

tion of the system, including peer review, and in any further planning or development required with respect to the system as a result of such review and evaluation; and

(B) provide exclusive employee representatives appropriate access to information to ensure that the participation of such exclusive employee representative in activities under subparagraph (A) is productive.

(7)(A) The Secretary may from time to time modify a system of promotion and advancement under this subsection.

(B) In modifying a system, the Secretary shall take into account any recommendations made by the exclusive employee representatives concerned.

(C) In modifying a system, the Secretary shall comply with paragraphs (2) through (5) and shall treat any proposal for the modification of a system as a proposal for a system for purposes of such paragraphs.

(D) The Secretary shall promptly submit to the congressional veterans' affairs committees a report on any modification of a system. Each report shall include—

(i) an explanation and justification of the modification; and

(ii) a description of any recommendations of exclusive employee representatives with respect to the modification and a statement whether or not the modification was revised in light of such recommendations.

(8) In the case of employees who are not within a unit with respect to which a labor organization is accorded exclusive recognition, the Secretary may develop procedures for input from representatives under this subsection from any appropriate organization that represents a substantial percentage of such employees or, if none, in such other manner as the Secretary considers appropriate, consistent with the purposes of this subsection.

(9) In this subsection, the term "congressional veterans' affairs committees" means the Committees on Veterans' Affairs of the Senate and the House of Representatives.

(Added Pub. L. 102-40, title IV, § 401(b)(2), May 7, 1991, 105 Stat. 224; amended Pub. L. 102-405, title III, § 302(c)(1), Oct. 9, 1992, 106 Stat. 1984; Pub. L. 108-170, title III, §§ 301(b), 302(c), Dec. 6, 2003, 117 Stat. 2055, 2058; Pub. L. 111-163, title VI, § 601(b), May 5, 2010, 124 Stat. 1168.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 4106 of this title prior to the repeal of that section as part of the complete revision of chapter 73 of this title by Pub. L. 102-40.

AMENDMENTS

2010—Subsec. (b)(1). Pub. L. 111-163, § 601(b)(1), substituted "Except as otherwise provided in this subsection, appointments" for "Appointments".

Subsec. (b)(2) to (4). Pub. L. 111-163, § 601(b)(2), (3), added pars. (2) and (3) and redesignated former par. (2) as (4).

2003—Subsec. (a)(2)(H). Pub. L. 108-170, § 302(c), added subpar. (H).

Subsec. (f)(3). Pub. L. 108-170, § 301(b)(1), inserted "reductions-in-force, the applicability of the principles of preference referred to in paragraph (2), rights of part-

time employees," after "adverse actions," ", whether appointed under this section or section 7405(a)(1)(B) of this title" after "such positions", and comma after "status".

Subsec. (h). Pub. L. 108-170, § 301(b)(2), added subsec. (h).

1992—Subsec. (f)(1). Pub. L. 102-405 substituted "Under Secretary for Health" for "Chief Medical Director".

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by section 302(c) of Pub. L. 108-170 effective at end of 180-day period beginning on Dec. 6, 2003, see section 302(h) of Pub. L. 108-170, set out as a note under section 7316 of this title.

§ 7404. Grades and pay scales

(a)(1)(A) The annual rates or ranges of rates of basic pay for positions provided in section¹ 7306 and 7401(4) of this title shall be prescribed from time to time by Executive order as authorized by chapter 53 of title 5 or as otherwise authorized by law.

(B) Section 5377 of title 5 shall apply to a position under section 7401(4) of this title as if such position were included in the definition of "position" in section 5377(a) of title 5.

(2) The pay of physicians and dentists serving in positions to which an Executive order applies under paragraph (1) shall be determined under subchapter III of this chapter instead of such Executive order.

(3)(A) The rate of basic pay for a position to which an Executive order applies under paragraph (1) and is not described by paragraph (2) shall be set in accordance with section 5382 of title 5 as if such position were a Senior Executive Service position (as such term is defined in section 3132(a) of title 5).

(B) A rate of basic pay for a position may not be set under subparagraph (A) in excess of—

(i) in the case the position is not described in clause (ii), the rate of basic pay payable for level III of the Executive Schedule; or

(ii) in the case that the position is covered by a performance appraisal system that meets the certification criteria established by regulation under section 5307(d) of title 5, the rate of basic pay payable for level II of the Executive Schedule.

(C) Notwithstanding the provisions of subsection (d) of section 5307 of title 5, the Secretary may make any certification under that subsection instead of the Office of Personnel Management and without concurrence of the Office of Management and Budget.

(b) The grades for positions provided for in paragraph (1) of section 7401 of this title shall be as follows. The annual ranges of rates of basic pay for those grades shall be prescribed from time to time by Executive order as authorized by chapter 53 of title 5 or as otherwise authorized by law:

PHYSICIAN AND DENTIST SCHEDULE

Physician grade.
Dentist grade.

