

fore 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; amended Pub. L. 114-323, title IV, §412(1), Dec. 16, 2016, 130 Stat. 1932.)

#### Editorial Notes

##### REFERENCES IN TEXT

The General Schedule, referred to in subsec. (a)(1)(A), is set out under section 5332 of this title.

##### 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§529 [title II, §208(a)], Nov. 5, 1990, 104 Stat. 1427, 1458, which related to recruitment and relocation bonuses, was repealed by Pub.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.

##### AMENDMENTS

2016—Subsec. (a)(2)(A). Pub. L. 114-323 inserted “, excluding members of the Foreign Service other than chiefs of mission and ambassadors at large” before semicolon at end.

#### Statutory Notes and Related Subsidiaries

##### 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).”

##### INCENTIVES FOR CRITICAL POSTS

Pub. L. 111-32, title XI, §1115(d), June 24, 2009, 123 Stat. 1906, as amended by Pub. L. 117-81, div. E, title LIII, §5315, Dec. 27, 2021, 135 Stat. 2366, provided that: “Notwithstanding sections 5753(a)(2)(A) and 5754(a)(2)(A) of title 5, United States Code, appropriations made available by this or any other Act may be used to pay recruitment, relocation, and retention bonuses under chapter 57 of title 5, United States Code[,] to members of the Foreign Service, other than chiefs of mission and ambassadors at large, who are on official duty in Iraq, Afghanistan, or Pakistan.”

#### § 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, excluding members of the Foreign Service other than chiefs of mission and ambassadors at large;

(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; amended Pub. L. 114-323, title IV, §412(2), Dec. 16, 2016, 130 Stat. 1932.)

#### Editorial Notes

##### REFERENCES IN TEXT

The General Schedule, referred to in subsec. (a)(1)(A), is set out under section 5332 of this title.

#### 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.

#### AMENDMENTS

2016—Subsec. (a)(2)(A). Pub. L. 114-323 inserted “, excluding members of the Foreign Service other than chiefs of mission and ambassadors at large” before semicolon at end.

#### Statutory Notes and Related Subsidiaries

##### 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; amend-