

by statute at a rate equal to 1 of the levels of the Executive Schedule.

An election under this paragraph shall remain effective so long as the appointee continues to serve in the same position.

(d) Appointment or removal of a person to or from any Senior Executive Service position in an independent regulatory commission shall not be subject, directly or indirectly, to review or approval by any officer or entity within the Executive Office of the President.

(Added Pub. L. 95-454, title IV, §403(a), Oct. 13, 1978, 92 Stat. 1161; amended Pub. L. 101-335, §7(a), July 17, 1990, 104 Stat. 325.)

Editorial Notes

REFERENCES IN TEXT

The Executive Schedule, referred to in subsec. (c), is set out as section 5311 et seq. of this title.

PRIOR PROVISIONS

A prior section 3392, added Pub. L. 95-437, §3(a), Oct. 10, 1978, 92 Stat. 1056, which related to the establishment of part-time career employment programs, was renumbered as section 3402 of this title by Pub. L. 95-454, title IX, §906(c)(1)(B), Oct. 13, 1978, 92 Stat. 1226.

AMENDMENTS

1990—Subsec. (c). Pub. L. 101-335 designated existing provisions as par. (1), redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, and added par. (2).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101-335, §7(b)(1), July 17, 1990, 104 Stat. 325, provided that: “The amendments made by this section [amending this section] shall take effect on the date of enactment of this Act [July 17, 1990].”

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 an Effective Date note under section 3131 of this title.

ELECTION BY PERSONS PREVIOUSLY APPOINTED; RETROACTIVE PERFORMANCE AWARDS

Pub. L. 101-335, §7(b)(2), (3), July 17, 1990, 104 Stat. 325, as amended by Pub. L. 102-378, §7(a), Oct. 2, 1992, 106 Stat. 1359, provided that:

“(2) ELECTION BY PERSONS PREVIOUSLY APPOINTED.—The Office of Personnel Management shall prescribe regulations (including procedures and deadlines) under which an election under section 3392(c)(2) of title 5, United States Code (as amended by this section) may be made by any individual who—

“(A) on the date of enactment of this Act [July 17, 1990], is serving in a civilian position in the executive branch which—

“(i) is not in the Senior Executive Service; and

“(ii) satisfies section 3392(c)(2)(B) of such title 5 (as so amended);

“(B) was appointed to that position on or after November 1, 1986, and has served continuously in such position since then;

“(C) was a career appointee (within the meaning of section 3132(a)(4) of such title 5) immediately before having been so appointed; and

“(D) was not, based on such individual’s appointment to the position described in subparagraph (A), eligible to make an election under section 3392(c) of such title 5 (as then in effect).

An election under this paragraph shall be effective as of the date of appointment to the position described in subparagraph (A).

“(3) RETROACTIVE PERFORMANCE AWARDS.—If an individual elects under paragraph (2) to continue to be subject to performance awards, the head of the agency in which such individual is serving shall determine whether to grant retroactive performance awards for any fiscal years prior to fiscal year 1991 to such individual, and the amount of any such awards, without regard to the provisions of subsection (b) of section 5383 of title 5, United States Code, and subsections (b) and (c) of section 5384 of such title. Before granting an award, the head of the agency shall make a written determination that the individual’s performance during the fiscal year for which the award is given was at least fully successful, and shall consider the recommendation of the agency’s performance review board with respect to the award. No such award for performance during any fiscal year may be less than 5 percent nor more than 15 percent of the individual’s rate of basic pay as of the end of such fiscal year.”

[Pub. L. 102-378, §7(b), Oct. 2, 1992, 106 Stat. 1359, provided that: “The amendment made by subsection (a) [enacting section 7(b)(3) of Pub. L. 101-335, set out above] shall be effective as if enacted as a part of section 7 of the Thrift Savings Plan Technical Amendments Act of 1990 [Pub. L. 101-335].”]

