102 of Title 3.

Section 103(6) of the Foreign Service Act of 1980, referred to in par. (1)(xii), is classified to section 3903(6) of Title 22, Foreign Relations and Intercourse.

Section 601(b) of the Legislative Reorganization Act of 1946 (60 Stat. 850), as amended, referred to in par. (3)(A), was classified to section 31a of Title 2, The Congress, which was repealed by act Mar. 2, 1955, ch. 9, §4(b), 69 Stat. 11.

Sections 60e–7, 60e–8, 60e–9, 60e–10, 60e–11, 60e–12, 60e–13, and 60e–14 of title 2, referred to in par. (3)(B), were omitted from the Code.

Section 5 of the Act of February 13, 1911, referred to in par. (3)(E), is classified to section 267 of Title 19, Customs Duties.

The Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983, referred to in par. (18)(ii), is Pub. L. 98–168, title II, Nov. 29, 1983, 97 Stat. 1106, as amended, which is set out as a note below.

The Bankruptcy Act, referred to in par. (22)(A), is act July 1, 1898, ch. 541, 30 Stat. 544, as amended, which was classified generally to former Title 11, Bankruptcy. The Act was repealed effective Oct. 1, 1979, by Pub. L. 95–598, §§401(a), 402(a), Nov. 6, 1978, 92 Stat. 2682, section 101 of which enacted revised Title 11.

Section 404(d) of the Act of November 6, 1978, referred to in par. (22)(A), is section 404(d) of Pub. L. 95–598, title IV, Nov. 6, 1978, 92 Stat. 2684, which was set out in a note preceding section 151 of Title 28, Judiciary and Judicial Procedure, and was repealed by Pub. L. 98–353, title I, §114, July 10, 1984, 98 Stat. 343.

Section 167 of the Federal Courts Improvement Act of 1982, referred to in par. (26), is section 167 of Pub. L. 97–164, which is set out as a note under section 171 of Title 28.

AMENDMENTS

1994—Par. (13). Pub. L. 103–353 inserted before semicolon at end ''or full-time National Guard duty (as such term is defined in section 101(d) of title 10) if such service interrupts creditable civilian service under this subchapter and is followed by reemployment in accordance with chapter 43 of title 38 that occurs on or after August 1, 1990''.

1993—Par. (3). Pub. L. 103–66 added subpar. (E), and in closing provisions substituted ''subparagraphs (B), (C), (D), and (E) of this paragraph'' for ''subparagraphs (B), (C), and (D) of this paragraph,''.

1992—Par. (1)(L). Pub. L. 102–378, §2(57)(A)(i), substituted ''section 8347(q)(1)'' for ''section 8347(p)(1)''.

Par. (1)(ii). Pub. L. 102–378, §2(57)(A)(ii), substituted ''section 8347(q)(2)'' for ''section 8347(p)(2)''.

Par. (7). Pub. L. 102–378, §2(57)(B), substituted ''University'' for ''College''.

Par. (26). Pub. L. 102–572 substituted ''Court of Federal Claims'' for ''Claims Court'' and ''United States Court of Federal Claims'' for ''United States Claims Court''.

1990—Par. (1)(L). Pub. L. 101–508, §7202(j)(1)(A)–(C), added subpar. (L).

Par. (1)(ii). Pub. L. 101–508, §7202(j)(1)(D), substituted ''(besides any employee excluded by clause (x), but including any employee who has made an election under section 8347(p)(2) to remain covered by a retirement system established for employees described in section 2105(c))'' for ''(other than an employee described in clause (x)''.

Par. (1)(v). Pub. L. 101–474 amended cl. (v) generally. Prior to amendment, cl. (v) read as follows: ''a temporary employee of the Administrative Office of the United States Courts or of a court named by section 610 of title 28;''.

Par. (7). Pub. L. 101–508, §7202(j)(1)(E), substituted ''Gallaudet College, and, in the case of an employee described in paragraph (1)(L), a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard described in section 2105(c)'' for ''and Gallaudet College''.

Par. (26). Pub. L. 101–650 added par. (26).

1988—Par. (1)(K). Pub. L. 100–679 added subpar. (K).

Par. (1)(xii). Pub. L. 100–238, §112, added cl. (xii).

Par. (18). Pub. L. 100–238, §123, inserted ''but does not include any amount attributable to—

''(i) the Federal Employees' Retirement System; or

''(ii) contributions made under the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983 by or on behalf of any individual who became subject to the Federal Employees' Retirement System;''.

1987—Par. (22). Pub. L. 100–53, §2(a)(1), amended par. (22) generally. Prior to amendment, par. (22) read as follows: '' 'bankruptcy judge' means an individual appointed under section 34 of the Bankruptcy Act (11 U.S.C. 62) or under section 404(d) of the Act of November 6, 1978 (Public Law 95–598; 92 Stat. 2549)—

''(A) who is serving as a United States bankruptcy judge on March 31, 1984;

''(B) whose service as United States bankruptcy judge at any time in the period beginning on October 1, 1979, and ending on July 10, 1984, is terminated by reason of death or disability; or

''(C) who is appointed as a bankruptcy judge under section 152 of title 28;''.

Par. (25). Pub. L. 100–53, §2(a)(2)–(4), added par. (25).

1986—Par. (1)(G). Pub. L. 99–335, §207(f)(1), amended subpar. (G) generally, substituting ''first employed'' for ''employed'' and inserting ''before October 1, 1987''.

Par. (1)(ii). Pub. L. 99–335, §202(a)(1), amended cl. (ii) generally, inserting ''(other than an employee described in clause (x)''.

Par. (1)(x). Pub. L. 99–335, §202(a)(2)–(4), added cl. (x).

Par. (1)(xi). Pub. L. 99–335, §207(f)(2), added cl. (xi).

Par. (2). Pub. L. 99–335, §202(b), inserted '', but does not include any such Member of Congress who is subject to the Federal Employees' Retirement System or who makes an election under section 8401(20) of this title not to be subject to such System''.

1984—Par. (22). Pub. L. 98–353, §116(a)(1), substituted ''of November 6, 1978 (Public Law 95–598; 92 Stat. 2549)'' for ''adding this paragraph'' in provision preceding subpar. (A).

Par. (22)(A). Pub. L. 98–531 substituted ''who is serving as a United States bankruptcy judge on March 31, 1984;'' for ''who is serving as a United States bankruptcy judge on the date of enactment of the Bankruptcy Amendments and Federal Judgeship Act of 1984, and continues to serve as a bankruptcy judge after such date until either the date on which a successor for such judge is appointed, or October 1, 1986, whichever date is earlier;''.

Pub. L. 98–353, §121(g), substituted ''the day before the date of enactment of the Bankruptcy Amendments and Federal Judgeship Act of 1984'' for ''June 27, 1984''.

Pub. L. 98–353, §116(a)(2), substituted ''who is serving as a United States bankruptcy judge on the date of enactment of the Bankruptcy Amendments and Federal Judgeship Act of 1984, and continues to serve as a bankruptcy judge after such date until either the date on which a successor for such judge is appointed, or October 1, 1986, whichever date is earlier;'' for ''who is serving as a United States bankruptcy judge on June 27, 1984, and that has agreed by filing a notice of such agreement with the President, the Senate, and the Director of the Administrative Office of the United States Courts, to accept an appointment as a judge of a United States bankruptcy court established under section 201 of this Act but that is not appointed by the President as a judge of such court; or''.

Pub. L. 98–325 substituted ''June 27, 1984'' for ''June 20, 1984''.

Pub. L. 98–299 substituted ''June 20, 1984'' for ''May 25, 1984''.

Pub. L. 98–271 substituted ''May 25, 1984'' for ''April 30, 1984''.

Pub. L. 98–249 substituted ''April 30, 1984'' for ''March 31, 1984''.

Par. (22)(B). Pub. L. 98–531 substituted ''whose service as United States bankruptcy judge at any time in the period beginning on October 1, 1979, and ending on July 10, 1984, is terminated by reason of death or disability'' for ''whose service as a United States bankruptcy judge during the period beginning on October 1, 1979, and ending on the date of enactment of the Bankruptcy Amendments and Federal Judgeship Act of 1984 is terminated by reason of death or disability''.

Pub. L. 98–353, §116(a)(3)(A), substituted ''period beginning on October 1, 1979, and ending on the date of enactment of the Bankruptcy Amendments and Federal Judgeship Act of 1984'' for ''transition period''.

Par. (22)(C). Pub. L. 98–353, §116(a)(4), added subpar. (C).

Pars. (23), (24). Pub. L. 98–615 added pars. (23) and (24).

1982—Par. (8)(B). Pub. L. 97–253, §306(a), inserted '', including any amounts deposited under section 8334(j) of this title''.

1980—Par. (6). Pub. L. 96–499 struck out par. (6) which defined ''disabled'' and ''disability'' as meaning totally disabled or total disability for useful and efficient service in the grade or class of position last occupied by the employee or Member because of disease or injury not due to vicious habits, intemperance, or wilful misconduct on his part within 5 years of becoming disabled.

1979—Par. (2). Pub. L. 96–54, §2(a)(47)(A), struck out ''and a Delegate to Congress,'' after ''title,''.

Par. (19)(C). Pub. L. 96–54, §2(a)(47)(B), struck out ''and'' after ''determined;''.

1978—Pars. (1), (17), (20). Pub. L. 95–454 substituted ''Office of Personnel Management'' and ''Office'' for ''Civil Service Commission'' and ''Commission'', respectively, wherever appearing.

Par. (22). Pub. L. 95–598 added par. (22).

1975—Par. (4). Pub. L. 94–183 struck out provision relating to member's option of having average pay computed from averaging rates of basic pay in effect over all periods of member's service after August 2, 1946.

1974—Par. (3). Pub. L. 93–350, §2(a), added subpar. (D) and inserted reference to subpar. (D) in closing provisions of par. (3).

Pars. (20), (21). Pub. L. 93–350, §2(b), added pars. (20) and (21).

1972—Par. (1)(J). Pub. L. 92–352 added par. (1)(J).

1969—Par. (4)(A). Pub. L. 91–93, §201(a), reduced the number of years of creditable service from 5 to 3 consecutive years and provided for averaging rate of basic pay over the total service in the case of an annuity under subsec. (d) or (e)(1) of section 8341 of this title based on service of less than three years.

Pars. (17) to (19). Pub. L. 91–93, §101, added pars. (17) to (19).

1968—Par. (3)(B)(ii). Pub. L. 90–623 inserted reference to section 60e–14 of title 2.

1966—Par. (3). Pub. L. 89–737 added subpar. (C) and, in the exception set out in provisions following subpar. (C), substituted reference to subpars. (B) and (C) for reference to subpar. (B).

CHANGE OF NAME

Reference to United States magistrate or to magistrate deemed to refer to United States magistrate judge pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

Gallaudet College, referred to in par. (1)(H), redesignated Gallaudet University by section 101(a) of Pub. L. 99–371, which is classified to section 4301(a) of Title 20, Education.

Commissioned Officer Corps of Environmental Science Services Administration, referred to in par. (13)(C), changed to Commissioned Officer Corps of National Oceanic and Atmospheric Administration, see 1970 Reorg. Plan No. 4, §4(d), eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090, set out in the Appendix to this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–353 effective with respect to reemployments initiated on or after the first day after the 60-day period beginning Oct. 13, 1994, with transition rules, see section 8 of Pub. L. 103–353, set out as a note under section 4301 of Title 38, Veterans' Benefits.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13812(c)(1) of Pub. L. 103–66 provided that: ''The amendments made by subsection (a) [amending this section] take effect on January 1, 1994, and apply only with respect to service performed on or after such date.''

EFFECTIVE DATE OF 1992 AMENDMENTS

Amendment by Pub. L. 102–572 effective Oct. 29, 1992, see section 911 of Pub. L. 102–572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

Amendment by section 2(57)(A) of Pub. L. 102–378 effective Nov. 5, 1990, and amendment by section 2(57)(B) of Pub. L. 102–378 effective Oct. 2, 1992, see section 9(a), (b)(6) of Pub. L. 102–378, set out as a note under section 6303 of this title.

EFFECTIVE DATE OF 1990 AMENDMENTS

Section 306(f) of Pub. L. 101–650, as amended by Pub. L. 102–572, title IX, §902(b)(1), Oct. 29, 1992, 106 Stat. 4516, provided that: ''This section and the amendments made by this section [enacting section 8440b [now 8440c] of this title and section 178 of Title 28, Judiciary and Judicial Procedure and amending this section, sections 8334, 8336, 8339, and 8402 of this title, and sections 376 and 604 of Title 28] shall apply to judges of, and senior judges in active service with, the United States Court of Federal Claims on or after the date of the enactment of this Act [Dec. 1, 1990].''

Amendment by Pub. L. 101–508 applicable with respect to any individual who, on or after Jan. 1, 1987, moves from employment in nonappropriated fund instrumentality of Department of Defense or Coast Guard, that is described in section 2105(c) of this title, to employment in Department or Coast Guard, that is not described in section 2105(c), or who moves from employment in Department or Coast Guard, that is not

described in section 2105(c), to employment in nonappropriated fund instrumentality of Department or Coast Guard, that is described in section 2105(c), see section 7202(m)(1) of Pub. L. 101–508, set out as a note under section 2105 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 3 of Pub. L. 100–53, as amended by Pub. L. 101–650, title III, § 321, Dec. 1, 1990, 104 Stat. 5117, provided that: ''This Act [amending this section and sections 8334, 8336, and 8339 of this title and enacting provisions set out as a note under this section] shall take effect on October 1, 1987, and shall apply to bankruptcy judges and United States magistrate judges in office on that date and to individuals subsequently appointed to such positions to whom chapter 83 of title 5, United States Code, otherwise applies.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–335 effective Jan. 1, 1987, see section 702(a) of Pub. L. 99–335, set out as an Effective Date note under section 8401 of this title.

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by Pub. L. 98–615 effective May 7, 1985, with enumerated exceptions and specific applicability provisions, see section 4(a)(1) of Pub. L. 98–615 as amended, set out as a note under section 8341 of this title.

Section 3 of Pub. L. 98–531 provided that:

''(a) Except as provided in subsection (b), this Act and the amendments made by this Act [renumbering a provision set out as a note under section 101 of Title 11, Bankruptcy] shall take effect on July 10, 1984.

''(b) The amendments made by section 2 [amending this section and sections 8336 and 8339 of this title] shall take effect on March 31, 1984.''

Amendment by Pub. L. 98–353 effective July 10, 1984, see section 122(a) of Pub. L. 98–353, set out as an Effective Date note under section 151 of Title 28, Judiciary and Judicial Procedure.

Section 116(e) of Pub. L. 98–353 provided that: ''The amendments made by this section [amending this section and sections 8334, 8336, and 8339 of this title] shall take effect on the date of enactment [July 10, 1984] and shall apply to bankruptcy judges who retire on or after such date.''

EFFECTIVE DATE OF 1982 AMENDMENT

Section 306(g) of Pub. L. 97–253, as amended by Pub. L. 97–346, § 3(e)(2), Oct. 15, 1982, 96 Stat. 1648; Pub. L. 98–369, div. B, title II, § 2205, July 18, 1984, 98 Stat. 1059, provided that: ''The amendments made by this section [amending this section and sections 8332, 8334, and 8348 of this title] shall take effect October 1, 1982; except that any employee or Member who retired after the date of the enactment of this Act [Sept. 8, 1982] and before October 1, 1985, or is entitled to an annuity under chapter 83 of title 5, United States Code, based on a separation from service occurring during such period, or a survivor of such individual, may make a payment under section 8334(j)(1) of title 5, United States Code. Regulations required to be issued under section 8334(j)(1) of title 5, United States Code, shall be issued by the Office of Personnel Management within 90 days after such effective date.''

EFFECTIVE DATE OF 1980 AMENDMENT

Section 403(c) of Pub. L. 96–499 provided that: ''The amendments made by this section [amending this section and section 8337 of this title] shall take effect on the 90th day after the date of the enactment of this Act [Dec. 5, 1980].''

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.

EFFECTIVE DATE OF 1978 AMENDMENTS

Amendment by Pub. L. 95–598 effective Nov. 6, 1978, see section 402(d) of Pub. L. 95–598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by section 2(a) of Pub. L. 93–350 effective at beginning of first applicable pay period which begins after Dec. 31, 1974, and amendment by section 2(b) of Pub. L. 93–350 effective July 12, 1974, see section 7 of Pub. L. 93–350, set out as a note under section 3307 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Section 105(b) of Pub. L. 92–352 provided that: ''Subsection (a) of this section [amending this section] shall become effective on the first day of the second month which begins after its enactment [July 13, 1972].''

EFFECTIVE DATE OF 1969 AMENDMENT

Section 207(a) of Pub. L. 91–93 provided that: ''The amendments made by sections 201, 202, 203, and 206(a) of this Act [amending this section and sections 8333, 8334, 8339, and 8341 of this title] shall not apply in the case of persons retired or otherwise separated prior to the date of enactment of this Act [Oct. 20, 1969], and the rights of such persons and their survivors shall continue in the same manner and to the same extent as if such sections had not been enacted.''

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–623 intended to restate without substantive change the law in effect on Oct. 22, 1968, see section 6 of Pub. L. 90–623, set out as a note under section 5334 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–737 applicable with respect to premium pay payable from and after first day of first pay period which begins after Nov. 2, 1966, see section 4 of Pub. L. 89–737, set out in the note under section 8114 of this title.

SHORT TITLE OF 1994 AMENDMENT

Pub. L. 103–358, § 1, Oct. 14, 1994, 108 Stat. 3420, provided that: ''This Act [amending sections 8345, 8437, and 8467 of this title and enacting provisions set out as a note under section 8345 of this title] may be cited as the 'Child Abuse Accountability Act'.''

SHORT TITLE OF 1990 AMENDMENT

Pub. L. 101–428, § 1(a), Oct. 15, 1990, 104 Stat. 928, provided that: ''This Act [amending sections 8335 to 8337, 8339, 8341, 8344, 8412, and 8425 of this title and enacting provisions set out as notes under sections 8335, 8339, and 8425 of this title] may be cited as the 'Capitol Police Retirement Act'.''

SHORT TITLE OF 1987 AMENDMENT

Section 1 of Pub. L. 100–53 provided that: ''This Act [amending this section and sections 8334, 8336, and 8339 of this title and enacting provisions set out as a note under this section] may be cited as the 'Magistrates' Retirement Parity Act of 1987'.''

SHORT TITLE OF 1986 AMENDMENT

Pub. L. 99–638, § 2(a), Nov. 10, 1986, 100 Stat. 3535, provided that: ''This section [amending sections 2105 and 8332 of this title and enacting provisions set out as a note under section 8332 of this title] may be cited as the 'Nonappropriated Fund Instrumentalities Employees' Retirement Credit Act of 1986'.''

SHORT TITLE OF 1984 AMENDMENT

Section 1 of Pub. L. 98–615 provided: ''That this Act [enacting sections 3595a, 4302a and 5406–5410 of this

title, amending this section and sections 3135, 3393, 3395, 3593–3595, 4312, 4501, 5332, 5334–5336, 5361, 5362, 5383, 5384, 5401–5405, 5948, 7543, 8334, 8336, 8339, 8341, 8342, 8345, 8348, 8901–8903, 8905, 8907, 8909, and 8913 of this title, section 1602 of Title 10, Armed Forces, and section 731 of Title 31, Money and Finance, and enacting provisions set out as notes under sections 3131, 3135, 5401, and 8341 of this title] may be cited as the 'Civil Service Retirement Spouse Equity Act of 1984'.''

SHORT TITLE OF 1969 AMENDMENT

Section 1 of Pub. L. 91–93 provided: ''That this Act [amending this section and sections 1308, 8333, 8334, 8339, 8340, 8341, and 8348 of this title, enacting provisions set out as notes under sections 8334, 8340, 8341, and 8348 of this title, and repealing provisions set out as a note under section 8339 of this title] may be cited as the 'Civil Service Retirement Amendments of 1969'.''

SAVINGS PROVISION

Section 105(c) of Pub. L. 92–352 provided that: ''The amendments made by such subsection (a) [amending this section] shall not apply in the cases of persons retired or otherwise separated prior to the effective date established under subsection (b) of this section [see Effective Date of 1972 Amendment note above], and the rights of such persons and their survivors shall continue in the same manner and to the same extent as if such amendments had not been enacted.''

ADDITIONAL AGENCY CONTRIBUTIONS TO RETIREMENT FUND

Pub. L. 103–226, § 4, Mar. 30, 1994, 108 Stat. 114, provided that:

''(a) RELATING TO FISCAL YEARS 1994 AND 1995.—

''(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 9 percent of the final basic pay of each employee of the agency—

''(A) who, on or after the date of the enactment of this Act [Mar. 30, 1994] and before October 1, 1995, retires under section 8336(d)(2) of such title; and

''(B) to whom a voluntary separation incentive payment has been or is to be paid by such agency based on that retirement.

''(2) DEFINITIONS.—For the purpose of this subsection—

''(A) the term 'final basic pay', with respect to an employee, means the total amount of basic pay 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; and

''(B) the term 'voluntary separation incentive payment' means—

''(i) a voluntary separation incentive payment under section 3 [5 U.S.C. 5597 note] (including under any program established under section 3(f)); and

''(ii) any separation pay under section 5597 of title 5, United States Code, or section 2 of the Central Intelligence Agency Voluntary Separation Pay Act (Public Law 103–36; 107 Stat. 104 [50 U.S.C. 403–4 note]).

''(b) RELATING TO FISCAL YEARS 1995 THROUGH 1998.—

''(1) IN GENERAL.—In addition to any other payments which it is required to make under subchapter III of chapter 83 or chapter 84 of title 5, United States Code, in fiscal years 1995, 1996, 1997, and 1998 (and in addition to any amounts required under subsection (a)), each agency shall, before the end of each such fiscal year, 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 the product of—

''(A) the number of employees of such agency who, as of March 31st of such fiscal year, are subject to subchapter III of chapter 83 or chapter 84 of such title; multiplied by

''(B) $80.

''(2) DEFINITION.—For the purpose of this subsection, the term 'agency' means an Executive agency (as defined by section 105 of title 5, United States Code), but does not include the General Accounting Office.

''(c) REGULATIONS.—The Director of the Office of Personnel Management may prescribe any regulations necessary to carry out this section.''

COORDINATION WITH PAY PERIODS

Pub. L. 99–556, title V, § 505, Oct. 27, 1986, 100 Stat. 3141, provided that: ''Under regulations prescribed by the Office of Personnel Management, any reference to a specific date in section 302, 303, 305 [5 U.S.C. 8331 notes], or 702(a) [5 U.S.C. 8401 note] of the Federal Employees' Retirement System Act of 1986 (Public Law 99–335; 100 Stat. 514) shall, for purposes of individual contributions (including deductions from basic pay), Government contributions, and refunds, be deemed to be a reference to the first day of the first applicable pay period beginning on or after such date, or to the day before such first day, as appropriate.''

CONTINUED COVERAGE UNDER CERTAIN FEDERAL EMPLOYEE BENEFIT PROGRAMS FOR CERTAIN EMPLOYEES OF SAINT ELIZABETHS HOSPITAL

Pub. L. 99–335, title II, § 207(*o*), as added by Pub. L. 100–238, title I, § 109(a), Jan. 8, 1988, 101 Stat. 1748, provided that: ''An employee of Saint Elizabeths Hospital who is appointed to a position in the government of the District of Columbia on October 1, 1987, pursuant to the Saint Elizabeths Hospital and District of Columbia Mental Health Services Act (Public Law 98–621; 98 Stat. 3369 and following) [see Short Title note set out under section 225 of Title 24, Hospitals and Asylums] shall, for purposes of chapters 83, 87, and 89 of title 5, United States Code, be treated in the same way as an individual first employed by the government of the District of Columbia before October 1, 1987.''

[Section 109(b) of Pub. L. 100–238 provided that: ''The amendment made by this section [enacting note above] shall be effective as of October 1, 1987.'']

ELECTION OF COVERAGE UNDER CHAPTER 84

Sections 301–303 of Pub. L. 99–335, as amended by Pub. L. 99–556, title III, §§ 301, 302, Oct. 27, 1986, 100 Stat. 3135, 3136; Pub. L. 100–20, § 1(a), Apr. 7, 1987, 101 Stat. 265; Pub. L. 100–238, title I, §§ 106, 107, 113(a)(1), 118, 119, 134(b), (c), Jan. 8, 1988, 101 Stat. 1746, 1747, 1750, 1752, 1764, 1765, provided that:

''SEC. 301. ELECTIONS.

''(a) ELECTIONS FOR INDIVIDUALS SUBJECT TO THE CIVIL SERVICE RETIREMENT SYSTEM.—(1)(A) Any individual (other than an individual under subsection (b)) who, as of June 30, 1987, is employed by the Federal Government, and who is then subject to subchapter III of chapter 83 of title 5, United States Code, may elect to become subject to chapter 84 of such title.

''(B) An election under this paragraph may not be made before July 1, 1987, or after December 31, 1987.

''(2)(A) Any individual who, after June 30, 1987, becomes reemployed by the Federal Government, and who is then subject to subchapter III of chapter 83 of title 5, United States Code, may elect to become subject to chapter 84 of such title.

''(B) An election under this paragraph shall not be effective unless it is made during the six-month period beginning on the date on which reemployment commences.

''(3)(A) Except as provided in subparagraph (B), any individual—

''(i) who is excluded from the operation of subchapter III of chapter 83 of title 5, United States

Code, under subsection (g), (i), (j), or (*l*) of section 8347 of such title, and

''(ii) with respect to whom chapter 84 of title 5, United States Code, does not apply because of section 8402(b)(2) of such title,

shall, for purposes of an election under paragraph (1) or (2), be treated as if such individual were subject to subchapter III of chapter 83 of title 5, United States Code.

''(B) An election under this paragraph may not be made by any individual who would be excluded from the operation of chapter 84 of title 5, United States Code, under section 8402(c) of such title (relating to exclusions based on the temporary or intermittent nature of one's employment).

''(4) A member of the Foreign Service described in section 103(6) of the Foreign Service Act of 1980 [22 U.S.C. 3903(6)] shall be ineligible to make any election under this subsection.

''(b) ELECTIONS FOR CERTAIN INDIVIDUALS SERVING CONTINUOUSLY SINCE DECEMBER 31, 1983.—The following rules shall apply in the case of any individual described in section 8402(b)(1) of title 5, United States Code:

''(1) If, as of December 31, 1986, the individual is subject to subchapter III of chapter 83 of title 5, United States Code, but is not subject to section 204 of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983 [section 204 of Pub. L. 98–168, set out below], the individual shall remain so subject to such subchapter unless the individual elects, after June 30, 1987, and before January 1, 1988—

''(A) to become subject to such subchapter under the same terms and conditions as apply in the case of an individual described in section 8402(b)(2) of such title who is subject to such subchapter; or

''(B) to become subject to chapter 84 of such title.

An individual eligible to make an election under this paragraph may make the election described in subparagraph (A) or (B), but not both.

''(2) If, as of December 31, 1986, the individual is subject to subchapter III of chapter 83 of title 5, United States Code, and is also subject to section 204 of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983 [set out below], the individual—

''(A) shall, as of January 1, 1987, become subject to such subchapter under the same terms and conditions as apply in the case of an individual described in section 8402(b)(2) of such title who is subject to such subchapter; and

''(B) may (during the six-month period described in subsection (a)(1)(B)) elect to become subject to chapter 84 of such title.

''(3)(A) If, as of December 31, 1986, the individual is not subject to subchapter III of chapter 83 of title 5, United States Code, such individual may, during the 6-month period described in subsection (a)(1)(B)—

''(i) elect to become subject to chapter 84 of such title; or

''(ii) if such individual has not since made an election described in subparagraph (B), elect to become subject to subchapter III of chapter 83 of such title under the same terms and conditions as apply in the case of an individual described in section 8402(b)(2) of such title who is subject to such subchapter.

''(B) Nothing in this paragraph shall be considered to preclude the individual from electing to become subject to subchapter III of chapter 83 of such title pursuant to notification under section 8331(2) of such title—

''(i) during the period after December 31, 1986, and before July 1, 1987; or

''(ii) after December 31, 1987, if such individual has not since become subject to subchapter III of chapter 83, or chapter 84, of such title.

''(C) Any individual who becomes subject to subchapter III of chapter 83 of such title pursuant to notification under section 8331(2) of such title after December 31, 1986, shall become subject to such subchapter under the same terms and conditions as apply in the case of an individual described in section 8402(b)(2) of such title who is subject to such subchapter.

''(c) EFFECTIVE DATE; IRREVOCABILITY.—An election made under this section—

''(1) shall take effect beginning with the first pay period beginning after the date of the election; and

''(2) shall be irrevocable.

''(d) CONDITION FOR MAKING AN ELECTION; EXTENSION TO SATISFY CONDITION.—(1) An election under this section to become subject to chapter 84 of title 5, United States Code, shall not be considered effective in the case of an individual having one or more former spouses, unless the election is made with the written consent of such former spouse (or each such former spouse, if there is more than one).

''(2)(A) This subsection applies with respect to a former spouse who (based on the service of the individual involved) is entitled to benefits under section 8341(h) or 8345(j) of title 5, United States Code, under the terms of a decree of divorce or annulment, or a court order or court-approved property settlement incident to any such decree, with respect to which the Office of Personnel Management has been duly notified.

''(B) This subsection does not apply with respect to a former spouse who has ceased to be so entitled as a result of remarrying before age 55.

''(3) The requirement under paragraph (1) shall be considered satisfied with respect to a former spouse if the individual seeking to make the election establishes to the satisfaction of the Office (in accordance with regulations prescribed by the Office)—

''(A) that the former spouse's whereabouts cannot be determined; or

''(B) that, due to exceptional circumstances, requiring the individual to seek the former spouse's consent would otherwise be inappropriate.

''(4)(A) The Office shall, upon application of an individual, grant an extension for such individual to make an election referred to in paragraph (1) if such individual—

''(i) files application for extension before the end of the period during which such individual would otherwise be eligible to make such election; and

''(ii) demonstrates to the satisfaction of the Office that the extension is needed to secure the modification of a decree of divorce or annulment (or a court order or court-approved property settlement incident to any such decree) in order to satisfy the consent requirement under paragraph (1).

''(B) An extension under this paragraph shall be for 6 months or for such longer period as the Office considers appropriate.

''(e) EXCLUSIONS.—This section does not apply to an individual under section 8331(1)(G) of title 5, United States Code.

''SEC. 302. EFFECT OF AN ELECTION UNDER SECTION 301 TO BECOME SUBJECT TO THE FEDERAL EMPLOYEES' RETIREMENT SYSTEM.

''(a) GENERAL AND SPECIAL RULES.—All provisions of chapter 84 of title 5, United States Code (including those relating to disability benefits, survivor benefits, and any reductions to provide for survivor benefits) shall apply with respect to any individual who becomes subject to such chapter pursuant to an election under section 301, except if, or to the extent that, such provisions are inconsistent with the following:

''(1)(A) Any civilian service which is performed before the effective date of the election under section 301 shall not be creditable under chapter 84 of title 5, United States Code, except as otherwise provided in this subsection.

''(B) Any service described in subparagraph (A) which is covered service within the meaning of section 203(a)(3) of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983 (97 Stat. 1107; 5 U.S.C. 8331 note) (hereinafter in this section referred to as 'covered service') shall be cred-

itable under chapter 84 of title 5, United States Code, if—

''(i) with respect to any such service performed before January 1, 1987, 1.3 percent of basic pay for such service was withheld in accordance with such Act or, if either such withholding was not made or was made, but the amount so withheld was subsequently refunded, 1.3 percent of basic pay for such period is deposited to the credit of the Civil Service Retirement and Disability Fund (hereinafter in this section referred to as the 'Fund'), with interest (computed under section 8334(e) of such title); and

''(ii) with respect to any such service performed after December 31, 1986, and before the effective date of the election, an amount equal to the percentage of basic pay for such service which would be required to be withheld under section 8422(a) of title 5, United States Code, has been contributed to the Fund by the individual involved, whether by withholdings from pay or, if either no withholding was made or was made, but the amount withheld was subsequently refunded, the aforementioned percentage of basic pay for such period is deposited to the credit of the Fund, with interest (computed under section 8334(e) of such title).

''(C) Any service described in subparagraph (A)—

''(i) which is not covered service;

''(ii) which constitutes service of a type described in section 8411(b)(3) of title 5, United States Code (determined without regard to whether such service was performed before, on, or after January 1, 1989, and without regard to the provisions of section 8411(f) of such title); and

''(iii) which, in the aggregate, is equal to less than 5 years;

shall be creditable under chapter 84 of such title, subject to section 8411(f) of such title.

''(D) Any service described in subparagraph (A)—

''(i) which is not covered service;

''(ii) which constitutes service of a type described in section 8411(b)(3) of title 5, United States Code (determined without regard to whether such service was performed before, on, or after January 1, 1989, and without regard to the provisions of section 8411(f) of such title); and

''(iii) which, in the aggregate, is equal to 5 years or more;

shall be creditable for purposes of—

''(I) section 8410 of such title, relating to the minimum period of civilian service required to be eligible for an annuity;

''(II) any provision of section 8412 (other than subsection (d) or (e) thereof), 8413, 8414, 8442(b)(1), 8443(a)(1), or 8451 of such title which relates to a minimum period of service for entitlement to an annuity;

''(III) the provisions of paragraphs (4) and (6);

''(IV) any provision of section 8412(d) of such title which relates to a minimum period of service for entitlement to an annuity, but only if and to the extent that the service described in subparagraph (A) was as a law enforcement officer or firefighter;

''(V) any provision of section 8412(e) of such title which relates to a minimum period of service for entitlement to an annuity, but only if and to the extent that the service described in subparagraph (A) was as an air traffic controller; and

''(VI) the provision of subsection (g) of section 8415 which relates to the minimum period of service required to qualify for the higher accrual rate under such subsection.

''(2)(A) Except as provided in subparagraph (B), the creditability under chapter 84 of title 5, United States Code, of any military service which is performed before the effective date of the election under section 301 shall be determined in accordance with applicable provisions of such chapter.

''(B) If the electing individual has performed service described in clauses (i) through (iii) of paragraph (1)(D), service described in subparagraph (A) which, but for the provisions of subsection (b), would be creditable under subchapter III of chapter 83 of title 5, United States Code, as in effect on December 31, 1986, shall be creditable for purposes of—

''(i) any provision of section 8412 (other than subsection (d) or (e) thereof), 8413, or 8414 of such title which relates to a minimum period of service for entitlement to an annuity; and

''(ii) the provisions of paragraph (4).

''(3)(A)(i) If the electing individual becomes entitled to an annuity under subchapter II of chapter 84 of title 5, United States Code, or dies leaving a survivor or survivors entitled to benefits under subchapter IV of such chapter, the annuity for such individual shall be equal to the sum of the individual's accrued benefits under the Civil Service Retirement System (as determined under paragraph (4)) and the individual's accrued benefits under the Federal Employees' Retirement System (as determined under paragraph (5)).

''(ii) An annuity computed under this subparagraph shall be deemed to be the individual's annuity computed under section 8415 of title 5, United States Code.

''(B) If the electing individual becomes entitled to an annuity under subchapter V of chapter 84 of title 5, United States Code, and if it becomes necessary to compute an annuity under section 8415 of such title with respect to such individual as a result of such individual's having become so entitled, the methodology set forth in subparagraph (A) shall be used in computing any such annuity under section 8415.

''(4) Accrued benefits under this paragraph shall be computed in accordance with applicable provisions of subchapter III of chapter 83 of title 5, United States Code (but without regard to subsection (j) or (k), or the second sentence of subsection (e), of section 8339 of such title) using only any civilian service under paragraph (1)(D), and any military service under paragraph (2)(B), which would be creditable for purposes of computing an annuity under such subchapter. Notwithstanding the preceding sentence, in computing accrued benefits under this paragraph for an individual retiring under section 8412(g) or 8413(b) of title 5, United States Code, section 8339(h) of such title (relating to reductions based on age at date of separation) shall not apply.

''(5) Accrued benefits under this paragraph shall be computed under section 8415 of title 5, United States Code, using—

''(A) total service creditable under chapter 84 of such title which is performed on or after the effective date of the election under section 301; and

''(B) with respect to service performed before such effective date—

''(i) creditable civilian service (as determined under applicable provisions of this subsection) other than any service described in paragraph (1)(D); and

''(ii) creditable military service (as determined under applicable provisions of this subsection) other than any service described in paragraph (2)(B).

''(6)(A) For purposes of any computation under paragraph (4) or (5), the average pay to be used shall be the largest annual rate resulting from averaging the individual's rates of basic pay in effect over any 3 consecutive years of creditable service or, in the case of an annuity based on service of less than 3 years, over the total period of service so creditable, with each rate weighted by the period it was in effect.

''(B) For purposes of subparagraph (A), service shall be considered creditable if it would be considered creditable for purposes of determining average pay under chapter 83 or 84 of title 5, United States Code.

''(7) The cost-of-living adjustments for the annuity of the electing individual shall be made as follows:

''(A) The portion of the annuity attributable to paragraph (4) shall be adjusted at the time and in the amount provided for under section 8340 of title 5, United States Code.

''(B) The portion of the annuity attributable to paragraph (5) shall be adjusted at the time and in the amount provided for under section 8462 of title 5, United States Code.

''(8) For purposes of any computation under paragraph (4) in the case of an individual who retires under section 8412 or 8414 of title 5, United States Code, or who dies leaving a survivor or survivors entitled to benefits under subchapter IV of such chapter, sick leave creditable under section 8339(m) of such title shall be equal to the number of days of unused sick leave to the individual's credit as of the date of retirement or as of the effective date of the individual's election under section 301, whichever is less.

''(9) In computing the annuity under paragraph (3) for an individual retiring under section 8412(g) or 8413(b) of title 5, United States Code, the reduction under section 8415(f) of such title shall apply with respect to the sum computed under such paragraph.

''(10) An annuity supplement under section 8421 of title 5, United States Code, shall be computed using the same service as is used for the computation under paragraph (5).

''(11) Effective from its commencing date, an annuity payable to an annuitant's survivor (other than a child under section 8443 of title 5, United States Code) shall be increased by the total percent by which the deceased annuitant's annuity was increased under paragraph (7).

''(12)(A)(i) If the electing individual is a reemployed annuitant under section 8344 of title 5, United States Code, under conditions allowing the annuity to continue during reemployment, payment of the annuitant's annuity shall continue after the effective date of the election, and an amount equal to the annuity allocable to the period of actual employment shall continue to be deducted from the annuitant's pay and deposited as provided in subsection (a) of such section. Deductions from pay under section 8422(a) of such title and contributions under section 8423 of such title shall begin effective on the effective date of the election.

''(ii) Notwithstanding any provision of section 301, an election under such section shall not be available to any reemployed annuitant who would be excluded from the operation of chapter 84 of title 5, United States Code, under section 8402(c) of such title (relating to exclusions based on the temporary or intermittent nature of one's employment).

''(B) If the annuitant serves on a full-time basis for at least 1 year, or on a part-time basis for periods equivalent to at least 1 year of full-time service, such annuitant's annuity, on termination of reemployment, shall be increased by an annuity computed—

''(i) with respect to reemployment service before the effective date of the election, under section 8339(a), (b), (d), (e), (h), (i), and (n) of title 5, United States Code, as may apply based on the reemployment in which such annuitant was engaged before such effective date; and

''(ii) with respect to reemployment service on or after the effective date of the election, under section 8415(a) through (f) of such title, as may apply based on the reemployment in which such annuitant was engaged on or after such effective date;

with the 'average pay' used in any computation under clause (i) or (ii) being determined (based on rates of pay in effect during the period of reemployment, whether before, on, or after the effective date of the election) in the same way as provided for in paragraph (6). If the annuitant is receiving a reduced annuity as provided in section 8339(j) or section 8339(k)(2) of title 5, United States Code, the increase in annuity payable under this subparagraph is reduced by 10 percent and the survivor annuity payable under section 8341(b) of such title is increased by 55 percent of the increase in annuity payable under this subparagraph, unless, at the time of claiming the increase payable under this subparagraph, the annuitant notifies the Office of Personnel Management in writing that such annuitant does not desire the survivor annuity to be increased. If the annuitant dies while still reemployed, after having been reemployed for at least 1 full year (or the equivalent thereof, in the case of part-time employment), any survivor annuity payable under section 8341(b) of such title based on the service of such annuitant is increased as though the reemployment had otherwise terminated. In applying paragraph (7) to an amount under this subparagraph, any portion of such amount attributable to clause (i) shall be adjusted under subparagraph (A) of such paragraph, and any portion of such amount attributable to clause (ii) shall be adjusted under subparagraph (B) of such paragraph.

''(C)(i) If the annuitant serves on a full-time basis for at least 5 years, or on a part-time basis for periods equivalent to at least 5 years of full-time service, such annuitant may elect, instead of the benefit provided by subparagraph (B), to have such annuitant's rights redetermined, effective upon separation from employment. If the annuitant so elects, the redetermined annuity will become payable as if such annuitant were retiring for the first time based on the separation from reemployment service, and the provisions of this section concerning computation of annuity (other than any provision of this paragraph) shall apply.

''(ii) If the annuitant dies while still reemployed, after having been reemployed for at least 5 full years (or the equivalent thereof, in the case of part-time employment), any person entitled to a survivor annuity under section 8341(b) of title 5, United States Code, based on the service of such annuitant shall be permitted to elect to have such person's rights redetermined in accordance with regulations which the Office shall prescribe. Redetermined benefits elected under this clause shall be in lieu of any increased benefits which would otherwise be payable in accordance with the next to last sentence of subparagraph (B).

''(D) If the annuitant serves on a full-time basis for less than 1 year (or the equivalent thereof, in the case of part-time employment), any amounts withheld under section 8422(a) of title 5, United States Code, from such annuitant's pay for the period (or periods) involved shall, upon written application to the Office, be payable to such annuitant (or the appropriate survivor or survivors, determined in the order set forth in section 8342(c) of such title).

''(E) For purposes of determining the period of an annuitant's reemployment service under this paragraph, a period of reemployment service shall not be taken into account unless—

''(i) with respect to service performed before the effective date of the election under section 301, it is service which, if performed for at least 1 full year, would have allowed such annuitant to elect under section 8344(a) of title 5, United States Code, to have deductions withheld from pay; or

''(ii) with respect to service performed on or after the effective date of the election under section 301, it is service with respect to which deductions from pay would be required to be withheld under the second sentence of section 8468(a) of title 5, United States Code.

''(b) CHAPTER 83 GENERALLY INAPPLICABLE.—(1) Except as provided in subsection (a) or paragraph (2), subchapter III of chapter 83 of title 5, United States Code, shall not apply with respect to any individual who becomes subject to chapter 84 of title 5, United States Code, pursuant to an election under section 301.

''(2)(A) Nothing in paragraph (1), or in subchapter III of chapter 83 of title 5, United States Code, shall preclude the making of a deposit under such subchapter with respect to any civilian service under subsection (a)(1)(D) or military service under subsection (a)(2)(B) either by the electing individual or, for purposes of survivor annuities, by a survivor of such individual.

''(B) Nothing in paragraph (1) shall preclude the payment of any lump-sum credit in accordance with section 8342 of title 5, United States Code.

''(c) REFUNDS RELATING TO CERTAIN CIVILIAN SERVICE.—(1) Any individual who makes an election under section 301 to become subject to chapter 84 and who, with respect to any period before the effective date of the election, has made a contribution to the Civil Service Retirement System (whether by deductions from pay or by a deposit or redeposit) and has not taken a refund of the contribution (as so made), shall be entitled to a refund equal to—

''(A) for a period of service under clause (i) of subsection (a)(1)(B), the amount by which—

''(i) the amount contributed with respect to such period, exceeds

''(ii) the amount required under such clause (i) with respect to such period;

''(B) for a period of service under clause (ii) of subsection (a)(1)(B), the amount by which—

''(i) the amount so contributed with respect to such period, exceeds

''(ii) the amount required under such clause (ii) with respect to such period; and

''(C) for a period of service under subparagraph (C) of subsection (a)(1), the amount by which—

''(i) the amount so contributed with respect to such period, exceeds

''(ii) the amount required under such subparagraph with respect to such period.

''(2) In accordance with regulations prescribed by the Office of Personnel Management, a refund under this subsection shall be payable upon written application therefor filed with the Office and shall include interest at the rate provided in section 8334(e)(3) of title 5, United States Code. Interest on the refund shall accrue monthly and shall be compounded annually.

''SEC. 303. PROVISIONS RELATING TO AN ELECTION TO BECOME SUBJECT TO CHAPTER 83 SUBJECT TO CERTAIN OFFSETS RELATING TO SOCIAL SECURITY.

''(a) REFUND.—Any individual who makes an election under section 301(b)(1)(A) shall, upon written application to the Office of Personnel Management, be entitled to a refund equal to—

''(1) for the period beginning on January 1, 1984, and ending on December 31, 1986, the amount by which—

''(A) the total amount deducted from such individual's basic pay under section 8334(a)(1) of title 5, United States Code, for such period, exceeds

''(B) 1.3 percent of such individual's total basic pay for such period; and

''(2) for the period beginning on January 1, 1987, and ending on the day before the effective date of the election, the amount by which—

''(A) the total amount deducted from such individual's basic pay under such section 8334(a)(1) for such period, exceeds

''(B) the total amount which would have been deducted if such individual's basic pay had instead been subject to section 8334(k) of such title during such period.

A refund under this subsection shall be computed with interest in accordance with section 302(c)(2) and regulations prescribed by the Office of Personnel Management.

''(b) DEPOSIT REQUIREMENTS.—(1) In the case of an individual who becomes subject to subchapter III of chapter 83 of title 5, United States Code, pursuant to notification as described in the second sentence of section 301(b)(3)(B), service performed by such individual before the effective date of the notification shall not be considered creditable under such subchapter unless—

''(A) for any service during the period beginning on January 1, 1987, and ending on the day before such effective date, there is deposited to the credit of the Fund a percentage of basic pay for such period equal to the percentage which would have applied under section 8334(k) of such title if such individual's pay had been subject to such section during such period;

''(B) for any period of service beginning on January 1, 1984, and ending on December 31, 1986, there is deposited to the credit of the Fund an amount equal to 1.3 percent of basic pay for such period; and

''(C) for any period of service before January 1, 1984, there is deposited to the credit of the Fund any amount required with respect to such period under such subchapter.

''(2) A deposit under this subsection may be made by the individual or, for purposes of survivor annuities, a survivor of such individual.''

[Section 113(a)(2) of Pub. L. 100–238 provided that: ''The amendment made by paragraph (1) [amending section 301(a) of Pub. L. 99–335 set out above] shall be effective as of June 30, 1987. Any refund which becomes payable as a result of the preceding sentence shall, to the extent that such refund involves an individual's contributions to the Thrift Savings Fund (established under section 8437 of title 5, United States Code), be adjusted to reflect any earnings attributable thereto.'']

[Amendment by section 134(b) of Pub. L. 100–238 to section 302(a) of Pub. L. 99–335 applicable with respect to any election made by a reemployed annuitant on or after Jan. 8, 1988, see section 134(d) of Pub. L. 100–238, set out as an Effective Date of 1988 Amendment note under section 8468 of this title.]

CONSTRUCTION OF ADJUSTMENTS IN RETIREMENT PROVISIONS MADE BY PUB. L. 98–353

Section 117 of Pub. L. 98–353 provided that: ''The adjustments in the retirement provisions made by this Act shall not be construed to be a 'new government retirement system' for purposes of the Federal Employees Retirement Contribution Temporary Adjustment Act of 1983 (Public Law 98–168) [set out below]''.

ELECTION OF RETIREMENT PLAN UNDER FEDERAL EMPLOYEES' RETIREMENT CONTRIBUTION TEMPORARY ADJUSTMENT ACT OF 1983

Pub. L. 98–369, div. B, title II, § 2206, July 18, 1984, 98 Stat. 1059, provided that:

''(a) For the purposes of this section, the term 'covered retirement system' shall have the same meaning as provided in section 203(a)(2) of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983 (Public Law 98–168; 97 Stat. 1107) [set out below].

''(b)(1) Any individual who was entitled to make an election under section 208(a) of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983 (97 Stat. 1111) [set out below], but who did not make such an election, may make an election under such section not later than September 15, 1984.

''(2)(A) Not later than September 15, 1984, any such individual who made an election under paragraph (1) of section 208(a) of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983 [set out below] may—

''(i) make any other election which such individual was entitled to make under such section before January 1, 1984; or

''(ii) elect to become a participant in a covered retirement system (if such individual is otherwise eligible to participate in such system), subject to sections 201 through 207 of such Act [set out below].

''(B) Not later than September 15, 1984, any such individual who made an election under paragraph (2) of section 208(a) of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983 may—

''(i) make any other election which such individual was entitled to make under such section before January 1, 1984; or

''(ii) elect to terminate participation in the covered retirement system with respect to which such individual made the election under such paragraph (2).

''(3) An election under this subsection shall be made by a written application submitted to the official by whom the electing individual is paid.

''(4) An election made as provided in this subsection shall take effect with respect to service performed on or after the first day of the first applicable pay period commencing after September 15, 1984.

''(c)(1) Section 8342(a)(4) of title 5, United States Code, does not apply for the purpose of determining an entitlement to a refund under section 208(c) of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983 (97 Stat. 1111) [set out below].

''(2) Paragraph (1) shall take effect with respect to any election made under section 208(a) of such Act or this Act before, on, or after January 1, 1984.

''(d) Nothing in this section or the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983 [set out below] affects any entitlement to benefits accrued under a covered retirement system before January 1, 1984, except to the extent that any amount refunded under section 208(c) of such Act is not redeposited in the applicable retirement fund.''

FEDERAL EMPLOYEES' RETIREMENT CONTRIBUTION TEMPORARY ADJUSTMENT

Pub. L. 98–168, title II, Nov. 29, 1983, 97 Stat. 1106, as amended by Pub. L. 99–190, § 147, Dec. 19, 1985, 99 Stat. 1324; Pub. L. 99–335, title III, §§ 305(a), 309, June 6, 1986, 100 Stat. 606, 607; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''SHORT TITLE

''SEC. 201. This title may be cited as the 'Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983'.

''STATEMENT OF POLICY

''SEC. 202. It is the policy of the Government—

''(1) that the amount required to be contributed to certain public retirement systems by employees and officers of the Government who are also required to pay employment taxes relating to benefits under title II of the Social Security Act [42 U.S.C. 401 et seq.] for service performed after December 31, 1983, be modified until the date on which such employees and officers are covered by a new Government retirement system (the design, structure, and provisions of which have not been determined on the date of enactment of this Act [Nov. 29, 1983]) or January 1, 1987, whichever is earlier;

''(2) that the Treasury be required to pay into such retirement systems the remainder of the amount such employees and officers would have contributed during such period but for the temporary modification;

''(3) that the employing agencies make contributions to the retirement systems with respect to such service in amounts required by law in effect before January 1, 1984, without reduction in such amounts;

''(4) that such employees and officers accrue credit for service for the purposes of the public retirement systems in effect on the date of enactment of this Act [Nov. 29, 1983] until a new Government retirement system covering such employees and officers is established;

''(5) that, where appropriate, deposits to the credit of such a retirement system be required with respect to service performed by an employee or officer of the Government during the period described in clause (1), and, where appropriate, annuities be offset by the amount of certain social security benefits attributable to such service; and

''(6) that such employees and officers who are first employed in civilian service by the Government or first take office in civilian service in the Government on or after January 1, 1984, become subject to such new Government retirement system as may be established for employees and officers of the Government on or after January 1, 1984, and before January 1, 1987, with credit for service performed after December 31, 1983, by such employees and officers transferred to such new Government retirement system.

''DEFINITIONS

''SEC. 203. (a) For the purposes of this title—

''(1) the term 'covered employee' means any individual whose service is covered service;

''(2) the term 'covered retirement system' means—

''(A) the Civil Service Retirement and Disability System under subchapter III of chapter 83 of title 5, United States Code;

''(B) the Foreign Service Retirement and Disability System under chapter 8 of the Foreign Service Act of 1980 (22 U.S.C. 4041 et seq.);

''(C) the Central Intelligence Agency Retirement and Disability System under the Central Intelligence Agency Retirement Act of 1964 for Certain Employees (50 U.S.C. 403 note); and

''(D) any other retirement system (other than a new Government retirement system) under which a covered employee who is a participant in the system is required to make contributions to the system in an amount equal to a portion of the participant's basic pay for covered service, as determined by the President;

''(3) the term 'covered service' means service which is employment for the purposes of title II of the Social Security Act [42 U.S.C. 401 et seq.] and chapter 21 of the Internal Revenue Code of 1986 [26 U.S.C. 3101 et seq.] by reason of the amendments made by section 101 of the Social Security Amendments of 1983 (97 Stat. 67) [amending section 3121 of Title 26, Internal Revenue Code, and sections 409 and 410 of Title 42, The Public Health and Welfare, and enacting provisions set out as notes under section 3121 of Title 26 and section 410 of Title 42]; and

''(4) the term 'new Government retirement system' means any retirement system which (A) is established for officers or employees of the Government by or pursuant to a law enacted after December 31, 1983, and before January 1, 1987, and (B) takes effect on or before January 1, 1987.

''(b) The President shall publish the determinations made for the purpose of subsection (a)(2)(D) in an Executive order.

''CONTRIBUTION ADJUSTMENTS

''SEC. 204. (a) In the case of a covered employee who is participating in a covered retirement system, an employing agency shall deduct and withhold only 1.3 percent of the basic pay of such employee under—

''(1) section 8334 of title 5, United States Code;

''(2) section 805 of the Foreign Service Act of 1980 (22 U.S.C. 4045);

''(3) section 211 of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees (50 U.S.C. 403 note); or

''(4) any provision of any other covered retirement system which requires a participant in the system to make contributions of a portion of the basic pay of the participant;

for covered service which is performed after December 31, 1983, and before the earlier of the effective date of a new Government retirement system or January 1, 1987. Deductions shall be made and withheld as provided by such provisions in the case of covered service which is performed on or after such effective date or January 1, 1987, as the case may be, and is not subject to a new Government retirement system.

''(b) Employing agencies of the Government shall make contributions with respect to service to which subsection (a) of this section applies under the second sentence of section 8334(a)(1) of title 5, United States Code, the second sentence of section 805(a) of the Foreign Service Act of 1980 (22 U.S.C. 4045(a)), the second sentence of section 211(a) of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees (50 U.S.C. 403 note), and any provision of any other covered retirement system requiring a contribution by the employing agency, as if subsection (a) of this section had not been enacted.

''REIMBURSEMENT FOR CONTRIBUTION DEFICIENCY

''SEC. 205. (a) For purposes of this section—

''(1) the term 'contribution deficiency', when used with respect to a covered retirement system, means the excess of—

''(A) the total amount which, but for section 204(a) of this Act, would have been deducted and withheld under a provision referred to in such section from the pay of covered employees participating in such retirement system for service to which such section applies, over

''(B) the total amount which was deducted and withheld from the pay of covered employees for such service as provided in section 204(a) of this Act; and

''(2) the term 'appropriate agency head' means—

''(A) the Director of the Office of Personnel Management, with respect to the Civil Service Retirement and Disability System under subchapter III of chapter 83 of title 5, United States Code;

''(B) the Secretary of State, with respect to the Foreign Service Retirement and Disability System under chapter 8 of the Foreign Service Retirement Act of 1980 (22 U.S.C. 404 et seq.) [22 U.S.C. 4041 et seq.];

''(C) the Director of Central Intelligence, with respect to the Central Intelligence Agency Retirement and Disability System under the Central Intelligence Agency Retirement Act of 1964 for Certain Employees (50 U.S.C. 403 note); and

''(D) the officer designated by the President for that purpose in the case of any retirement system described in section 203(a)(2)(D) of this Act.

''(b) At the end of each of fiscal years 1984, 1985, 1986, and 1987, the appropriate agency head—

''(1) shall determine the amount of the contribution deficiency for such fiscal year in the case of each covered retirement system, including the interest that those contributions would have earned had they been credited to the fund established for the payment of benefits under such retirement system in the same manner and at the same time as deductions under the applicable provision of law referred to in section 204(a) of this Act; and

''(2) shall notify the Secretary of the Treasury of the amount of the contribution deficiency in each such case.

''(c) Before closing the accounts for each of fiscal years 1984, 1985, 1986, and 1987, the Secretary of the Treasury shall credit to the fund established for the payment of benefits under each covered retirement system, as a Government contribution, out of any money in the Treasury not otherwise appropriated, an amount equal to the amount determined under subsection (b) with respect to that covered retirement system for the fiscal year involved.

''(d) Amounts credited to a fund under subsection (c) shall be accounted for separately than amounts credited to such fund under any other provision of law.

''SPECIAL DEPOSIT AND OFFSET RULES RELATING TO RETIREMENT BENEFITS FOR INTERIM COVERED SERVICE

''SEC. 206. (a) For the purposes of this section, the term 'interim covered service' means covered service to which section 204(a) applies.

''(b)(1) Paragraphs (2) and (3) apply according to the provisions thereof only with respect to a covered employee who is employed by the Government on December 31, 1983.

''(2)(A) Notwithstanding any other provision of law, the interim covered service of such covered employee shall be considered—

''(i) in determining entitlement to and computing the amount of an annuity (other than a disability or survivor annuity) commencing under a covered retirement system during the period beginning January 1, 1984, and ending on the earlier of the date a new Government retirement system takes effect or January 1, 1987, by reason of the retirement of such covered employee during such period only if such covered employee makes a deposit to the credit of such covered retirement system for such covered service in an amount computed as provided in subsection (f); and

''(ii) in computing a disability or survivor annuity which commences under a covered retirement system during such period and is based in any part on such interim covered service.

''(B) Notwithstanding any other provision of law, an annuity to which subparagraph (A)(ii) applies shall be reduced by the portion of the amount of any benefits which is payable under title II of the Social Security Act [42 U.S.C. 401 et seq.] and is attributable to the interim covered service considered in computing the amount of such annuity, as determined under subsection (g), unless, in the case of a survivor annuity, a covered employee has made a deposit with respect to such covered service for the purposes of subparagraph (A)(i) before the date on which payment of such annuity commences.

''(3) Notwithstanding any other provision of law, if a new Government retirement system is not established or is inapplicable to such a covered employee who retires or dies subject to a covered retirement system after the date on which such new Government retirement system takes effect, the interim covered service of such covered employee shall be considered in determining entitlement to and computing the amount of an annuity under a covered retirement system based on the service of such covered employee only if such covered employee makes a deposit to the credit of such covered retirement system for such covered service in an amount computed as provided in subsection (f).

''(c)(1) Paragraphs (2) and (3) apply according to the provisions thereof only with respect to a covered employee who was not employed by the Government on December 31, 1983.

''(2) Notwithstanding any other provision of law, any annuity which commences under a covered retirement system during the period described in subsection (b)(2)(A)(i) and is based, in any part, on interim covered service shall be reduced by the portion of the amount of any benefits which is payable under title II of the Social Security Act [42 U.S.C. 401 et seq.] to the annuitant and is attributable to such service, as determined under subsection (g).

''(3) Notwithstanding any other provision of law, if a new Government retirement system is not established, the interim covered service of such a covered employee who retires or dies after January 1, 1987, shall be considered in determining entitlement to and computing the amount of an annuity under a covered retirement system based on the service of such covered employee only if such covered employee makes a deposit to the credit of such covered retirement system for such covered service in an amount computed as provided in subsection (f).

''(d) If a covered employee with respect to whom subsection (b)(3) or (c)(3) applies dies without having made a deposit pursuant to such subsection, any individual who is entitled to an annuity under a covered retirement system based on the service of such covered employee or who would be entitled to such an annuity if such deposit had been made by the covered employee before death may make such deposit after the date of death of such covered employee. Service covered by a deposit made pursuant to the first sentence shall be considered in determining, in the case of each individual to whom the first sentence applies, the entitlement to and the amount of an annuity under a covered retirement system based on the service of such covered employee.

''(e) A reduction in annuity under subsection (b)(2)(B) or (c)(2) shall commence on the first day of the first month after the date on which payment of benefits under title II of the Social Security Act [42 U.S.C. 401 et seq.] commence and shall be redetermined each time an increase in such benefits takes effect pursuant to section 215(i) of the Social Security Act [42 U.S.C. 415(i)]. In the case of an annuity of a participant or former participant in a covered retirement system, of a surviving spouse or child of such participant or former participant, or of any other person designated by such participant or former participant to receive an annuity, under a covered retirement system (other than a former spouse) the reduction in annuity under

subsection (b)(2)(B) or (c)(2) shall be calculated before any reduction in such annuity provided under such system for the purpose of paying an annuity under such system to any former spouse of such participant or former participant based on the service of such participant or former participant.

''(f) For the purposes of subsection (b) or (c), the amount of a deposit to the credit of the applicable covered retirement system shall be equal to the excess of—

''(1) the total amount which would have been deducted and withheld from the basic pay of the covered employee for the interim covered service under such covered retirement system but for the application of section 204(a), over

''(2) the amount which was deducted and withheld from such basic pay for such interim covered service pursuant to section 204(a) and was not refunded to such covered employee.

''(g) For the purpose of subsections (b)(2)(B) and (c)(2), the portion of the amount of the benefits which is payable under title II of the Social Security Act [42 U.S.C. 401 et seq.] to an individual and is attributable to interim covered service shall be determined by—

''(1) computing the amount of such benefits including credit for such service;

''(2) computing the amount of such benefits, if any, without including credit for such service; and

''(3) subtracting the amount computed under clause (2) from the amount computed under clause (1).

''(h) The Secretary of Health and Human Services shall furnish to the appropriate agency head (as defined in section 205(a)(2)) such information as such agency head considers necessary to carry out this section.

''TRANSFER OF CREDIT TO NEW RETIREMENT SYSTEM

''SEC. 207. [Repealed. Pub. L. 99–335, title III, § 309, June 6, 1986, 100 Stat. 607]

''SEC. 208. (a) Any individual performing service of a type referred to in clause (i), (ii), (iii), or (iv) of section 210(a)(5) of the Social Security Act [42 U.S.C. 410(a)(5)(i)–(iv)] beginning on or before December 31, 1983, may—

''(1) if such individual is then currently a participant in a covered retirement system, elect by written application submitted before January 1, 1984—

''(A) to terminate participation in such system, effective after December 31, 1983; or

''(B) to remain under such system, as if the preceding sections of this Act [probably means this 'title'] and the amendments made by this Act had not been enacted; or

''(2) if such individual is then currently not a participant in a covered retirement system, elect by written application—

''(A) to become a participant under such system (if such individual is otherwise eligible to participate in the system), subject to the preceding sections of this Act [probably means this 'title'] and the amendments made by this Act; or

''(B) to become a participant under such system (if such individual is otherwise eligible to participate in the system), as if the preceding sections of this Act and the amendments made by this Act had not been enacted.

''(b) An application by an individual under subsection (a) shall be submitted to the official by whom such covered employee is paid.

''(c) Any individual who elects to terminate participation in a covered retirement system under subsection (a)(1)(A) is entitled to have such individual's contributions to the retirement system refunded, in accordance with applicable provisions of law, as if such individual had separated from service as of the effective date of the election.

''(d) Any individual who is eligible to make an election under subparagraph (A) or (B) of subsection (a)(1), but who does not make an election under either such subparagraph, shall be subject to the preceding sections of this Act [probably means this 'title'] and the amendments made by this Act.''

[Amendment to section 206(c)(3) of Pub. L. 98–168 by section 305(a)(1) of Pub. L. 99–335 directing the substitution of ''January 1, 1987'' for ''January 1, 1986'' has been executed by substituting ''January 1, 1987'' for ''April 30, 1986'' to reflect the probable intent of Congress.]

[Section 305(b) of Pub. L. 99–335 provided that:

''(1) The amendments made by subsection (a) [amending Pub. L. 98–168 set out above] shall be effective as of May 1, 1986.

''(2) Any refund payable to an individual as a result of paragraph (1) shall be paid out of funds of the appropriate retirement system.

''(3) For purposes of this subsection, the term 'retirement system' means a covered retirement system as defined by section 203(a)(2) of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983 (97 Stat. 1107; 5 U.S.C. 8331 note).'']

[The Central Intelligence Agency Retirement Act of 1964 for Certain Employees, referred to in Pub. L. 98–168, set out above, is Pub. L. 88–643, Oct. 13, 1964, 78 Stat. 1043, which was revised generally by Pub. L. 102–496, title VIII, § 802, Oct. 24, 1992, 106 Stat. 3196, is known as the Central Intelligence Agency Retirement Act and is classified generally to chapter 38 (§ 2001 et seq.) of Title 50, War and National Defense.]

CANAL ZONE GOVERNMENT AND PANAMA CANAL COMPANY EMPLOYEES

Section 13 of Pub. L. 85–550, July 25, 1958, 72 Stat. 410, as amended by Pub. L. 87–845, § 2, Oct. 18, 1962, 76A Stat. 697, provided that:

''(a) Effective on and after the first day of the first pay period which begins in the third calendar month following the calendar month in which this Act is enacted [July 1958]—

''The Act of July 8, 1937 (50 Stat. 478; 68 Stat. 17; Public Numbered 191, Seventy-fifth Congress; Public Law 299, Eighty-third Congress), shall apply only with respect to those individuals within the classes of individuals subject to such Act of July 8, 1937, whose employment shall have been terminated, prior to such first day of such first pay period, in the manner provided by the first section of such Act; and

''(b) On on before the first day of the first pay period which begins in the third calendar month following the calendar month in which this Act is enacted [July 1958], the Panama Canal Company shall pay, as an agency contribution, into the civil service retirement and disability fund created by the Act of May 22, 1920, for each individual—

''(1) who is employed, on such first day of such first pay period, by the Canal Zone Government or by the Panama Canal Company, and

''(2) who, by reason of the enactment of this section and the operation of the Civil Service Retirement Act (5 U.S.C. 2251–2267) [this subchapter], is subject to such Act on and after such first day of such first pay period,

for service performed by such individual in the employment of—

''(A) the Panama Railroad Company during the period which began on June 29, 1948, and ended on June 30, 1951, or

''(B) the Panama Canal (former independent agency), the Canal Zone Government, or the Panama Canal Company during the period which began on July 1, 1951, and which ends immediately prior to such first day of such first pay period,

an amount equal to the aggregate amount which such individual would have been required to contribute for retirement purposes if he had been subject to the Civil Service Retirement Act during such periods of service.

''(c) Nothing contained in this section shall affect—

''(1) the rights of any individual existing immediately prior to such first day of such first pay period above specified, or

''(2) the continuing obligations of the Canal Zone Government and the Panama Canal Company under section 4(a) of the Civil Service Retirement Act (5

U.S.C. 2254(a)) [section 8334(a) of this title], to reimburse the civil service retirement and disability fund for Government contributions to such fund covering service performed, on or after such first day of such first pay period above specified, by the employees concerned.''

MEMBERS OF CIVILIAN FACULTIES OF UNITED STATES NAVAL ACADEMY AND UNITED STATES NAVAL POSTGRADUATE SCHOOL

Section 402 of act July 31, 1956, ch. 804, title IV, 70 Stat. 760, provided that:

''(a) On and after the effective date of this title [on the first day of the first month beginning more than sixty days after July 31, 1956] persons employed as members of the civilian faculties of the United States Naval Academy and the United States Naval Postgraduate School shall be included within the terms of the Civil Service Retirement Act [this subchapter], and on and after that date the Act of January 16, 1936 (49 Stat. 1092), as amended [covered by section 7081 et seq. of Title 10, Armed Forces] shall not apply to such persons.

''(b) In lieu of the deposit prescribed by section 4(c) of the Civil Service Retirement Act [section 8334(c) of this title] an employee who by virtue of subsection (a) is included within the terms of such Act [this subchapter] shall deposit, for service rendered prior to the effective date of this title as a member of the civilian faculty of the United States Naval Academy or of the United States Naval Postgraduate School, a sum equal to so much of the repurchase price of his annuity policy carried as required by the Act of January 16, 1936, as amended [covered by section 7081 et seq. of Title 10, Armed Forces], as is based on the monthly allotments which were registered with the Navy Allotment Office toward the purchase of that annuity, the deposit to be made within six months after the effective date of this title. Should the deposit not be made within that period no credit shall be allowed under the Civil Service Retirement Act [this subchapter] for service rendered as a member of the civilian faculty of the United States Naval Academy or of the United States Naval Postgraduate School subsequent to July 31, 1920, and prior to the effective date of this title. If the deposit is made, such service shall be held and considered to be service during which the employee was subject to the Civil Service Retirement Act [this subchapter].''

EX. ORD. NO. 12461. DESIGNATION AS A FEDERAL RETIREMENT SYSTEM

Ex. Ord. No. 12461, Feb. 17, 1984, 49 F.R. 6471, provided:

By the authority vested in me as President by the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983 (title II of Public Law 98–168) (''the Act'') [set out as a note above], it is hereby ordered as follows:

SECTION 1. The District of Columbia Police and Firefighters' Retirement and Disability System, insofar as it applies to Federal employees who are covered under section 203(a)(1) of the Act [set out as a note above], is designated a covered retirement system under section 203(a)(2)(D) of the Act. The Secretary of the Treasury is designated the appropriate agency head with respect to such system, under section 205(a)(2)(D) of the Act [set out as a note above]. In discharging the responsibilities delegated by this Order, the Secretary shall be guided by the information and recommendations provided by the Mayor of the District of Columbia.

SEC. 2. This Order shall be effective as of January 1, 1984.

RONALD REAGAN.

CROSS REFERENCES

Annual report of Office of Personnel Management on operation of this subchapter, see section 1308 of this title.

Civil Service Retirement and Disability Fund, see section 8348 of this title.

Peace Corps volunteers' service credited for purposes of this subchapter, see section 2504 of Title 22, Foreign Relations and Intercourse.

Retirement of employees of land-grant colleges, see section 331 of Title 7, Agriculture.

Right to compensation for scheduled disabilities specified by section 8107 not impaired by eligibility for benefits under this subchapter, see section 8116 of this title.

Uniform date for retirement of Federal personnel, see section 8301 of this title.

United States magistrate judges and necessary clerical and secretarial assistants employed in the offices of such full-time magistrate judges deemed officers and employees in the Federal judicial branch within meaning of this subchapter, see section 634 of Title 28, Judiciary and Judicial Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3307, 3323, 5541, 5545a, 8332, 8342, 8344, 8347, 8401, 8411, 8467, 8704 of this title; title 10 section 945; title 12 section 1723a; title 19 section 58c; title 22 sections 3671, 3681, 3968, 4046; title 26 sections 402, 7447; title 28 section 376; title 38 sections 7296, 7426, 7438; title 45 section 1206; title 50 section 2036.

§ 8332. Creditable service

(a) The total service of an employee or Member is the full years and twelfth parts thereof, excluding from the aggregate the fractional part of a month, if any.

(b) The service of an employee shall be credited from the date of original employment to the date of separation on which title to annuity is based in the civilian service of the Government. Except as provided in paragraph (13)[1] of this subsection, credit may not be allowed for a period of separation from the service in excess of 3 calendar days. The service includes—

(1) employment as a substitute in the postal field service;

(2) service in the Pan American Sanitary Bureau;

(3) subject to section 8334(c) and 8339(i) of this title, service performed before July 10, 1960, as an employee of a county committee established under section 590h(b) of title 16 or of a committee or an association of producers described by section 610(b) of title 7;

(4) service as a student-employee as defined by section 5351 of this title only if he later becomes subject to this subchapter;

(5) a period of satisfactory service of a volunteer or volunteer leader under chapter 34 of title 22 only if he later becomes subject to this subchapter;

(6) employment under section 709 of title 32 or any prior corresponding provision of law;

(7) a period of service of a volunteer under part A of title VIII of the Economic Opportunity Act of 1964, or a period of service of a full-time volunteer enrolled in a program of at least one year's duration under part A, B, or C of title I of the Domestic Volunteer Service Act of 1973 only if he later becomes subject to this subchapter;

(8) subject to section 8334(c) and 8339(i) of this title, service performed after February 18, 1929, and before noon on January 3, 1971, as a United States Capitol Guide;

(9) subject to sections 8334(c) and 8339(i) of this title, service as a substitute teacher for

[1] So in original. Probably should be paragraph ''(14)''.

the government of the District of Columbia after July 1, 1955, if such service is not credited for benefits under any other retirement system established by a law of the United States;

(10) periods of imprisonment of a foreign national for which compensation is provided under section 410 of the Foreign Service Act of 1980, if the individual (A) was subject to this subchapter during employment with the Government last preceding imprisonment, or (B) is qualified for an annuity under this subchapter on the basis of other service of the individual;

(11) subject to sections 8334(c) and 8339(i) of this title, service in any capacity of at least 130 days (or its equivalent) per calendar year performed after July 1, 1946, for the National Committee for a Free Europe; Free Europe Committee, Incorporated; Free Europe, Incorporated; Radio Liberation Committee; Radio Liberty Committee; subdivisions of any of those organizations; Radio Free Europe/Radio Liberty, Incorporated, Radio Free Asia; the Asia Foundation; or the Armed Forces Network, Europe (AFN–E), but only if such service is not credited for benefits under any other retirement system which is established for such entities and funded in whole or in part by the Government and only if the individual later becomes subject to this subchapter;

(12) service as a justice or judge of the United States, as defined by section 451 of title 28, and service as a judge of a court created by Act of Congress in a territory which is invested with any jurisdiction of a district court of the United States, but no credit shall be allowed for such service if the employee is entitled to a salary or an annuity under section 371, 372, or 373 of title 28;

(13) subject to sections 8334(c) and 8339(i) of this title, service performed on or after December 6, 1967, and before the effective date of this paragraph as an employee of the House Beauty Shop, only if he serves as such an employee for a period of at least five years after such effective date;

(14) one year of service to be credited for each year in which a Native of the Pribilof Islands performs service in the taking and curing of fur seal skins and other activities in connection with the administration of the Pribilof Islands, notwithstanding any period of separation from the service, and regardless of whether the Native who performs the service retires before, on, or after the effective date of this paragraph;

(15) subject to sections 8334(c) and 8339(i) of this title, service performed on or after January 3, 1969, and before January 4, 1973, as the Washington Representative for Guam or the Washington Representative for the Virgin Islands, only if the individual serves as a Member for a period of at least five years after January 2, 1973; and

(16) service performed by any individual as an employee described in section 2105(c) of this title after June 18, 1952, and before January 1, 1966, if (A) such service involved conducting an arts and crafts, drama, music, library, service club, youth activities, sports, or recreation program (including any outdoor recreation program) for personnel of the armed forces, and (B) such individual is an employee subject to this subchapter on the day before the date of the enactment of the Nonappropriated Fund Instrumentalities Employees' Retirement Credit Act of 1986.

The Office of Personnel Management shall accept the certification of the Secretary of Agriculture or his designee concerning service for the purpose of this subchapter of the type performed by an employee named by paragraph (3) of this subsection. The Office of Personnel Management shall accept the certification of the Secretary of Commerce or his designee concerning service for the purpose of this subchapter of the type performed by an employee named by paragraph (14) of this subsection. The Office of Personnel Management shall accept the certification of the Capitol Guide Board concerning service for the purpose of this subchapter of the type described in paragraph (8) of this subsection and performed by an employee. The Office of Personnel Management shall accept the certification of the Clerk of the House of Representatives concerning service for the purpose of this subchapter of the type described in paragraph (13) of this subsection. For the purpose of paragraph (5) of this subsection—

(A) a volunteer and a volunteer leader are deemed receiving pay during their service at the respective rates of readjustment allowances payable under sections 2504(c) and 2505(1) of title 22; and

(B) the period of an individual's service as a volunteer or volunteer leader under chapter 34 of title 22 is the period between enrollment as a volunteer or volunteer leader and the termination of that service by the President or by death or resignation.

The Office of Personnel Management shall accept the certification of the Executive Director of the Board for International Broadcasting, and the Secretary of State with respect to the Asia Foundation and the Secretary of Defense with respect to the Armed Forces Network, Europe (AFN–E), concerning services for the purposes of this subchapter of the type described in paragraph (11) of this subsection. For the purpose of this subchapter, service of the type described in paragraph (15) of this subsection shall be considered Member service. The Office of Personnel Management shall accept, for the purposes of this subchapter, the certification of the head of a nonappropriated fund instrumentality of the United States concerning service of the type described in paragraph (16) of this subsection which was performed for such appropriated fund instrumentality.

(c)(1) Except as provided in paragraph (2) of this subsection and subsection (d) of this section—

(A) the service of an individual who first becomes an employee or Member before October 1, 1982, shall include credit for each period of military service performed before the date of the separation on which the entitlement to an annuity under this subchapter is based, subject to section 8332(j) of this title; and

(B) the service of an individual who first becomes an employee or Member on or after October 1, 1982, shall include credit for—

(i) each period of military service performed before January 1, 1957, and

(ii) each period of military service performed after December 31, 1956, and before the separation on which the entitlement to annuity under this subchapter is based, only if a deposit (with interest, if any) is made with respect to that period, as provided in section 8334(j) of this title.

(2) If an employee or Member is awarded retired pay based on any period of military service, the service of the employee or Member may not include credit for such period of military service unless the retired pay is awarded—

(A) based on a service-connected disability—

(i) incurred in combat with an enemy of the United States; or

(ii) caused by an instrumentality of war and incurred in line of duty during a period of war as defined by section 1101 of title 38; or

(B) under chapter 1223 of title 10 (or under chapter 67 of that title as in effect before the effective date of the Reserve Officer Personnel Management Act).

(3)(A) Notwithstanding paragraph (2) of this subsection, for purposes of computing a survivor annuity for a survivor of an employee or Member—

(i) who was awarded retired pay based on any period of military service, and

(ii) whose death occurs before separation from the service,

creditable service of the deceased employee or Member shall include each period of military service includable under subparagraph (A) or (B) of paragraph (1) of this subsection, as applicable. In carrying out this subparagraph, any amount deposited under section 8334(h) of this title shall be taken into account.

(B) A survivor annuity computed based on an amount which, under authority of subparagraph (A), takes into consideration any period of military service shall be reduced by the amount of any survivor's benefits—

(i) payable to a survivor (other than a child) under a retirement system for members of the uniformed services;

(ii) if, or to the extent that, such benefits are based on such period of military service.

(C) The Office of Personnel Management shall prescribe regulations to carry out this paragraph, including regulations under which—

(i) a survivor may elect not to be covered by this paragraph; and

(ii) this paragraph shall be carried out in any case which involves a former spouse.

(d) For the purpose of section 8339(c)(1) of this title, a Member—

(1) shall be allowed credit only for periods of military service not exceeding 5 years, plus military service performed by the Member on leaving his office, for the purpose of performing military service, during a war or national emergency proclaimed by the President or declared by Congress and before his final separation from service as Member; and

(2) may not receive credit for military service for which credit is allowed for purpose of retired pay under other statute.

(e) This subchapter does not affect the right of an employee or Member to retired pay, pension, or compensation in addition to an annuity payable under this subchapter.

(f) Credit shall be allowed for leaves of absence without pay granted an employee while performing military service or while receiving benefits under subchapter I of chapter 81 of this title. An employee or former employee who returns to duty after a period of separation is deemed, for the purpose of this subsection, to have been in a leave of absence without pay for that part of the period in which he was receiving benefits under subchapter I of chapter 81 of this title or any earlier statute on which such subchapter is based. Except for a substitute in the postal field service and service described in paragraph (14) of subsection (b) of this section,,[2] credit may not be allowed for so much of other leaves of absence without pay as exceeds 6 months in the aggregate in a calendar year.

(g) An employee who during the period of a war, or of a national emergency as proclaimed by the President or declared by Congress, leaves his position to enter the military service is deemed, for the purpose of this subchapter, as not separated from his civilian position because of that military service, unless he applies for and receives a lump-sum credit under this subchapter. However, the employee is deemed as not retaining his civilian position after December 31, 1956, or after the expiration of 5 years of that military service, whichever, is later.

(h) An employee who—

(1) has at least 5 years' Member service; and

(2) serves as a Member at any time after August 2, 1946;

may not be allowed credit for service which is used in the computation of an annuity under section 8339(c) of this title.

(i) An individual who qualifies as an employee under section 8331(1)(E) of this title is entitled to credit for his service as a United States Commissioner, which is not credited for the purpose of this subchapter for service performed by him in a capacity other than Commissioner, on the basis of—

(1) 1/313 of a year for each day on which he performed service as a Commissioner before July 1, 1945; and

(2) 1/260 of a year for each day on which he performed service as a Commissioner after June 30, 1945.

Credit for service performed as Commissioner may not exceed 313 days in a year before July 1, 1945, or 260 days in a year after June 30, 1945. For the purpose of this subchapter, the employment and pay of a Commissioner is deemed on a daily basis when actually employed.

(j)(1) Notwithstanding any other provision of this section, military service, except military service covered by military leave with pay from a civilian position, performed by an individual

[2] So in original.

after December 1956, the period of an individual's services as a volunteer under part A of title VIII of the Economic Opportunity Act of 1964, the period of an individual's service as a full-time volunteer enrolled in a program of at least 1 year's duration under part A, B, or C of title I of the Domestic Volunteer Service Act of 1973, and the period of an individual's service as a volunteer or volunteer leader under chapter 34 of title 22, shall be excluded in determining the aggregate period of service on which an annuity payable under this subchapter to the individual or to his spouse, former spouse or child is based, if the individual, spouse, former spouse, or child is entitled, or would on proper application be entitled, at the time of that determination, to monthly old-age or survivors benefits under section 402 of title 42 based on the individual's wages and self-employment income. If the military service or service as a volunteer under part A of title VIII of the Economic Opportunity Act of 1964, as a full-time volunteer enrolled in a program of at least 1 year's duration under part A, B, or C of title I of the Domestic Volunteer Service Act of 1973, or as a volunteer or volunteer leader under chapter 34 of title 22 is not excluded by the preceding sentence, but on becoming 62 years of age, the individual or spouse, former spouse[3] becomes entitled, or would on proper application be entitled, to the described benefits, the Office of Personnel Management shall redetermine the aggregate period of service on which the annuity is based, effective as of the first day of the month in which he or she becomes 62 years of age, so as to exclude that service. The Secretary of Health, Education, and Welfare, on request of the Office, shall inform the Office whether or not the individual, spouse, former spouse, or child is entitled at any named time to the described benefits. For the purpose of this subsection, the period of an individual's service as a volunteer or volunteer leader under chapter 34 of title 22 is the period between enrollment as a volunteer or volunteer leader and termination of that service by the President or by death or resignation and the period of an individual's service as a volunteer under part A of title VIII of the Economic Opportunity Act of 1964 or under part A, B, or C of title I of the Domestic Volunteer Service Act of 1973 is the period between enrollment as a volunteer and termination of that service by the Director of the Office of Economic Opportunity or the Chief Executive Officer of the Corporation for National and Community Service, as appropriate, or by death or resignation.

(2) The provisions of paragraph (1) of this subsection relating to credit for military service shall not apply to—

(A) any period of military service of an employee or Member with respect to which the employee or Member has made a deposit with interest, if any, under section 8334(j) of this title; or

(B) the service of any employee or Member described in section 8332(c)(1)(B) of this title.

(3) The provisions of paragraph (1) relating to credit for service as a volunteer or volunteer leader under the Economic Opportunity Act of 1964, part A, B, or C of title I of the Domestic Volunteer Service Act of 1973, or the Peace Corps Act shall not apply to any period of service as a volunteer or volunteer leader of an employee or Member with respect to which the employee or Member has made the deposit with interest, if any, required by section 8334(*l*).

(k)(1) An employee who enters on approved leave without pay to serve as a full-time officer or employee of an organization composed primarily of employees as defined by section 8331(1) of this title, within 60 days after entering on that leave without pay, may file with his employing agency an election to receive full retirement credit for his periods of that leave without pay and arrange to pay currently into the Fund, through his employing agency, amounts equal to the retirement deductions and agency contributions that would be applicable if he were in pay status. If the election and all payments provided by this paragraph are not made, the employee may not receive credit for the periods of leave without pay occurring after July 17, 1966, notwithstanding the third[4] sentence of subsection (f) of this section. For the purpose of the preceding sentence, ''employee'' includes an employee who was on approved leave without pay and serving as a full-time officer or employee of such an organization on July 18, 1966, and who filed a similar election before September 17, 1966.

(2) An employee may deposit with interest an amount equal to retirement deductions representing any period or periods of approved leave without pay while serving, before July 18, 1966, as a full-time officer or employee of an organization composed primarily of employees as defined by section 8331(1) of this title. An employee who makes the deposit shall be allowed full retirement credit for the period or periods of leave without pay. If the employee dies, a survivor as defined by section 8331(10) of this title may make the deposit. If the deposit is not made in full, retirement credit shall be allowed in accordance with the third[4] sentence of subsection (f) of this section.

(*l*)(1) Any employee or Member who—

(A) is of Japanese ancestry; and

(B) while a citizen of the United States or an alien lawfully admitted to the United States for permanent residence, was interned or otherwise detained at any time during World War II in any camp, installation, or other facility in the United States, or in any territory or possession of the United States, under any policy or program of the United States respecting individuals of Japanese ancestry which was established during World War II in the interests of national security pursuant to—

(i) Executive Order Numbered 9066, dated February 19, 1942;

(ii) section 67 of the Act entitled ''An Act to provide a government for the Territory of Hawaii'', approved April 30, 1900 (chapter 339, Fifty-sixth Congress; 31 Stat. 153);

(iii) Executive Order Numbered 9489, dated October 18, 1944;

[3] So in original. Probably should be ''individual, spouse, or former spouse''.

[4] See 1986 Amendment note below.

(iv) sections 4067 through 4070 of the Revised Statutes of the United States; or

(v) any other statute, rules, regulation, or order; or

(C) is of Aleut ancestry and while a citizen of the United States was interned or otherwise detained in, or relocated to any camp, installation, or other facility in the Territory of Alaska which was established during World War II for the purpose of the internment, detention, or relocation of Aleuts pursuant to any statute, rule, regulation, or order;

shall be allowed credit (as civilian service) for any period during which such employee or Member was so interned or otherwise detained after such employee became 18 years of age.

(2) For the purpose of this subsection, ''World War II'' means the period beginning on December 7, 1941, and ending on December 31, 1946.

(m)(1) Upon application to the Office of Personnel Management, any individual who is an employee on the date of the enactment of this subsection, and who has on such date or thereafter acquires 5 years or more of creditable civilian service under this section (exclusive of service for which credit is allowed under this subsection) shall be allowed credit (as service as a Congressional employee) for service before the date of the enactment of this subsection while employed by the Democratic Senatorial Campaign Committee, the Republican Senatorial Campaign Committee, the Democratic National Congressional Committee, or the Republican National Congressional Committee, if—

(A) such employee has at least 5 years service on such committees as of the effective date of this section, and

(B) such employee makes a deposit to the Fund in an amount equal to the amount which would be required under section 8834(c) of this title if such service were service as a Congressional employee.

(2) The Office shall accept the certification of the President of the Senate (or his designee) or the Speaker of the House (or his designee), as the case may be, concerning the service of, and the amount of compensation received by, an employee with respect to which credit is to be sought under this subsection.

(3) An individual receiving credit for service for any period under this subsection shall not be granted credit for such service under the provisions of the Social Security Act.

(n) Any employee who—

(1) served in a position in which the employee was excluded from coverage under this subchapter because the employee was covered under a retirement system established under section 10 of the Federal Reserve Act; and

(2) transferred without a break in service to a position to which the employee was appointed by the President, with the advice and consent of the Senate, and in which position the employee is subject to this subchapter,

shall be treated for all purposes of this subchapter as if any service that would have been creditable under the retirement system established under section 10 of the Federal Reserve Act was service performed while subject to this subchapter if any employee and employer deductions, contributions or rights with respect to the employee's service are transferred from such retirement system to the Fund.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 567; Pub. L. 90–83, §1(73), Sept. 11, 1967, 81 Stat. 214; Pub. L. 90–486, §5(a), Aug. 13, 1968, 82 Stat. 757; Pub. L. 91–177, title I, §112(a), Dec. 30, 1969, 83 Stat. 831; Pub. L. 91–510, title IV, §442(b), Oct. 26, 1970, 84 Stat. 1191; Pub. L. 91–658, §1, Jan. 8, 1971, 84 Stat. 1961; Pub. L. 92–297, §7(1), May 16, 1972, 86 Stat. 144; Pub. L. 92–454, §1, Oct. 2, 1972, 86 Stat. 760; Pub. L. 93–113, title VI, §602, Oct. 1, 1973, 87 Stat. 417; Pub. L. 94–183, §2(32), (33), (39), Dec. 31, 1975, 89 Stat. 1058, 1059; Pub. L. 95–382, §1(a), Sept. 22, 1978, 92 Stat. 727; Pub. L. 95–454, title IX, §906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 96–54, §2(a)(48), Aug. 14, 1979, 93 Stat. 384; Pub. L. 96–465, title II, §2313, Oct. 17, 1980, 94 Stat. 2167; Pub. L. 96–523, §4(a), Dec. 12, 1980, 94 Stat. 3040; Pub. L. 97–164, title II, §207(a), Apr. 2, 1982, 96 Stat. 54; Pub. L. 97–253, title III, §306(b), (c), Sept. 8, 1982, 96 Stat. 795, 796; Pub. L. 97–346, §3(a), (b), Oct. 15, 1982, 96 Stat. 1647; Pub. L. 98–51, title I, §111(2), July 14, 1983, 97 Stat. 269; Pub. L. 89–702, title II, §209(a)–(e), as added Pub. L. 98–129, §2, Oct. 14, 1983, 97 Stat. 843; Pub. L. 98–369, div. B, title II, §2208(a), July 18, 1984, 98 Stat. 1060; Pub. L. 99–251, title II, §202, Feb. 27, 1986, 100 Stat. 23; Pub. L. 99–335, title II, §207(g), June 6, 1986, 100 Stat. 595; Pub. L. 99–556, title V, §502(a), Oct. 27, 1986, 100 Stat. 3140; Pub. L. 99–638, §2(b)(2), Nov. 10, 1986, 100 Stat. 3536; Pub. L. 100–204, title V, §503, Dec. 22, 1987, 101 Stat. 1383; Pub. L. 101–530, §1, Nov. 6, 1990, 104 Stat. 2338; Pub. L. 102–83, §5(c)(2), Aug. 6, 1991, 105 Stat. 406; Pub. L. 102–242, title IV, §466(a), Dec. 19, 1991, 105 Stat. 2384; Pub. L. 102–378, §2(58), Oct. 2, 1992, 106 Stat. 1354; Pub. L. 103–82, title III, §371(a)(1), title IV, §405(b), Sept. 21, 1993, 107 Stat. 909, 921; Pub. L. 103–337, div. A, title XVI, §1677(a)(3), Oct. 5, 1994, 108 Stat. 3019.)

HISTORICAL AND REVISION NOTES
1966 ACT

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 2253 (less (f) and (g)).	July 31, 1956, ch. 804, §401 ''Sec. 3 (less (f) and (g))'', 70 Stat. 745. Aug. 1, 1956, ch. 837, §409, 70 Stat. 877. June 17, 1957, Pub. L. 85–56, §2201(2), 71 Stat. 157. Sept. 2, 1958, Pub. L. 85–857, §13(c), 72 Stat. 1264. Sept. 21, 1959, Pub. L. 86–306, §1, 73 Stat. 583. Sept. 22, 1961, Pub. L. 87–293, §21, 75 Stat. 623.
.....	5 U.S.C. 2252(g) (2d sentence).	July 31, 1956, ch. 804, §401 ''Sec. 2(g) (2d sentence)'', 70 Stat. 745.
.....	5 U.S.C. 2252(h)(2), (3).	July 1, 1960, Pub. L. 86–568, §115(b)(1) ''(h)(2), (3)'', 74 Stat. 302. Oct. 4, 1961, Pub. L. 87–350, §2(a), 75 Stat. 770.
.....	5 U.S.C. 1054 (less 1st 27 words).	Aug. 4, 1947, ch. 452, §5 (less 1st 27 words), 61 Stat. 728.
.....	22 U.S.C. 2504(f) (as applicable to the Civil Service Retirement Act, as amended).	Sept. 22, 1961, Pub. L. 87–293, §5(f) (as applicable to the Civil Service Retirement Act, as amended), 75 Stat. 614.

HISTORICAL AND REVISION NOTES—CONTINUED

1966 ACT

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
		Dec. 13, 1963, Pub. L. 88–200, § 2(c) (as applicable to the Civil Service Retirement Act, as amended), 77 Stat. 359.

The section is reorganized for clarity.

Subsection (b)(B) is added on authority of section 2522(e) of title 22.

In subsection (c)(1)(B), the words ''as that term is defined by section 301 of title 38'' are coextensive with and substituted for ''as that term is used in chapter 11 of Title 38''.

In subsection (c)(2), the words ''under chapter 67 of title 10'' are substituted for ''title III of Public Law 810, Eightieth Congress'' on authority of the Act of Aug. 10, 1956, ch. 104, § 49(b), 70A Stat. 640.

In subsection (f), the words ''without pay'' are added after ''leaves of absence'' in the first sentence for clarity and to align it with the use of the term in the second sentence. The words ''postal field service'' are coextensive with and substituted for ''postal service''.

In subsection (g), the words ''has left'' are omitted as executed.

In subsection (i), the words ''but nothing contained in this chapter [chapter 30 of title 5] shall affect, otherwise than for the purposes of this chapter, the basis, under applicable law other than this chapter, on which such United States Commissioner is employed or on which his compensation is determined and paid'' are omitted from the last sentence as surplusage as there is nothing in the chapter that can reasonably be construed to affect that basis other than for the purposes of the chapter.

In subsection (j), the words ''or section 2504(f) of Title 22'' are omitted as unnecessary since the provisions of that section applicable to this subchapter are carried into subsection (b). The last sentence is added on authority of section 2522(e) of title 22.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 ACT

Section of title 5	*Source (U.S. Code)*	*Source (Statutes at Large)*
8332(k)(1) ...	5 App.: 2253(k)(1).	July 18, 1966, Pub. L. 89–504, § 503, 80 Stat. 300.
8332(k)(2) ...	5 App.: 2253(k)(2).	

In subsection (k)(1), the words ''as defined by section 8331(1) of this title'' are substituted for ''as defined in section 1(a) of this Act''. The words ''occurring after July 17, 1966'' are substituted for ''occurring on or after date of enactment of this subsection''. The words ''notwithstanding the second sentence of subsection (f) of this section'' are substituted for ''notwithstanding the provisions of the second sentence of section 3(c) of this Act''. The last sentence is substituted for the second sentence of former subsection (k)(1) to reflect the current effect of the subsection with regard to those employees who were on leave without pay on July 18, 1966, and who filed a similar election within the time prescribed by that sentence.

In subsection (k)(2), the words ''before July 18, 1966'' are substituted for ''prior to the date of enactment of this subsection''. The words ''as defined by section 8331(1) of this title'' are substituted for ''as defined in section 1(a) of this Act''. The second sentence is substituted for ''and may receive full retirement credit for such period or periods of leave without pay''. The words ''If the employee dies'' are substituted for ''In the event of his death''. The words ''as defined by section 8331(10) of this title'' are substituted for ''as defined in section 1(o) of this Act''. In the last sentence, the words ''described in this paragraph'' following ''If the deposit'' are omitted as unnecessary. The words ''the second sentence of subsection (f) of this section'' are substituted for ''the second sentence of section 3(c) of this Act''.

REFERENCES IN TEXT

The Economic Opportunity Act of 1964, referred to in subsecs. (b)(7) and (j)(1), (3), is Pub. L. 88–452, Aug. 20, 1964, 73 Stat. 508, as amended, which was classified generally to chapter 34 (§ 2701 et seq.) of Title 42, The Public Health and Welfare, prior to repeal, except for titles VIII and X, by Pub. L. 97–35, title VI, § 683(a), Aug. 13, 1981, 95 Stat. 519. Titles VIII and X of the Act are classified generally to subchapters VIII (§ 2991 et seq.) and X (§ 2996 et seq.) of chapter 34 of Title 42. Part A of title VIII of that Act is part A of title VIII of Pub. L. 88–452 as added by Pub. L. 90–222, title I, § 110, Dec. 23, 1967, 81 Stat. 722, which was classified generally to part A (§ 2992 et seq.) of subchapter VIII of chapter 34 of Title 42, prior to its repeal by Pub. L. 93–113, title VI, § 603, Oct. 1, 1973, 87 Stat. 417. See sections 4951 et seq. and 5055 of Title 42. For complete classification of this Act to the Code, see Tables.

Parts A, B, and C of title I of the Domestic Volunteer Service Act of 1973, referred to in subsecs. (b)(7) and (j)(1), (3), are classified to part A (§ 4951 et seq.), part B (§ 4971 et seq.), and part C (§ 4991 et seq.), respectively, of subchapter I of chapter 66 of Title 42.

Section 410 of the Foreign Service Act of 1980, referred to in subsec. (b)(10), is classified to section 3970 of Title 22, Foreign Relations and Intercourse.

The effective date of this paragraph, referred to in subsec. (b)(13), is Jan. 3, 1978, the effective date of section 111(2) of Pub. L. 98–51. See Effective Date of 1983 Amendment note below.

The effective date of this paragraph, referred to in subsec. (b)(14), is Oct. 14, 1983, the date of enactment of Pub. L. 98–129.

The date of the enactment of the Nonappropriated Fund Instrumentalities Employees' Retirement Credit Act of 1986, referred to in subsec. (b)(16), is the date of enactment of section 2 of Pub. L. 99–638, which was approved Nov. 10, 1986.

Chapter 67 of that title as in effect before the effective date of the Reserve Officer Personnel Management Act, referred to in subsec. (c)(2)(B), means chapter 67 (§ 1331 et seq.) of Title 10, Armed Forces, prior to its transfer to part II of subtitle E of Title 10, its renumbering as chapter 1223, and its general revision by section 1662(j)(1) of Pub. L. 103–337. A new chapter 67 (§ 1331) of Title 10 was added by section 1662(j)(7) of Pub. L. 103–337. For effective date of the Reserve Officer Personnel Management Act (Pub. L. 103–337, title XVI), see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of Title 10.

The Peace Corps Act, referred to in subsec. (j)(3), is Pub. L. 87–293, Sept. 22, 1961, 75 Stat. 612, as amended, which is classified principally to chapter 34 (§ 2501 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2501 of Title 22 and Tables.

Section 67 of the Act entitled ''An Act to provide a government for the Territory of Hawaii'', approved April 30, 1900 (chapter 339, Fifty-sixth Congress; 31 Stat. 153), referred to in subsec. (*l*)(1)(B)(ii), formerly classified to section 532 of Title 48, Territories and Insular Possessions, was omitted from such Title following the statehood of Hawaii.

Sections 4067 through 4070 of the Revised Statutes, referred to in subsec. (*l*)(1)(B)(iv), are classified to sections 21 through 24 of Title 50, War and National Defense.

The date of enactment of this subsection, referred to in subsec. (m)(1), means the date of enactment of Pub. L. 96–523 which was approved Dec. 12, 1980.

The effective date of this section, referred to in subsec. (m)(1)(A), probably means the effective date of this subsection which is the effective date of section 4 of Pub. L. 96–523. See Effective Date of 1980 Amendments note below.

The Social Security Act, referred to in subsec. (m)(3), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§301 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

Section 10 of the Federal Reserve Act, referred to in subsec. (n), is section 10 of act Dec. 23, 1913, ch. 6, 38 Stat. 260, as amended. For classification of section 10 to the Code, see Codification note set out under section 241 of Title 12, Banks and Banking, and Tables.

AMENDMENTS

1994—Subsec. (c)(2)(B). Pub. L. 103–337 substituted ''chapter 1223 of title 10 (or under chapter 67 of that title as in effect before the effective date of the Reserve Officer Personnel Management Act)'' for ''chapter 67 of title 10''.

1993—Subsec. (j)(1). Pub. L. 103–82, §405(b), which directed that ''the Chief Executive Officer of the Corporation for National and Community Service'' be substituted for ''the Director of ACTION'', could not be executed because ''the Director of ACTION'' does not appear in text.

Pub. L. 103–82, §371(a)(1)(A)(i), in first sentence inserted ''the period of an individual's service as a full-time volunteer enrolled in a program of at least 1 year's duration under part A, B, or C of title I of the Domestic Volunteer Service Act of 1973,'' after ''Economic Opportunity Act of 1964,''.

Pub. L. 103–82, §371(a)(1)(A)(ii), in second sentence inserted '', as a full-time volunteer enrolled in a program of at least 1 year's duration under part A, B, or C of title I of the Domestic Volunteer Service Act of 1973,'' after ''Economic Opportunity Act of 1964''.

Pub. L. 103–82, §371(a)(1)(A)(iii), in last sentence inserted ''or under part A, B, or C of title I of the Domestic Volunteer Service Act of 1973'' after ''Economic Opportunity Act of 1964'', and inserted ''or the Chief Executive Officer of the Corporation for National and Community Service, as appropriate,'' after ''Director of the Office of Economic Opportunity''.

Subsec. (j)(3). Pub. L. 103–82, §371(a)(1)(B), added par. (3).

1992—Subsec. (b). Pub. L. 102–378 substituted ''paragraph (16)'' for ''paragrpah (16)''.

1991—Subsec. (c)(2)(A)(ii). Pub. L. 102–83 substituted ''section 1101 of title 38'' for ''section 301 of title 38''.

Subsec. (n). Pub. L. 102–242 added subsec. (n).

1990—Subsec. (b). Pub. L. 101–530 struck out at beginning of last paragraph ''service referred to in paragraph (6) is allowable only in the case of persons performing service under section 709 of title 32 after December 31, 1968.''

1987—Subsec. (b). Pub. L. 100–204 inserted '', and the Secretary of State with respect to the Asia Foundation and the Secretary of Defense with respect to the Armed Forces Network, Europe (AFN–E),'' after ''Board for International Broadcasting'' in last paragraph.

1986—Subsec. (b). Pub. L. 99–638 which directed the amendment of subchapter (b) of section 8332 by adding par. (16) and closing provision relating to acceptance by the Office of Personnel Management of the certification of a nonappropriated fund instrumentality concerning service of the type described in par. (16) was executed to subsec. (b) of this section, as the probable intent of Congress.

Pub. L. 99–335, §207(g)(1)(C), (D), substituted ''paragraph (14)'' for ''paragraph (13)'' in second sentence following par. (15), and inserted last sentence providing that for purposes of this subchapter, service of the type described in par. (15) of this subsection shall be considered Member service.

Subsec. (b)(13) to (15). Pub. L. 99–335, §207(g)(1)(A), (B), redesignated the par. (13), relating to service credits for Pribilof Island Natives for taking and curing of fur seal skins and other activities, as par. (14), and added par. (15).

Subsec. (c)(3). Pub. L. 99–556 added par. (3).

Subsec. (f). Pub. L. 99–335, §207(g)(2), substituted ''paragraph (14)'' for ''paragraph (13)''.

Subsec. (j)(1). Pub. L. 99–251 substituted ''spouse, former spouse'' for ''widow'' wherever appearing.

Subsec. (k). Pub. L. 99–335, §207(g)(3), which directed the substitution of ''third'' for ''second'' in last sentence of par. (1), was executed by substituting ''third'' for ''second'' in penultimate sentence of par. (1) and last sentence of par. (2) as the probable intent of Congress.

1984—Subsec. (b)(13). Pub. L. 98–369 inserted in the par. (13) added by Pub. L. 98–129 '', and regardless of whether the Native who performs the service retires before, on, or after the effective date of this paragraph''.

1983—Subsec. (b). Pub. L. 98–129 substituted ''Except as provided in paragraph (13) of this subsection, credit'' for ''Credit'' in provisions preceding par. (1), and inserted in provisions immediately following par. (13) the sentence providing that the Office of Personnel Management shall accept the certification of the Secretary of Commerce or his designee concerning service for the purpose of this subchapter of the type performed by an employee named by par. (13) of this subsection.

Pub. L. 98–51, §111(2)(D), inserted in provisions immediately following par. (13) the sentence providing that the Office of Personnel Management shall accept the certification of the Clerk of the House of Representatives concerning service for the purpose of this subchapter of the type described in par. (13) of this subsection.

Subsec. (b)(13). Pub. L. 98–129 added a par. (13) relating to service performed by Pribilof Island Natives.

Pub. L. 98–51, §111(2)(A)–(C), added a par. (13) relating to service by a person as an employee of the House Beauty Shop.

Subsec. (f). Pub. L. 98–129 inserted ''and service described in paragraph (13) of subsection (b) of this section,'' after ''postal field service''.

Subsec. (*l*)(1)(C). Pub. L. 98–129 added subpar. (C).

1982—Subsec. (b)(12). Pub. L. 97–164 added par. (12).

Subsec. (c). Pub. L. 97–253, §306(b), designated existing first sentence as par. (1), inserted provision differentiating between individuals who become employees or Members before Oct. 1, 1982, and those who become so on or after Oct. 1, 1982, and designated existing second sentence as par. (2) with accommodating redesignations of paragraphs and subparagraphs as subparagraphs and clauses accordingly.

Subsec. (c)(1)(A). Pub. L. 97–346, §3(a), substituted ''period'' for ''month''.

Subsec. (c)(1)(B). Pub. L. 97–346, §3(b), redesignated provisions following ''shall include credit for'' as cl. (i), substituted ''each period of military service performed before January 1, 1957, and'' for ''each month of military service (performed before the date of the separation on which the entitlement to an annuity under this subchapter is based) only if a deposit with interest, if any, is made with respect to that month, as provided in section 8334(j) of this title'', and added cl. (2).

Subsec. (j). Pub. L. 97–253, §306(c), redesignated existing provisions as par. (1) and added par. (2).

Subsec. (j)(2)(A). Pub. L. 97–346, §3(a), substituted ''period'' for ''month''.

1980—Subsec. (b)(10), (11). Pub. L. 96–465 added pars. (10) and (11) and last sentence relating to acceptance by the Office of Personnel Management of the certification of the Executive Director of the Board for International Broadcasting.

Subsec. (m). Pub. L. 96–523 added subsec. (m).

1979—Subsec. (b). Pub. L. 96–54, §2(a)(48)(B), substituted ''after December 31, 1968'' for ''United States Code, on or after the effective date of the National Guard Technicians Act of 1968'' in last sentence.

Subsec. (b)(6). Pub. L. 96–54, §2(a)(48)(A), struck out '', United States Code'' after ''32''.

1978—Subsecs. (b), (j). Pub. L. 95–454 substituted ''Office of Personnel Management'' and ''Office'' for ''Civil Service Commission'' and ''Commission'', respectively, wherever appearing.

Subsec. (*l*). Pub. L. 95–382 added subsec. (*l*).

1975—Subsec. (b)(7). Pub. L. 94–183, §2(39), struck out ''(—U.S.C.—)'' after ''Domestic Volunteer Service Act of 1973''.

Subsec. (b)(8). Pub. L. 94–183, §2(32), substituted ''after February 18, 1929, and before noon on January 3, 1971'' for ''on and after February 19, 1929, and prior to the effective date of section 442 of the Legislative Reorganization Act of 1970''.

Subsec. (b)(9). Pub. L. 94–183, §2(33), substituted ''8339(i)'' for ''8339(h)''.

1973—Subsec. (b)(7). Pub. L. 93–113 included period of service of a full-time volunteer enrolled in a program of at least one year's duration under part A, B, or C of title I of the Domestic Volunteer Service Act of 1973.

1972—Subsec. (b). Pub. L. 92–454 added par. (9).

Pub. L. 92–297 substituted ''8339(i)'' for ''8339(h)'' in pars. (3) and (8).

1971—Subsec. (f). Pub. L. 91–658 provided for leave-without-pay status for retirement purposes of employees or former employees who return to duty after a period of separation during which compensation benefits were received.

1970—Subsec. (b). Pub. L. 91–510 added par. (8) and provision for Civil Service Commission acceptance of certification of Capitol Guide Board concerning service for purpose of this subchapter, respectively.

1969—Subsec. (b)(7). Pub. L. 91–177, §112(a)(1), added par. (7).

Subsec. (j). Pub. L. 91–177, §112(a)(2), excluded period of an individual's services as a VISTA volunteer under part A of subchapter VIII of title 42, from aggregate period of service determining annuity payments.

Pub. L. 91–177, §112(a)(3), inserted provision for computation of period of service of a VISTA volunteer under part A of subchapter VIII of title 42.

1968—Subsec. (b). Pub. L. 90–486 added par. (6), and provisions that service referred to in par. (6) is allowable only in the case of persons performing service under section 709 of title 32, on or after the specified effective date.

CHANGE OF NAME

Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 3508 of Title 20, Education.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of Title 10, Armed Forces.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 371(c) of Pub. L. 103–82 provided that:

''(1) APPLICABILITY.—

''(A) AMENDMENTS RELATING TO CSRS.—

''(i) IN GENERAL.—The amendments made by subsection (a) [amending this section and section 8334 of this title] shall apply with respect to any individual entitled to an annuity on the basis of a separation from service occurring on or after the effective date of this subtitle [Oct. 1, 1993].

''(ii) RULES RELATING TO ANNUITIES BASED ON EARLIER SEPARATIONS.—An annuity under subchapter III of chapter 83 of title 5, United States Code, payable to an individual based on a separation from service occurring before the effective date of this subtitle shall be subject to the provisions of paragraph (2).

''(B) AMENDMENTS RELATING TO FERS.—

''(i) IN GENERAL.—The amendments made by subsection (b) [amending sections 8411 and 8422 of this title] shall apply with respect to any individual entitled to an annuity on the basis of a separation from service occurring before, on, or after the effective date of this subtitle [Oct. 1, 1993], subject to clause (ii).

''(ii) RULE RELATING TO ANNUITIES BASED ON EARLIER SEPARATIONS.—In the case of any individual whose entitlement to an annuity is based on a separation from service occurring before the effective date of this subtitle, any increase in such individual's annuity on the basis of a deposit made under section 8442(f) of title 5, United States Code, as amended by subsection (b)(2), shall be effective beginning with the annuity payment payable for the first calendar month beginning after the effective date of this subtitle.

''(2) SPECIAL RULES.—

''(A) OLD-AGE OR SURVIVORS INSURANCE BENEFITS.—Subject to subparagraph (B), in any case in which an individual described in paragraph (1)(A)(ii) is also entitled to old-age or survivors insurance benefits under section 202 of the Social Security Act [42 U.S.C. 402] (or would be entitled to such benefits upon filing an application therefor), the amount of the annuity to which such individual is entitled under subchapter III of chapter 83 of title 5, United States Code (after taking into account any creditable service as a volunteer or volunteer leader under the Economic Opportunity Act of 1964 [42 U.S.C. 2701 et seq.], the Domestic Volunteer Service Act of 1973 [42 U.S.C. 4950 et seq.], or the Peace Corps Act [22 U.S.C. 2501 et seq.]) which is payable for any month shall be reduced by an amount determined by multiplying the amount of such old-age or survivors insurance benefit for the determination month by a fraction—

''(i) the numerator of which is the total of the wages (within the meaning of section 209 of the Social Security Act [42 U.S.C. 409]) for service as a volunteer or volunteer leader under the Economic Opportunity Act of 1964, the Domestic Volunteer Service Act of 1973, or the Peace Corps Act of such individual credited for years before the calendar year in which the determination month occurs, up to the contribution and benefit base determined under section 230 of the Social Security Act [42 U.S.C. 430] (or other applicable maximum annual amount referred to in section 215(e)(1) of such Act [42 U.S.C. 415(e)(1)] for each such year); and

''(ii) the denominator of which is the total of all wages described in clause (i), plus all other wages (within the meaning of section 209 of such Act [42 U.S.C. 409]) and all self-employment income (within the meaning of section 211(b) of such Act [42 U.S.C. 411(b)]) of such individual credited for years after 1936 and before the calendar year in which the determination month occurs, up to the contribution and benefit base (or such other amount referred to in section 215(e)(1) of such Act [42 U.S.C. 415(e)(1)] for each such year.

''(B) LIMITATIONS.—

''(i) REDUCTION IN ANNUITY.—Subparagraph (A) shall not reduce the annuity of an individual below the amount of the annuity which would be payable to the individual for the determination month if the provisions of section 8332(j) of title 5, United States Code, relating to service as a volunteer or volunteer leader, applied to the individual for such month.

''(ii) APPLICATION.—Subparagraph (A) shall not apply in the case of an individual who, prior to the date of enactment of this Act [Sept. 21, 1993], made a deposit under section 8334(c) of title 5, United States Code, with respect to service as a volunteer or volunteer leader (as described in subparagraph (A)).

''(iii) DETERMINATION MONTH.—For purposes of this paragraph, the term 'determination month' means—

''(I) the first month the individual described in paragraph (1)(A)(ii) is entitled to old-age or survivors benefits under section 202 of the Social Security Act [42 U.S.C. 402] (or would be entitled to such benefits upon filing an application therefor); or

''(II) the first calendar month beginning after the date of enactment of this Act [Sept. 21, 1993], in the case of any individual entitled to such benefits for such month.

''(iv) RULE RELATING TO ANNUITIES BASED ON EARLIER SEPARATIONS.—Any increase in an annuity

which occurs by virtue of the enactment of this paragraph shall be effective beginning with the annuity payment payable for the first calendar month beginning after the effective date of this subtitle [Oct. 1, 1993].

''(3) FURNISHING OF INFORMATION.—The Secretary of Health and Human Services shall furnish such information to the Office of Personnel Management as may be necessary to carry out this subsection.

''(4) ACTION TO INFORM INDIVIDUALS.—The Director of the Office of Personnel Management shall take such action as may be necessary and appropriate to inform individuals entitled to credit under this section for service as a volunteer or volunteer leader, or to have any annuity recomputed, or to make a deposit under this section, of such entitlement.''

Amendment by section 371(a)(1) of Pub. L. 103–82 effective Oct. 1, 1993, see section 392 of Pub. L. 103–82, set out as a note under section 4951 of Title 42, The Public Health and Welfare.

Section 406(b) of Pub. L. 103–82 provided that: ''The amendments made by sections 404 and 405 [amending this section, section 558a of Title 16, Conservation, section 2501–1 of Title 22, Foreign Relations and Intercourse, section 1542 of Title 25, Indians, and sections 3012, 3013, 3035a, 4950, 4953, 4995, 5025, 5043, 5048, 5056, 5061, 5065, 5590, 5616, 6863, 11312, 11851, 12312, 12638, and 12653 of Title 42, and amending provisions set out as notes under section 1701z–6 of Title 12, Banks and Banking, and sections 4954 and 5001 of Title 42] shall take effect on the effective date of section 203(c)(2).'' [Section 203(c)(2) of Pub. L. 103–82 is effective Apr. 4, 1994, see section 203(d) of Pub. L. 103–82 and Proc. No. 6662, set out as notes under section 12651 of Title 42.]

EFFECTIVE DATE OF 1991 AMENDMENT

Section 466(c) of Pub. L. 102–242 provided that: ''The amendment made by this section [amending this section and section 8411 of this title] shall apply with respect to any individual who transfers to a position in which he or she is subject to subchapter III of chapter 83 or chapter 84 of title 5, United States Code, on or after October 1, 1991.''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 3(a) of Pub. L. 101–530 provided that:

''(1) GENERAL RULE.—

''(A) ELIGIBILITY.—Except as provided in paragraph (2), the amendment made by section 1 [amending this section] applies only with respect to individuals who—

''(i) separate from employment with the Government on or after the date of enactment of this Act [Nov. 6, 1990]; and

''(ii) make an appropriate deposit, in accordance with section 8334(c) or 8411(f) of title 5, United States Code (as appropriate), for additional service that is creditable under such amendment.

''(B) DEPOSIT.—Any such deposit—

''(i) shall include interest, which shall be computed under section 8334(e) of such title (except that the rate of interest shall be 3 percent a year) from the midpoint of the period of additional service to the date deposit is made; and

''(ii) shall be made before date of retirement.

''(2) EXCEPTION.—

''(A) RULE FOR INDIVIDUALS SEPARATING AFTER DECEMBER 31, 1968, AND BEFORE THE ENACTMENT OF THIS ACT.—In the case of any individual who—

''(i) was employed under section 709 of title 32, United States Code, relating to National Guard technicians, or any prior corresponding provision of law, before January 1, 1969, and

''(ii) was separated from employment with the Government on or after January 1, 1969, and before the date of enactment of this Act [Nov. 6, 1990],

any annuity under subchapter III of chapter 83 or chapter 84 of title 5, United States Code, based on such individual's service (as defined in section 8331(12) or 8401(26) of such title, as applicable) shall be determined or redetermined to take into account the amendment made by section 1 [amending this section], if application therefor is received by the Office of Personnel Management within 1 year after the date of enactment of this Act, and an appropriate deposit is made for any additional service that is creditable under such amendment. Any such deposit shall be computed, and must be paid either in a lump sum at the time of application or in installments over the 2-year period which begins on the date of application, or such shorter period as the Office may by regulation prescribe.

''(B) EARLIER PAYMENTS NOT AFFECTED BY RECOMPUTATION.—Any change in an annuity resulting from a redetermination under subparagraph (A) shall apply only with respect to monthly payments accruing after the date the deposit required under subparagraph (A) is made (or, if payments are to be made in installments, after an agreement has been entered into regarding the manner in which such payments will be made).

''(3) PAYMENT BY SURVIVORS.—For the purpose of survivor annuities, any deposit or installment payment required by paragraph (1) or (2) relating to service of an individual may also be made by a survivor of such individual.''

EFFECTIVE DATE OF 1986 AMENDMENTS

Section 2(c) of Pub. L. 99–638 provided that: ''Notwithstanding any other provision of this Act [amending this section and section 2105 of this title and enacting provisions set out as notes under this section and section 8331 of this title] which specifies an effective date for amendments made by this Act, the amendments made by this section [amending this section and section 2105 of this title] shall take effect on the date of the enactment of this Act [Nov. 10, 1986].''

Section 502(c) of Pub. L. 99–556 provided that:

''(1) The amendments made by this section [amending this section and section 8411 of this title] shall apply to a survivor of an employee or Member who dies on or after the 180th day after the date of the enactment of this Act [Oct. 27, 1986].

''(2) Upon application to the Office of Personnel Management, such amendments shall also apply to a survivor of an employee or Member whose date of death precedes such 180th day, except that any resulting recomputation shall not be effective for any period beginning before the 60th day after the date on which the application is received.''

Amendment by Pub. L. 99–335 effective Jan. 1, 1987, see section 702(a) of Pub. L. 99–335, set out as an Effective Date note under section 8401 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective Oct. 14, 1983, see section 2208(c) of Pub. L. 98–369, set out as a note under section 1169a of Title 16, Conservation.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 111(2) of Pub. L. 98–51 provided that the amendment made by that section is effective Jan. 3, 1978.

EFFECTIVE DATE OF 1982 AMENDMENTS

Section 3(n) of Pub. L. 97–346 provided that: ''The amendments made by this section [amending this section and sections 8334, 8342, 8344, and 8348 of this title and provisions set out as notes under this section and sections 5504, 5532, 5728, 8331, 8334, and 8337 of this title] shall take effect as of the date of the enactment of the Omnibus Budget Reconciliation Act of 1982 [Sept. 8, 1982].''

Amendment by Pub. L. 97–253 effective Oct. 1, 1982, except that any employee or Member who retired after Sept. 8, 1982, and before Oct. 1, 1985, or is entitled to an annuity under chapter 83 of this title based on a separation from service occurring during such period, or a

survivor of such individual, may make a payment under section 8334(j)(1) of this title, and regulations required to be issued under section 8334(j)(1) of this title, to be issued by the Office of Personnel Management within 90 days after such effective date, see section 306(g) of Pub. L. 97–253, as amended, set out as a note under section 8331 of this title.

Amendment by Pub. L. 97–164 effective Oct. 1, 1982, see section 402 of Pub. L. 97–164, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1980 AMENDMENTS

Section 4(b) of Pub. L. 96–523 provided that: ''The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Dec. 12, 1980].''

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 305 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT; APPLICABILITY TO ANNUITIES; RECOMPUTATION

Section 2 of Pub. L. 95–382 provided that:

''(a) The amendments made by this Act [amending this section and section 8334 of this title] shall take effect on the later of—

''(1) the date of the enactment of this Act [Sept. 22, 1978], or

''(2) October 1, 1978.

''(b) Subject to subsection (c) of this section, the amendments made by the first section of this Act [amending this section and section 8334 of this title], shall apply with respect to annuities which commence before, on, or after the effective date of this Act, but no monetary benefit by reason of such amendments shall accrue for any period before such effective date.

''(c)(1) An annuity or survivor annuity based on the service of an employee or Member who performed service described in section 8332(*l*) of title 5, United States Code, as added by the first section of this Act, shall, upon application to the Civil Service Commission, be recomputed in accordance with such section 8332(*l*).

''(2) Any recomputation of an annuity under paragraph (1) shall apply with respect to months beginning more than 30 days after the date on which application for such recomputation is received in the Commission.

''(d)(1) The Civil Service Commission shall take such action as may be necessary and and appropriate to inform individuals entitled to have any service credited under section 8332(*l*) of title 5, United States Code, as added by the first section of this Act, or to have any annuity recomputed under subsection (c), of their entitlement to such credit or recomputation.

''(2) The Civil Service Commission shall, on request, assist any individual referred to in paragraph (1) in obtaining from any department, agency, or other instrumentality of the United States such information possessed by such instrumentality as may be necessary to verify the entitlement of such individual to have any service credited under such section 8332(*l*) or to have any annuity recomputed under subsection (c).

''(3) Any department, agency, or other instrumentality of the United States which possesses any information with respect to the internment or other detention of any employee or Member as described in such section 8332(*l*) shall, at the request of the Commission, furnish such information to the Commission.''

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92–297 effective on 90th day after May 16, 1972, see section 10 of Pub. L. 92–297, set out as an Effective Date note under section 3381 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Section 5(a) of Pub. L. 91–658 provided that: ''The amendment made by the first section of this Act [amending this section] is effective only with respect to annuity accruing for full months beginning after the date of enactment of this Act [Jan. 8, 1971]; but any part of a period of separation referred to in such amendment in which the employee or former employee was receiving benefits under subchapter I of chapter 81 of title 5, United States Code, or any earlier statute on which such subchapter is based shall be counted whether the employee returns to duty before, on, or after such date of enactment. With respect to any person retired before such date of enactment any such part of a period of separation shall be counted only upon application of the former employee.''

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–510 effective immediately prior to noon on Jan. 3, 1971, see section 601(1) of Pub. L. 91–510, set out as a note under section 72a of Title 2, The Congress.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–177 effective as to all former volunteers employed by the United States Government on or after the effective date of Pub. L. 91–177 which was approved on Dec. 30, 1969, see section 112(c) of Pub. L. 91–177.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–486 effective Jan. 1, 1969, except that no deductions or withholding from salary which result shall commence before first day of first pay period that begins on or after Jan. 1, 1968, see section 11 of Pub. L. 90–486, set out as a note under section 709 of Title 32, National Guard.

REGULATIONS

Section 4 of Pub. L. 101–530 provided that: ''The Office of Personnel Management shall prescribe any regulations necessary for the implementation of this Act [amending this section, enacting provisions set out as a note above, and enacting and amending provisions set out as notes under section 709 of Title 32, National Guard].''

TRANSFER OF FUNCTIONS

Certain functions of Clerk of House of Representatives transferred to Director of Non-legislative and Financial Services by section 7 of House Resolution No. 423, One Hundred Second Congress, Apr. 9, 1992. Director of Non-legislative and Financial Services replaced by Chief Administrative Officer of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

CREDITABILITY UNDER CSRS OF CERTAIN SERVICE PERFORMED UNDER PERSONAL SERVICE CONTRACT WITH UNITED STATES

Pub. L. 100–238, title I, § 110, Jan. 8, 1988, 101 Stat. 1749, provided that:

''(a) IN GENERAL.—

''(1) CONDITIONS FOR RECEIVING CREDIT.—Subject to the making of a deposit under section 8334(c) of title 5, United States Code, upon application to the Office of Personnel Management within 2 years after the date of the enactment of this Act [Jan. 8, 1988], any individual who is an employee (as defined by section 8331(1) or 8401(11) of such title) on such date shall be allowed credit under subchapter III of chapter 83 of such title for any service if such service was performed—

''(A) before November 5, 1985; and

''(B) under a personal service contract with the United States, except as provided in paragraph (3).

''(2) CERTIFICATION.—

''(A) IN GENERAL.—The Office shall, with respect to any service for which credit is sought under this subsection, accept the certification of the head of the agency which was party to the contract referred to in paragraph (1)(B), but only if such certification—

''(i) states that the agency had intended, through such contract, that the individual involved (or that persons like the individual involved) be considered as having been appointed to a position in which such individual would be subject to subchapter III of chapter 83 of title 5, United States Code; and

''(ii) indicates the period of service which was performed under the contract by the individual involved, and includes copies of appropriate records or other documentation to support the determination as to the length of such period.

''(B) FINALITY.—A decision by an agency head concerning whether or not to make a certification under this paragraph in any particular instance shall be at the sole discretion of the agency head, and shall not be subject to administrative or judicial review.

''(3) EXCEPTION.—Nothing in this subsection shall apply with respect to any service performed under—

''(A) a contract for which any appropriations, allocations, or funds were used under section 636(a)(3) of the Foreign Assistance Act of 1961 [22 U.S.C. 2396(a)(3)];

''(B) a contract entered into under section 10(a)(5) of the Peace Corps Act [22 U.S.C. 2509(a)(5)];

''(C) a contract under which the services of an individual may be terminated by a person other than the individual or the Government; or

''(D) a contract for a single transaction or a contract under which services are paid for in a single payment.

''(b) APPLICABILITY TO ANNUITANTS.—

''(1) IN GENERAL.—In the case of any individual who—

''(A) performed service for which credit is allowable under subsection (a), and

''(B) retired on an annuity payable under subchapter III of chapter 83 of title 5, United States Code, after January 23, 1980, and before the date of the enactment of this Act [Jan. 8, 1988],

any annuity under such subchapter based on the service of such individual shall be redetermined to take into account the amendment made by subsection (a) if application therefor is made, and the deposit requirement under such subsection is met, within 2 years after the date of the enactment of this Act.

''(2) AMOUNTS TO WHICH APPLICABLE.—Any change in an annuity resulting from a redetermination under paragraph (1) shall be effective with respect to payments accruing for months beginning after the date of the enactment of this Act.''

CLARIFICATION RELATING TO CONSIDERATION OF PRE-1987 SERVICE AS AIR TRAFFIC CONTROLLER FOR RETIREMENT PURPOSES

Pub. L. 100–92, §2, Aug. 18, 1987, 101 Stat. 679, provided that:

''(a) For purposes of subchapter III of chapter 83 of title 5, United States Code, and chapter 84 of such title—

''(1) service as an air traffic controller shall, with respect to any annuity which is based on a separation from service, or death, occurring on or after January 1, 1987, include any service as an air traffic controller whether performed before, on, or after January 1, 1987; and

''(2) the Office of Personnel Management shall accept the certification of the Secretary, or the designee of the Secretary, in determining the amount of any service performed by an individual as an air traffic controller.

''(b) For purposes of this section—

''(1) the term 'air traffic controller' has the meaning given such term by section 2109(1) of title 5, United States Code, as amended by section 207(b) of the Federal Employees' Retirement System Act of 1986 (Public Law 99–335; 100 Stat. 594); and

''(2) the term 'Secretary' has the meaning given such term by section 2109(2) of title 5, United States Code.''

CADET NURSE CORPS

Section 1 of Pub. L. 99–638 provided: ''That (a) service described in subsection (b) shall be considered creditable civilian service for purposes of subchapter III of chapter 83, or chapter 84, of title 5, United States Code, as applicable, in the case of any individual who meets the requirements of subsection (c).

''(b) This section relates to any period of training as a student or graduate nurse under a plan approved under section 2 of the Act of June 15, 1943 (57 Stat. 153) [former 50 App. U.S.C. 1452], if the total period of training under such plan was at least 2 years.

''(c)(1) An individual may not receive credit for service pursuant to this Act [amending sections 2105 and 8332 of this title and enacting provisions set out as notes under sections 8331 and 8332 of this title] unless—

''(A) within 14 months after the date of the enactment of this Act [Nov. 10, 1986], and in accordance with regulations under subsection (d), the individual files appropriate written application with the Office of Personnel Management;

''(B) at the time of filing the application under subparagraph (A), the individual is employed by the Government and subject to subchapter III of chapter 83 of title 5, United States Code (other than section 8344 of such title), or chapter 84 of such title (other than section 8468 of such title);

''(C) before the date of the separation on which is based the individual's entitlement to an annuity under subchapter III of chapter 83 of title 5, United States Code, or chapter 84 of such title, as applicable, such individual deposits into the Civil Service Retirement and Disability Fund the amount required under paragraph (2) with respect to the period of training involved.

''(2) The amount to be deposited shall be determined by the Office of Personnel Management in a manner consistent with applicable provisions of subchapter III of chapter 83 of title 5, United States Code, chapter 84 of such title or title III of the Federal Employees' Retirement System Act of 1986 [Pub. L. 99–335, title III, see Tables for classification], as the case may be, relating to deposits for earlier periods of civilian service for which deductions from basic pay have not been made.

''(d) The Office of Personnel Management shall, not later than 2 months after the date of the enactment of this Act [Nov. 10, 1986], prescribe regulations to carry out this Act [amending sections 2105 and 8332 of this title and enacting provisions set out as notes under sections 8331 and 8332 of this title].''

RECOMPUTATION AT AGE 62 OF CREDIT FOR MILITARY SERVICE OF CURRENT ANNUITANTS

Section 307 of Pub. L. 97–253, as amended by Pub. L. 97–346, §3(k), Oct. 15, 1982, 96 Stat. 1649, provided that:

''(a) The provisions of section 8332(j) of title 5, United States Code, relating to credit for military service, shall not apply with respect to any individual who is entitled to an annuity under subchapter III of chapter 83 of title 5, United States Code, on or before the date of enactment of this Act [Sept. 8, 1982] or who is entitled to an annuity based on a separation from service occurring on or before such date of enactment.

''(b) Subject to subsection (b), in any case in which an individual described in subsection (a) is also entitled to old-age or survivors' insurance benefits under section 202 of the Social Security Act [42 U.S.C. 402] (or would

be entitled to such benefits upon filing application therefor), the amount of the annuity to which such individual is entitled under subchapter III of chapter 83 of title 5, United States Code, (after taking into account subsection (a)) which is payable for any month shall be reduced by an amount determined by multiplying the amount of such old-age or survivors' insurance benefit for the determination month by a fraction—

''(1) the numerator of which is the total of the wages (within the meaning of section 209 of the Social Security Act [42 U.S.C. 409]) for service referred to in section 210(*l*) of such Act [42 U.S.C. 410(*l*)] (relating to service in the uniformed services) and deemed additional wages (within the meaning of section 229 of such Act [42 U.S.C. 429]) of such individual credited for years after 1956 and before the calendar year in which the determination month occurs, up to the contribution and benefit base determined under section 230 of the Social Security Act [42 U.S.C. 430] (or other applicable maximum annual amount referred to in section 215(e)(1) of such Act [42 U.S.C. 415(e)(1)]) for each such year, and

''(2) the denominator of which is the total of all wages and deemed additional wages described in paragraph (1) of this subsection plus all other wages (within the meaning of section 209 of such Act [42 U.S.C. 409]) and all self-employment income (within the meaning of section 211(b) of such Act [42 U.S.C. 411(b)]) of such individual credited for years after 1936 and before the calendar year in which the determination month occurs, up to the contribution and benefit base (or such other amount referred to in such section 215(e)(1) [42 U.S.C. 415(e)(1)]) for each such year.

''(c) Subsection (b) shall not reduce the annuity of any individual below the amount of the annuity which would be payable under this subchapter to the individual for the determination month if section 8332(j) of title 5, United States Code, applied to the individual for such month.

''(d) For purposes of this section, the term 'determination month' means—

''(1) the first month the individual described in subsection (a) is entitled to old-age or survivors' insurance benefits under section 202 of the Social Security Act [42 U.S.C. 402] (or would be entitled to such benefits upon filing application therefor); or

''(2) October 1982, in the case of any individual so entitled to such benefits for such month.

''(e) The preceding provisions of this section shall take effect with respect to any annuity payment payable under subchapter III of chapter 83 of title 5, United States Code, for calendar months beginning after September 30, 1982.

''(f) The Secretary of Health and Human Services shall furnish such information to the Office of Personnel Management as may be necessary to carry out the preceding provisions of this section.''

DISTRICT OF COLUMBIA SUBSTITUTE TEACHERS

Section 2 of Pub. L. 92–454 provided that: ''An annuity or survivor annuity based on the service of an employee or annuitant who performed service described in section 1 of this Act [amending this section] shall, upon application to the Civil Service Commission, be recomputed, effective on the first day of the first month following the date of enactment of this Act [Oct. 2, 1972], in accordance with section 1 of this Act.''

NATIONAL GUARD TECHNICIANS

Amendment by section 5(a)(4) of Pub. L. 90–486 not applicable to persons employed prior to Jan. 1, 1969 whose employment was covered by the civil service retirement provisions of section 8331 et seq. of this title, see section 5(d) of Pub. L. 90–486, set out as a note under section 709 of Title 32, National Guard.

CREDITABLE SERVICE OF CERTAIN COMMISSIONED OFFICERS OF THE REGULAR OR RESERVE CORPS OF THE PUBLIC HEALTH SERVICE

Section 6(a), (b) of Pub. L. 86–415, Apr. 8, 1960, 74 Stat. 35, provided that:

''(a) Except as provided in subsection (b), service as a commissioned officer in the Regular Corps of the Public Health Service prior to July 1, 1960, shall be considered, for purposes of credit under the Civil Service Retirement Act [this subchapter], other than section 3(f) thereof [section 8333(a) of this title], as civilian service performed by an employee (as defined in such Act [this subchapter]) and commissioned officers of the Reserve Corps of the Public Health Service, subject to the Civil Service Retirement Act [this subchapter] on June 30, 1960, shall be considered as voluntarily separated on that date, with respect to service as such officers, from civilian positions subject to such Act [this subchapter].

''(b) If a commissioned officer of the Regular or Reserve Corps of the Public Health Service is retired after June 30, 1960, and becomes entitled to retired pay from the Public Health Service, all service in the Regular or Reserve Corps of the Public Health Service prior to July 1, 1960, together with any other service which is performed at any time with the Public Health Service, other than as a commissioned officer, and which is credited to the officer for purposes of such retirement, shall be considered as military service for purposes of section 3(b) of the Civil Service Retirement Act [subsecs. (c)–(e) of this section]; except that, in the case of any such officer who is retired pursuant to subsection (a) of section 211 of the Public Health Service Act [section 212(a) of Title 42], any such service which was performed prior to July 1, 1960, which was subject to the Civil Service Retirement Act [this subchapter], and with respect to which he has not, prior to his retirement, received a refund of deductions under the Civil Service Retirement Act [this subchapter], shall not be considered as military service for purposes of such section 3(b) [subsecs. (c)–(e) of this section], but only if he waives his right to have such service included for purposes of computing the amount of his retired pay from the Service.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6303, 8331, 8334, 8339, 8345 of this title; title 16 section 1169a; title 22 sections 3671, 3681, 4048, 4056; title 25 section 450i; title 26 sections 3121, 7448; title 38 sections 7297, 7406, 7426; title 42 section 410; title 50 section 2082.

§ 8333. Eligibility for annuity

(a) An employee must complete at least 5 years of civilian service before he is eligible for an annuity under this subchapter.

(b) An employee or Member must complete, within the last 2 years before any separation from service, except a separation because of death or disability, at least 1 year of creditable civilian service during which he is subject to this subchapter before he or his survivors are eligible for annuity under this subchapter based on the separation. If an employee or Member, except an employee or Member separated from the service because of death or disability, fails to meet the service requirement of the preceding sentence, the amounts deducted from his pay during the service for which no eligibility for annuity is established based on the separation shall be returned to him on the separation. Failure to meet this service requirement does not deprive the individual or his survivors of annuity rights which attached on a previous separation.

(c) A Member or his survivor is eligible for an annuity under this subchapter only if the amounts named by section 8334 of this title have been deducted or deposited with respect to his last 5 years of civilian service, or, in the case of a survivor annuity under section 8341(d) or (e)(1) of this title, with respect to his total service.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 569; Pub. L. 91–93, title II, §201(b), Oct. 20, 1969, 83 Stat. 138; Pub. L. 94–183, §2(34), Dec. 31, 1975, 89 Stat. 1058.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(a), (b)	5 U.S.C. 2253(f), (g).	July 31, 1956, ch. 804, §401 ''Sec. 3(f), (g)'', 70 Stat. 746.
(c)	5 U.S.C. 2256(f) (last sentence).	July 31, 1956, ch. 804, §401 ''Sec. 6(f) (last sentence)'', 70 Stat. 750. Aug. 27, 1958, Pub. L. 85–772, §1(a), 72 Stat. 930.

In subsection (c), the words ''eligible for'' are substituted for ''entitled to''.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1975—Subsec. (c). Pub. L. 94–183 substituted ''of this title'' for ''of title 5'' and ''of this title'' for ''of this chapter''.

1969—Subsec. (c). Pub. L. 91–93 provided for eligibility for a survivor annuity under section 8341(d) or (e)(1) of this title only if the requisite amounts are deducted or deposited with respect to total service period.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–93 inapplicable in cases of persons retired or otherwise separated prior to Oct. 20, 1969, their rights and of their survivors continued as if such amendment had not been enacted, see section 207(a) of Pub. L. 91–93, set out as a note under section 8331 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 22 section 4051.

§ 8334. Deductions, contributions, and deposits

(a)(1) The employing agency shall deduct and withhold 7 percent of the basic pay of an employee, 7½ percent of the basic pay of a Congressional employee, a law enforcement officer, and a firefighter, and 8 percent of the basic pay of a Member, a Court of Federal Claims judge, a United States magistrate, a judge of the United States Court of Appeals for the Armed Forces, and a bankruptcy judge. An equal amount shall be contributed from the appropriation or fund used to pay the employee or, in the case of an elected official, from an appropriation or fund available for payment of other salaries of the same office or establishment. When an employee in the legislative branch is paid by the Clerk of the House of Representatives, the Clerk may pay from the contingent fund of the House the contribution that otherwise would be contributed from the appropriation or fund used to pay the employee.

(2) The amounts so deducted and withheld, together with the amounts so contributed, shall be deposited in the Treasury of the United States to the credit of the Fund under such procedures as the Comptroller General of the United States may prescribe. Deposits made by an employee or Member also shall be credited to the Fund.

(b) Each employee or Member is deemed to consent and agree to these deductions from basic pay. Notwithstanding any law or regulation affecting the pay of an employee or Member, payment less these deductions is a full and complete discharge and acquittance of all claims and demands for regular services during the period covered by the payment, except the right to the benefits to which the employee or Member is entitled under this subchapter.

