

Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 201 of Title 42 and Tables.

#### AMENDMENTS

2008—Subsec. (a)(1)(A). Pub. L. 110-437 inserted “, the Architect of the Capitol, the Botanic Garden, and the Office of Congressional Accessibility Services” after “title”.

2003—Subsec. (b)(2)(A). Pub. L. 108-123, §2(1), and Pub. L. 108-136 amended subpar. (A) identically, substituting “\$10,000” for “\$6,000”.

Subsec. (b)(2)(B). Pub. L. 108-123, §2(2), substituted “\$60,000” for “\$40,000”.

2000—Subsec. (a)(1)(B)(i). Pub. L. 106-398, §1 [[div. A], title XI, §1122(a)(1)], inserted “(20 U.S.C. 1071 et seq.)” before semicolon.

Subsec. (a)(1)(B)(ii). Pub. L. 106-398, §1 [[div. A], title XI, §1122(a)(2)], substituted “part D or E of title IV of the Higher Education Act of 1965 (20 U.S.C. 1087a et seq., 1087aa et seq.)” for “part E of title IV of the Higher Education Act of 1965”.

Subsec. (a)(1)(B)(iii). Pub. L. 106-398, §1 [[div. A], title XI, §1122(a)(3)], substituted “part A of title VII of the Public Health Service Act (42 U.S.C. 292 et seq.) or under part E of title VIII of such Act (42 U.S.C. 297a et seq.)” for “part C of title VII of Public Health Service Act or under part B of title VIII of such Act”.

Subsec. (a)(2). Pub. L. 106-398, §1 [[div. A], title XI, §1122(b)(1)], amended par. (2) generally. Prior to amendment, par. (2) read as follows: “An employee shall be ineligible for benefits under this section if such employee occupies a position which—

“(A) is excepted from the competitive service because of its confidential, policy-determining, policy-making, or policy-advocating character; or

“(B) is not subject to subchapter III of this chapter.”

Subsec. (b)(1). Pub. L. 106-398, §1 [[div. A], title XI, §1122(b)(2)], struck out “professional, technical, or administrative” after “highly qualified”.

Subsec. (h). Pub. L. 106-398, §1 [[div. A], title XI, §1122(d)], added subsec. (h).

#### EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108-136, div. A, title XI, §1123(b), Nov. 24, 2003, 117 Stat. 1637, provided that: “The amendment made by subsection (a) [amending this section] shall take effect on January 1, 2004.”

#### REGULATIONS

Pub. L. 106-398, §1 [[div. A], title XI, §1122(c)], Oct. 30, 2000, 114 Stat. 1654, 1654A-316, provided that:

“(1) Not later than 60 days after the date of the enactment of this Act [Oct. 30, 2000], the Director of the Office of Personnel Management shall issue proposed regulations under section 5379(g) of title 5, United States Code. The Director shall provide for a period of not less than 60 days for public comment on the regulations.

“(2) Not later than 240 days after the date of the enactment of this Act [Oct. 30, 2000], the Director shall issue final regulations.”

#### INSTITUTIONAL LOAN FORGIVENESS PROGRAMS

Pub. L. 110-315, title IX, §961, Aug. 14, 2008, 122 Stat. 3473, provided that: “Notwithstanding any other provision of law—

“(1) a public or private institution of higher education may provide an officer or employee of any branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, who is a current or former student of such institution, financial assistance for the purpose of repaying a student loan or providing forbearance of student loan repayment if—

“(A) such repayment or forbearance is provided to such officer or employee in accordance with a written, published policy of the institution relating to repaying or providing forbearance, respectively, for

students or former students who perform public service; and

“(B) in the case of a former student of the institution of higher education, the policy described in subparagraph (A) was in effect at the institution of higher education on the day before the date such officer or employee graduated from or otherwise ceased being a student at such institution; and

“(2) an officer or employee of any branch of the United States Government, of any independent agency of the United States, or of the District of Columbia may receive repayment or forbearance permitted under paragraph (1).”

