Sections 346 and 347 of title 28 referred to in former section 118k(c) were repealed by the Act of June 25, 1948, ch. 646, § 39, 62 Stat. 862, and are now covered by section 1254 of title 28.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.

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AMENDMENTS

2010—Pub. L. 111–292, § 2(b)(1), Dec. 9, 2010, 124 Stat. 3170, added item for chapter 65.

Pub. L. 111–282, § 4(c)(3), Oct. 15, 2010, 124 Stat. 3044, added item for chapter 102.

2006—Pub. L. 109–295, title VI, § 621(b), Oct. 4, 2006, 120 Stat. 1416, added item for chapter 101.

2004—Pub. L. 108–496, § 4, Dec. 23, 2004, 118 Stat. 4010, added items for chapters 89A and 89B.

Pub. L. 108–201, § 3(b), Feb. 24, 2004, 118 Stat. 477, added item for chapter 98.

2003—Pub. L. 108–136, div. A, title XI, §§ 1101(a)(2), 1129(b), Nov. 24, 2003, 117 Stat. 1633, 1645, added items for chapters 54 and 99.

2002—Pub. L. 107–347, title II, § 209(c)(3), Dec. 17, 2002, 116 Stat. 2930, added item for chapter 37.

Pub. L. 107–296, title VIII, § 841(a)(3), Nov. 25, 2002, 116 Stat. 2233, added item for chapter 97.

Pub. L. 107–123, § 8(d)(1)(A), Jan. 16, 2002, 115 Stat. 2399, added item for chapter 48.

2000—Pub. L. 106–398, § 1 [[div. A], title X, § 1076(f)(1)(B)], Oct. 30, 2000, 114 Stat. 1654, 1654A–282, substituted ''and Other Purposes'' for ''Purposes'' in item for chapter 91.

Pub. L. 106–265, title I, § 1002(b), Sept. 19, 2000, 114 Stat. 769, added item for chapter 90.

1998—Pub. L. 105–206, title I, § 1201(b), July 22, 1998, 112 Stat. 719, added items for subpart I and chapter 95.

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.

[1] Chapter heading amended by Pub. L. 107–296 without corresponding amendment of part analysis.

[2] So in original. Probably should be capitalized.

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''.

## 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 1998 AMENDMENT

Pub. L. 105–339, § 1, Oct. 31, 1998, 112 Stat. 3182, provided that: ''This Act [enacting sections 3330a to 3330c of this title, section 1316a of Title 2, The Congress, section 115 of Title 3, The President, and section 1354 of Title 31, Money and Finance, amending sections 2108, 2302, and 3304 of this title and section 4212 of Title 38, Veterans' Benefits, repealing section 1599c of Title 10, Armed Forces, enacting provisions set out as notes under section 2302 of this title and section 601 of Title 28, Judiciary and Judicial Procedure, and amending provisions set out as a note under section 106 of Title 49, Transportation] may be cited as the 'Veterans Employment Opportunities Act of 1998'.''

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'.''

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

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.''

### § 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.

## § 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.

## § 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 Regulatory 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; Pub. L. 109–435, title VI, § 604(b), Dec. 20, 2006, 120 Stat. 3241.)

HISTORICAL AND REVISION NOTES

The section is supplied for convenience.

AMENDMENTS

2006—Subsec. (b). Pub. L. 109–435 substituted ''Postal Regulatory Commission'' for ''Postal Rate Commission''.

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.

## § 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 who is 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 (if any), and whose employment in such a position began before October 1, 1996, and has been uninterrupted in such a position since that date 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 Regulatory 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; Pub. L. 104–201, div. A, title III, §370(b), Sept. 23, 1996, 110 Stat. 2499; Pub. L. 105–85, div. B, title XXVIII, §2871(c)(2), Nov. 18, 1997, 111 Stat. 2015; Pub. L. 109–435, title VI, §604(f), Dec. 20, 2006, 120 Stat. 3242.)

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 generally 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

2006—Subsec. (e). Pub. L. 109–435 substituted ''Postal Regulatory Commission'' for ''Postal Rate Commission''.

1997—Subsec. (b). Pub. L. 105–85 inserted ''(if any)'' after ''Academy dairy''.

1996—Subsec. (b). Pub. L. 104–201 inserted ''who is'' after ''An individual'' and ''and whose employment in such a position began before October 1, 1996, and has been uninterrupted in such a position since that date'' after ''Academy dairy,''.

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 1996 AMENDMENT

Section 370(e) of Pub. L. 104–201 provided that: ''The amendments made by this section [amending this section and section 6971 of Title 10, Armed Forces, and repealing section 6970 of Title 10] shall take effect on October 1, 1996.''

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.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

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.

## § 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.

## § 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 or employee 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 Chief Administrative Officer 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 Office of Congressional Accessibility Services.

(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; Pub. L. 104–186, title II, § 215(1), Aug. 20, 1996, 110 Stat. 1745; Pub. L. 110–437, title IV, § 422(c), Oct. 20, 2008, 122 Stat. 4997; Pub. L. 111–145, § 7(a), Mar. 4, 2010, 124 Stat. 55.)

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

2010—Par. (4). Pub. L. 111–145, inserted ''or employee'' after ''member''.

2008—Par. (9). Pub. L. 110–437 amended par. (9) generally. Prior to amendment, par. (9) read as follows: ''an employee of the Capitol Guide Service.''

1996—Par. (5). Pub. L. 104–186 substituted ''Chief Administrative Officer'' for ''Clerk''.

1970—Par. (9). Pub. L. 91—510 added par. (9).

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–145, § 7(d), Mar. 4, 2010, 124 Stat. 56, provided that: ''The amendments made by this section [amending this section and sections 5515, 5531, 5533, and 5537 of this title] shall take effect as though enacted as part of section 1018 of the Legislative Branch Appropriations Act, 2003 (2 U.S.C. 1907).''

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–437 effective first day of first pay period (applicable to employees transferred under section 2241 of Title 2, The Congress) on or after 30 days after Oct. 20, 2008, see section 422(d) of Pub. L. 110–437, set out as a note under section 1301 of Title 2.

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.

## § 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;

(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 October 15, 1976, not including service under section 12103(d) 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, Navy Reserve, Air Force Reserve, Marine Corps Reserve, or Coast Guard Reserve;

(C) served on active duty as defined by section 101(21) of title 38 in the armed forces during the period beginning on August 2, 1990, and ending on January 2, 1992; or

(D) 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 during the period beginning on September 11, 2001, and ending on the date prescribed by Presidential proclamation or by law as the last date of Operation Iraqi Freedom;

and who has been discharged or released from active duty in 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), (C), or (D) 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;

(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; and

(H) a veteran who was discharged or released from a period of active duty by reason of a sole survivorship discharge (as that term is defined in section 1174(i) of title 10);

but does not include applicants for, or members of, the Senior Executive Service, the Defense Intelligence Senior Executive Service, the Senior Cryptologic Executive Service, or the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service;

(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; Pub. L. 105–85, div. A, title XI, §1102(a), (c), Nov. 18, 1997, 111 Stat. 1922; Pub. L. 105–339, §4(a), Oct. 31, 1998, 112 Stat. 3185; Pub. L. 109–163, div. A, title V, §515(f)(1), title XI, §§1111, 1112(a), Jan. 6, 2006, 119 Stat. 3236, 3451; Pub. L. 110–317, §8, Aug. 29, 2008, 122 Stat. 3529.)

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.<br>Jan. 19, 1948, ch. 1, §1, 62 Stat. 3.<br>July 2, 1948, ch. 816, 62 Stat. 1233.<br>Aug. 26, 1949, ch. 513, 63 Stat. 666.<br>Dec. 27, 1950, ch. 1151, §1, 64 Stat. 1117.<br>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. |

AMENDMENTS

2008—Par. (3)(H). Pub. L. 110–317 added subpar. (H).

2006—Par. (1). Pub. L. 109–163, §1112(a), in concluding provisions, substituted ''discharged or released from active duty in'' for ''separated from''.

Par. (1)(B). Pub. L. 109–163, §515(f)(1), substituted ''Navy Reserve'' for ''Naval Reserve''.

Par. (1)(D). Pub. L. 109–163, §1111(a), added subpar. (D).

Par. (3)(B). Pub. L. 109–163, §1111(b), substituted ''paragraph (1)(B), (C), or (D)'' for ''paragraph (1)(B) or (C)''.

1998—Par. (3). Pub. L. 105–339, in concluding provisions, substituted ''or the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service;'' for ''the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service, or the General Accounting Office;''.

1997—Par. (1)(B). Pub. L. 105–85, §1102(c), substituted ''October 15, 1976,'' for ''the date of enactment of the Veterans' Education and Employment Assistance Act of 1976,'' and ''12103(d) of title 10'' for ''511(d) of title 10''.

Par. (1)(C). Pub. L. 105–85, §1102(a)(1), added subpar. (C).

Par. (3)(B). Pub. L. 105–85, §1102(a)(2), inserted ''or (C)'' after ''paragraph (1)(B)''.

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 2008 AMENDMENT

Pub. L. 110–317, § 10, Aug. 29, 2008, 122 Stat. 3530, provided that:

''(a) RETROACTIVE EFFECTIVE DATE.—Except as provided in subsection (b) and section 9 [amending section 685 of Title 26, Internal Revenue Code, and enacting provisions set out as a note under section 685 of Title 26], this Act [amending this section, section 8521 of this title, sections 1145, 1146, and 1174 of Title 10, Armed Forces, section 685 of Title 26, section 303a of Title 37, Pay and Allowances of the Uniformed Services, and sections 3011, 3012, 3702, and 4211 of Title 38, Veterans' Benefits, and enacting provisions set out as notes under section 101 of Title 10 and section 685 of Title 26] and the amendments made by this Act shall apply with respect to any sole survivorship discharge granted after September 11, 2001.

''(b) DATE OF ENACTMENT EFFECTIVE DATE FOR CERTAIN AMENDMENTS.—The amendments made by sections 4, 7, and 8 [amending this section and section 8521 of this title and section 1145 of Title 10] shall apply with respect to any sole survivorship discharge granted after the date of the enactment of this Act [Aug. 29, 2008].

''(c) SOLE SURVIVORSHIP DISCHARGE DEFINED.—In this section, the term 'sole survivorship discharge' means the separation of a member from the Armed Forces, at the request of the member, pursuant to the Department of Defense policy permitting the early separation of a member who is the only surviving child in a family in which—

''(1) the father or mother or one or more siblings—

''(A) served in the Armed Forces; and

''(B) was killed, died as a result of wounds, accident, or disease, is in a captured or missing in action status, or is permanently 100 percent disabled or hospitalized on a continuing basis (and is not employed gainfully because of the disability or hospitalization); and

''(2) the death, status, or disability did not result from the intentional misconduct or willful neglect of the parent or sibling and was not incurred during a period of unauthorized absence.''

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 1621 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.

SAVINGS PROVISION

Pub. L. 109–163, div. A, title XI, § 1112(b), Jan. 6, 2006, 119 Stat. 3451, provided that: ''Nothing in the amendment made by subsection (a) [amending this section] may be construed to affect a determination made before the date of enactment of this Act [Jan. 6, 2006] that an individual is a preference eligible (as defined in section 2108(3) of title 5, United States Code).''

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

## § 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.

## 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 Government Accountability Office.
2305. Coordination with certain other provisions of law.

AMENDMENTS

2004—Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814, substituted ''Government Accountability Office'' for ''General Accounting Office'' in item 2304.

### § 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 information 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.

NOTIFICATION AND FEDERAL EMPLOYEE ANTIDISCRIMINATION AND RETALIATION

Pub. L. 107–174, May 15, 2002, 116 Stat. 566, as amended by Pub. L. 109–435, title VI, § 604(f), Dec. 20, 2006, 120 Stat. 3242, provided that:

''SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

''(a) SHORT TITLE.—This Act may be cited as the 'Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002'.

''(b) TABLE OF CONTENTS.—[Omitted.]

''TITLE I—GENERAL PROVISIONS

''SEC. 101. FINDINGS.

''Congress finds that—

''(1) Federal agencies cannot be run effectively if those agencies practice or tolerate discrimination;

''(2) Congress has heard testimony from individuals, including representatives of the National Association for the Advancement of Colored People and the American Federation of Government Employees, that point to chronic problems of discrimination and retaliation against Federal employees;

''(3) in August 2000, a jury found that the Environmental Protection Agency had discriminated against a senior social scientist, and awarded that scientist $600,000;

''(4) in October 2000, an Occupational Safety and Health Administration investigation found that the Environmental Protection Agency had retaliated against a senior scientist for disagreeing with that agency on a matter of science and for helping Congress to carry out its oversight responsibilities;

''(5) there have been several recent class action suits based on discrimination brought against Federal agencies, including the Federal Bureau of Investigation, the Bureau of Alcohol, Tobacco, and Firearms, the Drug Enforcement Administration, the Immigration and Naturalization Service, the United States Marshals Service, the Department of Agriculture, the United States Information Agency, and the Social Security Administration;

''(6) notifying Federal employees of their rights under discrimination and whistleblower laws should increase Federal agency compliance with the law;

''(7) requiring annual reports to Congress on the number and severity of discrimination and whistleblower cases brought against each Federal agency should enable Congress to improve its oversight over compliance by agencies with the law; and

''(8) requiring Federal agencies to pay for any discrimination or whistleblower judgment, award, or settlement should improve agency accountability with respect to discrimination and whistleblower laws.

''SEC. 102. SENSE OF CONGRESS.

''It is the sense of Congress that—

''(1) Federal agencies should not retaliate for court judgments or settlements relating to discrimination and whistleblower laws by targeting the claimant or other employees with reductions in compensation, benefits, or workforce to pay for such judgments or settlements;

''(2) the mission of the Federal agency and the employment security of employees who are blameless in a whistleblower incident should not be compromised;

''(3) Federal agencies should not use a reduction in force or furloughs as means of funding a reimbursement under this Act;

''(4)(A) accountability in the enforcement of employee rights is not furthered by terminating—

''(i) the employment of other employees; or

''(ii) the benefits to which those employees are entitled through statute or contract; and

''(B) this Act is not intended to authorize those actions;

''(5)(A) nor is accountability furthered if Federal agencies react to the increased accountability under this Act by taking unfounded disciplinary actions against managers or by violating the procedural rights of managers who have been accused of discrimination; and

''(B) Federal agencies should ensure that managers have adequate training in the management of a diverse workforce and in dispute resolution and other essential communication skills; and

''(6)(A) Federal agencies are expected to reimburse the General Fund of the Treasury within a reasonable time under this Act; and

''(B) a Federal agency, particularly if the amount of reimbursement under this Act is large relative to annual appropriations for that agency, may need to extend reimbursement over several years in order to avoid—

''(i) reductions in force;

''(ii) furloughs;

''(iii) other reductions in compensation or benefits for the workforce of the agency; or

''(iv) an adverse effect on the mission of the agency.

''SEC. 103. DEFINITIONS.

''For purposes of this Act—

''(1) the term 'applicant for Federal employment' means an individual applying for employment in or under a Federal agency;

''(2) the term 'basis of alleged discrimination' shall have the meaning given such term under section 303;

''(3) the term 'Federal agency' means an Executive agency (as defined in section 105 of title 5, United States Code), the United States Postal Service, or the Postal Regulatory Commission;

''(4) the term 'Federal employee' means an individual employed in or under a Federal agency;

''(5) the term 'former Federal employee' means an individual formerly employed in or under a Federal agency; and

''(6) the term 'issue of alleged discrimination' shall have the meaning given such term under section 303.

''SEC. 104. EFFECTIVE DATE.

''This Act and the amendments made by this Act shall take effect on the 1st day of the 1st fiscal year beginning more than 180 days after the date of the enactment of this Act [May 15, 2002].

''TITLE II—FEDERAL EMPLOYEE DISCRIMINATION AND RETALIATION

''SEC. 201. REIMBURSEMENT REQUIREMENT.

''(a) APPLICABILITY.—This section applies with respect to any payment made in accordance with section 2414, 2517, 2672, or 2677 of title 28, United States Code, and under section 1304 of title 31, United States Code (relating to judgments, awards, and compromise settlements) to any Federal employee, former Federal employee, or applicant for Federal employment, in connection with any proceeding brought by or on behalf of such employee, former employee, or applicant under—

''(1) any provision of law cited in subsection (c); or

''(2) any other provision of law which prohibits any form of discrimination, as identified under rules issued under section 204.

''(b) REQUIREMENT.—An amount equal to the amount of each payment described in subsection (a) shall be reimbursed to the fund described in section 1304 of title 31, United States Code, out of any appropriation, fund, or other account (excluding any part of such appropriation, of such fund, or of such account available for the enforcement of any Federal law) available for operating expenses of the Federal agency to which the discriminatory conduct involved is attributable as determined under section 204.

''(c) SCOPE.—The provisions of law cited in this subsection are the following:

''(1) Section 2302(b) of title 5, United States Code, as applied to discriminatory conduct described in paragraphs (1) and (8), or described in paragraph (9) of such section as applied to discriminatory conduct described in paragraphs (1) and (8), of such section.

''(2) The provisions of law specified in section 2302(d) of title 5, United States Code.

''SEC. 202. NOTIFICATION REQUIREMENT.

''(a) IN GENERAL.—Written notification of the rights and protections available to Federal employees, former Federal employees, and applicants for Federal employment (as the case may be) in connection with the respective provisions of law covered by paragraphs (1) and (2) of section 201(a) shall be provided to such employees, former employees, and applicants—

''(1) in accordance with otherwise applicable provisions of law; or

''(2) if, or to the extent that, no such notification would otherwise be required, in such time, form, and manner as shall under section 204 be required in order to carry out the requirements of this section.

''(b) POSTING ON THE INTERNET.—Any written notification under this section shall include, but not be limited to, the posting of the information required under paragraph (1) or (2) (as applicable) of subsection (a) on the Internet site of the Federal agency involved.

''(c) EMPLOYEE TRAINING.—Each Federal agency shall provide to the employees of such agency training regarding the rights and remedies applicable to such employees under the laws cited in section 201(c).

''SEC. 203. REPORTING REQUIREMENT.

''(a) ANNUAL REPORT.—Subject to subsection (b), not later than 180 days after the end of each fiscal year, each Federal agency shall submit to the Speaker of the House of Representatives, the President pro tempore of the Senate, the Committee on Governmental Affairs [now Committee on Homeland Security and Governmental Affairs] of the Senate, the Committee on Government Reform [now Committee on Oversight and Government Reform] of the House of Representatives, each committee of Congress with jurisdiction relating to the agency, the Equal Employment Opportunity Commission, and the Attorney General an annual report which shall include, with respect to the fiscal year—

''(1) the number of cases arising under each of the respective provisions of law covered by paragraphs (1) and (2) of section 201(a) in which discrimination on the part of such agency was alleged;

''(2) the status or disposition of cases described in paragraph (1);

''(3) the amount of money required to be reimbursed by such agency under section 201 in connection with each of such cases, separately identifying the aggregate amount of such reimbursements attributable to the payment of attorneys' fees, if any;

''(4) the number of employees disciplined for discrimination, retaliation, harassment, or any other infraction of any provision of law referred to in paragraph (1);

''(5) the final year-end data posted under section 301(c)(1)(B) for such fiscal year (without regard to section 301(c)(2));

''(6) a detailed description of—

''(A) the policy implemented by that agency relating to appropriate disciplinary actions against a Federal employee who—

''(i) discriminated against any individual in violation of any of the laws cited under section 201(a)(1) or (2); or

''(ii) committed another prohibited personnel practice that was revealed in the investigation of a complaint alleging a violation of any of the laws cited under section 201(a)(1) or (2); and

''(B) with respect to each of such laws, the number of employees who are disciplined in accordance with such policy and the specific nature of the disciplinary action taken;

''(7) an analysis of the information described under paragraphs (1) through (6) (in conjunction with data provided to the Equal Employment Opportunity Commission in compliance with part 1614 of title 29 of the Code of Federal Regulations) including—

''(A) an examination of trends;

''(B) causal analysis;

''(C) practical knowledge gained through experience; and

''(D) any actions planned or taken to improve complaint or civil rights programs of the agency; and

''(8) any adjustment (to the extent the adjustment can be ascertained in the budget of the agency) to comply with the requirements under section 201.

''(b) FIRST REPORT.—The 1st report submitted under subsection (a) shall include for each item under subsection (a) data for each of the 5 immediately preceding fiscal years (or, if data are not available for all 5 fiscal years, for each of those 5 fiscal years for which data are available).

''SEC. 204. RULES AND GUIDELINES.

''(a) ISSUANCE OF RULES AND GUIDELINES.—The President (or the designee of the President) shall issue—

''(1) rules to carry out this title;

''(2) rules to require that a comprehensive study be conducted in the executive branch to determine the best practices relating to the appropriate disciplinary actions against Federal employees who commit the actions described under clauses (i) and (ii) of section 203(a)(6)(A); and

''(3) based on the results of such study, advisory guidelines incorporating best practices that Federal agencies may follow to take such actions against such employees.

''(b) AGENCY NOTIFICATION REGARDING IMPLEMENTATION OF GUIDELINES.—Not later than 30 days after the issuance of guidelines under subsection (a), each Federal agency shall submit to the Speaker of the House of Representatives, the President pro tempore of the Senate, the Equal Employment Opportunity Commission, and the Attorney General a written statement specifying in detail—

''(1) whether such agency has adopted and will fully follow such guidelines;

''(2) if such agency has not adopted such guidelines; the reasons for the failure to adopt such guidelines; and

''(3) if such agency will not fully follow such guidelines, the reasons for the decision not to fully follow such guidelines and an explanation of the extent to which such agency will not follow such guidelines.

''SEC. 205. CLARIFICATION OF REMEDIES.

''Consistent with Federal law, nothing in this title shall prevent any Federal employee, former Federal employee, or applicant for Federal employment from exercising any right otherwise available under the laws of the United States.

''SEC. 206. STUDIES BY GENERAL ACCOUNTING OFFICE [now GOVERNMENT ACCOUNTABILITY OFFICE] ON EXHAUSTION OF ADMINISTRATIVE REMEDIES AND ON ASCERTAINMENT OF CERTAIN DEPARTMENT OF JUSTICE COSTS.

''(a) STUDY ON EXHAUSTION OF ADMINISTRATIVE REMEDIES.—

''(1) STUDY.—

''(A) IN GENERAL.—Not later than 180 days after the date of enactment of this Act [May 15, 2002], the General Accounting Office [now Government Accountability Office] shall conduct a study relating to the effects of eliminating the requirement that Federal employees aggrieved by violations of any of the laws specified under section 201(c) exhaust administrative remedies before filing complaints with the Equal Employment Opportunity Commission.

''(B) CONTENTS.—The study shall include a detailed summary of matters investigated, information collected, and conclusions formulated that lead to determinations of how the elimination of such requirement will—

''(i) expedite handling of allegations of such violations within Federal agencies and will streamline the complaint-filing process;

''(ii) affect the workload of the Commission;

''(iii) affect established alternative dispute resolution procedures in such agencies; and

''(iv) affect any other matters determined by the General Accounting Office [now Government Accountability Office] to be appropriate for consideration.

''(2) REPORT.—Not later than 90 days after completion of the study required by paragraph (1), the General Accounting Office [now Government Accountability Office] shall submit to the Speaker of the House of Representatives, the President pro tempore of the Senate, the Equal Employment Opportunity Commission, and the Attorney General a report containing the information required to be included in such study.

''(b) STUDY ON ASCERTAINMENT OF CERTAIN COSTS OF THE DEPARTMENT OF JUSTICE IN DEFENDING DISCRIMINATION AND WHISTLEBLOWER CASES.—

''(1) STUDY.—Not later than 180 days after the date of enactment of this Act [May 15, 2002], the General Accounting Office [now Government Accountability Office] shall conduct a study of the methods that could be used for, and the extent of any administrative burden that would be imposed on, the Department of Justice to ascertain the personnel and administrative costs incurred in defending in each case arising from a proceeding identified under section 201(a)(1) and (2).

''(2) REPORT.—Not later than 90 days after completion of the study required by paragraph (1), the General Accounting Office [now Government Accountability Office] shall submit to the Speaker of the House of Representatives and the President pro tempore of the Senate a report containing the information required to be included in the study.

''(c) STUDIES ON STATUTORY EFFECTS ON AGENCY OPERATIONS.—

''(1) IN GENERAL.—Not later than 18 months after the date of enactment of this Act [May 15, 2002], the General Accounting Office [now Government Accountability Office] shall conduct—

''(A) a study on the effects of section 201 on the operations of Federal agencies; and

''(B) a study on the effects of section 13 of the Contract Disputes Act of 1978 (41 U.S.C. 612) [now 41 U.S.C. 7108] on the operations of Federal agencies.

''(2) CONTENTS.—Each study under paragraph (1) shall include, with respect to the applicable statutes of the study—

''(A) a summary of the number of cases in which a payment was made in accordance with section 2414, 2517, 2672, or 2677 of title 28, United States Code, and under section 1304 of title 31, United States Code;

''(B) a summary of the length of time Federal agencies used to complete reimbursements of payments described under subparagraph (A); and

''(C) conclusions that assist in making determinations on how the reimbursements of payments described under subparagraph (A) will affect—

''(i) the operations of Federal agencies;

''(ii) funds appropriated on an annual basis;

''(iii) employee relations and other human capital matters;

''(iv) settlements; and

''(v) any other matter determined by the General Accounting Office [now Government Accountability Office] to be appropriate for consideration.

''(3) REPORTS.—Not later than 90 days after the completion of each study under paragraph (1), the General Accounting Office [now Government Accountability Office] shall submit a report on each study, respectively, to the Speaker of the House of Representatives, the President pro tempore of the Senate, the Committee on Governmental Affairs [now Committee on Homeland Security and Governmental Affairs] of the Senate, the Committee on Government Reform [now Committee on Oversight and Government Reform] of the House of Representatives, and the Attorney General.

''(d) STUDY ON ADMINISTRATIVE AND PERSONNEL COSTS INCURRED BY THE DEPARTMENT OF THE TREASURY.—

''(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act [May 15, 2002], the General Accounting Office [now Government Accountability Office] shall conduct a study on the extent of any administrative and personnel costs incurred by the Department of the Treasury to account for payments made in accordance with section 2414, 2517, 2672, or 2677 of title 28, United States Code, and under section 1304 of title 31, United States Code, as a result of—

''(A) this Act; and

''(B) the Contracts Dispute [Contract Disputes] Act of 1978 (41 U.S.C. 601 note [see 41 U.S.C. 7101 et seq.]; Public Law 95–563).

''(2) REPORT.—Not later than 90 days after the completion of the study under paragraph (1), the General Accounting Office [now Government Accountability Office] shall submit a report on the study to the Speaker of the House of Representatives, the President pro tempore of the Senate, the Committee on Governmental Affairs [now Committee on Homeland Security and Governmental Affairs] of the Senate, the Committee on Government Reform [now Committee on Oversight and Government Reform] of the House of Representatives, and the Attorney General.

## ''TITLE III—EQUAL EMPLOYMENT OPPORTUNITY COMPLAINT DATA DISCLOSURE

### ''SEC. 301. DATA TO BE POSTED BY EMPLOYING FEDERAL AGENCIES.

''(a) IN GENERAL.—Each Federal agency shall post on its public Web site, in the time, form, and manner prescribed under section 303 (in conformance with the requirements of this section), summary statistical data relating to equal employment opportunity complaints filed with such agency by employees or former employees of, or applicants for employment with, such agency.

''(b) CONTENT REQUIREMENTS.—The data posted by a Federal agency under this section shall include, for the then current fiscal year, the following:

''(1) The number of complaints filed with such agency in such fiscal year.

''(2) The number of individuals filing those complaints (including as the agent of a class).

''(3) The number of individuals who filed 2 or more of those complaints.

''(4) The number of complaints (described in paragraph (1)) in which each of the various bases of alleged discrimination is alleged.

''(5) The number of complaints (described in paragraph (1)) in which each of the various issues of alleged discrimination is alleged.

''(6) The average length of time, for each step of the process, it is taking such agency to process complaints (taking into account all complaints pending for any length of time in such fiscal year, whether first filed in such fiscal year or earlier). Average times under this paragraph shall be posted—

''(A) for all such complaints,

''(B) for all such complaints in which a hearing before an administrative judge of the Equal Employment Opportunity Commission is not requested, and

''(C) for all such complaints in which a hearing before an administrative judge of the Equal Employment Opportunity Commission is requested.

''(7) The total number of final agency actions rendered in such fiscal year involving a finding of discrimination and, of that number—

''(A) the number and percentage that were rendered without a hearing before an administrative judge of the Equal Employment Opportunity Commission, and

''(B) the number and percentage that were rendered after a hearing before an administrative judge of the Equal Employment Opportunity Commission.

''(8) Of the total number of final agency actions rendered in such fiscal year involving a finding of discrimination—

''(A) the number and percentage involving a finding of discrimination based on each of the respective bases of alleged discrimination, and

''(B) of the number specified under subparagraph (A) for each of the respective bases of alleged discrimination—

''(i) the number and percentage that were rendered without a hearing before an administrative judge of the Equal Employment Opportunity Commission, and

''(ii) the number and percentage that were rendered after a hearing before an administrative judge of the Equal Employment Opportunity Commission.

''(9) Of the total number of final agency actions rendered in such fiscal year involving a finding of discrimination—

''(A) the number and percentage involving a finding of discrimination in connection with each of the respective issues of alleged discrimination, and

''(B) of the number specified under subparagraph (A) for each of the respective issues of alleged discrimination—

''(i) the number and percentage that were rendered without a hearing before an administrative judge of the Equal Employment Opportunity Commission, and

''(ii) the number and percentage that were rendered after a hearing before an administrative judge of the Equal Employment Opportunity Commission.

''(10)(A) Of the total number of complaints pending in such fiscal year (as described in the parenthetical matter in paragraph (6)), the number that were first filed before the start of the then current fiscal year.

''(B) With respect to those pending complaints that were first filed before the start of the then current fiscal year—

''(i) the number of individuals who filed those complaints, and

''(ii) the number of those complaints which are at the various steps of the complaint process.

''(C) Of the total number of complaints pending in such fiscal year (as described in the parenthetical matter in paragraph (6)), the total number of complaints with respect to which the agency violated the requirements of section 1614.106(e)(2) of title 29 of the Code of Federal Regulations (as in effect on July 1, 2000, and amended from time to time) by failing to conduct within 180 days of the filing of such complaints an impartial and appropriate investigation of such complaints.

''(c) TIMING AND OTHER REQUIREMENTS.—

''(1) CURRENT YEAR DATA.—Data posted under this section for the then current fiscal year shall include both—

''(A) interim year-to-date data, updated quarterly, and

''(B) final year-end data.

''(2) DATA FOR PRIOR YEARS.—The data posted by a Federal agency under this section for a fiscal year (both interim and final) shall include, for each item under subsection (b), such agency's corresponding year-end data for each of the 5 immediately preceding fiscal years (or, if not available for all 5 fiscal years, for however many of those 5 fiscal years for which data are available).

''SEC. 302. DATA TO BE POSTED BY THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.

''(a) IN GENERAL.—The Equal Employment Opportunity Commission shall post on its public Web site, in the time, form, and manner prescribed under section 303 for purposes of this section, summary statistical data relating to—

''(1) hearings requested before an administrative judge of the Commission on complaints described in section 301, and

''(2) appeals filed with the Commission from final agency actions on complaints described in section 301.

''(b) SPECIFIC REQUIREMENTS.—The data posted under this section shall, with respect to the hearings and appeals described in subsection (a), include summary statistical data corresponding to that described in paragraphs (1) through (10) of section 301(b), and shall be subject to the same timing and other requirements as set forth in section 301(c).

''(c) COORDINATION.—The data required under this section shall be in addition to the data the Commission is required to post under section 301 as an employing Federal agency.

''SEC. 303. RULES.

''The Equal Employment Opportunity Commission shall issue any rules necessary to carry out this title.''

[For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of Title 8, Aliens and Nationality.]

[For transfer of authorities, functions, personnel, and assets of the Bureau of Alcohol, Tobacco and Firearms, including the related functions of the Secretary of the Treasury, to the Department of Justice, see section 531(c) of Title 6, Domestic Security, and section 599A(c)(1) of Title 28, Judiciary and Judicial Procedure.]

[Memorandum of President of the United States, July 8, 2003, 68 F.R. 45155, delegated to Director of Office of Personnel Management authority of President under section 204(a) of Public Law 107–174, set out above.]

## § 2302. Prohibited personnel practices

(a)(1) For the purpose of this title, ''prohibited personnel practice'' means any action described in subsection (b).

(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, or 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 National Geospatial-Intelligence Agency, 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 Government Accountability 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 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;

(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[1] refusing to obey an order that would require the individual to violate a law;

[1] So in original. The word ''for'' probably should not appear.

(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;

(11)(A) knowingly take, recommend, or approve any personnel action if the taking of such action would violate a veterans' preference requirement; or

(B) knowingly fail to take, recommend, or approve any personnel action if the failure to take such action would violate a veterans' preference requirement; or

(12) 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.

(e)(1) For the purpose of this section, the term ''veterans' preference requirement'' means any of the following provisions of law:

(A) Sections 2108, 3305(b), 3309, 3310, 3311, 3312, 3313, 3314, 3315, 3316, 3317(b), 3318, 3320, 3351, 3352, 3363, 3501, 3502(b), 3504, and 4303(e) and (with respect to a preference eligible referred to in section 7511(a)(1)(B)) subchapter II of chapter 75 and section 7701.

(B) Sections 943(c)(2) and 1784(c) of title 10.

(C) Section 1308(b) of the Alaska National Interest Lands Conservation Act.

(D) Section 301(c) of the Foreign Service Act of 1980.

(E) Sections 106(f),[2] 7281(e), and 7802(5)[2] of title 38.

(F) Section 1005(a) of title 39.

(G) Any other provision of law that the Director of the Office of Personnel Management designates in regulations as being a veterans' preference requirement for the purposes of this subsection.

(H) Any regulation prescribed under subsection (b) or (c) of section 1302 and any other regulation that implements a provision of law referred to in any of the preceding subparagraphs.

(2) Notwithstanding any other provision of this title, no authority to order corrective action shall be available in connection with a prohibited personnel practice described in subsection (b)(11). Nothing in this paragraph shall be considered to affect any authority under section 1215 (relating to disciplinary action).

(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; Pub. L. 104–197, title III, § 315(b)(2), Sept. 16, 1996, 110 Stat. 2416, Pub. L. 104–201, div. A, title XI, § 1122(a)(1), title XVI, § 1615(b), Sept. 23, 1996, 110 Stat. 2687, 2741; Pub. L. 105–339, § 6(a), (b), (c)(2), Oct. 31, 1998, 112 Stat. 3187, 3188; Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814; Pub. L. 110–417, [div. A], title IX, § 931(a)(1), Oct. 14, 2008, 122 Stat. 4575.)

REFERENCES IN TEXT

Section 1308(b) of the Alaska National Interest Lands Conservation Act, referred to in subsec. (e)(1)(C), is classified to section 3198(b) of Title 16, Conservation.

Section 301(c) of the Foreign Service Act of 1980, referred to in subsec. (e)(1)(D), is classified to section 3941(c) of Title 22, Foreign Relations and Intercourse.

Section 106(f) of title 38, referred to in subsec. (e)(1)(E), was enacted subsequent to the enactment of subsec. (e) of this section.

Section 7802(5) of title 38, referred to in subsec. (e)(1)(E), was redesignated section 7802(e) of title 38 by Pub. L. 108–170, title III, § 304(b)(3), Dec. 6, 2003, 117 Stat. 2059.

AMENDMENTS

2008—Subsec. (a)(2)(C)(ii). Pub. L. 110–417 substituted ''National Geospatial-Intelligence Agency'' for ''National Imagery and Mapping Agency''.

2004—Subsec. (a)(2)(C)(iii). Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office''.

[2] See References in Text note below.

1998—Subsec. (a)(1). Pub. L. 105–339, § 6(c)(2), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''For purposes of this title, 'prohibited personnel practice' means the following:

''(A) Any action described in subsection (b) of this section.

''(B) Any action or failure to act that is designated as a prohibited personnel action under section 1599c(a) of title 10.''

Subsec. (b)(10) to (12). Pub. L. 105–339, § 6(a), struck out ''or'' at end of par. (10), added par. (11), and redesignated former par. (11) as (12).

Subsec. (e). Pub. L. 105–339, § 6(b), added subsec. (e).

1996—Subsec. (a)(1). Pub. L. 104–201, § 1615(b), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''For the purpose of this title, 'prohibited personnel practice' means any action described in subsection (b) of this section.''

Subsec. (a)(2)(C)(ii). Pub. L. 104–201, § 1122(a)(1), substituted ''National Imagery and Mapping Agency'' for ''Central Imagery Office''.

Subsec. (b)(2). Pub. L. 104–197 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 except as provided under section 3303(f);''.

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 1996 AMENDMENTS

Amendment by section 1122(a)(1) of Pub. L. 104–201 effective Oct. 1, 1996, see section 1124 of Pub. L. 104–201, set out as a note under section 193 of Title 10, Armed Forces.

Section 315(c) of Pub. L. 104–197 provided that: ''This section [amending this section and section 3303 of this title] shall take effect 30 days after the date of the enactment of this Act [Sept. 16, 1996].''

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.

SAVINGS PROVISION

Pub. L. 105–339, § 6(d), Oct. 31, 1998, 112 Stat. 3188, provided that: ''This section [amending this section and repealing section 1599c of Title 10, Armed Forces] shall be treated as if it had never been enacted for purposes of any personnel action (within the meaning of section 2302 of title 5, United States Code) preceding the date of enactment of this Act [Oct. 31, 1998].''

FEDERAL BENEFITS AND NON-DISCRIMINATION

Memorandum of President of the United States, June 17, 2009, 74 F.R. 29393, provided:

Memorandum for the Heads of Executive Departments and Agencies

Millions of hard-working, dedicated, and patriotic public servants are employed by the Federal Government as part of the civilian workforce, and many of these devoted Americans have same-sex domestic partners. Leading companies in the private sector are free to provide to same-sex domestic partners the same benefits they provide to married people of the opposite sex. Executive departments and agencies, however, may only provide benefits on that basis if they have legal authorization to do so. My Administration is not authorized by Federal law to extend a number of available Federal benefits to the same-sex partners of Federal employees. Within existing law, however, my Administration, in consultation with the Secretary of State, who oversees our Foreign Service employees, and the

Director of the Office of Personnel Management, who oversees human resource management for our civil service employees, has identified areas in which statutory authority exists to achieve greater equality for the Federal workforce through extension to same-sex domestic partners of benefits currently available to married people of the opposite sex. Extending available benefits will help the Federal Government compete with the private sector to recruit and retain the best and the brightest employees.

I hereby request the following:

SECTION 1. *Extension of Identified Benefits*. The Secretary of State and the Director of the Office of Personnel Management shall, in consultation with the Department of Justice, extend the benefits they have respectively identified to qualified same-sex domestic partners of Federal employees where doing so can be achieved and is consistent with Federal law.

SEC. 2. *Review of Governmentwide Benefits*. The heads of all other executive departments and agencies, in consultation with the Office of Personnel Management, shall conduct a review of the benefits provided by their respective departments and agencies to determine what authority they have to extend such benefits to same-sex domestic partners of Federal employees. The results of this review shall be reported within 90 days to the Director of the Office of Personnel Management, who, in consultation with the Department of Justice, shall recommend to me any additional measures that can be taken, consistent with existing law, to provide benefits to the same-sex domestic partners of Federal Government employees.

SEC. 3. *Promoting Compliance with Existing Law Requiring Federal Workplaces to be Free of Discrimination Based on Non-Merit Factors*. The Office of Personnel Management shall issue guidance within 90 days to all executive departments and agencies regarding compliance with, and implementation of, the civil service laws, rules, and regulations, including 5 U.S.C. 2302(b)(10), which make it unlawful to discriminate against Federal employees or applicants for Federal employment on the basis of factors not related to job performance.

SEC. 4. *General Provisions*. (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

(i) Authority granted by law or Executive Order to an agency, or the head thereof; or

(ii) Functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

SEC. 5. *Publication*. The Director of the Office of Personnel Management is hereby authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA.

EXTENSION OF BENEFITS TO SAME-SEX DOMESTIC PARTNERS OF FEDERAL EMPLOYEES

Memorandum of President of the United States, June 2, 2010, 75 F.R. 32247, provided:

Memorandum for the Heads of Executive Departments and Agencies

For far too long, many of our Government's hard-working, dedicated LGBT employees have been denied equal access to the basic rights and benefits their colleagues enjoy. This kind of systemic inequality undermines the health, well-being, and security not just of our Federal workforce, but also of their families and communities. That is why, last June, I directed the heads of executive departments and agencies (agencies), in consultation with the Office of Personnel Management (OPM), to conduct a thorough review of the benefits they provide and to identify any that could be extended to LGBT employees and their partners and families. Although legislative action is necessary to provide full equality to LGBT Federal employees, the agencies have identified a number of benefits that can be extended under existing law. OPM, in consultation with the Department of Justice, has provided me with a report recommending that all of the identified benefits be extended.

Accordingly, I hereby direct the following:

SECTION 1. *Immediate Actions To Extend Benefits*. Agencies should immediately take the following actions, consistent with existing law, in order to extend benefits to the same-sex domestic partners of Federal employees, and, where applicable, to the children of same-sex domestic partners of Federal employees:

(a) The Director of OPM should take appropriate action to:

(i) clarify that the children of employees' same-sex domestic partners fall within the definition of ''child'' for purposes of Federal child-care subsidies, and, where appropriate, for child-care services;

(ii) clarify that, for purposes of employee assistance programs, same-sex domestic partners and their children qualify as ''family members'';

(iii) issue a proposed rule that would clarify that employees' same-sex domestic partners qualify as ''family members'' for purposes of noncompetitive appointments made pursuant to Executive Order 12721 of July 30, 1990;

(iv) issue a proposed rule that would add a Federal retiree's same-sex domestic partner to the list of individuals presumed to have an insurable interest in the employee pursuant to 5 U.S.C. 8339(k)(1), 8420;

(v) clarify that under appropriate circumstances, employees' same-sex domestic partners and their children qualify as dependents for purposes of evacuation payments made under 5 U.S.C. 5522–5523; Folio: 1632 [sic]

(vi) amend its guidance on implementing President Clinton's April 11, 1997, memorandum to heads of executive departments and agencies on ''Expanded Family and Medical Leave Policies'' to specify that the 24 hours of unpaid leave made available to Federal employees in connection with (i) school and early childhood educational activities; (ii) routine family medical purposes; and (iii) elderly relatives' health or care needs, may be used to meet the needs of an employee's same-sex domestic partner or the same-sex domestic partner's children; and

(vii) clarify that employees' same-sex domestic partners qualify as dependents for purposes of calculating the extra allowance payable under 5 U.S.C. 5942a to assist employees stationed on Johnston Island, subject to any limitations applicable to spouses.

(b) The Administrator of General Services should take appropriate action to amend the definitions of ''immediate family'' and ''dependent'' appearing in the Federal Travel Regulations, 41 C.F.R. Chs. 300–304, to include same-sex domestic partners and their children, so that employees and their domestic partners and children can obtain the full benefits available under applicable law, including certain travel, relocation, and subsistence payments.

(c) All agencies offering any of the benefits specified by OPM in implementing guidance under section 3 of this memorandum, including credit union membership, access to fitness facilities, and access to planning and counseling services, should take all appropriate action to provide the same level of benefits that is provided to employees' spouses and their children to employees' same-sex domestic partners and their children.

(d) All agencies with authority to provide benefits to employees outside of the context of title 5, United States Code should take all appropriate actions to ensure that the benefits being provided to employees' spouses and their children are also being provided, at an equivalent level wherever permitted by law, to their employees' same-sex domestic partners and their children.

SEC. 2. *Continuing Obligation To Provide New Benefits.* In the future, all agencies that provide new benefits to the spouses of Federal employees and their children should, to the extent permitted by law, also provide them to the same-sex domestic partners of their employees and those same-sex domestic partners' children. This section applies to appropriated and nonappropriated fund instrumentalities of such agencies.

SEC. 3. *Monitoring and Guidance.* The Director of OPM shall monitor compliance with this memorandum, and may instruct agencies to provide the Director with reports on the status of their compliance, and prescribe the form Folio: 1633 [sic] and manner of such reports. The Director of OPM shall also issue guidance to ensure consistent and appropriate implementation.

SEC. 4. *Reporting.* By April 1, 2011, and annually thereafter, the Director of OPM shall provide the President with a report on the progress of the agencies in implementing this memorandum until such time as all recommendations have been appropriately implemented.

SEC. 5. *General Provisions.* (a) Except as expressly stated herein, nothing in this memorandum shall be construed to impair or otherwise affect:

(i) authority granted by law or Executive Order to an agency, or the head thereof; or

(ii) functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

SEC. 6. *Publication.* The Director of OPM is hereby authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA.

## § 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.

DELEGATION OF RESPONSIBILITIES CONCERNING FBI EMPLOYEES UNDER THE CIVIL SERVICE REFORM ACT OF 1978

Memorandum of President of the United States, Apr. 14, 1997, 62 F.R. 23123, provided:

Memorandum for the Attorney General

By the authority vested in me by the Constitution and laws of the United States of America, including section 301 of title 3, United States Code, I hereby delegate to the Attorney General the functions concerning employees of the Federal Bureau of Investigation vested in the President by section 101(a) of the Civil Service Reform Act of 1978 (Public Law 95–454), as amended by the Whistleblower Protection Act of 1989 (Public Law 101–12), and codified at section 2303(c) of title 5, United States Code, and direct the Attorney General to establish appropriate processes within the Department of Justice to carry out these functions. Not later than March 1 of each year, the Attorney General shall provide a report to the President stating the number of allegations of reprisal received during the preceding calendar year, the disposition of each allegation resolved during the preceding calendar year, and the number of unresolved allegations pending as of the end of the calendar year.

All of the functions vested in the President by section 2303(c) of title 5, United States Code, and delegated to the Attorney General, may be redelegated, as appropriate, provided that such functions may not be redelegated to the Federal Bureau of Investigation.

You are authorized and directed to publish this memorandum in the Federal Register.

WILLIAM J. CLINTON.

## § 2304. Responsibility of the Government Accountability Office

If requested by either House of the Congress (or any committee thereof), or if considered necessary by the Comptroller General, the Government Accountability 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.

(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; Pub. L. 104–66, title II, § 2181(e), Dec. 21, 1995, 109 Stat. 732; Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814.)

AMENDMENTS

2004—Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office'' in section catchline and text.

1995—Pub. L. 104–66 struck out subsec. (a) designation before ''If requested by'' and struck out subsec. (b) which read as follows: ''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.''

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

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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, the Secretary of Homeland Security, 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; Pub. L. 109–241, title IX, § 902(a)(2), July 11, 2006, 120 Stat. 566.)

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.<br>Mar. 28, 1896, ch. 73, 29 Stat. 75.<br>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

2006—Subsec. (b). Pub. L. 109–241 inserted ''the Secretary of Homeland Security,'' after ''the Secretary of the Interior,''.

1975—Subsec. (b). Pub. L. 94–183 struck out ''the Postmaster General,'' after ''under the control of''.

### § 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. 87–332 (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 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 ''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.

### § 2904. Oath; administered without fees

An employee of an Executive agency who is authorized to administer the oath of office re-

quired 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.<br>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.<br>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; and

(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.

## § 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 Government Accountability Office.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 413; Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814.)

HISTORICAL AND REVISION NOTES

| *Derivation* | *U.S. Code* | *Revised Statutes and Statutes at Large* |
|---|---|---|
| ..... | 5 U.S.C. 642a. | Jan. 16, 1883, ch. 27, § 11; added 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.

AMENDMENTS

2004—Subsec. (b)(3). Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office''.

### § 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 Governmental Affairs of Senate changed to Committee on Homeland Security and Governmental Affairs of Senate, effective Jan. 4, 2005, by Senate Resolution No. 445, One Hundred Eighth Congress, Oct. 9, 2004.

Committee on Government Operations of House of Representatives treated as referring to Committee on Government Reform and Oversight of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note under section 21 of Title 2, The Congress. Committee on Government Reform and Oversight of House of Representatives changed to Committee on Government Reform of House of Representatives by House Resolution No. 5, One Hundred Sixth Congress, Jan. 6, 1999. Committee on Government Reform of House of Representatives changed to Committee on Oversight and Government Reform of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007.

## Subpart B—Employment and Retention

### CHAPTER 31—AUTHORITY FOR EMPLOYMENT

SUBCHAPTER I—EMPLOYMENT AUTHORITIES

Sec.
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3102. Employment of personal assistants for handicapped employees, including blind and deaf employees.
3103. Employment at seat of Government only for services rendered.
3104. Employment of specially qualified scientific and professional personnel.
3105. Appointment of administrative law judges.
3106. Employment of attorneys; restrictions.
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3109. Employment of experts and consultants; temporary or intermittent.
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3112. Disabled veterans; noncompetitive appointment.
3113. Restriction on reemployment after conviction of certain crimes.
3114. Appointment of candidates to positions in the competitive service by the Securities and Exchange Commission.[1]

SUBCHAPTER II—THE SENIOR EXECUTIVE SERVICE

3131. The Senior Executive Service.
3132. Definitions and exclusions.
3133. Authorization of positions; authority for appointment.
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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.
3152. Limitation on pay.

SUBCHAPTER IV—TEMPORARY ORGANIZATIONS ESTABLISHED BY LAW OR EXECUTIVE ORDER

3161. Employment and compensation of employees.

AMENDMENTS

2010—Pub. L. 111–203, title IX, § 929G(b), July 21, 2010, 124 Stat. 1856, added item 3114 and struck out former item 3114 ''Appointment of accountants, economists, and examiners by the Securities and Exchange Commission''.

2003—Pub. L. 108–44, § 2(b), July 3, 2003, 117 Stat. 843, added item 3114.

2000—Pub. L. 106–398, § 1 [[div. A], title XI, § 1101(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–310, added subchapter IV heading and item 3161.

1997—Pub. L. 105–61, title VI, § 638(b), Oct. 10, 1997, 111 Stat. 1317, added item 3113.

1995—Pub. L. 104–66, title II, § 2181(a)(2), Dec. 21, 1995, 109 Stat. 732, struck out item 3135 ''Biennial report''.

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 em-

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

ployees, 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.<br>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; Pub. L. 108–271, §8(b), July 7, 2004, 118 Stat. 814, 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 Government Accountability 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

Pub. L. 111–117, div. C, title VII, § 704, Dec. 16, 2009, 123 Stat. 3205, 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 who is lawfully admitted for permanent residence and is seeking citizenship as outlined in 8 U.S.C. 1324b(a)(3)(B); (3) is a person who is admitted as a refugee under 8 U.S.C. 1157 or is granted asylum under 8 U.S.C. 1158 and has filed a declaration of intention to become a lawful permanent resident and then a citizen when eligible; or (4) is a person who owes allegiance to the United States: *Provided*, That for purposes of this section, affidavits signed by any such person shall be considered prima facie evidence that the requirements of this section with respect to his or her status are being 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 1 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: *Provided further*, That this section shall not apply to any person who is an officer or employee of the Government of the United States on the date of enactment of this Act [Dec. 16, 2009], or to international broadcasters employed by the Broadcasting Board of Governors, or to temporary employment of translators, or to temporary employment in the field service (not to exceed 60 days) as a result of emergencies: *Provided further*, That this section does not apply to the employment as Wildland firefighters for not more than 120 days of nonresident aliens employed by the Department of the Interior or the USDA Forest Service pursuant to an agreement with another country.''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 111–8, div. D, title VII, § 704, Mar. 11, 2009, 123 Stat. 680.

Pub. L. 110–161, div. D, title VII, § 705, Dec. 26, 2007, 121 Stat. 2019.

Pub. L. 109–115, div. A, title VIII, § 805, Nov. 30, 2005, 119 Stat. 2496.

Pub. L. 108–447, div. H, title VI, § 605, Dec. 8, 2004, 118 Stat. 3273.

Pub. L. 108–199, div. F, title VI, § 605, Jan. 23, 2004, 118 Stat. 350.

Pub. L. 108–7, div. J, title VI, § 605, Feb. 20, 2003, 117 Stat. 464.

Pub. L. 107–67, title VI, § 605, Nov. 12, 2001, 115 Stat. 545, as amended by Pub. L. 108–188, title I, § 110, Dec. 17, 2003, 117 Stat. 2757.

Pub. L. 106–554, § 1(a)(3) [title VI, § 605], Dec. 21, 2000, 114 Stat. 2763, 2763A–155.

Pub. L. 106–58, title VI, § 605, Sept. 29, 1999, 113 Stat. 466.

Pub. L. 105–277, div. A, § 101(h) [title VI, § 606], Oct. 21, 1998, 112 Stat. 2681–480, 2681–513.

Pub. L. 105–61, title VI, § 606, Oct. 10, 1997, 111 Stat. 1309.

Pub. L. 104–208, div. A, title I, § 101(f) [title VI, § 606], Sept. 30, 1996, 110 Stat. 3009–314, 3009–354.

Pub. L. 104–52, title VI, § 606, Nov. 19, 1995, 109 Stat. 497.

Pub. L. 103–329, title VI, § 606, Sept. 30, 1994, 108 Stat. 2416.

Pub. L. 103–123, title VI, § 606, Oct. 28, 1993, 107 Stat. 1259.

Pub. L. 102–393, title VI, § 607, Oct. 6, 1992, 106 Stat. 1766.

Pub. L. 102–141, title VI, § 607, Oct. 28, 1991, 105 Stat. 868.

Pub. L. 101–509, title VI, § 603, Nov. 5, 1990, 104 Stat. 1471.

Pub. L. 101–136, title VI, § 603, Nov. 3, 1989, 103 Stat. 816.

Pub. L. 100–440, title VI, § 603, Sept. 22, 1988, 102 Stat. 1751.

Pub. L. 100–202, § 101(m) [title VI, § 603], Dec. 22, 1987, 101 Stat. 1329–390, 1329–419.

Pub. L. 99–500, § 101(m) [title VI, § 603], Oct. 18, 1986, 100 Stat. 1783–308, 1783–328, and Pub. L. 99–591, § 101(m) [title VI, § 603], Oct. 30, 1986, 100 Stat. 3341–308, 3341–328.

Pub. L. 99–190, title I, § 101(h) [H.R. 3036, title VI, § 603], Dec. 19, 1985, 99 Stat. 1291.

Pub. L. 98–473, title I, § 101(j) [H.R. 5798, title VI, § 604], Oct. 12, 1984, 98 Stat. 1963.

Pub. L. 98–151, § 101(f) [H.R. 4139, title VI, § 603], Nov. 14, 1983, 97 Stat. 973.
Pub. L. 97–377, title I, § 101(a) [incorporating H.R. 4121, title VI, § 603, for FY 1982], Dec. 21, 1982, 96 Stat. 1830.
Pub. L. 97–92, § 101(a) [H.R. 4121, title VI, § 603], Dec. 15, 1981, 95 Stat. 1183.
Pub. L. 96–536, § 101(a) [incorporating Pub. L. 96–74, title VI, § 602], Dec. 16, 1980, 94 Stat. 3166.
Pub. L. 96–74, title VI, § 602, Sept. 29, 1979, 93 Stat. 574.
Pub. L. 95–429, title VI, § 602, Oct. 10, 1978, 92 Stat. 1015.
Pub. L. 95–81, title VI, § 602, July 31, 1977, 91 Stat. 354.
Pub. L. 94–419, title VII, § 750, Sept. 22, 1976, 90 Stat. 1299.
Pub. L. 94–363, title VI, § 602, July 14, 1976, 90 Stat. 977.
Pub. L. 94–212, title VII, § 753, Feb. 9, 1976, 90 Stat. 177.
Pub. L. 94–91, title VI, § 602, Aug. 9, 1975, 89 Stat. 458.
Pub. L. 93–381, title VI, § 602, Aug. 21, 1974, 88 Stat. 630.
Pub. L. 93–143, title VI, § 602, Oct. 30, 1973, 87 Stat. 524.
Pub. L. 92–351, title VI, § 602, July 13, 1972, 86 Stat. 487.
Pub. L. 92–49, title VI, § 602, July 9, 1971, 85 Stat. 122.
Pub. L. 91–439, title V, § 502, Oct. 7, 1970, 84 Stat. 902.
Pub. L. 91–144, title V, § 502, Dec. 11, 1969, 83 Stat. 336.
Pub. L. 90–479, title V, § 502, Aug. 12, 1968, 82 Stat. 717.
Pub. L. 90–147, title V, § 502, Nov. 20, 1967, 81 Stat. 483.
Pub. L. 89–689, title V, § 502, Oct. 15, 1966, 80 Stat. 1014.
Pub. L. 89–299, title V, § 502, Oct. 28, 1965, 79 Stat. 1108.
Pub. L. 88–511, title V, § 502, Aug. 30, 1964, 78 Stat. 693.
Pub. L. 88–257, title V, § 502, Dec. 31, 1963, 77 Stat. 855.
Pub. L. 87–880, title V, § 502, Oct. 24, 1962, 76 Stat. 1227.
Pub. L. 87–125, title V, § 502, Aug. 3, 1961, 75 Stat. 282.
Pub. L. 86–642, title II, § 202, July 12, 1960, 74 Stat. 476.
Pub. L. 86–79, title II, § 202, July 8, 1959, 73 Stat. 165.
Pub. L. 85–468, title II, § 202, June 25, 1958, 72 Stat. 224.
Pub. L. 85–48, title II, § 202, June 5, 1957, 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 20113 of Title 51, National and Commercial Space Programs.

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.

## § 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;

(B) the Library of Congress; and

(C) an office, agency, or other establishment in the judicial branch;

(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; Pub. L. 106–518, title III, § 311, Nov. 13, 2000, 114 Stat. 2421; Pub. L. 106–553, § 1(a)(2) [title III, § 307], Dec. 21, 2000, 114 Stat. 2762, 2762A–86.)

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

2000—Subsec. (a)(1)(C). Pub. L. 106–518 and Pub. L. 106–553 amended par. (1) identically, adding subpar. (C).

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.

## §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.<br>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.

## §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 and publishes in such form as the Director may determine (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; Pub. L. 110–372, §2(c)(1), Oct. 8, 2008, 122 Stat. 4044.)

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.<br>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

2008—Subsec. (a). Pub. L. 110–372 substituted ''prescribes and publishes in such form as the Director may determine'' for ''prescribes''.

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 2008 AMENDMENT

Amendment by Pub. L. 110–372 effective on the first day of the first pay period beginning on or after the 180th day following Oct. 8, 2008, see section 2(d) of Pub. L. 110–372, set out as a note under section 5376 of this title.

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.

EXPERIMENTAL PERSONNEL PROGRAM FOR SCIENTIFIC AND TECHNICAL PERSONNEL

Pub. L. 105–261, div. A, title XI, § 1101, Oct. 17, 1998, 112 Stat. 2139, as amended by Pub. L. 106–65, div. A, title X, § 1067(3), Oct. 5, 1999, 113 Stat. 774; Pub. L. 106–398, § 1 [[div. A] title X, § 1087(d)(6), title XI, § 1113], Oct. 30, 2000, 114 Stat. 1654, 1654A–293, 1654A–314; Pub. L. 108–136, div. A, title IX, § 921(g), title XI, § 1116, Nov. 24, 2003, 117 Stat. 1570, 1636; Pub. L. 109–364, div. A, title XI, § 1103, Oct. 17, 2006, 120 Stat. 2408; Pub. L. 110–181, div. A, title XI, § 1108, Jan. 28, 2008, 122 Stat. 358; Pub. L. 111–84, div. A, title XI, § 1104, Oct. 28, 2009, 123 Stat. 2485; Pub. L. 111–383, div. A, title IX, § 901(a)(2), Jan. 7, 2011, 124 Stat. 4317, provided that:

''(a) PROGRAM AUTHORIZED.—During the program period specified in subsection (e)(1), the Secretary of Defense may carry out a program of experimental use of the special personnel management authority provided in subsection (b) in order to facilitate recruitment of eminent experts in science or engineering for research and development projects administered by the Defense Advanced Research Projects Agency and research and development projects administered by laboratories designated for the program by the Secretary from among the laboratories of each of the military departments.

''(b) SPECIAL PERSONNEL MANAGEMENT AUTHORITY.—Under the program, the Secretary may—

''(1) without regard to any provision of title 5, United States Code, governing the appointment of employees in the civil service, appoint scientists and engineers from outside the civil service and uniformed services (as such terms are defined in section 2101 of such title) to—

''(A) not more than 40 scientific and engineering positions in the Defense Advanced Research Projects Agency;

''(B) not more than 40 scientific and engineering positions in the designated laboratories of each of the military services;

''(C) not more than a total of 10 scientific and engineering positions in the National Geospatial-Intelligence Agency and the National Security Agency; and

''(D) not more than a total of 10 scientific and engineering positions in the Office of the Assistant Secretary of Defense for Research and Engineering;

''(2) prescribe the rates of basic pay for positions to which employees are appointed under paragraph (1) at rates not in excess of the maximum rate of basic pay authorized for senior-level positions under section 5376 of title 5, United States Code, as increased by locality-based comparability payments under section 5304 of such title, notwithstanding any provision of such title governing the rates of pay or classification of employees in the executive branch; and

''(3) pay any employee appointed under paragraph (1) payments in addition to basic pay within the limit applicable to the employee under subsection (d).

''(c) LIMITATION ON TERM OF APPOINTMENT.—(1) Except as provided in paragraph (2), the service of an employee under an appointment under subsection (b)(1) may not exceed 4 years.

''(2) The Secretary may, in the case of a particular employee, extend the period to which service is limited

under paragraph (1) by up to 2 years if the Secretary determines that such action is necessary to promote the efficiency of the Defense Advanced Research Projects Agency.

''(d) LIMITATIONS ON ADDITIONAL PAYMENTS.—(1) Subject to paragraph (3), the total amount of additional payments paid to an employee under subsection (b)(3) for any 12-month period may not exceed the lesser of the following amounts:

''(A) $50,000 in fiscal year 2010, which may be adjusted annually thereafter by the Secretary, with a percentage increase equal to one-half of 1 percentage point less than the percentage by which the Employment Cost Index, published quarterly by the Bureau of Labor Statistics, for the base quarter of the year before the preceding calendar year exceeds the Employment Cost Index for the base quarter of the second year before the preceding calendar year.

''(B) The amount equal to 50 percent of the employee's annual rate of basic pay.

''(2) In paragraph (1), the term 'base quarter' has the meaning given that term in section 5302(3) of title 5, United States Code.

''(3) Notwithstanding any other provision of this section or section 5307 of title 5, United States Code, no additional payments may be paid to an employee under subsection (b)(3) in any calendar year if, or to the extent that, the employee's total annual compensation in such calendar year will exceed the maximum amount of total annual compensation payable at the salary set in accordance with section 104 of title 3, United States Code.

''(4) An employee appointed under the program is not eligible for any bonus, monetary award, or other monetary incentive for service under the appointment other than payments authorized by this section.

''(e) PERIOD OF PROGRAM.—(1) The period for carrying out the program authorized under this section begins on October 17, 1998, and ends on September 30, 2014.

''(2) After the termination of the program—

''(A) no appointment may be made under paragraph (1) of subsection (b);

''(B) a rate of basic pay prescribed under paragraph (2) of that subsection may not take effect for a position; and

''(C) no period of service may be extended under subsection (c)(2).

''(f) SAVINGS PROVISIONS.—In the case of an employee who, on the last day of the program period specified in subsection (e)(1), is serving in a position pursuant to an appointment under subsection (b)(1)—

''(1) the termination of the program does not terminate the employee's employment in that position before the expiration of the lesser of—

''(A) the period for which the employee was appointed; or

''(B) the period to which the employee's service is limited under subsection (c), including any extension made under paragraph (2) of that subsection before the termination of the program; and

''(2) the rate of basic pay prescribed for the position under subsection (b)(2) may not be reduced for so long (within the period applicable to the employee under paragraph (1)) as the employee continues to serve in the position without a break in service.

''(g) ANNUAL REPORT.—(1)(A) Not later than December 31 of each year in which the authority under this section is in effect, the Secretary of Defense shall submit to the committees of Congress specified in subparagraph (B) a report on the operation of this section. Each report shall cover the fiscal year that most recently ended before such December 31.

''(B) The committees of Congress specified in this subparagraph are—

''(i) the Committee on Armed Services, the Committee on Homeland Security and Governmental Affairs, and the Committee on Appropriations of the Senate; and

''(ii) the Committee on Armed Services, the Committee on Oversight and Government Reform, and the Committee on Appropriations of the House of Representatives.

''(2) The annual report shall contain, for the period covered by the report, the following:

''(A) A detailed discussion of the exercise of authority under this section.

''(B) The sources from which individuals appointed under subsection (b)(1) were recruited.

''(C) The methodology used for identifying and selecting such individuals.

''(D) Any additional information that the Secretary considers helpful for assessing the utility of the authority under this section.''

[Except as otherwise provided, reference to maximum rate under section 5376 of this title before first day of first pay period beginning on or after 180th day after Oct. 8, 2008, considered reference to basic pay rate for level IV of Executive Schedule (5 U.S.C. 5315) and reference to maximum rate on or after first day of first pay period beginning on or after 180th day after Oct. 8, 2008, considered reference to basic pay rate for level III of Executive Schedule (5 U.S.C. 5314), or for level II of the Executive Schedule (5 U.S.C. 5313) for certain employees, see section 2(d)(3) of Pub. L. 110–372, set out as an Effective Date of 2008 Amendment note under section 5376 of this title.]

FBI PERSONNEL MANAGEMENT SYSTEM FOR NON-SPECIAL AGENT EMPLOYEES; SECRETARY OF THE TREASURY

Pub. L. 111–117, div. B, title II, §206, Dec. 16, 2009, 123 Stat. 3139, provided that: ''The Attorney General is authorized to extend through September 30, 2011, the Personnel Management Demonstration Project transferred to the Attorney General pursuant to [former] section 1115 of the Homeland Security Act of 2002, Public Law 107–296 (6 U.S.C. 533) [now 28 U.S.C. 599B] without limitation on the number of employees or the positions covered.''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 111–8, div. B, title II, §206, Mar. 11, 2009, 123 Stat. 585.

Pub. L. 110–161, div. B, title II, §206, Dec. 26, 2007, 121 Stat. 1913.

Pub. L. 109–108, title I, §106, Nov. 22, 2005, 119 Stat. 2304.

Pub. L. 108–447, div. B, title I, §109, Dec. 8, 2004, 118 Stat. 2868.

Pub. L. 105–119, title I, §122, Nov. 26, 1997, 111 Stat. 2469, as amended by Pub. L. 105–277, div. C, title I, §102, Oct. 21, 1998, 112 Stat. 2681–585; Pub. L. 107–67, title I, §120, Nov. 12, 2001, 115 Stat. 525; Pub. L. 108–7, div. J, title I, §119, Feb. 20, 2003, 117 Stat. 439; Pub. L. 108–199, div. F, title II, §216, Jan. 23, 2004, 118 Stat. 320; Pub. L. 108–447, div. H, title II, §216, Dec. 8, 2004, 118 Stat. 3241; Pub. L. 109–115, div. A, title II, §216, Nov. 30, 2005, 119 Stat. 2439; Pub. L. 110–161, div. D, title I, §115, Dec. 26, 2007, 121 Stat. 1978; Pub. L. 111–8, div. D, title I, §113, Mar. 11, 2009, 123 Stat. 637; Pub. L. 111–117, div. C, title I, §113, Dec. 16, 2009, 123 Stat. 3166, provided that during 3-year period beginning on Nov. 26, 1997, Director of the Federal Bureau of Investigation could, with approval of Attorney General, establish personnel management system providing for compensation and performance management of not more than 3,000 non-Special Agent employees to fill critical scientific, technical, engineering, intelligence analyst, language translator, and medical positions in Federal Bureau of Investigation, further authorized Secretary of the Treasury to establish, for period of 12 years from Oct. 21, 1998, personnel management demonstration project providing for compensation and performance management of not more than combined total of 950 employees who fill critical scientific, technical, engineering, intelligence analyst, language translator, and medical positions in Bureau of Alcohol, Tobacco and Firearms, and further provided for submittal of reports to Congress and termination of authority to establish demonstration project on Nov. 26, 2000.

[Personnel management demonstration project transferred to Attorney General for continued use by Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice, and Secretary of the Treasury for continued use by Tax and Trade Bureau, see section 599B of Title 28, Judiciary and Judicial Procedure.]

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.]

## § 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 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 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.

### § 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.<br>Sept. 2, 1958, Pub. L. 85–861, § 7(a), 72 Stat. 1555. |
| ..... | 5 U.S.C. 314. | R.S. § 365.<br>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.

### § 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 6101(b) to (d) 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; Pub. L. 111–350, § 5(a)(4), Jan. 4, 2011, 124 Stat. 3841.)

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

2011—Subsec. (b)(3). Pub. L. 111–350 substituted ''section 6101(b) to (d) of title 41'' for ''section 5 of title 41''.

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.''

[Except as otherwise provided, reference to maximum rate under section 5376 of this title before first day of first pay period beginning on or after 180th day after Oct. 8, 2008, considered reference to basic pay rate for level IV of Executive Schedule (5 U.S.C. 5315) and reference to maximum rate on or after first day of first pay period beginning on or after 180th day after Oct. 8, 2008, considered reference to basic pay rate for level III of Executive Schedule (5 U.S.C. 5314), or for level II of the Executive Schedule (5 U.S.C. 5313) for certain employees, see section 2(d)(3) of Pub. L. 110–372, set out as an Effective Date of 2008 Amendment note under section 5376 of this title.]

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.''

EX. ORD. NO. 13433. PROTECTING AMERICAN TAXPAYERS FROM PAYMENT OF CONTINGENCY FEES

Ex. Ord. No. 13433, May 16, 2007, 72 F.R. 28441, 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, it is hereby ordered as follows:

SECTION 1. *Policy*. To help ensure the integrity and effective supervision of the legal and expert witness services provided to or on behalf of the United States, it is the policy of the United States that organizations or individuals that provide such services to or on behalf of the United States shall be compensated in amounts that are reasonable, not contingent upon the outcome of litigation or other proceedings, and established according to criteria set in advance of performance of the services, except when otherwise required by law.

SEC. 2. *Duties of Agency Heads*. (a) Heads of agencies shall implement within their respective agencies the policy set forth in section 1, consistent with such instructions as the Attorney General may prescribe.

(b) After the date of this order, no agency shall enter into a contingency fee agreement for legal or expert witness services addressed by section 1 of this order, unless the Attorney General has determined that the agency's entry into the agreement is required by law.

(c) Within 90 days after the date of this order, the head of each agency shall notify the Attorney General and the Director of the Office of Management and Budget of any contingency fee agreements for services addressed by section 1 of this order that are in effect as of the date of this order.

SEC. 3. *Definitions*. For purposes of this order:

(a) The term ''agency'' means an executive agency as defined in section 105 of title 5, United States Code, and the United States Postal Service and the Postal Regulatory Commission, but shall exclude the Government Accountability Office and elements of the intelligence community (as defined in section 3(4) of the National Security Act of 1947 as amended (50 U.S.C. 401a(4))[)].

(b) The term ''contingency fee agreement'' means a contract or other agreement to provide services under which the amount or the payment of the fee for the services is contingent in whole or in part on the outcome of the matter for which the services were obtained. The term does not include:

(i) qualified tax collection contracts defined in section 6306 of title 26, United States Code, and

(ii) contracts described in sections 3711 and 3718 of title 31, United States Code.

SEC. 4. *General Provisions*. (a) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(b) Nothing in this order shall be construed to impair or otherwise affect:

(i) authority granted by law to an agency or the head thereof; or

(ii) functions of the Director of the Office of Management and Budget relating to budget, administrative, or legislative proposals.

(c) This order is not intended to, and does not, create any right, benefit, or privilege, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, instrumentalities, or entities, its officers or employees, or any other person.

GEORGE W. BUSH.

## § 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.]

### § 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 section 7905 (relating to commuting by means other than single-occupancy motor vehicles), chapter 81 (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.

(d) Notwithstanding section 1342 of title 31, the head of an agency may accept voluntary service for the United States under chapter 37 of this title and regulations of the Office of Personnel Management.

(e) For purposes of this section the term ''agency'' shall include the Architect of the Capitol. With respect to the Architect of the Capitol, the authority granted to the Office of Personnel Management under this section shall be exercised by the Architect of the Capitol.

(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; Pub. L. 107–296, title XIII, § 1314(b), Nov. 25, 2002, 116 Stat. 2296; Pub. L. 107–347, title II, § 209(g)(1)(A), Dec. 17, 2002, 116 Stat. 2931; Pub. L. 111–68, div. A, title I, § 1303(a), Oct. 1, 2009, 123 Stat. 2034.)

AMENDMENTS

2009—Subsec. (e). Pub. L. 111–68 added subsec. (e).

2002—Subsec. (c)(1). Pub. L. 107–296 substituted ''section 7905 (relating to commuting by means other than single-occupancy motor vehicles), chapter 81'' for ''chapter 81 of this title''.

Subsec. (d). Pub. L. 107–347 added subsec. (d).

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 OF 2002 AMENDMENTS

Amendment by Pub. L. 107–347 effective 120 days after Dec. 17, 2002, see section 402(a) of Pub. L. 107–347, set

out as an Effective Date note under section 3601 of Title 44, Public Printing and Documents.

Amendment by Pub. L. 107–296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

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.

### § 3113. Restriction on reemployment after conviction of certain crimes

An employee shall be separated from service and barred from reemployment in the Federal service, if—

(1) the employee is convicted of a violation of section 201(b) of title 18; and

(2) such violation related to conduct prohibited under section 1010(a) of the Controlled Substances Import and Export Act (21 U.S.C. 960(a)).

(Added Pub. L. 105–61, title VI, § 638(a), Oct. 10, 1997, 111 Stat. 1316.)

EFFECTIVE DATE

Section 638(c) of Pub. L. 105–61 provided that: ''This section [enacting this section] shall apply during fiscal year 1998 and each fiscal year thereafter.''

### § 3114. Appointment of candidates to certain positions in the competitive service by the Securities and Exchange Commission

(a) APPLICABILITY.—This section applies with respect to any position of accountant, economist, and securities compliance examiner at the Commission that is in the competitive service, and any position at the Commission in the competitive service that requires specialized knowledge of financial and capital market formation or regulation, financial market structures or surveillance, or information technology.

(b) APPOINTMENT AUTHORITY.—

(1) IN GENERAL.—The Commission may appoint candidates to any position described in subsection (a)—

(A) in accordance with the statutes, rules, and regulations governing appointments in the excepted service; and

(B) notwithstanding any statutes, rules, and regulations governing appointments in the competitive service.

(2) RULE OF CONSTRUCTION.—The appointment of a candidate to a position under authority of this subsection shall not be considered to cause such position to be converted from the competitive service to the excepted service.

(c) REPORTS.—No later than 90 days after the end of fiscal year 2003 (for fiscal year 2003) and 90 days after the end of fiscal year 2005 (for fiscal years 2004 and 2005), the Commission shall submit a report with respect to its exercise of the authority granted by subsection (b) during such fiscal years to the Committee on Government Reform and the Committee on Financial Services of the House of Representatives and the Committee on Governmental Affairs and the Committee on Banking, Housing, and Urban Affairs of the Senate. Such reports shall describe the changes in the hiring process authorized by such subsection, including relevant information related to—

(1) the quality of candidates;

(2) the procedures used by the Commission to select candidates through the streamlined hiring process;

(3) the numbers, types, and grades of employees hired under the authority;

(4) any benefits or shortcomings associated with the use of the authority;

(5) the effect of the exercise of the authority on the hiring of veterans and other demographic groups; and

(6) the way in which managers were trained in the administration of the streamlined hiring system.

(d) COMMISSION DEFINED.—For purposes of this section, the term ''Commission'' means the Securities and Exchange Commission.

(Added Pub. L. 108–44, § 2(a), July 3, 2003, 117 Stat. 842; amended Pub. L. 111–203, title IX, § 929G(a), July 21, 2010, 124 Stat. 1855.)

AMENDMENTS

2010—Pub. L. 111–203 substituted ''Appointment of candidates to certain positions in the competitive service by the Securities and Exchange Commission'' for ''Appointment of accountants, economists, and examiners by the Securities and Exchange Commission'' in section catchline, added subsec. (a), and struck out former subsec. (a). Prior to amendment, text read as follows: ''This section applies with respect to any position of accountant, economist, and securities compliance examiner at the Commission that is in the competitive service.''

CHANGE OF NAME

Committee on Government Reform of House of Representatives changed to Committee on Oversight and Government Reform of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007.

Committee on Governmental Affairs of Senate changed to Committee on Homeland Security and Governmental Affairs of Senate, effective Jan. 4, 2005, by Senate Resolution No. 445, One Hundred Eighth Congress, Oct. 9, 2004.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

## SUBCHAPTER II—THE SENIOR EXECUTIVE SERVICE

### § 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.)

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.''

### § 3132. Definitions and exclusions

(a) For the purpose of this subchapter—

(1) ''agency'' means an Executive agency, except a Government corporation and the Government Accountability 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 National Geospatial-Intelligence Agency, the National Security Agency, Department of Defense intelligence activities the civilian employees of which are subject to section 1590 of title 10, 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 the Election Assistance Commission;

(D) the Office of the Comptroller of the Currency, the Office of Thrift Supervision,,[1] the Resolution Trust Corporation, the Farm Credit Administration, the Federal Housing Finance Agency, the National Credit Union Administration, the Bureau of Consumer Financial Protection, and the Office of Financial Research;

(E) the Securities and Exchange Commission; or

(F) the Commodity Futures Trading Commission;

(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.

(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 rec-

[1] So in original.

ommendation 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; Pub. L. 104–201, div. A, title XI, § 1122(a)(1), Sept. 23, 1996, 110 Stat. 2687; Pub. L. 107–123, § 8(d)(1)(B), Jan. 16, 2002, 115 Stat. 2399; Pub. L. 107–171, title X, § 10702(c)(1), May 13, 2002, 116 Stat. 517; Pub. L. 107–252, title VIII, § 811(b), Oct. 29, 2002, 116 Stat. 1727; Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814; Pub. L. 110–289, div. A, title I, § 1161(g)(2), July 30, 2008, 122 Stat. 2781; Pub. L. 110–417, [div. A], title IX, § 931(a)(1), Oct. 14, 2008, 122 Stat. 4575; Pub. L. 111–203, title I, § 152(d)(4), July 21, 2010, 124 Stat. 1414.)

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

2010—Subsec. (a)(1)(D). Pub. L. 111–203 substituted ''the National Credit Union Administration, the Bureau of Consumer Financial Protection, and the Office of Financial Research;'' for ''and the National Credit Union Administration;''.

2008—Subsec. (a)(1)(B). Pub. L. 110–417 substituted ''National Geospatial-Intelligence Agency'' for ''National Imagery and Mapping Agency''.

Pub. L. 110–289, § 1161(g)(2)(A), substituted '', and'' for ''., and''.

Subsec. (a)(1)(D). Pub. L. 110–289, § 1161(g)(2)(B), struck out ''the Federal Housing Finance Board'' after ''the Office of Thrift Supervision,'', substituted ''the Federal Housing Finance Agency'' for ''the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development'', and struck out ''or or'' at end.

Subsec. (a)(1)(E), (F). Pub. L. 110–289, § 1161(g)(2)(C), (D), inserted ''or'' at end of subpar. (E), relating to Securities and Exchange Commission, and redesignated subpar. (E), relating to Commodity Futures Trading Commission, as (F).

2004—Subsec. (a)(1). Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office'' in introductory provisions.

2002—Subsec. (a)(1)(C). Pub. L. 107–252, § 811(b), inserted ''or the Election Assistance Commission'' after ''Commission''.

Pub. L. 107–171, § 10702(c)(1)(A), which directed amendment by striking ''or'' at the end, could not be executed because the word ''or'' did not appear at the end. See below.

Pub. L. 107–123, § 8(d)(1)(B)(i), struck out ''or'' at end.

Subsec. (a)(1)(D). Pub. L. 107–171, § 10702(c)(1)(B), inserted ''or'' at end.

Pub. L. 107–123, § 8(d)(1)(B)(ii), inserted ''or'' at end.

Subsec. (a)(1)(E). Pub. L. 107–171, § 10702(c)(1)(C), added subpar. (E) relating to Commodity Futures Trading Commission.

Pub. L. 107–123, § 8(d)(1)(B)(iii), added subpar. (E) relating to the Securities and Exchange Commission.

1996—Subsec. (a)(1)(B). Pub. L. 104–201 substituted ''National Imagery and Mapping Agency'' for ''Central Imagery Office''.

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 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–289, div. A , title I, § 1163, July 30, 2008, 122 Stat. 2782, provided that: ''Except as otherwise specifically provided in this title [see Tables for classification], this title and the amendments made by this title shall take effect on, and shall apply beginning on, the date of enactment of this Act [July 30, 2008].''

EFFECTIVE DATE OF 2002 AMENDMENTS

Amendment by Pub. L. 107–252 effective upon appointment of all members of the Election Assistance Commission under section 15323 of Title 42, The Public Health and Welfare, see section 15534(a) of Title 42.

Amendment by Pub. L. 107–123 effective Oct. 1, 2001, see section 11 of Pub. L. 107–123, set out as a note under section 78ee of Title 15, Commerce and Trade.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–201 effective Oct. 1, 1996, see section 1124 of Pub. L. 104–201, set out as a note under section 193 of Title 10, Armed Forces.

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.

### § 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.

## § 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.

**[§3135. Repealed. Pub. L. 104–66, title II, §2181(a)(1), Dec. 21, 1995, 109 Stat. 732]**

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, directed Office of Personnel Management to submit reports to Congress relating to Senior Executive Service.

**§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;[1]

(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) Except as provided in subsection (a), the Attorney General may—

(1) 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

(2) 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.

(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,

[1] See References in Text note below.

§ 506(b)(1), Nov. 30, 1989, 103 Stat. 1758; Pub. L. 109–108, title I, § 111, Nov. 22, 2005, 119 Stat. 2305.)

REFERENCES IN TEXT

Section 3393a, referred to in subsec. (a)(5)(E), was repealed by Pub. L. 107–296, title XIII, § 1321(a)(1)(B), Nov. 25, 2002, 116 Stat. 2296.

Provisions of this title governing appointments and other personnel actions in the competitive service, referred to in subsec. (b)(2), are classified generally to section 3301 et seq. of this title.

AMENDMENTS

2005—Subsec. (b). Pub. L. 109–108 struck out par. (1) designation before ''Except as provided'', redesignated subpars. (A) and (B) as pars. (1) and (2), respectively, and struck out former par. (2) which read as follows:

''(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.''

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.''

### § 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).''

## SUBCHAPTER IV—TEMPORARY ORGANIZATIONS ESTABLISHED BY LAW OR EXECUTIVE ORDER

### § 3161. Employment and compensation of employees

(a) DEFINITION OF TEMPORARY ORGANIZATION.—For the purposes of this subchapter, the term ''temporary organization'' means a commission, committee, board, or other organization that—

(1) is established by law or Executive order for a specific period not in excess of three years for the purpose of performing a specific study or other project; and

(2) is terminated upon the completion of the study or project or upon the occurrence of a condition related to the completion of the study or project.

(b) EMPLOYMENT AUTHORITY.—(1) Notwithstanding the provisions of chapter 51 of this title, the head of a temporary organization may appoint persons to positions of employment in a temporary organization in such numbers and with such skills as are necessary for the performance of the functions required of a temporary organization.

(2) The period of an appointment under paragraph (1) may not exceed three years, except that under regulations prescribed by the Office of Personnel Management the period of appointment may be extended for up to an additional two years.

(3) The positions of employment in a temporary organization are in the excepted service of the civil service.

(c) DETAIL AUTHORITY.—Upon the request of the head of a temporary organization, the head of any department or agency of the Government may detail, on a nonreimbursable basis, any personnel of the department or agency to that organization to assist in carrying out its duties.

(d) COMPENSATION.—(1) The rate of basic pay for an employee appointed under subsection (b) shall be established under regulations prescribed by the Office of Personnel Management without regard to the provisions of chapter 51 and subchapter III of chapter 53 of this title.

(2) The rate of basic pay for the chairman, a member, an executive director, a staff director, or another executive level position of a temporary organization may not exceed the maximum rate of basic pay established for the Senior Executive Service under section 5382 of this title.

(3) Except as provided in paragraph (4), the rate of basic pay for other positions in a temporary organization may not exceed the maximum rate of basic pay for grade GS–15 of the General Schedule under section 5332 of this title.

(4) The rate of basic pay for a senior staff position of a temporary organization may, in a case determined by the head of the temporary organization as exceptional, exceed the maximum rate of basic pay authorized under paragraph (3), but may not exceed the maximum rate of basic pay authorized for an executive level position under paragraph (2).

(5) In this subsection, the term ''basic pay'' includes locality pay provided for under section 5304 of this title.

(e) TRAVEL EXPENSES.—An employee of a temporary organization, whether employed on a full-time or part-time basis, may be allowed travel and transportation expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of this title, while traveling away from the employee's regular place of business in the performance of services for the temporary organization.

(f) BENEFITS.—An employee appointed under subsection (b) shall be afforded the same benefits and entitlements as are provided temporary employees under this title.

(g) RETURN RIGHTS.—An employee serving under a career or career conditional appointment or the equivalent in an agency who trans-

fers to or converts to an appointment in a temporary organization with the consent of the head of the agency is entitled to be returned to the employee's former position or a position of like seniority, status, and pay without grade or pay retention in the agency if the employee—

(1) is being separated from the temporary organization for reasons other than misconduct, neglect of duty, or malfeasance; and

(2) applies for return not later than 30 days before the earlier of—

(A) the date of the termination of the employment in the temporary organization; or

(B) the date of the termination of the temporary organization.

(h) TEMPORARY AND INTERMITTENT SERVICES.—The head of a temporary organization may procure for the organization temporary and intermittent services under section 3109(b) of this title.

(i) ACCEPTANCE OF VOLUNTEER SERVICES.—(1) The head of a temporary organization may accept volunteer services appropriate to the duties of the organization without regard to section 1342 of title 31.

(2) Donors of voluntary services accepted for a temporary organization under this subsection may include the following:

(A) Advisors.

(B) Experts.

(C) Members of the commission, committee, board, or other temporary organization, as the case may be.

(D) A person performing services in any other capacity determined appropriate by the head of the temporary organization.

(3) The head of the temporary organization—

(A) shall ensure that each person performing voluntary services accepted under this subsection is notified of the scope of the voluntary services accepted;

(B) shall supervise the volunteer to the same extent as employees receiving compensation for similar services; and

(C) shall ensure that the volunteer has appropriate credentials or is otherwise qualified to perform in each capacity for which the volunteer's services are accepted.

(4) A person providing volunteer services accepted under this subsection shall be considered an employee of the Federal Government in the performance of those services for the purposes of the following provisions of law:

(A) Chapter 81 of this title, relating to compensation for work-related injuries.

(B) Chapter 171 of title 28, relating to tort claims.

(C) Chapter 11 of title 18, relating to conflicts of interest.

(Added Pub. L. 106–398, § 1 [[div. A], title XI, § 1101(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–308.)

## CHAPTER 33—EXAMINATION, SELECTION, AND PLACEMENT

### SUBCHAPTER I—EXAMINATION, CERTIFICATION, AND APPOINTMENT

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

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AMENDMENTS

2002—Pub. L. 107–296, title XIII, §§1312(b), 1321(a)(1)(C), Nov. 25, 2002, 116 Stat. 2291, 2296, added item 3319 and struck out item 3393a ''Recertification''.

1998—Pub. L. 105–339, §3(b), Oct. 31, 1998, 112 Stat. 3184, added items 3330a to 3330c.

Pub. L. 105–277, div. C, title I, §151(c)(1), Oct. 21, 1998, 112 Stat. 2681–616, substituted ''DETAILS, VACANCIES, AND APPOINTMENTS'' for ''DETAILS'' in heading for subchapter III, ''Acting officer'' for ''Details; to office of head of Executive agency or military department'' in item 3345, ''Time limitation'' for ''Details; to subordinate offices'' in item 3346, ''Exclusivity'' for ''Details; Presidential authority'' in item 3347, ''Vacant office'' for ''Details; limited in time'' in item 3348, and ''Reporting of vacancies'' for ''Details; to fill vacancies; restrictions'' in item 3349 and added items 3349a to 3349d.

1996—Pub. L. 104–197, title III, §315(b)(1), Sept. 16, 1996, 110 Stat. 2416, substituted ''Competitive service; recommendations of Senators or Representatives'' for ''Political recommendations'' in item 3303.

Pub. L. 104–106, div. A, title X, §1037(b)(2), Feb. 10, 1996, 110 Stat. 432, which directed substitution of ''3330. Government-wide list of vacant positions'' for the item relating to section 3329, as added by section 4431(b) of Pub. L. 102–484, could not be executed because of the intervening amendment by Pub. L. 104–52, §4(2). See 1995 Amendment note below.

1995—Pub. L. 104–52, title IV, §4(2), Nov. 19, 1995, 109 Stat. 490, redesignated item 3329 ''Government-wide list of vacant positions'' as item 3330.

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.

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''.

## SUBCHAPTER I—EXAMINATION, CERTIFICATION, AND APPOINTMENT

### § 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 1998 AMENDMENT

Pub. L. 105–277, div. C, title I, §151(a), Oct. 21, 1998, 112 Stat. 2681–611, provided that: ''This section [enacting sections 3345 to 3349d of this title, repealing former sections 3345 to 3349 of this title, and enacting provisions set out as a note under section 3345 of this title] may be cited as the 'Federal Vacancies Reform Act of 1998'.''

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'.''

MODIFICATIONS TO NATIONAL SECURITY EDUCATION PROGRAM

Pub. L. 107–296, title XIII, §1332(a), Nov. 25, 2002, 116 Stat. 2299, provided that:

''(a) FINDINGS AND POLICIES.—

''(1) FINDINGS.—Congress finds that—

''(A) the United States Government actively encourages and financially supports the training, education, and development of many United States citizens;

''(B) as a condition of some of those supports, many of those citizens have an obligation to seek either compensated or uncompensated employment in the Federal sector; and

''(C) it is in the United States national interest to maximize the return to the Nation of funds invested in the development of such citizens by seeking to employ them in the Federal sector.

''(2) POLICY.—It shall be the policy of the United States Government to—

''(A) establish procedures for ensuring that United States citizens who have incurred service obligations as the result of receiving financial support for education and training from the United States Government and have applied for Federal positions are considered in all recruitment and hiring initiatives of Federal departments, bureaus, agencies, and offices; and

''(B) advertise and open all Federal positions to United States citizens who have incurred service obligations with the United States Government as the result of receiving financial support for education and training from the United States Government.''

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, directed executive agencies and the Department of Defense, in filling vacant positions, to give full consideration to the applications of certain individuals who became displaced employees before Oct. 1, 1997, before selecting any candidate from outside the agency for the position.

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 Docu-

ment 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. 10675, Aug. 21, 1956, 21 F.R. 6327; Ex. Ord. No. 10745, Dec. 12, 1957, 22 F.R. 10025; Ex. Ord. No. 12107, § 2–101(a), Dec. 28, 1978, 44 F.R. 1055, amended generally the Civil Service Rules, provided for transition from the indefinite appointment system to the career-conditional appointment system, and revoked Ex. Ord. No. 9830, Feb. 24, 1947, 12 F.R. 1259; Ex. Ord. No. 9973, June 28, 1948, 13 F.R. 3600; Ex. Ord. No. 10180, Nov. 13, 1950, 15 F.R. 7745; Ex. Ord. No. 10440, Mar. 31, 1953, 18 F.R. 1823; and Ex. Ord. No. 10463, June 25, 1953, 18 F.R. 3655. The Civil Service Rules are set out in Parts 1 to 10 of Title 5, Code of Federal Regulations. The Civil Service Rules were also amended by the following Executive Orders:

Ex. Ord. No. 10641, Oct. 26, 1955, 20 F.R. 8137, as amended by Ex. Ord. No. 12107, § 2–101(a), Dec. 28, 1978, 44 F.R. 1055.

Ex. Ord. No. 10869, Mar. 9, 1960, 25 F.R. 2073.

Ex. Ord. No. 11315, Nov. 17, 1966, 31 F.R. 14729, as amended by Ex. Ord. No. 12107, § 2–101(a), Dec. 28, 1978, 44 F.R. 1055.

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, as amended by Ex. Ord. No. 12107, § 2–101(a), Dec. 28, 1978, 44 F.R. 1055.

Ex. Ord. No. 12021, Nov. 30, 1977, 42 F.R. 61237.

Ex. Ord. No. 12043, Mar. 7, 1978, 43 F.R. 9773, as amended by Ex. Ord. No. 12107, § 2–101(a), Dec. 28, 1978, 44 F.R. 1055.

Ex. Ord. No. 12125, Mar. 15, 1979, 44 F.R. 16879.

Ex. Ord. No. 12148, § 5–212, July 20, 1979, 44 F.R. 43239, set out in a note under section 5195 of Title 42, The Public Health and Welfare.

Ex. Ord. No. 12300, Mar. 23, 1981, 46 F.R. 18683, which was superseded by Ex. Ord. No. 12940, Nov. 28, 1994, 59 F.R. 61519.

Ex. Ord. No. 12748, § 8(a), Feb. 1, 1991, 56 F.R. 4521, set out as a note under section 5301 of this title.

Ex. Ord. No. 12896, Feb. 3, 1994, 59 F.R. 5515.

Ex. Ord. No. 12940, Nov. 28, 1994, 59 F.R. 61519.

Ex. Ord. No. 13124, § 2(b), June 4, 1999, 64 F.R. 31103.

Ex. Ord. No. 13197, Jan. 18, 2001, 66 F.R. 7853.

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 below.

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.

EXECUTIVE ORDER NO. 11315

Ex. Ord. No. 11315, Nov. 17, 1966, 31 F.R. 14729, as amended by Ex. Ord. No. 12107, § 2–101(a), Dec. 28, 1978, 44 F.R. 1055, added Civil Service Rule IX and amended Civil Service Rule VI, provided for transition to the full establishment of executive assignments under Rule IX, and delegated responsibility for the administration of the executive assignment system established by this Order to the Office of Personnel Management and heads of agencies affected by Rule IX. Civil Service Rule IX, as established by this Order, was revoked by Ex. Ord. No. 12748, § 8(a), Feb. 1, 1991, 56 F.R. 4521, set out under section 5301 of this title.

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 below.

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, formerly set out 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; Ex. Ord. No. 13024, Nov. 7, 1996, 61 F.R. 58125, 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 term, 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 term, 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. Students converted to term appointment under section 2 may subsequently be converted noncompetitively to a career or career-conditional appointment before the term appointment expires.

SEC. 5. Executive Order No. 11813 of October 7, 1974, is hereby revoked.

[Ex. Ord. No. 12015, set out above, is revoked on the effective date of final regulations promulgated by the Director of OPM to implement the Internship Program, see Ex. Ord. No. 13562, § 8(b), Dec. 27, 2010, 75 F.R. 82588, set out below.]

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.

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. 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.

EXECUTIVE ORDER NO. 12364

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, which related to the Presidential Management Intern Program, was superseded by Ex. Ord. No. 13318, Nov. 21, 2003, 68 F.R. 66317, set out below.

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.

EXECUTIVE ORDER NO. 12596

Ex. Ord. No. 12596, May 7, 1987, 52 F.R. 17537, which provided for noncompetitive conversion to career status of certain employees in professional and administrative career positions, was revoked by Ex. Ord. No. 13162, July 6, 2000, 65 F.R. 43212, set out as a note below.

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), 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. 13124. AMENDING THE CIVIL SERVICE RULES RELATING TO FEDERAL EMPLOYEES WITH PSYCHIATRIC DISABILITIES

Ex. Ord. No. 13124, June 4, 1999, 64 F.R. 31103, 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 in order to give individuals with psychiatric disabilities the same hiring opportunities as persons with severe physical disabilities or mental retardation under the Civil Service Rules, and to permit individuals with psychiatric disabilities to obtain Civil Service competitive status, it is hereby ordered as follows:

SECTION 1. *Policy*.

(a) It is the policy of the United States to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for persons with disabilities. The Federal Government as an employer should serve as a model for the employment of persons with disabilities and utilize the full potential of these talented citizens.

(b) The Civil Service Rules governing appointment of persons with psychiatric disabilities were adopted years ago when attitudes about mental illness were different than they are today, which led to stricter standards for hiring persons with psychiatric disabilities than for persons with mental retardation or severe physical disabilities. The Civil Service Rules provide that persons with mental retardation, severe physical disabilities, or psychiatric disabilities may be hired under excepted appointing authorities. While persons with mental retardation or severe physical disabilities may be appointed for more than 2 years and may convert to competitive status after completion of 2 years of satisfactory service in their excepted position, people with psychiatric disabilities may not.

(c) The Office of Personnel Management (OPM) and the President's Task Force on Employment of Adults with Disabilities believe that the Federal Government could better benefit from the contributions of persons with psychiatric disabilities if they were given the same opportunities available to people with mental retardation or severe physical disabilities.

SEC. 2. *Implementation*.

(a) The Director of the Office of Personnel Management shall, consistent with OPM authority, provide that persons with psychiatric disabilities are subject to the same hiring rules as persons with mental retardation or severe physical disabilities.

(b) [Amended Civil Service Rule III.]

SEC. 3. The Director of the Office of Personnel Management shall prescribe such regulations as may be necessary to implement this order.

WILLIAM J. CLINTON.

EX. ORD. NO. 13162. FEDERAL CAREER INTERN PROGRAM

Ex. Ord. No. 13162, July 6, 2000, 65 F.R. 43211, 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 in order to provide for the recruitment and selection of exceptional employees for careers in the public sector, it is hereby ordered as follows:

SECTION 1. There is hereby constituted the Federal Career Intern Program (Program). The purpose of the Program is to attract exceptional men and women to the Federal workforce who have diverse professional experiences, academic training, and competencies, and to prepare them for careers in analyzing and implementing public programs. ''Career Intern'' is a generic term, and agencies may use occupational titles as appropriate.

SEC. 2. The Program is another step in the Administration's effort to recruit the highest caliber people to the Federal Government, develop their professional abilities, and retain them in Federal departments and agencies. Cabinet secretaries and agency administrators should view the Program as complementary to existing programs that provide career enhancement opportunities for Federal employees, and departments and agencies are encouraged to identify and make use of those programs, as well as the new Program, to meet department and agency needs.

SEC. 3. (a) The Office of Personnel Management (OPM) shall develop appropriate merit-based procedures for the recruitment, screening, placement, and continuing career development of Career Interns.

(b) In developing those procedures, the OPM shall provide for such actions as deemed appropriate to assure equal employment opportunity and the application of appropriate veterans' preference criteria.

SEC. 4. (a) A successful candidate shall be appointed to a position in Schedule B of the excepted service at the GS–5, 7, or 9 (and equivalent) or other trainee level appropriate for the Program, unless otherwise approved by the OPM. The appointment shall not exceed 2 years unless extended by the Federal department or agency, with the concurrence of the OPM, for up to 1 additional year.

(b) Tenure for a Career Intern shall be governed by the following principles and policies:

(1) Assigned responsibilities shall be consistent with a Career Intern's competencies and career interests, and the purposes of the Program.

(2) Continuation in the Program shall be contingent upon satisfactory performance by the Career Intern throughout the internship period.

(3) Except as provided in subsections (4) and (5) of this section, service as a Career Intern confers 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 a Career Intern who satisfactorily completes the internship and meets all other requirements prescribed by the OPM.

(5) Within an agency, an employee who formerly held a career or career-conditional appointment immediately before entering the Career Intern Program,

and who fails to complete the Career Intern Program for reasons unrelated to misconduct or suitability, shall be placed in a career or career-conditional position in the current agency at no lower grade or pay than the one the employee left to accept the position in the Career Intern Program.

SEC. 5. A Career Intern shall participate in a formal program of training and job assignments to develop competencies that the OPM identifies as core to the Program, and the employing agency identifies as appropriate to the agency's mission and needs.

SEC. 6. The OPM shall prescribe such regulations as it determines necessary to carry out the purpose of this order.

SEC. 7. The OPM shall provide oversight of the Program.

SEC. 8. Executive Order 12596 of May 7, 1987, is revoked.

SEC. 9. *Judicial Review*. This order is intended only to improve the internal management of the executive branch. It does not create any right or benefit, substantive or procedural, enforceable in law or equity, by a party against the United States, its agencies, its officers or employees, or any other person.

WILLIAM J. CLINTON.

[Ex. Ord. No. 13162, set out above, is revoked effective Mar. 1, 2011, see Ex. Ord. No. 13562, § 8(a), Dec. 27, 2010, 75 F.R. 82588, set out below.]

EX. ORD. NO. 13318. PRESIDENTIAL MANAGEMENT FELLOWS PROGRAM

Ex. Ord. No. 13318, Nov. 21, 2003, 68 F.R. 66317, 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 in order to provide for the recruitment and selection of outstanding employees for service in public sector management, it is hereby ordered as follows:

SECTION 1. There is hereby constituted the Presidential Management Fellows Program. The purpose of the Program is to attract to the Federal service outstanding men and women from a variety of academic disciplines and career paths who have a clear interest in, and commitment to, excellence in the leadership and management of public policies and programs. Individuals selected for the Program shall be known as Presidential Management Fellows (PMFs) or Senior Presidential Management Fellows (Senior PMFs).

SEC. 2. (a) Individuals eligible for appointment as a PMF under this order are those who, in pursuing a course of study at the graduate level, have demonstrated both exceptional ability and the commitment to which section 1 refers. Such individuals at the time of application must have received, or must expect to receive soon thereafter, an appropriate advanced degree as defined by the Director of the Office of Personnel Management (OPM).

(b) Individuals eligible for appointment as a Senior PMF under this order are those who have, through extensive work experience, demonstrated both exceptional leadership or analytical ability and the commitment to which section 1 refers.

SEC. 3. The Director of OPM shall prescribe appropriate merit-based rules for the recruitment, nomination, assessment, selection, appointment, placement, and continuing career development of fellows, including rules that:

(a) reserve to the head of a department or agency or component within the Executive Office of the President (EOP) the authority to appoint a fellow who is to be employed in that department, agency, or component;

(b) provide for nomination by universities and colleges, through competitive selection processes, of eligible individuals for consideration for appointment as PMFs;

(c) carry out the policy of the United States to ensure equal employment opportunities for employees without discrimination because of race, color, religion, sex, or national origin; and

(d) ensure the application of appropriate veterans' preference criteria.

SEC. 4. (a) Fellows shall be appointed to positions in either:

(1) Schedule A of the excepted service; or

(2) an agency or component within the EOP excepted from the competitive service.

(b) Appointments under subsection (a) shall not exceed 2 years in duration unless extended by the head of the department or agency or component within the EOP, with the concurrence of the Director of OPM, for a period not to exceed 1 additional year.

(c) The following principles and policies shall govern service and tenure by fellows:

(1) responsibilities assigned to a PMF shall be consistent with the PMF's educational background and career interests, and the purposes of the Program; and responsibilities assigned to a Senior PMF shall be consistent with the Senior PMF's experience and career interests, and the purposes of the Program;

(2) continuation of a fellow's appointment shall be contingent upon satisfactory performance by the fellow throughout the fellowship appointment;

(3) except as provided in paragraph (4) of this subsection, service as a fellow shall confer no right to further Federal employment in either the competitive or excepted service upon the expiration of the fellow's appointment; and

(4) competitive civil service status may be granted to a fellow who satisfactorily completes the Program and meets such other requirements as the Director of OPM may prescribe. A fellow appointed by an agency excepted from the competitive service may also be appointed to a permanent position in an excepted service agency without further competition.

SEC. 5. The Director of OPM shall provide for an orderly transition, including with respect to nominations, selection processes, and appointments, from the Presidential Management Intern Program established by Executive Order 12364 [formerly set out above] of May 24, 1982, to the Presidential Management Fellows Program established by this order. Until that transition is provided for, individuals who were selected or appointed under the provisions of Executive Order 12364 and who have not completed their scheduled periods of excepted service are hereby redesignated as Presidential Management Fellows, and continue their internships under the terms of Executive Order 12364.

SEC. 6. The Director of OPM shall prescribe such regulations as may be necessary to carry out the purposes of this order.

SEC. 7. Executive Order 12364 [formerly set out above] is superseded, except as provided in section 5 of this order.

SEC. 8. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, instrumentalities or entities, its officers or employees, or any other person.

GEORGE W. BUSH.

[Ex. Ord. No. 13318, set out above, is revoked on the effective date of final regulations promulgated by the Director of OPM to implement required changes to the PMF Program, see Ex. Ord. No. 13562, § 8(c), Dec. 27, 2010, 75 F.R. 82588, set out below.]

EX. ORD. NO. 13473. TO AUTHORIZE CERTAIN NONCOMPETITIVE APPOINTMENTS IN THE CIVIL SERVICE FOR SPOUSES OF CERTAIN MEMBERS OF THE ARMED FORCES

Ex. Ord. No. 13473, Sept. 25, 2008, 73 F.R. 56703, 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, it is hereby ordered as follows:

SECTION 1. *Policy*. It shall be the policy of the United States to provide for the appropriately expedited re-

cruitment and selection of spouses of members of the Armed Forces for appointment to positions in the competitive service of the Federal civil service as part of the effort of the United States to recruit and retain in military service, skilled and experienced members of the Armed Forces and to recognize and honor the service of such members injured, disabled, or killed in connection with their service.

SEC. 2. *Definitions*. As used in this order:

(a) the term ''agency'' has the meaning specified for the term ''executive agency'' in section 105 of title 5, United States Code, but does not include the Government Accountability Office;

(b) the term ''Armed Forces'' has the meaning specified for that term in section 101 of title 10, United States Code;

(c) the term ''active duty'' means full-time duty in an armed force and includes full-time National Guard duty, except that, for Reserve Component members, the term ''active duty'' does not include training duties or attendance at service schools.

(d) the term ''permanent change of station'' means the assignment, detail, or transfer of a member of the Armed Forces serving at a present permanent duty station to a different permanent duty station under a competent authorization or order that does not:

(i) specify the duty as temporary;

(ii) provide for assignment, detail, or transfer, after that different permanent duty station, to a further different permanent duty station; or (iii) [sic] direct return to the present permanent duty station; and

(e) the term ''totally disabled retired or separated member'' means a member of the Armed Forces who:

(i) retired under chapter 61 of title 10, United States Code, with a disability rating at the time of retirement of 100 per cent; or (ii) [sic] retired or separated from the Armed Forces and has a disability rating of 100 percent from the Department of Veterans Affairs.

SEC. 3. *Noncompetitive Appointment Authority*. Consistent with the policy set forth in section 1 of this order and such regulations as the Director of the Office of Personnel Management may prescribe, the head of an agency may make a noncompetitive appointment to any position in the competitive service, for which the individual is qualified, of an individual who is:

(a) the spouse of a member of the Armed Forces who, as determined by the Secretary of Defense, is performing active duty pursuant to orders that authorize a permanent change of station move, if such spouse relocates to the member's new permanent duty station;

(b) the spouse of a totally disabled retired or separated member of the Armed Forces; or

(c) the unremarried widow or widower of a member of the Armed Forces killed while performing active duty.

SEC. 4. *Administrative Provisions*. The heads of agencies shall employ, as appropriate, appointment authority available to them, in addition to the authority granted by section 3 of this order, to carry out the policy set forth in section 1.

SEC. 5. *General Provisions*. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) authority granted by law to a department or agency or the head thereof; and

(ii) functions of the Director of the Office of Management and Budget relating to budget, administrative, or legislative functions.

(b) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its agencies, instrumentalities, or entities, its officers, employees, or agents, or any other person.

GEORGE W. BUSH.

EX. ORD. NO. 13518. EMPLOYMENT OF VETERANS IN THE FEDERAL GOVERNMENT

Ex. Ord. No. 13518, Nov. 9, 2009, 74 F.R. 58533, provided:

By the authority vested in me by the Constitution and the laws of the United States of America, including section 301 of title 3 of the United States Code, I hereby order as follows:

SECTION 1. *Policy*. Veterans have served and sacrificed in defense of our Nation. When they complete their service, we must do everything in our power to assist them in re-entering civilian life and finding employment. Government as well as private employers should play a prominent role in helping veterans who may be struggling to find jobs. As one of the Nation's leading employers, the Federal Government is in need of highly skilled individuals to meet agency staffing needs and to support mission objectives. Our veterans, who have benefited from training and development during their military service, possess a wide variety of skills and experiences, as well as the motivation for public service, that will help fulfill Federal agencies' staffing needs. It is therefore the policy of my Administration to enhance recruitment of and promote employment opportunities for veterans within the executive branch, consistent with merit system principles and veterans' preferences prescribed by law. The Federal Government will thereby help lead by example in promoting veterans' employment.

SEC. 2. *Council on Veterans Employment*. There is hereby established an interagency Council on Veterans Employment (Council), to be co-chaired by the Secretaries of Labor and Veterans Affairs. The Director of the Office of Personnel Management (OPM) shall serve as Vice Chair of the Council.

(a) Mission and Function of the Council. The Council shall:

(i) advise and assist the President and the Director of OPM in establishing a coordinated Government-wide effort to increase the number of veterans employed by the Federal Government by enhancing recruitment and training;

(ii) serve as a national forum for promoting veterans' employment opportunities in the executive branch; and

(iii) establish performance measures to assess the effectiveness of, and submit an annual report to the President on the status of, the Veterans Employment Initiative described in section 3 of this order.

(b) Membership of the Council. The Council shall consist of the heads of the following agencies and such other executive branch agencies as the President may designate:

(i) the Department of State;
(ii) the Department of the Treasury;
(iii) the Department of Defense;
(iv) the Department of Justice;
(v) the Department of the Interior;
(vi) the Department of Agriculture;
(vii) the Department of Commerce;
(viii) the Department of Labor;
(ix) the Department of Health and Human Services;
(x) the Department of Housing and Urban Development;
(xi) the Department of Transportation;
(xii) the Department of Energy;
(xiii) the Department of Education;
(xiv) the Department of Veterans Affairs;
(xv) the Department of Homeland Security;
(xvi) the Environmental Protection Agency;
(xvii) the National Aeronautics and Space Administration;
(xviii) the Agency for International Development;
(xix) the General Services Administration;
(xx) the National Science Foundation;
(xxi) the Nuclear Regulatory Commission;
(xxii) the Office of Personnel Management;
(xxiii) the Small Business Administration; and
(xxiv) the Social Security Administration.

A member of the Council may designate, to perform the Council functions of the member, a senior official who is part of the member's agency, and who is a full-time officer or employee of the Federal Government.

(c) Administration of the Council. The Co-Chairs shall convene meetings of the Council, determine its agenda, and direct its work. At the direction of the Co-Chairs, the Council may establish subgroups consisting

exclusively of Council members or their designees, as appropriate. The Vice Chair shall designate an Executive Director for the Council to support the Vice Chair in managing the Council's activities. The OPM shall provide administrative support for the Council to the extent permitted by law and within existing appropriations.

(d) Steering Committee. There is established within the Council a Steering Committee consisting of the Secretaries of Defense, Labor, Veterans Affairs, and Homeland Security, the Director of OPM, and any other Council member designated by the Co-Chairs. The Steering Committee shall be responsible for providing leadership, accountability, and strategic direction to the Council.

SEC. 3. *Veterans Employment Initiative*. The agencies represented on the Council shall participate in a Veterans Employment Initiative (Initiative). Under the Initiative, each participating agency shall, to the extent permitted by law:

(a) develop an agency-specific Operational Plan for promoting employment opportunities for veterans, consistent with the Government-wide Veterans Recruitment and Employment Strategic Plan described in section 4 of this order, merit system principles, the agency's strategic human capital plan, and other applicable workforce planning strategies and initiatives;

(b) within 120 days of the date of this order, establish a Veterans Employment Program Office, or designate an agency officer or employee with full-time responsibility for its Veterans Employment Program, to be responsible for enhancing employment opportunities for veterans within the agency, consistent with law and merit system principles, including developing and implementing the agency's Operational Plan, veterans recruitment programs, and training programs for veterans with disabilities, and for coordinating employment counseling to help match the career aspirations of veterans to the needs of the agency;

(c) provide mandatory annual training to agency human resources personnel and hiring managers concerning veterans' employment, including training on veterans' preferences and special authorities for the hiring of veterans;

(d) identify key occupations for which the agency will provide job counseling and training to better enable veterans to meet agency staffing needs associated with those occupations; and

(e) coordinate with the Departments of Defense and Veterans Affairs to promote further development and application of technology designed to assist transitioning service members and veterans with disabilities.

SEC. 4. *Additional Responsibilities of the Director of the Office of Personnel Management*. The Director of OPM shall, in consultation with the Council and to the extent permitted by law:

(a) develop a Government-wide Veterans Recruitment and Employment Strategic Plan, to be updated at least every 3 years, addressing barriers to the employment of veterans in the executive branch and focusing on:

(i) identifying actions that agency leaders should take to improve employment opportunities for veterans;

(ii) developing the skills of transitioning military service members and veterans;

(iii) marketing the Federal Government as an employer of choice to transitioning service members and veterans;

(iv) marketing the talent, experience, and dedication of transitioning service members and veterans to Federal agencies; and

(v) disseminating Federal employment information to veterans and hiring officials;

(b) provide Government-wide leadership in recruitment and employment of veterans in the executive branch;

(c) identify key occupations, focusing on positions in high-demand occupations where talent is needed to meet Government-wide staffing needs, for which the Federal Government will provide job counseling and training under section 5(a) of this order to veterans and transitioning military service personnel;

(d) develop mandatory training for both human resources personnel and hiring managers on veterans' employment, including veterans' preference and special hiring authorities;

(e) compile and post on the OPM website Government-wide statistics on the hiring of veterans; and

(f) within 1 year of the date of this order and with the advice of the Council, provide recommendations to the President on improving the ability of veterans' preference laws to meet the needs of the new generation of veterans, especially those transitioning from the conflicts in Iraq and Afghanistan, and the needs of Federal hiring officials.

SEC. 5. *Responsibilities of the Secretaries of Defense, Labor, Veterans Affairs, and Homeland Security*. The Secretaries of Defense, Labor, Veterans Affairs, and Homeland Security shall take the following actions, to the extent permitted by law:

(a) The Secretaries of Defense, Labor, Veterans Affairs, and Homeland Security shall, in consultation with OPM, develop and implement counseling and training programs to align veterans' and transitioning service members' skills and career aspirations to Federal employment opportunities, targeting Federal occupations that are projected to have heavy recruitment needs.

(b) The Secretary of Labor shall conduct employment workshops for veterans and transitioning military service personnel as part of the Transition Assistance Program (TAP), and integrate in those workshops information about the Federal hiring process, veterans' preference laws, special hiring authorities, and Federal job opportunities.

(c) The Secretary of Defense and Secretary of Homeland Security (with respect to the Coast Guard) shall:

(i) reinforce military leadership's commitment and support of the service members' transition process; and

(ii) institute policies that encourage every eligible service member to take the opportunity to enroll in any or all of the four components of the TAP.

(d) The Secretaries of Labor and Veterans Affairs shall:

(i) assist veterans and transitioning service members in translating military skills, training, and education to Federal occupations through programs developed under subsection (a) of this section; and

(ii) provide training to employment and rehabilitation counselors on the Federal hiring process, veterans' preferences, special hiring authorities, and identifying Federal employment opportunities for veterans.

SEC. 6. *General Provisions*. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) authority granted by law to a department or agency or the head thereof; or

(ii) functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

BARACK OBAMA.

EX. ORD. NO. 13562. RECRUITING AND HIRING STUDENTS AND RECENT GRADUATES

Ex. Ord. No. 13562, Dec. 27, 2010, 75 F.R. 82585, 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, it is hereby ordered as follows:

SECTION 1. *Policy*. The Federal Government benefits from a diverse workforce that includes students and re-

cent graduates, who infuse the workplace with their enthusiasm, talents, and unique perspectives. The existing competitive hiring process for the Federal civil service, however, is structured in a manner that, even at the entry level, favors job applicants who have significant previous work experience. This structure, along with the complexity of the rules governing admission to the career civil service, creates a barrier to recruiting and hiring students and recent graduates. It places the Federal Government at a competitive disadvantage compared to private-sector employers when it comes to hiring qualified applicants for entry-level positions.

To compete effectively for students and recent graduates, the Federal Government must improve its recruiting efforts; offer clear paths to Federal internships for students from high school through post-graduate school; offer clear paths to civil service careers for recent graduates; and provide meaningful training, mentoring, and career-development opportunities. Further, exposing students and recent graduates to Federal jobs through internships and similar programs attracts them to careers in the Federal Government and enables agency employers to evaluate them on the job to determine whether they are likely to have successful careers in Government.

Accordingly, pursuant to my authority under 5 U.S.C. 3302(1), and in order to achieve a workforce that represents all segments of society as provided in 5 U.S.C. 2301(b)(1), I find that conditions of good administration (specifically, the need to promote employment opportunities for students and recent graduates in the Federal workforce) make necessary an exception to the competitive hiring rules for certain positions in the Federal civil service.

SEC. 2. *Establishment*. There are hereby established the Internship Program and the Recent Graduates Program, which, along with the Presidential Management Fellows Program, as modified herein, shall collectively be known as the Pathways Programs. I therefore direct the Director of the Office of Personnel Management (OPM) to issue regulations implementing the Pathways Programs consistent with this order, including:

(a) a description of the positions that executive departments and agencies (agencies) may fill through the Pathways Programs because conditions of good administration necessitate excepting those positions from the competitive hiring rules;

(b) rules governing whether, to what extent, and in what manner public notice should be provided of job opportunities in the Pathways Programs;

(c) a description of career-development, training, and mentorship opportunities for participants in the Pathways Programs;

(d) requirements that managers meaningfully assess the performance of participants in the Pathways Programs to identify those who should be considered for conversion to career civil service positions;

(e) a description of OPM oversight of agency use of the Pathways Programs to ensure that (i) they serve as a supplement to, and not a substitute for, the competitive hiring process, and (ii) agencies are using the Pathways Programs in a genuine effort to develop talent for careers in the civil service;

(f) a description of OPM plans to evaluate agencies' effectiveness in recruiting and retaining talent using the Pathways Programs and of the satisfaction of Pathways Programs participants and their hiring managers; and

(g) standard naming conventions across agencies, so that students and recent graduates can clearly understand and compare the career pathway opportunities available to them in the Federal Government.

SEC. 3. *Internship Program*. The Internship Program shall provide students in high schools, community colleges, 4-year colleges, trade schools, career and technical education programs, and other qualifying educational institutions and programs, as determined by OPM, with paid opportunities to work in agencies and explore Federal careers while still in school. The Internship Program would replace the existing Student Career Experience Program, established pursuant to Executive Order 12015 of October 26, 1977. The following principles and policies shall govern the Internship Program:

(a) Participants in the program shall be referred to as ''Interns'' and shall be students enrolled, or accepted for enrollment, in qualifying educational institutions and programs, as determined by OPM.

(b) Subject to any exceptions OPM may establish by regulation, agencies shall provide Interns with meaningful developmental work and set clear expectations regarding the work experience of the intern.

(c) Students employed by third-party internship providers but placed in agencies may, to the extent permitted by OPM regulations, be treated as participants in the Internship Program.

SEC. 4. *Recent Graduates Program*. The Recent Graduates Program shall provide individuals who have recently graduated from qualifying educational institutions or programs with developmental experiences in the Federal Government intended to promote possible careers in the civil service. The following principles and policies shall govern the Recent Graduates Program:

(a) Participants in the program shall be referred to as ''Recent Graduates'' and must have obtained a qualifying degree, or completed a qualifying career or technical education program, as determined by OPM, within the preceding 2 years, except that veterans who, due to their military service obligation, were precluded from participating in the Recent Graduates Program during the 2-year period after obtaining a qualifying degree or completing a qualifying program shall be eligible to participate in the Program within 6 years of obtaining a qualifying degree or completing a qualifying program.

(b) Responsibilities assigned to a Recent Graduate shall be consistent with his or her qualifications, educational background, and career interests, the purpose of the Recent Graduates Program, and agency needs.

SEC. 5. *Presidential Management Fellows Program*. The Presidential Management Fellows (PMF) Program is an existing program established pursuant to Executive Order 13318 of November 21, 2003, that aims to attract to the Federal service outstanding men and women from a variety of academic disciplines at the graduate level who have a clear interest in, and commitment to, the leadership and management of public policies and programs. The following requirements shall govern the PMF Program upon the revocation of Executive Order 13318, as provided in section 8 of this order:

(a) Participants in this program shall continue to be known as Presidential Management Fellows (PMFs or Fellows) and must have received, within the preceding 2 years, a qualifying advanced degree, as determined by OPM.

(b) Responsibilities assigned to a PMF shall be consistent with the PMF's qualifications, educational background, and career interests, the purposes of the PMF Program, and agency needs.

(c) OPM shall establish the eligibility requirements and minimum qualifications for the program, as well as a process for assessing eligible individuals for consideration for appointment as PMFs.

SEC. 6. *Appointment and Conversion*. (a) Appointments to any of the Pathways Programs shall be under Schedule D of the excepted service, as established by section 7 of this order.

(b) Appointments to the Recent Graduates or PMF Programs shall not exceed 2 years, unless extended by the employing agency for up to 120 days thereafter.

(c) Appointment to a Pathways Program shall confer no right to further Federal employment in either the competitive or excepted service upon the expiration of the appointment, except that agencies may convert eligible participants noncompetitively to term, career, or career conditional appointments after satisfying requirements to be established by OPM, and agencies may noncompetitively convert participants who were

initially converted to a term appointment under this section to a career or career-conditional appointment before the term appointment expires.

SEC. 7. *Implementation*. (a) [Amended Civil Service Rule VI.]

(b) The Director of OPM shall:

(i) promulgate such regulations as the Director determines may be necessary to implement this order;

(ii) provide oversight of the Pathways Programs;

(iii) establish, if appropriate, a Government-wide cap on the number of noncompetitive conversions to the competitive service of Interns, Recent Graduates, or PMFs (or a Government-wide combined conversion cap applicable to all three categories together);

(iv) administer, and review and revise annually or as needed, any Government-wide cap established pursuant to this subsection;

(v) provide guidance on conducting an orderly transition from existing student and internship programs to the Pathways Programs established pursuant to this order; and

(vi) consider for publication in the Federal Register at an appropriate time a proposed rule seeking public comment on the elimination of the Student Temporary Employment Program, established through OPM regulations at 5 CFR 213.3202(a).

(c) In accordance with regulations prescribed pursuant to this order and applicable law, agencies shall:

(i) use appropriate merit-based procedures for recruitment, assessment, placement, and ongoing career development for participants in the Pathways Programs;

(ii) provide for equal employment opportunity in the Pathways Programs without regard to race, ethnicity, color, religion, sex, national origin, age, disability, sexual orientation, or any other non-merit-based factor;

(iii) apply veterans' preference criteria; and

(iv) within 45 days of the date of this order, designate a Pathways Programs Officer (at the agency level, or at bureaus or components within the agency) to administer Pathways Programs, to serve as liaison with OPM, and to report to OPM on the implementation of the Pathways Programs and the individuals hired under them.

SEC. 8. *Prior Executive Orders*. (a) Effective March 1, 2011, Executive Order 13162 (Federal Career Intern Program) is superseded and revoked. Any individuals serving in appointments under that order on March 1, 2011, shall be converted to the competitive service, effective on that date, with no loss of pay or benefits.

(b) On the effective date of final regulations promulgated by the Director of OPM to implement the Internship Program, Executive Order 12015 (pursuant to which the Student Career Experience Program was established), as amended, is superseded and revoked.

(c) On the effective date of final regulations promulgated by the Director of OPM to implement changes to the PMF Program required by this order, Executive Order 13318 (Presidential Management Fellows Program), as amended, is superseded and revoked.

SEC. 9. *General Provisions*. (a) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(b) Nothing in this order shall be construed to impair or otherwise affect:

(i) authority granted by law, regulation, Executive Order, or Presidential Directive to an executive department, agency, or head thereof; or

(ii) functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

BARACK OBAMA.

IMPROVING THE FEDERAL RECRUITMENT AND HIRING PROCESS

Memorandum of President of the United States, May 11, 2010, 75 F.R. 27157, provided:

Memorandum for the Heads of Executive Departments and Agencies

To deliver the quality services and results the American people expect and deserve, the Federal Government must recruit and hire highly qualified employees, and public service should be a career of choice for the most talented Americans. Yet the complexity and inefficiency of today's Federal hiring process deters many highly qualified individuals from seeking and obtaining jobs in the Federal Government.

I therefore call on executive departments and agencies (agencies) to overhaul the way they recruit and hire our civilian workforce. Americans must be able to apply for Federal jobs through a commonsense hiring process and agencies must be able to select high-quality candidates efficiently and quickly. Moreover, agency managers and supervisors must assume a leadership role in recruiting and selecting employees from all segments of our society. Human resource offices must provide critical support for these efforts. The ability of agencies to perform their missions effectively and efficiently depends on a talented and engaged workforce, and we must reform our hiring system to further strengthen that workforce.

By the authority vested in me as President by the Constitution and the laws of the United States, including section 3301 of title 5, United States Code, I hereby direct the following:

SECTION 1. *Directions to Agencies*. Agency heads shall take the following actions no later than November 1, 2010:

(a) consistent with merit system principles and other requirements of title 5, United States Code, and subject to guidance to be issued by the Office of Personnel Management (OPM), adopt hiring procedures that:

(1) eliminate any requirement that applicants respond to essay-style questions when submitting their initial application materials for any Federal job;

(2) allow individuals to apply for Federal employment by submitting resumes and cover letters or completing simple, plain language applications, and assess applicants using valid, reliable tools; and

(3) provide for selection from among a larger number of qualified applicants by using the ''category rating'' approach (as authorized by section 3319 of title 5, United States Code), rather than the ''rule of 3'' approach, under which managers may only select from among the three highest scoring applicants;

(b) require that managers and supervisors with responsibility for hiring are:

(1) more fully involved in the hiring process, including planning current and future workforce requirements, identifying the skills required for the job, and engaging actively in the recruitment and, when applicable, the interviewing process; and

(2) accountable for recruiting and hiring highly qualified employees and supporting their successful transition into Federal service, beginning with the first performance review cycle starting after November 1, 2010;

(c) provide the OPM and the Office of Management and Budget (OMB) timelines and targets to:

(1) improve the quality and speed of agency hiring by:

(i) reducing substantially the time it takes to hire mission-critical and commonly filled positions;

(ii) measuring the quality and speed of the hiring process; and

(iii) analyzing the causes of agency hiring problems and actions that will be taken to reduce them; and

(2) provide every agency hiring manager training on effective, efficient, and timely ways to recruit and hire well-qualified individuals;

(d) notify individuals applying for Federal employment through USAJOBS, an OPM-approved Federal web-based employment search portal, about the status of their application at key stages of the application process; and

(e) identify a senior official accountable for leading agency implementation of this memorandum.

SEC. 2. *Directions to the OPM*. The OPM shall take the following actions no later than 90 days after the date of this memorandum:

(a) establish a Government-wide performance review and improvement process for hiring reform actions described in section 1 of this memorandum, including:

(1) a timeline, benchmarks, and indicators of progress; [and]

(2) a goal-focused, data-driven system for holding agencies accountable for improving the quality and speed of agency hiring, achieving agency hiring reform targets, and satisfying merit system principles and veterans' preference requirements; and [sic]

(b) develop a plan to promote diversity in the Federal workforce, consistent with the merit system principle (codified at 5 U.S.C. 2301(b)(1)) that the Federal Government should endeavor to achieve a workforce from all segments of society;

(c) evaluate the Federal Career Intern Program established by Executive Order 13162 of July 6, 2000, provide recommendations concerning the future of that program, and propose a framework for providing effective pathways into the Federal Government for college students and recent college graduates;

(d) provide guidance or propose regulations, as appropriate, to streamline and improve the quality of job announcements for Federal employment to make sure they are easily understood by applicants;

(e) evaluate the effectiveness of shared registers used in filling positions common across multiple agencies and develop a strategy for improving agencies' use of these shared registers for commonly filled Government-wide positions;

(f) develop a plan to increase the capacity of USAJOBS to provide applicants, hiring managers, and human resource professionals with information to improve the recruitment and hiring processes; and

(g) take such further administrative action as appropriate to implement sections 1 and 2 of this memorandum.

SEC. 3. *Senior Administration Officials*. Agency heads and other senior administration officials visiting university or college campuses on official business are encouraged to discuss career opportunities in the Federal Government with students.

SEC. 4. *Reporting*. (a) The OPM, in coordination with the OMB and in consultation with other agencies, shall develop a public human resources website to:

(1) track key human resource data, including progress on hiring reform implementation; and

(2) assist senior agency leaders, hiring managers, and human resource professionals with identifying and replicating best practices within the Federal Government for improving new employee quality and the hiring process.

(b) Each agency shall regularly review its key human resource performance and work with the OPM and the OMB to achieve timelines and targets for correcting agency hiring problems.

(c) The OPM shall submit to the President an annual report on the impact of hiring initiatives set forth in this memorandum, including its recommendations for further improving the Federal Government's hiring process.

SEC. 5. *General Provisions*. (a) Except as expressly stated herein, nothing in this memorandum shall be construed to impair or otherwise affect:

(1) authority granted by law or Executive Order to an agency, or the head thereof; or

(2) functions of the Director of the OMB relating to budgetary, administrative, or legislative proposals.

(b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) The Director of the OPM, in consultation with the OMB, may grant an exception to any of the requirements set forth in section 1 of this memorandum to an agency that demonstrates that exceptional circumstances prevent it from complying with that requirement.

SEC. 6. *Publication*. The Director of the OPM is hereby authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA.

## § 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 [now Government Accountability 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.

## § 3303. Competitive service; recommendations of Senators or Representatives

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.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 418; Pub. L. 103–94, § 8(a), Oct. 6, 1993, 107 Stat. 1006; Pub. L. 104–197, title III, § 315(a), Sept. 16, 1996, 110 Stat. 2416.)

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

1996—Pub. L. 104–197 substituted ''Competitive service; recommendations of Senators or Representatives'' for ''Political recommendations'' in section catchline and amended text generally, substituting provisions prohibiting receipt or consideration of recommendations of applicants in competitive service made by Senators or Representatives for provisions which directed that personnel actions be taken without solicitation of or regard to such recommendations from Members of Congress, congressional employees, any elected official of the government of any State (including D.C. and Puerto Rico) or subdivision thereof, or political party official, prohibited such persons from making such recommendations, prohibited employees or applicants from soliciting such recommendations and required notification of such prohibition, but allowed for certain exceptions regarding solicitation and consideration of recommendations if subject of recommendation was limited to factors pertinent to work performance, ability, aptitude, general qualifications, related to suitability or security standards, or furnished pursuant to law or regulation.

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 1996 AMENDMENT

Amendment by Pub. L. 104–197 effective 30 days after Sept. 16, 1996, see section 315(c) of Pub. L. 104–197, set out as a note under section 2302 of this title.

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.

## § 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;

(2) noncompetitive examinations when competent applicants do not compete after notice has been given of the existence of the vacancy; and

(3) authority for agencies to appoint, without regard to the provision of sections 3309 through 3318, candidates directly to positions for which—

(A) public notice has been given; and

(B) the Office of Personnel Management has determined that there exists a severe shortage of candidates or that there is a critical hiring need.

The Office shall prescribe, by regulation, criteria for identifying such positions and may delegate authority to make determinations under such criteria.

(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)(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.

(d) The Office of Personnel Management shall promulgate regulations on the manner and extent that experience of an individual in a position other than the competitive service, such as the excepted service (as defined under section 2103) in the legislative or judicial branch, or in any private or nonprofit enterprise, may be considered in making appointments to a position in the competitive service (as defined under section 2102). In promulgating such regulations OPM shall not grant any preference based on the fact of service in the legislative or judicial branch. The regulations shall be consistent with the principles of equitable competition and merit based appointments.

(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.

(f)(1) Preference eligibles or veterans who have been separated from the armed forces under honorable conditions after 3 years or more of active service may not be denied the opportunity to compete for vacant positions for which the agency making the announcement will accept applications from individuals outside its own workforce under merit promotion procedures.

(2) If selected, a preference eligible or veteran described in paragraph (1) shall receive a career or career-conditional appointment, as appropriate.

(3) This subsection shall not be construed to confer an entitlement to veterans' preference that is not otherwise required by law.

(4) The area of consideration for all merit promotion announcements which include consideration of individuals of the Federal workforce shall indicate that preference eligibles and veterans who have been separated from the armed forces under honorable conditions after 3 years or more of active service are eligible to apply. The announcements shall be publicized in accordance with section 3327.

(5) The Office of Personnel Management shall prescribe regulations necessary for the administration of this subsection. The regulations shall ensure that an individual who has completed an initial tour of active duty is not excluded from the application of this subsection because of having been released from such tour of duty shortly before completing 3 years of active service, having been honorably released from such duty.

(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; Pub. L. 104–65, §§ 16(a), (b), 17(a), Dec. 19, 1995, 109 Stat. 703; Pub. L. 104–186, title II, § 215(2), Aug. 20, 1996, 110 Stat. 1745; Pub. L. 105–339, § 2, Oct. 31, 1998, 112 Stat. 3182; Pub. L. 106–117, title V, § 511(c), Nov. 30, 1999, 113 Stat. 1575; Pub. L. 107–296, title XIII, § 1312(a)(1), Nov. 25, 2002, 116 Stat. 2290; Pub. L. 108–375, div. A, title XI, § 1105(g), Oct. 28, 2004, 118 Stat. 2075; Pub. L. 109–163, div. A, title XI, § 1104(e)(2), Jan. 6, 2006, 119 Stat. 3450; Pub. L. 111–84, div. A, title XI, § 1102(d)(2), Oct. 28, 2009, 123 Stat. 2485.)

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. |
| (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

2009—Subsec. (a)(3)(B). Pub. L. 111–84 amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows:

''(i) the Office of Personnel Management has determined that there exists a severe shortage of candidates or there is a critical hiring need; or

''(ii) the candidate is a participant in the Science, Mathematics, and Research for Transformation (SMART) Defense Defense Education Program under section 2192a of title 10, United States Code.''

2006—Subsec. (a)(3)(B)(ii). Pub. L. 109–163 substituted ''Defense Education Program'' for ''Scholarship Pilot Program'' and ''section 2192a of title 10, United States Code.'' for ''section 1105 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005.''

2004—Subsec. (a)(3)(B). Pub. L. 108–375 added subpar. (B) and struck out former subpar. (B) which read as follows: ''the Office of Personnel Management has determined that there exists a severe shortage of candidates or there is a critical hiring need.''

2002—Subsec. (a)(3). Pub. L. 107–296 added par. (3).

1999—Subsec. (f)(2), (3). Pub. L. 106–117, § 511(c)(2), (3), added par. (2) and redesignated former par. (2) as (3). Former par. (3) redesignated (4).

Subsec. (f)(4). Pub. L. 106–117, § 511(c)(1), (2), redesignated par. (3) as (4) and struck out former par. (4) which read as follows: ''The Office of Personnel Management shall establish an appointing authority to appoint such preference eligibles and veterans.''

Subsec. (f)(5). Pub. L. 106–117, § 511(c)(4), added par. (5).

1998—Subsec. (f). Pub. L. 105–339 added subsec. (f).

1996—Subsec. (c)(1). Pub. L. 104–186 substituted ''Chief Administrative Officer'' for ''Clerk''.

1995—Subsec. (c). Pub. L. 104–65, § 16(a), (b), redesignated subsec. (d) as (c) and struck out former subsec. (c) which read as follows: ''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 Chief Administrative Officer 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.''

Subsec. (d). Pub. L. 104–65, § 17(a), which directed amendment of this section by adding subsec. (d) at the end thereof, was executed by adding subsec. (d) after subsec. (c) to reflect the probable intent of Congress.

Pub. L. 104–65, § 16(b), redesignated subsec. (d) as (c).

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 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–117, title V, § 511(d)(2), Nov. 30, 1999, 113 Stat. 1576, provided that: ''If pursuant to subsection (a) [113 Stat. 1575] the amendments specified in subsection (c) [amending this section] are made, those amendments shall take effect as of October 31, 1998, as if included in subsection (f) of section 3304 of title 5, United States Code, as enacted by section 2 of the Veterans Employment Opportunities Act of 1998 (Public Law 105–339; 112 Stat. 3182).''

EFFECTIVE DATE OF 1995 AMENDMENT

Section 16(c) of Pub. L. 104–65 provided that: ''The repeal and amendment made by this section [amending this section] shall take effect 2 years after the date of the enactment of this Act [Dec. 19, 1995].''

Section 17(b) of Pub. L. 104–65 provided that: ''The amendment made by this section [amending this section] shall take effect 2 years after the date of the enactment of this Act [Dec. 19, 1995], except the Office of Personnel Management shall—

''(1) conduct a study on excepted service considerations for competitive service appointments relating to such amendment; and

''(2) take all necessary actions for the regulations described under such amendment to take effect as final regulations on the effective date of this 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.

## § 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. |
| (b) ..... | 5 U.S.C. 859. | June 27, 1944, ch. 287, § 10, 58 Stat. 390.<br>Jan. 19, 1948, ch. 1, § 3, 62 Stat. 3.<br>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.

## [§ 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), (d), (e), and (f) 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.

(f) The Secretary of Energy may determine and fix the maximum age limit for an original appointment to a position as a nuclear materials courier, as defined by section 8331(27) or 8401(33).

(g) The Secretary of Homeland Security may determine and fix the maximum age limit for an original appointment to a position as a customs and border protection officer, as defined by section 8401(36).

(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; Pub. L. 105–261, div. C, title XXXI, § 3154(a), Oct. 17, 1998, 112 Stat. 2254; Pub. L. 110–161, div. E, title V, § 535(c), Dec. 26, 2007, 121 Stat. 2076.)

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

2007—Subsec. (g). Pub. L. 110–161 added subsec. (g).

1998—Subsec. (a). Pub. L. 105–261, § 3154(a)(1), substituted ''(d), (e), and (f)'' for ''and (d)''.

Subsec. (f). Pub. L. 105–261, § 3154(a)(2), added subsec. (f).

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 2007 AMENDMENT; TRANSITION RULES

Pub. L. 110–161, div. E, title V, § 535(e), Dec. 26, 2007, 121 Stat. 2077, provided that:

''(1) EFFECTIVE DATE.—The amendments made by this section [amending this section and sections 8331, 8334 to 8336, 8401, 8412, 8415, 8422, 8423, and 8425 of this title] shall become effective on the later of June 30, 2008, or the first day of the first pay period beginning at least 6 months after the date of the enactment of this Act [Dec. 26, 2007].

''(2) TRANSITION RULES.—

''(A) NONAPPLICABILITY OF MANDATORY SEPARATION PROVISIONS TO CERTAIN INDIVIDUALS.—The amendments made by subsections (a)(3) and (b)(6) [amending sections 8335 and 8425 of this title], respectively, shall not apply to an individual first appointed as a customs and border protection officer before the effective date under paragraph (1).

''(B) TREATMENT OF PRIOR CBPO SERVICE.—

''(i) GENERAL RULE.—Except as provided in clause (ii), nothing in this section [amending this section and sections 8331, 8334 to 8336, 8401, 8412, 8415, 8422, 8423, and 8425 of this title and enacting provisions set out as a note under this section] or any amendment made by this section shall be considered to apply with respect to any service performed as a customs and border protection officer before the effective date under paragraph (1).

''(ii) EXCEPTION.—Service described in section 8331(31) or 8401(36) of title 5, United States Code (as amended by this section) rendered before the effective date under paragraph (1) may be taken into account to determine if an individual who is serving on or after such effective date then qualifies as a customs and border protection officer by virtue of holding a supervisory or administrative position in the Department of Homeland Security.

''(C) MINIMUM ANNUITY AMOUNT.—The annuity of an individual serving as a customs and border protection officer on the effective date under paragraph (1) pursuant to an appointment made before that date shall, to the extent that its computation is based on service rendered as a customs and border protection officer on or after that date, be at least equal to the amount that would be payable—

''(i) to the extent that such service is subject to the Civil Service Retirement System, by applying section 8339(d) of title 5, United States Code, with respect to such service; and

''(ii) to the extent such service is subject to the Federal Employees' Retirement System, by applying section 8415(d) of title 5, United States Code, with respect to such service.

''(D) RULE OF CONSTRUCTION.—Nothing in the amendment made by subsection (c) [amending this section] shall be considered to apply with respect to any appointment made before the effective date under paragraph (1).

''(3) ELECTION.—

''(A) INCUMBENT DEFINED.—For purposes of this paragraph, the term 'incumbent' means an individual who is serving as a customs and border protection officer on the date of the enactment of this Act.

''(B) NOTICE REQUIREMENT.—Not later than 30 days after the date of the enactment of this Act, the Director of the Office of Personnel Management shall take measures reasonably designed to ensure that incumbents are notified as to their election rights under this paragraph, and the effect of making or not making a timely election.

''(C) ELECTION AVAILABLE TO INCUMBENTS.—

''(i) IN GENERAL.—An incumbent may elect, for all purposes, either—

''(I) to be treated in accordance with the amendments made by subsection (a) or (b) [amending sections 8331, 8334 to 8336, 8401, 8412, 8415, 8422, 8423, and 8425 of this title], as applicable; or

''(II) to be treated as if subsections (a) and (b) had never been enacted.

''Failure to make a timely election under this paragraph shall be treated in the same way as an election made under subclause (I) on the last day allowable under clause (ii).

''(ii) DEADLINE.—An election under this paragraph shall not be effective unless it is made at least 14 days before the effective date under paragraph (1).

''(4) DEFINITION.—For purposes of this subsection, the term 'customs and border protection officer' has the meaning given such term by section 8331(31) or 8401(36) of title 5, United States Code (as amended by this section).

''(5) EXCLUSION.—Nothing in this section or any amendment made by this section shall be considered to afford any election or to otherwise apply with respect to any individual who, as of the day before the date of the enactment of this Act—

''(A) holds a position within U.S. Customs and Border Protection; and

''(B) is considered a law enforcement officer for purposes of subchapter III of chapter 83 or chapter 84 of title 5, United States Code, by virtue of such position.''

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.

REGULATIONS

Pub. L. 110–161, div. E, title V, § 535(d), Dec. 26, 2007, 121 Stat. 2077, provided that: ''Any regulations necessary to carry out the amendments made by this section [amending this section and sections 8331, 8334 to 8336, 8401, 8412, 8415, 8422, 8423, and 8425 of this title] shall be prescribed by the Director of the Office of Personnel Management in consultation with the Secretary of Homeland Security.''

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.

## § 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)–(B) 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; Pub. L. 105–85, div. A, title XI, § 1102(b), Nov. 18, 1997, 111 Stat. 1922.)

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.<br>Jan. 19, 1948, ch. 1, § 2, 62 Stat. 3.<br>Dec. 27, 1950, ch. 1151, § 2(a), 64 Stat. 1117.<br>July 14, 1952, ch. 728, § 2, 66 Stat. 627.<br>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

1997—Par. (2). Pub. L. 105–85 substituted ''section 2108(3)(A)–(B)'' for ''section 2108(3)(A)''.

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.

## § 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.<br>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.

### § 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.

### § 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.

### § 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.<br>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.

## § 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.

## § 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.

## [§ 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.

### § 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.

### § 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.

## § 3319. Alternative ranking and selection procedures

(a) The Office, in exercising its authority under section 3304, or an agency to which the Office has delegated examining authority under section 1104(a)(2), may establish category rating systems for evaluating applicants for positions in the competitive service, under 2 or more quality categories based on merit consistent with regulations prescribed by the Office of Personnel Management, rather than assigned individual numerical ratings.

(b) Within each quality category established under subsection (a), preference-eligibles shall be listed ahead of individuals who are not preference eligibles. For other than scientific and professional positions at GS–9 of the General Schedule (equivalent or higher), qualified preference-eligibles who have a compensable service-connected disability of 10 percent or more shall be listed in the highest quality category.

(c)(1) An appointing official may select any applicant in the highest quality category or, if fewer than 3 candidates have been assigned to the highest quality category, in a merged category consisting of the highest and the second highest quality categories.

(2) Notwithstanding paragraph (1), the appointing official may not pass over a preference-eligible in the same category from which selection is made, unless the requirements of section 3317(b) or 3318(b), as applicable, are satisfied.

(d) Each agency that establishes a category rating system under this section shall submit in each of the 3 years following that establishment, a report to Congress on that system including information on—

(1) the number of employees hired under that system;

(2) the impact that system has had on the hiring of veterans and minorities, including those who are American Indian or Alaska Natives, Asian, Black or African American, and native Hawaiian or other Pacific Islanders; and

(3) the way in which managers were trained in the administration of that system.

(e) The Office of Personnel Management may prescribe such regulations as it considers necessary to carry out the provisions of this section.

(Added Pub. L. 107–296, title XIII, § 1312(a)(2), Nov. 25, 2002, 116 Stat. 2290.)

REFERENCES IN TEXT

The General Schedule, referred to in subsec. (b), is set out under section 5332 of this title.

PRIOR PROVISIONS

A prior section 3319, Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 421, related to prohibitions on employment of members of same family in the competitive service, prior to repeal by Pub. L. 95–454, title III, § 307(h)(1), title IX, § 907, Oct. 13, 1978, 92 Stat. 1149, 1227, effective 90 days after Oct. 13, 1978.

EFFECTIVE DATE

Section effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as a note under section 101 of Title 6, Domestic Security.

## § 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].

## § 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.

## [§ 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 ''Notwithstanding 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.

## § 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 Director of the Office of Personnel Management on the basis of qualification standards developed by the agency involved in accordance with criteria specified in

regulations prescribed by the Director. 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; Pub. L. 110–372, § 2(c)(2), Oct. 8, 2008, 122 Stat. 4044.)

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

2008—Subsec. (a). Pub. L. 110–372 substituted ''the Director of the Office of Personnel Management on the basis of qualification standards developed by the agency involved in accordance with criteria specified in regulations prescribed by the Director'' for ''the Office of Personnel Management'' in introductory provisions.

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 2008 AMENDMENT

Amendment by Pub. L. 110–372 effective on the first day of the first pay period beginning on or after the 180th day following Oct. 8, 2008, see section 2(d) of Pub. L. 110–372, set out as a note under section 5376 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 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.

## § 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 on the basis of standards developed by the agency involved in

accordance with criteria specified in regulations prescribed by the Director of the Office of Personnel Management.

(b) This section does not apply to positions established under section 3104(c).

(c) The Director of the Office of Personnel Management shall prescribe such regulations as may be necessary to carry out the purpose of this section.

(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; Pub. L. 110–372, § 2(c)(3), Oct. 8, 2008, 122 Stat. 4044.)

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

2008—Subsec. (a). Pub. L. 110–372, § 2(c)(3)(A), substituted ''on the basis of standards developed by the agency involved in accordance with criteria specified in regulations prescribed by the Director of the Office of Personnel Management'' for ''or its designee for this purpose''.

Subsec. (c). Pub. L. 110–372, § 2(c)(3)(B), added subsec. (c).

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 2008 AMENDMENT

Amendment by Pub. L. 110–372 effective on the first day of the first pay period beginning on or after the 180th day following Oct. 8, 2008, see section 2(d) of Pub. L. 110–372, set out as a note under section 5376 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.

## § 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. |
| (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.

### § 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.''

### § 3329. 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 the term ''military technician (dual status)'' 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 least 15 years of such service and 20 years of service creditable under section 12732 of title 10, by reason of ceasing to satisfy the condition described in section 8401(30)(B)[1] shall, if appropriate written application is submitted within 1 year after the date of separation, be provided placement consideration in a position described in subsection (c) through a priority placement program of the Department of Defense.

(c)(1) The position for which placement consideration shall be provided to a former military technician under subsection (b) shall be a position—

(A) in either the competitive service or the excepted service;

(B) within the Department of Defense; and

(C) in which the person is qualified to serve, taking into consideration whether the employee in that position is required to be a member of a reserve component of the armed forces as a condition of employment.

(2) To the maximum extent practicable, the position shall also be in a pay grade or other pay classification sufficient to ensure that the rate of basic pay of the former military technician, upon appointment to the position, is not less than the rate of basic pay last received by the former military technician 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.

[1] See References in Text note below.

(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; amended Pub. L. 104–106, div. A, title X, § 1037(a), Feb. 10, 1996, 110 Stat. 431; Pub. L. 105–85, div. A, title XI, § 1103, Nov. 18, 1997, 111 Stat. 1923; Pub. L. 106–398, § 1 [[div. A], title X, § 1087(f)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–293.)

REFERENCES IN TEXT

Section 8401(30) of this title, referred to in subsecs. (a) and (b), was amended generally by Pub. L. 106–65, div. A, title V, § 522(c)(2), Oct. 5, 1999, 113 Stat. 597, and, as so amended, no longer contains a subpar. (B).

CODIFICATION

Another section 3329 was renumbered section 3330 of this title.

AMENDMENTS

2000—Subsec. (a). Pub. L. 106–398, § 1 [[div. A], title X, § 1087(f)(1)(A)], substituted ''the term 'military technician (dual status)' '' for ''such term''.

Subsec. (b). Pub. L. 106–398, § 1 [[div. A], title X, § 1087(f)(1)(B)], substituted ''section 12732 of title 10'' for ''section 1332 of title 10''.

1997—Subsec. (b). Pub. L. 105–85 struck out ''a position described in subsection (c) not later than 6 months after the date of the application'' after ''program of the Department of Defense''.

1996—Subsec. (b). Pub. L. 104–106, § 1037(a)(1), substituted ''be provided placement consideration in a position described in subsection (c) through a priority placement program of the Department of Defense'' for ''be offered''.

Subsec. (c). Pub. L. 104–106, § 1037(a)(2), added subsec. (c) and struck out former subsec. (c) which read as follows: ''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.''

## § 3330. Government-wide list of vacant positions

(a) For the purpose of this section, the term ''agency'' means an Executive agency, excluding the Government Accountability 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.

(f) The Office may, to the extent it determines appropriate, charge such fees to agencies for services provided under this section and for related Federal employment information. The Office shall retain such fees to pay the costs of providing such services and information.

(Added Pub. L. 102–484, div. D, title XLIV, § 4431(a), Oct. 23, 1992, 106 Stat. 2719, § 3329; renumbered § 3330 and amended Pub. L. 104–52, title IV, § 4(1), Nov. 19, 1995, 109 Stat. 490; Pub. L. 104–106, div. A, title X, § 1037(b)(1), Feb. 10, 1996, 110 Stat. 432; Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814.)

AMENDMENTS

2004—Subsec. (a). Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office''.

1996—Pub. L. 104–106, which directed renumbering of the section 3329 of this title that was added by Pub. L. 102–484, § 4431, as section 3330 of this title, could not be executed because of the intervening renumbering of that section by Pub. L. 104–52, § 4(1)(A). See 1995 Amendment note below.

1995—Pub. L. 104–52, § 4(1)(A), renumbered section 3329 of this title, relating to government-wide list of vacant positions, as this section.

Subsec. (f). Pub. L. 104–52, § 4(1)(B), added subsec. (f).

## § 3330a. Preference eligibles; administrative redress

(a)(1)(A) A preference eligible who alleges that an agency has violated such individual's rights under any statute or regulation relating to veterans' preference may file a complaint with the Secretary of Labor.

(B) A veteran described in section 3304(f)(1) who alleges that an agency has violated such section with respect to such veteran may file a complaint with the Secretary of Labor.

(2)(A) A complaint under this subsection must be filed within 60 days after the date of the alleged violation.

(B) Such complaint shall be in writing, be in such form as the Secretary may prescribe, specify the agency against which the complaint is filed, and contain a summary of the allegations that form the basis for the complaint.

(3) The Secretary shall, upon request, provide technical assistance to a potential complainant with respect to a complaint under this subsection.

(b)(1) The Secretary of Labor shall investigate each complaint under subsection (a).

(2) In carrying out any investigation under this subsection, the Secretary's duly authorized representatives shall, at all reasonable times, have reasonable access to, for purposes of examination, and the right to copy and receive, any documents of any person or agency that the Secretary considers relevant to the investigation.

(3) In carrying out any investigation under this subsection, the Secretary may require by subpoena the attendance and testimony of wit-

nesses and the production of documents relating to any matter under investigation. In case of disobedience of the subpoena or contumacy and on request of the Secretary, the Attorney General may apply to any district court of the United States in whose jurisdiction such disobedience or contumacy occurs for an order enforcing the subpoena.

(4) Upon application, the district courts of the United States shall have jurisdiction to issue writs commanding any person or agency to comply with the subpoena of the Secretary or to comply with any order of the Secretary made pursuant to a lawful investigation under this subsection and the district courts shall have jurisdiction to punish failure to obey a subpoena or other lawful order of the Secretary as a contempt of court.

(c)(1)(A) If the Secretary of Labor determines as a result of an investigation under subsection (b) that the action alleged in a complaint under subsection (a) occurred, the Secretary shall attempt to resolve the complaint by making reasonable efforts to ensure that the agency specified in the complaint complies with applicable provisions of statute or regulation relating to veterans' preference.

(B) The Secretary of Labor shall make determinations referred to in subparagraph (A) based on a preponderance of the evidence.

(2) If the efforts of the Secretary under subsection (b) with respect to a complaint under subsection (a) do not result in the resolution of the complaint, the Secretary shall notify the person who submitted the complaint, in writing, of the results of the Secretary's investigation under subsection (b).

(d)(1) If the Secretary of Labor is unable to resolve a complaint under subsection (a) within 60 days after the date on which it is filed, the complainant may elect to appeal the alleged violation to the Merit Systems Protection Board in accordance with such procedures as the Merit Systems Protection Board shall prescribe, except that in no event may any such appeal be brought—

(A) before the 61st day after the date on which the complaint is filed; or

(B) later than 15 days after the date on which the complainant receives written notification from the Secretary under subsection (c)(2).

(2) An appeal under this subsection may not be brought unless—

(A) the complainant first provides written notification to the Secretary of such complainant's intention to bring such appeal; and

(B) appropriate evidence of compliance with subparagraph (A) is included (in such form and manner as the Merit Systems Protection Board may prescribe) with the notice of appeal under this subsection.

(3) Upon receiving notification under paragraph (2)(A), the Secretary shall not continue to investigate or further attempt to resolve the complaint to which the notification relates.

(e)(1) This section shall not be construed to prohibit a preference eligible from appealing directly to the Merit Systems Protection Board from any action which is appealable to the Board under any other law, rule, or regulation, in lieu of administrative redress under this section.

(2) A preference eligible may not pursue redress for an alleged violation described in subsection (a) under this section at the same time the preference eligible pursues redress for such violation under any other law, rule, or regulation.

(Added Pub. L. 105–339, § 3(a), Oct. 31, 1998, 112 Stat. 3182; amended Pub. L. 108–454, title VIII, § 804(a), Dec. 10, 2004, 118 Stat. 3626.)

AMENDMENTS

2004—Subsec. (a)(1). Pub. L. 108–454 designated existing provisions as subpar. (A) and added subpar. (B).

### § 3330b. Preference eligibles; judicial redress

(a) In lieu of continuing the administrative redress procedure provided under section 3330a(d), a preference eligible, or a veteran described by section 3330a(a)(1)(B) with respect to a violation described by such section, may elect, in accordance with this section, to terminate those administrative proceedings and file an action with the appropriate United States district court not later than 60 days after the date of the election.

(b) An election under this section may not be made—

(1) before the 121st day after the date on which the appeal is filed with the Merit Systems Protection Board under section 3330a(d); or

(2) after the Merit Systems Protection Board has issued a judicially reviewable decision on the merits of the appeal.

(c) An election under this section shall be made, in writing, in such form and manner as the Merit Systems Protection Board shall by regulation prescribe. The election shall be effective as of the date on which it is received, and the administrative proceeding to which it relates shall terminate immediately upon the receipt of such election.

(Added Pub. L. 105–339, § 3(a), Oct. 31, 1998, 112 Stat. 3184; amended Pub. L. 108–454, title VIII, § 804(b), Dec. 10, 2004, 118 Stat. 3626.)

AMENDMENTS

2004—Subsec. (a). Pub. L. 108–454, which directed insertion of ", or a veteran described by section 3330a(a)(1)(B) with respect to a violation described by such section," after "a preference eligible" in subsec. (a) of section 3330b, without specifying the Code title to be amended, was executed by making the insertion in subsec. (a) of this section, to reflect the probable intent of Congress.

### § 3330c. Preference eligibles; remedy

(a) If the Merit Systems Protection Board (in a proceeding under section 3330a) or a court (in a proceeding under section 3330b) determines that an agency has violated a right described in section 3330a, the Board or court (as the case may be) shall order the agency to comply with such provisions and award compensation for any loss of wages or benefits suffered by the individual by reason of the violation involved. If the Board or court determines that such violation was willful, it shall award an amount equal to backpay as liquidated damages.

(b) A preference eligible who prevails in an action under section 3330a or 3330b shall be awarded reasonable attorney fees, expert witness fees, and other litigation expenses.

(Added Pub. L. 105–339, § 3(a), Oct. 31, 1998, 112 Stat. 3184.)

## 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.<br>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.

### § 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.<br>Mar. 2, 1927, ch. 284, 44 Stat. 1346.<br>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.

### § 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.

## SUBCHAPTER III—DETAILS, VACANCIES, AND APPOINTMENTS

AMENDMENTS

1998—Pub. L. 105–277, div. C, title I, § 151(c)(2), Oct. 21, 1998, 112 Stat. 2681–616, substituted ''DETAILS, VACANCIES, AND APPOINTMENTS'' for ''DETAILS'' as subchapter heading.

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, which directed each Executive agency detailing personnel submit an annual report to Senate and House Committees on Appropriations on all employees or members of armed services detailed to Executive agencies, listing grade, position, and offices of each person detailed and agency to which each such person was de-

tailed, with exemptions for certain intelligence agencies, terminated, effective May 15, 2000, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 151 of House Document No. 103–7. 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; repealed by Pub. L. 104–66, title III, § 3001(h), Dec. 21, 1995, 109 Stat. 734.

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.

## § 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)(1) 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.

(2) The 120-day limitation in paragraph (1) for details and renewals of details does not apply to the Department of Defense in the case of a detail—

(A) made in connection with the closure or realignment of a military installation pursuant to a base closure law or an organizational restructuring of the Department as part of a reduction in the size of the armed forces or the civilian workforce of the Department; and

(B) in which the position to which the employee is detailed is eliminated on or before the date of the closure, realignment, or restructuring.

(c) For purposes of this section, the term ''base closure law'' has the meaning given such term in section 101(a)(17) of title 10.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 424; Pub. L. 104–106, div. A, title X, § 1033(a), Feb. 10, 1996, 110 Stat. 429; Pub. L. 109–163, div. A, title X, § 1056(a)(4), Jan. 6, 2006, 119 Stat. 3439.)

HISTORICAL AND REVISION NOTES

| *Derivation* | *U.S. Code* | *Revised Statutes and Statutes at Large* |
|---|---|---|
| ..... | 5 U.S.C. 38. | R.S. § 166.<br>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.

AMENDMENTS

2006—Subsec. (c). Pub. L. 109–163 amended subsec. (c) generally. Prior to amendment, subsec. (c) defined the terms ''base closure law'' and ''military installation'' for purposes of this section.

1996—Subsec. (b). Pub. L. 104–106 designated existing provisions as par. (1) and added par. (2).

Subsec. (c). Pub. L. 104–106, § 1033(a)(2), added subsec. (c).

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1033(b) of Pub. L. 104–106 provided that: ''The amendments made by subsection (a) [amending this section] apply to details made before the date of the enactment of this Act [Feb. 10, 1996] but still in effect on that date and details made on or after that date.''

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.

## [§ 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. |
| (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.

## § 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.

## § 3345. Acting officer

(a) If an officer of an Executive agency (including the Executive Office of the President, and other than the Government Accountability Office) whose appointment to office is required to be made by the President, by and with the advice and consent of the Senate, dies, resigns, or is otherwise unable to perform the functions and duties of the office—

(1) the first assistant to the office of such officer shall perform the functions and duties of the office temporarily in an acting capacity subject to the time limitations of section 3346;

(2) notwithstanding paragraph (1), the President (and only the President) may direct a person who serves in an office for which appointment is required to be made by the President, by and with the advice and consent of the Senate, to perform the functions and duties of the vacant office temporarily in an acting capacity subject to the time limitations of section 3346; or

(3) notwithstanding paragraph (1), the President (and only the President) may direct an

officer or employee of such Executive agency to perform the functions and duties of the vacant office temporarily in an acting capacity, subject to the time limitations of section 3346, if—

(A) during the 365-day period preceding the date of death, resignation, or beginning of inability to serve of the applicable officer, the officer or employee served in a position in such agency for not less than 90 days; and

(B) the rate of pay for the position described under subparagraph (A) is equal to or greater than the minimum rate of pay payable for a position at GS–15 of the General Schedule.

(b)(1) Notwithstanding subsection (a)(1), a person may not serve as an acting officer for an office under this section, if—

(A) during the 365-day period preceding the date of the death, resignation, or beginning of inability to serve, such person—

(i) did not serve in the position of first assistant to the office of such officer; or

(ii) served in the position of first assistant to the office of such officer for less than 90 days; and

(B) the President submits a nomination of such person to the Senate for appointment to such office.

(2) Paragraph (1) shall not apply to any person if—

(A) such person is serving as the first assistant to the office of an officer described under subsection (a);

(B) the office of such first assistant is an office for which appointment is required to be made by the President, by and with the advice and consent of the Senate; and

(C) the Senate has approved the appointment of such person to such office.

(c)(1) Notwithstanding subsection (a)(1), the President (and only the President) may direct an officer who is nominated by the President for reappointment for an additional term to the same office in an Executive department without a break in service, to continue to serve in that office subject to the time limitations in section 3346, until such time as the Senate has acted to confirm or reject the nomination, notwithstanding adjournment sine die.

(2) For purposes of this section and sections 3346, 3347, 3348, 3349, 3349a, and 3349d, the expiration of a term of office is an inability to perform the functions and duties of such office.

(Added Pub. L. 105–277, div. C, title I, § 151(b), Oct. 21, 1998, 112 Stat. 2681–611; amended Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814.)

REFERENCES IN TEXT

The General Schedule, referred to in subsec. (a)(3)(B), is set out under section 5332 of this title.

PRIOR PROVISIONS

A prior section 3345, Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 425; Pub. L. 100–398, § 7(a)(1), (2), Aug. 17, 1988, 102 Stat. 988, provided for details to office of head of Executive agency or military department, prior to repeal by Pub. L. 105–277, div. C, title I, § 151(b), (d)(1), Oct. 21, 1998, 112 Stat. 2681–611, 2681–616, effective 30 days after Oct. 21, 1998.

AMENDMENTS

2004—Subsec. (a). Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office'' in introductory provisions.

EFFECTIVE DATE

Pub. L. 105–277, div. C, title I, § 151(d), Oct. 21, 1998, 112 Stat. 2681–616, provided that:

''(1) EFFECTIVE DATE.—Subject to paragraph (2), this section [enacting this section and sections 3346 to 3349d of this title, repealing former sections 3345 to 3349 of this title, and enacting provisions set out as a note under section 3301 of this title] and the amendments made by this section shall take effect 30 days after the date of enactment of this section [Oct. 21, 1998].

''(2) APPLICATION.—

''(A) IN GENERAL.—This section shall apply to any office that becomes vacant after the effective date of this section.

''(B) IMMEDIATE APPLICATION OF TIME LIMITATION.—Notwithstanding subparagraph (A), for any office vacant on the effective date of this section, the time limitations under section 3346 of title 5, United States Code (as amended by this section) shall apply to such office. Such time limitations shall apply as though such office first became vacant on the effective date of this section.

''(C) CERTAIN NOMINATIONS.—If the President submits to the Senate the nomination of any person after the effective date of this section for an office for which such person had been nominated before such date, the next nomination of such person after such date shall be considered a first nomination of such person to that office for purposes of sections 3345 through 3349 and section 3349d of title 5, United States Code (as amended by this section).''

ORDER OF SUCCESSION WITHIN DEPARTMENT OF HOMELAND SECURITY

For order of succession within the Department of Homeland Security, see Ex. Ord. No. 13286, § 88, Feb. 28, 2003, 68 F.R. 10632, as amended, set out as a note under section 111 of Title 6, Domestic Security.

EXECUTIVE ORDER NO. 10513

Ex. Ord. No. 10513, Jan. 19, 1954, 19 F.R. 369, which designated certain officers of the Department of Labor to act as Secretary of Labor during any period of unavailability of both the Secretary and the Deputy Secretary of Labor, was revoked by Ex. Ord. No. 13245, § 4, Dec. 8, 2001, 66 F.R. 66269, set out below.

EXECUTIVE ORDER NO. 11274

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, which designated certain officers of the Department of Housing and Urban Development to act as Secretary of Housing and Urban Development during any period of unavailability of the Secretary, was revoked by Ex. Ord. No. 13243, § 4, Dec. 18, 2001, 66 F.R. 66263, set out below.

EXECUTIVE ORDER NO. 11487

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, which designated certain officers of the Department of the Interior to act as Secretary of the Interior during any period of unavailability of both the Secretary and the Deputy Secretary of the Interior, was revoked by Ex. Ord. No. 13244, § 4, Dec. 18, 2001, 66 F.R. 66267, set out below.

EXECUTIVE ORDER NO. 11822

Ex. Ord. No. 11822, Dec. 10, 1974, 39 F.R. 43275, which designated certain officers of the Department of the Treasury to act as Secretary of the Treasury during any period of unavailability of both the Secretary and

the Deputy Secretary of the Treasury, was revoked by Ex. Ord. No. 13246, § 4, Dec. 18, 2001, 66 F.R. 66270, set out below.

EXECUTIVE ORDER NO. 11880

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; Ex. Ord. No. 12998, Apr. 5, 1996, 61 F.R. 15873, which designated certain officers of the Department of Commerce to act as Secretary of Commerce during any period of unavailability of both the Secretary and the Deputy Secretary of Commerce, was revoked by Ex. Ord. No. 13242, § 4, Dec. 18, 2001, 66 F.R. 66261, set out below.

EXECUTIVE ORDER NO. 11957

Ex. Ord. No. 11957, Jan. 13, 1977, 42 F.R. 3295, which designated certain officers of the Department of Agriculture to act as Secretary of Agriculture during any period of unavailability of both the Secretary and the Deputy Secretary of Agriculture, was revoked by Ex. Ord. No. 13241, § 4, Dec. 18, 2001, 66 F.R. 66259, formerly set out below.

EXECUTIVE ORDER NO. 12343

Ex. Ord. No. 12343, Jan. 27, 1982, 47 F.R. 4225, which designated certain officers of the Department of State to act as Secretary of State during any period of unavailability of both the Secretary and the Deputy Secretary of State, was revoked by Ex. Ord. No. 13251, § 4, Dec. 28, 2001, 67 F.R. 1599, set out below.

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 [former] 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 [former] 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 [former] 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.

EXECUTIVE ORDER NO. 13000

Ex. Ord. No. 13000, Apr. 24, 1996, 61 F.R. 18483, which provided an order of succession of officers to act as Secretary of Defense, was revoked by Ex. Ord. No. 13394, § 5, Dec. 22, 2005, 70 F.R. 76666, formerly set out below.

EXECUTIVE ORDER NO. 13241

Ex. Ord. No. 13241, Dec. 18, 2001, 66 F.R. 66258, as amended by Ex. Ord. No. 13261, § 4(a), Mar. 19, 2002, 67 F.R. 13243; Ex. Ord. No. 13484, §§ 1, 2, Jan. 9, 2009, 74 F.R. 2285, which designated certain officers of the Department of Agriculture to act as Secretary of Agriculture during any period of unavailability of both the Secretary and the Deputy Secretary of Agriculture, was revoked by Ex. Ord. No. 13542, § 3, May 13, 2010, 75 F.R. 27922, set out below.

EX. ORD. NO. 13242. PROVIDING AN ORDER OF SUCCESSION WITHIN THE DEPARTMENT OF COMMERCE

Ex. Ord. No. 13242, Dec. 18, 2001, 66 F.R. 66260, as amended by Ex. Ord. No. 13261, § 4(b), Mar. 19, 2002, 67 F.R. 13243, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including Subchapter III of Chapter 33 of title 5 of the United States Code, it is hereby ordered that:

SECTION 1. Subject to the provisions of section 3 of this Executive Order, the officers named in section 2, in the order listed, shall act as and perform the functions and duties of the office of Secretary of Commerce (Secretary) during any period when both the Secretary and the Deputy Secretary of Commerce (Deputy Secretary) have died, resigned, or are otherwise unable to perform the functions and duties of the office of Secretary.

SEC. 2. *Order of Succession*.

(a) General Counsel of the Department of Commerce;

(b) Under Secretary of Commerce for International Trade;

(c) Under Secretary of Commerce for Economic Affairs;

(d) Under Secretary of Commerce for Oceans and Atmosphere and Administrator of the National Oceanic and Atmospheric Administration;

(e) Under Secretary of Commerce for Technology;

(f) Under Secretary of Commerce for Export Administration;

(g) Chief Financial Officer of the Department of Commerce and Assistant Secretary of Commerce in charge of Administration; and

(h) Assistant Secretary of Commerce in charge of Legislative and Intergovernmental Affairs.

SEC. 3. *Exceptions*.

(a) No individual who is serving in an office listed in section 2(a)–(h) in an acting capacity shall, by virtue of so serving, act as Secretary pursuant to this order.

(b) Notwithstanding the provisions of this Executive Order, the President retains discretion, to the extent permitted by Subchapter III of Chapter 33 of title 5 of the United States Code, to depart from this Executive Order in designating an acting Secretary.

SEC. 4. Executive Order 11880 of October 2, 1975, Executive Order 12998 of April 5, 1996, and section 26 of Executive Order 12608 of September 9, 1987, are hereby revoked.

GEORGE W. BUSH.

EX. ORD. NO. 13243. PROVIDING AN ORDER OF SUCCESSION WITHIN THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Ex. Ord. No. 13243, Dec. 18, 2001, 66 F.R. 66262, as amended by Ex. Ord. No. 13261, § 4(c), Mar. 19, 2002, 67 F.R. 13244, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including Subchapter III of Chapter 33 of title 5 of the United States Code, it is hereby ordered that:

SECTION 1. Subject to the provisions of section 3 of this Executive Order, the officers named in section 2, in the order listed, shall act as and perform the functions and duties of the office of Secretary of Housing and Urban Development (Secretary) during any period when both the Secretary and the Deputy Secretary of Housing and Urban Development (Deputy Secretary) have died, resigned, or are otherwise unable to perform the functions and duties of the office of Secretary.

SEC. 2. *Order of Succession*.

(a) General Counsel of the Department of Housing and Urban Development;

(b) Assistant Secretary of Housing and Urban Development in charge of Housing-Federal Housing Commission;

(c) Assistant Secretary of Housing and Urban Development in charge of Community, Planning and Development;

(d) Assistant Secretary of Housing and Urban Development in charge of Public and Indian Housing;

(e) Assistant Secretary of Housing and Urban Development in charge of Policy Development and Research;

(f) Assistant Secretary of Housing and Urban Development in charge of Fair Housing and Equal Opportunity;

(g) Assistant Secretary of Housing and Urban Development in charge of Congressional and Intergovernmental Relations;

(h) Assistant Secretary of Housing and Urban Development in charge of Administration; and

(i) Assistant Secretary of Housing and Urban Development in charge of Public Affairs.

SEC. 3. *Exceptions*.

(a) No individual who is serving in an office listed in section 2(a)–(i) in an acting capacity shall, by virtue of so serving, act as Secretary pursuant to this order.

(b) Notwithstanding the provisions of this Executive Order, the President retains discretion, to the extent permitted by Subchapter III of Chapter 33 of title 5 of the United States Code, to depart from this Executive Order in designating an acting Secretary.

SEC. 4. Executive Order 11274 of March 30, 1996, is hereby revoked.

GEORGE W. BUSH.

EX. ORD. NO. 13244. PROVIDING AN ORDER OF SUCCESSION WITHIN THE DEPARTMENT OF THE INTERIOR

Ex. Ord. No. 13244, Dec. 18, 2001, 66 F.R. 66267, as amended by Ex. Ord. No. 13261, § 4(d), Mar. 19, 2002, 67 F.R. 13244, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of

America, including Subchapter III of Chapter 33 of title 5 of the United States Code, it is hereby ordered that:

SECTION 1. Subject to the provisions of section 3 of this Executive Order, the officers named in section 2, in the order listed, shall act as and perform the functions and duties of the office of Secretary of the Interior (Secretary) during any period when both the Secretary and the Deputy Secretary of the Interior (Deputy Secretary) have died, resigned, or are otherwise unable to perform the functions and duties of the office of Secretary.

SEC. 2. *Order of Succession*.

(a) Solicitor of the Department of the Interior;

(b) Assistant Secretary of the Interior in charge of Policy, Management and Budget;

(c) Assistant Secretary of the Interior in charge of Land and Minerals Management;

(d) Assistant Secretary of the Interior in charge of Water and Science;

(e) Assistant Secretary of the Interior for Fish and Wildlife and Parks; and

(f) Assistant Secretary of the Interior for Indian Affairs.

SEC. 3. *Exceptions*.

(a) No individual who is serving in an office listed in section 2(a)–(f) in an acting capacity shall, by virtue of so serving, act as Secretary pursuant to this order.

(b) Notwithstanding the provisions of this Executive Order, the President retains discretion, to the extent permitted by Subchapter III of Chapter 33 of title 5 of the United States Code, to depart from this Executive Order in designating an acting Secretary.

SEC. 4. Executive Order 11487 of October 6, 1969, is hereby revoked.

GEORGE W. BUSH.

EX. ORD. NO. 13245. PROVIDING AN ORDER OF SUCCESSION WITHIN THE DEPARTMENT OF LABOR

Ex. Ord. No. 13245, Dec. 18, 2001, 66 F.R. 66268, as amended by Ex. Ord. No. 13261, §4(e), Mar. 19, 2002, 67 F.R. 13244, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including Subchapter III of Chapter 33 of title 5 of the United States Code, it is hereby ordered that:

SECTION 1. Subject to the provisions of section 3 of this Executive Order, the officers named in section 2, in the order listed, shall act as and perform the functions and duties of the office of Secretary of Labor (Secretary) during any period when both the Secretary and the Deputy Secretary of Labor (Deputy Secretary) have died, resigned, or are otherwise unable to perform the functions and duties of the office of Secretary.

SEC. 2. *Order of Succession*.

(a) Solicitor of Labor;

(b) Assistant Secretary of Labor in charge of Administration and Management;

(c) Assistant Secretary of Labor in charge of Policy;

(d) Assistant Secretary of Labor in charge of Congressional and Intergovernmental Affairs;

(e) Assistant Secretary of Labor in charge of the Employment and Training Administration;

(f) Assistant Secretary of Labor in charge of the Employment Standards Administration;

(g) Assistant Secretary of Labor in charge of the Pension and Welfare Benefits Administration;

(h) Assistant Secretary of Labor for Occupational Safety and Health;

(i) Assistant Secretary of Labor for Mine Safety and Health;

(j) Assistant Secretary of Labor in charge of the Office of Public Affairs;

(k) Assistant Secretary of Labor for Veterans' Employment and Training; and

(l) Assistant Secretary of Labor in charge of the Office of Disability Employment Policy.

SEC. 3. *Exceptions*.

(a) No individual who is serving in an office listed in section 2(a)–(l) in an acting capacity shall, by virtue of so serving, act as Secretary pursuant to this order.

(b) Notwithstanding the provisions of this Executive Order, the President retains discretion, to the extent permitted by Subchapter III of Chapter 33 of title 5 of the United States Code, to depart from this Executive Order in designating an acting Secretary.

SEC. 4. Executive Order 10513 of January 19, 1954, is hereby revoked.

GEORGE W. BUSH.

EX. ORD. NO. 13246. PROVIDING AN ORDER OF SUCCESSION WITHIN THE DEPARTMENT OF THE TREASURY

Ex. Ord. No. 13246, Dec. 18, 2001, 66 F.R. 66270, as amended by Ex. Ord. No. 13261, §4(f), Mar. 19, 2002, 67 F.R. 13244, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including Subchapter III of Chapter 33 of title 5 of the United States Code, it is hereby ordered that:

SECTION 1. Subject to the provisions of section 3 of this Executive Order, the officers named in section 2, in the order listed, shall act as and perform the functions and duties of the office of Secretary of the Treasury (Secretary) during any period when both the Secretary and the Deputy Secretary of the Treasury (Deputy Secretary) have died, resigned, or are otherwise unable to perform the functions and duties of the office of Secretary.

SEC. 2. *Order of Succession*.

(a) Under Secretaries of the Treasury (including the Under Secretary of the Treasury for Enforcement), in the order in which they shall have taken the oath of office as such officers;

(b) General Counsel of the Department of the Treasury; and

(c) Deputy Under Secretaries of the Treasury and those Assistant Secretaries of the Treasury appointed by the President by and with the consent of the Senate, in the order in which they shall have taken the oath of office as such officers.

SEC. 3. *Exceptions*.

(a) No individual who is serving in an office listed in section 2(a)–(c) in an acting capacity shall, by virtue of so serving, act as Secretary pursuant to this order.

(b) Notwithstanding the provisions of this Executive Order, the President retains discretion, to the extent permitted by Subchapter III of Chapter 33 of title 5 of the United States Code, to depart from this Executive Order in designating an acting Secretary.

SEC. 4. Executive Order 11822 of December 10, 1974, is hereby revoked.

GEORGE W. BUSH.

EX. ORD. NO. 13247. PROVIDING AN ORDER OF SUCCESSION WITHIN THE DEPARTMENT OF VETERANS AFFAIRS

Ex. Ord. No. 13247, Dec. 18, 2001, 66 F.R. 66271, as amended by Ex. Ord. No. 13261, §4(g), Mar. 19, 2002, 67 F.R. 13244, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including Subchapter III of Chapter 33 of title 5 of the United States Code, it is hereby ordered that:

SEC. 1. Subject to the provisions of section 3 of this Executive Order, the officers named in section 2, in the order listed, shall act as and perform the functions and duties of the office of Secretary of Veterans Affairs (Secretary) during any period when both the Secretary and the Deputy Secretary of Veterans Affairs (Deputy Secretary) have died, resigned, or are otherwise unable to perform the functions and duties of the office of Secretary.

SEC. 2. *Order of Succession*.

(a) Under Secretary of Veterans Affairs for Health;

(b) Under Secretary of Veterans Affairs for Benefits;

(c) Under Secretary of Veterans Affairs for Memorial Affairs;

(d) General Counsel of the Department of Veterans Affairs;

(e) Assistant Secretaries of Veterans Affairs, in the order in which they shall have taken the oath of office

as Assistant Secretaries, other than the Chief Financial Officer and, if an Assistant Secretary, the Chief Information Officer;

(f) Chief Information Officer of the Department of Veterans Affairs, if the Chief Information Officer is an officer appointed by the President by and with the consent of the Senate;

(g) Chief Financial Officer of the Department of Veterans Affairs; and

(h) Chairman, Board of Veterans' Appeals.

SEC. 3. *Exceptions*.

(a) No individual who is serving in an office listed in section 2(a)–(h) in an acting capacity shall, by virtue of so serving, act as Secretary pursuant to this order.

(b) Notwithstanding the provisions of this Executive Order, the President retains discretion, to the extent permitted by Subchapter III of Chapter 33 of title 5 of the United States Code, to depart from this Executive Order in designating an acting Secretary.

GEORGE W. BUSH.

EXECUTIVE ORDER NO. 13250

Ex. Ord. No. 13250, Dec. 28, 2001, 67 F.R. 1597, as amended by Ex. Ord. No. 13261, §4(h), Mar. 19, 2002, 67 F.R. 13244, which provided an order of succession within the Department of Health and Human Services, was revoked by Ex. Ord. No. 13461, §4, Feb. 15, 2008, 73 F.R. 9438, set out below.

EX. ORD. NO. 13251. PROVIDING AN ORDER OF SUCCESSION WITHIN THE DEPARTMENT OF STATE

Ex. Ord. No. 13251, Dec. 28, 2001, 67 F.R. 1599, as amended by Ex. Ord. No. 13261, §4(i), Mar. 19, 2002, 67 F.R. 13244, provided:

By the authority vested in me as President by the Constitution and laws of the United States of America, including the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345 *et seq.*, it is hereby ordered that:

SECTION 1. Subject to the provisions of section 3 of this order, the officers named in section 2, in the order listed, shall act as, and perform the duties of, the office of Secretary of State (Secretary) during any period in which the Secretary has died, resigned, or otherwise become unable to perform the functions and duties of the office of Secretary.

SEC. 2. *Order of Succession*.

(a) Deputy Secretary of State;

(b) Deputy Secretary of State for Management and Resources;

(c) Under Secretary of State designated for political affairs pursuant to section 2651a(b) of title 22, United States Code;

(d) Under Secretary of State designated for management affairs pursuant to section 2651a(b) of title 22, United States Code;

(e) The remaining Under Secretaries of State, in the order in which they shall have taken the oath of office as such;

(f) Assistant Secretaries of State designated for regional bureaus pursuant to section 2651a(c) of title 22, United States Code, in the order in which they shall have taken the oath of office as such;

(g) The following officers, in the order in which they shall have taken the oath of office as such:

(1) Remaining Assistant Secretaries of State;

(2) Coordinator for Counterterrorism;

(3) Director General of the Foreign Service; and

(4) Legal Adviser;

(h) United States Representative to the United Nations (New York);

(i) Deputy United States Representative to the United Nations (New York);

(j) The following other United States Representatives to the United Nations (New York), in the order in which they shall have taken the oath of office as such:

(1) United States Representative to the United Nations for United Nations Management and Reform;

(2) United States Representative to the United Nations on the Economic and Social Council of the United Nations; and

(3) Alternate United States Representative to the United Nations for Special Political Affairs in the United Nations;

(k) The following Chiefs of Mission, in the order listed:

(1) United States Ambassador to the United Kingdom;

(2) United States Ambassador to Canada;

(3) United States Ambassador to Australia;

(4) United States Ambassador to Mexico;

(5) United States Ambassador to Japan; and

(6) United States Ambassador to India;

(l) The following officers, in the order in which they shall have taken the oath of office as such:

(1) United States Ambassadors at Large;

(2) Counselor; and

(3) Special Representatives of the President; and

(m) The remaining Chiefs of Mission, in the order in which they shall have taken the oath of office as such.

SEC. 3. *Exceptions*.

(a) No individual who has not been appointed by the President by and with the consent of the Senate shall act as Secretary pursuant to this order.

(b) No individual who is serving in an office listed in section 2(a)–(m) in an acting capacity shall, by virtue of so serving, act as Secretary pursuant to this order.

(c) Notwithstanding the provisions of this order, the President retains discretion, to the extent permitted by the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345 *et seq.*, to depart from this order in designating an acting Secretary.

(d) A successor office, intended to be the equivalent of an office identified in section 2 of this order, shall be deemed to be the position identified in section 2 for purposes of this order.

SEC. 4. Executive Order 12343 of January 27, 1982, is hereby revoked.

GEORGE W. BUSH.

EX. ORD. NO. 13261. PROVIDING AN ORDER OF SUCCESSION IN THE ENVIRONMENTAL PROTECTION AGENCY AND AMENDING CERTAIN ORDERS ON SUCCESSION

Ex. Ord. No. 13261, Mar. 19, 2002, 67 F.R. 13243, as amended by Ex. Ord. No. 13344, July 7, 2004, 69 F.R. 41747, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345, *et seq.*, it is hereby ordered that:

SECTION 1. Subject to the provisions of section 3 of this order, the officers named in section 2, in the order listed, shall act as and perform the functions and duties of the office of the Administrator of the Environmental Protection Agency (Administrator) during any period when both the Administrator and the Deputy Administrator of the Environmental Protection Agency have died, resigned, or become otherwise unable to perform the functions and duties of the office of Administrator.

SEC. 2. *Order of Succession*.

(a) Assistant Administrator, Office of Solid Waste;

(b) Assistant Administrator for Toxic Substances;

(c) Assistant Administrator (Air and Radiation).[;]

(d) Assistant Administrator (Water Programs);

(e) Assistant Administrator (General Counsel);

(f) Assistant Administrator (Enforcement and Compliance Assurance);

(g) Chief Financial Officer;

(h) Assistant Administrator (Research and Development);

(i) Assistant Administrator (International Activities);

(j) Assistant Administrator (Administration and Resources Management); and

(k) Assistant Administrator (Environmental Information).

SEC. 3. *Exceptions*.

(a) No individual who is serving in an office listed in section 2(a)–(k) in an acting capacity, by virtue of so serving, shall act as Administrator pursuant to this order.

(b) Notwithstanding the provisions of this order, the President retains discretion, to the extent permitted by the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345 *et seq.*, to depart from this order in designating an acting Administrator.

SEC. 4. *Amendments to Certain Executive Orders providing Orders of Succession.* Executive Orders 13241, 13242, 13243, 13244, 13245, 13246, and 13247 of December 18, 2001, and Executive Orders 13250 and 13251 of December 28, 2001, are hereby amended as follows:

(a) [Amended Ex. Ord. No. 13241, formerly set out above;]

(b) [Amended Ex. Ord. No. 13242, set out above;]

(c) [Amended Ex. Ord. No. 13243, set out above;]

(d) [Amended Ex. Ord. No. 13244, set out above;]

(e) [Amended Ex. Ord. No. 13245, set out above;]

(f) [Amended Ex. Ord. No. 13246, set out above;]

(g) [Amended Ex. Ord. No. 13247, set out above;]

(h) [Amended Ex. Ord. No. 13250, formerly set out above; and]

(i) [Amended Ex. Ord. No. 13251, set out above.]

GEORGE W. BUSH.

EX. ORD. NO. 13370. PROVIDING AN ORDER OF SUCCESSION IN THE OFFICE OF MANAGEMENT AND BUDGET

Ex. Ord. No. 13370, Jan. 13, 2005, 70 F.R. 3137, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America and pursuant to the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345 *et seq.*, it is hereby ordered that:

SECTION 1. During any period when the Director of the Office of Management and Budget (Director) and the Deputy Director of the Office of Management and Budget (Deputy Director) have died, resigned, or otherwise become unable to perform the functions and duties of the office of Director, the following officers of the Office of Management and Budget, in the order listed, shall perform the functions and duties of the office of Director, if they are eligible to act as Director under the provisions of the Federal Vacancies Reform Act of 1998, until such time as at least one of the officers mentioned above is able to perform the functions and duties of the office of Director:

Deputy Director for Management;

Executive Associate Director;

Associate Director (National Security Programs);

Associate Director (General Government Programs);

Associate Director (Human Resource Programs);

Associate Director (Natural Resource Programs);

General Counsel;

Administrator for Federal Procurement Policy;

Administrator of the Office of Information and Regulatory Affairs;

Controller, Office of Federal Financial Management; and

Administrator of the Office of Electronic Government.

SEC. 2. *Exceptions.* (a) No individual who is serving in an office listed in section 1 in an acting capacity, by virtue of so serving, shall act as Director pursuant to this order.

(b) Notwithstanding the provisions of this order, the President retains discretion, to the extent permitted by law, to depart from this order in designating an acting Director.

GEORGE W. BUSH.

EXECUTIVE ORDER NO. 13394

Ex. Ord. No. 13394, Dec. 22, 2005, 70 F.R. 76665, which provided an order of succession of officers to act as Secretary of Defense, was revoked by Ex. Ord. No. 13533, § 3, Mar. 1, 2010, 75 F.R. 10164, set out below.

EX. ORD. NO. 13461. PROVIDING AN ORDER OF SUCCESSION WITHIN THE DEPARTMENT OF HEALTH AND HUMAN SERVICES

Ex. Ord. No. 13461, Feb. 15, 2008, 73 F.R. 9437, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345 *et seq.*, it is hereby ordered that:

SECTION 1. Subject to the provisions of section 3 of this order, the officers named in section 2, in the order listed, shall act as and perform the functions and duties of the Office of the Secretary of Health and Human Services (Secretary), if they are eligible to act as Secretary under the provisions of the Federal Vacancies Reform Act of 1998, during any period in which the Secretary has died, resigned, or become otherwise unable to perform the functions and duties of the office of Secretary.

SEC. 2. *Order of Succession.*

(a) Deputy Secretary of Health and Human Services;

(b) General Counsel of the Department of Health and Human Services;

(c) Assistant Secretary (Resources and Technology);

(d) Assistant Secretary (Planning and Evaluation);

(e) Administrator of the Centers for Medicare and Medicaid Services;

(f) Commissioner of Food and Drugs;

(g) Director of the National Institutes of Health;

(h) Assistant Secretary for Family Support;

(i) Other Assistant Secretaries of the Department of Health and Human Services appointed by the President, in the order in which they shall have taken the oath of office as such;

(j) Director, Centers for Disease Control and Prevention; and

(k) Director, Region 4.

SEC. 3. *Exceptions.*

(a) No individual who is serving in an office listed in section 2 of this order in an acting capacity, by virtue of so serving, shall act as Secretary pursuant to this order.

(b) Notwithstanding the provisions of this order, the President retains discretion, consistent with the Federal Vacancies Reform Act of 1998, to depart from this order in designating an acting Secretary.

SEC. 4. *Revocation.* Executive Order 13250 of December 28, 2001 (Providing An Order of Succession Within the Department of Health and Human Services), and the President's memorandum of March 19, 2002 (Designation of Officers of the Department of Health and Human Services), are hereby revoked.

GEORGE W. BUSH.

EX. ORD. NO. 13472. EXECUTIVE BRANCH RESPONSIBILITIES WITH RESPECT TO ORDERS OF SUCCESSION

Ex. Ord. No. 13472, Sept. 11, 2008, 73 F.R. 53353, 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. *Policy.* It is the policy of the Federal Government to ensure that each executive branch agency can perform its essential functions and remain an effectively functioning part of the Federal Government under all conditions. Accordingly, each agency shall take all appropriate actions to establish, maintain, and, as necessary, revise an order of succession, or to propose presidential action to establish or revise an order of succession.

SEC. 2. *Definitions.* As used in this order:

(a) ''agency'' means:

(i) an executive agency as defined in section 105 of title 5, United States Code, other than the Government Accountability Office; and

(ii) the United States Postal Service and the Postal Regulatory Commission; and

(b) ''order of succession'' means a list of officials by position who shall act as and perform the functions and duties of the office of the head of the agency in the event that the office-holder has died, resigned, or otherwise become unable to perform the functions and duties of the office. ''Order of succession'' does not include any order, rule, memorandum, or other document

delegating or partially delegating the authority of an office.

SEC. 3. *Orders of Succession Requiring Presidential Action.*

(a) Each agency for which presidential action is required to establish an order of succession shall draft a proposed order of succession if no such order exists and, not later than 30 days from the date of this order, send such proposed draft order to the Counsel to the President for review and comment.

(b) Each agency described in subsection 3(a) of this order shall send any proposed updates or revisions to the agency's order of succession to the Counsel to the President for review and comment.

(c) Upon completion of the requirements set forth by subsections (a) or (b) of this section with respect to a proposed order, the agency shall submit the proposed order to the Office of Management and Budget in accordance with Executive Order 11030, as amended.

SEC. 4. *Orders of Succession Not Requiring Presidential Action.* (a) Each agency for which presidential action is not required to establish an order of succession because of the agency's existing legal authority shall establish and maintain such order in accordance with applicable law and any applicable guidance issued by the President or the Secretary of Homeland Security, including the laws and guidance regarding continuity plans and programs for the executive branch.

(b) Each agency described in subsection 4(a) of this order shall update and revise its order of succession as necessary. Before implementing any revisions to its order of succession, such agency shall send the proposed revisions to the Counsel to the President for review and comment.

(c) Not later than 30 days from the date of this order, and not later than 7 days from the issuance date of any subsequent final revision to an existing order of succession, each agency described in subsection 4(a) of this order shall provide a copy of its order of succession to the Counsel to the President, the Assistant to the President for Homeland Security and Counterterrorism, and the Director of the Office of Management and Budget.

SEC. 5. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) authority granted by law to a department, agency, or the head thereof; or

(ii) functions of the Director of the Office of Management and Budget relating to budget, administrative, or legislative proposals.

(b) Nothing in this order shall be construed to delegate the President's authority under the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345 *et seq.*, to designate individuals to perform the functions and duties of a vacant office temporarily in an acting capacity.

(c) This order shall be implemented in a manner consistent with applicable law and subject to the availability of appropriations.

(d) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, by any party against the United States, its agencies, instrumentalities, or entities, its officers, employees, or agents, or any other person.

GEORGE W. BUSH.

EXECUTIVE ORDER NO. 13481

Ex. Ord. No. 13481, Dec. 9, 2008, 73 F.R. 75531, which provided an order of succession within the Department of Justice, was revoked by Ex. Ord. No. 13557, § 3, Nov. 4, 2010, 75 F.R. 68679, set out below.

EX. ORD. NO. 13485. PROVIDING AN ORDER OF SUCCESSION WITHIN THE DEPARTMENT OF TRANSPORTATION

Ex. Ord. No. 13485, Jan. 9, 2009, 74 F.R. 2287, provided:

By the authority vested in me as President under the Constitution and the laws of the United States of America, including the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345 *et seq.*, it is hereby ordered that:

SECTION 1. *Order of Succession.* Subject to the provisions of section 2 of this order, the following officials of the Department of Transportation, in the order listed, shall act as and perform the functions and duties of the office of the Secretary of Transportation (Secretary), during any period in which the Secretary, the Deputy Secretary of Transportation, the Under Secretary of Transportation for Policy, and the officials designated by the Secretary pursuant to 49 U.S.C. 102(e) have died, resigned, or otherwise become unable to perform the functions and duties of the office of Secretary, until such time as the Secretary or one of the officials listed above is able to perform the duties of that office:

(a) Administrator of the Federal Highway Administration;

(b) Administrator of the Federal Aviation Administration;

(c) Administrator of the Federal Motor Carrier Safety Administration;

(d) Administrator of the Federal Railroad Administration;

(e) Administrator of the Federal Transit Administration;

(f) Administrator of the Maritime Administration;

(g) Administrator of the Pipeline and Hazardous Materials Safety Administration;

(h) Administrator of the National Highway Traffic Safety Administration;

(i) Administrator of the Research and Innovative Technology Administration;

(j) Administrator of the Saint Lawrence Seaway Development Corporation;

(k) Regional Administrator, Southern Region, Federal Aviation Administration;

(l) Director, Resource Center, Lakewood, Colorado, Federal Highway Administration; and

(m) Regional Administrator, Northwest Mountain Region, Federal Aviation Administration.

SEC. 2. *Exceptions.* (a) No individual who is serving in an office listed in section 1 in an acting capacity, by virtue of so serving, shall act as Secretary pursuant to this section.

(b) No individual who is serving in an office listed in section 1 shall act as Secretary unless that individual is otherwise eligible to so serve under the Federal Vacancies Reform Act of 1998.

(c) Notwithstanding the provisions of this order, the President retains discretion, to the extent permitted by law, to depart from this order in designating an acting Secretary.

SEC. 3. This order supersedes the President's Memorandum of March 19, 2002 (Designation of Officers of the Department of Transportation).

SEC. 4. This order is intended 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 in equity, by any party against the United States, its agencies, instrumentalities, or entities, its officers, employees, or agents, or any other person.

GEORGE W. BUSH.

