Pub. L. 104–186, title II, § 215(3), Aug. 20, 1996, 110 Stat. 1745.)

Editorial Notes

REFERENCES IN TEXT

Section 166b–3a of title 40, referred to in subsec. (a)(1)(B), means section 166b–3a of former Title 40, Public Buildings, Property, and Works, which was transferred to section 1848 of Title 2, The Congress.

The General Schedule, referred to in subsec. (a)(2), is set out under section 5332 of this title.

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

AMENDMENTS

1996—Subsec. (a)(1)(A). Pub. L. 104–186 substituted ''Chief Administrative Officer'' for ''Clerk''.

1992—Subsec. (a)(1)(B). Pub. L. 102–378 substituted ''section 166b–3a'' for ''section 166b–3''.

1990—Pub. L. 101–509 amended section generally, substituting provisions authorizing adjustments in rates of pay, minimum or maximum rates of pay, and monetary limitations or allowances with respect to pay of certain Federal employees for provisions establishing Advisory Committee on Federal Pay and setting forth its duties.

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.

§ 5307. Limitation on certain payments

(a)(1) Except as otherwise permitted by or under law, or as otherwise provided under subsection (d), no allowance, differential, bonus, award, or other similar cash payment under this title may be paid to an employee in a calendar year if, or to the extent that, when added to the total basic pay paid or payable to such employee for service performed in such calendar year as an employee in the executive branch (or as an employee outside the executive branch to whom chapter 51 applies), such payment would cause the total to exceed the annual rate of basic pay payable for level I of the Executive Schedule, as of the end of such calendar year.

(2) This section shall not apply to any payment under—

(A) subchapter III or VII of chapter 55 or section 5596;

(B) chapter 57 (other than section 5753, 5754, 5755, or 5757);[1] or

(C) chapter 59 (other than section 5925, 5928, 5941(a)(2), or 5948).

(b)(1) Any amount which is not paid to an employee in a calendar year because of the limitation under subsection (a) shall be paid to such employee in a lump sum at the beginning of the following calendar year.

(2) Any amount paid under this subsection in a calendar year shall be taken into account for purposes of appying[2] the limitations under subsection (a) with respect to such calendar year.

(c) The Office of Personnel Management shall prescribe such regulations as may be necessary to carry out this section (subject to subsection (d)), including regulations (consistent with section 5582) concerning how a lump-sum payment under subsection (b) shall be made with respect to any employee who dies before an amount payable to such employee under subsection (b) is made.

(d)(1) Notwithstanding any other provision of this section, subsection (a)(1) shall be applied by substituting ''the total annual compensation payable to the Vice President under section 104 of title 3'' for ''the annual rate of basic pay payable for level I of the Executive Schedule'' in the case of any employee who—

(A) is paid under section 5376 or 5383 of this title, section 332(f), 603, or 604 of title 28, or section 108 of the Legislative Branch Appropriations Act, 1991 (2 U.S.C. 1849); and

(B) holds a position in or under an agency which is described in paragraph (2).

(2) An agency described in this paragraph is any agency which, for purposes of applying the limitation in the calendar year involved, has a performance appraisal system certified under this subsection as making, in its design and application, meaningful distinctions based on relative performance.

(3)(A) The Office of Personnel Management and the Office of Management and Budget jointly shall promulgate such regulations as may be necessary to carry out this subsection, including the criteria and procedures in accordance with which any determinations under this subsection shall be made.

(B) The certification of an agency performance appraisal system under this subsection shall be for a period not to exceed 24 months beginning on the date of certification, unless extended by the Director of the Office of Personnel Management for up to 6 additional months, except that such certification may be terminated at any time upon a finding that the actions of such agency have not remained in conformance with applicable requirements.

(C) Any certification or decertification under this subsection shall be made by the Office of Personnel Management, with the concurrence of the Office of Management and Budget.

(4) Notwithstanding any provision of paragraph (3), any regulations, certifications, or other measures necessary to carry out this subsection with respect to employees within the judicial branch shall be the responsibility of the Director of the Administrative Office of the United States Courts. However, the regulations under this paragraph shall be consistent with those promulgated under paragraph (3).

