

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 L. 102-378, §8(a), repealed Pub.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

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.

PAY INCREASES

For adjustment of rates of basic pay for the Senior Executive Service under this section, see the executive order detailing the adjustment of certain rates of pay set out as a note under section 5332 of this title.

For miscellaneous provisions dealing with adjustments of pay and limitations on use of funds to pay salaries in prior years, see notes under section 5318 of this title.

Executive Documents

EXECUTIVE ORDER NO. 12592

Ex. Ord. No. 12592, Apr. 10, 1987, 52 F.R. 13417, as amended by Ex. Ord. No. 12609, Sept. 23, 1987, 52 F.R. 36211, which related to the establishment, functions, administration, and termination of the President's Commission on Compensation of Career Federal Executives, was revoked by Ex. Ord. No. 12692, Sept. 29, 1989, 54 F.R. 40627, formerly set out as a note under section 1013 of this title.

§ 5383. Setting individual senior executive pay

(a) Each appointing authority shall determine, in accordance with criteria established by the Office of Personnel Management, which of the rates within a range established under section 5382 shall be paid to each senior executive under such appointing authority.

(b) Members of the Senior Executive Service shall be subject to the limitation under section 5307.

(c) Except as provided in regulations prescribed by the Office under section 5385, the rate of basic pay for any senior executive may not be adjusted more than once during any 12-month period.

(d) The rate of basic pay for any career appointee may be reduced from any rate of basic pay to any lower rate of basic pay only if the career appointee receives a written notice of the reduction at least 15 days in advance of the reduction.

(e)(1) This subsection applies to—

(A) any individual who, after serving at least 5 years of current continuous service in 1 or more positions in the competitive service, is appointed, without any break in service, as a career appointee; and

(B) any individual who—

(i) holds a position which is converted from the competitive service to a career reserved position in the Senior Executive Service; and

(ii) as of the conversion date, has at least 5 years of current continuous service in 1 or more positions in the competitive service.

(2)(A) The initial rate of pay for a career appointee who is appointed under the circumstances described in paragraph (1)(A) may not be less than the rate of basic pay last payable to that individual immediately before being so appointed.

(B) The initial rate of pay for a career appointee following the position's conversion (as described in paragraph (1)(B)) may not be less than the rate of basic pay last payable to that individual immediately before such position's conversion.

(Added Pub. L. 95-454, title IV, § 407(a), Oct. 13, 1978, 92 Stat. 1171; amended Pub. L. 96-166, § 3, Dec. 29, 1979, 93 Stat. 1273; Pub. L. 98-615, title III, § 305, Nov. 8, 1984, 98 Stat. 3219; Pub. L. 101-509, title V, § 529 [title I, § 101(b)(7)], Nov. 5, 1990, 104 Stat. 1427, 1440; Pub. L. 102-175, § 2, Dec. 2, 1991, 105 Stat. 1222; Pub. L. 102-378, § 2(35), Oct. 2, 1992, 106 Stat. 1351; Pub. L. 108-136, div. A, title XI, § 1125(a)(3), Nov. 24, 2003, 117 Stat. 1639.)

Editorial Notes

AMENDMENTS

2003—Subsec. (a). Pub. L. 108-136, § 1125(a)(3)(A), substituted “which of the rates within a range established under section 5382” for “which of the rates established under section 5382 of this title”.

Subsec. (c). Pub. L. 108-136, § 1125(a)(3)(B), substituted “as provided in regulations prescribed by the Office under section 5385” for “for any pay adjustment under section 5382 of this title”.

1992—Subsec. (b). Pub. L. 102-378 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows:

“(1) In no event may the aggregate amount paid to a senior executive during any fiscal year under sections 4507, 5382, 5384, and 5948 of this title exceed the annual rate payable for positions at level I of the Executive Schedule in effect at the end of such fiscal year.

“(2)(A) Any amount which is not paid to a senior executive during a fiscal year because of the limitation under paragraph (1) of this subsection shall be paid to that individual in a lump sum at the beginning of the following fiscal year.

“(B) Any amount paid under this paragraph during a fiscal year shall be taken into account for purposes of applying the limitation under paragraph (1) of this subsection with respect to such fiscal year.

“(C) The Office of Personnel Management shall prescribe regulations, consistent with section 5582 of this title, under which payment under this paragraph shall be made in the case of any individual whose death precludes payment under subparagraph (A) of this paragraph.”

1991—Subsec. (e). Pub. L. 102-175 added subsec. (e).

1990—Subsec. (b)(1). Pub. L. 101-509, which directed that “5304(j),” be struck out after the reference to section 4507, could not be executed because “5304(j),” does not appear in text.

1984—Subsec. (b). Pub. L. 98-615 designated existing provisions as par. (1) and added par. (2).

1979—Subsec. (b). Pub. L. 96-166 inserted reference to section 5948.