EX. ORD. NO. 13533. PROVIDING AN ORDER OF SUCCESSION WITHIN THE DEPARTMENT OF DEFENSE

Ex. Ord. No. 13533, Mar. 1, 2010, 75 F.R. 10163, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Vacancies Reform Act of 1998, as amended, 5 U.S.C. 3345 *et seq.*, it is hereby ordered that:

SECTION 1. *Order of Succession.*

(a) Subject to the provisions of section 2 of this order, the following officials of the Department of Defense, in the order listed, shall act as and perform the functions and duties of the office of the Secretary of Defense (Secretary) during any period in which the Secretary has died, resigned, or otherwise become unable to perform the functions and duties of the office of the Secretary, until such time as the Secretary is able to perform the functions and duties of that office:

(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, Technology, and Logistics;
(6) Under Secretary of Defense for Policy;
(7) Under Secretary of Defense (Comptroller);
(8) Under Secretary of Defense for Personnel and Readiness;
(9) Under Secretary of Defense for Intelligence;
(10) Deputy Chief Management Officer, Department of Defense;
(11) Principal Deputy Under Secretary of Defense for Acquisition, Technology, and Logistics;
(12) Principal Deputy Under Secretary of Defense for Policy;
(13) Principal Deputy Under Secretary of Defense (Comptroller);
(14) Principal Deputy Under Secretary of Defense for Personnel and Readiness;
(15) Principal Deputy Under Secretary of Defense for Intelligence;
(16) Director of Defense Research and Engineering [now Assistant Secretary of Defense for Research and Engineering];
(17) General Counsel of the Department of Defense, the Assistant Secretaries of Defense, the Assistant to the Secretary of Defense for Nuclear and Chemical and Biological Defense Programs [now Assistant Secretary of Defense for Nuclear, Chemical, and Biological Defense Programs], the Director of Operational Test and Evaluation, the Director of Operational Energy Plans and Programs [now Assistant Secretary of Defense for Operational Energy Plans and Programs], and the Director of Cost Assessment and Program Evaluation;
(18) Under Secretaries of the Army, the Navy, and the Air Force; and
(19) Assistant Secretaries of the Army, the Navy, and the Air Force, and General Counsels of the Army, the Navy, and the Air Force.

(b) Precedence among officers designated within the same paragraph of subsection (a) shall be determined by the order in which they have been appointed to such office. Where officers designated within the same paragraph of subsection (a) have the same appointment date, precedence shall be determined by the order in which they have taken the oath to serve in that office.

SEC. 2. *Exceptions*.

(a) No individual who is serving in an office listed in section 1 in an acting capacity, by virtue of so serving, shall act as Secretary pursuant to this order.

(b) No individual listed in section 1 shall act as Secretary unless that individual was appointed by the President, by and with the advice and consent of the Senate, and that individual is otherwise eligible to so serve under the Federal Vacancies Reform Act of 1998, as amended.

(c) Notwithstanding the provisions of this order, the President retains discretion, to the extent permitted by law, to depart from this order in designating an acting Secretary.

SEC. 3. *Revocation*. Executive Order 13394 of December 22, 2005 (Providing An Order of Succession Within the Department of Defense), is hereby revoked.

SEC. 4. *Judicial Review*. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

BARACK OBAMA.

EX. ORD. NO. 13542. PROVIDING AN ORDER OF SUCCESSION WITHIN THE DEPARTMENT OF AGRICULTURE

Ex. Ord. No. 13542, May 13, 2010, 75 F.R. 27921, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345, *et seq.*, it is hereby ordered that:

SECTION 1. *Order of Succession*. (a) Subject to the provisions of section 2 of this order, the following officials of the Department of Agriculture, in the order listed, shall act as and perform the functions and duties of the office of Secretary of Agriculture (Secretary) during any period in which both the Secretary and the Deputy Secretary of Agriculture (Deputy Secretary) have died, resigned, or are otherwise unable to perform the functions and duties of the office of Secretary, until such time as the Secretary or Deputy Secretary is able to perform the functions and duties of that office:
(1) Assistant Secretary of Agriculture for Administration;
(2) Under Secretary of Agriculture for Marketing and Regulatory Programs;
(3) Under Secretary of Agriculture for Food, Nutrition, and Consumer Services;
(4) Under Secretary of Agriculture for Food Safety;
(5) Under Secretary of Agriculture for Natural Resources and Environment;
(6) Under Secretary of Agriculture for Farm and Foreign Agricultural Services;
(7) Under Secretary of Agriculture for Rural Development;
(8) Under Secretary of Agriculture for Research, Education, and Economics;
(9) General Counsel of the Department of Agriculture;
(10) Chief of Staff, Office of the Secretary;
(11) Director, Kansas City Commodity Office, Farm Service Agency;
(12) State Executive Directors of the Farm Service Agency for the States of California, Iowa, and Kansas, in order of seniority fixed by length of unbroken service as State Executive Director of that State;
(13) Regional Administrators of the Food and Nutrition Service for the Mountain Plains Regional Office (Denver, Colorado), Midwest Regional Office (Chicago, Illinois), and Western Regional Office (San Francisco, California), in order of seniority fixed by length of unbroken service as Regional Administrator of that Regional Office;
(14) Chief Financial Officer of the Department of Agriculture;
(15) Assistant Secretary of Agriculture for Civil Rights; and
(16) Assistant Secretary of Agriculture for Congressional Relations.

(b) If any two or more individuals designated in paragraphs (12) and (13) of subsection (a) were sworn in to, or commenced service in, their respective offices on the same day, precedence shall be determined by the alphabetical order of the State in which the individual serves.

SEC. 2. *Exceptions*. (a) No individual who is serving in an office listed in section 1 in an acting capacity shall, by virtue of so serving, act as Secretary pursuant to this order.

(b) No individual who is serving in an office listed in section 1 shall act as Secretary unless that individual is otherwise eligible to so serve under the Federal Vacancies Reform Act of 1998.

(c) Notwithstanding the provisions of this order, the President retains discretion, to the extent permitted by law, to depart from this order in designating an acting Secretary.

SEC. 3. Executive Order 13241 of December 18, 2001, as amended, is hereby revoked.

SEC. 4. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

BARACK OBAMA.

EX. ORD. NO. 13557. PROVIDING AN ORDER OF SUCCESSION WITHIN THE DEPARTMENT OF JUSTICE

Ex. Ord. No. 13557, Nov. 4, 2010, 75 F.R. 68679, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345 *et seq.*, it is hereby ordered that:

SECTION 1. *Order of Succession*. Subject to the provisions of section 2 of this order, the following officers, in the order listed, shall act as and perform the functions and duties of the office of Attorney General, during any period in which the Attorney General, the Deputy Attorney General, the Associate Attorney General, and any officers designated by the Attorney General pursuant to 28 U.S.C. 508 to act as Attorney General have died, resigned, or otherwise become unable to perform the functions and duties of the office of Attorney General, until such time as at least one of the officers mentioned above is able to perform the functions and duties of that office:

(a) United States Attorney for the Eastern District of Virginia;

(b) United States Attorney for the District of Minnesota; and

(c) United States Attorney for the District of Arizona.

SEC. 2. *Exceptions*. (a) No individual who is serving in an office listed in section 1 of this order in an acting capacity, by virtue of so serving, shall act as Attorney General pursuant to this order.

(b) No individual listed in section 1 shall act as Attorney General unless that individual is otherwise eligible to so serve under the Federal Vacancies Reform Act of 1998.

(c) Notwithstanding the provisions of this order, the President retains discretion, to the extent permitted by law, to depart from this order in designating an acting Attorney General.

SEC. 3. Executive Order 13481 of December 9, 2008, is revoked.

SEC. 4. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

BARACK OBAMA.

DESIGNATION OF OFFICERS OF THE FEDERAL EMERGENCY MANAGEMENT AGENCY TO ACT AS DIRECTOR OF THE FEDERAL EMERGENCY MANAGEMENT AGENCY

Memorandum of President of the United States, Nov. 26, 2002, 67 F.R. 79513, which provided for an order of succession within the Federal Emergency Management Agency, terminated upon the transfer of the authorities, functions, personnel, and assets of the Federal Emergency Management Agency to the Department of Homeland Security.

DESIGNATION OF OFFICERS OF THE DEPARTMENT OF VETERANS AFFAIRS TO ACT AS SECRETARY OF VETERANS AFFAIRS

Memorandum of President of the United States, Feb. 12, 2003, 68 F.R. 10141, provided:

Memorandum for the Secretary of Veterans Affairs

By the authority vested in me as President under the Constitution and laws of the United States of America and pursuant to the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345 *et seq.*, I hereby order that:

SECTION 1.*Order of Succession*.

During any period when the Secretary of Veterans Affairs (Secretary), the Deputy Secretary of Veterans Affairs (Deputy Secretary), and the officers designated by Executive Order 13247 of December 18, 2001 [set out above], to perform the functions and duties of the office of Secretary have died, resigned, or otherwise become unable to perform the functions and duties of the office of Secretary, the following officers of the Department of Veterans Affairs, in the order listed, shall perform the functions and duties of the office of Secretary, if they are eligible to act as Secretary under the provisions of the Federal Vacancies Reform Act of 1998, until such time as at least one of the officers mentioned above is able to perform the functions and duties of the office of Secretary:

Veterans Integrated Service Network (VISN) 8 Director, Veterans Health Administration;

VISN 7 Director, Veterans Health Administration;

Veterans Benefits Administration Southern Area Director; and

North Florida/South Georgia Healthcare System Director.

SEC. 2. *Exceptions*.

(a) No individual who is serving in an office listed in section 1 in an acting capacity, by virtue of so serving, shall act as Secretary pursuant to this memorandum.

(b) Notwithstanding the provisions of this memorandum, the President retains discretion, to the extent permitted by the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345 *et seq.*, to depart from this memorandum in designating an acting Secretary.

SEC. 3. *Publication*.

You are authorized and directed to publish this memorandum in the Federal Register.

GEORGE W. BUSH.

DESIGNATION OF OFFICERS OF THE OFFICE OF PERSONNEL MANAGEMENT TO ACT AS DIRECTOR OF THE OFFICE OF PERSONNEL MANAGEMENT

Memorandum of President of the United States, Mar. 11, 2003, 68 F.R. 12281, which provided for an order of succession within the Office of Personnel Management, was superseded by Memorandum of President of the United States, May 5, 2005, 70 F.R. 28773, set out below.

Memorandum of President of the United States, May 5, 2005, 70 F.R. 28773, provided:

Memorandum for the Director of the Office of Personnel Management

By the authority vested in me as President under the Constitution and laws of the United States of America and pursuant to the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345 *et seq.*, I hereby order that:

SECTION 1. *Order of Succession*.

During any period when the Director of the Office of Personnel Management (Director), or the Deputy Director of the Office of Personnel Management, has died, resigned, or otherwise become unable to perform the functions and duties of the office of Director, the following officers of the Office of Personnel Management, in the order listed, shall perform the functions and duties of the office of Director, if they are eligible to act as Director under the provisions of the Federal Vacancies Reform Act of 1998, until such time as at least one of the officers mentioned above is able to perform the functions and duties of the office of Director:

General Counsel;

Chief of Staff;

Director, Office of Communications and Public Liaison;

Director, Office of Congressional Relations;

Associate Director, Human Resources Products and Services;

Associate Director for Management;

Associate Director, Strategic Human Resources Policy;

Chief Financial Officer;

Associate Director, Human Capital Leadership and Merit Systems Accountability;

Deputy Associate Director, Center for Investigations Services; and

Director, Federal Executive Institute.

SEC. 2. *Exceptions*.

(a) No individual who is serving in an office listed in section 1 in an acting capacity, by virtue of so serving, shall act as Director pursuant to this memorandum.

(b) Notwithstanding the provisions of this memorandum, the President retains discretion, to the extent permitted by the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345–3349d, to depart from this memorandum in designating an acting Director.

SEC. 3. *Prior Memorandum Superceded*.

This memorandum supercedes the Presidential Memorandum of March 11, 2003 [formerly set out above], entitled, ''Designation of Officers of the Office of Personnel Management to Act as Director of the Office of Personnel Management.''

SEC. 4. *Publication*.

You are authorized and directed to publish this memorandum in the Federal Register.

GEORGE W. BUSH.

DESIGNATION OF OFFICERS OF THE DEPARTMENT OF JUSTICE

Memorandum of President of the United States, Dec. 8, 2006, 71 F.R. 74753, which provided a designation of officers of the Department of Justice, was superseded by Ex. Ord. No. 13481, § 3, Dec. 9, 2008, 73 F.R. 75531, formerly set out above.

DESIGNATION OF OFFICERS OF THE FEDERAL BUREAU OF INVESTIGATION

Memorandum of President of the United States, Feb. 9, 2007, 72 F.R. 7343, provided:

Memorandum for the Director of the Federal Bureau of Investigation

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345, *et seq.*, it is hereby ordered that:

SECTION 1. *Order of Succession*. During any period when the Director of the Federal Bureau of Investigation (Director) has died, resigned, or otherwise become unable to perform the functions and duties of the office of the Director, the following officials of the Federal Bureau of Investigation, in the order listed, shall perform the functions and duties of the office of the Director of the Federal Bureau of Investigation, until such time as the Director is able to perform the functions and duties of the office of Director of the Federal Bureau of Investigation:

(a) Deputy Director of the Federal Bureau of Investigation;

(b) Associate Deputy Director of the Federal Bureau of Investigation;

(c) Executive Assistant Director of the National Security Branch;

(d) Executive Assistant Director for Criminal, Cyber, Response and Services; and

(e) The Assistant Directors of the Federal Bureau of Investigation, in the order listed:

(1) Assistant Director, Counterterrorism Division;

(2) Assistant Director, Criminal Investigative Division;

(3) Assistant Director, Counterintelligence Division;

(4) Assistant Director, Washington Field Office;

(5) Assistant Director, New York Field Office; and

(6) Assistant Director, Los Angeles Field Office.

SEC. 2. *Exceptions*.

(a) No individual who is serving in an office listed in section 1 in an acting capacity, by virtue of so serving, shall act as the Director pursuant to this memorandum.

(b) No individual shall act as Director unless that individual is otherwise eligible to so serve under the Federal Vacancies Reform Act of 1998.

(c) Notwithstanding the provisions of this memorandum, the President retains discretion, to the extent permitted by law, to depart from this memorandum in designating an acting Director.

SEC. 3. *Judicial Review*. This memorandum is intended 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 in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

SEC. 4. The Director of the Federal Bureau of Investigation is authorized and directed to publish this memorandum in the Federal Register.

GEORGE W. BUSH.

DESIGNATION OF OFFICERS OF THE OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE TO ACT AS THE UNITED STATES TRADE REPRESENTATIVE

Memorandum of President of the United States, Feb. 20, 2007, 72 F.R. 8085, provided:

Memorandum for the United States Trade Representative

By the authority vested in me as President under the Constitution and the laws of the United States of America, including the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345, *et seq.*, it is hereby ordered that:

SECTION 1. *Order of Succession*.

During any period when the United States Trade Representative (USTR) has died, resigned, or otherwise becomes unable to perform the functions and duties of the office of the United States Trade Representative, the following officers of the Office of the United States Trade Representative, in the order listed, shall perform the functions and duties of the USTR, until such time as the USTR is able to perform the functions and duties of that office;

(a) Deputy United States Trade Representatives (stationed in Washington, D.C.; in order of their length of service as a Deputy USTR);

(b) Deputy United States Trade Representative (stationed in Geneva);

(c) General Counsel;

(d) Chief Negotiator for Agriculture;

(e) Deputy General Counsel; and

(f) Deputy Chief of Mission (stationed in Geneva).

SEC. 2. *Exceptions*.

(a) No individual who is serving in an office listed in section 1 in an acting capacity, by virtue of so serving, shall act as the USTR pursuant to this memorandum.

(b) No individual shall act as USTR unless that individual is otherwise eligible to so serve under the Federal Vacancies Reform Act of 1998.

(c) Notwithstanding the provisions of this memorandum, the President retains discretion, to the extent permitted by law, to depart from this memorandum in designating an acting USTR.

SEC. 3. *Judicial Review*. This memorandum is intended 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 in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

SEC. 4. *Publication*. You are authorized and directed to publish this memorandum in the Federal Register.

GEORGE W. BUSH.

DESIGNATION OF OFFICERS OF THE COUNCIL ON ENVIRONMENTAL QUALITY TO ACT AS CHAIRMAN OF THE COUNCIL ON ENVIRONMENTAL QUALITY

Memorandum of President of the United States, Sept. 18, 2008, 73 F.R. 54487, provided:

Memorandum for the Chairman of the Council on Environmental Quality

By the authority vested in me as President by the Constitution and laws of the United States of America, including the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345 *et seq.*, it is hereby ordered that:

SECTION 1. *Order of Succession*. Subject to the provisions of section 2 of this memorandum, the following officials of the Council on Environmental Quality in the order listed, shall act as and perform the functions and duties of the office of the Chairman of the Council on Environmental Quality (Chairman), during any period in which the Chairman has died, resigned, or otherwise become unable to perform the functions and duties of the office of Chairman until such time as the Chairman is able to perform the functions and duties of that office:

(a) Chief of Staff;

(b) General Counsel; and

(c) Associate Directors in the order that they shall have been appointed as such.

SEC. 2. *Exceptions*.

(a) No individual who is serving in an office listed in section 1 in an acting capacity, by virtue of so serving, shall act as the Chairman pursuant to this memorandum.

(b) No individual listed in section 1 shall act as Chairman unless that individual is otherwise eligible to so serve under the Federal Vacancies Reform Act of 1998.

(c) Notwithstanding the provisions of this memorandum, the President retains discretion, to the extent permitted by law, to depart from this order in designating an acting Chairman.

SEC. 3. *Judicial Review*. This memorandum is intended 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 in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

SEC. 4. You are authorized and directed to publish this memorandum in the Federal Register.

GEORGE W. BUSH.

DESIGNATION OF OFFICERS OF THE OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE TO ACT AS DIRECTOR OF NATIONAL INTELLIGENCE

Memorandum of President of the United States, Dec. 20, 2005, 70 F.R. 76375, which provided for a designation of officers of the Office of the Director of National Intelligence to act as Director of National Intelligence, was superseded by Memorandum of President of the United States, § 4, Oct. 3, 2008, 73 F.R. 58869, set out below.

Memorandum of President of the United States, Oct. 3, 2008, 73 F.R. 58869, provided:

Memorandum for the Director of National Intelligence

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345 *et seq.*,

it is hereby ordered that:

SECTION 1. Subject to the provisions of sections 2 and 3 of this memorandum, the following officers of the office of the Director of National Intelligence, in the order listed, shall act as and perform the functions and duties of the office of the Director of National Intelligence (DNI), during any period in which the DNI and the Principal Deputy Director of National Intelligence have died, resigned, or otherwise become unable to perform the functions and duties of the office of the DNI, until such time as the DNI or the Principal Deputy Director is able to perform the functions and duties of the office of DNI:

(a) Director of the Intelligence Staff;

(b) Deputy Director of National Intelligence for Policy, Plans, and Requirements;

(c) Deputy Director of National Intelligence for Analysis;

(d) Deputy Director of National Intelligence for Collection;

(e) Director of the National Counterterrorism Center; and

(f) National Counterintelligence Executive.

SEC. 2. *National Security Act of 1947*. This memorandum shall not supersede the authority of the Principal Deputy Director of National Intelligence to act for, and exercise the powers of, the Director of National Intelligence during the absence or disability of the Director of National Intelligence or during a vacancy in the position of Director of National Intelligence (National Security Act of 1947, as amended, 50 U.S.C. 403–3a).

SEC. 3. *Exceptions*. (a) No individual who is serving in an office listed in section 1 in an acting capacity, by virtue of so serving, shall act as DNI pursuant to this memorandum.

(b) No individual listed in section 1 shall act as DNI unless that individual is otherwise eligible to so serve under the Federal Vacancies Reform Act of 1998.

(c) Notwithstanding the provisions of this memorandum, the President retains discretion, to the extent permitted by law, to depart from this memorandum in designating an acting DNI.

SEC. 4. This memorandum supersedes the President's memorandum of December 20, 2005 (Designation of Officers of the Office of the Director of National Intelligence to Act as Director of National Intelligence).

SEC. 5. This memorandum is intended 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 in equity by any party against the United States, its agencies, instrumentalities, or entities, its officers, employees, or agents, or any other person.

SEC. 6. You are authorized and directed to publish this memorandum in the Federal Register.

GEORGE W. BUSH.

DESIGNATION OF OFFICERS OF THE SOCIAL SECURITY ADMINISTRATION TO ACT AS THE COMMISSIONER OF SOCIAL SECURITY

Memorandum of President of the United States, Apr. 17, 2006, 71 F.R. 20333, which provided for a designation of officers of the Social Security Administration, was superseded by Memorandum of President of the United States, § 3, Oct. 17, 2008, 73 F.R. 62845, set out below.

Memorandum of President of the United States, Oct. 17, 2008, 73 F.R. 62845, provided:

Memorandum for the Commissioner of Social Security

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345 *et seq.*, it is hereby ordered that:

SECTION 1. *Order of Succession*. Subject to the provisions of section 2 of this memorandum, the following officials of the Social Security Administration, in the order listed, shall act as and perform the functions and duties of the office of the Commissioner of Social Security (Commissioner), during any period in which both the Commissioner and Deputy Commissioner have died, resigned, or become otherwise unable to perform the functions and duties of the office of the Commissioner, until such time as the Commissioner or Deputy Commissioner are able to perform the duties of that office:

(a) Chief of Staff;

(b) Deputy Commissioner for Operations;

(c) Deputy Commissioner for Budget, Finance and Management;

(d) Deputy Commissioner for Systems;

(e) Deputy Commissioner for Quality Performance;

(f) Regional Commissioner, Atlanta; and

(g) Regional Commissioner, Dallas.

SEC. 2. *Exceptions*. (a) No individual who is serving in an office listed in section 1 in an acting capacity, by virtue of so serving, shall act as Commissioner pursuant to this memorandum.

(b) No individual listed in section 1 shall act as Commissioner unless that individual is otherwise eligible to so serve under the Federal Vacancies Reform Act of 1998.

(c) Notwithstanding the provisions of this memorandum, the President retains the discretion, to the extent permitted by law, to depart from this memorandum in designating an acting Commissioner.

SEC. 3. This memorandum supersedes the President's Memorandum of April 17, 2006 (Designation of Officers of the Social Security Administration).

SEC. 4. This memorandum is intended 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 in equity, by any party against the United States, its agencies, instrumentalities, or entities, its officers, employees, or agents, or any other person.

SEC. 5. You are authorized and directed to publish this memorandum in the Federal Register.

GEORGE W. BUSH.

DESIGNATION OF OFFICERS OF THE PENSION BENEFIT GUARANTY CORPORATION TO ACT AS DIRECTOR OF THE PENSION BENEFIT GUARANTY CORPORATION

Memorandum of President of the United States, Dec. 9, 2008, 73 F.R. 75533, provided:

Memorandum for the Director of the Pension Benefit Guaranty Corporation

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345 *et seq.*, it is hereby ordered that:

SECTION 1. *Order of Succession*. Subject to the provisions of section 2 of this memorandum, the following officials of the Pension Benefit Guaranty Corporation, in the order listed, shall act as and perform the functions and duties of the office of the Director of the Pension Benefit Guaranty Corporation (Director), during any period in which the Director has died, resigned, or otherwise become unable to perform the functions and duties of the office of Director, until such time as the Director is able to perform the functions and duties of that office:

(a) Deputy Director for Operations;

(b) Chief Management Officer;

(c) Chief Operating Officer; and

(d) General Counsel.

SEC. 2. *Exceptions*. [()a) No individual who is serving in an office listed in section 1 in an acting capacity, by virtue of so serving, shall act as the Director pursuant to this memorandum.

(b) No individual listed in section 1 shall act as Director unless that individual is otherwise eligible to so serve under the Federal Vacancies Reform Act of 1998.

(c) Notwithstanding the provisions of this memorandum, the President retains discretion, to the extent permitted by law, to depart from this memorandum in designating an acting Director.

SEC. 3. This memorandum is intended 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 in equity, by any party against the United States, it [sic] agencies, instrumentalities, or entities, its officers, employees, or agents, or any other person.

SEC. 4. You are authorized and directed to publish this memorandum in the Federal Register.

GEORGE W. BUSH.

DESIGNATION OF OFFICERS OF THE UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT TO ACT AS ADMINISTRATOR

Memorandum of President of the United States, Dec. 9, 2008, 73 F.R. 75535, provided:

Memorandum for the Administrator of the United States Agency for International Development

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345 *et seq.*, it is hereby ordered that:

SECTION 1. *Order of Succession*. Subject to the provisions of section 2 of this memorandum, the Assistant Administrators for the Bureaus, in the order in which they were appointed as an Assistant Administrator, shall act as and perform the functions and duties of the office of the Administrator (Administrator), during any period in which the Administrator and the Deputy Administrator have died, resigned, or otherwise become unable to perform the functions and duties of the office of Administrator, until such time as the Administrator or Deputy Administrator are able to perform the functions and duties of that office:

(a) Bureau for Africa;

(b) Bureau for Asia;

(c) Bureau for Democracy, Conflict, and Humanitarian Assistance;

(d) Bureau for Economic Growth, Agriculture, and Trade;

(e) Bureau for Europe and Eurasia;

(f) Bureau for Global Health;

(g) Bureau for Latin America and the Caribbean;

(h) Bureau for Legislative and Public Affairs;

(i) Bureau for Management; and

(j) Bureau for the Middle East.

SEC. 2. *Exceptions*. (a) No individual who is serving in an office listed in section 1 in an acting capacity, by virtue of so serving, shall act as the Administrator pursuant to this memorandum.

(b) No individual listed in section 1 shall act as Administrator unless that individual is otherwise eligible to so serve under the Federal Vacancies Reform Act of 1998.

(c) Notwithstanding the provisions of this memorandum, the President retains discretion, to the extent permitted by law, to depart from this memorandum in designating an acting Administrator.

SEC. 3. This memorandum supersedes the President's memorandum of July 10, 2002, (Designation of Officers of the United States Agency for International Development to Act as Administrator).

SEC. 4. This memorandum is intended 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 in equity, by any party against the United States, it [sic] agencies, instrumentalities, or entities, its officers, employees, or agents, or any other person.

SEC. 5. You are authorized and directed to publish this memorandum in the Federal Register.

GEORGE W. BUSH.

DESIGNATION OF OFFICERS OF THE NATIONAL AERONAUTICS AND SPACE ADMINISTRATION TO ACT AS ADMINISTRATOR

Memorandum of President of the United States, Jan. 16, 2009, 74 F.R. 4099, provided:

Memorandum for the Administrator of the National Aeronautics and Space Administration

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345 *et seq.*, it is hereby ordered that:

SECTION 1. *Order of Succession*. Subject to the provisions of section 2 of this memorandum, the following officials of the National Aeronautics and Space Administration (NASA), in the order listed, shall act as and perform the functions and duties of the office of the Administrator of NASA (Administrator), during any period in which both the Administrator and Deputy Administrator of NASA (Deputy Administrator) have died, resigned, or otherwise become unable to perform the functions and duties of the office of Administrator, until such time as the Administrator or Deputy Administrator is able to perform the functions and duties of that office:

(a) Associate Administrator;

(b) Chief of Staff to the NASA Administrator;

(c) Director for Johnson Space Flight Center;

(d) Director for Kennedy Space Flight Center; and

(e) Director for Marshall Space Flight Center.

SEC. 2. *Exceptions*. (a) No individual who is serving in an office listed in section 1 in an acting capacity, by virtue of so serving, shall act as Administrator pursuant to this memorandum.

(b) No individual listed in section 1 shall act as Administrator unless that individual is otherwise eligible to so serve under the Federal Vacancies Reform Act of 1998.

(c) Notwithstanding the provisions of this memorandum, the President retains discretion, to the extent permitted by law, to depart from this memorandum in designating an acting Administrator.

SEC. 3. This memorandum is intended 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 in equity by any party against the United States, it [sic] agencies, instrumentalities, or entities, its officers, employees, or agents, or any other person.

SEC. 4. You are authorized and directed to publish this memorandum in the Federal Register.

GEORGE W. BUSH.

DESIGNATION OF OFFICERS TO ACT AS PRESIDENT OF THE OVERSEAS PRIVATE INVESTMENT CORPORATION

Memorandum of President of the United States, Jan. 16, 2009, 74 F.R. 4101, provided:

Memorandum for the President of the Overseas Private Investment Corporation

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345 *et seq.*, it is hereby ordered that:

SECTION 1. *Order of Succession*. Subject to the provisions of section 2 of this memorandum, the following officials of the Overseas Private Investment Corporation, in the order listed, shall act as and perform the functions and duties of the office of the President of the Overseas Private Investment Corporation (POPIC), during any period in which the POPIC has died, resigned, or otherwise become unable to perform the functions and duties of the office of POPIC, until such time as the POPIC is able to perform the functions and duties of that office:

(a) Executive Vice President;

(b) Vice President and General Counsel;

(c) Vice President and Chief Financial Officer;

(d) Deputy General Counsel; and

(e) Director of Operations.

SEC. 2. *Exceptions*.

(a) No individual who is serving in an office listed in section 1 in an acting capacity, by virtue of so serving, shall act as POPIC pursuant to this memorandum.

(b) No individual listed in section 1 shall act as POPIC unless that individual is otherwise eligible to so serve under the Federal Vacancies Reform Act of 1998.

(c) Notwithstanding the provisions of this memorandum, the President retains discretion, to the extent permitted by law, to depart from this memorandum in designating an acting POPIC.

SEC. 3. This memorandum is intended 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 in equity by any party against the United States, it [sic] agencies, instrumentalities, or entities, its officers, employees, or agents, or any other person.

SEC. 4. You are authorized and directed to publish this memorandum in the Federal Register.

GEORGE W. BUSH.

DESIGNATION OF OFFICERS OF THE OFFICE OF SCIENCE AND TECHNOLOGY POLICY TO ACT AS DIRECTOR

Memorandum of President of the United States, Aug. 5, 2009, 74 F.R. 39871, provided:

Memorandum for the Director of the Office of Science and Technology Policy

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345 *et seq.*, it is hereby ordered that:

SECTION 1. *Order of Succession*. Subject to the provisions of section 2 of this memorandum, the following officials of the Office of Science and Technology Policy (OSTP), in the order listed, shall act as and perform the functions and duties of the office of the Director of OSTP (Director), during any period in which the Director has died, resigned, or otherwise become unable to perform the functions and duties of the office of the Director, until such time as the Director is able to perform the functions and duties of that office:

(a) Associate Director (National Security and International Affairs);

(b) Associate Director (Technology);

(c) Associate Director (Science); and

(d) Associate Director (Environment).

SEC. 2. *Exceptions*.

(a) No individual who is serving in an office listed in section 1 in an acting capacity, by virtue of so serving, shall act as Director pursuant to this memorandum.

(b) No individual listed in section 1 shall act as Director unless that individual is otherwise eligible to so serve under the Federal Vacancies Reform Act of 1998.

(c) Notwithstanding the provisions of this memorandum, the President retains the discretion, to the extent permitted by law, to depart from this memorandum in designating an acting Director.

SEC. 3. *Revocation*. The President's memorandum of December 11, 2002 (Designation of Officers of the Office of Science and Technology Policy to Act as Director), is hereby revoked.

SEC. 4. This memorandum is intended 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 in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

SEC. 5. You are authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA.

DESIGNATION OF OFFICERS OF THE UNITED STATES SECTION, INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES AND MEXICO TO ACT AS THE COMMISSIONER OF THE UNITED STATES SECTION

Memorandum of President of the United States, Aug. 31, 2009, 74 F.R. 45533, provided:

Memorandum for the Commissioner of the United States Section, International Boundary and Water Commission, United States and Mexico

By the authority vested in me as President by the Constitution and laws of the United States of America, it is hereby ordered that:

SECTION 1. *Order of Succession*. Subject to the provisions of section 2 of this memorandum, the following officials of the United States Section, International Boundary and Water Commission, United States and Mexico, in the order listed, shall act as and perform the functions and duties of the office of the Commissioner of the United States Section, International Boundary and Water Commission, United States and Mexico (Commissioner), during any period in which the Commissioner has died, resigned, or otherwise become unable to perform the functions and duties of the office of Commissioner, until such time as the Commissioner is able to perform the functions and duties of that office:

(a) United States Section Principal Engineer—Operations Department; and

(b) United States Section Principal Engineer—Engineering Department.

SEC. 2. *Exceptions*.

(a) No individual who is serving in an office listed in section 1 in an acting capacity, by virtue of so serving, shall act as Commissioner pursuant to this memorandum.

(b) Notwithstanding the provisions of this memorandum, the President retains discretion, to the extent permitted by law, to depart from this memorandum in designating an acting Commissioner.

SEC. 3. This memorandum is intended 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 in equity, by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

SEC. 4. You are authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA.

## § 3346. Time limitation

(a) Except in the case of a vacancy caused by sickness, the person serving as an acting officer as described under section 3345 may serve in the office—

(1) for no longer than 210 days beginning on the date the vacancy occurs; or

(2) subject to subsection (b), once a first or second nomination for the office is submitted to the Senate, from the date of such nomination for the period that the nomination is pending in the Senate.

(b)(1) If the first nomination for the office is rejected by the Senate, withdrawn, or returned to the President by the Senate, the person may continue to serve as the acting officer for no more than 210 days after the date of such rejection, withdrawal, or return.

(2) Notwithstanding paragraph (1), if a second nomination for the office is submitted to the Senate after the rejection, withdrawal, or return of the first nomination, the person serving as the acting officer may continue to serve—

(A) until the second nomination is confirmed; or

(B) for no more than 210 days after the second nomination is rejected, withdrawn, or returned.

(c) If a vacancy occurs during an adjournment of the Congress sine die, the 210-day period under subsection (a) shall begin on the date that the Senate first reconvenes.

(Added Pub. L. 105–277, div. C, title I, § 151(b), Oct. 21, 1998, 112 Stat. 2681–612.)

PRIOR PROVISIONS

A prior section 3346, Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 426, provided for details to subordinate offices, prior to repeal by Pub. L. 105–277, div. C, title I, § 151(b), (d)(1), Oct. 21, 1998, 112 Stat. 2681–611, 2681–616, effective 30 days after Oct. 21, 1998. See section 3345 of this title.

EFFECTIVE DATE

Section effective 30 days after Oct. 21, 1998, and applicable to any office that becomes vacant after such effective date, with certain exceptions, see section 151(d) of Pub. L. 105–277, set out as a note under section 3345 of this title.

### § 3347. Exclusivity

(a) Sections 3345 and 3346 are the exclusive means for temporarily authorizing an acting official to perform the functions and duties of any office of an Executive agency (including the Executive Office of the President, and other than the Government Accountability Office) for which appointment is required to be made by the President, by and with the advice and consent of the Senate, unless—

(1) a statutory provision expressly—

(A) authorizes the President, a court, or the head of an Executive department, to designate an officer or employee to perform the functions and duties of a specified office temporarily in an acting capacity; or

(B) designates an officer or employee to perform the functions and duties of a specified office temporarily in an acting capacity; or

(2) the President makes an appointment to fill a vacancy in such office during the recess of the Senate pursuant to clause 3 of section 2 of article II of the United States Constitution.

(b) Any statutory provision providing general authority to the head of an Executive agency (including the Executive Office of the President, and other than the Government Accountability Office) to delegate duties statutorily vested in that agency head to, or to reassign duties among, officers or employees of such Executive agency, is not a statutory provision to which subsection (a)(1) applies.

(Added Pub. L. 105–277, div. C, title I, § 151(b), Oct. 21, 1998, 112 Stat. 2681–613; amended Pub. L. 106–31, title V, § 5011, May 21, 1999, 113 Stat. 112; Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814.)

PRIOR PROVISIONS

A prior section 3347, Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 426, provided for Presidential authority relating to details, prior to repeal by Pub. L. 105–277, div. C, title I, § 151(b), (d)(1), Oct. 21, 1998, 112 Stat. 2681–611, 2681–616, effective 30 days after Oct. 21, 1998. See section 3345 of this title.

AMENDMENTS

2004—Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office'' in introductory provisions of subsec. (a) and in subsec. (b).

1999—Subsec. (b). Pub. L. 106–31 substituted ''subsection (a)(1)'' for ''subsection (a)(2)''.

EFFECTIVE DATE

Section effective 30 days after Oct. 21, 1998, and applicable to any office that becomes vacant after such effective date, with certain exceptions, see section 151(d) of Pub. L. 105–277, set out as a note under section 3345 of this title.

### § 3348. Vacant office

(a) In this section—

(1) the term ''action'' includes any agency action as defined under section 551(13); and

(2) the term ''function or duty'' means any function or duty of the applicable office that—

(A)(i) is established by statute; and

(ii) is required by statute to be performed by the applicable officer (and only that officer); or

(B)(i)(I) is established by regulation; and

(II) is required by such regulation to be performed by the applicable officer (and only that officer); and

(ii) includes a function or duty to which clause (i)(I) and (II) applies, and the applicable regulation is in effect at any time during the 180-day period preceding the date on which the vacancy occurs.

(b) Unless an officer or employee is performing the functions and duties in accordance with sections 3345, 3346, and 3347, if an officer of an Executive agency (including the Executive Office of the President, and other than the Government Accountability Office) whose appointment to office is required to be made by the President, by and with the advice and consent of the Senate, dies, resigns, or is otherwise unable to perform the functions and duties of the office—

(1) the office shall remain vacant; and

(2) in the case of an office other than the office of the head of an Executive agency (including the Executive Office of the President, and other than the Government Accountability Office), only the head of such Executive agency may perform any function or duty of such office.

(c) If the last day of any 210-day period under section 3346 is a day on which the Senate is not

in session, the second day the Senate is next in session and receiving nominations shall be deemed to be the last day of such period.

(d)(1) An action taken by any person who is not acting under section 3345, 3346, or 3347, or as provided by subsection (b), in the performance of any function or duty of a vacant office to which this section and sections 3346, 3347, 3349, 3349a, 3349b, and 3349c apply shall have no force or effect.

(2) An action that has no force or effect under paragraph (1) may not be ratified.

(e) This section shall not apply to—

(1) the General Counsel of the National Labor Relations Board;

(2) the General Counsel of the Federal Labor Relations Authority;

(3) any Inspector General appointed by the President, by and with the advice and consent of the Senate;

(4) any Chief Financial Officer appointed by the President, by and with the advice and consent of the Senate; or

(5) an office of an Executive agency (including the Executive Office of the President, and other than the Government Accountability Office) if a statutory provision expressly prohibits the head of the Executive agency from performing the functions and duties of such office.

(Added Pub. L. 105–277, div. C, title I, § 151(b), Oct. 21, 1998, 112 Stat. 2681–613; amended Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814.)

PRIOR PROVISIONS

A prior section 3348, Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 426; Pub. L. 100–398, § 7(b), Aug. 17, 1988, 102 Stat. 988, provided for time limitations relating to details, prior to repeal by Pub. L. 105–277, div. C, title I, § 151(b), (d)(1), Oct. 21, 1998, 112 Stat. 2681–611, 2681–616, effective 30 days after Oct. 21, 1998. See section 3346 of this title.

AMENDMENTS

2004—Subsec. (b). Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office'' in two places.

Subsec. (e)(5). Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office''.

EFFECTIVE DATE

Section effective 30 days after Oct. 21, 1998, and applicable to any office that becomes vacant after such effective date, with certain exceptions, see section 151(d) of Pub. L. 105–277, set out as a note under section 3345 of this title.

### § 3349. Reporting of vacancies

(a) The head of each Executive agency (including the Executive Office of the President, and other than the Government Accountability Office) shall submit to the Comptroller General of the United States and to each House of Congress—

(1) notification of a vacancy in an office to which this section and sections 3345, 3346, 3347, 3348, 3349a, 3349b, 3349c, and 3349d apply and the date such vacancy occurred immediately upon the occurrence of the vacancy;

(2) the name of any person serving in an acting capacity and the date such service began immediately upon the designation;

(3) the name of any person nominated to the Senate to fill the vacancy and the date such nomination is submitted immediately upon the submission of the nomination; and

(4) the date of a rejection, withdrawal, or return of any nomination immediately upon such rejection, withdrawal, or return.

(b) If the Comptroller General of the United States makes a determination that an officer is serving longer than the 210-day period including the applicable exceptions to such period under section 3346 or section 3349a, the Comptroller General shall report such determination immediately to—

(1) the Committee on Governmental Affairs of the Senate;

(2) the Committee on Government Reform and Oversight of the House of Representatives;

(3) the Committees on Appropriations of the Senate and House of Representatives;

(4) the appropriate committees of jurisdiction of the Senate and House of Representatives;

(5) the President; and

(6) the Office of Personnel Management.

(Added Pub. L. 105–277, div. C, title I, § 151(b), Oct. 21, 1998, 112 Stat. 2681–614; amended Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814.)

PRIOR PROVISIONS

A prior section 3349, Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 426, provided for restrictions relating to details to fill vacancies, prior to repeal by Pub. L. 105–277, div. C, title I, § 151(b), (d)(1), Oct. 21, 1998, 112 Stat. 2681–611, 2681–616, effective 30 days after Oct. 21, 1998. See section 3347 of this title.

AMENDMENTS

2004—Subsec. (a). Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office'' in introductory provisions.

CHANGE OF NAME

Committee on Governmental Affairs of Senate changed to Committee on Homeland Security and Governmental Affairs of Senate, effective Jan. 4, 2005, by Senate Resolution No. 445, One Hundred Eighth Congress, Oct. 9, 2004.

Committee on Government Reform and Oversight of House of Representatives changed to Committee on Government Reform of House of Representatives by House Resolution No. 5, One Hundred Sixth Congress, Jan. 6, 1999. Committee on Government Reform of House of Representatives changed to Committee on Oversight and Government Reform of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007.

EFFECTIVE DATE

Section effective 30 days after Oct. 21, 1998, and applicable to any office that becomes vacant after such effective date, with certain exceptions, see section 151(d) of Pub. L. 105–277, set out as a note under section 3345 of this title.

### § 3349a. Presidential inaugural transitions

(a) In this section, the term ''transitional inauguration day'' means the date on which any person swears or affirms the oath of office as President, if such person is not the President on the date preceding the date of swearing or affirming such oath of office.

(b) With respect to any vacancy that exists during the 60-day period beginning on a transi-

tional inauguration day, the 210-day period under section 3346 or 3348 shall be deemed to begin on the later of the date occurring—

(1) 90 days after such transitional inauguration day; or

(2) 90 days after the date on which the vacancy occurs.

(Added Pub. L. 105–277, div. C, title I, § 151(b), Oct. 21, 1998, 112 Stat. 2681–615.)

EFFECTIVE DATE

Section effective 30 days after Oct. 21, 1998, and applicable to any office that becomes vacant after such effective date, with certain exceptions, see section 151(d) of Pub. L. 105–277, set out as a note under section 3345 of this title.

### § 3349b. Holdover provisions

Sections 3345 through 3349a shall not be construed to affect any statute that authorizes a person to continue to serve in any office—

(1) after the expiration of the term for which such person is appointed; and

(2) until a successor is appointed or a specified period of time has expired.

(Added Pub. L. 105–277, div. C, title I, § 151(b), Oct. 21, 1998, 112 Stat. 2681–615.)

EFFECTIVE DATE

Section effective 30 days after Oct. 21, 1998, and applicable to any office that becomes vacant after such effective date, with certain exceptions, see section 151(d) of Pub. L. 105–277, set out as a note under section 3345 of this title.

### § 3349c. Exclusion of certain officers

Sections 3345 through 3349b shall not apply to—

(1) any member who is appointed by the President, by and with the advice and consent of the Senate to any board, commission, or similar entity that—

(A) is composed of multiple members; and

(B) governs an independent establishment or Government corporation;

(2) any commissioner of the Federal Energy Regulatory Commission;

(3) any member of the Surface Transportation Board; or

(4) any judge appointed by the President, by and with the advice and consent of the Senate, to a court constituted under article I of the United States Constitution.

(Added Pub. L. 105–277, div. C, title I, § 151(b), Oct. 21, 1998, 112 Stat. 2681–615.)

EFFECTIVE DATE

Section effective 30 days after Oct. 21, 1998, and applicable to any office that becomes vacant after such effective date, with certain exceptions, see section 151(d) of Pub. L. 105–277, set out as a note under section 3345 of this title.

### § 3349d. Notification of intent to nominate during certain recesses or adjournments

(a) The submission to the Senate, during a recess or adjournment of the Senate in excess of 15 days, of a written notification by the President of the President's intention to submit a nomination after the recess or adjournment shall be considered a nomination for purposes of sections 3345 through 3349c if such notification contains the name of the proposed nominee and the office for which the person is nominated.

(b) If the President does not submit a nomination of the person named under subsection (a) within 2 days after the end of such recess or adjournment, effective after such second day the notification considered a nomination under subsection (a) shall be treated as a withdrawn nomination for purposes of sections 3345 through 3349c.

(Added Pub. L. 105–277, div. C, title I, § 151(b), Oct. 21, 1998, 112 Stat. 2681–615.)

EFFECTIVE DATE

Section effective 30 days after Oct. 21, 1998, and applicable to any office that becomes vacant after such effective date, with certain exceptions, see section 151(d) of Pub. L. 105–277, set out as a note under section 3345 of this title.

## 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.

### § 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.

**[§ 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

### § 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 Regulatory 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; Pub. L. 109–435, title VI, § 604(b), Dec. 20, 2006, 120 Stat. 3241.)

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

2006—Par. (3). Pub. L. 109–435 substituted ''Postal Regulatory Commission'' for ''Postal Rate Commission''.

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 ''sec-

tion 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.

EMPLOYEE EXCHANGE PROGRAM BETWEEN FEDERAL EMPLOYEES AND EMPLOYEES OF STATE AND LOCAL GOVERNMENTS

Pub. L. 108–196, § 3, Dec. 19, 2003, 117 Stat. 2896, provided that:

''(a) DEFINITIONS.—In this section—

''(1) the term 'employing agency' means the Federal, State, or local government agency with which the participating employee was employed before an assignment under the Program;

''(2) the term 'participating employee' means an employee who is participating in the Program; and

''(3) the term 'Program' means the employee exchange program established under subsection (b).

''(b) ESTABLISHMENT.—The President shall establish an employee exchange program between Federal agencies that perform law enforcement functions and agencies of State and local governments that perform law enforcement functions.

''(c) CONDUCT OF PROGRAM.—The Program shall be conducted in accordance with subchapter VI of chapter 33 of title 5, United States Code.

''(d) QUALIFICATIONS.—An employee of an employing agency who performs law enforcement functions may be selected to participate in the Program if the employee—

''(1) has been employed by that employing agency for a period of more than 3 years;

''(2) has had appropriate training or experience to perform the work required by the assignment;

''(3) has had an overall rating of satisfactory or higher on performance appraisals from the employing agency during the 3-year period before being assigned to another agency under this section; and

''(4) agrees to return to the employing agency after completing the assignment for a period not less than the length of the assignment.

''(e) WRITTEN AGREEMENT.—An employee shall enter into a written agreement regarding the terms and conditions of the assignment before beginning the assignment with another agency.''

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.''

## § 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, 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 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.

## § 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 title IV of act Aug. 2, 1946, ch. 753, 60 Stat. 842, which was classified principally to chapter 20 (§§ 921, 922, 931–934, 941–946) of former Title 28, Judicial Code and Judiciary. Title IV of act Aug. 2, 1946, was substantially repealed and reenacted as sections 1346(b) and 2671 et seq. of Title 28, Judiciary and Judicial Procedure, by act June 25, 1948, ch. 646, 62 Stat. 992, the first section of which enacted Title 28. The Federal Tort Claims Act is also commonly used to refer to chapter 171 of Title 28, Judiciary and Judicial Procedure. For complete classification of title IV to the Code, see Tables. For distribution of former sections of Title 28 into the revised Title 28, see Table at the beginning of Title 28.

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.

## § 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, the Ethics in Government Act of 1978, chapter 21 of title 41, 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; Pub. L. 107–107, div. A, title XI, § 1117, Dec. 28, 2001, 115 Stat. 1241; Pub. L. 111–350, § 5(a)(5), Jan. 4, 2011, 124 Stat. 3841.)

### References in Text

The Ethics in Government Act of 1978, referred to in subsec. (c)(2), is Pub. L. 95–521, Oct. 26, 1978, 92 Stat. 1824. 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.

The Federal Tort Claims Act, referred to in subsec. (c)(2), is title IV of act Aug. 2, 1946, ch. 753, 60 Stat. 842, which was classified principally to chapter 20 (§§ 921, 922, 931–934, 941–946) of former Title 28, Judicial Code and Judiciary. Title IV of act Aug. 2, 1946, was substantially repealed and reenacted as sections 1346(b) and 2671 et seq. of Title 28, Judiciary and Judicial Procedure, by act June 25, 1948, ch. 646, 62 Stat. 992, the first section of which enacted Title 28. The Federal Tort Claims Act is also commonly used to refer to chapter 171 of Title 28, Judiciary and Judicial Procedure. For complete classification of title IV to the Code, see Tables. For distribution of former sections of Title 28 into the revised Title 28, see Table at the beginning of Title 28.

### Amendments

2011—Subsec. (c)(2). Pub. L. 111–350 substituted ''chapter 21 of title 41'' for ''section 27 of the Office of Federal Procurement Policy Act''.

2001—Subsec. (c)(2). Pub. L. 107–107 inserted ''the Ethics in Government Act of 1978, section 27 of the Office of Federal Procurement Policy Act,'' after ''chapter 73 of this title,''.

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.

### § 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) 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(c) 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(g) 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; Pub. L. 104–201, div. A, title XVII, § 1723(a)(1)(A), Sept. 23, 1996, 110 Stat. 2758.)

AMENDMENTS

1996—Subsec. (a)(3). Pub. L. 104–201, § 1723(a)(1)(A)(i), substituted ''section 5724a(a)'' for ''section 5724a(a)(1)''.

Subsec. (a)(4). Pub. L. 104–201, § 1723(a)(1)(A)(ii), substituted ''section 5724a(c)'' for ''section 5724a(a)(3)''.

Subsec. (a)(5). Pub. L. 104–201, § 1723(a)(1)(A)(iii), substituted ''section 5724a(g)'' for ''section 5724a(b)''.

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 1996 AMENDMENT

Amendment by Pub. L. 104–201 effective 180 days after Sept. 23, 1996, see section 1725(a) of Pub. L. 104–201, set out as a note under section 5722 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.

### § 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 [formerly set out as a note under section 2271 of Title 50, Appendix, War and National Defense], section 1(b) shall control.

## 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.)

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. Subsequently, section 4107 was amended generally by Pub. L. 107–296, title XIII, § 1331(a), Nov. 25, 2002, 116 Stat. 2298.

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''.

[1] See References in Text note below.

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.

## § 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.

### § 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.

### § 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.

### § 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,,[1] 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; Pub. L. 107–296, title XIII, § 1321(a)(1)(A), Nov. 25, 2002, 116 Stat. 2296.)

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

2002—Subsec. (g). Pub. L. 107–296 struck out ''3393a'' after ''1215,''.

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 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as

[1] So in original.

an Effective Date note under section 101 of Title 6, Domestic Security.

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

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 3135, 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.''

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.

### [§ 3393a. Repealed. Pub. L. 107–296, title XIII, § 1321(a)(1)(B), Nov. 25, 2002, 116 Stat. 2296]

Section, added Pub. L. 101–194, title V, § 506(a)(1), Nov. 30, 1989, 103 Stat. 1756, related to recertification of career appointees.

EFFECTIVE DATE OF REPEAL

Repeal effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

### § 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.

### § 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 3393 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 establish 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).

### § 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. Repealed.]
3408. Employee organization representation.

AMENDMENTS

1995—Pub. L. 104–66, title III, § 3001(a)(2), Dec. 21, 1995, 109 Stat. 734, struck out item 3407 ''Reports''.

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.

### § 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 Federal Bureau of Investigation, Department of Justice;

(v) the Central Intelligence Agency; and

(vi) 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; Pub. L. 104–201, div. C, title XXXV, § 3548(a)(1), Sept. 23, 1996, 110 Stat. 2868.)

AMENDMENTS

1996—Par. (1). Pub. L. 104–201, which directed amendment of par. (1) by striking cl. (v) and redesignating cls. (vi), (vii), and (viii) as (v), (vi), and (vii), respectively, was executed by striking cl. (iv), relating to the Panama Canal Company, and redesignating cls. (v), (vi), and (vii) as (iv), (v), and (vi), respectively, to reflect the probable intent of Congress, because par. (1) does not contain a cl. (viii) and the amendments were included in a series of conforming amendments relating to the Panama Canal.

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.''

### § 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, utilizing 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.

### § 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.

### § 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. Repealed. Pub. L. 104–66, title III, § 3001(a)(1), Dec. 21, 1995, 109 Stat. 733]

Section, 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, related to reports.

### § 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, VOLUNTARY SEPARATION INCENTIVE PAYMENTS, 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—VOLUNTARY SEPARATION INCENTIVE PAYMENTS

3521. Definitions.
3522. Agency plans; approval.
3523. Authority to provide voluntary separation incentive payments.
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3525. Regulations.

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.
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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.
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3595. Reduction in force in the Senior Executive Service.
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3596. Regulations.

SUBCHAPTER VI—REEMPLOYMENT FOLLOWING LIMITED APPOINTMENT IN THE FOREIGN SERVICE

3597. Reemployment following limited appointment in the Foreign Service.

SUBCHAPTER VII—RETENTION OF RETIRED SPECIALIZED EMPLOYEES AT THE FEDERAL BUREAU OF INVESTIGATION

3598.[1] Federal Bureau of Investigation reserve service.[2]

3598.[1] Federal Bureau of Investigation Reserve Service.

AMENDMENTS

2004—Pub. L. 108–447, div. B, title I, § 114(b), Dec. 8, 2004, 118 Stat. 2869, and Pub. L. 108–458, title II, § 2004(b), Dec. 17, 2004, 118 Stat. 3704, amended analysis identically, adding item for subchapter VII.

Pub. L. 108–458, title II, § 2004(b), Dec. 17, 2004, 118 Stat. 3704, added item 3598, set out second.

Pub. L. 108–447, div. B, title I, § 114(b), Dec. 8, 2004, 118 Stat. 2869, added item 3598, set out first.

2002—Pub. L. 107–296, title XIII, § 1313(a)(1)(B), Nov. 25, 2002, 116 Stat. 2294, substituted ''RETENTION PREFERENCE, VOLUNTARY SEPARATION INCENTIVE PAYMENTS, RESTORATION, AND REEMPLOYMENT'' for ''RETENTION PREFERENCE, RESTORATION, AND REEMPLOYMENT'' in chapter heading and added item for subchapter II and items 3521 to 3525.

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

### § 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 periods 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

[1] So in original. Two sections ''3598'' have been enacted.

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

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.

**§ 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, 1966, 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 State or entity designated by the State to carry out rapid response activities under section 134(a)(2)(A) of the Workforce Investment Act of 1998; 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 title I of the Workforce Investment Act of 1998.

(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 title I of the Workforce Investment Act of 1998.

(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.

(f)(1) The Secretary of Defense or the Secretary of a military department may—

(A) separate from service any employee who volunteers to be separated under this subpara-

graph even though the employee is not otherwise subject to separation due to a reduction in force; and

(B) for each employee voluntarily separated under subparagraph (A), retain an employee in a similar position who would otherwise be separated due to a reduction in force.

(2) The separation of an employee under paragraph (1)(A) shall be treated as an involuntary separation due to a reduction in force.

(3) An employee with critical knowledge and skills (as defined by the Secretary concerned) may not participate in a voluntary separation under paragraph (1)(A) if the Secretary concerned determines that such participation would impair the performance of the mission of the Department of Defense or the military department concerned.

(4) The regulations prescribed under this section shall incorporate the authority provided in this subsection.

(5) No authority under paragraph (1) may be exercised after September 30, 2014.

(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; Pub. L. 104–106, div. A, title X, §§ 1034, 1043(d)(1), Feb. 10, 1996, 110 Stat. 430, 438; Pub. L. 104–201, div. A, title XVI, § 1609, Sept. 23, 1996, 110 Stat. 2738; Pub. L. 105–277, div. A, § 101(f) [title VIII, § 405(d)(1), (f)(1)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–417, 2681–429; Pub. L. 106–398, § 1 [[div. A], title XI, § 1103], Oct. 30, 2000, 114 Stat. 1654, 1654A–311; Pub. L. 109–163, div. A, title XI, § 1102, Jan. 6, 2006, 119 Stat. 3447; Pub. L. 110–417, [div. A], title XI, § 1105, Oct. 14, 2008, 122 Stat. 4617.)

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.<br>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 Workforce Investment Act of 1998, referred to in subsec. (d)(3), (4), is Pub. L. 105–220, Aug. 7, 1998, 112 Stat. 936, as amended. Title I of the Act is classified principally to chapter 30 (§ 2801 et seq.) of Title 29, Labor. Section 134(a)(2)(A) of the Act is classified to section 2864(a)(2)(A) of Title 29. For complete classification of this Act to the Code, see Short Title note set out under section 9201 of Title 20, Education, and Tables.

AMENDMENTS

2008—Subsec. (f)(5). Pub. L. 110–417 substituted ''September 30, 2014'' for ''September 30, 2010''.

2006—Subsec. (f)(5). Pub. L. 109–163 substituted ''September 30, 2010'' for ''September 30, 2005''.

2000—Subsec. (f)(5). Pub. L. 106–398 substituted ''September 30, 2005'' for ''September 30, 2001''.

1998—Subsec. (d)(3)(A)(i). Pub. L. 105–277, § 101(f) [title VIII, § 405(f)(1)(A)(i)], added cl. (i) and struck out former cl. (i) which read as follows: ''the appropriate State dislocated worker unit or office (referred to in section 311(b)(2) of the Job Training Partnership Act), or the State or entity designated by the State to carry out rapid response activities under section 134(a)(2)(A) of the Workforce Investment Act of 1998; and''.

Pub. L. 105–277, § 101(f) [title VIII, § 405(d)(1)(A)(i)], added cl. (i) and struck out former cl. (i) which read as follows: ''the appropriate State dislocated worker unit or units (referred to in section 311(b)(2) of the Job Training Partnership Act); and''.

Subsec. (d)(3)(B)(iii). Pub. L. 105–277, § 101(f) [title VIII, § 405(f)(1)(A)(ii)], struck out ''under the Job Training Partnership Act or'' before ''under title I of''.

Pub. L. 105–277, § 101(f) [title VIII, § 405(d)(1)(A)(ii)], substituted ''other services under the Job Training Partnership Act or under title I of the Workforce Investment Act of 1998'' for ''other services under the Job Training Partnership Act''.

Subsec. (d)(4). Pub. L. 105–277, § 101(f) [title VIII, § 405(f)(1)(B)], struck out ''the Job Training Partnership Act or'' before ''title I of''.

Pub. L. 105–277, § 101(f) [title VIII, § 405(d)(1)(B)], substituted ''Secretary of Labor on matters relating to the Job Training Partnership Act or title I of the Workforce Investment Act of 1998'' for ''Secretary of Labor on matters relating to the Job Training Partnership Act''.

1996—Subsec. (a)(C)(ii). Pub. L. 104–106, § 1043(d)(1), substituted ''January 1, 1966'' for ''January 1, 1987''.

Subsec. (f). Pub. L. 104–201 amended subsec. (f) generally. Prior to amendment, subsec. (f) read as follows:

''(f)(1) The Secretary of Defense or the Secretary of a military department may—

''(A) release in a reduction in force an employee who volunteers for the release even though the employee is not otherwise subject to release in the reduction in force under the criteria applicable under the other provisions of this section; and

''(B) for each employee voluntarily released in the reduction in force under subparagraph (A), retain an employee in a similar position who would otherwise be released in the reduction in force under such criteria.

''(2) A voluntary release of an employee in a reduction in force pursuant to paragraph (1) shall be treated as an involuntary release in the reduction in force.

''(3) An employee with critical knowledge and skills (as defined by the Secretary concerned) may not participate in a voluntary release under paragraph (1) if the Secretary concerned determines that such participation would impair the performance of the mission of the Department of Defense or the military department concerned.

''(4) The regulations prescribed under this section shall incorporate the authority provided in this subsection.

''(5) The authority under paragraph (1) may not be exercised after September 30, 1996.''

Pub. L. 104–106, § 1034, added subsec. (f).

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 1998 AMENDMENT

Pub. L. 105–277, div. A, § 101(f) [title VIII, § 405(g)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–434, as amended by Pub. L. 106–400, § 2, Oct. 30, 2000, 114 Stat. 1675, provided that:

''(1) IMMEDIATELY EFFECTIVE AMENDMENTS.—The amendments made by subsections (a) through (d) [amending this section and sections 2014, 2015, and 2026 of Title 7, Agriculture, sections 1255a and 1613 of Title 8, Aliens and Nationality, sections 636, 1022a, 3116, and 3151 of Title 15, Commerce and Trade, section 79*l* of Title 16, Conservation, section 665 of Title 18, Crimes and Criminal Procedure, sections 2296 and 2311 of Title 19, Customs Duties, sections 1070d–2, 1087vv, 3443, 5934, 5938, 6365, 6434, 6453, and 6455 of Title 20, Education, section 5855 of Title 22, Foreign Relations and Intercourse, section 2102 of Title 29, Labor, section 6703 of Title 31, Money and Finance, sections 4102A, 4103A, and 4213 of Title 38, Veterans' Benefits, and sections 603, 1437u, 1474, 3013, 3056, 3056a, 3056h, 3796ee, 4368a, 4953, 4959, 6103, 6864, 6873, 7274h, 9806, 11302, 12637, 12653c, 12655m, 12899c, 12899e, and 13823 of Title 42, The Public Health and Welfare, amending provisions set out as notes under sections 1183a and 1522 of Title 8, sections 1143, 2391, 2501, 2701, and 2687 of Title 10, Armed Forces, section 3304 of Title 26, Internal Revenue Code, section 1721 of Title 29, and section 4101 of Title 38, and repealing provisions set out as notes under sections 1501 and 1551 of Title 29] shall take effect on the date of the enactment of this Act [Oct. 21, 1998].

''(2) SUBSEQUENTLY EFFECTIVE AMENDMENTS.—

''(A) MCKINNEY-VENTO HOMELESS ASSISTANCE ACT.—The amendments made by subsection (e) shall take effect on July 1, 1999.

''(B) JOB TRAINING PARTNERSHIP ACT.—The amendments made by subsection (f) [amending this section and sections 2014, 2015, and 2026 of Title 7, Agriculture, sections 1255a and 1613 of Title 8, Aliens and Nationality, sections 636 and 3116 of Title 15, Commerce and Trade, sections 2296 and 2311 of Title 19, Customs Duties, sections 1070d–2, 1087vv, 6365, 6434, 6453, and 6455 of Title 20, Education, section 2102 of Title 29, Labor, section 6703 of Title 31, Money and Finance, sections 4102A, 4103A, and 4213 of Title 38, Veterans' Benefits, and sections 603, 1437u, 1474, 3013, 3056, 3056a, 3056h, 3796ee, 4368a, 4953, 4959, 6864, 6873, 7274h, 9806, 11302, 12653c, 12655m, 12899c, and 13823 of Title 42, The Public Health and Welfare, and amending provisions set out as notes under sections 1183a and 1522 of Title 8, sections 1143, 2501, 2687, and 2701 of Title 10, Armed Forces, section 3304 of Title 26, Internal Revenue Code, section 1721 of Title 29, and section 4101 of Title 38] shall take effect on July 1, 2000.''

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1043(d)(2) of Pub. L. 104–106 provided that: ''Notwithstanding any provision of subsection (c) [set out as a note under section 8347 of this title], the amendment made by paragraph (1) [amending this section] shall—

''(A) take effect on the date of the enactment of this Act [Feb. 10, 1996]; and

''(B) apply with respect to any reduction in force carried out on or after such date.''

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.

REGULATIONS

For provisions relating to promulgation of regulations necessary to carry out amendment by section 1043(d)(1) of Pub. L. 104–106, see section 1043(b) of Pub. L. 104–106, set out as a Regulations; Effective Date of 1996 Amendment note under section 8347 of this title.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

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, as amended by Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814, 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 Government Accountability 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, as amended by Ex. Ord. No. 13415, § 2(b), Dec. 1, 2006, 71 F.R. 70641, 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. This order shall be effective immediately.

## § 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.

### § 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.

## SUBCHAPTER II—VOLUNTARY SEPARATION INCENTIVE PAYMENTS

PRIOR PROVISIONS

A prior subchapter II of this chapter consisting of section 3551, related to restoration of positions of Federal and District of Columbia employees upon release from duty in Reserves or National Guard, prior to repeal by Pub. L. 103–353, §§ 2(b)(2)(B), 8, Oct. 13, 1994, 108 Stat. 3169, 3175, effective with respect to reemployments initiated on or after first day after 60-day period beginning Oct. 13, 1994, with transition rules.

### § 3521. Definitions

In this subchapter, the term—

(1) ''agency'' means an Executive agency as defined under section 105; and

(2) ''employee''—

(A) means an employee as defined under section 2105 employed by an agency and an individual employed by a county committee established under section 8(b)(5) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)(5)) who—

(i) is serving under an appointment without time limitation; and

(ii) has been currently employed for a continuous period of at least 3 years; and

(B) shall not include—

(i) a reemployed annuitant under subchapter III of chapter 83 or 84 or another retirement system for employees of the Government;

(ii) an employee having a disability on the basis of which such employee is or would be eligible for disability retirement under subchapter III of chapter 83 or 84 or another retirement system for employees of the Government;

(iii) an employee who is in receipt of a decision notice of involuntary separation for misconduct or unacceptable performance;

(iv) an employee who has previously received any voluntary separation incentive payment from the Federal Government under this subchapter or any other authority;

(v) an employee covered by statutory reemployment rights who is on transfer employment with another organization; or

(vi) any employee who—

(I) during the 36-month period preceding the date of separation of that employee, performed service for which a student loan repayment benefit was or is to be paid under section 5379;

(II) during the 24-month period preceding the date of separation of that employee, performed service for which a recruitment or relocation bonus was or is to be paid under section 5753; or

(III) during the 12-month period preceding the date of separation of that employee, performed service for which a retention bonus was or is to be paid under section 5754.

(Added Pub. L. 107–296, title XIII, § 1313(a)(1)(A), Nov. 25, 2002, 116 Stat. 2291.)

EFFECTIVE DATE

Pub. L. 107–296, title XIII, § 1313(a)(4), Nov. 25, 2002, 116 Stat. 2294, provided that: ''This subsection [enacting this subchapter and provisions set out as notes under this section] shall take effect 60 days after the date of enactment of this Act [Nov. 25, 2002].''

SMITHSONIAN INSTITUTION EMPLOYEES

Pub. L. 108–72, § 5, Aug. 15, 2003, 117 Stat. 889, provided that: ''The Secretary of the Smithsonian Institution may establish a program for making voluntary separation incentive payments for employees of the Smithsonian Institution which is substantially similar to the program established under subchapter II of chapter 35 of title 5, United States Code (as added by section 1313(a) of the Homeland Security Act of 2002 [Pub. L. 107–296]).''

JUDICIAL BRANCH EMPLOYEES

Pub. L. 107–296, title XIII, § 1313(a)(2), Nov. 25, 2002, 116 Stat. 2294, provided that: ''The Director of the Administrative Office of the United States Courts may, by regulation, establish a program substantially similar to the program established under paragraph (1) [enacting this subchapter] for individuals serving in the judicial branch.''

CONTINUATION OF OTHER AUTHORITY

Pub. L. 107–296, title XIII, § 1313(a)(3), Nov. 25, 2002, 116 Stat. 2294, provided that: ''Any agency exercising any voluntary separation incentive authority in effect on the effective date of this subsection [see Effective Date note above] may continue to offer voluntary separation incentives consistent with that authority until that authority expires.''

SENSE OF CONGRESS

Pub. L. 107–296, title XIII, § 1313(c), Nov. 25, 2002, 116 Stat. 2296, provided that: ''It is the sense of Congress that the implementation of this section [enacting this subchapter, amending sections 8336 and 8414 of this title, enacting provisions set out as notes under this section and section 8336 of this title, and repealing provisions set out as notes under sections 8336 and 8414 of this title] is intended to reshape the Federal workforce and not downsize the Federal workforce.''

## § 3522. Agency plans; approval

(a) Before obligating any resources for voluntary separation incentive payments, the head of each agency shall submit to the Office of Personnel Management a plan outlining the intended use of such incentive payments and a proposed organizational chart for the agency once such incentive payments have been completed.

(b) The plan of an agency under subsection (a) shall include—

(1) the specific positions and functions to be reduced or eliminated;

(2) a description of which categories of employees will be offered incentives;

(3) the time period during which incentives may be paid;

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

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

(c) The Director of the Office of Personnel Management shall review each agency's plan an[1] may make any appropriate modifications in the plan, in consultation with the Director of the Office of Management and Budget. A plan under this section may not be implemented without the approval of the Directive[2] of the Office of Personnel Management.

(Added Pub. L. 107–296, title XIII, § 1313(a)(1)(A), Nov. 25, 2002, 116 Stat. 2292.)

## § 3523. Authority to provide voluntary separation incentive payments

(a) A voluntary separation incentive payment under this subchapter may be paid to an employee only as provided in the plan of an agency established under section 3522.

(b) A voluntary incentive payment—

(1) shall be offered to agency employees on the basis of—

(A) 1 or more organizational units;

(B) 1 or more occupational series or levels;

(C) 1 or more geographical locations;

(D) skills, knowledge, or other factors related to a position;

(E) specific periods of time during which eligible employees may elect a voluntary incentive payment; or

[1] So in original. Probably should be ''and''.

[2] So in original. Probably should be ''Director''.

(F) any appropriate combination of such factors;

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

(3) 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 (without adjustment for any previous payment made); or

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

(4) may be made only in the case of an employee who voluntarily separates (whether by retirement or resignation) under this subchapter;

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

(6) shall not be taken into account in determining the amount of any severance pay to which the employee may be entitled under section 5595, based on another other[1] separation; and

(7) shall be paid from appropriations or funds available for the payment of the basic pay of the employee.

(Added Pub. L. 107–296, title XIII, § 1313(a)(1)(A), Nov. 25, 2002, 116 Stat. 2293.)

### § 3524. Effect of subsequent employment with the Government

(a) The term ''employment''—

(1) in subsection (b) includes employment under a personal services contract (or other direct contract) with the United States Government (other than an entity in the legislative branch); and

(2) in subsection (c) does not include employment under such a contract.

(b) An individual who has received a voluntary separation incentive payment under this subchapter and accepts any employment for compensation with the Government of the United States with[1] 5 years after the date of the separation on which the payment is based shall be required to pay, before the individual's first day of employment, the entire amount of the incentive payment to the agency that paid the incentive payment.

(c)(1) If the employment under this section is with an agency, other than the Government Accountability Office, the United States Postal Service, or the Postal Regulatory Commission, the Director of the Office of Personnel Management may, at the request of the head of the agency, may[2] waive the repayment if—

(A) the individual involved possesses unique abilities and is the only qualified applicant available for the position; or

(B) in case of an emergency involving a direct threat to life or property, the individual—

(i) has skills directly related to resolving the emergency; and

(ii) will serve on a temporary basis only so long as that individual's services are made necessary by the emergency.

(2) If the employment under this section 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.

(3) If the employment under this section 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. 107–296, title XIII, § 1313(a)(1)(A), Nov. 25, 2002, 116 Stat. 2293; amended Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814; Pub. L. 109–435, title VI, § 604(f), Dec. 20, 2006, 120 Stat. 3242.)

AMENDMENTS

2006—Subsec. (c)(1). Pub. L. 109–435 substituted ''Postal Regulatory Commission'' for ''Postal Rate Commission'' in introductory provisions.

2004—Subsec. (c)(1). Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office'' in introductory provisions.

### § 3525. Regulations

The Office of Personnel Management may prescribe regulations to carry out this subchapter.

(Added Pub. L. 107–296, title XIII, § 1313(a)(1)(A), Nov. 25, 2002, 116 Stat. 2294.)

PRIOR PROVISIONS

A prior section 3551, Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 429; Pub. L. 90–491, § 2, Aug. 17, 1968, 82 Stat. 791, related to restoration of positions of Federal and District of Columbia employees upon release from duty in Reserves or National Guard, prior to repeal by Pub. L. 103–353, §§ 2(b)(2)(B), 8, Oct. 13, 1994, 108 Stat. 3169, 3175, effective with respect to reemployments initiated on or after first day after 60-day period beginning Oct. 13, 1994, with transition rules.

## 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.

[1] So in original.

[1] So in original. Probably should be ''within''.

[2] So in original.

## 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.

### § 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 reemployed 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, an employee entitled to the benefits of subsection (a) is entitled to the rate of basic pay to which the employee would have been entitled had the employee remained in the civil service. On reemployment, the agency shall restore the sick leave account of the employee, by credit or charge, to its status at the time of transfer. The period of separation caused by the employment of the employee with the international organization and the period necessary to effect reemployment are deemed creditable service for all appropriate civil service employment purposes. This subsection does not apply to a congressional employee.

(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; Pub. L. 105–277, div. G, subdiv. B, title XXV, § 2504(a), Oct. 21, 1998, 112 Stat. 2681–837.)

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

1998—Subsec. (b). Pub. L. 105–277 inserted concluding provisions and struck out former concluding provisions which read as follows: "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."

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.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–277, div. G, subdiv. B, title XXV, § 2504(b), Oct. 21, 1998, 112 Stat. 2681–837, provided that: "The

amendment made by subsection (a) [amending this section] shall apply with respect to transfers that take effect on or after the date of enactment of this Act [Oct. 21, 1998].''

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.

### § 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.

SEC. 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

### § 3591. Definitions

For the purpose of this subchapter, ''agency'', ''Senior Executive Service position'', ''senior ex-

ecutive'', ''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, or

(2) at any time for less than fully successful executive performance as determined under subchapter II of chapter 43 of this title,

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.

(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; Pub. L. 107–296, title XIII, § 1321(a)(2)(A), Nov. 25, 2002, 116 Stat. 2297.)

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–296, § 1321(a)(2)(A)(iv), struck out last sentence which read as follows: ''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)(1). Pub. L. 107–296, § 1321(a)(2)(A)(i), inserted ''or'' at end.

Subsec. (a)(2). Pub. L. 107–296, § 1321(a)(2)(A)(ii), struck out ''or'' at end.

Subsec. (a)(3). Pub. L. 107–296, § 1321(a)(2)(A)(iii), struck out par. (3) which read as follows: ''if the career appointee is not recertified as a senior executive under section 3393a,''.

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 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

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.

SAVINGS PROVISION

Pub. L. 107–296, title XIII, § 1321(b), Nov. 25, 2002, 116 Stat. 2297, provided that: ''Notwithstanding the amendments made by subsection (a)(2)(A) [amending this section], an appeal under the final sentence of section 3592(a) of title 5, United States Code, that is pending on the day before the effective date of this section [see Effective Date of 2002 Amendment note above]—

''(1) shall not abate by reason of the enactment of the amendments made by subsection (a)(2)(A); and

''(2) shall continue as if such amendments had not been enacted.''

### § 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, or less than fully successful executive performance as determined under subchapter II of chapter 43.

(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; Pub. L. 107–296, title XIII, § 1321(a)(2)(B), Nov. 25, 2002, 116 Stat. 2297.)

AMENDMENTS

2002—Subsec. (a)(2). Pub. L. 107–296 added par. (2) and struck out former par. (2) which read as follows: ''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.''

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 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

Pub. L. 107–296, title XIII, § 1321(c), Nov. 25, 2002, 116 Stat. 2297, provided that: ''The amendment made by subsection (a)(2)(B) [amending this section] shall not apply with respect to an individual who, before the effective date of this section [see note above], leaves the Senior Executive Service for failure to be recertified as a senior executive under section 3393a of title 5, United States Code.''

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 3393 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; or

(2) is removed from the Senior Executive Service under paragraph (4) or (5) of section 3595(b) of this title;

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; Pub. L. 107–296, title XIII, § 1321(a)(2)(C), Nov. 25, 2002, 116 Stat. 2297.)

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

2002—Subsec. (b)(1). Pub. L. 107–296, § 1321(a)(2)(C)(i), inserted ''or'' at end.

Subsec. (b)(2). Pub. L. 107–296, § 1321(a)(2)(C)(ii), struck out ''or'' at end.

Subsec. (b)(3). Pub. L. 107–296, § 1321(a)(2)(C)(iii), struck out par. (3) which read as follows: ''is removed from the Senior Executive Service for failure to be recertified under section 3393a;''.

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 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

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 3393 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 Execu-

tive 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 3393 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.''

### § 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 3393 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 po-

sition 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.

## SUBCHAPTER VII—RETENTION OF RETIRED SPECIALIZED EMPLOYEES AT THE FEDERAL BUREAU OF INVESTIGATION

CODIFICATION

Pub. L. 108–447, div. B, title I, § 114(a), Dec. 8, 2004, 118 Stat. 2869, and Pub. L. 108–458, title II, § 2004(a), Dec. 17, 2004, 118 Stat. 3704, amended chapter identically adding subchapter VII heading.

### § 3598.[1] Federal Bureau of Investigation Reserve Service

(a) ESTABLISHMENT.—The Director of the Federal Bureau of Investigation may provide for the establishment and training of a Federal Bureau of Investigation Reserve Service (hereinafter in this section referred to as the ''FBI Reserve Service'') for temporary reemployment of employees in the Bureau during periods of emergency, as determined by the Director.

(b) MEMBERSHIP.—Membership in the FBI Reserve Service shall be limited to individuals who previously served as full-time employees of the Bureau.

(c) ANNUITANTS.—If an annuitant receiving an annuity from the Civil Service Retirement and Disability Fund becomes temporarily reemployed pursuant to this section, such annuity shall not be discontinued thereby. An annuitant so reemployed shall not be considered an employee for the purposes of chapter 83 or 84.

(d) NO IMPACT ON BUREAU PERSONNEL CEILING.—FBI Reserve Service members reemployed on a temporary basis pursuant to this section shall not count against any personnel ceiling applicable to the Bureau.

(e) EXPENSES.—The Director may provide members of the FBI Reserve Service transportation and per diem in lieu of subsistence, in accordance with applicable provisions of this title, for the purpose of participating in any training that relates to service as a member of the FBI Reserve Service.

(f) LIMITATION ON MEMBERSHIP.—Membership of the FBI Reserve Service is not to exceed 500 members at any given time.

(Added Pub. L. 108–447, div. B, title I, § 114(a), Dec. 8, 2004, 118 Stat. 2869.)

[1] Another section 3598 is set out after this section.

### § 3598.[1] Federal Bureau of Investigation Reserve Service

(a) ESTABLISHMENT.—The Director of the Federal Bureau of Investigation may provide for the establishment and training of a Federal Bureau of Investigation Reserve Service (hereinafter in this section referred to as the ''FBI Reserve Service'') for temporary reemployment of employees in the Bureau during periods of emergency, as determined by the Director.

(b) MEMBERSHIP.—Membership in the FBI Reserve Service shall be limited to individuals who previously served as full-time employees of the Bureau.

(c) ANNUITANTS.—If an individual receiving an annuity from the Civil Service Retirement and Disability Fund on the basis of such individual's service becomes temporarily reemployed pursuant to this section, such annuity shall not be discontinued thereby. An individual so reemployed shall not be considered an employee for the purposes of chapter 83 or 84.

(d) NO IMPACT ON BUREAU PERSONNEL CEILING.—FBI Reserve Service members reemployed on a temporary basis pursuant to this section shall not count against any personnel ceiling applicable to the Bureau.

(e) EXPENSES.—The Director may provide members of the FBI Reserve Service transportation and per diem in lieu of subsistence, in accordance with applicable provisions of this title, for the purpose of participating in any training that relates to service as a member of the FBI Reserve Service.

(f) LIMITATION ON MEMBERSHIP.—Membership of the FBI Reserve Service is not to exceed 500 members at any given time.

(g) LIMITATION ON DURATION OF SERVICE.—An individual may not be reemployed under this section for more than 180 days in connection with any particular emergency unless, in the judgment of the Director, the public interest so requires.

(Added Pub. L. 108–458, title II, § 2004(a), Dec. 17, 2004, 118 Stat. 3703.)

[1] Another section 3598 is set out preceding this section.

## CHAPTER 37—INFORMATION TECHNOLOGY EXCHANGE PROGRAM

Sec.
3701. Definitions.
3702. General provisions.
3703. Assignment of employees to private sector organizations.
3704. Assignment of employees from private sector organizations.
3705. Application to Office of the Chief Technology Officer of the District of Columbia.
3706. Reporting requirement.
3707. Regulations.

### § 3701. Definitions

For purposes of this chapter—

(1) the term ''agency'' means an Executive agency, but does not include the Government Accountability Office; and

(2) the term ''detail'' means—

(A) the assignment or loan of an employee of an agency to a private sector organization

without a change of position from the agency that employs the individual, or

(B) the assignment or loan of an employee of a private sector organization to an agency without a change of position from the private sector organization that employs the individual,

whichever is appropriate in the context in which such term is used.

(Added Pub. L. 107–347, title II, § 209(c)(1), Dec. 17, 2002, 116 Stat. 2925; amended Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814.)

AMENDMENTS

2004—Par. (1). Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office''.

EFFECTIVE DATE

Chapter effective 120 days after Dec. 17, 2002, see section 402(a) of Pub. L. 107–347, set out as a note under section 3601 of Title 44, Public Printing and Documents.

## § 3702. General provisions

(a) ASSIGNMENT AUTHORITY.—On request from or with the agreement of a private sector organization, and with the consent of the employee concerned, the head of an agency may arrange for the assignment of an employee of the agency to a private sector organization or an employee of a private sector organization to the agency. An eligible employee is an individual who—

(1) works in the field of information technology management;

(2) is considered an exceptional performer by the individual's current employer; and

(3) is expected to assume increased information technology management responsibilities in the future.

An employee of an agency shall be eligible to participate in this program only if the employee is employed at the GS–11 level or above (or equivalent) and is serving under a career or career-conditional appointment or an appointment of equivalent tenure in the excepted service, and applicable requirements of section 209(b) of the E-Government Act of 2002 are met with respect to the proposed assignment of such employee.

(b) AGREEMENTS.—Each agency that exercises its authority under this chapter shall provide for a written agreement between the agency and the employee concerned regarding the terms and conditions of the employee's assignment. In the case of an employee of the agency, the agreement shall—

(1) require the employee to serve in the civil service, upon completion of the assignment, for a period equal to the length of the assignment; and

(2) 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 agency from which assigned) the employee shall be liable to the United States for payment of all expenses of the assignment.

An amount under paragraph (2) shall be treated as a debt due the United States.

(c) TERMINATION.—Assignments may be terminated by the agency or private sector organization concerned for any reason at any time.

(d) DURATION.—Assignments under this chapter shall be for a period of between 3 months and 1 year, and may be extended in 3-month increments for a total of not more than 1 additional year, except that no assignment under this chapter may commence after the end of the 5-year period beginning on the date of the enactment of this chapter.

(e) ASSISTANCE.—The Chief Information Officers Council, by agreement with the Office of Personnel Management, may assist in the administration of this chapter, including by maintaining lists of potential candidates for assignment under this chapter, establishing mentoring relationships for the benefit of individuals who are given assignments under this chapter, and publicizing the program.

(f) CONSIDERATIONS.—In exercising any authority under this chapter, an agency shall take into consideration—

(1) the need to ensure that small business concerns are appropriately represented with respect to the assignments described in sections 3703 and 3704, respectively; and

(2) how assignments described in section 3703 might best be used to help meet the needs of the agency for the training of employees in information technology management.

(Added Pub. L. 107–347, title II, § 209(c)(1), Dec. 17, 2002, 116 Stat. 2925.)

REFERENCES IN TEXT

GS–11, referred to in subsec. (a), is contained in the General Schedule which is set out under section 5332 of this title.

Section 209(b) of the E-Government Act of 2002, referred to in subsec. (a), is section 209(b) of Pub. L. 107–347, which is set out in a note under section 3501 of Title 44, Public Printing and Documents.

The date of the enactment of this chapter, referred to in subsec. (d), is the date of enactment of Pub. L. 107–347, which was approved Dec. 17, 2002.

PILOT PROGRAM FOR THE TEMPORARY ASSIGNMENT OF INFORMATION TECHNOLOGY PERSONNEL TO PRIVATE SECTOR ORGANIZATIONS

Pub. L. 111–84, div. A, title XI, § 1110, Oct. 28, 2009, 123 Stat. 2493, provided that:

''(a) ASSIGNMENT AUTHORITY.—The Secretary of Defense may, with the agreement of the private sector organization concerned, arrange for the temporary assignment of an employee to such private sector organization, or from such private sector organization to a Department of Defense organization under this section. An employee shall be eligible for such an assignment only if—

''(1) the employee—

''(A) works in the field of information technology management;

''(B) is considered by the Secretary of Defense to be an exceptional employee;

''(C) is expected to assume increased information technology management responsibilities in the future; and

''(D) is compensated at not less than the GS–11 level (or the equivalent); and

''(2) the proposed assignment meets applicable requirements of section 209(b) of the E-Government Act of 2002 [Pub. L. 107–347] (44 U.S.C. 3501 note).

''(b) AGREEMENTS.—The Secretary of Defense shall provide for a written agreement among the Department of Defense, the private sector organization, and the employee concerned regarding the terms and conditions of the employee's assignment under this section. The agreement—

''(1) shall require that employees of the Department of Defense, upon completion of the assignment, will serve in the civil service for a period equal to the length of the assignment; and

''(2) shall provide that if the employee of the Department of Defense or of the private sector organization (as the case may be) fails to carry out the agreement, such employee shall be liable to the United States for payment of all expenses of the assignment, unless that failure was for good and sufficient reason, as determined by the Secretary of Defense.

An amount for which an employee is liable under paragraph (2) shall be treated as a debt due the United States.

''(c) TERMINATION.—An assignment under this section may, at any time and for any reason, be terminated by the Department of Defense or the private sector organization concerned.

''(d) DURATION.—An assignment under this section shall be for a period of not less than 3 months and not more than 1 year, and may be extended in 3-month increments for a total of not more than 1 additional year; however, no assignment under this section may commence after September 30, 2013.

''(e) TERMS AND CONDITIONS FOR PRIVATE SECTOR EMPLOYEES.—An employee of a private sector organization who is assigned to a Department of Defense organization under this section—

''(1) may continue to receive pay and benefits from the private sector organization from which such employee is assigned;

''(2) is deemed to be an employee of the Department of Defense for the purposes of—

''(A) chapter 73 of title 5, United States Code;

''(B) sections 201, 203, 205, 207, 208, 209, 603, 606, 607, 643, 654, 1905, and 1913 of title 18, United States Code;

''(C) sections 1343, 1344, and 1349(b) of title 31, United States Code;

''(D) the Federal Tort Claims Act [see Short Title note under section 2671 of Title 28, Judiciary and Judicial Procedure] and any other Federal tort liability statute;

''(E) the Ethics in Government Act of 1978 [5 U.S.C. App.];

''(F) section 1043 of the Internal Revenue Code of 1986 [26 U.S.C. 1043]; and

''(G) section 27 of the Office of Federal Procurement Policy Act [now 41 U.S.C. 2101 et seq.]; and

''(3) may not have access to any trade secrets or to any other nonpublic information which is of commercial value to the private sector organization from which such employee is assigned.

''(f) PROHIBITION AGAINST CHARGING CERTAIN COSTS TO THE FEDERAL GOVERNMENT.—A private sector organization may not charge the Department of Defense or any other agency of the Federal Government, as direct or indirect costs under a Federal contract, the costs of pay or benefits paid by the organization to an employee assigned to a Department of Defense organization under this section for the period of the assignment.

''(g) CONSIDERATIONS.—In carrying out this section, the Secretary of Defense—

''(1) shall ensure that, of the assignments made under this section each year, at least 20 percent are from small business concerns (as defined by section 3703(e)(2)(A) of title 5, United States Code); and

''(2) shall take into consideration the question of how assignments under this section might best be used to help meet the needs of the Department of Defense with respect to the training of employees in information technology management.

''(h) NUMERICAL LIMITATION.—In no event may more than 10 employees be participating in assignments under this section at any given time.

''(i) REPORTING REQUIREMENT.—For each of fiscal years 2010 through 2015, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives], not later than 1 month after the end of the fiscal year involved, a report on any activities carried out under this section during such fiscal year, including information concerning—

''(1) the respective organizations (as referred to in subsection (a)) to and from which any employee was assigned under this section;

''(2) the positions those employees held while they were so assigned;

''(3) a description of the tasks they performed while they were so assigned; and

''(4) a discussion of any actions that might be taken to improve the effectiveness of the program under this section, including any proposed changes in law.

''(j) REPEAL OF SUPERSEDED SECTION.—Section 1109 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181; 122 Stat. 358) [formerly set out as a note under this section] is repealed, except that—

''(1) nothing in this subsection shall, in the case of any assignment commencing under such section 1109 on or before the date of the enactment of this Act [Oct. 28, 2009], affect—

''(A) the duration of such assignment or the authority to extend such assignment in accordance with subsection (d) of such section 1109, as last in effect; or

''(B) the terms or conditions of the agreement governing such assignment, including with respect to any service obligation under subsection (b) thereof; and

''(2) any employee whose assignment is allowed to continue by virtue of paragraph (1) shall be taken into account for purposes of—

''(A) the numerical limitation under subsection (h); and

''(B) the reporting requirement under subsection (i).''

Pub. L. 110–181, div. A, title XI, § 1109, Jan. 28, 2008, 122 Stat. 358, which authorized the Secretary of Defense to arrange for the temporary assignment of a Department of Defense employee to a private sector organization under certain terms, conditions, and considerations, and for a limited period, and required the Secretary to submit to the Committees on Armed Services a report on the potential benefits of temporarily assigning information technology specialists from private sector organizations to the Department of Defense, was repealed, with certain exceptions, by Pub. L. 111–84, div. A, title XI, § 1110(j), Oct. 28, 2009, 123 Stat. 2495, see above.

## § 3703. Assignment of employees to private sector organizations

(a) IN GENERAL.—An employee of an agency assigned to a private sector organization under this chapter is deemed, during the period of the assignment, to be on detail to a regular work assignment in his agency.

(b) COORDINATION WITH CHAPTER 81.—Notwithstanding any other provision of law, an employee of an agency assigned to a private sector organization under this chapter is entitled to retain coverage, rights, and benefits under subchapter I of chapter 81, and employment during the assignment is deemed employment by the United States, except that, if the employee or the employee's dependents receive from the private sector organization any payment under an insurance policy for which the premium is wholly paid by the private sector organization, or other benefit of any kind on account of the same injury or death, then, the amount of such payment or benefit shall be credited against any compensation otherwise payable under subchapter I of chapter 81.

(c) REIMBURSEMENTS.—The assignment of an employee to a private sector organization under

this chapter may be made with or without reimbursement by the private sector organization for the travel and transportation expenses to or from the place of assignment, subject to the same terms and conditions as apply with respect to an employee of a Federal agency or a State or local government under section 3375, and for the pay, or a part thereof, of the employee during assignment. Any reimbursements shall be credited to the appropriation of the agency used for paying the travel and transportation expenses or pay.

(d) TORT LIABILITY; SUPERVISION.—The Federal Tort Claims Act and any other Federal tort liability statute apply to an employee of an agency assigned to a private sector organization under this chapter. The supervision of the duties of an employee of an agency so assigned to a private sector organization may be governed by an agreement between the agency and the organization.

(e) SMALL BUSINESS CONCERNS.—

(1) IN GENERAL.—The head of each agency shall take such actions as may be necessary to ensure that, of the assignments made under this chapter from such agency to private sector organizations in each year, at least 20 percent are to small business concerns.

(2) DEFINITIONS.—For purposes of this subsection—

(A) the term ''small business concern'' means a business concern that satisfies the definitions and standards specified by the Administrator of the Small Business Administration under section 3(a)(2) of the Small Business Act (as from time to time amended by the Administrator);

(B) the term ''year'' refers to the 12-month period beginning on the date of the enactment of this chapter, and each succeeding 12-month period in which any assignments under this chapter may be made; and

(C) the assignments ''made'' in a year are those commencing in such year.

(3) REPORTING REQUIREMENT.—An agency which fails to comply with paragraph (1) in a year shall, within 90 days after the end of such year, submit a report to the Committees on Government Reform and Small Business of the House of Representatives and the Committees on Governmental Affairs and Small Business of the Senate. The report shall include—

(A) the total number of assignments made under this chapter from such agency to private sector organizations in the year;

(B) of that total number, the number (and percentage) made to small business concerns; and

(C) the reasons for the agency's noncompliance with paragraph (1).

(4) EXCLUSION.—This subsection shall not apply to an agency in any year in which it makes fewer than 5 assignments under this chapter to private sector organizations.

(Added Pub. L. 107–347, title II, § 209(c)(1), Dec. 17, 2002, 116 Stat. 2926.)

REFERENCES IN TEXT

The Federal Tort Claims Act, referred to in subsec. (d), is title IV of act Aug. 2, 1946, ch. 753, 60 Stat. 842, which was classified principally to chapter 20 (§§ 921, 922, 931–934, 941–946) of former Title 28, Judicial Code and Judiciary. Title IV of act Aug. 2, 1946, was substantially repealed and reenacted as sections 1346(b) and 2671 et seq. of Title 28, Judiciary and Judicial Procedure, by act June 25, 1948, ch. 646, 62 Stat. 992, the first section of which enacted Title 28. The Federal Tort Claims Act is also commonly used to refer to chapter 171 of Title 28, Judiciary and Judicial Procedure. For complete classification of title IV to the Code, see Tables. For distribution of former sections of Title 28 into the revised Title 28, see Table at the beginning of Title 28.

Section 3(a)(2) of the Small Business Act, referred to in subsec. (e)(2)(A), is classified to section 632(a)(2) of Title 15, Commerce and Trade.

The date of the enactment of this chapter, referred to in subsec. (e)(2)(B), is the date of enactment of Pub. L. 107–347, which was approved Dec. 17, 2002.

CHANGE OF NAME

Committee on Government Reform of House of Representatives changed to Committee on Oversight and Government Reform of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007.

Committee on Governmental Affairs of Senate changed to Committee on Homeland Security and Governmental Affairs of Senate, effective Jan. 4, 2005, by Senate Resolution No. 445, One Hundred Eighth Congress, Oct. 9, 2004.

Committee on Small Business of Senate changed to Committee on Small Business and Entrepreneurship of Senate. See Senate Resolution No. 123, One Hundred Seventh Congress, June 29, 2001.

## § 3704. Assignment of employees from private sector organizations

(a) IN GENERAL.—An employee of a private sector organization assigned to an agency under this chapter is deemed, during the period of the assignment, to be on detail to such agency.

(b) TERMS AND CONDITIONS.—An employee of a private sector organization assigned to an agency under this chapter—

(1) may continue to receive pay and benefits from the private sector organization from which he is assigned;

(2) is deemed, notwithstanding subsection (a), to be an employee of the agency for the purposes of—

(A) chapter 73;

(B) sections 201, 203, 205, 207, 208, 209, 603, 606, 607, 643, 654, 1905, and 1913 of title 18;

(C) sections 1343, 1344, and 1349(b) of title 31;

(D) the Federal Tort Claims Act and any other Federal tort liability statute;

(E) the Ethics in Government Act of 1978;

(F) section 1043 of the Internal Revenue Code of 1986; and

(G) chapter 21 of title 41;

(3) may not have access to any trade secrets or to any other nonpublic information which is of commercial value to the private sector organization from which he is assigned; and

(4) is subject to such regulations as the President may prescribe.

The supervision of an employee of a private sector organization assigned to an agency under this chapter may be governed by agreement between the agency and the private sector organization concerned. Such an assignment may be

made with or without reimbursement by the agency for the pay, or a part thereof, of the employee during the period of assignment, or for any contribution of the private sector organization to employee benefit systems.

(c) COORDINATION WITH CHAPTER 81.—An employee of a private sector organization assigned to an agency under this chapter who suffers disability or dies as a result of personal injury sustained while performing duties during the assignment shall be treated, for the purpose of subchapter I of chapter 81, as an employee as defined by section 8101 who had sustained the injury in the performance of duty, except that, if the employee or the employee's dependents receive from the private sector organization any payment under an insurance policy for which the premium is wholly paid by the private sector organization, or other benefit of any kind on account of the same injury or death, then, the amount of such payment or benefit shall be credited against any compensation otherwise payable under subchapter I of chapter 81.

(d) PROHIBITION AGAINST CHARGING CERTAIN COSTS TO THE FEDERAL GOVERNMENT.—A private sector organization may not charge the Federal Government, as direct or indirect costs under a Federal contract, the costs of pay or benefits paid by the organization to an employee assigned to an agency under this chapter for the period of the assignment.

(Added Pub. L. 107–347, title II, § 209(c)(1), Dec. 17, 2002, 116 Stat. 2928; amended Pub. L. 111–350, § 5(a)(6), Jan. 4, 2011, 124 Stat. 3841.)

REFERENCES IN TEXT

The Federal Tort Claims Act, referred to in subsec. (b)(2)(D), is title IV of act Aug. 2, 1946, ch. 753, 60 Stat. 842, which was classified principally to chapter 20 (§§ 921, 922, 931–934, 941–946) of former Title 28, Judicial Code and Judiciary. Title IV of act Aug. 2, 1946, was substantially repealed and reenacted as sections 1346(b) and 2671 et seq. of Title 28, Judiciary and Judicial Procedure, by act June 25, 1948, ch. 646, 62 Stat. 992, the first section of which enacted Title 28. The Federal Tort Claims Act is also commonly used to refer to chapter 171 of Title 28, Judiciary and Judicial Procedure. For complete classification of title IV to the Code, see Tables. For distribution of former sections of Title 28 into the revised Title 28, see Table at the beginning of Title 28.

The Ethics in Government Act of 1978, referred to in subsec. (b)(2)(E), is Pub. L. 95–521, Oct. 26, 1978, 92 Stat. 1824. 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.

Section 1043 of the Internal Revenue Code of 1986, referred to in subsec. (b)(2)(F), is classified to section 1043 of Title 26, Internal Revenue Code.

AMENDMENTS

2011—Subsec. (b)(2)(G). Pub. L. 111–350 substituted "chapter 21 of title 41" for "section 27 of the Office of Federal Procurement Policy Act".

## § 3705. Application to Office of the Chief Technology Officer of the District of Columbia

(a) IN GENERAL.—The Chief Technology Officer of the District of Columbia may arrange for the assignment of an employee of the Office of the Chief Technology Officer to a private sector organization, or an employee of a private sector organization to such Office, in the same manner as the head of an agency under this chapter.

(b) TERMS AND CONDITIONS.—An assignment made pursuant to subsection (a) shall be subject to the same terms and conditions as an assignment made by the head of an agency under this chapter, except that in applying such terms and conditions to an assignment made pursuant to subsection (a), any reference in this chapter to a provision of law or regulation of the United States shall be deemed to be a reference to the applicable provision of law or regulation of the District of Columbia, including the applicable provisions of the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (sec. 1–601.01 et seq., D.C. Official Code) and section 601 of the District of Columbia Campaign Finance Reform and Conflict of Interest Act (sec. 1–1106.01, D.C. Official Code).

(c) DEFINITION.—For purposes of this section, the term "Office of the Chief Technology Officer" means the office established in the executive branch of the government of the District of Columbia under the Office of the Chief Technology Officer Establishment Act of 1998 (sec. 1–1401 et seq., D.C. Official Code).

(Added Pub. L. 107–347, title II, § 209(c)(1), Dec. 17, 2002, 116 Stat. 2929.)

REFERENCES IN TEXT

The District of Columbia Government Comprehensive Merit Personnel Act of 1978, referred to in subsec. (b), is an act of the District of Columbia and is not classified to the Code.

The District of Columbia Campaign Finance Reform and Conflict of Interest Act, referred to in subsec. (b), is Pub. L. 93–376, Aug. 14, 1974, 88 Stat. 447, as amended, which is not classified to the Code.

The Office of the Chief Technology Officer Establishment Act of 1998, referred to in subsec. (c), is an act of the District of Columbia and is not classified to the Code.

## § 3706. Reporting requirement

(a) IN GENERAL.—The Office of Personnel Management shall, not later than April 30 and October 31 of each year, prepare and submit to the Committee on Government Reform of the House of Representatives and the Committee on Governmental Affairs of the Senate a semiannual report summarizing the operation of this chapter during the immediately preceding 6-month period ending on March 31 and September 30, respectively.

(b) CONTENT.—Each report shall include, with respect to the 6-month period to which such report relates—

(1) the total number of individuals assigned to, and the total number of individuals assigned from, each agency during such period;

(2) a brief description of each assignment included under paragraph (1), including—

(A) the name of the assigned individual, as well as the private sector organization and the agency (including the specific bureau or other agency component) to or from which such individual was assigned;

(B) the respective positions to and from which the individual was assigned, including the duties and responsibilities and the pay grade or level associated with each; and

(C) the duration and objectives of the individual's assignment; and

(3) such other information as the Office considers appropriate.

(c) PUBLICATION.—A copy of each report submitted under subsection (a)—

(1) shall be published in the Federal Register; and

(2) shall be made publicly available on the Internet.

(d) AGENCY COOPERATION.—On request of the Office, agencies shall furnish such information and reports as the Office may require in order to carry out this section.

(Added Pub. L. 107–347, title II, § 209(c)(1), Dec. 17, 2002, 116 Stat. 2929.)

CHANGE OF NAME

Committee on Government Reform of House of Representatives changed to Committee on Oversight and Government Reform of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007.

Committee on Governmental Affairs of Senate changed to Committee on Homeland Security and Governmental Affairs of Senate, effective Jan. 4, 2005, by Senate Resolution No. 445, One Hundred Eighth Congress, Oct. 9, 2004.

### § 3707. Regulations

The Director of the Office of Personnel Management shall prescribe regulations for the administration of this chapter.

(Added Pub. L. 107–347, title II, § 209(c)(1), Dec. 17, 2002, 116 Stat. 2930.)

## 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. Academic degree training.
4108. Employee agreements; service after training.
4109. Expenses of training.
4110. Expenses of attendance at meetings.
4111. Acceptance of contributions, awards, and other payments.
4112. Absorption of costs within funds available.
[4113. Repealed.]
[4114. Repealed.]
4115. Collection of training information.
4116. Training program assistance.
4117. Administration.
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4119. Training for employees under the Office of the Architect of the Capitol and the Botanic Garden.
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4121. Specific training programs.

AMENDMENTS

2004—Pub. L. 108–411, title II, § 201(b)(2), Oct. 30, 2004, 118 Stat. 2312, added item 4121.

2003—Pub. L. 108–7, div. H, title I, § 1010(b), Feb. 20, 2003, 117 Stat. 360, added item 4120.

2002—Pub. L. 107–296, title XIII, § 1331(b), Nov. 25, 2002, 116 Stat. 2299, substituted ''Academic degree training'' for ''Restriction on degree training'' in item 4107.

1995—Pub. L. 104–66, title II, § 2181(c)(2), Dec. 21, 1995, 109 Stat. 732, struck out item 4113 ''Agency review of training needs; annual program reports''.

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.

### § 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.

## § 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.<br>May 26, 1959, Pub. L. 86–33, 73 Stat. 62.<br>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 Attorneys 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.

## § 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.

(c) The head of each agency shall, on a regular basis—

(1) evaluate each program or plan established, operated, or maintained under subsection (a) with respect to accomplishing specific performance plans and strategic goals in performing the agency mission; and

(2) modify such program or plan as needed to accomplish such plans and goals.

(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; Pub. L. 108–411, title II, § 201(a), Oct. 30, 2004, 118 Stat. 2311.)

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

2004—Subsec. (c). Pub. L. 108–411 added subsec. (c).

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.

OPTIONAL PARTICIPATION OF FEDERAL EMPLOYEES IN AIDS TRAINING PROGRAMS

Pub. L. 104–146, §9, May 20, 1996, 110 Stat. 1373, provided that:

''(a) IN GENERAL.—Notwithstanding any other provision of law, a Federal employee may not be required to attend or participate in an AIDS or HIV training program if such employee refuses to consent to such attendance or participation, except for training necessary to protect the health and safety of the Federal employee and the individuals served by such employees. An employer may not retaliate in any manner against such an employee because of the refusal of such employee to consent to such attendance or participation.

''(b) DEFINITION.—As used in subsection (a), the term 'Federal employee' has the same meaning given the term 'employee' in section 2105 of title 5, United States Code, and such term shall include members of the armed forces.''

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.

DEPARTMENT OF HOMELAND SECURITY

Exception from provisions of subsec. (a)(1) of this section of those elements of the Department of Homeland Security that are supervised by the Under Secretary of Homeland Security for Information Analysis and Infrastructure Protection through the Department's Assistant Secretary for Information Analysis, see Ex. Ord. No. 13286, §86, Feb. 28, 2003, 68 F.R. 10632, set out as a note under section 111 of Title 6, Domestic Security.

CENTRAL INTELLIGENCE AGENCY

Exception of Central Intelligence Agency from certain provisions of subsec. (a)(1) of this section, 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.

EX. ORD. NO. 13111. USING TECHNOLOGY TO IMPROVE TRAINING OPPORTUNITIES FOR FEDERAL GOVERNMENT EMPLOYEES

Ex. Ord. No. 13111, Jan. 12, 1999, 64 F.R. 2793, as amended by Ex. Ord. No. 13188, Jan. 12, 2001, 66 F.R. 5419; Ex. Ord. No. 13218, §3(a), June 20, 2001, 66 F.R. 33628; Ex. Ord. No. 13316, §3(a), Sept. 17, 2003, 68 F.R. 55255, provided:

Advances in technology and increased skills needs are changing the workplace at an ever increasing rate. These advances can make Federal employees more productive and provide improved service to our customers, the American taxpayers. We need to ensure that we continue to train Federal employees to take full advantage of these technological advances and to acquire the skills and learning needed to succeed in a changing workplace. A coordinated Federal effort is needed to provide flexible training opportunities to employees and to explore how Federal training programs, initiatives, and policies can better support lifelong learning through the use of learning technology.

To help us meet these goals, I am creating a task force on Federal training technology, directing Federal agencies to take certain steps to enhance employees' training opportunities through the use of training technology, and an advisory committee on the use of training technology, which also will explore options for financing the training and post-secondary education needed to upgrade skills and gain new knowledge.

Therefore, by the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Advisory Committee Act, as amended (5 U.S.C. App.), and in furtherance of the purposes of Chapter 41 of title 5, United States Code, the Government Employees Training Act of 1958 (Public Law 85–507 [see Tables for classification]), as amended, and Executive Order 11348, ''Providing for the Further Training of Government Employees,'' [set out above] and in order to make effective use of technology to improve training opportunities for Federal Government employees, it is ordered as follows:

SECTION 1. *Establishment of the President's Task Force on Federal Training Technology*. (a) The ''President's Task Force on Federal Training Technology'' (Task Force) is established. The Task Force shall provide leadership regarding the effective use of technology in training and education; make training opportunities an integral part of continuing employment in the Federal Government; and facilitate the ongoing coordination of Federal activities concerning the use of technology in training. The Task Force shall consist of the heads of the following departments and agencies or their representatives: the Departments of State, the Treasury, Defense, Justice, Interior, Agriculture, Commerce, Labor, Health and Human Services, Housing and Urban Development, Transportation, Energy, and Education; the Office of Personnel Management, General Services Administration, Environmental Protection Agency, National Aeronautics and Space and Administration, Small Business Administration, and Social Security Administration; a representative from the Small Agency Council; and representatives from other relevant agencies and related Federal councils, as determined by the Chair and Vice Chair of the Task Force.

(b) Within 30 days of the date of this order, the head of each agency or council shall designate a senior official to serve as a representative to the Task Force. The representative shall report directly to the agency head or the President's Management Council member on the agency's or council's activities under this order.

(c) The Director of the Office of Personnel Management (OPM) shall be the Chair and the representative from the Department of Labor shall be the Vice Chair of the Task Force.

(d) The Chair and Vice Chair shall appoint an Executive Director.

(e) The Task Force member agencies shall provide any required staffing and funding, as appropriate.

SEC. 2. *Duties of the Task Force*. (a) Within 18 months of the date of this order, the Task Force shall develop and recommend to the President, through the Assistant to the President for Economic Policy and the Assistant to the President for Science and Technology, a policy to make effective use of technology to improve training opportunities for Federal Government employees. The policy should promote and integrate the effective use of training technologies to create affordable and convenient training opportunities to improve Federal employee performance. The Task Force shall seek the views of experts from industry, academia, and State and local governments as the Task Force proceeds, as appropriate. Specifically, the Task Force shall:

(1) develop strategies to improve the efficiency and availability of training opportunities for Federal Government employees;

(2) form partnerships among key Federal agencies, State and local governments, businesses, universities, and other appropriate entities to promote the development and use of high-quality training opportunities;

(3) analyze the use of technology in existing training programs and policies of the Task Force member agencies to determine what changes, modifications, and innovations may be necessary to advance training opportunities;

(4) in consultation with the Department of Defense and the National Institute of Standards and Technology, recommend standards for training software and associated services purchased by Federal agencies and contractors. These standards should be consistent with voluntary industry consensus-based commercial standards. Agencies, where appropriate, should use these standards in procurements to promote reusable training component software and thereby reduce duplication in the development of courseware;

(5) evaluate and, where appropriate, coordinate and collaborate on, research and demonstration activities of Task Force member agencies related to Federal training technology;

(6) identify and support cross-agency training areas that would particularly benefit from new instructional technologies and facilitate multiagency procurement and use of training materials, where appropriate;

(7) in consultation with the General Services Administration, the Office of Personnel Management, and the Office of Federal Procurement Policy of the Office of Management and Budget (OFPP), promote existing and new procurement vehicles that allow agencies to provide innovative training opportunities for Federal employees;

(8) recommend changes that may be needed to existing procurement laws to further the objectives of this order and forward the recommendations to the Administrator of OFPP; and

(b) develop options and recommendations for establishing a Federal Individual Training Account for each

Federal worker for training relevant to his or her Federal employment. To the extent permitted by law, such accounts may be established with the funds allocated to the agency for employee training. Approval for training would be within the discretion of the individual employee's manager. Options and recommendations shall be reported no later than 6 months from the date of this order.

SEC. 3. *Duties of All Federal Agencies*. (a) Each Federal agency shall, to the extent permitted by law:

(1) include as part of its annual budget process a set of goals to provide the highest quality and most efficient training opportunities possible to its employees, and a set of performance measures of the quality and availability of training opportunities possible to its employees. Such measures should be, where appropriate, based on outcomes related to performance rather than time allocation;

(2) identify the resources necessary to achieve the aforementioned goals and performance measures articulated in its annual performance plan;

(3) and, where practicable, use the standards recommended by the Task Force and published by the Office of Personnel Management for purchasing training software and associated services; and

(4) subject to the availability of appropriations, post training courses, information, and other learning opportunities on the Department of Labor's America's Learning Exchange (ALX), or other appropriate information dissemination vehicles as determined by the Task Force, to make information about Federal training courses, information, and other learning opportunities widely available to Federal employees.

(b) Each Federal agency, to the extent permitted by law, is encouraged to consider how savings achieved through the efficient use of training technology can be reinvested in improved training for their employees.

SEC. 4. *Duties of Specific Federal Agencies*. (a) In light of the Office of Personnel Management's responsibility for developing Government-wide training policy, coordinating and managing training policy programs, and providing technical assistance to Federal agencies, the Office of Personnel Management or other appropriate agency as determined by the Task Force shall:

(1) in consultation with the Task Force, the Department of Defense, the National Institute of Standards and Technology, the Department of Labor, and other appropriate agencies as determined by OPM, publish the standards for training software and associated services recommended by the Task Force; and

(2) ensure that qualification standards for civil service positions, where appropriate, reflect standard industry certification practices.

(b) The Department of Labor or other appropriate agency as determined by the Task Force shall, subject to the availability of appropriations:

(1) establish a specialized database for Federal training within the framework of the Department of Labor's ALX, or other appropriate information dissemination vehicles determined by the Task Force, to make information about Federal training courses, information, and other learning opportunities widely available to Federal employees;

(2) establish and maintain a training technology website for agencies to post training needs and to foster communication among the agencies and between public and private sector organizations to identify and meet common needs; and

(3) establish a staffed help desk and technology resource center to support Federal agencies using training technology and to facilitate the development of online training courses.

(c) The Department of Defense or other appropriate agency as determined by the Task Force shall:

(1) in consultation with the National Institute of Standards and Technology, lead Federal participation in business and university organizations charged with developing consensus standards for training software and associated services and lead the Federal review of the standards; and

(2) provide guidance to Defense agencies and advise the civilian agencies, as appropriate, on how best to use these standards for large-scale development and implementation of efficient and effective distributed learning technologies.

(d) Each Executive department shall designate at least one subject area of training that it will use to demonstrate opportunities in technology-based training and assign an agency leader in the designated area. Leaders in these training technology experiments shall work closely with other agencies with similar training interests. Each Executive department shall develop a plan for measuring and evaluating the effectiveness, cost-effectiveness, and benefits to employees and the agency for each designated subject area.

[SECS. 5 to 7. Revoked by Ex. Ord. No. 13316, § 3(a), Sept. 17, 2003, 68 F.R. 55255, eff. Sept. 30, 2003.]

SEC. 8. *Definitions*. (a) As used in this order, the terms ''agency,'' ''employee,'' ''Government,'' and ''training'' have the meaning given to those terms, respectively, by section 4101 of title 5, United States Code.

(b) The term ''technology,'' means any equipment or interconnected system or subsystem of equipment that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information, including computers, ancillary equipment, software, firmware and similar procedures, services (including support services), and related resources. For purposes of the preceding sentence, equipment is used by an Executive agency if the equipment is used by the Executive agency directly or is used by a contractor under a contract with the Executive agency that requires the use of such equipment. The term ''technology'' does not include any equipment that is acquired by a Federal contractor incidental to a Federal contract.

SEC. 9. *Judicial Review*. This order does not create any enforceable rights against the United States, its agencies, its officers, or any person.

## § 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.

### § 4105. Non-Government facilities; use of

The head of an agency, without regard to section 6101(b) to (d) 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; Pub. L. 111–350, § 5(a)(7), Jan. 4, 2011, 124 Stat. 3841.)

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

2011—Pub. L. 111–350 substituted ''section 6101(b) to (d) of title 41'' for ''section 5 of title 41''.

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.''

### [§ 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. Academic degree training

(a) Subject to subsection (b), an agency may select and assign an employee to academic degree training and may pay or reimburse the costs of academic degree training from appropriated or other available funds if such training—

(1) contributes significantly to—

(A) meeting an identified agency training need;

(B) resolving an identified agency staffing problem; or

(C) accomplishing goals in the strategic plan of the agency;

(2) is part of a planned, systemic, and coordinated agency employee development program linked to accomplishing the strategic goals of the agency; and

(3) is accredited and is provided by a college or university that is accredited by a nationally recognized body.

(b) In exercising authority under subsection (a), an agency shall—

(1) consistent with the merit system principles set forth in paragraphs (2) and (7) of section 2301(b), take into consideration the need to—

(A) maintain a balanced workforce in which women, members of racial and ethnic minority groups, and persons with disabilities are appropriately represented in Government service; and

(B) provide employees effective education and training to improve organizational and individual performance;

(2) assure that the training is not for the sole purpose of providing an employee an opportunity to obtain an academic degree or qualify for appointment to a particular position for which the academic degree is a basic requirement;

(3) assure that no authority under this subsection is exercised on behalf of any employee occupying or seeking to qualify for—

(A) a noncareer appointment in the senior Executive Service; or

(B) appointment to any position that is excepted from the competitive service because of its confidential policy-determining, policy-making or policy-advocating character; and

(4) to the greatest extent practicable, facilitate the use of online degree training.

(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; Pub. L. 106–398, § 1 [[div. A], title XI, § 1121], Oct. 30, 2000, 114 Stat. 1654, 1654A–315; Pub. L. 107–296, title XIII, § 1331(a), Nov. 25, 2002, 116 Stat. 2298.)

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

2002—Pub. L. 107–296 amended section catchline and text generally, substituting provisions authorizing selection and assignment of employees for academic degree training and payment or reimbursement of costs, for provisions relating to restrictions on degree training or the payment or reimbursement of the costs of training and provisions setting forth exceptions and special rules with respect to employees of the Department of Defense.

2000—Subsec. (a). Pub. L. 106–398, § 1 [[div. A], title XI, § 1121(1)], substituted ''subsections (b) and (c)'' for ''subsection (b)'' in introductory provisions.

Subsec. (b)(1). Pub. L. 106–398, § 1 [[div. A], title XI, § 1121(2)], substituted ''subsection (a) or (c)'' for ''subsection (a)''.

Subsec. (c). Pub. L. 106–398, § 1 [[div. A], title XI, § 1121(3)], added subsec. (c).

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).

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

## § 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.

(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; Pub. L. 107–347, title II, § 209(g)(1)(B), Dec. 17, 2002, 116 Stat. 2932.)

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

2002—Subsec. (d). Pub. L. 107–347 struck out subsec. (d) which read as follows: ''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.''

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).

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–347 effective 120 days after Dec. 17, 2002, see section 402(a) of Pub. L. 107–347, set out as an Effective Date note under section 3601 of Title 44, Public Printing and Documents.

DEPARTMENT OF HOMELAND SECURITY

Exception from provisions of this section of those elements of the Department of Homeland Security that are supervised by the Under Secretary of Homeland Security for Information Analysis and Infrastructure Protection through the Department's Assistant Secretary for Information Analysis, see Ex. Ord. No. 13286, § 86, Feb. 28, 2003, 68 F.R. 10632, set out as a note under section 111 of Title 6, Domestic Security.

CENTRAL INTELLIGENCE AGENCY

Exception of Central Intelligence Agency from provisions of this section, 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.

(d) Notwithstanding subsection (a)(1), a firefighter who is subject to section 5545b of this title shall be paid basic pay and overtime pay for the firefighter's regular tour of duty while attending agency sanctioned training.

(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; Pub. L. 105–277, div. A, § 101(h) [title VI, § 628(c)], Oct. 21, 1998, 112 Stat. 2681–480, 2681–521.)

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

1998—Subsec. (d). Pub. L. 105–277 added subsec. (d).

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 1998 AMENDMENT

Pub. L. 105–277, div. A, § 101(h) [title VI, § 628(e)], Oct. 21, 1998, 112 Stat. 2681–480, 2681–521, provided that: "The

amendments made by this section [enacting section 5545b of this title and amending this section and sections 5542 and 8331 of this title] shall take effect on the first day of the first applicable pay period which begins on or after October 1, 1998.''

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.

DEPARTMENT OF HOMELAND SECURITY

Exception from introductory provisions of subsec. (a) of this section of those elements of the Department of Homeland Security that are supervised by the Under Secretary of Homeland Security for Information Analysis and Infrastructure Protection through the Department's Assistant Secretary for Information Analysis, see Ex. Ord. No. 13286, § 86, Feb. 28, 2003, 68 F.R. 10632, set out as a note under section 111 of Title 6, Domestic Security.

CENTRAL INTELLIGENCE AGENCY

Exception of Central Intelligence Agency from certain introductory provisions of subsec. (a) of this section, see Ex. Ord. No. 10805, Feb. 18, 1959, 24 F.R. 1301, set out as a note under section 4102 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.

## § 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.

## § 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. Repealed. Pub. L. 104–66, title II, § 2181(c)(1), Dec. 21, 1995, 109 Stat. 732]

Section, 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, related to agency review of training needs and annual program reports.

### [§ 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.

DEPARTMENT OF HOMELAND SECURITY

Exception from provisions of this section of those elements of the Department of Homeland Security that are supervised by the Under Secretary of Homeland Security for Information Analysis and Infrastructure Protection through the Department's Assistant Secretary for Information Analysis, see Ex. Ord. No. 13286, § 86, Feb. 28, 2003, 68 F.R. 10632, set out as a note under section 111 of Title 6, Domestic Security.

CENTRAL INTELLIGENCE AGENCY

Exception of Central Intelligence Agency from provisions of this section, 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.

DEPARTMENT OF HOMELAND SECURITY

Exception from provisions of this section of those elements of the Department of Homeland Security that are supervised by the Under Secretary of Homeland Security for Information Analysis and Infrastructure Protection through the Department's Assistant Secretary for Information Analysis, see Ex. Ord. No. 13286, § 86, Feb. 28, 2003, 68 F.R. 10632, set out as a note under section 111 of Title 6, Domestic Security.

CENTRAL INTELLIGENCE AGENCY

Exception of Central Intelligence Agency from certain provisions of this section, 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.

DEPARTMENT OF HOMELAND SECURITY

Exception from provisions of this section of those elements of the Department of Homeland Security that are supervised by the Under Secretary of Homeland Security for Information Analysis and Infrastructure Protection through the Department's Assistant Secretary for Information Analysis, see Ex. Ord. No. 13286, § 86, Feb. 28, 2003, 68 F.R. 10632, set out as a note under section 111 of Title 6, Domestic Security.

CENTRAL INTELLIGENCE AGENCY

Exception of Central Intelligence Agency from provisions of this section, see Ex. Ord. No. 10805, Feb. 18, 1959, 24 F.R. 1301, set out as a note under section 4102 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.)

### § 4120. Training for employees of the Capitol Police

(a) The Chief of the Capitol Police may, by regulation, make applicable such provisions of this chapter as the Chief determines necessary to provide for training of employees of the Capitol Police. The regulations shall provide for training which, in the determination of the Chief, is consistent with the training provided by agencies under the preceding sections of this chapter.

(b) The Office of Personnel Management shall provide the Chief of the Capitol Police with such advice and assistance as the Chief may request in order to enable the Chief to carry out the purposes of this section.

(Added Pub. L. 108–7, div. H, title I, § 1010(a), Feb. 20, 2003, 117 Stat. 360.)

### § 4121. Specific training programs

In consultation with the Office of Personnel Management, the head of each agency shall establish—

(1) a comprehensive management succession program to provide training to employees to develop managers for the agency; and

(2) a program to provide training to managers on actions, options, and strategies a manager may use in—

(A) relating to employees with unacceptable performance;

(B) mentoring employees and improving employee performance and productivity; and

(C) conducting employee performance appraisals.

(Added Pub. L. 108–411, title II, § 201(b)(1), Oct. 30, 2004, 118 Stat. 2311.)

## 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.
4305. Regulations.

SUBCHAPTER II—PERFORMANCE APPRAISAL IN THE SENIOR EXECUTIVE SERVICE

4311. Definitions.
4312. Senior Executive Service performance appraisal systems.
4313. Criteria for performance appraisals.
4314. Ratings for performance appraisals.
4315. Regulations.

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.

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 National Geospatial-Intelligence Agency, the Na-

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

tional 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 Government Accountability 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; Pub. L. 104–201, div. A, title XI, § 1122(a)(1), Sept. 23, 1996, 110 Stat. 2687; Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814; Pub. L. 110–417, [div. A], title IX, § 931(a)(1), Oct. 14, 2008, 122 Stat. 4575.)

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.<br>Sept. 1, 1954, ch. 1208, § 601(a), 68 Stat. 1115.<br>June 17, 1957, Pub. L. 85–56, § 2201(21), 71 Stat. 159.<br>July 11, 1957, Pub. L. 85–101, 71 Stat. 293. |

HISTORICAL AND REVISION NOTES—CONTINUED

| *Derivation* | *U.S. Code* | *Revised Statutes and Statutes at Large* |
|---|---|---|
| | | Sept. 2, 1958, Pub. L. 85–857, § 13(p), 72 Stat. 1266.<br>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

2008—Par. (1)(ii) Pub. L. 110–417 substituted ''National Geospatial-Intelligence Agency'' for ''National Imagery and Mapping Agency''.

2004—Par. (1)(iii). Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office''.

1996—Par. (1)(ii). Pub. L. 104–201 substituted ''National Imagery and Mapping Agency'' for ''Central Imagery Office''.

1994—Par. (1)(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 1996 AMENDMENT

Amendment by Pub. L. 104–201 effective Oct. 1, 1996, see section 1124 of Pub. L. 104–201, set out as a note under section 193 of Title 10, Armed Forces.

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.

## § 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.

(c) In accordance with regulations which the Office shall prescribe, the head of an agency may administer and maintain a performance appraisal system electronically.

(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; Pub. L. 106–398, § 1 [[div. A], title XI, § 1104], Oct. 30, 2000, 114 Stat. 1654, 1654A–311.)

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

2000—Subsec. (c). Pub. L. 106–398 added subsec. (c).

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.

## [§ 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 follows: "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.

## § 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' Pref-

erence 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.

### § 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.

### [§§ 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

### § 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 3393 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.

(Added Pub. L. 95–454, title IV, § 405(a), Oct. 13, 1978, 92 Stat. 1169; amended Pub. L. 104–66, title II, § 2181(b), Dec. 21, 1995, 109 Stat. 732.)

AMENDMENTS

1995—Subsec. (d). Pub. L. 104–66 struck out subsec. (d) which related to reports to Congress.

### § 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.)

## CHAPTER 45—INCENTIVE AWARDS

SUBCHAPTER I—AWARDS FOR SUPERIOR ACCOMPLISHMENTS

Sec.
4501. Definitions.
4502. General provisions.
4503. Agency awards.
4504. Presidential awards.
4505. Awards to former employees.
4505a. Performance-based cash awards.
4506. Regulations.
4507. Awarding of Ranks[1] in the Senior Executive Service.
4507a. Awarding of ranks to other senior career employees.
4508. Limitation of awards during a Presidential election year.
4509. Prohibition of cash award to Executive Schedule officers.

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[2]

4521. Definition.
4522. General provision.
4523. Award authority.

AMENDMENTS

2001—Pub. L. 107–67, title VI, § 641(c), Nov. 12, 2001, 115 Stat. 555, added item 4507a.

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.

## 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.<br>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''.

[1] So in original. Probably should not be capitalized.

[2] So in original. Does not conform to subchapter heading.

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 this section and sections 4502 to 4507 of this title as subchapter I, and amending this section and sections 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.

EX. ORD. NO. 12976. COMPENSATION PRACTICES OF GOVERNMENT CORPORATIONS

Ex. Ord. No. 12976, Oct. 5, 1995, 60 F.R. 52829, 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 sections 1105, 1108, and 1111 of title 31, United States Code, it is hereby ordered as follows:

SECTION 1. *Statement of Presidential Principles*.

Government corporations subject to this order should not pay bonuses in excess of those authorized by sections 4501 through 4507 of title 5, United States Code, except as otherwise specifically provided by law.

SEC. 2. *Administration Review*. (a) Before taking action to approve any bonus in excess of those authorized in section 4502 of title 5, United States Code, each corporation subject to this section (as provided in section 6 of this order) shall submit information to the Director of the Office of Management and Budget (OMB) relating to such bonuses as provided in subsection (b). Such corporation shall refrain from approving any such bonus until the Director of OMB has had an opportunity to review the information provided by the corporation.

(b) The Director of OMB shall issue instructions to the corporations subject to this section specifying when information is to be submitted, and the content and form of such information.

SEC. 3. *Information Reporting Requirements*. (a) Government corporations subject to this order will provide information to the Director of OMB relating to the compensation practices for senior executives of such corporations as provided in subsection (c).

(b) Information submitted shall include the following with respect to senior executives of each corporation subject to this section:

(1) the compensation plan, procedures, and structure of such corporation;

(2) base salary levels, annual bonuses, and other compensation; and

(3) information supporting the senior executive compensation plan and levels.

(c) The Director of OMB shall issue instructions to the corporations subject to this section specifying when information is to be submitted, and the content and form of such information.

SEC. 4. *Review*. (a) OMB, in consultation with the Department of Labor, will review the information submitted pursuant to section 3, taking into consideration:

(1) consistency with statutory requirements;

(2) consistency with corporate mission;

(3) standards of Federal management and efficiency; and

(4) equivalent private sector compensation practices.

SEC. 5. *Public Dissemination Requirement*. Government corporations subject to this order shall make available through public dissemination the information submitted pursuant to section 3 of this order.

SEC. 6. *Coverage*. This order will apply to all mixed-ownership and wholly owned corporations listed in section 9101(2) and (3) of title 31, United States Code. Section 2 shall apply only to wholly owned corporations except such corporations that have specific authority to approve bonuses in excess of those authorized under sections 4501 through 4507 of title 5, United States Code.

SEC. 7. *Administration*. All corporations subject to this order shall provide any information in the manner and form, and at the time, requested pursuant to this order by the Director of OMB.

SEC. 8. 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 other person.

WILLIAM J. CLINTON.

## § 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.

(f) The Secretary of Defense may grant a cash award under subsection (b) of this section with-

out regard to the requirements for certification and approval provided in that subsection.

(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; Pub. L. 106–398, § 1 [[div. A], title XI, § 1132], Oct. 30, 2000, 114 Stat. 1654, 1654A–318.)

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

2000—Subsec. (f). Pub. L. 106–398 added subsec. (f).

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.

## § 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.

## § 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.

### § 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 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)(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; Pub. L. 108–411, title III, § 301(c), Oct. 30, 2004, 118 Stat. 2317.)

AMENDMENTS

2004—Subsec. (a)(2). Pub. L. 108–411 struck out subpar. (A) designation before ''A cash award under'' and struck out subpar. (B) which read as follows: ''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.''

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 2004 AMENDMENT

Amendment by Pub. L. 108–411 effective on the first day of the first applicable pay period beginning on or after the 180th day after Oct. 30, 2004, with provisions relating to conversion rules, see section 301(d) of Pub. L. 108–411, set out as a note under section 5363 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

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.

EX. ORD. NO. 13415. ASSIGNMENT OF CERTAIN PAY-RELATED FUNCTIONS

Ex. Ord. No. 13415, Dec. 1, 2006, 71 F.R. 70641, 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, it is hereby ordered as follows:

SECTION 1. *Assignment of Functions*. The functions of the President under sections 4505a, 5305, and 5377 of title 5, United States Code, are assigned to the Director of the Office of Personnel Management.

SEC. 2. *Revocations*. (a) [Amended Ex. Ord. No. 12748, set out as a note under section 5301 of this title.]

(b) [Amended Ex. Ord. No. 12828, set out as a note under section 3502 of this title.]

SEC. 3. *General Provision*. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity against the United States, its departments, agencies, entities, officers, employees, or agents, or any other person.

GEORGE W. BUSH.

## § 4506. Regulations

The Office of Personnel Management shall prescribe regulations and instructions under which the awards programs 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; Pub. L. 107–67, title VI, § 641(b), Nov. 12, 2001, 115 Stat. 555.)

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

2001—Pub. L. 107–67 substituted ''the awards programs'' for ''the agency awards program''.

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 2001 AMENDMENT

Pub. L. 107–67, title VI, § 641(d), Nov. 12, 2001, 115 Stat. 555, provided that: ''The amendments made by this section [enacting section 4507a of this title and amending this section] shall take effect for awards granted in 2003.''

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 an amount equal to 20 percent of annual basic pay, 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 an amount equal to 35 percent of annual basic pay, 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; amended Pub. L. 105–277, div. A, § 101(h) [title VI, § 631(a), (b)], Oct. 21, 1998, 112 Stat. 2681–480, 2681–523.)

AMENDMENTS

1998—Subsec. (e)(1). Pub. L. 105–277, § 101(h) [title VI, § 631(a)], substituted ''an amount equal to 20 percent of annual basic pay'' for ''$10,000''.

Subsec. (e)(2). Pub. L. 105–277, § 101(h) [title VI, § 631(b)], substituted ''an amount equal to 35 percent of annual basic pay'' for ''$20,000''.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–277, div. A, § 101(h) [title VI, § 631(c)], Oct. 21, 1998, 112 Stat. 2681–480, 2681–523, provided that: ''The amendments made by this section [amending this section] shall take effect on October 1, 1998, or the date of enactment of this Act [Oct. 21, 1998], whichever is later.''

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.

### § 4507a. Awarding of ranks to other senior career employees

(a) For the purpose of this section, the term ''senior career employee'' means an individual appointed to a position classified above GS–15 and paid under section 5376 who is not serving—

(1) under a time-limited appointment; or

(2) in a position that is excepted from the competitive service because of its confidential or policy-making character.

(b) Each agency employing senior career employees shall submit annually to the Office of Personnel Management recommendations of senior career employees in the agency to be awarded the rank of Meritorious Senior Professional or Distinguished Senior Professional, which may be awarded by the President for sustained accomplishment or sustained extraordinary accomplishment, respectively.

(c) The recommendations shall be made, reviewed, and awarded under the same terms and conditions (to the extent determined by the Office of Personnel Management) that apply to rank awards for members of the Senior Executive Service under section 4507.

(Added Pub. L. 107–67, title VI, § 641(a), Nov. 12, 2001, 115 Stat. 554.)

REFERENCES IN TEXT

GS–15, referred to in subsec. (a), is contained in the General Schedule, which is set out under section 5332 of this title.

EFFECTIVE DATE

Section effective for awards granted in 2003, see section 641(d) of Pub. L. 107–67, set out as an Effective Date of 2001 Amendment note under section 4506 of this title.

### § 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".

### § 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."

TRANSFER OF FUNCTIONS

For transfer of the functions, personnel, assets, and obligations of the United States Secret Service, including the functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 381, 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

### § 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.)

[1] So in original. Probably should be "subsection".

## CHAPTER 47—PERSONNEL RESEARCH PROGRAMS AND DEMONSTRATION PROJECTS

Sec.
4701. Definitions.
4702. Research programs.
4703. Demonstration projects.
4704. Allocation of funds.
4705. Regulations.
[4706. Renumbered.]

AMENDMENTS

1998—Pub. L. 105–362, title XIII, § 1302(b)(2)(B)(ii), Nov. 10, 1998, 112 Stat. 3293, added item 4705 and struck out former items 4705 ''Reports'' and 4706 ''Regulations''.

### § 4701. Definitions

(a) For the purpose of this chapter—

(1) ''agency'' means an Executive agency and the Government Printing Office, but does not include—

(A) a Government corporation;

(B) the Federal Bureau of Investigation, the Central Intelligence Agency, the Defense Intelligence Agency, the National Geospatial-Intelligence Agency, 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 Government Accountability 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; Pub. L. 104–201, div. A, title XI, § 1122(a)(1), Sept. 23, 1996, 110 Stat. 2687; Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814; Pub. L. 110–417, [div. A], title IX, § 931(a)(1), Oct. 14, 2008, 122 Stat. 4575.)

AMENDMENTS

2008—Subsec. (a)(1)(B). Pub. L. 110–417 substituted ''National Geospatial-Intelligence Agency'' for ''National Imagery and Mapping Agency''.

2004—Subsec. (a)(1)(C). Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office''.

1996—Subsec. (a)(1)(B). Pub. L. 104–201 substituted ''National Imagery and Mapping Agency'' for ''Central Imagery Office''.

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 1996 AMENDMENT

Amendment by Pub. L. 104–201 effective Oct. 1, 1996, see section 1124 of Pub. L. 104–201, set out as a note under section 193 of Title 10, Armed Forces.

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.

DESIGN ELEMENTS OF PAY-FOR-PERFORMANCE SYSTEMS IN DEMONSTRATION PROJECTS

Pub. L. 108–136, div. A, title XI, § 1126, Nov. 24, 2003, 117 Stat. 1640, provided that: ''A pay-for-performance system may not be initiated under chapter 47 of title 5, United States Code, after the date of the enactment of this Act [Nov. 24, 2003], unless it incorporates the following elements:

''(1) Adherence to merit principles set forth in section 2301 of such title.

''(2) A fair, credible, and transparent employee performance appraisal system.

''(3) A link between elements of the pay-for-performance system, the employee performance appraisal system, and the agency's strategic plan.

''(4) A means for ensuring employee involvement in the design and implementation of the system.

''(5) Adequate training and retraining for supervisors, managers, and employees in the implementation and operation of the pay-for-performance system.

''(6) A process for ensuring ongoing performance feedback and dialogue between supervisors, managers, and employees throughout the appraisal period, and setting timetables for review.

''(7) Effective safeguards to ensure that the management of the system is fair and equitable and based on employee performance.

''(8) A means for ensuring that adequate agency resources are allocated for the design, implementation, and administration of the pay-for-performance system.''

### § 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.)

AUTHORITY OF EXPORT-IMPORT BANK TO CONDUCT DEMONSTRATION PROGRAM

Pub. L. 104–97, § 2, Jan. 11, 1996, 109 Stat. 984, provided that: ''Notwithstanding section 4701(a)(1)(A) of title 5, United States Code, the Export-Import Bank of the United States may conduct a demonstration project in accordance with section 4703 of such 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. 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, § 4706; renumbered § 4705, Pub. L. 105–362, title XIII, § 1302(b)(2)(B)(i), Nov. 10, 1998, 112 Stat. 3293.)

PRIOR PROVISIONS

A prior section 4705, added Pub. L. 95–454, title VI, § 601(a), Oct. 13, 1978, 92 Stat. 1188, required annual report on research programs and demonstration projects, prior to repeal by Pub. L. 105–362, title XIII, § 1302(b)(2)(B)(i), Nov. 10, 1998, 112 Stat. 3293.

### [§ 4706. Renumbered § 4705]

## CHAPTER 48—AGENCY PERSONNEL DEMONSTRATION PROJECT

Sec.
4801. Nonapplicability of chapter 47.
4802. Securities and Exchange Commission.

### § 4801. Nonapplicability of chapter 47

Chapter 47 shall not apply to this chapter.

(Added Pub. L. 107–123, § 8(a), Jan. 16, 2002, 115 Stat. 2398.)

EFFECTIVE DATE

Chapter effective Oct. 1, 2001, see section 11 of Pub. L. 107–123, set out as an Effective Date of 2002 Amendment note under section 78ee of Title 15, Commerce and Trade.

### § 4802. Securities and Exchange Commission

(a) In this section, the term ''Commission'' means the Securities and Exchange Commission.

(b) The Commission may appoint and fix the compensation of such officers, attorneys, economists, examiners, and other employees as may be necessary for carrying out its functions under the securities laws as defined under section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c).

(c) Rates of basic pay for all employees of the Commission may be set and adjusted by the Commission without regard to the provisions of chapter 51 or subchapter III of chapter 53.

(d) The Commission may provide additional compensation and benefits to employees of the Commission if the same type of compensation or benefits are then being provided by any agency referred to under section 1206 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1833b) or, if not then being provided, could be provided by such an agency under applicable provisions of law, rule, or regulation. In setting and adjusting the total amount of compensation and benefits for employees, the Commission shall consult with, and seek to maintain comparability with, the agencies referred to under section 1206 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1833b).

(e) The Commission shall consult with the Office of Personnel Management in the implementation of this section.

(f) This section shall be administered consistent with merit system principles.

(Added Pub. L. 107–123, § 8(a), Jan. 16, 2002, 115 Stat. 2398.)

EMPLOYEES REPRESENTED BY LABOR ORGANIZATIONS

Pub. L. 107–123, § 8(b), Jan. 16, 2002, 115 Stat. 2398, provided that: ''To the extent that any employee of the Securities and Exchange Commission is represented by a labor organization with exclusive recognition in accordance with chapter 71 of title 5, United States Code, no reduction in base pay of such employee shall be made by reason of enactment of this section [enacting this chapter, amending sections 3132 and 5373 of this title, section 1833b of Title 12, Banks and Banking, and section 78d of Title 15, Commerce and Trade, and enacting provisions set out as a note under this section] (including the amendments made by this section).''

IMPLEMENTATION PLAN AND REPORT

Pub. L. 107–123, § 8(c), Jan. 16, 2002, 115 Stat. 2398, provided that:

''(1) IMPLEMENTATION PLAN.—

''(A) IN GENERAL.—The Securities and Exchange Commission shall develop a plan to implement section 4802 of title 5, United States Code, as added by this section.

''(B) INCLUSION IN ANNUAL PERFORMANCE PLAN AND REPORT.—The Securities and Exchange Commission shall include—

''(i) the plan developed under this paragraph in the annual program performance plan submitted

under section 1115 of title 31, United States Code; and

''(ii) the effects of implementing the plan developed under this paragraph in the annual program performance report submitted under section 1116 of title 31, United States Code.

''(2) IMPLEMENTATION REPORT.—

''(A) IN GENERAL.—Before implementing the plan developed under paragraph (1), the Securities and Exchange Commission shall submit a report to the Committee on Governmental Affairs [now Committee on Homeland Security and Governmental Affairs] and the Committee on Banking, Housing, and Urban Affairs of the Senate, the Committee on Government Reform [now Committee on Oversight and Government Reform] and the Committee on Financial Services of the House of Representatives, and the Office of Personnel Management on the details of the plan.

''(B) CONTENT.—The report under this paragraph shall include—

''(i) evidence and supporting documentation justifying the plan; and

''(ii) budgeting projections on costs and benefits resulting from the plan.''

## Subpart D—Pay and Allowances

### 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.

### § 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.

### § 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 National Security Agency, Department of Defense;

(vii) the Government Accountability Office; or[1]

(ix)[2] the Defense Intelligence Agency, Department of Defense; or

(x) the National Geospatial-Intelligence Agency, 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—

[1] So in original. The word ''or'' probably should not appear.

[2] So in original. Subsec. (a)(1) does not contain a cl. (viii).

[3] So in original. The period probably should be a semicolon.

(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 United States Secret Service Uniformed Division; 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 Provost and Academic Dean of the Naval Postgraduate School 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;

[(12) Repealed. Pub. L. 104–201, div. C, title XXXV, § 3548(a)(2)(B), Sept. 23, 1996, 110 Stat. 3868;]

(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) administrative patent judges and designated administrative patent judges in the United States Patent and Trademark Office;

(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 7105(a)(2), (c)(2), or (d)(2) of title 41.

(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.

(e) Except as may be specifically provided, this chapter does not apply for pay purposes to any employee of the government of the District of Columbia during fiscal year 2006 or any succeeding fiscal year.

(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; Pub. L. 104–201, div. A, title XI, § 1122(a)(1), div. C, title XXXV, § 3548(a)(2), Sept. 23, 1996, 110 Stat. 2687, 2868; Pub. L. 106–113, div. B, § 1000(a)(9) [title IV, § 4732(b)(3)], Nov. 29, 1999, 113 Stat. 1536, 1501A–583; Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814; Pub. L. 108–375, div. A, title V, § 557(b)(5), Oct. 28, 2004, 118 Stat. 1916; Pub. L. 109–356, title III, § 303(b), Oct. 16, 2006, 120 Stat. 2040; Pub. L. 110–417, [div. A], title IX, § 931(a)(1), Oct. 14, 2008, 122 Stat. 4575; Pub. L. 111–282, § 4(c)(1), Oct. 15, 2010, 124 Stat. 3043; Pub. L. 111–350, § 5(a)(8), Jan. 4, 2011, 124 Stat. 3841.)

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.<br>May 29, 1959, Pub. L. 86–36, § 1, 73 Stat. 63.<br>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.<br>Sept. 1, 1954, ch. 1208, § 105(a) ''(7) (less provisos)'', 68 Stat. 1106.<br>June 17, 1957, Pub. L. 85–56, § 2201(20), 71 Stat. 159.<br>July 25, 1958, Pub. L. 85–550, § 16(a), (b)(1), 72 Stat. 411.<br>Sept. 2, 1958, Pub. L. 85–857, § 13(*o*), 72 Stat. 1266.<br>July 17, 1959, Pub. L. 86–91, § 3, 73 Stat. 213.<br>Sept. 23, 1959, Pub. L. 86–370, § 6(a)(4), 73 Stat. 652.<br>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, 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.

Level V of the Executive Schedule, referred to in subsec. (c)(25), is set out in section 5316 of this title.

AMENDMENTS

2011—Subsec. (c)(30). Pub. L. 111–350 substituted ''section 7105(a)(2), (c)(2), or (d)(2) of title 41'' for ''section 8 of the Contract Disputes Act of 1978''.

2010—Subsec. (c)(5). Pub. L. 111–282 substituted ''the United States Secret Service Uniformed Division'' for ''the Executive Protective Service''.

2008—Subsec. (a)(1)(x). Pub. L. 110–417 substituted ''National Geospatial-Intelligence Agency'' for ''National Imagery and Mapping Agency''.

2006—Subsec. (e). Pub. L. 109–356 added subsec. (e).

2004—Subsec. (a)(1)(vii). Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office''.

Subsec. (b). Pub. L. 108–375, § 557(b)(5)(B), which directed amendment of subsec. (b) by substituting ''Provost and Academic Dean'' for ''Academic Dean'', could not be executed because the words ''Academic Dean'' did not appear.

Subsec. (c)(10). Pub. L. 108–375, § 557(b)(5)(A), substituted ''Provost and Academic Dean of the Naval Postgraduate School'' for ''Academic Dean of the Postgraduate School of the Naval Academy''.

1999—Subsec. (c)(23). Pub. L. 106–113 amended par. (23) generally. Prior to amendment, par. (23) read as follows: ''examiners-in-chief and designated examiners-in-chief in the Patent and Trademark Office, Department of Commerce;''.

1996—Subsec. (a)(1)(vi), (vii). Pub. L. 104–201, § 3548(a)(2)(A), redesignated cls. (vii) and (viii) as (vi) and (vii), respectively, and struck out former cl. (vi) which read as follows: ''the Panama Canal Commission;''.

Subsec. (a)(1)(viii). Pub. L. 104–201, § 3548(a)(2)(A)(ii), which directed redesignation of cl. (ix) as (viii) could not be executed because subsec. (a)(1) did not contain a cl. (ix). See 1983 Amendment note below. Former cl. (viii) redesignated (vii).

Subsec. (a)(1)(ix), (x). Pub. L. 104–201, § 3548(a)(2)(A)(ii), redesignated cls. (x) and (xi) as (ix) and (x), respectively.

Subsec. (a)(1)(xi). Pub. L. 104–201, § 3548(a)(2)(A)(ii), redesignated cl. (xi) as (x).

Pub. L. 104–201, § 1122(a)(1), substituted ''National Imagery and Mapping Agency'' for ''Central Imagery Office''.

Subsec. (c)(12). Pub. L. 104–201, § 3548(a)(2)(B), struck out par. (12) which read as follows: ''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;''.

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 2010 AMENDMENT

Pub. L. 111–282, § 5, Oct. 15, 2010, 124 Stat. 3044, provided that: ''This Act [enacting chapter 102 of this title, amending this section and sections 5541, 6304, and 6324 of this title, enacting provisions set out as notes under section 10201 of this title, and amending provisions set out as notes under section 3056A of Title 18, Crimes and Criminal Procedure] and the amendments made by this Act shall take effect on the first day of the first pay period which begins after the date of the enactment of this Act [Oct. 15, 2010].''

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, § 4731] of Pub. L. 106–113, set out as a note under section 1 of Title 35, Patents.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1122(a)(1) of Pub. L. 104–201 effective Oct. 1, 1996, see section 1124 of Pub. L. 104–201,

set out as a note under section 193 of Title 10, Armed Forces.

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

Pub. L. 100–135, §3, Oct. 16, 1987, 101 Stat. 812, provided that: ''The amendments made by section 1 [amending this section and sections 167 and 167h of Title 2, The Congress] shall apply with respect to pay periods beginning after September 30, 1987, except that any pay increase for employees of the Library of Congress, pursuant to the amendments made by such section, shall be subject to appropriation and shall be implemented in four approximately equal annual increments, so that pay parity with the Capitol Police occurs beginning with the first pay period beginning after September 30, 1990.''

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

Pub. L. 90–610, §3, Oct. 21, 1968, 82 Stat. 1201, provided that: ''The amendments made by this Act [amending this section and section 167 of Title 2, The Congress] shall take effect on the first day of the first pay period which begins on or after the date of enactment of this Act [Oct. 21, 1968]. Notwithstanding any provisions of this Act, no rate of basic pay shall be reduced by reason of the enactment of this Act.''

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.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

For transfer of the functions, personnel, assets, and obligations of the United States Secret Service, including the functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 381, 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

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.

## § 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.<br>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.

## § 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, busi-

ness, 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 im-

portance, 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.<br>Sept. 1, 1954, ch. 1208, §107, 68 Stat. 1108. |
| ..... | 5 U.S.C. 1112. | Oct. 28, 1949, ch. 782, §602, 63 Stat. 959.<br>Sept. 1, 1954, ch. 1208, §108, 68 Stat. 1108.<br>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.''

## § 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.

PERFORMANCE MANAGEMENT SKILLS AND COMPETENCIES

Pub. L. 111–352, § 12, Jan. 4, 2011, 124 Stat. 3882, provided that:

''(a) PERFORMANCE MANAGEMENT SKILLS AND COMPETENCIES.—Not later than 1 year after the date of enactment of this Act [Jan. 4, 2011], the Director of the Office of Personnel Management, in consultation with the Performance Improvement Council, shall identify the key skills and competencies needed by Federal Government personnel for developing goals, evaluating programs, and analyzing and using performance information for the purpose of improving Government efficiency and effectiveness.

''(b) POSITION CLASSIFICATIONS.—Not later than 2 years after the date of enactment of this Act, based on the identifications under subsection (a), the Director of the Office of Personnel Management shall incorporate, as appropriate, such key skills and competencies into relevant position classifications.

''(c) INCORPORATION INTO EXISTING AGENCY TRAINING.—Not later than 2 years after the enactment of this Act, the Director of the Office of Personnel Management shall work with each agency, as defined under section 306(f) of title 5, United States Code, to incorporate the key skills identified under subsection (a) into training for relevant employees at each agency.''

## § 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.

## § 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 published by the Director of the Office of Personnel Management in such form as the Director may determine (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.

(c) The Librarian of Congress may classify positions in the Library of Congress above GS–15 pursuant to standards established by the Office in subsection (a)(2).

(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. 92–261, § 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; Pub. L. 110–372, § 2(c)(4), Oct. 8, 2008, 122 Stat. 4044; Pub. L. 111–68, div. A, title I, § 1403, Oct. 1, 2009, 123 Stat. 2038.)

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.<br>Sept. 1, 1954, ch. 1208, § 101(a), 68 Stat. 1105.<br>June 28, 1955, ch. 189, § 12(a), 69 Stat. 179.<br>July 31, 1956, ch. 804, § 502, 70 Stat. 762.<br>Aug. 14, 1957, Pub. L. 85–136, 71 Stat. 352.<br>June 20, 1958, Pub. L. 85–462, §§ 10 (less ''(i)''), 11, 72 Stat. 213, 213A.<br>Sept. 23, 1959, Pub. L. 86–370, § 2(a), (b), 73 Stat. 650.<br>Sept. 23, 1959, Pub. L. 86–377, § 1(a), 73 Stat. 700.<br>July 1, 1960, Pub. L. 86–568, § 203, 74 Stat. 305.<br>Sept. 26, 1961, Pub. L. 87–322, § 1, 75 Stat. 685.<br>Oct. 4, 1961, Pub. L. 87–367, §§ 102(a), (b), 103(1), 75 Stat. 786, 787.<br>Oct. 11, 1962, Pub. L. 87–793, § 606, 76 Stat. 848.<br>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.<br>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. |

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

2009—Subsec. (c). Pub. L. 111–68 added subsec. (c).

2008—Subsec. (a)(2). Pub. L. 110–372 inserted ''published by the Director of the Office of Personnel Management in such form as the Director may determine'' after ''and procedures''.

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 2008 AMENDMENT

Amendment by Pub. L. 110–372 effective on the first day of the first pay period beginning on or after the 180th day following Oct. 8, 2008, see section 2(d) of Pub. L. 110–372, set out as a note under section 5376 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 1988 AMENDMENT

Pub. L. 100–702, title I, § 109, Nov. 19, 1988, 102 Stat. 4645, provided that: ''This title [amending this section] shall become effective on January 1, 1989.''

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, Nov. 1, 1978, 92 Stat. 2391.

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.

## § 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)(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; Pub. L. 105–206, title I, § 1102(e)(2), July 22, 1998, 112 Stat. 704.)

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

1998—Subsecs. (b), (c). Pub. L. 105–206 redesignated subsec. (c) as (b) and struck out former subsec. (b) which read as follows: ''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.''

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.

## § 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.

## § 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]

[1] See References in Text note below.

(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.)

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.

## CHAPTER 53—PAY RATES AND SYSTEMS

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[5337. Repealed.]
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5342. Definitions; application.
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5378. Police forces of the Bureau of Engraving and Printing and the United States Mint.
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[5380. Repealed.]

SUBCHAPTER VIII—PAY FOR THE SENIOR EXECUTIVE SERVICE

5381. Definitions.
5382. Establishment and adjustment of rates of pay for the Senior Executive Service.[1]
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SUBCHAPTER IX—SPECIAL OCCUPATIONAL PAY SYSTEMS

5391. Definitions.
5392. Establishment of special occupational pay systems.

AMENDMENTS

2000—Pub. L. 106–554, §1(a)(3) [title VI, §645(a)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A–170, added item 5372b.

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.

[1] Section catchline amended by Pub. L. 108–136 without corresponding amendment of chapter analysis.

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.

## SUBCHAPTER I—PAY COMPARABILITY SYSTEM

### § 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 2000 AMENDMENT

Pub. L. 106–554, § 1(a)(4) [div. B, title IX, § 901], Dec. 21, 2000, 114 Stat. 2763, 2763A–303, provided that: ''This title [enacting provisions set out as notes under sections 5304 and 5305 of this title and section 204 of Title 3, The President, and amending provisions set out as a note under section 5305 of this title] may be cited as the 'Law Enforcement Pay Equity Act of 2000'.''

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 this section, sections 5108 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 [now Committee on Homeland Security and 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 Per-

sonnel 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; Ex. Ord. No. 13106, § 8, Dec. 7, 1998, 63 F.R. 68152; Ex. Ord. No. 13415, § 2(a), Dec. 1, 2006, 71 F.R. 70641, 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(g)–(h) [5 U.S.C. 5304(g), (h)] concerning the extension of locality-based comparability payments to certain categories of positions not otherwise covered.

SEC. 3. *Previous Order Revoked*. Executive Order No. 11721, as amended, is revoked.

SEC. 4. *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. 5. *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. 6. *Executive Assignment System*. (a) Civil Service Rule 9 (5 CFR Part 9), as established by Executive Order No. 11315, as amended, 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. 7. *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.]

## § 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 the rates of basic pay under the General Schedule as established by section 5332, excluding pay under section 5304 and any other additional pay of any kind; 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; Pub. L. 108–411, title III, § 301(a)(1), Oct. 30, 2004, 118 Stat. 2313.)

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, provided for annual reports on pay comparability, prior to repeal by Pub. L. 91–656, § 2(b)(1), Jan. 8, 1971, 84 Stat. 1946.

AMENDMENTS

2004—Par. (8). Pub. L. 108–411 added par. (8) and struck out former par. (8) which read as follows: ''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''.

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 2004 AMENDMENT

Amendment by Pub. L. 108–411 effective on the first day of the first applicable pay period beginning on or after the 180th day after Oct. 30, 2004, with provisions relating to conversion rules, see section 301(d) of Pub. L. 108–411, set out as a note under section 5363 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 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.

## § 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, ef-

fective 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.<br>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

2010—Pub. L. 111–242, § 147, as added by Pub. L. 111–322, title I, § 1(a)(2), Dec. 22, 2010, 124 Stat. 3518, provided that:

''(a) For the purposes of this section—

''(1) the term 'employee'—

''(A) means an employee as defined in section 2105 of title 5, United States Code; and

''(B) includes an individual to whom subsection (b), (c), or (f) of such section 2105 pertains (whether or not such individual satisfies subparagraph (A));

''(2) the term 'senior executive' means—

''(A) a member of the Senior Executive Service under subchapter VIII of chapter 53 of title 5, United States Code;

''(B) a member of the FBI–DEA Senior Executive Service under subchapter III of chapter 31 of title 5, United States Code;

''(C) a member of the Senior Foreign Service under chapter 4 of title I of the Foreign Service Act of 1980 (22 U.S.C. 3961 and following); and

''(D) a member of any similar senior executive service in an Executive agency;

''(3) the term 'senior-level employee' means an employee who holds a position in an Executive agency and who is covered by section 5376 of title 5, United States Code, or any similar authority; and

''(4) the term 'Executive agency' has the meaning given such term by section 105 of title 5, United States Code.

''(b)(1) Notwithstanding any other provision of law, except as provided in subsection (e), no statutory pay adjustment which (but for this subsection) would otherwise take effect during the period beginning on January 1, 2011, and ending on December 31, 2012, shall be made.

''(2) For purposes of this subsection, the term 'statutory pay adjustment' means—

''(A) an adjustment required under section 5303, 5304, 5304a, 5318, or 5343(a) of title 5, United States Code; and

''(B) any similar adjustment, required by statute, with respect to employees in an Executive agency.

''(c) Notwithstanding any other provision of law, except as provided in subsection (e), during the period beginning on January 1, 2011, and ending on December 31, 2012, no senior executive or senior-level employee may receive an increase in his or her rate of basic pay absent a change of position that results in a substantial increase in responsibility, or a promotion.

''(d) The President may issue guidance that Executive agencies shall apply in the implementation of this section.

''(e) The Non-Foreign Area Retirement Equity Assurance Act of 2009 [Pub. L. 111–84, div. A, title XIX, subtitle B] (5 U.S.C. 5304 note) shall be applied using the appropriate locality-based comparability payments established by the President as the applicable comparability payments in section 1914(2) and (3) of such Act.''

2009—Pub. L. 111–117, div. C, title VII, § 744, Dec. 16, 2009, 123 Stat. 3219, provided that:

''(a) The adjustment in rates of basic pay for employees under the statutory pay systems that takes effect in fiscal year 2010 under section 5303 of title 5, United States Code, shall be an increase of 1.5 percent, and the overall average percentage of the adjustments taking effect in such fiscal year under sections 5304–5304a of such title 5 shall be an increase of 0.5 percent (with comparability payments to be determined and allocated among pay localities by the President). Adjustments under the preceding sentence shall also apply to civilian employees in the Department of Homeland Security and in the Department of Defense. All adjustments under this subsection shall be effective as of the first day of the first applicable pay period beginning on or after January 1, 2010.

''(b) Notwithstanding section 710 [Pub. L. 111–117, 5 U.S.C. 5343 note], the adjustment in rates of basic pay for the statutory pay systems that take place in fiscal year 2010 under sections 5344 and 5348 of title 5, United States Code, shall be no less than the percentages in subsection (a) as employees in the same location whose rates of basic pay are adjusted pursuant to the statutory pay systems under section 5303 and 5304–5304a of title 5, United States Code. Prevailing rate employees at locations where there are no employees whose pay is increased pursuant to sections 5303 and 5304–5304a of such title 5 and prevailing rate employees described in section 5343(a)(5) of such title 5 shall be considered to be located in the pay locality designated as 'Rest of U.S.' pursuant to section 5304 of such title 5 for purposes of this subsection.

''(c) Funds used to carry out this section shall be paid from appropriations, which are made to each applicable department or agency for salaries and expenses for fiscal year 2010.''

2008—Pub. L. 110–329, div. A, § 142, Sept. 30, 2008, 122 Stat. 3580, as amended by Pub. L. 111–8, div. D, title VII, § 738(a), Mar. 11, 2009, 123 Stat. 691, provided that:

''(a) The adjustment in rates of basic pay for employees under the statutory pay systems that takes effect in fiscal year 2009 under sections 5303 and 5304 of title 5, United States Code, shall be an increase of 3.9 percent, and this adjustment shall apply to civilian employees in the Department of Homeland Security and shall apply to civilian employees in the Department of Defense who are represented by a labor organization as defined in section 7103(a)(4) of title 5, United States Code. Such adjustment shall be effective as of the first day of the first applicable pay period beginning on or after January 1, 2009.

''(b) The adjustment in rates of basic pay for the statutory pay systems that take place in fiscal year 2009 under sections 5344 and 5348 of title 5, United States Code, shall be no less than the percentage in subsection (a) as employees in the same location whose rates of basic pay are adjusted pursuant to the statutory pay systems under section 5303 and 5304 of such title 5. Prevailing rate employees at locations where there are no employees whose pay is increased pursuant to sections 5303 and 5304 of such title 5 and prevailing rate employees described in section 5343(a)(5) of such title 5 shall be considered to be located in the pay locality designated as 'Rest of US' pursuant to section 5304 of such title 5 for purposes of this subsection.

''(c) Funds used to carry out this section shall be paid from appropriations which are made to each applicable department or agency for salaries and expenses for fiscal year 2009.

''(d) The provisions of this section shall apply notwithstanding any other provision of this joint resolution [div. A of Pub. L. 110–329, amending section 17013 of Title 42, The Public Health and Welfare, and provisions set out in a note under section 1701 of Title 50, War and National Defense].''

[Pub. L. 111–8, div. D, title VII, § 738(b), Mar. 11, 2009, 123 Stat. 691, provided that: ''The amendment made by subsection (a) [amending section 142 of Pub. L. 110–329, set out above] shall take effect as if included in the enactment of the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009 [Pub. L. 110–329].'']

2007—Pub. L. 110–161, div. D, title VII, § 740, Dec. 26, 2007, 121 Stat. 2031, provided that:

''(a) The adjustment in rates of basic pay for employees under the statutory pay systems that takes effect in fiscal year 2008 under sections 5303 and 5304 of title 5, United States Code, shall be an increase of 3.5 percent, and this adjustment shall apply to civilian employees in the Department of Homeland Security and shall apply to civilian employees in the Department of Defense who are represented by a labor organization as defined in 5 U.S.C. 7103(a)(4), and such adjustments shall be effective as of the first day of the first applicable pay period beginning on or after January 1, 2008. Civilian employees in the Department of Defense who are eligible to be represented by a labor organization as defined in 5 U.S.C. 7103(a)(4), but are not so represented, will receive the adjustment provided for in this section unless the positions are entitled to a pay adjustment under 5 U.S.C. 9902.

''(b) Notwithstanding section 712 of this Act [div. D of Pub. L. 110–161, 5 U.S.C. 5343 note], the adjustment in rates of basic pay for the statutory pay systems that take place in fiscal year 2008 under sections 5344 and 5348 of title 5, United States Code, shall be no less than the percentage in paragraph (a) as employees in the same location whose rates of basic pay are adjusted pursuant to the statutory pay systems under section 5303 and 5304 of title 5, United States Code. Prevailing rate employees at locations where there are no employees whose pay is increased pursuant to sections 5303 and 5304 of title 5 and prevailing rate employees described in section 5343(a)(5) of title 5 shall be considered to be located in the pay locality designated as 'Rest of US' pursuant to section 5304 of title 5 for purposes of this paragraph.

''(c) Funds used to carry out this section shall be paid from appropriations, which are made to each applicable department or agency for salaries and expenses for fiscal year 2008.''

2005—Pub. L. 109–115, div. A, title VIII, § 843, Nov. 30, 2005, 119 Stat. 2506, provided that:

''(a) The adjustment in rates of basic pay for employees under the statutory pay systems that takes effect in fiscal year 2006 under sections 5303 and 5304 of title 5, United States Code, shall be an increase of 3.1 percent, and this adjustment shall apply to civilian employees in the Department of Defense and the Department of Homeland Security and such adjustments shall be effective as of the first day of the first applicable pay period beginning on or after January 1, 2006.

''(b) Notwithstanding section 813 of this Act [div. A of Pub. L. 109–115, 5 U.S.C. 5343 note], the adjustment in rates of basic pay for the statutory pay systems that take place in fiscal year 2006 under sections 5344 and 5348 of title 5, United States Code, shall be no less than the percentage in paragraph (a) as employees in the same location whose rates of basic pay are adjusted pursuant to the statutory pay systems under section 5303 and 5304 of title 5, United States Code. Prevailing rate employees at locations where there are no employees whose pay is increased pursuant to sections 5303 and 5304 of title 5 and prevailing rate employees described in section 5343(a)(5) of title 5 shall be considered to be located in the pay locality designated as 'Rest of US' pursuant to section 5304 of title 5 for purposes of this paragraph.

''(c) Funds used to carry out this section shall be paid from appropriations, which are made to each applicable department or agency for salaries and expenses for fiscal year 2006.''

2004—Pub. L. 108–447, div. H, title VI, § 640, Dec. 8, 2004, 118 Stat. 3282, provided that:

''(a) The adjustment in rates of basic pay for employees under the statutory pay systems that takes effect in fiscal year 2005 under sections 5303 and 5304 of title 5, United States Code, shall be an increase of 3.5 percent, and this adjustment shall apply to civilian employees in the Department of Defense and the Department of Homeland Security and such adjustments shall be effective as of the first day of the first applicable pay period beginning on or after January 1, 2005.

''(b) Notwithstanding section 613 of this Act [div. H of Pub. L. 108–447, 5 U.S.C. 5343 note], the adjustment in rates of basic pay for the statutory pay systems that take place in fiscal year 2005 under sections 5344 and 5348 of title 5, United States Code, shall be no less than the percentage in paragraph (a) as employees in the same location whose rates of basic pay are adjusted pursuant to the statutory pay systems under section 5303 and 5304 of title 5, United States Code. Prevailing rate employees at locations where there are no employees whose pay is increased pursuant to sections 5303 and 5304 of title 5 and prevailing rate employees described in section 5343(a)(5) of title 5 shall be considered to be located in the pay locality designated as 'Rest of US' pursuant to section 5304 of title 5 for purposes of this paragraph.

''(c) Funds used to carry out this section shall be paid from appropriations, which are made to each applicable department or agency for salaries and expenses for fiscal year 2005.''

Pub. L. 108–199, div. F, title VI, § 640, Jan. 23, 2004, 118 Stat. 359, provided that:

''(a) The adjustment in rates of basic pay for employees under the statutory pay systems that takes effect in fiscal year 2004 under sections 5303 and 5304 of title 5, United States Code, shall be an increase of 4.1 percent, and this adjustment shall apply to civilian employees in the Department of Defense and the Department of Homeland Security and such adjustments shall be effective as of the first day of the first applicable pay period beginning on or after January 1, 2004.

''(b) Notwithstanding section 613 of this Act [div. F of Pub. L. 108–199, 5 U.S.C. 5343 note], the adjustment in rates of basic pay for the statutory pay systems that take place in fiscal year 2004 under sections 5344 and 5348 of title 5, United States Code, shall be no less than the percentage in paragraph (a) as employees in the same location whose rates of basic pay are adjusted pursuant to the statutory pay systems under section 5303 and 5304 of title 5, United States Code. Prevailing rate employees at locations where there are no employees whose pay is increased pursuant to sections 5303 and 5304 of title 5 and prevailing rate employees described in section 5343(a)(5) of title 5 shall be considered to be located in the pay locality designated as 'Rest of US' pursuant to section 5304 of title 5 for purposes of this paragraph.

''(c) Funds used to carry out this section shall be paid from appropriations, which are made to each applicable department or agency for salaries and expenses for fiscal year 2004.''

2003—Pub. L. 108–7, div. J, title VI, § 637, Feb. 20, 2003, 117 Stat. 472, provided that:

''(a) The adjustment in rates of basic pay for the statutory pay systems that takes effect in fiscal year 2003 under sections 5303 and 5304 of title 5, United States Code, shall be an increase of 4.1 percent and shall be effective as of the first day of the first applicable pay period beginning on or after January 1, 2003.

''(b) Funds used to carry out this section shall be paid from appropriations which are made to each applicable department or agency for salaries and expenses for fiscal year 2003.''

2001—Pub. L. 107–67, title VI, § 646, Nov. 12, 2001, 115 Stat. 556, provided that:

''(a) The adjustment in rates of basic pay for the statutory pay systems that takes effect in fiscal year 2002 under sections 5303 and 5304 of title 5, United States Code, shall be an increase of 4.6 percent.

''(b) Funds used to carry out this section shall be paid from appropriations which are made to each applicable department or agency for salaries and expenses for fiscal year 2002.''

2000—Pub. L. 106–554, § 1(a)(4) [div. B, title I, § 140], Dec. 21, 2000, 114 Stat. 2763, 2763A–235, provided that:

''(a) The adjustment in rates of basic pay for the statutory pay systems that takes effect in fiscal year 2001 under sections 5303 and 5304 of title 5, United States Code, shall be an increase of 3.7 percent.

''(b) Funds used to carry out this section shall be paid from appropriations which are made to each applicable department or agency for salaries and expenses for fiscal year 2001.''

1999—Pub. L. 106–58, title VI, § 646, Sept. 29, 1999, 113 Stat. 478, provided that:

''(a) The adjustment in rates of basic pay for the statutory pay systems that takes effect in fiscal year 2000 under sections 5303 and 5304 of title 5, United States Code, shall be an increase of 4.8 percent.

''(b) Funds used to carry out this section shall be paid from appropriations which are made to each applicable department or agency for salaries and expenses for fiscal year 2000.''

1998—Pub. L. 105–277, div. A, § 101(h) [title VI, § 621], Oct. 21, 1998, 112 Stat. 2681–480, 2681–518, provided that: ''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 1999 in the rates of basic pay for the statutory pay systems.''

Pub. L. 105–277, div. A, § 101(h) [title VI, § 647], Oct. 21, 1998, 112 Stat. 2681–480, 2681–527, provided that:

''(a) The adjustment in rates of basic pay for the statutory pay systems that takes effect in fiscal year 1999 under sections 5303 and 5304 of title 5, United States Code, shall be an increase of 3.6 percent.

''(b) Funds used to carry out this section shall be paid from appropriations which are made to each applicable department or agency for salaries and expenses for fiscal year 1999.''

1996—Pub. L. 104–208, div. A, title I, § 101(f) [title VI, § 637], Sept. 30, 1996, 110 Stat. 3009–314, 3009–364, provided that: ''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 1997 in the rates of basic pay for the statutory pay systems.''

1995—Pub. L. 104–52, title VI, § 633, Nov. 19, 1995, 109 Stat. 507, provided that: ''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 1996 in the rates of basic pay for the statutory pay systems.''

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. 902] 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 [formerly 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.]

### § 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 1/5 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 2/5 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 1/2 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 3/5 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 4/5 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 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 in the United States, as defined under section 5921(4), and its territories and possessions, including the Commonwealth of Puerto Rico and the Commonwealth of the Northern Mariana Islands, shall be included within a pay locality; and

[1] See References in Text note below.

(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) and (B) of subsection (h)(1);

(B) positions under subsection (h)(1)(C) not covered by appraisal systems certified under subsection 5307(d); and

(C) any positions under subsection (h)(1)(D) as the President may determine.

(3) The applicable maximum under this subsection shall be level II of the Executive Schedule for positions under subsection (h)(1)(C) covered by appraisal systems certified under section 5307(d).

(h)(1) For the purpose of this subsection, the term ''position'' means—

(A) a position to which section 5372 applies (relating to administrative law judges appointed under section 3105);

(B) a position to which section 5372a applies (relating to contract appeals board members);

(C) a Senior Executive Service position under section 3132 or 3151 or a senior level position under section 5376 stationed within the United States, but outside the 48 contiguous States and the District of Columbia in which the incumbent was an individual who on the day before the effective date of section 1912 of the Non-Foreign Area Retirement Equity Assurance Act of 2009 was eligible to receive a cost-of-living allowance under section 5941 and who thereafter has served continuously in an area in which such an allowance was payable; and

(D) 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);

(iii) a position to which subchapter II applies (relating to the Executive Schedule);

(iv) a Senior Executive Service position under section 3132, except for a position covered by subparagraph (C);

(v) a position in the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service under section 3151, except for a position covered by subparagraph (C);

(vi) a position in a system equivalent to the system in clause (iv), as determined by the President's Pay Agent designated under subsection (d); or

(vii) a position to which section 5376 applies (relating to certain senior-level and scientific and professional positions), except for a position covered by subparagraph (C).

(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 (C) of paragraph (1), all positions described in the subparagraph or subparagraphs involved (excluding any under clause (i), (ii), (iii), (iv), (v), (vi), or (vii) of such paragraph); and

(ii) with respect to positions under paragraph (1)(D), such positions as may be considered appropriate (excluding any under clause (i), (ii), (iii), (iv), (v), (vi), or (vii) 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; Pub. L. 108–136, div. A, title XI, § 1125(a)(1), Nov. 24, 2003, 117 Stat. 1638; Pub. L. 108–411, title III, § 302(a)(1), Oct. 30, 2004, 118 Stat. 2318; Pub. L. 110–372, § 2(a), Oct. 8, 2008, 122 Stat. 4043; Pub. L. 111–84, div. A, title XIX, § 1912(a), Oct. 28, 2009, 123 Stat. 2619.)

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 II, III, and IV of the Executive Schedule, referred to in subsecs. (g) and (h)(1)(D), are set out in sections 5313, 5314, and 5315, respectively, of this title.

For the effective date of section 1912 of the Non-Foreign Area Retirement Equity Assurance Act of 2009 [Pub. L. 111–84], referred to in subsec. (h)(1)(C), see section 1919(b) of Pub. L. 111–84, set out in a note below.

AMENDMENTS

2009—Subsec. (f)(1)(A). Pub. L. 111–84, § 1912(a)(1), added subpar. (A) and struck out former subpar. (A), which read as follows: ''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''.

Subsec. (g)(2)(B), (C). Pub. L. 111–84, § 1912(a)(2)(A), added subpars. (B) and (C) and struck out former subpar. (B) which read as follows: ''any positions under subsection (h)(1)(C) as the President may determine.''

Subsec. (g)(3). Pub. L. 111–84, § 1912(a)(2)(B), added par. (3).

Subsec. (h)(1)(C), (D). Pub. L. 111–84, § 1912(a)(3)(A)–(C), added subpar. (C) and redesignated former subpar. (C) as (D).

Subsec. (h)(1)(iv), (v). Pub. L. 111–84, § 1912(a)(3)(D), (E), inserted '', except for a position covered by subparagraph (C)'' before the semicolon.

Subsec. (h)(1)(vii). Pub. L. 111–84, § 1912(a)(3)(F), inserted '', except for a position covered by subparagraph (C)'' before the period.

Subsec. (h)(2)(B)(i). Pub. L. 111–84, § 1912(a)(4)(A), substituted ''through (C)'' for ''and (B)''.

Subsec. (h)(2)(B)(ii). Pub. L. 111–84, § 1912(a)(4)(B), substituted ''(1)(D)'' for ''(1)(C)''.

2008—Subsec. (g)(2). Pub. L. 110–372, § 2(a)(1), amended par. (2) generally. Prior to amendment, par. (2) read as follows:

''(2) The applicable maximum under this subsection shall be level III of the Executive Schedule for—

''(A) positions under subparagraphs (A)–(C) of subsection (h)(1); and

''(B) any positions under subsection (h)(1)(D) which the President may determine.''

Subsec. (h)(1). Pub. L. 110–372, § 2(a)(2)(A)(ii), which directed amendment of subsec. (h)(1)(D) by striking ''or'' at end of cl. (v), substituting ''; or'' for period at end of cl. (vi), and adding at end a new cl. (vii), was executed by making the strike out and substitution in the cls. (v) and (vi) which follow subpar. (D) and by adding cl. (vii) after cl. (vi), to reflect the probable intent of Congress.

Subsec. (h)(1)(A) to (D). Pub. L. 110–372, § 2(a)(2)(A)(i), (iii), redesignated subpars. (B) to (D) as (A) to (C), respectively, and struck out former subpar. (A) which read as follows: ''a position to which section 5376 applies (relating to certain senior-level positions);''.

Subsec. (h)(2)(B)(i). Pub. L. 110–372, § 2(a)(2)(B)(i), substituted ''subparagraphs (A) and (B)'' for ''subparagraphs (A) through (C)'' and ''(vi), or (vii)'' for ''or (vi)''.

Subsec. (h)(2)(B)(ii). Pub. L. 110–372, § 2(a)(2)(B)(ii), substituted ''paragraph (1)(C)'' for ''paragraph (1)(D)'' and ''(vi), or (vii)'' for ''or (vi)''.

2004—Subsec. (g)(2)(A). Pub. L. 108–411, § 302(a)(1)(A), substituted ''(A)–(C)'' for ''(A)–(D)''.

Subsec. (h)(2)(B)(i). Pub. L. 108–411, § 302(a)(1)(B), substituted ''or (vi)'' for ''or (vii)''.

2003—Subsec. (g)(2)(A). Pub. L. 108–136, § 1125(a)(1)(A)(i), substituted ''subparagraphs (A)–(D)'' for ''subparagraphs (A)–(E)''.

Subsec. (g)(2)(B). Pub. L. 108–136, § 1125(a)(1)(A)(ii), substituted ''subsection (h)(1)(D)'' for ''subsection (h)(1)(F)''.

Subsec. (h)(1)(B) to (F). Pub. L. 108–136, § 1125(a)(1)(B)(i), (ii), redesignated subpars. (D), (E), and (F) as (B), (C), and (D), respectively, and struck out former subpars. (B) and (C) which read as follows:

''(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;''.

Subsec. (h)(1)(iv) to (vi). Pub. L. 108–136, § 1125(a)(1)(B)(iii)–(v), added cls. (iv) to (vi).

Subsec. (h)(2)(B)(i). Pub. L. 108–136, § 1125(a)(1)(C)(i), substituted ''subparagraphs (A) through (C)'' for ''subparagraphs (A) through (E)'' and ''clause (i), (ii), (iii), (iv), (v), or (vii)'' for ''clause (i) or (ii)''.

Subsec. (h)(2)(B)(ii). Pub. L. 108–136, § 1125(a)(1)(C)(ii), substituted ''paragraph (1)(D)'' for ''paragraph (1)(F)'' and ''clause (i), (ii), (iii), (iv), (v), or (vi)'' for ''clause (i) or (ii)''.

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 2009 AMENDMENT

For effective date of amendment by Pub. L. 111–84, see section 1919 of Pub. L. 111–84, set out in a Non-Foreign Area Retirement Equity Assurance note below.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–372 effective on the first day of the first pay period beginning on or after the 180th day following Oct. 8, 2008, see section 2(d) of Pub. L. 110–372, set out as a note under section 5376 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–411, title III, §302(a)(2), Oct. 30, 2004, 118 Stat. 2318, provided that: ''The amendments made by this subsection [amending this section] shall take effect as if included in the enactment of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136).''

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–136, div. A, title XI, §1125(c), Nov. 24, 2003, 117 Stat. 1640, provided that:

''(1) The amendments made by this section [enacting section 7302 of this title and amending this section, sections 5382 and 5383 of this title, and section 207 of Title 18, Crimes and Criminal Procedure] shall take effect on the first day of the first pay period beginning on or after the first January 1 following the date of the enactment of this section [Nov. 24, 2003].

''(2) The amendments made by subsection (a) [amending this section and sections 5382 and 5383 of this title] may not result in a reduction in the rate of basic pay for any senior executive during the first year after the effective date of those amendments.

''(3) For the purposes of paragraph (2), the rate of basic pay for a senior executive shall be deemed to be the rate of basic pay set for the senior executive under section 5383 of title 5, United States Code, plus applicable locality pay paid to that senior executive, as of the date of the enactment of this Act [Nov. 24, 2003].

''(4) Until otherwise provided by law, or except as otherwise provided by this section, any reference in a provision of law to a rate of basic pay that is above the minimum payable and below the maximum payable to a member of the Senior Executive Service shall be considered a reference to the rate of basic pay payable for level IV of the Executive 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, 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.

NON-FOREIGN AREA RETIREMENT EQUITY ASSURANCE

Pub. L. 111–84, div. A, title XIX, subtitle B, Oct. 28, 2009, 123 Stat. 2619, as amended by Pub. L. 111–383, div. A, title X, §1075(d)(22), Jan. 7, 2011, 124 Stat. 4374, provided that:

''SEC. 1911. SHORT TITLE.

''This subtitle may be cited as the 'Non-Foreign Area Retirement Equity Assurance Act of 2009' or the 'Non-Foreign AREA Act of 2009'.

''SEC. 1912. EXTENSION OF LOCALITY PAY.

''(a) LOCALITY-BASED COMPARABILITY PAYMENTS.—[Amended this section.]

''(b) ALLOWANCES BASED ON LIVING COSTS AND CONDITIONS OF ENVIRONMENT.—[Amended section 5941 of this title.]

''SEC. 1913. ADJUSTMENT OF SPECIAL RATES.

''(a) IN GENERAL.—Each special rate of pay established under section 5305 of title 5, United States Code, and payable in an area designated as a cost-of-living allowance area under section 5941(a) of that title, shall be adjusted, on the dates prescribed by section 1914, in accordance with regulations prescribed by the Director of the Office of Personnel Management under section 1918.

''(b) AGENCIES WITH STATUTORY AUTHORITY.—

''(1) IN GENERAL.—Each special rate of pay established under an authority described under paragraph (2) and payable in a location designated as a cost-of-living allowance area under section 5941(a)(1) of title 5, United States Code, shall be adjusted in accordance with regulations prescribed by the applicable head of the agency that are consistent with the regulations issued by the Director of the Office of Personnel Management under subsection (a).

''(2) STATUTORY AUTHORITY.—The authority referred to under paragraph (1), [sic] is any statutory authority that—

''(A) is similar to the authority exercised under section 5305 of title 5, United States Code;

''(B) is exercised by the head of an agency when the head of the agency determines it to be necessary in order to obtain or retain the services of persons specified by statute; and

''(C) authorizes the head of the agency to increase the minimum, intermediate, or maximum rates of basic pay authorized under applicable statutes and regulations.

''(c) TEMPORARY ADJUSTMENT.—Regulations issued under subsection (a) or (b) may provide that statutory limitations on the amount of such special rates may be temporarily raised to a higher level during the transition period described in section 1914 ending on the first day of the first pay period beginning on or after January 1, 2012, at which time any special rate of pay in excess of the applicable limitation shall be converted to a retained rate under section 5363 of title 5, United States Code.

''SEC. 1914. TRANSITION SCHEDULE FOR LOCALITY-BASED COMPARABILITY PAYMENTS.

''Notwithstanding any other provision of this subtitle or section 5304 or 5304a of title 5, United States Code, in implementing the amendments made by this subtitle, for each non-foreign area determined under section 5941(b) of such title, the applicable rate for the locality-based comparability adjustment that is used in the computation required under section 5941(c) of such title shall be adjusted, effective on the first day of the first pay period beginning on or after January 1—

''(1) in calendar year 2010, by using 1/3 of the locality pay percentage for the rest of United States locality pay area;

''(2) in calendar year 2011, by using 2/3 of the otherwise applicable comparability payment approved by the President for each non-foreign area; and

''(3) in calendar year 2012 and each subsequent year, by using the full amount of the applicable comparability payment approved by the President for each non-foreign area.

''SEC. 1915. SAVINGS PROVISION.

''(a) SENSE OF CONGRESS.—It is the sense of Congress that—

''(1) the application of this subtitle to any employee should not result in a decrease in the take home pay of that employee;

''(2) in calendar year 2012 and each subsequent year, no employee shall receive less than the Rest of the U.S. locality pay rate;

''(3) concurrent with the surveys next conducted under the provisions of section 5304(d)(1)(A) of title 5, United States Code, beginning after the date of the enactment of this Act [Oct. 28, 2009], the Bureau of Labor Statistics should conduct separate surveys to determine the extent of any pay disparity (as defined by section 5302 of that title) that may exist with respect to positions located in the State of Alaska, the State of Hawaii, and the United States territories, including American Samoa, Guam, Commonwealth of the Northern Mariana Islands, Commonwealth of Puerto Rico, and the United States Virgin Islands;

''(4) if the surveys under paragraph (3) indicate that the pay disparity determined for the State of Alaska, the State of Hawaii, or any 1 of the United States territories including American Samoa, Guam, Commonwealth of the Northern Mariana Islands, Commonwealth of Puerto Rico, and the United States Virgin Islands exceeds the pay disparity determined for the locality which (for purposes of section 5304 of that title) is commonly known as the 'Rest of the United States', the President's Pay Agent should take appropriate measures to provide that each such surveyed area be treated as a separate pay locality for purposes of that section; and

''(5) the President's Pay Agent will establish 1 locality area for the entire State of Hawaii and 1 locality area for the entire State of Alaska.

''(b) SAVINGS PROVISIONS.—

''(1) IN GENERAL.—During the transition period described in section 1914 ending on the first day of the first pay period beginning on or after January 1, 2012, an employee paid a special rate under 5305 of title 5, United States Code, who the day before the date of enactment of this Act [Oct. 28, 2009] was eligible to receive a cost-of-living allowance under section 5941 of title 5, United States Code, and who continues to be officially stationed in an allowance area, shall receive an increase in the employee's special rate consistent with increases in the applicable special rate schedule. For employees in allowance areas, the minimum step rate for any grade of a special rate schedule shall be increased at the time of an increase in the applicable locality rate percentage for the allowance area by not less than the dollar increase in the locality-based comparability payment for a non-special rate employee at the same minimum step provided under section 1914 of this subtitle, and corresponding increases shall be provided for all step rates of the given pay range.

''(2) CONTINUATION OF COST OF LIVING ALLOWANCE RATE.—If an employee, who the day before the date of enactment of this Act was eligible to receive a cost-of-living allowance under section 5941 of title 5, United States Code, would receive a rate of basic pay and applicable locality-based comparability payment which is in excess of the maximum rate limitation set under section 5304(g) of title 5, United States Code, for his position (but for that maximum rate limitation) due to the operation of this subtitle, the employee shall continue to receive the cost-of-living allowance rate in effect on December 31, 2009 without adjustment until—

''(A) the employee leaves the allowance area or pay system; or

''(B) the employee is entitled to receive basic pay (including any applicable locality-based comparability payment or similar supplement) at a higher rate,

but, when any such position becomes vacant, the pay of any subsequent appointee thereto shall be fixed in the manner provided by applicable law and regulation.

''(3) LOCALITY-BASED COMPARABILITY PAYMENTS.—Any employee covered under paragraph (2) shall receive any applicable locality-based comparability payment extended under section 1914 of this subtitle which is not in excess of the maximum rate set under section 5304(g) of title 5, United States Code, for his position including any future increase to statutory pay limitations under 5318 of title 5, United States Code. Notwithstanding paragraph (2), to the extent that an employee covered under that paragraph receives any amount of locality-based comparability payment, the cost-of-living allowance rate under that paragraph shall be reduced accordingly, as provided under section 5941(c)(2)(B) of title 5, United States Code.

''SEC. 1916. APPLICATION TO OTHER ELIGIBLE EMPLOYEES.

''(a) IN GENERAL.—

''(1) DEFINITION.—In this subsection, the term 'covered employee' means—

''(A) any employee who—

''(i) on the day before the date of enactment of this Act [Oct. 28, 2009]—

''(I) was eligible to be paid a cost-of-living allowance under 5941 of title 5, United States Code; and

''(II) was not eligible to be paid locality-based comparability payments under 5304 or 5304a of that title; or

''(ii) on or after the date of enactment of this Act becomes eligible to be paid a cost-of-living allowance under 5941 of title 5, United States Code; or

''(B) any employee who—

''(i) on the day before the date of enactment of this Act—

''(I) was eligible to be paid an allowance under section 1603(b) of title 10, United States Code;

''(II) was eligible to be paid an allowance under section 1005(b) of title 39, United States Code;

''(III) was employed by the Transportation Security Administration of the Department of Homeland Security and was eligible to be paid an allowance based on section 5941 of title 5, United States Code; or

''(IV) was eligible to be paid under any other authority a cost-of-living allowance that is equivalent to the cost-of-living allowance under section 5941 of title 5, United States Code; or

''(ii) on or after the date of enactment of this Act [Oct. 28, 2009]—

''(I) becomes eligible to be paid an allowance under section 1603(b) of title 10, United States Code;

''(II) becomes eligible to be paid an allowance under section 1005(b) of title 39, United States Code;

''(III) is employed by the Transportation Security Administration of the Department of Homeland Security and becomes eligible to be paid an allowance based on section 5941 of title 5, United States Code; or

''(IV) becomes eligible to be paid under any other authority a cost-of-living allowance that is equivalent to the cost-of-living allowance under section 5941 of title 5, United States Code.

''(2) APPLICATION TO COVERED EMPLOYEES.—

''(A) IN GENERAL.—Notwithstanding any other provision of law, for purposes of this subtitle (including the amendments made by this subtitle) any covered employee shall be treated as an employee to whom section 5941 of title 5, United States Code (as amended by section 1912 of this subtitle), and section 1914 of this subtitle apply.

''(B) PAY FIXED BY STATUTE.—Pay to covered employees under section 5304 or 5304a of title 5, United States Code, as a result of the application of this subtitle shall be considered to be fixed by statute.

''(C) PERFORMANCE APPRAISAL SYSTEM.—With respect to a covered employee who is subject to a performance appraisal system no part of pay attributable to locality-based comparability payments as a result of the application of this subtitle including section 5941 of title 5, United States Code (as amended by section 1912 of this subtitle), may be reduced on the basis of the performance of that employee.

''(b) POSTAL EMPLOYEES IN NON-FOREIGN AREAS.—

''(1) IN GENERAL.—[Amended section 1005 of Title 39, Postal Service.]

''(2) CONTINUATION OF COST OF LIVING ALLOWANCE.—

''(A) IN GENERAL.—Notwithstanding any other provision of this subtitle, any employee of the Postal Service (other than an employee covered by section 1003(b) and (c) of title 39, United States Code, whose duty station is in a nonforeign area) who is paid an allowance under section 1005(b) of that title shall be treated for all purposes as if the provisions of this subtitle (including the amendments made by this subtitle) had not been enacted, except that the cost-of-living allowance rate paid to that employee—

''(i) may result in the allowance exceeding 25 percent of the rate of basic pay of that employee; and

''(ii) shall be the greater of—

''(I) the cost-of-living allowance rate in effect on December 31, 2009 for the applicable area; or

''(II) the applicable locality-based comparability pay percentage under section 1914.

''(B) RULE OF CONSTRUCTION.—Nothing in this subtitle shall be construed to—

''(i) provide for an employee described under subparagraph (A) to be a covered employee as defined under subsection (a); or

''(ii) authorize an employee described under subparagraph (A) to file an election under section 1917 of this subtitle.

''SEC. 1917. ELECTION OF ADDITIONAL BASIC PAY FOR ANNUITY COMPUTATION BY EMPLOYEES.

''(a) DEFINITION.—In this section the term 'covered employee' means any employee—

''(1) to whom section 1914 applies;

''(2) who is separated from service by reason of retirement under chapter 83 or 84 of title 5, United States Code, during the period of January 1, 2010, through December 31, 2012; and

''(3) who files an election with the Office of Personnel Management under subsection (b).

''(b) ELECTION.—

''(1) IN GENERAL.—An employee described under subsection (a)(1) and (2) may file an election with the Office of Personnel Management to be covered under this section.

''(2) DEADLINE.—An election under this subsection may be filed not later than December 31, 2012.

''(c) COMPUTATION OF ANNUITY.—

''(1) IN GENERAL.—Except as provided under paragraph (2), for purposes of the computation of an annuity of a covered employee any cost-of-living allowance under section 5941 of title 5, United States Code, paid to that employee during the first applicable pay period beginning on or after January 1, 2010 through the first applicable pay period ending on or after December 31, 2012, shall be considered basic pay as defined under section 8331(3) or 8401(4) of that title.

''(2) LIMITATION.—An employee's cost-of-living allowance may be considered basic pay under paragraph (1) only to the extent that, when added to the employee's locality-based comparability payments, the resulting sum does not exceed the amount of the locality-based comparability payments the employee would have received during that period for the applicable pay area if the limitation under section 1914 did not apply.

''(d) CIVIL SERVICE RETIREMENT AND DISABILITY RETIREMENT FUND.—

''(1) EMPLOYEE CONTRIBUTIONS.—A covered employee shall pay into the Civil Service Retirement and Disability Retirement Fund—

''(A) an amount equal to the difference between—

''(i) employee contributions that would have been deducted and withheld from pay under section 8334 or 8422 of title 5, United States Code, during the period described under subsection (c) of this section if the cost-of-living allowances described under that subsection had been treated as basic pay under section 8331(3) or 8401(4) of title 5, United States Code; and

''(ii) employee contributions that were actually deducted and withheld from pay under section 8334 or 8422 of title 5, United States Code, during that period; and

''(B) interest as prescribed under section 8334(e) of title 5, United States Code, based on the amount determined under subparagraph (A).

''(2) AGENCY CONTRIBUTIONS.—

''(A) IN GENERAL.—The employing agency of a covered employee shall pay into the Civil Service Retirement and Disability Retirement Fund an amount for applicable agency contributions based on payments made under paragraph (1).

''(B) SOURCE.—Amounts paid under this paragraph shall be contributed from the appropriation or fund used to pay the employee.

''(3) REGULATIONS.—The Office of Personnel Management may prescribe regulations to carry out this section.

''SEC. 1918. REGULATIONS.

''(a) IN GENERAL.—The Director of the Office of Personnel Management shall prescribe regulations to carry out this subtitle, including—

''(1) rules for special rate employees described under section 1913;

''(2) rules for adjusting rates of basic pay for employees in pay systems administered by the Office of Personnel Management when such employees are not entitled to locality-based comparability payments under section 5304 of title 5, United States Code, without regard to otherwise applicable statutory pay limitations during the transition period described in section 1914 ending on the first day of the first pay period beginning on or after January 1, 2012; and

''(3) rules governing establishment and adjustment of saved or retained rates for any employee whose rate of pay exceeds applicable pay limitations on the first day of the first pay period beginning on or after January 1, 2012.

''(b) OTHER PAY SYSTEMS.—With the concurrence of the Director of the Office of Personnel Management, the administrator of a pay system not administered by the Office of Personnel Management shall prescribe regulations to carry out this subtitle with respect to employees in such pay system, consistent with the regulations prescribed by the Office under subsection (a). With respect to employees not entitled to locality-based comparability payments under section 5304 of title 5, United States Code, regulations prescribed under this subsection may provide for special payments or adjustments for employees who were eligible to receive a cost-of-living allowance under section 5941 of that title on the date before the date of enactment of this Act [Oct. 28, 2009].

''SEC. 1919. EFFECTIVE DATES.

''(a) IN GENERAL.—Except as provided by subsection (b), this subtitle (including the amendments made by this subtitle) shall take effect on the date of enactment of this Act [Oct. 28, 2009].

''(b) LOCALITY PAY AND SCHEDULE.—The amendments made by section 1912 and the provisions of section 1914 shall take effect on the first day of the first applicable pay period beginning on or after January 1, 2010.''

COMPARABILITY PAYMENTS BETWEEN 2002 AND 2007; COMPARISONS AND RECOMMENDATIONS; REVISION OF METHODOLOGY

Pub. L. 106–554, §1(a)(3) [title VI, §637], Dec. 21, 2000, 114 Stat. 2763, 2763A–165, provided that:

''(a) For purposes of this section—

''(1) the term 'comparability payment' refers to a locality-based comparability payment under section 5304 of title 5, United States Code;

''(2) the term 'President's pay agent' refers to the pay agent described in section 5302(4) of such title; and

''(3) the term 'pay locality' has the meaning given such term by section 5302(5) of such title.

''(b) Notwithstanding any provision of section 5304 of title 5, United States Code, for purposes of determining appropriate pay localities and making comparability payment recommendations, the President's pay agent may, in accordance with succeeding provisions of this section, make comparisons of General Schedule pay and non-Federal pay within any of the metropolitan statistical areas described in subsection (d)(3), using—

''(1) data from surveys of the Bureau of Labor Statistics;

''(2) salary data sets obtained under subsection (c); or

''(3) any combination thereof.

''(c) To the extent necessary in order to carry out this section, the President's pay agent may obtain any salary data sets (referred to in subsection (b)) from any organization or entity that regularly compiles similar data for businesses in the private sector.

''(d)(1)(A) This paragraph applies with respect to the five metropolitan statistical areas described in paragraph (3) which—

''(i) have the highest levels of nonfarm employment (as determined based on data made available by the Bureau of Labor Statistics); and

''(ii) as of the date of the enactment of this Act [Dec. 21, 2000], have not previously been surveyed by the Bureau of Labor Statistics (as discrete pay localities) for purposes of section 5304 of title 5, United States Code.

''(B) The President's pay agent, based on such comparisons under subsection (b) as the pay agent considers appropriate, shall: (i) determine whether any of the five areas under subparagraph (A) warrants designation as a discrete pay locality; and (ii) if so, make recommendations as to what level of comparability payments would be appropriate during 2002 for each area so determined.

