

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105-85, div. A, title XI, § 1104(b), Nov. 18, 1997, 111 Stat. 1923, provided that:

“(1) The amendment made by subsection (a) [amending this section] shall take effect 180 days after the date of the enactment of this Act [Nov. 18, 1997].

“(2) In the case of a person who is employed in a teaching position referred to in section 5334(d) of title 5, United States Code, on the day before the effective date under paragraph (1), the rate of pay of that person determined under that section (as in effect on that day) may not be reduced by reason of the amendment made by subsection (a) for so long as the person continues to serve in that position or another such position without a break in service of more than three days on or after that day.”

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-89 effective Nov. 1, 1993, see section 3(c) of Pub. L. 103-89, set out as a note under section 3372 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-508 applicable with respect to any individual who, on or after Jan. 1, 1987, moves from employment in nonappropriated fund instrumentality of Department of Defense or Coast Guard, that is described in section 2105(c) of this title, to employment in Department or Coast Guard, that is not described in section 2105(c), or who moves from employment in Department or Coast Guard, that is not described in section 2105(c), to employment in nonappropriated fund instrumentality of Department or Coast Guard, that is described in section 2105(c), see section 7202(m)(1) of Pub. L. 101-508, set out as a note under section 2105 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98-615, title II, § 205, Nov. 8, 1984, 98 Stat. 3217, provided that amendment by Pub. L. 98-615 was effective Oct. 1, 1984, and applicable with respect to pay periods commencing on or after that date, with certain exceptions and qualifications.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-54 effective July 12, 1979, see section 2(b) of Pub. L. 96-54, set out as a note under section 305 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 105-85, div. A, title V, § 504(a), Nov. 18, 1997, 111 Stat. 1725, provided that amendment by section 503(f) of Pub. L. 95-454 was effective on first day of first applicable pay period which began on or after Oct. 1, 1981, except it could take effect with respect to any category or categories of positions before such day to extent prescribed by Director of Office of Personnel Management.

Amendment by section 801(a)(2), (3)(F), (G) of Pub. L. 95-454 effective on first day of first applicable pay period beginning on or after 90th day after Oct. 13, 1978, see section 801(a)(4) of Pub. L. 95-454, set out as an Effective Date note under section 5361 of this title.

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.

EFFECTIVE DATE OF 1968 AMENDMENT

Pub. L. 90-623, § 6, Oct. 22, 1968, 82 Stat. 1315, provided that:

“(a) Sections 1-5 of this Act [amending this section, sections 559, 2108, 3102, 3502, 5314, 5315, 5316, 5352, 5353, 5516, 5521, 5527, 5537, 5546, 5724, 6104, 6305, 6312, 6323, 6324, 8143, 8191, 8331, and 8347 of this title, sections 101, 510 [now 12102], 815, 1124, 3534, 4342, 5149, 6483, 6954, and 9342 of Title 10, Armed Forces, sections 101, 212, 205, 305, 306, 307, 308, 311, 406, 417, 554, 703, 904, 1001, and 1006 of Title 37, Pay and Allowances of the Uniformed Services, and

sections 2727 and 2994b of Title 42, The Public Health and Welfare, and repealing section 8339 note of this title] restate, without substantive change, the laws replaced by those sections on the effective date of this Act. Laws effective after June 30, 1968, that are inconsistent with this Act [Oct. 22, 1968] supersede it to the extent of the inconsistency.

“(b) References made by other laws, regulations, and orders to the laws restated by this Act are deemed to refer to the corresponding provisions of this Act.

“(c) Actions taken under the laws restated by this Act are deemed to have been taken under the corresponding provisions of this Act.

“(d) Sections 1(2) and 1(14) of this Act [amending sections 2108 and 5724 of this title] are effective as of September 11, 1967, for all purposes.

“(e) Sections 1(13)(B) and 1(17) of this Act [amending sections 5546 and 6323 of this title] are effective as of September 6, 1966, for all purposes.”