(c) Each employee or Member credited with civilian service after July 31, 1920, for which retirement deductions or deposits have not been made, may deposit with interest an amount equal to the following percentages of his basic pay received for that service:

	Percentage of basic pay	Service period
Employee	2½	August 1, 1920, to June 30, 1926.
	3½	July 1, 1926, to June 30, 1942.
	5	July 1, 1942, to June 30, 1948.
	6	July 1, 1948, to October 31, 1956.
	6½	November 1, 1956, to December 31, 1969.
	7	After December 31, 1969.
Member or employee for Congressional employee service.	2½	August 1, 1920, to June 30, 1926.
		July 1, 1926, to June 30, 1942.
	3½.	July 1, 1942, to June 30, 1948.
	5	July 1, 1948, to October 31, 1956.
	6	November 1, 1956, to December 31, 1969.
	6½	After December 31, 1969.
	7½	
Member for Member service.	2½	August 1, 1920, to June 30, 1926.
		July 1, 1926, to June 30, 1942.
	3½	July 1, 1942, to August 1, 1946.
	5	August 2, 1946, to October 31, 1956.
	6	November 1, 1956, to December 31, 1969.
	7½	After December 31, 1969.
	8	
Law enforcement officer for law enforcement service and firefighter for firefighter service.	2½	August 1, 1920, to June 30, 1926.
		July 1, 1926, to June 30, 1942.
	3½.	July 1, 1942, to June 30, 1948.
	5	July 1, 1948, to October 31, 1956.
	6	November 1, 1956, to December 31, 1969.
	6½	January 1, 1970, to December 31, 1974.
	7	After December 31, 1974.
	7½	
Bankruptcy judge.	2½	August 1, 1920, to June 30, 1926.
	3½	July 3, 1926, to June 30, 1942.
	5	July 1, 1942, to June 30, 1948.
	6	July 1, 1948, to October 31, 1956.
	6½	November 1, 1956, to December 31, 1969.
	7	January 1, 1970, to December 31, 1983.
	8	After December 31, 1983.
Judge of the United States Court of Appeals for the Armed Forces for service as a judge of that court.	6	May 5, 1950, to October 31, 1956.
	6½	November 1, 1956, to December 31, 1969.
	7	January 1, 1970, to (but not including) the date of the enactment of the Department of Defense Authorization Act, 1984.
	8	On and after the date of the enactment of the Department of Defense Authorization Act, 1984.
United States magistrate.	2½	August 1, 1920, to June 30, 1926.
	3½	July 1, 1926, to June 30, 1942.
	5	July 1, 1942, to June 30, 1948.
	6	July 1, 1948, to October 31, 1956.
	6½	November 1, 1956, to December 31, 1969.
	7	January 1, 1970, to September 30, 1987.
	8	After September 30, 1987.
Court of Federal Claims Judge.	2½	August 1, 1920, to June 30, 1926.
	3½	July 1, 1926, to June 30, 1942.
	5	July 1, 1942, to June 30, 1948.
	6	July 1, 1948, to October 31, 1956.
	6½	November 1, 1956, to December 31, 1969.
	7	January 1, 1970, to September 30, 1988.
	8	After September 30, 1988.

Notwithstanding the preceding provisions of this subsection and any provision of section 206(b)(3) of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983,

the percentage of basic pay required under this subsection in the case of an individual described in section 8402(b)(2) shall, with respect to any covered service (as defined by section 203(a)(3) of such Act) performed by such individual after December 31, 1983, and before January 1, 1987, be equal to 1.3 percent, and, with respect to any such service performed after December 31, 1986, be equal to the amount that would have been deducted from the employee's basic pay under subsection (k) of this section if the employee's pay had been subject to that subsection during such period.

(d)(1) Each employee or Member who has received a refund of retirement deductions under this or any other retirement system established for employees of the Government covering service for which he may be allowed credit under this subchapter may deposit the amount received, with interest. Credit may not be allowed for the service covered by the refund until the deposit is made.

(2)(A) This paragraph applies with respect to any employee or Member who—

(i) separates before October 1, 1990, and receives (or elects, in accordance with applicable provisions of this subchapter, to receive) a refund (described in paragraph (1)) which relates to a period of service ending before October 1, 1990;

(ii) is entitled to an annuity under this subchapter (other than a disability annuity) which is based on service of such employee or Member, and which commences on or after December 2, 1990; and

(iii) does not make the deposit (described in paragraph (1)) required in order to receive credit for the period of service with respect to which the refund relates.

(B) Notwithstanding the second sentence of paragraph (1), the annuity to which an employee or Member under this paragraph is entitled shall (subject to adjustment under section 8340) be equal to an amount which, when taken together with the unpaid amount referred to in subparagraph (A)(iii), would result in the present value of the total being actuarially equivalent to the present value of the annuity which would otherwise be provided the employee or Member under this subchapter, as computed under subsections (a)–(i) and (n) of section 8339 (treating, for purposes of so computing the annuity which would otherwise be provided under this subchapter, the deposit referred to in subparagraph (A)(iii) as if it had been timely made).

(C) The Office of Personnel Management shall prescribe such regulations as may be necessary to carry out this paragraph.

(e)(1) Interest under subsection (c), (d)(1), (j), (k), or (*l*) of this section is computed in accordance with paragraphs (2) and (3) of this subsection and regulations prescribed by the Office of Personnel Management.

(2) Interest accrues annually on the outstanding portion of any amount that may be deposited under subsection (c), (d)(1), (j), (k), or (*l*) of this section, and is compounded annually, until the portion is deposited. Such interest is computed from the mid-point of each service period included in the computation, or from the date refund was paid. The deposit may be made in one or more installments. Interest may not be charged for a period of separation from the service which began before October 1, 1956.

(3) The rate of interest is 4 percent a year through December 31, 1947, and 3 percent a year beginning January 1, 1948, through December 31, 1984. Thereafter, the rate of interest for any calendar year shall be equal to the overall average yield to the Fund during the preceding fiscal year from all obligations purchased by the Secretary of the Treasury during such fiscal year under section 8348(c), (d), and (e) of this title, as determined by the Secretary.

(f) Under such regulations as the Office of Personnel Management may prescribe, amounts deducted under subsection (a) or (k) of this section and deposited under subsections (c) and (d)(1) of this section shall be entered on individual retirement records.

(g) Deposit may not be required for—

(1) service before August 1, 1920;

(2) military service, except to the extent provided under section 8332(c) or 8334(j) of this title;

(3) service for the Panama Railroad Company before January 1, 1924;

(4) service performed before October 29, 1983,,[1] by natives of the Pribilof Islands in the taking and curing of fur seal skins and other activities in connection with the administration of the Pribilof Islands except where deductions, contributions, and deposits were made before October 29, 1983;

(5) days of unused sick leave credited under section 8339(m) of this title; or

(6) any period for which credit is allowed under section 8332*(l)* of this title.

(h) For the purpose of survivor annuities, deposits authorized by subsections (c), (d)(1), (j), and (k) of this section may also be made by a survivor of an employee or Member.

(i)(1) The Director of the Administrative Office of the United States Courts shall pay to the Fund the amount which an employee may deposit under subsection (c) of this section for service creditable under section 8332(b)(12) of this title if such creditable service immediately precedes service as an employee subject to this subchapter with a break in service of no more than ninety working days. The Director shall pay such amount from any appropriation available to him as a necessary expense of the appropriation concerned.

(2) The amount the Director pays in accordance with paragraph (1) of this subsection shall be reduced by the amount of any refund to the employee under section 376 of title 28. Except to the extent of such reduction, the amount the Director pays to the Fund shall satisfy the deposit requirement of subsection (c) of this section.

(3) Notwithstanding any other provision of law, the amount the Director pays under this subsection shall constitute an employer contribution to the Fund, excludable under section 402 of the Internal Revenue Code of 1986 from the employee's gross income until such time as the contribution is distributed or made available to the employee, and shall not be subject to refund or to lump-sum payment to the employee.

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[1] So in original.

(4) Notwithstanding any other provision of law, a bankruptcy judge or magistrate who is covered by section 377 of title 28 or section 2(c) of the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988 shall not be subject to deductions and contributions to the Fund, if the judge or magistrate notifies the Director of the Administrative Office of the United States Courts of an election of a retirement annuity under those provisions. Upon such an election, the judge or magistrate shall be entitled to a lump-sum credit under section 8342(a) of this title.

(5) Notwithstanding any other provision of law, a judge who is covered by section 7296 of title 38 shall not be subject to deductions and contributions to the Fund, if the judge notifies the Director of the Office of Personnel Management of an election of a retirement annuity under that section. Upon such an election, the judge shall be entitled to a lump-sum credit under section 8342(a) of this title.

(6) Notwithstanding any other provision of law, a judge of the United States Court of Federal Claims who is covered by section 178 of title 28 shall not be subject to deductions and contributions to the Fund if the judge notifies the Director of the Administrative Office of the United States Courts of an election of a retirement annuity under those provisions. Upon such an election, the judge shall be entitled to a lump-sum credit under section 8342(a) of this title.

(j)(1)(A) Except as provided in subparagraph (B), each employee or Member who has performed military service before the date of the separation on which the entitlement to any annuity under this subchapter is based may pay, in accordance with such regulations as the Office shall issue, to the agency by which the employee is employed, or, in the case of a Member or a Congressional employee, to the Secretary of the Senate or the Clerk of the House of Representatives, as appropriate, an amount equal to 7 percent of the amount of the basic pay paid under section 204 of title 37 to the employee or Member for each period of military service after December 1956. The amount of such payments shall be based on such evidence of basic pay for military service as the employee or Member may provide, or if the Office determines sufficient evidence has not been so provided to adequately determine basic pay for military service, such payment shall be based upon estimates of such basic pay provided to the Office under paragraph (4).

(B) In any case where military service interrupts creditable civilian service under this subchapter and reemployment pursuant to chapter 43 of title 38 occurs on or after August 1, 1990, the deposit payable under this paragraph may not exceed the amount that would have been deducted and withheld under subsection (a)(1) from basic pay during civilian service if the employee had not performed the period of military service.

(2) Any deposit made under paragraph (1) of this subsection more than two years after the later of—

(A) October 1, 1983; or

(B) the date on which the employee or Member making the deposit first becomes an employee or Member following the period of military service for which such deposit is due,

shall include interest on such amount computed and compounded annually beginning on the date of the expiration of the two-year period. The interest rate that is applicable in computing interest in any year under this paragraph shall be equal to the interest rate that is applicable for such year under subsection (e) of this section.

(3) Any payment received by an agency, the Secretary of the Senate, or the Clerk of the House of Representatives under this subsection shall be immediately remitted to the Office for deposit in the Treasury of the United States to the credit of the Fund.

(4) The Secretary of Defense, the Secretary of Transportation, the Secretary of Commerce, or the Secretary of Health and Human Services, as appropriate, shall furnish such information to the Office as the Office may determine to be necessary for the administration of this subsection.

(k)(1) Effective with respect to pay periods beginning after December 31, 1986, in administering this section in the case of an individual described in section 8402(b)(2) of this title—

(A) the amount to be deducted and withheld by the employing agency shall be determined in accordance with paragraph (2) of this subsection instead of the first sentence of subsection (a)(1) of this section; and

(B) the amount of the contribution under the second sentence of subsection (a)(1) of this section shall be the amount which would have been contributed under such sentence if this subsection had not been enacted.

(2)(A) With respect to Federal wages of an employee or Member (or that portion thereof) not exceeding the contribution and benefit base during the calendar year involved, the appropriate amount to be deducted and withheld under this subsection is the amount by which—

(i) the total deduction for those wages (or for that portion) exceeds;

(ii) the OASDI contribution with respect to those wages (or that portion).

(B) With respect to any portion of Federal wages of an employee or Member which exceed the contribution and benefit base during the calendar year involved, the appropriate amount to be deducted and withheld under this subsection is an amount equal to the total deduction for that portion.

(C) For purposes of this paragraph—

(i) the term ''Federal wages'' means basic pay for service as an employee or Member, as the case may be;

(ii) the term ''contribution and benefit base'' means the contribution and benefit base in effect with respect to the period involved, as determined under section 230 of the Social Security Act;

(iii) the term ''total deduction'', as used with respect to any Federal wages (or portion thereof), means an amount equal to the amount of those wages (or of that portion), multiplied by the percentage which (but for this subsection) would apply under the first sentence of subsection (a)(1) with respect to the individual involved; and

(iv) the term ''OASDI contribution'', with respect to any income, means the amount of tax which may be imposed under section 3101(a) of the Internal Revenue Code of 1986 with respect to such income (determined without regard to any income which is not a part of Federal wages).

(3) The amount of a deposit under subsection (c) of this section for any service with respect to which paragraph (1) of this subsection applies shall be equal to an amount determined based on the preceding provisions of this subsection, and shall include interest.

(4) In administering paragraphs (1) through (3)—

(A) the term ''an individual described in section 8402(b)(2) of this title'' shall be considered to include any individual—

(i) who is subject to this subchapter as a result of a provision of law described in section 8347(*o*), and

(ii) whose employment (as described in section 8347(*o*)) is also employment for purposes of title II of the Social Security Act and chapter 21 of the Internal Revenue Code of 1986; and

(B) the term ''Federal wages'', as applied with respect to any individual to whom this subsection applies as a result of subparagraph (A), means basic pay for any employment referred to in subparagraph (A)(ii).

(*l*)(1) Each employee or Member who has performed service as a volunteer or volunteer leader under part A of title VIII of the Economic Opportunity Act of 1964, as a full-time volunteer enrolled in a program of at least 1 year's duration under part A, B, or C of title I of the Domestic Volunteer Service Act of 1973, or as a volunteer or volunteer leader under the Peace Corps Act before the date of the separation on which the entitlement to any annuity under this subchapter is based may pay, in accordance with such regulations as the Office of Personnel Management shall issue, an amount equal to 7 percent of the readjustment allowance paid to the employee or Member under title VIII of the Economic Opportunity Act of 1964 or section 5(c) or 6(1) of the Peace Corps Act or the stipend paid to the employee or Member under part A, B, or C of title I of the Domestic Volunteer Service Act of 1973, for each period of service as such a volunteer or volunteer leader.

(2) Any deposit made under paragraph (1) more than 2 years after the later of—

(A) October 1, 1993; or

(B) the date on which the employee or Member making the deposit first becomes an employee or Member,

shall include interest on such amount computed and compounded annually beginning on the date of the expiration of the 2-year period. The interest rate that is applicable in computing interest in any year under this paragraph shall be equal to the interest rate that is applicable for such year under subsection (e).

(3) The Director of the Peace Corps and the Chief Executive Officer of the Corporation for National and Community Service shall furnish such information to the Office of Personnel Management as the Office may determine to be necessary for the administration of this subsection.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 569; Pub. L. 90–83, § 1(74), Sept. 11, 1967, 81 Stat. 214; Pub. L. 90–486, § 5(b), Aug. 13, 1968, 82 Stat. 757; Pub. L. 91–93, title I, § 102(a), title II, § 202, Oct. 20, 1969, 83 Stat. 136, 138; Pub. L. 92–297, § 7(2), May 16, 1972, 86 Stat. 144; Pub. L. 93–350, § 3, July 12, 1974, 88 Stat. 356; Pub. L. 94–126, §§ 1(a), 2(a), Nov. 12, 1975, 89 Stat. 679; Pub. L. 95–382, § 1(b), Sept. 22, 1978, 92 Stat. 727; Pub. L. 95–454, title IX, § 906(a)(2), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 95–598, title III, § 338(b), Nov. 6, 1978, 92 Stat. 2681; Pub. L. 97–164, title II, § 207(b), Apr. 2, 1982, 96 Stat. 54; Pub. L. 97–253, title III, §§ 303(a)(1), 306(d), (e), Sept. 8, 1982, 96 Stat. 793, 796, 797; Pub. L. 97–346, § 3(a), (c)–(e)(1), Oct. 15, 1982, 96 Stat. 1647, 1648; Pub. L. 98–94, title XII, §§ 1256(a), 1257, Sept. 24, 1983, 97 Stat. 701, 702; Pub. L. 89–702, title II, § 209(f), as added Pub. L. 98–129, § 2, Oct. 14, 1983, 97 Stat. 843; Pub. L. 98–353, title I, § 116(b), July 10, 1984, 98 Stat. 344; Pub. L. 98–615, § 2(2), Nov. 8, 1984, 98 Stat. 3195; Pub. L. 99–335, title II, § 201(a), (c), June 6, 1986, 100 Stat. 588, 591; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100–53, § 2(b), June 18, 1987, 101 Stat. 367; Pub. L. 100–238, title I, §§ 102, 108(b)(1), Jan. 8, 1988, 101 Stat. 1744, 1748; Pub. L. 100–659, § 6(b), Nov. 15, 1988, 102 Stat. 3919; Pub. L. 101–94, title I, § 102(a), Aug. 16, 1989, 103 Stat. 626; Pub. L. 101–508, title VII, § 7001(b)(1), (2)(A), (B), Nov. 5, 1990, 104 Stat. 1388–328, 1388–329; Pub. L. 101–650, title III, § 306(c)(2), (e)(2), Dec. 1, 1990, 104 Stat. 5110, 5112; Pub. L. 102–40, title IV, § 402(d)(2), May 7, 1991, 105 Stat. 239; Pub. L. 102–378, § 2(59), Oct. 2, 1992, 106 Stat. 1354; Pub. L. 102–572, title IX, § 902(b), Oct. 29, 1992, 106 Stat. 4516; Pub. L. 103–66, title XI, § 11004(a)(3), Aug. 10, 1993, 107 Stat. 412; Pub. L. 103–82, title III, § 371(a)(2), Sept. 21, 1993, 107 Stat. 910; Pub. L. 103–337, div. A, title IX, § 924(d)(1)(A), Oct. 5, 1994, 108 Stat. 2832; Pub. L. 103–353, § 5(b), Oct. 13, 1994, 108 Stat. 3173.)

HISTORICAL AND REVISION NOTES
1966 ACT

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	2 U.S.C. 129.	July 1, 1957, Pub. L. 85–75, § 101 (proviso on p. 248), 71 Stat. 248.
.....	5 U.S.C. 2254.	July 31, 1956, ch. 804, § 401 ''Sec. 4'', 70 Stat. 747. June 29, 1957, Pub. L. 85–65, § 1, 71 Stat. 209. May 27, 1958, Pub. L. 85–426, § 214(b) (words before comma), 72 Stat. 143. Aug. 27, 1958, Pub. L. 85–772, § 1(d), 72 Stat. 930.

In subsection (a), the words ''From and after the first day of the first pay period which begins on or after the effective date of the Civil Service Retirement Act Amendments of 1956'' and ''From and after the first day of the first pay period which begins after June 30, 1957'' in former section 2254 are omitted as executed. The words ''on and after July 1, 1957'' in former section 129 of title 2 are omitted as executed.

In subsection (b), the word ''rule'' is omitted as unnecessary.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 ACT

Section of title 5	*Source (U.S. Code)*	*Source (Statutes at Large)*
8334(g)(4) ...	5 App.: 2254(g).	Nov. 2, 1966, Pub. L. 89–702, §208(c), 80 Stat. 1096.

REFERENCES IN TEXT

The date of the enactment of the Department of Defense Authorization Act, 1984, referred to in the table in subsec. (c), is the date of enactment of Pub. L. 98–94 which was approved Sept. 24, 1983.

Sections 203 and 206 of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983 [Pub. L. 98–168], referred to in subsec. (c), are set out as a note under section 8331 of this title.

Sections 402 and 3101(a) and chapter 21 of the Internal Revenue Code of 1986, referred to in subsecs. (i)(3) and (k)(2)(C)(iv), (4)(A)(ii), are classified to sections 402 and 3101(a) and chapter 21 (§3101 et seq.), respectively, of Title 26, Internal Revenue Code.

Section 2(c) of the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988, referred to in subsec. (i)(4), is section 2(c) of Pub. L. 100–659, which is set out as a note under section 377 of Title 28, Judiciary and Judicial Procedure.

The Social Security Act, referred to in subsec. (k)(2)(C)(ii), (4)(A)(ii), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title II of the Social Security Act is classified generally to subchapter II (§401 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. Section 230 of the Social Security Act is classified to section 430 of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

The Economic Opportunity Act of 1964, referred to in subsec. (*l*)(1), is Pub. L. 88–452, Aug. 20, 1964, 78 Stat. 508, as amended. Title VIII of the Act probably means title VIII of Pub. L. 88–452 as added by Pub. L. 89–794, title VIII, §801, Nov. 8, 1966, 80 Stat. 1472, and generally revised and amended by Pub. L. 90–222, title I, §110, Dec. 23, 1967, 81 Stat. 722, which was classified generally to subchapter VIII (§2991 et seq.) of chapter 34 of Title 42, prior to its repeal by Pub. L. 93–113, title VI, §603, Oct. 1, 1973, 87 Stat. 417. Part A of title VIII of the Act is part A of title VIII of Pub. L. 88–452 as added by Pub. L. 90–222, §110, which was classified generally to part A (§2992 et seq.) of subchapter VIII of chapter 34 of Title 42, prior to its repeal by Pub. L. 93–113, §603. See sections 4951 et seq. and 5055 of Title 42. For complete classification of this Act to the Code, see Tables.

Parts A, B, and C of title I of the Domestic Volunteer Service Act of 1973, referred to in subsec. (*l*)(1), are classified to part A (§4951 et seq.), part B (§4971 et seq.), and part C (§4991 et seq.), respectively, of subchapter I of chapter 66 of Title 42.

The Peace Corps Act, referred to in subsec. (*l*)(1), is Pub. L. 87–293, Sept. 22, 1961, 75 Stat. 612, as amended, which is classified principally to chapter 34 (§2501 et seq.) of Title 22, Foreign Relations and Intercourse. Sections 5(c) and 6(1) of the Act are classified to sections 2504(c) and 2505(1), respectively, of Title 22. For complete classification of this Act to the Code, see Short Title note set out under section 2501 of Title 22 and Tables.

AMENDMENTS

1994—Subsec. (a)(1). Pub. L. 103–337 substituted ''Court of Appeals for the Armed Forces'' for ''Court of Military Appeals''.

Subsec. (c). Pub. L. 103–337 substituted ''Court of Appeals for the Armed Forces'' for ''Court of Military Appeals'' in table.

Subsec. (j)(1). Pub. L. 103–353, §5(b)(1), designated existing provisions as subpar. (A) and substituted ''Except as provided in subparagraph (B), each employee'' for ''Each employee'' and added subpar. (B).

Subsec. (j)(2)(B). Pub. L. 103–353, §5(b)(2), inserted before comma at end ''following the period of military service for which such deposit is due''.

1993—Subsec. (e)(1), (2). Pub. L. 103–82, §371(a)(2)(B), substituted ''(k), or (*l*)'' for ''or (k)''.

Subsec. (h). Pub. L. 103–66 struck out ''and by section 8339(j)(5)(C) and the last sentence of section 8339(k)(2) of this title'' before ''may also be made''.

Subsec. (*l*). Pub. L. 103–82, §371(a)(2)(A), added subsec. (*l*).

1992—Subsec. (a)(1). Pub. L. 102–572, §902(b)(2), substituted ''Court of Federal Claims'' for ''Claims Court''.

Subsec. (c). Pub. L. 102–572, §902(b)(2), substituted ''Court of Federal Claims'' for ''Claims Court'' in table.

Subsec. (i)(5). Pub. L. 102–378 redesignated par. (5), relating to United States Claims Court judges, as (6).

Subsec. (i)(6). Pub. L. 102–572, §902(b)(1), substituted ''United States Court of Federal Claims'' for ''United States Claims Court''.

Pub. L. 102–378 redesignated par. (5), relating to United States Claims Court judges, as (6).

1991—Subsec. (i)(5). Pub. L. 102–40 substituted ''section 7296 of title 38'' for ''section 4096 of title 38''.

1990—Subsec. (a)(1). Pub. L. 101–650, §306(c)(2)(A), inserted ''a Claims Court Judge,'' after ''Member,''.

Subsec. (c). Pub. L. 101–650, §306(c)(2)(B), inserted table covering percentages of pay and service periods for a Claims Court Judge.

Subsec. (d). Pub. L. 101–508, §7001(b)(1), designated existing provisions as par. (1) and added par. (2).

Subsec. (e)(1), (2). Pub. L. 101–508, §7001(b)(2)(A), substituted ''(d)(1),'' for ''(d),''.

Subsec. (f). Pub. L. 101–508, §7001(b)(2)(B), substituted ''(d)(1)'' for ''(d)''.

Subsec. (h). Pub. L. 101–508, §7001(b)(2)(A), substituted ''(d)(1),'' for ''(d),''.

Subsec. (i)(5). Pub. L. 101–650, §3069(e)(2), added par. (5) relating to judges covered by a section of title 28.

1989—Subsec. (i)(5). Pub. L. 101–94 added par. (5) relating to judges covered by a section of title 38.

1988—Subsec. (c). Pub. L. 100–238, §102, struck out period at end and inserted '', and, with respect to any such service performed after December 31, 1986, be equal to the amount that would have been deducted from the employee's basic pay under subsection (k) of this section if the employee's pay had been subject to that subsection during such period.''

Subsec. (i)(4). Pub. L. 100–659 added par. (4).

Subsec. (k)(4). Pub. L. 100–238, §108(b)(1), added par. (4).

1987—Subsec. (a)(1). Pub. L. 100–53, §2(b)(1), substituted ''Member, a United States magistrate, a judge'' for ''Member and a judge'' and ''Appeals,'' for ''Appeals''.

Subsec. (c). Pub. L. 100–53, §2(b)(2), inserted table covering percentages of basic pay and service periods for United States magistrates.

1986—Subsec. (c). Pub. L. 99–335, §201(c), inserted provision that notwithstanding preceding provisions of this subsection and any provision of section 206(b)(3) of Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983, the percentage of basic pay required under this subsection in case of an individual described in section 8402(b)(2) of this title shall, with respect to any covered service performed after Dec. 31, 1983, and before Jan. 1, 1987, be equal to 1.3 percent.

Subsec. (e)(1), (2). Pub. L. 99–335, §201(a)(2)(A), substituted ''(j), or (k)'' for ''or (j)''.

Subsec. (f). Pub. L. 99–335, §201(a)(2)(B), inserted ''or (k)'' after ''subsection (a)''.

Subsec. (h). Pub. L. 99–335, §201(a)(2)(C), substituted ''(j), and (k)'' for ''and (j)''.

Subsec. (i)(3). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

Subsec. (k). Pub. L. 99–335, §201(a)(1), added subsec. (k).

Subsec. (k)(2)(C)(iv). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

1984—Subsec. (a)(1). Pub. L. 98–353, §116(b)(1), inserted ''and a bankruptcy judge''.

Subsec. (c). Pub. L. 98–353, §116(b)(2), substituted in the table relating to bankruptcy judges the items relating to 7 percent for the period Jan. 1, 1970 to Dec. 31, 1983, and 8 percent for the period after Dec. 31, 1983, for the prior item relating to 7 percent for the period after Jan. 1, 1970.

Subsec. (h). Pub. L. 98–615 substituted ''annuities, deposits authorized by subsections (c), (d), and (j) of this section and by section 8339(j)(5)(C) and the last sentence of section 8339(k)(2) of this title may also be made by a survivor'' for ''annuity, deposits authorized by subsections (c), (d), and (j) of this section may also be made by the survivor''.

1983—Subsec. (a)(1). Pub. L. 98–94, §1256(a)(1), inserted ''and a judge of the United States Court of Military Appeals'' after ''and 8 percent of the basic pay of a Member''.

Subsec. (c). Pub. L. 98–94, §1256(a)(2), added to the table items covering a judge of the United States Court of Military Appeals for service as a judge of that court.

Subsec. (g)(4). Pub. L. 98–129 substituted ''October 29, 1983,'' for ''January 1, 1950'', and directed that the phrase ''except where deductions, contributions, and deposits were made before October 29, 1983'' be inserted after ''the Pribilof Islands'' which amendment was executed by inserting that phrase after ''the Pribilof Islands'' the second time those words appear, as the probable intent of Congress.

Subsec. (j)(2)(A). Pub. L. 98–94, §1257, substituted ''October 1, 1983'' for ''October 1, 1982''.

1982—Subsec. (e). Pub. L. 97–253, §303(a)(1), redesignated existing provisions as par. (2), inserted provision that interest accrues annually on the outstanding portion of any amount that may be deposited under subsec. (c), (d), or (j) of this section, and is compounded annually until the portion is deposited, substituted ''Such interest'' for ''Interest under subsection (c) or (d) of this section'', struck out '', to the date of deposit or commencing date of annuity, whichever is earlier'' after ''date refund was paid'', and struck out provision that the interest was computed at the rate of four percent a year to Dec. 31, 1947, and 3 percent thereafter compounded annually, and added pars. (1) and (3).

Subsec. (e)(3). Pub. L. 97–346, §3(c), substituted ''the preceding fiscal year'' for ''the preceding calendar year'' and ''during such fiscal year'' for ''during such calendar year''.

Subsec. (g)(2). Pub. L. 97–253, §306(e), inserted '', except to the extent provided under section 8332(c) or section 8334(j) of this title''.

Subsec. (h). Pub. L. 97–346, §3(d), inserted reference to subsec. (j).

Subsec. (i). Pub. L. 97–164 added subsec. (i).

Subsec. (j). Pub. L. 97–253, §306(d), added subsec. (j).

Subsec. (j)(1). Pub. L. 97–346, §3(a), substituted ''period'' for ''month''.

Pub. L. 97–346, §3(e)(1), struck out ''within 90 days after the effective date of this subsection'' after ''regulations as the Office shall issue'', and substituted ''The amount of such payments shall be based on such evidence of basic pay for military service as the employee or Member may provide, or if the Office determines sufficient evidence has not been so provided to adequately determine basic pay for military service, such payment shall be based upon estimates of such basic pay provided to the Office under paragraph (4)'' for ''as certified to the agency, the Secretary of the Senate, or the Clerk of the House of Representatives, as appropriate, by the Secretary of Defense, the Secretary of Transportation, the Secretary of Commerce, or the Secretary of Health and Human Services, as appropriate, upon the employee's or Member's request''.

1978—Subsec. (c). Pub. L. 95–598 inserted bankruptcy judge schedule of deposits.

Subsec. (f). Pub. L. 95–454 substituted ''Office of Personnel Management'' for ''Civil Service Commission''.

Subsec. (g)(6). Pub. L. 95–382 added par. (6).

1975—Subsec. (c), Pub. L. 94–126, §1(a), struck out last sentence requiring that deposit, with respect to a period of service referred to in section 8332(b)(6) of this title performed before Jan. 1, 1969, shall be an amount equal to 55 percent of a deposit computed in accordance with such provisions.

Subsec. (g)(5). Pub. L. 94–126, §2(a), substituted reference to ''section 8339(m) of this title'' for ''section 8339(n) of this title''.

1974—Subsec. (a)(1). Pub. L. 93–350, §3(a), inserted ''a law enforcement officer, and a firefighter,'' after ''Congressional employee,''.

Subsec. (c). Pub. L. 93–350, §3(b), inserted schedule for law enforcement officer for law enforcement service and firefighter for firefighter service.

1972—Subsec. (g)(5). Pub. L. 92–297 substituted ''section 8339(n)'' for ''section 8339(m)''.

1969—Subsec. (a)(1). Pub. L. 91–93, §102(a)(1), designated first and second sentences of subsec. (a) as subsec. (a)(1), increasing by one-half percent the deduction from the basic pay of an employee and a Member to 7 and 8 percent, respectively, and providing for a 7½ percent deduction from basic pay of a Congressional employee.

Subsec. (a)(2). Pub. L. 91–93, §102(a)(1), designated third and fourth sentences of subsec. (a) as subsec. (a)(2), deleting ''under this section'' after ''Member''.

Subsec. (c). Pub. L. 91–93, §102(a)(2), substituted service period Nov. 1, 1956, to Dec. 31, 1969, for prior service period after Oct. 31, 1956, for deductions of 6½ percent of basic pay of an employee, inserted provision for 7 percent deduction from basic pay of an employee for service period after Dec. 31, 1969, inserted percentage of basic pay and service period provisions for Member or employee for Congressional employee service, substituted service period Nov. 1, 1956; to Dec. 31, 1969, for prior service period after Oct. 31, 1956, for deduction of 7½ percent of basic pay of Member for Member service, inserted provision for 8 percent deduction from basic pay of Member for Member service after Dec. 31, 1969, and inserted provision for amount of deposit for period of service performed before Jan. 1, 1969.

Subsec. (g)(5). Pub. L. 91–93, §202, added par. (5).

1968—Subsec. (c). Pub. L. 90–486 inserted provisions that the deposit with respect to a period of service referred to in section 8332(b)(6) of this title which was performed prior to the specified effective date shall be an amount equal to 55 percent of a deposit computed in accordance with such provisions.

CHANGE OF NAME

Reference to United States magistrate or to magistrate deemed to refer to United States magistrate judge pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–353 effective with respect to reemployments initiated on or after the first day after the 60-day period beginning Oct. 13, 1994, with transition rules, see section 8 of Pub. L. 103–353, set out as a note under section 4301 of Title 38, Veterans' Benefits.

EFFECTIVE DATE OF 1993 AMENDMENTS

Amendment by Pub. L. 103–82 effective Oct. 1, 1993, and applicable with respect to any individual entitled to an annuity on the basis of a separation from service occurring on or after Oct. 1, 1993, see sections 371(c) and 392 of Pub. L. 103–82, set out as notes under section 8332 of this title and section 4951 of Title 42, The Public Health and Welfare, respectively.

Amendment by Pub. L. 103–66 effective on first day of first month beginning at least 30 days after Aug. 10, 1993, and applicable to all deposits required under section 8339(j)(3) or (5), 8339(k)(2), or 8418 of this title, on which no payment has been made prior to such effective date, see section 11004(c) of Pub. L. 103–66, set out as a note under section 8339 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–572 effective Oct. 29, 1992, see section 911 of Pub. L. 102–572, set out as a note

under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1990 AMENDMENTS

Amendment by Pub. L. 101–650 applicable to judges of, and senior judges in active service with, the United States Court of Federal Claims on or after Dec. 1, 1990, see section 306(f) of Pub. L. 101–650, set out as a note under section 8331 of this title.

Section 7001(b)(3) of Pub. L. 101–508 provided that: ''The amendments made by this subsection [amending this section and sections 8339 and 8342 of this title] shall be effective with respect to any annuity having a commencement date later than December 1, 1990.''

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–659 effective Nov. 15, 1988, and applicable to bankruptcy judges and magistrates [now United States magistrate judges] who retire on or after Nov. 15, 1988, with exception for judges and magistrates retiring on or after July 31, 1987, see section 9 of Pub. L. 100–659, set out as an Effective Date note under section 377 of Title 28, Judiciary and Judicial Procedure.

Section 108(b)(3) of Pub. L. 100–238 provided that: ''The amendments made by this subsection [amending this section and section 8349 of this title] shall be effective as of January 1, 1987.''

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–53 effective Oct. 1, 1987, and applicable to bankruptcy judges and United States magistrate judges in office on that date and to individuals subsequently appointed to such positions to whom this chapter otherwise applies, see section 3 of Pub. L. 100–53, as amended, set out as a note under section 8331 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–335 effective Jan. 1, 1987, see section 702(a) of Pub. L. 99–335, set out as an Effective Date note under section 8401 of this title.

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by Pub. L. 98–615 effective May 7, 1985, with enumerated exceptions and specific applicability provisions, see section 4(a)(1) of Pub. L. 98–615, as amended, set out as a note under section 8341 of this title.

Amendment by Pub. L. 98–353 effective July 10, 1984, and applicable to bankruptcy judges who retire on or after such date, see section 116(e) of Pub. L. 98–353, set out as a note under section 8331 of this title. See, also, section 122(a) of Pub. L. 98–353, set out as an Effective Date note under section 151 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 1256(f) of Pub. L. 98–94 provided that: ''The increase in deductions from the pay of a judge of the United States Court of Military Appeals [now United States Court of Appeals for the Armed Forces] required by section 8334(a) of title 5, United States Code, as amended by subsection (a), shall take effect with respect to the first pay period that begins after the date of the enactment of this Act [Sept. 24, 1983].''

EFFECTIVE DATE OF 1982 AMENDMENTS

Section 303(d)(1) of Pub. L. 97–253, as amended by Pub. L. 97–346, §3(j)(1), Oct. 15, 1982, 96 Stat. 1649, provided that:

''The amendments made by subsections (a) and (b) [amending this section and sections 8339 and 8343 of this title] shall apply with respect to deposits for service performed on or after October 1, 1982, and with respect to refunds for which application is received by either the employing agency or the Office of Personnel Management on or after such date. The provisions of section 8334 and section 8339(i) of title 5, United States Code, as in effect the day before the date of the enactment of this Act [Sept. 7, 1982], shall continue to apply with respect to periods of service and refunds occurring on or before September 30, 1982. Notwithstanding the preceding two sentences, the amendments made by subsection (a) shall apply in the case of any deposit for military service under section 8334(j) of title 5, United States Code (as added by section 306(d) of this Act), regardless of whether such military service was performed before or after October 1, 1982.''

Amendment by section 306(d), (e) of Pub. L. 97–253 effective Oct. 1, 1982, except that any employee or Member who retired after Sept. 8, 1982, and before Oct. 1, 1985, or is entitled to an annuity under chapter 83 of this title based on a separation from service occurring during such period, or a survivor of such individual, may make a payment under section 8334(j)(1) of this title, and regulations required to be issued under section 8334(j)(1) of this title, to be issued by the Office of Personnel Management within 90 days after such effective date, see section 306(g) of Pub. L. 97–253, as amended, set out as a note under section 8331 of this title.

Amendment by Pub. L. 97–164 effective Oct. 1, 1982, see section 402 of Pub. L. 97–164, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1978 AMENDMENTS

Amendment by Pub. L. 95–598 effective Nov. 6, 1978, see section 402(d) of Pub. L. 95–598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

Amendment by Pub. L. 95–382 effective Oct 1, 1978, and applicable to specified annuities, see section 2 of Pub. L. 95–382, set out as a note under section 8332 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Section 3 of Pub. L. 94–126 provided that: ''The amendments made by the first section of this Act [amending this section and sections 8339 and 8345 of this title] shall become effective as of January 1, 1969, except that such amendments shall not apply to a person who, on the date of enactment of this Act [Nov. 12, 1975], is receiving or is entitled to receive benefits under any retirement system established by the United States or any instrumentality thereof, unless such person requests, in writing, the office which administers his retirement system to apply such amendments to him. Any additional benefits payable pursuant to such a written request shall commence on the first day of the month [December] following the date of the enactment of this Act.''

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–350 effective at beginning of first applicable pay period which begins after Dec. 31, 1974, see section 7 of Pub. L. 93–350, set out as a note under section 3307 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92–297 effective on 90th day after May 16, 1972, see section 10 of Pub. L. 92–297, set out as an Effective Date note under section 3381 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Section 102(b) of Pub. L. 91–93 provided that: ''The amendment made by subsection (a)(1) of this section [amending this section] shall become effective at the beginning of the first applicable pay period beginning after December 31, 1969.''

Amendment by Pub. L. 91–93 inapplicable in cases of persons retired or otherwise separated prior to Oct. 20, 1969, their rights and of their survivors continued as if

such amendment had not been enacted, see section 207(a) of Pub. L. 91–93, set out as a note under section 8331 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–486 effective Jan. 1, 1969, except that no deductions or withholding from salary which result therefrom shall commence before first day of first pay period that begins on or after Jan. 1, 1968, see section 11 of Pub. L. 90–486, set out as a note under section 709 of Title 32, National Guard.

TRANSFER OF FUNCTIONS

Certain functions of Clerk of House of Representatives transferred to Director of Non-legislative and Financial Services by section 7 of House Resolution No. 423, One Hundred Second Congress, Apr. 9, 1992. Director of Non-legislative and Financial Services replaced by Chief Administrative Officer of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

OFFSETS TO PREVENT FULL DOUBLE COVERAGE FOR EMPLOYEES OF PARK POLICE AND SECRET SERVICE

Section 103(e) of Pub. L. 100–238 provided that: ''Notwithstanding any other provision of law, in the case of an employee of the United States Secret Service or the United States Park Police whose pay is simultaneously subject to a deposit requirement under the District of Columbia Police and Firefighters' Retirement and Disability System and the contribution requirement under section 3101(a) of the Internal Revenue Code of 1986 [26 U.S.C. 3101(a)]—

''(1) any deposits under the District of Columbia Police and Firefighters' Retirement and Disability System shall be adjusted in a manner consistent with section 8334(k) of title 5, United States Code (relating to offsets in deductions from pay to reflect OASDI contributions); and

''(2) any benefits payable under the District of Columbia Police and Firefighters' Retirement and Disability System based on the service of any such employee shall be adjusted in a manner consistent with section 8349 of title 5, United States Code (relating to offsets to reflect benefits under title II of the Social Security Act [42 U.S.C. 401 et seq.]).''

REFUNDS OF CERTAIN EXCESS DEDUCTIONS TAKEN AFTER 1983 TO OFFSET EMPLOYEES UNDER CSRS

Section 128 of Pub. L. 100–238 provided that:

''(a) REFUND ELIGIBILITY.—An individual shall upon written application to the Office of Personnel Management, receive a refund under subsection (b), if such individual—

''(1) was subject to section 8334(a)(1) of title 5, United States Code, for any period of service after December 31, 1983, because of an election under section 208(a)(1)(B) of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983 (97 Stat. 1107; 5 U.S.C. 8331 note);

''(2) is not eligible to make an election under section 301(b) of the Federal Employees' Retirement System Act of 1986 (Public Law 99–335; 100 Stat. 599) [5 U.S.C. 8331 note]; and

''(3) becomes subject to section 8334(k) of title 5, United States Code.

''(b) REFUND COMPUTATION.—An individual eligible for a refund under subsection (a) shall receive a refund—

''(1) for the period beginning on January 1, 1984, and ending on December 31, 1986, for the amount by which—

''(A) the total amount deducted from such individual's basic pay under section 8334(a)(1) of title 5, United States Code, for service described in subsection (a)(1) of this section, exceeds

''(B) 1.3 percent of such individual's total basic pay for such period; and

''(2) for the period beginning on January 1, 1987, and ending on the day before such individual becomes subject to section 8334(k) of title 5, United States Code, for the amount by which—

''(A) the total amount deducted from such individual's basic pay under section 8334(a)(1) of title 5, United States Code, for service described in subsection (a)(1) of this section, exceeds

''(B) the total amount which would have been deducted if such individual's basic pay had instead been subject to section 8334(k) of title 5, United States Code, during such period.

''(c) INTEREST COMPUTATION.—A refund under this section shall be computed with interest in accordance with section 8334(e) of title 5, United States Code, and regulations prescribed by the Office of Personnel Management.''

NATIONAL GUARD TECHNICIANS

Amendment by Pub. L. 90–486 not applicable to persons employed prior to Jan. 1, 1969, whose employment was covered by the civil service retirement provisions of section 8331 et seq. of this title, see section 5(d) of Pub. L. 90–486, set out as a note under section 709 of Title 32, National Guard.

CROSS REFERENCES

Civil Service Retirement and Disability Fund as trust fund, see section 1321 of Title 31, Money and Finance.

Contributions by Postal Service, see section 1005 of Title 39, Postal Service.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8331, 8332, 8333, 8339, 8342, 8344, 8348, 8411, 8422, 8432 of this title; title 10 sections 942, 945; title 12 section 1723a; title 22 sections 3671, 3681, 3968, 4045; title 26 section 3121; title 28 sections 611, 627; title 40 section 881; title 42 section 410; title 45 section 1206; title 50 sections 2021, 2031, 2082, 2121.

§ 8335. Mandatory separation

(a) An air traffic controller shall be separated from the service on the last day of the month in which he becomes 56 years of age. The Secretary, under such regulations as he may prescribe, may exempt a controller having exceptional skills and experience as a controller from the automatic separation provisions of this subsection until that controller becomes 61 years of age. The Secretary shall notify the controller in writing of the date of separation at least 60 days before that date. Action to separate the controller is not effective, without the consent of the controller, until the last day of the month in which the 60-day notice expires.

(b) A firefighter who is otherwise eligible for immediate retirement under section 8336(c) shall be separated from the service on the last day of the month in which such firefighter becomes 55 years of age or completes 20 years of service if then over that age. A law enforcement officer who is otherwise eligible for immediate retirement under section 8336(c) shall be separated from the service on the last day of the month in which that officer becomes 57 years of age or completes 20 years of service if then over that age. The head of the agency, when in his judgment the public interest so requires, may exempt such an employee from automatic separation under this subsection until that employee becomes 60 years of age. The employing office shall notify the employee in writing of the date of separation at least 60 days in advance thereof. Action to separate the employee is not effective, without the consent of the employee, until the

last day of the month in which the 60-day notice expires.

(c) An employee of the Alaska Railroad in Alaska and an employee who is a citizen of the United States employed on the Isthmus of Panama by the Panama Canal Commission, who becomes 62 years of age and completes 15 years of service in Alaska or on the Isthmus of Panama shall be automatically separated from the service. The separation is effective on the last day of the month in which the employee becomes age 62 or completes 15 years of service in Alaska or on the Isthmus of Panama if then over that age. The employing office shall notify the employee in writing of the date of separation at least 60 days in advance thereof. Action to separate the employee is not effective, without the consent of the employee, until the last day of the month in which the 60-day notice expires.

(d) A member of the Capitol Police who is otherwise eligible for immediate retirement under section 8336(m) shall be separated from the service on the last day of the month in which such member becomes 57 years of age or completes 20 years of service if then over that age. The Capitol Police Board, when in its judgment the public interest so requires, may exempt such a member from automatic separation under this subsection until that member becomes 60 years of age. The Board shall notify the member in writing of the date of separation at least 60 days in advance thereof. Action to separate the member is not effective, without the consent of the member, until the last day of the month in which the 60-day notice expires.

(e) The President, by Executive order, may exempt an employee (other than a member of the Capitol Police) from automatic separation under this section when he determines the public interest so requires.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 571; Pub. L. 92–297, §4, May 16, 1972, 86 Stat. 144; Pub. L. 93–350, §4, July 12, 1974, 88 Stat. 356; Pub. L. 95–256, §5(c), Apr. 6, 1978, 92 Stat. 191; Pub. L. 96–70, title III, §3302(e)(3), Sept. 27, 1979, 93 Stat. 498; Pub. L. 96–347, §1(b), Sept. 12, 1980, 94 Stat. 1150; Pub. L. 101–428, §2(b)(1)(A), (2), Oct. 15, 1990, 104 Stat. 928; Pub. L. 101–509, title V, §529 [title IV, §409(a)], Nov. 5, 1990, 104 Stat. 1427, 1468; Pub. L. 102–378, §2(60), Oct. 2, 1992, 106 Stat. 1354; Pub. L. 103–283, title III, §307(a), July 22, 1994, 108 Stat. 1441.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 2255.	July 31, 1956, ch. 804, §401 ''Sec. 5'', 70 Stat. 748. Feb. 7, 1964, Pub. L. 88–267, §1 (less (a)–(c)), 78 Stat. 9.

Standard changes are made to conform with the definitions applicable and style of this title as outlined in the preface to the report.

REFERENCES IN TEXT

For definition of Secretary, referred to in subsec. (a), see section 2109 of this title.

AMENDMENTS

1994—Subsec. (d). Pub. L. 103–283 substituted ''57'' for ''55'' in first sentence.

1992—Subsec. (b). Pub. L. 102–378 amended first sentence generally. Prior to amendment, first sentence read as follows: ''A firefighter who is otherwise eligible for immediate retirement under section 8336(c) of this title shall be separated from the service on the last day of the month in which he becomes 55 years of age or completes 20 years of service if then over that age.''

1990—Subsec. (b). Pub. L. 101–509, §529 [title IV, §409(a)(1)], which directed that ''law enforcement officer of a'' be struck out before ''firefighter who is'', was executed by striking out ''law enforcement officer or a'' as the probable intent of Congress.

Pub. L. 101–509, §529 [title IV, §409(a)(2)], inserted after first sentence ''A law enforcement officer who is otherwise eligible for immediate retirement under section 8336(c) shall be separated from the service on the last day of the month in which that officer becomes 57 years of age or completes 20 years of service if then over that age.''

Subsec. (d). Pub. L. 101–428, §2(b)(1)(A), added subsec. (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 101–428, §2(b)(2), inserted ''(other than a member of the Capitol Police)'' after ''employee''.

Pub. L. 101–428, §2(b)(1)(A), redesignated subsec. (d) as (e).

1980—Subsec. (a). Pub. L. 96–347 substituted ''Secretary'' for ''Secretary of Transportation'' in two places.

1979—Subsec. (c). Pub. L. 96–70, which directed substitution of ''Panama Canal Commission'' for ''Panama Canal Company or the Canal Zone Government'' in subsec. (e), was executed to subsec. (c) to reflect the probable intent of Congress and Pub. L. 95–256 which struck out subsec. (e) and restated provisions thereof in subsec. (c).

1978—Subsec. (a). Pub. L. 95–256, §5(c)(1), (2), redesignated subsec. (f) as (a). Former subsec. (a), relating to mandatory separation when an employee became 70 years of age and completed 15 years of service, was struck out.

Subsec. (b). Pub. L. 95–256, §5(c)(1), (2), redesignated subsec. (g) as (b). Former subsec. (b), relating to notice by employing office of date of separation, was struck out.

Subsec. (c). Pub. L. 95–256, §5(c)(1), (3), added subsec. (c) relating to provisions covered by former subsec. (e). Former subsec. (c), relating to exemption of an employee from automatic separation by President, was struck out. See subsec. (d).

Subsec. (d). Pub. L. 95–256, §5(c)(1), (3), added subsec. (d). Former subsec. (d), relating to inapplicability of automatic separation provisions of this section, was struck out.

Subsec. (e). Pub. L. 95–256, §5(c)(1), struck out subsec. (e) which related to applicability of provisions to employees of Alaskan Railroad, Panama Canal Company, and Canal Zone Government. See subsec. (c).

Subsecs. (f), (g). Pub. L. 95–256, §5(c)(2), redesignated subsecs. (f) and (g) as (a) and (b), respectively.

1974—Subsec. (g). Pub. L. 93–350 added subsec. (g).

1972—Subsec. (f). Pub. L. 92–297 added subsec. (f).

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by section 2(60) of Pub. L. 102–378 effective Nov. 5, 1990, see section 9(b)(6) of Pub. L. 102–378, set out as a note under section 6303 of this title.

EFFECTIVE DATE OF 1990 AMENDMENTS

Section 529 [title IV, §409(c)] of Pub. L. 101–509 provided that: ''For the purposes of this section [amending this section and section 8425 of this title], the effective date shall be the date of enactment of this Act [Nov. 5, 1990].''

Section 2(b)(1)(B) of Pub. L. 101–428 provided that: ''The amendment made by subparagraph (A) [amending this section] shall take effect 2 years after the date of enactment of this Act [Oct. 15, 1990].''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–347 effective on 90th day after Sept. 12, 1980, see section 3 of Pub. L. 96–347, set out as a note under section 2109 of this title.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–70 effective Oct. 1, 1979, see section 3304 of Pub. L. 96–70, set out as an Effective Date note under section 3601 of Title 22, Foreign Relations and Intercourse.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–256 effective Sept. 30, 1978, see section 5(f) of Pub. L. 95–256, set out as a note under section 633a of Title 29, Labor.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–350 effective Jan. 1, 1978, see section 7 of Pub. L. 93–350, set out as a note under section 3307 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92–297 effective on 90th day after May 16, 1972, see section 10 of Pub. L. 92–297, set out as an Effective Date note under section 3381 of this title.

NONAPPLICABILITY OF SUBSECTION (a) TO AIR TRAFFIC CONTROLLERS APPOINTED BEFORE JANUARY 1, 1987

Pub. L. 99–556, title V, §504, Oct. 27, 1986, 100 Stat. 3141, provided that:

''(a) IN GENERAL.—Section 8335(a) of title 5, United States Code, shall not apply to any air traffic controller appointed before January 1, 1987.

''(b) DEFINITION.—For purposes of this section, the term 'air traffic controller' means any individual who—

''(1) is an air traffic controller within the meaning of section 2109(1) of title 5, United States Code, as in effect on January 1, 1987; but

''(2) is not an air traffic controller within the meaning of section 2109(1) of title 5, United States Code, as in effect on December 31, 1986.''

NONAPPLICABILITY OF SUBSECTION (a) TO DEPARTMENT OF DEFENSE AIR TRAFFIC CONTROLLERS APPOINTED BEFORE SEPTEMBER 12, 1980

Section 2 of Pub. L. 96–347 provided that: ''Section 8335(a) of title 5, United States Code shall not apply to an individual appointed as an air traffic controller in the Department of Defense before the date of the enactment of this Act [Sept. 12, 1980].''

NONAPPLICABILITY OF SUBSECTION (f) TO AIR TRAFFIC CONTROLLERS APPOINTED BEFORE MAY 16, 1972

Section 8 of Pub. L. 92–297 provided that: ''Section 8335(f) of title 5, United States Code, as added by this Act, does not apply to a person appointed as an air traffic controller by the Department of Transportation before the date of enactment of this Act [May 16, 1972].''

CROSS REFERENCES

Automatic separations, see section 3323 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8339 of this title; title 26 section 7447.

§ 8336. Immediate retirement

(a) An employee who is separated from the service after becoming 55 years of age and completing 30 years of service is entitled to an annuity.

(b) An employee who is separated from the service after becoming 60 years of age and completing 20 years of service is entitled to an annuity.

(c)(1) An employee who is separated from the service after becoming 50 years of age and completing 20 years of service as a law enforcement officer or firefighter, or any combination of such service totaling at least 20 years, is entitled to an annuity.

(2) An employee is entitled to an annuity if the employee—

(A) was a law enforcement officer or firefighter employed by the Panama Canal Company or the Canal Zone Government at any time during the period beginning March 31, 1979, and ending September 30, 1979; and

(B) is separated from the service before January 1, 2000, after becoming 48 years of age and completing 18 years of service as a law enforcement officer or firefighter, or any combination of such service totaling at least 18 years.

(d) An employee who—

(1) is separated from the service involuntarily, except by removal for cause on charges of misconduct or delinquency; or

(2) while serving in a geographic area designated by the Office of Personnel Management, is separated from the service voluntarily during a period in which the Office determines that—

(A) the agency in which the employee is serving is undergoing a major reorganization, a major reduction in force, or a major transfer of function; and

(B) a significant percent of the employees serving in such agency will be separated or subject to an immediate reduction in the rate of basic pay (without regard to subchapter VI of chapter 53 of this title or comparable provisions);

after completing 25 years of service or after becoming 50 years of age and completing 20 years of service is entitled to an annuity. For purposes of paragraph (1) of this subsection, separation for failure to accept a directed reassignment to a position outside the commuting area of the employee concerned or to accompany a position outside of such area pursuant to a transfer of function shall not be considered to be a removal for cause on charges of misconduct or delinquency. Notwithstanding the first sentence of this subsection, an employee described in paragraph (1) of this subsection is not entitled to an annuity under this subsection if the employee has declined a reasonable offer of another position in the employee's agency for which the employee is qualified, which is not lower than 2 grades (or pay levels) below the employee's grade (or pay level), and which is within the employee's commuting area.

(e) An employee who is voluntarily or involuntarily separated from the service, except by removal for cause on charges of misconduct or delinquency, after completing 25 years of service as an air traffic controller or after becoming 50 years of age and completing 20 years of service as an air traffic controller, is entitled to an annuity.

(f) An employee who is separated from the service after becoming 62 years of age and completing 5 years of service is entitled to an annuity.

(g) A Member who is separated from the service after becoming 62 years of age and completing 5 years of civilian service or after becoming 60 years of age and completing 10 years of Member service is entitled to an annuity. A Member who is separated from the service after becoming 55 years of age (but before becoming 60 years of age) and completing 30 years of service is entitled to a reduced annuity. A Member who is separated from the service, except by resignation or expulsion, after completing 25 years of service or after becoming 50 years of age and (1) completing 20 years of service or (2) serving in 9 Congresses is entitled to an annuity.

(h)(1) A member of the Senior Executive Service who is removed from the Senior Executive Service for failure to be recertified as a senior executive under section 3393a or for less than fully successful executive performance (as determined under subchapter II of chapter 43 of this title) after completing 25 years of service or after becoming 50 years of age and completing 20 years of service is entitled to an annuity.

(2) A member of the Defense Intelligence Senior Executive Service or the Senior Cryptologic Executive Service who is removed from such service for failure to be recertified as a senior executive or for less than fully successful executive performance after completing 25 years of service or after becoming 50 years of age and completing 20 years of service is entitled to an annuity.

(3) A member of the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service who is removed from such service for failure to be recertified as a senior executive or for less than fully successful executive performance after completing 25 years of service or after becoming 50 years of age and completing 20 years of service is entitled to an annuity.

(i)(1) An employee of the Panama Canal Commission or of an Executive agency conducting operations in the Canal Zone or Republic of Panama who is separated from the service before January 1, 2000, who was employed by the Canal Zone Government or the Panama Canal Company at any time during the period beginning March 31, 1979, and ending September 30, 1979, and who has had continuous Panama Canal service, without a break in service of more than 3 days, from that time until separation, is entitled to an annuity if the employee is separated—

(A) involuntarily, after completing 20 years of service or after becoming 48 years of age and completing 18 years of service, if the separation is a result of the implementation of any provision of the Panama Canal Treaty of 1977 and related agreements; or

(B) voluntarily, after completing 23 years of service or after becoming 48 years of age and completing 18 years of service.

(2) An employee of the Panama Canal Commission or of an Executive agency conducting operations in the Canal Zone or Republic of Panama who is separated from the service before January 1, 2000, who was employed, at a permanent duty station in the Canal Zone, by any Executive agency other than the Canal Zone Government or the Panama Canal Company at any time during the period beginning March 31, 1979, and ending September 30, 1979, and who has had continuous Panama Canal service, without a break in service of more than 3 days, from that time until separation, is entitled to an annuity if—

(A) the employee is separated involuntarily, after completing 20 years of service or after becoming 48 years of age and completing 18 years of service; and

(B) the separation is the result of the implementation of any provision of the Panama Canal Treaty of 1977 and related agreements.

(3) An employee of the Panama Canal Commission employed by that body after September 30, 1979, who is separated from the Panama Canal Commission before January 1, 2000, and who at the time of separation has a minimum of 11 years of continuous employment with the Commission (disregarding any break in service of 3 days or less) is entitled to an annuity if the employee is separated—

(A) involuntarily, after completing 20 years of service or after becoming 48 years of age and completing 18 years of service, if the separation is a result of the implementation of any provision of the Panama Canal Treaty of 1977 and related agreements; or

(B) voluntarily, after completing 23 years of service or after becoming 48 years of age and completing 18 years of service.

(4) For the purpose of this subsection—

(A) ''Panama Canal service'' means—

(i) service as an employee of the Canal Zone Government, the Panama Canal Company, or the Panama Canal Commission; or

(ii) service at a permanent duty station in the Canal Zone or Republic of Panama as an employee of an Executive agency conducting operations in the Canal Zone or the Republic of Panama; and

(B) ''Executive agency'' includes the United States District Court for the District of the Canal Zone and the Smithsonian Institution.

(j)(1) Except as provided in paragraph (3), an employee is entitled to an annuity if he—

(A)(i) is separated from the service after completing 25 years of service or after becoming 50 years of age and completing 20 years of service, or

(ii) is involuntarily separated, except by removal for cause on charges of misconduct or delinquency, during the 2-year period before the date on which he would meet the years of service and age requirements under clause (i),

(B) was employed in the Bureau of Indian Affairs, the Indian Health Service, a tribal organization (to the extent provided in paragraph (2)), or any combination thereof, continuously from December 21, 1972, to the date of his separation, and

(C) is not entitled to preference under the Indian preference laws.

(2) Employment in a tribal organization may be considered for purposes of paragraph (1)(B) of this subsection only if—

(A) the employee was employed by the tribal organization after January 4, 1975, and immediately before such employment he was an employee of the Bureau of Indian Affairs or the Indian Health Service, and

(B) at the time of such employment such employee and the tribal organization were eligible to elect, and elected, to have the employee retain the coverage, rights, and benefits of this chapter under section 105(e)(2) of the Indian Self-Determination Act (25 U.S.C. 450i(a)(2);[1] 88 Stat. 2209).

(3)(A) The provisions of paragraph (1) of this subsection shall not apply with respect to any separation of any employee which occurs after the date 10 years after—

(i) the date the employee first meets the years of service and age requirements of paragraph (1)(A)(i), or

(ii) the date of the enactment of this paragraph, if the employee met those requirements before that date.

(B) For purposes of applying this paragraph with respect to any employee of the Bureau of Indian Affairs in the Department of the Interior or of the Indian Health Service in the Department of Health, Education, and Welfare, the Secretary of the department involved may postpone the date otherwise applicable under subparagraph (A) if—

(i) such employee consents to such postponement, and

(ii) the Secretary finds that such postponement is necessary for the continued effective operation of the agency.

The period of any postponement under this subparagraph shall not exceed 12 months and the total period of all postponements with respect to any employee shall not exceed 5 years.

(4) For the purpose of this subsection—

(A) ''Bureau of Indian Affairs'' means (i) the Bureau of Indian Affairs and (ii) all other organizational units in the Department of the Interior directly and primarily related to providing services to Indians and in which positions are filled in accordance with the Indian preference laws.

(B) ''Indian preference laws'' means section 12 of the Act of June 18, 1934 (25 U.S.C. 472; 48 Stat. 986), or any other provision of law granting a preference to Indians in promotions or other Federal personnel actions.

(k) A bankruptcy judge, United States magistrate, or Court of Federal Claims judge who is separated from service, except by removal, after becoming 62 years of age and completing 5 years of civilian service, or after becoming 60 years of age and completing 10 years of service as a bankruptcy judge, United States magistrate, or Court of Federal Claims judge, is entitled to an annuity.

(*l*) A judge of the United States Court of Appeals for the Armed Forces who is separated from the service after becoming 62 years of age and completing 5 years of civilian service or after completing the term of service for which he was appointed as a judge of such court is entitled to an annuity. A judge who is separated from the service before becoming 60 years of age is entitled to a reduced annuity.

(m) A member of the Capitol Police who is separated from the service after becoming 50 years of age and completing 20 years of service as a member of the Capitol Police or as a law enforcement officer, or any combination of such service totaling at least 20 years, is entitled to an annuity.

(n) An annuity or reduced annuity authorized by this section is computed under section 8339 of this title.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 571; Pub. L. 90–83, § 1(75), Sept. 11, 1967, 81 Stat. 214; Pub. L. 92–297, § 5, May 16, 1972, 86 Stat. 144; Pub. L. 92–382, Aug. 14, 1972, 86 Stat. 539; Pub. L. 93–39, June 12, 1973, 87 Stat. 73; Pub. L. 93–350, § 5, July 12, 1974, 88 Stat. 356; Pub. L. 94–183, § 2(40), (41), Dec. 31, 1975, 89 Stat. 1059; Pub. L. 95–454, title III, § 306, title IV, § 412(a), Oct. 13, 1978, 92 Stat. 1147, 1175; Pub. L. 96–70, title I, § 1241(a), Sept. 27, 1979, 93 Stat. 471; Pub. L. 96–135, § 1(a), Dec. 5, 1979, 93 Stat. 1056; Pub. L. 97–89, title VIII, § 803, Dec. 4, 1981, 95 Stat. 1161; Pub. L. 97–253, title III, § 308(a), Sept. 8, 1982, 96 Stat. 798; Pub. L. 98–94, title XII, § 1256(b), Sept. 24, 1983, 97 Stat. 701; Pub. L. 98–353, title I, § 116(c), July 10, 1984, 98 Stat. 344; Pub. L. 98–531, § 2(b), Oct. 19, 1984, 98 Stat. 2704; Pub. L. 98–615, title III, § 304(d), Nov. 8, 1984, 98 Stat. 3219; Pub. L. 99–190, § 101(d) [title III, § 315], Dec. 19, 1985, 99 Stat. 1224, 1266; Pub. L. 100–53, § 2(c), June 18, 1987, 101 Stat. 368; Pub. L. 100–325, § 2(*l*), May 30, 1988, 102 Stat. 582; Pub. L. 101–194, title V, § 506(b)(7), Nov. 30, 1989, 103 Stat. 1758; Pub. L. 101–428, § 2(a), Oct. 15, 1990, 104 Stat. 928; Pub. L. 101–510, div. C, title XXXV, § 3506(a), Nov. 5, 1990, 104 Stat. 1846; Pub. L. 101–650, title III, § 306(c)(3), Dec. 1, 1990, 104 Stat. 5110; Pub. L. 102–572, title IX, § 902(b)(2), Oct. 29, 1992, 106 Stat. 4516; Pub. L. 103–337, div. A, title IX, § 924(d)(1)(A), Oct. 5, 1994, 108 Stat. 2832.)

HISTORICAL AND REVISION NOTES

1966 ACT

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 2256 (less last sentence in (f)).	July 31, 1956, ch. 804, § 401 ''Sec. 6 (less last sentence in (f))'', 70 Stat. 749. July 7, 1960, Pub. L. 86–604, § 1(b), 74 Stat. 358. July 12, 1960, Pub. L. 86–622, § 3(b), 74 Stat. 410.

Standard changes are made to conform with the definition applicable and the style of this title as outlined in the preface to the report.

1967 ACT

Section of title 5	*Source (U.S. Code)*	*Source (Statutes at Large)*
8336(a)	5 App.: 2256(a).	July 18, 1966, Pub. L. 89–504, § 504, 80 Stat. 301.
8336(b)	5 App.: 2256(b).	

In subsections (a) and (b), the words ''is entitled to'' are substituted for ''shall * * * be paid''. The words ''computed as provided in section 9'' are omitted as unnecessary in view of 5 U.S.C. 8339.

REFERENCES IN TEXT

Section 105(e)(2) of the Indian Self-Determination Act (25 U.S.C. 450i(a)(2); 88 Stat. 2209), referred to in subsec. (j)(2)(B), was renumbered section 104(e)(2) of that Act by Pub. L. 100–472, title II, § 203(a), Oct. 5, 1988, 102 Stat. 2290, without corresponding amendment to this section. Section 104(e)(2) of the Indian Self-Determination Act is classified to section 450i(e)(2) of Title 25, Indians.

[1] See References in Text note below.

Section 105 of that Act is classified to section 450j of Title 25.

The date of the enactment of this paragraph, referred to in subsec. (j)(3)(A)(ii), is Dec. 5, 1979, the date of the enactment of Pub. L. 96–135, which was approved Dec. 5, 1979.

AMENDMENTS

1994—Subsec. (*l*). Pub. L. 103–337 substituted ''Court of Appeals for the Armed Forces'' for ''Court of Military Appeals''.

1992—Subsec. (k). Pub. L. 102–572 substituted ''Court of Federal Claims'' for ''Claims Court'' in two places.

1990—Subsec. (i)(3), (4). Pub. L. 101–510 added par. (3) and redesignated former par. (3) as (4).

Subsec. (k). Pub. L. 101–650 amended subsec. (k) generally. Prior to amendment, subsec. (k) read as follows: ''A bankruptcy judge or United States magistrate who is separated from service, except by removal, after becoming 62 years of age and completing 5 years of civilian service, or after becoming 60 years of age and completing 10 years of service as a bankruptcy judge or United States magistrate, is entitled to an annuity.''

Subsecs. (m), (n). Pub. L. 101–428 added subsec. (m) and redesignated former subsec. (m) as (n).

1989—Subsec. (h)(1). Pub. L. 101–194, §506(b)(7)(A), substituted ''for failure to be recertified as a senior executive under section 3393a or for'' for ''for''.

Subsec. (h)(2), (3). Pub. L. 101–194, §506(b)(7)(B), (C), substituted ''for failure to be recertified as a senior executive or for'' for ''for''.

1988—Subsec. (h)(3). Pub. L. 100–325 added par. (3).

1987—Subsec. (k). Pub. L. 100–53 amended subsec. (k) generally. Prior to amendment, subsec. (k) read as follows: ''A bankruptcy judge who is separated from service, except by removal, after becoming sixty-two years of age and completing ten years of service as a bankruptcy judge is entitled to an annuity.''

1985—Subsec. (j)(3)(A). Pub. L. 99–190 substituted ''10 years'' for ''5 years''.

1984—Subsec. (d). Pub. L. 98–615 inserted provision that for purposes of par. (1), separation for failure to accept a directed reassignment to a position outside the commuting area of the employee concerned or to accompany a position outside of such area pursuant to a transfer of function shall not be considered to be a removal for cause on charges of misconduct or delinquency.

Subsec. (k). Pub. L. 98–353, §116(c), added subsec. (k). Former subsec. (k) redesignated (*l*).

Subsec. (*l*). Pub. L. 98–531 redesignated the subsec. (*l*), which was redesignated by Pub. L. 98–94, as (m).

Pub. L. 98–353, §116(c)(1), redesignated subsec. (k) as (*l*).

Subsec. (m). Pub. L. 98–531 redesignated the subsec. (*l*), which was redesignated by Pub. L. 98–94, as (m).

1983—Subsecs. (k), (*l*). Pub. L. 98–94 added subsec. (k) and redesignated former subsec. (k) as (*l*).

1982—Subsec. (d). Pub. L. 97–253, §308(a), inserted provision that the agency which is undergoing a major reorganization, a major reduction in force, or a major transfer of function must have a significant percent of its employees who will be separated or subject to an immediate reduction in the rate of basic pay and inserted provision that notwithstanding the first sentence of this subsection, an employee described in paragraph (1) of this subsection is not entitled to an annuity under this subsection if the employee has declined a reasonable offer of another position in the employee's agency for which the employee is qualified, which is not lower than 2 grades (or pay levels) below the employee's grade (or pay level), and which is within the employee's commuting area.

1981—Subsec. (h). Pub. L. 97–89 designated existing provisions as par. (1) and added par. (2).

1979—Subsec. (c). Pub. L. 96–70 §1241(a)(1), designated existing provisions as par. (1) and added par. (2).

Subsec. (i). Pub. L. 96–70, §1241(a)(2), added subsec. (i). Former subsec. (i) redesignated (j).

Subsec. (j). Pub. L. 96–135 added subsec. (j). Former subsec. (j) redesignated (k).

Pub. L. 96–70, §1241(a)(2), redesignated former subsec. (i) as (j).

Subsec. (k). Pub. L. 96–135 redesignated former subsec. (j) as (k).

1978—Subsec. (d)(2). Pub. L. 95–454, §306, substituted provisions relating to the employee's agency undergoing a major reorganization, reduction in force, or transfer of function, as determined by the Office of Personnel Management, for provisions relating to the employee's agency undergoing a major reduction in force, as determined by the Commission.

Subsecs. (h), (i). Pub. L. 95–454, §412(a), added subsec. (h) and redesignated former subsec. (h) as (i).

1975—Subsecs. (d), (g). Pub. L. 94–183 substituted ''an'' for ''a reduced'' after ''is entitled to''.

1974—Subsec. (c). Pub. L. 93–350 substituted provisions granting annuity entitlement to employees separated from the service after becoming 50 years of age and completing 20 years of service as a law enforcement officer or firefighter or any combination of such service totaling at least 20 years for provisions requiring the head of the employing agency to recommend, and the Civil Service Commission to approve, the retirement of an otherwise eligible employee requiring the agency and the Commission to consider the degree of hazard the employee was subjected to in the performance of his duties, and defining ''detention'' to include the duties of specified employees.

1973—Subsec. (d). Pub. L. 93–39 reenacted existing provisions, designated part of such provisions as item (1) and added item (2).

1972—Subsec. (c). Pub. L. 92–382 inserted reference to employees performing work directly connected with the control and extinguishment of fires or the maintenance and use of firefighting apparatus and equipment for the purpose of retirement benefits.

Subsecs. (e) to (h). Pub. L. 92–297 added subsec. (e) and redesignated former subsecs. (e) to (g) as (f) to (h), respectively.

CHANGE OF NAME

Reference to United States magistrate or to magistrate deemed to refer to United States magistrate judge pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 3508 of Title 20, Education.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–572 effective Oct. 29, 1992, see section 911 of Pub. L. 102–572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–650 applicable to judges of, and senior judges in active service with, the United States Court of Federal Claims on or after Dec. 1, 1990, see section 306(f) of Pub. L. 101–650, set out as a note under section 8331 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–194 effective Jan. 1, 1991, see section 506(d) of Pub. L. 101–194, set out as a note under section 3151 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–53 effective Oct. 1, 1987, and applicable to bankruptcy judges and United States magistrate judges in office on that date and to individuals subsequently appointed to such positions to whom this chapter otherwise applies, see section 3 of Pub. L. 100–53, as amended, set out as a note under section 8331 of this title.

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by Pub. L. 98–615 effective Nov. 8, 1984, see section 307 of Pub. L. 98–615, set out as a note under section 3135 of this title.

Amendment by Pub. L. 98–531 effective Mar. 31, 1984, see section 3(b) of Pub. L. 98–531, set out as a note under section 8331 of this title.

Amendment by Pub. L. 98–353 effective July 10, 1984, and applicable to bankruptcy judges who retire on or after such date, see section 116(e) of Pub. L. 98–353, set out as a note under section 8331 of this title. See, also, section 122(a) of Pub. L. 98–353, set out as an Effective Date note under section 151 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1982 AMENDMENT

Section 308(b) of Pub. L. 97–253 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect October 1, 1982.''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–89 effective Oct. 1, 1981, see section 806 of Pub. L. 97–89, set out as an Effective Date note under section 1601 of Title 10, Armed Forces.

EFFECTIVE DATE OF 1979 AMENDMENTS

Section 1(d) of Pub. L. 96–135 provided that: ''The amendments made by this section [amending this section and section 8339 of this title] shall take effect on the date of the enactment of this Act [Dec. 5, 1979].''

Section 1241(b)(1) of Pub. L. 96–70 provided that: ''The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Sept. 27, 1979], but no amount of annuity under chapter 83 of title 5, United States Code, accruing by reason of those amendments shall be payable for any period before October 1, 1979.''

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 306 of Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

Amendment by section 412 of Pub. L. 95–454 effective 9 months after Oct. 13, 1978, and congressional review of provisions of sections 401 through 412 of Pub. L. 95–454, see section 415 of Pub. L. 95–454, set out as an Effective Date note under section 3131 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–350 effective July 12, 1974, see section 7 of Pub. L. 93–350, set out as a note under section 3307 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92–297 effective on 90th day after May 16, 1972, see section 10 of Pub. L. 92–297, set out as an Effective Date note under section 3381 of this title.

TERMINATION OF UNITED STATES DISTRICT COURT FOR THE DISTRICT OF THE CANAL ZONE

For termination of the United States District Court for the District of the Canal Zone at end of the ''transition period'', being the 30-month period beginning Oct. 1, 1979, and ending midnight Mar. 31, 1982, see Paragraph 5 of Article XI of the Panama Canal Treaty of 1977 and sections 3831 and 3841 to 3843 of Title 22, Foreign Relations and Intercourse.

INDIAN PREFERENCE LAWS APPLICABLE TO BUREAU OF INDIAN AFFAIRS AND INDIAN HEALTH SERVICE POSITIONS

Nonapplicability of annuity provisions of subsec. (j) of this section to individuals accepting waiver of Indian preference laws with respect to personnel actions, see section 472a(c)(2) of Title 25, Indians.

INDIVIDUALS ENTITLED TO ANNUITY PAYMENTS FOR PERIOD PRIOR TO OCTOBER 1, 1979

Section 1241(b)(2) of Pub. L. 96–70 provided that: ''Effective October 1, 1979, any individual who, but for paragraph (1) of this subsection [set out as an Effective Date of 1979 Amendment note above], would have been entitled to one or more annuity payments pursuant to the amendments made by this section [amending this section] for periods before October 1, 1979, shall be entitled, to such extent or in such amounts as are provided in advance in appropriation Acts, to a lump sum payment equal to the total amount of all such annuity payments.''

CROSS REFERENCES

Computation of annuity of employees retiring under subsec. (c) of this section, see section 8339 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3381, 3382, 3396, 8335, 8339, 8348 of this title; title 22 sections 3671, 3691, 4045, 4046, 4051, 4052; title 24 section 225d; title 25 section 472a; title 45 section 1206; title 50 section 2053.

§ 8337. Disability retirement

(a) An employee who completes 5 years of civilian service and has become disabled shall be retired on the employee's own application or on application by the employee's agency. Any employee shall be considered to be disabled only if the employee is found by the Office of Personnel Management to be unable, because of disease or injury, to render useful and efficient service in the employee's position and is not qualified for reassignment, under procedures prescribed by the Office, to a vacant position which is in the agency at the same grade or level and in which the employee would be able to render useful and efficient service. For the purpose of the preceding sentence, an employee of the United States Postal Service shall be considered not qualified for a reassignment described in that sentence if the reassignment is to a position in a different craft or is inconsistent with the terms of a collective bargaining agreement covering the employee. A judge of the United States Court of Appeals for the Armed Forces who completes 5 years of civilian service and who is found by the Office to be disabled for useful and efficient service as a judge of such court or who is removed for mental or physical disability under section 942(c) of title 10 shall be retired on the judge's own application or upon such removal. A Member who completes 5 years of Member service and is found by the Office to be disabled for useful and efficient service as a Member because of disease or injury shall be retired on the Member's own application. An annuity authorized by this section is computed under section 8339(g) of this title, unless the employee or Member is eligible for a higher annuity computed under section 8339(a)–(e), (n), or (q).

(b) A claim may be allowed under this section only if the application is filed with the Office before the employee or Member is separated from the service or within 1 year thereafter. This time limitation may be waived by the Office for an employee or Member who at the date of separation from service or within 1 year thereafter is mentally incompetent, if the application is filed with the Office within 1 year from the date of restoration of the employee or Mem-

ber to competency or the appointment of a fiduciary, whichever is earlier.

(c) An annuitant receiving disability retirement annuity from the Fund shall be examined under the direction of the Office—

(1) at the end of 1 year from the date of the disability retirement; and

(2) annually thereafter until he becomes 60 years of age;

unless his disability is permanent in character. If the annuitant fails to submit to examination as required by this section, payment of the annuity shall be suspended until continuance of the disability is satisfactorily established.

(d) If an annuitant receiving disability retirement annuity from the Fund, before becoming 60 years of age, recovers from his disability, payment of the annuity terminates on reemployment by the Government or 1 year after the date of the medical examination showing the recovery, whichever is earlier. If an annuitant receiving disability retirement annuity from the Fund, before becoming 60 years of age, is restored to an earning capacity fairly comparable to the current rate of pay of the position occupied at the time of retirement, payment of the annuity terminates on reemployment by the Government or 180 days after the end of the calendar year in which earning capacity is so restored, whichever is earlier. Earning capacity is deemed restored if in any calendar year the income of the annuitant from wages or self-employment or both equals at least 80 percent of the current rate of pay of the position occupied immediately before retirement.

(e) If an annuitant whose annuity is terminated under subsection (d) of this section is not reemployed in a position in which he is subject to this subchapter, he is deemed, except for service credit, to have been involuntarily separated from the service for the purpose of this subchapter as of the date of termination of the disability annuity, and after that termination is entitled to annuity under the applicable provisions of this subchapter. If an annuitant whose annuity is heretofore or hereafter terminated because of an earning capacity provision of this subchapter or an earlier statute—

(1) is not reemployed in a position within the purview of this subchapter; and

(2) has not recovered from the disability for which he was retired;

his annuity shall be restored at the same rate effective the first of the year following any calendar year in which his income from wages or self-employment or both is less than 80 percent of the current rate of pay of the position occupied immediately before retirement. If an annuitant whose annuity is heretofore or hereafter terminated because of a medical finding that he has recovered from disability is not reemployed in a position in which he is subject to this subchapter, his annuity shall be restored at the same rate effective from the date of medical examination showing a recurrence of the disability. The second and third sentences of this subsection do not apply to an individual who has become 62 years of age and is receiving or is eligible to receive annuity under the first sentence of this subsection.

(f)(1) An individual is not entitled to receive—

(A) an annuity under this subchapter, and

(B) compensation for injury to, or disability of, such individual under subchapter I of chapter 81, other than compensation payable under section 8107,

covering the same period of time.

(2) An individual is not entitled to receive an annuity under this subchapter and a concurrent benefit under subchapter I of chapter 81 on account of the death of the same person.

(3) Paragraphs (1) and (2) do not bar the right of a claimant to the greater benefit conferred by either this subchapter or subchapter I of chapter 81.

(g) If an individual is entitled to an annuity under this subchapter, and the individual receives a lump-sum payment for compensation under section 8135 based on the disability or death of the same person, so much of the compensation as has been paid for a period extended beyond the date payment of the annuity commences, as determined by the Department of Labor, shall be refunded to that Department for credit to the Employees' Compensation Fund. Before the individual may receive the annuity, the individual shall—

(1) refund to the Department of Labor the amount representing the commuted compensation payments for the extended period; or

(2) authorize the deduction of the amount from the annuity.

Deductions from the annuity may be made from accrued or accruing payments. The amounts deducted and withheld from the annuity shall be transmitted to the Department of Labor for reimbursement to the Employees' Compensation Fund. When the Department of Labor finds that the financial circumstances of an individual entitled to an annuity under this subchapter warrant deferred refunding, deductions from the annuity may be prorated against and paid from accruing payments in such manner as the Department determines appropriate.

(h)(1) As used in this subsection, the term ''technician'' means an individual employed under section 709(a) of title 32 who, as a condition of the employment, is required under section 709(b) of such title to be a member of the National Guard and to hold a specified military grade.

(2)(A) Except as provided in subparagraph (B) of this paragraph, an individual shall be retired under this section if the individual—

(i) is separated from employment as a technician under section 709(e)(1) of title 32 by reason of a disability that disqualifies the individual from membership in the National Guard or from holding the military grade required for such employment;

(ii) is not considered to be disabled under the second sentence of subsection (a) of this section;

(iii) is not appointed to a position in the Government (whether under paragraph (3) of this subsection or otherwise); and

(iv) has not declined an offer of an appointment to a position in the Government under paragraph (3) of this subsection.

(B) Payment of any annuity for an individual pursuant to this subsection terminates—

(i) on the date the individual is appointed to a position in the Government (whether pursuant to paragraph (3) of this subsection or otherwise);

(ii) on the date the individual declines an offer of appointment to a position in the Government under paragraph (3); or

(iii) as provided under subsection (d).

(3) Any individual applying for or receiving any annuity pursuant to this subsection shall, in accordance with regulations prescribed by the Office, be considered by any agency of the Government before any vacant position in the agency is filled if—

(A) the position is located within the commuting area of the individual's former position;

(B) the individual is qualified to serve in such position, as determined by the head of the agency; and

(C) the position is at the same grade or equivalent level as the position from which the individual was separated under section 709(e)(1) of title 32.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 572; Pub. L. 90–83, § 1(76), Sept. 11, 1967, 81 Stat. 214; Pub. L. 95–454, title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 96–499, title IV, § 403(a), Dec. 5, 1980, 94 Stat. 2605; Pub. L. 97–253, title III, § 302(a), Sept. 8, 1982, 96 Stat. 792; Pub. L. 98–94, title XII, § 1256(c), Sept. 24, 1983, 97 Stat. 701; Pub. L. 100–238, title I, § 124(a)(1)(A), Jan. 8, 1988, 101 Stat. 1755; Pub. L. 101–189, div. A, title XIII, § 1304(b)(2), Nov. 29, 1989, 103 Stat. 1577; Pub. L. 101–428, § 2(d)(1), Oct. 15, 1990, 104 Stat. 929; Pub. L. 102–378, § 2(61), Oct. 2, 1992, 106 Stat. 1354; Pub. L. 103–337, div. A, title IX, § 924(d)(1)(A), Oct. 5, 1994, 108 Stat. 2832.)

HISTORICAL AND REVISION NOTES

1966 ACT

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 2257.	July 31, 1956, ch. 804, § 401 ''Sec. 7'', 70 Stat. 750. Oct. 4, 1961, Pub. L. 87–350, § 4(a), 75 Stat. 771.

In subsection (c), the words ''receiving disability retirement annuity from the Fund'' are coextensive with and substituted for ''retired under this section or under section 6 of the Act of May 29, 1930, as amended''.

In subsection (g), the words ''Notwithstanding any provision of law to the contrary'' are omitted as unnecessary. The words ''Employees' Compensation Fund'' are substituted for ''Federal Employees' Compensation Fund'' to conform to the title of that Fund as set forth in section 8147.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 ACT

This section amends 5 U.S.C. 8337(e) for consistency within the subchapter and to reflect that it is the individual, rather than the position, that is subject to the subchapter.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–337 substituted ''Court of Appeals for the Armed Forces'' for ''Court of Military Appeals''.

1992—Subsec. (a). Pub. L. 102–378 substituted ''if'' for ''is'' after ''employee'' in second sentence.

1990—Subsec. (a). Pub. L. 101–428 substituted ''8339(a)–(e), (n), or (q)'' for ''8339(a)–(e) or (n)''.

1989—Subsec. (a). Pub. L. 101–189 substituted ''section 942(c) of title 10'' for ''section 867(a)(2) of title 10''.

1988—Subsec. (f). Pub. L. 100–238 added subsec. (f) and struck out former subsec. (f) which read as follows: ''An individual is not entitled to receive an annuity under this subchapter and compensation for injury or disability to himself under subchapter I of chapter 81 of this title covering the same period of time. This provision does not bar the right of a claimant to the greater benefit conferred by either subchapter for any part of the same period of time. Neither this provision nor any provision of subchapter I of chapter 81 of this title denies to an individual an annuity accruing to him under this subchapter on account of service performed by him, or denies any concurrent benefit to him under subchapter I of chapter 81 of this title on account of the death of another individual.''

Subsec. (g). Pub. L. 100–238 added subsec. (g) and struck out former subsec. (g) which read as follows: ''The right of an individual entitled to an annuity under this subchapter is not affected because he has received a lump-sum payment for compensation under section 8135 of this title. However, if the annuity is payable on account of the same disability for which compensation under section 8135 of this title has been paid, so much of the compensation as has been paid for a period extended beyond the date the annuity becomes effective, as determined by the Department of Labor, shall be refunded to that Department to be covered into the Employees' Compensation Fund. Before the individual may receive the annuity he shall—

''(1) refund to the Department of Labor the amount representing the commuted compensation payments for the extended period; or

''(2) authorize the deduction of that amount from the annuity payable to him under this subchapter, which amount shall be transmitted to the Department of Labor for reimbursement to the Employees' Compensation Fund.

Deductions from the annuity may be made from accrued and accruing payments. When the Department of Labor finds that the financial circumstances of the annuitant warrant deferred refunding, deductions from the annuity may be prorated against and paid from accruing payments in such manner as that Department determines.''

1983—Subsec. (a). Pub. L. 98–94 inserted provision that a judge of the United States Court of Military Appeals who completes 5 years of civilian service and who is found by the Office to be disabled for useful and efficient service as a judge of such court or who is removed for mental or physical disability under section 867(a)(2) of title 10 shall be retired on the judge's own application or upon such removal.

1982—Subsec. (d). Pub. L. 97–253, § 302(a)(1), (2), substituted ''180 days'' for ''1 year'' in provision relating to restoration of an annuitant to an earning capacity fairly comparable to the current rate of pay of the position occupied at the time of retirement, and ''any calendar year'' for ''each of 2 succeeding calendar years''.

Subsec. (h). Pub. L. 97–253, § 302(a)(3), added subsec. (h).

1980—Subsec. (a). Pub. L. 96–499 provided that an employee was to be considered disabled only if the employee were found by the Office of Personnel Management to be unable to render useful and efficient service in the employee's position and was not qualified for reassignment to a vacant position in the agency at the same grade or level and provided that an employee in the Postal Service was to be considered not qualified for such reassignment if such reassignment were to a position in a different craft or were inconsistent with the terms of the appropriate collective bargaining agreement.

1978—Subsecs. (a) to (c). Pub. L. 95–454 substituted ''Office of Personnel Management'' and ''Office'' for ''Civil Service Commission'' and ''Commission'', respectively, wherever appearing.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 124(c) of Pub. L. 100–238 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting section 8464a of this title, amending this section, renumbering section 8457 of this title as section 8456, and repealing former section 8456 of this title] shall be effective as of January 1, 1987, and shall apply with respect to benefits payable based on a death or disability occurring on or after that date.

''(2) EXCEPTION.—The amendment made by subsection (a)(1)(A) [amending this section] shall take effect on the date of the enactment of this Act [Jan. 8, 1988] and shall apply with respect to benefits payable based on a death or disability occurring on or after that date.''

EFFECTIVE DATE OF 1982 AMENDMENT

Section 302(c) of Pub. L. 97–253, as amended by Pub. L. 97–346, §3(i), Oct. 15, 1982, 96 Stat. 1649, provided that:

''(1) Except as provided in paragraphs (2) and (3), the amendments made by subsections (a) and (b) [amending this section and section 8347 of this title] shall take effective October 1, 1982.

''(2) The amendments made by paragraphs (1) and (2) of subsection (a) [amending this section] shall take effect with respect to income earned after December 31, 1982.

''(3) Subsection (h) of section 8337 of title 5, United States Code (as added by subsection (a)) shall apply to any technician (as defined in paragraph (1) of such subsection (h)) who is separated from employment as a technician on or after October 1, 1982. Such subsection (h) shall also apply to any technician separated from employment as a technician on or after December 31, 1979, and before October 1, 1982, if application therefor is made to the Office of Personnel Management within 12 months after the date of the enactment of this Act [Sept. 8, 1982]. Any annuity resulting from such application shall commence as of the day after the date such application is received by the Office.''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–499 effective on 90th day after Dec. 5, 1980, see section 403(c) of Pub. L. 96–499, set out as a note under section 8331 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

CROSS REFERENCES

Computation of annuities for Members and employees retiring under this section, see section 8339 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3304, 7511, 8339, 8343a, 8345, 8347, 8349, 8706, 8908 of this title; title 38 sections 7426, 7438; title 50 section 403s.

§ 8338. Deferred retirement

(a) An employee who is separated from the service or transferred to a position in which he does not continue subject to this subchapter after completing 5 years of civilian service is entitled to an annuity beginning at the age of 62 years.

(b) A Member who, after December 31, 1955, is separated from the service as a Member after completing 5 years of civilian service is entitled to an annuity beginning at the age of 62 years. A Member who is separated from the service after completing 10 or more years of Member service is entitled to an annuity beginning at the age of 60 years. A Member who is separated from the service after completing 20 or more years of service, including 10 or more years of Member service, is entitled to a reduced annuity beginning at the age of 50 years.

(c) A judge of the United States Court of Appeals for the Armed Forces who is separated from the service after completing 5 years of civilian service is entitled to an annuity beginning at the age of 62 years. A judge of such court who is separated from the service after completing the term of service for which he was appointed is entitled to an annuity. If an annuity is elected before the judge becomes 60 years of age, it shall be a reduced annuity.

(d) An annuity or reduced annuity authorized by this section is computed under section 8339 of this title.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 574; Pub. L. 90–83, §1(77), Sept. 11, 1967, 81 Stat. 214; Pub. L. 98–94, title XII, §1256(d), Sept. 24, 1983, 97 Stat. 702; Pub. L. 103–337, div. A, title IX, §924(d)(1)(A), Oct. 5, 1994, 108 Stat. 2832.)

HISTORICAL AND REVISION NOTES

1966 ACT

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 2258.	July 31, 1956, ch. 804, §401 ''Sec. 8'', 70 Stat. 751. July 7, 1960, Pub. L. 86–604, §1(c), 74 Stat. 358. July 12, 1960, Pub. L. 86–622, §2(a), 74 Stat. 410.

In subsection (b), the words ''after December 31, 1955'' are substituted for ''on or after January 1, 1956''. The word ''hereafter'' is omitted as unnecessary.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 ACT

This section amends 5 U.S.C. 8338(a) for consistency within the subchapter and to reflect that it is the individual, rather than the position, that is subject to the subchapter.

AMENDMENTS

1994—Subsec. (c). Pub. L. 103–337 substituted ''Court of Appeals for the Armed Forces'' for ''Court of Military Appeals''.

1983—Subsecs. (c), (d). Pub. L. 98–94 added subsec. (c), and redesignated former subsec. (c) as (d).

SAVINGS PROVISIONS DEFERRED ANNUITIES UNDER LAWS REPEALED BY PUB. L. 90–83

Pub. L. 90–83, §10(a), Sept. 11, 1967, 81 Stat. 222, provided that: ''The right to a deferred annuity on satisfaction of the conditions attached thereto is continued notwithstanding the repeal by this Act of the law conferring the right.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8339, 8341 of this title; title 22 section 4051.

§ 8339. Computation of annuity

(a) Except as otherwise provided by this section, the annuity of an employee retiring under this subchapter is—

(1) 1½ percent of his average pay multiplied by so much of his total service as does not exceed 5 years; plus

(2) 1¾ percent of his average pay multiplied by so much of his total service as exceeds 5 years but does not exceed 10 years; plus

(3) 2 percent of his average pay multiplied by so much of his total service as exceeds 10 years.

However, when it results in a larger annuity, 1 percent of his average pay plus $25 is substituted for the percentage specified by paragraph (1), (2), or (3) of this subsection, or any combination thereof.

(b) The annuity of a Congressional employee, or former Congressional employee, retiring under this subchapter is computed under subsection (a) of this section, except, if he has had—

(1) at least 5 years' service as a Congressional employee or Member or any combination thereof; and

(2) deductions withheld from his pay or has made deposit covering his last 5 years of civilian service;

his annuity is computed with respect to his service as a Congressional employee, his military service not exceeding 5 years, and any Member service, by multiplying 2½ percent of his average pay by the years of that service.

(c) The annuity of a Member, or former Member with title to Member annuity, retiring under this subchapter is computed under subsection (a) of this section, except, if he has had at least 5 years' service as a Member or Congressional employee or any combination thereof, his annuity is computed with respect to—

(1) his service as a Member and so much of his military service as is creditable for the purpose of this paragraph; and

(2) his Congressional employee service; by multiplying 2½ percent of his average pay by the years of that service.

(d)(1) The annuity of an employee retiring under section 8335(b) or 8336(c) of this title is—

(A) 2½ percent of his average pay multiplied by so much of his total service as does not exceed 20 years; plus

(B) 2 percent of his average pay multiplied by so much of his total service as exceeds 20 years.

(2) The annuity of an employee retiring under this subchapter who was employed by the Panama Canal Company or Canal Zone Government on September 30, 1979, is computed with respect to the period of continuous Panama Canal service from that date, disregarding any break in service of not more than 3 days, by adding—

(A) 2½ percent of the employee's average pay multiplied by so much of that service as does not exceed 20 years; plus

(B) 2 percent of the employee's average pay multiplied by so much of that service as exceeds 20 years.

(3) The annuity of an employee retiring under this subchapter who is employed by the Panama Canal Commission at any time during the period beginning October 1, 1990, and ending December 31, 1999, is computed, with respect to any period of service with the Panama Canal Commission, by adding—

(A) 2½ percent of the employee's average pay multiplied by so much of that service as does not exceed 20 years; plus

(B) 2 percent of the employee's average pay multiplied by so much of that service as exceeds 20 years.

(4)(A) In the case of an employee who has service as a law enforcement officer or firefighter to which paragraph (2) of this subsection applies, the annuity of that employee is increased by $8 for each full month of that service which is performed in the Republic of Panama.

(B) In the case of an employee retiring under this subchapter who—

(i) was employed as a law enforcement officer or firefighter by the Panama Canal Company or Canal Zone Government at any time during the period beginning March 31, 1979, and ending September 30, 1979; and

(ii) does not meet the age and service requirements of section 8336(c) of this title;

the annuity of that employee is increased by $12 for each full month of that service which occurred before October 1, 1979.

(C) An annuity increase under this paragraph does not apply with respect to service performed after completion of 20 years of service (or any combination of service) as a law enforcement officer or firefighter.

(5) For the purpose of this subsection—

(A) ''Panama Canal service'' means—

(i) service as an employee of the Panama Canal Commission; or

(ii) service at a permanent duty station in the Canal Zone or Republic of Panama as an employee of an Executive agency conducting operations in the Canal Zone or Republic of Panama; and

(B) ''Executive agency'' includes the Smithsonian Institution.

(6) The annuity of an employee retiring under section 8336(j) of this title is computed under subsection (a) of this section, except that with respect to service on or after December 21, 1972, the employee's annuity is—

(A) 2½ percent of the employee's average pay multiplied by so much of the employee's service on or after that date as does not exceed 20 years; plus

(B) 2 percent of the employee's average pay multiplied by so much of the employee's service on or after that date as exceeds 20 years.

(7) The annuity of an employee who is a judge of the United States Court of Appeals for the Armed Forces, or a former judge of such court, retiring under this subchapter is computed under subsection (a) of this section, except, with respect to his service as a judge of such court, his service as a Member, his congressional employee service, and his military service (not exceeding 5 years) creditable under section 8332 of this title, his annuity is computed by multiplying 2½ percent of his average pay by the years of that service.

(e) The annuity of an employee retiring under section 8336(e) of this title is computed under subsection (a) of this section. That annuity may not be less than 50 percent of the average pay of the employee unless such employee has received, pursuant to section 8342 of this title, payment of the lump-sum credit attributable to deductions under section 8334(a) of this title during any period of employment as an air traffic controller and such employee has not deposited in the Fund the amount received, with interest, pursuant to section 8334(d)(1) of this title.

(f) The annuity computed under subsections (a)–(e), (n), and (q) of this section may not exceed 80 percent of—

(1) the average pay of the employee; or

(2) the greatest of—

(A) the final basic pay of the Member;

(B) the average pay of the Member; or

(C) the final basic pay of the appointive position of a former Member who elects to have his annuity computed or recomputed under section 8344(d)(1) of this title.

(g) The annuity of an employee or Member retiring under section 8337 of this title is at least the smaller of—

(1) 40 percent of his average pay; or

(2) the sum obtained under subsections (a)–(c), (n), or (q) of this section after increasing his service of the type last performed by the period elapsing between the date of separation and the date he becomes 60 years of age.

However, if an employee or Member retiring under section 8337 of this title is receiving retired pay or retainer pay for military service (except that specified in section 8332(c)(1) or (2) of this title) or pension or compensation from the Department of Veterans Affairs in lieu of such retired or retainer pay, the annuity of that employee or Member shall be computed under subsection (a), (b), (c), (n), or (q) of this section, as appropriate, excluding credit for military service from that computation. If the amount of the annuity so computed, plus the retired or retainer pay which is received, or which would be received but for the application of the limitation in section 5532 of this title, or the pension or compensation from the Department of Veterans Affairs in lieu of such retired or retainer pay, is less than the smaller of the annuity otherwise payable under paragraph (1) or (2) of this subsection, an amount equal to the difference shall be added to the annuity payable under subsection (a), (b), (c), (n), or (q) of this section, as appropriate.

(h) The annuity computed under subsections (a), (b), (d)(5), and (f) of this section for an employee retiring under section 8336(d), (h), or (j) of this title is reduced by 1/6 of 1 percent for each full month the employee is under 55 years of age at the date of separation, except that such reduction shall not apply in the case of an employee retiring under section 8336(h) for failure to be recertified as a senior executive. The annuity computed under subsections (c) and (f) of this section for a Member retiring under the second or third sentence of section 8336(g) of this title or the third sentence of section 8338(b) of this title is reduced by 1/12 of 1 percent for each full month not in excess of 60 months, and 1/6 of 1 percent for each full month in excess of 60 months the Member is under 60 years of age at the date of separation. The annuity computed under subsections (a), (d)(6), and (f) of this section for a judge of the United States Court of Appeals for the Armed Forces retiring under the second sentence of section 8336(k) of this title or the third sentence of section 8338(c) of this title is reduced by 1/12 of 1 percent for each full month not in excess of 60 months, and 1/6 of 1 percent for each full month in excess of 60 months, the judge is under 60 years of age at the date of separation.

(i) For the purposes of subsections (a)–(h), (n), and (q) of this section, the total service of any employee or Member shall not include any period of civilian service after July 31, 1920, for which retirement deductions or deposits have not been made under section 8334(a) of this title unless—

(1) the employee or Member makes a deposit for such period as provided in section 8334(c) or (d)(1) of this title; or

(2) no deposit is required for such service, as provided under section 8334(g) of this title or under any statute.

(j)(1) The annuity computed under subsections (a)–(i), (n), and (q) of this section (or a portion of the annuity, if jointly designated for this purpose by the employee or Member and the spouse of the employee or Member under procedures prescribed by the Office of Personnel Management) for an employee or Member who is married at the time of retiring under this subchapter is reduced as provided in paragraph (4) of this subsection in order to provide a survivor annuity for the spouse under section 8341(b) of this title, unless the employee or Member and the spouse jointly waive the spouse's right to a survivor annuity in a written election filed with the Office at the time that the employee or Member retires. Each such election shall be made in accordance with such requirements as the Office shall, by regulation, prescribe, and shall be irrevocable. The Office shall provide, by regulation, that an employee or Member may waive the survivor annuity without the spouse's consent if the employee or Member establishes to the satisfaction of the Office—

(A) that the spouse's whereabouts cannot be determined, or

(B) that, due to exceptional circumstances, requiring the employee or Member to seek the spouse's consent would otherwise be inappropriate.

(2) If an employee or Member has a former spouse who is entitled to a survivor annuity as provided in section 8341(h) of this title, the annuity of the employee or Member computed under subsections (a)–(i), (n), and (q) of this section (or any designated portion of the annuity, in the event that the former spouse is entitled to less than 55 percent of the employee or Member's annuity) is reduced as provided in paragraph (4) of this subsection.

(3) An employee or Member who has a former spouse may elect, under procedures prescribed by the Office, to have the annuity computed under subsections (a)–(i), (n), and (q) of this section or a portion thereof reduced as provided in paragraph (4) of this subsection in order to provide a survivor annuity for such former spouse under section 8341(h) of this title, unless all rights to survivor benefits for such former spouse under this subchapter based on marriage to such employee or Member were waived under paragraph (1) of this subsection. An election under this paragraph shall be made at the time of retirement or, if later, within 2 years after the date on which the marriage of the former spouse to the employee or Member is dissolved, subject to a deposit in the Fund by the retired employee or Member of an amount determined

by the Office, as nearly as may be administratively feasible, to reflect the amount by which the annuity of such employee or Member would have been reduced if the election had been continuously in effect since the date the annuity commenced, plus interest. For the purposes of the preceding sentence, the annual rate of interest for each year during which the annuity would have been reduced if the election had been in effect since the date the annuity commenced shall be 6 percent. The Office shall, by regulation, provide for payment of the deposit required under this paragraph by a reduction in the annuity of the employee or Member. The reduction shall, to the extent practicable, be designed so that the present value of the future reduction is actuarially equivalent to the deposit required under this paragraph, except that the total reductions in the annuity of an employee or Member to pay deposits required by the provisions of this paragraph, paragraph (5), or subsection (k)(2) shall not exceed 25 percent of the annuity computed under subsections (a) through (i), (n), and (q), including adjustments under section 8340. The reduction, which shall be effective on the same date as the election under this paragraph, shall be permanent and unaffected by any future termination of the entitlement of the former spouse. Such reduction shall be independent of and in addition to the reduction required under the first sentence of this paragraph. An election under this paragraph—

(A) shall not be effective to the extent that it—

(i) conflicts with—

(I) any court order or decree referred to in subsection (h)(1) of section 8341 of this title, which was issued before the date of such election; or

(II) any agreement referred to in such subsection which was entered into before such date; or

(ii) would cause the total of survivor annuities payable under subsections (b), (d), (f), and (h) of section 8341 of this title based on the service of the employee or Member to exceed 55 percent of the annuity to which the employee or Member is entitled under subsections (a)–(i), (n), and (q) of this section; and

(B) shall not be effective, in the case of an employee or Member who is then married, unless it is made with the spouse's written consent.

The Office shall provide by regulation that subparagraph (B) of this paragraph may be waived for either of the reasons set forth in the last sentence of paragraph (1) of this subsection. In the case of a retired employee or Member whose annuity is being reduced in order to provide a survivor annuity for a former spouse, an election to provide or increase a survivor annuity for any other former spouse (and to continue an appropriate reduction) may be made within the same period that, and subject to the same conditions under which, an election could be made under paragraph (5)(B) of this subsection for a current spouse (subject to the provisions of this paragraph relating to consent of a current spouse, if the retired employee or Member is then married). The opportunity to make an election under the preceding sentence is in addition to any opportunity otherwise afforded under this paragraph.

(4) In order to provide a survivor annuity or combination of survivor annuities under subsections (b), (d), (f), and (h) of section 8341 of this title, the annuity of an employee or Member (or any designated portion or portions thereof) is reduced by 2½ percent of the first $3,600 thereof plus 10 percent of so much thereof as exceeds $3,600.

(5)(A) Any reduction in an annuity for the purpose of providing a survivor annuity for the current spouse of a retired employee or Member shall be terminated for each full month—

(i) after the death of the spouse, or

(ii) after the dissolution of the spouse's marriage to the employee or Member, except that an appropriate reduction shall be made thereafter if the spouse is entitled, as a former spouse, to a survivor annuity under section 8341(h) of this title.

(B) Any reduction in an annuity for the purpose of providing a survivor annuity for a former spouse of a retired employee or Member shall be terminated for each full month after the former spouse remarries before reaching age 55 or dies. This reduction shall be replaced by an appropriate reduction or reductions under paragraph (4) of this subsection if the retired employee or Member has (i) another former spouse who is entitled to a survivor annuity under section 8341(h) of this title, (ii) a current spouse to whom the employee or Member was married at the time of retirement and with respect to whom a survivor annuity was not jointly waived under paragraph (1) of this subsection, or (iii) a current spouse whom the employee or Member married after retirement and with respect to whom an election has been made under subparagraph (C) of this paragraph or subsection (k)(2) of this section.

(C)(i) Upon remarriage, a retired employee or Member who was married at the time of retirement (including an employee or Member whose annuity was not reduced to provide a survivor annuity for the employee or Member's spouse or former spouse as of the time of retirement) may irrevocably elect during such marriage, in a signed writing received by the Office within 2 years after such remarriage or, if later, within 2 years after the death or remarriage of any former spouse of such employee or Member who was entitled to a survivor annuity under section 8341(h) of this title (or of the last such surviving former spouse, if there was more than one), a reduction in the employee or Member's annuity under paragraph (4) of this subsection for the purpose of providing an annuity for such employee or Member's spouse in the event such spouse survives the employee or Member.

(ii) Such election and reduction shall be effective the first day of the second month after the election is received by the Office, but not less than 9 months after the date of the remarriage, and the retired employee or Member shall deposit in the Fund an amount determined by the Office of Personnel Management, as nearly as may be administratively feasible, to reflect the amount by which the annuity of such retired

employee or Member would have been reduced if the election had been in effect since the date of retirement or, if later, the date the previous reduction in such retired employee or Member's annuity was terminated under subparagraph (A) or (B) of this paragraph, plus interest. For the purposes of the preceding sentence, the annual rate of interest for each year during which an annuity would have been reduced if the election had been in effect on and after the applicable date referred to in such sentence shall be 6 percent.

(iii) The Office shall, by regulation, provide for payment of the deposit required under clause (ii) by a reduction in the annuity of the employee or Member. The reduction shall, to the extent practicable, be designed so that the present value of the future reduction is actuarially equivalent to the deposit required under clause (ii), except that total reductions in the annuity of an employee or Member to pay deposits required by the provisions of this paragraph or paragraph (3) shall not exceed 25 percent of the annuity computed under subsections (a) through (i), (n), and (q), including adjustments under section 8340. The reduction required by this clause, which shall be effective on the same date as the election under clause (i), shall be permanent and unaffected by any future termination of the marriage. Such reduction shall be independent of and in addition to the reduction required under clause (i).

(iv) Notwithstanding any other provision of this subparagraph, an election under this subparagraph may not be made for the purpose of providing an annuity in the case of a spouse by remarriage if such spouse was married to the employee or Member at the time of such employee or Member's retirement, and all rights to survivor benefits for such spouse under this subchapter based on marriage to such employee or Member were then waived under paragraph (1) of this subsection or a similar prior provision of law.

(v) An election to provide a survivor annuity to a person under this subparagraph—

(I) shall prospectively void any election made by the employee or Member under subsection (k)(1) of this section with respect to such person; or

(II) shall, if an election was made by the employee or Member under such subsection (k)(1) with respect to a different person, prospectively void such election if appropriate written application is made by such employee or Member at the time of making the election under this subparagraph.

(vi) The deposit provisions of clauses (ii) and (iii) of this subparagraph shall not apply if—

(I) the employee or Member makes an election under this subparagraph after having made an election under subsection (k)(1) of this section; and

(II) the election under such subsection (k)(1) becomes void under clause (v) of this subparagraph.

(k)(1) At the time of retiring under section 8336 or 8338 of this title, an employee or Member who is found to be in good health by the Office may elect a reduced annuity instead of an annuity computed under subsections (a)–(i), (n), and (q) of this section and name in writing an individual having an insurable interest in the employee or Member to receive an annuity under section 8341(c) of this title after the death of the retired employee or Member. The annuity of the employee or Member making the election is reduced by 10 percent, and by 5 percent for each full 5 years the individual named is younger than the retiring employee or Member. However, the total reduction may not exceed 40 percent. An annuity which is reduced under this paragraph or any similar prior provision of law shall, effective the first day of the month following the death of the individual named under this paragraph, be recomputed and paid as if the annuity had not been so reduced. In the case of a married employee or Member, an election under this paragraph on behalf of the spouse may be made only if any right of such spouse to a survivor annuity based on the service of such employee or Member is waived in accordance with subsection (j)(1) of this section.

(2)(A) An employee or Member, who is unmarried at the time of retiring under a provision of law which permits election of a reduced annuity with a survivor annuity payable to such employee or Member's spouse and who later marries, may irrevocably elect, in a signed writing received in the Office within 2 years after such employee or Member marries or, if later, within 2 years after the death or remarriage of any former spouse of such employee or Member who was entitled to a survivor annuity under section 8341(h) of this title (or of the last such surviving former spouse, if there was more than one), a reduction in the retired employee or Member's current annuity as provided in subsection (j) of this section.

(B)(i) The election and reduction shall take effect on the first day of the first month beginning after the expiration of the 9-month period beginning on the date of marriage. Any such election to provide a survivor annuity for a person—

(I) shall prospectively void any election made by the employee or Member under paragraph (1) of this subsection with respect to such person; or

(II) shall, if an election was made by the employee or Member under such paragraph with respect to a different person, prospectively void such election if appropriate written application is made by such employee or Member at the time of making the election under this paragraph.

(ii) The retired employee or Member shall deposit in the Fund an amount determined by the Office of Personnel Management, as nearly as may be administratively feasible, to reflect the amount by which the retired employee or Member's annuity would have been reduced under subsection (j)(4) of this section since the commencing date of the annuity, if the employee or Member had been married at the time of retirement and had elected to provide a survivor annuity at that time, plus interest. For the purposes of the preceding sentence, the annual rate of interest for each year during which the annuity would have been reduced if the election had been in effect since the date of the annuity commenced shall be 6 percent.

(C) The Office shall, by regulation, provide for payment of the deposit required under subparagraph (B)(ii) by a reduction in the annuity of the employee or Member. The reduction shall, to the extent practicable, be designed so that the present value of the future reduction is actuarially equivalent to the deposit required under subparagraph (B)(ii), except that total reductions in the annuity of an employee or Member to pay deposits required by this subsection or subsection (j)(3) shall not exceed 25 percent of the annuity computed under subsections (a) through (i), (n), and (q), including adjustments under section 8340. The reduction required by this subparagraph, which shall be effective on the same date as the election under subparagraph (A), shall be permanent and unaffected by any future termination of the marriage. Such reduction shall be independent of and in addition to the reduction required under subparagraph (A).

(D) Subparagraphs (B)(ii) and (C) of this paragraph shall not apply if—

(i) the employee or Member makes an election under this paragraph after having made an election under paragraph (1) of this subsection; and

(ii) the election under such paragraph (1) becomes void under subparagraph (B)(i) of this paragraph.

(*l*) The annuity computed under subsections (a)–(k), (n), and (q) of this section for an employee who is a citizen of the United States is increased by $36 for each year of service in the employ of—

(1) the Alaska Engineering Commission, or The Alaska Railroad, in Alaska between March 12, 1914, and July 1, 1923; or

(2) the Isthmian Canal Commission, or the Panama Railroad Company, on the Isthmus of Panama between May 4, 1904, and April 1, 1914.

(m) In computing any annuity under subsections (a)–(e), (n), and (q) of this section, the total service of an employee who retires on an immediate annuity or dies leaving a survivor or survivors entitled to annuity includes, without regard to the limitations imposed by subsection (f) of this section, the days of unused sick leave to his credit under a formal leave system, except that these days will not be counted in determining average pay or annuity eligible under this subchapter. For the purpose of this subsection, in the case of any such employee who is excepted from subchapter I of chapter 63 of this title under section 6301(2)(x)–(xiii) of this title, the days of unused sick leave to his credit include any unused sick leave standing to his credit when he was excepted from such subchapter.

(n) The annuity of an employee who is a Court of Federal Claims judge, bankruptcy judge, or United States magistrate is computed, with respect to service as a Court of Federal Claims judge, as a commissioner of the Court of Claims, as a referee in bankruptcy, as a bankruptcy judge, as a United States magistrate, and as a United States commissioner, and with respect to the military service of any such individual (not exceeding 5 years) creditable under section 8332 of this title, by multiplying 2½ percent of the individual's average pay by the years of that service.

(*o*)(1)(A) An employee or Member—

(i) who, at the time of retirement, is married, and

(ii) who notifies the Office at such time (in accordance with subsection (j)) that a survivor annuity under section 8341(b) of this title is not desired,

may, during the 18-month period beginning on the date of the retirement of such employee or Member, elect to have a reduction under subsection (j) made in the annuity of the employee or Member (or in such portion thereof as the employee or Member may designate) in order to provide a survivor annuity for the spouse of such employee or Member.

(B) An employee or Member—

(i) who, at the time of retirement, is married, and

(ii) who at such time designates (in accordance with subsection (j)) that a limited portion of the annuity of such employee or Member is to be used as the base for a survivor annuity under section 8341(b) of this title,

may, during the 18-month period beginning on the date of the retirement of such employee or Member, elect to have a greater portion of the annuity of such employee or Member so used.

(2)(A) An election under subparagraph (A) or (B) of paragraph (1) of this subsection shall not be considered effective unless the amount specified in subparagraph (B) of this paragraph is deposited into the Fund before the expiration of the applicable 18-month period under paragraph (1).

(B) The amount to be deposited with respect to an election under this subsection is an amount equal to the sum of—

(i) the additional cost to the System which is associated with providing a survivor annuity under subsection (b)(2) of this section and results from such election taking into account (I) the difference (for the period between the date on which the annuity of the participant or former participant commences and the date of the election) between the amount paid to such participant or former participant under this subchapter and the amount which would have been paid if such election had been made at the time the participant or former participant applied for the annuity, and (II) the costs associated with providing for the later election; and

(ii) interest on the additional cost determined under clause (i) of this subparagraph computed using the interest rate specified or determined under section 8334(e) of this title for the calendar year in which the amount to be deposited is determined.

(3) An election by an employee or Member under this subsection voids prospectively any election previously made in the case of such employee or Member under subsection (j).

(4) An annuity which is reduced in connection with an election under this subsection shall be reduced by the same percentage reductions as were in effect at the time of the retirement of the employee or Member whose annuity is so reduced.

(5) Rights and obligations resulting from the election of a reduced annuity under this subsection shall be the same as the rights and obligations which would have resulted had the employee or Member involved elected such annuity at the time of retiring.

(6) The Office shall, on an annual basis, inform each employee or Member who is eligible to make an election under this subsection of the right to make such election and the procedures and deadlines applicable to such election.

(p)(1) In computing an annuity under this subchapter for an employee whose service includes service that was performed on a part-time basis—

(A) the average pay of the employee, to the extent that it includes pay for service performed in any position on a part-time basis, shall be determined by using the annual rate of basic pay that would be payable for full-time service in the position; and

(B) the benefit so computed shall then be multiplied by a fraction equal to the ratio which the employee's actual service, as determined by prorating an employee's total service to reflect the service that was performed on a part-time basis, bears to the total service that would be creditable for the employee if all of the service had been performed on a full-time basis.

(2) For the purpose of this subsection, employment on a part-time basis shall not be considered to include employment on a temporary or intermittent basis.

(q) The annuity of a member of the Capitol Police, or former member of the Capitol Police, retiring under this subchapter is computed in accordance with subsection (b), except that, in the case of a member who retires under section 8335(d) or 8336(m), and who meets the requirements of subsection (b)(2), the annuity of such member is—

(1) 2½ percent of the member's average pay multiplied by so much of such member's total service as does not exceed 20 years; plus

(2) 2 percent of the member's average pay multiplied by so much of such member's total service as exceeds 20 years.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 574; Pub. L. 90–83, §1(78), Sept. 11, 1967, 81 Stat. 214; Pub. L. 90–206, title II, §224(b), Dec. 16, 1967, 81 Stat. 642; Pub. L. 90–486, §5(c), Aug. 13, 1968, 82 Stat. 757; Pub. L. 91–93, title II, §203, Oct. 20, 1969, 83 Stat. 139; Pub. L. 91–658, §2, Jan. 8, 1971, 84 Stat. 1961; Pub. L. 92–297, §§6, 7(3), May 16, 1972, 86 Stat. 144; Pub. L. 93–260, §2(a), Apr. 9, 1974, 88 Stat. 76; Pub. L. 93–350, §6, July 12, 1974, 88 Stat. 356; Pub. L. 93–474, §1, Oct. 26, 1974, 88 Stat. 1438; Pub. L. 94–126, §1(b), Nov. 12, 1975, 89 Stat. 679; Pub. L. 94–397, §1(d), Sept. 3, 1976, 90 Stat. 1203; Pub. L. 95–256, §5(d), Apr. 6, 1978, 92 Stat. 191; Pub. L. 95–317, §§1(a), (c), 2, July 10, 1978, 92 Stat. 382; Pub. L. 95–454, title IV, §412(b), title IX, §906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1175, 1224; Pub. L. 95–519, §3, Oct. 25, 1978, 92 Stat. 1819; Pub. L. 95–598, title III, §338(a), Nov. 6, 1978, 92 Stat. 2681; Pub. L. 96–54, §2(a)(49), Aug. 14, 1979, 93 Stat. 384; Pub. L. 96–70, title I, §1242(a), Sept. 27, 1979, 93 Stat. 472; Pub. L. 96–135, §1(b), (c), Dec. 5, 1979, 93 Stat. 1057; Pub. L. 96–391, §1, Oct. 7, 1980, 94 Stat. 1557; Pub. L. 96–499, title IV, §404(a), Dec. 5, 1980, 94 Stat. 2606; Pub. L. 97–253, title III, §303(b), Sept. 8, 1982, 96 Stat. 794; Pub. L. 97–276, §151(f), Oct. 2, 1982, 96 Stat. 1202; Pub. L. 98–94, title XII, §1256(e), Sept. 24, 1983, 97 Stat. 702; Pub. L. 98–249, §3(a), Mar. 31, 1984, 98 Stat. 117; Pub. L. 98–271, §3(a), Apr. 30, 1984, 98 Stat. 163; Pub. L. 98–299, §3(a), May 25, 1984, 98 Stat. 214; Pub. L. 98–325, §3(a), June 20, 1984, 98 Stat. 268; Pub. L. 98–353, title I, §§112, 116(d), 121(f), July 10, 1984, 98 Stat. 343, 344, 346; Pub. L. 98–531, §2(c), Oct. 19, 1984, 98 Stat. 2704; Pub. L. 98–615, §2(3), Nov. 8, 1984, 98 Stat. 3195; Pub. L. 99–251, title II, §203(a)–(c), title III, §307(a), Feb. 27, 1986, 100 Stat. 23, 24, 28; Pub. L. 99–272, title XV, §15204(a)(1), Apr. 7, 1986, 100 Stat. 334; Pub. L. 100–53, §2(d), June 18, 1987, 101 Stat. 368; Pub. L. 101–194, title V, §506(b)(8), Nov. 30, 1989, 103 Stat. 1759; Pub. L. 101–428, §2(c)(1), (d)(2)–(6), Oct. 15, 1990, 104 Stat. 928, 929; Pub. L. 101–508, title VII, §7001(b)(2)(B), (C), Nov. 5, 1990, 104 Stat. 1388–329; Pub. L. 101–510, div. C, title XXXV, §3506(b), Nov. 5, 1990, 104 Stat. 1847; Pub. L. 101–650, title III, §306(c)(4), Dec. 1, 1990, 104 Stat. 5110; Pub. L. 102–54, §13(b)(4), June 13, 1991, 105 Stat. 274; Pub. L. 102–198, §7(b), Dec. 9, 1991, 105 Stat. 1624; Pub. L. 102–378, §2(62), Oct. 2, 1992, 106 Stat. 1354; Pub. L. 102–572, title IX, §902(b)(2), Oct. 29, 1992, 106 Stat. 4516; Pub. L. 103–66, title XI, §11004(a)(1), (2), Aug. 10, 1993, 107 Stat. 410, 411; Pub. L. 103–337, div. A, title IX, §924(d)(1)(A), Oct. 5, 1994, 108 Stat. 2832.)

HISTORICAL AND REVISION NOTES

1966 ACT

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 2259.	July 31, 1956, ch. 804, §401 ''Sec. 9'', 70 Stat. 752. July 7, 1960, Pub. L. 86–604, §1(d), (e), 74 Stat. 358. July 12, 1960, Pub. L. 86–622, §2(b), 74 Stat. 410. Oct. 4, 1961, Pub. L. 87–350, §6, 75 Stat. 772. Oct. 11, 1962, Pub. L. 87–793, §1103(a), 76 Stat. 870.

The section is reorganized to eliminate repetition.

In subsection (f)(2), the words ''service of the type last performed'' are substituted for ''total service'' in former section 2259(a), ''service as a Congressional employee'' in former section 2259(b), and ''Member service'' in former section 2259(c).

In subsection (i), the words ''by the employee or Member at the time of retirement'' are added on authority of former section 2260(a)(1), which is carried into section 8341(b).

In subsection (j), the words ''an annuity computed as provided in section 2259 of this title'' and ''an annuity so computed'' are omitted as unnecessary as former sections 2256 and 2258, which are carried into this title as sections 8336 and 8338, respectively, expressly require that the annuities authorized thereby must be computed under former section 2259, which is carried into this section.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 ACT

Section of title 5	*Source (U.S. Code)*	*Source (Statutes at Large)*
8339(g)	5 App.: 2259(d).	July 18, 1966, Pub. L. 89–504, §505, 80 Stat. 301.

AMENDMENTS

1994—Subsec. (d)(7). Pub. L. 103–337, which directed amendment of subsec. (d)(6) by substituting ''Court of Appeals for the Armed Forces'' for ''Court of Military Appeals'', was executed to subsec. (d)(7) to reflect the probable intent of Congress and the redesignation of subsec. (d)(6) as (d)(7) by Pub. L. 101–510. See 1990 Amendment note below.

Subsec. (h). Pub. L. 103–337 substituted ''Court of Appeals for the Armed Forces'' for ''Court of Military Appeals''.

1993—Subsec. (j)(3). Pub. L. 103–66, §11004(a)(1)(A)(i), struck out '', within such 2-year period,'' after ''retired employee or Member'' in second sentence.

Pub. L. 103–66, §11004(a)(1)(A)(ii), substituted fourth through seventh sentences for former fourth sentence which read as follows: ''If the employee or Member does not make such a deposit, the Office shall collect the amount of the deposit by offset against the employee or Member's annuity, up to a maximum of 25 percent of the net annuity otherwise payable to the employee or Member, and the employee or Member is deemed to consent to such offset.''

Subsec. (j)(5)(C)(ii). Pub. L. 103–66, §11004(a)(1)(B)(i), struck out '', within 2 years after the date of the remarriage or, if later, the death or remarriage of the former spouse (or of the last such surviving former spouse),'' after ''employee or Member shall''.

Subsec. (j)(5)(C)(iii). Pub. L. 103–66, §11004(a)(1)(B)(ii), amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: ''If the employee or Member does not make such deposit, the Office shall collect such amount by offset against the employee or Member's annuity, up to a maximum of 25 percent of the net annuity otherwise payable to the employee or Member, and the employee or Member is deemed to consent to such offset.''

Subsec. (k)(2)(B)(ii). Pub. L. 103–66, §11004(a)(2)(A), which directed amendment of cl. (ii) by substituting in first sentence ''The retired employee'' for ''Within 2 years after the date of the marriage, the retired employee'', was executed by making the substitution for ''Within 2 years after the date of marriage, the retired employee'' to reflect the probable intent of Congress.

Subsec. (k)(2)(C). Pub. L. 103–66, §11004(a)(2)(B), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''If the employee or Member does not make such deposit, the Office shall collect such amount by offset against the employee or Member's annuity, up to a maximum of 25 percent of the net annuity otherwise payable to the employee or Member, and the employee or Member is deemed to consent to such offset.''

1992—Subsec. (n). Pub. L. 102–572 substituted ''Court of Federal Claims'' for ''Claims Court'' in two places.

Subsecs. (*o*), (p). Pub. L. 102–378, §2(62), redesignated subsec. (*o*), relating to employee whose service includes service performed on part-time basis, as (p).

1991—Subsec. (g). Pub. L. 102–54 substituted ''pension or compensation from the Department of Veterans Affairs'' for ''Veterans' Administration pension or compensation'' in second and third sentences.

Subsec. (n). Pub. L. 102–198 inserted a comma after ''United States commissioner''.

1990—Subsec. (d)(3) to (7). Pub. L. 101–510 added par. (3) and redesignated former pars. (3) to (6) as (4) to (7), respectively.

Subsec. (e). Pub. L. 101–508, §7001(b)(2)(C), substituted ''8334(d)(1)'' for ''8334(d)''.

Subsec. (f). Pub. L. 101–428, §2(d)(2), substituted ''(a)–(e), (n), and (q)'' for ''(a)–(e) and (n)''.

Subsec. (g). Pub. L. 101–428, §2(d)(3)(B), substituted ''(c), (n), or (q)'' for ''(c), or (n)'' wherever appearing in closing provisions.

Subsec. (g)(2). Pub. L. 101–428, §2(d)(3)(A), substituted ''(a)–(c), (n), or (q)'' for ''(a)–(c) or (n)''.

Subsec. (i). Pub. L. 101–428, §2(d)(4), substituted ''(a)–(h), (n), and (q)'' for ''(a)–(h) and (n)''.

Subsec. (i)(1). Pub. L. 101–508, §7001(b)(2)(B), substituted ''(d)(1)'' for ''(d)''.

Subsec. (j). Pub. L. 101–428, §2(d)(5), substituted ''(a)–(i), (n), and (q)'' for ''(a)–(i) and (n)'' in pars. (1) and (2), and in introductory provisions and subpar. (A)(ii) of par. (3).

Subsec. (k)(1). Pub. L. 101–428, §2(d)(5), substituted ''(a)–(i), (n), and (q)'' for ''(a)–(i) and (n)''.

Subsec. (*l*). Pub. L. 101–428, §2(d)(6), substituted ''(a)–(k), (n), and (q)'' for ''(a)–(k) and (n)''.

Subsec. (m). Pub. L. 101–428, §2(d)(2), substituted ''(a)–(e), (n), and (q)'' for ''(a)–(e) and (n)''.

Subsec. (n). Pub. L. 101–650 amended subsec. (n) generally. Prior to amendment, subsec. (n) read as follows: ''The annuity of an employee who is a bankruptcy judge or United States magistrate is computed, with respect to service as a referee in bankruptcy, as a bankruptcy judge, as a United States magistrate, and as a United States commissioner and with respect to the military service of any such individual (not exceeding 5 years) creditable under section 8332 of this title, by multiplying 2½ percent of the individual's average pay by the years of that service.''

Subsec. (q). Pub. L. 101–428, §2(c)(1), added subsec. (q).

1989—Subsec. (h). Pub. L. 101–194 inserted '', except that such reduction shall not apply in the case of an employee retiring under section 8336(h) for failure to be recertified as a senior executive'' before period at end of first sentence.

1987—Subsec. (n). Pub. L. 100–53 amended subsec. (n) generally. Prior to amendment, subsec. (n) read as follows: ''The annuity of an employee who is a bankruptcy judge is computed with respect to service after as a referee in bankruptcy and as a bankruptcy judge and his military service (not exceeding five years) creditable under section 8332 of this title by multiplying 2½ percent of his average annual pay by the years of that service.''

1986—Subsec. (j)(3). Pub. L. 99–251, §203(a), inserted '', unless all rights to survivor benefits for such former spouse under this subchapter based on marriage to such employee or Member were waived under paragraph (1) of this subsection'' at end of first sentence.

Subsec. (j)(5)(B). Pub. L. 99–251, §203(b), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows:

''(B)(i) Any reduction in an annuity for the purpose of providing a survivor annuity for a former spouse of a retired employee or Member shall be terminated for each full month after the former spouse remarries before reaching age 55 or dies, unless the employee or Member elects, within 2 years after the former spouse's death or remarriage, to continue the reduction in order to provide a survivor annuity or increase the survivor annuity for the current spouse of the retired employee or Member.

''(ii) Notwithstanding clause (i) of this subparagraph—

''(I) a reduction in an annuity shall not be terminated under such clause, and

''(II) an election made under such clause with respect to a current spouse after a remarriage before age 55 or the death of a former spouse shall not be effective,

if, and to the extent that, continuation of the reduction is necessary in order to provide for any survivor annuity, or any increase in a survivor annuity, which becomes payable under section 8341(h)(2) of this title to any other former spouse as a result of such remarriage or death.''

Subsec. (j)(5)(C)(v), (vi). Pub. L. 99–251, §203(c)(1), added cls. (v) and (vi).

Subsec. (k)(1). Pub. L. 99–251, §203(c)(2), inserted at end ''In the case of a married employee or Member, an election under this paragraph on behalf of the spouse may be made only if any right of such spouse to a survivor annuity based on the service of such employee or Member is waived in accordance with subsection (j)(1) of this section.''

Subsec. (k)(2)(B)(i). Pub. L. 99–251, §203(c)(3)(A), substituted provisions directing that the election and reduction shall take effect on the first day of the first

month beginning after the expiration of the 9-month period beginning on the date of marriage and that any such election to provide a survivor annuity for a person shall prospectively void any election made by the employee or Member under paragraph (1) of this subsection with respect to such person, or shall, if an election was made by the employee or Member under such paragraph with respect to a different person, prospectively void such election if appropriate written application is made by such employee or Member at the time of making the election under this paragraph, for provisions which directed that the election and reduction had to take effect the first day of the first month beginning 9 months after the date of marriage and would prospectively void any election previously made under paragraph (1) of this subsection.

Subsec. (k)(2)(B)(ii). Pub. L. 99–251, §203(c)(3)(B), struck out ''(other than an employee or Member who made a previous election under paragraph (1) of this subsection)'' after ''retired employee or Member''.

Subsec. (k)(2)(D). Pub. L. 99–251, §203(c)(3)(C), added subpar. (D).

Subsec. (*o*). Pub. L. 99–272 added subsec. (*o*), set out second, relating to computation of annuities for part-time service.

Pub. L. 99–251, §307(a), added subsec. (*o*), set out first, relating to 18-month period for election of survivor annuities.

1984—Subsec. (f). Pub. L. 98–353, §112, substituted ''and (n)'' for ''and (*o*)''.

Subsec. (g). Pub. L. 98–353, §116(d)(1), (2), inserted ''or (n)'' after ''(c)'' in par. (2), and substituted ''(c), or (n)'' for ''or (c)'' in two places in provisions following par. (2).

Subsec. (j)(1). Pub. L. 98–615, §2(3)(A), substituted provisions that at the time of retirement an employee's pension will be reduced to provide survivor benefits to the spouse unless the employee or Member and the spouse jointly waive the spouse's right to the survivor annuity in a written statement filed with the Office of Personnel Management which shall be made in accordance with such requirements as prescribed by the Office by regulation and which shall be irrevocable and that the Office, by regulation, must provide that an employee may waive the survivor annuity without the spouse's consent only when the spouse's whereabouts are unknown to the employee or, due to exceptional circumstances it would be inappropriate to require the employee to seek the spouse's consent for provisions that at the time of retirement an employee's pension would be reduced by 2½ percent of so much thereof as did not exceed $3,600 and by 10 percent of so much thereof as exceeded that amount, unless the employee or member notified the Office of Personnel Management in writing at the time of retirement that he did not desire any surviving spouse to receive an annuity under section 8341(b) of this title, and struck out provisions for the restoration to the employee or Member of his full pension, as if such reduction had not taken place, for each full month in which such employee or Member was not married, and providing the employee or Member a right of irrevocable election of reduction for the benefit of a subsequent spouse, in the event of remarriage, in an amount equal to the prior reduction, to take effect 1 year after remarriage.

Pub. L. 98–353, §112, substituted ''and (n)'' for ''and (*o*)''.

Subsec. (j)(2). Pub. L. 98–615, §2(3)(A), substituted provision that if an employee or Member has a former spouse who is entitled to a survivor annuity as provided in section 8341(h) of this title, the annuity of the employee or Member computed under subsecs. (a)–(i) and (n) (or any designated portion of the annuity, in the event that the former spouse is entitled to less than 55 percent of the employee or Member's annuity) is reduced as provided in par. (4) for provision that any written notification (or designation) by any employee or Member under the first sentence of par. (1) would not be considered valid unless the employee or Member established to the satisfaction of the Office that the spouse had been notified of the loss of or reduction in survivor benefits or that the employee or Member had complied with such notification requirements as the Office would, by regulation, prescribe.

Subsec. (j)(3) to (5). Pub. L. 98–615, §2(3)(A), added pars. (3) to (5).

Subsec. (k)(1). Pub. L. 98–615, §2(3)(B), substituted ''an employee or Member'' for ''an unmarried employee or Member''.

Pub. L. 98–353, §112, substituted ''and (n)'' for ''and (*o*)''.

Subsec. (k)(2). Pub. L. 98–615, §2(3)(C), designated existing provisions as subpar. (A), substituted ''such employee or Member's spouse'' for ''his spouse'' and ''within 2 years after such employee or Member marries or, if later, within 2 years after the death or remarriage of any former spouse of such employee or Member who was entitled to a survivor annuity under section 8341(h) of this title (or of the last such surviving former spouse, if there was more than one), a reduction in the retired employee or Member's current annuity as provided in subsection (j) of this section'' for ''within 1 year after he marries, a reduction in his current annuity as provided in subsection (j) of this section. The reduced annuity shall be effective the first day of the first month beginning 1 year after the date of marriage. The election voids prospectively any election previously made under paragraph (1) of this subsection'', and added subpars. (B) and (C).

Subsec. (*l*). Pub. L. 98–353, §112, substituted ''and (n)'' for ''and (*o*)'' in provisions preceding par. (1).

Subsec. (m). Pub. L. 98–353, §112, substituted ''and (n)'' for ''and (*o*)''.

Subsec. (n). Pub. L. 98–531 substituted ''as a referee in bankruptcy and'' for ''March 31, 1979, and before the date of the enactment of the Bankruptcy Amendments and Federal Judgeship Act of 1984''.

Pub. L. 98–353, §121(f), substituted ''the date of enactment of the Bankruptcy Amendments and Federal Judgeship Act of 1984'' for ''June 28, 1984''.

Pub. L. 98–353, §116(d)(3), substituted ''as a referee in bankruptcy and'' for ''March 31, 1979, and before June 27, 1984,''.

Pub. L. 98–325 substituted ''June 28, 1984'' for ''June 21, 1984''.

Pub. L. 98–299 substituted ''June 21, 1984'' for ''May 26, 1984''.

Pub. L. 98–271 substituted ''May 26, 1984'' for ''April 1, 1984''.

Pub. L. 98–249 which purported to amend subsec. (*o*) by substituting ''May 1, 1984'' for ''April 1, 1984'' was probably intended as an amendment of subsec. (n). See amendment of subsec. (n) by Pub. L. 98–271.

1983—Subsec. (d)(6). Pub. L. 98–94, §1256(e)(1), added par. (6).

Subsec. (h). Pub. L. 98–94, §1256(e)(2), inserted provision that the annuity computed under subsections (a), (d)(6), and (f) of this section for a judge of the United States Court of Military Appeals retiring under the second sentence of section 8336(k) of this title or the third sentence of section 8338(c) of this title is reducted by 1/12 of 1 percent for each full month not in excess of 60 months, and 1/6 of 1 percent for each full month in excess of 60 months, the judge is under 60 years of age at the date of separation.

1982—Subsec. (e). Pub. L. 97–276 inserted ''unless such employee has received, pursuant to section 8342 of this title, payment of the lump-sum credit attributable to deductions under section 8334(a) of this title during any period of employment as an air traffic controller and such employee has not deposited in the Fund the amount received, with interest, pursuant to section 8334(d) of this title''.

Subsec. (i). Pub. L. 97–253 redesignated former unnumbered subsection into provisions preceding par. (1) and par. (1) and (2) and completely revised such provisions as so redesignated. Prior to amendment subsec. (i) read as follows: ''The annuity computed under subsections (a)–(h) and (*o*) of this section is reduced by 10 percent of a deposit described by section 8334(c) of this

title remaining unpaid, unless the employee or Member elects to eliminate the service involved for the purpose of annuity computation.''

1980—Subsec. (g). Pub. L. 96–499 provided for a minimum disability retirement annuity where an employee or Member retiring under section 8337 of this title was receiving retired or retainer pay for military service or a Veterans' Administration pension or compensation.

Subsec. (j). Pub. L. 96–391 redesignated existing provisions as par. (1) and added par. (2).

1979—Subsec. (d). Pub. L. 96–70 designated existing provisions as par. (1) and added pars. (2) to (4).

Subsec. (d)(5). Pub. L. 96–135, §1(b), added par. (5).

Subsec. (h). Pub. L. 96–135, §1(c), inserted references to subsections (d)(5) and (j) of this section.

Subsecs. (n), (*o*). Pub. L. 96–54 redesignated subsec. (*o*) as (n). Former subsec. (n) redesignated (m) by Pub. L. 94–126.

1978—Subsec. (d). Pub. L. 95–256 substituted ''(b)'' for ''(g)''.

Subsec. (f). Pub. L. 95–598, §338(a)(1), inserted reference to subsec. (*o*) of this section.

Subsec. (h). Pub. L. 95–454, §412(b), substituted ''section 8336(d) or (h)'' for ''section 8336(d)''.

Subsec. (i). Pub. L. 95–598, §338(a)(2), inserted reference to subsec. (*o*) of this section.

Subsec. (j). Pub. L. 95–598, §338(a)(3), inserted reference to subsec. (*o*) of this section.

Pub. L. 95–454, §906(a)(2), (3), substituted ''Office of Personnel Management'' and ''Office'' for ''Civil Service Commission'' and ''Commission'', respectively.

