

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-316 effective 60 days after Oct. 19, 1996, see section 101(e)(2) of Pub. L. 104-316, set out as a note under section 4593 of Title 2, The Congress.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100-702, title X, §1009(b), Nov. 19, 1988, 102 Stat. 4668, provided that: “The amendments made by this section [amending this section] shall apply with respect to any claim arising before the date of the enactment of this Act [Nov. 19, 1988] which is pending on such date, and to any claim which arises on or after such date of enactment.”

EFFECTIVE DATE OF 1985 AMENDMENT

Pub. L. 99-224, § 4, Dec. 28, 1985, 99 Stat. 1742, provided that: “The amendments made by section 1 of this Act [amending this section] shall apply to any claim arising out of an erroneous payment of travel, transportation, or relocation expenses and allowances made on or after the date of the enactment of this Act [Dec. 28, 1985]. The amendments made by sections 2 and 3 of this Act [amending section 2774 of Title 10, Armed Forces, and section 716 of Title 32, National Guard] shall apply to any claim arising out of an erroneous payment of travel and transportation allowances made on or after the date of the enactment of this Act.”

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.

SUBCHAPTER IX—SEVERANCE PAY AND BACK PAY

Editorial Notes

AMENDMENTS

1967—Pub. L. 90-83, §1(34)(A), Sept. 11, 1967, 81 Stat. 201, inserted “SEVERANCE PAY AND” before “BACK PAY” in subchapter heading.

[§§ 5591 to 5594. Repealed. Pub. L. 90-83, § 1(34)(B), Sept. 11, 1967, 81 Stat. 201]

HISTORICAL AND REVISION NOTES

This section deletes sections 5591, 5592, 5593, and 5594 of title 5, United States Code, to reflect the repeal of the source statutes of those sections by the act of March 30, 1966, Public Law 89-380, section 5, 80 Stat. 95.

[Sections, Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 496, 497, related to back pay for individuals or preference eligibles reinstated or restored, and are covered by section 5596 of this title.]

§ 5595. Severance pay

(a) For the purpose of this section—

(1) “agency” means—

- (A) an Executive agency;
- (B) the Library of Congress;
- (C) the Government Publishing Office;
- (D) the government of the District of Columbia;

(E) the Administrative Office of the United States Courts, the Federal Judicial Center, and the courts named by section 610 of title 28; and

(F) the Office of the Architect of the Capitol; and

(2) “employee” means—

(A) an individual employed in or under an agency; and

(B) an individual employed by a county committee established under section 590h(b) of title 16;

but does not include—

(i) an employee (other than a member of the Senior Executive Service or the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service, or an employee whose pay is fixed under section 5376) whose rate of basic pay is fixed at a rate provided for one of the levels of the Executive Schedule or is in excess of the maximum rate for the Executive Schedule;

(ii) an employee serving under an appointment with a definite time limitation, except one so appointed for full-time employment without a break in service of more than 3 days following service under an appointment without time limitation;

(iii) an alien employee who occupies a position outside the several States, the District of Columbia, and the areas and installations in the Republic of Panama made available to the United States pursuant to the Panama Canal Treaty of 1977 and related agreements (as described in section 3(a) of the Panama Canal Act of 1979);

(iv) an employee who is subject to subchapter III of chapter 83 of this title or any other retirement statute or retirement system applicable to an employee as defined by section 2105 of this title or a member of a uniformed service and who, at the time of separation from the service, has fulfilled the requirements for immediate annuity under such a statute or system;

(v) an employee who, at the time of separation from the service, is receiving compensation under subchapter I of chapter 81 of this title, other than one receiving this compensation concurrently with pay or on account of the death of another individual;

(vi) an employee who, at the time of separation from the service, is entitled to receive benefits under section 609(b)(1) of the Foreign Service Act of 1980 or any other severance pay from the Government;

(vii) an employee of the Tennessee Valley Authority;

(viii) an employee of the Office of the Architect of the Capitol, who is employed on a temporary when actually employed basis;

(ix) an employee of the Government Publishing Office, who is employed on a temporary when actually employed basis; or

(x) such other employee as may be excluded by regulations of the President or such other officer or agency as he may designate.