''(C)(i) Any recommendations under subparagraph (B)(ii) shall be included—

''(I) in the pay agent's report under section 5304(d)(1) of title 5, United States Code, submitted for purposes of comparability payments scheduled to become payable in 2002; or

''(II) if compliance with subclause (I) is impracticable, in a supplementary report which the pay agent shall submit to the President and the Congress no later than March 1, 2001.

''(ii) In the event that the recommendations are completed in time to be included in the report described in clause (i)(I), a copy of those recommendations shall be transmitted by the pay agent to the Congress contemporaneous with their submission to the President.

''(D) Each of the five areas under subparagraph (A) that so warrants, as determined by the President's pay agent, shall be designated as a discrete pay locality under section 5304 of title 5, United States Code, in time for it to be treated as such for purposes of comparability payments becoming payable in 2002.

''(2) The President's pay agent may, at any time after the 180th day following the submission of the report under subsection (f), make any initial or further determinations or recommendations under this section, based on any pay comparisons under subsection (b), with respect to any area described in paragraph (3).

''(3) An area described in this paragraph is any metropolitan statistical area within the continental United States that (as determined based on data made available by the Bureau of Labor Statistics and the Office of Personnel Management, respectively) has a high level of nonfarm employment and at least 2,500 General Schedule employees whose post of duty is within such area.

''(e)(1) The authority under this section to make pay comparisons and to make any determinations or recommendations based on such comparisons shall be available to the President's pay agent only for purposes of comparability payments becoming payable on or after January 1, 2002, and before January 1, 2007, and only with respect to areas described in subsection (d)(3).

''(2) Any comparisons and recommendations so made shall, if included in the pay agent's report under section 5304(d)(1) of title 5, United States Code, for any year (or the pay agent's supplementary report, in accordance with subsection (d)(1)(C)(i)(II)), be considered and acted on as the pay agent's comparisons and recommendations under such section 5304(d)(1) for the area and the year involved.

''(f)(1) No later than March 1, 2001, the President's pay agent shall submit to the Committee on Government Reform [now Committee on Oversight and Government Reform] of the House of Representatives, the Committee on Governmental Affairs [now Committee on Homeland Security and Governmental Affairs] of the Senate, and the Committees on Appropriations of the House of Representatives and of the Senate, a report on the use of pay comparison data, as described in subsection (b)(2) or (3) (as appropriate), for purposes of comparability payments.

''(2) The report shall include the cost of obtaining such data, the rationale underlying the decisions reached based on such data, and the relative advantages and disadvantages of using such data (including whether the effort involved in analyzing and integrating such data is commensurate with the benefits derived from their use). The report may include specific

recommendations regarding the continued use of such data.

''(g)(1) No later than May 1, 2001, the President's pay agent shall prepare and submit to the committees specified in subsection (f)(1) a report relating to the ongoing efforts of the Office of Personnel Management, the Office of Management and Budget, and the Bureau of Labor Statistics to revise the methodology currently being used by the Bureau of Labor Statistics in performing its surveys under section 5304 of title 5, United States Code.

''(2) The report shall include a detailed accounting of any concerns the pay agent may have regarding the current methodology, the specific projects the pay agent has directed any of those agencies to undertake in order to address those concerns, and a time line for the anticipated completion of those projects and for implementation of the revised methodology.

''(3) The report shall also include recommendations as to how those ongoing efforts might be expedited, including any additional resources which, in the opinion of the pay agent, are needed in order to expedite completion of the activities described in the preceding provisions of this subsection, and the reasons why those additional resources are needed.''

FREEZE OF CURRENT RATE FOR LOCALITY-BASED COMPARABILITY ADJUSTMENTS

Pub. L. 106–554, § 1(a)(4) [div. B, title IX, § 902(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–304, which provided that notwithstanding any other law, no officer or member of the United States Secret Service Uniformed Division or Park Police was to be paid locality pay under section 5304 or 5304a of this title, at a percentage rate for the applicable locality in excess of the rate in effect for pay periods during calendar year 2000, ceased to be effective on the first day of the first pay period on or after Jan. 1, 2003, pursuant to Pub. L. 108–7, div. J, title VI, § 643, Feb. 20, 2003, 117 Stat. 473.

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, formerly 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 [sic].

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 U.S.C. App.], 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

For adjustment of locality-based comparability payments under this section, see the executive order detailing the adjustment of certain rates of pay set out as a note under section 5332 of this title.

Approvals of locality-based comparability payments recommended by the Director of the Office of Personnel Management were contained in the following:

Memorandum of President of the United States, Nov. 30, 1994, 59 F.R. 62549.

Memorandum of President of the United States, Dec. 1, 1993, 58 F.R. 64097.

## § 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)(1) Whenever the Office of Personnel Management 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), the Office 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 pay for 1 or more grades or levels, occupational groups, series, classes, or subdivisions thereof, and may make corresponding increases in all rates of the pay range for each such grade or level. However, a minimum rate so established may not exceed the maximum rate of basic pay (excluding any locality-based comparability payment under section 5304 or similar provision of law) for the grade or level by more than 30 percent, and no rate may be established under this section in excess of the rate of basic pay payable for level IV of the Executive Schedule. In the case of individuals not subject to the provisions of this title governing appointment in the competitive service, the President may designate another agency to authorize special rates under this section.

(2) The head of an agency may determine that a category of employees of the agency will not be covered by a special rate authorization established under this section. The head of an agency shall provide written notice to the Office of Personnel Management (or other agency designated by the President to authorize special rates under the last sentence of paragraph (1)) which identifies the specific category or categories of employees that will not be covered by special rates authorized under this section. If the head of an agency removes a category of employees from coverage under a special rate authorization after that authorization takes effect, the loss of coverage will take effect on the first day of the first pay period after the date of the notice.

(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 Office of Personnel Management (or such other agency as the President may under the last sentence of subsection (a)(1) designate) 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 Office of Personnel Management (or by such other agency as the President may designate under the last sentence of subsection (a)(1)). The actions and revisions have the force and effect of statute.

(e) An increase in a rate of pay established under this section is not an equivalent increase in pay within the meaning of section 5335.

(f) When a schedule of special rates established under this section is adjusted under subsection (d), a covered employee's special rate will be adjusted in accordance with conversion rules prescribed by the Office of Personnel Management (or by such other agency as the President may under the last sentence of subsection (a)(1) designate).

(g)(1) The benefit of any comparability payments under section 5304 shall be available to individuals receiving rates of pay established under this section to such extent as the Office of Personnel Management (or such other agency as the President may under the last sentence of subsection (a)(1) designate) considers appro-

priate, 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) An employee shall not for any purpose be considered to be entitled to a rate of pay established under this section with respect to any period for which such employee is entitled to a higher rate of basic pay under any other provision of law. For purposes of this subsection, the term ''basic pay'' includes any applicable locality-based comparability payment under section 5304 or similar provision of law.

(i) If an employee who is receiving a rate of pay under this section becomes subject, by virtue of moving to a new official duty station, to a different pay schedule, such employee's new rate of pay shall be initially established under conversion rules prescribed by the Office of Personnel Management (or such other agency as the President may under the last sentence of subsection (a)(1) designate) in conformance with the following:

(1) First, determine the rate of pay to which such employee would be entitled at the new official duty station based on such employee's position, grade, and step (or relative position in the rate range) before the move.

(2) Then, if (in addition to the change in pay schedule) the move also involves any personnel action or other change requiring a rate adjustment under any other provision of law, rule, or regulation, apply the applicable rate adjustment provisions, treating the rate determined under paragraph (1) as if it were the rate last received by the employee before the rate adjustment.

(j) A rate determined under a schedule of special rates established under this section shall be considered to be part of basic pay for purposes of subchapter III of chapter 83, chapter 84, chapter 87, subchapter V of chapter 55, and section 5941, and for 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. 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; Pub. L. 108–411, title III, § 301(a)(2), Oct. 30, 2004, 118 Stat. 2313.)

REFERENCES IN TEXT

Level IV of the Executive Schedule, referred to in subsecs. (a)(1) and (g)(2), is set out in section 5315 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

2004—Subsec. (a). Pub. L. 108–411, § 301(a)(2)(A), added subsec. (a) and struck out former subsec. (a) relating to the President's authority to establish higher minimum rates of basic pay for specified individuals where the Government's recruitment or retention efforts are, or are likely to become, significantly handicapped.

Subsec. (b)(4). Pub. L. 108–411, § 301(a)(2)(B), added par. (4) and struck out former par. (4) which read as follows: ''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.''

Subsec. (d). Pub. L. 108–411, § 301(a)(2)(C), substituted ''Office of Personnel Management'' for ''President'' and ''(or by such other agency as the President may designate under the last sentence of subsection (a)(1))'' for ''or by such agency as he may designate''.

Subsec. (e). Pub. L. 108–411, § 301(a)(2)(D), substituted ''rate of pay'' for ''rate of basic pay''.

Subsec. (f). Pub. L. 108–411, § 301(a)(2)(E), added subsec. (f) and struck out former subsec. (f) which read as follows: ''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.''

Subsec. (g)(1). Pub. L. 108–411, § 301(a)(2)(F), substituted ''pay'' for ''basic pay'' and ''Office of Personnel Management (or such other agency as the President may under the last sentence of subsection (a)(1) designate)'' for ''President (or his designated agency)''.

Subsec. (h). Pub. L. 108–411, § 301(a)(2)(G), added subsec. (h) and struck out former subsec. (h) which read as follows ''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.''

Subsecs. (i), (j). Pub. L. 108–411, § 301(a)(2)(H), added subsecs. (i) and (j).

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 2004 AMENDMENT

Amendment by Pub. L. 108–411 effective on the first day of the first applicable pay period beginning on or after the 180th day after Oct. 30, 2004, with provision relating to conversion rules, see section 301(d) of Pub. L. 108–411, set out as a note under section 5363 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.

DELEGATION OF FUNCTIONS

Functions of President under this section assigned to the Director of the Office of Personnel Management by section 1 of Ex. Ord. No. 13415, Dec. 1, 2006, 71 F.R. 70641, set out as a note under section 4505a 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

Pub. L. 106–554, § 1(a)(4) [div. B, title IX, § 907(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–309, provided that: ''Beginning on the effective date of this Act [see section 1(a)(4) [div. B, title IX, § 909] of Pub. L. 106–554, set out in a Conversion to New Salary Schedule note under section 3056A of Title 18, Crimes and Criminal Procedure]—

''(1) no existing special salary rates shall be authorized for members of the United States Park Police under section 5305 of title 5, United States Code (or any previous similar provision of law); and

''(2) no special rates of pay or special pay adjustments shall be applicable to members of the United States Park Police pursuant to section 405 of the Federal Law Enforcement Pay Reform Act of 1990 [section 529 [title IV, § 405] of Pub. L. 101–509, set out in a note below].''

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; Pub. L. 105–61, title I, § 118(e), Oct. 10, 1997, 111 Stat. 1288; Pub. L. 106–554, § 1(a)(4) [div. B, title IX, § 907(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–309; Pub. L. 108–411, title I, § 101(b), title III, § 301(b), Oct. 30, 2004, 118 Stat. 2309, 2317, 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) and shall be basic pay for all purposes. The rates shall be adjusted at the time of adjustments in the General Schedule to maintain the step linkage set forth in subsection (b)(2).

''(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% |

| ''Area | Differential |
|---|---|
| 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) special agent within the Diplomatic Security Service;

''(2) probation officer (referred to in section 3672 of title 18, United States Code); or

''(3) pretrial services officer (referred to in section 3153 of title 18, United States Code).

''(c) For purposes of this section, the term 'appropriate agency head' means—

''(1) with respect to any individual under subsection (b)(1), the Secretary of State; or

''(2) with respect to any individual under subsection (b)(2) or (b)(3), 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.''

[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.''

## § 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 Chief Administrative Officer 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[1] 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

[1] See References in Text note below.

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; Pub. L. 104–186, title II, § 215(3), Aug. 20, 1996, 110 Stat. 1745.)

REFERENCES IN TEXT

Section 166b–3a of title 40, referred to in subsec. (a)(1)(B), means section 166b–3a of former Title 40, Public Buildings, Property, and Works, which was transferred to section 1848 of Title 2, The Congress.

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

1996—Subsec. (a)(1)(A). Pub. L. 104–186 substituted ''Chief Administrative Officer'' for ''Clerk''.

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.

## § 5307. Limitation on certain payments

(a)(1) Except as otherwise permitted by or under law, or as otherwise provided under subsection (d), 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, 5755, or 5757);[1] 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[2] 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 (subject to subsection (d)), 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.

(d)(1) Notwithstanding any other provision of this section, subsection (a)(1) shall be applied by substituting ''the total annual compensation payable to the Vice President under section 104 of title 3'' for ''the annual rate of basic pay payable for level I of the Executive Schedule'' in the case of any employee who—

(A) is paid under section 5376 or 5383 of this title or section 332(f), 603, or 604 of title 28; and

(B) holds a position in or under an agency which is described in paragraph (2).

(2) An agency described in this paragraph is any agency which, for purposes of applying the limitation in the calendar year involved, has a performance appraisal system certified under this subsection as making, in its design and application, meaningful distinctions based on relative performance.

(3)(A) The Office of Personnel Management and the Office of Management and Budget jointly shall promulgate such regulations as may be necessary to carry out this subsection, including the criteria and procedures in accordance with which any determinations under this subsection shall be made.

(B) The certification of an agency performance appraisal system under this subsection shall be

[1] See References in Text note below.

[2] So in original. Probably should be ''applying''.

for a period not to exceed 24 months beginning on the date of certification, unless extended by the Director of the Office of Personnel Management for up to 6 additional months, except that such certification may be terminated at any time upon a finding that the actions of such agency have not remained in conformance with applicable requirements.

(C) Any certification or decertification under this subsection shall be made by the Office of Personnel Management, with the concurrence of the Office of Management and Budget.

(4) Notwithstanding any provision of paragraph (3), any regulations, certifications, or other measures necessary to carry out this subsection with respect to employees within the judicial branch shall be the responsibility of the Director of the Administrative Office of the United States Courts. However, the regulations under this paragraph shall be consistent with those promulgated under paragraph (3).

(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; Pub. L. 107–273, div. A, title II, § 207(b), Nov. 2, 2002, 116 Stat. 1780; Pub. L. 107–296, title XIII, § 1322, Nov. 25, 2002, 116 Stat. 2297; Pub. L. 110–372, § 3(a), Oct. 8, 2008, 122 Stat. 4045.)

REFERENCES IN TEXT

Level I of the Executive Schedule, referred to in subsecs. (a)(1) and (d)(1), is set out in section 5312 of this title.

Section 5757, referred to in subsec. (a)(2)(B), probably means the section 5757 of this title added by Pub. L. 107–273, relating to extended assignment incentive.

AMENDMENTS

2008—Subsec. (d)(2). Pub. L. 110–372, § 3(a)(1), substituted ''applying the limitation in the calendar year involved, has a performance appraisal system certified under this subsection as making, in its design and application, meaningful distinctions based on relative performance'' for ''the calendar year involved, has been certified under this subsection as having a performance appraisal system which (as designed and applied) makes meaningful distinctions based on relative performance''.

Subsec. (d)(3)(B). Pub. L. 110–372, § 3(a)(2), substituted ''The certification of an agency performance appraisal system under this subsection shall be for a period not to exceed 24 months beginning on the date of certification, unless extended by the Director of the Office of Personnel Management for up to 6 additional months'' for ''An agency's certification under this subsection shall be for a period of 2 calendar years'' and struck out '', for purposes of either or both of those years,'' after ''time''.

2002—Subsec. (a)(1). Pub. L. 107–296, § 1322(b)(1), inserted ''or as otherwise provided under subsection (d),'' after ''under law,''.

Subsec. (a)(2)(B). Pub. L. 107–273 substituted ''5755, or 5757'' for ''or 5755''.

Subsec. (c). Pub. L. 107–296, § 1322(b)(2), substituted ''this section (subject to subsection (d)),'' for ''this section,''.

Subsec. (d). Pub. L. 107–296, § 1322(a), added subsec. (d).

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 2008 AMENDMENT

Pub. L. 110–372, § 3(c), Oct. 8, 2008, 122 Stat. 4046, provided that: ''The amendments made by this section [amending this section] shall take effect on the date of enactment of this Act [Oct. 8, 2008].''

EFFECTIVE DATE OF 2002 AMENDMENTS

Amendment by Pub. L. 107–296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

Pub. L. 107–273, div. A, title II, § 207(c), Nov. 2, 2002, 116 Stat. 1780, provided that: ''The amendments made by this section [enacting section 5757 of this title and amending this section] shall take effect on the first day of the first applicable pay period beginning on or after 6 months after the date of enactment of this Act [Nov. 2, 2002].''

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.

EXTENSION OF CERTIFICATION

Pub. L. 110–372, § 3(b), Oct. 8, 2008, 122 Stat. 4045, provided that:

''(1) EXTENSION TO 2009.—

''(A) IN GENERAL.—For any certification of a performance appraisal system under section 5307(d) of title 5, United States Code, in effect on the date of enactment of this Act [Oct. 8, 2008] and scheduled to expire at the end of calendar year 2008, the Director of the Office of Personnel Management may provide that such a certification shall be extended without requiring additional justification by the agency.

''(B) LIMITATION.—The expiration of any extension under this paragraph shall be not later than the later of—

''(i) June 30, 2009; or

''(ii) the first anniversary of the date of the certification.

''(2) EXTENSION TO 2010.—

''(A) IN GENERAL.—For any certification of a performance appraisal system under section 5307(d) of title 5, United States Code, in effect on the date of enactment and scheduled to expire at the end of calendar year 2009, the Director of the Office of Personnel Management may provide that such a certification shall be extended without requiring additional justification by the agency.

''(B) LIMITATION.—The expiration of any extension under this paragraph shall be not later than the later of—

''(i) June 30, 2010; or

''(ii) the second anniversary of the date of the certification.''

FREEZE ON DISCRETIONARY AWARDS, BONUSES, AND SIMILAR PAYMENTS FOR FEDERAL POLITICAL APPOINTEES

Memorandum of President of the United States, Aug. 3, 2010, 75 F.R. 47433, provided:

Memorandum for the Assistant to the President and Chief of Staff [and] The Heads of Executive Departments and Agencies

At a time when so many American families are struggling to make ends meet, I am committed to making sure the Federal Government is spending the taxpayers' money wisely and carefully, and cutting costs wherever possible. I am committed to ending programs that do not work, streamlining those that do, and bringing a new responsibility for stewardship of tax dollars. Like households and businesses across the country, the Federal Government is tightening its belt. This effort began during my first days in office, when I froze the salaries of the senior members of my White House Staff.

As a next step in this effort, I direct you to suspend cash awards, quality step increases, bonuses, and similar discretionary payments or salary adjustments to any politically appointed Federal employee, commencing immediately, and continuing through the end of Fiscal Year 2011. I also direct the Office of Personnel Management to issue guidance, in consultation with the Office of Management and Budget, to assist departments and agencies in implementing this policy.

In addition to these actions freezing discretionary payments, I have proposed in my Budget for Fiscal Year 2011 a salary freeze for senior political appointees throughout the Federal Government. Unlike the administrative action I have taken today in this memorandum, my proposed salary freeze requires legislation, so it cannot be implemented absent legislative action by the Congress.

I appreciate the hard work of our Federal workforce, and understand how important these payments can be to many workers and their families. Yet like households and businesses across the country, we need to make tough choices about how to spend our funds.

This memorandum shall be carried out to the extent permitted by law and consistent with executive departments' and agencies' legal authorities. Nothing in this memorandum shall be construed to affect payments or salary adjustments for Federal employees who are not political appointees. This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

The Director of the Office of Management and Budget is hereby authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA.

### [§ 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

### § 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 determine 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.

## § 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.
Secretary of Homeland Security.
Director of the Office of Management and Budget.
Commissioner of Social Security, Social Security Administration.
Director of National Drug Control Policy.
Chairman, Board of Governors of the Federal Reserve System.
Director of National Intelligence.

(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; Pub. L. 105–277, div. C, title VII, § 713(a)(1), Oct. 21, 1998, 112 Stat. 2681–693; Pub. L. 106–569, title X, § 1002(a)(1), Dec. 27, 2000, 114 Stat. 3028; Pub. L. 107–296, title XVII, § 1702(a)(1), Nov. 25, 2002, 116 Stat. 2313; Pub. L. 108–458, title I, § 1015(a), Dec. 17, 2004, 118 Stat. 3664.)

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

2004—Pub. L. 108–458 inserted item relating to Director of National Intelligence.

2002—Pub. L. 107–296 inserted item relating to Secretary of Homeland Security.

2000—Pub. L. 106–569 inserted item relating to Chairman, Board of Governors of the Federal Reserve System.

1998—Pub. L. 105–277 inserted item relating to Director of National Drug Control Policy.

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 DATE OF 2004 AMENDMENT

For Determination by President that amendment by Pub. L. 108–458 take effect on Apr. 21, 2005, see Memorandum of President of the United States, Apr. 21, 2005, 70 F.R. 23925, set out as a note under section 401 of Title 50, War and National Defense.

Amendment by Pub. L. 108–458 effective not later than six months after Dec. 17, 2004, except as otherwise expressly provided, see section 1097(a) of Pub. L. 108–458, set out as an Effective Date of 2004 Amendment; Transition Provisions note under section 401 of Title 50, War and National Defense.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as

an Effective Date note under section 101 of Title 6, Domestic Security.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–569, title X, §1002(b), Dec. 27, 2000, 114 Stat. 3028, provided that: ''This section [amending this section and sections 5313 and 5314 of this title] and the amendments made by this section shall take effect on the first day of the first pay period for the Chairman and Members of the Board of Governors of the Federal Reserve System beginning on or after the date of the enactment of this Act [Dec. 27, 2000].''

EFFECTIVE AND TERMINATION DATES OF 1988 AMENDMENTS

Amendment by Pub. L. 100–690 effective Jan. 21, 1989, and repealed on Sept. 30, 1997, see sections 1012 and 1009, respectively, of Pub. L. 100–690.

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 former 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'.''

COMPENSATION AND EMOLUMENTS OF SECRETARY OF THE INTERIOR; FIXING AT LEVEL IN EFFECT ON JANUARY 1, 2005

Pub. L. 111–1, §1, Jan. 16, 2009, 123 Stat. 3, provided that:

''(a) IN GENERAL.—The compensation and other emoluments attached to the office of Secretary of the Interior shall be those in effect January 1, 2005, notwithstanding any increase in such compensation or emoluments after that date under any provision of law, or provision which has the force and effect of law, that is enacted or becomes effective during the period beginning at noon of January 3, 2005, and ending at noon of January 3, 2011.

''(b) CIVIL ACTION AND APPEAL.—

''(1) JURISDICTION.—Any person aggrieved by an action of the Secretary of the Interior may bring a civil action in the United States District Court for the District of Columbia to contest the constitutionality of the appointment and continuance in office of the Secretary of the Interior on the ground that such appointment and continuance in office is in violation of article I, section 6, clause 2, of the Constitution. The United States District Court for the District of Columbia shall have exclusive jurisdiction over such a civil action, without regard to the sum or value of the matter in controversy.

''(2) THREE JUDGE PANEL.—Any claim challenging the constitutionality of the appointment and continuance in office of the Secretary of the Interior on the ground that such appointment and continuance in office is in violation of article I, section 6, clause 2, of the Constitution, in an action brought under paragraph (1) shall be heard and determined by a panel of three judges in accordance with section 2284 of title 28, United States Code. It shall be the duty of the district court to advance on the docket and to expedite the disposition of any matter brought under this subsection.

''(3) APPEAL.—

''(A) DIRECT APPEAL TO SUPREME COURT.—An appeal may be taken directly to the Supreme Court of the United States from any interlocutory or final judgment, decree, or order upon the validity of the appointment and continuance in office of the Secretary of the Interior under article I, section 6, clause 2, of the Constitution, entered in any action brought under this subsection. Any such appeal shall be taken by a notice of appeal filed within 20 days after such judgment, decree, or order is entered.

''(B) JURISDICTION.—The Supreme Court shall, if it has not previously ruled on the question presented by an appeal taken under subparagraph (A), accept jurisdiction over the appeal, advance the appeal on the docket, and expedite the appeal.

''(c) EFFECTIVE DATE.—This joint resolution shall take effect at 12:00 p.m. on January 20, 2009.''

COMPENSATION AND EMOLUMENTS OF SECRETARY OF STATE; FIXING AT LEVEL IN EFFECT ON JANUARY 1, 2007

Pub. L. 110–455, Dec. 19, 2008, 122 Stat. 5036, provided that:

''(a) IN GENERAL.—The compensation and other emoluments attached to the office of Secretary of State shall be those in effect January 1, 2007, notwithstanding any increase in such compensation or emoluments after that date under any provision of law, or provision which has the force and effect of law, that is enacted or becomes effective during the period beginning at noon of January 3, 2007, and ending at noon of January 3, 2013.

''(b) CIVIL ACTION AND APPEAL.—

''(1) JURISDICTION.—Any person aggrieved by an action of the Secretary of State may bring a civil action in the United States District Court for the District of Columbia to contest the constitutionality of the appointment and continuance in office of the Secretary of State on the ground that such appointment and continuance in office is in violation of article I, section 6, clause 2, of the Constitution. The United States District Court for the District of Columbia shall have exclusive jurisdiction over such a civil action, without regard to the sum or value of the matter in controversy.

''(2) THREE JUDGE PANEL.—Any claim challenging the constitutionality of the appointment and continuance in office of the Secretary of State on the ground that such appointment and continuance in of-

fice is in violation of article I, section 6, clause 2, of the Constitution, in an action brought under paragraph (1) shall be heard and determined by a panel of three judges in accordance with section 2284 of title 28, United States Code. It shall be the duty of the district court to advance on the docket and to expedite the disposition of any matter brought under this subsection.

''(3) APPEAL.—

''(A) DIRECT APPEAL TO SUPREME COURT.—An appeal may be taken directly to the Supreme Court of the United States from any interlocutory or final judgment, decree, or order upon the validity of the appointment and continuance in office of the Secretary of State under article I, section 6, clause 2, of the Constitution, entered in any action brought under this subsection. Any such appeal shall be taken by a notice of appeal filed within 20 days after such judgment, decree, or order is entered.

''(B) JURISDICTION.—The Supreme Court shall, if it has not previously ruled on the question presented by an appeal taken under subparagraph (A), accept jurisdiction over the appeal, advance the appeal on the docket, and expedite the appeal.

''(c) EFFECTIVE DATE.—This joint resolution shall take effect at 12:00 p.m. on January 20, 2009.''

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.

SALARY INCREASES

For adjustment of salaries under this section, see the executive order detailing the adjustment of certain rates of pay set out as a note under section 5332 of this title.

For prior year salary increases per the recommendation of the President, see Prior Salary Recommendations notes under section 358 of Title 2, The Congress.

For miscellaneous provisions dealing with adjustments of pay and limitations on use of funds to pay salaries in prior years, see notes under section 5318 of this title.

## § 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.

Deputy Secretary of State for Management and Resources.

Administrator, Agency for International Development.

Administrator of the National Aeronautics and Space Administration.

Deputy Secretary of Veterans Affairs.

Deputy Secretary of Homeland Security.

Under Secretary of Homeland Security for Management.

Deputy Secretary of the Treasury.

Deputy Secretary of Transportation.

Chairman, Nuclear Regulatory Commission.

Chairman, Council of Economic Advisers.

Director of the Office of Science and Technology.

Director of the Central Intelligence Agency.

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, Technology, and Logistics.

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 Federal Housing Finance Agency.

Deputy Commissioner of Social Security, Social Security Administration.

Administrator of the Community Development Financial Institutions Fund.

Deputy Director of National Drug Control Policy.

Members, Board of Governors of the Federal Reserve System.

The[1] Under Secretary of Transportation for Security.

Under Secretary of Transportation for Policy.

Chief Executive Officer, Millennium Challenge Corporation.

Principal Deputy Director of National Intelligence.

Director of the National Counterterrorism Center.

[1] So in original. The word ''The'' probably should not appear.

Director of the National Counter Proliferation Center.

Administrator of the Federal Emergency Management Agency.

(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; Pub. L. 105–277, div. C, title VII, § 713(a)(2), div. G, subdiv. A, title XII, § 1224(1), title XIII, § 1332(1), Oct. 21, 1998, 112 Stat. 2681–693, 2681–772, 2681–785; Pub. L. 106–65, div. A, title IX, § 911(e), Oct. 5, 1999, 113 Stat. 719; Pub. L. 106–553, § 1(a)(2) [title IV, § 404(b)], Dec. 21, 2000, 114 Stat. 2762, 2762A–96; Pub. L. 106–569, title X, § 1002(a)(2), Dec. 27, 2000, 114 Stat. 3028; Pub. L. 107–71, title I, § 101(c)(1), Nov. 19, 2001, 115 Stat. 602; Pub. L. 107–295, title II, § 215(b), Nov. 25, 2002, 116 Stat. 2102; Pub. L. 107–296, title XVII, § 1702(a)(2), Nov. 25, 2002, 116 Stat. 2313; Pub. L. 108–199, div. D, title VI, § 604(b)(4)(B), Jan. 23, 2004, 118 Stat. 212; Pub. L. 108–458, title I, § 1015(b), Dec. 17, 2004, 118 Stat. 3664; Pub. L. 109–295, title VI, § 612(a)(1), Oct. 4, 2006, 120 Stat. 1410; Pub. L. 110–53, title XXIV, § 2405(e), Aug. 3, 2007, 121 Stat. 550; Pub. L. 110–289, div. A, title I, § 1161(g)(1), July 30, 2008, 122 Stat. 2780; Pub. L. 111–259, title VIII, § 807(a), Oct. 7, 2010, 124 Stat. 2749.)

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

2010—Pub. L. 111–259 substituted ''Director of the Central Intelligence Agency'' for ''Director of Central Intelligence''.

2008—Pub. L. 110–289 substituted ''Director of the Federal Housing Finance Agency'' for ''Director of the Office of Federal Housing Enterprise Oversight, Department of Housing and Urban Development''.

2007—Pub. L. 110–53 inserted item relating to Under Secretary of Homeland Security for Management.

2006—Pub. L. 109–295 inserted item relating to Administrator of the Federal Emergency Management Agency.

2004—Pub. L. 108–458 inserted items relating to Principal Deputy Director of National Intelligence, Director of the National Counterterrorism Center, and Director of the National Counter Proliferation Center.

Pub. L. 108–199 inserted item relating to Chief Executive Officer, Millennium Challenge Corporation.

2002—Pub. L. 107–296 inserted item relating to Deputy Secretary of Homeland Security.

Pub. L. 107–295 inserted item relating to Under Secretary of Transportation for Policy.

2001—Pub. L. 107–71 inserted item relating to Under Secretary of Transportation for Security.

2000—Pub. L. 106–569 struck out item relating to Chairman, Board of Governors of the Federal Reserve System and inserted item relating to Members, Board of Governors of the Federal Reserve System.

Pub. L. 106–553 inserted item relating to Deputy Secretary of State for Management and Resources.

1999—Pub. L. 106–65 substituted ''Under Secretary of Defense for Acquisition, Technology, and Logistics'' for ''Under Secretary of Defense for Acquisition and Technology''.

1998—Pub. L. 105–277, § 1332(1), struck out item relating to Director of the United States Information Agency.

Pub. L. 105–277, § 1224(1), struck out item relating to Director of the United States Arms Control and Disarmament Agency.

Pub. L. 105–277, § 713(a)(2), inserted item relating to Deputy Director of National Drug Control Policy.

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. 97–449, § 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.

CHANGE OF NAME

Any reference to the Administrator of the Federal Emergency Management Agency in title VI of Pub. L. 109–295 or an amendment by title VI to be considered to refer and apply to the Director of the Federal Emergency Management Agency until Mar. 31, 2007, see section 612(f)(2) of Pub. L. 109–295, set out as a note under section 313 of Title 6, Domestic Security.

EFFECTIVE DATE OF 2004 AMENDMENT

For Determination by President that amendment by Pub. L. 108–458 take effect on Apr. 21, 2005, see Memorandum of President of the United States, Apr. 21, 2005, 70 F.R. 23925, set out as a note under section 401 of Title 50, War and National Defense.

Amendment by Pub. L. 108–458 effective not later than six months after Dec. 17, 2004, except as otherwise expressly provided, see section 1097(a) of Pub. L. 108–458, set out as an Effective Date of 2004 Amendment; Transition Provisions note under section 401 of Title 50, War and National Defense.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–569 effective on the first day of the first pay period for the Chairman and Members of the Board of Governors of the Federal Reserve System beginning on or after Dec. 27, 2000, see section 1002(b) of Pub. L. 106–569, set out as a note under section 5312 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 1224(1) of Pub. L. 105–277 effective Apr. 1, 1999, see section 1201 of Pub. L. 105–277, set out as an Effective Date note under section 6511 of Title 22, Foreign Relations and Intercourse.

Amendment by section 1332(1) of Pub. L. 105–277 effective Oct. 1, 1999, see section 1301 of Pub. L. 105–277, set out as an Effective Date note under section 6531 of Title 22, Foreign Relations and Intercourse.

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

For transfer of functions, personnel, assets, and liabilities of the Transportation Security Administration of the Department of Transportation, including the functions of the Secretary of Transportation, and of the Under Secretary of Transportation for Security, relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(2), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

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.

BONUS ELIGIBILITY OF UNDER SECRETARY OF TRANSPORTATION FOR SECURITY

Pub. L. 107–71, title I, § 101(c)(2), Nov. 19, 2001, 115 Stat. 602, provided that: ''In addition to the annual rate of pay authorized by section 5313 of title 5, United States Code, the Under Secretary may receive a bonus for any calendar year not to exceed 30 percent of the annual rate of pay, based on the Secretary's evaluation of the Under Secretary's performance.''

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.

SALARY INCREASES

For adjustment of salaries under this section, see the executive order detailing the adjustment of certain rates of pay set out as a note under section 5332 of this title.

For prior year salary increases per the recommendation of the President, see Prior Salary Recommendations notes under section 358 of Title 2, The Congress.

For miscellaneous provisions dealing with adjustments of pay and limitations on use of funds to pay salaries in prior years, see notes under section 5318 of this title.

## § 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 (6).
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, Surface Transportation Board.
Chairman, National Labor Relations Board.
Chairman, Securities and Exchange Commission.
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.
Under Secretary of Defense for Intelligence.
Deputy Chief Management Officer of the Department of Defense.
Under Secretary of the Air Force.
Under Secretary of the Army.
Under Secretary of the Navy.
Deputy Administrator of the National Aeronautics and Space Administration.
Deputy Director of the Central Intelligence Agency.
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.
Director of the Federal Bureau of Investigation, Department of Justice.
Administrator of the National Highway Traffic Safety Administration.
Administrator of the Federal Motor Carrier 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 Regulatory 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 Secretaries of Energy (3).
Chairman, Commodity Futures Trading Commission.
Deputy United States Trade Representatives (3).
Chief Agricultural Negotiator.
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.
Under Secretary of Commerce for Standards and Technology, who also serves as Director of the National Institute of Standards and Technology.
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.
Under Secretary of Agriculture for Marketing and Regulatory Programs.
Director, Institute for Scientific and Technological Cooperation.
Under Secretary of Agriculture for Rural Development.
Administrator, Maritime Administration.
Executive Director Property Review Board.
Deputy Administrator of the Environmental Protection Agency.
Archivist of the United States.
Executive Director, Federal Retirement Thrift Investment Board.
Principal Deputy Under Secretary of Defense for Acquisition, Technology, and Logistics.
Director, Trade and Development Agency.
Under Secretary for Health, Department of Veterans Affairs.
Under Secretary for Benefits, Department of Veterans Affairs.
Under Secretary for Memorial Affairs, Department of Veterans Affairs.
Under Secretaries, Department of Homeland Security.
Director of the Bureau of Citizenship and Immigration Services.

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 Innovative Technology Administration.

Deputy Director for Demand Reduction, Office of National Drug Control Policy.

Deputy Director for Supply Reduction, Office of National Drug Control Policy.

Deputy Director for State and Local Affairs, Office of National Drug Control Policy.

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

Register of Copyrights.

Commissioner of Customs, Department of Homeland Security.

Under Secretary of Education[1]

Administrator of the Centers for Medicare & Medicaid Services.

Administrator of the Office of Electronic Government.

Administrator, Pipeline and Hazardous Materials Safety Administration.

Director, Pension Benefit Guaranty Corporation.

Deputy Administrators, Federal Emergency Management Agency.

Chief Executive Officer, International Clean Energy Foundation.

Independent Member of the Financial Stability Oversight Council (1).

Director of the Office of Financial Research.

(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),

[1] So in original. Probably should be followed by a period.

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(g), formerly 251(e), 261(c), 285(e), Oct. 13, 1994, 108 Stat. 3214, 3219, 3222, 3223, 3226, 3227, as amended Pub. L. 105–277, div. A, § 101(a) [title X, § 1001(3)], Oct. 21, 1998, 112 Stat. 2681, 2681–41, and renumbered Pub. L. 110–234, title VII, § 7511(a)(3), May 22, 2008, 122 Stat. 1259, and Pub. L. 110–246, § 4(a), title VII, § 7511(a)(3), June 18, 2008, 122 Stat. 1664, 2021; Pub. L. 104–88, title III, § 301(a), Dec. 29, 1995, 109 Stat. 943; Pub. L. 104–105, title II, § 219(b)(1), Feb. 10, 1996, 110 Stat. 184; Pub. L. 104–127, title VII, § 794(b), Apr. 4, 1996, 110 Stat. 1155; Pub. L. 104–293, title VIII, § 812(a), Oct. 11, 1996, 110 Stat. 3482; Pub. L. 105–277, div. C, title VII, § 713(a)(3), div. G, subdiv. A, title XII, § 1224(2), subdiv. B, title XXIII, § 2305(a)(2), Oct. 21, 1998, 112 Stat. 2681–693, 2681–772, 2681–825; Pub. L. 105–304, title IV, § 401(a)(3), Oct. 28, 1998, 112 Stat. 2887; Pub. L. 105–368, title IV, § 403(b)(1), Nov. 11, 1998, 112 Stat. 3338; Pub. L. 106–65, div. A, title IX, § 911(b)(2), div. C, title XXXII, § 3293(a), Oct. 5, 1999, 113 Stat. 718, 969; Pub. L. 106–113, div. B, §§ 1000(a)(5) [title II, § 238(a)(2)], 1000(a)(9) [title IV, § 4720(a)], Nov. 29, 1999, 113 Stat. 1536, 1501A–302, 1501A–581; Pub. L. 106–159, title I, § 101(d)(1), Dec. 9, 1999, 113 Stat. 1751; Pub. L. 106–476, title II, § 2002, Nov. 9, 2000, 114 Stat. 2175; Pub. L. 106–569, title X, § 1002(a)(3), Dec. 27, 2000, 114 Stat. 3028; Pub. L. 107–110, title X, § 1071(a), Jan. 8, 2002, 115 Stat. 2088; Pub. L. 107–296, title IV, § 411(b)(2), title XVII, § 1702(a)(3), Nov. 25, 2002, 116 Stat. 2179, 2313; Pub. L. 107–314, div. A, title IX, § 901(c), Dec. 2, 2002, 116 Stat. 2620; Pub. L. 108–173, title IX, § 900(d)(1), Dec. 8, 2003, 117 Stat. 2370; Pub. L. 108–411, title III, § 302(b), Oct. 30, 2004, 118 Stat. 2319; Pub. L. 108–426, §§ 2(d), 4(f), Nov. 30, 2004, 118 Stat. 2424, 2426; Pub. L. 108–447, div. C, title VI, § 603(c)(1), Dec. 8, 2004, 118 Stat. 2967; Pub. L. 109–58, title X, § 1006(c)(2), Aug. 8, 2005, 119 Stat. 932; Pub. L. 109–163, div. A, title IX, § 901(a), Jan. 6, 2006, 119 Stat. 3397; Pub. L. 109–280, title IV, § 411(b), Aug. 17, 2006, 120 Stat. 935; Pub. L. 109–295, title VI, § 612(a)(2), Oct. 4, 2006, 120 Stat. 1410; Pub. L. 109–364, div. A, title IX, § 942(b), Oct. 17, 2006, 120 Stat. 2365; Pub. L. 109–435, title VI, § 604(b), Dec. 20, 2006, 120 Stat. 3241; Pub. L. 110–69, title III, § 3002(c)(1), Aug. 9, 2007, 121 Stat. 586; Pub. L. 110–140, title IX, § 922(b)(4)(B), Dec. 19, 2007, 121 Stat. 1733; Pub. L. 110–181, div. A, title IX, § 904(a)(3), Jan. 28, 2008, 122 Stat. 274; Pub. L. 111–84, div. A, title IX, § 906(d)(1), Oct. 28, 2009, 123 Stat. 2428; Pub. L. 111–203, title I, §§ 111(i)(2), 152(j), July 21, 2010, 124 Stat. 1394, 1414; Pub. L. 111–259, title IV, § 423(b)(1), Oct. 7, 2010, 124 Stat. 2728; Pub. L. 111–358, title IV, § 403(b)(1)(A), Jan. 4, 2011, 124 Stat. 4000.)

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. 110–234 and Pub. L. 110–246 identically renumbered section 251(e) of Pub. L. 103–354, cited as a credit to this section, as section 251(g) of that Act. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234.

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

2011—Pub. L. 111–358 inserted item relating to Under Secretary of Commerce for Standards and Technology, who also serves as Director of the National Institute of Standards and Technology.

2010—Pub. L. 111–259 substituted ''Deputy Director of the Central Intelligence Agency'' for ''Deputy Directors of Central Intelligence (2)''.

Pub. L. 111–203, § 152(j), inserted item relating to Director of the Office of Financial Research.

Pub. L. 111–203, § 111(i)(2), inserted item relating to Independent Member of the Financial Stability Oversight Council.

2009—Pub. L. 111–84 substituted ''Principal Deputy Under Secretary of Defense for Acquisition, Technology, and Logistics.'' for ''Deputy Under Secretary of Defense for Acquisition and Technology.''

2008—Pub. L. 110–181 inserted item relating to Deputy Chief Management Officer of the Department of Defense.

2007—Pub. L. 110–140 inserted item relating to Chief Executive Officer, International Clean Energy Foundation.

Pub. L. 110–69 struck out item relating to Under Secretary of Commerce for Technology.

2006—Pub. L. 109–435 substituted ''Chairman, Postal Regulatory Commission'' for ''Chairman, Postal Rate Commission''.

Pub. L. 109–364 struck out item relating to Deputy Under Secretary of Defense for Logistics and Materiel Readiness.

Pub. L. 109–295 inserted item relating to Deputy Administrators, Federal Emergency Management Agency.

Pub. L. 109–280 inserted item relating to Director, Pension Benefit Guaranty Corporation.

Pub. L. 109–163, which directed insertion of items relating to Under Secretary of the Air Force, Under Secretary of the Army, and Under Secretary of the Navy after ''Under Secretary of Defense for Intelligence'', was executed by inserting such items after ''Under Secretary of Defense for Intelligence.'', to reflect the probable intent of Congress.

2005—Pub. L. 109–58 substituted ''Under Secretaries of Energy (3)'' for ''Under Secretaries of Energy (2)''.

2004—Pub. L. 108–447 struck out item relating to Chairman, Board of Directors of the Tennessee Valley Authority.

Pub. L. 108–426, § 4(f), substituted ''Administrator, Research and Innovative Technology Administration'' for ''Administrator, Research and Special Programs Administration''.

Pub. L. 108–426, § 2(d), inserted item relating to Administrator, Pipeline and Hazardous Materials Safety Administration.

Pub. L. 108–411 inserted item relating to Administrator of the Office of Electronic Government.

2003—Pub. L. 108–173 inserted item relating to Administrator of Centers for Medicare & Medicaid Services.

2002—Pub. L. 107–314 inserted item relating to Under Secretary of Defense for Intelligence.

Pub. L. 107–296, § 1702(a)(3), inserted items relating to Under Secretaries, Department of Homeland Security and Director of the Bureau of Citizenship and Immigration Services.

Pub. L. 107–296, § 411(b)(2), substituted ''Commissioner of Customs, Department of Homeland Security.'' for ''Commissioner of Customs, Department of the Treasury''.

Pub. L. 107–110 inserted item relating to Under Secretary of Education.

2000—Pub. L. 106–569 struck out item relating to Members, Board of Governors of the Federal Reserve System.

Pub. L. 106–476 inserted item relating to Chief Agricultural Negotiator.

1999—Pub. L. 106–159 inserted item relating to Administrator of the Federal Motor Carrier Safety Administration.

Pub. L. 106–113, § 1000(a)(9) [title IV, § 4720(a)], substituted ''Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.'' for ''Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.''

Pub. L. 106–113, § 1000(a)(5) [title II, § 238(a)(2)], inserted item relating to Commissioner of Customs, Department of the Treasury.

Pub. L. 106–65, § 3293(a), substituted ''Under Secretaries of Energy (2)'' for ''Under Secretary, Department of Energy''.

Pub. L. 106–65, § 911(b)(2), inserted item relating to Deputy Under Secretary of Defense for Logistics and Materiel Readiness.

1998—Pub. L. 105–368 inserted item relating to Under Secretary for Memorial Affairs, Department of Veterans Affairs.

Pub. L. 105–304 inserted items relating to Assistant Secretary of Commerce and Commissioner of Patents and Trademarks and Register of Copyrights.

Pub. L. 105–277, § 2305(a)(2), substituted ''Under Secretaries of State (6)'' for ''Under Secretaries of State (5)''.

Pub. L. 105–277, § 1224(2), struck out item relating to Deputy Director of the United States Arms Control and Disarmament Agency.

Pub. L. 105–277, § 713(a)(3), inserted items relating to Deputy Director for Demand Reduction, Office of National Drug Control Policy, Deputy Director for Supply Reduction, Office of National Drug Control Policy, and Deputy Director for State and Local Affairs, Office of National Drug Control Policy.

Pub. L. 105–277, § 101(a) [title X, § 1001(3)], added Pub. L. 103–354, § 285(e). See 1994 Amendment note below.

1996—Pub. L. 104–293 substituted ''Deputy Directors of Central Intelligence (2)'' for ''Deputy Director of Central Intelligence''.

Pub. L. 104–127 substituted ''Under Secretary of Agriculture for Rural Development'' for ''Under Secretary of Agriculture for Rural Economic and Community Development''.

Pub. L. 104–105 struck out item relating to Chairperson, Board of Directors of the Farm Credit System Insurance Corporation.

1995—Pub. L. 104–88 substituted ''Chairman, Surface Transportation Board'' for ''Chairman, Interstate Commerce Commission''.

1994—Pub. L. 103–354, § 251(g), formerly § 251(e), as renumbered by Pub. L. 110–246, § 7511(a)(3), inserted item relating to Under Secretary of Agriculture for Research, Education, and Economics.

Pub. L. 103–354, § 285(e), as added by Pub. L. 105–277, § 101(a) [title X, § 1001(3)], inserted item relating to Under Secretary of Agriculture for Marketing and Regulatory Programs.

Pub. L. 103–354, §§ 225(e)(2), 231(f)(2), 241(e), 245(e), 261(c), 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; 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. 102–552 inserted item relating to Chairperson, Board of Directors of the Farm Credit System Insurance Corporation.

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 2010 AMENDMENT

Amendment by Pub. L. 111–259 applicable on the earlier of (1) the date of the appointment by the President of an individual to serve as Deputy Director of the Central Intelligence Agency (CIA) pursuant to section 403–4c of Title 50, War and National Defense, as added by section 423(a) of Pub. L. 111–259, with certain exceptions; or (2) the date of the cessation of the performance of the duties of the Deputy Director of the CIA by the individual administratively performing such duties as of Oct. 7, 2010, see section 423(c) of Pub. L. 111–259, set out as an Effective Date note under section 403–4c of Title 50.

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–140 effective on the date that is 1 day after Dec. 19, 2007, see section 1601 of Pub. L. 110–140, set out as an Effective Date note under section 1824 of Title 2, The Congress.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–364, div. A, title IX, § 942(c), Oct. 17, 2006, 120 Stat. 2365, provided that: ''The amendments made by this section [amending this section and section 5315 of this title] shall take effect on the date of the enactment of this Act [Oct. 17, 2006], and shall apply with respect to individuals appointed as Deputy Under Secretary of Defense for Logistics and Materiel Readiness on or after that date.''

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–447 effective on the later of the date on which at least three persons nominated under section 604(a) of Pub. L. 108–447 take office or May 18, 2005, see section 604(b) of Pub. L. 108–447, set out as an Appointments; Effective Date; Transition note under section 831a of Title 16, Conservation.

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–173, title IX, § 900(d)(3), Dec. 8, 2003, 117 Stat. 2370, provided that: ''The amendments made by this subsection [amending this section and section 5315 of this title] take effect on January 1, 2004.''

EFFECTIVE DATE OF 2002 AMENDMENTS

Amendment by Pub. L. 107–296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

Pub. L. 107–110, title X, § 1071(b), Jan. 8, 2002, 115 Stat. 2088, provided that: ''This section [amending this section] shall take effect on the first day of the first pay period on or after the date of enactment of this Act [Jan. 8, 2002].''

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–569 effective on the first day of the first pay period for the Chairman and Members of the Board of Governors of the Federal Reserve System beginning on or after Dec. 27, 2000, see section 1002(b) of Pub. L. 106–569, set out as a note under section 5312 of this title.

EFFECTIVE DATE OF 1999 AMENDMENTS

Amendment by Pub. L. 106–159 effective Jan. 1, 2000, see section 107(a) of Pub. L. 106–159, set out as a note under section 104 of Title 49, Transportation.

Pub. L. 106–113, div. B, § 1000(a)(5) [title II, § 238(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A–302, provided that: ''The amendment made by this subsection [probably means this section, amending this section and section 5315 of this title] shall take effect on January 1, 2000.''

Amendment by section 1000(a)(9) [title IV, § 4720(a)] of Pub. L. 106–113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, § 4731] of Pub. L. 106–113, set out as a note under section 1 of Title 35, Patents.

Amendment by section 3293(a) of Pub. L. 106–65 effective Mar. 1, 2000, see section 3299 of Pub. L. 106–65, set out as an Effective Date note under section 2401 of Title 50, War and National Defense.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 1224(2) of Pub. L. 105–277 effective Apr. 1, 1999, see section 1201 of Pub. L. 105–277, set out as an Effective Date note under section 6511 of Title 22, Foreign Relations and Intercourse.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–88 effective Jan. 1, 1996, see section 2 of Pub. L. 104–88, set out as an Effective Date note under section 701 of Title 49, Transportation.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–236 applicable with respect to officials, offices, and bureaus of Department of State when executive orders, regulations, or departmental directives implementing the amendments by sections 161 and 162 of Pub. L. 103–236 become effective, or 90 days after Apr. 30, 1994, whichever comes earlier, see section 161(b) of Pub. L. 103–236, as amended, set out as a note under section 2651a of Title 22, Foreign Relations and Intercourse.

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 Sept. 30, 1997, see sections 1012 and 1009, respectively, of Pub. L. 100–690.

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 U.S.C. App. 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.

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 (5 U.S.C. 5313), 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, 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.

SALARY INCREASES

For adjustment of salaries under this section, see the executive order detailing the adjustment of certain rates of pay set out as a note under section 5332 of this title.

For prior year salary increases per the recommendation of the President, see Prior Salary Recommendations notes under section 358 of Title 2, The Congress.

For miscellaneous provisions dealing with adjustments of pay and limitations on use of funds to pay salaries in prior years, see notes under section 5318 of this title.

**§ 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).

Assistant Secretaries of Agriculture (3).

Assistant Secretaries of Commerce (11).

Assistant Secretaries of Defense (16).

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 (11).

Assistant Secretaries of Labor (10), one of whom shall be the Assistant Secretary of Labor for Veterans' Employment and Training.

Assistant Secretaries of State (24) 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 (10).

Members, United States International Trade Commission (5).

Assistant Secretaries of Education (10).

General Counsel, 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.

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, Surface Transportation Board.

Members, National Labor Relations Board.

Members, Securities and Exchange Commission.

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 Regulatory 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.

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.

Director, Office of Indian Energy Policy and Programs, Department of Energy.

Director, Office of Science, 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.

Special Counsel of the Merit Systems Protection Board.

Chairman, Federal Labor Relations Authority.

Assistant Secretaries, Department of Homeland Security.

General Counsel, Department of Homeland Security.

Officer for Civil Rights and Civil Liberties, Department of Homeland Security.

Chief Financial Officer, Department of Homeland Security.

Chief Information Officer, Department of Homeland Security.

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.

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.

Director of Cost Assessment and Program Evaluation, Department of Defense.

Special Representatives of the President for arms control, nonproliferation, and disarmament matters, Department of State.

Ambassadors at Large.

Assistant Secretary of Commerce and Director General of the United States and Foreign Commercial Service.

Assistant Secretaries, Department of Veterans Affairs (7).

General Counsel, Department of Veterans Affairs.

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.

Chairman, United States Parole Commission.

Director, Bureau of the Census, Department of Commerce.

Director of the Institute of Museum and Library 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.

Principal Deputy Under Secretary of Defense for Policy.

Principal Deputy Under Secretary of Defense for Personnel and Readiness.

Principal Deputy Under Secretary of Defense (Comptroller).

Principal Deputy Under Secretary of Defense for Intelligence.

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.

Liaison for Community and Junior Colleges, Department of Education.

Director of the Office of Educational Technology.

Director of the International Broadcasting Bureau.

The[2] Commissioner of Labor Statistics, Department of Labor.

Administrator, Rural Utilities Service, Department of Agriculture.

Chief Information Officer, Department of Agriculture.

Chief Information Officer, Department of Commerce.

Chief Information Officer, Department of Defense (unless the official designated as the Chief Information Officer of the Department of Defense is an official listed under section 5312, 5313, or 5314 of this title).

Chief Information Officer, Department of Education.

[1] So in original. Probably should be followed by a period.

[2] The word ''The'' probably should not appear.

Chief Information Officer, Department of Energy.

Chief Information Officer, Department of Health and Human Services.

Chief Information Officer, Department of Housing and Urban Development.

Chief Information Officer, Department of the Interior.

Chief Information Officer, Department of Justice.

Chief Information Officer, Department of Labor.

Chief Information Officer, Department of State.

Chief Information Officer, Department of Transportation.

Chief Information Officer, Department of the Treasury.

Chief Information Officer, Department of Veterans Affairs.

Chief Information Officer, Environmental Protection Agency.

Chief Information Officer, National Aeronautics and Space Administration.

Chief Information Officer, Agency for International Development.

Chief Information Officer, Federal Emergency Management Agency.

Chief Information Officer, General Services Administration.

Chief Information Officer, National Science Foundation.

Chief Information Officer, Nuclear Regulatory Agency.

Chief Information Officer, Office of Personnel Management.

Chief Information Officer, Small Business Administration.

General Counsel of the Central Intelligence Agency.

Principal Deputy Administrator, National Nuclear Security Administration.

Additional Deputy Administrators of the National Nuclear Security Administration (3), but if the Deputy Administrator for Naval Reactors is an officer of the Navy on active duty, (2).

Deputy Under Secretary of Commerce for Intellectual Property and Deputy Director of the United States Patent and Trademark Office.

General Counsel of the Office of the Director of National Intelligence.

Chief Medical Officer, Department of Homeland Security.

(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, §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; Pub. L. 104–88, title III, § 301(b), Dec. 29, 1995, 109 Stat. 943; Pub. L. 104–105, title II, § 219(b)(2), Feb. 10, 1996, 110 Stat. 184; Pub. L. 104–106, div. A, title IX, § 902(b), div. E, title LI, § 5125(e), Feb. 10, 1996, 110 Stat. 401, 686; Pub. L. 104–127, title VII, § 723(b), Apr. 4, 1996, 110 Stat. 1119; Pub. L. 104–208, div. A, title I, § 101(e) [title VII, § 709(b)(1)], (f) [title VI, § 662(c)(1)], Sept. 30, 1996, 110 Stat. 3009–233, 3009–313, 3009–314, 3009–380; Pub. L. 104–293, title VIII, §§ 812(b), 813(c), Oct. 11, 1996, 110 Stat. 3482, 3483; Pub. L. 105–85, div. A, title X, § 1073(e)(1), div. C, title XXXV, § 3550(b), Nov. 18, 1997, 111 Stat. 1906, 2074; Pub. L. 105–245, title III, § 309(b)(2)(A), Oct. 7, 1998, 112 Stat. 1853; Pub. L. 105–261, div. A, title IX, § 901(b), Oct. 17, 1998, 112 Stat. 2091; Pub. L. 105–277, div. A, § 101(a) [title X, § 1003], div. G, subdiv. A, title XII, § 1224(3), title XIII, §§ 1314(c), 1332(2), subdiv. B, title XXIII, § 2305(b)(2), Oct. 21, 1998, 112 Stat. 2681, 2681–42, 2681–772, 2681–776, 2681–785, 2681–825; Pub. L. 105–368, title IV, § 403(b)(2), Nov. 11, 1998, 112 Stat. 3338; Pub. L. 106–65, div. C, title XXXII, §§ 3293(b), 3294(a)(1), Oct. 5, 1999, 113 Stat. 969, 970; Pub. L. 106–113, div. B, §§ 1000(a)(5) [title II, § 238(a)(1)], 1000(a)(9) [title IV, § 4720(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A–302, 1501A–581; Pub. L. 106–422, § 1(c), Nov. 1, 2000, 114 Stat. 1872; Pub. L. 107–107, div. A, title IX, § 901(b), (c)(2), div. C, title XXXI, § 3141(b), Dec. 28, 2001, 115 Stat. 1194, 1370; Pub. L. 107–171, title VI, § 6201(d)(1), title X, § 10704(b), May 13, 2002, 116 Stat. 419, 518; Pub. L. 107–189, § 22(b), June 14, 2002, 116 Stat. 708; Pub. L. 107–279, title IV, § 404(b), Nov. 5, 2002, 116 Stat. 1985; Pub. L. 107–287, § 5(d), Nov. 7, 2002, 116 Stat. 2030; Pub. L. 107–296, title XVII, § 1702(a)(4), (5), Nov. 25, 2002, 116 Stat. 2313; Pub. L. 107–314, div. A, title IX, § 902(d), Dec. 2, 2002, 116 Stat. 2621; Pub. L. 108–173, title IX, § 900(d)(2), Dec. 8, 2003, 117 Stat. 2370; Pub. L. 108–177, title I, § 105(d)(3), Dec. 13, 2003, 117 Stat. 2604; Pub. L. 108–447, div. C, title VI, § 603(c)(2), Dec. 8, 2004, 118 Stat. 2967; Pub. L. 108–458, title I, § 1015(c), Dec. 17, 2004, 118 Stat. 3664; Pub. L. 109–58, title V, § 502(b)(2), title X, § 1006(c)(3), Aug. 8, 2005, 119 Stat. 764, 932; Pub. L. 109–163, div. A, title IX, § 901(b), Jan. 6, 2006, 119 Stat. 3397; Pub. L. 109–177, title V, § 506(a)(3), Mar. 9, 2006, 120 Stat. 247; Pub. L. 109–295, title VI, § 612(a)(3), Oct. 4, 2006, 120 Stat. 1410; Pub. L. 109–364, div. A, title IX, §§ 901(b), 942(a), Oct. 17, 2006, 120 Stat. 2350, 2365; Pub. L. 109–435, title VI, § 604(b), Dec. 20, 2006, 120 Stat. 3241; Pub. L. 110–49, § 11(b), July 26, 2007, 121 Stat. 260; Pub. L. 110–343, div. A, title I, § 101(a)(3)(B)(i), Oct. 3, 2008, 122 Stat. 3767; Pub. L. 110–409, § 4(a)(2), Oct. 14, 2008, 122 Stat. 4303; Pub. L. 111–11, title XIII, § 13004(b), Mar. 30, 2009, 123 Stat. 1449; Pub. L. 111–23, title I, § 101(a)(3), May 22, 2009, 123 Stat. 1706; Pub. L. 111–84, div. A, title IX, § 906(d)(2), Oct. 28, 2009, 123 Stat. 2428; Pub. L. 111–259, title VIII, § 807(b), Oct. 7, 2010, 124 Stat. 2749; Pub. L. 111–358, title IV, § 403(b)(1)(B), Jan. 4, 2011, 124 Stat. 4000; Pub. L. 111–383, div. A, title IX, § 901(n)(1), (2)(A), Jan. 7, 2011, 124 Stat. 4326, 4327.)

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. |
| 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

2011—Pub. L. 111–383, § 901(n)(2)(A), struck out item relating to Director of Defense Research and Engineering.

Pub. L. 111–383, § 901(n)(1), substituted ''(16)'' for ''(12)'' in item relating to Assistant Secretaries of Defense.

Pub. L. 111–358 struck out item relating to Director, National Institute of Standards and Technology, Department of Commerce.

2010—Pub. L. 111–259 substituted ''General Counsel of the Office of the Director of National Intelligence'' for ''General Counsel of the Central Intelligence Agency''.

2009—Pub. L. 111–84 substituted ''(12)'' for ''(10)'' in item relating to Assistant Secretaries of Defense, inserted items relating to Principal Deputy Under Secretaries of Defense for Policy, for Personnel and Readiness, and for Intelligence, and Principal Deputy Under Secretary of Defense (Comptroller), and struck out items relating to Deputy Under Secretaries of Defense for Policy, for Personnel and Readiness, and for Logistics and Materiel Readiness.

Pub. L. 111–23 inserted item relating to Director of Cost Assessment and Program Evaluation, Department of Defense.

Pub. L. 111–11 substituted ''(8)'' for ''(7)'' in item relating to Assistant Secretaries of Energy.

2008—Pub. L. 110–409 struck out items relating to Inspectors General of Departments of Education, Energy, Health and Human Services, Agriculture, Housing and Urban Development, Labor, Transportation, Veterans Affairs, Homeland Security, Defense, State, Commerce, the Interior, Justice, and the Treasury, Agency for International Development, Environmental Protection Agency, Export-Import Bank, Federal Emergency Management Agency, General Services Administration, National Aeronautics and Space Administration, Nuclear Regulatory Commission, Office of Personnel Management, Railroad Retirement Board, Small Business Administration, Tennessee Valley Authority, Federal Deposit Insurance Corporation, Resolution Trust Corporation, Central Intelligence Agency, Social Security Administration, and United States Postal Service.

Pub. L. 110–343 substituted ''(10)'' for ''(9)'' in item relating to Assistant Secretaries of the Treasury.

2007—Pub. L. 110–49 substituted ''(9)'' for ''(8)'' in item relating to Assistant Secretaries of the Treasury.

2006—Pub. L. 109–435 substituted ''Members, Postal Regulatory Commission (4)'' for ''Members, Postal Rate Commission (4)''.

Pub. L. 109–364, § 942(a), inserted item relating to Deputy Under Secretary of Defense for Logistics and Materiel Readiness.

Pub. L. 109–364, § 901(b), substituted ''(10)'' for ''(9)'' in item relating to Assistant Secretaries of Defense.

Pub. L. 109–295 inserted item relating to Chief Medical Officer, Department of Homeland Security.

Pub. L. 109–177, § 506(a)(3), substituted ''(11)'' for ''(10)'' in item relating to Assistant Attorneys General.

Pub. L. 109–163 struck out items relating to Under Secretary of the Air Force, Under Secretary of the Army, and Under Secretary of the Navy.

2005—Pub. L. 109–58, § 1006(c)(3), substituted ''(7)'' for ''(6)'' in item relating to Assistant Secretaries of Energy.

Pub. L. 109–58, § 502(b)(2), inserted item relating to Director, Office of Indian Energy Policy and Programs, Department of Energy.

2004—Pub. L. 108–458 inserted item relating to General Counsel of the Office of the National Intelligence Director and struck out item relating to Assistant Directors of Central Intelligence.

Pub. L. 108–447 struck out item relating to Members, Board of Directors of the Tennessee Valley Authority.

2003—Pub. L. 108–177 substituted ''(8)'' for ''(7)'' in item relating to Assistant Secretaries of the Treasury.

Pub. L. 108–173 struck out item relating to Administrator of the Health Care Financing Administration.

2002—Pub. L. 107–314, which directed the repeal of Pub. L. 107–107, § 901(c), was executed by substituting

''(9)'' for ''(8)'' in item relating to Assistant Secretaries of Defense to reflect the probable intent of Congress. See 2001 Amendment note below.

Pub. L. 107–296, § 1702(a)(5), struck out item relating to Commissioner of Immigration and Naturalization, Department of Justice.

Pub. L. 107–296, § 1702(a)(4), inserted items relating to Assistant Secretaries, Department of Homeland Security, General Counsel, Department of Homeland Security, Officer for Civil Rights and Civil Liberties, Department of Homeland Security, Chief Financial Officer, Department of Homeland Security, Chief Information Officer, Department of Homeland Security, and Inspector General, Department of Homeland Security.

Pub. L. 107–287 substituted ''(7)'' for ''(6)'' in item relating to Assistant Secretaries, Department of Veterans Affairs.

Pub. L. 107–279 struck out item relating to Commissioner, National Center for Education Statistics.

Pub. L. 107–189 inserted item relating to Inspector General, Export-Import Bank.

Pub. L. 107–171, § 10704(b), substituted ''(3)'' for ''(2)'' in item relating to Assistant Secretaries of Agriculture.

Pub. L. 107–171, § 6201(d)(1), struck out item relating to Executive Director of the Alternative Agricultural Research and Commercialization Corporation.

2001—Pub. L. 107–107, § 3141(b), inserted item relating to Principal Deputy Administrator, National Nuclear Security Administration and inserted ''Additional'' before ''Deputy Administrators of the National Nuclear Security Administration''.

Pub. L. 107–107, § 901(c)(2), which substituted ''(8)'' for ''(9)'' in item relating to Assistant Secretaries of Defense, was repealed by Pub. L. 107–314. See 2002 Amendment note above.

Pub. L. 107–107, § 901(b), inserted item relating to Deputy Under Secretary of Defense for Personnel and Readiness.

2000—Pub. L. 106–422 inserted item relating to Inspector General, Tennessee Valley Authority.

1999—Pub. L. 106–113, § 1000(a)(9) [title IV, § 4720(b)], inserted item relating to Deputy Under Secretary of Commerce for Intellectual Property and Deputy Director of the United States Patent and Trademark Office.

Pub. L. 106–113, § 1000(a)(5) [title II, § 238(a)(1)], struck out ''Commissioner of Customs, Department of the Treasury''.

Pub. L. 106–65, § 3294(a)(1), substituted ''(6)'' for ''(8)'' in item relating to Assistant Secretaries of Energy.

Pub. L. 106–65, § 3293(b), inserted item relating to Deputy Administrators of the National Nuclear Security Administration.

1998—Pub. L. 105–368 struck out item relating to Director of the National Cemetery System.

Pub. L. 105–277, § 2305(b)(2), which directed the substitution of ''Assistant Secretaries of State (24)'' for ''Assistant Secretaries of State (20)'', was executed by making the substitution for ''20 Assistant Secretaries of State'' in item relating to 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, to reflect the probable intent of Congress.

Pub. L. 105–277, § 1332(2), struck out item relating to Deputy Director of the United States Information Agency and substituted ''Director of the International Broadcasting Bureau.'' for ''Director of the International Broadcasting Bureau, the United States Information Agency.''

Pub. L. 105–277, § 1314(c), struck out item relating to Inspector General, United States Information Agency.

Pub. L. 105–277, § 1224(3), struck out item relating to Assistant Directors, United States Arms Control and Disarmament Agency (4) and substituted ''Special Representatives of the President for arms control, nonproliferation, and disarmament matters, Department of State'' for ''Special Representatives of the President for arms control, nonproliferation, and disarmament matters, United States Arms Control and Disarmament Agency''.

Pub. L. 105–277, § 101(a) [title X, § 1003], substituted ''Assistant Secretaries of Agriculture (2)'' for ''Assistant Secretaries of Agriculture (3)''.

Pub. L. 105–261 substituted ''(9)'' for ''(10)'' in item relating to Assistant Secretaries of Defense.

Pub. L. 105–245 substituted ''Director, Office of Science, Department of Energy'' for ''Director, Office of Energy Research, Department of Energy''.

1997—Pub. L. 105–85, § 3550(b), struck out item relating to Administrator of the Panama Canal Commission.

Pub. L. 105–85, § 1073(e)(1), inserted ''the'' before ''Interior'' in item relating to Chief Information Officer of Department of the Interior and before ''Treasury'' in item relating to Chief Information Officer of Department of the Treasury.

1996—Pub. L. 104–293 inserted items relating to Assistant Directors of Central Intelligence and General Counsel of Central Intelligence Agency.

Pub. L. 104–208, § 101(f) [title VI, § 662(c)(1)], inserted item relating to Inspector General, United States Postal Service.

Pub. L. 104–208, § 101(e) [title VII, § 709(b)(1)], substituted ''Museum and Library Services'' for ''Museum Services'' after ''Director of the Institute of''.

Pub. L. 104–127 inserted item relating to Executive Director of the Alternative Agricultural Research and Commercialization Corporation.

Pub. L. 104–106, § 5125(e), inserted items relating to Chief Information Officer of Departments of Agriculture, Commerce, Defense, Education, Energy, Health and Human Services, Housing and Urban Development, Interior, Justice, Labor, State, Transportation, Treasury, and Veterans Affairs and Chief Information Officer of Environmental Protection Agency, National Aeronautics and Space Administration, Agency for International Development, Federal Emergency Management Agency, General Services Administration, National Science Foundation, Nuclear Regulatory Agency, Office of Personnel Management, and Small Business Administration.

Pub. L. 104–106, § 902(b), substituted ''(10)'' for ''(11)'' in item relating to Assistant Secretaries of Defense.

Pub. L. 104–105 struck out item relating to Members, Board of Directors of the Farm Credit System Insurance Corporation.

1995—Pub. L. 104–88 substituted ''Members, Surface Transportation Board'' for ''Members, Interstate Commerce Commission''.

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. 102–552 inserted item relating to Members, Board of Directors of the Farm Credit System Insurance Corporation.

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 Officer 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 Affairs (6), General Counsel, Department of Veterans Affairs, and Director of the National Cemetery System.

Pub. L. 100–504 inserted items relating to Inspector 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 2011 AMENDMENT

Amendment by section 901 of Pub. L. 111–383 effective Jan. 1, 2011, see section 901(p) of Pub. L. 111–383, set out as a note under section 131 of Title 10, Armed Forces.

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–49, § 12, July 26, 2007, 121 Stat. 260, provided that: ''The amendments made by this Act [amending this section, section 301 of Title 31, Money and Finance, and section 2170 of the Appendix to Title 50, War and National Defense] shall apply after the end of the 90-day period beginning on the date of enactment of this Act [July 26, 2007].''

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 942(a) of Pub. L. 109–364 effective Oct. 17, 2006, and applicable with respect to individuals appointed as Deputy Under Secretary of Defense for Logistics and Materiel Readiness on or after that date, see section 942(c) of Pub. L. 109–364, set out as a note under section 5314 of this title.

EFFECTIVE DATE OF 2004 AMENDMENTS

For Determination by President that amendment by Pub. L. 108–458 take effect on Apr. 21, 2005, see Memorandum of President of the United States, Apr. 21, 2005, 70 F.R. 23925, set out as a note under section 401 of Title 50, War and National Defense.

Amendment by Pub. L. 108–458 effective not later than six months after Dec. 17, 2004, except as otherwise expressly provided, see section 1097(a) of Pub. L. 108–458, set out as an Effective Date of 2004 Amendment; Transition Provisions note under section 401 of Title 50, War and National Defense.

Amendment by Pub. L. 108–447 effective on the later of the date on which at least three persons nominated under section 604(a) of Pub. L. 108–447 take office or May 18, 2005, see section 604(b) of Pub. L. 108–447, set out as an Appointments; Effective Date; Transition note under section 831a of Title 16, Conservation.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–173 effective Jan. 1, 2004, see section 900(d)(3) of Pub. L. 108–173, set out as a note under section 5314 of this title.

EFFECTIVE DATE OF 2002 AMENDMENTS

Pub. L. 107–296, title XVII, § 1702(b), Nov. 25, 2002, 116 Stat. 2313, provided that: ''Notwithstanding section 4 [enacting provisions set out as a note under section 101 of Title 6, Domestic Security], the amendment made by subsection (a)(5) [amending this section] shall take effect on the date on which the transfer of functions specified under section 441 [enacting section 251 of Title 6] takes effect.''

Pub. L. 107–189, § 22(e), June 14, 2002, 116 Stat. 708, provided that: ''The amendments made by this section [amending this section and sections 9 and 11 of the Inspector General Act of 1978, Pub. L. 95–452, set out in the Appendix to this title] shall take effect on October 1, 2002.''

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–107, div. A, title IX, § 901(d), Dec. 28, 2001, 115 Stat. 1194, which provided that amendments made by Pub. L. 107–107, § 901(c) (amending this section and section 138 of Title 10, Armed Forces), were to take effect on the date on which a person was first appointed as Deputy Under Secretary of Defense for Personnel and Readiness, was repealed by Pub. L. 107–314, div. A, title IX, § 902(d), Dec. 2, 2002, 116 Stat. 2621.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–422 effective 30 days after Nov. 1, 2000, see section 1(d)(1) of Pub. L. 106–422, set out as a note under section 8G of Pub. L. 95–452 [Inspector General Act of 1978] in the Appendix to this title.

EFFECTIVE DATE OF 1999 AMENDMENTS

Amendment by section 1000(a)(5) [title II, § 238(a)(1)] of Pub. L. 106–113 effective Jan. 1, 2000, see section 1000(a)(5) [title II, § 238(b)] of Pub. L. 106–113, set out as a note under section 5314 of this title.

Amendment by section 1000(a)(9) [title IV, § 4720(b)] of Pub. L. 106–113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, § 4731] of Pub. L. 106–113, set out as a note under section 1 of Title 35, Patents.

Amendment by Pub. L. 106–65 effective Mar. 1, 2000, see section 3299 of Pub. L. 106–65, set out as an Effective Date note under section 2401 of Title 50, War and National Defense.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 1224(3) of Pub. L. 105–277 effective Apr. 1, 1999, see section 1201 of Pub. L. 105–277, set out as an Effective Date note under section 6511 of Title 22, Foreign Relations and Intercourse.

Amendment by sections 1314(c) and 1332(2) of Pub. L. 105–277 effective Oct. 1, 1999, see section 1301 of Pub. L. 105–277, set out as an Effective Date note under section 6531 of Title 22, Foreign Relations and Intercourse.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 5125(e) of Pub. L. 104–106 effective 180 days after Feb. 10, 1996, see section 5701 of Pub. L. 104–106, div. E, title LVII, Feb. 10, 1996, 110 Stat. 702.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–88 effective Jan. 1, 1996, see section 2 of Pub. L. 104–88, set out as an Effective Date note under section 701 of Title 49, Transportation.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 162(d)(2) of Pub. L. 103–236 applicable with respect to officials, offices, and bureaus of

Department of State when executive orders, regulations, or departmental directives implementing the amendments by sections 161 and 162 of Pub. L. 103–236 become effective, or 90 days after Apr. 30, 1994, whichever comes earlier, see section 161(b) of Pub. L. 103–236, as amended, set out as a note under section 2651a of Title 22, Foreign Relations and Intercourse.

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 Sept. 30, 1997, see sections 1012 and 1009, respectively, of Pub. L. 100–690.

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.

Section 603(c) of Pub. L. 100–485 provided that: ''The amendments made by this section [amending this section and enacting section 617 of Title 42, The Public Health and Welfare] shall become effective on February 1, 1989.''

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 of 1988 Amendment note under section 1071 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 a note under section 2904 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

For transfer of all functions, personnel, assets, components, authorities, grant programs, and liabilities of the Federal Emergency Management Agency, including the functions of the Under Secretary for Federal Emergency Management relating thereto, to the Federal Emergency Management Agency, see section 315(a)(1) of Title 6, Domestic Security.

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(1) and sections 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

For transfer of responsibilities of the Department of Homeland Security Chief Information Officer related to the implementation of the Integrated Wireless Network to the Director for Emergency Communications, see section 571(d)(2) of Title 6, Domestic Security.

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.

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.

INSPECTOR GENERAL, UNITED STATES POSTAL SERVICE

Section 101(f) [title VI, § 662(c)(1)] of Pub. L. 104–208 provided in part that: ''The amendment made by the

preceding sentence [amending this section] shall apply notwithstanding section 410 or any other provision of title 39, United States Code.''

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.

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.

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

For adjustment of salaries under this section, see the executive order detailing the adjustment of certain rates of pay set out as a note under section 5332 of this title.

For prior year salary increases per the recommendation of the President, see Prior Salary Recommendations notes under section 358 of Title 2, The Congress.

For miscellaneous provisions dealing with adjustments of pay and limitations on use of funds to pay salaries in prior years, see notes under section 5318 of this title.

## § 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.

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 Acquisition 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, 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, Bureau of Mines, Department of the Interior.

Director, Geological Survey, Department of the Interior.

Deputy Commissioner of Internal Revenue, Department of the Treasury.

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 National Aeronautics and Space Administration.

Manpower Administrator, Department of Labor.

Members, Renegotiation Board.

Members, Subversive Activities Control Board.

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.

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.

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 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.

Deputy Administrator of the Federal Motor Carrier Safety Administration.

Assistant Federal Motor Carrier Safety Administrator.

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).

Additional officers, Nuclear Regulatory Commission (5).

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).

Commissioner, Administration on Children, Youth, and Families.

(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; Pub. L. 104–106, div. A, title IX, § 904(b)(2), Feb. 10, 1996, 110 Stat. 403; Pub. L. 104–201, div. A, title X, § 1073(e)(1)(A), Sept. 23, 1996, 110 Stat. 2658; Pub. L. 105–85, div. A, title X, § 1073(e)(2), Nov. 18, 1997, 111 Stat. 1906; Pub. L. 105–277, div. G, subdiv. A, title XII, § 1224(4), title XIII, § 1332(3), Oct. 21, 1998, 112 Stat. 2681–772, 2681–785; Pub. L. 105–393, title I, § 103, Nov. 13, 1998, 112 Stat. 3617; Pub. L. 106–44, § 2(b), Aug. 5, 1999, 113 Stat. 223; Pub. L. 106–113, div. B, § 1000(a)(9) [title IV, § 4732(b)(4)], Nov. 29, 1999, 113 Stat. 1536, 1501A–583; Pub. L. 106–159, title I, § 101(d)(2), Dec. 9, 1999, 113 Stat. 1751; Pub. L. 107–171, title X, § 10702(c)(2), May 13, 2002, 116 Stat. 517; Pub. L. 108–426, § 3(c), Nov. 30, 2004, 118 Stat. 2425; Pub. L. 109–313, § 2(b), Oct. 6, 2006, 120 Stat. 1734; Pub. L. 111–383, div. A, title IX, § 901(n)(2)(B), (3), Jan. 7, 2011, 124 Stat. 4327.)

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. |
| 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

2011—Pub. L. 111–383, § 901(n)(3), struck out items relating to Director, Defense Advanced Research Projects Agency, Department of Defense, Deputy General Counsel, Department of Defense, Deputy Under Secretaries of Defense for Research and Engineering, Department of Defense, and Special Assistant to the Secretary of Defense.

Pub. L. 111–383, § 901(n)(2)(B), struck out item relating to Assistant to the Secretary of Defense for Nuclear and Chemical and Biological Defense Programs, Department of Defense.

2006—Pub. L. 109–313 substituted ''Commissioner, Federal Acquisition Service, General Services Administration'' for ''Commissioner, Federal Supply Service, General Services Administration''.

2004—Pub. L. 108–426 struck out item relating to Director, Bureau of Transportation Statistics.

2002—Pub. L. 107–171 struck out items relating to General Counsel, Commodity Futures Trading Commission and Executive Director, Commodity Futures Trading Commission.

1999—Pub. L. 106–159 inserted items relating to Deputy Administrator of the Federal Motor Carrier Safety Administration and Assistant Federal Motor Carrier Safety Administrator.

Pub. L. 106–113 which directed amendment of this section by striking out items relating to Commissioner of Patents, Department of Commerce, Deputy Commissioner of Patents and Trademarks, Assistant Commissioner for Patents, and Assistant Commissioner for Trademarks, was executed by striking out items relating to Deputy Commissioner of Patents and Trademarks, Assistant Commissioner for Patents, and Assistant Commissioner for Trademarks to reflect the probable intent of Congress and the intervening amendment by Pub. L. 106–44, § 2(b), which struck out item relating to Commissioner of Patents, Department of Commerce. See below.

Pub. L. 106–44 struck out item relating to Commissioner of Patents, Department of Commerce.

1998—Pub. L. 105–393 struck out item relating to Administrator for Economic Development.

Pub. L. 105–277, § 1332(3), struck out items relating to Deputy Director, Policy and Plans, United States Information Agency, and Associate Director (Policy and Plans), United States Information Agency.

Pub. L. 105–277, § 1224(4), struck out item relating to General Counsel of the United States Arms Control and Disarmament Agency.

1997—Pub. L. 105–85 substituted ''Nuclear and Chemical and Biological Defense Programs'' for ''Atomic Energy''.

1996—Pub. L. 104–201 inserted ''Defense'' before ''Advanced Research Projects Agency''.

Pub. L. 104–106, which directed amendment of section by substituting ''Assistant to the Secretary of Defense for Nuclear and Chemical and Biological Defense Programs, Department of Defense.'' for ''The Assistant to the Secretary of Defense for Atomic Energy, Depart-

ment of Defense.'', could not be executed because the words to be substituted for did not appear.

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 2011 AMENDMENT

Amendment by section 901 of Pub. L. 111–383 effective Jan. 1, 2011, see section 901(p) of Pub. L. 111–383, set out as a note under section 131 of Title 10, Armed Forces.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–313, § 6, Oct. 6, 2006, 120 Stat. 1738, provided that: ''This Act [see Short Title of 2006 Amendment note set out under section 101 of Title 40, Public Buildings, Property, and Works] and the amendments made by this Act shall take effect 60 days after the date of the enactment of this Act [Oct. 6, 2006].''

EFFECTIVE DATE OF 1999 AMENDMENTS

Amendment by Pub. L. 106–159 effective Jan. 1, 2000, see section 107(a) of Pub. L. 106–159, set out as a note under section 104 of Title 49, Transportation.

Amendment by Pub. L. 106–113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, § 4731] of Pub. L. 106–113, set out as a note under section 1 of Title 35, Patents.

EFFECTIVE DATE OF 1998 AMENDMENTS

Amendment by Pub. L. 105–393 effective on date determined by Secretary of Commerce, but not later than 90 days after Nov. 13, 1998, see section 105 of Pub. L. 105–393, set out as an Effective Date note under section 3121 of Title 42, The Public Health and Welfare.

Amendment by section 1224(4) of Pub. L. 105–277 effective Apr. 1, 1999, see section 1201 of Pub. L. 105–277, set out as an Effective Date note under section 6511 of Title 22, Foreign Relations and Intercourse.

Amendment by section 1332(3) of Pub. L. 105–277 effective Oct. 1, 1999, see section 1301 of Pub. L. 105–277, set out as an Effective Date note under section 6531 of Title 22, Foreign Relations and Intercourse.

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 1976 AMENDMENT

Amendment by Pub. L. 94–582 effective 30 days after Oct. 21, 1976, see section 27 of Pub. L. 94–582, as amended, set out as a note under section 74 of Title 7, Agriculture.

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.

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

For adjustment of salaries under this section, see the executive order detailing the adjustment of certain rates of pay set out as a note under section 5332 of this title.

For prior year salary increases per the recommendation of the President, see Prior Salary Recommendations notes under section 358 of Title 2, The Congress.

For miscellaneous provisions dealing with adjustments of pay and limitations on use of funds to pay salaries in prior years, see notes under section 5318 of this title.

## § 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 Executive 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; Ex. Ord. No. 13063, Sept. 30, 1997, 62 F.R. 51757, 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 Assistant and Counselor to the Secretary of Labor, Department of Labor.

(c) Deputy Under Secretary for Education, Department of Education.

(d) Deputy Under Secretary for Education, Department of Education.

(e) 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.

## § 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, reduced the rate of salary or basic pay prescribed by law as of July 14, 1983, for any office or position at level I, II, or III of the Executive Schedule, any Member of Congress, and certain other offices and positions in the legislative, executive, or judicial branch, or in the government of the District of Columbia and also reduced the maximum rate of salary or basic pay prescribed by law as of July 14, 1983, for certain offices and positions in the legislative, executive, or judicial branch, or in the government of the District of Columbia.

LIMITATION ON MAXIMUM RATE OF SALARY INCREASES FOR SENIOR EXECUTIVE, JUDICIAL, AND LEGISLATIVE POSITIONS FOR SERVICES PERFORMED AFTER DECEMBER 17, 1982

Pub. L. 97–377, title I, § 129(b)–(d), Dec. 21, 1982, 96 Stat. 1914, reduced salary increases for senior executive, judicial, and legislative positions (including Members of Congress but excluding Senators) from up to 27.2 percent to 15 percent.

FISCAL YEAR 1983 LIMITATION ON USE OF FUNDS FOR PAY ADJUSTMENTS FOR CERTAIN POSITIONS

Section 306(a), (b), and (d) of S. 2939, Ninety-seventh Congress, 2nd Session, as reported Sept. 22, 1982, made applicable by 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, prohibited the use of funds appropriated for the fiscal year ending Sept. 30, 1983, 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 exceeded the rate (or maximum rate, if higher) of salary or basic pay payable for such office or position for Sept. 30, 1982, if that rate was either fixed at a rate equal to or greater than the rate of basic pay for level V of the Executive Schedule under section 5316 of this title or limited to a maximum rate equal to or greater than the rate of basic pay for such level V under section 5308 of this title or any other provision of law or congressional resolution.

FISCAL YEAR 1982 LIMITATION ON USE OF FUNDS FOR PAY ADJUSTMENTS FOR CERTAIN POSITIONS

Section 305(a), (b), and (d) of H.R. 4120, as reported July 9, 1981, made applicable by Pub. L. 97–92, § 101(g), Dec. 15, 1981, 95 Stat. 1190, prohibited the use of funds appropriated for the fiscal year ending Sept. 30, 1982, 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 exceeded the rate (or maximum rate, if higher) of salary or basic pay payable for such office or position for Sept. 30, 1981, if that rate was either fixed at a rate equal to or greater than the rate of basic pay for level V of the Executive Schedule under section 5316 of this title or limited to a maximum rate equal to or greater than the rate of basic pay for such level V under section 5308 of this title or any other provision of law or congressional resolution.

Similar provisions were contained in Pub. L. 97–51, § 101(c), Oct. 1, 1981, 95 Stat. 959, as amended by Pub. L. 97–85, Nov. 23, 1981, 95 Stat. 1098.

Pub. L. 97–92, § 141, Dec. 15, 1981, 95 Stat. 1200, provided that nothing in section 305 of H.R. 4120, made applicable by section 101(g) of Pub. L. 97–92, required that the rate of salary or basic pay, payable to any individual for or on account of services performed after Dec. 31, 1981, be limited to or reduced to an amount which was less than $59,500 for pay corresponding to the rate of basic pay for level III of the Executive Schedule under section 5314 of this title; $58,500 for pay corresponding to the rate of basic pay for level IV of the Executive Schedule under section 5315 of this title; or $57,500 for pay corresponding to the rate of basic pay for level V of the Executive Schedule under section 5316 of this title. Any adjustment to the pay of an employee paid by the Clerk of the House was to result in pay no less than that of an employee paid by the Secretary of the Senate holding an equivalent position.

FISCAL YEAR 1981 LIMITATION ON USE OF FUNDS FOR PAY ADJUSTMENTS FOR CERTAIN POSITIONS

Section 306(a), (b), and (d) of H.R. 7593, as passed the House of Representatives on July 21, 1980, made applicable by Pub. L. 96–536, § 101(c), Dec. 16, 1980, 94 Stat. 3167, as amended by Pub. L. 97–12, title IV, § 401, June 5, 1981, 95 Stat. 95, prohibited the use of funds appropriated for the fiscal year ending Sept. 30, 1981, 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 exceeded the rate (or maximum rate, if higher) of salary or basic pay payable for such office or position for Sept. 30, 1980, if the rate of salary or basic pay for that office or position was either fixed at a rate equal to or greater than the rate of basic pay for level V of the Executive Schedule under section 5316 of this title or limited to a maximum rate equal to or greater than the rate of basic pay for such level V under section 5308 of this title or any other provision of law or congressional resolution.

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, for the fiscal year 1980, prohibited the use of funds available for payment to executive employees, including Members of Congress, entitled under existing law to approximately 12.9 percent increase in pay, to pay any such employee or official any sum in excess of 5.5 percent increase in existing pay, and such sum, if accepted, would be in lieu of the 12.9 percent due for such fiscal year.

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, prohibited the use of funds appropriated for the fiscal year ending Sept. 30, 1979, 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 exceeded the rate (or maximum rate, if higher) of salary or basic pay payable for such office or position for Sept. 30, 1978, if the rate of salary or basic pay for such office or position was either fixed at a rate equal to or greater than the rate of basic pay for level V of the Executive Schedule under section 5316 of this title or limited to a maximum rate equal to or greater than the rate of basic pay for such level V under section 5308 of this title or any other provision of law or congressional resolution.

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, nullified the first adjustment in pay which would have been made after July 11, 1977, under the following provisions of law: the second sentence of section 104 of Title 3, The President; par. (2) of section 31 of Title 2, The Congress; section 461 of Title 28, Judiciary and Judicial Procedure; and section 5318 of this title.

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, prohibited the use of funds appropriated in any Act to

pay the salary of an individual in a position or office referred to in section 356 of Title 2, The Congress, at a rate exceeding the salary rate for such position or office in effect on Sept. 30, 1976, except increases submitted by the President pursuant to sections 351 to 364 of Title 2.

## SUBCHAPTER III—GENERAL SCHEDULE PAY RATES

### § 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.

### § 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.<br>Oct. 24, 1951, ch. 554, § 1(a), 65 Stat. 612.<br>Sept. 1, 1954, ch. 1208, § 109 (less (c)), 68 Stat. 1108.<br>June 28, 1955, ch. 189, § 2(a), 69 Stat. 172.<br>June 20, 1958, Pub. L. 85–462, § 2(a), 72 Stat. 203.<br>July 1, 1960, Pub. L. 86–568, § 112(a), 74 Stat. 298.<br>Oct. 11, 1962, Pub. L. 87–793, § 602(a), 76 Stat. 843.<br>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.<br>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.<br>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 1847 of Title 2, 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 no officer or employee of the United States shall have his or her pay reduced by reason of Ex. Ord. No. 11777, Apr. 12, 1974.

1970 INCREASE IN PAY RATES

Pub. L. 91–231, Apr. 15, 1970, 84 Stat. 195, known as the Federal Employees Salary Act of 1970, and effective on the first day of the first pay period beginning on or after Dec. 27, 1969, provided for an increase in the rates of basic pay, basic compensation, and salaries contained in the General Schedule, the Postal Field Service Schedule and Rural Carrier Schedule, the schedule relating to certain positions within the Department of Medicine and Surgery of the Veterans' Administration, and the Foreign Service schedules, and also for employees of Agricultural Stabilization and Conservation County Committees, for certain employees of the Legislative and Judicial Branches, for United States Attorneys, and for other employees of the United States Government and the government of the District of Columbia whose rates of pay were fixed by administrative action and not otherwise increased.

INITIAL ADJUSTMENT OF 1967 PAY INCREASES

Pub. L. 90–206, title II, §§ 202(b), 220(a)(2), Dec. 16, 1967, 81 Stat. 625, 639, effective as of the beginning of the first pay period which began on or after Oct. 1, 1967, made various initial adjustments to the rates of basic pay of officers and employees referred to in the General Schedule set forth in the amendment to this section made by section 202(a) of Pub. L. 90–206.

1967 SALARY INCREASE FOR PERSONS WHOSE COMPENSATION RATES ARE FIXED BY ADMINISTRATIVE ACTION

Pub. L. 90–206, title II, §§ 211(b)–(d), 220(a)(2), Dec. 16, 1967, 81 Stat. 633, 639, effective as of the beginning of the first pay period which began on or after Oct. 1, 1967, authorized the increase of the rates of pay of certain officers and employees of the Federal Government and of the municipal government of the District of Columbia by amounts not to exceed the increases provided by title II of Pub. L. 90–206 for corresponding rates of pay in the appropriate schedule or scale of pay.

RETROACTIVE COMPENSATION UNDER 1967 PAY INCREASES

Pub. L. 90–206, title II, § 218, Dec. 16, 1967, 81 Stat. 638, provided for retroactive pay under title II of Pub. L. 90–206 only in the case of an individual in the service of the United States, including service in the Armed Forces, or the municipal government of the District of Columbia on Dec. 16, 1967, subject to certain restrictions.

EX. ORD. NO. 13561. ADJUSTMENTS OF CERTAIN RATES OF PAY

Ex. Ord. No. 13561, Dec. 22, 2010, 75 F.R. 81817, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the laws cited herein, it is hereby ordered as follows:

SECTION 1. *Statutory Pay Systems*. Pursuant to the Continuing Appropriations and Surface Transportation Extensions Act, 2011 (H.R. 3082) [Pub. L. 111–322], which I signed into law today (the ''Continuing Appropriations Act''), 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*. The ranges of rates of basic pay for senior executives in the Senior Executive Service, as established pursuant to 5 U.S.C. 5382, are set forth on Schedule 4 attached hereto and made a part hereof.

SEC. 3. *Certain Executive, Legislative, and Judicial Salaries*. The rates of basic 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), and section 140 of Public Law 97–92) at Schedule 7.

SEC. 4. *Uniformed Services*. The rates of monthly basic pay (37 U.S.C. 203(a)) for members of the uniformed services, as adjusted under 37 U.S.C. 1009, and the rate of monthly cadet or midshipman pay (37 U.S.C. 203(c)) are set forth on Schedule 8 attached hereto and made a part hereof.

SEC. 5. *Locality-Based Comparability Payments*. (a) Pursuant to section 5304 of title 5, United States Code, the Non-Foreign Area Retirement Equity Assurance Act of 2009 (Public Law 111–84; 5 U.S.C. 5304 note), and the Continuing Appropriations Act, locality-based comparability payments shall be paid in accordance with Schedule 9 attached hereto and made a part hereof.

(b) The Director of the Office of Personnel Management shall take such actions as may be necessary to implement these payments and to publish appropriate notice of such payments in the Federal Register.

SEC. 6. *Administrative Law Judges*. Pursuant to section 5372 of title 5, United States Code, the rates of basic pay for administrative law judges are set forth on Schedule 10 attached hereto and made a part hereof.

SEC. 7. *Effective Dates*. Schedule 8 is effective January 1, 2011. The other schedules contained herein are effective on the first day of the first applicable pay period beginning on or after January 1, 2011.

SEC. 8. *Prior Order Superseded*. Executive Order 13525 of December 23, 2009, is superseded.

BARACK OBAMA.

SCHEDULE 1

*General Schedule*

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2011)

| | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
|---|---|---|---|---|---|---|---|---|---|---|
| GS–1 | $17,803 | $18,398 | $18,990 | $19,579 | $20,171 | $20,519 | $21,104 | $21,694 | $21,717 | $22,269 |
| GS–2 | 20,017 | 20,493 | 21,155 | 21,717 | 21,961 | 22,607 | 23,253 | 23,899 | 24,545 | 25,191 |
| GS–3 | 21,840 | 22,568 | 23,296 | 24,024 | 24,752 | 25,480 | 26,208 | 26,936 | 27,664 | 28,392 |
| GS–4 | 24,518 | 25,335 | 26,152 | 26,969 | 27,786 | 28,603 | 29,420 | 30,327 | 31,054 | 31,871 |
| GS–5 | 27,431 | 28,345 | 29,259 | 30,173 | 31,087 | 32,001 | 32,915 | 33,829 | 34,743 | 35,657 |
| GS–6 | 30,577 | 31,596 | 32,615 | 33,634 | 34,653 | 35,672 | 36,691 | 37,710 | 38,729 | 39,748 |
| GS–7 | 33,979 | 35,112 | 36,245 | 37,378 | 38,511 | 39,644 | 40,777 | 41,910 | 43,043 | 44,176 |
| GS–8 | 37,631 | 38,885 | 40,139 | 41,393 | 42,647 | 43,901 | 45,155 | 46,409 | 47,663 | 48,917 |
| GS–9 | 41,563 | 42,948 | 44,333 | 45,718 | 47,103 | 48,488 | 49,873 | 51,258 | 52,643 | 54,028 |
| GS–10 | 45,771 | 47,297 | 48,823 | 50,349 | 51,875 | 53,401 | 54,927 | 56,453 | 57,979 | 59,505 |
| GS–11 | 50,287 | 51,963 | 53,639 | 55,315 | 56,991 | 58,667 | 60,343 | 62,019 | 63,695 | 65,371 |
| GS–12 | 60,274 | 62,283 | 64,292 | 66,301 | 68,310 | 70,319 | 72,328 | 74,337 | 76,346 | 78,355 |
| GS–13 | 71,674 | 74,063 | 76,452 | 78,841 | 81,230 | 83,619 | 86,008 | 88,397 | 90,786 | 93,175 |
| GS–14 | 84,697 | 87,520 | 90,343 | 93,166 | 95,989 | 98,812 | 101,635 | 104,458 | 107,281 | 110,104 |
| GS–15 | 99,628 | 102,949 | 106,270 | 109,591 | 112,912 | 116,233 | 119,554 | 122,875 | 126,196 | 129,517 |

SCHEDULE 2

*Foreign Service Schedule*

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2011)

| Step | Class 1 | Class 2 | Class 3 | Class 4 | Class 5 | Class 6 | Class 7 | Class 8 | Class 9 |
|---|---|---|---|---|---|---|---|---|---|
| 1 | $99,628 | $80,728 | $65,413 | $53,003 | $42,948 | $38,394 | $34,324 | $30,684 | $27,431 |
| 2 | 102,617 | 83,150 | 67,375 | 54,593 | 44,236 | 39,546 | 35,354 | 31,605 | 28,254 |
| 3 | 105,695 | 85,644 | 69,397 | 56,231 | 45,564 | 40,732 | 36,414 | 32,553 | 29,102 |
| 4 | 108,866 | 88,214 | 71,479 | 57,918 | 46,930 | 41,954 | 37,507 | 33,529 | 29,975 |
| 5 | 112,132 | 90,860 | 73,623 | 59,655 | 48,338 | 43,213 | 38,632 | 34,535 | 30,874 |
| 6 | 115,496 | 93,586 | 75,832 | 61,445 | 49,789 | 44,509 | 39,791 | 35,571 | 31,800 |
| 7 | 118,961 | 96,393 | 78,107 | 63,288 | 51,282 | 45,844 | 40,985 | 36,638 | 32,754 |
| 8 | 122,530 | 99,285 | 80,450 | 65,187 | 52,821 | 47,220 | 42,214 | 37,737 | 33,737 |
| 9 | 126,206 | 102,264 | 82,863 | 67,143 | 54,405 | 48,636 | 43,481 | 38,870 | 34,749 |
| 10 | 129,517 | 105,332 | 85,349 | 69,157 | 56,037 | 50,095 | 44,785 | 40,036 | 35,791 |
| 11 | 129,517 | 108,492 | 87,910 | 71,232 | 57,719 | 51,598 | 46,129 | 41,237 | 36,865 |
| 12 | 129,517 | 111,746 | 90,547 | 73,369 | 59,450 | 53,146 | 47,512 | 42,474 | 37,971 |
| 13 | 129,517 | 115,099 | 93,263 | 75,570 | 61,234 | 54,741 | 48,938 | 43,748 | 39,110 |
| 14 | 129,517 | 118,552 | 96,061 | 77,837 | 63,071 | 56,383 | 50,406 | 45,060 | 40,283 |

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, 2011)

| | Minimum | Maximum |
|---|---|---|
| Schedule for the Office of the Under Secretary for Health (38 U.S.C. 7306)[1] | | |
| Assistant Under Secretaries for Health | [2]$157,279 | |
| (Only applies to incumbents who are not physicians or dentists) | | |
| Service Directors | $116,844 | $145,113 |
| Director, National Center for Preventive Health | 99,628 | 145,113 |
| Physician and Dentist Base and Longevity Schedule[3] | | |
| Physician Grade | $97,987 | $143,725 |

SCHEDULE 3—Continued

*Veterans Health Administration Schedules, Department of Veterans Affairs*

| | | |
|---|---|---|
| Dentist Grade | 97,987 | 143,725 |
| Clinical Podiatrist, Chiropractor, and Optometrist Schedule | | |
| Chief Grade | $99,628 | $129,517 |
| Senior Grade | 84,697 | 110,104 |
| Intermediate Grade | 71,674 | 93,175 |
| Full Grade | 60,274 | 78,355 |
| Associate Grade | 50,287 | 65,371 |
| Physician Assistant and Expanded-Function Dental Auxiliary Schedule[4] | | |
| Director Grade | $99,628 | $129,517 |
| Assistant Director Grade | 84,697 | 110,104 |
| Chief Grade | 71,674 | 93,175 |
| Senior Grade | 60,274 | 78,355 |

SCHEDULE 3—Continued

*Veterans Health Administration Schedules, Department of Veterans Affairs*

| | | |
|---|---|---|
| Intermediate Grade | 50,287 | 65,371 |
| Full Grade | 41,563 | 54,028 |
| Associate Grade | 35,766 | 46,494 |
| Junior Grade | 30,577 | 39,748 |

[1] This schedule does not apply to the Deputy Under Secretary for Health, the Associate Deputy Under Secretary for Health, Assistant Under Secretaries for Health who are physicians or dentists, Medical Directors, the Assistant Under Secretary for Nursing Programs, or the Director of Nursing Services.

[2] Pursuant to 38 U.S.C. 7404(d), the rate of basic pay payable to these employees is limited to the rate for level V of the Executive Schedule, which is $145,700.

[3] Pursuant to section 3 of Public Law 108–445 [see Tables for classification] and 38 U.S.C. 7431, Veterans Health Administration physicians and dentists may also be paid market pay and performance pay.

[4] Pursuant to section 301(a) of Public Law 102–40 [38 U.S.C. 7451 note], these positions are paid according to the Nurse Schedule in 38 U.S.C. 4107(b), 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, 2011)

| | Minimum | Maximum |
|---|---|---|
| Agencies with a Certified SES Performance Appraisal System | $119,554 | $179,700 |
| Agencies without a Certified SES Performance Appraisal System | $119,554 | $165,300 |

SCHEDULE 5

*Executive Schedule*

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2011)

| | |
|---|---|
| Level I | $199,700 |
| Level II | 179,700 |
| Level III | 165,300 |
| Level IV | 155,500 |
| Level V | 145,700 |

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, 2011)

| | |
|---|---|
| Vice President | $230,700 |
| Senators | 174,000 |
| Members of the House of Representatives | 174,000 |
| Delegates to the House of Representatives | 174,000 |
| Resident Commissioner from Puerto Rico | 174,000 |
| President pro tempore of the Senate | 193,400 |
| Majority leader and minority leader of the Senate | 193,400 |
| Majority leader and minority leader of the House of Representatives | 193,400 |
| Speaker of the House of Representatives | 223,500 |

SCHEDULE 7

*Judicial Salaries*

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2011)

| | |
|---|---|
| Chief Justice of the United States | $223,500 |
| Associate Justices of the Supreme Court | 213,900 |
| Circuit Judges | 184,500 |
| District Judges | 174,000 |
| Judges of the Court of International Trade | 174,000 |

SCHEDULE 8

*Pay of the Uniformed Services*

(Effective January 1, 2011)

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[2] | ..... | ..... | ..... | ..... | ..... |
| O–9 | ..... | ..... | ..... | ..... | ..... |
| O–8 | $9,530.70 | $9,842.70 | $10,050.00 | $10,107.90 | $10,366.50 |
| O–7 | 7,919.10 | 8,287.20 | 8,457.30 | 8,592.60 | 8,837.70 |
| O–6 | 5,869.50 | 6,448.50 | 6,871.50 | 6,871.50 | 6,897.60 |
| O–5 | 4,893.00 | 5,512.20 | 5,893.80 | 5,965.80 | 6,203.70 |

SCHEDULE 8—Continued

*Pay of the Uniformed Services*

| Pay Grade | 2 or less | Over 2 | Over 3 | Over 4 | Over 6 |
|---|---|---|---|---|---|
| O–4 | 4,221.90 | 4,887.30 | 5,213.40 | 5,286.00 | 5,588.70 |
| O–3[3] | 3,711.90 | 4,208.10 | 4,542.00 | 4,951.80 | 5,188.80 |
| O–2[3] | 3,207.30 | 3,652.80 | 4,207.20 | 4,349.10 | 4,438.50 |
| O–1[3] | 2,784.00 | 2,897.40 | 3,502.50 | 3,502.50 | 3,502.50 |
| | Over 8 | Over 10 | Over 12 | Over 14 | Over 16 |
| O–10[2] | ..... | ..... | ..... | ..... | ..... |
| O–9 | ..... | ..... | ..... | ..... | ..... |
| O–8 | $10,798.20 | $10,899.00 | $11,308.80 | $11,426.40 | $11,779.80 |
| O–7 | 9,079.80 | 9,359.70 | 9,638.70 | 9,918.60 | 10,798.20 |
| O–6 | 7,193.40 | 7,232.40 | 7,232.40 | 7,643.40 | 8,370.30 |
| O–5 | 6,346.20 | 6,659.40 | 6,889.20 | 7,186.20 | 7,640.70 |
| O–4 | 5,913.30 | 6,317.40 | 6,632.10 | 6,851.10 | 6,976.50 |
| O–3[3] | 5,449.20 | 5,617.80 | 5,894.70 | 6,039.00 | 6,039.00 |
| O–2[3] | 4,438.50 | 4,438.50 | 4,438.50 | 4,438.50 | 4,438.50 |
| O–1[3] | 3,502.50 | 3,502.50 | 3,502.50 | 3,502.50 | 3,502.50 |
| | Over 18 | Over 20 | Over 22 | Over 24 | Over 26 |
| O–10[2] | ..... | [1] $15,400.80 | [1] $15,475.80 | [1] $15,797.70 | [1] $16,358.40 |
| O–9 | ..... | 13,469.70 | 13,663.80 | 13,944.00 | 14,433.00 |
| O–8 | $12,291.00 | 12,762.30 | 13,077.30 | 13,077.30 | 13,077.30 |
| O–7 | 11,540.70 | 11,540.70 | 11,540.70 | 11,540.70 | 11,599.50 |
| O–6 | 8,796.90 | 9,222.90 | 9,465.60 | 9,711.30 | 10,187.70 |
| O–5 | 7,856.70 | 8,070.30 | 8,313.30 | 8,313.30 | 8,313.30 |
| O–4 | 7,049.10 | 7,049.10 | 7,049.10 | 7,049.10 | 7,049.10 |
| O–3[3] | 6,039.00 | 6,039.00 | 6,039.00 | 6,039.00 | 6,039.00 |
| O–2[3] | 4,438.50 | 4,438.50 | 4,438.50 | 4,438.50 | 4,438.50 |
| O–1[3] | 3,502.50 | 3,502.50 | 3,502.50 | 3,502.50 | 3,502.50 |
| | Over 28 | Over 30 | Over 32 | Over 34 | Over 36 |
| O–10[2] | [1] $16,358.40 | [1] $17,176.20 | [1] $17,176.20 | [1] $18,034.80 | [1] $18,034.80 |
| O–9 | 14,433.00 | [1] 15,155.10 | [1] 15,155.10 | [1] 15,912.90 | [1] 15,912.90 |
| O–8 | 13,077.30 | 13,404.30 | 13,404.30 | 13,739.40 | 13,739.40 |
| O–7 | 11,599.50 | 11,831.70 | 11,831.70 | 11,831.70 | 11,831.70 |
| O–6 | 10,187.70 | 10,391.10 | 10,391.10 | 10,391.10 | 10,391.10 |
| O–5 | 8,313.30 | 8,313.30 | 8,313.30 | 8,313.30 | 8,313.30 |
| O–4 | 7,049.10 | 7,049.10 | 7,049.10 | 7,049.10 | 7,049.10 |
| O–3[3] | 6,039.00 | 6,039.00 | 6,039.00 | 6,039.00 | 6,039.00 |
| O–2[3] | 4,438.50 | 4,438.50 | 4,438.50 | 4,438.50 | 4,438.50 |
| O–1[3] | 3,502.50 | 3,502.50 | 3,502.50 | 3,502.50 | 3,502.50 |
| | Over 38 | Over 40 | | | |
| O–10[2] | [1] $18,936.90 | [1] $18,936.90 | | | |
| O–9 | [1] 16,708.50 | [1] 16,708.50 | | | |
| O–8 | 13,739.40 | 13,739.40 | | | |
| O–7 | 11,831.70 | 11,831.70 | | | |
| O–6 | 10,391.10 | 10,391.10 | | | |
| O–5 | 8,313.30 | 8,313.30 | | | |
| O–4 | 7,049.10 | 7,049.10 | | | |
| O–3[3] | 6,039.00 | 6,039.00 | | | |
| O–2[3] | 4,438.50 | 4,438.50 | | | |
| O–1[3] | 3,502.50 | 3,502.50 | | | |

[1] Basic pay is limited to the rate of basic pay for level II of the Executive Schedule, which is $14,975.10 per month for officers at pay grades O–7 through O–10, and limited to the rate of basic pay for level V of the Executive Schedule, which is $12,141.60 per month, for officers at O–6 and below.

[2] For officers 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, Commandant of the Coast Guard, or commander of a unified or specified combatant command (as defined in 10 U.S.C. 161(c)), basic pay for this grade is calculated to be $20,263.50 per month, regardless of cumulative years of service computed under 37 U.S.C. 205. Nevertheless, actual basic pay for these officers is limited to the rate of basic pay for level II of the Executive Schedule, which is $14,975.10 per month.

[3] 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.

Commissioned Officers With Over 4 Years Active Duty Service as an Enlisted Member or Warrant Officer[4]

| Pay Grade | Over 4 | Over 6 | Over 8 | Over 10 |
|---|---|---|---|---|
| O–3E | $4,951.80 | $5,188.80 | $5,449.20 | $5,617.80 |
| O–2E | 4,349.10 | 4,438.50 | 4,580.10 | 4,818.60 |
| O–1E | 3,502.50 | 3,740.40 | 3,878.70 | 4,020.30 |
| | Over 12 | Over 14 | Over 16 | Over 18 |
| O–3E | $5,894.70 | $6,128.10 | $6,262.20 | $6,444.90 |
| O–2E | 5,002.80 | 5,140.20 | 5,140.20 | 5,140.20 |
| O–1E | 4,158.90 | 4,349.10 | 4,349.10 | 4,349.10 |
| | Over 20 | Over 22 | Over 24 | Over 26 |
| O–3E | $6,444.90 | $6,444.90 | $6,444.90 | $6,444.90 |
| O–2E | 5,140.20 | 5,140.20 | 5,140.20 | 5,140.20 |
| O–1E | 4,349.10 | 4,349.10 | 4,349.10 | 4,349.10 |
| | Over 28 | Over 30 | Over 32 | Over 34 |

Commissioned Officers With Over 4 Years Active Duty Service as an Enlisted Member or Warrant Officer[4]—Continued

| Pay Grade | Over 4 | Over 6 | Over 8 | Over 10 |
|---|---|---|---|---|
| O–3E .... | $6,444.90 | $6,444.90 | $6,444.90 | $6,444.90 |
| O–2E .... | 5,140.20 | 5,140.20 | 5,140.20 | 5,140.20 |
| O–1E .... | 4,349.10 | 4,349.10 | 4,349.10 | 4,349.10 |
| | Over 36 | Over 38 | Over 40 | |
| O–3E .... | $6,444.90 | $6,444.90 | $6,444.90 | |
| O–2E .... | 5,140.20 | 5,140.20 | 5,140.20 | |
| O–1E .... | 4,349.10 | 4,349.10 | 4,349.10 | |

[4] Reservists with at least 1,460 points as an enlisted member and/or warrant officer which are creditable toward reserve retirement also qualify for these rates.

Warrant Officers

| Pay Grade | 2 or less | Over 2 | Over 3 | Over 4 | Over 6 |
|---|---|---|---|---|---|
| W–5 ..... | ..... | ..... | ..... | ..... | ..... |
| W–4 ..... | $3,836.10 | $4,126.50 | $4,245.00 | $4,361.40 | $4,562.10 |
| W–3 ..... | 3,502.80 | 3,648.90 | 3,798.60 | 3,847.80 | 4,004.70 |
| W–2 ..... | 3,099.90 | 3,393.00 | 3,483.30 | 3,545.40 | 3,746.40 |
| W–1 ..... | 2,721.00 | 3,013.50 | 3,092.40 | 3,258.90 | 3,456.00 |
| | Over 8 | Over 10 | Over 12 | Over 14 | Over 16 |
| W–5 ..... | ..... | ..... | ..... | ..... | ..... |
| W–4 ..... | $4,760.70 | $4,961.40 | $5,264.40 | $5,529.60 | $5,781.90 |
| W–3 ..... | 4,313.70 | 4,635.00 | 4,786.20 | 4,961.10 | 5,142.00 |
| W–2 ..... | 4,059.00 | 4,213.50 | 4,366.20 | 4,552.50 | 4,698.00 |
| W–1 ..... | 3,745.80 | 3,881.40 | 4,070.40 | 4,256.70 | 4,403.10 |
| | Over 18 | Over 20 | Over 22 | Over 24 | Over 26 |
| W–5 ..... | ..... | $6,820.80 | $7,167.00 | $7,424.70 | $7,710.00 |
| W–4 ..... | $5,988.30 | 6,189.60 | 6,485.40 | 6,728.40 | 7,005.60 |
| W–3 ..... | 5,466.00 | 5,685.30 | 5,816.40 | 5,955.60 | 6,144.90 |
| W–2 ..... | 4,830.00 | 4,987.80 | 5,091.60 | 5,174.10 | 5,174.10 |
| W–1 ..... | 4,538.10 | 4,701.60 | 4,701.60 | 4,701.60 | 4,701.60 |
| | Over 28 | Over 30 | Over 32 | Over 34 | Over 36 |
| W–5 ..... | $7,710.00 | $8,095.80 | $8,095.80 | $8,500.50 | $8,500.50 |
| W–4 ..... | 7,005.60 | 7,145.70 | 7,145.70 | 7,145.70 | 7,145.70 |
| W–3 ..... | 6,144.90 | 6,144.90 | 6,144.90 | 6,144.90 | 6,144.90 |
| W–2 ..... | 5,174.10 | 5,174.10 | 5,174.10 | 5,174.10 | 5,174.10 |
| W–1 ..... | 4,701.60 | 4,701.60 | 4,701.60 | 4,701.60 | 4,701.60 |
| | Over 38 | Over 40 | | | |
| W–5 ..... | $8,925.90 | $8,925.90 | | | |
| W–4 ..... | 7,145.70 | 7,145.70 | | | |
| W–3 ..... | 6,144.90 | 6,144.90 | | | |
| W–2 ..... | 5,174.10 | 5,174.10 | | | |
| W–1 ..... | 4,701.60 | 4,701.60 | | | |

Enlisted Members

| Pay Grade | 2 or less | Over 2 | Over 3 | Over 4 | Over 6 |
|---|---|---|---|---|---|
| E–9[1] ..... | ..... | ..... | ..... | ..... | ..... |
| E–8 ..... | ..... | ..... | ..... | ..... | ..... |
| E–7 ..... | $2,637.30 | $2,878.50 | $2,988.90 | $3,135.00 | $3,249.00 |
| E–6 ..... | 2,281.20 | 2,510.10 | 2,620.80 | 2,728.50 | 2,840.70 |
| E–5 ..... | 2,090.10 | 2,230.20 | 2,337.90 | 2,448.30 | 2,620.20 |
| E–4 ..... | 1,916.10 | 2,014.20 | 2,123.40 | 2,230.80 | 2,325.90 |
| E–3 ..... | 1,729.80 | 1,838.70 | 1,950.00 | 1,950.00 | 1,950.00 |
| E–2 ..... | 1,644.90 | 1,644.90 | 1,644.90 | 1,644.90 | 1,644.90 |
| E–1[2] ..... | 1,467.60 | 1,467.60 | 1,467.60 | 1,467.60 | 1,467.60 |
| E–1[3] ..... | 1,357.20 | ..... | ..... | ..... | ..... |
| | Over 8 | Over 10 | Over 12 | Over 14 | Over 16 |
| E–9[1] ..... | ..... | $4,634.70 | $4,739.70 | $4,872.00 | $5,027.70 |
| E–8 ..... | $3,794.10 | 3,961.80 | 4,065.60 | 4,190.40 | 4,325.10 |
| E–7 ..... | 3,444.60 | 3,554.70 | 3,750.90 | 3,913.50 | 4,024.50 |
| E–6 ..... | 3,093.60 | 3,192.30 | 3,382.80 | 3,441.00 | 3,483.60 |
| E–5 ..... | 2,800.50 | 2,947.50 | 2,965.50 | 2,965.50 | 2,965.50 |
| E–4 ..... | 2,325.90 | 2,325.90 | 2,325.90 | 2,325.90 | 2,325.90 |
| E–3 ..... | 1,950.00 | 1,950.00 | 1,950.00 | 1,950.00 | 1,950.00 |
| E–2 ..... | 1,644.90 | 1,644.90 | 1,644.90 | 1,644.90 | 1,644.90 |
| E–1[2] ..... | 1,467.60 | 1,467.60 | 1,467.60 | 1,467.60 | 1,467.60 |
| E–1[3] ..... | ..... | ..... | ..... | ..... | ..... |
| | Over 18 | Over 20 | Over 22 | Over 24 | Over 26 |
| E–9[1] ..... | $5,184.60 | $5,436.60 | $5,649.30 | $5,873.40 | $6,215.70 |
| E–8 ..... | 4,568.40 | 4,691.70 | 4,901.70 | 5,017.80 | 5,304.60 |
| E–7 ..... | 4,143.00 | 4,189.20 | 4,342.80 | 4,425.60 | 4,740.00 |
| E–6 ..... | 3,533.40 | 3,533.40 | 3,533.40 | 3,533.40 | 3,533.40 |
| E–5 ..... | 2,965.50 | 2,965.50 | 2,965.50 | 2,965.50 | 2,965.50 |
| E–4 ..... | 2,325.90 | 2,325.90 | 2,325.90 | 2,325.90 | 2,325.90 |
| E–3 ..... | 1,950.00 | 1,950.00 | 1,950.00 | 1,950.00 | 1,950.00 |
| E–2 ..... | 1,644.90 | 1,644.90 | 1,644.90 | 1,644.90 | 1,644.90 |
| E–1[2] ..... | 1,467.60 | 1,467.60 | 1,467.60 | 1,467.60 | 1,467.60 |
| E–1[3] ..... | ..... | ..... | ..... | ..... | ..... |

Enlisted Members—Continued

| Pay Grade | 2 or less | Over 2 | Over 3 | Over 4 | Over 6 |
|---|---|---|---|---|---|
| | Over 28 | Over 30 | Over 32 | Over 34 | Over 36 |
| E–9[1] ..... | $6,215.70 | $6,526.20 | $6,526.20 | $6,852.90 | $6,852.90 |
| E–8 ..... | 5,304.60 | 5,411.10 | 5,411.10 | 5,411.10 | 5,411.10 |
| E–7 ..... | 4,740.00 | 4,740.00 | 4,740.00 | 4,740.00 | 4,740.00 |
| E–6 ..... | 3,533.40 | 3,533.40 | 3,533.40 | 3,533.40 | 3,533.40 |
| E–5 ..... | 2,965.50 | 2,965.50 | 2,965.50 | 2,965.50 | 2,965.50 |
| E–4 ..... | 2,325.90 | 2,325.90 | 2,325.90 | 2,325.90 | 2,325.90 |
| E–3 ..... | 1,950.00 | 1,950.00 | 1,950.00 | 1,950.00 | 1,950.00 |
| E–2 ..... | 1,644.90 | 1,644.90 | 1,644.90 | 1,644.90 | 1,644.90 |
| E–1[2] ..... | 1,467.60 | 1,467.60 | 1,467.60 | 1,467.60 | 1,467.60 |
| E–1[3] ..... | ..... | ..... | ..... | ..... | ..... |
| | Over 38 | Over 40 | | | |
| E–9[1] ..... | $7,195.80 | $7,195.80 | | | |
| E–8 ..... | 5,411.10 | 5,411.10 | | | |
| E–7 ..... | 4,740.00 | 4,740.00 | | | |
| E–6 ..... | 3,533.40 | 3,533.40 | | | |
| E–5 ..... | 2,965.50 | 2,965.50 | | | |
| E–4 ..... | 2,325.90 | 2,325.90 | | | |
| E–3 ..... | 1,950.00 | 1,950.00 | | | |
| E–2 ..... | 1,644.90 | 1,644.90 | | | |
| E–1[2] ..... | 1,467.60 | 1,467.60 | | | |
| E–1[3] ..... | ..... | ..... | | | |

[1] For noncommissioned officers serving as Sergeant Major of the Army, Master Chief Petty Officer of the Navy or Coast Guard, Chief Master Sergeant of the Air Force, Sergeant Major of the Marine Corps, or Senior Enlisted Advisor to the Chairman of the Joint Chiefs of Staff, basic pay for this grade is $7,489.80 per month, regardless of cumulative years of service under 37 U.S.C. 205.

[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—RATE OF MONTHLY CADET OR MIDSHIPMAN PAY

The rate of monthly cadet or midshipman pay authorized by 37 U.S.C. 203(c) is $974.40.

NOTE: As a result of the enactment of sections 602–604 of Public Law 105–85, the National Defense Authorization Act for Fiscal Year 1998 [see Tables for classification], the Secretary of Defense now has the authority to adjust the rates of basic allowances for subsistence and housing. Therefore, these allowances are no longer adjusted by the President in conjunction with the adjustment of basic pay for members of the uniformed services. Accordingly, the tables of allowances included in previous orders are not included here.

SCHEDULE 9

*Locality-Based Comparability Payments*

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2011)

| Locality Pay Area[1] | Rate |
|---|---|
| Alaska[2] | 24.69% |
| Atlanta-Sandy Springs-Gainesville, GA–AL | 19.29% |
| Boston-Worcester-Manchester, MA–NH–RI–ME | 24.80% |
| Buffalo-Niagara-Cattaraugus, NY | 16.98% |
| Chicago-Naperville-Michigan City, IL–IN–WI | 25.10% |
| Cincinnati-Middletown-Wilmington, OH–KY–IN | 18.55% |
| Cleveland-Akron-Elyria, OH | 18.68% |
| Columbus-Marion-Chillicothe, OH | 17.16% |
| Dallas-Fort Worth, TX | 20.67% |
| Dayton-Springfield-Greenville, OH | 16.24% |
| Denver-Aurora-Boulder, CO | 22.52% |
| Detroit-Warren-Flint, MI | 24.09% |
| Hartford-West Hartford-Willimantic, CT–MA | 25.82% |
| Hawaii[2] | 16.51% |
| Houston-Baytown-Huntsville, TX | 28.71% |
| Huntsville-Decatur, AL | 16.02% |
| Indianapolis-Anderson-Columbus, IN | 14.68% |
| Los Angeles-Long Beach-Riverside, CA | 27.16% |
| Miami-Fort Lauderdale-Pompano Beach, FL | 20.79% |
| Milwaukee-Racine-Waukesha, WI | 18.10% |
| Minneapolis-St. Paul-St. Cloud, MN–WI | 20.96% |
| New York-Newark-Bridgeport, NY–NJ–CT–PA | 28.72% |
| Philadelphia-Camden-Vineland, PA–NJ–DE–MD | 21.79% |
| Phoenix-Mesa-Scottsdale, AZ | 16.76% |
| Pittsburgh-New Castle, PA | 16.37% |
| Portland-Vancouver-Beaverton, OR–WA | 20.35% |
| Raleigh-Durham-Cary, NC | 17.64% |
| Richmond, VA | 16.47% |
| Sacramento–Arden-Arcade–Yuba City, CA–NV | 22.20% |
| San Diego-Carlsbad-San Marcos, CA | 24.19% |
| San Jose-San Francisco-Oakland, CA | 35.15% |
| Seattle-Tacoma-Olympia, WA | 21.81% |

SCHEDULE 9—Continued

*Locality-Based Comparability Payments*

| Locality Pay Area[1] | Rate |
|---|---|
| Washington-Baltimore-Northern Virginia, DC–MD–VA–WV–PA | 24.22% |
| Rest of U.S.[2] | 14.16% |

[1] Locality Pay Areas are defined in 5 CFR 531.603.

[2] Under the Non-Foreign Area Retirement Equity Assurance Act of 2009 (sections 1911–1919, Public Law 111–84, October 28, 2009), two-thirds of the applicable locality pay rate will be payable in non-foreign areas effective with the first pay period in January 2011. Those two-thirds payable locality rates are 16.46% in Alaska, 11.01% in Hawaii, and 9.44% in other non-foreign areas (as identified in 5 CFR 591.205(b)(3)–(16)) that are part of the Rest of U.S. locality pay area.

SCHEDULE 10

*Administrative Law Judges*

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2011)

| | |
|---|---|
| AL–3/A | $103,900 |
| AL–3/B | 111,800 |
| AL–3/C | 119,900 |
| AL–3/D | 127,800 |
| AL–3/E | 135,900 |
| AL–3/F | 143,700 |
| AL–2 | 151,800 |
| AL–1 | 155,500 |

PRIOR ADJUSTMENTS OF CERTAIN RATES OF PAY WERE CONTAINED IN THE FOLLOWING:

Ex. Ord. No. 13525, Dec. 23, 2009, 74 F.R. 69231, effective Jan. 1, 2010, superseded by Ex. Ord. No. 13561.

Ex. Ord. No. 13483, Dec. 18, 2008, 73 F.R. 78587, effective Jan. 1, 2009, superseded by Ex. Ord. No. 13525.

Ex. Ord. No. 13454, Jan. 4, 2008, 73 F.R. 1481, effective Jan. 1, 2008, superseded by Ex. Ord. No. 13483.

Ex. Ord. No. 13420, Dec. 21, 2006, 71 F.R. 77571, effective Jan. 1, 2007, superseded by Ex. Ord. No. 13454.

Ex. Ord. No. 13393, Dec. 22, 2005, 70 F.R. 76655, effective Jan. 1, 2006, superseded by Ex. Ord. No. 13420.

Ex. Ord. No. 13368, Dec. 30, 2004, 70 F.R. 1147, effective Jan. 1, 2005, superseded by Ex. Ord. No. 13393.

Ex. Ord. No. 13332, Mar. 3, 2004, 69 F.R. 10891, effective Jan. 1, 2004, superseded by Ex. Ord. No. 13368.

Ex. Ord. No. 13322, Dec. 30, 2003, 69 F.R. 231, effective Jan. 1, 2004, superseded by Ex. Ord. No. 13332.

Ex. Ord. No. 13282, Dec. 31, 2002, 68 F.R. 1133, as amended by Ex. Ord. No. 13291, Mar. 21, 2003, 68 F.R. 14525, effective Jan. 1, 2003, superseded by Ex. Ord. No. 13322.

Ex. Ord. No. 13249, Dec. 28, 2001, 67 F.R. 639, effective Jan. 1, 2002, superseded by Ex. Ord. No. 13282, as amended.

Ex. Ord. No. 13182, Dec. 23, 2000, 65 F.R. 82879, 66 F.R. 10057, effective Jan. 1, 2001, superseded by Ex. Ord. No. 13249.

Ex. Ord. No. 13144, Dec. 21, 1999, 64 F.R. 72237, effective Jan. 1, 2000, superseded by Ex. Ord. No. 13182.

Ex. Ord. No. 13106, Dec. 7, 1998, 63 F.R. 68151, effective Jan. 1, 1999, substantially superseded by Ex. Ord. No. 13144.

Ex. Ord. No. 13071, Dec. 29, 1997, 62 F.R. 68521, effective Jan. 1, 1998, superseded by Ex. Ord. No. 13106.

Ex. Ord. No. 13033, Dec. 27, 1996, 61 F.R. 68987, effective Jan. 1, 1997, superseded by Ex. Ord. No. 13071.

Ex. Ord. No. 12990, Feb. 29, 1996, 61 F.R. 8467, effective Jan. 1, 1996, superseded by Ex. Ord. No. 13033.

Ex. Ord. No. 12984, Dec. 28, 1995, 61 F.R. 237, as amended by Ex. Ord. No. 12990, § 3, Feb. 29, 1996, 61 F.R. 8467, effective Jan. 1, 1996, superseded by Ex. Ord. No. 13033.

Ex. Ord. No. 12944, Dec. 28, 1994, 60 F.R. 309, effective Jan. 1, 1995, superseded by Ex. Ord. No. 12984, as amended.

Ex. Ord. No. 12886, Dec. 23, 1993, 58 F.R. 68709, effective Jan. 1, 1994, superseded by Ex. Ord. No. 12944.

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, effective Jan. 1, 1993, superseded by Ex. Ord. No. 12944.

Ex. Ord. No. 12786, Dec. 26, 1991, 56 F.R. 67453, effective Jan. 1, 1992, superseded by Ex. Ord. No. 12826, as amended.

Ex. Ord. No. 12736, Dec. 12, 1990, 55 F.R. 51385, effective Jan. 1, 1991, superseded by Ex. Ord. No. 12786.

Ex. Ord. No. 12698, Dec. 23, 1989, 54 F.R. 53473, effective Jan. 1 and 31, 1990, superseded by Ex. Ord. No. 12736.

Ex. Ord. No. 12663, Jan. 6, 1989, 54 F.R. 791, effective Jan. 1, 1989, superseded by Ex. Ord. No. 12698.

Ex. Ord. No. 12622, Dec. 31, 1987, 53 F.R. 222, effective Jan. 1, 1988, superseded by Ex. Ord. No. 12663.

Ex. Ord. No. 12578, Dec. 31, 1986, 52 F.R. 505, effective Jan. 1, 1987, superseded by Ex. Ord. No. 12622.

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, effective Jan. 1, 1985, superseded by Ex. Ord. No. 12578.

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, effective Jan. 1, 1984, superseded by Ex. Ord. No. 12496, as amended.

Ex. Ord. No. 12387, Oct. 8, 1982, 47 F.R. 44981, effective Oct. 1, 1982, superseded by Ex. Ord. No. 12456, as amended.

Ex. Ord. No. 12330, Oct. 15, 1981, 46 F.R. 50921, effective Oct. 1, 1981, superseded by Ex. Ord. No. 12387.

Ex. Ord. No. 12248, Oct. 16, 1980, 45 F.R. 69199, effective Oct. 1, 1980, superseded by Ex. Ord. No. 12330.

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, effective Oct. 1, 1979, superseded by Ex. Ord. No. 12248.

Ex. Ord. No. 12087, Oct. 7, 1978, 43 F.R. 46823, effective Oct. 1, 1978, superseded by Ex. Ord. No. 12165, as amended.

Ex. Ord. No. 12010, Sept. 28, 1977, 42 F.R. 52365, effective Oct. 1, 1977, superseded by Ex. Ord. No. 12087.

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, effective Oct. 1, 1976, superseded by Ex. Ord. No. 12010.

Ex. Ord. No. 11883, Oct. 6, 1975, 40 F.R. 47091, effective Oct. 1, 1975, superseded by Ex. Ord. No. 11941, as amended.

Ex. Ord. No. 11811, Oct. 7, 1974, 39 F.R. 36302, effective Oct. 1, 1974, superseded by Ex. Ord. No. 11883.

Ex. Ord. No. 11739, Oct. 3, 1973, 38 F.R. 27581, effective Oct. 1, 1973, superseded by Ex. Ord. No. 11811.

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, effective Oct. 1, 1972, superseded by Ex. Ord. No. 11811.

Ex. Ord. No. 11637, Dec. 22, 1971, 36 F.R. 24911, effective Jan. 1, 1972, superseded by Ex. Ord. No. 11811.

Ex. Ord. No. 11576, Jan. 8, 1971, 36 F.R. 347, effective Jan. 1, 1971, superseded by Ex. Ord. No. 11811.

Ex. Ord. No. 11524, Apr. 15, 1970, 35 F.R. 6247, effective first pay period on or after Dec. 27, 1969, superseded by Ex. Ord. No. 11811.

Ex. Ord. No. 11474, June 16, 1969, 34 F.R. 9605, effective July 1, 1969, superseded by Ex. Ord. No. 11811.

Ex. Ord. No. 11413, June 11, 1968, 33 F.R. 8641, effective July 1, 1968, superseded by Ex. Ord. No. 11811.

FREEZING FEDERAL EMPLOYEE PAY SCHEDULES AND RATES THAT ARE SET BY ADMINISTRATIVE DISCRETION

Memorandum of President of the United States, Dec. 22, 2010, 75 F.R. 81829, provided:

Memorandum for the Heads of Executive Departments and Agencies

On November 29, 2010, I proposed a two-year freeze in the pay of civilian Federal employees as the first of a number of difficult actions required to put our Nation on a sound fiscal footing. As I said then, Federal workers are not just a line in a budget. They are public servants who, like their private sector counterparts, may be struggling in these difficult economic times.

Despite the sacrifices that I knew a pay freeze would entail for our dedicated civil servants, I concluded that a two-year freeze in the upward statutory adjustment of pay schedules is a necessary first step in our effort

to address the challenge of our fiscal reality. The Congress responded to my proposal by including such a freeze in the Continuing Appropriations and Surface Transportation Extensions Act, 2011 (H.R. 3082) [Pub. L. 111–322], which I signed into law today (the ''Act''). The Act freezes statutory pay adjustments for all executive branch pay schedules for a two-year period. It also generally prohibits executive departments and agencies from providing any base salary increases at all to senior executives or senior level employees, including performance-based increases.

While this legislation will prevent adjustments in executive branch pay schedules that are made by statute, some laws allow such adjustments to be made by agency heads as an exercise of administrative discretion. In order to ensure consistent treatment of executive branch employees and to promote the fiscal purposes of my original proposal, agency heads who have such discretion should not provide any upward adjustments in Federal employees' pay schedules or rates during the two-year period covered by the statutory pay freeze.

Accordingly, you should suspend any increases to any pay systems or pay schedules covering executive branch employees that could otherwise take effect as a result of an exercise of administrative discretion during the period beginning on January 1, 2011, and ending on December 31, 2012. You also should forgo any general increases (including general increases for a geographic area, such as locality pay) in covered employees' rates of pay that could otherwise take effect as a result of the exercise of administrative discretion during the same period. To the extent that an agency pay system provides performance-based increases in lieu of general increases, funds allocated for those performance-based increases should be correspondingly reduced to reflect the freezing of the employees' base pay schedule.

This memorandum shall be carried out to the extent permitted by law and consistent with executive departments' and agencies' legal authorities. This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

The Director of the Office of Personnel Management shall issue guidance on implementing this memorandum, and is also hereby authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA.

## § 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.<br>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.<br>Sept. 1, 1954, ch. 1208, § 104, 68 Stat. 1106.<br>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.

## § 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 14306(a)(2) of title 40, 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.

If an employee's rate after promotion or transfer is greater than the maximum rate of basic pay for the employee's grade, that rate shall be treated as a retained rate under section 5363. The Office of Personnel Management shall prescribe by regulation the circumstances under which and the extent to which special rates under section 5305 (or similar provision of law) or locality-adjusted rates under section 5304 (or similar provision of law) are considered to be basic pay in applying this subsection.

(c) An employee in the legislative branch who is paid by the Secretary of the Senate or the Chief Administrative Officer 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 an amount determined under regulations which the Secretary of Defense shall prescribe for the determination of the yearly rate of pay of the position. The amount by which a rate of pay is increased under the regulations may not exceed the amount equal to 20 percent of that rate of pay.

(e) An employee of a county committee established pursuant to section 8(b) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)) may, on appointment to a position subject to this subchapter, have the initial rate of basic pay of the employee fixed at—

(1) the lowest rate of the higher grade that exceeds the rate of basic pay of the employee with the county committee by not less than 2 step-increases of the grade from which the employee was promoted, if the Federal Civil Service position under this subchapter is at a higher grade than the last grade the employee had while an employee of the county committee;

(2) the same step of the grade as the employee last held during service with the county committee, if the Federal Civil Service position under this subchapter is at the same grade as the last grade the employee had while an employee of the county committee; or

(3) the lowest step of the Federal grade for which the rate of basic pay is equal to or greater than the highest previous rate of pay of the employee, if the Federal Civil Service position under this subchapter is at a lower grade than the last grade the employee had while an employee of the county committee.

(f)(1) 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—

(A) if the highest previous rate of basic pay received by that employee during the employee's service described in section 2105(c) is equal to a rate of the appropriate grade, such rate of the appropriate grade;

(B) if the employee's highest previous rate of basic pay (as described in subparagraph (A)) is between two rates of the appropriate grade, the higher of those two rates; or

(C) if the employee's highest previous rate of basic pay (as described in subparagraph (A)) exceeds the maximum rate of the appropriate grade, the maximum rate of the appropriate grade.

(2) 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.

(g) In the case of an employee who—

(1) moves to a new official duty station, and

(2) by virtue of such move, becomes subject to a different pay schedule,

any rate adjustment under the preceding provisions of this section, with respect to such employee in connection with such move, shall be made—

(A) first, by determining the rate of pay to which such employee would be entitled at the new official duty station based on such employee's position, grade, and step (or relative position in the rate range) before the move, and

(B) then, by applying the provisions of this section that would otherwise apply (if any), treating the rate determined under subparagraph (A) as if it were the rate last received by the employee before the rate adjustment.

(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; Pub. L. 104–186, title II, § 215(4), Aug. 20, 1996, 110 Stat. 1745; Pub. L. 105–85, div. A, title XI, § 1104(a), Nov. 18, 1997, 111 Stat. 1923; Pub. L. 105–393, title II, § 223, Nov. 13, 1998, 112 Stat. 3626; Pub. L. 107–171, title X, § 10701, May 13, 2002, 116 Stat. 515; Pub. L. 108–178, § 4(a), Dec. 15, 2003, 117 Stat. 2640; Pub. L. 108–411, title III, § 301(a)(3), Oct. 30, 2004, 118 Stat. 2315; Pub. L. 110–181, div. A, title XI, § 1114, Jan. 28, 2008, 122 Stat. 360.)

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.<br>Sept. 1, 1954, ch. 1208, § 112 (as applicable to § 802(b)), 68 Stat. 1108.<br>May 29, 1958, Pub. L. 85–432, § 4(a), (b), 72 Stat. 151.<br>July 31, 1959, Pub. L. 86–122, § 2(a), 73 Stat. 268. |

HISTORICAL AND REVISION NOTES—CONTINUED

| *Derivation* | *U.S. Code* | *Revised Statutes and Statutes at Large* |
|---|---|---|
| (e) ..... | 5 U.S.C. 2357. | Oct. 11, 1962, Pub. L. 87–793, § 604(a), (b), 76 Stat. 847.<br>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.

AMENDMENTS

2008—Subsec. (f). Pub. L. 110–181 designated first sentence as par. (1), substituted "does not exceed—" for "does not exceed the highest previous rate of basic pay received by that employee during the employee's service described in section 2105(c).", added subpars. (A) to (C), and designated second sentence as par. (2).

2004—Subsec. (b). Pub. L. 108–411, § 301(a)(3)(A), inserted concluding provisions.

Subsec. (g). Pub. L. 108–411, § 301(a)(3)(B), added subsec. (g).

2003—Subsec. (a). Pub. L. 108–178 substituted "section 14306(a)(2) of title 40" for "section 106(2) of the Appalachian Regional Development Act of 1965 (40 U.S.C. App.)".

2002—Subsec. (e). Pub. L. 107–171 added subsec. (e) and struck out former subsec. (e) which read as follows: "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."

1998—Subsec. (a). Pub. L. 105–393 substituted "the Appalachian Regional Development Act of 1965 (40 U.S.C. App.)" for "title 40, appendix, or by a regional commission established pursuant to section 3182 of title 42, under section 3186(a)(2) of that title".

1997—Subsec. (d). Pub. L. 105–85 substituted "an amount determined under regulations which the Secretary of Defense shall prescribe for the determination of the yearly rate of pay of the position. The amount by which a rate of pay is increased under the regulations may not exceed the amount equal to 20 percent of that rate of pay." for "20 percent to determine the yearly rate of pay of the position."

1996—Subsec. (c). Pub. L. 104–186 substituted "Chief Administrative Officer" for "Clerk".

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 2004 AMENDMENT

Amendment by Pub. L. 108–411 effective on the first day of the first applicable pay period beginning on or after the 180th day after Oct. 30, 2004, with provisions relating to conversion rules, see section 301(d) of Pub. L. 108–411, set out as a note under section 5363 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–178, § 5, Dec. 15, 2003, 117 Stat. 2642, provided that: ''This Act [see Tables for classification] and amendments and repeals made by this Act are effective August 21, 2002.''

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1104(b) of Pub. L. 105–85 provided that:

''(1) The amendment made by subsection (a) [amending this section] shall take effect 180 days after the date of the enactment of this Act [Nov. 18, 1997].

''(2) In the case of a person who is employed in a teaching position referred to in section 5334(d) of title 5, United States Code, on the day before the effective date under paragraph (1), the rate of pay of that person determined under that section (as in effect on that day) may not be reduced by reason of the amendment made by subsection (a) for so long as the person continues to serve in that position or another such position without a break in service of more than three days on or after that day.''

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

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

**§ 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 per-

formance 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.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

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.''

## § 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.

### [§ 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

### § 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 [formerly set out as a 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.''

### § 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 National Security Agency, Department of Defense;

(G) the Bureau of Engraving and Printing, except for the purposes of section 5349 of this title;

(H) the Government Accountability Office; or[1]

(J)[2] the Defense Intelligence Agency, Department of Defense; or

(K) the National Geospatial-Intelligence Agency, 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; Pub. L. 104–201, div. A, title XI, § 1122(a)(1), div. C, title XXXV, § 3548(a)(3)(A), Sept. 23, 1996, 110 Stat. 2687, 2868; Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814; Pub. L. 110–417, [div. A], title IX, § 931(a)(1), Oct. 14, 2008, 122 Stat. 4575.)

PRIOR PROVISIONS

A prior section 5342, Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 471, provided for crews of vessels.

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

2008—Subsec. (a)(1)(K). Pub. L. 110–417 substituted ''National Geospatial-Intelligence Agency'' for ''National Imagery and Mapping Agency''.

2004—Subsec. (a)(1)(H). Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office''.

1996—Subsec. (a)(1). Pub. L. 104–201, § 3548(a)(3)(A), which directed amendment of subsec. (a)(1) by striking subpar. (G) and redesignating subpars. (H), (I), (J), (K), and (L) as (G), (H), (I), (J), and (K), respectively, was executed by striking subpar. (F), relating to the Panama Canal Commission, and redesignating subpars. (G), (H), (I), (K), and (L) as (F), (G), (H), (J), and (K), respectively, to reflect the probable intent of Congress, because subsec. (a)(1) does not contain a subpar. (J) and the amendments were included in a series of conforming amendments relating to the Panama Canal.

Subsec. (a)(1)(L). Pub. L. 104–201, § 1122(a)(1), substituted ''National Imagery and Mapping Agency'' for ''Central Imagery Office''.

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 1996 AMENDMENT

Amendment by section 1122(a)(1) of Pub. L. 104–201 effective Oct. 1, 1996, see section 1124 of Pub. L. 104–201, set out as a note under section 193 of Title 10, Armed Forces.

[1] So in original. The word ''or'' probably should not appear.

[2] So in original. Subsec. (a)(1) does not contain a subpar. (I).

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.

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.

## § 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 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 of 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, and for any hardship or hazard related to asbestos, such differentials shall be determined by applying occupational safety and health standards consistent with the permissible exposure limit promulgated by the Secretary of Labor under the Occupational Safety and Health Act of 1970;

(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 establish the wage schedules and rates on the basis of—

(A) local private industry rates; and

(B) 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.

(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; Pub. L. 104–201, div. C, title XXXV, § 3548(a)(3)(B), Sept. 23, 1996, 110 Stat. 2868; Pub. L. 107–107, div. A, title XI, § 1113(a), Dec. 28, 2001, 115 Stat. 1239; Pub. L. 108–136, div. A, title XI, § 1122(a), Nov. 24, 2003, 117 Stat. 1636.)

REFERENCES IN TEXT

The Occupational Safety and Health Act of 1970, referred to in subsec. (c)(4), is Pub. L. 91–596, Dec. 29, 1970, 84 Stat. 1590, which is classified principally to chapter 15 (§ 651 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 651 of Title 29 and Tables.

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

2003—Subsec. (c)(4). Pub. L. 108–136 inserted before semicolon at end ‘‘, and for any hardship or hazard related to asbestos, such differentials shall be determined by applying occupational safety and health standards consistent with the permissible exposure limit promulgated by the Secretary of Labor under the Occupational Safety and Health Act of 1970’’.

2001—Subsec. (d)(2). Pub. L. 107–107 amended par. (2) generally. Prior to amendment, par. (2) read as follows:

''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.''

1996—Subsec. (a)(5). Pub. L. 104–201 struck out ''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),'' after ''Puerto Rico,''.

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 2003 AMENDMENT

Pub. L. 108–136, div. A, title XI, § 1122(c), Nov. 24, 2003, 117 Stat. 1637, provided that: ''Subject to any vested constitutional property rights, any administrative or judicial determination after the date of the enactment of this Act [Nov. 24, 2003] concerning backpay for a differential established under sections 5343(c)(4) or 5545(d) of such title [this title] shall be based on occupational safety and health standards described in the amendments made by subsections (a) and (b) [amending this section and section 5545 of this title].''

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–107, div. A, title XI, § 1113(b), Dec. 28, 2001, 115 Stat. 1239, provided that: ''Wage adjustments made pursuant to the amendment made by this section [amending this section] shall take effect in each applicable wage area on the first normal effective date of the applicable wage survey adjustment that occurs after the date of the enactment of this Act [Dec. 28, 2001].''

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. 111–117, div. C, title VII, § 710, Dec. 16, 2009, 123 Stat. 3206, 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 fiscal year 2010, 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 the comparable section for previous fiscal years until the normal effective date of the applicable wage survey adjustment that is to take effect in fiscal year 2010, in an amount that exceeds the rate payable for the applicable grade and step of the applicable wage schedule in accordance with such section; and

''(2) during the period consisting of the remainder of fiscal year 2010, 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 2010 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 2010 under section 5304 of such title (whether by adjustment or otherwise), and the overall average percentage of such payments which was effective in the previous fiscal year 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, 2009, 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, 2009, 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, 2009.

''(f) For the purpose of administering any provision of law (including any rule or regulation that provides pre-

mium 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. 111–8, div. D, title VII, § 710, Mar. 11, 2009, 123 Stat. 682.

Pub. L. 110–161, div. D, title VII, § 712, Dec. 26, 2007, 121 Stat. 2021.

Pub. L. 109–115, div. A, title VIII, § 813, Nov. 30, 2005, 119 Stat. 2497.

Pub. L. 108–447, div. H, title VI, § 613, Dec. 8, 2004, 118 Stat. 3275.

Pub. L. 108–199, div. F, title VI, § 613, Jan. 23, 2004, 118 Stat. 352.

Pub. L. 108–7, div. J, title VI, § 613, Feb. 20, 2003, 117 Stat. 465.

Pub. L. 107–67, title VI, § 613, Nov. 12, 2001, 115 Stat. 547, as amended by Pub. L. 108–2, § 3, Jan. 10, 2003, 117 Stat. 5.

Pub. L. 106–554, § 1(a)(3) [title VI, § 613], Dec. 21, 2000, 114 Stat. 2763, 2763A–157.

Pub. L. 106–58, title VI, § 613, Sept. 29, 1999, 113 Stat. 468.

Pub. L. 105–277, div. A, § 101(h) [title VI, § 614], Oct. 21, 1998, 112 Stat. 2681–480, 2681–515.

Pub. L. 105–61, title VI, § 614, Oct. 10, 1997, 111 Stat. 1311.

Pub. L. 104–208, div. A, title I, § 101(f) [title VI, § 616], Sept. 30, 1996, 110 Stat. 3009–314, 3009–356.

Pub. L. 104–52, title VI, § 616, Nov. 19, 1995, 109 Stat. 500, as amended by Pub. L. 104–208, div. A, title I, § 101(f) [title VI, § 659 [title II, § 206(b)(3)]], Sept. 30, 1996, 110 Stat. 3009–314, 3009–372, 3009–378.

Pub. L. 103–329, title VI, § 617, Sept. 30, 1994, 108 Stat. 2419.

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. 110–114, title V, § 5026, Nov. 8, 2007, 121 Stat. 1203, provided that: ''Employees of the Corps of Engineers who are paid wages determined under the last undesignated paragraph under the heading 'Administrative Provisions' of chapter V of the Supplemental Appropriations Act, 1982 (5 U.S.C. 5343 note; 96 Stat. 832) shall be allowed, through appropriate employee organization representatives, to participate in wage surveys under such paragraph to the same extent as are prevailing rate employees under subsection (c)(2) of section 5343 of title 5, United States Code. Nothing in such section 5343 shall be construed to affect which agencies are to be surveyed under such paragraph.''

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 accord-

ance 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.''

## § 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.

### [§ 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 prevailing 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; 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.

### § 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.

(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; Pub. L. 104–66, title II, § 2181(d), Dec. 21, 1995, 109 Stat. 732.)

AMENDMENTS

1995—Subsec. (e). Pub. L. 104–66 struck out at end ''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.''

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.

## § 5348. Crews of vessels

(a) Except as provided by subsection (b) 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 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; Pub. L. 104–201, div. C, title XXXV, § 3548(a)(3)(C), Sept. 23, 1996, 110 Stat. 2868.)

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–201, § 3548(a)(3)(C)(iii), substituted ''subsection (b)'' for ''subsections (b) and (c)''.

Subsecs. (b), (c). Pub. L. 104–201, § 3548(a)(3)(C)(i), (ii), redesignated subsec. (c) as (b) and struck out former subsec. (b) which read as follows: ''Vessel employees of the Panama Canal Commission may be paid in accordance with the wage practices of the maritime industry.''

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.

### § 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 Government Accountability 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; Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814.)

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

2004—Subsec. (a). Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office''.

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.

## SUBCHAPTER V—STUDENT-EMPLOYEES

### § 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.

## § 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, and replaced by Council of District of Columbia, as provided by section 401 of Pub. L. 93–198.

## § 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, and replaced by Council of District of Columbia, as provided by section 401 of Pub. L. 93–198.

## § 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.<br>June 17, 1957, Pub. L. 85–56, §2201(19), 71 Stat. 159.<br>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.

### § 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—

(A) the rate of basic pay payable to an employee under law or regulations before any deductions or additions of any kind, but including—

(i) any applicable locality-based comparability payment under section 5304 or similar provision of law;

(ii) any applicable special pay under section 5305 or similar provision of law; and

(iii) subject to such regulations as the Office of Personnel Management may prescribe, any applicable existing retained rate of pay established under section 5363 or similar provision of law; and

(B) in the case of a prevailing rate employee, the scheduled rate of pay determined under section 5343;

(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;

(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; and

(8) ''retained rate'' means the rate of basic pay to which an employee is entitled under section 5363(b)(2).

(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; Pub. L. 108–411, title III, §301(a)(4), Oct. 30, 2004, 118 Stat. 2315.)

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

2004—Par. (4). Pub. L. 108–411, §301(a)(4)(A), amended par. (4) generally. Prior to amendment, par. (4) read as follows: '' '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;''.

Par. (8). Pub. L. 108–411, §301(a)(4)(B)–(D), added par. (8).

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 2004 AMENDMENT

Amendment by Pub. L. 108–411 effective on the first day of the first applicable pay period beginning on or after the 180th day after Oct. 30, 2004, with provisions relating to conversion rules, see section 301(d) of Pub. L. 108–411, set out as a note under section 5363 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 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).''

## § 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 reduction 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 estab-

lished 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.''

## § 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 a rate of basic pay in accordance with regulations prescribed by the Office of Personnel Management in conformity with the provisions of this section.

(b)(1)(A) If, as a result of any event described in subsection (a), the employee's former rate of basic pay is less than or equal to the maximum rate of basic pay payable for the grade of the employee's position immediately after the occurrence of the event involved, the employee is entitled to basic pay at the lowest rate of basic pay payable for such grade that equals or exceeds such former rate of basic pay.

(B) This section shall cease to apply to an employee to whom subparagraph (A) applies once the appropriate rate of basic pay has been determined for such employee under this paragraph.

(2)(A) If, as a result of any event described in subsection (a), the employee's former rate of basic pay is greater than the maximum rate of basic pay payable for the grade of the employee's position immediately after the occurrence of the event involved, the employee is entitled to basic pay at a rate equal to the lesser of—

(i) the employee's former rate of basic pay; or

(ii) 150 percent of the maximum rate of basic pay payable for the grade of the employee's position immediately after the occurrence of the event involved,

as adjusted by subparagraph (B).

(B) A rate to which an employee is entitled under this paragraph shall be increased at the time of any increase in the maximum rate of basic pay payable for the grade of the employee's position by 50 percent of the dollar amount of each such increase.

(3) For purposes of this subsection, the term ''former rate of basic pay'', as used with respect to an employee in connection with an event described in subsection (a), means the rate of basic pay last received by such employee before the occurrence of such event.

(c)(1) Notwithstanding any other provision of this section, in the case of an employee who—

(A) moves to a new official duty station, and

(B) in conjunction with such move, becomes subject to both a different pay schedule and (disregarding this subsection) the preceding provisions of this section,

this section shall be applied—

(i) first, by determining the rate of pay to which such employee would be entitled at the new official duty station based on such employee's position, grade, and step (or relative

position in the pay range) before the move, and

(ii) then, by applying the provisions of this section that would apply (if any), treating the rate determined under clause (i) as if it were the rate last received by the employee before the application of this section.

(2) A reduction in an employee's rate of basic pay resulting from a determination under paragraph (1)(ii) is not a basis for an entitlement under this section.

(3) The rate of basic pay for an employee who is receiving a retained rate at the time of moving to a new official duty station at which different pay schedules apply shall be subject to regulations prescribed by the Office of Personnel Management consistent with the purposes of this section.

(d) A retained rate shall be considered part of basic pay for purposes of this subchapter and for purposes of subchapter III of chapter 83, chapters 84 and 87, subchapter V of chapter 55, section 5941, and for such other purposes as may be expressly provided for by law or as the Office of Personnel Management may by regulation prescribe. The Office shall, for any purpose other than any of the purposes referred to in the preceding sentence, prescribe by regulation what constitutes basic pay for employees receiving a retained rate.

(e) This section shall not apply, or shall cease to apply, to an employee who—

(1) has a break in service of 1 workday or more;

(2) is entitled, by operation of this subchapter, chapter 51 or 53, or any other provision of law, 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 retained rate to which the employee would otherwise be entitled; 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; Pub. L. 108–411, title III, § 301(a)(5), Oct. 30, 2004, 118 Stat. 2316.)

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

2004—Subsec. (a). Pub. L. 108–411, § 301(a)(5)(A), inserted concluding provisions and struck out former concluding provisions which read as follows: ''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.''

Subsecs. (b) to (e). Pub. L. 108–411, § 301(a)(5)(B), added subsecs. (b) to (e) and struck out former subsecs. (b) and (c) which read as follows:

''(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.''

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 2004 AMENDMENT

Pub. L. 108–411, title III, § 301(d), Oct. 30, 2004, 118 Stat. 2317, provided that:

''(1) EFFECTIVE DATE.—This section [amending this section, sections 4505a, 5302, 5305, 5334, 5361, and 5365 of this title, and provisions set out as a note under section 5305 of this title] shall take effect on the first day of the first applicable pay period beginning on or after the 180th day after the date of the enactment of this Act [Oct. 30, 2004].

''(2) CONVERSION RULES.—

''(A) INDIVIDUALS RECEIVING A RETAINED RATE OR A RATE GREATER THAN THE MAXIMUM RATE FOR THE GRADE.—Subject to any regulations the Office of Personnel Management may prescribe, an employee under a covered pay schedule who, on the day before the effective date of this section, is receiving a retained rate under section 5363 of title 5, United States Code, or is receiving under similar authority a rate of basic pay that is greater than the maximum rate of basic pay payable for the grade of the employee's position shall have that rate converted as of the effective date of this section, and the employee shall be considered to be receiving a retained rate under section 5363 of such title (as amended by this section). The newly applicable retained rate shall equal the formerly applicable retained rate as adjusted to include any applicable locality-based payment under section 5304 of title 5, United States Code, or similar provision of law.

''(B) DEFINITION.—For purposes of this paragraph, the term 'covered pay schedule' has the meaning given such term by section 5361 of title 5, United States Code.''

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.

## § 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 (subject to any conditions or limitations the Office may establish)—

(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; Pub. L. 108–411, title III, § 301(a)(6), Oct. 30, 2004, 118 Stat. 2317.)

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

2004—Subsec. (b). Pub. L. 108–411 inserted ''(subject to any conditions or limitations the Office may establish)'' after ''provisions of this subchapter'' in introductory provisions.

1990—Subsec. (b). Pub. L. 101–508 inserted at end ''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).''

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–411 effective on the first day of the first applicable pay period beginning on or after the 180th day after Oct. 30, 2004, with provisions relating to conversion rules, see section 301(d) of Pub. L. 108–411, set out as a note under section 5363 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.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

### § 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.

### § 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.

### § 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)(A) 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.

(B) Within level AL–3, there shall be 6 rates of basic pay, designated as AL–3, rates A through F, respectively. Level AL–2 and level AL–1 shall each have 1 rate of basic pay.

(C) The rate of basic pay for AL–3, rate A, may not be less than 65 percent of the rate of basic pay for level IV of the Executive Schedule, and the rate of basic pay for AL–1 may not exceed the rate 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 at the beginning of the next pay period following completion of 52 weeks of service in the next lower rate, and to rates E and F of that level at the beginning of the next pay period following 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.

(4) 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 basic pay under the General Schedule, each rate of basic pay for administrative law judges shall be adjusted by an amount determined by the President to be 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; Pub. L. 106–97, § 1, Nov. 12, 1999, 113 Stat. 1322.)

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)(C), is set out in section 5315 of this title.

The General Schedule, referred to in subsec. (b)(4), is set out under section 5332 of this title.

AMENDMENTS

1999—Subsec. (b)(1). Pub. L. 106–97, § 1(1), designated first sentence as subpar. (A) and struck out after first sentence the following: ''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.'' |

Subsec. (b)(1)(B), (C). Pub. L. 106–97, § 1(1), added subpars. (B) and (C).

Subsec. (b)(3)(A). Pub. L. 106–97, § 1(2), substituted ''at the beginning of the next pay period following'' for ''upon'' in two places.

Subsec. (b)(4). Pub. L. 106–97, § 1(3), added par. (4).

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.''

PAY INCREASES

For adjustment of rates of basic pay for administrative law judges under this section, see the executive order detailing the adjustment of certain rates of pay set out as a note under section 5332 of this title.

## § 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 7105(a)(2), (c)(2), or (d)(2) of title 41 or a member of the Civilian Board of Contract Appeals appointed under section 7105(b)(2) of title 41; and

(2) the term ''appeals board'' means an agency board of contract appeals established pursuant to section 7105(a)(1), (c)(1), or (d)(1) of title 41.

(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; amended Pub. L. 109–163, div. A, title VIII, § 847(f)(1), Jan. 6, 2006, 119 Stat. 3395; Pub. L. 111–350, § 5(a)(9), Jan. 4, 2011, 124 Stat. 3841.)

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

2011—Subsec. (a)(1). Pub. L. 111–350, § 5(a)(9)(A), substituted ''section 7105(a)(2), (c)(2), or (d)(2) of title 41'' for ''section 8 of the Contract Disputes Act of 1978'' and ''section 7105(b)(2) of title 41'' for ''section 42 of the Office of Federal Procurement Policy Act''.

Subsec. (a)(2). Pub. L. 111–350, § 5(a)(9)(B), substituted ''section 7105(a)(1), (c)(1), or (d)(1) of title 41'' for ''section 8 of the Contract Disputes Act of 1978''.

2006—Subsec. (a)(1). Pub. L. 109–163 inserted ''or a member of the Civilian Board of Contract Appeals appointed under section 42 of the Office of Federal Procurement Policy Act'' after ''of 1978''.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–163, div. A, title VIII, § 847(g), Jan. 6, 2006, 119 Stat. 3395, provided that: ''Section 42 of the Office of Federal Procurement Policy Act, as added by this section, and the amendments and repeals made by this section [enacting section 438 of Title 41, Public Contracts, amending this section and sections 601 and 607 of Title 41, and enacting provisions set out as a note under section 607 of Title 41], shall take effect 1 year after the date of the enactment of this Act [Jan. 6, 2006].''

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.

## § 5372b. Administrative appeals judges

(a) For the purpose of this section—

(1) the term ''administrative appeals judge position'' means a position the duties of which primarily involve reviewing decisions of administrative law judges appointed under section 3105; and

(2) the term ''agency'' means an Executive agency, as defined by section 105, but does not include the Government Accountability Office.

(b) Subject to such regulations as the Office of Personnel Management may prescribe, the head of the agency concerned shall fix the rate of basic pay for each administrative appeals judge position within such agency which is not classified above GS–15 pursuant to section 5108.

(c) A rate of basic pay fixed under this section shall be—

(1) not less than the minimum rate of basic pay for level AL–3 under section 5372; and

(2) not greater than the maximum rate of basic pay for level AL–3 under section 5372.

(Added Pub. L. 106–554, § 1(a)(3) [title VI, § 645(a)(1)], Dec. 21, 2000, 114 Stat. 2763, 2763A–169; amended Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814.)

REFERENCES IN TEXT

GS–15, referred to in subsec. (b), is contained in the General Schedule which is set out under section 5332 of this title.

AMENDMENTS

2004—Subsec. (a)(2). Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office''.

EFFECTIVE DATE

Pub. L. 106–554, § 1(a)(3) [title VI, § 645(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–170, provided that: ''The amendment made by subsection (a)(1) [enacting this section] shall apply with respect to pay for service performed on or after the first day of the first applicable pay period beginning on or after—

''(1) the 120th day after the date of the enactment of this Act [Dec. 21, 2000]; or

''(2) if earlier, the effective date of regulations prescribed by the Office of Personnel Management to carry out such amendment.''

## § 5373. Limitation on pay fixed by administrative action

(a) Except as provided in subsection (b) and 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) sections 248, 482, 1766, and 1819 of title 12, section 206 of the Bank Conservation Act, sections 2B(b)[1] 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;

(2) section 831b of title 16;

(3) sections 403a–403c, 403e–403h, and 403j of title 50; or

(4)[2] section 4802.

(4)[2] section 2(a)(7) of the Commodity Exchange Act (7 U.S.C. 2(a)(7)).

(b) Subsection (a) shall not affect the authority of the Secretary of Defense or the Secretary of a military department to fix the pay of a civilian employee paid from nonappropriated funds, except that the annual rate of basic pay (including any portion of such pay attributable to comparability with private-sector pay in a locality) of such an employee may not be fixed at a rate greater than the rate for level III of the Executive Schedule.

(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; Pub. L. 104–201, div. C, title XXXV, § 3548(a)(4), Sept. 23, 1996, 110 Stat. 2868; Pub. L. 106–65, div. A, title XI, § 1102, Oct. 5, 1999, 113 Stat. 776; Pub. L. 107–123, § 8(d)(1)(C), Jan. 16, 2002, 115 Stat. 2399; Pub. L. 107–171, title X, § 10702(c)(3), May 13, 2002, 116 Stat. 517.)

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.<br>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 subsec. (a), is Pub. L.

[1] See References in Text note below.

[2] So in original. Two pars. (4) have been enacted.

88–426, Aug. 14, 1964, 78 Stat. 400. For complete classification of this Act to the Code, see Tables.

Level IV of the Executive Schedule, referred to in subsec. (a), is set out in section 5315 of this title.

Section 206 of the Bank Conservation Act, referred to in subsec. (a)(1), 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 subsec. (a)(1), are classified to sections 1422b(b) and 1441a(e)(4), respectively, of Title 12, Banks and Banking. Section 1422b of Title 12 was repealed by Pub. L. 110–289, div. A, title II, § 1204(1), July 30, 2008, 122 Stat. 2786.

Section 2A(i) of the Home Owners' Loan Act, referred to in subsec. (a)(1), 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 was classified to section 1462a(g) of Title 12, Banks and Banking, prior to repeal by Pub. L. 111–203, title III, § 369(3)(B), July 21, 2010, 124 Stat. 1558.

Sections 5.11 and 5.58 of the Farm Credit Act of 1971, referred to in subsec. (a)(1), are classified to sections 2245 and 2277a–7, respectively, of Title 12, Banks and Banking.

Section 403e–1 of Title 50, War and National Defense, included within the reference to sections 403e–403h of Title 50 in subsec. (a)(3), was enacted by Pub. L. 98–215, title IV, § 402, Dec. 9, 1983, 97 Stat. 1477, after subsec. (a)(3) was enacted.

Level III of the Executive Schedule, referred to in subsec. (b), is set out in section 5314 of this title.

AMENDMENTS

2002—Subsec. (a)(2). Pub. L. 107–171, § 10702(c)(3)(A), which directed amendment of par. (2) by striking ''or'' at end, could not be executed because the word ''or'' did not appear at the end. See below.

Pub. L. 107–123, § 8(d)(1)(C)(i), struck out ''or'' at end.

Subsec. (a)(3). Pub. L. 107–171, § 10702(c)(3)(B), which directed substitution of ''; or'' for the period at the end, could not be executed because there was no period at the end. See below.

Pub. L. 107–123, § 8(d)(1)(C)(ii), substituted ''; or'' for the period at the end.

Subsec. (a)(4). Pub. L. 107–171, § 10702(c)(3)(C), added par. (4) relating to section 2(a)(7) of the Commodity Exchange Act.

Pub. L. 107–123, § 8(d)(1)(C)(iii), added par. (4) relating to section 4802.

1999—Pub. L. 106–65 designated existing provisions as subsec. (a), substituted ''(a) Except as provided in subsection (b) and'' for ''Except as provided'', and added subsec. (b).

1996—Pub. L. 104–201 redesignated pars. (2) to (4) as (1) to (3), respectively, and struck out former par. (1) which read as follows: ''section 1202 of the Panama Canal Act of 1979;''.

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 2002 AMENDMENT

Amendment by Pub. L. 107–123 effective Oct. 1, 2001, see section 11 of Pub. L. 107–123, set out as a note under section 78ee of Title 15, Commerce and Trade.

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 Date note under section 3601 of Title 22, Foreign Relations and Intercourse.

## § 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 posi-

tions 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 former 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 former Title 40, Public Buildings, Property, and Works].''

## § 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) subject to paragraph (3), not greater than the rate of basic pay payable for level III 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.

(3) In the case of an agency which has a performance appraisal system which, as designed and applied, is certified under section 5307(d) as making meaningful distinctions based on relative performance, paragraph (1)(B) shall apply as if the reference to ''level III'' were a reference to ''level II''.

(4) No employee may suffer a reduction in pay by reason of transfer from an agency with an applicable maximum rate of pay prescribed under paragraph (3) to an agency with an applicable maximum rate of pay prescribed under paragraph (1)(B).

(Added Pub. L. 101–509, title V, § 529 [title I, § 102(a)(1)], Nov. 5, 1990, 104 Stat. 1427, 1443; amended Pub. L. 110–372, § 2(b), Oct. 8, 2008, 122 Stat. 4044.)

REFERENCES IN TEXT

The General Schedule, referred to in subsec. (b), is set out under section 5332 of this title.

Levels II and III of the Executive Schedule, referred to in subsec. (b), are set out in sections 5313 and 5314 of this title, respectively.

AMENDMENTS

2008—Subsec. (b)(1)(B). Pub. L. 110–372, § 2(b)(1), added subpar. (B) and struck out former subpar. (B) which read as follows: ''not greater than the rate of basic pay payable for level IV of the Executive Schedule.''.

Subsec. (b)(3), (4). Pub. L. 110–372, § 2(b)(2), added pars. (3) and (4).

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–372, § 2(d), Oct. 8, 2008, 122 Stat. 4044, provided that:

''(1) EFFECTIVE DATE.—The amendments made by this section [amending this section and sections 3104, 3324,

3325, 5108 and 5304 of this title] shall take effect on the first day of the first pay period beginning on or after the 180th day following the date of enactment of this Act [Oct. 8, 2008].

''(2) NO REDUCTIONS IN RATES OF PAY.—

''(A) IN GENERAL.—The amendments made by this section may not result, at the time such amendments take effect, in a reduction in the rate of basic pay for an individual holding a position to which section 5376 of title 5, United States Code, applies.

''(B) DETERMINATION OF RATE OF PAY.—For the purposes of subparagraph (A), the rate of basic pay for an individual described in that subparagraph shall be deemed to be the rate of basic pay set for the individual under section 5376 of title 5, United States Code, plus any applicable locality pay paid to that individual on the day before the effective date under paragraph (1), subject to regulations that the Director of the Office of Personnel Management may prescribe.

''(3) REFERENCES TO MAXIMUM RATES.—Except as otherwise provided by law, any reference in a provision of law to the maximum rate under section 5376 of title 5, United States Code—

''(A) as provided before the effective date of the amendments made by this section, shall be considered a reference to the rate of basic pay for level IV of the Executive Schedule [5 U.S.C. 5315]; and

''(B) as provided on or after the effective date of the amendments made by this section, shall be considered a reference to—

''(i) the rate of basic pay for level III of the Executive Schedule [5 U.S.C. 5314]; or

''(ii) if the head of the agency responsible for administering the applicable pay system certifies that the employees are covered by a performance appraisal system meeting the certification criteria established by regulation under section 5307(d), level II of the Executive Schedule [5 U.S.C. 5313].''

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.''

[Except as otherwise provided, reference to maximum rate under section 5376 of this title before first day of first pay period beginning on or after 180th day after Oct. 8, 2008, considered reference to basic pay rate for level IV of Executive Schedule (5 U.S.C. 5315) and reference to maximum rate on or after first day of first pay period beginning on or after 180th day after Oct. 8, 2008, considered reference to basic pay rate for level III of Executive Schedule (5 U.S.C. 5314), or for level II of the Executive Schedule (5 U.S.C. 5313) for certain employees, see section 2(d)(3) of Pub. L. 110–372, set out as an Effective Date of 2008 Amendment note under this section.]

## § 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;

(F) a position in a category as to which a designation is in effect under subsection (i); and

(G) a position at the Federal Bureau of Investigation, the primary duties and responsibilities of which relate to intelligence functions (as determined by the Director of the Federal Bureau of Investigation).

(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 indi-

vidual exceptionally well qualified for the position.

(c) The Office of Personnel Management, in consultation with the Office of Management and Budget, 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 Personnel Management 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 Personnel Management 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 Personnel Management shall consult with the Office of Management and Budget before making any decision to grant or terminate any authority under this section.

(h) The Office of Personnel Management shall report to the Committee on Government Reform 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; Pub. L. 108–411, title I, § 102, Oct. 30, 2004, 118 Stat. 2311; Pub. L. 108–447, div. B, title I, § 115, Dec. 8, 2004, 118 Stat. 2870.)

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

2004—Subsec. (a)(2)(G). Pub. L. 108–447 added subpar. (G).

Subsec. (c). Pub. L. 108–411, § 102(1), (2), substituted ''Office of Management and Budget'' for ''Office of Personnel Management'' and ''Office of Personnel Management'' for ''Office of Management and Budget''.

Subsec. (e)(1), (f). Pub. L. 108–411, § 102(2), substituted ''Office of Personnel Management'' for ''Office of Management and Budget''.

Subsec. (g). Pub. L. 108–411, § 102(1)–(3), substituted ''Office of Personnel Management'' for ''Office of Management and Budget'' and ''Office of Management and Budget'' for ''Office of Personnel Management'' and struck out ''prescribing regulations under this section or'' before ''making any decision''.

Subsec. (h). Pub. L. 108–411, § 102(2), (4), in introductory provisions, substituted ''Office of Personnel Management'' for ''Office of Management and Budget'' and ''Committee on Government Reform'' for ''Committee on Post Office and Civil Service''.

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).

CHANGE OF NAME

Committee on Government Reform of House of Representatives changed to Committee on Oversight and Government Reform of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007.

Committee on Governmental Affairs of Senate changed to Committee on Homeland Security and Governmental Affairs of Senate, effective Jan. 4, 2005, by Senate Resolution No. 445, One Hundred Eighth Congress, Oct. 9, 2004.

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

Functions of President under this section assigned to the Director of the Office of Personnel Management by section 1 of Ex. Ord. No. 13415, Dec. 1, 2006, 71 F.R. 70641, set out as a note under section 4505a of this title.

## § 5378. Police forces of the Bureau of Engraving and Printing and the United States Mint

(a) The Secretary of the Department of the Treasury, or his designee, in his sole discretion shall fix the rates of basic pay for positions within the police forces of the United States Mint and the Bureau of Engraving and Printing without regard to the pay provisions of title 5, United States Code, except that no entry-level police officer shall receive basic pay for a calendar year that is less than the basic rate of pay

for General Schedule GS–7 and no executive security official shall receive basic compensation for a calendar year that exceeds the basic rate of pay for General Schedule GS–15.

(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; amended Pub. L. 104–52, title V, § 521, Nov. 19, 1995, 109 Stat. 494; Pub. L. 105–61, title I, § 121, Oct. 10, 1997, 111 Stat. 1289.)

REFERENCES IN TEXT

The General Schedule, referred to in subsec. (a), is set out under section 5332 of this title.

AMENDMENTS

1997—Subsec. (a). Pub. L. 105–61 amended subsec. (a) generally. Prior to amendment, subsec. (a) consisted of pars. (1) to (8) providing maximum levels of General Schedule at which Secretary of the Treasury was to set basic rates of pay for positions in police forces of Bureau of Engraving and Printing and United States Mint.

1995—Subsec. (a)(8). Pub. L. 104–52, which directed amendment of this section by adding par. (8), was executed by adding par. (8) at end of subsec. (a) to reflect the probable intent of Congress.

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.]

## § 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, the Architect of the Capitol, the Botanic Garden, and the Office of Congressional Accessibility Services; 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 (20 U.S.C. 1071 et seq.);

(ii) a loan made under part D or E of title IV of the Higher Education Act of 1965 (20 U.S.C. 1087a et seq., 1087aa et seq.); and

(iii) a health education assistance loan made or insured under part A of title VII of the Public Health Service Act (42 U.S.C. 292 et seq.) or under part E of title VIII of such Act (42 U.S.C. 297a et seq.).

(2) An employee shall be ineligible for benefits under this section if the employee occupies a position that is excepted from the competitive service because of its confidential, policy-determining, policy-making, or policy-advocating character.

(b)(1) The head of an agency may, in order to recruit or retain highly qualified 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) $10,000 for any employee in any calendar year; or

(B) a total of $60,000 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 (excluding 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.

(h)(1) Each head of an agency shall maintain, and annually submit to the Director of the Office of Personnel Management, information with respect to the agency on—

(A) the number of Federal employees selected to receive benefits under this section;

(B) the job classifications for the recipients; and

(C) the cost to the Federal Government of providing the benefits.

(2) The Director of the Office of Personnel Management shall prepare, and annually submit to Congress, a report containing the information submitted under paragraph (1), and information identifying the agencies that have provided benefits under this section.

(Added Pub. L. 101–510, div. A, title XII, § 1206(b)(1), Nov. 5, 1990, 104 Stat. 1659; amended Pub. L. 106–398, § 1 [[div. A], title XI, § 1122(a), (b), (d)], Oct. 30, 2000, 114 Stat. 1654, 1654A–316; Pub. L. 108–123, § 2, Nov. 11, 2003, 117 Stat. 1345; Pub. L. 108–136, div. A, title XI, § 1123(a), Nov. 24, 2003, 117 Stat. 1637; Pub. L. 110–437, title V, § 502, Oct. 20, 2008, 122 Stat. 4997.)

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, D, and E of title IV of the Act are classified to parts B (§ 1071 et seq.), C (§ 1087a 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 A of title VII of the Act is classified generally to part A (§ 292 et seq.) of subchapter V of chapter 6A of Title 42, The Public Health and Welfare. Part E of title VIII of the Act is classified generally to part E (§ 297a 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.

AMENDMENTS

2008—Subsec. (a)(1)(A). Pub. L. 110–437 inserted ", the Architect of the Capitol, the Botanic Garden, and the Office of Congressional Accessibility Services" after "title".

2003—Subsec. (b)(2)(A). Pub. L. 108–123, § 2(1), and Pub. L. 108–136 amended subpar. (A) identically, substituting "$10,000" for "$6,000".

Subsec. (b)(2)(B). Pub. L. 108–123, § 2(2), substituted "$60,000" for "$40,000".

2000—Subsec. (a)(1)(B)(i). Pub. L. 106–398, § 1 [[div. A], title XI, § 1122(a)(1)], inserted "(20 U.S.C. 1071 et seq.)" before semicolon.

Subsec. (a)(1)(B)(ii). Pub. L. 106–398, § 1 [[div. A], title XI, § 1122(a)(2)], substituted "part D or E of title IV of the Higher Education Act of 1965 (20 U.S.C. 1087a et seq., 1087aa et seq.)" for "part E of title IV of the Higher Education Act of 1965".

Subsec. (a)(1)(B)(iii). Pub. L. 106–398, § 1 [[div. A], title XI, § 1122(a)(3)], substituted ''part A of title VII of the Public Health Service Act (42 U.S.C. 292 et seq.) or under part E of title VIII of such Act (42 U.S.C. 297a et seq.)'' for ''part C of title VII of Public Health Service Act or under part B of title VIII of such Act''.

Subsec. (a)(2). Pub. L. 106–398, § 1 [[div. A], title XI, § 1122(b)(1)], amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''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.''

Subsec. (b)(1). Pub. L. 106–398, § 1 [[div. A], title XI, § 1122(b)(2)], struck out ''professional, technical, or administrative'' after ''highly qualified''.

Subsec. (h). Pub. L. 106–398, § 1 [[div. A], title XI, § 1122(d)], added subsec. (h).

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–136, div. A, title XI, § 1123(b), Nov. 24, 2003, 117 Stat. 1637, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on January 1, 2004.''

REGULATIONS

Pub. L. 106–398, § 1 [[div. A], title XI, § 1122(c)], Oct. 30, 2000, 114 Stat. 1654, 1654A–316, provided that:

''(1) Not later than 60 days after the date of the enactment of this Act [Oct. 30, 2000], the Director of the Office of Personnel Management shall issue proposed regulations under section 5379(g) of title 5, United States Code. The Director shall provide for a period of not less than 60 days for public comment on the regulations.

''(2) Not later than 240 days after the date of the enactment of this Act [Oct. 30, 2000], the Director shall issue final regulations.''

INSTITUTIONAL LOAN FORGIVENESS PROGRAMS

Pub. L. 110–315, title IX, § 961, Aug. 14, 2008, 122 Stat. 3473, provided that: ''Notwithstanding any other provision of law—

''(1) a public or private institution of higher education may provide an officer or employee of any branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, who is a current or former student of such institution, financial assistance for the purpose of repaying a student loan or providing forbearance of student loan repayment if—

''(A) such repayment or forbearance is provided to such officer or employee in accordance with a written, published policy of the institution relating to repaying or providing forbearance, respectively, for students or former students who perform public service; and

''(B) in the case of a former student of the institution of higher education, the policy described in subparagraph (A) was in effect at the institution of higher education on the day before the date such officer or employee graduated from or otherwise ceased being a student at such institution; and

''(2) an officer or employee of any branch of the United States Government, of any independent agency of the United States, or of the District of Columbia may receive repayment or forbearance permitted under paragraph (1).''

### [§ 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

### § 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 of rates of pay for the Senior Executive Service

(a) Subject to regulations prescribed by the Office of Personnel Management, there shall be established a range of rates of basic pay for the Senior Executive Service, and each senior executive shall be paid at one of the rates within the range, based on individual performance, contribution to the agency's performance, or both, as determined under a rigorous performance management system. The lowest rate of the range shall not be less than the minimum rate of basic pay payable under section 5376, and the highest rate, for any position under this system or an equivalent system as determined by the President's Pay Agent designated under section 5304(d), shall not exceed the rate for level III of the Executive Schedule. The payment of the rates shall not be subject to the pay limitation of section 5306(e) or 5373.

(b) Notwithstanding the provisions of subsection (a), the applicable maximum shall be level II of the Executive Schedule for any agency that is certified under section 5307 as having a performance appraisal system which, as designed and applied, makes meaningful distinctions based on relative performance.

(c) No employee may suffer a reduction in pay by reason of transfer from an agency with an applicable maximum rate of pay prescribed under subsection (b) to an agency with an applicable maximum rate of pay prescribed under subsection (a).

(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; Pub. L. 108–136, div. A, title XI, § 1125(a)(2), Nov. 24, 2003, 117 Stat. 1638.)

REFERENCES IN TEXT

Level III of the Executive Schedule, referred to in subsec. (a), is set out in section 5314 of this title.

Level II of the Executive Schedule, referred to in subsec. (b), is set out in section 5313 of this title.

AMENDMENTS

2003—Pub. L. 108–136 substituted ''Establishment of rates of pay for the Senior Executive Service'' for ''Establishment and adjustment of rates of pay for the Senior Executive Service'' in section catchline and amended text generally. Prior to amendment, text read as follows:

''(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.''

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 2003 AMENDMENT

Amendment by Pub. L. 108–136 effective on first day of first pay period beginning on or after Jan. 1, 2004, but not to result in reduction in rate of basic pay for any senior executive during first year after effective date, see section 1125(c) of Pub. L. 108–136, set out as a note under section 5304 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

For adjustment of rates of basic pay for the Senior Executive Service under this section, see the executive order detailing the adjustment of certain rates of pay set out as a note under section 5332 of this title.

For miscellaneous provisions dealing with adjustments of pay and limitations on use of funds to pay salaries in prior years, see notes 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.

## § 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 within a range established under section 5382 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 as provided in regulations prescribed by the Office under section 5385, 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; Pub. L. 108–136, div. A, title XI, § 1125(a)(3), Nov. 24, 2003, 117 Stat. 1639.)

AMENDMENTS

2003—Subsec. (a). Pub. L. 108–136, § 1125(a)(3)(A), substituted ''which of the rates within a range established under section 5382'' for ''which of the rates established under section 5382 of this title''.

Subsec. (c). Pub. L. 108–136, § 1125(a)(3)(B), substituted ''as provided in regulations prescribed by the Office under section 5385'' for ''for any pay adjustment under section 5382 of this title''.

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 2003 AMENDMENT

Amendment by Pub. L. 108–136 effective on first day of first pay period beginning on or after Jan. 1, 2004, but not to result in reduction in rate of basic pay for any senior executive during first year after effective date, see section 1125(c) of Pub. L. 108–136, set out as a note under section 5304 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 3393 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.

## § 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 10 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 20 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; Pub. L. 105–277, div. A, § 101(h) [title VI, § 632(a)], Oct. 21, 1998, 112 Stat. 2681–480, 2681–523.)

AMENDMENTS

1998—Subsec. (b)(3). Pub. L. 105–277 substituted ''10 percent'' for ''3 percent'' in subpar. (A) and substituted ''20 percent'' for ''15 percent'' in subpar. (B).

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 num-

[1] So in original. Probably should be capitalized.

ber of Senior Executive Service positions in such agency, except for an agency having less than 4 such positions.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–277, div. A, § 101(h) [title VI, § 632(b)], Oct. 21, 1998, 112 Stat. 2681–480, 2681–523, provided that: ''The amendments made by this section [amending this section] shall take effect on October 1, 1998, or the date of enactment of this Act [Oct. 21, 1998], whichever is later.''

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 3393 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.

### § 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''.

### § 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—HUMAN CAPITAL PERFORMANCE FUND

Sec.
5401. Purpose.
5402. Definitions.
5403. Human Capital Performance Fund.
5404. Human capital performance payments.

Sec.
5405. Regulations.
5406. Agency plan.
5407. Nature of payment.
5408. Appropriations.

PRIOR PROVISIONS

A prior chapter 54, consisting of sections 5401 to 5410, related to performance management and recognition system, prior to repeal by Pub. L. 103–89, § 3(a)(1), (c), Sept. 30, 1993, 107 Stat. 981, 983, eff. Nov. 1, 1993.

TREATMENT OF EMPLOYEES COVERED BY PERFORMANCE MANAGEMENT AND RECOGNITION SYSTEM AS OF TERMINATION DATE

Pub. L. 103–89, § 4, Sept. 30, 1993, 107 Stat. 983, 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 [former] 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 [former] 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.''

## § 5401. Purpose

The purpose of this chapter is to promote, through the creation of a Human Capital Performance Fund, greater performance in the Federal Government. Monies from the Fund will be used to reward agencies' highest performing and most valuable employees. This Fund will offer Federal managers a new tool to recognize employee performance that is critical to the achievement of agency missions.

(Added Pub. L. 108–136, div. A, title XI, § 1129(a), Nov. 24, 2003, 117 Stat. 1642.)

PRIOR PROVISIONS

A prior 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, prior to repeal by Pub. L. 103–89, § 3(a)(1), (c), Sept. 30, 1993, 107 Stat. 981, 983, eff. Nov. 1, 1993.

## § 5402. Definitions

For the purpose of this chapter—

(1) ''agency'' means an Executive agency under section 105, but does not include the Government Accountability Office;

(2) ''employee'' includes—

(A) an individual paid under a statutory pay system defined in section 5302(1);

(B) a prevailing rate employee, as defined in section 5342(a)(2); and

(C) a category of employees included by the Office of Personnel Management following the review of an agency plan under section 5403(b)(1);

but does not include—

(i) an individual paid at an annual rate of basic pay for a level of the Executive Schedule, under subchapter II of chapter 53, or at a rate provided for one of those levels under another provision of law;

(ii) a member of the Senior Executive Service paid under subchapter VIII of chapter 53, or an equivalent system;

(iii) an administrative law judge paid under section 5372;

(iv) a contract appeals board member paid under section 5372a;

(v) an administrative appeals judge paid under section 5372b; and

(vi) an individual in a position which is excepted from the competitive service because of its confidential, policy-determining, policy-making, or policy-advocating character; and

(3) ''Office'' means the Office of Personnel Management.

(Added Pub. L. 108–136, div. A, title XI, § 1129(a), Nov. 24, 2003, 117 Stat. 1642; amended Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814.)

PRIOR PROVISIONS

A prior 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, prior to repeal by Pub. L. 103–89, § 3(a)(1), (c), Sept. 30, 1993, 107 Stat. 981, 983, eff. Nov. 1, 1993.

AMENDMENTS

2004—Par. (1). Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office''.

### § 5403. Human Capital Performance Fund

(a) There is hereby established the Human Capital Performance Fund, to be administered by the Office for the purpose of this chapter.

(b)(1)(A) An agency shall submit a plan as described in section 5406 to be eligible for consideration by the Office for an allocation under this section. An allocation shall be made only upon approval by the Office of an agency's plan.

(B)(i) After the reduction for training required under section 5408, ninety percent of the remaining amount appropriated to the Fund may be allocated by the Office to the agencies. Of the amount to be allocated, an agency's pro rata distribution may not exceed its pro rata share of Executive branch payroll.

(ii) If the Office does not allocate an agency's full pro rata share, the undistributed amount remaining from that share will become available for distribution to other agencies, as provided in subparagraph (C).

(C)(i) After the reduction for training under section 5408, ten percent of the remaining amount appropriated to the Fund, as well as the amount of the pro rata share not distributed because of an agency's failure to submit a satisfactory plan, shall be allocated among agencies with exceptionally high-quality plans.

(ii) An agency with an exceptionally high-quality plan is eligible to receive an additional distribution in addition to its full pro rata distribution.

(2) Each agency is required to provide to the Office such payroll information as the Office specifies necessary to determine the Executive branch payroll.

(Added Pub. L. 108–136, div. A, title XI, § 1129(a), Nov. 24, 2003, 117 Stat. 1642.)

PRIOR PROVISIONS

A prior 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, prior to repeal by Pub. L. 103–89, § 3(a)(1), (c), Sept. 30, 1993, 107 Stat. 981, 983, eff. Nov. 1, 1993.

### § 5404. Human capital performance payments

(a)(1) Notwithstanding any other provision of law, the Office may authorize an agency to provide human capital performance payments to individual employees based on exceptional performance contributing to the achievement of the agency mission.

(2) The number of employees in an agency receiving payments from the Fund, in any year, shall not be more than the number equal to 15 percent of the agency's average total civilian full- and part-time permanent employment for the previous fiscal year.

(b)(1) A human capital performance payment provided to an individual employee from the Fund, in any year, shall not exceed 10 percent of the employee's rate of basic pay.

(2) The aggregate of an employee's rate of basic pay, adjusted by any locality-based comparability payments, and human capital performance pay, as defined by regulation, may not exceed the rate of basic pay for Executive Level IV in any year.

(3) Any human capital performance payment provided to an employee from the Fund is in addition to any annual pay adjustment (under section 5303 or any similar provision of law) and any locality-based comparability payment that may apply.

(c) No monies from the Human Capital Performance Fund may be used to pay for a new position, for other performance-related payments, or for recruitment or retention incentives paid under sections 5753 and 5754.

(d)(1) An agency may finance initial human capital performance payments using monies from the Human Capital Performance Fund, as available.

(2) In subsequent years, continuation of previously awarded human capital performance payments shall be financed from other agency funds available for salaries and expenses.

(Added Pub. L. 108–136, div. A, title XI, § 1129(a), Nov. 24, 2003, 117 Stat. 1643.)

REFERENCES IN TEXT

Executive Level IV, referred to in subsec. (b)(2), is set out in section 5315 of this title.

PRIOR PROVISIONS

A prior 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, prior to repeal by Pub. L. 103–89, § 3(a)(1), (c), Sept. 30, 1993, 107 Stat. 981, 983, eff. Nov. 1, 1993.

### § 5405. Regulations

The Office shall issue such regulations as it determines to be necessary for the administration of this chapter, including the administration of the Fund. The Office's regulations shall include criteria governing—

(1) an agency plan under section 5406;

(2) the allocation of monies from the Fund to agencies;

(3) the nature, extent, duration, and adjustment of, and approval processes for, payments to individual employees under this chapter;

(4) the relationship to this chapter of agency performance management systems;

(5) training of supervisors, managers, and other individuals involved in the process of making performance distinctions; and

(6) the circumstances under which funds may be allocated by the Office to an agency in amounts below or in excess of the agency's pro rata share.

(Added Pub. L. 108–136, div. A, title XI, § 1129(a), Nov. 24, 2003, 117 Stat. 1643.)

PRIOR PROVISIONS

A prior 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, prior to repeal by Pub. L. 103–89, § 3(a)(1), (c), Sept. 30, 1993, 107 Stat. 981, 983, eff. Nov. 1, 1993.

### § 5406. Agency plan

(a) To be eligible for consideration by the Office for an allocation under this section, an agency shall—

(1) develop a plan that incorporates the following elements:

(A) adherence to merit principles set forth in section 2301;

(B) a fair, credible, and transparent employee performance appraisal system;

(C) a link between the pay-for-performance system, the employee performance appraisal system, and the agency's strategic plan;

(D) a means for ensuring employee involvement in the design and implementation of the system;

(E) adequate training and retraining for supervisors, managers, and employees in the implementation and operation of the pay-for-performance system;

(F) a process for ensuring ongoing performance feedback and dialogue between supervisors, managers, and employees throughout the appraisal period, and setting timetables for review;

(G) effective safeguards to ensure that the management of the system is fair and equitable and based on employee performance; and

(H) a means for ensuring that adequate agency resources are allocated for the design, implementation, and administration of the pay-for-performance system;

(2) upon approval, receive an allocation of funding from the Office;

(3) make payments to individual employees in accordance with the agency's approved plan; and

(4) provide such information to the Office regarding payments made and use of funds received under this section as the Office may specify.

(b) The Office, in consultation with the Chief Human Capital Officers Council, shall review and approve an agency's plan before the agency is eligible to receive an allocation of funding from the Office.

(c) The Chief Human Capital Officers Council shall include in its annual report to Congress under section 1303(d) of the Homeland Security Act of 2002 an evaluation of the formulation and implementation of agency performance management systems.

(Added Pub. L. 108–136, div. A, title XI, § 1129(a), Nov. 24, 2003, 117 Stat. 1644.)

REFERENCES IN TEXT

Section 1303(d) of the Homeland Security Act of 2002, referred to in subsec. (c), is section 1303(d) of Pub. L. 107–296, which is set out as a note under section 1401 of this title.

PRIOR PROVISIONS

A prior 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, prior to repeal by Pub. L. 103–89, § 3(a)(1), (c), Sept. 30, 1993, 107 Stat. 981, 983, eff. Nov. 1, 1993.

### § 5407. Nature of payment

Any payment to an employee under this section shall be part of the employee's basic pay for the purposes of subchapter III of chapter 83, and chapters 84 and 87, and for such other purposes (other than chapter 75) as the Office shall determine by regulation.

(Added Pub. L. 108–136, div. A, title XI, § 1129(a), Nov. 24, 2003, 117 Stat. 1645.)

PRIOR PROVISIONS

A prior section 5407, added Pub. L. 98–615, title II, § 201(a), Nov. 8, 1984, 98 Stat. 3213, related to cash award program, prior to repeal by Pub. L. 103–89, § 3(a)(1), (c), Sept. 30, 1993, 107 Stat. 981, 983, eff. Nov. 1, 1993.

### § 5408. Appropriations

There is authorized to be appropriated $500,000,000 for fiscal year 2004, and, for each subsequent fiscal year, such sums as may be necessary to carry out the provisions of this chapter. In the first year of implementation, up to 10 percent of the amount appropriated to the Fund

shall be available to participating agencies to train supervisors, managers, and other individuals involved in the appraisal process on using performance management systems to make meaningful distinctions in employee performance and on the use of the Fund.

(Added Pub. L. 108–136, div. A, title XI, § 1129(a), Nov. 24, 2003, 117 Stat. 1645.)

PRIOR PROVISIONS

Prior sections 5408 to 5410 were repealed by Pub. L. 103–89, § 3(a)(1), (c), Sept. 30, 1993, 107 Stat. 981, 983, effective Nov. 1, 1993.

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.

## CHAPTER 55—PAY ADMINISTRATION

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[5591 to 5594. Repealed.]

[1] Section catchline amended by Pub. L. 97–365 without corresponding amendment of chapter analysis.

5595. Severance pay.
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AMENDMENTS

2009—Pub. L. 111–8, div. D, title VII, § 751(b), Mar. 11, 2009, 123 Stat. 695, added item 5538.

2004—Pub. L. 108–411, title II, § 203(b), Oct. 30, 2004, 118 Stat. 2313, added item 5550b.

1999—Pub. L. 106–65, div. A, title VI, § 651(a)(2), Oct. 5, 1999, 113 Stat. 664, struck out item 5532 ''Employment of retired members of the uniformed services; reduction in retired or retainer pay.''

1998—Pub. L. 105–277, div. A, § 101(h) [title VI, § 628(b)], Oct. 21, 1998, 112 Stat. 2681–480, 2681–521, added item 5545b.

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.

NO PAYMENT OF SERVICES TO INDIVIDUAL IN ACTING OR TEMPORARY CAPACITY AFTER SECOND NOMINATION FOR THAT INDIVIDUAL IS WITHDRAWN OR RETURNED TO PRESIDENT

Pub. L. 111–8, div. D, title VII, § 749, Mar. 11, 2009, 123 Stat. 693, provided that: ''Effective January 20, 2009, and for each fiscal year thereafter, no part of any appropriation contained in this or any other Act may be used for the payment of services to any individual carrying out the responsibilities of any position requiring Senate advice and consent in an acting or temporary capacity after the second submission of a nomination for that individual to that position has been withdrawn or returned to the President.''

