

formance pay, as defined by regulation, may not exceed the rate of basic pay for Executive Level IV in any year.

(3) Any human capital performance payment provided to an employee from the Fund is in addition to any annual pay adjustment (under section 5303 or any similar provision of law) and any locality-based comparability payment that may apply.

(c) No monies from the Human Capital Performance Fund may be used to pay for a new position, for other performance-related payments, or for recruitment or retention incentives paid under sections 5753 and 5754.

(d)(1) An agency may finance initial human capital performance payments using monies from the Human Capital Performance Fund, as available.

(2) In subsequent years, continuation of previously awarded human capital performance payments shall be financed from other agency funds available for salaries and expenses.

(Added Pub. L. 108-136, div. A, title XI, §1129(a), Nov. 24, 2003, 117 Stat. 1643.)

#### Editorial Notes

##### REFERENCES IN TEXT

Executive Level IV, referred to in subsec. (b)(2), is set out in section 5315 of this title.

##### PRIOR PROVISIONS

A prior section 5404, added Pub. L. 95-454, title V, §501, Oct. 13, 1978, 92 Stat. 1183; amended Pub. L. 98-615, title II, §201(a), Nov. 8, 1984, 98 Stat. 3210; Pub. L. 101-103, §3(a), Sept. 30, 1989, 103 Stat. 670, related to merit increases, prior to repeal by Pub. L. 103-89, §3(a)(1), (c), Sept. 30, 1993, 107 Stat. 981, 983, eff. Nov. 1, 1993.

#### § 5405. Regulations

The Office shall issue such regulations as it determines to be necessary for the administration of this chapter, including the administration of the Fund. The Office's regulations shall include criteria governing—

- (1) an agency plan under section 5406;
- (2) the allocation of monies from the Fund to agencies;
- (3) the nature, extent, duration, and adjustment of, and approval processes for, payments to individual employees under this chapter;
- (4) the relationship to this chapter of agency performance management systems;
- (5) training of supervisors, managers, and other individuals involved in the process of making performance distinctions; and
- (6) the circumstances under which funds may be allocated by the Office to an agency in amounts below or in excess of the agency's pro rata share.

(Added Pub. L. 108-136, div. A, title XI, §1129(a), Nov. 24, 2003, 117 Stat. 1643.)

#### Editorial Notes

##### PRIOR PROVISIONS

A prior section 5405, added Pub. L. 95-454, title V, §501, Oct. 13, 1978, 92 Stat. 1183; amended Pub. L. 98-615, title II, §201(a), Nov. 8, 1984, 98 Stat. 3211; Pub. L. 101-509, title V, §529 [title I, §101(b)(3)(C)], Nov. 5, 1990,

104 Stat. 1427, 1439, related to pay administration, prior to repeal by Pub. L. 103-89, §3(a)(1), (c), Sept. 30, 1993, 107 Stat. 981, 983, eff. Nov. 1, 1993.

#### § 5406. Agency plan

(a) To be eligible for consideration by the Office for an allocation under this section, an agency shall—

(1) develop a plan that incorporates the following elements:

(A) adherence to merit principles set forth in section 2301;

(B) a fair, credible, and transparent employee performance appraisal system;

(C) a link between the pay-for-performance system, the employee performance appraisal system, and the agency's strategic plan;

(D) a means for ensuring employee involvement in the design and implementation of the system;

(E) adequate training and retraining for supervisors, managers, and employees in the implementation and operation of the pay-for-performance system;

(F) a process for ensuring ongoing performance feedback and dialogue between supervisors, managers, and employees throughout the appraisal period, and setting timetables for review;

(G) effective safeguards to ensure that the management of the system is fair and equitable and based on employee performance; and

(H) a means for ensuring that adequate agency resources are allocated for the design, implementation, and administration of the pay-for-performance system;

(2) upon approval, receive an allocation of funding from the Office;

(3) make payments to individual employees in accordance with the agency's approved plan; and

(4) provide such information to the Office regarding payments made and use of funds received under this section as the Office may specify.