(b) Under regulations prescribed by the President or such officer or agency as he may designate, an employee who—

(1) has been employed currently for a continuous period of at least 12 months; and

(2) is involuntarily separated from the service, not by removal for cause on charges of misconduct, delinquency, or inefficiency;

is entitled to be paid severance pay in regular pay periods by the agency from which separated. However, the Director of the Administrative Of-

office of the United States Courts may prescribe regulations to effect the application and operation of this section to the agencies specified in subsection (a)(1)(E) of this section. The Architect of the Capitol may prescribe regulations to effect the application and operation of this section to the agency specified in subsection (a)(1)(F) of this section. The Director of the Government Publishing Office may prescribe regulations to effect the application and operation of this section to the agency specified in subsection (a)(1)(C) of this section.

(c) Severance pay consists of—

(1) a basic severance allowance computed on the basis of 1 week's basic pay at the rate received immediately before separation for each year of civilian service up to and including 10 years for which severance pay has not been received under this or any other authority and 2 weeks' basic pay at that rate for each year of civilian service beyond 10 years for which severance pay has not been received under this or any other authority; and

(2) an age adjustment allowance computed on the basis of 10 percent of the total basic severance allowance for each year by which the age of the recipient exceeds 40 years at the time of separation.

Total severance pay under this section may not exceed 1 year's pay at the rate received immediately before separation. For the purpose of this subsection, "basic pay" includes premium pay under section 5545(c)(1) of this title.

(d) If an employee is reemployed by the Government of the United States or the government of the District of Columbia before the end of the period covered by payments of severance pay, the payments shall be discontinued beginning with the date of reemployment and the service represented by the unexpired portion of the period shall be recredited to the employee for use in any later computations of severance pay. For the purpose of subsection (b) (1) of this section, reemployment that causes severance pay to be discontinued is deemed employment continuous with that serving as the basis for severance pay.

(e) If the employee dies before the end of the period covered by payments of severance pay, the payments of severance pay with respect to the employee shall be continued as if the employee were living and shall be paid on a pay period basis to the survivor of the employee in accordance with section 5582(b) of this title.

(f) Severance pay under this section is not a basis for payment, and may not be included in the basis for computation, of any other type of United States or District of Columbia Government benefits. A period covered by severance pay is not a period of United States or District of Columbia Government service or employment.

(g) The Secretary of Agriculture shall prescribe regulations to effect the application and operation of this section to an individual named by subsection (a)(2)(B) of this section.

(h)(1) Severance pay under this section may not be paid to—

(A) a person described in paragraph (4)(A) during any period in which the person is employed in a defense nonappropriated fund instrumentality; or

(B) a person described in paragraph (4)(B) during any period in which the person is employed in a Coast Guard nonappropriated fund instrumentality.

(2)(A) Except as provided in subparagraph (B), payment of severance pay to a person referred to in paragraph (1) may be resumed upon any involuntary separation of the person from the position of employment in a nonappropriated fund instrumentality, not by removal for cause on charges of misconduct, delinquency, or inefficiency.

(B) Payment of severance pay may not be resumed under subparagraph (A) in the case of a person who, upon separation, is entitled to immediate payment of retired or retainer pay as a member or former member of the uniformed services or to an immediate annuity under—

(i) a retirement system for persons retiring from employment by a nonappropriated fund instrumentality;

(ii) subchapter III of chapter 83 of this title;

(iii) subchapter II of chapter 84 of this title;

or

(iv) any other retirement system of the Federal Government for persons retiring from employment with the Federal Government.

(3) Upon resumption of payment of severance pay under paragraph (2)(A) in the case of a person separated as described in such paragraph, the amount of the severance pay so payable for a period shall be reduced (but not below zero) by the portion (if any) of the amount of any severance pay payable for such period to the person by the nonappropriated fund instrumentality that is attributable to credit for service taken into account under subsection (c) in the computation of the amount of the severance pay so resumed.

(4) Paragraph (1) applies to a person who, on or after January 1, 1987, moves without a break in service—

(A) from employment in the Department of Defense that is not employment in a defense nonappropriated fund instrumentality to employment in a defense nonappropriated fund instrumentality; or

(B) from employment in the Coast Guard that is not employment in a Coast Guard nonappropriated fund instrumentality to employment in a Coast Guard nonappropriated fund instrumentality.

(5) The Secretary of Defense, in consultation with the Secretary of Homeland Security, shall prescribe regulations to carry out this subsection.

(6) In this subsection:

(A) The term "defense nonappropriated fund instrumentality" means a nonappropriated fund instrumentality of the Department of Defense.

(B) The term "Coast Guard nonappropriated fund instrumentality" means a nonappropriated fund instrumentality of the Coast Guard.

