

(4) a consultant or advisor to the Department.

(Pub. L. 110-161, div. G, title III, §306, Dec. 26, 2007, 121 Stat. 2198.)

CODIFICATION

Section was enacted as part of the Department of Education Appropriations Act, 2008, and also as part of the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2008, and the Consolidated Appropriations Act, 2008, and not as part of the Department of Education Organization Act which comprises this chapter.

SUBCHAPTER V—TRANSITIONAL, SAVINGS,
AND CONFORMING PROVISIONS

§ 3501. Transfer and allocation of appropriations and personnel

(a) Personnel and appropriations in connection with functions and offices transferred by this chapter; use of unexpended funds

Except as otherwise provided in this chapter, the personnel employed in connection with, and the assets, liabilities, contracts, property, records, and unexpended balance of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to, or to be made available in connection with the functions and offices, or portions thereof transferred by this chapter, subject to section 1531 of title 31, shall be transferred to the Secretary for appropriate allocation. Unexpended funds transferred pursuant to this subsection shall be used only for the purposes for which the funds were originally authorized and appropriated.

(b) Positions specified to carry out functions or offices transferred by this chapter

Positions expressly specified by statute or reorganization plan to carry out functions or offices transferred by this chapter, personnel occupying those positions on the effective date of this chapter, and personnel authorized to receive compensation in such positions at the rate prescribed for offices and positions at level IV or V of the Executive Schedule (5 U.S.C. 5315-5316) on May 4, 1980, shall be subject to the provisions of section 3503 of this title.

(Pub. L. 96-88, title V, §501, Oct. 17, 1979, 93 Stat. 689.)

CODIFICATION

In subsec. (a), “section 1531 of title 31” substituted for “section 202 of the Budget and Accounting Procedures Act of 1950 [31 U.S.C. 581c]” on authority of Pub. L. 97-258, §4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

In subsec. (b), “May 4, 1980” substituted for “the effective date of this chapter” pursuant to section 601 of Pub. L. 96-88, set out as an Effective Date note under section 3401 of this title.

§ 3502. Effect on personnel

(a) Non-separation or non-reduction in grade or compensation of full-time personnel and part-time personnel holding permanent positions

Except as otherwise provided in this chapter, the transfer pursuant to this subchapter of full-

time personnel (except special Government employees) and part-time personnel holding permanent positions shall not cause any such employee to be separated or reduced in grade or compensation for one year after the date of transfer to the Department.

(b) Positions compensated in accordance with Executive Schedule

Any person who, on the day preceding May 4, 1980, held a position compensated in accordance with the Executive Schedule prescribed in chapter 53 of title 5 and who, without a break in service, is appointed in the Department to a position having duties comparable to the duties performed immediately preceding such appointment shall continue to be compensated in such new position at not less than the rate provided for such previous position, for the duration of the service of such person in such new position.

(Pub. L. 96-88, title V, §502, Oct. 17, 1979, 93 Stat. 690.)

CODIFICATION

In subsec. (b), “May 4, 1980” substituted for “the effective date of this chapter” pursuant to section 601 of Pub. L. 96-88, set out as an Effective Date note under section 3401 of this title.

ABOLISHED POSITIONS DEEMED TRANSFERRED

Pub. L. 96-88, title V, §508(l)(4), Oct. 17, 1979, 93 Stat. 694, provided that: “Positions abolished as a consequence of the amendments made by this subsection [amending sections 1102, 2390, and 3012 of this title] shall, for purposes of section 502(a) [subsec. (a) of this section], be deemed to be permanent positions transferred pursuant to title V of this Act [this subchapter].”

§ 3503. Agency terminations

(a) Specific terminations

On May 4, 1980, the following entities shall terminate:

(A) the Education Division of the Department of Health, Education, and Welfare, including the Office of Education;

(B) the Office of the Assistant Secretary for Education of the Department of Health, Education, and Welfare;

(C) the Bureau of Occupational and Adult Education of the Department of Health, Education, and Welfare.

(b) Positions authorized to be compensated at rate prescribed for level IV or V of the Executive Schedule

Each position which was expressly authorized by law, or the incumbent of which was authorized to receive compensation at the rate prescribed for level IV or V of the Executive Schedule (5 U.S.C. 5315-5316), in an office terminated pursuant to this chapter shall also terminate.