Pub. L. 95–317, §1(a), inserted ''(or is remarried if there is no election in effect under the following sentence)'' after ''or Member is not married'', and substituted provisions authorizing, upon remarriage, an irrevocable election in a signed writing received by the Commission within 1 year after remarriage for a reduction and computation of such reduction, for provisions authorizing the annuity, upon remarriage, to be reduced by the same percentage reductions in effect at the time of retirement.

Subsec. (k). Pub. L. 95–454, §906(a)(3), substituted ''Office'' for ''Commission'' wherever appearing.

Subsec. (k)(1). Pub. L. 95–598, §338(a)(3), inserted reference to subsec. (*o*) of this section.

Pub. L. 95–317, §2, inserted provisions relating to recomputation and payment of an annuity reduced under this par. or any similar prior provision of law.

Subsec. (k)(2). Pub. L. 95–317, §1(c), substituted ''The reduced annuity shall be effective the first day of the first month beginning 1 year after the date of marriage'' for ''His reduced annuity is effective the first day of the month after his election is received in the Commission''.

Subsec. (*l*). Pub. L. 95–598, §338(a)(4), inserted reference to subsec. (*o*) of this section.

Subsec. (m). Pub. L. 95–598, §338(a)(5), inserted reference to subsec. (*o*) of this section.

Pub. L. 95–519 inserted provision relating to computation of days of unused sick leave for employees excepted from subchapter I of chapter 63 of this title.

Subsec. (*o*). Pub. L. 95–598, §338(a)(6), added subsec. (*o*).

1976—Subsec. (f)(2)(C). Pub. L. 94–397 substituted ''8344(d)(1)'' for ''8344(b)(1)''.

1975—Subsecs. (m), (n). Pub. L. 94–126 struck out subsec. (m) which required that 45 per centum of each year, or fraction thereof, of service referred to in section 8332(b)(6) which was performed prior to the effective date of the National Guard Technicians Act of 1968, be disregarded in determining service for the purpose of computing an annuity under each paragraph of this section, and redesignated subsec. (n) as (m).

1974—Subsec. (d). Pub. L. 93–350 inserted reference to employees retiring under section 8335(g) of this title and substituted a schedule of 2½ percent of his average pay multiplied by so much of his total service as does not exceed 20 years plus 2 percent of his average pay multiplied by so much of his total service as exceeds 20 years for a schedule of 2 percent of his average pay multiplied by his total service.

Subsec. (f)(2). Pub. L. 93–260 substituted ''greatest'' for ''greater'', redesignated cl. (B) as cl. (C), and added cl. (B).

Subsec. (j). Pub. L. 93–474 inserted provision that an annuity reduced under this subsection or any similar provision of law shall be recomputed and paid as if the annuity had not been so reduced for each full month during which a retired employee or member is not married and that upon marriage the annuity shall be reduced by the same percentage reductions which were in effect at the time of retirement.

1972—Subsec. (e). Pub. L. 92–297, §6(1), (2), added subsec. (e) and redesignated former subsec. (e) as (f).

Subsec. (f). Pub. L. 92–297, §§6(1), 7(3)(A), redesignated former subsec. (e) as (f) and substituted references to subsecs. (a) to (e) for references to subsecs. (a) to (d). Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 92–297, §6(1), redesignated former subsec. (f) as (g). Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 92–297, §§6(1), 7(3)(B), redesignated former subsec. (g) as (h) and substituted ''subsections (a), (b), and (f)'', ''subsections (c) and (f)'', and ''section 8336(g)'' for ''subsections (a), (b), and (e)'', ''subsections (c) and (e)'', and ''section 8336(f)'' respectively. Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 92–297, §§6(1), 7(3)(C), redesignated former subsec. (h) as (i) and substituted reference to subsections (a)–(h) for reference to subsections (a)–(g). Former subsec. (i) redesignated (j).

Subsec. (j). Pub. L. 92–297, §§6(1), 7(3)(D), redesignated former subsec. (i) as (j) and substituted reference to subsections (a) to (i) for reference to subsections (a) to (h). Former subsec. (j) redesignated (k).

Subsec. (k). Pub. L. 92–297, §§6(1), 7(3)(E), redesignated former subsec. (j) as (k) and substituted ''subsections (a)–(i)'' and ''subsection (j)'' for ''subsections (a)–(h)'' and ''subsection (i)'', respectively. Former subsec. (k) redesignated (*l*).

Subsec. (*l*). Pub. L. 92–297, §§6(1), 7(3)(F), redesignated former subsec. (k) as (*l*) and substituted ''subsections (a)–(e)'' for ''subsections (a)–(j)''. Former subsec. (*l*) redesignated (m).

Subsec. (m). Pub. L. 92–297, §6(1) redesignated former subsec. (*l*) as (m). Former subsec. (m) redesignated (n).

Subsec. (n). Pub. L. 92–297, §§6(1), 7(3)(G), redesignated former subsec. (m) as (n) and substituted ''subsections (a)–(e)'' and ''subsection (f)'' for ''subsections (a)–(d)'' and ''subsection (e)'', respectively.

1971—Subsec. (i). Pub. L. 91–658, §2(a), substituted ''any spouse surviving him'' for ''his spouse''.

Subsec. (j). Pub. L. 91–658, §2(b), designated existing provisions as par. (1) and added par. (2).

1969—Subsec. (b). Pub. L. 91–93, §203(1), substituted ''his service as a Congressional employee, his military service not exceeding 5 years,'' for ''so much of his service as a Congressional employee and his military service as does not exceed a total of 15 years''.

Subsec. (c)(2). Pub. L. 91–93, §203(2), struck out ''so much of'' and ''as does not exceed 15 years'' before and after ''his Congressional employee service''.

Subsec. (f). Pub. L. 91–93, §203(3), struck out last sentence providing ''However, this subsection does not increase the annuity of a survivor.''

Subsec. (i). Pub. L. 91–93, §203(4), struck out ''(excluding any increase because of retirement under section 8337 of this title)'' after ''subsections (a)–(h) of this section''.

Subsec. (m). Pub. L. 91–93, §203(5), added subsec. (m).

1968—Subsec. (*l*). Pub. L. 90–486 added subsec. (*l*).

1967—Subsec. (e)(2). Pub. L. 90–206 inserted provision for the use of the final basic pay of the appointive position of a former Member who elects to have his annuity computed or recomputed under section 8344(b)(1) of this title inmaking the determination of the maximum allowable annuity.

CHANGE OF NAME

Reference to United States magistrate or to magistrate deemed to refer to United States magistrate judge pursuant to section 321 of Pub. L. 101–650, set out

as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 11004(c) of Pub. L. 103–66 provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and sections 8334 and 8418 of this title] shall take effect on the first day of the first month beginning at least 30 days after the date of the enactment of this Act [Aug. 10, 1993] and shall apply to all deposits required under section 8339(j)(3) or (5), 8339(k)(2), or 8418 of title 5, United States Code, on which no payment has been made prior to such effective date.

''(2) PARTIAL DEPOSIT.—For any deposit required under section 8339(j)(3) or (5), 8339(k)(2), or 8418 of title 5, United States Code, or section 4(b) or (c) of the Civil Service Retirement Spouse Equity Act of 1984 [Pub. L. 98–615] (5 U.S.C. 8341 note) that has been partially, but not fully, paid before the effective date of this Act [probably should be ''the effective date of the amendments made by this section''], the Office shall by regulation provide for determining the remaining portion of the deposit and for payment of the remaining portion of the deposit by a prospective reduction in the annuity of the employee or Member. The reduction shall be similar to the reductions provided pursuant to the amendments made under this section.''

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–572 effective Oct. 29, 1992, see section 911 of Pub. L. 102–572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1990 AMENDMENTS

Amendment by Pub. L. 101–650 applicable to judges of, and senior judges in active service with, the United States Court of Federal Claims on or after Dec. 1, 1990, see section 306(f) of Pub. L. 101–650, set out as a note under section 8331 of this title.

Amendment by Pub. L. 101–508 effective with respect to any annuity having a commencement date later than Dec. 1, 1990, see section 7001(b)(3) of Pub. L. 101–508, set out as a note under section 8334 of this title.

Section 2(c)(2) of Pub. L. 101–428 provided that:

''(A) The amendment made by paragraph (1) [amending this section] shall take effect 4 years after the date of enactment of this Act [Oct. 15, 1990], and shall apply with respect to any annuity, entitlement to which is based on a separation occurring on or after that effective date, subject to subparagraph (B).

''(B) Nothing in this subsection or in the amendment made by this subsection [amending this section] shall, with respect to any service performed before the effective date of such amendment, have the effect of reducing the percentage applicable in computing any portion of an annuity based on such service below the percentage which would otherwise apply if this Act had not been enacted.''

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–194 effective Jan. 1, 1991, see section 506(d) of Pub. L. 101–194, set out as a note under section 3151 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–53 effective Oct. 1, 1987, and applicable to bankruptcy judges and United States magistrate judges in office on that date and to individuals subsequently appointed to such positions to whom this chapter otherwise applies, see section 3 of Pub. L. 100–53, as amended, set out as a note under section 8331 of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Section 15204(b), formerly 15204(c), of Pub. L. 99–272, as redesignated by Pub. L. 99–509, title VII, §7003(b), Oct. 21, 1986, 100 Stat. 1949, provided that: ''The amendments made by this section [amending this section, section 8341 of this title, and former section 4109 of Title 38, Veterans' Benefits] shall be effective with respect to service performed on or after the date of the enactment of this Act [Apr. 7, 1986].''

Section 203(d) of Pub. L. 99–251 provided that: ''The amendments made by this section [amending this section] shall take effect May 7, 1985.''

Section 307(b) of Pub. L. 99–251 provided that:

''(1) The amendment made by subsection (a) [amending this section] shall take effect 3 months after the date of the enactment of this Act [Feb. 27, 1986].

''(2)(A) Subject to subparagraph (B), the amendment made by subsection (a) shall apply with respect to employees and Members who retire before, on, or after such amendment first takes effect.

''(B) For the purpose of applying the provisions of paragraph (1) of section 8339(*o*) of title 5, United States Code (as added by subsection (a) of this section) to employees and Members who retire before the date on which the amendment made by subsection (a) first takes effect—

''(i) the period referred to in subparagraph (A) or (B) of such paragraph (as the case may be) shall be considered to begin on the date on which such amendment first becomes effective; and

''(ii) the amount referred to in paragraph (2) of such section 8339(*o*) shall be computed without regard to the provisions of subparagraph (B)(ii) of such paragraph (relating to interest).

''(3) For purposes of this subsection, the terms 'employee' and 'Member' each has the meaning given that term in sections 8331(1) and 8331(2) of title 5, United States Code, respectively.''

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by Pub. L. 98–615 effective May 7, 1985, with enumerated exceptions and specific applicability provisions, see section 4(a)(1), (4) of Pub. L. 98–615, as amended, set out as a note under section 8341 of this title.

Amendment by Pub. L. 98–531 effective Mar. 31, 1984, see section 3(b) of Pub. L. 98–531, set out as a note under section 8331 of this title.

Amendment by Pub. L. 98–353 effective July 10, 1984, and applicable to bankruptcy judges who retire on or after such date, see section 116(e) of Pub. L. 98–353, set out as a note under section 8331 of this title. See, also, section 122(a) of Pub. L. 98–353, set out as an Effective Date note under section 151 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1982 AMENDMENTS

Section 151(h)(3) of Pub. L. 97–276 provided that: ''The amendment made by subsection 152(f) [151(f)] of this joint resolution [amending this section] shall take effect on the date of the enactment of this joint resolution [Oct. 2, 1982].''

Amendment by Pub. L. 97–253 effective with respect to deposits for service performed, on or after Oct. 1, 1982, and with respect to refunds for which application is received by Office of Personnel Management on or after Oct. 1, 1982, and provisions of section 8339(i) of title 5, as in effect the day before Sept. 7, 1982, to continue to apply with respect to periods of service and refunds occurring on or before Sept. 30, 1982, see section 303(d)(1) of Pub. L. 97–253, as amended by Pub. L. 97–346, §3(j)(1), Oct. 15, 1982, 96 Stat. 1649, set out as a note under section 8334 of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

Section 404(c) of Pub. L. 96–499 provided that: ''The amendments made by this section [amending this section and section 8347 of this title] shall take effect on the date of the enactment of this Act [Dec. 5, 1980].''

Section 3 of Pub. L. 96–391 provided that: ''The amendments made by the first section of this Act [amending this section] shall take effect with respect

to notifications and designations made under the first sentence of section 8339(j) of title 5, United States Code, on or after the ninetieth day after the date of the enactment of this Act [Oct. 7, 1980].''

EFFECTIVE DATE OF 1979 AMENDMENTS

Amendment by Pub. L. 96–135 effective Dec. 5, 1979, see section 1(d) of Pub. L. 96–135, set out as a note under section 8336 of this title.

Section 1242(b)(1) of Pub. L. 96–70 provided that: ''The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Sept. 27, 1979], but no amount of annuity under chapter 83 of title 5, United States Code, accruing by reason of those amendments shall be payable for any period before October 1, 1979.''

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.

EFFECTIVE DATE OF 1978 AMENDMENTS

Amendment by Pub. L. 95–598 effective Nov. 6, 1978, see section 402(d) of Pub. L. 95–598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

Amendment by Pub. L. 95–519 applicable only with respect to employees who retire or die on or after Oct. 25, 1978, see section 4(b) of Pub. L. 95–519, set out as a note under section 5551 of this title.

Amendment by section 412(b) of Pub. L. 95–454 effective 9 months after Oct. 13, 1978, and congressional review of provisions of sections 401 through 412 of Pub. L. 95–454, see section 415 of Pub. L. 95–454, set out as an Effective Date note under section 3131 of this title.

Amendment by section 906(a)(2), (3) of Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

Amendment by Pub. L. 95–256 effective Sept. 30, 1978, see section 5(f) of Pub. L. 95–256, set out as a note under section 633a of Title 29, Labor.

EFFECTIVE DATE OF 1978 AMENDMENTS; SURVIVOR ANNUITIES SUBJECT TO REDUCTION, ETC.

Section 4 of Pub. L. 95–317 provided that:

''(a) This act [amending this section and section 8341 of this title and enacting provisions set out as notes under this section] shall take effect—

''(1) the first day of the first month which begins on or after the date of the enactment of this Act [July 10, 1978], or

''(2) October 1, 1978,

whichever is later.

''(b) Except as provided under subsection (c) of this section, the amendments made by the first section and section 2 of this Act [amending this section and section 8341 of this title] shall apply with respect to annuities which commence before, on, or after the effective date of this Act, but no monetary benefit by reason of such amendments shall accrue for any period before such effective date.

''(c) The amendments made by the first section of this Act [amending this section and section 8341 of this title] shall not affect the eligibility of any individual to a survivor annuity under section 8341(b) of title 5, United States Code, or the reduction therefor under section 8339(j) of such title, in the case of an annuitant who remarried before the effective date of this Act, unless the annuitant notifies the Civil Service Commission in a signed writing received in the Commission within one year after the effective date of this Act that such annuitant does not desire the spouse of the annuitant to receive a survivor annuity in the event of the annuitant's death. Such notification shall take effect the first day of the first month after it is received in the Commission.''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–397 effective Oct. 1, 1976, and applicable to annuitants serving in appointive or elective positions on and after such date, see section 2 of Pub. L. 94–397, set out as a note under section 8344 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–126 effective Jan. 1, 1969, applicable to a person who, on Nov. 12, 1975, is receiving or is entitled to receive benefits under any Federal retirement system and requests in writing the application of the amendment to him by the office administering his retirement system, and additional benefits to commence Dec. 1, 1975, see section 3 of Pub. L. 94–126, set out as a note under section 8334 of this title.

EFFECTIVE DATE OF 1974 AMENDMENTS

Section 2 of Pub. L. 93–474 provided that: ''The amendment made by this Act [amending this section] shall apply to annuities which commence before, on, or after the date of enactment of this Act [Oct. 26, 1974], but no increase in annuity shall be paid for any period prior to the first day of the first month which begins on or after the date of enactment of this Act.''

Amendment by Pub. L. 93–350 effective on July 12, 1974, see section 7 of Pub. L. 93–350, set out as a note under section 3307 of this title.

Section 2(b) of Pub. L. 93–260 provided that: ''The amendments made by subsection (a) of this section [amending this section] shall apply to annuities paid for months beginning after the date of enactment of this Act [Apr. 9, 1974].''

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92–297 effective on 90th day after May 16, 1972, see section 10 of Pub. L. 92–297, set out as an Effective Date note under section 3381 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Section 5(b) of Pub. L. 91–658 provided that: ''The amendments made by section 2(a) and 3 of this Act [amending this section and section 8341 of this title] shall not apply in the cases of employees, Members, or annuitants who died before the date of enactment of this Act [Jan. 8, 1971]. The rights of such persons and their survivors shall continue in the same manner and to the same extent as if such amendments had not been enacted.''

Section 5(c) of Pub. L. 91–658 provided that: ''The amendments made by section 2(b) of this Act [amending this section] shall apply to an annuitant who was unmarried at the time of retiring, but who later married, only if the election is made within 1 year after the date of enactment of this Act [Jan. 8, 1971].''

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–93 inapplicable in cases of persons retired or otherwise separated prior to Oct. 20, 1969, their rights and of their survivors continued as if such amendment had not been enacted, see section 207(a) of Pub. L. 91–93, set out as a note under section 8331 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–486 effective Jan. 1, 1969, except that no deductions or withholding from salary which result therefrom shall commence before first day of first pay period that begins on or after Jan. 1, 1968, see section 11 of Pub. L. 90–486, set out as a note under section 709 of Title 32, National Guard.

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90–206 effective Dec. 16, 1967, see section 220(a)(1) of Pub. L. 90–206, set out as an Effective Date note under section 3110 of this title.

INDIVIDUALS ENTITLED TO ANNUITY PAYMENTS FOR PERIOD PRIOR TO OCTOBER 1, 1979

Section 1242(b)(2) of Pub. L. 96–70 provided that: ''Effective October 1, 1979, any individual who, but for

paragraph (1) of this subsection [set out as an Effective Date of 1979 Amendment note above], would have been entitled to one or more annuity payments pursuant to the amendments made by this section [amending this section] for periods before October 1, 1979, shall be entitled, to such extent or in such amounts as are provided in advance in appropriation Acts, to a lump sum payment equal to the total amount of all such annuity payments.''

ANNUAL NOTICE TO ANNUITANT OF RIGHTS OF ELECTION UNDER SUBSECS. (j) AND (k)(2) OF THIS SECTION

Section 3 of Pub. L. 95–317, as amended by 1978 Reorg. Plan No. 2, §102, 43 F.R. 36037, 92 Stat. 3783, provided that: ''The Director of the Office of Personnel Management shall, on an annual basis, inform each annuitant of such annuitant's rights of election under sections 8339(j) and 8339(k)(2) of title 5, United States Code.''

INCREASE IN ANNUITY FOR EMPLOYEES OR MEMBERS SEPARATED FROM CIVIL SERVICE PRIOR TO OCT. 20, 1969

Section 2(a) of Pub. L. 93–273, Apr. 26, 1974, 88 Stat. 93, provided that: ''An annuity payable from the Civil Service Retirement and Disability Fund to a former employee or Member, which is based on a separation occurring prior to October 20, 1969, is increased by $240.''

Section 3 of Pub. L. 93–273 provided in part that annuity increases under this provision shall apply to annuities which commence before, on, or after Apr. 26, 1974, but that no increase in annuity shall be paid for any period prior to the first day of the first month which begins on or after the ninetieth day after Apr. 26, 1974, or the date on which the annuity commences, whichever is later. See section 3 of Pub. L. 93–273, set out as a note under section 8345 of this title.

1970 INCREASE IN PAY RATES OF CERTAIN EMPLOYEES OF THE LEGISLATIVE BRANCH

Adjustment by the President pro tempore of the Senate with respect to the United States Senate, by the Finance Clerk of the House of Representatives with respect to the United States House of Representatives, and by the Architect of the Capitol with respect to the Office of the Architect of the Capitol, effective on the first day of the first pay period which begins on or after Dec. 27, 1969, of the rates of pay of employees of the legislative branch subject to section 214 of Pub. L. 90–206 with certain exceptions, by the amounts of the adjustment for corresponding rates for employees subject to the General Schedule, set out in section 5332 of this title, which had been made by section 2 of Pub. L. 91–231 raising such rates by 6 percent, see Pub. L. 91–231, set out as a note under section 5332 of this title.

1967 INCREASE IN COMPENSATION AS PART OF BASIC PAY RATE

Section 214(d) of Pub. L. 90–206, title II, Dec. 16, 1967, 81 Stat. 636, providing for the inclusion of the additional compensation pursuant to section 214 of Pub. L. 90–206 as part of basic pay for purposes of civil service retirement, was repealed by section 7(a)(4) of Pub. L. 90–623, Oct. 22, 1968, 82 Stat. 1315, except with respect to rights and duties which matured, penalties that were incurred, and proceedings that were begun before Oct. 22, 1968.

1962 INCREASE IN ANNUITIES

Section 1101 of Pub. L. 87–793, Oct. 11, 1962, 76 Stat. 868, provided that:

''(a) The annuity of each person who, on the effective date of this section [Jan. 1, 1963], is receiving or entitled to receive an annuity from the civil service retirement and disability fund shall be increased by 5 per centum of the amount of such annuity.

''(b) The annuity of each person who receives or is entitled to receive an annuity from the civil service retirement and disability fund commencing during the period which begins on the day following the effective date of this section [Jan. 1, 1963] and ends five years after such date, shall be increased in accordance with the following table:

''If the annuity commences between—	*The annuity shall be increased by—*
''January 2, 1963, and December 31, 1963	4 per centum
''January 1, 1964, and December 31, 1964	3 per centum
''January 1, 1965, and December 31, 1965	2 per centum
''January 1, 1966, and December 31, 1966	1 per centum

''(c) In lieu of any other increase provided by this section, the annuity of a survivor of a retired employee or Member of Congress who received an increase under this section shall be increased by a percentage equal to the percentage by which the annuity of such employee or Member was so increased.

''(d) No increase provided by this section shall be computed on any additional annuity purchased at retirement by voluntary contributions.

''(e) The limitation reading 'or (3) the sum necessary to increase such annuity, exclusive of annuity purchased by voluntary contributions under the second paragraph of section 10 of this Act, to $2,160' contained in section 8(c)(1) of the Civil Service Retirement Act of May 29, 1930, as amended by the Acts of July 16, 1952 (66 Stat. 722; Public Law 555, Eighty-second Congress), and August 31, 1954 (68 Stat. 1043; Public Law 747, Eighty-third Congress), shall not be effective on or after the effective date of this section [Jan. 1, 1963].

''(f) The limitation contained in the next to the last sentence of section 8(d)(1) of the Civil Service Retirement Act of May 29, 1930, as amended, as enacted by the Act of August 11, 1955 (69 Stat. 692; Public Law 369, Eighty-fourth Congress) shall not be effective on and after the effective date of this section [Jan. 1, 1963].

''(g) The increases provided by this section shall take effect on the effective date of this section [Jan. 1, 1963], except that any increase under subsection (b) or (c) shall take effect on the beginning date of the annuity.

''(h) The monthly installment of annuity after adjustment under this section shall be fixed at the nearest dollar''.

Section 1104 of Pub. L. 87–793 provided in part that section 1101 of Pub. L. 87–793 shall take effect on January 1, 1963.

1958 INCREASE IN ANNUITIES

Pub. L. 85–465, June 25, 1958, 72 Stat. 218, as amended by Pub. L. 86–604, §3(a), July 7, 1960, 74 Stat. 359; Pub. L. 87–114, July 31, 1961, 75 Stat. 241, provided:

''That (a) the annuity of each retired employee or Member of Congress who, on August 1, 1958, is receiving or entitled to receive an annuity from the civil service retirement and disability fund based on service which terminated prior to October 1, 1956, shall be increased by 10 per centum, but no such increase shall exceed $500 per annum.

''(b) The annuity otherwise payable from the civil service retirement and disability fund to—

''(1) each survivor who on August 1, 1958, is receiving or entitled to receive an annuity based on service which terminated prior to October 1, 1956, and

''(2) each survivor of a retired employee or Member of Congress described in subsection (a) of this section, shall be increased by 10 per centum. No increase provided by this subsection shall exceed $250 per annum.

''(c) No increase provided by this section shall be computed on any additional annuity purchased at retirement by voluntary contributions.

''SEC. 2. The unmarried widow or widower of an employee—

''(1) who had completed at least ten years of service creditable for civil service retirement purposes.

''(2) who (A) died February 29, 1948, or (B), if retired under the Alaska Railroad Retirement Act of June 29, 1936, as amended, or under sections 91 to 107, inclusive, of title 2 of the Canal Zone Code, approved June 19, 1934, as amended, died before April 1, 1948; and

''(3) who was at the time of his death

(A) subject to an Act under which annuities granted before February 20, 1948, were or are now payable from the civil service retirement and disability fund or (B) retired under such an Act,

(B) etc.

shall be entitled to receive an annuity. In order to qualify for such annuity, the widow or widower shall have been married to the employee for at least five years immediately prior to his death and must be not entitled to any other annuity from the civil service retirement and disability fund based on the service of such employee. Such annuity shall be equal to one-half of the annuity which the employee was receiving on the date of his death if retired, or would have been receiving if he had been retired for disability on the date of his death, but shall not exceed $750 per annum and shall not be increased by the provisions of this or any other prior law. Any annuity granted under this section shall cease upon the death or remarriage of the widow or widower.

''SEC. 3. (a) An increase in annuity provided by subsection (a), or clause (1) of subsection (b), of the first section of this Act shall take effect on August 1, 1958. An increase in annuity provided by clause (2) of such subsection (b) shall take effect on the commencing date of the survivor annuity.

''(b) An annuity provided by section 2 of this Act shall commence on August 1, 1958, or on the first day of the month in which application for such annuity is received in the Civil Service Commission, whichever occurs later.

''SEC. 4. Notwithstanding any other provision of law, the annuities and increases in annuities provided by the preceding sections of this Act shall be paid from the civil service retirement and disability fund.

''(c) The monthly installment of each annuity increased or provided by this Act shall be fixed at the nearest dollar.

''SEC. 5. (a) The amendments made by section 401 of the Civil Service Retirement Act Amendments of 1956 (70 Stat. 743–760; 5 U.S.C. 2251–2267) [amending provisions covered by this subchapter] may apply at the option of any employee who, prior to July 31, 1956, was separated from the service under the automatic separation provisions of the Civil Service Retirement Act [this subchapter] but whose separation would not have taken effect until after July 30, 1965, if he had been permitted to remain in the service until the expiration of any accumulated or current accrued annual leave to his credit at the time of his separation from the service. Such option shall be exercised by a writing received in the Civil Service Commission before January 1, 1959.

''(b) No increase in annuity provided by this Act or any prior provision of law shall apply in the case of any retired employee who exercises the option permitted by subsection (a) of this section.''

1962 AND 1958 INCREASES IN ANNUITIES; CLARIFICATION

Pub. L. 89–17, May 1, 1965, 79 Stat. 109, provided: ''That for the purposes of section 1(a) of the Act of June 25, 1958 (Public Law 85–465) [1958 Increase in Annuities note set out above], and section 1101(a) of the Act of October 11, 1962 (Public Law 87–793) [1962 Increase in Annuities note set out under this section], the words 'entitled to receive an annuity' shall, from and after the respective effective dates (August 1, 1958, and January 1, 1963) of the annuity increases provided by such Acts, not include any person whose annuity commencing date occurs after the effective date of the annuity increase involved.''

PAYMENT OF ANNUITIES TO CERTAIN UNREMARRIED WIDOWS OR WIDOWERS OF EMPLOYEES RETIRED UNDER RAILROAD RETIREMENT ACT OR CANAL ZONE CODE

Section 3(b), (c) of Pub. L. 86–604, July 7, 1960, 74 Stat. 359, made section 4 of act June 25, 1958, set out in the 1958 Increase in Annuities note under this section, applicable to annuities authorized by section 2(2)(B) of act June 25, 1958, and provided that such annuities should commence Aug. 1, 1958, or on the first day of the month in which application therefor was received in the Civil Service Commission, whichever occurred later.

ESTIMATES OF APPROPRIATIONS FOR REIMBURSING FUND FOR AMOUNTS PAID UNDER 1958 INCREASE IN ANNUITIES

Pub. L. 91–93, title I, § 105, Oct. 20, 1969, 83 Stat. 138, repealed part of Pub. L. 87–141, title I, § 101, Aug. 17, 1961, 75 Stat. 345, which required the Civil Service Commission to include annually in its estimates to the Bureau of the Budget, estimates of appropriations necessary to reimburse the civil service retirement and disability fund for amounts paid out of the fund by reason of enactment of Pub. L. 85–465, set out in the 1958 Increase in Annuities note under this section, and the Bureau of the Budget to submit such estimates annually to the Congress.

ANNUITY OF DIRECTOR OF FBI

Pub. L. 86–734, § 5, Sept. 8, 1960, 74 Stat. 868, provided that: ''Any person who shall retire for age after serving at least thirty years as Director of the Federal Bureau of Investigation shall receive an annuity during the remainder of his life equal to the salary payable to him at the time of his retirement.''

NATIONAL GUARD TECHNICIANS

Amendment by Pub. L. 90–486 not applicable to persons employed prior to Jan. 1, 1969, whose employment was covered by the civil service retirement provisions of section 8331 et seq. of this title, see section 5(d) of Pub. L. 90–486, set out as a note under section 709 of Title 32, National Guard.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6129, 8332, 8334, 8336, 8337, 8338, 8341, 8342, 8343a, 8344, 8348, 8901, 8905 of this title; title 10 sections 1450, 1452; title 22 sections 3671, 3691, 4045, 4046, 4069–1; title 38 section 7426; title 50 section 403r.

§ 8340. Cost-of-living adjustment of annuities

(a) For the purpose of this section—

(1) the term ''base quarter'', as used with respect to a year, means the calendar quarter ending on September 30, of such year; and

(2) the price index for a base quarter is the arithmetical mean of such index for the 3 months comprising such quarter.

(b) Except as provided in subsection (c) of this section, effective December 1 of each year, each annuity payable from the Fund having a commencing date not later than such December 1 shall be increased by the percent change in the price index for the base quarter of such year over the price index for the base quarter of the preceding year in which an adjustment under this subsection was made, adjusted to the nearest ⅒ of 1 percent.

(c) Eligibility for an annuity increase under this section is governed by the commencing date of each annuity payable from the Fund as of the effective date of an increase, except as follows:

(1) The first increase (if any) made under subsection (b) of this section to an annuity which is payable from the Fund to an employee or Member who retires, to the widow, widower, or former spouse,[1] of a deceased employee or Member, or to the widow, widower, former spouse, or insurable interest designee of a deceased annuitant whose annuity has not been increased under this subsection or subsection (b) of this section, shall be equal to the product (adjusted to the nearest 1/10 of 1 percent) of—

(A) 1/12 of the applicable percent change computed under subsection (b) of this section, multiplied by

(B) the number of months (not to exceed 12 months, counting any portion of a month as a month)—

(i) for which the annuity was payable from the Fund before the effective date of the increase, or

(ii) in the case of a widow, widower, former spouse, or insurable interest designee of a deceased annuitant whose annuity has not been so increased, since the annuity was first payable to the deceased annuitant.

(2) Effective from its commencing date, an annuity payable from the Fund to an annuitant's survivor (except a child entitled under section 8341(e) of this title), which annuity commences the day after the death of the annuitant and after the effective date of the first increase under this section, shall be increased by the total percent increase the annuitant was receiving under this section at death. However, the increase in a survivor annuity authorized by section 8 of the Act of May 29, 1930, as amended to July 6, 1950, shall be computed as if the annuity commencing date had been the effective date of the first increase under this section.

(3) For the purpose of computing the annuity of a child under section 8341(e) of this title that commences after October 31, 1969, the items $900, $1,080, $2,700, and $3,240 appearing in section 8341(e) of this title shall be increased by the total percent increases allowed and in force under this section on or after such day and, in case of a deceased annuitant, the items 60 percent and 75 percent appearing in section 8341(e) of this title shall be increased by the total percent allowed and in force to the annuitant under this section on or after such day.

(d) This section does not authorize an increase in an additional annuity purchased at retirement by voluntary contributions.

(e) The monthly installment of annuity after adjustment under this section shall be rounded to the next lowest dollar. However, the monthly installment shall after adjustment reflect an increase of at least $1.

(f) Effective September 1, 1966, or on the commencing date of annuity, whichever is later, the annuity of each surviving spouse whose entitlement to annuity payable from the Fund resulted from the death of—

(1) an employee or Member before October 11, 1962; or

(2) a retired employee or Member whose retirement was based on a separation from service before October 11, 1962;

is increased by 10 percent.

(g)(1) An annuity shall not be increased by reason of any adjustment under this section to an amount which exceeds the greater of—

(A) the maximum pay payable for GS–15 30 days before the effective date of the adjustment under this section; or

(B) the final pay (or average pay, if higher) of the employee or Member with respect to whom the annuity is paid, increased by the overall annual average percentage adjustments (compounded) in rates of pay of the General Schedule under subchapter I of chapter 53 of this title during the period—

(i) beginning on the date the annuity commenced (or, in the case of a survivor of the retired employee or Member, the date the employee's or Member's annuity commenced), and

(ii) ending on the effective date of the adjustment under this section.

(2) For the purposes of paragraph (1) of this subsection, ''pay'' means the rate of salary or basic pay as payable under any provision of law, including any provision of law limiting the expenditure of appropriated funds.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 576; Pub. L. 90–83, §1(79), Sept. 11, 1967, 81 Stat. 215; Pub. L. 91–93, title II, §204, Oct. 20, 1969, 83 Stat. 139; Pub. L. 93–136, §1, Oct. 24, 1973, 87 Stat. 490; Pub. L. 94–126, §2(b), Nov. 12, 1975, 89 Stat. 679; Pub. L. 94–183, §2(35), Dec. 31, 1975, 89 Stat. 1058; Pub. L. 94–440, title XIII, §1306(a), (c)(1), Oct. 1, 1976, 90 Stat. 1462; Pub. L. 95–454, title IX, §906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 96–499, title IV, §401(a), Dec. 5, 1980, 94 Stat. 2605; Pub. L. 97–35, title XVII, §1702(a), (b), Aug. 13, 1981, 95 Stat. 754; Pub. L. 97–253, title III, §§304(a), 309(a), Sept. 8, 1982, 96 Stat. 795, 798; Pub. L. 98–270, title II, §201(a), Apr. 18, 1984, 98 Stat. 157; Pub. L. 98–369, div. B, title II, §2201(b), July 18, 1984, 98 Stat. 1058; Pub. L. 99–251, title II, §204, Feb. 27, 1986, 100 Stat. 25.)

HISTORICAL AND REVISION NOTES
1966 ACT

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 2268.	July 31, 1956, ch. 804, §401 ''Sec. 18''; added Oct. 11, 1962, Pub. L. 87–793, §1102(b) (less so much as redesignated §18 as 19), 76 Stat. 869.

In subsection (a), the words ''After January 1, 1964'' and ''other than 1964'' and subsection (a)(1) of former section 2268, are omitted as executed.

In subsection (b), the words ''subsection (a) of this section'' are substituted for ''subsection (a)(1) or (a)(2) of this section'' since subsection (a)(1) has been omitted as executed.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

[1] So in original. The comma probably should not appear.

1967 ACT

Section of title 5	*Source (U.S. Code)*	*Source (Statutes at Large)*
8340(a)	5 App.: 2268(a), (f).	Sept. 27, 1965, Pub. L. 89–205, §1(c), 79 Stat. 840.
8340(b)	5 App.: 2268(b).	
8340(c)	5 App.: 2268(c).	Nov. 1, 1965, Pub. L. 89–314, §1, 79 Stat. 1162.
8340(d)	5 App.: 2268(d).	
8340(e)	5 App.: 2268(e).	
8340(f)	5 App.: 2268(g).	July 18, 1966, Pub. L. 89–504, §507, 80 Stat. 302.

In subsection (a), the words ''Effective December 1, 1965 * * * before December 2, 1965,'' are substituted for ''Effective the first day of the third month which begins after the date of enactment of this amendment * * * not later than such effective date.'' In clause (1), the words ''month of July 1965'' are substituted for ''month latest published on date of enactment of this amendment'' for clarity and since the July 1965 price index was the price index for the month latest published on September 27, 1965, the date of enactment of the amendment. The word ''base'' is inserted before ''month of July 1965'' for clarity and on authority of the second sentence of 5 U.S.C. App. 2268(a) which provided: ''The month used in determining the increase based on the per centum rise in the price index under this subsection shall be the base month for determining the per centum change in the price index until the next succeeding increase occurs.'' In view of the foregoing and of the definition of ''base month'' in 5 U.S.C. 8331(16), the quoted sentence is omitted as executed and unnecessary. In clause (2), the words ''before October 2, 1956,'' are substituted for ''on or before October 1, 1956.'' In the second sentence, which is based on 5 App. U.S.C. 2268(f), the words ''before January 1, 1966,'' are substituted for ''not later than December 31, 1965.'' In clause (B), the words ''Act of June 25, 1958 (72 Stat. 219)'' are substituted for ''Public Law 85–465'' to conform to the style of title 5, United States Code.

In the first sentence of subsection (b), the words ''after the first increase under this section,'' following ''Each month,'' are omitted as executed and unnecessary.

In subsection (f), the words ''September 1, 1966,'' are substituted for ''the first day of the second month after the enactment of this subsection.''

REFERENCES IN TEXT

Section 8 of the Act of May 29, 1930, as amended to July 6, 1950, referred to in subsec. (c)(2), is the predecessor of section 8338 of this title.

AMENDMENTS

1986—Subsec. (c)(1). Pub. L. 99–251 substituted '', widower, or former spouse,'' for first reference to ''or widower'', and '', widower, former spouse, or insurable interest designee'' for second and third references to ''or widower''.

1984—Subsec. (a). Pub. L. 98–270 substituted provisions defining term ''base quarter'' as meaning the calendar quarter ending Sept. 30 of a year and providing that the price index for a base quarter is the arithmetical mean of such index for the three months comprising such quarter for former provisions which had directed that, effective Dec. 1, 1965, each annuity payable from the Fund having a commencing date before Dec. 2, 1965, was increased by (1) the percent rise in the price index, adjusted to the nearest ⅒ of 1 percent, determined by the Office of Personnel Management on the basis of the annual average price index for calendar year 1962 and the price index for the base month of July 1965; plus (2) 6½ percent if the commencing date (or in the case of the survivor of a deceased annuitant the commencing date of the annuity of the retired employee) occurred before Oct. 2, 1956, or 1½ percent if the commencing date (or in the case of the survivor of a deceased annuitant the commencing date of the annuity of the retired employee) occurred after Oct. 1, 1956, that each annuity payable from the Fund (other than the immediate annuity of an annuitant's survivor or of a child entitled under section 8341(e) of this title) having a commencing date after Dec. 1, 1965, but before Jan. 1, 1966, was increased from its commencing date as if the annuity commencing date were Dec. 1, 1965, and that each survivor annuity authorized by (A) section 8 of the Act of May 29, 1930, as amended to July 6, 1950, or (B) section 2 of the Act of June 25, 1958 (72 Stat. 219), was increased by any additional amount required to make the total increase under this subsection equal to the smaller of 15 percent or $10 a month.

Subsec. (b). Pub. L. 98–270 substituted ''Except as provided in subsection (c) of this section, effective December 1 of each year, each annuity payable from the Fund having a commencing date not later than such December 1 shall be increased by the percent change in the price index for the base quarter of such year over the price index for the base quarter of the preceding year in which an adjustment under this subsection was made, adjusted to the nearest ⅒ of 1 percent'' for ''Except as provided in subsection (c) of this section, effective March 1 of each year each annuity payable from the Fund having a commencing date not later than such March 1 shall be increased by the percent change in the price index published for December of the preceding year over the price index published for December of the year prior to the preceding year, adjusted to the nearest ⅒ of 1 percent''.

Subsec. (c)(1)(A). Pub. L. 98–369, §2201(b)(1), substituted ''computed'' for ''computer''.

Subsec. (c)(2)(B). Pub. L. 98–369, §2201(b)(2), substituted ''not to exceed 12 months, counting'' for ''counting''.

1982—Subsec. (e). Pub. L. 97–253, §304(a), substituted ''rounded to the next lowest'' for ''fixed at the nearest''.

Subsec. (g). Pub. L. 97–253, §309(a), added subsec. (g).

1981—Subsec. (b). Pub. L. 97–35, §1702(a), substituted provisions that except as provided in subsec. (c), the annuities payable from the Fund having a commencing date not later than March 1 of each year shall be increased by the percent change in the price index published for December of the preceding year over the price index published for December of the year prior to the preceding year, adjusted to the nearest ⅒ of 1 percent, for provisions requiring the Office to determine on Jan. 1 and July 1 of each year the percent change in the price index based on the data for a six month period and to adjust the annuities in March and September of each year according to specified formula when there is a rise in the price index.

Subsec. (c)(1). Pub. L. 97–35, §1702(b), in opening provision inserted reference to the widow or widower of a deceased annuitant whose annuity has not been increased under this subsection or subsection (b) of this section, in par. (A) substituted ''1/12'' for ''⅙'', and in subpar. (B) designated existing provisions as item (i) and added item (ii).

1980—Subsec. (c)(1). Pub. L. 96–499, substituted formula for computing the first increase to be made under subsec. (b) of this section to an annuity which is payable from the Fund to an employee or Member who retires, to the widow or widower of a deceased employee or Member for provisions that an annuity, except a deferred annuity under section 8338 of this title or any other provision of law, payable from the Fund to an employee or Member who retires, or to the widow or widower of a deceased employee or Member and having a commencing date after the effective date of the then last preceding annuity increase under subsec. (b) of this section shall not be less than the annuity which would have been payable if the commencing date of such annuity had been the effective date of the then last preceding annuity increase under subsec. (b) of this section and that employees or deceased employees were to be deemed, for purposes of section 8339(m) of this title to have to their credit, on the effective date of the last preceding increase under subsec. (b), unused sick leave equal to that unused sick leave to his credit on the date of separation from service.

1978—Subsecs. (a)(1), (b)(1). Pub. L. 95–454 substituted ''Office of Personnel Management'' for ''Civil Service Commission'' and ''Office'' for ''Commission''.

1976—Subsec. (b). Pub. L. 94–440, §1306(a), struck out ''1 percent plus'' after ''shall be increased by''.

Pub. L. 94–440, §1306(c)(1), substituted provisions requiring that Commission shall determine percent change in price index on Jan. 1 and July 1 of each year and effective Mar. 1 or Sept. 1, each annuity payable from Fund shall be increased by the computed percent change in the price index adjusted to the nearest ⅒ of 1 percent, for provisions requiring that Commission shall determine percent change in price index on a monthly basis and effective the first day of the third month that begins after the price index change equals a rise of 3 percent for 3 consecutive months over the prior price index, each annuity payable from Fund shall be increased by the highest rise in the price index over those months adjusted to the nearest ⅒ of 1 percent.

1975—Subsec. (c)(1). Pub. L. 94–126 substituted reference to ''section 8339(m) of this title'' for ''section 8339(n) of this title''.

Subsec. (c)(3). Pub. L. 94–183 substituted ''after October 31, 1969'' for ''on or after the first day of the first month that begins on or after the date of enactment of the Civil Service Retirement Amendments of 1969''.

1973—Subsec. (c). Pub. L. 93–136 redesignated existing pars. (1) and (2) as pars. (2) and (3) and added par. (1).

1969—Subsec. (b). Pub. L. 91–93, §204(a), increased the annuity payable from the Fund by 1 percent.

Subsec. (c)(2). Pub L. 91–93, §204(b), increased the minimum survivor annuity for children of a deceased Federal employee, substituting dollar and percentage references to $900, $1,080, $2,700, $3,240, and 60 and 75 percent for prior references to $600, $720, $1,800, $2,160 and 40 and 50 percent respectively, such new increases to commence on or after the first day of the first month that begins on or after Oct. 20, 1969, the date of enactment of the Civil Service Retirement Amendments of 1969, whereas prior provisions were for computation of a child's annuity commencing after effective date of first increase under this section based on employee annuity that commenced after Oct. 1, 1956, or was payable at death.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 201(b) of Pub. L. 98–270 provided that:

''(1) The amendments made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Apr. 18, 1984], except that no adjustment under section 8340(b) of title 5, United States Code (as amended by such subsection), shall be made during the period beginning on the date of the enactment of this Act and ending November 30, 1984.

''(2)(A) For purposes of the first adjustment under section 8340(b) of title 5, United States Code (as amended by subsection (a)), the base quarter ending September 30, 1983, shall be considered to have been a base quarter in which an adjustment under such section (as so amended) was made.

''(B) As used in subparagraph (A), the term 'base quarter' has the meaning given such term by section 8340(a)(1) of title 5, United States Code (as amended by subsection (a)).''

EFFECTIVE DATE OF 1982 AMENDMENT

Section 304(c) of Pub. L. 97–253 provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 8345 of this title] shall apply with respect to any annuity commencing on or after October 1, 1982, and with respect to any adjustment or redetermination of any annuity made on or after such date''.

Section 309(b) of Pub. L. 97–253 provided that: ''The amendment made by subsection (a) of this section [amending this section] shall not cause any annuity to be reduced below the rate that is payable on the date of the enactment of this Act [Sept. 8, 1982], but shall apply to any adjustment occurring on or after such date of enactment under section 8340 of title 5, United States Code, to any annuity payable from the Civil Service Retirement and Disability Fund, whether such annuity has a commencing date before, on, or after the date of enactment of this Act.''

EFFECTIVE DATE OF 1981 AMENDMENT

Section 1702(c) of Pub. L. 97–35 provided that: ''The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Aug. 13, 1981] and shall apply to annuities which commence before, on, or after such date.''

EFFECTIVE DATE OF 1980 AMENDMENT

Section 401(b) of Pub. L. 96–499 provided that:

''(1) The amendment made by subsection (a)(1) [amending this section] shall apply with respect to annuities commencing after the 45th day after the date of the enactment of this Act [Dec. 5, 1980].

''(2) The amendment made by subsection (a)(2) [amending this section] shall take effect with respect to any annuity increase which takes effect after the date of the enactment of this Act [Dec. 5, 1980].''

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 1306(b) of Pub. L. 94–440 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to any increase in annuities after the date of enactment of this Act [Oct. 1, 1976].''

Section 1306(c)(2) of Pub. L. 94–440 provided that: ''The amendment made by subsection (1) [amending this section] shall apply to any increase in annuities after the date of enactment of this Act [Oct. 1, 1976], except that with respect to the first date after the date of enactment of this Act on which the Commission is to determine a percent change, such percent change shall be determined by computing the change in the price index published for the month immediately preceding such first date over the price index for the last month prior to the date of enactment of this Act for which the price index showed a percent rise forming the basis for a cost-of-living annuity increase under section 8340(b) of title 5, United States Code [subsec. (b) of this section], as in effect immediately prior to the date of the enactment of this Act [Oct. 1, 1976].''

EFFECTIVE DATE OF 1973 AMENDMENT

Section 2 of Pub. L. 93–136 provided that: ''The amendments made by this Act [amending this section] shall apply only with respect to annuities which commence on or after July 2, 1973.''

EFFECTIVE DATE OF 1969 AMENDMENT

Section 207(b) of Pub. L. 91–93 provided that: ''The amendments made by section 204(a) of this Act to section 8340 of title 5, United States Code, shall apply only to annuity increases which become effective under such section 8340 after the date of enactment of this Act [Oct. 20, 1969].''

DELAY IN COST-OF-LIVING ADJUSTMENTS DURING FISCAL YEARS 1994, 1995, AND 1996

Pub. L. 103–66, title XI, §11001, Aug. 10, 1993, 107 Stat. 408, provided that:

''(a) APPLICABILITY.—This section shall apply with respect to any cost-of-living increase scheduled to take effect, during fiscal year 1994, 1995, or 1996, under—

''(1) section 8340(b) or 8462(b) of title 5, United States Code;

''(2) section 826 or 858 of the Foreign Service Act of 1980 [22 U.S.C. 4066, 4071g]; or

''(3) section 291 of the Central Intelligence Agency Retirement Act (50 U.S.C. 2131), as set forth in sec-

tion 802 of the CIARDS Technical Corrections Act of 1992 (Public Law 102–496; 106 Stat. 3196).

''(b) DELAY IN EFFECTIVE DATE OF ADJUSTMENTS.—A cost-of-living increase described in subsection (a) shall not take effect until the first day of the third calendar month after the date such increase would otherwise take effect.

''(c) RULE OF CONSTRUCTION.—Nothing in this section shall be considered to affect any determination relating to eligibility for an annuity increase or the amount of the first increase in an annuity under section 8340(b) or (c) or section 8462(b) or (c) of title 5, United States Code, or comparable provisions of law.''

TIME OF PAYMENT OF ANNUITY OR RETIRED OR RETIREMENT PAY WHICH PRESIDENT ADJUSTS

Section 2201(a) of Pub. L. 98–369 provided that: ''Notwithstanding any other provision of law, beginning with the monthly rate payable for December 1984, any annuity or retired or retirement pay payable under any retirement system for Government officers or employees which the President adjusts pursuant to section 8340(b) of title 5, United States Code, shall be paid no earlier than the first business day of the succeeding month.''

COST-OF-LIVING ADJUSTMENTS DURING FISCAL YEARS 1983, 1984, AND 1985

Section 301(a)–(c) of Pub. L. 97–253, as amended by Pub. L. 98–270, title I, § 201(c), Apr. 18, 1984, 98 Stat. 158; Pub. L. 98–396, title I, Aug. 22, 1984, 98 Stat. 1403, provided that:

''(a)(1) Except as provided in paragraph (3), the cost-of-living increase under any Government retirement system in annuity or retired or retainer pay of any early retiree taking effect in each of fiscal years 1983, 1984, and 1985, shall be equal to one-half of the assumed increase in the price index for that year.

''(2) For purposes of this subsection, an individual shall be considered to be an early retiree if—

''(A) the individual is under the age of 62 years as of the effective date of the cost-of-living increase involved (determined without regard to subsection (b));

''(B) the annuity or retired or retainer pay of the individual is not computed in whole or in part based on any disability of the individual; and

''(C) the annuity or retired or retainer pay of the individual is based upon the Government service of the individual.

''(3) If the percentage increase in the price index for fiscal year 1983, 1984, or 1985 (as determined by the Office of Personnel Management under section 8340(b) of title 5, United States Code) exceeds the assumed increase in the price index for that year, then the increase in the annuity or retired or retainer pay of an early retiree under paragraph (1) taking effect in that fiscal year shall be equal to—

''(A) one-half of the assumed increase in the price index for that year, plus

''(B) the amount by which the percentage increase in the price index exceeds the assumed price index increase.

If the percentage increase in the price index for fiscal year 1985 (as determined by the Office of Personnel Management under section 8340(b) of title 5, United States Code) is less than the assumed increase in the price index for that year, then the increase in the annuity or retired or retainer pay of an early retiree under paragraph (1) taking effect in that fiscal year shall be equal to the percentage increase in the price index for that year (as so determined).

''(4) As used in this subsection—

''(A) the term 'price index' has the meaning given such term in section 8331(15) of title 5, United States Code; and

''(B) the term 'assumed increase in the price index' means—

''(i) 6.6 percent, in the case of fiscal year 1983,

''(ii) 7.2 percent, in the case of fiscal year 1984, and

''(iii) 6.6 percent, in the case of fiscal year 1985.

''(5) The amount of any survivor annuity which is based on the service of any early retiree subject to this subsection shall be computed as if this subsection had not been enacted.

''(b) [Repealed. Pub. L. 98–270, title II, § 201(c)(2), Apr. 18, 1984, 98 Stat. 158]

''(c) For purposes of this section, the term 'cost-of-living increase under a Government retirement system' means any increase under—

''(1) section 8340(b) of title 5, United States Code;

''(2) section 826 of the Foreign Service Act of 1980 [22 U.S.C. 4066];

''(3) the Central Intelligence Agency Act of 1964 for Certain Employees (50 U.S.C. 403 note);

''(4) section 1401a(b) of title 10, United States Code; or

''(5) any other adjustment of any annuity under a retirement system for Government officers or employees which the President determines, by Executive order, is based on adjustments under any of the provisions referred to in the preceding paragraph.''

COST-OF-LIVING ADJUSTMENT OF RETIRED PAY OR RETAINER PAY OF MEMBERS AND FORMER MEMBERS OF ARMED FORCES AND COMMISSIONED OFFICERS OF NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION AND PUBLIC HEALTH SERVICE; EFFECTIVE DATE OF AMENDMENT

See provisions of section 801(c) of Pub. L. 94–361, title VIII, July 14, 1976, 90 Stat. 929, set out as a note under section 1401a of Title 10, Armed Forces.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8334, 8339, 8341, 8344, 8348, 8349, 8443, 8462 of this title; title 22 sections 3682, 4066; title 28 sections 373, 376, 377, 611, 627; title 31 section 777; title 50 section 2131.

§ 8341. Survivor annuities

(a) For the purpose of this section—

(1) ''widow'' means the surviving wife of an employee or Member who—

(A) was married to him for at least 9 months immediately before his death; or

(B) is the mother of issue by that marriage;

(2) ''widower'' means the surviving husband of an employee or Member who—

(A) was married to her for at least 9 months immediately before her death; or

(B) is the father of issue by that marriage;

(3) ''dependent'', in the case of any child, means that the employee or Member involved was, at the time of the employee or Member's death, either living with or contributing to the support of such child, as determined in accordance with such regulations as the Office of Personnel Management shall prescribe; and

(4) ''child'' means—

(A) an unmarried dependent child under 18 years of age, including (i) an adopted child, and (ii) a stepchild but only if the stepchild lived with the employee or Member in a regular parent-child relationship, and (iii) a recognized natural child, and (iv) a child who lived with and for whom a petition of adoption was filed by an employee or Member, and who is adopted by the surviving spouse of the employee or Member after his death;

(B) such unmarried dependent child regardless of age who is incapable of self-support because of mental or physical disability incurred before age 18; or

(C) such unmarried dependent child between 18 and 22 years of age who is a student regularly pursuing a full-time course of study or training in residence in a high school, trade school, technical or vocational institute, junior college, college, university, or comparable recognized educational institution.

For the purpose of this paragraph and subsection (e) of this section, a child whose 22nd birthday occurs before July 1 or after August 31 of a calendar year, and while he is regularly pursuing such a course of study or training, is deemed to have become 22 years of age on the first day of July after that birthday. A child who is a student is deemed not to have ceased to be a student during an interim between school years if the interim is not more than 5 months and if he shows to the satisfaction of the Office of Personnel Management that he has a bona fide intention of continuing to pursue a course of study or training in the same or different school during the school semester (or other period into which the school year is divided) immediately after the interim.

(b)(1) Except as provided in paragraph (2) of this subsection, if an employee or Member dies after having retired under this subchapter and is survived by a widow or widower, the widow or widower is entitled to an annuity equal to 55 percent (or 50 percent if retired before October 11, 1962) of an annuity computed under section 8339(a)–(i), (n), (p), and (q) of this title as may apply with respect to the annuitant, or of such portion thereof as may have been designated for this purpose under section 8339(j)(1) of this title, unless the right to a survivor annuity was waived under such section 8339(j)(1) or, in the case of remarriage, the employee or Member did not file an election under section 8339(j)(5)(C) or section 8339(k)(2) of this title, as the case may be.

(2) If an annuitant—

(A) who retired before April 1, 1948; or

(B) who elected a reduced annuity provided in paragraph (2) of section 8339(k) of this title;

dies and is survived by a widow or widower, the widow or widower is entitled to an annuity in an amount which would have been paid had the annuitant been married to the widow or widower at the time of retirement.

(3) A spouse acquired after retirement is entitled to a survivor annuity under this subsection only upon electing this annuity instead of any other survivor benefit to which he may be entitled under this subchapter or another retirement system for Government employees. The annuity of the widow or widower under this subsection commences on the day after the annuitant dies. This annuity and the right thereto terminate on the last day of the month before the widow or widower—

(A) dies; or

(B) remarries before becoming 55 years of age.

(4) Notwithstanding the preceding provisions of this subsection, the annuity payable under this subsection to the widow or widower of a retired employee or Member may not exceed the difference between—

(A) the amount which would otherwise be payable to such widow or widower under this subsection (determined without regard to any waiver or designation under section 8339(j)(1) of this title or a prior similar provision of law), and

(B) the amount of the survivor annuity payable to any former spouse of such employee or Member under subsection (h) of this section.

(c) The annuity of a survivor named under section 8339(k)(1) of this title is 55 percent of the reduced annuity of the retired employee or Member. The annuity of the survivor commences on the day after the retired employee or Member dies. This annuity and the right thereto terminate on the last day of the month before the survivor dies.

(d) If an employee or Member dies after completing at least 18 months of civilian service, his widow or widower is entitled to an annuity equal to 55 percent of an annuity computed under section 8339(a)–(f), (i), (n), (p), and (q) of this title as may apply with respect to the employee or Member, except that, in the computation of the annuity under such section, the annuity of the employee or Member shall be at least the smaller of—

(1) 40 percent of his average pay; or

(2) the sum obtained under such section after increasing his service of the type last performed by the period elapsing between the date of death and the date he would have become 60 years of age.

Notwithstanding the preceding sentence, the annuity payable under this subsection to the widow or widower of an employee or Member may not exceed the difference between—

(A) the amount which would otherwise be payable to such widow or widower under this subsection, and

(B) the amount of the survivor annuity payable to any former spouse of such employee or Member under subsection (h) of this section.

The annuity of the widow or widower commences on the day after the employee or Member dies. This annuity and the right thereto terminate on the last day of the month before the widow or widower—

(i) dies; or

(ii) remarries before becoming 55 years of age.

(e)(1) For the purposes of this subsection, ''former spouse'' includes a former spouse who was married to an employee or Member for less than 9 months and a former spouse of an employee or Member who completed less than 18 months of service covered by this subchapter.

(2) If an employee or Member dies after completing at least 18 months of civilian service, or an employee or Member dies after retiring under this subchapter, and is survived by a spouse or a former spouse who is the natural or adoptive parent of a surviving child of the employee or Member, that surviving child is entitled to an annuity equal to the smallest of—

(A) 60 percent of the average pay of the employee or Member divided by the number of children;

(B) $900; or

(C) $2,700 divided by the number of children;

subject to section 8340 of this title. If the employee or Member is not survived by a spouse or a former spouse who is the natural or adoptive parent of a surviving child of the employee or Member, that surviving child is entitled to an annuity equal to the smallest of—

(i) 75 percent of the average pay of the employee or Member divided by the number of children;

(ii) $1,080; or

(iii) $3,240 divided by the number of children;

subject to section 8340 of this title.

(3) The annuity of a child under this subchapter or under the Act of May 29, 1930, as amended from and after February 28, 1948, commences on the day after the employee or Member dies, or commences or resumes on the first day of the month in which the child later becomes or again becomes a student as described by subsection (a)(3) of this section, if any lump sum paid is returned to the Fund. This annuity and the right thereto terminate on the last day of the month before the child—

(A) becomes 18 years of age unless he is then a student as described or incapable of self-support;

(B) becomes capable of self-support after becoming 18 years of age unless he is then such a student;

(C) becomes 22 years of age if he is then such a student and capable of self-support;

(D) ceases to be such a student after becoming 18 years of age unless he is then incapable of self-support; or

(E) dies or marries;

whichever first occurs. On the death of the surviving spouse or former spouse or termination of the annuity of a child, the annuity of any other child or children shall be recomputed and paid as though the spouse, former spouse, or child had not survived the employee or Member.

(f) If a Member heretofore or hereafter separated from the service with title to deferred annuity from the Fund hereafter dies before having established a valid claim for annuity and is survived by a spouse to whom married at the date of separation, the surviving spouse—

(1) is entitled to an annuity equal to 55 percent of the deferred annuity of the Member commencing on the day after the Member dies and terminating on the last day of the month before the surviving spouse dies or remarries; or

(2) may elect to receive the lump-sum credit instead of annuity if the spouse is the individual who would be entitled to the lump-sum credit and files application therefor with the Office before the award of the annuity.

Notwithstanding the preceding sentence, an annuity payable under this subsection to the surviving spouse of a Member may not exceed the difference between—

(A) the annuity which would otherwise be payable to such surviving spouse under this subsection, and

(B) the amount of the survivor annuity payable to any former spouse of such Member under subsection (h) of this section.

(g) In the case of a surviving spouse whose annuity under this section is terminated because of remarriage before becoming 55 years of age, annuity at the same rate shall be restored commencing on the day the remarriage is dissolved by death, annulment, or divorce, if—

(1) the surviving spouse elects to receive this annuity instead of a survivor benefit to which he may be entitled, under this subchapter or another retirement system for Government employees, by reason of the remarriage; and

(2) any lump sum paid on termination of the annuity is returned to the Fund.

(h)(1) Subject to paragraphs (2) through (5) of this subsection, a former spouse of a deceased employee, Member, annuitant, or former Member who was separated from the service with title to a deferred annuity under section 8338(b) of this title is entitled to a survivor annuity under this subsection, if and to the extent expressly provided for in an election under section 8339(j)(3) of this title, or in the terms of any decree of divorce or annulment or any court order or court-approved property settlement agreement incident to such decree.

(2)(A) The annuity payable to a former spouse under this subsection may not exceed the difference between—

(i) the amount applicable in the case of such former spouse, as determined under subparagraph (B) of this paragraph, and

(ii) the amount of any annuity payable under this subsection to any other former spouse of the employee, Member, or annuitant, based on an election previously made under section 8339(j)(3) of this title, or a court order previously issued.

(B) The applicable amount, for purposes of subparagraph (A)(i) of this paragraph in the case of a former spouse, is the amount which would be applicable—

(i) under subsection (b)(4)(A) of this section in the case of a widow or widower, if the deceased was an employee or Member who died after retirement;

(ii) under subparagraph (A) of subsection (d) of this section in the case of a widow or widower, if the deceased was an employee or Member described in the first sentence of such subsection; or

(iii) under subparagraph (A) of subsection (f) of this section in the case of a surviving spouse, if the deceased was a Member described in the first sentence of such subsection.

(3) The commencement and termination of an annuity payable under this subsection shall be governed by the terms of the applicable order, decree, agreement, or election, as the case may be, except that any such annuity—

(A) shall not commence before—

(i) the day after the employee, Member, or annuitant dies, or

(ii) the first day of the second month beginning after the date on which the Office receives written notice of the order, decree, agreement, or election, as the case may be, together with such additional information or documentation as the Office may prescribe,

whichever is later, and

(B) shall terminate—

(i) in the case of an annuity computed by reference to clause (i) or (ii) of paragraph (2)(B) of this subsection, no later than the last day of the month before the former spouse remarries before becoming 55 years of age or dies; or

(ii) in the case of an annuity computed by reference to clause (iii) of such paragraph, no later than the last day of the month before the former spouse remarries or dies.

(4) For purposes of this subchapter, a modification in a decree, order, agreement, or election referred to in paragraph (1) of this subsection shall not be effective—

(A) if such modification is made after the retirement or death of the employee or Member concerned, and

(B) to the extent that such modification involves an annuity under this subsection.

(5) For purposes of this subchapter, a decree, order, agreement, or election referred to in paragraph (1) of this subsection shall not be effective, in the case of a former spouse, to the extent that it is inconsistent with any joint designation or waiver previously executed with respect to such former spouse under section 8339(j)(1) of this title or a similar prior provision of law.

(6) Any payment under this subsection to a person bars recovery by any other person.

(7) As used in this subsection, ''court'' means any court of any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, or the Virgin Islands, and any Indian court.

(i) The requirement in subsections (a)(1)(A) and (a)(2)(A) of this section that the surviving spouse of an employee or Member have been married to such employee or Member for at least 9 months immediately before the employee or Member's death in order to qualify as the widow or widower of such employee or Member shall be deemed satisfied in any case in which the employee or Member dies within the applicable 9-month period, if—

(1) the death of the employee or Member was accidental; or

(2) the surviving spouse of such individual had been previously married to the individual and subsequently divorced, and the aggregate time married is at least 9 months.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 577; Pub. L. 90–83, §1(80), Sept. 11, 1967, 81 Stat. 216; Pub. L. 91–93, title II, §206, Oct. 20, 1969, 83 Stat. 140; Pub. L. 91–658, §3, Jan. 8, 1971, 84 Stat. 1961; Pub. L. 92–243, §1, Mar. 9, 1972, 86 Stat. 56; Pub. L. 92–297, §7(4), May 16, 1972, 86 Stat. 145; Pub. L. 93–260, §1(a), Apr. 9, 1974, 88 Stat. 76; Pub. L. 94–183, §2(36), Dec. 31, 1975, 89 Stat. 1058; Pub. L. 95–317, §1(b), July 10, 1978, 92 Stat. 382; Pub. L. 95–318, §2, July 10, 1978, 92 Stat. 384; Pub. L. 95–454, title IX, §906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 95–598, title III, §338(c), Nov. 6, 1978, 92 Stat. 2681; Pub. L. 96–179, §1, Jan. 2, 1980, 93 Stat. 1299; Pub. L. 98–353, title I, §112, July 10, 1984, 98 Stat. 343; Pub. L. 98–615, §2(4), Nov. 8, 1984, 98 Stat. 3199; Pub. L. 99–251, title II, §§205–207, Feb. 27, 1986, 100 Stat. 25; Pub. L. 99–272, title XV, §15204(a)(2), Apr. 7, 1986, 100 Stat. 335; Pub. L. 101–428, §2(d)(7), Oct. 15, 1990, 104 Stat. 929; Pub. L. 102–378, §2(63), Oct. 2, 1992, 106 Stat. 1354.)

HISTORICAL AND REVISION NOTES

1966 ACT

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(a)	5 U.S.C. 2251(h)–(j).	July 31, 1956, ch. 804, §401 ''Sec. 1(h)–(j)'', 70 Stat. 744. Oct. 11, 1962, Pub. L. 87–793, §1103(f)(A), 76 Stat. 871.
(b)–(f)	5 U.S.C. 2260.	July 31, 1956, ch. 804, §401 ''Sec. 10'', 70 Stat. 754. Aug. 27, 1958, Pub. L. 85–772, §1(b), (c), 72 Stat. 930. Sept. 6, 1960, Pub. L. 86–713, §1(a), 74 Stat. 813. Oct. 11, 1962, Pub. L. 87–793, §1103 (less (a) and (f)(A)), 76 Stat. 870, 871.

In subsection (b), the words ''designated for this purpose under section 8339(i) of this title'' are substituted for ''designated in writing for such purpose by the employee or Member at the time of retirement'' in view of the provisions of section 8339(i).

In subsection (f), the words ''heretofore or hereafter'' are substituted ''either prior to, on, or after the effective date of the Civil Service Retirement Act Amendments of 1956''.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 ACT

Section of title 5	*Source (U.S. Code)*	*Source (Statutes at Large)*
8341(a)(4) ...	5 App.: 2251(j) (less last sentence).	Apr. 25, 1966, Pub. L. 89–407, §1 (words before 1st comma), 80 Stat. 131. July 18, 1966, Pub. L. 89–504, §502, 80 Stat. 300.
8341(b) (last sentence).	5 App.: 2260(a)(2).	July 18, 1966, Pub. L. 89–504, §506(a), 80 Stat. 301.
8341(d) (last sentence).	5 App.: 2260(c) (last sentence).	July 18, 1966, Pub. L. 89–504, §506(b), 80 Stat. 301.
8341(e)	5 App.: 2260(d).	July 18, 1966, Pub. L. 89–504, §506(c), 80 Stat. 301.
8341(g)	5 App.: 2260(f).	July 18, 1966, Pub. L. 89–504, §506(d), 80 Stat. 302.

In subsection (a)(4), the words ''for the purposes of section 10(d)'' are omitted as covered by the words ''For the purpose of this section.''

In clause (2) of the last sentence of subsection (b), the word ''retired'' is inserted before ''Member'' for clarity and to conform to the penultimate sentence and clause (1) of the last sentence.

In subsection (e), the words ''any lump sum paid'' are substituted for ''the lump-sum credit, if paid'' for clarity and consistency with subsection (g)(2).

In subsection (e)(2)(C), the words ''capable of self-support'' are substituted for ''not incapable of self-support.''

In subsection (g), the words ''after July 18, 1966'' are substituted for ''hereafter.'' In clause (1), the word ''he'' is substituted for ''he or she'' on authority of 1 U.S.C. 1. The words ''another retirement system for Government employees'' are substituted for ''any other retirement system established for employees of the Government'' for consistency with section 8101(1)(ii).

REFERENCES IN TEXT

The Act of May 29, 1930, as amended from and after February 28, 1948, referred to in subsec. (e)(3), is the predecessor of section 8338 of this title.

AMENDMENTS

1992—Subsecs. (b)(1), (d). Pub. L. 102–378 substituted ''(p),'' for ''(*o*),''.

1990—Subsecs. (b)(1), (d). Pub. L. 101–428 substituted ''(n), (*o*), and (q)'' for ''(n), and (*o*)''.

1986—Subsecs. (b)(1), (d). Pub. L. 99–272 substituted '', (n) and (*o*)'' for ''and (n)'' in subsec. (b)(1), and ''(n), and (*o*)'' for ''and (n)'' in subsec. (d).

Subsec. (e). Pub. L. 99–251, § 205, added par. (1), redesignated existing pars. (1) and (2) as (2) and (3), respectively, and in par. (2) as redesignated substituted ''that surviving child'' for ''each surviving child'' in two places.

Subsec. (h)(1). Pub. L. 99–251, § 206, substituted ''annuitant, or former Member who was separated from the service with title to a deferred annuity under section 8338(b) of this title'' for ''or annuitant''.

Subsec. (h)(4)(A). Pub. L. 99–251, § 207, inserted ''or death'' after ''retirement''.

1984—Subsec. (a)(1)(A), (2)(A). Pub. L. 98–615, § 2(4)(A), substituted ''9 months'' for ''1 year''.

Subsec. (b)(1). Pub. L. 98–615, § 2(4)(B)(i), substituted ''by a widow or widower, the widow or widower is entitled to an annuity equal to 55 percent (or 50 percent if retired before October 11, 1962)'' for ''by a spouse to whom he was married at the time of retirement, or by a widow or widower whom he married after retirement, the spouse, widow, or widower is entitled to an annuity equal to 55 percent, or 50 percent if retired before October 11, 1962'' and ''section 8339(j)(1) of this title, unless the right to a survivor annuity was waived under such section 8339(j)(1) or, in the case of remarriage, the employee or Member did not file an election under section 8339(j)(5)(C) or section 8339(k)(2) of this title, as the case may be'' for ''section 8339(j) of this title, unless the employee or Member has notified the Office in writing at the time of retirement that he does not desire any spouse surviving him to receive his annuity, or in the case of remarriage, he did not file an election under the third sentence of section 8339(j) of this title''.

Pub. L. 98–353 substituted ''and (n)'' for ''and (*o*)''.

Subsec. (b)(3). Pub. L. 98–615, § 2(4)(B)(ii), substituted ''widow or widower'' for ''spouse, widow, or widower'' wherever appearing in provisions preceding subpar. (A).

Subsec. (b)(3)(B). Pub. L. 98–615, § 2(4)(B)(iii), substituted ''55 years of age'' for ''60 years of age''.

Subsec. (b)(4). Pub. L. 98–615, § 2(4)(B)(iv), added par. (4).

Subsec. (d). Pub. L. 98–615, § 2(4)(C)(i), inserted provision that the annuity payable under this subsection to the widow or widower of an employee or Member may not exceed the difference between the amount which would otherwise be payable to such widow or widower under this subsection and the amount of the survivor annuity payable to any former spouse of such employee or Member under subsec. (h).

Pub. L. 98–353 substituted ''and (n)'' for ''and (*o*)''.

Subsec. (d)(i). Pub. L. 98–615, § 2(4)(C)(ii), redesignated subpar. (A) as cl. (i).

Subsec. (d)(ii). Pub. L. 98–615, § 2(4)(C)(ii), redesignated subpar. (B) as cl. (ii) and substituted ''55 years of age'' for ''60 years of age''.

Subsec. (e)(1). Pub. L. 98–615, § 2(4)(D)(i), inserted ''or a former spouse who is the natural or adoptive parent of a surviving child of the employee or Member'' in provisions preceding subpar. (A) and following subpar. (C).

Subsec. (e)(2). Pub. L. 98–615, § 2(4)(D)(ii), substituted ''surviving spouse or former spouse'' for ''surviving spouse'' and ''spouse, former spouse, or child'' for ''spouse or child'' in provisions following subpar. (E).

Subsec. (f). Pub. L. 98–615, § 2(4)(E), inserted provision that an annuity payable under this subsection to the surviving spouse of a Member may not exceed the difference between the annuity which would otherwise be payable to such surviving spouse under this subsection and the amount of the survivor annuity payable to any former spouse of such Member under subsec. (h) of this section in provisions following par. (2).

Subsec. (g). Pub. L. 98–615, § 2(4)(F), substituted ''55 years of age'' for ''60 years of age'' in provisions preceding par. (1).

Subsecs. (h), (i). Pub. L. 98–615, § 2(4)(G), added subsecs. (h) and (i).

1980—Subsec. (a)(2)(B). Pub. L. 96–179, § 1(1), struck out ''and'' after ''marriage;''.

Subsec. (a)(3). Pub. L. 96–179, § 1(2), added par. (3). Former par. (3) redesignated (4).

Subsec. (a)(4). Pub. L. 96–179, § 1(3), redesignated former par. (3) as (4), substituted ''unmarried dependent child'' for ''unmarried child'' wherever appearing in subpars. (A), (B), and (C), substituted ''but only if the stepchild'' for ''or recognized natural child who'' in subpar. (A)(ii), and inserted ''a recognized natural child, and (iv)'' after ''(iii)''.

1978—Subsec. (a)(3). Pub. L. 95–454, § 906(a)(2), substituted ''Office of Personnel Management'' for ''Civil Service Commission''.

Subsec. (b)(1). Pub. L. 95–598, § 338(c)(1), inserted reference to subsec. (*o*) of section 8339 of this title.

Pub. L. 95–454, § 906(a)(3), substituted ''Office'' for ''Commission''.

Pub. L. 95–317 inserted provisions relating to failure to file an election under section 8339(j) of this title in the case of remarriage.

Subsec. (d). Pub. L. 95–598, § 338(c)(2), inserted reference to subsec. (*o*) of section 8339 of this title.

Subsec. (f)(2). Pub. L. 95–454, § 906(a)(3), substituted ''Office'' for ''Commission''.

Subsec. (g). Pub. L. 95–318 struck out ''after July 18, 1966,'' after ''terminated''.

1975—Subsec. (c). Pub. L. 94–183 substituted ''8339(k)(1)'' for ''8339(k)''.

1974—Subsec. (a)(1)(A), (2)(A). Pub. L. 93–260 substituted ''1 year'' for ''2 years''.

1972—Subsec. (a)(3)(A). Pub. L. 92–243 added cl. (iii).

Subsec. (c). Pub. L. 92–297, § 7(4)(i), substituted ''section 8339(a)–(i)'', ''section 8339(j)'', and ''section 8339(k)'' for ''section 8339(a)–(h)'', ''section 8339(i)'', and ''section 8339(j)'', respectively.

Pub. L. 92–297, § 7(4)(ii), substituted ''section 8339(k)'' for ''section 8339(j)''.

Subsec. (d). Pub. L. 92–297, § 7(4)(iii), substituted ''section 8339(a)–(f) and (i)'' for ''section 8339(a)–(e) and (h)''.

1971—Subsec. (a)(3), (4). Pub. L. 91–658, § 3(a), struck out par. (3) which defined ''dependent widower'', and redesignated par. (4) as (3).

Subsec. (b). Pub. L. 91–658, § 3(b), designated existing first sentence as par. (1), and inserted exception phrase, provision for survival by widow or widower whom employee or Member marries after retirement, entitlement of widow or widower to 55 percent annuity (limited to 50 percent where retirement before Oct. 11, 1962), and substituted ''any spouse surviving him'' for ''his spouse''; added par. (2); and added par. (3), first sentence, respecting entitlement to survivor annuity by a spouse acquired after retirement upon election from available survivor benefits, and designated as second and third sentences former second and third sentences, providing for widows and widowers and substituting ''annuitant'' for ''retired employee or member''.

Subsec. (d). Pub. L. 91–658, § 3(c), substituted ''his widow or widower'' for ''the widow or dependent widower of the employee or Member'' in first sentence, struck out ''or dependent'' before ''widower'' in second sentence, and substituted in third sentence provision for termination of annuity where widow or widower dies or remarries before becoming 60 years of age for prior termination of annuity before widow or dependent widower dies, the dependent widower becomes capable of self-support, the widow or dependent widower of an employee remarries before becoming 60 years of age, or the widow or dependent widower of a member remarries.

Subsec. (e)(2). Pub. L. 91–658, § 3(d), substituted reference to ''subsection (a)(3)'' for ''subsection (a)(4)''.

1969—Subsec. (d). Pub. L. 91–93, § 206(a), provided for entitlement to a survivor annuity after an 18 month rather than a 5 year period of civilian service and prescribed as the annuity the smaller of two computations when computing the annuity under section 8399 (a) to (e) and (h) of this title.

Subsec. (e)(1). Pub. L. 91–93, § 206(b), increased annuity of a surviving child, substituting ''eighteen months'' for ''five years'' of civilian service in par. (1), ''60 percent'', ''$900'', and ''$2,700'' for ''40 percent'', ''$600'', and ''$1,800'' in cls. (A), (B), and (C), respectively, and ''75 percent'', ''$1,080'', and ''$3,240'', for ''50 percent'', ''$720'', and ''$2,160'' in cls. (i), (ii), and (iii), respectively.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–272 effective with respect to service performed on or after Apr. 7, 1986, see section 15204(b) of Pub. L. 99–272, as amended, set out as a note under section 8339 of this title.

EFFECTIVE DATE OF 1984 AMENDMENTS

Section 4 of Pub. L. 98–615, as amended by Pub. L. 99–251, title II, § 201(a)–(c), Feb. 27, 1986, 100 Stat. 20, 22; Pub. L. 99–549, § 9(a), Oct. 27, 1986, 100 Stat. 3065; Pub. L. 99–556, title V, § 501(a), Oct. 27, 1986, 100 Stat. 3139; Pub. L. 100–238, title I, § 127, Jan. 8, 1988, 101 Stat. 1758, provided that:

''(a)(1) Except as provided in paragraphs (3), (4), (5), and (6) and subsections (b) and (c), the amendments made by section 2 of this Act [amending this section and sections 8331, 8334, 8339, 8342, 8345, and 8348 of this title] shall take effect May 7, 1985, and shall apply—

''(A) to any individual who, on or after such date, is married to an employee or Member who, on or after such date, retires, dies, or applies for a refund of contributions under subchapter III of chapter 83 of title 5, United States Code, and

''(B) to any individual who, as of such date, is married to a retired employee or Member,

unless (i) such employee or Member has waived, under the first sentence of section 8339(j)(1) of such title (or a similar prior provision of law), the right of that individual's spouse to receive a survivor annuity, or (ii) in the case of a post-retirement marriage or remarriage, an election has not been made before such date by such employee or Member with respect to such individual under the applicable provisions of section 8339(j)(1) or 8339(k)(2) of such title, as the case may be (or a similar prior provision of law).

''(2) Except as provided in subsection (f), the amendments made by section 3 of this Act [amending sections 8901 to 8903, 8905, 8907, 8909, and 8913 of this title] shall take effect May 7, 1985, and shall apply to any individual who, on or after such date, is married to an employee or annuitant.

''(3) The amendments made by subparagraphs (B)(iii) and (C)(ii) of section 2(4) of this Act [amending section 8341 of this title] (relating to the termination of survivor benefits for a widow or widower who remarries before age 55) and the amendments made by subparagraph (F) of such section 2(4) [amending section 8341 of this title] (relating to the restoration of a survivor annuity upon the dissolution of such a remarriage) shall apply—

''(A) in the case of a remarriage occurring on or after the date of the enactment of this Act [Nov. 8, 1984]; and

''(B) with respect to periods beginning on or after such date.

''(4)(A) Except as provided in subparagraph (B), the amendment made by section 2(3)(A) of this Act [amending section 8339 of this title] (but only to the extent that it amends title 5, United States Code, by adding a new section 8339(j)(5)(C)) and the amendment made by section 2(3)(C) of this Act [amending section 8339 of this title] (which relate to the election of a survivor annuity for a spouse in the case of a post-retirement marriage or remarriage) shall apply—

''(i) to an employee or Member who retires before, on, or after May 7, 1985; and

''(ii) in the case of a marriage occurring on or after May 7, 1985.

''(B) The amendments referred to in subparagraph (A) shall not apply in the case of a marriage of an employee or Member retiring before May 7, 1985, if the marriage occurred after May 6, 1985, and before the date of the enactment of the Federal Employees Benefits Improvement Act of 1986 [Feb. 27, 1986].

''(C) Any election by an employee or Member described in subparagraph (B) to provide a survivor annuity for that individual's spouse by a marriage described in such subparagraph shall be effective if made in accordance with the applicable provisions of section 8339(j)(1) or 8339(k)(2) of title 5, United States Code, as the case may be, as in effect on May 6, 1985.

''(5)(A) Paragraphs (3), (4), and (5)(B) of section 8339(j) of title 5, United States Code (as added by section 2(3)(A) of this Act), shall apply in the case of a former spouse of an employee or Member whose marriage to such employee or Member terminated before May 7, 1985, if such employee or Member retires on or after such date. The paragraphs referred to in the preceding sentence shall so apply only insofar as they relate to an election to provide a survivor annuity for a former spouse.

''(B)(i) The requirement described in clause (ii) shall not apply to an election made by an employee or Member under section 8339(j)(3) of title 5, United States Code (as amended by section 2(3)(A) of this Act), in order to provide a survivor annuity under section 8341(h) of such title (as amended by section 2(4)(G) of this Act) in the case of a former spouse referred to in subparagraph (A) if the election meets the requirements of clause (iii).

''(ii) The requirement referred to in clause (i) is the requirement prescribed in section 8339(j)(3) of title 5, United States Code, for an employee or Member to make an election in the case of a former spouse under such section 8339(j)(3) at the time of retirement or, if later, within 2 years after the date on which the marriage of the former spouse to the employee or Member is dissolved.

''(iii) Clause (i) applies to an election which is made by an employee or Member who retires on or after May 7, 1985, and before the date of the enactment of the Federal Employees Benefits Improvement Act of 1986 [Feb. 27, 1986], and is received by the Office of Personnel Management within the 2-year period beginning on the date of the enactment of such Act.

''(C) A survivor annuity shall be paid a former spouse as provided in section 8341(h) of title 5, United States Code (as amended by section 2(4)(G) of this Act), pursuant to an election made in the case of such former spouse under this paragraph.

''(D) The amendments made by paragraphs (6) and (7) of section 2 of this Act [amending sections 8345 and 8348 of this title] shall apply in the case of survivor annuities and elections authorized by this paragraph.

''(6) The amendment made by section 2(4)(A) of this Act [amending section 8341 of this title] (relating to the definition of a widow or widower) and the amendment made by section 2(4)(G) of this Act (but only to the extent that it amends title 5, United States Code, by adding a new section 8341(i)) shall apply with respect to any marriage occurring on or after the date of the enactment of this Act [Nov. 8, 1984].

''(b)(1) Notwithstanding subsection (a)(1) of this section, a former spouse of an employee or Member who retired before May 7, 1985, or who died after becoming eligible to retire and before such date, is entitled to a survivor annuity under section 8341(b) of title 5, United States Code, as amended by this Act, if—

''(A) the retired employee or Member elects, in writing, within eighteen months after the date of enactment of this Act, according to procedures prescribed by the Office of Personnel Management, to have the annuity of such employee or Member reduced under section 8339(j) of title 5, United States Code, as amended by this Act, and, except as provided in paragraph (3) of this subsection, to deposit in the Civil Service Retirement and Disability Fund an amount determined by the Office, as nearly as may be administratively feasible, to reflect the amount by which such employee or Member's annuity would

have been reduced had the reduction been in effect since such employee or Member's annuity commenced, plus interest computed at the annual rate of six percent for each year during which the annuity would have been reduced if the election had been in effect on and after the date the annuity commenced; or

''(B) where the employee or Member dies or died on or before the one hundred and eightieth day after the date of enactment of this Act or does not make the election described in subparagraph (A)—

''(i) the former spouse's marriage to the employee or Member was dissolved after September 14, 1978, and before May 8, 1987;

''(ii) the former spouse was married to the employee or Member for at least ten years during periods of creditable service under section 8332 of title 5, United States Code;

''(iii) the former spouse has not remarried before age fifty-five after September 14, 1978;

''(iv) the former spouse files an application for the survivor annuity with the Office on or before May 7, 1989; and

''(v) the former spouse is at least fifty years of age on May 7, 1987.

A survivor annuity under subparagraph (B) shall commence on the day after the employee or Member dies or the first day of the second month after the former spouse's application is received by the Office, whichever occurs later.

''(2) Except as provided in paragraph (3), if a retired employee or Member who makes an election under subparagraph (A) of paragraph (1) does not make the deposit required by such subparagraph, the Office shall collect the amount of the deposit by offset against the employee or Member's annuity, up to a maximum of 25 per centum of the net annuity otherwise payable to the employee or Member, and the employee or Member is deemed to consent to such offset.

''(3) An election made by an individual under subparagraph (A) of paragraph (1) of this subsection to provide a survivor annuity for any person prospectively voids any election previously made by such individual with respect to such person under section 8339(k)(1) of title 5, United States Code, as amended by this Act, or any similar prior provision of law. Notwithstanding the provisions of such subparagraph (A), an individual who made such an election under such section 8339(k)(1) (or prior provision) shall not be required to make the deposit described in such subparagraph.

''(4)(A) A former spouse of an employee or Member referred to in the matter before subparagraph (A) in paragraph (1) of this section shall be entitled to a survivor annuity under subparagraph (B) of such paragraph if—

''(i) the former spouse satisfies the requirements of clauses (ii) through (v) of such subparagraph (B); and

''(ii) there is no surviving spouse of the employee or Member and no other former spouse of such employee or Member who is entitled to receive a survivor annuity under subchapter III of chapter 83 of title 5, United States Code, based on the service of such employee or Member which is creditable under such subchapter and there is no other person who has been designated to receive a survivor annuity under such subchapter by reason of an insurable interest in such employee or Member.

''(B) For the purposes of this paragraph, the term 'surviving spouse' means a widow or a widower as defined in paragraphs (1) and (2), respectively, of section 8341(a) of title 5, United States Code.

''(5) A survivor annuity provided under this subsection shall be 55 per centum of the annuity of the retired employee or Member (or of that portion of the annuity which such employee or Member may have designated for this purpose under paragraph (1)(A) of this subsection), as determined under section 8339(a)–(i) and (n) of title 5, United States Code, increased by—

''(A) the total percent increase the retired employee or Member was receiving under section 8340 of such title at death, or

''(B) in the case of a retired employee or Member whose date of death precedes the one hundred and eightieth day after the date of enactment of this Act [Nov. 8, 1984], the total percent increase the retired employee or Member would have received under such section 8340 had such individual died on the one hundred and eightieth day after such date of enactment,

and shall not be subject to reduction under section 8341(h)(2) of such title, as amended by this Act.

''(c) Notwithstanding subsection (a)(1) of this section, an employee or Member who retired before the one hundred and eightieth day after the date of enactment of this Act [Nov. 8, 1984] and who is married to a spouse acquired after retirement for whom such employee or Member was unable to provide a survivor annuity because—

''(1) the employee or Member was married at the time of retirement and elected not to provide a survivor annuity for the employee or Member's spouse at the time of retirement, or

''(2) the employee or Member failed to notify the Office of the employee or Member's post-retirement marriage within one year after the marriage,

may elect in writing, within one year after the date of enactment of this Act, in accordance with procedures prescribed by the Office, to provide for a survivor annuity for such spouse under section 8341(b) of title 5, United States Code, as amended by this Act, to have the retired employee or Member's annuity reduced under section 8339(j) of such title, as so amended, and to deposit in the Civil Service Retirement and Disability Fund an amount determined by the Office, as nearly as may be administratively feasible, to reflect the amount by which such employee or Member's annuity would have been reduced had the election been continuously in effect since the annuity commenced, plus interest. For the purposes of the preceding sentence, the annual rate of interest for each year during which the annuity would have been reduced if the election had been in effect on and after the date the annuity commenced shall be 6 percent. If the retired employee or Member does not make such deposit, the Office shall collect such amount by offset against such employee or Member's annuity, up to a maximum of 25 percent of the net annuity otherwise payable to such employee or Member, and such employee or Member is deemed to consent to such offset. The Office shall provide for general public notice of the right to make an election under this subsection. In cases to which paragraph (2) of this subsection applies, the retired employee or Member shall provide the Office with such documentation as the Office shall decide is appropriate, that such employee or Member attempted to elect a reduced annuity with survivor benefit for such employee or Member's current spouse and that such employee or Member's election was rejected by the Office because it was untimely filed.

''(d) A deposit required by subsection (b)(1)(A) or (c) of this section may be made by the surviving former spouse or spouse, as applicable, of the retired employee or Member.

''(e) The Office shall determine at the end of each fiscal year—

''(1) the cost of survivor annuities provided under subsections (b) and (c) of this section, less an amount determined appropriate by the Office to reflect the value of any deposits made under subsection (b)(1)(A), (c), or (d), and

''(2) the cost of administering subsections (b) and (c).

The Office shall notify the Secretary of the Treasury of the amounts so determined. The Secretary of the Treasury, before closing the account for the fiscal year in question, shall credit to the Civil Service Retirement and Disability Fund, out of any money in the Treasury not otherwise appropriated, such amounts, which shall be available in the same manner as provided under subparagraphs (A) and (B) of section 8348(a)(1) of title 5, United States Code, as amended by this Act.

''(f) Any individual—

''(1) who is entitled to a survivor annuity under subsection (b) of this section or pursuant to an election authorized by reason of the application of subsection (a)(5) of this section,

''(2) as to whom a court order or decree referred to in section 8345(j) of title 5, United States Code (or similar provision of law under a retirement system for Government employees other than the Civil Service Retirement System) has been issued before May 7, 1985, or

''(3) who is entitled (other than as described in paragraph (2)) to an annuity or any portion of an annuity as a former spouse under a retirement system for Government employees as of May 7, 1985,

shall be considered to have satisfied section 8901(10)(C) of title 5, United States Code, as amended by this Act. Notwithstanding subsection (a)(2) of this section, any such individual who otherwise meets the definition of a former spouse under section 8901 of title 5, United States Code, as so amended, may, within 12 months after the date of the enactment of the Federal Employees Benefits Improvement Act of 1986 [Feb. 27, 1986], enroll in an approved health benefits plan described by section 8903 of such title, under the conditions set forth in section 8905(c) of such title, as so amended (other than the conditions prescribed in subparagraphs (A) and (B) of paragraph (1) of such section 8905(c)).

''(g)(1) For purposes of subsections (a)(1), (b), (c), (d), and (e), 'employee', 'Member', and 'former spouse' each has the meaning given that term under section 8331 of title 5, United States Code, as amended by this Act.

''(2) For purposes of subsection (a)(2), 'employee' and 'annuitant' each has the meaning given that term under section 8901 of title 5, United States Code.

''(h) Section 827 of the Foreign Service Act of 1980 [22 U.S.C. 4067] and section 292 of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees [50 U.S.C. 403 note] shall not apply with respect to either the amendments made by section 2 [amending sections 8331, 8334, 8339, 8341, 8342, 8345, and 8348 of this title] or the preceding provisions of this section.''

[Section 501(b) of Pub. L. 99–556 provided that: ''The amendments made by this section [amending note above] shall be effective as of May 7, 1985.'']

[Section 9(b) of Pub. L. 99–549 provided that: ''The amendments made by this section [amending note above] shall be effective as of May 7, 1985.'']

[The Central Intelligence Agency Retirement Act of 1964 for Certain Employees, referred to in Pub. L. 98–615, set out above, is Pub. L. 88–643, Oct. 13, 1964, 78 Stat. 1043, which was revised generally by Pub. L. 102–496, title VIII, §802, Oct. 24, 1992, 106 Stat. 3196, is known as the Central Intelligence Agency Retirement Act and is classified generally to chapter 38 (§2001 et seq.) of Title 50, War and National Defense.]

Amendment by Pub. L. 98–353 effective July 10, 1984, see section 122(a) of Pub. L. 98–353, set out as an Effective Date note under section 151 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 5(a) of Pub. L. 96–179 provided that: ''The amendments made by the first section [amending this section] and section 2 of this Act [amending section 8901 of this title] shall take effect on the date of the enactment of this Act [Jan. 2, 1980], except that no benefits under chapter 89 of title 5, United States Code, made available by reason of such amendments shall be payable for any period before October 1, 1979.''

EFFECTIVE DATE OF 1978 AMENDMENTS

Amendment by Pub. L. 95–598 effective Nov. 6, 1978, see section 402(d) of Pub. L. 95–598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

Section 3 of Pub. L. 95–318 provided that: ''The foregoing provisions of this Act [amending this section and enacting provisions set out as notes under this section] shall take effect on—

''(1) the first day of the month following the date of the enactment of this Act [July 10, 1978], or

''(2) October 1, 1978,

whichever date is later.''

EFFECTIVE DATE OF 1978 AMENDMENT; SURVIVOR ANNUITIES SUBJECT TO REDUCTION, ETC.

For effective date of amendment by Pub. L. 95–317 as first day of first month which begins on or after date of enactment of Pub. L. 95–317, which was approved July 10, 1978, or Oct. 1, 1978, whichever is later, and provisions respecting eligibility of an individual to a survivor annuity, or the reduction therefor, see section 4 of Pub. L. 95–317, set out as a note under section 8339 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Section 1(b) of Pub. L. 93–260 provided that: ''The amendments made by subsection (a) of this section [amending this section] shall not apply in the cases of employees, Members, or annuitants who died before the date of enactment of this Act [Apr. 9, 1974]. The rights of such individuals and their survivors shall continue in the same manner and to the same extent as if such amendments had not been enacted.''

EFFECTIVE DATE OF 1972 AMENDMENTS

Amendment by Pub. L. 92–297 effective on 90th day after May 16, 1972, see section 10 of Pub. L. 92–297, set out as an Effective Date note under section 3381 of this title.

Section 2 of Pub. L. 92–243 provided that: ''The amendment made by the first section of this Act [amending this section] is effective upon enactment [Mar. 9, 1972]. Upon application to the Civil Service Commission, it also applies to a child of an employee or Member who died or retired before such date of enactment [Mar. 9, 1972] but no annuity shall be paid by reason of the amendment for any period prior to the date of enactment.''

EFFECTIVE DATE OF 1969 AMENDMENTS

Section 2 of Pub. L. 91–189 provided that: ''The provisions of section 8341(e) of title 5, United States Code, as amended by section 206(b) of Public Law 91–93 (83 Stat. 140), shall be effective as of October 20, 1969.''

Amendment by Pub. L. 91–93 inapplicable in cases of persons retired or otherwise separated prior to Oct. 20, 1969, their rights and of their survivors continued as if such amendment had not been enacted, see section 207(a) of Pub. L. 91–93 set out as a note under section 8331 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT; RECOMPUTATION AND REDUCTION OF SURVIVOR ANNUITIES

Section 207(c) of Pub. L. 91–93 provided that:

''(1) The amendment made by section 206(b) of this Act [amending this section] shall become effective on the first day of the first month which begins on or after the date of enactment of this Act [Oct. 20, 1969].

''(2) The annuity of each surviving child who, immediately prior to the effective date of such amendment [amending this section] is receiving an annuity under section 8341(e) of title 5, United States Code, or under a comparable provision of any prior law, or who hereafter becomes entitled to receive annuity under the Act of May 29, 1930, as amended from and after February 28, 1948, shall be recomputed effective on such date, or computed from commencing date if later, in accordance with such amendment. No increase allowed and in force prior to such date shall be included in the computation or recomputation of any such annuity. This paragraph shall not operate to reduce any annuity.''

ADDITIONAL ELECTIONS UNDER CIVIL SERVICE RETIREMENT SPOUSE EQUITY ACT OF 1984

Section 201(d) of Pub. L. 99–251 provided that:

''(1) Notwithstanding the time limitation prescribed in subparagraph (A) of section 4(b)(1) of the Civil Service Retirement Spouse Equity Act of 1984 [Pub. L. 98–615, § 4(b)(1)(A), set out as a note above], an election may be made under such subparagraph before the expiration of the 12-month period beginning on the date on which the regulations under paragraph (3) of this subsection first take effect.

''(2) Any retired employee or Member who has made an election under section 4(b)(1)(A) of the Civil Service Retirement Spouse Equity Act of 1984 [set out as a note above] (as in effect at the time of such election) before the regulations under paragraph (3) of this subsection become effective may modify such election by designating, in writing, that only a portion of such employee or Member's annuity is to be used as the base for the survivor annuity for the former spouse for whom the election was made. A modification under this subparagraph shall be subject to the deadline under paragraph (1) of this subsection.

''(3) The Office of Personnel Management shall prescribe regulations to carry out this subsection, including regulations under which an appropriate refund shall be made in the case of a modification under paragraph (2) of this subsection.''

RESTORATION OF SURVIVOR ANNUITIES FOR CERTAIN WIDOWS AND WIDOWERS REMARRYING BEFORE JULY 18, 1966, AND WHERE MEMBER DIED BEFORE JANUARY 8, 1971

Section 1 of Pub. L. 95–318, eff. Oct. 1, 1978, provided that:

''(a) Upon application to the Civil Service Commission, the annuity of—

''(1) a surviving spouse of an employee which was terminated under the provisions of section 8341 (b) or (d) of title 5, United States Code, or of any prior applicable law, because of the remarriage of such spouse before July 18, 1966, and

''(2) a surviving spouse of a Member who died before January 8, 1971, which was terminated under any such provision, because of the remarriage of such spouse,

shall be restored in accordance with the provisions of subsection (b) of this section.

''(b)(1) In the case of a remarriage occurring after the surviving spouse became sixty years of age, the annuity shall be restored to such spouse under subsection (a) of this section only if any lump sum paid on termination of the annuity is returned to the Civil Service Retirement and Disability Fund. If such amount is paid, the annuity shall be so restored commencing on the effective date of this section at the rate which would have been in effect if the annuity had not been terminated.

''(2) In the case of a remarriage occurring before the surviving spouse became sixty years of age, the annuity shall be restored to such spouse under subsection (a) of this section only if—

''(A) such spouse elects to receive this annuity instead of a survivor benefit to which the spouse may be entitled under subchapter III of chapter 83 of such title 5 or under another retirement system for Government employees by reason of the marriage; and

''(B) any lump sum paid on termination of the annuity is returned to such fund.

If the requirements of the preceding sentence are satisfied, such annuity shall be so restored commencing on the effective date of this section or on the first day of the month following the date the remarriage is dissolved by death, annulment, or divorce, whichever date is later, at the rate which was in effect when the annuity was terminated.''

INCREASE IN ANNUITY PAYABLE TO SURVIVING SPOUSES OF MEMBERS, EMPLOYEES, OF ANNUITIES BASED ON SEPARATION OCCURRING PRIOR TO OCT. 20, 1969

Section 2(b) of Pub. L. 93–273, Apr. 26, 1974, 88 Stat. 93, provided that: ''In lieu of any increase based on an increase under subsection (a) of this section, an annuity payable from the Civil Service Retirement and Disability Fund to the surviving spouse of an employee, Member, or annuitant, which is based on a separation occurring prior to October 20, 1969 shall be increased by $132.''

Section 3 of Pub. L. 93–273, Apr. 26, 1974, 88 Stat. 93 provided in part that annuity increases under this pension shall apply to annuities which commence before, on, or after Apr. 26, 1974, but that no increase in annuity shall be paid for any period prior to the first day of the first month which begins on or after the ninetieth day after Apr. 26, 1974, or the date on which the annuity commences, whichever is later. See section 3 of Pub. L. 93–273, set out as a note under section 8345 of this title.

REMARRIAGE PROVISIONS

Section 205 of Pub. L. 91–93 provided that: ''The provisions of subsection (b)(1), (d)(3), and (g) of section 8341 of title 5, United States Code, also shall apply in the case of any widow or widower—

''(1) of an employee who died, retired, or was otherwise finally separated before July 18, 1966;

''(2) who shall have remarried on or after such date; and

''(3) who, immediately before such remarriage, was receiving annuity from the Civil Service Retirement and Disability Fund;

except that no annuity shall be paid by reason of this section for any period prior to the enactment of this section. No annuity shall be terminated solely by reason of the enactment of this section. Notwithstanding the prohibition contained in the first sentence of this section on the payment of annuity for any period prior to the enactment of this section, in any case in which the Civil Service Commission determines that—

''(1) the remarriage of any widow or widower described in such sentence was entered into by the widow or widower in good faith and in reliance on erroneous information provided by Government authority prior to that remarriage that the then existing survivor annuity of the widow or widower would not be terminated because of the remarriage; and

''(2) such annuity was terminated by law because of that remarriage;

then payment of annuity may be made by reason of this section in such case, beginning as of the effective date of the termination because of the remarriage.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8331, 8333, 8339, 8340, 8342, 8343a, 8344, 8348, 8901, 8905 of this title; title 10 sections 1450, 1452; title 22 section 4069–1; title 38 sections 7426, 7438; title 50 section 403s.

§ 8342. Lump-sum benefits; designation of beneficiary; order of precedence

(a) Subject to subsection (j) of this section, an employee or Member who—

(1)(A) is separated from the service for at least thirty-one consecutive days; or

(B) is transferred to a position in which he is not subject to this subchapter, or chapter 84 of this title, and remains in such a position for at least thirty-one consecutive days;

(2) files an application with the Office of Personnel Management for payment of the lump-sum credit;

(3) is not reemployed in a position in which he is subject to this subchapter, or chapter 84 of this title, at the time he files the application; and

(4) will not become eligible to receive an annuity within thirty-one days after filing the application,

is entitled to be paid the lump-sum credit. Except as provided in section 8343a or 8334(d)(2) of

this title, the receipt of the payment of the lump-sum credit by the employee or Member voids all annuity rights under this subchapter based on the service on which the lump-sum credit is based, until the employee or Member is reemployed in the service subject to this subchapter. In applying this subsection to an employee or Member who becomes subject to chapter 84 (other than by an election under title III of the Federal Employees' Retirement System Act of 1986) and who, while subject to such chapter, files an application with the Office for a payment under this subsection—

(i) entitlement to payment of the lump-sum credit shall be determined without regard to paragraph (1) or (3) if, or to the extent that, such lump-sum credit relates to service of a type described in clauses (i) through (iii) of section 302(a)(1)(C) of the Federal Employees' Retirement System Act of 1986; and

(ii) if, or to the extent that, the lump-sum credit so relates to service of a type referred to in clause (i), it shall (notwithstanding section 8331(8)) consist of—

(I) the amount by which any unrefunded amount described in section 8331(8)(A) or (B) relating to such service, exceeds 1.3 percent of basic pay for such service; and

(II) interest on the amount payable under subclause (I), computed in a manner consistent with applicable provisions of section 8331(8).

(b) Under regulations prescribed by the Office, a present or former employee or Member may designate a beneficiary or beneficiaries for the purpose of this subchapter.

(c) Lump-sum benefits authorized by subsections (d)–(f) of this section shall be paid to the person or persons surviving the employee or Member and alive at the date title to the payment arises in the following order of precedence, and the payment bars recovery by any other person:

First, to the beneficiary or beneficiaries designated by the employee or Member in a signed and witnessed writing received in the Office before his death. For this purpose, a designation, change, or cancellation of beneficiary in a will or other document not so executed and filed has no force or effect.

Second, if there is no designated beneficiary, to the widow or widower of the employee or Member.

Third, if none of the above, to the child or children of the employee or Member and descendants of deceased children by representation.

Fourth, if none of the above, to the parents of the employee or Member or the survivor of them.

Fifth, if none of the above, to the duly appointed executor or administrator of the estate of the employee or Member.

Sixth, if none of the above, to such other next of kin of the employee or Member as the Office determines to be entitled under the laws of the domicile of the employee or Member at the date of his death.

For the purpose of this subsection, ''child'' includes a natural child and an adopted child, but does not include a stepchild.

(d) If an employee or Member dies—

(1) without a survivor; or

(2) with a survivor or survivors and the right of all survivors terminates before a claim for survivor annuity is filed;

or if a former employee or Member not retired dies, the lump-sum credit shall be paid.

(e) If all annuity rights under this subchapter based on the service of a deceased employee or Member terminate before the total annuity paid equals the lump-sum credit, the difference shall be paid.

(f) If an annuitant dies, annuity accrued and unpaid shall be paid.

(g) Annuity accrued and unpaid on the termination, except by death, of the annuity of an annuitant or survivor annuitant shall be paid to that individual. Annuity accrued and unpaid on the death of a survivor annuitant shall be paid in the following order of precedence, and the payment bars recovery by any other person:

First, to the duly appointed executor or administrator of the estate of the survivor annuitant.

Second, if there is no executor or administrator, payment may be made, after 30 days from the date of death of the survivor annuitant, to such next of kin of the survivor annuitant as the Office determines to be entitled under the laws of the domicile of the survivor annuitant at the date of his death.

(h) Amounts deducted and withheld from the basic pay of an employee or Member from the first day of the first month which begins after he has performed sufficient service (excluding service which the employee or Member elects to eliminate for the purpose of annuity computation under section 8339 of this title) to entitle him to the maximum annuity provided by section 8339 of this title, together with interest on the amounts at the rate of 3 percent a year compounded annually from the date of the deductions to the date of retirement or death, shall be applied toward any deposit due under section 8334 of this title, and any balance not so required is deemed a voluntary contribution for the purpose of section 8343 of this title.

(i) An employee who—

(1) is separated from the service before July 12, 1960; and

(2) continues in the service after July 12, 1960, without break in service of 1 workday or more;

is entitled to the benefits of subsection (h) of this section.

(j)(1) Payment of the lump-sum credit under subsection (a) of this section—

(A) may be made only if any current spouse and any former spouse of the employee or Member are notified of the employee or Member's application; and

(B) shall be subject to the terms of a court decree of divorce, annulment, or legal separation or any court order or court approved property settlement agreement incident to such decree if—

(i) the decree, order, or agreement expressly relates to any portion of the lump-sum credit involved; and

(ii) payment of the lump-sum credit would extinguish entitlement of the employee's or

Member's spouse or former spouse to a survivor annuity under section 8341(h) of this title or to any portion of an annuity under section 8345(j) of this title.

(2)(A) Notification of a spouse or former spouse under this subsection shall be made in accordance with such requirements as the Office shall by regulation prescribe.

(B) Under the regulations, the Office may provide that paragraph (1)(A) of this subsection may be waived with respect to a spouse or former spouse if the employee or Member establishes to the satisfaction of the Office that the whereabouts of such spouse or former spouse cannot be determined.

(3) The Office shall prescribe regulations under which this subsection shall be applied in any case in which the Office receives two or more such orders or decrees.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 579; Pub. L. 90–83, § 1(81), Sept. 11, 1967, 81 Stat. 217; Pub. L. 95–454, title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 97–253, title III, § 303(c), Sept. 8, 1982, 96 Stat. 794; Pub. L. 97–346, § 3(f), Oct. 15, 1982, 96 Stat. 1648; Pub. L. 98–615, § 2(5), Nov. 8, 1984, 98 Stat. 3201; Pub. L. 99–251, title II, § 208, Feb. 27, 1986, 100 Stat. 25; Pub. L. 99–335, title II, §§ 204(b)(2), 207(h), June 6, 1986, 100 Stat. 592, 596; Pub. L. 100–238, title I, § 105(b), Jan. 8, 1988, 101 Stat. 1746; Pub. L. 101–508, title VII, § 7001(b)(2)(D), Nov. 5, 1990, 104 Stat. 1388–329.)

HISTORICAL AND REVISION NOTES

1966 ACT

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 2261.	July 31, 1956, ch. 804, § 401 ''Sec. 11'' 70 Stat. 755. July 12, 1960, Pub. L. 86–622, § 1(a), 74 Stat. 409. Oct. 4, 1961, Pub. L. 87–350, § 3, 75 Stat. 771.

In subsection (a), the words ''before October 1, 1956'' are substituted for ''prior to the effective date of the Civil Service Retirement Act Amendments of 1956'' on authority of § 406 of the Act of July 31, 1956, ch. 804, 70 Stat. 761.

In subsection (g), the words ''the expiration of'' are omitted as surplusage.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 ACT

Section of title 5	*Source (U.S. Code)*	*Source (Statutes at Large)*
8342(a)	[No source].	[No source.]
8342(c)	5 App.: 2261(c).	Mar. 23, 1966, Pub. L. 89–373, § 2, 80 Stat. 78.
	5 App.: 2251(j) (last sentence).	Apr. 25, 1966, Pub. L. 89–407, § 1 (less words before 1st comma), 80 Stat. 131.

In subsection (a), the amendment is made for consistency within the subchapter and to reflect that it is the individual, rather than the position, that is subject to the subchapter.

In the last sentence of subsection (c), the words ''this subsection'' are substituted for ''section 11'' to reflect the codification of title 5, United States Code.

REFERENCES IN TEXT

The Federal Employees' Retirement System Act of 1986, referred to in subsec. (a), is Pub. L. 99–335, June 6, 1986, 100 Stat. 514, as amended. Title III of the Federal Employees' Retirement System Act of 1986 amended sections 3121 and 6103 of Title 26, Internal Revenue Code, section 1005 of Title 39, Postal Service, and section 410 of Title 42, The Public Health and Welfare, enacted provisions set out as notes under sections 8331, 8401, 8432, and 8472 of this title and section 6103 of Title 26, and amended provisions set out as a note under section 8331 of this title. Section 302 of that Act is set out as a note under section 8331 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 8401 of this title and Tables.

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–508 inserted ''or 8334(d)(2)'' after ''8343a'' in second sentence.

1988—Subsec. (a). Pub. L. 100–238 amended last sentence of subsec. (a) generally. Prior to amendment, last sentence read as follows: ''In applying this subsection with respect to an employee or Member who becomes subject to chapter 84 of this title, entitlement to payment of the lump-sum credit shall be determined without regard to paragraph (1) or (3) if, and to the extent that, such lump-sum credit relates to service of a type described in clauses (i) through (iii) of section 302(a)(1)(C) of the Federal Employees' Retirement System Act of 1986.''

1986—Subsec. (a). Pub. L. 99–335 inserted '', or chapter 84 of this title,'' in pars. (1)(B) and (3), substituted ''Except as provided in section 8343a of this title, the'' for ''The'' in second sentence, and inserted provisions regarding entitlement by an employee or Member who becomes subject to chapter 84 of this title to payment of a lump-sum credit.

Subsec. (j)(1)(B). Pub. L. 99–251 amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''in any case in which there is a former spouse, shall be subject to the terms of a court order or decree issued with respect to such former spouse if—

''(i) the order or decree expressly relates to any portion of the lump-sum credit involved, and

''(ii) payment of the lump-sum credit would extinguish entitlement of the former spouse to a survivor annuity under section 8341(h) of this title or to any portion of an annuity under section 8345(j) of this title.''

1984—Subsec. (a). Pub. L. 98–615, § 2(5)(A), substituted ''Subject to subsection (j) of this section, an'' for ''An'' in provisions preceding par. (1).

Subsec. (j). Pub. L. 98–615, § 2(5)(B), added subsec. (j).

1982—Subsec. (a). Pub. L. 97–346 substituted ''such a position'' for ''such position'' in par. (1)(B).

Pub. L. 97–253, § 303(c), substituted provisions that an employee or Member who is separated from the service for at least 31 consecutive days or is transferred to a position in which he is not subject to this subchapter for 31 days, and who files an application with the Office of Personnel Management for payment of a lump-sum credit, is not reemployed in a position subject to this subchapter at the time of filing, and will not be eligible for an annuity within 31 days of filing, is entitled to be paid the lump-sum credit and upon receipt of such payment, all annuity rights based on the service upon which the credit is based are voided until reemployment under this subchapter occurs for provisions that such employee or Member who was separated from the service, or was transferred to a position in which he did not continue subject to this subchapter, was entitled to be paid the lump-sum credit if his separation or transfer occurred and application for payment was filed with the Office of Personnel Management at least 31 days before the earliest commencing date of any annuity for which he was eligible, that the receipt of payment of the lump-sum credit by the individual voided all annuity rights under this subchapter until he was reemployed in the service subject to this subchapter, and that this subsection also applied to an employee or Member separated before October 1, 1956, after completing at least 20 years of civilian service.

1978—Subsecs. (a) to (c), (g). Pub. L. 95–454 substituted ''Office of Personnel Management'' for ''Civil Service Commission'' and ''Office'' for ''Commission''.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 effective with respect to any annuity having a commencement date later than Dec. 1, 1990, see section 7001(b)(3) of Pub. L. 101–508, set out as a note under section 8334 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–335 effective Jan. 1, 1987, see section 702(a) of Pub. L. 99–335, set out as an Effective Date note under section 8401 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–615 effective May 7, 1985, with enumerated exceptions and specific applicability provisions, see section 4(a)(1) of Pub. L. 98–615, as amended, set out as a note under section 8341 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Section 303(d)(2) of Pub. L. 97–253 provided that: ''The amendment made by subsection (c) [amending this section] shall take effect October 1, 1982.''

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

REESTABLISHMENT OF RIGHT TO RECEIVE ANNUITY BY JUDGES WHO RECEIVED LUMP-SUM CREDIT

Pub. L. 96–504, §2, Dec. 5, 1980, 94 Stat. 2741, provided that: ''A present or former justice or judge of the United States, as defined by section 451 of title 28, United States Code, who, prior to the effective date of this section [Dec. 5, 1980], voided his right to receive an annuity under subchapter III of chapter 83 of title 5, United States Code, by applying for and receiving a refund of his lump-sum credit while serving as such a justice or judge may, upon application filed with the Office of Personnel Management within one year following the effective date of this section, redeposit such refund with interest computed under section 8334(e) of such title 5 and thereby reestablish his right to receive an annuity under such subchapter effective on the date he otherwise was eligible to receive an annuity. The surviving spouse of any such justice or judge who dies before the effective date of this section may apply to make such redeposit within one year following the effective date of this section and receive both (1) the amount of the annuity which the justice or judge would have been entitled to receive before his death had application been made by him for the annuity and (2) any survivor annuity the justice or judge could have provided under the provisions of law in effect at the time of separation from the service on which title to the annuity is based.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8316, 8334, 8339, 8343, 8344 of this title; title 16 section 1168; title 26 section 3121; title 42 section 410.

§ 8343. Additional annuities; voluntary contributions

(a) Under regulations prescribed by the Office of Personnel Management, an employee or Member may voluntarily contribute additional sums in multiples of $25, but the total may not exceed 10 percent of his basic pay for creditable service after July 31, 1920. The voluntary contribution account in each case is the sum of unrefunded contributions, plus interest at 3 percent a year through December 31, 1984, and thereafter at the rate computed under section 8334(e) of this title, compounded annually to—

(1) the date of payment under subsection (d) of this section, separation, or transfer to a position in which he does not continue subject to this subchapter, whichever is earliest; or

(2) the commencing date fixed for a deferred annuity or date of death, whichever is earlier, in the case of an individual who is separated with title to deferred annuity and does not claim the voluntary contribution account.

(b) The voluntary contribution account is used to purchase at retirement an annuity in addition to the annuity otherwise provided. For each $100 in the voluntary contribution account, the additional annuity consists of $7, increased by 20 cents for each full year, if any, the employee or Member is over 55 years of age at the date of retirement.

(c) A retiring employee or Member may elect a reduced additional annuity instead of the additional annuity described by subsection (b) of this section and designate in writing an individual to receive after his death an annuity of 50 percent of his reduced additional annuity. The additional annuity of the employee or Member making the election is reduced by 10 percent, and by 5 percent for each full 5 years the individual designated is younger than the retiring employee or Member. However, the total reduction may not exceed 40 percent.

(d) A present or former employee or Member is entitled to be paid the voluntary contribution account if he files application for payment with the Office before receiving an additional annuity. An individual who has been paid the voluntary contribution account may not again deposit additional sums under this section until, after a separation from the service of more than 3 calendar days, he again becomes subject to this subchapter.

(e) If a present or former employee or Member not retired dies, the voluntary contribution account is paid under section 8342(c) of this title. If all additional annuities or any right thereto based on the voluntary contribution account of a deceased employee or Member terminate before the total additional annuity paid equals the account, the difference is paid under section 8342(c) of this title.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 580; Pub. L. 90–83, §1(82), Sept. 11, 1967, 81 Stat. 217; Pub. L. 95–454, title IX, §906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 97–253, title III, §303(a)(2), Sept. 8, 1982, 96 Stat. 794.)

HISTORICAL AND REVISION NOTES
1966 ACT

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 2262.	July 31, 1956, ch. 804, §401 ''Sec. 12'', 70 Stat. 756. Aug. 14, 1958, Pub. L. 85–661, §1, 72 Stat. 614.

In subsection (a), the words ''after July 31, 1920'' are substituted for ''on or after August 1, 1920''. In paragraph (1), the words ''payment under subsection (d) of this section'' are based on ''but such account shall not in any case include interest beyond date of payment'' in former section 2262(d); the latter, accordingly, are omitted from subsection (d).

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 ACT

This section amends 5 U.S.C. 8343(a)(1) for consistency within the subchapter and to reflect that it is the individual, rather than the position, that is subject to the subchapter.

AMENDMENTS

1982—Subsec. (a). Pub. L. 97–253 inserted ''through December 31, 1984, and thereafter at the rate computed under section 8334(e) of this title,''.

1978—Subsecs. (a), (d). Pub. L. 95–454 substituted ''Office of Personnel Management'' for ''Civil Service Commission'' and ''Office'' for ''Commission''.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–253 effective with respect to deposits for service performed, on or after Oct. 1, 1982, and with respect to refunds for which application is received by Office of Personnel Management on or after Oct. 1, 1982, see section 303(d)(1) of Pub. L. 97–253, as amended by Pub. L. 97–346, § 3(j)(1), Oct. 15, 1982, 96 Stat. 1649, set out as a note under section 8334 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8342 of this title; title 10 section 942.

§ 8343a. Alternative forms of annuities

(a) The Office of Personnel Management shall prescribe regulations under which any employee or Member who has a life-threatening affliction or other critical medical condition may, at the time of retiring under this subchapter (other than under section 8337 of this title), elect annuity benefits under this section instead of any other benefits under this subchapter (including any benefits under section 8341 of this title) based on the service of the employee or Member.

(b) Subject to subsection (c), the Office shall by regulation provide for such alternative forms of annuities as the Office considers appropriate, except that among the alternatives offered shall be—

(1) an alternative which provides for—

(A) payment of the lump-sum credit to the employee or Member; and

(B) payment of an annuity to the employee or Member for life; and

(2) in the case of an employee or Member who is married at the time of retirement, an alternative which provides for—

(A) payment of the lump-sum credit to the employee or Member; and

(B) payment of an annuity to the employee or Member for life, with a survivor annuity payable for the life of a surviving spouse.

(c) Each alternative provided for under subsection (b) shall, to the extent practicable, be designed such that the present value of the benefits provided under such alternative (including any lump-sum credit) is actuarially equivalent to the present value of the annuity which would otherwise be provided the employee or Member under this subchapter, as computed under subsections (a)–(i), (n), and (q) of section 8339 of this title.

(d) An employee or Member who, at the time of retiring under this subchapter—

(1) is married, shall be ineligible to make an election under this section unless a waiver is made under section 8339(j)(1) of this title; or

(2) has a former spouse, shall be ineligible to make an election under this section if the former spouse is entitled to benefits under section 8341(h) or 8345(j) of this title (based on the service of the employee or Member) under the terms of a decree of divorce or annulment, or a court order or court-approved property settlement incident to any such decree, with respect to which the Office has been duly notified.

(e) An employee or Member who is married at the time of retiring under this subchapter and who makes an election under this section may, during the 18-month period beginning on the date of retirement, make the election provided for under section 8339(*o*) of this title, subject to the deposit requirement thereunder.

(Added Pub. L. 99–335, title II, § 204(a), June 6, 1986, 100 Stat. 591; amended Pub. L. 101–428, § 2(d)(5), Oct. 15, 1990, 104 Stat. 929; Pub. L. 101–508, title VII, § 7001(a)(1), Nov. 5, 1990, 104 Stat. 1388–327; Pub. L. 103–66, title XI, § 11002(a), Aug. 10, 1993, 107 Stat. 409.)

AMENDMENTS

1993—Subsec. (a). Pub. L. 103–66, § 11002(a)(1), substituted ''any employee or Member who has a life-threatening affliction or other critical medical condition'' for ''an employee or Member''.

Subsec. (f). Pub. L. 103–66, § 11002(a)(2), struck out subsec. (f) which prohibited election of alternative form of annuity where commencement date would be after Dec. 1, 1990, with certain exceptions.

1990—Subsec. (c). Pub. L. 101–428 substituted ''(a)–(i), (n), and (q)'' for ''(a)–(i) and (n)''.

Subsec. (f). Pub. L. 101–508 added subsec. (f).

EFFECTIVE DATE OF 1993 AMENDMENT

Section 11002(d) of Pub. L. 103–66 provided that: ''The amendments made by this section [amending this section and section 8420a of this title, section 4047 of Title 22, Foreign Relations and Intercourse, and section 2143 of Title 50, War and National Defense] shall become effective on October 1, 1994, and shall apply with respect to any annuity commencing on or after that date.''

EFFECTIVE DATE

Section effective June 6, 1986, see section 702(b)(3) of Pub. L. 99–335, set out as a note under section 8401 of this title.

APPLICABILITY OF SECTIONS 8343a(f) AND 8420a(f) TO INDIVIDUALS CALLED TO OR PERFORMING DUTY IN CONNECTION WITH OPERATION DESERT SHIELD

Section 7001(a)(4) of Pub. L. 101–508 provided that:

''(A) In applying the provisions of section 8343a(f) or 8420a(f) of title 5, United States Code (as amended by paragraph (1)) to any individual described in subparagraph (B), the reference in such provisions to 'December 1, 1990' shall be deemed to read 'December 1, 1991'.

''(B) This paragraph applies with respect to any individual who—

''(i)(I) is a member of the Armed Forces of the United States who, before December 1, 1990, was called or ordered to active duty (other than for training) pursuant to section 672 [now 12301], 673 [now 12302], 673b [now 12304], 674 [now 12306], 675 [now 12307], or 688 of title 10, United States Code, in connection with Operation Desert Shield; or

''(II) is an employee of the Department of Defense who is certified by the Secretary of Defense to have performed, after November 30, 1990, duties essential for the support of Operation Desert Shield; and

''(ii) would have been eligible to make an election under section 8343a or 8420a of title 5, United States Code (as amended by paragraph (1)) as of November 30, 1990.

''(C) The Office of Personnel Management may prescribe such regulations as may be necessary to carry out this paragraph.''

PARTIAL DEFERRED PAYMENT OF LUMP-SUM CREDIT FOR CERTAIN INDIVIDUALS ELECTING ALTERNATIVE FORMS OF ANNUITIES

Pub. L. 101–239, title IV, § 4005, Dec. 19, 1989, 103 Stat. 2135, as amended by Pub. L. 101–508, title VII, § 7001(a)(2)(A)–(C)(i), Nov. 5, 1990, 104 Stat. 1388–328, provided that:

''(a) IN GENERAL.—Notwithstanding any other provision of law, and except as provided in subsection (c), any lump-sum credit payable to an employee or Member pursuant to the election of an alternative form of annuity by such employee or Member under section 8343a or section 8420a of title 5, United States Code, shall be paid in accordance with the schedule under subsection (b) (instead of the schedule which would otherwise apply), if the commencement date of the annuity payable to such employee or Member occurs after December 2, 1989, and before December 2, 1990.

''(b) SCHEDULE OF PAYMENTS.—The schedule of payment of any lump-sum credit subject to this section is as follows:

''(1) 50 percent of the lump-sum credit shall be payable on the date on which, but for the enactment of this section, the full amount of the lump-sum credit would otherwise be payable.

''(2) The remainder of the lump-sum credit shall be payable on the date which occurs 12 months after the date on which the payment described in paragraph (1) is paid.

An amount payable in accordance with paragraph (2) shall be payable with interest, computed using the rate under section 8334(e)(3) of title 5, United States Code.

''(c) EXCEPTIONS.—The Office of Personnel Management shall prescribe regulations to provide that, unless the individual involved indicates otherwise by written notice to the Office (submitted at such time and in such manner as the regulations may require), this section shall not apply—

''(1) in the case of any individual who is separated from Government service involuntarily, other than for cause on charges of misconduct or delinquency; and

''(2) in the case of any individual as to whom the application of this section would be against equity and good conscience, due to a life-threatening affliction or other critical medical condition affecting such individual.

''(d) ANNUITY BENEFITS NOT AFFECTED.—Nothing in this section shall affect the commencement date, the amount, or any other aspect of any annuity benefits payable under section 8343a or section 8420a of title 5, United States Code.

''(e) DEFINITIONS.—For purposes of this section, the terms 'lump-sum credit', 'employee', and 'Member' each has the meaning given such term by section 8331 or section 8401 of title 5, United States Code, as appropriate.

''(f) CONTINUED APPLICABILITY.—The preceding provisions of this section (disregarding the provision in subsection (a) limiting this section's applicability to annuities commencing before the date specified in such provision) shall also apply in the case of any employee or Member whose election of an alternative form of annuity would not have been allowable under section 8343a(f) or 8420a(f) of title 5, United States Code (as the case may be), but for—

''(1) paragraph (2)(A) thereof; or

''(2) section 7001(a)(4) of the Omnibus Budget Reconciliation Act of 1990 [Pub. L. 101–508, set out as a note above].''

[Section 7001(a)(2)(C)(ii) of Pub. L. 101–508 provided that: ''The amendments made by clause (i) [amending section 4005 of Pub. L. 101–239 and section 6001 of Pub. L. 100–203, set out as notes above and below] shall not apply in any case in which the first half of the lump-sum payment involved was paid before the beginning of the 11-month period which ends on the date of the enactment of this Act [Nov. 5, 1990].'']

Similar provisions were contained in the following acts:

Pub. L. 101–227, § 2, Dec. 12, 1989, 103 Stat. 1943, which was repealed by Pub. L. 101–508, title VII, § 7001(a)(2)(D), Nov. 5, 1990, 104 Stat. 1388–328.

Pub. L. 100–203, title VI, § 6001, Dec. 22, 1987, 101 Stat. 1330–275, as amended by Pub. L. 101–103, § 6, Sept. 30, 1989, 103 Stat. 672; Pub. L. 101–508, title VII, § 7001(a)(2)(C)(i), Nov. 5, 1990, 104 Stat. 1388–328.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8342, 8348 of this title; title 50 section 2143.

§ 8344. Annuities and pay on reemployment

(a) If an annuitant receiving annuity from the Fund, except—

(1) a disability annuitant whose annuity is terminated because of his recovery or restoration of earning capacity;

(2) an annuitant whose annuity, based on an involuntary separation (other than an automatic separation or an involuntary separation for cause on charges of misconduct or delinquency), is terminated under subsection (b) of this section;

(3) an annuitant whose annuity is terminated under subsection (c) of this section; or

(4) a Member receiving annuity from the Fund;

becomes employed in an appointive or elective position, his service on and after the date he is so employed is covered by this subchapter. Deductions for the Fund may not be withheld from his pay unless the individual elects to have such deductions withheld under subparagraph (A). An amount equal to the annuity allocable to the period of actual employment shall be deducted from his pay, except for lump-sum leave payment purposes under section 5551 of this title. The amounts so deducted shall be deposited in the Treasury of the United States to the credit of the Fund. If the annuitant serves on a full-time basis, except as President, for at least 1 year, on a part-time basis for periods equivalent to at least 1 year of full-time service, in employment not excluding him from coverage under section 8331(1)(i) or (ii) of this title—

(A) deductions for the Fund may be withheld from his pay (if the employee so elects), and his annuity on termination of employment is increased by an annuity computed under section 8339(a), (b), (d), (e), (h), (i), (n), and (q) of this title as may apply based on the period of employment and the basic pay, before deduction, averaged during that employment; and

(B) his lump-sum credit may not be reduced by annuity paid during that employment.

If the annuitant is receiving a reduced annuity as provided in section 8339(j) or section 8339(k)(2) of this title, the increase in annuity payable under subparagraph (A) of this subsection is reduced by 10 percent and the survivor annuity payable under section 8341(b) of this title is in-

creased by 55 percent of the increase in annuity payable under such subparagraph (A), unless, at the time of claiming the increase payable under such subparagraph (A), the annuitant notifies the Office of Personnel Management in writing that he does not desire the survivor annuity to be increased. If the annuitant dies while still reemployed, the survivor annuity payable is increased as though the reemployment had otherwise terminated. If the described employment of the annuitant continues for at least 5 years, or the equivalent of 5 years in the case of part-time employment, he may elect, instead of the benefit provided by subparagraph (A) of this subsection, to deposit in the Fund (to the extent deposits or deductions have not otherwise been made) an amount computed under section 8334(c) of this title covering that employment and have his rights redetermined under this subchapter. If the annuitant dies while still reemployed and the described employment had continued for at least 5 years, or the equivalent of 5 years in the case of part-time employment, the person entitled to survivor annuity under section 8341(b) of this title may elect to deposit in the Fund and have his rights redetermined under this subchapter.

(b) If an annuitant, other than a Member receiving an annuity from the Fund, whose annuity is based on an involuntary separation (other than an automatic separation or an involuntary separation for cause or charges on misconduct or delinquency) is reemployed in a position in which he is subject to this subchapter, payment of the annuity terminates on reemployment.

(c) If an annuitant, other than a Member receiving an annuity from the Fund, is appointed by the President to a position in which he is subject to this subchapter, or is elected as a Member, payment of the annuity terminates on reemployment. Upon separation from such position, an individual whose annuity is so terminated is entitled to have his rights redetermined under this subchapter, except that the amount of the annuity resulting from such redetermination shall be at least equal to the amount of the terminated annuity plus any increases under section 8340 of this title occurring after the termination and before the commencement of the redetermined annuity.

(d) If a Member receiving annuity from the Fund becomes employed in an appointive or elective position, annuity payments are discontinued during the employment and resumed on termination of the employment in the amount equal to the sum of the amount of the annuity the member was receiving immediately before the commencement of the employment and the amount of the increases which would have been made in the amount of the annuity under section 8340 of this title during the period of the employment if the annuity had been payable during that period, except that—

(1) the retired Member or Member separated with title to immediate or deferred annuity, who serves at any time after separation as a Member in an appointive position in which he is subject to this subchapter, is entitled, if he so elects, to have his Member annuity computed or recomputed as if the service had been performed before his separation as a Member and the annuity as so computed or recomputed is effective—

(A) the day Member annuity commences; or

(B) the day after the date of separation from the appointive position;

whichever is later;

(2) if the retired Member becomes employed after December 31, 1958, in an appointive position on an intermittent-service basis—

(A) his annuity continues during the employment and is not increased as a result of service performed during that employment;

(B) retirement deductions may not be withheld from his pay;

(C) an amount equal to the annuity allocable to the period of actual employment shall be deducted from his pay, except for lump-sum leave payment purposes under section 5551 of this title; and

(D) the amounts so deducted shall be deposited in the Treasury of the United States to the credit of the Fund;

(3) if the retired Member becomes employed after December 31, 1958, in an appointive position without pay on a full-time or substantially full-time basis, his annuity continues during the employment and is not increased as a result of service performed during the employment; and

(4) if the retired Member takes office as Member and gives notice as provided by section 8331(2) of this title, his service as Member during that period shall be credited in determining his right to and the amount of later annuity.

(e) This section does not apply to an individual appointed to serve as a Governor of the Board of Governors of the United States Postal Service.

(f) Notwithstanding the provisions of subsection (a) of this section, if an annuitant receiving annuity from the Fund, except a Member receiving annuity from the Fund, becomes employed as a justice or judge of the United States, as defined by section 451 of title 28, annuity payments are discontinued during such employment and are resumed in the same amount upon resignation or retirement from regular active service as such a justice or judge.

(g) A former employee or a former Member who becomes employed as a justice or judge of the United States, as defined by section 451 of title 28, may, at any time prior to resignation or retirement from regular active service as such a justice or judge, apply for and be paid, in accordance with section 8342(a) of this title, the amount (if any) by which the lump-sum credit exceeds the total annuity paid, notwithstanding the time limitation contained in such section for filing an application for payment.

(h)(1) Subject to paragraph (2) of this subsection, subsections (a), (b), (c), and (d) of this section shall not apply to any annuitant receiving an annuity from the Fund while such annuitant is employed, during any period described in section 5532(f)(2) of this title or any portion thereof, under the administrative authority of the Administrator, Federal Aviation Administration, or the Secretary of Defense to perform

duties in the operation of the air traffic control system or to train other individuals to perform such duties: *Provided, however*, That the amount such an annuitant may receive in pay, excluding premium pay, in any pay period when aggregated with the annuity payable during that same period shall not exceed the rate payable for level V of the Executive Schedule.

(2) Paragraph (1) of this subsection shall apply only in the case of any annuitant receiving an annuity from the Fund who, before December 31, 1987, applied for retirement or separated from the service while being entitled to an annuity under this chapter.

(i)(1) The Director of the Office of Personnel Management may, at the request of the head of an Executive agency—

(A) waive the application of the preceding provisions of this section on a case-by-case basis for employees in positions for which there is exceptional difficulty in recruiting or retaining a qualified employee; or

(B) grant authority to the head of such agency to waive the application of the preceding provisions of this section, on a case-by-case basis, for an employee serving on a temporary basis, but only if, and for so long as, the authority is necessary due to an emergency involving a direct threat to life or property or other unusual circumstances.

(2) The Office shall prescribe regulations for the exercise of any authority under this subsection, including criteria for any exercise of authority and procedures for terminating a delegation of authority under paragraph (1)(B).

(j)(1) If warranted by circumstances described in subsection (i)(1)(A) or (B) (as applicable), the Director of the Administrative Office of the United States Courts shall, with respect to an employee in the judicial branch, have the same waiver authority as would be available to the Director of the Office of Personnel Management, or a duly authorized agency head, under subsection (i) with respect to an employee of an Executive agency.

(2) Authority under this subsection may not be exercised with respect to a justice or judge of the United States, as defined in section 451 of title 28.

(k)(1) If warranted by circumstances described in subsection (i)(1)(A) or (B) (as applicable), an official or committee designated in paragraph (2) shall, with respect to the employees specified in the applicable subparagraph of such paragraph, have the same waiver authority as would be available to the Director of the Office of Personnel Management, or a duly authorized agency head, under subsection (i) with respect to an employee of an Executive agency.

(2) Authority under this subsection may be exercised—

(A) with respect to an employee of an agency in the legislative branch, by the head of such agency;

(B) with respect to an employee of the House of Representatives, by the Speaker of the House of Representatives; and

(C) with respect to an employee of the Senate, by the Committee on Rules and Administration of the Senate.

(3) Any exercise of authority under this subsection shall be in conformance with such written policies and procedures as the agency head, the Speaker of the House of Representatives, or the Committee on Rules and Administration of the Senate (as applicable) shall prescribe, consistent with the provisions of this subsection.

(4) For the purpose of this subsection, ''agency in the legislative branch'', ''employee of the House of Representatives'', ''employee of the Senate'', and ''congressional employee'' each has the meaning given to it in section 5531 of this title.

(*l*)(1) For the purpose of subsections (i) through (k), ''Executive agency'' shall not include the General Accounting Office.

(2) An employee as to whom a waiver under subsection (i), (j), or (k) is in effect shall not be considered an employee for purposes of this chapter or chapter 84 of this title.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 581; Pub. L. 90–83, §1(83), Sept. 11, 1967, 81 Stat. 217; Pub. L. 91–375, §6(c)(20), Aug. 12, 1970, 84 Stat. 776; Pub. L. 91–658, §4, Jan. 8, 1971, 84 Stat. 1962; Pub. L. 92–297, §7(5), May 16, 1972, 86 Stat. 145; Pub. L. 94–397, §1(a)–(c), Sept. 3, 1976, 90 Stat. 1202, 1303; Pub. L. 95–454, title IX, §906(a)(14), Oct. 13, 1978, 92 Stat. 1226; Pub. L. 95–598, title III, §338(d), Nov. 6, 1978, 92 Stat. 2681; Pub. L. 96–179, §4, Jan. 2, 1980, 93 Stat. 1299; Pub. L. 96–504, §1, Dec. 5, 1980, 94 Stat. 2741; Pub. L. 97–141, §5(a), Dec. 29, 1981, 95 Stat. 1719; Pub. L. 97–276, §151(g), Oct. 2, 1982, 96 Stat. 1202; Pub. L. 97–346, §3(j)(2), Oct. 15, 1982, 96 Stat. 1649; Pub. L. 98–353, title I, §112, July 10, 1984, 98 Stat. 343; Pub. L. 98–396, title I, Aug. 22, 1984, 98 Stat. 1403; Pub. L. 98–525, title XV, §1537(e), Oct. 19, 1984, 98 Stat. 2636; Pub. L. 99–88, title I, §100, Aug. 15, 1985, 99 Stat. 351; Pub. L. 99–500, §101(*l*), Oct. 18, 1986, 100 Stat. 1783–308, and Pub. L. 99–591, §101(*l*), Oct. 30, 1986, 100 Stat. 3341–308; Pub. L. 100–202, §§101(*l*) [title I], 106, Dec. 22, 1987, 101 Stat. 1329–358, 1329–362, 1329–433; Pub. L. 100–457, title I, Sept. 30, 1988, 102 Stat. 2129; Pub. L. 101–428, §2(d)(8), Oct. 15, 1990, 104 Stat. 929; Pub. L. 101–509, title V, §529 [title I, §108(b)], Nov. 5, 1990, 104 Stat. 1427, 1450; Pub. L. 101–510, div. A, title XII, §1206(j)(2), Nov. 5, 1990, 104 Stat. 1664; Pub. L. 102–190, div. A, title VI, §655(b), Dec. 5, 1991, 105 Stat. 1391; Pub. L. 102–378, §8(a), Oct. 2, 1992, 106 Stat. 1359.)

HISTORICAL AND REVISION NOTES
1966 ACT

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 2263 (less (a)).	July 31, 1956, ch. 804, §401 ''Sec. 13 (less (a))'', 70 Stat. 757. July 7, 1960, Pub. L. 86–604, §1(f), 74 Stat. 358. July 12, 1960, Pub. L. 86–622, §3(a), 74 Stat. 410. Oct. 4, 1961, Pub. L. 87–350, §5, 75 Stat. 771.

