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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 L. 102-378, §8(a), Oct. 2, 1992, 106 Stat. 1359, repealed Pub.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title XII, §1206(i)(2), Nov. 5, 1990, 104 Stat. 1663, which added item 5380 “Pay authority for critical positions”, was repealed by Pub.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.

¹Section catchline amended by Pub. L. 108-136 without corresponding amendment of chapter analysis.

102-378, §8(a), Oct. 2, 1992, 106 Stat. 1359, which provided that this title shall read as if such section 1206(i)(2) had not been enacted.

Pub. L. 101-510, div. A, title XII, §1206(b)(2), Nov. 5, 1990, 104 Stat. 1661, added item 5379.

Pub. L. 101-509, title V, §529 [title I, §§101(a)(2), 102(a)(2), 103(b), 104(b), 105(a)(2), 109(a)(1)(B), title II, §§205(b), 211(b)(2)], Nov. 5, 1990, 104 Stat. 1427, 1439, 1443, 1445, 1446, 1448, 1451, 1457, 1461, struck out items 5301 “Policy”, 5303 “Higher minimum rates; Presidential authority”, 5304 “Presidential policies and regulations”, 5305 “Annual pay reports and adjustments”, 5306 “Advisory Committee on Federal Pay”, 5307 “Pay fixed by administrative action”, and 5308 “Pay limitation”, and added items 5301 to 5307, struck out “; higher rates for supervisors of prevailing rate employees” after “appointments” in item 5333, substituted “Health care positions” for “Scientific and professional positions” in item 5371, and added items 5372a, 5376 to 5378, item for subchapter IX, and items 5391 and 5392.

Pub. L. 101-263, §1(b), Apr. 4, 1990, 104 Stat. 125, inserted “the” before “National” in item 5375.

1979—Pub. L. 96-54, §2(a)(26)(B), Aug. 14, 1979, 93 Stat. 382, substituted “prevailing rate” for “wage-board” in item 5333.

1978—Pub. L. 95-454, title IV, §407(b), title VIII, §801(a)(3)(B)(i), (ii), Oct. 13, 1978, 92 Stat. 1172, 1221, struck out items 5337 “Pay saving” and 5345 “Retained rate of pay on reduction in grade or reassignment”, added item for subchapter VI and items 5361 to 5366, redesignated former item for subchapter VI and items 5361 to 5365 as subchapter VII and items 5371 to 5375, respectively, and added item for subchapter VIII and items 5381 to 5385.

Pub. L. 95-251, §2(c)(4), Mar. 27, 1978, 92 Stat. 184, substituted “Administrative law judges” for “Hearing examiners” in item 5362.

1975—Pub. L. 94-82, title II, §202(b)(6), Aug. 9, 1975, 89 Stat. 420, added item 5318.

1972—Pub. L. 92-392, §1(b), Aug. 19, 1972, 86 Stat. 572, substituted items 5341, 5343, 5344, and 5345 relating to “Policy”, “Prevailing rate determinations; wage schedules; night differentials”, “Effective date of wage increase; retroactive pay” and “Retained rate of pay on reduction in grade or reassignment”, for such former items relating to “Trades and crafts”, “Effective date of pay increase”, “Retroactive pay” and “Position classification appeals”, added items 5342, 5346, 5347, and 5349, and renumbered former item 5342 as 5348.

1971—Pub. L. 91-656, §§2(b)(2), 3(b), Jan. 8, 1971, 84 Stat. 1946, 1951, struck out item 5302 “Annual reports on pay comparability” and added items 5305-5308.

1969—Pub. L. 91-34, §1(b), June 30, 1969, 83 Stat. 41, added item 5365.

1967—Pub. L. 90-206, title II, §223(b), Dec. 16, 1967, 81 Stat. 642, added item 5345.

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

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	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

Pub. L. 101-509, title V, §529 [§1], Nov. 5, 1990, 104 Stat. 1427, 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."

Pub. L. 101-509, title V, §529 [title III, §306], Nov. 5, 1990, 104 Stat. 1427, 1464, 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

Pub. L. 91-656, § 1, Jan. 8, 1971, 84 Stat. 1946, 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

Pub. L. 101-509, title V, § 529 [title I, § 111], Nov. 5, 1990, 104 Stat. 1453, 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, alli-

ance, association, or affiliation of employee organizations.

“(d) PAY FOR MEMBERS.—The Chairman shall be paid at a rate of basic pay for the Senior Executive Service, to be determined by the Director of the Office of Personnel Management. The members of the Committee who are otherwise employees of the Federal Government shall not receive any additional pay by reason of their service on the Committee. The members of the Committee who are not otherwise employees of the Federal Government shall not be paid for their service on the Committee and shall not be considered employees of the Federal Government for any purpose by reason of their service on the Committee.

“(e) ADMINISTRATIVE SUPPORT.—The Office of Personnel Management may provide staff and administrative support for the Committee.

“(f) FUNCTIONS.—The Committee shall review available reports and studies on performance evaluation and performance-based pay systems (including a report to be prepared by the National Academy of Sciences) and any other pertinent information.

“(g) REPORT TO THE OFFICE OF PERSONNEL MANAGEMENT.—No later than 1 year after the date of enactment of this Act [Nov. 5, 1990], the Committee shall submit a report to the Director of the Office of Personnel Management, which shall include recommendations as to—

“(1) the types of pay raises to be covered;

“(2) guidelines for pay-for-performance systems, including the criteria to be used in determining eligibility for and the amount of increases in basic pay above the midpoint of the pay range;

“(3) the role organization performance should play in pay-for-performance systems;

“(4) any differences in pay-for-performance systems for different categories of employees;

“(5) the role for employee organizations in the implementation and operation of pay-for-performance systems; and

“(6) whether demonstration projects on pay-for-performance are desirable.”

BUDGET ACT COMPLIANCE

Pub. L. 101-509, title V, § 529 [title III, § 301], Nov. 5, 1990, 104 Stat. 1461, 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

Pub. L. 101-509, title V, § 529 [title III, § 303], Nov. 5, 1990, 104 Stat. 1463, 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 States 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.