(C) The term "nonappropriated fund instrumentality" means a nonappropriated fund instrumentality described in section 2105(c) of this title.

(i)(1) In the case of an employee of the Department of Defense who is entitled to severance pay

under this section, the Secretary of Defense or the Secretary of the military department concerned may, upon application by the employee, pay the total amount of the severance pay to the employee in one lump sum.

(2)(A) If an employee paid severance pay in a lump sum under this subsection is reemployed by the Government of the United States or the government of the District of Columbia at such time that, had the employee been paid severance pay in regular pay periods under subsection (b), the payments of such pay would have been discontinued under subsection (d) upon such reemployment, the employee shall repay to the Department of Defense (for the military department that formerly employed the employee, if applicable) an amount equal to the amount of severance pay to which the employee was entitled under this section that would not have been paid to the employee under subsection (d) by reason of such reemployment.

(B) The period of service represented by an amount of severance pay repaid by an employee under subparagraph (A) shall be considered service for which severance pay has not been received by the employee under this section.

(C) Amounts repaid to an agency under this paragraph shall be credited to the appropriation available for the pay of employees of the agency for the fiscal year in which received. Amounts so credited shall be merged with, and shall be available for the same purposes and the same period as, the other funds in that appropriation.

(3) If an employee fails to repay to an agency an amount required to be repaid under paragraph (2)(A), that amount is recoverable from the employee as a debt due the United States.

(4) This subsection applies with respect to severance pay payable under this section for separations taking effect on or after February 10, 1996, and before October 1, 2018.

(j)(1) In the case of an employee of the Department of Energy who is entitled to severance pay under this section as a result of the establishment of the National Nuclear Security Administration, the Secretary of Energy may, upon application by the employee, pay the total amount of the severance pay to the employee in one lump sum.

(2)(A) If an employee paid severance pay in a lump sum under this subsection is reemployed by the Government of the United States or the government of the District of Columbia at such time that, had the employee been paid severance pay in regular pay periods under subsection (b), the payments of such pay would have been discontinued under subsection (d) upon such reemployment, the employee shall repay to the Department of Energy an amount equal to the amount of severance pay to which the employee was entitled under this section that would not have been paid to the employee under subsection (d) by reason of such reemployment.

(B) The period of service represented by an amount of severance pay repaid by an employee under subparagraph (A) shall be considered service for which severance pay has not been received by the employee under this section.

(C) Amounts repaid to the Department of Energy under this paragraph shall be credited to the appropriation available for the pay of em-

ployees of the agency for the fiscal year in which received. Amounts so credited shall be merged with, and shall be available for the same purposes and the same period as, the other funds in that appropriation.

(3) If an employee fails to repay to the Department of Energy an amount required to be repaid under paragraph (2)(A), that amount is recoverable from the employee as a debt due the United States.

(Added Pub. L. 90-83, §1(34)(C), Sept. 11, 1967, 81 Stat. 201; amended Pub. L. 95-454, title IV, §408(a)(3), Oct. 13, 1978, 92 Stat. 1173; Pub. L. 96-70, title I, §1231(d), Sept. 27, 1979, 93 Stat. 470; Pub. L. 96-465, title II, §2305, Oct. 17, 1980, 94 Stat. 2165; Pub. L. 100-325, §2(i)(2), May 30, 1988, 102 Stat. 582; Pub. L. 101-474, §5(k), Oct. 30, 1990, 104 Stat. 1100; Pub. L. 101-509, title V, §529 [title I, §101(b)(9)(J)], Nov. 5, 1990, 104 Stat. 1427, 1442; Pub. L. 103-337, div. A, title III, §343(a), Oct. 5, 1994, 108 Stat. 2721; Pub. L. 104-106, div. A, title X, §1035, Feb. 10, 1996, 110 Stat. 430; Pub. L. 105-55, title III, §310(a), Oct. 7, 1997, 111 Stat. 1199; Pub. L. 105-275, title III, §§308(a), 309(a), Oct. 21, 1998, 112 Stat. 2452, 2454; Pub. L. 106-31, title V, §5006, May 21, 1999, 113 Stat. 112; Pub. L. 106-65, div. A, title XI, §1104(a), div. C, title XXXII, §3243, Oct. 5, 1999, 113 Stat. 777, 965; Pub. L. 107-314, div. A, title XI, §1102(a), Dec. 2, 2002, 116 Stat. 2660; Pub. L. 109-163, div. A, title XI, §1103, Jan. 6, 2006, 119 Stat. 3448; Pub. L. 109-241, title IX, §902(a)(3), July 11, 2006, 120 Stat. 566; Pub. L. 110-417, [div. A], title XI, §1104, Oct. 14, 2008, 122 Stat. 4617; Pub. L. 113-66, div. A, title XI, §1104, Dec. 26, 2013, 127 Stat. 886; Pub. L. 113-235, div. H, title I, §1301(b), (d), Dec. 16, 2014, 128 Stat. 2537.)