NO PAYMENT TO PERSON FILLING POSITION AFTER VOTE BY SENATE NOT TO APPROVE PERSON'S NOMINATION

Pub. L. 110–161, div. D, title VII, § 709, Dec. 26, 2007, 121 Stat. 2021, provided that: ''Hereafter, no part of any appropriation contained in this or any other Act shall be paid to any person for the filling of any position for which he or she has been nominated after the Senate has voted not to approve the nomination of said person.''

## 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.<br>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.

### § 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.

(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.

(c) For the purposes of this section:

(1) The term ''employee'' means—

(A) an employee in or under an Executive agency;

(B) 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

(C) an individual employed by the government of the District of Columbia.

(2) The term ''employee'' 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 clauses (ii), (iii), and (xiv) through (xvii) of such section.

(3) Notwithstanding paragraph (2), an individual who otherwise would be excluded from the definition of employee shall be deemed to be an employee for purposes of this section if the individual's employing agency so elects, under guidelines in regulations promulgated by the Office of Personnel Management under subsection (d)(2).

(d)(1) 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.

(2) The Office of Personnel Management shall provide guidelines by regulation for exemptions to be made by the heads of agencies under subsection (c)(3). Such guidelines shall provide for such exemptions only under exceptional circumstances.

(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; Pub. L. 108–136, div. A, title XI, § 1124, Nov. 24, 2003, 117 Stat. 1637.)

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. |

HISTORICAL AND REVISION NOTES—CONTINUED

1966 ACT

| *Derivation* | *U.S. Code* | *Revised Statutes and Statutes at Large* |
|---|---|---|
| (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.<br>Oct. 28, 1949, ch. 782, § 1203, 63 Stat. 973.<br>June 20, 1958, Pub. L. 85–462, § 15, 72 Stat. 214.<br>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

2003—Subsecs. (a), (b). Pub. L. 108–136, § 1124(a)(2), struck out last sentence which defined ''employee''.

Subsec. (c). Pub. L. 108–136, § 1124(a)(3), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 108–136, § 1124(a)(1), (b), redesignated subsec. (c) as (d), inserted ''(1)'' after ''(d)'', and added par. (2).

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.'']

## § 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 de-

ducted 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.<br>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.

## § 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; Pub. L. 104–208, div. A, title I, § 101(f) [title VI, §§ 641(a), 642(a)], Sept. 30, 1996, 110 Stat. 3009–314, 3009–365; Pub. L. 107–304, § 2(a), (b), Nov. 27, 2002, 116 Stat. 2364, 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 2003, 2004, 2005, 2006, and 2007 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 2003, 2004, 2005, 2006, and 2007 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)."

[Pub. L. 107–304, § 2(c), Nov. 27, 2002, 116 Stat. 2364, provided that: This section [amending section 8(a) of Pub. L. 101–12, set out above] shall be effective as of October 1, 2002."]

[Pub. L. 104–208, div. A, title I, § 101(f) [title VI, §§ 641(b), 642(b)], Sept. 30, 1996, 110 Stat. 3009–314, 3009–365, provided that the amendments made by section 101(f) [title VI, §§ 641(a), 642(a)] of Pub. L. 104–208 [amending section 8(a) of Pub. L. 101–12, set out above] were to be effective on Oct. 1, 1998.]

AUTHORIZATION OF APPROPRIATIONS

Pub. L. 95–454, title IX, § 903, Oct. 13, 1978, 92 Stat. 1224, provided that: "There are authorized to be appro-

priated, 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

### § 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 employing agency, 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; Pub. L. 104–316, title I, § 103(b), Oct. 19, 1996, 110 Stat. 3828.)

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

1996—Subsec. (b). Pub. L. 104–316 substituted ''employing agency'' for ''General Accounting Office''.

1972—Subsec. (b). Pub. L. 92–310 struck out ''and his sureties'' after ''against the individual''.

### § 5513. Withholding pay; credit disallowed or charge raised for payment

When the Government Accountability 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; Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814.)

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.<br>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.

AMENDMENTS

2004—Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office''.

### § 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. All Federal agencies to which debts are owed and which have outstanding delinquent debts shall participate in a computer match at least annually of their delinquent debt records with records of Federal employees to identify those employees who are delinquent in repayment of those debts. The preceding sentence shall not apply to any debt under the Internal Revenue Code of 1986. Matched Federal employee records shall include, but shall not be limited to, records of active Civil Service employees government-wide, military active duty personnel, military reservists, United States Postal Service employees, employees of other government corporations, and seasonal and temporary employees. The Secretary of the Treasury shall establish and maintain an interagency consortium to implement centralized salary offset computer matching, and promulgate regulations for this program. Agencies that perform centralized salary offset computer matching services under this subsection are authorized to charge a fee sufficient to cover the full cost for such services.

(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) Paragraph (2) shall not apply to routine intra-agency adjustments of pay that are attributable to clerical or administrative errors or delays in processing pay documents that have occurred within the four pay periods preceding the adjustment and to any adjustment that amounts to $50 or less, if at the time of such adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature and the amount of the adjustment and a point of contact for contesting such adjustment.

(4) 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.

(5) 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 executive departments and agencies, the United States Postal Service, the Postal Regulatory Commission, any nonappropriated fund instrumentality described in section 2105(c) of this title, the United States Senate, the United States House of Representatives, and any court, court administrative office, or instrumentality in the judicial or legislative branches of the Government, and government corporations.

(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.

(d) A levy pursuant to the Internal Revenue Code of 1986 shall take precedence over other deductions under this section.

(e) An employee of a nonappropriated fund instrumentality described in section 2105(c) of this title is deemed an employee covered by this section.

(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; Pub. L. 104–134, title III, § 31001(h), Apr. 26, 1996, 110 Stat. 1321–363; Pub. L. 109–435, title VI, § 604(b), Dec. 20, 2006, 120 Stat. 3241; Pub. L. 110–181, div. A, title VI, § 652, Jan. 28, 2008, 122 Stat. 162.)

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. |

HISTORICAL AND REVISION NOTES—CONTINUED

| *Derivation* | *U.S. Code* | *Revised Statutes and Statutes at Large* |
|---|---|---|
| ..... | 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.

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsecs. (a)(1) and (d), is classified generally to Title 26, Internal Revenue Code.

AMENDMENTS

2008—Subsec. (a)(5)(B). Pub. L. 110–181, § 652(1), inserted ''any nonappropriated fund instrumentality described in section 2105(c) of this title,'' after ''Commission,''.

Subsec. (e). Pub. L. 110–181, § 652(2), added subsec. (e).

2006—Subsec. (a)(5)(B). Pub. L. 109–435 substituted ''Postal Regulatory Commission'' for ''Postal Rate Commission''.

1996—Subsec. (a)(1). Pub. L. 104–134, § 31001(h)(A)(i), inserted at end ''All Federal agencies to which debts are owed and which have outstanding delinquent debts shall participate in a computer match at least annually of their delinquent debt records with records of Federal employees to identify those employees who are delinquent in repayment of those debts. The preceding sentence shall not apply to any debt under the Internal Revenue Code of 1986. Matched Federal employee records shall include, but shall not be limited to, records of active Civil Service employees government-wide, military active duty personnel, military reservists, United States Postal Service employees, employees of other government corporations, and seasonal and temporary employees. The Secretary of the Treasury shall establish and maintain an interagency consortium to implement centralized salary offset computer matching, and promulgate regulations for this program. Agencies that perform centralized salary offset computer matching services under this subsection are authorized to charge a fee sufficient to cover the full cost for such services.''

Subsec. (a)(3), (4). Pub. L. 104–134, § 31001(h)(A)(ii), (iii), added par. (3) and redesignated former pars. (3) and (4) as (4) and (5), respectively.

Subsec. (a)(5). Pub. L. 104–134, § 31001(h)((A)(ii), redesignated par. (4) as (5).

Subsec. (a)(5)(B). Pub. L. 104–134, § 31001(h)(A)(iv), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''‘agency’ includes the United States Postal Service and the Postal Rate Commission.''

Subsec. (d). Pub. L. 104–134, § 31001(h)(B), added subsec. (d).

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.''

## § 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, the Chief Administrative Officer of the House of Representatives, or the Chief of the Capitol Police) 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; Pub. L. 104–186, title II, § 215(5), Aug. 20, 1996, 110 Stat. 1745; Pub. L. 111–145, § 7(c)(1), Mar. 4, 2010, 124 Stat. 55.)

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

2010—Pub. L. 111–145 substituted '', the Chief Administrative Officer of the House of Representatives, or the Chief of the Capitol Police'' for ''or the Chief Administrative Officer of the House of Representatives''.

1996—Pub. L. 104–186 substituted ''Chief Administrative Officer'' for ''Clerk''.

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.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–145 effective as though enacted as part of section 1018 of Pub. L. 108–7, see section 7(d) of Pub. L. 111–145, set out as a note under section 2107 of this title.

## § 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.

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 agree-

ment 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.

## § 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, territory, possession, or commonwealth 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; Pub. L. 105–34, title XIV, § 1462(a), Aug. 5, 1997, 111 Stat. 1057.)

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.<br>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.<br>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

1997—Subsec. (c). Pub. L. 105–34 substituted '', territory, possession, or commonwealth'' for ''or territory or possession''.

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 1997 AMENDMENT

Section 1462(b) of Pub. L. 105–34 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on January 1, 1998.''

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 fol-

lowing 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.

## § 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.<br>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 granted military 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; Pub. L. 104–106, div. A, title V, § 516(b), Feb. 10, 1996, 110 Stat. 309.)

AMENDMENTS

1996—Pub. L. 104–106 substituted ''granted military leave'' for ''entitled to leave''.

1992—Pub. L. 102–378 substituted ''6323(b) or (c)'' for ''6323(c) or (d) 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.

**§ 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 Government Accountability Office;

(B) the United States Postal Service and the Postal Regulatory Commission;

(C) any agency of the judicial branch of the Government; and

(D) any agency of the legislative branch of the Government, including the Government Accountability 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 Consumer 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 section 459 of the Social Security Act (42 U.S.C. 659) 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 section 459 of the Social Security Act (42 U.S.C. 659) 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 Servicemembers Civil Relief Act (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 Homeland Security 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; amended Pub. L. 104–106, div. A, title VI, §643, Feb. 10, 1996, 110 Stat. 368; Pub. L. 104–193, title III, §362(b)(2), Aug. 22, 1996, 110 Stat. 2246; Pub. L. 105–85, div. A, title XI, §1105, Nov. 18, 1997, 111 Stat. 1923; Pub. L. 108–189, §2(b)(1), Dec. 19, 2003, 117 Stat. 2865; Pub. L. 108–271, §8(b), July 7, 2004, 118 Stat. 814; Pub. L. 109–241, title IX, §902(a)(3), July 11, 2006, 120 Stat. 566; Pub. L. 109–435, title VI, §604(f), Dec. 20, 2006, 120 Stat. 3242.)

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 Servicemembers Civil Relief Act, 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, Appendix, War and National Defense. For complete classification of this Act to the Code, see section 501 of Title 50, Appendix, and Tables.

AMENDMENTS

2006—Subsec. (a)(1)(B). Pub. L. 109–435 substituted ''Postal Regulatory Commission'' for ''Postal Rate Commission''.

Subsec. (k)(3). Pub. L. 109–241 substituted ''Secretary of Homeland Security'' for ''Secretary of Transportation''.

2004—Subsec. (a)(1)(A), (D). Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office''.

2003—Subsec. (k)(2)(A). Pub. L. 108–189 substituted ''Servicemembers Civil Relief Act'' for ''Soldiers' and Sailors' Civil Relief Act of 1940''.

1997—Subsec. (j)(2). Pub. L. 105–85, §1105(1), added par. (2) and struck out former par. (2) which read as follows: ''Such regulations shall provide that an agency's administrative costs incurred in executing legal process to which the agency is subject under this section shall be deducted from the amount withheld from the pay of the employee concerned pursuant to the legal process.''

Subsec. (k)(3), (4). Pub. L. 105–85, §1105(2), redesignated par. (4) as (3) and struck out former par. (3) which read as follows: ''Regulations under this subsection may also provide that the administrative costs incurred in establishing and maintaining an involuntary allotment be deducted from the amount withheld from the pay of the member of the uniformed services concerned pursuant to such regulations.''

Subsec. (*l*). Pub. L. 105–85, §1105(3), struck out subsec. (*l*) which read as follows: ''The amount of an agency's administrative costs deducted under regulations prescribed pursuant to subsection (j)(2) or (k)(3) shall be credited to the appropriation, fund, or account from which such administrative costs were paid.''

1996—Subsecs. (h)(2), (i). Pub. L. 104–193 substituted ''section 459 of the Social Security Act (42 U.S.C. 659)'' for ''sections 459, 461, and 462 of the Social Security Act (42 U.S.C. 659, 661, and 662)''.

Subsec. (j)(2). Pub. L. 104–106, §643(a), added par. (2) and struck out former par. (2) which read as follows: ''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.''

Subsec. (k)(3), (4). Pub. L. 104–106, §643(b), added par. (3) and redesignated former par. (3) as (4).

Subsec. (*l*). Pub. L. 104–106, §643(c), added subsec. (*l*).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–193 effective six months after Aug. 22, 1996, see section 362(d) of Pub. L. 104–193, set out as a note under section 659 of Title 42, The Public Health and Welfare.

For provisions relating to effective date of title III of Pub. L. 104–193, see section 395(a)–(c) of Pub. L. 104–193, set out as a note under section 654 of Title 42, The Public Health and Welfare.

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.

PILOT PROGRAM ON ALTERNATIVE NOTICE OF RECEIPT OF LEGAL PROCESS FOR GARNISHMENT OF FEDERAL PAY FOR CHILD SUPPORT AND ALIMONY

Pub. L. 105–261, div. A, title X, §1061, Oct. 17, 1998, 112 Stat. 2128, authorized the Secretary of Defense to conduct a pilot program on alternative notice procedures for withholding or garnishment of pay for the payment of child support and alimony under section 659 of Title 42, The Public Health and Welfare, required the Secretary to submit to Congress, not later than Jan. 1, 2001, a report describing the experience of the Department of Defense under the authority provided for the

program, and provided for termination of pilot program on Sept. 30, 2001.

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.

## SUBCHAPTER III—ADVANCEMENT, ALLOTMENT, AND ASSIGNMENT OF PAY

### § 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.<br>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 payments 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.

## § 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.

## § 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.

### § 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.

### § 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. For purposes of this section, the term ''agency'' includes the Office of the Architect of the Capitol.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 481; Pub. L. 107–68, title I, § 133(b)(1), Nov. 12, 2001, 115 Stat. 582.)

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.

AMENDMENTS

2001—Pub. L. 107–68 inserted at end ''For purposes of this section, the term 'agency' includes the Office of the Architect of the Capitol.''

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–68, title I, § 133(b)(2), Nov. 12, 2001, 115 Stat. 582, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply with respect to pay periods beginning on or after the date of the enactment of this Act [Nov. 12, 2001].''

### § 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, and replaced by Council of District of Columbia, as provided by section 401 of Pub. L. 93–198.

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 contained 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 section 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 Government Accountability 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, the Congressional Budget Office, and the United States Capitol Police;

(5) ''employee of the House of Representatives'' means a congressional employee whose pay is disbursed by the Chief Administrative Officer 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; Pub. L. 104–186, title II, § 215(6), Aug. 20, 1996, 110 Stat. 1745; Pub. L. 106–398, § 1 [[div. A], title X, § 1087(f)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–293; Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814; Pub. L. 111–145, § 7(b)(1), Mar. 4, 2010, 124 Stat. 55.)

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

2010—Par. (4). Pub. L. 111–145 substituted ''the Congressional Budget Office, and the United States Capitol Police'' for ''and the Congressional Budget Office''.

2004—Par. (4). Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office''.

2000—Pub. L. 106–398 substituted ''section'' for ''sections 5532 and'' in introductory provisions.

1996—Par. (5). Pub. L. 104–186 substituted ''Chief Administrative Officer'' for ''Clerk''.

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 2010 AMENDMENT

Amendment by Pub. L. 111–145 effective as though enacted as part of section 1018 of Pub. L. 108–7, see section 7(d) of Pub. L. 111–145, set out as a note under section 2107 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.

DUAL PAY REQUIREMENTS FOR PAY PERIODS SUBSEQUENT TO ENACTMENT OF CIVIL SERVICE ACT OF 1978

Pub. L. 95–454, title III, § 308(g), Oct. 13, 1978, 92 Stat. 1151, provided that:

''(1) Except as provided in paragraph (2) of this subsection, the amendments made by this section [amending this section and section 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.''

## [§ 5532. Repealed. Pub. L. 106–65, div. A, title VI, § 651(a)(1), Oct. 5, 1999, 113 Stat. 664]

Section, 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; Pub. L. 105–55, title I, § 107, Oct. 7, 1997, 111 Stat. 1184, related to employment of retired members of uniformed services and reduction in retired or retainer pay.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1999, see section 651(c) of Pub. L. 106–65, set out as an Effective Date of 1999 Amendment note under section 1466 of Title 10, Armed Forces.

## § 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 Man-

agement, 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, the Chief Administrative Officer of the House of Representatives, or the Chief of the Capitol Police, 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 disbursed by the Chief Administrative Officer of the House of Representatives or the Chief of the Capitol Police, 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, the Chief Administrative Officer of the House of Representatives, or the Chief of the Capitol Police; 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[1] 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; Pub. L. 104–186, title II, § 215(7), Aug. 20, 1996, 110 Stat. 1745; Pub. L. 111–145, § 7(b)(2), Mar. 4, 2010, 124 Stat. 55.)

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 174j–1, 174j–3, 174j–4, 174j–5, 174j–6, 174j–7, and 174k of title 40, referred to in subsec. (e)(1), were transferred to sections 2042, 2043, 2044, 2045, 2046, 2047, and 2041, respectively, of Title 2, The Congress. Section 174j–2 of title 40 was repealed by Pub. L. 107–217, § 6(b), Aug. 21, 2002, 116 Stat. 1304.

AMENDMENTS

2010—Subsec. (c)(1). Pub. L. 111–145, § 7(b)(2)(A)(i), substituted '', the Chief Administrative Officer of the House of Representatives, or the Chief of the Capitol Police'' for ''or the Chief Administrative Officer of the House of Representatives''.

Subsec. (c)(2). Pub. L. 111–145, § 7(b)(2)(A)(ii), inserted ''or the Chief of the Capitol Police'' after ''House of Representatives''.

[1] See References in Text note below.

Subsec. (d)(5)(A). Pub. L. 111–145, §7(b)(2)(B), substituted ", the Chief Administrative Officer of the House of Representatives, or the Chief of the Capitol Police" for "or the Chief Administrative Officer of the House of Representatives".

1996—Subsecs. (c)(1), (2), (d)(5)(A). Pub. L. 104–186 substituted "Chief Administrative Officer" for "Clerk".

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 2010 AMENDMENT

Amendment by Pub. L. 111–145 effective as though enacted as part of section 1018 of Pub. L. 108–7, see section 7(d) of Pub. L. 111–145, set out as a note under section 2107 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 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

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

INCREASE IN COMPENSATION OF INDIVIDUALS WHOSE PAY IS DISBURSED BY SECRETARY OF SENATE

2010—The figure "$10,540" in subsec. (c)(1) of this section to be deemed to refer, effective Jan. 1, 2010, to the figure "$33,003", see section 9 of Salary Directive of President pro tempore of the Senate, Jan. 5, 2010, set out as a note under section 60a–1 of Title 2, The Congress.

2009—The figure "$10,540" in subsec. (c)(1) of this section to be deemed to refer, effective Jan. 1, 2009, to the figure "$32,515", see section 9 of Salary Directive of President pro tempore of the Senate, Mar. 12, 2009, set out as a note under section 60a–1 of Title 2, The Congress.

2008—The figure "$10,540" in subsec. (c)(1) of this section to be deemed to refer, effective Jan. 1, 2008, to the figure "$31,906", see section 9 of Salary Directive of President pro tempore of the Senate, Jan. 7, 2008, set out as a note under section 60a–1 of Title 2, The Congress.

2007—The figure "$10,540" in subsec. (c)(1) of this section to be deemed to refer, effective Jan. 1, 2007, to the figure "$30,827", see section 9 of Salary Directive of President pro tempore of the Senate, Feb. 16, 2007, formerly set out as a note under section 60a–1 of Title 2.

2006—The figure "$10,540" in subsec. (c)(1) of this section to be deemed to refer, effective Jan. 1, 2006, to the figure "$29,905", see section 9 of Salary Directive of President pro tempore of the Senate, Jan. 4, 2006, formerly set out as a note under section 60a–1 of Title 2.

2005—The figure "$10,540" in subsec. (c)(1) of this section to be deemed to refer, effective Jan. 1, 2005, to the figure "$29,289", see section 9 of Salary Directive of President pro tempore of the Senate, Jan. 3, 2005, formerly set out as a note under section 60a–1 of Title 2.

2004—The figure "$10,540" in subsec. (c)(1) of this section to be deemed to refer, effective Jan. 1, 2004, to the figure "$28,574", see section 9 of Salary Directive of President pro tempore of the Senate, Mar. 5, 2004, formerly set out as a note under section 60a–1 of Title 2.

2003—The figure "$10,540" in subsec. (c)(1) of this section to be deemed to refer, effective Jan. 1, 2003, to the figure "$27,822", see section 9 of Salary Directive of President pro tempore of the Senate, Dec. 19, 2002, as amended, formerly set out as a note under section 60a–1 of Title 2.

2002—The figure ''$10,540'' in subsec. (c)(1) of this section to be deemed to refer, effective Jan. 1, 2002, to the figure ''$26,985'', see section 9 of Salary Directive of President pro tempore of the Senate, Dec. 20, 2001, formerly set out as a note under section 60a–1 of Title 2.

2001—The figure ''$10,540'' in subsec. (c)(1) of this section to be deemed to refer, effective Jan. 1, 2001, to the figure ''$26,329'', see section 9 of Salary Directive of President pro tempore of the Senate, Dec. 20, 2000, formerly set out as a note under section 60a–1 of Title 2.

2000—The figure ''$10,540'' in subsec. (c)(1) of this section to be deemed to refer, effective Jan. 1, 2000, to the figure ''$25,362'', see section 9 of Salary Directive of President pro tempore of the Senate, Dec. 12, 1999, formerly set out as a note under section 60a–1 of Title 2.

1999—The figure ''$10,540'' in subsec. (c)(1) of this section to be deemed to refer, effective Jan. 1, 1999, to the figure ''$24,433'', see section 9 of Salary Directive of President pro tempore of the Senate, Dec. 16, 1998, formerly set out as a note under section 60a–1 of Title 2.

1998—The figure ''$10,540'' in subsec. (c)(1) of this section to be deemed to refer, effective Jan. 1, 1998, to the figure ''$23,698'', see section 9 of Salary Directive of President pro tempore of the Senate, Dec. 19, 1997, formerly set out as a note under section 60a–1 of Title 2.

1997—The figure ''$10,540'' in subsec. (c)(1) of this section to be deemed to refer, effective Jan. 1, 1997, to the figure ''$23,165'', see section 9 of Salary Directive of President pro tempore of the Senate, Dec. 18, 1996, formerly set out as a note under section 60a–1 of Title 2.

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, formerly set out as a note under section 60a–1 of Title 2.

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 period 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, formerly 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.

## § 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. Such a member also is entitled to accrue annual leave with pay in the manner specified in section 6303(a) of this title for a retired member of a uniformed service.

(Added Pub. L. 90–83, § 1(22), Sept. 11, 1967, 81 Stat. 199; amended Pub. L. 109–364, div. A, title XI, § 1101, Oct. 17, 2006, 120 Stat. 2407.)

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.''

AMENDMENTS

2006—Pub. L. 109–364 inserted at end ''Such a member also is entitled to accrue annual leave with pay in the manner specified in section 6303(a) of this title for a retired member of a uniformed service.''

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 Re-

vised 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.

### § 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 [sic] 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.

### § 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, the Chief Administrative Officer of the House of Representatives, or the Chief of the Capitol Police) 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 judge 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 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; Pub. L. 101–650, title III, §321, Dec. 1, 1990, 104 Stat. 5117; Pub. L. 104–186, title II, §215(8), Aug. 20, 1996, 110 Stat. 1746; Pub. L. 104–201, div. C, title XXXV, §3548(a)(5), Sept. 23, 1996, 110 Stat. 2868; Pub. L. 111–145, §7(c)(2), Mar. 4, 2010, 124 Stat. 55.)

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

2010—Subsec. (a). Pub. L. 111–145 substituted '', the Chief Administrative Officer of the House of Representatives, or the Chief of the Capitol Police'' for ''or the Chief Administrative Officer of the House of Representatives'' in introductory provisions.

1996—Subsec. (a). Pub. L. 104–186 substituted ''Chief Administrative Officer'' for ''Clerk'' in introductory provisions.

Subsec. (c). Pub. L. 104–201 substituted ''the District Court of Guam and the District Court of the Virgin Islands'' for ''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''.

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

Words ''magistrate judge'' substituted for ''magistrate'' in subsec. (b) 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 2010 AMENDMENT

Amendment by Pub. L. 111–145 effective as though enacted as part of section 1018 of Pub. L. 108–7, see section 7(d) of Pub. L. 111–145, set out as a note under section 2107 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.

**§ 5538. Nonreduction in pay while serving in the uniformed services or National Guard**

(a) An employee who is absent from a position of employment with the Federal Government in order to perform active duty in the uniformed services pursuant to a call or order to active duty under a provision of law referred to in section 101(a)(13)(B) of title 10 shall be entitled, while serving on active duty, to receive, for each pay period described in subsection (b), an amount equal to the amount by which—

(1) the amount of basic pay which would otherwise have been payable to such employee for such pay period if such employee's civilian employment with the Government had not been interrupted by that service, exceeds (if at all)

(2) the amount of pay and allowances which (as determined under subsection (d))—

(A) is payable to such employee for that service; and

(B) is allocable to such pay period.

(b) Amounts under this section shall be payable with respect to each pay period (which would otherwise apply if the employee's civilian employment had not been interrupted)—

(1) during which such employee is entitled to re-employment rights under chapter 43 of title 38 with respect to the position from which such employee is absent (as referred to in subsection (a)); and

(2) for which such employee does not otherwise receive basic pay (including by taking any annual, military, or other paid leave) to which such employee is entitled by virtue of such employee's civilian employment with the Government.

(c) Any amount payable under this section to an employee shall be paid—

(1) by such employee's employing agency;

(2) from the appropriation or fund which would be used to pay the employee if such employee were in a pay status; and

(3) to the extent practicable, at the same time and in the same manner as would basic pay if such employee's civilian employment had not been interrupted.

(d) The Office of Personnel Management shall, in consultation with Secretary of Defense, prescribe any regulations necessary to carry out the preceding provisions of this section.

(e)(1) The head of each agency referred to in section 2302(a)(2)(C)(ii) shall, in consultation with the Office, prescribe procedures to ensure that the rights under this section apply to the employees of such agency.

(2) The Administrator of the Federal Aviation Administration shall, in consultation with the Office, prescribe procedures to ensure that the rights under this section apply to the employees of that agency.

(f) For purposes of this section—

(1) the terms ''employee'', ''Federal Government'', and ''uniformed services'' have the same respective meanings as given those terms in section 4303 of title 38;

(2) the term ''employing agency'', as used with respect to an employee entitled to any payments under this section, means the agency or other entity of the Government (including an agency referred to in section 2302(a)(2)(C)(ii)) with respect to which such employee has reemployment rights under chapter 43 of title 38; and

(3) the term ''basic pay'' includes any amount payable under section 5304.

(Added Pub. L. 111–8, div. D, title VII, § 751(a), Mar. 11, 2009, 123 Stat. 693; amended Pub. L. 111–117, div. C, title VII, § 745(a), Dec. 16, 2009, 123 Stat. 3219.)

AMENDMENTS

2009—Subsec. (b). Pub. L. 111–117 added subsec. (b) and struck out former subsec. (b), which read as follows:

''(b)(1) Amounts under this section shall be payable with respect to each pay period (which would otherwise apply if the employee's civilian employment had not been interrupted)—

''(A) during which such employee is entitled to reemployment rights under chapter 43 of title 38 with respect to the position from which such employee is absent (as referred to in subsection (a)); and

''(B) for which such employee does not otherwise receive basic pay (including by taking any annual, military, or other paid leave) to which such employee is entitled by virtue of such employee's civilian employment with the Government.

''(2) For purposes of this section, the period during which an employee is entitled to reemployment rights under chapter 43 of title 38—

''(A) shall be determined disregarding the provisions of section 4312(d) of title 38; and

''(B) shall include any period of time specified in section 4312(e) of title 38 within which an employee may report or apply for employment or reemployment following completion of service on active duty to which called or ordered as described in subsection (a).''

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–117, div. C, title VII, § 745(b), Dec. 16, 2009, 123 Stat. 3219, provided that: ''The amendments made by this section [amending this section] shall take effect on the first day of the first applicable pay period beginning on or after the date of the enactment of this Act [Dec. 16, 2009].''

EFFECTIVE DATE

Pub. L. 111–8, div. D, title VII, § 751(c), Mar. 11, 2009, 123 Stat. 695, provided that: ''The amendments made by this section [enacting this section] shall apply with respect to pay periods (as described in section 5538(b) of title 5, United States Code, as amended by this section) beginning on or after the date of enactment of this Act [Mar. 11, 2009].''

## SUBCHAPTER V—PREMIUM PAY

**§ 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 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 or 5550b 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, or a vessel employee of the Department of the Interior;

(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

(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; Pub. L. 104–201, div. C, title XXXV, § 3548(a)(6), Sept. 23, 1996, 110 Stat. 2869; Pub. L. 110–181, div. A, title XI, § 1111(b), Jan. 28, 2008, 122 Stat. 360; Pub. L. 111–282, § 4(c)(2), Oct. 15, 2010, 124 Stat. 3043.)

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.<br>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.<br>May 24, 1946, ch. 270, § 8(a), 60 Stat. 218.<br>Aug. 4, 1947, ch. 452, § 1, 61 Stat. 727.<br>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 ref-

[1] So in original. Probably should be ''sections''.

erences 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.

AMENDMENTS

2010—Par. (2)(iv)(II). Pub. L. 111–282 struck out ''a member of the United States Secret Service Uniformed Division,'' before ''a member of the United States Park Police''.

2008—Par. (2)(xi). Pub. L. 110–181 substituted ''section 5544 or 5550b'' for ''section 5544''.

1996—Par. (2)(xii). Pub. L. 104–201 inserted ''or'' after ''Services Administration,'' and struck out '', or a vessel employee of the Panama Canal Commission'' after ''Interior''.

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 2010 AMENDMENT

Amendment by Pub. L. 111–282 effective on first day of first pay period which begins after Oct. 15, 2010, see section 5 of Pub. L. 111–282, set out as a note under section 5102 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–181, div. A, title XI, § 1111(c), Jan. 28, 2008, 122 Stat. 360, provided that: ''The amendments made by this section [amending this section and section 5550b of this title] shall take effect on the earlier of—

''(1) the effective date of any regulations prescribed to carry out such amendments; or

''(2) the 90th day after the date of the enactment of this Act [Jan. 28, 2008].''

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.

AVAILABILITY OF PREMIUM PAY FOR ATTORNEYS EMPLOYED IN DEPARTMENT OF JUSTICE

Pub. L. 106–113, div. B, § 1000(a)(1) [title I, § 115], Nov. 29, 1999, 113 Stat. 1535, 1501A–21, provided that:

''(a) None of the funds made available by this or any other Act may be used to pay premium pay under title 5, United States Code, sections 5542–5549, to any individual employed as an attorney, including an Assistant United States Attorney, in the Department of Justice for any work performed on or after the date of the enactment of this Act [Nov. 29, 1999].

''(b) Notwithstanding any other provision of law, neither the United States nor any individual or entity acting on its behalf shall be liable for premium pay under title 5, United States Code, sections 5542–5549, for any work performed on or after the date of the enactment of this Act [Nov. 29, 1999] by any individual employed as an attorney in the Department of Justice, including an Assistant United States Attorney.''

[Pub. L. 106–553, § 1(a)(2) [title I, § 111], Dec. 21, 2000, 114 Stat. 2762, 2762A–68, provided that: ''Section 115 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2000 (as enacted into law by section 1000(a)(1) of Public Law 106–113) [set out above] shall apply hereafter.'']

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.''

## § 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 the greater of 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) or the hourly rate of basic pay of the employee, 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.

(5) Notwithstanding paragraphs (1) and (2), for an employee of the Department of the Interior or the United States Forest Service in the Department of Agriculture engaged in emergency wildland fire suppression activities, 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.

(6)(A) Notwithstanding paragraphs (1) and (2), for an employee of the Department of the Navy who is assigned to temporary duty to perform work aboard, or dockside in direct support of, the nuclear aircraft carrier that is forward deployed in Japan and who would be nonexempt under the Fair Labor Standards Act but for the application of the foreign area exemption in section 13(f) of that Act (29 U.S.C. 213(f)), 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.

(B) Subparagraph (A) shall expire on September 30, 2014.

(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

(2) such investigator shall be compensated for all other overtime work under section 5545a.

(e) Notwithstanding subsection (d)(1) of this section, all hours of overtime work scheduled in advance of the administrative workweek shall be compensated under subsection (a) if that work involves duties as authorized by section 3056(a) of title 18 or section 37(a)(3) of the State Department Basic Authorities Act of 1956, and if the investigator performs, on that same day, at least 2 hours of overtime work not scheduled in advance of the administrative workweek.

(f) In applying subsection (a) of this section with respect to a firefighter who is subject to section 5545b—

(1) such subsection shall be deemed to apply to hours of work officially ordered or approved in excess of 106 hours in a biweekly pay period, or, if the agency establishes a weekly basis for overtime pay computation, in excess of 53 hours in an administrative workweek; and

(2) the overtime hourly rate of pay is an amount equal to one and one-half times the hourly rate of basic pay under section 5545b(b)(1)(A) or (c)(1)(B), as applicable, and such overtime hourly rate of pay may not be less than such hourly rate of basic pay in applying the limitation on the overtime rate

[1] So in original. Probably should be capitalized.

provided in paragraph (2) of such subsection (a).

(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; Pub. L. 104–52, title V, § 531, Nov. 19, 1995, 109 Stat. 496; Pub. L. 105–277, div. A, § 101(b) [title IV, § 407(c)(2)], (h) [title VI, § 628(a)(1)], div. G, subdiv. B, title XXIII, § 2316(c)(2), Oct. 21, 1998, 112 Stat. 2681–50, 2681–102, 2681–480, 2681–519, 2681–829; Pub. L. 106–558, § 2(a), Dec. 21, 2000, 114 Stat. 2776; Pub. L. 108–136, div. A, title XI, § 1121, Nov. 24, 2003, 117 Stat. 1636; Pub. L. 111–383, div. A, title XI, § 1105(a), Jan. 7, 2011, 124 Stat. 4383.)

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.<br>Sept. 1, 1954, ch. 1208, § 203, 68 Stat. 1109. |
| (b) ..... | 5 U.S.C. 912a.<br>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.

The Fair Labor Standards Act, referred to in subsec. (a)(6)(A), probably means the Fair Labor Standards Act of 1938, act June 25, 1938, ch. 676, 52 Stat. 1060, which is classified generally 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.

Section 7 of the Fair Labor Standards Act of 1938, referred to in subsec. (c), is classified to section 207 of Title 29, Labor.

Section 37(a)(3) of the State Department Basic Authorities Act of 1956, referred to in subsec. (e), is classified to section 2709(a)(3) of Title 22, Foreign Relations and Intercourse.

AMENDMENTS

2011—Subsec. (a)(6). Pub. L. 111–383 added par. (6).

2003—Subsec. (a)(2). Pub. L. 108–136 inserted ''the greater of'' before ''one and one-half'' and ''or the hourly rate of basic pay of the employee'' before '', and all that amount''.

2000—Subsec. (a)(5). Pub. L. 106–558 added par. (5).

1998—Subsec. (e). Pub. L. 105–277, § 101(b) [title IV, § 407(c)(2)] and § 2316(c)(2), amended subsec. (e) identically, substituting ''title 18 or section 37(a)(3) of the State Department Basic Authorities Act of 1956,'' for ''title 18, United States Code,''.

Subsec. (f). Pub. L. 105–277, § 101(h) [title VI, § 628(a)(1)], added subsec. (f).

1995—Subsec. (e). Pub. L. 104–52 added subsec. (e).

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 2000 AMENDMENT

Pub. L. 106–558, § 2(b), Dec. 21, 2000, 114 Stat. 2777, as amended by Pub. L. 107–20, title II, § 2605, July 24, 2001, 115 Stat. 178, provided that: ''The amendments made by this section [amending this section] shall take effect on the date of enactment of this Act [Dec. 21, 2000].''

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–277, div. A, § 101(b) [title IV, § 407(d)], div. G, subdiv. B, title XXIII, § 2316(d), Oct. 21, 1998, 112 Stat. 2681–50, 2681–102, 2681–829, provided that: ''The amendments made by this section [amending this section and section 5545a of this title] shall take effect on the first day of the first applicable pay period—

''(1) which begins on or after the 90th day following the date of the enactment of this Act [Oct. 21, 1998]; and

''(2) on which date all regulations necessary to carry out such amendments are (in the judgment of the Director of the Office of Personnel Management and the Secretary of State) in effect.'' [Jan. 29, 1999, see 64 F.R. 4517.]

Amendment by section 101(h) [title VI, § 628(a)(1)] of Pub. L. 105–277 effective on first day of first applicable pay period which begins on or after Oct. 1, 1998, see section 101(h) [title VI, § 628(e)] of Pub. L. 105–277, set out as a note under section 4109 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 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 this section, section 5544 of this title, 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].''

## § 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 head of an agency may, on request of an employee, grant the employee compensatory time off from the employee's scheduled tour of duty instead of payment under section 5544 or section 7 of the Fair Labor Standards Act of 1938 for an equal amount of time spent in irregular or occasional overtime work. An agency head may not require an employee to be compensated for overtime work with an equivalent amount of compensatory time-off from the employee's tour of duty.

(c) 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.

(d)(1) The appropriate Secretary may, on request of an employee of a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard described in section 2105(c), grant such employee compensatory time off from duty instead of overtime pay for overtime work.

(2) For purposes of this subsection, the term ''appropriate Secretary'' means—

(A) with respect to an employee of a nonappropriated fund instrumentality of the Department of Defense, the Secretary of Defense; and

(B) with respect to an employee of a nonappropriated fund instrumentality of the Coast Guard, the Secretary of the Executive department in which it is operating.

(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; Pub. L. 104–201, div. A, title XVI, § 1610(a), Sept. 23, 1996, 110 Stat. 2738; Pub. L. 109–163, div. A, title VI, § 674, Jan. 6, 2006, 119 Stat. 3319.)

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.<br>May 24, 1946, ch. 270, § 9, 60 Stat. 218.<br>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 subsecs. (a)(1) and (b), 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

2006—Subsec. (d). Pub. L. 109–163 added subsec. (d).

1996—Subsecs. (b), (c). Pub. L. 104–201 added subsec. (b) and redesignated former subsec. (b) as (c).

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.

## § 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. For employees serving outside the United States in areas where Sunday is a routine workday and another day of the week is officially recognized as the day of rest and worship, the Secretary of State may designate the officially recognized day of rest and worship as the day with respect to which the preceding sentence shall apply instead of Sunday. 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 (including travel by the employee to such event and the return of the employee from such event to the employee's official duty station). 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) and the provisions of section 5543(b), 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; Pub. L. 104–201, div. A, title XVI, § 1610(b), Sept. 23, 1996, 110 Stat. 2738; Pub. L. 105–277, div. G, subdiv. B, title XXIII, § 2317(1), Oct. 21, 1998, 112 Stat. 2681–829; Pub. L. 110–181, div. A, title XI, § 1110, Jan. 28, 2008, 122 Stat. 360.)

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.<br>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.<br>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

2008—Subsec. (a). Pub. L. 110–181, in third sentence of concluding provisions, substituted ''administratively (including travel by the employee to such event and the return of the employee from such event to the employee's official duty station).'' for ''administratively.''

1998—Subsec. (a). Pub. L. 105–277, which directed the amendment of subsec. (a) by inserting after the fourth sentence ''For employees serving outside the United States in areas where Sunday is a routine workday and another day of the week is officially recognized as the day of rest and worship, the Secretary of State may designate the officially recognized day of rest and worship as the day with respect to which the preceding sentence shall apply instead of Sunday.'', was executed by making the insertion after the first sentence of the concluding provisions, to reflect the probable intent of Congress.

1996—Subsec. (c). Pub. L. 104–201 inserted ''and the provisions of section 5543(b)'' after ''the last two sentences of subsection (a)''.

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.

## § 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, and for any hardship or hazard related to asbestos, such differentials shall be determined by applying occupational safety and health standards consistent with the permissible exposure limit promulgated by the Secretary of Labor under the Occupational Safety and Health Act of 1970. 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; Pub. L. 108–136, div. A, title XI, § 1122(b), Nov. 24, 2003, 117 Stat. 1637.)

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.<br>May 24, 1946, ch. 270, § 10, 60 Stat. 218.<br>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.<br>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.

The Occupational Safety and Health Act of 1970, referred to in subsec. (d), is Pub. L. 91–596, Dec. 29, 1970, 84 Stat. 1590, as amended, which is classified principally to chapter 15 (§ 651 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 651 of Title 29 and Tables.

AMENDMENTS

2003—Subsec. (d). Pub. L. 108–136 inserted before period at end of first sentence '', and for any hardship or hazard related to asbestos, such differentials shall be determined by applying occupational safety and health standards consistent with the permissible exposure limit promulgated by the Secretary of Labor under the Occupational Safety and Health Act of 1970''.

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 2003 AMENDMENT

Subject to any vested constitutional property rights, any administrative or judicial determination after Nov. 24, 2003, concerning backpay for a differential established under subsec. (d) of this section to be based on occupational safety and health standards described in the amendments made by subsections (a) and (b) of section 1122 of Pub. L. 108–136, amending this section and section 5343 of this title, see section 1122(c) of Pub. L. 108–136, set out as a note under section 5343 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

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, formerly 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.

## § 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 sec-

tion 5541(3) (other than an officer occupying a position under title II of Public Law 99–399, subject to subsection (k)) who 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; and

(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.

(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), 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.

(i) The provisions of subsections (a)–(h) providing for availability pay shall apply to a pilot employed by the United States Customs Service who is a law enforcement officer as defined under section 5541(3). For the purpose of this section, section 5542(d) of this title, and section 13(a)(16) and (b)(30) of the Fair Labor Standards Act of 1938 (29 U.S.C. 213(a)(16) and (b)(30)), such pilot shall be deemed to be a criminal investigator as defined in this section. The Office of Personnel Management may prescribe regulations to carry out this subsection.

(j) Notwithstanding any other provision of this section, any Office of Inspector General which employs fewer than 5 criminal investigators may elect not to cover such criminal investigators under this section.

(k)(1) For purposes of this section, the term ''criminal investigator'' includes a special agent occupying a position under title II of Public Law 99–399 if such special agent—

(A) meets the definition of such term under paragraph (2) of subsection (a) (applied disregarding the parenthetical matter before subparagraph (A) thereof); and

(B) such special agent satisfies the requirements of subsection (d) without taking into account any hours described in paragraph (2)(B) thereof.

(2) In applying subsection (h) with respect to a special agent under this subsection—

(A) any reference in such subsection to ''basic pay'' shall be considered to include amounts designated as ''salary'';

(B) paragraph (2)(A) of such subsection shall be considered to include (in addition to the provisions of law specified therein) sections 609(b)(1), 805, 806, and 856 of the Foreign Service Act of 1980; and

(C) paragraph (2)(B) of such subsection shall be applied by substituting for ''Office of Personnel Management'' the following: ''Office of Personnel Management or the Secretary of State (to the extent that matters exclusively within the jurisdiction of the Secretary are concerned)''.

(Added Pub. L. 103–329, title VI, § 633(b)(1), Sept. 30, 1994, 108 Stat. 2425; amended Pub. L. 104–19, title I, §§ 901, 902(a), July 27, 1995, 109 Stat. 230; Pub. L. 104–208, div. A, title I, § 101(f) [title VI, § 659 [title II, § 206(b)(2)]], Sept. 30, 1996, 110 Stat. 3009–314, 3009–372, 3009–378; Pub. L. 105–277, div. A, § 101(b) [title IV, § 407(a), (c)(1)], div. G, subdiv. B, title XXIII, § 2316(a), (c)(1), Oct. 21, 1998, 112 Stat. 2681–50, 2681–101, 2681–102, 2681–828.)

REFERENCES IN TEXT

Title II of Public Law 99–399, referred to in subsecs. (a)(2) and (k)(1), 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.

Sections 609(b)(1), 805, 806, and 856 of the Foreign Service Act of 1980, referred to in subsec. (k)(2)(B), are classified to sections 4009(b)(1), 4045, 4046, and 4071e, respectively, of Title 22, Foreign Relations and Intercourse.

AMENDMENTS

1998—Subsec. (a)(2). Pub. L. 105–277, § 101(b) [title IV, § 407(c)(1)] and § 2316(c)(1), amended subsec. (a)(2) identically, substituting ''Public Law 99–399, subject to subsection (k))'' for ''Public Law 99–399)'' in introductory provisions.

Subsec. (k). Pub. L. 105–277, § 101(b) [title IV, § 407(a)] and § 2316(a), amended section identically, adding subsec. (k).

1996—Subsec. (h)(2)(A). Pub. L. 104–208 struck out ''8431,'' after ''8331(3),''.

1995—Subsec. (a)(2). Pub. L. 104–19, § 901(1)(A), inserted ''who'' before ''is required to'' in introductory provisions.

Subsec. (a)(2)(E)(v). Pub. L. 104–19, § 901(1)(B), inserted ''and'' at end.

Subsec. (i). Pub. L. 104–19, § 902(a), added subsec. (i).

Subsec. (j). Pub. L. 104–19, § 901(2), added subsec. (j).

EFFECTIVE DATE OF 1998 AMENDMENT

For effective date of amendment by Pub. L. 105–277, see section 101(b) [title IV, § 407(d)] and section 2316(d) of Pub. L. 105–277, set out as a note under section 5542 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 101(f) [title VI, § 659 [title II, § 207]] of Pub. L. 104–208 provided that: ''This title [title II (§§ 201–207) of section 659 of section 101(f) of Pub. L. 104–208, amending this section and sections 8351, 8401, 8433, 8435, and 8440a to 8440c of this title, repealing section 8431 of this title, enacting provisions set out as notes under sections 8401 and 8433 of this title, and amending provisions set out as a note under section 5343 of this title] shall take effect on the date of the enactment of this Act [Sept. 30, 1996] and withdrawals and elections as provided under the amendments made by this title shall be made at the earliest practicable date as determined by the Executive Director in regulations.''

EFFECTIVE DATE OF 1995 AMENDMENT

Section 902(b) of Pub. L. 104–19 provided that: ''The amendment made by subsection (a) of this section [amending this section] shall take effect on the first day of the first applicable pay period which begins on or after the 30th day following the date of enactment of this Act [July 27, 1995].''

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.''

IMPLEMENTATION

Pub. L. 105–277, div. A, § 101(b) [title IV, § 407(b)], div. G, subdiv. B, title XXIII, § 2316(b), Oct. 21, 1998, 112 Stat. 2681–50, 2681–102, 2681–828, provided that: ''Not later than the date on which the amendments made by this section [amending this section and section 5542 of this title] take effect [see Effective Date of 1998 Amendment note set out above], each special agent of the Diplomatic Security Service who satisfies the requirements of subsection (k)(1) of section 5545a of title 5, United States Code, as amended by this section, and the appropriate supervisory officer, to be designated by the Secretary of State, shall make an initial certification to the Secretary of State that the special agent is expected to meet the requirements of subsection (d) of such section 5545a. The Secretary of State may prescribe procedures necessary to administer this subsection.''

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

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.''

## § 5545b. Pay for firefighters

(a) This section applies to an employee whose position is classified in the firefighter occupation in conformance with the GS–081 standard published by the Office of Personnel Management, and whose normal work schedule, as in effect throughout the year, consists of regular tours of duty which average at least 106 hours per biweekly pay period.

(b)(1) If the regular tour of duty of a firefighter subject to this section generally consists of 24-hour shifts, rather than a basic 40-hour workweek (as determined under regulations prescribed by the Office of Personnel Management), section 5504(b) shall be applied as follows in computing pay—

(A) paragraph (1) of such section shall be deemed to require that the annual rate be divided by 2756 to derive the hourly rate; and

(B) the computation of such firefighter's daily, weekly, or biweekly rate shall be based on the hourly rate under subparagraph (A);

(2) For the purpose of sections 5595(c), 5941, 8331(3), and 8704(c), and for such other purposes as may be expressly provided for by law or as the Office of Personnel Management may by regulation prescribe, the basic pay of a firefighter subject to this subsection shall include an amount equal to the firefighter's basic hourly rate (as computed under paragraph (1)(A)) for all hours in such firefighter's regular tour of duty (including overtime hours).

(c)(1) If the regular tour of duty of a firefighter subject to this section includes a basic 40-hour workweek (as determined under regulations prescribed by the Office of Personnel Management), section 5504(b) shall be applied as follows in computing pay—

(A) the provisions of such section shall apply to the hours within the basic 40-hour workweek;

(B) for hours outside the basic 40-hour workweek, such section shall be deemed to require that the hourly rate be derived by dividing the annual rate by 2756; and

(C) the computation of such firefighter's daily, weekly, or biweekly rate shall be based on subparagraphs (A) and (B), as each applies to the hours involved.

(2) For purposes of sections 5595(c), 5941, 8331(3), and 8704(c), and for such other purposes as may be expressly provided for by law or as the Office of Personnel Management may by regulation prescribe, the basic pay of a firefighter subject to this subsection shall include—

(A) an amount computed under paragraph (1)(A) for the hours within the basic 40-hour workweek; and

(B) an amount equal to the firefighter's basic hourly rate (as computed under paragraph (1)(B)) for all hours outside the basic 40-hour workweek that are within such firefighter's regular tour of duty (including overtime hours).

(d)(1) A firefighter who is subject to this section shall receive overtime pay in accordance with section 5542, but shall not receive premium pay provided by other provisions of this subchapter.

(2) For the purpose of applying section 7(k) of the Fair Labor Standards Act of 1938 to a firefighter who is subject to this section, no violation referred to in such section 7(k) shall be deemed to have occurred if the requirements of section 5542(a) are met, applying section 5542(a) as provided in subsection (f) of that section: *Provided*, That the overtime hourly rate of pay for such firefighter shall in all cases be an amount equal to one and one-half times the firefighter's hourly rate of basic pay under subsection (b)(1)(A) or (c)(1)(B) of this section, as applicable.

(3) The Office of Personnel Management may prescribe regulations, with respect to firefighters subject to this section, that would permit an agency to reduce or eliminate the variation in the amount of firefighters' biweekly pay caused by work scheduling cycles that result in varying hours in the regular tours of duty from pay period to pay period. Under such regulations, the pay that a firefighter would otherwise receive for regular tours of duty over the work scheduling cycle shall, to the extent practicable, remain unaffected.

(4) Notwithstanding section 8114(e)(1), overtime pay for a firefighter subject to this section for hours in a regular tour of duty shall be included in any computation of pay under section 8114.

(Added Pub. L. 105–277, div. A, § 101(h) [title VI, § 628(a)(2)], Oct. 21, 1998, 112 Stat. 2681–480,

2681–519; amended Pub. L. 106–554, § 1(a)(3) [title VI, § 641(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–169.)

REFERENCES IN TEXT

Section 7(k) of the Fair Labor Standards Act of 1938, referred to in subsec. (d)(2), is classified to section 207(k) of Title 29, Labor.

AMENDMENTS

2000—Subsec. (d)(4). Pub. L. 106–554 added par. (4).

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, § 1(a)(3) [title VI, § 641(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–169, provided that: ''The amendment in subsection (a) [amending this section] shall be effective as if it had been enacted as part of the Federal Firefighters Overtime Pay Reform Act of 1998 [Pub. L. 105–277, div A, § 101(h) [title VI, § 628]] (112 Stat. 2681–519).''

EFFECTIVE DATE

Section effective on first day of first applicable pay period which begins on or after Oct. 1, 1998, see section 101(h) [title VI, § 628(e)] of Pub. L. 105–277, set out as an Effective Date of 1998 Amendment note under section 4109 of this title.

REGULATIONS

Pub. L. 105–277, div. A, § 101(h) [title VI, § 628(f)], Oct. 21, 1998, 112 Stat. 2681–480, 2681–521, provided that: ''Under regulations prescribed by the Office of Personnel Management, a firefighter subject to section 5545b of title 5, United States Code, as added by this section, whose regular tours of duty average 60 hours or less per workweek and do not include a basic 40-hour workweek, shall, upon implementation of this section, be granted an increase in basic pay equal to 2 step-increases of the applicable General Schedule grade, and such increase shall not be an equivalent increase in pay. If such increase results in a change to a longer waiting period for the firefighter's next step increase, the firefighter shall be credited with an additional year of service for the purpose of such waiting period. If such increase results in a rate of basic pay which is above the maximum rate of the applicable grade, such resulting pay rate shall be treated as a retained rate of basic pay in accordance with section 5363 of title 5, United States Code.''

ELIGIBILITY FOR PAY INCREASE

Pub. L. 106–31, title III, § 3032, May 21, 1999, 113 Stat. 104, provided that:

''(a) The treatment provided to firefighters under section 628(f) of the Treasury and General Government Appropriations Act, 1999 (as included in section 101(h) of division A of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Public Law 105–277)) [set out as a note above] shall be provided to any firefighter who—

''(1) on the effective date of section 5545b of title 5, United States Code [see Effective Date note above]—

''(A) was subject to such section; and

''(B) had a regular tour of duty that averaged more than 60 hours per week; and

''(2) before December 31, 1999, is involuntarily moved without a break in service from the regular tour of duty under paragraph (1) to a regular tour of duty that—

''(A) averages 60 hours or less per week; and

''(B) does not include a basic 40-hour workweek.

''(b) Subsection (a) shall apply to firefighters described under that subsection as of the effective date of section 5545b of title 5, United States Code.

''(c) The Office of Personnel Management may prescribe regulations necessary to implement this section.''

NO REDUCTION IN REGULAR PAY

Pub. L. 105–277, div. A, § 101(h) [title VI, § 628(g)], Oct. 21, 1998, 112 Stat. 2681–480, 2681–521, provided that: ''Under regulations prescribed by the Office of Personnel Management, the regular pay (over the established work scheduling cycle) of a firefighter subject to section 5545b of title 5, United States Code, as added by this section, shall not be reduced as a result of the implementation of this section.''

## § 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. For employees serving outside the United States in areas where Sunday is a routine workday and another day of the week is officially recognized as the day of rest and worship, the Secretary of State may designate the officially recognized day of rest and worship as the day with respect to which the preceding sentence shall apply instead of Sunday.

(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; Pub. L. 105–277, div. G, subdiv. B, title XXIII, § 2317(2), Oct. 21, 1998, 112 Stat. 2681–829.)

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.<br>May 24, 1946, ch. 270, § 11, 60 Stat. 218.<br>Sept. 1, 1954, ch. 1208, § 207, 68 Stat. 1110.<br>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

1998—Subsec. (a). Pub. L. 105–277 inserted at end ''For employees serving outside the United States in areas where Sunday is a routine workday and another day of the week is officially recognized as the day of rest and worship, the Secretary of State may designate the officially recognized day of rest and worship as the day with respect to which the preceding sentence shall apply instead of Sunday.''

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, and replaced by Council of District of Columbia, as provided by section 401 of Pub. L. 93–198.

CONDITION OF PERFORMANCE

Pub. L. 105–277, div. A, § 101(h) [title VI, § 624], Oct. 21, 1998, 112 Stat. 2681–480, 2681–518, provided that: ''Notwithstanding any other provision of law, no part of any funds provided by this Act or any other Act beginning in fiscal year 1999 and thereafter shall be available for paying Sunday premium pay to any employee unless such employee actually performed work during the time corresponding to such premium pay.''

Similar provisions were contained in the following prior appropriations act:

Pub. L. 105–61, title VI, § 636, Oct. 10, 1997, 111 Stat. 1316.

## § 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 Ad-

ministrator 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].''

## § 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) only to the extent that the payment does not cause the aggregate of basic pay and such premium pay for any pay period for such employee to exceed the greater of—

(1) the maximum rate of basic pay 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

(2) the rate payable for level V of the Executive Schedule.

(b)(1) Subject to regulations prescribed by the Office of Personnel Management, subsection (a) shall not apply to an employee who is paid premium pay by reason of work in connection with an emergency (including a wildfire emergency) that involves a direct threat to life or property, including work performed in the aftermath of such an emergency.

(2) Notwithstanding paragraph (1), no employee referred to in such paragraph may be paid premium pay under the provisions of law cited in subsection (a) if, or to the extent that, the aggregate of the basic pay and premium pay under those provisions for such employee would, in any calendar year, exceed the greater of—

(A) the maximum rate of basic pay payable for GS–15 in effect at the end of such calendar year (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 in effect at the end of such calendar year.

(3) Subject to regulations prescribed by the Office of Personnel Management, the head of an agency may determine that subsection (a) shall not apply to an employee who is paid premium pay to perform work that is critical to the mission of the agency. Such employees may be paid premium pay under the provisions of law cited in subsection (a) if, or to the extent that, the aggregate of the basic pay and premium pay under those provisions for such employee would not, in any calendar year, exceed the greater of—

(A) the maximum rate of basic pay payable for GS–15 in effect at the end of such calendar year (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 in effect at the end of such calendar year.

(c) The Office of Personnel Management shall prescribe regulations governing the methods of applying subsection (b)(2) and (b)(3) to employees who receive premium pay under section 5545(c) or 5545a, or to firefighters covered by section 5545b who receive overtime pay for hours in their regular tour of duty, and the method of payment to such employees. Such regulations may limit the payment of such premium pay on a biweekly basis.

(d) This section shall not apply to any employee of the Federal Aviation Administration or the Department of Defense who is paid premium pay under section 5546a.

(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; Pub. L. 107–107, div. A, title XI, § 1114(a), Dec. 28, 2001, 115 Stat. 1239.)

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.<br>May 24, 1946, ch. 270, § 7(a), 60 Stat. 218.<br>July 3, 1948, ch. 830, § 303(a), 62 Stat. 1268.<br>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)(1) and (b)(2)(A), (3)(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 subsecs. (a)(2) and (b)(2)(B), (3)(B), is set out in section 5316 of this title.

AMENDMENTS

2001—Pub. L. 107–107 reenacted section catchline without change and amended text generally. Prior to amendment, text read as follows:

''(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.''

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 2001 AMENDMENT

Pub. L. 107–107, div. A, title XI, § 1114(c), Dec. 28, 2001, 115 Stat. 1240, provided that: ''The amendments made by subsections (a) and (b) [amending this section and provisions set out as a note under this section] shall take effect on the first day of the first pay period beginning on or after the date that is 120 days following the date of enactment of this Act [Dec. 28, 2001].''

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'.''

PREMIUM PAY FOR PROTECTIVE SERVICES OF UNITED STATES SECRET SERVICE

Pub. L. 106–554, § 1(a)(3) [title I, § 118], Dec. 21, 2000, 114 Stat. 2763, 2763A–134, as amended by Pub. L. 107–107, div. A, title XI, § 1114(b), Dec. 28, 2001, 115 Stat. 1240, provided that: ''Hereafter, funds made available by this or any other Act may be used to pay premium pay for protective services authorized by section 3056(a) of title 18, United States Code, without regard to the restrictions contained in section 5547 of title 5, United States Code, except that such premium pay shall not be payable to an employee to the extent that the aggregate of the employee's basic and premium pay for the year would otherwise exceed the annual equivalent of that limitation. The term premium pay refers to the provisions of law cited in the first sentence of section 5547(a) of title 5, United States Code. Payment of additional premium pay payable under this section may be made in a lump sum on the last payday of the calendar year.''

Similar provisions were contained in Pub. L. 106–58, title I, § 118, Sept. 29, 1999, 113 Stat. 441.

[For transfer of the functions, personnel, assets, and obligations of the United States Secret Service, including the functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 381, 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.]

## § 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.

## § 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 10703 of the Farm Security and Rural Investment Act of 2002;

(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; Pub. L. 107–171, title X, § 10703(c)(4), May 13, 2002, 116 Stat. 518.)

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 10703 of the Farm Security and Rural Investment Act of 2002, referred to in par. (1), is section 10703 of Pub. L. 107–171, which enacted section 2219a of Title 7, Agriculture, amended this section and sections 468 and 695 of Title 21, Food and Drugs, and repealed section 394 of Title 7.

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.

[1] See References in Text note below.

AMENDMENTS

2002—Par. (1). Pub. L. 107–171 added par. (1) and struck out former par. (1) which read as follows: ''section 394 of title 7;''.

1983—Par. (4). Pub. L. 98–89 substituted ''sections 2111 and 2112 of title 46'' for ''section 382b of title 46''.

## [§ 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.

## § 5550b. Compensatory time off for travel

(a) Notwithstanding any provision of section 5542(b)(2) or 5544(a), each hour spent by an employee in travel status away from the official duty station of the employee, that is not otherwise compensable, shall be treated as an hour of work or employment for purposes of calculating compensatory time off.

(b) An employee who has any hours treated as hours of work or employment for purposes of calculating compensatory time under subsection (a), shall not be entitled to payment for any such hours that are unused as compensatory time.

(Added Pub. L. 108–411, title II, § 203(a), Oct. 30, 2004, 118 Stat. 2313; amended Pub. L. 110–181, div. A, title XI, § 1111(a), Jan. 28, 2008, 122 Stat. 360.)

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–181 substituted ''any provision of section 5542(b)(2) or 5544(a),'' for ''section 5542(b)(2),''.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–181 effective on the earlier of the effective date of any regulations prescribed to carry out amendments by section 1111 of Pub. L. 110–181 or the 90th day after Jan. 28, 2008, see section 1111(c) of Pub. L. 110–181, set out as a note under section 5541 of this title.

EFFECTIVE DATE

Pub. L. 108–411, title II, § 203(c), Oct. 30, 2004, 118 Stat. 2313, provided that: ''The amendments made by this section [enacting this section] shall take effect on the earlier of—

''(1) the effective date of any regulations prescribed to carry out such amendments; or

''(2) the 90th day after the date of the enactment of this Act [Oct. 30, 2004].''

COMPENSATORY TIME OFF FOR TRAVEL FOR DEPARTMENT OF JUSTICE ATTORNEYS

Pub. L. 109–425, § 1, Dec. 20, 2006, 120 Stat. 2910, provided that:

''(a) IN GENERAL.—Attorneys employed by the Department of Justice (including assistant United States attorneys) shall be eligible for compensatory time off for travel under section 5550b of title 5, United States Code, without regard to any provision of section 115 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2000 (as enacted into law by section 1000(a)(1) of Public Law 106–113 and reenacted by section 111 of the Department of Justice Appropriations Act, 2001 (as enacted into law by appendix B of Public Law 106–553) [set out as a note under section 5541 of this title]).

''(b) APPLICABILITY.—Subsection (a) shall apply with respect to time spent in travel status on or after the date of the enactment of this Act [Dec. 20, 2006].''

## SUBCHAPTER VI—PAYMENT FOR ACCUMULATED AND ACCRUED LEAVE

### § 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 government of the District of Columbia, who is separated from the service, is transferred to a position described under section 6301(2)(B)(xiii) of this title, 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.

(c)(1) Annual leave that is restored to an employee of the Department of Defense under section 6304(d) of this title by reason of the operation of paragraph (3) of such section and remains unused upon the transfer of the employee to a position described in paragraph (2) shall be liquidated by payment of a lump-sum for such leave to the employee upon the transfer.

(2) A position referred to in paragraph (1) is a position in a department or agency of the Federal Government outside the Department of Defense or a Department of Defense position that is not located at a Department of Defense installation being closed or realigned as described in section 6304(d)(3) of this title.

(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; Pub. L. 104–201, div. A, title XVI, § 1611(a), Sept. 23, 1996, 110 Stat. 2738; Pub. L. 106–518, title III, § 310, Nov. 13, 2000, 114 Stat. 2420.)

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.<br>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

2000—Subsec. (a). Pub. L. 106–518 substituted '', is transferred to a position described under section

6301(2)(B)(xiii) of this title, or elects'' for ''or elects'' in first sentence.

1996—Subsec. (c). Pub. L. 104–201 added subsec. (c).

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 1996 AMENDMENT

Section 1611(b) of Pub. L. 104–201 provided that: ''Subsection (c) of section 5551 of title 5, United States Code (as added by subsection (a)), shall apply with respect to transfers described in such subsection (c) that take effect on or after the date of the enactment of this Act [Sept. 23, 1996].''

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 this section and sections 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].''

### § 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.<br>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.

### § 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

### § 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 housing;

(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; Pub. L. 105–85, div. A, title VI, § 603(d)(3), Nov. 18, 1997, 111 Stat. 1783.)

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.<br>July 1, 1944, ch. 371, § 1, 58 Stat. 679.<br>May 16, 1947, ch. 70, § 1, 61 Stat. 96.<br>Aug. 29, 1957, Pub. L. 85–217, § 1(a), 71 Stat. 491.<br>Aug. 14, 1964, Pub. L. 88–428, § 1(1), (2), 78 Stat. 437. |

HISTORICAL AND REVISION NOTES—CONTINUED

| *Derivation* | *U.S. Code* | *Revised Statutes and Statutes at Large* |
|---|---|---|
| (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<br>July 1, 1944, ch. 371, § 2, 58 Stat. 679.<br>Apr. 4, 1953, ch. 17, § 1(a), 67 Stat. 21.<br>Aug. 29, 1957, Pub. L. 85–217, § 1(b) (1st par.), 71 Stat. 491.<br>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.<br>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.

AMENDMENTS

1997—Par. (6)(D). Pub. L. 105–85 substituted ''housing'' for ''quarters''.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 603(e) of Pub. L. 105–85 provided that: ''This section [amending this section, sections 708, 2830, 2882, 7572, and 7573 of Title 10, Armed Forces, section 107 of Title 32, National Guard, sections 101, 403, 405, 406, 420, 427, 551, and 1014 of Title 37, Pay and Allowances of the Uniformed Services, and section 454 of Title 50, Appendix, War and National Defense, repealing section 403a of Title 37, and enacting provisions set out as a note under section 403 of Title 37] and the amendments made by this section shall take effect on January 1, 1998.''

ACCOUNTING FOR CIVILIAN EMPLOYEES AND CONTRACTORS OF UNITED STATES

Pub. L. 104–106, div. A, title V, § 569(e), Feb. 10, 1996, 110 Stat. 352, directed Secretary of State to carry out

comprehensive study of provisions of this subchapter and any other law or regulation establishing procedures for accounting for civilian employees of the United States or contractors of the United States who serve with or accompany the Armed Forces in the field to determine the means, if any, by which those procedures may be improved, and further provided for submission of report to Congress not later than one year after Feb. 10, 1996, on results of study.

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.

## § 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.''

## § 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.<br>Dec. 24, 1942, ch. 828, §1 (1st par.), 56 Stat. 1092.<br>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.<br>Dec. 24, 1942, ch. 828, §1 (2d par.), 56 Stat. 1093.<br>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<br>Dec. 24, 1942, ch. 828, §1 (4th par.), 56 Stat. 1093.<br>Apr. 4, 1953, ch. 17, §1(b), 67 Stat. 21.<br>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.<br>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.<br>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.

## § 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 Administrator of General Services 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 Administrator of General Services 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 Administrator of General Services 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; Pub. L. 104–316, title II, § 202(a), Oct. 19, 1996, 110 Stat. 3842.)

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.<br>Feb. 12, 1946, ch. 6, § 1(a), 60 Stat. 5.<br>Aug. 29, 1951, ch. 356, § 1, 65 Stat. 207.<br>Apr. 4, 1953, ch. 17, § 1(d), 67 Stat. 21.<br>Aug. 29, 1957, Pub. L. 85–217, § 1(d), 71 Stat. 492. |
| (b) | 50A U.S.C. 1012 (1st sentence).<br>50A U.S.C. 1014 (as applicable to § 1012 (1st sentence)). | Aug. 14, 1964, Pub. L. 88–428, § 1(8), 78 Stat. 437.<br>Mar. 7, 1942, ch. 166, § 14 (as applicable to § 12 (1st sentence)), 56 Stat. 147.<br>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). | |

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

1996—Subsec. (h). Pub. L. 104–316 substituted ''Administrator of General Services'' for ''General Accounting Office'' wherever appearing.

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.<br>Dec. 24, 1942, ch. 828, §1 (3d par.), 56 Stat. 1093.<br>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.<br>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<br>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.

## § 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 other 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.

## § 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 |

HISTORICAL AND REVISION NOTES—CONTINUED

| *Derivation* | *U.S. Code* | *Revised Statutes and Statutes at Large* |
|---|---|---|
| (c) ..... | 50A U.S.C. 1009(a) (last sentence). | July 1, 1944, ch. 371, § 5, 58 Stat. 680.<br>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 ''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.<br>Aug. 8, 1947, ch. 515, § 6, 61 Stat. 918.<br>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 conform 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.

### § 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 Servicemembers Civil Relief Act, including the benefits provided by section 702 of such Act but excluding the benefits provided by sections 104, 105, and 106, title IV, and title V (other than sections 501 and 510) 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 ''servicemember'' 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; Pub. L. 108–189, § 2(b)(2), Dec. 19, 2003, 117 Stat. 2865.)

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 Servicemembers Civil Relief Act, 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 seq. of Title 50, Appendix, War and National Defense. Titles IV and V of the Act are classified to sections 541 et seq. and 561 et seq., respectively, of Title 50, Appendix. Sections 104, 105, 106, 501, 510, and 702 of the Act are classified to sections 514, 515, 516, 561, 570, and 592, respectively, of Title 50, Appendix. For complete classification of this Act to the Code, see section 501 of Title 50, Appendix, and Tables.

AMENDMENTS

2003—Subsec. (e)(1). Pub. L. 108–189, § 2(b)(2)(A), which directed substitution of ''provided by the Servicemembers Civil Relief Act, including the benefits provided by section 702 of such Act but excluding the benefits provided by sections 104, 105, and 106, title IV, and title V (other than sections 501 and 510) of such Act'' for '' 'provided by the Soldiers' and Sailors' Civil Relief Act of 1940' and all that follows through 'of such Act' '' was executed by making the substitution for ''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, 501 through 512, and 514 of such Act'' to reflect the probable intent of Congress.

Subsec. (e)(2)(A). Pub. L. 108–189, § 2(b)(2)(B), substituted ''servicemember'' for ''person in the military service''.

1991—Subsec. (f)(3)(A). Pub. L. 102–83 substituted ''section 3524 of title 38'' for ''section 1724 of title 38''.

SHORT TITLE OF 1986 AMENDMENT

Section 801 of title VIII of Pub. L. 99–399 provided that: ''This title [enacting this section, section 5570 of this title, sections 1051, 1095, and 2181 to 2185 of Title 10, Armed Forces, and 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 this section, 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 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.

### § 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

### § 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 an 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 deceased 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.<br>Apr. 30, 1954, ch. 177, § 2, 68 Stat. 65. |
| (2) ..... | 5 U.S.C. 61g. | Aug. 3, 1950, ch. 518, § 2, 64 Stat. 396.<br>July 2, 1953, ch. 178, § 5, 67 Stat. 138.<br>Sept. 1, 1954, ch. 1208, § 501, 68 Stat. 1115.<br>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 regulations promulgated—

(1) by the Director of the Office of Personnel Management or his designee, in the case of an employee of an executive agency;

(2) jointly by the President pro tempore of the Senate and the Speaker of the House of Representatives, or their designee, in the case of an employee of the legislative branch; and

(3) by the Chief Justice of the United States or his or her designee, in the case of an employee of the judicial branch.

(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; Pub. L. 104–316, title I, § 103(c), Oct. 19, 1996, 110 Stat. 3828.)

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.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–316 substituted ''An employee may change or revoke a designation at any time under regulations promulgated—'' for ''An employee may change or revoke a designation at any time under such regulations as the Comptroller General of the United States may prescribe.'' in introductory provisions and added pars. (1) to (3).

### § 5583. Payment of money due; settlement of accounts

(a) Under such regulations as the Director of the Office of Personnel Management 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) The Director may by regulation prescribe the method for settlement of accounts payable under subsection (a) of this section. 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; Pub. L. 104–316, title II, § 202(b), Oct. 19, 1996, 110 Stat. 3842.)

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.<br>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

1996—Subsec. (a). Pub. L. 104–316, § 202(b)(1), substituted ''Director of the Office of Personnel Management'' for ''Comptroller General of the United States''.

Subsec. (b). Pub. L. 104–316, § 202(b)(2), substituted ''The Director may by regulation prescribe the method for settlement of accounts payable under subsection (a) of this section.'' for ''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.''

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.

### § 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 authorized official;

(2) the head of the agency when—

(A) the claim is in an amount aggregating not more than $1,500; and

(B) the waiver is made in accordance with standards which the authorized official 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 authorized official 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;

(6) the Administrative Office of the United States Courts, the Federal Judicial Center, and any of the courts set forth in section 610 of title 28; and

(7) the Congressional Budget Office.

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

(g)[1] For the purpose of this section, the term ''authorized official'' means—

(1) the head of an agency, with respect to an agency or employee in the legislative branch; or

(2) the Director of the Office of Management and Budget, with respect to any other agency or employee.

(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; Pub. L. 104–316, title I, § 103(d), Oct. 19, 1996, 110 Stat. 3828; Pub. L. 109–55, title I, § 1100(a), Aug. 2, 2005, 119 Stat. 577.)

AMENDMENTS

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

1996—Subsec. (a). Pub. L. 104–316, § 103(d)(1), in par. (1) substituted ''authorized official'' for ''Comptroller General of the United States'', and in par. (2) inserted ''and'' at end of subpar. (A), redesignated subpar. (C) as (B) and substituted ''authorized official'' for ''Comptroller General'', and struck out former subpar. (B) which read as follows: ''the claim is not the subject of an exception made by the Comptroller General in the account of any accountable official; and''.

Subsec. (b). Pub. L. 104–316, § 103(d)(2), substituted ''authorized official'' for ''Comptroller General'' in introductory provisions.

Subsec. (g). Pub. L. 104–316, § 103(d)(3), added subsec. (g) defining ''authorized official''.

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 2005 AMENDMENT

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

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–316 effective 60 days after Oct. 19, 1996, see section 101(e)(2) of Pub. L. 104–316, set out as a note under section 130c of Title 2, The Congress.

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

[1] So in original. Probably should be ''(h)''.

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.

## 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.

### [§§ 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;

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

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

(2) ''employee'' means—

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

(B) an individual employed by a county committee established under section 590h(b) of title 16;

but does not include—

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

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

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

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

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

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

(vii) an employee of the Tennessee Valley Authority;

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

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

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

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

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

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

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

(c) Severance pay consists of—

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

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

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

(d) If an employee is reemployed by the Government of the United States or the government of the District of Columbia before the end of the period covered by payments of severance pay, the payments shall be discontinued beginning with the date of reemployment and the service represented by the unexpired portion of the period shall be recredited to the employee for use in any later computations of severance pay. For the purpose of subsection (b) (1) of this section, reemployment that causes severance pay to be discontinued is deemed employment continuous with that serving as the basis for severance pay.

(e) If the employee dies before the end of the period covered by payments of severance pay, the payments of severance pay with respect to the employee shall be continued as if the employee were living and shall be paid on a pay period basis to the survivor of the employee in accordance with section 5582(b) of this title.

(f) Severance pay under this section is not a basis for payment, and may not be included in the basis for computation, of any other type of United States or District of Columbia Government benefits. A period covered by severance pay is not a period of United States or District of Columbia Government service or employment.

(g) The Secretary of Agriculture shall prescribe regulations to effect the application and operation of this section to an individual named by subsection (a)(2)(B) of this section.

(h)(1) Severance pay under this section may not be paid 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 Homeland Security, shall prescribe regulations to carry out this subsection.

(6) In this subsection:

(A) The term ''defense nonappropriated fund instrumentality'' means a nonappropriated fund instrumentality of the Department of Defense.

(B) The term ''Coast Guard nonappropriated fund instrumentality'' means a nonappropriated fund instrumentality of the Coast Guard.

(C) The term ''nonappropriated fund instrumentality'' means a nonappropriated fund instrumentality described in section 2105(c) of this title.

(i)(1) In the case of an employee of the Department of Defense who is entitled to severance pay under this section, the Secretary of Defense or the Secretary of the military department concerned may, upon application by the employee, pay the total amount of the severance pay to the employee in one lump sum.

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

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

(C) Amounts repaid to an agency under this paragraph shall be credited to the appropriation available for the pay of employees of the agency

for the fiscal year in which received. Amounts so credited shall be merged with, and shall be available for the same purposes and the same period as, the other funds in that appropriation.

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

(4) This subsection applies with respect to severance pay payable under this section for separations taking effect on or after February 10, 1996, and before October 1, 2014.

(j)(1) In the case of an employee of the Department of Energy who is entitled to severance pay under this section as a result of the establishment of the National Nuclear Security Administration, the Secretary of Energy may, upon application by the employee, pay the total amount of the severance pay to the employee in one lump sum.

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

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

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

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

(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; Pub. L. 104–106, div. A, title X, § 1035, Feb. 10, 1996, 110 Stat. 430; Pub. L. 105–55, title III, § 310(a), Oct. 7, 1997, 111 Stat. 1199; Pub. L. 105–275, title III, §§ 308(a), 309(a), Oct. 21, 1998, 112 Stat. 2452, 2454; Pub. L. 106–31, title V, § 5006, May 21, 1999, 113 Stat. 112; Pub. L. 106–65, div. A, title XI, § 1104(a), div. C, title XXXII, § 3243, Oct. 5, 1999, 113 Stat. 777, 965; Pub. L. 107–314, div. A, title XI, § 1102(a), Dec. 2, 2002, 116 Stat. 2660; Pub. L. 109–163, div. A, title XI, § 1103, Jan. 6, 2006, 119 Stat. 3448; Pub. L. 109–241, title IX, § 902(a)(3), July 11, 2006, 120 Stat. 566; Pub. L. 110–417, [div. A], title XI, § 1104, Oct. 14, 2008, 122 Stat. 4617.)

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.<br>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

2008—Subsec. (i)(4). Pub. L. 110–417 substituted ''2014'' for ''2010''.

2006—Subsec. (h)(5). Pub. L. 109–241 substituted ''Secretary of Homeland Security'' for ''Secretary of Transportation''.

Subsec. (i)(4). Pub. L. 109–163 substituted ''2010'' for ''2006''.

2002—Subsec. (i)(4). Pub. L. 107–314 substituted ''2006'' for ''2003''.

1999—Subsec. (b). Pub. L. 106–31 substituted ''(a)(1)(C)'' for ''(a)(1)(G)'' in last sentence.

Subsec. (i)(4). Pub. L. 106–65, § 1104(a), substituted ''February 10, 1996, and before October 1, 2003'' for ''the date of the enactment of the National Defense Authorization Act for Fiscal Year 1996 and before October 1, 1999''.

Subsec. (j). Pub. L. 106–65, § 3243, added subsec. (j).

1998—Subsec. (a)(1)(F). Pub. L. 105–275, § 308(a)(1), struck out '', but only with respect to the United States Senate Restaurants'' after ''Capitol''.

Subsec. (a)(2)(viii). Pub. L. 105–275, §§ 308(a)(2), 309(a)(1)(A), struck out ''of the United States Senate Restaurants'' after ''an employee'' and ''or'' after the semicolon.

Subsec. (a)(2)(ix), (x). Pub. L. 105–275, § 309(a)(1)(B), added cl. (ix) and redesignated former cl. (ix) as (x).

Subsec. (b). Pub. L. 105–275, § 309(a)(2), inserted at end ''The Public Printer may prescribe regulations to effect the application and operation of this section to the agency specified in subsection (a)(1)(G) of this section.''

1997—Subsec. (a)(1)(F). Pub. L. 105–55, § 310(a)(1), added subpar. (F).

Subsec. (a)(2)(viii), (ix). Pub. L. 105–55, § 310(a)(2), added cl. (viii) and redesignated former cl. (viii) as (ix).

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

1996—Subsec. (i). Pub. L. 104–106 added subsec. (i).

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 1999 AMENDMENT

Amendment by section 3243 of Pub. L. 106–65 effective Mar. 1, 2000, see section 3299 of Pub. L. 106–65, set out as an Effective Date note under section 2401 of Title 50, War and National Defense.

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.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

REPORT

Pub. L. 107–314, div. A, title XI, § 1102(b), Dec. 2, 2002, 116 Stat. 2660, required the President, not later than one year after Dec. 2, 2002, to submit to Committees of Congress a report on whether the authority under section 5595(i) of this title should be made permanent or expanded to be made Governmentwide.

## § 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;

(5) the government of the District of Columbia;

(6) the Architect of the Capitol, including employees of the United States Senate Restaurants; and

(7) the United States Botanic Garden.

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

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

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

(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; Pub. L. 105–261, div. A, title XI, § 1104(a), Oct. 17, 1998, 112 Stat. 2141; Pub. L. 107–68, title III, § 309, Nov. 12, 2001, 115 Stat. 592.)

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)(5), are classified to sections 4131, 4102, and 4115, respectively, of Title 22, Foreign Relations and Intercourse.

AMENDMENTS

2001—Subsec. (a)(6), (7). Pub. L. 107–68 added pars. (6) and (7).

1998—Subsec. (b)(4), (5). Pub. L. 105–261 added par. (4) and redesignated former par. (4) as (5).

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 2001 AMENDMENT

Pub. L. 107–68, title III, § 309, Nov. 12, 2001, 115 Stat. 592, provided that the amendment made by section 309 is effective for all personnel actions taken on or after Nov. 12, 2001.

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 authorized for the employee by law or regulation, is subject to credit and liquidation by lump-sum payment only if a claim therefor is filed with the Postal Service within three years immediately following the date of 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.''

### § 5597. Separation pay

(a) For the purpose of this section—

(1) the term ''Secretary'' means the Secretary of Defense;

(2) the term ''defense agency'' means an agency of the Department of Defense, as further defined under regulations prescribed by the Secretary; and

(3) the term ''employee'' means an employee of a defense agency, serving under an appointment without time limitation, who has been currently employed for a continuous period of at least 12 months, except that such term does not include—

(A) a reemployed annuitant under subchapter III of chapter 83, chapter 84, or another retirement system for employees of the Government; or

(B) an employee having a disability on the basis of which such employee is or would be eligible for disability retirement under any of the retirement systems referred to in subparagraph (A).

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

(c) Under the program, separation pay may be offered by a defense agency only—

(1) with the prior consent, or on the authority, of the Secretary; and

(2) to employees within such occupational groups or geographic locations, or subject to such other similar objective and nonpersonal limitations or conditions, as the Secretary may require.

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

(d) Such separation pay—

(1) shall be paid in a lump-sum or in installments;

(2) shall be equal to the lesser of—

(A) an amount equal to the amount the employee would be entitled to receive under section 5595(c) if the employee were entitled to payment under such section; or

(B) $25,000;

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

(4) shall not be taken into account for purposes of determining the amount of any severance pay to which an individual may be entitled under section 5595 based on any other separation; and

(5) if paid in installments, shall cease to be paid upon the recipient's acceptance of employment by the Federal Government, or commencement of work under a personal services contract, as described in subsection (g)(1).

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

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

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

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

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

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

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

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

(B) If the employee is one with respect to whom a remittance would otherwise be required

under section 4(a) of the Federal Workforce Restructuring Act of 1994 based on the separation involved, the remittance under this subsection shall be instead of the remittance otherwise required under such section 4(a).

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

(3) For the purposes of this subsection—

(A) the term ''covered employee'' means an employee who is subject to subchapter III of chapter 83 or chapter 84 and to whom a voluntary separation incentive has been paid under this section on the basis of a separation occurring on or after October 1, 1997; and

(B) the term ''final basic pay'' has the meaning given such term in section 4(a)(2) of the Federal Workforce Restructuring Act of 1994.

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

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

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

(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; Pub. L. 104–201, div. A, title XVI, § 1612(a), Sept. 23, 1996, 110 Stat. 2739; Pub. L. 105–85, div. A, title XI, § 1106(a), (b)(1), Nov. 18, 1997, 111 Stat. 1923, 1924; Pub. L. 106–65, div. A, title XI, § 1104(b), Oct. 5, 1999, 113 Stat. 777; Pub. L. 106–398, § 1 [[div. A], title XI, §§ 1151, 1153(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–319, 1654A–323.)

REFERENCES IN TEXT

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

Section 4(a) of the Federal Workforce Restructuring Act of 1994, referred to in subsec. (h)(1)(B), (3)(B), is section 4(a) of Pub. L. 103–226, as amended, which is set out as a note under section 8331 of this title.

AMENDMENTS

2000—Subsec. (b). Pub. L. 106–398, § 1 [[div. A], title XI, § 1151(a)], inserted ''workforce restructuring (to meet mission needs, achieve one or more strength reductions, correct skill imbalances, or reduce the number of high-grade, managerial, or supervisory positions),'' after ''transfer of function,''.

Subsec. (c). Pub. L. 106–398, § 1 [[div. A], title XI, § 1151(b)(2)], inserted concluding provisions.

Subsec. (c)(2). Pub. L. 106–398, § 1 [[div. A], title XI, § 1151(b)(1)], inserted ''objective and nonpersonal'' after ''similar''.

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

Subsec. (d)(5). Pub. L. 106–398, § 1 [[div. A], title XI, § 1151(c)(2)–(4)], added par. (5).

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

Subsec. (i). Pub. L. 106–398, § 1 [[div. A], title XI, § 1153(a)], added subsec. (i).

1999—Subsec. (e). Pub. L. 106–65 substituted ''September 30, 2003'' for ''September 30, 2001''.

1997—Subsec. (e). Pub. L. 105–85, § 1106(b)(1), substituted ''September 30, 2001'' for ''September 30, 1999''.

Subsec. (h). Pub. L. 105–85, § 1106(a), added subsec. (h).

1996—Subsec. (g)(5). Pub. L. 104–201 added par. (5).

1994—Subsec. (e). Pub. L. 103–337 substituted ''September 30, 1999'' for ''September 30, 1997''.

Subsec. (g). Pub. L. 103–226 added subsec. (g).

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1612(b) of Pub. L. 104–201 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to employment accepted on or after the date of the enactment of this Act [Sept. 23, 1996].''

LIMITATIONS FOR FISCAL YEARS 2002 AND 2003 ON VSIP AND VERA

Pub. L. 106–398, § 1 [[div. A], title XI, § 1153(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–323, as amended by Pub. L. 107–107, div. A, title XI, § 1133(a), Dec. 28, 2001, 115 Stat. 1244, provided that:

''The Secretary of Defense shall ensure that, in fiscal year 2002 not more than 2000 employees of the Department of Defense are, and in fiscal year 2003 not more than 6000 employees of the Department of Defense are, as a result of workforce restructuring, separated from service entitled to one or more of the following benefits:

''(1) Voluntary separation incentive pay under section 5597 of title 5, United States Code.

''(2) Immediate annuity under section 8336(*o*) or 8414(d) of such title.''

[Pub. L. 107–107, div. A, title XI, § 1133(b), Dec. 28, 2001, 115 Stat. 1244, provided that: ''The amendments made by subsection (a) [amending Pub. L. 106–398, § 1 [[div. A], title XI, § 1153(b)], set out above] may be superceded by another provision of law that takes effect after the date of the enactment of this Act [Dec. 28, 2001], and before October 1, 2003, establishing a uniform system of providing voluntary separation incentives (including a system for requiring approval of plans by the Office of Management and Budget) for employees of the Federal Government.'']

VOLUNTARY SEPARATION INCENTIVES

Pub. L. 106–303, § 2, Oct. 13, 2000, 114 Stat. 1064, as amended by Pub. L. 108–271, §§ 2(a), (b)(2), (c), 8(b), July 7, 2004, 118 Stat. 811, 814, provided that:

''(a) IN GENERAL.—Effective October 13, 2000, the authority to provide voluntary separation incentive payments shall be available to the Comptroller General with respect to employees of the Government Accountability Office.

''(b) TERMS AND CONDITIONS.—The authority to provide voluntary separation incentive payments under this section shall be available in accordance with the provisions of subsections (a)(2)–(e) of section 663 of the Treasury, Postal Service, and General Government Appropriations Act, 1997, as contained in Public Law 104–208 (5 U.S.C. 5597 note), except that—

''(1) subsection (a)(2)(D) of such section shall be disregarded;

''(2) subsection (a)(2)(G) of such section shall be applied—

''(A) by construing the citations therein to be references to the appropriate authorities in connec-

tion with employees of the Government Accountability Office; and

''(B) by deeming such subsection to be amended by striking 'Code.' and inserting 'Code, or who, during the thirty-six month period preceding the date of separation, performed service for which a student loan repayment benefit was or is to be paid under section 5379 of title 5, United States Code.'

''(3) subsection (b)(1) of such section shall be applied by substituting 'Committee on Government Reform' [now Committee on Oversight and Government Reform] for 'Committee on Government Reform and Oversight';

''(4) (A) subsection (b)(2)(A) of such section shall be applied by substituting 'eliminated (if any)' for 'eliminated';

''(B) subsection (b)(2)(C) of such section shall be applied by substituting 'such positions or functions as are to be eliminated and such employees as are to be separated' for 'the eliminated positions and functions'; and

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

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

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

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

''(c) ADDITIONAL CONTRIBUTION TO RETIREMENT FUND.—

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

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

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

''(I) The amount equal to 19 percent of the final basic pay of each employee described in paragraph (2) who takes early retirement under section 8336(d) of title 5, United States Code.

''(II) The amount equal to 58 percent of the final basic pay of each employee described in paragraph (2) who retires on an immediate annuity under section 8336 of such title 5 (not including any employee covered by subclause (I)).

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

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

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

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

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

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

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

''(3) REGULATIONS.—

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

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

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

''(d) DEFINITIONS.—

''(1) FINAL BASIC PAY.—As used in this section, the term 'final basic pay' has the same meaning as under section 663(d)(2) of the Treasury, Postal Service, and General Government Appropriations Act, 1997, as contained in Public Law 104–208 (5 U.S.C. 5597 note).

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

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

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

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

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

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

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

Pub. L. 106–117, title XI, Nov. 30, 1999, 113 Stat. 1595, as amended by Pub. L. 106–419, title II, § 207, Nov. 1, 2000, 114 Stat. 1842, known as the ''Department of Veterans Affairs Employment Reduction Assistance Act of 1999'', authorized the Secretary of Veterans Affairs to submit a plan to the Director of the Office of Management and Budget for the payment of voluntary separation incentive payments, and upon approval thereof to pay voluntary separation incentive payments to eligible employees of the Department of Veterans Affairs only to the extent necessary to reduce or restructure the positions and functions identified by the plan, pro-

vided that the employees separate from service with the Department through Dec. 31, 2002, whether by retirement or resignation, defined ''employee'' for separation incentive purposes, and provided for additional contributions to the Retirement Fund, effect of subsequent employment with the Federal Government, and effect on agency employment levels.

Pub. L. 106–113, div. B, § 1000(a)(2) [title V, § 579], Nov. 29, 1999, 113 Stat. 1535, 1501A–113, as amended by Pub. L. 106–429, § 101(a) [title V, § 584], Nov. 6, 2000, 114 Stat. 1900, 1900A–56; Pub. L. 107–115, title V, § 575, Jan. 10, 2002, 115 Stat. 2168; Pub. L. 108–7, div. E, title V, § 571, Feb. 20, 2003, 117 Stat. 208, authorized voluntary separation incentives for employees of the United States Agency for International Development who voluntarily separated (whether by retirement or resignation) on or before Jan. 1, 2003, and defined pertinent terms, provided for the development of an agency strategic plan and the approval of such plan by the Director of the Office of Management and Budget, required additional agency contributions to the Retirement Fund, specified the effect of subsequent employment with the Federal Government, mandated a reduction of agency employment levels, and authorized the Office of Personnel Management to prescribe regulations to implement these provisions.

Pub. L. 106–58, title I, § 116, Sept. 29, 1999, 113 Stat. 439, authorized the Treasury Inspector General for Tax Administration, during the period from Oct. 1, 1999 through Jan. 1, 2003, to offer voluntary separation incentives in order to provide the necessary flexibility to carry out the plan to establish and reorganize the Office of the Treasury Inspector General for Tax Administration, defined ''employee'' for separation incentive purposes, and provided for authority to provide separation incentive payments, additional contributions to the Retirement Fund, effect of subsequent employment with the Federal Government, and effect on agency employment levels.

Pub. L. 106–58, title I, § 119, Sept. 29, 1999, 113 Stat. 441, authorized the Commissioner of the Financial Management Services of the Department of the Treasury, during the period from Oct. 1, 1999 through Jan. 31, 2000, to offer voluntary separation incentives in order to provide the necessary flexibility to carry out the closure of the Chicago Financial Center (CFC) in a manner which the Commissioner deemed most efficient, equitable to employees, and cost effective to the Government, defined ''employee'' for separation incentive purposes, and provided for an agency plan, authority to provide separation incentive payments, eligibility requirements, effect on subsequent employment with the Federal Government, contributions to the Retirement Fund, and reduction of agency employment levels.

Pub. L. 106–58, title IV, § 411, Sept. 29, 1999, 113 Stat. 456, as amended by Pub. L. 106–554, § 1(a)(3) [title IV, § 408], Dec. 21, 2000, 114 Stat. 2763, 2763A–146, authorized the Administrator of General Services, during the period Oct. 1, 1999 through Apr. 30, 2002, to offer a voluntary separation incentive in order to provide the necessary flexibility to carry out the closing of the Federal Supply Service distribution centers, forward supply points, and associated programs in a manner which the Administrator deemed most efficient, equitable to all employees, and cost effective for the Government, defined ''employee'' for separation incentive purposes, and provided for agency strategic plan, authority to provide incentive payments, eligibility requirements, effect of subsequent employment with the Federal Government, contributions to the Retirement Fund, and reduction of agency employment levels.

Pub. L. 105–206, title I, § 1202, July 22, 1998, 112 Stat. 719, authorized Commissioner of Internal Revenue to pay voluntary separation incentive payments to any qualifying employee of the Internal Revenue Service who voluntarily separated (whether by retirement or resignation) before Jan. 1, 2003, provided for pertinent definitions, additional Internal Revenue Service contributions to the Retirement Fund, effect of subsequent employment with the Government, and effect on Internal Revenue Service employment levels.

Pub. L. 104–208, div. A, title I, § 101(e) [title V, § 520], Sept. 30, 1996, 110 Stat. 3009–233, 3009–272, as amended by Pub. L. 105–78, title V, § 517, Nov. 13, 1997, 111 Stat. 1519; Pub. L. 106–113, div. B, § 1000(a)(4) [title V, § 515], Nov. 29, 1999, 113 Stat. 1535, 1501A–276, authorized Railroad Retirement Board and Office of Inspector General of Railroad Retirement Board to provide voluntary separation incentive payments to any qualifying employee who voluntarily separated (whether by retirement or resignation) before Mar. 31, 2000, directed the Railroad Retirement Board, prior to obligating any resources for voluntary separation incentive payments, to submit to Congress a strategic plan outlining intended use of such incentive payments and a proposed organizational chart for agency once such incentive payments have been completed, and further provided for pertinent definitions, additional contributions to the Retirement Fund, effect of subsequent employment with the Government, reduction of agency employment levels, and that program would take effect Oct. 1, 1996.

Pub. L. 106–65, div. C, title XXXI, § 3161, Oct. 5, 1999, 113 Stat. 942, as amended by Pub. L. 107–107, div. C, title XXXI, § 3153(a), Dec. 28, 2001, 115 Stat. 1377, provided that notwithstanding section 101(f) [title VI, § 663(c)(2)(D)] of Public Law 104–208, set out below, Department of Energy could pay voluntary separation incentive payments under such section 663 to qualifying employees who voluntarily separated (whether by retirement or resignation) before Jan. 1, 2004, and that not later than Mar. 15, 2000, Secretary of Energy was to submit to Director of Office of Personnel Management and Congress a report describing how the Department has paid voluntary separation payments under such section 663.

[Pub. L. 107–107, div. C, title XXXI, § 3153(b), Dec. 28, 2001, 115 Stat. 1377, provided that: ''The amendment made by subsection (a) [amending section 3161 of Pub. L. 106–65, set out above] may be superseded by another provision of law that takes effect after the date of the enactment of this Act [Dec. 28, 2001], and before January 1, 2004, establishing a uniform system for providing voluntary separation incentives (including a system for requiring approval of plans by the Office of Management and Budget) for employees of the Federal Government.'']

Pub. L. 105–261, div. C, title XXXI, § 3156, Oct. 17, 1998, 112 Stat. 2257, provided that notwithstanding section 101(f) [title VI, § 663(c)(2)(D)] of Public Law 104–208, set out below, Department of Energy could pay voluntary separation incentive payments to qualifying employees who voluntarily separated (whether by retirement or resignation) before Jan. 1, 2001.

Pub. L. 104–208, div. A, title I, § 101(f) [title VI, § 663], Sept. 30, 1996, 110 Stat. 3009–314, 3009–383, provided that:

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

''(1) the term 'agency' means any Executive agency (as defined in section 105 of title 5, United States Code), other than an Executive agency (except an agency receiving such authority in the Department of Transportation Appropriations Act, 1997 [probably means the Department of Transportation and Related Agencies Appropriations Act, 1997, Pub. L. 104–205, see Tables for classification]) that is authorized by any other provision of this Act or any other Act to provide voluntary separation incentive payments during all, or any part of, fiscal year 1997; 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 3 years, 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 agency;

''(B) an employee having a disability on the basis of which such employee is or would be eligible for disability retirement under subchapter III of chapter 83 or chapter 84 of title 5, United States Code,

or another retirement system for employees of the agency;

''(C) an employee who is in receipt of a specific notice of involuntary separation for misconduct or unacceptable performance;

''(D) an employee who, upon completing an additional period of service as referred to in section 3(b)(2)(B)(ii) of the Federal Workforce Restructuring Act of 1994 ([Pub. L. 103–226] 5 U.S.C. 5597 note), would qualify for a voluntary separation incentive payment under section 3 of such Act;

''(E) an employee who has previously received any voluntary separation incentive payment by the Federal Government under this section or any other authority and has not repaid such payment;

''(F) an employee covered by statutory reemployment rights who is on transfer to another organization; or

''(G) any employee who, during the twenty four month period preceding the date of separation, has received a recruitment or relocation bonus under section 5753 of title 5, United States Code, or who, within the twelve month period preceding the date of separation, received a retention allowance under section 5754 of title 5, United States Code.

''(b) AGENCY STRATEGIC PLAN.—

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

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

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

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

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

''(c) AUTHORITY TO PROVIDE VOLUNTARY SEPARATION INCENTIVE PAYMENTS.—

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

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

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

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

''(C) shall be equal to the lesser of—

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

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

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

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

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

''(d) ADDITIONAL AGENCY CONTRIBUTIONS TO THE RETIREMENT FUND.—

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

''(2) DEFINITION.—For the purpose of paragraph (I), 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.

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

''(f) REDUCTION OF AGENCY EMPLOYMENT LEVELS.—

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

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

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

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

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

els, and required an annual report on the program to be submitted to the Office of Personnel Management.

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

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

Pub. L. 104–134, title I, §101(c) [title III, §339], Apr. 26, 1996, 110 Stat. 1321–156, 1321–210; renumbered title I, Pub. L. 104–140, §1(a), May 2, 1996, 110 Stat. 1327, provided that, in order to avoid or minimize need for involuntary separations due to reduction in force, reorganization, transfer of function, or other similar action, Secretary of the Smithsonian Institution could pay, or authorize payment of, voluntary separation incentive payments to Smithsonian Institution employees who separated from Federal service voluntarily through Oct. 1, 1996 (whether by retirement or resignation).

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

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

MONITORING AND REPORT RELATING TO VOLUNTARY SEPARATION INCENTIVE PAYMENTS

Section 6 of Pub. L. 103–226 provided that: ''No later than December 31st of each fiscal year, the Office of Personnel Management shall submit to the Committee on Governmental Affairs [now Committee on Homeland Security and 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 section 403x 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 by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995. References to Committee on Post Office and Civil Service treated as referring to Committee on Government Reform and Oversight, see section 1(b) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Government Reform and Oversight of House of Representatives changed to Committee on Government Reform of House of Representatives by House Resolution No. 5, One Hundred Sixth Congress, Jan. 6, 1999. Committee on Government Reform of House of Representatives changed to Committee on Oversight and Government Reform of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007.]

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].''

## CHAPTER 57—TRAVEL, TRANSPORTATION, AND SUBSISTENCE

### SUBCHAPTER I—TRAVEL AND SUBSISTENCE EXPENSES; MILEAGE ALLOWANCES

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[1] So in original. Two sections 5757 have been enacted.

AMENDMENTS

2010—Pub. L. 111–292, § 3(b), Dec. 9, 2010, 124 Stat. 3173, added item 5711.

Pub. L. 111–178, § 2(c), June 9, 2010, 124 Stat. 1263, added item 5724d.

2009—Pub. L. 111–117, div. B, title II, § 219(b), Dec. 16, 2009, 123 Stat. 3142, added item 5761.

2008—Pub. L. 110–181, div. A, title XI, § 1104(b), Jan. 28, 2008, 122 Stat. 347, added item 5737a.

2006—Pub. L. 109–163, div. A, title XI, § 1121(b), Jan. 6, 2006, 119 Stat. 3452, added item 5760.

2004—Pub. L. 108–447, div. B, title I, § 113(b), Dec. 8, 2004, 118 Stat. 2869, added item 5759.

Pub. L. 108–411, title I, § 101(a)(2), Oct. 30, 2004, 118 Stat. 2309, substituted ''Retention bonuses'' for ''Retention allowances'' in item 5754.

2002—Pub. L. 107–273, div. A, title II, § 207(a)(2), Nov. 2, 2002, 116 Stat. 1780, added item 5757 ''Extended assignment incentive''.

2001—Pub. L. 107–107, div. A, title XI, § 1112(b), Dec. 28, 2001, 115 Stat. 1239, added item 5757 ''Payment of expenses to obtain professional credentials''.

1998—Pub. L. 105–264, §§ 4(b), 5(c), Oct. 19, 1998, 112 Stat. 2354, 2355, added items 5706c, 5710, and 5739.

1996—Pub. L. 104–201, div. A, title XVI, § 1605(a)(2), title XVII, § 1723(c), Sept. 23, 1996, 110 Stat. 2736, 2759, added items 5736 to 5738 and 5756.

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.

## SUBCHAPTER I—TRAVEL AND SUBSISTENCE EXPENSES; MILEAGE ALLOWANCES

### § 5701. Definitions

Except as otherwise provided in section 5707(d),[1] 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;

[1] See References in Text note below.

(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.

REFERENCES IN TEXT

Section 5707(d) of this title, referred to in text, was repealed by Pub. L. 104–201, div. A, title XVI, § 1614(a)(1), Sept. 23, 1996, 110 Stat. 2739.

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 this section and sections 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 this section, sections 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 1998 AMENDMENT

Pub. L. 105–264, § 1, Oct. 19, 1998, 112 Stat. 2350, provided that: ''This Act [enacting sections 5706c, 5710, and 5739 of this title, amending sections 5721 to 5724, 5724a, 5725, 5727 to 5729, 5731, and 5732 of this title, section 3413 of Title 12, Banks and Banking, and sections 3322, 3528, and 3726 of Title 31, Money and Finance, and enacting provisions set out as notes under this section, section 5706c of this title, and section 3322 of Title 31] may be cited as the 'Travel and Transportation Reform Act of 1998'.''

SHORT TITLE OF 1996 AMENDMENT

Pub. L. 104–201, div. A, title XVII, § 1701, Sept. 23, 1996, 110 Stat. 2752, provided that: ''This title [enacting sections 5737, 5738, and 5756 of this title, amending sections 3375, 5722 to 5724c, 5726 to 5729, and 5731 of this title, section 1348 of Title 31, Money and Finance, section 707 of Title 38, Veterans' Benefits, and sections 290aa and 299c–4 of Title 42, The Public Health and Welfare, and enacting provisions set out as notes under section 5722 of this title] may be cited as the 'Federal Employee Travel Reform Act of 1996'.''

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 this section, sections 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 this section, sections 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'.''

eTRAVEL SERVICE

Pub. L. 108–447, div. G, title II, § 209, Dec. 8, 2004, 118 Stat. 3193, provided that: ''Notwithstanding any other provision of law, no entity within the legislative branch shall be required to use the eTravel Service established by the Administrator of General Services for official travel by officers or employees of the entity during fiscal year 2005 or any succeeding fiscal year.''

CREDITWORTHINESS OF INDIVIDUALS TO BE ISSUED GOVERNMENT CHARGE CARDS

Pub. L. 111–117, div. C, title VII, § 738, Dec. 16, 2009, 123 Stat. 3214, provided that: ''Each executive department and agency shall evaluate the creditworthiness of an individual before issuing the individual a government travel charge card. Such evaluations for individually billed travel charge cards shall include an assessment of the individual's consumer report from a consumer reporting agency as those terms are defined in section 603 of the Fair Credit Reporting Act (Public Law 91–508 [Pub. L. 90–321]) [15 U.S.C. 1681a]: *Provided*, That the department or agency may not issue a government travel charge card to an individual that either lacks a credit history or is found to have an unsatisfactory credit history as a result of this evaluation: *Provided further*, That this restriction shall not preclude issuance of a restricted-use charge, debit, or stored value card made in accordance with agency procedures to: (1) an individual with an unsatisfactory credit history where such card is used to pay travel expenses and the agency determines there is no suitable alternative payment mechanism available before issuing the card; or (2) an individual who lacks a credit history. Each executive department and agency shall establish guidelines and procedures for disciplinary actions to be taken against agency personnel for improper, fraudulent, or abusive use of government charge cards, which shall include appropriate disciplinary actions for use of charge cards for purposes, and at establishments, that are inconsistent with the official business of the Department or agency or with applicable standards of conduct.''

Similar provisions were contained in the following prior appropriations acts:

Pub. L. 111–8, div. D, title VII, § 741, Mar. 11, 2009, 123 Stat. 691.

Pub. L. 110–161, div. D, title VII, § 743, Dec. 26, 2007, 121 Stat. 2032.

Pub. L. 109–115, div. A, title VIII, § 846, Nov. 30, 2005, 119 Stat. 2507.

Pub. L. 108–447, div. H, title VI, § 639, Dec. 8, 2004, 118 Stat. 3281.

Pub. L. 108–199, div. F, title VI, § 638, Jan. 23, 2004, 118 Stat. 358.

REQUIRING USE OF TRAVEL CHARGE CARD

Pub. L. 105–264, § 2, Oct. 19, 1998, 112 Stat. 2350, provided that:

''(a) IN GENERAL.—Under regulations issued by the Administrator of General Services after consultation with the Secretary of the Treasury, the Administrator shall require that Federal employees use the travel charge card established pursuant to the United States Travel and Transportation Payment and Expense Control System, or any Federal contractor-issued travel charge card, for all payments of expenses of official Government travel. The Administrator shall exempt any payment, person, type or class of payments, or type or class of personnel from any requirement established under the preceding sentence in any case in which—

''(1) it is in the best interest of the United States to do so;

''(2) payment through a travel charge card is impractical or imposes unreasonable burdens or costs on Federal employees or Federal agencies; or

''(3) the Secretary of Defense or the Secretary of Transportation (with respect to the Coast Guard) requests an exemption with respect to the members of the uniformed services.

''(b) AGENCY EXEMPTION.—The head of a Federal agency or the designee of such head may exempt any payment, person, type or class of payments, or type or class of agency personnel from subsection (a) if the agency head or the designee determines the exemption to be necessary in the interest of the agency. Not later than 30 days after granting such an exemption, the head of such agency or the designee shall notify the Administrator of General Services in writing of such exemption stating the reasons for the exemption.

''(c) LIMITATION ON RESTRICTION ON DISCLOSURE.—

''(1) IN GENERAL.—[Amended section 3413 of Title 12, Banks and Banking.]

''(2) EFFECTIVE DATE.—The amendment made by paragraph (1) is effective as of October 1, 1983, and applies to any records created pursuant to the United States Travel and Transportation Payment and Expense Control System or any Federal contractor-issued travel charge card issued for official Government travel.

''(d) COLLECTION OF AMOUNTS OWED.—

''(1) IN GENERAL.—Under regulations issued by the Administrator of General Services and upon written request of a Federal contractor, the head of any Federal agency or a disbursing official of the United States may, on behalf of the contractor, collect by deduction from the amount of pay owed to an employee of the agency any amount of funds the employee owes to the contractor as a result of delinquencies not disputed by the employee on a travel charge card issued for payment of expenses incurred in connection with official Government travel. The amount deducted from the pay owed to an employee with respect to a pay period may not exceed 15 percent of the disposable pay of the employee for that pay period, except that a greater percentage may be deducted upon the written consent of the employee.

''(2) DUE PROCESS PROTECTIONS.—Collection under this subsection shall be carried out in accordance with procedures substantially equivalent to the procedures required under section 3716(a) of title 31, United States Code.

''(3) DEFINITIONS.—For the purpose of this subsection:

''(A) AGENCY.—The term 'agency' has the meaning that term has under section 101 of title 31, United States Code.

''(B) EMPLOYEE.—The term 'employee' means an individual employed in or under an agency, including a member of any of the uniformed services. For purposes of this subsection, a member of one of the uniformed services is an employee of that uniformed service.

''(C) MEMBER; UNIFORMED SERVICE.—Each of the terms 'member' and 'uniformed service' has the meaning that term has in section 101 of title 37, United States Code.

''(e) REGULATIONS.—Within 270 days after the date of the enactment of this Act [Oct. 19, 1998], the Administrator of General Services shall promulgate regulations implementing this section, that—

''(1) make the use of the travel charge card established pursuant to the United States Travel and Transportation System and Expense Control System, or any Federal contractor-issued travel charge card, mandatory for all payments of expenses of official Government travel pursuant to this section;

''(2) specify the procedures for effecting under subsection (d) a deduction from pay owed to an employee, and ensure that the due process protections provided to employees under such procedures are no less than the protections provided to employees pursuant to section 3716 of title 31, United States Code;

''(3) provide that any deduction under subsection (d) from pay owed to an employee may occur only after reimbursement of the employee for the expenses

of Government travel with respect to which the deduction is made; and

''(4) require agencies to promptly reimburse employees for expenses charged on a travel charge card pursuant to this section, and by no later than 30 days after the submission of a claim for reimbursement.

''(f) REPORTS.—

''(1) IN GENERAL.—The Administrator of General Services shall submit 2 reports to the Congress on agency compliance with this section and regulations that have been issued under this section.

''(2) TIMING.—The first report under this subsection shall be submitted before the end of the 180-day period beginning on the date of the enactment of this Act [Oct. 19, 1998], and the second report shall be submitted after that period and before the end of the 540-day period beginning on that date of enactment.

''(3) PREPARATION.—Each report shall be based on a sampling survey of agencies that expended more than $5,000,000 during the previous fiscal year on travel and transportation payments, including payments for employee relocation. The head of an agency shall provide to the Administrator the necessary information in a format prescribed by the Administrator and approved by the Director of the Office of Management and Budget.

''(g) REIMBURSEMENT OF TRAVEL EXPENSES.—In accordance with regulations prescribed by the Administrator of General Services, the head of an agency shall ensure that the agency reimburses an employee who submits a proper voucher for allowable travel expenses in accordance with applicable travel regulations within 30 days after submission of the voucher. If an agency fails to reimburse an employee who has submitted a proper voucher within 30 days after submission of the voucher, the agency shall pay the employee a late payment fee as prescribed by the Administrator.''

[For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.]

## § 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 sub-

section (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.<br>Apr. 26, 1950, ch. 108, 64 Stat. 89.<br>July 28, 1955, ch. 424, § 1, 69 Stat. 393.<br>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.

RETENTION OF TRAVEL PROMOTIONAL ITEMS

Pub. L. 107–107, div. A, title XI, § 1116, Dec. 28, 2001, 115 Stat. 1241, provided that:

''(a) DEFINITION.—In this section, the term 'agency' has the meaning given that term under section 5701 of title 5, United States Code.

''(b) RETENTION OF TRAVEL PROMOTIONAL ITEMS.—To the extent provided under subsection (c), a Federal employee, member of the Foreign Service, member of a uniformed service, any family member or dependent of such an employee or member, or other individual who receives a promotional item (including frequent flyer miles, upgrade, or access to carrier clubs or facilities) as a result of using travel or transportation services obtained at Federal Government expense or accepted under section 1353 of title 31, United States Code, may retain the promotional item for personal use if the promotional item is obtained under the same terms as those offered to the general public and at no additional cost to the Federal Government.

''(c) LIMITATION.—Subsection (b)—

''(1) applies only to travel that—

''(A) is at the expense of an agency; or

''(B) is accepted by an agency under section 1353 of title 31, United States Code; and

''(2) does not apply to travel by any officer, employee, or other official of the Government who is not in or under any agency.

''(d) REGULATORY AUTHORITY.—Any agency with authority to prescribe regulations governing the acquisition, acceptance, use, or disposal of any travel or transportation services obtained at Government expense or accepted under section 1353 of title 31, United States Code, may prescribe regulations to carry out subsection (b) with respect to those travel or transportation services.

''(e) REPEAL OF SUPERSEDED LAW.—[Repealed section 6008 of Pub. L. 103–355, formerly set out as a note below.]

''(f) APPLICABILITY.—This section shall apply with respect to promotional items received before, on, or after the date of enactment of this Act [Dec. 28, 2001].''

COST SAVINGS FOR OFFICIAL TRAVEL

Pub. L. 103–355, title VI, § 6008, Oct. 13, 1994, 108 Stat. 3367, related to maximizing practicable cost savings for official travel through use of frequent traveler programs, prior to repeal by Pub. L. 107–107, div. A, title XI, § 1116(e), Dec. 28, 2001, 115 Stat. 1241.

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 applicability 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.

## § 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.<br>July 28, 1955, ch. 424, § 2, 69 Stat. 394.<br>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.

## § 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.<br>July 28, 1955, ch. 424, § 4, 69 Stat. 394.<br>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 employee 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 tie-down fee.

## § 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.

## § 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.

## § 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.

## § 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.

### § 5706c. Reimbursement for taxes incurred on money received for travel expenses

(a) Under regulations prescribed pursuant to section 5707 of this title, the head of an agency or department, or his or her designee, may use appropriations or other funds available to the agency for administrative expenses, for the reimbursement of Federal, State, and local income taxes incurred by an employee of the agency or by an employee and such employee's spouse (if filing jointly), for any travel or transportation reimbursement made to an employee for which reimbursement or an allowance is provided.

(b) Reimbursements under this section shall include an amount equal to all income taxes for which the employee and spouse, as the case may be, would be liable due to the reimbursement for the taxes referred to in subsection (a). In addition, reimbursements under this section shall include penalties and interest, for the tax years 1993 and 1994 only, as a result of agencies failing to withhold the appropriate amounts for tax liabilities of employees affected by the change in the deductibility of travel expenses made by Public Law 102–486.

(Added Pub. L. 105–264, § 4(a), Oct. 19, 1998, 112 Stat. 2354.)

REFERENCES IN TEXT

Public Law 102–486, referred to in subsec. (b), is Pub. L. 102–486, Oct. 24, 1992, 106 Stat. 2776, known as the Energy Policy Act of 1992. For complete classification of this Act to the Code, see Short Title note set out under section 13201 of Title 42, The Public Health and Welfare, and Tables.

EFFECTIVE DATE

Pub. L. 105–264, § 4(c), Oct. 19, 1998, 112 Stat. 2354, provided that: ''This section [enacting this section] shall be effective as of January 1, 1993.''

### § 5707. Regulations and reports

(a)(1) The Administrator of General Services shall prescribe regulations necessary for the administration 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 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.

(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; Pub. L. 104–201, div. A, title XVI, §1614(a)(1), Sept. 23, 1996, 110 Stat. 2739; Pub. L. 104–316, title I, §103(e), Oct. 19, 1996, 110 Stat. 3829.)

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.

AMENDMENTS

1996—Subsec. (b)(1)(A). Pub. L. 104–316 struck out ''the Comptroller General of the United States,'' after ''in consultation with''.

Subsec. (d). Pub. L. 104–201 struck out subsec. (d) which provided that agencies ensure that their approved accommodation percentages be not less than specified percentages for fiscal years beginning 4 and 5 years after Sept. 25, 1990, and that their percentages be not less than 90 percent for fiscal years beginning 6 years after Sept. 25, 1990, and thereafter.

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.

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.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsection (b)(1) of this section relating to reporting results of investigations to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 174 of House Document No. 103–7.

REPORTS REGARDING FOREIGN TRAVEL

Pub. L. 105–277, div. G, subdiv. B, title XXV, §2505, Oct. 21, 1998, 112 Stat. 2681–837, as amended by Pub. L. 106–113, div. B, §1000(a)(7) [div. A, title VII, §707], Nov. 29, 1999, 113 Stat. 1536, 1501A–461; Pub. L. 108–271, §8(b), July 7, 2004, 118 Stat. 814, provided that:

''(a) PROHIBITION.—Except as provided in subsection (e), none of the funds authorized to be appropriated for the Department of State for fiscal year 2000 or 2001 may be used to pay for the expenses of foreign travel by an officer or employee of an Executive branch agency to attend an international conference, or for the routine services that a United States diplomatic mission or consular post provides in support of foreign travel by such an officer or employee to attend an international conference, unless that officer or employee has submitted a preliminary report with respect to that foreign travel in accordance with subsection (b), and has not previously failed to submit a final report with respect to foreign travel to attend an international conference required by subsection (c).

''(b) PRELIMINARY REPORTS.—A preliminary report referred to in subsection (a) is a report by an officer or employee of an Executive branch agency with respect to proposed foreign travel to attend an international conference, submitted to the Director prior to commencement of the travel, setting forth—

''(1) the name and employing agency of the officer or employee;

''(2) the name of the official who authorized the travel; and

''(3) the purpose and duration of the travel.

''(c) FINAL REPORTS.—A final report referred to in subsection (a) is a report by an officer or employee of an Executive branch agency with respect to foreign travel to attend an international conference, submitted to the Director not later than 30 days after the conclusion of the travel—

''(1) setting forth the actual duration and cost of the travel; and

''(2) updating any other information included in the preliminary report.

''(d) REPORT TO CONGRESS.—The Director shall submit a report on January 31 of the years 2000 and 2001 and July 31 of the years 2000 and 2001, to the Committees on Foreign Relations and Appropriations of the Senate and the Committees on International Relations and Appropriations of the House of Representatives, setting forth with respect to each international conference for which reports described in subsection (c) were required to be submitted to the Director during the preceding six months—

''(1) the names and employing agencies of all officers and employees of Executive branch agencies who attended the international conference;

''(2) the names of all officials who authorized travel to the international conference, and the total number of officers and employees who were authorized to travel to the conference by each such official; and

''(3) the total cost of travel by officers and employees of Executive branch agencies to the international conference.

''(e) EXCEPTIONS.—This section shall not apply to travel by—

''(1) the President or the Vice President;

''(2) any officer or employee who is carrying out an intelligence or intelligence-related activity, who is performing a protective function, or who is engaged in a sensitive diplomatic mission; or

''(3) any officer or employee who travels prior to January 1, 1999.

''(f) DEFINITIONS.—In this section:

''(1) DIRECTOR.—The term 'Director' means the Director of the Office of International Conferences of the Department of State.

''(2) EXECUTIVE BRANCH AGENCY.—The terms 'Executive branch agency' and 'Executive branch agencies' mean—

''(A) an entity or entities, other than the Government Accountability Office, defined in section 105 of title 5, United States Code; and

''(B) the Executive Office of the President (except as provided in subsection (e)).

''(3) INTERNATIONAL CONFERENCE.—The term 'international conference' means any meeting held under the auspices of an international organization or foreign government, at which representatives of more than two foreign governments are expected to be in attendance, and to which United States Executive branch agencies will send a total of ten or more representatives.

''(g) REPORT.—Not later than 180 days after the date of enactment of this Act [Oct. 21, 1998], and annually thereafter, the President shall submit to the appropriate congressional committees a report describing—

''(1) the total Federal expenditure of all official international travel in each Executive branch agency during the previous fiscal year; and

''(2) the total number of individuals in each agency who engaged in such travel.''

REPORTING OF EMPLOYEE RELOCATION EXPENSES

Pub. L. 105–61, title VI, § 635, Oct. 10, 1997, 111 Stat. 1316, provided that: ''No later than 30 days after the enactment of this Act [Oct. 10, 1997], the Director of the Office of Management and Budget shall require all Federal departments and agencies to report total obligations for the expenses of employee relocation. All obligations incident to employee relocation authorized under either chapter 57 of title 5, United States Code, or section 901 of the Foreign Service Act of 1980 (22 U.S.C. 4081; Public Law 96–465), shall be included. Such information for the past, current, and budget years shall be included in the agency budget submission to the President. The Director of the Office of Management and Budget shall prepare a table presenting obligations for the expenses of employee relocation for all departments and agencies, and such table shall be transmitted to Congress each year as part of the President's annual budget.''

GAO AUDIT OF AGENCY COMPLIANCE

Section 5(b) of Pub. L. 101–391, which provided that not later than 6 months after the last day of the first fiscal year during which lodging expenses were subject to the requirements of former subsec. (d) of this section, and not later than 6 months after the last day of every fiscal year thereafter, the Comptroller General was to conduct an audit of the compliance of agencies with the requirements of such subsection, and was to submit a report to Congress describing the results of such audit, was repealed by Pub. L. 104–201, div. A, title XVI, § 1614(a)(2), Sept. 23, 1996, 110 Stat. 2739, and Pub. L. 104–316, title I, § 103(f), Oct. 19, 1996, 110 Stat. 3829.

## § 5707a. Adherence to fire safety guidelines in establishing rates and discounts for lodging expenses

(a)(1) For the purpose of making payments under this chapter for lodging expenses incurred in a State, each agency shall ensure that not less than 90 percent of the commercial-lodging room nights for employees of that agency for a fiscal year are booked in approved places of public accommodation.

(2) Each agency shall establish explicit procedures to satisfy the percentage requirement of paragraph (1).

(3) An agency shall be considered to be in compliance with the percentage requirement of paragraph (1) until September 30, 2002, and after that date if travel arrangements of the agency, whether made for civilian employees, members of the uniformed services, or foreign service personnel, are made through travel management processes designed to book commercial lodging in approved places of public accommodation, whenever available.

(b) Studies or surveys conducted for the purposes of establishing per diem rates for lodging expenses under this chapter shall be limited to approved places of public accommodation. 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.

(c) 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 is not an approved place of public accommodation.

(d) 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.

(e) The Administrator of General Services may take any additional actions the Administrator determines appropriate to facilitate the ability of employees traveling on official business to stay at approved places of public accommodation.

(f) For purposes of this section:

(1) The term ''agency'' does not include the government of the District of Columbia.

(2) The term ''approved places of public accommodation'' means hotels, motels, and other places of public accommodation that are listed by the Administrator of the Federal Emergency Management Agency as meeting the requirements of the fire prevention and control guidelines described in section 29 of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2225).

(3) 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, Guam, American Samoa, or any other territory or possession of the United States.

(Added Pub. L. 101–391, § 4(a), Sept. 25, 1990, 104 Stat. 749; amended Pub. L. 105–85, div. A, title XI, § 1107(a)–(c), Nov. 18, 1997, 111 Stat. 1924, 1925; Pub. L. 109–295, title VI, § 612(c), Oct. 4, 2006, 120 Stat. 1410.)

AMENDMENTS

1997—Subsec. (a). Pub. L. 105–85, § 1107(a)(2), added subsec. (a). Former subsec. (a) redesignated (b).

Subsec. (b). Pub. L. 105–85, § 1107(c)(1), substituted ''approved places of public accommodation'' for ''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'' and struck out ''as defined in section 4 of the Federal Fire Prevention and Control Act of 1974'' after ''that is not a State''.

Pub. L. 105–85, § 1107(a)(1), redesignated subsec. (a) as (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 105–85, § 1107(c)(2), substituted ''is not an approved place of public accommodation'' for ''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''.

Pub. L. 105–85, § 1107(a)(1), redesignated subsec. (b) as (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 105–85, § 1107(a)(1), redesignated subsec. (c) as (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 105–85, § 1107(c)(3), substituted ''facilitate the ability of'' for ''encourage'' and ''approved places of public accommodation'' for ''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''.

Pub. L. 105–85, § 1107(a)(1), redesignated subsec. (d) as (e).

Subsec. (f). Pub. L. 105–85, § 1107(b), added subsec. (f).

CHANGE OF NAME

''Administrator of the Federal Emergency Management Agency'' substituted for ''Director of the Federal Emergency Management Agency'' in subsec. (f)(2) on authority of section 612(c) of Pub. L. 109–295, set out as a note under section 313 of Title 6, Domestic Security. Any reference to the Administrator of the Federal Emergency Management Agency in title VI of Pub. L. 109–295 or an amendment by title VI to be considered to refer and apply to the Director of the Federal Emergency Management Agency until Mar. 31, 2007, see section 612(f)(2) of Pub. L. 109–295, set out as a note under section 313 of Title 6.

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 [now Administrator] 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).''

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.

## § 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.

## § 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.)

## § 5710. Authority for travel expenses test programs

(a)(1) Notwithstanding any other provision of this subchapter, under a test program which the Administrator of General Services determines to be in the interest of the Government and approves, an agency may pay through the proper disbursing official for a period not to exceed 24 months any necessary travel expenses in lieu of any payment otherwise authorized or required under this subchapter. An agency shall include in any request to the Administrator for approval of such a test program an analysis of the expected costs and benefits and a set of criteria for evaluating the effectiveness of the program.

(2) Any test program conducted under this section shall be designed to enhance cost savings or other efficiencies that accrue to the Government.

(3) Nothing in this section is intended to limit the authority of any agency to conduct test programs.

(b) The Administrator shall transmit a copy of any test program approved by the Administrator under this section to the appropriate committees of the Congress at least 30 days before the effective date of the program.

(c) An agency authorized to conduct a test program under subsection (a) shall provide to the Administrator and the appropriate committees of the Congress a report on the results of the program no later than 3 months after completion of the program.

(d) No more than 10 test programs under this section may be conducted simultaneously.

(e) The authority to conduct test programs under this section shall expire 7 years after the date of the enactment of the Travel and Transportation Reform Act of 1998.

(Added Pub. L. 105–264, § 5(a), Oct. 19, 1998, 112 Stat. 2354.)

REFERENCES IN TEXT

The date of the enactment of the Travel and Transportation Reform Act of 1998, referred to in subsec. (e), is the date of enactment of Pub. L. 105–264, which was approved Oct. 19, 1998.

**§ 5711. Authority for telework travel expenses test programs**

(a) Except as provided under subsection (f)(1), in this section, the term ''appropriate committees of Congress'' means—

(1) the Committee on Homeland Security and Governmental Affairs of the Senate; and

(2) the Committee on Oversight and Government Reform of the House of Representatives.

(b)(1) Notwithstanding any other provision of this subchapter, under a test program which the Administrator of General Services determines to be in the interest of the Government and approves, an employing agency may pay through the proper disbursing official any necessary travel expenses in lieu of any payment otherwise authorized or required under this subchapter for employees participating in a telework program. Under an approved test program, an agency may provide an employee with the option to waive any payment authorized or required under this subchapter. An agency shall include in any request to the Administrator for approval of such a test program an analysis of the expected costs and benefits and a set of criteria for evaluating the effectiveness of the program.

(2) Any test program conducted under this section shall be designed to enhance cost savings or other efficiencies that accrue to the Government.

(3) Under any test program, if an agency employee voluntarily relocates from the pre-existing duty station of that employee, the Administrator may authorize the employing agency to establish a reasonable maximum number of occasional visits to the pre-existing duty station before that employee is eligible for payment of any accrued travel expenses by that agency.

(4) Nothing in this section is intended to limit the authority of any agency to conduct test programs.

(c) The Administrator shall transmit a copy of any test program approved by the Administrator under this section, and the rationale for approval, to the appropriate committees of Congress at least 30 days before the effective date of the program.

(d)(1) An agency authorized to conduct a test program under subsection (b) shall provide to the Administrator, the Telework Managing Officer of that agency, and the appropriate committees of Congress a report on the results of the program not later than 3 months after completion of the program.

(2) The results in a report described under paragraph (1) may include—

(A) the number of visits an employee makes to the pre-existing duty station of that employee;

(B) the travel expenses paid by the agency;

(C) the travel expenses paid by the employee; or

(D) any other information the agency determines useful to aid the Administrator, Telework Managing Officer, and Congress in understanding the test program and the impact of the program.

(e) No more than 10 test programs under this section may be conducted simultaneously.

(f)(1) In this subsection, the term ''appropriate committee of Congress'' means—

(A) the Committee on Homeland Security and Governmental Affairs of the Senate;

(B) the Committee on Oversight and Government Reform of the House of Representatives;

(C) the Committee on the Judiciary of the Senate; and

(D) the Committee on the Judiciary of the House of Representatives.

(2) The Patent and Trademark Office shall conduct a test program under this section, including the provision of reports in accordance with subsection (d)(1).

(3) In conducting the program under this subsection, the Patent and Trademark Office may pay any travel expenses of an employee for travel to and from a Patent and Trademark Office worksite or provide an employee with the option to waive any payment authorized or required under this subchapter, if—

(A) the employee is employed at a Patent and Trademark Office worksite and enters into an approved telework arrangement;

(B) the employee requests to telework from a location beyond the local commuting area of the Patent and Trademark Office worksite; and

(C) the Patent and Trademark Office approves the requested arrangement for reasons of employee convenience instead of an agency need for the employee to relocate in order to perform duties specific to the new location.

(4)(A) The Patent and Trademark Office shall establish an oversight committee comprising an equal number of members representing management and labor, including representatives from each collective bargaining unit.

(B) The oversight committee shall develop the operating procedures for the program under this subsection to—

(i) provide for the effective and appropriate functioning of the program; and

(ii) ensure that—

(I) reasonable technological or other alternatives to employee travel are used before requiring employee travel, including teleconferencing, videoconferencing or internet-based technologies;

(II) the program is applied consistently and equitably throughout the Patent and Trademark Office; and

(III) an optimal operating standard is developed and implemented for maximizing the use of the telework arrangement described under paragraph (2) while minimizing agency travel expenses and employee travel requirements.

(5)(A) The test program under this subsection shall be designed to enhance cost savings or other efficiencies that accrue to the Government.

(B) The Director of the Patent and Trademark Office shall—

(i) prepare an analysis of the expected costs and benefits and a set of criteria for evaluating the effectiveness of the program; and

(ii) before the test program is implemented, submit the analysis and criteria to the Administrator of General Services and to the appropriate committees of Congress.

(C) With respect to an employee of the Patent and Trademark Office who voluntarily relocates from the pre-existing duty station of that employee, the operating procedures of the program may include a reasonable maximum number of occasional visits to the pre-existing duty station before that employee is eligible for payment of any accrued travel expenses by the Office.

(g) The authority to conduct test programs under this section shall expire 7 years after the date of the enactment of the Telework Enhancement Act of 2010.

(Added Pub. L. 111–292, § 3(a), Dec. 9, 2010, 124 Stat. 3171.)

REFERENCES IN TEXT

The date of the enactment of the Telework Enhancement Act of 2010, referred to in subsec. (g), is the date of enactment of Pub. L. 111–292, which was approved Dec. 9, 2010.

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

### § 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 Architect of the Capitol;

(H) the Government Printing Office; and

(I) 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;

(5) ''appropriation'' includes funds made available by statute under section 9104 of title 31;

(6) ''United States'' means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the territories and possessions of the United States, and the areas and installations in the Republic of Panama that are 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

(7) ''Foreign Service of the United States'' means the Foreign Service as constituted under the Foreign Service Act of 1980.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 500; Pub. L. 97–258, § 3(a)(14), Sept. 13, 1982, 96 Stat. 1063; Pub. L. 105–264, § 6(1), Oct. 19, 1998, 112 Stat. 2356; Pub. L. 110–161, div. H, title I, § 1303(a), Dec. 26, 2007, 121 Stat. 2242.)

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.

REFERENCES IN TEXT

Section 3(a) of the Panama Canal Act of 1979, referred to in par. (6), is classified to section 3602(a) of Title 22, Foreign Relations and Intercourse.

The Foreign Service Act of 1980, referred to in par. (7), is Pub. L. 96–465, Oct. 17, 1980, 94 Stat. 2071, 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.

AMENDMENTS

2007—Par. (1)(G) to (I). Pub. L. 110–161 added subpar. (G) and redesignated former subpars. (G) and (H) as (H) and (I), respectively.

1998—Pars. (6), (7). Pub. L. 105–264 added pars. (6) and (7).

1982—Par. (5). Pub. L. 97–258 substituted ''section 9104'' for ''section 849''.

### § 5722. Travel and transportation expenses of new appointees; posts of duty outside the continental United States

(a) Under regulations prescribed under section 5738 of this title 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;

(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 continental United States; and

(3) the expenses of transporting a privately owned motor vehicle as authorized under section 5727(c) of this title.

(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 Government for the expenses is recoverable from the individual as a debt due the Government.

(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; Pub. L. 104–201, div. A, title XVII, §§1715(b)(1), 1723(b)(1), Sept. 23, 1996, 110 Stat. 2755, 2759; Pub. L. 105–264, §6(2), Oct. 19, 1998, 112 Stat. 2356.)

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.<br>Sept. 23, 1950, ch. 1010, §2, 64 Stat. 985.<br>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.

AMENDMENTS

1998—Subsec. (a)(2). Pub. L. 105–264, §6(2)(A), substituted ''continental United States;'' for ''United States;''.

Subsec. (b). Pub. L. 105–264, §6(2)(B), substituted ''Government'' for ''United States'' in two places in concluding provisions.

1996—Subsec. (a). Pub. L. 104–201, §1723(b)(1), in introductory provisions, substituted ''Under regulations prescribed under section 5738 of this title'' for ''Under such regulations as the President may prescribe''.

Subsec. (a)(3). Pub. L. 104–201, §1715(b)(1), added par. (3).

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1725(a) of title XVII of div. A of Pub. L. 104–201 provided that: ''The amendments made by this title [enacting sections 5737, 5738, and 5756 of this title, amending this section, sections 3375, 5723 to 5724c, 5726 to 5729, and 5731 of this title, section 1348 of Title 31, Money and Finance, section 707 of Title 38, Veterans' Benefits, and sections 290aa and 299c–4 of Title 42, The Public Health and Welfare] shall take effect 180 days after the date of the enactment of this Act [Sept. 23, 1996].''

REGULATIONS

Section 1725(b) of title XVII of div. A of Pub. L. 104–201 provided that: ''The Administrator of General Services shall, not later than the effective date set forth under subsection (a) [set out above], issue final regulations implementing the amendments made by this title [see Effective Date of 1996 Amendment note above].''

ASSESSMENT OF COST SAVINGS

Section 1724 of title XVII of div. A of Pub. L. 104–201 directed Comptroller General, not later than one year after the effective date set forth in section 1725(a) of Pub. L. 104–201, to submit to Congress an assessment of costs of Federal travel administration that were saved as a result of the amendments made by title XVII of div. A of Pub. L. 104–201 and the regulations prescribed to carry out the amendments.

## § 5723. Travel and transportation expenses of new appointees and student trainees

(a) Under regulations prescribed under section 5738 of this title 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;

(2) transportation expenses of his immediate family and his household goods and personal effects to the extent authorized by section 5724 of this title; and

(3) the expenses of transporting a privately owned motor vehicle as authorized under section 5727(c) 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 Government for the expenses is recoverable from the individual as a debt due the Government.

(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; Pub. L. 104–201, div. A, title XVII, §§ 1715(b)(2), 1723(b)(1), Sept. 23, 1996, 110 Stat. 2755, 2759; Pub. L. 105–264, § 6(3), Oct. 19, 1998, 112 Stat. 2356.)

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.<br>July 5, 1960, Pub. L. 86–587, § 1, 74 Stat. 327.<br>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

1998—Subsec. (b). Pub. L. 105–264 substituted ''spent by the Government'' for ''spent by the United States'' and ''due the Government'' for ''due the United States''.

1996—Subsec. (a). Pub. L. 104–201, § 1723(b)(1), in introductory provisions, substituted ''Under regulations prescribed under section 5738 of this title'' for ''Under such regulations as the President may prescribe''.

Subsec. (a)(3). Pub. L. 104–201, § 1715(b)(2), which directed amendment of subsec. (a) by adding par. (3) at the end, was executed by adding par. (3) after par. (2) to reflect the probable intent of Congress.

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 1996 AMENDMENT

Amendment by Pub. L. 104–201 effective 180 days after Sept. 23, 1996, see section 1725(a) of Pub. L. 104–201, set out as a note under section 5722 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 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.

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.

### § 5724. Travel and transportation expenses of employees transferred; advancement of funds; reimbursement on commuted basis

(a) Under regulations prescribed under section 5738 of this title 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, 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 regulations prescribed under section 5738 of this title, 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 regulations prescribed under section 5738 of this title, 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 under section 5738 of this title, 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 under section 5738 of this title, 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) through (f) 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 regulations prescribed under section 5738 of this title 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 Government for the expenses and allowances is recoverable from the employee as a debt due the Government.

(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; Pub. L. 104–201, div. A, title XVII, § 1723(a)(1)(B), (b)(1), (2), Sept. 23, 1996, 110 Stat. 2759; Pub. L. 105–85, div. C, title XXXV, § 3550(c)(1), Nov. 18, 1997, 111 Stat. 2074; Pub. L. 105–264, § 6(4), Oct. 19, 1998, 112 Stat. 2356.)

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.<br>Sept. 23, 1950, ch. 1010, §§ 1(a), (b), 3(b), 64 Stat. 985, 986.<br>Feb. 12, 1958, Pub. L. 85–326, 72 Stat. 14.<br>Sept. 6, 1960, Pub. L. 86–707, § 301(c)(1), 74 Stat. 796.<br>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. |

1967 ACT—CONTINUED

| *Section of title 5* | *Source (U.S. Code)* | *Source (Statutes at Large)* |
|---|---|---|
| 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 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, 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.

AMENDMENTS

1998—Subsec. (a)(3). Pub. L. 105–264, § 6(4)(A), struck out '', 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'' after ''United States''.

Subsec. (i). Pub. L. 105–264, § 6(4)(B), substituted ''Government'' for ''United States'' in two places in last sentence.

1997—Subsec. (a)(3). Pub. L. 105–85, which directed the substitution of ''or the Commonwealth of Puerto Rico'' for '', 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 de-

scribed in section 3(a) of the Panama Canal Act of 1979'', effective Jan. 1, 1999, could not be executed because such language did not appear in text subsequent to amendment by Pub. L. 105–264. See 1998 Amendment note above.

1996—Subsecs. (a), (b). Pub. L. 104–201, § 1723(b)(1), in introductory provisions, substituted ''Under regulations prescribed under section 5738 of this title'' for ''Under such regulations as the President may prescribe''.

Subsec. (c). Pub. L. 104–201, § 1723(b)(2)(A), substituted ''under regulations prescribed under section 5738 of this title'' for ''under regulations prescribed by the President''.

Pub. L. 104–201, § 1723(b)(1), substituted ''Under regulations prescribed under section 5738 of this title'' for ''Under such regulations as the President may prescribe''.

Subsec. (e). Pub. L. 104–201, § 1723(b)(2)(A), substituted ''under regulations prescribed under section 5738 of this title'' for ''under regulations prescribed by the President''.

Pub. L. 104–201, § 1723(a)(1)(B), substituted ''section 5724a(a) through (f)'' for ''section 5724a(a), (b)''.

Subsec. (f). Pub. L. 104–201, § 1723(b)(2)(B), substituted ''under regulations prescribed under section 5738 of this title'' for ''under the regulations of the President''.

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 1997 AMENDMENT

Section 3550(c)(3) of Pub. L. 105–85 provided that: ''The amendments made by this subsection [amending this section and section 5724a of this title] shall take effect on January 1, 1999.''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–201 effective 180 days after Sept. 23, 1996, see section 1725(a) of Pub. L. 104–201, set out as a note under section 5722 of this title.

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 this section and sections 5723, 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.

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 this section and sections 5723, 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.

## § 5724a. Relocation expenses of employees transferred or reemployed

(a) Under regulations prescribed under section 5738, an agency shall pay to or on behalf of an employee who transfers in the interest of the Government, a per diem allowance or the actual subsistence expenses, or a combination thereof, of the immediate family of the employee for en route travel of the immediate family between the employee's old and new official stations.

(b)(1) Under regulations prescribed under section 5738, an agency may pay to or on behalf of an employee who transfers in the interest of the Government between official stations located within the United States—

(A) the expenses of transportation of the employee and the employee's spouse for travel to seek permanent residence quarters at a new official station; and

(B) either—

(i) a per diem allowance or the actual subsistence expenses (or a combination of both); or

(ii) an amount for subsistence expenses, that may not exceed a maximum amount determined by the Administrator of General Services.

(2) Expenses may be allowed under paragraph (1) only for one round trip in connection with each change of station of the employee.

(c)(1) Under regulations prescribed under section 5738, an agency may pay to or on behalf of an employee who transfers in the interest of the Government—

(A) actual subsistence expenses of the employee and the employee's immediate family for a period of up to 60 days while the employee or family is occupying temporary quarters when the new official station is located within the United States; or

(B) an amount for subsistence expenses, that may not exceed a maximum amount determined by the Administrator of General Services, instead of the actual subsistence expenses authorized in subparagraph (A) of this paragraph.

(2) The period authorized in paragraph (1) of this subsection for payment of expenses for residence in temporary quarters may be extended up to an additional 60 days if the head of the agency concerned or the designee of such head of the agency determines that there are compelling reasons for the continued occupancy of temporary quarters.

(3) The regulations implementing paragraph (1)(A) shall prescribe daily rates and amounts for subsistence expenses per individual.

(d)(1) Under regulations prescribed under section 5738, an agency shall pay to or on behalf of an employee who transfers in the interest of the Government, expenses of the sale of the residence (or the settlement of an unexpired lease) of the employee at the old official station and purchase of a residence at the new official station that are required to be paid by the employee, when the old and new official stations are located within the United States.

(2) Under regulations prescribed under section 5738, an agency shall pay to or on behalf of an employee who transfers in the interest of the Government from a post of duty located outside the United States to an official station within the United States (other than the official station within the United States from which the employee was transferred when assigned to the foreign tour of duty)—

(A) expenses required to be paid by the employee of the sale of the residence (or the settlement of an unexpired lease) of the employee at the old official station from which the employee was transferred when the employee was assigned to the post of duty located outside the United States; and

(B) expenses required to be paid by the employee of the purchase of a residence at the new official station within the United States.

(3) Reimbursement of expenses under paragraph (2) of this subsection shall not be allowed for any sale (or settlement of an 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 post of duty outside the United States.

(4) Reimbursement for brokerage fees on the sale of the residence and other expenses under this subsection may not exceed those customarily charged in the locality where the residence is located.

(5) Reimbursement may not be made under this subsection for losses incurred by the employee on the sale of the residence.

(6) This subsection applies regardless of whether title to the residence or the unexpired lease is—

(A) in the name of the employee alone;

(B) in the joint names of the employee and a member of the employee's immediate family; or

(C) in the name of a member of the employee's immediate family alone.

(7)(A) In connection with the sale of the residence at the old official station, reimbursement under this subsection shall not exceed 10 percent of the sale price.

(B) In connection with the purchase of a residence at the new official station, reimbursement under this subsection shall not exceed 5 percent of the purchase price.

(8) Under regulations prescribed under section 5738, an agency may pay to or on behalf of an employee who transfers in the interest of the Government expenses of property management services, instead of expenses under paragraph (1) or (2) of this subsection for sale of the employee's residence, when the agency determines that such transfer is advantageous and cost-effective for the Government.

(e) Under regulations prescribed under section 5738, an agency may pay to or on behalf of an employee who transfers in the interest of the Government, the expenses of property management services when the employee transfers to a post of duty outside the United States. Such payment shall terminate upon return of the employee to an official station within the United States.

(f)(1) Under regulations prescribed under section 5738 and subject to paragraph (2), an employee who is reimbursed under subsections (a) through (e) of this section or section 5724(a) of this title is entitled to an amount for miscellaneous expenses—

(A) not to exceed two weeks' basic pay, if such employee has an immediate family; or

(B) not to exceed one week's basic pay, if such employee does not have an immediate family.

(2) Amounts paid under paragraph (1) may not exceed amounts determined at the maximum rate payable for a position at GS–13 of the General Schedule.

(g) A former employee separated by reason of reduction in force or transfer of function who within one 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) through (f) of this section, in the same manner as though the employee had been transferred in the interest of the Government without a break in service to the location of reemployment from the location where separated.

(h) Payments for subsistence expenses, including amounts in lieu of per diem or actual subsistence expenses or a combination thereof, authorized under this section may not exceed the maximum payment allowed under regulations which implement section 5702 of this title.

(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; Pub. L. 104–201, div. A, title XVII, §§ 1711–1713(a), 1714, 1718, Sept. 23, 1996, 110 Stat. 2753–2755, 2757; Pub. L. 105–85, div. C, title XXXV, § 3550(c)(2), Nov. 18, 1997, 111 Stat. 2074; Pub. L. 105–264, §§ 6(5), 7, Oct. 19, 1998, 112 Stat. 2356, 2357.)

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

The General Schedule, referred to in subsec. (f)(2), is set out under section 5332 of this title.

AMENDMENTS

1998—Subsec. (a). Pub. L. 105–264, § 7(1), substituted "Under regulations prescribed under section 5738, an agency shall pay" for "An agency shall pay".

Subsec. (b)(1). Pub. L. 105–264, § 7(2), substituted "Under regulations prescribed under section 5738, an agency may pay" for "An agency may pay" in introductory provisions.

Subsec. (b)(1)(B)(ii). Pub. L. 105–264, § 7(3), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: "an amount for subsistence expenses."

Subsec. (c)(1). Pub. L. 105–264, § 7(2), substituted "Under regulations prescribed under section 5738, an agency may pay" for "An agency may pay" in introductory provisions.

Subsec. (c)(1)(B). Pub. L. 105–264, § 7(4), substituted "an amount for subsistence expenses, that may not exceed a maximum amount determined by the Administrator of General Services," for "an amount for subsistence expenses".

Subsec. (d)(1), (2). Pub. L. 105–264, § 7(1), substituted "Under regulations prescribed under section 5738, an agency shall pay" for "An agency shall pay".

Subsec. (d)(2)(A). Pub. L. 105–264, §7(5), substituted ''of the sale'' for ''for the sale''.

Subsec. (d)(2)(B). Pub. L. 105–264, §7(6), substituted ''of the purchase'' for ''for the purchase''.

Subsec. (d)(8). Pub. L. 105–264, §7(2), (7), substituted ''Under regulations prescribed under section 5738, an agency may pay'' for ''An agency may pay'' and ''paragraph (1) or (2)'' for ''paragraph (2) or (3)''.

Subsec. (e). Pub. L. 105–264, §7(2), substituted ''Under regulations prescribed under section 5738, an agency may pay'' for ''An agency may pay''.

Subsec. (f)(1). Pub. L. 105–264, §7(8), substituted ''Under regulations prescribed under section 5738 and subject to paragraph (2),'' for ''Subject to paragraph (2),'' in introductory provisions.

Subsec. (i). Pub. L. 105–264, §7(9), struck out subsec. (i) which read as follows: ''Subsections (a), (b), and (c) shall be implemented under regulations issued under section 5738 of this title.''

Subsec. (j). Pub. L. 105–264, §6(5), struck out subsec. (j) which read as follows: ''For purposes of subsections (c), (d), and (e), the term 'United States' includes the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the territories and possessions of the United States, and the areas and installations in the Republic of Panama that are 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 (22 U.S.C. 3602(a))).''

1997—Subsec. (j). Pub. L. 105–85, which directed the amendment of subsec. (j) by inserting ''and'' after ''Northern Mariana Islands,'' and by substituting ''United States.'' for ''United States, and the areas and installations in the Republic of Panama that are 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 (22 U.S.C. 3602(a))).'', effective Jan. 1, 1999, could not be executed because subsec. (j) did not appear subsequent to amendment by Pub. L. 105–264. See 1998 Amendment note above.

1996—Pub. L. 104–201, §1711, amended section generally, substituting subsecs. (a) and (b) for former subsecs. (a) to (c) which made funds available to pay certain expenses of employees for whom Government pays travel and transportation expenses under section 5724(a) of this title, provided for entitlement to certain amounts of basic pay to such employees, and provided for payment of expenses of certain former employees.

Subsec. (c). Pub. L. 104–201, §1712, added subsec. (c).

Subsec. (d). Pub. L. 104–201, §1713(a), added subsec. (d).

Subsec. (d)(8). Pub. L. 104–201, §1714(1), added par. (8).

Subsec. (e). Pub. L. 104–201, §1714(2), added subsec. (e).

Subsecs. (f) to (j). Pub. L. 104–201, §1718, added subsecs. (f) to (j).

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 1997 AMENDMENT

Amendment by Pub. L. 105–85 effective Jan. 1, 1999, see section 3550(c)(3) of Pub. L. 105–85, set out as a note under section 5724 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–201 effective 180 days after Sept. 23, 1996, see section 1725(a) of Pub. L. 104–201, set out as a note under section 5722 of this title.

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.

EXTENSION OF PAYMENT OF RELOCATION EXPENSES TO PUERTO RICO, NORTHERN MARIANA ISLANDS, AND TERRITORIES AND POSSESSIONS OF THE UNITED STATES

Pub. L. 105–277, div. A, §101(b) [title I, §125], Oct. 21, 1998, 112 Stat. 2681–50, 2681–74, provided that: ''Effective with the enactment of this Act [Oct. 21, 1998], and in

any fiscal year hereafter, the Attorney General and the Secretary of the Treasury may, for their respective agencies, extend the payment of relocation expenses listed in section 5724a(b)(1) of Title 5 of the United States Code to include the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and the territories and possessions of the United States.''

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.

### § 5724b. Taxes on reimbursements for travel, transportation, and relocation expenses of employees transferred

(a) Under regulations prescribed under section 5738 of this title 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; Pub. L. 104–201, div. A, title XVII, § 1723(b)(1), Sept. 23, 1996, 110 Stat. 2759.)

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

1996—Subsec. (a). Pub. L. 104–201 substituted ''Under regulations prescribed under section 5738 of this title'' for ''Under such regulations as the President may prescribe''.

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).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–201 effective 180 days after Sept. 23, 1996, see section 1725(a) of Pub. L. 104–201, set out as a note under section 5722 of this title.

[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.

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.

### § 5724c. Relocation services

Under regulations prescribed under section 5738 of this title, each agency may enter into contracts to provide relocation services to agencies and employees for the purpose of carrying out this subchapter. An agency may pay a fee for such services. Such services include 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; Pub. L. 104–201, div. A, title XVII, § 1713(b), Sept. 23, 1996, 110 Stat. 2754.)

AMENDMENTS

1996—Pub. L. 104–201 amended section generally. Prior to amendment, section read as follows: ''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.''

1984—Pub. L. 98–473 amended section generally, adding authority of the President to prescribe regulations.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–201 effective 180 days after Sept. 23, 1996, see section 1725(a) of Pub. L. 104–201, set out as a note under section 5722 of this title.

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.

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.

### § 5724d. Transportation and moving expenses for immediate family of certain deceased Federal employees

(a) IN GENERAL.—Under regulations prescribed by the President, the head of the agency concerned (or a designee) may determine that a covered employee died as a result of personal injury sustained while in the performance of the employee's duty and authorize or approve the pay-

ment by the agency, from Government funds, of—

(1) any qualified expense of the immediate family of the covered employee attributable to a change in their place of residence, if the place where the immediate family will reside following the death of the employee is—

(A) different from the place where the immediate family resided at the time of the employee's death; and

(B) within the United States; and

(2) any expense of preparing and transporting the remains of the deceased to—

(A) the place where the immediate family will reside following the death of the employee; or

(B) such other place appropriate for interment as is determined by the agency head (or designee).

(b) NO DUPLICATE PAYMENT OF EXPENSES.—No expenses may be paid under this section if those expenses are paid from Government funds under section 5742 or any other authority.

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

(1) the term ''covered employee'' means—

(A) a law enforcement officer, as defined in section 5541;

(B) any employee in or under the Federal Bureau of Investigation who is not described in subparagraph (A); and

(C) a customs and border protection officer, as defined in section 8331(31); and

(2) the term ''qualified expense'', as used with respect to an immediate family changing its place of residence, means the transportation expenses of the immediate family, the expenses of moving (including transporting, packing, crating, temporarily storing, draying, and unpacking) the household goods and personal effects of such immediate family, not in excess of 18,000 pounds net weight, and, when authorized or approved by the agency head (or designee), the transportation of 1 privately owned motor vehicle.

(Added Pub. L. 111–178, § 2(a), June 9, 2010, 124 Stat. 1262.)

NO RELEVANCE AS TO COMPENSATION CLAIMS

Pub. L. 111–178, § 2(b), June 9, 2010, 124 Stat. 1263, provided that: ''No determination made under section 5724d of title 5, United States Code, shall be deemed relevant to or be considered in connection with any claim for compensation under chapter 81 of that title or under any other law under which compensation may be provided on account of death or personal injury, nor shall any determination made with respect to any such claim be deemed relevant to or be considered in connection with any request for payment of expenses under such section 5724d.''

## § 5725. Transportation expenses; employees assigned to danger areas

(a) When an employee of the Government 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; Pub. L. 105–264, § 6(6), Oct. 19, 1998, 112 Stat. 2356.)

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.

AMENDMENTS

1998—Subsec. (a). Pub. L. 105–264 substituted ''Government'' for ''United States'' in introductory provisions.

## § 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 authorized under regulations prescribed under section 5738 of this title to be transported or stored, including, in emergencies, motor vehicles authorized to be shipped at Government expense.

(b) Under regulations prescribed under section 5738 of this title, 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 regulations prescribed under section 5738 of this title, 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; Pub. L. 104–201, div. A, title XVII, §1723(b)(1), (3), Sept. 23, 1996, 110 Stat. 2759.)

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

1996—Subsec. (a). Pub. L. 104–201, §1723(b)(3), substituted ''as authorized under regulations prescribed under section 5738 of this title'' for ''as the President may by regulation authorize''.

Subsecs. (b), (c). Pub. L. 104–201, §1723(b)(1), substituted ''Under regulations prescribed under section 5738 of this title'' for ''Under such regulations as the President may prescribe''.

1983—Subsec. (b). Pub. L. 98–151 substituted ''18,000'' for ''11,000''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–201 effective 180 days after Sept. 23, 1996, see section 1725(a) of Pub. L. 104–201, set out as a note under section 5722 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.

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.

## § 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 regulations prescribed under section 5738 of this title, 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) Under regulations prescribed under section 5738 of this title, the privately owned motor vehicle or vehicles of an employee, including a new appointee or a student trainee for whom travel and transportation expenses are authorized under section 5723 of this title, may be transported at Government expense to a new official station of the employee when the agency determines that such transport is advantageous and cost-effective to the Government.

(d) 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 continental 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.

(e) When the head of an agency authorizes transportation under subsection (b) or (c) 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.

(f)(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; Pub. L. 104–201, div. A, title XVII, §§ 1715(a), 1723(b)(1), Sept. 23, 1996, 110 Stat. 2755, 2759; Pub. L. 105–264, § 6(7), Oct. 19, 1998, 112 Stat. 2356.)

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.<br>Apr. 30, 1940, ch. 172, 54 Stat. 174.<br>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.<br>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

1998—Subsec. (d). Pub. L. 105–264 substituted ''continental United States'' for ''United States''.

1996—Subsec. (b). Pub. L. 104–201, § 1723(b)(1), in introductory provisions, substituted ''Under regulations prescribed under section 5738 of this title'' for ''Under such regulations as the President may prescribe''.

Subsec. (c). Pub. L. 104–201, § 1715(a)(2), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 104–201, § 1715(a)(1), redesignated subsec. (c) as (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 104–201, § 1715(a)(3), inserted ''or (c)'' after ''subsection (b)''.

Pub. L. 104–201, § 1715(a)(1), redesignated subsec. (d) as (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 104–201, § 1715(a)(1), redesignated subsec. (e) as (f).

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 1996 AMENDMENT

Amendment by Pub. L. 104–201 effective 180 days after Sept. 23, 1996, see section 1725(a) of Pub. L. 104–201, set out as a note under section 5722 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.

## § 5728. Travel and transportation expenses; vacation leave

(a) Under regulations prescribed under section 5738 of this title, 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 regulations prescribed under section 5738 of this title, an agency shall pay from its appropriations the expenses of round-trip travel

of an employee of the Government 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 regulations prescribed under section 5738 of this title, 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; Pub. L. 104–201, div. A, title XVII, § 1723(b)(1), Sept. 23, 1996, 110 Stat. 2759; Pub. L. 105–264, § 6(8), Oct. 19, 1998, 112 Stat. 2356.)

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

1998—Subsec. (b). Pub. L. 105–264 substituted ''an employee of the Government'' for ''an employee of the United States''.

1996—Subsecs. (a) to (c)(1). Pub. L. 104–201, § 1723(b)(1), substituted ''Under regulations prescribed under section 5738 of this title'' for ''Under such regulations as the President may prescribe''.

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 1996 AMENDMENT

Amendment by Pub. L. 104–201 effective 180 days after Sept. 23, 1996, see section 1725(a) of Pub. L. 104–201, set out as a note under section 5722 of this title.

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.''

## § 5729. Transportation expenses; prior return of family

(a) Under regulations prescribed under section 5738 of this title, an agency shall pay from its appropriations, not more than once before the return to the United States 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 regulations prescribed under section 5738 of this title, 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, 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; Pub. L. 104–201, div. A, title XVII, § 1723(b)(1), Sept. 23, 1996, 110 Stat. 2759; Pub. L. 105–264, § 6(9), Oct. 19, 1998, 112 Stat. 2356.)

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.

AMENDMENTS

1998—Subsecs. (a), (b). Pub. L. 105–264 struck out ''or its territories or possessions'' after ''to the United States''.

1996—Subsecs. (a), (b). Pub. L. 104–201 substituted ''Under regulations prescribed under section 5738 of this title'' for ''Under such regulations as the President may prescribe''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–201 effective 180 days after Sept. 23, 1996, see section 1725(a) of Pub. L. 104–201, set out as a note under section 5722 of this title.

## § 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 under section 5738 of this title, 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 Government 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; Pub. L. 104–201, div. A, title XVII, § 1723(b)(4), Sept. 23, 1996, 110 Stat. 2759; Pub. L. 105–264, § 6(10), Oct. 19, 1998, 112 Stat. 2356.)

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.<br>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.

AMENDMENTS

1998—Subsec. (b). Pub. L. 105–264 substituted ''Government'' for ''United States''.

1996—Subsec. (a). Pub. L. 104–201 substituted ''in accordance with regulations prescribed under section 5738 of this title'' for ''in accordance with regulations prescribed by the President''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–201 effective 180 days after Sept. 23, 1996, see section 1725(a) of Pub. L. 104–201, set out as a note under section 5722 of this title.

## § 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 Government, 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; Pub. L. 105–264, § 6(11), Oct. 19, 1998, 112 Stat. 2356.)

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.

AMENDMENTS

1998—Pub. L. 105–264 substituted ''Government'' for ''United States'' in introductory provisions.

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.

## § 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.

## § 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].''

### § 5736. Travel, transportation, and relocation expenses of certain nonappropriated fund employees

An employee of a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard described in section 2105(c) of this title 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, may be authorized travel, transportation, and relocation expenses and allowances under the same conditions and to the same extent authorized by this subchapter for transferred employees.

(Added Pub. L. 104–201, div. A, title XVI, § 1605(a)(1), Sept. 23, 1996, 110 Stat. 2736.)

EFFECTIVE DATE

Section 1605(b) of Pub. L. 104–201 provided that: ''Section 5736 of title 5, United States Code (as added by subsection (a)(1)), shall apply to moves between positions as described in such section that are effective on or after October 1, 1996.''

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

### § 5737. Relocation expenses of an employee who is performing an extended assignment

(a) Under regulations prescribed under section 5738 of this title, an agency may pay to or on behalf of an employee assigned from the employee's official station to a duty station for a period of not less than six months and not greater than 30 months, the following expenses in lieu of payment of expenses authorized under subchapter I of this chapter:

(1) Travel expenses to and from the assignment location in accordance with section 5724 of this title.

(2) Transportation expenses of the immediate family and household goods and personal effects to and from the assignment location in accordance with section 5724 of this title.

(3) A per diem allowance for en route travel of the employee's immediate family to and from the assignment location in accordance with section 5724a(a) of this title.

(4) Travel and transportation expenses of the employee and spouse to seek new residence quarters at the assignment location in accordance with section 5724a(b) of this title.

(5) Subsistence expenses of the employee and the employee's immediate family while occupying temporary quarters upon commencement and termination of the assignment in accordance with section 5724a(c) of this title.

(6) An amount, in accordance with section 5724a(f), to be used by the employee for miscellaneous expenses of this title.[1]

(7) The expenses of transporting a privately owned motor vehicle or vehicles to the assignment location in accordance with section 5727 of this title.

(8) An allowance as authorized under section 5724b of this title for Federal, State, and local income taxes incurred on reimbursement of expenses paid under this section or on services provided in kind under this section.

(9) Expenses of nontemporary storage of household goods and personal effects as defined in section 5726(a) of this title, subject to the limitation that the weight of the household goods and personal effects stored, together with the weight of property transported under section 5724(a) of this title, may not exceed the total maximum weight which could be transported in accordance with section 5724(a) of this title.

(10) Expenses of property management services.

(b) An agency shall not make payment under this section to or on behalf of the employee for expenses incurred after termination of the temporary assignment.

(Added Pub. L. 104–201, div. A, title XVII, § 1716, Sept. 23, 1996, 110 Stat. 2756.)

EFFECTIVE DATE

Section effective 180 days after Sept. 23, 1996, see section 1725(a) of Pub. L. 104–201, set out as an Effective Date of 1996 Amendment note under section 5722 of this title.

### § 5737a. Employees temporarily deployed in contingency operations

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

(1) the term ''covered employee'' means an individual who—

(A) is an employee of an Executive agency or a military department, excluding a Government controlled corporation; and

(B) is assigned on a temporary change of station in support of a contingency operation;

(2) the term ''temporary change of station'', as used with respect to an employee, means an assignment—

[1] So in original.

(A) from the employee's official duty station to a temporary duty station; and

(B) for which such employee is eligible for expenses under section 5737; and

(3) the term ''contingency operation'' has the meaning given such term by section 1482a(c) of title 10.

(b) QUARTERS AND RATIONS.—The head of an agency may provide quarters and rations, without charge, to any covered employee of such agency during the period of such employee's temporary assignment (as described in subsection (a)(1)(B)).

(c) STORAGE OF MOTOR VEHICLE.—The head of an agency may provide for the storage, without charge, or for the reimbursement of the cost of storage, of a motor vehicle that is owned or leased by a covered employee of such agency (or by a dependent of such an employee) and that is for the personal use of the covered employee. This subsection shall apply—

(1) with respect to storage during the period of the employee's temporary assignment (as described in subsection (a)(1)(B)); and

(2) in the case of a covered employee, with respect to not more than one motor vehicle as of any given time.

(d) RELATIONSHIP TO OTHER BENEFITS.—Any benefits under this section shall be in addition to (and not in lieu of) any other benefits for which the covered employee is otherwise eligible.

(Added Pub. L. 110–181, div. A, title XI, § 1104(a), Jan. 28, 2008, 122 Stat. 346.)

### § 5738. Regulations

(a)(1) Except as specifically provided in this subchapter, the Administrator of General Services shall prescribe regulations necessary for the administration of this subchapter.

(2) The Administrator of General Services shall include in the regulations authority for the head of an agency or his designee to waive any limitation of this subchapter or in any implementing regulation for any employee relocating to or from a remote or isolated location who would suffer hardship if the limitation were not waived. A waiver of a limitation under authority provided in the regulations pursuant to this paragraph shall be effective notwithstanding any other provision of this subchapter.

(b) In prescribing regulations for the implementation of section 5724b of this title, the Administrator of General Services shall consult with the Secretary of the Treasury.

(c) The Secretary of Defense shall prescribe regulations necessary for the implementation of section 5735 of this title.

(Added Pub. L. 104–201, div. A, title XVII, § 1722, Sept. 23, 1996, 110 Stat. 2758.)

EFFECTIVE DATE

Section effective 180 days after Sept. 23, 1996, see section 1725(a) of Pub. L. 104–201, set out as an Effective Date of 1996 Amendment note under section 5722 of this title.

### § 5739. Authority for relocation expenses test programs

(a)(1) Notwithstanding any other provision of this subchapter, under a test program which the Administrator of General Services determines to be in the interest of the Government and approves, an agency may pay through the proper disbursing official any necessary relocation expenses in lieu of any payment otherwise authorized or required under this subchapter. An agency shall include in any request to the Administrator for approval of such a test program an analysis of the expected costs and benefits and a set of criteria for evaluating the effectiveness of the program.

(2) Any test program conducted under this section shall be designed to enhance cost savings or other efficiencies that accrue to the Government.

(b) The Administrator shall transmit a copy of any test program approved or extended by the Administrator under this section to the appropriate committees of the Congress at least 30 days before the effective date of the program or extension.

(c)(1) An agency authorized to conduct a test program under subsection (a) shall annually submit a report on the results of the program to date to the Administrator.

(2) Not later than 3 months after completion of a test program, the agency conducting the program shall submit a final report on the results of the program to the Administrator and the appropriate committees of Congress.

(d) No more than 12 test programs under this section may be conducted simultaneously.

(e)(1) The Administrator may not approve any test program for an initial period of more than 4 years.

(2)(A) Upon the request of the agency administering a test program, the Administrator may extend the program.

(B) An extension under subparagraph (A) may not exceed 4 years.

(C) The Administrator may exercise more than 1 extension under subparagraph (A) with respect to any test program.

(Added Pub. L. 105–264, § 5(b), Oct. 19, 1998, 112 Stat. 2355; amended Pub. L. 109–325, § 1(a), Oct. 11, 2006, 120 Stat. 1760; Pub. L. 111–112, § 1(a), Nov. 30, 2009, 123 Stat. 3024.)

AMENDMENTS

2009—Subsec. (a)(3). Pub. L. 111–112, § 1(a)(1), struck out par. (3) which read as follows: ''Nothing in this section is intended to limit the authority of any agency to conduct test programs.''

Subsec. (b). Pub. L. 111–112, § 1(a)(2), inserted ''or extended'' after ''approved'' and ''or extension'' after ''of the program''.

Subsec. (c). Pub. L. 111–112, § 1(a)(3), added subsec. (c) and struck out former subsec. (c) which read as follows: ''An agency authorized to conduct a test program under subsection (a) shall provide to the Administrator and the appropriate committees of the Congress a report on the results of the program no later than 3 months after completion of the program.''

Subsec. (d). Pub. L. 111–112, § 1(a)(4), substituted ''12'' for ''10''.

Subsec. (e). Pub. L. 111–112, § 1(a)(5), added subsec. (e) and struck out former subsec. (e) which read as follows: ''The authority to conduct test programs under this section shall expire 11 years after the date of the enactment of the Travel and Transportation Reform Act of 1998.''

2006—Subsec. (a)(1). Pub. L. 109–325, § 1(a)(1), struck out ''for a period not to exceed 24 months'' after ''disbursing official''.

Subsec. (e). Pub. L. 109–325, §1(a)(2), substituted ''11 years'' for ''7 years''.

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–112, §1(b), Nov. 30, 2009, 123 Stat. 3025, provided that: ''This section [amending this section] shall take effect on December 18, 2009.''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–325, §1(b), Oct. 11, 2006, 120 Stat. 1760, provided that: ''The amendments made by this section [amending this section] shall take effect as though enacted as part of the Travel and Transportation Reform Act of 1998 (Public Law 105–264; 112 Stat. 2350).''

## 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;

(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—

(A) the employee died while performing official duties outside the continental United States or in transit thereto or therefrom; or

(B) in the case of an employee who was a party to a mandatory mobility agreement that was in effect when the employee died—

(i) the employee died in the circumstances described in subparagraph (A); or

(ii)(I) the employee died as a result of disease or injury incurred while performing official duties—

(aa) in an overseas location that, at the time such employee was performing such official duties, was within the area of responsibility of the Commander of the United States Central Command; and

(bb) in direct support of or directly related to a military operation, including a contingency operation (as defined in section 101(13) of title 10) or an operation in response to an emergency declared by the President; and

(II) the employee's dependents were residing either outside the continental United States or within the continental United States when the employee died; and

(3) the travel expenses of not more than 2 persons to escort the remains of a deceased employee, if death occurred while the employee was in travel status away from his official station in the United States or while performing official duties outside the United States or in transit thereto or therefrom, from the place of death to the home or official station of such person, or such other place appropriate for interment as is determined by the head of the agency concerned.

(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; Pub. L. 105–277, div. A, § 101(d) [title V, § 589(b)], Oct. 21, 1998, 112 Stat. 2681–150, 2681–210; Pub. L. 110–181, div. A, title XI, § 1103(a), Jan. 28, 2008, 122 Stat. 346.)

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.<br>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

2008—Subsec. (b)(2). Pub. L. 110–181 amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''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; and''.

1998—Subsec. (b)(3). Pub. L. 105–277 added par. (3).

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).

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–181, div. A, title XI, § 1103(b), Jan. 28, 2008, 122 Stat. 346, provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to deaths occurring on or after the date of the enactment of this Act [Jan. 28, 2008].''

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.

TRAVEL TO UNITED STATES FOR IMMEDIATE FAMILY OF EMPLOYEES SERVING ABROAD

Pub. L. 110–161, div. D, title VII, § 701, Dec. 26, 2007, 121 Stat. 2019, provided that: ''Hereafter, funds appropriated in this or any other Act may be used to pay travel to the United States for the immediate family of employees serving abroad in cases of death or life threatening illness of said employee.''

## 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 Chief Administrative Officer 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 Chief Administrative Officer 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; amended Pub. L. 104–186, title II, § 215(9), Aug. 20, 1996, 110 Stat. 1746.)

AMENDMENTS

1996—Pub. L. 104–186 substituted ''Chief Administrative Officer'' for ''Clerk'' in subsecs. (a) and (b).

### § 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)(1) This section may be applied to—

(A) employees covered by the General Schedule pay system established under subchapter III of chapter 53; and

(B) employees in a category approved by the Office of Personnel Management at the request of the head of an Executive agency.

(2) A bonus may not be paid under this section to an individual who is appointed to or who holds—

(A) a position to which an individual is appointed by the President, by and with the advice and consent of the Senate;

(B) a position in the Senior Executive Service as a noncareer appointee (as such term is defined under section 3132(a)); or

(C) a position which has been excepted from the competitive service by reason of its confidential, policy-determining, policy-making, or policy-advocating character.

(3) In this section, the term ''employee'' has the meaning given that term in section 2105, except that such term also includes an employee described in subsection (c) of that section.

(b) The Office of Personnel Management may authorize the head of an agency to pay a bonus under this section to an individual only if—

(1) the position to which such individual is appointed (as described in paragraph (2)(A)) or to which such individual moves or must relocate (as described in paragraph (2)(B)) is likely to be difficult to fill in the absence of such a bonus; and

(2) the individual—

(A) is newly appointed as an employee of the Federal Government; or

(B)(i) is currently employed by the Federal Government; and

(ii)(I) moves to a new position in the same geographic area under circumstances described in regulations of the Office; or

(II) must relocate to accept a position in a different geographic area.

(c)(1) Payment of a bonus under this section shall be contingent upon the employee entering into a written service agreement to complete a period of employment with the agency, not longer than 4 years. The Office may, by regulation, prescribe a minimum service period for purposes of this section.

(2)(A) The agreement shall include—

(i) the commencement and termination dates of the required service period (or provisions for the determination thereof);

(ii) the amount of the bonus;

(iii) the method of payment; and

(iv) other terms and conditions under which the bonus is payable, subject to the requirements of this section and regulations of the Office.

(B) The terms and conditions for paying a bonus, as specified in the service agreement, shall include—

(i) the conditions under which the agreement may be terminated before the agreed-upon service period has been completed; and

(ii) the effect of the termination.

(C) The required service period shall commence upon the commencement of service with the agency or movement to a new position or geographic area, as applicable, unless the service agreement provides for a later commencement date in circumstances and to the extent allowable under regulations of the Office, such as when there is an initial period of formal basic training.

(d)(1) Except as provided in subsection (e), a bonus under this section shall not exceed 25 percent of the annual rate of basic pay of the employee at the beginning of the service period multiplied by the number of years (including a fractional part of a year, as determined under regulations of the Office) in the required service period of the employee involved.

(2) A bonus under this section may be paid as an initial lump sum, in installments, as a final lump sum upon the completion of the full period of service required by the agreement, or in a combination of these forms of payment.

(3) A bonus under this section is not part of the basic pay of an employee for any purpose.

(4) Under regulations of the Office, a recruitment bonus under this section may be paid to an eligible individual before that individual enters on duty.

(e) The Office may authorize the head of an agency to waive the limitation under subsection (d)(1) based on a critical agency need, subject to regulations prescribed by the Office. Under such a waiver, the maximum bonus allowable shall—

(1) be equal to the maximum that would be determined if subsection (d)(1) were applied by substituting ''50'' for ''25''; but

(2) in no event exceed 100 percent of the annual rate of basic pay of the employee at the beginning of the service period.

Nothing in this subsection shall be considered to permit the waiver of any requirement under subsection (c).

(f) The Office shall require that an agency establish a plan for the payment of recruitment bonuses before paying any such bonuses, and a plan for the payment of relocation bonuses before paying any such bonuses, subject to regulations prescribed by the Office.

(g) The Office may prescribe regulations to carry out this section, including regulations relating to the repayment of a bonus under this section in appropriate circumstances when the agreed-upon service period has not been completed.

(Added Pub. L. 108–411, title I, § 101(a)(1), Oct. 30, 2004, 118 Stat. 2305.)

PRIOR PROVISIONS

A prior section 5753, added Pub. L. 101–509, title V, § 529 [title II, § 208(a)], Nov. 5, 1990, 104 Stat. 1427, 1458, which related to recruitment and relocation bonuses, was repealed by Pub. L. 108–411, title I, § 101(a)(1), Oct. 30, 2004, 118 Stat. 2305.

EFFECTIVE DATE

Pub. L. 108–411, title I, § 101(d), Oct. 30, 2004, 118 Stat. 2310, provided that:

''(1) EFFECTIVE DATE.—Except as provided under paragraphs (2) and (3), this section [enacting this section and section 5754 of this title, repealing former sections 5753 and 5754 of this title, and amending provisions set out as a note under section 5305 of this title] shall take effect on the first day of the first applicable pay period beginning on or after the 180th day after the date of the enactment of this Act [Oct. 30, 2004].

''(2) APPLICATION TO AGREEMENTS.—A recruitment or relocation bonus service agreement that was authorized under section 5753 of title 5, United States Code, before the effective date under paragraph (1) shall continue, until its expiration, to be subject to such section as in effect on the day before such effective date.

''(3) APPLICATION TO ALLOWANCES.—Payment of a retention allowance that was authorized under section 5754 of title 5, United States Code, before the effective date under paragraph (1) shall continue, subject to such section as in effect on the day before such effective date, until the retention allowance is reauthorized or terminated (but no longer than 1 year after such effective date).''

## § 5754. Retention bonuses

(a)(1) This section may be applied to—

(A) employees covered by the General Schedule pay system established under subchapter III of chapter 53; and

(B) employees in a category approved by the Office of Personnel Management at the request of the head of an Executive agency.

(2) A bonus may not be paid under this section to an individual who is appointed to or who holds—

(A) a position to which an individual is appointed by the President, by and with the advice and consent of the Senate;

(B) a position in the Senior Executive Service as a noncareer appointee (as such term is defined under section 3132(a)); or

(C) a position which has been excepted from the competitive service by reason of its confidential, policy-determining, policy-making, or policy-advocating character.

(3) In this section, the term ''employee'' has the meaning given that term in section 2105, except that such term also includes an employee described in subsection (c) of that section.

(b) The Office of Personnel Management may authorize the head of an agency to pay a retention bonus to an employee 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, in the absence of a retention bonus, the employee would be likely to leave—

(A) the Federal service; or

(B) for a different position in the Federal service under conditions described in regulations of the Office.

(c) The Office may authorize the head of an agency to pay retention bonuses to a group of employees in 1 or more categories of positions in 1 or more geographic areas, subject to the requirements of subsection (b)(1) and regulations prescribed by the Office, if there is a high risk that a significant portion of employees in the group would be likely to leave in the absence of retention bonuses.

(d)(1) Payment of a retention bonus is contingent upon the employee entering into a written service agreement with the agency to complete a period of employment with the agency.

(2)(A) The agreement shall include—

(i) the length of the required service period;

(ii) the amount of the bonus;

(iii) the method of payment; and

(iv) other terms and conditions under which the bonus is payable, subject to the requirements of this section and regulations of the Office.

(B) The terms and conditions for paying a bonus, as specified in the service agreement, shall include—

(i) the conditions under which the agreement may be terminated before the agreed-upon service period has been completed; and

(ii) the effect of the termination.

(3)(A) Notwithstanding paragraph (1), a written service agreement is not required if the agency pays a retention bonus in biweekly installments and sets the installment payment at the full bonus percentage rate established for the employee with no portion of the bonus deferred.

(B) If an agency pays a retention bonus in accordance with subparagraph (A) and makes a determination to terminate the payments, the agency shall provide written notice to the employee of that determination. Except as provided in regulations of the Office, the employee shall continue to be paid the retention bonus through the end of the pay period in which such written notice is provided.

(4) A retention bonus for an employee may not be based on any period of such service which is the basis for a recruitment or relocation bonus under section 5753.

(e)(1) Except as provided in subsection (f), a retention bonus, which shall be stated as a percentage of the employee's basic pay for the service period associated with the bonus, may not exceed—

(A) 25 percent of the employee's basic pay if paid under subsection (b); or

(B) 10 percent of an employee's basic pay if paid under subsection (c).

(2)(A) A retention bonus may be paid to an employee in installments after completion of specified periods of service or in a single lump sum at the end of the full period of service required by the agreement.

(B) An installment payment is derived by multiplying the amount of basic pay earned in the installment period by a percentage not to exceed the bonus percentage rate established for the employee.

(C) If the installment payment percentage established for the employee is less than the bonus percentage rate established for the employee, the accrued but unpaid portion of the bonus is payable as part of the final installment payment

to the employee after completion of the full service period under the terms of the service agreement.

(D) For purposes of this paragraph, the bonus percentage rate established for an employee means the bonus percentage rate established for such employee in accordance with paragraph (1) or subsection (f), as the case may be.

(3) A retention bonus is not part of the basic pay of an employee for any purpose.

(f) Upon the request of the head of an agency, the Office may waive the limit established under subsection (e)(1) and permit the agency head to pay an otherwise eligible employee or category of employees retention bonuses of up to 50 percent of basic pay, based on a critical agency need.

(g) The Office shall require that, before paying any bonuses under this section, an agency shall establish a plan for the payment of any such bonuses, subject to regulations prescribed by the Office.

(h) The Office may prescribe regulations to carry out this section.

(Added Pub. L. 108–411, title I, § 101(a)(1), Oct. 30, 2004, 118 Stat. 2307.)

PRIOR PROVISIONS

A prior section 5754, added Pub. L. 101–509, title V, § 529 [title II, § 208(a)], Nov. 5, 1990, 104 Stat. 1427, 1459, which related to retention allowances, was repealed by Pub. L. 108–411, title I, § 101(a)(1), Oct. 30, 2004, 118 Stat. 2305.

EFFECTIVE DATE

Section effective on the first day of the first applicable pay period beginning on or after the 180th day after Oct. 30, 2004, with exception for payment of certain retention allowances, see section 101(d) of Pub. L. 108–411, set out as a note under section 5753 of this title.

### § 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.

### § 5756. Home marketing incentive payment

(a) Under regulations prescribed under subsection (b), an agency may pay to an employee who transfers in the interest of the Government an amount to encourage the employee to aggressively market the employee's residence at the official station from which transferred when—

(1) the residence is entered into a relocation services program established under a contract in accordance with section 5724c of this title to arrange for the purchase of the residence;

(2) the employee finds a buyer who completes the purchase of the residence through the program; and

(3) the sale of the residence results in a reduced cost to the Government.

(b)(1) The Administrator of General Services shall prescribe regulations to carry out this section.

(2) The regulations shall include a limitation on the maximum amount payable with respect to an employee's residence. The Administrator shall establish the limitation in consultation with the Director of the Office of Management and Budget. For fiscal years 1997 and 1998, the maximum amount shall be the amount equal to five percent of the sale price of the residence.

(Added Pub. L. 104–201, div. A, title XVII, § 1717, Sept. 23, 1996, 110 Stat. 2757.)

EFFECTIVE DATE

Section effective 180 days after Sept. 23, 1996, see section 1725(a) of Pub. L. 104–201, set out as an Effective Date of 1996 Amendment note under section 5722 of this title.

### § 5757.[1] Payment of expenses to obtain professional credentials

(a) An agency may use appropriated funds or funds otherwise available to the agency to pay for—

[1] Another section 5757 is set out after this section.

(1) expenses for employees to obtain professional credentials, including expenses for professional accreditation, State-imposed and professional licenses, and professional certification; and

(2) examinations to obtain such credentials.

(b) The authority under subsection (a) may not be exercised on behalf of any employee occupying or seeking to qualify for appointment to any position that is excepted from the competitive service because of the confidential, policy-determining, policy-making, or policy-advocating character of the position.

(Added Pub. L. 107–107, div. A, title XI, § 1112(a), Dec. 28, 2001, 115 Stat. 1238.)

### § 5757.[1] Extended assignment incentive

(a) The head of an Executive agency may pay an extended assignment incentive to an employee if—

(1) the employee has completed at least 2 years of continuous service in 1 or more civil service positions located in a territory or possession of the United States, the Commonwealth of Puerto Rico, or the Commonwealth of the Northern Mariana Islands;

(2) the agency determines that replacing the employee with another employee possessing the required qualifications and experience would be difficult; and

(3) the agency determines it is in the best interest of the Government to encourage the employee to complete a specified additional period of employment with the agency in the territory or possession, the Commonwealth of Puerto Rico or Commonwealth of the Northern Mariana Islands, except that the total amount of service performed in a particular territory, commonwealth, or possession under 1 or more agreements established under this section may not exceed 5 years.

(b) The sum of extended assignment incentive payments for a service period may not exceed the greater of—

(1) an amount equal to 25 percent of the annual rate of basic pay of the employee at the beginning of the service period, times the number of years in the service period; or

(2) $15,000 per year in the service period.

(c)(1) Payment of an extended assignment incentive shall be contingent upon the employee entering into a written agreement with the agency specifying the period of service and other terms and conditions under which the extended assignment incentive is payable.

(2) The agreement shall set forth the method of payment, including any use of an initial lump-sum payment, installment payments, or a final lump-sum payment upon completion of the entire period of service.

(3) The agreement shall describe the conditions under which the extended assignment incentive may be canceled prior to the completion of agreed-upon service period and the effect of the cancellation. The agreement shall require that if, at the time of cancellation of the incentive, the employee has received incentive payments which exceed the amount which bears the same relationship to the total amount to be paid under the agreement as the completed service period bears to the agreed-upon service period, the employee shall repay that excess amount, at a minimum, except that an employee who is involuntarily reassigned to a position stationed outside the territory, commonwealth, or possession or involuntarily separated (not for cause on charges of misconduct, delinquency, or inefficiency) may not be required to repay any excess amounts.

(d) An agency may not put an extended assignment incentive into effect during a period in which the employee is fulfilling a recruitment or relocation bonus service agreement under section 5753 or for which an employee is receiving a retention allowance under section 5754.

(e) Extended assignment incentive payments may not be considered part of the basic pay of an employee.

(f) The Office of Personnel Management may prescribe regulations for the administration of this section, including regulations on an employee's entitlement to retain or receive incentive payments when an agreement is canceled. Neither this section nor implementing regulations may impair any agency's independent authority to administratively determine compensation for a class of its employees.

(Added Pub. L. 107–273, div. A, title II, § 207(a)(1), Nov. 2, 2002, 116 Stat. 1779.)

EFFECTIVE DATE

Section effective on the first day of the first applicable pay period beginning on or after 6 months after Nov. 2, 2002, see section 207(c) of Pub. L. 107–273, set out as an Effective Date of 2002 Amendment note under section 5307 of this title.

REPORT

Pub. L. 107–273, div. A, title II, § 207(d), Nov. 2, 2002, 116 Stat. 1780, provided that: "No later than 3 years after the effective date of this section [see Effective Date note above], the Office of Personnel Management, after consultation with affected agencies, shall submit a report to Congress assessing the effectiveness of the extended assignment incentive authority as a human resources management tool and making recommendations for any changes necessary to improve the effectiveness of the incentive authority. Each agency shall maintain such records and report such information, including the number and size of incentive offers made and accepted or declined by geographic location and occupation, in such format and at such times as the Office of Personnel Management may prescribe, for use in preparing the report."

### § 5759.[1] Retention and relocation bonuses for the Federal Bureau of Investigation

(a) AUTHORITY.—The Director of the Federal Bureau of Investigation, after consultation with the Director of the Office of Personnel Management, may pay, on a case-by-case basis, a bonus under this section to an employee of the Bureau if—

(1)(A) the unusually high or unique qualifications of the employee or a special need of the Bureau for the employee's services makes it essential to retain the employee; and

[1] Another section 5757 is set out preceding this section.

[1] So in original. No section 5758 has been enacted.

(B) the Director of the Federal Bureau of Investigation determines that, in the absence of such a bonus, the employee would be likely to leave—

(i) the Federal service; or

(ii) for a different position in the Federal service; or

(2) the individual is subject to a mobility agreement and is transferred to a position in a different geographical area in which there is a shortage of critical skills (as determined by the Director of the Federal Bureau of Investigation).

(b) SERVICE AGREEMENT.—Payment of a bonus under this section is contingent upon the employee entering into a written service agreement with the Bureau to complete a period of service with the Bureau. Such agreement shall include—

(1) the period of service the individual shall be required to complete in return for the bonus; and

(2) the conditions under which the agreement may be terminated before the agreed-upon service period has been completed, and the effect of the termination, including requirements for a bonus recipient's repayment of a bonus in circumstances determined by the Director of the Federal Bureau of Investigation.

(c) LIMITATION ON AUTHORITY.—A bonus paid under this section may not exceed 50 percent of the employee's annual rate of basic pay. The bonus may be paid in a lump sum or installments linked to completion of periods of service.

(d) IMPACT ON BASIC PAY.—A bonus paid under this section is not part of the basic pay of an employee for any purpose.

(Added Pub. L. 108–447, div. B, title I, § 113(a), Dec. 8, 2004, 118 Stat. 2868; amended Pub. L. 111–117, div. B, title II, § 217, Dec. 16, 2009, 123 Stat. 3141; Pub. L. 111–259, title IV, § 443, Oct. 7, 2010, 124 Stat. 2733.)

AMENDMENTS

2010—Subsec. (a)(2). Pub. L. 111–259, § 443(1), substituted ''is subject to a mobility agreement and is transferred to a position in a different geographical area in which there is a shortage of critical skills'' for ''is transferred to a different geographic area with a higher cost of living''.

Subsec. (b)(2). Pub. L. 111–259, § 443(2), substituted '', including requirements for a bonus recipient's repayment of a bonus in circumstances determined by the Director of the Federal Bureau of Investigation.'' for the period.

Subsec. (c). Pub. L. 111–259, § 443(3), substituted ''annual rate of basic pay. The bonus may be paid in a lump sum or installments linked to completion of periods of service.'' for ''basic pay.''

Subsec. (d). Pub. L. 111–259, § 443(4), substituted ''bonus paid under this section'' for ''retention bonus''.

2009—Subsec. (e). Pub. L. 111–117 struck out subsec. (e). Text read as follows: ''The authority to grant bonuses under this section shall cease to be available after December 31, 2009.''

## § 5760. Travel and transportation allowances: transportation of family members incident to the repatriation of employees held captive

(a) ALLOWANCE FOR FAMILY MEMBERS AND CERTAIN OTHERS.—(1) Under uniform regulations prescribed by the heads of agencies, travel and transportation described in subsection (d) may be provided for not more than 3 family members of an employee described in subsection (b).

(2) In addition to the family members authorized to be provided travel and transportation under paragraph (1), the head of an agency may provide travel and transportation described in subsection (d) to an attendant to accompany a family member described in subsection (b) if the head of an agency determines—

(A) the family member to be accompanied is unable to travel unattended because of age, physical condition, or other reason determined by the head of the agency; and

(B) no other family member who is eligible for travel and transportation under subsection (a) is able to serve as an attendant for the family member.

(3) If no family member of an employee described in subsection (b) is able to travel to the repatriation site of the employee, travel and transportation described in subsection (d) may be provided to not more than 2 persons related to and selected by the employee.

(b) COVERED EMPLOYEES.—An employee described in this subsection is an employee (as defined in section 2105 of this title) who—

(1) was held captive, as determined by the head of an agency concerned; and

(2) is repatriated to a site inside or outside the United States.

(c) ELIGIBLE FAMILY MEMBERS.—In this section, the term ''family member'' has the meaning given the term in section 411h(b) of title 37.

(d) TRAVEL AND TRANSPORTATION AUTHORIZED.—(1) The transportation authorized by subsection (a) is round-trip transportation between the home of the family member (or home of the attendant or person provided transportation under paragraph (2) or (3) of subsection (a), as the case may be) and the location of the repatriation site at which the employee is located.

(2) In addition to the transportation authorized by subsection (a), the head of an agency may provide a per diem allowance or reimbursement for the actual and necessary expenses of the travel, or a combination thereof, but not to exceed the rates established for such allowances and expenses under section 404(d) of title 37.

(3) The transportation authorized by subsection (a) may be provided by any of the means described in section 411h(d)(1) of title 37.

(4) An allowance under this subsection may be paid in advance.

(5) Reimbursement payable under this subsection may not exceed the cost of government-procured round-trip air travel.

(Added Pub. L. 109–163, div. A, title XI, § 1121(a), Jan. 6, 2006, 119 Stat. 3451.)

## § 5761. Foreign language proficiency pay awards for the Federal Bureau of Investigation

The Director of the Federal Bureau of Investigation may, under regulations prescribed by the Director, pay a cash award of up to 10 percent of basic pay to any Bureau employee who maintains proficiency in a language or languages critical to the mission or who uses one or

more foreign languages in the performance of official duties.

(Added Pub. L. 111–117, div. B, title II, § 219(a), Dec. 16, 2009, 123 Stat. 3141.)

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AMENDMENTS

2001—Pub. L. 107–107, div. A, title XI, § 1111(b), Dec. 28, 2001, 115 Stat. 1238, added item 5949.

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.

### 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.<br>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. |
| (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.

## § 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.

## § 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.

## 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. |
| (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, formerly 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.) [25 U.S.C. 450f et seq.], under which such tribe or tribal organization may retain rents and charges for the operation, maintenance, and repair of such quarters.''

### § 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.<br>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.

### § 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.

(c) Funds made available under subsection (b) may be provided in advance to persons eligible to receive reimbursements.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 510; Pub. L. 109–140, § 7, Dec. 22, 2005, 119 Stat. 2652.)

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.

AMENDMENTS

2005—Subsec. (c). Pub. L. 109–140 added subsec. (c).

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.

## SUBCHAPTER III—OVERSEAS DIFFERENTIALS AND ALLOWANCES

### § 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) cer-

tain 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.

### § 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.

(f)(1) If an employee dies at post in a foreign area, a transfer allowance under section 5924(2)(B) may be granted to the spouse or dependents of such employee (or both) for the purpose of providing for their return to the United States.

(2) A transfer allowance under this subsection may not be granted with respect to the spouse or a dependent of the employee unless, at the time of death, such spouse or dependent was residing—

(A) at the employee's post of assignment; or

(B) at a place, outside the United States, for which a separate maintenance allowance was being furnished under section 5924(3).

(3) The President may prescribe any regulations necessary to carry out this subsection.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 510; Pub. L. 102–138, title I, § 147(c), Oct. 28, 1991, 105 Stat. 669;

Pub. L. 106–113, div. B, § 1000(a)(7) [div. A, title III, § 335], Nov. 29, 1999, 113 Stat. 1536, 1501A–441.)

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

1999—Subsec. (f). Pub. L. 106–113 added subsec. (f).

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.

## § 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''.

## § 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 Govern-

ment, 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.

(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 school chosen by the employee, not to exceed the total cost to the Government of the dependent attending an adequate school in the nearest United States locality where an adequate school is 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 secondary or post-secondary educational institution, not to exceed one annual trip each way for each dependent, except that an allowance payment under subparagraph (A) may not be made for a dependent during the 12 months following the arrival of the dependent at the selected educational institution under authority contained in this subparagraph.

(C) In those cases in which an adequate school is available at the post of the employee, if the employee chooses to educate the dependent at a school away from post, the education allowance which includes board and room, and periodic travel between the post and the school chosen, shall not exceed the total cost to the Government of the dependent attending an adequate school at the post of the employee.

(D) Allowances provided pursuant to subparagraphs (A) and (B) may include, at the election of the employee, payment or reimbursement of the costs incurred to store baggage for the employee's dependent at or in the vicinity of the dependent's school during one trip per year by the dependent between the school and the employee's duty station, except that such payment or reimbursement may not exceed the cost that the Government would incur to transport the baggage in connection with the trip, and such payment or reimbursement shall be in lieu of transportation of the baggage.

(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; Pub. L. 104–201, div. C, title XXXV, § 3548(a)(7), Sept. 23, 1996, 110 Stat. 2869; Pub. L. 106–113, div. B, § 1000(a)(7) [div. A, title III, § 336], Nov. 29, 1999, 113 Stat. 1536, 1501A–442; Pub. L. 107–228, div. A, title III, § 319, Sept. 30, 2002, 116 Stat. 1380; Pub. L. 109–472, § 3, Jan. 11, 2007, 120 Stat. 3554.)

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.

AMENDMENTS

2007—Par. (4)(A). Pub. L. 109–472, § 3(1), inserted ''United States'' after ''nearest'' in first sentence.

Par. (4)(B). Pub. L. 109–472, § 3(2), amended subpar. (B) generally. Prior to amendment, subpar. (B) related to educational travel expenses of dependents of an employee.

Par. (4)(D). Pub. L. 109–472, § 3(3), added subpar. (D).

2002—Par. (4)(B). Pub. L. 107–228 inserted after first sentence ''At the election of the employee, in lieu of the transportation of the baggage of a dependent from the dependent's school, the costs incurred to store the baggage at or in the vicinity of the school during the dependent's annual trip between the school and the employee's duty station may be paid or reimbursed to the employee, except that the amount of the payment or reimbursement may not exceed the cost that the Government would incur to transport the baggage.''

1999—Par. (4). Pub. L. 106–113 substituted ''between that post and the school chosen by the employee, not to exceed the total cost to the Government of the dependent attending an adequate school in the nearest locality where an adequate school is available,'' for ''between that post and the nearest locality where adequate schools are available,'' in subpar. (A) and added subpar. (C).

1996—Par. (3). Pub. L. 104–201 struck out 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.''

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.

## § 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 35 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; Pub. L. 108–199, div. D, title V, § 591(a), Jan. 23, 2004, 118 Stat. 207; Pub. L. 109–140, § 4(b), Dec. 22, 2005, 119 Stat. 2651.)

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

2005—Subsec. (a). Pub. L. 109–140 struck out ''25 percent of the rate of basic pay or, in the case of an employee of the United States Agency for International Development,'' after ''may not exceed'' in last sentence.