In subsections (a) and (b), the words ''except for lump-sum leave payment purposes under section 61b of this title'' are omitted as unnecessary as section 5551(a) provides that a ''lump-sum leave payment is considered pay for taxation purposes only''.

In subsection (a), the words ''after September 30, 1956'' are substituted for ''hereafter'' on authority of §406 of the Act of July 31, 1956, ch. 804, 70 Stat. 761. In paragraph (2), the words ''other than an automatic separation'' are substituted for ''excluding a separation

under the automatic separation provisions of this chapter''. In the third sentence, the words ''and this provision concerning the lump-sum leave payments shall also be effective in the case of each retired employee separated from reemployment after December 15, 1953, and before the effective date of the Civil Service Retirement Act Amendments of 1956'' are omitted as executed, and any existing rights are preserved by technical section 8. In the fourth sentence, the words ''except as President'' are added to preserve the exception stated in former section 2252(b). In the penultimate sentence, the words ''after October 3, 1961'' are substituted for ''on or after October 4, 1961''. In the last sentence, the words ''in any manner'' are omitted as unnecessary.

In subsection (b), the words ''receiving annuity from the Fund'' are substituted for ''heretofore or hereafter retired under this chapter''. The word ''hereafter'' is omitted as unnecessary. In paragraph (1)(B), the words ''the day after'' are substituted for ''the first day of the month following'' on authority of former section 2264(b), which is carried into section 8345(b). In paragraph (1), former clause (C) is omitted as obsolete. In paragraph (2)(D), the words ''of the United States'' are omitted as unnecessary.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 ACT

Section of title 5	*Source (U.S. Code)*	*Source (Statutes at Large)*
8344(a)	5 App.: 2263(b) (last sentence).	Mar. 30, 1966, Pub. L. 89–378, §1, 80 Stat. 93.

In subsection (a), the words ''after July 11, 1960'' are substituted for ''on or after July 12, 1960.'' In subsection (b)(1), the amendment is made for consistency within the subchapter.

In the codification of 5 U.S.C. 8344 by Public Law 89–554, the words ''except for lump-sum leave payment purposes under section 61b of this title'' were omitted from the third sentence of subsection (a) and from subsection (b)(2)(C) on the basis that they were unnecessary since former 5 U.S.C. 61b [now codified as 5 U.S.C. 5551(a)] provided that a lump-sum leave payment was considered pay for taxation purposes only. This amendment restores to 5 U.S.C. 8344 the language that was so omitted to conform to the source statute (section 13 of the Civil Service Retirement Act, as amended) and in recognition that the language was expressly placed in the source statute to overcome certain decisions of the Comptroller General of the United States (see 28 Comp. Gen. 294; 33 id. 591, and 36 id. 209).

REFERENCES IN TEXT

Level V of the Executive Schedule, referred to in subsec. (h)(1), is set out in section 5316 of this title.

CODIFICATION

Amendment of subsec. (h)(2) by Pub. L. 99–500 and 99–591 is based on provisions under the subheading ''Federal Aviation Administration, Operations'', in title I of H.R. 5205 (Department of Transportation and Related Agencies Appropriations Act, 1987), as incorporated by reference by section 101(*l*) of Pub. L. 99–500 and 99–591, and enacted into law by section 106 of Pub. L. 100–202.

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

AMENDMENTS

1992—Subsec. (i). Pub. L. 102–378 repealed Pub. L. 101–510, §1206(j)(2). See 1990 Amendment note below.

1991—Subsec. (i)(3). Pub. L. 102–190, §655(b)(2), struck out par. (3) which read as follows: ''An employee to whom a waiver under subparagraph (A) or (B) of paragraph (1) applies shall not be deemed an employee for the purposes of this chapter or chapter 84 while such waiver is in effect.''

Subsecs. (j) to (*l*). Pub. L. 102–190, §655(b)(1), added subsecs. (j) to (*l*).

1990—Subsec. (a)(A). Pub. L. 101–428 substituted ''(i), (n), and (q)'' for ''(i), and (n)''.

Subsec. (i). Pub. L. 101–510, §1206(j)(2), added a subsec. (i) identical to that added by Pub. L. 101–509, see below. Pub. L. 102–378, §8(a), repealed Pub. L. 101–510, §1206(j)(2), and provided that this title shall read as if such section 1206(j)(2) had not been enacted.

Pub. L. 101–509 added subsec. (i).

1988—Subsec. (h)(2). Pub. L. 100–457 substituted ''1987'' for ''1986''.

1987—Subsec. (h)(2). Pub. L. 100–202, §101(*l*) [title I], substituted ''December 31, 1986'' for ''April 1, 1986''.

For amendment by section 106 of Pub. L. 100–202, see 1986 Amendment note below.

1986—Subsec. (h)(2). Pub. L. 99–500 and Pub. L. 99–591, §101(*l*), as enacted by Pub. L. 100–202, §106, substituted ''April 1, 1986'' for ''April 1, 1985''. See Codification note above.

1985—Subsec. (h)(1). Pub. L. 99–88 inserted proviso directing that the amount an annuitant may receive in pay, excluding premium pay, in any pay period when aggregated with the annuity payable during that same period shall not exceed the rate payable for level V of the Executive Schedule.

Subsec. (h)(2). Pub. L. 99–88 substituted ''April 1, 1985'' for ''August 3, 1981''.

1984—Subsec. (a)(A). Pub. L. 98–353 substituted ''and (n)'' for ''and (*o*)''.

Subsec. (d). Pub. L. 98–396 substituted ''on termination of the employment in the amount equal to the sum of the amount of the annuity the member was receiving immediately before the commencement of the employment and the amount of the increases which would have been made in the amount of the annuity under section 8340 of this title during the period of the employment if the annuity had been payable during that period'' for ''in the same amount on termination of the employment''.

Subsec. (h)(1). Pub. L. 98–525 inserted ''or the Secretary of Defense''.

1982—Subsec. (a). Pub. L. 97–346 inserted ''unless the individual elects to have such deductions withheld under subparagraph (A)'' and ''(to the extent deposits or deductions have not otherwise been made)''.

Subsec. (a)(4)(A). Pub. L. 97–346 inserted ''deductions for the Fund may be withheld from his pay (if the employee so elects)''.

Subsec. (h). Pub. L. 97–276 added subsec. (h).

1981—Subsec. (c). Pub. L. 97–141 inserted provision that upon separation from such position, an individual whose annuity is so terminated is entitled to have his rights redetermined under this subchapter, except that the amount of the annuity resulting from such redetermination shall be at least equal to the amount of the terminated annuity plus any increases under section 8340 of this title occurring after the termination and before the commencement of the redetermined annuity.

1980—Subsec. (c). Pub. L. 96–179 inserted ''or is elected as a Member,'' after ''subject to this subchapter,''.

Subsecs. (f), (g). Pub. L. 96–504 added subsecs. (f) and (g).

1978—Subsec. (a). Pub. L. 95–598 inserted reference to subsec. (*o*) of section 8339 of this title in par. (A).

Pub. L. 95–454 substituted ''Office of Personnel Management'' for ''Commission'' in provisions following par. (B).

1976—Subsec. (a). Pub. L. 94–397, §1(a), inserted provisions requiring applicability to annuitants whose annuity is terminated under subsecs. (b) and (c) of this section, authorizing deducted amounts to be deposited in the Treasury to the credit of the Fund, and covering described employment continuing for the equivalent of five years in the case of part-time employment, and struck out provisions requiring employment after Sept. 30, 1956, or service on July 31, 1956, for application of coverage, and redetermination rights for an annuitant whose annuity is based on involuntary separation from the service and who is separated after July 11, 1960 for full-time employment began before Oct. 1, 1956.

Subsecs. (b), (c). Pub. L. 94–397, §1(b), added subsecs. (b) and (c). Former subsecs. (b) and (c) redesignated (d) and (e), respectively.

Subsec. (d). Pub. L. 94–397, §1(b), (c), redesignated former subsec. (b) as (d) and struck out prohibition of application of subsec. to a Member appointed by the President to a position not requiring confirmation by the Senate.

Subsec. (e). Pub. L. 94–397, §1(b), redesignated former subsec. (c) as (e).

1972—Subsec. (a). Pub. L. 92–297 substituted ''section 8339(a), (b), (d), (e), (h), and (i)'' for ''section 8339(a), (b), (d), (g), and (h)'', in subpar. (A), and ''section 8339(j) or section 8339(k)(2)'' for ''section 8339(i) or section 8339(j)(2)'', in sentence following cl. (ii).

1971—Subsec. (a). Pub. L. 91–658 substituted provisions respecting reemployed annuitants and reduction in their annuity and increase in survivor annuity, notice to Commission of a desire not to increase the survivor annuity, increase in survivor annuity where annuitant dies while still reemployed, and redetermination of rights to survivor annuity where reemployment continued for five or more years upon election to deposit in the Fund, for prior provision that employment of an annuitant did not create an annuity for or affect the annuity of a survivor.

1970—Subsec. (c). Pub. L. 91–375 added subsec. (c).

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–378 effective Nov. 5, 1990, see section 9(b)(6) of Pub. L. 102–378, set out as a note under section 6303 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–509 effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title III, §305] of Pub. L. 101–509, set out as an Effective Date of 1990 Amendment note under section 5301 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 106 of Pub. L. 100–202 provided that the amendment by Pub. L. 99–500 and 99–591 is effective on date of enactment [Oct. 18, 1986] of the ''pertinent joint resolution'' making continuing appropriations for fiscal year 1987 [Pub. L. 99–500 and 99–591].

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by Pub. L. 98–525 effective Oct. 1, 1984, see section 1537(f) of Pub. L. 98–525, set out as a note under section 4109 of this title.

Amendment by Pub. L. 98–353 effective July 10, 1984, see section 122(a) of Pub. L. 98–353, set out as an Effective Date note under section 151 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–276 effective at 5 o'clock ante meridian eastern daylight time, Aug. 3, 1981, see section 151(h)(1) of Pub. L. 97–276, set out as an Effective Date note under section 5546a of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 5(b) of Pub. L. 97–141 provided that:

''(1) Subject to paragraph (2), the amendment made by subsection (a) [amending this section] shall apply to individuals whose annuities terminate under section 8344(c) of title 5, United States Code, on or after October 1, 1976.

''(2) In the case of an individual whose reemployment ended before the date of the enactment of this Act [Dec. 29, 1981], the amendment shall apply only upon application by the individual to the Office of Personnel Management within one year after the date of enactment. Upon receipt of such application, the Office shall recompute the annuity, effective as of the day following the day reemployment ended.''

EFFECTIVE DATE OF 1980 AMENDMENT

Section 6 of Pub. L. 96–504 provided that:

''(a) The provisions of this Act [amending this section, repealing section 375 of Title 28, Judiciary and Judicial Procedure, and enacting provisions set out as notes under sections 8342 of this title and section 376 of Title 28] shall take effect on—

''(1) the date of the enactment of this Act [Dec. 5, 1980], or

''(2) October 1, 1980,

whichever date is later.

''(b) The provisions of subsection (f) of section 8344 of title 5, United States Code, as added by the first section of this Act, shall apply only to an individual who becomes employed as a justice or judge of the United States on or after the effective date of this Act. The provisions of subsection (g) of such section, as added by the first section of this Act, shall apply to an individual employed as a justice or judge of the United States on the effective date of this Act and to an individual appointed as such a justice or judge on or after such effective date.''

EFFECTIVE DATE OF 1978 AMENDMENTS

Amendment by Pub. L. 95–598 effective Nov. 6, 1978, see section 402(d) of Pub. L. 95–598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 2 of Pub. L. 94–397 provided that:

''(a) Except as provided under subsection (b) of this section, the amendments made by this Act [amending this section and section 8339 of this title] shall become effective on the date of the enactment of this Act [Sept. 3, 1976] or October 1, 1976, whichever is later, and shall apply to annuitants serving in appointive or elective positions on and after such date.

''(b) The amendment made by subsection (c) of the first section of this Act [amending this section] shall become effective on the date of the enactment of this Act [Sept. 3, 1976] or October 1, 1976, whichever is later, but shall not apply to any annuitant reemployed before such date.''

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92–297 effective on 90th day after May 16, 1972, see section 10 of Pub. L. 92–297, set out as an Effective Date note under section 3381 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Section 5(d) of Pub. L. 91–658 provided that: ''The amendment made by section 4 of this Act [amending this section] shall apply only with respect to a reemployed annuitant whose employment terminates on or after the date of enactment of this Act [Jan. 8, 1971].''

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–375 effective within 1 year after Aug. 12, 1970, on date established therefor by Board of Governors of United States Postal Service and published by it in Federal Register, see section 15(a) of Pub. L. 91–375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by section 1(83)(A), (D) of Pub. L. 90–83 effective as of Sept. 6, 1966, for all purposes, see section 9(h) of Pub. L. 90–83, set out as a note under section 5102 of this title.

ANNUAL REPORT TO CONGRESS

Each agency in legislative branch to submit to Speaker of House of Representatives and Committee on

Rules and Administration of Senate, for each calendar year, a written report on how authority made available as result of amendment by Pub. L. 102–190 was used by such agency during the period covered by such report, see section 655(d) of Pub. L. 102–190, set out as a note under section 5532 of this title.

COMMISSION ON THE OPERATION OF THE SENATE

Pub. L. 94–252, Mar. 30, 1976, 90 Stat. 294, provided that: ''On and after the date of the enactment of the joint resolution [Mar. 30, 1976], the provisions of section 8344 of title 5, United States Code, shall not apply to any individual serving as a member of the Commission on the Operation of the Senate.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8339 of this title; title 20 section 4512; title 22 sections 2512, 2584; title 28 sections 625, 634; title 39 section 1005.

§ 8345. Payment of benefits; commencement, termination, and waiver of annuity

(a) Each annuity is stated as an annual amount, one-twelfth of which, rounded to the next lowest dollar, constitutes the monthly rate payable on the first business day of the month after the month or other period for which it has accrued.

(b)(1) Except as otherwise provided—

(A) an annuity of an employee or Member commences on the first day of the month after—

(i) separation from the service; or

(ii) pay ceases and the service and age requirements for title to annuity are met; and

(B) any other annuity payable from the Fund commences on the first day of the month after the occurrence of the event on which payment thereof is based.

(2) The annuity of—

(A) an employee involuntarily separated from service, except by removal for cause on charges of misconduct or delinquency; and

(B) an employee or Member retiring under section 8337 of this title due to a disability;

shall commence on the day after separation from the service or the day after pay ceases and the service and age or disability requirements for title to annuity are met.

(c) The annuity of a retired employee or Member terminates on the day death or other terminating event provided by this subchapter occurs. The annuity of a survivor terminates on the last day of the month before death or other terminating event occurs.

(d) An individual entitled to annuity from the Fund may decline to accept all or any part of the annuity by a waiver signed and filed with the Office of Personnel Management. The waiver may be revoked in writing at any time. Payment of the annuity waived may not be made for the period during which the waiver was in effect.

(e) Payment due a minor, or an individual mentally incompetent or under other legal disability, may be made to the person who is constituted guardian or other fiduciary by the law of the State of residence of the claimant or is otherwise legally vested with the care of the claimant or his estate. If a guardian or other fiduciary of the individual under legal disability has not been appointed under the law of the State of residence of the claimant, payment may be made to any person who, in the judgment of the Office, is responsible for the care of the claimant, and the payment bars recovery by any other person.

[(f) Repealed. Pub. L. 99–251, title III, § 305(a), Feb. 27, 1986, 100 Stat. 26.]

(g) The Office shall prescribe regulations to provide that the amount of any monthly annuity payable under this section accruing for any month and which is computed with regard to service that includes any service referred to in section 8332(b)(6) performed by an individual prior to January 1, 1969, shall be reduced by the portion of any benefits under any State retirement system to which such individual is entitled (or on proper application would be entitled) for such month which is attributable to such service performed by such individual before such date.

(h) An individual entitled to an annuity from the Fund may make allotments or assignments of amounts from his annuity for such purposes as the Office of Personnel Management in its sole discretion considers appropriate.

(i)(1) No payment shall be made from the Fund unless an application for benefits based on the service of an employee or Member is received in the Office of Personnel Management before the one hundred and fifteenth anniversary of his birth.

(2) Notwithstanding paragraph (1) of this subsection, after the death of an employee, Member, or annuitant, no benefit based on his service shall be paid from the Fund unless an application therefor is received in the Office of Personnel Management within 30 years after the death or other event which gives rise to title to the benefit.

(j)(1) Payments under this subchapter which would otherwise be made to an employee, Member, or annuitant based on service of that individual shall be paid (in whole or in part) by the Office to another person if and to the extent expressly provided for in the terms of—

(A) any court decree of divorce, annulment, or legal separation, or the terms of any court order or court-approved property settlement agreement incident to any court decree of divorce, annulment, or legal separation; or

(B) any court order or other similar process in the nature of garnishment for the enforcement of a judgment rendered against such employee, Member, or annuitant, for physically, sexually, or emotionally abusing a child.

In the event that the Office is served with more than 1 decree, order, or other legal process with respect to the same moneys due or payable to any individual, such moneys shall be available to satisfy such processes on a first-come, first-served basis, with any such process being satisfied out of such moneys as remain after the satisfaction of all such processes which have been previously served.

(2) Paragraph (1) shall only apply to payments made by the Office under this subchapter after the date of receipt in the Office of written notice of such decree, order, other legal process, or agreement, and such additional information and documentation as the Office may prescribe.

(3) For the purpose of this subsection—

(A) the term ''court'' means any court of any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, or the Virgin Islands, and any Indian court;

(B) the term ''judgment rendered for physically, sexually, or emotionally abusing a child'' means any legal claim perfected through a final enforceable judgment, which claim is based in whole or in part upon the physical, sexual, or emotional abuse of a child, whether or not that abuse is accompanied by other actionable wrongdoing, such as sexual exploitation or gross negligence; and

(C) the term ''child'' means an individual under 18 years of age.

(k)(1) The Office shall, in accordance with this subsection, enter into an agreement with any State within 120 days of a request for agreement from the proper State official. The agreement shall provide that the Office shall withhold State income tax in the case of the monthly annuity of any annuitant who voluntarily requests, in writing, such withholding. The amounts withheld during any calendar quarter shall be held in the Fund and disbursed to the States during the month following that calendar quarter.

(2) An annuitant may have in effect at any time only one request for withholding under this subsection, and an annuitant may not have more than two such requests in effect during any one calendar year.

(3) Subject to paragraph (2) of this subsection, an annuitant may change the State designated by that annuitant for purposes of having withholdings made, and may request that the withholdings be remitted in accordance with such change. An annuitant also may revoke any request of that annuitant for withholding. Any change in the State designated or revocation is effective on the first day of the month after the month in which the request or the revocation is processed by the Office, but in no event later than on the first day of the second month beginning after the day on which such request or revocation is received by the Office.

(4) This subsection does not give the consent of the United States to the application of a statute which imposes more burdensome requirements on the United States than on employers generally, or which subjects the United States or any annuitant to a penalty or liability because of this subsection. The Office may not accept pay from a State for services performed in withholding State income taxes from annuities. Any amount erroneously withheld from an annuity and paid to a State by the Office shall be repaid by the State in accordance with regulations issued by the Office.

(5) For the purpose of this subsection, ''State'' means a State, the District of Columbia, or any territory or possession of the United States.

(*l*) Transfers of contributions and deposits authorized by section 408(a)(3) of the Foreign Service Act of 1980 shall be deemed to be a complete and final payment of benefits under this chapter.

(Pub. L. 89–544, Sept. 6, 1966, 80 Stat. 582; Pub. L. 93–273, §1, Apr. 26, 1974, 88 Stat. 93; Pub. L. 94–126, §1(c), Nov. 12, 1975, 89 Stat. 679; Pub. L. 94–166, §1, Dec. 23, 1975, 89 Stat. 1002; Pub. L. 94–183, §1, Dec. 31, 1975, 89 Stat. 1057; Pub. L. 95–366, §1(a), Sept. 15, 1978, 92 Stat. 600; Pub. L. 95–454, title IX, §906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 97–35, title XVII, §1705(a), Aug. 13, 1981, 95 Stat. 758; Pub. L. 97–253, title III, §§304(b), 305(a), Sept. 8, 1982, 96 Stat. 795; Pub. L. 98–615, §2(6), Nov. 8, 1984, 98 Stat. 3202; Pub. L. 99–251, title III, §305(a), Feb. 27, 1986, 100 Stat. 26; Pub. L. 101–246, title I, §141(b), Feb. 16, 1990, 104 Stat. 35; Pub. L. 103–358, §2(a), Oct. 14, 1994, 108 Stat. 3420.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 2264.	July 31, 1956, ch. 804, §401 ''Sec. 14'', 70 Stat. 757. Sept. 6, 1960, Pub. L. 86–713, §1(b), 74 Stat. 814.

In subsection (b), the second sentence of former section 2264(b) is omitted as included in the second sentence of the revised subsection. The words ''after September 5, 1960'' are substituted for ''on or after September 6, 1960''.

In subsection (c), the first sentence of former section 2264(c) is omitted as covered by the remainder of the subsection. The words ''on or after September 6, 1960'' are omitted as obsolete.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

REFERENCES IN TEXT

Section 408(a)(3) of the Foreign Service Act of 1980, referred to in subsec. (*l*), is classified to section 3968(a)(3) of Title 22, Foreign Relations and Intercourse.

AMENDMENTS

1994—Subsec. (j)(1). Pub. L. 103–358, §2(a)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''Payments under this subchapter which would otherwise be made to an employee, Member, or annuitant based upon his service shall be paid (in whole or in part) by the Office to another person if and to the extent expressly provided for in the terms of any court decree of divorce, annulment, or legal separation, or the terms of any court order or court-approved property settlement agreement incident to any court decree of divorce, annulment, or legal separation. Any payment under this paragraph to a person bars recovery by any other person.''

Subsec. (j)(2). Pub. L. 103–358, §2(a)(2), inserted ''other legal process,'' after ''order,''.

Subsec. (j)(3). Pub. L. 103–358, §2(a)(3), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''As used in this subsection, 'court' means any court of any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, or the Virgin Islands, and any Indian court.''

1990—Subsec. (*l*). Pub. L. 101–246 added subsec. (*l*).

1986—Subsec. (f). Pub. L. 99–251 struck out subsec. (f) which provided minimum monthly rates of annuity payable under subsec. (a) with certain exceptions.

1984—Subsec. (f)(4). Pub. L. 98–615, §2(6)(A), added par. (4).

Subsec. (j)(3). Pub. L. 98–615, §2(6)(B), inserted reference to the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, the Virgin Islands, and any Indian court.

1982—Subsec. (a). Pub. L. 97–253, §304(b), substituted ''rounded to the next lowest'' for ''fixed at the nearest''.

Subsec. (b). Pub. L. 97–253, §305(a), substituted provisions that an annuity of an employee or Member com-

mences on the first day of the month after separation from service or pay ceases and the service and age requirements for title to annuity are met, that any other annuity payable from the Fund commences on the first day of the month after the occurrence of the event on which the payment thereof is based, and that the annuity of an employee involuntarily separated from service or of an employee or Member retiring due to a disability shall commence on the day after separation from the service or the day after pay ceases and the service and age or disability requirements for title to annuity are met for provisions that the annuity of an employee or Member would commence on the day after he was separated from the service, or on the day after his pay ceased and he met the service and the age or disability requirements for title to annuity and that an annuity payable from the Fund allowed after September 5, 1960, would commence on the day after the occurrence of the event on which payment thereof was based.

1981—Subsec. (k). Pub. L. 97–35 added subsec. (k).

1978—Subsecs. (d), (e). Pub. L. 95–454, §906(a)(2), (3), substituted ''Office of Personnel Management'' for ''Civil Service Commission'' and ''Office'' for ''Commission''.

Subsec. (g). Pub. L. 95–454, §906(a)(3), substituted ''Office'' for ''Commission'' in the subsec. (g) added by Pub. L. 94–126.

Pub. L. 95–366 redesignated as subsec. (h) the subsec. (g) added by Pub. L. 94–166.

Subsec. (h). Pub. L. 95–454, §906(a)(2), substituted ''Office of Personnel Management'' for ''Civil Service Commission''.

Pub. L. 95–366 redesignated former subsec. (g), added by Pub. L. 94–166, as (h). Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 95–454, §906(a)(2), substituted ''Office of Personnel Management'' for ''Civil Service Commission'' wherever appearing.

Pub. L. 95–366 redesignated former subsec. (h) as (i).

Subsec. (j). Pub. L. 95–454, §906(a)(3), substituted ''Office'' for ''Commission'' wherever appearing.

Pub. L. 95–366 added subsec. (j).

1975—Subsec. (g). Pub. L. 94–166 added subsec. (g) authorizing allotment or assignment of amounts from annuities.

Pub. L. 94–126 added subsec. (g) relating to the crediting of National Guard technician service in connection with civil service retirement.

Subsec. (h). Pub. L. 94–183 added subsec. (h).

1974—Subsec. (f). Pub. L. 93–273 added subsec. (f).

EFFECTIVE DATE OF 1994 AMENDMENT

Section 3 of Pub. L. 103–358 provided that: ''The amendments made by this Act [amending this section and sections 8437 and 8467 of this title] shall take effect on the date of enactment of this Act [Oct. 14, 1994], and shall apply with respect to any decree, order, or other legal process, or notice of agreement received by the Office of Personnel Management or the Executive Director of the Federal Retirement Thrift Investment Board on or after such date of enactment.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–615 effective May 7, 1985, with enumerated exceptions and specific applicability provisions, see section 4(a)(1), (5)(D) of Pub. L. 98–615, as amended, set out as a note under section 8341 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by section 304(b) of Pub. L. 97–253 applicable with respect to any annuity commencing on or after Oct. 1, 1982, and with respect to any adjustment or redetermination of any annuity made on or after such date, see section 304(c) of Pub. L. 97–253, set out as a note under section 8340 of this title.

Section 305(b) of Pub. L. 97–253, as amended by Pub. L. 97–377, title I, §124, Dec. 21, 1982, 96 Stat. 1913, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to annuities which commence on or after October 1, 1982, except for those individuals who serve three days or less in the month of retirement.''

EFFECTIVE DATE OF 1981 AMENDMENT

Section 1705(b) of Pub. L. 97–35 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect October 1, 1981.''

EFFECTIVE DATE OF 1978 AMENDMENTS

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

Section 2 of Pub. L. 95–366 provided that: ''The amendments made by the first section of this Act [amending this section and section 8346 of this title] shall only apply to payments made from the Civil Service Retirement and Disability Fund after the date of the enactment of this Act [Sept. 15, 1978].''

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–126 effective as of Jan. 1, 1969, applicable to a person who, on Nov. 12, 1975, is receiving or is entitled to receive benefits under any Federal retirement system and requests in writing the application of the amendment to him by the office administering his retirement system, and additional benefits to commence Dec. 1, 1975, see section 3 of Pub. L. 94–126, set out as a note under section 8334 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Section 3 of Pub. L. 93–273 provided that: ''This Act [amending this section and enacting provisions set out as notes under this section and sections 8339 and 8341 of this title] shall become effective on the date of enactment [Apr. 26, 1974]. Annuity increases under this Act shall apply to annuities which commence before, on, or after the date of enactment of this Act, but no increase in annuity shall be paid for any period prior to the first day of the first month which begins on or after the ninetieth day after the date of enactment of this Act, or the date on which the annuity commences, whichever is later.''

MINIMUM ANNUITY UNDER CIVIL SERVICE RETIREMENT AND DISABILITY SYSTEM

Section 305(b)–(d) of Pub. L. 99–251 provided that:

''(b) SAVINGS PROVISION.—An annuity payable from the Civil Service Retirement and Disability Fund as of the day before the date of enactment of this Act [Feb. 27, 1986] shall not be reduced—

''(1) by reason of the repeal of section 8345(f) of title 5, United States Code; or

''(2) if or to the extent that the reduction is to be made for the purpose of eliminating an overpayment resulting from the manner in which such section 8345(f) has been administered by the Office of Personnel Management.

''(c) RATIFICATION OF ERRONEOUS PAYMENTS.—Any individual to whom an overpayment of an annuity has been made from the Civil Service Retirement and Disability Fund before the date of enactment of this Act [Feb. 27, 1986] shall be deemed to have been entitled to that overpayment if and to the extent that such overpayment resulted from the manner in which the Office of Personnel Management has administered section 8345(f) of title 5, United States Code.

''(d) ADJUSTMENTS OF CERTAIN REDUCTIONS.—(1) Effective for any month after the date of enactment of this Act [Feb. 27, 1986], the amount of any annuity which—

''(A) is payable from the Civil Service Retirement and Disability Fund; and

''(B) was reduced after June 30, 1985, and before the date of enactment of this Act, to eliminate any overpayment resulting from the manner in which the Office of Personnel Management administered section 8345(f) of title 5, United States Code,

shall not be less than the amount which would have been payable as of such date of enactment if the reduction described in clause (B) had not been made.

''(2)(A) The Office shall make a lump-sum payment to each individual receiving an annuity to which paragraph (1) applies.

''(B) The lump-sum payment made to any individual under this paragraph shall be equal to the excess of—

''(i) the total amount of the annuity payments which would have been made to the individual for the period beginning with the first month in which the reduction described in paragraph (1)(B) was made and ending on the last day of the month in which this Act is enacted if the reduction had not been made, over

''(ii) the total amount of the annuity payments which have been paid to such individual for that period.''

AVAILABILITY OF THE CIVIL SERVICE RETIREMENT AND DISABILITY FUND FOR EXPENSES INCURRED BY THE OFFICE OF PERSONNEL MANAGEMENT

Section 1705(c) of Pub. L. 97–35 provided that: ''The Civil Service Retirement and Disability Fund is available for expenses incurred by the Office of Personnel Management in the initial implementation of the amendments made by this section [amending this section].''

MONTHLY RATE OF MINIMUM ANNUITY

Section 2(c) of Pub. L. 93–273 provided that: ''The monthly rate of an annuity resulting from an increase under this section [enacting provisions set out as notes under sections 8339 and 8341 of this title] shall be considered as the monthly rate of annuity payable under section 8345(a) of title 5, United States Code [subsec. (a) of this section], for purposes of computing the minimum annuity under section 8345(f) of title 5 [subsec. (f) of this section], as added by the first section of this Act.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8342, 8343a, 8346, 8349, 8901, 8905 of this title.

§ 8346. Exemption from legal process; recovery of payments

(a) The money mentioned by this subchapter is not assignable, either in law or equity, except under the provisions of subsections (h) and (j) of section 8345 of this title, or subject to execution, levy, attachment, garnishment, or other legal process, except as otherwise may be provided by Federal laws.

(b) Recovery of payments under this subchapter may not be made from an individual when, in the judgment of the Office of Personnel Management, the individual is without fault and recovery would be against equity and good conscience. Withholding or recovery of money mentioned by this subchapter on account of a certification or payment made by a former employee of the United States in the discharge of his official duties may be made only if the head of the agency on behalf of which the certification or payment was made certifies to the Office that the certification or payment involved fraud on the part of the former employee.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 583; Pub. L. 94–166, §2, Dec. 23, 1975, 89 Stat. 1002; Pub. L. 95–366, §1(b), Sept. 15, 1978, 92 Stat. 600; Pub. L. 95–454, title IX, §906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 2265.	July 31, 1956, ch. 804, §401 ''Sec. 15'', 70 Stat. 758.

In subsection (b), the words ''Notwithstanding any other provision of law'' are omitted as unnecessary. The second word of the second sentence ''or'' is substituted for ''of'' to correct a printing error.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1978—Subsec. (a). Pub. L. 95–366 substituted references to subsecs. (h) and (j) of section 8345 for reference to subsec. (g) of section 8345.

Subsec. (b). Pub. L. 95–454 substituted ''Office of Personnel Management'' and ''Office'' for ''Civil Service Commission'' and ''Commission'', respectively.

1975—Subsec. (a). Pub. L. 94–166 inserted ''except under the provisions of section 8345(g) of this title,'' after ''equity'', and '', except as otherwise may be provided by Federal laws'' after ''process''.

EFFECTIVE DATE OF 1978 AMENDMENTS

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

Amendment by Pub. L. 95–366 applicable to payments made from Civil Service Retirement and Disability Fund after Sept. 15, 1978, see section 2 of Pub. L. 95–366, set out as a note under section 8345 of this title.

FEDERAL RULES OF CIVIL PROCEDURE

Execution to enforce judgment, see rule 69, Title 28, Appendix, Judiciary and Judicial Procedure.

CROSS REFERENCES

Enforcement of legal obligations to provide child support or make alimony payments, see section 659 of Title 42, The Public Health and Welfare.

§ 8347. Administration; regulations

(a) The Office of Personnel Management shall administer this subchapter. Except as otherwise specifically provided herein, the Office shall perform, or cause to be performed, such acts and prescribe such regulations as are necessary and proper to carry out this subchapter.

(b) Applications under this subchapter shall be in such form as the Office prescribes. Agencies shall support the applications by such certificates as the Office considers necessary to the determination of the rights of applicants. The Office shall adjudicate all claims under this subchapter.

(c) The Office shall determine questions of disability and dependency arising under this subchapter. Except to the extent provided under subsection (d) of this section, the decisions of the Office concerning these matters are final and conclusive and are not subject to review. The Office may direct at any time such medical or other examinations as it considers necessary to determine the facts concerning disability or dependency of an individual receiving or applying for annuity under this subchapter. The Office may suspend or deny annuity for failure to submit to examination.

(d)(1) Subject to paragraph (2) of this subsection, an administrative action or order affecting the rights or interests of an individual or of the United States under this subchapter may be appealed to the Merit Systems Protection Board under procedures prescribed by the Board.

(2) In the case of any individual found by the Office to be disabled in whole or in part on the basis of the individual's mental condition, and

that finding was made pursuant to an application by an agency for purposes of disability retirement under section 8337(a) of this title, the procedures under section 7701 of this title shall apply and the decision of the Board shall be subject to judicial review under section 7703 of this title.

(e) The Office shall fix the fees for examinations made under this subchapter by physicians or surgeons who are not medical officers of the United States. The fees and reasonable traveling and other expenses incurred in connection with the examinations are paid from appropriations for the cost of administering this subchapter.

(f) The Office shall select three actuaries, to be known as the Board of Actuaries of the Civil Service Retirement System. The Office shall fix the pay of the members of the Board, except members otherwise in the employ of the United States. The Board shall report annually on the actuarial status of the System and furnish its advice and opinion on matters referred to it by the Office. The Board may recommend to the Office and to Congress such changes as in the Board's judgment are necessary to protect the public interest and maintain the System on a sound financial basis. The Office shall keep, or cause to be kept, such records as it considers necessary for making periodic actuarial valuations of the System. The Board shall make actuarial valuations every 5 years, or oftener if considered necessary by the Office.

(g) The Office may exclude from the operation of this subchapter an employee or group of employees in or under an Executive agency whose employment is temporary or intermittent. However, the Office may not exclude any employee who occupies a position on a part-time career employment basis (as defined in section 3401(2) of this title).

(h) The Office, on recommendation by the Mayor of the District of Columbia, may exclude from the operation of this subchapter an individual or group of individuals employed by the government of the District of Columbia whose employment is temporary or intermittent.

(i) The Architect of the Capitol may exclude from the operation of this subchapter an employee under the Office of the Architect of the Capitol whose employment is temporary or of uncertain duration.

(j) The Librarian of Congress may exclude from the operation of this subchapter an employee under the Library of Congress whose employment is temporary or of uncertain duration.

(k) The Secretary of Agriculture shall prescribe regulations to effect the application and operation of this subchapter to an individual named by section 8331(1)(F) of this title.

(*l*) The Director or Acting Director of the Botanic Garden may exclude from the operation of this subchapter an employee under the Botanic Garden whose employment is temporary or of uncertain duration.

(m) Notwithstanding any other provision of law, for the purpose of ensuring the accuracy of information used in the administration of this chapter, at the request of the Director of the Office of Personnel Management—

(1) the Secretary of Defense or the Secretary's designee shall provide information on retired or retainer pay provided under title 10;

(2) the Secretary of Veterans Affairs shall provide information on pensions or compensation provided under title 38;

(3) the Commissioner of Social Security or the Secretary's[1] designee shall provide information contained in the records of the Social Security Administration; and

(4) the Secretary of Labor or the Secretary's designee shall provide information on benefits paid under subchapter I of chapter 81 of this title.

The Director shall request only such information as the Director determines is necessary. The Director, in consultation with the officials from whom information is requested, shall establish, by regulation and otherwise, such safeguards as are necessary to ensure that information made available under this subsection is used only for the purpose authorized.

(n)(1) Notwithstanding any other provision of this subchapter, the Director of Central Intelligence shall, in a manner consistent with the administration of this subchapter by the Office, and to the extent considered appropriate by the Director of Central Intelligence—

(A) determine entitlement to benefits under this subchapter based on the service of employees of the Central Intelligence Agency;

(B) maintain records relating to the service of such employees;

(C) compute benefits under this subchapter based on the service of such employees;

(D) collect deposits to the Fund made by such employees, their spouses, and their former spouses;

(E) authorize and direct disbursements from the Fund to the extent based on service of such employees; and

(F) perform such other functions under this subchapter as the Director of Central Intelligence, in consultation with the Director of the Office of Personnel Management, determines to be appropriate.

(2) The Director of the Office of Personnel Management shall furnish such information and, on a reimbursable basis, such services to the Director of Central Intelligence as the Director of Central Intelligence requests to carry out paragraph (1) of this subsection.

(3)(A) The Director of Central Intelligence, in consultation with the Director of the Office of Personnel Management, shall by regulation prescribe appropriate procedures to carry out this subsection.

(B) The regulations shall provide procedures for the Director of the Office of Personnel Management to inspect and audit disbursements from the Civil Service Retirement and Disability Fund under this subchapter.

(C) The Director of Central Intelligence shall submit the regulations prescribed under subparagraph (A) to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives before the regulations take effect.

(4)(A) Section 201(c) of the Central Intelligence Agency Retirement Act shall apply in the administration of this subchapter to the extent

[1] So in original. Probably should be ''Commissioner's''.

that the provisions of this subchapter are administered under this subsection.

(B) Notwithstanding subparagraph (A) of this paragraph, section 8347(d) of this title shall apply with respect to employees of the Central Intelligence Agency who are subject to the Civil Service Retirement System.

(*o*) Any provision of law outside of this subchapter which provides coverage, service credit, or any other benefit under this subchapter to any individuals who (based on their being employed by an entity other than the Government) would not otherwise be eligible for any such coverage, credit, or benefit, shall not apply with respect to any individual appointed, transferred, or otherwise commencing that type of employment on or after October 1, 1988.

(p) The Director of the Administrative Office of the United States Courts may exclude from the operation of this subchapter an employee of the Administrative Office of the United States Courts, the Federal Judicial Center, or a court named by section 610 of title 28, whose employment is temporary or of uncertain duration.

(q)(1) Under regulations prescribed by the Office of Personnel Management, an employee of the Department of Defense or the Coast Guard who—

(A) has not previously made an election under this subsection or had an opportunity to make an election under this paragraph;

(B) has 5 or more years of civilian service creditable under this subchapter; and

(C) moves, without a break in service of more than 3 days, to employment in a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard, respectively, described in section 2105(c),

shall be given the opportunity to elect irrevocably, within 30 days after such move, to remain covered as an employee under this subchapter during any employment described in section 2105(c) after such move.

(2) Under regulations prescribed by the Office of Personnel Management, an employee of a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard, described in section 2105(c), who—

(A) has not previously made an election under this subsection or had an opportunity to make an election under this paragraph;

(B) is a vested participant in a retirement system established for employees described in section 2105(c), as the term ''vested participant'' is defined by such system;

(C) moves, without a break in service of more than 3 days, to a position in the Department of Defense or the Coast Guard, respectively, that is not described in section 2105(c); and

(D) is excluded from coverage under chapter 84 by section 8402(b),

shall be given the opportunity to elect irrevocably, within 30 days after such move, to remain covered, during any subsequent employment as an employee as defined in section 2105(a) or section 2105(c), by the retirement system applicable to such employee's current or most recent employment described in section 2105(c) rather than be subject to this subchapter.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 583; Pub. L. 90–83, §1(84), Sept. 11, 1967, 81 Stat. 218; Pub. L. 90–623, §1(22), Oct. 22, 1968, 82 Stat. 1313; Pub. L. 95–437, §4(a), Oct. 10, 1978, 92 Stat. 1058; Pub. L. 95–454, title IX, §906(a)(2), (3), (9), (c)(2)(F), Oct. 13, 1978, 92 Stat. 1224, 1225, 1227; Pub. L. 96–54, §2(a)(50), Aug. 14, 1979, 93 Stat. 384; Pub. L. 96–499, title IV, §404(b), Dec. 5, 1980, 94 Stat. 2606; Pub. L. 96–500, §1, Dec. 5, 1980, 94 Stat. 2696; Pub. L. 97–253, title III, §302(b), Sept. 8, 1982, 96 Stat. 793; Pub. L. 99–335, title II, §207(i), June 6, 1986, 100 Stat. 596; Pub. L. 100–238, title I, §108(a)(1), Jan. 8, 1988, 101 Stat. 1747; Pub. L. 101–474, §5(n), Oct. 30, 1990, 104 Stat. 1100; Pub. L. 101–508, title VII, §7202(j)(2), Nov. 5, 1990, 104 Stat. 1388–337; Pub. L. 102–54, §13(b)(5), June 13, 1991, 105 Stat. 274; Pub. L. 102–378, §2(64), Oct. 2, 1992, 106 Stat. 1354; Pub. L. 102–496, title VIII, §803(c), Oct. 24, 1992, 106 Stat. 3253; Pub. L. 103–296, title I, §108(e)(5), Aug. 15, 1994, 108 Stat. 1486.)

HISTORICAL AND REVISION NOTES

1966 ACT

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(a)–(f)	5 U.S.C. 2266 (less (f)).	July 31, 1956, ch. 804, §401 ''Sec. 16 (less (f))'', 70 Stat. 758.
(g)–(k)	5 U.S.C. 2252(e), (f) (words after semicolon), (h) (1).	July 31, 1956, ch. 804, §401 ''Sec. 2(e), (f) (words after semicolon)'', 70 Stat. 745. July 1, 1960, Pub. L. 86–568, §115(b)(1) ''(h) (1)'', 74 Stat. 302.

In subsection (a), the words ''to carry out this subchapter'' are substituted for ''for the purpose of carrying the provisions of this chapter into full force and effect''.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 ACT

Section of title 5	*Source (U.S. Code)*	*Source (Statutes at Large)*
8347(*l*)	5 App.: 2252(f).	Sept. 26, 1966, Pub. L. 89–604, §1(c), 80 Stat. 847.

REFERENCES IN TEXT

Section 201(c) of the Central Intelligence Agency Retirement Act, referred to in subsec. (n)(4)(A), is classified to section 2011(c) of Title 50, War and National Defense.

AMENDMENTS

1994—Subsec. (m)(3). Pub. L. 103–296 substituted ''Commissioner of Social Security'' for ''Secretary of Health and Human Services''.

1992—Subsec. (n)(4)(A). Pub. L. 102–496 substituted ''the Central Intelligence Agency Retirement Act'' for ''the Central Intelligence Agency Retirement Act of 1964 for Certain Employees''.

Subsec. (p). Pub. L. 102–378, §2(64)(A), redesignated subsec. (p), relating to employees of Department of Defense and Coast Guard, as (q).

Subsec. (q). Pub. L. 102–378, §2(64)(A), redesignated subsec. (p), relating to employees of Department of Defense and Coast Guard, as (q).

Subsec. (q)(1)(A), (2)(A). Pub. L. 102–378, §2(64)(B), amended subpars. (A) generally. Prior to amendment, subpars. (A) read as follows: ''has not previously made or had an opportunity to make an election under this subsection;''.

1991—Subsec. (m)(2). Pub. L. 102–54 substituted ''Secretary'' for ''Administrator''.

1990—Subsec. (p). Pub. L. 101–508 added subsec. (p) relating to elections by employees of Department of Defense, Coast Guard, or a nonappropriated fund instrumentality of Department of Defense or Coast Guard.

Pub. L. 101–474 added subsec. (p) relating to Director of Administrative Office of United States Courts.

1988—Subsec. (*o*). Pub. L. 100–238 added subsec. (*o*).

1986—Subsec. (n). Pub. L. 99–335 added subsec. (n).

1982—Subsec. (m)(3), (4). Pub. L. 97–253 added pars. (3) and (4).

1980—Subsec. (c). Pub. L. 96–500, §1(a), substituted ''Except to the extent provided under subsection (d) of this section, the decisions of the Office concerning'' for ''The decisions of the Office concerning''.

Subsec. (d). Pub. L. 96–500, §1(b), designated existing provisions as par. (1), made such par. (1) subject to the provisions of par. (2), and added par. (2).

Subsec. (m). Pub. L. 96–499 added subsec. (m).

1979—Subsec. (h). Pub. L. 96–54 substituted ''Mayor'' for ''Commissioner''.

1978—Subsecs. (a) to (c). Pub. L. 95–454, §906(a)(2), (3), substituted ''Office of Personnel Management'' and ''Office'' for ''Civil Service Commission'' and ''Commission'', respectively.

Subsec. (d). Pub. L. 95–454, §906(a)(9), substituted ''Merit Systems Protection Board'' for ''Commission'', and ''Board'' for ''Commission''.

Subsecs. (e), (f). Pub. L. 95–454, §906(a)(3), substituted ''Office'' for ''Commission'' wherever appearing.

Subsec. (g). Pub. L. 95–454, §906(a)(3), (c)(2)(F), substituted ''Office'' for ''Commission'' wherever appearing, and ''3401'' for ''3391''.

Pub. L. 95–437 inserted provision prohibiting the Commission from excluding any employee who occupies a position on a part-time career employment basis, as defined in section 3391(2) of this title.

Subsec. (h). Pub. L. 95–454, §906(a)(3), substituted ''Office'' for ''Commission''.

1968—Subsec. (h). Pub. L. 90–623 substituted ''Commissioner'' for ''Commissioners''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1992 AMENDMENTS

Amendment by Pub. L. 102–496 effective on first day of fourth month beginning after Oct. 24, 1992, see section 805 of Pub. L. 102–496, set out as an Effective Date note under section 2001 of Title 50, War and National Defense.

Amendment by section 2(64) of Pub. L. 102–378 effective Nov. 5, 1990, see section 9(b)(6) of Pub. L. 102–378, set out as a note under section 6303 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable with respect to any individual who, on or after Jan. 1, 1987, moves from employment in nonappropriated fund instrumentality of Department of Defense or Coast Guard, that is described in section 2105(c) of this title, to employment in Department or Coast Guard, that is not described in section 2105(c), or who moves from employment in Department or Coast Guard, that is not described in section 2105(c), to employment in nonappropriated fund instrumentality of Department or Coast Guard, that is described in section 2105(c), see section 7202(m)(1) of Pub. L. 101–508, set out as a note under section 2105 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–335 effective Jan. 1, 1987, see section 702(a) of Pub. L. 99–335, set out as an Effective Date note under section 8401 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–253 effective Oct. 1, 1982, see section 302(c)(1) of Pub. L. 97–253, as amended by section 3(i) of Pub. L. 97–346, set out as a note under section 8337 of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

Section 2 of Pub. L. 96–500 provided that: ''The amendments made by the first section of this Act [amending this section] shall apply with respect to determinations made by the Office of Personnel Management on or after the first day of the first month beginning after the date of the enactment of this Act [Dec. 5, 1980].''

Amendment by Pub. L. 96–499 effective Dec. 5, 1980, see section 404(c) of Pub. L. 96–499, set out as a note under section 8339 of this title.

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.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–623 intended to restate without substantive change the law in effect on Oct. 22, 1968, see section 6 of Pub. L. 90–623, set out as a note under section 5334 of this title.

TREATMENT OF INDIVIDUALS ELECTING TO REMAIN SUBJECT TO THEIR FORMER RETIREMENT SYSTEM

For provisions relating to the deductions and contributions required with respect to individuals electing under section 8347(q) or 8461(n) of this title to remain covered under subchapter III of chapter 83 of this title, chapter 84 of this title, or a retirement system for employees described in section 2105(c) of this title, see section 7202(n) of Pub. L. 101–508, set out as a note under section 2105 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8331, 8334, 8348, 8349, 8423, 8461 of this title; title 22 section 6103; title 25 section 450i.

§ 8348. Civil Service Retirement and Disability Fund

(a) There is a Civil Service Retirement and Disability Fund. The Fund—

(1) is appropriated for the payment of—

(A) benefits as provided by this subchapter or by the provisions of chapter 84 of this title which relate to benefits payable out of the Fund; and

(B) administrative expenses incurred by the Office of Personnel Management in placing in effect each annuity adjustment granted under section 8340 or 8462 of this title, in administering survivor annuities and elections providing therefor under sections 8339 and 8341 of this title or subchapters II and IV of chapter 84 of this title, in administering alternative forms of annuities under sections 8343a and 8420a (and related provisions of law), and in withholding taxes pursuant to section 3405 of title 26;

(2) is made available, subject to such annual limitation as the Congress may prescribe, for any expenses incurred by the Office in connection with the administration of this chapter, chapter 84 of this title, and other retirement and annuity statutes; and

(3) is made available, subject to such annual limitation as the Congress may prescribe, for any expenses incurred by the Merit Systems Protection Board in the administration of appeals authorized under sections 8347(d) and 8461(e) of this title.

(b) The Secretary of the Treasury may accept and credit to the Fund money received in the form of a donation, gift, legacy, or bequest, or otherwise contributed for the benefit of civil-service employees generally.

(c) The Secretary shall immediately invest, in interest-bearing securities of the United States such currently available portions of the Fund as are not immediately required for payments from the Fund. The income derived from these investments constitutes a part of the Fund.

(d) The purposes for which obligations of the United States may be issued under chapter 31 of title 31 are extended to authorize the issuance at par of public-debt obligations for purchase by the Fund. The obligations issued for purchase by the Fund shall have maturities fixed with due regard for the needs of the Fund and bear interest at a rate equal to the average market yield computed as of the end of the calendar month next preceding the date of the issue, borne by all marketable interest-bearing obligations of the United States then forming a part of the public debt which are not due or callable until after the expiration of 4 years from the end of that calendar month. If the average market yield is not a multiple of ⅛ of 1 percent, the rate of interest on the obligations shall be the multiple of ⅛ of 1 percent nearest the average market yield.

(e) The Secretary may purchase other interest-bearing obligations of the United States, or obligations guaranteed as to both principal and interest by the United States, on original issue or at the market price only if he determines that the purchases are in the public interest.

(f) Any statute which authorizes—

(1) new or liberalized benefits payable from the Fund, including annuity increases other than under section 8340 of this title;

(2) extension of the coverage of this subchapter to new groups of employees; or

(3) increases in pay on which benefits are computed;

is deemed to authorize appropriations to the Fund to finance the unfunded liability created by that statute, in 30 equal annual installments with interest computed at the rate used in the then most recent valuation of the Civil Service Retirement System and with the first payment thereof due as of the end of the fiscal year in which each new or liberalized benefit, extension of coverage, or increase in pay is effective.

(g) At the end of each fiscal year, the Office shall notify the Secretary of the Treasury of the amount equivalent to (1) interest on the unfunded liability computed for that year at the interest rate used in the then most recent valuation of the System, and (2) that portion of disbursement for annuities for that year which the Office estimates is attributable to credit allowed for military service, less an amount determined by the Office to be appropriate to reflect the value of the deposits made to the credit of the Fund under section 8334(j) of this title. Before closing the accounts for each fiscal year, the Secretary shall credit to the Fund, as a Government contribution, out of any money in the Treasury of the United States not otherwise appropriated, the following percentages of such amounts; 10 percent for 1971; 20 percent for 1972; 30 percent for 1973; 40 percent for 1974; 50 percent for 1975; 60 percent for 1976; 70 percent for 1977; 80 percent for 1978; 90 percent for 1979; and 100 percent for 1980 and for each fiscal year thereafter. The Office shall report to the President and to the Congress the sums credited to the Fund under this subsection.

(h)(1) Notwithstanding any other statute, the United States Postal Service shall be liable for that portion of any estimated increase in the unfunded liability of the Fund which is attributable to any benefits payable from the Fund to active and retired Postal Service officers and employees, and to their survivors, when the increase results from an employee-management agreement under title 39, or any administrative action by the Postal Service taken pursuant to law, which authorizes increases in pay on which benefits are computed.

(2) The estimated increase in the unfunded liability, referred to in paragraph (1) of this subsection, shall be determined by the Office of Personnel Management. The United States Postal Service shall pay the amount so determined to the Office in 30 equal annual installments with interest computed at the rate used in the most recent valuation of the Civil Service Retirement System, with the first payment thereof due at the end of the fiscal year in which an increase in pay becomes effective.

(i)(1) Notwithstanding any other provision of law, the Panama Canal Commission shall be liable for that portion of any estimated increase in the unfunded liability of the fund which is attributable to any benefits payable from the Fund to or on behalf of employees and their survivors to the extent attributable to the amendments made by sections 1241 and 1242, and the provisions of sections 1231(b) and 1243(a)(1), of the Panama Canal Act of 1979, and the amendments made by section 3506 of the Panama Canal Commission Authorization Act for Fiscal Year 1991.

(2) The estimated increase in the unfunded liability referred to in paragraph (1) of this subsection shall be determined by the Office of Personnel Management. The Panama Canal Commission shall pay to the Fund from funds available to it for that purpose the amount so determined in annual installments with interest computed at the rate used in the most recent valuation of the Civil Service Retirement System.

(j)(1) Notwithstanding subsection (c) of this section, the Secretary of the Treasury may suspend additional investment of amounts in the Fund if such additional investment could not be made without causing the public debt of the United States to exceed the public debt limit.

(2) Any amounts in the Fund which, solely by reason of the public debt limit, are not invested shall be invested by the Secretary of the Treasury as soon as such investments can be made without exceeding the public debt limit.

(3) Upon expiration of the debt issuance suspension period, the Secretary of the Treasury

shall immediately issue to the Fund obligations under chapter 31 of title 31 that (notwithstanding subsection (d) of this section) bear such interest rates and maturity dates as are necessary to ensure that, after such obligations are issued, the holdings of the Fund will replicate to the maximum extent practicable the obligations that would then be held by the Fund if the suspension of investment under paragraph (1) of this subsection, and any redemption or disinvestment under subsection (k) of this section for the purpose described in such paragraph, during such period had not occurred.

(4) On the first normal interest payment date after the expiration of any debt issuance suspension period, the Secretary of the Treasury shall pay to the Fund, from amounts in the general fund of the Treasury of the United States not otherwise appropriated, an amount determined by the Secretary to be equal to the excess of—

(A) the net amount of interest that would have been earned by the Fund during such debt issuance suspension period if—

(i) amounts in the Fund that were not invested during such debt issuance suspension period solely by reason of the public debt limit had been invested, and

(ii) redemptions and disinvestments with respect to the Fund which occurred during such debt issuance suspension period solely by reason of the public debt limit had not occurred, over

(B) the net amount of interest actually earned by the Fund during such debt issuance suspension period.

(5) For purposes of this subsection and subsections (k) and (*l*) of this section—

(A) the term ''public debt limit'' means the limitation imposed by section 3101(b) of title 31; and

(B) the term ''debt issuance suspension period'' means any period for which the Secretary of the Treasury determines for purposes of this subsection that the issuance of obligations of the United States may not be made without exceeding the public debt limit.

(k)(1) Subject to paragraph (2) of this subsection, the Secretary of the Treasury may sell or redeem securities, obligations, or other invested assets of the Fund before maturity in order to prevent the public debt of the United States from exceeding the public debt limit.

(2) The Secretary may sell or redeem securities, obligations, or other invested assets of the Fund under paragraph (1) of this subsection only during a debt issuance suspension period, and only to the extent necessary to obtain any amount of funds not exceeding the amount equal to the total amount of the payments authorized to be made from the Fund under the provisions of this subchapter or chapter 84 of this title or related provisions of law during such period. A sale or redemption may be made under this subsection even if, before the sale or redemption, there is a sufficient amount in the Fund to ensure that such payments are made in a timely manner.

(*l*)(1) The Secretary of the Treasury shall report to Congress on the operation and status of the Fund during each debt issuance suspension period for which the Secretary is required to take action under paragraph (3) or (4) of subsection (j) of this section. The report shall be submitted as soon as possible after the expiration of such period, but not later than the date that is 30 days after the first normal interest payment date occurring after the expiration of such period. The Secretary shall concurrently transmit a copy of such report to the Comptroller General of the United States.

(2) Whenever the Secretary of the Treasury determines that, by reason of the public debt limit, the Secretary will be unable to fully comply with the requirements of subsection (c) of this section, the Secretary shall immediately notify Congress of the determination. The notification shall be made in writing.

(m)(1) Notwithstanding any other provision of law, the United States Postal Service shall be liable for that portion of any estimated increase in the unfunded liability of the Fund which is attributable to any benefits payable from the Fund to former employees of the Postal Service who first become annuitants by reason of separation from the Postal Service on or after July 1, 1971, or to their survivors, or to the survivors of individuals who die on or after July 1, 1971, while employed by the Postal Service, when the increase results from a cost-of-living adjustment under section 8340 of this title.

(2) The estimated increase in the unfunded liability referred to in paragraph (1) of this subsection shall be determined by the Office after consultation with the Postal Service. The Postal Service shall pay the amount so determined to the Office in 15 equal annual installments with interest computed at the rate used in the most recent valuation of the Civil Service Retirement System, and with the first payment thereof due at the end of the fiscal year in which the cost-of-living adjustment with respect to which the payment relates becomes effective.

(3) In determining any amount for which the Postal Service is liable under this subsection, the amount of the liability shall be prorated to reflect only that portion of total service (used in computing the benefits involved) which is attributable to civilian service performed after June 30, 1971, as estimated by the Office.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 584; Pub. L. 90–83, § 1(85), Sept. 11, 1967, 81 Stat. 218; Pub. L. 91–93, title I, § 103(a), Oct. 20, 1969, 83 Stat. 137; Pub. L. 93–349, § 1, July 12, 1974, 88 Stat. 354; Pub. L. 94–183, § 2(37), Dec. 31, 1975, 89 Stat. 1058; Pub. L. 95–454, title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 96–70, title I, § 1244, Sept. 27, 1979, 93 Stat. 474; Pub. L. 97–253, title III, § 306(f), Sept. 8, 1982, 96 Stat. 797; Pub. L. 97–346, § 3(g), Oct. 15, 1982, 96 Stat. 1648; Pub. L. 98–216, § 3(a)(5), Feb. 14, 1984, 98 Stat. 6; Pub. L. 98–615, § 2(7), Nov. 8, 1984, 98 Stat. 3202; Pub. L. 99–335, title II, § 207(j), June 6, 1986, 100 Stat. 597; Pub. L. 99–509, title VI, § 6002, Oct. 21, 1986, 100 Stat. 1931; Pub. L. 100–203, title V, § 5428(d), Dec. 22, 1987, 101 Stat. 1330–274; Pub. L. 101–239, title IV, § 4002(a), Dec. 19, 1989, 103 Stat. 2133; Pub. L. 101–508, title VII, §§ 7001(a)(3), 7101(a), Nov. 5, 1990, 104 Stat. 1388–328, 1388–331; Pub. L. 101–510, div. C, title XXXV, § 3506(c), Nov. 5, 1990, 104 Stat. 1847; Pub. L. 103–424, § 10, Oct. 29, 1994, 108 Stat. 4366.)

HISTORICAL AND REVISION NOTES

1966 ACT

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(a)–(f)	5 U.S.C. 2267.	July 31, 1956, ch. 804, §401 ''Sec. 17'', 70 Stat. 759. Oct. 4, 1961, Pub. L. 87–350, §1(a), 75 Stat. 770.
(g)	[Uncodified].	Aug. 28, 1958, Pub. L. 85–844, §101 (par. under ''Civil Service Retirement and Disability Fund''), 72 Stat. 1064.

In subsection (a), the first sentence is based on former section 2251(f), which is carried into section 8331.

In subsection (f), the words ''to carry out this subchapter'' are substituted for ''to continue this chapter in full force and effect''.

In subsection (g), the words ''after the enactment of this Act'' are omitted as executed.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 ACT

Section of title 5	*Source (U.S. Code)*	*Source (Statutes at Large)*
8348(a)	5 App.: 2267(a).	Sept. 27, 1965, Pub. L. 89–205, §1(b), 79 Stat. 840.

The change in subsection (f) is made for uniformity in style and because the full title of the Commission appears in subsection (a).

REFERENCES IN TEXT

Sections 1241 and 1242 of the Panama Canal Act of 1979 [Pub. L. 96–70], referred to in subsec. (i)(1), amended sections 8336 and 8339 of this title, respectively.

Sections 1231(b) and 1243(a)(1) of the Panama Canal Act of 1979 [Pub. L. 96–70], referred to in subsec. (i)(1), are classified to sections 3671(b) and 3681(a)(1) of Title 22, Foreign Relations and Intercourse, respectively.

Section 3506 of the Panama Canal Commission Authorization Act for Fiscal Year 1991 [Pub. L. 101–510, div. C, title XXXV], referred to in subsec. (i)(1), amended sections 8336, 8339, and 8348 of this title.

AMENDMENTS

1994—Subsec. (a)(3). Pub. L. 103–424 added par. (3).

1990—Subsec. (a)(1)(B). Pub. L. 101–508, §7001(a)(3), inserted ''in administering alternative forms of annuities under sections 8343a and 8420a (and related provisions of law),'' before ''and in withholding''.

Subsec. (i)(1). Pub. L. 101–510 substituted ''1979, and the amendments made by section 3506 of the Panama Canal Commission Authorization Act for Fiscal Year 1991'' for ''1979''.

Subsec. (m)(1). Pub. L. 101–508, §7101(a), substituted ''July 1, 1971'' for ''October 1, 1986'' in two places.

1989—Subsec. (m). Pub. L. 101–239 added subsec. (m).

1987—Subsec. (i)(2). Pub. L. 100–203 substituted ''The Panama Canal Commission shall pay to the Fund from funds available to it'' for ''The Secretary of the Treasury shall pay to the Fund from appropriations''.

1986—Subsec. (a). Pub. L. 99–335 inserted reference to provisions of chapter 84 of this title which relate to benefits payable out of the Fund in par. (1)(A), inserted ''or 8462'' and reference to subchapters II and IV of chapter 84 of this title in par. (1)(B), and inserted reference to chapter 84 of this title in par. (2).

Subsecs. (j) to (*l*). Pub. L. 99–509 added subsecs. (j) to (*l*).

1984—Subsec. (a)(1)(B). Pub. L. 98–615 inserted '', in administering survivor annuities and elections providing therefor under sections 8339 and 8341 of this title,''.

Subsec. (d). Pub. L. 98–216 substituted ''chapter 31 of title 31'' for ''the Second Liberty Bond Act, as amended,''.

1982—Subsec. (a)(1)(B). Pub. L. 97–346 inserted ''and in withholding taxes pursuant to section 3405 of title 26''.

Subsec. (g). Pub. L. 97–253, §306(f), inserted '', less an amount determined by the Office to be appropriate to reflect the value of the deposits made to the credit of the Fund under section 8334(j) of this title'' after ''allowed for military service''.

1979—Subsec. (i). Pub. L. 96–70 added subsec. (i).

1978—Subsecs. (a), (g), (h)(2). Pub. L. 95–454 substituted ''Office of Personnel Management'' and ''Office'' for ''Civil Service Commission'' and ''Commission'', respectively, wherever appearing.

1975—Subsec. (h)(2). Pub. L. 94–183 substituted ''30'' for ''thirty''.

1974—Subsec. (h). Pub. L. 93–349 added subsec. (h).

1969—Subsec. (a). Pub. L. 91–93, §103(a)(1), designated existing provisions as par. (1)(A) and (B) and added par. (2).

Subsec. (f). Pub. L. 91–93, §103(a)(2), added subsec. (f) and struck out former subsec. (f) which required the Commission to submit estimates of appropriations necessary to finance the Fund on a normal cost plus interest basis and to carry out this subchapter.

Subsec. (g). Pub. L. 91–93, §103(a)(2), added subsec. (g) and struck out former subsec. (g) which contained restriction against use of Fund money to pay an increase in annuity benefits or a new annuity benefit under this subchapter or an earlier statute without an appropriation being made to the Fund in a sufficient amount to prevent an immediate increase in the unfunded accrued liability of the Fund.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 7101(d) of Pub. L. 101–508 provided that: ''This section and the amendments made by this section [amending this section, enacting provisions set out as a note under this section, and repealing provisions set out as notes under this section] shall take effect on October 1, 1990.''

EFFECTIVE DATE OF 1989 AMENDMENT

Section 4002(b)(1) of Pub. L. 101–239, which provided that section 4002 of Pub. L. 101–239 (amending this section and enacting provisions set out as notes under this section) be effective as of Oct. 1, 1986, was repealed by Pub. L. 101–508, title VII, §7101(b), Nov. 5, 1990, 104 Stat. 1388–331.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 effective Jan. 1, 1988, see section 5429 of Pub. L. 100–203, set out as a note under section 3683 of Title 22, Foreign Relations and Intercourse.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–335 effective Jan. 1, 1987, see section 702(a) of Pub. L. 99–335, set out as an Effective Date note under section 8401 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–615 effective May 7, 1985, with enumerated exceptions and specific applicability provisions, see section 4(a)(1), (5)(D) of Pub. L. 98–615, as amended, set out as a note under section 8341 of this title.

EFFECTIVE DATE OF 1982 AMENDMENTS

Amendment by Pub. L. 97–346 effective Sept. 8, 1982, see section 3(n) of Pub. L. 97–346, set out as a note under section 8332 of this title.

Amendment by Pub. L. 97–253 effective Oct. 1, 1982, except that any employee or Member who retired after Sept. 8, 1982, and before Oct. 1, 1985, or is entitled to an annuity under chapter 83 of this title based on a separation from service occurring during such period, or a survivor of such individual, may make a payment under section 8334(j)(1) of this title, and regulations required to be issued under section 8334(j)(1) of this title,

to be issued by the Office of Personnel Management within 90 days after such effective date, see section 306(g) of Pub. L. 97–253, as amended, set out as a note under section 8331 of this title.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–70 effective Oct. 1, 1979, see section 3304 of Pub. L. 96–70, set out as an Effective Date note under section 3601 of Title 22, Foreign Relations and Intercourse.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–349 effective July 1, 1971, except that the Postal Service shall not be required to make (1) the payments due June 30, 1972, June 30, 1973, and June 30, 1974, attributable to pay increases granted by the Postal Service prior to July 1, 1973, until such time as funds are appropriated to the Postal Service for that purpose, and (2) the transfer to the Civil Service Retirement and Disability Fund required by title II of the Treasury, Postal Service, and General Government Appropriation Act, 1974, Public Law 93–143, see section 3 of Pub. L. 93–349, set out as a note under section 1005 of Title 39, Postal Service.

EFFECTIVE DATE OF 1969 AMENDMENT

Section 103(b)(1) of Pub. L. 91–93 provided that: ''The provisions of subsection (g) of section 8348 of title 5, United States Code, as contained in the amendment made by subsection (a)(2) of this section, shall become effective at the beginning of the fiscal year which ends on June 30, 1971.''

PAYMENTS BY POSTAL SERVICE RELATING TO CORRECTED CALCULATIONS FOR PAST RETIREMENT COLAS

Pub. L. 103–66, title XI, §11101(a), Aug. 10, 1993, 107 Stat. 413, provided that: ''In addition to any other payments required under section 8348(m) of title 5, United States Code, or any other provision of law, the United States Postal Service shall pay into the Civil Service Retirement and Disability Fund a total of $693,000,000, of which—

''(1) at least one-third shall be paid not later than September 30, 1996;

''(2) at least two-thirds shall be paid not later than September 30, 1997; and

''(3) any remaining balance shall be paid not later than September 30, 1998.''

TIMELY PROCESSING OF RETIREMENT BENEFITS

Pub. L. 102–484, div. D, title XLIV, §4436(d), Oct. 23, 1992, 106 Stat. 2724, as amended by Pub. L. 103–337, div. A, title III, §341(b)(2), Oct. 5, 1994, 108 Stat. 2720, provided that:

''(1) In order to ensure the timely processing of applications for retirement benefits, under the Civil Service Retirement System or the Federal Employees' Retirement System, for civilian employees of the Department of Defense and other employees who retire when their agency is undergoing a major reorganization, a major reduction in force, or a major transfer of function, the costs incurred by the Office of Personnel Management in processing any such application shall be deemed to be an administrative expense described in section 8348(a)(1)(B) of title 5, United States Code.

''(2) This subsection shall apply with respect to applications for retirement benefits based on separations occurring before January 1, 2000.''

PRE-1991 COST-OF-LIVING ADJUSTMENTS

Section 7101(c) of Pub. L. 101–508, as amended by Pub. L. 102–378, §5(a)(1), Oct. 2, 1992, 106 Stat. 1358, provided that:

''(1) For the purpose of this subsection—

''(A) the term 'pre-1991 COLA' means a cost-of-living adjustment which took effect in any of the fiscal years specified in subparagraphs (A)–(N) of paragraph (3);

''(B) the term 'post-1990 fiscal year' means a fiscal year after fiscal year 1990; and

''(C) the term 'pre-1991 fiscal year' means a fiscal year before fiscal year 1991.

''(2) Notwithstanding any other provision of law, an installment (equal to an amount determined by reference to paragraph (3)) shall be payable by the United States Postal Service in a post-1990 fiscal year, with respect to a pre-1991 COLA, if such fiscal year occurs within the 15-fiscal-year period which begins with the first fiscal year in which that COLA took effect.

''(3) Notwithstanding any provision of section 8348(m) of title 5, United States Code, or any determination thereunder (including any made under such provision, as in effect before October 1, 1990), the estimated increase in the unfunded liability referred to in paragraph (1) of such section 8348(m) shall be payable, in accordance with this subsection, based on annual installments equal to—

''(A) $6,500,000 each, with respect to the cost-of-living adjustment which took effect in fiscal year 1977;

''(B) $7,000,000 each, with respect to the cost-of-living adjustment which took effect in fiscal year 1978;

''(C) $10,400,000 each, with respect to the cost-of-living adjustment which took effect in fiscal year 1979;

''(D) $20,500,000 each, with respect to the cost-of-living adjustment which took effect in fiscal year 1980;

''(E) $26,100,000 each, with respect to the cost-of-living adjustment which took effect in fiscal year 1981;

''(F) $28,100,000 each, with respect to the cost-of-living adjustment which took effect in fiscal year 1982;

''(G) $30,600,000 each, with respect to the cost-of-living adjustment which took effect in fiscal year 1983;

''(H) $5,700,000 each, with respect to the cost-of-living adjustment which took effect in fiscal year 1984;

''(I) $19,400,000 each, with respect to the cost-of-living adjustment which took effect in fiscal year 1985;

''(J) $7,400,000 each, with respect to the cost-of-living adjustment which took effect in fiscal year 1986;

''(K) $8,500,000 each, with respect to the cost-of-living adjustment which took effect in fiscal year 1987;

''(L) $36,800,000 each, with respect to the cost-of-living adjustment which took effect in fiscal year 1988;

''(M) $51,600,000 each, with respect to the cost-of-living adjustment which took effect in fiscal year 1989; and

''(N) $63,500,000 each, with respect to the cost-of-living adjustment which took effect in fiscal year 1990.

''(4) Any installment payable under this subsection shall be paid by the Postal Service at the same time as when it pays any installments due in that same fiscal year under section 8348(m) of title 5, United States Code.

''(5) An installment payable under this subsection in a fiscal year, with respect to a pre-1991 COLA, shall be in lieu of any other installment for which the Postal Service might otherwise be liable in such fiscal year, with respect to such COLA, under section 8348(m) of title 5, United States Code.''

[Amendment by Pub. L. 102–378 to section 7101(c) of Pub. L. 101–508, set out above, effective Nov. 5, 1990, see section 9(b)(6) of Pub. L. 102–378, set out as an Effective Date of 1992 Amendment note under section 6303 of this title.]

PAYMENTS RELATING TO AMOUNTS WHICH WOULD HAVE BEEN DUE BEFORE FISCAL YEAR 1987

Section 7103 of Pub. L. 101–508 provided that:

''(a) DEFINITION.—For the purpose of this section, the term 'pre-1987 fiscal year' means a fiscal year before fiscal year 1987.

''(b) FOR PAST RETIREMENT COLAS.—As payment for any amounts which would have been due in any pre-1987 fiscal year under the provisions of section 8348(m) of title 5, United States Code (as amended by section 7101)

if such provisions had been in effect as of July 1, 1971, the United States Postal Service shall pay into the Civil Service Retirement and Disability Fund—

''(1) $216,000,000, not later than September 30, 1991;

''(2) $266,000,000, not later than September 30, 1992;

''(3) $316,000,000, not later than September 30, 1993;

''(4) $416,000,000, not later than September 30, 1994; and

''(5) $471,000,000, not later than September 30, 1995.

''(c) FOR PAST HEALTH BENEFITS.—As payment for any amounts which would, for any period ending before the start of fiscal year 1987, have been payable under the provisions of section 8906(g)(2) of title 5, United States Code (as amended by section 7102) if such provisions had been in effect as of July 1, 1971, the United States Postal Service shall pay into the Employees Health Benefits Fund—

''(1) $56,000,000, not later than September 30, 1991;

''(2) $47,000,000, not later than September 30, 1992;

''(3) $62,000,000, not later than September 30, 1993;

''(4) $56,000,000, not later than September 30, 1994; and

''(5) $234,000,000, not later than September 30, 1995.''

CERTAIN POSTAL SERVICE ANNUITANTS; SIZE OF ANNUAL INSTALLMENTS TO FUND PREVIOUS YEARS' COLAS

Section 4002(b)(2) of Pub. L. 101–239, which provided that notwithstanding any provision of section 8348(m) of this title the estimated increase in the unfunded liability referred to in section 8348(m)(1) was to be payable based on annual installments equal to specified amounts for fiscal years 1987 to 1989, was repealed by Pub. L. 101–508, title VII, § 7101(b), Nov. 5, 1990, 104 Stat. 1388–331.

CERTAIN POSTAL SERVICE ANNUITANTS; ADDITIONAL AMOUNT PAYABLE

Section 4002(b)(3) of Pub. L. 101–239, which provided that first payment made under provisions of section 8348(m) of this title was to include, in addition to the amount which would otherwise have been payable at that time, an amount equal to the sum of any amounts which would have been due under those provisions in any prior year if this section had been enacted before Oct. 1, 1986, and which provided the method of computation, was repealed by Pub. L. 101–508, title VII, § 7101(b), Nov. 5, 1990, 104 Stat. 1388–331.

STATUS OF ORIGINAL SUBSEC. (g) PROVISIONS DURING PERIOD FROM OCT. 20, 1969 TO JUNE 30, 1970

Section 103(b)(2) of Pub. L. 91–93 provided that: ''Paragraph (1) of this subsection [set out as Effective Date of 1969 Amendment note above], shall not be held or considered to continue in effect after the enactment of this Act [Oct. 20, 1969], the provisions of section 8348(g) of title 5, United States Code, as in effect immediately prior to such enactment.''

INAPPLICABILITY TO BENEFITS UNDER PUB. L. 89–737 OF PROHIBITION AGAINST PAYMENT OF INCREASED ANNUITY BENEFIT WITHOUT COMPENSATING APPROPRIATION

Section 3 of Pub. L. 89–737, Nov. 2, 1966, 80 Stat. 1164, which provided that section 8348(g) of title 5, United States Code, does not apply with respect to annuity benefits resulting from the enactment of this Act [amending sections 8114, 8331, and 8704 of this title and section 1117 of former Title 5, Executive Departments and Government Officers and Employees], was repealed by Pub. L. 90–83, § 10(b), Sept. 11, 1967, 81 Stat. 223.

REDEMPTION OF OBLIGATIONS HELD PRIOR TO OCT. 4, 1961; REINVESTMENT OF PROCEEDS

Pub. L. 87–350, § 1(b) Oct. 4, 1961, 75 Stat. 770, provided that: ''All special issues in which the civil service retirement and disability fund is invested in accordance with section 17(d) of the Civil Service Retirement Act [subsecs. (d) and (e) of this section] as in effect prior to the enactment of this Act [Oct. 4, 1961] shall be redeemed and the moneys reinvested by the Secretary of the Treasury, as nearly as may be practicable, in equal annual amounts over the period of ten calendar years beginning with the calendar year 1962, in accordance with such section 17(d), as amended by subsection (a) of this section.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8331, 8401 of this title; title 20 section 125; title 25 section 450i.

§ 8349. Offset relating to certain benefits under the Social Security Act

(a)(1) Notwithstanding any other provision of this subchapter, if an individual under section 8402(b)(2) is entitled, or would on proper application be entitled, to old-age insurance benefits under title II of the Social Security Act, the annuity otherwise payable to such individual shall be reduced under this subsection.

(2) A reduction under this subsection commences beginning with the first month for which the individual both—

(A) is entitled to an annuity under this subchapter; and

(B) is entitled, or would on proper application be entitled, to old-age insurance benefits under title II of the Social Security Act.

(3)(A)(i) Subject to clause (ii) and subparagraphs (B) and (C), the amount of a reduction under this subsection shall be equal to the difference between—

(I) the old-age insurance benefit which would be payable to the individual for the month referred to in paragraph (2); and

(II) the old-age insurance benefit which would be so payable, excluding all wages derived from Federal service of the individual, and assuming the individual were fully insured (as defined by section 214(a) of the Social Security Act).

(ii) For purposes of this subsection, the amount of a benefit referred to in subclause (I) or (II) of clause (i) shall be determined without regard to subsections (b) through (*l*) of section 203 of the Social Security Act, and without regard to the requirement that an application for such benefit be filed.

(B) A reduction under this subsection—

(i) may not exceed an amount equal to the product of—

(I) the old-age insurance benefit to which the individual is entitled (or would on proper application be entitled) for the month referred to in paragraph (2), determined without regard to subsections (b) through (*l*) of section 203 of the Social Security Act; and

(II) a fraction, as determined under section 8421(b)(3) with respect to the individual, except that the reference to ''service'' in subparagraph (A) of such section shall be considered to mean Federal service; and

(ii) may not cause the annuity payment for an individual to be reduced below zero.

(C) An amount computed under subclause (I) or (II) of subparagraph (A)(i), or under subparagraph (B)(i)(I), for purposes of determining the amount of a reduction under this subsection shall be adjusted under section 8340 of this title.

(4) A reduction under this subsection applies with respect to the annuity otherwise payable to

such individual under this subchapter (other than under section 8337) for the month involved—

(A) based on service of such individual; and

(B) without regard to section 8345(j), if otherwise applicable.

(5) The operation of the preceding paragraphs of this subsection shall not be considered for purposes of applying the provisions of the second sentence of section 215(a)(7)(B)(i) or the provisions of section 215(d)(5)(ii) of the Social Security Act in determining any amount under subclause (I) or (II) of paragraph (3)(A)(i) or paragraph (3)(B)(i)(I) for purposes of this subsection.

(b)(1) Notwithstanding any other provision of this subchapter—

(A) a disability annuity to which an individual described in section 8402(b)(2) is entitled under this subchapter, and

(B) a survivor annuity to which a person is entitled under this subchapter based on the service of an individual described in section 8402(b)(2),

shall be subject to reduction under this subsection if that individual or person is also entitled (or would on proper application also be entitled) to any similar benefits under title II of the Social Security Act based on the wages and self-employment income of such individual described in section 8402(b)(2).

(2)(A) Subject to subparagraph (B), reductions under this subsection shall be made in a manner consistent with the manner in which reductions under subsection (a) are computed and otherwise made.

(B) Reductions under this subsection shall be discontinued if, or for so long as, entitlement to the similar benefits under title II of the Social Security Act (as referred to in paragraph (1)) is terminated (or, in the case of an individual who has not made proper application therefor, would be terminated).

(3) For the purpose of applying section 224 of the Social Security Act to the disability insurance benefit used to compute the reduction under this subsection, the amount of the CSRS annuity considered shall be the amount of the CSRS annuity before application of this section.

(4) The Office shall prescribe regulations to carry out this subsection.

(c) For the purpose of this section, the term ''Federal service'' means service which is employment for the purposes of title II of the Social Security Act and chapter 21 of the Internal Revenue Code of 1986 by reason of the amendments made by section 101 of the Social Security Amendments of 1983.

(d) In administering subsections (a) through (c)—

(1) the terms ''an individual under section 8402(b)(2)'' and ''an individual described in section 8402(b)(2)'' shall each be considered to include any individual—

(A) who is subject to this subchapter as a result of any provision of law described in section 8347(*o*), and

(B) whose employment (as described in section 8347(*o*)) is also employment for purposes of title II of the Social Security Act and chapter 21 of the Internal Revenue Code of 1986; and

(2) the term ''Federal service'', as applied with respect to any individual to whom this section applies as a result of paragraph (1), means any employment referred to in paragraph (1)(B) performed after December 31, 1983.

(Added Pub. L. 99–335, title II, § 201(b)(1), June 6, 1986, 100 Stat. 589; amended Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100–238, title I, § 108(b)(2), Jan. 8, 1988, 101 Stat. 1748.)

REFERENCES IN TEXT

The Social Security Act, referred to in text, is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title II of the Social Security Act is classified generally to subchapter II (§ 401 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. Sections 203, 214, 215, and 224 of the Social Security Act are classified to sections 403, 414, 415, and 424a, respectively, of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

Chapter 21 of the Internal Revenue Code of 1986, referred to in subsecs. (c) and (d)(1)(B), is classified to chapter 21 (§ 3101 et seq.) of Title 26, Internal Revenue Code.

Section 101 of the Social Security Amendments of 1983 [Pub. L. 98–21], referred to in subsec. (c), amended section 3121 of Title 26 and sections 409 and 410 of Title 42, The Public Health and Welfare, and enacted provisions set out as notes under section 3121 of Title 26 and section 410 of Title 42.

AMENDMENTS

1988—Subsec. (d). Pub. L. 100–238 added subsec. (d).

1986—Subsec. (c). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–238 effective Jan. 1, 1987, see section 108(b)(3) of Pub. L. 100–238, set out as a note under section 8334 of this title.

EFFECTIVE DATE

Section effective Jan. 1, 1987, see section 702(a) of Pub. L. 99–335, set out as a note under section 8401 of this title.

OFFSETS TO PREVENT FULL DOUBLE COVERAGE FOR EMPLOYEES OF PARK POLICE AND SECRET SERVICE

For provisions relating to offsets for prevention of full double coverage for employees of Park Police and Secret Service, see section 103(e) of Pub. L. 100–238, set out as a note under section 8334 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 22 section 4046; title 50 section 2031.

§ 8350. Retirement counseling

(a) For the purposes of this section, the term ''retirement counselor'', when used with respect to an agency, means an employee of the agency who is designated by the head of the agency to furnish information on benefits under this subchapter and chapter 84 of this title and counseling services relating to such benefits to other employees of the agency.

(b) The Director of the Office of Personnel Management shall establish a training program for all retirement counselors of agencies of the Federal Government.

(c)(1) The training program established under subsection (b) of this section shall provide for comprehensive training in the provisions and

administration of this subchapter and chapter 84 of this title, shall be designed to promote fully informed retirement decisions by employees and Members under this subchapter and individuals subject to chapter 84 of this title, and shall be revised as necessary to assure that the information furnished to retirement counselors of agencies under the program is current.

(2) The Director shall conduct a training session under the training program at least once every 3 months.

(3) Once each year, each retirement counselor of an agency shall successfully complete a training session conducted under the training program.

(Added Pub. L. 99–335, title II, §205(a), June 6, 1986, 100 Stat. 592; amended Pub. L. 99–556, title II, §202, Oct. 27, 1986, 100 Stat. 3135.)

AMENDMENTS

1986—Subsec. (c)(1). Pub. L. 99–556 substituted ''subsection (b)'' for ''subsection (b)(1)''.

EFFECTIVE DATE

Section effective June 6, 1986, see section 702(b)(3) of Pub. L. 99–335, set out as a note under section 8401 of this title.

§ 8351. Participation in the Thrift Savings Plan

(a)(1) An employee or Member may elect to contribute to the Thrift Savings Fund established by section 8437 of this title.

(2) An election may be made under paragraph (1) only during a period provided under section 8432(b) for individuals who are subject to chapter 84 of this title.

(b)(1) Except as otherwise provided in this subsection, the provisions of subchapters III and VII of chapter 84 of this title shall apply with respect to employees and Members making contributions to the Thrift Savings Fund under subsection (a) of this section.

(2) An employee or Member may contribute to the Thrift Savings Fund in any pay period any amount not exceeding 5 percent of the amount of the employee's or Member's basic pay for such period.

(3) No contributions may be made by an employing agency for the benefit of an employee or Member under section 8432(c) of this title.

(4) Section 8433(b) of this title applies to any employee or Member who elects to make contributions to the Thrift Savings Fund under subsection (a) of this section and separates from Government employment.

(5)(A) The provisions of section 8435 of this title that require a waiver or consent by the spouse of an employee or Member (or former employee or Member) shall not apply with respect to sums in the Thrift Savings Fund contributed by the employee or Member (or former employee or Member) and earnings in the fund attributable to such sums.

(B) An election, change of election, or modification (relating to the commencement date of a deferred annuity) authorized by subchapter III of chapter 84 of this title shall be effective in the case of a married employee or Member, and a loan may be approved under section 8433(g) of this title in such case, only after the Executive Director notifies the employee's or Member's spouse that the election, change of election, or modification has been made or that the Executive Director has received an application for such loan, as the case may be.

(C) Subparagraph (B) may be waived with respect to a spouse if the employee or Member establishes to the satisfaction of the Executive Director of the Federal Retirement Thrift Investment Board that the whereabouts of such spouse cannot be determined.

(D) Except with respect to the making of loans under section 8433(g), none of the provisions of this paragraph requiring notification to a spouse or former spouse of an employee, Member, former employee, or former Member shall apply in any case in which the nonforfeitable account balance of the employee, Member, former employee, or former Member is $3,500 or less.

(6) Notwithstanding paragraph (4), if an employee or Member separates from Government employment and such employee's or Member's nonforfeitable account balance is $3,500 or less, the Executive Director shall pay the nonforfeitable account balance to the participant in a single payment unless the employee or Member elects, at such time and otherwise in such manner as the Executive Director prescribes, one of the options available under subsection (b).

(7) For the purpose of this section, the term ''nonforfeitable account balance'' has the same meaning as under section 8401(32).

(11)[1] In applying section 8432b to an employee contributing to the Thrift Savings Fund after being restored to or reemployed in a position subject to this subchapter, pursuant to chapter 43 of title 38—

(A) any reference in such section to contributions under section 8432(a) shall be considered a reference to employee contributions under this section;

(B) the contribution rate under section 8432b(b)(2)(A) shall be the maximum percentage allowable under subsection (b)(2) of this section; and

(C) subsections (c) and (d) of section 8432b shall be disregarded.

(c) A member of the Foreign Service described in section 103(6) of the Foreign Service Act of 1980 shall be ineligible to make any election under this section.

(d) A foreign national employee of the Central Intelligence Agency whose services are performed outside the United States shall be ineligible to make an election under this section.

(e) The Executive Director of the Federal Retirement Thrift Investment Board may prescribe regulations to carry out this section.

(Added Pub. L. 99–335, title II, §206(a)(1), June 6, 1986, 100 Stat. 593; amended Pub. L. 100–238, title I, §111(a), Jan. 8, 1988, 101 Stat. 1750; Pub. L. 101–335, §§3(b)(1), 6(b)(1), July 17, 1990, 104 Stat. 320, 323; Pub. L. 102–183, title III, §308(a), Dec. 4, 1991, 105 Stat. 1265; Pub. L. 102–484, div. D, title XLIV, §4437(c), Oct. 23, 1992, 106 Stat. 2724; Pub. L. 103–226, §9(a), (i)(1), (2), Mar. 30, 1994, 108 Stat. 118, 121; Pub. L. 103–353, §4(d), Oct. 13, 1994, 108 Stat. 3172.)

[1] So in original. Probably should be ''(8)''.

REFERENCES IN TEXT

Section 103(6) of the Foreign Service Act of 1980, referred to in subsec. (c), is classified to section 3903(6) of Title 22, Foreign Relations and Intercourse.

AMENDMENTS

1994—Subsec. (b)(4). Pub. L. 103–226, § 9(a)(1), amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''Section 8433(b) of this title applies to any employee or Member who elects to make contributions to the Thrift Savings Fund under subsection (a) of this section and separates from Government employment entitled to an immediate annuity under this subchapter (including a disability retirement annuity under section 8337 of this title), separates from Government employment pursuant to regulations under section 3502(a) of this title or procedures under section 3595(a) of this title in a reduction in force, or separates from Government employment entitled to benefits under subchapter I of chapter 81 of this title.''

Subsec. (b)(5). Pub. L. 103–226, § 9(a)(2), (3), redesignated par. (7) as (5) and struck out former par. (5) which read as follows: ''Section 8433(c) of this title applies to any employee or Member who elects to make contributions to the Thrift Savings Fund under subsection (a) of this section and separates entitled to a deferred annuity under this subchapter.''

Subsec. (b)(5)(B) to (D). Pub. L. 103–226, § 9(a)(4), (i)(1), (2), substituted ''section 8433(g)'' for ''section 8433(i)'' in subpars. (B) and (D) and struck out ''or former spouse'' after ''spouse'' in two places in subpar. (C).

Subsec. (b)(6). Pub. L. 103–226, § 9(a)(5), amended par. (6) generally. Prior to amendment, par. (6) read as follows: ''Notwithstanding paragraphs (4) and (5), if an employee or Member separates from Government employment under circumstances making such employee or Member eligible to make an election under subsection (b) or (c) of section 8433, and such employee's or Member's nonforfeitable account balance is $3,500 or less, the Executive Director shall pay the nonforfeitable account balance to the participant in a single payment unless the employee or Member elects, at such time and otherwise in such manner as the Executive Director prescribes, one of the options available under such subsection (b) or (c), as applicable.''

Pub. L. 103–226, § 9(a)(2), (3), redesignated par. (9) as (6) and struck out former par. (6) which read as follows: ''Section 8433(d) of this title applies to any employee or Member who elects to make contributions to the Thrift Savings Fund under subsection (a) of this section and separates from the service before becoming entitled to an immediate or deferred annuity under this subchapter.''

Subsec. (b)(7). Pub. L. 103–226, § 9(a)(6), which directed substitution of ''nonforfeitable'' for ''nonforfeiture'', could not be executed because the term ''nonforfeiture'' does not appear in text.

Pub. L. 103–226, § 9(a)(3), redesignated par. (10) as (7). Former par. (7) redesignated (5).

Subsec. (b)(8). Pub. L. 103–226, § 9(a)(2), struck out par. (8) which read as follows: ''Notwithstanding paragraph (6), if an employee or Member who elects to make contributions to the Thrift Savings Fund under subsection (a) separates from Government employment before becoming entitled to a deferred or immediate annuity under this subchapter, and such employee's or Member's nonforfeitable account balance is $3,500 or less, the Executive Director shall pay the nonforfeitable account balance to the participant in a single payment unless the employee or Member elects, at such time and otherwise in such manner as the Executive Director prescribes, to have the nonforfeitable account balance transferred to an eligible retirement plan as provided in section 8433(e).''

Subsec. (b)(9), (10). Pub. L. 103–226, § 9(a)(3), redesignated pars. (9) and (10) as (6) and (7), respectively.

Subsec. (b)(11). Pub. L. 103–353 added par. (11).

1992—Subsec. (b)(4). Pub. L. 102–484 inserted '', separates from Government employment pursuant to regulations under section 3502(a) of this title or procedures under section 3595(a) of this title in a reduction in force,'' after ''section 8337 of this title)''.

1991—Subsecs. (d), (e). Pub. L. 102–183 added subsec. (d) and redesignated former subsec. (d) as (e).

1990—Subsec. (b)(7)(D). Pub. L. 101–335, § 6(b)(1)(B), added subpar. (D).

Subsec. (b)(8). Pub. L. 101–335, § 6(b)(1)(A), added par. (8).

Pub. L. 101–335, § 3(b)(1), struck out par. (8) which read as follows: ''Sums contributed under this section and earnings attributable to such sums may be invested and reinvested only in the Government Securities Investment Fund established under section 8438(b)(1)(A) of this title.''

Subsec. (b)(9), (10). Pub. L. 101–335, § 6(b)(1)(A), added pars. (9) and (10).

1988—Subsecs. (c), (d). Pub. L. 100–238 added subsec. (c) and redesignated former subsec. (c) as (d).

EFFECTIVE DATE OF 1994 AMENDMENTS

Amendment by Pub. L. 103–353 effective Oct. 13, 1994, and applicable to any employee whose release from military service, discharge from hospitalization, or other similar event making the individual eligible to seek restoration or reemployment under chapter 43 of Title 38, Veterans' Benefits, occurs on or after Aug. 2, 1990, with special rules for applying amendment to employees restored or reemployed before effective date, see section 4(e), (f) of Pub. L. 103–353, set out as an Effective Date note under section 8432b of this title.

Section 9(j) of Pub. L. 103–226 provided that: ''This section [amending this section and sections 8433 to 8435, 8437, and 8440a to 8440d of this title] shall take effect 1 year after the date of the enactment of this Act [Mar. 30, 1994] or on such earlier date as the Executive Director of the Federal Retirement Thrift Investment Board shall provide in regulation.''

EFFECTIVE DATE OF 1992 AMENDMENT

Section 4437(d) of Pub. L. 102–484 provided that: ''The amendments made by this section [amending this section and sections 8433 and 8435 of this title] shall apply with respect to separations occurring after December 31, 1993, or such earlier date as the Executive Director (appointed under section 8474 of title 5, United States Code) may by regulation prescribe.''

EFFECTIVE DATE OF 1991 AMENDMENT

Section 308(b) of Pub. L. 102–183 provided that:

''(1) The amendment made by subsection (a) [amending this section] shall take effect as of January 1, 1987.

''(2) Any refund which becomes payable as a result of the effective date specified in paragraph (1) shall, to the extent that that refund involves an individual's contributions to the Thrift Savings Fund (established under section 8437 of title 5, United States Code), be adjusted to reflect any earnings attributable thereto.''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 3(c) of Pub. L. 101–335 provided that: ''Subsections (a) and (b), and the amendments made by such subsections [amending this section and sections 8438, 8440a, and 8440b of this title and enacting provisions set out as a note under section 8438 of this title], shall be effective as of the second election period described in section 8432(b) of title 5, United States Code, beginning after the date of enactment of this Act [July 17, 1990], or as of such earlier date as the Executive Director may by regulation prescribe.''

Section 6(c) of Pub. L. 101–335 provided that: ''This section, and the amendments made by this section [amending this section and sections 8401, 8433, 8435, 8440a, and 8440b of this title and enacting provisions set out as a note under section 8433 of this title], shall be effective as of the second election period described in section 8432(b) of title 5, United States Code, beginning after the date of enactment of this Act [July 17, 1990] (or as of such earlier date as the Executive Director

may by regulation prescribe), and shall apply with respect to separations occurring before, on, or after that effective date.''

EFFECTIVE DATE OF 1988 AMENDMENT

Section 111(b) of Pub. L. 100–238 provided that: ''The amendments made by subsection (a) [amending this section] shall be effective as of March 31, 1987. Any refund which becomes payable as a result of the preceding sentence shall, to the extent that such refund involves an individual's contributions to the Thrift Savings Fund (established under section 8437 of title 5, United States Code), be adjusted to reflect any earnings attributable thereto.''

EFFECTIVE DATE

Section effective Jan. 1, 1987, see section 702(a) of Pub. L. 99–335, set out as a note under section 8401 of this title.

PERIOD WHEN ELECTION MAY FIRST BE MADE

Section 206(b) of Pub. L. 99–335, as amended by Pub. L. 99–509, title VI, §6001(b), Oct. 21, 1986, 100 Stat. 1930, provided that an election could first be made by a Federal employee or a Member of Congress under 5 U.S.C. 8351 (a)(2) during an election period prescribed by Executive Director of Federal Retirement Thrift Investment Board to begin on Apr. 1, 1987, with such election to take effect on first day of employee's or Member's first pay period which began on or after the date of the election. The maximum amount that an employee or Member could elect to contribute during any pay period which began on or after Apr. 1, 1987, and before Oct. 1, 1987, was an amount equal to 7.5 percent of the individual's basic pay for that period.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8432, 8439, 8440, 8440a, 8440d of this title; title 10 section 945; title 22 section 4069; title 50 section 2142.

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AMENDMENTS

1994—Pub. L. 103–353, §4(a)(2), Oct. 13, 1994, 108 Stat. 3172, added item 8432b.

1992—Pub. L. 102–572, title IX, §902(b)(2), Oct. 29, 1992, 106 Stat. 4516, substituted ''Court of Federal Claims'' for ''Claims Court'' in item 8440c.

Pub. L. 102–378, §5(d)(2), Oct. 2, 1992, 106 Stat. 1358, amended directory language of Pub. L. 101–198, §7(c)(4)(B). See 1991 Amendment note below.

1991—Pub. L. 102–198, §7(c)(2), Dec. 9, 1991, 105 Stat. 1625, redesignated item 8440b ''Claims Court judges'' as item 8440c.

Pub. L. 102–198, §7(c)(4)(B), Dec. 9, 1991, 105 Stat. 1625, as amended by Pub. L. 102–378, §5(d)(2), Oct. 2, 1992, 106 Stat. 1358, redesignated item 8440c ''Judges of the United States Court of Veterans Appeals'' as item 8440d.

Pub. L. 102–82, §5(a)(2), Aug. 6, 1991, 105 Stat. 376, added item 8440c ''Judges of the United States Court of Veterans Appeals''.

1990—Pub. L. 101–650, title III, §306(d)(2), Dec. 1, 1990, 104 Stat. 5111, which directed the amendment of the table of sections for this chapter by adding at the end thereof item 8440b ''Claims Court judges'', was executed by adding that item after the first item 8440b.

Pub. L. 101–335, §§2(a)(2), 9(b), July 17, 1990, 104 Stat. 320, 326, added item 8432a and redesignated item 8440a ''Bankruptcy judges and magistrates'' as item 8440b.

1988—Pub. L. 100–659, §7(b), Nov. 15, 1988, 102 Stat. 3920, added item 8440a ''Bankruptcy judges and magistrates''.

Pub. L. 100–654, title IV, §401(b), Nov. 14, 1988, 102 Stat. 3847, added item 8440a ''Justices and judges''.

Pub. L. 100–238, title I, §124(a)(2), (b)(2), Jan. 8, 1988, 101 Stat. 1756, added item 8464a, redesignated item 8457 as 8456, and struck out former item 8456 ''Relationship to workers' compensation''.

1986—Pub. L. 99–556, title I, §110(b), Oct. 27, 1986, 100 Stat. 3132, added item 8478a.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 2105, 3329, 5304, 5362, 5541, 5597, 5724, 8116, 8342, 8344, 8347, 8348, 8350, 8351, 8440a, 8440d, 8901 of this title; title 10 section 942; title 20 section 4416; title 22 sections 3951, 4067, 4069, 4071, 4071c, 4071d, 4071h; title 25 section 450i; title 26 sections 3121, 6103; title 28 sections 155, 178, 375, 376, 377, 611, 627, 636, 797; title 31 section 772; title 38 sections 7297, 7438, 7453, 7458; title 39 section 1005; title 40 section 214d; title 42 sections 402, 410, 3035r, 10704; title 50 sections 2021, 2151, 2152, 2153, 2154, 2155, 2157.

SUBCHAPTER I—GENERAL PROVISIONS

§ 8401. Definitions

For the purpose of this chapter—

(1) the term ''account'' means an account established and maintained under section 8439(a) of this title;

(2) the term ''annuitant'' means a former employee or Member who, on the basis of that individual's service, meets all requirements for title to an annuity under subchapter II or V of this chapter and files claim therefor;

(3) the term ''average pay'' means the largest annual rate resulting from averaging an employee's or Member's rates of basic pay in effect over any 3 consecutive years of service or, in the case of an annuity under this chapter based on service of less than 3 years, over the total service, with each rate weighted by the period it was in effect;

(4) except as provided in subchapter III of this chapter, the term ''basic pay'' has the meaning given such term by section 8331(3);

(5) the term ''Board'' means the Federal Retirement Thrift Investment Board established by section 8472(a) of this title;

(6) the term ''Civil Service Retirement and Disability Fund'' or ''Fund'' means the Civil Service Retirement and Disability Fund under section 8348;

(7) the term ''court'' means any court of any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, or the Virgin Islands, and any Indian court;

(8) the term ''Director'' means the Director of the Office of Personnel Management;

(9) the term ''dynamic assumptions'' means economic assumptions that are used in determining actuarial costs and liabilities of a retirement system and in anticipating the effects of long-term future—

(A) investment yields;

(B) increases in rates of basic pay; and

(C) rates of price inflation;

(10) the term ''earnings'', when used with respect to the Thrift Savings Fund, means the amount of the gain realized or yield received from the investment of sums in such Fund;

(11) the term ''employee'' means—

(A) an individual referred to in subparagraph (A), (E), (F), (H), (I), (J), or (K) of section 8331(1) of this title;

(B) a Congressional employee as defined in section 2107 of this title, including a temporary Congressional employee and an employee of the Congressional Budget Office; and

(C) an employee described in section 2105(c) who has made an election under section 8461(n)(1) to remain covered under this chapter;

whose civilian service after December 31, 1983, is employment for the purposes of title II of the Social Security Act and chapter 21 of the Internal Revenue Code of 1986, except that such term does not include—

(i) any individual referred to in—

(I) clause (i), (vi), or (ix) of paragraph (1) of section 8331;

(II) clause (ii) of such paragraph; or

(III) the undesignated material after the last clause of such paragraph;

(ii) any individual excluded under section 8402(c) of this title;

(iii) a member of the Foreign Service described in section 103(6) of the Foreign Service Act of 1980; or

(iv) an employee who has made an election under section 8461(n)(2) to remain covered by a retirement system established for employees described in section 2105(c);

(12) the term ''former spouse'' means a former spouse of an individual—

(A) if such individual performed at least 18 months of civilian service creditable under section 8411 as an employee or Member; and

(B) if the former spouse was married to such individual for at least 9 months;

(13) the term ''Executive Director'' means the Executive Director appointed under section 8474(a);

(14) the term ''firefighter'' means—

(A) an employee, the duties of whose position—

(i) are primarily to perform work directly connected with the control and extinguishment of fires; and

(ii) are sufficiently rigorous that employment opportunities should be limited to young and physically vigorous individuals, as determined by the Director considering the recommendations of the employing agency; and

(B) an employee who is transferred directly to a supervisory or administrative position after performing duties described in subparagraph (A) for at least 3 years;

(15) the term ''Government'' means the Federal Government, Gallaudet College, and, in the case of an employee described in paragraph (11)(C), a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard described in section 2105(c);

(16) the term ''Indian court'' has the meaning given such term by section 8331(24);

(17) the term ''law enforcement officer'' means—

(A) an employee, the duties of whose position—

(i) are primarily—

(I) the investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws of the United States, or

(II) the protection of officials of the United States against threats to personal safety; and

(ii) are sufficiently rigorous that employment opportunities should be limited to young and physically vigorous individuals, as determined by the Director considering the recommendations of the employing agency;

(B) an employee of the Department of the Interior or the Department of the Treasury (excluding any employee under subparagraph (A)) who occupies a position that, but for the enactment of the Federal Employees' Retirement System Act of 1986, would be subject to the District of Columbia Police and Firefighters' Retirement System, as determined by the Secretary of the Interior or the Secretary of the Treasury, as appropriate;

(C) an employee who is transferred directly to a supervisory or administrative position after performing duties described in subparagraph (A) and (B) for at least 3 years; and

(D) an employee—

(i) of the Bureau of Prisons or Federal Prison Industries, Incorporated;

(ii) of the Public Health Service assigned to the field service of the Bureau of Prisons or of the Federal Prison Industries, Incorporated; or

(iii) in the field service at Army or Navy disciplinary barracks or at any other confinement and rehabilitation facility operated by any of the armed forces;

whose duties in connection with individuals in detention suspected or convicted of offenses against the criminal laws of the United States or of the District of Columbia or offenses against the punitive articles of the Uniform Code of Military Justice (chapter 47 of title 10) require frequent direct contact with these individuals in their detention and are sufficiently rigorous that employment opportunities should be limited to young and physically vigorous individuals, as determined by the head of the employing agency;

(18) the term ''loss'', as used with respect to the Thrift Savings Fund, includes the amount of any loss resulting from the investment of sums in such Fund, or from the breach of any responsibility, duty, or obligation under section 8477.[1]

(19) the term ''lump-sum credit'' means the unrefunded amount consisting of—

(A) retirement deductions made from the basic pay of an employee or Member under section 8422(a) of this title (or under section 204 of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983);

(B) amounts deposited by an employee or Member under section 8422(e);

(C) amounts deposited by an employee, Member, or survivor under section 8411(f); and

(D) interest on the deductions and deposits which, for any calendar year, shall be equal to the overall average yield to the Fund during the preceding fiscal year from all obligations purchased by the Secretary of the Treasury during such fiscal year under section 8348(c), (d), and (e), as determined by the Secretary (compounded annually);

but does not include interest—

(i) if the service covered thereby aggregates 1 year or less; or

(ii) for a fractional part of a month in the total service;

(20) the term ''Member'' has the same meaning as provided in section 2106, except that such term does not include an individual who irrevocably elects, by written notice to the official by whom such individual is paid, not to participate in the Federal Employees' Retirement System;

(21) the term ''net earnings'' means the excess of earnings over losses;

(22) the term ''net losses'' means the excess of losses over earnings;

(23) the term ''normal-cost percentage'' means the entry-age normal cost of the provisions of the System which relate to the Fund, computed by the Office in accordance with generally accepted actuarial practice and standards (using dynamic assumptions) and expressed as a level percentage of aggregate basic pay;

(24) the term ''Office'' means the Office of Personnel Management;

(25) the term ''price index'' has the same meaning as provided in section 8331(15);

(26) the term ''service'' means service which is creditable under section 8411;

(27) the term ''supplemental liability'' means the estimated excess of—

(A) the actuarial present value of all future benefits payable from the Fund under this chapter based on the service of current or former employees or Members, over

(B) the sum of—

(i) the actuarial present value of deductions to be withheld from the future basic pay of employees and Members currently subject to this chapter pursuant to section 8422;

[1] So in original. The period probably should be a semicolon.

(ii) the actuarial present value of the future contributions to be made pursuant to section 8423(a) with respect to employees and Members currently subject to this chapter;

(iii) the Fund balance as of the date the supplemental liability is determined, to the extent that such balance is attributable—

(I) to the System, or

(II) to contributions made under the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983 by or on behalf of an individual who became subject to the System; and

(iv) any other appropriate amount, as determined by the Office in accordance with generally accepted actuarial practices and principles;

(28) the term ''survivor'' means an individual entitled to an annuity under subchapter IV of this chapter;

(29) the term ''System'' means the Federal Employees' Retirement System described in section 8402(a);

(30) the term ''military reserve technician'' means a member of one of the reserve components of the armed forces specified in section 10101 of title 10 who—

(A) is assigned to a civilian position as a technician in the administration and training of such reserve components or in the maintenance and repair of supplies issued to such reserve components; and

(B) as a condition of employment in such position, is required to be a member of one of such reserve components serving in a specified military grade;

(31) the term ''military service'' means honorable active service—

(A) in the armed forces;

(B) in the commissioned corps of the Public Health Service after June 30, 1960; or

(C) in the commissioned corps of the National Oceanic and Atmospheric Administration, or a predecessor entity in function, after June 30, 1961;

but does not include service in the National Guard except when ordered to active duty in the service of the United States or full-time National Guard duty (as such term is defined in section 101(d) of title 10) if such service interrupts creditable civilian service under this subchapter and is followed by reemployment in accordance with chapter 43 of title 38 that occurs on or after August 1, 1990; and

(32) the term ''nonforfeitable account balance'' means any amounts in an account, established and maintained under subchapter III, which are nonforfeitable (as determined under section 8432(g)).

(Added Pub. L. 99–335, title I, §101(a), June 6, 1986, 100 Stat. 517; amended Pub. L. 99–556, title I, §§107, 109, 119, Oct. 27, 1986, 100 Stat. 3132, 3134; Pub. L. 100–238, title I, §§103(a)(2), (c), (d)(2), 113(b)(1), Jan. 8, 1988, 101 Stat. 1744, 1745, 1750; Pub. L. 100–679, §13(a)(2), Nov. 17, 1988, 102 Stat. 4071; Pub. L. 101–335, §6(a)(1), July 17, 1990, 104 Stat. 322; Pub. L. 101–474, §5(*o*), Oct. 30, 1990, 104 Stat. 1100; Pub. L. 101–508, title VII, §7202(k)(1), Nov. 5, 1990, 104 Stat. 1388–338; Pub. L. 103–337, div. A, title XVI, §1677(a)(4), Oct. 5, 1994, 108 Stat. 3019; Pub. L. 103–353, §5(c), (e)(1), Oct. 13, 1994, 108 Stat. 3174.)

REFERENCES IN TEXT

The Social Security Act, referred to in par. (11), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title II of the Social Security Act is classified generally to subchapter II (§401 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

Chapter 21 of the Internal Revenue Code of 1986, referred to in par. (11), is classified to chapter 21 (§3101 et seq.) of Title 26, Internal Revenue Code.

Section 103(6) of the Foreign Service Act of 1980, referred to in par. (11)(iii), is classified to section 3903(6) of Title 22, Foreign Relations and Intercourse.

The Federal Employees' Retirement System Act of 1986, referred to in par. (17)(B), is Pub. L. 99–335, June 6, 1986, 100 Stat. 514, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 8401 of this title and Tables.

The Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983, referred to in pars. (19)(A) and (27)(B)(iii)(II), is Pub. L. 98–168, title II, Nov. 29, 1983, 97 Stat. 1106, as amended, which is set out as a note under section 8331 of this title.

AMENDMENTS

1994—Par. (11). Pub. L. 103–353, §5(e)(1), in flush provisions before cl. (i), substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

Par. (30). Pub. L. 103–337 substituted ''section 10101'' for ''section 261(a)'' in introductory provisions.

Par. (31). Pub. L. 103–353, §5(c), in closing provisions, inserted before semicolon ''or full-time National Guard duty (as such term is defined in section 101(d) of title 10) if such service interrupts creditable civilian service under this subchapter and is followed by reemployment in accordance with chapter 43 of title 38 that occurs on or after August 1, 1990''.

1990—Par. (11)(C). Pub. L. 101–508, §7202(k)(1)(A)(i)–(iii), added subpar. (C).

Par. (11)(i)(I). Pub. L. 101–474 struck out ''(v),'' after ''(i),''.

Par. (11)(iv). Pub. L. 101–508, §7202(k)(1)(A)(iv)–(vi), added cl. (iv).

Par. (15). Pub. L. 101–508, §7202(k)(1)(B), substituted '', Gallaudet College, and, in the case of an employee described in paragraph (11)(C), a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard described in section 2105(c);'' for ''and Gallaudet College;''.

Par. (32). Pub. L. 101–335 added par. (32).

1988—Par. (11)(A). Pub. L. 100–679 substituted ''(J), or (K)'' for ''or (J)''.

Par. (11)(i)(II). Pub. L. 100–238, §103(d)(2), struck out ''(other than an employee of the United States Park Police, or the United States Secret Service, whose civilian service after December 31, 1983, is such employment)''.

Par. (11)(iii). Pub. L. 100–238, §113(b)(1), added cl. (iii).

Par. (14)(A)(ii). Pub. L. 100–238, §103(a)(2), substituted ''should be'' for ''are required to be''.

Par. (14)(B). Pub. L. 100–238, §103(c)(2), substituted ''for at least 3 years'' for ''for at least 10 years''.

Par. (17). Pub. L. 100–238, §103(a)(2), (c)(1), in subpar. (A)(ii), substituted ''should be'' for ''are required to be'', added subpar. (B), redesignated former subpar. (B) as (C) and amended it generally, substituting ''subparagraph (A) and (B) for at least 3 years'' for ''subparagraph (A) for at least 10 years'', redesignated former subpar. (C) as (D), and in concluding provisions, substituted ''should be'' for ''are required to be''.

1986—Par. (11). Pub. L. 99–556, §119, struck out ''any of'' before ''whose civilian service'' in two places.

Par. (18). Pub. L. 99–556, § 109, amended par. (18) generally. Prior to amendment, par. (18) read as follows: ''the term 'loss', when used with respect to the Thrift Savings Fund, means the amount of the loss resulting from the investment of sums in such Fund;''.

Par. (19)(C), (D). Pub. L. 99–556, § 107, added subpar. (C) and redesignated former subpar. (C) as (D).

EFFECTIVE DATE OF 1994 AMENDMENTS

Amendment by Pub. L. 103–353 effective with respect to reemployments initiated on or after the first day after the 60-day period beginning Oct. 13, 1994, with transition rules, see section 8 of Pub. L. 103–353, set out as a note under section 4301 of Title 38, Veterans' Benefits.

Amendment by Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of Title 10, Armed Forces.

EFFECTIVE DATE OF 1990 AMENDMENTS

Amendment by Pub. L. 101–508 applicable with respect to any individual who, on or after Jan. 1, 1987, moves from employment in nonappropriated fund instrumentality of Department of Defense or Coast Guard, that is described in section 2105(c) of this title, to employment in Department or Coast Guard, that is not described in section 2105(c), or who moves from employment in Department or Coast Guard, that is not described in section 2105(c), to employment in nonappropriated fund instrumentality of Department or Coast Guard, that is described in section 2105(c), see section 7202(m)(1) of Pub. L. 101–508, set out as a note under section 2105 of this title.

Amendment by Pub. L. 101–335 effective as of second election period described in section 8432(b) of this title beginning after July 17, 1990, or such earlier date as Executive Director may by regulation prescribe, and applicable with respect to separations occurring before, on, or after that effective date, see section 6(c) of Pub. L. 101–335, set out as a note under section 8351 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 103(a)(2), (c), and (d)(2) of Pub. L. 100–238, effective Jan. 1, 1987, see section 103(f) of Pub. L. 100–238, set out as a note under section 3307 of this title.

Section 113(b)(2) of Pub. L. 100–238 provided that: ''The amendments made by paragraph (1) [amending this section] shall be effective as of January 1, 1987. Any refund which becomes payable as a result of the preceding sentence shall, to the extent that such refund involves an individual's contributions to the Thrift Savings Fund (established under section 8437 of title 5, United States Code), be adjusted to reflect any earnings attributable thereto.''

EFFECTIVE DATE

Section 702(a), (b) of Pub. L. 99–335 provided that:

''(a) IN GENERAL.—Except as provided in subsection (b), this Act and the amendments made by this Act [see Short Title note below] shall take effect on January 1, 1987.

''(b) EXCEPTIONS.—(1) Subchapter VII of chapter 84 of title 5, United States Code, as added by section 101 of this Act, shall take effect on the date of the enactment of this Act [June 6, 1986].

''(2) Except as provided in section 305 of this Act [enacting and amending provisions set out as notes under section 8331 of this title], title III of this Act, and the amendments made by such title [amending sections 3121 and 6103 of Title 26, Internal Revenue Code, section 1005 of Title 39, Postal Service, and section 410 of Title 42, The Public Health and Welfare, enacting provisions set out as notes under this section and sections 8331, 8432, and 8472 of this title and section 6103 of Title 26, and amending provisions set out as a note under section 8331 of this title], shall take effect on the date of the enactment of this Act.

''(3) The amendments made by sections 204 and 205 of this Act [enacting sections 8343a and 8350 of this title and amending section 8342 of this title] shall take effect on the date of the enactment of this Act.

''(4) Section 701 of this Act [enacting provisions set out as a note under section 8472 of this title] shall take effect on the date of the enactment of this Act.

''(5) Sections 505 [amending provisions formerly set out as a note under section 403 of Title 50, War and National Defense] and 601 of this Act and the amendments made by such section 601 [not classified to the Code] shall take effect on the date of the enactment of this Act.''

Reference to a specific date in section 702(a) of Pub. L. 99–335, set out above, for certain purposes, deemed to be a reference to the first day of the first pay period beginning after such date, or to the day before such day, as appropriate, see section 505 of Pub. L. 99–556, set out as a Coordination With Pay Periods note under section 8331 of this title.

SHORT TITLE OF 1990 AMENDMENT

Section 1 of Pub. L. 101–335 provided that: ''This Act [enacting section 8432a of this title, amending this section and sections 3392, 8351, 8433 to 8435, 8438, 8440a, 8440b, and 8477 of this title, renumbering former section 8440a of this title as section 8440b, enacting provisions set out as notes under sections 3392, 8351, 8432a, 8433, 8434, and 8438 of this title, and amending provisions set out as a note under section 8477 of this title] may be cited as the 'Thrift Savings Plan Technical Amendments Act of 1990'.''

SHORT TITLE OF 1987 AMENDMENT

Pub. L. 100–43, § 1, May 22, 1987, 101 Stat. 315, provided: ''That this Act [amending section 8438 of this title] may be cited as the 'Thrift Savings Fund Investment Act of 1987'.''

SHORT TITLE OF 1986 AMENDMENT

Section 1 of Pub. L. 99–556 provided that: ''This Act [enacting section 8478a of this title and section 4069 of Title 22, Foreign Relations and Intercourse, amending this section and sections 6301, 8332, 8350, 8402, 8411 to 8413, 8415, 8421a, 8442, 8443, 8452, 8457, 8461, 8462, 8477, 8478, and 8901 of this title and sections 4046, 4064, 4071c, 4071d, and 4071j of Title 22, enacting provisions set out as notes under sections 6301, 8331, 8332, 8335, 8341, 8477, and 8478 of this title and section 4046 of Title 22, and amending provisions set out as notes under sections 8331 and 8341 of this title] may be cited as the 'Federal Employees' Retirement System Technical Corrections Act of 1986'.''

SHORT TITLE

Section 100(a) of Pub. L. 99–335 provided that: ''This Act [enacting this chapter, sections 8343a, 8349, 8350, and 8351 of this title, and sections 4068 and 4071 to 4071k of Title 22, Foreign Relations and Intercourse, amending sections 2105, 2109, 5102, 5314, 6301, 6303, 8116, 8331, 8332, 8334, 8342, 8347, 8348, 8701, 8706, 8714, 8714b, 8714c, 8901, and 8905 of this title, section 1605 of Title 10, Armed Forces, sections 4041 to 4049, 4054 to 4056, 4058, 4060, 4061, 4063, 4064, 4066, and 4067 of Title 22, sections 3121 and 6103 of Title 26, Internal Revenue Code, section 1005 of Title 39, Postal Service, and section 410 of Title 42, The Public Health and Welfare, enacting provisions set out as notes under this section and sections 8331, 8351, 8432, and 8472 of this title, sections 3901 and 4046 of Title 22, and section 6103 of Title 26, and amending provisions set out as notes under section 8331 of this title and sections 402 and 403 of Title 50, War and National Defense] may be cited as the 'Federal Employees' Retirement System Act of 1986'.''

CONGRESSIONAL DECLARATION OF PURPOSE

Section 100A of Pub. L. 99–335 provided that: ''The purposes of this Act [see Short Title note above] are—

''(1) to establish a Federal employees' retirement plan which is coordinated with title II of the Social Security Act [42 U.S.C. 401 et seq.];

''(2) to ensure a fully funded and financially sound retirement benefits plan for Federal employees;

''(3) to enhance portability of retirement assets earned as an employee of the Federal Government;

''(4) to provide options for Federal employees with respect to retirement planning;

''(5) to assist in building a quality career work force in the Federal Government;

''(6) to encourage Federal employees to increase personal savings for retirement; and

''(7) to extend financial protection from disability to additional Federal employees and to increase such protection for eligible Federal employees.''

USE OF NORMAL-COST PERCENTAGE

Section 307 of Pub. L. 99–335, as amended by Pub. L. 100–366, §1, July 13, 1988, 102 Stat. 826, provided that: ''Notwithstanding any other provision of law, the normal-cost percentage (as defined by section 8401(23) of title 5, United States Code, as added by this Act) of the Federal Employees' Retirement System shall be used to value the cost of such System to the Civil Service Retirement and Disability Fund for all purposes in which the cost of the System is required to be determined by the Federal Government. For any comparisons between the cost of performing commercial activities under the contract with commercial sources and the cost of performing such activities using Government facilities and personnel, the cost of the System shall include the cost of such System to the Civil Service Retirement and Disability Fund as specified in the preceding sentence, the cost of the thrift savings plan under subchapter III of chapter 84 of title 5, United States Code, and the cost of social security.''

FIRST COST-OF-LIVING ADJUSTMENT

Section 702(c) of Pub. L. 99–335 provided that:

''(1) For purposes of the first adjustment under subsection (b) of section 8462 of title 5, United States Code (as added by section 101 of this Act), the base quarter ending on September 30, 1986, shall be considered to have been the base quarter for a year in which an adjustment under such subsection was made.

''(2) As used in paragraph (1), the term 'base quarter' has the meaning provided by section 8462(a)(1) of title 5, United States Code (as added by section 101 of this Act).''

CROSS REFERENCES

Peace Corps volunteers' service credited for purposes of this subchapter, see section 2504 of Title 22, Foreign Relations and Intercourse.

Retirement of employees of land-grant colleges, see section 331 of Title 7, Agriculture.

Right to compensation for scheduled disabilities specified by section 8107 not impaired by eligibility for benefits under this subchapter, see section 8116 of this title.

Uniform date for retirement of Federal personnel, see section 8301 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3307, 3323, 3329, 5541, 8331, 8351, 8411, 8414, 8431, 8477, 8704 of this title; title 10 section 2467; title 22 section 4046; title 38 sections 7296, 7426, 7438; title 50 sections 2152, 2154.

§ 8402. Federal Employees' Retirement System; exclusions

(a) The provisions of this chapter comprise the Federal Employees' Retirement System.

(b) The provisions of this chapter shall not apply with respect to—

(1) any individual who has performed service of a type described in subparagraph (C), (D), (E), or (F) of section 210(a)(5) of the Social Security Act continuously since December 31, 1983 (determined in accordance with the provisions of section 210(a)(5)(B) of the Social Security Act, relating to continuity of employment); or

(2)(A) any employee or Member who has separated from the service after—

(i) having been subject to subchapter III of chapter 83 of this title, or subchapter I of chapter 8[1] of the Foreign Service Act of 1980; and

(ii) having completed at least 5 years of civilian service creditable under subchapter III of chapter 83 of this title, or at least 5 years of civilian service creditable under subchapter I[1] of the Foreign Service Act of 1980 (determined without regard to any deposit or redeposit requirement under either such subchapter, or any requirement that the individual become subject to either such subchapter after performing the service involved); or

(B) any employee having at least 5 years of civilian service performed before January 1, 1987, creditable under subchapter III of chapter 83 of this title (determined without regard to any deposit or redeposit requirement under such subchapter, any requirement that the individual become subject to such subchapter after performing the service involved, or any requirement that the individual give notice in writing to the official by whom such individual is paid of such individual's desire to become subject to such subchapter);

except to the extent provided for under subsection (d) of this section or title III of the Federal Employees' Retirement System Act of 1986 pursuant to an election under such title to become subject to this chapter.

(c)(1) The Office may exclude from the operation of this chapter an employee or group of employees in or under an Executive agency, the United States Postal Service, or the Postal Rate Commission, whose employment is temporary or intermittent, except an employee whose employment is part-time career employment (as defined in section 3401(2)).

(2) The Architect of the Capitol may exclude from the operation of this chapter an employee under the Office of the Architect of the Capitol whose employment is temporary or of uncertain duration.

(3) The Librarian of Congress may exclude from the operation of this chapter an employee under the Library of Congress whose employment is temporary or of uncertain duration.

(4) The Director or Acting Director of the Botanic Garden may exclude from the operation of this chapter an employee under the Botanic Garden whose employment is temporary or of uncertain duration.

(5) The Clerk of the House of Representatives and the Secretary of the Senate each may exclude from the operation of this chapter a Congressional employee—

(A) whose employment is temporary or intermittent; and

(B) who is paid by such Clerk or Secretary, as the case may be.

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[1] See References in Text note below.

(6) The Director of the Office of Technology Assessment may exclude from the operation of this chapter an employee under the Office of Technology Assessment whose employment is temporary or intermittent.

(7) The Director of the Administrative Office of the United States Courts may exclude from the operation of this chapter an employee of the Administrative Office of the United States Courts, the Federal Judicial Center, or a court named by section 610 of title 28, whose employment is temporary or of uncertain duration.

(d) Paragraph (2) of subsection (b) shall not apply to an individual who becomes subject to subchapter II of chapter 8 of title I of the Foreign Service Act of 1980 (relating to the Foreign Service Pension System) pursuant to an election and who subsequently enters a position in which, but for such paragraph (2), he would be subject to this chapter.

(e) A bankruptcy judge or magistrate who is covered by section 377 of title 28 or section 2(c) of the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988 shall be excluded from the operation of this chapter, other than subchapters III and VII of such chapter, if the judge or magistrate notifies the Director of the Administrative Office of the United States Courts of an election of a retirement annuity under those provisions. Upon such election, the judge or magistrate shall be entitled to a lump-sum credit under section 8424 of this title.

(f) A judge who is covered by section 7296 of title 38 shall be excluded from the operation of this chapter if the judge notifies the Director of the Office of Personnel Management of an election of a retirement annuity under that section. Upon such election, the judge shall be entitled to a lump-sum credit under section 8424 of this title.

(g) A judge of the United States Court of Federal Claims who is covered by section 178 of title 28 shall be excluded from the operation of this chapter, other than subchapters III and VII of such chapter, if the judge notifies the Director of the Administrative Office of the United States Courts of an election of a retirement annuity under those provisions. Upon such election, the judge shall be entitled to a lump-sum credit under section 8424 of this title.

(Added Pub. L. 99–335, title I, §101(a), June 6, 1986, 100 Stat. 521; amended Pub. L. 99–556, title I, §116, Oct. 27, 1986, 100 Stat. 3134; Pub. L. 100–238, title I, §130, Jan. 8, 1988, 101 Stat. 1759; Pub. L. 100–659, §6(c), Nov. 15, 1988, 102 Stat. 3919; Pub. L. 101–94, title I, §102(b), Aug. 16, 1989, 103 Stat. 626; Pub. L. 101–474, §5(p), Oct. 30, 1990, 104 Stat. 1100; Pub. L. 101–650, title III, §306(e)(3), Dec. 1, 1990, 104 Stat. 5112; Pub. L. 102–40, title IV, §402(d)(2), May 7, 1991, 105 Stat. 239; Pub. L. 102–198, §7(d), Dec. 9, 1991, 105 Stat. 1625; Pub. L. 102–572, title IX, §902(b)(1), Oct. 29, 1992, 106 Stat. 4516.)

REFERENCES IN TEXT

Section 210(a)(5) of the Social Security Act, referred to in subsec. (b)(1), is classified to section 410(a)(5) of Title 42, The Public Health and Welfare.

The Federal Employees' Retirement System Act of 1986, referred to in subsec. (b), is Pub. L. 99–335, June 6, 1986, 100 Stat. 514. Title III of the Federal Employees' Retirement System Act of 1986 amended sections 3121 and 6103 of Title 26, Internal Revenue Code, section 1005 of Title 39, Postal Service, and section 410 of Title 42, enacted provisions set out as notes under sections 8331, 8401, 8432, and 8472 of this title and section 6103 of Title 26, and amended provisions set out as a note under section 8331 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 8401 of this title and Tables.

The Foreign Service Act of 1980, referred to in subsecs. (b)(2)(A) and (d), is Pub. L. 96–465, Oct. 17, 1980, 94 Stat. 2071. Subchapter I of chapter 8 and subchapter I of the Act probably mean subchapter I of chapter 8 of title I of the Act which is classified generally to part I (§4041 et seq.) of subchapter VIII of chapter 52 of Title 22, Foreign Relations and Intercourse. Subchapter II of chapter 8 of title I of the Act is classified generally to part II (§4071 et seq.) of subchapter VIII of chapter 52 of Title 22. For complete classification of this Act to the Code, see Short Title note set out under section 3901 of Title 22 and Tables.

Section 2(c) of the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988, referred to in subsec. (e), is section 2(c) of Pub. L. 100–659, which is set out as a note under section 377 of Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

1992—Subsec. (g). Pub. L. 102–572 substituted ''United States Court of Federal Claims'' for ''United States Claims Court''.

1991—Subsec. (f). Pub. L. 102–40 substituted ''section 7296 of title 38'' for ''section 4096 of title 38''.

Subsec. (g). Pub. L. 102–198 inserted a comma after ''such chapter''.

1990—Subsec. (c)(7). Pub. L. 101–474 added par. (7).

Subsec. (g). Pub. L. 101–650 added subsec. (g).

1989—Subsec. (f). Pub. L. 101–94 added subsec. (f).

1988—Subsec. (b)(2). Pub. L. 100–238, §130(1), inserted ''subsection (d) of this section or'' before ''title III'' in concluding provisions.

Subsec. (d). Pub. L. 100–238, §130(2), added subsec. (d).

Subsec. (e). Pub. L. 100–659 added subsec. (e).

1986—Subsec. (c)(5), (6). Pub. L. 99–556 added pars. (5) and (6).

CHANGE OF NAME

Reference to United States magistrate or to magistrate deemed to refer to United States magistrate judge pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–572 effective Oct. 29, 1992, see section 911 of Pub. L. 102–572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–650 applicable to judges of, and senior judges in active service with, the United States Court of Federal Claims on or after Dec. 1, 1990, see section 306(f) of Pub. L. 101–650, set out as a note under section 8331 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–659 effective Nov. 15, 1988, and applicable to bankruptcy judges and magistrates [now United States magistrate judges] who retire on or after Nov. 15, 1988, with exception for judges and magistrates retiring on or after July 31, 1987, see section 9 of Pub. L. 100–659, set out as an Effective Date note under section 377 of Title 28, Judiciary and Judicial Procedure.

TRANSFER OF FUNCTIONS

Certain functions of Clerk of House of Representatives transferred to Director of Non-legislative and Fi-

nancial Services by section 7 of House Resolution No. 423, One Hundred Second Congress, Apr. 9, 1992. Director of Non-legislative and Financial Services replaced by Chief Administrative Officer of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8334, 8347, 8349, 8401 of this title; title 50 section 2151.

§ 8403. Relationship to the Social Security Act

Except as otherwise provided in this chapter, the benefits payable under the System are in addition to the benefits payable under the Social Security Act.

(Added Pub. L. 99–335, title I, § 101(a), June 6, 1986, 100 Stat. 522.)

REFERENCES IN TEXT

The Social Security Act, referred to in text, is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§ 301 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

SUBCHAPTER II—BASIC ANNUITY

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 5595, 8348, 8401, 8435, 8455, 8461, 8464, 8464a, 8466, 8470 of this title; title 10 sections 942, 945; title 22 section 4071j; title 38 section 7426; title 39 section 1005; title 50 sections 2153, 2154.

§ 8410. Eligibility for annuity

Notwithstanding any other provision of this chapter, an employee or Member must complete at least 5 years of civilian service creditable under section 8411 in order to be eligible for an annuity under this subchapter.

(Added Pub. L. 99–335, title I, § 101(a), June 6, 1986, 100 Stat. 522.)

§ 8411. Creditable service

(a)(1) The total service of an employee or Member is the full years and twelfth parts thereof, excluding from the aggregate the fractional part of a month, if any.

(2) Credit may not be allowed for a period of separation from the service in excess of 3 calendar days.

(b) For the purpose of this chapter, creditable service of an employee or Member includes—

(1) employment as an employee, and any service as a Member (including the period from the date of the beginning of the term for which elected or appointed to the date of taking office as a Member), after December 31, 1986;

(2) except as provided in subsection (f), service with respect to which deductions and withholdings under section 204(a)(1) of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983 have been made;

(3) except as provided in subsection (f) or (h), any civilian service (performed before January 1, 1989, other than any service under paragraph (1) or (2)) which, but for the amendments made by subsections (a)(4) and (b) of section 202 of the Federal Employees' Retirement System Act of 1986, would be creditable under subchapter III of chapter 83 of this title (determined without regard to any deposit or redeposit requirement under such subchapter, any requirement that the individual become subject to such subchapter after performing the service involved, or any requirement that the individual give notice in writing to the official by whom such individual is paid of such individual's desire to become subject to such subchapter); and

(4) a period of service (other than any service under any of the preceding provisions of this subsection and other than any military service) that was creditable under the Foreign Service Pension System described in subchapter II of chapter 8[1] of the Foreign Service Act of 1980, if the employee or Member waives credit for such service under the Foreign Service Pension System and makes a payment to the Fund equal to the amount that would have been deducted from pay under section 8422(a) had the employee been subject to this chapter during such period of service (together with interest on such amount computed under paragraphs (2) and (3) of section 8334(e)).

(c)(1) Except as provided in paragraph (2) or (3), an employee or Member shall be allowed credit for—

(A) each period of military service performed before January 1, 1957; and

(B) each period of military service performed after December 31, 1956, and before the separation on which title to annuity is based, if a deposit (including interest, if any) is made with respect to such period in accordance with section 8422(e).

(2) If an employee or Member is awarded retired pay based on any period of military service, the service of the employee or Member may not include credit for such period of military service unless the retired pay is awarded—

(A) based on a service-connected disability—

(i) incurred in combat with an enemy of the United States; or

(ii) caused by an instrumentality of war and incurred in line of duty during a period of war as defined by section 1101 of title 38; or

(B) under chapter 1223 of title 10 (or under chapter 67 of that title as in effect before the effective date of the Reserve Officer Personnel Management Act).

(3) An employee or Member who has made a deposit under section 8334(j) (or a similar prior provision of law) with respect to a period of military service, and who has not taken a refund of such deposit—

(A) shall be allowed credit for such service without regard to the deposit requirement under paragraph (1)(B); and

(B) shall be entitled, upon filing appropriate application therefor with the Office, to a refund equal to the difference between—

(i) the amount deposited with respect to such period under such section 8334(j) (or prior provision), excluding interest; and

[1] See References in Text note below.

(ii) the amount which would otherwise have been required with respect to such period under paragraph (1)(B).

(4)(A) Notwithstanding paragraph (2), for purposes of computing a survivor annuity for a survivor of an employee or Member—

(i) who was awarded retired pay based on any period of military service, and

(ii) whose death occurs before separation from the service,

creditable service of the deceased employee or Member shall include each period of military service includable under subparagraph (A) or (B) of paragraph (1) or under paragraph (3). In carrying out this subparagraph, any amount deposited under section 8422(e)(5) shall be taken into account.

(B) A survivor annuity computed based on an amount which, under authority of subparagraph (A), takes into consideration any period of military service shall be reduced by the amount of any survivor's benefits—

(i) payable to a survivor (other than a child) under a retirement system for members of the uniformed services;

(ii) if, or to the extent that, such benefits are based on such period of military service.

(C) The Office of Personnel Management shall prescribe regulations to carry out this paragraph, including regulations under which—

(i) a survivor may elect not to be covered by this paragraph; and

(ii) this paragraph shall be carried out in any case which involves a former spouse.

(d) Credit under this chapter shall be allowed for leaves of absence without pay granted an employee while performing military service, or while receiving benefits under subchapter I of chapter 81. An employee or former employee who returns to duty after a period of separation is deemed, for the purpose of this subsection, to have been on leave of absence without pay for that part of the period in which that individual was receiving benefits under subchapter I of chapter 81. Credit may not be allowed for so much of other leaves of absence without pay as exceeds 6 months in the aggregate in a calendar year.

(e) Credit shall be allowed for periods of approved leave without pay granted an employee to serve as a full-time officer or employee of an organization composed primarily of employees (as defined by section 8331(1) or 8401(11)), subject to the employee arranging to pay, through the employee's employing agency, within 60 days after commencement of such leave without pay, amounts equal to the retirement deductions and agency contributions which would be applicable under sections 8422(a) and 8423(a), respectively, if the employee were in pay status. If the election and all payments provided by this subsection are not made, the employee may not receive credit for the periods of leave without pay, notwithstanding the third sentence of subsection (d).

(f)(1) An employee or Member who has received a refund of retirement deductions under subchapter III of chapter 83 with respect to any service described in subsection (b)(2) or (b)(3) may not be allowed credit for such service under this chapter unless such employee or Member deposits an amount equal to 1.3 percent of basic pay for such service, with interest. A deposit under this paragraph may be made only with respect to a refund received pursuant to an application filed with the Office before the date on which the employee or Member first becomes subject to this chapter.

(2) An employee or Member may not be allowed credit under this chapter for any service described in subsection (b)(3) for which retirement deductions under subchapter III of chapter 83 have not been made, unless such employee or Member deposits an amount equal to 1.3 percent of basic pay for such service, with interest.

(3) Interest under paragraph (1) or (2) shall be computed in accordance with paragraphs (2) and (3) of section 8334(e) and regulations prescribed by the Office.

(4) For the purpose of survivor annuities, deposits authorized by the preceding provisions of this subsection may also be made by a survivor of an employee or Member.

(g) Any employee who—

(1) served in a position in which the employee was excluded from coverage under this subchapter because the employee was covered under a retirement system established under section 10 of the Federal Reserve Act; and

(2) transferred without a break in service to a position to which the employee was appointed by the President, with the advice and consent of the Senate, and in which position the employee is subject to this subchapter,

shall be treated for all purposes of this subchapter as if any service that would have been creditable under the retirement system established under section 10 of the Federal Reserve Act was service performed while subject to this subchapter if any employee and employer deductions, contributions or rights with respect to the employee's service are transferred from such retirement system to the Fund.

(h) An employee or Member shall be allowed credit for service as a volunteer or volunteer leader under part A of title VIII of the Economic Opportunity Act of 1964, as a full-time volunteer enrolled in a program of at least 1 year's duration under part A, B, or C of title I of the Domestic Volunteer Service Act of 1973, or as a volunteer or volunteer leader under the Peace Corps Act performed at any time prior to the separation on which the entitlement to any annuity under this subchapter is based if the employee or Member has made a deposit with interest, if any, with respect to such service under section 8422(f).

(Added Pub. L. 99–335, title I, §101(a), June 6, 1986, 100 Stat. 522; amended Pub. L. 99–556, title I, §103, title V, §502(b), Oct. 27, 1986, 100 Stat. 3131, 3140; Pub. L. 100–238, title I, §§104(b), 105(a), Jan. 8, 1988, 101 Stat. 1746; Pub. L. 102–83, §5(c)(2), Aug. 6, 1991, 105 Stat. 406; Pub. L. 102–242, title IV, §466(b), Dec. 19, 1991, 105 Stat. 2385; Pub. L. 103–82, title III, §371(b)(1), Sept. 21, 1993, 107 Stat. 910; Pub. L. 103–337, div. A, title XVI, §1677(a)(3), Oct. 5, 1994, 108 Stat. 3019.)