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 5335. Periodic step-increases

(a) An employee paid on an annual basis, and occupying a permanent position within the scope of the General Schedule, who has not reached the maximum rate of pay for the grade in which his position is placed, shall be advanced in pay successively to the next higher rate within the grade at the beginning of the next pay period following the completion of—

- (1) each 52 calendar weeks of service in pay rates 1, 2, and 3;
- (2) each 104 calendar weeks of service in pay rates 4, 5, and 6; or
- (3) each 156 calendar weeks of service in pay rates 7, 8, and 9;

subject to the following conditions:

(A) the employee did not receive an equivalent increase in pay from any cause during that period; and

(B) the work of the employee is of an acceptable level of competence as determined by the head of the agency.

(b) Under regulations prescribed by the Office of Personnel Management, the benefit of successive step-increases shall be preserved for employees whose continuous service is interrupted in the public interest by service with the armed forces or by service in essential non-Government civilian employment during a period of war or national emergency.

(c) When a determination is made under subsection (a) of this section that the work of an employee is not of an acceptable level of competence, the employee is entitled to prompt written notice of that determination and an opportunity for reconsideration of the determination within his agency under uniform procedures prescribed by the Office of Personnel Management. If the determination is affirmed on reconsideration, the employee is entitled to appeal to the Merit Systems Protection Board. If the reconsideration or appeal results in a reversal of

the earlier determination, the new determination supersedes the earlier determination and is deemed to have been made as of the date of the earlier determination. The authority of the Office to prescribe procedures and the entitlement of the employee to appeal to the Board do not apply to a determination of acceptable level of competence made by the Librarian of Congress.

(d) An increase in pay granted by statute is not an equivalent increase in pay within the meaning of subsection (a) of this section.

(e) This section does not apply to the pay of an individual appointed by the President, by and with the advice and consent of the Senate.

(f) In computing periods of service under subsection (a) in the case of an employee who moves without a break in service of more than 3 days from a position under a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard described in section 2105(c) to a position under the Department of Defense or the Coast Guard, respectively, that is subject to this subchapter, service under such instrumentality shall, under regulations prescribed by the Office, be deemed service in a position subject to this subchapter.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 469; Pub. L. 90-83, §1(20), Sept. 11, 1967, 81 Stat. 199; Pub. L. 95-251, §2(a)(1), Mar. 27, 1978, 92 Stat. 183; Pub. L. 95-454, title V, §503(g), title IX, §906(a)(2), (8), Oct. 13, 1978, 92 Stat. 1184, 1224, 1225; Pub. L. 96-54, §2(a)(28), Aug. 14, 1979, 93 Stat. 383; Pub. L. 98-615, title II, §§203, 204(a)(1), Nov. 8, 1984, 98 Stat. 3216; Pub. L. 101-508, title VII, §7202(e), Nov. 5, 1990, 104 Stat. 1388-336; Pub. L. 101-509, title V, §529 [title I, §104(d)(2)], Nov. 5, 1990, 104 Stat. 1427, 1447; Pub. L. 103-89, §3(b)(1)(H), Sept. 30, 1993, 107 Stat. 982.)

HISTORICAL AND REVISION NOTES 1966 ACT

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
(a)-(c)	5 U.S.C. 1121.	Oct. 11, 1962, Pub. L. 87-793, §603 "Sec. 701", 76 Stat. 847.
(d)	5 U.S.C. 1123 (as applicable to 5 U.S.C. 1121).	Oct. 11, 1962, Pub. L. 87-793, §603 "Sec. 703 (as applicable to §701)", 76 Stat. 847.

In subsection (a), the words "General Schedule" are substituted for "compensation schedules fixed by this chapter" since the General Schedule is now the only compensation schedule in that chapter. The word "scheduled" is omitted since section 603 of the Act of Oct. 11, 1962, Pub. L. 87-793, 76 Stat. 847, eliminated the necessity of referring to rates as scheduled or longevity.

In subsection (a)(B), the words "except a hearing examiner appointed under section 3105 of this title" are added on authority of the third sentence of former section 1010 and the fifth sentence of former section 1011, which are carried into sections 5362 and 559, respectively, and of section 1106(a) of the Act of Oct. 28, 1949, ch. 782, 63 Stat. 972.