(Pub. L. 96-88, title V, §503, Oct. 17, 1979, 93 Stat. 690; Pub. L. 99-145, title XII, §1204(a)(3), Nov. 8, 1985, 99 Stat. 720.)

CODIFICATION

In subsec. (a), “May 4, 1980” substituted for “the effective date of this chapter” pursuant to section 601 of Pub. L. 96-88, set out as an Effective Date note under section 3401 of this title.

AMENDMENTS

1985—Subsec. (a). Pub. L. 99-145 struck out par. (1) designation and par. (2) which provided for termination

of Office of Dependents' Education of Department of Defense whenever President exercises authority under section 3442(a) of this title.

§ 3504. Incidental transfers

(a) Authorization of Director of Office of Management and Budget; termination of affairs

The Director of the Office of Management and Budget, at such time or times as the Director shall provide, is authorized and directed to make such determinations as may be necessary with regard to the functions, offices, or portions thereof transferred by this chapter, and to make such additional incidental dispositions of personnel, assets, liabilities, grants, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds held, used, arising from, available to, or to be made available in connection with such functions, offices, or portions thereof, as may be necessary to carry out the provisions of this chapter. The Director shall provide for the termination of the affairs of all entities terminated by this chapter and for such further measures and dispositions as may be necessary to effectuate the purposes of this chapter.

(b) Transfer of positions within Senior Executive Service

After consultation with the Director of the Office of Personnel Management, the Director of the Office of Management and Budget is authorized, at such time as the Director of the Office of Management and Budget provides, to make such determinations as may be necessary with regard to the transfer of positions within the Senior Executive Service in connection with functions and offices transferred by this chapter.

(Pub. L. 96-88, title V, § 504, Oct. 17, 1979, 93 Stat. 690.)

§ 3505. Savings provisions

(a) Orders, determinations, etc.

All orders, determinations, rules, regulations, permits, grants, contracts, certificates, licenses, and privileges—

(1) which have been issued, made, granted, or allowed to become effective by the President, any Federal department or agency or official thereof, or by a court of competent jurisdiction, in the performance of functions which are transferred under this chapter to the Secretary or the Department, and

(2) which are in effect on May 4, 1980,

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with the law by the President, the Secretary, or other authorized official, a court of competent jurisdiction, or by operation of law.

(b) Proceedings and applications; transfer

(1) The provisions of this chapter shall not affect any proceedings, including notices of proposed rulemaking, or any application for any license, permit, certificate, or financial assistance pending on May 4, 1980, before any department, agency, commission, or component thereof, functions of which are transferred by this

chapter; but such proceedings and applications, to the extent that they relate to functions so transferred, shall be continued. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this chapter had not been enacted; and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or revoked by the Secretary, by a court of competent jurisdiction, or by operation of law. Nothing in this subsection shall be deemed to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this chapter had not been enacted.

(2) The Secretary is authorized to promulgate regulations providing for the orderly transfer of proceedings continued under paragraph (1) to the Department.

(c) Actions

Except as provided in subsection (e) of this section—

(1) the provisions of this chapter shall not affect suits commenced prior to May 4, 1980, and

(2) in all such suits, proceedings shall be had, appeals taken, and judgments rendered in the same manner and effect as if this chapter had not been enacted.

(d) Liabilities incurred

No suit, action, or other proceeding commenced by or against any officer in the official capacity of such individual as an officer of any department or agency, functions of which are transferred by this chapter, shall abate by reason of the enactment of this chapter. No cause of action by or against any department or agency, functions of which are transferred by this chapter, or by or against any officer thereof in the official capacity of such officer shall abate by reason of the enactment of this chapter.

(e) Parties

If, before May 4, 1980, any department or agency, or officer thereof in the official capacity of such officer, is a party to a suit, and under this chapter any function of such department, agency, or officer is transferred to the Secretary or any other official of the Department, then such suit shall be continued with the Secretary or other appropriate official of the Department substituted or added as a party.

(f) Review

Orders and actions of the Secretary in the exercise of functions transferred under this chapter shall be subject to judicial review to the same extent and in the same manner as if such orders and actions had been by the agency or office, or part thereof, exercising such functions immediately preceding their transfer. Any statutory requirements relating to notice, hearings, action upon the record, or administrative review that apply to any function transferred by this chapter shall apply to the exercise of such function by the Secretary.

(Pub. L. 96-88, title V, § 505, Oct. 17, 1979, 93 Stat. 691.)