2004—Subsec. (a). Pub. L. 108–199 inserted ''or, in the case of an employee of the United States Agency for International Development, 35 percent of the rate of basic pay'' after ''25 percent of the rate of basic pay''.

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 2004 AMENDMENT

Pub. L. 108–199, div. D, title V, § 591(c), Jan. 23, 2004, 118 Stat. 207, which provided that except for employees of the United States Agency for International Development stationed in Iraq and Afghanistan, the amendments made by subsections (a) and (b), amending this section and section 5928 of this title, would not take effect until the same authority was enacted for employees of the Department of State, was repealed by Pub. L. 109–140, § 4(a), Dec. 22, 2005, 119 Stat. 2651.

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.

CRITERIA

Pub. L. 109–140, § 4(d), Dec. 22, 2005, 119 Stat. 2651, provided that: ''The Secretary of State shall inform the Committee on International Relations [now Committee on Foreign Affairs] of the House of Representatives and the Committee on Foreign Relations of the Senate of the criteria to be used in determinations of appropriate adjustments in post differentials under section 5925(a) of title 5, United States Code, as amended by subsection (b), and danger pay allowances under section 5928 of title 5, United States Code, as amended by subsection (c).''

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.''

## § 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.)

## § 5927. Advances of pay

(a) Up to three months' pay may be paid in advance—

(1) to an employee upon the assignment of the employee to a post in a foreign area;

(2) to an employee, other than an employee appointed under section 303 of the Foreign Service Act of 1980 (and employed under section 311 of such Act), who—

(A) is a citizen of the United States;

(B) is officially stationed or located outside the United States pursuant to Government authorization; and

(C) requires (or has a family member who requires) medical treatment outside the United States, in circumstances specified by the President in regulations; and

(3) to an employee compensated pursuant to section 408 of the Foreign Service Act of 1980, who—

(A) pursuant to United States Government authorization is located outside the country of employment; and

(B) requires medical treatment outside the country of employment in circumstances specified by the President in regulations.

(b) For the purpose of this section, the term ''country of employment'', as used with respect to an individual under subsection (a)(3), means the country (or other area) outside the United States where such individual is hired (as described in subsection (a)(3)) by the Government.

(Added Pub. L. 96–465, title II, § 2310(a), Oct. 17, 1980, 94 Stat. 2166; amended Pub. L. 106–113, div. B, § 1000(a)(7) [div. A, title III, § 337], Nov. 29, 1999, 113 Stat. 1536, 1501A–442; Pub. L. 107–228, div. A, title III, § 320, Sept. 30, 2002, 116 Stat. 1380.)

REFERENCES IN TEXT

Sections 303, 311, and 408 of the Foreign Service Act of 1980, referred to in subsec. (a)(2), (3), are classified to sections 3943, 3951, and 3968, respectively, of Title 22, Foreign Relations and Intercourse.

AMENDMENTS

2002—Subsec. (a)(3). Pub. L. 107–228, § 320(1), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''to a foreign national employee appointed under section 303 of the Foreign Service Act of 1980, or a nonfamily member United States citizen appointed under such section 303 (and employed under section 311 of such Act) for service at such nonfamily member's post of residence, who—

''(A) is located outside the country of employment of such foreign national employee or nonfamily member (as the case may be) pursuant to Government authorization; and

''(B) requires medical treatment outside the country of employment of such foreign national employee or nonfamily member (as the case may be), in circumstances specified by the President in regulations.''

Subsec. (b). Pub. L. 107–228, § 320(2), substituted ''hired'' for ''appointed''.

1999—Pub. L. 106–113 reenacted section catchline without change and amended text generally. Prior to amendment, text read as follows: ''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.''

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.

## § 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 35 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 35 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; Pub. L. 108–199, div. D, title V, § 591(b), Jan. 23, 2004, 118 Stat. 207; Pub. L. 109–140, § 4(c), Dec. 22, 2005, 119 Stat. 2651.)

AMENDMENTS

2005—Pub. L. 109–140 substituted ''35 percent of the basic pay of the employee'' for ''25 percent of the basic pay of the employee or 35 percent of the basic pay of the employee in the case of an employee of the United States Agency for International Development'' in two places.

2004—Pub. L. 108–199 inserted ''or 35 percent of the basic pay of the employee in the case of an employee of the United States Agency for International Development'' after ''25 percent of the basic pay of the employee'' in two places.

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 OR FBI EMPLOYEE

Pub. L. 101–246, title I, § 151, Feb. 16, 1990, 104 Stat. 42, as amended by Pub. L. 107–273, div. C, title I, § 11005, Nov. 2, 2002, 116 Stat. 1817, provided that: ''The Secretary of State may not deny a request by the Drug Enforcement Administration or Federal Bureau of Investigation 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.''

## SUBCHAPTER IV—MISCELLANEOUS ALLOWANCES

ELIGIBILITY OF ADDITIONAL EMPLOYEES FOR REIMBURSEMENT FOR PROFESSIONAL LIABILITY INSURANCE

Pub. L. 106–567, title IV, § 406, Dec. 27, 2000, 114 Stat. 2849, as amended by Pub. L. 107–108, title IV, § 404, Dec. 28, 2001, 115 Stat. 1404, provided that:

''(a) IN GENERAL.—Notwithstanding any provision of title VI, section 636 of the Treasury, Postal Service, and General Government Appropriations Act, 1997 [Pub. L. 104–208, div. A, title I, § 101(f)] (5 U.S.C. prec. 5941 note), the Director of Central Intelligence may—

''(1) designate as qualified employees within the meaning of subsection (b) of that section appropriate categories of employees not otherwise covered by that subsection; and

''(2) use appropriated funds available to the Director to reimburse employees within categories so designated for 100 percent of the costs incurred by such employees for professional liability insurance in accordance with subsection (a) of that section.

''(b) REPORTS.—The Director of Central Intelligence shall submit to the Select Committee on Intelligence of the Senate and the Permanent Select Committee of Intelligence of the House of Representatives a report on each designation of a category of employees under paragraph (1) of subsection (a), including the approximate number of employees covered by such designation and an estimate of the amount to be expended on reimbursement of such employees under paragraph (2) of that subsection.''

[Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the intelligence community deemed to be a reference to the Director of National Intelligence. Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the Central Intelligence Agency deemed to be a reference to the Director of the Central Intelligence Agency. See section 1081(a) and (b) of Pub. L. 108–458, set out as a note under section 401 of Title 50, War and National Defense.]

Pub. L. 106–346, § 101(a) [title III, § 348], Oct. 23, 2000, 114 Stat. 1356, 1356A–33, provided that: ''In addition to the authority provided in section 636 of the Treasury, Postal Service, and General Government Appropriations Act, 1997, as included in Public Law 104–208, title I, section 101(f), as amended [set out as a note below], beginning in fiscal year 2001 and thereafter, amounts appropriated for salaries and expenses for the Department of Transportation may be used to reimburse an employee whose position is that of safety inspector for not to exceed one-half the costs incurred by such employee for professional liability insurance. Any payment under this section shall be contingent upon the submission of such information or documentation as the Department may require.''

REIMBURSEMENTS RELATING TO PROFESSIONAL LIABILITY INSURANCE

Pub. L. 104–208, div. A, title I, § 101(f) [title VI, § 636], Sept. 30, 1996, 110 Stat. 3009–314, 3009–363, as amended by Pub. L. 105–277, div. A, § 101(h) [title VI, § 644], Oct. 21, 1998, 112 Stat. 2681–480, 2681–526; Pub. L. 106–58, title VI, § 642(a), Sept. 29, 1999, 113 Stat. 477; Pub. L. 110–161, div. F, title IV, § 429(a), Dec. 26, 2007, 121 Stat. 2151, provided that:

''(a) AUTHORITY.—Notwithstanding any other provision of law, amounts appropriated by this Act (or any other Act for fiscal year 1997 or any fiscal year thereafter) for salaries and expenses shall be used to reimburse any qualified employee for not to exceed one-half the costs incurred by such employee for professional liability insurance. A payment under this section shall be contingent upon the submission of such information or documentation as the employing agency may require.

''(b) QUALIFIED EMPLOYEE.—For purposes of this section, the term 'qualified employee' means an agency employee whose position is that of—

''(1) a law enforcement officer;

''(2) a supervisor or management official; or

''(3) a temporary fire line manager.

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

''(1) the term 'agency' means an Executive agency, as defined by section 105 of title 5, United States Code, any agency or court in the Judicial Branch, and any agency of the Legislative Branch of Government including any office or committee of the Senate or the House of Representatives;

''(2) the term 'law enforcement officer' means an employee, the duties of whose position are primarily the investigation, apprehension, prosecution, detention, or supervision of individuals suspected or convicted of offenses against the criminal laws of the United States, including any law enforcement officer under section 8331(20) or 8401(17) of such title 5, or under section 4823 of title 22, United States Code;

''(3) the terms 'supervisor' and 'management official' have the respective meanings given them by section 7103(a) of such title 5, and, with regard to the Judicial Branch, mean a justice or judge of the United States as defined in 28 U.S.C. 451 in regular active service or retired from regular active service, other judicial officers as authorized by the Judicial Conference of the United States, and supervisors and managers within the Judicial Branch as authorized by the Judicial Conference of the United States;

''(4) the term 'professional liability insurance' means insurance which provides coverage for—

''(A) legal liability for damages due to injuries to other persons, damage to their property, or other damage or loss to such other persons (including the expenses of litigation and settlement) resulting from or arising out of any tortious act, error, or omission of the covered individual (whether common law, statutory, or constitutional) while in the performance of such individual's official duties as a qualified employee; and

''(B) the cost of legal representation for the covered individual in connection with any administrative or judicial proceeding (including any investigation or disciplinary proceeding) relating to any act, error, or omission of the covered individual while in the performance of such individual's official duties as a qualified employee, and other legal costs and fees relating to any such administrative or judicial proceeding; and

''(5) notwithstanding the definition of the terms 'supervisor' and 'management official' under section 7103(a) of title 5, United States Code, the term 'temporary fire line manager' means an employee of the Forest Service or the Department of the Interior, whose duties include, as determined by the employing agency—

''(A) temporary supervision or management of personnel engaged in wildland or managed fire activities;

''(B) providing analysis or information that affects a decision by a supervisor or manager about a wildland or managed fire; or

''(C) directing the deployment of equipment for a wildland or managed fire.

''(d) APPLICABILITY.—The amendments made by this section [this note] shall take effect on the date of the enactment of this Act [Sept. 30, 1996] and shall apply thereafter.''

[Pub. L. 110–161, div. F, title IV, § 429(b), Dec. 26, 2007, 121 Stat. 2152, provided that: ''The amendment made by subsection (a) [amending section 101(f) [title VI, § 636] of Pub. L. 104–208, set out above] shall take effect on the date of enactment of this Act [Dec. 26, 2007].'']

[Pub. L. 106–58, title VI, § 642(b), Sept. 29, 1999, 113 Stat. 477, provided that: ''The amendment made by subsection (a) [amending section 101(f) [title VI, § 636] of Pub. L. 104–208, set out above] shall take effect on October 1, 1999, or the date of the enactment of this Act [Sept. 29, 1999], whichever is later.'']

**§ 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. Notwithstanding any preceding provision of this subsection, the cost-of-living allowance rate based on paragraph (1) shall be the cost-of-living allowance rate in effect on the date of enactment of the Non-Foreign Area Retirement Equity Assurance Act of 2009, except as adjusted under subsection (c).

(b) This section shall apply only to areas that are designated as cost-of-living allowance areas as in effect on December 31, 2009.

(c)(1) The cost-of-living allowance rate payable under this section shall be adjusted on the first day of the first applicable pay period beginning on or after—

(A) January 1, 2010; and

(B) January 1 of each calendar year in which a locality-based comparability adjustment takes effect under paragraphs (2) and (3), respectively, of section 1914 of the Non-Foreign Area Retirement Equity Assurance Act of 2009.

(2)(A) In this paragraph, the term ''applicable locality-based comparability pay percentage'' means, with respect to calendar year 2010 and each calendar year thereafter, the applicable percentage under paragraph (1), (2), or (3) of section 1914 of Non-Foreign Area Retirement Equity Assurance Act of 2009.

(B) Each adjusted cost-of-living allowance rate under paragraph (1) shall be computed by—

(i) subtracting 65 percent of the applicable locality-based comparability pay percentage from the cost-of-living allowance percentage rate in effect on December 31, 2009; and

(ii) dividing the resulting percentage determined under clause (i) by the sum of—

(I) one; and

(II) the applicable locality-based comparability payment percentage expressed as a numeral.

(3) No allowance rate computed under paragraph (2) may be less than zero.

(4) Each allowance rate computed under paragraph (2) shall be paid as a percentage of basic pay (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).

(d) 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; Pub. L. 111–84, div. A, title XIX, § 1912(b), Oct. 28, 2009, 123 Stat. 2620.)

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.<br>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.

REFERENCES IN TEXT

The date of enactment of the Non-Foreign Area Retirement Equity Assurance Act of 2009, referred to in subsec. (a), is the date of enactment of Pub. L. 111–84, which was approved Oct. 28, 2009.

Section 1914 of the Non-Foreign Area Retirement Equity Assurance Act of 2009, referred to in subsec. (c)(1)(B), (2)(A), is section 1914 of Pub. L. 111–84, which is set out in a Non-Foreign Area Retirement Equity Assurance note under section 5304 of this title.

AMENDMENTS

2009—Subsec. (a). Pub. L. 111–84, § 1912(b)(1), inserted at end ''Notwithstanding any preceding provision of this subsection, the cost-of-living allowance rate based on paragraph (1) shall be the cost-of-living allowance rate in effect on the date of enactment of the Non-Foreign Area Retirement Equity Assurance Act of 2009, except as adjusted under subsection (c).''

Subsecs. (b) to (d). Pub. L. 111–84, § 1912(b)(2), (3), added subsecs. (b) and (c) and redesignated former subsec. (b) as (d).

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–84 effective on the first day of the first applicable pay period beginning on or after Jan. 1, 2010, with transition and savings provisions, see sections 1914, 1915, and 1919(b) of Pub. L.

111–84, set out in a Non-Foreign Area Retirement Equity Assurance note under section 5304 of this title.

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; Pub. L. 104–52, title IV, § 5, Nov. 19, 1995, 109 Stat. 490; Pub. L. 105–61, title V, § 515, Oct. 10, 1997, 111 Stat. 1306, 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, 2000: *Provided*, That no later than March 1, 2000, 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; Ex. Ord. No. 13207, Apr. 5, 2001, 66 F.R. 18399, 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, 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[.]

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. 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''.

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 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 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.

## § 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.<br>Aug. 14, 1937, ch. 627, 50 Stat. 641.<br>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.

### [§ 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.<br>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.

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

For the purpose of determining length of service as a Government physician, service as a physician under section 4104 or 4114[1] of title 38 or ac-

[1] See References in Text note below.

tive service as a medical officer in the commissioned corps of the Public Health Service under Title II of the Public Health Service Act (42 U.S.C. ch. 6A) shall be deemed service as a Government physician.

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

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

(2) occupies an internship or residency training position,

(3) is a reemployed annuitant, or

(4) is fulfilling a scholarship obligation.

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

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

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

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

(g) For the purpose of this section—

(1) ''Government physician'' means any individual employed as a physician or dentist who is paid under—

(A) section 5332 of this title, relating to the General Schedule;

(B) Subchapter VIII of chapter 53 of this title, relating to the Senior Executive Service;

(C) section 5371, relating to certain health care positions;

(D) section 3 of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831b), relating to the Tennessee Valley Authority;

(E) chapter 4 of title I of the Foreign Service Act of 1980 (22 U.S.C. 3961 and following), relating to the Foreign Service;

(F) section 10 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403j), relating to the Central Intelligence Agency;

(G) section 1202 of the Panama Canal Act of 1979, relating to the Panama Canal Commission;

(H) section 2 of the Act of May 29, 1959[2] (Public Law 86–36, as amended, 50 U.S.C. 402 note), relating to the National Security Agency;

(I) section 5376, relating to certain senior-level positions;

(J) section 5377, relating to critical positions; or

(K) subchapter IX of chapter 53, relating to special occupational pay systems; and

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

(h)(1) Any allowance paid under this section shall not be considered as basic pay for the purposes of subchapter VI and section 5595 of chapter 55, chapter 81 or 87 of this title, or other benefits related to basic pay.

(2) Any allowance under this section for a Government physician shall be paid in the same manner and at the same time as the physician's basic pay is paid.

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

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

(1) which agencies entered into agreements under this section;

(2) the nature and extent of the recruitment or retention problems justifying the use of authority by each agency under this section;

(3) the number of physicians with whom agreements were entered into by each agency;

(4) the size of the allowances and the duration of the agreements entered into; and

(5) the degree to which the recruitment or retention problems referred to in paragraph (2) were alleviated under this section.

(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

[2] See References in Text note below.

Stat. 1115, 1116; Pub. L. 105–61, title V, § 517(a), Oct. 10, 1997, 111 Stat. 1307; Pub. L. 105–266, § 7(a), Oct. 19, 1998, 112 Stat. 2369; Pub. L. 106–554, § 1(a)(1) [title II, § 218(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–28; Pub. L. 106–571, §§ 2(a)(1), (b), 3(d), Dec. 28, 2000, 114 Stat. 3054, 3057.)

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.

Section 2 of the Act of May 29, 1959 (Public Law 86–36, as amended, 50 U.S.C. 402 note), referred to in subsec. (g)(1)(H), was repealed by Pub. L. 104–201, div. A, title XVI, § 1633(b)(1), Sept. 23, 1996, 110 Stat. 2751.

AMENDMENTS

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

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

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

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

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

''(B) the reasons for those recommendations.''

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

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

Subsec. (j)(2)(A). Pub. L. 105–61, § 517(a)(2), substituted ''September 30, 2000'' for ''September 30, 1997''.

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 1997 AMENDMENT

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

EFFECTIVE DATE OF 1993 AMENDMENT

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

EFFECTIVE DATE OF 1984 AMENDMENT

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

EFFECTIVE DATE OF REPEAL

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; Pub. L. 105–61, title V, § 517(b), Oct. 10, 1997, 111 Stat. 1307; Pub. L. 106–554, § 1(a)(1) [title II, § 218(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–28, which provided that this section would be repealed, unless specifically extended by Act of Congress, effective on Sept. 30, 2007, was repealed by Pub. L. 106–571, § 2(a)(2), Dec. 28, 2000, 114 Stat. 3054.

SHORT TITLE OF 2000 AMENDMENT

Pub. L. 106–571, § 1, Dec. 28, 2000, 114 Stat. 3054, provided that: ''This Act [amending this section and sections 8331, 8339, 8401, and 8415 of this title] may be cited as the 'Federal Physicians Comparability Allowance Amendments of 2000'.''

SHORT TITLE OF 1983 AMENDMENT

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

SHORT TITLE OF 1981 AMENDMENT

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

SHORT TITLE OF 1979 AMENDMENT

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

SHORT TITLE

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

CONSTRUCTION OF 1998 AMENDMENT

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

CONSTRUCTION OF 1993 AMENDMENT

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

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

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

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

MODIFICATION OF SERVICE AGREEMENTS IN EFFECT ON OCTOBER 19, 1998; LIMITATION

Pub. L. 105–266, § 7(b), Oct. 19, 1998, 112 Stat. 2369, provided that:

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

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

EFFECTIVENESS OF SERVICE AGREEMENTS LIMITED BY APPROPRIATION ACTS

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

DUE DATE FOR FIRST ANNUAL REPORT ON OPERATION OF SECTION

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

PAY OF CERTAIN FEDERAL PHYSICIANS FOR FISCAL YEAR 1982

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

SERVICE AGREEMENTS ENTERED INTO ON OR AFTER DECEMBER 29, 1981; ADVANCE AUTHORIZATION; FISCAL YEAR 1982

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

SERVICE AGREEMENTS ENTERED INTO ON OR AFTER DECEMBER 29, 1979; ADVANCE AUTHORIZATION

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

TIME OF ENTRY INTO ALLOWANCE AGREEMENTS AND FOR COMMENCEMENT OF ALLOWANCE

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

EX. ORD. NO. 12109. DELEGATION OF AUTHORITY TO DIRECTOR OF OFFICE OF PERSONNEL MANAGEMENT

Ex. Ord. No. 12109, Dec. 28, 1978, 44 F.R. 1067, provided: By the authority vested in me as President of the United States of America by Section 5948 of Title 5 and Section 301 of Title 3 of the United States Code, it is hereby ordered as follows:

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

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

JIMMY CARTER.

### § 5949. Hostile fire pay

(a) The head of an Executive agency may pay an employee hostile fire pay at the rate of $150 for any month in which the employee was—

(1) subject to hostile fire or explosion of hostile mines;

(2) on duty in an area in which the employee was in imminent danger of being exposed to hostile fire or explosion of hostile mines and in which, during the period on duty in that area, other employees were subject to hostile fire or explosion of hostile mines; or

(3) killed, injured, or wounded by hostile fire, explosion of a hostile mine, or any other hostile action.

(b) An employee covered by subsection (a)(3) who is hospitalized for the treatment of his or her injury or wound may be paid hostile fire pay under this section for not more than three additional months during which the employee is so hospitalized.

(c) An employee may be paid hostile fire pay under this section in addition to other pay and allowances to which entitled, except that an employee may not be paid hostile fire pay under this section for periods of time during which the employee receives payment under section 5925 of this title because of exposure to political violence or payment under section 5928 of this title.

(Added Pub. L. 107–107, div. A, title XI, § 1111(a), Dec. 28, 2001, 115 Stat. 1238.)

EFFECTIVE DATE

Pub. L. 107–107, div. A, title XI, § 1111(c), Dec. 28, 2001, 115 Stat. 1238, as amended by Pub. L. 108–375, div. A, title X, § 1084(h)(3), Oct. 28, 2004, 118 Stat. 2064, provided that: ''Section 5949 of title 5, United States Code, as added by subsection (a), is effective as if enacted into law on September 11, 2001, and may be applied with respect to any hostile action that took place on or after that date.''

## 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''.

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 in-

clude 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.<br>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 by 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.''

### [§ 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 public 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-

[1] See References in Text note below.

workday is a legal public holiday for the employee.

(3) Instead of a holiday that is designated under subsection (a) to occur on a Monday, for an employee at a duty post outside the United States whose basic workweek is other than Monday through Friday, and for whom Monday is a regularly scheduled workday, the legal public holiday is the first workday of the workweek in which the Monday designated for the observance of such holiday under subsection (a) occurs.

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 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.

(d)(1) For purposes of this subsection—

(A) the term ''compressed schedule'' has the meaning given such term by section 6121(5); and

(B) the term ''adverse agency impact'' has the meaning given such term by section 6131(b).

(2) An agency may prescribe rules under which employees on a compressed schedule may, in the case of a holiday that occurs on a regularly scheduled non-workday for such employees, and notwithstanding any other provision of law or the terms of any collective bargaining agreement, be required to observe such holiday on a workday other than as provided by subsection (b), if the agency head determines that it is necessary to do so in order to prevent an adverse agency impact.

(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; Pub. L. 104–201, div. A, title XVI, §1613, Sept. 23, 1996, 110 Stat. 2739; Pub. L. 105–261, div. A, title XI, §1107, Oct. 17, 1998, 112 Stat. 2142.)

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

1998—Subsec. (b)(3). Pub. L. 105–261 added par. (3).

1996—Subsec. (d). Pub. L. 104–201 added subsec. (d).

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.

## § 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.<br>June 11, 1954, ch. 283, 68 Stat. 249.<br>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.

### § 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.''

## 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.

### § 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, the Library of Congress, the Architect of the Capitol, and the Botanic Garden;

(2) ''employee'' has the meaning given the term in subsection (a) of section 2105 of this title, except that such term also includes an employee described in subsection (c) of that section;

(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; Pub. L. 104–106, div. A, title X, § 1041, Feb. 10, 1996, 110 Stat. 433; Pub. L. 111–68, div. A, title I, § 1302(1), Oct. 1, 2009, 123 Stat. 2034.)

AMENDMENTS

2009—Par. (1). Pub. L. 111–68 substituted ''the Library of Congress, the Architect of the Capitol, and the Botanic Garden'' for ''and the Library of Congress''.

1996—Par. (2). Pub. L. 104–106 amended par. (2) generally. Prior to amendment, par. (2) read as follows: '' 'employee' has the meaning given it by section 2105 of this title;''.

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.)

### § 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

[1] So in original. The word ''section'' probably should not appear.

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)''.

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''.

### § 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.)

### § 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.)

### § 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.)

### § 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.)

### § 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)''.

## § 6129. Administration of leave and retirement provisions

For purposes of administering sections 6303(a), 6304, 6307(a) and (d), 6323, 6326, 6327, 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.)

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.)

## § 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 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.

(3) With respect to employees of the Architect of the Capitol and the Botanic Garden, the authority granted to the Office of Personnel Management under this subchapter shall be exercised by the Architect of the Capitol.

(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; Pub. L. 111–68, div. A, title I, § 1302(2), Oct. 1, 2009, 123 Stat. 2034.)

AMENDMENTS

2009—Subsec. (c)(3). Pub. L. 111–68 added par. (3).

1989—Subsec. (c). Pub. L. 101–163 designated existing provisions as par. (1) and added par. (2).

## CHAPTER 63—LEAVE

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AMENDMENTS

1999—Pub. L. 106–56, §1(c)(2), Sept. 24, 1999, 113 Stat. 407, added item 6328.

1997—Pub. L. 105–18, title II, §9004(b), June 12, 1997, 111 Stat. 197, added heading of subchapter VI and item 6391.

1994—Pub. L. 103–329, title VI, §629(a)(2)(B), Sept. 30, 1994, 108 Stat. 2423, added item 6327.

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.

## SUBCHAPTER I—ANNUAL AND SICK LEAVE

### § 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.<br>July 2, 1953, ch. 178, § 1 ''(c)(1) (less last sentence)'', 67 Stat. 136.<br>Sept. 6, 1960, Pub. L. 86–707, § 402(a), 74 Stat. 800.<br>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 1999 AMENDMENT

Pub. L. 106–56, § 1(a), Sept. 24, 1999, 113 Stat. 407, provided that: ''This Act [amending section 6327 of this title and renumbering another section 6327 of this title as section 6328] may be cited as the 'Organ Donor Leave Act'.''

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 by 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 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.

## § 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.

(g) An employee who is being involuntarily separated from an agency due to a reduction in force or transfer of function under subchapter I of chapter 35 or section 3595 may elect to use annual leave to the employee's credit to remain on the agency's rolls after the date the employee would otherwise have been separated if, and only to the extent that, such additional time in a pay status will enable the employee to qualify for an immediate annuity under section 8336, 8412, 8414, or to qualify to carry health benefits coverage into retirement under section 8905(b).

(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; Pub. L. 104–208, div. A, title I, § 101(f) [title VI, § 634], Sept. 30, 1996, 110 Stat. 3009–314, 3009–363; Pub. L. 105–277, div. A, § 101(h) [title VI, § 653], Oct. 21, 1998, 112 Stat. 2681–480, 2681–528.)

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

1998—Subsec. (g). Pub. L. 105–277 inserted ''or section 3595'' after ''chapter 35''.

1996—Subsec. (g). Pub. L. 104–208 added subsec. (g).

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 un-

used 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.

### § 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, and for all service which is creditable by virtue of subsection (e). 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.

(e)(1) Not later than 180 days after the date of the enactment of this subsection, the Office of Personnel Management shall prescribe regulations under which, for purposes of determining years of service under subsection (a), credit shall, in the case of a newly appointed employee, be given for any prior service of such employee that would not otherwise be creditable for such purposes, if—

(A) such service—

(i) was performed in a position the duties of which directly relate to the duties of the position to which such employee is so appointed; and

(ii) meets such other requirements as the Office may prescribe; and

(B) in the judgment of the head of the appointing agency, the application of this subsection is necessary in order to achieve an important agency mission or performance goal.

(2) Service described in paragraph (1)—

(A) shall be creditable, for the purposes described in paragraph (1), as of the effective date of the employee's appointment; and

(B) shall not thereafter cease to be so creditable, unless the employee fails to complete a full year of continuous service with the agency.

(3) An employee shall not be eligible for the application of paragraph (1) on the basis of any appointment if, within 90 days before the effective date of such appointment, such employee has held any position in the civil service.

(f) Notwithstanding any other provision of this section, the rate of accrual of annual leave under subsection (a) shall be 1 day for each full biweekly pay period in the case of any employee who holds a position which is subject to—

(1) section 5376 or 5383; or

(2) a pay system equivalent to either of the foregoing, as determined by the Office of Personnel Management.

(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; Pub. L. 108–411, title II, § 202(a), (b), Oct. 30, 2004, 118 Stat. 2312.)

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.<br>Sept. 6, 1960, Pub. L. 86–707, § 401 ''(e)'', 74 Stat. 799.<br>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.

REFERENCES IN TEXT

The date of the enactment of this subsection, referred to in subsec. (e)(1), is the date of enactment of Pub. L. 108–411, which was approved Oct. 30, 2004.

AMENDMENTS

2004—Subsec. (a). Pub. L. 108–411, § 202(a)(2), inserted '', and for all service which is creditable by virtue of subsection (e)'' before period at end of second sentence.

Subsec. (e). Pub. L. 108–411, § 202(a)(1), added subsec. (e).

Subsec. (f). Pub. L. 108–411, § 202(b), added subsec. (f).

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 2004 AMENDMENT

Pub. L. 108–411, title II, § 202(c), Oct. 30, 2004, 118 Stat. 2312, provided that: ''None of the amendments made by subsection (a) [amending this section] shall apply in the case of any employee holding a position pursuant to an appointment made before the effective date of the regulations implementing such amendments.''

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.

**§ 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 biweekly 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, the closure of an installation of the Department of Defense in the Republic of Panama in accordance with the Panama Canal Treaty of 1977, 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.

(4)(A) For the purpose of this subsection, service of a Department of Defense emergency essential employee in a combat zone is an exigency of the public business for that employee. Any leave that, by reason of such service, is lost by the employee 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) As used in subparagraph (A)—

(i) the term ''Department of Defense emergency essential employee'' means an employee

of the Department of Defense who is designated under section 1580 of title 10 as an emergency essential employee; and

(ii) the term ''combat zone'' has the meaning given such term in section 112(c)(2) of the Internal Revenue Code of 1986.

(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) a position in the Senior Executive Service;

(B) a position in the Senior Foreign Service;

(C) a position in the Defense Intelligence Senior Executive Service;

(D) a position in the Senior Cryptologic Executive Service;

(E) a position in the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service;

(F) a position to which section 5376 applies;

(G) a position designated under section 1607(a) of title 10 as an Intelligence Senior Level position; or

(H)[1] a position in the Library of Congress the compensation for which is set at a rate equal to the annual rate of basic pay payable for positions at level III of the Executive Schedule under section 5314.

(H)[1] a position in the United States Secret Service Uniformed Division at the rank of Deputy Chief, Assistant Chief, or Chief.

(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; Pub. L. 105–261, div. A, title XI, § 1105, Oct. 17, 1998, 112 Stat. 2142; Pub. L. 106–65, div. A, title XI, § 1103(a), Oct. 5, 1999, 113 Stat. 776; Pub. L. 110–181, div. A, title XI, § 1112, Jan. 28, 2008, 122 Stat. 360; Pub. L. 111–68, div. A, title I, § 1404(1)–(3), Oct. 1, 2009, 123 Stat. 2038; Pub. L. 111–282, § 2(b), Oct. 15, 2010, 124 Stat. 3038.)

[1] So in original. Two subpars. (H) have been enacted.

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.<br>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.<br>July 2, 1953, ch. 178, § 3(b), 67 Stat. 137.<br>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.<br>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.

Section 112(c)(2) of the Internal Revenue Code of 1986, referred to in subsec. (d)(4)(B)(ii), is classified to section 112(c)(2) of Title 26, Internal Revenue Code.

AMENDMENTS

2010—Subsec. (f)(1)(F). Pub. L. 111–282, § 2(b)(1), which directed amendment of subpar. (F) by striking ''or'' after the semicolon, could not be executed because the word ''or'' did not appear.

Subsec. (f)(1)(G). Pub. L. 111–282, § 2(b)(2), which directed substitution of ''; or'' for the period, could not be executed because there was no period.

Subsec. (f)(1)(H). Pub. L. 111–282, § 2(b)(3), added subpar. (H) relating to a position in the United States Secret Service Uniformed Division.

2009—Subsec. (f)(1)(H). Pub. L. 111–68 added subpar. (H).

2008—Subsec. (f)(1). Pub. L. 110–181 substituted ''in—'' for ''in a position in—'' in introductory provisions, inserted ''a position in'' before ''the'' in subpars. (A) to (E), struck out ''or'' at end of subpar. (D), substituted semicolon for period at end of subpar. (E), and added subpars. (F) and (G).

1999—Subsec. (d)(4). Pub. L. 106–65 added par. (4).

1998—Subsec. (d)(3)(A). Pub. L. 105–261 inserted ''the closure of an installation of the Department of Defense in the Republic of Panama in accordance with the Panama Canal Treaty of 1977,'' after ''2687 note) during any period,''.

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 2010 AMENDMENT

Amendment by Pub. L. 111–282 effective on first day of first pay period which begins after Oct. 15, 2010, see section 5 of Pub. L. 111–282, set out as a note under section 5102 of this title.

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–68, div. A, title I, § 1404(4), Oct. 1, 2009, 123 Stat. 2038, provided that: ''The amendments made by subsection (a) [probably means pars. (1) to (3), which amended this section] shall apply with respect to annual leave accrued during pay periods beginning after the date of the enactment of this Act [Oct. 1, 2009].''

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 1621 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.

RESTORATION OF ANNUAL LEAVE FOR CERTAIN DEPARTMENT OF DEFENSE EMPLOYEES

Pub. L. 108–136, div. A, title XI, § 1114, Nov. 24, 2003, 117 Stat. 1635, provided that:

''(a) RESTORATION OF ANNUAL LEAVE.—During the period October 1, 1992, through December 31, 1997, all employees transferring from a closing or realigning Department of Defense installation or activity as defined under section 6304(d)(3) of title 5, United States Code, to another Department of Defense installation or activity—

''(1) may be deemed eligible by the Secretary of Defense for automatic restoration of forfeited annual leave under section 6304(d)(3) of title 5, United States Code, during the year of transfer; and

''(2) may be deemed by the Secretary of Defense to have used all forfeited annual leave properly restored under section 6304(d)(3) of title 5, United States Code, within the appropriate time limits, only if such restored annual leave was used by the employee or paid to the employee in the form of a lump sum payment under section 5551(a) of title 5, United States Code, by the last day of the 2001 leave year.

''(b) PAYMENT OF RESTORED ANNUAL LEAVE.—(1) On or after September 23, 1996, all employees transferring from a closing or realigning Department of Defense installation or activity as defined under section 6304(d)(3)(A) of title 5, United States Code, to another Department of Defense installation or activity who, upon transfer, were entitled to payment of a lump sum payment under section 5551(c) of title 5, United States Code, for forfeited annual leave properly restored under section 6304(d)(3) of title 5, United States Code—

''(A) may be paid only for any such restored annual leave currently remaining to their credit at the hourly rate payable on the date of transfer with appropriate back pay interest; and

''(B) shall be deemed paid for all such restored annual leave to which that employee was entitled to payment upon transfer, but subsequently used or was otherwise paid for upon separation.

''(2) This subsection shall take effect on the date of the enactment of this Act [Nov. 24, 2003].''

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.

## § 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, except that civil service mariners of the Military Sealift Command on temporary promotion aboard ship may be paid the difference between their temporary and permanent rates of pay for leave accrued under this section and section 6303 and not otherwise used during the temporary promotion upon the expiration or termination of the temporary promotion; 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; Pub. L. 106–398, § 1 [[div. A], title XI, § 1133], Oct. 30, 2000, 114 Stat. 1654, 1654A–318.)

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.<br>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

2000—Subsec. (c)(2). Pub. L. 106–398 amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''may not be made the basis for a lump-sum payment; and''.

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.

## § 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.<br>July 2, 1953, ch. 178, § 4(a) (2d–4th sentences), 67 Stat. 137.<br>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.

## § 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 defi-

[1] So in original. Probably should be ''(e)(1)''.

nition 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.<br>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''.

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.

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.

## § 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 Homeland Security, 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; Pub. L. 109–241, title IX, § 902(a)(3), July 11, 2006, 120 Stat. 566.)

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.<br>Aug. 18, 1959, Pub. L. 86–168, § 202(e), 73 Stat. 389.<br>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.

AMENDMENTS

2006—Subsec. (b). Pub. L. 109–241 substituted ''Secretary of Homeland Security'' for ''Secretary of Transportation''.

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.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

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.

**[§ 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.<br>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.

## § 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.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

## 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.<br>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 Chief Administrative Officer 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 or the Trust Territory of the Pacific Islands. 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 Chief Administrative Officer 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; Pub. L. 104–186, title II, §215(10), Aug. 20, 1996, 110 Stat. 1746; Pub. L. 104–201, div. C, title XXXV, §3548(a)(8), Sept. 23, 1996, 110 Stat. 2869.)

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

1996—Subsec. (a). Pub. L. 104–201, in concluding provisions, substituted ''Puerto Rico or'' for ''Puerto Rico,'' and struck out '', or the Republic of Panama'' after ''Pacific Islands''.

Pub. L. 104–186 substituted ''Chief Administrative Officer'' for ''Clerk'' in introductory provisions.

Subsec. (b). Pub. L. 104–186 substituted ''Chief Administrative Officer'' for ''Clerk''.

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.

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.

## § 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, inactive-duty training (as defined in section 101 of title 37), funeral honors duty (as described in section 12503 of title 10 and section 115 of title 32), 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.

(3) The minimum charge for leave under this subsection is one hour, and additional charges are in multiples thereof.

(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)(A) 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—

(i) Federal service under section 331, 332, 333, or 12406 of title 10, or other provision of law, as applicable, or

(ii) full-time military service for his State, the District of Columbia, the Commonwealth of Puerto Rico, or a territory of the United States; or

(B) performs full-time military service as a result of a call or order to active duty in support of a contingency operation as defined in section 101(a)(13) of title 10;

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 workdays in a calendar year. Upon the request of an employee, the period for which an employee is absent to perform service described in paragraph (2) may be charged to the employee's accrued annual leave or to compensatory time available to the employee instead of being charged as leave to which the employee is entitled under this subsection. The period of absence may not be charged to sick leave.

(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.

(d)(1) A military reserve technician described in section 8401(30)[1] is entitled at such person's request to leave without loss of, or reduction in, pay, leave to which such person is otherwise entitled, credit for time or service, or performance or efficiency rating for each day, not to exceed 44 workdays in a calendar year, in which such person is on active duty without pay, as authorized pursuant to section 12315 of title 10, under section 12301(b) or 12301(d) of title 10 for participation in operations outside the United States, its territories and possessions.

(2) An employee who requests annual leave or compensatory time to which the employee is otherwise entitled, for a period during which the employee would have been entitled upon request to leave under this subsection, may be granted such annual leave or compensatory time without regard to this section or section 5519.

(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; Pub. L. 104–106, div. A, title V, § 516(a), title X, § 1039, Feb. 10, 1996, 110 Stat. 309, 432; Pub. L. 106–65, div. A, title VI, § 672(b), title XI, §§ 1105(a), 1106(a), Oct. 5, 1999, 113 Stat. 674, 777; Pub. L. 106–554, § 1(a)(3) [title VI, § 642], Dec. 21, 2000, 114 Stat. 2763, 2763A–169; Pub. L. 107–107, div. A, title V, § 563, Dec. 28, 2001, 115 Stat. 1120; Pub. L. 108–136, div. A, title XI, § 1113(a), Nov. 24, 2003, 117 Stat. 1635; Pub. L. 108–375, div. A, title V, § 523, Oct. 28, 2004, 118 Stat. 1888.)

[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. 30r(a). | Aug. 10, 1956, ch. 1041, § 29 (a), 70A Stat. 632.<br>Sept. 2, 1958, Pub. L. 85–861, § 13, 72 Stat. 1557.<br>June 30, 1960, Pub. L. 86–559, § 7, 74 Stat. 282.<br>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.

REFERENCES IN TEXT

Section 8401(30) of this title, referred to in subsec. (d)(1), was amended generally by Pub. L. 106–65, div. A, title V, § 522(c)(2), Oct. 5, 1999, 113 Stat. 597, and, as so amended, no longer describes military reserve technicians.

AMENDMENTS

2004—Subsec. (d)(1). Pub. L. 108–375 struck out "(other than active duty during a war or national emergency declared by the President or Congress)" before "for participation in".

2003—Subsec. (b)(2). Pub. L. 108–136 designated existing provisions as subpar. (A), redesignated former subpars. (A) and (B) as cls. (i) and (ii), respectively, of subpar. (A), and added subpar. (B).

2001—Subsec. (a)(1). Pub. L. 107–107 inserted "funeral honors duty (as described in section 12503 of title 10 and section 115 of title 32)," after "(as defined in section 101 of title 37),".

2000—Subsec. (a)(3). Pub. L. 106–554 added par. (3).

1999—Subsec. (a)(1). Pub. L. 106–65, § 1106(a), inserted ", inactive-duty training (as defined in section 101 of title 37)," after "active duty" in first sentence.

Subsec. (d)(1). Pub. L. 106–65, §§ 672(b) and 1105(a), amended par. (1) identically, striking out "noncombat" after "for participation in".

1996—Subsec. (b). Pub. L. 104–106, § 516(a), inserted at end "Upon the request of an employee, the period for which an employee is absent to perform service described in paragraph (2) may be charged to the employee's accrued annual leave or to compensatory time available to the employee instead of being charged as leave to which the employee is entitled under this subsection. The period of absence may not be charged to sick leave."

Subsec. (d). Pub. L. 104–106, § 1039, added subsec. (d).

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 au-

thorities 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 2003 AMENDMENT

Pub. L. 108–136, div. A, title XI, § 1113(b), Nov. 24, 2003, 117 Stat. 1635, provided that: ''The amendments made by subsection (a) [amending this section] shall apply to military service performed on or after the date of the enactment of this Act [Nov. 24, 2003].''

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–65, div. A, title XI, § 1105(b), Oct. 5, 1999, 113 Stat. 777, 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, 1999] and shall apply with respect to days of leave under section 6323(d)(1) of title 5, United States Code, on or after that date.''

Pub. L. 106–65, div. A, title XI, § 1106(b), Oct. 5, 1999, 113 Stat. 777, provided that: ''The amendment made by subsection (a) [amending this section] shall not apply with respect to any inactive-duty training (as defined in such amendment) occurring before the date of the enactment of this Act [Oct. 5, 1999].''

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.

AUTHORIZATION TO USE APPROPRIATIONS TO PAY MILITARY LEAVE OR ANNUAL LEAVE

Pub. L. 107–117, div. A, title VIII, § 8023, Jan. 10, 2002, 115 Stat. 2252, provided that: ''During the current fiscal year and hereafter, funds appropriated or otherwise available for any Federal agency, the Congress, the judicial branch, or the District of Columbia may be used for the pay, allowances, and benefits of an employee as defined by section 2105 of title 5, United States Code, 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, United States Code, or the National Guard, as described in section 101 of title 32, United States Code;

''(2) performs, for the purpose of providing military aid to enforce the law or providing assistance to civil authorities in the protection or saving of life or property or prevention of injury—

''(A) Federal service under sections 331, 332, 333, or 12406 of title 10, United States Code, or other provision of law, as applicable; or

''(B) full-time military service for his or her State, the District of Columbia, the Commonwealth of Puerto Rico, or a territory of the United States; and

''(3) requests and is granted—

''(A) leave under the authority of this section; or

''(B) annual leave, which may be granted without regard to the provisions of sections 5519 and 6323(b) of title 5, United States Code, if such employee is otherwise entitled to such annual leave:

*Provided*, That any employee who requests leave under subsection (3)(A) for service described in subsection (2) of this section is entitled to such leave, subject to the provisions of this section and of the last sentence of section 6323(b) of title 5, United States Code, and such leave shall be considered leave under section 6323(b) of title 5, United States Code.''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 106–259, title VIII, § 8023, Aug. 9, 2000, 114 Stat. 679.

Pub. L. 106–79, title VIII, § 8025, Oct. 25, 1999, 113 Stat. 1236.

Pub. L. 105–262, title VIII, § 8025, Oct. 17, 1998, 112 Stat. 2302.

Pub. L. 105–56, title VIII, § 8026, Oct. 8, 1997, 111 Stat. 1226.

Pub. L. 104–208, div. A, title I, § 101(b) [title VIII, § 8028], Sept. 30, 1996, 110 Stat. 3009–71, 3009–94.

Pub. L. 104–61, title VIII, § 8036, Dec. 1, 1995, 109 Stat. 659.

Pub. L. 103–335, title VIII, § 8042, Sept. 30, 1994, 108 Stat. 2627.

Pub. L. 103–139, title VIII, § 8047, Nov. 11, 1993, 107 Stat. 1450.

Pub. L. 102–396, title IX, § 9064, Oct. 6, 1992, 106 Stat. 1916.

Pub. L. 102–172, title VIII, § 8068, Nov. 26, 1991, 105 Stat. 1187.

Pub. L. 101–511, title VIII, § 8086, Nov. 5, 1990, 104 Stat. 1895.

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.''

## § 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 United States Secret Service Uniformed Division 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 Homeland Security for the United States Secret Service Uniformed Division.

(c) This section shall not apply to members of the United States Secret Service Uniformed Division who are covered under chapter 84 for the purpose of retirement benefits.

(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; Pub. L. 111–282, § 2(c), Oct. 15, 2010, 124 Stat. 3038.)

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

2010—Subsec. (a). Pub. L. 111–282, § 2(c)(1), substituted ''United States Secret Service Uniformed Division'' for ''Executive Protective Service force''.

Subsec. (b)(3). Pub. L. 111–282, § 2(c)(2), substituted ''Homeland Security for the United States Secret Service Uniformed Division'' for ''the Treasury for the Executive Protective Service force''.

Subsec. (c). Pub. L. 111–282, § 2(c)(3), added subsec. (c).

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 2010 AMENDMENT

Amendment by Pub. L. 111–282 effective on first day of first pay period which begins after Oct. 15, 2010, see section 5 of Pub. L. 111–282, set out as a note under section 5102 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, and replaced by Council of District of Columbia, as provided by section 401 of Pub. L. 93–198.

## § 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.

### § 6327. 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 reduction 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) An employee may, in any calendar year, use—

(1) not to exceed 7 days of leave under this section to serve as a bone-marrow donor; and

(2) not to exceed 30 days of leave under this section to serve as an organ donor.

(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; amended Pub. L. 106–56, § 1(b), Sept. 24, 1999, 113 Stat. 407.)

CODIFICATION

Another section 6327 was renumbered section 6328 of this title.

AMENDMENTS

1999—Subsec. (b). Pub. L. 106–56 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''Not to exceed 7 days of leave may be used under this section by an employee in a calendar year.''

### § 6328. 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, § 6327; renumbered § 6328, Pub. L. 106–56, § 1(c)(1), Sept. 24, 1999, 113 Stat. 407.)

CODIFICATION

Section 642 of Pub. L. 103–329, which directed that this section 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.

AMENDMENTS

1999—Pub. L. 106–56 renumbered section 6327 of this title as this section.

## SUBCHAPTER III—VOLUNTARY TRANSFERS OF LEAVE

### § 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 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.)

## § 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)(1) 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.

(2)(A) The requirement under paragraph (1) relating to exhaustion of annual and sick leave shall not apply in the case of a leave recipient who—

(i) sustains a combat-related disability while a member of the armed forces, including a reserve component of the armed forces; and

(ii) is undergoing medical treatment for that disability.

(B) Subparagraph (A) shall apply to a member described in such subparagraph only so long as the member continues to undergo medical treatment for the disability, but in no event for longer than 5 years from the start of such treatment.

(C) For purposes of this paragraph—

(i) the term ''combat-related disability'' has the meaning given such term by section 1413a(e) of title 10; and

(ii) the term ''medical treatment'' has such meaning as the Office of Personnel Management shall by regulation prescribe.

(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; amended Pub. L. 110–181, div. A, title XVI, § 1675(a), Jan. 28, 2008, 122 Stat. 484.)

AMENDMENTS

2008—Subsec. (b). Pub. L. 110–181 designated existing provisions as par. (1) and added par. (2).

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–181, div. A, title XVI, § 1675(b), Jan. 28, 2008, 122 Stat. 484, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Jan. 28, 2008], except that, in the case of a leave recipient who is undergoing medical treatment on such date of enactment, section 6333(b)(2)(B) of title 5, United States Code (as amended by this section) shall be applied as if it had been amended by inserting 'or the date of the enactment of this subsection [probably should be ''paragraph''], whichever is later' after 'the start of such treatment'.''

## § 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.)

## § 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.)

**§ 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 exhausted 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.

### § 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 National Geospatial-Intelligence Agency; 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 National Geospatial-Intelligence Agency, the Director of the National Geospatial-Intelligence Agency; 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)(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 subsection 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.

(c)(1) Notwithstanding any provision of subsection (b), the head of an excepted agency may, at his sole discretion, by regulation establish a program under which an individual employed in or under such excepted agency may participate in a leave transfer program established under the provisions of this subchapter outside of this section, including provisions permitting the transfer of annual leave accrued or accumulated by such employee to, or permitting such employee to receive transferred leave from, an employee of any other agency (including another excepted agency having a program under this subsection).

(2) To the extent practicable and consistent with the protection of intelligence sources and methods, any program established under paragraph (1) shall be consistent with the provisions of this subchapter outside of this section and with any regulations issued by the Office of Personnel Management implementing this subchapter.

(d) The Office 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; Pub. L. 104–201, div. A, title XI, § 1122(a), Sept. 23, 1996, 110 Stat. 2687; Pub. L. 107–306, title III, § 322, Nov. 27, 2002, 116 Stat. 2391; Pub. L. 110–417, [div. A], title IX, § 931(a)(1), Oct. 14, 2008, 122 Stat. 4575.)

AMENDMENTS

2008—Subsec. (a)(1)(E), (2)(E). Pub. L. 110–417 substituted ''National Geospatial-Intelligence Agency'' for ''National Imagery and Mapping Agency'' wherever appearing.

2002—Subsec. (b). Pub. L. 107–306, § 322(a)(1), (2), redesignated subsec. (c) as (b) and struck out former subsec. (b) which read as follows: ''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.''

Subsec. (b)(2). Pub. L. 107–306, § 322(b)(1), substituted ''under this subsection'' for ''under this section'' in introductory provisions.

Subsec. (c). Pub. L. 107–306, § 322(a)(3), added subsec. (c). Former subsec. (c) redesignated (b).

Subsec. (d). Pub. L. 107–306, § 322(b)(2), struck out ''of Personnel Management'' after ''The Office''.

1996—Subsec. (a)(1)(E). Pub. L. 104–201, § 1122(a)(1), substituted ''National Imagery and Mapping Agency'' for ''Central Imagery Office''.

Subsec. (a)(2)(E). Pub. L. 104–201, § 1122(a)(2), substituted ''National Imagery and Mapping Agency, the Director of the National Imagery and Mapping Agency'' for ''Central Imagery Office, the Director of the Central Imagery Office''.

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).

CHANGE OF NAME

Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the intelligence community deemed to be a reference to the Director of National Intelligence. Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the Central Intelligence Agency deemed to be a reference to the Director of the Central Intelligence Agency. See section 1081(a), (b) of Pub. L. 108–458, set out as a note under section 401 of Title 50, War and National Defense.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–201 effective Oct. 1, 1996, see section 1124 of Pub. L. 104–201, set out as a note under section 193 of Title 10, Armed Forces.

### § 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

### § 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.

### § 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.)

### § 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;

(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.)

### § 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 ac-

crued 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.)

### § 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 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. 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.)

**§ 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

**§ 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[1] any individual employed on a temporary or intermittent basis, and any employee of the Government Accountability Office or the Library of Congress; 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

[1] So in original. Probably should be followed by a comma.

(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 number 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;

(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;

(7) the term ''covered active duty'' means—

(A) in the case of a member of a regular component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country; and

(B) in the case of a member of a reserve component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country under a call or order to active duty under a provision of law referred to in section 101(a)(13)(B) of title 10, United States Code;

(8) the term ''covered servicemember'' means—

(A) a member of the Armed Forces (including a member of the National Guard or Reserves) who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness; or

(B) a veteran who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness and who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during the period of 5 years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy;

(9) the term ''outpatient status'', with respect to a covered servicemember, means the status of a member of the Armed Forces assigned to—

(A) a military medical treatment facility as an outpatient; or

(B) a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients;

(10) the term ''next of kin'', used with respect to an individual, means the nearest blood relative of that individual;

(11) the term ''serious injury or illness''—

(A) in the case of a member of the Armed Forces (including a member of the National Guard or Reserves), means an injury or illness that was incurred by the member in line of duty on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in line of duty on active duty in the Armed Forces) and that may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating; and

(B) in the case of a veteran who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during a period described in paragraph (8)(B), means an injury or illness that was incurred by the member in line of duty on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in line of duty on active duty in the Armed Forces) and that manifested itself before or after the member became a veteran; and

(12) the term ''veteran'' has the meaning given the term in section 101 of title 38, United States Code.

(Added Pub. L. 103–3, title II, § 201(a)(1), Feb. 5, 1993, 107 Stat. 19; amended Pub. L. 104–1, title II, § 202(c)(2), Jan. 23, 1995, 109 Stat. 9; Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814; Pub. L. 110–181, div. A, title V, § 585(b)(1), Jan. 28, 2008, 122 Stat. 131; Pub. L. 111–84, div. A, title V, § 565(b)(1)(A), (2), (3), Oct. 28, 2009, 123 Stat. 2311, 2312.)

AMENDMENTS

2009—Par. (7). Pub. L. 111–84, § 565(b)(1)(A), amended par. (7) generally. Prior to amendment, par. (7) read as follows: ''the term 'active duty' means duty under a call or order to active duty under a provision of law referred to in section 101(a)(13)(B) of title 10;''.

Par. (8). Pub. L. 111–84, § 565(b)(2), amended par. (8) generally. Prior to amendment, par. (8) read as follows: ''the term 'covered servicemember' means a member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in an outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness;''.

Pars. (11), (12). Pub. L. 111–84, § 565(b)(3), added pars. (11) and (12) and struck out former par. (11) which read as follows: ''the term 'serious injury or illness', in the case of a member of the Armed Forces, means an injury or illness incurred by the member in line of duty on active duty in the Armed Forces that may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating.''

2008—Pars. (7) to (11). Pub. L. 110–181 added pars. (7) to (11).

2004—Par. (1)(A). Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office''.

1995—Par. (1)(A). Pub. L. 104–1 struck out ''and'' after ''District of Columbia'' and inserted '', and any employee of the General Accounting Office or the Library of Congress'' before semicolon.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–1 effective 1 year after transmission to Congress of the study under section

1371 of Title 2, The Congress, see section 1312(e)(2) of Title 2. The study required under section 1371 of Title 2, dated Dec. 31, 1996, was transmitted to Congress by the Board of Directors of the Office of Compliance on Dec. 30, 1996.

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.

REGULATIONS

Pub. L. 111–84, div. A, title V, § 565(b)(5), Oct. 28, 2009, 123 Stat. 2312, provided that: ''In prescribing regulations to carry out the amendments made by this subsection [amending this section and sections 6382 and 6383 of this title], the Office of Personnel Management shall consult with the Secretary of Defense and the Secretary of Veterans Affairs, as applicable.''

## § 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.

(E) Because of any qualifying exigency arising out of the fact that the spouse, or a son, daughter, or parent of the employee is on covered active duty (or has been notified of an impending call or order to covered active duty) in the Armed Forces.

(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.

(3) Subject to section 6383, an employee who is the spouse, son, daughter, parent, or next of kin of a covered servicemember shall be entitled to a total of 26 administrative workweeks of leave during a 12-month period to care for the servicemember. The leave described in this paragraph shall only be available during a single 12-month period.

(4) During the single 12-month period described in paragraph (3), an employee shall be entitled to a combined total of 26 administrative workweeks of leave under paragraphs (1) and (3). Nothing in this paragraph shall be construed to limit the availability of leave under paragraph (1) during any other 12-month period.

(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 subsection (b)(5) or (f) (as appropriate) of section 6383, leave under subparagraph (C) or (D) of subsection (a)(1) or under subsection (a)(3) may be taken intermittently or on a reduced leave schedule when medically necessary. Subject to subsection (e)(3) and section 6383(f), leave under subsection (a)(1)(E) may be taken intermittently or on a reduced leave schedule. 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) or under subsection (a)(3), 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), (D), or (E) 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. An employee may elect to substitute for leave under subsection (a)(3) any of the employee's accrued or accumulated annual or sick leave under subchapter I for any part of the 26-week period of leave under such subsection.

(e)(1) In any case in which the necessity for leave under subparagraph (A) or (B) of subsection (a)(1) or under subsection (a)(3) 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) or under subsection (a)(3) 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, parent, or covered servicemember 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.

(3) In any case in which the necessity for leave under subsection (a)(1)(E) is foreseeable, whether because the spouse, or a son, daughter, or parent, of the employee is on covered active duty, or because of notification of an impending call or order to covered active duty, the employee shall provide such notice to the employer as is reasonable and practicable.

(Added Pub. L. 103–3, title II, § 201(a)(1), Feb. 5, 1993, 107 Stat. 20; amended Pub. L. 110–181, div. A, title V, § 585(b)(2)–(3)(C), Jan. 28, 2008, 122 Stat. 132; Pub. L. 110–417, [div. A], title X, § 1061(b)(2), Oct. 14, 2008, 122 Stat. 4612; Pub. L. 111–84, div. A, title V, § 565(b)(1)(B), (4), Oct. 28, 2009, 123 Stat. 2311, 2312.)

AMENDMENTS

2009—Subsec. (a)(1)(E). Pub. L. 111–84, § 565(b)(1)(B)(i), added subpar. (E).

Subsec. (b)(1). Pub. L. 111–84, § 565(b)(1)(B)(ii), inserted after second sentence ''Subject to subsection (e)(3) and section 6383(f), leave under subsection (a)(1)(E) may be taken intermittently or on a reduced leave schedule.''

Subsec. (d). Pub. L. 111–84, § 565(b)(1)(B)(iii), substituted ''(D), or (E)'' for ''or (D)''.

Subsec. (e)(2)(A). Pub. L. 111–84, § 565(b)(4), substituted ''parent, or covered servicemember'' for ''or parent''.

Subsec. (e)(3). Pub. L. 111–84, § 565(b)(1)(B)(iv), added par. (3).

2008—Subsec. (a)(3), (4). Pub. L. 110–181, § 585(b)(2), added pars. (3) and (4).

Subsec. (b)(1). Pub. L. 110–181, § 585(b)(3)(A)(i), in second sentence, substituted ''subsection (b)(5) or (f) (as appropriate) of section 6383'' for ''section 6383(b)(5)'' and inserted ''or under subsection (a)(3)'' after ''subsection (a)(1)''.

Subsec. (b)(2). Pub. L. 110–181, § 585(b)(3)(A)(ii), inserted ''or under subsection (a)(3)'' after ''subsection (a)(1)''.

Subsec. (d). Pub. L. 110–181, § 585(b)(3)(B), inserted at end ''An employee may elect to substitute for leave under subsection (a)(3) any of the employee's accrued or accumulated annual or sick leave under subchapter I for any part of the 26-week period of leave under such subsection.''

Subsec. (e). Pub. L. 110–181, § 585(b)(3)(C), as amended by Pub. L. 110–417, inserted ''or under subsection (a)(3)'' after ''subsection (a)(1)'' in par. (1) and in introductory provisions of par. (2).

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–417, [div. A], title X, § 1061(b), Oct. 14, 2008, 122 Stat. 4612, provided that the amendment made by section 1061(b)(2) is effective as of Jan. 28, 2008, and as if included in Pub. L. 110–181 as enacted.

### § 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.

(f) An employing agency may require that a request for leave under paragraph (1)(E) or (3) of section 6382(a) be supported by a certification issued at such time and in such manner as the Office of Personnel Management may by regulation prescribe.

(Added Pub. L. 103–3, title II, § 201(a)(1), Feb. 5, 1993, 107 Stat. 21; amended Pub. L. 110–181, div. A, title V, § 585(b)(3)(D), Jan. 28, 2008, 122 Stat. 132; Pub. L. 111–84, div. A, title V, § 565(b)(1)(C), Oct. 28, 2009, 123 Stat. 2311.)

AMENDMENTS

2009—Subsec. (f). Pub. L. 111–84 substituted ''paragraph (1)(E) or (3) of section 6382(a)'' for ''section 6382(a)(3)''.

2008—Subsec. (f). Pub. L. 110–181 added subsec. (f).

**§ 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 regulations 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.

## SUBCHAPTER VI—LEAVE TRANSFER IN DISASTERS AND EMERGENCIES

**§ 6391. Authority for leave transfer program in disasters and emergencies**

(a) For the purpose of this section—

(1) ''employee'' means an employee as defined in section 6331(1); and

(2) ''agency'' means an Executive agency.

(b) In the event of a major disaster or emergency, as declared by the President, that results in severe adverse effects for a substantial number of employees, the President may direct the Office of Personnel Management to establish an emergency leave transfer program under which any employee in any agency may donate unused annual leave for transfer to employees of the same or other agencies who are adversely affected by such disaster or emergency.

(c) The Office shall establish appropriate requirements for the operation of the emergency leave transfer program under subsection (b), including appropriate limitations on the donation and use of annual leave under the program. An employee may receive and use leave under the program without regard to any requirement that any annual leave and sick leave to a leave recipient's credit must be exhausted before any transferred annual leave may be used.

(d) A leave bank established under subchapter IV may, to the extent provided in regulations prescribed by the Office, donate annual leave to the emergency leave transfer program established under subsection (b).

(e) Except to the extent that the Office may prescribe by regulation, nothing in section 7351 shall apply to any solicitation, donation, or acceptance of leave under this section.

(f) After consultation with the Administrative Office of the United States Courts, the Office of Personnel Management shall provide for the participation of employees in the judicial branch in any emergency leave transfer program under this section.

(g) The Office shall prescribe regulations necessary for the administration of this section.

(Added Pub. L. 105–18, title II, § 9004(a), June 12, 1997, 111 Stat. 196; amended Pub. L. 109–229, § 1, May 31, 2006, 120 Stat. 390.)

AMENDMENTS

2006—Subsecs. (f), (g). Pub. L. 109–229 added subsec. (f) and redesignated former subsec. (f) as (g).

## CHAPTER 65—TELEWORK

Sec.
6501. Definitions.
6502. Executive agencies telework requirement.
6503. Training and monitoring.
6504. Policy and support.
6505. Telework Managing Officer.
6506. Reports.

### § 6501. Definitions

In this chapter:

(1) EMPLOYEE.—The term ''employee'' has the meaning given that term under section 2105.

(2) EXECUTIVE AGENCY.—Except as provided in section 6506, the term ''executive agency'' has the meaning given that term under section 105.

(3) TELEWORK.—The term ''telework'' or ''teleworking'' refers to a work flexibility arrangement under which an employee performs the duties and responsibilities of such employee's position, and other authorized activities, from an approved worksite other than the location from which the employee would otherwise work.

(Added Pub. L. 111–292, § 2(a), Dec. 9, 2010, 124 Stat. 3165.)

TELEWORK RESEARCH

Pub. L. 111–292, § 4, Dec. 9, 2010, 124 Stat. 3173, provided that:

''(a) RESEARCH BY OPM ON TELEWORK.—The Director of the Office of Personnel Management shall—

''(1) research the utilization of telework by public and private sector entities that identify best practices and recommendations for the Federal Government;

''(2) review the outcomes associated with an increase in telework, including the effects of telework on energy consumption, job creation and availability, urban transportation patterns, and the ability to anticipate the dispersal of work during periods of emergency; and

''(3) make any studies or reviews performed under this subsection available to the public.

''(b) USE OF CONTRACT TO CARRY OUT RESEARCH.—The Director of the Office of Personnel Management may carry out subsection (a) under a contract entered into by the Director using competitive procedures under section 303 of the Federal Property and Administrative Services Act of 1949 ([former] 41 U.S.C. 253) [see 41 U.S.C. 3105, 3301, 3303 to 3305].

''(c) USE OF OTHER FEDERAL AGENCIES.—The heads of Federal agencies with relevant jurisdiction over the subject matters in subsection (a)(2) shall work cooperatively with the Director of the Office of Personnel Management to carry out that subsection, if the Director determines that coordination is necessary to fulfill obligations under that subsection.''

IMPLEMENTATION OF TELECOMMUTING PROGRAMS

Pub. L. 108–7, div. B, title VI, § 623, Feb. 20, 2003, 117 Stat. 103, as amended by Pub. L. 111–292, § 2(b)(2)(A), Dec. 9, 2010, 124 Stat. 3170, provided that: ''Of the funds appropriated in this Act [div. B of Pub. L. 108–7, see Tables for classification] for the Departments of Commerce, Justice, and State, the Judiciary, and the Small Business Administration, $100,000 shall be available to each Department or agency only to implement telecommuting programs: *Provided*, That, 6 months after the date of enactment of this Act [Feb. 20, 2003] and every 6 months thereafter, each Department or agency shall provide a report to the Committees on Appropriations on the status of telecommuting programs, including the number of Federal employees eligible for, and participating in, such programs: *Provided further*, That each Department or agency shall designate a Telework Managing Officer to be responsible for overseeing the implementation of telecommuting programs and serve as a point of contact on such programs for the Committees on Appropriations.''

Similar provisions were contained in the following appropriation acts:

Pub. L. 109–108, title VI, § 617, Nov. 22, 2005, 119 Stat. 2340, as amended by Pub. L. 111–292, § 2(b)(2)(D), Dec. 9, 2010, 124 Stat. 3171.

Pub. L. 108–447, div. B, title VI, § 622, Dec. 8, 2004, 118 Stat. 2919, as amended by Pub. L. 111–292, § 2(b)(2)(C), Dec. 9, 2010, 124 Stat. 3171.

Pub. L. 108–199, div. B, title VI, § 627, Jan. 23, 2004, 118 Stat. 99, as amended by Pub. L. 111–292, § 2(b)(2)(B), Dec. 9, 2010, 124 Stat. 3171.

TELECOMMUTING IN EXECUTIVE AGENCIES

Pub. L. 106–346, § 101(a) [title III, § 359], Oct. 23, 2000, 114 Stat. 1356, 1356A–36, provided that: ''Each executive agency shall establish a policy under which eligible employees of the agency may participate in telecommuting to the maximum extent possible without diminished employee performance. Not later than 6 months after the date of the enactment of this Act [Oct. 23, 2000], the Director of the Office of Personnel Management shall provide that the requirements of this section are applied to 25 percent of the Federal workforce, and to an additional 25 percent of such workforce each year thereafter.''

### § 6502. Executive agencies telework requirement

(a) TELEWORK ELIGIBILITY.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this chapter, the head of each executive agency shall—

(A) establish a policy under which eligible employees of the agency may be authorized to telework;

(B) determine the eligibility for all employees of the agency to participate in telework; and

(C) notify all employees of the agency of their eligibility to telework.

(2) LIMITATION.—An employee may not telework under a policy established under this section if—

(A) the employee has been officially disciplined for being absent without permission for more than 5 days in any calendar year; or

(B) the employee has been officially disciplined for violations of subpart G of the Standards of Ethical Conduct for Employees of the Executive Branch for viewing, downloading, or exchanging pornography, including child pornography, on a Federal Government computer or while performing official Federal Government duties.

(b) PARTICIPATION.—The policy described under subsection (a) shall—

(1) ensure that telework does not diminish employee performance or agency operations;

(2) require a written agreement that—

(A) is entered into between an agency manager and an employee authorized to telework, that outlines the specific work arrangement that is agreed to; and

(B) is mandatory in order for any employee to participate in telework;

(3) provide that an employee may not be authorized to telework if the performance of that employee does not comply with the terms of the written agreement between the agency manager and that employee;

(4) except in emergency situations as determined by the head of an agency, not apply to any employee of the agency whose official duties require on a daily basis (every work day)—

(A) direct handling of secure materials determined to be inappropriate for telework by the agency head; or

(B) on-site activity that cannot be handled remotely or at an alternate worksite; and

(5) be incorporated as part of the continuity of operations plans of the agency in the event of an emergency.

(Added Pub. L. 111–292, § 2(a), Dec. 9, 2010, 124 Stat. 3165.)

REFERENCES IN TEXT

The date of enactment of this chapter, referred to in subsec. (a)(1), is the date of enactment of Pub. L. 111–292, which was approved Dec. 9, 2010.

### § 6503. Training and monitoring

(a) IN GENERAL.—The head of each executive agency shall ensure that—

(1) an interactive telework training program is provided to—

(A) employees eligible to participate in the telework program of the agency; and

(B) all managers of teleworkers;

(2) except as provided under subsection (b), an employee has successfully completed the interactive telework training program before that employee enters into a written agreement to telework described under section 6502(b)(2);

(3) teleworkers and nonteleworkers are treated the same for purposes of—

(A) periodic appraisals of job performance of employees;

(B) training, rewarding, reassigning, promoting, reducing in grade, retaining, and removing employees;

(C) work requirements; or

(D) other acts involving managerial discretion; and

(4) when determining what constitutes diminished employee performance, the agency shall consult the performance management guidelines of the Office of Personnel Management.

(b) TRAINING REQUIREMENT EXEMPTIONS.—The head of an executive agency may provide for an exemption from the training requirements under subsection (a), if the head of that agency determines that the training would be unnecessary because the employee is already teleworking under a work arrangement in effect before the date of enactment of this chapter.

(Added Pub. L. 111–292, § 2(a), Dec. 9, 2010, 124 Stat. 3166.)

REFERENCES IN TEXT

The date of enactment of this chapter, referred to in subsec. (b), is the date of enactment of Pub. L. 111–292, which was approved Dec. 9, 2010.

### § 6504. Policy and support

(a) AGENCY CONSULTATION WITH THE OFFICE OF PERSONNEL MANAGEMENT.—Each executive agency shall consult with the Office of Personnel Management in developing telework policies.

(b) GUIDANCE AND CONSULTATION.—The Office of Personnel Management shall—

(1) provide policy and policy guidance for telework in the areas of pay and leave, agency closure, performance management, official worksite, recruitment and retention, and accommodations for employees with disabilities;

(2) assist each agency in establishing appropriate qualitative and quantitative measures and teleworking goals; and

(3) consult with—

(A) the Federal Emergency Management Agency on policy and policy guidance for telework in the areas of continuation of operations and long-term emergencies;

(B) the General Services Administration on policy and policy guidance for telework in the areas of telework centers, travel, technology, equipment, and dependent care; and

(C) the National Archives and Records Administration on policy and policy guidance for telework in the areas of efficient and effective records management and the preservation of records, including Presidential and Vice-Presidential records.

(c) SECURITY GUIDELINES.—

(1) IN GENERAL.—The Director of the Office of Management and Budget, in coordination with the Department of Homeland Security and the National Institute of Standards and Technology, shall issue guidelines not later than 180 days after the date of the enactment of this chapter to ensure the adequacy of information and security protections for information and information systems used while teleworking.

(2) CONTENTS.—Guidelines issued under this subsection shall, at a minimum, include requirements necessary to—

(A) control access to agency information and information systems;

(B) protect agency information (including personally identifiable information) and information systems;

(C) limit the introduction of vulnerabilities;

(D) protect information systems not under the control of the agency that are used for teleworking;

(E) safeguard wireless and other telecommunications capabilities that are used for teleworking; and

(F) prevent inappropriate use of official time or resources that violates subpart G of the Standards of Ethical Conduct for Employees of the Executive Branch by viewing, downloading, or exchanging pornography, including child pornography.

(d) CONTINUITY OF OPERATIONS PLANS.—

(1) INCORPORATION INTO CONTINUITY OF OPERATIONS PLANS.—Each executive agency shall incorporate telework into the continuity of operations plan of that agency.

(2) CONTINUITY OF OPERATIONS PLANS SUPERSEDE TELEWORK POLICY.—During any period

that an executive agency is operating under a continuity of operations plan, that plan shall supersede any telework policy.

(e) TELEWORK WEBSITE.—The Office of Personnel Management shall—

(1) maintain a central telework website; and

(2) include on that website related—

(A) telework links;

(B) announcements;

(C) guidance developed by the Office of Personnel Management; and

(D) guidance submitted by the Federal Emergency Management Agency, and the General Services Administration to the Office of Personnel Management not later than 10 business days after the date of submission.

(f) POLICY GUIDANCE ON PURCHASING COMPUTER SYSTEMS.—Not later than 120 days after the date of the enactment of this chapter, the Director of the Office of Management and Budget shall issue policy guidance requiring each executive agency when purchasing computer systems, to purchase computer systems that enable and support telework, unless the head of the agency determines that there is a mission-specific reason not to do so.

(Added Pub. L. 111–292, § 2(a), Dec. 9, 2010, 124 Stat. 3167.)

REFERENCES IN TEXT

The date of enactment of this chapter, referred to in subsecs. (c)(1) and (f), is the date of enactment of Pub. L. 111–292, which was approved Dec. 9, 2010.

### § 6505. Telework Managing Officer

(a) DESIGNATION.—The head of each executive agency shall designate an employee of the agency as the Telework Managing Officer. The Telework Managing Officer shall be established within the Office of the Chief Human Capital Officer or a comparable office with similar functions.

(b) DUTIES.—The Telework Managing Officer shall—

(1) be devoted to policy development and implementation related to agency telework programs;

(2) serve as—

(A) an advisor for agency leadership, including the Chief Human Capital Officer;

(B) a resource for managers and employees; and

(C) a primary agency point of contact for the Office of Personnel Management on telework matters; and

(3) perform other duties as the applicable delegating authority may assign.

(c) STATUS WITHIN AGENCY.—The Telework Managing Officer of an agency shall be a senior official of the agency who has direct access to the head of the agency.

(d) RULE OF CONSTRUCTION REGARDING STATUS OF TELEWORK MANAGING OFFICER.—Nothing in this section shall be construed to prohibit an individual who holds another office or position in an agency from serving as the Telework Managing Officer for the agency under this chapter.

(Added Pub. L. 111–292, § 2(a), Dec. 9, 2010, 124 Stat. 3168.)

### § 6506. Reports

(a) DEFINITION.—In this section, the term ''executive agency'' shall not include the Government Accountability Office.

(b) REPORTS BY THE OFFICE OF PERSONNEL MANAGEMENT.—

(1) SUBMISSION OF REPORTS.—Not later than 18 months after the date of enactment of this chapter and on an annual basis thereafter, the Director of the Office of Personnel Management, in consultation with Chief[1] Human Capital Officers Council, shall—

(A) submit a report addressing the telework programs of each executive agency to—

(i) the Committee on Homeland Security and Governmental Affairs of the Senate; and

(ii) the Committee on Oversight and Government Reform of the House of Representatives; and

(B) transmit a copy of the report to the Comptroller General and the Office of Management and Budget.

(2) CONTENTS.—Each report submitted under this subsection shall include—

(A) the degree of participation by employees of each executive agency in teleworking during the period covered by the report (and for each executive agency whose head is referred to under section 5312, the degree of participation in each bureau, division, or other major administrative unit of that agency), including—

(i) the total number of employees in the agency;

(ii) the number and percent of employees in the agency who are eligible to telework; and

(iii) the number and percent of eligible employees in the agency who are teleworking—

(I) 3 or more days per pay period;

(II) 1 or 2 days per pay period;

(III) once per month; and

(IV) on an occasional, episodic, or short-term basis;

(B) the method for gathering telework data in each agency;

(C) if the total number of employees teleworking is 10 percent higher or lower than the previous year in any agency, the reasons for the positive or negative variation;

(D) the agency goal for increasing participation to the extent practicable or necessary for the next reporting period, as indicated by the percent of eligible employees teleworking in each frequency category described under subparagraph (A)(iii);

(E) an explanation of whether or not the agency met the goals for the last reporting period and, if not, what actions are being taken to identify and eliminate barriers to maximizing telework opportunities for the next reporting period;

(F) an assessment of the progress each agency has made in meeting agency partici-

[1] So in original. Probably should be preceded by ''the''.

pation rate goals during the reporting period, and other agency goals relating to telework, such as the impact of telework on—

(i) emergency readiness;

(ii) energy use;

(iii) recruitment and retention;

(iv) performance;

(v) productivity; and

(vi) employee attitudes and opinions regarding telework; and

(G) the best practices in agency telework programs.

(c) COMPTROLLER GENERAL REPORTS.—

(1) REPORT ON GOVERNMENT ACCOUNTABILITY OFFICE TELEWORK PROGRAM.—

(A) IN GENERAL.—Not later than 18 months after the date of enactment of this chapter and on an annual basis thereafter, the Comptroller General shall submit a report addressing the telework program of the Government Accountability Office to—

(i) the Committee on Homeland Security and Governmental Affairs of the Senate; and

(ii) the Committee on Oversight and Government Reform of the House of Representatives.

(B) CONTENTS.—Each report submitted by the Comptroller General shall include the same information as required under subsection (b) applicable to the Government Accountability Office.

(2) REPORT TO CONGRESS ON OFFICE OF PERSONNEL MANAGEMENT REPORT.—Not later than 6 months after the submission of the first report to Congress required under subsection (b), the Comptroller General shall review that report required under subsection (b) and submit a report to Congress on the progress each executive agency has made towards the goals established under section 6504(b)(2).

(d) CHIEF HUMAN CAPITAL OFFICER REPORTS.—

(1) IN GENERAL.—Each year the Chief Human Capital Officer of each executive agency, in consultation with the Telework Managing Officer of that agency, shall submit a report to the Chair and Vice Chair of the Chief Human Capital Officers Council on agency management efforts to promote telework.

(2) REVIEW AND INCLUSION OF RELEVANT INFORMATION.—The Chair and Vice Chair of the Chief Human Capital Officers Council shall—

(A) review the reports submitted under paragraph (1);

(B) include relevant information from the submitted reports in the annual report to Congress required under subsection (b); and

(C) use that relevant information for other purposes related to the strategic management of human capital.

(Added Pub. L. 111–292, § 2(a), Dec. 9, 2010, 124 Stat. 3169.)

REFERENCES IN TEXT

The date of enactment of this chapter, referred to in subsecs. (b)(1) and (c)(1)(A), is the date of enactment of Pub. L. 111–292, which was approved Dec. 9, 2010.

# 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.

## 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.

SHORT TITLE

This chapter is popularly known as the ''Federal Service Labor-Management Relations Act''.

EMPLOYEE SURVEYS

Pub. L. 108–136, div. A, title XI, § 1128, Nov. 24, 2003, 117 Stat. 1641, provided that:

''(a) IN GENERAL.—Each agency shall conduct an annual survey of its employees (including survey questions unique to the agency and questions prescribed under subsection (b)) to assess—

''(1) leadership and management practices that contribute to agency performance; and

''(2) employee satisfaction with—

''(A) leadership policies and practices;

''(B) work environment;

''(C) rewards and recognition for professional accomplishment and personal contributions to achieving organizational mission;

''(D) opportunity for professional development and growth; and

''(E) opportunity to contribute to achieving organizational mission.

''(b) REGULATIONS.—The Office of Personnel Management shall issue regulations prescribing survey questions that should appear on all agency surveys under subsection (a) in order to allow a comparison across agencies.

''(c) AVAILABILITY OF RESULTS.—The results of the agency surveys under subsection (a) shall be made available to the public and posted on the website of the agency involved, unless the head of such agency determines that doing so would jeopardize or negatively impact national security.

''(d) AGENCY DEFINED.—For purposes of this section, the term 'agency' means an Executive agency (as defined by section 105 of title 5, United States Code).''

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 establish-

ment as defined in section 104 of title 5, United States Code, except the General Accounting Office [now Government Accountability 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 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.

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 prece-

dent 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.

[For abolition of United States Information Agency (other than Broadcasting Board of Governors and International Broadcasting Bureau), transfer of functions, and treatment of references thereto, see sections 6531, 6532, and 6551 of Title 22, Foreign Relations and Intercourse.]

EXECUTIVE ORDER NO. 12871

Ex. Ord. No. 12871, Oct. 1, 1993, 58 F.R. 52201, as amended by Ex. Ord. No. 12983, Dec. 21, 1995, 60 F.R. 66855; Ex. Ord. No. 13156, §1, May 17, 2000, 65 F.R. 31785, which established the National Partnership Council and required the head of certain Government agencies to implement labor-management partnerships to help reform Government, was revoked by Ex. Ord. No. 13203, Feb. 17, 2001, 66 F.R. 11227.

EX. ORD. NO. 13522. CREATING LABOR-MANAGEMENT FORUMS TO IMPROVE DELIVERY OF GOVERNMENT SERVICES

Ex. Ord. No. 13522, Dec. 9, 2009, 74 F.R. 66203, 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 establish a cooperative and productive form of labor-management relations throughout the executive branch, it is hereby ordered as follows:

SECTION 1. *Policy*. Federal employees and their union representatives are an essential source of front-line ideas and information about the realities of delivering Government services to the American people. A non-adversarial forum for managers, employees, and employees' union representatives to discuss Government operations will promote satisfactory labor relations

and improve the productivity and effectiveness of the Federal Government. Labor-management forums, as complements to the existing collective bargaining process, will allow managers and employees to collaborate in continuing to deliver the highest quality services to the American people. Management should discuss workplace challenges and problems with labor and endeavor to develop solutions jointly, rather than advise union representatives of predetermined solutions to problems and then engage in bargaining over the impact and implementation of the predetermined solutions.

The purpose of this order is to establish a cooperative and productive form of labor-management relations throughout the executive branch.

SEC. 2. *The National Council on Federal Labor-Management Relations.* There is established the National Council on Federal Labor-Management Relations (Council).

(a) *Membership.* The Council shall be composed of the following members appointed or designated by the President:

(i) the Director of the Office of Personnel Management (OPM) and Deputy Director for Management of the Office of Management and Budget (OMB), who shall serve as Co-Chairs of the Council;

(ii) the Chair of the Federal Labor Relations Authority;

(iii) a Deputy Secretary or other officer with department- or agency-wide authority from each of five executive departments or agencies not otherwise represented on the Council, who shall serve for terms of 2 years;

(iv) the President of the American Federation of Government Employees, AFL-CIO;

(v) the President of the National Federation of Federal Employees;

(vi) the President of the National Treasury Employees Union;

(vii) the President of the International Federation of Professional and Technical Engineers, AFL-CIO;

(viii) the heads of three other labor unions that represent Federal employees and are not otherwise represented on the Council, who shall serve for terms of 2 years;

(ix) the President of the Senior Executives Association; and

(x) the President of the Federal Managers Association.

(b) *Responsibilities and Functions.* The Council shall advise the President on matters involving labor-management relations in the executive branch. Its activities shall include, to the extent permitted by law:

(i) supporting the creation of department- or agency-level labor-management forums and promoting partnership efforts between labor and management in the executive branch;

(ii) developing suggested measurements and metrics for the evaluation of the effectiveness of the Council and department or agency labor-management forums in order to promote consistent, appropriate, and administratively efficient measurement and evaluation processes across departments and agencies;

(iii) collecting and disseminating information about, and providing guidance on, labor-management relations improvement efforts in the executive branch, including results achieved;

(iv) utilizing the expertise of individuals both within and outside the Federal Government to foster successful labor-management relations, including through training of department and agency personnel in methods of dispute resolution and cooperative methods of labor-management relations;

(v) developing recommendations for innovative ways to improve delivery of services and products to the public while cutting costs and advancing employee interests;

(vi) serving as a venue for addressing systemic failures of department- or agency-level forums established pursuant to section 3 of this order; and

(vii) providing recommendations to the President for the implementation of several pilot programs within the executive branch, described in section 4 of this order, for bargaining over subjects set forth in 5 U.S.C. 7106(b)(1).

(c) *Administration.*

(i) The Co-Chairs shall convene and preside at meetings of the Council, determine its agenda, and direct its work.

(ii) The Council shall seek input from nonmember executive departments and agencies, particularly smaller agencies. It also may, from time to time, invite persons from the private and public sectors to submit information. The Council shall also seek input from Federal manager and professional associations, companies, nonprofit organizations, State and local governments, Federal employees, and customers of Federal services, as needed.

(iii) 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.

(iv) Members of the Council shall serve without compensation for their work on the Council, but may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in Government service (5 U.S.C. 5701–5707), consistent with the availability of funds.

(v) The heads of executive departments and agencies shall, to the extent permitted by law, provide to the Council such assistance, information, and advice as the Council may require for purposes of carrying out its functions.

(vi) Insofar as the Federal Advisory Committee Act, as amended (5 U.S.C. App.), may apply to the Council, any functions of the President under that Act, except that of reporting to the Congress, shall be performed by the Director of OPM in accordance with the guidelines that have been issued by the Administrator of General Services.

(d) *Termination.* The Council shall terminate 2 years after the date of this order unless extended by the President.

SEC. 3. *Implementation of Labor-Management Forums Throughout the Executive Branch.*

(a) The head of each executive department or agency that is subject to the provisions of the Federal Service Labor-Management Relations Act (5 U.S.C. 7101 *et seq.*), or any other authority permitting employees of such department or agency to select an exclusive representative shall, to the extent permitted by law:

(i) establish department- or agency-level labor-management forums by creating labor-management committees or councils at the levels of recognition and other appropriate levels agreed to by labor and management, or adapting existing councils or committees if such groups exist, to help identify problems and propose solutions to better serve the public and agency missions;

(ii) allow employees and their union representatives to have pre-decisional involvement in all workplace matters to the fullest extent practicable, without regard to whether those matters are negotiable subjects of bargaining under 5 U.S.C. 7106; provide adequate information on such matters expeditiously to union representatives where not prohibited by law; and make a good-faith attempt to resolve issues concerning proposed changes in conditions of employment, including those involving the subjects set forth in 5 U.S.C. 7106(b)(1), through discussions in its labor-management forums; and

(iii) evaluate and document, in consultation with union representatives and consistent with the purposes of this order and any further guidance provided by the Council, changes in employee satisfaction, manager satisfaction, and organizational performance resulting from the labor-management forums.

(b) Each head of an executive department or agency in which there exists one or more exclusive representatives shall, in consultation with union representatives, prepare and submit for approval, within 90 days of the

date of this order, a written implementation plan to the Council. The plan shall:

(i) describe how the department or agency will conduct a baseline assessment of the current state of labor relations within the department or agency;

(ii) report the extent to which the department or agency has established labor-management forums, as set forth in subsection (a)(i) of this section, or may participate in the pilot projects described in section 4 of this order;

(iii) address how the department or agency will work with the exclusive representatives of its employees through its labor-management forums to develop department-, agency-, or bargaining unit-specific metrics to monitor improvements in areas such as labor-management satisfaction, productivity gains, cost savings, and other areas as identified by the relevant labor-management forum's participants; and

(iv) explain the department's or agency's plan for devoting sufficient resources to the implementation of the plan.

(c) The Council shall review each executive department or agency implementation plan within 30 days of receipt and provide a recommendation to the Co-Chairs as to whether to certify that the plan satisfies all requirements of this order. Plans that are determined by the Co-Chairs to be insufficient will be returned to the department or agency with guidance for improvement and resubmission within 30 days. Each department or agency covered by subsection (b) of this section must have a certified implementation plan in place no later than 150 days after the date of this order, unless the Co-Chairs of the Council authorize an extension of the deadline.

SEC. 4. *Negotiation over Permissive Subjects of Bargaining.*

(a) In order to evaluate the impact of bargaining over permissive subjects, several pilot projects of specified duration shall be established in which some executive departments or agencies elect to bargain over some or all of the subjects set forth in 5 U.S.C. 7106(b)(1) and waive any objection to participating in impasse procedures set forth in 5 U.S.C. 7119 that is based on the subjects being permissive. The Council shall develop recommendations for establishing the pilot projects, including (i) recommendations for evaluating such pilot projects on the basis, among other things, of their impacts on organizational performance, employee satisfaction, and labor relations of the affected departments or agencies; (ii) recommended methods for evaluating the effectiveness of dispute resolution procedures adopted and followed in the course of the pilot projects; and (iii) a recommended timeline for expeditious implementation of the pilot programs.

(b) The Council shall present its recommendations to the President within 150 days after the date of this order.

(c) No later than 18 months after implementation of the pilot projects, the Council shall submit a report to the President evaluating the results of the pilots and recommending appropriate next steps with respect to agency bargaining over the subjects set forth in 5 U.S.C. 7106(b)(1).

SEC. 5. *General Provisions.*

(a) Nothing in this order shall abrogate any collective bargaining agreements in effect on the date of this order.

(b) Nothing in this order shall be construed to limit, preclude, or prohibit any head of an executive department or agency from electing to negotiate over any or all of the subjects set forth in 5 U.S.C. 7106(b)(1) in any negotiation.

(c) Nothing in this order shall be construed to impair or otherwise affect:

(i) authority granted by law to an executive department, agency, or the head thereof; or

(ii) functions of the Director of OMB relating to budgetary, administrative, or legislative proposals.

(d) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(e) 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 or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

BARACK OBAMA.

## § 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 Agency for

International Development, 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, the Government Printing Office, and the Smithsonian Institution[1] but does not include—

(A) the Government Accountability 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 United States Secret Service and the United States Secret Service Uniformed Division.

(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);

[1] So in original. Probably should be followed by a comma.

(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; Pub. L. 104–201, div. A, title XVI, § 1634(a), Sept. 23, 1996, 110 Stat. 2752; Pub. L. 105–220, title III, § 341(e), Aug. 7, 1998, 112 Stat. 1092; Pub. L. 105–277, div. G, subdiv. A, title XIV, § 1422(b)(1), Oct. 21, 1998, 112 Stat. 2681–792; Pub. L. 106–554, § 1(a)(4) [div. B, title I, § 139], Dec. 21, 2000, 114 Stat. 2763, 2763A–235; Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814.)

AMENDMENTS

2004—Subsec. (a)(3)(A). Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office''.

2000—Subsec. (a)(3)(H). Pub. L. 106–554 added subpar. (H).

1998—Subsec. (a)(2)(B)(iv). Pub. L. 105–277 substituted ''Agency for International Development'' for ''United States International Development Cooperation Agency''.

Subsec. (a)(3). Pub. L. 105–220, in introductory provisions, struck out ''and'' after ''Library of Congress,'' and inserted ''and the Smithsonian Institution'' after ''Government Printing Office,''.

1996—Subsec. (a)(3)(F) to (H). Pub. L. 104–201 inserted ''or'' at end of subpar. (F), substituted a period for ''; or'' at end of subpar. (G), and struck out subpar. (H) which read as follows: ''the Central Imagery Office;''.

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. United States Information Agency (other than Broadcasting Board of Governors and International Broadcasting Bureau) abolished and functions transferred to Secretary of State by sections 6531 and 6532 of Title 22.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–277 effective Apr. 1, 1999, see section 1401 of Pub. L. 105–277, set out as an Effective Date note under section 6561 of Title 22, Foreign Relations and Intercourse.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–201 effective Oct. 1, 1996, see section 1635 of Pub. L. 104–201, set out as a note under section 1593 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.

TRANSFER OF FUNCTIONS

For transfer of the functions, personnel, assets, and obligations of the United States Secret Service, including the functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 381, 551(d), 552(d), and 557 of Title 6, Domestic Security,

and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

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; Ex. Ord. No. 13039, Mar. 11, 1997, 62 F.R. 12529; Ex. Ord. No. 13252, Jan. 7, 2002, 67 F.R. 1601; Ex. Ord. No. 13381, § 5(b), June 27, 2005, 70 F.R. 37955; Ex. Ord. No. 13467, § 3(d), June 30, 2008, 73 F.R. 38107; Ex. Ord. No. 13480, §§ 2–6, Nov. 26, 2008, 73 F.R. 73991, 73992, 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 Office of Terrorism and Financial Intelligence.

(b) The Financial Crimes Enforcement Network.

(c) Criminal Investigation, Internal Revenue Service.

(d) The Trade Analysis and Enforcement Division, Alcohol and Tobacco Tax and Trade Bureau.

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.

(i) Naval Special Warfare Development Group.

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.

(c) United States Attorneys' Offices.

(d) Criminal Division.

(e) INTERPOL—U.S. National Central Bureau.

(f) National Drug Intelligence Center.

(g) National Security Division.

(h) Bureau of Alcohol, Tobacco, Firearms, and Explosives.

1–210. Agencies or subdivisions of the Department of Energy:

(a) The National Nuclear Security Administration.

(b) The Office of Intelligence.

(c) The Office of Counterintelligence.

(d) The Office of Intelligence and Counterintelligence.

(e) The Savannah River Operations Office.

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 following subdivision of the Federal Aviation Administration (FAA), Department of Transportation: National Security Coordination Division, Office of Emergency Operations and Investigations, FAA Office of Security and Hazardous Materials.

1–214. Agencies or subdivisions of the Department of Homeland Security:

(a) Office of the Military Advisor.

(b) The following office within the Management Directorate:

(1) Office of Security.

(c) Office of Operations Coordination.

(d) Office of Counternarcotics Enforcement.

(e) Office of Intelligence and Analysis.

(f) Domestic Nuclear Detection Office.

(g) The following offices and subdivisions within the United States Coast Guard:

(1) Maritime Intelligence Fusion Centers, Atlantic.

(2) Pacific Area Intelligence Division.

(3) Intelligence Coordination Center.

(4) Coast Guard Investigative Service.

(5) Coast Guard Security Center.

(h) The following offices and subdivisions within United States Immigration and Customs Enforcement:

(1) The Office of Investigations.

(2) The Office of International Affairs.

(3) The Office of Intelligence.

(4) The National Incident Response Unit.

(i) The following office within the Transportation Security Administration:

(1) The Office of Law Enforcement/Federal Air Marshal Service.

(j) The following office within United States Customs and Border Protection:

(1) The Office of Intelligence and Operations Coordination.

(k) The following offices and subdivisions within the Federal Emergency Management Agency:

(1) The following offices and subdivisions within the Office of National Continuity Programs:

(A) The Office of the Assistant Administrator.

(B) The Operations Division.

(C) The Continuity of Operations Division.

(D) The Readiness Division.

(E) The Integrated Public Alert and Warning Systems Division.

(2) The following subdivisions within the Disaster Operations Directorate:

(A) The Mobile Emergency Response Support Operations, including Mobile Emergency Response Support Detachments.

(B) The FEMA Operations Center.

(C) The Alternate FEMA Operations Center.

1–215. The Defense Mapping Agency Reston Center, Department of Defense.

1–216. The Federal Investigative Services Division., [sic] Office of Personnel Management.

### 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.

EX. ORD. NO. 13252. EXCLUSIONS FROM THE FEDERAL LABOR-MANAGEMENT RELATIONS PROGRAM

Ex. Ord. No. 13252, Jan. 7, 2002, 67 F.R. 1601, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 7103(b)(1) of title 5, United States Code, and in order to exempt certain subdivisions of the Department of Justice from coverage under the Federal Labor-Management Relations Program, it is hereby ordered as follows:

SECTION 1. *Determinations*. The subdivisions of the Department of Justice set forth in section 2 of this order are hereby determined to have as a primary function intelligence, counterintelligence, investigative, or national security work. It is further determined that chapter 71 of title 5, United States Code, cannot be applied to these subdivisions in a manner consistent with national security requirements and considerations.

SEC. 2. *Amendment of Executive Order 12171*. Executive Order 12171 of November 19, 1979, as amended, [set out above] is further amended by adding to the end of section 1–209 the following new subsections:

''(c) United States Attorneys' Offices.

[''](d) Criminal Division.

[''](e) INTERPOL—U.S. National Central Bureau.

[''](f) National Drug Intelligence Center.

[''](g) Office of Intelligence Policy and Review.''

GEORGE W. BUSH.

## § 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.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsection (e) of this section relating to transmittal to Congress of an annual report on cases heard and decisions rendered, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 171 of House Document No. 103–7.

DELEGATION OF CERTAIN REPORTING AUTHORITY

Memorandum of President of the United States, Dec. 8, 2004, 69 F.R. 74935, provided:

Memorandum for the Chairman of the Federal Labor Relations Authority

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, I hereby delegate to the member who has been designated by the President as Chairman the functions conferred upon the President by 5 U.S.C. 7104(e) to provide the specified report to the Congress.

You are authorized and directed to publish this memorandum in the Federal Register.

GEORGE W. BUSH.

## § 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 Personnel 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.

### § 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 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.)

### § 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.

### § 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.

### § 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.

### § 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 therefor 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.

### § 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.)

### § 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.

### § 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.)

## 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 agreement 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 prohibited 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).

(h) Settlements and awards under this chapter shall be subject to the limitations in section 5596(b)(4) of this title.

(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; Pub. L. 105–261, div. A, title XI, § 1104(b), Oct. 17, 1998, 112 Stat. 2142.)

AMENDMENTS

1998—Subsec. (h). Pub. L. 105–261 added subsec. (h).

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).

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.

## § 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''.

## § 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 en-

forcing, 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.

## 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.)

### § 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.

### [§§ 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.

## 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.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of reporting provisions in subsec. (e) of this section, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 187 of House Document No. 103–7.

WORKPLACE POLICIES PROHIBITING DISCRIMINATION AND SEXUAL HARASSMENT

Pub. L. 110–161, div. D, title VII, § 716, Dec. 26, 2007, 121 Stat. 2023, provided that: ''Hereafter, no department, agency, or instrumentality of the United States receiving appropriated funds under this or any other Act

shall obligate or expend any such funds, unless such department, agency, or instrumentality has in place, and will continue to administer in good faith, a written policy designed to ensure that all of its workplaces are free from discrimination and sexual harassment and that all of its workplaces are not in violation of title VII of the Civil Rights Act of 1964 (Public Law 88–352, 78 Stat. 241) [42 U.S.C. 2000e et seq.], the Age Discrimination in Employment Act of 1967 (Public Law 90–202, 81 Stat. 602) [29 U.S.C. 621 et seq.], and the Rehabilitation Act of 1973 (Public Law 93–112, 87 Stat. 355) [29 U.S.C. 701 et seq.].''

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.''

## § 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).

## § 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.

## § 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, discrimination 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.

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.

## CHAPTER 73—SUITABILITY, SECURITY, AND CONDUCT

SUBCHAPTER I—REGULATION OF CONDUCT

Sec.
7301. Presidential regulations.
7302. Post-employment notification.

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.

SUBCHAPTER VII—MANDATORY REMOVAL FROM EMPLOYMENT OF CONVICTED LAW ENFORCEMENT OFFICERS

7371. Mandatory removal from employment of law enforcement officers convicted of felonies.

AMENDMENTS

2003—Pub. L. 108–136, div. A, title XI, §1125(b)(3), Nov. 24, 2003, 117 Stat. 1640, added item 7302.

2000—Pub. L. 106–554, §1(a)(3) [title VI, §639(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–168, added subchapter VII heading and item 7371.

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.

## 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 5195 of Title 42, The Public Health and Welfare.

CONTINUATION OF RANDOM DRUG TESTING PROGRAM FOR CERTAIN DEPARTMENT OF DEFENSE EMPLOYEES

Pub. L. 105–261, div. A, title XI, § 1108, Oct. 17, 1998, 112 Stat. 2142, provided that:

''(a) CONTINUATION OF EXISTING PROGRAM.—The Secretary of Defense shall continue to actively carry out the drug testing program, originally required by section 3(a) of Executive Order No. 12564 (51 Fed. Reg. 32889; September 15, 1986) [set out below], involving civilian employees of the Department of Defense who are considered to be employees in sensitive positions. The Secretary shall comply with the drug testing procedures prescribed pursuant to section 4 of the Executive order.

''(b) TESTING UPON REASONABLE SUSPICION OF ILLEGAL DRUG USE.—The Secretary of Defense shall ensure that the drug testing program referred to in subsection (a) authorizes the testing of a civilian employee of the Department of Defense for illegal drug use when there is a reasonable suspicion that the employee uses illegal drugs.

''(c) NOTIFICATION TO APPLICANTS.—The Secretary of Defense shall notify persons who apply for employment with the Department of Defense that, as a condition of employment by the Department, the person may be required to submit to drug testing under the drug testing program required by Executive Order No. 12564 (51 Fed. Reg. 32889; September 15, 1986) pursuant to the terms of the Executive order.

''(d) DEFINITIONS.—In this section, the terms 'illegal drugs' and 'employee in a sensitive position' have the meanings given such terms in section 7 of Executive Order No. 12564 (51 Fed. Reg. 32889; September 15, 1986).''

ANNUAL CERTIFICATION OF DRUG-FREE WORKPLACE PLAN ADMINISTRATORS

Pub. L. 106–58, title VI, § 624, Sept. 29, 1999, 113 Stat. 471, 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.''

Similar provisions were contained in the following prior appropriations acts:

Pub. L. 105–277, div. A, § 101(h) [title VI, § 634], Oct. 21, 1998, 112 Stat. 2681–480, 2681–524.

Pub. L. 105–61, title VI, § 621, Oct. 10, 1997, 111 Stat. 1313.

Pub. L. 104–208, div. A, title I, § 101(f) [title VI, § 623], Sept. 30, 1996, 110 Stat. 3009–314, 3009–358.

Pub. L. 104–52, title VI, § 624, Nov. 19, 1995, 109 Stat. 502.

Pub. L. 103–329, title VI, § 638, Sept. 30, 1994, 108 Stat. 2432.

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.

DISPLAY IN FEDERAL BUILDINGS OF CODE OF ETHICS FOR GOVERNMENT SERVICE

Pub. L. 96–303, July 3, 1980, 94 Stat. 855, which provided that each agency, under regulations prescribed by

Administrator of General Services Administration, display in appropriate areas of Federal buildings copies of the Code of Ethics for Government Service, authorized publication and distribution of such Code, and set forth text of the Code of Ethics for Government Service, was repealed by Pub. L. 104–179, § 4(a), Aug. 6, 1996, 110 Stat. 1566.

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 im-

plement 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) [Terminated, effective May 15, 2000, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 151 of House Document No. 103–7.]

''(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.''

[For abolition of United States Information Agency (other than Broadcasting Board of Governors and International Broadcasting Bureau), transfer of functions, and treatment of references thereto, see sections 6531, 6532, and 6551 of Title 22, Foreign Relations and Intercourse.]

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 behavior 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. 435 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.

[Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the intelligence community deemed to be a reference to the Director of National Intelligence. Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the Central Intelligence Agency deemed to be a reference to the Director of the Central Intelligence Agency. See section 1081(a), (b) of Pub. L. 108–458, set out as a note under section 401 of Title 50, War and National Defense.]

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. 2101].

(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 defined 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 [now Government Accountability 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.

EXECUTIVE ORDER NO. 12820

Ex. Ord. No. 12820, Nov. 5, 1992, 57 F.R. 53429, which facilitated Federal employees' participation in community service activities, was revoked by Ex. Ord. No. 13401, §3(b), Apr. 27, 2006, 71 F.R. 25738.

EXECUTIVE ORDER NO. 12834

Ex. Ord. No. 12834, Jan. 20, 1993, 58 F.R. 5911, which provided for ethics commitments by executive branch appointees, was revoked by Ex. Ord. No. 13184, Dec. 28, 2000, 66 F.R. 697, eff. noon Jan. 20, 2001.

EX. ORD. NO. 13058. PROTECTING FEDERAL EMPLOYEES AND THE PUBLIC FROM EXPOSURE TO TOBACCO SMOKE IN THE FEDERAL WORKPLACE

Ex. Ord. No. 13058, Aug. 9, 1997, 62 F.R. 43451, 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 protect Federal Government employees and members of the public from exposure to tobacco smoke in the Federal workplace, it is hereby ordered as follows:

SECTION 1. *Policy*. It is the policy of the executive branch to establish a smoke-free environment for Federal employees and members of the public visiting or using Federal facilities. The smoking of tobacco products is thus prohibited in all interior space owned, rented, or leased by the executive branch of the Federal Government, and in any outdoor areas under executive branch control in front of air intake ducts.

SEC. 2. *Exceptions*. The general policy established by this order is subject to the following exceptions: (a) The order does not apply in designated smoking areas that are enclosed and exhausted directly to the outside and away from air intake ducts, and are maintained under negative pressure (with respect to surrounding spaces) sufficient to contain tobacco smoke within the designated area. Agency officials shall not require workers to enter such areas during business hours while smoking is ongoing.

(b) The order does not extend to any residential accommodation for persons voluntarily or involuntarily residing, on a temporary or long-term basis, in a building owned, leased, or rented by the Federal Government.

(c) The order does not extend to those portions of federally owned buildings leased, rented, or otherwise provided in their entirety to nonfederal parties.

(d) The order does not extend to places of employment in the private sector or in other nonfederal governmental units that serve as the permanent or intermittent duty station of one or more Federal employees.

(e) The head of any agency may establish limited and narrow exceptions that are necessary to accomplish agency missions. Such exception shall be in writing, approved by the agency head, and to the fullest extent possible provide protection of nonsmokers from exposure to environmental tobacco smoke. Authority to establish such exceptions may not be delegated.

SEC. 3. *Other Locations*. The heads of agencies shall evaluate the need to restrict smoking at doorways and in courtyards under executive branch control in order to protect workers and visitors from environmental tobacco smoke, and may restrict smoking in these areas in light of this evaluation.

SEC. 4. *Smoking Cessation Programs*. The heads of agencies are encouraged to use existing authority to establish programs designed to help employees stop smoking.

SEC. 5. *Responsibility for Implementation*. The heads of agencies are responsible for implementing and ensuring compliance with the provisions of this order. ''Agency'' as used in this order means an Executive agency, as defined in 5 U.S.C. 105, and includes any employing unit or authority of the Federal Government, other than those of the legislative and judicial branches. Independent agencies are encouraged to comply with the provisions of this order.

SEC. 6. *Phase-In of Implementation*. Implementation of the policy set forth in this order shall be achieved no later than 1 year after the date of this order. This 1 year phase-in period is designed to establish a fixed but reasonable time for implementing this policy. Agency heads are directed during this period to inform all employees and visitors to executive branch facilities about the requirements of this order, inform their employees of the health risks of exposure to environmental tobacco smoke, and undertake related activities as necessary.

SEC. 7. *Consistency with Other Laws*. The provisions of this order shall be implemented consistent with applicable law, including the Federal Service Labor-Management Relations Act (5 U.S.C. 7101 *et seq.*) and the National Labor Relations Act (29 U.S.C. 151 *et seq.*)[.] Provisions of existing collective bargaining agreements shall be honored and agencies shall consult with employee labor representatives about the implementation of this order. Nothing herein shall be construed to impair or alter the powers and duties of Federal agencies established under law. Nothing herein shall be construed to replace any agency policy currently in effect, if such policy is legally established, in writing, and consistent with the terms of this order. Agencies shall review their current policy to confirm that agency policy comports with this order, and policy found not in compliance shall be revised to comply with the terms of this order.

SEC. 8. *Cause of Action*. This order does not create any right to administrative or judicial review, or any other 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 or affect in any way the liability of the executive branch under the Federal Tort Claims Act [see Short Title note set out under section 2671 of Title 28, Judiciary and Judicial Procedure].

SEC. 9. *Construction*. Nothing in this order shall limit an agency head from establishing more protective policies on smoking in the Federal workplace for employees and members of the public visiting or using Federal facilities.

WILLIAM J. CLINTON.

EX. ORD. NO. 13401. RESPONSIBILITIES OF FEDERAL DEPARTMENTS AND AGENCIES WITH RESPECT TO VOLUNTEER COMMUNITY SERVICE

Ex. Ord. No. 13401, Apr. 27, 2006, 71 F.R. 25737, 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 help ensure that the Federal Government supports and encourages volunteer community service, it is hereby ordered as follows:

SECTION 1. *Designation of a Liaison for Volunteer Community Service*. (a) The head of each agency shall, within 20 days after the date of this order, designate an officer or employee of such agency compensated at a level at or above the minimum level of pay of a member of the Senior Executive Service to serve under the authority of the head of the agency as the agency liaison for volunteer community service (Liaison).

(b) The Liaison in each agency shall promote and support community service on a voluntary basis among Federal employees, including those approaching retirement; promote the use of skilled volunteers; and facilitate public recognition for volunteer community service.

(c) The head of each agency shall prescribe arrangements within the agency for support and supervision of the Liaison that ensure high priority and substantial visibility for the function of the Liaison within the agency under this order.

(d) Each executive agency shall provide its Liaison with appropriate administrative support and other re-

sources to meet the responsibilities of the Liaison under this order.

SEC. 2. *Goals and Responsibilities of the Liaison*. The Liaison shall foster within the Liaison's agency a culture of taking responsibility, service to others, and good citizenship. Toward that end, the Liaison shall:

(a) identify, catalog, and review all activities of the agency that relate to volunteer community service, including, but not limited to rules, orders, grant programs, external relations, and other policies and practices, and make such recommendations to the head of the agency for adjustments as may be appropriate;

(b) actively work with USA Freedom Corps to promote volunteer community service among agency employees by providing information about community service opportunities;

(c) coordinate within the agency actions to facilitate public recognition for volunteer community service;

(d) promote, expand, and enhance skilled volunteer community service opportunities;

(e) work with the USA Freedom Corps and the Director of the Office of Personnel Management (OPM) to consider any appropriate changes in agency policies or practices that are not currently consistent with OPM guidance;

(f) coordinate the awarding of the President's Volunteer Service Award to recognize outstanding volunteer service by employees within the agency; and

(g) act as a liaison with the USA Freedom Corps.

SEC. 3. *Administrative Provisions*. (a) The USA Freedom Corps shall provide such information with respect to volunteer community service programs and activities and such advice and assistance as may be required by agencies in performing their functions under this order.

(b) Executive Order 12820 of November 5, 1992, is revoked.

(c) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(d) As used in this order:

(i) ''agency'' has the meaning of ''executive agency'' as defined in section 105 of title 5, United States Code; and

(ii) ''USA Freedom Corps'' means the Director of the USA Freedom Corps Office established by section 4 of Executive Order 13254 of January 29, 2002.

SEC. 4. *Reporting Provisions*. (a) Not later than 180 days from the date of this order and annually thereafter, each agency Liaison shall prepare and submit a report to the USA Freedom Corps that includes a description of the agency's activities in performing its functions under this order.

(b) A Liaison's first report under subsection (a) shall include annual performance indicators and measurable objectives for agency action approved by the head of the agency. Each report filed thereafter under subsection (a) shall measure the agency's performance against the indicators and objectives approved by the head of the agency.

SEC. 5. *Judicial Review*. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable by any party at law or in equity against the United States, its departments, agencies, entities, officers, employees, or agents, or any other person.

GEORGE W. BUSH.

EX. ORD. NO. 13488. GRANTING RECIPROCITY ON EXCEPTED SERVICE AND FEDERAL CONTRACTOR EMPLOYEE FITNESS AND REINVESTIGATING INDIVIDUALS IN POSITIONS OF PUBLIC TRUST

Ex. Ord. No. 13488, Jan. 16, 2009, 74 F.R. 4111, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 1104(a)(1), 3301, and 7301 of title 5, United States Code, and in order to simplify and streamline the system of Federal Government personnel investigative and adjudicative processes to make them more efficient and effective, it is hereby ordered as follows:

SECTION 1. *Policy*. (a) When agencies determine the fitness of individuals to perform work as employees in the excepted service or as contractor employees, prior favorable fitness or suitability determinations should be granted reciprocal recognition, to the extent practicable.

(b) It is necessary to reinvestigate individuals in positions of public trust in order to ensure that they remain suitable for continued employment.

SEC. 2. *Definitions*. For the purposes of this order:

(a) ''Agency'' means an executive agency as defined in section 105 of title 5, United States Code, but does not include the Government Accountability Office.

(b) ''Contractor employee'' means an individual who performs work for or on behalf of any agency under a contract and who, in order to perform the work specified under the contract, will require access to space, information, information technology systems, staff, or other assets of the Federal Government. Such contracts, include, but are not limited to:

(i) personal services contracts;

(ii) contracts between any non-Federal entity and any agency; and

(iii) sub-contracts between any non-Federal entity and another non-Federal entity to perform work related to the primary contract with the agency.

(c) ''Excepted service'' has the meaning provided in section 2103 of title 5, United States Code, but does not include those positions in any element of the intelligence community as defined in the National Security Act of 1947, as amended, to the extent they are not otherwise subject to Office of Personnel Management appointing authorities.

(d) ''Fitness'' is the level of character and conduct determined necessary for an individual to perform work for or on behalf of a Federal agency as an employee in the excepted service (other than a position subject to suitability) or as a contractor employee.

(e) ''Fitness determination'' means a decision by an agency that an individual has or does not have the required level of character and conduct necessary to perform work for or on behalf of a Federal agency as an employee in the excepted service (other than a position subject to suitability) or as a contractor employee. A favorable fitness determination is not a decision to appoint or contract with an individual.

(f) ''Position of Public Trust'' has the meaning provided in 5 *CFR* Part 731.

(g) ''Suitability'' has the meaning and coverage provided in *CFR* Part 731.

SEC. 3. *Agency Authority to Set Fitness Criteria and Determine Equivalency*. The authority to establish criteria for making fitness determinations remains within the discretion of the agency head. Agency heads also have the discretion to determine whether their criteria are equivalent to suitability standards established by the Office of Personnel Management. Agency heads shall take into account Office of Personnel Management guidance when exercising this discretion.

SEC. 4. *Reciprocal Recognition of Fitness and Suitability Determinations*. (a) Except as provided by subsection (b) of this section, agencies making fitness determinations shall grant reciprocal recognition to a prior favorable fitness or suitability determination when:

(i) the gaining agency uses criteria for making fitness determinations equivalent to suitability standards established by the Office of Personnel Management;

(ii) the prior favorable fitness or suitability determination was based on criteria equivalent to suitability standards established by the Office of Personnel Management; and

(iii) the individual has had no break in employment since the favorable determination was made.

(b) Exceptions to Reciprocal Recognition. A gaining agency is not required to grant reciprocal recognition to a prior favorable fitness or suitability determination when:

(i) the new position requires a higher level of investigation than previously conducted for that individual;

(ii) an agency obtains new information that calls into question the individual's fitness based on character or conduct; or

(iii) the individual's investigative record shows conduct that is incompatible with the core duties of the new position.

SEC. 5. *Reinvestigation of Individuals in Positions of Public Trust*. Individuals in positions of public trust shall be subject to reinvestigation under standards (including but not limited to the frequency of such reinvestigation) as determined by the Director of the Office of Personnel Management, to ensure their suitability for continued employment.

SEC. 6. *Responsibilities*. (a) An agency shall report to the Office of Personnel Management the nature and results of the background investigation and fitness determination (or later changes to that determination) made on an individual, to the extent consistent with law.

(b) The Director of the Office of Personnel Management is delegated authority to implement this order, including the authority to issue regulations and guidance governing suitability, or guidance related to fitness, as the Director determines appropriate.

SEC. 7. *General Provisions*. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) authority granted by law to a department or agency, or the head thereof; or

(ii) functions of the Director of the Office of Management and Budget relating to budget, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order shall not suspend, impede, or otherwise affect Executive Order 10450 of April 27, 1953, as amended, or Executive Order 13467 of June 30, 2008;

(d) 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 in equity by any party against the United States, its agencies, instrumentalities, or entities, its officers, employees or agents, or any other person.

SEC. 8. *Effective Date and Applicability*. This order is effective upon issuance and is applicable to individuals newly appointed to excepted service positions or hired as contractor employees beginning 90 days from the effective date of this order.

GEORGE W. BUSH.

EX. ORD. NO. 13490. ETHICS COMMITMENTS BY EXECUTIVE BRANCH PERSONNEL

Ex. Ord. No. 13490, Jan. 21, 2009, 74 F.R. 4673, 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 sections 3301 and 7301 of title 5, United States Code, it is hereby ordered as follows:

SECTION 1. *Ethics Pledge*. Every appointee in every executive agency appointed on or after January 20, 2009, shall sign, and upon signing shall be contractually committed to, the following pledge upon becoming an appointee:

''As a condition, and in consideration, of my employment in the United States Government in 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. *Lobbyist Gift Ban*. I will not accept gifts from registered lobbyists or lobbying organizations for the duration of my service as an appointee.

''2. *Revolving Door Ban—All Appointees Entering Government*. I will not for a period of 2 years from the date of my appointment participate in any particular matter involving specific parties that is directly and substantially related to my former employer or former clients, including regulations and contracts.

''3. *Revolving Door Ban—Lobbyists Entering Government*. If I was a registered lobbyist within the 2 years before the date of my appointment, in addition to abiding by the limitations of paragraph 2, I will not for a period of 2 years after the date of my appointment:

(a) participate in any particular matter on which I lobbied within the 2 years before the date of my appointment;

(b) participate in the specific issue area in which that particular matter falls; or

(c) seek or accept employment with any executive agency that I lobbied within the 2 years before the date of my appointment.

''4. *Revolving Door Ban—Appointees Leaving Government*. If, upon my departure from the Government, I am covered by the post-employment restrictions on communicating with employees of my former executive agency set forth in section 207(c) of title 18, United States Code, I agree that I will abide by those restrictions for a period of 2 years following the end of my appointment.

''5. *Revolving Door Ban—Appointees Leaving Government to Lobby*. In addition to abiding by the limitations of paragraph 4, I also agree, upon leaving Government service, not to lobby any covered executive branch official or non-career Senior Executive Service appointee for the remainder of the Administration.

''6. *Employment Qualification Commitment*. I agree that any hiring or other employment decisions I make will be based on the candidate's qualifications, competence, and experience.

''7. *Assent to Enforcement*. I acknowledge that the Executive Order entitled 'Ethics Commitments by Executive Branch Personnel,' issued by the President on January 21, 2009, 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 pledge set forth in section 1 of this order:

(a) ''Executive agency'' shall include each ''executive agency'' as defined by section 105 of title 5, United States Code, and shall include the Executive Office of the President; provided, however, that for purposes of this order ''executive agency'' shall include the United States Postal Service and Postal Regulatory Commission, but shall exclude the Government Accountability Office.

(b) ''Appointee'' shall include every full-time, non-career Presidential or Vice-Presidential appointee, non-career appointee in the Senior Executive Service (or other SES-type system), and appointee to a position that has been excepted from the competitive service by reason of being of a confidential or policymaking character (Schedule C and other positions excepted under comparable criteria) in an executive agency. It does not include any person appointed as a member of the Senior Foreign Service or solely as a uniformed service commissioned officer.

(c) ''Gift''

(1) shall have the definition set forth in section 2635.203(b) of title 5, Code of Federal Regulations;

(2) shall include gifts that are solicited or accepted indirectly as defined at section 2635.203(f) of title 5, Code of Federal Regulations; and

(3) shall exclude those items excluded by sections 2635.204(b), (c), (e)(1) & (3) and (j)–(l) of title 5, Code of Federal Regulations.

(d) ''Covered executive branch official'' and ''lobbyist'' shall have the definitions set forth in section 1602 of title 2, United States Code.

(e) ''Registered lobbyist or lobbying organization'' shall mean a lobbyist or an organization filing a registration pursuant to section 1603(a) of title 2, United States Code, and in the case of an organization filing such a registration, ''registered lobbyist'' shall include each of the lobbyists identified therein.

(f) ''Lobby'' and ''lobbied'' shall mean to act or have acted as a registered lobbyist.

(g) ''Particular matter'' shall have the same meaning as set forth in section 207 of title 18, United States Code, and section 2635.402(b)(3) of title 5, Code of Federal Regulations.

(h) ''Particular matter involving specific parties'' shall have the same meaning as set forth in section 2641.201(h) of title 5, Code of Federal Regulations, except that it shall also include any meeting or other communication relating to the performance of one's official duties with a former employer or former client, unless the communication applies to a particular matter of general applicability and participation in the meeting or other event is open to all interested parties.

(i) ''Former employer'' is any person for whom the appointee has within the 2 years prior to the date of his or her appointment served as an employee, officer, director, trustee, or general partner, except that ''former employer'' does not include any executive agency or other entity of the Federal Government, State or local government, the District of Columbia, Native American tribe, or any United States territory or possession.

(j) ''Former client'' is any person for whom the appointee served personally as agent, attorney, or consultant within the 2 years prior to the date of his or her appointment, but excluding instances where the service provided was limited to a speech or similar appearance. It does not include clients of the appointee's former employer to whom the appointee did not personally provide services.

(k) ''Directly and substantially related to my former employer or former clients'' shall mean matters in which the appointee's former employer or a former client is a party or represents a party.

(l) ''Participate'' means to participate personally and substantially.

(m) ''Post-employment restrictions'' shall include the provisions and exceptions in section 207(c) of title 18, United States Code, and the implementing regulations.

(n) ''Government official'' means any employee of the executive branch.

(o) ''Administration'' means all terms of office of the incumbent President serving at the time of the appointment of an appointee covered by this order.

(p) ''Pledge'' means the ethics pledge set forth in section 1 of this order.

(q) All references to provisions of law and regulations shall refer to such provisions as in effect on January 20, 2009.

SEC. 3. *Waiver*. (a) The Director of the Office of Management and Budget, or his or her designee, in consultation with the Counsel to the President or his or her designee, may grant to any current or former appointee a written waiver of any restrictions contained in the pledge signed by such appointee if, and to the extent that, the Director of the Office of Management and Budget, or his or her designee, certifies in writing (i) that the literal application of the restriction is inconsistent with the purposes of the restriction, or (ii) that it is in the public interest to grant the waiver. A waiver shall take effect when the certification is signed by the Director of the Office of Management and Budget or his or her designee.

(b) The public interest shall include, but not be limited to, exigent circumstances relating to national security or to the economy. *De minimis* contact with an executive agency shall be cause for a waiver of the restrictions contained in paragraph 3 of the pledge.

SEC. 4. *Administration*. (a) The head of every executive agency shall, in consultation with the Director of the Office of Government Ethics, establish 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 to ensure that every appointee in the agency signs the pledge upon assuming the appointed office or otherwise becoming an appointee; to ensure that compliance with paragraph 3 of the pledge is addressed in a written ethics agreement with each appointee to whom it applies, which agreement shall also be approved by the Counsel to the President or his or her designee prior to the appointee commencing work; to ensure that spousal employment issues and other conflicts not expressly addressed by the pledge are addressed in ethics agreements with appointees or, where no such agreements are required, through ethics counseling; and 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) shall be the responsibility of the Counsel to the President or his or her designee.

(c) The Director of the Office of Government Ethics shall:

(1) ensure that the pledge and a copy of this 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 the Counsel to the President or their designees, when appropriate, assist designated agency ethics officers in providing advice to current or former appointees regarding the application of the pledge; and

(3) in consultation with the Attorney General and the Counsel to the President or their designees, adopt such rules or procedures as are necessary or appropriate:

(i) to carry out the foregoing responsibilities;

(ii) to apply the lobbyist gift ban set forth in paragraph 1 of the pledge to all executive branch employees;

(iii) to authorize limited exceptions to the lobbyist gift ban for circumstances that do not implicate the purposes of the ban;

(iv) to make clear that no person shall have violated the lobbyist gift ban if the person properly disposes of a gift as provided by section 2635.205 of title 5, Code of Federal Regulations;

(v) to ensure that existing rules and procedures for Government employees engaged in negotiations for future employment with private businesses that are affected by their official actions do not affect the integrity of the Government's programs and operations;

(vi) to ensure, in consultation with the Director of the Office of Personnel Management, that the requirement set forth in paragraph 6 of the pledge is honored by every employee of the executive branch;

(4) in consultation with the Director of the Office of Management and Budget, report to the President on whether full compliance is being achieved with existing laws and regulations governing executive branch procurement lobbying disclosure and on steps the executive branch can take to expand to the fullest extent practicable disclosure of such executive branch procurement lobbying and of lobbying for presidential pardons, and to include in the report both immediate action the executive branch can take and, if necessary, recommendations for legislation; and

(5) provide an annual public report on the administration of the pledge and this order.

(d) The Director of the Office of Government Ethics shall, in consultation with the Attorney General, the Counsel to the President, and the Director of the Office of Personnel Management, or their designees, report to the President on steps the executive branch can take to expand to the fullest extent practicable the revolving door ban set forth in paragraph 5 of the pledge to all executive branch employees who are involved in the procurement process such that they may not for 2 years after leaving Government service lobby any Government official regarding a Government contract that was under their official responsibility in the last 2 years of their Government service; and to include in the report both immediate action the executive branch can take and, if necessary, recommendations for legislation.

(e) All pledges signed by appointees, and all waiver certifications with respect thereto, shall be filed with the head of the appointee's agency for permanent re-

tention in the appointee's official personnel folder or equivalent folder.

SEC. 5. *Enforcement*. (a) The contractual, fiduciary, and ethical commitments in the pledge provided for herein are solely enforceable by the United States pursuant to this section by any legally available means, including debarment proceedings within any affected executive agency or judicial civil proceedings for declaratory, injunctive, or monetary relief.

(b) Any former appointee who is determined, after notice and hearing, by the duly designated authority within any agency, to have violated his or her pledge may be barred from lobbying any officer or employee of that agency for up to 5 years in addition to the time period covered by the pledge. The head of every executive agency shall, in consultation with the Director of the Office of Government Ethics, establish procedures to implement this subsection, which procedures shall include (but not be limited to) providing for factfinding and investigation of possible violations of this order and for referrals to the Attorney General for his or her consideration pursuant to subsection (c).

(c) The Attorney General or his or her designee 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 any such civil action, the Attorney General or his or her designee 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) Nothing in this order shall be construed to impair or otherwise affect:

(1) authority granted by law to a department, agency, or the head thereof; or

(2) functions of the Director of the Office of Management and Budget relating to budget, administrative, or legislative proposals.

(d) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(e) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(f) The definitions set forth in this order are solely applicable to the terms of this order, and are not otherwise intended to impair or affect existing law.

BARACK OBAMA.

DELEGATION OF CERTAIN FUNCTIONS AND AUTHORITIES RELATING TO WORKPLACE ACCOMMODATIONS FOR NURSING MOTHERS

Memorandum of President of the United States, Dec. 20, 2010, 75 F.R. 80673, provided:

Memorandum for the Director of the Office of Personnel Management

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, I hereby delegate to you the functions and authority conferred upon the President by section 7301 of title 5, United States Code, with respect to providing appropriate workplace accommodations for executive branch civilian employees who are nursing mothers.

You are authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA.

## § 7302. Post-employment notification

(a) Not later than the effective date of the amendments made by section 1106 of the National Defense Authorization Act for Fiscal Year 2004,[1] or 180 days after the date of the enactment of that Act, whichever is later, the Office of Personnel Management shall, in consultation with the Attorney General and the Office of Government Ethics, promulgate regulations requiring that each Executive branch agency notify any employee of that agency who is subject to the provisions of section 207(c)(1) of title 18, as a result of the amendment to section 207(c)(2)(A)(ii) of that title by that Act.

(b) The regulations shall require that notice be given before, or as part of, the action that affects the employee's coverage under section 207(c)(1) of title 18, by virtue of the provisions of section 207(c)(2)(A)(ii) of that title, and again when employment or service in the covered position is terminated.

(Added Pub. L. 108–136, div. A, title XI, § 1125(b)(2), Nov. 24, 2003, 117 Stat. 1639.)

REFERENCES IN TEXT

The effective date of the amendments made by section 1106 of the National Defense Authorization Act for Fiscal Year 2004, referred to in subsec. (a), probably means the effective date of the amendments made by section 1125 of the National Defense Authorization Act for Fiscal Year 2004, Pub. L. 108–136, which enacted this section. Pub. L. 108–136 does not contain a section 1106, and the provisions appearing in section 1106 of H.R. 1588, the National Defense Authorization Act for Fiscal Year 2004, as passed by the House of Representatives on May 22, 2003, were contained in section 1125 of Pub. L. 108–136. For effective date of amendments made by section 1125 of Pub. L. 108–136, see section 1125(c) of Pub. L. 108–136, set out as an Effective Date of 2003 Amendment note under section 5304 of this title.

The date of the enactment of that Act, referred to in subsec. (a), is the date of enactment of the National Defense Authorization Act for Fiscal Year 2004, Pub. L. 108–136, which was approved Nov. 24, 2003.

EFFECTIVE DATE

Section effective on first day of first pay period beginning on or after Jan. 1, 2004, see section 1125(c)(1) of Pub. L. 108–136, set out as an Effective Date of 2003 Amendment note under section 5304 of this title.

[1] See References in Text note below.

## 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 re-adjudicate, 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 se-

curity 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 Management 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 unlaw-

fully 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.

### § 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.

### § 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 pro-

vision, 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 Government Accountability 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; amended Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814.)

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.

AMENDMENTS

2004—Par. (1)(A). Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office''.

## § 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 or the Election Assistance 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;

(XIII) the National Geospatial-Intelligence Agency; or

(XIV) the Office of the Director of National Intelligence; or

(ii) a person employed in a position described under section 3132(a)(4), 5372, 5372a, or 5372b of title 5, United States Code.

(3) No employee of the Criminal Division or National Security 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; Pub. L. 104–201, div. A, title XI, § 1122(a)(1), Sept. 23, 1996, 110 Stat. 2687; Pub. L. 106–554, § 1(a)(3) [title VI, § 645(a)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–170; Pub. L. 107–252, title VIII, § 811(a), Oct. 29, 2002, 116 Stat. 1727; Pub. L. 108–458, title I, § 1079(a), Dec. 17, 2004, 118 Stat. 3695; Pub. L. 109–177, title V, § 506(b)(2), Mar. 9, 2006, 120 Stat. 249; Pub. L. 110–417, [div. A], title IX, § 931(a)(1), Oct. 14, 2008, 122 Stat. 4575.)

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

2008—Subsec. (b)(2)(B)(i)(XIII). Pub. L. 110–417 substituted ''National Geospatial-Intelligence Agency'' for ''National Imagery and Mapping Agency''.

2006—Subsec. (b)(3). Pub. L. 109–177 inserted ''or National Security Division'' after ''Criminal Division''.

2004—Subsec. (b)(2)(B)(i)(XIV). Pub. L. 108–458 added subcl. (XIV).

2002—Subsec. (b)(2)(B)(i)(I). Pub. L. 107–252 inserted ''or the Election Assistance Commission'' after ''Commission''.

2000—Subsec. (b)(2)(B)(ii). Pub. L. 106–554 substituted ''5372a, or 5372b'' for ''or 5372a''.

1996—Subsec. (b)(2)(B)(i)(XIII). Pub. L. 104–201 substituted ''National Imagery and Mapping Agency'' for ''Central Imagery Office''.

1994—Subsec. (b)(2)(B)(i)(XIII). Pub. L. 103–359 added subcl. (XIII).

EFFECTIVE DATE OF 2004 AMENDMENT

For Determination by President that amendment by Pub. L. 108–458 take effect on Apr. 21, 2005, see Memorandum of President of the United States, Apr. 21, 2005, 70 F.R. 23925, set out as a note under section 401 of Title 50, War and National Defense.

Amendment by Pub. L. 108–458 effective not later than six months after Dec. 17, 2004, except as otherwise expressly provided, see section 1097(a) of Pub. L. 108–458, set out as an Effective Date of 2004 Amendment; Transition Provisions note under section 401 of Title 50, War and National Defense.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–252 effective upon appointment of all members of the Election Assistance Commission under section 15323 of Title 42, The Public Health and Welfare, see section 15534(a) of Title 42.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–201 effective Oct. 1, 1996, see section 1124 of Pub. L. 104–201, set out as a note under section 193 of Title 10, Armed Forces.

TRANSFER OF FUNCTIONS

For transfer of the functions, personnel, assets, and obligations of the United States Secret Service, including the functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 381, 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

For transfer of authorities, functions, personnel, and assets of the Bureau of Alcohol, Tobacco and Firearms, including the related functions of the Secretary of the Treasury, to the Department of Justice, see section 531(c) of Title 6, Domestic Security and section 599A(c)(1) of Title 28, Judiciary and Judicial Procedure.

## § 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.

## § 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) and paragraph (2) of section 7323(b) 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; amended Pub. L. 104–93, title III, § 308, Jan. 6, 1996, 109 Stat. 966.)

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.

AMENDMENTS

1996—Pub. L. 104–93 inserted ''and paragraph (2) of section 7323(b)'' after ''section 7323(a)''.

## § 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 Regulatory 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 employees 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 subtitle I of title 40 and division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41. 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, except 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)(A) In transmitting such listings for an element of the intelligence community, the head of such element may delete the information described in subparagraph (A) or (C) of paragraph (2) or in subparagraph (A) or (C) of paragraph (3) if the head of such element certifies in writing to the Secretary of State that the publication of such information could adversely affect United States intelligence sources or methods.

(B) Any information not provided to the Secretary of State pursuant to the authority in subparagraph (A) shall be transmitted to the Director of National Intelligence who shall keep a record of such information.

(C) In this paragraph, the term ''intelligence community'' has the meaning given that term in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

(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; Pub. L. 107–217, § 3(a)(1), Aug. 21, 2002, 116 Stat. 1295; Pub. L. 108–458, title I, § 1079(b), Dec. 17, 2004, 118 Stat. 3696; Pub. L. 109–435, title VI, § 604(b), Dec. 20, 2006, 120 Stat. 3241; Pub. L. 111–259, title III, § 361, Oct. 7, 2010, 124 Stat. 2701; Pub. L. 111–350, § 5(a)(10), Jan. 4, 2011, 124 Stat. 3841.)

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.

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

2011—Subsec. (e)(1). Pub. L. 111–350 substituted ''division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41'' for ''title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)''.

2010—Subsec. (f)(4). Pub. L. 111–259 amended par. (4) generally. Prior to amendment, par. (4) read as follows:

''(A) In transmitting such listings for the Central Intelligence Agency, the Director of the Central Intelligence Agency 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.

''(B) In transmitting such listings for the Office of the Director of National Intelligence, the Director of National 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.''

2006—Subsec. (a)(1)(A). Pub. L. 109–435 substituted ''Postal Regulatory Commission'' for ''Postal Rate Commission''.

2004—Subsec. (f)(4). Pub. L. 108–458 designated existing provisions as subpar. (A), substituted ''the Director of the Central Intelligence Agency'' for ''the Director of Central Intelligence'', and added subpar. (B).

2002—Subsec. (e)(1). Pub. L. 107–217 substituted ''provisions of subtitle I of title 40 and title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)'' for ''provisions of the Federal Property and Administrative Services Act of 1949''.

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 2004 AMENDMENT

For Determination by President that amendment by Pub. L. 108–458 take effect on Apr. 21, 2005, see Memorandum of President of the United States, Apr. 21, 2005, 70 F.R. 23925, set out as a note under section 401 of Title 50, War and National Defense.

Amendment by Pub. L. 108–458 effective not later than six months after Dec. 17, 2004, except as otherwise expressly provided, see section 1097(a) of Pub. L. 108–458, set out as an Effective Date of 2004 Amendment; Transition Provisions note under section 401 of Title 50, War and National Defense.

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, as amended by Ex. Ord. No. 13286, § 62, Feb. 28, 2003, 68 F.R. 10629, 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 Homeland Security, 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.

## 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.''

## § 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.

## § 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.

(4) Nothing in this section precludes an employee of a private sector organization, while assigned to an agency under chapter 37, from continuing to receive pay and benefits from such organization in accordance with such chapter.

(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 committee 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; Pub. L. 107–347, title II, §209(g)(1)(C), Dec. 17, 2002, 116 Stat. 2932.)

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

2002—Subsec. (b)(4). Pub. L. 107–347 added par. (4).

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''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–347 effective 120 days after Dec. 17, 2002, see section 402(a) of Pub. L. 107–347, set out as an Effective Date note under section 3601 of Title 44, Public Printing and Documents.

LIMITATION ON ACCEPTANCE OF HONORARY CLUB MEMBERSHIPS

Pub. L. 110–402, § 2, Oct. 13, 2008, 122 Stat. 4255, provided that:

''(a) DEFINITIONS.—In this section:

''(1) GIFT.—The term 'gift' has the meaning given under section 109(5) of the Ethics in Government Act of 1978 (5 U.S.C. App.).

''(2) JUDICIAL OFFICER.—The term 'judicial officer' has the meaning given under section 109(10) of the Ethics in Government Act of 1978 (5 U.S.C. App.).

''(b) PROHIBITION ON ACCEPTANCE OF HONORARY CLUB MEMBERSHIPS.—A judicial officer may not accept a gift of an honorary club membership with a value of more than $50 in any calendar year.''

## 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.''

### § 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, 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.

[1] See References in Text note below.

(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.

### § 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.)

[1] See References in Text note below.

[1] So in original. Probably should be followed by ''of''.

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.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of reporting provisions in this section, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 187 of House Document No. 103–7.

## SUBCHAPTER VII—MANDATORY REMOVAL FROM EMPLOYMENT OF CONVICTED LAW ENFORCEMENT OFFICERS

### § 7371. Mandatory removal from employment of law enforcement officers convicted of felonies

(a) In this section, the term—

(1) ''conviction notice date'' means the date on which an agency that employs a law enforcement officer has notice that the officer has been convicted of a felony that is entered by a Federal or State court, regardless of whether that conviction is appealed or is subject to appeal; and

(2) ''law enforcement officer'' has the meaning given that term under section 8331(20) or 8401(17).

(b) Any law enforcement officer who is convicted of a felony shall be removed from employment as a law enforcement officer on the last day of the first applicable pay period following the conviction notice date.

(c)(1) This section does not prohibit the removal of an individual from employment as a law enforcement officer before a conviction notice date if the removal is properly effected other than under this section.

(2) This section does not prohibit the employment of any individual in any position other than that of a law enforcement officer.

(d) If the conviction is overturned on appeal, the removal shall be set aside retroactively to the date on which the removal occurred, with back pay under section 5596 for the period during which the removal was in effect, unless the removal was properly effected other than under this section.

(e)(1) If removal is required under this section, the agency shall deliver written notice to the employee as soon as practicable, and not later than 5 calendar days after the conviction notice date. The notice shall include a description of the specific reasons for the removal, the date of removal, and the procedures made applicable under paragraph (2).

(2) The procedures under section 7513(b)(2), (3), and (4), (c), (d), and (e) shall apply to any removal under this section. The employee may use the procedures to contest or appeal a removal, but only with respect to whether—

(A) the employee is a law enforcement officer;

(B) the employee was convicted of a felony; or

(C) the conviction was overturned on appeal.

(3) A removal required under this section shall occur on the date specified in subsection (b) re-

gardless of whether the notice required under paragraph (1) of this subsection and the procedures made applicable under paragraph (2) of this subsection have been provided or completed by that date.

(Added Pub. L. 106–554, § 1(a)(3) [title VI, § 639(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–168.)

EFFECTIVE DATE

Pub. L. 106–554, § 1(a)(3) [title VI, § 639(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–168, provided that: ''The amendments made by this section [enacting this subchapter] shall take effect 30 days after the date of enactment of this Act [Dec. 21, 2000] and shall apply to any conviction of a felony entered by a Federal or State court on or after that date.''

## 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.
7514. Regulations.

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.

## 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.

[1] So in original. Does not conform to subchapter heading.

### § 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'.''

### § 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.

### § 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 continuous service in the same or similar positions—

(i) in an Executive agency; or

(ii) in the United States Postal Service or Postal Regulatory 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 Government Accountability Office;

(8) whose position is within the United States Postal Service, the Postal Regulatory Commission, the Panama Canal Commission, the Tennessee Valley Authority, the Federal Bureau of Investigation, an intelligence component of the Department of Defense (as defined in section 1614 of title 10), or an intelligence activity of a military department covered under subchapter I of chapter 83 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; Pub. L. 104–201, div. A, title XVI, § 1634(b), Sept. 23, 1996,

[1] So in original. Probably should be ''affecting''.

110 Stat. 2752; Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814; Pub. L. 109–435, title VI, § 604(b), (f), Dec. 20, 2006, 120 Stat. 3241, 3242.)

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

2006—Subsec. (a)(1)(B)(ii). Pub. L. 109–435, § 604(b), substituted ''Postal Regulatory Commission'' for ''Postal Rate Commission''.

Subsec. (b)(8). Pub. L. 109–435, § 604(f), substituted ''Postal Regulatory Commission'' for ''Postal Rate Commission''.

2004—Subsec. (b)(7). Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office''.

1996—Subsec. (b)(8). Pub. L. 104–201 substituted ''an intelligence component of the Department of Defense (as defined in section 1614 of title 10), or an intelligence activity of a military department covered under subchapter I of chapter 83 of title 10'' for ''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''.

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 1996 AMENDMENT

Amendment by Pub. L. 104–201 effective Oct. 1, 1996, see section 1635 of Pub. L. 104–201, set out as a note under section 1593 of Title 10, Armed Forces.

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.

## § 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.

### § 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.)

### § 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.

## 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.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

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.<br>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.

### § 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

### § 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 3393 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.

## 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, 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; Pub. L. 107–296, title XIII, § 1321(a)(3), Nov. 25, 2002, 116 Stat. 2297.)

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.<br>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.

AMENDMENTS

2002—Subsec. (c)(1)(A). Pub. L. 107–296, which directed the amendment of subpar. (A) by striking ''or removal from the Senior Executive Service for failure to be recertified under section 3393a'', was executed by striking out ''or a removal from the Senior Executive Service for failure to be recertified under section 3393a'' after ''section 4303'' to reflect the probable intent of Congress.

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 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

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.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of reporting provisions in subsec. (i)(2) of this section, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 177 of House Document No. 103–7.

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.

## § 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 no 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.)

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.

## § 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 60 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, within 60 days after the date the Director received notice of the final order or decision of the Board, 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; Pub. L. 105–311, § 10(a), Oct. 30, 1998, 112 Stat. 2954.)

AMENDMENTS

1998—Subsec. (b)(1). Pub. L. 105–311, § 10(a)(1), substituted ''within 60 days'' for ''within 30 days''.

Subsec. (d). Pub. L. 105–311, § 10(a)(2), in first sentence, inserted '', within 60 days after the date the Director received notice of the final order or decision of the Board,'' after ''filing''.

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 1998 AMENDMENT

Pub. L. 105–311, § 10(b), Oct. 30, 1998, 112 Stat. 2954, provided that: ''The amendments made by this section [amending this section] shall take effect on the date of enactment of this Act [Oct. 30, 1998], and apply to any suit, action, or other administrative or judicial proceeding pending on such date or commenced on or after such date.''

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.

## 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.''

[For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.]

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 Tennessee Valley Authority are not affected by this section.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 530; Pub. L. 90–83, § 1(47), Sept. 11, 1967, 81 Stat. 209; Pub. L. 104–201, div. C, title XXXV, § 3548(a)(9), Sept. 23, 1996, 110 Stat. 2869.)

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.<br>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.

AMENDMENTS

1996—Subsec. (f). Pub. L. 104–201 amended subsec. (f) generally. Prior to amendment, subsec. (f) read as follows: ''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.''

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.

## § 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 (not including the United States Postal Service), 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; Pub. L. 105–241, § 2(b)(2), Sept. 28, 1998, 112 Stat. 1572.)

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<br>Dec. 22, 1944, ch. 664, 58 Stat. 887.<br>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 sec-

tion 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

1998—Subsec. (a)(2). Pub. L. 105–241 inserted ''(not including the United States Postal Service)'' after ''Government of the United States''.

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 ([former] 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.

EXECUTIVE ORDER NO. 12566

Ex. Ord. No. 12566, Sept. 26, 1986, 51 F.R. 34575, which related to safety belt use by Federal employees, was revoked by Ex. Ord. No. 13043, §6, Apr. 16, 1997, 62 F.R. 19218, set out as a note under section 402 of Title 23, Highways.

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, 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, 1997, by Ex. Ord. No. 12974, Sept. 29, 1995, 60 F.R. 51875, 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, 1999, by Ex. Ord. No. 13062, §1(b), Sept. 29, 1997, 62 F.R. 51755, 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, 2001, by Ex. Ord. No. 13138, Sept. 30, 1999, 64 F.R. 53879, 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, 2003, by Ex. Ord. No. 13225, Sept. 28, 2001, 66 F.R. 50291, 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, 2005, by Ex. Ord. No. 13316, Sept. 17, 2003, 68 F.R. 55255, 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, 2007, by Ex. Ord. No. 13385, Sept. 29, 2005, 70 F.R. 57989, 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, 2009, by Ex. Ord. No. 13446, Sept. 28, 2007, 72 F.R. 56175, 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, 2011, by Ex. Ord. No. 13511, Sept. 29, 2009, 74 F.R. 50909, set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to this title.

THE PRESIDENTIAL POWER INITIATIVE: PROTECTING OUR WORKERS AND ENSURING REEMPLOYMENT

Memorandum of President of the United States, July 19, 2010, 75 F.R. 43029, provided:

Memorandum for the Heads of Executive Departments and Agencies

Each year Federal civilian employees are injured or fall ill on the job in significant numbers. Although the Federal Government has made progress in reducing workplace injuries and illnesses in recent years, its workers (excluding those employed by the U.S. Postal Service) still filed more than 79,000 new claims and received over $1.6 billion in workers' compensation payments in fiscal year 2009. Many of these work-related injuries and illnesses are preventable, and executive departments and agencies can and should do even more to improve workplace safety and health, reduce the financial burden of injury on taxpayers, and relieve unnecessary suffering by workers and their families.

Therefore, I am establishing a 4-year Protecting Our Workers and Ensuring Reemployment (POWER) Initiative, covering fiscal years 2011 through 2014. The POWER Initiative will extend prior workplace safety and health efforts of the Federal Government by setting more aggressive performance targets, encouraging the collection and analysis of data on the causes and consequences of frequent or severe injury and illness, and prioritizing safety and health management programs that have proven effective in the past.

Under the POWER Initiative, each executive department and agency will be expected to improve its performance in seven areas:

(i) reducing total injury and illness case rates;

(ii) reducing lost time injury and illness case rates;

(iii) analyzing lost time injury and illness data;

(iv) increasing the timely filing of workers' compensation claims;

(v) increasing the timely filing of wage-loss claims;

(vi) reducing lost production day rates; and

(vii) speeding employees' return to work in cases of serious injury or illness.

Executive departments and agencies (except the U.S. Postal Service) shall coordinate with the Department of Labor's Occupational Safety and Health Administration and Office of Workers' Compensation Programs to establish performance targets in each category. The

Secretary of Labor shall lead the POWER Initiative by measuring both Government-wide and agency-level performance and reporting to me annually.

Each executive department and agency shall bear its own costs for participating in the POWER Initiative, and nothing in this memorandum shall be construed to impair or otherwise affect the authority granted by law to an executive department or agency, or the head thereof.

This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

The Secretary of Labor is authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA.

### § 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.)

### § 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, a member of a uniformed service, and a student who provides voluntary services under section 3111;

(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; amended Pub. L. 107–296, title XIII, § 1314(a), Nov. 25, 2002, 116 Stat. 2296.)

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.

AMENDMENTS

2002—Subsec. (a)(1). Pub. L. 107–296 substituted ", a member of a uniformed service, and a student who provides voluntary services under section 3111" for "and a member of a uniformed service".

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

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."

TRANSIT SUBSIDY FOR DEPARTMENT OF LABOR EMPLOYEES OF NATIONAL CAPITAL REGION

Pub. L. 111–8, div. F, title I, § 104, Mar. 11, 2009, 123 Stat. 761, provided that: "After September 30, 2008, the Secretary of Labor shall issue a monthly transit subsidy of not less than the full amount (of not less than $115) that each of its employees of the National Capital Region is eligible to receive."

Pub. L. 110–161, div. G, title I, § 104, Dec. 26, 2007, 121 Stat. 2167, provided that: "After September 30, 2007, the Secretary of Labor shall issue a monthly transit subsidy of not less than the full amount (of not less than $110) that each of its employees of the National Capital Region is eligible to receive."

TRANSIT PASS TRANSPORTATION FRINGE BENEFITS

Pub. L. 109–59, title III, § 3049(a), Aug. 10, 2005, 119 Stat. 1711, as amended by Pub. L. 109–435, title VI, § 604(f), Dec. 20, 2006, 120 Stat. 3242, provided that:

"(1) IN GENERAL.—Effective as of the first day of the next fiscal year beginning after the date of the enactment of this Act [Aug. 10, 2005], each covered agency shall implement a program under which all qualified Federal employees serving in or under such agency shall be offered transit pass transportation fringe benefits, as described in paragraph (2).

"(2) BENEFITS DESCRIBED.—The benefits described in this paragraph are the transit pass transportation fringe benefits which, under section 2 of Executive Order No. 13150 [set out below], are required to be offered by Federal agencies in the National Capital Region on the date of the enactment of this Act.

"(3) DEFINITIONS.—In this subsection—

"(A) the term 'covered agency' means any agency, to the extent of its facilities in the National Capital Region;

"(B) the term 'agency' means any agency (as defined by 7905(a)(2) of title 5, United States Code), the Postal Regulatory Commission, and the Smithsonian Institution;

"(C) the term 'National Capital Region' includes the District of Columbia and every county or other geographic area covered by section 2 of Executive Order No. 13150;

"(D) the term 'Executive Order No. 13150' refers to Executive Order No. 13150 (5 U.S.C. 7905 note);

"(E) the term 'Federal agency' is used in the same way as under section 2 of Executive Order No. 13150; and

"(F) any determination as to whether or not one is a 'qualified Federal employee' shall be made applying the same criteria as would apply under section 2 of Executive Order No. 13150.

"(4) RULE OF CONSTRUCTION.—Nothing in this subsection shall be considered to require that a covered agency—

"(A) terminate any program or benefits in existence on the date of the enactment of this Act, or postpone any plans to implement (before the effective date referred to in paragraph (1)) any program or benefits permitted or required under any other provision of law; or

"(B) discontinue (on or after the effective date referred to in paragraph (1)) any program or benefits referred to in subparagraph (A), so long as such program or benefits satisfy the requirements of paragraphs (1) through (3)."

TRANSPORTATION SUBSIDY FOR EMPLOYEES OF THE SENATE

Pub. L. 107–68, title I, § 112, Nov. 12, 2001, 115 Stat. 569, authorized an employing office of an employee of the Senate to provide a monthly transportation subsidy to such employee up to the maximum monthly amount authorized under section 132(f)(2)(A) of Title 26, Internal Revenue Code.

TRANSIT SUBSIDIES; APPROPRIATIONS

Pub. L. 105–277, div. A, § 101(f) [title II, § 210], Oct. 21, 1998, 112 Stat. 2681–337, 2681–359, provided that: "Funds appropriated in this Act or subsequent Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Acts, for the National Institutes of Health may be used to provide transit subsidies in amounts consistent with the transportation subsidy programs authorized under section 629 of Public Law 101–509 [see note preceding section 7901 of this title] to non-FTE bearing positions including trainees, visiting fellows and volunteers."

Similar provisions were contained in the following prior appropriations act:

Pub. L. 105–78, title II, § 210, Nov. 13, 1997, 111 Stat. 1489.

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."

EX. ORD. NO. 13150. FEDERAL WORKFORCE TRANSPORTATION

Ex. Ord. No. 13150, Apr. 21, 2000, 65 F.R. 24613, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Transportation Equity Act for the 21st Century (Public Law 105–178) [see Tables for classification], section 1911 of the Energy Policy Act of 1992 (Public Law 102–486) [amending section 132 of Title 26, Internal Revenue Code], section 531(a)(1) of the Deficit Reduction Act of 1984 (26 U.S.C. 132), and the Federal Employees Clean Air Incentives Act (Public Law 103–172) [enacting this section and provisions set out as notes above], and in order to reduce Federal employees' contribution to traffic congestion and air pollution and to expand their commuting alternatives, it is hereby ordered as follows:

SECTION 1. *Mass Transportation and Vanpool Transportation Fringe Benefit Program.* (a) By no later than October 1, 2000, Federal agencies shall implement a transportation fringe benefit program that offers qualified Federal employees the option to exclude from taxable wages and compensation, consistent with section 132 of

title 26, United States Code, employee commuting costs incurred through the use of mass transportation and vanpools, not to exceed the maximum level allowed by law (26 U.S.C. 132 (f)(2)). These agency programs shall comply with the requirements of Internal Revenue Service regulations for qualified transportation fringe benefits under section 1.132–9 of title 26, Code of Federal Regulations, and other guidance.

(b) Federal agencies are encouraged to use any nonmonetary incentive that the agencies may otherwise offer under any other provision of law or other authority to encourage mass transportation and vanpool use, as provided for in section 7905(b)(2)(C) of title 5, United States Code.

SEC. 2. *Federal Agencies in the National Capital Region*. Federal agencies in the National Capital Region shall implement a ''transit pass'' transportation fringe benefit program for their qualified Federal employees by no later than October 1, 2000. Under this program, agencies shall provide their qualified Federal employees, in addition to current compensation, transit passes as defined in section 132(f)(5) of title 26, United States Code, in amounts approximately equal to employee commuting costs, not to exceed the maximum level allowed by law (26 U.S.C. 132(f)(2)). The National Capital Region is defined as the District of Columbia; Montgomery, Prince George's, and Frederick Counties in Maryland; Arlington, Fairfax, Loudon, and Prince William Counties in Virginia; and all cities now or hereafter existing in Maryland or Virginia within the geographic area bounded by the outer boundaries of the combined area of said counties.

SEC. 3. *Nationwide Pilot Program*. The Department of Transportation, the Environmental Protection Agency, and the Department of Energy shall implement a ''transit pass'' transportation fringe benefit program, as described in section 2 of this order, for all of their qualified Federal employees as a 3 year pilot program by no later than October 1, 2000. Before determining whether the program should be extended to other Federal employees nationwide, it shall be analyzed by an entity determined by the agencies identified in section 4 of this order to ascertain, among other things, if it is effective in reducing single occupancy vehicle travel and local area traffic congestion.

SEC. 4. *Guidance*. Federal agencies shall develop plans to implement this order in consultation with the Department of the Treasury, the Department of Transportation, the Environmental Protection Agency, the Office of Personnel Management, the General Services Administration, and the Office of Management and Budget. Federal agencies that currently have more generous programs or benefits in place may continue to offer those programs or benefits. Agencies shall absorb the costs of implementing this order within the sums received pursuant to the President's FY 2001 budget request to the Congress.

SEC. 5. *Judicial Review*. This order is not intended to and does not create any right or benefit, substantive or procedural, enforceable at law by any party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

WILLIAM J. CLINTON.

## Subpart G—Insurance and Annuities

### CHAPTER 81—COMPENSATION FOR WORK INJURIES

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AMENDMENTS

2008—Pub. L. 110–181, div. A, title XI, § 1105(b), Jan. 28, 2008, 122 Stat. 349, added item 8102a.

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

1995—Pub. L. 104–66, title I, § 1102(b)(3)(B), Dec. 21, 1995, 109 Stat. 723, added item 8152.

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.

## SUBCHAPTER I—GENERALLY

### § 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 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 depend-

[1] So in original. Pub. L. 93–416 added par. (F) immediately after par. (iv), rather than after par. (E).

ents 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.<br>June 5, 1924, ch. 261, § 2, 43 Stat. 389.<br>May 31, 1938, ch. 293, 52 Stat. 586.<br>Apr. 11, 1940, ch. 79, § 1, 54 Stat. 105.<br>July 1, 1944, ch. 373, § 605(b), 58 Stat. 712.<br>Aug. 13, 1946, ch. 958, § 5, 60 Stat. 1049.<br>Oct. 14, 1949, ch. 691, § 108, 63 Stat. 860.<br>July 30, 1956, ch. 779, § 3(b), 70 Stat. 721.<br>Aug. 1, 1956, ch. 837, § 501(e), 70 Stat. 883.<br>Aug. 8, 1958, Pub. L. 85–608, § 302, 72 Stat. 539.<br>Sept. 13, 1960, Pub. L. 86–767, § 208, 74 Stat. 908.<br>Sept. 4, 1964, Pub. L. 88–581, § 4(b), 78 Stat. 919. |
| | 5 U.S.C. 794 (1st sentence). | July 11, 1919, ch. 7, § 11 (1st sentence), 41 Stat. 104. |

HISTORICAL AND REVISION NOTES—CONTINUED

1966 ACT

| *Derivation* | *U.S. Code* | *Revised Statutes and Statutes at Large* |
|---|---|---|
| | [Uncodified]. | 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.<br>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.<br>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.

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.

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.

## § 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.<br>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.

### § 8102a. Death gratuity for injuries incurred in connection with employee's service with an Armed Force

(a) DEATH GRATUITY AUTHORIZED.—The United States shall pay a death gratuity of up to $100,000 to or for the survivor prescribed by subsection (d) immediately upon receiving official notification of the death of an employee who dies of injuries incurred in connection with the employee's service with an Armed Force in a contingency operation.

(b) RETROACTIVE PAYMENT IN CERTAIN CASES.—At the discretion of the Secretary concerned, subsection (a) may apply in the case of an employee who died, on or after October 7, 2001, and before the date of enactment of this section, as a result of injuries incurred in connection with the employee's service with an Armed Force in the theater of operations of Operation Enduring Freedom or Operation Iraqi Freedom.

(c) RELATIONSHIP TO OTHER BENEFITS.—The death gratuity payable under this section shall be reduced by the amount of any death gratuity provided under section 413 of the Foreign Service Act of 1980, section 1603 of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006, or any other law of the United States based on the same death.

(d) ELIGIBLE SURVIVORS.—

(1) Subject to paragraph (5), a death gratuity payable upon the death of a person covered by subsection (a) shall be paid to or for the living survivor highest on the following list:

(A) The employee's surviving spouse.

(B) The employee's children, as prescribed by paragraph (2), in equal shares.

(C) If designated by the employee, any one or more of the following persons:

(i) The employee's parents or persons in loco parentis, as prescribed by paragraph (3).

(ii) The employee's brothers.

(iii) The employee's sisters.

(D) The employee's parents or persons in loco parentis, as prescribed by paragraph (3), in equal shares.

(E) The employee's brothers and sisters in equal shares.

Subparagraphs (C) and (E) of this paragraph include brothers and sisters of the half blood and those through adoption.

(2) Paragraph (1)(B) applies, without regard to age or marital status, to—

(A) legitimate children;

(B) adopted children;

(C) stepchildren who were a part of the decedent's household at the time of death;

(D) illegitimate children of a female decedent; and

(E) illegitimate children of a male decedent—

(i) who have been acknowledged in writing signed by the decedent;

(ii) who have been judicially determined, before the decedent's death, to be his children;

(iii) who have been otherwise proved, by evidence satisfactory to the employing agency, to be children of the decedent; or

(iv) to whose support the decedent had been judicially ordered to contribute.

(3) Subparagraphs (C) and (D) of paragraph (1), so far as they apply to parents and persons in loco parentis, include fathers and mothers through adoption, and persons who stood in loco parentis to the decedent for a period of not less than one year at any time before the decedent became an employee. However, only one father and one mother, or their counterparts in loco parentis, may be recognized in any case, and preference shall be given to those who exercised a parental relationship on the date, or most nearly before the date, on which the decedent became an employee.

(4) Beginning on the date of the enactment of this paragraph, a person covered by this section may designate another person to receive not more than 50 percent of the amount payable under this section. The designation shall indicate the percentage of the amount, to be specified only in 10 percent increments up to the maximum of 50 percent, that the designated person may receive. The balance of the amount of the death gratuity shall be paid to or for the living survivors of the person concerned in accordance with subparagraphs (A) through (E) of paragraph (1).

(5) If a person entitled to all or a portion of a death gratuity under paragraph (1) or (4) dies before the person receives the death gratuity, it shall be paid to the living survivor next in the order prescribed by paragraph (1).

(e) DEFINITIONS.—(1) The term ''contingency operation'' has the meaning given to that term in section 1482a(c) of title 10, United States Code.

(2) The term ''employee'' has the meaning provided in section 8101 of this title, but also includes a nonappropriated fund instrumentality employee, as defined in section 1587(a)(1) of title 10.

(Added Pub. L. 110–181, div. A, title XI, § 1105(a), Jan. 28, 2008, 122 Stat. 347.)

REFERENCES IN TEXT

The date of enactment of this section, referred to in subsec. (b), is the date of enactment of Pub. L. 110–181, which was approved Jan. 28, 2008.

Section 413 of the Foreign Service Act of 1980, referred to in subsec. (c), is classified to section 3973 of Title 22, Foreign Relations and Intercourse.

Section 1603 of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006, referred to in subsec. (c), is section 1603 of Pub. L. 109–234, title I, June 15, 2006, 120 Stat. 443, which is not classified to the Code.

The date of the enactment of this paragraph, referred to in subsec. (d)(4), is the date of enactment of Pub. L. 110–181, which was approved Jan. 28, 2008.

### § 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.<br>June 26, 1926, ch. 695, § 1, 44 Stat. 772.<br>Oct. 14, 1949, ch. 691, § 202(b), 63 Stat. 862.<br>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.''

## § 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 former section 500(a) of Pub. L. 93–112, title V, Sept. 26, 1973, 87 Stat. 390, and pursuant to former section 500(a) of Pub. L. 93–112, which also provided that references to the Vocational Rehabilitation Act in other provisions of law were to be deemed a reference to the Rehabilitation Act of 1973, and were 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.

## § 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.<br>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.

## § 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 omits 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.<br>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.

### § 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.<br>Oct. 14, 1949, ch. 691, § 104 "Sec. 5(a), (b)", 63 Stat. 855.<br>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 disabil-

ity'' 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.

## § 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.

## § 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.

## § 8110. Augmented compensation for dependents

(a) For the purpose of this section, ''dependent'' means—

(1) a wife, if—

(A) she is a 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.<br>Feb. 12, 1927, ch. 110, § 1, 44 Stat. 1086.<br>May 13, 1936, ch. 382, 49 Stat. 1270.<br>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.

## § 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.<br>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.

## § 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.<br>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.

## § 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.

## § 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.<br>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.

## § 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.<br>Oct. 14, 1949, ch. 691, § 204, 63 Stat. 864.<br>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.

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; Pub. L. 106–398, § 1 [[div. A], title X, § 1087(f)(3)], Oct. 30, 2000, 114 Stat. 1654, 1654A–293.)

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.<br>July 1, 1944, ch. 373, § 605(a), 58 Stat. 712.<br>Aug. 13, 1946, ch. 958, § 5, 60 Stat. 1049.<br>Oct. 14, 1949, ch. 691, § 201, 63 Stat. 861.<br>July 30, 1956, ch. 779, § 3(b), 70 Stat. 721.<br>Sept. 13, 1960, Pub. L. 86–767, § 202, 74 Stat. 907.<br>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

2000—Subsec. (a)(4). Pub. L. 106–398 struck out '', subject to the reduction of such pay in accordance with section 5532(b) of title 5, United States Code'' after ''uniformed services''.

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.

## § 8117. Time of accrual of right

(a) An employee other than a Postal Service 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.

(b) A Postal Service employee is not entitled to compensation or continuation of pay for the first 3 days of temporary disability, except as provided under paragraph (3) of subsection (a). A Postal Service employee may use annual leave, sick leave, or leave without pay during that 3-day period, except that if the disability exceeds 14 days or is followed by permanent disability, the employee may have their sick leave or annual leave reinstated or receive pay for the time spent on leave without pay under this section.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 543; Pub. L. 93–416, § 10, Sept. 7, 1974, 88 Stat. 1145; Pub. L. 109–435, title IX, § 901(a), Dec. 20, 2006, 120 Stat. 3253.)

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.<br>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

2006—Pub. L. 109–435 designated existing provisions as subsec. (a), substituted ''An employee other than a Postal Service employee'' for ''An employee'', and added subsec. (b).

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.

## § 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, except as provided under section 8117(b), 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; Pub. L. 109–435, title IX, § 901(b), Dec. 20, 2006, 120 Stat. 3254.)

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.<br>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

2006—Subsec. (b)(1). Pub. L. 109–435 amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''without a break in time unless controverted under regulations of the Secretary;''.

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.''

## § 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.

## § 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.<br>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.

## § 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.

## § 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 dili-

gence 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.<br>June 13, 1922, ch. 219, 42 Stat. 650.<br>July 28, 1945, ch. 328, § 1, 59 Stat. 503.<br>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.

## § 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.<br>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.<br>June 26, 1926, ch. 695, § 3, 44 Stat. 772.<br>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.

### § 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.

### § 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.<br>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 payments 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. |

HISTORICAL AND REVISION NOTES—CONTINUED

| *Derivation* | *U.S. Code* | *Revised Statutes and Statutes at Large* |
|---|---|---|
| | | 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.

## § 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.<br>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.

### § 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.<br>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.

### § 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.

## § 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.<br>Feb. 12, 1927, ch. 110, § 3, 44 Stat. 1087.<br>July 28, 1945, ch. 328, §§ 2 (less last 24 words), 3, 59 Stat. 503.<br>Oct. 14, 1949, ch. 691, § 106 (less last 23 words of 1st sentence in "(B)" of (c); and less (e)), 63 Stat. 859.<br>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.

GRATUITY FOR DEATH OF CIVILIAN EMPLOYEE FROM INJURY SUSTAINED IN LINE OF DUTY

Pub. L. 104–208, div. A, title I, § 101(f) [title VI, § 651], Sept. 30, 1996, 110 Stat. 3009–314, 3009–368, provided that: "Notwithstanding section 8116 of title 5, United States Code, and in addition to any payment made under 5 U.S.C. 8101 et seq., beginning in fiscal year 1997 and thereafter, the head of any department or agency is authorized to pay from appropriations made available to the department or agency a death gratuity to the personal representative (as that term is defined by applicable law) of a civilian employee of that department or agency whose death resulted from an injury sustained in the line of duty on or after August 2, 1990: *Provided*, That payments made pursuant to this section, in combination with the payments made pursuant to sections 8133(f) and 8134(a) of such title 5 and section 312 of Public Law 103–332 (108 Stat. 2537) [5 U.S.C. 8134 note], may not exceed a total of $10,000 per employee."

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.

## § 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.<br>Feb. 12, 1927, ch. 110, § 4, 44 Stat. 1087.<br>July 28, 1945, ch. 328, § 2 (last 24 words), 59 Stat. 503.<br>Oct. 14, 1949, ch. 691, § 107, 63 Stat. 860.<br>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.''

## § 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.

### § 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 occurred.

(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, regulation, 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.<br>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.<br>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.

## § 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, or an illness contracted, in line of duty—

(1) while engaged in a flight or in flight instruction under chapter 103 of title 10; or

(2) during the period of the member's attendance at training or a practice cruise under chapter 103 of title 10, United States Code, beginning when the authorized travel to the training or practice cruise begins and ending when authorized travel from the training or practice cruise ends.

(b) For the purpose of this section, an injury, disability, death, or illness of a member referred to in subsection (a) may be considered as incurred or contracted in line of duty only if the injury, disability, or death is incurred, or the illness is contracted, by the member during a period described in that subsection. Subject to review by the Secretary of Labor, the Secretary of the military department concerned (under regulations prescribed by that Secretary), shall determine whether an injury, disability, or death was incurred, or an illness was contracted, by a member in line of duty.

(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; Pub. L. 105–261, div. A, title VI, § 655(a)–(c), Oct. 17, 1998, 112 Stat. 2053.)

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.<br>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

1998—Subsec. (a). Pub. L. 105–261, § 655(c), inserted '', or an illness contracted,'' after ''death incurred'' in introductory provisions.

Subsec. (a)(2). Pub. L. 105–261, § 655(a), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''while performing authorized travel to or from, or while attending, training or a practice cruise under chapter 103 of title 10.''

Subsec. (b). Pub. L. 105–261, § 655(b), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''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.''

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 1998 AMENDMENT

Pub. L. 105–261, div. A, title VI, § 655(d), Oct. 17, 1998, 112 Stat. 2053, provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall take effect on the date of the enactment of this Act [Oct. 17, 1998] and apply with respect to injuries, illnesses, disabilities, and deaths incurred or contracted on or after that date.''

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.]

## § 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].''

## § 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.

## § 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.

## § 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.<br>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.<br>Apr. 6, 1938, ch. 79 ''Sec. 42 (less 2d sentence of 2d par.)'', 52 Stat. 200.<br>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 Commission'' 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.

## § 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 Department 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 pen-

sioned 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.

### § 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.<br>Sept. 12, 1950, ch. 946, § 301(92), 64 Stat. 844.<br>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.

GOVERNMENT PRINTING OFFICE PAYMENT OF COST OF ADMINISTRATION

Pub. L. 105–275, title III, § 313, Oct. 21, 1998, 112 Stat. 2460, provided that: ''For purposes of section 8147 of title 5, United States Code, the Government Printing Office is not considered an agency which is required by statute to submit an annual budget pursuant to or as provided by chapter 91 of title 31, United States Code, and is not required to pay an additional amount for the cost of administration.''

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.

## § 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 or 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; amended Pub. L. 105–247, § 1, Oct. 9, 1998, 112 Stat. 1863.)

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.

AMENDMENTS

1998—Subsec. (a). Pub. L. 105–247 substituted ''or receipt'' for ''a receipt''.

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 Employees' 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.

### § 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.

### § 8152. Annual report

The Secretary of Labor shall, at the end of each fiscal year, prepare a report with respect to the administration of this chapter. Such report shall be submitted to Congress in accordance with the requirement with respect to submission under section 42 of the Longshore[1] Harbor Workers' Compensation Act (33 U.S.C. 942).

(Added Pub. L. 104–66, title I, § 1102(b)(3)(A), Dec. 21, 1995, 109 Stat. 723.)

## SUBCHAPTER II—EMPLOYEES OF NONAPPROPRIATED FUND INSTRUMENTALITIES

### § 8171. Compensation for work injuries; generally

(a) The Longshore and Harbor Workers' Compensation Act (33 U.S.C. 901 et seq.) applies with

[1] So in original. Probably should be ''Longshore and''.

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(a)) 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 section 39(b) 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. 918 and 921) 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; Pub. L. 104–106, div. A, title XV, §1505(b)(1), Feb. 10, 1996, 110 Stat. 514.)

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.<br>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

1996—Subsec. (a). Pub. L. 104–106, §1505(b)(1)(A), substituted ''903(a))'' for ''903(3))'' in concluding provisions.

Subsec. (c)(1). Pub. L. 104–106, §1505(b)(1)(B), inserted ''section'' before ''39(b)''.

Subsec. (d). Pub. L. 104–106, §1505(b)(1)(C), substituted ''(33 U.S.C. 918 and 921)'' for ''(33 U.S.C. 18 and 21, respectively)''.

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''.

## § 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. 902(2)), occurring to an employee of a 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; Pub. L. 104–106, div. A, title XV, §1505(b)(2), Feb. 10, 1996, 110 Stat. 514.)

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

1996—Pub. L. 104–106 substituted ''(33 U.S.C. 902(2))'' for ''(33 U.S.C. 2(2))'' in introductory provisions.

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.

### § 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. 902(2)), 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; Pub. L. 104–106, div. A, title XV, § 1505(b)(2), Feb. 10, 1996, 110 Stat. 514.)

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

1996—Pub. L. 104–106 substituted ''(33 U.S.C. 902(2))'' for ''(33 U.S.C. 2(2))''.

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

### § 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 commission 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 this section and sections 8192 and 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].''

### § 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 enforce-

ment 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.

## 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.

## 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 Railroad 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''.

## § 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 before 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 injure 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.''

[1] So in original. Probably should be ''subparagraph''.

## § 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 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.

SUSPENSION OF PAYMENT OF RETIRED PAY OF MEMBERS WHO ARE ABSENT FROM UNITED STATES TO AVOID PROSECUTION

Pub. L. 104–201, div. A, title VI, § 633, Sept. 23, 1996, 110 Stat. 2550, provided that:

''(a) DEVELOPMENT OF PROCEDURES FOR SUSPENSION.—The Secretary of Defense shall develop uniform procedures under which the Secretary of a military department may suspend the payment of the retired pay of a member or former member of the Armed Forces during periods in which the member willfully remains outside the United States to avoid criminal prosecution or civil liability. The procedures shall address the types of criminal offenses and civil proceedings for which the procedures may be used, including the offenses specified in section 8312 of title 5, United States Code, and

the manner by which a member, upon the return of the member to the United States, may obtain retired pay withheld during the member's absence.

''(b) REPORT TO CONGRESS.—The Secretary of Defense shall submit to Congress a report describing the procedures developed under subsection (a). The report shall include recommendations regarding changes to existing provisions of law (including section 8313 of title 5, United States Code) that the Secretary determines are necessary to fully implement the procedures.

''(c) RETIRED PAY DEFINED.—For purposes of this section, the term '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.

''(d) EFFECTIVE DATE.—The uniform procedures required by subsection (a) shall be developed not later than 30 days after the date of the enactment of this Act [Sept. 23, 1996].''

### § 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.

### § 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.

### § 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 Con-

tingency 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.

## § 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.

(e) The spouse of an individual whose annuity or retired pay is forfeited under section 8312 or 8313 after the date of enactment of this subsection shall be eligible for spousal pension benefits if the Attorney General of the United States determines that the spouse fully cooperated with Federal authorities in the conduct of a criminal investigation and subsequent prosecution of the individual which resulted in such forfeiture.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 563; Pub. L. 104–93, title III, § 305, Jan. 6, 1996, 109 Stat. 965.)

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.

REFERENCES IN TEXT

The date of enactment of this subsection, referred to in subsec. (e), is the date of enactment of Pub. L. 104–93, which was approved Jan. 6, 1996.

AMENDMENTS

1996—Subsec. (e). Pub. L. 104–93 added subsec. (e).

### § 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 8322 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

### § 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;

(E) availability pay—

(i) received by a criminal investigator under section 5545a of this title; or

(ii) received after September 11, 2001, by a Federal air marshal of the Department of Transportation, subject to all restrictions and earning limitations imposed on criminal investigators under section 5545a;

(F) pay as provided in section 5545b(b)(2) and (c)(2);

(G) 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; and

(H) any amount received under section 5948 (relating to physicians comparability allowances);

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) through (H) 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;

(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;

and includes service as a cadet at the United States Military Academy, the United States Air Force Academy, or the United States Coast Guard Academy, or as a midshipman at the United States Naval Academy, 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

[1] So in original. Probably should be followed by a comma.

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 percentage'' means the entry-age normal cost computed by the Office of Personnel Management in accordance with generally accepted actuarial practice and standards (using dynamic assumptions) and expressed as a level percentage of aggregate basic pay;

(18) ''Fund balance'' means the current net assets of the Fund available for payment of benefits, as determined by the Office in accordance with appropriate accounting standards, but does not include any amount attributable to—

(A) the Federal Employees' Retirement System; or

(B) 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 judge'' or ''United States magistrate judge'' means an individual appointed under section 631 of title 28;

(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;

(27) ''Nuclear materials courier''—

(A) means an employee of the Department of Energy, the duties of whose position are primarily to transport, and provide armed escort and protection during transit of, nuclear weapons, nuclear weapon components, strategic quantities of special nuclear materials or other materials related to national security; and

(B) includes an employee who is transferred directly to a supervisory or administrative position within the same Department of Energy organization, after performing duties referred to in subparagraph (A) for at least 3 years;

(28) ''Government physician'' has the meaning given that term under section 5948;

(29) ''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;

(30) the term ''air traffic controller'' or ''controller'' means—

(A) a controller within the meaning of section 2109(1); and

(B) a civilian employee of the Department of Transportation or the Department of Defense who is the immediate supervisor of a person described in section 2109(1)(B); and

(31) ''customs and border protection officer'' means an employee in the Department of Homeland Security (A) who holds a position within the GS–1895 job series (determined applying the criteria in effect as of September 1, 2007) or any successor position, and (B) whose duties include activities relating to the arrival and departure of persons, conveyances, and merchandise at ports of entry, including any such employee who is transferred directly to a supervisory or administrative position in the Department of Homeland Security after performing such duties (as described in subparagraph (B)) in 1 or more positions (as described in subparagraph (A)) for at least 3 years.

(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), 321, Dec. 1, 1990, 104 Stat. 5110, 5117; 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; Pub. L. 105–261, div. C, title XXXI, § 3154(b), Oct. 17, 1998, 112 Stat. 2254; Pub. L. 105–277, div. A, § 101(h) [title VI, § 628(d)], Oct. 21, 1998, 112 Stat. 2681–480, 2681–521; Pub. L. 106–571, § 3(a), (b)(2), Dec. 28, 2000, 114 Stat. 3054, 3055; Pub. L. 107–71, title I, § 105(c), Nov. 19, 2001, 115 Stat. 607; Pub. L. 108–18, § 2(a), Apr. 23, 2003, 117 Stat. 624; Pub. L. 108–176, title II, § 226(a)(1), Dec. 12, 2003, 117 Stat. 2529; Pub. L. 110–161, div. E, title V, § 535(a)(1), Dec. 26, 2007, 121 Stat. 2075; Pub. L. 110–181, div. A, title XI, § 1115(a), Jan. 28, 2008, 122 Stat. 361.)

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.<br>Apr. 8, 1960, Pub. L. 86–415, § 6(c), 74 Stat. 35.<br>July 7, 1960, Pub. L. 86–604, § 1(a), 74 Stat. 358.<br>Sept. 14, 1961, Pub. L. 87–233, § 2, 75 Stat. 507.<br>Oct. 11, 1962, Pub. L. 87–793, § 1102(a), 76 Stat. 869.<br>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.<br>July 1, 1960, Pub. L. 86–568, § 115(b)(1) ''(h) (less words after colon)'', 74 Stat. 302.<br>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. |
| ..... | 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)(G), 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)(B), 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

2008—Par. (13). Pub. L. 110–181, in concluding provisions, substituted ''and includes service as a cadet at the United States Military Academy, the United States Air Force Academy, or the United States Coast Guard Academy, or as a midshipman at the United States Naval Academy, but'' for ''but''.

2007—Pars. (29) to (31). Pub. L. 110–161 redesignated par. (29) defining ''air traffic controller'' or ''controller'' as (30) and added par. (31).

2003—Par. (17). Pub. L. 108–18, § 2(a)(1), substituted '''normal-cost percentage''' for '''normal cost''' and inserted ''and standards (using dynamic assumptions)'' after ''practice''.

Par. (18). Pub. L. 108–18, § 2(a)(2), amended par. (18) generally. Prior to amendment, par. (18) read as follows: '''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;''.

Pars. (27), (28). Pub. L. 108–18, § 2(a)(3), and Pub. L. 108–176, § 226(a)(1)(A), (B), made identical amendments, striking out ''and'' at end of par. (27) and substituting ''; and'' for period at end of par. (28).

Par. (29). Pub. L. 108–176, § 226(a)(1)(C), added par. (29) defining ''air traffic controller'' or ''controller''.

Pub. L. 108–18, § 2(a)(3), added par. (29) defining ''dynamic assumptions'' .

2001—Par. (3)(E). Pub. L. 107–71 amended subpar. (E) generally. Prior to amendment, subpar. (E) read as follows: ''with respect to a criminal investigator, availability pay under section 5545a of this title;''.

2000—Par. (3). Pub. L. 106–571, § 3(a)(4), substituted ''through (H)'' for ''through (G)'' in concluding provisions.

Par. (3)(H). Pub. L. 106–571, § 3(a)(1)–(3), added subpar. (H).

Par. (28). Pub. L. 106–571, § 3(b)(2), added par. (28).

1998—Par. (3). Pub. L. 105–277 struck out ''and'' at end of subpar. (D), added subpars. (E) and (F), redesignated former subpar. (E) as (G), and, in concluding provisions, substituted ''subparagraphs (B) through (G)'' for ''subparagraphs (B), (C), (D), and (E)''.

Par. (27). Pub. L. 105–261 added par. (27).

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

Words ''magistrate judge'' and ''United States magistrate judge'' substituted for ''magistrate'' and ''United States magistrate'', respectively, in par. (25) 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 2008 AMENDMENT

Pub. L. 110–181, div. A, title XI, § 1115(c), Jan. 28, 2008, 122 Stat. 361, provided that: ''The amendments made by this section [amending this section and section 8401 of this title] shall apply to—

''(1) any annuity, eligibility for which is based upon a separation occurring before, on, or after the date of enactment of this Act [Jan. 28, 2008]; and

''(2) any period of service as a cadet at the United States Military Academy, the United States Air Force Academy, or the United States Coast Guard Academy, or as a midshipman at the United States Naval Academy, occurring before, on, or after the date of enactment of this Act.''

EFFECTIVE DATE OF 2007 AMENDMENT; TRANSITION RULES

Amendment by Pub. L. 110–161 effective on the later of June 30, 2008, or the first day of the first pay period beginning at least 6 months after Dec. 26, 2007, with transition rules and rights of election, see section 535(e) of Pub. L. 110–161, set out as a note under section 3307 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–176 effective on 60th day after Dec. 12, 2003, and applicable with respect to any annuity entitlement based on an individual's separation from service occurring on or after such effective date, and any service performed by any such individual before, on, or after such effective date, subject to special rule relating to deposit requirement, see section 226(c) of Pub. L. 108–176, set out as a note under section 8401 of this title.

EFFECTIVE DATE OF 1998 AMENDMENTS

Amendment by Pub. L. 105–277 effective on first day of first applicable pay period which begins on or after Oct. 1, 1998, see section 101(h) [title VI, § 628(e)] of Pub. L. 105–277, set out as a note under section 4109 of this title.

Pub. L. 105–261, div. C, title XXXI, § 3154(m), (n), Oct. 17, 1998, 112 Stat. 2256, provided that:

''(m) APPLICABILITY.—Subsections (b) through (*l*) [amending this section and sections 8334 to 8336, 8401, 8412, 8415, 8422, 8423, and 8425 of this title and enacting provisions set out as notes under sections 8334, 8348, and 8422 of this title] shall apply only to an individual who is employed as a nuclear materials courier, as defined by section 8331(27) or 8401(33) of title 5, United States Code (as amended by this section), after the later of—

''(1) September 30, 1998; or

''(2) the date of the enactment of this Act [Oct. 17, 1998].

''(n) EFFECTIVE DATES.—(1) Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 3307, 8334 to 8336, 8401, 8412, 8415, 8422, 8423, and 8425 of this title] shall take effect at the beginning of the first pay period that begins after the later of—

''(A) October 1, 1998; or

''(B) the date of the enactment of this Act.

''(2)(A) The amendments made by subsection (a) [amending section 3307 of this title] shall take effect on the date of the enactment of this Act.

''(B) The amendments made by subsections (d) and (k) [amending sections 8335 and 8425 of this title] shall take effect 1 year after the date of the enactment of this Act.''

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 an Effective Date 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 nonap-

propriated 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.''

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

RETIREMENT TREATMENT FOR CAPITOL POLICE HAZARDOUS MATERIALS RESPONSE TEAM MEMBERS

Pub. L. 108–83, title I, § 1004, Sept. 30, 2003, 117 Stat. 1022, provided that:

''(a) RETIREMENT TREATMENT.—

''(1) IN GENERAL.—For purposes of chapters 83 and 84 of title 5, United States Code, a hazardous materials response team member of the Capitol Police shall be treated as a member of the Capitol Police.

''(2) APPLICATION.—This subsection shall apply to periods of service performed as a hazardous materials response team member of the Capitol Police on and after December 1, 2002.

''(b) TREATMENT OF INCUMBENTS.—

''(1) DEFINITIONS.—In this subsection, the term—

''(A) 'incumbent' means an individual who—

''(i) is first appointed as a hazardous materials response team member of the Capitol Police before the effective date of this section; and

''(ii) is employed as a hazardous materials response team member of the Capitol Police on that date; and

''(B) 'prior service' means any period of service performed by an incumbent as a hazardous materials response team member of the Capitol Police before the effective date of this section.

''(2) INDIVIDUAL CONTRIBUTIONS.—

''(A) IN GENERAL.—An incumbent shall pay with respect to prior service an amount into the Civil Service Retirement and Disability Fund equal to—

''(i) the difference between the individual contributions that were actually made for such prior service and the individual contributions that would have been made for such service if subsection (a) had then been in effect; and

''(ii) interest computed on the amount under clause (i) based on section 8334(e) of title 5, United States Code.

''(B) EFFECT OF NOT CONTRIBUTING.—If no part of or less than the full amount required under subparagraph (A) is paid, all prior service of the incumbent shall remain fully creditable as treated under subsection (a), but the resulting annuity shall be reduced in a manner similar to that described under section 8334(d)(2) of title 5, United States Code, to the extent necessary to make up the amount unpaid.

''(3) GOVERNMENT CONTRIBUTIONS FOR PRIOR SERVICE.—The Capitol Police shall pay with respect to prior service of each incumbent an amount into the Civil Service Retirement and Disability Fund equal to—

''(A) the difference between the Government contributions that were actually made for such prior service and the Government contributions that would have been made for such service if subsection (a) had then been in effect; and

''(B) interest computed on the amount under subparagraph (A) based on section 8334(e) of title 5, United States Code.

''(c) EFFECTIVE DATE.—This section shall take effect on the first day of the first applicable pay period beginning on or after the date of enactment of this Act [Sept. 30, 2003].''

SUPREME COURT POLICE RETIREMENT

Pub. L. 106–553, § 1(a)(2) [title III, § 308], Dec. 21, 2000, 114 Stat. 2762, 2762A–86, provided that:

''(a) SUPREME COURT POLICE RETIREMENT.—

''(1) SERVICE DEEMED TO BE SERVICE AS LAW ENFORCEMENT OFFICER.—Any period of service performed before the effective date of this section by an individual as a member of the Supreme Court Police, who is such a member on such date, shall be deemed to be service performed as a law enforcement officer for purposes of chapters 83 and 84 of title 5, United States Code. Notwithstanding any amendment made by this section, any period of service performed before the effective date of this section by an individual as a member of the Supreme Court Police, who is not such a member on such date, shall be employee service for purposes of chapters 83 and 84 of title 5, United States Code.

''(2) CONTRIBUTIONS.—The Marshal of the Supreme Court of the United States shall pay an amount determined by the Office of Personnel Management equal to—

''(A)(i) the difference between—

''(I) the amount that was deducted and withheld from basic pay under chapters 83 and 84 of title 5, United States Code, for the period of service described in the first sentence of paragraph (1); and

''(II) the amount that should have been deducted and withheld for such period of service, if it had instead been performed as a law enforcement officer; and

''(ii) interest as prescribed under section 8334(e) of title 5, United States Code, based on the amount determined under clause (i); and

''(B) with respect to the period of service described in subparagraph (A), the difference between the Government contributions that were in fact made to the Civil Service Retirement and Disability Fund for such service, and the amount that would have been required if such service had instead been performed as a law enforcement officer, subject to subsection (f).

''(3) DEPOSIT OF PAYMENTS.—Payments under paragraph (2) shall be paid from the salaries and expenses account from appropriations to the Supreme Court of the United States, including any prior year unobligated balances, and deposited in the Civil Service Retirement and Disability Fund.

''(b) AMENDMENTS TO CHAPTER 83.—[Amended sections 8334 to 8336 and 8339 of this title.]

''(c) AMENDMENTS TO CHAPTER 84.—[Amended sections 8412, 8415, 8422, 8423, and 8425 of this title.]

''(d) PAYMENTS FOR OTHER LIABILITY.—

''(1) IN GENERAL.—The Marshal of the Supreme Court of the United States shall pay into the Civil Service Retirement and Disability Fund an amount determined by the Director of the Office of Personnel Management to be necessary to reimburse the Fund for any estimated increase in the unfunded liability of the Fund resulting from the amendments related to the Civil Service Retirement System under this section, and for any estimated increase in the supplemental liability of the Fund resulting from the amendments related to the Federal Employees' Retirement System under this section.

''(2) INSTALLMENTS.—The amount determined under paragraph (1) shall be paid in 5 equal annual installments with interest computed at the rates used in the most recent valuation of the Federal Employees' Retirement System.

''(3) SOURCE OF FUNDS.—Payments under this subsection shall be made from amounts available from the salaries and expenses account from appropriations to the Supreme Court of the United States, including any prior year unobligated balances.

''(e) NO MANDATORY SEPARATION FOR A 2-YEAR PERIOD.—Nothing in section 8335(e) or 8425(d) of title 5, United States Code, as added by this section, shall require the automatic separation of any member of the Supreme Court Police before the end of the 2-year period beginning on the effective date of this section.

''(f) NONREDUCTION IN GOVERNMENT CONTRIBUTIONS.—Notwithstanding any other provision of this section, Government contributions to the Civil Service Retirement and Disability Fund on behalf of a member of the Supreme Court Police shall, with respect to any service performed during the period beginning on January 1, 1999, and ending on December 31, 2002, while subject to the Federal Employees' Retirement System, be determined in the same way as if this section had never been enacted.

''(g) SAVINGS PROVISION.—Nothing in this section or in any amendment made by 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 service as a member of the Supreme Court Police below the percentage which would otherwise apply if this section had not been enacted.

''(h) TECHNICAL AND CONFORMING AMENDMENTS.—[Amended sections 8337, 8339, 8341, 8343a, and 8344 of this title.]

''(i) APPLICABILITY.—This section and the amendments made by this section shall apply only to an individual who is employed as a member of the Supreme Court Police after the later of October 1, 2000, or the date of enactment of this Act [Dec. 21, 2000].

''(j) EFFECTIVE DATE.—Except as otherwise provided in this section, this section and the amendments made by this section shall take effect on the first day of the first applicable pay period that begins on the later of October 1, 2000, or the date of enactment of this Act.''

FEDERAL RETIREMENT COVERAGE ERRORS CORRECTION

Pub. L. 106–265, title II, Sept. 19, 2000, 114 Stat. 770, provided that:

''SEC. 2001. SHORT TITLE; TABLE OF CONTENTS.

''(a) SHORT TITLE.—This title may be cited as the 'Federal Erroneous Retirement Coverage Corrections Act'.

''(b) TABLE OF CONTENTS.—[Omitted.]

''SEC. 2002. DEFINITIONS.

''For purposes of this title:

''(1) ANNUITANT.—The term 'annuitant' has the meaning given such term under section 8331(9) or 8401(2) of title 5, United States Code.

''(2) CSRS.—The term 'CSRS' means the Civil Service Retirement System.

''(3) CSRDF.—The term 'CSRDF' means the Civil Service Retirement and Disability Fund.

''(4) CSRS COVERED.—The term 'CSRS covered', with respect to any service, means service that is subject to the provisions of subchapter III of chapter 83 of title 5, United States Code, other than service subject to section 8334(k) of such title.

''(5) CSRS-OFFSET COVERED.—The term 'CSRS-Offset covered', with respect to any service, means service that is subject to the provisions of subchapter III of chapter 83 of title 5, United States Code, and to section 8334(k) of such title.

''(6) EMPLOYEE.—The term 'employee' has the meaning given such term under section 8331(1) or 8401(11) of title 5, United States Code.

''(7) EXECUTIVE DIRECTOR.—The term 'Executive Director of the Federal Retirement Thrift Investment Board' or 'Executive Director' means the Executive Director appointed under section 8474 of title 5, United States Code.

''(8) FERS.—The term 'FERS' means the Federal Employees' Retirement System.

''(9) FERS COVERED.—The term 'FERS covered', with respect to any service, means service that is subject to chapter 84 of title 5, United States Code.

''(10) FORMER EMPLOYEE.—The term 'former employee' means an individual who was an employee, but who is not an annuitant.

''(11) OASDI TAXES.—The term 'OASDI taxes' means the OASDI employee tax and the OASDI employer tax.

''(12) OASDI EMPLOYEE TAX.—The term 'OASDI employee tax' means the tax imposed under section 3101(a) of the Internal Revenue Code of 1986 [26 U.S.C. 3101(a)] (relating to Old-Age, Survivors and Disability Insurance).

''(13) OASDI EMPLOYER TAX.—The term 'OASDI employer tax' means the tax imposed under section 3111(a) of the Internal Revenue Code of 1986 [26 U.S.C. 3111(a)] (relating to Old-Age, Survivors and Disability Insurance).

''(14) OASDI TRUST FUNDS.—The term 'OASDI trust funds' means the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund.

''(15) OFFICE.—The term 'Office' means the Office of Personnel Management.

''(16) RETIREMENT COVERAGE DETERMINATION.—The term 'retirement coverage determination' means a determination by an employee or agent of the Government as to whether a particular type of Government service is CSRS covered, CSRS-Offset covered, FERS covered, or Social Security-Only covered.

''(17) RETIREMENT COVERAGE ERROR.—The term 'retirement coverage error' means an erroneous retirement coverage determination that was in effect for a minimum period of 3 years of service after December 31, 1986.

''(18) SOCIAL SECURITY-ONLY COVERED.—The term 'Social Security-Only covered', with respect to any service, means Government service that—

''(A) constitutes employment under section 210 of the Social Security Act (42 U.S.C. 410); and

''(B)(i) is subject to OASDI taxes; but

''(ii) is not subject to CSRS or FERS.

''(19) SURVIVOR.—The term 'survivor' has the meaning given such term under section 8331(10) or 8401(28) of title 5, United States Code.

''(20) THRIFT SAVINGS FUND.—The term 'Thrift Savings Fund' means the Thrift Savings Fund established under section 8437 of title 5, United States Code.

''SEC. 2003. APPLICABILITY.

''(a) IN GENERAL.—This title shall apply with respect to retirement coverage errors that occur before, on, or after the date of the enactment of this Act [Sept. 19, 2000].

''(b) LIMITATION.—Except as otherwise provided in this title, this title shall not apply to any erroneous retirement coverage determination that was in effect for a period of less than 3 years of service after December 31, 1986.

''SEC. 2004. IRREVOCABILITY OF ELECTIONS.

''Any election made (or deemed to have been made) by an employee or any other individual under this title shall be irrevocable.

''SUBTITLE A—DESCRIPTION OF RETIREMENT COVERAGE ERRORS TO WHICH THIS TITLE APPLIES AND MEASURES FOR THEIR RECTIFICATION

''CHAPTER 1—EMPLOYEES AND ANNUITANTS WHO SHOULD HAVE BEEN FERS COVERED, BUT WHO WERE ERRONEOUSLY CSRS COVERED OR CSRS-OFFSET COVERED INSTEAD, AND SURVIVORS OF SUCH EMPLOYEES AND ANNUITANTS

''SEC. 2101. EMPLOYEES.

''(a) APPLICABILITY.—This section shall apply in the case of any employee or former employee who should be (or should have been) FERS covered but, as a result of a retirement coverage error, is (or was) CSRS covered or CSRS-Offset covered instead.

''(b) UNCORRECTED ERROR.—

''(1) APPLICABILITY.—This subsection applies if the retirement coverage error has not been corrected before the effective date of the regulations described under paragraph (3). As soon as practicable after discovery of the error, and subject to the right of an election under paragraph (2), if CSRS covered or CSRS-Offset covered, such individual shall be treated as CSRS-Offset covered, retroactive to the date of the retirement coverage error.

''(2) COVERAGE.—

''(A) ELECTION.—Upon written notice of a retirement coverage error, an individual may elect to be CSRS-Offset covered or FERS covered, effective as of the date of the retirement coverage error. Such election shall be made not later than 180 days after the date of receipt of such notice.

''(B) NONELECTION.—If the individual does not make an election by the date provided under subparagraph (A), a CSRS-Offset covered individual shall remain CSRS-Offset covered and a CSRS covered individual shall be treated as CSRS-Offset covered.

''(3) REGULATIONS.—The Office shall prescribe regulations to carry out this subsection.

''(c) CORRECTED ERROR.—

''(1) APPLICABILITY.—This subsection applies if the retirement coverage error was corrected before the effective date of the regulations described under subsection (b).

''(2) COVERAGE.—

''(A) ELECTION.—

''(i) CSRS-OFFSET COVERED.—Not later than 180 days after the date of the enactment of this Act [Sept. 19, 2000], the Office shall prescribe regulations authorizing individuals to elect, during the 18-month period immediately following the effective date of such regulations, to be CSRS-Offset covered, effective as of the date of the retirement coverage error.

''(ii) THRIFT SAVINGS FUND CONTRIBUTIONS.—If under this section an individual elects to be CSRS-Offset covered, all employee contributions to the Thrift Savings Fund made during the period of FERS coverage (and earnings on such contributions) may remain in the Thrift Savings Fund in accordance with regulations prescribed by the Executive Director, notwithstanding any limit under title 5, United States Code, that would otherwise be applicable.