§ 3393. Career appointments

(a) Each agency shall establish a recruitment program, in accordance with guidelines which shall be issued by the Office of Personnel Management, which provides for recruitment of career appointees from—

(1) all groups of qualified individuals within the civil service; or

(2) all groups of qualified individuals whether or not within the civil service.

(b) Each agency shall establish one or more executive resources boards, as appropriate, the members of which shall be appointed by the head of the agency from among employees of the agency or commissioned officers of the uniformed services serving on active duty in such agency. The boards shall, in accordance with merit staffing requirements established by the Office, conduct the merit staffing process for career appointees, including—

(1) reviewing the executive qualifications of each candidate for a position to be filled by a career appointee; and

(2) making written recommendations to the appropriate appointing authority concerning such candidates.

(c)(1) The Office shall establish one or more qualifications review boards, as appropriate. It is the function of the boards to certify the executive qualifications of candidates for initial appointment as career appointees in accordance with regulations prescribed by the Office. Of the members of each board more than one-half shall be appointed from among career appointees. Appointments to such boards shall be made on a non-partisan basis, the sole selection criterion being the professional knowledge of public management and knowledge of the appropriate occupational fields of the intended appointee.

(2) The Office shall, in consultation with the various qualification review boards, prescribe criteria for establishing executive qualifications for appointment of career appointees. The criteria shall provide for—

(A) consideration of demonstrated executive experience;

(B) consideration of successful participation in a career executive development program which is approved by the Office; and

(C) sufficient flexibility to allow for the appointment of individuals who have special or unique qualities which indicate a likelihood of executive success and who would not otherwise be eligible for appointment.

(d) An individual's initial appointment as a career appointee shall become final only after the individual has served a 1-year probationary period as a career appointee.

(e) Each career appointee shall meet the executive qualifications of the position to which appointed, as determined in writing by the appointing authority.

(f) The title of each career reserved position shall be published in the Federal Register.

(g) A career appointee may not be removed from the Senior Executive Service or civil service except in accordance with the applicable provisions of sections 1215,¹ 3592, 3595, 7532, or 7543 of this title.

(Added Pub. L. 95-454, title IV, §403(a), Oct. 13, 1978, 92 Stat. 1161; amended Pub. L. 97-35, title XVII, §1704(c), Aug. 13, 1981, 95 Stat. 758; Pub. L. 98-615, title III, §306(b)(1), Nov. 8, 1984, 98 Stat. 3220; Pub. L. 101-12, §9(b), Apr. 10, 1989, 103 Stat. 35; Pub. L. 101-194, title V, §506(b)(2), Nov. 30, 1989, 103 Stat. 1758; Pub. L. 101-280, §6(d)(1), May 4, 1990, 104 Stat. 160; Pub. L. 107-296, title XIII, §1321(a)(1)(A), Nov. 25, 2002, 116 Stat. 2296; Pub. L. 114-92, div. A, title XI, §1105(c)(2), Nov. 25, 2015, 129 Stat. 1024; Pub. L. 117-81, div. A, title XI, §1106(b)(2)(B), Dec. 27, 2021, 135 Stat. 1950.)

Editorial Notes

PRIOR PROVISIONS

A prior section 3393, added Pub. L. 95-437, §3(a), Oct. 10, 1978, 92 Stat. 1057, which related to limitations concerning part-time career employment opportunities, was renumbered as section 3403 of this title by Pub. L. 95-454, title IX, §906(c)(1)(B), Oct. 13, 1978, 92 Stat. 1226.

AMENDMENTS

2021—Subsec. (d). Pub. L. 117-81 struck out at end “The preceding sentence shall not apply to any individual covered by section 1599e of title 10.”

2015—Subsec. (d). Pub. L. 114-92 inserted at end “The preceding sentence shall not apply to any individual covered by section 1599e of title 10.”

2002—Subsec. (g). Pub. L. 107-296 struck out “3393a” after “1215.”

1990—Subsec. (g). Pub. L. 101-280 made technical correction to directory language of Pub. L. 101-194, see 1989 Amendment below.

