

Editorial Notes

AMENDMENTS

1991—Pub. L. 102-54 substituted “Secretary of Veterans Affairs” for “Administrator of Veterans’ Affairs”.

§ 5356. Appropriations

Funds appropriated to an agency for expenses of its hospitals, clinics, and laboratories to which student-employees are assigned or attached are available to carry out the provisions of this subchapter.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 472.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 1058.	Aug. 4, 1947, ch. 452, § 9, 61 Stat. 728.

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

**SUBCHAPTER VI—GRADE AND PAY
RETENTION**

Editorial Notes

PRIOR PROVISIONS

A prior subchapter VI was renumbered VII by Pub. L. 95-454, title VIII, § 801(a)(3)(A)(i), Oct. 13, 1978, 92 Stat. 1221.

§ 5361. Definitions

For the purpose of this subchapter—

(1) “employee” means an employee to whom chapter 51 of this title applies, and a prevailing rate employee, as defined by section 5342(a)(2) of this title, whose employment is other than on a temporary or term basis;

(2) “agency” has the meaning given it by section 5102 of this title;

(3) “retained grade” means the grade used for determining benefits to which an employee to whom section 5362 of this title applies is entitled;

(4) “rate of basic pay” means—

(A) the rate of basic pay payable to an employee under law or regulations before any deductions or additions of any kind, but including—

(i) any applicable locality-based comparability payment under section 5304 or similar provision of law;

(ii) any applicable special pay under section 5305 or similar provision of law; and

(iii) subject to such regulations as the Office of Personnel Management may prescribe, any applicable existing retained rate of pay established under section 5363 or similar provision of law; and

(B) in the case of a prevailing rate employee, the scheduled rate of pay determined under section 5343;

(5) “covered pay schedule” means the General Schedule, any prevailing rate schedule established under subchapter IV of this chapter, or a special occupational pay system under subchapter IX;

(6) “position subject to this subchapter” means any position under a covered pay schedule;

(7) “reduction-in-force procedures” means procedures applied in carrying out any reduction in force due to a reorganization, due to lack of funds or curtailment of work, or due to any other factor; and

(8) “retained rate” means the rate of basic pay to which an employee is entitled under section 5363(b)(2).

(Added Pub. L. 95-454, title VIII, § 801(a)(1), Oct. 13, 1978, 92 Stat. 1218; amended Pub. L. 98-615, title II, § 204(a)(2), Nov. 8, 1984, 98 Stat. 3216; Pub. L. 101-509, title V, § 529 [title I, § 105(b)(1)], Nov. 5, 1990, 104 Stat. 1427, 1448; Pub. L. 103-89, § 3(b)(1)(J), Sept. 30, 1993, 107 Stat. 982; Pub. L. 108-411, title III, § 301(a)(4), Oct. 30, 2004, 118 Stat. 2315.)

Editorial Notes

REFERENCES IN TEXT

The General Schedule, referred to in par. (5), is set out under section 5332 of this title.

PRIOR PROVISIONS

A prior section 5361, Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 473, which related to scientific and professional positions, was renumbered section 5371 of this title by Pub. L. 95-454, title VIII, § 801(a)(3)(A)(ii), Oct. 13, 1978, 92 Stat. 1221.

AMENDMENTS

2004—Par. (4). Pub. L. 108-411, § 301(a)(4)(A), amended par. (4) generally. Prior to amendment, par. (4) read as follows: “‘rate of basic pay’ means, in the case of a prevailing rate employee, the scheduled rate of pay determined under section 5343 of this title;”.

Par. (8). Pub. L. 108-411, § 301(a)(4)(B)–(D), added par. (8).

1993—Par. (5). Pub. L. 103-89 substituted “or a special occupational pay system under subchapter IX” for “a special occupational pay system under subchapter IX, or the performance management and recognition system under chapter 54 of this title”.

1990—Par. (5). Pub. L. 101-509 inserted “a special occupational pay system under subchapter IX,” before “or the performance”.

1984—Par. (5). Pub. L. 98-615 substituted “performance management and recognition system” for “merit pay system”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-411 effective on the first day of the first applicable pay period beginning on or after the 180th day after Oct. 30, 2004, with provisions relating to conversion rules, see section 301(d) of Pub. L. 108-411, set out as a note under section 5363 of this title.

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. 101-509 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 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

tive Oct. 1, 1984, and applicable with respect to pay periods commencing on or after that date, with certain exceptions and qualifications.