(b) The Office, in consultation with the Chief Human Capital Officers Council, shall review and approve an agency's plan before the agency is eligible to receive an allocation of funding from the Office.

(c) The Chief Human Capital Officers Council shall include in its annual report to Congress under section 1303(d) of the Homeland Security Act of 2002 an evaluation of the formulation and implementation of agency performance management systems.

(Added Pub. L. 108-136, div. A, title XI, §1129(a), Nov. 24, 2003, 117 Stat. 1644.)

#### Editorial Notes

##### REFERENCES IN TEXT

Section 1303(d) of the Homeland Security Act of 2002, referred to in subsec. (c), is section 1303(d) of Pub. L. 107-296, which is set out as a note under section 1401 of this title.

##### PRIOR PROVISIONS

A prior section 5406, added Pub. L. 98-615, title II, §201(a), Nov. 8, 1984, 98 Stat. 3211; amended Pub. L.

101-103, § 4, Sept. 30, 1989, 103 Stat. 671; Pub. L. 102-22, § 2(b), Mar. 28, 1991, 105 Stat. 71, related to performance awards, prior to repeal by Pub. L. 103-89, § 3(a)(1), (c), Sept. 30, 1993, 107 Stat. 981, 983, eff. Nov. 1, 1993.

#### § 5407. Nature of payment

Any payment to an employee under this section shall be part of the employee's basic pay for the purposes of subchapter III of chapter 83, and chapters 84 and 87, and for such other purposes (other than chapter 75) as the Office shall determine by regulation.

(Added Pub. L. 108-136, div. A, title XI, § 1129(a), Nov. 24, 2003, 117 Stat. 1645.)

#### Editorial Notes

##### PRIOR PROVISIONS

A prior section 5407, added Pub. L. 98-615, title II, § 201(a), Nov. 8, 1984, 98 Stat. 3213, related to cash award program, prior to repeal by Pub. L. 103-89, § 3(a)(1), (c), Sept. 30, 1993, 107 Stat. 981, 983, eff. Nov. 1, 1993.

#### § 5408. Appropriations

There is authorized to be appropriated \$500,000,000 for fiscal year 2004, and, for each subsequent fiscal year, such sums as may be necessary to carry out the provisions of this chapter. In the first year of implementation, up to 10 percent of the amount appropriated to the Fund shall be available to participating agencies to train supervisors, managers, and other individuals involved in the appraisal process on using performance management systems to make meaningful distinctions in employee performance and on the use of the Fund.

(Added Pub. L. 108-136, div. A, title XI, § 1129(a), Nov. 24, 2003, 117 Stat. 1645.)

#### Editorial Notes

##### PRIOR PROVISIONS

Prior sections 5408 to 5410 were repealed by Pub. L. 103-89, § 3(a)(1), (c), Sept. 30, 1993, 107 Stat. 981, 983, effective Nov. 1, 1993.

Section 5408, added Pub. L. 98-615, title II, § 201(a), Nov. 8, 1984, 98 Stat. 3214, required annual reports by Office of Personnel Management.

Section 5409, added Pub. L. 98-615, title II, § 201(a), Nov. 8, 1984, 98 Stat. 3214, directed Office of Personnel Management to prescribe regulations.

Section 5410, added Pub. L. 98-615, title II, § 201(a), Nov. 8, 1984, 98 Stat. 3214; amended Pub. L. 101-103, § 2, Sept. 30, 1989, 103 Stat. 670; Pub. L. 102-22, § 2(c), Mar. 28, 1991, 105 Stat. 71; Pub. L. 103-89, § 2, Sept. 30, 1993, 107 Stat. 981, related to termination of chapter and accompanying regulations.

### CHAPTER 55—PAY ADMINISTRATION

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<sup>1</sup> Section catchline amended by Pub. L. 97-365 without corresponding amendment of chapter analysis.