''(B) PREVIOUS SETTLEMENT PAYMENT.—An individual who previously received a payment ordered by a court or provided as a settlement of claim for losses resulting from a retirement coverage error shall not be entitled to make an election under this subsection unless that amount is waived in whole or in part under section 2208, and any amount not waived is repaid.

''(C) INELIGIBILITY FOR ELECTION.—An individual who, subsequent to correction of the retirement coverage error, received a refund of retirement deductions under section 8424 of title 5, United States Code, or a distribution under section 8433(b), (c), or (h)(1)(A) of title 5, United States Code, may not make an election under this subsection.

''(3) CORRECTIVE ACTION TO REMAIN IN EFFECT.—If an individual is ineligible to make an election or does not make an election under paragraph (2) before the end of any time limitation under this subsection, the corrective action taken before such time limitation shall remain in effect.

''SEC. 2102. ANNUITANTS AND SURVIVORS.

''(a) IN GENERAL.—This section shall apply in the case of an individual who is—

''(1) an annuitant who should have been FERS covered but, as a result of a retirement coverage error, was CSRS covered or CSRS-Offset covered instead; or

''(2) a survivor of an employee who should have been FERS covered but, as a result of a retirement coverage error, was CSRS covered or CSRS-Offset covered instead.

''(b) COVERAGE.—

''(1) ELECTION.—Not later than 180 days after the date of the enactment of this Act [Sept. 19, 2000], the Office shall prescribe regulations authorizing an individual described under subsection (a) to elect CSRS-Offset coverage or FERS coverage, effective as of the date of the retirement coverage error.

''(2) TIME LIMITATION.—An election under this subsection shall be made not later than 18 months after the effective date of the regulations prescribed under paragraph (1).

''(3) REDUCED ANNUITY.—

''(A) AMOUNT IN ACCOUNT.—If the individual elects CSRS-Offset coverage, the amount in the employee's Thrift Savings Fund account under subchapter III of chapter 84 of title 5, United States Code, on the date of retirement that represents the Government's contributions and earnings on those contributions (whether or not such amount was subsequently distributed from the Thrift Savings Fund) will form the basis for a reduction in the individual's annuity, under regulations prescribed by the Office.

''(B) REDUCTION.—The reduced annuity to which the individual is entitled shall be equal to an amount which, when taken together with the amount referred to in subparagraph (A), would result in the present value of the total being actuarially equivalent to the present value of an unreduced CSRS-Offset annuity that would have been provided the individual.

''(4) REDUCED BENEFIT.—If—

''(A) a surviving spouse elects CSRS-Offset benefits; and

''(B) a FERS basic employee death benefit under section 8442(b) of title 5, United States Code, was previously paid,

then the survivor's CSRS-Offset benefit shall be subject to a reduction, under regulations prescribed by the Office. The reduced annuity to which the individual is entitled shall be equal to an amount which, when taken together with the amount of the payment referred to under subparagraph (B) would result in the present value of the total being actuarially equivalent to the present value of an unreduced CSRS-Offset annuity that would have been provided the individual.

''(5) PREVIOUS SETTLEMENT PAYMENT.—An individual who previously received a payment ordered by a court or provided as a settlement of claim for losses resulting from a retirement coverage error may not make an election under this subsection unless repayment of that amount is waived in whole or in part under section 2208, and any amount not waived is repaid.

''(c) NONELECTION.—If the individual does not make an election under subsection (b) before any time limitation under this section, the retirement coverage shall be subject to the following rules:

''(1) CORRECTIVE ACTION PREVIOUSLY TAKEN.—If corrective action was taken before the end of any time limitation under this section, that corrective action shall remain in effect.

''(2) CORRECTIVE ACTION NOT PREVIOUSLY TAKEN.—If corrective action was not taken before such time limitation, the employee shall be CSRS-Offset covered, retroactive to the date of the retirement coverage error.

''CHAPTER 2—EMPLOYEE WHO SHOULD HAVE BEEN FERS COVERED, CSRS-OFFSET COVERED, OR CSRS COVERED, BUT WHO WAS ERRONEOUSLY SOCIAL SECURITY-ONLY COVERED INSTEAD

''SEC. 2111. APPLICABILITY.

''This chapter shall apply in the case of any employee who—

''(1) should be (or should have been) FERS covered but, as a result of a retirement coverage error, is (or was) Social Security-Only covered instead;

''(2) should be (or should have been) CSRS-Offset covered but, as a result of a retirement coverage error, is (or was) Social Security-Only covered instead; or

''(3) should be (or should have been) CSRS covered but, as a result of a retirement coverage error, is (or was) Social Security-Only covered instead.

''SEC. 2112. CORRECTION MANDATORY.

''(a) UNCORRECTED ERROR.—If the retirement coverage error has not been corrected, as soon as practicable after discovery of the error, such individual shall be covered under the correct retirement coverage, effective as of the date of the retirement coverage error.

''(b) CORRECTED ERROR.—If the retirement coverage error has been corrected, the corrective action previously taken shall remain in effect.

''CHAPTER 3—EMPLOYEE WHO SHOULD OR COULD HAVE BEEN SOCIAL SECURITY-ONLY COVERED BUT WHO WAS ERRONEOUSLY CSRS-OFFSET COVERED OR CSRS COVERED INSTEAD

''SEC. 2121. EMPLOYEE WHO SHOULD BE SOCIAL SECURITY-ONLY COVERED, BUT WHO IS ERRONEOUSLY CSRS OR CSRS-OFFSET COVERED INSTEAD.

''(a) APPLICABILITY.—This section applies in the case of a retirement coverage error in which a Social Security-Only covered employee was erroneously CSRS covered or CSRS-Offset covered.

''(b) UNCORRECTED ERROR.—

''(1) APPLICABILITY.—This subsection applies if the retirement coverage error has not been corrected before the effective date of the regulations described in paragraph (3).

''(2) COVERAGE.—In the case of an individual who is erroneously CSRS covered, as soon as practicable after discovery of the error, and subject to the right of an election under paragraph (3), such individual shall be CSRS-Offset covered, effective as of the date of the retirement coverage error.

''(3) ELECTION.—

''(A) IN GENERAL.—Upon written notice of a retirement coverage error, an individual may elect to be CSRS-Offset covered or Social Security-Only covered, effective as of the date of the retirement coverage error. Such election shall be made not later than 180 days after the date of receipt of such notice.

''(B) NONELECTION.—If the individual does not make an election before the date provided under subparagraph (A), the individual shall remain CSRS-Offset covered.

''(C) REGULATIONS.—The Office shall prescribe regulations to carry out this paragraph.

''(c) CORRECTED ERROR.—

''(1) APPLICABILITY.—This subsection applies if the retirement coverage error was corrected before the effective date of the regulations described under subsection (b)(3).

''(2) ELECTION.—Not later than 180 days after the date of the enactment of this Act [Sept. 19, 2000], the Office shall prescribe regulations authorizing individuals to elect, during the 18-month period immediately following the effective date of such regulations, to be CSRS-Offset covered or Social Security-Only covered, effective as of the date of the retirement coverage error.

''(3) NONELECTION.—If an eligible individual does not make an election under paragraph (2) before the end of any time limitation under this subsection, the corrective action taken before such time limitation shall remain in effect.

''CHAPTER 4—EMPLOYEE WHO WAS ERRONEOUSLY FERS COVERED

''SEC. 2131. EMPLOYEE WHO SHOULD BE SOCIAL SECURITY-ONLY COVERED, CSRS COVERED, OR CSRS-OFFSET COVERED AND IS NOT FERS-ELIGIBLE, BUT WHO IS ERRONEOUSLY FERS COVERED INSTEAD.

''(a) APPLICABILITY.—This section applies in the case of a retirement coverage error in which a Social Security-Only covered, CSRS covered, or CSRS-Offset covered employee not eligible to elect FERS coverage under authority of section 8402(c) of title 5, United States Code, was erroneously FERS covered.

''(b) UNCORRECTED ERROR.—

''(1) APPLICABILITY.—This subsection applies if the retirement coverage error has not been corrected before the effective date of the regulations described in paragraph (2).

''(2) COVERAGE.—

''(A) ELECTION.—

''(i) IN GENERAL.—Upon written notice of a retirement coverage error, an individual may elect to remain FERS covered or to be Social Security-Only covered, CSRS covered, or CSRS-Offset covered, as would have applied in the absence of the erroneous retirement coverage determination, effective as of the date of the retirement coverage error. Such election shall be made not later than 180 days after the date of receipt of such notice.

''(ii) TREATMENT OF FERS ELECTION.—An election of FERS coverage under this subsection is deemed to be an election under section 301 of the Federal Employees Retirement System Act of 1986 (5 U.S.C. 8331 note; Public Law 99–335; 100 Stat. 599).

''(B) NONELECTION.—If the individual does not make an election before the date provided under subparagraph (A), the individual shall remain FERS covered, effective as of the date of the retirement coverage error.

''(3) EMPLOYEE CONTRIBUTIONS IN THRIFT SAVINGS FUND.—If under this section, an individual elects to be Social Security-Only covered, CSRS covered, or CSRS-Offset covered, all employee contributions to the Thrift Savings Fund made during the period of erroneous FERS coverage (and all earnings on such contributions) may remain in the Thrift Savings Fund in accordance with regulations prescribed by the Executive Director, notwithstanding any limit under section 8351 or 8432 of title 5, United States Code.

''(4) REGULATIONS.—Except as provided under paragraph (3), the Office shall prescribe regulations to carry out this subsection.

''(c) CORRECTED ERROR.—

''(1) APPLICABILITY.—This subsection applies if the retirement coverage error was corrected before the effective date of the regulations described under paragraph (2).

''(2) ELECTION.—Not later than 180 days after the date of the enactment of this Act [Sept. 19, 2000], the Office shall prescribe regulations authorizing individuals to elect, during the 18-month period immediately following the effective date of such regula-

tions to remain Social Security-Only covered, CSRS covered, or CSRS-Offset covered, or to be FERS covered, effective as of the date of the retirement coverage error.

''(3) NONELECTION.—If an eligible individual does not make an election under paragraph (2), the corrective action taken before the end of any time limitation under this subsection shall remain in effect.

''(4) TREATMENT OF FERS ELECTION.—An election of FERS coverage under this subsection is deemed to be an election under section 301 of the Federal Employees Retirement System Act of 1986 (5 U.S.C. 8331 note; Public Law 99–335; 100 Stat. 599).

''SEC. 2132. FERS-ELIGIBLE EMPLOYEE WHO SHOULD HAVE BEEN CSRS COVERED, CSRS-OFFSET COVERED, OR SOCIAL SECURITY-ONLY COVERED, BUT WHO WAS ERRONEOUSLY FERS COVERED INSTEAD WITHOUT AN ELECTION.

''(a) IN GENERAL.—

''(1) FERS ELECTION PREVENTED.—If an individual was prevented from electing FERS coverage because the individual was erroneously FERS covered during the period when the individual was eligible to elect FERS under title III of the Federal Employees Retirement System Act [Pub. L. 99–335] or the Federal Employees' Retirement System Open Enrollment Act of 1997 (Public Law 105–61; 111 Stat. 1318 et seq.) [5 U.S.C. 8331 notes], the individual—

''(A) is deemed to have elected FERS coverage; and

''(B) shall remain covered by FERS, unless the individual declines, under regulations prescribed by the Office, to be FERS covered.

''(2) DECLINING FERS COVERAGE.—If an individual described under paragraph (1)(B) declines to be FERS covered, such individual shall be CSRS covered, CSRS-Offset covered, or Social Security-Only covered, as would apply in the absence of a FERS election, effective as of the date of the erroneous retirement coverage determination.

''(b) EMPLOYEE CONTRIBUTIONS IN THRIFT SAVINGS FUND.—If under this section, an individual declines to be FERS covered and instead is Social Security-Only covered, CSRS covered, or CSRS-Offset covered, as would apply in the absence of a FERS election, all employee contributions to the Thrift Savings Fund made during the period of erroneous FERS coverage (and all earnings on such contributions) may remain in the Thrift Savings Fund in accordance with regulations prescribed by the Executive Director, notwithstanding any limit under title 5, United States Code, that would otherwise be applicable.

''(c) INAPPLICABILITY OF DURATION OF ERRONEOUS COVERAGE.—This section shall apply regardless of the length of time the erroneous coverage determination remained in effect.

''SEC. 2133. RETROACTIVE EFFECT.

''This chapter shall be effective as of January 1, 1987, except that section 2132 shall not apply to individuals who made or were deemed to have made elections similar to those provided in this section under regulations prescribed by the Office before the effective date of this title.

''CHAPTER 5—EMPLOYEE WHO SHOULD HAVE BEEN CSRS-OFFSET COVERED, BUT WHO WAS ERRONEOUSLY CSRS COVERED INSTEAD

''SEC. 2141. APPLICABILITY.

''This chapter shall apply in the case of any employee who should be (or should have been) CSRS-Offset covered but, as a result of a retirement coverage error, is (or was) CSRS covered instead.

''SEC. 2142. CORRECTION MANDATORY.

''(a) UNCORRECTED ERROR.—If the retirement coverage error has not been corrected, as soon as practicable after discovery of the error, such individual shall be covered under the correct retirement coverage, effective as of the date of the retirement coverage error.

''(b) CORRECTED ERROR.—If the retirement coverage error has been corrected before the effective date of this title, the corrective action taken before such date shall remain in effect.

''CHAPTER 6—EMPLOYEE WHO SHOULD HAVE BEEN CSRS COVERED, BUT WHO WAS ERRONEOUSLY CSRS-OFFSET COVERED INSTEAD

''SEC. 2151. APPLICABILITY.

''This chapter shall apply in the case of any employee who should be (or should have been) CSRS covered but, as a result of a retirement coverage error, is (or was) CSRS-Offset covered instead.

''SEC. 2152. CORRECTION MANDATORY.

''(a) UNCORRECTED ERROR.—If the retirement coverage error has not been corrected, as soon as practicable after discovery of the error, such individual shall be covered under the correct retirement coverage, effective as of the date of the retirement coverage error.

''(b) CORRECTED ERROR.—If the retirement coverage error has been corrected before the effective date of this title, the corrective action taken before such date shall remain in effect.

''SUBTITLE B—GENERAL PROVISIONS

''SEC. 2201. IDENTIFICATION AND NOTIFICATION REQUIREMENTS.

''Government agencies shall take all such measures as may be reasonable and appropriate to promptly identify and notify individuals who are (or have been) affected by a retirement coverage error of their rights under this title.

''SEC. 2202. INFORMATION TO BE FURNISHED TO AND BY AUTHORITIES ADMINISTERING THIS TITLE.

''(a) APPLICABILITY.—The authorities identified in this subsection are—

''(1) the Director of the Office of Personnel Management;

''(2) the Commissioner of Social Security; and

''(3) the Executive Director of the Federal Retirement Thrift Investment Board.

''(b) AUTHORITY TO OBTAIN INFORMATION.—Each authority identified in subsection (a) may secure directly from any department or agency of the United States information necessary to enable such authority to carry out its responsibilities under this title. Upon request of the authority involved, the head of the department or agency involved shall furnish that information to the requesting authority.

''(c) AUTHORITY TO PROVIDE INFORMATION.—Each authority identified in subsection (a) may provide directly to any department or agency of the United States all information such authority believes necessary to enable the department or agency to carry out its responsibilities under this title.

''(d) LIMITATION; SAFEGUARDS.—Each of the respective authorities under subsection (a) shall—

''(1) request or provide only such information as that authority considers necessary; and

''(2) establish, by regulation or otherwise, appropriate safeguards to ensure that any information obtained under this section shall be used only for the purpose authorized.

''SEC. 2203. SERVICE CREDIT DEPOSITS.

''(a) CSRS DEPOSIT.—In the case of a retirement coverage error in which—

''(1) a FERS covered employee was erroneously CSRS covered or CSRS-Offset covered;

''(2) the employee made a service credit deposit under the CSRS rules; and

''(3) there is a subsequent retroactive change to FERS coverage,

the excess of the amount of the CSRS civilian or military service credit deposit over the FERS civilian or military service credit deposit, together with interest

computed in accordance with paragraphs (2) and (3) of section 8334(e) of title 5, United States Code, and regulations prescribed by the Office, shall be paid to the employee, the annuitant or, in the case of a deceased employee, to the individual entitled to lump-sum benefits under section 8424(d) of title 5, United States Code.

''(b) FERS DEPOSIT.—

''(1) APPLICABILITY.—This subsection applies in the case of an erroneous retirement coverage determination in which—

''(A) the employee owed a service credit deposit under section 8411(f) of title 5, United States Code; and

''(B)(i) there is a subsequent retroactive change to CSRS or CSRS-Offset coverage; or

''(ii) the service becomes creditable under chapter 83 of title 5, United States Code.

''(2) REDUCED ANNUITY.—

''(A) IN GENERAL.—If at the time of commencement of an annuity there is remaining unpaid CSRS civilian or military service credit deposit for service described under paragraph (1), the annuity shall be reduced based upon the amount unpaid together with interest computed in accordance with section 8334(e)(2) and (3) of title 5, United States Code, and regulations prescribed by the Office.

''(B) AMOUNT.—The reduced annuity to which the individual is entitled shall be equal to an amount that, when taken together with the amount referred to under subparagraph (A), would result in the present value of the total being actuarially equivalent to the present value of the unreduced annuity benefit that would have been provided the individual.

''(3) SURVIVOR ANNUITY.—

''(A) IN GENERAL.—If at the time of commencement of a survivor annuity, there is remaining unpaid any CSRS service credit deposit described under paragraph (1), and there has been no actuarial reduction in an annuity under paragraph (2), the survivor annuity shall be reduced based upon the amount unpaid together with interest computed in accordance with section 8334(e)(2) and (3) of title 5, United States Code, and regulations prescribed by the Office.

''(B) AMOUNT.—The reduced survivor annuity to which the individual is entitled shall be equal to an amount that, when taken together with the amount referred to under subparagraph (A), would result in the present value of the total being actuarially equivalent to the present value of an unreduced survivor annuity benefit that would have been provided the individual.

''SEC. 2204. PROVISIONS RELATED TO SOCIAL SECURITY COVERAGE OF MISCLASSIFIED EMPLOYEES.

''(a) DEFINITIONS.—In this section, the term—

''(1) 'covered individual' means any employee, former employee, or annuitant who—

''(A) is or was employed erroneously subject to CSRS coverage as a result of a retirement coverage error; and

''(B) is or was retroactively converted to CSRS-offset coverage, FERS coverage, or Social Security-Only coverage; and

''(2) 'excess CSRS deduction amount' means an amount equal to the difference between the CSRS deductions withheld and the CSRS-Offset or FERS deductions, if any, due with respect to a covered individual during the entire period the individual was erroneously subject to CSRS coverage as a result of a retirement coverage error.

''(b) REPORTS TO COMMISSIONER OF SOCIAL SECURITY.—

''(1) IN GENERAL.—In order to carry out the Commissioner of Social Security's responsibilities under title II of the Social Security Act [42 U.S.C. 401 et seq.], the Commissioner may request the head of each agency that employs or employed a covered individual to report (in coordination with the Office of Personnel Management) in such form and within such timeframe as the Commissioner may specify, any or all of—

''(A) the total wages (as defined in section 3121(a) of the Internal Revenue Code of 1986 [26 U.S.C. 3121(a)]) paid to such individual during each year of the entire period of the erroneous CSRS coverage; and

''(B) such additional information as the Commissioner may require for the purpose of carrying out the Commissioner's responsibilities under title II of the Social Security Act (42 U.S.C. 401 et seq.).

''(2) COMPLIANCE.—The head of an agency or the Office shall comply with a request from the Commissioner under paragraph (1).

''(3) WAGES.—For purposes of section 201 of the Social Security Act (42 U.S.C. 401), wages reported under this subsection shall be deemed to be wages reported to the Secretary of the Treasury or the Secretary's delegates pursuant to subtitle F of the Internal Revenue Code of 1986 [26 U.S.C. 6001 et seq.].

''(c) PAYMENT RELATING TO OASDI EMPLOYEE TAXES.—The Office shall transfer from the Civil Service Retirement and Disability Fund to the General Fund of the Treasury an amount equal to the lesser of the excess CSRS deduction amount or the OASDI taxes due for covered individuals (as adjusted by amounts transferred relating to applicable OASDI employee taxes as a result of corrections made, including corrections made before the date of the enactment of this Act [Sept. 19, 2000]). If the excess CSRS deductions exceed the OASDI taxes, any difference shall be paid to the covered individual or survivors, as appropriate.

''(d) PAYMENT OF OASDI EMPLOYER TAXES.—

''(1) IN GENERAL.—Each employing agency shall pay an amount equal to the OASDI employer taxes owed with respect to covered individuals during the applicable period of erroneous coverage (as adjusted by amounts transferred for the payment of such taxes as a result of corrections made, including corrections made before the date of the enactment of this Act [Sept. 19, 2000]).

''(2) PAYMENT.—Amounts paid under this subsection shall be determined subject to any limitation under section 6501 of the Internal Revenue Code of 1986 [26 U.S.C. 6501].

''SEC. 2205. THRIFT SAVINGS PLAN TREATMENT FOR CERTAIN INDIVIDUALS.

''(a) APPLICABILITY.—This section applies to an individual who—

''(1) is eligible to make an election of coverage under section 2101 or 2102, and only if FERS coverage is elected (or remains in effect) for the employee involved; or

''(2) is described in section 2111, and makes or has made retroactive employee contributions to the Thrift Savings Fund under regulations prescribed by the Executive Director.

''(b) PAYMENT INTO THRIFT SAVINGS FUND.—

''(1) IN GENERAL.—

''(A) PAYMENT.—With respect to an individual to whom this section applies, the employing agency shall pay to the Thrift Savings Fund under subchapter III of chapter 84 of title 5, United States Code, for credit to the account of the employee involved, an amount equal to the earnings which are disallowed under section 8432a(a)(2) of such title on the employee's retroactive contributions to such Fund.

''(B) AMOUNT.—Earnings under subparagraph (A) shall be computed in accordance with the procedures for computing lost earnings under section 8432a of title 5, United States Code. The amount paid by the employing agency shall be treated for all purposes as if that amount had actually been earned on the basis of the employee's contributions.

''(C) EXCEPTIONS.—If an individual made retroactive contributions before the effective date of the regulations under section 2101(c), the Director may

provide for an alternative calculation of lost earnings to the extent that a calculation under subparagraph (B) is not administratively feasible. The alternative calculation shall yield an amount that is as close as practicable to the amount computed under subparagraph (B), taking into account earnings previously paid.

''(2) ADDITIONAL EMPLOYEE CONTRIBUTION.—In cases in which the retirement coverage error was corrected before the effective date of the regulations under section 2101(c), the employee involved shall have an additional opportunity to make retroactive contributions for the period of the retirement coverage error (subject to applicable limits), and such contributions (including any contributions made after the date of the correction) shall be treated in accordance with paragraph (1).

''(c) REGULATIONS.—

''(1) EXECUTIVE DIRECTOR.—The Executive Director shall prescribe regulations appropriate to carry out this section relating to retroactive employee contributions and payments made on or after the effective date of the regulations under section 2101(c).

''(2) OFFICE.—The Office, in consultation with the Federal Retirement Thrift Investment Board, shall prescribe regulations appropriate to carry out this section relating to the calculation of lost earnings on retroactive employee contributions made before the effective date of the regulations under section 2101(c).

''SEC. 2206. CERTAIN AGENCY AMOUNTS TO BE PAID INTO OR REMAIN IN THE CSRDF.

''(a) CERTAIN EXCESS AGENCY CONTRIBUTIONS TO REMAIN IN THE CSRDF.—

''(1) IN GENERAL.—Any amount described under paragraph (2) shall—

''(A) remain in the CSRDF; and

''(B) may not be paid or credited to an agency.

''(2) AMOUNTS.—Paragraph (1) refers to any amount of contributions made by an agency under section 8423 of title 5, United States Code, on behalf of any employee, former employee, or annuitant (or survivor of such employee, former employee, or annuitant) who makes an election to correct a retirement coverage error under this title, that the Office determines to be excess as a result of such election.

''(b) ADDITIONAL EMPLOYEE RETIREMENT DEDUCTIONS TO BE PAID BY AGENCY.—If a correction in a retirement coverage error results in an increase in employee deductions under section 8334 or 8422 of title 5, United States Code, that cannot be fully paid by a reallocation of otherwise available amounts previously deducted from the employee's pay as employment taxes or retirement deductions, the employing agency—

''(1) shall pay the required additional amount into the CSRDF; and

''(2) shall not seek repayment of that amount from the employee, former employee, annuitant, or survivor.

''SEC. 2207. CSRS COVERAGE DETERMINATIONS TO BE APPROVED BY OPM.

''No agency shall place an individual under CSRS coverage unless—

''(1) the individual has been employed with CSRS coverage within the preceding 365 days; or

''(2) the Office has agreed in writing that the agency's coverage determination is correct.

''SEC. 2208. DISCRETIONARY ACTIONS BY DIRECTOR.

''(a) IN GENERAL.—The Director of the Office of Personnel Management may—

''(1) extend the deadlines for making elections under this title in circumstances involving an individual's inability to make a timely election due to a cause beyond the individual's control;

''(2) provide for the reimbursement of necessary and reasonable expenses incurred by an individual with respect to settlement of a claim for losses resulting from a retirement coverage error, including attorney's fees, court costs, and other actual expenses;

''(3) compensate an individual for monetary losses that are a direct and proximate result of a retirement coverage error, excluding claimed losses relating to forgone contributions and earnings under the Thrift Savings Plan under subchapter III of chapter 84 of title 5, United States Code, and all other investment opportunities; and

''(4) waive payments required due to correction of a retirement coverage error under this title.

''(b) SIMILAR ACTIONS.—In exercising the authority under this section, the Director shall, to the extent practicable, provide for similar actions in situations involving similar circumstances.

''(c) JUDICIAL REVIEW.—Actions taken under this section are final and conclusive, and are not subject to administrative or judicial review.

''(d) REGULATIONS.—The Office of Personnel Management shall prescribe regulations regarding the process and criteria used in exercising the authority under this section.

''(e) REPORT.—The Office of Personnel Management shall, not later than 180 days after the date of the enactment of this Act [Sept. 19, 2000], and annually thereafter for each year in which the authority provided in this section is used, submit a report to each House of Congress on the operation of this section.

''SEC. 2209. REGULATIONS.

''(a) IN GENERAL.—In addition to the regulations specifically authorized in this title, the Office may prescribe such other regulations as are necessary for the administration of this title.

''(b) FORMER SPOUSE.—The regulations prescribed under this title shall provide for protection of the rights of a former spouse with entitlement to an apportionment of benefits or to survivor benefits based on the service of the employee.

''SUBTITLE C—OTHER PROVISIONS

''SEC. 2301. PROVISIONS TO AUTHORIZE CONTINUED CONFORMITY OF OTHER FEDERAL RETIREMENT SYSTEMS.

''(a) FOREIGN SERVICE.—Sections 827 and 851 of the Foreign Service Act of 1980 (22 U.S.C. 4067 and 4071) shall apply with respect to this title in the same manner as if this title were part of—

''(1) the Civil Service Retirement System, to the extent this title relates to the Civil Service Retirement System; and

''(2) the Federal Employees' Retirement System, to the extent this title relates to the Federal Employees' Retirement System.

''(b) CENTRAL INTELLIGENCE AGENCY.—Sections 292 and 301 of the Central Intelligence Agency Retirement Act (50 U.S.C. 2141 and 2151) shall apply with respect to this title in the same manner as if this title were part of—

''(1) the Civil Service Retirement System, to the extent this title relates to the Civil Service Retirement System; and

''(2) the Federal Employees' Retirement System, to the extent this title relates to the Federal Employees' Retirement System.

''SEC. 2302. AUTHORIZATION OF PAYMENTS.

''All payments authorized or required by this title to be paid from the Civil Service Retirement and Disability Fund, together with administrative expenses incurred by the Office in administering this title, shall be deemed to have been authorized to be paid from that Fund, which is appropriated for the payment thereof.

''SEC. 2303. INDIVIDUAL RIGHT OF ACTION PRESERVED FOR AMOUNTS NOT OTHERWISE PROVIDED FOR UNDER THIS TITLE.

''Nothing in this title shall preclude an individual from bringing a claim against the Government of the United States which such individual may have under section 1346(b) or chapter 171 of title 28, United States Code, or any other provision of law (except to the extent the claim is for any amounts otherwise provided for under this title).

''SUBTITLE D—EFFECTIVE DATE

''SEC. 2401. EFFECTIVE DATE.

''Except as otherwise provided in this title, this title shall take effect on the date of the enactment of this Act [Sept. 19, 2000].''

FEDERAL EMPLOYEES' RETIREMENT SYSTEM OPEN ENROLLMENT ACT OF 1997

Pub. L. 105–61, title VI, § 642(a)–(c), Oct. 10, 1997, 111 Stat. 1318, as amended by Pub. L. 105–66, title III, § 348, Oct. 27, 1997, 111 Stat. 1451, known as the ''Federal Employees' Retirement System Open Enrollment Act of 1997'', provided that any individual who, as of Jan. 1, 1998, was employed by the Federal Government, and on such date was subject to subchapter III of chapter 83 of this title, other than a Member of Congress, could elect to become subject to chapter 84 of this title, and directed Office of Personnel Management to promulgate regulations which would provide for an election to be made not before July 1, 1998, or after Dec. 31, 1998.

PILOT PROGRAMS FOR DEFENSE EMPLOYEES CONVERTED TO CONTRACTOR EMPLOYEES DUE TO PRIVATIZATION AT CLOSED MILITARY INSTALLATIONS

Pub. L. 104–201, div. A, title XVI, § 1616, Sept. 23, 1996, 110 Stat. 2741, as amended by Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814, provided that:

''(a) PILOT PROGRAMS AUTHORIZED.—(1) The Secretary of Defense, after consultation with the Director of the Office of Personnel Management, may establish one or more pilot programs under which Federal retirement benefits are provided in accordance with this section to persons who convert from Federal employment to employment by a Department of Defense contractor in connection with the privatization of the performance of functions at selected military installations being closed under the base closure and realignment process.

''(2) The Secretary of Defense shall select the military installations to be covered by a pilot program under this section.

''(b) ELIGIBLE CONVERTED EMPLOYEES.—(1) A person is a converted employee eligible for Federal retirement benefits under this section if the person is a former employee of the Department of Defense (other than a temporary employee) who—

''(A) while employed by the Department of Defense at a military installation selected to participate in a pilot program, performed a function that was recommended, in a report of the Defense Base Closure and Realignment Commission submitted to the President under 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), to be privatized for performance by a defense contractor at the same installation or in the vicinity of the installation;

''(B) while so employed, separated from Federal service after being notified that the employee would be separated in a reduction in force resulting from such privatization;

''(C) at the time separated from Federal service, was covered under the Civil Service Retirement System, but was not eligible for an immediate annuity under the Civil Service Retirement System;

''(D) does not withdraw retirement contributions under section 8342 of title 5, United States Code;

''(E) within 60 days following such separation, is employed by the defense contractor selected to privatize the function to perform substantially the same function performed by the person before the separation; and

''(F) remains employed by the defense contractor (or a successor defense contractor) or subcontractor of the defense contractor (or successor defense contractor) until attaining early deferred retirement age (unless the employment is sooner involuntarily terminated for reasons other than performance or conduct of the employee).

''(2) A person who, under paragraph (1), would otherwise be eligible for an early deferred annuity under this section shall not be eligible for such benefits if the person received separation pay or severance pay due to a separation described in subparagraph (B) of that paragraph unless the person repays the full amount of such pay with interest (computed at a rate determined appropriate by the Director of the Office of Personnel Management) to the Department of Defense before attaining early deferred retirement age.

''(c) RETIREMENT BENEFITS OF CONVERTED EMPLOYEES.—In the case of a converted employee covered by a pilot program, payment of a deferred annuity for which the converted employee is eligible under section 8338(a) of title 5, United States Code, shall commence on the first day of the first month that begins after the date on which the converted employee attains early deferred retirement age, notwithstanding the age requirement under that section. If the employment of a converted employee is involuntarily terminated by the defense contractor or subcontractor as described in subsection (b)(1)(F) and the converted employee resumes Federal service before the converted employee attains early deferred retirement age, the converted employee shall once again be covered under the Civil Service Retirement System instead of the pilot program.

''(d) COMPUTATION OF AVERAGE PAY.—(1)(A) This paragraph applies to a converted employee who was employed in a position classified under the General Schedule immediately before the employee's covered separation from Federal service.

''(B) Subject to subparagraph (C), for purposes of computing the deferred annuity for a converted employee referred to in subparagraph (A), the average pay of the converted employee, computed under section 8331(4) of title 5, United States Code, as of the date of the employee's covered separation from Federal service, shall be adjusted at the same time and by the same percentage that rates of basic pay are increased under section 5303 of such title during the period beginning on that date and ending on the date on which the converted employee attains early deferred retirement age.

''(C) The average pay of a converted employee, as adjusted under subparagraph (B), may not exceed the amount to which an annuity of the converted employee could be increased under section 8340 of title 5, United States Code, in accordance with the limitation in subsection (g)(1) of such section (relating to maximum pay, final pay, or average pay).

''(2)(A) This paragraph applies to a converted employee who was a prevailing rate employee (as defined under section 5342(2) [5342(a)(2)] of title 5, United States Code) immediately before the employee's covered separation from Federal service.

''(B) For purposes of computing the deferred annuity for a converted employee referred to in subparagraph (A), the average pay of the converted employee, computed under section 8331(4) of title 5, United States Code, as of the date of the employee's covered separation from Federal service, shall be adjusted at the same time and by the same percentage that pay rates for positions that are in the same area as, and are comparable to, the last position the converted employee held as a prevailing rate employee, are increased under section 5343(a) of such title during the period beginning on that date and ending on the date on which the converted employee attains early deferred retirement age.

''(e) PAYMENT OF UNFUNDED LIABILITY.—(1) The military department concerned shall be liable for that portion of any estimated increase in the unfunded liability of the Civil Service Retirement and Disability Fund established under section 8348 of title 5, United States Code, which is attributable to any benefits payable from such Fund to a converted employee, and any survivor of a converted employee, when the increase results from—

''(A) an increase in the average pay of the converted employee under subsection (d) upon which such benefits are computed; and

''(B) the commencement of an early deferred annuity in accordance with this section before the attainment of 62 years of age by the converted employee.

''(2) The estimated increase in the unfunded liability for each department referred to in paragraph (1) shall be determined by the Director of the Office of Personnel Management. In making the determination, the Director shall consider any savings to the Fund as a result of a pilot program established under this section. The Secretary of the military department concerned shall pay the amount so determined to the Director in 10 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 average pay under subsection (d) becomes effective.

''(f) CONTRACTOR SERVICE NOT CREDITABLE.—Service performed by a converted employee for a defense contractor after the employee's covered separation from Federal service is not creditable service for purposes of subchapter III of chapter 83 of title 5, United States Code.

''(g) RECEIPT OF BENEFITS WHILE EMPLOYED BY A DEFENSE CONTRACTOR.—A converted employee may commence receipt of an early deferred annuity in accordance with this section while continuing to work for a defense contractor.

''(h) LUMP-SUM CREDIT PAYMENT.—If a converted employee dies before attaining early deferred retirement age, such employee shall be treated as a former employee who dies not retired for purposes of payment of the lump-sum credit under section 8342(d) of title 5, United States Code.

''(i) CONTINUED FEDERAL HEALTH BENEFITS COVERAGE.—Notwithstanding section 8905a(e)(1)(A) of title 5, United States Code, the continued coverage of a converted employee for health benefits under chapter 89 of such title by reason of the application of section 8905a of such title to such employee shall terminate 90 days after the date of the employee's covered separation from Federal employment. For the purposes of the preceding sentence, a person who, except for subsection (b)(2), would be a converted employee shall be considered a converted employee.

''(j) REPORT BY GOVERNMENT ACCOUNTABILITY OFFICE.—The Comptroller General shall conduct a study of each pilot program, if any, established under this section and submit a report on the pilot program to Congress not later than two years after the date on which the program is established. The report shall contain the following:

''(1) A review and evaluation of the program, including—

''(A) an evaluation of the success of the privatization outcomes of the program;

''(B) a comparison and evaluation of such privatization outcomes with the privatization outcomes with respect to facilities at other military installations closed or realigned under the base closure laws;

''(C) an evaluation of the impact of the program on the Federal workforce and whether the program results in the maintenance of a skilled workforce for defense contractors at an acceptable cost to the military department concerned; and

''(D) an assessment of the extent to which the program is a cost-effective means of facilitating privatization of the performance of Federal activities.

''(2) Recommendations relating to the expansion of the program to other installations and employees.

''(3) Any other recommendation relating to the program.

''(k) IMPLEMENTING REGULATIONS.—Not later than 30 days after the Secretary of Defense notifies the Director of the Office of Personnel Management of a decision to establish a pilot program under this section, the Director shall prescribe regulations to carry out the provisions of this section with respect to that pilot program. Before prescribing the regulations, the Director shall consult with the Secretary.

''(*l*) DEFINITIONS.—In this section:

''(1) The term 'converted employee' means a person who, pursuant to subsection (b), is eligible for benefits under this section.

''(2) The term 'covered separation from Federal service' means a separation from Federal service as described under subsection (b)(1)(B).

''(3) The term 'Civil Service Retirement System' means the retirement system under subchapter III of chapter 83 of title 5, United States Code.

''(4) The term 'defense contractor' means any entity that—

''(A) contracts with the Department of Defense to perform a function previously performed by Department of Defense employees;

''(B) performs that function at the same installation at which such function was previously performed by Department of Defense employees or in the vicinity of that installation; and

''(C) is the employer of one or more converted employees.

''(5) The term 'early deferred retirement age' means the first age at which a converted employee would have been eligible for immediate retirement under subsection (a) or (b) of section 8336 of title 5, United States Code, if such converted employee had remained an employee within the meaning of section 8331(1) of such title continuously until attaining such age.

''(6) The term 'severance pay' means severance pay payable under section 5595 of title 5, United States Code.

''(7) The term 'separation pay' means separation pay payable under section 5597 of title 5, United States Code.

''(m) APPLICATION OF PILOT PROGRAM.—In the event that a pilot program is established for a military installation, the pilot program shall apply to a covered separation from Federal service by an employee of the Department of Defense at the installation occurring on or after August 1, 1996.''

ADDITIONAL AGENCY CONTRIBUTIONS TO RETIREMENT FUND

Pub. L. 103–226, § 4, Mar. 30, 1994, 108 Stat. 114, as amended by Pub. L. 104–52, title IV, § 3, Nov. 19, 1995, 109 Stat. 490; Pub. L. 108–487, title IV, § 401(b)(2), Dec. 23, 2004, 118 Stat. 3946, provided that:

''(a) RELATING TO VOLUNTARY SEPARATION INCENTIVE PAYMENTS.—

''(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] 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.

''(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 [now Government Accountability 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; Pub. L. 108–176, title II, § 226(b)(2)(D), Dec. 12, 2003, 117 Stat. 2530, 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 creditable 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 (h) 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(g) 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 (g) 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 notifi-

cation 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).'']

[Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the intelligence community deemed to be a reference to the Director of National Intelligence. Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the Central Intelligence Agency deemed to be a reference to the Director of the Central Intelligence Agency. See section 1081(a), (b) of Pub. L. 108–458, set out as a note under section 401 of Title 50, War and National Defense.]

[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 or 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.

## § 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 sections 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,[2] 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 sections 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 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;

(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

[1] So in original. Probably should be paragraph ''(14)''.

[2] See References in Text note below.

Instrumentalities Employees' Retirement Credit Act of 1986; and

(17) service performed by any individual as an employee paid from nonappropriated funds of an instrumentality of the Department of Defense or the Coast Guard described in section 2105(c) that is not covered by paragraph (16) and that is not otherwise creditable, if the individual elects (in accordance with regulations prescribed by the Office) to have such service credited under this paragraph.

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 Chief Administrative Officer 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) or (17) of this subsection which was performed for such appropriated fund instrumentality. Service credited under paragraph (17) may not also be credited under any other retirement system provided for employees paid from nonappropriated funds of a nonappropriated fund instrumentality.

(c)(1) Except as provided in paragraphs (2) and (4) 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.

(4) If, after January 1, 1997, an employee or Member waives retired pay that is subject to a

court order for which there has been effective service on the Secretary concerned for purposes of section 1408 of title 10, the military service on which the retired pay is based may be credited as service for purposes of this subchapter only if the employee or Member authorizes the Director to deduct and withhold from the annuity payable to the employee or Member under this subchapter an amount equal to the amount that, if the annuity payment was instead a payment of the employee's or Member's retired pay, would have been deducted and withheld and paid to the former spouse covered by the court order under such section 1408. The amount deducted and withheld under this paragraph shall be paid to that former spouse. The period of civil service employment by the employee or Member shall not be taken into consideration in determining the amount of the deductions and withholding or the amount of the payment to the former spouse. The Director of the Office of Personnel Management shall prescribe regulations to carry out this paragraph.

(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,,[3] 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 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,[2] 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,[2] 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[4] 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

[3] So in original.

[4] So in original. Probably should be ''individual, spouse, or former spouse''.

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,[2] 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,[2] 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[5] 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[5] 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;

(iv) sections 4067 through 4070 of the Revised Statutes of the United States; or

(v) any other statute, rule, 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 4 years and 6 months of service on such committees as of December 12, 1980; and

(B) such employee makes a deposit to the Fund in an amount equal to the amount which

[5] See 1986 Amendment note below.

would be required under section 8334(c) of this title if such service were service as a Congressional employee.

(2) Upon application to the Office of Personnel Management, any individual who was an employee on the date of enactment of this paragraph, 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 December 31, 1990, 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 4 years and 6 months of service on such committees as of December 31, 1990; and

(B) such employee makes a deposit to the Fund in an amount equal to the amount which would be required under section 8334(c) if such service were service as a congressional employee.

(3) 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.

(4) 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.

(*o*)(1) Notwithstanding any other provision of this subchapter, the service of an individual finally convicted of an offense described in paragraph (2) shall not be taken into account for purposes of this subchapter, except that this sentence applies only to service rendered as a Member (irrespective of when rendered). Any such individual (or other person determined under section 8342(c), if applicable) shall be entitled to be paid so much of such individual's lump-sum credit as is attributable to service to which the preceding sentence applies.

(2)(A) An offense described in this paragraph is any offense described in subparagraph (B) for which the following apply:

(i) Every act or omission of the individual (referred to in paragraph (1)) that is needed to satisfy the elements of the offense occurs while the individual is a Member.

(ii) Every act or omission of the individual that is needed to satisfy the elements of the offense directly relates to the performance of the individual's official duties as a Member.

(iii) The offense is committed after the date of enactment of this subsection.

(B) An offense described in this subparagraph is only the following, and only to the extent that the offense is a felony:

(i) An offense under section 201 of title 18 (relating to bribery of public officials and witnesses).

(ii) An offense under section 219 of title 18 (relating to officers and employees acting as agents of foreign principals).

(iii) An offense under section 1343 of title 18 (relating to fraud by wire, radio, or television, including as part of a scheme to deprive citizens of honest services thereby).

(iv) An offense under section 104(a) of the Foreign Corrupt Practices Act of 1977 (relating to prohibited foreign trade practices by domestic concerns).

(v) An offense under section 1957 of title 18 (relating to engaging in monetary transactions in property derived from specified unlawful activity).

(vi) An offense under section 1512 of title 18 (relating to tampering with a witness, victim, or an informant).

(vii) An offense under chapter 96 of title 18 (relating to racketeer influenced and corrupt organizations).

(viii) An offense under section 371 of title 18 (relating to conspiracy to commit offense or to defraud United States), to the extent of any conspiracy to commit an act which constitutes—

(I) an offense under clause (i), (ii), (iii), (iv), (v), (vi), or (vii); or

(II) an offense under section 207 of title 18 (relating to restrictions on former officers, employees, and elected officials of the executive and legislative branches).

(ix) Perjury committed under section 1621 of title 18 in falsely denying the commission of an act which constitutes—

(I) an offense under clause (i), (ii), (iii), (iv), (v), (vi), or (vii); or

(II) an offense under clause (viii), to the extent provided in such clause.

(x) Subornation of perjury committed under section 1622 of title 18 in connection with the false denial or false testimony of another individual as specified in clause (ix).

(3) An individual convicted of an offense described in paragraph (2) shall not, after the date of the final conviction, be eligible to participate in the retirement system under this subchapter or chapter 84 while serving as a Member.

(4) The Office of Personnel Management shall prescribe any regulations necessary to carry out this subsection. Such regulations shall include—

(A) provisions under which interest on any lump-sum payment under the second sentence of paragraph (1) shall be limited in a manner similar to that specified in the last sentence of section 8316(b); and

(B) provisions under which the Office may provide for—

(i) the payment, to the spouse or children of any individual referred to in the first sentence of paragraph (1), of any amounts which (but for this clause) would otherwise have been nonpayable by reason of such first sentence, subject to paragraph (5); and

(ii) an appropriate adjustment in the amount of any lump-sum payment under the second sentence of paragraph (1) to reflect the application of clause (i).

(5) Regulations to carry out clause (i) of paragraph (4)(B) shall include provisions to ensure that the authority to make any payment to the spouse or children of an individual under such clause shall be available only to the extent that the application of such clause is considered necessary and appropriate taking into account the totality of the circumstances, including the financial needs of the spouse or children, whether the spouse or children participated in an offense described in paragraph (2) of which such individual was finally convicted, and what measures, if any, may be necessary to ensure that the convicted individual does not benefit from any such payment.

(6) For purposes of this subsection—

(A) the terms ''finally convicted'' and ''final conviction'' refer to a conviction (i) which has not been appealed and is no longer appealable because the time for taking an appeal has expired, or (ii) which has been appealed and the appeals process for which is completed;

(B) the term ''Member'' has the meaning given such term by section 2106, notwithstanding section 8331(2); and

(C) the term ''child'' has the meaning given such term by section 8341.

(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; Pub. L. 104–186, title II, § 215(11), Aug. 20, 1996, 110 Stat. 1746; Pub. L. 104–201, div. A, title VI, § 637(a), Sept. 23, 1996, 110 Stat. 2580; Pub. L. 106–57, title III, § 312, Sept. 29, 1999, 113 Stat. 428; Pub. L. 106–554, § 1(a)(4) [div. A, § 901(a)(1)], Dec. 21, 2000, 114 Stat. 2763, 2763A–195; Pub. L. 107–107, div. A, title XI, § 1132(a)(1), Dec. 28, 2001, 115 Stat. 1242; Pub. L. 110–81, title IV, § 401(a), Sept. 14, 2007, 121 Stat. 754.)

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.<br>Aug. 1, 1956, ch. 837, § 409, 70 Stat. 877.<br>June 17, 1957, Pub. L. 85–56, § 2201(2), 71 Stat. 157.<br>Sept. 2, 1958, Pub. L. 85–857, § 13(c), 72 Stat. 1264.<br>Sept. 21, 1959, Pub. L. 86–306, § 1, 73 Stat. 583.<br>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.<br>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.<br>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, other-

wise 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, |
| 8332(k)(2) ... | 5 App.: 2253(k)(2). | § 503, 80 Stat. 300. |

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, 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.

The Domestic Volunteer Service Act of 1973, referred to in subsecs. (b)(7) and (j)(1), (3), is Pub. L. 93–113, Oct. 1, 1973, 87 Stat. 394. Parts A and C of title I of the Act are classified generally to parts A (§ 4951 et seq.) and C (§ 4991 et seq.), respectively, of subchapter I of chapter 66 of Title 42, The Public Health and Welfare. Part B of title I of the Act, which was classified generally to part B (§ 4971 et seq.) of subchapter I of chapter 66 of Title 42, was repealed by Pub. L. 111–13, title II, § 2121, Apr. 21, 2009, 123 Stat. 1584. For complete classification of this Act to the Code, see Short Title note set out under section 4950 of Title 42 and Tables.

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, 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 date of enactment of this paragraph, referred to in subsec. (m)(2), is the date of enactment of Pub. L. 106–554, which was approved Dec. 21, 2000.

The Social Security Act, referred to in subsec. (m)(4), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, 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. 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 date of enactment of this subsection, referred to in subsec. (*o*)(2)(A)(iii), is the date of enactment of Pub. L. 110–81, which was approved Sept. 14, 2007.

Section 104(a) of the Foreign Corrupt Practices Act of 1977, referred to in subsec. (*o*)(2)(B)(iv), is classified to section 78dd–2(a) of Title 15, Commerce and Trade.

AMENDMENTS

2007—Subsec. (*o*). Pub. L. 110–81 added subsec. (*o*).

2001—Subsec. (b). Pub. L. 107–107, § 1132(a)(1)(D), (E), in concluding provisions, inserted ''or (17)'' after ''service of the type described in paragraph (16)'' and inserted at end ''Service credited under paragraph (17) may not also be credited under any other retirement system provided for employees paid from nonappropriated funds of a nonappropriated fund instrumentality.''

Subsec. (b)(17). Pub. L. 107–107, §1132(a)(1)(A)–(C), added par. (17).

2000—Subsec. (m)(2) to (4). Pub. L. 106–554 added par. (2) and redesignated former pars. (2) and (3) as (3) and (4), respectively.

1999—Subsec. (m)(1)(A). Pub. L. 106–57 amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''such employee has at least 5 years service on such committees as of the effective date of this section, and''.

1996—Subsec. (b). Pub. L. 104–186 substituted ''Chief Administrative Officer'' for ''Clerk'' in fourth sentence of concluding provisions.

Subsec. (c)(1). Pub. L. 104–201, §637(a)(2), in introductory provisions, substituted ''Except as provided in paragraphs (2) and (4)'' for ''Except as provided in paragraph (2)''.

Subsec. (c)(4). Pub. L. 104–201, §637(a)(1), added par. (4).

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 2001 AMENDMENT

Pub. L. 107–107, div. A, title XI, § 1132(c), Dec. 28, 2001, 115 Stat. 1244, provided that: ''The amendments made by this section [amending this section and sections 8334, 8339, 8411, 8415, and 8422 of this title] shall apply only to separations from service as an employee of the United States on or after the date of the enactment of this Act [Dec. 28, 2001].''

EFFECTIVE DATE OF 1996 AMENDMENT

Section 637(c) of Pub. L. 104–201 provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 8411 of this title] shall take effect on January 1, 1997.''

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

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security,

and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

RETIREMENT CREDIT FOR SERVICE OF CERTAIN EMPLOYEES TRANSFERRED FROM DISTRICT OF COLUMBIA SERVICE TO FEDERAL SERVICE

Pub. L. 111–84, div. A, title XIX, § 1905, Oct. 28, 2009, 123 Stat. 2617, provided that:

''(a) RETIREMENT CREDIT.—

''(1) IN GENERAL.—Any individual who is treated as an employee of the Federal Government for purposes of chapter 83 or chapter 84 of title 5, United States Code, on or after the date of enactment of this Act [Oct. 28, 2009] who performed qualifying District of Columbia service shall be entitled to have such service included in calculating the individual's creditable service under section 8332 or 8411 of title 5, United States Code, but only for purposes of the following provisions of such title:

''(A) Sections 8333 and 8410 (relating to eligibility for annuity).

''(B) Sections 8336 (other than subsections (d), (h), and (p) thereof) and 8412 (relating to immediate retirement).

''(C) Sections 8338 and 8413 (relating to deferred retirement).

''(D) Sections 8336(d), 8336(h), 8336(p), and 8414 (relating to early retirement).

''(E) Section 8341 and subchapter IV of chapter 84 (relating to survivor annuities).

''(F) Section 8337 and subchapter V of chapter 84 (relating to disability benefits).

''(2) TREATMENT OF DETENTION OFFICER SERVICE AS LAW ENFORCEMENT OFFICER SERVICE.—Any portion of an individual's qualifying District of Columbia service which consisted of service as a detention officer under section 2604(2) of the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (sec. 1-626.04(2), D.C. Official Code) shall be treated as service as a law enforcement officer under sections 8331(20) or 8401(17) of title 5, United States Code, for purposes of applying paragraph (1) with respect to the individual.

''(3) SERVICE NOT INCLUDED IN COMPUTING AMOUNT OF ANY ANNUITY.—Qualifying District of Columbia service shall not be taken into account for purposes of computing the amount of any benefit payable out of the Civil Service Retirement and Disability Fund.

''(b) QUALIFYING DISTRICT OF COLUMBIA SERVICE DEFINED.—In this section, 'qualifying District of Columbia service' means any of the following:

''(1) Service performed by an individual as a nonjudicial employee of the District of Columbia courts—

''(A) which was performed prior to the effective date of the amendments made by section 11246(b) of the Balanced Budget Act of 1997 [Pub. L. 105–33, see Effective Date of 1997 Amendment note set out under section 3121 of Title 26, Internal Revenue Code]; and

''(B) for which the individual did not ever receive credit under the provisions of subchapter III of chapter 83 or chapter 84 of title 5, United States Code (other than by virtue of section 8331(1)(iv) of such title).

''(2) Service performed by an individual as an employee of an entity of the District of Columbia government whose functions were transferred to the Pretrial Services, Parole, Adult Supervision, and Offender Supervision Trustee under section 11232 of the Balanced Budget Act of 1997 [111 Stat. 746]—

''(A) which was performed prior to the effective date of the individual's coverage as an employee of the Federal Government under section 11232(f) of such Act [111 Stat. 747]; and

''(B) for which the individual did not ever receive credit under the provisions of subchapter III of chapter 83 or chapter 84 of title 5, United States Code (other than by virtue of section 8331(1)(iv) of such title).

''(3) Service performed by an individual as an employee of the District of Columbia Public Defender Service—

''(A) which was performed prior to the effective date of the amendments made by section 7(e) of the District of Columbia Courts and Justice Technical Corrections Act of 1998 [112 Stat. 2427]; and

''(B) for which the individual did not ever receive credit under the provisions of subchapter III of chapter 83 or chapter 84 of title 5, United States Code (other than by virtue of section 8331(1)(iv) of such title).

''(4) In the case of an individual who was an employee of the District of Columbia Department of Corrections who was separated from service as a result of the closing of the Lorton Correctional Complex and who was appointed to a position with the Bureau of Prisons, the District of Columbia courts, the Pretrial Services, Parole, Adult Supervision, and Offender Supervision Trustee, the United States Parole Commission, or the District of Columbia Public Defender Service, service performed by the individual as an employee of the District of Columbia Department of Corrections—

''(A) which was performed prior to the effective date of the individual's coverage as an employee of the Federal Government; and

''(B) for which the individual did not ever receive credit under the provisions of subchapter III of chapter 83 or chapter 84 of title 5, United States Code (other than by virtue of section 8331(1)(iv) of such title).

''(c) CERTIFICATION OF SERVICE.—The Office of Personnel Management shall accept the certification of the appropriate personnel official of the government of the District of Columbia or other independent employing entity concerning whether an individual performed qualifying District of Columbia service and the length of the period of such service the individual performed.''

FORMER EMPLOYEES OF LEGISLATIVE SERVICE ORGANIZATIONS

Pub. L. 106–554, § 1(a)(4) [div. A, § 901(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–196, provided that:

''(1) SERVICE OF EMPLOYEES OF LEGISLATIVE SERVICE ORGANIZATIONS.—

''(A) IN GENERAL.—Subject to succeeding provisions of this paragraph, upon application to the Office of Personnel Management in such form and manner as the Office shall prescribe, any individual who performed service as an employee of a legislative service organization of the House of Representatives (as defined and authorized in the One Hundred Third Congress) and whose pay was paid in whole or in part by a source other than the Clerk Hire account of a Member of the House of Representatives (other than an individual described in paragraph (6)) shall be entitled—

''(i) to receive credit under the provisions of subchapter III of chapter 83 or chapter 84 of title 5, United States Code (whichever would be appropriate), as congressional employee service, for all such service; and

''(ii) to have all pay for such service which was so paid by a source other than the Clerk Hire account of a Member included (in addition to any amounts otherwise included in basic pay) for purposes of computing an annuity payable out of the Civil Service Retirement and Disability Fund.

''(B) DEPOSIT REQUIREMENT.—In order to be eligible for the benefits described in subparagraph (A), an individual shall be required to pay into the Civil Service Retirement and Disability Fund an amount equal to the difference between—

''(i) the employee contributions that were actually made to such Fund under applicable provisions of law with respect to the service described in subparagraph (A); and

''(ii) the employee contributions that would have been required with respect to such service if the amounts described in subparagraph (A)(ii) had also been treated as basic pay.

The amount required under this subparagraph shall include interest, which shall be computed under section 8334(e) of title 5, United States Code.

''(C) CERTAIN OFFSETS REQUIRED IN ORDER TO PREVENT DOUBLE CONTRIBUTIONS AND BENEFITS.—In the case of any period of service as an employee of a legislative service organization which constituted employment for purposes of title II of the Social Security Act [42 U.S.C. 401 et seq.]—

''(i) any pay for such service (as described in subparagraph (A)(ii)) with respect to which the deposit under subparagraph (B) would otherwise be computed by applying the first sentence of section 8334(a)(1) of title 5, United States Code, shall instead be computed in a manner based on section 8334(k) of such title; and

''(ii) any retirement benefits under subchapter III of chapter 83 of title 5, United States Code, shall be subject to offset (to reflect that portion of benefits under title II of the Social Security Act [42 U.S.C. 401 et seq.] attributable to pay referred to in subparagraph (A)) similar to that provided for under section 8349 of such title.

''(2) SURVIVOR ANNUITANTS.—For purposes of survivor annuities, an application authorized by this section may, in the case of an individual under paragraph (1) who has died, be made by a survivor of such individual.

''(3) RECOMPUTATION OF ANNUITIES.—Any annuity or survivor annuity payable as of when an individual makes the deposit required under paragraph (1) shall be recomputed to take into account the crediting of service under such paragraph for purposes of amounts accruing for any period beginning on or after the date on which the individual makes the deposit.

''(4) CERTIFICATION OF SPEAKER.—The Office of Personnel Management shall accept the certification of the Speaker of the House of Representatives (or the Speaker's designee) concerning the service of, and the amount of compensation received by, an employee with respect to whom credit is to be sought under this subsection.

''(5) NOTIFICATION AND OTHER DUTIES OF THE OFFICE OF PERSONNEL MANAGEMENT.—

''(A) NOTICE.—The Office of Personnel Management shall take such action as may be necessary and appropriate to inform individuals of any rights they might have as a result of enactment of this subsection.

''(B) ASSISTANCE.—The Office shall, on request, assist any individual in obtaining from any department, agency, or other instrumentality of the United States any information in the possession of such instrumentality which may be necessary to verify the entitlement of such individual to have any service credited under this subsection or to have an annuity recomputed under paragraph (3).

''(C) INFORMATION.—Any department, agency, or other instrumentality of the United States which possesses any information with respect to an individual's performance of any service described in paragraph (1) shall, at the request of the office, furnish such information to the Office.

''(6) EXCLUSION OF CERTAIN EMPLOYEES.—An individual is not eligible for credit under this subsection if the individual served as an employee of the House of Representatives for an aggregate period of 5 years or longer after the individual's final period of service as an employee of a legislative service organization of the House of Representatives.

''(7) MEMBER DEFINED.—In this subsection, the term 'Member of the House of Representatives' includes a Delegate or Resident Commissioner to Congress.''

CREDITABILITY OF ICC EMPLOYEE'S ANNUAL LEAVE FOR PURPOSES OF MEETING MINIMUM ELIGIBILITY REQUIREMENTS FOR IMMEDIATE ANNUITY

Pub. L. 104–88, title I, § 105, Dec. 29, 1995, 109 Stat. 920, provided that:

''(a) IN GENERAL.—An employee of the Interstate Commerce Commission who is separated from Government service pursuant to the abolition of that agency under section 101 [49 U.S.C. 701 note] shall, upon appropriate written application, be given credit, for purposes of determining eligibility for and computing the amount of any annuity under subchapter III of chapter 83 or chapter 84 of title 5, United States Code, for accrued annual leave standing to such employee's credit at the time of separation.

''(b) LIMITATION AND OTHER CONDITIONS.—Any regulations necessary to carry out this section shall be prescribed by the Office of Personnel Management. Such regulations shall include provisions—

''(1) defining the types of leave for which credit may be given under this section (such definition to be similar to the corresponding provisions of the regulations under section 351.608(c)(2) of title 5 of the Code of Federal Regulations, as in effect on the date of the enactment of this Act [Dec. 29, 1995]);

''(2) limiting the amount of accrued annual leave which may be used for the purposes specified in subsection (a) to the minimum period of time necessary in order to permit such employee to attain first eligibility for an immediate annuity under section 8336, 8412, or 8414 of title 5, United States Code (in a manner similar to the corresponding provisions of the regulations referred to in paragraph (1));

''(3) under which contributions (or arrangements for the making of contributions) shall be made so that—

''(A) employee contributions for any period of leave for which retirement credit may be obtained under this section shall be made by the employee; and

''(B) Government contributions with respect to such period shall similarly be made by the Interstate Commerce Commission or other appropriate officer or entity (out of appropriations otherwise available for such contributions); and

''(4) under which subsection (a) shall not apply with respect to an employee who declines a reasonable offer of employment in another position in the Department of Transportation made under this Act [see Tables for classification] or any amendment made by this Act.

''(c) EXTINGUISHMENT OF ELIGIBILITY FOR LUMP-SUM PAYMENT.—A lump-sum payment under section 5551 of title 5, United States Code, shall not be payable with respect to any leave for which retirement credit is obtained under this section.''

[Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104–88, to Surface Transportation Board effective Jan. 1, 1996, by section 702 of Title 49, Transportation, and section 101 of Pub. L. 104–88, set out as a note under section 701 of Title 49.]

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 U.S.C. App. 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."

## § 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. |

HISTORICAL AND REVISION NOTES—CONTINUED

| *Derivation* | *U.S. Code* | *Revised Statutes and Statutes at Large* |
|---|---|---|
| (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.

## § 8334. Deductions, contributions, and deposits

(a)(1)(A) The employing agency shall deduct and withhold from the basic pay of an employee, Member, Congressional employee, law enforcement officer, firefighter, bankruptcy judge, judge of the United States Court of Appeals for the Armed Forces, United States magistrate,[1] Court of Federal Claims judge, member of the Capitol Police, member of the Supreme Court Police, nuclear materials courier, or customs and border protection officer, as the case may be, the percentage of basic pay applicable under subsection (c).

(B)(i) Except as provided in clause (ii), 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 Chief Administrative Officer of the House of Representatives, the Chief Administrative Officer may pay from the applicable accounts of the House of Representatives the contribution that otherwise would be contributed from the appropriation or fund used to pay the employee.

(ii) In the case of an employee of the United States Postal Service, no amount shall be contributed under this subparagraph.

(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 Secretary of the Treasury 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 ..... | January 1, 1970, to December 31, 1998. |
| | 7.25 ..... | January 1, 1999, to December 31, 1999. |
| | 7.4 ..... | January 1, 2000, to December 31, 2000. |
| | 7 ..... | After December 31, 2000. |
| Member or employee for Congressional employee service. | 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. |
| | 7.5 ..... | January 1, 1970, to December 31, 1998. |
| | 7.75 ..... | January 1, 1999, to December 31, 1999. |
| | 7.9 ..... | January 1, 2000, to December 31, 2000. |
| | 7.5 ..... | After December 31, 2000. |
| Member for Member service. | 2½ ..... | August 1, 1920, to June 30, 1926. |
| | 3½ ..... | July 1, 1926, to June 30, 1942. |
| | 5 ..... | July 1, 1942, to August 1, 1946. |
| | 6 ..... | August 2, 1946, to October 31, 1956. |
| | 7½ ..... | November 1, 1956, to December 31, 1969. |
| | 8 ..... | January 1, 1970, to December 31, 1998. |
| | 8.25 ..... | January 1, 1999, to December 31, 1999. |
| | 8.4 ..... | January 1, 2000, to December 31, 2000. |
| | 8.5 ..... | January 1, 2001, to December 31, 2002. |
| | 8 ..... | After December 31, 2002. |
| Law enforcement officer for law enforcement service, member of the Supreme Court Police for Supreme Court Police service, and firefighter for firefighter service. | 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 December 31, 1974. |
| | 7.5 ..... | January 1, 1975, to December 31, 1998. |
| | 7.75 ..... | January 1, 1999, to December 31, 1999. |
| | 7.9 ..... | January 1, 2000, to December 31, 2000. |
| | 7.5 ..... | After December 31, 2000. |
| 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 ..... | January 1, 1984, to December 31, 1998. |
| | 8.25 ..... | January 1, 1999, to December 31, 1999. |
| | 8.4 ..... | January 1, 2000, to December 31, 2000. |
| | 8 ..... | After December 31, 2000. |

[1] So in original. Probably should be ''United States magistrate judge,''.

| | Percentage of basic pay | Service period |
|---|---|---|
| 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 | The date of enactment of the Department of Defense Authorization Act, 1984, to December 31, 1998. |
| | 8.25 | January 1, 1999, to December 31, 1999. |
| | 8.4 | January 1, 2000, to December 31, 2000. |
| | 8 | After December 31, 2000. |
| United States magistrate 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, 1987. |
| | 8 | October 1, 1987, to December 31, 1998. |
| | 8.25 | January 1, 1999, to December 31, 1999. |
| | 8.4 | January 1, 2000, to December 31, 2000. |
| | 8 | After December 31, 2000. |
| 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 | October 1, 1988, to December 31, 1998. |
| | 8.25 | January 1, 1999, to December 31, 1999. |
| | 8.4 | January 1, 2000, to December 31, 2000. |
| | 8 | After December 31, 2000. |
| Member of the Capitol Police. | 2.5 | August 1, 1920, to June 30, 1926. |
| | 3.5 | July 1, 1926, to June 30, 1942. |
| | 5 | July 1, 1942, to June 30, 1948. |
| | 6 | July 1, 1948, to October 31, 1956. |
| | 6.5 | November 1, 1956, to December 31, 1969. |
| | 7.5 | January 1, 1970, to December 31, 1998. |
| | 7.75 | January 1, 1999, to December 31, 1999. |
| | 7.9 | January 1, 2000, to December 31, 2000. |
| | 7.5 | After December 31, 2000. |
| Nuclear materials courier. | 7 | October 1, 1977 to October 16, 1998. |
| | 7.5 | October 17, 1998 to December 31, 1998. |
| | 7.75 | January 1, 1999 to December 31, 1999. |
| | 7.9 | January 1, 2000 to December 31, 2000. |
| | 7.5 | After December 31, 2000. |
| Customs and border protection officer. | 7.5 | After June 29, 2008. |

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 March 1, 1991, 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 March 1, 1991;

(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 de-

ducted 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 section 8334(j) of this title;

(3) service for the Panama Railroad Company before January 1, 1924;

(4) service performed before October 29, 1983,,[2] 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.

(4) Notwithstanding any other provision of law, a bankruptcy judge or magistrate judge 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 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 or magistrate judge 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), and subject to paragraph (5), 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 Chief Administrative Officer 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 Chief Administrative Officer of the House of Representatives under this subsection shall be immediately re-

[2] So in original.

mitted 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) Effective with respect to any period of military service after December 31, 1998, the percentage of basic pay under section 204 of title 37 payable under paragraph (1) shall be equal to the same percentage as would be applicable under subsection (c) of this section for that same period for service as an employee, subject to paragraph (1)(B).

(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 subsection (a)(1)(A); and

(B) the amount of the contribution under subparagraph (B) of subsection (a)(1) shall be the amount which would have been contributed under such subparagraph 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 subsection (a)(1)(A) 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,[3] 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,[3] 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. This paragraph shall be subject to paragraph (4).

(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.

(4) Effective with respect to any period of service after December 31, 1998, the percentage of the

[3] See References in Text note below.

readjustment allowance or stipend (as the case may be) payable under paragraph (1) shall be equal to the same percentage as would be applicable under subsection (c) of this section for the same period for service as an employee.

(m) A Member who has served in a position in the executive branch for which the rate of basic pay was reduced for the duration of the service of the Member to remove the impediment to the appointment of the Member imposed by article I, section 6, clause 2 of the Constitution, or the survivor of such a Member, may deposit to the credit of the Fund an amount equal to the difference between the amount deducted from the basic pay of the Member during that period of service and the amount that would have been deducted if the rate of basic pay which would otherwise have been in effect during that period had been in effect, plus interest computed under subsection (e).

(n) Notwithstanding subsection (c), no deposit may be made with respect to service credited under section 8332(b)(17).

(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), 321, Dec. 1, 1990, 104 Stat. 5110, 5112, 5117; 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; Pub. L. 104–186, title II, § 215(12), Aug. 20, 1996, 110 Stat. 1746; Pub. L. 104–316, title I, § 103(g), Oct. 19, 1996, 110 Stat. 3829; Pub. L. 105–33, title VII, § 7001(a)(3), (4), Aug. 5, 1997, 111 Stat. 653, 657; Pub. L. 105–61, title V, § 516(a)(1), Oct. 10, 1997, 111 Stat. 1306; Pub. L. 105–261, div. C, title XXXI, § 3154(c)(1), (2), Oct. 17, 1998, 112 Stat. 2254; Pub. L. 106–65, div. A, title X, § 1066(d)(3), Oct. 5, 1999, 113 Stat. 773; Pub. L. 106–346, § 101(a) [title V, § 505(a)], Oct. 23, 2000, 114 Stat. 1356, 1356A–50; Pub. L. 106–553, § 1(a)(2) [title III, § 308(b)(1)], Dec. 21, 2000, 114 Stat. 2762, 2762A–86; Pub. L. 107–107, div. A, title XI, § 1132(a)(2), Dec. 28, 2001, 115 Stat. 1243; Pub. L. 108–18, § 2(b), Apr. 23, 2003, 117 Stat. 624; Pub. L. 109–435, title VIII, § 802(a)(1), Dec. 20, 2006, 120 Stat. 3249; Pub. L. 110–161, div. E, title V, § 535(a)(2), Dec. 26, 2007, 121 Stat. 2075; Pub. L. 111–84, div. A, title XIX, § 1902(a), Oct. 28, 2009, 123 Stat. 2615.)

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.<br>June 29, 1957, Pub. L. 85–65, § 1, 71 Stat. 209.<br>May 27, 1958, Pub. L. 85–426, § 214(b) (words before comma), 72 Stat. 143.<br>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. 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. 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.

The Domestic Volunteer Service Act of 1973, referred to in subsec. (*l*)(1), is Pub. L. 93–113, Oct. 1, 1973, 87 Stat. 394. Parts A and C of title I of the Act are classified generally to parts A (§ 4951 et seq.) and C (§ 4991 et seq.), respectively, of subchapter I of chapter 66 of Title 42, The Public Health and Welfare. Part B of title I of the Act, which was classified generally to part B (§ 4971 et seq.) of subchapter I of chapter 66 of Title 42, was repealed by Pub. L. 111–13, title II, § 2121, Apr. 21, 2009, 123 Stat. 1584. For complete classification of this Act to the Code, see Short Title note set out under section 4950 of Title 42 and Tables.

The Peace Corps Act, referred to in subsec. (*l*)(1), is Pub. L. 87–293, Sept. 22, 1961, 75 Stat. 612, 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

2009—Subsec. (d)(2)(A)(i). Pub. L. 111–84 substituted ''March 1, 1991'' for ''October 1, 1990'' in two places.

2007—Subsec. (a)(1)(A). Pub. L. 110–161, § 535(a)(2)(A), substituted ''nuclear materials courier, or customs and border protection officer,'' for ''or nuclear materials courier,''.

Subsec. (c). Pub. L. 110–161, § 535(a)(2)(B), inserted table relating to customs and border protection officer.

2006—Subsec. (a)(1)(B)(ii). Pub. L. 109–435 added cl. (ii) and struck out former cl. (ii) which read as follows: ''In the case of an employee of the United States Postal Service, the amount to be contributed under this subparagraph shall (instead of the amount described in clause (i)) be equal to the product derived by multiplying the employee's basic pay by the percentage equal to—

''(I) the normal-cost percentage for the applicable employee category listed in subparagraph (A), minus

''(II) the percentage deduction rate that applies with respect to such employee under subparagraph (A).''

2003—Subsec. (a)(1). Pub. L. 108–18, § 2(b)(1), designated first sentence as subpar. (A), designated second and third sentences as subpar. (B)(i), substituted ''Except as provided in clause (ii), an equal'' for ''An equal'' in subpar. (B)(i), and added subpar. (B)(ii).

Subsec. (k)(1)(A). Pub. L. 108–18, § 2(b)(2)(A), substituted ''subsection (a)(1)(A)'' for ''the first sentence of subsection (a)(1) of this section''.

Subsec. (k)(1)(B). Pub. L. 108–18, § 2(b)(2)(B), substituted ''subparagraph (B) of subsection (a)(1)'' for ''the second sentence of subsection (a)(1) of this section'' and ''such subparagraph'' for ''such sentence''.

Subsec. (k)(2)(C)(iii). Pub. L. 108–18, § 2(b)(2)(C), substituted ''subsection (a)(1)(A)'' for ''the first sentence of subsection (a)(1)''.

2001—Subsec. (n). Pub. L. 107–107 added subsec. (n).

2000—Subsec. (a)(1). Pub. L. 106–553, § 1(a)(2) [title III, § 308(b)(1)(A)], inserted ''member of the Supreme Court Police,'' after ''member of the Capitol Police,''.

Subsec. (c). Pub. L. 106–553, § 1(a)(2) [title III, § 308(b)(1)(B)], in table relating to law enforcement officer for law enforcement service and firefighter for firefighter service, inserted '', member of the Supreme Court Police for Supreme Court Police service,'' after ''law enforcement service''.

Pub. L. 106–346, in tables relating to an employee, a Member or employee for Congressional employee service, a law enforcement officer for law enforcement service and firefighter for firefighter service, a bankruptcy judge, a judge of the United States Court of Appeals for the Armed Forces for service as a judge of that court, a United States magistrate judge, a Court of Federal Claims judge, a member of the Capitol Police, and a nuclear materials courier, substituted item relating to service period after December 31, 2000, for former items relating to service periods January 1, 2001, to December 31, 2002, and after December 31, 2002.

1999—Subsec. (c). Pub. L. 106–65, in table relating to nuclear materials courier, substituted ''October 16, 1998'' for ''the day before the date of the enactment of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999'' and ''October 17, 1998'' for ''The date of the enactment of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999''.

1998—Subsec. (a)(1). Pub. L. 105–261, § 3154(c)(1), substituted ''member of the Capitol Police, or nuclear materials courier,'' for ''or member of the Capitol Police,''.

Subsec. (c). Pub. L. 105–261, § 3154(c)(2), inserted table relating to nuclear materials courier.

1997—Subsec. (a)(1). Pub. L. 105–33, § 7001(a)(3)(A), amended first sentence generally. Prior to amendment, first sentence read as follows: ''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.''

Subsec. (c). Pub. L. 105–33, § 7001(a)(3)(B)(ix), inserted table relating to member of the Capitol Police.

Pub. L. 105–33, § 7001(a)(3)(B)(viii), in table relating to a Court of Federal Claims Judge, substituted items relating to service periods October 1, 1988, to after December 31, 2002, for former item relating to service period after September 30, 1988.

Pub. L. 105–33, § 7001(a)(3)(B)(vii), in table relating to a United States magistrate, substituted items relating to service periods October 1, 1987, to after December 31, 2002, for former item relating to service period after September 30, 1987.

Pub. L. 105–33, § 7001(a)(3)(B)(vi), in table relating to a judge of the United States Court of Appeals for the Armed Forces for service as a judge of that court, substituted items relating to service periods on and after the date of enactment of the Department of Defense Authorization Act, 1984, to after December 31, 2002, for former item relating to service period on and after the date of the enactment of the Department of Defense Authorization Act, 1984.

Pub. L. 105–33, § 7001(a)(3)(B)(v), in table relating to a bankruptcy judge, substituted items relating to service periods January 1, 1984, to after December 31, 2002, for former item relating to service period after December 31, 1983.

Pub. L. 105–33, § 7001(a)(3)(B)(iv), in table relating to a law enforcement officer for law enforcement service and firefighter for firefighter service, substituted items relating to service periods January 1, 1975, to after December 31, 2002, for former item relating to service period after December 31, 1974.

Pub. L. 105–33, § 7001(a)(3)(B)(i)–(iii), in tables relating to an employee, a Member or employee for Congressional employee service, and a Member for Member service, substituted items relating to service periods January 1, 1970, to after December 31, 2002, for former item relating to service period after December 31, 1969.

Subsec. (j)(1)(A). Pub. L. 105–33, § 7001(a)(4)(A)(i), inserted ''and subject to paragraph (5),'' after ''Except as provided in subparagraph (B),''.

Subsec. (j)(5). Pub. L. 105–33, § 7001(a)(4)(A)(ii), added par. (5).

Subsec. (*l*)(1). Pub. L. 105–33, § 7001(a)(4)(B)(i), inserted at end ''This paragraph shall be subject to paragraph (4).''

Subsec. (*l*)(4). Pub. L. 105–33, § 7001(a)(4)(B)(ii), added par. (4).

Subsec. (m). Pub. L. 105–61 added subsec. (m).

1996—Subsec. (a)(1). Pub. L. 104–186, § 215(12)(A), substituted ''Chief Administrative Officer of the House of Representatives, the Chief Administrative Officer may pay from the applicable accounts of the House of Representatives'' for ''Clerk of the House of Representatives, the Clerk may pay from the contingent fund of the House''.

Subsec. (a)(2). Pub. L. 104–316 substituted ''Secretary of the Treasury'' for ''Comptroller General of the United States''.

Subsec. (j)(1)(A), (3). Pub. L. 104–186, § 215(12)(B), substituted ''Chief Administrative Officer'' for ''Clerk''.

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

"United States magistrate judge" and "magistrate judge" substituted for "United States magistrate" and "magistrate", respectively, wherever appearing in subsecs. (c) and (i)(4) 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 2009 AMENDMENT

Pub. L. 111–84, div. A, title XIX, § 1902(b), Oct. 28, 2009, 123 Stat. 2615, provided that: "The amendment made by subsection (a) [amending this section] shall be effective with respect to any annuity, entitlement to which is based on a separation from service occurring on or after the date of enactment of this Act [Oct. 28, 2009]."

EFFECTIVE DATE OF 2007 AMENDMENT; TRANSITION RULES

Amendment by Pub. L. 110–161 effective on the later of June 30, 2008, or the first day of the first pay period beginning at least 6 months after Dec. 26, 2007, with transition rules and rights of election, see section 535(e) of Pub. L. 110–161, set out as a note under section 3307 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–435, title VIII, § 805, Dec. 20, 2006, 120 Stat. 3253, provided that:

"(a) IN GENERAL.—Except as provided under subsection (b), this title [see Short Title of 2006 Amendment note set out under section 101 of this title] shall take effect on October 1, 2006.

"(b) TERMINATION OF EMPLOYER CONTRIBUTION.—The amendment made by paragraph (1) of section 802(a) [amending this section] shall take effect on the first day of the first pay period beginning on or after October 1, 2006."

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–18, § 4, Apr. 23, 2003, 117 Stat. 630, provided that: "This Act [see section 1 of Pub. L. 108–18, set out as a Short Title of 2003 Amendments note under section 101 of this title] and the amendments made by this Act shall become effective on the date of the enactment of this Act [Apr. 23, 2003], except that the amendments made by section 2(b) [amending this section] shall apply with respect to pay periods beginning on or after such date."

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–107 applicable only to separations from service as an employee of the United States on or after Dec. 28, 2001, see section 1132(c) of Pub. L. 107–107, set out as a note under section 8332 of this title.

EFFECTIVE DATE OF 2000 AMENDMENTS

Amendment by Pub. L. 106–553 effective on the first day of the first applicable pay period that begins on Dec. 21, 2000, and applicable only to an individual who is employed as a member of the Supreme Court Police after Dec. 21, 2000, see section 1(a)(2) [title III, § 308(i), (j)] of Pub. L. 106–553, set out in a Supreme Court Police Retirement note under section 8331 of this title.

Pub. L. 106–346, § 101(a) [title V, § 505(i)], Oct. 23, 2000, 114 Stat. 1356, 1356A–54, provided that: "The amendments made by this section [amending this section, section 8422 of this title, sections 4045, 4071c, and 4071e of Title 22, Foreign Relations and Intercourse, and section 2082 of Title 50, War and National Defense, enacting provisions set out as notes under this section, section 4045 of Title 22, and section 2021 of Title 50, and amending provisions set out as notes under section 4045 of Title 22 and section 2021 of Title 50] shall take effect upon the close of calendar year 2000, and shall apply thereafter."

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–261 effective at the beginning of the first pay period that begins after Oct. 17,

1998, and applicable only to an individual who is employed as a nuclear materials courier, as defined by section 8331(27) or 8401(33) of this title, after Oct. 17, 1998, see section 3154(m), (n) of Pub. L. 105–261, set out as a note under section 8331 of this title.

EFFECTIVE DATE OF 1997 AMENDMENTS

Section 516(b) of Pub. L. 105–61 provided that: ''The amendments made by subsection (a) [amending this section and sections 8337, 8339, 8341, 8343a, 8344, 8415, 8422, and 8468 of this title] shall be applicable to any annuity commencing before, on, or after the date of enactment of this Act [Oct. 10, 1997], and shall be effective with regard to any payment made after the first month following the date of enactment.''

Section 7001(f) of Pub. L. 105–33 provided that:

''(1) IN GENERAL.—This section [amending this section, section 8422 of this title, sections 4045, 4071c, and 4071e of Title 22, Foreign Relations and Intercourse, and section 2082 of Title 50, War and National Defense, and enacting provisions set out as notes under this section, section 8422 of this title, sections 4045 and 4071c of Title 22, and section 2021 of Title 50] shall take effect on—

''(A) October 1, 1997; or

''(B) if later, the date of enactment of this Act [Aug. 5, 1997].

''(2) SPECIAL RULE.—If the date of enactment of this Act is later than October 1, 1997, then any reference to October 1, 1997, in subsection (a)(1), (c)(1), or (d)(1) shall be treated as a reference to the date of enactment of this Act.''

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 an Effective Date 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 magistrate judges who retire on or after Nov. 15, 1988, with exception for judges and magistrate judges retiring on or after July 31, 1987, see section 9 of Pub. L. 100–659, as amended, 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.

CONTRIBUTIONS TO FEDERAL CIVIL SERVICE RETIREMENT SYSTEM

Pub. L. 106–346, § 101(a) [title V, § 505(f)], Oct. 23, 2000, 114 Stat. 1356, 1356A–54, provided that: ''Notwithstanding section 8334(a)(1) or (k)(1) of title 5, United States Code, during the period beginning on October 1, 2002, through December 31, 2002, each employing agency (other than the United States Postal Service or the Metropolitan Washington Airports Authority) shall contribute—

''(1) 7.5 percent of the basic pay of an employee;

''(2) 8 percent of the basic pay of a congressional employee, a law enforcement officer, a member of the Capitol Police, a firefighter, or a nuclear materials courier; and

''(3) 8.5 percent of the basic pay of a Member of Congress, a Court of Federal Claims judge, a United States magistrate [now United States magistrate judge], a judge of the United States Court of Appeals for the Armed Forces, or a bankruptcy judge,

in lieu of the agency contributions otherwise required under section 8334(a)(1) of such title 5.''

Pub. L. 105–261, div. C, title XXXI, § 3154(c)(3), Oct. 17, 1998, 112 Stat. 2255, provided that: ''Notwithstanding subsection (a)(1) or (k)(1) of section 8334 of title 5, United States Code, or section 7001(a) of Public Law 105–33 [set out as a note below], during the period beginning on the effective date provided for under subsection (n)(1) [set out as an Effective Date of 1998 Amendment note under section 8331 of this title] and ending on September 30, 2002, the Department of Energy shall deposit in the Treasury of the United States to the credit of the Civil Service Retirement and Disability Fund on behalf of each nuclear materials courier from whose basic pay a deduction is made under such subsection (a)(1) during that period an amount equal to 9.01 percent of such basic pay, in lieu of the agency contributions otherwise required under such subsection (a)(1) during that period.''

Section 7001(a)(1), (2) of Pub. L. 105–33 provided that:

''(1) AGENCY CONTRIBUTIONS.—

''(A) IN GENERAL.—Notwithstanding section 8334(a)(1) or (k)(1) of title 5, United States Code, during the period beginning on October 1, 1997, through September 30, 2002, each employing agency (other than the United States Postal Service or the Metropolitan Washington Airports Authority) shall contribute—

''(i) 8.51 percent of the basic pay of an employee;

''(ii) 9.01 percent of the basic pay of a congressional employee, a law enforcement officer, a member of the Capitol police, or a firefighter; and

''(iii) 9.51 percent of the basic pay of a Member of Congress, a Court of Federal Claims judge, a United States magistrate [now United States magistrate judge], a judge of the United States Court of Appeals for the Armed Forces, or a bankruptcy judge;

in lieu of the agency contributions otherwise required under section 8334(a)(1) of title 5, United States Code.

''(B) APPLICATION.—For purposes of subparagraph (A) and notwithstanding the amendments made by paragraph (3) [amending this section], during the period beginning on January 1, 1999 through December 31, 2002, with respect to the United States Postal Service and the Metropolitan Washington Airports Authority, the agency contribution shall be determined as though those amendments had not been made.

''(2) NO REDUCTION IN AGENCY CONTRIBUTIONS BY THE POSTAL SERVICE.—Contributions by the Treasury of the United States or the United States Postal Service under section 8348(g), (h), or (m) of title 5, United States Code—

''(A) shall not be reduced as a result of the amendments made under paragraph (3) of this subsection; and

''(B) shall be computed as though such amendments had not been enacted.''

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 Dis-

ability 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.]).''

[For transfer of the functions, personnel, assets, and obligations of the United States Secret Service, including the functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 381, 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.]

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.

## § 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 or completes the age and service requirements for an annuity under section 8336(e), whichever occurs later. 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. For purposes of this subsection, the term ''air traffic controller'' or ''controller'' has the meaning given to it under section 8331(29)(A).[1]

(b)(1) A law enforcement officer, firefighter, nuclear materials courier, or customs and border protection 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, firefighter, or courier, as the case may be, 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.

(2) In the case of employees of the Federal Bureau of Investigation, the second sentence of paragraph (1) shall be applied by substituting ''65 years of age'' for ''60 years of age''. The authority to grant exemptions in accordance with the preceding sentence shall cease to be available after December 31, 2011.

(c) 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.

(d) A member of the Supreme Court Police who is otherwise eligible for immediate retirement under section 8336(n) shall be separated from the service on the last day of the month in

[1] See References in Text note below.

which such member becomes 57 years of age or completes 20 years of service if then over that age. The Marshal of the Supreme Court of the United States, when in his 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 Marshal 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.

(f)[2] The President, by Executive order, may exempt an employee (other than a member of the Capitol Police or the Supreme Court 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; Pub. L. 105–261, div. C, title XXXI, § 3154(d), Oct. 17, 1998, 112 Stat. 2255; Pub. L. 106–553, § 1(a)(2) [title III, § 308(b)(2)], Dec. 21, 2000, 114 Stat. 2762, 2762A–87; Pub. L. 106–554, § 1(a)(4) [div. B, title I, § 141(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–235; Pub. L. 107–27, § 2(a), Aug. 20, 2001, 115 Stat. 207; Pub. L. 107–67, title VI, § 640(a), Nov. 12, 2001, 115 Stat. 554; Pub. L. 108–7, div. J, title VI, § 648(a), Feb. 20, 2003, 117 Stat. 474; Pub. L. 108–176, title II, § 226(a)(3)(A), Dec. 12, 2003, 117 Stat. 2529; Pub. L. 108–447, div. B, title I, § 112(a), Dec. 8, 2004, 118 Stat. 2868; Pub. L. 108–458, title II, § 2005(a), Dec. 17, 2004, 118 Stat. 3704; Pub. L. 110–161, div. E, title V, § 535(a)(3), Dec. 26, 2007, 121 Stat. 2075; Pub. L. 111–259, title IV, § 444(a), Oct. 7, 2010, 124 Stat. 2733.)

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.<br>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.

Section 8331(29)(A), referred to in subsec. (a), was redesignated as section 8331(30)(A) by Pub. L. 110–161, div. E, title V, § 535(a)(1)(A), Dec. 26, 2007, 121 Stat. 2075.

AMENDMENTS

2010—Subsec. (b)(2). Pub. L. 111–259, § 444(a)(2), struck out par. (2) added by section 2005(a)(2) of Pub. L. 108–458 which read as follows: "In the case of employees of the Federal Bureau of Investigation, the second sentence of paragraph (1) shall be applied by substituting '65 years of age' for '60 years of age'. The Federal Bureau of Investigation may not grant more than 50 exemptions in any fiscal year in accordance with the preceding sentence, and the authority to grant such exemptions shall cease to be available after September 30, 2007."

Pub. L. 111–259, § 444(a)(1), amended par. (2) relating to employees of the Federal Bureau of Investigation and providing that authority to grant exemptions shall cease to be available after Dec. 31, 2009, by substituting "2011" for "2009".

2007—Subsec. (b)(1). Pub. L. 110–161 substituted "nuclear materials courier, or customs and border protection officer" for "or nuclear materials courier" in first sentence.

2004—Subsec. (b). Pub. L. 108–447, § 112(a)(1), and Pub. L. 108–458, § 2005(a)(1), amended subsec. (b) identically, designating existing provisions as par. (1).

Subsec. (b)(2). Pub. L. 108–458, § 2005(a)(2), added par. (2) relating to employees of the Federal Bureau of Investigation, limiting number of exemptions to 50 per fiscal year, and providing that authority to grant such exemptions shall cease to be available after Sept. 30, 2007.

Pub. L. 108–447, § 112(a)(2), added par. (2) relating to employees of the Federal Bureau of Investigation and providing that authority to grant exemptions shall cease to be available after Dec. 31, 2009.

2003—Subsec. (a). Pub. L. 108–176 inserted at end "For purposes of this subsection, the term 'air traffic controller' or 'controller' has the meaning given to it under section 8331(29)(A)."

Pub. L. 108–7 substituted "8336(e)" for "8336".

2001—Subsec. (a). Pub. L. 107–67 inserted before period at end of first sentence "or completes the age and service requirements for an annuity under section 8336, whichever occurs later".

Subsec. (b). Pub. L. 107–27 struck out first sentence which read "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." and, in second sentence, inserted ", firefighter," after "law enforcement officer" and "that officer".

2000—Subsec. (c). Pub. L. 106–554 redesignated subsec. (d) as (c) and struck out former subsec. (c) which read as follows: "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."

Subsec. (d). Pub. L. 106–554, § 1(a)(4) [div. B, title I, § 141(a)(2)], redesignated subsec. (e) as (d). Former subsec. (d) redesignated (c).

Subsec. (e). Pub. L. 106–554, § 1(a)(4) [div. B, title I, § 141(a)(2)], redesignated subsec. (e) as (d).

Pub. L. 106–553, § 1(a)(2) [title III, § 308(b)(2)(A)], added subsec. (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 106–553 redesignated subsec. (e) as (f) and substituted "Police or the Supreme Court Police)" for "Police)".

1998—Subsec. (b). Pub. L. 105–261, in second sentence, inserted "or nuclear materials courier" after "law enforcement officer" and "or courier, as the case may be," after "that officer".

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

[2] So in original. Probably should be "(e)".

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 2007 AMENDMENT; TRANSITION RULES

Amendment by Pub. L. 110–161 effective on the later of June 30, 2008, or the first day of the first pay period beginning at least 6 months after Dec. 26, 2007, with transition rules and rights of election, see section 535(e) of Pub. L. 110–161, set out as a note under section 3307 of this title.

EFFECTIVE DATE OF 2003 AMENDMENTS

Amendment by Pub. L. 108–176 effective on 60th day after Dec. 12, 2003, and applicable with respect to any annuity entitlement based on an individual's separation from service occurring on or after such effective date, and any service performed by any such individual before, on, or after such effective date, subject to special rule relating to deposit requirement, see section 226(c) of Pub. L. 108–176, set out as a note under section 8401 of this title.

Pub. L. 108–7, div. J, title VI, § 648(b), Feb. 20, 2003, 117 Stat. 474, provided that: ''The amendment made by subsection (a) [amending this section] shall be effective as of January 1, 2003.''

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–67, title VI, § 640(b), Nov. 12, 2001, 115 Stat. 554, provided that: ''The amendment made by subsection (a) [amending this section] takes effect on the date of enactment [Nov. 12, 2001] with regard to any individual subject to chapter 83 of title 5, United States Code, who is employed as an air traffic controller on that date.''

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–553 effective on the first day of the first applicable pay period that begins on Dec. 21, 2000, and applicable only to an individual who is employed as a member of the Supreme Court Police after Dec. 21, 2000, see section 1(a)(2) [title III, § 308(i), (j)] of Pub. L. 106–553, set out in a Supreme Court Police Retirement note under section 8331 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–261 effective 1 year after Oct. 17, 1998, and applicable only to an individual who is employed as a nuclear materials courier, as defined by section 8331(27) or 8401(33) of this title, after Oct. 17, 1998, see section 3154(m), (n) of Pub. L. 105–261, set out as a note under section 8331 of this title.

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.

EXEMPTION PROCESS TO DELAY MANDATORY RETIREMENT FOR AIR TRAFFIC CONTROLLERS

Pub. L. 108–199, div. F, title I, Jan. 23, 2004, 118 Stat. 282, provided in part: ''That not later than March 1,

2004, the Secretary of Transportation, in consultation with the Administrator of the Federal Aviation Administration, shall issue final regulations, pursuant to 5 U.S.C. 8335, establishing an exemption process allowing individual air traffic controllers to delay mandatory retirement until the employee reaches no later than 61 years of age''.

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].''

### § 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, firefighter, nuclear materials courier, or customs and border protection officer, 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)(A) has been employed continuously, by the agency in which the employee is serving, for at least the 31-day period ending on the date on which such agency requests the determination referred to in subparagraph (D);

(B) is serving under an appointment that is not time limited;

(C) has not been duly notified that such employee is to be involuntarily separated for misconduct or unacceptable performance;

(D) is separated from the service voluntarily during a period in which, as determined by the office[1] of Personnel Management (upon request of the agency) under regulations prescribed by the Office—

(i) such agency (or, if applicable, the component in which the employee is serving) is undergoing substantial delayering, substantial reorganization, substantial reductions in force, substantial transfer of function, or other substantial workforce restructuring (or shaping);

(ii) a significant percentage of employees servicing[2] in such agency (or component) are likely to be separated or subject to an immediate reduction in the rate of basic pay (without regard to subchapter VI of chapter 53, or comparable provisions); or

(iii) identified as being in positions which are becoming surplus or excess to the agency's future ability to carry out its mission effectively; and

(E) as determined by the agency under regulations prescribed by the Office, is within the scope of the offer of voluntary early retirement, which may be made on the basis of—

(i) 1 or more organizational units;

(ii) 1 or more occupational series or levels;

(iii) 1 or more geographical locations;

(iv) specific periods;

(v) skills, knowledge, or other factors related to a position; or

(vi) any appropriate combination of such factors;

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 de-

[1] So in original. Probably should be capitalized.

[2] So in original. Probably should be ''serving''.

linquency, 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 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);[3] 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 judge, 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 judge, 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 as a law enforcement officer, or as a customs and border protection officer, or any combination of such service totaling at least 20 years, is entitled to an annuity.

(n) A member of the Supreme Court Police who is separated from the service after becoming 50 years of age and completing 20 years of service as a member of the Supreme Court Police as a law enforcement officer, or as a customs and border protection officer, or any combination of such service totaling at least 20 years, is entitled to an annuity.

(*o*) An annuity or reduced annuity authorized by this section is computed under section 8339 of this title.

(p)(1) The Secretary of Defense may, during fiscal years 2002 and 2003, carry out a program under which an employee of the Department of Defense may be separated from the service entitled to an immediate annuity under this subchapter if the employee—

(A) has—

(i) completed 25 years of service; or

(ii) become 50 years of age and completed 20 years of service; and

(B) is eligible for the annuity under paragraph (2) or (3).

(2)(A) For the purposes of paragraph (1), an employee referred to in that paragraph is eligible for an immediate annuity under this paragraph if the employee—

(i) is separated from the service involuntarily other than for cause; and

(ii) has not declined a reasonable offer of another position in the Department of Defense 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.

(B) For the purposes of paragraph (2)(A)(i), a 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 may not be considered to be a removal for cause.

(3) For the purposes of paragraph (1), an employee referred to in that paragraph is eligible for an immediate annuity under this paragraph if the employee satisfies all of the following conditions:

(A) The employee is separated from the service voluntarily during a period in which the organization within the Department of Defense in which the employee is serving is undergoing a major organizational adjustment.

(B) The employee has been employed continuously by the Department of Defense for more than 30 days before the date on which the head of the employee's organization re-

[3] See References in Text note below.

quests the determinations required under subparagraph (A).

(C) The employee is serving under an appointment that is not limited by time.

(D) The employee is not in receipt of a decision notice of involuntary separation for misconduct or unacceptable performance.

(E) The employee is within the scope of an offer of voluntary early retirement, as defined on the basis of one or more of the following objective criteria:

(i) One or more organizational units.

(ii) One or more occupational groups, series, or levels.

(iii) One or more geographical locations.

(iv) Any other similar objective and nonpersonal criteria that the Office of Personnel Management determines appropriate.

(4) Under regulations prescribed by the Office of Personnel Management, the determinations of whether an employee meets—

(A) the requirements of subparagraph (A) of paragraph (3) shall be made by the Office, upon the request of the Secretary of Defense; and

(B) the requirements of subparagraph (E) of such paragraph shall be made by the Secretary of Defense.

(5) A determination of which employees are within the scope of an offer of early retirement shall be made only on the basis of consistent and well-documented application of the relevant criteria.

(6) In this subsection, the term ''major organizational adjustment'' means any of the following:

(A) A major reorganization.

(B) A major reduction in force.

(C) A major transfer of function.

(D) A workforce restructuring—

(i) to meet mission needs;

(ii) to achieve one or more reductions in strength;

(iii) to correct skill imbalances; or

(iv) to reduce the number of high-grade, managerial, supervisory, or similar positions.

(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), 321, Dec. 1, 1990, 104 Stat. 5110, 5117; 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; Pub. L. 105–261, div. A, title XI, § 1109(a), div. C, title XXXI, § 3154(e), Oct. 17, 1998, 112 Stat. 2143, 2255; Pub. L. 106–58, title VI, § 651(b), Sept. 29, 1999, 113 Stat. 480; Pub. L. 106–398, § 1 [[div. A], title XI, § 1152(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–320; Pub. L. 106–553, § 1(a)(2) [title III, § 308(b)(3)], Dec. 21, 2000, 114 Stat. 2762, 2762A–87; Pub. L. 107–107, div. A, title X, § 1048(i)(5), Dec. 28, 2001, 115 Stat. 1229; Pub. L. 107–296, title XIII, §§ 1313(b)(1), 1321(a)(4)(A), Nov. 25, 2002, 116 Stat. 2294, 2297; Pub. L. 110–161, div. E, title V, § 535(a)(4), Dec. 26, 2007, 121 Stat. 2075.)

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.<br>July 7, 1960, Pub. L. 86–604, § 1(b), 74 Stat. 358.<br>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. 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

2007—Subsec. (c)(1). Pub. L. 110–161, § 535(a)(4)(A), substituted ''nuclear materials courier, or customs and border protection officer'' for ''or nuclear materials courier''.

Subsecs. (m), (n). Pub. L. 110–161, § 535(a)(4)(B), substituted ''as a law enforcement officer, or as a customs and border protection officer,'' for ''or as a law enforcement officer,''.

2002—Subsec. (d)(2). Pub. L. 107–296, § 1313(b)(1), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''except in the case of an employee who is separated from the service under a program carried out under subsection (p), 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);''.

Subsec. (h)(1). Pub. L. 107–296, § 1321(a)(4)(A), struck out ''for failure to be recertified as a senior executive under section 3393a or'' before ''for less than''.

2001—Subsec. (d)(2). Pub. L. 107–107, § 1048(i)(5)(A), substituted ''subsection (p)'' for ''subsection (*o*)'' in introductory provisions.

Subsecs. (*o*), (p). Pub. L. 107–107, § 1048(i)(5)(B), redesignated subsec. (*o*), relating to Department of Defense employees, as (p).

2000—Subsec. (d)(2). Pub. L. 106–398, § 1 [[div. A], title XI, § 1152(a)(1)], inserted ''except in the case of an employee who is separated from the service under a program carried out under subsection (*o*),'' before ''while serving'' in introductory provisions.

Subsec. (n). Pub. L. 106–553 added subsec. (n). Former subsec. (n), relating to computation of annuity under section 8339 of this title, redesignated (*o*).

Subsec. (*o*). Pub. L. 106–553 redesignated subsec. (n), relating to computation of annuity under section 8339 of this title, as (*o*).

Pub. L. 106–398, § 1 [[div. A], title XI, § 1152(a)(2)], added subsec. (*o*) relating to Department of Defense employees.

1999—Subsecs. (d)(2), (*o*). Pub. L. 106–58 repealed Pub. L. 105–261, § 1109(a). See 1998 Amendment notes below.

1998—Subsec. (c)(1). Pub. L. 105–261, § 3154(e), substituted '', firefighter, or nuclear materials courier'' for ''or firefighter''.

Subsec. (d)(2). Pub. L. 105–261, § 1109(a)(1), which directed insertion of ''except in the case of an employee described in subsection (*o*)(1),'' after ''(2)'', was repealed by Pub. L. 106–58.

Subsec. (*o*). Pub. L. 105–261, § 1109(a)(2), which directed addition of subsec. (*o*), relating to authority of Department of Defense to offer employees voluntary early retirement, was repealed by Pub. L. 106–58.

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

''United States magistrate judge'' substituted for ''United States magistrate'' wherever appearing in sub-

sec. (k) 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 2007 AMENDMENT; TRANSITION RULES

Amendment by Pub. L. 110–161 effective on the later of June 30, 2008, or the first day of the first pay period beginning at least 6 months after Dec. 26, 2007, with transition rules and rights of election, see section 535(e) of Pub. L. 110–161, set out as a note under section 3307 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–553 effective on the first day of the first applicable pay period that begins on Dec. 21, 2000, and applicable only to an individual who is employed as a member of the Supreme Court Police after Dec. 21, 2000, see section 1(a)(2) [title III, § 308(i), (j)] of Pub. L. 106–553, set out in a Supreme Court Police Retirement note under section 8331 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–261, div. A, title XI, § 1109(d), Oct. 17, 1998, 112 Stat. 2145, as amended by Pub. L. 106–65, div. A, title XI, § 1101, Oct. 5, 1999, 113 Stat. 775, which provided that the amendments made by section 1109 of Pub. L. 105–261 (amending this section and sections 8339, 8414, and 8464 of this title) were to be effective Oct. 1, 2000, and applicable with respect to an approval for voluntary early retirement made on or after that date, was repealed by Pub. L. 106–58, title VI, § 651(b), Sept. 29, 1999, 113 Stat. 480.

Amendment by section 3154(e) of Pub. L. 105–261 effective at the beginning of the first pay period that begins after Oct. 17, 1998, and applicable only to an individual who is employed as a nuclear materials courier, as defined by section 8331(27) or 8401(33) of this title, after Oct. 17, 1998, see section 3154(m), (n) of Pub. L. 105–261, set out as a note under section 8331 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 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 3393 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 1621 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.

REGULATIONS

Pub. L. 107–296, title XIII, § 1313(b)(5), Nov. 25, 2002, 116 Stat. 2296, provided that: ''The Office of Personnel Management may prescribe regulations to carry out this subsection [amending this section and section 8414 of this title, enacting provisions set out as notes under this section, and repealing provisions set out as notes under this section and section 8414 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 2101 and 2201 to 2203(a) of Pub. L. 96–70, title II, Sept. 27, 1979, 93 Stat. 493, formerly classified to

sections 3831 and 3841 to 3843, respectively, of Title 22, Foreign Relations and Intercourse.

GOVERNMENT ACCOUNTABILITY OFFICE: VOLUNTARY EARLY RETIREMENT

Pub. L. 107–296, title XIII, § 1313(b)(3), Nov. 25, 2002, 116 Stat. 2296, provided that: ''The amendments made by this subsection [amending this section and section 8414 of this title and repealing provisions set out as notes under this section and section 8414 of this title] shall not be construed to affect the authority under section 1 of Public Law 106–303 (5 U.S.C. 8336 note; 114 State. 1063).''

Pub. L. 106–303, § 1, Oct. 13, 2000, 114 Stat. 1063, as amended by Pub. L. 108–271, §§ 2(a), (b)(1), 8(b), July 7, 2004, 118 Stat. 811, 814, provided that:

''(a) CIVIL SERVICE RETIREMENT SYSTEM.—Effective October 13, 2000, paragraph (2) of section 8336(d) of title 5, United States Code, shall, with respect to officers and employees of the Government Accountability Office, be applied as if it had been amended to read as follows:

'' '(2)(A) has been employed continuously by the Government Accountability Office for at least the 31-day period immediately preceding the start of the period referred to in subparagraph (D);

'' '(B) is serving under an appointment that is not time limited;

'' '(C) has not received a notice of involuntary separation, for misconduct or unacceptable performance, with respect to which final action remains pending; and

'' '(D) is separated from the service voluntarily during a period with respect to which the Comptroller General determines that the application of this subsection is necessary and appropriate for the purpose of—

'' '(i) realigning the Government Accountability Office's workforce in order to meet budgetary constraints or mission needs;

'' '(ii) correcting skill imbalances; or

'' '(iii) reducing high-grade, managerial, or supervisory positions;'.

''(b) FEDERAL EMPLOYEES' RETIREMENT SYSTEM.—Effective October 13, 2000, subparagraph (B) of section 8414(b)(1) of title 5, United States Code, shall, with respect to officers and employees of the Government Accountability Office, be applied as if it had been amended to read as follows:

'' '(B)(i) has been employed continuously by the Government Accountability Office for at least the 31-day period immediately preceding the start of the period referred to in clause (iv);

'' '(ii) is serving under an appointment that is not time limited;

'' '(iii) has not received a notice of involuntary separation, for misconduct or unacceptable performance, with respect to which final action remains pending; and

'' '(iv) is separated from the service voluntarily during a period with respect to which the Comptroller General determines that the application of this subsection is necessary and appropriate for the purpose of—

'' '(I) realigning the Government Accountability Office's workforce in order to meet budgetary constraints or mission needs;

'' '(II) correcting skill imbalances; or

'' '(III) reducing high-grade, managerial, or supervisory positions;'.

''(c) NUMERICAL LIMITATION.—Not to exceed 10 percent of the Government Accountability Office's workforce (as of the start of a fiscal year) shall be permitted to take voluntary early retirement in such fiscal year pursuant to this section.

''(d) REGULATIONS.—The Comptroller General shall prescribe any regulations necessary to carry out this section, including regulations under which an early retirement offer may be made to any employee or group of employees based on—

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

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

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

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

APPLICATION OF SUBSECTION (d)(2)

Pub. L. 105–174, title III, § 7001(a), May 1, 1998, 112 Stat. 91, as amended by Pub. L. 106–58, title VI, § 651(a), Sept. 29, 1999, 113 Stat. 480, which provided that, effective May 1, 1998, subsec. (d)(2) of this section was to be applied as if it read as specified in Pub. L. 105–174, § 7001(a), was repealed by Pub. L. 107–296, title XIII, § 1313(b)(4), Nov. 25, 2002, 116 Stat. 2296.

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.''

## § 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 serv-

ice 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) through (e), (n), (q), (r), or (s).

(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 Member 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 in which he is subject to 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 or section 10216 of title 10 who, as a condition of the employment, is required under section 709(b) of title 32 or section 10216 of title 10, respectively, to be a member of the Selected Reserve.

(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 or section 10216 of title 10 by reason of a disability that disqualifies the individual from membership in the Selected Reserve;

(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 or section 10216 of title 10.

(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; Pub. L. 105–61, title V, § 516(a)(2), Oct. 10, 1997, 111 Stat. 1306; Pub. L. 106–65, div. A, title V, § 522(d), Oct. 5, 1999, 113 Stat. 597; Pub. L. 106–553, § 1(a)(2) [title III, § 308(h)(1)], Dec. 21, 2000, 114 Stat. 2762, 2762A–88.)

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.<br>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

2000—Subsec. (a). Pub. L. 106–553 substituted "8339(a) through (e), (n), (q), (r), or (s)" for "8339(a)–(e), (n), (q), or (r)" in last sentence.

1999—Subsec. (h)(1). Pub. L. 106–65, § 522(d)(1), inserted "or section 10216 of title 10" after "title 32" and substituted "title 32 or section 10216 of title 10, respectively, to be a member of the Selected Reserve." for "such title to be a member of the National Guard and to hold a specified military grade."

Subsec. (h)(2)(A)(i). Pub. L. 106–65, § 522(d)(2), inserted "or section 10216 of title 10" after "title 32" and substituted "Selected Reserve" for "National Guard or from holding the military grade required for such employment".

Subsec. (h)(3)(C). Pub. L. 106–65, § 522(d)(3), inserted "or section 10216 of title 10" after "title 32".

1997—Subsec. (a). Pub. L. 105–61 substituted "(q), or (r)" for "or (q)".

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 2000 AMENDMENT

Amendment by Pub. L. 106–553 effective on the first day of the first applicable pay period that begins on Dec. 21, 2000, and applicable only to an individual who is employed as a member of the Supreme Court Police after Dec. 21, 2000, see section 1(a)(2) [title III, § 308(i), (j)] of Pub. L. 106–553, set out in a Supreme Court Police Retirement note under section 8331 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–61 applicable to any annuity commencing before, on, or after Oct. 10, 1997, and effective with regard to any payment made after the first month following Oct. 10, 1997, see section 516(b) of Pub. L. 105–61, set out as a note under section 8334 of this title.

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.

## § 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.<br>July 7, 1960, Pub. L. 86–604, § 1(c), 74 Stat. 358.<br>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.''

## § 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) through (e), (n), (q), (r), and (s) 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) through (c), (n), (q), (r), or (s) 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), (q), (r), or (s), 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 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), (q), (r), or (s), 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), (j), or (*o*) of this title is reduced by ⅙ of 1 percent for each full month the employee is under 55 years of age at the date of separation. 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 ⅙ 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 ⅙ 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), (q), (r), or (s), 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), (q), (r), and (s) (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 ac-

cordance 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), (q), (r), and (s) (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), (q), (r), and (s) 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), (q), and (r), 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), (q), (r), and (s); 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 para-

graph (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), (q), and (r), 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), (q), (r), and (s) 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), (q), and (r), 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), (q), (r), and (s) 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) through (e), (n), (q), (r), and (s), 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 eligibility 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 judge 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 judge, 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.

(3) In the administration of paragraph (1)—

(A) subparagraph (A) of such paragraph shall apply with respect to service performed before, on, or after April 7, 1986; and

(B) subparagraph (B) of such paragraph—

(i) shall apply with respect to that portion of any annuity which is attributable to service performed on or after April 7, 1986; and

(ii) shall not apply with respect to that portion of any annuity which is attributable to service performed before April 7, 1986.

(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(c) 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.

(r) The annuity of a member of the Supreme Court Police, or former member of the Supreme Court Police, retiring under this subchapter is computed in accordance with subsection (d).

(s)[1] The annuity of a Member who has served in a position in the executive branch for which the rate of basic pay was reduced for the duration of the service of the Member in that position to remove the impediment to the appointment of the Member imposed by article I, section 6, clause 2 of the Constitution, shall, subject to a deposit in the Fund as provided under section 8334(m), be computed as though the rate of basic pay which would otherwise have been in effect during that period of service had been in effect.

(s)(1)[1] For purposes of this subsection, the term ''physicians comparability allowance'' refers to an amount described in section 8331(3)(H).

(2) Except as otherwise provided in this subsection, no part of a physicians comparability allowance shall be treated as basic pay for purposes of any computation under this section unless, before the date of the separation on which entitlement to annuity is based, the separating individual has completed at least 15 years of service as a Government physician (whether performed before, on, or after the date of the enactment of this subsection).

(3) If the condition under paragraph (2) is met, then, any amounts received by the individual in the form of a physicians comparability allowance shall (for the purposes referred to in paragraph (2)) be treated as basic pay, but only to the extent that such amounts are attributable to service performed on or after the date of the enactment of this subsection, and only to the extent of the percentage allowable, which shall be determined as follows:

| If the total amount of service performed, on or after the date of | Then, the percent- |
|---|---|

[1] So in original. Two subsecs. (s) have been enacted.

| the enactment of this subsection, as a Government physician is: | age allowable is: |
|---|---|
| Less than 2 years | 0 |
| At least 2 but less than 4 years | 25 |
| At least 4 but less than 6 years | 50 |
| At least 6 but less than 8 years | 75 |
| At least 8 years | 100. |

(4) Notwithstanding any other provision of this subsection, 100 percent of all amounts received as a physicians comparability allowance shall, to the extent attributable to service performed on or after the date of the enactment of this subsection, be treated as basic pay (without regard to any of the preceding provisions of this subsection) for purposes of computing—

(A) an annuity under subsection (g); and

(B) a survivor annuity under section 8341, if based on the service of an individual who dies before separating from service.

(u)[2] The annuity of an employee retiring under this subchapter with service credited under section 8332(b)(17) shall be reduced by the amount necessary to ensure that the present value of the annuity payable to the employee is actuarially equivalent to the present value of the annuity that would be payable to the employee under this subchapter if it were computed—

(1) on the basis of service that does not include service credited under section 8332(b)(17); and

(2) assuming the employee separated from service on the actual date of the separation of the employee.

The amount of the reduction shall be computed under regulations prescribed by the Office of Personnel Management for the administration of this subsection.

(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), 321, Dec. 1, 1990, 104 Stat. 5110, 5117; 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; Pub. L. 104–106, div. A, title XV, § 1505(b)(3), Feb. 10, 1996, 110 Stat. 514; Pub. L. 105–61, title V, § 516(a)(3), Oct. 10, 1997, 111 Stat. 1306; Pub. L. 105–261, div. A, title XI, § 1109(c)(1), Oct. 17, 1998, 112 Stat. 2145; Pub. L. 106–58, title VI, § 651(b), Sept. 29, 1999, 113 Stat. 480; Pub. L. 106–398, § 1 [[div. A], title X, § 1087(f)(4), title XI, § 1152(c)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–293, 1654A–322; Pub. L. 106–553, § 1(a)(2) [title III, § 308(b)(4), (h)(2)–(6)], Dec. 21, 2000, 114 Stat. 2762, 2762A–87 to 2762A–89; Pub. L. 106–554, § 1(a)(4) [div. B, title I, § 141(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–235; Pub. L. 106–571, § 3(b)(1), Dec. 28, 2000, 114 Stat. 3055; Pub. L. 107–107, div. A, title XI, § 1132(a)(3), Dec. 28, 2001, 115 Stat. 1243; Pub. L. 107–296, title XIII, § 1321(a)(4)(B), Nov. 25, 2002, 116 Stat. 2297; Pub. L. 111–84, div. A, title XIX, § 1903(a), Oct. 28, 2009, 123 Stat. 2616.)

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.<br>July 7, 1960, Pub. L. 86–604, § 1(d), (e), 74 Stat. 358.<br>July 12, 1960, Pub. L. 86–622, § 2(b), 74 Stat. 410.<br>Oct. 4, 1961, Pub. L. 87–350, § 6, 75 Stat. 772.<br>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

[2] So in original. No subsec. (t) has been enacted.

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. |

REFERENCES IN TEXT

The date of the enactment of this subsection, referred to in subsec. (s), is the date of enactment of Pub. L. 106–571, which was approved Dec. 28, 2000.

AMENDMENTS

2009—Subsec. (p)(3). Pub. L. 111–84 added par. (3).

2002—Subsec. (h). Pub. L. 107–296 struck out before period at end of first sentence ‘‘, 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’’.

2001—Subsec. (u). Pub. L. 107–107 added subsec. (u).

2000—Subsec. (f). Pub. L. 106–553, § 1(a)(2) [title III, § 308(h)(2)], substituted ‘‘subsections (a) through (e), (n), (q), (r), and (s)’’ for ‘‘subsections (a)–(e), (n), (q), and (r)’’ in introductory provisions.

Subsec. (g). Pub. L. 106–553, § 1(a)(2) [title III, § 308(h)(3)(B)], substituted ‘‘(q), (r), or (s)’’ for ‘‘(q), or (r)’’ in two places in concluding provisions.

Pub. L. 106–398, § 1 [[div. A], title X, § 1087(f)(4)], struck out ‘‘the application of the limitation in section 5532 of this title, or’’ after ‘‘received but for’’ in concluding provisions.

Subsec. (g)(2). Pub. L. 106–553, § 1(a)(2) [title III, § 308(h)(3)(A)], substituted ‘‘subsections (a) through (c), (n), (q), (r), or (s)’’ for ‘‘subsections (a)–(c), (n), (q), or (r)’’.

Subsec. (h). Pub. L. 106–398, § 1 [[div. A], title XI, § 1152(c)(1)], substituted ‘‘(j), or (*o*)’’ for ‘‘or (j)’’ in first sentence.

Subsec. (i). Pub. L. 106–553, § 1(a)(2) [title III, § 308(h)(4)], substituted ‘‘(a)–(h), (n), (q), (r), or (s)’’ for ‘‘(a)–(h), (n), (q), and (r)’’ in introductory provisions.

Subsecs. (j), (k)(1). Pub. L. 106–553, § 1(a)(2) [title III, § 308(h)(5)], substituted ‘‘(a)–(i), (n), (q), (r), and (s)’’ for ‘‘(a)–(i), (n), (q), and (r)’’ wherever appearing.

Subsec. (*l*). Pub. L. 106–553, § 1(a)(2) [title III, § 308(h)(6)], substituted ‘‘(a)–(k), (n), (q), (r), and (s)’’ for ‘‘(a)–(k), (n), (q), and (r)’’ in introductory provisions.

Subsec. (m). Pub. L. 106–553, § 1(a)(2) [title III, § 308(h)(2)], substituted ‘‘subsections (a) through (e), (n), (q), (r), and (s)’’ for ‘‘subsections (a)–(e), (n), (q), and (r)’’.

Subsec. (q). Pub. L. 106–554 substituted ‘‘8335(c)’’ for ‘‘8335(d)’’.

Subsec. (r). Pub. L. 106–553, § 1(a)(2) [title III, § 308(b)(4)], added subsec. (r). Former subsec. (r), relating to the annuity of a Member who has served in a position in the executive branch, redesignated (s).

Subsec. (s). Pub. L. 106–571 added subsec. (s), relating to physicians comparability allowance.

Pub. L. 106–553, § 1(a)(2) [title III, § 308(b)(4)], redesignated subsec. (r), relating to computation of annuity of a Member who has served in a position in the executive branch, as (s).

1999—Subsec. (h). Pub. L. 106–58 repealed Pub. L. 105–261, § 1109(c)(1). See 1998 Amendment note below.

1998—Subsec. (h). Pub. L. 105–261, § 1109(c)(1), which directed substitution of ‘‘(j), or (*o*)’’ for ‘‘or (j)’’ in the first sentence, was repealed by Pub. L. 106–58.

1997—Subsec. (f). Pub. L. 105–61, § 516(a)(3)(A), substituted ‘‘(q), and (r)’’ for ‘‘and (q) of this section’’.

Subsec. (g). Pub. L. 105–61, § 516(a)(3)(B), substituted ‘‘(q), or (r)’’ for ‘‘or (q) of this section’’ in par. (2) and in two places in concluding provisions.

Subsecs. (i) to (m). Pub. L. 105–61, § 516(a)(3)(A), substituted ‘‘(q), and (r)’’ for ‘‘and (q)’’ and ‘‘and (q) of this section’’ wherever appearing.

Subsec. (r). Pub. L. 105–61, § 516(a)(3)(C), added subsec. (r).

1996—Subsec. (d)(7). Pub. L. 104–106 substituted ‘‘Court of Appeals for the Armed Forces’’ for ‘‘Court of Military Appeals’’.

1994—Subsec. (d)(6). Pub. L. 103–337, which directed amendment of par. (6) by substituting ‘‘Court of Appeals for the Armed Forces’’ for ‘‘Court of Military Appeals’’, could not be executed because the words ‘‘Court of Military Appeals’’ did not appear in par. (6).

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

''United States magistrate judge'' substituted for ''United States magistrate'' wherever appearing in subsec. (n) 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 2009 AMENDMENT

Pub. L. 111–84, div. A, title XIX, § 1903(b), Oct. 28, 2009, 123 Stat. 2616, provided that: ''The amendment made by subsection (a) [amending this section] shall be effective with respect to any annuity, entitlement to which is based on a separation from service occurring on or after the date of enactment of this Act [Oct. 28, 2009].''

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–107 applicable only to separations from service as an employee of the United States on or after Dec. 28, 2001, see section 1132(c) of Pub. L. 107–107, set out as a note under section 8332 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–553 effective on the first day of the first applicable pay period that begins on Dec. 21, 2000, and applicable only to an individual who is employed as a member of the Supreme Court Police after Dec. 21, 2000, see section 1(a)(2) [title III, § 308(i), (j)] of Pub. L. 106–553, set out in a Supreme Court Police Retirement note under section 8331 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–61 applicable to any annuity commencing before, on, or after Oct. 10, 1997, and effective with regard to any payment made after the first month following Oct. 10, 1997, see section 516(b) of Pub. L. 105–61, set out as a note under section 8334 of this title.

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 Fi-

nance 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, formerly 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.

## § 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 1/10 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

[1] So in original. The comma probably should not appear.

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.

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). | July 18, 1966, Pub. L. 89–504, § 507, 80 Stat. 302. |
| 8340(f) ..... | 5 App.: 2268(g). | |

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 1/10 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 1/10 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 1/10 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 1/10 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 ''1/6'', 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 1/10 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 1/10 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 section 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.

### § 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), (q), (r), and (s) 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 annu-

itant dies. This annuity and the right thereto terminate on the last day of the month before the widow or widower—

(A) dies; or

(B) except as provided in subsection (k), 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), (q), (r), and (s) 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) except as provided in subsection (k), 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.

(4) If the annuity of a child under this subchapter terminates under paragraph (3)(E) because of marriage, then, if such marriage ends, such annuity shall resume on the first day of the month in which it ends, but only if—

(A) any lump sum paid is returned to the Fund; and

(B) that individual is not otherwise ineligible for such annuity.

(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) except as provided in subsection (k), 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.

(k)(1)[1] Subsections (b)(3)(B), (d)(ii), and (h)(3)(B)(i) (to the extent that they provide for termination of a survivor annuity because of a remarriage before age 55) shall not apply if the widow, widower, or former spouse was married for at least 30 years to the individual on whose service the survivor annuity is based.

(2) A remarriage described in paragraph (1) shall not be taken into account for purposes of section 8339(j)(5)(B) or (C) or any other provision of this chapter which the Office may by regulation identify in order to carry out the purposes of this subsection.

(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; Pub. L. 104–208, div. A, title I, § 101(f) [title VI, § 633(a)(1)], Sept. 30, 1996, 110 Stat. 3009–314, 3009–362; Pub. L. 105–61, title V, §§ 516(a)(4), 518(a), Oct. 10, 1997, 111 Stat. 1306, 1307; Pub. L. 106–553, § 1(a)(2) [title III, § 308(h)(7)], Dec. 21, 2000, 114 Stat. 2762, 2762A–89.)

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.<br>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.<br>Aug. 27, 1958, Pub. L. 85–772, § 1(b), (c), 72 Stat. 930.<br>Sept. 6, 1960, Pub. L. 86–713, § 1(a), 74 Stat. 813.<br>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.<br>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

2000—Subsecs. (b)(1), (d). Pub. L. 106–553 substituted "(q), (r), and (s)" for "(q), and (r)".

1997—Subsec. (b)(1). Pub. L. 105–61, § 516(a)(4), substituted "(q), and (r)" for "and (q) of this title".

Subsec. (b)(3)(B). Pub. L. 105–61, § 518(a)(2)(A), substituted "except as provided in subsection (k), remarries" for "remarries".

Subsec. (d). Pub. L. 105–61, §§ 516(a)(4), 518(a)(2)(A), substituted "(q), and (r)" for "and (q) of this title" in introductory provisions and "except as provided in subsection (k), remarries" for "remarries" in cl. (ii).

Subsec. (h)(3)(B)(i). Pub. L. 105–61, § 518(a)(2)(B), substituted "except as provided in subsection (k), in" for "in".

Subsec. (k). Pub. L. 105–61, § 518(a)(1), added subsec. (k).

1996—Subsec. (e)(4). Pub. L. 104–208 added par. (4).

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".

[1] So in original. No subsec. (j) has been enacted.

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 2000 AMENDMENT

Amendment by Pub. L. 106–553 effective on the first day of the first applicable pay period that begins on Dec. 21, 2000, and applicable only to an individual who is employed as a member of the Supreme Court Police after Dec. 21, 2000, see section 1(a)(2) [title III, § 308(i), (j)] of Pub. L. 106–553, set out in a Supreme Court Police Retirement note under section 8331 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 516(a) of Pub. L. 105–61 applicable to any annuity commencing before, on, or after Oct. 10, 1997, and effective with regard to any payment made after the first month following Oct. 10, 1997, see section 516(b) of Pub. L. 105–61, set out as a note under section 8334 of this title.

Section 518(c) of Pub. L. 105–61 provided that: ''The amendments made by this section [amending this section and sections 8442 and 8445 of this title] shall apply with respect to remarriages occurring on or after January 1, 1995.''

EFFECTIVE DATE OF 1996 AMENDMENT

Section 101(f) [title VI, § 633(b)] of Pub. L. 104–208 provided that: ''The amendments made by subsection (a) [amending this section and sections 8443 and 8908 of this title] shall apply with respect to any termination of marriage taking effect before, on, or after the date of enactment of this Act [Sept. 30, 1996], except that benefits shall be payable only with respect to amounts accruing for periods beginning on the first day of the month beginning after the later of such termination of marriage or such date of enactment.''

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 amend-

ment [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.''

## § 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)(A) Payment of the lump-sum credit under subsection (a) may be made only if the spouse, if any, and any former spouse of the employee or Member are notified of the employee or Member's application.

(B) The Office shall prescribe regulations under which the lump-sum credit shall not be

paid without the consent of a spouse or former spouse of the employee or Member where the Office has received such additional information and documentation as the Office may require that—

(i) a court order bars payment of the lump-sum credit in order to preserve the court's ability to award an annuity under section 8341(h) or section 8345(j); or

(ii) payment of the lump-sum credit would extinguish the entitlement of the spouse or former spouse, under a court order on file with the Office, to a survivor annuity under section 8341(h) or to any portion of an annuity under section 8345(j).

(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; Pub. L. 106–361, § 3(a), Oct. 27, 2000, 114 Stat. 1402.)

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.<br>July 12, 1960, Pub. L. 86–622, § 1(a), 74 Stat. 409.<br>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. |

1967 ACT—CONTINUED

| *Section of title 5* | *Source (U.S. Code)* | *Source (Statutes at Large)* |
|---|---|---|
| | 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

2000—Subsec. (j)(1). Pub. L. 106–361 amended par. (1) generally. Prior to amendment, par. (1) read as follows: "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."

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.''

## § 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.

## § 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), (q), (r), and (s) of section 8339.

(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; Pub. L. 105–61, title V, § 516(a)(5), Oct. 10, 1997, 111 Stat. 1306; Pub. L. 106–553, § 1(a)(2) [title III, § 308(h)(5)], Dec. 21, 2000, 114 Stat. 2762, 2762A–89.)

AMENDMENTS

2000—Subsec. (c). Pub. L. 106–553 substituted ''(a)–(i), (n), (q), (r), and (s)'' for ''(a)–(i), (n), (q), and (r)''.

1997—Subsec. (c). Pub. L. 105–61, which directed the substitution of ''(q), and (r) of section 8339'' for ''and (q) of section 8339 of this title'' in section 8334a(c), was executed by making the substitution in subsec. (c) of this section to reflect the probable intent of Congress, because there is no section 8334a in this title.

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 2000 AMENDMENT

Amendment by Pub. L. 106–553 effective on the first day of the first applicable pay period that begins on Dec. 21, 2000, and applicable only to an individual who is employed as a member of the Supreme Court Police after Dec. 21, 2000, see section 1(a)(2) [title III, § 308(i), (j)] of Pub. L. 106–553, set out in a Supreme Court Police Retirement note under section 8331 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–61 applicable to any annuity commencing before, on, or after Oct. 10, 1997, and effective with regard to any payment made after the first month following Oct. 10, 1997, see section 516(b) of Pub. L. 105–61, set out as a note under section 8334 of this title.

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.

**§ 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, or 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), (q), (r), and (s) 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 increased 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 (as in effect before the repeal of that section by section 651(a) of Public Law 106–65) 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 Committee on House Oversight 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 Committee on House Oversight 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 purposes of this subsection—

(A) the term ''head of an agency'' means—

(i) the head of an Executive agency, other than the Department of Defense or the Government Accountability Office;

(ii) the head of the United States Postal Service;

(iii) the Director of the Administrative Office of the United States Courts, with respect to employees of the judicial branch; and

(iv) any employing authority described under subsection (k)(2), other than the Government Accountability Office; and

(B) the term ''limited time appointee'' means an annuitant appointed under a temporary appointment limited to 1 year or less.

(2) The head of an agency may waive the application of subsection (a) or (b) with respect to any annuitant who is employed in such agency as a limited time appointee, if the head of the agency determines that the employment of the annuitant is necessary to—

(A) fulfill functions critical to the mission of the agency, or any component of that agency;

(B) assist in the implementation or oversight of the American Recovery and Reinvestment Act of 2009 (Public Law 111–5) or the Troubled Asset Relief Program under title I of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5211 et seq.);

(C) assist in the development, management, or oversight of agency procurement actions;

(D) assist the Inspector General for that agency in the performance of the mission of that Inspector General;

(E) promote appropriate training or mentoring programs of employees;

(F) assist in the recruitment or retention of employees; or

(G) respond to an emergency involving a direct threat to life of property or other unusual circumstances.

(3) The head of an agency may not waive the application of subsection (a) or (b) with respect to an annuitant—

(A) for more than 520 hours of service performed by that annuitant during the period ending 6 months following the individual's annuity commencing date;

(B) for more than 1040 hours of service performed by that annuitant during any 12-month period; or

(C) for more than a total of 3120 hours of service performed by that annuitant.

(4)(A) The total number of annuitants to whom a waiver by the head of an agency under this subsection or section 8468(i) applies may not exceed 2.5 percent of the total number of full-time employees of that agency.

(B) If the total number of annuitants to whom a waiver by the head of an agency under this subsection or section 8468(i) applies exceeds 1 percent of the total number of full-time employees of that agency, the head of that agency shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate, the Committee on Oversight and Government Reform of the House of Representatives, and the Office of Personnel Management—

(i) a report with an explanation that justifies the need for the waivers in excess of that percentage; and

(ii) not later than 180 days after submitting the report under clause (i), a succession plan.

(5)(A) The Director of the Office of Personnel Management may promulgate regulations providing for the administration of this subsection.

(B) Any regulations promulgated under subparagraph (A) may—

(i) provide standards for the maintenance and form of necessary records of employment under this subsection;

(ii) to the extent not otherwise expressly prohibited by law, require employing agencies to provide records of such employment to the Office of Personnel Management or other employing agencies as necessary to ensure compliance with paragraph (3);

(iii) authorize other administratively convenient periods substantially equivalent to 12 months, such as 26 pay periods, to be used in determining compliance with paragraph (3)(B);

(iv) include such other administrative requirements as the Director of the Office of Personnel Management may find appropriate to provide for the effective operation of, or to ensure compliance with, this subsection; and

(v) encourage the training and mentoring of employees by any limited time appointee employed under this subsection.

(6)(A) Any hours of training or mentoring of employees by any limited time appointee employed under this subsection shall not be included in the hours of service performed for purposes of paragraph (3), but those hours of training or mentoring may not exceed 520 hours.

(B) If the primary service performed by any limited time appointee employed under this subsection is training or mentoring of employees, the hours of that service shall be included in the hours of service performed for purposes of paragraph (3).

(7) The authority of the head of an agency under this subsection to waive the application of subsection (a) or (b) shall terminate 5 years after the date of enactment of the National Defense Authorization Act for Fiscal Year 2010.

(m)(1) For the purpose of subsections (i) through (*l*), ''Executive agency'' shall not include the Government Accountability Office.

(2) An employee as to whom a waiver under subsection (i), (j), (k), or (*l*) 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; Pub. L. 105–55, title I, §107, Oct. 7, 1997, 111 Stat. 1184; Pub. L. 105–61, title V, §516(a)(6), Oct. 10, 1997, 111 Stat. 1306; Pub. L. 106–398, §1 [[div. A], title X, §1087(f)(5)], Oct. 30, 2000, 114 Stat. 1654, 1654A–293; Pub. L. 106–553, §1(a)(2) [title III, §308(h)(8)], Dec. 21, 2000, 114 Stat. 2762, 2762A–89; Pub. L. 108–271, §8(b), July 7, 2004, 118 Stat. 814; Pub. L. 111–84, div. A, title XI, §1122(a), Oct. 28, 2009, 123 Stat. 2505; Pub. L. 111–383, div. A, title X, §1075(a)(1), Jan. 7, 2011, 124 Stat. 4368.)

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.<br>July 7, 1960, Pub. L. 86–604, §1(f), 74 Stat. 358.<br>July 12, 1960, Pub. L. 86–622, §3(a), 74 Stat. 410.<br>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.

The American Recovery and Reinvestment Act of 2009, referred to in subsec. (*l*)(2)(B), is Pub. L. 111–5, Feb. 17, 2009, 123 Stat. 115. For complete classification of this Act to the Code, see Short Title of 2009 Amendment note set out under section 1 of Title 26, Internal Revenue Code, and Tables.

The Emergency Economic Stabilization Act of 2008, referred to in subsec. (*l*)(2)(B), is div. A of Pub. L. 110–343, Oct. 3, 2008, 122 Stat. 3765. Title I of the Act is classified principally to subchapter I (§5211 et seq.) of chapter 52 of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 5201 of Title 12 and Tables.

The date of enactment of the National Defense Authorization Act for Fiscal Year 2010, referred to in subsec. (*l*)(7), is the date of enactment of Pub. L. 111–84, which was approved Oct. 28, 2009.

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

2011—Subsec. (*l*)(2)(B). Pub. L. 111–383 substituted ''5211 et seq.'' for ''5201 et seq.''

2009—Subsec. (*l*). Pub. L. 111–84, §1122(a)(1), (2), added subsec. (*l*). Former subsec. (*l*) redesignated (m).

Subsec. (m). Pub. L. 111–84, §1122(a)(1), redesignated subsec. (*l*) as (m).

Subsec. (m)(1). Pub. L. 111–84, §1122(a)(3)(A), substituted ''(*l*)'' for ''(k)''.

Subsec. (m)(2). Pub. L. 111–84, §1122(a)(3)(B), substituted ''(k), or (*l*)'' for ''or (k)''.

2004—Subsec. (*l*)(1). Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office''.

2000—Subsec. (a)(A). Pub. L. 106–553 substituted ''(q), (r), and (s)'' for ''(q), and (r)''.

Subsec. (h)(1). Pub. L. 106–398 inserted ''(as in effect before the repeal of that section by section 651(a) of Public Law 106–65)'' after ''section 5532(f)(2) of this title''.

1997—Subsec. (a)(A). Pub. L. 105–61 substituted ''(q), and (r)'' for ''and (q) of this title''.

Subsec. (k)(2)(B), (3). Pub. L. 105–55 substituted ''the Committee on House Oversight of the House of Representatives'' for ''the Speaker of the House of Representatives''.

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).

### Change of Name

Committee on House Oversight of House of Representatives changed to Committee on House Administration of House of Representatives by House Resolution No. 5, One Hundred Sixth Congress, Jan. 6, 1999.

### Effective Date of 2000 Amendment

Amendment by Pub. L. 106–553 effective on the first day of the first applicable pay period that begins on Dec. 21, 2000, and applicable only to an individual who is employed as a member of the Supreme Court Police after Dec. 21, 2000, see section 1(a)(2) [title III, § 308(i), (j)] of Pub. L. 106–553, set out in a Supreme Court Police Retirement note under section 8331 of this title.

### Effective Date of 1997 Amendment

Amendment by Pub. L. 105–61 applicable to any annuity commencing before, on, or after Oct. 10, 1997, and effective with regard to any payment made after the first month following Oct. 10, 1997, see section 516(b) of Pub. L. 105–61, set out as a note under section 8334 of this title.

### 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.

ELIMINATION OF DUPLICATIVE AMENDMENTS

Pub. L. 102–378, § 8(a), Oct. 2, 1992, 106 Stat. 1359, 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 5532 and 8468 of this title, and enacting provisions set out as notes under sections 5532 and 5380 of this title], are repealed, and title 5, United States Code, shall read as if such subsections had not been enacted.''

CONSTRUCTION OF 2009 AMENDMENT

Pub. L. 111–84, div. A, title XI, § 1122(c), Oct. 28, 2009, 123 Stat. 2509, provided that: ''Nothing in the amendments made by this section [amending this section, section 8468 of this title, and section 1005 of Title 39, Postal Service] may be construed to authorize the waiver of the hiring preferences under chapter 33 of title 5, United States Code in selecting annuitants to employ in an appointive or elective position.''

ANNUAL REPORT TO CONGRESS

Pub. L. 102–190, div. A, title VI, § 655(d), Dec. 5, 1991, 105 Stat. 1393, 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, 5532, 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.''

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.''

### § 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 commences 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.''

## § 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.

## § 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 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

[1] So in original. Probably should be ''Commissioner's''.

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 who—

(A) has not previously made an election under this subsection or had an opportunity to make an election under this paragraph; and

(B) moves, without a break in service of more than 1 year, 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 participant in a retirement system established for employees described in section 2105(c);

(C) moves, without a break in service of more than 1 year, to a position 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; Pub. L. 104–106, div. A, title X, §1043(a)(1), Feb. 10, 1996, 110 Stat. 434; Pub. L. 107–107, div. A, title XI, §1131(a), Dec. 28, 2001, 115 Stat. 1242.)

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

2001—Subsec. (q)(1). Pub. L. 107–107, §1131(a)(1), inserted "and" after semicolon in subpar. (A), redesignated subpar. (C) as (B), and struck out former subpar. (B) which read as follows: "has 5 or more years of civilian service creditable under this subchapter; and".

Subsec. (q)(2)(B). Pub. L. 107–107, §1131(a)(2), struck out "vested" before "participant in a retirement system" and struck out ", as the term 'vested participant' is defined by such system" before semicolon at end.

1996—Subsec. (q)(1). Pub. L. 104–106, §1043(a)(1)(A), struck out "of the Department of Defense or the Coast Guard" after "an employee" in introductory provisions and substituted "1 year" for "3 days" in subpar. (C).

Subsec. (q)(2)(C). Pub. L. 104–106, §1043(a)(1)(B), substituted "1 year" for "3 days" and struck out "in the Department of Defense or the Coast Guard, respectively," after "to a position".

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''.

CHANGE OF NAME

Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the intelligence community deemed to be a reference to the Director of National Intelligence. Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the Central Intelligence Agency deemed to be a reference to the Director of the Central Intelligence Agency. See section 1081(a), (b) of Pub. L. 108–458, set out as a note under section 401 of Title 50, War and National Defense.

EFFECTIVE DATE OF 1996 AMENDMENT

For effective date of amendments by Pub. L. 104–106, see Regulations; Effective Date of 1996 Amendment note below.

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.

REGULATIONS; EFFECTIVE DATE OF 1996 AMENDMENT

Section 1043(b), (c) of Pub. L. 104–106 provided that:

''(b) REGULATIONS.—Not later than 6 months after the date of the enactment of this Act [Feb. 10, 1996], the Office of Personnel Management (and each of the other administrative authorities, within the meaning of subsection (c)(2)(C)(iii)) shall prescribe any regulations (or make any modifications in existing regulations) necessary to carry out this section [amending this section and sections 3502 and 8461 of this title and enacting provisions set out as a note under section 3502 of this title] and the amendments made by this section, including regulations to provide for the notification of individuals who may be affected by the enactment of this section. All regulations (and modifications to regulations) under the preceding sentence shall take effect on the same date.

''(c) APPLICABILITY; RELATED PROVISIONS.—

''(1) PROSPECTIVE RULES.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and sections 3502 and 8461 of this title] shall apply with respect to moves occurring on or after the effective date of the regulations under subsection (b). Moves occurring on or after the date of the enactment of this Act [Feb. 10, 1996] and before the effective date of such regulations shall be subject to applicable provisions of title 5, United States Code, disregarding the amendments made by this section, except that any individual making an election pursuant to this sentence shall be ineligible to make an election otherwise allowable under paragraph (2).

''(2) RETROACTIVE RULES.—

''(A) IN GENERAL.—The regulations under subsection (b) shall include provisions for the application of sections 8347(q) and 8461(n) of title 5, United States Code, as amended by this section, with respect to any individual who, at any time after December 31, 1965, and before the effective date of such regulations, moved between positions in circumstances that would have qualified such individual to make an election under the provisions of such section 8347(q) or 8461(n), as so amended, if such provisions had then been in effect.

''(B) DEADLINE; RELATED PROVISIONS.—An election pursuant to this paragraph—

''(i) shall be made within 1 year after the effective date of the regulations under subsection (b), and

''(ii) shall have the same force and effect as if it had been timely made at the time of the move,

except that no such election may be made by any individual—

''(I) who has previously made, or had an opportunity to make, an election under section 8347(q) or 8461(n) of title 5, United States Code (as in effect before being amended by this section); however, this subclause shall not be considered to render an individual ineligible, based on an opportunity arising out of a move occurring during the period described in the second sentence of paragraph (1), if no election has in fact been made by such individual based on such move;

''(II) who has not, since the move on which eligibility for the election is based, remained continuously subject (disregarding any break in service of less than 3 days) to CSRS or FERS or both seriatim (if the move was from a NAFI position) or any retirement system (or 2 or more such systems seriatim) established for employees described in section 2105(c) of such title (if the move was to a NAFI position); or

''(III) if such election would be based on a move to the Civil Service Retirement System from a retirement system established for employees described in section 2105(c) of such title.

''(C) TRANSFERS OF CONTRIBUTIONS.—

''(i) IN GENERAL.—If an individual makes an election under this paragraph to be transferred back to a retirement system in which such individual previously participated (in this section referred to as the 'previous system'), all individual contributions (including interest) and Government contributions to the retirement system in which such individual is then currently participating (in this section referred to as the 'current system'), excluding those made to the Thrift Savings Plan or any other defined contribution plan, which are attributable to periods of service performed since the move on which the election is based, shall be paid to the fund, account, or other repository for contributions made under the previous system. For purposes of this section, the term 'current system' shall be considered also to include any retirement system (besides the one in which the individual is participating at the time of making the election) in which such individual previously participated since the move on which the election is based.

''(ii) CONDITION SUBSEQUENT RELATING TO REPAYMENT OF LUMP-SUM CREDIT.—In the case of an individual who has received such individual's lump-sum credit (within the meaning of section 8401(19) of title 5, United States Code, or a similar payment) from such individual's previous system, the payment described in clause (i) shall not be made (and the election to which it relates shall be ineffective) unless such lump-sum credit is redeposited or otherwise paid at such time and in such manner as shall be required under applicable regulations. Regulations to carry out this clause shall include provisions for the computation of interest (consistent with section 8334(e)(2) and (3) of title 5, United States Code), if no provisions for such computation otherwise exist.

''(iii) CONDITION SUBSEQUENT RELATING TO DEFICIENCY IN PAYMENTS RELATIVE TO AMOUNTS NEEDED TO ENSURE THAT BENEFITS ARE FULLY FUNDED.—

''(I) IN GENERAL.—Except as provided in subclause (II), the payment described in clause (i) shall not be made (and the election to which it relates shall be ineffective) if the actuarial present value of the future benefits that would be payable under the previous system with respect to service performed by such individual after the move on which the election under this paragraph is based and before the effective date of the election, exceeds the total amounts required to be transferred to the previous system under the preceding provisions of this subparagraph with respect to such service, as determined by the authority administering such previous system (in this section referred to as the 'administrative authority').

''(II) PAYMENT OF DEFICIENCY.—A determination of a deficiency under this clause shall not render an election ineffective if the individual pays or arranges to pay, at a time and in a manner satisfactory to such administrative authority, the full amount of the deficiency described in subclause (I).

''(D) ALTERNATIVE ELECTION FOR AN INDIVIDUAL THEN PARTICIPATING IN FERS.—

''(i) APPLICABILITY.—This subparagraph applies with respect to any individual who—

''(I) is then currently participating in FERS; and

''(II) would then otherwise be eligible to make an election under subparagraphs (A) through (C) of this paragraph, determined disregarding the matter in subclause (I) of subparagraph (B) before the first semicolon therein.

''(ii) ELECTION.—An individual described in clause (i) may, instead of making an election for which such individual is otherwise eligible under this paragraph, elect to have all prior qualifying NAFI service of such individual treated as creditable service for purposes of any annuity under FERS payable out of the Civil Service Retirement and Disability Fund.

''(iii) QUALIFYING NAFI SERVICE.—For purposes of this subparagraph, the term 'qualifying NAFI service' means any service which, but for this subparagraph, would be creditable for purposes of any retirement system established for employees described in section 2105(c) of title 5, United States Code.

''(iv) SERVICE CEASES TO BE CREDITABLE FOR NAFI RETIREMENT SYSTEM PURPOSES.—Any qualifying NAFI service that becomes creditable for FERS purposes by virtue of an election made under this subparagraph shall not be creditable for purposes of any retirement system referred to in clause (iii).

''(v) CONDITIONS.—An election under this subparagraph shall be subject to requirements, similar to those set forth in subparagraph (C), to ensure that—

''(I) appropriate transfers of individual and Government contributions are made to the Civil Service Retirement and Disability Fund; and

''(II) the actuarial present value of future benefits under FERS attributable to service made creditable by such election is fully funded.

''(E) ALTERNATIVE ELECTION FOR AN INDIVIDUAL THEN PARTICIPATING IN A NAFI RETIREMENT SYSTEM.—

''(i) APPLICABILITY.—This subparagraph applies with respect to any individual who—

''(I) is then currently participating in any retirement system established for employees described in section 2105(c) of title 5, United States Code (in this subparagraph referred to as a 'NAFI retirement system'); and

''(II) would then otherwise be eligible to make an election under subparagraphs (A) through (C) of this paragraph (determined disregarding the matter in subclause (I) of subparagraph (B) before the first semicolon therein) based on a move from FERS.

''(ii) ELECTION.—An individual described in clause (i) may, instead of making an election for which such individual is otherwise eligible under this paragraph, elect to have all prior qualifying FERS service of such individual treated as creditable service for purposes of determining eligibility for benefits under a NAFI retirement system, but not for purposes of computing the amount of any such benefits except as provided in clause (v)(II).

''(iii) QUALIFYING FERS SERVICE.—For purposes of this subparagraph, the term 'qualifying FERS service' means any service which, but for this subparagraph, would be creditable for purposes of the Federal Employees' Retirement System.

''(iv) SERVICE CEASES TO BE CREDITABLE FOR PURPOSES OF FERS.—Any qualifying FERS service that becomes creditable for NAFI purposes by virtue of an election made under this subparagraph shall not be creditable for purposes of the Federal Employees' Retirement System.

''(v) FUNDING REQUIREMENTS.—

''(I) IN GENERAL.—Except as provided in subclause (II), nothing in this section or in any other provision of law or any other authority shall be considered to require any payment or transfer of monies in order for an election under this subparagraph to be effective.

''(II) CONTRIBUTION REQUIRED ONLY IF INDIVIDUAL ELECTS TO HAVE SERVICE MADE CREDITABLE FOR COMPUTATION PURPOSES AS WELL.—Under regulations prescribed by the appropriate administrative authority, an individual making an election under this subparagraph may further elect to have the qualifying FERS service made creditable for computation purposes under a NAFI retirement system, but only if the individual pays or arranges to pay, at a time and in a manner satisfactory to such administrative authority, the amount necessary to fully fund the actuarial present value of future benefits under the NAFI retirement system attributable to the qualifying FERS service.

''(3) INFORMATION.—The regulations under subsection (b) shall include provisions under which any individual—

''(A) shall, upon request, be provided information or assistance in determining whether such individual is eligible to make an election under paragraph (2) and, if so, the exact amount of any payment which would be required of such individual in connection with any such election; and

''(B) may seek any other information or assistance relating to any such election.''

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which the report required by subsec. (f) of this section is listed on page 187), see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

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.

## § 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), in making an allotment or assignment made by an individual under section 8345(h) or 8465(b) of this title, and in withholding taxes pursuant to section 3405 of title 26 or section 8345(k) or 8469 of this title;

(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.

(h)(1) In this subsection, the term ''Postal surplus or supplemental liability'' means the estimated difference, as determined by the Office, between—

(A) the actuarial present value of all future benefits payable from the Fund under this subchapter to current or former employees of the United States Postal Service and attributable to civilian employment with the United States Postal Service; and

(B) the sum of—

(i) the actuarial present value of deductions to be withheld from the future basic pay of employees of the United States Postal Service currently subject to this subchapter under section 8334;

(ii) that portion of the Fund balance, as of the date the Postal surplus or supplemental liability is determined, attributable to payments to the Fund by the United States Postal Service and its employees, minus benefit payments attributable to civilian employment with the United States Postal Service, plus the earnings on such amounts while in the Fund; and

(iii) any other appropriate amount, as determined by the Office in accordance with generally accepted actuarial practices and principles.

(2)(A) Not later than June 15, 2007, the Office shall determine the Postal surplus or supplemental liability, as of September 30, 2006. If that result is a surplus, the amount of the surplus shall be transferred to the Postal Service Retiree Health Benefits Fund established under section 8909a by June 30, 2007.

(B) The Office shall redetermine the Postal surplus or supplemental liability as of the close of the fiscal year, for each fiscal year beginning after September 30, 2007, through the fiscal year ending September 30, 2038. If the result is a surplus, that amount shall remain in the Fund until distribution is authorized under subparagraph (C). Beginning June 15, 2017, if the result is a supplemental liability, the Office shall establish an amortization schedule, including a series of annual installments commencing on September 30 of the subsequent fiscal year, which provides for the liquidation of such liability by September 30, 2043.

(C) As of the close of the fiscal years ending September 30, 2015, 2025, 2035, and 2039, if the result is a surplus, that amount shall be transferred to the Postal Service Retiree Health Benefits Fund, and any prior amortization schedule for payments shall be terminated.

(D) Amortization schedules established under this paragraph shall be set in accordance with generally accepted actuarial practices and principles, with interest computed at the rate used in the most recent valuation of the Civil Service Retirement System.

(E) The United States Postal Service shall pay the amounts so determined to the Office, with payments due not later than the date scheduled by the Office.

(3) Notwithstanding any other provision of law, in computing the amount of any payment under any other subsection of this section that is based upon the amount of the unfunded liability, such payment shall be computed disregarding that portion of the unfunded liability that the Office determines will be liquidated by payments under this subsection.

(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 Per-

sonnel 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.

(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.

(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; Pub. L. 104–52, title IV, § 2, Nov. 19, 1995, 109 Stat. 490; Pub. L. 104–316, title I, § 103(h), Oct. 19, 1996, 110 Stat. 3829; Pub. L. 105–362, title XIII, § 1302(c), Nov. 10, 1998, 112 Stat. 3293; Pub. L. 108–18, § 2(c), (d)(1)(A), Apr. 23, 2003, 117 Stat. 625, 626; Pub. L. 109–435, title VIII, § 802(a)(2), Dec. 20, 2006, 120 Stat. 3249.)

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.<br>Oct. 4, 1961, Pub. L. 87–350, § 1(a), 75 Stat. 770. |

HISTORICAL AND REVISION NOTES—CONTINUED

1966 ACT

| *Derivation* | *U.S. Code* | *Revised Statutes and Statutes at Large* |
|---|---|---|
| (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

2006—Subsec. (h). Pub. L. 109–435 amended subsec. (h) generally. Prior to amendment, subsec. (h) related to postal supplemental liability.

2003—Subsec. (h). Pub. L. 108–18, § 2(c), amended subsec. (h) generally. Prior to amendment, subsec. (h) read as follows:

''(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.''

Subsec. (m). Pub. L. 108–18, § 2(d)(1)(A), struck out subsec. (m) which read as follows:

''(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.''

1998—Subsec. (g). Pub. L. 105–362 struck out at end ''The Office shall report to the President and to the Congress the sums credited to the Fund under this subsection.''

1996—Subsec. (*l*)(1). Pub. L. 104–316 struck out at end ''The Secretary shall concurrently transmit a copy of such report to the Comptroller General of the United States.''

1995—Subsec. (a)(1)(B). Pub. L. 104–52 inserted ''in making an allotment or assignment made by an individual under section 8345(h) or 8465(b) of this title,'' after ''of law),'' and ''or section 8345(k) or 8469 of this title'' before semicolon at end.

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 2006 AMENDMENT

Amendment by Pub. L. 109–435 effective Oct. 1, 2006, see section 805(a) of Pub. L. 109–435, set out as a note under section 8334 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–18, § 2(d)(2), Apr. 23, 2003, 117 Stat. 627, provided that: ''Nothing in this subsection [repealing subsec. (m) of this section and provisions set out as a note under this section] shall be considered to affect any payments made before the date of the enactment of this Act [Apr. 23, 2003] under either of the provisions of law repealed by paragraph (1).''

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 3712 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.''

REVIEW BY POSTAL REGULATORY COMMISSION

Pub. L. 109–435, title VIII, § 802(c), Dec. 20, 2006, 120 Stat. 3250, provided that:

''(1) IN GENERAL.—

''(A) REQUEST FOR REVIEW.—Notwithstanding any other provision of this section [amending this section and section 8334 of this title] (including any amendment made by this section), any determination or redetermination made by the Office of Personnel Management under this section (including any amendment made by this section) shall, upon request of the United States Postal Service, be subject to a review by the Postal Regulatory Commission under this subsection.

''(B) REPORT.—Upon receiving a request under subparagraph (A), the Commission shall promptly procure the services of an actuary, who shall hold membership in the American Academy of Actuaries and shall be qualified in the evaluation of pension obligations, to conduct a review in accordance with generally accepted actuarial practices and principles and to provide a report to the Commission containing the results of the review. The Commission, upon determining that the report satisfies the requirements of this paragraph, shall approve the report, with any comments it may choose to make, and submit it with any such comments to the Postal Service, the Office of Personnel Management, and Congress.

''(2) RECONSIDERATION.—Upon receiving the report from the Commission under paragraph (1), the Office of Personnel Management shall reconsider its determination or redetermination in light of such report, and shall make any appropriate adjustments. The Office shall submit a report containing the results of its reconsideration to the Commission, the Postal Service, and Congress.''

PAYMENTS TO REIMBURSE FUND FOR INCREASE IN UNFUNDED LIABILITY

Pub. L. 105–261, div. C, title XXXI, § 3154(*l*), Oct. 17, 1998, 112 Stat. 2256, provided that:

''(1) The Department of Energy shall pay into the Civil Service Retirement and Disability Fund an amount determined by the Director of the Office of Personnel Management to be necessary to reimburse the Fund for any estimated increase in the unfunded liability of the Fund resulting from the amendments related to the Civil Service Retirement System under this section [amending sections 3307, 8331, 8334 to 8336, 8401, 8412, 8415, 8422, 8423, and 8425 of this title], and for any estimated increase in the supplemental liability of the Fund resulting from the amendments related to the Federal Employees Retirement System under this section.

''(2) The Department shall pay the amount so determined in five equal annual installments with interest computed at the rate used in the most recent valuation of the Federal Employees Retirement System.

''(3) The Department shall make payments under this subsection from amounts available for weapons activities of the Department.''

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, required the United States Postal Service to pay into the Civil Service Retirement and Disability Fund a total of $693,000,000 not later than September 30, 1998, in addition to other payments required by law.

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; Pub. L. 105–85, div. A, title XI, § 1106(b)(2), Nov. 18, 1997, 111 Stat. 1924, 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, 2002.''

PRE-1991 COST-OF-LIVING ADJUSTMENTS

Pub. L. 101–508, title VII, § 7101(c), Nov. 5, 1990, 104 Stat. 1388–331, as amended by Pub. L. 102–378, § 5(a)(1), Oct. 2, 1992, 106 Stat. 1358, related to pre-1991 cost-of-living adjustments, prior to repeal by Pub. L. 108–18, § 2(d)(1)(B), Apr. 23, 2003, 117 Stat. 627.

PAYMENTS RELATING TO AMOUNTS WHICH WOULD HAVE BEEN DUE BEFORE FISCAL YEAR 1987

Pub. L. 101–508, title VII, § 7103, Nov. 5, 1990, 104 Stat. 1388–333, required the United States Postal Service to pay, not later than Sept. 30, 1995, into the Civil Service Retirement and Disability Fund and into the Employees Health Benefits Fund certain sums for retirement COLA and health benefits which would have been due in any pre-1987 fiscal year if certain amendments had been in effect as of July 1, 1971.

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.''

## § 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 de-

rived 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.

## § 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.

ENHANCING FINANCIAL LITERACY

Pub. L. 108–469, § 2, Dec. 21, 2004, 118 Stat. 3892, provided that:

''(a) IN GENERAL.—The Federal Retirement Thrift Investment Board (in this section referred to as the 'Board') shall periodically evaluate whether the tools available to participants provide the information needed to understand, evaluate, and compare financial products, services, and opportunities offered through the Thrift Savings Plan. The Board shall use these evaluations to improve its existing education program for Thrift Savings Plan participants.

''(b) REPORT ON FINANCIAL LITERACY EFFORTS.—The Board shall annually report to the Committee on Governmental Affairs [now Committee on Homeland Security and Governmental Affairs] of the Senate and the Committee on Government Reform [now Committee on Oversight and Government Reform] of the House of Representatives on its Thrift Savings Plan education efforts on behalf of plan participants.

''(c) STRATEGY.—As part of the retirement training offered by Office of Personnel Management under section 8350 of title 5, United States Code, the Office, in consultation with the Board, shall—

''(1) not later than 6 months after the date of enactment of this Act [Dec. 21, 2004], develop and implement a retirement financial literacy and education strategy for Federal employees that—

''(A) shall educate Federal employees on the need for retirement savings and investment; and

''(B) provide information related to how Federal employees can receive additional information on how to plan for retirement and calculate what their retirement investment should be in order to meet their retirement goals; and

''(2) submit a report to the Committee on Governmental Affairs [now Committee on Homeland Security and Governmental Affairs] of the Senate and the Committee on Government Reform [now Committee on Oversight and Government Reform] of the House of Representatives on the strategy described under paragraph (1).''

## § 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) as 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)(A) An employee or Member may contribute to the Thrift Savings Fund in any pay period any amount not exceeding the maximum percentage of such employee's or Member's basic pay for such pay period allowable under subparagraph (B).

(B) The maximum percentage allowable under this subparagraph shall be determined in accordance with the following table:

| In the case of a pay period beginning in fiscal year: | The maximum percentage allowable is: |
|---|---|
| 2001 | 6 |
| 2002 | 7 |
| 2003 | 8 |
| 2004 | 9 |
| 2005 | 10 |
| 2006 or thereafter | 100. |

(C) Notwithstanding any limitation under this paragraph, an eligible participant (as defined by section 414(v) of the Internal Revenue Code of 1986) may make such additional contributions to the Thrift Savings Fund as are permitted by such section 414(v) and regulations of the Executive Director consistent therewith.

(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 con-

tributions 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 or change of election 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 or withdrawal may be approved under section 8433(g) and (h) of this title in such case, only after the Executive Director notifies the employee's or Member's spouse that the election or change of election has been made or that the Executive Director has received an application for such loan or withdrawal, 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 or withdrawals under section 8433(g) or (h), 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 less than an amount that the Executive Director prescribes by regulation, the Executive Director shall pay the nonforfeitable account balance to the participant in a single payment.

(7) For the purpose of this section, the term ''nonforfeitable account balance'' has the same meaning as under section 8401(32).

(8) 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, except that the reference in section 8432b(b)(2)(B) to employee contributions under section 8432(a) shall be considered a reference to employee contributions under this subchapter and section 8440e;

(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.

(9) For the purpose of this section, separation from Government employment includes a transfer described in section 8431.

(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)(1) 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.

(2)(A) Only those employees of the Central Intelligence Agency participating in the pilot project required by section 402(b) of the Intelligence Authorization Act for Fiscal Year 2003 (Public Law 107–306; 50 U.S.C. 403–4 note) and making contributions to the Thrift Savings Fund out of basic pay may also contribute (by direct transfer to the Fund) any part of bonus pay received by the employee as part of the pilot project.

(B) Contributions under this paragraph are subject to section 8432(d) of this title.

(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; Pub. L. 104–208, div. A, title I, § 101(f) [title VI, § 659 [title II, § 202]], Sept. 30, 1996, 110 Stat. 3009–314, 3009–372, 3009–374; Pub. L. 106–65, div. A, title VI, § 661(a)(3)(B), Oct. 5, 1999, 113 Stat. 671; Pub. L. 106–168, title II, § 203(b), Dec. 12, 1999, 113 Stat. 1820; Pub. L. 106–554, § 1(a)(4) [div. B, title I, § 138(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–234; Pub. L. 107–304, § 1(a), Nov. 27, 2002, 116 Stat. 2363; Pub. L. 108–177, title IV, § 405(b)(1), Dec. 13, 2003, 117 Stat. 2632; Pub. L. 108–469, § 1(d)(1), Dec. 21, 2004, 118 Stat. 3891.)

REFERENCES IN TEXT

Section 414(v) of the Internal Revenue Code of 1986, referred to in subsec. (b)(2)(C), is classified to section 414(v) of Title 26, Internal Revenue Code.

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

2004—Subsec. (a)(2). Pub. L. 108–469 substituted ''as'' for ''only during a period''.

2003—Subsec. (d). Pub. L. 108–177 designated existing provisions as par. (1) and added par. (2).

2002—Subsec. (b)(2)(C). Pub. L. 107–304 added subpar. (C).

2000—Subsec. (b)(2). Pub. L. 106–554 designated existing provisions as subpar. (A), substituted ''the maximum percentage of such employee's or Member's basic pay for such pay period allowable under subparagraph (B).'' for ''5 percent of the amount of the employee's or Member's basic pay for such period.'', and added subpar. (B).

1999—Subsec. (b)(8)(A). Pub. L. 106–65, § 661(a)(3)(B)(ii), inserted before semicolon at end '', except that the reference in section 8432b(b)(2)(B) to employee contributions under section 8432(a) shall be considered a reference to employee contributions under this subchapter and section 8440e''.

Pub. L. 106–65, § 661(a)(3)(B)(i), and Pub. L. 106–168, amended subsec. (b) identically, redesignating par. (11) as (8).

Subsec. (b)(9). Pub. L. 106–168 added par. (9).

Subsec. (b)(11). Pub. L. 106–65, § 661(a)(3)(B)(i), and Pub. L. 106–168, amended subsec. (b) identically, redesignating par. (11) as (8).

1996—Subsec. (b)(5)(B). Pub. L. 104–208, § 101(f) [title VI, § 659 [title II, § 202(1)(A)]], substituted ''An election or change of election'' for ''An election, change of election, or modification (relating to the commencement date of a deferred annuity)'', inserted ''or withdrawal'' after ''and a loan'' and ''and (h)'' after ''8433(g)'', substituted ''the election or change of election'' for ''the election, change of election, or modification'', and inserted ''or withdrawal'' after ''for such loan''.

Subsec. (b)(5)(D). Pub. L. 104–208, § 101(f) [title VI, § 659 [title II, § 202(1)(B)]], inserted ''or withdrawals'' after ''of loans'' and ''or (h)'' after ''8433(g)''.

Subsec. (b)(6). Pub. L. 104–208, § 101(f) [title VI, § 659 [title II, § 202(2)]], substituted ''less than an amount that the Executive Director prescribes by regulation'' for ''$3,500 or less'' and struck out ''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)'' before period at end.

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 2002 AMENDMENT

Pub. L. 107–304, § 1(c), Nov. 27, 2002, 116 Stat. 2363, provided that: ''The amendments made by this section [amending this section and sections 8432 and 8440f of this title] shall take effect as of the earliest practicable date, as determined by the Executive Director (appointed under section 8474(a) of title 5, United States Code) in regulations.''

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–554, § 1(a)(4) [div. B, title I, § 138(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–234, provided that:

''(1) IN GENERAL.—The amendments made by this section [enacting section 8440f of this title and amending this section and sections 8432 and 8440a to 8440e of this title] shall take effect on the date of enactment of this Act [Dec. 21, 2000].

''(2) COORDINATION WITH ELECTION PERIODS.—The Executive Director shall by regulation determine the first election period in which elections may be made consistent with the amendments made by this section.

''(3) DEFINITIONS.—For purposes of this section—

''(A) the term 'election period' means a period afforded under section 8432(b) of title 5, United States Code; and

''(B) the term 'Executive Director' has the meaning given such term by section 8401(13) of title 5, United States Code.''

EFFECTIVE DATE OF 1999 AMENDMENTS

Amendment by Pub. L. 106–168 applicable with respect to transfers occurring before, on, or after Dec. 12, 1999, with special rule for applying amendment with respect to transfers occurring before Dec. 12, 1999, see section 203(c) of Pub. L. 106–168, set out as an Effective Date note under section 8431 of this title.

Amendment by section 661(a)(3)(B)(ii) of Pub. L. 106–65 effective 180 days after Oct. 30, 2000, unless postponed, see section 663 of Pub. L. 106–65, as amended, set out as an Effective Date note under section 8440e of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–208 effective Sept. 30, 1996, and withdrawals and elections as provided under such

amendment to be made at earliest practicable date as determined by Executive Director in regulations, see section 101(f) [title VI, § 659 [title II, § 207]] of Pub. L. 104–208, set out as a note under section 5545a of this title.

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.'' [Implementing regulations were published in the Federal Register Feb. 21, 1995, 60 F.R. 9595, effective Mar. 10, 1995.]

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.

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AMENDMENTS

2009—Pub. L. 111–84, div. A, title XIX, §1904(b)(3)(B), Oct. 28, 2009, 123 Stat. 2617, added item 8422 and struck out former item 8422 ''Deductions from pay; contributions for other service''.

Pub. L. 111–31, div. B, title I, §§103(b), 107(b), June 22, 2009, 123 Stat. 1854, 1856, added items 8432d and 8480.

2001—Pub. L. 107–107, div. A, title XI, §1132(b)(2)(C), Dec. 28, 2001, 115 Stat. 1244, substituted ''other service'' for ''military service'' in item 8422.

2000—Pub. L. 106–554, §1(a)(4) [div. B, title I, §138(a)(7)(B)], Dec. 21, 2000, 114 Stat. 2763, 2763A–234, added item 8440f.

1999—Pub. L. 106–168, title II, §203(a)(2), Dec. 12, 1999, 113 Stat. 1820, added item 8431.

Pub. L. 106–113, div. B, §1000(a)(7) [div. A, title III, §334(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A–441, added item 8432c.

Pub. L. 106–65, div. A, title VI, §§661(a)(2)(B), 663, Oct. 5, 1999, 113 Stat. 671, 673, as amended by Pub. L. 106–398, §1 [[div. A], title VI, §661(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–167, added item 8440e, effective 180 days after Oct. 30, 2000, unless postponed.

1998—Pub. L. 105–368, title V, §512(b)(2)(B), Nov. 11, 1998, 112 Stat. 3342, substituted ''Judges of the United States Court of Appeals for Veterans Claims'' for ''Judges of the United States Court of Veterans Appeals'' in item 8440d.

1996—Pub. L. 104–208, div. A, title I, §101(f) [title VI, §659 [title II, §206(b)(1)]], Sept. 30, 1996, 110 Stat. 3009–314, 3009–372, 3009–378, struck out item 8431 ''Definition''.

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.

CHANGE OF NAME

Words ''magistrate judges'' substituted for ''magistrates'' in item 8440b pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

## 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) 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) or 8422(i); 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, and who (in the case of an individual who is a Member of the House of Representatives, including a Delegate or Resident Commissioner to the Congress) serves as a Member prior to the date of the enactment of the Legislative Branch Appropriations Act, 2004;

(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;

(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 technician (dual status)'' means an employee described in section 10216 of title 10;

(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;

and includes service as a cadet at the United States Military Academy, the United States Air Force Academy, or the United States Coast Guard Academy, or as a midshipman at the United States Naval Academy, 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;

[1] So in original. The period probably should be a semicolon.

(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));

(33) ''Nuclear materials courier'' has the meaning given that term in section 8331(27);

(34) the term ''Government physician'' has the meaning given such term under section 5948;

(35) the term ''air traffic controller'' or ''controller'' means—

(A) a controller within the meaning of section 2109(1); and

(B) a civilian employee of the Department of Transportation or the Department of Defense who is the immediate supervisor of a person described in section 2109(1)(B); and

(36) the term ''customs and border protection officer'' means an employee in the Department of Homeland Security (A) who holds a position within the GS–1895 job series (determined applying the criteria in effect as of September 1, 2007) or any successor position, and (B) whose duties include activities relating to the arrival and departure of persons, conveyances, and merchandise at ports of entry, including any such employee who is transferred directly to a supervisory or administrative position in the Department of Homeland Security after performing such duties (as described in subparagraph (B)) in 1 or more positions (as described in subparagraph (A)) for at least 3 years.

(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; Pub. L. 104–208, div. A, title I, § 101(f) [title VI, § 659 [title II, § 206(a)(1)]], Sept. 30, 1996, 110 Stat. 3009–314, 3009–372, 3009–378; Pub. L. 105–261, div. C, title XXXI, § 3154(f), Oct. 17, 1998, 112 Stat. 2255; Pub. L. 106–65, div. A, title V, § 522(c)(2), Oct. 5, 1999, 113 Stat. 597; Pub. L. 106–571, § 3(c)(2), Dec. 28, 2000, 114 Stat. 3056; Pub. L. 108–83, title I, § 104(a), Sept. 30, 2003, 117 Stat. 1017; Pub. L. 108–176, title II, § 226(a)(2), Dec. 12, 2003, 117 Stat. 2529; Pub. L. 110–161, div. E, title V, § 535(b)(1), Dec. 26, 2007, 121 Stat. 2076; Pub. L. 110–181, div. A, title XI, § 1115(b), Jan. 28, 2008, 122 Stat. 361; Pub. L. 111–84, div. A, title XIX, § 1904(b)(1), Oct. 28, 2009, 123 Stat. 2616.)

REFERENCES IN TEXT

The Social Security Act, referred to in par. (11), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. 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. 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, which is set out as a note under section 8331 of this title.

The date of the enactment of the Legislative Branch Appropriations Act, 2004, referred to in par. (20), is the date of enactment of Pub. L. 108–83, which was approved Sept. 30, 2003.

AMENDMENTS

2009—Par. (19)(C). Pub. L. 111–84 substituted ''8411(f) or 8422(i);'' for ''8411(f);''.

2008—Par. (31). Pub. L. 110–181, in concluding provisions, substituted ''and includes service as a cadet at the United States Military Academy, the United States Air Force Academy, or the United States Coast Guard Academy, or as a midshipman at the United States Naval Academy, but'' for ''but''.

2007—Par. (36). Pub. L. 110–161 added par. (36).

2003—Par. (20). Pub. L. 108–83 inserted before semicolon at end '', and who (in the case of an individual who is a Member of the House of Representatives, including a Delegate or Resident Commissioner to the Congress) serves as a Member prior to the date of the enactment of the Legislative Branch Appropriations Act, 2004''.

Par. (35). Pub. L. 108–176 added par. (35).

2000—Par. (34). Pub. L. 106–571 added par. (34).

1999—Par. (30). Pub. L. 106–65 amended par. (30) generally. Prior to amendment, par. (30) read as follows: ''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;''.

1998—Par. (33). Pub. L. 105–261 added par. (33).

1996—Par. (4). Pub. L. 104–208 struck out ''except as provided in subchapter III of this chapter,'' before ''the term''.

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 2008 AMENDMENT

Amendment by Pub. L. 110–181 applicable to any annuity, eligibility for which is based upon a separation occurring before, on, or after Jan. 28, 2008, and any period of service as a cadet at the United States Military Academy, the United States Air Force Academy, or the United States Coast Guard Academy, or as a midshipman at the United States Naval Academy, occurring before, on, or after Jan. 28, 2008, see section 1115(c) of Pub. L. 110–181, set out as a note under section 8331 of this title.

EFFECTIVE DATE OF 2007 AMENDMENT; TRANSITION RULES

Amendment by Pub. L. 110–161 effective on the later of June 30, 2008, or the first day of the first pay period beginning at least 6 months after Dec. 26, 2007, with transition rules and rights of election, see section 535(e) of Pub. L. 110–161, set out as a note under section 3307 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–176, title II, § 226(c), Dec. 12, 2003, 117 Stat. 2530, provided that:

''(1) IN GENERAL.—This section [amending this section and sections 8331, 8335, 8415, 8422, 8425, 8452, and 8468 of this title] and the amendments made by this section—

''(A) shall take effect on the 60th day after the date of enactment of this Act [Dec. 12, 2003]; and

''(B) shall apply with respect to—

''(i) any annuity entitlement to which is based on an individual's separation from service occurring on or after the effective date of this section; and

''(ii) any service performed by any such individual before, on, or after the effective date of this section, subject to paragraph (2).

''(2) SPECIAL RULE.—

''(A) DEPOSIT REQUIREMENT.—For purposes of determining eligibility for immediate retirement under section 8412(e) of title 5, United States Code, the amendment made by subsection (a)(2) [amending this section] shall, with respect to any service described in subparagraph (B), be disregarded unless there is deposited into the Civil Service Retirement and Disability Fund, with respect to such service, in such time, form, and manner as the Office of Personnel Management by regulation requires, an amount equal to the amount by which—

''(i) the deductions from pay which would have been required for such service if the amendments made by subsection (a)(2) had been in effect when such service was performed, exceeds

''(ii) the unrefunded deductions or deposits actually made under subchapter II of chapter 84 of such title with respect to such service.

An amount under this subparagraph shall include interest, computed under paragraphs (2) and (3) of section 8334(e) of such title 5.

''(B) PRIOR SERVICE DESCRIBED.—This paragraph applies with respect to any service performed by an individual before the effective date of this section as an employee described in section 8401(35)(B) of title 5, United States Code (as amended by subsection (a)(2)).''

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–261 effective at the beginning of the first pay period that begins after Oct. 17, 1998, and applicable only to an individual who is employed as a nuclear materials courier, as defined by section 8331(27) or 8401(33) of this title, after Oct. 17, 1998, see section 3154(m), (n) of Pub. L. 105–261, set out as a note under section 8331 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–208 effective Sept. 30, 1996, and withdrawals and elections as provided under such amendment to be made at earliest practicable date as determined by Executive Director in regulations, see section 101(f) [title VI, § 659 [title II, § 207]] of Pub. L. 104–208, set out as a note under section 5545a of this title.

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 an Effective Date 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 1999 AMENDMENT

Pub. L. 106–168, title II, § 201, Dec. 12, 1999, 113 Stat. 1817, provided that: ''This title [enacting section 8431 of this title, amending sections 8351, 8402, and 8411 of this title, and enacting provisions set out as notes under sections 8402 and 8431 of this title] may be cited as the 'Federal Reserve Board Retirement Portability Act'.''

SHORT TITLE OF 1998 AMENDMENT

Pub. L. 105–274, § 1, Oct. 21, 1998, 112 Stat. 2419, provided that: ''This Act [amending section 8402 of this title and enacting provisions set out as a note under section 8402 of this title] may be cited as the 'District of Columbia Courts and Justice Technical Corrections Act of 1998'.''

SHORT TITLE OF 1996 AMENDMENT

Section 101(f) [title VI, § 659 [title I, § 101]] of Pub. L. 104–208 provided that: ''This title [title I (§§ 101–104) of section 659 of section 101(f) of Pub. L. 104–208, amending sections 8438 and 8439 of this title and enacting provisions set out as a note under section 8438 of this title] may be cited as the 'Thrift Savings Investment Funds Act of 1996'.''

Section 101(f) [title VI, § 659 [title II, § 201]] of Pub. L. 104–208 provided that: ''This title [title II (§§ 201–207) of section 659 of section 101(f) of Pub. L. 104–208, amending this section and sections 5545a, 8351, 8433, 8435, and 8440a to 8440c of this title, repealing section 8431 of this title, enacting provisions set out as notes under sections 5545a and 8433 of this title, and amending provisions set out as a note under section 5343 of this title] may be cited as the 'Thrift Savings Plan Act of 1996'.''

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'.''

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

ELECTION

Pub. L. 108–83, title I, § 104(b), Sept. 30, 2003, 117 Stat. 1018, provided that:

''(1) During the 60-day period which begins on the date of the enactment of the Legislative Branch Appropriations Act, 2004 [Sept. 30, 2003], any individual who, as of such date, is serving as a Member of the House of Representatives and on such date is not subject to chapter 84 of title 5, United States Code, may elect to become subject to such chapter.

''(2) Any election under this paragraph shall be carried out in accordance with such procedures as the Office of Personnel Management may provide.

''(3) In this subsection, the term 'Member of the House of Representatives' includes a Delegate or Resident Commissioner to the Congress.''

SERVICE AS LAW ENFORCEMENT OFFICER

Pub. L. 104–52, title VI, § 640, Nov. 19, 1995, 109 Stat. 513, as amended by Pub. L. 104–208, div. A, title I, § 101(f) [title VI, § 629(a)], Sept. 30, 1996, 110 Stat. 3009–314, 3009–362, provided that: ''Hereafter, service performed during the period January 1, 1984, through December 31, 1986, which would, if performed after that period, be considered service as a law enforcement officer, as defined in section 8401(17)(A)(i)(II) and (B) of title 5, United States Code, shall be deemed service as a law enforcement officer for the purposes of chapter 84 of such title.''

[Pub. L. 104–208, div. A, title I, § 101(f) [title VI, § 629(b)], Sept. 30, 1996, 110 Stat. 3009–314, 3009–362, provided that: ''The amendment made by subsection (a) [amending section 640 of Pub. L. 104–52, set out above] shall take effect as if included in Public Law 104–52 on the date of its enactment [Nov. 19, 1995].'']

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).''

## § 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—

(I) subchapter III of chapter 83 of this title;

(II) subchapter I of chapter 8 of title I of the Foreign Service Act of 1980; or

(III) the benefit structure for employees of the Board of Governors of the Federal Reserve System appointed before January 1, 1984, that is a component of the Retirement Plan for Employees of the Federal Reserve System, established under section 10 of the Federal Reserve Act; and

(ii) having completed—

(I) at least 5 years of civilian service creditable under subchapter III of chapter 83 of this title;

(II) at least 5 years of civilian service creditable under subchapter I of chapter 8 of title I of the Foreign Service Act of 1980; or

(III) at least 5 years of civilian service (other than any service performed in the employ of a Federal Reserve Bank) creditable under the benefit structure for employees of the Board of Governors of the Federal Reserve System appointed before January 1, 1984, that is a component of the Retirement Plan for Employees of the Federal Reserve System, established under section 10 of the Federal Reserve Act,

determined without regard to any deposit or redeposit requirement under either such subchapter or under such benefit structure, or any requirement that the individual become subject to either such subchapter or to such benefit structure 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 Regulatory Commission, whose employment is tem-

porary 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 Chief Administrative Officer 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 Chief Administrative Officer or Secretary, as the case may be.

(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 Congressional Budget Office may exclude from the operation of this chapter an employee under the Congressional Budget Office whose employment is temporary or intermittent.

(8) 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.

(9) The Joint Committee on Judicial Administration in the District of Columbia may exclude from the operation of this chapter an employee of the District of Columbia Courts whose employment is temporary or of uncertain duration.

(d) Paragraph (2) of subsection (b) shall not apply to an individual who—

(1) becomes subject to—

(A) 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; or

(B) the benefit structure in which employees of the Board of Governors of the Federal Reserve System appointed on or after January 1, 1984, participate, which benefit structure is a component of the Retirement Plan for Employees of the Federal Reserve System, established under section 10 of the Federal Reserve Act (and any redesignated or successor version of such benefit structure, if so identified in writing by the Board of Governors of the Federal Reserve System for purposes of this chapter); and

(2) subsequently enters a position in which, but for paragraph (2) of subsection (b), such individual would be subject to this chapter.

(e) A bankruptcy judge or magistrate judge 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 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 or magistrate judge 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), 321, Dec. 1, 1990, 104 Stat. 5112, 5117; 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; Pub. L. 104–53, title I, § 115, Nov. 19, 1995, 109 Stat. 527; Pub. L. 104–186, title II, § 215(13), Aug. 20, 1996, 110 Stat. 1746; Pub. L. 105–274, § 6(a), Oct. 20, 1998, 112 Stat. 2424; Pub. L. 106–168, title II, § 202(b), Dec. 12, 1999, 113 Stat. 1818; Pub. L. 109–435, title VI, § 604(b), Dec. 20, 2006, 120 Stat. 3241.)

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)(i)(II), (ii)(II) and (d)(1)(A), is Pub. L. 96–465, Oct. 17, 1980, 94 Stat. 2071. Subchapters I and II of chapter 8 of title I of the Act are classified generally to parts I (§ 4041 et seq.) and II (§ 4071 et seq.), respectively, 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.

Section 10 of the Federal Reserve Act, referred to in subsecs. (b)(2)(A)(i)(III), (ii)(III) and (d)(1)(B), 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.

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

2006—Subsec. (c)(1). Pub. L. 109–435 substituted ''Postal Regulatory Commission'' for ''Postal Rate Commission''.

1999—Subsec. (b)(2)(A). Pub. L. 106–168, § 202(b)(1), added subpar. (A) and struck out former subpar. (A) which read as follows: ''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 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 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''.

Subsec. (d). Pub. L. 106–168, § 202(b)(2), amended subsec. (d) generally. Prior to amendment, text read as follows: ''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.''

1998—Subsec. (c)(9). Pub. L. 105–274 added par. (9).

1996—Subsec. (c)(5). Pub. L. 104–186 substituted ''Chief Administrative Officer'' for ''Clerk'' in introductory provisions and subpar. (B).

1995—Subsec. (c)(7), (8). Pub. L. 104–53 added par. (7) and redesignated former par. (7) as (8).

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

Words ''magistrate judge'' substituted for ''magistrate'' wherever appearing in subsec. (e) 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 1999 AMENDMENT

Pub. L. 106–168, title II, § 202(d), Dec. 12, 1999, 113 Stat. 1819, provided that:

''(1) IN GENERAL.—Subject to succeeding provisions of this subsection, this section [amending this section and section 8411 of this title and enacting provisions set out as a note under this section] and the amendments made by this section shall take effect on the date of the enactment of this Act [Dec. 12, 1999].

''(2) PROVISIONS RELATING TO CREDITABILITY AND CERTAIN FORMER EMPLOYEES.—The amendments made by subsection (a) [amending section 8411 of this title] and the provisions of subsection (c) [set out as a note below] shall apply only to individuals who separate from service subject to chapter 84 of title 5, United States Code, on or after the date of the enactment of this Act [Dec. 12, 1999].

''(3) PROVISIONS RELATING TO EXCLUSION FROM CHAPTER.—The amendments made by subsection (b) [amending this section] shall not apply to any former employee of the Board of Governors of the Federal Reserve System who, subsequent to his or her last period of service as an employee of the Board of Governors of the Federal Reserve System and prior to the date of the enactment of this Act [Dec. 12, 1999], became subject to subchapter III of chapter 83 or chapter 84 of title 5, United States Code, under the law in effect at the time of the individual's appointment.''

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–274, § 10, Oct. 20, 1998, 112 Stat. 2429, provided that: ''Except as otherwise specifically provided, this Act [amending this section and enacting provisions set out as a note under section 8401 of this title] and the amendments made by this Act shall take effect as if included in the enactment of title XI of the Balanced Budget Act of 1997 [Pub. L. 105–33].''

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 magistrate judges who retire on or after Nov. 15, 1988, with exception for judges and magistrate judges retiring on or after July 31, 1987, see section 9 of Pub. L. 100–659, as amended, set out as an Effective Date note under section 377 of Title 28, Judiciary and Judicial Procedure.

PROVISIONS RELATING TO CERTAIN FORMER EMPLOYEES

Pub. L. 106–168, title II, § 202(c), Dec. 12, 1999, 113 Stat. 1819, provided that: ''A former employee of the Board of Governors of the Federal Reserve System who—

''(1) has at least 5 years of civilian service (other than any service performed in the employ of a Federal Reserve Bank) creditable under the benefit structure for employees of the Board of Governors of the Federal Reserve System appointed before January 1, 1984, that is a component of the Retirement Plan for Employees of the Federal Reserve System, established under section 10 of the Federal Reserve Act [Act Dec. 23, 1913, ch. 6, see Codification note set out under 12 U.S.C. 241];

''(2) was subsequently employed subject to the benefit structure in which employees of the Board of Governors of the Federal Reserve System appointed on or after January 1, 1984, participate, which benefit structure is a component of the Retirement Plan for Employees of the Federal Reserve System, established under section 10 of the Federal Reserve Act (and any redesignated or successor version of such benefit structure, if so identified in writing by the Board of Governors of the Federal Reserve System for purposes of chapter 84 of title 5, United States Code); and

"(3) after service described in paragraph (2), becomes subject to and thereafter entitled to benefits under chapter 84 of title 5, United States Code,

shall, for purposes of section 302 of the Federal Employees' Retirement System Act of 1986 [Pub. L. 99–335] (100 Stat. 601; 5 U.S.C. 8331 note) be considered to have become subject to chapter 84 of title 5, United States Code, pursuant to an election under section 301 of such Act [5 U.S.C. 8331 note]."

### § 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

### § 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);

(4) a period of service (other than any service under any other paragraph 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));

(5) a period of service (other than any service under any other paragraph of this subsection, any military service, and any service performed in the employ of a Federal Reserve Bank) that was creditable under the Bank Plan (as defined in subsection (i)), if the employee waives credit for such service under the Bank Plan 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)); and

(6) service performed by any individual as an employee paid from nonappropriated funds of an instrumentality of the Department of Defense or the Coast Guard described in section 2105(c) that is not otherwise creditable, if the individual elects (in accordance with regulations prescribed by the Office) to have such service credited under this paragraph.

Paragraph (5) shall not apply in the case of any employee as to whom subsection (g) (or, to the extent subchapter III of chapter 83 is involved, section 8332(n)) otherwise applies.

(c)(1) Except as provided in paragraphs (2), (3), and (5), 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

[1] See References in Text note below.

(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

(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.

(5) If, after January 1, 1997, an employee or Member waives retired pay that is subject to a court order for which there has been effective service on the Secretary concerned for purposes of section 1408 of title 10, the military service on which the retired pay is based may be credited as service for purposes of this chapter only if the employee or Member authorizes the Director to deduct and withhold from the annuity payable to the employee or Member under this subchapter an amount equal to the amount that, if the annuity payment was instead a payment of the employee's or Member's retired pay, would have been deducted and withheld and paid to the former spouse covered by the court order under such section 1408. The amount deducted and withheld under this paragraph shall be paid to that former spouse. The period of civil service employment by the employee or Member shall not be taken into consideration in determining the amount of the deductions and withholding or the amount of the payment to the former spouse. The Director of the Office of Personnel Management shall prescribe regulations to carry out this paragraph.

(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,[1] 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).

(i)[2] For purposes of subsection (b)(5), the term ''Bank Plan'' means the benefit structure in which employees of the Board of Governors of the Federal Reserve System appointed on or after January 1, 1984, participate, which benefit structure is a component of the Retirement Plan for Employees of the Federal Reserve System, established under section 10 of the Federal Reserve Act (and any redesignated or successor version of such benefit structure, if so identified in writing by the Board of Governors of the Federal Reserve System for purposes of this chapter).

(i)(1)[2] Upon application to the Office of Personnel Management, any individual who was an employee on the date of enactment of this paragraph, and who has on such date or thereafter acquired 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 December 31, 1990, 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 4 years and 6 months of service on such committees as of December 31, 1990; and

(B) such employee deposits to the Fund an amount equal to 1.3 percent of the base pay for such service, with interest.

(2) The Office shall accept the certification of the President of the Senate (or the President's designee) or the Speaker of the House of Representatives (or the Speaker's designee), as the case may be, concerning the service of, and the amount of compensation received by, an employee with respect to whom credit is to be sought under this subsection.

(3) An individual shall not be granted credit for such service under this subsection if eligible for credit under section 8332(m) for such service.

(k)(1)[3] The Office of Personnel Management shall accept, for the purposes of this chapter, the certification of the head of a nonappropriated fund instrumentality of the United States concerning service of the type described in subsection (b)(6) that was performed for such nonappropriated fund instrumentality.

(2) Service credited under subsection (b)(6) may not also be credited under any other retirement system provided for employees paid from nonappropriated funds of a nonappropriated fund instrumentality.

(*l*)(1) Notwithstanding any other provision of this chapter, the service of an individual finally convicted of an offense described in paragraph (2) shall not be taken into account for purposes of this chapter, except that this sentence applies only to service rendered as a Member (irrespective of when rendered). Any such individual (or other person determined under section 8424(d), if applicable) shall be entitled to be paid so much of such individual's lump-sum credit as is attributable to service to which the preceding sentence applies.

(2) An offense described in this paragraph is any offense described in section 8332(*o*)(2)(B) for which the following apply:

(A) Every act or omission of the individual (referred to in paragraph (1)) that is needed to satisfy the elements of the offense occurs while the individual is a Member.

(B) Every act or omission of the individual that is needed to satisfy the elements of the offense directly relates to the performance of the individual's official duties as a Member.

(C) The offense is committed after the date of enactment of this subsection.

(3) An individual convicted of an offense described in paragraph (2) shall not, after the date of the final conviction, be eligible to participate in the retirement system under this chapter while serving as a Member.

(4) The Office of Personnel Management shall prescribe any regulations necessary to carry out this subsection. Such regulations shall include—

(A) provisions under which interest on any lump-sum payment under the second sentence of paragraph (1) shall be limited in a manner similar to that specified in the last sentence of section 8316(b); and

(B) provisions under which the Office may provide for—

(i) the payment, to the spouse or children of any individual referred to in the first sentence of paragraph (1), of any amounts which (but for this clause) would otherwise have been nonpayable by reason of such first sentence, subject to paragraph (5); and

(ii) an appropriate adjustment in the amount of any lump-sum payment under the second sentence of paragraph (1) to reflect the application of clause (i).

[2] So in original. Two subsecs. (i) have been enacted.

[3] So in original. No subsec. (j) has been enacted.

(5) Regulations to carry out clause (i) of paragraph (4)(B) shall include provisions to ensure that the authority to make any payment under such clause to the spouse or children of an individual shall be available only to the extent that the application of such clause is considered necessary and appropriate taking into account the totality of the circumstances, including the financial needs of the spouse or children, whether the spouse or children participated in an offense described in paragraph (2) of which such individual was finally convicted, and what measures, if any, may be necessary to ensure that the convicted individual does not benefit from any such payment.

(6) For purposes of this subsection—

(A) the terms ''finally convicted'' and ''final conviction'' refer to a conviction (i) which has not been appealed and is no longer appealable because the time for taking an appeal has expired, or (ii) which has been appealed and the appeals process for which is completed;

(B) the term ''Member'' has the meaning given such term by section 2106, notwithstanding section 8401(20); and

(C) the term ''child'' has the meaning given such term by section 8441.

(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; Pub. L. 104–201, div. A, title VI, § 637(b), Sept. 23, 1996, 110 Stat. 2580; Pub. L. 106–168, title II, § 202(a), Dec. 12, 1999, 113 Stat. 1817; Pub. L. 106–554, § 1(a)(4) [div. A, § 901(a)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–196; Pub. L. 107–107, div. A, title XI, § 1132(b)(1), Dec. 28, 2001, 115 Stat. 1243; Pub. L. 110–81, title IV, § 401(b), Sept. 14, 2007, 121 Stat. 756.)

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. 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 subsecs. (g) and (i), is section 10 of act Dec. 23, 1913, ch. 6, 38 Stat. 260. 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. 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.

The Domestic Volunteer Service Act of 1973, referred to in subsec. (h), is Pub. L. 93–113, Oct. 1, 1973, 87 Stat. 394. Parts A and C of title I of the Act are classified generally to parts A (§ 4951 et seq.) and C (§ 4991 et seq.), respectively, of subchapter I of chapter 66 of Title 42, The Public Health and Welfare. Part B of title I of the Act, which was classified generally to part B (§ 4971 et seq.) of subchapter I of chapter 66 of Title 42, was repealed by Pub. L. 111–13, title II, § 2121, Apr. 21, 2009, 123 Stat. 1584. For complete classification of this Act to the Code, see Short Title note set out under section 4950 of Title 42 and Tables.

The Peace Corps Act, referred to in subsec. (h), is Pub. L. 87–293, Sept. 22, 1961, 75 Stat. 612, 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.

The date of enactment of this paragraph, referred to in subsec. (i)(1), is the date of enactment of Pub. L. 106–554, which was approved Dec. 21, 2000.

The date of enactment of this subsection, referred to in subsec. (*l*)(2)(C), is the date of enactment of Pub. L. 110–81, which was approved Sept. 14, 2007.

AMENDMENTS

2007—Subsec. (*l*). Pub. L. 110–81 added subsec. (*l*).

2001—Subsec. (b)(6). Pub. L. 107–107, § 1132(b)(1)(A), added par. (6).

Subsec. (k). Pub. L. 107–107, § 1132(b)(1)(B), added subsec. (k).

2000—Subsec. (i). Pub. L. 106–554 added subsec. (i) relating to credit for service as congressional employee for certain service before Dec. 31, 1990.

1999—Subsec. (b). Pub. L. 106–168, § 202(a)(1), in par. (3), struck out ''and'' at end, in par. (4), substituted ''other paragraph'' for ''of the preceding provisions'' and ''; and'' for period at end, and added par. (5) and concluding provisions.

Subsec. (i). Pub. L. 106–168, § 202(a)(2), added subsec. (i) defining ''Bank Plan'' for purposes of subsec. (b)(5).

1996—Subsec. (c)(1). Pub. L. 104–201, § 637(b)(2), in introductory provisions, substituted ''Except as provided in paragraphs (2), (3), and (5)'' for ''Except as provided in paragraph (2) or (3)''.

Subsec. (c)(5). Pub. L. 104–201, § 637(b)(1), added par. (5).

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 appli-

cation 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 2001 AMENDMENT

Amendment by Pub. L. 107–107 applicable only to separations from service as an employee of the United States on or after Dec. 28, 2001, see section 1132(c) of Pub. L. 107–107, set out as a note under section 8332 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–168 effective Dec. 12, 1999, and applicable only to individuals who separate from service subject to chapter 84 of this title on or after Dec. 12, 1999, see section 202(d) of Pub. L. 106–168, set out as a note under section 8402 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–201 effective Jan. 1, 1997, see section 637(c) of Pub. L. 104–201, set out as a note under section 8332 of this title.

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.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

RETIREMENT CREDIT FOR CERTAIN GOVERNMENT SERVICE PERFORMED ABROAD

Pub. L. 107–228, div. A, title III, § 321, Sept. 30, 2002, 116 Stat. 1380, provided that:

''(a) RETIREMENT CREDIT FOR CERTAIN GOVERNMENT SERVICE PERFORMED ABROAD.—Subject to subsection (b)(1), credit under chapter 84 of title 5, United States Code, shall be allowed for any service performed by an individual if or to the extent that—

''(1) it was performed by such individual—

''(A) after December 31, 1988, and before May 24, 1998;

''(B) at a United States diplomatic mission, consular post (other than a consular agency), or other Foreign Service post abroad; and

''(C) under a temporary appointment pursuant to sections 309 and 311 of the Foreign Service Act of 1980 (22 U.S.C. 3949 and 3951);

''(2) at the time of performing such service, such individual would have satisfied all eligibility requirements under regulations of the Department (as in effect on the date of the enactment of this Act [Sept. 30, 2002]) for a family member limited noncareer appointment (within the meaning of such regulations, as in effect on such date of enactment), except that, in applying this paragraph, an individual not employed by the Department while performing such service shall be treated as if then so employed;

''(3) such service would have been creditable under section 8411(b)(3) of such title 5 if—

''(A) the service had been performed before January 1, 1989; and

''(B) the deposit requirements of section 8411(f) of such title 5 had been met with respect to such service;

''(4) such service would not otherwise be creditable under the Federal Employees' Retirement System or any other retirement system for employees of the United States Government (disregarding title II of the Social Security Act [42 U.S.C. 401 et seq.]); and

''(5) the total amount of service performed by such individual (satisfying paragraphs (1) through (4)) is not less than 90 days.

