

Pub. L. 107-123, §8(d)(1)(B)(ii), inserted “or” at end.
Subsec. (a)(1)(B). 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.”

Statutory Notes and Related Subsidiaries

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 20923 of Title 52, Voting and Elections, see section 21134(a) of Title 52.

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 30101 of Title 52, Voting and Elections.

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 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.

CONSTRUCTION

Pub. L. 112-166, §2(hh), Aug. 10, 2012, 126 Stat. 1290, provided that: “Notwithstanding section 3132(a)(2) of title 5, United States Code, removal of Senate confirmation for any position in this section shall not—

“(1) result in any such position being placed in the Senior Executive Service; or

“(2) alter compensation for any such position under the Executive Schedule or other applicable compensation provisions of law.”

§ 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. Beginning in 2023, the number of such positions authorized under the preceding sentence for the Department of Defense may not exceed the limitation provided in section 1109 of the National Defense Authorization Act for Fiscal Year 2017.

(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; amended Pub. L. 114-328, div. A, title XI, § 1109(c), Dec. 23, 2016, 130 Stat. 2449.)

Editorial Notes

REFERENCES IN TEXT

Section 1109 of the National Defense Authorization Act for Fiscal Year 2017, referred to in subsec. (c), is section 1109 of Pub. L. 114-328, set out as a note below.

Section 413 of the Civil Service Reform Act of 1978, referred to in subsec. (e)(1), is section 413 of Pub. L. 95-454, 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.

AMENDMENTS

2016—Subsec. (c). Pub. L. 114-328 inserted at end “Beginning in 2023, the number of such positions authorized under the preceding sentence for the Department of Defense may not exceed the limitation provided in section 1109 of the National Defense Authorization Act for Fiscal Year 2017.”

Statutory Notes and Related Subsidiaries

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.

LIMITATION ON NUMBER OF DOD SES POSITIONS

Pub. L. 114-328, div. A, title XI, § 1109, Dec. 23, 2016, 130 Stat. 2449, as amended by Pub. L. 118-31, div. A, title XI, § 1115, Dec. 22, 2023, 137 Stat. 433, provided that:

“(a) LIMITATION ON NUMBER OF DOD SES POSITIONS.—

“(1) IN GENERAL.—Not later than December 31, 2022, the total number of Senior Executive Service positions authorized under section 3133 of title 5, United States Code, for the Department of Defense may not exceed 1,260.

“(2) HIGHLY QUALIFIED EXPERTS.—Of the total number of positions authorized under paragraph (1), not more than 200 of such positions may be occupied by an individual appointed under the authority provided in section 9903 of such title.

“(3) EXCEPTION.—The limitation under this subsection shall not apply to positions described in this subsection that are fully funded through amounts appropriated to an agency other than the Department of Defense.

“(b) PLAN TO ACHIEVE REQUIRED LIMITATION.—

“(1) IN GENERAL.—The Secretary of Defense shall develop a plan to achieve the limitation required by subsection (a) that includes—

“(A) the distribution of Senior Executive Service positions across the Office of the Secretary of Defense, the Joint Staff, the Military Departments, the Defense Agencies and Field Activities, the unified and specified combatant commands, and other key elements of the Department of Defense;

“(B) the by-year reductions to Senior Executive Service positions consistent with the distribution required under subparagraph (A); and

“(C) recommendations for any legislative action that may be necessary for personnel management and shaping authorities to achieve the required limitation.

“(2) SUBMISSION OF PLAN.—Not less than one year after the date of the enactment of this Act [Dec. 23, 2016], the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report setting forth the plan developed under paragraph (1).

“(3) PROGRESS REPORTS.—The Secretary of Defense shall provide to the Committees on Armed Services of the Senate and the House of Representatives semi-annual progress report briefings describing and assessing the progress of the Secretary in implementing the plan developed under paragraph (1).

“(c) CONFORMING AMENDMENT.—[Amended section 3133(c) of this title.]

“(d) DEFINITION OF SENIOR EXECUTIVE SERVICE POSITION.—In this section, the term ‘Senior Executive Service position’ has the meaning given such term in section 3132(a)(2) of title 5, United States Code.”

CONVERSION TO SENIOR EXECUTIVE SERVICE

Pub. L. 95-454, title IV, § 413, Oct. 13, 1978, 92 Stat. 1175, 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.”

[Pub. L. 95-454, title IV, §415(a)(2), Oct. 13, 1978, 92 Stat. 1179, provided that section 413 [set out above] 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.