Title VII (sections 701-705) of the Act of Oct. 28, 1949, ch. 782, 63 Stat. 967-969, as amended by the following Acts is omitted from the derivation and repealed (see Table II) as superseded by the Act of Oct. 11, 1962, Pub. L. 87-793, §603, 76 Stat. 847, which is carried into this section and section 5336:

June 28, 1950, ch. 382, §2, 64 Stat. 262.
Sept. 30, 1950, ch. 1123, §§9, 10, 64 Stat. 1100.
Oct. 24, 1951, ch. 554, §1(e), 65 Stat. 613.

Sept. 1, 1954, ch. 1208, §§102(a), 103(a), 112 (less applicability to §802(b)), 305(a), 68 Stat. 1105, 1108, 1113.

June 28, 1955, ch. 189, §2(e), 69 Stat. 175.

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

1967 ACT

<i>Section of title 5</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
5335(c)	5 App.: 1121(c).	Oct. 29, 1965, Pub. L. 89-301, §3, 79 Stat. 1112.

The word "officer" is omitted as included in "employee", and the word "agency" is substituted for "department" to conform to the definition in 5 U.S.C. 5331.

Editorial Notes

REFERENCES IN TEXT

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

AMENDMENTS

1993—Subsec. (e). Pub. L. 103-89, §3(b)(1)(H)(i), struck out "covered by the performance management and recognition system established under chapter 54 of this title, or," after "individual".

Subsecs. (f), (g). Pub. L. 103-89, §3(b)(1)(H)(ii), redesignated subsec. (g) as (f) and struck out former subsec. (f) which read as follows: "Notwithstanding subsection (b) or (e) of this section, an increase in pay granted under section 5404 of this title is an equivalent increase in pay within the meaning of subsection (a) of this section and shall be taken into account in the case of any employee who, before becoming subject to this section, was granted such an increase while covered by the performance management and recognition system established under chapter 54 of this title."

1990—Subsec. (a)(B). Pub. L. 101-509 struck out "except an administrative law judge appointed under section 3105 of this title," after "work of the employee".

Subsec. (g). Pub. L. 101-508 added subsec. (g).

1984—Subsec. (e). Pub. L. 98-615, §204(a)(1), substituted "the performance management and recognition system established under chapter 54" for "the merit pay system established under section 5402".

Subsec. (f). Pub. L. 98-615, §203, added subsec. (f).

1979—Subsec. (a)(3)(B). Pub. L. 96-54 substituted "an administrative law judge" for "a administrative law judge".

1978—Subsec. (a). Pub. L. 95-251 substituted "administrative law judge" for "hearing examiner".

Subsec. (b). Pub. L. 95-454, §906(a)(2), substituted "Office of Personnel Management" for "Civil Service Commission".

Subsec. (c). Pub. L. 95-454, §906(a)(8), substituted references to Office of Personnel Management and Merit Systems Protection Board and Office and Board, respectively, for references to Civil Service Commission wherever appearing in text.

Subsec. (e). Pub. L. 95-454, §503(g), inserted reference to merit pay system established under section 5402 of this title.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-89 effective Nov. 1, 1993, see section 3(c) of Pub. L. 103-89, set out as a note under section 3372 of this title.

EFFECTIVE DATE OF 1990 AMENDMENTS

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.

Amendment by Pub. L. 101-508 applicable with respect to any individual who, on or after Jan. 1, 1987, moves from employment in nonappropriated fund instrumentality of Department of Defense or Coast Guard, that is described in section 2105(c) of this title, to employment in Department or Coast Guard, that is not described in section 2105(c), or who moves from employment in Department or Coast Guard, that is not described in section 2105(c), to employment in nonappropriated fund instrumentality of Department or Coast Guard, that is described in section 2105(c), see section 7202(m)(1) of Pub. L. 101-508, set out as a note under section 2105 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98-615, title II, §205, Nov. 8, 1984, 98 Stat. 3217, provided that amendment by Pub. L. 98-615 was effective Oct. 1, 1984, and applicable with respect to pay periods commencing on or after that date, with certain exceptions and qualifications.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-54 effective July 12, 1979, see section 2(b) of Pub. L. 96-54, set out as a note under section 305 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95-454, title V, §504(a), Oct. 13, 1978, 92 Stat. 1184, provided that amendment by section 503(g) of Pub. L. 95-454 was effective on first day of first applicable pay period which began on or after Oct. 1, 1981, except it could take effect with respect to any category or categories of positions before such day to extent prescribed by Director of Office of Personnel Management.