(5)(A) Notwithstanding any provision of paragraph (3), any regulations, certifications, or other measures necessary to carry out this subsection—

(i) with respect to employees of the Library of Congress shall be the responsibility of the Librarian of Congress;

(ii) with respect to employees of the Office of the Architect of the Capitol shall be the responsibility of the Architect of the Capitol; and

(iii) with respect to employees of the Government Publishing Office shall be the responsibility of the Director of the Government Publishing Office.

[1] See References in Text note below.

[2] So in original. Probably should be ''applying''.

(B) The regulations under this paragraph shall be consistent with those promulgated under paragraph (3).

(Added Pub. L. 91–656, § 3(a), Jan. 8, 1971, 84 Stat. 1950; amended Pub. L. 97–258, § 3(a)(10), Sept. 13, 1982, 96 Stat. 1063; Pub. L. 101–509, title V, § 529 [title I, § 101(a)(1)], Nov. 5, 1990, 104 Stat. 1427, 1438; Pub. L. 102–77, § 2, July 26, 1991, 105 Stat. 369; Pub. L. 107–273, div. A, title II, § 207(b), Nov. 2, 2002, 116 Stat. 1780; Pub. L. 107–296, title XIII, § 1322, Nov. 25, 2002, 116 Stat. 2297; Pub. L. 110–372, § 3(a), Oct. 8, 2008, 122 Stat. 4045; Pub. L. 114–113, div. I, title II, § 210(a), Dec. 18, 2015, 129 Stat. 2674.)

Editorial Notes

REFERENCES IN TEXT

Level I of the Executive Schedule, referred to in subsecs. (a)(1) and (d)(1), is set out in section 5312 of this title.

Section 5757, referred to in subsec. (a)(2)(B), probably means the section 5757 of this title added by Pub. L. 107–273, relating to extended assignment incentive.

AMENDMENTS

2015—Subsec. (d)(1)(A). Pub. L. 114–113, § 210(a)(1), substituted ''this title, section 332(f), 603, or 604 of title 28, or section 108 of the Legislative Branch Appropriations Act, 1991 (2 U.S.C. 1849)'' for ''this title or section 332(f), 603, or 604 of title 28''.

Subsec. (d)(5). Pub. L. 114–113, § 210(a)(2), added par. (5).

2008—Subsec. (d)(2). Pub. L. 110–372, § 3(a)(1), substituted ''applying the limitation in the calendar year involved, has a performance appraisal system certified under this subsection as making, in its design and application, meaningful distinctions based on relative performance'' for ''the calendar year involved, has been certified under this subsection as having a performance appraisal system which (as designed and applied) makes meaningful distinctions based on relative performance''.

Subsec. (d)(3)(B). Pub. L. 110–372, § 3(a)(2), substituted ''The certification of an agency performance appraisal system under this subsection shall be for a period not to exceed 24 months beginning on the date of certification, unless extended by the Director of the Office of Personnel Management for up to 6 additional months'' for ''An agency's certification under this subsection shall be for a period of 2 calendar years'' and struck out '', for purposes of either or both of those years,'' after ''time''.

2002—Subsec. (a)(1). Pub. L. 107–296, § 1322(b)(1), inserted ''or as otherwise provided under subsection (d),'' after ''under law,''.

Subsec. (a)(2)(B). Pub. L. 107–273 substituted ''5755, or 5757'' for ''or 5755''.

Subsec. (c). Pub. L. 107–296, § 1322(b)(2), substituted ''this section (subject to subsection (d)),'' for ''this section,''.

Subsec. (d). Pub. L. 107–296, § 1322(a), added subsec. (d).

1991—Subsec. (a). Pub. L. 102–77, § 2(1)–(3), designated existing provisions as par. (1), substituted ''cause the'' for ''cause to the'', and added par. (2).