REFERENCES IN TEXT

Section 204(a)(1) of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983

[Pub. L. 98–168], referred to in subsec. (b)(2), is set out as a note under section 8331 of this title.

Subsections (a)(4) and (b) of section 202 of the Federal Employees' Retirement System Act of 1986 [Pub. L. 99–335], referred to in subsec. (b)(3), amended section 8331(1) and (2) of this title.

The Foreign Service Act of 1980, referred to in subsec. (b)(4), is Pub. L. 96–465, Oct. 17, 1980, 94 Stat. 2071, as amended. Subchapter II of chapter 8 of the Act probably means subchapter II of chapter 8 of title I of the Act which is classified generally to part II (§ 4071 et seq.) of subchapter VIII 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.

Chapter 67 of that title as in effect before the effective date of the Reserve Officer Personnel Management Act, referred to in subsec. (c)(2)(B), means chapter 67 (§ 1331 et seq.) of Title 10, Armed Forces, prior to its transfer to part II of subtitle E of Title 10, its renumbering as chapter 1223, and its general revision by section 1662(j)(1) of Pub. L. 103–337. A new chapter 67 (§ 1331) of Title 10 was added by section 1662(j)(7) of Pub. L. 103–337. For effective date of the Reserve Officer Personnel Management Act (Pub. L. 103–337, title XVI), see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of Title 10.

Section 10 of the Federal Reserve Act, referred to in subsec. (g), is section 10 of act Dec. 23, 1913, ch. 6, 38 Stat. 260, as amended. For classification of section 10 to the Code, see Codification note set out under section 241 of Title 12, Banks and Banking, and Tables.

The Economic Opportunity Act of 1964, referred to in subsec. (h), is Pub. L. 88–452, Aug. 20, 1964, 73 Stat. 508, as amended. Part A of title VIII of that Act is part A of title VIII of Pub. L. 88–452 as added by Pub. L. 90–222, title I, § 110, Dec. 23, 1967, 81 Stat. 722, which was classified generally to part A (§ 2992 et seq.) of subchapter VIII of chapter 34 of Title 42, The Public Health and Welfare, prior to its repeal by Pub. L. 93–113, title VI, § 603, Oct. 1, 1973, 87 Stat. 417. See sections 4951 et seq. and 5055 of Title 42.

Parts A, B, and C of title I of the Domestic Volunteer Service Act of 1973, referred to in subsec. (h), are classified to part A (§ 4951 et seq.), part B (§ 4971 et seq.), and part C (§ 4991 et seq.), respectively, of subchapter I of chapter 66 of Title 42.

The Peace Corps Act, referred to in subsec. (h), is Pub. L. 87–293, Sept. 22, 1961, 75 Stat. 612, as amended, which is classified principally to chapter 34 (§ 2501 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2501 of Title 22 and Tables.

AMENDMENTS

1994—Subsec. (c)(2)(B). Pub. L. 103–337 substituted ''chapter 1223 of title 10 (or under chapter 67 of that title as in effect before the effective date of the Reserve Officer Personnel Management Act)'' for ''chapter 67 of title 10''.

1993—Subsec. (b)(3). Pub. L. 103–82, § 371(b)(1)(A), substituted ''subsection (f) or (h)'' for ''subsection (f)''.

Subsec. (h). Pub. L. 103–82, § 371(b)(1)(B), added subsec. (h).

1991—Subsec. (c)(2)(A)(ii). Pub. L. 102–83 substituted ''section 1101 of title 38'' for ''section 301 of title 38''.

Subsec. (g). Pub. L. 102–242 added subsec. (g).

1988—Subsec. (c)(4)(A). Pub. L. 100–238, § 104(b), substituted ''section 8422(e)(5)'' for ''subsection (f)(4)'' in concluding provisions.

Subsec. (f)(1). Pub. L. 100–238, § 105(a), inserted at end ''A deposit under this paragraph may be made only with respect to a refund received pursuant to an application filed with the Office before the date on which the employee or Member first becomes subject to this chapter.''

1986—Subsec. (b)(2). Pub. L. 99–556, § 103(1), inserted ''except as provided in subsection (f),''.

Subsec. (c)(4). Pub. L. 99–556, § 502(b), added par. (4).

Subsec. (f)(1). Pub. L. 99–556, § 103(2), inserted ''(b)(2) or''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of Title 10, Armed Forces.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–82 effective Oct. 1, 1993, and applicable with respect to any individual entitled to an annuity on the basis of a separation from service occurring before, on, or after Oct. 1, 1993, subject to rule relating to annuities based on earlier separations, see sections 371(c) and 392 of Pub. L. 103–82, set out as notes under section 8332 of this title and section 4951 of Title 42, The Public Health and Welfare, respectively.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–242 applicable with respect to any individual who transfers to a position in which he or she is subject to subchapter III of chapter 83 of this title or chapter 84 of this title, on or after Oct. 1, 1991, see section 466(c) of Pub. L. 102–242, set out as a note under section 8332 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 502(b) of Pub. L. 99–556 applicable to a survivor of an employee or member who dies on or after the 180th day after Oct. 27, 1986, and to other survivors upon application, see section 502(c) of Pub. L. 99–556, set out as a note under section 8332 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8401, 8410, 8432, 8442, 8443, 8451 of this title; title 2 section 121b; title 38 section 7426; title 40 section 214d; title 50 section 2154.

§ 8412. Immediate retirement

(a) An employee or Member who is separated from the service after attaining the applicable minimum retirement age under subsection (h) and completing 30 years of service is entitled to an annuity.

(b) An employee or Member who is separated from the service after becoming 60 years of age and completing 20 years of service is entitled to an annuity.

(c) An employee or Member who is separated from the service after becoming 62 years of age and completing 5 years of service is entitled to an annuity.

(d) An employee who is separated from the service, except by removal for cause on charges of misconduct or delinquency—

(1) after completing 25 years of service as a law enforcement officer, member of the Capitol Police, or firefighter, or any combination of such service totaling at least 25 years, or

(2) after becoming 50 years of age and completing 20 years of service as a law enforcement officer, member of the Capitol Police, or firefighter, or any combination of such service totaling at least 20 years,

is entitled to an annuity.

(e) An employee who is separated from the service, except by removal for cause on charges of misconduct or delinquency—

(1) after completing 25 years of service as an air traffic controller, or

(2) after becoming 50 years of age and completing 20 years of service as an air traffic controller,

is entitled to an annuity.

(f) A Member who is separated from the service, except by resignation or expulsion—

(1) after completing 25 years of service, or

(2) after becoming 50 years of age and completing 20 years of service,

is entitled to an annuity.

(g)(1) An employee or Member who is separated from the service after attaining the applicable minimum retirement age under subsection (h) and completing 10 years of service is entitled to an annuity. This subsection shall not apply to an employee or Member who is entitled to an annuity under any other provision of this section.

(2) An employee or Member entitled to an annuity under this subsection may defer the commencement of such annuity by written election. The date to which the commencement of the annuity is deferred may not precede the 31st day after the date of filing the election, and must precede the date on which the employee or Member becomes 62 years of age.

(3) The Office shall prescribe regulations under which an election under paragraph (2) shall be made.

(h)(1) The applicable minimum retirement age under this subsection is—

(A) for an individual whose date of birth is before January 1, 1948, 55 years of age;

(B) for an individual whose date of birth is after December 31, 1947, and before January 1, 1953, 55 years of age plus the number of months in the age increase factor determined under paragraph (2)(A);

(C) for an individual whose date of birth is after December 31, 1952, and before January 1, 1965, 56 years of age;

(D) for an individual whose date of birth is after December 31, 1964, and before January 1, 1970, 56 years of age plus the number of months in the age increase factor determined under paragraph (2)(B); and

(E) for an individual whose date of birth is after December 31, 1969, 57 years of age.

(2)(A) For an individual whose date of birth occurs during the 5-year period consisting of calendar years 1948 through 1952, the age increase factor shall be equal to two-twelfths times the number of months in the period beginning with January 1948 and ending with December of the year in which the date of birth occurs.

(B) For an individual whose date of birth occurs during the 5-year period consisting of calendar years 1965 through 1969, the age increase factor shall be equal to two-twelfths times the number of months in the period beginning with January 1965 and ending with December of the year in which the date of birth occurs.

(Added Pub. L. 99–335, title I, §101(a), June 6, 1986, 100 Stat. 524; amended Pub. L. 99–556, title I, §105(a), Oct. 27, 1986, 100 Stat. 3131; Pub. L. 101–428, §3(a), Oct. 15, 1990, 104 Stat. 929.)

AMENDMENTS

1990—Subsec. (d)(1), (2). Pub. L. 101–428 substituted ''officer, member of the Capitol Police,'' for ''officer''.

1986—Subsec. (g). Pub. L. 99–556 designated existing provisions as par. (1) and added par. (2).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8413, 8414, 8415, 8420, 8421, 8421a, 8425, 8442, 8452, 8462, 8464, 8901 of this title; title 22 sections 4045, 4046, 4052, 4071d.

§ 8413. Deferred retirement

(a) An employee or Member who is separated from the service, or transferred to a position in which the employee or Member does not continue subject to this chapter, after completing 5 years of service is entitled to an annuity beginning at the age of 62 years.

(b)(1) An employee or Member who is separated from the service, or transferred to a position in which the employee or Member does not continue subject to this chapter, after completing 10 years of service but before attaining the applicable minimum retirement age under section 8412(h) is entitled to an annuity beginning on the date designated by the employee or Member in a written election under this subsection. The date designated under this subsection may not precede the date on which the employee or Member attains such minimum retirement age and must precede the date on which the employee or Member becomes 62 years of age.

(2) The election of an annuity under this subsection shall not be effective unless—

(A) it is made at such time and in such manner as the Office shall by regulation prescribe; and

(B) the employee or Member will not otherwise be eligible to receive an annuity within 31 days after filing the election.

(3) The election of an annuity under this subsection extinguishes the right of the employee or Member to receive any other annuity based on the service on which the annuity under this subsection is based.

(Added Pub. L. 99–335, title I, §101(a), June 6, 1986, 100 Stat. 525; amended Pub. L. 99–556, title I, §105(b)(1), Oct. 27, 1986, 100 Stat. 3132.)

AMENDMENTS

1986—Subsec. (b)(1). Pub. L. 99–556 inserted ''but before attaining the applicable minimum retirement age under section 8412(h)'' in first sentence and substituted ''such minimum retirement age'' for ''the applicable minimum retirement age under section 8412(h)'' in second sentence.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8415, 8420, 8442, 8445, 8462, 8464 of this title; title 22 section 4071d.

§ 8414. Early retirement

(a)(1) A member of the Senior Executive Service who is removed from the Senior Executive Service for failure to be recertified as a senior executive under section 3393a or for less than fully successful executive performance (as determined under subchapter II of chapter 43 of this title) after completing 25 years of service, or after becoming 50 years of age and completing 20 years of service, is entitled to an annuity.

(2) A member of the Defense Intelligence Senior Executive Service or the Senior Cryptologic Executive Service who is removed from such service for failure to be recertified as a senior executive or for less than fully successful execu-

tive performance after completing 25 years of service, or after becoming 50 years of age and completing 20 years of service, is entitled to an annuity.

(3) A member of the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service who is removed from such service for failure to be recertified as a senior executive or for less than fully successful executive performance after completing 25 years of service or after becoming 50 years of age and completing 20 years of service is entitled to an annuity.

(b)(1) Except as provided in paragraphs (2) and (3), an employee who—

(A) is separated from the service involuntarily, except by removal for cause on charges of misconduct or delinquency; or

(B) while serving in a geographic area designated by the Director, is separated from the service voluntarily during a period in which (as determined by the Director)—

(i) the agency in which the employee is serving is undergoing a major reorganization, a major reduction in force, or a major transfer of function; and

(ii) a significant percentage of the total number of employees serving in such agency will be separated or subject to an immediate reduction in the rate of basic pay (without regard to subchapter VI of chapter 53 of this title or comparable provisions);

after completing 25 years of service, or after becoming 50 years of age and completing 20 years of service, is entitled to an annuity.

(2) An employee under paragraph (1) who is separated as described in subparagraph (A) of such paragraph is not entitled to an annuity under this subsection if the employee has declined a reasonable offer of another position in the employee's agency for which the employee is qualified, and the offered position is not lower than 2 grades (or pay levels) below the employee's grade (or pay level) and is within the employee's commuting area.

(3) Paragraph (1) shall not apply to an employee entitled to an annuity under subsection (d) or (e) of section 8412.

(c) A military reserve technician who is separated from technician service, after becoming 50 years of age and completing 25 years of service, by reason of ceasing to satisfy the condition described in section 8401(30)(B) is entitled to an annuity.

(Added Pub. L. 99–335, title I, § 101(a), June 6, 1986, 100 Stat. 526; amended Pub. L. 100–325, § 2(m), May 30, 1988, 102 Stat. 583; Pub. L. 101–194, title V, § 506(b)(9), Nov. 30, 1989, 103 Stat. 1759.)

AMENDMENTS

1989—Subsec. (a)(1). Pub. L. 101–194, § 506(b)(9)(A), substituted ''for failure to be recertified as a senior executive under section 3393a or for'' for ''for''.

Subsec. (a)(2), (3). Pub. L. 101–194, § 506(b)(9)(B), (C), substituted ''for failure to be recertified as a senior executive or for'' for ''for''.

1988—Subsec. (a)(3). Pub. L. 100–325 added par. (3).

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–194 effective Jan. 1, 1991, see section 506(d) of Pub. L. 101–194, set out as a note under section 3151 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8420, 8421, 8421a, 8456, 8462, 8464, 8901 of this title; title 50 section 2053.

§ 8415. Computation of basic annuity

(a) Except as otherwise provided in this section, the annuity of an employee retiring under this subchapter is 1 percent of that individual's average pay multiplied by such individual's total service.

(b) The annuity of a Member, or former Member with title to a Member annuity, retiring under this subchapter is computed under subsection (a), except that if the individual has had at least 5 years of service as a Member or Congressional employee, or any combination thereof, so much of the annuity as is computed with respect to either such type of service (or a combination thereof), not exceeding a total of 20 years, shall be computed by multiplying 1 7/10 percent of the individual's average pay by the years of such service.

(c) The annuity of a Congressional employee, or former Congressional employee, retiring under this subchapter is computed under subsection (a), except that if the individual has had at least 5 years of service as a Congressional employee or Member, or any combination thereof, so much of the annuity as is computed with respect to either such type of service (or a combination thereof), not exceeding a total of 20 years, shall be computed by multiplying 1 7/10 percent of the individual's average pay by the years of such service.

(d) The annuity of an employee retiring under subsection (d) or (e) of section 8412 or under subsection (a), (b), or (c) of section 8425 is—

(1) 1 7/10 percent of that individual's average pay multiplied by so much of such individual's total service as does not exceed 20 years; plus

(2) 1 percent of that individual's average pay multiplied by so much of such individual's total service as exceeds 20 years.

(e)(1) In computing an annuity under this subchapter for an employee whose service includes service performed on a part-time basis—

(A) the average pay of the employee, to the extent that it includes pay for service performed in any position on a part-time basis, shall be determined by using the annual rate of basic pay that would be payable for full-time service in the position; and

(B) the benefit so computed shall then be multiplied by a fraction equal to the ratio which the employee's actual service, as determined by prorating the employee's total service to reflect the service that was performed on a part-time basis, bears to the total service that would be creditable for the employee if all of the service had been performed on a full-time basis.

(2) For the purpose of this subsection, employment on a part-time basis shall not be considered to include employment on a temporary or intermittent basis.

(f)(1) The annuity of an employee or Member retiring under section 8412(g) or 8413(b) is computed in accordance with applicable provisions of this section, except that the annuity shall be reduced by five-twelfths of 1 percent for each

full month by which the commencement date of the annuity precedes the sixty-second anniversary of the birth of the employee or Member.

(2)(A) Paragraph (1) does not apply in the case of an employee or Member retiring under section 8412(g) or 8413(b) if the employee or Member would satisfy the age and service requirements for title to an annuity under section 8412(a), (b), (d)(2), (e)(2), or (f)(2), determined as if the employee or Member had, as of the date of separation, attained the age specified in subparagraph (B).

(B) A determination under subparagraph (A) shall be based on how old the employee or Member will be as of the date on which the annuity under section 8412(g) or 8413(b) is to commence.

(g)(1) In applying subsection (a) with respect to an employee under paragraph (2), the percentage applied under such subsection shall be 1.1 percent, rather than 1 percent.

(2) This subsection applies in the case of an employee who—

(A) retires entitled to an annuity under section 8412; and

(B) at the time of the separation on which entitlement to the annuity is based, is at least 62 years of age and has completed at least 20 years of service;

but does not apply in the case of a Congressional employee, military reserve technician, law enforcement officer, firefighter, or air traffic controller.

(Added Pub. L. 99–335, title I, §101(a), June 6, 1986, 100 Stat. 527; amended Pub. L. 99–556, title I, §105(b)(2), Oct. 27, 1986, 100 Stat. 3132; Pub. L. 103–283, title III, §307(b)(2), July 22, 1994, 108 Stat. 1442.)

AMENDMENTS

1994—Subsec. (d). Pub. L. 103–283 substituted ''(a), (b), or (c)'' for ''(a) or (b)''.

1986—Subsec. (f)(2). Pub. L. 99–556 inserted ''8412(g) or'' in subpars. (A) and (B).

CLARIFICATION RELATING TO CONSIDERATION OF PRE-1987 SERVICE AS AN AIR TRAFFIC CONTROLLER FOR RETIREMENT PURPOSES

See section 2 of Pub. L. 100–92, set out as a note under section 8332 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8418, 8419, 8420, 8420a, 8421, 8442, 8452, 8468 of this title; title 22 sections 4045, 4046, 4071d; title 38 section 7426; title 50 section 2153.

§ 8416. Survivor reduction for a current spouse

(a)(1) If an employee or Member is married at the time of retiring under this chapter, the reduction described in section 8419(a) shall be made unless the employee or Member and the spouse jointly waive, by written election, any right which the spouse may have to a survivor annuity under section 8442 based on the service of such employee or Member. A waiver under this paragraph shall be filed with the Office under procedures prescribed by the Office.

(2) Notwithstanding paragraph (1), an employee or Member who is married at the time of retiring under this chapter may waive the annuity for a surviving spouse without the spouse's consent if the employee or Member establishes to the satisfaction of the Office (in accordance with regulations prescribed by the Office)—

(A) that the spouse's whereabouts cannot be determined; or

(B) that, due to exceptional circumstances, requiring the employee or Member to seek the spouse's consent would otherwise be inappropriate.

(3) Except as provided in subsection (d), a waiver made under this subsection shall be irrevocable.

(b)(1) Upon remarriage, a retired employee or Member who was married at the time of retirement (including an employee or Member whose annuity was not reduced to provide a survivor annuity for the employee's or Member's spouse or former spouse as of the time of retirement) may irrevocably elect during such marriage, in a signed writing received by the Office within 2 years after such remarriage or, if later, within 2 years after the death or remarriage of any former spouse of such employee or Member who was entitled to a survivor annuity under section 8445 (or of the last such surviving former spouse, if there was more than one), a reduction in the employee's or Member's annuity under section 8419(a) for the purpose of providing an annuity for such employee's or Member's spouse in the event such spouse survives the employee or Member.

(2) The election and reduction shall be effective the first day of the second month after the election is received by the Office, but not less than 9 months after the date of the remarriage.

(3) An election to provide a survivor annuity to an individual under this subsection—

(A) shall prospectively void any election made by the employee or Member under section 8420 with respect to such individual; or

(B) shall, if an election was made by the employee or Member under section 8420 with respect to a different individual, prospectively void such election if appropriate written application is made by such employee or Member at the time of making the election under this subsection.

(4) Any election under this subsection made by an employee or Member on behalf of an individual after the retirement of such employee or Member shall not be effective if—

(A) the employee or Member was married to such individual at the time of retirement; and

(B) the annuity rights of such individual based on the service of such employee or Member were then waived under subsection (a).

(c)(1) An employee or Member who is unmarried at the time of retiring under this chapter and who later marries may irrevocably elect, in a signed writing received by the Office within 2 years after such employee or Member marries or, if later, within 2 years after the death or remarriage of any former spouse of such employee or Member who was entitled to a survivor annuity under section 8445 (or of the last such surviving former spouse, if there was more than one), a reduction in the current annuity of the retired employee or Member, in accordance with section 8419(a).

(2) The election and reduction shall take effect the first day of the first month beginning 9

months after the date of marriage. Any such election to provide a survivor annuity for an individual—

(A) shall prospectively void any election made by the employee or Member under section 8420 with respect to such individual; or

(B) shall, if an election was made by the employee or Member under section 8420 with respect to a different individual, prospectively void such election if appropriate written application is made by such employee or Member at the time of making the election under this subsection.

(d)(1) An employee or Member—

(A) who is married on the date of retiring under this chapter, and

(B) with respect to whose spouse a waiver under subsection (a) has been made,

may, during the 18-month period beginning on such date, elect to have a reduction made under section 8419 in order to provide a survivor annuity under section 8442 for such spouse.

(2)(A) An election under this subsection shall not be effective unless the amount described in subparagraph (B) is deposited into the Fund before the expiration of the 18-month period referred to in paragraph (1).

(B) The amount to be deposited under this subparagraph is equal to the sum of—

(i) the difference (for the period between the date on which the annuity of the former employee or Member commences and the date on which reductions pursuant to the election under this subsection commence) between the amount paid to the former employee or Member from the Fund under this chapter and the amount which would have been paid if such election had been made at the time of retirement; and

(ii) the costs associated with providing for the election under this subsection.

The amount to be deposited under clause (i) shall include interest, computed at the rate of 6 percent a year.

(3) An annuity which is reduced pursuant to an election by a former employee or Member under this subsection shall be reduced by the same percentage as was in effect under section 8419 as of the date of the employee's or Member's retirement.

(4) Rights and obligations under this chapter resulting from an election under this subsection shall be the same as the rights and obligations which would have resulted had the election been made at the time of retirement.

(5) The Office shall inform each employee and Member who is eligible to make an election under this subsection of the right to make such election and the procedures and deadlines applicable in making any such election.

(Added Pub. L. 99–335, title I, § 101(a), June 6, 1986, 100 Stat. 528.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8417, 8418, 8419, 8420, 8420a, 8442, 8445 of this title; title 50 section 2154.

§ 8417. Survivor reduction for a former spouse

(a) If an employee or Member has a former spouse who is entitled to a survivor annuity as provided in section 8445, the reduction described in section 8419(a) shall be made.

(b)(1) An employee or Member who has a former spouse may elect, under procedures prescribed by the Office, a reduction in the annuity of the employee or Member under section 8419(a) in order to provide a survivor annuity for such former spouse under section 8445.

(2) An election under this subsection shall be made at the time of retirement or, if the marriage is dissolved after the date of retirement, within 2 years after the date on which the marriage of the former spouse to the employee or Member is so dissolved.

(3) An election under this subsection—

(A) shall not be effective to the extent that it—

(i) conflicts with—

(I) any court order or decree referred to in section 8445(a) which was issued before the date of such election; or

(II) any agreement referred to in such section 8445(a) which was entered into before such date; or

(ii) would cause the total of survivor annuities payable under sections 8442 and 8445, respectively, based on the service of the employee or Member to exceed the amount which would be payable to a widow or widower of such employee or Member under such section 8442 (determined without regard to any reduction to provide for an annuity under such section 8445); and

(B) shall not be effective, in the case of an employee or Member who is then married, unless it is made with the spouse's written consent.

The Office shall by regulation provide that subparagraph (B) may be waived for either of the reasons set forth in section 8416(a)(2).

(Added Pub. L. 99–335, title I, § 101(a), June 6, 1986, 100 Stat. 530.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8418, 8442, 8445, 8901, 8905 of this title; title 22 section 4071j; title 50 section 2154.

§ 8418. Survivor elections; deposit; offsets

(a)(1) An individual who makes an election under subsection (b) or (c) of section 8416 or section 8417(b) which is required to be made within 2 years after the date of a prescribed event shall deposit into the Fund an amount determined by the Office (as nearly as may be administratively feasible) to reflect the amount by which the annuity of such individual would have been reduced if the election had been in effect since the date of retirement (or, if later, and in the case of an election under such section 8416(b), since the date the previous reduction in the annuity of such individual was terminated under paragraph (1) or (2) of section 8419(b)), plus interest.

(2) Interest under paragraph (1) shall be computed at the rate of 6 percent a year.

(b) The Office shall, by regulation, provide for payment of the deposit required under subsection (a) by a reduction in the annuity of the employee or Member. The reduction shall, to the

extent practicable, be designed so that the present value of the future reduction is actuarially equivalent to the deposit required under subsection (a), except that the total reductions in the annuity of an employee or Member to pay deposits required by this section shall not exceed 25 percent of the annuity computed under section 8415 or section 8452, including adjustments under section 8462. The reduction required by this subsection, which shall be effective at the same time as the election under section 8416(b) and (c) or section 8417(b), shall be permanent and unaffected by any future termination of the marriage or the entitlement of the former spouse. Such reduction shall be independent of and in addition to the reduction required under section 8416(b) and (c) or section 8417(b).

(c) Subsections (a) and (b) shall not apply if—

(1) the employee or Member makes an election under section 8416(b) or (c) after having made an election under section 8420; and

(2) the election under such section 8420 becomes void under subsection (b)(3) or (c)(2) of such section 8416.

(d) The Office shall prescribe regulations under which the survivor of an employee or Member may make a deposit under this section.

(Added Pub. L. 99–335, title I, §101(a), June 6, 1986, 100 Stat. 530; amended Pub. L. 103–66, title XI, §11004(b), Aug. 10, 1993, 107 Stat. 412.)

AMENDMENTS

1993—Subsec. (a)(1). Pub. L. 103–66, §11004(b)(1), struck out '', before the expiration of the 2-year period involved,'' after ''into the Fund''.

Subsec. (b). Pub. L. 102–66, §11004(b)(2), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''If the electing individual does not make the deposit required under subsection (a), the Office shall collect such amount by offset against such individual's annuity, up to a maximum of 25 percent of the net annuity otherwise payable, and the individual is deemed to consent to such offset.''

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 effective on first day of first month beginning at least 30 days after Aug. 10, 1993, and applicable to all deposits required under section 8339(j)(3) or (5), 8339(k)(2), or 8418 of this title, on which no payment has been made prior to such effective date, with provision for partial deposit, see section 11004(c) of Pub. L. 103–66, set out as a note under section 8339 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 22 section 4071j; title 50 section 2154.

§ 8419. Survivor reductions; computation

(a)(1) Except as provided in paragraph (2), the annuity of an annuitant computed under section 8415, or under section 8452 (including subsection (a)(2) of such section, if applicable) or one-half of the annuity, if jointly designated for this purpose by the employee or Member and the spouse of the employee or Member under procedures prescribed by the Office of Personnel Management, shall be reduced by 10 percent if a survivor annuity, or a combination of survivor annuities, under section 8442 or 8445 (or both) are to be provided for.

(2)(A) If no survivor annuity under section 8442 is to be provided for, but one or more survivor annuities under section 8445 involving a total of less than the entirety of the amount referred to in subsection (b)(2) of such section are to be provided for, the annuity of the annuitant involved (as computed under section 8415, or under section 8452 (including subsection (a)(2) of such section, if applicable)) or one-half of the annuity, if jointly designated for this purpose by the employee or Member and the spouse of the employee or Member under procedures prescribed by the Office of Personnel Management, shall be reduced by an appropriate percentage determined under subparagraph (B).

(B) The Office shall prescribe regulations under which an appropriate reduction under this paragraph, not to exceed a total of 10 percent, shall be made.

(b)(1) Any reduction in an annuity for the purpose of providing a survivor annuity for the current spouse of a retired employee or Member shall be terminated for each full month—

(A) after the death of the spouse; or

(B) after the dissolution of the spouse's marriage to the employee or Member, except that an appropriate reduction shall be made thereafter if the spouse is entitled, as a former spouse, to a survivor annuity under section 8445.

(2) Any reduction in an annuity for the purpose of providing a survivor annuity for a former spouse of a retired employee or Member shall be terminated for each full month after the former spouse remarries before reaching age 55 or dies. This reduction shall be replaced by appropriate reductions under subsection (a) if the retired employee or Member has one or more of the following:

(A) another former spouse who is entitled to a survivor annuity under section 8445;

(B) a current spouse to whom the employee or Member was married at the time of retirement and with respect to whom a survivor annuity was not waived under section 8416(a) (or, if waived, with respect to whom an election under section 8416(d) has been made); or

(C) a current spouse whom the employee or Member married after retirement and with respect to whom an election has been made under subsection (b) or (c) of section 8416.

(Added Pub. L. 99–335, title I, §101(a), June 6, 1986, 100 Stat. 531; amended Pub. L. 100–238, title I, §131(a), Jan. 8, 1988, 101 Stat. 1759.)

AMENDMENTS

1988—Subsec. (a)(1), (2)(A). Pub. L. 100–238 inserted ''or one-half of the annuity, if jointly designated for this purpose by the employee or Member and the spouse of the employee or Member under procedures prescribed by the Office of Personnel Management'' before '', shall be reduced''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8416, 8417, 8418, 8442, 8468 of this title.

§ 8420. Insurable interest reductions

(a)(1) At the time of retiring under section 8412, 8413, or 8414, an employee or Member who is found to be in good health by the Office may elect to have such employee's or Member's annuity (as computed under section 8415) reduced

under paragraph (2) in order to provide an annuity under section 8444 for an individual having an insurable interest in the employee or Member. Such individual shall be designated by the employee or Member in writing.

(2) The annuity of the employee or Member making the election is reduced by 10 percent, and by 5 percent for each full 5 years the individual named is younger than the retiring employee or Member, except that the total reduction may not exceed 40 percent.

(3) An annuity which is reduced under this subsection shall, effective the first day of the month following the death of the individual named under this subsection, be recomputed and paid as if the annuity had not been so reduced.

(b)(1) In the case of a married employee or Member, an election under this section on behalf of the spouse may be made only if any right of such spouse to a survivor annuity based on the service of such employee or Member is waived in accordance with section 8416(a).

(2) Paragraph (1) does not apply in the case of an employee or Member if such employee or Member has a former spouse who would become entitled to an annuity under section 8445 as a survivor of such employee or Member.

(Added Pub. L. 99–335, title I, § 101(a), June 6, 1986, 100 Stat. 532.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8416, 8418, 8444 of this title.

§ 8420a. Alternative forms of annuities

(a) The Office shall prescribe regulations under which any employee or Member who has a life-threatening affliction or other critical medical condition may, at the time of retiring under this subchapter, elect annuity benefits under this section instead of any other benefits under this subchapter, and any benefits under subchapter IV of this chapter, based on the service of the employee or Member.

(b) Subject to subsection (c), the Office shall by regulation provide for such alternative forms of annuities as the Office considers appropriate, except that among the alternatives offered shall be—

(1) an alternative which provides for—

(A) payment of the lump-sum credit (excluding interest) to the employee or Member; and

(B) payment of an annuity to the employee or Member for life; and

(2) in the case of an employee or Member who is married at the time of retirement, an alternative which provides for—

(A) payment of the lump-sum credit (excluding interest) to the employee or Member; and

(B) payment of an annuity to the employee or Member for life, with a survivor annuity payable for the life of a surviving spouse.

(c) Each alternative provided for under subsection (b) shall, to the extent practicable, be designed such that the present value of the benefits provided under such alternative (including any lump-sum credit) is actuarially equivalent to the sum of—

(1) the present value of the annuity which would otherwise be provided under this subchapter, as computed under section 8415; and

(2) the present value of the annuity supplement which would otherwise be provided (if any) under section 8421.

(d) An employee or Member who, at the time of retiring under this subchapter—

(1) is married, shall be ineligible to make an election under this section unless a waiver is made under section 8416(a); or

(2) has a former spouse, shall be ineligible to make an election under this section if the former spouse is entitled to benefits under section 8445 or 8467 (based on the service of the employee or Member) under the terms of a decree of divorce or annulment, or a court order or court-approved property settlement incident to any such decree, with respect to which the Office has been duly notified.

(e) An employee or Member who is married at the time of retiring under this subchapter and who makes an election under this section may, during the 18-month period beginning on the date of retirement, make the election provided for under section 8416(d), subject to the deposit requirement thereunder.

(Added Pub. L. 99–335, title I, § 101(a), June 6, 1986, 100 Stat. 532; amended Pub. L. 101–508, title VII, § 7001(a)(1), Nov. 5, 1990, 104 Stat. 1388–327; Pub. L. 103–66, title XI, § 11002(a), Aug. 10, 1993, 107 Stat. 409.)

AMENDMENTS

1993—Subsec. (a). Pub. L. 103–66, § 11002(a)(1), substituted ''any employee or Member who has a life-threatening affliction or other critical medical condition'' for ''an employee or Member''.

Subsec. (f). Pub. L. 103–66, § 11002(a)(2), struck out subsec. (f) which prohibited election of alternative form of annuity where commencement date would be after Dec. 1, 1990, with certain exceptions.

1990—Subsec. (f). Pub. L. 101–508 added subsec. (f).

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 effective Oct. 1, 1994, and applicable with respect to any annuity commencing on or after that date, see section 11002(d) of Pub. L. 103–66, set out as a note under section 8343a of this title.

APPLICABILITY OF SECTIONS 8343a(f) AND 8420a(f) TO INDIVIDUALS CALLED TO OR PERFORMING DUTY IN CONNECTION WITH OPERATION DESERT SHIELD

For provisions relating to application of subsec. (f) of this section to certain members of Armed Forces who were called or ordered to active duty in connection with Operation Desert Shield and to certain employees of Department of Defense who are certified to have performed duties essential for support of Operation Desert Shield, see section 7001(a)(4) of Pub. L. 101–508, set out as a note under section 8343a of this title.

PARTIAL DEFERRED PAYMENT OF LUMP-SUM CREDIT FOR CERTAIN INDIVIDUALS ELECTING ALTERNATIVE FORMS OF ANNUITIES

For provisions relating to deferred payment of lump-sum credit for certain individuals electing alternative forms of annuities, see notes set out under section 8343a of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8348, 8424 of this title.

§ 8421. Annuity supplement

(a)(1) Subject to paragraph (3), an individual shall, if and while entitled to an annuity under subsection (a), (b), (d), or (e) of section 8412, or under section 8414(c), also be entitled to an annuity supplement under this section.

(2) Subject to paragraph (3), an individual shall, if and while entitled to an annuity under section 8412(f), or under subsection (a) or (b) of section 8414, also be entitled to an annuity supplement under this section if such individual is at least the applicable minimum retirement age under section 8412(h), except that an individual entitled to an annuity under section 8414(a) for failure to be recertified as a senior executive shall be entitled to an annuity supplement without regard to such applicable minimum retirement age.

(3)(A) An individual whose entitlement to an annuity under section 8412 or 8414 does not commence before age 62 is not entitled to an annuity supplement under this section.

(B) An individual entitled to an annuity supplement under this section ceases to be so entitled after the last day of the month preceding the first month for which such individual would, on proper application, be entitled to old-age insurance benefits under title II of the Social Security Act, but not later than the last day of the month in which such individual attains age 62.

(b)(1) The amount of the annuity supplement of an annuitant under this section for any month shall be equal to the product of—

(A) an amount determined under paragraph (2), multiplied by

(B) a fraction, as described in paragraph (3).

(2) The amount under this paragraph for an annuitant is an amount equal to the old-age insurance benefit which would be payable to such annuitant under title II of the Social Security Act (without regard to sections 203, 215(a)(7), and 215(d)(5) of such Act) upon attaining age 62 and filing application therefor, determined as if the annuitant had attained such age and filed application therefor, and were a fully insured individual (as defined in section 214(a) of such Act), on January 1 of the year in which such annuitant's entitlement to any payment under this section commences, except that the reduction of such old-age insurance benefit under section 202(q) of such Act shall be the maximum applicable for an individual born in the same year as the annuitant. In computing the primary insurance amount under section 215 of such Act for purposes of this paragraph, the number of elapsed years (referred to in section 215(b)(2)(B)(iii) of such Act and used to compute the number of benefit computation years) shall not include years beginning with the year in which such annuitant's entitlement to any payment under this section commences, and—

(A) only basic pay for service performed (if any) shall be taken into account in computing the total wages and self-employment income of the annuitant for a benefit computation year;

(B) for a benefit computation year which commences after the date of the separation with respect to which entitlement to the annuitant's annuity under this subchapter is based and before the date as of which such annuitant is treated, under the preceding sentence, to have attained age 62, the total wages and self-employment income of such annuitant for such year shall be deemed to be zero; and

(C) for a benefit computation year after age 21 which precedes the separation referred to in subparagraph (B), and during which the individual did not perform a full year of service, the total wages and self-employment income of such annuitant for such year shall be deemed to have been an amount equal to the product of—

(i) the average total wages of all workers for that year, multiplied by

(ii) a fraction—

(I) the numerator of which is the total basic pay of the individual for service performed in the first year thereafter in which such individual performed a full year of service; and

(II) the denominator of which is the average total wages of all workers for the year referred to in subclause (I).

(3) The fraction under this paragraph for any annuitant is a fraction—

(A) the numerator of which is the annuitant's total years of service (rounding a fraction to the nearest whole number, with ½ being rounded to the next higher number), not to exceed the number under subparagraph (B); and

(B) the denominator of which is 40.

(4) For the purpose of this subsection—

(A) the term ''benefit computation year'' has the meaning provided in section 215(b)(2)(B)(i) of the Social Security Act;

(B) the term ''average total wages of all workers'', for a year, means the average of the total wages, as defined and computed under section 215(b)(3)(A)(ii)(I) of the Social Security Act for such year; and

(C) the term ''service'' does not include military service.

(c) An amount under this section shall, for purposes of section 8467, be treated in the same way as an amount computed under section 8415.

(Added Pub. L. 99–335, title I, §101(a), June 6, 1986, 100 Stat. 533; amended Pub. L. 101–194, title V, §506(b)(10), Nov. 30, 1989, 103 Stat. 1759; Pub. L. 102–378, §2(65), Oct. 2, 1992, 106 Stat. 1354.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (a)(3)(B) and (b)(2), (4)(A), (B), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title II of the Social Security Act is classified generally to subchapter II (§401 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. Sections 202, 203, 214, and 215 of the Social Security Act are classified to sections 402, 403, 414, and 415, respectively, of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

1992—Subsec. (a)(2). Pub. L. 102–378 inserted period at end.

1989—Subsec. (a)(2). Pub. L. 101–194 substituted '', except that an individual entitled to an annuity under section 8414(a) for failure to be recertified as a

senior executive shall be entitled to an annuity supplement without regard to such applicable minimum retirement age'' for period at end.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–194 effective Jan. 1, 1991, see section 506(d) of Pub. L. 101–194, set out as a note under section 3151 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8349, 8420a, 8421a, 8442 of this title; title 22 section 4071d; title 50 section 2154.

§ 8421a. Reductions on account of earnings from work performed while entitled to an annuity supplement

(a) The amount of the annuity supplement to which an individual is entitled under section 8421 for any month (determined without regard to subsection (c) of such section) shall be reduced by the amount of any excess earnings of such individual which are required to be charged to such supplement for such month, as determined under subsection (b).

(b) The amount of an individual's excess earnings shall be charged to months as follows:

(1)(A) There shall be charged to each month of a year under subsection (a) an amount equal to the individual's excess earnings (as determined under paragraph (2) with respect to such year), divided by the number of the individual's supplement entitlement months for such year (as determined under paragraph (3)).

(B) Notwithstanding subparagraph (A), the amount charged to a month under subsection (a) may not exceed the amount of the annuity supplement to which the individual is entitled under section 8421 for such month (determined without regard to subsection (c) of such section).

(2) The excess earnings based on which reductions under subsection (a) shall be made with respect to an individual in a year—

(A) shall be equal to 50 percent of so much of such individual's earnings for the immediately preceding year as exceeds the applicable exempt amount for such preceding year; but

(B) may not exceed the total amount of the annuity supplement payments to which such individual was entitled for such preceding year under section 8421 (determined without regard to subsection (c) of such section, and without regard to this section).

(3)(A) Subject to subparagraph (B), the number of an individual's supplement entitlement months for a year shall be 12.

(B) The number determined under subparagraph (A) shall be reduced so as not to include any month after which such individual ceases to be entitled to an annuity supplement by reason of section 8421(a)(3)(B), relating to cessation of entitlement upon attaining age 62.

(4)(A) For purposes of this section, and except as provided in subparagraph (B), the ''earnings'' and the ''applicable exempt amount'' of an individual shall be determined in a manner consistent with applicable provisions of section 203 of the Social Security Act.

(B) For purposes of this section—

(i) in determining the excess earnings of any individual, only earnings attributable to periods during which such individual was entitled to an annuity supplement under section 8421 shall be considered; and

(ii) any earnings attributable to a period before attaining the applicable retirement age under section 8412(h) shall not be considered in determining the excess earnings of an individual who retires under section 8412(d) or (e), or section 8414(c).

(c) The Office shall prescribe regulations under which this section shall be applied in the case of a reemployed annuitant.

(Added Pub. L. 99–335, title I, § 101(a), June 6, 1986, 100 Stat. 535; amended Pub. L. 99–556, title I, § 121, Oct. 27, 1986, 100 Stat. 3134.)

REFERENCES IN TEXT

Section 203 of the Social Security Act, referred to in subsec. (b)(4)(A), is classified to section 403 of Title 42, The Public Health and Welfare.

AMENDMENTS

1986—Subsecs. (c), (d). Pub. L. 99–556 redesignated subsec. (d) as (c) and struck out former subsec. (c) which read as follows: ''If, after an individual ceases to be entitled to an annuity supplement under section 8421 by reason of subsection (a)(3)(B) of such section, any portion of the individual's excess earnings remains outstanding, an amount not to exceed 25 percent of the amount otherwise payable to such individual under this chapter for each month shall be deducted from such monthly payment until the full amount of that outstanding portion has been accounted for. To the extent practicable, reductions under this subsection shall be made by a level percentage.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 22 section 4071d; title 50 section 2154.

§ 8422. Deductions from pay; contributions for military service

(a)(1) The employing agency shall deduct and withhold from basic pay of each employee and Member a percentage of basic pay determined in accordance with paragraph (2).

(2) The applicable percentage under this subsection for any pay period shall be—

(A) in the case of an employee (other than a law enforcement officer, firefighter, air traffic controller, or Congressional employee) a percentage equal to—

(i) 7 percent, minus

(ii) the percentage then in effect under section 3101(a) of the Internal Revenue Code of 1986 (relating to rate of tax for old-age, survivors, and disability insurance); and

(B) in the case of a Member, law enforcement officer, firefighter, air traffic controller, or Congressional employee, a percentage equal to—

(i) 7½ percent, minus

(ii) the same percentage as would apply in the case of an employee under subparagraph (A)(ii).

(b) Each employee or Member is deemed to consent and agree to the deductions under subsection (a). Notwithstanding any law or regulation affecting the pay of an employee or Mem-

ber, payment less such deductions is a full and complete discharge and acquittance of all claims and demands for regular services during the period covered by the payment, except the right to any benefits under this subchapter, or under subchapter IV or V of this chapter, based on the service of the employee or Member.

(c) The amounts deducted and withheld under this section shall be deposited in the Treasury of the United States to the credit of the Fund under such procedures as the Comptroller General of the United States may prescribe.

(d) Under such regulations as the Office may prescribe, amounts deducted under subsection (a) shall be entered on individual retirement records.

(e)(1)(A) Except as provided in subparagraph (B), each employee or Member who has performed military service before the date of the separation on which the entitlement to any annuity under this subchapter, or subchapter V of this chapter, is based may pay, in accordance with such regulations as the Office shall issue, to the agency by which the employee is employed, or, in the case of a Member or a Congressional employee, to the Secretary of the Senate or the Clerk of the House of Representatives, as appropriate, an amount equal to 3 percent of the amount of the basic pay paid under section 204 of title 37 to the employee or Member for each period of military service after December 1956. The amount of such payments shall be based on such evidence of basic pay for military service as the employee or Member may provide, or if the Office determines sufficient evidence has not been so provided to adequately determine basic pay for military service, such payment shall be based on estimates of such basic pay provided to the Office under paragraph (4).

(B) In any case where military service interrupts creditable civilian service under this subchapter and reemployment pursuant to chapter 43 of title 38 occurs on or after August 1, 1990, the deposit payable under this paragraph may not exceed the amount that would have been deducted and withheld under subsection (a)(1) from basic pay during civilian service if the employee had not performed the period of military service.

(2) Any deposit made under paragraph (1) more than two years after the later of—

(A) January 1, 1987; or

(B) the date on which the employee or Member making the deposit first becomes an employee or Member following the period of military service for which such deposit is due,

shall include interest on such amount computed and compounded annually beginning on the date of the expiration of the two-year period. The interest rate that is applicable in computing interest in any year under this paragraph shall be equal to the interest rate that is applicable for such year under section 8334(e).

(3) Any payment received by an agency, the Secretary of the Senate, or the Clerk of the House of Representatives under this subsection shall be immediately remitted to the Office for deposit in the Treasury of the United States to the credit of the Fund.

(4) The Secretary of Defense, the Secretary of Transportation, the Secretary of Commerce, or the Secretary of Health and Human Services, as appropriate, shall furnish such information to the Office as the Office may determine to be necessary for the administration of this subsection.

(5) For the purpose of survivor annuities, deposits authorized by this subsection may also be made by a survivor of an employee or Member.

(f)(1) Each employee or Member who has performed service as a volunteer or volunteer leader under part A of title VIII of the Economic Opportunity Act of 1964, as a full-time volunteer enrolled in a program of at least 1 year's duration under part A, B, or C of title I of the Domestic Volunteer Service Act of 1973, or as a volunteer or volunteer leader under the Peace Corps Act before the date of the separation on which the entitlement to any annuity under this subchapter, or subchapter V of this chapter, is based may pay, in accordance with such regulations as the Office of Personnel Management shall issue, an amount equal to 3 percent of the readjustment allowance paid to the employee or Member under title VIII of the Economic Opportunity Service Act of 1964 or section 5(c) or 6(1) of the Peace Corps Act or the stipend paid to the employee or Member under part A, B, or C of title I of the Domestic Volunteer Service Act of 1973, for each period of service as such a volunteer or volunteer leader.

(2) Any deposit made under paragraph (1) more than 2 years after the later of—

(A) October 1, 1993, or

(B) the date on which the employee or Member making the deposit first becomes an employee or Member,

shall include interest on such amount computed and compounded annually beginning on the date of the expiration of the 2-year period. The interest rate that is applicable in computing interest in any year under this paragraph shall be equal to the interest rate that is applicable for such year under section 8334(e).

(3) The Director of the Peace Corps and the Chief Executive Officer of the Corporation for National and Community Service shall furnish such information to the Office of Personnel Management as the Office may determine to be necessary for the administration of this subsection.

(Added Pub. L. 99–335, title I, §101(a), June 6, 1986, 100 Stat. 536; amended Pub. L. 100–238, title I, §104(a), Jan. 8, 1988, 101 Stat. 1746; Pub. L. 103–82, title III, §371(b)(2), Sept. 21, 1993, 107 Stat. 911; Pub. L. 103–353, §5(d), (e)(2), Oct. 13, 1994, 108 Stat. 3174.)

REFERENCES IN TEXT

Section 3101(a) of the Internal Revenue Code of 1986, referred to in subsec. (a)(2)(A)(ii), is classified to section 3101(a) of Title 26, Internal Revenue Code.

The Economic Opportunity Act of 1964, referred to in subsec. (f)(1), is Pub. L. 88–452, Aug. 20, 1964, 78 Stat. 508, as amended. Title VIII of the Act probably means title VIII of Pub. L. 88–452 as added by Pub. L. 89–794, title VIII, §801, Nov. 8, 1966, 80 Stat. 1472, and generally revised and amended by Pub. L. 90–222, title I, §110, Dec. 23, 1967, 81 Stat. 722, which was classified generally to subchapter VIII (§2991 et seq.) of chapter 34 of Title 42, The Public Health and Welfare, prior to its repeal by Pub. L. 93–113, title VI, §603, Oct. 1, 1973, 87 Stat. 417. Part A of title VIII of the Act is part A of title VIII of

Pub. L. 88–452 as added by Pub. L. 90–222, § 110, which was classified generally to part A (§ 2992 et seq.) of subchapter VIII of chapter 34 of Title 42, prior to its repeal by Pub. L. 93–113, § 603. See sections 4951 et seq. and 5055 of Title 42. For complete classification of this Act to the Code, see Tables.

Parts A, B, and C of title I of the Domestic Volunteer Service Act of 1973, referred to in subsec. (f)(1), are classified to part A (§ 4951 et seq.), part B (§ 4971 et seq.), and part C (§ 4991 et seq.), respectively, of subchapter I of chapter 66 of Title 42.

The Peace Corps Act, referred to in subsec. (f)(1), is Pub. L. 87–293, Sept. 22, 1961, 75 Stat. 612, as amended, which is classified principally to chapter 34 (§ 2501 et seq.) of Title 22, Foreign Relations and Intercourse. Sections 5(c) and 6(1) of the Act are classified to sections 2504(c) and 2505(1), respectively, of Title 22. For complete classification of this Act to the Code, see Short Title note set out under section 2501 of Title 22 and Tables.

AMENDMENTS

1994—Subsec. (a)(2)(A)(ii). Pub. L. 103–353, § 5(e)(2), substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

Subsec. (e)(1). Pub. L. 103–353, § 5(d)(1), designated existing provisions as subpar. (A) and substituted ''Except as provided in subparagraph (B), each employee'' for ''Each employee'' and added subpar. (B).

Subsec. (e)(2)(B). Pub. L. 103–353, § 5(d)(2), inserted before comma at end ''following the period of military service for which such deposit is due''.

1993—Subsec. (f). Pub. L. 103–82 added subsec. (f).

1988—Subsec. (e)(5). Pub. L. 100–238 added par. (5).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–353 effective with respect to reemployments initiated on or after the first day after the 60-day period beginning Oct. 13, 1994, with transition rules, see section 8 of Pub. L. 103–353, set out as a note under section 4301 of Title 38, Veterans' Benefits.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–82 effective Oct. 1, 1993, and applicable with respect to any individual entitled to an annuity on the basis of a separation from service occurring before, on, or after Oct. 1, 1993, subject to rule relating to annuities based on earlier separations, see sections 371(c) and 392 of Pub. L. 103–82, set out as notes under section 8332 of this title and section 4951 of Title 42, The Public Health and Welfare, respectively.

TRANSFER OF FUNCTIONS

Certain functions of Clerk of House of Representatives transferred to Director of Non-legislative and Financial Services by section 7 of House Resolution No. 423, One Hundred Second Congress, Apr. 9, 1992. Director of Non-legislative and Financial Services replaced by Chief Administrative Officer of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8401, 8411, 8423, 8468 of this title; title 2 section 121b; title 10 section 942; title 22 section 4045; title 28 sections 611, 627; title 40 section 214d; title 50 section 2152.

§ 8423. Government contributions

(a)(1) Each employing agency having any employees or Members subject to section 8422(a) shall contribute to the Fund an amount equal to the sum of—

(A) the product of—

(i) the normal-cost percentage, as determined for employees (other than employees covered by subparagraph (B)), multiplied by

(ii) the aggregate amount of basic pay payable by the agency, for the period involved, to employees (under clause (i)) who are within such agency; and

(B) the product of—

(i) the normal-cost percentage, as determined for Members, Congressional employees, law enforcement officers, firefighters, air traffic controllers, military reserve technicians, and employees under sections 302 and 303 of the Central Intelligence Agency Retirement Act, multiplied by

(ii) the aggregate amount of basic pay payable by the agency, for the period involved, to employees and Members (under clause (i)) who are within such agency.

(2) In determining any normal-cost percentage to be applied under this subsection, amounts provided for under section 8422 shall be taken into account.

(3) Contributions under this subsection shall be paid—

(A) in the case of law enforcement officers, firefighters, air traffic controllers, military reserve technicians, and other employees, from the appropriation or fund used to pay such law enforcement officers, firefighters, air traffic controllers, military reserve technicians, or other employees, respectively;

(B) in the case of elected officials, from an appropriation or fund available for payment of other salaries of the same office or establishment; and

(C) in the case of employees of the legislative branch paid by the Clerk of the House of Representatives, from the contingent fund of the House.

(4) A contribution to the Fund under this subsection shall be deposited under such procedures as the Comptroller General of the United States may prescribe.

(b)(1) The Office shall compute—

(A) the amount of the supplemental liability of the Fund with respect to individuals other than those to whom subparagraph (B) relates, and

(B) the amount of the supplemental liability of the Fund with respect to current or former employees of the United States Postal Service (and the Postal Rate Commission) and their survivors;

as of the close of each fiscal year beginning after September 30, 1987.

(2) The amount of any supplemental liability computed under paragraph (1)(A) or (1)(B) shall be amortized in 30 equal annual installments, with interest computed at the rate used in the most recent valuation of the System.

(3) At the end of each fiscal year, the Office shall notify—

(A) the Secretary of the Treasury of the amount of the installment computed under this subsection for such year with respect to individuals under paragraph (1)(A); and

(B) the Postmaster General of the United States of the amount of the installment computed under this subsection for such year with respect to individuals under paragraph (1)(B).

(4)(A) Before closing the accounts for a fiscal year, the Secretary of the Treasury shall credit

to the Fund, as a Government contribution, out of any money in the Treasury of the United States not otherwise appropriated, the amount under paragraph (3)(A) for such year.

(B) Upon receiving notification under paragraph (3)(B), the United States Postal Service shall pay the amount specified in such notification to the Fund.

(5) For the purpose of carrying out paragraph (1) with respect to any fiscal year, the Office may—

(A) require the Board of Actuaries of the Civil Service Retirement System to make actuarial determinations and valuations, make recommendations, and maintain records in the same manner as provided in section 8347(f); and

(B) use the latest actuarial determinations and valuations made by such Board of Actuaries.

(c) Under regulations prescribed by the Office, the head of an agency may request reconsideration of any amount determined to be payable with respect to such agency under subsection (a) or (b). Any such request shall be referred to the Board of Actuaries of the Civil Service Retirement System. The Board of Actuaries shall review the computations of the Office and may make any adjustment with respect to any such amount which the Board determines appropriate. A determination by the Board of Actuaries under this subsection shall be final.

(Added Pub. L. 99–335, title I, § 101(a), June 6, 1986, 100 Stat. 537; amended Pub. L. 102–378, § 2(66), Oct. 2, 1992, 106 Stat. 1354; Pub. L. 102–496, title VIII, § 803(c), Oct. 24, 1992, 106 Stat. 3253.)

REFERENCES IN TEXT

Sections 302 and 303 of the Central Intelligence Agency Retirement Act, referred to in subsec. (a)(1)(B)(i), are classified to sections 2152 and 2153, respectively, of Title 50, War and National Defense.

AMENDMENTS

1992—Subsec. (a)(1)(B)(i). Pub. L. 102–496 substituted ''the Central Intelligence Agency Retirement Act'' for ''the Central Intelligence Agency Retirement Act of 1964 for Certain Employees''.

Pub. L. 102–378 substituted ''multiplied'' for ''multipled''.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–496 effective first day of fourth month beginning after Oct. 24, 1992, see section 805 of Pub. L. 102–496, set out as an Effective Date note under section 2001 of Title 50, War and National Defense.

TRANSFER OF FUNCTIONS

Certain functions of Clerk of House of Representatives transferred to Director of Non-legislative and Financial Services by section 7 of House Resolution No. 423, One Hundred Second Congress, Apr. 9, 1992. Director of Non-legislative and Financial Services replaced by Chief Administrative Officer of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8401, 8411, 8468 of this title; title 22 section 4071f; title 40 section 214d.

§ 8424. Lump-sum benefits; designation of beneficiary; order of precedence

(a) Subject to subsection (b), an employee or Member who—

(1)(A) is separated from the service for at least 31 consecutive days; or

(B) is transferred to a position in which the individual is not subject to this chapter and remains in such a position for at least 31 consecutive days;

(2) files an application with the Office for payment of the lump-sum credit;

(3) is not reemployed in a position in which the individual is subject to this chapter at the time of filing the application; and

(4) will not become eligible to receive an annuity within 31 days after filing the application;

is entitled to be paid the lump-sum credit. Except as provided in section 8420a, payment of the lump-sum credit to an employee or Member voids all annuity rights under this subchapter, and subchapters IV and V of this chapter, based on the service on which the lump-sum credit is based.

(b)(1) Payment of the lump-sum credit under subsection (a)—

(A) may be made only if any current spouse and any former spouse of the employee or Member are notified of the application by the employee or Member; and

(B) in any case in which there is a former spouse, shall be subject to the terms of a court decree of divorce, annulment, or legal separation issued with respect to such former spouse if—

(i) the decree expressly relates to any portion of the lump-sum credit involved; and

(ii) payment of the lump-sum credit would affect any right or interest of the former spouse with respect to a survivor annuity under section 8445, or to any portion of an annuity under section 8467.

(2)(A) Notification of a spouse or former spouse under this subsection shall be made in accordance with such requirements as the Office shall by regulation prescribe.

(B) Under the regulations, the Office may provide that paragraph (1)(A) may be waived with respect to a spouse or former spouse if the employee or Member establishes to the satisfaction of the Office that the whereabouts of such spouse or former spouse cannot be determined.

(3) The Office shall prescribe regulations under which this subsection shall be applied in any case in which the Office receives two or more orders or decrees referred to in paragraph (1)(B)(i).

(c) Under regulations prescribed by the Office, an employee or Member, or a former employee or Member, may designate one or more beneficiaries under this section.

(d) Lump-sum benefits authorized by subsections (e) through (g) shall be paid to the individual or individuals surviving the employee or Member and alive at the date title to the payment arises in the following order of precedence, and the payment bars recovery by any other individual:

First, to the beneficiary or beneficiaries designated by the employee or Member in a

signed and witnessed writing received in the Office before the death of such employee or Member. For this purpose, a designation, change, or cancellation of beneficiary in a will or other document not so executed and filed has no force or effect.

Second, if there is no designated beneficiary, to the widow or widower of the employee or Member.

Third, if none of the above, to the child or children of the employee or Member and descendants of deceased children by representation.

Fourth, if none of the above, to the parents of the employee or Member or the survivor of them.

Fifth, if none of the above, to the duly appointed executor or administrator of the estate of the employee or Member.

Sixth, if none of the above, to such other next of kin of the employee or Member as the Office determines to be entitled under the laws of the domicile of the employee or Member at the date of death of the employee or Member.

For the purpose of this subsection, ''child'' includes a natural child and an adopted child, but does not include a stepchild.

(e) If an employee or Member, or former employee or Member, dies—

(1) without a survivor, or

(2) with a survivor or survivors and the right of all survivors under subchapter IV terminates before a claim for survivor annuity under such subchapter is filed,

the lump-sum credit shall be paid.

(f) If all annuity rights under this chapter (other than under subchapter III of this chapter) based on the service of a deceased employee or Member terminate before the total annuity paid equals the lump-sum credit, the difference shall be paid.

(g) If an annuitant dies, annuity accrued and unpaid shall be paid.

(h) Annuity accrued and unpaid on the termination, except by death, of the annuity of an annuitant or survivor shall be paid to that individual. Annuity accrued and unpaid on the death of a survivor shall be paid in the following order of precedence, and the payment bars recovery by any other person:

First, to the duly appointed executor or administrator of the estate of the survivor.

Second, if there is no executor or administrator, payment may be made, after 30 days from the date of death of the survivor, to such next of kin of the survivor as the Office determines to be entitled under the laws of the domicile of the survivor at the date of death.

(Added Pub. L. 99–335, title I, §101(a), June 6, 1986, 100 Stat. 539.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8402, 8433, 8442, 8468 of this title; title 50 section 2154.

§ 8425. Mandatory separation

(a) An air traffic controller who is otherwise eligible for immediate retirement under section 8412(e) shall be separated from the service on the last day of the month in which that air traffic controller becomes 56 years of age or completes 20 years of service if then over that age. The Secretary, under such regulations as the Secretary may prescribe, may exempt a controller having exceptional skills and experience as a controller from the automatic separation provisions of this subsection until that controller becomes 61 years of age. The Secretary shall notify the controller in writing of the date of separation at least 60 days before that date. Action to separate the controller is not effective, without the consent of the controller, until the last day of the month in which the 60-day notice expires.

(b) A firefighter who is otherwise eligible for immediate retirement under section 8412(d) shall be separated from the service on the last day of the month in which such firefighter becomes 55 years of age or completes 20 years of service if then over that age. A law enforcement officer who is otherwise eligible for immediate retirement under section 8412(d) shall be separated from the service on the last day of the month in which that law enforcement officer becomes 57 years of age or completes 20 years of service if then over that age. If the head of the agency judges that the public interest so requires, that agency head may exempt such an employee from automatic separation under this subsection until that employee becomes 60 years of age. The employing office shall notify the employee in writing of the date of separation at least 60 days before that date. Action to separate the employee is not effective, without the consent of the employee, until the last day of the month in which the 60-day notice expires.

(c) A member of the Capitol Police who is otherwise eligible for immediate retirement under section 8412(d) shall be separated from the service on the last day of the month in which such member becomes 57 years of age or completes 20 years of service if then over that age. The Capitol Police Board, when in its judgment the public interest so requires, may exempt such a member from automatic separation under this subsection until that member becomes 60 years of age. The Board shall notify the member in writing of the date of separation at least 60 days before that date. Action to separate the member is not effective, without the consent of the member, until the last day of the month in which the 60-day notice expires.

(d) The President, by Executive order, may exempt an employee (other than a member of the Capitol Police) from automatic separation under this section if the President determines the public interest so requires.

(Added Pub. L. 99–335, title I, §101(a), June 6, 1986, 100 Stat. 540; amended Pub. L. 101–428, §3(b)(1)(A), (2), Oct. 15, 1990, 104 Stat. 929, 930; Pub. L. 101–509, title V, §529 [title IV, §409(b)], Nov. 5, 1990, 104 Stat. 1427, 1468; Pub. L. 102–378, §2(67), Oct. 2, 1992, 106 Stat. 1354; Pub. L. 103–283, title III, §307(b)(1), July 22, 1994, 108 Stat. 1441.)

AMENDMENTS

1994—Subsec. (b). Pub. L. 103–283, §307(b)(1)(A), struck out ''member of the Capitol Police or'' before ''firefighter who is'' and ''member or'' before ''firefighter becomes'' in first sentence.

Subsecs. (c), (d). Pub. L. 103–283, §307(b)(1)(B), (C), added subsec. (c) and redesignated former subsec. (c) as (d).

1992—Subsec. (b). Pub. L. 102–378 amended first sentence generally and, in second sentence, substituted ''becomes'' for ''become''. Prior to amendment, first sentence read as follows: ''A law enforcement officer, member of the Capitol Police, or firefighter who is otherwise eligible for immediate retirement under section 8412(d) shall be separated from the service on the last day of the month in which that law enforcement officer, member of the Capitol Police, or firefighter becomes 55 years of age or completes 20 years of service if then over that age.''

1990—Subsec. (b). Pub. L. 101–509, §529 [title IV, §409(b)(1)], which directed the amendment of subsec. (b) by striking out ''law enforcement officer or'' wherever appearing in first sentence, could not be executed because of a prior amendment by Pub. L. 101–428, §3(b)(1)(A), see below.

Pub. L. 101–509, §529 [title IV, §409(b)(2)], inserted after first sentence ''A law enforcement officer who is otherwise eligible for immediate retirement under section 8412(d) shall be separated from the service on the last day of the month in which that law enforcement officer become 57 years of age or completes 20 years of service if then over that age.''

Pub. L. 101–428, §3(b)(1)(A), substituted ''officer, member of the Capitol Police, or'' for ''officer or'' in two places.

Subsec. (c). Pub. L. 101–428, §3(b)(2), inserted ''(other than a member of the Capitol Police)'' after ''employee''.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–378 effective Nov. 5, 1990, see section 9(b)(6) of Pub. L. 102–378, set out as a note under section 6303 of this title.

EXCEPTION TO AUTOMATIC SEPARATION OF MEMBERS OF CAPITOL POLICE

Section 3(b)(1)(B) of Pub. L. 101–428 provided that: ''Nothing in section 8425(b) of title 5, United States Code, as amended by subparagraph (A), shall require the automatic separation of any member of the Capitol Police before the end of the 2-year period beginning on the date of enactment of this Act [Oct. 15, 1990].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8415 of this title.

SUBCHAPTER III—THRIFT SAVINGS PLAN

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 8116, 8351, 8401, 8402, 8424, 8461, 8471, 8472, 8473, 8474, 8477 of this title; title 10 sections 945, 2467; title 22 sections 4069, 4071h; title 26 sections 3121, 7701; title 28 sections 178, 377, 611, 627; title 39 section 1005; title 40 section 214d; title 50 section 2154.

§ 8431. Definition

Notwithstanding section 8401 of this title, for the purpose of this subchapter, the term ''basic pay'', when used with respect to an employee or Member, means the basic pay of the employee or Member established pursuant to law, without regard to any provision of law (except sections 5303(e), 5304(g), and 5382(b) of this title) limiting the rate of pay actually payable in any pay period (including any provision of law restricting the use of appropriated funds).

(Added Pub. L. 99–335, title I, §101(a), June 6, 1986, 100 Stat. 541; amended Pub. L. 101–509, title V, §529 [title I, §101(b)(6)(B)], Nov. 5, 1990, 104 Stat. 1427, 1440.)

AMENDMENTS

1990—Pub. L. 101–509 substituted ''5303(e), 5304(g),'' for ''5308''.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–509 effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title III, §305] of Pub. L. 101–509, set out as a note under section 5301 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5545a of this title.

§ 8432. Contributions

(a) An employee or Member may contribute to the Thrift Savings Fund in any pay period, pursuant to an election under subsection (b)(1), an amount not to exceed 10 percent of such individual's basic pay for such period. Contributions made under this subsection during any 6-month period for which an election period is provided under subsection (b)(1) shall be made each pay period during such 6-month period pursuant to a program of regular contributions provided in regulations prescribed by the Executive Director.

(b)(1)(A) The Executive Director shall prescribe regulations under which employees and Members shall be afforded a reasonable period every 6 months to elect to make contributions under subsection (a), to modify the amount to be contributed under such subsection, or to terminate such contributions. An election to make such contributions shall remain in effect until modified or terminated.

(B) The amount to be contributed pursuant to an election under subparagraph (A) shall be the percentage of basic pay or amount designated by the employee or Member.

(2) Under the regulations—

(A) an employee or Member who has not previously been eligible to make an election under this subsection shall not become so eligible until the second period (described in paragraph (1)) beginning after the date of commencing service as an employee or Member;

(B) an employee or Member whose appointment or election to a position or office in the Federal Government follows a previous period of service during which that individual met the requirements of subparagraph (A) shall be eligible to make an election under this subsection notwithstanding any period of separation;

(C) an employee or Member who elects under subparagraph (D) to terminate contributions shall not again become eligible to make an election under this subsection until the second period (described in paragraph (1)) commencing after the election to terminate; and

(D) an election to terminate may be made under this subparagraph at any time other than during a period afforded under paragraph (1).

(3) Notwithstanding paragraph (2)(A), an employee or Member who elects to become subject to this chapter under section 301 of the Federal Employees' Retirement System Act of 1986 may make the first election for the purpose of subsection (a) during the period prescribed for such purpose by the Executive Director. The period prescribed by the Executive Director shall commence on the date on which the employee or

Member makes the election to become subject to this chapter.

(4)(A) Notwithstanding paragraph (2)(A), an employee or Member who is an employee or Member on January 1, 1987, and continues as an employee or Member without a break in service through April 1, 1987, may make the first election for the purpose of subsection (a) during the election period prescribed for such purpose by the Executive Director. The Executive Director shall prescribe an election period for such purpose which shall commence on April 1, 1987. An election by such an employee or Member during that election period shall be effective on the first day of the employee's or Member's first pay period which begins after the date on which the employee or Member makes that election.

(B) Notwithstanding subsection (a), the maximum amount that an employee or Member may contribute during any pay period which begins on or after April 1, 1987, and before October 1, 1987, pursuant to an election made during the election period provided under subparagraph (A) is the amount equal to 15 percent of such individual's basic pay for such pay period.

(c)(1)(A) At the time prescribed by the Executive Director, but no later than 12 days after the end of the pay period that includes the first date on which an employee or Member may make contributions under subsection (a) (without regard to whether the employee or Member has elected to make such contributions during such pay period), and within such time as the Executive Director may prescribe with respect to succeeding pay periods (but no later than 12 days after the end of each such pay period), the employing agency shall contribute to the Thrift Savings Fund for the benefit of such employee or Member the amount equal to 1 percent of the basic pay of such employee or Member for such pay period.

(B) In the case of each employee or Member who is an employee or Member on January 1, 1987, and continues as an employee or Member without a break in service through April 1, 1987, the employing agency shall contribute to the Thrift Savings Fund for the benefit of such employee or Member the amount equal to 1 percent of the total basic pay paid to such employee or Member for that period of service.

(C) If an employee or Member—

(i) is an employee or Member on January 1, 1987;

(ii) separates from Government employment before April 1, 1987; and

(iii) before separation, completes the number of years of civilian service applicable to such employee or Member under subparagraph (A) or (B) of subsection (g)(2),

the employing agency shall contribute to the Thrift Savings Fund for the benefit of such employee or Member the amount equal to 1 percent of the total basic pay paid to such employee or Member for service performed on or after January 1, 1987, and before the date of the separation.

(2)(A) In addition to contributions made under paragraph (1), the employing agency of an employee or Member who contributes to the Thrift Savings Fund under subsection (a) for any pay period shall make a contribution to the Thrift Savings Fund for the benefit of such employee or Member. The employing agency's contribution shall be made within such time as the Executive Director may prescribe, but no later than 12 days after the end of each such pay period.

(B) The amount contributed under subparagraph (A) by an employing agency with respect to a contribution of an employee or Member during any pay period shall be the amount equal to the sum of—

(i) such portion of the total amount of the employee's or Member's contribution as does not exceed 3 percent of such employee's or Member's basic pay for such period; and

(ii) one-half of such portion of the amount of the employee's or Member's contribution as exceeds 3 percent, but does not exceed 5 percent, of such employee's or Member's basic pay for such pay period.

(C) Notwithstanding subparagraph (B), the amount contributed under subparagraph (A) by an employing agency with respect to any contribution made by an employee or Member during any pay period which begins after the date on which such employee or Member makes an election under subsection (b)(4) and before July 1, 1987, shall be the amount equal to the sum of—

(i) two times such portion of the total amount of the employee's or Member's contribution as does not exceed 3 percent of such employee's or Member's basic pay for such pay period; and

(ii) such portion of the total amount of the employee's or Member's contributions as exceeds 3 percent, but does not exceed 5 percent, of such employee's or Member's basic pay for such pay period.

(3)(A) There shall be contributed to the Thrift Savings Fund on behalf of each employee or Member described in subparagraph (B) the amount determined under subparagraph (C).

(B) An employee or Member referred to in subparagraph (A) is an employee or Member who—

(i) is an employee or Member on January 1, 1987;

(ii) has creditable service described in section 8411(b)(2) of this title; and

(iii) has not received a refund of the amount of the retirement deductions made with respect to such service under section 204 of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983.

(C) The amount referred to in subparagraph (A) in the case of an employee or Member is equal to the sum of—

(i) 1 percent of the total basic pay paid to such employee or Member for service described in section 8411(b)(2) of this title; and

(ii) interest on such amount computed with respect to such service in the manner provided in paragraphs (2) and (3) of section 8334(e) of this title.

(D) The Secretary of the Treasury shall credit to the Thrift Savings Fund, out of any sums in the Treasury not otherwise appropriated, the amounts determined by the Director to be necessary to carry out this paragraph.

(d) Notwithstanding any other provision of this section, no contribution may be made under

this section for any year to the extent that such contribution, when added to prior contributions for such year, exceeds any limitation under section 415 of the Internal Revenue Code of 1986. However, no contribution made under subsection (c)(3) shall be subject to, or taken into account, for purposes of the preceding sentence.

(e) The sums required to be contributed to the Thrift Savings Fund by an employing agency under subsection (c) for the benefit of an employee or Member shall be paid from the appropriation or fund available to such agency for payment of salaries of the employee's or Member's office or establishment. When an employee or Member in the legislative branch is paid by the Clerk of the House of Representatives, the Clerk may pay from the contingent fund of the House of Representatives the contribution that otherwise would be contributed from the appropriation or fund used to pay the employee or Member.

(f) Amounts contributed by an employee or Member under subsection (a) and amounts contributed with respect to such employee or Member under subsection (c) shall be deposited in the Thrift Savings Fund to the credit of that employee's or Member's account in accordance with such procedures as the Comptroller General of the United States may, in consultation with the Executive Director, prescribe in regulations.

(g)(1) Except as otherwise provided in this subsection, all contributions made under this section shall be fully nonforfeitable when made.

(2) Contributions made for the benefit of an employee under subsection (c)(1) and all earnings attributable to such contributions shall be forfeited if the employee separates from Government employment before completing—

(A) 2 years of civilian service in the case of an employee who, at the time of separation, is serving in—

(i) a position in the Senior Executive Service as a noncareer appointee (as defined in section 3132(a)(7) of this title);

(ii) a position listed in section 5312, 5313, 5314, 5315, or 5316 of this title or a position placed in level IV or V of the Executive Schedule under section 5317 of this title; or

(iii) a position in the Executive branch which is excepted from the competitive service by the Office by reason of the confidential and policy-determining character of the position; or

(B) 3 years of civilian service in the case of an employee who is not serving in a position described in subparagraph (A) at the time of separation.

(3) Contributions made for the benefit of a Member or Congressional employee under subsection (c)(1) and all earnings attributable to such contributions shall be forfeited if the Member or Congressional employee separates from Government employment before completing 2 years of civilian service.

(4) Nothing in paragraph (2) or (3) shall cause the forfeiture of any contributions made for the benefit of an employee, Member, or Congressional employee under subsection (c)(1), or any earnings attributable thereto, if such employee, Member, or Congressional employee is not separated from Government employment as of date of death.

(h) No transfers or contributions may be made to the Thrift Savings Fund except as provided in this chapter or section 8351 of this title.

(i)(1) This subsection applies to any employee—

(A) to whom section 8432b applies; and

(B) who, during the period of such employee's absence from civilian service (as referred to in section 8432b(b)(2)(B))—

(i) is eligible to make an election described in subsection (b)(1); or

(ii) would be so eligible but for having either elected to terminate individual contributions to the Thrift Savings Fund within 2 months before commencing military service or separated in order to perform military service.

(2) The Executive Director shall prescribe regulations to ensure that any employee to whom this subsection applies shall, within a reasonable time after being restored or reemployed (in the manner described in section 8432b(a)(2)), be afforded the opportunity to make, for purposes of this section, any election which would be allowable during a period described in subsection (b)(1)(A).

(Added Pub. L. 99–335, title I, §101(a), June 6, 1986, 100 Stat. 541; amended Pub. L. 99–509, title VI, §6001(a)(1), (2), Oct. 21, 1986, 100 Stat. 1929, 1930; Pub. L. 100–20, §1(b), Apr. 7, 1987, 101 Stat. 265; Pub. L. 100–238, title I, §§114, 115, 121, Jan. 8, 1988, 101 Stat. 1751, 1752; Pub. L. 103–353, §§4(c), 5(e)(3), Oct. 13, 1994, 108 Stat. 3172, 3174.)

REFERENCES IN TEXT

Section 301 of the Federal Employees' Retirement System Act of 1986 [Pub. L. 99–335], referred to in subsec. (b)(3), is set out as a note under section 8331 of this title.

Section 204 of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983 [Pub. L. 98–168], referred to in subsec. (c)(3)(B)(iii), is set out as a note under section 8331 of this title.

Section 415 of the Internal Revenue Code of 1986, referred to in subsec. (d), is classified to section 415 of Title 26, Internal Revenue Code.

AMENDMENTS

1994—Subsec. (d). Pub. L. 103–353, §5(e)(3), substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

Subsec. (i). Pub. L. 103–353, §4(c), added subsec. (i).

1988—Subsec. (c)(1)(A). Pub. L. 100–238, §121(a), substituted ''At the time prescribed by the Executive Director, but no later than 12 days after the end of'' for ''At the end of'' and ''within such time as the Executive Director may prescribe with respect to succeeding pay periods (but no later than 12 days after the end of each such pay period)'' for ''at the end of each succeeding pay period''.

Subsec. (c)(2)(A). Pub. L. 100–238, §121(b), substituted ''within such time as the Executive Director may prescribe, but no later than 12 days after the end of each such pay period'' for ''at the end of such pay period''.

Subsec. (d). Pub. L. 100–238, §114, inserted at end ''However, no contribution made under subsection (c)(3) shall be subject to, or taken into account, for purposes of the preceding sentence.''

Subsec. (g)(1). Pub. L. 100–238, §115(1), substituted ''Except as otherwise provided in this subsection'' for ''Except as provided in paragraphs (2) and (3)''.

Subsec. (g)(4). Pub. L. 100–238, §115(2), added par. (4).

1987—Subsec. (b)(4)(A). Pub. L. 100–20 substituted ''Notwithstanding paragraph (2)(A), an employee or Member who is an employee or Member on January 1, 1987, and continues as an employee or Member without a break in service through April 1, 1987, may make the first election for the purpose of subsection (a) during the election period prescribed for such purpose by the Executive Director'' for ''Notwithstanding paragraph (2)(A), an employee or Member who is an employee or Member on January 1, 1987, continues as an employee or Member without a break in service through April 1, 1987, and has creditable service described in section 8411(b)(2) of this title may make the first election for the purpose of subsection (a) during the election period prescribed for such purpose by the Executive Director''.

1986—Subsec. (b)(4). Pub. L. 99–509, §6001(a)(1), designated existing provisions as subpar. (A), inserted ''continues as an employee or Member without a break in service through April 1, 1987,'' substituted ''April 1, 1987'' for ''January 1, 1987'', substituted ''the date on which the employee or Member makes that election'' for ''the last day of that election period'', and added subpar. (B).

Subsec. (c)(1). Pub. L. 99–509, §6001(a)(2)(A), designated existing provisions as subpar. (A) and added subpars. (B) and (C).

Subsec. (c)(2)(C). Pub. L. 99–509, §6001(a)(2)(B), added subpar. (C).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 4(c) of Pub. L. 103–353 effective Oct. 13, 1994, and applicable to any employee whose release from military service, discharge from hospitalization, or other similar event making the individual eligible to seek restoration or reemployment under chapter 43 of Title 38, Veterans' Benefits, occurs on or after Aug. 2, 1990, with special rules for applying amendment to employees restored or reemployed before effective date, see section 4(e), (f) of Pub. L. 103–353, set out as an Effective Date note under section 8432b of this title.

Amendment by section 5(e)(3) of Pub. L. 103–353 effective with respect to reemployments initiated on or after the first day after the 60-day period beginning Oct. 13, 1994, with transition rules, see section 8 of Pub. L. 103–353, set out as a note under section 4301 of Title 38.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 6001(f) of Pub. L. 99–509 provided that: ''This section [amending this section and section 8472 of this title, enacting provisions set out as notes under this section, and amending provisions set out as a note under section 8351 of this title], other than subsection (d) [set out as a note below], and the amendments made by this section shall take effect on January 1, 1987.''

TRANSFER OF FUNCTIONS

Certain functions of Clerk of House of Representatives transferred to Director of Non-legislative and Financial Services by section 7 of House Resolution No. 423, One Hundred Second Congress, Apr. 9, 1992. Director of Non-legislative and Financial Services replaced by Chief Administrative Officer of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

ELIGIBILITY OF CERTAIN INDIVIDUALS TO PARTICIPATE IN THRIFT SAVINGS PLAN

Section 125 of Pub. L. 100–238 provided that:

''(a) DEFINITIONS.—For purposes of this section—

''(1) the term 'Executive Director' means the Executive Director under section 8474 of title 5, United States Code; and

''(2) the term 'Thrift Savings Plan' refers to the program under subchapter III of chapter 84 of title 5, United States Code.

''(b) REGULATIONS.—

''(1) IN GENERAL.—The Executive Director shall prescribe regulations relating to participation in the Thrift Savings Plan by an individual described in subsection (c).

''(2) SPECIFIC MATTERS TO BE INCLUDED.—Under the regulations—

''(A) in computing a percentage of basic pay to determine an amount to be contributed to the Thrift Savings Fund, the rate of basic pay to be used shall be the same as that used in computing any amount which the individual involved is otherwise required, as a condition for participating in the Civil Service Retirement System or the Federal Employees' Retirement System (as the case may be), to contribute to the Civil Service Retirement and Disability Fund; and

''(B) an employing authority which would not otherwise make contributions to the Thrift Savings Fund shall be allowed, with respect to any individual under subsection (c) who is serving under such authority, and at the sole discretion of such authority, to make any contributions on behalf of such individual which would be permitted or required under the provisions of section 8432(c) of title 5, United States Code, if such authority were the individual's employing agency under such provisions.

''(c) APPLICABILITY.—This section applies with respect to—

''(1) any individual participating in the Civil Service Retirement System or the Federal Employees' Retirement System as—

''(A) an individual who has entered on approved leave without pay to serve as a full-time officer or employee of an organization composed primarily of employees (as defined by section 8331(1) or 8401(11) of title 5, United States Code);

''(B) an individual assigned from a Federal agency to a State or local government under subchapter VI of chapter 33 of title 5, United States Code; or

''(C) an individual appointed or otherwise assigned to one of the cooperative extension services, as defined by section 1404(5) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3103(5)); and

''(2) any individual who is participating in the Civil Service Retirement System as a result of a provision of law described in section 8347(*o*).

''(d) EFFECTIVE DATE.—

''(1) IN GENERAL.—Except as provided in paragraph (2), the regulations prescribed under this section shall become effective in accordance with the provisions of such regulations.

''(2) EXCEPTION.—The regulations prescribed under this section shall, with respect to individuals under subsection (c)(1)(C), be effective as of January 1, 1987.''

CONTRIBUTIONS TO THRIFT SAVINGS FUND

Section 6001(a)(3) of Pub. L. 99–509 directed that contributions made to Thrift Savings Fund under 5 U.S.C. 8432(c)(1)(B), (C) and (3) be made as soon as practicable during the 15-day period which began on Apr. 1, 1987.

INAPPLICABILITY OF LIMITATION ON NUMBER OF ELECTIONS WITHIN A SIX-MONTH PERIOD

Section 6001(c) of Pub. L. 99–509 provided that the requirement that contributions be made for a 6-month period after an election, as provided in 5 U.S.C. 8432(a), did not apply to contributions made pursuant to an election made during the period provided in 5 U.S.C. 8432(b)(4) or 206(b) of the Federal Employees' Retirement System Act of 1986; that the first election period prescribed under 5 U.S.C. 8432(b)(1) commence on July 1, 1987; and that each employee or Member who made such an election could make an election under 5 U.S.C. 8432(b)(1) during the election period that began on July 1, 1987.

REGULATIONS

Section 6001(d) of Pub. L. 99–509 provided that: ''The Executive Director of the Federal Retirement Thrift

Investment Board may prescribe regulations to carry out subsections (a), (b), and (c) [amending this section, enacting provisions set out as notes under this section, and amending provisions set out as a note under section 8351 of this title] and the amendments made by subsections (a) and (b).''

PLAN FOR DELAYED CONTRIBUTIONS TO THRIFT SAVINGS FUND

Section 312 of Pub. L. 99–335 directed Executive Director of Federal Retirement Thrift Investment Board to transmit to Congress, not later than Jan. 1, 1988, a plan to afford Federal employees and Members of Congress who make less than maximum amount of authorized contributions to Thrift Savings Fund in any period an opportunity to contribute to such Fund, in a later period, the excess of such amount over the amount contributed during such period, with plan to include such recommendations for legislation as Executive Director considered appropriate.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8351, 8401, 8432a, 8432b, 8433, 8437, 8439, 8440a, 8440b, 8440c, 8440d, 8479 of this title; title 10 section 942; title 40 section 214d.

§ 8432a. Payment of lost earnings

(a)(1) The Executive Director shall prescribe regulations under which an employing agency shall be required to pay to the Thrift Savings Fund amounts representing lost earnings resulting from errors (including errors of omission) made by such agency in carrying out this subchapter, subject to paragraph (2).

(2) If the error involves an employing agency's failure to deduct from basic pay contributions (in whole or in part) on behalf of an individual in accordance with section 8432(a), the regulations shall not provide for the payment of any lost earnings which would be attributable to—

(A) the contributions that the agency failed to deduct from basic pay in accordance with section 8432(a); or

(B) any related contributions under section 8432(c)(2) that the employing agency is not required (by statute or otherwise) to make up.

(b) The regulations—

(1) shall include—

(A) procedures for computing lost earnings; and

(B) procedures under which amounts paid to the Thrift Savings Fund under this section shall be credited to appropriate accounts;

(2) may provide for exceptions from the requirements of this section to the extent that correction of an error is not administratively feasible;

(3) may require an employing agency to reimburse the Thrift Savings Fund for costs incurred by the Thrift Savings Fund in implementing corrections of employing agency errors under this section; and

(4) may include such other provisions as the Executive Director determines appropriate to carry out this section.

(c) Any amounts required to be paid by an employing agency under this section shall be paid from the appropriation or fund available to the employing agency for payment of salaries of the participant's office or establishment. If a participant in the legislative branch is paid by the Clerk of the House of Representatives, the Clerk may pay from the contingent fund of the House of Representatives the amount required to be paid to correct errors relating to the Thrift Savings Fund that otherwise would be paid from the appropriation or fund used to pay the participant.

(Added Pub. L. 101–335, § 2(a)(1), July 17, 1990, 104 Stat. 319.)

EFFECTIVE DATE

Section 2(b) of Pub. L. 101–335 provided that: ''The amendments made by this section [enacting this section] shall apply with respect to lost earnings attributable to errors made before, on, or after the date of enactment of this Act [July 17, 1990].''

TRANSFER OF FUNCTIONS

Certain functions of Clerk of House of Representatives transferred to Director of Non-legislative and Financial Services by section 7 of House Resolution No. 423, One Hundred Second Congress, Apr. 9, 1992. Director of Non-legislative and Financial Services replaced by Chief Administrative Officer of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

§ 8432b. Contributions of persons who perform military service

(a) This section applies to any employee who—

(1) separates or enters leave-without-pay status in order to perform military service; and

(2) is subsequently restored to or reemployed in a position which is subject to this chapter, pursuant to chapter 43 of title 38.

(b)(1) Each employee to whom this section applies may contribute to the Thrift Savings Fund, in accordance with this subsection, an amount not to exceed the amount described in paragraph (2).

(2) The maximum amount which an employee may contribute under this subsection is equal to—

(A) the contributions under section 8432(a) which would have been made, over the period beginning on date of separation or commencement of leave-without-pay status (as applicable) and ending on the day before the date of restoration or reemployment (as applicable); reduced by

(B) any contributions under section 8432(a) actually made by such employee over the period described in subparagraph (A).

(3) Contributions under this subsection—

(A) shall be made at the same time and in the same manner as would any contributions under section 8432(a);

(B) shall be made over the period of time specified by the employee under paragraph (4)(B); and

(C) shall be in addition to any contributions then actually being made under section 8432(a).

(4) The Executive Director shall prescribe the time, form, and manner in which an employee may specify—

(A) the total amount such employee wishes to contribute under this subsection with respect to any particular period referred to in paragraph (2)(B); and

(B) the period of time over which the employee wishes to make contributions under this subsection.

The employing agency may place a maximum limit on the period of time referred to in subparagraph (B), which cannot be shorter than two times the period referred to in paragraph (2)(B) and not longer than four times such period.

(c) If an employee makes contributions under subsection (b), the employing agency shall make contributions to the Thrift Savings Fund on such employee's behalf—

(1) in the same manner as would be required under section 8432(c)(2) if the employee contributions were being made under section 8432(a); and

(2) disregarding any contributions then actually being made under section 8432(a) and any agency contributions relating thereto.

(d) An employee to whom this section applies is entitled to have contributed to the Thrift Savings Fund on such employee's behalf an amount equal to—

(1) 1 percent of such employee's basic pay (as determined under subsection (e)) for the period referred to in subsection (b)(2)(B); reduced by

(2) any contributions actually made on such employee's behalf under section 8432(c)(1) with respect to the period referred to in subsection (b)(2)(B).

(e) For purposes of any computation under this section, an employee shall, with respect to the period referred to in subsection (b)(2)(B), be considered to have been paid at the rate which would have been payable over such period had such employee remained continuously employed in the position which such employee last held before separating or entering leave-without-pay status to perform military service.

(f)(1) The employing agency may be required to pay lost earnings on contributions made pursuant to subsections (c) and (d). Such earnings, if required, shall be calculated retroactively to the date the contribution would have been made had the employee not separated or entered leave without pay status to perform military service.

(2) Procedures for calculating and crediting the earnings payable pursuant to paragraph (1) shall be prescribed by the Executive Director.

(g) Amounts paid under subsection (c), (d), or (f) shall be paid—

(1) by the agency to which the employee is restored or in which such employee is reemployed;

(2) from the same source as would be the case under section 8432(e) with respect to sums required under section 8432(c); and

(3) within the time prescribed by the Executive Director.

(h)(1) For purposes of section 8432(g), in the case of an employee to whom this section applies—

(A) a separation from civilian service in order to perform the military service on which the employee's restoration or reemployment rights are based shall be disregarded; and

(B) such employee shall be credited with a period of civilian service equal to the period referred to in subsection (b)(2)(B).

(2)(A) An employee to whom this section applies may elect, for purposes of section 8433(d), or paragraph (1) or (2) of section 8433(h), as the case may be, to have such employee's separation (described in subsection (a)(1)) treated as if it had never occurred.

(B) An election under this paragraph shall be made within such period of time after restoration or reemployment (as the case may be) and otherwise in such manner as the Executive Director prescribes.

(i) The Executive Director shall prescribe regulations to carry out this section.

(Added Pub. L. 103–353, § 4(a)(1), Oct. 13, 1994, 108 Stat. 3170.)

EFFECTIVE DATE

Section 4(e), (f) of Pub. L. 103–353 provided that:

''(e) EFFECTIVE DATE; APPLICABILITY.—This section [enacting this section and amending sections 8351, 8432, and 8433 of this title] and the amendments made by this section—

''(1) shall take effect on the date of enactment of this Act [Oct. 13, 1994]; and

''(2) shall apply to any employee whose release from military service, discharge from hospitalization, or other similar event making the individual eligible to seek restoration or reemployment under chapter 43 of title 38, United States Code, occurs on or after August 2, 1990.

''(f) RULES FOR APPLYING AMENDMENTS TO EMPLOYEES RESTORED OR REEMPLOYED BEFORE EFFECTIVE DATE.—In the case of any employee (described in subsection (e)(2)) who is reemployed or restored (in the circumstances described in section 8432b(a) of title 5, United States Code, as amended by this section) before the date of enactment of this Act [Oct. 13, 1994], the amendments made by this section [enacting this section and amending sections 8351, 8432, and 8433 of this title] shall apply to such employee, in accordance with their terms, subject to the following:

''(1) The employee shall be deemed not to have been reemployed or restored until—

''(A) the date of enactment of this Act, or

''(B) the first day following such employee's reemployment or restoration on which such employee is or was eligible to make an election relating to contributions to the Thrift Savings Fund,

whichever occurs or occurred first.

''(2) If the employee changed agencies during the period between the date of actual reemployment or restoration and the date of enactment of this Act, the employing agency as of such date of enactment shall be considered the reemploying or restoring agency.

''(3)(A) For purposes of any computation under section 8432b of such title, pay shall be determined in accordance with subsection (e) of such section, except that, with respect to the period described in subparagraph (B), actual pay attributable to such period shall be used.

''(B) The period described in this subparagraph is the period beginning on the first day of the first applicable pay period beginning on or after the date of the employee's actual reemployment or restoration and ending on the day before the date determined under paragraph (1).

''(4) Deem section 8432b(b)(2)(A) of such title to be amended by striking 'ending on the day before the date of restoration or reemployment (as applicable)' and inserting 'ending on the date determined under section 4(f)(1) of the Uniformed Services Employment and Reemployment Rights Act of 1994'.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8351, 8432, 8433 of this title; title 38 section 4318.

§ 8433. Benefits and election of benefits

(a) An employee or Member who separates from Government employment is entitled to the amount of the balance in the employee's or Member's account (except for the portion of such amount forfeited under section 8432(g) of this title, if any) as provided in this section.

(b) Subject to section 8435 of this title, any employee or Member who separates from Government employment is entitled and may elect—

(1) to receive an immediate annuity from the Thrift Savings Fund;

(2) to defer the commencement of the payment of an annuity from the Thrift Savings Fund until such date as the employee or Member specifies, but not later than April 1 of the year following the year in which the employee or Member becomes 70½ years of age;

(3) to withdraw the amount of the balance in the employee's or Member's account in the Thrift Savings Fund in one or more substantially equal payments to be made not less frequently than annually and to commence before April 1 of the year following the year in which the employee or Member becomes 70½ years of age; or

(4) to transfer the amount of the balance in the employee's or Member's account to an eligible retirement plan as provided in subsection (c).

(c)(1) The Executive Director shall make each transfer elected under subsection (b)(4) directly to an eligible retirement plan or plans (as defined in section 402(c)(8) of the Internal Revenue Code of 1986) identified by the employee, Member, former employee, or former Member for whom the transfer is made.

(2) A transfer may not be made for an employee, Member, former employee, or former Member under paragraph (1) until the Executive Director receives from that individual the information required by the Executive Director specifically to identify the eligible retirement plan or plans to which the transfer is to be made.

(d)(1) Subject to paragraph (3)(A) and subsections (a) and (c) of section 8435 of this title, an employee or Member may change an election previously made under this subchapter.

(2) Subject to paragraph (3)(B) and section 8435(c) of this title, a former employee or Member who has made an election pursuant to subsection (b)(2) may modify the date specified in such election or in a previous modification under this paragraph.

(3)(A) A former employee or Member may not change an election under this section on or after the date on which a payment is made in accordance with such election or, in the case of an election to receive an annuity, the date on which an annuity contract is purchased to provide for the annuity elected by the former employee or Member.

(B) A modification of a date may not be made under paragraph (2) on or after the date on which an annuity contract is purchased to provide for the annuity involved, and may not specify a date for the commencement of an annuity earlier than 90 days after the date on which the modification is submitted to the Executive Director (or such period shorter than 90 days as the Executive Director may by regulation prescribe).

(e) If an employee or Member (or former employee or Member) dies without having made an election under this section or after having elected an annuity under this section but before making an election under section 8434 of this title, an amount equal to the value of that individual's account (as of death) shall, subject to any decree, order, or agreement referred to in section 8435(c)(2) of this title be paid in a manner consistent with section 8424(d) of this title.

(f)(1) Notwithstanding subsection (b), if an employee or Member separates from Government employment, and such employee's or Member's nonforfeitable account balance is $3,500 or less, the Executive Director shall pay the nonforfeitable account balance to the participant in a single payment unless the employee or Member elects, at such time and otherwise in such manner as the Executive Director prescribes, one of the options available under subsection (b), or unless an election under section 8432b(h)(2) is made to treat such separation for purposes of this paragraph as if it had never occurred.

(2) Unless otherwise elected under this section, and subject to paragraph (1), benefits under this subchapter shall be paid as an annuity commencing for an employee, Member, former employee, or former Member on February 1 of the year following the latest of the year in which—

(A) the employee, Member, former employee, or former Member becomes 65 years of age;

(B) occurs the tenth anniversary of the year in which the employee, Member, former employee, or former Member became subject to this subchapter; or

(C) the employee, Member, former employee, or former Member separates from Government employment.

(g)(1) At any time after December 31, 1987, and before separation, an employee or Member may apply to the Board for permission to borrow from the employee's or Member's account an amount not exceeding the value of that portion of such account which is attributable to contributions made by the employee or Member under section 8432(a) of this title.

(2) An application under this subsection may be approved only for—

(A) the purchase of a primary residence;

(B) educational expenses;

(C) medical expenses; or

(D) financial hardship.

(3) Loans under this subsection shall be available to all employees and Members on a reasonably equivalent basis, and shall be subject to such other conditions as the Board may by regulation prescribe. The restrictions of section 8477(c)(1) of this title shall not apply to loans made under this subsection.

(4) A loan may not be made under this subsection to the extent that the loan would be treated as a taxable distribution under section 72(p) of the Internal Revenue Code of 1986.

(5) A loan may not be made under this subsection unless the requirements of section 8435(e) of this title are satisfied.

(Added Pub. L. 99–335, title I, §101(a), June 6, 1986, 100 Stat. 544; amended Pub. L. 100–238, title

I, § 132, Jan. 8, 1988, 101 Stat. 1760; Pub. L. 101–335, §§ 5(a), 6(a)(2), July 17, 1990, 104 Stat. 321, 322; Pub. L. 102–484, div. D, title XLIV, § 4437(a), Oct. 23, 1992, 106 Stat. 2724; Pub. L. 103–226, § 9(b), (i)(3)–(7), Mar. 30, 1994, 108 Stat. 119, 121, 122; Pub. L. 103–353, §§ 4(b), 5(e)(4), Oct. 13, 1994, 108 Stat. 3172, 3174.)

REFERENCES IN TEXT

Sections 72(p) and 402(c)(8) of the Internal Revenue Code of 1986, referred to in subsecs. (c)(1) and (g)(4), are classified to sections 72(p) and 402(a)(5)(E), respectively, of Title 26, Internal Revenue Code.

AMENDMENTS

1994—Subsec. (b). Pub. L. 103–226, § 9(b)(1), amended introductory provisions generally, substituting ''Subject to section 8435 of this title, any employee or Member who separates from Government employment is entitled and may elect—'' for ''Subject to section 8435 of this title, any employee or Member who separates from Government employment entitled to an immediate annuity under subchapter II of this chapter, any employee or Member who separates from Government employment entitled to benefits under subchapter I of chapter 81 of this title, any employee who separates from Government employment pursuant to regulations under section 3502(a) of this title or procedures under section 3595(a) of this title in a reduction in force, and any employee or Member who is entitled to receive disability benefits under subchapter V of this chapter is entitled and may elect—''.

Subsec. (b)(4). Pub. L. 103–226, § 9(i)(3), substituted ''subsection (c)'' for ''subsection (e)''.

Subsec. (c). Pub. L. 103–226, § 9(b)(2), redesignated subsec. (e) as (c) and struck out former subsec. (c) which related to permissible elections by employees separating from Government who are entitled to a deferred annuity.

Subsec. (c)(1). Pub. L. 103–226, § 9(b)(3), substituted ''directly to an eligible retirement plan or plans (as defined in section 402(c)(8) of the Internal Revenue Code of 1986)'' for ''or (c)(4) or required under subsection (d) directly to an eligible retirement plan or plans (as defined in section 402(a)(5)(E) of the Internal Revenue Code of 1954)''.

Subsec. (d). Pub. L. 103–353, § 4(b)(1), inserted before period at end '', unless an election under section 8432b(h)(2) is made to treat such separation for purposes of this subsection as if it had never occurred''.

Pub. L. 103–226, § 9(b)(2), redesignated subsec. (f) as (d) and struck out former subsec. (d) which read as follows: ''Subject to section 8435 of this title, any employee or Member who separates from Government employment before becoming entitled to a deferred annuity under subchapter II of this chapter shall transfer the amount of the balance in the employee's or Member's account to an eligible retirement plan as provided in subsection (e), unless an election under section 8432b(h)(2) is made to treat such separation for purposes of this subsection as if it had never occurred.''

Subsec. (d)(1). Pub. L. 103–226, § 9(i)(4), substituted ''(c) of section 8435'' for ''(d) of section 8435''.

Subsec. (d)(2). Pub. L. 103–226, § 9(b)(4), (i)(5), substituted ''section 8435(c)'' for ''section 8435(d)'' and struck out ''or (c)(2)'' after ''subsection (b)(2)''.

Subsec. (e). Pub. L. 103–226, § 9(b)(2), (i)(6), redesignated subsec. (g) as (e) and substituted ''section 8435(c)(2)'' for ''section 8435(d)(2)''. Former subsec. (e) redesignated (c).

Subsec. (f). Pub. L. 103–226, § 9(b)(2), redesignated subsec. (h) as (f). Former subsec. (f) redesignated (d).

Subsec. (f)(1). Pub. L. 103–226, § 9(b)(5)(A), (B), redesignated par. (2) as (1), substituted ''Notwithstanding subsection (b), if an employee or Member separates from Government employment, and such employee's or Member's'' for ''Notwithstanding subsections (b) and (c), if an employee or Member separates from Government employment under circumstances making such employee or Member eligible to make an election under either of those subsections, and such employee's or Member's'', struck out ''or (c), as applicable'' before period at end, and struck out former par. (1) which read as follows: ''Notwithstanding subsection (d), if an employee or Member separates from Government employment before becoming entitled to a deferred annuity under subchapter II, and such employee's or Member's nonforfeitable account balance is $3,500 or less, the Executive Director shall pay the nonforfeitable account balance to the participant in a single payment unless the employee or Member elects, at such time and otherwise in such manner as the Executive Director prescribes, to have the nonforfeitable account balance transferred to an eligible retirement plan as provided in subsection (e), or unless an election under section 8432b(h)(2) is made to treat such separation for purposes of this paragraph as if it had never occurred.''

Subsec. (f)(2). Pub. L. 103–226, § 9(b)(5)(A), (C), redesignated par. (3) as (2) and substituted ''paragraph (1)'' for ''paragraphs (1) and (2)'' before '', benefits under this chapter''. Former par. (2) redesignated (1).

Subsec. (f)(3). Pub. L. 103–226, § 9(b)(5)(A), redesignated par. (3) as (2).

Subsec. (g). Pub. L. 103–226, § 9(b)(2), redesignated subsec. (i) as (g). Former subsec. (g) redesignated (e).

Subsec. (g)(5). Pub. L. 103–226, § 9(i)(7), substituted ''section 8435(e)'' for ''section 8435(f)''.

Subsec. (h). Pub. L. 103–226, § 9(b)(2), redesignated subsec. (h) as (f).

Subsec. (h)(1), (2). Pub. L. 103–353, § 4(b)(2), inserted before period at end '', or unless an election under section 8432b(h)(2) is made to treat such separation for purposes of this paragraph as if it had never occurred''.

Subsec. (i). Pub. L. 103–226, § 9(b)(2), redesignated subsec. (i) as (g).

Subsec. (i)(4). Pub. L. 103–353, § 5(e)(4), substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

1992—Subsec. (b). Pub. L. 102–484 inserted ''any employee who separates from Government employment pursuant to regulations under section 3502(a) of this title or procedures under section 3595(a) of this title in a reduction in force,'' after ''chapter 81 of this title,''.

1990—Subsec. (f)(3)(A). Pub. L. 101–335, § 5(a)(1), substituted ''an annuity contract is purchased to provide for the annuity elected by the former employee or Member'' for ''an annuity elected by the former employee or Member commences''.

Subsec. (f)(3)(B). Pub. L. 101–335, § 5(a)(2), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''A modification of a date may not be made under paragraph (2) on or after such date and may not specify a date for the commencement of an annuity earlier than 1 month after the date on which the modification is submitted to the Executive Director.''

Subsec. (h). Pub. L. 101–335, § 6(a)(2), amended subsec. (h) generally. Prior to amendment, subsec. (h) read as follows: ''Unless otherwise elected under this section, benefits under this subchapter shall be paid as an annuity commencing for an employee, Member, former employee, or former Member on February 1 of the year following the latest of the year in which—

''(1) the employee, Member, former employee, or former Member becomes 65 years of age;

''(2) occurs the tenth anniversary of the year in which the employee, Member, former employee, or former Member became subject to this subchapter; or

''(3) the employee, Member, former employee, or former Member separates from Government employment.''

1988—Subsec. (i)(3). Pub. L. 100–238 amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''Loans under this subsection shall be subject to such conditions as the Board may prescribe consistent with section 408(b)(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1108(b)(1)). The conditions shall be included in regulations issued by the Executive Director.''

EFFECTIVE DATE OF 1994 AMENDMENTS

Amendment by section 4(b) of Pub. L. 103–353 effective Oct. 13, 1994, and applicable to any employee whose release from military service, discharge from hospitalization, or other similar event making the individual eligible to seek restoration or reemployment under chapter 43 of Title 38, Veterans' Benefits, occurs on or after Aug. 2, 1990, with special rules for applying amendment to employees restored or reemployed before effective date, see section 4(e), (f) of Pub. L. 103–353, set out as an Effective Date note under section 8432b of this title.

Amendment by section 5(e)(4) of Pub. L. 103–353 effective with respect to reemployments initiated on or after the first day after the 60-day period beginning Oct. 13, 1994, with transition rules, see section 8 of Pub. L. 103–353, set out as a note under section 4301 of Title 38.

Amendment by Pub. L. 103–226 effective 1 year after Mar. 30, 1994, or on such earlier date as the Executive Director of the Federal Retirement Thrift Investment Board shall provide in regulation, see section 9(j) of Pub. L. 103–226, set out as a note under section 8351 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–484 applicable with respect to separations occurring after Dec. 31, 1993, or such earlier date as Executive Director (appointed under section 8474 of this title) may by regulation prescribe, see section 4437(d) of Pub. L. 102–484, set out as a note under section 8351 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 5(d) of Pub. L. 101–335 provided that: ''The amendments made by this section [amending this section and sections 8434, and 8435 of this title] shall be effective as of April 1, 1987.''

Amendment by section 6(a)(2) of Pub. L. 101–335 effective as of second election period described in section 8432(b) of this title beginning after July 17, 1990, or such earlier date as Executive Director may by regulation prescribe, and applicable with respect to separations occurring before, on, or after that effective date, see section 6(c) of Pub. L. 101–335, set out as a note under section 8351 of this title.

REGULATIONS

Section 6(b)(4) of Pub. L. 101–335 provided that: ''The Executive Director (as appointed under section 8474(a) of title 5, United States Code) shall prescribe regulations under which the purposes of the amendments made by this section [amending this section and sections 8351, 8401, 8435, 8440a, and 8440b of this title] shall be carried out with respect to any individuals participating in the Thrift Savings Plan who would not otherwise be affected by this section.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8351, 8434, 8432b, 8435, 8436, 8437, 8440a, 8440b, 8440c, 8440d of this title; title 22 section 4071j; title 50 section 2154.

§ 8434. Annuities: methods of payment; election; purchase

(a)(1) The Board shall prescribe methods of payment of annuities under this subchapter.

(2) The methods of payment prescribed under paragraph (1) shall include, but not be limited to—

(A) a method which provides for the payment of a monthly annuity only to an annuitant during the life of the annuitant;

(B) a method which provides for the payment of a monthly annuity to an annuitant for the joint lives of the annuitant and the spouse of the annuitant and an appropriate monthly annuity to the one of them who survives the other of them for the life of the survivor;

(C) a method described in subparagraph (A) which provides for automatic adjustments in the amount of the annuity payable so long as the amount of the annuity payable in any one year shall not be less than the amount payable in the previous year;

(D) a method described in subparagraph (B) which provides for automatic adjustments in the amount of the annuity payable so long as the amount of the annuity payable in any one year shall not be less than the amount payable in the previous year; and

(E) a method which provides for the payment of a monthly annuity—

(i) to the annuitant for the joint lives of the annuitant and an individual who is designated by the annuitant under regulations prescribed by the Executive Director and (I) is a former spouse of the annuitant, or (II) has an insurable interest in the annuitant; and

(ii) to the one of them who survives the other of them for the life of the survivor.

(b) Subject to section 8435(b) of this title, under such regulations as the Executive Director shall prescribe, an employee, Member, former employee, or former Member who elects under section 8433 of this title to receive an annuity under this subchapter shall elect, on or before the date on which an annuity contract is purchased to provide for that annuity, one of the methods of payment prescribed under subsection (a).

(c) Notwithstanding the elimination of a method of payment by the Board, an employee, Member, former employee, or former Member may elect the eliminated method if the elimination of such method becomes effective less than 5 years before the date on which that individual's annuity commences.

(d)(1) Not earlier than 90 days (or such shorter period as the Executive Director may by regulation prescribe) before an annuity is to commence under this subchapter, the Executive Director shall expend the balance in the annuitant's account to purchase an annuity contract from any entity which, in the normal course of its business, sells and provides annuities.

(2) The Executive Director shall assure, by contract entered into with each entity from which an annuity contract is purchased under paragraph (1), that the annuity shall be provided in accordance with the provisions of this subchapter and subchapter VII of this chapter.

(3) An annuity contract purchased under paragraph (1) shall include such terms and conditions as the Executive Director requires for the protection of the annuitant.

(4) The Executive Director shall require, from each entity from which an annuity contract is purchased under paragraph (1), a bond or proof of financial responsibility sufficient to protect the annuitant.

(e)(1) No tax, fee, or other monetary payment may be imposed or collected by any State, the District of Columbia, or the Commonwealth of Puerto Rico, or by any political subdivision or

other governmental authority thereof, on, or with respect to, any amount paid to purchase an annuity contract under this section.

(2) Paragraph (1) shall not be construed to exempt any company or other entity issuing an annuity contract under this section from the imposition, payment, or collection of a tax, fee, or other monetary payment on the net income or profit accruing to or realized by that entity from the sale of an annuity contract under this section if that tax, fee, or payment is applicable to a broad range of business activity.

(Added Pub. L. 99–335, title I, §101(a), June 6, 1986, 100 Stat. 546; amended Pub. L. 100–238, title I, §129, Jan. 8, 1988, 101 Stat. 1759; Pub. L. 101–335, §§4(a), 5(b), July 17, 1990, 104 Stat. 321; Pub. L. 103–226, §9(c), (i)(8), Mar. 30, 1994, 108 Stat. 120, 122.)

AMENDMENTS

1994—Subsec. (b). Pub. L. 103–226, §9(i)(8), substituted ''section 8435(b)'' for ''section 8435(c)''.

Subsec. (c). Pub. L. 103–226, §9(c), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''Notwithstanding an elimination of a method of payment by the Board—

''(1) an employee, Member, former employee, or former Member who is entitled under section 8412 of this title to an immediate annuity not reduced under section 8415(f) of this title may elect the eliminated method if the elimination of such method became effective less than 5 years before the date on which the annuity commences; and

''(2) any other employee, Member, former employee, or former Member may elect such method of payment for amounts contributed by or on behalf of the employee, Member, former employee, or former Member under section 8432 of this title before such effective date and for earnings attributable to such amounts.''

1990—Subsec. (b). Pub. L. 101–335, §5(b)(1), substituted ''an annuity contract is purchased to provide for that annuity,'' for ''the annuity commences,''.

Subsec. (d)(1). Pub. L. 101–335, §5(b)(2), substituted ''Not earlier than 90 days (or such shorter period as the Executive Director may by regulation prescribe) before an annuity'' for ''At the time an annuity''.

Subsec. (e). Pub. L. 101–335, §4(a), added subsec. (e).

1988—Subsec. (a)(2)(C), (D). Pub. L. 100–238 amended subpars. (C) and (D) generally. Prior to amendment, subpars. (C) and (D) read as follows:

''(C) a method described in subparagraph (A) which provides annual increases in the amount of the annuity payable;

''(D) a method described in subparagraph (B) which provides annual increases in the amount of the annuity payable; and''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–226 effective 1 year after Mar. 30, 1994, or on such earlier date as the Executive Director of the Federal Retirement Thrift Investment Board shall provide in regulation, see section 9(j) of Pub. L. 103–226, set out as a note under section 8351 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 4(b) of Pub. L. 101–335 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect 30 days after the date of enactment of this Act [July 17, 1990].''

Amendment by section 5(b) of Pub. L. 101–335 effective Apr. 1, 1987, see section 5(d) of Pub. L. 101–335, set out as a note under section 8433 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8433, 8435, 8436 of this title.

§ 8435. Protections for spouses and former spouses

(a)(1)(A) A married employee or Member (or former employee or Member) may make an election under subsection (b)(3) or (b)(4) of section 8433 of this title or change an election previously made under subsection (b)(1) or (b)(2) of such section only if the employee or Member (or former employee or Member) satisfies the requirements of subparagraph (B).

(B) An employee or Member (or former employee or Member) may make an election or change referred to in subparagraph (A) if the employee or Member and the employee's or Member's spouse (or the former employee or Member and the former employee's or Member's spouse) jointly waive, by written election, any right which the spouse may have to a survivor annuity with respect to such employee or Member (or former employee or Member) under section 8434 of this title or subsection (b).

(2) Paragraph (1) shall not apply to an election or change of election by an employee or Member (or former employee or Member) who establishes to the satisfaction of the Executive Director (at the time of the election or change and in accordance with regulations prescribed by the Executive Director)—

(A) that the spouse's whereabouts cannot be determined; or

(B) that, due to exceptional circumstances, requiring the spouse's waiver would otherwise be inappropriate.

(b)(1) Notwithstanding any election under subsection (b) of section 8434 of this title, the method described in subsection (a)(2)(B) of such section (or, if more than one form of such method is available, the form which the Board determines to be the one which provides for a surviving spouse a survivor annuity most closely approximating the annuity of a surviving spouse under section 8442 of this title) shall be deemed the applicable method under such subsection (b) in the case of an employee, Member, former employee, or former Member who is married on the date on which an annuity contract is purchased to provide for the employee's, Member's, former employee's, or former Member's annuity under this subchapter.

(2) Paragraph (1) shall not apply if—

(A) a joint waiver of such method is made, in writing, by the employee or Member and the spouse; or

(B) the employee or Member waives such method, in writing, after establishing to the satisfaction of the Executive Director that circumstances described under subsection (a)(2)(A) or (B) make the requirement of a joint waiver inappropriate.

(c)(1) An election, change of election, or modification of the commencement date of a deferred annuity shall not be effective under this subchapter to the extent that the election, change, modification, or transfer conflicts with any court decree, order, or agreement described in paragraph (2).

(2) A court decree, order, or agreement referred to in paragraph (1) is, with respect to an employee or Member (or former employee or Member), a court decree of divorce, annulment,

or legal separation issued in the case of such employee or Member (or former employee or Member) and any former spouse of the employee or Member (or former employee or Member) or any court order or court-approved property settlement agreement incident to such decree if—

(A) the decree, order, or agreement expressly relates to any portion of the balance in the employee's or Member's (or former employee's or Member's) account; and

(B) notice of the decree, order, or agreement was received by the Executive Director before—

(i) the date on which payment is made, or

(ii) in the case of an annuity, the date on which an annuity contract is purchased to provide for the annuity,

in accordance with the election, change, modification, or contribution referred to in paragraph (1).

(3) The Executive Director shall prescribe regulations under which this subsection shall be applied in any case in which the Executive Director receives two or more decrees, orders, or agreements referred to in paragraph (1).

(d)(1) Subject to paragraphs (2) through (7), a former spouse of a deceased employee or Member (or a deceased former employee or Member) who died after performing 18 or more months of service and a former spouse of a deceased former employee or Member who died entitled to an immediate or deferred annuity under subchapter II of this chapter is entitled to a survivor annuity under this subsection if and to the extent that—

(A) an election under section 8434(a)(2)(E) of this title, or

(B) any court decree, order, or agreement (described in subsection (c)(2), without regard to subparagraph (B) of such subsection) which relates to such deceased individual and such former spouse,

expressly provides for such survivor annuity.

(2) Paragraph (1) shall apply only to payments made by the Executive Director after the date on which the Executive Director receives written notice of the election, decree, order, or agreement, and such additional information and documentation as the Executive Director may require.

(3) The amount of the survivor annuity payable from the Thrift Savings Fund to a former spouse of a deceased employee, Member, former employee, or former Member under this section may not exceed the excess, if any, of—

(A) the amount of the survivor annuity determined for a surviving spouse of the deceased employee, Member, former employee, or former Member under the method described in subsection (b)(1), over

(B) the total amount of all other survivor annuities payable under this subchapter to other former spouses of such deceased employee, Member, former employee, or former Member based on the order of precedence provided in paragraph (4).

(4) If more than one former spouse of a deceased employee, Member, former employee, or former Member is entitled to a survivor annuity pursuant to this subsection, the amount of each such survivor annuity shall be limited appropriately to carry out paragraph (3) in the order of precedence established for the entitlements by the chronological order of the dates on which elections are properly made pursuant to section 8434(a)(2)(E) of this title and the dates on which the court decrees, orders, or agreements applicable to the entitlement were issued, as the case may be.

(5) Subsections (c) and (d) of section 8445 of this title shall apply to an entitlement of a former spouse to a survivor annuity under this subsection.

(6) For the purposes of this section, a court decree, order, or agreement or an election referred to in subsection (a) of this section shall not be effective, in the case of a former spouse, to the extent that the election is inconsistent with any joint waiver previously executed with respect to such former spouse under subsection (a)(2) or (b)(2).

(7) Any payment under this subsection to any individual bars recovery by any other individual.

(e)(1)(A) A loan may be made to a married employee or Member under section 8433(g) of this title only if the employee's or Member's spouse consents to such loan in writing.

(B) A consent under subparagraph (A) shall be irrevocable with respect to the loan to which the consent relates.

(C) Subparagraph (A) shall not apply to a loan to an employee or Member who establishes to the satisfaction of the Executive Director (at the time the employee or Member applies for such loan and in accordance with regulations prescribed by the Executive Director)—

(i) that the spouse's whereabouts cannot be determined; or

(ii) that, due to exceptional circumstances, requiring the employee or Member to seek the spouse's consent would otherwise be inappropriate.

(2) An application for a loan under section 8433(g) of this title shall not be approved if approval would have the result described under subsection (c)(1).

(f) Waivers and notifications required by this section and waivers of the requirements for such waivers and notifications (as authorized by this section) may be made only in accordance with procedures prescribed by the Executive Director.

(g) Except with respect to the making of loans under section 8433(g), none of the provisions of this section requiring notification to, or the consent or waiver of, a spouse or former spouse of an employee, Member, former employee, or former Member shall apply in any case in which the nonforfeitable account balance of the employee, Member, former employee, or former Member is $3,500 or less.

(h) The protections provided by this section are in addition to the protections provided by section 8467 of this title.

(Added Pub. L. 99–335, title I, §101(a), June 6, 1986, 100 Stat. 547; amended Pub. L. 101–335, §§5(c), 6(a)(3), July 17, 1990, 104 Stat. 322, 323; Pub. L. 102–484, div. D, title XLIV, §4437(b), Oct. 23, 1992, 106 Stat. 2724; Pub. L. 103–226, §9(d), (i)(9)–(15), Mar. 30, 1994, 108 Stat. 120, 122.)

AMENDMENTS

1994—Subsec. (a)(1)(A). Pub. L. 103–226, §9(d)(1), substituted ''subsection (b)(3) or (b)(4) of section 8433 of this title or change an election previously made under subsection (b)(1) or (b)(2)'' for ''subsection (b)(3), (b)(4), (c)(3), or (c)(4) of section 8433 of this title or change an election previously made under subsection (b)(1), (b)(2), (c)(1), or (c)(2)''.

Subsec. (a)(1)(B). Pub. L. 103–226, §9(i)(9), substituted ''subsection (b)'' for ''subsection (c)''.

Subsec. (b). Pub. L. 103–226, §9(d)(4), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''Paragraph (1) shall not apply—

''(A) in the case of an employee or Member retiring under section 8412, 8413, 8414, or 8451 of this title, or who separates from Government employment pursuant to regulations under section 3502(a) of this title or procedures under section 3595(a) of this title in a reduction in force, if—

''(i) a joint waiver of such method is made, in writing, by the employee or Member and the spouse; or

''(ii) the employee or Member waives such method, in writing, after establishing to the satisfaction of the Executive Director that circumstances described in subsection (a)(2)(A) or (a)(2)(B) make the requirement of a joint waiver inappropriate; or

''(B) in the case of an employee or Member not covered by subparagraph (A), if the employee or Member waives such method after—

''(i) having provided notification to the spouse of intent to waive; or

''(ii) establishing to the satisfaction of the Executive Director that the whereabouts of such spouse cannot be determined.''

Pub. L. 103–226, §9(d)(2), redesignated subsec. (c) as (b) and struck out former subsec. (b) which read as follows: ''(b)(1) Except as provided in paragraph (2), a transfer may be made by an employee or Member (or former employee or Member) under section 8433(d) of this title only after the Executive Director notifies any current spouse and each former spouse of the employee or Member (or former employee or Member), if any, that the transfer is to be made.

''(2) Paragraph (1) may be waived with respect to a spouse or former spouse if the employee or Member (or former employee or Member) establishes to the satisfaction of the Executive Director that the whereabouts of such spouse or former spouse cannot be determined.''

Subsec. (c). Pub. L. 103–226, §9(d)(3), (5), redesignated subsec. (d) as (c) and, in par. (1), struck out ''and a transfer may not be made under section 8433(d) of this title'' after ''effective under this subchapter''. Former subsec. (c) redesignated (b).

Subsec. (d). Pub. L. 103–226, §9(d)(3), redesignated subsec. (e) as (d). Former subsec. (d) redesignated (c).

Subsec. (d)(1)(B). Pub. L. 103–226, §9(i)(10), substituted ''subsection (c)(2)'' for ''subsection (d)(2)''.

Subsec. (d)(3)(A). Pub. L. 103–226, §9(i)(11), substituted ''subsection (b)(1)'' for ''subsection (c)(1)''.

Subsec. (d)(6). Pub. L. 103–226, §9(i)(12), substituted ''or (b)(2)'' for ''or (c)(2)''.

Subsec. (e). Pub. L. 103–226, §9(d)(3), redesignated subsec. (f) as (e). Former subsec. (e) redesignated (d).

Subsec. (e)(1)(A). Pub. L. 103–226, §9(i)(13), substituted ''section 8433(g)'' for ''section 8433(i)''.

Subsec. (e)(2). Pub. L. 103–226, §9(i)(14), substituted ''section 8433(g) of this title shall not be approved if approval would have the result described under subsection (c)(1)'' for ''section 8433(i) of this title shall not be approved if approval would have the result described in subsection (d)(1)''.

Subsec. (f). Pub. L. 103–226, §9(d)(3), redesignated subsec. (g) as (f). Former subsec. (f) redesignated (e).

Subsec. (g). Pub. L. 103–226, §9(d)(3), (i)(15), redesignated subsec. (h) as (g) and substituted ''section 8433(g)'' for ''section 8433(i)''. Former subsec. (g) redesignated (f).

Subsecs. (h), (i). Pub. L. 103–226, §9(d)(3), redesignated subsec. (i) as (h). Former subsec. (h) redesignated (g).

1992—Subsec. (c)(2)(A). Pub. L. 102–484 inserted '', or who separates from Government employment pursuant to regulations under section 3502(a) of this title or procedures under section 3595(a) of this title in a reduction in force,'' after ''8451 of this title''.

1990—Subsec. (c)(1). Pub. L. 101–335, §5(c)(1), inserted ''an annuity contract is purchased to provide for'' after ''the date on which'' and struck out ''commences'' after ''former Member's annuity''.

Subsec. (d)(2)(B)(ii). Pub. L. 101–335, §5(c)(2), substituted ''an annuity contract is purchased to provide for the annuity'' for ''the annuity commences''.

Subsecs. (h), (i). Pub. L. 101–335, §6(a)(3), added subsec. (h) and redesignated former subsec. (h) as (i).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–226 effective 1 year after Mar. 30, 1994, or on such earlier date as the Executive Director of the Federal Retirement Thrift Investment Board shall provide in regulation, see section 9(j) of Pub. L. 103–226, set out as a note under section 8351 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–484 applicable with respect to separations occurring after Dec. 31, 1993, or such earlier date as Executive Director (appointed under section 8474 of this title) may by regulation prescribe, see section 4437(d) of Pub. L. 102–484, set out as a note under section 8351 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 5(c) of Pub. L. 101–335 effective Apr. 1, 1987, see section 5(d) of Pub. L. 101–335, set out as a note under section 8433 of this title.

Amendment by section 6(a)(3) of Pub. L. 101–335 effective as of second election period described in section 8432(b) of this title beginning after July 17, 1990, or such earlier date as Executive Director may by regulation prescribe, and applicable with respect to separations occurring before, on, or after that effective date, see section 6(c) of Pub. L. 101–335, set out as a note under section 8351 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8351, 8433, 8434, 8436 of this title.

§ 8436. Administrative provisions

(a) The Executive Director shall make or provide for payments and transfers in accordance with an election of an employee or Member under section 8433 or 8434(b) of this title or, if applicable, in accordance with section 8435 of this title.

(b) Any election, change of election, or modification of a deferred annuity commencement date made under this subchapter shall be in writing and shall be filed with the Executive Director in accordance with regulations prescribed by the Executive Director.

(Added Pub. L. 99–335, title I, §101(a), June 6, 1986, 100 Stat. 550.)

§ 8437. Thrift Savings Fund

(a) There is established in the Treasury of the United States a Thrift Savings Fund.

(b) The Thrift Savings Fund consists of the sum of all amounts contributed under section 8432 of this title and all amounts deposited under section 8479(b) of this title, increased by the total net earnings from investments of sums in the Thrift Savings Fund or reduced by the total net losses from investments of the Thrift

Savings Fund, and reduced by the total amount of payments made from the Thrift Savings Fund (including payments for administrative expenses).

(c) The sums in the Thrift Savings Fund are appropriated and shall remain available without fiscal year limitation—

(1) to invest under section 8438 of this title;

(2) to pay benefits or purchase annuity contracts under this subchapter;

(3) to pay the administrative expenses of the Federal Retirement Thrift Investment Management System prescribed in subchapter VII of this chapter;

(4) to make distributions for the purposes of section 8440(b) of this title;

(5) to make loans to employees and Members as authorized under section 8433(g) of this title; and

(6) to purchase insurance as provided in section 8479(b)(2) of this title.

(d) Administrative expenses incurred to carry out this subchapter and subchapter VII of this chapter shall be paid first out of any sums in the Thrift Savings Fund forfeited under section 8432(g) of this title and then out of net earnings in such Fund.

(e)(1) Subject to subsection (d) and paragraphs (2) and (3), sums in the Thrift Savings Fund credited to the account of an employee, Member, former employee, or former Member may not be used for, or diverted to, purposes other than for the exclusive benefit of the employee, Member, former employee, or former Member or his beneficiaries under this subchapter.

(2) Except as provided in paragraph (3), sums in the Thrift Savings Fund may not be assigned or alienated and are not subject to execution, levy, attachment, garnishment, or other legal process. For the purposes of this paragraph, a loan made from such Fund to an employee or Member shall not be considered to be an assignment or alienation.

(3) Moneys due or payable from the Thrift Savings Fund to any individual and, in the case of an individual who is an employee or Member (or former employee or Member), the balance in the account of the employee or Member (or former employee or Member) shall be subject to legal process for the enforcement of the individual's legal obligations to provide child support or make alimony payments as provided in section 459 of the Social Security Act (42 U.S.C. 659) or relating to the enforcement of a judgment for physically, sexually, or emotionally abusing a child as provided under section 8467(a). For the purposes of this paragraph, an amount contributed for the benefit of an individual under section 8432(c)(1) (including any earnings attributable thereto) shall not be considered part of the balance in such individual's account unless such amount is nonforfeitable, as determined under applicable provisions of section 8432(g).

(f) The sums in the Thrift Savings Fund shall not be appropriated for any purpose other than the purposes specified in this section and may not be used for any other purpose.

(g) All sums contributed to the Thrift Savings Fund by an employee or Member or by an employing agency for the benefit of such employee or Member and all net earnings in such Fund attributable to investment of such sums are held in such Fund in trust for such employee or Member.

(Added Pub. L. 99–335, title I, §101(a), June 6, 1986, 100 Stat. 550; amended Pub. L. 100–238, title I, §§116, 117(a), Jan. 8, 1988, 101 Stat. 1751; Pub. L. 103–226, §9(i)(16), Mar. 30, 1994, 108 Stat. 122; Pub. L. 103–358, §2(b)(4), Oct. 14, 1994, 108 Stat. 3421.)

AMENDMENTS

1994—Subsec. (c)(5). Pub. L. 103–226 substituted ''section 8433(g)'' for ''section 8433(i)''.

Subsec. (e)(3). Pub. L. 103–358 substituted ''or relating to the enforcement of a judgment for physically, sexually, or emotionally abusing a child as provided under section 8467(a).'' for period at end of first sentence.

1988—Subsec. (d). Pub. L. 100–238, §117(a)(1), struck out ''attributable to sums contributed to such Fund under section 8432(c) of this title'' after ''such Fund''.

Subsec. (e)(1). Pub. L. 100–238, §117(a)(2), inserted ''subsection (d) and'' after ''Subject to''.

Subsec. (e)(3). Pub. L. 100–238, §116, inserted at end ''For the purposes of this paragraph, an amount contributed for the benefit of an individual under section 8432(c)(1) (including any earnings attributable thereto) shall not be considered part of the balance in such individual's account unless such amount is nonforfeitable, as determined under applicable provisions of section 8432(g).''

EFFECTIVE DATE OF 1994 AMENDMENTS

Amendment by Pub. L. 103–358 effective Oct. 14, 1994, and applicable with respect to any decree, order, or other legal process, or notice of agreement received by Office of Personnel Management or Executive Director of Federal Retirement Thrift Investment Board on or after Oct. 14, 1994, see section 3 of Pub. L. 103–358, set out as a note under section 8345 of this title.

Amendment by Pub. L. 103–226 effective 1 year after Mar. 30, 1994, or on such earlier date as the Executive Director of the Federal Retirement Thrift Investment Board shall provide in regulation, see section 9(j) of Pub. L. 103–226, set out as a note under section 8351 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 117(b) of Pub. L. 100–238 provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on the first day of the first month beginning on or after the date of the enactment of this Act [Jan. 8, 1988].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8351, 8439, 8471 of this title.

§ 8438. Investment of Thrift Savings Fund

(a) For the purposes of this section—

(1) the term ''Common Stock Index Investment Fund'' means the Common Stock Index Investment Fund established under subsection (b)(1)(C);

(2) the term ''equity capital'' means common and preferred stock, surplus, undivided profits, contingency reserves, and other capital reserves;

(3) the term ''Fixed Income Investment Fund'' means the Fixed Income Investment Fund established under subsection (b)(1)(B);

(4) the term ''Government Securities Investment Fund'' means the Government Securities Investment Fund established under subsection (b)(1)(A);

(5) the term ''net worth'' means capital, paid-in and contributed surplus, unassigned

surplus, contingency reserves, group contingency reserves, and special reserves;

(6) the term ''plan'' means an employee benefit plan, as defined in section 3(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(3));

(7) the term ''qualified professional asset manager'' means—

(A) a bank, as defined in section 202(a)(2) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(2)) which—

(i) has the power to manage, acquire, or dispose of assets of a plan; and

(ii) has, as of the last day of its latest fiscal year ending before the date of a determination for the purpose of this clause, equity capital in excess of $1,000,000;

(B) a savings and loan association, the accounts of which are insured by the Federal Deposit Insurance Corporation, which—

(i) has applied for and been granted trust powers to manage, acquire, or dispose of assets of a plan by a State or Government authority having supervision over savings and loan associations; and

(ii) has, as of the last day of its latest fiscal year ending before the date of a determination for the purpose of this clause, equity capital or net worth in excess of $1,000,000;

(C) an insurance company which—

(i) is qualified under the laws of more than one State to manage, acquire, or dispose of any assets of a plan;

(ii) has, as of the last day of its latest fiscal year ending before the date of a determination for the purpose of this clause, net worth in excess of $1,000,000; and

(iii) is subject to supervision and examination by a State authority having supervision over insurance companies; or

(D) an investment adviser registered under section 203 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3) if the investment adviser has, on the last day of its latest fiscal year ending before the date of a determination for the purpose of this subparagraph, total client assets under its management and control in excess of $50,000,000, and—

(i) the investment adviser has, on such day, shareholder's or partner's equity in excess of $750,000; or

(ii) payment of all of the investment adviser's liabilities, including any liabilities which may arise by reason of a breach or violation of a duty described in section 8477 of this title, is unconditionally guaranteed by—

(I) a person (as defined in section 8471(4) of this title) who directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the investment adviser and who has, on the last day of the person's latest fiscal year ending before the date of a determination for the purpose of this clause, shareholder's or partner's equity in an amount which, when added to the amount of the shareholder's or partner's equity of the investment adviser on such day, exceeds $750,000;

(II) a qualified professional asset manager described in subparagraph (A), (B), or (C); or

(III) a broker or dealer registered under section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78*o*) that has, on the last day of the broker's or dealer's latest fiscal year ending before the date of a determination for the purpose of this clause, net worth in excess of $750,000; and

(8) the term ''shareholder's or partner's equity'', as used in paragraph (7)(D) with respect to an investment adviser or a person (as defined in section 8471(4) of this title) who is affiliated with the investment adviser in a manner described in clause (ii)(I) of such paragraph (7)(D), means the equity shown in the most recent balance sheet prepared for such investment adviser or affiliated person, in accordance with generally accepted accounting principles, within 2 years before the date on which the investment adviser's status as a qualified professional asset manager is determined for the purposes of this section.

(b)(1) The Board shall establish—

(A) a Government Securities Investment Fund under which sums in the Thrift Savings Fund are invested in securities of the United States Government issued as provided in subsection (e);

(B) a Fixed Income Investment Fund under which sums in the Thrift Savings Fund are invested in—

(i) insurance contracts;

(ii) certificates of deposits; or

(iii) other instruments or obligations selected by qualified professional asset managers,

which return the amount invested and pay interest, at a specified rate or rates, on that amount during a specified period of time; and

(C) a Common Stock Index Investment Fund as provided in paragraph (2).

(2)(A) The Board shall select an index which is a commonly recognized index comprised of common stock the aggregate market value of which is a reasonably complete representation of the United States equity markets.

(B) The Common Stock Index Investment Fund shall be invested in a portfolio designed to replicate the performance of the index selected under subparagraph (A). The portfolio shall be designed such that, to the extent practicable, the percentage of the Common Stock Index Investment Fund that is invested in each stock is the same as the percentage determined by dividing the aggregate market value of all shares of that stock by the aggregate market value of all shares of all stocks included in such index.

(c)(1) The Executive Director shall invest the sums available in the Thrift Savings Fund for investment as provided in elections made under subsection (d).

(2) If an election has not been made with respect to any sums in the Thrift Savings Fund available for investment, the Executive Director

shall invest such sums in the Government Securities Investment Fund.

(d)(1) At least twice each year, an employee or Member (or former employee or Member) may elect the investment funds referred to in subsection (b) into which the sums in the Thrift Savings Fund credited to such individual's account are to be invested or reinvested.

(2) An election may be made under paragraph (1) only in accordance with regulations prescribed by the Executive Director and within such period as the Executive Director shall provide in such regulations.

(e)(1) The Secretary of the Treasury is authorized to issue special interest-bearing obligations of the United States for purchase by the Thrift Savings Fund for the Government Securities Investment Fund.

(2)(A) Obligations issued for the purpose of this subsection shall have maturities fixed with due regard to the needs of such Fund as determined by the Executive Director, and shall bear interest at a rate equal to the average market yield (computed by the Secretary of the Treasury on the basis of market quotations as of the end of the calendar month next preceding the date of issue of such obligations) on all marketable interest-bearing obligations of the United States then forming a part of the public debt which are not due or callable earlier than 4 years after the end of such calendar month.

(B) Any average market yield computed under subparagraph (A) which is not a multiple of one-eighth of 1 percent, shall be rounded to the nearest multiple of one-eighth of 1 percent.

(f) The Board, other Government agencies, the Executive Director, an employee, a Member, a former employee, and a former Member may not exercise voting rights associated with the ownership of securities by the Thrift Savings Fund.

(g)(1) Notwithstanding subsection (e) of this section, the Secretary of the Treasury may suspend the issuance of additional amounts of obligations of the United States, if such issuances could not be made without causing the public debt of the United States to exceed the public debt limit, as determined by the Secretary of the Treasury.

(2) Any issuances of obligations to the Government Securities Investment Fund which, solely by reason of the public debt limit are not issued, shall be issued under subsection (e) by the Secretary of the Treasury as soon as such issuances can be issued without exceeding the public debt limit.

(3) Upon expiration of the debt issuance suspension period, the Secretary of the Treasury shall immediately issue to the Government Securities Investment Fund obligations under chapter 31 of title 31 that (notwithstanding subsection (e)(2) of this section) bear such interest rates and maturity dates as are necessary to ensure that, after such obligations are issued, the holdings of obligations of the United States by the Government Securities Investment Fund will replicate the obligations that would then be held by the Government Securities Investment Fund under the procedure set forth in paragraph (5), if the suspension of issuances under paragraph (1) of this subsection had not occurred.

(4) On the first business day after the expiration of any debt issuance suspension period, the Secretary of the Treasury shall pay to the Government Securities Investment Fund, from amounts in the general fund of the Treasury of the United States not otherwise appropriated, an amount equal to the excess of the net amount of interest that would have been earned by the Government Securities Investment Fund from obligations of the United States during such debt issuance suspension period if—

(A) amounts in the Government Securities Investment Fund that were available for investment in obligations of the United States and were not invested during such debt issuance suspension period solely by reason of the public debt limit had been invested under the procedure set forth in paragraph (5), over

(B) the net amount of interest actually earned by the Government Securities Investment Fund from obligations of the United States during such debt issuance suspension period.

(5) On each business day during the debt limit suspension period, the Executive Director shall notify the Secretary of the Treasury of the amounts, by maturity, that would have been invested or redeemed each day had the debt issuance suspension period not occurred.

(6) For purposes of this subsection and subsection (h) of this section—

(A) the term ''public debt limit'' means the limitation imposed by section 3101(b) of title 31; and

(B) the term ''debt issuance suspension period'' means any period for which the Secretary of the Treasury determines for purposes of this subsection that the issuance of obligations of the United States may not be made without exceeding the public debt limit.

(h)(1) The Secretary of the Treasury shall report to Congress on the operation and status of the Thrift Savings Fund during each debt issuance suspension period for which the Secretary is required to take action under paragraph (3) or (4) of subsection (g) of this section. The report shall be submitted as soon as possible after the expiration of such period, but not later than 30 days after the first business day after the expiration of such period. The Secretary shall concurrently transmit a copy of such report to the Executive Director and the Comptroller General of the United States.

(2) Whenever the Secretary of the Treasury determines that, by reason of the public debt limit, the Secretary will be unable to fully comply with the requirements of subsection (e) of this section, the Secretary shall immediately notify Congress and the Executive Director of the determination. The notification shall be made in writing.

(Added Pub. L. 99–335, title I, §101(a), June 6, 1986, 100 Stat. 551; amended Pub. L. 100–43, §2, May 22, 1987, 101 Stat. 315; Pub. L. 100–366, §2(a), July 13, 1988, 102 Stat. 826; Pub. L. 101–335, §3(a), July 17, 1990, 104 Stat. 320; Pub. L. 102–378, §2(68), Oct. 2, 1992, 106 Stat. 1355.)