EFFECTIVE DATE

Pub. L. 95-454, title VIII, §801(a)(4), Oct. 13, 1978, 92 Stat. 1222, provided that:

“(A) The amendments made by this subsection [enacting sections 5361 to 5366 of this title and redesignating former sections 5361 to 5366 as sections 5371 to 5375 of this title, amending sections 559, 1305, 3104, 5102, 5107, 5334, 5349, and 8704 of this title, sections 4540, 7212, and 9540 of Title 10, Armed Forces, section 1715 of Title 15, Commerce and Trade, and section 3608 of Title 42, The Public Health and Welfare, and repealing sections 5337 and 5345 of this title] shall take effect on the first day of the first applicable pay period beginning on or after the 90th day after the date of the enactment of this Act [Oct. 13, 1978].

“(B) An employee who was receiving pay under the provisions of section 5334(d), 5337, or 5345 of title 5, United States Code, on the day before the effective date prescribed in subparagraph (A) of this paragraph shall not have such pay reduced or terminated by reason of the amendments made by this subsection and, unless section 5362 of such title 5 (as amended by subsection (a)(1) of this section) applies, such an employee is entitled to continue to receive pay as authorized by those provisions (as in effect on such date).”

§ 5362. Grade retention following a change of positions or reclassification

(a) Any employee—

(1) who is placed as a result of reduction-in-force procedures from a position subject to this subchapter to another position which is subject to this subchapter and which is in a lower grade than the previous position, and

(2) who has served for 52 consecutive weeks or more in one or more positions subject to this subchapter at a grade or grades higher than that of the new position,

is entitled, to the extent provided in subsection (c) of this section, to have the grade of the position held immediately before such placement be considered to be the retained grade of the employee in any position he holds for the 2-year period beginning on the date of such placement.

(b)(1) Any employee who is in a position subject to this subchapter and whose position has been reduced in grade is entitled, to the extent provided in subsection (c) of this section, to have the grade of such position before reduction be treated as the retained grade of such employee for the 2-year period beginning on the date of the reduction in grade.

(2) The provisions of paragraph (1) of this subsection shall not apply with respect to any reduction in the grade of a position which had not been classified at the higher grade for a continuous period of at least one year immediately before such reduction.

(c) For the 2-year period referred to in subsections (a) and (b) of this section, the retained grade of an employee under such subsection (a) or (b) shall be treated as the grade of the employee's position for all purposes (including pay and pay administration under this chapter and chapter 55 of this title, retirement and life insurance under chapters 83, 84, and 87 of this title, and eligibility for training and promotion under this title) except—

(1) for purposes of subsection (a) of this section,

(2) for purposes of applying any reduction-in-force procedures, or

(3) for such other purposes as the Office of Personnel Management may provide by regulation.

(d) The foregoing provisions of this section shall cease to apply to an employee who—

(1) has a break in service of one workday or more;

(2) is demoted (determined without regard to this section) for personal cause or at the employee's request;

(3) is placed in, or declines a reasonable offer of, a position the grade of which is equal to or higher than the retained grade; or

(4) elects in writing to have the benefits of this section terminate.

(Added Pub. L. 95-454, title VIII, §801(a)(1), Oct. 13, 1978, 92 Stat. 1219; amended Pub. L. 98-615, title II, §204(a)(1), Nov. 8, 1984, 98 Stat. 3216; Pub. L. 103-89, §3(b)(1)(K), Sept. 30, 1993, 107 Stat. 982.)

Editorial Notes

PRIOR PROVISIONS

A prior section 5362, Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 473, Pub. L. 95-251, §2(a)(1), (b)(1), Mar. 27, 1978, 92 Stat. 183, which related to hearing examiners, was renumbered section 5372 of this title by Pub. L. 95-454, title VIII, §801(a)(3)(A)(ii), Oct. 13, 1978, 92 Stat. 1221.

AMENDMENTS

1993—Subsec. (c). Pub. L. 103-89 substituted “chapter 55 of this title, retirement and life insurance under chapters 83, 84, and 87” for “chapters 54 and 55 of this title, retirement and life insurance under chapters 83 and 87” in introductory provisions, redesignated par. (4) as (3), and struck out former par. (3) which read as follows: “for purposes of determining whether the employee is covered by the performance management and recognition system established under chapter 54 of this title, or”.

1984—Subsec. (c)(3). Pub. L. 98-615 substituted “performance management and recognition system established under chapter 54” for “merit pay system established under section 5402”.

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

Section 205 of Pub. L. 98-615 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.

ADDITIONAL PAY AND BENEFITS FOR EMPLOYEES REDUCED IN GRADE ON OR AFTER JANUARY 1, 1977, ETC.

Pub. L. 95-454, title VIII, §801(b), Oct. 13, 1978, 92 Stat. 1222, provided that:

“(1) Under regulations prescribed by the Office of Personnel Management, any employee—

“(A) whose grade was reduced on or after January 1, 1977, and before the effective date of the amendments made by subsection (a) of this section [see Effective Date note set out under section 5361 of this title] under circumstances which would have entitled the employee to coverage under the provisions of section 5362 of title 5, United States Code (as amended