Subsec. (b)(3). Pub. L. 102–77, § 2(4), struck out par. (3) which read as follows: ''Paragraph (1) shall not apply to an amount if, or to the extent that, it is attributable to a payment the authority for which would derive from section 4505a(d), 5753(e), or 5754(e).''

1990—Pub. L. 101–509 amended section generally, substituting provisions prohibiting cash payments to employees in excess of annual rate of basic pay payable for level I of Executive Schedule in a calendar year, for provisions authorizing adjustments in rates of pay, minimum or maximum rates of pay, and monetary limitations or allowances with respect to pay of certain Federal employees.

1982—Subsec. (a). Pub. L. 97–258 substituted ''sections 1341, 1342, and 1349–1351 and subchapter II of chapter 15'' for ''section 665''.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2015 AMENDMENT

Pub. L. 114–113, div. I, title II, § 210(b), Dec. 18, 2015, 129 Stat. 2674, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Dec. 18, 2015].''

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–372, § 3(c), Oct. 8, 2008, 122 Stat. 4046, provided that: ''The amendments made by this section [amending this section] shall take effect on the date of enactment of this Act [Oct. 8, 2008].''

EFFECTIVE DATE OF 2002 AMENDMENTS

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.

Pub. L. 107–273, div. A, title II, § 207(c), Nov. 2, 2002, 116 Stat. 1780, provided that: ''The amendments made by this section [enacting section 5757 of this title and amending this section] shall take effect on the first day of the first applicable pay period beginning on or after 6 months after the date of enactment of this Act [Nov. 2, 2002].''

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.

CONSTRUCTION

Pub. L. 115–41, title II, § 204(d), June 23, 2017, 131 Stat. 876, provided that: ''Nothing in this Act [see Short Title of 2017 Amendment note set out under section 101 of Title 38, Veterans' Benefits] or the amendments made by this Act may be construed to modify the certification issued by the Office of Personnel Management and the Office of Management and Budget regarding the performance appraisal system of the Senior Executive Service of the Department of Veterans Affairs.''

EXTENSION OF CERTIFICATION

Pub. L. 110–372, § 3(b), Oct. 8, 2008, 122 Stat. 4045, provided that:

''(1) EXTENSION TO 2009.—

''(A) IN GENERAL.—For any certification of a performance appraisal system under section 5307(d) of title 5, United States Code, in effect on the date of enactment of this Act [Oct. 8, 2008] and scheduled to expire at the end of calendar year 2008, the Director of the Office of Personnel Management may provide that such a certification shall be extended without requiring additional justification by the agency.

''(B) LIMITATION.—The expiration of any extension under this paragraph shall be not later than the later of—

''(i) June 30, 2009; or

''(ii) the first anniversary of the date of the certification.

''(2) EXTENSION TO 2010.—

''(A) IN GENERAL.—For any certification of a performance appraisal system under section 5307(d) of title 5, United States Code, in effect on the date of enactment and scheduled to expire at the end of calendar year 2009, the Director of the Office of Personnel Management may provide that such a certification shall be extended without requiring additional justification by the agency.

''(B) LIMITATION.—The expiration of any extension under this paragraph shall be not later than the later of—

''(i) June 30, 2010; or

''(ii) the second anniversary of the date of the certification.''

Executive Documents

FREEZE ON DISCRETIONARY AWARDS, BONUSES, AND SIMILAR PAYMENTS FOR FEDERAL POLITICAL APPOINTEES

Memorandum of President of the United States, Aug. 3, 2010, 75 F.R. 47433, provided:

Memorandum for the Assistant to the President and Chief of Staff [and] The Heads of Executive Departments and Agencies

At a time when so many American families are struggling to make ends meet, I am committed to making sure the Federal Government is spending the taxpayers' money wisely and carefully, and cutting costs wherever possible. I am committed to ending programs that do not work, streamlining those that do, and bringing a new responsibility for stewardship of tax dollars. Like households and businesses across the country, the Federal Government is tightening its belt. This effort began during my first days in office, when I froze the salaries of the senior members of my White House Staff.