#### § 5380. Repealed. Pub. L. 102-378, §8(a), Oct. 2, 1992, 106 Stat. 1359

Section, added Pub. L. 101-510, div. A, title XII, §1206(i)(1), Nov. 5, 1990, 104 Stat. 1662, related to pay authority for critical positions. See section 5377 of this title. Pub. L. 102-378, §8(a), repealed Pub. L. 101-510, §1206(i)(1), and provided that this title shall read as if section 1206(i)(1) had not been enacted.

Pub. L. 101-510, §1206(i)(3), provided that (A) unless section 5380 of this title did not take effect as provided in subpar. (B), such section would cease to be in effect on the earlier of Oct. 1, 1992, or the date of the enactment of the Federal Employees Pay Comparability Act of 1990 [Nov. 5, 1990], and (B) section 5380 of this title would not take effect if the Federal Employees Pay Comparability Act of 1990 [Pub. L. 101-509] was enacted before the date of the enactment of this Act [Nov. 5, 1990]. Pub. L. 102-378, §8(a), repealed Pub. L. 101-510, §1206(i)(3), and provided that this title shall read as if section 1206(i)(3) had not been enacted.

#### EFFECTIVE DATE OF REPEAL

Repeal effective Nov. 5, 1990, see section 9(b)(6) of Pub. L. 102-378, set out as an Effective Date of 1992 Amendment note under section 6303 of this title.

#### SUBCHAPTER VIII—PAY FOR THE SENIOR EXECUTIVE SERVICE

##### § 5381. Definitions

For the purpose of this subchapter, “agency”, “Senior Executive Service position”, “career appointee”, and “senior executive” have the meanings set forth in section 3132(a) of this title.

(Added Pub. L. 95-454, title IV, §407(a), Oct. 13, 1978, 92 Stat. 1171; amended Pub. L. 101-136, title VI, §625(b), Nov. 3, 1989, 103 Stat. 823.)

#### AMENDMENTS

1989—Pub. L. 101-136 inserted “‘career appointee,’” before “and”.

#### EFFECTIVE DATE

Subchapter 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(a)(1), (b) of Pub. L. 95-454, set out as a note under section 3131 of this title.

##### § 5382. Establishment of rates of pay for the Senior Executive Service

(a) Subject to regulations prescribed by the Office of Personnel Management, there shall be established a range of rates of basic pay for the Senior Executive Service, and each senior executive shall be paid at one of the rates within the range, based on individual performance, contribution to the agency’s performance, or both, as determined under a rigorous performance management system. The lowest rate of the

range shall not be less than the minimum rate of basic pay payable under section 5376, and the highest rate, for any position under this system or an equivalent system as determined by the President's Pay Agent designated under section 5304(d), shall not exceed the rate for level III of the Executive Schedule. The payment of the rates shall not be subject to the pay limitation of section 5306(e) or 5373.

(b) Notwithstanding the provisions of subsection (a), the applicable maximum shall be level II of the Executive Schedule for any agency that is certified under section 5307 as having a performance appraisal system which, as designed and applied, makes meaningful distinctions based on relative performance.

(c) No employee may suffer a reduction in pay by reason of transfer from an agency with an applicable maximum rate of pay prescribed under subsection (b) to an agency with an applicable maximum rate of pay prescribed under subsection (a).

(Added Pub. L. 95-454, title IV, §407(a), Oct. 13, 1978, 92 Stat. 1171; amended Pub. L. 101-509, title V, § 529 [title I, §101(b)(4)(B), (6)(A), (9)(I)], Nov. 5, 1990, 104 Stat. 1427, 1439, 1440, 1442; Pub. L. 108-136, div. A, title XI, §1125(a)(2), Nov. 24, 2003, 117 Stat. 1638.)

#### REFERENCES IN TEXT

Level III of the Executive Schedule, referred to in subsec. (a), is set out in section 5314 of this title.