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 1984 AMENDMENT

Amendment by Pub. L. 98-615 effective following expiration of 90-day period beginning on Nov. 8, 1984, see section 307 of Pub. L. 98-615, set out as a note under section 3393 of this title.

EFFECTIVE DATE

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.

SENIOR EXECUTIVE SERVICE; MAXIMUM AGGREGATE AMOUNT PAYABLE, ETC.; REPORT

Pub. L. 98-168, title III, § 301(a), Nov. 29, 1983, 97 Stat. 1112, required Office of Personnel Management to study

and, within 12 months after Nov. 29, 1983, submit to each House of Congress a report on effect which 5 U.S.C. 5383(b) (relating to maximum aggregate amount payable to a member of Senior Executive Service in a fiscal year) has had with respect to recruitment, retention, and morale of career appointees in Senior Executive Service.

§ 5384. Performance awards in the Senior Executive Service

(a)(1) To encourage excellence in performance by career appointees, performance awards shall be paid to career appointees in accordance with the provisions of this section.

(2) Such awards shall be paid in a lump sum and shall be in addition to the basic pay paid under section 5382 of this title or any award paid under section 4507 of this title.

(b)(1) No performance award under this section shall be paid to any career appointee whose performance was determined to be less than fully successful at the time of the appointee's most recent performance appraisal and rating under subchapter II of chapter 43 of this title.

(2) The amount of a performance award under this section shall be determined by the agency head but may not be less than 5 percent nor more than 20 percent of the career appointee's rate of basic pay.

(3) The aggregate amount of performance awards paid under this section by an agency during any fiscal year may not exceed the greater of—

(A) an amount equal to 10 percent of the aggregate amount of basic pay paid to career appointees in such agency during the preceding fiscal year; or

(B) an amount equal to 20 percent of the average of the annual rates of basic pay paid to career appointees in such agency during the preceding fiscal year.

(c)(1) Performance awards paid by any agency under this section shall be based on recommendations by performance review boards established by such agency under section 4314 of this title.

(2) not¹ less than a majority of the members of any review board referred to in paragraph (1) shall be career appointees whenever making recommendations under such paragraph with respect to a career appointee. The requirement of the preceding sentence shall not apply in any case in which the Office of Personnel Management determines that there exists an insufficient number of career appointees available to comply with the requirement.

(d) The Office of Personnel Management may issue guidance to agencies concerning the proportion of Senior Executive Service salary expenses that may be appropriately applied to payment of performance awards and the distribution of awards.

(Added Pub. L. 95-454, title IV, § 407(a), Oct. 13, 1978, 92 Stat. 1172; amended Pub. L. 98-615, title III, § 302, Nov. 8, 1984, 98 Stat. 3217; Pub. L. 101-136, title VI, § 625(a), Nov. 3, 1989, 103 Stat. 822; Pub. L. 105-277, div. A, § 101(h) [title VI, § 632(a)], Oct. 21, 1998, 112 Stat. 2681-480, 2681-523.)

¹ So in original. Probably should be capitalized.

Editorial Notes

AMENDMENTS

1998—Subsec. (b)(3). Pub. L. 105-277 substituted “10 percent” for “3 percent” in subpar. (A) and substituted “20 percent” for “15 percent” in subpar. (B).

1989—Subsec. (c). Pub. L. 101-136 designated existing provisions as par. (1) and added par. (2).

1984—Subsec. (b)(2). Pub. L. 98-615, § 302(1), substituted “but may not be less than 5 percent nor more than 20 percent” for “but may not exceed 20 percent”.

Subsec. (b)(3). Pub. L. 98-615, § 302(2), substituted provisions limiting the aggregate amount of performance awards paid under this section by an agency during any fiscal year to the greater of 3 percent of the aggregate basic pay of career appointees in that agency during the preceding fiscal year or 15 percent of the average of the annual rates of basic pay of such appointees during such fiscal year for provisions limiting the number of career appointees paid performance awards under this section during any fiscal year to 50 percent of the number of Senior Executive Service positions in such agency, except for an agency having less than 4 such positions.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105-277, div. A, § 101(h) [title VI, § 632(b)], Oct. 21, 1998, 112 Stat. 2681-480, 2681-523, provided that: “The amendments made by this section [amending this section] shall take effect on October 1, 1998, or the date of enactment of this Act [Oct. 21, 1998], whichever is later.”

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-615 effective following expiration of 90-day period beginning on Nov. 8, 1984, see section 307 of Pub. L. 98-615, set out as a note under section 3393 of this title.

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 PERFORMANCE AWARDS FOR CAREER APPOINTEES

Section 306(c) of S. 2939, Ninety-seventh Congress, 2nd Session, as reported Sept. 22, 1982, and incorporated by reference in Pub. L. 97-276, § 101(e), Oct. 2, 1982, 96 Stat. 1189, to be effective as if enacted into law, provided that: “None of the funds appropriated by this Act or any other Act shall be used by any agency to pay performance awards in fiscal year 1983 under section 5384 of title 5, United States Code, or any comparable personnel system established on or after October 13, 1978, to more than 20 per centum of the number of Senior Executive Service or comparable personnel system positions in such agency: *Provided*, That an agency with less than five Senior Executive Service employees or equivalent positions may grant one such performance award.”