AMENDMENTS

1992—Subsec. (a)(7)(B). Pub. L. 102–378 substituted ''Deposit'' for ''Savings and Loan''.

1990—Subsec. (b)(1)(A). Pub. L. 101–335, §3(a)(2), substituted ''subsection (e)'' for ''subsection (f)''.

Subsec. (c)(1). Pub. L. 101–335, §3(a)(3), substituted ''The'' for ''Subject to subsection (e), the''.

Subsec. (d)(1). Pub. L. 101–335, §3(a)(4), struck out ''and not subject to subsection (e)'' after ''individual's account''.

Subsec. (e). Pub. L. 101–335, §3(a)(1), redesignated subsec. (f) as (e) and struck out former subsec. (e) which related to minimum percentages to be invested in Government Securities Investment Fund and limitations on reinvestment of sums invested in Government Securities Investment Fund prior to years 1992 and 1997.

Subsec. (f). Pub. L. 101–335, §3(a)(1), redesignated subsec. (g) as (f). Former subsec. (f) redesignated (e).

Subsec. (g). Pub. L. 101–335, §3(a)(1), (5), (6), redesignated subsec. (h) as (g) and substituted ''subsection (e)'' for ''subsection (f)'' in pars. (1) and (2), ''subsection (e)(2)'' for ''subsection (f)(2)'' in par. (3), and ''subsection (h)'' for ''subsection (i)'' in par. (6). Former subsec. (g) redesignated (f).

Subsecs. (h), (i). Pub. L. 101–335, §3(a)(1), (7), redesignated subsec. (i) as (h) and substituted ''subsection (g)'' for ''subsection (h)'' in par. (1) and ''subsection (e)'' for ''subsection (f)'' in par. (2). Former subsec. (h) redesignated (g).

1988—Subsec. (e)(3)(A). Pub. L. 100–366 struck out ''and the earnings attributable to the investment of such sums'' after ''paragraph (1)''.

1987—Subsecs. (h), (i). Pub. L. 100–43 added subsecs. (h) and (i).

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–335 effective as of second election period described in section 8432(b) of this title beginning after July 17, 1990, or as of such earlier date as Executive Director may by regulation prescribe, see section 3(c) of Pub. L. 101–335, set out as a note under section 8351 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 2(b) of Pub. L. 100–366 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to earnings attributable to contributions made to the Thrift Savings Fund on or after April 1, 1987.''

REMOVAL OF INVESTMENT RESTRICTIONS

Section 3(b)(4) of Pub. L. 101–335 provided that: ''Any other provision of law, in effect on the date of enactment of this Act [July 17, 1990], which provides that any amounts contributed to the Thrift Savings Fund, or earnings thereon, may be invested or reinvested only in the Government Securities Investment Fund established under section 8438(b)(1)(A) of title 5, United States Code, shall cease to be effective.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8437, 8439, 8472, 8477 of this title.

§ 8439. Accounting and information

(a)(1) The Executive Director shall establish and maintain an account for each individual for whom contributions are made under section 8432(c)(1) of this title or who makes contributions to the Thrift Savings Fund under section 8351 of this title.

(2) The balance in an individual's account at any time is the excess of—

(A) the sum of—

(i) all contributions made to the Thrift Savings Fund by the individual under section 8432(a) or 8351 of this title;

(ii) all contributions made to such Fund for the benefit of the individual under section 8432(c) of this title; and

(iii) the total amount of the allocations made to and reductions made in the account pursuant to paragraph (3), over

(B) the amounts paid out of the Thrift Savings Fund with respect to such individual under this subchapter.

(3) Pursuant to regulations prescribed by the Executive Director, the Executive Director shall allocate to each account an amount equal to a pro rata share of the net earnings and net losses from each investment of sums in the Thrift Savings Fund attributable to sums credited to such account, reduced by an appropriate share of the administrative expenses paid out of the net earnings under section 8437(d) of this title, as determined by the Executive Director.

(b)(1) For the purposes of this subsection, the term ''qualified public accountant'' shall have the same meaning as provided in section 103(a)(3)(D) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1023(a)(3)(D)).

(2) The Executive Director shall annually engage, on behalf of all individuals for whom an account is maintained, an independent qualified public accountant, who shall conduct an examination of all accounts and other books and records maintained in the administration of this subchapter and subchapter VII as the public accountant considers necessary to enable the public accountant to make the determination required by paragraph (3). The examination shall be conducted in accordance with generally accepted auditing standards and shall involve such tests of the accounts, books, and records as the public accountant considers necessary.

(3) The public accountant conducting an examination under paragraph (2) shall determine whether the accounts, books, and records referred to in such paragraph have been maintained in conformity with generally accepted accounting principles applied on a basis consistent with the manner in which such principles were applied during the examination conducted under such paragraph during the preceding year. The public accountant shall transmit to the Board and the Comptroller General of the United States a report on his examination, including his determination under this paragraph.

(4) In making a determination under paragraph (3), a public accountant may rely on the correctness of any actuarial matter certified by an enrolled actuary if the public accountant states his reliance in the report transmitted to the Board under such paragraph.

(c)(1) The Board shall prescribe regulations under which each individual for whom an account is maintained shall be furnished with—

(A) a periodic statement relating to the individual's account; and

(B) a summary description of the investment options under section 8438 of this title covering, and an evaluation of, each such option the 5-year period preceding the date as of which such evaluation is made.

(2) Information under this subsection shall be provided at least 30 calendar days before the beginning of each election period under section 8432(b)(1)(A) of this title, and in a manner designed to facilitate informed decisionmaking with respect to elections under sections 8432 and 8438 of this title.

(d) Each employee, Member, former employee, or former Member who elects to invest in the

Common Stock Index Investment Fund or the Fixed Income Investment Fund described in paragraphs (1) and (3), respectively, of section 8438(a) of this title shall sign an acknowledgement prescribed by the Executive Director which states that the employee, Member, former employee, or former Member understands that an investment in either such Fund is made at the employee's, Member's, former employee's, or former Member's risk, that the employee, Member, former employee, or former Member is not protected by the Government against any loss on such investment, and that a return on such investment is not guaranteed by the Government.

(Added Pub. L. 99–335, title I, § 101(a), June 6, 1986, 100 Stat. 555.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8401, 8461, 8471 of this title.

§ 8440. Tax treatment of the Thrift Savings Fund

(a) For purposes of the Internal Revenue Code of 1986—

(1) the Thrift Savings Fund shall be treated as a trust described in section 401(a) of such Code which is exempt from taxation under section 501(a) of such Code;

(2) any contribution to, or distribution from, the Thrift Savings Fund shall be treated in the same manner as contributions to or distributions from such a trust; and

(3) subject to section 401(k)(4)(B) of such Code and any dollar limitation on the application of section 402(a)(8) of such Code, contributions to the Thrift Savings Fund shall not be treated as distributed or made available to an employee or Member nor as a contribution made to the Fund by an employee or Member merely because the employee or Member has, under the provisions of this subchapter and section 8351 of this title, an election whether the contribution will be made to the Thrift Savings Fund or received by the employee or Member in cash.

(b) NONDISCRIMINATION REQUIREMENTS.—Notwithstanding any other provision of law, the Thrift Savings Fund is not subject to the nondiscrimination requirements applicable to arrangements described in section 401(k) of title 26, United States Code, or to matching contributions (as described in section 401(m) of title 26, United States Code), so long as it meets the requirements of this section.

(c) Subsection (a) shall not be construed to provide that any amount of the employee's or Member's basic pay which is contributed to the Thrift Savings Fund shall not be included in the term ''wages'' for the purposes of section 209 of the Social Security Act or section 3121(a) of the Internal Revenue Code of 1986.

(Added Pub. L. 99–335, title I, § 101(a), June 6, 1986, 100 Stat. 557; amended Pub. L. 100–202, § 101(m) [title VI, § 624(b)], Dec. 22, 1987, 101 Stat. 1329–390, 1329–430; Pub. L. 100–647, title I, § 1011A(m)(2), Nov. 10, 1988, 102 Stat. 3483; by Pub. L. 102–378, § 2(69), Oct. 2, 1992, 106 Stat. 1355; Pub. L. 103–353, § 5(e)(5), Oct. 13, 1994, 108 Stat. 3174.)

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsecs. (a) and (c), is classified generally to Title 26, Internal Revenue Code.

Section 209 of the Social Security Act, referred to in subsec. (c), is classified to section 409 of Title 42, The Public Health and Welfare.

AMENDMENTS

1994—Subsecs. (a), (c). Pub. L. 103–353 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

1992—Subsec. (a)(3). Pub. L. 102–378 inserted ''section 401(k)(4)(B) of such Code and'' after ''subject to''.

1988—Subsec. (a)(3). Pub. L. 100–647, which directed the insertion of '', 401(k)(4)(B) of such Code,'' after ''subsection (b)'', could not be executed because of previous amendment by Pub. L. 100–202, § 101(m) [title VI, § 624(b)(1)] which struck out ''subsection (b)''. See 1987 Amendment note below.

1987—Subsec. (a)(3). Pub. L. 100–202, § 101(m) [title VI, § 624(b)(1)], struck out ''the provisions of subsection (b) and'' after ''subject to''.

Subsec. (b). Pub. L. 100–202, § 101(m) [title VI, § 624(b)(2)], added subsec. (b) and struck out former subsec. (b) which consisted of pars. (1) and (2) providing that subsec. (a)(3) not apply to the Thrift Savings Fund unless the Fund meets the antidiscrimination requirements applicable to arrangements described in section 401(k) of title 26 and to matching contributions.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–353 effective with respect to reemployments initiated on or after the first day after the 60-day period beginning Oct. 13, 1994, with transition rules, see section 8 of Pub. L. 103–353, set out as a note under section 4301 of Title 38, Veterans' Benefits.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–378 effective Nov. 10, 1988, see section 9(b)(8) of Pub. L. 102–378, set out as a note under section 6303 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of Title 26, Internal Revenue Code.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8437 of this title.

§ 8440a. Justices and judges

(a)(1) A justice or judge of the United States as defined by section 451 of title 28 may elect to contribute an amount of such individual's basic pay to the Thrift Savings Fund. Basic pay does not include an annuity or salary received by a justice or judge who has retired under section 371(a) or (b) or section 372(a) of title 28, United States Code.

(2) An election may be made under paragraph (1) only during a period provided under section 8432(b) for individuals subject to chapter 84 of this title: *Provided, however*, That a justice or judge may make the first such election within 60 days of the effective date of this section.

(b)(1) Except as otherwise provided in this subsection, the provisions of this subchapter and subchapter VII shall apply with respect to justices and judges making contributions to the Thrift Savings Fund.

(2) The amount contributed by a justice or judge shall not exceed 5 percent of basic pay.

(3) No contributions shall be made for the benefit of a justice or judge under section 8432(c) of this title.

(4) Section 8433(b) of this title applies with respect to elections available to any justice or judge who retires under section 371(a) or (b) or section 372(a) of title 28. Retirement under section 371(a) or (b) or section 372(a) of title 28 is a separation from service for the purposes of subchapters III and VII of chapter 84 of this title.

(5) Section 8433(b) of this title applies to any justice or judge who resigns without having met the age and service requirements set forth in section 371(c) of title 28.

(6) The provisions of section 8351(b)(5) of this title shall govern the rights of spouses of justices or judges contributing to the Thrift Savings Fund under this section.

(7) Notwithstanding paragraphs (4) and (5), if any justice or judge retires under subsection (a) or (b) of section 371 or section 372(a) of title 28, or resigns without having met the age and service requirements set forth under section 371(c) of title 28, and such justice's or judge's nonforfeitable account balance is $3,500 or less, the Executive Director shall pay the nonforfeitable account balance to the participant in a single payment unless the justice or judge elects, at such time and otherwise in such manner as the Executive Director prescribes, one of the options available under section 8433(b).

(Added Pub. L. 100–654, title IV, § 401(a), Nov. 14, 1988, 102 Stat. 3847; amended Pub. L. 101–335, §§ 3(b)(2), 6(b)(2), July 17, 1990, 104 Stat. 320, 323; Pub. L. 102–378, § 2(70), Oct. 2, 1992, 106 Stat. 1355; Pub. L. 103–226, § 9(e), (i)(17), Mar. 30, 1994, 108 Stat. 120, 122.)

REFERENCES IN TEXT

The effective date of this section, referred to in subsec. (a)(2), is the date of enactment of Pub. L. 100–654 which was approved Nov. 14, 1988.

CODIFICATION

Another section 8440a was renumbered section 8440b of this title.

AMENDMENTS

1994—Subsec. (b)(5). Pub. L. 103–226, § 9(e)(1), substituted ''Section 8433(b)'' for ''Section 8433(d)''.

Subsec. (b)(6). Pub. L. 103–226, § 9(i)(17), substituted ''section 8351(b)(5)'' for ''section 8351(b)(7)''.

Subsec. (b)(7), (8). Pub. L. 103–226, § 9(e)(2), added par. (7) and struck out former pars. (7) and (8) which read as follows:

''(7) Notwithstanding paragraph (5), if any justice or judge who elects to make contributions to the Thrift Savings Fund under subsection (a) resigns without having met the age and service requirements set forth in section 371(c) of title 28, and such justice's or judge's nonforfeitable account balance is $3,500 or less, the Executive Director shall pay the nonforfeitable account balance to the participant in a single payment unless the justice or judge elects, at such time and otherwise in such manner as the Executive Director prescribes, to have the nonforfeitable account balance transferred to an eligible retirement plan as provided in section 8433(e).

''(8) Notwithstanding paragraph (4), if any justice or judge retires under subsection (a) or (b) of section 371 or section 372(a) of title 28, and such justice's or judge's nonforfeitable account balance is $3,500 or less, the Executive Director shall pay the nonforfeitable account balance to the participant in a single payment unless the justice or judge elects, at such time and otherwise in such manner as the Executive Director prescribes, one of the options available under section 8433(b).''

1992—Subsec. (b)(1). Pub. L. 102–378 substituted ''this subchapter and subchapter VII'' for ''subchapters III and VII of chapter 84 of this title''.

1990—Subsec. (b)(6). Pub. L. 101–335, § 3(b)(2), redesignated par. (7) as (6) and struck out former par. (6) which read as follows: ''Sums contributed under this section and earnings attributable to such sums may be invested and reinvested only in the Government Securities Investment Fund established under section 8438(b)(1)(A) of this title.''

Subsec. (b)(7), (8). Pub. L. 101–335, § 6(b)(2), added pars. (7) and (8). Former par. (7) redesignated (6).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–226 effective 1 year after Mar. 30, 1994, or on such earlier date as the Executive Director of the Federal Retirement Thrift Investment Board shall provide in regulation, see section 9(j) of Pub. L. 103–226, set out as a note under section 8351 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 3(b)(2) of Pub. L. 101–335 effective as of second election period described in section 8432(b) of this title beginning after July 17, 1990, or as of such earlier date as Executive Director may by regulation prescribe, see section 3(c) of Pub. L. 101–335, set out as a note under section 8351 of this title.

Amendment by section 6(b)(2) of Pub. L. 101–335 effective as of second election period described in section 8432(b) of this title beginning after July 17, 1990, or such earlier date as Executive Director may by regulation prescribe, and applicable with respect to separations occurring before, on, or after that effective date, see section 6(c) of Pub. L. 101–335, set out as a note under section 8351 of this title.

§ 8440b. Bankruptcy judges and magistrates

(a)(1) A bankruptcy judge or magistrate who is covered by section 377 of title 28 or section 2(c) of the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988 may elect to contribute an amount of such individual's basic pay to the Thrift Savings Fund.

(2) An election may be made under paragraph (1) only during a period provided under section 8432(b) for individuals subject to this chapter.

(b)(1) Except as otherwise provided in this subsection, the provisions of this subchapter and subchapter VII shall apply with respect to bankruptcy judges and magistrates who make contributions to the Thrift Savings Fund under subsection (a) of this section.

(2) The amount contributed by a bankruptcy judge or magistrate for any pay period shall not exceed 5 percent of basic pay for such pay period.

(3) No contributions shall be made under section 8432(c) of this title for the benefit of a bankruptcy judge or magistrate making contributions under subsection (a) of this section.

(4)(A) Section 8433(b) of this title applies to a bankruptcy judge or magistrate who elects to make contributions to the Thrift Savings Fund under subsection (a) of this section and who retires entitled to an immediate annuity under section 377 of title 28 (including a disability annuity under subsection (d) of such section) or section 2(c) of the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988.

(B) Section 8433(b) of this title applies to any bankruptcy judge or magistrate who elects to

make contributions to the Thrift Savings Fund under subsection (a) of this section and who retires before attaining age 65 but is entitled, upon attaining age 65, to an annuity under section 377 of title 28 or section 2(c) of the Retirement and Survivors Annuities for Bankruptcy Judges and Magistrates Act of 1988.

(C) Section 8433(b) of this title applies to any bankruptcy judge or magistrate who elects to make contributions to the Thrift Savings Fund under subsection (a) of this section and who retires before becoming entitled to an immediate annuity, or an annuity upon attaining age 65, under section 377 of title 28 or section 2(c) of the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988.

(5) With respect to bankruptcy judges and magistrates to whom this section applies, any of the actions described under paragraph (4)(A), (B), or (C) shall be considered a separation from service for purposes of this subchapter and subchapter VII.

(6) For purposes of this section, the terms ''retirement'' and ''retire'' include removal from office under section 377(d) of title 28 on the sole ground of mental or physical disability.

(7) In the case of a bankruptcy judge or magistrate who receives a distribution from the Thrift Savings Plan and who later receives an annuity under section 377 of title 28, that annuity shall be offset by an amount equal to the amount which represents the Government's contribution to that person's Thrift Savings Account, without regard to earnings attributable to that amount. Where such an offset would exceed 50 percent of the annuity to be received in the first year, the offset may be divided equally over the first 2 years in which that person receives the annuity.

(8) Notwithstanding paragraph (4), if any bankruptcy judge or magistrate retires under circumstances making such bankruptcy judge or magistrate eligible to make an election under subsection (b) of section 8433, and such bankruptcy judge's or magistrate's nonforfeitable account balance is $3,500 or less, the Executive Director shall pay the nonforfeitable account balance to the participant in a single payment unless the bankruptcy judge or magistrate elects, at such time and otherwise in such manner as the Executive Director prescribes, one of the options available under such subsection (b).

(Added Pub. L. 100–659, §7(a), Nov. 15, 1988, 102 Stat. 3919, §8440a; renumbered §8440b and amended Pub. L. 101–335, §§3(b)(3), 6(b)(3), 9(a), July 17, 1990, 104 Stat. 320, 324, 326; Pub. L. 103–226, §9(f), Mar. 30, 1994, 108 Stat. 120.)

REFERENCES IN TEXT

Section 2(c) of the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988, referred to in subsecs. (a)(1) and (b)(4), is section 2(c) of Pub. L. 100–659, which is set out as a note under section 377 of Title 28, Judiciary and Judicial Procedure.

CODIFICATION

Another section 8440b was renumbered section 8440c of this title.

AMENDMENTS

1994—Subsec. (b)(4)(B). Pub. L. 103–226, §9(f)(1), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''Section 8433(c) of this title applies to any bankruptcy judge or magistrate who elects to make contributions to the Thrift Savings Fund under subsection (a) of this section and who retires before attaining age 65 but is entitled, upon attaining age 65, to an annuity under section 377 of title 28 or section 2(c) of the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988; except that the period described in paragraph (3) of section 8433(c) commences on or after the date on which payment of the bankruptcy judge's or magistrate's annuity under section 377 of title 28 commences.''

Subsec. (b)(4)(C). Pub. L. 103–226, §9(f)(2), substituted ''Section 8433(b)'' for ''Section 8433(d)''.

Subsec. (b)(5). Pub. L. 103–226, §9(f)(3), substituted ''any of the actions described under paragraph (4)(A), (B), or (C) shall be considered'' for ''retirement under section 377 of title 28 is''.

Subsec. (b)(8). Pub. L. 103–226, §9(f)(5)(B), which directed striking out ''and (c), as applicable'', was executed by striking out ''or (c), as applicable'' before period at end to reflect the probable intent of Congress.

Pub. L. 103–226, §9(f)(5)(A), substituted ''Notwithstanding paragraph (4), if any bankruptcy judge or magistrate retires under circumstances making such bankruptcy judge or magistrate eligible to make an election under subsection (b)'' for ''Notwithstanding subparagraphs (A) and (B) of paragraph (4), if any bankruptcy judge or magistrate retires under circumstances making such bankruptcy judge or magistrate eligible to make an election under subsection (b) or (c)''.

Pub. L. 103–226, §9(f)(4), redesignated par. (9) as (8) and struck out former par. (8) which read as follows: ''Notwithstanding paragraph (4)(C), if any bankruptcy judge or magistrate who elects to make contributions to the Thrift Savings Fund under subsection (a) retires before becoming entitled to an immediate annuity, or an annuity upon attaining age 65, under section 377 of title 28 or section 2(c) of the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988, and such bankruptcy judge's or magistrate's nonforfeitable account balance is $3,500 or less, the Executive Director shall pay the nonforfeitable account balance to the participant in a single payment unless the bankruptcy judge or magistrate elects, at such time and otherwise in such manner as the Executive Director prescribes, to have the nonforfeitable account balance transferred to an eligible retirement plan as provided in section 8433(e).''

Subsec. (b)(9). Pub. L. 103–226, §9(f)(4), redesignated par. (9) as (8).

1990—Pub. L. 101–335, §9(a), renumbered section 8440a of this title as this section.

Subsec. (b)(7). Pub. L. 101–335, §3(b)(3), redesignated par. (8) as (7) and struck out former par. (7) which read as follows: ''Sums contributed pursuant to this section by bankruptcy judges or magistrates, as well as all previous contributions to the Thrift Savings Fund by those bankruptcy judges and magistrates, and earnings attributable to such sums and contributions, may be invested and reinvested only in the Government Securities Investment Fund established under section 8438(b)(1)(A) of this title.''

Subsec. (b)(8), (9). Pub. L. 101–335, §6(b)(3), added pars. (8) and (9). Former par. (8) redesignated (7).

CHANGE OF NAME

Reference to United States magistrate or to magistrate deemed to refer to United States magistrate judge pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–226 effective 1 year after Mar. 30, 1994, or on such earlier date as the Executive Director of the Federal Retirement Thrift Investment Board shall provide in regulation, see section 9(j) of

Pub. L. 103–226, set out as a note under section 8351 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 3(b)(3) of Pub. L. 101–335 effective as of second election period described in section 8432(b) of this title beginning after July 17, 1990, or as of such earlier date as Executive Director may by regulation prescribe, see section 3(c) of Pub. L. 101–335, set out as a note under section 8351 of this title.

Amendment by section 6(b)(3) of Pub. L. 101–335 effective as of second election period described in section 8432(b) of this title beginning after July 17, 1990, or such earlier date as Executive Director may by regulation prescribe, and applicable with respect to separations occurring before, on, or after that effective date, see section 6(c) of Pub. L. 101–335, set out as a note under section 8351 of this title.

EFFECTIVE DATE

Section effective Nov. 15, 1988, and applicable to bankruptcy judges and magistrates [now United States magistrate judges] who retire on or after Nov. 15, 1988, with exception for judges and magistrates retiring on or after July 31, 1987, see section 9 of Pub. L. 100–659, set out as a note under section 377 of Title 28, Judiciary and Judicial Procedure.

§ 8440c. Court of Federal Claims judges

(a)(1) A judge of the United States Court of Federal Claims who is covered by section 178 of title 28 may elect to contribute an amount of such individual's basic pay to the Thrift Savings Fund.

(2) An election may be made under paragraph (1) only during a period provided under section 8432(b) for individuals subject to this chapter.

(b)(1) Except as otherwise provided in this subsection, the provisions of this subchapter and subchapter VII shall apply with respect to Court of Federal Claims judges who make contributions to the Thrift Savings Fund under subsection (a) of this section.

(2) The amount contributed by a Court of Federal Claims judge for any pay period shall not exceed 5 percent of basic pay for such pay period.

(3) No contributions shall be made under section 8432(c) of this title for the benefit of a Court of Federal Claims judge making contributions under subsection (a) of this section.

(4)(A) Section 8433(b) of this title applies to a Court of Federal Claims judge who elects to make contributions to the Thrift Savings Fund under subsection (a) of this section and who retires entitled to an annuity under section 178 of title 28 (including a disability annuity under subsection (c) of such section).

(B) Section 8433(b) of this title applies to any Court of Federal Claims judge who elects to make contributions to the Thrift Savings Fund under subsection (a) of this section and who retires before becoming entitled to an annuity under section 178 of title 28.

(5) With respect to Court of Federal Claims judges to whom this section applies, any of the actions described in paragraph (4)(A) or (B) shall be considered a separation from service for purposes of this subchapter and subchapter VII.

(6) For purposes of this section, the terms ''retirement'' and ''retire'' include removal from office under section 178(c) of title 28 on the sole ground of mental or physical disability.

(7) In the case of a Court of Federal Claims judge who receives a distribution from the Thrift Savings Plan and who later receives an annuity under section 178 of title 28, such annuity shall be offset by an amount equal to the amount which represents the Government's contribution to that person's Thrift Savings Account, without regard to earnings attributable to that amount. Where such an offset would exceed 50 percent of the annuity to be received in the first year, the offset may be divided equally over the first 2 years in which that person receives the annuity.

(8) Notwithstanding paragraph (4), if any Court of Federal Claims judge retires under circumstances making such judge eligible to make an election under section 8433(b), and such judge's nonforfeitable account balance is $3,500 or less, the Executive Director shall pay the nonforfeitable account balance to the participant in a single payment unless the judge elects, at such time and otherwise in such manner as the Executive Director prescribes, one of the options available under section 8433(b).

(Added Pub. L. 101–650, title III, § 306(d)(1), Dec. 1, 1990, 104 Stat. 5110, § 8440b; renumbered § 8440c and amended Pub. L. 102–198, § 7(c)(1), Dec. 9, 1991, 105 Stat. 1624; Pub. L. 102–572, title IX, § 902(b), Oct. 29, 1992, 106 Stat. 4516; Pub. L. 103–226, § 9(g), Mar. 30, 1994, 108 Stat. 121.)

CODIFICATION

Another section 8440c was renumbered section 8440d of this title.

AMENDMENTS

1994—Subsec. (b)(4)(B). Pub. L. 103–226, § 9(g)(1), substituted ''Section 8433(b)'' for ''Section 8433(d)''.

Subsec. (b)(5). Pub. L. 103–226, § 9(g)(2), substituted ''any of the actions described in paragraph (4)(A) or (B) shall be considered'' for ''retirement under section 178 of title 28 is''.

Subsec. (b)(8), (9). Pub. L. 103–226, § 9(g)(3), (4), redesignated par. (9) as (8), substituted ''Notwithstanding paragraph (4)'' for ''Notwithstanding paragraph (4)(A)'', and struck out former par. (8) which read as follows: ''Notwithstanding paragraph (4)(B), if any Court of Federal Claims judge who elects to make contributions to the Thrift Savings Fund under subsection (a) retires before becoming entitled to an annuity under section 178 of title 28, and such judge's nonforfeitable account balance is $3,500 or less, the Executive Director shall pay the nonforfeitable account balance to the participant in a single payment unless the judge elects, at such time and otherwise in such manner as the Executive Director prescribes, to have the nonforfeitable account balance transferred to an eligible retirement plan as provided in section 8433(e).''

1992—Pub. L. 102–572, § 902(b)(2), substituted ''Court of Federal Claims'' for ''Claims Court'' in section catchline.

Subsec. (a)(1). Pub. L. 102–572, § 902(b)(1), substituted ''United States Court of Federal Claims'' for ''United States Claims Court''.

Subsec. (b)(1) to (5), (7) to (9). Pub. L. 102–572, § 902(b)(2), substituted ''Court of Federal Claims'' for ''Claims Court'' wherever appearing.

1991—Pub. L. 102–198, § 7(c)(1)(A), renumbered section 8440b of this title as this section.

Subsec. (b)(4)(A). Pub. L. 102–198, § 7(c)(1)(B)(i), substituted ''subsection (c)'' for ''subsection (d)''.

Subsec. (b)(7). Pub. L. 102–198, § 7(c)(1)(B)(ii), redesignated par. (8) as (7) and struck out former par. (7) which read as follows: ''Sums contributed pursuant to this section by Claims Court judges, as well as all previous

contributions to the Thrift Savings Fund by those judges, and earnings attributable to such sums and contributions, may be invested and reinvested only in the Government Securities Investment Fund established under section 8438(b)(1)(A) of this title.''

Subsec. (b)(8). Pub. L. 102–198, §7(c)(1)(B)(ii), (iii) added par. (8) and redesignated former par. (8) as (7).

Subsec. (b)(9). Pub. L. 102–198, §7(c)(1)(B)(iii), added par. (9).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–226 effective 1 year after Mar. 30, 1994, or on such earlier date as the Executive Director of the Federal Retirement Thrift Investment Board shall provide in regulation, see section 9(j) of Pub. L. 103–226, set out as a note under section 8351 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–572 effective Oct. 29, 1992, see section 911 of Pub. L. 102–572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1991 AMENDMENT

Section 7(c)(3) of Pub. L. 102–198, as amended by Pub. L. 102–572, title IX, §902(b)(2), Oct. 29, 1992, 106 Stat. 4516, provided that: ''Paragraphs (8) and (9) of section 8440c(b) of title 5, United States Code (as added by paragraph (1)) shall be effective as of January 1, 1991, and shall apply to any Court of Federal Claims judge retiring on or after such date.''

EFFECTIVE DATE

Section applicable to judges of, and senior judges in active service with, the United States Court of Federal Claims on or after Dec. 1, 1990, see section 306(f) of Pub. L. 101–650, set out as an Effective Date of 1990 Amendment note under section 8331 of this title.

§ 8440d. Judges of the United States Court of Veterans Appeals

(a)(1) A judge of the United States Court of Veterans Appeals may elect to contribute to the Thrift Savings Fund.

(2) An election may be made under paragraph (1) only during a period provided under section 8432(b) of this title for individuals subject to chapter 84 of this title.

(b)(1) Except as otherwise provided in this subsection, the provisions of this subchapter and subchapter VII of this chapter shall apply with respect to a judge making contributions to the Thrift Savings Fund.

(2) The amount contributed by a judge may not exceed 5 percent of the amount of the judge's basic pay. Basic pay does not include any retired pay paid pursuant to section 7296 of title 38.

(3) No contributions may be made for the benefit of a judge under section 8432(c) of this title.

(4) Section 8433(b) of this title applies with respect to a judge who elects to make contributions to the Thrift Savings Fund and retires under section 7296(b) of title 38.

(5) Section 8433(b) of this title applies in the case of a judge who elects to make contributions to the Thrift Savings Fund and thereafter ceases to serve as a judge of the United States Court of Veterans Appeals but does not retire under section 7296(b) of title 38.

(6) The provisions of section 8351(b)(7)[1] of this title shall apply with respect to a judge who has elected to contribute to the Thrift Savings Fund under this section.

(Added Pub. L. 102–82, §5(a)(1), Aug. 6, 1991, 105 Stat. 376, §8440c; renumbered §8440d, Pub. L. 102–198, §7(c)(4)(A), Dec. 9, 1991, 105 Stat. 1625, as amended by Pub. L. 102–378, §5(d)(1), Oct. 2, 1992, 106 Stat. 1358; Pub. L. 103–226, §9(h), Mar. 30, 1994, 108 Stat. 121.)

REFERENCES IN TEXT

Section 8351(b)(7) of this title, referred to in subsec. (b)(6), was redesignated section 8351(b)(5) of this title by Pub. L. 103–226, §9(a)(3), Mar. 30, 1994, 108 Stat. 119.

AMENDMENTS

1994—Subsec. (b)(5). Pub. L. 103–226 substituted ''Section 8433(b) of this title applies'' for ''A transfer shall be made as provided in section 8433(d) of this title''.

1992—Pub. L. 102–378 amended Pub. L. 102–198. See 1991 Amendment note below.

1991—Pub. L. 102–198, as amended by Pub. L. 102–378, renumbered section 8440c of this title as this section.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–226 effective 1 year after Mar. 30, 1994, or on such earlier date as the Executive Director of the Federal Retirement Thrift Investment Board shall provide in regulation, see section 9(j) of Pub. L. 103–226, set out as a note under section 8351 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–378 effective Dec. 9, 1991, see section 9(b)(2) of Pub. L. 102–378, set out as a note under section 6303 of this title.

FIRST ELECTION

Section 5(b) of Pub. L. 102–82, as amended by Pub. L. 102–198, §7(c)(4)(C), Dec. 9, 1991, 105 Stat. 1625, provided that: ''A judge of the United States Court of Veterans Appeals on the date of the enactment of this Act [Aug. 6, 1991] may make an election under section 8440d(a) of title 5, United States Code, within 60 days after the date of the enactment of this Act.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 38 sections 7296, 7297.

SUBCHAPTER IV—SURVIVOR ANNUITIES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 8348, 8401, 8420a, 8422, 8424, 8461, 8464a, 8466, 8468, 8470 of this title; title 2 section 121b; title 22 section 4071j; title 38 section 7426; title 40 section 214d; title 50 section 2154.

§ 8441. Definitions

For the purpose of this subchapter—

(1) the term ''widow'' means the surviving wife of an employee, Member, or annuitant, or of a former employee or Member, who—

(A) was married to him for at least 9 months immediately before his death; or

(B) is the mother of issue by that marriage;

(2) the term ''widower'' means the surviving husband of an employee, Member, or annuitant, or of a former employee or Member, who—

(A) was married to her for at least 9 months immediately before her death; or

(B) is the father of issue by that marriage;

(3) the term ''dependent'', in the case of any child, means that the employee, Member, or

[1] See References in Text note below.

annuitant involved was, at the time of death of the employee, Member, or annuitant either living with or contributing to the support of such child, as determined in accordance with such regulations as the Office shall prescribe; and

(4) the term ''child'' means—

(A) an unmarried dependent child under 18 years of age, including (i) an adopted child, (ii) a stepchild but only if the stepchild lived with the employee, Member, or annuitant in a regular parent-child relationship, (iii) a recognized natural child, and (iv) a child who lived with and for whom a petition of adoption was filed by an employee, Member, or annuitant and who is adopted by the widow or widower of the employee, Member, or annuitant after the death of such employee, Member, or annuitant;

(B) such unmarried dependent child regardless of age who is incapable of self-support because of mental or physical disability incurred before age 18; or

(C) such unmarried dependent child between 18 and 22 years of age who is a student regularly pursuing a full-time course of study or training in residence in a high school, trade school, technical or vocational institute, junior college, college, university, or comparable recognized educational institution.

For the purpose of this paragraph and section 8443, a child whose 22nd birthday occurs before July 1 or after August 31 of a calendar year, and while regularly pursuing such a course of study or training, is deemed to have become 22 years of age on the first day of July after that birthday. A child who is a student is deemed not to have ceased to be a student during an interim between school years if the interim is not more than 5 months and if such child shows to the satisfaction of the Office that such child has a bona fide intention of continuing to pursue a course of study or training in the same or different school during the school semester (or other period into which the school year is divided) immediately after the interim.

(Added Pub. L. 99–335, title I, § 101(a), June 6, 1986, 100 Stat. 558.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8442, 8443 of this title.

§ 8442. Rights of a widow or widower

(a)(1) Except as provided in subsection (g), if an annuitant dies and is survived by a widow or widower, the widow or widower is entitled to an annuity equal to 50 percent of an annuity computed under section 8415 with respect to the annuitant, (or one-half thereof, if designated for this purpose under section 8419 of this title), unless—

(A) the right to an annuity was waived under section 8416(a) (and no election was subsequently made under section 8416(d) nullifying the waiver); or

(B) in the case of a marriage after retirement, the annuitant did not file an election under section 8416(b) or (c), as the case may be.

(2) A spouse acquired after retirement is entitled to an annuity under this subsection (as provided in paragraph (1)) only upon electing this annuity instead of any other survivor benefit to which such spouse may be entitled under this subchapter or section 8424 or under another retirement system for Government employees.

(b)(1) If an employee or Member dies after completing at least 18 months of civilian service creditable under section 8411 and is survived by a widow or widower, the widow or widower is entitled to—

(A) an amount equal to the sum of—

(i) 50 percent of the final annual rate of basic pay (or of the average pay, if higher) of the employee or Member; and

(ii) $15,000 as adjusted under section 8462(e); and

(B) if the employee or Member completed at least 10 years of service, an annuity equal to 50 percent of an annuity computed under section 8415 with respect to the employee or Member, but without regard to subsection (f) of such section.

(2) The Office shall prescribe regulations under which the total amount payable to a widow or widower under paragraph (1)(A) may, at the election of the widow or widower, be paid—

(A) in a lump sum; or

(B) on a monthly basis—

(i) over a period of 3 years beginning on the day after the employee's or Member's death; or

(ii) over any other period established under the regulations.

Any method of payment provided for under subparagraph (B) shall be designed such that the present value of the benefits provided under such method is actuarially equivalent to the present value of a lump-sum payment under subparagraph (A).

(3) An amount payable under paragraph (1)(A) shall not be considered to be part of an annuity for purposes of this chapter.

(c)(1) If a former employee or Member dies after having separated from the service with title to a deferred annuity under section 8413 but before having established a valid claim for an annuity, and is survived by a widow or widower to whom married on the date of separation, the widow or widower may elect to receive—

(A) an annuity under paragraph (2); or

(B) the lump-sum credit, if the widow or widower is the individual who would be entitled to the lump-sum credit and if such widow or widower files application therefor with the Office.

(2)(A)(i) Subject to clause (ii) and subparagraph (B)(ii), the annuity of the widow or widower is equal to 50 percent of an annuity computed under section 8415 for the former employee or Member.

(ii)(I) In computing an amount under section 8415 for a former employee or Member (described in subclause (II)) in order to compute the annuity for a widow or widower under this subsection, the computation under section 8415 shall be made as if the former employee or Member had attained the applicable minimum retirement age under section 8412(h).

(II) This clause applies with respect to a former employee or Member who dies before having attained the applicable minimum retirement age under section 8412(h).

(B)(i) Notwithstanding the first sentence of subsection (d)(1), the annuity of the widow or widower of a former employee or Member under subparagraph (A)(ii) commences—

(I) on the day after the date on which the former employee or Member would have attained age 62 (or, if applicable, either age 60 if the former employee or Member completed at least 20 years of service, or the applicable minimum retirement age (under section 8412(h)) if the former employee or Member completed at least 30 years of service); or

(II) if the widow or widower so designates in the election, as of the day after the death of the former employee or Member.

(ii) The present value of the annuity of a widow or widower who chooses the earlier commencement date under clause (i)(II) shall be actuarially equivalent to the present value of an annuity computed for the widow or widower, determined as if the commencement date under clause (i)(I) were applicable.

(3)(A) Paragraphs (1) and (2) shall apply only in the case of an employee or Member who completes at least 10 years of service.

(B) Nothing in this subsection shall be considered to affect the provisions of this chapter relating to a lump-sum credit in the case of the widow or widower of a former employee or Member who dies after completing less than 10 years of service.

(d)(1) The annuity of a widow or widower under this section commences on the day after the death of the individual on whose service such annuity is based. This annuity and the right thereto terminate on the last day of the month before the widow or widower—

(A) dies; or

(B) remarries before becoming 55 years of age.

(2) In the case of a widow or widower whose annuity under this section is terminated because of remarriage before becoming 55 years of age, the annuity shall be restored at the same rate commencing on the day the remarriage is dissolved by death, divorce, or annulment, if—

(A) the widow or widower elects to receive this annuity instead of any other survivor benefit to which such widow or widower may be entitled (under this subchapter or section 8424 or under another retirement system for Government employees) by reason of the remarriage; and

(B) any lump sum paid on termination of the annuity is returned to the Fund.

(e) The requirement in paragraphs (1)(A) and (2)(A) of section 8441 that the widow or widower of an annuitant, employee, or Member, or of a former employee or Member, have been married to such individual for at least 9 months immediately before the death of the individual in order to qualify as the widow or widower of such individual shall be deemed satisfied in any case in which the individual dies within the applicable 9-month period, if—

(1) the death of the individual was accidental; or

(2) the surviving spouse of the individual had been previously married to such individual and subsequently divorced, and the aggregate time married is at least 9 months.

(f)(1) Subject to paragraph (4), a survivor who is entitled to an annuity under subsection (a) shall also be entitled to a supplementary annuity under this subsection.

(2) A supplementary annuity under this subsection shall be equal to the lesser of—

(A) the amount by which the survivor's assumed CSRS annuity exceeds the annuity payable to such survivor under subsection (a); or

(B) the amount determined under paragraph (3).

(3)(A) Except as provided in subparagraph (B), the amount under this paragraph for a survivor is the amount of widow's or widower's insurance benefits which would be payable to such survivor under title II of the Social Security Act (without regard to sections 202(e)(7), 202(f)(2), and 203 of such Act) based on the wages and self-employment income of the deceased annuitant, and determined—

(i) as of the date on which the annuitant died; and

(ii) as if the survivor had attained age 60 and made application for those benefits under subsection (e) or (f) of section 202 of such Act, as the case may be.

(B) Any computation or determination under this paragraph shall be made in accordance with the applicable provisions of the Social Security Act, except that in computing any primary insurance amount under section 215 of such Act for purposes of determining an amount under this subsection, subparagraphs (A) and (C) of section 8421(b)(2) shall apply.

(4) A supplementary annuity under this subsection—

(A) shall be payable to a survivor only for calendar months ending before the calendar month in which such survivor first satisfies the minimum age requirement under section 202(e)(1)(B)(i) or 202(f)(1)(B)(i) of the Social Security Act, as the case may be;

(B) shall not be payable to a survivor who would not be entitled to benefits under subsection (e) or (f) of section 202 of the Social Security Act based on the wages and self-employment income of the deceased annuitant (determined, as of the date of the annuitant's death, as if the survivor had attained age 60 and made appropriate application for benefits, but without regard to any restriction under either such subsection relating to remarriage); and

(C) shall not be payable to a survivor for any calendar month in which such survivor is entitled (or would, on proper application, be entitled) to benefits under section 202(g) of the Social Security Act (relating to mother's and father's insurance benefits), or under section 202(e) or (f) of such Act by reason of having become disabled, based on the wages and self-employment income of the deceased annuitant.

(5) For the purpose of this subsection, the term ''assumed CSRS annuity'', as used in the case of a survivor, means the amount of the an-

nuity to which such survivor would be entitled under subchapter III of chapter 83 of this title based on the service of the deceased annuitant, determined—

(A) as of the day after the date of the annuitant's death;

(B) as if the survivor had made appropriate application therefor; and

(C) as if the service of the deceased annuitant were creditable under such subchapter.

(6) An amount payable under this subsection shall be adjusted under section 8462 and shall otherwise be treated under this chapter in the same way as an amount payable under subsection (a).

(g)(1) If the widow or widower of an annuitant under section 8452 (hereinafter in this subsection referred to as a ''disability annuitant'') is determined under subsection (a) to be entitled to an annuity based on the service of such disability annuitant, the annuity of the widow or widower shall be equal to 50 percent of the amount determined under paragraph (2) (or one-half thereof if designated for this purpose under section 8419 of this title), rather than of the amount referred to in subsection (a).

(2)(A) Except as provided in subparagraph (B), the amount on which the annuity of the widow or widower of a disability annuitant is based shall be the amount of the annuity to which such disability annuitant was entitled, as computed under section 8452 (including appropriate reduction under subsection (a)(2) of such section and any adjustments under section 8462 allowed under section 8452), as of the day before the date of the disability annuitant's death.

(B)(i) In the case of a widow or widower entitled to an annuity based on the service of a disability annuitant who dies before age 62, the amount under clause (ii) shall apply instead of the amount which would otherwise apply under subparagraph (A).

(ii)(I) Subject to subclause (II), the amount of the annuity to which the disability annuitant was entitled as of the day before the date of death shall be considered to be the amount which would be computed with respect to such disability annuitant under section 8452(b) if the disability annuitant had attained age 62 on the day before date of death.

(II) For purposes of any such computation under section 8452(b)(2) pursuant to this clause, creditable service shall (in addition to the service which would otherwise be used under subparagraph (B)(i) of such section) include the period of time between date of death and the date of the sixty-second anniversary of the birth of the annuitant, and average pay shall be adjusted in accordance with subparagraph (B)(ii) of such section only through date of death.

(h) The following rules shall apply notwithstanding any other provision of this section:

(1) The annuity payable under this section to a widow or widower may not exceed the difference between—

(A) the amount of the annuity which would otherwise be payable to such widow or widower under this section; and

(B) the amount of the annuity payable to any former spouse of the deceased employee, Member, or annuitant, or former employee or Member, based on an election made under section 8417(b) or a court order previously issued or agreement previously entered into as described in section 8445(a).

(2) The amount payable under subsection (b)(1)(A) to a widow or widower may not exceed the difference between—

(A) the amount which would otherwise be payable to such widow or widower under such subsection; and

(B) the portion of such amount payable to any former spouse of the deceased employee, Member, or annuitant, or former employee or Member, based on a court order previously issued or agreement previously entered into.

(3) A lump-sum credit under subsection (c)(2) shall be subject to the same terms and conditions as apply with respect to a lump-sum credit under section 8424(b).

(Added Pub. L. 99–335, title I, §101(a), June 6, 1986, 100 Stat. 559; amended Pub. L. 99–556, title I, §120, Oct. 27, 1986, 100 Stat. 3134; Pub. L. 100–238, title I, §131(b), Jan. 8, 1988, 101 Stat. 1760.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (f)(3), (4), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§301 et seq.) of Title 42, The Public Health and Welfare. Title II of the Social Security Act is classified generally to subchapter II (§401 et seq.) of chapter 7 of Title 42. Sections 202, 203, and 215 are classified to sections 402, 403, and 415, respectively, of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

1988—Subsec. (a)(1). Pub. L. 100–238, §131(b)(1), inserted ''(or one-half thereof, if designated for this purpose under section 8419 of this title),'' after ''with respect to the annuitant,''.

Subsec. (g)(1). Pub. L. 100–238, §131(b)(2), inserted ''(or one-half thereof if designated for this purpose under section 8419 of this title)'' after ''paragraph (2)''.

1986—Subsec. (c)(2)(B)(i)(I). Pub. L. 99–556 which directed that subsec. (c)(2)(B)(i)(I) of this section be amended generally was executed to subsec. (c)(2)(B)(i)(I) of this section, as the probable intent of Congress. Prior to the amendment, subcl. (I) read as follows: ''on the day after the date on which the former employee or Member would have attained age 62; or''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8416, 8417, 8419, 8435, 8445, 8462, 8468, 8901 of this title; title 22 section 4071d; title 38 section 7438; title 50 section 2154.

§ 8443. Rights of a child

(a)(1) If an employee or Member dies after completing at least 18 months of civilian service which is creditable under section 8411, or an annuitant dies, each surviving child is, for any month, entitled to an annuity equal to—

(A) the amount by which the applicable amount under paragraph (2) for such month exceeds the applicable amount under paragraph (3) for such month, divided by

(B) the number of children entitled to a payment under this section for such month.

(2) The applicable amount under this paragraph for any month is the total amount to

which the surviving child or children (as the case may be) of the annuitant, employee, or Member would be entitled for such month under subchapter III of chapter 83 (including any adjustment based on section 8340) based on the service of such annuitant, employee, or Member, if the service of such annuitant, employee, or Member were creditable under such subchapter.

(3) The applicable amount under this paragraph for any month is the total amount of child's insurance benefits which are payable (or would, on proper application, be payable) under title II of the Social Security Act for such month based on the wages and self-employment income of such annuitant, employee, or Member.

(b) The annuity of a child under this subchapter—

(1) commences on the day after the annuitant, employee, or Member dies;

(2) commences or resumes on the first day of the month in which the child later becomes or again becomes a student as described by section 8441(4), if any lump sum paid is returned to the Fund; or

(3) commences or resumes on the first day of the month in which the child later becomes or again becomes incapable of self-support because of a mental or physical disability incurred before age 18 (or a later recurrence of such disability), if any lump sum paid is returned to the Fund.

This annuity and the right thereto terminate on the last day of the month before the child—

(A) becomes 18 years of age unless then a student as described or incapable of self-support;

(B) becomes capable of self-support after becoming 18 years of age unless then such a student;

(C) becomes 22 years of age if then such a student and capable of self-support;

(D) ceases to be such a student after becoming 18 years of age unless then incapable of self-support; or

(E) dies or marries;

whichever occurs first. On the death of the surviving wife or husband, or former wife or husband, or termination of the annuity of a child, the annuity of any other child or children shall be recomputed and paid as though the wife or husband, former wife or husband, or child had not survived the annuitant, employee, or Member.

(Added Pub. L. 99–335, title I, §101(a), June 6, 1986, 100 Stat. 563; amended Pub. L. 99–556, title I, §117(a), Oct. 27, 1986, 100 Stat. 3134.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (a)(3), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title II of the Social Security Act is classified generally to subchapter II (§401 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

1986—Subsec. (a)(2). Pub. L. 99–556 inserted ''(including any adjustment based on section 8340)''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8441, 8462 of this title; title 38 section 7438.

§ 8444. Rights of a named individual with an insurable interest

The annuity of a survivor named under section 8420(a) is 55 percent of the reduced annuity of the retired employee or Member determined under paragraph (2) of such section 8420(a). The annuity of the survivor commences on the day after the retired employee or Member dies. This annuity and the right thereto terminate on the last day of the month before the survivor dies.

(Added Pub. L. 99–335, title I, §101(a), June 6, 1986, 100 Stat. 563.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8420 of this title.

§ 8445. Rights of a former spouse

(a) Subject to subsections (b) through (e), a former spouse of a deceased employee, Member, or annuitant (or of a former employee or Member who dies after having separated from the service with title to a deferred annuity under section 8413 but before having established a valid claim for annuity) is entitled to an annuity under this section, if and to the extent expressly provided for in an election under section 8417(b), or in the terms of any decree of divorce or annulment or any court order or court-approved property settlement agreement incident to such decree.

(b)(1) The annuity payable to a former spouse under this section may not exceed the difference between—

(A) the amount applicable in the case of such former spouse, as determined under paragraph (2); and

(B) the amount of any annuity payable under this section to any other former spouse of the employee, Member, or annuitant, or former employee or Member, based on an election previously made under section 8417(b), or a court order previously issued or agreement previously entered into as described in subsection (a).

(2) The applicable amount, for purposes of paragraph (1)(A) in the case of a former spouse, is the amount of the annuity which would be payable under the provisions of section 8442 (including subsection (f) of such section, but without regard to subsection (h) of such section) if such former spouse were a widow or widower entitled to an annuity under such provisions based on the service of the deceased employee, Member, or annuitant, or former employee or Member.

(c) The commencement and termination of an annuity payable under this section shall be governed by the terms of the applicable order, decree, agreement, or election, as the case may be, except that any such annuity—

(1) shall not commence before—

(A) the day after the employee, Member, or annuitant, or former employee or Member, dies; or

(B) the first day of the second month beginning after the date on which the Office receives written notice of the order, decree, agreement, or election, as the case may be, together with such additional information

or documentation as the Office may prescribe;

whichever is later; and

(2) shall terminate no later than the last day of the month before the former spouse remarries before becoming 55 years of age or dies.

(d) For purposes of this chapter, a modification in a decree, order, agreement, or election referred to in subsection (a) shall not be effective—

(1) if such modification is made after the retirement or death of the employee, Member, or annuitant, or former employee or Member, concerned; and

(2) to the extent that such modification involves an annuity under this section.

(e) For purposes of this chapter, a decree, order, agreement, or election referred to in subsection (a) shall not be effective, in the case of a former spouse, to the extent that it is inconsistent with any joint waiver previously executed with respect to such former spouse under section 8416(a).

(f)(1) Any amount under section 8442(b)(1)(A) which would otherwise be payable to a widow or widower based on the service of another individual shall be paid (in whole or in part) by the Office to a former spouse of such individual if and to the extent expressly provided for in the terms of a court decree of divorce, annulment, or legal separation, or the terms of a court order or court-approved property settlement incident to any decree of divorce, annulment, or legal separation.

(2) Paragraph (1) shall apply only to payments made by the Office after the date of receipt in the Office of written notice of such decree, order, or agreement, and such additional information and documentation as the Office may prescribe.

(g) Any payment under this section to a person bars recovery by any other person.

(Added Pub. L. 99–335, title I, §101(a), June 6, 1986, 100 Stat. 564.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8416, 8417, 8419, 8420, 8420a, 8424, 8435, 8442, 8468, 8901, 8905 of this title; title 50 section 2154.

SUBCHAPTER V—DISABILITY BENEFITS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 8401, 8422, 8424, 8461, 8464, 8464a, 8470 of this title; title 2 section 121b; title 40 section 214d; title 50 section 2154.

§ 8451. Disability retirement

(a)(1)(A) An employee who completes at least 18 months of civilian service creditable under section 8411 and has become disabled shall be retired on the employee's own application or on application by the employee's agency.

(B) For purposes of this subsection, an employee shall be considered disabled only if the employee is found by the Office to be unable, because of disease or injury, to render useful and efficient service in the employee's position.

(2)(A) Notwithstanding paragraph (1), an employee shall not be eligible for disability retirement under this section if the employee has declined a reasonable offer of reassignment to a vacant position in the employee's agency for which the employee is qualified if the position—

(i) is at the same grade (or pay level) as the employee's most recent grade (or pay level) or higher;

(ii) is within the employee's commuting area; and

(iii) is one in which the employee would be able to render useful and efficient service.

(B) An employee who is applying for disability retirement under this subchapter shall be considered for reassignment by the employee's agency to a vacant position described in subparagraph (A) in accordance with such procedures as the Office shall by regulation prescribe.

(C) An employee is entitled to appeal to the Merit Systems Protection Board under section 7701 any determination that the employee is not unable, because of disease or injury, to render useful and efficient service in a position to which the employee has declined reassignment under this section.

(D) For purposes of subparagraph (A), an employee of the United States Postal Service shall not be considered qualified for a position if such position is in a different craft or if reassignment to such position would be inconsistent with the terms of a collective-bargaining agreement covering the employee.

(b) A Member who completes at least 18 months of service as a Member and is found by the Office to be disabled for useful and efficient service as a Member because of disease or injury shall be retired on the Member's own application.

(c) An employee or Member retiring under this section is entitled to an annuity computed under section 8452.

(Added Pub. L. 99–335, title I, §101(a), June 6, 1986, 100 Stat. 565.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8456, 8461, 8464 of this title; title 38 sections 7426, 7438.

§ 8452. Computation of disability annuity

(a)(1)(A) Except as provided in paragraph (2), or subsection (b), (c), or (d), the annuity of an annuitant under this subchapter—

(i) for the period beginning on the date on which such annuity commences, or is restored (as described in section 8455(b)(2) or (3)), and ending at the end of the twelfth month beginning on or after such date, shall be equal to 60 percent of the annuitant's average pay; and

(ii) after the end of the period referred to in clause (i), shall be equal to 40 percent of the annuitant's average pay.

(B) An annuity computed under this paragraph—

(i) shall not, during any period referred to in subparagraph (A)(i), be adjusted under section 8462; but

(ii) shall, after the end of any period referred to in subparagraph (A)(i), be adjusted to reflect all adjustments made under section 8462(b) after the end of the period referred to in subparagraph (A)(i), whether the amount

actually payable to the annuitant under this section in any month is determined under this subsection or otherwise.

(2)(A) For any month in which an annuitant is entitled both to an annuity under this subchapter as computed under paragraph (1) and to a disability insurance benefit under section 223 of the Social Security Act, the annuitant's annuity for such month (as so computed) shall—

(i) if such month occurs during a period referred to in paragraph (1)(A)(i), be reduced by 100 percent of the annuitant's assumed disability insurance benefit for such month; or

(ii) if such month occurs other than during a period referred to in paragraph (1)(A)(i), be reduced by 60 percent of the annuitant's assumed disability insurance benefit for such month;

except that an annuity may not be reduced below zero by reason of this paragraph.

(B)(i) For purposes of this paragraph, the assumed disability insurance benefit of an annuitant for any month shall be equal to—

(I) the amount of the disability insurance benefit to which the annuitant is entitled under section 223 of the Social Security Act for the month in which the annuity under this subchapter commences, or is restored, or, if no entitlement to such disability insurance benefits exists for such month, the first month thereafter for which the annuitant is entitled both to an annuity under this subchapter and disability insurance benefits under section 223 of the Social Security Act, adjusted by

(II) all adjustments made under section 8462(b) after the end of the period referred to in paragraph (1)(A)(i) (or, if later, after the end of the month preceding the first month for which the annuitant is entitled both to an annuity under this subchapter and disability insurance benefits under section 223 of the Social Security Act) and before the start of the month involved (without regard to whether the annuitant's annuity was affected by any of those adjustments).

(ii) For purposes of applying section 224 of the Social Security Act to the assumed disability insurance benefit used to compute the reduction under this paragraph, the amount of the annuity under this subchapter which is considered shall be the amount of the annuity as determined before the application of this paragraph.

(3) Section 8462 shall apply with respect to amounts under this subsection only as provided in paragraphs (1) and (2).

(b)(1) Except as provided in subsection (d), if an annuitant is entitled to an annuity under this subchapter as of the day before the date of the sixty-second anniversary of the annuitant's birth (hereinafter in this section referred to as the annuitant's ''redetermination date''), such annuity shall be redetermined by the Office in accordance with paragraph (2). Effective as of the annuitant's redetermination date, the annuity (as so redetermined) shall be in lieu of any annuity to which such annuitant would otherwise be entitled under this subchapter.

(2)(A) An annuity redetermined under this subsection shall be equal to the amount of the annuity to which the annuitant would be entitled under section 8415, taking into account the provisions of subparagraph (B).

(B) In performing a computation under this paragraph—

(i) creditable service of an annuitant shall be increased by including any period (or periods) before the annuitant's redetermination date during which the annuitant was entitled to an annuity under this subchapter; and

(ii) the average pay which would otherwise be used shall be adjusted to reflect all adjustments made under section 8462(b) with respect to any period (or periods) referred to in clause (i) (without regard to whether the annuitant's annuity was affected by any of those adjustments).

(c) Except as provided in subsection (d), the annuity of an annuitant under this subchapter shall be computed under section 8415 if—

(1) such annuity commences, or is restored, beginning on or after the redetermination date of the annuitant; or

(2) as of the day on which such annuity commences, or is restored, the annuitant satisfies the age and service requirements for entitlement to an annuity under section 8412 (other than subsection (g) of such section).

(d)(1) The annuity to which an annuitant is entitled under this section (after the reduction under subsection (a)(2), if applicable, has been made) shall not be less than the amount of an annuity computed under section 8415 (excluding subsection (f) of such section).

(2) In applying this subsection with respect to any annuitant, the amount of an annuity so computed under section 8415 shall be adjusted under section 8462 (including subsection (c) thereof)—

(A) to the same extent, and otherwise in the same manner, as if it were an annuity—

(i) subject to adjustment under such section; and

(ii) with a commencement date coinciding with the date the annuitant's annuity commenced or was restored under this subchapter, as the case may be; and

(B) whether the amount actually payable to the annuitant under this section in any month is determined under this subsection or otherwise.

(Added Pub. L. 99–335, title I, §101(a), June 6, 1986, 100 Stat. 566; amended Pub. L. 99–556, title I, §§104, 106, Oct. 27, 1986, 100 Stat. 3131, 3132; Pub. L. 100–238, title I, §122(a)–(c), Jan. 8, 1988, 101 Stat. 1753, 1754.)

REFERENCES IN TEXT

Sections 223 and 224 of the Social Security Act, referred to in subsec. (a)(2), are classified to sections 423 and 424a, respectively, of Title 42, The Public Health and Welfare.

AMENDMENTS

1988—Subsec. (a)(1)(B). Pub. L. 100–238, §122(c)(2)(A), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''An annuity computed under this paragraph shall not, for purposes of any adjustment under section 8462 (including any adjustment under subsection (c)(1) of such section), be considered to have commenced until after such annuity ceases to be determined under subparagraph (A)(i).''

Subsec. (a)(2)(B)(i). Pub. L. 100–238, §122(a), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: ''For purposes of this paragraph, the assumed disability insurance benefit of an annuitant for any month shall be equal to—

''(I) the amount of the disability insurance benefit to which the annuitant would have been entitled under section 223 of the Social Security Act for the month in which the annuity under this subchapter commenced, or was restored, determined as if such annuitant had then satisfied all requirements for entitlement to a benefit under such section, adjusted by

''(II) all adjustments made under section 8462(b) between the date on which the annuity commenced, or was restored, and the start of the month involved (without regard to whether the annuitant's annuity was affected by any of those adjustments).

For purposes of computing the assumed disability insurance benefit, the month in which the annuitant's disability began (as determined under section 216(i)(2)(C) of the Social Security Act) shall be the month in which the annuity commenced or, if earlier (and if a determination was actually made) the month determined under such section.''

Subsec. (a)(3). Pub. L. 100–238, §122(c)(2)(B), added par. (3).

Subsec. (b). Pub. L. 100–238, §122(b), amended subsec. (b) generally, substituting pars. (1) and (2) for former pars. (1) to (4).

Subsec. (d). Pub. L. 100–238, §122(c)(1), designated existing provisions as par. (1) and added par. (2).

1986—Subsec. (b)(3). Pub. L. 99–556, §106, substituted ''(a)(1)(A)(i)'' for ''(a)(1)(A)'' in second sentence.

Subsec. (d). Pub. L. 99–556, §104, inserted ''(after the reduction under subsection (a)(2), if applicable, has been made)''.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 122(d) of Pub. L. 100–238 provided that: ''The amendments made by this section [amending this section] shall be effective as of January 1, 1987, as if they had been enacted as part of the Federal Employees' Retirement System Act of 1986 (Public Law 99–335; 100 Stat. 514 and following).''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8418, 8419, 8442, 8451, 8455, 8462 of this title; title 22 section 4071d.

§ 8453. Application

A claim may be allowed under this subchapter only if application is filed with the Office before the employee or Member is separated from the service or within 1 year thereafter. This time limitation may be waived by the Office for an employee or Member who, at the date of separation from service or within 1 year thereafter, is mentally incompetent if the application is filed with the Office within 1 year from the date of restoration of the employee or Member to competency or the appointment of a fiduciary, whichever is earlier.

(Added Pub. L. 99–335, title I, §101(a), June 6, 1986, 100 Stat. 568.)

§ 8454. Medical examination

An annuitant receiving a disability retirement annuity from the Fund shall be examined under the direction of the Office—

(1) at the end of 1 year from the date of the disability retirement; and

(2) annually thereafter until becoming 60 years of age;

unless the disability is permanent in character. If the annuitant fails to submit to examination as required by this section, payment of the annuity shall be suspended until continuance of the disability is satisfactorily established.

(Added Pub. L. 99–335, title I, §101(a), June 6, 1986, 100 Stat. 568.)

§ 8455. Recovery; restoration of earning capacity

(a)(1) If an annuitant receiving a disability retirement annuity from the Fund recovers from the disability before becoming 60 years of age, payment of the annuity terminates on reemployment by the Government or 1 year after the date on which the Office determines that the annuitant has recovered, whichever is earlier.

(2) If an annuitant receiving a disability annuity from the Fund, before becoming 60 years of age, is restored to an earning capacity fairly comparable to the current rate of pay of the position occupied at the time of retirement, payment of the annuity terminates 180 days after the end of the calendar year in which earning capacity is so restored. Earning capacity is deemed restored if in any calendar year the income of the annuitant from wages or self-employment or both equals at least 80 percent of the current rate of pay of the position occupied immediately before retirement.

(b)(1) If an annuitant whose annuity is terminated under subsection (a) is not reemployed in a position in which that individual is subject to this chapter, such individual is deemed, except for service credit, to have been involuntarily separated from the service for the purpose of subchapter II of this chapter as of the date of termination of the disability annuity, and after that termination is entitled to annuity under the applicable provisions of such subchapter.

(2) If an annuitant whose annuity is terminated under subsection (a)(2)—

(A) is not reemployed in a position subject to this chapter; and

(B) has not recovered from the disability for which that individual was retired;

the annuity of such individual shall be restored at the applicable rate under section 8452 effective the first of the year following any calendar year in which such individual's income from wages or self-employment or both is less than 80 percent of the current rate of pay of the position occupied immediately before retirement.

(3) If an annuitant whose annuity is terminated because of a medical finding that the individual has recovered from disability is not reemployed in a position in which such individual is subject to this chapter, the annuity of such individual shall be restored at the applicable rate under section 8452 effective from the date on which the Office determines that there has been a recurrence of the disability.

(4) Paragraphs (2) and (3) shall not apply in the case of an annuitant receiving an annuity from the Fund under subchapter II of this chapter.

(Added Pub. L. 99–335, title I, §101(a), June 6, 1986, 100 Stat. 568.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8452, 8456 of this title.

§ 8456. Military reserve technicians

(a)(1) Except as provided in paragraph (2) or (3), an individual shall be retired under this subchapter if the individual—

(A) is separated from employment as a military reserve technician by reason of a disability that disqualifies the individual from membership in a reserve component of the Armed Forces specified in section 10101 of title 10 or from holding the military grade required for such employment;

(B) is not considered to be disabled under section 8451(a)(1)(B);

(C) is not appointed to a position in the Government (whether under subsection (b) or otherwise); and

(D) has not declined an offer of an appointment to a position in the Government under subsection (b).

(2) Payment of any annuity for an individual pursuant to this section terminates—

(A) on the date the individual is appointed to a position in the Government (whether pursuant to subsection (b) or otherwise);

(B) on the date the individual declines an offer of appointment to a position in the Government under subsection (b); or

(C) as provided under section 8455(a).

(3) An individual eligible to retire under section 8414(c) shall not be eligible to retire under this section.

(b) Any individual applying for or receiving any annuity pursuant to this section shall, in accordance with regulations prescribed by the Office, be considered by any agency of the Government before any vacant position in the agency is filled if—

(1) the position is located within the commuting area of the individual's former position;

(2) the individual is qualified to serve in such position, as determined by the head of the agency; and

(3) the position is at the same grade or equivalent level as the position from which the individual was separated.

(Added Pub. L. 99–335, title I, §101(a), June 6, 1986, 100 Stat. 570, §8457; amended Pub. L. 99–556, title I, §118, Oct. 27, 1986, 100 Stat. 3134; renumbered §8456, Pub. L. 100–238, title I, §124(b)(1)(B), Jan. 8, 1988, 101 Stat. 1756; Pub. L. 103–337, div. A, title XVI, §1677(a)(4), Oct. 5, 1994, 108 Stat. 3019.)

PRIOR PROVISIONS

A prior section 8456, added Pub. L. 99–355, title I, §101(a), June 6, 1986, 100 Stat. 569, related to relationship between annuity and workers' compensation, prior to repeal by Pub. L. 100–238, title I, §124(b)(1)(A), Jan. 8, 1988, 101 Stat. 1756. See section 8464a of this title.

AMENDMENTS

1994—Subsec. (a)(1)(A). Pub. L. 103–337 substituted ''section 10101'' for ''section 261(a)''.

1988—Pub. L. 100–238 renumbered section 8457 of this title as this section.

1986—Subsec. (a)(1)(C), (D), (2)(A), (B). Pub. L. 99–556 substituted ''subsection (b)'' for ''subsection (c)''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of Title 10, Armed Forces.

[§ 8457. Renumbered § 8456]

SUBCHAPTER VI—GENERAL AND ADMINISTRATIVE PROVISIONS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 8461 of this title.

§ 8461. Authority of the Office of Personnel Management

(a) The Office shall pay all benefits that are payable under subchapter II, IV, V, or VI of this chapter from the Fund.

(b) The Office shall administer all provisions of this chapter not specifically required to be administered by the Board, the Executive Director, the Secretary of Labor, or any other officer or agency.

(c) The Office shall adjudicate all claims under the provisions of this chapter administered by the Office.

(d) The Office shall determine questions of disability and dependency arising under the provisions of this chapter administered by the Office. Except to the extent provided under subsection (e), the decisions of the Office concerning these matters are final and conclusive and are not subject to review. The Office may direct at any time such medical or other examinations as it considers necessary to determine the facts concerning disability or dependency of an individual receiving or applying for annuity under the provisions of this chapter administered by the Office. The Office may suspend or deny annuity for failure to submit to examination.

(e)(1) Subject to paragraph (2), an administrative action or order affecting the rights or interests of an individual or of the United States under the provisions of this chapter administered by the Office may be appealed to the Merit Systems Protection Board under procedures prescribed by the Board.

(2) In the case of any individual found by the Office to be disabled in whole or in part on the basis of the individual's mental condition, and that finding was made pursuant to an application by an agency for purposes of disability retirement under section 8451, the procedures under section 7701 shall apply and the decision of the Board shall be subject to judicial review under section 7703.

(f) The Office shall fix the fees for examinations made under subchapter V of this chapter by physicians or surgeons who are not medical officers of the United States. The fees and reasonable traveling and other expenses incurred in connection with the examinations are paid from appropriations for the cost of administering the provisions of this chapter administered by the Office.

(g) The Office may prescribe regulations to carry out the provisions of this chapter administered by the Office.

(h)(1) Each Government agency shall furnish the Director with such information as the Director determines necessary in order to administer this chapter.

(2) The Director, in consultation with the officials from whom such information is requested,

shall establish (by regulation or otherwise) such safeguards as are necessary to ensure that information made available under this subsection is used only for the purpose authorized.

(i) In making a determination of ''actuarial equivalence'' under this chapter, the economic assumptions used shall be the same as the economic assumptions most recently used by the Office (before the determination of actuarial equivalence involved) in determining the normal-cost percentage of the System.

(j)(1) Notwithstanding any other provision of this chapter, the Director of Central Intelligence shall, in a manner consistent with the administration of this chapter by the Office, and to the extent considered appropriate by the Director of Central Intelligence—

(A) determine entitlement to benefits under this chapter based on the service of employees of the Central Intelligence Agency;

(B) maintain records relating to the service of such employees;

(C) compute benefits under this chapter based on the service of such employees;

(D) collect deposits to the Fund made by such employees, their spouses, their former spouses, and their survivors;

(E) authorize and direct disbursements from the Fund to the extent based on service of such employees; and

(F) perform such other functions under this chapter (other than under subchapters III and VII of this chapter) with respect to employees of the Central Intelligence Agency as the Director of Central Intelligence, in consultation with the Director of the Office of Personnel Management, determines to be appropriate.

(2) The Director of the Office of Personnel Management shall furnish such information and, on a reimbursable basis, such services to the Director of Central Intelligence as the Director of Central Intelligence requests to carry out paragraph (1).

(k)(1) The Director of Central Intelligence, in consultation with the Executive Director of the Federal Retirement Thrift Investment Board, may—

(A) maintain exclusive records relating to elections, contributions, and accounts under the Thrift Savings Plan provided in subchapter III of this chapter in the case of employees of the Central Intelligence Agency;

(B) provide that contributions by, or on behalf of, such employees to the Thrift Savings Plan be accounted for by such Executive Director in aggregate amounts;

(C) make the necessary disbursements from, and the necessary allocations of earnings, losses, and charges to, individual accounts of such employees under the Thrift Savings Plan; and

(D) perform such other functions under subchapters III and VII of this chapter (but not including investing sums in the Thrift Savings Fund) with respect to employees of the Central Intelligence Agency as the Director of Central Intelligence, in consultation with the Executive Director of the Federal Retirement Thrift Investment Board, determines to be appropriate.

(2) The Executive Director of the Federal Retirement Thrift Investment Board may not exercise authority under this chapter in the case of employees of the Central Intelligence Agency to the extent that the Director of Central Intelligence exercises authority provided in paragraph (1).

(3) The Executive Director of the Federal Retirement Thrift Investment Board shall furnish such information and, on a reimbursable basis, such services to the Director of Central Intelligence as the Director of Central Intelligence determines necessary to carry out this subsection.

(*l*) Subsection (h)(1), and sections 8439(b) and 8474(c)(4), shall be applied with respect to information relating to employees of the Central Intelligence Agency in a manner that protects intelligence sources, methods, and activities.

(m)(1) The Director of Central Intelligence, in consultation with the Director of the Office of Personnel Management and the Executive Director of the Federal Retirement Thrift Investment Board, shall by regulation prescribe appropriate procedures to carry out subsections (j), (k), and (*l*).

(2) The regulations shall provide procedures for the Director of the Office of Personnel Management to inspect and audit disbursements from the Fund under this chapter.

(3) The Director of Central Intelligence shall submit the regulations prescribed under paragraph (1) to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives before the regulations take effect.

(n)(1) Under regulations prescribed by the Office, an employee of the Department of Defense or the Coast Guard who—

(A) has not previously made an election under this subsection or had an opportunity to make an election under this paragraph;

(B) has 5 or more years of civilian service creditable under this chapter; and

(C) moves, without a break in service of more than 3 days, to employment in a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard, respectively, described in section 2105(c),

shall be given the opportunity to elect irrevocably, within 30 days after such move, to remain covered as an employee under this chapter during any employment described in section 2105(c) after such move.

(2) Under regulations prescribed by the Office, an employee of a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard described in section 2105(c), who—

(A) has not previously made an election under this subsection or had an opportunity to make an election under this paragraph;

(B) is a vested participant in a retirement system established for employees described in section 2105(c), as the term ''vested participant'' is defined by such system;

(C) moves, without a break in service of more than 3 days, to a position in the Department of Defense or the Coast Guard, respectively, that is not described by section 2105(c); and

(D) is not eligible to make an election under section 8347(q),

shall be given the opportunity to elect irrevocably, within 30 days after such move, to re-

main covered, during any subsequent employment as an employee as defined by section 2105(a) or section 2105(c), by the retirement system applicable to such employee's current or most recent employment described by section 2105(c) rather than be subject to this chapter.

(Added Pub. L. 99–335, title I, §101(a), June 6, 1986, 100 Stat. 570; amended Pub. L. 99–556, title I, §102, Oct. 27, 1986, 100 Stat. 3131; Pub. L. 101–508, title VII, §7202(k)(2), Nov. 5, 1990, 104 Stat. 1388–339; Pub. L. 102–378, §2(71), Oct. 2, 1992, 106 Stat. 1355.)

AMENDMENTS

1992—Subsec. (n)(1)(A), (2)(A). Pub. L. 102–378, §2(71)(A), amended subpars. (A) generally. Prior to amendment, subpars. (A) read as follows: ''has not previously made or had an opportunity to make an election under this subsection;''.

Subsec. (n)(2)(D). Pub. L. 102–378, §2(71)(B), substituted ''8347(q)'' for ''8347(p)''.

1990—Subsec. (n). Pub. L. 101–508 added subsec. (n).

1986—Subsec. (m)(2). Pub. L. 99–556 struck out '', and from the Thrift Savings Fund,'' after ''from the Fund''.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–378 effective Nov. 5, 1990, see section 9(b)(6) of Pub. L. 102–378, set out as a note under section 6303 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable with respect to any individual who, on or after Jan. 1, 1987, moves from employment in nonappropriated fund instrumentality of Department of Defense or Coast Guard, that is described in section 2105(c) of this title, to employment in Department or Coast Guard, that is not described in section 2105(c), or who moves from employment in Department or Coast Guard, that is not described in section 2105(c), to employment in nonappropriated fund instrumentality of Department or Coast Guard, that is described in section 2105(c), see section 7202(m)(1) of Pub. L. 101–508, set out as a note under section 2105 of this title.

TREATMENT OF INDIVIDUALS ELECTING TO REMAIN SUBJECT TO THEIR FORMER RETIREMENT SYSTEM

For provisions relating to the deductions and contributions required with respect to individuals electing under section 8347(q) or 8461(n) of this title to remain covered under subchapter III of chapter 83 of this title, chapter 84 of this title, or a retirement system for employees described in section 2105(c) of this title, see section 7202(n) of Pub. L. 101–508, set out as a note under section 2105 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8348, 8401, 8901 of this title; title 50 sections 2142, 2155.

§ 8462. Cost-of-living adjustments

(a) For the purpose of this section—

(1) the term ''base quarter'', as used with respect to a year, means the calendar quarter ending on September 30 of such year;

(2) the price index for a base quarter is the arithmetical mean of such index for the 3 months comprising such quarter; and

(3) the term ''percent change in the price index'', as used with respect to a year, means the percentage derived by—

(A) reducing—

(i) the price index for the base quarter of such year, by

(ii) the price index for the base quarter of the preceding year in which an adjustment under this subsection was made;

(B) dividing the difference under subparagraph (A) by the price index referred to in subparagraph (A)(ii); and

(C) multiplying the quotient under subparagraph (B) by 100.

(b)(1) Except as provided in subsection (c), effective December 1 of any year in which an adjustment under this subsection is to be made, as determined under paragraph (2), each annuity payable from the Fund under this chapter (other than an annuity under section 8443) having a commencing date not later than such December 1 shall be adjusted as follows:

(A) If the percent change in the price index for the year does not exceed 3 percent, each annuity subject to adjustment under this subsection shall be increased by the lesser of—

(i) the percent change in the price index (rounded to the nearest one-tenth of 1 percent); or

(ii) 2 percent.

(B) If the percent change in the price index for the year exceeds 3 percent, each annuity subject to adjustment under this subsection shall be increased by the excess of—

(i) the percent change in the price index (rounded to the nearest one-tenth of 1 percent), over

(ii) 1 percent.

(2) An adjustment under this subsection shall be made in a year only if the price index for the base quarter of such year exceeds the price index for the base quarter of the preceding year in which an adjustment under this subsection was made.

(3) An annuity under this chapter shall not be subject to adjustment under section 8340. Nothing in the preceding sentence shall affect the computation of any amount under section 8443(a)(2).

(c) Eligibility for an annuity increase under this section is governed by the commencing date of each annuity payable from the Fund as of the effective date of an increase, except as follows:

(1) The first increase (if any) made under subsection (b) to an annuity which is payable from the Fund to an annuitant or survivor (other than a child under section 8443) whose annuity has not been increased under this subsection or subsection (b) shall be equal to the product (adjusted to the nearest one-tenth of 1 percent) of—

(A) one-twelfth of the applicable percent change computed under subsection (b), multiplied by

(B) the number of months (not to exceed 12 months, counting any portion of a month as a month)—

(i) for which the annuity was payable from the Fund before the effective date of the increase; or

(ii) in the case of a survivor of a deceased annuitant whose annuity has not been so increased, since the annuity was first payable to the deceased annuitant.

(2) Effective from its commencing date, an annuity payable from the Fund to an annu-

itant's survivor (other than a widow or widower whose annuity is computed under section 8442(g) or a child under section 8443) shall be increased by the total percentage by which the deceased annuitant's annuity had been increased under this section during the period beginning on the date the deceased annuitant's annuity commenced and ending on the date of the deceased annuitant's death.

(3)(A) An adjustment under subsection (b) for any year shall not be effective with respect to the annuity of an annuitant who is under 62 years of age as of the date on which such adjustment would otherwise first take effect.

(B)(i) Except as provided in clause (ii), this paragraph applies only with respect to an annuitant under section 8412, 8413, or 8414.

(ii) This paragraph does not apply with respect to an annuitant under subsection (d) or (e) of section 8412 or (in the case of an annuitant separated from service as a military reserve technician as a result of disability) under section 8414(c).

(4) The first increase (if any) made under subsection (b) to an annuity which is payable from the Fund to a widow or widower whose annuity is computed under section 8442(g) shall be equal to the product (adjusted to the nearest one-tenth of 1 percent) of—

(A) one-twelfth of the applicable percent change computed under subsection (b), multiplied by

(B) the number of months (not to exceed 12 months, counting any portion of a month as a month) since—

(i) the effective date of the adjustment last made under this section in the annuity of the annuitant on whose service on the widow's or widower's annuity is based; or

(ii) if the annuity of the annuitant (referred to in clause (i)) has not been increased under this section, the commencement date of such annuitant's annuity (determined subject to section 8452(a)(1)(B)).

(d) The monthly installment of an annuity after adjustment under this section shall be rounded to the next lowest dollar. However, the monthly installment shall, after adjustment, reflect an increase of at least $1.

(e) The $15,000 amount referred to in section 8442(b)(1)(A)(ii) shall be increased at the same time that, and by the same percent as the percentage by which, annuities under subchapter III of chapter 83 are increased.

(Added Pub. L. 99–335, title I, § 101(a), June 6, 1986, 100 Stat. 572; amended Pub. L. 99–556, title I, § 117(b), Oct. 27, 1986, 100 Stat. 3134.)

AMENDMENTS

1986—Subsec. (b)(3). Pub. L. 99–556 inserted provision relating to the computation of any amount under section 8443(a)(2).

DELAY IN COST-OF-LIVING ADJUSTMENTS DURING FISCAL YEARS 1994, 1995, AND 1996

Any cost-of-living increase scheduled to take effect during fiscal year 1994, 1995, or 1996 under subsec. (b) of this section delayed until first day of third calendar month after date such increase would otherwise take effect, see section 11001 of Pub. L. 103–66, set out as a note under section 8340 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8348, 8418, 8442, 8452 of this title; title 22 section 4071g.

§ 8463. Rate of benefits

Each annuity payable from the Fund is stated as an annual amount, one-twelfth of which, rounded to the next lower dollar, constitutes the monthly rate payable on the first business day of the first month beginning after the month for which it has accrued.

(Added Pub. L. 99–335, title I, § 101(a), June 6, 1986, 100 Stat. 574.)

§ 8464. Commencement and termination of annuities of employees and Members

(a)(1) Except as otherwise provided in this chapter—

(A) an annuity payable from the Fund commences on the first day of the month after—

(i) separation from the service, in the case of an employee or Member retiring under section 8412, or subsection (a) or (b)(1)(B) of section 8414; or

(ii) pay ceases, and the applicable age and service requirements are met, in the case of an employee or Member retiring under section 8413;

(B) an annuity payable from the Fund commences on the day after separation from the service in the case of an employee retiring under subsection (b)(1)(A) or (c) of section 8414; and

(C) an annuity payable from the Fund commences on the day after separation from the service or the day after pay ceases and the requirements for title to an annuity are met in the case of an employee or Member retiring under section 8451.

(2) Notwithstanding paragraph (1)(A)(i), an annuity payable from the Fund commences on the day after separation from the service in the case of an employee or Member—

(A) who retires under section 8412; and

(B) whose separation occurs upon the expiration of a term (or other period) for which the individual was appointed or elected.

(b) Except as otherwise provided in this chapter, the annuity of an annuitant under subchapter II or V of this chapter terminates on the date death or other terminating event occurs.

(Added Pub. L. 99–335, title I, § 101(a), June 6, 1986, 100 Stat. 574.)

§ 8464a. Relationship between annuity and workers' compensation

(a)(1) An individual is not entitled to receive—

(A) an annuity under subchapter II or V, and

(B) compensation for injury to, or disability of, such individual under subchapter I of chapter 81, other than compensation payable under section 8107,

covering the same period of time.

(2) An individual is not entitled to receive an annuity under subchapter IV and a concurrent benefit under subchapter I of chapter 81 on account of the death of the same person.

(3) Paragraphs (1) and (2) do not bar the right of a claimant to the greater benefit conferred by either this chapter or subchapter I of chapter 81.

(b) If an individual is entitled to an annuity under subchapter II, IV, or V, and the individual receives a lump-sum payment for compensation under section 8135 based on the disability or death of the same person, so much of the compensation as has been paid for a period extended beyond the date payment of the annuity commences, as determined by the Department of Labor, shall be refunded to that Department for credit to the Employees' Compensation Fund. Before the individual may receive the annuity, the individual shall—

(1) refund to the Department of Labor the amount representing the commuted compensation payments for the extended period; or

(2) authorize the deduction of the amount from the annuity.

Deductions from the annuity may be made from accrued or accruing payments. The amounts deducted and withheld from the annuity shall be transmitted to the Department of Labor for reimbursement to the Employees' Compensation Fund. When the Department of Labor finds that the financial circumstances of an individual entitled to an annuity under subchapter II, IV, or V warrant deferred refunding, deductions from the annuity may be prorated against and paid from accruing payments in such manner as the Department determines appropriate.

(Added Pub. L. 100–238, title I, §124(a)(1)(B), Jan. 8, 1988, 101 Stat. 1755.)

PRIOR PROVISIONS

Provisions similar to this section were contained in section 8456 of this title prior to repeal by Pub. L. 100–238.

EFFECTIVE DATE

Section effective Jan. 1, 1987, and applicable with respect to benefits payable based on a death or disability occurring on or after that date, see section 124(c) of Pub. L. 100–238 set out as an Effective Date of 1988 Amendment note under section 8337 of this title.

§ 8465. Waiver, allotment, and assignment of benefits

(a) An individual entitled to an annuity payable from the Fund may decline to accept all or any part of the amount of the annuity by a waiver signed and filed with the Office. The waiver may be revoked in writing at any time. Payment of the annuity waived may not be made for the period during which the waiver is in effect.

(b) An individual entitled to an annuity payable from the Fund may make allotments or assignments of amounts from the annuity for such purposes as the Office considers appropriate.

(Added Pub. L. 99–335, title I, §101(a), June 6, 1986, 100 Stat. 575.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8470 of this title.

§ 8466. Application for benefits

(a) No payment of benefits based on the service of an employee or Member shall be made from the Fund unless an application for payment of the benefits is received by the Office before the one hundred and fifteenth anniversary of the birth of the employee or Member.

(b) Notwithstanding subsection (a), after the death of an employee, Member, or annuitant, or former employee or Member, a benefit based on the service of such employee, Member, or annuitant, or former employee or Member, shall not be paid under subchapter II or IV of this chapter unless an application therefor is received by the Office within 30 years after the death or other event which establishes the entitlement to the benefit.

(c) Payment due a minor, or an individual mentally incompetent or under other legal disability, may be made to the person who is constituted guardian or other fiduciary by the law of the State of residence of the claimant or is otherwise legally vested with the care of the claimant or his estate. If a guardian or other fiduciary of the individual under legal disability has not been appointed under the law of the State of residence of the claimant, payment may be made to any person who, in the judgment of the Office, is responsible for the care of the claimant, and the payment bars recovery by any other person.

(Added Pub. L. 99–335, title I, §101(a), June 6, 1986, 100 Stat. 575.)

§ 8467. Court orders

(a) Payments under this chapter which would otherwise be made to an employee, Member, or annuitant (including an employee, Member, or annuitant as defined in section 8331) based on service of that individual shall be paid (in whole or in part) by the Office or the Executive Director, as the case may be, to another person if and to the extent expressly provided for in the terms of—

(1) any court decree of divorce, annulment, or legal separation, or the terms of any court order or court-approved property settlement agreement incident to any court decree of divorce, annulment, or legal separation; or

(2) any court order or other similar process in the nature of garnishment for the enforcement of a judgment rendered against such employee, Member, or annuitant, for physically, sexually, or emotionally abusing a child.

In the event that the Office or the Executive Director, as the case may be, is served with more than 1 decree, order, or other legal process with respect to the same moneys due or payable to any individual, such moneys shall be available to satisfy such processes on a first-come, first-served basis, with any such process being satisfied out of such moneys as remain after the satisfaction of all such processes which have been previously served.

(b) Subsection (a) shall apply only to payments made by the Office or the Executive Director under this chapter after the date on which the Office or the Executive Director (as the case may be) receives written notice of such decree, order, other legal process, or agreement, and such additional information and documentation as the Office or the Executive Director may require.

(c) For the purpose of this section—

(1) the term ''judgment rendered for physically, sexually, or emotionally abusing a child'' means any legal claim perfected through a final enforceable judgment, which claim is based in whole or in part upon the physical, sexual, or emotional abuse of a child, whether or not that abuse is accompanied by other actionable wrongdoing, such as sexual exploitation or gross negligence; and

(2) the term ''child'' means an individual under 18 years of age.

(Added Pub. L. 99–335, title I, § 101(a), June 6, 1986, 100 Stat. 575; amended Pub. L. 103–358, § 2(b)(1)–(3), Oct. 14, 1994, 108 Stat. 3421.)

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–358, § 2(b)(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''Payments under this chapter which would otherwise be made to an employee, Member, or annuitant (including an employee, Member, or annuitant as defined under section 8331) based on the service of that individual shall be paid (in whole or in part) by the Office or the Executive Director (as the case may be), to another person if and to the extent that the terms of any court decree of divorce, annulment, or legal separation, or the terms of any court order or court-approved property settlement agreement incident to any court decree of divorce, annulment, or legal separation expressly provide. Any payment under this subsection to a person bars recovery by any other person.''

Subsec. (b). Pub. L. 103–358, § 2(b)(2), inserted ''other legal process,'' after ''order,''.

Subsec. (c). Pub. L. 103–358, § 2(b)(3), added subsec. (c).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–358 effective Oct. 14, 1994, and applicable with respect to any decree, order, or other legal process, or notice of agreement received by Office of Personnel Management or Executive Director of Federal Retirement Thrift Investment Board on or after Oct. 14, 1994, see section 3 of Pub. L. 103–358, set out as a note under section 8345 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8420a, 8421, 8424, 8435, 8437, 8470, 8901, 8905 of this title.

§ 8468. Annuities and pay on reemployment

(a) If an annuitant, except a disability annuitant whose annuity is terminated because of the annuitant's recovery or restoration of earning capacity, becomes employed in an appointive or elective position, an amount equal to the annuity allocable to the period of actual employment shall be deducted from the annuitant's pay, except for lump-sum leave payment purposes under section 5551. Unless the annuitant's appointment is on an intermittent basis or is to a position as a justice or judge (as defined by section 451 of title 28) or as an employee subject to another retirement system for Government employees, or unless the annuitant is serving as President, deductions for the Fund shall be withheld from the annuitant's pay under section 8422(a) and contributions under section 8423 shall be made. The deductions and contributions referred to in the preceding provisions of this subsection shall be deposited in the Treasury of the United States to the credit of the Fund. The annuitant's lump-sum credit may not be reduced by annuity paid during the reemployment.

(b)(1)(A) If an annuitant subject to deductions under the second sentence of subsection (a) serves on a full-time basis for at least 1 year, or on a part-time basis for periods equivalent to at least 1 year of full-time service, the annuitant's annuity on termination of reemployment shall be increased by an annuity computed under section 8415(a) through (f) as may apply based on the period of reemployment and the basic pay, before deduction, averaged during the reemployment.

(B)(i) If the annuitant is receiving a reduced annuity as provided in section 8419, the increase in annuity payable under subparagraph (A) is reduced by 10 percent and the survivor annuity or combination of survivor annuities payable under section 8442 or 8445 (or both) is increased by 50 percent of the increase in annuity payable under subparagraph (A), unless, at the time of claiming the increase payable under subparagraph (A), the annuitant notifies the Office in writing that the annuitant does not desire the survivor annuity to be increased.

(ii) If an annuitant who is subject to the deductions referred to in subparagraph (A) dies while still reemployed, after having been reemployed for not less than 1 year of full-time service (or the equivalent thereof, in the case of full-time[1] employment), the survivor annuity payable is increased as though the reemployment had otherwise terminated.

(2)(A) If an annuitant subject to deductions under the second sentence of subsection (a) serves on a full-time basis for at least 5 years, or on a part-time basis for periods equivalent to at least 5 years of full-time service, the annuitant may elect, instead of the benefit provided by paragraph (1), to have such annuitant's rights redetermined under this chapter.

(B) If an annuitant who is subject to the deductions referred to in subparagraph (A) dies while still reemployed, after having been reemployed for at least 5 years of full-time service (or the equivalent thereof in the case of part-time employment), any person entitled to a survivor annuity under section 8442 or 8445 based on the service of such annuitant shall be permitted to elect, in accordance with regulations prescribed by the Office of Personnel Management, to have such person's rights under subchapter IV redetermined. A redetermined survivor annuity elected under this subparagraph shall be in lieu of an increased annuity which would otherwise be payable in accordance with paragraph (1)(B)(ii).

(3) If an annuitant subject to deductions under the second sentence of subsection (a) serves on a full-time basis for a period of less than 1 year, or on a part-time basis for periods equivalent to less than 1 year of full-time service, the total amount withheld under section 8422(a) from the annuitant's basic pay for the period or periods involved shall, upon written application to the Office, be payable to the annuitant (or the appropriate survivor or survivors, determined in the order set forth in section 8424(d)).

(c) This section does not apply to an individual appointed to serve as a Governor of the Board of Governors of the United States Postal Service.

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[1] So in original. Probably should be ''part-time''.

(d) If an annuitant becomes employed as a justice or judge of the United States, as defined by section 451 of title 28, the annuitant may, at any time prior to resignation or retirement from regular active service as such a justice or judge, apply for and be paid, in accordance with section 8424(a), the amount (if any) by which the lump-sum credit exceeds the total annuity paid, notwithstanding the time limitation contained in such section for filing an application for payment.

(e) A reference in this section to an ''annuity'' shall not be considered to include any amount payable from a source other than the Fund.

(f)(1) The Director of the Office of Personnel Management may, at the request of the head of an Executive agency—

(A) waive the application of the preceding provisions of this section on a case-by-case basis for employees in positions for which there is exceptional difficulty in recruiting or retaining a qualified employee; or

(B) grant authority to the head of such agency to waive the application of the preceding provisions of this section, on a case-by-case basis, for an employee serving on a temporary basis, but only if, and for so long as, the authority is necessary due to an emergency involving a direct threat to life or property or other unusual circumstances.

(2) The Office shall prescribe regulations for the exercise of any authority under this subsection, including criteria for any exercise of authority and procedures for terminating a delegation of authority under paragraph (1)(B).

(g)(1) If warranted by circumstances described in subsection (f)(1)(A) or (B) (as applicable), the Director of the Administrative Office of the United States Courts shall, with respect to an employee in the judicial branch, have the same waiver authority as would be available to the Director of the Office of Personnel Management, or a duly authorized agency head, under subsection (f) with respect to an employee of an Executive agency.

(2) Authority under this subsection may not be exercised with respect to a justice or judge of the United States, as defined in section 451 of title 28.

(h)(1) If warranted by circumstances described in subsection (f)(1)(A) or (B) (as applicable), an official or committee designated in paragraph (2) shall, with respect to the employees specified in the applicable subparagraph of such paragraph, have the same waiver authority as would be available to the Director of the Office of Personnel Management, or a duly authorized agency head, under subsection (f) with respect to an employee of an Executive agency.

(2) Authority under this subsection may be exercised—

(A) with respect to an employee of an agency in the legislative branch, by the head of such agency;

(B) with respect to an employee of the House of Representatives, by the Speaker of the House of Representatives; and

(C) with respect to an employee of the Senate, by the Committee on Rules and Administration of the Senate.

(3) Any exercise of authority under this subsection shall be in conformance with such written policies and procedures as the agency head, the Speaker of the House of Representatives, or the Committee on Rules and Administration of the Senate (as applicable) shall prescribe, consistent with the provisions of this subsection.

(4) For the purpose of this subsection, ''agency in the legislative branch'', ''employee of the House of Representatives'', ''employee of the Senate'', and ''congressional employee'' each has the meaning given to it in section 5531 of this title.

(i)(1) For the purpose of subsections (f) through (h), ''Executive agency'' shall not include the General Accounting Office.

(2) An employee as to whom a waiver under subsection (f), (g), or (h) is in effect shall not be considered an employee for purposes of this chapter or chapter 83 of this title.

(Added Pub. L. 99–335, title I, §101(a), June 6, 1986, 100 Stat. 576; amended Pub. L. 100–238, title I, §134(a), Jan. 8, 1988, 101 Stat. 1762; Pub. L. 101–509, title V, §529 [title I, §108(c)], Nov. 5, 1990, 104 Stat. 1427, 1450; Pub. L. 101–510, div. A, title XII, §1206(j)(3), Nov. 5, 1990, 104 Stat. 1664; Pub. L. 102–190, div. A, title VI, §655(c), Dec. 5, 1991, 105 Stat. 1392; Pub. L. 102–378, §8(a), Oct. 2, 1992, 106 Stat. 1359.)

AMENDMENTS

1992—Subsec. (f). Pub. L. 102–378 repealed Pub. L. 101–510, §1206(j)(3). See 1990 Amendment note below.

1991—Subsec. (f)(3). Pub. L. 102–190, §655(c)(2), struck out par. (3) which read as follows: ''An employee to whom a waiver under subparagraph (A) or (B) of paragraph (1) applies shall not be deemed an employee for the purposes of chapter 83 or this chapter while such waiver is in effect.''

Subsecs. (g) to (i). Pub. L. 102–190, §655(c)(1), added subsecs. (g) to (i).

1990—Subsec. (f). Pub. L. 101–510, §1206(j)(3), added a subsec. (f) identical to that added by Pub. L. 101–509, see below. Pub. L. 102–378, §8(a), repealed Pub. L. 101–510, §1206(j)(3), and provided that this title shall read as if section 1206(j)(3) had not been enacted.

Pub. L. 101–509 added subsec. (f).

1988—Pub. L. 100–238 amended section generally, substituting subsecs. (a) to (e) for former subsecs. (a) to (c).

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–378 effective Nov. 5, 1990, see section 9(b)(6) of Pub. L. 102–378, set out as a note under section 6303 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–509 effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title III, §305] of Pub. L. 101–509, set out as an Effective Date of 1990 Amendment note under section 5301 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 134(d) of Pub. L. 100–238 provided that:

''(1) GENERALLY.—The amendments made by this section [amending this section and provisions set out as notes under section 8331 of this title] shall take effect on the date of the enactment of this Act [Jan. 8, 1988], and as provided in paragraph (2), shall apply with respect to any individual who becomes a reemployed annuitant on or after such date.

''(2) EXCEPTION.—The amendment made by subsection (b) [amending provisions set out as a note under section 8331 of this title] shall apply with respect to any election made by a reemployed annuitant on or after the date of the enactment of this Act [Jan. 8, 1988].''

ANNUAL REPORT TO CONGRESS

Each agency in legislative branch to submit to Speaker of House of Representatives and Committee on Rules and Administration of Senate, for each calendar year, a written report on how authority made available as result of amendment by Pub. L. 102–190 was used by such agency during the period covered by such report, see section 655(d) of Pub. L. 102–190, set out as a note under section 5532 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 20 section 4512; title 22 section 4064; title 39 section 1005.

§ 8469. Withholding of State income taxes

(a) The Office shall, in accordance with this section, enter into an agreement with any State within 120 days of a request for agreement from the proper State official. The agreement shall provide that the Office shall withhold State income tax in the case of the monthly annuity of any annuitant who voluntarily requests, in writing, such withholding. The amounts withheld during any calendar quarter shall be held in the Fund and disbursed to the States during the month following that calendar quarter.

(b) An annuitant may have in effect at any time only one request for withholding under this section, and an annuitant may not have more than two such requests in effect during any one calendar year.

(c) Subject to subsection (b), an annuitant may change the State designated by that annuitant for purposes of having withholdings made, and may request that the withholdings be remitted in accordance with such change. An annuitant also may revoke any request of that annuitant for withholding. Any change in the State designated or revocation is effective on the first day of the month after the month in which the request or the revocation is processed by the Office, but in no event later than on the first day of the second month beginning after the day on which such request or revocation is received by the Office.

(d) This section does not give the consent of the United States to the application of a statute which imposes more burdensome requirements on the United States than on employers generally, or which subjects the United States or any annuitant to a penalty or liability because of this section. The Office may not accept pay from a State for services performed in withholding State income taxes from annuities. Any amount erroneously withheld from an annuity and paid to a State by the Office shall be repaid by the State in accordance with regulations issued by the Office.

(e) For the purpose of this section—

(1) the term ''State'' means a State, the District of Columbia, or any territory or possession of the United States; and

(2) the term ''annuitant'' includes a survivor who is receiving an annuity from the Fund.

(Added Pub. L. 99–335, title I, § 101(a), June 6, 1986, 100 Stat. 576.)

§ 8470. Exemption from legal process; recovery of payments

(a) An amount payable under subchapter II, IV, or V of this chapter is not assignable, either in law or equity, except under the provisions of section 8465 or 8467, or subject to execution, levy, attachment, garnishment or other legal process, except as otherwise may be provided by Federal laws.

(b) Recovery of payments under subchapter II, IV, or V of this chapter may not be made from an individual when, in the judgment of the Office, the individual is without fault and recovery would be against equity and good conscience. Withholding or recovery of money paid under subchapter II, IV, or V of this chapter on account of a certification or payment made by a former employee of the United States in the discharge of his official duties may be made only if the head of the agency on behalf of which the certification or payment was made certifies to the Office that the certification or payment involved fraud on the part of the former employee.

(Added Pub. L. 99–335, title I, § 101(a), June 6, 1986, 100 Stat. 577.)

SUBCHAPTER VII—FEDERAL RETIREMENT THRIFT INVESTMENT MANAGEMENT SYSTEM

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 8351, 8402, 8434, 8437, 8439, 8440a, 8440b, 8440c, 8440d, 8461 of this title; title 22 section 4071h; title 28 sections 178, 377.

§ 8471. Definitions

For the purposes of this subchapter—

(1) the term ''beneficiary'' means an individual (other than a participant) entitled to payment from the Thrift Savings Fund under subchapter III of this chapter;

(2) the term ''Council'' means the Employee Thrift Advisory Council established under section 8473 of this title;

(3) the term ''participant'' means an individual for whom an account has been established under section 8439 of this title;

(4) the term ''person'' means an individual, partnership, joint venture, corporation, mutual company, joint-stock company, trust, estate, unincorporated organization, association, or labor organization; and

(5) the term ''Thrift Savings Fund'' means the Thrift Savings Fund established under section 8437 of this title.

(Added Pub. L. 99–335, title I, § 101(a), June 6, 1986, 100 Stat. 577.)

EFFECTIVE DATE

Subchapter VII effective June 6, 1986, see section 702(b)(1) of Pub. L. 99–335, set out as a note under section 8401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8438 of this title; title 39 section 1005.

§ 8472. Federal Retirement Thrift Investment Board

(a) There is established in the Executive branch of the Government a Federal Retirement Thrift Investment Board.

(b) The Board shall be composed of—

(1) 3 members appointed by the President, of whom 1 shall be designated by the President as Chairman; and

(2) 2 members appointed by the President, of whom—

(A) 1 shall be appointed by the President after taking into consideration the recommendation made by the Speaker of the House of Representatives in consultation with the minority leader of the House of Representatives; and

(B) 1 shall be appointed by the President after taking into consideration the recommendation made by the majority leader of the Senate in consultation with the minority leader of the Senate.

(c) Except as provided in section 311 of the Federal Employees' Retirement System Act of 1986, appointments under subsection (a) shall be made by and with the advice and consent of the Senate.

(d) Members of the Board shall have substantial experience, training, and expertise in the management of financial investments and pension benefit plans.

(e)(1) Except as provided in section 311 of the Federal Employees' Retirement System Act of 1986, a member of the Board shall be appointed for a term of 4 years, except that of the members first appointed (other than the members appointed under such section)—

(A) the Chairman shall be appointed for a term of 4 years;

(B) the members appointed under subsection (b)(2) shall be appointed for terms of 3 years; and

(C) the remaining members shall be appointed for terms of 2 years.

(2)(A) A vacancy on the Board shall be filled in the manner in which the original appointment was made and shall be subject to any conditions which applied with respect to the original appointment.

(B) An individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced.

(3) The term of any member shall not expire before the date on which the member's successor takes office.

(f) The Board shall—

(1) establish policies for—

(A) the investment and management of the Thrift Savings Fund; and

(B) the administration of subchapter III of this chapter;

(2) review the performance of investments made for the Thrift Savings Fund; and

(3) review and approve the budget of the Board.

(g)(1) The Board may—

(A) adopt, alter, and use a seal;

(B) except as provided in paragraph (2), direct the Executive Director to take such action as the Board considers appropriate to carry out the provisions of this subchapter and subchapter III of this chapter and the policies of the Board;

(C) upon the concurring votes of four members, remove the Executive Director from office for good cause shown; and

(D) take such other actions as may be necessary to carry out the functions of the Board.

(2) Except in the case of investments required by section 8438 of this title to be invested in securities of the Government, the Board may not direct the Executive Director to invest or to cause to be invested any sums in the Thrift Savings Fund in a specific asset or to dispose of or cause to be disposed of any specific asset of such Fund.

(h) The members of the Board shall discharge their responsibilities solely in the interest of participants and beneficiaries under this subchapter and subchapter III of this chapter.

(i) The Board shall prepare and submit to the President, and, at the same time, to the appropriate committees of Congress, an annual budget of the expenses and other items relating to the Board which shall be included as a separate item in the budget required to be transmitted to the Congress under section 1105 of title 31.

(j) The Board may submit to the President, and, at the same time, shall submit to each House of the Congress, any legislative recommendations of the Board relating to any of its functions under this title or any other provision of law.

(Added Pub. L. 99–335, title I, §101(a), June 6, 1986, 100 Stat. 578; amended Pub. L. 99–509, title VI, §6001(e), Oct. 21, 1986, 100 Stat. 1931.)

REFERENCES IN TEXT

Section 311 of the Federal Employees' Retirement System Act of 1986 [Pub. L. 99–335], referred to in subsecs. (c) and (e)(1), is set out as a note below.

AMENDMENTS

1986—Subsecs. (i), (j). Pub. L. 99–509 added subsecs. (i) and (j).

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–509 effective Jan. 1, 1987, see section 6001(f) of Pub. L. 99–509, set out as a note under section 8432 of this title.

INITIAL APPOINTMENTS TO FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Section 311 of Pub. L. 99–335 provided that:

''(a) INITIAL APPOINTMENT OF MEMBERS.—Section 8472(c) of title 5, United States Code (as added by section 101(a) of this Act) shall not apply to the members of the Federal Retirement Thrift Investment Board first appointed to such Board.

''(b) TERMS OF SERVICE.—Notwithstanding subsection (e)(1) of section 8472 of title 5, United States Code (as added by section 101(a) of this Act), the term of service of each member of the Federal Retirement Thrift Investment Board appointed pursuant to subsection (a) shall be 1 year, except that such member shall continue to serve until his successor is appointed under subsection (b) of such section 8472 and confirmed under subsection (c) of such section.''

AUTHORIZATION OF APPROPRIATIONS FOR CERTAIN EXPENSES OF FEDERAL RETIREMENT THRIFT INVESTMENT MANAGEMENT SYSTEM

Section 701 of Pub. L. 99–335, as amended by Pub. L. 99–500, §101(m) [title IV, §401], Oct. 18, 1986, 100 Stat. 1783–308, 1783–322, and Pub. L. 99–591, §101(m) [title IV, §401], Oct. 30, 1986, 100 Stat. 3341–308, 3341–322, provided that:

''(a) TEMPORARY ALTERNATIVE FUNDING.—Notwithstanding section 8434(c)(3) [probably should be ''section 8437(c)(3)''] of title 5, United States Code (as added by section 101 of this Act), the expenses incurred in the administration of the Federal Retirement Thrift Investment Management System under subchapter VII of

chapter 84 of such title (as so added) during fiscal years 1986 and 1987 may be paid from sums appropriated pursuant to subsection (b).

''(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Federal Retirement Thrift Investment Board, for fiscal years 1986 and 1987, such sums as may be necessary to pay the expenses incurred in the administration of the Federal Retirement Thrift Investment Management System during such fiscal years.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8401, 8475, 8476, 8477 of this title.

§ 8473. Employee Thrift Advisory Council

(a) The Board shall establish an Employee Thrift Advisory Council. The Council shall be composed of 14 members appointed by the Chairman of the Board in accordance with subsection (b).

(b) The Chairman shall appoint 14 members of the Council, of whom—

(1) 4 shall be appointed to represent the respective labor organizations representing (as exclusive representatives) the first, second, third, and fourth largest numbers of individuals subject to chapter 71 of this title;

(2) 2 shall be appointed to represent the respective labor organizations which have been accorded exclusive recognition under section 1203(a) of title 39 representing the largest and second largest numbers of individuals employed by the United States Postal Service;

(3) 1 shall be appointed to represent the labor organization which has been accorded exclusive recognition under section 1203(a) of title 39 representing the largest number of individuals employed by the United States Postal Service as rural letter carriers;

(4) 2 shall be appointed to represent the respective managerial organizations (other than an organization described in paragraph (5)) which consult with the United States Postal Service under section 1004(b) of title 39 and which represent the largest and second largest numbers of individuals employed by the United States Postal Service as managerial personnel;

(5) 1 shall be appointed to represent the supervisors' organization as defined in section 1004(h) of title 39;

(6) 1 shall be appointed to represent employee organizations having as a purpose promoting the interests of women in Government service;

(7) 1 shall be appointed to represent the organization representing the largest number of individuals receiving annuities under this chapter or chapter 83 of this title;

(8) 1 shall be appointed to represent the organization representing the largest number of supervisors and management officials (as defined by section 7103(a)); and

(9) 1 shall be appointed to represent the organization representing the largest number of members of the Senior Executive Service.

(c)(1) The Chairman of the Board shall designate 1 member of the Council to serve as head of the Council.

(2) A member of the Council shall be appointed for a term of 4 years.

(3)(A) A vacancy in the Council shall be filled in the manner in which the original appointment was made and shall be subject to any conditions which applied with respect to the original appointment.

(B) An individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced.

(C) The term of any member shall not expire before the date on which the member's successor takes office.

(d) The Council shall act by resolution of a majority of the members.

(e) The Council shall—

(1) advise the Board and the Executive Director on matters relating to—

(A) investment policies for the Thrift Savings Fund; and

(B) the administration of this subchapter and subchapter III of this chapter; and

(2) perform such other duties as the Board may direct with respect to investment funds established in accordance with subchapter III of this chapter.

(f) Section 14(a)(2) of the Federal Advisory Committee Act shall not apply to the Council.

(Added Pub. L. 99–335, title I, § 101(a), June 6, 1986, 100 Stat. 579; amended Pub. L. 103–89, § 3(b)(1)(N), Sept. 30, 1993, 107 Stat. 982.)

REFERENCES IN TEXT

Section 14(a)(2) of the Federal Advisory Committee Act [Pub. L. 92–463], referred to in subsec. (f), is section 14(a)(2) of Pub. L. 92–463, which is set out in the Appendix to this title.

AMENDMENTS

1993—Subsec. (b)(8). Pub. L. 103–89 substituted ''supervisors and management officials (as defined by section 7103(a))'' for ''individuals subject to the Performance Management and Recognition System under chapter 54 of this title''.

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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8471 of this title.

§ 8474. Executive Director

(a)(1) The Board shall appoint, without regard to the provisions of law governing appointments in the competitive service, an Executive Director by action agreed to by a majority of the members of the Board.

(2) The Executive Director shall have substantial experience, training, and expertise in the management of financial investments and pension benefit plans.

(b) The Executive Director shall—

(1) carry out the policies established by the Board;

(2) invest and manage the Thrift Savings Fund in accordance with the investment policies and other policies established by the Board;

(3) purchase annuity contracts and provide for the payment of other benefits under subchapter III of this chapter;

(4) administer the provisions of this subchapter and subchapter III of this chapter;

(5) prescribe such regulations (other than regulations relating to fiduciary responsibilities) as may be necessary for the administration of this subchapter and subchapter III of this chapter; and

(6) meet from time to time with the Council upon request of the Council.

(c) The Executive Director may—

(1) prescribe such regulations as may be necessary to carry out the responsibilities of the Executive Director under this section, other than regulations relating to fiduciary responsibilities;

(2) appoint such personnel as may be necessary to carry out the provisions of this subchapter and subchapter III of this chapter;

(3) subject to approval by the Board, procure the services of experts and consultants under section 3109 of this title;

(4) secure directly from an Executive agency, the United States Postal Service, or the Postal Rate Commission any information necessary to carry out the provisions of this subchapter or subchapter III of this chapter and policies of the Board;

(5) make such payments out of sums in the Thrift Savings Fund as the Executive Director determines are necessary to carry out the provisions of this subchapter and subchapter III of this chapter and the policies of the Board;

(6) pay the compensation, per diem, and travel expenses of individuals appointed under paragraphs (2), (3), and (7) of this subsection from the Thrift Savings Fund;

(7) accept and use the services of individuals employed intermittently in the Government service and reimburse such individuals for travel expenses, as authorized by section 5703 of this title, including per diem as authorized by section 5702 of this title;

(8) except as otherwise expressly prohibited by law or the policies of the Board, delegate any of the Executive Director's functions to such employees under the Board as the Executive Director may designate and authorize such successive redelegations of such functions to such employees under the Board as the Executive Director may consider to be necessary or appropriate; and

(9) take such other actions as are appropriate to carry out the functions of the Executive Director.

(Added Pub. L. 99–335, title I, §101(a), June 6, 1986, 100 Stat. 580.)

REFERENCES IN TEXT

The provisions of law governing appointments in the competitive service, referred to in subsec. (a)(1), are classified generally to section 3301 et seq. of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5102, 8401, 8461, 8476 of this title.

§ 8475. Investment policies

The Board shall develop investment policies under section 8472(f)(1) of this title which provide for—

(1) prudent investments suitable for accumulating funds for payment of retirement income; and

(2) low administrative costs.

(Added Pub. L. 99–335, title I, §101(a), June 6, 1986, 100 Stat. 581.)

§ 8476. Administrative provisions

(a) The Board shall meet—

(1) not less than once during each month; and

(2) at additional times at the call of the Chairman.

(b)(1) Except as provided in sections 8472(g)(1)(C) and 8474(a)(1) of this title, the Board shall perform the functions and exercise the powers of the Board on a majority vote of a quorum of the Board.

(2) A vacancy on the Board shall not impair the authority of a quorum of the Board to perform the functions and exercise the powers of the Board.

(c) Three members of the Board shall constitute a quorum for the transaction of business.

(d)(1) Each member of the Board who is not an officer or employee of the Federal Government shall be compensated at the daily rate of basic pay for level IV of the Executive Schedule for each day during which such member is engaged in performing a function of the Board.

(2) A member of the Board shall be paid travel, per diem, and other necessary expenses under subchapter I of chapter 57 of this title while traveling away from such member's home or regular place of business in the performance of the duties of the Board.

(3) Payments authorized under this subsection shall be paid from the Thrift Savings Fund.

(e) The accrued annual leave of any employee who is a member of the Board or the Council shall not be charged for any time used in performing services for the Board or the Council.

(Added Pub. L. 99–335, title I, §101(a), June 6, 1986, 100 Stat. 581; amended Pub. L. 101–509, title V, §529 [title I, §101(b)(9)(K)], Nov. 5, 1990, 104 Stat. 1427, 1442.)

REFERENCES IN TEXT

Level IV of the Executive Schedule, referred to in subsec. (d)(1), is set out in section 5315 of this title.

AMENDMENTS

1990—Subsec. (d)(1). Pub. L. 101–509 substituted ''level IV of the Executive Schedule'' for ''grade GS–18 of the General Schedule''.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–509 effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title III, §305] of Pub. L. 101–509, set out as a note under section 5301 of this title.

§ 8477. Fiduciary responsibilities; liability and penalties

(a) For the purposes of this section—

(1) the term ''account'' is not limited by the definition provided in section 8401(1);

(2) the term ''adequate consideration'' means—

(A) in the case of a security for which there is a generally recognized market—

(i) the price of the security prevailing on a national securities exchange which is registered under section 6 of the Securities Exchange Act of 1934; or

(ii) if the security is not traded on such a national securities exchange, a price not less favorable to the Thrift Savings Fund than the offering price for the security as established by the current bid and asked prices quoted by persons independent of the issuer and of any party in interest; and

(B) in the case of an asset other than a security for which there is a generally recognized market, the fair market value of the asset as determined in good faith by a fiduciary or fiduciaries in accordance with regulations prescribed by the Secretary of Labor;

(3) the term ''fiduciary'' means—

(A) a member of the Board;

(B) the Executive Director;

(C) any person who has or exercises discretionary authority or discretionary control over the management or disposition of the assets of the Thrift Savings Fund; and

(D) any person who, with respect to the Thrift Savings Fund, is described in section 3(21)(A) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(21)(A)); and

(4) the term ''party in interest'' includes—

(A) any fiduciary;

(B) any counsel to a person who is a fiduciary, with respect to the actions of such person as a fiduciary;

(C) any participant;

(D) any person providing services to the Board and, with respect to the actions of the Executive Director as a fiduciary any person providing services to the Executive Director;

(E) a labor organization, the members of which are participants;

(F) a spouse, sibling, ancestor, lineal descendant, or spouse of a lineal descendant of a person described in subparagraph (A), (B), or (D);

(G) a corporation, partnership, or trust or estate of which, or in which, at least 50 percent of—

(i) the combined voting power of all classes of stock entitled to vote or the total value of shares of all classes of stock of such corporation;

(ii) the capital interest or profits interest of such partnership; or

(iii) the beneficial interest of such trust or estate,

is owned directly or indirectly, or held by a person described in subparagraph (A), (B), (D), or (E);

(H) an official (including a director) of, or an individual employed by, a person described in subparagraph (A), (B), (D), (E), or (G), or an individual having powers or responsibilities similar to those of such an official;

(I) a holder (directly or indirectly) of at least 10 percent of the shares in a person described in any subparagraph referred to in subparagraph (H); and

(J) a person who, directly or indirectly, is at least a 10 percent partner or joint venturer (measured in capital or profits) in a person described in any subparagraph referred to in subparagraph (H).

(b)(1) To the extent not inconsistent with the provisions of this chapter and the policies prescribed by the Board, a fiduciary shall discharge his responsibilities with respect to the Thrift Savings Fund or applicable portion thereof solely in the interest of the participants and beneficiaries and—

(A) for the exclusive purpose of—

(i) providing benefits to participants and their beneficiaries; and

(ii) defraying reasonable expenses of administering the Thrift Savings Fund or applicable portions thereof;

(B) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent individual acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like objectives; and

(C) to the extent permitted by section 8438 of this title, by diversifying the investments of the Thrift Savings Fund or applicable portions thereof so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so.

(2) No fiduciary may maintain the indicia of ownership of any assets of the Thrift Savings Fund outside the jurisdiction of the district courts of the United States.

(c)(1) A fiduciary shall not permit the Thrift Savings Fund to engage in any of the following transactions, except in exchange for adequate consideration:

(A) A transfer of any assets of the Thrift Savings Fund to any person the fiduciary knows or should know to be a party in interest or the use of such assets by any such person.

(B) An acquisition of any property from or sale of any property to the Thrift Savings Fund by any person the fiduciary knows or should know to be a party in interest.

(C) A transfer or exchange of services between the Thrift Savings Fund and any person the fiduciary knows or should know to be a party in interest.

(2) Notwithstanding paragraph (1), a fiduciary with respect to the Thrift Savings Fund shall not—

(A) deal with any assets of the Thrift Savings Fund in his own interest or for his own account;

(B) act, in an individual capacity or any other capacity, in any transaction involving the Thrift Savings Fund on behalf of a party, or representing a party, whose interests are adverse to the interests of the Thrift Savings Fund or the interests of its participants or beneficiaries; or

(C) receive any consideration for his own personal account from any party dealing with sums credited to the Thrift Savings Fund in connection with a transaction involving assets of the Thrift Savings Fund.

(3)(A) The Secretary of Labor may, in accordance with procedures which the Secretary shall by regulation prescribe, grant a conditional or unconditional exemption of any fiduciary or transaction, or class of fiduciaries or transactions, from all or part of the restrictions imposed by paragraph (2).

(B) An exemption granted under this paragraph shall not relieve a fiduciary from any other applicable provision of this chapter.

(C) The Secretary of Labor may not grant an exemption under this paragraph unless he finds that such exemption is—

(i) administratively feasible;

(ii) in the interests of the Thrift Savings Fund and of its participants and beneficiaries; and

(iii) protective of the rights of participants and beneficiaries of such Fund.

(D) An exemption under this paragraph may not be granted unless—

(i) notice of the proposed exemption is published in the Federal Register;

(ii) interested persons are given an opportunity to present views; and

(iii) the Secretary of Labor affords an opportunity for a hearing and makes a determination on the record with respect to the respective requirements of clauses (i), (ii), and (iii) of subparagraph (C).

(E) Notwithstanding subparagraph (D), the Secretary of Labor may determine that an exemption granted for any class of fiduciaries or transactions under section 408(a) of the Employee Retirement Income Security Act of 1974 shall, upon publication of notice in the Federal Register under this subparagraph, constitute an exemption for purposes of the provisions of paragraph (2).

(d) This section does not prohibit any fiduciary from—

(1) receiving any benefit which the fiduciary is entitled to receive under this subchapter or subchapter III of this chapter as a participant or beneficiary;

(2) receiving any reasonable compensation authorized by this subchapter for services rendered, or for reimbursement of expenses properly and actually incurred, in the performance of the fiduciary's duties under this chapter; or

(3) serving as a fiduciary in addition to being an officer, employee, agent, or other representative of a party in interest.

(e)(1)(A) Any fiduciary that breaches the responsibilities, duties, and obligations set out in subsection (b) or violates subsection (c) shall be personally liable to the Thrift Savings Fund for any losses to such Fund resulting from each such breach or violation and to restore to such Fund any profits made by the fiduciary through use of assets of such Fund by the fiduciary, and shall be subject to such other equitable or remedial relief as a court considers appropriate, except as provided in paragraphs (3) and (4) of this subsection. A fiduciary may be removed for a breach referred to in the preceding sentence.

(B) The Secretary of Labor may assess a civil penalty against a party in interest with respect to each transaction which is engaged in by the party in interest and is prohibited by subsection (c). The amount of such penalty shall be equal to 5 percent of the amount involved in each such transaction (as defined in section 4975(f)(4) of the Internal Revenue Code of 1986) for each year or part thereof during which the prohibited transaction continues, except that, if the transaction is not corrected (in such manner as the Secretary of Labor shall prescribe by regulation consistent with section 4975(f)(5) of such Code) within 90 days after the date the Secretary of Labor transmits notice to the party in interest (or such longer period as the Secretary of Labor may permit), such penalty may be in an amount not more than 100 percent of the amount involved.

(C) A fiduciary shall not be liable under subparagraph (A) with respect to a breach of fiduciary duty under subsection (b) committed before becoming a fiduciary or after ceasing to be a fiduciary.

(D) A fiduciary shall be jointly and severally liable under subparagraph (A) for a breach of fiduciary duty under subsection (b) by another fiduciary only if—

(i) the fiduciary participates knowingly in, or knowingly undertakes to conceal, an act or omission of such other fiduciary, knowing such act or omission is such a breach;

(ii) by the fiduciary's failure to comply with subsection (b) in the administration of the fiduciary's specific responsibilities which give rise to the fiduciary status, the fiduciary has enabled such other fiduciary to commit such a breach; or

(iii) the fiduciary has knowledge of a breach by such other fiduciary, unless the fiduciary makes reasonable efforts under the circumstances to remedy the breach.

(E) The Secretary of Labor shall prescribe, in regulations, procedures for allocating fiduciary responsibilities among fiduciaries, including investment managers. Any fiduciary who, pursuant to such procedures, allocates to a person or persons any fiduciary responsibility shall not be liable for an act or omission of such person or persons unless—

(i) such fiduciary violated subsection (b) with respect to the allocation, with respect to the implementation of the procedures prescribed by the Secretary of Labor (or the Board under section 114 of the Federal Employees' Retirement System Technical Corrections Act of 1986), or in continuing such allocation; or

(ii) such fiduciary would otherwise be liable in accordance with subparagraph (D).

(2) No civil action may be maintained against any fiduciary with respect to the responsibilities, liabilities, and penalties authorized or provided for in this section except in accordance with paragraphs (3) and (4).

(3) A civil action may be brought in the district courts of the United States—

(A) by the Secretary of Labor against any fiduciary other than a Member of the Board or the Executive Director of the Board—

(i) to determine and enforce a liability under paragraph (1)(A);

(ii) to collect any civil penalty under paragraph (1)(B);

(iii) to enjoin any act or practice which violates any provision of subsection (b) or (c);

(iv) to obtain any other appropriate equitable relief to redress a violation of any such provision; or

(v) to enjoin any act or practice which violates subsection (g)(2) or (h) of section 8472 of this title;

(B) by any participant, beneficiary, or fiduciary against any fiduciary—

(i) to enjoin any act or practice which violates any provision of subsection (b) or (c);

(ii) to obtain any other appropriate equitable relief to redress a violation of any such provision;

(iii) to enjoin any act or practice which violates subsection (g)(2) or (h) of section 8472 of this title; or

(C) by any participant or beneficiary—

(i) to recover benefits of such participant or beneficiary under the provisions of subchapter III of this chapter, to enforce any right of such participant or beneficiary under such provisions, or to clarify any such right to future benefits under such provisions; or

(ii) to enforce any claim otherwise cognizable under sections 1346(b) and 2671 through 2680 of title 28, provided that the remedy against the United States provided by sections 1346(b) and 2672 of title 28 for damages for injury or loss of property caused by the negligent or wrongful act or omission of any fiduciary while acting within the scope of his duties or employment shall be exclusive of any other civil action or proceeding by the participant or beneficiary for recovery of money by reason of the same subject matter against the fiduciary (or the estate of such fiduciary) whose act or omission gave rise to such action or proceeding, whether or not such action or proceeding is based on an alleged violation of subsection (b) or (c).

(4)(A) In all civil actions under paragraph (3)(A), attorneys appointed by the Secretary may represent the Secretary (except as provided in section 518(a) of title 28), however all such litigation shall be subject to the direction and control of the Attorney General.

(B) The Attorney General shall defend any civil action or proceeding brought in any court against any fiduciary referred to in paragraph (3)(C)(ii) (or the estate of such fiduciary) for any such injury. Any fiduciary against whom such a civil action or proceeding is brought shall deliver, within such time after date of service or knowledge of service as determined by the Attorney General, all process served upon such fiduciary (or an attested copy thereof) to the Executive Director of the Board, who shall promptly furnish copies of the pleading and process to the Attorney General and the United States Attorney for the district wherein the action or proceeding is brought.

(C) Upon certification by the Attorney General that a fiduciary described in paragraph (3)(C)(ii) was acting in the scope of such fiduciary's duties or employment as a fiduciary at the time of the occurrence or omission out of which the action arose, any such civil action or proceeding commenced in a State court shall be—

(i) removed without bond at any time before trial by the Attorney General to the district court of the United States for the district and division in which it is pending; and

(ii) deemed a tort action brought against the United States under the provisions of title 28 and all references thereto.

(D) The Attorney General may compromise or settle any claim asserted in such civil action or proceeding in the manner provided in section 2677 of title 28, and with the same effect. To the extent section 2672 of title 28 provides that persons other than the Attorney General or his designee may compromise and settle claims, and that payment of such claims may be made from agency appropriations, such provisions shall not apply to claims based upon an alleged violation of subsection (b) or (c).

(E) For the purposes of paragraph (3)(C)(ii) the provisions of sections 2680(h) of title 28 shall not apply to any claim based upon an alleged violation of subsection (b) or (c).

(F) Notwithstanding sections 1346(b) and 2671 through 2680 of title 28, whenever an award, compromise, or settlement is made under such sections upon any claim based upon an alleged violation of subsection (b) or (c), payment of such award, compromise, or settlement shall be made to the appropriate account within the Thrift Savings Fund, or where there is no such appropriate account, to the participant or beneficiary bringing the claim.

(G) For purposes of paragraph (3)(C)(ii), fiduciary includes only the Members of the Board and the Board's Executive Director.

(5) Any relief awarded against a Member of the Board or the Executive Director of the Board in a civil action authorized by paragraph (3) may not include any monetary damages or any other recovery of money.

(6) An action may not be commenced under paragraph (3)(A) or (B) with respect to a fiduciary's breach of any responsibility, duty, or obligation under subsection (b) or a violation of subsection (c) after the earlier of—

(A) 6 years after (i) the date of the last action which constituted a part of the breach or violation, or (ii) in the case of an omission, the latest date on which the fiduciary could have cured the breach or violation; or

(B) 3 years after the earliest date on which the plaintiff had actual knowledge of the breach or violation, except that, in the case of fraud or concealment, such action may be commenced not later than 6 years after the date of discovery of such breach or violation.

(7)(A) The district courts of the United States shall have exclusive jurisdiction of civil actions under this subsection.

(B) An action under this subsection may be brought in the District Court of the United States for the District of Columbia or a district court of the United States in the district where the breach alleged in the complaint or petition filed in the action took place or in the district where a defendant resides or may be found.

Process may be served in any other district where a defendant resides or may be found.

(8)(A) A copy of the complaint or petition filed in any action brought under this subsection (other than by the Secretary of Labor) shall be served on the Executive Director, the Secretary of Labor, and the Secretary of the Treasury by certified mail.

(B) Any officer referred to in subparagraph (A) of this paragraph shall have the right in his discretion to intervene in any action. If the Secretary of Labor brings an action under paragraph (2) of this subsection on behalf of a participant or beneficiary, he shall notify the Executive Director and the Secretary of the Treasury.

(f) The Secretary of Labor may prescribe regulations to carry out this section.

(g)(1) The Secretary of Labor shall establish a program to carry out audits to determine the level of compliance with the requirements of this section relating to fiduciary responsibilities and prohibited activities of fiduciaries.

(2) An audit under this subsection may be conducted by the Secretary of Labor, by contract with a qualified non-governmental organization, or in cooperation with the Comptroller General of the United States, as the Secretary considers appropriate.

(Added Pub. L. 99–335, title I, §101(a), June 6, 1986, 100 Stat. 582; amended Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 99–556, title I, §§112, 114(b), Oct. 27, 1986, 100 Stat. 3133; Pub. L. 100–238, title I, §133(a), (c), Jan. 8, 1988, 101 Stat. 1760, 1762; Pub. L. 100–366, §3(a), July 13, 1988, 102 Stat. 826; Pub. L. 101–335, §8, July 17, 1990, 104 Stat. 325.)

REFERENCES IN TEXT

Section 6 of the Securities Exchange Act of 1934, referred to in subsec. (a)(2)(A)(i), is classified to section 78f of Title 15, Commerce and Trade.

Section 408(a) of the Employee Retirement Income Security Act of 1974, referred to in subsec. (c)(3)(E), is classified to section 1108(a) of Title 29, Labor.

Section 4975(f)(4) and (5) of the Internal Revenue Code of 1986, referred to in subsec. (e)(1)(B), is classified to section 4975(f)(4) and (5) of Title 26, Internal Revenue Code.

Section 114 of the Federal Employees' Retirement System Technical Corrections Act of 1986, referred to in subsec. (e)(1)(E)(i), is section 114 of Pub. L. 99–556 which amended this section and enacted provisions set out as a note under this section.

AMENDMENTS

1990—Pub. L. 101–335 repealed section 133(c) of Pub. L. 100–238. See Effective Date of 1988 Amendment note below.

1988—Subsec. (e)(1)(A). Pub. L. 100–238, §133(a)(1), inserted '', except as provided in paragraphs (3) and (4) of this subsection''.

Subsec. (e)(1)(B). Pub. L. 100–238, §133(a)(2), substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

Subsec. (e)(1)(D). Pub. L. 100–238, §133(a)(3), inserted ''only'' in introductory provisions.

Subsec. (e)(2), (3). Pub. L. 100–238, §133(a)(5), added pars. (2) and (3) and struck out former pars. (2) and (3) which read as follows:

''(2) A civil action may be brought in the district courts of the United States—

''(A) by the Secretary of Labor—

''(i) to determine and enforce a liability under paragraph (1)(A);

''(ii) to collect any civil penalty under paragraph (1)(B); or

''(iii) to enjoin any act or practice which violates subsection (g)(2) or (h) of section 8472 of this title;

''(B) by the Secretary of Labor, any participant, beneficiary, or fiduciary—

''(i) to enjoin any act or practice which violates any provision of subsection (b) or (c); or

''(ii) to obtain any other appropriate equitable relief to redress a violation of any such provision; or

''(C) by any participant or beneficiary to recover benefits due to him or her under the provisions of subchapter III of this chapter, to enforce his or her rights under such provisions, or to clarify his or her rights to future benefits under such provisions.

''(3) An action may not be commenced under paragraph (2) with respect to a fiduciary's breach of any responsibility, duty, or obligation under subsection (b) or a violation of subsection (c) after the earlier of—

''(A) 6 years after (i) the date of the last action which constituted a part of the breach or violation, or (ii) in the case of an omission, the latest date on which the fiduciary could have cured the breach or violation; or

''(B) 3 years after the earliest date on which the plaintiff had actual knowledge of the breach or violation, except that, in the case of fraud or concealment, such action may be commenced not later than 6 years after the date of discovery of such breach or violation.''

Subsec. (e)(3)(C)(ii). Pub. L. 100–366, §3(a)(1), substituted ''28, provided that'' for ''28, if'' and ''shall be exclusive of'' for ''is exclusive of''.

Subsec. (e)(4) to (8). Pub. L. 100–238, §133(a)(4), (5), added pars. (4) to (6) and redesignated former pars. (4) and (5) as (7) and (8), respectively.

Subsec. (e)(5). Pub. L. 100–366, §3(a)(2), substituted ''paragraph (3)'' for ''paragraphs (3) and (4)''.

1986—Subsec. (c)(3)(E). Pub. L. 99–556, §112, added subpar. (E).

Subsec. (e)(1)(B). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

Subsec. (e)(1)(E)(i). Pub. L. 99–556, §114(b), substituted ''Secretary of Labor (or the Board under section 114 of the Federal Employees' Retirement System Technical Corrections Act of 1986)'' for ''Board''.

EFFECTIVE DATE OF 1988 AMENDMENTS

Section 3(b) of Pub. L. 100–366 provided that: ''Section 8477(e) of title 5, United States Code, as amended by subsection (a), shall apply to any civil action or proceeding arising from any act or omission occurring on or after October 1, 1986.''

Section 133(b) of Pub. L. 100–238 provided that: ''The provisions of section 8477(e)(1), (2), (3), (4), (5), and (6) of title 5, United States Code (as amended by subsection (a) of this section), shall apply to any civil action or proceeding arising from any act or omission occurring on or after October 1, 1986.''

Section 133(c) of Pub. L. 100–238, which provided that the provisions of subsection (a) (and the amendments to section 8477(e) of title 5 contained therein) and subsection (b) of this section were to be repealed effective on Dec. 31, 1990, and that on and after Dec. 31, 1990, the provisions of section 8477(e) of title 5 were to be in effect as such provisions were in effect on Jan. 7, 1988, was repealed by Pub. L. 101–335, §8, July 17, 1990, 104 Stat. 325.

INTERIM EXEMPTION PROCEDURES

Section 111 of Pub. L. 99–556 provided that:

''(a) IN GENERAL.—Subject to subsection (b), until such time as final regulations under subparagraph (A) of section 8477(c)(3) of title 5, United States Code, become effective, the Secretary of Labor may, in accordance with procedures under section 408(a) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1108(a)], grant any exemption allowable under such section 8477(c)(3).

''(b) TERMINATION OF INTERIM AUTHORITY.—The authority to grant an exemption under section 8477(c)(3) of title 5, United States Code, using the procedures under section 408(a) of the Employee Retirement Income Security Act of 1974 shall expire not later than December 31, 1988.''

ALLOCATION OF FIDUCIARY RESPONSIBILITIES

Section 114(a) of Pub. L. 99–556 provided that:

''(1) Subject to paragraph (2), until such time as final regulations under subparagraph (E) of section 8477(e)(1) of title 5, United States Code, become effective, a fiduciary (as defined by section 8477(a)(3) of title 5, United States Code) may, in accordance with procedures established by the Federal Retirement Thrift Investment Board, make any allocation of fiduciary responsibilities.

''(2) The authority to make any allocation under section 8477(e)(1)(E) using the procedures referred to in paragraph (1), and any allocation so made using such procedures, shall expire not later than December 31, 1988.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8401, 8433, 8438, 8478a of this title.

§ 8478. Bonding

(a)(1) Except as provided in paragraph (2), each fiduciary and each person who handles funds or property of the Thrift Savings Fund shall be bonded as provided in this section.

(2)(A) Bond shall not be required of a fiduciary (or of any officer or employee of such fiduciary) if such fiduciary—

(i) is a corporation organized and doing business under the laws of the United States or of any State;

(ii) is authorized under such laws to exercise trust powers or to conduct an insurance business;

(iii) is subject to supervision or examination by Federal or State authority; and

(iv) has at all times a combined capital and surplus in excess of such minimum amount (not less than $1,000,000) as the Secretary of Labor prescribes in regulations.

(B) If—

(i) a bank or other financial institution would, but for this subparagraph, not be required to be bonded under this section by reason of the application of the exception provided in subparagraph (A),

(ii) the bank or financial institution is authorized to exercise trust powers, and

(iii) the deposits of the bank or financial institution are not insured by the Federal Deposit Insurance Corporation,

such exception shall apply to such bank or financial institution only if the bank or institution meets bonding requirements under State law which the Secretary of Labor determines are at least equivalent to those imposed on banks by Federal law.

(b)(1) The Secretary of Labor shall prescribe the amount of a bond under this section at the beginning of each fiscal year. Except as otherwise provided in this paragraph, such amount shall not be less than 10 percent of the amount of funds handled. In no case shall such bond be less than $1,000 nor more than $500,000, except that the Secretary of Labor, after due notice and opportunity for hearing to all interested parties, and other consideration of the record, may prescribe an amount in excess of $500,000.

(2) For the purpose of prescribing the amount of a bond under paragraph (1), the amount of funds handled shall be determined by reference to the amount of the funds handled by the person, group, or class to be covered by such bond or by their predecessor or predecessors, if any, during the preceding fiscal year, or to the amount of funds to be handled during the current fiscal year by such person, group, or class, estimated as provided in regulations prescribed by the Secretary of Labor.

(c) A bond required by subsection (a)—

(1) shall include such terms and conditions as the Secretary of Labor considers necessary to protect the Thrift Savings Fund against loss by reason of acts of fraud or dishonesty on the part of the bonded person directly or through connivance with others;

(2) shall have as surety thereon a corporate surety company which is an acceptable surety on Federal bonds under authority granted by the Secretary of the Treasury pursuant to sections 9304 through 9308 of title 31; and

(3) shall be in a form or of a type approved by the Secretary of Labor, including individual bonds or schedule or blanket forms of bonds which cover a group or class.

(d)(1) It shall be unlawful for any person to whom subsection (a) applies, to receive, handle, disburse, or otherwise exercise custody or control of any of the funds or other property of the Thrift Savings Fund without being bonded as required by this section.

(2) It shall be unlawful for any fiduciary, or any other person having authority to direct the performance of functions described in paragraph (1), to permit any such function to be performed by any person to whom subsection (a) applies unless such person has met the requirements of such subsection.

(e) Notwithstanding any other provision of law, any person who is required to be bonded as provided in subsection (a) shall be exempt from any other provision of law which would, but for this subsection, require such person to be bonded for the handling of the funds or other property of the Thrift Savings Fund.

(f) The Secretary of Labor shall prescribe such regulations as may be necessary to carry out the provisions of this section, including exempting a person or class of persons from the requirements of this section.

