

(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

### Editorial Notes

#### 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

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

### Editorial Notes

#### 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”.

### Statutory Notes and Related Subsidiaries

#### 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 com-

mencing 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

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

#### Editorial Notes

##### 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.

#### Statutory Notes and Related Subsidiaries

##### 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

Pub. L. 101-509, title V, § 529 [title I, § 104(e)], Nov. 5, 1990, 104 Stat. 1427, 1447, 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.)

#### Editorial Notes

##### 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”.

#### Statutory Notes and Related Subsidiaries

##### 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.)

#### Editorial Notes

##### 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”.

#### Statutory Notes and Related Subsidiaries

##### 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)<sup>1</sup> and 21A(e)(4)<sup>1</sup> of the Federal Home Loan Bank Act, section 2A(i)<sup>1</sup> 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;<sup>1</sup> or

(4)<sup>2</sup> section 4802.

(4)<sup>2</sup> 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.

<sup>1</sup> See References in Text note below.

<sup>2</sup> So in original. Two pars. (4) have been enacted.

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

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 2212.	Aug. 14, 1964, Pub. L. 88-426, § 308, 78 Stat. 432. Oct. 6, 1964, Pub. L. 88-631, § 3(e), 78 Stat. 1008.

The words “head of an Executive agency or military department” are coextensive with and substituted for “head of any executive department, independent establishment, or agency in the executive branch” because of the definitions in sections 102 and 105.

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

#### Editorial Notes

##### REFERENCES IN TEXT

The Government Employees Salary Reform Act of 1964 (78 Stat. 400), referred to in subsec. (a), is Pub. L. 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), were classified to former 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 1441a of Title 12 was repealed by Pub. L. 111-203, title III, § 364(b), July 21, 2010, 124 Stat. 1555.

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.

Sections 403a-403c, 403e-403h, and 403j of title 50, referred to in subsec. (a)(3), were editorially reclassified to sections 3501 to 3503, 3505, 3323, 3506, 3507, 3508, and 3510, respectively, of Title 50, War and National Defense. Section 403e-1 of Title 50, included within the reference to sections 403e-403h of Title 50, was enacted by Pub. L. 98-215, title IV, § 402, Dec. 9, 1983, 97 Stat. 1477, after subsec. (a)(3) was enacted, and subsequently editorially reclassified to section 3323 of Title 50.

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)”.

#### Statutory Notes and Related Subsidiaries

##### 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

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

## Editorial Notes

## 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”.

## Statutory Notes and Related Subsidiaries

## EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 906(a)(2) of Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

## § 5375. Police force of the National Zoological Park

The Secretary of the Smithsonian Institution shall fix the annual rates of basic pay for positions on the police force of the National Zoological Park as follows:

- (1) Private, not more than the maximum annual rate of basic pay payable for grade GS-7 of the General Schedule.
- (2) Sergeant, not more than the maximum annual rate of basic pay payable for grade GS-8 of the General Schedule.
- (3) Lieutenant, not more than the maximum annual rate of basic pay payable for grade GS-9 of the General Schedule.
- (4) Captain, not more than the maximum annual rate of basic pay payable for grade GS-10 of the General Schedule.

(Added Pub. L. 91-34, §1(a), June 30, 1969, 83 Stat. 41, §5365; amended Pub. L. 94-183, §2(20), Dec. 31, 1975, 89 Stat. 1058; renumbered §5375, Pub. L. 95-454, title VIII, §801(a)(3)(A)(ii), Oct. 13, 1978, 92 Stat. 1221; Pub. L. 101-263, §1(a), Apr. 4, 1990, 104 Stat. 125; Pub. L. 102-378, §2(33), Oct. 2, 1992, 106 Stat. 1350.)

## Editorial Notes

## 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-7”.

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.

## Statutory Notes and Related Subsidiaries

## EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101-263, §2, Apr. 4, 1990, 104 Stat. 125, 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

Pub. L. 91-34, §3(a), June 30, 1969, 83 Stat. 41, 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

Pub. L. 91-34, §3(b), June 30, 1969, 83 Stat. 41, 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 com-

mencing 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.)

### Editorial Notes

#### 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).

### Statutory Notes and Related Subsidiaries

#### 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 consid-

ered 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

Pub. L. 101-509, title V, § 529 [title I, § 101(c), (d)], Nov. 5, 1990, 104 Stat. 1427, 1442, 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.”

[For reference to maximum rate under section 5376 of this title, 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 individual 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<sup>1</sup> 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.)

**Editorial Notes**

**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 Man-

<sup>1</sup> So in original. Probably should be “or”.

agement 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).

#### Statutory Notes and Related Subsidiaries

##### 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 Oversight and Government Reform of House of Representatives changed to Committee on Oversight and Reform of House of Representatives by House Resolution No. 6, One Hundred Sixteenth Congress, Jan. 9, 2019. Committee on Oversight and Reform of House of Representatives changed to Committee on Oversight and Accountability of House of Representatives by House Resolution No. 5, One Hundred Eighteenth Congress, Jan. 9, 2023.

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.

#### Executive Documents

##### 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.)

#### Editorial Notes

##### 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.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE; CONVERSION AND SAVINGS PROVISIONS

Pub. L. 101-509, title V, §529 [title I, §109(c)], Nov. 5, 1990, 104 Stat. 1427, 1452, 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

Pub. L. 101-509, title V, §529 [title I, §109(b)], Nov. 5, 1990, 104 Stat. 1427, 1451, 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.)

### Editorial Notes

#### 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. Parts B, D, and E of title IV of the Act are classified to parts B (§1071 et seq.), D (§1087a et seq.), and E (§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. 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 amend-

ment, 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).

### Statutory Notes and Related Subsidiaries

#### 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.

#### Statutory Notes and Related Subsidiaries

##### 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.)

#### Editorial Notes

##### AMENDMENTS

1989—Pub. L. 101-136 inserted “‘career appointee,’” before “and”.

#### 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.

### § 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.)

#### Editorial Notes

##### 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.”

#### Statutory Notes and Related Subsidiaries

##### 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.

##### EFFECTIVE DATE

Section effective 9 months after Oct. 13, 1978, and congressional review of provisions of sections 401 through