1989—Subsec. (g). Pub. L. 101-194, as amended by Pub. L. 101-280, inserted “3393a,” after “1215.”

Pub. L. 101-12 substituted “1215” for “1207”.

1984—Subsec. (b). Pub. L. 98-615 inserted provision referring to commissioned officers of the uniformed services serving on active duty in such agency in provisions preceding par. (1).

1981—Subsec. (g). Pub. L. 97-35 added subsec. (g).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 117-81 applied as if effective Dec. 31, 2022, to correspond to the effective date of the

repeal of section 1599e of Title 10, Armed Forces, to reflect the probable intent of Congress. See Effective Date of Repeal note under section 1599e of Title 10.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107-296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

EFFECTIVE DATE OF 1989 AMENDMENTS

Amendment by Pub. L. 101-194 effective Jan. 1, 1991, see section 506(d) of Pub. L. 101-194, set out as a note under section 3151 of this title.

Amendment by Pub. L. 101-12 effective 90 days following Apr. 10, 1989, see section 11 of Pub. L. 101-12, set out as a note under section 1201 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98-615, title III, §307, Nov. 8, 1984, 98 Stat. 3220, provided that: “The amendments made by this title [enacting section 3595a of this title, amending this section and sections 3135, 3593 to 3595, 4312, 5383, and 5384 of this title, and enacting provisions set out as a note under section 3131 of this title] shall be effective following the expiration of the 90-day period beginning on the date of enactment of this Act [Nov. 8, 1984], except that the amendments made by section 304 [amending sections 3395, 3595, 7543, and 8336 of this title] shall be effective as of such date of enactment.”

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-35 effective June 1, 1981, with certain exceptions and conditions, see section 1704(e) of Pub. L. 97-35, set out as an Effective Date note under section 3595 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 an Effective Date note under section 3131 of this title.

TEMPORARY INAPPLICABILITY OF CERTIFICATION OF EXECUTIVE QUALIFICATIONS BY QUALIFICATION REVIEW BOARDS OF OFFICE OF PERSONNEL MANAGEMENT

Pub. L. 115-232, div. A, title XI, §1109, Aug. 13, 2018, 132 Stat. 2010, as amended by Pub. L. 116-283, div. A, title XI, §1118, Jan. 1, 2021, 134 Stat. 3897, provided that:

“(a) TEMPORARY INAPPLICABILITY.—Notwithstanding section 3393(c) of title 5, United States Code, or any regulations implementing that section, and subject to the provisions of this section, the Secretary of Defense may appoint individuals for service in the Senior Executive Service of the Department of Defense without such individuals being subject to the certification of executive qualifications by a qualification review board of the Office of Personnel Management in connection with such appointment otherwise required by that section.

“(b) QUALIFICATIONS OF INDIVIDUALS APPOINTED.—The Secretary shall ensure that individuals appointed under this section possess the necessary qualifications and experience for the position to which appointed.

“(c) LIMITATION.—The total number of appointments made under this section in any year may not exceed 50 appointments.

“(d) REPORTS.—

“(1) INITIAL REPORT.—Not later than one year after the date of the enactment of this Act [Aug. 13, 2018], the Secretary shall submit to the committees of Congress and official specified in paragraph (3) a report on the number and type of appointments made under this section as of the date of the report, including—

“(A) a description of the qualifications of the individuals appointed; and

“(B) data on the time required to appoint the individuals.

¹ So in original.

“(2) FINAL REPORT.—Not later than two years after the date of the enactment of this Act, the Secretary shall submit to the committees of Congress and official specified in paragraph (3) a report on the use of the authority in this section. The report shall include the following:

“(A) The number and type of appointments made under this section during the one-year period ending on the date of the report.

“(B) Data on and an assessment whether appointments under the authority in this section reduced the time to hire when compared with the time to hire under the current review system of the Office of Personnel Management.

“(C) An assessment of the utility of the appointing authority and process under this section.

“(D) An assessment whether the appointments made under this section resulted in higher quality new executives for the Senior Executive Service of the Department when compared with the executives produced under the current review system of the Office of Personnel Management.