''(b) REQUIREMENTS.—

''(1) REQUIREMENTS OF THE INDIVIDUAL.—In order to receive credit under chapter 84 of title 5, United States Code, for any service described in subsection (a), the individual who performed such service (or, if deceased, any person who is or would be eligible for a survivor annuity under the Federal Employees' Retirement System based on the service of such individual)—

''(A) shall file a written application with the Office of Personnel Management not later than 36 months after the effective date of the regulations prescribed to carry out this section (as specified in those regulations); and

''(B) shall remit to the Office (for deposit in the Treasury of the United States to the credit of the Civil Service Retirement and Disability Fund) the total amount that, under section 8422 of such title 5, should have been deducted from the basic pay of such individual for such service if such service had then been creditable under such chapter 84.

''(2) GOVERNMENT CONTRIBUTIONS.—

''(A) IN GENERAL.—In addition to any other payment that it is required to make under chapter 84 of title 5, United States Code, a department, agency, or other instrumentality of the United States shall remit to the Office of Personnel Management (for deposit in the Treasury of the United States to the credit of the Fund) the amount described in subparagraph (B).

''(B) AMOUNT DESCRIBED.—The amount described in this subparagraph is, with respect to a remittance under paragraph (1), the total amount of Government contributions that would, under section 8423 of title 5, United States Code, have been required of the instrumentality involved (to the extent that it was the employing entity during the period of service to which such remittance relates) in connection with such service.

''(C) SPECIAL RULE.—If an amount cannot be remitted under this paragraph because an instrumentality has ceased to exist, such amount shall instead be treated as part of the supplemental liability referred to in section 8423(b)(1)(A) or (B) of title 5, United States Code (whichever would be appropriate).

''(3) RELATED REQUIREMENTS.—Any remittance under paragraph (1) or (2)—

''(A) shall be made in such time, form, and manner as the Office of Personnel Management may by regulation require; and

''(B) shall be computed with interest (in accordance with section 8334(e) of title 5, United States Code, and such requirements as the Office may by regulation prescribe).

''(4) NOTIFICATION AND ASSISTANCE REQUIREMENTS.—

''(A) IN GENERAL.—The Office of Personnel Management shall take such action as may be necessary and appropriate to inform individuals entitled to have any service credited under this section, or to have any annuity computed or recomputed under this section, of their entitlement to such credit, computation, or recomputation.

''(B) ASSISTANCE TO INDIVIDUALS.—The Office shall, on request, assist any individual referred to in subparagraph (A) in obtaining from any department, agency, or other instrumentality of the United States such information in the possession of such instrumentality as may be necessary to verify the entitlement of such individual to have any service credited, or to have any annuity computed or recomputed, pursuant to this section.

''(C) ASSISTANCE FROM INSTRUMENTALITIES.—Any department, agency, or other instrumentality of the United States that possesses any information with respect to any service described in subsection (a) shall, at the request of the Office, furnish such information to the Office.

''(c) DEFINITIONS.—In this section:

''(1) ABROAD.—The term 'abroad' has the meaning given such term under section 102 of the Foreign Service Act of 1980 (22 U.S.C. 3902).

''(2) BASIC PAY.—The term 'basic pay' has the meaning given such term under section 8401 of title 5, United States Code.

''(3) CIVIL SERVICE RETIREMENT AND DISABILITY FUND.—The term 'Civil Service Retirement and Disability Fund' or 'Fund' means the Civil Service Retirement and Disability Fund under section 8348 of title 5, United States Code.

''(4) TEMPORARY APPOINTMENT.—The term 'temporary appointment' means an appointment that is limited by its terms to a period of one year or less.

''(d) RULE OF CONSTRUCTION.—Nothing in this section shall be considered to permit or require the making of any contributions to the Thrift Savings Fund that would not otherwise have been permitted or required had this section not been enacted.

''(e) APPLICABILITY.—

''(1) ANNUITIES COMMENCING ON OR AFTER EFFECTIVE DATE OF IMPLEMENTING REGULATIONS.—An annuity or survivor annuity—

''(A) which is based on the service of an individual who performed service described in subsection (a), and

''(B) which commences on or after the effective date of the regulations prescribed to carry out this section (as determined under subsection (b)(1)(A)),

shall (subject to subsection (b)(1)) be computed taking into account all service described in subsection (a) that was performed by such individual.

''(2) ANNUITIES WITH COMMENCEMENT DATE PRECEDING EFFECTIVE DATE OF IMPLEMENTING REGULATIONS.—

''(A) RECOMPUTATION CASES.—An annuity or survivor annuity—

''(i) which is based on the service of an individual who performed service described in subsection (a), and

''(ii) which commences before the effective date referred to in paragraph (1)(B),

shall (subject to subsection (b)(1)) be recomputed taking into account all service described in subsection (a) that was performed by such individual.

''(B) OTHER CASES.—An annuity or survivor annuity—

''(i) which is based on the service of an individual who performed service described in subsection (a),

''(ii) the requirements for entitlement which could not be met without taking into account service described in subsection (a), and

''(iii) which (if service described in subsection (a) had been taken into account, and an appropriate application been submitted) would have commenced before the effective date referred to in paragraph (1)(B),

shall (subject to subsection (b)(1)) be computed taking into account all service described in subsection (a) that was performed by such individual.

''(C) RETROACTIVE EFFECT.—Any computation or recomputation of an annuity or survivor annuity pursuant to this paragraph shall—

''(i) if pursuant to subparagraph (A), be effective as of the commencement date of the annuity or survivor annuity involved; and

''(ii) if pursuant to subparagraph (B), be effective as of the commencement date that would have applied if application for the annuity or survivor annuity involved had been submitted on the earliest date possible in order for it to have been approved.

''(D) LUMP-SUM PAYMENT.—Any amounts which by virtue of subparagraph (C) are payable for any months preceding the first month (on or after the effective date referred to in paragraph (1)(B)) as of which annuity or survivor annuity payments become payable fully reflecting the computation or recomputation under subparagraph (A) or (B) (as the case may be) shall be payable in the form of a lump-sum payment.

''(E) ORDER OF PRECEDENCE.—Section 8424(d) of title 5, United States Code, shall apply in the case of any payment under subparagraph (D) payable to an individual who has died.

''(f) IMPLEMENTATION.—The Office of Personnel Management, in consultation with the Secretary, shall prescribe such regulations and take such action as may be necessary and appropriate to implement this section.''

[For definitions of ''Department'' and ''Secretary'' as used in section 321 of Pub. L. 107–228, set out above, see section 3 of Pub. L. 107–228, set out as a note under section 2651 of Title 22, Foreign Relations and Intercourse.]

### § 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 Supreme Court Police, firefighter, nuclear materials courier, or customs and border protection officer, 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 Supreme Court Police, firefighter, nuclear materials courier, or customs and border protection officer, 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; Pub. L. 105–261, div. C, title XXXI, § 3154(g), Oct. 17, 1998, 112 Stat. 2255; Pub. L. 106–553, § 1(a)(2) [title III, § 308(c)(1)], Dec. 21, 2000, 114 Stat. 2762, 2762A–87; Pub. L. 110–161, div. E, title V, § 535(b)(2), Dec. 26, 2007, 121 Stat. 2076.)

AMENDMENTS

2007—Subsec. (d)(1), (2). Pub. L. 110–161 substituted ''nuclear materials courier, or customs and border protection officer,'' for ''or nuclear materials courier,''.

2000—Subsec. (d). Pub. L. 106–553 inserted ''or Supreme Court Police'' after ''Capitol Police'' in pars. (1) and (2).

1998—Subsec. (d)(1), (2). Pub. L. 105–261 substituted ''firefighter, or nuclear materials courier'' for ''or firefighter''.

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).

EFFECTIVE DATE OF 2007 AMENDMENT; TRANSITION RULES

Amendment by Pub. L. 110–161 effective on the later of June 30, 2008, or the first day of the first pay period beginning at least 6 months after Dec. 26, 2007, with transition rules and rights of election, see section 535(e) of Pub. L. 110–161, set out as a note under section 3307 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–553 effective on the first day of the first applicable pay period that begins on Dec. 21, 2000, and applicable only to an individual who is employed as a member of the Supreme Court Police after Dec. 21, 2000, see section 1(a)(2) [title III, § 308(i), (j)] of Pub. L. 106–553, set out in a Supreme Court Police Retirement note under section 8331 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–261 effective at the beginning of the first pay period that begins after Oct. 17, 1998, and applicable only to an individual who is employed as a nuclear materials courier, as defined by section 8331(27) or 8401(33) of this title, after Oct. 17, 1998, see section 3154(m), (n) of Pub. L. 105–261, set out as a note under section 8331 of this title.

## § 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.

**§ 8414. Early retirement**

(a)(1) A member of the Senior Executive Service who 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) 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.

(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)(i) has been employed continuously, by the agency in which the employee is serving, for at least the 31-day period ending on the date on which such agency requests the determination referred to in clause (iv);

(ii) is serving under an appointment that is not time limited;

(iii) has not been duly notified that such employee is to be involuntarily separated for misconduct or unacceptable performance;

(iv) is separate[1] from the service voluntarily during a period in which, as determined by the Office of Personnel Management (upon request of the agency) under regulations prescribed by the Office—

(I) such agency (or, if applicable, the component in which the employee is serving) is undergoing substantial delayering, substantial reorganization, substantial reductions in force, substantial transfer of function, or other substantial workforce restructuring (or shaping);

(II) a significant percentage of employees serving in such agency (or component) are likely to be separated or subject to an immediate reduction in the rate of basic pay (without regard to subchapter VI of chapter 53, or comparable provisions); or

(III) identified as being in positions which are becoming surplus or excess to the agency's future ability to carry out its mission effectively; and

(v) as determined by the agency under regulations prescribed by the Office, is within the scope of the offer of voluntary early retirement, which may be made on the basis of—

(I) 1 or more organizational units;

(II) 1 or more occupational series or levels;

(III) 1 or more geographical locations;

(IV) specific periods;

(V) skills, knowledge, or other factors related to a position; or

(VI) any appropriate combination of such factors.[2]

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)(1) An employee who was hired as a military reserve technician on or before February 10, 1996 (under the provisions of this title in effect before that date), and who is separated from technician service, after becoming 50 years of age and completing 25 years of service, by reason of being separated from the Selected Reserve of the employee's reserve component or ceasing to hold the military grade specified by the Secretary concerned for the position held by the employee is entitled to an annuity.

(2) An employee who is initially hired as a military technician (dual status) after February 10, 1996, and who is separated from the Selected Reserve or ceases to hold the military grade specified by the Secretary concerned for the position held by the technician—

(A) after completing 25 years of service as a military technician (dual status), or

(B) after becoming 50 years of age and completing 20 years of service as a military technician (dual status),

is entitled to an annuity.

(d)(1) The Secretary of Defense may, during fiscal years 2002 and 2003, carry out a program

[1] So in original. Probably should be ''separated''.

[2] So in original. Probably should be a semicolon.

under which an employee of the Department of Defense may be separated from the service entitled to an immediate annuity under this subchapter if the employee—

(A) has—

(i) completed 25 years of service; or

(ii) become 50 years of age and completed 20 years of service; and

(B) is eligible for the annuity under paragraph (2) or (3).

(2)(A) For the purposes of paragraph (1), an employee referred to in that paragraph is eligible for an immediate annuity under this paragraph if the employee—

(i) is separated from the service involuntarily other than for cause; and

(ii) has not declined a reasonable offer of another position in the Department of Defense 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.

(B) For the purposes of paragraph (2)(A)(i), a 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 may not be considered to be a removal for cause.

(3) For the purposes of paragraph (1), an employee referred to in that paragraph is eligible for an immediate annuity under this paragraph if the employee satisfies all of the following conditions:

(A) The employee is separated from the service voluntarily during a period in which the organization within the Department of Defense in which the employee is serving is undergoing a major organizational adjustment.

(B) The employee has been employed continuously by the Department of Defense for more than 30 days before the date on which the head of the employee's organization requests the determinations required under subparagraph (A).

(C) The employee is serving under an appointment that is not limited by time.

(D) The employee is not in receipt of a decision notice of involuntary separation for misconduct or unacceptable performance.

(E) The employee is within the scope of an offer of voluntary early retirement, as defined on the basis of one or more of the following objective criteria:

(i) One or more organizational units.

(ii) One or more occupational groups, series, or levels.

(iii) One or more geographical locations.

(iv) Any other similar objective and nonpersonal criteria that the Office of Personnel Management determines appropriate.

(4) Under regulations prescribed by the Office of Personnel Management, the determinations of whether an employee meets—

(A) the requirements of subparagraph (A) of paragraph (3) shall be made by the Office upon the request of the Secretary of Defense; and

(B) the requirements of subparagraph (E) of such paragraph shall be made by the Secretary of Defense.

(5) A determination of which employees are within the scope of an offer of early retirement shall be made only on the basis of consistent and well-documented application of the relevant criteria.

(6) In this subsection, the term ''major organizational adjustment'' means any of the following:

(A) A major reorganization.

(B) A major reduction in force.

(C) A major transfer of function.

(D) A workforce restructuring—

(i) to meet mission needs;

(ii) to achieve one or more reductions in strength;

(iii) to correct skill imbalances; or

(iv) to reduce the number of high-grade, managerial, supervisory, or similar positions.

(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; Pub. L. 105–261, div. A, title XI, § 1109(b), Oct. 17, 1998, 112 Stat. 2144; Pub. L. 106–58, title VI, § 651(b), Sept. 29, 1999, 113 Stat. 480; Pub. L. 106–65, div. A, title V, § 522(b), Oct. 5, 1999, 113 Stat. 597; Pub. L. 106–398, § 1 [[div. A], title XI, § 1152(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–321; Pub. L. 107–296, title XIII, §§ 1313(b)(2), 1321(a)(5)(A), Nov. 25, 2002, 116 Stat. 2295, 2297.)

AMENDMENTS

2002—Subsec. (a)(1). Pub. L. 107–296, § 1321(a)(5)(A), struck out ''for failure to be recertified as a senior executive under section 3393a or'' before ''for less than fully''.

Subsec. (b)(1)(B). Pub. L. 107–296, § 1313(b)(2), added subpar. (B) and struck out former subpar. (B) which read as follows: ''except in the case of an employee who is separated from the service under a program carried out under subsection (d), 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);''.

2000—Subsec. (b)(1)(B). Pub. L. 106–398, § 1 [[div. A], title XI, § 1152(b)(1)], inserted ''except in the case of an employee who is separated from the service under a program carried out under subsection (d),'' before ''while serving'' in introductory provisions.

Subsec. (d). Pub. L. 106–398, § 1 [[div. A], title XI, § 1152(b)(2)], added subsec. (d).

1999—Subsec. (b)(1)(B). Pub. L. 106–58 repealed Pub. L. 105–261, § 1109(b)(1). See 1998 Amendment note below.

Subsec. (c). Pub. L. 106–65 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''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.''

Subsec. (d). Pub. L. 106–58 repealed Pub. L. 105–261, § 1109(b)(2). See 1998 Amendment note below.

1998—Subsec. (b)(1)(B). Pub. L. 105–261, § 1109(b)(1), which directed insertion of ''except in the case of an employee described in subsection (d)(1),'' after ''(B)'', was repealed by Pub. L. 106–58.

Subsec. (d). Pub. L. 105–261, § 1109(b)(2), which directed addition of subsec. (d), relating to authority of Department of Defense to offer employees voluntary early retirement, was repealed by Pub. L. 106–58.

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 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

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.

GOVERNMENT ACCOUNTABILITY OFFICE: VOLUNTARY EARLY RETIREMENT

For provisions relating to the application of subsection (b)(1)(B) of this section to officers and employees of the Government Accountability Office effective Oct. 13, 2000, see section 1 of Pub. L. 106–303, set out as a note under section 8336 of this title.

APPLICATION OF SUBSECTION (b)(1)(B)

Pub. L. 105–174, title III, § 7001(b), May 1, 1998, 112 Stat. 91, as amended by Pub. L. 106–58, title VI, § 651(a), Sept. 29, 1999, 113 Stat. 480, which provided that, effective May 1, 1998, subsec. (b)(1)(B) of this section was to be applied as if it read as specified in Pub. L. 105–174, § 7001(b), was repealed by Pub. L. 107–296, title XIII, § 1313(b)(4), Nov. 25, 2002, 116 Stat. 2296.

## § 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) The annuity of an air traffic controller or former air traffic controller retiring under section 8412(a) is computed under subsection (a), except that if the individual has had at least 5 years of service as an air traffic controller as defined by section 2109(1)(A)(i), so much of the annuity as is computed with respect to such type of service shall be computed by multiplying 1 7/10 percent of the individual's average pay by the years of such service.

(f)(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.

(g)(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.

(h)(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 technician (dual status), law

enforcement officer, member of the Supreme Court Police, firefighter, nuclear materials courier, air traffic controller, or customs and border protection officer[1]

(i) The annuity of a Member who has served in a position in the executive branch for which the rate of basic pay was reduced for the duration of the service of the Member in that position to remove the impediment to the appointment of the Member imposed by article I, section 6, clause 2 of the Constitution, shall, subject to a deposit in the Fund as provided under section 8422(g), be computed as though the rate of basic pay which would otherwise have been in effect during that period of service had been in effect.

(j)(1) For purposes of this subsection, the term ''physicians comparability allowance'' refers to an amount described in section 8331(3)(H).

(2) Except as otherwise provided in this subsection, no part of a physicians comparability allowance shall be treated as basic pay for purposes of any computation under this section unless, before the date of the separation on which entitlement to annuity is based, the separating individual has completed at least 15 years of service as a Government physician (whether performed before, on, or after the date of the enactment of this subsection).

(3) If the condition under paragraph (2) is met, then, any amounts received by the individual in the form of a physicians comparability allowance shall (for the purposes referred to in paragraph (2)) be treated as basic pay, but only to the extent that such amounts are attributable to service performed on or after the date of the enactment of this subsection, and only to the extent of the percentage allowable, which shall be determined as follows:

| If the total amount of service performed, on or after the date of the enactment of this subsection, as a Government physician is: | Then, the percentage allowable is: |
|---|---|
| Less than 2 years | 0 |
| At least 2 but less than 4 years | 25 |
| At least 4 but less than 6 years | 50 |
| At least 6 but less than 8 years | 75 |
| At least 8 years | 100. |

(4) Notwithstanding any other provision of this subsection, 100 percent of all amounts received as a physicians comparability allowance shall, to the extent attributable to service performed on or after the date of the enactment of this subsection, be treated as basic pay (without regard to any of the preceding provisions of this subsection) for purposes of computing—

(A) an annuity under section 8452; and

(B) a survivor annuity under subchapter IV, if based on the service of an individual who dies before separating from service.

(k) The annuity of an employee retiring under this chapter with service credited under section 8411(b)(6) shall be reduced by the amount necessary to ensure that the present value of the annuity payable to the employee under this subchapter is actuarially equivalent to the present value of the annuity that would be payable to the employee under this subchapter if it were computed—

(1) on the basis of service that does not include service credited under section 8411(b)(6); and

(2) assuming the employee separated from service on the actual date of the separation of the employee.

The amount of the reduction shall be computed under regulations prescribed by the Office of Personnel Management for the administration of this subsection.

(*l*)(1) In computing an annuity under this subchapter, the total service of an employee who retires from the position of a registered nurse with the Veterans Health Administration on an immediate annuity, or dies while employed in that position leaving any survivor entitled to an annuity, includes the days of unused sick leave to the credit of that employee under a formal leave system, except that such days shall not be counted in determining average pay or annuity eligibility under this subchapter.

(2)(A) Except as provided in paragraph (1), in computing an annuity under this subchapter, the total service of an employee who retires on an immediate annuity or who dies leaving a survivor or survivors entitled to annuity includes the applicable percentage of the days of unused sick leave to his credit under a formal leave system and for which days the employee has not received payment, except that these days will not be counted in determining average pay or annuity eligibility under this subchapter. For purposes of this subsection, in the case of any such employee who is excepted from subchapter I of chapter 63 under section 6301(2)(x) through (xiii), 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.

(B) For purposes of subparagraph (A), the term ''applicable percentage'' means—

(i) 50 percent in the case of an annuity, entitlement to which is based on a death or other separation occurring during the period beginning on the date of enactment of this paragraph and ending on December 31, 2013; and

(ii) 100 percent in the case of an annuity, entitlement to which is based on a death or other separation occurring after December 31, 2013.

(m) In the case of any annuity computation under this section that includes, in the aggregate, at least 2 months of credit under section 8411(d) for any period while receiving benefits under subchapter I of chapter 81, the percentage otherwise applicable under this section for that period so credited shall be increased by 1 percentage point.

(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; Pub. L. 105–61, title V, § 516(a)(7), Oct. 10, 1997, 111 Stat. 1306; Pub. L. 105–261, div. C, title XXXI, § 3154(h), Oct. 17, 1998, 112 Stat. 2255; Pub. L. 106–65, div. A, title V, § 522(c)(1), Oct. 5, 1999, 113 Stat. 597; Pub. L. 106–553, § 1(a)(2) [title III, § 308(c)(2)], Dec. 21, 2000, 114 Stat. 2762, 2762A–87; Pub. L. 106–571, § 3(c)(1), Dec. 28, 2000, 114 Stat. 3055; Pub. L. 107–107, div. A, title XI,

[1] So in original. Probably should be followed by a period.

§ 1132(b)(3), Dec. 28, 2001, 115 Stat. 1244; Pub. L. 107–135, title I, § 122(a), Jan. 23, 2002, 115 Stat. 2451; Pub. L. 108–92, § 1(a), Oct. 3, 2003, 117 Stat. 1160; Pub. L. 108–176, title II, § 226(b)(1), Dec. 12, 2003, 117 Stat. 2530; Pub. L. 110–161, div. E, title V, § 535(b)(3), Dec. 26, 2007, 121 Stat. 2076; Pub. L. 111–84, div. A, title XIX, § 1901(a), Oct. 28, 2009, 123 Stat. 2615.)

REFERENCES IN TEXT

The date of the enactment of this subsection, referred to in subsec. (j), is the date of enactment of Pub. L. 106–571, which was approved Dec. 28, 2000.

The date of enactment of this paragraph, referred to in subsec. (*l*)(2)(B)(i), is the date of enactment of Pub. L. 111–84, which was approved Oct. 28, 2009.

AMENDMENTS

2009—Subsecs. (k) to (m). Pub. L. 111–84 redesignated subsec. (k), relating to inclusion of unused sick leave in computing an annuity of a registered nurse with the Veterans Health Administration, as (*l*), designated existing provisions as par. (1), added par. (2), and redesignated former subsec. (*l*) as (m).

2007—Subsec. (h)(2). Pub. L. 110–161 substituted ''air traffic controller, or customs and border protection officer'' for ''or air traffic controller.'' in concluding provisions.

2003—Subsecs. (e) to (h). Pub. L. 108–176, § 226(b)(1), added subsec. (e) and redesignated former subsecs. (e) to (g) as (f) to (h), respectively. Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 108–176, § 226(b)(1)(A), redesignated subsec. (h) as (i). Former subsec. (i) redesignated (j).

Pub. L. 108–176, § 226(b)(1)(A), which directed the redesignation of the second subsec. (i) as (*l*), could not be executed because of the redesignation of the second subsec. (i) as (k) by Pub. L. 108–92, § 1(a)(1). See below.

Pub. L. 108–92, § 1(a)(1), redesignated second subsec. (i), relating to inclusion of unused sick leave in computing an annuity of a registered nurse with the Veterans Health Administration, as (k).

Subsec. (j). Pub. L. 108–176, § 226(b)(1)(A), redesignated subsec. (i) as (j). Former subsec. (j) redesignated (k).

Subsec. (k). Pub. L. 108–176, § 226(b)(1)(A), redesignated subsec. (j) as (k).

Pub. L. 108–92, § 1(a)(1), redesignated second subsec. (i), relating to inclusion of unused sick leave in computing an annuity of a registered nurse with the Veterans Health Administration, as (k).

Subsec.(*l*). Pub. L. 108–92, § 1(a)(2), added subsec. (*l*).

2002—Subsec. (i). Pub. L. 107–135 added subsec. (i) relating to inclusion of unused sick leave in computing an annuity of a registered nurse with the Veterans Health Administration.

2001—Subsec. (j). Pub. L. 107–107 added subsec. (j).

2000—Subsec. (g). Pub. L. 106–553 inserted ''member of the Supreme Court Police,'' after ''law enforcement officer,'' in concluding provisions.

Subsec. (i). Pub. L. 106–571 added subsec. (i).

1999—Subsec. (g)(2). Pub. L. 106–65 substituted ''military technician (dual status)'' for ''military reserve technician'' in concluding provisions.

1998—Subsec. (g)(2). Pub. L. 105–261 inserted ''nuclear materials courier,'' after ''firefighter,'' in concluding provisions.

1997—Subsec. (h). Pub. L. 105–61 added subsec. (h).

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).

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–84, div. A, title XIX, § 1901(c), Oct. 28, 2009, 123 Stat. 2615, provided that: ''The amendments made by this section [amending this section and section 8422 of this title] shall apply with respect to any annuity, entitlement to which is based on a death or other separation from service occurring on or after the date of enactment of this Act [Oct. 28, 2009].''

EFFECTIVE DATE OF 2007 AMENDMENT; TRANSITION RULES

Amendment by Pub. L. 110–161 effective on the later of June 30, 2008, or the first day of the first pay period beginning at least 6 months after Dec. 26, 2007, with transition rules and rights of election, see section 535(e) of Pub. L. 110–161, set out as a note under section 3307 of this title.

EFFECTIVE DATE OF 2003 AMENDMENTS

Amendment by Pub. L. 108–176 effective on 60th day after Dec. 12, 2003, and applicable with respect to any annuity entitlement based on an individual's separation from service occurring on or after such effective date, and any service performed by any such individual before, on, or after such effective date, subject to special rule relating to deposit requirement, see section 226(c) of Pub. L. 108–176, set out as a note under section 8401 of this title.

Pub. L. 108–92, § 2, Oct. 3, 2003, 117 Stat. 1160, provided that: ''The amendments made by this Act [amending this section and section 8422 of this title] shall apply with respect to any annuity entitlement to which is based on a separation from service occurring on or after the date of enactment of this Act [Oct. 3, 2003].''

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–135, title I, § 122(c), Jan. 23, 2002, 115 Stat. 2451, provided that: ''The amendments made by this section [amending this section and section 8422 of this title] shall take effect 60 days after the date of the enactment of this Act [Jan. 23, 2002] and shall apply to individuals who separate from service on or after that effective date.''

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–107 applicable only to separations from service as an employee of the United States on or after Dec. 28, 2001, see section 1132(c) of Pub. L. 107–107, set out as a note under section 8332 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–553 effective on the first day of the first applicable pay period that begins on Dec. 21, 2000, and applicable only to an individual who is employed as a member of the Supreme Court Police after Dec. 21, 2000, see section 1(a)(2) [title III, § 308(i), (j)] of Pub. L. 106–553, set out in a Supreme Court Police Retirement note under section 8331 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–261 effective at the beginning of the first pay period that begins after Oct. 17, 1998, and applicable only to an individual who is employed as a nuclear materials courier, as defined by section 8331(27) or 8401(33) of this title, after Oct. 17, 1998, see section 3154(m), (n) of Pub. L. 105–261, set out as a note under section 8331 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–61 applicable to any annuity commencing before, on, or after Oct. 10, 1997, and effective with regard to any payment made after the first month following Oct. 10, 1997, see section 516(b) of Pub. L. 105–61, set out as a note under section 8334 of this title.

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.

## § 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 re-

duction 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.)

### § 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.)

### § 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.

### § 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''.

### § 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.)

### § 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.

## § 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).

(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; Pub. L. 107–296, title XIII, § 1321(a)(5)(B), Nov. 25, 2002, 116 Stat. 2297.)

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

2002—Subsec. (a)(2). Pub. L. 107–296, which directed amendment of par. (2) by striking '', 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 retirement age'', was executed by striking out '', 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'' before period at end, to reflect the probable intent of Congress.

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 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

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.

## § 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 en-

titled 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).

(5) Notwithstanding paragraphs (1) through (4), the reduction required by subsection (a) shall be effective with respect to the annuity supplement payable for each month in the 12-month period beginning on the first day of the seventh month after the end of the calendar year in which the excess earnings were earned.

(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; Pub. L. 106–394, § 3(a), Oct. 30, 2000, 114 Stat. 1630.)

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

2000—Subsec. (b)(5). Pub. L. 106–394 added par. (5).

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.''

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–394, § 3(b), Oct. 30, 2000, 114 Stat. 1630, provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to reductions required to be made in calendar years beginning after the date of the enactment of this Act [Oct. 30, 2000].''

## § 8422. Deductions from pay; contributions for other service; deposits

(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 percentage to be deducted and withheld from basic pay for any pay period shall be equal to—

(A) the applicable percentage under paragraph (3), minus

(B) 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).

(3) The applicable percentage under this paragraph for civilian service shall be as follows:

| | | |
|---|---|---|
| Employee | 7 | January 1, 1987, to December 31, 1998. |
| | 7.25 | January 1, 1999, to December 31, 1999. |
| | 7.4 | January 1, 2000, to December 31, 2000. |
| | 7 | After December 31, 2000. |
| Congressional employee. | 7.5 | January 1, 1987, to December 31, 1998. |
| | 7.75 | January 1, 1999, to December 31, 1999. |
| | 7.9 | January 1, 2000, to December 31, 2000. |
| | 7.5 | After December 31, 2000. |
| Member | 7.5 | January 1, 1987, to December 31, 1998. |
| | 7.75 | January 1, 1999, to December 31, 1999. |
| | 7.9 | January 1, 2000, to December 31, 2000. |
| | 8 | January 1, 2001, to December 31, 2002. |
| | 7.5 | After December 31, 2002. |
| Law enforcement officer, firefighter, member of the Capitol Police, member of the Supreme Court Police, or air traffic controller. | 7.5 | January 1, 1987, to December 31, 1998. |
| | 7.75 | January 1, 1999, to December 31, 1999. |
| | 7.9 | January 1, 2000, to December 31, 2000. |
| | 7.5 | After December 31, 2000. |
| Nuclear materials courier. | 7 | January 1, 1987, to October 16, 1998. |
| | 7.5 | October 17, 1998, to December 31, 1998. |
| | 7.75 | January 1, 1999, to December 31, 1999. |
| | 7.9 | January 1, 2000, to December 31, 2000. |
| | 7.5 | After December 31, 2000. |
| Customs and border protection officer. | 7.5 | After June 29, 2008. |

(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 Member, 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 Secretary of the Treasury may prescribe. Deposits made by an employee, Member, or survivor also shall be credited to the Fund.

(d)(1) Under such regulations as the Office may prescribe, amounts deducted under subsection (a) shall be entered on individual retirement records.

(2) Deposit may not be required for days of unused sick leave credited under paragraph (1) or (2) of section 8415(*l*).

(e)(1)(A) Except as provided in subparagraph (B), and subject to paragraph (6), 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 Chief Administrative Officer 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 Chief Administrative Officer 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.

(6) The percentage of basic pay under section 204 of title 37 payable under paragraph (1), with respect to any period of military service performed during—

(A) January 1, 1999, through December 31, 1999, shall be 3.25 percent; and

(B) January 1, 2000, through December 31, 2000, shall be 3.4 percent.

(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,[1] 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,[1] 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. This paragraph shall be subject to paragraph (4).

(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.

(4) The percentage of the readjustment allowance or stipend (as the case may be) payable under paragraph (1), with respect to any period of volunteer service performed during—

(A) January 1, 1999, through December 31, 1999, shall be 3.25 percent; and

(B) January 1, 2000, through December 31, 2000, shall be 3.4 percent.

(g) A Member who has served in a position in the executive branch for which the rate of basic pay was reduced for the duration of the service of the Member to remove the impediment to the appointment of the Member imposed by article I, section 6, clause 2 of the Constitution, or the survivor of such a Member, may deposit to the credit of the Fund an amount equal to the difference between the amount deducted from the basic pay of the Member during that period of service and the amount that would have been deducted if the rate of basic pay which would otherwise have been in effect during that period had been in effect, plus interest computed under section 8334(e).

(h) No deposit may be made with respect to service credited under section 8411(b)(6).

(i)(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 such employee or Member may be allowed credit under this chapter 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) Interest under this subsection shall be computed in accordance with paragraphs (2) and (3)

[1] See References in Text note below.

of section 8334(e) and regulations prescribed by the Office. The option under the third sentence of section 8334(e)(2) to make a deposit in one or more installments shall apply to deposits under this subsection.

(3) For the purpose of survivor annuities, deposits authorized by this subsection may also be made by a survivor of an employee or Member.

(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; Pub. L. 104–186, title II, § 215(14), Aug. 20, 1996, 110 Stat. 1746; Pub. L. 104–316, title I, § 103(g), Oct. 19, 1996, 110 Stat. 3829; Pub. L. 105–33, title VII, § 7001(b)(1), Aug. 5, 1997, 111 Stat. 657; Pub. L. 105–61, title V, § 516(a)(8), Oct. 10, 1997, 111 Stat. 1307; Pub. L. 105–261, div. C, title XXXI, § 3154(i)(1), Oct. 17, 1998, 112 Stat. 2255; Pub. L. 106–65, div. A, title X, § 1066(d)(3), Oct. 5, 1999, 113 Stat. 773; Pub. L. 106–346, § 101(a) [title V, § 505(b)], Oct. 23, 2000, 114 Stat. 1356, 1356A–52; Pub. L. 106–553, § 1(a)(2) [title III, § 308(c)(3)], Dec. 21, 2000, 114 Stat. 2762, 2762A–87; Pub. L. 107–107, div. A, title XI, § 1132(b)(2)(A), (B), Dec. 28, 2001, 115 Stat. 1243, 1244; Pub. L. 107–135, title I, § 122(b), Jan. 23, 2002, 115 Stat. 2451; Pub. L. 108–92, § 1(b), Oct. 3, 2003, 117 Stat. 1160; Pub. L. 108–176, title II, § 226(b)(2)(A), Dec. 12, 2003, 117 Stat. 2530; Pub. L. 110–161, div. E, title V, § 535(b)(4), Dec. 26, 2007, 121 Stat. 2076; Pub. L. 111–84, div. A, title XIX, §§ 1901(b), 1904(a), (b)(2), (3)(A), Oct. 28, 2009, 123 Stat. 2615, 2616.)

REFERENCES IN TEXT

Section 3101(a) of the Internal Revenue Code of 1986, referred to in subsec. (a)(2)(B), 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. 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.

The Domestic Volunteer Service Act of 1973, referred to in subsec. (f)(1), is Pub. L. 93–113, Oct. 1, 1973, 87 Stat. 394. Parts A and C of title I of the Act are classified generally to parts A (§ 4951 et seq.) and C (§ 4991 et seq.), respectively, of subchapter I of chapter 66 of Title 42, The Public Health and Welfare. Part B of title I of the Act, which was classified generally to part B (§ 4971 et seq.) of subchapter I of chapter 66 of Title 42, was repealed by Pub. L. 111–13, title II, § 2121, Apr. 21, 2009, 123 Stat. 1584. For complete classification of this Act to the Code, see Short Title note set out under section 4950 of Title 42 and Tables.

The Peace Corps Act, referred to in subsec. (f)(1), is Pub. L. 87–293, Sept. 22, 1961, 75 Stat. 612, 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

2009—Pub. L. 111–84, § 1904(b)(3)(A), amended section catchline generally, inserting "; deposits" after "service".

Subsec. (c). Pub. L. 111–84, § 1904(b)(2), inserted at end "Deposits made by an employee, Member, or survivor also shall be credited to the Fund."

Subsec. (d)(2). Pub. L. 111–84, § 1901(b), substituted "paragraph (1) or (2) of section 8415(*l*)" for "section 8415(k)".

Subsec. (i). Pub. L. 111–84, § 1904(a), added subsec. (i).

2007—Subsec. (a)(3). Pub. L. 110–161 inserted table for customs and border protection officer.

2003—Subsec. (d)(2). Pub. L. 108–176, which directed the substitution of "8415(j)" for "8415(i)", could not be executed because "8415(i)" did not appear subsequent to amendment by Pub. L. 108–92. See below.

Pub. L. 108–92 substituted "8415(k)" for "8415(i)".

2002—Subsec. (d). Pub. L. 107–135 designated existing provisions as par. (1) and added par. (2).

2001—Pub. L. 107–107, § 1132(b)(2)(B), substituted "other service" for "military service" in section catchline.

Subsec. (h). Pub. L. 107–107, § 1132(b)(2)(A), added subsec. (h).

2000—Subsec. (a)(3). Pub. L. 106–553 inserted "member of the Supreme Court Police," after "member of the Capitol Police," in table for law enforcement officer, firefighter, member of the Capitol Police, or air traffic controller.

Pub. L. 106–346, § 101(a) [title V, § 505(b)(1)], added par. (3) and struck out former par. (3), which set out tables of applicable percentages for employee, Congressional employee, Member, law enforcement officer, firefighter, member of the Capitol Police, air traffic controller, and nuclear materials courier.

Subsec. (e)(6). Pub. L. 106–346, § 101(a) [title V, § 505(b)(2)], inserted "and" at end of subpar. (A), substituted a period for "; and" at end of subpar. (B), and struck out subpar. (C) which read as follows: "January 1, 2001, through December 31, 2002, shall be 3.5 percent."

Subsec. (f)(4). Pub. L. 106–346, § 101(a) [title V, § 505(b)(3)], inserted "and" at end of subpar. (A), substituted a period for "; and" at end of subpar. (B), and struck out subpar. (C) which read as follows: "January 1, 2001, through December 31, 2002, shall be 3.5 percent."

1999—Subsec. (a)(3). Pub. L. 106–65, in table for nuclear materials courier, substituted "October 16, 1998" for "the day before the date of the enactment of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999" and "October 17, 1998" for "The date of the enactment of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999".

1998—Subsec. (a)(3). Pub. L. 105–261 inserted table for nuclear materials courier.

1997—Subsec. (a)(2), (3). Pub. L. 105–33, § 7001(b)(1)(A), added pars. (2) and (3) and struck out former par. (2) which read as follows: "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)."

Subsec. (e)(1)(A). Pub. L. 105–33, § 7001(b)(1)(B)(i), inserted "and subject to paragraph (6)," after "Except as provided in subparagraph (B),".

Subsec. (e)(6). Pub. L. 105–33, § 7001(b)(1)(B)(ii), added par. (6).

Subsec. (f)(1). Pub. L. 105–33, § 7001(b)(1)(C)(i), inserted at end "This paragraph shall be subject to paragraph (4)."

Subsec. (f)(4). Pub. L. 105–33, § 7001(b)(1)(C)(ii), added par. (4).

Subsec. (g). Pub. L. 105–61 added subsec. (g).

1996—Subsec. (c). Pub. L. 104–316 substituted ''Secretary of the Treasury'' for ''Comptroller General of the United States''.

Subsec. (e)(1)(A), (3). Pub. L. 104–186 substituted ''Chief Administrative Officer'' for ''Clerk''.

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 2009 AMENDMENT

Amendment by section 1901(b) of Pub. L. 111–84 applicable with respect to any annuity, entitlement to which is based on a death or other separation from service occurring on or after Oct. 28, 2009, see section 1901(c) of Pub. L. 111–84, set out as a note under section 8415 of this title.

EFFECTIVE DATE OF 2007 AMENDMENT; TRANSITION RULES

Amendment by Pub. L. 110–161 effective on the later of June 30, 2008, or the first day of the first pay period beginning at least 6 months after Dec. 26, 2007, with transition rules and rights of election, see section 535(e) of Pub. L. 110–161, set out as a note under section 3307 of this title.

EFFECTIVE DATE OF 2003 AMENDMENTS

Amendment by Pub. L. 108–176 effective on 60th day after Dec. 12, 2003, and applicable with respect to any annuity entitlement based on an individual's separation from service occurring on or after such effective date, and any service performed by any such individual before, on, or after such effective date, subject to special rule relating to deposit requirement, see section 226(c) of Pub. L. 108–176, set out as a note under section 8401 of this title.

Amendment by Pub. L. 108–92 applicable with respect to any annuity entitlement which is based on a separation from service occurring on or after Oct. 3, 2003, see section 2 of Pub. L. 108–92, set out as a note under section 8415 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–135 effective 60 days after Jan. 23, 2002, and applicable to individuals who separate from service on or after that effective date, see section 122(c) of Pub. L. 107–135, set out as a note under section 8415 of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–107 applicable only to separations from service as an employee of the United States on or after Dec. 28, 2001, see section 1132(c) of Pub. L. 107–107, set out as a note under section 8332 of this title.

EFFECTIVE DATE OF 2000 AMENDMENTS

Amendment by Pub. L. 106–553 effective on the first day of the first applicable pay period that begins on Dec. 21, 2000, and applicable only to an individual who is employed as a member of the Supreme Court Police after Dec. 21, 2000, see section 1(a)(2) [title III, § 308(i), (j)] of Pub. L. 106–553, set out in a Supreme Court Police Retirement note under section 8331 of this title.

Amendment by Pub. L. 106–346 effective upon the close of calendar year 2000 and applicable thereafter, see section 101(a) [title V, § 505(i)] of Pub. L. 106–346, set out as a note under section 8334 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–261 effective at the beginning of the first pay period that begins after Oct. 17, 1998, and applicable only to an individual who is employed as a nuclear materials courier, as defined by section 8331(27) or 8401(33) of this title, after Oct. 17, 1998, see section 3154(m), (n) of Pub. L. 105–261, set out as a note under section 8331 of this title.

EFFECTIVE DATE OF 1997 AMENDMENTS

Amendment by Pub. L. 105–61 applicable to any annuity commencing before, on, or after Oct. 10, 1997, and effective with regard to any payment made after the first month following Oct. 10, 1997, see section 516(b) of Pub. L. 105–61, set out as a note under section 8334 of this title.

Amendment by Pub. L. 105–33 effective Oct. 1, 1997, see section 7001(f) of Pub. L. 105–33, set out as a note under section 8334 of 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 an Effective Date 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.

NO REDUCTION IN AGENCY CONTRIBUTIONS

Pub. L. 105–261, div. C, title XXXI, § 3154(i)(2), Oct. 17, 1998, 112 Stat. 2256, provided that: ''Contributions under subsections (a) and (b) of section 8423 of title 5, United States Code, shall not be reduced as a result of that portion of the amendment made by paragraph (1) [amending this section] requiring employee deductions at a rate in excess of 7.5 percent for the period beginning on January 1, 1999, and ending on December 31, 2002.''

Section 7001(b)(2) of Pub. L. 105–33 provided that: ''Contributions under section 8423(a) and (b) of title 5, United States Code, shall not be reduced as a result of the amendments made under paragraph (1) [amending this section] of this subsection.''

## § 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, members of the Supreme Court Police, firefighters, nu-

clear materials couriers, customs and border protection officers, 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, members of the Supreme Court Police, firefighters, nuclear materials couriers, customs and border protection officers, air traffic controllers, military reserve technicians, and other employees, from the appropriation or fund used to pay such law enforcement officers, members of the Supreme Court Police, firefighters, nuclear materials couriers, customs and border protection officers, 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 Chief Administrative Officer of the House of Representatives, from the applicable accounts of the House of Representatives.

(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 Regulatory 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; Pub. L. 104–186, title II, § 215(15), Aug. 20, 1996, 110 Stat. 1746; Pub. L. 105–261, div. C, title XXXI, § 3154(j), Oct. 17, 1998, 112 Stat. 2256; Pub. L. 106–553, § 1(a)(2) [title III, § 308(c)(4)], Dec. 21, 2000, 114 Stat. 2762, 2762A–87; Pub. L. 109–435, title VI, § 604(b), Dec. 20, 2006, 120 Stat. 3241; Pub. L. 110–161, div. E, title V, § 535(b)(5), Dec. 26, 2007, 121 Stat. 2076.)

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

2007—Subsec. (a)(1)(B)(i), (3)(A). Pub. L. 110–161 inserted ''customs and border protection officers,'' after ''nuclear materials couriers,'' wherever appearing.

2006—Subsec. (b)(1)(B). Pub. L. 109–435 substituted ''Postal Regulatory Commission'' for ''Postal Rate Commission''.

2000—Subsec. (a). Pub. L. 106–553 inserted ''members of the Supreme Court Police,'' after ''law enforcement officers,'' wherever appearing.

1998—Subsec. (a)(1)(B)(i), (3)(A). Pub. L. 105–261 inserted ''nuclear materials couriers,'' after ''firefighters,'' wherever appearing.

1996—Subsec. (a)(3)(C). Pub. L. 104–186 substituted ''Chief Administrative Officer of the House of Representatives, from the applicable accounts of the House of Representatives'' for ''Clerk of the House of Representatives, from the contingent fund of the House''.

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 2007 AMENDMENT; TRANSITION RULES

Amendment by Pub. L. 110–161 effective on the later of June 30, 2008, or the first day of the first pay period beginning at least 6 months after Dec. 26, 2007, with transition rules and rights of election, see section 535(e) of Pub. L. 110–161, set out as a note under section 3307 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–553 effective on the first day of the first applicable pay period that begins on Dec. 21, 2000, and applicable only to an individual who is employed as a member of the Supreme Court Police after Dec. 21, 2000, see section 1(a)(2) [title III, § 308(i), (j)] of Pub. L. 106–553, set out in a Supreme Court Police Retirement note under section 8331 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–261 effective at the beginning of the first pay period that begins after Oct. 17, 1998, and applicable only to an individual who is employed as a nuclear materials courier, as defined by section 8331(27) or 8401(33) of this title, after Oct. 17, 1998, see section 3154(m), (n) of Pub. L. 105–261, set out as a note under section 8331 of this title.

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

Statutory functions, duties, or authority of Chief Administrative Officer of the House of Representatives or Secretary of the Senate as disbursing officers for the Capitol Police transferred to Chief of the Capitol Police, and references in any law or resolution before Feb. 20, 2003, to funds paid or disbursed by Chief Administrative Officer of the House of Representatives and Secretary of the Senate relating to pay and allowances of Capitol Police employees deemed to refer to Chief of the Capitol Police. See section 1907(a) of Title 2, The Congress.

## § 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, until the employee or Member is reemployed in the service subject to this chapter.

(b)(1)(A) Payment of the lump-sum credit under subsection (a) may be made only if the spouse, if any, and any former spouse of the employee or Member are notified of the employee or Member's application.

(B) The Office shall prescribe regulations under which the lump-sum credit shall not be paid without the consent of a spouse or former spouse of the employee or Member where the Office has received such additional information or documentation as the Office may require that—

(i) a court order bars payment of the lump-sum credit in order to preserve the court's ability to award an annuity under section 8445 or 8467; or

(ii) payment of the lump-sum credit would extinguish the entitlement of the spouse or former spouse, under a court order on file with the Office, 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; amended Pub. L. 106–361, § 3(b), Oct. 27, 2000, 114 Stat. 1402; Pub. L. 111–84, div. A, title XIX, § 1904(b)(4), Oct. 28, 2009, 123 Stat. 2617.)

AMENDMENTS

2009—Subsec. (a). Pub. L. 111–84 substituted ''based, until the employee or Member is reemployed in the service subject to this chapter.'' for ''based.'' in concluding provisions.

2000—Subsec. (b)(1). Pub. L. 106–361 amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''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.''

## § 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. For purposes of this subsection, the term ''air traffic controller'' or ''controller'' has the meaning given to it under section 8401(35)(A).

(b)(1) A law enforcement officer, firefighter, nuclear materials courier, or customs and border protection 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, firefighter, nuclear materials courier, or customs and border protection officer[1] as the case may be, 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.

(2) In the case of employees of the Federal Bureau of Investigation, the second sentence of paragraph (1) shall be applied by substituting ''65 years of age'' for ''60 years of age''. The authority to grant exemptions in accordance with the preceding sentence shall cease to be available after December 31, 2011.

(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) A member of the Supreme Court 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 Marshal of the Supreme Court of the United States, when in his 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 Marshal shall notify the member in writing of the date of separation at least 60 days

[1] So in original. Probably should be followed by a comma.

before the 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.

(e) The President, by Executive order, may exempt an employee (other than a member of the Capitol Police or Supreme Court 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; Pub. L. 105–261, div. C, title XXXI, § 3154(k), Oct. 17, 1998, 112 Stat. 2256; Pub. L. 106–553, § 1(a)(2) [title III, § 308(c)(5)], Dec. 21, 2000, 114 Stat. 2762, 2762A–87; Pub. L. 107–27, § 2(b), Aug. 20, 2001, 115 Stat. 207; Pub. L. 108–176, title II, § 226(a)(3)(B), Dec. 12, 2003, 117 Stat. 2529; Pub. L. 108–447, div. B, title I, § 112(b), Dec. 8, 2004, 118 Stat. 2868; Pub. L. 108–458, title II, § 2005(b), Dec. 17, 2004, 118 Stat. 3704; Pub. L. 110–161, div. E, title V, § 535(b)(6), Dec. 26, 2007, 121 Stat. 2076; Pub. L. 111–259, title IV, § 444(b), Oct. 7, 2010, 124 Stat. 2733.)

AMENDMENTS

2010—Subsec. (b)(2). Pub. L. 111–259, § 444(b)(2), struck out par. (2) added by section 2005(b)(2) of Pub. L. 108–458 which read as follows: ''In the case of employees of the Federal Bureau of Investigation, the second sentence of paragraph (1) shall be applied by substituting '65 years of age' for '60 years of age'. The Federal Bureau of Investigation may not grant more than 50 exemptions in any fiscal year in accordance with the preceding sentence, and the authority to grant such exemptions shall cease to be available after September 30, 2007.''

Pub. L. 111–259, § 444(b)(1), amended par. (2) relating to employees of the Federal Bureau of Investigation and providing that authority to grant exemptions shall cease to be available after Dec. 31, 2009, by substituting ''2011'' for ''2009''.

2007—Subsec. (b)(1). Pub. L. 110–161 substituted ''nuclear materials courier, or customs and border protection officer who'' for ''or nuclear materials courier who'' and ''nuclear materials courier, or customs and border protection officer'' for ''or nuclear materials courier,''.

2004—Subsec. (b). Pub. L. 108–447, § 112(b)(1), and Pub. L. 108–458, § 2005(b)(1), amended subsec. (b) identically, designating existing provisions as par. (1).

Subsec. (b)(2). Pub. L. 108–458, § 2005(b)(2), added par. (2) relating to employees of the Federal Bureau of Investigation, limiting number of exemptions to 50 per fiscal year, and providing that authority to grant such exemptions shall cease to be available after Sept. 30, 2007.

Pub. L. 108–447, § 112(b)(2), added par. (2) relating to employees of the Federal Bureau of Investigation and providing that authority to grant exemptions shall cease to be available after Dec. 31, 2009.

2003—Subsec. (a). Pub. L. 108–176 inserted at end ''For purposes of this subsection, the term 'air traffic controller' or 'controller' has the meaning given to it under section 8401(35)(A).''

2001—Subsec. (b). Pub. L. 107–27 struck out first sentence which read ''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.'' and, in second sentence, inserted '', firefighter,'' after ''law enforcement officer'' in two places and substituted ''courier, as the case may be, becomes 57 years of age'' for ''courier becomes 57 years of age''.

2000—Subsec. (d). Pub. L. 106–553, § 1(a)(2) [title III, § 308(c)(5)(A)], added subsec. (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 106–553, § 1(a)(2) [title III, § 308(c)(5)], redesignated subsec. (d) as (e) and substituted ''Police or Supreme Court Police)'' for ''Police)''.

1998—Subsec. (b). Pub. L. 105–261, in second sentence, inserted ''or nuclear materials courier'' after ''law enforcement officer'' in two places.

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 2007 AMENDMENT; TRANSITION RULES

Amendment by Pub. L. 110–161 effective on the later of June 30, 2008, or the first day of the first pay period beginning at least 6 months after Dec. 26, 2007, with transition rules and rights of election, see section 535(e) of Pub. L. 110–161, set out as a note under section 3307 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–176 effective on 60th day after Dec. 12, 2003, and applicable with respect to any annuity entitlement based on an individual's separation from service occurring on or after such effective date, and any service performed by any such individual before, on, or after such effective date, subject to special rule relating to deposit requirement, see section 226(c) of Pub. L. 108–176, set out as a note under section 8401 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–553 effective on the first day of the first applicable pay period that begins on Dec. 21, 2000, and applicable only to an individual who is employed as a member of the Supreme Court Police after Dec. 21, 2000, see section 1(a)(2) [title III, § 308(i), (j)] of Pub. L. 106–553, set out in a Supreme Court Police Retirement note under section 8331 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–261 effective 1 year after Oct. 17, 1998, and applicable only to an individual who is employed as a nuclear materials courier, as defined by section 8331(27) or 8401(33) of this title, after Oct. 17, 1998, see section 3154(m), (n) of Pub. L. 105–261, set out as a note under section 8331 of this title.

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].''

## SUBCHAPTER III—THRIFT SAVINGS PLAN

### § 8431. Certain transfers to be treated as a separation

(a) For purposes of this subchapter, separation from Government employment includes a transfer from a position that is subject to one of the retirement systems described in subsection (b) to a position that is not subject to any of them.

(b) The retirement systems described in this subsection are—

(1) the retirement system under this chapter;

(2) the retirement system under subchapter III of chapter 83; and

(3) any other retirement system under which individuals may contribute to the Thrift Savings Fund through withholdings from pay.

(Added Pub. L. 106–168, title II, § 203(a)(1), Dec. 12, 1999, 113 Stat. 1820.)

PRIOR PROVISIONS

A prior section 8431, 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, provided a definition of ''basic pay'' for this subchapter, prior to repeal by Pub. L. 104–208, div. A, title I, § 101(f) [title VI, § 659 [title II, §§ 206(a)(2), 207]], Sept. 30, 1996, 110 Stat. 3009–314, 3009–372, 3009–378, effective Sept. 30, 1996.

EFFECTIVE DATE

Pub. L. 106–168, title II, § 203(c), Dec. 12, 1999, 113 Stat. 1820, provided that: ''The amendments made by this section [enacting this section and amending section 8351 of this title] shall apply with respect to transfers occurring before, on, or after the date of the enactment of this Act [Dec. 12, 1999], except that, for purposes of applying such amendments with respect to any transfer occurring before such date of enactment, the date of such transfer shall be considered to be the date of the enactment of this Act. The Executive Director (within the meaning of section 8401(13) of title 5, United States Code) may prescribe any regulations necessary to carry out this subsection.''

### § 8432. Contributions

(a)(1) An employee or Member may contribute to the Thrift Savings Fund in any pay period, pursuant to an election under subsection (b), an amount not to exceed the maximum percentage of such employee's or Member's basic pay for such pay period allowable under paragraph (2). Contributions under this subsection pursuant to such an election shall, with respect to each pay period for which such election remains in effect, be made in accordance with a program of regular contributions provided in regulations prescribed by the Executive Director.

(2) The maximum percentage allowable under this paragraph shall be determined in accordance with the following table:

| In the case of a pay period beginning in fiscal year: | The maximum percentage allowable is: |
|---|---|
| 2001 | 11 |
| 2002 | 12 |
| 2003 | 13 |
| 2004 | 14 |
| 2005 | 15 |
| 2006 or thereafter | 100. |

(3) Notwithstanding any limitation under this subsection, an eligible participant (as defined by section 414(v) of the Internal Revenue Code of 1986) may make such additional contributions to the Thrift Savings Fund as are permitted by such section 414(v) and regulations of the Executive Director consistent therewith.

(b)(1)(A)(i) The Executive Director shall prescribe regulations under which employees and Members may make contributions under subsection (a), to modify the amount to be contributed under such subsection, or to terminate such contributions.

(ii) An election to make contributions under this paragraph—

(I) may be made at any time;

(II) shall take effect on the earliest date after the election that is administratively feasible; and

(III) 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)(A) The Executive Director shall by regulation provide for an eligible individual to be automatically enrolled to make contributions under subsection (a) at the default percentage of basic pay.

(B) For purposes of this paragraph, the default percentage shall be equal to 3 percent or such other percentage, not less than 2 percent nor more than 5 percent, as the Board may prescribe.

(C) The regulations shall include provisions under which any individual who would otherwise be automatically enrolled in accordance with subparagraph (A) may—

(i) modify the percentage or amount to be contributed pursuant to automatic enrollment, effective not later than the first full pay period following receipt of the election by the appropriate processing entity; or

(ii) decline automatic enrollment altogether.

(D)(i) Except as provided in clause (ii), for purposes of this paragraph, the term ''eligible individual'' means any individual who, after any regulations under subparagraph (A) first take effect, is appointed, transferred, or reappointed to

a position in which that individual becomes eligible to contribute to the Thrift Savings Fund.

(ii) Members of the uniformed services shall not be eligible individuals for purposes of this paragraph.

(E) Sections 8351(a)(1), 8440a(a)(1), 8440b(a)(1), 8440c(a)(1), 8440d(a)(1), and 8440e(a)(1)[1] shall be applied in a manner consistent with the purposes of this paragraph.

(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)[2] 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 appro-

[1] So in original. Probably should be "8440e(b)(1)".

[2] See References in Text note below.

priation 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 Chief Administrative Officer of the House of Representatives, the Chief Administrative Officer may pay from the applicable accounts 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 Secretary of the Treasury 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.

(5) Notwithstanding any other provision of law, contributions made by the Government for the benefit of an employee or Member under subsection (c), and all earnings attributable to such contributions, shall be forfeited if the annuity of the employee or Member, or that of a survivor or beneficiary, is forfeited under subchapter II of chapter 83.

(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).

(j)(1) For the purpose of this subsection—

(A) the term ''eligible rollover distribution'' has the meaning given such term by section 402(c)(4) of the Internal Revenue Code of 1986; and

(B) the term ''qualified trust'' has the meaning given such term by section 402(c)(8) of the Internal Revenue Code of 1986.

(2) An employee or Member may contribute to the Thrift Savings Fund an eligible rollover that a qualified trust could accept under the Internal Revenue Code of 1986. A contribution made under this subsection shall be made in the form described in section 401(a)(31) of the Internal Revenue Code of 1986. In the case of an eligible rollover distribution, the maximum amount transferred to the Thrift Savings Fund shall not exceed the amount which would otherwise have been included in the employee's or Member's gross income for Federal income tax purposes.

(3) The Executive Director shall prescribe regulations to carry out this subsection.

(k)(1) Only those employees of the Central Intelligence Agency participating in the pilot project required by section 402(b) of the Intelligence Authorization Act for Fiscal Year 2003 (Public Law 107–306; 50 U.S.C. 403–4 note) and making contributions to the Thrift Savings Fund out of basic pay may also contribute (by direct transfer to the Fund) any part of bonus pay received by the employee as part of the pilot project.

(2) Contributions under this subsection are subject to subsection (d).

(3) For purposes of subsection (c), basic pay of an employee of the Central Intelligence Agency participating in the pilot project referred to in paragraph (1) shall include bonus pay received by the employee as part of the pilot project.

(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; Pub. L. 104–93, title III, §304(a), Jan. 6, 1996, 109 Stat. 965; Pub. L. 104–186, title II, §215(16), Aug. 20, 1996, 110 Stat. 1746; Pub. L. 104–316, title I, §103(g), Oct. 19, 1996, 110 Stat. 3829; Pub. L. 106–361, §§1(a), 2(a), (b)(1)–(3), Oct. 27, 2000, 114 Stat. 1400, 1401; Pub. L. 106–554, §1(a)(4) [div. B, title I, §138(a)(1)], Dec. 21, 2000, 114 Stat. 2763, 2763A–233; Pub. L. 107–304, §1(b)(1), Nov. 27, 2002, 116 Stat. 2363; Pub. L. 108–177, title IV, §405(b)(2), Dec. 13, 2003, 117 Stat. 2632; Pub. L. 108–469, §1(b), (c), (d)(2), Dec. 21, 2004, 118 Stat. 3891; Pub. L. 111–31, div. B, title I, §102, June 22, 2009, 123 Stat. 1853.)

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsecs. (a)(3), (d), and (j), is classified generally to Title 26, Internal Revenue Code.

Subsection (b)(4), referred to in subsec. (c)(2)(C), was repealed by section 102(a) of Pub. L. 111–31. See 2009 Amendment note below.

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.

AMENDMENTS

2009—Subsec. (b)(1)(B). Pub. L. 111–31, §102(b), which directed the amendment of par. (1) by ''striking the parenthetical matter in subparagraph (B)'' was executed by striking out ''(or any election allowable by virtue of paragraph (4))'' before ''shall be the percentage'', but not striking out ''(A)'' after ''subparagraph'', to reflect the probable intent of Congress.

Subsec. (b)(2) to (4). Pub. L. 111–31, §102(a), added par. (2) and struck out former pars. (2) to (4) which related to eligibility to make an election regarding contributions.

2004—Subsec. (b)(1)(A). Pub. L. 108–469, §1(b), designated existing provisions as cl. (i), substituted ''may'' for ''shall be afforded a reasonable period every 6 months to elect to'', struck out second sentence which read ''An election to make such contributions shall remain in effect until modified or terminated.'', and added cl. (ii).

Subsec. (b)(2)(A), (C). Pub. L. 108–469, §1(d)(2)(A), (B), substituted ''until the date'' for ''until the second period''.

Subsec. (b)(2)(D). Pub. L. 108–469, §1(d)(2)(C), substituted ''as provided'' for ''other than during a period afforded''.

Subsec. (b)(4)(C). Pub. L. 108–469, §1(c), designated existing provisions as cl. (i) and added cl. (ii).

2003—Subsec. (k). Pub. L. 108–177 added subsec. (k).

2002—Subsec. (a)(3). Pub. L. 107–304 added par. (3).

2000—Subsec. (a). Pub. L. 106–554 designated existing provisions as par. (1), substituted ''the maximum percentage of such employee's or Member's basic pay for such pay period allowable under paragraph (2).'' for ''10 percent of such individual's basic pay for such period.'', and added par. (2).

Pub. L. 106–361, §2(b)(1), substituted ''(b)'' for ''(b)(1)'' and ''Contributions under this subsection pursuant to such an election shall, with respect to each pay period for which such election remains in effect, be made in accordance with a program of regular contributions provided in regulations prescribed by the Executive Director'' for ''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''.

Subsec. (b)(1)(B). Pub. L. 106–361, §2(b)(2), inserted ''(or any election allowable by virtue of paragraph (4))'' after ''subparagraph (A)''.

Subsec. (b)(3). Pub. L. 106–361, §2(b)(3), substituted ''An'' for ''Notwithstanding paragraph (2)(A), an''.

Subsec. (b)(4). Pub. L. 106–361, §2(a), amended par. (4) generally. Prior to amendment, par. (4) read as follows:

''(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.''

Subsec. (j). Pub. L. 106–361, §1(a), added subsec. (j).

1996—Subsec. (e). Pub. L. 104–186 substituted ''Chief Administrative Officer of the House of Representatives, the Chief Administrative Officer may pay from the applicable accounts'' for ''Clerk of the House of Representatives, the Clerk may pay from the contingent fund''.

Subsec. (f). Pub. L. 104–316 substituted ''Secretary of the Treasury'' for ''Comptroller General of the United States''.

Subsec. (g)(5). Pub. L. 104–93 added par. (5).

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 2002 AMENDMENT

Amendment by Pub. L. 107–304 effective as of the earliest practicable date determined by the Executive Director in regulations, see section 1(c) of Pub. L. 107–304, set out as a note under section 8351 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–361, § 1(b), Oct. 27, 2000, 114 Stat. 1400, provided that: ''The amendment made by this section [amending this section] shall take effect at the earliest practicable date after September 30, 2000, as determined by the Executive Director in regulations.'' [Final regulations implementing the amendments became effective May 2, 2001. See 66 F.R. 22088.]

Pub. L. 106–361, § 2(c)(1), Oct. 27, 2000, 114 Stat. 1401, provided that: ''The amendments made by this section [amending this section and sections 8439, 8440a, and 8440d of this title] shall take effect at the earliest practicable date after September 30, 2000, as determined by the Executive Director in regulations.'' [Final regulations implementing the amendments became effective May 2, 2001. See 66 F.R. 22088.]

EFFECTIVE DATE OF 1996 AMENDMENT

Section 304(b) of Pub. L. 104–93 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to offenses upon which the requisite annuity forfeitures are based occurring on or after the date of the enactment of this Act [Jan. 6, 1996].''

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 an Effective Date 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 below], and the amendments made by this section shall take effect on January 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).''

SAVINGS PROVISIONS

Pub. L. 106–361, § 2(c)(2), Oct. 27, 2000, 114 Stat. 1401, provided that: ''Notwithstanding any other provision of this section [amending this section and sections 8439, 8440a, and 8440d of this title and enacting provisions set out as a note under this section], until the amendments made by this section take effect [see Effective Date of 2000 Amendment note above], title 5, United States Code, shall be applied as if this section had not been enacted.''

ELIGIBILITY OF CERTAIN INDIVIDUALS TO PARTICIPATE IN THRIFT SAVINGS PLAN

Pub. L. 100–238, title I, § 125, Jan. 8, 1988. 101 Stat. 1756, as amended by Pub. L. 107–347, title II, § 209(g)(3), Dec. 17, 2002, 116 Stat. 2932; Pub. L. 110–234, title VII, § 7101(b)(6), May 22, 2008, 122 Stat. 1214; Pub. L. 110–246, § 4(a), title VII, § 7101(b)(6), June 18, 2008, 122 Stat. 1664, 1975, 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;

''(C) an individual appointed or otherwise assigned to one of the cooperative extension services, as defined by section 1404 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3103); or

''(D) an individual assigned from a Federal agency to a private sector organization under chapter 37 of title 5, United States Code; 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

Pub. L. 99–509, title VI, § 6001(c), Oct. 21, 1986, 100 Stat. 1931, 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 former 5 U.S.C. 8432(b)(4) or section 206(b) of Pub. L. 99–335, formerly set out as a note under section 8351 of this title; 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.

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.

## § 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 Chief Administrative Officer of the House of Representatives, the Chief Administrative Officer may pay from the applicable accounts 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; amended Pub. L. 104–186, title II, § 215(17), Aug. 20, 1996, 110 Stat. 1746.)

AMENDMENTS

1996—Subsec. (c). Pub. L. 104–186 substituted ''Chief Administrative Officer of the House of Representatives, the Chief Administrative Officer may pay from the applicable accounts'' for ''Clerk of the House of Representatives, the Clerk may pay from the contingent fund''.

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].''

## § 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) or 8440e 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)(1) If an employee makes contributions under subsection (b), the employing agency shall make contributions to the Thrift Savings Fund on such employee's behalf—

(A) 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

(B) disregarding any contributions then actually being made under section 8432(a) and any agency contributions relating thereto.

(2) 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—

(A) the total contributions to which that individual would have been entitled under section 8432(c)(2), based on the amounts contributed by such individual under section 8440e (other than under subsection (d)(2) thereof) with respect to the period referred to in subsection (b)(2)(B), if those amounts had been contributed by such individual under section 8432(a); reduced by

(B) any contributions actually made on such employee's behalf under section 8432(c)(2) (including pursuant to an agreement under section 211(d) of title 37) with respect to the period referred to in subsection (b)(2)(B).

(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),[1] 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; amended Pub. L. 106–65, div. A, title VI, § 661(a)(3)(A), (C), Oct. 5, 1999, 113 Stat. 671.)

REFERENCES IN TEXT

Section 8433(h), referred to in subsec. (h)(2)(A), was redesignated section 8433(f) by Pub. L. 103–226, § 9(b)(2), Mar. 30, 1994, 108 Stat. 119.

AMENDMENTS

1999—Subsec. (b)(2)(B). Pub. L. 106–65, § 661(a)(3)(A), inserted ''or 8440e'' after ''section 8432(a)''.

Subsec. (c). Pub. L. 106–65, § 661(a)(3)(C), designated existing provisions as par. (1), redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, of par. (1), and added par. (2).

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–65 effective 180 days after Oct. 30, 2000, unless postponed, see section 663 of Pub. L. 106–65, as amended, set out as an Effective Date note under section 8440e of this title.

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,

[1] See References in Text note below.

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'.''

## § 8432c. Contributions of certain persons reemployed after service with international organizations

(a) In this section, the term ''covered person'' means any person who—

(1) transfers from a position of employment covered by chapter 83 or 84 or subchapter I or II of chapter 8[1] of the Foreign Service Act of 1980 to a position of employment with an international organization pursuant to section 3582;

(2) pursuant to section 3582 elects to retain coverage, rights, and benefits under any system established by law for the retirement of persons during the period of employment with the international organization and currently deposits the necessary deductions in payment for such coverage, rights, and benefits in the system's fund; and

(3) is reemployed pursuant to section 3582(b) to a position covered by chapter 83 or 84 or subchapter I or II of chapter 8[1] of the Foreign Service Act of 1980 after separation from the international organization.

(b)(1) Each covered person 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 a covered person may contribute under paragraph (1) is equal to—

(A) the total amount of all contributions under section 8351(b)(2) or 8432(a), as applicable, which the person would have made over the period beginning on the date of transfer of the person (as described in subsection (a)(1)) and ending on the day before the date of reemployment of the person (as described in subsection (a)(3)), minus

(B) the total amount of all contributions, if any, under section 8351(b)(2) or 8432(a), as applicable, actually made by the person over the period described in subparagraph (A).

(3) Contributions under paragraph (1)—

(A) shall be made at the same time and in the same manner as would any contributions under section 8351(b)(2) or 8432(a), as applicable;

(B) shall be made over the period of time specified by the person under paragraph (4)(B); and

(C) shall be in addition to any contributions actually being made by the person during that period under section 8351(b)(2) or 8432(a), as applicable.

(4) The Executive Director shall prescribe the time, form, and manner in which a covered person may specify—

(A) the total amount the person wishes to contribute with respect to any period described in paragraph (2)(A); and

(B) the period of time over which the covered person wishes to make contributions under this subsection.

(c) If a covered person who makes contributions under section 8432(a) makes contributions under subsection (b), the agency employing the person shall make those contributions to the Thrift Savings Fund on the person's behalf in the same manner as contributions are made for an employee described in section 8432b(a) under sections 8432b(c), 8432b(d), and 8432b(f). Amounts paid under this subsection shall be paid in the same manner as amounts are paid under section 8432b(g).

(d) For purposes of any computation under this section, a covered person shall, with respect to the period described in subsection (b)(2)(A), be considered to have been paid at the rate which would have been payable over such period had the person remained continuously employed in the position that the person last held before transferring to the international organization.

(e) For purposes of section 8432(g), a covered person shall be credited with a period of civilian service equal to the period beginning on the date of transfer of the person (as described in subsection (a)(1)) and ending on the day before the date of reemployment of the person (as described in subsection (a)(3)).

[1] See References in Text note below.

(f) The Executive Director shall prescribe regulations to carry out this section.

(Added Pub. L. 106–113, div. B, § 1000(a)(7) [div. A, title III, § 334(a)], Nov. 29, 1999, 113 Stat. 1536, 1501A–440.)

REFERENCES IN TEXT

The Foreign Service Act of 1980, referred to in subsec. (a)(1), (3), is Pub. L. 96–465, Oct. 17, 1980, 94 Stat. 2071, as amended. Subchapters I and II of chapter 8 of the Act probably mean subchapters I and II of chapter 8 of title I of the Act which are classified generally to parts I (§ 4041 et seq.) and II (§ 4071 et seq.), respectively, 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.

EFFECTIVE DATE

Pub. L. 106–113, div. B, § 1000(a)(7) [div. A, title III, § 334(c)], Nov. 29, 1999, 113 Stat. 1536, 1501A–441, provided that: ''The amendment made by subsection (a) [enacting this section] shall apply to persons reemployed on or after the date of enactment of this Act [Nov. 29, 1999].''

### § 8432d. Qualified Roth contribution program

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

(1) the term ''qualified Roth contribution program'' means a program described in paragraph (1) of section 402A(b) of the Internal Revenue Code of 1986 which meets the requirements of paragraph (2) of such section; and

(2) the terms ''designated Roth contribution'' and ''elective deferral'' have the meanings given such terms in section 402A of the Internal Revenue Code of 1986.

(b) AUTHORITY TO ESTABLISH.—The Executive Director shall by regulation provide for the inclusion in the Thrift Savings Plan of a qualified Roth contribution program, under such terms and conditions as the Board may prescribe.

(c) REQUIRED PROVISIONS.—The regulations under subsection (b) shall include—

(1) provisions under which an election to make designated Roth contributions may be made—

(A) by any individual who is eligible to make contributions under section 8351, 8432(a), 8440a, 8440b, 8440c, 8440d, or 8440e; and

(B) by any individual, not described in subparagraph (A), who is otherwise eligible to make elective deferrals under the Thrift Savings Plan;

(2) any provisions which may, as a result of enactment of this section, be necessary in order to clarify the meaning of any reference to an ''account'' made in section 8432(f), 8433, 8434(d), 8435, 8437, or any other provision of law; and

(3) any other provisions which may be necessary to carry out this section.

(Added Pub. L. 111–31, div. B, title I, § 103(a), June 22, 2009, 123 Stat. 1853.)

REFERENCES IN TEXT

Section 402A of the Internal Revenue Code of 1986, referred to in subsec. (a), is classified to section 402A of Title 26, Internal Revenue Code.

### § 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 to withdraw from the Thrift Savings Fund the balance of the employee's or Member's account as—

(1) an annuity;

(2) a single payment;

(3) 2 or more substantially equal payments to be made not less frequently than annually; or

(4) any combination of payments as provided under paragraphs (1) through (3) as the Executive Director may prescribe by regulation.

(c)(1) In addition to the right provided under subsection (b) to withdraw the balance of the account, an employee or Member who separates from Government service and who has not made a withdrawal under subsection (h)(1)(A) may make one withdrawal of any amount as a single payment in accordance with subsection (b)(2) from the employee's or Member's account.

(2) An employee or Member may request that the amount withdrawn from the Thrift Savings Fund in accordance with subsection (b)(2) be transferred to an eligible retirement plan.

(3) The Executive Director shall make each transfer elected under paragraph (2) 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.

(4) A transfer may not be made for an employee, Member, former employee, or former Member under paragraph (2) 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 (2) 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) 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.

(e)(1) 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.

(2) Notwithstanding section 8424(d), if an employee, Member, former employee, or former

Member dies and has designated as sole or partial beneficiary his or her spouse at the time of death, or, if an employee, Member, former employee, or former Member, dies with no designated beneficiary and is survived by a spouse, the spouse may maintain the portion of the employee's or Member's account to which the spouse is entitled in accordance with the following terms:

(A) Subject to the limitations of subparagraph (B), the spouse shall have the same withdrawal options under subsection (b) as the employee or Member were the employee or Member living.

(B) The spouse may not make withdrawals under subsection (g) or (h).

(C) The spouse may not make contributions or transfers to the account.

(D) The account shall be disbursed upon the death of the surviving spouse. A beneficiary or surviving spouse of a deceased spouse who has inherited an account is ineligible to maintain the inherited spousal account.

(3) The Executive Director shall prescribe regulations to carry out this subsection.

(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 less than an amount that the Executive Director prescribes by regulation, the Executive Director shall pay the nonforfeitable account balance to the participant in a single payment, 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 April 1 of the year following the latest of the year in which—

(A) the employee, Member, former employee, or former Member becomes 70½ years of age; or

(B) the employee, Member, former employee, or former Member separates from Government employment.

(g)(1) At any time 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. Before a loan is issued, the Executive Director shall provide in writing the employee or Member with appropriate information concerning the cost of the loan relative to other sources of financing, as well as the lifetime cost of the loan, including the difference in interest rates between the funds offered by the Thrift Savings Fund, and any other effect of such loan on the employee's or Member's final account balance.

(2) 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.

(3) 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.

(4) A loan may not be made under this subsection unless the requirements of section 8435(e) of this title are satisfied.

(h)(1) An employee or Member may apply, before separation, to the Board for permission to withdraw an amount from the employee's or Member's account based upon—

(A) the employee or Member having attained age 59½; or

(B) financial hardship.

(2) A withdrawal under paragraph (1)(A) shall be available to each eligible participant one time only.

(3) A withdrawal under paragraph (1)(B) shall be available only for an amount not exceeding the value of that portion of such account which is attributable to contributions made by the employee or Member.

(4) Withdrawals under paragraph (1) shall be subject to such other conditions as the Executive Director may prescribe by regulation.

(5) A withdrawal 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; Pub. L. 104–208, div. A, title I, § 101(f) [title VI, § 659 [title II, § 203(a)]], Sept. 30, 1996, 110 Stat. 3009–314, 3009–372, 3009–374; Pub. L. 106–65, div. A, title VI, § 661(a)(4), Oct. 5, 1999, 113 Stat. 672; Pub. L. 108–469, § 3(1), Dec. 21, 2004, 118 Stat. 3893; Pub. L. 111–31, div. B, title I, § 109, June 22, 2009, 123 Stat. 1856.)

REFERENCES IN TEXT

Sections 72(p) and 402(c)(8) of the Internal Revenue Code of 1986, referred to in subsecs. (c)(3) and (g)(3), are classified to sections 72(p) and 402(c)(8), respectively, of Title 26, Internal Revenue Code.

AMENDMENTS

2009—Subsec. (e). Pub. L. 111–31 designated existing provisions as par. (1) and added pars. (2) and (3).

2004—Subsec. (d)(1). Pub. L. 108–469 substituted ''paragraph (2)'' for ''paragraph (3)''.

1999—Subsecs. (g)(1), (h)(3). Pub. L. 106–65 struck out ''under section 8432(a) of this title'' after ''by the employee or Member''.

1996—Subsec. (b). Pub. L. 104–208, § 101(f) [title VI, § 659 [title II, § 203(a)(1)]], added subsec. (b) and struck out former subsec. (b) which read as follows: ''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 Sav-

ings 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).''

Subsec. (c). Pub. L. 104–208, § 101(f) [title VI, § 659 [title II, § 203(a)(1)]], added subsec. (c) and struck out former subsec. (c) which read as follows:

''(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.''

Subsec. (d)(1). Pub. L. 104–208, § 101(f) [title VI, § 659 [title II, § 203(a)(2)(A)]], substituted ''(3)'' for ''(3)(A)'' after ''Subject to paragraph''.

Subsec. (d)(2). Pub. L. 104–208, § 101(f) [title VI, § 659 [title II, § 203(a)(2)(C)]], struck out subpar. (A) designation before ''A former employee'' and struck out subpar. (B) which read as follows: ''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).''

Pub. L. 104–208, § 101(f) [title VI, § 659 [title II, § 203(a)(2)(B)]], redesignated par. (3) as (2) and struck out former par. (2) which read as follows: ''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.''

Subsec. (d)(3). Pub. L. 104–208, § 101(f) [title VI, § 659 [title II, § 203(a)(2)(B)]], redesignated par. (3) as (2).

Subsec. (f)(1). Pub. L. 104–208, § 101(f) [title VI, § 659 [title II, § 203(a)(3)]], substituted ''less than an amount that the Executive Director prescribes by regulation'' for ''$3,500 or less'' and substituted a comma for ''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''.

Subsec. (f)(2). Pub. L. 104–208, § 101(f) [title VI, § 659 [title II, § 203(a)(4)]], in introductory provisions substituted ''April 1'' for ''February 1'', in subpar. (A) substituted ''70½'' for ''65'' and inserted ''or'' after semicolon, redesignated subpar. (C) as (B), and struck out former subpar. (B) which read as follows: ''occurs the tenth anniversary of the year in which the employee, Member, former employee, or former Member became subject to this subchapter; or''.

Subsec. (g)(1). Pub. L. 104–208, § 101(f) [title VI, § 659 [title II, § 203(a)(5)(A)]], struck out ''after December 31, 1987, and'' after ''At any time'', and inserted at end ''Before a loan is issued, the Executive Director shall provide in writing the employee or Member with appropriate information concerning the cost of the loan relative to other sources of financing, as well as the lifetime cost of the loan, including the difference in interest rates between the funds offered by the Thrift Savings Fund, and any other effect of such loan on the employee's or Member's final account balance.''

Subsec. (g)(2) to (5). Pub. L. 104–208, § 101(f) [title VI, § 659 [title II, § 203(a)(5)(B)]], redesignated pars. (3) to (5) as (2) to (4), respectively, and struck out former par. (2) which read as follows: ''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.''

Subsec. (h). Pub. L. 104–208, § 101(f) [title VI, § 659 [title II, § 203(a)(6)]], added subsec. (h).

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 1999 AMENDMENT

Amendment by Pub. L. 106–65 effective 180 days after Oct. 30, 2000, unless postponed, see section 663 of Pub. L. 106–65, as amended, set out as an Effective Date note under section 8440e of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–208 effective Sept. 30, 1996, and withdrawals and elections as provided under such amendment to be made at earliest practicable date as determined by Executive Director in regulations, see section 101(f) [title VI, § 659 [title II, § 207]] of Pub. L. 104–208, set out as a note under section 5545a of this title.

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 an Effective Date note under section 4301 of Title 38.

Amendment by Pub. L. 103–226 effective Mar. 10, 1995, 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.''

INVALIDITY OF CERTAIN PRIOR ELECTIONS

Section 101(f) [title VI, § 659 [title II, § 203(b)]] of Pub. L. 104–208 provided that: ''Any election made under section 8433(b)(2) of title 5, United States Code (as in effect before the effective date of this title [Sept. 30, 1996]), with respect to an annuity which has not commenced before the implementation date of this title as provided by regulation by the Executive Director in accordance with section 207 of this title [5 U.S.C. 5545a note], shall be invalid.''

## § 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 Mar. 10, 1995, 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.

**§ 8435. Protections for spouses and former spouses**

(a)(1)(A) A married employee or Member (or former employee or Member) may withdraw all or part of a Thrift Savings Fund account under subsection (b)(2), (3), or (4) of section 8433 of this title or change a withdrawal election only if the employee or Member (or former employee or Member) satisfies the requirements of subparagraph (B). A married employee or Member (or former employee or Member) may make a withdrawal from a Thrift Savings Fund account under subsection (c)(1) of section 8433 of this title 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 or change of election shall not be effective under this subchapter to the extent that the election, change, 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, 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 or withdrawal may be made to a married employee or Member under section 8433(g) and (h) of this title only if the employee's or Member's spouse consents to such loan or withdrawal in writing.

(B) A consent under subparagraph (A) shall be irrevocable with respect to the loan or withdrawal to which the consent relates.

(C) Subparagraph (A) shall not apply to a loan or withdrawal 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 or withdrawal 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 or withdrawal under section 8433(g) and (h) 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 or withdrawals under section 8433(g) and (h), 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; Pub. L. 104–208, div. A, title I, § 101(f) [title VI, § 659 [title II, § 204]], Sept. 30, 1996, 110 Stat. 3009–314, 3009–372, 3009–376.)

AMENDMENTS

1996—Subsec. (a)(1)(A). Pub. L. 104–208, § 101(f) [title VI, § 659 [title II, § 204(1)]], substituted ''may withdraw all or part of a Thrift Savings Fund account under subsection (b)(2), (3), or (4) of section 8433 of this title or change a withdrawal election'' for ''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'' and inserted at end ''A married employee or Member (or former employee or Member) may make a withdrawal from a Thrift Savings Fund account under subsection (c)(1) of section 8433 of this title only if the employee or Member (or former employee or Member) satisfies the requirements of subparagraph (B).''

Subsec. (c)(1). Pub. L. 104–208, § 101(f) [title VI, § 659 [title II, § 204(2)(A)]], substituted ''An election or change of election'' for ''An election, change of election, or modification of the commencement date of a deferred annuity'' and ''or transfer'' for ''modification, or transfer''.

Subsec. (c)(2)(B). Pub. L. 104–208, § 101(f) [title VI, § 659 [title II, § 204(2)(B)]], struck out ''modification,'' after ''change,'' in closing provisions.

Subsec. (e)(1). Pub. L. 104–208, § 101(f) [title VI, § 659 [title II, § 204(3)(A)]], in subpar. (A) inserted ''or withdrawal'' after ''A loan'', ''and (h)'' after ''8433(g)'', and ''or withdrawal'' after ''such loan'', in subpar. (B) inserted ''or withdrawal'' after ''loan'', and in subpar. (C) inserted ''or withdrawal'' after ''to a loan'' and after ''for such loan''.

Subsec. (e)(2). Pub. L. 104–208, § 101(f) [title VI, § 659 [title II, § 204(3)(B)(i)]], inserted ''or withdrawal'' after ''loan''.

Pub. L. 104–208, § 101(f) [title VI, § 659 [title II, § 204(3)(B)(ii)]], which directed insertion of ''and (h)'' after ''8344(g)'', was executed by making the insertion after ''8433(g)'' to reflect the probable intent of Congress.

Subsec. (g). Pub. L. 104–208, § 101(f) [title VI, § 659 [title II, § 204(4)(A)]], inserted ''or withdrawals'' after ''loans''.

Pub. L. 104–208, § 101(f) [title VI, § 659 [title II, § 204(4)(B)]], which directed insertion of ''and (h)'' after ''8344(g)'' was executed by making the insertion after ''8433(g)'' to reflect the probable intent of Congress.

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 1996 AMENDMENT

Amendment by Pub. L. 104–208 effective Sept. 30, 1996, and withdrawals and elections as provided under such amendment to be made at earliest practicable date as determined by Executive Director in regulations, see section 101(f) [title VI, § 659 [title II, § 207]] of Pub. L. 104–208, set out as a note under section 5545a of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–226 effective Mar. 10, 1995, 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.

## § 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) the[1] enforcement of an order for restitution under section 3663A of title 18, forfeiture under section 8432(g)(5) of this title, or an obligation of the Executive Director to make a payment to another person under section 8467 of this title. 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; Pub. L. 111–31, div. B, title I, § 108, June 22, 2009, 123 Stat. 1856.)

AMENDMENTS

2009—Subsec. (e)(3). Pub. L. 111–31 which directed substitution of ''the enforcement of an order for restitution under section 3663A of title 18, forfeiture under section 8432(g)(5) of this title, or an obligation of the Executive Director to make a payment to another person under section 8467 of this title'' for ''or relating to the enforcement of a judgment for the physically, sexually, or emotionally abusing a child as provided under section 8467(a)'' in the first sentence, was executed by making the substitution for ''or relating to the enforcement of a judgment for physically, sexually, or emotionally abusing a child as provided under section 8467(a)'', to reflect the probable intent of Congress.

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 Mar. 10, 1995, 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].''

## § 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 ''International Stock Index Investment Fund'' means the International Stock Index Investment Fund established under subsection (b)(1)(E);

(6) the term ''net worth'' means capital, paid-in and contributed surplus, unassigned surplus, contingency reserves, group contingency reserves, and special reserves;

(7) 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));

(8) the term ''qualified professional asset manager'' means—

[1] So in original.

(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;

(9) the term ''shareholder's or partner's equity'', as used in paragraph (8)(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 (8)(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; and

(10) the term ''Small Capitalization Stock Index Investment Fund'' means the Small Capitalization Stock Index Investment Fund established under subsection (b)(1)(D).

(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;

(C) a Common Stock Index Investment Fund as provided in paragraph (2);

(D) a Small Capitalization Stock Index Investment Fund as provided in paragraph (3);

(E) an International Stock Index Investment Fund as provided in paragraph (4); and

(F) a service that enables participants to invest in mutual funds, if the Board authorizes the mutual fund window under paragraph (5).

(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.

(3)(A) The Board shall select an index which is a commonly recognized index comprised of common stock the aggregate market value of which represents the United States equity markets ex-

cluding the common stocks included in the Common Stock Index Investment Fund.

(B) The Small Capitalization Stock Index Investment Fund shall be invested in a portfolio designed to replicate the performance of the index in subparagraph (A). The portfolio shall be designed such that, to the extent practicable, the percentage of the Small Capitalization 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.

(4)(A) The Board shall select an index which is a commonly recognized index comprised of stock the aggregate market value of which is a reasonably complete representation of the international equity markets excluding the United States equity markets.

(B) The International Stock Index Investment Fund shall be invested in a portfolio designed to replicate the performance of the index in subparagraph (A). The portfolio shall be designed such that, to the extent practicable, the percentage of the International 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.

(5)(A) The Board may authorize the addition of a mutual fund window under the Thrift Savings Plan if the Board determines that such addition would be in the best interests of participants.

(B) The Board shall ensure that any expenses charged for use of the mutual fund window are borne solely by the participants who use such window.

(C) The Board may establish such other terms and conditions for the mutual fund window as the Board considers appropriate to protect the interests of participants, including requirements relating to risk disclosure.

(D) The Board shall consult with the Employee Thrift Advisory Council (established under section 8473) before authorizing the addition of a mutual fund window or establishing a service that enables participants to invest in mutual funds.

(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 and options 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.

(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; Pub. L. 104–208, div. A, title I, § 101(f) [title VI, § 659 [title I, § 102]], Sept. 30, 1996, 110 Stat. 3009–314, 3009–372; Pub. L. 104–316, title I, § 103(i), Oct. 19, 1996, 110 Stat. 3829; Pub. L. 111–31, div. B, title I, § 104, June 22, 2009, 123 Stat. 1854.)

AMENDMENTS

2009—Subsec. (b)(1)(F). Pub. L. 111–31, § 104(a), added subpar. (F).

Subsec. (b)(5). Pub. L. 111–31, § 104(b), added par. (5).

Subsec. (d)(1). Pub. L. 111–31, § 104(c), inserted ''and options'' after ''investment funds''.

1996—Subsec. (a). Pub. L. 104–208, § 101(f) [title VI, § 659 [title I, § 102(1)]], added par. (5), redesignated former pars. (5) to (8) as (6) to (9), respectively, in par. (9) substituted ''paragraph (8)(D)'' for ''paragraph (7)(D)'' in two places, and added par. (10).

Subsec. (b). Pub. L. 104–208, § 101(f) [title VI, § 659 [title I, § 102(2)]], in par. (1) added subpars. (D) and (E) and added pars. (3) and (4).

Subsec. (h)(1). Pub. L. 104–316 struck out ''and the Comptroller General of the United States'' before period at end.

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 1996 AMENDMENT

Section 101(f) [title VI, § 659 [title I, § 104]] provided that: ''This title [title I (§§ 101–104) of section 659 of section 101(f) of Pub. L. 104–208, amending this section and section 8439 of this title and enacting provisions set out as a note under section 8401 of this title] shall take effect on the date of enactment of this Act [Sept. 30, 1996], and the Funds established under this title shall be offered for investment at the earliest practicable election period (described in section 8432(b) of title 5, United States Code) as determined by the Executive Director in regulations.''

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.''

## § 8439. Accounting and information

(a)(1) The Executive Director shall establish and maintain an account for each individual who makes contributions or for whom contributions are made under section 8432 of this title or who makes contributions to the Thrift Savings Fund.

(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;

(ii) all contributions made to such Fund for the benefit of the individual; 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 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 on a regular basis, and in a manner designed to facilitate informed decisionmaking with respect to elections under sections 8432 and 8438 of this title. Nothing in this paragraph shall be considered to limit the dissemination of information only to the times required under the preceding sentence.

(d) Each employee, Member, former employee, or former Member who elects to invest in any investment fund or option under this chapter, other than the Government Securities Investment Fund, 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 any such fund or option 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; amended Pub. L. 104–208, div. A, title I, § 101(f) [title VI, § 659 [title I, § 103]], Sept. 30, 1996, 110 Stat. 3009–314, 3009–372, 3009–373; Pub. L. 104–316, title I, § 103(j), Oct. 19, 1996, 110 Stat. 3829; Pub. L. 106–65, div. A, title VI, § 661(a)(5), Oct. 5, 1999, 113 Stat. 672; Pub. L. 106–361, § 2(b)(4), (5), Oct. 27, 2000, 114 Stat. 1401; Pub. L. 108–469, § 1(d)(3), Dec. 21, 2004, 118 Stat. 3892; Pub. L. 111–31, div. B, title I, § 106(a), June 22, 2009, 123 Stat. 1855.)

AMENDMENTS

2009—Subsec. (d). Pub. L. 111–31, § 106(a)(2), substituted ''any such fund or option'' for ''either such Fund''.

Pub. L. 111–31, § 106(a)(1), which directed substitution of ''any investment fund or option under this chapter, other than the Government Securities Investment Fund,'' for ''the matter after 'who elects to invest in' and before 'shall sign an acknowledgment' '', was executed by making the substitution for ''the Common Stock Index Investment Fund, the Fixed Income Investment Fund, the International Stock Index Investment Fund, or the Small Capitalization Stock Index Investment Fund, defined in paragraphs (1), (3), (5), and (10), respectively, of section 8438(a) of this title'', before ''shall sign an acknowledgement'', to reflect the probable intent of Congress.

2004—Subsec. (c)(2). Pub. L. 108–469 substituted ''on a regular basis'' for ''at least 30 calendar days before the beginning of each election period under section 8432(b)(1)(A) of this title''.

2000—Subsec. (a)(1). Pub. L. 106–361, § 2(b)(4), inserted ''who makes contributions or'' after ''for each individual'' and substituted ''section 8432'' for ''section 8432(c)(1)''.

Subsec. (c)(2). Pub. L. 106–361, § 2(b)(5), inserted at end ''Nothing in this paragraph shall be considered to limit the dissemination of information only to the times required under the preceding sentence.''

1999—Subsec. (a)(1). Pub. L. 106–65, § 661(a)(5)(A), in so far as it directed amendment of par. (1) by striking out ''under section 8432(c)(1) of this title'', could not be executed because the words ''under section 8432(c)(1) of this title'' did not appear subsequent to amendment by Pub. L. 106–361, § 2(b)(4). See 2000 Amendment note above.

Pub. L. 106–65, § 661(a)(5)(A), struck out ''under section 8351 of this title'' after ''Thrift Savings Fund''.

Subsec. (a)(2)(A)(i). Pub. L. 106–65, § 661(a)(5)(B), struck out ''under section 8432(a) or 8351 of this title'' after ''individual''.

Subsec. (a)(2)(A)(ii). Pub. L. 106–65, § 661(a)(5)(C), struck out ''under section 8432(c) of this title'' after ''individual''.

1996—Subsec. (b)(3). Pub. L. 104–316 struck out ''and the Comptroller General of the United States'' after ''to the Board''.

Subsec. (d). Pub. L. 104–208 substituted ''Each employee, Member, former employee, or former Member who elects to invest in the Common Stock Index Investment Fund, the Fixed Income Investment Fund, the International Stock Index Investment Fund, or the Small Capitalization Stock Index Investment Fund, defined in paragraphs (1), (3), (5), and (10),'' for ''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),''.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–361 effective at the earliest practicable date after Sept. 30, 2000, as determined by the Executive Director in regulations, see section 2(c)(1) of Pub. L. 106–361, set out as a note under section 8432 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–65 effective 180 days after Oct. 30, 2000, unless postponed, see section 663 of Pub. L. 106–65, as amended, set out as an Effective Date note under section 8440e of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–208 effective Sept. 30, 1996, with provisions for certain funds to be offered for investment at earliest practicable election period, see section 101(f) [title VI, § 659 [title I, § 104]] of Pub. L. 104–208, set out as a note under section 8438 of this title.

REPORTING REQUIREMENTS

Pub. L. 111–31, div. B, title I, § 105, June 22, 2009, 123 Stat. 1855, provided that:

''(a) ANNUAL REPORT.—The Board shall, not later than June 30 of each year, submit to Congress an annual report on the operations of the Thrift Savings Plan. Such report shall include, for the prior calendar year, information on the number of participants as of the last day of such prior calendar year, the median balance in participants' accounts as of such last day, demographic information on participants, the percentage allocation of amounts among investment funds or options, the status of the development and implementation of the mutual fund window, the diversity demographics of any company, investment adviser, or other entity retained to invest and manage the assets of the Thrift Savings Fund, and such other information as the Board considers appropriate. A copy of each annual report under this subsection shall be made available to the public through an Internet website.

''(b) REPORTING OF FEES AND OTHER INFORMATION.—

''(1) IN GENERAL.—The Board shall include in the periodic statements provided to participants under section 8439(c) of title 5, United States Code, the amount of the investment management fees, administrative expenses, and any other fees or expenses paid with respect to each investment fund and option under the Thrift Savings Plan. Any such statement shall also provide a statement notifying participants as to how they may access the annual report described in subsection (a), as well as any other information concerning the Thrift Savings Plan that might be useful.

''(2) USE OF ESTIMATES.—For purposes of providing the information required under this subsection, the Board may provide a reasonable and representative estimate of any fees or expenses described in paragraph (1) and shall indicate any such estimate as being such an estimate. Any such estimate shall be based on the previous year's experience.

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

''(1) the term 'Board' has the meaning given such term by 8401(5) of title 5, United States Code;

''(2) the term 'participant' has the meaning given such term by section 8471(3) of title 5, United States Code; and

''(3) the term 'account' means an account established under section 8439 of title 5, United States Code.''

## § 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; 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 an Effective Date 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.

## § 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) as 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 justices and judges making contributions to the Thrift Savings Fund.

(2) The amount contributed by a justice or judge for any pay period shall not exceed the maximum percentage of such justice's or judge's basic pay for such pay period allowable under section 8440f.

(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 less than an amount that the Executive Director prescribes by regulation, the Executive Director shall pay the nonforfeitable account balance to the participant in a single payment.

(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; Pub. L. 104–208, div. A, title I, § 101(f) [title VI, § 659 [title II, § 205(a)]], Sept. 30, 1996, 110 Stat. 3009–314, 3009–372, 3009–377; Pub. L. 106–361, § 2(b)(6), Oct. 27, 2000, 114 Stat. 1401; Pub. L. 106–554, § 1(a)(4) [div. B, title I, § 138(a)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–233; Pub. L. 108–469, § 1(d)(4), Dec. 21, 2004, 118 Stat. 3892.)

CODIFICATION

Another section 8440a was renumbered section 8440b of this title.

AMENDMENTS

2004—Subsec. (a)(2). Pub. L. 108–469 substituted ''as'' for ''only during a period''.

2000—Subsec. (a)(2). Pub. L. 106–361 substituted ''this chapter'' for ''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''.

Subsec. (b)(2). Pub. L. 106–554 amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''The amount contributed by a justice or judge shall not exceed 5 percent of basic pay.''

1996—Subsec. (b)(7). Pub. L. 104–208 substituted ''less than an amount that the Executive Director prescribes by regulation'' for ''$3,500 or less'' and struck out ''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)'' before period at end.

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 2000 AMENDMENT

Amendment by Pub. L. 106–361 effective at the earliest practicable date after Sept. 30, 2000, as determined by the Executive Director in regulations, see section 2(c)(1) of Pub. L. 106–361, set out as a note under section 8432 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–208 effective Sept. 30, 1996, and withdrawals and elections as provided under such amendment to be made at earliest practicable date as determined by Executive Director in regulations, see section 101(f) [title VI, § 659 [title II, § 207]] of Pub. L. 104–208, set out as a note under section 5545a of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–226 effective Mar. 10, 1995, 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 magistrate judges

(a)(1) A bankruptcy judge or magistrate judge 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) as 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 magistrate judges who make contributions to the Thrift Savings Fund under subsection (a) of this section.

(2) The amount contributed by a bankruptcy judge or magistrate judge for any pay period shall not exceed the maximum percentage of such bankruptcy judge's or magistrate judge's basic pay for such pay period allowable under section 8440f.

(3) No contributions shall be made under section 8432(c) of this title for the benefit of a bankruptcy judge or magistrate judge making contributions under subsection (a) of this section.

(4)(A) Section 8433(b) of this title applies to a bankruptcy judge or magistrate judge 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 judge 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 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 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 magistrate judges 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 judge 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 of the distribution 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 judge retires under circumstances making such bankruptcy judge or magistrate judge eligible to make an election under subsection (b) of section 8433, and such bankruptcy judge's or magistrate judge's nonforfeitable account balance is less than an amount that the Executive Director prescribes by regulation, the Executive Director shall pay the nonforfeitable account balance to the participant in a single payment.

(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. 101–650, title III, § 321, Dec. 1, 1990, 104 Stat. 5117; Pub. L. 103–226, § 9(f), Mar. 30, 1994, 108 Stat. 120; Pub. L.

104–208, div. A, title I, § 101(f) [title VI, § 659 [title II, § 205(b)]], Sept. 30, 1996, 110 Stat. 3009–314, 3009–372, 3009–377; Pub. L. 106–554, § 1(a)(4) [div. B, title I, § 138(a)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A–233; Pub. L. 108–469, §§ 1(d)(5), 3(2), Dec. 21, 2004, 118 Stat. 3892, 3893.)

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

2004—Subsec. (a)(2). Pub. L. 108–469, § 1(d)(5), substituted ''as'' for ''only during a period''.

Subsec. (b)(2). Pub. L. 108–469, § 3(2)(A), substituted ''bankruptcy judge's or magistrate judge's'' for ''bankruptcy judge's or magistrate's''.

Subsec. (b)(4)(B). Pub. L. 108–469, § 3(2)(B), substituted ''bankruptcy judge or magistrate judge'' for ''bankruptcy judge or magistrate''.

Subsec. (b)(8). Pub. L. 108–469, § 3(2)(B), substituted ''bankruptcy judge or magistrate judge'' for ''bankruptcy judge or magistrate'' in two places.

2000—Subsec. (b)(2). Pub. L. 106–554 substituted ''the maximum percentage of such bankruptcy judge's or magistrate's basic pay for such pay period allowable under section 8440f.'' for ''5 percent of basic pay for such pay period.''

1996—Subsec. (b)(7). Pub. L. 104–208, § 101(f) [title VI, § 659 [title II, § 205(b)(1)]], inserted ''of the distribution'' after ''equal to the amount'' in first sentence.

Subsec. (b)(8). Pub. L. 104–208, § 101(f) [title VI, § 659 [title II, § 205(b)(2)(A)]], substituted ''less than an amount that the Executive Director prescribes by regulation'' for ''$3,500 or less''.

Pub. L. 104–208, § 101(f) [title VI, § 659 [title II, § 205(b)(2)(B)]], which directed that par. (8) be amended by striking out ''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 subsection (b)'', was executed by striking out ''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)'' before period at end, to reflect the probable intent of Congress.

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

Words ''magistrate judge'', ''magistrate judges'', and ''magistrate judge's'' substituted for ''magistrate'', ''magistrates'', and ''magistrate's'', respectively, in section catchline and in subsecs. (a)(1) and (b)(1)–(3), (4)(A), (C), (5), (7), and (8), 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 1996 AMENDMENT

Amendment by Pub. L. 104–208 effective Sept. 30, 1996, and withdrawals and elections as provided under such amendment to be made at earliest practicable date as determined by Executive Director in regulations, see section 101(f) [title VI, § 659 [title II, § 207]] of Pub. L. 104–208, set out as a note under section 5545a of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–226 effective Mar. 10, 1995, 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 magistrate judges who retire on or after Nov. 15, 1988, with exception for judges and magistrate judges retiring on or after July 31, 1987, see section 9 of Pub. L. 100–659, as amended, 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) as 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 the maximum percentage of such judge's basic pay for such pay period allowable under section 8440f.

(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 of the distribution 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 less than an amount that the Executive Director prescribes by regulation, the Executive Director shall pay the nonforfeitable account balance to the participant in a single payment.

(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; Pub. L. 104–208, div. A, title I, § 101(f) [title VI, § 659 [title II, § 205(c)]], Sept. 30, 1996, 110 Stat. 3009–314, 3009–372, 3009–378; Pub. L. 106–554, § 1(a)(4) [div. B, title I, § 138(a)(4)], Dec. 21, 2000, 114 Stat. 2763, 2763A–233; Pub. L. 108–469, § 1(d)(6), Dec. 21, 2004, 118 Stat. 3892.)

CODIFICATION

Another section 8440c was renumbered section 8440d of this title.

AMENDMENTS

2004—Subsec. (a)(2). Pub. L. 108–469 substituted ''as'' for ''only during a period''.

2000—Subsec. (b)(2). Pub. L. 106–554 substituted ''the maximum percentage of such judge's basic pay for such pay period allowable under section 8440f.'' for ''5 percent of basic pay for such pay period.''

1996—Subsec. (b)(7). Pub. L. 104–208, § 101(f) [title VI, § 659 [title II, § 205(c)(1)]], inserted ''of the distribution'' after ''equal to the amount''.

Subsec. (b)(8). Pub. L. 104–208, § 101(f) [title VI, § 659 [title II, § 205(c)(2)]], substituted ''less than an amount that the Executive Director prescribes by regulation'' for ''$3,500 or less'' and struck out ''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)'' before period at end.

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 1996 AMENDMENT

Amendment by Pub. L. 104–208 effective Sept. 30, 1996, and withdrawals and elections as provided under such amendment to be made at earliest practicable date as determined by Executive Director in regulations, see section 101(f) [title VI, § 659 [title II, § 207]] of Pub. L. 104–208, set out as a note under section 5545a of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–226 effective Mar. 10, 1995, 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 Appeals for Veterans Claims

(a)(1) A judge of the United States Court of Appeals for Veterans Claims may elect to contribute to the Thrift Savings Fund.

(2) An election may be made under paragraph (1) as provided under section 8432(b) of this title for individuals subject to this chapter.

(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 of the United States Court of Appeals for Veterans Claims for any pay period may not exceed the maximum percentage of such judge's basic pay for such pay period allowable under section 8440f. 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 Appeals for Veterans Claims 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; amended Pub. L. 103–226, § 9(h), Mar. 30, 1994, 108 Stat. 121; Pub. L. 105–368, title V, § 512(b)(1)(A), (2)(A), Nov. 11, 1998, 112 Stat. 3342; Pub. L. 106–361, § 2(b)(6), Oct. 27, 2000, 114 Stat. 1401; Pub. L. 106–554, § 1(a)(4) [div. B, title I, § 138(a)(5)], Dec. 21, 2000, 114 Stat. 2763, 2763A–233; Pub. L. 108–469, § 1(d)(7), Dec. 21, 2004, 118 Stat. 3892.)

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

2004—Subsec. (a)(2). Pub. L. 108–469 substituted ''as'' for ''only during a period''.

2000—Subsec. (a)(2). Pub. L. 106–361 substituted ''this chapter'' for ''chapter 84 of this title''.

Subsec. (b)(2). Pub. L. 106–554 amended first sentence generally. Prior to amendment, first sentence read as follows: ''The amount contributed by a judge may not exceed 5 percent of the amount of the judge's basic pay.''

1998—Pub. L. 105–368, § 512(b)(2)(A), substituted ''Judges of the United States Court of Appeals for Veterans Claims'' for ''Judges of the United States Court of Veterans Appeals'' in section catchline.

Subsecs. (a)(1), (b)(5). Pub. L. 105–368, § 512(b)(1)(A), substituted ''Court of Appeals for Veterans Claims'' for ''Court of Veterans Appeals''.

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 2000 AMENDMENT

Amendment by Pub. L. 106–361 effective at the earliest practicable date after Sept. 30, 2000, as determined by the Executive Director in regulations, see section 2(c)(1) of Pub. L. 106–361, set out as a note under section 8432 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–368 effective on first day of first month beginning more than 90 days after Nov. 11, 1998, see section 513 of Pub. L. 105–368, set out as a note under section 7251 of Title 38, Veterans' Benefits.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–226 effective Mar. 10, 1995, see section 9(j) of Pub. L. 103–226, set out as a note under section 8351 of this title.

[1] See References in Text note below.

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.''

## § 8440e. Members of the uniformed services

(a) For purposes of this section—

(1) the term ''member'' has the meaning given such term by section 211 of title 37; and

(2) the term ''basic pay'' means basic pay payable under section 204 of title 37.

(b)(1) Any member eligible to participate in the Thrift Savings Plan by virtue of section 211(b) of title 37 may contribute to the Thrift Savings Fund.

(2)(A) Except as provided in subparagraph (B), an election to contribute to the Thrift Savings Fund under this section may be made as provided under section 8432(b).

(B)(i) Notwithstanding subparagraph (A), any individual who is a member as of the effective date that applies with respect to such individual under section 663 of the National Defense Authorization Act for Fiscal Year 2000 may make the first such election during the 60-day period beginning on such effective date.

(ii) An election made under this subparagraph shall take effect on the first day of the first applicable pay period beginning after the close of the 60-day period referred to in clause (i).

(c) Except as otherwise provided in this section, the provisions of this subchapter and subchapter VII shall apply with respect to members making contributions to the Thrift Savings Fund, and such members shall, for purposes of this subchapter and subchapter VII, be considered employees within the meaning of section 8401(11).

(d)(1)(A) The amount contributed by a member described in section 211(a)(1) of title 37 for any pay period out of basic pay may not exceed the maximum percentage of such member's basic pay for such pay period allowable under section 8440f.

(B) The amount contributed by a member described in section 211(a)(2) of title 37 for any pay period out of any compensation received under section 206 of title 37 may not exceed the maximum percentage of such member's compensation for such pay period (received under such section 206) allowable under section 8440f.

(2) A member making contributions to the Thrift Savings Fund out of basic pay, or out of compensation under section 206 of title 37, may also contribute (by direct transfer to the Fund) any part of any special or incentive pay that such member receives under chapter 5 of title 37.

(3) Nothing in this section or section 211 of title 37 shall be considered to waive any dollar limitation under the Internal Revenue Code of 1986 which otherwise applies with respect to the Thrift Savings Fund.

(e) Except as provided in section 211(d) of title 37, no contribution under section 8432(c) of this title may be made for the benefit of a member making contributions to the Thrift Savings Fund under this section.

(Added Pub. L. 106–65, div. A, title VI, § 661(a)(2)(A), Oct. 5, 1999, 113 Stat. 670; amended Pub. L. 106–398, § 1 [[div. A], title VI, § 661(c)], Oct. 30, 2000, 114 Stat. 1654, 1654A–167; Pub. L. 106–554, § 1(a)(4) [div. B, title I, § 138(a)(6)], Dec. 21, 2000, 114 Stat. 2763, 2763A–233; Pub. L. 108–469, § 1(d)(8), Dec. 21, 2004, 118 Stat. 3892.)

REFERENCES IN TEXT

Section 663 of the National Defense Authorization Act for Fiscal Year 2000, referred to in subsec. (b)(2)(B)(i), is section 663 of Pub. L. 106–65, as amended, which is set out as an Effective Date note below.

The Internal Revenue Code of 1986, referred to in subsec. (d)(3), is classified generally to Title 26, Internal Revenue Code.

AMENDMENTS

2004—Subsec. (b)(2)(A). Pub. L. 108–469 substituted ''as provided under section 8432(b)'' for ''only during a period provided under section 8432(b), subject to the same conditions as prescribed under paragraph (2) (A)–(D) thereof''.

2000—Subsec. (b)(2)(B)(i). Pub. L. 106–398 substituted ''as of the effective date that applies with respect to such individual under section 663 of the National Defense Authorization Act for Fiscal Year 2000'' for ''as of the effective date described in paragraph (1) of section 663(a) of the National Defense Authorization Act for Fiscal Year 2000 (or, if applicable, paragraph (2) thereof)''.

Subsec. (d)(1)(A). Pub. L. 106–554, § 1(a)(4) [div. B, title I, § 138(a)(6)(A)], substituted ''the maximum percentage of such member's basic pay for such pay period allowable under section 8440f.'' for ''5 percent of such member's basic pay for such pay period.''

Subsec. (d)(1)(B). Pub. L. 106–554, § 1(a)(4) [div. B, title I, § 138(a)(6)(B)], substituted ''the maximum percentage of such member's compensation for such pay period (received under such section 206) allowable under section 8440f.'' for ''5 percent of such compensation, payable to such member for such pay period.''

EFFECTIVE DATE

Pub. L. 106–65, div. A, title VI, § 663, Oct. 5, 1999, 113 Stat. 673, as amended by Pub. L. 106–398, § 1 [[div. A], title VI, § 661(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–167, provided that:

''(a) IN GENERAL.—Except as provided in subsection (b), the amendments made by this subtitle [subtitle F (§§ 661–663) of title VI of div. A of Pub. L. 106–65, enacting this section and section 211 of Title 37, Pay and Allowances of the Uniformed Services, and amending sections 8351, 8432b, 8433, 8439, and 8473 of this title and section 211 of Title 37] shall take effect 180 days after the date of the enactment of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 [Oct. 30, 2000].

''(b) POSTPONEMENT AUTHORITY.—(1) The Secretary of Defense may postpone by up to 180 days after the date that would otherwise apply under subsection (a)—

''(A) the date as of which the amendments made by this subtitle shall take effect; or

''(B) the date as of which section 211(a)(2) of title 37, United States Code (as added by this subtitle) shall take effect.

''(2) Postponement authority under this subsection may be exercised only to the extent that the failure to do so would prevent the Federal Retirement Thrift Investment Board from being able to provide timely and accurate services to investors or would place an excessive burden on the administrative capacity of the

Board to accommodate participants in the Thrift Savings Plan, as determined by the Secretary of Defense after consultation with the Executive Director (appointed by the Board).

''(3) Paragraph (1) includes the authority to postpone the effective date of the amendments made by this subtitle (apart from section 211(a)(2) of title 37, United States Code), and the effective date of such section 211(a)(2), by different lengths of time.

''(4) The Secretary shall notify the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives], the Committee on Government Reform [now Committee on Oversight and Government Reform] of the House of Representatives, and the Committee on Governmental Affairs [now Committee on Homeland Security and Governmental Affairs] of the Senate of any determination made under this subsection.''

REGULATIONS

Pub. L. 106–65, div. A, title VI, § 661(b), Oct. 5, 1999, 113 Stat. 672, as amended by Pub. L. 106–398, § 1 [[div. A], title VI, § 661(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–167, provided that: ''Not later than the 180th day after the date of the enactment of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 [Oct. 30, 2000], the Executive Director (appointed by the Federal Retirement Thrift Investment Board) shall issue regulations to implement the amendments made by this subtitle [subtitle F (§§ 661–663) of title VI of div. A of Pub. L. 106–65, enacting this section and section 211 of Title 37, Pay and Allowances of the Uniformed Services, and amending sections 8351, 8432b, 8433, 8439, and 8473 of this title and section 211 of Title 37].''

### § 8440f. Maximum percentage allowable for certain participants

(a) The maximum percentage allowable under this section shall be determined in accordance with the following table:

| In the case of a pay period beginning in fiscal year: | The maximum percentage allowable is: |
|---|---|
| 2001 | 6 |
| 2002 | 7 |
| 2003 | 8 |
| 2004 | 9 |
| 2005 | 10 |
| 2006 or thereafter | 100. |

(b) Notwithstanding any limitation under this section, an eligible participant (as defined by section 414(v) of the Internal Revenue Code of 1986) may make such additional contributions to the Thrift Savings Fund as are permitted by such section 414(v) and regulations of the Executive Director consistent therewith.

(Added Pub. L. 106–554, § 1(a)(4) [div. B, title I, § 138(a)(7)(A)], Dec. 21, 2000, 114 Stat. 2763, 2763A–234; amended Pub. L. 107–304, § 1(b)(2), Nov. 27, 2002, 116 Stat. 2363.)

REFERENCES IN TEXT

Section 414(v) of the Internal Revenue Code of 1986, referred to in subsec. (b), is classified to section 414(v) of Title 26, Internal Revenue Code.

AMENDMENTS

2002—Pub. L. 107–304 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–304 effective as of the earliest practicable date determined by the Executive Director in regulations, see section 1(c) of Pub. L. 107–304, set out as a note under section 8351 of this title.

## SUBCHAPTER IV—SURVIVOR ANNUITIES

### § 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 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.)

**§ 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) except as provided in paragraph (3), 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.

(3) Paragraph (1)(B) (relating to termination of a survivor annuity because of a remarriage before age 55) shall not apply if the widow or widower was married for at least 30 years to the individual on whose service the survivor annuity is based.

(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 annuity 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; Pub. L. 105–61, title V, § 518(b)(1), Oct. 10, 1997, 111 Stat. 1307.)

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

1997—Subsec. (d)(1)(B). Pub. L. 105–61, § 518(b)(1)(B), substituted ''except as provided in paragraph (3), remarries'' for ''remarries''.

Subsec. (d)(3). Pub. L. 105–61, § 518(b)(1)(A), added par. (3).

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''.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–61 applicable with respect to remarriages occurring on or after Jan. 1, 1995, see section 518(c) of Pub. L. 105–61, set out as a note under section 8341 of this title.

## § 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. If the annuity of a child under this subchapter terminates under subparagraph (E) because of marriage, then, if such marriage ends, such annuity shall resume on the first day of the month in which it ends, but only if any lump sum paid is returned to the Fund, and that individual is not otherwise ineligible for such annuity.

(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; Pub. L. 104–208, div. A, title I, § 101(f) [title VI, § 633(a)(2)], Sept. 30, 1996, 110 Stat. 3009–314, 3009–363.)

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

1996—Subsec. (b). Pub. L. 104–208 inserted at end ''If the annuity of a child under this subchapter terminates under subparagraph (E) because of marriage, then, if such marriage ends, such annuity shall resume on the first day of the month in which it ends, but only if any lump sum paid is returned to the Fund, and that individual is not otherwise ineligible for such annuity.''

1986—Subsec. (a)(2). Pub. L. 99–556 inserted ''(including any adjustment based on section 8340)''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–208 applicable with respect to termination of marriage taking effect before, on, or after Sept. 30, 1996, except that benefits are payable only with respect to amounts accruing for periods beginning on first day of month beginning after the later of termination of marriage or Sept. 30, 1996, see section 101(f) [title VI, § 633(b)] of Pub. L. 104–208, set out as a note under section 8341 of this title.

### § 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.)

### § 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) except as provided in subsection (h), 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 sub-

section (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.

(h)(1) Subsection (c)(2) (to the extent that it provides for termination of a survivor annuity because of a remarriage before age 55) shall not apply if the former spouse was married for at least 30 years to the individual on whose service the survivor annuity is based.

(2) A remarriage described in paragraph (1) shall not be taken into account for purposes of section 8419(b)(1)(B) or any other provision of this chapter which the Office may by regulation identify in order to carry out the purposes of this subsection.

(Added Pub. L. 99–335, title I, § 101(a), June 6, 1986, 100 Stat. 564; amended Pub. L. 105–61, title V, § 518(b)(2), Oct. 10, 1997, 111 Stat. 1308.)

AMENDMENTS

1997—Subsec. (c)(2). Pub. L. 105–61, § 518(b)(2)(B), substituted ''except as provided in subsection (h), shall'' for ''shall''.

Subsec. (h). Pub. L. 105–61, § 518(b)(2)(A), added subsec. (h).

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–61 applicable with respect to remarriages occurring on or after Jan. 1, 1995, see section 518(c) of Pub. L. 105–61, set out as a note under section 8341 of this title.

## SUBCHAPTER V—DISABILITY BENEFITS

### § 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.)

### § 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 (g) 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; Pub. L. 108–176, title II, § 226(b)(2)(B), Dec. 12, 2003, 117 Stat. 2530.)

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

2003—Subsec. (d)(1). Pub. L. 108–176 substituted ''subsection (g)'' for ''subsection (f)''.

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 2003 AMENDMENT

Amendment by Pub. L. 108–176 effective on 60th day after Dec. 12, 2003, and applicable with respect to any annuity entitlement based on an individual's separation from service occurring on or after such effective date, and any service performed by any such individual before, on, or after such effective date, subject to special rule relating to deposit requirement, see section 226(c) of Pub. L. 108–176, set out as a note under section 8401 of this title.

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).''

### § 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.)

### § 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

### § 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 who—

(A) has not previously made an election under this subsection or had an opportunity to make an election under this paragraph; and

(B) moves, without a break in service of more than 1 year, 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 participant in a retirement system established for employees described in section 2105(c);

(C) moves, without a break in service of more than 1 year, to a position 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 remain 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; Pub. L. 104–106, div. A, title X, § 1043(a)(2), Feb. 10, 1996, 110 Stat. 434; Pub. L. 107–107, div. A, title XI, § 1131(b), Dec. 28, 2001, 115 Stat. 1242.)

AMENDMENTS

2001—Subsec. (n)(1). Pub. L. 107–107, § 1131(b)(1), inserted ''and'' at end of subpar. (A), redesignated subpar. (C) as (B), and struck out former subpar. (B) which read as follows: ''has 5 or more years of civilian service creditable under this chapter; and''.

Subsec. (n)(2)(B). Pub. L. 107–107, § 1131(b)(2), struck out ''vested'' before ''participant in a retirement system'' and struck out '', as the term 'vested participant' is defined by such system'' before semicolon at end.

1996—Subsec. (n)(1). Pub. L. 104–106, § 1043(a)(2)(A), struck out ''of the Department of Defense or the Coast Guard'' after ''an employee'' in introductory provisions and substituted ''1 year'' for ''3 days'' in subpar. (C).

Subsec. (n)(2)(C). Pub. L. 104–106, § 1043(a)(2)(B), substituted ''1 year'' for ''3 days'' and struck out ''in the Department of Defense or the Coast Guard, respectively,'' after ''to a position''.

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''.

CHANGE OF NAME

Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the intelligence community deemed to be a reference to the Director of National Intelligence. Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the Central Intelligence Agency deemed to be a reference to the Director of the Central Intelligence Agency. See section 1081(a), (b) of Pub. L. 108–458, set out as a note under section 401 of Title 50, War and National Defense.

EFFECTIVE DATE OF 1996 AMENDMENT

For effective date of amendments by Pub. L. 104–106, see Regulations; Effective Date of 1996 Amendment note below.

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.

REGULATIONS; EFFECTIVE DATE OF 1996 AMENDMENT

For provisions relating to promulgation of regulations necessary to carry out amendment by Pub. L. 104–106, and effective date of such amendment in connection with those regulations, see section 1043(b), (c) of Pub. L. 104–106, set out as a note under section 8347 of this title.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

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.

## § 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 annuitant'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.

### § 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), (b)(1)(B), or (d) 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; amended Pub. L. 105–261, div. A, title XI, § 1109(c)(2), Oct. 17, 1998, 112 Stat. 2145; Pub. L. 106–58, title VI, § 651(b), Sept. 29, 1999, 113 Stat. 480; Pub. L. 106–398, § 1 [[div. A], title XI, § 1152(c)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–323; Pub. L. 107–107, div. A, title X, § 1048(f)(2), Dec. 28, 2001, 115 Stat. 1228.)

AMENDMENTS

2001—Subsec. (a)(1)(A)(i). Pub. L. 107–107 amended directory language of Pub. L. 106–398. See 2000 Amendment note below.

2000—Subsec. (a)(1)(A)(i). Pub. L. 106–398, as amended by Pub. L. 107–107, substituted ‘‘, (b)(1)(B), or (d)’’ for ‘‘or (b)(1)(B)’’.

1999—Subsec. (a)(1)(A)(i). Pub. L. 106–58 repealed Pub. L. 105–261, § 1109(c)(2). See 1998 Amendment note below.

1998—Subsec. (a)(1)(A)(i). Pub. L. 105–261, § 1109(c)(2), which directed substitution of ‘‘, (b)(1)(B), or (d)’’ for ‘‘or (b)(1)(B)’’, was repealed by Pub. L. 106–58.

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–107, div. A, title X, § 1048(f), Dec. 28, 2001, 115 Stat. 1228, provided that the amendment made by section 1048(f)(2) is effective as of Oct. 30, 2000, and as if included in the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, as enacted into law by Pub. L. 106–398.

## § 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.)

## § 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.

### § 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 (h) 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 claim-

ing 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.

(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 Committee on House Oversight 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 Committee on House Oversight 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 purposes of this subsection—

(A) the term ''head of an agency'' means—

(i) the head of an Executive agency, other than the Department of Defense or the Government Accountability Office;

[1] So in original. Probably should be ''part-time''.

(ii) the head of the United States Postal Service;

(iii) the Director of the Administrative Office of the United States Courts, with respect to employees of the judicial branch; and

(iv) any employing authority described under subsection (h)(2), other than the Government Accountability Office; and

(B) the term ''limited time appointee'' means an annuitant appointed under a temporary appointment limited to 1 year or less.

(2) The head of an agency may waive the application of subsection (a) with respect to any annuitant who is employed in such agency as a limited time appointee, if the head of the agency determines that the employment of the annuitant is necessary to—

(A) fulfill functions critical to the mission of the agency, or any component of that agency;

(B) assist in the implementation or oversight of the American Recovery and Reinvestment Act of 2009 (Public Law 111–5) or the Troubled Asset Relief Program under title I of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5201 et seq.);

(C) assist in the development, management, or oversight of agency procurement actions;

(D) assist the Inspector General for that agency in the performance of the mission of that Inspector General;

(E) promote appropriate training or mentoring programs of employees;

(F) assist in the recruitment or retention of employees; or

(G) respond to an emergency involving a direct threat to life of property or other unusual circumstances.

(3) The head of an agency may not waive the application of subsection (a) with respect to an annuitant—

(A) for more than 520 hours of service performed by that annuitant during the period ending 6 months following the individual's annuity commencing date;

(B) for more than 1040 hours of service performed by that annuitant during any 12-month period; or

(C) for more than a total of 3120 hours of service performed by that annuitant.

(4)(A) The total number of annuitants to whom a waiver by the head of an agency under this subsection or section 8344(*l*) applies may not exceed 2.5 percent of the total number of full-time employees of that agency.

(B) If the total number of annuitants to whom a waiver by the head of an agency under this subsection or section 8344(*l*) applies exceeds 1 percent of the total number of full-time employees of that agency, the head of that agency shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate, the Committee on Oversight and Government Reform of the House of Representatives, and the Office of Personnel Management—

(i) a report with an explanation that justifies the need for the waivers in excess of that percentage; and

(ii) not later than 180 days after submitting the report under clause (i), a succession plan.

(5)(A) The Director of the Office of Personnel Management may promulgate regulations providing for the administration of this subsection.

(B) Any regulations promulgated under subparagraph (A) may—

(i) provide standards for the maintenance and form of necessary records of employment under this subsection;

(ii) to the extent not otherwise expressly prohibited by law, require employing agencies to provide records of such employment to the Office or other employing agencies as necessary to ensure compliance with paragraph (3);

(iii) authorize other administratively convenient periods substantially equivalent to 12 months, such as 26 pay periods, to be used in determining compliance with paragraph (3)(B);

(iv) include such other administrative requirements as the Director of the Office of Personnel Management may find appropriate to provide for effective operation of, or to ensure compliance with, this subsection; and

(v) encourage the training and mentoring of employees by any limited time appointee employed under this subsection.

(6)(A) Any hours of training or mentoring of employees by any limited time appointee employed under this subsection shall not be included in the hours of service performed for purposes of paragraph (3), but those hours of training or mentoring may not exceed 520 hours.

(B) If the primary service performed by any limited time appointee employed under this subsection is training or mentoring of employees, the hours of that service shall be included in the hours of service performed for purposes of paragraph (3).

(7) The authority of the head of an agency under this subsection to waive the application of subsection (a) shall terminate 5 years after the date of enactment of the National Defense Authorization Act for Fiscal Year 2010.

(j)(1) For the purpose of subsections (f) through (i), ''Executive agency'' shall not include the Government Accountability Office.

(2) An employee as to whom a waiver under subsection (f), (g), (h), or (i) 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; Pub. L. 105–55, title I, § 107, Oct. 7, 1997, 111 Stat. 1184; Pub. L. 105–61, title V, § 516(a)(9), Oct. 10, 1997, 111 Stat. 1307; Pub. L. 108–176, title II, § 226(b)(2)(C), Dec. 12, 2003, 117 Stat. 2530; Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814; Pub. L. 111–84, div. A, title XI, § 1122(b), Oct. 28, 2009, 123 Stat. 2507.)

REFERENCES IN TEXT

The American Recovery and Reinvestment Act of 2009, referred to in subsec. (i)(2)(B), is Pub. L. 111–5, Feb. 17, 2009, 123 Stat. 115. For complete classification

of this Act to the Code, see Short Title of 2009 Amendment note set out under section 1 of Title 26, Internal Revenue Code, and Tables.

The Emergency Economic Stabilization Act of 2008, referred to in subsec. (i)(2)(B), is div. A of Pub. L. 110–343, Oct. 3, 2008, 122 Stat. 3765. Title I of the Act is classified principally to subchapter I (§5211 et seq.) of chapter 52 of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 5201 of Title 12 and Tables.

The date of enactment of the National Defense Authorization Act for Fiscal Year 2010, referred to in subsec. (i)(7), is the date of enactment of Pub. L. 111–84, which was approved Oct. 28, 2009.

AMENDMENTS

2009—Subsec. (i). Pub. L. 111–84, §1122(b)(2), added subsec. (i). Former subsec. (i) redesignated (j).

Subsec. (j). Pub. L. 111–84, §1122(b)(1), redesignated subsec. (i) as (j).

Subsec. (j)(1). Pub. L. 111–84, §1122(b)(3)(A), substituted ''(i)'' for ''(h)''.

Subsec. (j)(2). Pub. L. 111–84, §1122(b)(3)(B), substituted ''(h), or (i)'' for ''or (h)''.

2004—Subsec. (i)(1). Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office''.

2003—Subsec. (b)(1)(A). Pub. L. 108–176 substituted ''through (h)'' for ''through (g)''.

1997—Subsec. (b)(1)(A). Pub. L. 105–61 substituted ''through (g)'' for ''through (f)''.

Subsec. (h)(2)(B), (3). Pub. L. 105–55 substituted ''the Committee on House Oversight of the House of Representatives'' for ''the Speaker of the House of Representatives''.

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).

CHANGE OF NAME

Committee on House Oversight of House of Representatives changed to Committee on House Administration of House of Representatives by House Resolution No. 5, One Hundred Sixth Congress, Jan. 6, 1999.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–176 effective on 60th day after Dec. 12, 2003, and applicable with respect to any annuity entitlement based on an individual's separation from service occurring on or after such effective date, and any service performed by any such individual before, on, or after such effective date, subject to special rule relating to deposit requirement, see section 226(c) of Pub. L. 108–176, set out as a note under section 8401 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–61 applicable to any annuity commencing before, on, or after Oct. 10, 1997, and effective with regard to any payment made after the first month following Oct. 10, 1997, see section 516(b) of Pub. L. 105–61, set out as a note under section 8334 of this title.

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].''

CONSTRUCTION OF 2009 AMENDMENT

Nothing in amendment by section 1122 of Pub. L. 111–84 to be construed to authorize the waiver of the hiring preferences under chapter 33 of this title in selecting annuitants to employ in an appointive or elective position, see section 1122(c) of Pub. L. 111–84, set out as a note under section 8344 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 8344 of this title.

## § 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

### § 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.

### § 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.''

## § 8473. Employee Thrift Advisory Council

(a) The Board shall establish an Employee Thrift Advisory Council. The Council shall be composed of 15 members appointed by the Chairman of the Board in accordance with subsection (b).

(b) The Chairman shall appoint 15 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 pro-

moting 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));

(9) 1 shall be appointed to represent the organization representing the largest number of members of the Senior Executive Service; and

(10) 1 shall be appointed to represent participants (under section 8440e) who are members of the uniformed services.

(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; Pub. L. 106–65, div. A, title VI, § 661(a)(6), Oct. 5, 1999, 113 Stat. 672.)

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

1999—Subsec. (a). Pub. L. 106–65, § 661(a)(6)(A), substituted ''15 members'' for ''14 members''.

Subsec. (b). Pub. L. 106–65, § 661(a)(6)(B)(i), substituted ''15 members'' for ''14 members'' in introductory provisions.

Subsec. (b)(10). Pub. L. 106–65, § 661(a)(6)(B)(ii)–(iv), added par. (10).

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 1999 AMENDMENT

Amendment by Pub. L. 106–65 effective 180 days after Oct. 30, 2000, unless postponed, see section 663 of Pub. L. 106–65, as amended, set out as an Effective Date note under section 8440e 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.

## § 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 Regulatory 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; amended Pub. L. 109–435, title VI, § 604(b), Dec. 20, 2006, 120 Stat. 3241.)

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.

AMENDMENTS

2006—Subsec. (c)(4). Pub. L. 109–435 substituted ''Postal Regulatory Commission'' for ''Postal Rate Commission''.

### § 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)(i) 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.

(ii) A fiduciary shall not be liable under subparagraph (A), and no civil action may be brought against a fiduciary—

(I) for providing for the automatic enrollment of a participant in accordance with section 8432(b)(2)(A);

(II) for enrolling a participant in a default investment fund in accordance with section 8438(c)(2); or

(III) for allowing a participant to invest through the mutual fund window or for establishing restrictions applicable to participants' ability to invest through the mutual fund window.

(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; Pub. L. 111–31, div. B, title I, § 106(b), June 22, 2009, 123 Stat. 1855.)

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

2009—Subsec. (e)(1)(C). Pub. L. 111–31 designated existing provisions as cl. (i) and added cl. (ii).

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."

## § 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.''

## § 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.)

### § 8480. Subpoena authority

(a) In order to carry out the responsibilities specified in this subchapter and subchapter III of this chapter, the Executive Director may issue subpoenas commanding each person to whom the subpoena is directed to produce designated books, documents, records, electronically stored information, or tangible materials in the possession or control of that individual.

(b) Notwithstanding any Federal, State, or local law, any person, including officers, agents, and employees, receiving a subpoena under this section, who complies in good faith with the subpoena and thus produces the materials sought, shall not be liable in any court of any State or the United States to any individual, domestic or foreign corporation or upon a partnership or other unincorporated association for such production.

(c) When a person fails to obey a subpoena issued under this section, the district court of the United States for the district in which the investigation is conducted or in which the person failing to obey is found, shall on proper application issue an order directing that person to comply with the subpoena. The court may punish as contempt any disobedience of its order.

(d) The Executive Director shall prescribe regulations to carry out subsection (a).

(Added Pub. L. 111–31, div. B, title I, § 107(a), June 22, 2009, 123 Stat. 1856.)

## CHAPTER 85—UNEMPLOYMENT COMPENSATION

SUBCHAPTER I—EMPLOYEES GENERALLY

Sec.
8501. Definitions.
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SUBCHAPTER II—EX-SERVICEMEN

8521. Definitions; application.
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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.

## SUBCHAPTER I—EMPLOYEES GENERALLY

### § 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 Agricultural 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.<br>Aug. 28, 1958, Pub. L. 85–848, § 2, 72 Stat. 1087.<br>July 12, 1960, Pub. L. 86–624, § 30(g), 74 Stat. 420.<br>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.

## § 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.

## § 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.

## § 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 Government Accountability 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; Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814.)

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

2004—Subsec. (c). Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office''.

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.<br>Aug. 28, 1958, Pub. L. 85–848, § 4, 72 Stat. 1089.<br>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 representation 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.''

## SUBCHAPTER II—EX-SERVICEMEN

### § 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 (including pursuant to a sole survivorship discharge, as that term is defined in section 1174(i) of title 10), 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; Pub. L. 110–317, § 7, Aug. 29, 2008, 122 Stat. 3529.)

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

2008—Subsec. (a)(1)(B)(ii)(III). Pub. L. 110–317 substituted ''hardship (including pursuant to a sole survivorship discharge, as that term is defined in section 1174(i) of title 10),'' for ''hardship,''.

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 2008 AMENDMENT

Amendment by Pub. L. 110–317 applicable with respect to any sole survivorship discharge granted after Aug. 29, 2008, see section 10 of Pub. L. 110–317, set out as a note under section 2108 of this title.

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.

### § 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.<br>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.<br>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.
8703. Benefit certificate.
8704. Group insurance; amounts.
8705. Death claims; order of precedence; escheat.
8706. Termination of insurance; assignment of ownership.
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8714d. Option to receive ''living benefits''.
8715. Jurisdiction of courts.
8716. Regulations.

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.

### § 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) 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.

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 or foster child (but only if the stepchild or foster child 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

[1] See Change of Name note below.

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; Pub. L. 105–311, §§ 3(1), 4, Oct. 30, 1998, 112 Stat. 2950.)

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

1998—Subsec. (c). Pub. L. 105–311, § 3(1), substituted a period for comma after "$10,000" in par. (2) and struck out "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." before last sentence.

Subsec. (d)(1)(B). Pub. L. 105–311, § 4, inserted "or foster child" after "stepchild" in two places in introductory provisions.

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 1998 AMENDMENT

Pub. L. 105–311, § 11, Oct. 30, 1998, 112 Stat. 2954, provided that:

"(a) IN GENERAL.—Except as otherwise provided in this Act [see Short Title of 1998 Amendment note below], the amendments made by this Act shall take effect on the date of enactment of this Act [Oct. 30, 1998].

"(b) MAXIMUM LIMITATION ON EMPLOYEE INSURANCE.—Section 3 [amending this section and section 8714b of this title] shall take effect on the first day of the first applicable pay period beginning on or after the date of enactment of this Act.

"(c) ERRONEOUS COVERAGE.—Section 5 [amending section 8706 of this title] shall be effective in any case in which a finding of erroneous insurance coverage is made on or after the date of enactment of this Act.

"(d) DIRECT PAYMENT OF INSURANCE CONTRIBUTIONS.—Section 6 [amending sections 8707 and 8714a to 8714c of this title] shall take effect on the first day of the first applicable pay period beginning on or after the date of enactment of this Act.

''(e) ADDITIONAL OPTIONAL LIFE INSURANCE.—

''(1) IN GENERAL.—Section 7 [amending section 8714b of this title and enacting provisions set out as a note under section 8714b of this title] shall take effect on the first day of the first pay period that begins on or after the 180th day following the date of enactment of this Act, or on any earlier date that the Office of Personnel Management may prescribe that is at least 60 days after the date of enactment of this Act.

''(2) REGULATIONS.—The Office shall prescribe regulations under which an employee may elect to continue additional optional insurance that remains in force on such effective date without subsequent reduction and with the full cost withheld from annuity or compensation on and after such effective date if that employee—

''(A) separated from service before such effective date due to retirement or entitlement to compensation under subchapter I of chapter 81 of title 5, United States Code; and

''(B) continued additional optional insurance pursuant to section 8714b(c)(2) as in effect immediately before such effective date.

''(f) IMPROVED OPTIONAL LIFE INSURANCE ON FAMILY MEMBERS.—The amendments made by section 8 [amending section 8714c of this title] shall take effect on the first day of the first pay period which begins on or after the 180th day following the date of enactment of this Act or on any earlier date that the Office of Personnel Management may prescribe.

''(g) OPEN SEASON.—Any election made by an employee under section 9 [set out as a note below], and applicable withholdings, shall be effective on the first day of the first applicable pay period that—

''(1) begins on or after the date occurring 365 days after the first day of the election period authorized under section 9; and

''(2) follows a pay period in which the employee was in a pay and duty status.''

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 1998 AMENDMENT

Pub. L. 105–311, § 1, Oct. 30, 1998, 112 Stat. 2950, provided that: ''This Act [amending this section and sections 7703, 8706, 8707, and 8714a to 8714c of this title and enacting provisions set out as notes under this section and sections 7703 and 8714b of this title] may be cited as the 'Federal Employees Life Insurance Improvement Act'.''

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'.''

CONSTRUCTION

Pub. L. 111–8, div. D, title III, § 307(b), Mar. 11, 2009, 123 Stat. 648, provided that: ''For purposes of construing and applying chapter 87 of title 5, United States Code, including any adjustment of insurance rates by regulation or otherwise, the following categories of judicial officers shall be deemed to be judges of the United States as described under section 8701 of title 5, United States Code:

''(1) United States magistrate judges.

''(2) Bankruptcy judges appointed under chapter 6 of title 28, United States Code.

''(3) Judges of the District Court of Guam, judges of the District Court for the Northern Mariana Islands, and judges of the District Court of the Virgin Islands.

''(4) Bankruptcy judges and magistrate judges retired under section 377 of title 28, United States Code.

''(5) Judges retired under section 373 of title 28, United States Code.''

[Section 307(b) of Pub. L. 111–8, set out above, applicable with respect to any payment made on or after the first day of the first applicable pay period beginning on or after Jan. 7, 2008, see section 307(c) of Pub. L. 111–8, set out as an Effective Date of 2009 Amendment note under section 604 of Title 28, Judiciary and Judicial Procedure.]

Similar provisions were contained in the following prior act:

Pub. L. 110–177, title V, § 502(b), Jan. 7, 2008, 121 Stat. 2542.

OPEN SEASON

Pub. L. 105–311, § 9, Oct. 30, 1998, 112 Stat. 2954, provided that: ''Beginning not later than 180 days after the date of enactment of this Act [Oct. 30, 1998], the Office of Personnel Management shall conduct an open enrollment opportunity for purposes of chapter 87 of title 5, United States Code, over a period of not less than 8 weeks. During this period, an employee (as defined under section 8701(a) of such title)—

''(1) may, if the employee previously declined or voluntarily terminated any coverage under chapter 87

of such title, elect to begin, resume, or increase group life insurance (and acquire applicable accidental death and dismemberment insurance) under all sections of such chapter without submitting evidence of insurability; and

''(2) may, if currently insured for optional life insurance on family members, elect an amount above the minimum insurance on a spouse.''

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.

## § 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.

(c) Notwithstanding a notice previously given under subsection (b), an employee who is deployed in support of a contingency operation (as that term is defined in section 101(a)(13) of title 10) or an employee of the Department of Defense who is designated as an emergency essential employee under section 1580 of title 10 shall be insured if the employee, within 60 days after the date of notification of deployment or designation, elects to be insured under a policy of insurance under this chapter. An election under the preceding sentence shall be effective when provided to the Office in writing, in the form prescribed by the Office, within such 60-day period.

(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; Pub. L. 106–398, § 1 [[div. A], title XI, § 1134(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–318; Pub. L. 110–417, [div. A], title XI, § 1103(a), Oct. 14, 2008, 122 Stat. 4616.)

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

2008—Subsec. (c). Pub. L. 110–417 inserted ''an employee who is deployed in support of a contingency operation (as that term is defined in section 101(a)(13) of title 10) or'' after ''subsection (b),'' and substituted ''the date of notification of deployment or'' for ''the date of the''.

2000—Subsec. (c). Pub. L. 106–398 added subsec. (c).

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.

APPLICABILITY

Pub. L. 106–398, § 1 [[div. A], title XI, § 1134(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–318, provided that: ''For purposes of section 8702(c) of title 5, United States Code (as added by subsection (a)), an employee of the Department of Defense who is designated as an emergency essential employee under section 1580 of title 10, United States Code, before the date of the enactment of this Act [Oct. 30, 2000] shall be deemed to be so designated on the date of the enactment of this Act.''

## § 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.]

## § 8705. Death claims; order of precedence; escheat

(a) Except as provided in subsection (e), 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.

(e)(1) Any amount which would otherwise be paid to a person determined under the order of precedence named by subsection (a) 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.

(2) For purposes of this subsection, a decree, order, or agreement referred to in paragraph (1) shall not be effective unless it is received, before the date of the covered employee's death, by the employing agency or, if the employee has separated from service, by the Office.

(3) A designation under this subsection with respect to any person may not be changed except—

(A) with the written consent of such person, if received as described in paragraph (2); or

(B) by modification of the decree, order, or agreement, as the case may be, if received as described in paragraph (2).

(4) The Office shall prescribe any regulations necessary to carry out this subsection, including regulations for the application of this subsection in the event that two or more decrees, orders, or agreements, are received with respect to the same amount.

(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; Pub. L. 105–205, § 1, July 22, 1998, 112 Stat. 683.)

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.<br>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

1998—Subsec. (a). Pub. L. 105–205, § 1(1), substituted ''Except as provided in subsection (e), the'' for ''The''.

Subsec. (e). Pub. L. 105–205, § 1(2), added subsec. (e).

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.

## § 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 on 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)(1) An employee who enters on approved leave without pay in the circumstances described in paragraph (2) may elect to have such employee's life insurance continue (beyond the end of the 12 months of coverage provided for under subsection (a)) for an additional 12 months and arrange to pay currently into the Employees' Life Insurance Fund, through such employee's employing agency, both employee and agency contributions, from the beginning of that additional 12 months of coverage. The employing agency shall forward the premium payments to the Fund. If the employee does not so elect, such employee's insurance will continue during nonpay status and stop as provided by subsection (a). An individual making an election under this subsection may cancel that election at any time, in which case such employee's insurance will stop as provided by subsection (a) or upon receipt of notice of cancellation, whichever is later.

(2) This subsection applies in the case of any employee who—

(A) is a member of a reserve component of the armed forces called or ordered to active duty under a call or order that does not specify a period of 30 days or less; and

(B) enters on approved leave without pay to perform active duty pursuant to such call or order.

(e) 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.

(f)(1) 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.

(2) A court decree of divorce, annulment, or legal separation, or the terms of a court-approved property settlement agreement incident to any court decree of divorce, annulment, or legal separation, may direct that an insured employee or former employee make an irrevocable assignment of the employee's or former employee's incidents of ownership in insurance under this chapter (if there is no previous assignment) to the person specified in the court order or court-approved property settlement agreement.

(g) 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 sub-

section (e) of such section, such former employee may, under regulations prescribed by the Office, elect to resume the insurance coverage which was so stopped.

(h) The insurance of an employee under a policy purchased under section 8709 shall not be invalidated based on a finding that the employee erroneously became insured, or erroneously continued insurance upon retirement or entitlement to compensation under subchapter I of chapter 81 of this title, if such finding occurs after the erroneous insurance and applicable withholdings have been in force for 2 years during the employee's lifetime.

(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; Pub. L. 105–205, § 2, July 22, 1998, 112 Stat. 683; Pub. L. 105–311, § 5, Oct. 30, 1998, 112 Stat. 2951; Pub. L. 110–181, div. A, title XI, § 1102, Jan. 28, 2008, 122 Stat. 345.)

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.<br>Aug. 11, 1955, ch. 794, § 2(a), 69 Stat. 677.<br>May 28, 1956, ch. 328, § 1, 70 Stat. 213.<br>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

2008—Subsecs. (d) to (h). Pub. L. 110–181 added subsec. (d) and redesignated former subsecs. (d) to (g) as (e) to (h), respectively.

1998—Subsec. (e). Pub. L. 105–205 designated existing provisions as par. (1) and added par. (2).

Subsec. (g). Pub. L. 105–311 added subsec. (g).

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 Commission 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 1998 AMENDMENT

Amendment by Pub. L. 105–311 effective in any case in which a finding of erroneous insurance coverage is made on or after Oct. 30, 1998, see section 11(c) of Pub. L. 105–311, set out as a note under section 8701 of this title.

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.]

## § 8707. Employee deductions; withholding

(a) Subject to subsection (c)(2), 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) Subject to subsection (c)(2), 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)(1) 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.

(2) An employee who is subject to withholdings under this section and whose pay, annuity, or compensation is insufficient to cover such withholdings may nevertheless continue insurance if the employee arranges to pay currently into the Employees' Life Insurance Fund, through the agency or retirement system that administers pay, annuity, or compensation, an amount equal to the withholdings that would otherwise be required under this section.

(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; Pub. L. 105–311, § 6(1), Oct. 30, 1998, 112 Stat. 2951.)

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

1998—Subsec. (a). Pub. L. 105–311, § 6(1)(A), substituted ''Subject to subsection (c)(2), during'' for ''During''.

Subsec. (b)(1). Pub. L. 105–311, § 6(1)(B), substituted ''Subject to subsection (c)(2), whenever'' for ''Whenever''.

Subsec. (c). Pub. L. 105–311, § 6(1)(C), designated existing provisions as par. (1) and added par. (2).

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 1998 AMENDMENT

Amendment by Pub. L. 105–311 effective on the first day of the first applicable pay period beginning on or after Oct. 30, 1998, see section 11(d) of Pub. L. 105–311, set out as a note under section 8701 of this title.

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.

## § 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 Chief Administrative Officer of the House of Representatives, the Chief Administrative Officer may contribute the sum required by subsection (a) of this section from the applicable accounts of the House of Representatives.

(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; Pub. L. 104–186, title II, § 215(18), Aug. 20, 1996, 110 Stat. 1746.)

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

1996—Subsec. (b). Pub. L. 104–186 substituted "Chief Administrative Officer of the House of Representatives, the Chief Administrative Officer may contribute the sum required by subsection (a) of this section from the applicable accounts of the House of Representatives." for "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."

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.

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.

### § 8709. Insurance policies

(a) The Office of Personnel Management, without regard to section 6101(b) to (d) 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; Pub. L. 111–350, § 5(a)(11), Jan. 4, 2011, 124 Stat. 3841.)

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

2011—Subsec. (a). Pub. L. 111–350 substituted ''section 6101(b) to (d) of title 41'' for ''section 5 of title 41'' in introductory provisions.

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.

### § 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.<br>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.

## § 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.

## § 8712. Annual accounting; special contingency reserve

A policy purchased under this chapter shall provide for an accounting to the Office of Per-

sonnel 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 rates 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.

### § 8713. 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)(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, 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, prior to repeal 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.

### § 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.<br>Aug. 11, 1955, ch. 794, §1(a) ''(c) (less applicability to §10)'', (b), 69 Stat. 676.<br>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.''

## § 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 6101(b) to (d) 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)(1) An employee who is deployed in support of a contingency operation (as that term is defined in section 101(a)(13) of title 10) or an employee of the Department of Defense who is designated as emergency essential under section 1580 of title 10 shall be insured under the policy of insurance under this section if the employee, within 60 days after the date of notification of deployment or designation, elects to be insured under the policy of insurance. An election under this paragraph shall be effective when provided to the Office in writing, in the form prescribed by the Office, within such 60-day period.

(2) 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

[1] So in original. Probably should be ''paragraph (1) of this subsection,''.

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.

(3) Notwithstanding paragraph (1), an employee who is subject to withholdings under this subsection and whose pay, annuity, or compensation is insufficient to cover such withholdings may nevertheless continue optional insurance if the employee arranges to pay currently into the Employees' Life Insurance Fund, through the agency or retirement system which administers pay, annuity, or compensation, an amount equal to the withholdings that would otherwise be required under this subsection.

(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; Pub. L. 105–311, § 6(2), Oct. 30, 1998, 112 Stat. 2951; Pub. L. 110–417, [div. A], title XI, § 1103(b), Oct. 14, 2008, 122 Stat. 4616; Pub. L. 111–350, § 5(a)(12), Jan. 4, 2011, 124 Stat. 3841.)

AMENDMENTS

2011—Subsec. (a). Pub. L. 111–350 substituted ''section 6101(b) to (d) of title 41'' for ''section 5 of title 41''.

2008—Subsec. (b). Pub. L. 110–417 designated existing provisions as par. (2) and added par. (1).

1998—Subsec. (d)(3). Pub. L. 105–311 added par. (3).

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 1998 AMENDMENT

Amendment by Pub. L. 105–311 effective on the first day of the first applicable pay period beginning on or after Oct. 30, 1998, see section 11(d) of Pub. L. 105–311, set out as a note under section 8701 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. 98–353, § 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].''

## § 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 6101(b) to (d) 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)(1) An employee who is deployed in support of a contingency operation (as that term is defined in section 101(a)(13) of title 10) or an employee of the Department of Defense who is designated as emergency essential under section 1580 of title 10 shall be insured under the policy of insurance under this section if the employee, within 60 days after the date of notification of deployment or designation, elects to be insured under the policy of insurance. An election under this paragraph shall be effective when provided to the Office in writing, in the form prescribed by the Office, within such 60-day period.

(2) 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). 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.

(3) The amount of additional optional insurance continued under paragraph (2) shall be continued, with or without reduction, 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 withholdings cease in accordance with subsection (d), in which case—

(i) the amount of additional optional insurance continued under paragraph (2) 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; and

(ii) the reduction under clause (i) shall continue for 50 months at which time the insurance shall stop.

(B) The employee may, instead of the option under subparagraph (A), elect to have the full cost of additional optional insurance continue to be withheld from such employee's annuity or compensation on and after the date such withholdings would otherwise cease pursuant to an election under subparagraph (A), in which case the amount of additional optional insurance continued under paragraph (2) shall not be reduced, subject to paragraph (4).

(C) An employee who does not make any election under the preceding provisions of this paragraph shall be treated as if such employee had made an election under subparagraph (A).

(4) If an employee makes an election under paragraph (3)(B), that individual may subsequently cancel such election, in which case additional optional insurance shall be determined as if the individual had originally made an election under paragraph (3)(A).

(5)(A) An employee whose additional optional insurance under this section would otherwise stop in accordance with paragraph (1) and who is not eligible to continue insurance under paragraph (2) may elect, under conditions prescribed by the Office of Personnel Management, to continue all or a portion of so much of the additional optional insurance as has been in force for not less than—

(i) the 5 years of service immediately preceding the date of the event which would cause insurance to stop under paragraph (1); or

(ii) the full period or periods of service during which the insurance was available to the employee, if fewer than 5 years,

at group rates established for purposes of this section, in lieu of conversion to an individual policy. The amount of insurance continued under this paragraph shall be reduced by 50 percent effective at the beginning of the second calendar month after the date the employee or former employee attains age 70 and shall stop at the beginning of the second calendar month after attainment of age 80, 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. Alternatively, insurance continued under this paragraph may be reduced or stopped at any time the employee or former employee elects.

(B) When an employee or former employee elects to continue additional optional insurance under this paragraph following separation from service or 12 months without pay, the insured individual shall submit timely payment of the full cost thereof, plus any amount the Office determines necessary to cover associated administrative expenses, in such manner as the Office shall prescribe by regulation. Amounts required under this subparagraph shall be deposited, used, and invested as provided under section 8714 and shall be reported and accounted for together with amounts withheld under section 8714a(d).

(C)(i) Subject to clause (ii), no election to continue additional optional insurance may be made under this paragraph 3 years after the effective date of this paragraph.

(ii) On and after the date on which an election may not be made under clause (i), all additional optional insurance under this paragraph for former employees shall terminate, 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.

(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, if insurance is continued as provided under subsection (c)(3)(A), 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 (and any amounts withheld as provided in subsection (c)(3)(B)) 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.

(3) Notwithstanding paragraph (1), an employee who is subject to withholdings under this subsection and whose pay, annuity, or compensation is insufficient to cover such withholdings may nevertheless continue additional optional insurance if the employee arranges to pay currently into the Employees' Life Insurance Fund, through the agency or retirement system which administers pay, annuity, or compensation, an amount equal to the withholdings that would otherwise be required under this subsection.

(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; Pub. L. 105–311, §§ 3(2), 6(3), 7(a), (c), Oct. 30, 1998, 112 Stat. 2950–2953; Pub. L. 110–417, [div. A], title XI, § 1103(c), Oct. 14, 2008, 122 Stat. 4617; Pub. L. 111–350, § 5(a)(13), Jan. 4, 2011, 124 Stat. 3841.)

AMENDMENTS

2011—Subsec. (a). Pub. L. 111–350 substituted ''section 6101(b) to (d) of title 41'' for ''section 5 of title 41''.

2008—Subsec. (b). Pub. L. 110–417 designated existing provisions as par. (2) and added par. (1).

1998—Subsec. (b). Pub. L. 105–311, § 3(2), in first sentence, struck out ''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)'' after ''$1,000)''.

Subsec. (c)(2). Pub. L. 105–311, § 7(a)(1)(A), struck out at end ''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.''

Subsec. (c)(3) to (5). Pub. L. 105–311, § 7(a)(1)(B), added pars. (3) to (5).

Subsec. (d)(1). Pub. L. 105–311, § 7(a)(2), (c), inserted ''if insurance is continued as provided under subsection (c)(3)(A),'' after ''except that,'' and ''(and any amounts withheld as provided in subsection (c)(3)(B))'' after ''Amounts so withheld''.

Subsec. (d)(3). Pub. L. 105–311, § 6(3), added par. (3).

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 1998 AMENDMENT

Amendment by sections 3(2) and 6(3) of Pub. L. 105–311 effective on the first day of the first applicable pay period beginning on or after Oct. 30, 1998, and amendment by section 7(a), (c) of Pub. L. 105–311 effective on the first day of the first pay period that begins on or after the 180th day following Oct. 30, 1998, or on any earlier date that the Office of Personnel Management may prescribe that is at least 60 days after Oct. 30, 1998, see section 11(b), (d), (e)(1) of Pub. L. 105–311, set out as a note under section 8701 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.

REPORT TO CONGRESS

Pub. L. 105–311, § 7(b), Oct. 30, 1998, 112 Stat. 2953, provided that: ''Not later than 3 years after the date of enactment of this Act [Oct. 30, 1998], the Office of Personnel Management shall submit a report to Congress on additional optional insurance provided under section 8714b(c)(5) of title 5, United States Code (as added by subsection (a) of this section). Such report shall include recommendations on whether continuation for such additional optional insurance should terminate as provided under such section, be extended, or be made permanent.''

## § 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 6101(b) to (d) 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)(1) The optional life insurance on family members 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—

(A) $5,000 for a spouse; and

(B) $2,500 for each child described under section 8701(d).

(2) 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 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) through (4).

(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. Notwithstanding the preceding sentence, the full cost shall be continued after the calendar month in which the former employee becomes 65 years of age if, and for so long as, an election under this section corresponding to that described in section 8714b(c)(3)(B) remains in effect with respect to such 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 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.

(3) Notwithstanding paragraph (1), an employee who is subject to withholdings under this subsection and whose pay, annuity, or compensation is insufficient to cover such withholdings may nevertheless continue optional life insurance on family members if the employee arranges to pay currently into the Employees' Life Insurance Fund, through the agency or retirement system that administers pay, annuity, or compensation, an amount equal to the withholdings that would otherwise be required under this subsection.

(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; Pub. L. 105–311, §§ 6(4), 8, Oct. 30, 1998, 112 Stat. 2951, 2953; Pub. L. 111–350, § 5(a)(14), Jan. 4, 2011, 124 Stat. 3842.)

AMENDMENTS

2011—Subsec. (a). Pub. L. 111–350 substituted ''section 6101(b) to (d) of title 41'' for ''section 5 of title 41''.

1998—Subsec. (b). Pub. L. 105–311, § 8(a), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''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.''

Subsec. (c)(2). Pub. L. 105–311, § 8(b)(1), substituted ''section 8714b(c)(2) through (4)'' for ''section 8714b(c)(2) of this title''.

Subsec. (d)(1). Pub. L. 105–311, § 8(b)(2), inserted before last sentence ''Notwithstanding the preceding sentence, the full cost shall be continued after the calendar month in which the former employee becomes 65 years of age if, and for so long as, an election under this section corresponding to that described in section 8714b(c)(3)(B) remains in effect with respect to such former employee.''

Subsec. (d)(3). Pub. L. 105–311, § 6(4), added par. (3).

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 1998 AMENDMENT

Amendment by section 6(4) of Pub. L. 105–311 effective on the first day of the first applicable pay period beginning on or after Oct. 30, 1998, and amendment by section 8 of Pub. L. 105–311 effective on the first day of the first pay period which begins on or after the 180th day following Oct. 30, 1998, or on any earlier date that the Office of Personnel Management may prescribe, see section 11(d), (f) of Pub. L. 105–311, set out as a note under section 8701 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. 98–353, § 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.

### § 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 bene-

fits 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.<br>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.<br>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.

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.

## CHAPTER 89—HEALTH INSURANCE


Sec.
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AMENDMENTS

2006—Pub. L. 109–435, title VIII, § 803(a)(2), Dec. 20, 2006, 120 Stat. 3252, added item 8909a.

1998—Pub. L. 105–266, § 6(a)(2), Oct. 19, 1998, 112 Stat. 2369, added item 8903b.

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.

### § 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);

(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; and

(J) an individual who is employed by the Roosevelt Campobello International Park Commission and is a citizen of the United States,

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

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

[1] See Change of Name note below.

(D) a member of a family who receives monthly compensation under subchapter I of 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 arrangement 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 and an association of organizations or other entities described in this paragraph sponsoring a health benefits plan;

(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; Pub. L. 105–266, § 3(a), Oct. 19, 1998, 112 Stat. 2366; Pub. L. 110–74, § 1, Aug. 9, 2007, 121 Stat. 723.)

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.<br>July 8, 1963, Pub. L. 88–59, § 1, 77 Stat. 76.<br>Mar. 17, 1964, Pub. L. 88–284, § 1(1)–(4), 78 Stat. 164.<br>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

2007—Par. (1)(J). Pub. L. 110–74 added subpar. (J).

1998—Par. (7). Pub. L. 105–266 substituted ''organization and an association of organizations or other entities described in this paragraph sponsoring a health benefits plan;'' for ''organization;''.

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 2000 AMENDMENT

Pub. L. 106–394, §1, Oct. 30, 2000, 114 Stat. 1629, provided that: ''This Act [amending sections 8421a and 8905 of this title and enacting provisions set out as a note under section 8421a of this title] may be cited as the 'Federal Employees Health Benefits Children's Equity Act of 2000'.''

SHORT TITLE OF 1998 AMENDMENT

Pub. L. 105–266, §1, Oct. 19, 1998, 112 Stat. 2363, provided that: ''This Act [enacting section 8903b of this title, amending this section and sections 5948, 8902 to 8903, and 8909 of this title, and enacting provisions set out as notes under this section and sections 5948, 8902, 8902a, 8903b, and 8909 of this title] may be cited as the 'Federal Employees Health Care Protection Act of 1998'.''

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'.''

CONTINUATION OF HEALTH BENEFITS COVERAGE FOR INDIVIDUALS ENROLLED IN A PLAN ADMINISTERED BY THE OVERSEAS PRIVATE INVESTMENT CORPORATION

Pub. L. 107–304, §4, Nov. 27, 2002, 116 Stat. 2364, 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 Overseas Private Investment Corporation before the effective date of this Act [probably means Nov. 27, 2002, the date of enactment of Pub. L. 107–304] shall be deemed to be a period of enrollment in a health benefits plan under chapter 89 of such title.

''(b) CONTINUED COVERAGE.—

''(1) IN GENERAL.—Any individual who, as of the enrollment eligibility date, is covered by a health benefits plan administered by the Overseas Private Investment Corporation 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 such date.

''(2) INDIVIDUALS CURRENTLY UNDER CONTINUED COVERAGE.—An individual who, as of the enrollment eligibility date, is entitled to continued coverage under a health benefits plan administered by the Overseas Private Investment Corporation—

''(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 Overseas Private Investment Corporation; 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 such date.

''(3) UNMARRIED DEPENDENT CHILDREN.—An individual who, as of the enrollment eligibility date, is covered as an unmarried dependent child under a health benefits plan administered by the Overseas Private Investment Corporation 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 ceased to meet the requirements for being considered an unmarried dependent child under chapter 89 of such title as of such date; 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 such date.

''(c) TRANSFERS TO THE EMPLOYEES HEALTH BENEFITS FUND.—

''(1) IN GENERAL.—The Overseas Private Investment Corporation 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 Overseas Private Investment Corporation, 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.

''(2) AVAILABILITY OF FUNDS.—The amounts transferred under paragraph (1) shall be held in the Fund and used by the Office in addition to amounts available under section 8906(g)(1) of title 5, United States Code.

''(d) ADMINISTRATION AND REGULATIONS.—The Office of Personnel Management—

''(1) shall administer 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.

''(e) ENROLLMENT ELIGIBILITY DATE.—For purposes of this section, the term 'enrollment eligibility date' means the last day on which coverage under a health benefits plan administered by the Overseas Private Investment Corporation is available. Such date shall be determined by the Office of Personnel Management in consultation with the Overseas Private Investment Corporation.''

CONTINUED COVERAGE FOR INDIVIDUALS ENROLLED IN PLAN ADMINISTERED BY FEDERAL DEPOSIT INSURANCE CORPORATION OR FOR EMPLOYEES OF BOARD OF GOVERNORS OF FEDERAL RESERVE SYSTEM

Pub. L. 105–266, § 4, Oct. 19, 1998, 112 Stat. 2367, provided that:

''(a) ENROLLMENT IN CHAPTER 89 PLAN.—For purposes of chapter 89 of title 5, United States Code, any period of enrollment—

''(1) in a health benefits plan administered by the Federal Deposit Insurance Corporation before the termination of such plan on or before January 2, 1999; or

''(2) subject to subsection (c), in a health benefits plan (not under chapter 89 of such title) with respect to which the eligibility of any employees or retired employees of the Board of Governors of the Federal Reserve System terminates on or before January 2, 1999,

shall be deemed to be a period of enrollment in a health benefits plan under chapter 89 of such title.

''(b) CONTINUED COVERAGE.—(1) Subject to subsection (c), any individual who, on or before January 2, 1999, is enrolled in a health benefits plan described in subsection (a)(1) or (2) may enroll in an approved health benefits plan under chapter 89 of title 5, United States Code, either as an individual or for self and family, if, after taking into account the provisions of subsection (a), such individual—

''(A) meets the requirements of such chapter for eligibility to become so enrolled as an employee, annuitant, or former spouse (within the meaning of such chapter); or

''(B) would meet those requirements if, to the extent such requirements involve either retirement system under such title 5, such individual satisfies similar requirements or provisions of the Retirement Plan for Employees of the Federal Reserve System.

Any determination under subparagraph (B) shall be made under guidelines which the Office of Personnel Management shall establish in consultation with the Board of Governors of the Federal Reserve System.

''(2) Subject to subsection (c), any individual who, on or before January 2, 1999, is entitled to continued coverage under a health benefits plan described in subsection (a)(1) or (2) shall be deemed to be entitled to continued coverage under section 8905a of title 5, United States Code, but only for the same remaining period as would have been allowable under the health benefits plan in which such individual was enrolled on or before January 2, 1999, if—

''(A) such individual had remained enrolled in such plan; and

''(B) such plan did not terminate, or the eligibility of such individual with respect to such plan did not terminate, as described in subsection (a).

''(3) Subject to subsection (c), any individual (other than an individual under paragraph (2)) who, on or before January 2, 1999, is covered under a health benefits plan described in subsection (a)(1) or (2) as an unmarried dependent child, but who does not then qualify for coverage under chapter 89 of title 5, United States Code, as a family member (within the meaning of such chapter) shall be deemed to be entitled to continued coverage under section 8905a of such title, to the same extent and in the same manner as if such individual had, on or before January 2, 1999, ceased to meet the requirements for being considered an unmarried dependent child of an enrollee under such chapter.

''(4) Coverage under chapter 89 of title 5, United States Code, pursuant to an enrollment under this section shall become effective on January 3, 1999 or such earlier date as established by the Office of Personnel Management after consultation with the Federal Deposit Insurance Corporation or the Board of Governors of the Federal Reserve System, as appropriate.

''(c) ELIGIBILITY FOR FEHBP LIMITED TO INDIVIDUALS LOSING ELIGIBILITY UNDER FORMER HEALTH PLAN.—Nothing in subsection (a)(2) or any paragraph of subsection (b) (to the extent such paragraph relates to the plan described in subsection (a)(2)) shall be considered to apply with respect to any individual whose eligibility for coverage under such plan does not involuntarily terminate on or before January 2, 1999.

''(d) TRANSFERS TO THE EMPLOYEES HEALTH BENEFITS FUND.—The Federal Deposit Insurance Corporation and the Board of Governors of the Federal Reserve System shall transfer to the Employees Health Benefits Fund under section 8909 of title 5, United States Code, amounts determined by the Director of the Office of Personnel Management, after consultation with the Federal Deposit Insurance Corporation and the Board of Governors of the Federal Reserve System, 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 of Personnel Management in addition to amounts available under section 8906(g)(1) of such title.

''(e) 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 FOR INDIVIDUALS ENROLLED IN PLAN ADMINISTERED BY FARM CREDIT ADMINISTRATION

Pub. L. 104–37, title VI, § 601, Oct. 21, 1995, 109 Stat. 328, provided that:

''(a) 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 Farm Credit Administration prior to the effective date of this Act [Oct. 21, 1995] shall be deemed to be a period of enrollment in a health benefits plan under chapter 89 of such title.

''(b)(1) An individual who, on September 30, 1995, is covered by a health benefits plan administered by the Farm Credit Administration 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 September 30, 1995.

''(2) An individual who, on September 30, 1995, is entitled to continued coverage under a health benefits plan administered by the Farm Credit Administration—

''(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 Farm Credit Administration; and

''(B) may enroll in an approved health benefits plan described under sections 8903 or 8903a of such title in accordance with section 8905A of such title for coverage effective on and after September 30, 1995.

''(3) An individual who, on September 30, 1995, is covered as an unmarried dependent child under a health benefits plan administered by the Farm Credit Administration 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 September 30, 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 on and after September 30, 1995.

''(c) The Farm Credit Administration shall transfer to the Federal 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 Farm Credit Administration, 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 amount so transferred shall be held in the Fund and used by the Office in addition to the amounts available under section 8906(g)(1) of such title.

''(d) 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 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 cer-

tain Federal employee benefit programs, see section 207(*o*) of Pub. L. 99–335, set out as a note under section 8331 of this title.

**§ 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 6101(b) to (d) 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 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, 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) Nothing in this subsection shall be considered to preclude a health benefits plan from providing direct access or direct payment or reimbursement to a provider in a health care practice or profession other than a practice or profession listed in paragraph (1), if such provider is licensed or certified as such under Federal or State law.

(3) 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 with-

in the meaning of section 1310(d)(1)[1] of title XIII of the Public Health Service Act (42 U.S.C. 300c–9(d)).

(m)(1) The terms of any contract under this chapter which relate to the nature, provision, 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.

(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).

(*o*) A contract may not be made or a plan approved which includes coverage for any benefit, item, or service for which funds may not be used under the Assisted Suicide Funding Restriction Act of 1997.

(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; Pub. L. 105–12, § 9(g), Apr. 30, 1997, 111 Stat. 27; Pub. L. 105–266, §§ 3(c), 8, Oct. 19, 1998, 112 Stat. 2366, 2370; Pub. L. 111–350, § 5(a)(15), Jan. 4, 2011, 124 Stat. 3842.)

[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. 3005. | Sept. 28, 1959, Pub. L. 86–382, § 6, 73 Stat. 712.<br>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. Section 300e–9(d) of Title 42 was redesignated section 300e–9(c) of Title 42 by Pub. L. 100–517, § 7(b), Oct. 24, 1988, 102 Stat. 2580.

The Assisted Suicide Funding Restriction Act of 1997, referred to in subsec. (*o*), is Pub. L. 105–12, Apr. 30, 1997, 111 Stat. 23, which is classified principally to chapter 138 (§ 14401 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 14401 of Title 42 and Tables.

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

2011—Subsec. (a). Pub. L. 111–350 substituted ''section 6101(b) to (d) of title 41'' for ''section 5 of title 41''.

1998—Subsec. (k)(2), (3). Pub. L. 105–266, § 8, added par. (2) and redesignated former par. (2) as (3).

Subsec. (m)(1). Pub. L. 105–266, § 3(c), added par. (1) and struck out former par. (1) which read as follows: ''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.''

1997—Subsec. (*o*). Pub. L. 105–12 added subsec. (*o*).

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 1997 AMENDMENT

Amendment by Pub. L. 105–12 effective Apr. 30, 1997, and applicable to Federal payments made pursuant to obligations incurred after Apr. 30, 1997, for items and services provided on or after such date, subject to also being applicable with respect to contracts entered into, renewed, or extended after Apr. 30, 1997, as well as contracts entered into before Apr. 30, 1997, to the extent permitted under such contracts, see section 11 of Pub. L. 105–12, set out as an Effective Date note under section 14401 of Title 42, The Public Health and Welfare.

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].''

FULL DISCLOSURE IN HEALTH PLAN CONTRACTS

Pub. L. 105–266, § 5, Oct. 19, 1998, 112 Stat. 2368, provided that: ''The Office of Personnel Management shall encourage carriers offering health benefits plans described by section 8903 or section 8903a of title 5, United States Code, with respect to contractual arrangements made by such carriers with any person for purposes of obtaining discounts from providers for health care services or supplies furnished to individuals enrolled in such plan, to seek assurance that the conditions for such discounts are fully disclosed to the providers who grant them.''

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.

## § 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;

(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; and

(D) the term ''should know'' means that a person, with respect to information, acts in deliberate ignorance of, or in reckless disregard of, the truth or falsity of the information, and no proof of specific intent to defraud is required;[1]

(2)(A) Notwithstanding section 8902(j) or any other provision of this chapter, if, under subsection (b), (c), or (d) 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 shall 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,

[1] So in original. The semicolon probably should be a period.

distribution, prescription, or dispensing of a controlled substance.

(5) Any provider that is currently debarred, suspended, or otherwise excluded from any procurement or nonprocurement activity (within the meaning of section 2455 of the Federal Acquisition Streamlining Act of 1994).

(c) The Office may bar the following providers of health care services from participating in the program under this chapter:

(1) 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.

(2) Any provider that is an entity directly or indirectly owned, or with a control interest of 5 percent or more held, by an individual who has been convicted of any offense described in subsection (b), against whom a civil monetary penalty has been assessed under subsection (d), or who has been debarred from participation under this chapter.

(3) Any individual who directly or indirectly owns or has a control interest in a sanctioned entity and who knows or should know of the action constituting the basis for the entity's conviction of any offense described in subsection (b), assessment with a civil monetary penalty under subsection (d), or debarment from participation under this chapter.

(4) Any provider that the Office determines, in connection with claims presented under this chapter, has charged for health care services or supplies in an amount substantially in excess of such provider's customary charge for such services or supplies (unless the Office finds there is good cause for such charge), 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.

(5) Any provider that the Office determines has committed acts described in subsection (d).

Any determination under paragraph (4) relating to whether a charge for health care services or supplies is substantially in excess of the needs of the covered individual shall be made by trained reviewers based on written medical protocols developed by physicians. In the event such a determination cannot be made based on such protocols, a physician in an appropriate specialty shall be consulted.

(d) Whenever the Office determines—

(1) in connection with claims presented under this chapter, that a provider has charged for a health care service or supply which the provider knows or should have known involves—

(A) an item or service not provided as claimed;

(B) charges in violation of applicable charge limitations under section 8904(b); or

(C) an item or service furnished during a period in which the provider was debarred from participation under this chapter pursuant to a determination by the Office under this section, other than as permitted under subsection (g)(2)(B);

(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.

(e) 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.

(f) In making a determination relating to the appropriateness of imposing or the period of any debarment under this section (where such debarment is not mandatory), 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.

(g)(1)(A) Except as provided in subparagraph (B), 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 shall be specified in regulations prescribed by the Office. Any such provider that is debarred from participation may request a hearing in accordance with subsection (h)(1).

(B) Unless the Office determines that the health or safety of individuals receiving health care services warrants an earlier effective date, the Office shall not make a determination adverse to a provider under subsection (c)(5) or (d) until such provider has been given reasonable notice and an opportunity for the determination to be made after a hearing as provided in accordance with subsection (h)(1).

(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 of debarment 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. In the case of a debarment under paragraph (1), (2), (3), or (4) of subsection (b), the minimum period of debarment shall not be less than 3 years, except as provided in paragraph (4)(B)(ii).

(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), (c), or (d) 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.

(h)(1) Any provider of health care services or supplies that is the subject of an adverse determination by the Office under this section shall be entitled to reasonable notice and an opportunity to request a hearing of record, and to judicial review as provided in this subsection after the Office renders a final decision. The Office shall grant a request for a hearing upon a showing that due process rights have not previously been afforded with respect to any finding of fact which is relied upon as a cause for an adverse determination under this section. Such hearing shall be conducted without regard to subchapter II of chapter 5 and chapter 7 of this title by a hearing officer who shall be designated by the Director of the Office and who shall not otherwise have been involved in the adverse determination being appealed. A request for a hearing under this subsection shall be filed within such period and in accordance with such procedures as the Office shall prescribe by regulation.

(2) Any provider adversely affected by a final decision under paragraph (1) made after a hearing to which such provider was a party may seek review of such decision in the United States District Court for the District of Columbia or for the district in which the plaintiff resides or has his or her principal place of business by filing a notice of appeal in such court within 60 days after the date the decision is issued, and by simultaneously sending copies of such notice by certified mail to the Director of the Office and to the Attorney General. In answer to the appeal, the Director of the Office shall promptly file in such court a certified copy of the transcript of the record, if the Office conducted a hearing, and other evidence upon which the findings and decision complained of are based. The court shall have power to enter, upon the pleadings and evidence of record, a judgment affirming, modifying, or setting aside, in whole or in part, the decision of the Office, with or without remanding the case for a rehearing. The district court shall not set aside or remand the decision of the Office unless there is not substantial evidence on the record, taken as whole, to support the findings by the Office of a cause for action under this section or unless action taken by the Office constitutes an abuse of discretion.

(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.

(i) A civil action to recover civil monetary penalties or assessments under subsection (d) 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. The amount of a penalty or assessment as finally determined by the Office, or other amount the Office may agree to in compromise, may be deducted from any sum then or later owing by the United States to the party against whom the penalty or assessment has been levied.

(j) 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; amended Pub. L. 105–266, § 2(a), Oct. 19, 1998, 112 Stat. 2363.)

REFERENCES IN TEXT

Section 2455 of the Federal Acquisition Streamlining Act of 1994, referred to in subsec. (b)(5), is section 2455 of Pub. L. 103–355, which is set out as a note under section 6101 of Title 31, Money and Finance.

AMENDMENTS

1998—Subsec. (a)(1)(D). Pub. L. 105–266, § 2(a)(1)(A), added subpar. (D).

Subsec. (a)(2)(A). Pub. L. 105–266, § 2(a)(1)(B), substituted ''subsection (b), (c), or (d)'' for ''subsection (b) or (c)''.

Subsec. (b). Pub. L. 105–266, § 2(a)(2)(A), substituted ''shall'' for ''may'' in introductory provisions.

Subsec. (b)(5). Pub. L. 105–266, § 2(a)(2)(B), amended par. (5) generally. Prior to amendment, par. (5) read as follows: ''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.''

Subsec. (c). Pub. L. 105–266, § 2(a)(3), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 105–266, § 2(a)(3), redesignated subsec. (c) as (d). Former subsec. (d) redesignated (e).

Subsec. (d)(1). Pub. L. 105–266, § 2(a)(4), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''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;''.

Subsec. (e). Pub. L. 105–266, § 2(a)(3), redesignated subsec. (d) as (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 105–266, § 2(a)(3), (5), redesignated subsec. (e) as (f) and inserted ''(where such debarment is not mandatory)'' after ''debarment under this section''. Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 105–266, § 2(a)(3), redesignated subsec. (f) as (g). Former subsec. (g) redesignated (h).

Subsec. (g)(1). Pub. L. 105–266, § 2(a)(6)(A), added par. (1) and struck out former par. (1) which read as follows: ''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.''

Subsec. (g)(3). Pub. L. 105–266, § 2(a)(6)(B), inserted ''of debarment'' after ''notice'' and inserted at end ''In the case of a debarment under paragraph (1), (2), (3), or (4) of subsection (b), the minimum period of debarment shall not be less than 3 years, except as provided in paragraph (4)(B)(ii).''

Subsec. (g)(4)(B)(i)(I). Pub. L. 105–266, § 2(a)(6)(C), substituted ''subsection (b), (c), or (d)'' for ''subsection (b) or (c)''.

Subsec. (g)(6). Pub. L. 105–266, § 2(a)(6)(D), struck out par. (6) which read as follows: ''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.''

Subsec. (h). Pub. L. 105–266, § 2(a)(3), redesignated subsec. (g) as (h). Former subsec. (h) redesignated (i).

Subsec. (h)(1), (2). Pub. L. 105–266, § 2(a)(7), added pars. (1) and (2) and struck out former pars. (1) and (2) which read as follows:

''(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.''

Subsec. (i). Pub. L. 105–266, § 2(a)(3), (8), redesignated subsec. (h) as (i), substituted ''subsection (d)'' for ''subsection (c)'', and inserted at end ''The amount of a penalty or assessment as finally determined by the Office, or other amount the Office may agree to in compromise, may be deducted from any sum then or later owing by the United States to the party against whom the penalty or assessment has been levied.'' Former subsec. (i) redesignated (j).

Subsec. (j). Pub. L. 105–266, § 2(a)(3), redesignated subsec. (i) as (j).

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–266, § 2(b), Oct. 19, 1998, 112 Stat. 2366, provided that:

''(1) IN GENERAL.—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. 19, 1998].

''(2) EXCEPTIONS.—(A) Paragraphs (2), (3), and (5) of section 8902a(c) of title 5, United States Code, as amended by subsection (a)(3), shall apply only to the extent that the misconduct which is the basis for debarment under paragraph (2), (3), or (5), as applicable, occurs after the date of the enactment of this Act.

''(B) Paragraph (1)(B) of section 8902a(d) of title 5, United States Code, as amended by subsection (a)(4), shall apply only with respect to charges which violate section 8904(b) of such title for items or services furnished after the date of the enactment of this Act.

''(C) Paragraph (3) of section 8902a(g) of title 5, United States Code, as amended by subsection (a)(6)(B), shall apply only with respect to debarments based on convictions occurring after the date of the enactment of this Act.''

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, which may be underwritten by participating affiliates licensed in any number of States, 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; Pub. L. 105–266, § 3(b), Oct. 19, 1998, 112 Stat. 2366.)

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.<br>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

1998—Par. (1). Pub. L. 105–266 substituted ''plan, which may be underwritten by participating affiliates licensed in any number of States,'' for ''plan,''.

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.

### § 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.)

### § 8903b. Authority to readmit an employee organization plan

(a) In the event that a plan described by section 8903(3) or 8903a is discontinued under this chapter (other than in the circumstance described in section 8909(d)), that discontinuation shall be disregarded, for purposes of any determination as to that plan's eligibility to be considered an approved plan under this chapter, but only for purposes of any contract year later than the third contract year beginning after such plan is so discontinued.

(b) A contract for a plan approved under this section shall require the carrier—

(1) to demonstrate experience in service delivery within a managed care system (including provider networks) throughout the United States; and

(2) if the carrier involved would not otherwise be subject to the requirement set forth in section 8903a(c)(1), to satisfy such requirement.

(Added Pub. L. 105–266, § 6(a)(1), Oct. 19, 1998, 112 Stat. 2368.)

EFFECTIVE DATE

Pub. L. 105–266, § 6(a)(3), Oct. 19, 1998, 112 Stat. 2369, provided that:

''(A) IN GENERAL.—The amendments made by this subsection [enacting this section] shall apply as of the date of the enactment of this Act [Oct. 19, 1998], including with respect to any plan which has been discontinued as of such date.

''(B) TRANSITION RULE.—For purposes of applying section 8903b(a) of title 5, United States Code (as amended by this subsection) with respect to any plan seeking to be readmitted for purposes of any contract year beginning before January 1, 2000, such section shall be applied by substituting 'second contract year' for 'third contract year'.''

### § 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 sections 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).''

## § 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

[1] So in original. Probably should be followed by a period.

(ii) incapable of self-support because of mental or physical disability which existed before age 22.

(d) An individual whom the Secretary of Defense determines is an eligible beneficiary under subsection (b) of section 1108 of title 10 may enroll, as part of the demonstration project under such section, in a health benefits plan under this chapter in accordance with the agreement under subsection (a) of such section between the Secretary and the Office and applicable regulations under this chapter.

(e) 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 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.

(f) 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.

(g)(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.

(h)(1) An unenrolled employee who is required by a court or administrative order to provide health insurance coverage for a child who meets the requirements of section 8901(5) may enroll for self and family coverage in a health benefits plan under this chapter. If such employee fails to enroll for self and family coverage in a health benefits plan that provides full benefits and services in the location in which the child resides, and the employee does not provide documentation showing that such coverage has been provided through other health insurance, the employing agency shall enroll the employee in a self and family enrollment in the option which provides the lower level of coverage under the Service Benefit Plan.

(2) An employee who is enrolled as an individual in a health benefits plan under this chapter and who is required by a court or administrative order to provide health insurance coverage for a child who meets the requirements of section 8901(5) may change to a self and family enrollment in the same or another health benefits plan under this chapter. If such employee fails to change to a self and family enrollment and the employee does not provide documentation showing that such coverage has been provided through other health insurance, the employing agency shall change the enrollment of the employee to a self and family enrollment in the plan in which the employee is enrolled if that plan provides full benefits and services in the location where the child resides. If the plan in which the employee is enrolled does not provide full benefits and services in the location in which the child resides, or, if the employee fails to change to a self and family enrollment in a plan that provides full benefits and services in the location where the child resides, the employing agency shall change the coverage of the employee to a self and family enrollment in the option which provides the lower level of coverage under the Service Benefits Plan.

(3) The employee may not discontinue the self and family enrollment in a plan that provides full benefits and services in the location in which the child resides for so long as the court or administrative order remains in effect and the child continues to meet the requirements of section 8901(5), unless the employee provides documentation showing that such coverage has been provided through other health insurance.

(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; Pub. L. 105–261, div. A, title VII, § 721(b)(1), Oct. 17, 1998, 112 Stat. 2065; Pub. L. 106–394, § 2, Oct. 30, 2000, 114 Stat. 1629.)

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.<br>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

2000—Subsec. (h). Pub. L. 106–394 added subsec. (h).

1998—Subsecs. (d) to (g). Pub. L. 105–261 added subsec. (d) and redesignated former subsecs. (d) to (f) as (e) to (g), respectively.

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 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 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 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);

(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); and

(3) any employee who—

(A) is enrolled in a health benefits plan under this chapter;

(B) is a member of a reserve component of the armed forces;

(C) is called or ordered to active duty in support of a contingency operation (as defined in section 101(a)(13) of title 10);

(D) is placed on leave without pay or separated from service to perform active duty; and

(E) serves on active duty for a period of more than 30 consecutive days.

(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 paragraphs (4), (5), and (6), 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), (4), or (5), as the case may be) and claims (if any), to the same ex-

tent 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, or a voluntary separation from a surplus position, in or under the Department of Defense due to a reduction in force, or the Department of Energy due to a reduction in force resulting from the establishment of the National Nuclear Security Administration—

(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) December 31, 2011; or

(ii) February 1, 2012, if specific notice of such separation was given to such individual before December 31, 2011.

(C) For the purpose of this paragraph, ''surplus position'' means a position which is identified in pre-reduction-in-force planning as no longer required, and which is expected to be eliminated under formal reduction-in-force procedures.

(5)(A) If the basis for continued coverage under this section is an involuntary separation from a position in or under the Department of Veterans Affairs due to a reduction in force or a title 38 staffing readjustment, or a voluntary or involuntary separation from a Department of Energy position at a Department of Energy facility at which the Secretary is carrying out a closure project selected under section 4421 of the Atomic Energy Defense Act—

(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 only apply with respect to individuals whose continued coverage is based on a separation occurring on or after the date of the enactment of this paragraph.

(6)(A) If the basis for continued coverage under this section is, as a result of the termination of the Space Shuttle Program, an involuntary separation from a position due to a reduction-in-force or declination of a directed reassignment or transfer of function, or a voluntary separation from a surplus position in the National Aeronautics and Space Administration—

(i) the individual shall be liable for not more than the employee contributions referred to in paragraph (1)(A)(i); and

(ii) the National Aeronautics and Space Administration shall pay the remaining portion of the amount required under paragraph (1)(A).

(B) This paragraph shall only apply with respect to individuals whose continued coverage is based on a separation occurring on or after the date of enactment of this paragraph and before December 31, 2010.

(C) For purposes of this paragraph, ''surplus position'' means a position which is—

(i) identified in pre-reduction-in-force planning as no longer required, and which is expected to be eliminated under formal reduction-in-force procedures as a result of the termination of the Space Shuttle Program; or

(ii) encumbered by an employee who has received official certification from the National Aeronautics and Space Administration consistent with the Administration's career transition assistance program regulations that the position is being abolished as a result of the termination of the Space Shuttle Program.

(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;

(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); or

(C) in the case of an employee described in subsection (b)(3), the date which is 24 months after the employee is placed on leave without pay or separated from service to perform active duty.

(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; Pub. L. 104–106, div. A, title X, § 1036, Feb. 10, 1996, 110 Stat. 431; Pub. L. 106–65, div. A, title XI, § 1104(c), div. C, title XXXII, § 3244, Oct. 5, 1999, 113 Stat. 777, 965; Pub. L. 106–117, title XI, § 1106, Nov. 30, 1999, 113 Stat. 1598; Pub. L. 107–314, div. A, title XI, § 1103, Dec. 2, 2002, 116 Stat. 2661; Pub. L. 107–314, div. D, title XLVI, § 4603(h), formerly Pub. L. 106–398, § 1 [div. C, title XXXI, § 3136(h)], Oct. 30, 2000, 114 Stat. 1654, 1654A–459, renumbered § 4603(h) of Pub. L. 107–314 by Pub. L. 108–136, div. C, title XXXI, § 3141(i)(4)(A)–(C), Nov. 24, 2003, 117 Stat. 1777; Pub. L. 108–136, div. C, title XXXI, § 3141(m)(3), Nov. 24, 2003, 117 Stat. 1787; Pub. L. 108–375, div. A, title XI, § 1101(a), Oct. 28, 2004, 118 Stat. 2072; Pub. L. 109–163, div. A, title XI, § 1101, Jan. 6, 2006, 119 Stat. 3447; Pub. L. 110–422, title VI, § 615, Oct. 15, 2008, 122 Stat. 4800; Pub. L. 111–242, § 151, as added Pub. L. 111–322, title I, § 1(a)(2), Dec. 22, 2010, 124 Stat. 3519.)

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.

Section 4421 of the Atomic Energy Defense Act, referred to in subsec. (d)(5)(A), is classified to section 2601 of Title 50, War and National Defense.

The date of the enactment of this paragraph, referred to in subsec. (d)(5)(B), is the date of enactment of Pub. L. 106–117, which was approved Nov. 30, 1999.

The date of enactment of this paragraph, referred to in subsec. (d)(6)(B), is the date of enactment of Pub. L. 110–422, which was approved Oct. 15, 2008.

AMENDMENTS

2010—Subsec. (d)(4)(B)(i). Pub. L. 111–242, § 151(1), as added by Pub. L. 111–322, substituted ''December 31, 2011'' for ''October 1, 2010''.

Subsec. (d)(4)(B)(ii). Pub. L. 111–242, § 151(2), as added by Pub. L. 111–322, substituted ''February 1, 2012'' for ''February 1, 2011'' and ''December 31, 2011'' for ''October 1, 2010''.

2008—Subsec. (d)(1)(A). Pub. L. 110–422, § 615(b), substituted ''(4), (5), and (6)'' for ''(4) and (5)'' in introductory provisions.

Subsec. (d)(6). Pub. L. 110–422, § 615(a), added par. (6).

2006—Subsec. (d)(4)(B)(i). Pub. L. 109–163, § 1101(1), substituted ''October 1, 2010'' for ''October 1, 2006''.

Subsec. (d)(4)(B)(ii). Pub. L. 109–163, § 1101(2), substituted ''February 1, 2011'' for ''February 1, 2007'' and ''October 1, 2010'' for ''October 1, 2006''.

2004—Subsec. (a). Pub. L. 108–375, § 1101(a)(1), struck out ''paragraph (1) or (2) of'' after ''Any individual described in''.

Subsec. (b)(3). Pub. L. 108–375, § 1101(a)(2), added par. (3).

Subsec. (e)(1)(C). Pub. L. 108–375, § 1101(a)(4), added subpar. (C).

2003—Subsec. (d)(5)(A). Pub. L. 108–136, § 3141(m)(3), substituted ''section 4421 of the Atomic Energy Defense Act'' for ''section 3143 of the National Defense Authorization Act for Fiscal Year 1997 (42 U.S.C. 7274n)''.

2002—Subsec. (d)(4)(B)(i). Pub. L. 107–314, § 1103(1), substituted ''2006'' for ''2003''.

Subsec. (d)(4)(B)(ii). Pub. L. 107–314, § 1103(2), substituted ''2007'' and ''2006'' for ''2004'' and ''2003'', respectively.

2000—Subsec. (d)(5)(A). Pub. L. 107–314, § 4603(h), formerly Pub. L. 106–398, § 1 [div. C, title XXXI, § 3136(h)], as renumbered by Pub. L. 108–136, § 3141(i)(4)(A)–(C), in introductory provisions, inserted '', or a voluntary or involuntary separation from a Department of Energy position at a Department of Energy facility at which the Secretary is carrying out a closure project selected under section 3143 of the National Defense Authorization Act for Fiscal Year 1997 (42 U.S.C. 7274n)'' after ''readjustment''.

1999—Subsec. (d)(1)(A). Pub. L. 106–117, § 1106(1), substituted ''paragraphs (4) and (5)'' for ''paragraph (4)'' in introductory provisions.

Subsec. (d)(2). Pub. L. 106–117, § 1106(2), substituted ''(1), (4), or (5)'' for ''(1) or (4)''.

Subsec. (d)(4)(A). Pub. L. 106–65, § 3244, inserted '', or the Department of Energy due to a reduction in force resulting from the establishment of the National Nuclear Security Administration'' after ''reduction in force'' in introductory provisions.

Subsec. (d)(4)(B). Pub. L. 106–65, § 1104(c), added cls. (i) and (ii) and struck out former cls. (i) and (ii) which read as follows:

''(i) October 1, 1999; or

''(ii) February 1, 2000, if specific notice of such separation was given to such individual before October 1, 1999.''

Subsec. (d)(5). Pub. L. 106–117, § 1106(3), added par. (5).

1996—Subsec. (d)(4)(A). Pub. L. 104–106, § 1036(1), inserted '', or a voluntary separation from a surplus position,'' after ''an involuntary separation from a position'' in introductory provisions.

Subsec. (d)(4)(C). Pub. L. 104–106, § 1036(2), added subpar. (C).

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 OF 2004 AMENDMENT

Pub. L. 108–375, div. A, title XI, § 1101(c), Oct. 28, 2004, 118 Stat. 2072, provided that: ''The amendments made by this section [amending this section and section 8906 of this title] shall apply with respect to Federal employees called or ordered to active duty on or after September 14, 2001.''

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by section 3244 of Pub. L. 106–65 effective Mar. 1, 2000, see section 3299 of Pub. L. 106–65, set out as an Effective Date note under section 2401 of Title 50, War and National Defense.

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.''

## § 8906. Contributions

(a)(1) Not later than October 1 of each year, the Office of Personnel Management shall determine the weighted average of the subscription charges that will be in effect during the following contract year with respect to—

(A) enrollments under this chapter for self alone; and

(B) enrollments under this chapter for self and family.

(2) In determining each weighted average under paragraph (1), the weight to be given to a particular subscription charge shall, with respect to each plan (and option) to which it is to apply, be commensurate with the number of enrollees enrolled in such plan (and option) as of March 31 of the year in which the determination is being made.

(3) For purposes of paragraph (2), the term ''enrollee'' means any individual who, during the contract year for which the weighted average is to be used under this section, will be eligible for a Government contribution for health benefits.

(b)(1) Except as provided in paragraphs (2), (3), and (4), 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 72 percent of the weighted average under subsection (a)(1)(A) or (B), as applicable. 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).

(4) In the case of persons who are enrolled in a health benefits plan as part of the demonstration project under section 1108 of title 10, the Government contribution shall be subject to the limitation set forth in subsection (i) of that section.

(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)(A) 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.

(B) During each pay period in which an enrollment continues under subparagraph (A)—

(i) employee and Government contributions required by this section shall be paid on a current basis; and

(ii) if necessary, the head of the employing agency shall approve advance payment, recoverable in the same manner as under section 5524a(c), of a portion of basic pay sufficient to pay current employee contributions.

(C) Each agency shall establish procedures for accepting direct payments of employee contributions for the purposes of this paragraph.

(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.

(3)(A) An employing agency may pay both the employee and Government contributions, and any additional administrative expenses otherwise chargeable to the employee, with respect to health care coverage for an employee described in subparagraph (B) and the family of such employee.