Amendment by section 906(a)(2), (8) 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.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

DELAY OF PERIODIC STEP INCREASE FOR CIVILIAN EMPLOYEES OF THE DEPARTMENT OF DEFENSE BASED UPON UNACCEPTABLE PERFORMANCE

Pub. L. 114-92, div. A, title XI, §1106, Nov. 25, 2015, 129 Stat. 1024, provided that:

“(a) DELAY.—Under procedures established by the Secretary of Defense, upon a determination by the Secretary that the work of an employee is not at an acceptable level of competence, the period of time during which the work of the employee is not at an acceptable level of competence shall not count toward completion of the period of service required for purposes of subsection (a) of section 5335 of title 5, United States Code, or subsection (e)(1) or (e)(2) of section 5343 of such title.

“(b) APPLICABILITY TO PERIODS OF SERVICE.—Subsection (a) shall not apply with respect to any period of service performed before the date of the enactment of this Act [Nov. 25, 2015].”

PAY INCREASES DEEMED EQUIVALENT INCREASES IN PAY

Pub. L. 103-89, §5(a), Sept. 30, 1993, 107 Stat. 984, provided that: “Notwithstanding the amendment made by section 3(b)(1)(H)(ii) [amending this section], an increase in pay granted under section 5404 of title 5, United States Code, before November 1, 1993, shall be

deemed to be an equivalent increase in pay within the meaning of section 5335(a) of such title.”

§ 5336. Additional step-increases

(a) Within the limit of available appropriations and under regulations prescribed by the Office of Personnel Management, the head of each agency may grant additional step-increases in recognition of high quality performance above that ordinarily found in the type of position concerned. However, an employee is eligible under this section for only one additional step-increase within any 52-week period.

(b) A step-increase under this section is in addition to those under section 5335 of this title and is not an equivalent increase in pay within the meaning of section 5335(a) of this title.

(c) This section does not apply to the pay of an individual appointed by the President, by and with the advice and consent of the Senate.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 469; Pub. L. 95-454, title V, §503(h), title IX, §906(a)(2), Oct. 13, 1978, 92 Stat. 1184, 1224; Pub. L. 98-615, title II, §204(a)(1), Nov. 8, 1984, 98 Stat. 3216; Pub. L. 103-89, §3(b)(1)(I), Sept. 30, 1993, 107 Stat. 982.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
(a), (b)	5 U.S.C. 1122.	Oct. 11, 1962, Pub. L. 87-793, §603 “Sec. 702”, 76 Stat. 847.
(c)	5 U.S.C. 1123 (less applicability to 5 U.S.C. 1121).	Oct. 11, 1962, Pub. L. 87-793, §603 “Sec. 703 (less applicability to §701)”, 76 Stat. 847.

For repeal of Title VII (sections 701-705) of the Act of Oct. 28, 1949, ch. 782, 63 Stat. 967-969, as amended, see revision note for section 5335.

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

1993—Subsec. (c). Pub. L. 103-89 struck out “covered by the performance management and recognition system established under chapter 54 of this title, or,” after “individual”.

1984—Subsec. (c). Pub. L. 98-615 substituted “the performance management and recognition system established under chapter 54” for “the merit pay system established under section 5402”.

1978—Subsec. (a). Pub. L. 95-454, §906(a)(2), substituted “Office of Personnel Management” for “Civil Service Commission”.

Subsec. (c). Pub. L. 95-454, §503(h), inserted reference to merit pay system established under section 5402 of this title.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-89 effective Nov. 1, 1993, see section 3(c) of Pub. L. 103-89, set out as a note under section 3372 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98-615, title II, §205, Nov. 8, 1984, 98 Stat. 3217, provided that amendment by Pub. L. 98-615 was effective Oct. 1, 1984, and applicable with respect to pay periods commencing on or after that date, with certain exceptions and qualifications.