

REDUCTION OF BASIC PAY RATE

Pub. L. 91-34, §3(b), June 30, 1969, 83 Stat. 41, provided that: “No rate of basic pay shall be reduced by reason of the enactment of this Act [enacting this section and amending sections 5102 and 5109 of this title and section 193n of former Title 40, Public Buildings, Property, and Works].”

§ 5376. Pay for certain senior-level positions

(a) This section applies to—

- (1) positions that are classified above GS-15 pursuant to section 5108; and
- (2) scientific or professional positions established under section 3104;

but does not apply to—

- (A) any Senior Executive Service position under section 3132; or
- (B) any position in the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service under section 3151.

(b)(1) Subject to such regulations as the Office of Personnel Management prescribes, the head of the agency concerned shall fix the rate of basic pay for any position within such agency to which this section applies. A rate fixed under this section shall be—

- (A) not less than 120 percent of the minimum rate of basic pay payable for GS-15 of the General Schedule; and
- (B) subject to paragraph (3), not greater than the rate of basic pay payable for level III of the Executive Schedule.

The payment of a rate of basic pay under this section shall not be subject to the pay limitation of section 5306(e) or 5373.

(2) Subject to paragraph (1), 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 for positions within an agency shall be adjusted by such amount as the head of such agency considers appropriate.

(3) In the case of an agency which has a performance appraisal system which, as designed and applied, is certified under section 5307(d) as making meaningful distinctions based on relative performance, paragraph (1)(B) shall apply as if the reference to “level III” were a reference to “level II”.

(4) No employee may suffer a reduction in pay by reason of transfer from an agency with an applicable maximum rate of pay prescribed under paragraph (3) to an agency with an applicable maximum rate of pay prescribed under paragraph (1)(B).

(Added Pub. L. 101-509, title V, §529 [title I, §102(a)(1)], Nov. 5, 1990, 104 Stat. 1427, 1443; amended Pub. L. 110-372, §2(b), Oct. 8, 2008, 122 Stat. 4044.)

Editorial Notes

REFERENCES IN TEXT

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

Levels II and III of the Executive Schedule, referred to in subsec. (b), are set out in sections 5313 and 5314 of this title, respectively.

AMENDMENTS

2008—Subsec. (b)(1)(B). Pub. L. 110-372, §2(b)(1), added subpar. (B) and struck out former subpar. (B) which read as follows: “not greater than the rate of basic pay payable for level IV of the Executive Schedule.”

Subsec. (b)(3), (4). Pub. L. 110-372, §2(b)(2), added pars. (3) and (4).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110-372, §2(d), Oct. 8, 2008, 122 Stat. 4044, provided that:

“(1) EFFECTIVE DATE.—The amendments made by this section [amending this section and sections 3104, 3324, 3325, 5108 and 5304 of this title] shall take effect on the first day of the first pay period beginning on or after the 180th day following the date of enactment of this Act [Oct. 8, 2008].

“(2) NO REDUCTIONS IN RATES OF PAY.—

“(A) IN GENERAL.—The amendments made by this section may not result, at the time such amendments take effect, in a reduction in the rate of basic pay for an individual holding a position to which section 5376 of title 5, United States Code, applies.

“(B) DETERMINATION OF RATE OF PAY.—For the purposes of subparagraph (A), the rate of basic pay for an individual described in that subparagraph shall be deemed to be the rate of basic pay set for the individual under section 5376 of title 5, United States Code, plus any applicable locality pay paid to that individual on the day before the effective date under paragraph (1), subject to regulations that the Director of the Office of Personnel Management may prescribe.

“(3) REFERENCES TO MAXIMUM RATES.—Except as otherwise provided by law, any reference in a provision of law to the maximum rate under section 5376 of title 5, United States Code—

“(A) as provided before the effective date of the amendments made by this section, shall be considered a reference to the rate of basic pay for level IV of the Executive Schedule [5 U.S.C. 5315]; and

“(B) as provided on or after the effective date of the amendments made by this section, shall be considered a reference to—

“(i) the rate of basic pay for level III of the Executive Schedule [5 U.S.C. 5314]; or

“(ii) if the head of the agency responsible for administering the applicable pay system certifies that the employees are covered by a performance appraisal system meeting the certification criteria established by regulation under section 5307(d), level II of the Executive Schedule [5 U.S.C. 5313].”

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.