HISTORICAL AND REVISION NOTES

<i>Section of title 5</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
5595	5 App.: 1117.	Oct. 29, 1965, Pub. L. 89-301, § 9, 79 Stat. 1118. Nov. 2, 1966, Pub. L. 89-737, § 2, 80 Stat. 1164.

In subsection (a), subsections (a) and (b) of 5 App. U.S.C. 1117 are restated as definitions.

In subsection (a)(1)(A), the term “Executive agency” is substituted for “the executive branch of the Government of the United States, including each corporation wholly owned or controlled by the United States” and “the General Accounting Office” to conform to the definition in 5 U.S.C. 105.

The definition in subsection (a)(2) continues the application of the section to only civilian officers and employees, and does not encompass members of the uniformed services as they are not “employed” in or under an agency. Throughout the section, the word “officer”, in the phrase “officer or employee”, is omitted as included within “employee”. The last 40 words of 5 App. U.S.C. 1117(a) are codified in subsection (g).

In subsection (a)(2)(i), the words “Executive Schedule” are substituted for “Federal Executive Salary Schedule” to reflect the provisions of 5 U.S.C. 5311. The words “of the General Schedule of the Classification Act of 1949, as amended” are omitted as unnecessary.

In subsection (a)(2)(ii), the words “without a break in service of more than 3 days” are coextensive with and substituted for “without a break in service or after a separation of three days or less”.

In subsection (a)(2)(iv), the words “subchapter III of chapter 83 of this title” are substituted for “the Civil Service Retirement Act, as amended” to reflect the

codification of the act in title 5 U.S.C. The words “employees as defined by section 2105 of this title” are co-extensive with and substituted for “Federal officers and employees”.

In subsection (a)(2)(v), the words “subchapter I of chapter 81 of this title” are substituted for “the Federal Employees’ Compensation Act, as amended” to reflect the codification of the act in title 5, U.S.C.

In subsection (b) the word “agency” is substituted for “department, independent establishment, corporation, or other governmental unit” to conform to the definition in subsection (a)(1). Subsection (b)(1) is substituted for 5 App. U.S.C. 1117(e).

In subsection (e), the words “section 5582(b) of this title” are substituted for “the first section of the Act of August 3, 1950 (5 U.S.C. 61f)” to reflect the codification of the section in title 5, United States Code.

Editorial Notes

REFERENCES IN TEXT

The Executive Schedule, referred to in subsec. (a)(2)(i), is set out in section 5311 et seq. of this title.

Section 3(a) of the Panama Canal Act of 1979, referred to in subsec. (a)(2)(iii), is classified to section 3602(a) of Title 22, Foreign Relations and Intercourse.

Section 609(b)(1) of the Foreign Service Act of 1980, referred to in subsec. (a)(2)(vi), is classified to section 4009(b)(1) of Title 22.

AMENDMENTS

2013—Subsec. (i)(4). Pub. L. 113–66 substituted “October 1, 2018” for “October 1, 2014”.

2008—Subsec. (i)(4). Pub. L. 110–417 substituted “2014” for “2010”.

2006—Subsec. (h)(5). Pub. L. 109–241 substituted “Secretary of Homeland Security” for “Secretary of Transportation”.

Subsec. (i)(4). Pub. L. 109–163 substituted “2010” for “2006”.

2002—Subsec. (i)(4). Pub. L. 107–314 substituted “2006” for “2003”.

1999—Subsec. (b). Pub. L. 106–31 substituted “(a)(1)(C)” for “(a)(1)(G)” in last sentence.

Subsec. (i)(4). Pub. L. 106–65, §1104(a), substituted “February 10, 1996, and before October 1, 2003” for “the date of the enactment of the National Defense Authorization Act for Fiscal Year 1996 and before October 1, 1999”.

Subsec. (j). Pub. L. 106–65, §3243, added subsec. (j).

1998—Subsec. (a)(1)(F). Pub. L. 105–275, §308(a)(1), struck out “, but only with respect to the United States Senate Restaurants” after “Capitol”.