Level II of the Executive Schedule, referred to in subsec. (b), is set out in section 5313 of this title.

#### AMENDMENTS

2003—Pub. L. 108-136 substituted “Establishment of rates of pay for the Senior Executive Service” for “Establishment and adjustment of rates of pay for the Senior Executive Service” in section catchline and amended text generally. Prior to amendment, text read as follows:

“(a) There shall be 5 or more rates of basic pay for the Senior Executive Service, and each senior executive shall be paid at one of the rates. The rates of basic pay shall be initially established and thereafter adjusted by the President subject to subsection (b) of this section.

“(b) In setting rates of basic pay, the lowest rate for the Senior Executive Service shall not be less than the minimum rate of basic pay payable under section 5376 and the highest rate shall not exceed the rate for level IV of the Executive Schedule. The payment of the rates shall not be subject to the pay limitation of section 5306(e) or 5373 of this title.

“(c) Subject to subsection (b) of this section, 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 of this title in the rates of pay under the General Schedule, each rate of basic pay for the Senior Executive Service shall be adjusted by an amount determined by the President to be appropriate.

“(d) The rates of basic pay that are established and adjusted under this section shall be printed in the Federal Register and shall supersede any prior rates of basic pay for the Senior Executive Service.”

1990—Subsec. (b). Pub. L. 101-509, §529 [title I, §101(b)(6)(A), (9)(I)], substituted “under section 5376” for “for GS-16 of the General Schedule” and “5306(e)” for “5308”.

Subsec. (c). Pub. L. 101-509, §529 [title I, §101(b)(4)(B)], substituted “5303” for “5305” and struck out at end “The adjusted rates of basic pay for the Senior Executive Service shall be included in the report transmitted

to the Congress by the President under section 5305(a)(3) or (c)(1) of this title.”

#### EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108-136 effective on first day of first pay period beginning on or after Jan. 1, 2004, but not to result in reduction in rate of basic pay for any senior executive during first year after effective date, see section 1125(c) of Pub. L. 108-136, set out as a note under section 5304 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.

#### PAY INCREASES

For adjustment of rates of basic pay for the Senior Executive Service under this section, see the executive order detailing the adjustment of certain rates of pay set out as a note under section 5332 of this title.

For miscellaneous provisions dealing with adjustments of pay and limitations on use of funds to pay salaries in prior years, see notes under section 5318 of this title.

#### EXECUTIVE ORDER NO. 12592

Ex. Ord. No. 12592, Apr. 10, 1987, 52 F.R. 13417, as amended by Ex. Ord. No. 12609, Sept. 23, 1987, 52 F.R. 36211, which related to the establishment, functions, administration, and termination of the President's Commission on Compensation of Career Federal Executives, was revoked by Ex. Ord. No. 12692, Sept. 29, 1989, 54 F.R. 40627, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to this title.

#### § 5383. Setting individual senior executive pay

(a) Each appointing authority shall determine, in accordance with criteria established by the Office of Personnel Management, which of the rates within a range established under section 5382 shall be paid to each senior executive under such appointing authority.

(b) Members of the Senior Executive Service shall be subject to the limitation under section 5307.

(c) Except as provided in regulations prescribed by the Office under section 5385, the rate of basic pay for any senior executive may not be adjusted more than once during any 12-month period.

(d) The rate of basic pay for any career appointee may be reduced from any rate of basic pay to any lower rate of basic pay only if the career appointee receives a written notice of the reduction at least 15 days in advance of the reduction.

(e)(1) This subsection applies to—

(A) any individual who, after serving at least 5 years of current continuous service in 1 or more positions in the competitive service, is appointed, without any break in service, as a career appointee; and

(B) any individual who—

(i) holds a position which is converted from the competitive service to a career reserved position in the Senior Executive Service; and

(ii) as of the conversion date, has at least 5 years of current continuous service in 1 or more positions in the competitive service.