As a next step in this effort, I direct you to suspend cash awards, quality step increases, bonuses, and similar discretionary payments or salary adjustments to any politically appointed Federal employee, commencing immediately, and continuing through the end of Fiscal Year 2011. I also direct the Office of Personnel Management to issue guidance, in consultation with the Office of Management and Budget, to assist departments and agencies in implementing this policy.

In addition to these actions freezing discretionary payments, I have proposed in my Budget for Fiscal Year 2011 a salary freeze for senior political appointees throughout the Federal Government. Unlike the administrative action I have taken today in this memorandum, my proposed salary freeze requires legislation, so it cannot be implemented absent legislative action by the Congress.

I appreciate the hard work of our Federal workforce, and understand how important these payments can be to many workers and their families. Yet like households and businesses across the country, we need to make tough choices about how to spend our funds.

This memorandum shall be carried out to the extent permitted by law and consistent with executive departments' and agencies' legal authorities. Nothing in this memorandum shall be construed to affect payments or salary adjustments for Federal employees who are not political appointees. This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

The Director of the Office of Management and Budget is hereby authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA.

[§ 5308. Omitted]

Editorial Notes

CODIFICATION

Section, added Pub. L. 91–656, § 3(a), Jan. 8, 1971, 84 Stat. 1951, relating to pay limitation, was omitted in the general revision of this subchapter by Pub. L. 101–509.

SUBCHAPTER II—EXECUTIVE SCHEDULE PAY RATES

§ 5311. The Executive Schedule

The Executive Schedule, which is divided into five pay levels, is the basic pay schedule for positions, other than Senior Executive Service positions and positions in the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service, to which this subchapter applies.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 459; Pub. L. 95–454, title IV, §§ 408(b)(1), 414(b)(1), Oct. 13, 1978, 92 Stat. 1173, 1178; Pub. L. 96–54, § 2(a)(24), Aug. 14, 1979, 93 Stat. 382; Pub. L. 100–325, § 2(h)(1), (2), May 30, 1988, 102 Stat. 582; Pub. L. 101–509, title V, § 529 [title I, § 104(c)], Nov. 5, 1990, 104 Stat. 1427, 1447.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 2210.	Aug. 14, 1964, Pub. L. 88–426, § 302, 78 Stat. 415.

The words ''There is hereby established'' are omitted as executed. The word ''offices'' is omitted as included in ''positions''. The words ''Executive Schedule'' are substituted for ''Federal Executive Salary Schedule''.

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

1990—Pub. L. 101–509 struck out ''(a)'' before ''The Executive Schedule, which'' and struck out subsec. (b) which read as follows:

''(1) Not later than 180 days after the date of the enactment of the Civil Service Reform Act of 1978, the Director of the Office of Personnel Management shall determine the number and classification of executive level positions in existence in the executive branch on that date of enactment, and shall publish the determination in the Federal Register. Effective beginning on the date of the publication, the number of executive level positions within the executive branch may not exceed the number published under this subsection.

''(2) For the purpose of this subsection, 'executive level position' means—

''(A) any office or position in the civil service the rate of pay for which is equal to or greater than the rate of basic pay payable for positions under section 5316 of this title, or

''(B) any such office or position the rate of pay for which may be fixed by administrative action at a rate equal to or greater than the rate of basic pay payable for positions under section 5316 of this title;

but does not include any Senior Executive Service position (as defined in section 3132(a) of this title) or any position in the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service.''

1988—Subsec. (a). Pub. L. 100–325, § 2(h)(1), inserted reference to positions in Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service.

Subsec. (b)(2). Pub. L. 100–325, § 2(h)(2), substituted ''(as defined in section 3132(a) of this title) or any position in the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service'' for '', as defined in section 3132(a) of this title'' in concluding provision.

1979—Subsec. (b)(1). Pub. L. 96–54 inserted ''of the Office of Personnel Management'' after ''Director''.

1978—Pub. L. 95–454, § 408(b)(1), inserted reference to Senior Executive Service positions.

Pub. L. 95–454, § 414(b)(1), designated existing provisions as subsec. (a) and added subsec. (b).