Subsec. (a)(2)(viii). Pub. L. 105–275, §§308(a)(2), 309(a)(1)(A), struck out “of the United States Senate Restaurants” after “an employee” and “or” after the semicolon.

Subsec. (a)(2)(ix), (x). Pub. L. 105–275, §309(a)(1)(B), added cl. (ix) and redesignated former cl. (ix) as (x).

Subsec. (b). Pub. L. 105–275, §309(a)(2), inserted at end “The Public Printer may prescribe regulations to effect the application and operation of this section to the agency specified in subsection (a)(1)(G) of this section.”

1997—Subsec. (a)(1)(F). Pub. L. 105–55, §310(a)(1), added subpar. (F).

Subsec. (a)(2)(viii), (ix). Pub. L. 105–55, §310(a)(2), added cl. (viii) and redesignated former cl. (viii) as (ix).

Subsec. (b). Pub. L. 105–55, §310(a)(3), inserted at end “The Architect of the Capitol may prescribe regulations to effect the application and operation of this section to the agency specified in subsection (a)(1)(F) of this section.”

1996—Subsec. (i). Pub. L. 104–106 added subsec. (i).

1994—Subsec. (h). Pub. L. 103–337 added subsec. (h).

1990—Subsec. (a)(1)(E). Pub. L. 101–474, §5(k)(1), added subpar. (E).

Subsec. (a)(2)(i). Pub. L. 101–509 substituted “employee (other)” for “employee, other”, inserted “or an employee whose pay is fixed under section 5376)” before

“whose rate”, and substituted “the Executive Schedule” for “GS–18”.

Subsec. (b). Pub. L. 101–474, §5(k)(2), inserted at end “However, the Director of the Administrative Office of the United States Courts may prescribe regulations to effect the application and operation of this section to the agencies specified in subsection (a)(1)(E) of this section.”

1988—Subsec. (a)(2)(i). Pub. L. 100–325 inserted reference to Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service.

1980—Subsec. (a)(2)(vi). Pub. L. 96–465 inserted “benefits under section 609(b)(1) of the Foreign Service Act of 1980 or any” after “to receive”.

1979—Subsec. (a)(2)(iii). Pub. L. 96–70 substituted “areas and installations in the Republic of Panama made available to the United States pursuant to the Panama Canal Treaty of 1977 and related agreements (as described in section 3(a) of the Panama Canal Act of 1979)” for “Canal Zone”.

1978—Subsec. (a)(2)(i). Pub. L. 95–454 inserted reference to a member of the Senior Executive Service.

Statutory Notes and Related Subsidiaries

CHANGE OF NAME

“Government Publishing Office” substituted for “Government Printing Office” in subsec. (a)(1)(C), (2)(B)(ix) on authority of section 1301(b) of Pub. L. 113–235, set out as a note preceding section 301 of Title 44, Public Printing and Documents.

“Director of the Government Publishing Office” substituted for “Public Printer” in subsec. (b) on authority of section 1301(d) of Pub. L. 113–235, set out as a note under section 301 of Title 44, Public Printing and Documents.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by section 3243 of Pub. L. 106–65 effective Mar. 1, 2000, see section 3299 of Pub. L. 106–65, set out as an Effective Date note under section 2401 of Title 50, War and National Defense.

EFFECTIVE DATE OF 1994 AMENDMENT

Pub. L. 103–337, div. A, title III, §343(b), Oct. 5, 1994, 108 Stat. 2722, provided that: “Subsection (h) of section 5595 of title 5, United States Code, as added by subsection (a), shall apply with respect to pay periods that begin on or after the date of the enactment of this Act [Oct. 5, 1994].”

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 1980 AMENDMENT

Amendment by Pub. L. 96–465 effective Feb. 15, 1981, except as otherwise provided, see section 2403 of Pub. L. 96–465, set out as an Effective Date note under section 3901 of Title 22, Foreign Relations and Intercourse.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–70 effective Oct. 1, 1979, see section 3304 of Pub. L. 96–70, set out as an Effective Date note under section 3601 of Title 22, Foreign Relations and Intercourse.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 9 months after Oct. 13, 1978, and congressional review of provisions of sections 401 through 412 of Pub. L. 95–454, see section 415 of Pub. L. 95–454, set out as a note under section 3131 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.

REPORT

Pub. L. 107-314, div. A, title XI, §1102(b), Dec. 2, 2002, 116 Stat. 2660, required the President, not later than one year after Dec. 2, 2002, to submit to Committees of Congress a report on whether the authority under section 5595(i) of this title should be made permanent or expanded to be made Governmentwide.