“(E) Any recommendation for the improvement of the selection and qualification process for the Senior Executive Service of the Department that the Secretary considers necessary in order to attract and hire highly qualified candidates for service in that Senior Executive Service.

“(3) COMMITTEES OF CONGRESS AND OFFICIAL.—The committees of Congress and official specified in this paragraph are—

“(A) the Committee on Armed Services and the Committee on Homeland Security and Governmental Affairs of the Senate;

“(B) the Committee on Armed Services and the Committee on Oversight and Government Reform [now Committee on Oversight and Reform] of the House of Representatives; and

“(C) the Director of the Office of Personnel Management.

“(e) SUNSET.—Subsection (a) shall cease to be effective on August 13, 2023.”

[§ 3393a. Repealed. Pub. L. 107-296, title XIII, § 1321(a)(1)(B), Nov. 25, 2002, 116 Stat. 2296]

Section, added Pub. L. 101-194, title V, § 506(a)(1), Nov. 30, 1989, 103 Stat. 1756, related to recertification of career appointees.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF REPEAL

Repeal effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107-296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

§ 3394. Noncareer and limited appointments

(a) Each noncareer appointee, limited term appointee, and limited emergency appointee shall meet the qualifications of the position to which appointed, as determined in writing by the appointing authority.

(b) An individual may not be appointed as a limited term appointee or as a limited emergency appointee without the prior approval of the exercise of such appointing authority by the Office of Personnel Management.

(Added Pub. L. 95-454, title IV, § 403(a), Oct. 13, 1978, 92 Stat. 1162.)

Editorial Notes

PRIOR PROVISIONS

A prior section 3394, added Pub. L. 95-437, § 3(a), Oct. 10, 1978, 92 Stat. 1057, which related to personnel ceilings,

was renumbered as section 3404 of this title by Pub. L. 95-454, title IX, § 906(c)(1)(B), Oct. 13, 1978, 92 Stat. 1226.

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 an Effective Date note under section 3131 of this title.

§ 3395. Reassignment and transfer within the Senior Executive Service

(a)(1) A career appointee in an agency—

(A) may, subject to paragraph (2) of this subsection, be reassigned to any Senior Executive Service position in the same agency for which the appointee is qualified; and

(B) may transfer to a Senior Executive Service position in another agency for which the appointee is qualified, with the approval of the agency to which the appointee transfers.

(2)(A) Except as provided in subparagraph (B) of this paragraph, a career appointee may be reassigned to any Senior Executive Service position only if the career appointee receives written notice of the reassignment at least 15 days before the effective date of such reassignment.

(B)(i) A career appointee may not be reassigned to a Senior Executive Service position outside the career appointee's commuting area unless—

(I) before providing notice under subclause (II) of this clause (or seeking or obtaining the consent of the career appointee under clause (ii) of this subparagraph to waive such notice), the agency consults with the career appointee on the reasons for, and the appointee's preferences with respect to, the proposed reassignment; and

(II) the career appointee receives written notice of the reassignment, including a statement of the reasons for the reassignment, at least 60 days before the effective date of the reassignment.

(ii) Notice of reassignment under clause (i)(II) of this subparagraph may be waived with the written consent of the career appointee involved.

(b)(1) Notwithstanding section 3394(b) of this title, a limited emergency appointee may be reassigned to another Senior Executive Service position in the same agency established to meet a bona fide, unanticipated, urgent need, except that the appointee may not serve in one or more positions in such agency under such appointment in excess of 18 months.

(2) Notwithstanding section 3394(b) of this title, a limited term appointee may be reassigned to another Senior Executive Service position in the same agency the duties of which will expire at the end of a term of 3 years or less, except that the appointee may not serve in one or more positions in the agency under such appointment in excess of 3 years.

(c) A limited term appointee or a limited emergency appointee may not be appointed to, or continue to hold, a position under such an appointment if, within the preceding 48 months,