(B) An employee referred to in subparagraph (A) is an employee who—

(i) is enrolled in a health benefits plan under this chapter;

(ii) is a member of a reserve component of the armed forces;

(iii) is called or ordered to active duty in support of a contingency operation (as defined in section 101(a)(13) of title 10);

(iv) is placed on leave without pay or separated from service to perform active duty; and

(v) serves on active duty for a period of more than 30 consecutive days.

(C) Notwithstanding the one-year limitation on coverage described in paragraph (1)(A), payment may be made under this paragraph for a period not to exceed 24 months.

(f) The Government contribution, and any additional payments under subsection (e)(3)(A), 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 Chief Administrative Officer of the House of Representatives, from the applicable accounts of the House of Representatives; 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 paragraphs (2) and (3), 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 through September 30, 2016, be paid by the United States Postal Service, and thereafter shall be paid first from the Postal Service Retiree Health Benefits Fund up to the amount contained in the Fund, with any remaining amount 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.

(3) The Government contribution for persons enrolled in a health benefits plan as part of the demonstration project under section 1108 of title 10 shall be paid as provided in subsection (i) of that section.

(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; Pub. L. 104–186, title II, § 215(19), Aug. 20, 1996, 110 Stat. 1747; Pub. L. 104–208, div. A, title I, § 101(f) [title IV, § 422], Sept. 30, 1996, 110 Stat. 3009–314, 3009–343; Pub. L. 105–33, title VII, § 7002(a), Aug. 5, 1997, 111 Stat. 662; Pub. L. 105–261, div. A, title VII, § 721(b)(2),

(3), Oct. 17, 1998, 112 Stat. 2065; Pub. L. 107–107, div. A, title V, § 519(a), (b), Dec. 28, 2001, 115 Stat. 1096; Pub. L. 108–375, div. A, title XI, § 1101(b), Oct. 28, 2004, 118 Stat. 2072; Pub. L. 109–435, title VIII, § 803(a)(1)(A), Dec. 20, 2006, 120 Stat. 3251.)

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.<br>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 section 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

2006—Subsec. (g)(2)(A). Pub. L. 109–435 substituted ''shall through September 30, 2016, be paid by the United States Postal Service, and thereafter shall be paid first from the Postal Service Retiree Health Benefits Fund up to the amount contained in the Fund, with any remaining amount paid by the United States Postal Service'' for ''shall be paid by the United States Postal Service''.

2004—Subsec. (e)(3)(C). Pub. L. 108–375 substituted ''24 months'' for ''18 months''.

2001—Subsec. (e)(3). Pub. L. 107–107, § 519(a), added par. (3).

Subsec. (f). Pub. L. 107–107, § 519(b), amended introductory provisions generally. Prior to amendment, introductory provisions read as follows: ''The Government contributions for health benefits for an employee shall be paid—''.

1998—Subsec. (b)(1). Pub. L. 105–261, § 721(b)(2)(A), substituted ''paragraphs (2), (3), and (4)'' for ''paragraphs (2) and (3)''.

Subsec. (b)(4). Pub. L. 105–261, § 721(b)(2)(B), added par. (4).

Subsec. (g)(1). Pub. L. 105–261, § 721(b)(3)(A), substituted ''paragraphs (2) and (3)'' for ''paragraph (2)''.

Subsec. (g)(3). Pub. L. 105–261, § 721(b)(3)(B), added par. (3).

1997—Subsec. (a). Pub. L. 105–33 added subsec. (a) and struck out former subsec. (a) which read as follows: ''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.''

Subsec. (b)(1). Pub. L. 105–33 added par. (1) and struck out former par. (1) which read as follows: ''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.''

1996—Subsec. (e)(1). Pub. L. 104–208 struck out at end ''The regulations may provide for the waiving of contributions by the employee and the Government.'', inserted subpar. (A) designation, and added subpars. (B) and (C).

Subsec. (f)(3). Pub. L. 104–186 substituted ''Chief Administrative Officer of the House of Representatives, from the applicable accounts of the House of Representatives'' for ''Clerk of the House of Representatives, from the contingent fund of the House''.

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 2006 AMENDMENT

Amendment by Pub. L. 109–435 effective Oct. 1, 2006, see section 805(a) of Pub. L. 109–435, set out as a note under section 8334 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–375 applicable with respect to Federal employees called or ordered to active duty on or after Sept. 14, 2001, see section 1101(c) of Pub. L. 108–375, set out as a note under section 8905a of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–107, div. A, title V, §519(c), Dec. 28, 2001, 115 Stat. 1096, provided that: ''The amendments made by this section [amending this section] apply with respect to employees called to active duty on or after December 8, 1995, and an agency may make retroactive payments to such employees for premiums paid on or after such date.''

EFFECTIVE DATE OF 1997 AMENDMENT

Section 7002(b) of Pub. L. 105–33 provided that: ''This section [amending this section] shall take effect on the first day of the contract year that begins in 1999. Nothing in this subsection shall prevent the Office of Personnel Management from taking any action, before such first day, which it considers necessary in order to ensure the timely implementation of this section.''

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.''

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.

## § 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].''

## § 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 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.

(d) A surviving child whose survivor annuity under section 8341(e) or 8443(b) was terminated and is later restored under paragraph (4) of section 8341(e) or the last sentence of section 8443(b) may, under regulations prescribed by the Office, enroll in a health benefits plan described by section 8903 or 8903a if such surviving child 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; Pub. L. 104–208, div. A, title I, § 101(f) [title VI, § 633(a)(3)], Sept. 30, 1996, 110 Stat. 3009–314, 3009–363.)

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.<br>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

1996—Subsec. (d). Pub. L. 104–208 added subsec. (d).

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 1996 AMENDMENT

Amendment by Pub. L. 104–208 applicable with respect to termination of marriage taking effect before, on, or after Sept. 30, 1996, except that benefits are payable only with respect to amounts accruing for periods beginning on first day of month beginning after the later of termination of marriage or Sept. 30, 1996, see section 101(f) [title VI, § 633(b)] of Pub. L. 104–208, 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.

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)(1) 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.

(2) Any crediting required under paragraph (1) pursuant to the discontinuation of any plan under this chapter shall be completed by the end of the second contract year beginning after such plan is so discontinued.

(3) The Office shall prescribe regulations in accordance with which this subsection shall be ap-

plied in the case of any plan which is discontinued before being credited with the full amount to which it would otherwise be entitled based on the discontinuation of any other plan.

(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.

(g) The fund described in subsection (a) is available to pay costs that the Office incurs for activities associated with implementation of the demonstration project under section 1108 of title 10.

(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; Pub. L. 105–261, div. A, title VII, § 721(b)(4), Oct. 17, 1998, 112 Stat. 2065; Pub. L. 105–266, § 6(b)(1), Oct. 19, 1998, 112 Stat. 2369.)

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.<br>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

1998—Subsec. (e). Pub. L. 105–266 designated existing provisions as par. (1) and added pars. (2) and (3).

Subsec. (g). Pub. L. 105–261 added subsec. (g).

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.

DISPOSAL OF AMOUNTS REMAINING AS OF OCTOBER 19, 1998, IN CONTINGENCY RESERVE OF DISCONTINUED PLAN

Pub. L. 105–266, § 6(b)(2), Oct. 19, 1998, 112 Stat. 2369, provided that: ''In the case of any amounts remaining as of the date of the enactment of this Act [Oct. 19, 1998] in the contingency reserve of a discontinued plan, such amounts shall be disposed of in accordance with

section 8909(e) of title 5, United States Code, as amended by this subsection, by—

''(A) the deadline set forth in section 8909(e) of such title (as so amended); or

''(B) if later, the end of the 6-month period beginning on such date of enactment.''

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.''

## § 8909a. Postal Service Retiree Health Benefit[1] Fund

(a) There is in the Treasury of the United States a Postal Service Retiree Health Benefits Fund which is administered by the Office of Personnel Management.

(b) The Fund is available without fiscal year limitation for payments required under section 8906(g)(2)(A).

(c) The Secretary of the Treasury 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. Such investments shall be made in the same manner as investments for the Civil Service Retirement and Disability Fund under section 8348.

(d)(1) Not later than June 30, 2007, and by June 30 of each succeeding year, the Office shall compute the net present value of the future payments required under section 8906(g)(2)(A) and attributable to the service of Postal Service employees during the most recently ended fiscal year.

(2)(A) Not later than June 30, 2007, the Office shall compute, and by June 30 of each succeeding year, the Office shall recompute the difference between—

(i) the net present value of the excess of future payments required under section 8906(g)(2)(A) for current and future United States Postal Service annuitants as of the end of the fiscal year ending on September 30 of that year; and

[1] So in original. Probably should be ''Benefits''.

(ii)(I) the value of the assets of the Postal Retiree Health Benefits Fund as of the end of the fiscal year ending on September 30 of that year; and

(II) the net present value computed under paragraph (1).

(B) Not later than June 30, 2017, the Office shall compute, and by June 30 of each succeeding year shall recompute, a schedule including a series of annual installments which provide for the liquidation of any liability or surplus by September 30, 2056, or within 15 years, whichever is later, of the net present value determined under subparagraph (A), including interest at the rate used in that computation.

(3)(A) The United States Postal Service shall pay into such Fund—

(i) $5,400,000,000, not later than September 30, 2007;

(ii) $5,600,000,000, not later than September 30, 2008;

(iii) $1,400,000,000, not later than September 30, 2009;

(iv) $5,500,000,000, not later than September 30, 2010;

(v) $5,500,000,000, not later than September 30, 2011;

(vi) $5,600,000,000, not later than September 30, 2012;

(vii) $5,600,000,000, not later than September 30, 2013;

(viii) $5,700,000,000, not later than September 30, 2014;

(ix) $5,700,000,000, not later than September 30, 2015; and

(x) $5,800,000,000, not later than September 30, 2016.

(B) Not later than September 30, 2017, and by September 30 of each succeeding year, the United States Postal Service shall pay into such Fund the sum of—

(i) the net present value computed under paragraph (1); and

(ii) any annual installment computed under paragraph (2)(B).

(4) Computations under this subsection shall be made consistent with the assumptions and methodology used by the Office for financial reporting under subchapter II of chapter 35 of title 31.

(5)(A)(i) Any computation or other determination of the Office under this subsection shall, upon request of the United States Postal Service, be subject to a review by the Postal Regulatory Commission under this paragraph.

(ii) Upon receiving a request under clause (i), the Commission shall promptly procure the services of an actuary, who shall hold membership in the American Academy of Actuaries and shall be qualified in the evaluation of healthcare insurance obligations, to conduct a review in accordance with generally accepted actuarial practices and principles and to provide a report to the Commission containing the results of the review. The Commission, upon determining that the report satisfies the requirements of this subparagraph, shall approve the report, with any comments it may choose to make, and submit it with any such comments to the Postal Service, the Office of Personnel Management, and Congress.

(B) Upon receiving the report under subparagraph (A), the Office of Personnel Management shall reconsider its determination or redetermination in light of such report, and shall make any appropriate adjustments. The Office shall submit a report containing the results of its reconsideration to the Commission, the Postal Service, and Congress.

(6) After consultation with the United States Postal Service, the Office shall promulgate any regulations the Office determines necessary under this subsection.

(Added Pub. L. 109–435, title VIII, § 803(a)(1)(B), Dec. 20, 2006, 120 Stat. 3251; amended Pub. L. 111–68, div. B, § 164(a), Oct. 1, 2009, 123 Stat. 2053.)

AMENDMENTS

2009—Subsec. (d)(3)(A)(iii). Pub. L. 111–68 amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: ''$5,400,000,000, not later than September 30, 2009;''.

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–68, div. B, § 164(b), Oct. 1, 2009, 123 Stat. 2053, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect as if included in the enactment of section 803(a)(1)(B) of the Postal Accountability and Enhancement Act (Public Law 109–435; 120 Stat. 3251).''

EFFECTIVE DATE

Section effective Oct. 1, 2006, see section 805(a) of Pub. L. 109–435, set out as a Effective Date of 2006 Amendment note under section 8334 of this title.

REVIEW BY POSTAL REGULATORY COMMISSION

Pub. L. 109–435, title VIII, § 803(b), Dec. 20, 2006, 120 Stat. 3252, provided that:

''(1) IN GENERAL.—

''(A) REQUEST FOR REVIEW.—Any regulation established under section 8909a(d)(5) of title 5, United States Code (as added by subsection (a)), shall, upon request of the United States Postal Service, be subject to a review by the Postal Regulatory Commission under this paragraph.

''(B) REPORT.—Upon receiving a request under subparagraph (A), the Commission shall promptly procure the services of an actuary, who shall hold membership in the American Academy of Actuaries and shall be qualified in the evaluation of healthcare insurance obligations, to conduct a review in accordance with generally accepted actuarial practices and principles and to provide a report to the Commission containing the results of the review. The Commission, upon determining that the report satisfies the requirements of this paragraph, shall approve the report, with any comments it may choose to make, and submit it with any such comments to the Postal Service, the Office of Personnel Management, and Congress.

''(2) RECONSIDERATION.—Upon receiving the report under paragraph (1), the Office of Personnel Management shall reconsider its determination or redetermination in light of such report, and shall make any appropriate adjustments. The Office shall submit a report containing the results of its reconsideration to the Commission, the Postal Service, and Congress.''

## § 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 Government Accountability 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; Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814.)

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

2004—Subsec. (b)(2). Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office''.

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.

## § 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 by 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 benefits 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.

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.

## § 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.)

## CHAPTER 89A—ENHANCED DENTAL BENEFITS

Sec.
8951. Definitions.
8952. Availability of dental benefits.
8953. Contracting authority.
8954. Benefits.
8955. Information to individuals eligible to enroll.
8956. Election of coverage.
8957. Coverage of restored survivor or disability annuitants.
8958. Premiums.
8959. Preemption.
8960. Studies, reports, and audits.
8961. Jurisdiction of courts.
8962. Administrative functions.

### § 8951. Definitions

In this chapter:

(1) The term ''employee'' means an employee defined under section 8901(1) and an employee of the District of Columbia courts.

(2) The terms ''annuitant'', ''member of family'', and ''dependent'' have the meanings as such terms are defined under paragraphs (3), (5), and (9), respectively, of section 8901.

(3) The term ''eligible individual'' refers to an individual described in paragraph (1) or (2), without regard to whether the individual is enrolled in a health benefits plan under chapter 89.

(4) The term ''Office'' means the Office of Personnel Management.

(5) The term ''qualified company'' means a company (or consortium of companies or an employee organization defined under section 8901(8)) that offers indemnity, preferred provider organization, health maintenance organization, or discount dental programs and if required is licensed to issue applicable coverage in any number of States, taking any subsidiaries of such a company into account (and, in the case of a consortium, considering the member companies and any subsidiaries thereof, collectively).

(6) The term ''employee organization'' means 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 chapter 89.

(7) The term ''State'' includes the District of Columbia.

(Added Pub. L. 108–496, § 2, Dec. 23, 2004, 118 Stat. 4001; amended Pub. L. 109–356, title I, § 117(a)(1), Oct. 16, 2006, 120 Stat. 2027.)

AMENDMENTS

2006—Par. (1). Pub. L. 109–356, which directed insertion of ''and an employee of the District of Columbia courts'' at end of par. (1), was executed by making the insertion before the period to reflect the probable intent of Congress.

EFFECTIVE DATE

Pub. L. 108–496, § 7, Dec. 23, 2004, 118 Stat. 4011, provided that: ''The amendments made by this Act [enacting this chapter and chapter 89B of this title, amending section 1005 of Title 39, Postal Service, and enacting provisions set out as a note under section 101 of this title] shall take effect on the date of enactment of this Act [Dec. 23, 2004] and shall apply to contracts that take effect with respect to the calendar year 2006.''

### § 8952. Availability of dental benefits

(a) The Office shall establish and administer a program through which an eligible individual may obtain dental coverage to supplement coverage available through chapter 89.

(b) The Office shall determine, in the exercise of its reasonable discretion, the financial requirements for qualified companies to participate in the program.

(c) Nothing in this chapter shall be construed to prohibit the availability of dental benefits provided by health benefits plans under chapter 89.

(Added Pub. L. 108–496, § 2, Dec. 23, 2004, 118 Stat. 4002.)

### § 8953. Contracting authority

(a)(1) The Office shall contract with a reasonable number of qualified companies for a policy or policies of benefits described under section 8954 without regard to section 6101(b) to (d) of title 41 or any other statute requiring competitive bidding. An employee organization may contract with a qualified company for the purpose of participating with that qualified company in any contract between the Office and that qualified company.

(2) The Office shall ensure that each resulting contract is awarded on the basis of contractor qualifications, price, and reasonable competition.

(b) Each contract under this section shall contain—

(1) the requirements under section 8902(d), (f), and (i) made applicable to contracts under this section by regulations prescribed by the Office;

(2) the terms of the enrollment period; and

(3) such other terms and conditions as may be mutually agreed to by the Office and the qualified company involved, consistent with the requirements of this chapter and regulations prescribed by the Office.

(c) Nothing in this chapter shall, in the case of an individual electing dental supplemental benefit coverage under this chapter after the expiration of such individual's first opportunity to enroll, preclude the application of waiting periods more stringent than those that would have applied if that opportunity had not yet expired.

(d)(1) Each contract under this chapter shall require the qualified company to agree—

(A) to provide payments or benefits to an eligible individual if such individual is entitled thereto under the terms of the contract; and

(B) with respect to disputes regarding claims for payments or benefits under the terms of the contract—

(i) to establish internal procedures designed to expeditiously resolve such disputes; and

(ii) to establish, for disputes not resolved through procedures under clause (i), procedures for 1 or more alternative means of dispute resolution involving independent third-party review under appropriate circumstances by entities mutually acceptable to the Office and the qualified company.

(2) A determination by a qualified company as to whether or not a particular individual is eligible to obtain coverage under this chapter shall be subject to review only to the extent and in the manner provided in the applicable contract.

(3) For purposes of applying the Contract Disputes Act of 1978[1] to disputes arising under this chapter between a qualified company and the Office—

(A) the agency board having jurisdiction to decide an appeal relative to such a dispute shall be such board of contract appeals as the Director of the Office of Personnel Management shall specify in writing (after appropriate arrangements, as described in section 8(c)[1] of such Act); and

(B) the district courts of the United States shall have original jurisdiction, concurrent with the United States Court of Federal Claims, of any action described in section 10(a)(1)[1] of such Act relative to such a dispute.

(e) Nothing in this section shall be considered to grant authority for the Office or third-party reviewer to change the terms of any contract under this chapter.

(f) Contracts under this chapter shall be for a uniform term of 7 years and may not be renewed automatically.

(Added Pub. L. 108–496, § 2, Dec. 23, 2004, 118 Stat. 4002; amended Pub. L. 111–350, § 5(a)(16), Jan. 4, 2011, 124 Stat. 3842.)

REFERENCES IN TEXT

The Contract Disputes Act of 1978, referred to in subsec. (d)(3), is Pub. L. 95–563, Nov. 1, 1978, 92 Stat. 2383, which was classified principally to chapter 9 (§ 601 et seq.) of former Title 41, Public Contracts, and was substantially repealed and restated as chapter 71 (§ 7101 et seq.) of Title 41, Public Contracts, by Pub. L. 111–350, §§ 3, 7(b), Jan. 4, 2011, 124 Stat. 3677, 3855. Sections 8(c) and 10(a)(1) of the Act, which were classified to sections 607(c) and 609(a)(1), respectively, of former Title 41, were repealed and restated as section 7105(d), (e)(1)(C) and section 7104(b)(1), respectively, of Title 41. For complete classification of this Act to the Code, see Tables. For disposition of sections of former Title 41, see Disposition Table preceding section 101 of Title 41.

AMENDMENTS

2011—Subsec. (a)(1). Pub. L. 111–350 substituted ''section 6101(b) to (d) of title 41'' for ''section 5 of title 41''.

### § 8954. Benefits

(a) The Office may prescribe reasonable minimum standards for enhanced dental benefits plans offered under this chapter and for qualified companies offering the plans.

(b) Each contract may include more than 1 level of benefits that shall be made available to all eligible individuals.

(c) The benefits to be provided under enhanced dental benefits plans under this chapter may be of the following types:

(1) Diagnostic.
(2) Preventive.
(3) Emergency care.
(4) Restorative.
(5) Oral and maxillofacial surgery.
(6) Endodontics.
(7) Periodontics.
(8) Prosthodontics.
(9) Orthodontics.

(d) A contract approved under this chapter shall require the qualified company to cover the geographic service delivery area specified by the Office. The Office shall require qualified companies to include dentally underserved areas in their service delivery areas.

(e) If an individual has dental coverage under a health benefits plan under chapter 89 and also has coverage under a plan under this chapter, the health benefits plan under chapter 89 shall be the first payor of any benefit payments.

(Added Pub. L. 108–496, § 2, Dec. 23, 2004, 118 Stat. 4003.)

### § 8955. Information to individuals eligible to enroll

(a) The qualified companies[1] at the direction and with the approval of the Office, shall make available to each individual eligible to enroll in a dental benefits plan information on services and benefits (including maximums, limitations, and exclusions), that the Office considers necessary to enable the individual to make an informed decision about electing coverage.

(b) The Office shall make available to each individual eligible to enroll in a dental benefits plan, information on services and benefits provided by qualified companies participating under chapter 89.

(Added Pub. L. 108–496, § 2, Dec. 23, 2004, 118 Stat. 4004.)

### § 8956. Election of coverage

(a) An eligible individual may enroll in a dental benefits plan for self-only, self plus one, or for self and family. If an eligible individual has a spouse who is also eligible to enroll, either spouse, but not both, may enroll for self plus one or self and family. An individual may not be enrolled both as an employee, annuitant, or other individual eligible to enroll and as a member of the family.

(b) The Office shall prescribe regulations under which—

(1) an eligible individual may enroll in a dental benefits plan; and

(2) an enrolled individual may change the self-only, self plus one, or self and family coverage of that individual.

(c)(1) Regulations under subsection (b) shall permit an eligible individual to cancel or transfer the enrollment of that individual to another dental benefits plan—

(A) before the start of any contract term in which there is a change in rates charged or

[1] See References in Text note below.

[1] So in original. Probably should be followed by a comma.

benefits provided, in which a new plan is offered, or in which an existing plan is terminated; or

(B) during other times and under other circumstances specified by the Office.

(2) A transfer under paragraph (1) shall be subject to waiting periods provided under a new plan.

(Added Pub. L. 108–496, § 2, Dec. 23, 2004, 118 Stat. 4004.)

### § 8957. Coverage of restored survivor or disability annuitants

A surviving spouse, disability annuitant, or surviving child whose annuity is terminated and is later restored, may continue enrollment in a dental benefits plan subject to the terms and conditions prescribed in regulations issued by the Office.

(Added Pub. L. 108–496, § 2, Dec. 23, 2004, 118 Stat. 4004.)

### § 8958. Premiums

(a) Each eligible individual obtaining supplemental dental coverage under this chapter shall be responsible for 100 percent of the premiums for such coverage.

(b) The Office shall prescribe regulations specifying the terms and conditions under which individuals are required to pay the premiums for enrollment.

(c) The amount necessary to pay the premiums for enrollment may—

(1) in the case of an employee, be withheld from the pay of such an employee; or

(2) in the case of an annuitant, be withheld from the annuity of such an annuitant.

(d) All amounts withheld under this section shall be paid directly to the qualified company.

(e) Each participating qualified company shall maintain accounting records that contain such information and reports as the Office may require.

(f)(1) The Employee Health Benefits Fund is available, without fiscal year limitation, for reasonable expenses incurred by the Office in administering this chapter before the first day of the first contract period, including reasonable implementation costs.

(2)(A) There is established in the Employees Health Benefits Fund a Dental Benefits Administrative Account, which shall be available to the Office, without fiscal year limitation, to defray reasonable expenses incurred by the Office in administering this chapter after the start of the first contract year.

(B) A contract under this chapter shall include appropriate provisions under which the qualified company involved shall, during each year, make such periodic contributions to the Dental Benefits Administrative Account as necessary to ensure that the reasonable anticipated expenses of the Office in administering this chapter during such year are defrayed.

(Added Pub. L. 108–496, § 2, Dec. 23, 2004, 118 Stat. 4004.)

### § 8959. Preemption

The terms of any contract that relate to the nature, provision, 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 dental benefits, insurance, plans, or contracts.

(Added Pub. L. 108–496, § 2, Dec. 23, 2004, 118 Stat. 4005.)

### § 8960. Studies, reports, and audits

(a) Each contract shall contain provisions requiring the qualified company 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 Government Accountability Office to examine such records of the qualified company as may be necessary to carry out the purposes of this chapter.

(b) Each Federal agency shall keep such records, make such certifications, and furnish the Office, the qualified company, or both, with such information and reports as the Office may require.

(c) The Office shall conduct periodic reviews of plans under this chapter, including a comparison of the dental benefits available under chapter 89, to ensure the competitiveness of plans under this chapter. The Office shall cooperate with the Government Accountability Office to provide periodic evaluations of the program.

(Added Pub. L. 108–496, § 2, Dec. 23, 2004, 118 Stat. 4005.)

### § 8961. 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 under this chapter after such administrative remedies as required under section 8953(d) have been exhausted, but only to the extent judicial review is not precluded by any dispute resolution or other remedy under this chapter.

(Added Pub. L. 108–496, § 2, Dec. 23, 2004, 118 Stat. 4005.)

### § 8962. Administrative functions

(a) The Office shall prescribe regulations to carry out this chapter. The regulations may exclude an employee on the basis of the nature and type of employment or conditions pertaining to it.

(b) The Office shall, as appropriate, provide for coordinated enrollment, promotion, and education efforts as appropriate in consultation with each qualified company. The information under this subsection shall include information relating to the dental benefits available under chapter 89, including the advantages and disadvantages of obtaining additional coverage under this chapter.

(Added Pub. L. 108–496, § 2, Dec. 23, 2004, 118 Stat. 4006.)

## CHAPTER 89B—ENHANCED VISION BENEFITS

Sec.
8981. Definitions.

Sec.
8982. Availability of vision benefits.
8983. Contracting authority.
8984. Benefits.
8985. Information to individuals eligible to enroll.
8986. Election of coverage.
8987. Coverage of restored survivor or disability annuitants.
8988. Premiums.
8989. Preemption.
8990. Studies, reports, and audits.
8991. Jurisdiction of courts.
8992. Administrative functions.

### § 8981. Definitions

In this chapter:

(1) The term ''employee'' means an employee defined under section 8901(1) and an employee of the District of Columbia courts.

(2) The terms ''annuitant'', ''member of family'', and ''dependent'' have the meanings as such terms are defined under paragraphs (3), (5), and (9), respectively, of section 8901.

(3) The term ''eligible individual'' refers to an individual described in paragraph (1) or (2), without regard to whether the individual is enrolled in a health benefits plan under chapter 89.

(4) The term ''Office'' means the Office of Personnel Management.

(5) The term ''qualified company'' means a company (or consortium of companies or an employee organization defined under section 8901(8)) that offers indemnity, preferred provider organization, health maintenance organization, or discount vision programs and if required is licensed to issue applicable coverage in any number of States, taking any subsidiaries of such a company into account (and, in the case of a consortium, considering the member companies and any subsidiaries thereof, collectively).

(6) The term ''employee organization'' means 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 chapter 89.

(7) The term ''State'' includes the District of Columbia.

(Added Pub. L. 108–496, § 3, Dec. 23, 2004, 118 Stat. 4006; amended Pub. L. 109–356, title I, § 117(a)(2), Oct. 16, 2006, 120 Stat. 2027.)

AMENDMENTS

2006—Par. (1). Pub. L. 109–356, which directed insertion of ''and an employee of the District of Columbia courts'' at end of par. (1), was executed by making the insertion before the period, to reflect the probable intent of Congress.

EFFECTIVE DATE

Chapter effective Dec. 23, 2004, and applicable to contracts that take effect with respect to the calendar year 2006, see section 7 of Pub. L. 108–496, set out as a note under section 8951 of this title.

### § 8982. Availability of vision benefits

(a) The Office shall establish and administer a program through which an eligible individual may obtain vision coverage to supplement coverage available through chapter 89.

(b) The Office shall determine, in the exercise of its reasonable discretion, the financial requirements for qualified companies to participate in the program.

(c) Nothing in this chapter shall be construed to prohibit the availability of vision benefits provided by health benefits plans under chapter 89.

(Added Pub. L. 108–496, § 3, Dec. 23, 2004, 118 Stat. 4007.)

### § 8983. Contracting authority

(a)(1) The Office shall contract with a reasonable number of qualified companies for a policy or policies of benefits described under section 8984 without regard to section 6101(b) to (d) of title 41 or any other statute requiring competitive bidding. An employee organization may contract with a qualified company for the purpose of participating with that qualified company in any contract between the Office and that qualified company.

(2) The Office shall ensure that each resulting contract is awarded on the basis of contractor qualifications, price, and reasonable competition.

(b) Each contract under this section shall contain—

(1) the requirements under section 8902(d), (f), and (i) made applicable to contracts under this section by regulations prescribed by the Office;

(2) the terms of the enrollment period; and

(3) such other terms and conditions as may be mutually agreed to by the Office and the qualified company involved, consistent with the requirements of this chapter and regulations prescribed by the Office.

(c) Nothing in this chapter shall, in the case of an individual electing vision supplemental benefit coverage under this chapter after the expiration of such individual's first opportunity to enroll, preclude the application of waiting periods more stringent than those that would have applied if that opportunity had not yet expired.

(d)(1) Each contract under this chapter shall require the qualified company to agree—

(A) to provide payments or benefits to an eligible individual if such individual is entitled thereto under the terms of the contract; and

(B) with respect to disputes regarding claims for payments or benefits under the terms of the contract—

(i) to establish internal procedures designed to expeditiously resolve such disputes; and

(ii) to establish, for disputes not resolved through procedures under clause (i), procedures for 1 or more alternative means of dispute resolution involving independent third-party review under appropriate circumstances by entities mutually acceptable to the Office and the qualified company.

(2) A determination by a qualified company as to whether or not a particular individual is eligible to obtain coverage under this chapter shall be subject to review only to the extent and in the manner provided in the applicable contract.

(3) For purposes of applying the Contract Disputes Act of 1978[1] to disputes arising under this chapter between a qualified company and the Office—

(A) the agency board having jurisdiction to decide an appeal relative to such a dispute shall be such board of contract appeals as the Director of the Office of Personnel Management shall specify in writing (after appropriate arrangements, as described in section 8(c)[1] of such Act); and

(B) the district courts of the United States shall have original jurisdiction, concurrent with the United States Court of Federal Claims, of any action described in section 10(a)(1)[1] of such Act relative to such a dispute.

(e) Nothing in this section shall be considered to grant authority for the Office or third-party reviewer to change the terms of any contract under this chapter.

(f) Contracts under this chapter shall be for a uniform term of 7 years and may not be renewed automatically.

(Added Pub. L. 108–496, § 3, Dec. 23, 2004, 118 Stat. 4007; amended Pub. L. 111–350, § 5(a)(17), Jan. 4, 2011, 124 Stat. 3842.)

REFERENCES IN TEXT

The Contract Disputes Act of 1978, referred to in subsec. (d)(3), is Pub. L. 95–563, Nov. 1, 1978, 92 Stat. 2383, which was classified principally to chapter 9 (§ 601 et seq.) of former Title 41, Public Contracts, and was substantially repealed and restated as chapter 71 (§ 7101 et seq.) of Title 41, Public Contracts, by Pub. L. 111–350, §§ 3, 7(b), Jan. 4, 2011, 124 Stat. 3677, 3855. Sections 8(c) and 10(a)(1) of the Act, which were classified to sections 607(c) and 609(a)(1), respectively, of former Title 41, were repealed and restated as section 7105(d), (e)(1)(C) and section 7104(b)(1), respectively, of Title 41. For complete classification of this Act to the Code, see Tables. For disposition of sections of former Title 41, see Disposition Table preceding section 101 of Title 41.

AMENDMENTS

2011—Subsec. (a)(1). Pub. L. 111–350 substituted ''section 6101(b) to (d) of title 41'' for ''section 5 of title 41''.

### § 8984. Benefits

(a) The Office may prescribe reasonable minimum standards for enhanced vision benefits plans offered under this chapter and for qualified companies offering the plans.

(b) Each contract may include more than 1 level of benefits that shall be made available to all eligible individuals.

(c) The benefits to be provided under enhanced vision benefits plans under this chapter may be of the following types:

(1) Diagnostic (to include refractive services).

(2) Preventive.

(3) Eyewear.

(d) A contract approved under this chapter shall require the qualified company to cover the geographic service delivery area specified by the Office. The Office shall require qualified companies to include visually underserved areas in their service delivery areas.

(e) If an individual has vision coverage under a health benefits plan under chapter 89 and also has coverage under a plan under this chapter, the health benefits plan under chapter 89 shall be the first payor of any benefit payments.

(Added Pub. L. 108–496, § 3, Dec. 23, 2004, 118 Stat. 4008.)

### § 8985. Information to individuals eligible to enroll

(a) The qualified companies at the direction and with the approval of the Office, shall make available to each individual eligible to enroll in a vision benefits plan information on services and benefits (including maximums, limitations, and exclusions), that the Office considers necessary to enable the individual to make an informed decision about electing coverage.

(b) The Office shall make available to each individual eligible to enroll in a vision benefits plan, information on services and benefits provided by qualified companies participating under chapter 89.

(Added Pub. L. 108–496, § 3, Dec. 23, 2004, 118 Stat. 4008.)

### § 8986. Election of coverage

(a) An eligible individual may enroll in a vision benefits plan for self-only, self plus one, or for self and family. If an eligible individual has a spouse who is also eligible to enroll, either spouse, but not both, may enroll for self plus one or self and family. An individual may not be enrolled both as an employee, annuitant, or other individual eligible to enroll and as a member of the family.

(b) The Office shall prescribe regulations under which—

(1) an eligible individual may enroll in a vision benefits plan; and

(2) an enrolled individual may change the self-only, self plus one, or self and family coverage of that individual.

(c)(1) Regulations under subsection (b) shall permit an eligible individual to cancel or transfer the enrollment of that individual to another vision benefits plan—

(A) before the start of any contract term in which there is a change in rates charged or benefits provided, in which a new plan is offered, or in which an existing plan is terminated; or

(B) during other times and under other circumstances specified by the Office.

(2) A transfer under paragraph (1) shall be subject to waiting periods provided under a new plan.

(Added Pub. L. 108–496, § 3, Dec. 23, 2004, 118 Stat. 4008.)

### § 8987. Coverage of restored survivor or disability annuitants

A surviving spouse, disability annuitant, or surviving child whose annuity is terminated and is later restored, may continue enrollment in a vision benefits plan subject to the terms and conditions prescribed in regulations issued by the Office.

(Added Pub. L. 108–496, § 3, Dec. 23, 2004, 118 Stat. 4009.)

[1] See References in Text note below.

### § 8988. Premiums

(a) Each eligible individual obtaining supplemental vision coverage under this chapter shall be responsible for 100 percent of the premiums for such coverage.

(b) The Office shall prescribe regulations specifying the terms and conditions under which individuals are required to pay the premiums for enrollment.

(c) The amount necessary to pay the premiums for enrollment may—

(1) in the case of an employee, be withheld from the pay of such an employee; or

(2) in the case of an annuitant, be withheld from the annuity of such an annuitant.

(d) All amounts withheld under this section shall be paid directly to the qualified company.

(e) Each participating qualified company shall maintain accounting records that contain such information and reports as the Office may require.

(f)(1) The Employee Health Benefits Fund is available, without fiscal year limitation, for reasonable expenses incurred by the Office in administering this chapter before the first day of the first contract period, including reasonable implementation costs.

(2)(A) There is established in the Employees Health Benefits Fund a Vision Benefits Administrative Account, which shall be available to the Office, without fiscal year limitation, to defray reasonable expenses incurred by the Office in administering this chapter after the start of the first contract year.

(B) A contract under this chapter shall include appropriate provisions under which the qualified company involved shall, during each year, make such periodic contributions to the Vision Benefits Administrative Account as necessary to ensure that the reasonable anticipated expenses of the Office in administering this chapter during such year are defrayed.

(Added Pub. L. 108–496, § 3, Dec. 23, 2004, 118 Stat. 4009.)

### § 8989. Preemption

The terms of any contract that relate to the nature, provision, 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 vision benefits, insurance, plans, or contracts.

(Added Pub. L. 108–496, § 3, Dec. 23, 2004, 118 Stat. 4010.)

### § 8990. Studies, reports, and audits

(a) Each contract shall contain provisions requiring the qualified company 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 Government Accountability Office to examine such records of the qualified company as may be necessary to carry out the purposes of this chapter.

(b) Each Federal agency shall keep such records, make such certifications, and furnish the Office, the qualified company, or both, with such information and reports as the Office may require.

(c) The Office shall conduct periodic reviews of plans under this chapter, including a comparison of the vision benefits available under chapter 89, to ensure the competitiveness of plans under this chapter. The Office shall cooperate with the Government Accountability Office to provide periodic evaluations of the program.

(Added Pub. L. 108–496, § 3, Dec. 23, 2004, 118 Stat. 4010.)

### § 8991. 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 under this chapter after such administrative remedies as required under section 8983(d) have been exhausted, but only to the extent judicial review is not precluded by any dispute resolution or other remedy under this chapter.

(Added Pub. L. 108–496, § 3, Dec. 23, 2004, 118 Stat. 4010.)

### § 8992. Administrative functions

(a) The Office shall prescribe regulations to carry out this chapter. The regulations may exclude an employee on the basis of the nature and type of employment or conditions pertaining to it.

(b) The Office shall, as appropriate, provide for coordinated enrollment, promotion, and education efforts as appropriate in consultation with each qualified company. The information under this subsection shall include information relating to the vision benefits available under chapter 89, including the advantages and disadvantages of obtaining additional coverage under this chapter.

(Added Pub. L. 108–496, § 3, Dec. 23, 2004, 118 Stat. 4010.)

## CHAPTER 90—LONG-TERM CARE INSURANCE

Sec.
9001. Definitions.
9002. Availability of insurance.
9003. Contracting authority.
9004. Financing.
9005. Preemption.
9006. Studies, reports, and audits.
9007. Jurisdiction of courts.
9008. Administrative functions.
9009. Cost accounting standards.

### § 9001. Definitions

For purposes of this chapter:

(1) EMPLOYEE.—The term ''employee'' means—

(A) an employee as defined by section 8901(1);

(B) an individual described in section 2105(e);

(C) an individual employed by the Tennessee Valley Authority;

(D) an employee of a nonappropriated fund instrumentality of the Department of Defense described in section 2105(c); and

(E) an employee of the District of Columbia courts.

(2) ANNUITANT.—The term ''annuitant'' means—

(A) any individual who would satisfy the requirements of paragraph (3) of section 8901 if, for purposes of such paragraph, the term ''employee'' were considered to have the meaning given to it under paragraph (1);

(B) any individual who—

(i) satisfies all requirements for title to an annuity under subchapter III of chapter 83, chapter 84, or any other retirement system for employees of the Government (whether based on the service of such individual or otherwise), and files application therefor;

(ii) is at least 18 years of age; and

(iii) would not (but for this subparagraph) otherwise satisfy the requirements of this paragraph; and

(C) any former employee who, on the basis of his or her service, would meet all requirements for being considered an ''annuitant'' within the meaning of subchapter III of chapter 83, chapter 84, or any other retirement system for employees of the Government, but for the fact that such former employee has not attained the minimum age for title to annuity.

(3) MEMBER OF THE UNIFORMED SERVICES.—The term ''member of the uniformed services'' means a member of the uniformed services, other than a retired member of the uniformed services, who is—

(A) on active duty or full-time National Guard duty for a period of more than 30 days; or

(B) a member of the Selected Reserve.

(4) RETIRED MEMBER OF THE UNIFORMED SERVICES.—The term ''retired member of the uniformed services'' means a member or former member of the uniformed services entitled to retired or retainer pay, and a member who has been transferred to the Retired Reserve and who would be entitled to retired pay under chapter 1223 of title 10 but for not having attained the age of 60 and who satisfies such eligibility requirements as the Office of Personnel Management prescribes under section 9008.

(5) QUALIFIED RELATIVE.—The term ''qualified relative'' means each of the following:

(A) The spouse of an individual described in paragraph (1), (2), (3), or (4).

(B) A parent, stepparent, or parent-in-law of an individual described in paragraph (1) or (3).

(C) A child (including an adopted child, a stepchild, or, to the extent the Office of Personnel Management by regulation provides, a foster child) of an individual described in paragraph (1), (2), (3), or (4), if such child is at least 18 years of age.

(D) An individual having such other relationship to an individual described in paragraph (1), (2), (3), or (4) as the Office may by regulation prescribe.

(6) ELIGIBLE INDIVIDUAL.—The term ''eligible individual'' refers to an individual described in paragraph (1), (2), (3), (4), or (5).

(7) QUALIFIED CARRIER.—The term ''qualified carrier'' means an insurance company (or consortium of insurance companies) that is licensed to issue long-term care insurance in all States, taking any subsidiaries of such a company into account (and, in the case of a consortium, considering the member companies and any subsidiaries thereof, collectively).

(8) STATE.—The term ''State'' includes the District of Columbia.

(9) QUALIFIED LONG-TERM CARE INSURANCE CONTRACT.—The term ''qualified long-term care insurance contract'' has the meaning given such term by section 7702B of the Internal Revenue Code of 1986.

(10) APPROPRIATE SECRETARY.—The term ''appropriate Secretary'' means—

(A) except as otherwise provided in this paragraph, the Secretary of Defense;

(B) with respect to the Coast Guard when it is not operating as a service of the Navy, the Secretary of Homeland Security;

(C) with respect to the commissioned corps of the National Oceanic and Atmospheric Administration, the Secretary of Commerce; and

(D) with respect to the commissioned corps of the Public Health Service, the Secretary of Health and Human Services.

(Added Pub. L. 106–265, title I, § 1002(a), Sept. 19, 2000, 114 Stat. 762; amended Pub. L. 107–104, § 1, Dec. 27, 2001, 115 Stat. 1001; Pub. L. 107–107, div. A, title X, § 1048(i)(6), Dec. 28, 2001, 115 Stat. 1229; Pub. L. 107–314, div. A, title XI, § 1101(a), Dec. 2, 2002, 116 Stat. 2660; Pub. L. 108–7, div. C, title III, § 138(a), Feb. 20, 2003, 117 Stat. 129; Pub. L. 108–136, div. A, title V, § 561, Nov. 24, 2003, 117 Stat. 1482; Pub. L. 109–241, title IX, § 902(a)(3), July 11, 2006, 120 Stat. 566; Pub. L. 109–356, title I, § 117(a)(3), Oct. 16, 2006, 120 Stat. 2027.)

REFERENCES IN TEXT

Section 7702B of the Internal Revenue Code of 1986, referred to in par. (9), is classified to section 7702B of Title 26, Internal Revenue Code.

AMENDMENTS

2006—Par. (1)(E). Pub. L. 109–356 added subpar. (E).

Par. (10)(B). Pub. L. 109–241 substituted ''Secretary of Homeland Security'' for ''Secretary of Transportation''.

2003—Par. (1). Pub. L. 108–136, § 561(a), substituted a period for a comma at end of subpar. (D) and struck out concluding provisions which read: ''but does not include an individual employed by the government of the District of Columbia (other than an employee of the District of Columbia Courts).''

Pub. L. 108–7 inserted ''(other than an employee of the District of Columbia Courts)'' before period at end of concluding provisions.

Par. (2)(A). Pub. L. 108–136, § 561(d), struck out ''of this subsection'' after ''paragraph (1)''.

Par. (2)(C). Pub. L. 108–136, § 561(b), added subpar. (C).

Par. (4). Pub. L. 108–136, § 561(c), substituted ''and a member who has been transferred to the Retired Reserve and who would be entitled to retired pay under chapter 1223 of title 10 but for not having'' for ''including a member or former member retired under chapter 1223 of title 10 who has''.

2002—Par. (1)(D). Pub. L. 107–314 added subpar. (D).

2001—Par. (2). Pub. L. 107–104 amended heading and text of par. (2) generally. Prior to amendment, text read as follows: ''The term 'annuitant' has the meaning such term would have under paragraph (3) of section

8901 if, for purposes of such paragraph, the term 'employee' were considered to have the meaning given to it under paragraph (1) of this subsection.''

Par. (3)(A). Pub. L. 107–107 substituted ''or'' for ''and'' after semicolon.

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–104, § 3, Dec. 27, 2001, 115 Stat. 1002, provided that: ''The amendments made by this Act [amending this section and section 9005 of this title] shall take effect as if included in the enactment of section 1002 of the Long-Term Care Security Act (Public Law 106–265; 114 Stat. 762).''

EFFECTIVE DATE

Pub. L. 106–265, title I, § 1003, Sept. 19, 2000, 114 Stat. 770, provided that: ''The Office of Personnel Management shall take such measures as may be necessary to ensure that long-term care insurance coverage under title 5, United States Code, as amended by this title [enacting this chapter], may be obtained in time to take effect not later than the first day of the first applicable pay period of the first fiscal year which begins after the end of the 18-month period beginning on the date of the enactment of this Act [Sept. 19, 2000].''

SHORT TITLE

Pub. L. 106–265, title I, § 1001, Sept. 19, 2000, 114 Stat. 762, provided that: ''This title [enacting this chapter] may be cited as the 'Long-Term Care Security Act'.''

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

## § 9002. Availability of insurance

(a) IN GENERAL.—The Office of Personnel Management shall establish and, in consultation with the appropriate Secretaries, administer a program through which an individual described in paragraph (1), (2), (3), (4), or (5) of section 9001 may obtain long-term care insurance coverage under this chapter for such individual.

(b) DISCRETIONARY AUTHORITY REGARDING NONAPPROPRIATED FUND INSTRUMENTALITIES.—The Secretary of Defense may determine that a nonappropriated fund instrumentality of the Department of Defense is covered under this chapter or is covered under an alternative long-term care insurance program.

(c) GENERAL REQUIREMENTS.—Long-term care insurance may not be offered under this chapter unless—

(1) the only coverage provided is under qualified long-term care insurance contracts; and

(2) each insurance contract under which any such coverage is provided is issued by a qualified carrier.

(d) DOCUMENTATION REQUIREMENT.—As a condition for obtaining long-term care insurance coverage under this chapter based on one's status as a qualified relative, an applicant shall provide documentation to demonstrate the relationship, as prescribed by the Office.

(e) UNDERWRITING STANDARDS.—

(1) DISQUALIFYING CONDITION.—Nothing in this chapter shall be considered to require that long-term care insurance coverage be made available in the case of any individual who would be eligible for benefits immediately.

(2) SPOUSAL PARITY.—For the purpose of underwriting standards, a spouse of an individual described in paragraph (1), (2), (3), or (4) of section 9001 shall, as nearly as practicable, be treated like that individual.

(3) GUARANTEED ISSUE.—Nothing in this chapter shall be considered to require that long-term care insurance coverage be guaranteed to an eligible individual.

(4) REQUIREMENT THAT CONTRACT BE FULLY INSURED.—In addition to the requirements otherwise applicable under section 9001(9), in order to be considered a qualified long-term care insurance contract for purposes of this chapter, a contract must be fully insured, whether through reinsurance with other companies or otherwise.

(5) HIGHER STANDARDS ALLOWABLE.—Nothing in this chapter shall, in the case of an individual applying for long-term care insurance coverage under this chapter after the expiration of such individual's first opportunity to enroll, preclude the application of underwriting standards more stringent than those that would have applied if that opportunity had not yet expired.

(f) GUARANTEED RENEWABILITY.—The benefits and coverage made available to eligible individuals under any insurance contract under this chapter shall be guaranteed renewable (as defined by section 7A(2) of the model regulations described in section 7702B(g)(2) of the Internal Revenue Code of 1986), including the right to have insurance remain in effect so long as premiums continue to be timely made. However, the authority to revise premiums under this chapter shall be available only on a class basis and only to the extent otherwise allowable under section 9003(b).

(Added Pub. L. 106–265, title I, § 1002(a), Sept. 19, 2000, 114 Stat. 764; amended Pub. L. 107–314, div. A, title XI, § 1101(b), Dec. 2, 2002, 116 Stat. 2660.)

REFERENCES IN TEXT

Section 7702B(g)(2) of the Internal Revenue Code of 1986, referred to in subsec. (f), is classified to section 7702B(g)(2) of Title 26, Internal Revenue Code.

AMENDMENTS

2002—Subsecs. (b) to (f). Pub. L. 107–314 added subsec. (b) and redesignated former subsecs. (b) to (e) as (c) to (f), respectively.

## § 9003. Contracting authority

(a) IN GENERAL.—The Office of Personnel Management shall, without regard to section 6101(b) to (d) of title 41 or any other statute requiring competitive bidding, contract with one or more qualified carriers for a policy or policies of long-term care insurance. The Office shall ensure that each resulting contract (hereafter in this chapter referred to as a ''master contract'') is awarded on the basis of contractor qualifications, price, and reasonable competition.

(b) TERMS AND CONDITIONS.—

(1) IN GENERAL.—Each master contract under this chapter shall contain—

(A) a detailed statement of the benefits offered (including any maximums, limitations, exclusions, and other definitions of benefits);

(B) the premiums charged (including any limitations or other conditions on their subsequent adjustment);

(C) the terms of the enrollment period; and

(D) such other terms and conditions as may be mutually agreed to by the Office and the carrier involved, consistent with the requirements of this chapter.

(2) PREMIUMS.—Premiums charged under each master contract entered into under this section shall reasonably and equitably reflect the cost of the benefits provided, as determined by the Office. The premiums shall not be adjusted during the term of the contract unless mutually agreed to by the Office and the carrier.

(3) NONRENEWABILITY.—Master contracts under this chapter may not be made automatically renewable.

(c) PAYMENT OF REQUIRED BENEFITS; DISPUTE RESOLUTION.—

(1) IN GENERAL.—Each master contract under this chapter shall require the carrier to agree—

(A) to provide payments or benefits to an eligible individual if such individual is entitled thereto under the terms of the contract; and

(B) with respect to disputes regarding claims for payments or benefits under the terms of the contract—

(i) to establish internal procedures designed to expeditiously resolve such disputes; and

(ii) to establish, for disputes not resolved through procedures under clause (i), procedures for one or more alternative means of dispute resolution involving independent third-party review under appropriate circumstances by entities mutually acceptable to the Office and the carrier.

(2) ELIGIBILITY.—A carrier's determination as to whether or not a particular individual is eligible to obtain long-term care insurance coverage under this chapter shall be subject to review only to the extent and in the manner provided in the applicable master contract.

(3) OTHER CLAIMS.—For purposes of applying chapter 71 of title 41 to disputes arising under this chapter between a carrier and the Office—

(A) the agency board having jurisdiction to decide an appeal relative to such a dispute shall be such board of contract appeals as the Director of the Office of Personnel Management shall specify in writing; and

(B) the district courts of the United States shall have original jurisdiction, concurrent with the United States Court of Federal Claims, of any action described in section 7104(b)(1) of title 41 relative to such a dispute.

(4) RULE OF CONSTRUCTION.—Nothing in this chapter shall be considered to grant authority for the Office or a third-party reviewer to change the terms of any contract under this chapter.

(d) DURATION.—

(1) IN GENERAL.—Each master contract under this chapter shall be for a term of 7 years, unless terminated earlier by the Office in accordance with the terms of such contract. However, the rights and responsibilities of the enrolled individual, the insurer, and the Office (or duly designated third-party administrator) under such contract shall continue with respect to such individual until the termination of coverage of the enrolled individual or the effective date of a successor contract thereto.

(2) EXCEPTION.—

(A) SHORTER DURATION.—In the case of a master contract entered into before the end of the period described in subparagraph (B), paragraph (1) shall be applied by substituting ''ending on the last day of the 7-year period described in paragraph (2)(B)'' for ''of 7 years''.

(B) DEFINITION.—The period described in this subparagraph is the 7-year period beginning on the earliest date as of which any long-term care insurance coverage under this chapter becomes effective.

(3) CONGRESSIONAL NOTIFICATION.—No later than 180 days after receiving the second report required under section 9006(c), the President (or his designee) shall submit to the Committees on Government Reform and on Armed Services of the House of Representatives and the Committees on Governmental Affairs and on Armed Services of the Senate, a written recommendation as to whether the program under this chapter should be continued without modification, terminated, or restructured. During the 180-day period following the date on which the President (or his designee) submits the recommendation required under the preceding sentence, the Office of Personnel Management may not take any steps to rebid or otherwise contract for any coverage to be available at any time following the expiration of the 7-year period described in paragraph (2)(B).

(4) FULL PORTABILITY.—Each master contract under this chapter shall include such provisions as may be necessary to ensure that, once an individual becomes duly enrolled, long-term care insurance coverage obtained by such individual pursuant to that enrollment shall not be terminated due to any change in status (such as separation from Government service or the uniformed services) or ceasing to meet the requirements for being considered a qualified relative (whether as a result of dissolution of marriage or otherwise).

(Added Pub. L. 106–265, title I, § 1002(a), Sept. 19, 2000, 114 Stat. 764; amended Pub. L. 111–350, § 5(a)(18), Jan. 4, 2011, 124 Stat. 3842.)

AMENDMENTS

2011—Subsec. (a). Pub. L. 111–350, § 5(a)(18)(A), substituted ''section 6101(b) to (d) of title 41'' for ''section 5 of title 41''.

Subsec. (c)(3). Pub. L. 111–350, § 5(a)(18)(B), substituted ''chapter 71 of title 41'' for ''the Contract Disputes Act of 1978'' in introductory provisions.

Subsec. (c)(3)(A). Pub. L. 111–350, § 5(a)(18)(C), struck out ''(after appropriate arrangements, as described in section 8(c) of such Act)'' after ''specify in writing''.

Subsec. (c)(3)(B). Pub. L. 111–350, § 5(a)(18)(D), substituted ''section 7104(b)(1) of title 41'' for ''section 10(a)(1) of such Act''.

CHANGE OF NAME

Committee on Government Reform of House of Representatives changed to Committee on Oversight and Government Reform of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007.

Committee on Governmental Affairs of Senate changed to Committee on Homeland Security and Governmental Affairs of Senate, effective Jan. 4, 2005, by Senate Resolution No. 445, One Hundred Eighth Congress, Oct. 9, 2004.

### § 9004. Financing

(a) IN GENERAL.—Each eligible individual obtaining long-term care insurance coverage under this chapter shall be responsible for 100 percent of the premiums for such coverage.

(b) WITHHOLDINGS.—

(1) IN GENERAL.—The amount necessary to pay the premiums for enrollment may—

(A) in the case of an employee, be withheld from the pay of such employee;

(B) in the case of an annuitant, be withheld from the annuity of such annuitant;

(C) in the case of a member of the uniformed services described in section 9001(3), be withheld from the pay of such member; and

(D) in the case of a retired member of the uniformed services described in section 9001(4), be withheld from the retired pay or retainer pay payable to such member.

(2) VOLUNTARY WITHHOLDINGS FOR QUALIFIED RELATIVES.—Withholdings to pay the premiums for enrollment of a qualified relative may, upon election of the appropriate eligible individual (described in section 9001(1)–(4)), be withheld under paragraph (1) to the same extent and in the same manner as if enrollment were for such individual.

(c) DIRECT PAYMENTS.—All amounts withheld under this section shall be paid directly to the carrier.

(d) OTHER FORMS OF PAYMENT.—Any enrollee who does not elect to have premiums withheld under subsection (b) or whose pay, annuity, or retired or retainer pay (as referred to in subsection (b)(1)) is insufficient to cover the withholding required for enrollment (or who is not receiving any regular amounts from the Government, as referred to in subsection (b)(1), from which any such withholdings may be made, and whose premiums are not otherwise being provided for under subsection (b)(2)) shall pay an amount equal to the full amount of those charges directly to the carrier.

(e) SEPARATE ACCOUNTING REQUIREMENT.—Each carrier participating under this chapter shall maintain records that permit it to account for all amounts received under this chapter (including investment earnings on those amounts) separate and apart from all other funds.

(f) REIMBURSEMENTS.—

(1) REASONABLE INITIAL COSTS.—

(A) IN GENERAL.—The Employees' Life Insurance Fund is available, without fiscal year limitation, for reasonable expenses incurred by the Office of Personnel Management in administering this chapter before the start of the 7-year period described in section 9003(d)(2)(B), including reasonable implementation costs.

(B) REIMBURSEMENT REQUIREMENT.—Such Fund shall be reimbursed, before the end of the first year of that 7-year period, for all amounts obligated or expended under subparagraph (A) (including lost investment income). Such reimbursement shall be made by carriers, on a pro rata basis, in accordance with appropriate provisions which shall be included in master contracts under this chapter.

(2) SUBSEQUENT COSTS.—

(A) IN GENERAL.—There is hereby established in the Employees' Life Insurance Fund a Long-Term Care Administrative Account, which shall be available to the Office, without fiscal year limitation, to defray reasonable expenses incurred by the Office in administering this chapter after the start of the 7-year period described in section 9003(d)(2)(B).

(B) REIMBURSEMENT REQUIREMENT.—Each master contract under this chapter shall include appropriate provisions under which the carrier involved shall, during each year, make such periodic contributions to the Long-Term Care Administrative Account as necessary to ensure that the reasonable anticipated expenses of the Office in administering this chapter during such year (adjusted to reconcile for any earlier overestimates or underestimates under this subparagraph) are defrayed.

(Added Pub. L. 106–265, title I, § 1002(a), Sept. 19, 2000, 114 Stat. 766.)

### § 9005. Preemption

(a) CONTRACTUAL PROVISIONS.—The terms of any contract under this chapter which relate to the nature, provision, 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 long-term care insurance or contracts.

(b) PREMIUMS.—

(1) IN GENERAL.—No tax, fee, or other monetary payment may be imposed or collected, directly or indirectly, 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 for an insurance policy under this chapter.

(2) RULE OF CONSTRUCTION.—Paragraph (1) shall not be construed to exempt any company or other entity 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 such entity from business conducted under this chapter, if that tax, fee, or payment is applicable to a broad range of business activity.

(Added Pub. L. 106–265, title I, § 1002(a), Sept. 19, 2000, 114 Stat. 768; amended Pub. L. 107–104, § 2, Dec. 27, 2001, 115 Stat. 1001.)

AMENDMENTS

2001—Pub. L. 107–104 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–104 effective as if included in the enactment of section 1002 of Pub. L. 106–265, see section 3 of Pub. L. 107–104, set out as a note under section 9001 of this title.

### § 9006. Studies, reports, and audits

(a) PROVISIONS RELATING TO CARRIERS.—Each master contract under this chapter shall contain provisions requiring the carrier—

(1) to furnish such reasonable reports as the Office of Personnel Management determines to be necessary to enable it to carry out its functions under this chapter; and

(2) to permit the Office and representatives of the Government Accountability Office to examine such records of the carrier as may be necessary to carry out the purposes of this chapter.

(b) PROVISIONS RELATING TO FEDERAL AGENCIES.—Each Federal agency shall keep such records, make such certifications, and furnish the Office, the carrier, or both, with such information and reports as the Office may require.

(c) REPORTS BY THE GOVERNMENT ACCOUNTABILITY OFFICE.—The Government Accountability Office shall prepare and submit to the President, the Office of Personnel Management, and each House of Congress, before the end of the third and fifth years during which the program under this chapter is in effect, a written report evaluating such program. Each such report shall include an analysis of the competitiveness of the program, as compared to both group and individual coverage generally available to individuals in the private insurance market. The Office shall cooperate with the Government Accountability Office to provide periodic evaluations of the program.

(Added Pub. L. 106–265, title I, § 1002(a), Sept. 19, 2000, 114 Stat. 768; amended Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814.)

AMENDMENTS

2004—Subsec. (a)(2). Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office''.

Subsec. (c). Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office'' in heading and two places in text.

### § 9007. Jurisdiction of courts

The district courts of the United States have original jurisdiction of a civil action or claim described in paragraph (1) or (2) of section 9003(c), after such administrative remedies as required under such paragraph (1) or (2) (as applicable) have been exhausted, but only to the extent judicial review is not precluded by any dispute resolution or other remedy under this chapter.

(Added Pub. L. 106–265, title I, § 1002(a), Sept. 19, 2000, 114 Stat. 768.)

### § 9008. Administrative functions

(a) IN GENERAL.—The Office of Personnel Management shall prescribe regulations necessary to carry out this chapter.

(b) ENROLLMENT PERIODS.—The Office shall provide for periodic coordinated enrollment, promotion, and education efforts in consultation with the carriers.

(c) CONSULTATION.—Any regulations necessary to effect the application and operation of this chapter with respect to an eligible individual described in paragraph (3) or (4) of section 9001, or a qualified relative thereof, shall be prescribed by the Office in consultation with the appropriate Secretary.

(d) INFORMED DECISIONMAKING.—The Office shall ensure that each eligible individual applying for long-term care insurance under this chapter is furnished the information necessary to enable that individual to evaluate the advantages and disadvantages of obtaining long-term care insurance under this chapter, including the following:

(1) The principal long-term care benefits and coverage available under this chapter, and how those benefits and coverage compare to the range of long-term care benefits and coverage otherwise generally available.

(2) Representative examples of the cost of long-term care, and the sufficiency of the benefits available under this chapter relative to those costs. The information under this paragraph shall also include—

(A) the projected effect of inflation on the value of those benefits; and

(B) a comparison of the inflation-adjusted value of those benefits to the projected future costs of long-term care.

(3) Any rights individuals under this chapter may have to cancel coverage, and to receive a total or partial refund of premiums. The information under this paragraph shall also include—

(A) the projected number or percentage of individuals likely to fail to maintain their coverage (determined based on lapse rates experienced under similar group long-term care insurance programs and, when available, this chapter); and

(B)(i) a summary description of how and when premiums for long-term care insurance under this chapter may be raised;

(ii) the premium history during the last 10 years for each qualified carrier offering long-term care insurance under this chapter; and

(iii) if cost increases are anticipated, the projected premiums for a typical insured individual at various ages.

(4) The advantages and disadvantages of long-term care insurance generally, relative to other means of accumulating or otherwise acquiring the assets that may be needed to meet the costs of long-term care, such as through tax-qualified retirement programs or other investment vehicles.

(Added Pub. L. 106–265, title I, § 1002(a), Sept. 19, 2000, 114 Stat. 768.)

### § 9009. Cost accounting standards

The cost accounting standards issued pursuant to section 1502(a) and (b) of title 41 shall not apply with respect to a long-term care insurance contract under this chapter.

(Added Pub. L. 106–265, title I, §1002(a), Sept. 19, 2000, 114 Stat. 769; amended Pub. L. 111–350, §5(a)(19), Jan. 4, 2011, 124 Stat. 3842.)

AMENDMENTS

2011—Pub. L. 111–350 substituted ''section 1502(a) and (b) of title 41'' for ''section 26(f) of the Office of Federal Procurement Policy Act (41 U.S.C. 422(f))''.

## Subpart H—Access to Criminal History Record Information

### CHAPTER 91—ACCESS TO CRIMINAL HISTORY RECORDS FOR NATIONAL SECURITY AND OTHER PURPOSES

Sec.
9101. Access to criminal history records for national security and other purposes.

AMENDMENTS

2000—Pub. L. 106–398, §1 [[div. A], title X, §1076(f)(1)(A), (2)(B)], Oct. 30, 2000, 114 Stat. 1654, 1654A–282, substituted ''AND OTHER PURPOSES'' for ''PURPOSES'' in chapter heading and ''Access to criminal history records for national security and other purposes'' for ''Criminal history record information for national security purposes'' in item 9101.

### §9101. Access to criminal history records for national security and other purposes

(a) As used in this section:

(1) The term ''criminal justice agency'' means (A) any Federal, State, or local court, and (B) any Federal, State, or local 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 Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, 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.

(6) The term ''covered agency'' means any of the following:

(A) The Department of Defense.
(B) The Department of State.
(C) The Department of Transportation.
(D) The Office of Personnel Management.
(E) The Central Intelligence Agency.
(F) The Federal Bureau of Investigation.

(b)(1) Upon request by the head of a covered agency, criminal justice agencies shall make available criminal history record information regarding individuals under investigation by that covered agency for the purpose of determining eligibility for any of the following:

(A) Access to classified information.

(B) Assignment to or retention in sensitive national security duties.

(C) Acceptance or retention in the armed forces.

(D) Appointment, retention, or assignment to a position of public trust or a critical or sensitive position while either employed by the Government or performing a Government contract.

(2) 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.

(3) Fees, if any, charged for providing criminal history record information pursuant to this subsection shall not exceed the reasonable cost of providing such information.

(4) 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.

(c) A covered agency 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)(1) Automated information delivery systems shall be used to provide criminal history record information to a covered agency under subsection (b) whenever available.

(2) Fees, if any, charged for automated access through such systems may not exceed the reasonable cost of providing such access.

(3) The criminal justice agency providing the criminal history record information through such systems may not limit disclosure on the basis that the repository is accessed from outside the State.

(4) Information provided through such systems shall be the full and complete criminal history record.

(5) Criminal justice agencies shall accept and respond to requests for criminal history record

information through such systems with printed or photocopied records when requested.

(f) 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; Pub. L. 106–398, § 1 [[div. A], title X, § 1076(a)–(e), (f)(2)(A)], Oct. 30, 2000, 114 Stat. 1654, 1654A–280 to 1654A–282.)

AMENDMENTS

2000—Pub. L. 106–398, § 1 [[div. A], title X, § 1076(f)(2)(A)], substituted ''Access to criminal history records for national security and other purposes'' for ''Criminal history record information for national security purposes'' in section catchline.

Subsec. (a)(1). Pub. L. 106–398, § 1 [[div. A], title X, § 1076(e)(1)], substituted ''means (A) any Federal, State, or local court, and (B) any Federal, State, or local agency, or any subunit thereof, which'' for ''includes Federal, State, and local agencies and means: (A) courts, or (B) a Government agency or any subunit thereof which''.

Subsec. (a)(4). Pub. L. 106–398, § 1 [[div. A], title X, § 1076(e)(2)], inserted ''the Commonwealth of'' before ''the Northern Mariana Islands'' and struck out ''the Trust Territory of the Pacific Islands,'' after ''American Samoa,''.

Subsec. (a)(6). Pub. L. 106–398, § 1 [[div. A], title X, § 1076(a)(1)], added par. (6).

Subsec. (b). Pub. L. 106–398, § 1 [[div. A], title X, § 1076(c)], in first sentence of par. (1), inserted ''any of the following:'' after ''eligibility for'' and substituted subpars. (A) to (D) for ''(A) access to classified information or (B) assignment to or retention in sensitive national security duties.'', designated second sentence of par. (1) as par. (2), designated third sentence of par. (1) as par. (3) and substituted a period for '', nor shall they in any event exceed those charged to State or local agencies other than criminal justice agencies for such information.'', and redesignated former par. (2) as (4).

Subsec. (b)(1). Pub. L. 106–398, § 1 [[div. A], title X, § 1076(a)(2)], substituted ''by the head of a covered agency'' for ''by the Department of Defense, the Department of State, the Office of Personnel Management, the Central Intelligence Agency, or the Federal Bureau of Investigation'' and ''that covered agency'' for ''such department, office, agency, or bureau''.

Subsec. (b)(3). Pub. L. 106–398, § 1 [[div. A], title X, § 1076(b)], struck out par. (3) which related to agreements between Federal departments and agencies and States and localities to indemnify and hold harmless the States and localities from claims arising from the disclosure or use of criminal history record information.

Subsec. (c). Pub. L. 106–398, § 1 [[div. A], title X, § 1076(a)(3)], substituted ''A covered agency'' for ''The Department of Defense, the Department of State, the Office of Personnel Management, the Central Intelligence Agency, or the Federal Bureau of Investigation''.

Subsecs. (e), (f). Pub. L. 106–398, § 1 [[div. A], title X, § 1076(d)], added subsec. (e) and redesignated former subsec. (e) as (f).

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 DATE OF SUBSECTION (b)(3) OF THIS SECTION

Pub. L. 100–453, title I, § 101(d), Sept. 29, 1988, 102 Stat. 1904, extended the expiration date provided in section 803(b) of Pub. L. 99–169, formerly set out below, until Dec. 31, 1989.

Section 803(b) of Pub. L. 99–169 provided that subsec. (b)(3) of this section expired three years after Dec. 4, 1985.

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.

## Subpart I—Miscellaneous

### CHAPTER 95—PERSONNEL FLEXIBILITIES RELATING TO THE INTERNAL REVENUE SERVICE

Sec.
9501. Internal Revenue Service personnel flexibilities.
9502. Pay authority for critical positions.
9503. Streamlined critical pay authority.
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9505. Performance awards for senior executives.
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9507. Streamlined demonstration project authority.
9508. General workforce performance management system.
9509. General workforce classification and pay.
9510. General workforce staffing.

### § 9501. Internal Revenue Service personnel flexibilities

(a) Any flexibilities provided by sections 9502 through 9510 of this chapter shall be exercised in a manner consistent with—

(1) chapter 23 (relating to merit system principles and prohibited personnel practices);

(2) provisions relating to preference eligibles;

(3) except as otherwise specifically provided, section 5307 (relating to the aggregate limitation on pay);

(4) except as otherwise specifically provided, chapter 71 (relating to labor-management relations); and

(5) subject to subsections (b) and (c) of section 1104, as though such authorities were delegated to the Secretary of the Treasury under section 1104(a)(2).

(b) The Secretary of the Treasury shall provide the Office of Personnel Management with any information that Office requires in carrying out its responsibilities under this section.

(c) Employees within a unit to which a labor organization is accorded exclusive recognition under chapter 71 shall not be subject to any flexibility provided by sections 9507 through 9510 of this chapter unless the exclusive representative and the Internal Revenue Service have entered into a written agreement which specifically provides for the exercise of that flexibility. Such written agreement may be imposed by the Federal Services Impasses Panel under section 7119.

(Added Pub. L. 105–206, title I, § 1201(a), July 22, 1998, 112 Stat. 712.)

### § 9502. Pay authority for critical positions

(a) When the Secretary of the Treasury seeks a grant of authority under section 5377 for critical pay for 1 or more positions at the Internal Revenue Service, the Office of Personnel Management may fix the rate of basic pay, notwithstanding sections 5377(d)(2) and 5307, at any rate up to the salary set in accordance with section 104 of title 3.

(b) Notwithstanding section 5307, no allowance, differential, bonus, award, or similar cash payment may be paid to any employee receiving critical pay at a rate fixed under subsection (a), in any calendar year if, or to the extent that, the employee's total annual compensation will exceed the maximum amount of total annual compensation payable at the salary set in accordance with section 104 of title 3.

(Added Pub. L. 105–206, title I, § 1201(a), July 22, 1998, 112 Stat. 712; amended Pub. L. 110–161, div. D, title I, § 107, Dec. 26, 2007, 121 Stat. 1977.)

AMENDMENTS

2007—Subsec. (a). Pub. L. 110–161 substituted ''Office of Personnel Management'' for ''Office of Management and Budget''.

### § 9503. Streamlined critical pay authority

(a) Notwithstanding section 9502, and without regard to the provisions of this title governing appointments in the competitive service or the Senior Executive Service and chapters 51 and 53 (relating to classification and pay rates), the Secretary of the Treasury may, before July 23, 2013, establish, fix the compensation of, and appoint individuals to, designated critical administrative, technical, and professional positions needed to carry out the functions of the Internal Revenue Service, if—

(1) the positions—

(A) require expertise of an extremely high level in an administrative, technical, or professional field; and

(B) are critical to the Internal Revenue Service's successful accomplishment of an important mission;

(2) exercise of the authority is necessary to recruit or retain an individual exceptionally well qualified for the position;

(3) the number of such positions does not exceed 40 at any one time;

(4) designation of such positions are approved by the Secretary of the Treasury;

(5) the terms of such appointments are limited to no more than 4 years;

(6) appointees to such positions were not Internal Revenue Service employees prior to June 1, 1998;

(7) total annual compensation for any appointee to such positions does not exceed the highest total annual compensation payable at the rate determined under section 104 of title 3; and

(8) all such positions are excluded from the collective bargaining unit.

(b) Individuals appointed under this section shall not be considered to be employees for purposes of subchapter II of chapter 75.

(Added Pub. L. 105–206, title I, § 1201(a), July 22, 1998, 112 Stat. 712; amended Pub. L. 110–161, div. D, title I, § 105, Dec. 26, 2007, 121 Stat. 1977.)

REFERENCES IN TEXT

The provisions of this title governing appointments in the competitive service, referred to in subsec. (a), are classified generally to section 3301 et seq. of this title.

AMENDMENTS

2007—Subsec. (a). Pub. L. 110–161 substituted ''before July 23, 2013'' for ''for a period of 10 years after the date of enactment of this section'' in introductory provisions.

### § 9504. Recruitment, retention, relocation incentives, and relocation expenses

(a) Before July 23, 2013 and subject to approval by the Office of Personnel Management, the Secretary of the Treasury may provide for variations from sections 5753 and 5754 governing payment of recruitment, relocation, and retention incentives.

(b) Before July 23, 2013, the Secretary of the Treasury may pay from appropriations made to the Internal Revenue Service allowable relocation expenses under section 5724a for employees transferred or reemployed and allowable travel and transportation expenses under section 5723 for new appointees, for any new appointee appointed to a position for which pay is fixed under section 9502 or 9503 after June 1, 1998.

(Added Pub. L. 105–206, title I, § 1201(a), July 22, 1998, 112 Stat. 713; amended Pub. L. 110–161, div. D, title I, § 106, Dec. 26, 2007, 121 Stat. 1977.)

AMENDMENTS

2007—Subsecs. (a), (b). Pub. L. 110–161 substituted ''Before July 23, 2013'' for ''For a period of 10 years after the date of enactment of this section''.

### § 9505. Performance awards for senior executives

(a) Before July 23, 2013, Internal Revenue Service senior executives who have program management responsibility over significant functions of the Internal Revenue Service may be paid a performance bonus without regard to the limitation in section 5384(b)(2) if the Secretary of the Treasury finds such award warranted based on the executive's performance.

(b) In evaluating an executive's performance for purposes of an award under this section, the Secretary of the Treasury shall take into account the executive's contributions toward the successful accomplishment of goals and objectives established under the Government Performance and Results Act of 1993, subtitle III of title 40, Revenue Procedure 64–22 (as in effect on July 30, 1997), taxpayer service surveys, and other performance metrics or plans established in consultation with the Internal Revenue Service Oversight Board.

(c) Any award in excess of 20 percent of an executive's rate of basic pay shall be approved by the Secretary of the Treasury.

(d) Notwithstanding section 5384(b)(3), the Secretary of the Treasury shall determine the aggregate amount of performance awards available to be paid during any fiscal year under this section and section 5384 to career senior executives in the Internal Revenue Service. Such amount may not exceed the maximum amount which would be allowable under paragraph (3) of section 5384(b) if such paragraph were applied by substituting ''the Internal Revenue Service'' for ''an agency''. The Internal Revenue Service shall not be included in the determination under section 5384(b)(3) of the aggregate amount of performance awards payable to career senior executives in the Department of the Treasury other than the Internal Revenue Service.

(e) Notwithstanding section 5307, a performance bonus award may not be paid to an executive in a calendar year if, or to the extent that, the executive's total annual compensation will exceed the maximum amount of total annual compensation payable at the rate determined under section 104 of title 3.

(Added Pub. L. 105–206, title I, § 1201(a), July 22, 1998, 112 Stat. 713; amended Pub. L. 107–217, § 3(a)(2), Aug. 21, 2002, 116 Stat. 1295; Pub. L. 108–7, div. J, title VI, § 645(a), Feb. 20, 2003, 117 Stat. 474; Pub. L. 110–161, div. D, title I, § 106, Dec. 26, 2007, 121 Stat. 1977.)

REFERENCES IN TEXT

The Government Performance and Results Act of 1993, referred to in subsec. (b), is Pub. L. 103–62, Aug. 3, 1993, 107 Stat. 285, which enacted section 306 of this title, sections 1115 to 1119, 9703, and 9704 of Title 31, Money and Finance, and sections 2801 to 2805 of Title 39, Postal Service, amended section 1105 of Title 31, and enacted provisions set out as notes under sections 1101 and 1115 of Title 31. For complete classification of this Act to the Code, see Short Title of 1993 Amendment note set out under section 1101 of Title 31 and Tables.

AMENDMENTS

2007—Subsec. (a). Pub. L. 110–161 substituted ''Before July 23, 2013'' for ''For a period of 10 years after the date of enactment of this section''.

2003—Subsec. (d). Pub. L. 108–7 substituted ''Such amount may not exceed the maximum amount which would be allowable under paragraph (3) of section 5384(b) if such paragraph were applied by substituting 'the Internal Revenue Service' for 'an agency'.'' for ''Such amount may not exceed an amount equal to 5 percent of the aggregate amount of basic pay paid to career senior executives in the Internal Revenue Service during the preceding fiscal year.''

2002—Subsec. (b). Pub. L. 107–217 substituted ''subtitle III of title 40'' for ''division E of the Clinger-Cohen Act of 1996 (Public Law 104–106; 110 Stat. 679)''.

EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–7, div. J, title VI, § 645(b), Feb. 20, 2003, 117 Stat. 474, provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to fiscal years beginning after September 30, 2002.''

### § 9506. Limited appointments to career reserved Senior Executive Service positions

(a) In the application of section 3132, a ''career reserved position'' in the Internal Revenue Service means a position designated under section 3132(b) which may be filled only by—

(1) a career appointee; or

(2) a limited emergency appointee or a limited term appointee—

(A) who, immediately upon entering the career reserved position, was serving under a career or career-conditional appointment outside the Senior Executive Service; or

(B) whose limited emergency or limited term appointment is approved in advance by the Office of Personnel Management.

(b)(1) The number of positions described under subsection (a) which are filled by an appointee as described under paragraph (2) of such subsection may not exceed 10 percent of the total number of Senior Executive Service positions in the Internal Revenue Service.

(2) Notwithstanding section 3132—

(A) the term of an appointee described under subsection (a)(2) may be for any period not to exceed 3 years; and

(B) such an appointee may serve—

(i) two such terms; or

(ii) two such terms in addition to any unexpired term applicable at the time of appointment.

(Added Pub. L. 105–206, title I, § 1201(a), July 22, 1998, 112 Stat. 714.)

### § 9507. Streamlined demonstration project authority

(a) The exercise of any of the flexibilities under sections 9502 through 9510 shall not affect the authority of the Secretary of the Treasury to implement for the Internal Revenue Service a demonstration project subject to chapter 47, as provided in subsection (b).

(b) In applying section 4703 to a demonstration project described in section 4701(a)(4) which involves the Internal Revenue Service—

(1) section 4703(b)(1) shall be deemed to read as follows:

''(1) develop a plan for such project which describes its purpose, the employees to be covered, the project itself, its anticipated outcomes, and the method of evaluating the project;'';

(2) section 4703(b)(3) shall not apply;

(3) the 180-day notification period in section 4703(b)(4) shall be deemed to be a notification period of 30 days;

(4) section 4703(b)(6) shall be deemed to read as follows:

''(6) provides each House of Congress with the final version of the plan.'';

(5) section 4703(c)(1) shall be deemed to read as follows:

''(1) subchapter V of chapter 63 or subpart G of part III of this title;'';

(6) the requirements of paragraphs (1)(A) and (2) of section 4703(d) shall not apply; and

(7) notwithstanding section 4703(d)(1)(B), based on an evaluation as provided in section 4703(h), the Office of Personnel Management and the Secretary of the Treasury, except as otherwise provided by this subsection, may waive the termination date of a demonstration project under section 4703(d).

(c) At least 90 days before waiving the termination date under subsection (b)(7), the Office of Personnel Management shall publish in the Federal Register a notice of its intention to waive the termination date and shall inform in writing both Houses of Congress of its intention.

(Added Pub. L. 105–206, title I, § 1201(a), July 22, 1998, 112 Stat. 715.)

### § 9508. General workforce performance management system

(a) In lieu of a performance appraisal system established under section 4302, the Secretary of the Treasury shall, within 1 year after the date of enactment of this section, establish for the Internal Revenue Service a performance management system that—

(1) maintains individual accountability by—

(A) establishing one or more retention standards for each employee related to the work of the employee and expressed in terms of individual performance, and communicating such retention standards to employees;

(B) making periodic determinations of whether each employee meets or does not meet the employee's established retention standards; and

(C) taking actions, in accordance with applicable laws and regulations, with respect to any employee whose performance does not meet established retention standards, including denying any increases in basic pay, promotions, and credit for performance under section 3502, and taking one or more of the following actions:

(i) Reassignment.

(ii) An action under chapter 43 or chapter 75 of this title.

(iii) Any other appropriate action to resolve the performance problem; and

(2) except as provided under section 1204 of the Internal Revenue Service Restructuring and Reform Act of 1998, strengthens the system's effectiveness by—

(A) establishing goals or objectives for individual, group, or organizational performance (or any combination thereof), consistent with the Internal Revenue Service's performance planning procedures, including those established under the Government Performance and Results Act of 1993, subtitle III of title 40, Revenue Procedure 64–22 (as in effect on July 30, 1997), and taxpayer service surveys, and communicating such goals or objectives to employees;

(B) using such goals and objectives to make performance distinctions among employees or groups of employees; and

(C) using performance assessments as a basis for granting employee awards, adjusting an employee's rate of basic pay, and other appropriate personnel actions, in accordance with applicable laws and regulations.

(b)(1) For purposes of subsection (a)(2), the term ''performance assessment'' means a determination of whether or not retention standards established under subsection (a)(1)(A) are met, and any additional performance determination made on the basis of performance goals and objectives established under subsection (a)(2)(A).

(2) For purposes of this title, the term ''unacceptable performance'' with respect to an employee of the Internal Revenue Service covered by a performance management system established under this section means performance of the employee which fails to meet a retention standard established under this section.

(c)(1) The Secretary of the Treasury may establish an awards program designed to provide incentives for and recognition of organizational, group, and individual achievements by providing for granting awards to employees who, as individuals or members of a group, contribute to meeting the performance goals and objectives established under this chapter by such means as a superior individual or group accomplishment, a documented productivity gain, or sustained superior performance.

(2) A cash award under subchapter I of chapter 45 may be granted to an employee of the Internal Revenue Service without the need for any approval under section 4502(b).

(d)(1) In applying sections 4303(b)(1)(A) and 7513(b)(1) to employees of the Internal Revenue Service, ''30 days'' may be deemed to be ''15 days''.

(2) Notwithstanding the second sentence of section 5335(c), an employee of the Internal Revenue Service shall not have a right to appeal the denial of a periodic step increase under section 5335 to the Merit Systems Protection Board.

(Added Pub. L. 105–206, title I, § 1201(a), July 22, 1998, 112 Stat. 715; amended Pub. L. 107–217, § 3(a)(3), Aug. 21, 2002, 116 Stat. 1295.)

REFERENCES IN TEXT

The date of enactment of this section, referred to in subsec. (a), is the date of enactment of Pub. L. 105–206, which was approved July 22, 1998.

Section 1204 of the Internal Revenue Service Restructuring and Reform Act of 1998, referred to in subsec. (a)(2), is section 1204 of Pub. L. 105–206, which is set out as a note under section 7804 of Title 26, Internal Revenue Code.

The Government Performance and Results Act of 1993, referred to in subsec. (a)(2)(A), is Pub. L. 103–62, Aug. 3, 1993, 107 Stat. 285, which enacted section 306 of this title, sections 1115 to 1119, 9703, and 9704 of Title 31, Money and Finance, and sections 2801 to 2805 of Title 39, Postal Service, amended section 1105 of Title 31, and en-

acted provisions set out as notes under sections 1101 and 1115 of Title 31. For complete classification of this Act to the Code, see Short Title of 1993 Amendment note set out under section 1101 of Title 31 and Tables.

AMENDMENTS

2002—Subsec. (a)(2)(A). Pub. L. 107–217 substituted ''subtitle III of title 40'' for ''division E of the Clinger-Cohen Act of 1996 (Public Law 104–106; 110 Stat. 679)''.

**§ 9509. General workforce classification and pay**

(a) For purposes of this section, the term ''broad-banded system'' means a system for grouping positions for pay, job evaluation, and other purposes that is different from the system established under chapter 51 and subchapter III of chapter 53 as a result of combining grades and related ranges of rates of pay in one or more occupational series.

(b)(1)(A) The Secretary of the Treasury may, subject to criteria to be prescribed by the Office of Personnel Management, establish one or more broad-banded systems covering all or any portion of the Internal Revenue Service workforce.

(B) With the approval of the Office of Personnel Management, a broad-banded system established under this section may either include or consist of positions that otherwise would be subject to subchapter IV of chapter 53 or section 5376.

(2) The Office of Personnel Management may require the Secretary of the Treasury to submit information relating to broad-banded systems at the Internal Revenue Service.

(3) Except as otherwise provided under this section, employees under a broad-banded system shall continue to be subject to the laws and regulations covering employees under the pay system that otherwise would apply to such employees.

(4) The criteria to be prescribed by the Office of Personnel Management shall, at a minimum—

(A) ensure that the structure of any broad-banded system maintains the principle of equal pay for substantially equal work;

(B) establish the minimum and maximum number of grades that may be combined into pay bands;

(C) establish requirements for setting minimum and maximum rates of pay in a pay band;

(D) establish requirements for adjusting the pay of an employee within a pay band;

(E) establish requirements for setting the pay of a supervisory employee whose position is in a pay band or who supervises employees whose positions are in pay bands; and

(F) establish requirements and methodologies for setting the pay of an employee upon conversion to a broad-banded system, initial appointment, change of position or type of appointment (including promotion, demotion, transfer, reassignment, reinstatement, placement in another pay band, or movement to a different geographic location), and movement between a broad-banded system and another pay system.

(c) With the approval of the Office of Personnel Management and in accordance with a plan for implementation submitted by the Secretary of the Treasury, the Secretary may, with respect to Internal Revenue Service employees who are covered by a broad-banded system established under this section, provide for variations from the provisions of subchapter VI of chapter 53.

(Added Pub. L. 105–206, title I, § 1201(a), July 22, 1998, 112 Stat. 716.)

**§ 9510. General workforce staffing**

(a)(1) Except as otherwise provided by this section, an employee of the Internal Revenue Service may be selected for a permanent appointment in the competitive service in the Internal Revenue Service through internal competitive promotion procedures if—

(A) the employee has completed, in the competitive service, 2 years of current continuous service under a term appointment or any combination of term appointments;

(B) such term appointment or appointments were made under competitive procedures prescribed for permanent appointments;

(C) the employee's performance under such term appointment or appointments met established retention standards, or, if not covered by a performance management system established under section 9508, was rated at the fully successful level or higher (or equivalent thereof); and

(D) the vacancy announcement for the term appointment from which the conversion is made stated that there was a potential for subsequent conversion to a permanent appointment.

(2) An appointment under this section may be made only to a position in the same line of work as a position to which the employee received a term appointment under competitive procedures.

(b)(1) Notwithstanding subchapter I of chapter 33, the Secretary of the Treasury may establish category rating systems for evaluating applicants for Internal Revenue Service positions in the competitive service under which qualified candidates are divided into two or more quality categories on the basis of relative degrees of merit, rather than assigned individual numerical ratings.

(2) Each applicant who meets the minimum qualification requirements for the position to be filled shall be assigned to an appropriate category based on an evaluation of the applicant's knowledge, skills, and abilities relative to those needed for successful performance in the position to be filled.

(3) Within each quality category established under paragraph (1), preference eligibles shall be listed ahead of individuals who are not preference eligibles. For other than scientific and professional positions at or higher than GS–9 (or equivalent), preference eligibles who have a compensable service-connected disability of 10 percent or more, and who meet the minimum qualification standards, shall be listed in the highest quality category.

(4) An appointing authority may select any applicant from the highest quality category or, if fewer than three candidates have been assigned to the highest quality category, from a merged category consisting of the highest and second highest quality categories.

(5) Notwithstanding paragraph (4), the appointing authority may not pass over a preference eligible in the same or higher category from which selection is made unless the requirements of section 3317(b) or 3318(b), as applicable, are satisfied.

(c) The Secretary of the Treasury may detail employees among the offices of the Internal Revenue Service without regard to the 120-day limitation in section 3341(b).

(d) Notwithstanding any other provision of law, the Secretary of the Treasury may establish a probationary period under section 3321 of up to 3 years for Internal Revenue Service positions if the Secretary of the Treasury determines that the nature of the work is such that a shorter period is insufficient to demonstrate complete proficiency in the position.

(e) Nothing in this section exempts the Secretary of the Treasury from—

(1) any employment priority established under direction of the President for the placement of surplus or displaced employees; or

(2) any obligation under a court order or decree relating to the employment practices of the Internal Revenue Service or the Department of the Treasury.

(Added Pub. L. 105–206, title I, § 1201(a), July 22, 1998, 112 Stat. 717.)

REFERENCES IN TEXT

GS–9, referred to in subsec. (b)(3), is contained in the General Schedule which is set out under section 5332 of this title.

## CHAPTER 97—DEPARTMENT OF HOMELAND SECURITY

Sec.
9701. Establishment of human resources management system.

### § 9701. Establishment of human resources management system

(a) IN GENERAL.—Notwithstanding any other provision of this part, the Secretary of Homeland Security may, in regulations prescribed jointly with the Director of the Office of Personnel Management, establish, and from time to time adjust, a human resources management system for some or all of the organizational units of the Department of Homeland Security.

(b) SYSTEM REQUIREMENTS.—Any system established under subsection (a) shall—

(1) be flexible;

(2) be contemporary;

(3) not waive, modify, or otherwise affect—

(A) the public employment principles of merit and fitness set forth in section 2301, including the principles of hiring based on merit, fair treatment without regard to political affiliation or other nonmerit considerations, equal pay for equal work, and protection of employees against reprisal for whistleblowing;

(B) any provision of section 2302, relating to prohibited personnel practices;

(C)(i) any provision of law referred to in section 2302(b)(1), (8), and (9); or

(ii) any provision of law implementing any provision of law referred to in section 2302(b)(1), (8), and (9) 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;

(D) any other provision of this part (as described in subsection (c)); or

(E) any rule or regulation prescribed under any provision of law referred to in any of the preceding subparagraphs of this paragraph;

(4) ensure that employees may organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them, subject to any exclusion from coverage or limitation on negotiability established by law; and

(5) permit the use of a category rating system for evaluating applicants for positions in the competitive service.

(c) OTHER NONWAIVABLE PROVISIONS.—The other provisions of this part as referred to in subsection (b)(3)(D), are (to the extent not otherwise specified in subparagraph (A), (B), (C), or (D) of subsection (b)(3))—

(1) subparts A, B, E, G, and H of this part; and

(2) chapters 41, 45, 47, 55, 57, 59, 72, 73, and 79, and this chapter.

(d) LIMITATIONS RELATING TO PAY.—Nothing in this section shall constitute authority—

(1) to modify the pay of any employee who serves in—

(A) an Executive Schedule position under subchapter II of chapter 53 of title 5, United States Code; or

(B) a position for which the rate of basic pay is fixed in statute by reference to a section or level under subchapter II of chapter 53 of such title 5;

(2) to fix pay for any employee or position at an annual rate greater than the maximum amount of cash compensation allowable under section 5307 of such title 5 in a year; or

(3) to exempt any employee from the application of such section 5307.

(e) PROVISIONS TO ENSURE COLLABORATION WITH EMPLOYEE REPRESENTATIVES.—

(1) IN GENERAL.—In order to ensure that the authority of this section is exercised in collaboration with, and in a manner that ensures the participation of employee representatives in the planning, development, and implementation of any human resources management system or adjustments to such system under this section, the Secretary of Homeland Security and the Director of the Office of Personnel Management shall provide for the following:

(A) NOTICE OF PROPOSAL.—The Secretary and the Director shall, with respect to any proposed system or adjustment—

(i) provide to each employee representative representing any employees who might be affected, a written description of the proposed system or adjustment (including the reasons why it is considered necessary);

(ii) give each representative 30 calendar days (unless extraordinary circumstances

require earlier action) to review and make recommendations with respect to the proposal; and

(iii) give any recommendations received from any such representatives under clause (ii) full and fair consideration in deciding whether or how to proceed with the proposal.

(B) PRE-IMPLEMENTATION CONGRESSIONAL NOTIFICATION, CONSULTATION, AND MEDIATION.—Following receipt of recommendations, if any, from employee representatives with respect to a proposal described in subparagraph (A), the Secretary and the Director shall accept such modifications to the proposal in response to the recommendations as they determine advisable and shall, with respect to any parts of the proposal as to which they have not accepted the recommendations—

(i) notify Congress of those parts of the proposal, together with the recommendations of employee representatives;

(ii) meet and confer for not less than 30 calendar days with any representatives who have made recommendations, in order to attempt to reach agreement on whether or how to proceed with those parts of the proposal; and

(iii) at the Secretary's option, or if requested by a majority of the employee representatives who have made recommendations, use the services of the Federal Mediation and Conciliation Service during such meet and confer period to facilitate the process of attempting to reach agreement.

(C) IMPLEMENTATION.—

(i) Any part of the proposal as to which the representatives do not make a recommendation, or as to which their recommendations are accepted by the Secretary and the Director, may be implemented immediately.

(ii) With respect to any parts of the proposal as to which recommendations have been made but not accepted by the Secretary and the Director, at any time after 30 calendar days have elapsed since the initiation of the congressional notification, consultation, and mediation procedures set forth in subparagraph (B), if the Secretary determines, in the Secretary's sole and unreviewable discretion, that further consultation and mediation is unlikely to produce agreement, the Secretary may implement any or all of such parts, including any modifications made in response to the recommendations as the Secretary determines advisable.

(iii) The Secretary shall promptly notify Congress of the implementation of any part of the proposal and shall furnish with such notice an explanation of the proposal, any changes made to the proposal as a result of recommendations from employee representatives, and of the reasons why implementation is appropriate under this subparagraph.

(D) CONTINUING COLLABORATION.—If a proposal described in subparagraph (A) is implemented, the Secretary and the Director shall—

(i) develop a method for each employee representative to participate in any further planning or development which might become necessary; and

(ii) give each employee representative adequate access to information to make that participation productive.

(2) PROCEDURES.—Any procedures necessary to carry out this subsection shall be established by the Secretary and the Director jointly as internal rules of departmental procedure which shall not be subject to review. Such procedures shall include measures to ensure—

(A) in the case of employees within a unit with respect to which a labor organization is accorded exclusive recognition, representation by individuals designated or from among individuals nominated by such organization;

(B) in the case of any employees who are not within such a unit, representation by any appropriate organization which represents a substantial percentage of those employees or, if none, in such other manner as may be appropriate, consistent with the purposes of the subsection;

(C) the fair and expeditious handling of the consultation and mediation process described in subparagraph (B) of paragraph (1), including procedures by which, if the number of employee representatives providing recommendations exceeds 5, such representatives select a committee or other unified representative with which the Secretary and Director may meet and confer; and

(D) the selection of representatives in a manner consistent with the relative number of employees represented by the organizations or other representatives involved.

(f) PROVISIONS RELATING TO APPELLATE PROCEDURES.—

(1) SENSE OF CONGRESS.—It is the sense of Congress that—

(A) employees of the Department are entitled to fair treatment in any appeals that they bring in decisions relating to their employment; and

(B) in prescribing regulations for any such appeals procedures, the Secretary and the Director of the Office of Personnel Management—

(i) should ensure that employees of the Department are afforded the protections of due process; and

(ii) toward that end, should be required to consult with the Merit Systems Protection Board before issuing any such regulations.

(2) REQUIREMENTS.—Any regulations under this section which relate to any matters within the purview of chapter 77—

(A) shall be issued only after consultation with the Merit Systems Protection Board;

(B) shall ensure the availability of procedures which shall—

(i) be consistent with requirements of due process; and

(ii) provide, to the maximum extent practicable, for the expeditious handling of

any matters involving the Department; and

(C) shall modify procedures under chapter 77 only insofar as such modifications are designed to further the fair, efficient, and expeditious resolution of matters involving the employees of the Department.

(g) PROVISIONS RELATING TO LABOR-MANAGEMENT RELATIONS.—Nothing in this section shall be construed as conferring authority on the Secretary of Homeland Security to modify any of the provisions of section 842 of the Homeland Security Act of 2002.

(h) SUNSET PROVISION.—Effective 5 years after the conclusion of the transition period defined under section 1501 of the Homeland Security Act of 2002, all authority to issue regulations under this section (including regulations which would modify, supersede, or terminate any regulations previously issued under this section) shall cease to be available.

(Added Pub. L. 107–296, title VIII, § 841(a)(2), Nov. 25, 2002, 116 Stat. 2230.)

REFERENCES IN TEXT

Section 842 of the Homeland Security Act of 2002, referred to in subsec. (g), is classified to section 412 of Title 6, Domestic Security.

Section 1501 of the Homeland Security Act of 2002, referred to in subsec. (h), is classified to section 541 of Title 6, Domestic Security.

EFFECTIVE DATE

Section effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as a note under section 101 of Title 6, Domestic Security.

ALLOWANCES AND BENEFITS FOR PERSONNEL ABROAD

Pub. L. 111–83, title V, § 546, Oct. 28, 2009, 123 Stat. 2177, provided that: ''For fiscal year 2010 and thereafter, the Secretary [of Homeland Security] may provide to personnel appointed or assigned to serve abroad, allowances and benefits similar to those provided under chapter 9 of title I of the Foreign Service Act of 1990 [1980] (22 U.S.C. 4081 et seq.).''

## CHAPTER 98—NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

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### § 9801. Definitions

For purposes of this chapter—

(1) the term ''Administration'' means the National Aeronautics and Space Administration;

(2) the term ''Administrator'' means the Administrator of the National Aeronautics and Space Administration;

(3) the term ''critical need'' means a specific and important safety, management, engineering, science, research, or operations requirement of the Administration's mission that the Administration is unable to fulfill because the Administration lacks the appropriate employees because—

(A) of the inability to fill positions; or

(B) employees do not possess the requisite skills;

(4) the term ''employee'' means an individual employed in or under the Administration;

(5) the term ''workforce plan'' means the plan required under section 9802(a);

(6) the term ''appropriate committees of Congress'' means—

(A) the Committees on Government Reform, Science, and Appropriations of the House of Representatives; and

(B) the Committees on Governmental Affairs, Commerce, Science, and Transportation, and Appropriations of the Senate;

(7) the term ''redesignation bonus'' means a bonus under section 9804 paid to an individual described in subsection (a)(2) thereof;

(8) the term ''supervisor'' has the meaning given such term by section 7103(a)(10); and

(9) the term ''management official'' has the meaning given such term by section 7103(a)(11).

(Added Pub. L. 108–201, § 3(a), Feb. 24, 2004, 118 Stat. 461.)

CHANGE OF NAME

Committee on Government Reform of House of Representatives changed to Committee on Oversight and Government Reform of House of Representatives and Committee on Science of House of Representatives changed to Committee on Science and Technology of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007.

Committee on Governmental Affairs of Senate changed to Committee on Homeland Security and Governmental Affairs of Senate, effective Jan. 4, 2005, by Senate Resolution No. 445, One Hundred Eighth Congress, Oct. 9, 2004.

### § 9802. Planning, notification, and reporting requirements

(a) Not later than 90 days before exercising any of the workforce authorities made available under this chapter, the Administrator shall submit a written plan to the appropriate committees of Congress. Such plan shall be approved by the Office of Personnel Management.

(b) A workforce plan shall include a description of—

(1) each critical need of the Administration and the criteria used in the identification of that need;

(2)(A) the functions, approximate number, and classes or other categories of positions or employees that—

(i) address critical needs; and

(ii) would be eligible for each authority proposed to be exercised under this chapter; and

(B) how the exercise of those authorities with respect to the eligible positions or em-

ployees involved would address each critical need identified under paragraph (1);

(3)(A) any critical need identified under paragraph (1) which would not be addressed by the authorities made available under this chapter; and

(B) the reasons why those needs would not be so addressed;

(4) the specific criteria to be used in determining which individuals may receive the benefits described under sections 9804 and 9805 (including the criteria for granting bonuses in the absence of a critical need), and how the level of those benefits will be determined;

(5) the safeguards or other measures that will be applied to ensure that this chapter is carried out in a manner consistent with merit system principles;

(6) the means by which employees will be afforded the notification required under subsections (c) and (d)(1)(B);

(7) the methods that will be used to determine if the authorities exercised under this chapter have successfully addressed each critical need identified under paragraph (1);

(8)(A) the recruitment methods used by the Administration before the enactment of this chapter to recruit highly qualified individuals; and

(B) the changes the Administration will implement after the enactment of this chapter in order to improve its recruitment of highly qualified individuals, including how it intends to use—

(i) nongovernmental recruitment or placement agencies; and

(ii) Internet technologies; and

(9) any workforce-related reforms required to resolve the findings and recommendations of the Columbia Accident Investigation Board, the extent to which those recommendations were accepted, and, if necessary, the reasons why any of those recommendations were not accepted.

(c) Not later than 60 days before first exercising any of the workforce authorities made available under this chapter, the Administrator shall provide to all employees the workforce plan and any additional information which the Administrator considers appropriate.

(d)(1)(A) The Administrator may from time to time modify the workforce plan. Any modification to the workforce plan shall be submitted to the Office of Personnel Management for approval by the Office before the modification may be implemented.

(B) Not later than 60 days before implementing any such modifications, the Administrator shall provide an appropriately modified plan to all employees of the Administration and to the appropriate committees of Congress.

(2) Any reference in this chapter or any other provision of law to the workforce plan shall be considered to include any modification made in accordance with this subsection.

(e) Before submitting any written plan under subsection (a) (or modification under subsection (d)) to the Office of Personnel Management, the Administrator shall—

(1) provide to each employee representative representing any employees who might be affected by such plan (or modification) a copy of the proposed plan (or modification);

(2) give each representative 30 calendar days (unless extraordinary circumstances require earlier action) to review and make recommendations with respect to the proposed plan (or modification); and

(3) give any recommendations received from any such representatives under paragraph (2) full and fair consideration in deciding whether or how to proceed with respect to the proposed plan (or modification).

(f) None of the workforce authorities made available under this chapter may be exercised in a manner inconsistent with the workforce plan.

(g) Whenever the Administration submits its performance plan under section 1115 of title 31 to the Office of Management and Budget for any year, the Administration shall at the same time submit a copy of such plan to the appropriate committees of Congress.

(h) Not later than 6 years after the date of enactment of this chapter, the Administrator shall submit to the appropriate committees of Congress an evaluation and analysis of the actions taken by the Administration under this chapter, including—

(1) an evaluation, using the methods described in subsection (b)(7), of whether the authorities exercised under this chapter successfully addressed each critical need identified under subsection (b)(1);

(2) to the extent that they did not, an explanation of the reasons why any critical need (apart from the ones under subsection (b)(3)) was not successfully addressed; and

(3) recommendations for how the Administration could address any remaining critical need and could prevent those that have been addressed from recurring.

(i) The budget request for the Administration for the first fiscal year beginning after the date of enactment of this chapter and for each fiscal year thereafter shall include a statement of the total amount of appropriations requested for such fiscal year to carry out this chapter.

(Added Pub. L. 108–201, § 3(a), Feb. 24, 2004, 118 Stat. 462.)

REFERENCES IN TEXT

The date of enactment of this chapter, referred to in subsecs. (h) and (i), is the date of enactment of Pub. L. 108–201, which was approved Feb. 24, 2004.

### § 9803. Restrictions

(a) None of the workforce authorities made available under this chapter may be exercised with respect to any officer who is appointed by the President, by and with the advice and consent of the Senate.

(b) Unless specifically stated otherwise, all workforce authorities made available under this chapter shall be subject to section 5307.

(c)(1) None of the workforce authorities made available under section 9804, 9805, 9806, 9807, 9809, 9812, 9813, 9814, or 9815 may be exercised with respect to a political appointee.

(2) For purposes of this subsection, the term ''political appointee'' means an employee who holds—

(A) a position which has been excepted from the competitive service by reason of its confidential, policy-determining, policy-making, or policy-advocating character; or

(B) a position in the Senior Executive Service as a noncareer appointee (as such term is defined in section 3132(a)).

(Added Pub. L. 108–201, § 3(a), Feb. 24, 2004, 118 Stat. 464.)

**§ 9804. Recruitment, redesignation, and relocation bonuses**

(a) Notwithstanding section 5753, the Administrator may pay a bonus to an individual, in accordance with the workforce plan and subject to the limitations in this section, if—

(1) the Administrator determines that the Administration would be likely, in the absence of a bonus, to encounter difficulty in filling a position; and

(2) the individual—

(A) is newly appointed as an employee of the Federal Government;

(B) is currently employed by the Federal Government and is newly appointed to another position in the same geographic area; or

(C) is currently employed by the Federal Government and is required to relocate to a different geographic area to accept a position with the Administration.

(b) If the position is described as addressing a critical need in the workforce plan under section 9802(b)(2)(A), the amount of a bonus may not exceed—

(1) 50 percent of the employee's annual rate of basic pay (including comparability payments under sections 5304 and 5304a) as of the beginning of the service period multiplied by the service period specified under subsection (d)(1)(B)(i); or

(2) 100 percent of the employee's annual rate of basic pay (including comparability payments under sections 5304 and 5304a) as of the beginning of the service period.

(c) If the position is not described as addressing a critical need in the workforce plan under section 9802(b)(2)(A), the amount of a bonus may not exceed 25 percent of the employee's annual rate of basic pay (excluding comparability payments under sections 5304 and 5304a) as of the beginning of the service period.

(d)(1)(A) Payment of a bonus under this section shall be contingent upon the individual entering into a service agreement with the Administration.

(B) At a minimum, the service agreement shall include—

(i) the required service period;

(ii) the method of payment, including a payment schedule, which may include a lump-sum payment, installment payments, or a combination thereof;

(iii) the amount of the bonus and the basis for calculating that amount; and

(iv) the conditions under which the agreement may be terminated before the agreed-upon service period has been completed, and the effect of the termination.

(2) For purposes of determinations under subsections (b)(1) and (c)(1), the employee's service period shall be expressed as the number equal to the full years and twelfth parts thereof, rounding the fractional part of a month to the nearest twelfth part of a year. The service period may not be less than 6 months and may not exceed 4 years.

(3) A bonus under this section may not be considered to be part of the basic pay of an employee.

(e) Before paying a bonus under this section, the Administration shall establish a plan for paying recruitment, redesignation, and relocation bonuses, subject to approval by the Office of Personnel Management.

(f) No more than 25 percent of the total amount in bonuses awarded under subsection (a) in any year may be awarded to supervisors or management officials.

(Added Pub. L. 108–201, § 3(a), Feb. 24, 2004, 118 Stat. 464.)

**§ 9805. Retention bonuses**

(a) Notwithstanding section 5754, the Administrator may pay a bonus to an employee, in accordance with the workforce plan and subject to the limitations in this section, if the Administrator determines that—

(1) the unusually high or unique qualifications of the employee or a special need of the Administration for the employee's services makes it essential to retain the employee; and

(2) the employee would be likely to leave in the absence of a retention bonus.

(b) If the position is described as addressing a critical need in the workforce plan under section 9802(b)(2)(A), the amount of a bonus may not exceed 50 percent of the employee's annual rate of basic pay (including comparability payments under sections 5304 and 5304a).

(c) If the position is not described as addressing a critical need in the workforce plan under section 9802(b)(2)(A), the amount of a bonus may not exceed 25 percent of the employee's annual rate of basic pay (excluding comparability payments under sections 5304 and 5304a).

(d)(1)(A) Payment of a bonus under this section shall be contingent upon the employee entering into a service agreement with the Administration.

(B) At a minimum, the service agreement shall include—

(i) the required service period;

(ii) the method of payment, including a payment schedule, which may include a lump-sum payment, installment payments, or a combination thereof;

(iii) the amount of the bonus and the basis for calculating the amount; and

(iv) the conditions under which the agreement may be terminated before the agreed-upon service period has been completed, and the effect of the termination.

(2) The employee's service period shall be expressed as the number equal to the full years and twelfth parts thereof, rounding the fractional part of a month to the nearest twelfth part of a year. The service period may not be less than 6 months and may not exceed 4 years.

(3) Notwithstanding paragraph (1), a service agreement is not required if the Administration pays a bonus in biweekly installments and sets the installment payment at the full bonus percentage rate established for the employee, with no portion of the bonus deferred. In this case, the Administration shall inform the employee in writing of any decision to change the retention bonus payments. The employee shall continue to accrue entitlement to the retention bonus through the end of the pay period in which such written notice is provided.

(e) A bonus under this section may not be considered to be part of the basic pay of an employee.

(f) An employee is not entitled to a retention bonus under this section during a service period previously established for that employee under section 5753 or under section 9804.

(g) No more than 25 percent of the total amount in bonuses awarded under subsection (a) in any year may be awarded to supervisors or management officials.

(Added Pub. L. 108–201, § 3(a), Feb. 24, 2004, 118 Stat. 465.)

**§ 9806. Term appointments**

(a) The Administrator may authorize term appointments within the Administration under subchapter I of chapter 33, for a period of not less than 1 year and not more than 6 years.

(b) Notwithstanding chapter 33 or any other provision of law relating to the examination, certification, and appointment of individuals in the competitive service, the Administrator may convert an employee serving under a term appointment to a permanent appointment in the competitive service within the Administration without further competition if—

(1) such individual was appointed under open, competitive examination under subchapter I of chapter 33 to the term position;

(2) the announcement for the term appointment from which the conversion is made stated that there was potential for subsequent conversion to a career-conditional or career appointment;

(3) the employee has completed at least 2 years of current continuous service under a term appointment in the competitive service;

(4) the employee's performance under such term appointment was at least fully successful or equivalent; and

(5) the position to which such employee is being converted under this section is in the same occupational series, is in the same geographic location, and provides no greater promotion potential than the term position for which the competitive examination was conducted.

(c) Notwithstanding chapter 33 or any other provision of law relating to the examination, certification, and appointment of individuals in the competitive service, the Administrator may convert an employee serving under a term appointment to a permanent appointment in the competitive service within the Administration through internal competitive promotion procedures if the conditions under paragraphs (1) through (4) of subsection (b) are met.

(d) An employee converted under this section becomes a career-conditional employee, unless the employee has otherwise completed the service requirements for career tenure.

(e) An employee converted to career or career-conditional employment under this section acquires competitive status upon conversion.

(Added Pub. L. 108–201, § 3(a), Feb. 24, 2004, 118 Stat. 466.)

**§ 9807. Pay authority for critical positions**

(a) In this section, the term ''position'' means—

(1) a position to which chapter 51 applies, including a position in the Senior Executive Service;

(2) a position under the Executive Schedule under sections 5312 through 5317;

(3) a position established under section 3104; or

(4) a senior-level position to which section 5376(a)(1) applies.

(b) Authority under this section—

(1) may be exercised only with respect to a position that—

(A) is described as addressing a critical need in the workforce plan under section 9802(b)(2)(A); and

(B) requires expertise of an extremely high level in a scientific, technical, professional, or administrative field;

(2) may be exercised only to the extent necessary to recruit or retain an individual exceptionally well qualified for the position; and

(3) may be exercised only in retaining employees of the Administration or in appointing individuals who were not employees of another Federal agency as defined under section 5102(a)(1).

(c)(1) Notwithstanding section 5377, the Administrator may fix the rate of basic pay for a position in the Administration in accordance with this section. The Administrator may not delegate this authority.

(2) The number of positions with pay fixed under this section may not exceed 10 at any time.

(d)(1) The rate of basic pay fixed under this section may not be less than the rate of basic pay (including any comparability payments) which would otherwise be payable for the position involved if this section had never been enacted.

(2) The annual rate of basic pay fixed under this section may not exceed the per annum rate of salary payable under section 104 of title 3.

(3) Notwithstanding any provision of section 5307, in the case of an employee who, during any calendar year, is receiving pay at a rate fixed under this section, no allowance, differential, bonus, award, or similar cash payment may be paid to such employee if, or to the extent that, when added to 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 per annum rate of salary which, as of the end of

such calendar year, is payable under section 104 of title 3.

(Added Pub. L. 108–201, § 3(a), Feb. 24, 2004, 118 Stat. 467.)

### § 9808. Assignments of intergovernmental personnel

For purposes of applying the third sentence of section 3372(a) (relating to the authority of the head of a Federal agency to extend the period of an employee's assignment to or from a State or local government, institution of higher education, or other organization), the Administrator may, with the concurrence of the employee and the government or organization concerned, take any action which would be allowable if such sentence had been amended by striking ''two'' and inserting ''four''.

(Added Pub. L. 108–201, § 3(a), Feb. 24, 2004, 118 Stat. 468.)

### § 9809. Science and technology scholarship program

(a)(1) The Administrator shall establish a National Aeronautics and Space Administration Science and Technology Scholarship Program to award scholarships to individuals that is designed to recruit and prepare students for careers in the Administration.

(2) Individuals shall be selected to receive scholarships under this section through a competitive process primarily on the basis of academic merit, with consideration given to financial need and the goal of promoting the participation of individuals identified in section 33 or 34 of the Science and Engineering Equal Opportunities Act (42 U.S.C. 1885a or 1885b).

(3) To carry out the Program the Administrator shall enter into contractual agreements with individuals selected under paragraph (2) under which the individuals agree to serve as full-time employees of the Administration, for the period described in subsection (f)(1), in positions needed by the Administration and for which the individuals are qualified, in exchange for receiving a scholarship.

(b) In order to be eligible to participate in the Program, an individual must—

(1) be enrolled or accepted for enrollment as a full-time student at an institution of higher education in an academic field or discipline described in the list made available under subsection (d);

(2) be a United States citizen or permanent resident; and

(3) at the time of the initial scholarship award, not be an employee (as defined in section 2105).

(c) An individual seeking a scholarship under this section shall submit an application to the Administrator at such time, in such manner, and containing such information, agreements, or assurances as the Administrator may require to carry out this section.

(d) The Administrator shall make publicly available a list of academic programs and fields of study for which scholarships under the Program may be utilized and shall update the list as necessary.

(e)(1) The Administrator may provide a scholarship under the Program for an academic year if the individual applying for the scholarship has submitted to the Administrator, as part of the application required under subsection (c), a proposed academic program leading to a degree in a program or field of study on the list made available under subsection (d).

(2) An individual may not receive a scholarship under this section for more than 4 academic years, unless the Administrator grants a waiver.

(3) The dollar amount of a scholarship under this section for an academic year shall be determined under regulations issued by the Administrator, but shall in no case exceed the cost of attendance.

(4) A scholarship provided under this section may be expended for tuition, fees, and other authorized expenses as established by the Administrator by regulation.

(5) The Administrator may enter into a contractual agreement with an institution of higher education under which the amounts provided for a scholarship under this section for tuition, fees, and other authorized expenses are paid directly to the institution with respect to which the scholarship is provided.

(f)(1) The period of service for which an individual shall be obligated to serve as an employee of the Administration is, except as provided in subsection (h)(2), 24 months for each academic year for which a scholarship under this section is provided.

(2)(A) Except as provided in subparagraph (B), obligated service under paragraph (1) shall begin not later than 60 days after the individual obtains the educational degree for which the scholarship was provided.

(B) The Administrator may defer the obligation of an individual to provide a period of service under paragraph (1) if the Administrator determines that such a deferral is appropriate. The Administrator shall prescribe the terms and conditions under which a service obligation may be deferred through regulation.

(g)(1) Scholarship recipients who fail to maintain a high level of academic standing, as defined by the Administrator by regulation, who are dismissed from their educational institutions for disciplinary reasons, or who voluntarily terminate academic training before graduation from the educational program for which the scholarship was awarded, shall be in breach of their contractual agreement and, in lieu of any service obligation arising under such agreement, shall be liable to the United States for repayment within 1 year after the date of default of all scholarship funds paid to them and to the institution of higher education on their behalf under the agreement, except as provided in subsection (h)(2). The repayment period may be extended by the Administrator when determined to be necessary, as established by regulation.

(2) Scholarship recipients who, for any reason, fail to begin or complete their service obligation after completion of academic training, or fail to comply with the terms and conditions of deferment established by the Administrator pursuant to subsection (f)(2)(B), shall be in breach of their contractual agreement. When recipients breach their agreements for the reasons stated in the

preceding sentence, the recipient shall be liable to the United States for an amount equal to—

(A) the total amount of scholarships received by such individual under this section; plus

(B) the interest on the amounts of such awards which would be payable if at the time the awards were received they were loans bearing interest at the maximum legal prevailing rate, as determined by the Treasurer of the United States.

(h)(1) Any obligation of an individual incurred under the Program (or a contractual agreement thereunder) for service or payment shall be canceled upon the death of the individual.

(2) The Administrator shall by regulation provide for the partial or total waiver or suspension of any obligation of service or payment incurred by an individual under the Program (or a contractual agreement thereunder) whenever compliance by the individual is impossible or would involve extreme hardship to the individual, or if enforcement of such obligation with respect to the individual would be contrary to the best interests of the Government.

(i) For purposes of this section—

(1) the term ''cost of attendance'' has the meaning given that term in section 472 of the Higher Education Act of 1965;

(2) the term ''institution of higher education'' has the meaning given that term in section 101(a) of the Higher Education Act of 1965; and

(3) the term ''Program'' means the National Aeronautics and Space Administration Science and Technology Scholarship Program established under this section.

(j)(1) There is authorized to be appropriated to the Administration for the Program $10,000,000 for each fiscal year.

(2) Amounts appropriated under this section shall remain available for 2 fiscal years.

(Added Pub. L. 108–201, § 3(a), Feb. 24, 2004, 118 Stat. 468; amended Pub. L. 109–155, title VII, § 703(a), Dec. 30, 2005, 119 Stat. 2936.)

REFERENCES IN TEXT

Sections 101(a) and 472 of the Higher Education Act of 1965, referred to in subsec. (i), are classified to sections 1001(a) and 1087*ll*, respectively, of Title 20, Education.

AMENDMENTS

2005—Subsec. (a)(2). Pub. L. 109–155, § 703(a)(1), substituted ''Act (42 U.S.C. 1885a or 1885b).'' for ''Act.''

Subsec. (c). Pub. L. 109–155, § 703(a)(2), substituted ''require to carry out this section.'' for ''require.''

Subsec. (f)(1). Pub. L. 109–155, § 703(a)(3), struck out at end ''Under no circumstances shall the total period of obligated service be more than 4 years.''

Subsec. (g)(2). Pub. L. 109–155, § 703(a)(4), substituted a period for a comma at end of subpar. (B) and struck out concluding provisions which read: ''multiplied by 3.''

## § 9810. Distinguished scholar appointment authority

(a) In this section—

(1) the term ''professional position'' means a position that is classified to an occupational series identified by the Office of Personnel Management as a position that—

(A) requires education and training in the principles, concepts, and theories of the occupation that typically can be gained only through completion of a specified curriculum at a recognized college or university; and

(B) is covered by the Group Coverage Qualification Standard for Professional and Scientific Positions; and

(2) the term ''research position'' means a position in a professional series that primarily involves scientific inquiry or investigation, or research-type exploratory development of a creative or scientific nature, where the knowledge required to perform the work successfully is acquired typically and primarily through graduate study.

(b) The Administration may appoint, without regard to the provisions of section 3304(b) and sections 3309 through 3318, but subject to subsection (c), candidates directly to General Schedule professional, competitive service positions in the Administration for which public notice has been given (in accordance with regulations of the Office of Personnel Management), if—

(1) with respect to a position at the GS–7 level, the individual—

(A) received, within 2 years before the effective date of the appointment, from an accredited institution authorized to grant baccalaureate degrees, a baccalaureate degree in a field of study for which possession of that degree in conjunction with academic achievements meets the qualification standards as prescribed by the Office of Personnel Management for the position to which the individual is being appointed; and

(B) achieved a cumulative grade point average of 3.0 or higher on a 4.0 scale and a grade point average of 3.5 or higher for courses in the field of study required to qualify for the position;

(2) with respect to a position at the GS–9 level, the individual—

(A) received, within 2 years before the effective date of the appointment, from an accredited institution authorized to grant graduate degrees, a graduate degree in a field of study for which possession of that degree meets the qualification standards at this grade level as prescribed by the Office of Personnel Management for the position to which the individual is being appointed; and

(B) achieved a cumulative grade point average of 3.5 or higher on a 4.0 scale in graduate coursework in the field of study required for the position;

(3) with respect to a position at the GS–11 level, the individual—

(A) received, within 2 years before the effective date of the appointment, from an accredited institution authorized to grant graduate degrees, a graduate degree in a field of study for which possession of that degree meets the qualification standards at this grade level as prescribed by the Office of Personnel Management for the position to which the individual is being appointed; and

(B) achieved a cumulative grade point average of 3.5 or higher on a 4.0 scale in grad-

uate coursework in the field of study required for the position; or

(4) with respect to a research position at the GS–12 level, the individual—

(A) received, within 2 years before the effective date of the appointment, from an accredited institution authorized to grant graduate degrees, a graduate degree in a field of study for which possession of that degree meets the qualification standards at this grade level as prescribed by the Office of Personnel Management for the position to which the individual is being appointed; and

(B) achieved a cumulative grade point average of 3.5 or higher on a 4.0 scale in graduate coursework in the field of study required for the position.

(c) In making any selections under this section, preference eligibles who meet the criteria for distinguished scholar appointments shall be considered ahead of nonpreference eligibles.

(d) An appointment made under this authority shall be a career-conditional appointment in the competitive civil service.

(Added Pub. L. 108–201, § 3(a), Feb. 24, 2004, 118 Stat. 470.)

REFERENCES IN TEXT

The General Schedule, referred to in subsec. (b), is set out under section 5332 of this title.

### § 9811. Travel and transportation expenses of certain new appointees

(a) In this section, the term ''new appointee'' means—

(1) a person newly appointed or reinstated to Federal service to the Administration to—

(A) a career or career-conditional appointment or an excepted service appointment to a continuing position;

(B) a term appointment;

(C) an excepted service appointment that provides for noncompetitive conversion to a career or career-conditional appointment;

(D) a career or limited term Senior Executive Service appointment;

(E) an appointment made under section 20113(b)(1) of title 51;

(F) an appointment to a position established under section 3104; or

(G) an appointment to a position established under section 5108; or

(2) a student trainee who, upon completion of academic work, is converted to an appointment in the Administration that is identified in paragraph (1) in accordance with an appropriate authority.

(b) The Administrator may pay the travel, transportation, and relocation expenses of a new appointee to the same extent, in the same manner, and subject to the same conditions as the payment of such expenses under sections 5724, 5724a, 5724b, and 5724c to an employee transferred in the interests of the United States Government.

(Added Pub. L. 108–201, § 3(a), Feb. 24, 2004, 118 Stat. 472; amended Pub. L. 111–314, § 4(a), Dec. 18, 2010, 124 Stat. 3440.)

AMENDMENTS

2010—Subsec. (a)(1)(E). Pub. L. 111–314 substituted ''section 20113(b)(1) of title 51'' for ''section 203(c)(2)(A) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2473(c)(2)(A))''.

### § 9812. Annual leave enhancements

(a) In this section—

(1) the term ''newly appointed employee'' means an individual who is first appointed—

(A) as an employee of the Federal Government; or

(B) as an employee of the Federal Government following a break in service of at least 90 days after that individual's last period of Federal employment, other than—

(i) employment under the Student Educational Employment Program administered by the Office of Personnel Management;

(ii) employment as a law clerk trainee;

(iii) employment under a short-term temporary appointing authority while a student during periods of vacation from the educational institution at which the student is enrolled;

(iv) employment under a provisional appointment if the new appointment is permanent and immediately follows the provisional appointment; or

(v) employment under a temporary appointment that is neither full-time nor the principal employment of the individual;

(2) the term ''period of qualified non-Federal service'' means any period of service performed by an individual that—

(A) was performed in a position the duties of which were directly related to the duties of the position in the Administration which that individual will fill as a newly appointed employee; and

(B) except for this section, would not otherwise be service performed by an employee for purposes of section 6303; and

(3) the term ''directly related to the duties of the position'' means duties and responsibilities in the same line of work which require similar qualifications.

(b)(1) For purposes of section 6303, the Administrator may deem a period of qualified non-Federal service performed by a newly appointed employee to be a period of service of equal length performed as an employee.

(2) A decision under paragraph (1) to treat a period of qualified non-Federal service as if it were service performed as an employee shall continue to apply so long as that individual serves in or under the Administration.

(c)(1) Notwithstanding section 6303(a), the annual leave accrual rate for an employee of the Administration in a position paid under section 5376 or 5383, or for an employee in an equivalent category whose rate of basic pay is greater than the rate payable at GS–15, step 10, shall be 1 day for each full biweekly pay period.

(2) The accrual rate established under this subsection shall continue to apply to the employee so long as such employee serves in or under the Administration.

(Added Pub. L. 108–201, § 3(a), Feb. 24, 2004, 118 Stat. 472.)

REFERENCES IN TEXT

GS–15, referred to in subsec. (c)(1), is contained in the General Schedule, which is set out under section 5332 of this title.

### § 9813. Limited appointments to Senior Executive Service positions

(a) In this section—

(1) the term ''career reserved position'' means a position in the Administration designated under section 3132(b) which may be filled only by—

(A) a career appointee; or

(B) a limited emergency appointee or a limited term appointee—

(i) who, immediately before entering the career reserved position, was serving under a career or career-conditional appointment outside the Senior Executive Service; or

(ii) whose limited emergency or limited term appointment is approved in advance by the Office of Personnel Management;

(2) the term ''limited emergency appointee'' has the meaning given under section 3132; and

(3) the term ''limited term appointee'' means an individual appointed to a Senior Executive Service position in the Administration to meet a bona fide temporary need, as determined by the Administrator.

(b) The number of career reserved positions which are filled by an appointee as described under subsection (a)(1)(B) may not exceed 10 percent of the total number of Senior Executive Service positions allocated to the Administration.

(c) Notwithstanding sections 3132 and 3394(b)—

(1) the Administrator may appoint an individual to any Senior Executive Service position in the Administration as a limited term appointee under this section for a period of—

(A) 4 years or less to a position the duties of which will expire at the end of such term; or

(B) 1 year or less to a position the duties of which are continuing; and

(2) in rare circumstances, the Administrator may authorize an extension of a limited appointment under—

(A) paragraph (1)(A) for a period not to exceed 2 years; and

(B) paragraph (1)(B) for a period not to exceed 1 year.

(d) A limited term appointee who has been appointed in the Administration from a career or career-conditional appointment outside the Senior Executive Service shall have reemployment rights in the agency from which appointed, or in another agency, under requirements and conditions established by the Office of Personnel Management. The Office shall have the authority to direct such placement in any agency.

(e) Notwithstanding section 3394(b) and section 3395—

(1) a limited term appointee serving under a term prescribed under this section may be reassigned to another Senior Executive Service position in the Administration, the duties of which will expire at the end of a term of 4 years or less; and

(2) a limited term appointee serving under a term prescribed under this section may be reassigned to another continuing Senior Executive Service position in the Administration, except that the appointee may not serve in 1 or more positions in the Administration under such appointment in excess of 1 year, except that in rare circumstances, the Administrator may approve an extension up to an additional 1 year.

(f) A limited term appointee may not serve more than 7 consecutive years under any combination of limited appointments.

(g) Notwithstanding section 5384, the Administrator may authorize performance awards to limited term appointees in the Administration in the same amounts and in the same manner as career appointees.

(Added Pub. L. 108–201, § 3(a), Feb. 24, 2004, 118 Stat. 473.)

### § 9814. Qualifications pay

(a) Notwithstanding section 5334, the Administrator may set the pay of an employee paid under the General Schedule at any step within the pay range for the grade of the position, if such employee—

(1) possesses unusually high or unique qualifications; and

(2) is assigned—

(A) new duties, without a change of position; or

(B) to a new position.

(b) If an exercise of the authority under this section relates to a current employee selected for another position within the Administration, a determination shall be made that the employee's contribution in the new position will exceed that in the former position, before setting pay under this section.

(c) Pay as set under this section is basic pay for such purposes as pay set under section 5334.

(d) If the employee serves for at least 1 year in the position for which the pay determination under this section was made, or a successor position, the pay earned under such position may be used in succeeding actions to set pay under chapter 53.

(e) Before setting any employee's pay under this section, the Administrator shall submit a plan to the Office of Personnel Management and the appropriate committees of Congress, that includes—

(1) criteria for approval of actions to set pay under this section;

(2) the level of approval required to set pay under this section;

(3) all types of actions and positions to be covered;

(4) the relationship between the exercise of authority under this section and the use of other pay incentives; and

(5) a process to evaluate the effectiveness of this section.

(Added Pub. L. 108–201, § 3(a), Feb. 24, 2004, 118 Stat. 474.)

REFERENCES IN TEXT

The General Schedule, referred to in subsec. (a), is set out under section 5332 of this title.

### § 9815. Reporting requirement

The Administrator shall submit to the appropriate committees of Congress, not later than February 28 of each of the next 6 years beginning after the date of enactment of this chapter, a report that provides the following:

(1) A summary of all bonuses paid under subsections (b) and (c) of section 9804 during the preceding fiscal year. Such summary shall include the total amount of bonuses paid, the total number of bonuses paid, the percentage of the amount of bonuses awarded to supervisors and management officials, and the average percentage used to calculate the total average bonus amount, under each of those subsections.

(2) A summary of all bonuses paid under subsections (b) and (c) of section 9805 during the preceding fiscal year. Such summary shall include the total amount of bonuses paid, the total number of bonuses paid, the percentage of the amount of bonuses awarded to supervisors and management officials, and the average percentage used to calculate the total average bonus amount, under each of those subsections.

(3) The total number of term appointments converted during the preceding fiscal year under section 9806 and, of that total number, the number of conversions that were made to address a critical need described in the workforce plan pursuant to section 9802(b)(2).

(4) The number of positions for which the rate of basic pay was fixed under section 9807 during the preceding fiscal year, the number of positions for which the rate of basic pay under such section was terminated during the preceding fiscal year, and the number of times the rate of basic pay was fixed under such section to address a critical need described in the workforce plan pursuant to section 9802(b)(2).

(5) The number of scholarships awarded under section 9809 during the preceding fiscal year and the number of scholarship recipients appointed by the Administration during the preceding fiscal year.

(6) The total number of distinguished scholar appointments made under section 9810 during the preceding fiscal year and, of that total number, the number of appointments that were made to address a critical need described in the workforce plan pursuant to section 9802(b)(2).

(7) The average amount paid per appointee, and the largest amount paid to any appointee, under section 9811 during the preceding fiscal year for travel and transportation expenses.

(8) The total number of employees who were awarded enhanced annual leave under section 9812 during the preceding fiscal year; of that total number, the number of employees who were serving in a position addressing a critical need described in the workforce plan pursuant to section 9802(b)(2); and, for employees in each of those respective groups, the average amount of additional annual leave such employees earned in the preceding fiscal year (over and above what they would have earned absent section 9812).

(9) The total number of appointments made under section 9813 during the preceding fiscal year and, of that total number, the number of appointments that were made to address a critical need described in the workforce plan pursuant to section 9802(b)(2).

(10) The number of employees for whom the Administrator set the pay under section 9814 during the preceding fiscal year and the number of times pay was set under such section to address a critical need described in the workforce plan pursuant to section 9802(b)(2).

(11) A summary of all recruitment, relocation, redesignation, and retention bonuses paid under authorities other than this chapter and excluding the authorities provided in sections 5753 and 5754 of this title, during the preceding fiscal year. Such summary shall include, for each type of bonus, the total amount of bonuses paid, the total number of bonuses paid, the percentage of the amount of bonuses awarded to supervisors and management officials, and the average percentage used to calculate the total average bonus amount.

(Added Pub. L. 108–201, § 3(a), Feb. 24, 2004, 118 Stat. 475.)

REFERENCES IN TEXT

The date of enactment of this chapter, referred to in introductory provisions, is the date of enactment of Pub. L. 108–201, which was approved Feb. 24, 2004.

## CHAPTER 99—DEPARTMENT OF DEFENSE NATIONAL SECURITY PERSONNEL SYSTEM

Sec.
9901. Definitions.
9902. Department of Defense personnel authorities.
9903. Attracting highly qualified experts.
9904. Special pay and benefits for certain employees outside the United States.

AMENDMENTS

2009—Pub. L. 111–84, div. A, title XI, § 1113(f)(2), Oct. 28, 2009, 123 Stat. 2502, added item 9902 and struck out former item 9902 ''Establishment of human resources management system''.

### § 9901. Definitions

For purposes of this chapter—

(1) the term ''Director'' means the Director of the Office of Personnel Management; and

(2) the term ''Secretary'' means the Secretary of Defense.

(Added Pub. L. 108–136, div. A, title XI, § 1101(a)(1), Nov. 24, 2003, 117 Stat. 1621.)

IMPACT ON DEPARTMENT OF DEFENSE CIVILIAN PERSONNEL

Pub. L. 108–136, div. A, title XI, § 1101(b), Nov. 24, 2003, 117 Stat. 1633, provided that:

''(1) Any exercise of authority under chapter 99 of such title [this chapter] (as added by subsection (a)), including under any system established under such chapter, shall be in conformance with the requirements of this subsection.

''(2) No other provision of this Act [see Tables for classification] or of any amendment made by this Act may be construed or applied in a manner so as to limit, supersede, or otherwise affect the provisions of this section [enacting this chapter], except to the extent that it does so by specific reference to this section.''

**§ 9902. Department of Defense personnel authorities**

(a) PERFORMANCE MANAGEMENT AND WORKFORCE INCENTIVES.—(1) The Secretary, in coordination with the Director, shall promulgate regulations providing for the following:

(A) A fair, credible, and transparent performance appraisal system for employees.

(B) A fair, credible, and transparent system for linking employee bonuses and other performance-based actions to performance appraisals of employees.

(C) A process for ensuring ongoing performance feedback and dialogue among supervisors, managers, and employees throughout the appraisal period and setting timetables for review.

(D) Development of ''performance assistance plans'' that are designed to give employees formal training, on-the-job training, counseling, mentoring, and other assistance.

(2) In developing the regulations required by this subsection, the Secretary, in coordination with the Director, may waive the requirements of chapter 43 (other than sections 4302 and 4303(e)) and the regulations implementing such chapter, to the extent necessary to achieve the objectives of this subsection.

(3)(A) The Secretary may establish a fund, to be known as the ''Department of Defense Civilian Workforce Incentive Fund'' (in this paragraph referred to as the ''Fund'').

(B) The Fund shall consist of the following:

(i) Amounts appropriated to the Fund.

(ii) Amounts available for compensation of employees that are transferred to the Fund.

(C) Amounts in the Fund shall be available for the following:

(i) Incentive payments for employees based on team or individual performance (which payments shall be in addition to basic pay).

(ii) Incentive payments to attract or retain employees with particular or superior qualifications or abilities.

(D) The authority provided in this paragraph is in addition to, and does not supersede or replace, any authority or source of funding otherwise available to the Secretary to pay bonuses or make incentive payments to civilian employees of the Department.

(4)(A) Any action taken by the Secretary under this subsection, or to implement this subsection, shall be subject to the requirements of subsection (c) and chapter 71.

(B) Any rules or regulations promulgated pursuant to this subsection shall be deemed an agency rule or regulation under section 7117(a)(2), and shall not be deemed a Government-wide rule or regulation under section 7117(a)(1).

(b) FLEXIBILITIES RELATING TO APPOINTMENTS.—(1) The Secretary, in coordination with the Director, shall promulgate regulations to redesign the procedures which are applied by the Department of Defense in making appointments to positions within the competitive service in order to—

(A) better meet mission needs;

(B) respond to managers' needs and the needs of applicants;

(C) produce high-quality applicants;

(D) support timely decisions;

(E) uphold appointments based on merit system principles; and

(F) promote competitive job offers.

(2) In redesigning the process by which such appointments shall be made, the Secretary, in coordination with the Director, may waive the requirements of chapter 33, and the regulations implementing such chapter, to the extent necessary to achieve the objectives of this section, while providing for the following:

(A) Fair, credible, and transparent methods of establishing qualification requirements for, recruitment for, and appointments to positions.

(B) Fair and open competition and equitable treatment in the consideration and selection of individuals to positions.

(C) Fair, credible, and transparent methods of assigning, reassigning, detailing, transferring, or promoting employees.

(3) In implementing this subsection, the Secretary shall comply with the provisions of section 2302(b)(11), regarding veterans' preference requirements, in a manner consistent with that in which such provisions are applied under chapter 33.

(4)(A) Any action taken by the Secretary under this subsection, or to implement this subsection, shall be subject to the requirements of subsection (c) and chapter 71.

(B) Any rules or regulations promulgated pursuant to this section shall be deemed an agency rule or regulation under section 7117(a)(2), and shall not be deemed a Government-wide rule or regulation under section 7117(a)(1).

(c) CRITERIA FOR USE OF NEW PERSONNEL AUTHORITIES.—In establishing any new performance management and workforce incentive system under subsection (a) or utilizing appointment flexibilities under subsection (b), the Secretary shall—

(1) adhere to merit principles set forth in section 2301;

(2) include a means for ensuring employee involvement (for bargaining unit employees, through their exclusive representatives) in the design and implementation of such system;

(3) provide for adequate training and retraining for supervisors, managers, and employees in the implementation and operation of such system;

(4) develop—

(A) a comprehensive management succession program to provide training to employees to develop managers for the agency; and

(B) a program to provide training to supervisors on actions, options, and strategies a supervisor may use in administering such system;

(5) include effective transparency and accountability measures and safeguards to ensure that the management of such system is fair, credible, and equitable, including appropriate independent reasonableness reviews, internal assessments, and employee surveys;

(6) utilize the annual strategic workforce plan, required by section 115b of title 10; and

(7) ensure that adequate agency resources are allocated for the design, implementation, and administration of such system.

(d) DEVELOPMENT OF TRAINING PROGRAM FOR SUPERVISORS.—(1) The Secretary shall develop—

(A) a program to provide training to supervisors on use of the new authorities provided in this section, including the actions, options, and strategies a supervisor may use in—

(i) developing and discussing relevant goals and objectives with the employee, communicating and discussing progress relative to performance goals and objectives, and conducting performance appraisals;

(ii) mentoring and motivating employees, and improving employee performance and productivity;

(iii) fostering a work environment characterized by fairness, respect, equal opportunity, and attention to the quality of the work of employees;

(iv) effectively managing employees with unacceptable performance;

(v) addressing reports of a hostile work environment, reprisal, or harassment of or by another supervisor or employee; and

(vi) otherwise carrying out the duties and responsibilities of a supervisor;

(B) a program to provide training to supervisors on the prohibited personnel practices under section 2302 (particularly with respect to such practices described under subsections (b)(1) and (b)(8) of such section), employee collective bargaining and union participation rights, and the procedures and processes used to enforce employee rights; and

(C) a program under which experienced supervisors mentor new supervisors by—

(i) sharing knowledge and advice in areas such as communication, critical thinking, responsibility, flexibility, motivating employees, teamwork, leadership, and professional development; and

(ii) pointing out strengths and areas for development.

(2) Each supervisor shall be required to complete a program at least once every 3 years.

(e) PROVISIONS REGARDING NATIONAL LEVEL BARGAINING.—

(1) The Secretary may bargain with a labor organization which has been accorded exclusive recognition under chapter 71 at an organizational level above the level of exclusive recognition. The decision to bargain above the level of exclusive recognition shall not be subject to review. The Secretary shall consult with the labor organization before determining the appropriate organizational level of bargaining.

(2) Any such bargaining shall—

(A) address issues that are—

(i) subject to bargaining under chapter 71 and this chapter;

(ii) applicable to multiple bargaining units; and

(iii) raised by either party to the bargaining;

(B) except as agreed by the parties or directed through an independent dispute resolution process agreed upon by the parties, be binding on all affected subordinate bargaining units of the labor organization at the level of recognition and their exclusive representatives, and the Department of Defense and its subcomponents, without regard to levels of recognition;

(C) to the extent agreed by the parties or directed through an independent dispute resolution process agreed upon by the parties, supersede conflicting provisions of all other collective bargaining agreements of the labor organization, including collective bargaining agreements negotiated with an exclusive representative at the level of recognition; and

(D) except as agreed by the parties or directed through an independent dispute resolution process agreed upon by the parties, not be subject to further negotiations for any purpose, including bargaining at the level of recognition.

(3) Any independent dispute resolution process agreed to by the parties for the purposes of paragraph (2) shall have the authority to address all issues on which the parties are unable to reach agreement.

(4) The National Guard Bureau and the Army and Air Force National Guard may be included in coverage under this subsection.

(5) Any bargaining completed pursuant to this subsection with a labor organization not otherwise having national consultation rights with the Department of Defense or its subcomponents shall not create any obligation on the Department of Defense or its subcomponents to confer national consultation rights on such a labor organization.

(f) PROVISIONS RELATED TO SEPARATION AND RETIREMENT INCENTIVES.—

(1) The Secretary may establish a program within the Department of Defense under which employees may be eligible for early retirement, offered separation incentive pay to separate from service voluntarily, or both. This authority may be used to reduce the number of personnel employed by the Department of Defense or to restructure the workforce to meet mission objectives without reducing the overall number of personnel. This authority is in addition to, and notwithstanding, any other authorities established by law or regulation for such programs.

(2)(A) The Secretary may not authorize the payment of voluntary separation incentive pay under paragraph (1) to more than 25,000 employees in any fiscal year, except that employees who receive voluntary separation incentive pay as a result of a closure or realignment of a military installation under the Defense Base Closure and Realignment Act of 1990 (title XXIX of Public Law 101–510; 10 U.S.C. 2687 note) shall not be included in that number.

(B) The Secretary shall prepare a report each fiscal year setting forth the number of employees who received such pay as a result of a closure or realignment of a military base as described under subparagraph (A).

(C) The Secretary shall submit the report under subparagraph (B) to the Committee on Armed Services and the Committee on Governmental Affairs of the Senate, and the Committee on Armed Services and the Committee

on Government Reform of the House of Representatives.

(3) For purposes of this section, the term ''employee'' means an employee of the Department of Defense, serving under an appointment without time limitation, except that such term does not include—

(A) a reemployed annuitant under subchapter III of chapter 83 or chapter 84, or another retirement system for employees of the Federal Government;

(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); or

(C) for purposes of eligibility for separation incentives under this section, an employee who is in receipt of a decision notice of involuntary separation for misconduct or unacceptable performance.

(4) An employee who is at least 50 years of age and has completed 20 years of service, or has at least 25 years of service, may, pursuant to regulations promulgated under this section, apply and be retired from the Department of Defense and receive benefits in accordance with chapter 83 or 84 if the employee has been employed continuously within the Department of Defense for more than 30 days before the date on which the determination to conduct a reduction or restructuring within 1 or more Department of Defense components is approved.

(5)(A) Separation pay shall be paid in a lump sum or in installments and shall be equal to the lesser of—

(i) an amount equal to the amount the employee would be entitled to receive under section 5595(c), if the employee were entitled to payment under such section; or

(ii) $25,000.

(B) Separation pay shall not be a basis for payment, and shall not be included in the computation, of any other type of Government benefit. Separation pay shall not be taken into account for the purpose of determining the amount of any severance pay to which an individual may be entitled under section 5595, based on any other separation.

(C) Separation pay, if paid in installments, shall cease to be paid upon the recipient's acceptance of employment by the Federal Government, or commencement of work under a personal services contract as described in paragraph (6).

(6)(A) An employee who receives separation pay under such program may not be reemployed by the Department of Defense for a 12-month period beginning on the effective date of the employee's separation, unless this prohibition is waived by the Secretary on a case-by-case basis.

(B) 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 (Public Law 103–226; 108 Stat. 111) and accepts employment with the Government of the United States, or who commences work through a personal services contract with the United States within 5 years after the date of the separation on which payment of the separation pay is based, shall be required to repay the entire amount of the separation pay to the Department of Defense. If the employment is with an Executive agency (as defined by section 105) other than the Department of Defense, the Director may, at the request of the head of that agency, waive the repayment if the individual involved possesses unique abilities and is the only qualified applicant available for the position. If the employment is within the Department of Defense, the Secretary may waive the repayment if the individual involved is the only qualified applicant available for the position. 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. 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.

(7) Under this program, early retirement and separation pay may be offered only pursuant to regulations established by the Secretary, subject to such limitations or conditions as the Secretary may require.

(g) PROVISIONS RELATING TO REEMPLOYMENT.—

(1) Except as provided under paragraph (2), if an annuitant receiving an annuity from the Civil Service Retirement and Disability Fund becomes employed in a position within the Department of Defense, his annuity shall continue. An annuitant so reemployed shall not be considered an employee for purposes of subchapter III of chapter 83 or chapter 84.

(2)(A) An annuitant retired under section 8336(d)(1) or 8414(b)(1)(A) receiving an annuity from the Civil Service Retirement and Disability Fund, who becomes employed in a position within the Department of Defense after the date of enactment of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136), may elect to be subject to section 8344 or 8468 (as the case may be).

(B) An election for coverage under this paragraph shall be filed not later than the later of 90 days after the date the Department of Defense—

(i) prescribes regulations to carry out this subsection; or

(ii) takes reasonable actions to notify employees who may file an election.

(C) If an employee files an election under this paragraph, coverage shall be effective beginning on the first day of the first applicable pay period beginning on or after the date of the filing of the election.

(D) Paragraph (1) shall apply to an individual who is eligible to file an election under subparagraph (A) and does not file a timely election under subparagraph (B).

(3) Benefits similar to those provided by paragraphs (1) and (2) may be extended, in ac-

cordance with regulations prescribed by the President, so as to be made available with respect to reemployed annuitants within the Department of Defense who are subject to such other retirement systems for Government employees (whose annuities are payable under authorities other than subchapter III of chapter 83 or chapter 84 of title 5) as may be provided for under such regulations.

(4) The Secretary shall prescribe regulations to carry out this subsection, excluding paragraph (3).

(Added Pub. L. 108–136, div. A, title XI, § 1101(a)(1), Nov. 24, 2003, 117 Stat. 1621; amended Pub. L. 110–181, div. A, title XI, § 1106(a), Jan. 28, 2008, 122 Stat. 349; Pub. L. 110–417, [div. A], title XI, § 1106, Oct. 14, 2008, 122 Stat. 4617; Pub. L. 111–84, div. A, title XI, §§ 1113(b)(1), (d), (f)(1), 1121, Oct. 28, 2009, 123 Stat. 2498, 2499, 2502, 2505; Pub. L. 111–383, div. A, title X, § 1075(a)(2), title XI, § 1101(c), Jan. 7, 2011, 124 Stat. 4368, 4382.)

REFERENCES IN TEXT

The Defense Base Closure and Realignment Act of 1990, referred to in subsec. (f)(2)(A), is part A of title XXIX of div. B of Pub. L. 101–510, Nov. 5, 1990, 104 Stat. 1808, 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.

The date of the enactment of the Federal Workforce Restructuring Act of 1994, referred to in subsec. (f)(6)(B), is the date of enactment of Pub. L. 103–226, which was approved Mar. 30, 1994.

The date of the enactment of the National Defense Authorization Act for Fiscal Year 2004, referred to in subsec. (g)(2)(A), is the date of enactment of Pub. L. 108–136, which was approved Nov. 24, 2003.

AMENDMENTS

2011—Subsec. (a)(2). Pub. L. 111–383, § 1075(a)(2), substituted ''chapter'' for ''chapters'' in two places.

Subsec. (g)(3), (4). Pub. L. 111–383, § 1101(c), amended directory language of Pub. L. 111–84, § 1121. See 2009 Amendment note below.

2009—Pub. L. 111–84, § 1113(f)(1), amended section catchline generally, substituting ''Department of Defense personnel authorities'' for ''Establishment of human resources management system''.

Pub. L. 111–84, § 1113(b)(1), (d), added subsecs. (a) to (d), redesignated subsecs. (f) to (h) as (e) to (g), respectively, and struck out former subsecs. (a) to (e), (i), and (j) which, respectively, authorized the Secretary of Defense to establish and adjust the National Security Personnel System (NSPS), provided for certain requirements of the NSPS, provided for certain exceptions to the NSPS with respect to certain laboratories, enumerated nonwaivable provisions referred to in former subsec. (b)(3)(D), established limitations relating to pay, preserved certain rights of and limitations on the Secretary, and prohibited the addition of an organizational or functional unit to the NSPS that would cause the number of employees added to the NSPS to exceed 100,000 in that year.

Subsec. (g)(3), (4). Pub. L. 111–84, § 1121, as amended by Pub. L. 111–383, § 1101(c), added par. (3), redesignated former par. (3) as (4), and, in par. (4), inserted '', excluding paragraph (3)'' before period at end.

2008—Pub. L. 110–181 amended section generally, substituting provisions relating to establishment of human resources management system for former provisions which related to, in subsec. (a), general authority of Secretary of Defense to establish and adjust a human resources management system, in subsec. (b), system requirements, in subsec. (c), personnel management at defense laboratories, in subsec. (d), nonwaivable provisions, in subsec. (e), limitations relating to pay, in subsec. (f), collaboration with employee representatives, in subsec. (g), national level bargaining, in subsec. (h), appellate procedures, in subsec. (i), separation and retirement incentives, in subsec. (j), reemployment, in subsec. (k), personnel management, in subsec. (*l*), phase-in of the National Security Personnel System, and, in subsec. (m), labor management relations.

Subsec. (i). Pub. L. 110–417 substituted ''the requirements and limitations in paragraph (3)'' for ''the requirements of chapter 71 and the limitations in subsection (b)(3)'' in par. (1), inserted '', in a manner comparable to that in which such provisions are applied under chapter 33'' before period at end of par. (2), and added par. (3).

CHANGE OF NAME

Committee on Governmental Affairs of Senate changed to Committee on Homeland Security and Governmental Affairs of Senate, effective Jan. 4, 2005, by Senate Resolution No. 445, One Hundred Eighth Congress, Oct. 9, 2004.

Committee on Government Reform of House of Representatives changed to Committee on Oversight and Government Reform of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007.

EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 111–383, div. A, title XI, § 1101(d), Jan. 7, 2011, 124 Stat. 4382, provided that:

''(1) Except as provided in paragraph (2), the amendments made by this section [amending this section and provisions set out as notes preceding section 1580 and under section 2358 of Title 10, Armed Forces] shall take effect as of October 28, 2009.

''(2) The amendment made by subsection (a)(2) [amending provisions set out as a note preceding section 1580 of Title 10] shall take effect as of the date of enactment of this Act [Jan. 7, 2011].''

REFERENCES TO PUB. L. 111–383

Pub. L. 111–383, § 1(b), Jan. 7, 2011, 124 Stat. 4137, provided that: ''Any reference in this or any other Act to the 'National Defense Authorization Act for Fiscal Year 2011' shall be deemed to refer to the 'Ike Skelton National Defense Authorization Act for Fiscal Year 2011'.''

PROVISIONS RELATING TO THE NATIONAL SECURITY PERSONNEL SYSTEM

Pub. L. 111–84, div. A, title XI, § 1113(a)–(g), Oct. 28, 2009, 123 Stat. 2498–2502, as amended by Pub. L. 111–383, div. A, title X, § 1075(d)(17), Jan. 7, 2011, 124 Stat. 4373, provided that:

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

''(1) the term 'National Security Personnel System' or 'NSPS' refers to a human resources management system established under authority of section 9902 of title 5, United States Code (as in effect before the date of the enactment of this Act [Oct. 28, 2009]); and

''(2) the term 'statutory pay system' means a pay system under—

''(A) subchapter III of chapter 53 of title 5, United States Code (relating to General Schedule pay rates); or

''(B) such other provisions of law as would apply if section 9902 of title 5, United States Code, had never been enacted.

''(b) REPEAL OF PROVISIONS RELATING TO NSPS.—

''(1) IN GENERAL.—[Amended this section.]

''(2) EXPANSION PROHIBITED.—The National Security Personnel System may not be extended to any organizational or functional unit of the Department of Defense (or any component thereof) not included in such System as of March 1, 2009.

''(3) CURRENT RULES INVALID.—Any regulations in effect as of the day before the date of the enactment of this Act [Oct. 28, 2009] which were issued pursuant to any provision of law repealed by paragraph (1)(A)—

''(A) may not be modified on or after the date of the enactment of this Act, except as necessary to implement this Act [see Tables for classification]; and

''(B) shall cease to be effective as of January 1, 2012.

''(c) TERMINATION OF NSPS AND CONVERSION OF EMPLOYEES AND POSITIONS.—

''(1) IN GENERAL.—The Secretary of Defense shall take all actions which may be necessary to provide, beginning no later than 6 months after the date of enactment of this Act [Oct. 28, 2009], for the orderly termination of the National Security Personnel System and conversion of all employees and positions from such System, by not later than January 1, 2012, to—

''(A) the statutory pay system and all other aspects of the personnel system that last applied to such employee or position (as the case may be) before the National Security Personnel System applied; or

''(B) if subparagraph (A) does not apply, the statutory pay system and all other aspects of the personnel system that would have applied if the National Security Personnel System had never been established.

No employee shall suffer any loss of or decrease in pay because of the preceding sentence, and, for purposes of carrying out such preceding sentence, any determination of the system that last applied (or that would have applied) with respect to an employee or position shall take into account any modifications to such system pursuant to the provisions of subsections (a) and (b) of section 9902 of title 5, United States Code, as amended by subsection (d).

''(2) TRANSITION PERIOD APPOINTMENTS.—To the extent practicable, any individual who, during the NSPS transition period, is appointed to any position within the Department of Defense which is subject to the NSPS shall be subject to the statutory pay system and all other aspects of the personnel system to which such individual or position is to be converted in accordance with the requirements of paragraph (1).

''(3) TEMPORARY CONTINUATION OF NSPS.—Notwithstanding any other provision of this section, the National Security Personnel System, as in effect on the day before the date of the enactment of this Act, shall continue to apply with respect to any employees and positions remaining subject to the NSPS, in accordance with paragraph (1), during the NSPS transition period.

''(4) RESTORATION OF FULL ANNUAL PAY ADJUSTMENTS UNDER NSPS PENDING ITS TERMINATION.—Notwithstanding subsection (b)(1)(A) [amending this section], section 9902(e)(7) of title 5, United States Code, to the extent that it remains in force under paragraph (3), shall be applied by substituting '100 percent' for 'no less than 60 percent'.

''(5) NSPS TRANSITION PERIOD DEFINED.—For purposes of this subsection, the term 'NSPS transition period' means the period beginning on the date of the enactment of this Act and ending on January 1, 2012.

''(d) AUTHORITY RELATING TO PERFORMANCE MANAGEMENT AND WORKFORCE INCENTIVES, HIRING FLEXIBILITIES, AND TRAINING OF SUPERVISORS.—[Amended this section.]

''(e) REPORTS.—The Secretary of Defense shall provide a report to the covered committees (as defined by subsection (g)(6))—

''(1) no later than 6 months after the date of enactment of this Act [Oct. 28, 2009], on the initial steps being taken to reclassify positions from the NSPS and the initial conversion plan to begin converting employees from the NSPS, which information shall be supplemented by reports describing the progress of the conversion process which shall be submitted to the same committees on a semiannual basis;

''(2) no later than 12 months after date of enactment, [on] a plan for the personnel management system as authorized by section 9902(a) of title 5, United States Code, as amended by this section, which plan shall not take effect until 90 days after the submission of the plan to Congress; and

''(3) no later than 12 months after date of enactment, [on] a plan for the appointment procedures as authorized by section 9902(b) of title 5, United States Code, as amended by this section.

''(f) CLERICAL AMENDMENTS.—[Amended this section and analysis preceding section 9901 of this title.]

''(g) OTHER PERSONNEL FLEXIBILITIES.—

''(1) IN GENERAL.—If the Secretary of Defense determines that it would be in the best interest of the Department of Defense to implement personnel flexibilities in addition to those authorized under section 9902 of title 5, United States Code, as amended by this section, the Secretary, in coordination with the Director of the Office of Personnel Management, may develop and submit to the covered committees, not later than 6 months after the date of the enactment of this Act [Oct. 28, 2009], a proposal to implement—

''(A) additional personnel flexibilities and associated statutory waivers with respect to the application of the General Schedule (as defined in section 5332 of title 5, United States Code); or

''(B) additional personnel flexibilities and associated statutory waivers, which would require exemption from the application of the General Schedule (as so defined).

''(2) RATIONALE.—If the Secretary's proposal is to implement authorities described in paragraph (1)(B), the Secretary shall provide a detailed rationale as to why implementation of authorities described in paragraph (1)(A) are not adequate or appropriate to meet the interests of the Department.

''(3) REQUIREMENTS.—The Secretary's proposal (whether as described in paragraph (1)(A) or (1)(B))—

''(A) shall be developed in a manner consistent with the requirements of subsections (c) and (d) of section 9902 of title 5, United States Code, as amended by this section;

''(B) shall include a description of proposed regulations and implementing rules that the Secretary plans to adopt for the proposed system;

''(C) shall identify and provide a rationale for any statutory waiver that would be required to implement the proposed system;

''(D) shall describe the steps that the Department would take to avoid problems of the type described in the report of the Defense Business Board, dated August 2009, regarding the National Security Personnel System; and

''(E) may not provide for the waiver of any provision of law that cannot be waived under paragraph (3) of section 9902(b) of title 5, United States Code (as in effect on the day before the date of the enactment of this Act), and shall be subject to the requirements in paragraphs (4) and (5) of such section (as then in effect).

''(4) CONGRESSIONAL APPROVAL REQUIRED.—If Congress approves the Secretary's proposal in the National Defense Authorization Act for Fiscal Year 2011, the Secretary may implement the proposal (subject to any changes required by law) and begin the implementation of such proposal for personnel included in the National Security Personnel System, in lieu of the transition that would otherwise be required by subsection (b), subject to paragraph (5).

''(5) RESTRICTIONS.—Notwithstanding any approval under paragraph (4), the provisions of subsection (b)(2) and (c)(4) shall apply with respect to any proposal approved under such paragraph, unless and until modified or repealed in legislation enacted after the date of the enactment of this Act.

''(6) DEFINITIONS.—For purposes of this subsection, the term 'covered committees' means—

''(A) the Committees on Armed Services of the Senate and the House of Representatives;

''(B) the Committee on Homeland Security and Governmental Affairs of the Senate; and

''(C) the Committee on Oversight and Government Reform of the House of Representatives.''

IMPLEMENTATION

Pub. L. 110–181, div. A, title XI, § 1106(b), Jan. 28, 2008, 122 Stat. 356, which related to implementation of requirements of this section as amended by Pub. L. 110–181, was repealed by Pub. L. 111–84, div. A, title XI, § 1113(h)(1), Oct. 28, 2009, 123 Stat. 2503.

CIVILIAN PAY

Pub. L. 109–13, div. A, title I, § 1020, May 11, 2005, 119 Stat. 251, provided that: ''None of the funds appropriated to the Department of Defense by this Act or any other Act for fiscal year 2005 or any other fiscal year may be expended for any pay raise granted on or after January 1, 2005, that is implemented in a manner that provides a greater increase for non-career employees than for career employees on the basis of their status as career or non-career employees, unless specifically authorized by law: *Provided*, That this provision shall be implemented for fiscal year 2005 without regard to the requirements of section 5383 of title 5, United States Code: *Provided further*, That no employee of the Department of Defense shall have his or her pay reduced for the purpose of complying with the requirements of this provision.''

PILOT PROGRAM FOR IMPROVED CIVILIAN PERSONNEL MANAGEMENT

Pub. L. 108–136, div. A, title XI, § 1111, Nov. 24, 2003, 117 Stat. 1634, provided that:

''(a) PILOT PROGRAM.—The Secretary of Defense may carry out a pilot program using an automated workforce management system to demonstrate improved efficiency in the performance of civilian personnel management. The automated workforce management system used for the pilot program shall be capable of automating the following workforce management functions:

''(1) Job definition.

''(2) Position management.

''(3) Recruitment.

''(4) Staffing.

''(5) Performance management.

''(b) AUTHORITIES UNDER PILOT PROGRAM.—Under the pilot program, the Secretary of Defense shall provide the Secretary of each military department with the authority for the following:

''(1) To use an automated workforce management system for the civilian workforce of that military department to assess the potential of such a system to do the following:

''(A) Substantially reduce hiring cycle times.

''(B) Lower labor costs.

''(C) Increase efficiency.

''(D) Improve performance management.

''(E) Provide better management reporting.

''(F) Enable that system to make operational new personnel management flexibilities granted under the civilian personnel transformation program.

''(2) Identify at least one regional civilian personnel center (or equivalent) in that military department for participation in the pilot program.

''(c) DURATION OF PILOT PROGRAM.—The Secretary of Defense may carry out the pilot program under this section at each selected regional civilian personnel center for a period of two years beginning not later than March 1, 2004.''

## § 9903. Attracting highly qualified experts

(a) IN GENERAL.—The Secretary may carry out a program using the authority provided in subsection (b) in order to attract highly qualified experts in needed occupations, as determined by the Secretary.

(b) AUTHORITY.—Under the program, the Secretary may—

(1) appoint personnel from outside the civil service and uniformed services (as such terms are defined in section 2101) to positions in the Department of Defense without regard to any provision of this title governing the appointment of employees to positions in the Department of Defense;

(2) prescribe the rates of basic pay for positions to which employees are appointed under paragraph (1) at rates not in excess of the maximum rate of basic pay authorized for senior-level positions under section 5376, as increased by locality-based comparability payments under section 5304, notwithstanding any provision of this title governing the rates of pay or classification of employees in the executive branch; and

(3) pay any employee appointed under paragraph (1) payments in addition to basic pay within the limits applicable to the employee under subsection (d).

(c) LIMITATION ON TERM OF APPOINTMENT.—(1) Except as provided in paragraph (2), the service of an employee under an appointment made pursuant to this section may not exceed 5 years.

(2) The Secretary may, in the case of a particular employee, extend the period to which service is limited under paragraph (1) by up to 1 additional year if the Secretary determines that such action is necessary to promote the Department of Defense's national security missions.

(d) LIMITATIONS ON ADDITIONAL PAYMENTS.—(1) The total amount of the additional payments paid to an employee under this section for any 12-month period may not exceed the lesser of the following amounts:

(A) $50,000 in fiscal year 2004, which may be adjusted annually thereafter by the Secretary, with a percentage increase equal to one-half of 1 percentage point less than the percentage by which the Employment Cost Index, published quarterly by the Bureau of Labor Statistics, for the base quarter of the year before the preceding calendar year exceeds the Employment Cost Index for the base quarter of the second year before the preceding calendar year.

(B) The amount equal to 50 percent of the employee's annual rate of basic pay.

For purposes of this paragraph, the term ''base quarter'' has the meaning given such term by section 5302(3).

(2) An employee appointed under this section is not eligible for any bonus, monetary award, or other monetary incentive for service except for payments authorized under this section.

(3) Notwithstanding any other provision of this subsection or of section 5307, no additional payments may be paid to an employee under this section in any calendar year if, or to the extent that, the employee's total annual compensation will exceed the maximum amount of total annual compensation payable at the salary set in accordance with section 104 of title 3.

(e) LIMITATION ON NUMBER OF HIGHLY QUALIFIED EXPERTS.—The number of highly qualified experts appointed and retained by the Secretary under subsection (b)(1) shall not exceed 2,500 at any time.

(f) SAVINGS PROVISIONS.—In the event that the Secretary terminates this program, in the case of an employee who, on the day before the termination of the program, is serving in a position pursuant to an appointment under this section—

(1) the termination of the program does not terminate the employee's employment in that position before the expiration of the lesser of—

(A) the period for which the employee was appointed; or

(B) the period to which the employee's service is limited under subsection (c), including any extension made under this section before the termination of the program; and

(2) the rate of basic pay prescribed for the position under this section may not be reduced as long as the employee continues to serve in the position without a break in service.

(Added Pub. L. 108–136, div. A, title XI, § 1101(a)(1), Nov. 24, 2003, 117 Stat. 1632.)

REFERENCES TO MAXIMUM RATE UNDER 5 U.S.C. 5376

Except as otherwise provided, reference to maximum rate under section 5376 of this title before first day of first pay period beginning on or after 180th day after Oct. 8, 2008, considered reference to basic pay rate for level IV of Executive Schedule (5 U.S.C. 5315) and reference to maximum rate on or after first day of first pay period beginning on or after 180th day after Oct. 8, 2008, considered reference to basic pay rate for level III of Executive Schedule (5 U.S.C. 5314), or for level II of the Executive Schedule (5 U.S.C. 5313) for certain employees, see section 2(d)(3) of Pub. L. 110–372, set out as an Effective Date of 2008 Amendment note under section 5376 of this title.

REQUIREMENTS FOR DEPARTMENT OF DEFENSE SENIOR MENTORS

Pub. L. 111–383, div. A, title XI, § 1102, Jan. 7, 2011, 124 Stat. 4382, provided that:

''(a) IN GENERAL.—The Secretary of Defense shall issue appropriate policies and procedures to ensure that all senior mentors employed by the Department of Defense are—

''(1) hired as highly qualified experts under section 9903 of title 5, United States Code; and

''(2) required to comply with all applicable Federal laws and regulations on personnel and ethics matters.

''(b) SENIOR MENTOR DEFINED.—In this section, the term 'senior mentor' means a retired flag, general, or other military officer or retired senior civilian official who provides expert experience-based mentoring, teaching, training, advice, and recommendations to senior military officers, staffs, and students as they participate in war games, warfighting courses, operational planning, operational exercises, and decision-making exercises.''

### § 9904. Special pay and benefits for certain employees outside the United States

The Secretary may provide to certain civilian employees of the Department of Defense assigned to activities outside the United States as determined by the Secretary to be in support of Department of Defense activities abroad hazardous to life or health or so specialized because of security requirements as to be clearly distinguishable from normal Government employment—

(1) allowances and benefits—

(A) comparable to those provided by the Secretary of State to members of the Foreign Service under chapter 9 of title I of the Foreign Service Act of 1980 (Public Law 96–465, 22 U.S.C. 4081 et seq.) or any other provision of law; or

(B) comparable to those provided by the Director of Central Intelligence to personnel of the Central Intelligence Agency; and

(2) special retirement accrual benefits and disability in the same manner provided for by the Central Intelligence Agency Retirement Act (50 U.S.C. 2001 et seq.) and in section 18 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403r).

(Added Pub. L. 108–136, div. A, title XI, § 1101(a)(1), Nov. 24, 2003, 117 Stat. 1633.)

REFERENCES IN TEXT

The Foreign Service Act of 1980, referred to in par. (1)(A), is Pub. L. 96–465, Oct. 17, 1980, 94 Stat. 2071, as amended. Chapter 9 of title I of the Act is classified generally to subchapter IX (§ 4081 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.

The Central Intelligence Agency Retirement Act, referred to in par. (2), is Pub. L. 88–643, as revised generally by Pub. L. 102–496, title VIII, § 802, Oct. 24, 1992, 106 Stat. 3196, which is classified generally to chapter 38 (§ 2001 et seq.) of chapter 38 of Title 50, 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 and Tables.

CHANGE OF NAME

Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the intelligence community deemed to be a reference to the Director of National Intelligence. Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the Central Intelligence Agency deemed to be a reference to the Director of the Central Intelligence Agency. See section 1081(a), (b) of Pub. L. 108–458, set out as a note under section 401 of Title 50, War and National Defense.

## CHAPTER 101—FEDERAL EMERGENCY MANAGEMENT AGENCY PERSONNEL

Sec.
10101. Definitions.
10102. Strategic human capital plan.
10103. Career paths.
10104. Recruitment bonuses.
10105. Retention bonuses.
10106. Quarterly report on vacancy rate in employee positions.

### § 10101. Definitions

For purposes of this chapter—

(1) the term ''Agency'' means the Federal Emergency Management Agency;

(2) the term ''Administrator'' means the Administrator of the Federal Emergency Management Agency;

(3) the term ''appropriate committees of Congress'' has the meaning given the term in section 602 of the Post-Katrina Emergency Management Reform Act of 2006;

(4) the term ''Department'' means the Department of Homeland Security; and

(5) the term ''Surge Capacity Force'' refers to the Surge Capacity Force, described under section 624 of the Post-Katrina Emergency Management Reform Act of 2006.

(Added Pub. L. 109–295, title VI, § 621(a), Oct. 4, 2006, 120 Stat. 1411.)

REFERENCES IN TEXT

Section 602 of the Post-Katrina Emergency Management Reform Act of 2006, referred to in par. (3), is classified to section 701 of Title 6, Domestic Security.

Section 624 of the Post-Katrina Emergency Management Reform Act of 2006, referred to in par. (5), is classified to section 711 of Title 6, Domestic Security.

CHANGE OF NAME

Any reference to the Administrator of the Federal Emergency Management Agency in title VI of Pub. L. 109–295 or an amendment by title VI to be considered to refer and apply to the Director of the Federal Emergency Management Agency until Mar. 31, 2007, see section 612(f)(2) of Pub. L. 109–295, set out as a note under section 313 of Title 6, Domestic Security.

### § 10102. Strategic human capital plan

(a) PLAN DEVELOPMENT.—Not later than 6 months after the date of enactment of this chapter, the Administrator shall develop and submit to the appropriate committees of Congress a strategic human capital plan to shape and improve the workforce of the Agency.

(b) CONTENTS.—The strategic human capital plan shall include—

(1) a workforce gap analysis, including an assessment of—

(A) the critical skills and competencies that will be needed in the workforce of the Agency to support the mission and responsibilities of, and effectively manage, the Agency during the 10-year period beginning on the date of enactment of this chapter;

(B) the skills and competencies of the workforce of the Agency on the day before the date of enactment of this chapter and projected trends in that workforce, based on expected losses due to retirement and other attrition; and

(C) the staffing levels of each category of employee, including gaps in the workforce of the Agency on the day before the date of enactment of this chapter and in the projected workforce of the Agency that should be addressed to ensure that the Agency has continued access to the critical skills and competencies described in subparagraph (A);

(2) a plan of action for developing and reshaping the workforce of the Agency to address the gaps in critical skills and competencies identified under paragraph (1)(C), including—

(A) specific recruitment and retention goals, including the use of the bonus authorities under this chapter as well as other bonus authorities (including the program objective of the Agency to be achieved through such goals);

(B) specific strategies for developing, training, deploying, compensating, and motivating and retaining the Agency workforce and its ability to fulfill the Agency's mission and responsibilities (including the program objectives of the Department and the Agency to be achieved through such strategies);

(C) specific strategies for recruiting individuals who have served in multiple State agencies with emergency management responsibilities; and

(D) specific strategies for the development, training, and coordinated and rapid deployment of the Surge Capacity Force; and

(3) a discussion that—

(A) details the number of employees of the Department not employed by the Agency serving in the Surge Capacity Force and the qualifications or credentials of such individuals;

(B) details the number of individuals not employed by the Department serving in the Surge Capacity Force and the qualifications or credentials of such individuals;

(C) describes the training given to the Surge Capacity Force during the calendar year preceding the year of submission of the plan under subsection (c);

(D) states whether the Surge Capacity Force is able to adequately prepare for, respond to, and recover from natural disasters, acts of terrorism, and other man-made disasters, including catastrophic incidents; and

(E) describes any additional authorities or resources necessary to address any deficiencies in the Surge Capacity Force.

(c) ANNUAL UPDATES.—Not later than May 1, 2007, and May 1st of each of the next 5 succeeding years, the Administrator shall submit to the appropriate committees of Congress an update of the strategic human capital plan, including an assessment by the Administrator, using results-oriented performance measures, of the progress of the Department and the Agency in implementing the strategic human capital plan.

(Added Pub. L. 109–295, title VI, § 621(a), Oct. 4, 2006, 120 Stat. 1412.)

REFERENCES IN TEXT

The date of enactment of this chapter, referred to in subsecs. (a) and (b)(1), is the date of enactment of Pub. L. 109–295, which was approved Oct. 4, 2006.

### § 10103. Career paths

(a) IN GENERAL.—The Administrator shall—

(1) ensure that appropriate career paths for personnel of the Agency are identified, including the education, training, experience, and assignments necessary for career progression within the Agency; and

(2) publish information on the career paths described in paragraph (1).

(b) EDUCATION, TRAINING, AND EXPERIENCE.—The Administrator shall ensure that all personnel of the Agency are provided the opportunity to acquire the education, training, and experience necessary to qualify for promotion within the Agency, including, as appropriate, the opportunity to participate in the Rotation Program established under section 844 of the Homeland Security Act of 2002.

(c) POLICY.—The Administrator shall establish a policy for assigning Agency personnel to positions that provides for a balance between—

(1) the need for such personnel to serve in career enhancing positions; and

(2) the need to require service in a position for a sufficient period of time to provide the stability necessary—

(A) to carry out the duties of that position; and

(B) for responsibility and accountability for actions taken in that position.

(Added Pub. L. 109–295, title VI, § 621(a), Oct. 4, 2006, 120 Stat. 1413.)

REFERENCES IN TEXT

Section 844 of the Homeland Security Act of 2002, referred to in subsec. (b), is classified to section 414 of Title 6, Domestic Security.

### § 10104. Recruitment bonuses

(a) IN GENERAL.—The Administrator may pay a bonus to an individual in order to recruit the individual for a position within the Agency that would otherwise be difficult to fill in the absence of such a bonus. Upon completion of the strategic human capital plan, such bonuses shall be paid in accordance with that plan.

(b) BONUS AMOUNT.—

(1) IN GENERAL.—The amount of a bonus under this section shall be determined by the Administrator, but may not exceed 25 percent of the annual rate of basic pay of the position involved.

(2) FORM OF PAYMENT.—A bonus under this section shall be paid in the form of a lump-sum payment and shall not be considered to be part of basic pay.

(c) SERVICE AGREEMENTS.—Payment of a bonus under this section shall be contingent upon the employee entering into a written service agreement with the Agency. The agreement shall include—

(1) the period of service the individual shall be required to complete in return for the bonus; and

(2) the conditions under which the agreement may be terminated before the agreed-upon service period has been completed, and the effect of the termination.

(d) ELIGIBILITY.—A bonus under this section may not be paid to an individual who is appointed to or holds—

(1) a position to which an individual is appointed by the President, by and with the advice and consent of the Senate;

(2) a position in the Senior Executive Service as a noncareer appointee (as defined in section 3132(a)); or

(3) a position which has been excepted from the competitive service by reason of its confidential, policy-determining, policy-making, or policy-advocating character.

(e) TERMINATION.—The authority to pay bonuses under this section shall terminate 5 years after the date of enactment of this chapter.

(f) REPORTS.—

(1) IN GENERAL.—The Agency shall submit to the appropriate committees of Congress, annually for each of the 5 years during which this section is in effect, a report on the operation of this section.

(2) CONTENTS.—Each report submitted under this subsection shall include, with respect to the period covered by such report, a description of how the authority to pay bonuses under this section was used by the Agency, including—

(A) the number and dollar amount of bonuses paid to individuals holding positions within each pay grade, pay level, or other pay classification; and

(B) a determination of the extent to which such bonuses furthered the purposes of this section.

(Added Pub. L. 109–295, title VI, § 621(a), Oct. 4, 2006, 120 Stat. 1414.)

REFERENCES IN TEXT

The date of enactment of this chapter, referred to in subsec. (e), is the date of enactment of Pub. L. 109–295, which was approved Oct. 4, 2006.

### § 10105. Retention bonuses

(a) AUTHORITY.—The Administrator may pay, on a case-by-case basis, a bonus under this section to an employee of the Agency 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 Administrator determines that, in the absence of such a bonus, the employee would be likely to leave—

(A) the Federal service; or

(B) for a different position in the Federal service.

(b) SERVICE AGREEMENT.—Payment of a bonus under this section is contingent upon the employee entering into a written service agreement with the Agency to complete a period of service with the Agency. Such agreement shall include—

(1) the period of service the individual shall be required to complete in return for the bonus; and

(2) the conditions under which the agreement may be terminated before the agreed-upon service period has been completed, and the effect of the termination.

(c) BONUS AMOUNT.—

(1) IN GENERAL.—The amount of a bonus under this section shall be determined by the Administrator, but may not exceed 25 percent of the annual rate of basic pay of the position involved.

(2) FORM OF PAYMENT.—A bonus under this section shall be paid in the form of a lump-sum payment and shall not be considered to be part of basic pay.

(d) LIMITATION.—A bonus under this section—

(1) may not be based on any period of service which is the basis for a recruitment bonus under section 10104;

(2) may not be paid to an individual who is appointed to or holds—

(A) a position to which an individual is appointed by the President, by and with the advice and consent of the Senate;

(B) a position in the Senior Executive Service as a noncareer appointee (as defined in section 3132(a)); or

(C) a position which has been excepted from the competitive service by reason of its confidential, policy-determining, policy-making, or policy-advocating character; and

(3) upon completion of the strategic human capital plan, shall be paid in accordance with that plan.

(e) TERMINATION OF AUTHORITY.—The authority to grant bonuses under this section shall expire 5 years after the date of enactment of this chapter.

(f) REPORTS.—

(1) IN GENERAL.—The Office of Personnel Management shall submit to the appropriate committees of Congress, annually for each of the first 5 years during which this section is in effect, a report on the operation of this section.

(2) CONTENTS.—Each report submitted under this subsection shall include, with respect to the period covered by such report, a description of how the authority to pay bonuses under this section was used by the Agency, including, with respect to each such agency—

(A) the number and dollar amount of bonuses paid to individuals holding positions within each pay grade, pay level, or other pay classification; and

(B) a determination of the extent to which such bonuses furthered the purposes of this section.

(Added Pub. L. 109–295, title VI, § 621(a), Oct. 4, 2006, 120 Stat. 1414.)

REFERENCES IN TEXT

The date of enactment of this chapter, referred to in subsec. (e), is the date of enactment of Pub. L. 109–295, which was approved Oct. 4, 2006.

### § 10106. Quarterly report on vacancy rate in employee positions

(a) INITIAL REPORT.—

(1) IN GENERAL.—Not later than 3 months after the date of enactment of this chapter, the Administrator shall develop and submit to the appropriate committees of Congress a report on the vacancies in employee positions of the Agency.

(2) CONTENTS.—The report under this subsection shall include—

(A) vacancies of each category of employee position;

(B) the number of applicants for each vacancy for which public notice has been given;

(C) the length of time that each vacancy has been pending;

(D) hiring-cycle time for each vacancy that has been filled; and

(E) a plan for reducing the hiring-cycle time and reducing the current and anticipated vacancies with highly-qualified personnel.

(b) QUARTERLY UPDATES.—Not later than 3 months after submission of the initial report, and every 3 months thereafter until 5 years after the date of enactment of this chapter, the Administrator shall submit to the appropriate committees of Congress an update of the report under subsection (a), including an assessment by the Administrator of the progress of the Agency in filling vacant employee positions of the Agency.

(Added Pub. L. 109–295, title VI, § 621(a), Oct. 4, 2006, 120 Stat. 1416.)

REFERENCES IN TEXT

The date of enactment of this chapter, referred to in subsecs. (a)(1) and (b), is the date of enactment of Pub. L. 109–295, which was approved Oct. 4, 2006.

## CHAPTER 102—UNITED STATES SECRET SERVICE UNIFORMED DIVISION PERSONNEL

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### § 10201. Definitions

In this chapter—

(1) the term ''member'' means an employee of the United States Secret Service Uniformed Division having the authorities described under section 3056A(b) of title 18;

(2) the term ''Secretary'' means the Secretary of the Department of Homeland Security; and

(3) the term ''United States Secret Service Uniformed Division'' has the meaning given that term under section 3056A of title 18.

(Added Pub. L. 111–282, § 2(a), Oct. 15, 2010, 124 Stat. 3033.)

EFFECTIVE DATE

Chapter effective on first day of first pay period which begins after Oct. 15, 2010, see section 5 of Pub. L. 111–282, set out as an Effective Date of 2010 Amendment note under section 5102 of this title.

PURPOSE

Pub. L. 111–282, § 1(b), Oct. 15, 2010, 124 Stat. 3033, provided that: ''The purpose of this Act [see Short Title of 2010 Amendment note set out under section 101 of this title] is to transfer statutory entitlements to pay and hours of work authorized by laws codified in the District of Columbia Official Code for current members of the United States Secret Service Uniformed Division from such laws to the United States Code.''

MISCELLANEOUS PROVISIONS

Pub. L. 111–282, § 3, Oct. 15, 2010, 124 Stat. 3038, provided that:

''(a) CONVERSION TO NEW SALARY SCHEDULE.—

''(1) IN GENERAL.—

''(A) RATES OF PAY FIXED.—Effective the first day of the first pay period which begins after the date of the enactment of this Act [Oct. 15, 2010], the Secretary shall fix the rates of basic pay for members of the United States Secret Service Uniformed Division, as defined under section 10201 of title 5, United States Code, (as added by section 2(a)) in accordance with the provisions of this subsection.

''(B) RATE BASED ON CREDITABLE SERVICE.—

''(i) IN GENERAL.—Each member shall be placed in and receive basic pay at the corresponding scheduled rate under chapter 102 of title 5, United States Code, as added by section 2(a) (after any adjustment under paragraph (3) of this subsection) in accordance with the member's total years of creditable service, as provided in the table in this clause. If the scheduled rate of basic pay for the step to which the member would be assigned in accordance with this paragraph is lower than the member's rate of basic pay immediately before the date of enactment of this paragraph, the member shall be placed in and receive basic pay at the next higher service step, subject to the provisions of clause (iv). If the member's rate of pay exceeds the highest step of the rank,

the rate of basic pay shall be determined in accordance with clause (iv).

| ''Full Years of Creditable Service | Step Assigned Upon Conversion |
|---|---|
| 0 | 1 |
| 1 | 2 |
| 2 | 3 |
| 3 | 4 |
| 5 | 5 |
| 7 | 6 |
| 9 | 7 |
| 11 | 8 |
| 13 | 9 |
| 15 | 10 |
| 17 | 11 |
| 19 | 12 |
| 22 | 13 |

''(ii) CREDITABLE SERVICE.—For the purposes of this subsection, a member's creditable service is any police service in pay status with the United States Secret Service Uniformed Division, the United States Park Police, or the District of Columbia Metropolitan Police Department.

''(iii) STEP 13 CONVERSION MAXIMUM RATE.—

''(I) IN GENERAL.—A member who, at the time of conversion, is in step 13 of any rank below Deputy Chief, is entitled to that rate of basic pay which is the greater of—

''(aa) the rate of pay for step 13 under the new salary schedule; or

''(bb) the rate of pay for step 14 under the pay schedule in effect immediately before conversion.

''(II) STEP 14 RATE.—Clause (iv) shall apply to a member whose pay is set in accordance with subclause (I)(bb).

''(iv) ADJUSTMENT BASED ON FORMER RATE OF PAY.—

''(I) DEFINITION.—In this clause, the term 'former rate of basic pay' means the rate of basic pay last received by a member before the conversion.

''(II) IN GENERAL.—If, as a result of conversion to the new salary schedule, the member's former rate of basic pay is greater than the maximum rate of basic pay payable for the rank of the member's position immediately after the conversion, the member is entitled to basic pay at a rate equal to the member's former rate of basic pay, and increased at the time of any increase in the maximum rate of basic pay payable for the rank of the member's position by 50 percent of the dollar amount of each such increase.

''(III) PROMOTIONS.—For the purpose of applying section 10207 of title 5, United States Code, relating to promotions, (as added by section 2(a)) an employee receiving a rate above the maximum rate as provided under this clause shall be deemed to be at step 13.

''(2) CREDIT FOR SERVICE.—Each member whose position is converted to the salary schedule under chapter 102 of title 5, United States Code, (as added by section 2(a)) in accordance with this subsection shall be granted credit for purposes of such member's first service step adjustment made after conversion to the salary schedule under that chapter for all satisfactory service performed by the member since the member's last increase in basic pay before the adjustment under this section.

''(3) ADJUSTMENTS DURING TRANSITION.—The schedule of rates of basic pay shall be increased by the percentage of any annual adjustment applicable to the General Schedule authorized under section 5303 of title 5, United States Code, or any other authority, which takes effect during the period beginning on January 1, 2010, through the last day of the last pay period preceding the first pay period which begins after the date of the enactment of this Act. The Secretary of Homeland Security may establish a methodology of schedule adjustment that results in uniform fixed-dollar step increments within any given rank and preserves the established percentage differences among rates of different ranks at the same step position.

''(b) IMPACT ON BENEFITS UNDER THE DISTRICT OF COLUMBIA POLICE AND FIREFIGHTERS' RETIREMENT AND DISABILITY SYSTEM.—

''(1) SALARY INCREASES FOR PURPOSES OF CERTAIN PENSIONS AND ALLOWANCES.—For purposes of section 3 of the Act entitled 'An Act to provide increased pensions for widows and children of deceased members of the Police Department and the Fire Department of the District of Columbia', approved August 4, 1949 (sec. 5–744, D.C. Official Code) and section 301 of the District of Columbia Police and Firemen's Salary Act of 1953 (sec. 5–745, D.C. Official Code)—

''(A) the conversion of positions and members of the United States Secret Service Uniformed Division to appropriate ranks in the salary schedule set forth in this Act [see Short Title of 2010 Amendment note set out under section 101 of this title] and the amendments made by this Act shall not be treated as an increase in the salary of individuals who are members of the United States Secret Service Uniformed Division on the date of the enactment of this Act [Oct. 15, 2010]; and

''(B) any adjustment of rates of basic pay of those positions and individuals in accordance with this Act and the amendments made by this Act which is made after such conversion shall be treated as an increase in the salary of individuals who are members of the United States Secret Service Uniformed Division on the date of the enactment of this Act.

''(2) TREATMENT OF RETIREMENT BENEFITS AND PENSIONS OF CURRENT AND FORMER MEMBERS.—Except as otherwise provided in this Act, nothing in this Act shall affect retirement benefits and pensions of current members and former members who have retired under the District of Columbia Police and Firefighters' Retirement and Disability System.''

INAPPLICABILITY OF DISTRICT OF COLUMBIA OFFICIAL CODE PROVISIONS

Pub. L. 111–282, § 4(a), Oct. 15, 2010, 124 Stat. 3041, provided that: ''To the extent that any provision of any law codified in the District of Columbia Official Code that authorizes an entitlement to pay or hours of work for current members of the United States Secret Service Uniformed Division is not expressly revoked by this Act [see Short Title of 2010 Amendment note set out under section 101 of this title], such provision shall not apply to such members after the effective date of this Act [see Effective Date of 2010 Amendment note set out under section 5102 of this title].''

## § 10202. Authorities

(a) IN GENERAL.—The Secretary is authorized to—

(1) fix and adjust rates of basic pay for members of the United States Secret Service Uniformed Division, subject to the requirements of this chapter;

(2) determine what constitutes an acceptable level of competence for the purposes of section 10205;

(3) establish and determine the positions at the Officer and Sergeant ranks to be included as technician positions; and

(4) determine the rate of basic pay of a member who is changed or demoted to a lower rank, in accordance with section 10208.

(b) DELEGATION OF AUTHORITY.—The Secretary is authorized to delegate to the designated agent or agents of the Secretary, any power or function vested in the Secretary under in[1] this chapter.

(c) REGULATIONS.—The Secretary may prescribe such regulations as may be necessary to administer this chapter.

(Added Pub. L. 111–282, § 2(a), Oct. 15, 2010, 124 Stat. 3034.)

## § 10203. Basic pay

(a) IN GENERAL.—The annual rates of basic pay of members of the United States Secret Service Uniformed Division shall be fixed in accordance with the following schedule of rates, except that the payable annual rate of basic pay for positions at the Lieutenant, Captain, and Inspector ranks is limited to 95 percent of the rate of pay for level V of the Executive Schedule under subchapter II of chapter 53.

| Rank | Step 1 | Step 2 | Step 3 | Step 4 | Step 5 | Step 6 | Step 7 | Step 8 | Step 9 | Step 10 | Step 11 | Step 12 | Step 13 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Officer | $44,000 | $46,640 | $49,280 | $51,920 | $54,560 | $57,200 | $59,840 | $62,480 | $65,120 | $67,760 | $70,400 | $73,040 | $75,680 |
| Sergeant | ..... | ..... | ..... | 59,708 | 62,744 | 65,780 | 68,816 | 71,852 | 74,888 | 77,924 | 80,960 | 83,996 | 87,032 |
| Lieutenant | ..... | ..... | ..... | ..... | 69,018 | 72,358 | 75,698 | 79,038 | 82,378 | 85,718 | 89,058 | 92,398 | 95,738 |
| Captain | ..... | ..... | ..... | ..... | ..... | 79,594 | 83,268 | 86,942 | 90,616 | 94,290 | 97,964 | 101,638 | 105,312 |
| Inspector | ..... | ..... | ..... | ..... | ..... | 91,533 | 95,758 | 99,983 | 104,208 | 108,433 | 112,658 | 116,883 | 121,108 |
| Deputy Chief | The rate of basic pay for Deputy Chief positions will be equal to 95 percent of the rate of pay for level V of the Executive Schedule. | | | | | | | | | | | | |
| Assistant Chief | The rate of basic pay[1] the Assistant Chief position will be equal to 95 percent of the rate of pay for level V of the Executive Schedule. | | | | | | | | | | | | |
| Chief | The rate of basic pay[1] the Chief position will be equal to the rate of pay for level V of the Executive Schedule. | | | | | | | | | | | | |

[1] So in original. Probably should be followed by ''for''.

(b) SCHEDULE ADJUSTMENT.—

(1)(A) Effective at the beginning of the first pay period commencing on or after the first day of the month in which an adjustment in the rates of basic pay under the General Schedule takes effect under section 5303 or other authority, the schedule of annual rates of basic pay of members (except the Deputy Chiefs, Assistant Chief and Chief) shall be adjusted by the Secretary by a percentage amount corresponding to the percentage adjustment made in the rates of pay under the General Schedule.

(B) The Secretary may establish a methodology of schedule adjustment that—

(i) results in uniform fixed-dollar step increments within any given rank; and

(ii) preserves the established percentage differences among rates of different ranks at the same step position.

(2) Notwithstanding paragraph (1), the payable annual rate of basic pay for positions at the Lieutenant, Captain, and Inspector ranks after adjustment under paragraph (1) may not exceed 95 percent of the rate of pay for level V of the Executive Schedule under subchapter II of chapter 53.

(3) Locality-based comparability payments authorized under section 5304 shall be applicable to the basic pay for all ranks under this section, except locality-based comparability payments may not be paid at a rate which, when added to the rate of basic pay otherwise payable to the member, would cause the total to exceed the rate of basic pay payable for level IV of the Executive Schedule.

(Added Pub. L. 111–282, § 2(a), Oct. 15, 2010, 124 Stat. 3034.)

REFERENCES IN TEXT

Levels IV and V of the Executive Schedule, referred to in subsecs. (a) and (b)(2), (3), are set out in sections 5315 and 5316, respectively, of this title.

The General Schedule, referred to in subsec. (b)(1)(A), is set out under section 5332 of this title.

## § 10204. Rate of pay for original appointments

(a) IN GENERAL.—Except as provided in subsection (b), all original appointments shall be made at the minimum rate of basic pay for the Officer rank set forth in the schedule in section 10203.

(b) EXCEPTION FOR SUPERIOR QUALIFICATIONS OR SPECIAL NEED.—The Director of the United States Secret Service or the designee of the Director may appoint an individual at a rate above the minimum rate of basic pay for the Officer rank based on the individual's superior qualifications or a special need of the Government for the individual's services.

(Added Pub. L. 111–282, § 2(a), Oct. 15, 2010, 124 Stat. 3036.)

## § 10205. Service step adjustments

(a) DEFINITION.—In this section, the term ''calendar week of active service'' includes all periods of leave with pay or other paid time off, and periods of non-pay status which do not cumulatively equal one 40-hour workweek.

(b) ADJUSTMENTS.—Each member whose current performance is at an acceptable level of competence shall have a service step adjustment as follows:

(1) Each member in service step 1, 2, or 3 shall be advanced successively to the next higher service step at the beginning of the first pay period immediately following the completion of 52 calendar weeks of active service in the member's service step.

(2) Each member in service step 4, 5, 6, 7, 8, 9, 10, or 11 shall be advanced successively to the next higher service step at the beginning of the first pay period immediately following the completion of 104 calendar weeks of active service in the member's service step.

[1] So in original.

(3) Each member in service step 12 shall be advanced successively to the next higher service step at the beginning of the first pay period immediately following the completion of 156 calendar weeks of active service in the member's service step.

(Added Pub. L. 111–282, § 2(a), Oct. 15, 2010, 124 Stat. 3036.)

**§ 10206. Technician positions**

(a) IN GENERAL.—(1) Each member whose position is determined under section 10202(a)(3) to be included as a technician position shall, on or after such date, receive, in addition to the member's scheduled rate of basic pay, an amount equal to 6 percent of the sum of such member's rate of basic pay and the applicable locality-based comparability payment.

(2) A member described in this subsection shall receive the additional compensation authorized by this subsection until such time as the member's position is determined under section 10202(a)(3) not to be a technician position, or until the member no longer occupies such position, whichever occurs first.

(3) The additional compensation authorized by this subsection shall be paid to a member in the same manner and at the same time as the member's basic pay is paid.

(b) EXCEPTIONS.—(1) Except as provided in paragraph (2), the additional compensation authorized by subsection (a)(1) shall be considered as basic pay for all purposes, including section 8401(4).

(2) The additional compensation authorized by subsection (a)(1) shall not be considered as basic pay for the purposes of—

(A) section 5304; or

(B) section 7511(a)(4).

(3) The loss of the additional compensation authorized by subsection (a)(1) shall not constitute an adverse action for the purposes of section 7512.

(Added Pub. L. 111–282, § 2(a), Oct. 15, 2010, 124 Stat. 3037.)

**§ 10207. Promotions**

(a) IN GENERAL.—Each member who is promoted to a higher rank shall receive basic pay at the same step at which such member was being compensated prior to the date of the promotion.

(b) CREDIT FOR SERVICE.—For the purposes of a service step adjustment under section 10205, periods of service at the lower rank shall be credited in the same manner as if it was service at the rank to which the employee is promoted.

(Added Pub. L. 111–282, § 2(a), Oct. 15, 2010, 124 Stat. 3037.)

**§ 10208. Demotions**

When a member is changed or demoted from any rank to a lower rank, the Secretary may fix the member's rate of basic pay at the rate of pay for any step in the lower rank which does not exceed the lowest step in the lower rank for which the rate of basic pay is equal to or greater than the member's existing rate of basic pay.

(Added Pub. L. 111–282, § 2(a), Oct. 15, 2010, 124 Stat. 3037.)

**§ 10209. Clothing allowances**

(a) IN GENERAL.—In addition to the benefits provided under section 5901, the Director of the United States Secret Service or the designee of the Director is authorized to provide a clothing allowance to a member assigned to perform duties in normal business or work attire purchased at the discretion of the employee. Such clothing allowance shall not to be treated as part of the member's basic pay for any purpose (including retirement purposes) and shall not be used for the purpose of computing the member's overtime pay, pay during leave or other paid time off, lump-sum payments under section 5551 or section 5552, workers' compensation, or any other benefit. Such allowance for any member may be discontinued at any time upon written notification by the Director of the United States Secret Service or the designee of the Director.

(b) MAXIMUM AMOUNT AUTHORIZED.—A clothing allowance authorized under this section shall not exceed $500 per annum.

(Added Pub. L. 111–282, § 2(a), Oct. 15, 2010, 124 Stat. 3037.)

**§ 10210. Reporting requirement**

Not later than 3 years after the date of the enactment of this chapter, the Secretary shall prepare and transmit to Congress a report on the operation of this chapter. The report shall include—

(1) an assessment of the effectiveness of this chapter with respect to efforts of the Secretary to recruit and retain well-qualified personnel; and

(2) recommendations for any legislation or administrative action which the Secretary considers appropriate.

(Added Pub. L. 111–282, § 2(a), Oct. 15, 2010, 124 Stat. 3038.)

REFERENCES IN TEXT

The date of the enactment of this chapter, referred to in text, is the date of enactment of Pub. L. 111–282, which was approved Oct. 15, 2010.