(Added Pub. L. 99–335, title I, § 101(a), June 6, 1986, 100 Stat. 586; amended Pub. L. 99–556, title I, §§ 108, 115, Oct. 27, 1986, 100 Stat. 3132, 3134; Pub. L. 102–378, § 2(72), Oct. 2, 1992, 106 Stat. 1355.)

AMENDMENTS

1992—Subsec. (a)(2)(B)(iii). Pub. L. 102–378 struck out ''Corporation or the Federal Savings and Loan Insurance'' before ''Corporation''.

1986—Subsec. (a)(1). Pub. L. 99–556, § 108, struck out ''(other than a member of the Employee Thrift Advisory Council with respect to his duties as a member)'' after ''each fiduciary''.

Subsec. (c)(2). Pub. L. 99–556, § 115, substituted ''sections 9304 through 9308 of title 31'' for ''sections 6 through 13 of title 6''.

INTERIM BONDING REGULATIONS

Section 113 of Pub. L. 99–556 provided that:

''(a) IN GENERAL.—Subject to subsection (b), until such time as the Secretary of Labor promulgates final regulations under section 8478 of title 5, United States Code, the Secretary of Labor may, with respect to the Thrift Savings Fund, apply the temporary regulations under section 412 of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1112] that are set forth in section 2550.412–1, and subchapter I of chapter XXV, of title 29 of the Code of Federal Regulations, as in effect on September 23, 1986.

''(b) TERMINATION OF INTERIM AUTHORITY.—The authority to apply the temporary regulations referred to in subsection (a) with respect to the Thrift Savings Fund shall expire not later than December 31, 1989.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8478a of this title.

§ 8478a. Investigative authority

Any authority available to the Secretary of Labor under section 504 of the Employee Retirement Income Security Act of 1974 is hereby made available to the Secretary of Labor, and any officer designated by the Secretary of Labor, to determine whether any person has violated, or is about to violate, any provision of section 8477 or 8478.

(Added Pub. L. 99–556, title I, §110(a), Oct. 27, 1986, 100 Stat. 3132.)

REFERENCES IN TEXT

Section 504 of the Employee Retirement Income Security Act of 1974, referred to in text, is classified to section 1134 of Title 29, Labor.

§ 8479. Exculpatory provisions; insurance

(a) Any provision in an agreement or instrument which purports to relieve a fiduciary from responsibility or liability for any responsibility, obligation, or duty under this subchapter shall be void.

(b)(1) The Executive Director may require employing agencies to contribute an amount not to exceed 1 percent of the amount such agencies are required to contribute in accordance with section 8432(c) of this title to the Thrift Savings Fund.

(2) The sums credited to the Thrift Savings Fund under paragraph (1) shall be available and may be used at the discretion of the Executive Director to purchase insurance to cover potential liability of persons who serve in a fiduciary capacity with respect to the Thrift Savings Fund, without regard to whether a policy of insurance permits recourse by the insurer against the fiduciary in the case of a breach of a fiduciary obligation.

(Added Pub. L. 99–335, title I, §101(a), June 6, 1986, 100 Stat. 588.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8437 of this title.

CHAPTER 85—UNEMPLOYMENT COMPENSATION

SUBCHAPTER I—EMPLOYEES GENERALLY

Sec.
8501. Definitions.
8502. Compensation under State agreement.
8503. Compensation absent State agreement.
8504. Assignment of Federal service and wages.
8505. Payments to States.
8506. Dissemination of information.
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8508. Regulations.
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SUBCHAPTER II—EX-SERVICEMEN

8521. Definitions; application.
8522. Assignment of Federal service and wages.
8523. Dissemination of information.
8524. Repealed.
8525. Effect on other statutes.

AMENDMENTS

1992—Pub. L. 102–378, §2(73), Oct. 2, 1992, 106 Stat. 1355, added item 8509.

1975—Pub. L. 94–183, §2(42), Dec. 31, 1975, 89 Stat. 1059, substituted ''Repealed'' for ''Accrued leave'' in item 8524.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 2 section 906; title 18 section 1919; title 19 section 2319; title 28 section 996.

SUBCHAPTER I—EMPLOYEES GENERALLY

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 3373, 8521 of this title; title 39 section 1005.

§ 8501. Definitions

For the purpose of this subchapter—

(1) ''Federal service'' means service performed after 1952 in the employ of the United States or an instrumentality of the United States which is wholly or partially owned by the United States, but does not include service (except service to which subchapter II of this chapter applies) performed—

(A) by an elective official in the executive or legislative branch;

(B) as a member of the armed forces or the Commissioned Corps of the National Oceanic and Atmospheric Administration;

(C) by members of the Foreign Service for whom payments are provided under section 609(b)(1) of the Foreign Service Act of 1980;

(D) outside the United States, the Commonwealth of Puerto Rico, and the Virgin Islands by an individual who is not a citizen of the United States;

(E) by an individual excluded by regulations of the Office of Personnel Management from the operation of subchapter III of chapter 83 of this title because he is paid on a contract or fee basis;

(F) by an individual receiving nominal pay and allowances of $12 or less a year;

(G) in a hospital, home, or other institution of the United States by a patient or inmate thereof;

(H) by a student-employee as defined by section 5351 of this title;

(I) by an individual serving on a temporary basis in case of fire, storm, earthquake, flood, or other similar emergency;

(J) by an individual employed under a Federal relief program to relieve him from unemployment;

(K) as a member of a State, county, or community committee under the Agricul-

tural Stabilization and Conservation Service or of any other board, council, committee, or other similar body, unless the board, council, committee, or other body is composed exclusively of individuals otherwise in the full-time employ of the United States; or

(L) by an officer or a member of the crew on or in connection with an American vessel—

(i) owned by or bareboat chartered to the United States; and

(ii) whose business is conducted by a general agent of the Secretary of Commerce;

if contributions on account of the service are required to be made to an unemployment fund under a State unemployment compensation law under section 3305(g) of title 26;

(2) ''Federal wages'' means all pay and allowances, in cash and in kind, for Federal service;

(3) ''Federal employee'' means an individual who has performed Federal service;

(4) ''compensation'' means cash benefits payable to an individual with respect to his unemployment including any portion thereof payable with respect to dependents;

(5) ''benefit year'' means the benefit year as defined by the applicable State unemployment compensation law, and if not so defined the term means the period prescribed in the agreement under this subchapter with a State or, in the absence of such an agreement, the period prescribed by the Secretary of Labor;

(6) ''State'' means the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands;

(7) ''United States'', when used in a geographical sense, means the States; and

(8) ''base period'' means the base period as defined by the applicable State unemployment compensation law for the benefit year.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 585; Pub. L. 94–566, title I, § 116(e)(1), title II, § 214(b), Oct. 20, 1976, 90 Stat. 2672, 2678; Pub. L. 95–454, title IX, § 906(a)(2), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 96–215, § 4(a), Mar. 25, 1980, 94 Stat. 124; Pub. L. 96–465, title II, § 2314(h), Oct. 17, 1980, 94 Stat. 2168.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	42 U.S.C. 1361.	Sept. 1, 1954, ch. 1212, § 4(a) ''Sec. 1501'', 68 Stat. 1130. Aug. 28, 1958, Pub. L. 85–848, § 2, 72 Stat. 1087. July 12, 1960, Pub. L. 86–624, § 30(g), 74 Stat. 420. Sept. 13, 1960, Pub. L. 86–778, §§ 531(e), 542(d), 74 Stat. 984, 986.

Clause (4) of former section 1361(a) is omitted as obsolete.

In paragraph (1)(A), the word ''official'' is substituted for ''officer'' because of the definition of ''officer'' in section 2104. The words ''of the Government of the United States'' are omitted as unnecessary.

In paragraph (1)(E), the words ''by regulations of the Civil Service Commission from the operation of subchapter III of chapter 83 of this title'' are substituted for ''by Executive order from the operation of the Civil Service Retirement Act of 1930'' on authority of the Civil Service Retirement Act Amendments of 1956, which are carried into subchapter III of chapter 83.

In paragraph (1)(K), the words ''Agricultural Stabilization and Conservation Service'' are substituted for ''Production and Marketing Administration'' on authority of Secretary's memorandum 1320, supp. 4 of November 2, 1953.

In paragraph (1)(L), the words ''section 1606(g) of Title 26, Internal Revenue Code of 1939'' in former section 1361(a)(13) are omitted as obsolete.

The last sentence of former section 1361 is omitted as its substance is included in paragraph (1)(D).

Former section 1361(f) is omitted as unnecessary as the full title of the Secretary of Labor is set out the first time it is used in each section.

Paragraphs (6) and (7) are added on authority of section 1101(a)(1), (2) of the Act of Aug. 14, 1935, ch. 531, 49 Stat. 647, as amended; 42 U.S.C. 1301(a)(1), (2).

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

REFERENCES IN TEXT

Section 609(b)(1) of the Foreign Service Act of 1980, referred to in par. (1)(C), is classified to section 4009(b)(1) of Title 22, Foreign Relations and Intercourse.

AMENDMENTS

1980—Par. (1)(B). Pub. L. 96–215 inserted ''or the Commissioned Corps of the National Oceanic and Atmospheric Administration'' after ''armed forces''.

Par. (1)(C). Pub. L. 96–465 substituted ''members of the Foreign Service for whom payments are provided under section 609(b)(1) of the Foreign Service Act of 1980'' for ''Foreign Service personnel for whom special separation allowances are provided under chapter 14 of title 22''.

1978—Par. (1)(E). Pub. L. 95–454 substituted ''Office of Personnel Management'' for ''Civil Service Commission''.

1976—Par. (6). Pub. L. 94–566, § 116(e)(1), added the Virgin Islands in definition of ''State''.

Par. (8). Pub. L. 94–566, § 214(b), added par. (8).

EFFECTIVE DATE OF 1980 AMENDMENTS

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.

Section 4(c) of Pub. L. 96–215 provided that: ''The amendments made by this section [amending this section and section 8521 of this title] shall apply with respect to assignments of services and wages pursuant to any first claim (for a benefit year) which is filed after the date of the enactment of this Act [Mar. 25, 1980].''

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 116(e)(1) of Pub. L. 94–566 applicable with respect to benefit years beginning on or after the later of Oct. 1, 1976, or the first day of the first week for which compensation becomes payable under an unemployment compensation law of the Virgin Islands which is approved by the Secretary of Labor under section 3304(a) of Title 26, Internal Revenue Code, see section 116(f)(3) of Pub. L. 94–566, set out as a note under section 3304 of Title 26.

Section 214(c) of Pub. L. 94–566 provided that: ''The amendments made by this section [amending this section and section 8505 of this title] shall apply with regard to compensation paid on the basis of claims for compensation filed on or after July 1, 1977''.

TEMPORARY 1990 CENSUS SERVICES CONSTITUTING FEDERAL SERVICE

Determination respecting temporary 1990 census services as Federal service for purposes of this subchapter, see section 141 of Pub. L. 101–382, set out as a note under section 23 of Title 13, Census.

§ 8502. Compensation under State agreement

(a) The Secretary of Labor, on behalf of the United States, may enter into an agreement with a State, or with an agency administering the unemployment compensation law of a State, under which the State agency shall—

(1) pay, as agent of the United States, compensation under this subchapter to Federal employees; and

(2) otherwise cooperate with the Secretary and with other State agencies in paying compensation under this subchapter.

(b) The agreement shall provide that compensation will be paid by the State to a Federal employee in the same amount, on the same terms, and subject to the same conditions as the compensation which would be payable to him under the unemployment compensation law of the State if his Federal service and Federal wages assigned under section 8504 of this title to the State had been included as employment and wages under that State law.

[(c) Repealed. Pub. L. 90–83, §1(86)(B), Sept. 11, 1967, 81 Stat. 218.]

(d) A determination by a State agency with respect to entitlement to compensation under an agreement is subject to review in the same manner and to the same extent as determinations under the State unemployment compensation law, and only in that manner and to that extent.

(e) Each agreement shall provide the terms and conditions on which it may be amended or terminated.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 586; Pub. L. 90–83, §1(86), Sept. 11, 1967, 81 Stat. 218.)

HISTORICAL AND REVISION NOTES
1966 ACT

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	42 U.S.C. 1362.	Sept. 1, 1954, ch. 1212, §4(a) ''Sec. 1502'', 68 Stat. 1131. Sept. 13, 1960, Pub. L. 86–778, §542(b)(1)(A), 74 Stat. 985.

In subsection (a), the words ''under this subchapter'' are substituted for ''on the basis provided in subsection (b) of this section''.

In subsection (b), the words ''with respect to unemployment after December 31, 1954'' are omitted as obsolete.

In subsection (c), the words ''with respect to unemployment after December 31, 1960'' are omitted as obsolete. In the last sentence, the application to section 8503(b) is omitted and carried into that section.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 ACT

This section amends 5 U.S.C. 8502 to eliminate certain provisions that are now obsolete. The obsolete provisions were based on section 542(b)(1)(A) of the act of September 13, 1960, 74 Stat. 985, that amended section 1502(b) of the Social Security Act effective January 1, 1961, but only in the case of weeks of unemployment beginning before January 1, 1966. Any existing rights are preserved by section 7 of this bill.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8507, 8523 of this title.

§ 8503. Compensation absent State agreement

(a) In the case of a Federal employee whose Federal service and Federal wages are assigned under section 8504 of this title to a State which does not have an agreement with the Secretary of Labor, the Secretary, under regulations prescribed by him, shall, on the filing by the Federal employee of a claim for compensation under this subsection, pay compensation to him in the same amount, on the same terms, and subject to the same conditions as would be paid to him under the unemployment compensation law of the State if his Federal service and Federal wages had been included as employment and wages under that State law. However, if the Federal employee, without regard to his Federal service and Federal wages, has employment or wages sufficient to qualify for compensation during the benefit year under that State law, then payments of compensation under this subsection may be made only on the basis of his Federal service and Federal wages.

(b) A Federal employee whose claim for compensation under subsection (a) of this section is denied is entitled to a fair hearing under regulations prescribed by the Secretary. A final determination by the Secretary with respect to entitlement to compensation under this section is subject to review by the courts in the same manner and to the same extent as is provided by section 405(g) of title 42.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 587; Pub. L. 90–83, §1(87), Sept. 11, 1967, 81 Stat. 218; Pub. L. 94–566, title I, §116(e)(2), Oct. 20, 1976, 90 Stat. 2673.)

HISTORICAL AND REVISION NOTES
1966 ACT

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	42 U.S.C. 1363.	Sept. 1, 1954, ch. 1212, §4(a) ''Sec. 1503'', 68 Stat. 1132. Sept. 13, 1960, Pub. L. 86–778, §542(b)(1)(B), (C), (c)(1), 74 Stat. 986.

In subsections (a) and (b), the words ''with respect to unemployment after December 31, 1954'' are omitted as obsolete.

In subsection (b), the last sentence is added on authority of the last sentence of former section 1362(b), which section is carried into section 8502.

In subsection (c), the words ''with respect to final decisions of the Secretary of Health, Education, and Welfare under subchapter II of this chapter'' are omitted as unnecessary.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 ACT

Section of title 5	*Source (U.S. Code)*	*Source (Statutes at Large)*
8503(b)	[Uncodified].	Sept. 13, 1960, Pub. L. 86–778, §542(a)(1), 74 Stat. 985.

This section also amends 5 U.S.C. 8503 to eliminate certain provisions that are now obsolete. The obsolete provisions were based on section 542(b)(1)(B) and (C) of the act of September 13, 1960, 74 Stat. 986, that amended section 1503 (a) and (b) of the Social Security Act effective January 1, 1961, but only in the case of weeks of unemployment beginning before January 1, 1966. Any existing rights are preserved by section 7 of this bill.

AMENDMENTS

1976—Subsecs. (b), (c). Pub. L. 94–566, §116(e)(2), redesignated subsec. (c) as (b) and substituted ''subsection (a)'' for ''subsection (a) or (b)''. Former subsec. (b), which made special provision for Federal employees whose Federal service and Federal wages were assigned to the Virgin Islands, was struck out.

Subsec. (d). Pub. L. 94–566, §116(e)(2)(A), struck out subsec. (d) which authorized the Secretary to use the personnel and facilities of the agency in the Virgin Islands cooperating with the United States Employment Service.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–566 applicable with respect to benefit years beginning on or after later of Oct. 1, 1976, or first day of first week for which compensation becomes payable under an unemployment compensation law of Virgin Islands which is approved by Secretary of Labor under section 3304(a) of Title 26, Internal Revenue Code, see section 116(f)(3) of Pub. L. 94–566, set out as a note under section 3304 of Title 26.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8507, 8523 of this title.

§ 8504. Assignment of Federal service and wages

Under regulations prescribed by the Secretary of Labor, the Federal service and Federal wages of a Federal employee shall be assigned to the State in which he had his last official station in Federal service before the filing of his first claim for compensation for the benefit year. However—

(1) if, at the time of filing his first claim, he resides in another State in which he performed, after the termination of his Federal service, service covered under the unemployment compensation law of the other State, his Federal service and Federal wages shall be assigned to the other State; and

(2) if his last official station in Federal service, before filing his first claim, was outside the United States, his Federal service and Federal wages shall be assigned to the State where he resides at the time he files his first claim.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 588; Pub. L. 90–83, §1(88), Sept. 11, 1967, 81 Stat. 218; Pub. L. 94–566, title I, §116(e)(3), Oct. 20, 1976, 90 Stat. 2673.)

HISTORICAL AND REVISION NOTES

1966 ACT

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	42 U.S.C. 1364.	Sept. 1, 1954, ch. 1212, §4(a) ''Sec. 1504'', 68 Stat. 1133. Sept. 13, 1960, Pub. L. 86–778, §542(b)(2), 74 Stat. 986.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 ACT

Section of title 5	*Source (U.S. Code)*	*Source (Statutes at Large)*
8504(3)	[Uncodified].	Sept. 13, 1960, Pub. L. 86–778, §542(a)(2), 74 Stat. 985.

This section also amends 5 U.S.C. 8504 to eliminate certain provisions that are now obsolete. The obsolete provisions were based on section 542(b)(2) of the act of September 13, 1960, 74 Stat. 986, that amended section 1504 of the Social Security Act effective January 1, 1961, but only in the case of first claims filed before January 1, 1966. Any existing rights are preserved by section 7 of this bill.

AMENDMENTS

1976—Par. (3). Pub. L. 94–566 struck out par. (3) which covered the assignment to the Virgin Islands of the Federal service and Federal wages of Federal employees whose first claims were filed while residing in the Virgin Islands.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–566 applicable with respect to benefit years beginning on or after later of Oct. 1, 1976, or first day of first week for which compensation becomes payable under an unemployment compensation law of Virgin Islands which is approved by Secretary of Labor under section 3304(a) of Title 26, Internal Revenue Code, see section 116(f)(3), set out as a note under section 3304 of Title 26.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8502, 8503, 8522 of this title.

§ 8505. Payments to States

(a) Each State is entitled to be paid by the United States with respect to each individual whose base period wages included Federal wages an amount which shall bear the same ratio to the total amount of compensation paid to such individual as the amount of his Federal wages in his base period bears to the total amount of his base period wages.

(b) Each State shall be paid, either in advance or by way of reimbursement, as may be determined by the Secretary of Labor, the sum that the Secretary estimates the State is entitled to receive under this subchapter for each calendar month. The sum shall be reduced or increased by the amount which the Secretary finds that his estimate for an earlier calendar month was greater or less than the sum which should have been paid to the State. An estimate may be made on the basis of a statistical, sampling, or other method agreed on by the Secretary and the State agency.

(c) The Secretary, from time to time, shall certify to the Secretary of the Treasury the sum payable to each State under this section. The Secretary of the Treasury, before audit or settlement by the General Accounting Office, shall pay the State in accordance with the certification from the funds for carrying out the purposes of this subchapter.

(d) Money paid a State under this subchapter may be used solely for the purposes for which it is paid. Money so paid which is not used for these purposes shall be returned, at the time specified by the agreement, to the Treasury of the United States and credited to current applicable appropriations, funds, or accounts from

which payments to States under this subchapter may be made.

(e) An agreement may—

(1) require each State officer or employee who certifies payments or disburses funds under the agreement, or who otherwise participates in its performance, to give a surety bond to the United States in the amount the Secretary considers necessary; and

(2) provide for payment of the cost of the bond from funds for carrying out the purposes of this subchapter.

(f) In the absence of gross negligence or intent to defraud the United States, an individual designated by the Secretary, or designated under an agreement, as a certifying official is not liable for the payment of compensation certified by him under this subchapter.

(g) In the absence of gross negligence or intent to defraud the United States, a disbursing official is not liable for a payment by him under this subchapter if it was based on a voucher signed by a certifying official designated as provided by subsection (f) of this section.

(h) For the purpose of payments made to a State under subchapter III of chapter 7 of title 42, administration by a State agency under an agreement is deemed a part of the administration of the State unemployment compensation law.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 588; Pub. L. 94–566, title II, §214(a), Oct. 20, 1976, 90 Stat. 2678.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	42 U.S.C. 1366.	Sept. 1, 1954, ch. 1212, §4(a) ''Sec. 1506'', 68 Stat. 1133.

In the first sentence of subsection (d), the word ''may'' is substituted for ''shall'' since the sentence does not direct the use of the money, rather it limits the purposes for which the money may be used.

In subsections (f) and (g), the word ''official'' is substituted for ''officer'' because of the definition of ''officer'' in section 2104.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1976—Subsec. (a). Pub. L. 94–566 substituted provisions that each State is entitled to be paid by the United States with respect to each individual whose base period wages included Federal wages an amount which shall bear the same ratio to the total amount of compensation paid to such individual as the amount of his Federal wages in his base period bears to the total amount of his base period wages for provisions that each State is entitled to be paid by the United States an amount equal to the additional cost to the State of payments of compensation in accordance with an agreement under this subchapter which would not have been made by the State but for the agreement.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–566 applicable with regard to compensation paid on the basis of claims for compensation filed on or after July 1, 1977, see section 214(c) of Pub. L. 94–566, set out as a note under section 8501 of this title.

§ 8506. Dissemination of information

(a) Each agency of the United States and each wholly or partially owned instrumentality of the United States shall make available to State agencies which have agreements under this subchapter, or to the Secretary of Labor, as the case may be, such information concerning the Federal service and Federal wages of a Federal employee as the Secretary considers practicable and necessary for the determination of the entitlement of the Federal employee to compensation under this subchapter. The information shall include the findings of the employing agency concerning—

(1) whether or not the Federal employee has performed Federal service;

(2) the periods of Federal service;

(3) the amount of Federal wages; and

(4) the reasons for termination of Federal service.

The employing agency shall make the findings in the form and manner prescribed by regulations of the Secretary. The regulations shall include provision for correction by the employing agency of errors and omissions. This subsection does not apply with respect to Federal service and Federal wages covered by subchapter II of this chapter.

(b) The agency administering the unemployment compensation law of a State shall furnish the Secretary such information as he considers necessary or appropriate in carrying out this subchapter. The information is deemed the report required by the Secretary for the purpose of section 503(a)(6) of title 42.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 589; Pub. L. 94–566, title III, §313(a), Oct. 20, 1976, 90 Stat. 2680.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	42 U.S.C. 1367.	Sept. 1, 1954, ch. 1212, §4(a) ''Sec. 1507'', 68 Stat. 1134. Aug. 28, 1958, Pub. L. 85–848, §4, 72 Stat. 1089. Sept. 13, 1960, Pub. L. 86–778, §531(f), 74 Stat. 984.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1976—Subsec. (a). Pub. L. 94–566 struck out provision that findings made in accordance with the Secretary's regulations were final and conclusive for the purpose of sections 8502(d) and 8503(c) of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 313(b) of Pub. L. 94–566 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to findings made after the date of the enactment of this Act [Oct. 20, 1976].''

§ 8507. False statements and misrepresentations

(a) If a State agency, the Secretary of Labor, or a court of competent jurisdiction finds that an individual—

(1) knowingly has made, or caused to be made by another, a false statement or rep-

resentation of a material fact, or knowingly has failed, or caused another to fail, to disclose a material fact; and

(2) as a result of that action has received an amount as compensation under this subchapter to which he was not entitled;

the individual shall repay the amount to the State agency or the Secretary. Instead of requiring repayment under this subsection, the State agency or the Secretary may recover the amount by deductions from compensation payable to the individual under this subchapter during the 2-year period after the date of the finding. A finding by a State agency or the Secretary may be made only after an opportunity for a fair hearing, subject to such further review as may be appropriate under sections 8502(d) and 8503(c) of this title.

(b) An amount repaid under subsection (a) of this section shall be—

(1) deposited in the fund from which payment was made, if the repayment was to a State agency; or

(2) returned to the Treasury of the United States and credited to the current applicable appropriation, fund, or account from which payment was made, if the repayment was to the Secretary.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 590.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	42 U.S.C. 1368(b).	Sept. 1, 1954, ch. 1212, §4(a), ''Sec. 1508(b)'', 68 Stat. 1135.

In subsection (a), the words ''as the case may be'', ''be liable to'', and ''of any amount'' are omitted as unnecessary.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

§ 8508. Regulations

The Secretary of Labor may prescribe rules and regulations necessary to carry out this subchapter and subchapter II of this chapter. The Secretary, insofar as practicable, shall consult with representatives of the State unemployment compensation agencies before prescribing rules or regulations which may affect the performance by the State agencies of functions under agreements under this subchapter.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 590.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	42 U.S.C. 1369.	Sept. 1, 1954, ch. 1212, §4(a) ''Sec. 1509'', 68 Stat. 1135.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

§ 8509. Federal Employees Compensation Account

(a) The Federal Employees Compensation Account (as established by section 909 of the Social Security Act, and hereafter in this section referred to as the ''Account'') in the Unemployment Trust Fund (as established by section 904 of such Act) shall consist of—

(1) funds appropriated to or transferred thereto, and

(2) amounts deposited therein pursuant to subsection (c).

(b) Moneys in the Account shall be available only for the purpose of making payments to States pursuant to agreements entered into under this chapter and making payments of compensation under this chapter in States which do not have in effect such an agreement.

(c)(1) Each employing agency shall deposit into the Account amounts equal to the expenditures incurred under this chapter on account of Federal service performed by employees and former employees of that agency.

(2) Deposits required by paragraph (1) shall be made during each calendar quarter and the amount of the deposit to be made by any employing agency during any quarter shall be based on a determination by the Secretary of Labor as to the amounts of payments, made prior to such quarter from the Account based on Federal service performed by employees of such agency after December 31, 1980, with respect to which deposit has not previously been made. The amount to be deposited by any employing agency during any calendar quarter shall be adjusted to take account of any overpayment or underpayment of deposit during any previous quarter for which adjustment has not already been made.

(3) If any Federal agency does not deposit in the Federal Employees Compensation Account any amount before the date 30 days after the date on which the Secretary of Labor has notified such agency that it is required to so deposit such amount, the Secretary of Labor shall notify the Secretary of the Treasury of the failure to make such deposit and the Secretary of the Treasury shall transfer such amount to the Federal Employees Compensation Account from amounts otherwise appropriated to such Federal agency.

(d) The Secretary of Labor shall certify to the Secretary of the Treasury the amount of the deposit which each employing agency is required to make to the Account during any calendar quarter, and the Secretary of the Treasury shall notify the Secretary of Labor as to the date and amount of any deposit made to such Account by any such agency.

(e) Prior to the beginning of each fiscal year (commencing with the fiscal year which begins October 1, 1981) the Secretary of Labor shall estimate—

(1) the amount of expenditures which will be made from the Account during such year, and

(2) the amount of funds which will be available during such year for the making of such expenditures,

and if, on the basis of such estimate, he determines that the amount described in paragraph (2) is in excess of the amount necessary—

(3) to meet the expenditures described in paragraph (1), and

(4) to provide a reasonable contingency fund so as to assure that there will, during all

times in such year, be sufficient sums available in the Account to meet the expenditures described in paragraph (1),

he shall certify the amount of such excess to the Secretary of the Treasury and the Secretary of the Treasury shall transfer, from the Account to the general fund of the Treasury, an amount equal to such excess.

(f) The Secretary of Labor is authorized to establish such rules and regulations as may be necessary or appropriate to carry out the provisions of this section.

(g) Any funds appropriated after the establishment of the Account, for the making of payments for which expenditures are authorized to be made from moneys in the Account, shall be made to the Account; and there are hereby authorized to be appropriated to the Account, from time to time, such sums as may be necessary to assure that there will, at all times, be sufficient sums available in the Account to meet the expenditures authorized to be made from moneys therein.

(h) For purposes of this section, the term ''Federal service'' includes Federal service as defined in section 8521(a).

(Added Pub. L. 96–499, title X, § 1023(b), Dec. 5, 1980, 94 Stat. 2657; amended Pub. L. 97–362, title II, § 202(a), Oct. 25, 1982, 96 Stat. 1732; Pub. L. 102–318, title V, § 532(a), July 3, 1992, 106 Stat. 317.)

REFERENCES IN TEXT

Sections 909 and 904 of the Social Security Act, referred to in subsec. (a), are classified to sections 1109 and 1104, respectively, of Title 42, The Public Health and Welfare.

AMENDMENTS

1992—Subsec. (c)(3). Pub. L. 102–318 added par. (3).

1982—Subsecs. (b), (c)(1). Pub. L. 97–362, § 202(a)(1), substituted ''chapter'' for ''subchapter'' wherever appearing.

Subsec. (h). Pub. L. 97–362, § 202(a)(2), added subsec. (h).

EFFECTIVE DATE OF 1992 AMENDMENT

Section 532(b) of Pub. L. 102–318 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to failures outstanding on the date of the enactment of this Act [July 3, 1992] or at any time thereafter.''

EFFECTIVE DATE OF 1982 AMENDMENT

Section 202(b)(1) of Pub. L. 97–362 provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on October 1, 1983.''

TRANSFER OF APPROPRIATED UNEMPLOYMENT COMPENSATION FUNDS

Pub. L. 97–362, title II, § 202(b)(2), Oct. 25, 1982, 96 Stat. 1733, provided that: ''All funds appropriated which are available (on October 1, 1983) for the making of payments to States under chapter 85 of title 5, United States Code, on the basis of Federal service (as defined in section 8521(a) of such title 5) or for the making of payments under such chapter on the basis of such service in States which do not have in effect an agreement under such chapter, shall be transferred on such date to the Federal Employees Compensation Account established by section 909 of the Social Security Act [42 U.S.C. 1109]. On and after such date, all payments described in the preceding sentence shall be made from such account as provided by section 8509 of such title 5.''

Section 1023(c) of Pub. L. 96–499 provided that: ''All funds appropriated which are available for the making of payments to States after December 31, 1980, pursuant to agreements entered into under subchapter I of chapter 85 of title 5, United States Code, or for the making of payments after such date of compensation under such subchapter in States which do not have in effect such an agreement, shall be transferred on January 1, 1981, to the Federal Employees Compensation Account established by section 909 of the Social Security Act [42 U.S.C. 1109]. On and after such date, all payments described in the preceding sentence shall be made from such Account as provided by section 8509 of title 5, United States Code.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 42 section 1109.

SUBCHAPTER II—EX-SERVICEMEN

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 8501, 8506, 8508 of this title.

§ 8521. Definitions; application

(a) For the purpose of this subchapter—

(1) ''Federal service'' means active service (not including active duty in a reserve status unless for a continuous period of 90 days or more) in the armed forces or the Commissioned Corps of the National Oceanic and Atmospheric Administration if with respect to that service—

(A) the individual was discharged or released under honorable conditions (and, if an officer, did not resign for the good of the service); and

(B)(i) the individual was discharged or released after completing his first full term of active service which the individual initially agreed to serve, or

(ii) the individual was discharged or released before completing such term of active service—

(I) for the convenience of the Government under an early release program,

(II) because of medical disqualification, pregnancy, parenthood, or any service-incurred injury or disability,

(III) because of hardship, or

(IV) because of personality disorders or inaptitude but only if the service was continuous for 365 days or more;

(2) ''Federal wages'' means all pay and allowances, in cash and in kind, for Federal service, computed on the basis of the pay and allowances for the pay grade of the individual at the time of his latest discharge or release from Federal service as specified in the schedule applicable at the time he files his first claim for compensation for the benefit year. The Secretary of Labor shall issue, from time to time, after consultation with the Secretary of Defense, schedules specifying the pay and allowances for each pay grade of servicemen covered by this subchapter, which reflect representative amounts for appropriate elements of the pay and allowances whether in cash or in kind; and

(3) ''State'' means the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands.

(b) The provisions of subchapter I of this chapter, subject to the modifications made by this subchapter, apply to individuals who have had Federal service as defined by subsection (a) of this section.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 590; Pub. L. 90–83, § 1(89), Sept. 11, 1967, 81 Stat. 218; Pub. L. 94–566, title I, § 116(e)(4), Oct. 20, 1976, 90 Stat. 2673; Pub. L. 96–215, § 4(b), Mar. 25, 1980, 94 Stat. 124; Pub. L. 96–364, title IV, § 415(a), Sept. 26, 1980, 94 Stat. 1310; Pub. L. 97–35, title XXIV, § 2405(a), Aug. 13, 1981, 95 Stat. 876; Pub. L. 97–362, title II, § 201(a), (b), Oct. 25, 1982, 96 Stat. 1732; Pub. L. 102–164, title III, § 301(a), (b), Nov. 15, 1991, 105 Stat. 1059.)

HISTORICAL AND REVISION NOTES

1966 ACT

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	42 U.S.C. 1371 (a)–(c).	Aug. 28, 1958, Pub. L. 85–848, § 3 ''Sec. 1511(a)–(c)'', 72 Stat. 1088.

In subsection (a)(1), the words ''armed forces'' are coextensive with and substituted for ''Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States'' in view of the definition of ''armed forces'' in section 2101. The words ''after October 27, 1958'' are substituted for ''after the sixtieth day after August 28, 1958''.

In subsection (b), the words ''with respect to weeks of unemployment ending after the sixtieth day after August 28, 1958'' are omitted as obsolete because the law is here stated with prospective effect.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 ACT

This incorporates into 5 U.S.C. 8521 the definition of ''State'' which is applicable to the source statute of that section by virtue of section 1301(a)(1) of title 42.

CODIFICATION

Section 8 of Pub. L. 102–107, Aug. 17, 1991, 105 Stat. 546, which contained provisions substantially identical to those of section 301 of Pub. L. 102–164, amending this section and enacting provisions set out below, did not become effective pursuant to section 10(b) of Pub. L. 102–107, because the President did not take the action required by that section by Aug. 17, 1991.

AMENDMENTS

1991—Subsec. (a)(1). Pub. L. 102–164, § 301(b), substituted ''90 days'' for ''180 days''.

Subsec. (c). Pub. L. 102–164, § 301(a), struck out subsec. (c) which read as follows:

''(1) An individual shall not be entitled to compensation under this subchapter for any week before the fifth week beginning after the week in which the individual was discharged or released.

''(2) The aggregate amount of compensation payable on the basis of Federal service (as defined in subsection (a)) to any individual with respect to any benefit year shall not exceed 13 times the individual's weekly benefit amount for total unemployment.''

1982—Subsec. (a)(1). Pub. L. 97–362, § 201(a), substituted provision that ''Federal service'' means active service (not including active duty in a reserve status unless for a continuous period of 180 days or more) in the armed forces or the Commissioned Corps of the National Oceanic and Atmospheric Administration if with respect to that service the individual was discharged or released under honorable conditions (and, if an officer, did not resign for the good of the service), and the individual was discharged or released after completing his first full term of active service which the individual initially agreed to serve, or the individual was discharged or released before completing such term of active service for the convenience of the Government under an early release program, because of medical disqualification, pregnancy, parenthood, or any service-incurred injury or disability, because of hardship, or because of personality disorders or inaptitude but only if the service was continuous for 365 days or more, for provision that ''Federal service'' meant active service, including active duty for training purposes, in the armed forces or the Commissioned Corps of the National Oceanic and Atmospheric Administration which either began after January 31, 1955, or terminated after October 27, 1958, if that service was continuous for 365 days or more, or was terminated earlier because of an actual service-incurred injury or disability, and with respect to that service, the individual was discharged or released under honorable conditions, did not resign or voluntarily leave the service, and was not released or discharged for cause as defined by the Department of Defense.

Subsec. (c). Pub. L. 97–362, § 201(b), added subsec. (c).

1981—Subsec. (a)(1)(B). Pub. L. 97–35 substituted ''honorable conditions;'' for ''conditions other than dishonorable; and'' in cl. (i), and ''did not resign or voluntarily leave the service; and'' for ''was not given a bad conduct discharge, or, if an officer, did not resign for the good of the service;'' in cl. (ii), and added cl. (iii).

1980—Subsec. (a)(1). Pub. L. 96–215 inserted ''or the Commissioned Corps of the National Oceanic and Atmospheric Administration'' after ''armed forces'' in provisions preceding subpar. (A).

Subsec. (a)(1)(A). Pub. L. 96–364 substituted ''365'' for ''90''.

1976—Subsec. (a)(3). Pub. L. 94–566 added the Virgin Islands to definition of ''State''.

EFFECTIVE DATE OF 1991 AMENDMENT

Section 301(c) of Pub. L. 102–164 provided that: ''The amendments made by this section [amending this section] shall apply to weeks of unemployment beginning on or after the date of the enactment of this Act [Nov. 15, 1991].''

EFFECTIVE DATE OF 1982 AMENDMENT; TRANSITIONAL RULE

Section 201(c) of Pub. L. 97–362 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section], shall apply with respect to terminations of service on or after July 1, 1981, but only for purposes of determining eligibility for benefits for weeks of unemployment beginning after the date of the enactment of this Act [Oct. 25, 1982].

''(2) TRANSITIONAL RULE.—The amendments made by this section shall not apply to the extent that such amendments would (but for this paragraph) reduce the amount of compensation payable in the case of benefit years established before the date of the enactment of this Act [Oct. 25, 1982].''

EFFECTIVE DATE OF 1981 AMENDMENT

Section 2405(b) of Pub. L. 97–35 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to terminations of service on or after July 1, 1981, but only in the case of weeks of unemployment beginning after the date of the enactment of this Act [Aug. 13, 1981].''

EFFECTIVE DATE OF 1980 AMENDMENTS

Section 415(b) of Pub. L. 96–364 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to determinations of Federal service in the case of individuals filing claims for unemployment compensation on or after October 1, 1980.''

Amendment by Pub. L. 96–215 applicable with respect to assignments of services and wages pursuant to any

first claim (for a benefit year) which is filed after Mar. 25, 1980, see section 4(c) of Pub. L. 96–215, set out as a note under section 8501 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–566 applicable with respect to benefit years beginning on or after later of Oct. 1, 1976, or first day of first week for which compensation becomes payable under an unemployment compensation law of Virgin Islands which is approved by Secretary of Labor under section 3304(a) of Title 26, Internal Revenue Code, see section 116(f)(3) of Pub. L. 94–566, set out as a note under section 3304 of Title 26.

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90–83 effective as of Sept. 6, 1966, for all purposes, see section 9(h) of Pub. L. 90–83, set out as a note under section 5102 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8509, 8523 of this title; title 19 section 2291.

§ 8522. Assignment of Federal service and wages

Notwithstanding section 8504 of this title, Federal service and Federal wages not previously assigned shall be assigned to the State in which the claimant first files claim for unemployment compensation after his latest discharge or release from Federal service. This assignment is deemed as assignment under section 8504 of this title for the purpose of this subchapter.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 591; Pub. L. 94–566, title I, §116(e)(5), Oct. 20, 1976, 90 Stat. 2673.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	42 U.S.C. 1371(e).	Aug. 28, 1958, Pub. L. 85–848, §3 ''Sec. 1511(e)'', 72 Stat. 1088. Sept. 13, 1960, Pub. L. 86–778, §542(c)(2), 74 Stat. 986.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1976—Pub. L. 94–566 struck out ''or to the Virgin Islands, as the case may be,'' after ''shall be assigned to the State''.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–566 applicable with respect to benefit years beginning on or after later of Oct. 1, 1976, or first day of first week for which compensation becomes payable under an unemployment compensation law of Virgin Islands which is approved by Secretary of Labor under section 3304(a) of Title 26, Internal Revenue Code, see section 116(f)(3) of Pub. L. 94–566, set out as a note under section 3304 of Title 26.

§ 8523. Dissemination of information

(a) When designated by the Secretary of Labor, an agency of the United States shall make available to the appropriate State agency or to the Secretary, as the case may be, such information, including findings in the form and manner prescribed by regulations of the Secretary, as the Secretary considers practicable and necessary for the determination of the entitlement of an individual to compensation under this subchapter.

(b) Subject to correction of errors and omissions as prescribed by regulations of the Secretary, the following are final and conclusive for the purpose of sections 8502(d) and 8503(c) of this title:

(1) Findings by an agency of the United States made in accordance with subsection (a) of this section with respect to—

(A) whether or not an individual has met any condition specified by section 8521(a)(1) of this title;

(B) the periods of Federal service; and

(C) the pay grade of the individual at the time of his latest discharge or release from Federal service.

(2) The schedules of pay and allowances prescribed by the Secretary under section 8521(a)(2) of this title.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 591.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	42 U.S.C. 1371(d).	Aug. 28, 1958, Pub. L. 85–848, §3 ''Sec. 1511(d)'', 72 Stat. 1088.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

[§ 8524. Repealed. Pub. L. 91–373, title I, § 107, Aug. 10, 1970, 84 Stat. 701]

Section, Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 591, provided that a payment to ex-servicemen for unused accrued leave was to be deemed to continue Federal service during period after termination with respect to which the serviceman received payment and that such payment was to be deemed Federal wages subject to regulations concerning allocation over the period after termination.

EFFECTIVE DATE OF REPEAL

Section 107 of Pub. L. 91–373 provided that the repeal is effective with respect to benefit years which begin more than 30 days after the date of enactment of Pub. L. 91–373, which was approved on Aug. 10, 1970.

§ 8525. Effect on other statutes

[(a) Repealed. Pub. L. 90–83, §1(90), Sept. 11, 1967, 81 Stat. 219.]

(b) An individual is not entitled to compensation under this subchapter for any period with respect to which he receives—

(1) a subsistence allowance under chapter 31 of title 38 or under part VIII of Veterans Regulation Numbered 1(a); or

(2) an educational assistance allowance under chapter 35 of title 38.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 591; Pub. L. 90–83, §1(90), Sept. 11, 1967, 81 Stat. 219.)

HISTORICAL AND REVISION NOTES

1966 ACT

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	42 U.S.C. 1371 (g)–(i).	Aug. 28, 1958, Pub. L. 85–848, §3 ''Sec. 1511 (g)–(i)'', 72 Stat. 1089. Sept. 2, 1958, Pub. L. 85–857, §13(i)(3), 72 Stat. 1265.

In subsection (b), the words ''an education and training allowance under subsection (a), (b), (c), or (d) of section 1632 of title 38'' are omitted as obsolete. The authority to pay an education and training allowance under section 1632 of title 38 terminated on January 31, 1965, pursuant to section 1613(a) of title 38.

Section 1371(i) of title 42, providing that certain individuals are not entitled to unemployment compensation under the provisions of subchapter I of chapter 41 of title 38, is omitted as obsolete. Subchapter I of chapter 41 of title 38, which related to unemployment compensation for Korean conflict veterans, was repealed by the Act of Sept. 19, 1962, Pub. L. 87–675, 76 Stat. 558.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 ACT

This section deletes subsection (a) of 5 U.S.C. 8525. That subsection is now obsolete in view of the repeal, effective July 1, 1966, of chapter 43 of title 38, U.S.C., by Public Law 89–50, section 1(a) (79 Stat. 173).

CHAPTER 87—LIFE INSURANCE

Sec.
8701. Definitions.
8702. Automatic coverage.
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8706. Termination of insurance; assignment of ownership.
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AMENDMENTS

1994—Pub. L. 103–409, § 2(b), Oct. 25, 1994, 108 Stat. 4232, added item 8714d.

1988—Pub. L. 100–238, title I, § 108(a)(2)(B), Jan. 8, 1988, 101 Stat. 1747, added item 8713.

1984—Pub. L. 98–353, title II, § 208(b), July 10, 1984, 98 Stat. 351, inserted ''; assignment of ownership'' in item 8706.

1980—Pub. L. 96–427, §§ 2(e), 7(b), 8(c), and 9(b), Oct. 10, 1980, 94 Stat. 1832, 1836, 1837, added items 8714b and 8714c, substituted ''Definitions'' for ''Definition'' in item 8701, and struck out item 8713 ''Advisory committee''.

1967—Pub. L. 90–206, title IV, § 404(2), Dec. 16, 1967, 81 Stat. 648, added item 8714a.

Pub. L. 90–83, § 1(94), Sept. 11, 1967, 81 Stat. 219, substituted ''Advisory committee'' for ''Advisors'' in item 8713.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 1103, 1308, 3373, 3374, 3582, 5304, 5362, 5948 of this title; title 2 sections 31b–5, 72a; title 20 section 125; title 22 sections 2025, 2391, 3649, 3658, 4606; title 25 section 450i; title 28 sections 332, 627, 634, 996; title 38 sections 7438, 7453, 7458; title 39 section 1005; title 40 section 214d; title 42 sections 2996d, 4276, 10704; title 45 section 1206.

§ 8701. Definitions

(a) For the purpose of this chapter, ''employee'' means—

(1) an employee as defined by section 2105 of this title;

(2) a Member of Congress as defined by section 2106 of this title;

(3) a Congressional employee as defined by section 2107 of this title;

(4) the President;

(5) a justice or judge of the United States appointed to hold office during good behavior (i) who is in regular active judicial service, or (ii) who is retired from regular active service under section 371(b) or 372(a) of title 28, United States Code, or (iii) who has resigned the judicial office under section 371(a) of title 28 with the continued right during the remainder of his lifetime to receive the salary of the office at the time of his resignation;

(6) an individual first employed by the government of the District of Columbia before October 1, 1987;

(7) an individual employed by Gallaudet College;[1]

(8) an individual employed by a county committee established under section 590h(b) of title 16;

(9) an individual appointed to a position on the office staff of a former President under section 1(b) of the Act of August 25, 1958 (72 Stat. 838); and

(10) an individual appointed to a position on the office staff of a former President, or a former Vice President under section 4 of the Presidential Transition Act of 1963, as amended (78 Stat. 153), who immediately before the date of such appointment was an employee as defined under any other paragraph of this subsection;

but does not include—

(A) an employee of a corporation supervised by the Farm Credit Administration if private interests elect or appoint a member of the board of directors;

(B) an individual who is not a citizen or national of the United States and whose permanent duty station is outside the United States, unless the individual was an employee for the purpose of this chapter on September 30, 1979, by reason of service in an Executive agency, the United States Postal Service, or the Smithsonian Institution in the area which was then known as the Canal Zone; or

(C) an employee excluded by regulation of the Office of Personnel Management under section 8716(b) of this title.

(b) Notwithstanding subsection (a) of this section, the employment of a teacher in the recess period between two school years in a position other than a teaching position in which he served immediately before the recess period does not qualify the individual as an employee for the purpose of this chapter. For the purpose of this subsection, ''teacher'' and ''teaching position'' have the meanings given them by section 901 of title 20.

(c) For the purpose of this chapter, ''basic insurance amount'' means, in the case of any employee under this chapter, an amount equal to the greater of—

[1] See Change of Name note below.

(1) the annual rate of basic pay payable to the employee, rounded to the next higher multiple of $1,000, plus $2,000, or

(2) $10,000,

except that the amount of insurance may not exceed the annual rate of basic pay payable for positions at level II of the Executive Schedule under section 5313 of this title, rounded to the next higher multiple of $1,000, plus $2,000. In the case of any former employee entitled to coverage under this chapter, the term means the basic insurance amount applicable for the employee at the time the insurance to which the employee is entitled as an employee under this chapter stops pursuant to section 8706(a) of this title.

(d)(1) For the purpose of this chapter, ''family member'', when used with respect to any individual, means—

(A) the spouse of the individual; and

(B) an unmarried dependent child of the individual (other than a stillborn child), including an adopted child, stepchild (but only if the stepchild lived with the individual in a regular parent-child relationship), or recognized natural child—

(i) who is less than 22 years of age, or

(ii) who is 22 years of age or older and is incapable of self-support because of a mental or physical disability which existed before the child became 22 years of age.

(2) For the purpose of this subsection, ''dependent'', in the case of any child, means that the individual involved was, at the time of the child's death, either living with or contributing to the support of the child, as determined in accordance with the regulations the Office shall prescribe.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 592; Pub. L. 91–418, §3(a), Sept. 25, 1970, 84 Stat. 869; Pub. L. 93–160, §1(a), Nov. 27, 1973, 87 Stat. 635; Pub. L. 95–454, title IX, §906(a)(2), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 96–54, §2(a)(51), Aug. 14, 1979, 93 Stat. 384; Pub. L. 96–70, title I, §1209(b), Sept. 27, 1979, 93 Stat. 463; Pub. L. 96–427, §§2(a), 8(b), Oct. 10, 1980, 94 Stat. 1831, 1837; Pub. L. 98–353, title II, §205, July 10, 1984, 98 Stat. 350; Pub. L. 99–335, title II, §207(k)(1), June 6, 1986, 100 Stat. 597; Pub. L. 100–679, §13(b), Nov. 17, 1988, 102 Stat. 4071.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(a)	2 U.S.C. 126.	Sept. 1, 1954, ch. 1208, §603, 68 Stat. 1116.
	5 U.S.C. 2091(a) (1st sentence, less words between 6th and 7th commas), (b), (d) (1st sentence, less words between 1st and 2d commas).	Aug. 17, 1954, ch. 752, §2(a) (1st sentence, less words between 6th and 7th commas), (b), 68 Stat. 736. Aug. 1, 1956, ch. 837, §501(c)(1) (as applicable to §2 (b)), 70 Stat. 882. Aug. 2, 1956, ch. 901, §1, 70 Stat. 955. July 1, 1960, Pub. L. 86–568, §115(c) ''(d) (1st sentence, less words between 1st and 2d commas)''. 74 Stat. 302. Aug. 31, 1964, Pub. L. 88–531 §2, 78 Stat. 737.
	[Uncodified].	Aug. 25, 1958, Pub. L. 85–745, §1(b) (last sentence, as applicable to the Federal Employees' Group Life Insurance Act of 1954), 72 Stat. 838.
(b)	5 U.S.C. 2358(c) (less applicability to the Civil Service Retirement Act).	July 17, 1959, Pub. L. 86–91, §10(c) (less applicability to the Civil Service Retirement Act), 73 Stat. 217.

The definition of ''Congressional employee'' in section 2107 of this title includes an Official Reporter of Debates of the Senate and an individual employed by an Official Reporter of Debates of the Senate so that the inclusion of ''a Congressional employee'' in subsection (a)(3) provides the coverage for those individuals which was given by former section 126 of title 2.

The definition of ''employee'' in section 2105 of this title is broad enough to cover the officers and employees set out in former section 2091(a) with the exception of Members of Congress, the President, individuals employed either by the government of the District of Columbia or by Gallaudet College, and United States commissioners. Accordingly, these have been added specifically in paragraphs (2), (4), (5), (6), and (7).

In subsection (a) (B), the words ''United States'' are substituted for ''a State of the United States or the District of Columbia''.

Subsection (a)(C) is added for clarity.

In subsection (b), the last sentence is added on authority of former section 2351, which section is scheduled for transfer to section 901 of title 20.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

REFERENCES IN TEXT

Act of August 25, 1958 (72 Stat. 838), referred to in subsec. (a)(9), is Pub. L. 85–745 and is set out as a note under section 102 of Title 3, The President.

Section 4 of the Presidential Transition Act of 1963, referred to in subsec. (a)(10), is section 4 of Pub. L. 88–277, which is set out as a note under section 102 of Title 3.

AMENDMENTS

1988—Subsec. (a)(10). Pub. L. 100–679 added par. (10).

1986—Subsec. (a)(6). Pub. L. 99–335 amended par. (6) generally, substituting ''first employed'' for ''employed'' and inserting ''before October 1, 1987''.

1984—Subsec. (a)(5) to (9). Pub. L. 98–353 added par. (5) and redesignated former pars. (5) to (8) as (6) to (9), respectively.

1980—Pub. L. 96–427, §2(a)(1), substituted ''Definitions'' for ''Definition'' in section catchline.

Subsec. (c). Pub. L. 96–427, §2(a)(2), added subsec. (c).

Subsec. (d). Pub. L. 96–427, §8(b), added subsec. (d).

1979—Subsec. (a)(7) to (9). Pub. L. 96–54 struck out cl. (7) which related to coverage within term ''employee'' of a United States Commissioner, and redesignated cls. (8) and (9) as (7) and (8), respectively.

Subsec. (a)(B). Pub. L. 96–70 inserted provisions relating to an individual who was an employee for the purpose of this chapter on Sept. 30, 1979, by reason of service in an Executive agency, the United States Postal Service, or the Smithsonian Institution in the area which was then known as the Canal Zone.

1978—Subsec. (a)(C). Pub. L. 95–454 substituted ''Office of Personnel Management'' for ''Civil Service Commission''.

1973—Subsec. (a)(B). Pub. L. 93–160 excluded from definition of ''employee'' persons who are not nationals of the United States and whose permanent duty station is outside the United States and the Panama Canal Zone.

1970—Subsec. (a)(B). Pub. L. 91–418 excluded from definition of ''employee'' a noncitizen employee whose permanent duty station is outside the Panama Canal Zone.

CHANGE OF NAME

Gallaudet College, referred to in subsec. (a)(7), redesignated Gallaudet University by section 101(a) of Pub. L. 99–371, which is classified to section 4301(a) of Title 20, Education.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–335 effective Jan. 1, 1987, see section 702(a) of Pub. L. 99–335, set out as an Effective Date note under section 8401 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 10 of Pub. L. 96–427 provided that:

''(a) Unless otherwise specified, this Act [see Short Title note below] shall take effect on the date of the enactment of this Act [Oct. 10, 1980] and shall have no effect in the case of an employee who died, was separated, or retired before the date of enactment.

''(b) The amendment made by subsection (d) of section 2 of this Act [amending section 8704 of this title] shall apply with respect to premium pay payable under section 5545(c)(2) of title 5, United States Code, from and after the first day of the first pay period which begins on or after the date of the enactment of this Act [Oct. 10, 1980].

''(c) The amendment made by section 3 of this Act [amending section 8706 of this title] shall apply only in the case of an employee who retires or become entitled to receive compensation for work injury on or after the 180th day following the date of the enactment of this Act [Oct. 10, 1980], or any earlier date that the Office of Personnel Management may prescribe which is at least 60 days after the date of enactment.

''(d) The amendments made by sections 7 and 8 of this Act [enacting sections 8714b and 8714c of this title and amending this section] shall take effect on the first day of the first pay period which begins on or after the 180th day following the date of the enactment of this Act [Oct. 10, 1980], or on any earlier date that the Office may prescribe which is at least 60 days after the date of enactment, and shall have no effect in the case of an employee who died, was finally separated, or retired before the effective date.''

EFFECTIVE DATE OF 1979 AMENDMENTS

Amendment by Pub. L. 96–70 effective Oct. 1, 1979, see section 3304 of Pub. L. 96–70, set out as an Effective Date note under section 3601 of Title 22, Foreign Relations and Intercourse.

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.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

SHORT TITLE OF 1994 AMENDMENT

Pub. L. 103–409, §1, Oct. 25, 1994, 108 Stat. 4230, provided that: ''This Act [enacting section 8714d of this title and provisions set out as notes under this section and sections 8704, 8714, and 8901 of this title] may be cited as the 'FEGLI Living Benefits Act'.''

SHORT TITLE OF 1980 AMENDMENT

Section 1 of Pub. L. 96–427 provided that: ''This Act [enacting sections 8714b and 8714c of this title, amending this section and sections 8704, 8706, 8707, 8709, and 8714a of this title, repealing section 8713 of this title and enacting provisions set out as notes under this section and sections 8704 and 8714a of this title] may be cited as the 'Federal Employees' Group Life Insurance Act of 1980'.''

OPEN SEASON; NOTICE

Pub. L. 103–409, §3(b), Oct. 25, 1994, 108 Stat. 4232, provided that:

''(1) The Office of Personnel Management shall prescribe regulations under which, beginning not later than 9 months after the date of the enactment of this Act [Oct. 25, 1994], and over a period of not less than 8 weeks—

''(A) an employee (as defined by section 8701(a) of title 5, United States Code) who declined or voluntarily terminated coverage under chapter 87 of such title—

''(i) may elect to begin, or to resume, group life insurance and group accidental death and dismemberment insurance; and

''(ii) may make such other elections under such chapter as the Office may allow; and

''(B) such other elections as the Office allows may be made.

''(2) The Office shall take such action as may be necessary to ensure that employees and any other individuals who would be eligible to make an election under this subsection are afforded advance notification to that effect.''

CONTINUED COVERAGE UNDER CERTAIN FEDERAL EMPLOYEE BENEFIT PROGRAMS FOR CERTAIN EMPLOYEES OF SAINT ELIZABETHS HOSPITAL

For provisions relating to treatment of certain Federal employees of Saint Elizabeths Hospital under certain Federal employee benefit programs, see section 207(*o*) of Pub. L. 99–335, set out as a note under section 8331 of this title.

CROSS REFERENCES

Annual report to Congress by Office of Personnel Management on the operation of this chapter, see section 1308 of this title.

International organizations, coverage of employees transferring to, see section 3582 of this title.

Secretary of Agriculture to prescribe regulations for this chapter covering county committee employees, see section 8716 of this title.

United States magistrate judges and necessary clerical and secretarial assistants employed in the offices of such fulltime magistrate judges deemed officers and employees in the Federal judicial branch within meaning of this chapter, see section 634 of Title 28, Judiciary and Judicial Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8706, 8714a, 8714b, 8714c, 8716 of this title; title 40 section 214d.

§ 8702. Automatic coverage

(a) An employee is automatically insured on the date he becomes eligible for insurance and each policy of insurance purchased by the Office of Personnel Management under this chapter shall provide for that automatic coverage.

(b) An employee desiring not to be insured shall give written notice to his employing office on a form prescribed by the Office. If the notice is received before he has become insured, he shall not be insured. If the notice is received after he has become insured, his insurance stops at the end of the pay period in which the notice is received.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 593; Pub. L. 95–454, title IX, §906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 2094(a) (less 1st par.).	Aug. 17, 1954, ch. 752, §5(a) (less 1st par.), 68 Stat. 738.

In subsection (a), the words ''eligible for insurance'' are coextensive with and substituted for ''eligible under the terms of this chapter''.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1978—Subsecs. (a), (b). Pub. L. 95–454 substituted ''Office of Personnel Management'' for ''Civil Service Commission'' and ''Office'' for ''Commission''.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8714b, 8714c of this title.

§ 8703. Benefit certificate

The Office of Personnel Management shall arrange to have each insured employee receive a certificate setting forth the benefits to which he is entitled, to whom the benefits are payable, to whom the claims shall be submitted, and summarizing the provisions of the policy principally affecting him. The certificate is issued instead of the certificate which the insurance company would otherwise be required to issue.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 593; Pub. L. 95–454, title IX, § 906(a)(2), Oct. 13, 1978, 92 Stat. 1224.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 2098.	Aug. 17, 1954, ch. 752, § 9, 68 Stat. 742.

The words ''each insured employee'' are coextensive with and substituted for ''each employee insured under such policy''.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1978—Pub. L. 95–454 substituted ''Office of Personnel Management'' for ''Civil Service Commission''.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

§ 8704. Group insurance; amounts

(a) An employee eligible for insurance is entitled to be insured for an amount of group life insurance equal to—

(1) the employee's basic insurance amount, multiplied by

(2) the appropriate factor determined on the basis of the employee's age in accordance with the following schedule:

If the age of the employee is	The appropriate factor is:
35 or under	2.0
36	1.9
37	1.8
38	1.7
39	1.6
40	1.5
41	1.4
42	1.3
43	1.2
44	1.1
45 or over	1.0.

(b) An employee eligible for insurance is entitled to be insured for group accidental death and dismemberment insurance in accordance with this subsection. Subject to the conditions and limitations approved by the Office of Personnel Management which are contained in the policy purchased by the Office, the group accidental death and dismemberment insurance provides payment as follows:

Loss	Amount payable
For loss of life	Full amount of the employee's basic insurance amount.
Loss of one hand or of one foot or loss of sight of one eye.	One-half the amount of the employee's basic insurance amount.
Loss of two or more such members.	Full amount of the employee's basic insurance amount.

For any one accident the aggregate amount of group accidental death and dismemberment insurance that may be paid may not exceed an amount equal to the employee's basic insurance amount.

(c) The Office shall prescribe regulations providing for the conversion of other than annual rates of pay to annual rates of pay and shall specify the types of pay included in annual pay. For the purpose of this chapter, ''annual pay'' includes—

(1) premium pay under section 5545(c)(1) of this title; and

(2) with respect to a law enforcement officer as defined in section 8331(20) or 8401(17) of this title, premium pay under section 5545(c)(2) of this title.

(d) In determining the amount of insurance to which an employee is entitled—

(1) a change in rate of pay under subchapter VI of chapter 53 of this title is deemed effective as of the first day of the pay period after the pay period in which the payroll change is approved; and

(2) a change in rate of pay under section 5344 or 5349 of this title is deemed effective as of the date of issuance of the order granting the increase or the effective date of the increase, whichever is later, except, that in the case of an employee who dies or retires during the period beginning on the effective date of the increase and ending on the date of the issuance of the order granting the increase, a change in rate of pay under either of such sections shall be deemed as having been in effect for such employee during that period.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 593; Pub. L. 89–737, § 1(3), Nov. 2, 1966, 80 Stat. 1164; Pub. L. 90–206, title IV, § 401, Dec. 16, 1967, 81 Stat. 646; Pub. L. 92–392, § 11, Aug. 19, 1972, 86 Stat. 575; Pub. L. 95–454, title VIII, § 801(a)(3)(E), title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1222, 1224;

Pub. L. 96–427, §2(b)–(d), Oct. 10, 1980, 94 Stat. 1831, 1832; Pub. L. 100–238, title I, §103(b), Jan. 8, 1988, 101 Stat. 1744.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(a)–(c)	5 U.S.C. 2092 (less (d))	Aug. 17, 1954, ch. 752, §3 (less (d)), 68 Stat. 737.
(d)(1)	[Uncodified].	Aug. 23, 1958, Pub. L. 85–737, §3, 72 Stat. 831.
(d)(2)	5 U.S.C. 1183.	Sept. 2, 1958, Pub. L. 85–872, §3, 72 Stat. 1697.

In subsection (a), the words ''An employee eligible for insurance is entitled'' are coextensive with and substituted for ''Each employee to whom this chapter applies shall be eligible''.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1988—Subsec. (c)(2). Pub. L. 100–238 inserted ''or 8401(17)'' after ''8331(20)''.

1980—Subsec. (a). Pub. L. 96–427, §2(b), substituted new formula for group life insurance to be computed by multiplying the basic insurance with a factor to be obtained from the table based on age for provisions calling for group life insurance and an equal amount of death and dismemberment insurance in accordance with a schedule based on the basic pay with special provision for extension by the amount of increase in the annual rates of basic pay for positions at level II of the Executive Schedule under section 5313 of this title. Prior to this amendment, the table was as follows:

If annual pay is—		*The amount of group life insurance is—*	*The amount of group accidental death and dismemberment insurance is—*
Greater than—	*But not greater than—*		
0	$8,000	$10,000	$10,000
$8,000	9,000	11,000	11,000
9,000	10,000	12,000	12,000
10,000	11,000	13,000	13,000
11,000	12,000	14,000	14,000
12,000	13,000	15,000	15,000
13,000	14,000	16,000	16,000
14,000	15,000	17,000	17,000
15,000	16,000	18,000	18,000
16,000	17,000	19,000	19,000
17,000	18,000	20,000	20,000
18,000	19,000	21,000	21,000
19,000	20,000	22,000	22,000
20,000	21,000	23,000	23,000
21,000	22,000	24,000	24,000
22,000	23,000	25,000	25,000
23,000	24,000	26,000	26,000
24,000	25,000	27,000	27,000
25,000	26,000	28,000	28,000
26,000	27,000	29,000	29,000
27,000	28,000	30,000	30,000
28,000	29,000	31,000	31,000
29,000		32,000	32,000

Subsec. (b). Pub. L. 96–427, §2(c), inserted provision that an employee eligible for insurance is entitled to be insured for group accidental death and dismemberment insurance in accordance with this subsection and substituted reference to employee's basic insurance amount for reference to the amount shown in the schedule in subsec. (a) of this section in four places.

Subsec. (c). Pub. L. 96–427, §2(d), expanded definition of ''annual pay'' to include premium pay under section 5545(c)(2) of this title with respect to a law enforcement officer as defined in section 8331(20) of this title.

1978—Subsecs. (b), (c). Pub. L. 95–454, §906(a)(2), (3), substituted ''Office of Personnel Management'' and ''Office'' for ''Civil Service Commission'' and ''Commission'', respectively, wherever appearing.

Subsec. (d)(1). Pub. L. 95–454, §801(a)(3)(E), substituted ''subchapter VI of chapter 53'' for ''section 5337''.

1972—Subsec. (d)(2). Pub. L. 92–392 substituted ''section 5344 or 5349 of this title'' for ''section 5343 of this title'' and added the exception.

1967—Subsec. (a). Pub. L. 90–206, in material preceding the table, struck out reference to an approximate relationship between the amount of group life insurance and the eligible employee's annual pay and inserted reference to an automatic extension of the schedule correspondingly by the amounts of increases in the annual rate of basic pay for positions at level II of the Executive Schedule under section 5313 of this title, and raised the insurance coverages for both life and accidental death and dismemberment.

1966—Subsec. (c). Pub. L. 89–737 inserted provision that, for the purpose of this chapter, ''annual pay'' includes premium pay under section 5545(c)(1) of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–238 effective Jan. 1, 1987, see section 103(f) of Pub. L. 100–238 set out as a note under section 3307 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by section 2(d) of Pub. L. 96–427 applicable with respect to premium pay payable under section 5545(c)(2) of this title from and after the first day of the first pay period which begins on or after Oct. 10, 1980, see section 10(b) of Pub. L. 96–427, set out as a note under section 8701 of this title.

Section 2(f) of Pub. L. 96–427 provided that: ''Subsections (b) and (c) of this section [amending this section] shall take effect beginning with the first pay period beginning on or after October 1, 1981.''

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 801(a)(3)(E) of Pub. L. 95–454 effective on first day of first applicable pay period beginning on or after 90th day after Oct. 13, 1978, see section 801(a)(4) of Pub. L. 95–454, set out as an Effective Date note under section 5361 of this title.

Amendment by section 906(a)(2), (3) of Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92–392 effective on first day of first applicable pay period beginning on or after 90th day after Aug. 19, 1972, see section 15(a) of Pub. L. 92–392, set out as an Effective Date note under section 5341 of this title.

EFFECTIVE DATE OF 1967 AMENDMENT

Section 405(a) of Pub. L. 90–206 provided that: ''The amendments made by sections 401 to 403, inclusive, of this Act [amending this section and sections 8707 and 8708 of this title] shall take effect on the first day of the first pay period which begins on or after the sixtieth day following the date of enactment [Dec. 16, 1967]. In the case of an employee who dies or retires during the period beginning on the date of enactment of this Act and prior to the effective date prescribed by this subsection, the amount of insurance shall be determined as if the amendments made by section 401 [amending this section] were in effect for such employee during such period.''

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–737 applicable with respect to premium pay payable from and after first day of first pay period which begins after date of enactment of Pub. L. 89–737, which was approved Nov. 2, 1966, see section 4 of Pub. L. 89–737, set out in the note under section 8114 of this title.

RETROACTIVE EFFECT OF 1967 AMENDMENT

Section 405(c) of Pub. L. 90–206 provided that: ''The amendments made by sections 401 to 404, inclusive, of this Act [enacting section 8714a of this title and amending this section and sections 8707 and 8708 of this title]

shall have no effect in the case of an employee who died, was finally separated, or retired prior to the date of enactment [Dec. 16, 1967].''

1967 ADJUSTMENT IN AMOUNT OF INSURANCE

Section 220(b) of Pub. L. 90–206 provided that: ''For the purposes of determining the amount of insurance for which an individual is eligible chapter 87 of title 5, United States Code, relating to group life insurance for Federal employees—

''(1) all changes in rates of pay which result from the enactment of this title [see Short Title Note under section 5332 of this title] except Postal Field Service Schedule II, Rural Carrier Schedule II, and sections 207, 212, 213(d) and (e), 215, 219, and 225) shall be held and considered to become effective as of the date of such enactment [Dec. 16, 1967]; and

''(2) all changes in rates of pay which result from the enactment of section 212 of this title [enacting provisions set out as a note under section 5303 of this title] and which take effect retroactively from the date on which the adjustments thereof are actually ordered under such section, shall be held and considered to become effective on the date on which such adjustments are actually ordered.''

[Section 220(b) of Pub. L. 90–206 effective Dec. 16, 1967, see section 220(a) (1) of Pub. L. 90–206, set out as an Effective Date note under section 3110 of this title.]

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5545a, 8714a, 8714d of this title.

§ 8705. Death claims; order of precedence; escheat

(a) The amount of group life insurance and group accidental death insurance in force on an employee at the date of his death shall be paid, on the establishment of a valid claim, to the person or persons surviving at the date of his death, in the following order of precedence:

First, to the beneficiary or beneficiaries designated by the employee in a signed and witnessed writing received before death in the employing office or, if insured because of receipt of annuity or of benefits under subchapter I of chapter 81 of this title as provided by section 8706(b) of this title, in the Office of Personnel Management. For this purpose, a designation, change, or cancellation of beneficiary in a will or other document not so executed and filed has no force or effect.

Second, if there is no designated beneficiary, to the widow or widower of the employee.

Third, if none of the above, to the child or children of the employee and descendants of deceased children by representation.

Fourth, if none of the above, to the parents of the employee or the survivor of them.

Fifth, if none of the above, to the duly appointed executor or administrator of the estate of the employee.

Sixth, if none of the above, to other next of kin of the employee entitled under the laws of the domicile of the employee at the date of his death.

(b) If, within 1 year after the death of the employee, no claim for payment has been filed by a person entitled under the order of precedence named by subsection (a) of this section, or if payment to the person within that period is prohibited by Federal statute or regulation, payment may be made in the order of precedence as if the person had predeceased the employee, and the payment bars recovery by any other person.

(c) If, within 2 years after the death of the employee, no claim for payment has been filed by a person entitled under the order of precedence named by subsection (a) of this section, and neither the Office nor the administrative office established by the company concerned pursuant to section 8709(b) of this title has received notice that such a claim will be made, payment may be made to the claimant who in the judgment of the Office is equitably entitled thereto, and the payment bars recovery by any other person.

(d) If, within 4 years after the death of the employee, payment has not been made under this section and no claim for payment by a person entitled under this section is pending, the amount payable escheats to the credit of the Employees' Life Insurance Fund.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 594; Pub. L. 90–83, §1(91), Sept. 11, 1967, 81 Stat. 219; Pub. L. 95–454, title IX, §906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 95–583, §1(b), Nov. 2, 1978, 92 Stat. 2481.)

HISTORICAL AND REVISION NOTES

1966 ACT

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 2093.	Aug. 17, 1954, ch. 752, §4, 68 Stat. 738. Aug. 28, 1962, Pub. L. 87–611, §1, 76 Stat. 406.

In subsection (c), the words ''Employees' Life Insurance Fund'' are substituted for ''fund created pursuant to section 2094(c) of this title''.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 ACT

Section of title 5	*Source (U.S. Code)*	*Source (Statutes at Large)*
8705(a)	5 App.: 2093.	Mar. 23, 1966, Pub. L. 89–373, §1, 80 Stat. 78.

In subsection (a), ''Civil Service Commission'' is substituted for ''Commission'' on authority of former 5 U.S.C. 2091(a).

In subsection (c), ''Commission'' is substituted for ''Civil Service Commission'' for consistency of style. The full title of the Commission is set forth the first time it is used in a section.

AMENDMENTS

1978—Subsec. (a). Pub. L. 95–583 struck out ''or (c)'' after ''section 8706(b)''.

Pub. L. 95–454 substituted ''Office of Personnel Management'' for ''Civil Service Commission''.

Subsec. (c). Pub. L. 95–454 substituted ''Office'' for ''Commission'' wherever appearing.

EFFECTIVE DATE OF 1978 AMENDMENTS

Amendment by Pub. L. 95–583 effective Nov. 2, 1978, see section 3 of Pub. L. 95–583, set out as a note under section 8706 of this title.

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8714a, 8714b, 8714c of this title.

§ 8706. Termination of insurance; assignment of ownership

(a) A policy purchased under this chapter shall contain a provision, approved by the Office of Personnel Management, to the effect that insurance of an employee stops on his separation from the service or 12 months after discontinuance of his pay, whichever is earlier, subject to a provision for temporary extension of life insurance coverage and for conversion to an individual policy of life insurance under conditions approved by the Office. Justices and judges of the United States described in section 8701(a)(5)(ii) and (iii) of this chapter are deemed to continue in active employment for purposes of this chapter.

(b)(1) In the case of any employee who retires on an immediate annuity and has been insured under this chapter throughout—

(A) the 5 years of service immediately preceding the date of the employee's retirement, or

(B) the full period or periods of service during which the employee was entitled to be insured, if fewer than 5 years,

life insurance, without accidental death and dismemberment insurance, may be continued, under conditions determined by the Office.

(2) In the case of any employee who becomes entitled to receive compensation under subchapter I of chapter 81 of this title because of disease or injury to the employee and has been insured under this chapter throughout—

(A) the 5 years of service immediately preceding the date the employee becomes entitled to compensation, or

(B) the full period or periods of service during which the employee was entitled to be insured, if fewer than 5 years,

life insurance, without accidental death and dismemberment insurance, may be continued, under conditions determined by the Office, during the period the employee is receiving compensation and is held by the Secretary of Labor or the Secretary's delegate to be unable to return to duty.

(3) The amount of life insurance continued under paragraph (1) or (2) of this subsection shall be continued, with or without reduction, at the end of each full calendar month after the date the employee becomes 65 years of age and is retired or is receiving compensation for disease or injury, in accordance with the employee's written election at the time eligibility to continue insurance during retirement or receipt of compensation arises, as follows:

(A) the employee may elect to have the deductions required by section 8707 of this title withheld from annuity or compensation, and the employee's life insurance shall be reduced each month by 2 percent of the face value until 25 percent of the amount of life insurance in force before the first reduction remains; or

(B) in addition to any deductions which would be required if the insurance were continued as provided under subparagraph (A) of this paragraph, the employee may elect continuous withholdings from annuity or compensation in amounts determined by the Office, and the employee's life insurance coverage shall be either continued without reduction or reduced each month by no more than 1 percent of its face value until no less than 50 percent of the amount of insurance in force before the first reduction remains.

(4) If an employee elects to continue insurance under subparagraph (B) of paragraph (3) of this subsection at the time eligibility to continue insurance during retirement or receipt of compensation for disease or injury arises, the individual may later cancel that election and life insurance coverage shall continue as if the individual had originally elected coverage under subparagraph (A) of paragraph (3) of this subsection.

(c) Notwithstanding subsections (a) and (b) of this section, an employee who enters on approved leave without pay to serve as a full-time officer or employee of an organization composed primarily of employees as defined by section 8701(a) of this title, within 60 days after entering on that leave without pay, may elect to continue his insurance and arrange to pay currently into the Employees' Life Insurance Fund, through his employing agency, both employee and agency contributions from the beginning of leave without pay. The employing agency shall forward the premium payments to the Fund. If the employee does not so elect, his insurance will continue during nonpay status and stop as provided by subsection (a) of this section.

(d) If the insurance of an employee stops because of separation from the service or suspension without pay, and the separation or suspension is thereafter officially found to have been erroneous, the employee is deemed to have been insured during the period of erroneous separation or suspension. Deductions otherwise required by section 8707 of this chapter shall not be withheld from any backpay awarded for the period of separation or suspension unless death or accidental dismemberment of the employee occurs during such period.

(e) Under regulations prescribed by the Office, each policy purchased under this chapter shall provide that an insured employee or former employee may make an irrevocable assignment of the employee's or former employee's incidents of ownership in the policy.

(f) If the insurance of a former employee receiving a disability annuity under section 8337 of this title stops because of the termination of such annuity, and such annuity is thereafter restored under the second or third sentence of subsection (e) of such section, such former employee may, under regulations prescribed by the Office, elect to resume the insurance coverage which was so stopped.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 595; Pub. L. 90–83, § 1(92), Sept. 11, 1967, 81 Stat. 219; Pub. L. 92–529, Oct. 21, 1972, 86 Stat. 1050; Pub. L. 95–454, title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 95–583, § 1(a), Nov. 2, 1978, 92 Stat. 2481; Pub. L. 96–427, § 3(a), Oct. 10, 1980, 94 Stat. 1832; Pub. L. 98–353, title II, §§ 206, 208, July 10, 1984, 98 Stat. 351, as amended by Pub. L. 99–336, § 7(1), June 19, 1986, 100 Stat. 639; Pub. L. 99–53, § 3(b), June 17, 1985, 99 Stat. 95; Pub. L. 99–335, title II, § 207(k)(2), June 6, 1986, 100 Stat. 597; Pub. L.

99–336, §7(1), June 19, 1986, 100 Stat. 639; Pub. L. 102–378, §2(74), Oct. 2, 1992, 106 Stat. 1355; Pub. L. 103–336, §4, Oct. 3, 1994, 108 Stat. 2662.)

HISTORICAL AND REVISION NOTES

1966 ACT

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(a)–(c)	5 U.S.C. 2095.	Aug. 17, 1954, ch. 752, §6, 68 Stat. 739. Aug. 11, 1955, ch. 794, §2(a), 69 Stat. 677. May 28, 1956, ch. 328, §1, 70 Stat. 213. Sept. 23, 1959, Pub. L. 86–377, §4(c), 73 Stat. 701.
(d)	5 U.S.C. 2091(c).	Aug. 1, 1956, ch. 837, §501(c)(1) (less applicability to §2(b)), 70 Stat. 882.

In subsection (b), the words ''armed forces'' are coextensive with and substituted for ''Army, Navy, Air Force, and Marine Corps, or Coast Guard of the United States'' in view of the definition of ''armed forces'' in section 2101.

In subsection (c), the word ''only'' is supplied for clarity and for consistency with subsection (b). The words ''under conditions determined by the Commission, without cost to him'' are coextensive with and substituted for ''as provided in subsection (b) of this section''.

In subsection (d), the first sentence of former section 2091(c) is omitted as unnecessary as the definition of ''employee'' in section 8701 precludes acquisition of coverage by a member of a uniformed service. The words ''section 101 of title 38'' are substituted for ''section 1101 of title 38'' on authority of section 5(a) of the Act of Sept. 2, 1958, Pub. L. 85–857, 72 Stat. 1262.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 ACT

Section of title 5	*Source (U.S. Code)*	*Source (Statutes at Large)*
8706(e)	5 App.: 2095(d).	July 18, 1966, Pub. L. 89–504, §406(a), 80 Stat. 298.

The words ''subsections (a)–(c) of this section'' are substituted for ''the foregoing'' to reflect the codification of former 5 U.S.C. 2095. The word ''officer'' is omitted as included in ''employee.'' The words ''as defined by section 8701(a) of this title'' are substituted for ''as defined in section 2 of the Act'' to reflect the codification of that section in 5 U.S.C. 8701(a). The words ''Employees' Life Insurance Fund'' and ''Fund'' are substituted for ''fund'' and ''fund established by section 5 of this Act'', respectively.

AMENDMENTS

1994—Subsec. (e). Pub. L. 103–336 substituted ''employee or former employee'' for ''Federal judge'', ''employee's or former employee's'' for ''judge's'', and ''purchased'' for ''purchase''.

1992—Subsecs. (f), (g). Pub. L. 102–378 redesignated subsec. (g) as (f).

1986—Subsec. (a). Pub. L. 98–353, §206, as amended generally by Pub. L. 99–336, §7(1), inserted sentence which deemed justices and judges described in section 8701(a)(5)(ii) and (iii) of this chapter to continue in active employment for purposes of this chapter.

Subsecs. (c) to (f). Pub. L. 99–335 struck out subsec. (c) and redesignated subsecs. (d) to (f) as (c) to (e), respectively. Former subsec. (c) provided that insurance granted an employee stops, except for a 31-day extension of life insurance coverage, on the day immediately before his entry on active duty or active duty for training unless the period is covered by military leave with pay but does not stop during a period of inactive duty training and defined ''active duty'', ''active duty for training'', and ''inactive duty training'' as having the meanings given them by section 101 of title 38.

1985—Subsec. (g). Pub. L. 99–53 added subsec. (g).

1984—Pub. L. 98–353, §208(b), inserted ''; assignment of ownership'' in section catchline.

Subsec. (f). Pub. L. 98–353, §208(a), added subsec. (f).

1980—Subsec. (b). Pub. L. 96–427 added subsec. (b) and struck out former subsec. (b) which read as follows:

''(1) If on the date the insurance would otherwise stop the employee retires on an immediate annuity and has been insured under this chapter throughout—

''(A) the 5 years of service immediately preceding such date, or

''(B) the full period or periods of service during which the employee was entitled to be insured, if less than 5 years,

life insurance only may be continued, without cost to the employee, under conditions determined by the Office.

''(2) If on the date the insurance would otherwise stop the employee is receiving compensation under subchapter I of chapter 81 of this title because of disease or injury to the employee and has been insured under this chapter throughout—

''(A) the 5 years of service immediately preceding such date, or

''(B) the full period or periods of service during which the employee was entitled to be insured, if less than 5 years,

life insurance only may be continued, without cost to the employee, under conditions determined by the Office, during the period the employee is receiving compensation for work injuries and is held by the Secretary of Labor or his delegate to be unable to return to duty.

''(3) The amount of life insurance continued under paragraph (1) or paragraph (2) of this subsection shall be reduced by 2 percent at the end of each full calendar month after the date the employee becomes 65 years of age and is retired or is receiving such compensation for disease or injury. The Office shall prescribe minimum amounts, not less than 25 percent of the amount of life insurance in force before the first reduction, to which the insurance may be reduced.''

1978—Subsec. (a). Pub. L. 95–454 substituted ''Office of Personnel Management'' and ''Office'' for ''Civil Service Commission'' and ''Commission'', respectively.

Subsec. (b). Pub. L. 95–583, §1(a)(1), added subsec. (b) and struck out former subsec. (b) which read as follows: ''If on the date the insurance would otherwise stop the employee retires on an immediate annuity and—

''(1) his retirement is for disability; or

''(2) he has completed 12 years of creditable service as determined by the Commission;

his life insurance only may be continued, without cost to him, under conditions determined by the Commission. Periods of honorable, active service in the armed forces shall be credited toward the required 12 years if the employee has completed at least 5 years of civilian service. The amount of life insurance continued under this subsection shall be reduced by 2 percent at the end of each full calendar month after the date the employee becomes 65 years of age or retires, whichever is later. The Commission may prescribe minimum amounts, not less than 25 percent of the amount of life insurance in force before the first reduction, to which the insurance may be reduced.''

Pub. L. 95–454, which substituted ''Office'' for ''Commission'', was executed to text of subsec. (b) as amended by Pub. L. 95–583. See Effective Date of 1978 Amendments note below.

Subsec. (c). Pub. L. 95–583, §1(a)(1), (2), struck out ''If on the date the insurance would otherwise stop the employee is receiving benefits under subchapter I of chapter 81 of this title because of disease or injury to himself, his life insurance only may be continued, without cost to him, under conditions determined by the Com-

mission while he is receiving the benefits and is held by the Department of Labor to be unable to return to duty.'' and redesignated subsec. (d) as (c).

Subsec. (d). Pub. L. 95–583, §1(a)(2), (3), redesignated subsec. (e) as (d) and substituted reference to ''subsections (a) and (b) of this section'' for ''subsections (a)–(c) of this section''. Former subsec. (d) redesignated (c).

Subsecs. (e), (f). Pub. L. 95–583, §1(a)(2), redesignated subsecs. (e) and (f) as (d) and (e), respectively.

1972—Subsec. (f). Pub. L. 92–529 added subsec. (f).

EFFECTIVE DATE OF 1986 AMENDMENTS

Section 207 of Pub. L. 98–353, as amended generally by Pub. L. 99–336, §7(2), provided that: ''The amendments to chapter 87 of title 5, United States Code, made by section 206 of this Act [which, as amended generally by Pub. L. 99–336, §7(1), amended this section and sections 8714a to 8714c of this title] shall apply in the case of any justice or judge who is retired under section 371(a) or 371(b) or 372(a) of title 28, United States Code. The amendments apply to those who retire on or after January 1, 1982.''

Amendment by Pub. L. 99–335 effective Jan. 1, 1987, see section 702(a) of Pub. L. 99–335, set out as an Effective Date note under section 8401 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 209 of Pub. L. 98–353 provided that:

''(a) Except as provided in subsection (b), the amendments made by this Act to section 8706 of title 5, United States Code, shall apply to policies purchased by judges after the date of enactment of this Act [July 10, 1984].

''(b) If a company which issued a policy which is in effect on the date of the enactment of this Act agrees, the amendments made by this Act [probably should be 'made by this Act to section 8706 of title 5'] shall apply to such policy.''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–427 applicable only in case of an employee who retires or becomes entitled to receive compensation for work injury on or after 180th day following Oct. 10, 1980, or any earlier date that Office of Personnel Management may prescribe which is at least 60 days after Oct. 10, 1980, see section 10(c) of Pub. L. 96–427, set out as a note under section 8701 of this title.

EFFECTIVE DATE OF 1978 AMENDMENTS

Section 3 of Pub. L. 95–583 provided that: ''The amendments made by this Act [amending this section and sections 8705, 8714a, and 8901 of this title] shall take effect on the date of the enactment of this Act [Nov. 2, 1978].''

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

INSURANCE COVERAGE FOR RESTORED DISABILITY ANNUITANTS

Section 3(c) of Pub. L. 99–53 provided that:

''(1) The amendments made by this section [amending this section and section 8908 of this title] shall apply with respect to any individual whose disability annuity is or was restored under section 8337(e) of title 5, United States Code, after December 31, 1983.

''(2)(A) The Office of Personnel Management shall notify each individual under subparagraph (B) of any rights which such individual may have under section 8706(g) or section 8908(c) of title 5, United States Code, as amended by this section, including any procedures or deadlines which may apply with respect to the exercise of those rights.

''(B) Notification under this paragraph shall be provided to any individual who, as of the 90th day after the date of enactment of this Act [June 17, 1985], is receiving a disability annuity which was restored to such individual under section 8337(e) of title 5, United States Code, after December 31, 1983.

''(3)(A) Nothing in this section shall be construed to authorize—

''(i) coverage under chapter 87 of title 5, United States Code, in the case of any individual who makes an election under section 8706(g) of such title (as amended by this Act), for any period before the date of such election; or

''(ii) coverage under chapter 89 of title 5, United States Code, in the case of any individual who becomes enrolled in a health benefits plan under section 8908(c) of such title (as amended by this Act), for any period before the date as of which such individual becomes so enrolled.

''(B) This paragraph applies with respect to any individual receiving a disability annuity which is or was restored under section 8337(e) of title 5, United States Code, after December 31, 1983, and before the expiration of the 90-day period beginning on the date of enactment of this Act [June 17, 1985].''

ELECTION OF LIFE INSURANCE OR HEALTH BENEFITS DURING PERIOD OF SERVICE AS OFFICER OR EMPLOYEE OF AN EMPLOYEE ORGANIZATION; CONTRIBUTIONS INTO EMPLOYEES LIFE INSURANCE FUND OR EMPLOYEES HEALTH BENEFITS FUND, NON-ELECTION; REGULATIONS

Pub. L. 89–504, title IV, §406(c), July 18, 1966, 80 Stat. 298, provided that: ''An officer or employee who is on approved leave without pay and serving as a full-time officer or employee of an organization composed primarily of employees, as defined in section 2 of the Federal Employees' Group Life Insurance Act of 1954, as amended (5 U.S.C. 2091) [section 8701 of this title] or section 2 of the Federal Employees Health Benefits Act of 1959, as amended (5 U.S.C. 3001) [section 8901 of this title] as the case may be, may, within sixty days after the date of enactment of this Act [July 18, 1966], file with his employing agency an election (1) to continue any insurance status or health benefits enrollment, or both, that he has on the date of enactment of this Act [July 18, 1966], (2) to reacquire any insurance status or health benefits enrollment, or both, which he may have lost while on leave without pay, or (3) to acquire as insured status or enroll in a health benefits plan, or both, if he was never previously eligible to do so, by arranging to pay currently and continuously into the employees' life insurance fund and the employees' health benefits fund, as appropriate, through his employing agency, both employee and agency contributions. The employing agency shall forward such payments to the employees' life insurance fund and the employees' health benefits fund, as appropriate. If he does not so elect, his insurance status and health benefits enrollment will continue and terminate as for other employees in nonpay status, or he will remain ineligible for insurance and health benefits, as the case may be, as though this paragraph had not been enacted. The United States Civil Service Commission is authorized to issue regulations to carry out the purposes of this paragraph.''

[Provision effective July 18, 1966, see section 410(1) of Pub. L. 89–504.]

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8701, 8705, 8707, 8708, 8714a, 8714b, 8714d of this title.

§ 8707. Employee deductions; withholding

(a) During each period in which an employee is insured under a policy purchased by the Office of Personnel Management under section 8709 of this title, there shall be withheld from the employee's pay a share of the cost of the group life insurance and accidental death and dismemberment insurance.

(b)(1) Whenever life insurance continues after an employee retires on an immediate annuity or

while the employee is receiving compensation under subchapter I of chapter 81 of this title because of disease or injury to the employee, as provided in section 8706(b) of this title, deductions for insurance shall be withheld from the employee's annuity or compensation, except that, in any case in which the insurance is continued as provided in section 8706(b)(3)(A) of this title, the deductions shall not be made for months after the calendar month in which the employee becomes 65 years of age.

(2) Notwithstanding paragraph (1) of this subsection, insurance shall be so continued without cost (other than as provided under section 8706(b)(3)(B)) to each employee who so retires, or commences receiving compensation, on or before December 31, 1989.

(c) The amount withheld from the pay, annuity, or compensation of each employee subject to insurance deductions shall be at the rate, adjusted to the nearest half-cent, of 66⅔ percent of the level cost as determined by the Office for each $1,000 of the employee's basic insurance amount.

(d) If an agency fails to withhold the proper amount of life insurance deductions from an individual's salary, compensation, or retirement annuity, the collection of unpaid deductions may be waived by the agency if, in the judgment of the agency, the individual is without fault and recovery would be against equity and good conscience. However, if the agency so waives the collection of unpaid deductions, the agency shall submit an amount equal to the sum of the uncollected deductions and related agency contributions required under section 8708 of this title to the Office for deposit to the Employees' Life Insurance Fund.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 595; Pub. L. 90–206, title IV, §402, Dec. 16, 1967, 81 Stat. 647; Pub. L. 95–454, title IX, §906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 96–427, §4(a), Oct. 10, 1980, 94 Stat. 1833.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 2094(a) (1st par.).	Aug. 17, 1954, ch. 752, §5(a) (1st par.), 68 Stat. 738. Sept. 23, 1959, Pub. L. 86–377, §4(b), 73 Stat. 701.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1980—Subsec. (a). Pub. L. 96–427 designated first sentence of existing section as subsec. (a) and substituted ''a policy purchased'' for ''a policy of insurance purchased'' and ''the employee's pay a share of the cost'' for ''the pay of the employee his share of the cost''.

Subsec. (b). Pub. L. 96–427 added subsec. (b).

Subsec. (c). Pub. L. 96–427 designated second sentence of existing section as subsec. (c) and inserted reference to pay, annuity, or compensation of each employee.

Subsec. (d). Pub. L. 96–427 added subsec. (d).

1978—Pub. L. 95–454 substituted ''Office of Personnel Management'' and ''Office'' for ''Civil Service Commission'' and ''Commission'', respectively.

1967—Pub. L. 90–206 struck out reference to the Civil Service Commission's function of determining the amount to be withheld for group insurance and substituted provisions setting a rate of 66⅔ percent of the level cost of each $1,000 of insurance as determined by the Commission for provisions setting a limit of 25 cents biweekly for each $1,000 of group life insurance and directing the withholding of the amount from employees paid on other than a biweekly basis at a proportional rate adjusted to the nearest cent.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–427 effective Oct. 10, 1980, with the amendment to have no effect in case of an employee who died, was separated, or retired before Oct. 10, 1980, see section 10(a) of Pub. L. 96–427, set out as a note under section 8701 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90–206 effective on first day of first pay period which begins on or after sixtieth day following Dec. 16, 1967, see section 405(a) of Pub. L. 90–206, set out as a note under section 8704 of this title.

RETROACTIVE EFFECT OF 1967 AMENDMENT

Amendment by Pub. L. 90–206 to have no effect in case of an employee who died, was finally separated, or retired prior to Dec. 16, 1967, see section 405(c) of Pub. L. 90–206, set out as a note under section 8704 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8706, 8708, 8714, 8714a, 8714d of this title; title 40 section 214d.

§ 8708. Government contributions

(a) For each period in which an employee is insured under a policy of insurance purchased by the Office of Personnel Management under section 8709 of this title, a sum equal to one-half the amount which is withheld from the pay of the employee under section 8707 of this title shall be contributed from the appropriation or fund which is used to pay him.

(b) When an employee is paid by the Clerk of the House of Representatives, the Clerk may contribute the sum required by subsection (a) of this section from the contingent fund of the House.

(c) When the employee is an elected official, the sum required by subsection (a) of this section is contributed from an appropriation or fund available for payment of other salaries of the same office or establishment.

(d)(1) Except as otherwise provided in this subsection, for each period in which an employee continues life insurance after retirement or while in receipt of compensation under subchapter I of chapter 81 of this title because of disease or injury to the employee, as provided under section 8706(b) of this title, a sum equal to one-half of the amount which is withheld from the employee's annuity or compensation under section 8707 of this title shall be contributed by the Office from annual appropriations which are authorized to be made for that purpose and which may be made available until expended.

(2) Contributions under this subsection—

(A) shall not be made other than with respect to individuals who retire, or commence receiving compensation, after December 31, 1989;

(B) shall not be made with respect to any individual for months after the calendar month in which such individual becomes 65 years of age; and

(C) shall, in the case of any individual who elects coverage under subparagraph (B) of section 8706(b)(3) of this title, be equal to the amount which would apply under this subsection if such individual had instead elected coverage under subparagraph (A) of such section.

(3) The United States Postal Service shall pay the contributions required under this subsection with respect to any individual who—

(A) first becomes an annuitant by reason of retirement from employment with the United States Postal Service after December 31, 1989; or

(B) commences receiving compensation under subchapter I of chapter 81 of this title (because of disease or injury to the individual) after December 31, 1989, if the position last held by the individual before commencing to receive such compensation was within the United States Postal Service.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 595; Pub. L. 90–206, title IV, § 403, Dec. 16, 1967, 81 Stat. 647; Pub. L. 95–454, title IX, § 906(a)(2), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 101–303, § 2, May 29, 1990, 104 Stat. 250.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(a), (c)	5 U.S.C. 2094(b).	Aug. 17, 1954, ch. 752, § 5(b), 68 Stat. 738.
(b)	2 U.S.C. 128.	Aug. 5, 1955, ch. 568, § 101 (4th par. under ''Administrative Provisions''), 69 Stat. 513.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1990—Subsec. (d). Pub. L. 101–303 added subsec. (d).

1978—Subsec. (a). Pub. L. 95–454 substituted ''Office of Personnel Management'' for ''Civil Service Commission''.

1967—Subsec. (a). Pub. L. 90–206 substituted provisions setting the sum to be withheld at one-half the amount withheld from the pay of the employee under section 8707 of this title for provisions setting the sum to be withheld at a rate to be determined by the Commission not to exceed one-half of the amount withheld under section 8707 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90–206 effective on first day of first pay period which begins on or after sixtieth day following December 16, 1967, see section 405(a) of Pub. L. 90–206, set out as a note under section 8704 of this title.

TRANSFER OF FUNCTIONS

Certain functions of Clerk of House of Representatives transferred to Director of Non-legislative and Financial Services by section 7 of House Resolution No. 423, One Hundred Second Congress, Apr. 9, 1992. Director of Non-legislative and Financial Services replaced by Chief Administrative Officer of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

RETROACTIVE EFFECT OF 1967 AMENDMENT

Amendment by Pub. L. 90–206 to have no effect in case of an employee who died, was finally separated, or retired prior to Dec. 16, 1967, see section 405(c) of Pub. L. 90–206, set out as a note under section 8704 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8707, 8714, 8714a, 8714d of this title; title 40 section 214d.

§ 8709. Insurance policies

(a) The Office of Personnel Management, without regard to section 5 of title 41, may purchase from one or more life insurance companies a policy or policies of group life and accidental death and dismemberment insurance to provide the benefits specified by this chapter. A company must meet the following requirements:

(1) It must be licensed to transact life and accidental death and dismemberment insurance under the laws of 48 of the States and the District of Columbia.

(2) It must have in effect, on the most recent December 31 for which information is available to the Office, an amount of employee group life insurance equal to at least 1 percent of the total amount of employee group life insurance in the United States in all life insurance companies.

(b) A company issuing a policy under subsection (a) of this section shall establish an administrative office under a name approved by the Office.

(c) The Office at any time may discontinue a policy purchased from a company under subsection (a) of this section.

(d)(1) The provisions of any contract under this chapter which relate to the nature or extent of coverage or benefits (including payments with respect to benefits) shall supersede and preempt any law of any State or political subdivision thereof, or any regulation issued thereunder, which relates to group life insurance to the extent that the law or regulation is inconsistent with the contractual provisions.

(2) For the purpose of this section, ''State'' means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and a territory or possession of the United States.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 596; Pub. L. 95–454, title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 96–427, § 5(a), Oct. 10, 1980, 94 Stat. 1834.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 2096 (less (c)–(e)).	Aug. 17, 1954, ch. 752, § 7 (less (c)–(e)), 68 Stat. 739.

In subsection (a), the words ''as determined by it'' are omitted as unnecessary.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1980—Subsec. (d). Pub. L. 96–427 added subsec. (d).

1978—Subsecs. (a) to (c). Pub. L. 95–454 substituted ''Office of Personnel Management'' and ''Office'' for ''Civil Service Commission'' and ''Commission'', respectively, wherever appearing.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–427 effective Oct. 10, 1980, with the amendment to have no effect in case of an employee who died, was separated, or retired before Oct. 10, 1980, see section 10(a) of Pub. L. 96–427, set out as a note under section 8701 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8705, 8707, 8708, 8714a, 8714b, 8714c of this title.

§ 8710. Reinsurance

(a) The Office of Personnel Management shall arrange with a company issuing a policy under this chapter for the reinsurance, under conditions approved by the Office, of portions of the total amount of insurance under the policy, determined under this section, with other life insurance companies which elect to participate in the reinsurance.

(b) The Office shall determine for and in advance of a policy year which companies are eligible to participate as reinsurers and the amount of insurance under a policy which is to be allocated to the issuing company and to reinsurers. The Office shall make this determination at least every 3 years and when a participating company withdraws.

(c) The Office shall establish a formula under which the amount of insurance retained by an issuing company after ceding reinsurance, and the amount of reinsurance ceded to each reinsurer, is in proportion to the total amount of each company's group life insurance, excluding insurance purchased under this chapter, in force in the United States on the determination date, which is the most recent December 31 for which information is available to the Office. In determining the proportions, the portion of a company's group life insurance in force on the determination date in excess of $100,000,000 shall be reduced by—

(1) 25 percent of the first $100,000,000 of the excess;

(2) 50 percent of the second $100,000,000 of the excess;

(3) 75 percent of the third $100,000,000 of the excess; and

(4) 95 percent of the remaining excess.

However, the amount retained by or ceded to a company may not exceed 25 percent of the amount of the company's total life insurance in force in the United States on the determination date.

(d) A fraternal benefit association which is—

(1) licensed to transact life insurance under the laws of a State or the District of Columbia; and

(2) engaged in issuing insurance certificates on the lives of employees of the United States exclusively;

is eligible to act as a reinsuring company and may be allocated an amount of reinsurance equal to 25 percent of its total life insurance in force on employees of the United States on the determination date named by subsection (c) of this section.

(e) An issuing company or reinsurer is entitled, as a minimum, to be allocated an amount of insurance under the policy equal to any reduction from December 31, 1953, to the determination date, in the amount of the company's group life insurance under policies issued to associations of employees of the United States. However, any increase under this subsection in the amount allocated is reduced by the amount in force on the determination date of any policy covering life insurance agreements assumed by the Office.

(f) The Office may modify the computations under this section as necessary to carry out the intent of this section.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 596; Pub. L. 95–454, title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 2096(c)–(e).	Aug. 17, 1954, ch. 752, § 7(c)–(e), 68 Stat. 739. Aug. 11, 1955, ch. 794, § 3, 69 Stat. 677.

The section is reorganized to clarify the steps in the computation of the insurance allocable to issuing and reinsuring companies.

In subsections (c) and (d), references to the first determination date, December 31, 1953, are omitted as executed.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1978—Subsecs. (a) to (c), (e), (f). Pub. L. 95–454 substituted ''Office of Personnel Management'' and ''Office'' for ''Civil Service Commission'' and ''Commission'', respectively, wherever appearing.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8714a, 8714b, 8714c of this title.

§ 8711. Basic tables of premium rates

(a) A policy purchased under this chapter shall include, for the first policy year, basic tables of premium rates as follows:

(1) For group life insurance, a schedule of basic premium rates by age which the Office of Personnel Management determines to be consistent with the lowest schedule of basic premium rates generally charged for new group life insurance policies issued to large employers.

(2) For group accidental death and dismemberment insurance, a basic premium rate which the Office determines is consistent with the lowest rate generally charged for new

group accidental death and dismemberment policies issued to large employers.

The schedule for group life insurance, except as otherwise provided by this section, shall be applied to the distribution by age of the amounts of group life insurance under the policy at its date of issuance to determine an average basic premium rate per $1,000 of life insurance.

(b) The policy shall provide that the basic premium rates determined for the first policy year continue for later policy years except as readjusted for a later year based on experience under the policy. The company issuing the policy may make the readjustment on a basis that the Office determines in advance of the policy year is consistent with the general practice of life insurance companies under policies of group life and group accidental death and dismemberment insurance issued to large employers.

(c) The policy shall provide that if the Office determines that ascertaining the actual age distribution of the amounts of group life insurance in force at the date of issue of the policy or at the end of the first or any later year of insurance thereunder would not be possible except at a disproportionately high expense, the Office may approve the determination of a tentative average group life premium rate, for the first or any later policy year, instead of using the actual age distribution. The Office, on request by the company issuing the policy, shall redetermine the tentative average premium rate during any policy year, if experience indicates that the assumptions made in determining that rate were incorrect for that year.

(d) The policy shall stipulate the maximum expense and risk charges for the first policy year. The Office shall determine these charges on a basis consistent with the general level of charges made by life insurance companies under policies of group life and accidental death and dismemberment insurance issued to large employers. The maximum charges continue from year to year, except that the Office may redetermine them for any year either by agreement with the company issuing the policy or on written notice given to the company at least 1 year before the beginning of the year for which the redetermined maximum charges will be effective.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 597; Pub. L. 95–454, title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 2097 (less (d)).	Aug. 17, 1954, ch. 752, § 8 (less (d)), 68 Stat. 740.

In subsection (a), the word ''policy'' is substituted for ''policy or policies'' on authority of 1 U.S.C. 1. In subsections (b) and (c), the words ''The policy'' are substituted for ''Each policy so purchased''. In subsections (b), (c), and (d), the word ''insurance'', preceding the word ''company'', is omitted as unnecessary; and the word ''company'' is substituted for ''company or companies'' on authority of 1 U.S.C. 1.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1978—Subsecs. (a) to (d). Pub. L. 95–454 substituted ''Office of Personnel Management'' and ''Office'' for ''Civil Service Commission'' and ''Commission'', respectively, wherever appearing.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8714a, 8714b, 8714c of this title.

§ 8712. Annual accounting; special contingency reserve

A policy purchased under this chapter shall provide for an accounting to the Office of Personnel Management not later than 90 days after the end of each policy year. The accounting shall set forth, in a form approved by the Office—

(1) the amounts of premiums actually accrued under the policy from its date of issue to the end of the policy year;

(2) the total of all mortality and other claim charges incurred for that period; and

(3) the amounts of the insurers' expense and risk charges for that period.

An excess of the total of paragraph (1) of this section over the sum of paragraphs (2) and (3) of this section shall be held by the company issuing the policy as a special contingency reserve to be used by the company only for charges under the policy. The reserve shall bear interest at a rate determined in advance of each policy year by the company and approved by the Office as being consistent with the rate generally used by the company for similar funds held under other group life insurance policies. When the Office determines that the special contingency reserve has attained an amount estimated by it to make satisfactory provision for adverse fluctuations in future charges under the policy, any further excess shall be deposited in the Treasury of the United States to the credit of the Employees' Life Insurance Fund. When a policy is discontinued, any balance remaining in the special contingency reserve after all charges have been made shall be deposited in the Treasury to the credit of the Fund. The company may make the deposit in equal monthly installments over a period of not more than 2 years.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 598; Pub. L. 95–454, title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 2097(d).	Aug. 17, 1954, ch. 752, § 8(d), 68 Stat. 741.

The words ''A policy purchased under this chapter'' are substituted for ''Each such policy'' for clarity. The word ''insurance'', preceding the word ''company'', is omitted as unnecessary; and the word ''company'' is substituted for ''company or companies'' on authority of 1 U.S.C. 1.

The words ''Employees' Life Insurance Fund'' are substituted for ''fund''.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1978—Pub. L. 95–454 substituted ''Office of Personnel Management'' and ''Office'' for ''Civil Service Commission'' and ''Commission'', respectively.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8714a, 8714b, 8714c of this title.

§ 8713. Effect of other statutes

Any provision of law outside of this chapter provides coverage or any other benefit under this chapter to any individuals who (based on their being employed by an entity other than the Government) would not otherwise be eligible for any such coverage or benefit shall not apply with respect to any individual appointed, transferred, or otherwise commencing that type of employment on or after October 1, 1988.

(Added Pub. L. 100–238, title I, §108(a)(2)(A), Jan. 8, 1988, 101 Stat. 1747.)

PRIOR PROVISIONS

A prior section 8713, Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 598; Pub. L. 90–83, §1(93), Sept. 11, 1967, 81 Stat. 219; Pub. L. 95–454, title IX, §906(a)(1), (4), Oct. 13, 1978, 92 Stat. 1224, 1225, which provided for an advisory committee to be appointed by the Director of the Office of Personnel Management to be composed of five employees insured under this chapter, to serve without additional pay, to advise the Office regarding matters of concern to employees under this chapter, was repealed by Pub. L. 96–427, §9(a), Oct. 10, 1980, 94 Stat. 1837, effective Oct. 10, 1980, with the repeal to have no effect in the case of an employee who died, was separated, or retired before Oct. 10, 1980.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 22 section 6103; title 25 section 450i.

§ 8714. Employees' Life Insurance Fund

(a) The amounts withheld from employees under section 8707 of this title and the sums contributed from appropriations and funds under section 8708 of this title shall be deposited in the Treasury of the United States to the credit of the Employees' Life Insurance Fund. The Fund is available without fiscal year limitation for—

(1) premium payments under an insurance policy purchased under this chapter; and

(2) expenses incurred by the Office of Personnel Management in the administration of this chapter within the limitations that may be specified annually by appropriation acts.

(b) The Secretary of the Treasury may invest and reinvest any of the money in the Fund in interest-bearing obligations of the United States, and may sell these obligations for the purposes of the Fund. The interest on and the proceeds from the sale of these obligations, and the income derived from dividend or premium rate adjustments from insurers, become a part of the Fund.

(c)(1) No tax, fee, or other monetary payment may be imposed or collected by any State, the District of Columbia, or the Commonwealth of Puerto Rico, or by any political subdivision or other governmental authority thereof, on, or with respect to, any premium paid under an insurance policy purchased under this chapter.

(2) Paragraph (1) of this subsection shall not be construed to exempt any company issuing a policy of insurance under this chapter from the imposition, payment, or collection of a tax, fee, or other monetary payment on the net income or profit accruing to or realized by that company from business conducted under this chapter, if that tax, fee, or payment is applicable to a broad range of business activity.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 598; Pub. L. 95–454, title IX, §906(a)(2), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 96–499, title IV, §405(a), Dec. 5, 1980, 94 Stat. 2606.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 2094(c) (less applicability to 5 U.S.C. 2099), (d).	Aug. 17, 1954, ch. 752, §5(c) (less applicability to §10), 68 Stat. 739. Aug. 11, 1955, ch. 794, §1(a) ''(c) (less applicability to §10)'', (b), 69 Stat. 676. Apr. 11, 1958, Pub. L. 85–377, §1 (less applicability to §10), 72 Stat. 87.

In subsection (a), the words ''of the Employees' Life Insurance Fund'' are substituted for ''of a fund which is hereby created''. The proviso which made appropriations available to the Commission for salaries and expenses for the fiscal year 1955 available on a reimbursable basis for necessary administrative expenses for carrying out the purposes of this chapter is omitted as executed.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1980—Subsec. (c). Pub. L. 96–499 added subsec. (c).

1978—Subsec. (a)(2). Pub. L. 95–454 substituted ''Office of Personnel Management'' for ''Civil Service Commission''.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 405(b) of Pub. L. 96–499 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Dec. 5, 1980], and shall apply with respect to premiums paid on or after such date.''

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

FUNDING

Pub. L. 103–409, §4, Oct. 25, 1994, 108 Stat. 4232, provided that: ''Notwithstanding section 8714(a)(1) of title 5, United States Code, the Office of Personnel Management shall retain in the Employees' Life Insurance Fund such portion of premium payments otherwise due as will, no later than September 30, 1995, permanently reduce the contingency reserve established under the third sentence of section 8712 of such title 5 by an amount equal to the amount by which payments from the Employees' Life Insurance Fund during the fiscal year ending September 30, 1995, exceed the payments

that would have been paid had the amendments made by this Act [enacting section 8714d of this title] not been enacted.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8714a, 8714b, 8714c of this title; title 20 section 125; title 25 section 450i.

§ 8714a. Optional insurance

(a) Under the conditions, directives, and terms specified in sections 8709–8712 of this title, the Office of Personnel Management, without regard to section 5 of title 41, may purchase a policy which shall make available to each insured employee equal amounts of optional life insurance and accidental death and dismemberment insurance in addition to the amounts provided in section 8704(a) of this title.

(b) The optional life insurance and accidental death and dismemberment insurance shall be made available to each insured employee under such conditions as the Office shall prescribe and in amounts approved by the Office but not more than the greater of $10,000 or an amount which, when added to the amount provided in section 8704(a) of this title, makes the sum of his insurance equal to his annual pay.

(c)(1) Except as otherwise provided in this subsection, the optional insurance on an employee stops on his separation from service or 12 months after discontinuance of his pay, whichever is earlier, subject to a provision for temporary extension of life insurance coverage and for conversion to an individual policy of life insurance under conditions approved by the Office.

(2)(A) In the case of any employee who retires on an immediate annuity and has been insured under this section throughout—

(i) the 5 years of service immediately preceding the date of such retirement, or

(ii) the full period or periods of service during which the employee was entitled to be insured, if less than 5 years,

the amount of optional life insurance only which has been in force throughout such period may be continued, under conditions determined by the Office.

(B) In the case of any employee who becomes entitled to receive compensation under subchapter I of chapter 81 of this title because of disease or injury to the employee and has been insured under this section throughout—

(i) the 5 years of service immediately preceding the date such employee becomes entitled to such compensation, or

(ii) the full period or periods of service during which the employee was entitled to be insured, if less than 5 years,

the amount of optional life insurance only which has been in force throughout such period may be continued, under conditions determined by the Office, during the period the employee is receiving such compensation for disease or injury and is held by the Secretary of Labor or his delegate to be unable to return to duty.

(C) The amount of optional life insurance continued under subparagraph (A) or subparagraph (B) of this paragraph shall be reduced by 2 percent at the end of each full calendar month after the date the employee becomes 65 years of age and is retired or is receiving compensation for disease or injury. The Office shall prescribe minimum amounts, not less than 25 percent of the amount of life insurance in force before the first reduction, to which the insurance may be reduced.

(3) Notwithstanding paragraph (c)(1) of this section,[1] a justice or judge of the United States as defined by section 8701(a)(5) of this title who resigns his office without meeting the requirements of section 371(a) of title 28, United States Code, for continuation of the judicial salary shall have the right to convert regular optional life insurance coverage issued under this section during his judicial service to an individual policy of life insurance under the same conditions approved by the Office governing conversion of basic life insurance coverage for employees eligible as provided in section 8706(a) of this title.

(d)(1) During each period in which an employee has the optional insurance the full cost thereof shall be withheld from his pay. During each period in which an employee continues optional life insurance after retirement or while in receipt of compensation for work injuries, as provided in section 8706(b) of this title, the full cost thereof shall be withheld from his annuity or compensation, except that, at the end of the calendar month in which he becomes 65 years of age, the optional life insurance shall be without cost to him. Amounts so withheld shall be deposited, used, and invested as provided in section 8714 of this title and shall be reported and accounted for separately from amounts withheld and contributed under sections 8707 and 8708 of this title.

(2) If an agency fails to withhold the proper cost of optional insurance from an individual's salary, compensation, or retirement annuity, the collection of amounts properly due may be waived by the agency if, in the judgment of the agency, the individual is without fault and recovery would be against equity and good conscience. However, if the agency so waives the collection of any unpaid amount, the agency shall submit an amount equal to the uncollected amount to the Office for deposit to the Employees' Life Insurance Fund.

(e) The cost of the optional insurance shall be determined from time to time by the Office on the basis of such age groups as it considers appropriate.

(f) The amount of optional life, or life and accidental death, insurance in force on an employee at the date of his death shall be paid as provided in section 8705 of this title.

(Added Pub. L. 90–206, title IV, § 404(1), Dec. 16, 1967, 81 Stat. 647; amended Pub. L. 95–454, title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 95–583, § 1(c), Nov. 2, 1978, 92 Stat. 2481; Pub. L. 96–427, § 6, Oct. 10, 1980, 94 Stat. 1834; Pub. L. 98–353, title II, § 206, July 10, 1984, 98 Stat. 351, as amended by Pub. L. 99–336, § 7(1), June 19, 1986, 100 Stat. 639; Pub. L. 99–335, title II, § 207(k)(3), June 6, 1986, 100 Stat. 597; Pub. L. 99–336, § 7(1), June 19, 1986, 100 Stat. 639.)

[1] So in original. Probably should be ''paragraph (1) of this subsection,''.

AMENDMENTS

1986—Subsec. (c)(1). Pub. L. 99–336 amended Pub. L. 98–353, § 206, generally. See 1984 Amendment note below.

Pub. L. 99–335 amended par. (1) generally, effective Jan. 1, 1987. Prior to such effective date, par. (1) read as follows: ''The optional insurance on an employee stops on his separation from service, 12 months after discontinuance of his pay, or on his entry on active duty or active duty for training, as provided in sections 8706(a) and 8706(c) of this title. Justices and judges of the United States described in section 8701(a)(5)(ii) and (iii) of this chapter are deemed to continue in active employment for purposes of this chapter.''

1984—Subsec. (c)(1). Pub. L. 98–353, § 206, as amended generally by Pub. L. 99–336, inserted sentence which deemed justices and judges described in section 8701(a)(5)(ii) and (iii) of this chapter to continue in active employment for purposes of this chapter.

Subsec. (c)(3). Pub. L. 98–353, § 206, added par. (3).

1980—Subsec. (c)(2)(C). Pub. L. 96–427, § 6(a), substituted provisions that the amount of optional life insurance shall be reduced by 2% at the end of each calendar month after the date the employee becomes 65 years of age and is retired or is receiving compensation for disease or injury and that the Office shall prescribe minimum amount of life insurance in force before the first reduction to which the insurance may be reduced for provisions that such optional insurance be subject to the same monthly reductions as required for regular life insurance under section 8706(b)(3) of this title.

Subsec. (d). Pub. L. 96–427, § 6(b), designated existing provisions as par. (1) and added par. (2).

1978—Subsecs. (a), (b). Pub. L. 95–454 substituted ''Office of Personnel Management'' for ''Civil Service Commission'' and ''Office'' for ''Commission'' wherever appearing.

Subsec. (c)(1). Pub. L. 95–583, § 1(c)(1), substituted reference to section ''8706(c)'' for ''8706(d)''.

Subsec. (c)(2). Pub. L. 95–583, § 1(c)(2), added par. (2) and struck out former par. (2) which read as follows: ''So much of the optional life insurance in force on an employee on the date he retires on an immediate annuity or becomes entitled to receive compensation for work injuries which has been in force for not less than—

''(A) the full period or periods of service during which the optional insurance was available to him; or

''(B) the 12 years of service immediately preceding his retirement or beginning date of entitlement to compensation for work injuries and during which the optional insurance was available to him;

whichever is shorter, may be continued—

''(A) after retirement, under the same conditions (except with respect to cost but including reduction of the amount continued) as provided in section 8706(b) of this title; or

''(B) while in receipt of compensation for work injuries under the same conditions (except with respect to cost) as provided in section 8706(c) of this title.''

Pub. L. 95–454, which substituted ''Office'' for ''Commission'', was executed to text of subsec. (c)(2) as amended by Pub. L. 95–583. See Effective Date of 1978 Amendments note below.

Subsec. (d). Pub. L. 95–583, § 1(c)(3), struck out ''or 8706(c)'' after ''section 8706(b)''.

Subsec. (e). Pub. L. 95–454 substituted ''Office'' for ''Commission''.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–335 effective Jan. 1, 1987, see section 702(a) of Pub. L. 99–335, set out as an Effective Date note under section 8401 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–353, § 206, as amended generally by Pub. L. 99–336, § 7(1), applicable to any justice or judge who retires under 28 U.S.C. 371(a) or (b) or 372(a) on or after January 1, 1982, see section 207 of Pub. L. 98–353, as amended generally by Pub. L. 99–336, § 7(2), set out as a note under section 8706 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–427 effective Oct. 10, 1980, with amendment to have no effect in case of an employee who died, was separated, or retired before Oct. 10, 1980, see section 10(a) of Pub. L. 96–427, set out as a note under section 8701 of this title.

EFFECTIVE DATE OF 1978 AMENDMENTS

Amendment by Pub. L. 95–583 effective Nov. 2, 1978, see section 3 of Pub. L. 95–583, set out as a note under section 8706 of this title.

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

EFFECTIVE DATE

Section 405(b) of Pub. L. 90–206 provided that:

''(1) The amendments made by section 404 of this Act [enacting this section and amending analysis preceding section 8701 of this title] shall take effect on the first day of the first pay period which begins on or after the one hundred and eightieth day following the date of enactment [Dec. 16, 1967], or on any earlier date that the Civil Service Commission may prescribe, which is at least sixty days after the date of enactment [Dec. 16, 1967]. In the case of an employee who dies during the period beginning on the date of enactment [Dec. 16, 1967] and ending on the effective date prescribed by or pursuant to this subsection, or during the sixty days immediately following such period if the Commission determines that he did not have a reasonable opportunity to elect the optional insurance made available by section 404, the insurance of such employee shall be determined as if the amendments made by section 404 had been in effect on the date of such death, and the employee had elected to receive the maximum amount of optional insurance available to him under such amendments. An employee who retires during the period beginning on the date of enactment and ending on the effective date prescribed by or pursuant to this subsection shall have an opportunity to elect the optional insurance made available by section 404.

''(2) In the case of an employee in the service on the effective date prescribed by or pursuant to this subsection, (i) the period during which such employee may elect to receive optional insurance under the amendment made by section 404 shall not expire prior to the sixtieth day after such effective date, and (ii) for the purpose of determining the amount of insurance to be continued after retirement, the period during which such optional insurance was available to such employee shall not be considered to have commenced prior to the expiration of sixty days following such effective date.''

RETROACTIVE EFFECT

Enactment of this section by Pub. L. 90–206 to have no effect in the case of an employee who died, was finally separated, or retired prior to Dec. 16, 1967, see section 405(c) of Pub. L. 90–206, set out as an Retroactive Effect of 1967 Amendment note under section 8704 of this title.

AVAILABILITY OF CERTAIN FUNDS IN EMPLOYEES' LIFE INSURANCE FUND

Section 11 of Pub. L. 96–427 provided that: ''Amounts credited to the Employees' Life Insurance Fund under section 8714a(d) of title 5, United States Code shall be available for expenses incurred by the Office of Personnel Management in implementing the amendments made by sections 7 and 8 of this Act [enacting sections 8714b, 8714c, and 8701(d) of this title].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8714b, 8714c, 8714d of this title.

§ 8714b. Additional optional life insurance

(a) Under the conditions, directives, and terms specified in sections 8709 through 8712 of this

title, the Office of Personnel Management, without regard to section 5 of title 41, may purchase a policy which shall make available to each employee insured under section 8702 of this title amounts of additional optional life insurance (without accidental death and dismemberment insurance). An employee may elect coverage under this section without regard to whether the employee has elected coverage under optional insurance available under section 8714a of this title.

(b) The additional optional insurance provided under this section shall be made available to each eligible employee who has elected coverage under this section, under conditions the Office shall prescribe, in multiples, at the employee's election, of 1, 2, 3, 4, or 5 times the annual rate of basic pay payable to the employee (rounded to the next higher multiple of $1,000) except that coverage may not exceed an amount equal to 5 times the annual rate of basic pay payable for positions at level II of the Executive Schedule under section 5313 of this title (rounded to the next higher multiple of $1,000). An employee may reduce or stop coverage elected pursuant to this section at any time.

(c)(1) Except as otherwise provided in this subsection, the additional optional insurance elected by an employee pursuant to this section shall stop on separation from service or 12 months after discontinuance of his pay, whichever is earlier, subject to a provision for temporary extension of life insurance coverage and for conversion to an individual policy of life insurance under conditions approved by the Office. Justices and judges of the United States described in section 8701(a)(5)(ii) and (iii) of this chapter are deemed to continue in active employment for purposes of this chapter. A justice or judge of the United States as defined by section 8701(a)(5) of this title who resigns his office without meeting the requirements of section 371(a) of title 28, United States Code, for continuation of the judicial salary shall have the right to convert additional optional life insurance coverage issued under this section during his judicial service to an individual policy of life insurance under the same conditions approved by the Office governing conversion of basic life insurance coverage for employees eligible as provided in section 8706(a) of this title.

(2) In the case of any employee who retires on an immediate annuity or who becomes entitled to receive compensation under subchapter I of chapter 81 of this title because of disease or injury to the employee, so much of the additional optional insurance as has been in force for not less than—

(A) the 5 years of service immediately preceding the date of retirement or entitlement to compensation, or

(B) the full period or periods of service during which the insurance was available to the employee, if fewer than 5 years,

may be continued under conditions determined by the Office after retirement or while the employee is receiving compensation under subchapter I of chapter 81 of this title and is held by the Secretary of Labor (or the Secretary's delegate) to be unable to return to duty. The amount of insurance continued under this paragraph shall be reduced each month by 2 percent effective at the beginning of the second calendar month after the date the employee becomes 65 years of age and is retired or is in receipt of compensation. The reduction shall continue for 50 months at which time the insurance stops.

(d)(1) During each period in which the additional optional insurance is in force on an employee the full cost thereof shall be withheld from the employee's pay. During each period in which an employee continues additional optional insurance after retirement or while in receipt of compensation under subchapter I of chapter 81 of this title because of disease or injury to the employee, as provided in subsection (c) of this section, the full cost thereof shall be withheld from the former employee's annuity or compensation, except that, beginning at the end of the calendar month in which the former employee becomes 65 years of age, the additional optional life insurance shall be without cost to the former employee. Amounts so withheld shall be deposited, used, and invested as provided in section 8714 of this title and shall be reported and accounted for together with amounts withheld under section 8714a(d) of this title.

(2) If an agency fails to withhold the proper cost of additional optional insurance from an individual's salary, compensation, or retirement annuity, the collection of amounts properly due may be waived by the agency if, in the judgment of the agency, the individual is without fault and recovery would be against equity and good conscience. However, if the agency so waives the collection of any unpaid amount, the agency shall submit an amount equal to the uncollected amount to the Office for deposit to the Employees' Life Insurance Fund.

(e) The cost of the additional optional insurance shall be determined from time to time by the Office on the basis of the employee's age relative to such age groups as the Office establishes under section 8714a(e) of this title.

(f) The amount of additional optional life insurance in force on an employee at the date of his death shall be paid as provided in section 8705 of this title.

(Added Pub. L. 96–427, § 7(a), Oct. 10, 1980, 94 Stat. 1834; amended Pub. L. 98–353, title II, §§ 206, 207, July 10, 1984, 98 Stat. 351, as amended by Pub. L. 99–336, § 7(1), June 19, 1986, 100 Stat. 639; Pub. L. 99–335, title II, § 207(k)(4), June 6, 1986, 100 Stat. 597; Pub. L. 99–336, § 7(1), June 19, 1986, 100 Stat. 639.)

AMENDMENTS

1986—Subsec. (c)(1). Pub. L. 98–353, § 206, as amended generally by Pub. L. 99–336, § 7(1), inserted sentence which deemed justices and judges described in section 8701(a)(5)(ii) and (iii) of this chapter to continue in active employment for purposes of this chapter.

Pub. L. 99–335 substituted ''Except as otherwise provided in this subsection, the additional optional insurance elected by an employee pursuant to this section shall stop on separation from service or 12 months after discontinuance of his pay, whichever is earlier, subject to a provision for temporary extension of life insurance coverage and for conversion to an individual policy of life insurance under conditions approved by the Office'' for ''The additional optional insurance elected by an employee pursuant to this section shall stop on separation from service, 12 months after discontinuance of

pay, or on entry on active military duty or active duty for training, subject to provision for a 31-day temporary extension of insurance coverage and for conversion to an individual policy, as provided in sections 8706(a) and 8706(c) of this title''.

1984—Subsec. (c)(1). Pub. L. 98–353 inserted ''A justice or judge of the United States as defined by section 8701(a)(5) of this title who resigns his office without meeting the requirements of section 371(a) of title 28, United States Code, for continuation of the judicial salary shall have the right to convert additional optional life insurance coverage issued under this section during his judicial service to an individual policy of life insurance under the same conditions approved by the Office governing conversion of basic life insurance coverage for employees eligible as provided in section 8706(a) of this title.''

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by Pub. L. 98–353, §206, as amended generally by Pub. L. 99–336, §7(1), applicable to any justice or judge who retires under 28 U.S.C. 371(a) or (b) or 372(a) on or after January 1, 1982, see section 207 of Pub. L. 98–353, as amended generally by Pub. L. 99–336, §7(2), set out as a note under section 8706 of this title.

Amendment by Pub. L. 99–335 effective Jan. 1, 1987, see section 702(a) of Pub. L. 99–335, set out as an Effective Date note under section 8401 of this title.

EFFECTIVE DATE

Section effective on first day of first pay period which begins on or after 180th day following Oct. 10, 1980, or on any earlier date that Office may prescribe which is at least 60 days after Oct. 10, 1980, and shall have no effect in case of an employee who died, was finally separated, or retired before effective date, see section 10(d) of Pub. L. 96–427 set out as an Effective Date of 1980 Amendment note under section 8701 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8714c, 8714d of this title.

§ 8714c. Optional life insurance on family members

(a) Under the conditions, directives, and terms specified in sections 8709 through 8712 of this title, the Office of Personnel Management, without regard to section 5 of title 41, may purchase a policy which shall make available to each employee insured under section 8702 of this title amounts of optional life insurance (without accidental death and dismemberment insurance) on the employee's family members.

(b) The optional life insurance on family members provided under this section shall be made available to each eligible employee who elects coverage under this section, under conditions the Office shall prescribe, in the amount of $5,000 for a spouse and $2,500 for each child described in section 8701(d). The employee may stop coverage elected under this section at any time.

(c)(1) Except as otherwise provided in this subsection, the optional life insurance on family members shall stop at the earlier of the employee's death, the employee's separation from the service, or 12 months after discontinuance of pay, subject to a provision for temporary extension of life insurance coverage and for conversion to individual policies of life insurance under conditions approved by the Office.

(2) In the case of any employee who retires on an immediate annuity or who becomes entitled to receive compensation under subchapter I of chapter 81 of this title because of disease or injury to the employee and who has had in force insurance under this section for no less than—

(A) the 5 years of service immediately preceding the date of retirement or entitlement to compensation, or

(B) the full period or periods of service during which the insurance was available to the employee, if fewer than 5 years,

optional life insurance on family members may be continued under the same conditions as provided in section 8714b(c)(2) of this title.

(d)(1) During each period in which the optional life insurance on family members is in force the full cost thereof shall be withheld from the employee's pay. During each period in which an employee continues optional life insurance on family members after retirement or while in receipt of compensation under subchapter I of chapter 81 of this title because of disease or injury to the employee, as provided in subsection (c) of this section, the full cost shall be withheld from the annuity or compensation, except that, beginning at the end of the calendar month in which the former employee becomes 65 years of age, the optional life insurance on family members shall be without cost to the employee. Amounts so withheld shall be deposited, used, and invested as provided in section 8714 of this title and shall be reported and accounted for together with amounts withheld under section 8714a(d) of this title.

(2) If an agency fails to withhold the proper cost of optional life insurance on family members from an individual's salary, compensation, or retirement annuity, the collection of amounts properly due may be waived by the agency if, in the judgment of the agency, the individual is without fault and recovery would be against equity and good conscience. However, if the agency so waives the collection of any unpaid amount, the agency shall submit an amount equal to the uncollected amount to the Office for deposit to the Employees' Life Insurance Fund.

(e) The cost of the optional life insurance on family members shall be determined from time to time by the Office on the basis of the employee's age relative to such age groups as the Office establishes under section 8714a(e) of this title.

(f) The amount of optional life insurance which is in force under this section on a family member of an employee or former employee on the date of the death of the family member shall be paid, on the establishment of a valid claim by the employee, to such employee or, in the event of the death of the employee before payment can be made, to the person or persons entitled to the group life insurance in force on the employee under section 8705 of this title.

(Added Pub. L. 96–427, §8(a), Oct. 10, 1980, 94 Stat. 1836; amended Pub. L. 98–353, title II, §206, as amended by Pub. L. 99–336, §7(1), June 19, 1986, 100 Stat. 639; Pub. L. 99–335, title II, §207(k)(5), June 6, 1986, 100 Stat. 598; Pub. L. 99–336, §7(1), June 19, 1986, 100 Stat. 639.)

AMENDMENTS

1986—Subsec. (c)(1). Pub. L. 99–336 amended Pub. L. 98–353, §206, generally. See 1984 Amendment note below.

Pub. L. 99–335 amended par. (1) generally, effective Jan. 1, 1977. Prior to such effective date, par. (1) read as follows: ''Optional life insurance on family members shall stop at the earlier of the employee's death, the employee's separation from the service, 12 months after discontinuance of pay, or the employee's entry on active duty or active duty for training, as provided in sections 8706(a) and 8706(c) of this title, subject to provision for a 31-day temporary extension of insurance coverage and for conversion to individual policies under conditions approved by the Office. Justices and judges of the United States described in section 8701(a)(5)(ii) and (iii) of this chapter are deemed to continue in active employment for purposes of this chapter.''

1984—Subsec. (c)(1). Pub. L. 98–353, § 206, as amended generally by Pub. L. 99–336, inserted sentence which deemed justices and judges described in section 8701(a)(5)(ii) and (iii) of this chapter to continue in active employment for purposes of this chapter.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–335 effective Jan. 1, 1987, see section 702(a) of Pub. L. 99–335, set out as an Effective Date note under section 8401 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–353, § 206, as amended generally by Pub. L. 99–336, § 7(1), applicable to any justice or judge who retires under 28 U.S.C. 371(a) or (b) or 372(a) on or after January 1, 1982, see section 207 of Pub. L. 98–353, as amended generally by Pub. L. 99–336, § 7(2), set out as a note under section 8706 of this title.

EFFECTIVE DATE

Section effective on first day of first pay period which begins on or after 180th day following Oct. 10, 1980, or on any earlier date that Office may prescribe which is at least 60 days after Oct. 10, 1980, and shall have no effect in case of an employee who died, was finally separated, or retired before effective date, see section 10(d) of Pub. L. 96–427 set out as an Effective Date of 1980 Amendment note under section 8701 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8714d of this title.

§ 8714d. Option to receive "living benefits"

(a) For the purpose of this section, an individual shall be considered to be ''terminally ill'' if such individual has a medical prognosis that such individual's life expectancy is 9 months or less.

(b) The Office of Personnel Management shall prescribe regulations under which any individual covered by group life insurance under section 8704(a) may, if such individual is terminally ill, elect to receive a lump-sum payment equal to—

(1) the full amount of insurance under section 8704(a) (or portion thereof designated for this purpose under subsection (d)(4)) which would otherwise be payable under this chapter (on the establishment of a valid claim)—

(A) computed based on a date determined under regulations of the Office (but not later than 30 days after the date on which the individual's application for benefits under this section is approved or deemed approved under subsection (d)(3)); and

(B) assuming continued coverage under this chapter at that time;

reduced by

(2) an amount necessary to assure that there is no increase in the actuarial value of the benefit paid (as determined under regulations of the Office).

(c)(1) If a lump-sum payment is taken under this section—

(A) no insurance under the provisions of section 8704(a) or (b) shall be payable based on the death or any loss of the individual involved, unless the lump-sum payment represents only a portion of the total benefits which could have been taken, in which case benefits under those provisions shall remain in effect, except that the basic insurance amount on which they are based—

(i) shall be reduced by the percentage which the designated portion comprised relative to the total benefits which could have been taken (rounding the result to the nearest multiple of $1,000 or, if midway between multiples of $1,000, to the next higher multiple of $1,000); and

(ii) shall not be subject to further adjustment; and

(B) deductions and withholdings under section 8707, and contributions under section 8708, shall be terminated with respect to such individual (or reduced in a manner consistent with the percentage reduction in the individual's basic insurance amount, if applicable), effective with respect to any amounts which would otherwise become due on or after the date of payment under this section.

(2) An individual who takes a lump-sum payment under this section (whether full or partial) remains eligible for optional benefits under sections 8714a–8714c (subject to payment of the full cost of those benefits in accordance with applicable provisions of the section or sections involved, to the same extent as if no election under this section had been made).

(d)(1) The Office's regulations shall include provisions regarding the form and manner in which an application under this section shall be made and the procedures in accordance with which any such application shall be considered.

(2) An application shall not be considered to be complete unless it includes such information and supporting evidence as the regulations require, including certification by an appropriate medical authority as to the nature of the individual's illness and that the individual is not expected to live more than 9 months because of that illness.

(3)(A) In order to ascertain the reliability of any medical opinion or finding submitted as part of an application under this section, the covered individual may be required to submit to a medical examination under the direction of the agency or entity considering the application. The individual shall not be liable for the costs associated with any examination required under this subparagraph.

(B) Any decision by the reviewing agency or entity with respect to an application for benefits under this section (including one relating to an individual's medical prognosis) shall not be subject to administrative review.

(4)(A) An individual making an election under this section may designate that only a limited portion (expressed as a multiple of $1,000) of the total amount otherwise allowable under this section be paid pursuant to such election.

(B) A designation under this paragraph may not be made by an individual described in paragraph (1) or (2) of section 8706(b).

(5) An election to receive benefits under this section shall be irrevocable, and not more than one such election may be made by any individual.

(6) The regulations shall include provisions to address the question of how to apply section 8706(b)(3)(B) in the case of an electing individual who has attained 65 years of age.

(Added Pub. L. 103–409, §2(a), Oct. 25, 1994, 108 Stat. 4230.)

EFFECTIVE DATE OF 1994 AMENDMENT

Pub. L. 103–409, §3(a), Oct. 25, 1994, 108 Stat. 4232, provided that: ''The amendments made by section 2 [enacting this section] shall take effect 9 months after the date of the enactment of this Act [Oct. 25, 1994].''

§ 8715. Jurisdiction of courts

The district courts of the United States have original jurisdiction, concurrent with the United States Court of Federal Claims, of a civil action or claim against the United States founded on this chapter.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 599; Pub. L. 97–164, title I, §160(a)(2), Apr. 2, 1982, 96 Stat. 48; Pub. L. 102–572, title IX, §902(b)(1), Oct. 29, 1992, 106 Stat. 4516.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 2103 (less applicability to 5 U.S.C. 2099).	Aug. 17, 1954, ch. 752, §14 (less applicability to §10), 68 Stat. 743.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1992—Pub. L. 102–572 substituted ''United States Court of Federal Claims'' for ''United States Claims Court''.

1982—Pub. L. 97–164 substituted ''United States Claims Court'' for ''Court of Claims''.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–572 effective Oct. 29, 1992, see section 911 of Pub. L. 102–572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–164 effective Oct. 1, 1982, see section 402 of Pub. L. 97–164, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

§ 8716. Regulations

(a) The Office of Personnel Management may prescribe regulations necessary to carry out the purposes of this chapter.

(b) The regulations of the Office may prescribe the time at which and the conditions under which an employee is eligible for coverage under this chapter. The Office, after consulting the head of the agency or other employing authority concerned, may exclude an employee on the basis of the nature and type of his employment or conditions pertaining to it, such as short-term appointment, seasonal, intermittent employment, and employment of like nature. The Office may not exclude—

(1) an employee or group of employees solely on the basis of the hazardous nature of employment;

(2) a teacher in the employ of the Board of Education of the District of Columbia, whose pay is fixed by section 1501 of title 31, District of Columbia Code, on the basis of the fact that the teacher is serving under a temporary appointment if the teacher has been so employed by the Board for a period or periods totaling not less than two school years; or

(3) an employee who is occupying a position on a part-time career employment basis (as defined in section 3401(2) of this title).

(c) The Secretary of Agriculture shall prescribe regulations to effect the application and operation of this chapter to an individual named by section 8701(a)(8) of this title.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 599; Pub. L. 95–437, §4(b), Oct. 10, 1978, 92 Stat. 1058; Pub. L. 95–454, title IX, §906(a)(2), (3), (c)(2)(F), (G), Oct. 13, 1978, 92 Stat. 1224, 1227.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(a)	5 U.S.C. 2100 (less applicability to 5 U.S.C. 2099).	Aug. 17, 1954, ch. 752, §11 (less applicability to §10), 68 Stat. 742.
(b), (c)	5 U.S.C. 2091(a) (words between 6th and 7th commas of 1st sentence and 2d sentence), (d) (words between 1st and 2d commas of 1st sentence, and 2d sentence).	Aug. 17, 1954, ch. 752, §2(a) (words between 6th and 7th commas of 1st sentence and 2d sentence), 68 Stat. 736. July 1, 1960, Pub. L. 86–568, §115(c) ''(d) (words between 1st and 2d commas of 1st sentence, and 2d sentence)'', 74 Stat. 302. Oct. 6, 1964, Pub. L. 88–631, §2, 78 Stat. 1007.