§ 5596. Back pay due to unjustified personnel action

(a) For the purpose of this section, “agency” means—

- (1) an Executive agency;
- (2) the Administrative Office of the United States Courts, the Federal Judicial Center, and the courts named by section 610 of title 28;
- (3) the Library of Congress;
- (4) the Government Publishing Office;
- (5) the government of the District of Columbia;
- (6) the Architect of the Capitol, including employees of the United States Senate Restaurants; and
- (7) the United States Botanic Garden.

(b)(1) An employee of an agency who, on the basis of a timely appeal or an administrative determination (including a decision relating to an unfair labor practice or a grievance) is found by appropriate authority under applicable law, rule, regulation, or collective bargaining agreement, to have been affected by an unjustified or unwarranted personnel action which has resulted in the withdrawal or reduction of all or part of the pay, allowances, or differentials of the employee—

(A) is entitled, on correction of the personnel action, to receive for the period for which the personnel action was in effect—

(i) an amount equal to all or any part of the pay, allowances, or differentials, as applicable which the employee normally would have earned or received during the period if the personnel action had not occurred, less any amounts earned by the employee through other employment during that period; and

(ii) reasonable attorney fees related to the personnel action which, with respect to any decision relating to an unfair labor practice or a grievance processed under a procedure negotiated in accordance with chapter 71 of this title, or under chapter 11 of title I of the Foreign Service Act of 1980, shall be awarded in accordance with standards established under section 7701(g) of this title; and

(B) for all purposes, is deemed to have performed service for the agency during that period, except that—

(i) annual leave restored under this paragraph which is in excess of the maximum leave accumulation permitted by law shall be credited to a separate leave account for the employee and shall be available for use

by the employee within the time limits prescribed by regulations of the Office of Personnel Management, and

(ii) annual leave credited under clause (i) of this subparagraph but unused and still available to the employee under regulations prescribed by the Office shall be included in the lump-sum payment under section 5551 or 5552(1) of this title but may not be retained to the credit of the employee under section 5552(2) of this title.

(2)(A) An amount payable under paragraph (1)(A)(i) of this subsection shall be payable with interest.

(B) Such interest—

(i) shall be computed for the period beginning on the effective date of the withdrawal or reduction involved and ending on a date not more than 30 days before the date on which payment is made;

(ii) shall be computed at the rate or rates in effect under section 6621(a)(1) of the Internal Revenue Code of 1986 during the period described in clause (i); and

(iii) shall be compounded daily.

(C) Interest under this paragraph shall be paid out of amounts available for payments under paragraph (1) of this subsection.

(3) This subsection does not apply to any reclassification action nor authorize the setting aside of an otherwise proper promotion by a selecting official from a group of properly ranked and certified candidates.

(4) The pay, allowances, or differentials granted under this section for the period for which an unjustified or unwarranted personnel action was in effect shall not exceed that authorized by the applicable law, rule, regulations, or collective bargaining agreement under which the unjustified or unwarranted personnel action is found, except that in no case may pay, allowances, or differentials be granted under this section for a period beginning more than 6 years before the date of the filing of a timely appeal or, absent such filing, the date of the administrative determination.

(5) For the purpose of this subsection, “grievance” and “collective bargaining agreement” have the meanings set forth in section 7103 of this title and (with respect to members of the Foreign Service) in sections 1101 and 1002 of the Foreign Service Act of 1980, “unfair labor practice” means an unfair labor practice described in section 7116 of this title and (with respect to members of the Foreign Service) in section 1015 of the Foreign Service Act of 1980, and “personnel action” includes the omission or failure to take an action or confer a benefit.

(c) The Office of Personnel Management shall prescribe regulations to carry out this section. However, the regulations are not applicable to the Tennessee Valley Authority and its employees, or to the agencies specified in subsection (a)(2) of this section.

(Added Pub. L. 90-83, §1(34)(C), Sept. 11, 1967, 81 Stat. 203; amended Pub. L. 94-172, §1(a), Dec. 23, 1975, 89 Stat. 1025; Pub. L. 95-454, title VII, §702, Oct. 13, 1978, 92 Stat. 1216; Pub. L. 96-54, §2(a)(14), Aug. 14, 1979, 93 Stat. 382; Pub. L. 96-465, title II, §2306, Oct. 17, 1980, 94 Stat. 2165; Pub. L. 100-202,