REFERENCES IN OTHER LAWS TO GS-16, 17, OR 18 PAY RATES; REGULATIONS

Pub. L. 101-509, title V, §529 [title I, §101(c), (d)], Nov. 5, 1990, 104 Stat. 1427, 1442, provided that:

“(c) OTHER REFERENCES.—Until otherwise provided by law—

“(1) any reference in a provision of law (which is outside title 5, United States Code, and in effect immediately before this section takes effect [see Effective Date of 1990 Amendment note set out under section 5301 of this title], excluding any reference in a provision of law amended by this Act [see Short Title of 1990 Amendment note set out under section 5301 of this title])—

“(A)(i) to the rate of pay for grade GS-18 of the General Schedule, or to the maximum rate of pay

under the General Schedule, shall be considered a reference to the maximum rate payable under section 5376 of such title (as amended by section 102(a));

“(ii) to the minimum rate of pay for grade GS-16 of the General Schedule shall be considered a reference to the minimum rate payable under section 5376 of such title (as amended by section 102(a)); and

“(iii) to a rate of pay for grade GS-16 or 17 of the General Schedule shall (except as provided in clause (ii)) be considered a reference to a rate of pay for a position classified above GS-15 pursuant to section 5108 of such title (as amended by section 102(b)(2)); and

“(B) to a rate of pay under the General Schedule shall not include any comparability payment payable under section 5304 of such title (as amended by this section) or any geographic adjustment payable under section 302 [section 529 [title III, § 302] of Pub. L. 101-509, set out as a note under section 5304 of this title]; and

“(2) any authority granted by a provision of law (which is outside such title, and in effect immediately before this section takes effect) to fix pay in accordance with chapter 51 and subchapter III of chapter 53 of such title—

“(A) shall not be considered to include any authority under section 5304 of such title (as amended by this section) or section 302; but

“(B) shall be considered to include authority under section 5376 of such title (as amended by section 102(a)), if applicable.

“(d) REGULATIONS.—The Office of Personnel Management may prescribe regulations, consistent with subsection (c)(1)(B) and section 303 [section 529 [title III, § 303] of Pub. L. 101-509, set out as a note under section 5301 of this title], governing the conversion or adjustment of rates of pay, where necessary because of the abolishment of grades GS-16, 17, and 18 of the General Schedule.”

[For reference to maximum rate under section 5376 of this title, see section 2(d)(3) of Pub. L. 110-372, set out as an Effective Date of 2008 Amendment note under this section.]

§ 5377. Pay authority for critical positions

(a) For the purpose of this section—

(1) the term “agency” has the meaning given it by section 5102; and

(2) the term “position” means—

(A) a position to which chapter 51 applies, including a position in the Senior Executive Service or the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service;

(B) a position under the Executive Schedule under sections 5312–5317;

(C) a position to which section 5372 applies (or would apply, but for this section);

(D) a position to which section 5372a applies (or would apply, but for this section);

(E) a position established under section 3104;

(F) a position in a category as to which a designation is in effect under subsection (i); and

(G) a position at the Federal Bureau of Investigation, the primary duties and responsibilities of which relate to intelligence functions (as determined by the Director of the Federal Bureau of Investigation).

(b) Authority under this section—

(1) may be granted or exercised only with respect to a position—

(A) which requires expertise of an extremely high level in a scientific, technical, professional, or administrative field; and

(B) which is critical to the agency’s successful accomplishment of an important mission; and

(2) may be granted or exercised only to the extent necessary to recruit or retain an individual exceptionally well qualified for the position.

(c) The Office of Personnel Management, in consultation with the Office of Management and Budget, may, upon the request of the head of an agency, grant authority to fix the rate of basic pay for 1 or more positions in such agency in accordance with this section.

(d)(1) The rate of basic pay fixed under this section by an agency head may not be less than the rate of basic pay (including any comparability payments) which would then otherwise be payable for the position involved if this section had never been enacted.

(2) Basic pay may not be fixed under this section at a rate greater than the rate payable for level I of the Executive Schedule, except upon written approval of the President.

(e) The authority to fix the rate of basic pay under this section for a position shall terminate—

(1) whenever the Office of Personnel Management determines (in accordance with such procedures and subject to such terms or conditions as such Office by regulation prescribes) that 1 or more of the requirements of subsection (b) are no longer met; or

(2) as of such date as such Office may otherwise specify, except that termination under this paragraph may not take effect before the authority has been available for such position for at least 1 calendar year.

(f) The Office of Personnel Management may not authorize the exercise of authority under this section with respect to more than 800 positions at any time, of which not more than 30 may, at any such time, be positions the rate of basic pay for which would otherwise be determined under subchapter II.

(g) The Office of Personnel Management shall consult with the Office of Management and Budget before making any decision to grant or terminate any authority under this section.

(h) The Office of Personnel Management shall report to the Committee on Government Reform of the House of Representatives and the Committee on Governmental Affairs of the Senate each year, in writing, on the operation of this section. Each report under this subsection shall include—

(1) the number of positions, in the aggregate and by agency, for which higher rates of pay were authorized or paid under this section during any part of the period covered by such report; and

(2) the name of each employee to whom a higher rate of pay was paid under this section during any portion of the period covered by such report, the rate on¹ rates paid under this section during such period, the dates between which each such higher rate was paid, and the

¹ So in original. Probably should be “or”.