In subsection (a), the words ''Except as otherwise provided herein'' are omitted as unnecessary since the authority to prescribe regulations is carried into this section.

In subsection (b), the words ''section 1501 of title 31, District of Columbia Code'' are substituted for ''section 1 of the District of Columbia Teachers' Salary Act of 1955 (69 Stat. 521), as amended (Sec. 31–1501, D.C. Code, 1961 edition)''.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

REFERENCES IN TEXT

Section 1501 of title 31, District of Columbia Code, referred to in subsec. (b)(2), was transferred to section 31–1101 of Title 31, Education and Cultural Institutions, of the District of Columbia Code.

AMENDMENTS

1978—Subsec. (a). Pub. L. 95–454, §906(a)(2), substituted ''Office of Personnel Management'' for ''Civil Service Commission''.

Subsec. (b). Pub. L. 95–454, §906(a)(3), substituted ''Office'' for ''Commission'' wherever appearing.

Pub. L. 95–437 substituted ''intermittent employment'' for ''intermittent or part-time employment'' in provision preceding par. (1), and added par. (3).

Pub. L. 95–454, §906(c)(2)(F), (G), substituted ''3401'' for ''3391'' in par. (3).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8701 of this title.

CHAPTER 89—HEALTH INSURANCE

Sec.
8901. Definitions.
8902. Contracting authority.
8902a. Debarment and other sanctions.
8903. Health benefits plans.
8903a. Additional health benefits plans.
8904. Types of benefits.
8905. Election of coverage.
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8906. Contributions.
8906a. Temporary employees.
8907. Information to individuals eligible to enroll.
8908. Coverage of restored employees and survivor or disability annuitants.
8909. Employees Health Benefits Fund.
8910. Studies, reports, and audits.
8911. Advisory committee.
8912. Jurisdiction of courts.
8913. Regulations.
8914. Effect of other statutes.

AMENDMENTS

1988—Pub. L. 100–654, title I, § 101(b), title II, § 201(a)(2), title III, § 301(b), Nov. 14, 1988, 102 Stat. 3841, 3845, 3846, added items 8902a, 8905a, and 8906a.

Pub. L. 100–238, title I, § 108(a)(3)(B), Jan. 8, 1988, 101 Stat. 1748, added item 8914.

1985—Pub. L. 99–53, §§ 1(b)(2), 3(a)(2)(B), June 17, 1985, 99 Stat. 94, 95, added item 8903a and inserted ''or disability'' after ''and survivor'' in item 8908.

1984—Pub. L. 98–615, § 3(8), Nov. 8, 1984, 98 Stat. 3204, substituted ''Information to individuals eligible to enroll'' for ''Information to employees'' in item 8907.

1976—Pub. L. 94–342, § 1(b), July 6, 1976, 90 Stat. 808, substituted ''employees and survivor annuitants'' for ''employee'' in item 8908.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 1308, 3373, 3374, 3582, 6386 of this title; title 2 sections 31b–5, 72a; title 22 sections 2391, 3649, 4069c, 4069c–1, 4606; title 25 section 450i; title 28 sections 332, 627, 634, 996; title 39 section 1005; title 40 section 214c; title 42 sections 300e–1, 300e–6, 426a, 1395y, 2996d, 10704; title 45 section 1206; title 50 section 403p.

§ 8901. Definitions

For the purpose of this chapter—

(1) ''employee'' means—

(A) an employee as defined by section 2105 of this title;

(B) a Member of Congress as defined by section 2106 of this title;

(C) a Congressional employee as defined by section 2107 of this title;

(D) the President;

(E) an individual first employed by the government of the District of Columbia before October 1, 1987;

(F) an individual employed by Gallaudet College;[1]

(G) an individual employed by a county committee established under section 590h(b) of title 16;

(H) an individual appointed to a position on the office staff of a former President under section 1(b) of the Act of August 25, 1958 (72 Stat. 838); and

(I) an individual appointed to a position on the office staff of a former President, or a former Vice President under section 4 of the Presidential Transition Act of 1963, as amended (78 Stat. 153), who immediately before the date of such appointment was an employee as defined under any other subparagraph of this paragraph;

but does not include—

(i) an employee of a corporation supervised by the Farm Credit Administration if private interests elect or appoint a member of the board of directors;

(ii) an individual who is not a citizen or national of the United States and whose permanent duty station is outside the United States, unless the individual was an employee for the purpose of this chapter on September 30, 1979, by reason of service in an Executive agency, the United States Postal Service, or the Smithsonian Institution in the area which was then known as the Canal Zone;

(iii) an employee of the Tennessee Valley Authority; or

(iv) an employee excluded by regulation of the Office of Personnel Management under section 8913(b) of this title;

(2) ''Government'' means the Government of the United States and the government of the District of Columbia;

(3) ''annuitant'' means—

(A) an employee who retires—

(i) on an immediate annuity under subchapter III of chapter 83 of this title, or another retirement system for employees of the Government, after 5 or more years of service;

(ii) under section 8412 or 8414 of this title;

(iii) for disability under subchapter III of chapter 83 of this title, chapter 84 of this title, or another retirement system for employees of the Government; or

(iv) on an immediate annuity under a retirement system established for employees described in section 2105(c), in the case of an individual who elected under section 8347(q)(2) or 8461(n)(2) to remain subject to such a system;

(B) a member of a family who receives an immediate annuity as the survivor of an employee (including a family member entitled to an amount under section 8442(b)(1)(A), whether or not such family member is entitled to an annuity under section 8442(b)(1)(B)) or of a retired employee described by subparagraph (A) of this paragraph;

(C) an employee who receives monthly compensation under subchapter I of chapter 81 of this title and who is determined by the Secretary of Labor to be unable to return to duty; and

(D) a member of a family who receives monthly compensation under subchapter I of

[1] See Change of Name note below.

chapter 81 of this title as the surviving beneficiary of—

(i) an employee who dies as a result of injury or illness compensable under that subchapter; or

(ii) a former employee who is separated after having completed 5 or more years of service and who dies while receiving monthly compensation under that subchapter and who has been held by the Secretary to have been unable to return to duty;

(4) ''service'', as used by paragraph (3) of this section, means service which is creditable under subchapter III of chapter 83 or chapter 84 of this title;

(5) ''member of family'' means the spouse of an employee or annuitant and an unmarried dependent child under 22 years of age, including—

(A) an adopted child or recognized natural child; and

(B) a stepchild or foster child but only if the child lives with the employee or annuitant in a regular parent-child relationship;

or such an unmarried dependent child regardless of age who is incapable of self-support because of mental or physical disability which existed before age 22;

(6) ''health benefits plan'' means a group insurance policy or contract, medical or hospital service agreement, membership or subscription contract, or similar group arrangements provided by a carrier for the purpose of providing, paying for, or reimbursing expenses for health services;

(7) ''carrier'' means a voluntary association, corporation, partnership, or other nongovernmental organization which is lawfully engaged in providing, paying for, or reimbursing the cost of, health services under group insurance policies or contracts, medical or hospital service agreements, membership or subscription contracts, or similar group arrangements, in consideration of premiums or other periodic charges payable to the carrier, including a health benefits plan duly sponsored or underwritten by an employee organization;

(8) ''employee organization'' means—

(A) an association or other organization of employees which is national in scope, or in which membership is open to all employees of a Government agency who are eligible to enroll in a health benefits plan under this chapter and which, after December 31, 1978, and before January 1, 1980, applied to the Office for approval of a plan provided under section 8903(3) of this title; and

(B) an association or other organization which is national in scope, in which membership is open only to employees, annuitants, or former spouses, or any combination thereof, and which, during the 90-day period beginning on the date of enactment of section 8903a of this title, applied to the Office for approval of a plan provided under such section;

(9) ''dependent'', in the case of any child, means that the employee or annuitant involved is either living with or contributing to the support of such child, as determined in accordance with such regulations as the Office shall prescribe;

(10) ''former spouse'' means a former spouse of an employee, former employee, or annuitant—

(A) who has not remarried before age 55 after the marriage to the employee, former employee, or annuitant was dissolved,

(B) who was enrolled in an approved health benefits plan under this chapter as a family member at any time during the 18-month period before the date of the dissolution of the marriage to the employee, former employee, or annuitant, and

(C)(i) who is receiving any portion of an annuity under section 8345(j) or 8467 of this title or a survivor annuity under section 8341(h) or 8445 of this title (or benefits similar to either of the aforementioned annuity benefits under a retirement system for Government employees other than the Civil Service Retirement System or the Federal Employees' Retirement System),

(ii) as to whom a court order or decree referred to in section 8341(h), 8345(j), 8445, or 8467 of this title (or similar provision of law under any such retirement system other than the Civil Service Retirement System or the Federal Employees' Retirement System) has been issued, or for whom an election has been made under section 8339(j)(3) or 8417(b) of this title (or similar provision of law), or

(iii) who is otherwise entitled to an annuity or any portion of an annuity as a former spouse under a retirement system for Government employees,

except that such term shall not include any such unremarried former spouse of a former employee whose marriage was dissolved after the former employee's separation from the service (other than by retirement); and

(11) ''qualified clinical social worker'' means an individual—

(A) who is licensed or certified as a clinical social worker by the State in which such individual practices; or

(B) who, if such State does not provide for the licensing or certification of clinical social workers—

(i) is certified by a national professional organization offering certification of clinical social workers; or

(ii) meets equivalent requirements (as prescribed by the Office).

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 600; Pub. L. 90–83, §1(95), Sept. 11, 1967, 81 Stat. 219; Pub. L. 91–418, §§2, 3(b), Sept. 25, 1970, 84 Stat. 869; Pub. L. 93–160, §1(b), Nov. 27, 1973, 87 Stat. 635; Pub. L. 95–368, §2, Sept. 17, 1978, 92 Stat. 606; Pub. L. 95–454, title IX, §906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 95–583, §2, Nov. 2, 1978, 92 Stat. 2482; Pub. L. 96–54, §2(a)(52), Aug. 14, 1979, 93 Stat. 384; Pub. L. 96–70, title I, §1209(c), Sept. 27, 1979, 93 Stat. 463; Pub. L. 96–179, §2, Jan. 2, 1980, 93 Stat. 1299; Pub. L. 98–615, §3(1), Nov. 8, 1984, 98 Stat. 3202; Pub. L. 99–53, §1(a), June 17, 1985, 99 Stat. 93; Pub. L. 99–251, title I, §105(a), Feb. 27, 1986, 100 Stat. 15; Pub. L. 99–335, title II, §207(*l*), June 6, 1986, 100 Stat. 598; Pub. L. 99–556, title V,

§ 503, Oct. 27, 1986, 100 Stat. 3141; Pub. L. 100–679, § 13(c), Nov. 17, 1988, 102 Stat. 4071; Pub. L. 101–508, title VII, § 7202(*l*), Nov. 5, 1990, 104 Stat. 1388–339; Pub. L. 102–378, § 2(75), Oct. 2, 1992, 106 Stat. 1355.)

HISTORICAL AND REVISION NOTES

1966 ACT

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 3001.	Sept. 28, 1959, Pub. L. 86–382, § 2, 73 Stat. 709. July 8, 1963, Pub. L. 88–59, § 1, 77 Stat. 76. Mar. 17, 1964, Pub. L. 88–284, § 1(1)–(4), 78 Stat. 164. Aug. 31, 1964, Pub. L. 88–531, § 1, 78 Stat. 737.
.....	5 U.S.C. 3002(f) (1st sentence, less words between 1st and 2d commas).	July 1, 1960, Pub. L. 86–568, § 115(d) ''(f) (1st sentence, less words between 1st and 2d commas)'', 74 Stat. 303.

The definition of ''employee'' in section 2105 of this title is broad enough to cover the officers and employees covered by former section 3001 with the exception of a Member of Congress, the President, an individual employed by the government of the District of Columbia, an individual employed by Gallaudet College, a United States commissioner, and an Official Reporter of Debates of the Senate and an individual employed by him. The first five have been added in paragraphs (1)(B), (D), (E), (F), and (G). The latter are covered by the definition of ''Congressional employee'' in section 2107 of this title and are included by the addition of a Congressional employee in paragraph (1)(C).

In paragraph (1)(ii), the words ''the United States'' are substituted for ''a State of the United States or the District of Columbia''.

Paragraph (1)(iv) is added for clarity.

In paragraph (8), the words ''before January 1, 1964'' are substituted for ''on or before December 31, 1963''.

The definition of ''Commission'' in former section 3001(h) is omitted as unnecessary as the full title ''Civil Service Commission'' is set forth the first time it is used in a section.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 ACT

Section of title 5	*Source (U.S. Code)*	*Source (Statutes at Large)*
8901(5)	5 App.: 3001(d).	July 18, 1966, Pub. L. 89–504, § 601, 80 Stat. 303.

REFERENCES IN TEXT

Section 1(b) of the Act of August 25, 1958 (72 Stat. 838), referred to in par. (1)(H), is section 1(b) of Pub. L. 85–745 which is set out as a note under section 102 of Title 3, The President.

Section 4 of the Presidential Transition Act of 1963, referred to in par. (1)(I), is section 4 of Pub. L. 88–277, which is set out as a note under section 102 of Title 3.

The date of enactment of section 8903a of this title, referred to in par. (8)(B), means the date of enactment of Pub. L. 99–53, which enacted section 8903a and which was approved June 17, 1985.

AMENDMENTS

1992—Par. (3)(A)(iv). Pub. L. 102–378, § 2(75)(A), substituted ''8347(q)(2)'' for ''8347(p)(2)''.

Par. (10)(C)(ii). Pub. L. 102–378, § 2(75)(B), inserted comma after ''8341(h)''.

1990—Par. (3)(A)(iv). Pub. L. 101–508 added cl. (iv).

1988—Par. (1)(H), (I). Pub. L. 100–679 added subpars. (H) and (I).

1986—Par. (1)(E). Pub. L. 99–335, § 207(*l*)(1), amended subpar. (E) generally, substituting ''first employed'' for ''employed'' and inserting ''before October 1, 1987''.

Par. (3)(A). Pub. L. 99–335, § 207(*l*)(2), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''an employee who retires on an immediate annuity under subchapter III of chapter 83 of this title or another retirement system for employees of the Government, after 5 or more years of service or for disability''.

Par. (3)(B). Pub. L. 99–556 inserted ''(including a family member entitled to an amount under section 8442(b)(1)(A), whether or not such family member is entitled to an annuity under section 8442(b)(1)(B))''.

Par. (4). Pub. L. 99–335, § 207(*l*)(3), inserted ''or chapter 84''.

Par. (10)(C)(i). Pub. L. 99–335, § 207(*l*)(4), inserted ''or 8467'', ''or 8445'', and ''or the Federal Employees' Retirement System''.

Par. (10)(C)(ii). Pub. L. 99–335, § 207(*l*)(5), substituted ''8345(j), 8445, or 8467'' for ''or 8345(j)'' and inserted ''or the Federal Employees' Retirement System'' and ''or 8417(b)''.

Par. (11). Pub. L. 99–251 added par. (11).

1985—Par. (8). Pub. L. 99–53 amended par. (8) generally, designating existing provisions as subpar. (A) and adding subpar. (B).

1984—Par. (10). Pub. L. 98–615 added par. (10).

1980—Par. (5). Pub. L. 96–179, § 2(1), inserted ''dependent'' after ''unmarried'' in provisions preceding subpar. (A) and in provisions following subpar. (B), inserted ''or recognized natural child'' after ''child'' in subpar. (A), and substituted ''or foster child but only if the child;'' for '', foster child, or recognized natural child who'' in subpar. (B).

Par. (9). Pub. L. 96–179, § 2(2)–(4), added par. (9).

1979—Par. (1). Pub. L. 96–70 in cl. (ii) substituted provisions relating to an individual who was an employee for the purpose of this chapter on Sept. 30, 1979, by reason of service in an Executive agency, United States Postal Service, or Smithsonian Institution in area which was then known as Canal Zone for provisions relating to Panama Canal Zone.

Pub. L. 96–54 struck out cl. (G) which related to coverage of a United States Commissioner as an ''employee'', and redesignated cl. (H) as (G).

1978—Par. (1)(iv). Pub. L. 95–454 substituted ''Office of Personnel Management'' for ''Civil Service Commission''.

Par. (3)(A). Pub. L. 95–583 reduced period of service to 5 from 12 years.

Par. (8). Pub. L. 95–454 substituted ''Office'' for ''Commission''.

Pub. L. 95–368 substituted ''after December 31, 1978, and before January 1, 1980'' for ''before January 1, 1964''.

1973—Par. (1)(ii). Pub. L. 93–160 excluded from definition of ''employee'' persons who are not nationals of United States and whose permanent duty station is outside United States and Panama Canal Zone.

1970—Par. (1)(ii). Pub. L. 91–418, § 3(b), excluded from definition of ''employee'' a noncitizen employee whose permanent duty station is outside Panama Canal Zone.

Par. (3)(B). Pub. L. 91–418, § 2(a), redefined ''annuitant'' to be a member of a family who receives an immediate annuity as the survivor of an employee rather than as the survivor of an employee who dies after completing 5 or more years of service.

Par. (3)(D)(i). Pub. L. 91–418, § 2(b), redefined ''annuitant'' to be a member of a family who receives monthly compensation as the surviving beneficiary of an employee who dies as a result of a compensable injury or illness rather than as the survivor of an employee who, having completed 5 or more years of service, so dies.

CHANGE OF NAME

Gallaudet College, referred to in par. (1)(F), was redesignated Gallaudet University by section 101(a) of Pub. L. 99–371, which is classified to section 4301(a) of Title 20, Education.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by section 2(75)(A) of Pub. L. 102–378 effective Nov. 5, 1990, and amendment by section 2(75)(B) of Pub. L. 102–378 effective Oct. 2, 1992, see section 9(a), (b)(6) of Pub. L. 102–378, set out as a note under section 6303 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable with respect to any individual who, on or after Jan. 1, 1987, moves from employment in nonappropriated fund instrumentality of Department of Defense or Coast Guard, that is described in section 2105(c) of this title, to employment in Department or Coast Guard, that is not described in section 2105(c), or who moves from employment in Department or Coast Guard, that is not described in section 2105(c), to employment in nonappropriated fund instrumentality of Department or Coast Guard, that is described in section 2105(c), see section 7202(m)(1) of Pub. L. 101–508, set out as a note under section 2105 of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by Pub. L. 99–335 effective Jan. 1, 1987, see section 702(a) of Pub. L. 99–335, set out as an Effective Date note under section 8401 of this title.

Section 105(c) of Pub. L. 99–251 provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 8902 of this title] shall be effective with respect to contracts entered into or renewed for calendar years beginning after December 31, 1986.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–615 effective May 7, 1985, with enumerated exceptions, and applicable to any individual who is married to an employee or annuitant on or after that date, see section 4(a)(2) of Pub. L. 98–615, as amended, set out as a note under section 8341 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–179 effective Jan. 2, 1980, except that no benefits under this chapter that are made available by reason of amendment of this section and section 8341 of this title by Pub. L. 96–179 shall be payable for any period before Oct. 1, 1979, see section 5(a) of Pub. L. 96–179, set out as a note under section 8341 of this title.

EFFECTIVE DATE OF 1979 AMENDMENTS

Amendment by Pub. L. 96–70 effective Oct. 1, 1979, see section 3304 of Pub. L. 96–70, set out as an Effective Date note under section 3601 of Title 22, Foreign Relations and Intercourse.

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.

EFFECTIVE DATE OF 1978 AMENDMENTS

Amendment by Pub. L. 95–583 effective Nov. 2, 1978, see section 3 of Pub. L. 95–583, set out as a note under section 8706 of this title.

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

SHORT TITLE OF 1988 AMENDMENT

Pub. L. 100–654, §1, Nov. 14, 1988, 102 Stat. 3837, provided that: ''This Act [enacting sections 8440a, 8902a, 8905a, and 8906a of this title, amending sections 8902, 8903, 8905, 8909, and 8913 of this title, and enacting provisions set out as notes under sections 8902, 8902a, and 8906a of this title] may be cited as the 'Federal Employees Health Benefits Amendments Act of 1988'.''

SHORT TITLE OF 1986 AMENDMENT

Section 1 of Pub. L. 99–251 provided that: ''This Act [amending this section, sections 1103, 3502, 5334, 5924, 6312, 8332, 8339 to 8342, 8345, 8902, 8903, 8905, and 8909 of this title, and section 35 of Title 24, Hospitals and Asylums, enacting provisions set out as notes under this section and sections 7901, 8339, 8341, 8345, 8902, 8904, 8905, and 8909 of this title, and amending provisions set out as notes under sections 8341 and 8902 of this title] may be cited as the 'Federal Employees Benefits Improvement Act of 1986'.''

CONTINUED COVERAGE FOR INDIVIDUALS ENROLLED IN PLAN ADMINISTERED BY OFFICE OF THE COMPTROLLER OF THE CURRENCY OR OFFICE OF THRIFT SUPERVISION

Pub. L. 103–409, §5, Oct. 25, 1994, 108 Stat. 4232, provided that:

''(a) ENROLLMENT IN CHAPTER 89 PLAN.—For purposes of the administration of chapter 89 of title 5, United States Code, any period of enrollment under a health benefits plan administered by the Office of the Comptroller of the Currency or the Office of Thrift Supervision before the termination of such plans on January 7, 1995, shall be deemed to be a period of enrollment in a health benefits plan under chapter 89 of such title.

''(b) CONTINUED COVERAGE.—(1) Any individual who, on January 7, 1995, is covered by a health benefits plan administered by the Office of the Comptroller of the Currency or the Office of Thrift Supervision may enroll in an approved health benefits plan described under section 8903 or 8903a of title 5, United States Code—

''(A) either as an individual or for self and family, if such individual is an employee, annuitant, or former spouse as defined under section 8901 of such title; and

''(B) for coverage effective on and after January 8, 1995.

''(2) An individual who, on January 7, 1995, is entitled to continued coverage under a health benefits plan administered by the Office of the Comptroller of the Currency or the Office of Thrift Supervision—

''(A) shall be deemed to be entitled to continued coverage under section 8905a of title 5, United States Code, for the same period that would have been permitted under the plan administered by the Office of the Comptroller of the Currency or the Office of Thrift Supervision; and

''(B) may enroll in an approved health benefits plan described under section 8903 or 8903a of such title in accordance with section 8905a of such title for coverage effective on and after January 8, 1995.

''(3) An individual who, on January 7, 1995, is covered as an unmarried dependent child under a health benefits plan administered by the Office of the Comptroller of the Currency or the Office of Thrift Supervision and who is not a member of family as defined under section 8901(5) of title 5, United States Code—

''(A) shall be deemed to be entitled to continued coverage under section 8905a of such title as though the individual had, on January 7, 1995, ceased to meet the requirements for being considered an unmarried dependent child under chapter 89 of such title; and

''(B) may enroll in an approved health benefits plan described under section 8903 or 8903a of such title in accordance with section 8905a for continued coverage effective on and after January 8, 1995.

''(c) TRANSFERS TO THE EMPLOYEES HEALTH BENEFITS FUND.—The Office of the Comptroller of the Currency and the Office of Thrift Supervision shall transfer to the Employees Health Benefits Fund established under section 8909 of title 5, United States Code, amounts determined by the Director of the Office of Personnel Management, after consultation with the Office of the Comptroller of the Currency and the Office of Thrift Supervision, to be necessary to reimburse the Fund for the cost of providing benefits under this section not otherwise paid for by the individuals covered by this section. The amounts so transferred shall be held in the Fund and used by the Office in addition to amounts available under section 8906(g)(1) of such title.

''(d) ADMINISTRATION AND REGULATIONS.—The Office of Personnel Management—

''(1) shall administer the provisions of this section to provide for—

''(A) a period of notice and open enrollment for individuals affected by this section; and

''(B) no lapse of health coverage for individuals who enroll in a health benefits plan under chapter 89 of title 5, United States Code, in accordance with this section; and

''(2) may prescribe regulations to implement this section.''

CONTINUED COVERAGE UNDER CERTAIN FEDERAL EMPLOYEE BENEFIT PROGRAMS FOR CERTAIN EMPLOYEES OF SAINT ELIZABETHS HOSPITAL

For provisions relating to treatment of certain Federal employees of Saint Elizabeths Hospital under certain Federal employee benefit programs, see section 207(*o*) of Pub. L. 99–335, set out as a note under section 8331 of this title.

CROSS REFERENCES

Annual report to Congress by the Office of Personnel Management on the operation of this chapter, see section 1308 of this title.

United States magistrate judges and necessary clerical and secretarial assistants employed in the offices of such full-time magistrate judges deemed officers and employees in the Federal judicial branch within meaning of this chapter, see section 634 of Title 28, Judiciary and Judicial Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8902, 8903, 8903a, 8905a, 8906, 8909, 8913 of this title; title 40 section 214c; title 42 section 251.

§ 8902. Contracting authority

(a) The Office of Personnel Management may contract with qualified carriers offering plans described by section 8903 or 8903a of this title, without regard to section 5 of title 41 or other statute requiring competitive bidding. Each contract shall be for a uniform term of at least 1 year, but may be made automatically renewable from term to term in the absence of notice of termination by either party.

(b) To be eligible as a carrier for the plan described by section 8903(2) of this title, a company must be licensed to issue group health insurance in all the States and the District of Columbia.

(c) A contract for a plan described by section 8903(1) or (2) of this title shall require the carrier—

(1) to reinsure with other companies which elect to participate, under an equitable formula based on the total amount of their group health insurance benefit payments in the United States during the latest year for which the information is available, to be determined by the carrier and approved by the Office; or

(2) to allocate its rights and obligations under the contract among its affiliates which elect to participate, under an equitable formula to be determined by the carrier and the affiliates and approved by the Office.

(d) Each contract under this chapter shall contain a detailed statement of benefits offered and shall include such maximums, limitations, exclusions, and other definitions of benefits as the Office considers necessary or desirable.

(e) The Office may prescribe reasonable minimum standards for health benefits plans described by section 8903 or 8903a of this title and for carriers offering the plans. Approval of a plan may be withdrawn only after notice and opportunity for hearing to the carrier concerned without regard to subchapter II of chapter 5 and chapter 7 of this title. The Office may terminate the contract of a carrier effective at the end of the contract term, if the Office finds that at no time during the preceding two contract terms did the carrier have 300 or more employees and annuitants, exclusive of family members, enrolled in the plan.

(f) A contract may not be made or a plan approved which excludes an individual because of race, sex, health status, or, at the time of the first opportunity to enroll, because of age.

(g) A contract may not be made or a plan approved which does not offer to each employee, annuitant, family member, former spouse, or person having continued coverage under section 8905a of this title whose enrollment in the plan is ended, except by a cancellation of enrollment, a temporary extension of coverage during which he may exercise the option to convert, without evidence of good health, to a nongroup contract providing health benefits. An employee, annuitant, family member, former spouse, or person having continued coverage under section 8905a of this title who exercises this option shall pay the full periodic charges of the nongroup contract.

(h) The benefits and coverage made available under subsection (g) of this section are noncancelable by the carrier except for fraud, over-insurance, or nonpayment of periodic charges.

(i) Rates charged under health benefits plans described by section 8903 or 8903a of this title shall reasonably and equitably reflect the cost of the benefits provided. Rates under health benefits plans described by section 8903(1) and (2) of this title shall be determined on a basis which, in the judgment of the Office, is consistent with the lowest schedule of basic rates generally charged for new group health benefit plans issued to large employers. The rates determined for the first contract term shall be continued for later contract terms, except that they may be readjusted for any later term, based on past experience and benefit adjustments under the later contract. Any readjustment in rates shall be made in advance of the contract term in which they will apply and on a basis which, in the judgment of the Office, is consistent with the general practice of carriers which issue group health benefit plans to large employers.

(j) Each contract under this chapter shall require the carrier to agree to pay for or provide a health service or supply in an individual case if the Office finds that the employee, annuitant, family member, former spouse, or person having continued coverage under section 8905a of this title is entitled thereto under the terms of the contract.

(k)(1) When a contract under this chapter requires payment or reimbursement for services which may be performed by a clinical psychologist, optometrist, nurse midwife, nursing school administered clinic, or nurse practitioner/clinical specialist, licensed or certified as such under Federal or State law, as applicable, or by a qualified clinical social worker as defined in section 8901(11), an employee, annuitant, family member, former spouse, or person having con-

tinued coverage under section 8905a of this title covered by the contract shall be free to select, and shall have direct access to, such a clinical psychologist, qualified clinical social worker, optometrist, nurse midwife, nursing school administered clinic, or nurse practitioner/nurse clinical specialist without supervision or referral by another health practitioner and shall be entitled under the contract to have payment or reimbursement made to him or on his behalf for the services performed.

(2) The provisions of this subsection shall not apply to comprehensive medical plans as described in section 8903(4) of this title.

(*l*) The Office shall contract under this chapter for a plan described in section 8903(4) of this title with any qualified health maintenance carrier which offers such a plan. For the purpose of this subsection, ''qualified health maintenance carrier'' means any qualified carrier which is a qualified health maintenance organization within the meaning of section 1310(d)(1) of title XIII of the Public Health Service Act (42 U.S.C. 300c–9(d)).

(m)(1) The provisions of any contract under this chapter which relate to the nature or extent of coverage or benefits (including payments with respect to benefits) shall supersede and preempt any State or local law, or any regulation issued thereunder, which relates to health insurance or plans to the extent that such law or regulation is inconsistent with such contractual provisions.

(2)(A) Notwithstanding the provisions of paragraph (1) of this subsection, if a contract under this chapter provides for the provision of, the payment for, or the reimbursement of the cost of health services for the care and treatment of any particular health condition, the carrier shall provide, pay, or reimburse up to the limits of its contract for any such health service properly provided by any person licensed under State law to provide such service if such service is provided to an individual covered by such contract in a State where 25 percent or more of the population is located in primary medical care manpower shortage areas designated pursuant to section 332 of the Public Health Service Act (42 U.S.C. 254e).

(B) The provisions of subparagraph (A) shall not apply to contracts entered into providing prepayment plans described in section 8903(4) of this title.

(n) A contract for a plan described by section 8903(1), (2), or (3), or section 8903a, shall require the carrier—

(1) to implement hospitalization-cost-containment measures, such as measures—

(A) for verifying the medical necessity of any proposed treatment or surgery;

(B) for determining the feasibility or appropriateness of providing services on an outpatient rather than on an inpatient basis;

(C) for determining the appropriate length of stay (through concurrent review or otherwise) in cases involving inpatient care; and

(D) involving case management, if the circumstances so warrant; and

(2) to establish incentives to encourage compliance with measures under paragraph (1).

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 601; Pub. L. 93–246, §3, Jan. 31, 1974, 88 Stat. 4; Pub. L. 93–363, §1, July 30, 1974, 88 Stat. 398; Pub. L. 94–183, §2(43), Dec. 31, 1975, 89 Stat. 1059; Pub. L. 94–460, title I, §110(b), Oct. 8, 1976, 90 Stat. 1952; Pub. L. 95–368, §1, Sept. 17, 1978, 92 Stat. 606; Pub. L. 95–454, title IX, §906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 96–179, §3, Jan. 2, 1980, 93 Stat. 1299; Pub. L. 98–615, §3(2), Nov. 8, 1984, 98 Stat. 3203; Pub. L. 99–53, §2(a), June 17, 1985, 99 Stat. 94; Pub. L. 99–251, title I, §§105(b), 106(a)(3), Feb. 27, 1986, 100 Stat. 15, 16; Pub. L. 100–202, §101(m) [title VI, §626], Dec. 22, 1987, 101 Stat. 1329–390, 1329–430; Pub. L. 100–654, title II, §§201(b), 202(a), Nov. 14, 1988, 102 Stat. 3845; Pub. L. 101–508, title VII, §7002(a), Nov. 5, 1990, 104 Stat. 1388–329; Pub. L. 101–509, title IV, §1, Nov. 5, 1990, 104 Stat. 1421; Pub. L. 102–393, title V, §537(a), (b), Oct. 6, 1992, 106 Stat. 1765.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 3005.	Sept. 28, 1959, Pub. L. 86–382, §6, 73 Stat. 712. Mar. 17, 1964, Pub. L. 88–284, §1(7)–(9), 78 Stat. 165.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

REFERENCES IN TEXT

Section 1310(d)(1) of title XIII of the Public Health Service Act (42 U.S.C. 300c–9(d)), referred to in subsec. (*l*), probably is intended as a reference to section 300e–9(d) of Title 42, The Public Health and Welfare.

CODIFICATION

Another section 1 of title IV of Pub. L. 101–509, 104 Stat. 1416, enacted sections 2701 to 2706 of Title 44, Public Printing and Documents, and provisions set out as a note under section 2102 of Title 44.

AMENDMENTS

1992—Pub. L. 102–393 amended subsec. (k) generally. Prior to amendment, subsec. (k) read as follows:

''(1) When a contract under this chapter requires payment or reimbursement for services which may be performed by a clinical psychologist, optometrist, nurse midwife, or nurse practitioner/clinical specialist, licensed or certified as such under Federal or State law, as applicable, or by a qualified clinical social worker as defined in section 8901(11), an employee, annuitant, family member, former spouse, or person having continued coverage under section 8905a of this title covered by the contract shall be free to select, and shall have direct access to, such a clinical psychologist, qualified clinical social worker, optometrist, nurse midwife, or nurse practitioner/nurse clinical specialist without supervision or referral by another health practitioner and shall be entitled under the contract to have payment or reimbursement made to him or on his behalf for the services performed.

''(2) The provisions of this subsection shall not apply to group practice prepayment plans.''

1990—Subsec. (k)(1). Pub. L. 101–509 substituted ''performed by a clinical psychologist, optometrist, nurse midwife, or nurse practitioner/clinical specialist'' for ''performed by a clinical psychologist or optometrist'' and ''qualified clinical social worker, optometrist, nurse midwife, or nurse practitioner/nurse clinical specialist'' for ''qualified clinical social worker or optometrist''.

Subsec. (n). Pub. L. 101–508 added subsec. (n).

1988—Subsecs. (g), (j), (k)(1). Pub. L. 100–654 substituted ''former spouse, or person having continued coverage under section 8905a of this title'' for ''or former spouse'' wherever appearing.

1987—Subsec. (k)(1). Pub. L. 100–202, § 101(m) [title VI, § 626(1), (2)], inserted ''or by a qualified clinical social worker as defined in section 8901(11),'' after ''as applicable,'', and '', qualified clinical social worker'' after ''such a clinical psychologist''.

Subsec. (k)(2), (3). Pub. L. 100–202, § 101(m) [title VI, § 626(3)], redesignated par. (3) as (2) and struck out former par. (2) which read as follows: ''When a contract under this chapter requires payment or reimbursement for services which may be performed by a qualified clinical social worker, an employee, annuitant, family member, or former spouse covered by the contract shall be entitled under the contract to have payment or reimbursement made to him or on his behalf for the services performed. As a condition for the payment or reimbursement, the contract—

''(A) may require that the services be performed pursuant to a referral by a psychiatrist; but

''(B) may not require that the services be performed under the supervision of a psychiatrist or other health practitioner.''

Subsec. (m)(2)(A). Pub. L. 100–202, § 101(m) [title VI, § 626(4)], struck out ''This paragraph shall apply with respect to a qualified clinical social worker covered by subsection (k)(2) of this section without regard to whether such contract contains the requirement authorized by clause (i) of the second sentence of subparagraph (A) of such subsection (k)(2).''

1986—Subsec. (k). Pub. L. 99–251, § 105(b), designated existing provisions as par. (1), struck out last sentence providing that the provisions of this subsection shall not apply to group practice prepayment plans, and added pars. (2) and (3).

Subsec. (m)(2)(A). Pub. L. 99–251, § 106(a)(3), inserted last sentence relating to applicability of this paragraph with respect to a qualified clinical social worker covered by subsection (k)(2) of this section.

1985—Subsecs. (a), (e), (i). Pub. L. 99–53 inserted reference to section 8903a of this title.

1984—Subsec. (g). Pub. L. 98–615, § 3(2)(A), substituted ''employee, annuitant, family member, or former spouse'' for ''employee or annuitant'' in two places.

Subsecs. (j), (k). Pub. L. 98–615, § 3(2)(B), substituted ''family member, or former spouse'' for ''or family member''.

1980—Subsec. (m)(2)(A). Pub. L. 96–179 substituted ''in a State where 25 percent or more of the population is located in primary medical care manpower shortage areas designated pursuant to section 332 of the Public Health Service Act (42 U.S.C. 254e)'' for ''who is a member of a medically underserved population (within the meaning of section 1302(7) of the Public Health Service Act (42 U.S.C. 300e–17))''.

1978—Subsecs. (a), (c) to (e), (i), (j), (*l*). Pub. L. 95–454 substituted ''Office of Personnel Management'' for ''Civil Service Commission'' and ''Office'' for ''Commission'' wherever appearing.

Subsec. (m). Pub. L. 95–368 added subsec. (m).

1976—Subsec. (*l*). Pub. L. 94–460 added subsec. (*l*).

1975—Subsecs. (j), (k). Pub. L. 94–183 redesignated subsec. (j), added by Pub. L. 93–363 and relating to services performed by a clinical psychologist or optometrist, as (k).

1974—Subsec. (j). Pub. L. 93–363 added subsec. (j) covering services performed by a clinical psychologist or optometrist.

Pub. L. 93–246 added subsec. (j) requiring the carrier to pay for or provide a health service or supply in specified cases.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 537(c) of Pub. L. 102–393 provided that: ''The amendments made by this section [amending this section] shall be effective with respect to contract years beginning after the date of enactment of this Act [Oct. 6, 1992].''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 7002(g) of Pub. L. 101–508 provided that: ''Except as provided in subsection (f) [set out as a note under section 8904 of this title], the amendments made by this section [amending this section, sections 8904, 8909, and 8910 of this title, and provisions set out as a note under section 8906 of this title] shall apply with respect to contract years beginning on or after January 1, 1991.''

EFFECTIVE DATE OF 1988 AMENDMENT

Section 203 of title II of Pub. L. 100–654 provided that: ''(a) IN GENERAL.—The amendments made by this title [enacting section 8905a of this title and amending this section and sections 8903, 8905, and 8909 of this title] shall apply with respect to—

''(1) any calendar year beginning, and contracts entered into or renewed for any calendar year beginning, after the end of the 9-month period beginning on the date of the enactment of this Act [Nov. 14, 1988]; and

''(2) any qualifying event occurring on or after the first day of the first calendar year beginning after the end of the 9-month period referred to in paragraph (1).

''(b) DEFINITION.—For the purpose of this section, the term 'qualifying event' means any of the following events:

''(1) A separation from Government service.

''(2) A divorce, annulment, or legal separation.

''(3) Any change in circumstances which causes an individual to become ineligible to be considered an unmarried dependent child under chapter 89 of such title [section 8901 et seq. of this title].''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 105(b) of Pub. L. 99–251 effective with respect to contracts entered into or renewed for calendar years beginning after Dec. 31, 1986, see section 105(c) of Pub. L. 99–251, set out as a note under section 8901 of this title.

Section 106(b) of Pub. L. 99–251 provided that: ''The amendments made by subsection (a) [amending this section and provisions set out as notes under this section] shall take effect with respect to services provided after December 31, 1984.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–615 effective May 7, 1985, with enumerated exceptions, and applicable to any individual who is married to an employee or annuitant on or after that date, see section 4(a)(2) of Pub. L. 98–615, as amended, set out as a note under section 8341 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 5(b) of Pub. L. 96–179, as amended by Pub. L. 99–251, title I, § 106(a)(2), Feb. 27, 1986, 100 Stat. 16, provided that: ''The amendments made by section 3 [amending this section] shall apply to services provided after December 31, 1979, under any contract entered into or renewed after December 31, 1979.''

EFFECTIVE DATE OF 1978 AMENDMENTS

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

Section 3 of Pub. L. 95–368, as amended by Pub. L. 99–251, title I, § 106(a)(1), Feb. 27, 1986, 100 Stat. 16, provided that: ''The provisions of section 8902(m)(2) of title 5, United States Code, as added by the first section of this Act, shall apply to services provided under any contract entered into or renewed after December 31, 1979.''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–460 effective Oct. 8, 1976, see section 118 of Pub. L. 94–460, set out as a note under section 300e of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1974 AMENDMENTS

Section 2 of Pub. L. 93–363 provided that: ''The amendment made by this Act [amending this section]

shall become effective with respect to any contract entered into or renewed on or after the date of enactment of this Act [July 30, 1974].''

Section 4(c) of Pub. L. 93–246 provided that: ''Section 3 [amending this section] shall become effective with respect to any contract entered into or renewed on or after the date of enactment of this Act [Jan. 31, 1974].''

RATE REDUCTION FOR MEDICARE ELIGIBLE FEDERAL ANNUITANTS

Pub. L. 100–360, title IV, §422, July 1, 1988, 102 Stat. 810, which directed the Office of Personnel Management to reduce the rates charged medicare eligible individuals participating in health benefit plans by a prorated amount, was repealed by Pub. L. 101–234, title III, §301(a), Dec. 13, 1989, 103 Stat. 1985.

AUTHORITY OF CARRIER TO CONTRACT FOR COMPREHENSIVE MEDICAL SERVICES FROM A GROUP PRACTICE UNIT OR ORGANIZATION

Pub. L. 91–515, title IV, §401, Oct. 30, 1970, 84 Stat. 1309, authorized Secretary of Health, Education, and Welfare to permit any carrier which is a party to a contract entered into under this chapter or under the Retired Federal Employees Health Benefits Act, or which participates in carrying out of any such contract, to issue in any State contracts entitling any person as a beneficiary to receive comprehensive medical services from a group practice unit or organization with which such carrier has contracted or otherwise arranged for the provision of such services.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8902a, 8910, 8913 of this title.

§ 8902a. Debarment and other sanctions

(a)(1) For the purpose of this section—

(A) the term ''provider of health care services or supplies'' or ''provider'' means a physician, hospital, or other individual or entity which furnishes health care services or supplies;

(B) the term ''individual covered under this chapter'' or ''covered individual'' means an employee, annuitant, family member, or former spouse covered by a health benefits plan described by section 8903 or 8903a; and

(C) an individual or entity shall be considered to have been ''convicted'' of a criminal offense if—

(i) a judgment of conviction for such offense has been entered against the individual or entity by a Federal, State, or local court;

(ii) there has been a finding of guilt against the individual or entity by a Federal, State, or local court with respect to such offense;

(iii) a plea of guilty or nolo contendere by the individual or entity has been accepted by a Federal, State, or local court with respect to such offense; or

(iv) in the case of an individual, the individual has entered a first offender or other program pursuant to which a judgment of conviction for such offense has been withheld;

without regard to the pendency or outcome of any appeal (other than a judgment of acquittal based on innocence) or request for relief on behalf of the individual or entity.

(2)(A) Notwithstanding section 8902(j) or any other provision of this chapter, if, under subsection (b) or (c), a provider is barred from participating in the program under this chapter, no payment may be made by a carrier pursuant to any contract under this chapter (either to such provider or by reimbursement) for any service or supply furnished by such provider during the period of the debarment.

(B) Each contract under this chapter shall contain such provisions as may be necessary to carry out subparagraph (A) and the other provisions of this section.

(b) The Office of Personnel Management may bar the following providers of health care services or supplies from participating in the program under this chapter:

(1) Any provider that has been convicted, under Federal or State law, of a criminal offense relating to fraud, corruption, breach of fiduciary responsibility, or other financial misconduct in connection with the delivery of a health care service or supply.

(2) Any provider that has been convicted, under Federal or State law, of a criminal offense relating to neglect or abuse of patients in connection with the delivery of a health care service or supply.

(3) Any provider that has been convicted, under Federal or State law, in connection with the interference with or obstruction of an investigation or prosecution of a criminal offense described in paragraph (1) or (2).

(4) Any provider that has been convicted, under Federal or State law, of a criminal offense relating to the unlawful manufacture, distribution, prescription, or dispensing of a controlled substance.

(5) Any provider—

(A) whose license to provide health care services or supplies has been revoked, suspended, restricted, or not renewed, by a State licensing authority for reasons relating to the provider's professional competence, professional performance, or financial integrity; or

(B) that surrendered such a license while a formal disciplinary proceeding was pending before such an authority, if the proceeding concerned the provider's professional competence, professional performance, or financial integrity.

(c) Whenever the Office determines—

(1) in connection with a claim presented under this chapter, that a provider of health care services or supplies—

(A) has charged for health care services or supplies that the provider knows or should have known were not provided as claimed; or

(B) has charged for health care services or supplies in an amount substantially in excess of such provider's customary charges for such services or supplies, or charged for health care services or supplies which are substantially in excess of the needs of the covered individual or which are of a quality that fails to meet professionally recognized standards for such services or supplies;

(2) that a provider of health care services or supplies has knowingly made, or caused to be made, any false statement or misrepresentation of a material fact which is reflected in a claim presented under this chapter; or

(3) that a provider of health care services or supplies has knowingly failed to provide any information required by a carrier or by the Office to determine whether a payment or reimbursement is payable under this chapter or the amount of any such payment or reimbursement;

the Office may, in addition to any other penalties that may be prescribed by law, and after consultation with the Attorney General, impose a civil monetary penalty of not more than $10,000 for any item or service involved. In addition, such a provider shall be subject to an assessment of not more than twice the amount claimed for each such item or service. In addition, the Office may make a determination in the same proceeding to bar such provider from participating in the program under this chapter.

(d) The Office—

(1) may not initiate any debarment proceeding against a provider, based on such provider's having been convicted of a criminal offense, later than 6 years after the date on which such provider is so convicted; and

(2) may not initiate any action relating to a civil penalty, assessment, or debarment under this section, in connection with any claim, later than 6 years after the date the claim is presented, as determined under regulations prescribed by the Office.

(e) In making a determination relating to the appropriateness of imposing or the period of any debarment under this section, or the appropriateness of imposing or the amount of any civil penalty or assessment under this section, the Office shall take into account—

(1) the nature of any claims involved and the circumstances under which they were presented;

(2) the degree of culpability, history of prior offenses or improper conduct of the provider involved; and

(3) such other matters as justice may require.

(f)(1) The debarment of a provider under subsection (b) or (c) shall be effective at such time and upon such reasonable notice to such provider, and to carriers and covered individuals, as may be specified in regulations prescribed by the Office.

(2)(A) Except as provided in subparagraph (B), a debarment shall be effective with respect to any health care services or supplies furnished by a provider on or after the effective date of such provider's debarment.

(B) A debarment shall not apply with respect to inpatient institutional services furnished to an individual who was admitted to the institution before the date the debarment would otherwise become effective until the passage of 30 days after such date, unless the Office determines that the health or safety of the individual receiving those services warrants that a shorter period, or that no such period, be afforded.

(3) Any notice referred to in paragraph (1) shall specify the date as of which debarment becomes effective and the minimum period of time for which such debarment is to remain effective.

(4)(A) A provider barred from participating in the program under this chapter may, after the expiration of the minimum period of debarment referred to in paragraph (3), apply to the Office, in such manner as the Office may by regulation prescribe, for termination of the debarment.

(B) The Office may—

(i) terminate the debarment of a provider, pursuant to an application filed by such provider after the end of the minimum debarment period, if the Office determines, based on the conduct of the applicant, that—

(I) there is no basis under subsection (b) or (c) for continuing the debarment; and

(II) there are reasonable assurances that the types of actions which formed the basis for the original debarment have not recurred and will not recur; or

(ii) notwithstanding any provision of subparagraph (A), terminate the debarment of a provider, pursuant to an application filed by such provider before the end of the minimum debarment period, if the Office determines that—

(I) based on the conduct of the applicant, the requirements of subclauses (I) and (II) of clause (i) have been met; and

(II) early termination under this clause is warranted based on the fact that the provider is the sole community provider or the sole source of essential specialized services in a community, or other similar circumstances.

(5) The Office shall—

(A) promptly notify the appropriate State or local agency or authority having responsibility for the licensing or certification of a provider barred from participation in the program under this chapter of the fact of the debarment, as well as the reasons for such debarment;

(B) request that appropriate investigations be made and sanctions invoked in accordance with applicable law and policy; and

(C) request that the State or local agency or authority keep the Office fully and currently informed with respect to any actions taken in response to the request.

(6) The Office shall, upon written request and payment of a reasonable charge to defray the cost of complying with such request, furnish a current list of any providers barred from participating in the program under this chapter, including the minimum period of time remaining under the terms of each provider's debarment.

(g)(1) The Office may not make a determination under subsection (b) or (c) adverse to a provider of health care services or supplies until such provider has been given written notice and an opportunity for a hearing on the record. A provider is entitled to be represented by counsel, to present witnesses, and to cross-examine witnesses against the provider in any such hearing.

(2) Notwithstanding section 8912, any person adversely affected by a final decision under paragraph (1) may obtain review of such decision in the United States Court of Appeals for the Federal Circuit. A written petition requesting that the decision be modified or set aside must be filed within 60 days after the date on which such person is notified of such decision.

(3) Matters that were raised or that could have been raised in a hearing under paragraph (1) or

an appeal under paragraph (2) may not be raised as a defense to a civil action by the United States to collect a penalty or assessment imposed under this section.

(h) A civil action to recover civil monetary penalties or assessments under subsection (c) shall be brought by the Attorney General in the name of the United States, and may be brought in the United States district court for the district where the claim involved was presented or where the person subject to the penalty resides. Amounts recovered under this section shall be paid to the Office for deposit into the Employees Health Benefits Fund.

(i) The Office shall prescribe regulations under which, with respect to services or supplies furnished by a debarred provider to a covered individual during the period of such provider's debarment, payment or reimbursement under this chapter may be made, notwithstanding the fact of such debarment, if such individual did not know or could not reasonably be expected to have known of the debarment. In any such instance, the carrier involved shall take appropriate measures to ensure that the individual is informed of the debarment and the minimum period of time remaining under the terms of the debarment.

(Added Pub. L. 100–654, title I, §101(a), Nov. 14, 1988, 102 Stat. 3837.)

EFFECTIVE DATE; PRIOR CONDUCT

Section 102 of title I of Pub. L. 100–654 provided that:

''(a) APPLICABILITY.—The amendments made by this title [enacting this section] shall be effective with respect to any calendar year beginning, and contracts entered into or renewed for any calendar year beginning, after the date of the enactment of this Act [Nov. 14, 1988].

''(b) PRIOR CONDUCT NOT TO BE CONSIDERED.—In carrying out section 8902a of title 5, United States Code, as added by this title, no debarment, civil monetary penalty, or assessment may be imposed under such section based on any criminal or other conduct occurring before the beginning of the first calendar year which begins after the date of the enactment of this Act [Nov. 14, 1988].''

§ 8903. Health benefits plans

The Office of Personnel Management may contract for or approve the following health benefits plans:

(1) SERVICE BENEFIT PLAN.—One Government-wide plan, offering two levels of benefits, under which payment is made by a carrier under contracts with physicians, hospitals, or other providers of health services for benefits of the types described by section 8904(1) of this title given to employees, annuitants, members of their families, former spouses, or persons having continued coverage under section 8905a of this title, or, under certain conditions, payment is made by a carrier to the employee, annuitant, family member, former spouse, or person having continued coverage under section 8905a of this title.

(2) INDEMNITY BENEFIT PLAN.—One Government-wide plan, offering two levels of benefits, under which a carrier agrees to pay certain sums of money, not in excess of the actual expenses incurred, for benefits of the types described by section 8904(2) of this title.

(3) EMPLOYEE ORGANIZATION PLANS.—Employee organization plans which offer benefits of the types referred to by section 8904(3) of this title, which are sponsored or underwritten, and are administered, in whole or substantial part, by employee organizations described in section 8901(8)(A) of this title, which are available only to individuals, and members of their families, who at the time of enrollment are members of the organization.

(4) COMPREHENSIVE MEDICAL PLANS.—

(A) GROUP-PRACTICE PREPAYMENT PLANS.—Group-practice prepayment plans which offer health benefits of the types referred to by section 8904(4) of this title, in whole or in substantial part on a prepaid basis, with professional services thereunder provided by physicians practicing as a group in a common center or centers. The group shall include at least 3 physicians who receive all or a substantial part of their professional income from the prepaid funds and who represent 1 or more medical specialties appropriate and necessary for the population proposed to be served by the plan.

(B) INDIVIDUAL-PRACTICE PREPAYMENT PLANS.—Individual-practice prepayment plans which offer health services in whole or substantial part on a prepaid basis, with professional services thereunder provided by individual physicians who agree, under certain conditions approved by the Office, to accept the payments provided by the plans as full payment for covered services given by them including, in addition to in-hospital services, general care given in their offices and the patients' homes, out-of-hospital diagnostic procedures, and preventive care, and which plans are offered by organizations which have successfully operated similar plans before approval by the Office of the plan in which employees may enroll.

(C) MIXED MODEL PREPAYMENT PLANS.—Mixed model prepayment plans which are a combination of the type of plans described in subparagraph (A) and the type of plans described in subparagraph (B).

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 602; Pub. L. 95–454, title IX, §906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 98–615, §3(3), Nov. 8, 1984, 98 Stat. 3203; Pub. L. 99–53, §2(b), June 17, 1985, 99 Stat. 94; Pub. L. 99–251, title I, §§102, 111, Feb. 27, 1986, 100 Stat. 14, 19; Pub. L. 100–654, title II, §202(b), Nov. 14, 1988, 102 Stat. 3845.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 3003.	Sept. 28, 1959, Pub. L. 86–382, §4, 73 Stat. 711. July 8, 1963, Pub. L. 88–59, §1(b), 77 Stat. 77.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1988—Par. (1). Pub. L. 100–654 substituted ''former spouses, or persons having continued coverage under section 8905a of this title,'' for ''or former spouses,'' and ''former spouse, or person having continued coverage

under section 8905a of this title.'' for ''or former spouse.''

1986—Par. (4)(A). Pub. L. 99–251, § 102, amended second sentence generally, substituting ''at least 3 physicians'' for ''physicians representing at least three major medical specialties'' and inserted ''and who represent 1 or more medical specialties appropriate and necessary for the population proposed to be served by the plan''.

Par. (4)(C). Pub. L. 99–251, § 111, added subpar. (C).

1985—Par. (3). Pub. L. 99–53 inserted ''described in section 8901(8)(A) of this title'' after ''employee organizations''.

1984—Par. (1). Pub. L. 98–615, § 3(3), substituted ''employees, annuitants, members of their families, or former spouses'' for ''employees or annuitants, or members of their families'' and ''employee, annuitant, family member, or former spouse'' for ''employee or annuitant or member of his family''.

1978—Pub. L. 95–454 substituted ''Office of Personnel Management'' and ''Office'' for ''Civil Service Commission'' and ''Commission'', respectively, wherever appearing.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–654 applicable with respect to any calendar year beginning, and contracts entered into or renewed for any calendar year beginning, after end of 9-month period beginning Nov. 14, 1988, and with respect to any qualifying event occurring on or after first day of first calendar year beginning after end of such 9-month period, see section 203 of Pub. L. 100–654, set out as a note under section 8902 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–615 effective May 7, 1985, with enumerated exceptions, and applicable to any individual who is married to an employee or annuitant on or after that date, see section 4(a)(2) of Pub. L. 98–615, as amended, set out as a note under section 8341 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8901, 8902, 8902a, 8903a, 8904, 8905, 8907, 8908, 8909, 8910, 8913 of this title; title 42 section 1395s.

§ 8903a. Additional health benefits plans

(a) In addition to any plan under section 8903 of this title, the Office of Personnel Management may contract for or approve one or more health benefits plans under this section.

(b) A plan under this section may not be contracted for or approved unless it—

(1) is sponsored or underwritten, and administered, in whole or substantial part, by an employee organization described in section 8901(8)(B) of this title;

(2) offers benefits of the types named by paragraph (1) or (2) of section 8904 of this title or both;

(3) provides for benefits only by paying for, or providing reimbursement for, the cost of such benefits (as provided for under paragraph (1) or (2) of section 8903 of this title) or a combination thereof; and

(4) is available only to individuals who, at the time of enrollment, are full members of the organization and to members of their families.

(c) A contract for a plan approved under this section shall require the carrier—

(1) to enter into an agreement approved by the Office with an underwriting subcontractor licensed to issue group health insurance in all the States and the District of Columbia; or

(2) to demonstrate ability to meet reasonable minimum financial standards prescribed by the Office.

(d) For the purpose of this section, an individual shall be considered a full member of an organization if such individual is eligible to exercise all rights and privileges incident to full membership in such organization (determined without regard to the right to hold elected office).

(Added Pub. L. 99–53, § 1(b)(1), June 17, 1985, 99 Stat. 93.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8901, 8902, 8902a, 8905, 8907, 8908, 8909, 8910, 8913 of this title; title 42 section 1395s.

§ 8904. Types of benefits

(a) The benefits to be provided under plans described by section 8903 of this title may be of the following types:

(1) SERVICE BENEFIT PLAN.—

(A) Hospital benefits.
(B) Surgical benefits.
(C) In-hospital medical benefits.
(D) Ambulatory patient benefits.
(E) Supplemental benefits.
(F) Obstetrical benefits.

(2) INDEMNITY BENEFIT PLAN.—

(A) Hospital care.
(B) Surgical care and treatment.
(C) Medical care and treatment.
(D) Obstetrical benefits.
(E) Prescribed drugs, medicines, and prosthetic devices.
(F) Other medical supplies and services.

(3) EMPLOYEE ORGANIZATION PLANS.—Benefits of the types named under paragraph (1) or (2) of this subsection or both.

(4) COMPREHENSIVE MEDICAL PLANS.—Benefits of the types named under paragraph (1) or (2) of this subsection or both.

All plans contracted for under paragraphs (1) and (2) of this subsection shall include benefits both for costs associated with care in a general hospital and for other health services of a catastrophic nature.

(b)(1)(A) A plan, other than a prepayment plan described in section 8903(4) of this title, may not provide benefits, in the case of any retired enrolled individual who is age 65 or older and is not covered to receive Medicare hospital and insurance benefits under part A of title XVIII of the Social Security Act (42 U.S.C. 1395c et seq.), to pay a charge imposed by any health care provider, for inpatient hospital services which are covered for purposes of benefit payments under this chapter and part A of title XVIII of the Social Security Act, to the extent that such charge exceeds applicable limitations on hospital charges established for Medicare purposes under section 1886 of the Social Security Act (42 U.S.C. 1395ww). Hospital providers who have in force participation agreements with the Secretary of Health and Human Services consistent with sec-

tions 1814(a) and 1866 of the Social Security Act (42 U.S.C. 1395f(a) and 1395cc), whereby the participating provider accepts Medicare benefits as full payment for covered items and services after applicable patient copayments under section 1813 of such Act (42 U.S.C. 1395e) have been satisfied, shall accept equivalent benefit payments and enrollee copayments under this chapter as full payment for services described in the preceding sentence. The Office of Personnel Management shall notify the Secretary of Health and Human Services if a hospital is found to knowingly and willfully violate this subsection on a repeated basis and the Secretary may invoke appropriate sanctions in accordance with section 1866(b)(2) of the Social Security Act (42 U.S.C. 1395cc(b)(2)) and applicable regulations.

(B)(i) A plan, other than a prepayment plan described in section 8903(4), may not provide benefits, in the case of any retired enrolled individual who is age 65 or older and is not entitled to Medicare supplementary medical insurance benefits under part B of title XVIII of the Social Security Act (42 U.S.C. 1395j et seq.), to pay a charge imposed for physicians' services (as defined in section 1848(j) of such Act, 42 U.S.C. 1395w–4(j)) which are covered for purposes of benefit payments under this chapter and under such part, to the extent that such charge exceeds the fee schedule amount under section 1848(a) of such Act (42 U.S.C. 1395w–4(a)).

(ii) Physicians and suppliers who have in force participation agreements with the Secretary of Health and Human Services consistent with section 1842(h)(1) of such Act (42 U.S.C. 1395u(h)(1)), whereby the participating provider accepts Medicare benefits (including allowable deductible and coinsurance amounts) as full payment for covered items and services shall accept equivalent benefit and enrollee cost-sharing under this chapter as full payment for services described in clause (i). Physicians and suppliers who are nonparticipating physicians and suppliers for purposes of part B of title XVIII of such Act shall not impose charges that exceed the limiting charge under section 1848(g) of such Act (42 U.S.C. 1395w–4(g)) with respect to services described in clause (i) provided to enrollees described in such clause. The Office of Personnel Management shall notify a physician or supplier who is found to have violated this clause and inform them of the requirements of this clause and sanctions for such a violation. The Office of Personnel Management shall notify the Secretary of Health and Human Services if a physician or supplier is found to knowingly and willfully violate this clause on a repeated basis and the Secretary of Health and Human Services may invoke appropriate sanctions in accordance with sections 1128A(a) and 1848(g)(1) of such Act (42 U.S.C. 1320a–7a(a), 1395w–4(g)(1)) and applicable regulations.

(C) If the Secretary of Health and Human Services determines that a violation of this subsection warrants excluding a provider from participation for a specified period under title XVIII of the Social Security Act, the Office shall enforce a corresponding exclusion of such provider for purposes of this chapter.

(2) Notwithstanding any other provision of law, the Secretary of Health and Human Services and the Director of the Office of Personnel Management, and their agents, shall exchange any information necessary to implement this subsection.

(3)(A) Not later than December 1, 1991, and periodically thereafter, the Secretary of Health and Human Services (in consultation with the Director of the Office of Personnel Management) shall supply to carriers of plans described in paragraphs (1) through (3) of section 8903 the Medicare program information necessary for them to comply with paragraph (1).

(B) For purposes of this paragraph, the term ''Medicare program information'' includes (i) the limitations on hospital charges established for Medicare purposes under section 1886 of the Social Security Act (42 U.S.C. 1395ww) and the identity of hospitals which have in force agreements with the Secretary of Health and Human Services consistent with section 1814(a) and 1866 of the Social Security Act (42 U.S.C. 1395f(a) and 1395cc), and (ii) the fee schedule amounts and limiting charges for physicians' services established under section 1848 of such Act (42 U.S.C. 1395w–4) and the identity of participating physicians and suppliers who have in force agreements with such Secretary under section 1842(h) of such Act (42 U.S.C. 1395u(h)).

(4) The Director of the Office of Personnel Management shall enter into an arrangement with the Secretary of Health and Human Services, to be effective before the first day of the fifth month that begins before each contract year, under which—

(A) physicians and suppliers (whether or not participating) under the Medicare program will be notified of the requirements of paragraph (1)(B);

(B) enforcement procedures will be in place to carry out such paragraph (including enforcement of protections against overcharging of beneficiaries); and

(C) Medicare program information described in paragraph (3)(B)(ii) will be supplied to carriers under paragraph (3)(A).

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 603; Pub. L. 101–508, title VII, §7002(f)(1), Nov. 5, 1990, 104 Stat. 1388–330; Pub. L. 102–378, §2(76), Oct. 2, 1992, 106 Stat. 1355; Pub. L. 103–66, title XI, §11003(a), Aug. 10, 1993, 107 Stat. 409.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 3004.	Sept. 28, 1959, Pub. L. 86–382, §5, 73 Stat. 712.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (b)(1), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XVIII of the Act is classified generally to subchapter XVIII (§1395 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. Parts A and B of title XVIII of the Act are classified generally to part A (§1395c et seq.) and part B (§1395j et seq.), respectively, of subchapter XVIII of chapter 7 of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

1993—Subsec. (b)(1). Pub. L. 103–66, § 11003(a)(1), designated existing provisions as subpar. (A) and added subpars. (B) and (C).

Subsec. (b)(3)(B). Pub. L. 103–66, § 11003(a)(2), inserted cl. (i) designation and added cl. (ii).

Subsec. (b)(4). Pub. L. 103–66, § 11003(a)(3), added par. (4).

1992—Subsec. (a). Pub. L. 102–378 substituted ''this subsection'' for ''this section'' in pars. (3) and (4) and in last sentence.

1990—Pub. L. 101–508 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1993 AMENDMENT

Section 11003(b) of Pub. L. 103–66 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to contract years beginning on or after January 1, 1995.''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 7002(f)(2) of Pub. L. 101–508 provided that: ''The amendments made by this subsection [amending this section] shall apply with respect to contract years beginning on or after January 1, 1992.''

MENTAL HEALTH, ALCOHOLISM, AND DRUG ADDICTION BENEFITS; CONGRESSIONAL FINDINGS; SENSE OF CONGRESS

Pub. L. 99–251, title I, § 107, Feb. 27, 1986, 100 Stat. 16, provided that:

''(a) FINDINGS.—The Congress finds that—

''(1) the treatment of mental illness, alcoholism, and drug addiction are basic health care services which are needed by approximately 40,000,000 Americans each year;

''(2) treatment of mental illness, alcoholism, and drug addiction is increasingly successful;

''(3) timely and appropriate treatment of mental illness, alcoholism, and drug addiction is cost effective in terms of restored productivity, reduced utilization of other health services, and reduced social dependence; and

''(4) mental illness is a problem of grave concern to the people of the United States and is widely but unnecessarily feared and misunderstood.

''(b) SENSE OF THE CONGRESS.—It is the sense of the Congress—

''(1) that participants in the Federal employees health benefits program should receive adequate benefits coverage for treatment of mental illness, alcoholism, and drug addiction; and

''(2) that the Office of Personnel Management should encourage participating health benefits plans to provide adequate benefits relating to treatment of mental illness, alcoholism, and drug addiction (including benefits relating to coverage for inpatient and outpatient treatment and catastrophic protection benefits).''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8903, 8903a of this title.

§ 8905. Election of coverage

(a) An employee may enroll in an approved health benefits plan described by section 8903 or 8903a of this title either as an individual or for self and family.

(b) An annuitant who at the time he becomes an annuitant was enrolled in a health benefits plan under this chapter—

(1) as an employee for a period of not less than—

(A) the 5 years of service immediately before retirement;

(B) the full period or periods of service between the last day of the first period, as prescribed by regulations of the Office of Personnel Management, in which he is eligible to enroll in the plan and the date on which he becomes an annuitant; or

(C) the full period or periods of service beginning with the enrollment which became effective before January 1, 1965, and ending with the date on which he becomes an annuitant;

whichever is shortest; or

(2) as a member of the family of an employee or annuitant;

may continue his enrollment under the conditions of eligibility prescribed by regulations of the Office. The Office may, in its sole discretion, waive the requirements of this subsection in the case of an individual who fails to satisfy such requirements if the Office determines that, due to exceptional circumstances, it would be against equity and good conscience not to allow such individual to be enrolled as an annuitant in a health benefits plan under this chapter[1]

(c)(1) A former spouse may—

(A) within 60 days after the dissolution of the marriage, or

(B) in the case of a former spouse of a former employee whose marriage was dissolved after the employee's retirement, within 60 days after the dissolution of the marriage or, if later, within 60 days after an election is made under section 8339(j)(3) or 8417(b) of this title for such former spouse by the retired employee,

enroll in an approved health benefits plan described by section 8903 or 8903a of this title as an individual or for self and family as provided in paragraph (2) of this subsection, subject to agreement to pay the full subscription charge of the enrollment, including the amounts determined by the Office to be necessary for administration and reserves pursuant to section 8909(b) of this title. The former spouse shall submit an enrollment application and make premium payments to the agency which, at the time of divorce or annulment, employed the employee to whom the former spouse was married or, in the case of a former spouse who is receiving annuity payments under section 8341(h), 8345(j), 8445, or 8467 of this title, to the Office of Personnel Management.

(2) Coverage for self and family under this subsection shall be limited to—

(A) the former spouse; and

(B) unmarried dependent natural or adopted children of the former spouse and the employee who are—

(i) under 22 years of age; or

(ii) incapable of self-support because of mental or physical disability which existed before age 22.

(d) If an employee, annuitant, or other individual eligible to enroll in a health benefits plan under this chapter has a spouse who is also eligible to enroll, either spouse, but not both, may enroll for self and family, or each spouse may

[1] So in original. Probably should be followed by a period.

enroll as an individual. However, an individual may not be enrolled both as an employee, annuitant, or other individual eligible to enroll and as a member of the family.

(e) An employee, annuitant, former spouse, or person having continued coverage under section 8905a of this title enrolled in a health benefits plan under this chapter may change his coverage or that of himself and members of his family by an application filed within 60 days after a change in family status or at other times and under conditions prescribed by regulations of the Office.

(f)(1) Under regulations prescribed by the Office, the Office shall, before the start of any contract term in which—

(A) an adjustment is made in any of the rates charged or benefits provided under a health benefits plan described by section 8903 or 8903a of this title,

(B) a newly approved health benefits plan is offered, or

(C) an existing plan is terminated,

provide a period of not less than 3 weeks during which any employee, annuitant, former spouse, or person having continued coverage under section 8905a of this title enrolled in a health benefits plan described by such section shall be permitted to transfer that individual's enrollment to another such plan or to cancel such enrollment.

(2) In addition to any opportunity afforded under paragraph (1) of this subsection, an employee, annuitant, former spouse, or person having continued coverage under section 8905a of this title enrolled in a health benefits plan under this chapter shall be permitted to transfer that individual's enrollment to another such plan, or to cancel such enrollment, at such other times and subject to such conditions as the Office may prescribe in regulations.

(3)(A) In addition to any informational requirements otherwise applicable under this chapter, the regulations shall include provisions to ensure that each employee eligible to enroll in a health benefits plan under this chapter (whether actually enrolled or not) is notified in writing as to the rights afforded under section 8905a of this title.

(B) Notification under this paragraph shall be provided by employing agencies at an appropriate point in time before each period under paragraph (1) so that employees may be aware of their rights under section 8905a of this title when making enrollment decisions during such period.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 603; Pub. L. 95–454, title IX, §906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 98–615, §3(4), Nov. 8, 1984, 98 Stat. 3203; Pub. L. 99–53, §2(a), (c), June 17, 1985, 99 Stat. 94; Pub. L. 99–251, title I, §§103, 104(a), Feb. 27, 1986, 100 Stat. 14; Pub. L. 99–335, title II, §207(m), June 6, 1986, 100 Stat. 598; Pub. L. 100–654, title II, §§201(c), (d), 202(c), Nov. 14, 1988, 102 Stat. 3845; Pub. L. 102–378, §2(77), Oct. 2, 1992, 106 Stat. 1355.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 3002(a) (1st sentence, less words between 1st and 4th commas), (b)–(e).	Sept. 28, 1959, Pub. L. 86–382, §3(a) (1st sentence, less words between 1st and 4th commas), (b)–(e), 73 Stat. 710. Mar. 17, 1964, Pub. L. 88–284, §1(5), 78 Stat. 164.

In subsection (b)(1), the words ''as an employee'' are inserted for clarity.

In subsection (b)(1)(C), the words ''before January 1, 1965'' are substituted for ''not later than December 31, 1964''.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1992—Subsec. (b). Pub. L. 102–378, §2(77)(A), substituted ''this chapter'' for ''this subchapter.'' at end.

Subsec. (c)(1). Pub. L. 102–378, §2(77)(B), inserted comma after ''8341(h)'' in last sentence.

1988—Subsec. (d). Pub. L. 100–654, §202(c), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: ''If an employee has a spouse who is an employee, either spouse, but not both, may enroll for self and family, or each spouse may enroll as an individual. However, an individual may not be enrolled both as an employee or annuitant and as a member of the family.''

Subsecs. (e), (f)(1), (2). Pub. L. 100–654, §201(c), (d)(1), substituted ''former spouse, or person having continued coverage under section 8905a of this title'' for ''or former spouse''.

Subsec. (f)(3). Pub. L. 100–654, §201(d)(2), added par. (3).

1986—Subsec. (b). Pub. L. 99–251, §103, inserted last sentence relating to waiver of the requirements of this subsection if it would be against equity to prohibit enrollment.

Subsec. (c)(1). Pub. L. 99–335 inserted in subpar. (B) ''or 8417(b)'' and substituted in provision following subpar. (B) ''8345(j), 8445, or 8467'' for ''or 8345(j)''.

Subsec. (f). Pub. L. 99–251, §104(a), amended subsec. (f) generally. Prior to amendment, subsec. (f) read as follows: ''An employee, annuitant, or former spouse enrolled in a health benefits plan under this chapter may change his coverage or that of himself and members of his family by an application filed within 60 days after a change in family status or at other times and under conditions prescribed by regulations of the Office.''

1985—Subsecs. (a), (c)(1). Pub. L. 99–53, §2(a), inserted reference to section 8903a of this title.

Subsec. (f). Pub. L. 99–53, §2(a), (c), inserted reference to section 8903a of this title and substituted ''such plan'' for ''plan described by that section''.

1984—Subsec. (c). Pub. L. 98–615, §3(4)(A), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 98–615, §3(4)(A), redesignated former subsec. (c) as (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 98–615, §3(4), redesignated former subsec. (d) as (e) and substituted ''An employee, annuitant, or former spouse'' for ''An employee or annuitant''. Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 98–615, §3(4), redesignated former subsec. (e) as (f) and substituted ''An employee, annuitant, or former spouse'' for ''An employee or annuitant''.

1978—Subsecs. (b), (d), (e). Pub. L. 95–454 substituted ''Office of Personnel Management'' and ''Office'' for ''Civil Service Commission'' and ''Commission'', respectively, wherever appearing.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–654 applicable with respect to any calendar year beginning, and contracts en-

tered into or renewed for any calendar year beginning, after end of 9-month period beginning Nov. 14, 1988, and with respect to any qualifying event occurring on or after first day of first calendar year beginning after end of such 9-month period, see section 203 of Pub. L. 100–654, set out as a note under section 8902 of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by Pub. L. 99–335 effective Jan. 1, 1987, see section 702(a) of Pub. L. 99–335, set out as an Effective Date note under section 8401 of this title.

Section 104(b) of Pub. L. 99–251 provided that: ''The amendment made by subsection (a) [amending this section] shall be effective with respect to contracts entered into or renewed for calendar years beginning after December 31, 1986.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–615 effective May 7, 1985, with enumerated exceptions, and applicable to any individual who is married to an employee or annuitant on or after that date, see section 4(a)(2) of Pub. L. 98–615, as amended, set out as a note under section 8341 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

ELECTION OF HEALTH BENEFITS COVERAGE AND ENTITLEMENT TO HEALTH BENEFITS UNDER THIS CHAPTER RATHER THAN UNDER RETIRED FEDERAL EMPLOYEES HEALTH BENEFITS ACT

Pub. L. 93–246, §§2, 4(b), Jan. 31, 1974, 88 Stat. 4, provided that:

''SEC. 2. (a) Notwithstanding any other provision of law, an annuitant, as defined under section 8901(3) of title 5, United States Code, who is participating or who is eligible to participate in the health benefits program offered under the Retired Federal Employees Health Benefits Act (74 Stat. 849; Public Law 86–724), may elect, in accordance with regulations prescribed by the United States Civil Service Commission, to be covered under the provisions of chapter 89 of title 5, United States Code [this chapter], in lieu of coverage under such Act.

''(b) An annuitant who elects to be covered under the provisions of chapter 89 of title 5, United States Code [this chapter], in accordance with subsection (a) of this section, shall be entitled to the benefits under such chapter 89.

''[Sec. 4] (b) Section 2 [set out above] shall take effect on the one hundred and eightieth day following the date of enactment [Jan. 1, 1974] or on such earlier date as the United States Civil Service Commission may prescribe.''

§ 8905a. Continued coverage

(a) Any individual described in paragraph (1) or (2) of subsection (b) may elect to continue coverage under this chapter in accordance with the provisions of this section.

(b) This section applies with respect to—

(1) any employee who—

(A) is separated from service, whether voluntarily or involuntarily, except that if the separation is involuntary, this section shall not apply if the separation is for gross misconduct (as defined under regulations which the Office of Personnel Management shall prescribe); and

(B) would not otherwise be eligible for any benefits under this chapter (determined without regard to any temporary extension of coverage and without regard to any benefits available under a nongroup contract); and

(2) any individual who—

(A) ceases to meet the requirements for being considered an unmarried dependent child under this chapter;

(B) on the day before so ceasing to meet the requirements referred to in subparagraph (A), was covered under a health benefits plan under this chapter as a member of the family of an employee or annuitant; and

(C) would not otherwise be eligible for any benefits under this chapter (determined without regard to any temporary extension of coverage and without regard to any benefits available under a nongroup contract).

(c)(1) The Office shall prescribe regulations and provide for the inclusion of appropriate terms in contracts with carriers to provide that—

(A) with respect to an employee who becomes (or will become) eligible for continued coverage under this section as a result of separation from service, the separating agency shall, before the end of the 30-day period beginning on the date as of which coverage (including any temporary extensions of coverage) would otherwise end, notify the individual of such individual's rights under this section; and

(B) with respect to a child of an employee or annuitant who becomes eligible for continued coverage under this section as a result of ceasing to meet the requirements for being considered a member of the employee's or annuitant's family—

(i) the employee or annuitant may provide written notice of the child's change in status (complete with the child's name, address, and such other information as the Office may by regulation require)—

(I) to the employee's employing agency; or

(II) in the case of an annuitant, to the Office; and

(ii) if the notice referred to in clause (i) is received within 60 days after the date as of which the child involved first ceases to meet the requirements involved, the employing agency or the Office (as the case may be) must, within 14 days after receiving such notice, notify the child of such child's rights under this section.

(2) In order to obtain continued coverage under this section, an appropriate written election (submitted in such manner as the Office by regulation prescribes) must be made—

(A) in the case of an individual seeking continued coverage based on a separation from service, before the end of the 60-day period beginning on the later of—

(i) the effective date of the separation; or

(ii) the date the separated individual receives the notice required under paragraph (1)(A); or

(B) in the case of an individual seeking continued coverage based on a change in circumstances making such individual ineligible for coverage as an unmarried dependent child, before the end of the 60-day period beginning on the later of—

(i) the date as of which such individual first ceases to meet the requirements for being considered an unmarried dependent child; or

(ii) the date such individual receives notice under paragraph (1)(B)(ii);

except that if a parent fails to provide the notice required under paragraph (1)(B)(i) in timely fashion, the 60-day period under this subparagraph shall be based on the date under clause (i), irrespective of whether or not any notice under paragraph (1)(B)(ii) is provided.

(d)(1)(A) Except as provided in paragraph (4), an individual receiving continued coverage under this section shall be required to pay currently into the Employees Health Benefits Fund, under arrangements satisfactory to the Office, an amount equal to the sum of—

(i) the employee and agency contributions which would be required in the case of an employee enrolled in the same health benefits plan and level of benefits; and

(ii) an amount, determined under regulations prescribed by the Office, necessary for administrative expenses, but not to exceed 2 percent of the total amount under clause (i).

(B) Payments under this section to the Fund shall—

(i) in the case of an individual whose continued coverage is based on such individual's separation, be made through the agency which last employed such individual; or

(ii) in the case of an individual whose continued coverage is based on a change in circumstances referred to in subsection (c)(2)(B), be made through—

(I) the Office, if, at the time coverage would (but for this section) otherwise have been discontinued, the individual was covered as the child of an annuitant; or

(II) if, at the time referred to in subclause (I), the individual was covered as the child of an employee, the employee's employing agency as of such time.

(2) If an individual elects to continue coverage under this section before the end of the applicable period under subsection (c)(2), but after such individual's coverage under this chapter (including any temporary extensions of coverage) expires, coverage shall be restored retroactively, with appropriate contributions (determined in accordance with paragraph (1) or (4), as the case may be) and claims (if any), to the same extent and effect as though no break in coverage had occurred.

(3)(A) An individual making an election under subsection (c)(2)(B) may, at such individual's option, elect coverage either as an individual or, if appropriate, for self and family.

(B) For the purpose of this paragraph, members of an individual's family shall be determined in the same way as would apply under this chapter in the case of an enrolled employee.

(C) Nothing in this paragraph shall be considered to limit an individual making an election under subsection (c)(2)(A) to coverage for self alone.

(4)(A) If the basis for continued coverage under this section is an involuntary separation from a position in or under the Department of Defense due to a reduction in force—

(i) the individual shall be liable for not more than the employee contributions referred to in paragraph (1)(A)(i); and

(ii) the agency which last employed the individual shall pay the remaining portion of the amount required under paragraph (1)(A).

(B) This paragraph shall apply with respect to any individual whose continued coverage is based on a separation occurring on or after the date of enactment of this paragraph and before—

(i) October 1, 1999; or

(ii) February 1, 2000, if specific notice of such separation was given to such individual before October 1, 1999.

(e)(1) Continued coverage under this section may not extend beyond—

(A) in the case of an individual whose continued coverage is based on separation from service, the date which is 18 months after the effective date of the separation; or

(B) in the case of an individual whose continued coverage is based on ceasing to meet the requirements for being considered an unmarried dependent child, the date which is 36 months after the date on which the individual first ceases to meet those requirements, subject to paragraph (2).

(2) In the case of an individual who—

(A) ceases to meet the requirements for being considered an unmarried dependent child;

(B) as of the day before so ceasing to meet the requirements referred to in subparagraph (A), was covered as the child of a former employee receiving continued coverage under this section based on the former employee's separation from service; and

(C) so ceases to meet the requirements referred to in subparagraph (A) before the end of the 18-month period beginning on the date of the former employee's separation from service,

extended coverage under this section may not extend beyond the date which is 36 months after the separation date referred to in subparagraph (C).

(f)(1) The Office shall prescribe regulations under which, in addition to any individual otherwise eligible for continued coverage under this section, and to the extent practicable, continued coverage may also, upon appropriate written application, be afforded under this section—

(A) to any individual who—

(i) if subparagraphs (A) and (C) of paragraph (10) of section 8901 were disregarded, would be eligible to be considered a former spouse within the meaning of such paragraph; but

(ii) would not, but for this subsection, be eligible to be so considered; and

(B) to any individual whose coverage as a family member would otherwise terminate as a result of a legal separation.

(2) The terms and conditions for coverage under the regulations shall include—

(A) consistent with subsection (c), any necessary notification provisions, and provisions under which an election period of at least 60 days' duration is afforded;

(B) terms and conditions identical to those under subsection (d), except that contributions to the Employees Health Benefits Fund shall be made through such agency as the Office by regulation prescribes;

(C) provisions relating to the termination of continued coverage, except that continued coverage under this section may not (subject to paragraph (3)) extend beyond the date which is 36 months after the date on which the qualifying event under this subsection (the date of divorce, annulment, or legal separation, as the case may be) occurs; and

(D) provisions designed to ensure that any coverage pursuant to this subsection does not adversely affect any eligibility for coverage which the individual involved might otherwise have under this chapter (including as a result of any change in personal circumstances) if this subsection had not been enacted.

(3) In the case of an individual—

(A) who becomes eligible for continued coverage under this subsection based on a divorce, annulment, or legal separation from a person who, as of the day before the date of the divorce, annulment, or legal separation (as the case may be) was receiving continued coverage under this section for self and family based on such person's separation from service; and

(B) whose divorce, annulment, or legal separation (as the case may be) occurs before the end of the 18-month period beginning on the date of the separation from service referred to in subparagraph (A),

extended coverage under this section may not extend beyond the date which is 36 months after the date of the separation from service, as referred to in subparagraph (A).

(Added Pub. L. 100–654, title II, § 201(a)(1), Nov. 14, 1988, 102 Stat. 3841; amended Pub. L. 102–484, div. D, title XLIV, § 4438(a), Oct. 23, 1992, 106 Stat. 2725; Pub. L. 103–337, div. A, title III, § 341(d), Oct. 5, 1994, 108 Stat. 2720.)

REFERENCES IN TEXT

The date of enactment of this paragraph, referred to in subsec. (d)(4)(B), is the date of enactment of Pub. L. 102–484, which was approved Oct. 23, 1992.

AMENDMENTS

1994—Subsec. (d)(4)(B). Pub. L. 103–337 substituted ''October 1, 1999'' for ''October 1, 1997'' in cls. (i) and (ii) and ''February 1, 2000'' for ''February 1, 1998'' in cl. (ii).

1992—Subsec. (d)(1)(A). Pub. L. 102–484, § 4438(a)(1), substituted ''Except as provided in paragraph (4), an individual'' for ''An individual''.

Subsec. (d)(2). Pub. L. 102–484, § 4438(a)(2), substituted ''in accordance with paragraph (1) or (4), as the case may be)'' for ''in accordance with paragraph (1))''.

Subsec. (d)(4). Pub. L. 102–484, § 4438(a)(3), added par. (4).

EFFECTIVE DATE

Section applicable with respect to any calendar year beginning, and contracts entered into or renewed for any calendar year beginning, after the end of the 9-month period beginning Nov. 14, 1988, and with respect to any qualifying event occurring on or after the first day of the first calendar year beginning after the end of such 9-month period, see section 203 of Pub. L. 100–654, set out as an Effective Date of 1988 Amendment note under section 8902 of this title.

SOURCE OF PAYMENTS

Section 4438(b)(1) of Pub. L. 102–484 provided that: ''Any amount which becomes payable by an agency as a result of the enactment of subsection (a) [amending this section] shall be paid out of funds or appropriations available for salaries and expenses of such agency.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8902, 8903, 8905, 8909 of this title; title 10 sections 1078a, 1086a, 1145.

§ 8906. Contributions

(a) The Office of Personnel Management shall determine the average of the subscription charges in effect on the beginning date of each contract year with respect to self alone or self and family enrollments under this chapter, as applicable, for the highest level of benefits offered by—

(1) the service benefit plan;

(2) the indemnity benefit plan;

(3) the two employee organization plans with the largest number of enrollments, as determined by the Office; and

(4) the two comprehensive medical plans with the largest number of enrollments, as determined by the Office.

(b)(1) Except as provided by paragraphs (2) and (3) of this subsection, the biweekly Government contribution for health benefits for an employee or annuitant enrolled in a health benefits plan under this chapter is adjusted to an amount equal to 60 percent of the average subscription charge determined under subsection (a) of this section. For an employee, the adjustment begins on the first day of the employee's first pay period of each year. For an annuitant, the adjustment begins on the first day of the first period of each year for which an annuity payment is made.

(2) The biweekly Government contribution for an employee or annuitant enrolled in a plan under this chapter shall not exceed 75 percent of the subscription charge.

(3) In the case of an employee who is occupying a position on a part-time career employment basis (as defined in section 3401(2) of this title), the biweekly Government contribution shall be equal to the percentage which bears the same ratio to the percentage determined under this subsection (without regard to this paragraph) as the average number of hours of such employee's regularly scheduled workweek bears to the average number of hours in the regularly scheduled workweek of an employee serving in a comparable position on a full-time career basis (as determined under regulations prescribed by the Office).

(c) There shall be withheld from the pay of each enrolled employee and (except as provided in subsection (i) of this section) the annuity of each enrolled annuitant and there shall be contributed by the Government, amounts, in the same ratio as the contributions of the employee or annuitant and the Government under subsection (b) of this section, which are necessary

for the administrative costs and the reserves provided for by section 8909(b) of this title.

(d) The amount necessary to pay the total charge for enrollment, after the Government contribution is deducted, shall be withheld from the pay of each enrolled employee and (except as provided in subsection (i) of this section) from the annuity of each enrolled annuitant. The withholding for an annuitant shall be the same as that for an employee enrolled in the same health benefits plan and level of benefits.

(e)(1) An employee enrolled in a health benefits plan under this chapter who is placed in a leave without pay status may have his coverage and the coverage of members of his family continued under the plan for not to exceed 1 year under regulations prescribed by the Office. The regulations may provide for the waiving of contributions by the employee and the Government.

(2) An employee who enters on approved leave without pay to serve as a full-time officer or employee of an organization composed primarily of employees as defined by section 8901 of this title, within 60 days after entering on that leave without pay, may file with his employing agency an election to continue his health benefits enrollment and arrange to pay currently into the Employees Health Benefits Fund, through his employing agency, both employee and agency contributions from the beginning of leave without pay. The employing agency shall forward the enrollment charges so paid to the Fund. If the employee does not so elect, his enrollment will continue during nonpay status and end as provided by paragraph (1) of this subsection and implementing regulations.

(f) The Government contributions for health benefits for an employee shall be paid—

(1) in the case of employees generally, from the appropriation or fund which is used to pay the employee;

(2) in the case of an elected official, from an appropriation or fund available for payment of other salaries of the same office or establishment;

(3) in the case of an employee of the legislative branch who is paid by the Clerk of the House of Representatives, from the contingent fund of the House; and

(4) in the case of an employee in a leave without pay status, from the appropriation or fund which would be used to pay the employee if he were in a pay status.

(g)(1) Except as provided in paragraph (2), the Government contributions authorized by this section for health benefits for an annuitant shall be paid from annual appropriations which are authorized to be made for that purpose and which may be made available until expended.

(2)(A) The Government contributions authorized by this section for health benefits for an individual who first becomes an annuitant by reason of retirement from employment with the United States Postal Service on or after July 1, 1971, or for a survivor of such an individual or of an individual who died on or after July 1, 1971, while employed by the United States Postal Service, shall be paid by the United States Postal Service.

(B) In determining any amount for which the Postal Service is liable under this paragraph, the amount of the liability shall be prorated to reflect only that portion of total service which is attributable to civilian service performed (by the former postal employee or by the deceased individual referred to in subparagraph (A), as the case may be) after June 30, 1971, as estimated by the Office of Personnel Management.

(h) The Office shall provide for conversion of biweekly rates of contribution specified by this section to rates for employees and annuitants paid on other than a biweekly basis, and for this purpose may provide for the adjustment of the converted rate to the nearest cent.

(i) An annuitant whose annuity is insufficient to cover the withholdings required for enrollment in a particular health benefits plan may enroll (or remain enrolled) in such plan, notwithstanding any other provision of this section, if the annuitant elects, under conditions prescribed by regulations of the Office, to pay currently into the Employees Health Benefits Fund, through the retirement system that administers the annuitant's health benefits enrollment, an amount equal to the withholdings that would otherwise be required under this section.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 604; Pub. L. 90–83, §1(96), Sept. 11, 1967, 81 Stat. 219; Pub. L. 91–418, §1(a), Sept. 25, 1970, 84 Stat. 869; Pub. L. 93–246, §1, Jan. 31, 1974, 88 Stat. 3; Pub. L. 94–310, §3(a), June 15, 1976, 90 Stat. 687; Pub. L. 95–437, §4(c)(2)(A), Oct. 10, 1978, 92 Stat. 1059; Pub. L. 95–454, title IX, §906(a)(15), (c)(2)(F), Oct. 13, 1978, 92 Stat. 1226, 1227; Pub. L. 96–54, §2(a)(53), Aug. 14, 1979, 93 Stat. 384; Pub. L. 99–272, title XV, §15202(b), Apr. 7, 1986, 100 Stat. 334; Pub. L. 101–239, title IV, §4003(a), Dec. 19, 1989, 103 Stat. 2135; Pub. L. 101–303, §1(a), (b), May 29, 1990, 104 Stat. 250; Pub. L. 101–508, title VII, §7102(a), (b), Nov. 5, 1990, 104 Stat. 1388–333; Pub. L. 102–378, §2(78), Oct. 2, 1992, 106 Stat. 1355.)

HISTORICAL AND REVISION NOTES

1966 ACT

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 3006.	Sept. 28, 1959, Pub. L. 86–382, §7, 73 Stat. 713. Mar. 17, 1964, Pub. L. 88–284, §1(10), (11), 78 Stat. 165.

In subsection (f)(1), the words ''in the case of employees generally'' are inserted for clarity.

In subsection (h), the word ''biweekly'' is inserted for clarity.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 ACT

Section of title 5	*Source (U.S. Code)*	*Source (Statutes at Large)*
8906(a)	5 App.: 3006(a)(1).	July 18, 1966, Pub. L. 89–504, §§406(b), 602, 80 Stat. 298, 303.
8906(b)	5 App.: 3006(a)(2).	
8906(e)(2) ...	5 App.: 3006(b)(2).	

In subsection (a), the words ''subsection (b) of this section'', ''this chapter'', and ''subsection (c) of this section'' are substituted for ''paragraph (2) of this subsection'', ''this Act'', and ''paragraph (3)'', respectively, to reflect the codification of title 5, United States Code.

In subsection (e)(2), the words ''as defined by section 8901 of this title'' are substituted for ''as defined in sec-

tion 2 of this Act'' to reflect the codification of that section in 5 U.S.C. 8901. The words ''Employees Health Benefits Fund'' and ''Fund'' are substituted for ''fund'' and ''fund'', respectively. In the penultimate sentence, the words ''will continue during nonpay status and end'' are substituted for ''will terminate'' for clarity and on authority of 5 U.S.C. 8906(e)(1).

AMENDMENTS

1992—Subsec. (b)(3). Pub. L. 102–378, §2(78)(A), inserted period after ''Office)''.

Subsec. (c). Pub. L. 102–378, §2(78)(B), substituted ''and (except'' for ''and except''.

1990—Subsec. (c). Pub. L. 101–303, §1(b)(1), inserted ''except as provided in subsection (i) of this section)'' after ''enrolled employee and''.

Subsec. (d). Pub. L. 101–303, §1(b)(2), inserted ''(except as provided in subsection (i) of this section)'' after ''enrolled employee and''.

Subsec. (g)(2). Pub. L. 101–508 designated existing provisions as subpar. (A), substituted ''July 1, 1971,'' for ''October 1, 1986,'' in two places, and added subpar. (B).

Subsec. (i). Pub. L. 101–303, §1(a), added subsec. (i).

1989—Subsec. (g)(2). Pub. L. 101–239 inserted ''or for a survivor of such an individual or of an individual who died on or after October 1, 1986, while employed by the United States Postal Service,'' after ''1986,''.

1986—Subsec. (g). Pub. L. 99–272 designated existing provisions as par. (1) and added par. (2).

1979—Subsec. (b)(1). Pub. L. 96–54 substituted provisions setting forth adjustment amount of the Government contribution of equal to 60 percent of the average subscription charge under subsec. (a) and determinations respecting the commencement date of the adjustment, for provisions setting forth adjustment amounts of the Government contribution of equal to 50 percent of the average subscription charge under subsec. (a) for applicable pay periods beginning in 1974, and equal to 60 percent for pay periods beginning in 1975 and after, and determinations respecting the commencement date of the adjustment.

1978—Subsec. (a). Pub. L. 95–454, §906(a)(15), substituted ''Office of Personnel Management'' for ''Commission'' in introductory material, and ''Office'' for ''Commission'' in cls. (3) and (4).

Subsec. (b)(1). Pub. L. 95–437, §4(c)(2)(A)(i), substituted ''paragraphs (2) and (3)'' for ''paragraph (2)''.

Subsec. (b)(3). Pub. L. 95–454, §906(a)(15), (c)(2)(F), substituted ''Office'' for ''Commission'', and ''3401'' for ''3391''.

Pub. L. 95–437, §4(c)(2)(A)(ii), added par. (3).

Subsecs. (e)(1), (h). Pub. L. 95–454, §906(a)(15), substituted ''Office'' for ''Commission''.

1976—Subsec. (g). Pub. L. 94–310 provided for payment of Government contributions from annual appropriations which may be made available until expended.

1974—Subsec. (a). Pub. L. 93–246, §1(a), struck out introductory text ''Except as provided by subsection (b) of this section, the biweekly Government contribution for health benefits for employees or annuitants enrolled in health benefits plans under this chapter shall be adjusted'', now incorporated in subsec. (b)(1) of this section, required Commission determination of average of subscription charges, and reenacted remainder of existing provisions, substituting ''beginning date of each contract year'' for ''beginning date of the adjustment''.

Subsec. (b)(1). Pub. L. 93–246, §1(a), incorporated introductory text of former subsec. (a) reading ''Except as provided by subsection (b) of this section, the biweekly Government contribution for health benefits for employees or annuitants enrolled in health benefits plans under this chapter shall be adjusted'', as initial text of provisions designated as subsec. (b)(1), substituted provision for amount of biweekly Government contribution equal to 50 percent of average subscription charge for applicable pay periods commencing in 1974 and 60 percent for applicable pay periods commencing in 1975, and annually thereafter, for former subsec. (a) provision for an amount equal to 40 percent of average of subscription charges and former subsec. (b) provision for 50 percent of subscription charge where the biweekly subscription charge was less than twice the Government contribution.

Subsec. (b)(2). Pub. L. 93–246, §1(a), added par. (2).

Subsec. (c). Pub. L. 93–246, §1(b), struck out reference to subsec. (a).

Subsec. (g). Pub. L. 93–246, §1(c), substituted ''by this section'' for ''by subsection (a) of this section''.

1970—Subsec. (a). Pub. L. 91–418, in increasing the Government contribution to the cost of health benefits insurance, substituted provision for adjustment of such contribution, beginning on the first day of the first pay period of each year, to an amount equal to 40 percent of the adjustment, with respect to self alone or self and family enrollments, as applicable, for the highest level of benefits offered by the service benefit plan, the indemnity benefit plan, the two employee organization plans, and the two comprehensive medical plans, for prior provision for a contribution, in addition to requirement of subsec. (c) of this section, of $1.62 if the enrollment is for self or $3.94 if the enrollment is for self and family.

EFFECTIVE DATE OF 1990 AMENDMENTS

Section 7102(c) of Pub. L. 101–508 provided that: ''The amendments made by this section [amending this section] shall take effect on October 1, 1990, and shall apply with respect to amounts payable for periods beginning on or after that date.''

Section 1(c) of Pub. L. 101–303 provided that: ''The amendments made by this section [amending this section] shall take effect on the date of enactment of this Act [May 29, 1990]. Any annuitant whose enrollment was terminated at any time before such date on account of such annuitant's annuity being insufficient to cover the amount of the required withholdings may, under regulations prescribed by the Office of Personnel Management, be prospectively reinstated in any available health benefits plan upon application of the annuitant.''

EFFECTIVE DATE OF 1989 AMENDMENT

Section 4003(b) of Pub. L. 101–239 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on October 1, 1989, and shall apply with respect to amounts payable for periods beginning on or after that date.''

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.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–310 effective Oct. 1, 1976, see section 4 of Pub. L. 94–310, set out as a note under section 130b of Title 2, The Congress.

EFFECTIVE DATE OF 1974 AMENDMENT

Section 4(a) of Pub. L. 93–246 provided that: ''The first section of this Act [amending this section] shall take effect on the first day of the first applicable pay period which begins on or after January 1, 1974.''

Section 4(d) of Pub. L. 93–246 provided that: ''The determination of the average of subscription charges and the adjustment of the Government contributions for 1973, under section 8906 of title 5, United States Code, as amended by the first section of this Act [amending this section], shall take effect on the first day of the first applicable pay period which begins on or after the thirtieth day following the date of enactment of this Act [Jan. 31, 1974].''

EFFECTIVE DATE OF 1970 AMENDMENT

Section 1(b) of Pub. L. 91–418 provided that: ''The amendment made by subsection (a) of this section

[amending this section] shall become effective at the beginning of the first applicable pay period which commences after December 31, 1970.''

TRANSFER OF FUNCTIONS

Certain functions of Clerk of House of Representatives transferred to Director of Non-legislative and Financial Services by section 7 of House Resolution No. 423, One Hundred Second Congress, Apr. 9, 1992. Director of Non-legislative and Financial Services replaced by Chief Administrative Officer of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

PAYMENTS BY POSTAL SERVICE RELATING TO CORRECTED CALCULATIONS FOR PAST HEALTH BENEFITS

Pub. L. 103–66, title XI, §11101(b), Aug. 10, 1993, 107 Stat. 413, provided that: ''In addition to any other payments required under section 8906(g)(2) of title 5, United States Code, or any other provision of law, the United States Postal Service shall pay into the Employees Health Benefits Fund a total of $348,000,000, of which—

''(1) at least one-third shall be paid not later than September 30, 1996;

''(2) at least two-thirds shall be paid not later than September 30, 1997; and

''(3) any remaining balance shall be paid not later than September 30, 1998.''

COMPUTATION OF GOVERNMENT CONTRIBUTIONS TO FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM FOR 1990 THROUGH 1993

Pub. L. 101–76, Aug. 11, 1989, 103 Stat. 556, as amended by Pub. L. 101–508, title VII, §7002(e), Nov. 5, 1990, 104 Stat. 1388–330; Pub. L. 103–66, title XI, §11005, Aug. 10, 1993, 107 Stat. 412, provided: ''That (a)(1) in the administration of chapter 89 of title 5, United States Code, for each of contract years 1990 through 1998 (inclusive), in order to compute the average subscription charges under section 8906(a) of such title for such contract years, the subscription charges in effect for the indemnity benefit plan on the beginning date of each such contract year—

''(A) shall be deemed to be the subscription charges which were in effect for such plan on the beginning date of the preceding contract year as adjusted under paragraph (2); or

''(B) if subparagraph (A) does not apply, shall be deemed to be—

''(i) the subscription charges which were deemed under this Act to have been in effect for such plan with respect to the preceding contract year as adjusted under paragraph (2), except as provided in clause (ii); or

''(ii) for each of contract years 1997 and 1998, the subscription charges which would be derived by applying the terms of clause (i), reduced by 1 percent.

''(2) The subscription charges under paragraph (1) shall be increased or decreased (as appropriate) by the average percentage by which the respective subscription charges taken into account under paragraphs (1), (3), and (4) of such section 8906(a) for that contract year increased or decreased from the subscription charges taken into account under such paragraphs (1), (3), and (4) for the preceding contract year.

''(b) Separate percentages shall be computed under subsection (a)(2) with respect to enrollments for self alone and enrollments for self and family, respectively.

''(c) The provisions of this Act shall not apply to a contract year (or any period thereafter), if comprehensive reform legislation is enacted to amend section 8906 of title 5, United States Code, and such amendment is required to be implemented by the commencement of negotiations pertaining to rates and benefits for such contract year.

''(d) Any reference in this Act to a 'contract year' shall be considered to be a reference to a contract year under chapter 89 of title 5, United States Code.

''(e) No later than 180 days after the date of the enactment of this Act [Aug. 11, 1989], the Director of the Office of Personnel Management shall transmit recommendations to the Congress for comprehensive reform of the Federal Employee Health Benefits Program.''

CONTRIBUTIONS BY UNITED STATES POSTAL SERVICE TO EMPLOYEES HEALTH BENEFITS FUND

Pub. L. 100–203, title VI, §6003, Dec. 22, 1987, 101 Stat. 1330–277, directed Postal Service to pay $160,000,000 in fiscal year 1988 and $270,000,000 in fiscal year 1989 into Employee Health Benefits Fund in addition to any amount deposited into Fund pursuant to this section in each such fiscal year.

EMPLOYEES SERVING ON PART-TIME CAREER EMPLOYMENT BASIS ON OCTOBER 10, 1978

Section 4(c)(2)(B) of Pub. L. 95–437 provided that: ''The amendments made by subparagraph (A) [amending subsec. (b)(1) and (3) of this section] shall not apply with respect to any employee serving in a position on a part-time career employment basis on the date of the enactment of this Act [Oct. 10, 1978] for such period as the employee continues to serve without a break in service in that or any other position on such part-time basis.''

CALCULATION AND PAYMENT BY GOVERNMENT OF CONTRIBUTIONS TO CONTINGENCY RESERVES OF ALL HEALTH BENEFIT PLANS

Pub. L. 97–346, §4, Oct. 15, 1982, 96 Stat. 1650, directed Office of Personnel Management to determine amount by which Government contribution under 5 U.S.C. 8906(b) for the 1983 contract year was less than the Government contribution which would have been determined under such section for such contract year if Government contribution had been calculated by using the two employee organization plans which in 1981 satisfied the standard set forth in 5 U.S.C. 8906(a)(3) directed Government to pay amount of difference thus determined to contingency reserves of all health benefits plans for contract year 1983 in proportion to estimated number of individuals enrolled in such plans during 1983, and directed such payments be paid by appropriate agencies (including Postal Service and Postal Rate Commission) from appropriations referred to in 5 U.S.C. 8906(f) and (g) in same manner as if such payments were Government contributions, and in amounts determined appropriate by Office of Personnel Management.

ELECTION OF HEALTH BENEFITS DURING PERIOD OF SERVICE AS OFFICER OR EMPLOYEE OF AN EMPLOYEE ORGANIZATION; CONTRIBUTIONS INTO EMPLOYEES HEALTH BENEFITS FUND; NON-ELECTION; REGULATIONS

Election of health benefits within sixty days after July 18, 1966, by certain employees on leave without pay for service as officer or employee of an employee organization, contributions into Fund, effect of non-election of benefits, and regulations, see note set out under section 8706 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8906a, 8909 of this title; title 40 section 214c; title 42 section 1395s; title 45 section 1212.

§ 8906a. Temporary employees

(a)(1) The Office of Personnel Management shall prescribe regulations to provide for offering health benefits plans to temporary employees (who meet the requirements of paragraph (2)) under the provisions of this chapter.

(2) To be eligible to participate in a health benefits plan offered under this section a temporary employee shall have completed 1 year of current continuous employment, excluding any break in service of 5 days or less.

(b) Notwithstanding the provisions of section 8906—

(1) any temporary employee enrolled in a health benefits plan under this section shall have an amount withheld from the pay of such employee, as determined by the Office of Personnel Management, equal to—

(A) the amount withheld from the pay of an employee under the provisions of section 8906; and

(B) the amount of the Government contribution for an employee under section 8906; and

(2) the employing agency of any such temporary employee shall not pay the Government contribution under the provisions of section 8906.

(Added Pub. L. 100–654, title III, § 301(a), Nov. 14, 1988, 102 Stat. 3846.)

EFFECTIVE DATE

Section 301(d) of Pub. L. 100–654 provided that: ''The amendments made by this section [enacting this section and amending section 8913 of this title] shall be effective 120 days after the date of enactment of this section [Nov. 14, 1988].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8913 of this title.

§ 8907. Information to individuals eligible to enroll

(a) The Office of Personnel Management shall make available to each individual eligible to enroll in a health benefits plan under this chapter such information, in a form acceptable to the Office after consultation with the carrier, as may be necessary to enable the individual to exercise an informed choice among the types of plans described by sections 8903 and 8903a of this title.

(b) Each individual enrollee in a health benefits plan shall be issued an appropriate document setting forth or summarizing the—

(1) services or benefits, including maximums, limitations, and exclusions, to which the enrollee or the enrollee and any eligible family members are entitled thereunder;

(2) procedure for obtaining benefits; and

(3) principal provisions of the plan affecting the enrollee and any eligible family members.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 605; Pub. L. 95–454, title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 98–615, § 3(5), Nov. 8, 1984, 98 Stat. 3204; Pub. L. 99–53, § 2(d), June 17, 1985, 99 Stat. 94.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 3009(d).	Sept. 28, 1959, Pub. L. 86–382, § 10(d), 73 Stat. 715.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1985—Subsec. (a). Pub. L. 99–53 inserted reference to section 8903a of this title.

1984—Pub. L. 98–615, § 3(5)(C), substituted ''individuals eligible to enroll'' for ''employees'' in section catchline.

Subsec. (a). Pub. L. 98–615, § 3(5)(A), substituted ''individual'' for ''employee'' in two places.

Subsec. (b). Pub. L. 98–615, § 3(5)(B)(i), substituted ''enrollee'' for ''employee enrolled'' in provisions preceding par. (1).

Subsec. (b)(1). Pub. L. 98–615, § 3(5)(B)(ii), substituted ''enrollee or the enrollee and any eligible family members'' for ''employee or the employee and members of his family''.

Subsec. (b)(3). Pub. L. 98–615, § 3(5)(B)(iii), substituted ''the enrollee and any eligible family members'' for ''the employee or members of his family''.

1978—Subsec. (a). Pub. L. 95–454 substituted ''Office of Personnel Management'' and ''Office'' for ''Civil Service Commission'' and ''Commission'', respectively.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–615 effective May 7, 1985, with enumerated exceptions, and applicable to any individual who is married to an employee or annuitant on or after that date, see section 4(a)(2) of Pub. L. 98–615, as amended, set out as a note under section 8341 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

§ 8908. Coverage of restored employees and survivor or disability annuitants

(a) An employee enrolled in a health benefits plan under this chapter who is removed or suspended without pay and later reinstated or restored to duty on the ground that the removal or suspension was unjustified or unwarranted may, at his option, enroll as a new employee or have his coverage restored, with appropriate adjustments made in contributions and claims, to the same extent and effect as though the removal or suspension had not taken place.

(b) A surviving spouse whose survivor annuity under this title was terminated because of remarriage and is later restored may, under such regulations as the Office of Personnel Management may prescribe, enroll in a health benefits plan described by section 8903 or 8903a of this title if such spouse was covered by any such plan immediately before such annuity was terminated.

(c) A disability annuitant whose disability annuity under section 8337 of this title was terminated and is later restored under the second or third sentence of subsection (e) of such section may, under regulations prescribed by the Office, enroll in a health benefits plan described by section 8903 or 8903a of this title if such annuitant was covered by any such plan immediately before such annuity was terminated.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 605; Pub. L. 94–342, § 1(a), July 6, 1976, 90 Stat. 808; Pub. L. 95–454, title IX, § 906(a)(2), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 99–53, §§ 2(a), 3(a)(1), (2)(A), June 17, 1985, 99 Stat. 94, 95.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 3009(c).	Sept. 28, 1959, Pub. L. 86–382, § 10(c), 73 Stat. 715. Mar. 17, 1964, Pub. L. 88–284, § 1 (less (1)–(13)), 78 Stat. 165.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1985—Pub. L. 99–53, §3(a)(2)(A), inserted ''or disability'' after ''and survivor'' in section catchline.

Subsec. (b). Pub. L. 99–53, §2(a), inserted reference to section 8903a of this title.

Subsec. (c). Pub. L. 99–53, §3(a)(1), added subsec. (c).

1978—Subsec. (b). Pub. L. 95–454 substituted ''Office of Personnel Management'' for ''Civil Service Commission''.

1976—Pub. L. 94–342 designated existing provisions as subsec. (a), added subsec. (b), and substituted ''employees and survivor annuitants'' for ''employee'' in section catchline.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 2 of Pub. L. 94–342 provided that: ''The amendments made by the first section of this Act [amending this section] shall take effect on October 1, 1976, or on the date of the enactment of this Act [July 6, 1976], whichever date is later. Such amendments shall apply with respect to individuals whose survivor annuities are restored before, on, or after such date.''

INSURANCE COVERAGE FOR RESTORED DISABILITY ANNUITANTS

For provisions directing that subsec. (c) of this section shall apply with respect to any individual whose disability annuity is or was restored under section 8337(e) of this title after December 31, 1983, directing that the Office of Personnel Management notify each individual of any rights which such individual may have under subsec. (c) of this section, including any procedures or deadlines which might apply with respect to the exercise of those rights, directing that such notification be provided to any individual who, as of the 90th day after June 17, 1985, is receiving a disability annuity which was restored to such individual under section 8337(e) of this title after December 31, 1983, directing that nothing in subsec. (c) of this section be construed to authorize coverage under this chapter in the case of any individual who becomes enrolled in a health benefits plan under subsec. (c) of this section for any period before the date as of which such individual becomes so enrolled, and directing that such rule of construction apply with respect to any individual receiving a disability annuity which is or was restored under section 8337(e) of this title after December 31, 1983, and before the expiration of the 90-day period beginning on June 17, 1985, see section 3(c) of Pub. L. 99–53, set out as a note under section 8706 of this title.

§ 8909. Employees Health Benefits Fund

(a) There is in the Treasury of the United States an Employees Health Benefits Fund which is administered by the Office of Personnel Management. The contributions of enrollees and the Government described by section 8906 of this title shall be paid into the Fund. The Fund is available—

(1) without fiscal year limitation for all payments to approved health benefits plans; and

(2) to pay expenses for administering this chapter within the limitations that may be specified annually by Congress.

Payments from the Fund to a plan participating in a letter-of-credit arrangement under this chapter shall, in connection with any payment or reimbursement to be made by such plan for a health service or supply, be made, to the maximum extent practicable, on a checks-presented basis (as defined under regulations of the Department of the Treasury).

(b) Portions of the contributions made by enrollees and the Government shall be regularly set aside in the Fund as follows:

(1) A percentage, not to exceed 1 percent of all contributions, determined by the Office to be reasonably adequate to pay the administrative expenses made available by subsection (a) of this section.

(2) For each health benefits plan, a percentage, not to exceed 3 percent of the contributions toward the plan, determined by the Office to be reasonably adequate to provide a contingency reserve.

The Office, from time to time and in amounts it considers appropriate, may transfer unused funds for administrative expenses to the contingency reserves of the plans then under contract with the Office. When funds are so transferred, each contingency reserve shall be credited in proportion to the total amount of the subscription charges paid and accrued to the plan for the contract term immediately before the contract term in which the transfer is made. The income derived from dividends, rate adjustments, or other refunds made by a plan shall be credited to its contingency reserve. The contingency reserves may be used to defray increases in future rates, or may be applied to reduce the contributions of enrollees and the Government to, or to increase the benefits provided by, the plan from which the reserves are derived, as the Office from time to time shall determine.

(c) The Secretary of the Treasury may invest and reinvest any of the money in the Fund in interest-bearing obligations of the United States, and may sell these obligations for the purposes of the Fund. The interest on and the proceeds from the sale of these obligations become a part of the Fund.

(d) When the assets, liabilities, and membership of employee organizations sponsoring or underwriting plans approved under section 8903(3) or 8903a of this title are merged, the assets (including contingency reserves) and liabilities of the plans sponsored or underwritten by the merged organizations shall be transferred at the beginning of the contract term next following the date of the merger to the plan sponsored or underwritten by the successor organization. Each employee, annuitant, former spouse, or person having continued coverage under section 8905a of this title affected by a merger shall be transferred to the plan sponsored or underwritten by the successor organization unless he enrolls in another plan under this chapter. If the successor organization is an organization described in section 8901(8)(B) of this title, any employee, annuitant, former spouse, or person having continued coverage under section 8905a of this title so transferred may not remain enrolled in the plan after the end of the contract term in which the merger occurs unless that individual is a full member of such organization (as determined under section 8903a(d) of this title).

(e) Except as provided by subsection (d) of this section, when a plan described by section 8903(3)

or (4) or 8903a of this title is discontinued under this chapter, the contingency reserve of that plan shall be credited to the contingency reserves of the plans continuing under this chapter for the contract term following that in which termination occurs, each reserve to be credited in proportion to the amount of the subscription charges paid and accrued to the plan for the year of termination.

(f)(1) No tax, fee, or other monetary payment may be imposed, directly or indirectly, on a carrier or an underwriting or plan administration subcontractor of an approved health benefits plan by any State, the District of Columbia, or the Commonwealth of Puerto Rico, or by any political subdivision or other governmental authority thereof, with respect to any payment made from the Fund.

(2) Paragraph (1) shall not be construed to exempt any carrier or underwriting or plan administration subcontractor of an approved health benefits plan from the imposition, payment, or collection of a tax, fee, or other monetary payment on the net income or profit accruing to or realized by such carrier or underwriting or plan administration subcontractor from business conducted under this chapter, if that tax, fee, or payment is applicable to a broad range of business activity.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 605; Pub. L. 95–454, title IX, §906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 98–615, §3(6), Nov. 8, 1984, 98 Stat. 3204; Pub. L. 99–53, §2(e), (f), June 17, 1985, 99 Stat. 94; Pub. L. 99–251, title I, §101, Feb. 27, 1986, 100 Stat. 14; Pub. L. 100–654, title II, §202(a), Nov. 14, 1988, 102 Stat. 3845; Pub. L. 101–508, title VII, §7002(b), (c), Nov. 5, 1990, 104 Stat. 1388–330.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 3007.	Sept. 28, 1959, Pub. L. 86–382, §8, 73 Stat. 714. Mar. 17, 1964, Pub. L. 88–284, §1(12), (13), 78 Stat. 165.
.....	5 U.S.C. 3008(b).	Sept. 23, 1959, Pub. L. 86–382, §9(b), 73 Stat. 715.

In subsection (a), the words ''hereby created'' are omitted as executed. The words ''hereinafter referred to as the 'Fund' '' are omitted as unnecessary. The words ''to reimburse the Employees Health Benefits Fund for sums expended by the Commission in administering the provisions of this chapter for the fiscal years 1960 and 1961'' in former section 3008(b) are omitted as executed.

In subsection (d), the requirement that the assets and liabilities of plans of organizations that have been merged be transferred at the beginning of the contract term next following the date of the merger or enactment of this subsection is omitted as executed. The next beginning contract term referred to was November 1, 1964, and the transfers have been made. In the last sentence, the word ''hereafter'' is omitted as unnecessary.

In subsection (e), the word ''is'' is substituted for ''is or has been'' as this title is stated prospectively, and any existing rights and duties are preserved by technical section 8.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface of the report.

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–508, §7002(b), inserted at end ''Payments from the Fund to a plan participating in a letter-of-credit arrangement under this chapter shall, in connection with any payment or reimbursement to be made by such plan for a health service or supply, be made, to the maximum extent practicable, on a checks-presented basis (as defined under regulations of the Department of the Treasury).''

Subsec. (f). Pub. L. 101–508, §7002(c), added subsec. (f).

1988—Subsec. (d). Pub. L. 100–654 substituted ''former spouse, or person having continued coverage under section 8905a of this title'' for ''or former spouse'' in two places.

1986—Subsec. (b). Pub. L. 99–251 substituted ''enrollees'' for ''employees'' in last sentence.

1985—Subsec. (d). Pub. L. 99–53, §2(e), substituted ''section 8903(3) or 8903a'' for ''section 8903(3)'' and inserted provision directing that if the successor organization is an organization described in section 8901(8)(B) of this title, any transferred employee, annuitant, or former spouse may not remain enrolled in the plan after the end of the contract term in which the merger occurs unless the individual is a full member of such organization (as determined under section 8903a(d) of this title).

Subsec. (e). Pub. L. 99–53, §2(f), inserted ''or 8903a'' before ''of this title''.

1984—Subsecs. (a), (b). Pub. L. 98–615, §3(6)(A), substituted ''enrollees'' for ''employees, annuitants,'' in provisions preceding par. (1).

Subsec. (d). Pub. L. 98–615, §3(6)(B), substituted ''Each employee, annuitant, or former spouse'' for ''Each employee or annuitant''.

1978—Subsecs. (a), (b). Pub. L. 95–454 substituted ''Office of Personnel Management'' for ''Civil Service Commission'' and ''Office'' for ''Commission'' wherever appearing.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable with respect to contract years beginning on or after Jan. 1, 1991, see section 7002(g) of Pub. L. 101–508, set out as a note under section 8902 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–654 applicable with respect to any calendar year beginning, and contracts entered into or renewed for any calendar year beginning, after end of 9-month period beginning Nov. 14, 1988, and with respect to any qualifying event occurring on or after first day of first calendar year beginning after end of such 9-month period, see section 203 of Pub. L. 100–654, set out as a note under section 8902 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–615 effective May 7, 1985, with enumerated exceptions, and applicable to any individual who is married to an employee or annuitant on or after that date, see section 4(a)(2) of Pub. L. 98–615, as amended, set out as a note under section 8341 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

AMOUNTS TO BE REFUNDED FROM CARRIERS' SPECIAL RESERVES

Pub. L. 99–272, title XV, §15202(a), Apr. 7, 1986, 100 Stat. 333, provided that:

''(1) The Office of Personnel Management—

''(A) shall determine the minimum level of financial reserves necessary to be held by a carrier for each health benefits plan under chapter 89 of such title for the purpose of ensuring the stable and efficient operation of such plan; and

''(B) shall require the carrier to refund to the Employees Health Benefits Fund (described in section 8909(a) of title 5, United States Code) any such reserves in excess of such minimum level in such

amounts and at such times during fiscal years 1986 and 1987 as the Office determines appropriate.

''(2) In carrying out its responsibilities under this subsection, the Office shall ensure that the aggregate amount to be refunded to the Employees Health Benefits Fund under this subsection—

''(A) during fiscal year 1986 shall be not less than $800,000,000; and

''(B) during fiscal year 1987 shall be not less than $300,000,000.

''(3) No amount in the Employees Health Benefits Fund may be transferred to the general fund of the Treasury of the United States as a result of a refund made under this subsection.

''(4)(A) Subject to subparagraphs (B) and (C), any amounts refunded to the Employees Health Benefits Fund under this subsection may be used solely for the purpose of paying the Government contribution under chapter 89 of title 5, United States Code, for health benefits for annuitants, as defined by section 8901(3) of title 5, United States Code, (including the Government contribution for former employees of the United States Postal Service) enrolled in health benefits plans under such chapter.

''(B) This paragraph applies to a refund to the extent that such refund represents amounts attributable to Government contributions which were made under section 8906(b) of title 5, United States Code, (including contributions made by the United States Postal Service) as determined under regulations which the Office of Personnel Management shall prescribe.

''(C) Any part of the amount in the Employees Health Benefits Fund as a result of a refund made under this subsection may be transferred—

''(i) to the government of the District of Columbia, except that the amount of any such part so transferred shall not exceed the amount attributable to the contributions made by the government of the District of Columbia to subscription charges under this chapter (as determined by the Office of Personnel Management); and

''(ii) to the United States Postal Service, except that the amount of any such part so transferred shall not exceed the amount attributable to the contributions made by the United States Postal Service to subscription charges under this chapter (as determined by the Office).

''(5) The provisions of this subsection shall apply notwithstanding any provision of the Federal Employees Benefits Improvement Act of 1985 [probably means the Federal Employees Benefits Improvement Act of 1986, Pub. L. 99–251, see Short Title of 1986 Amendment note set out under section 8901 of this title for classification].''

RESTRICTIONS RELATING TO AMOUNTS REFUNDED TO EMPLOYEES HEALTH BENEFITS FUND FROM CARRIERS' SPECIAL RESERVES

Section 112 of Pub. L. 99–251 provided that:

''(a) PROHIBITED TRANSFERS.—(1) No amount in the Employees Health Benefits Fund may be transferred to the general fund of the Treasury of the United States or the United States Postal Service as a result of a refund described in paragraph (2).

''(2) This subsection applies with respect to any refund made by a carrier during fiscal year 1986 or 1987 to the Employees Health Benefits Fund to the extent that such refund represents amounts in excess of the minimum level of financial reserves necessary to be held by such carrier to ensure the stable and efficient operation of its health benefits plan.

''(b) RESTRICTION RELATING TO USE OF CERTAIN AMOUNTS IN THE FUND.—(1) Any amount which is in the Employees Health Benefits Fund, and which is described in paragraph (2), may be used solely for the purpose of paying the Government contribution under chapter 89 of title 5, United States Code, for health benefits for annuitants enrolled in health benefits plans (without regard to the health benefits plan or plans from which the refunds were received).

''(2) This subsection applies with respect to any amounts—

''(A) which are referred to in subsection (a)(2); and

''(B) which are attributable to Government contributions (other than contributions by the government of the District of Columbia, which shall be returned to such government) that were made under section 8906(b) of title 5, United States Code, as determined under regulations which the Office of Personnel Management shall prescribe.

''(c) DEFINITIONS.—For the purpose of this section—

''(1) the term 'Employees Health Benefits Fund' refers to the fund described in section 8909(a) of title 5, United States Code;

''(2) the term 'carrier' has the meaning given such term by section 8901(7) of such title; and

''(3) the term 'health benefits plan' has the meaning given such term by section 8901(6) of such title.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6386, 8905, 8906 of this title; title 22 sections 4069c, 4069c–1; title 25 section 450i; title 50 section 403p.

§ 8910. Studies, reports, and audits

(a) The Office of Personnel Management shall make a continuing study of the operation and administration of this chapter, including surveys and reports on health benefits plans available to employees and on the experience of the plans.

(b) Each contract entered into under section 8902 of this title shall contain provisions requiring carriers to—

(1) furnish such reasonable reports as the Office determines to be necessary to enable it to carry out its functions under this chapter; and

(2) permit the Office and representatives of the General Accounting Office to examine records of the carriers as may be necessary to carry out the purposes of this chapter.

(c) Each Government agency shall keep such records, make such certifications, and furnish the Office with such information and reports as may be necessary to enable the Office to carry out its functions under this chapter.

(d) The Office, in consultation with the Department of Health and Human Services, shall develop and implement a system through which the carrier for an approved health benefits plan described by section 8903 or 8903a will be able to identify those annuitants or other individuals covered by such plan who are entitled to benefits under part A or B of title XVIII of the Social Security Act in order to ensure that payments under coordination of benefits with Medicare do not exceed the statutory maximums which physicians may charge Medicare enrollees.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 606; Pub. L. 95–454, title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 101–508, title VII, § 7002(d), Nov. 5, 1990, 104 Stat. 1388–330.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 3010.	Sept. 28, 1959, Pub. L. 86–382, § 11, 73 Stat. 716.

In subsection (b), the word ''agency'' is substituted for ''department, agency, and independent establishment''.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (d), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Parts A and B of title XVIII of the Social Security Act are classified generally to parts A (§ 1395c et seq.) and B (§ 1395j et seq.), respectively, of subchapter XVIII of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

1990—Subsec. (d). Pub. L. 101–508 added subsec. (d).

1978—Subsecs. (a) to (c). Pub. L. 95–454 substituted ''Office of Personnel Management'' for ''Civil Service Commission'' and ''Office'' for ''Commission'' wherever appearing.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable with respect to contract years beginning on or after Jan. 1, 1991, see section 7002(g) of Pub. L. 101–508, set out as a note under section 8902 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

§ 8911. Advisory committee

The Director of the Office of Personnel Management shall appoint a committee composed of five members, who serve without pay, to advise the Office regarding matters of concern to employees under this chapter. Each member of the committee shall be an employee enrolled under this chapter or an elected official of an employee organization.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 607; Pub. L. 95–454, title IX, § 906(a)(1), (4), Oct. 13, 1978, 92 Stat. 1224, 1225.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 3012.	Sept. 28, 1959, Pub. L. 86–382, § 13, 73 Stat. 716.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1978—Pub. L. 95–454 substituted ''Director of the Office of Personnel Management'' for ''Chairman of the Civil Service Commission'' and ''Office'' for ''Commission''.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. See section 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to this title.

§ 8912. Jurisdiction of courts

The district courts of the United States have original jurisdiction, concurrent with the United States Court of Federal Claims, of a civil action or claim against the United States founded on this chapter.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 607; Pub. L. 97–164, title I, § 160(a)(3), Apr. 2, 1982, 96 Stat. 48; Pub. L. 102–572, title IX, § 902(b)(1), Oct. 29, 1992, 106 Stat. 4516.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 3014.	Sept. 28, 1959, Pub. L. 86–382, § 15, 73 Stat. 716.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1992—Pub. L. 102–572 substituted ''United States Court of Federal Claims'' for ''United States Claims Court''.

1982—Pub. L. 97–164 substituted ''United States Claims Court'' for ''Court of Claims''.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–572 effective Oct. 29, 1992, see section 911 of Pub. L. 102–572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–164 effective Oct. 1, 1982, see section 402 of Pub. L. 97–164, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8902a of this title.

§ 8913. Regulations

(a) The Office of Personnel Management may prescribe regulations necessary to carry out this chapter.

(b) The regulations of the Office may prescribe the time at which and the manner and conditions under which an employee is eligible to enroll in an approved health benefits plan described in section 8903 or 8903a of this title. The regulations may exclude an employee on the basis of the nature and type of his employment or conditions pertaining to it, such as short-term appointment, seasonal or intermittent employment, and employment of like nature. The Office may not exclude—

(1) an employee or group of employees solely on the basis of the hazardous nature of employment;

(2) a teacher in the employ of the Board of Education of the District of Columbia, whose pay is fixed by section 1501 of title 31, District of Columbia Code, on the basis of the fact that the teacher is serving under a temporary appointment if the teacher has been so employed by the Board for a period or periods totaling not less than two school years;

(3) an employee who is occupying a position on a part-time career employment basis (as defined in section 3401(2) of this title); or

(4) an employee who is employed on a temporary basis and is eligible under section 8906a(a).

(c) The regulations of the Office shall provide for the beginning and ending dates of coverage of employees, annuitants, members of their families, and former spouses under health benefit plans. The regulations may permit the coverage to continue, exclusive of the temporary extension of coverage described by section 8902(g) of this title, until the end of the pay period in which an employee is separated from the service, or until the end of the month in which an annuitant or former spouse ceases to be entitled to annuity, and in case of the death of an employee or annuitant, may permit a temporary extension of the coverage of members of his family for not to exceed 90 days.

(d) The Secretary of Agriculture shall prescribe regulations to effect the application and operation of this chapter to an individual named by section 8901(1)(H) of this title.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 607; Pub. L. 95–437, §4(c)(1), Oct. 10, 1978, 92 Stat. 1058; Pub. L. 95–454, title IX, §906(a)(2), (3), (c)(2)(F), (H), Oct. 13, 1978, 92 Stat. 1224, 1227; Pub. L. 98–615, §3(7), Nov. 8, 1984, 98 Stat. 3204; Pub. L. 99–53, §2(a), June 17, 1985, 99 Stat. 94; Pub. L. 100–654, title III, §301(c), Nov. 14, 1988, 102 Stat. 3846.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(a)	5 U.S.C. 3009(a).	Sept. 28, 1959, Pub. L. 86–382, §10(a), 73 Stat. 715.
(b)	5 U.S.C. 3002(a) (words between 1st and 4th commas of 1st sentence, and 2d sentence), (f) (words between 1st and 2d commas of 1st sentence).	Sept. 28, 1959, Pub. L. 86–382, §3(a) (words between 1st and 4th commas of 1st sentence, and 2d sentence), 73 Stat. 710. July 1, 1960, Pub. L. 86–568, §115(d) ''(f) (words between 1st and 2d commas of 1st sentence)'', 74 Stat. 303. Oct. 6, 1964, Pub. L. 88–631, §1, 78 Stat. 1007.
(c)	5 U.S.C. 3009(b).	Sept. 28, 1959, Pub. L. 86–382, §10(b), 73 Stat. 715.
(d)	5 U.S.C. 3002(f) (2d sentence).	July 1, 1960, Pub. L. 86–568, §115(d) ''(f) (2d sentence)'', 74 Stat. 303.

In subsection (b)(2), the words ''section 1501 of title 31, District of Columbia Code'' are substituted for ''section 1 of the District of Columbia Teachers' Salary Act of 1955 (69 Stat. 521), as amended (sec. 31–1501, D.C. Code, 1961 edition)''.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

REFERENCES IN TEXT

Section 1501 of title 31, District of Columbia Code, referred to in subsec. (b)(2), was transferred to section 31–1101 of Title 31, Education and Cultural Institutions, of the District of Columbia Code.

AMENDMENTS

1988—Subsec. (b)(4). Pub. L. 100–654 added par. (4).

1985—Subsec. (b). Pub. L. 99–53 inserted reference to section 8903a of this title.

1984—Subsec. (c). Pub. L. 98–615, §3(7), substituted ''employees, annuitants, members of their families, and former spouses'' for ''employees and annuitants and members of their families'', and ''in which an annuitant or former spouse'' for ''in which an annuitant''.

1978—Subsecs. (a), (b). Pub. L. 95–454, §906(a)(2), (3), substituted ''Office of Personnel Management'' for ''Civil Service Commission'' and ''Office'' for ''Commission'' wherever appearing.

Subsec. (b)(3). Pub. L. 95–454, §906(c)(2)(F), (H), substituted ''3401'' for ''3391''.

Pub. L. 95–437 added par. (3).

Subsec. (c). Pub. L. 95–454, §906(a)(3), substituted ''Office'' for ''Commission''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–654 effective 120 days after Nov. 14, 1988, see section 301(d) of Pub. L. 100–654, set out as an Effective Date note under section 8906a of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–615 effective May 7, 1985, with enumerated exceptions, and applicable to any individual who is married to an employee or annuitant on or after that date, see section 4(a)(2) of Pub. L. 98–615, as amended, set out as a note under section 8341 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8901 of this title.

§ 8914. Effect of other statutes

Any provision of law outside of this chapter which provides coverage or any other benefit under this chapter to any individuals who (based on their being employed by an entity other than the Government) would not otherwise be eligible for any such coverage or benefit shall not apply with respect to any individual appointed, transferred, or otherwise commencing that type of employment on or after October 1, 1988.

(Added Pub. L. 100–238, title I, §108(a)(3)(A), Jan. 8, 1988, 101 Stat. 1747.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 22 section 6103; title 25 section 450i.

Subpart H—Access to Criminal History Record Information

CHAPTER 91—ACCESS TO CRIMINAL HISTORY RECORDS FOR NATIONAL SECURITY PURPOSES

Sec.
9101. Criminal history record information for national security purposes.

§ 9101. Criminal history record information for national security purposes

(a) As used in this section:

(1) The term ''criminal justice agency'' includes Federal, State, and local agencies and means: (A) courts, or (B) a Government agency or any subunit thereof which performs the administration of criminal justice pursuant to a statute or Executive order, and which allocates a substantial part of its annual budget to the administration of criminal justice.

(2) The term ''criminal history record information'' means information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, indictments, informations, or other formal criminal charges, and any disposition arising therefrom, sentencing, correction supervision, and release. The term does not include identification information such as fingerprint records to the extent that such information does not indicate involvement of the individual in the criminal justice system. The term does not include those records of a State or locality sealed pursuant to law from access by State and local criminal justice agencies of that State or locality.

(3) The term ''classified information'' means information or material designated pursuant to the provisions of a statute or Executive order as requiring protection against unauthorized disclosure for reasons of national security.

(4) The term ''State'' means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

(5) The term ''local'' and ''locality'' means any local government authority or agency or component thereof within a State having jurisdiction over matters at a county, municipal, or other local government level.

(b)(1) Upon request by the Department of Defense, the Department of State, the Office of Personnel Management, the Central Intelligence Agency, or the Federal Bureau of Investigation, criminal justice agencies shall make available criminal history record information regarding individuals under investigation by such department, office, agency, or bureau for the purpose of determining eligibility for (A) access to classified information or (B) assignment to or retention in sensitive national security duties. Such a request to a State central criminal history record repository shall be accompanied by the fingerprints of the individual who is the subject of the request if required by State law and if the repository uses the fingerprints in an automated fingerprint identification system. Fees, if any, charged for providing criminal history record information pursuant to this subsection shall not exceed the reasonable cost of providing such information, nor shall they in any event exceed those charged to State or local agencies other than criminal justice agencies for such information.

(2) This subsection shall apply notwithstanding any other provision of law or regulation of any State or of any locality within a State, or any other law of the United States.

(3)(A) Upon request by a State or locality, the Department of Defense, the Department of State, the Office of Personnel Management, the Central Intelligence Agency, or the Federal Bureau of Investigation shall enter into an agreement with such State or locality to indemnify and hold harmless such State or locality, and its officers, employees and agents, from any claim against such State or locality, or its officer, employee or agent, for damages, costs and other monetary loss, whether or not suit is instituted, arising from the disclosure or use by such department, office, agency, or bureau of criminal history record information obtained from the State or locality pursuant to this subsection, if the laws of such State or locality, as of the date of enactment of this section, otherwise have the effect of prohibiting the disclosure of such criminal history record information to such department, office, agency, or bureau.

(B) When the Department of Defense, the Department of State, the Office of Personnel Management, the Central Intelligence Agency, or the Federal Bureau of Investigation and a State or locality have entered into an agreement described in subparagraph (A), and a claim described in such subparagraph is made against such State or locality, or its officer, employee, or agent, the State or locality shall expeditiously transmit notice of such claim to the Attorney General and to the United States Attorney of the district embracing the place wherein the claim is made, and the United States shall have the opportunity to make all determinations regarding the settlement or defense of such claim.

(c) The Department of Defense, the Department of State, the Office of Personnel Management, the Central Intelligence Agency, or the Federal Bureau of Investigation shall not obtain criminal history record information pursuant to this section unless it has received written consent from the individual under investigation for the release of such information for the purposes set forth in paragraph (b)(1).

(d) Criminal history record information received under this section shall be disclosed or used only for the purposes set forth in paragraph (b)(1) or for national security or criminal justice purposes authorized by law, and such information shall be made available to the individual who is the subject of such information upon request.

(e) The authority provided under this section with respect to the Department of State may be exercised only so long as the Department of State continues to extend to its employees and applicants for employment, at a minimum, those procedural safeguards provided for as part of the security clearance process that were made available, as of May 1, 1987, pursuant to section 163.4 of volume 3 of the Foreign Affairs Manual.

(Added Pub. L. 99–169, title VIII, § 801(a), Dec. 4, 1985, 99 Stat. 1009; amended Pub. L. 99–569, title IV, § 402(a), Oct. 27, 1986, 100 Stat. 3196; Pub. L. 101–246, title I, § 114, Feb. 16, 1990, 104 Stat. 22.)

TERMINATION OF SUBSECTION (b)(3)

For termination of subsection (b)(3) of this section by section 803(b) of Pub. L. 99–169, see Termination Date of Subsection (b)(3) of This Section note below.

AMENDMENTS

1990—Subsecs. (b)(1), (3)(A), (B), (c). Pub. L. 101–246, § 114(1), inserted ''the Department of State,'' after ''Defense,'' wherever appearing.

Subsec. (e). Pub. L. 101–246, § 114(2), added subsec. (e).

1986—Subsecs. (b)(1), (3), (c). Pub. L. 99–569 inserted references to the Federal Bureau of Investigation and such bureau.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 402(c) of Pub. L. 99–569 provided that: ''The amendments made by this section [amending this section and provisions set out as a note under this section] shall become effective with respect to any inquiry which begins after the date of enactment of this Act [Oct. 27, 1986] conducted by the Federal Bureau of Investigation for purposes specified in paragraph (b)(1) of section 9101 of title 5, United States Code.''

EFFECTIVE DATE

Section 802 of Pub. L. 99–169 provided that: ''The amendments made by section 801(a) of this Act [enacting this section] shall become effective with respect to any inquiry which begins after the date of enactment of this Act [Dec. 4, 1985] conducted by the Department of Defense, the Office of Personnel Management, or the Central Intelligence Agency, for the purposes specified in paragraph (b)(1) of section 9101 of title 5, United States Code, as added by this Act.''

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

TERMINATION DATE OF SUBSECTION (b)(3) OF THIS SECTION

Pub. L. 100–453, title I, § 101(d), Sept. 29, 1988, 102 Stat. 1904, provided that: ''The expiration date provided for in section 803(b) of the Intelligence Authorization Act for Fiscal Year 1986 (Public Law 99–169) [set out below] shall be extended until December 31, 1989.''

Section 803(b) of Pub. L. 99–169 provided that: ''Three years after the date of enactment of this Act [Dec. 4, 1985], section 9101(b)(3) of title 5, United States Code, shall expire.''

REPORT TO CONGRESSIONAL COMMITTEES ON EFFECT OF PROVISIONS FOR INDEMNIFICATION AGREEMENTS

Section 803(a) of Pub. L. 99–169, as amended by Pub. L. 99–569, title IV, § 402(b), Oct. 27, 1986, 100 Stat. 3196, directed Department of Justice, within two years after Dec. 4, 1985, and after consultation with Department of Defense, Office of Personnel Management, Central Intelligence Agency, and Federal Bureau of Investigation, to report to appropriate committees of Congress concerning the effect of 5 U.S.C. 9101(b)(3), as added by this Act, including the effect of the absence of indemnification agreements upon States and localities not eligible under 5 U.S.C. 9101(b)(3) for such agreements.