Similar provisions were contained in the following acts:

Pub. L. 97-51, §§ 101(c), 124, Oct. 1, 1981, 95 Stat. 959, 965.

Pub. L. 96-536, § 101(c), Dec. 16, 1980, 94 Stat. 3167.

Pub. L. 96-369, § 101(c), Oct. 1, 1980, 94 Stat. 1352.

Pub. L. 96-304, title III, § 303, July 8, 1980, 94 Stat. 927.

§ 5385. Regulations

The Office of Personnel Management shall prescribe regulations to carry out the purpose of this subchapter.

(Added Pub. L. 95-454, title IV, § 407(a), Oct. 13, 1978, 92 Stat. 1172.)

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.

SUBCHAPTER IX—SPECIAL OCCUPATIONAL PAY SYSTEMS**Editorial Notes****AMENDMENTS**

1992—Pub. L. 102-378, §2(36), Oct. 2, 1992, 106 Stat. 1351, struck out subchapter analysis, consisting of item 5391 “Definitions” and item 5392 “Establishment of special occupational pay systems”.

§ 5391. Definitions

For the purposes of this subchapter, “agency”, “employee”, and “position” have the meanings given them by section 5102.

(Added Pub. L. 101-509, title V, §529 [title I, §105(a)(1)], Nov. 5, 1990, 104 Stat. 1427, 1447.)

Statutory Notes and Related Subsidiaries**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.

§ 5392. Establishment of special occupational pay systems

(a) Authority under this section may be exercised with respect to any occupation or group of occupations to which subchapter III applies (or would apply but for this section).

(b) Subject to subsection (a), the President’s pay agent (as referred to in section 5304(d)) may establish one or more special occupational pay systems for any positions within occupations or groups of occupations that the pay agent determines, for reasons of good administration, should not be classified under chapter 51 or subject to subchapter III.

(c) In establishing special occupational pay systems, the pay agent shall—

(1) identify occupations or groups of occupations for which chapter 51 and subchapter III do not function adequately;

(2) consider alternative approaches for determining the pay for employees in positions in such occupations or groups of occupations;

(3) give thorough consideration to the views of agencies employing such employees and labor organizations representing such employees, as well as other interested parties;

(4) publish a proposed plan for determining the pay of such employees in the Federal Register;

(5) conduct one or more public hearings;

(6) provide each House of Congress with a report at least 90 days in advance of the date the system is to take effect setting forth the details of the proposed plan; and

(7) not later than 30 days before the date the system is to take effect, publish in the Federal Register the details of the final plan for the special occupational pay system.

(d) A special occupational pay system may not—

(1) provide for a waiver of any law, rule, or regulation that could not be waived under section 4703(c); or

(2) provide a rate of basic pay for any employee in excess of the rate payable for level V of the Executive Schedule.

(e) Subject to subsection (d)(2), effective at the beginning of the first applicable pay period commencing on or after the first day of the month in which an adjustment takes effect under section 5303 in the rates of pay under the General Schedule, each rate of pay established under this section shall be adjusted by such amount as the Office considers appropriate.

(Added Pub. L. 101-509, title V, §529 [title I, §105(a)(1)], Nov. 5, 1990, 104 Stat. 1427, 1448.)

Editorial Notes**REFERENCES IN TEXT**

Level V of the Executive Schedule, referred to in subsec. (d)(2), is set out in section 5316 of this title.

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

Statutory Notes and Related Subsidiaries**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.

CHAPTER 54—HUMAN CAPITAL PERFORMANCE FUND**Sec.**

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Editorial Notes**PRIOR PROVISIONS**

A prior chapter 54, consisting of sections 5401 to 5410, related to performance management and recognition system, prior to repeal by Pub. L. 103-89, §3(a)(1), (c), Sept. 30, 1993, 107 Stat. 981, 983, eff. Nov. 1, 1993.

Statutory Notes and Related Subsidiaries**TREATMENT OF EMPLOYEES COVERED BY PERFORMANCE MANAGEMENT AND RECOGNITION SYSTEM AS OF TERMINATION DATE**

Pub. L. 103-89, §4, Sept. 30, 1993, 107 Stat. 983, provided that:

“(a) DEFINITIONS.—For purposes of this section—

“(1) the term ‘employee’ means an individual employed by an agency (within the meaning of section 7103(a)(3) of title 5, United States Code);

“(2) the term ‘performance management and recognition system’ means the performance management and recognition system under [former] chapter 54 of title 5, United States Code;

“(3) the term ‘basic pay’ does not include any amount payable under section 302 [set out as a note under section 5304 of this title] or title IV [see Short