NURSE SCHEDULE

Nurse V.

¹ So in original. Probably should be "sections".

Nurse IV.
Nurse III.
Nurse II.
Nurse I.

CLINICAL PODIATRIST, CHIROPRACTOR, AND
OPTOMETRIST SCHEDULE

Chief grade.
Senior grade.
Intermediate grade.
Full grade.
Associate grade.

(c) Notwithstanding the provisions of section 7425(a) of this title, a person appointed under section 7306 of this title who is not eligible for pay under subchapter III shall be deemed to be a career appointee for the purposes of sections 4507 and 5384 of title 5.

(d) Except as provided under subsection (e), subchapter III, and section 7457 of this title, pay for positions for which basic pay is paid under this section may not be paid at a rate in excess of the rate of basic pay authorized by section 5316 of title 5 for positions in Level V of the Executive Schedule.

(e) The position of Chief Nursing Officer, Office of Nursing Services, shall be exempt from the provisions of section 7451 of this title and shall be paid at a rate determined by the Secretary, not to exceed the maximum rate established for the Senior Executive Service under section 5382 of title 5.

(Added Pub. L. 102-40, title IV, § 401(b)(2), May 7, 1991, 105 Stat. 225; amended Pub. L. 102-405, title II, § 206, title III, § 302(c)(1), Oct. 9, 1992, 106 Stat. 1984; Pub. L. 102-585, title III, § 301(a), Nov. 4, 1992, 106 Stat. 4951; Pub. L. 108-170, title III, § 302(d), Dec. 6, 2003, 117 Stat. 2058; Pub. L. 108-445, § 3(a), (f), Dec. 3, 2004, 118 Stat. 2636, 2643; Pub. L. 109-461, title II, § 202, Dec. 22, 2006, 120 Stat. 3410; Pub. L. 111-163, title VI, § 601(d)(1), May 5, 2010, 124 Stat. 1169; Pub. L. 115-41, title II, § 207(b), June 23, 2017, 131 Stat. 877.)

REFERENCES IN TEXT

Level III of the Executive Schedule, referred to in subsec. (a)(3)(B)(i), is set out in section 5314 of Title 5, Government Organization and Employees.

Level II of the Executive Schedule, referred to in subsec. (a)(3)(B)(ii), is set out in section 5313 of Title 5, Government Organization and Employees.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 4107(a)-(d) of this title prior to the repeal of that section as part of the complete revision of chapter 73 of this title by Pub. L. 102-40.

AMENDMENTS

2017—Subsec. (a)(1). Pub. L. 115-41 designated existing provisions as subpar. (A), inserted “and 7401(4)” after “section 7306”, and added subpar. (B).

2010—Subsec. (a). Pub. L. 111-163 designated first sentence as par. (1) and second sentence as par. (2), substituted “under paragraph (1)” for “under the preceding sentence” in par. (2), and added par. (3).

2006—Subsec. (d). Pub. L. 109-461, § 202(1), substituted “subsection (e), subchapter III, and” for “subchapter III and in”.

Subsec. (e). Pub. L. 109-461, § 202(2), added subsec. (e).
2004—Subsec. (a). Pub. L. 108-445, § 3(a)(2), inserted at end “The pay of physicians and dentists serving in positions to which an Executive order applies under the

preceding sentence shall be determined under subchapter III of this chapter instead of such Executive order.”

Subsec. (b). Pub. L. 108-445, § 3(a)(1), struck out “(1)” after “(b)”, inserted items relating to Physician grade and Dentist grade under heading “PHYSICIAN AND DENTIST SCHEDULE” and struck out former items under that heading, which read “Director grade”, “Executive grade”, “Chief grade”, “Senior grade”, “Intermediate grade”, “Full grade”, and “Associate grade”, and struck out par. (2). Prior to amendment, par. (2) read as follows: “A person may not hold the director grade in the Physician and Dentist Schedule unless the person is serving as a director of a hospital, domiciliary, center, or outpatient clinic (independent), or comparable position. A person may not hold the executive grade in that Schedule unless the person holds the position of chief of staff at a hospital, center, or outpatient clinic (independent), or comparable position.”

Subsec. (c). Pub. L. 108-445, § 3(f)(1), substituted “pay” for “special pay”.

Subsec. (d). Pub. L. 108-445, § 3(f)(2), substituted “pay for positions for which basic pay is paid under this section may not be paid at a rate in excess of the rate of basic pay authorized by section 5316 of title 5 for positions in Level V of the Executive Schedule.” for “pay may not be paid at a rate in excess of the rate of basic pay for an appropriate level authorized by section 5315 or 5316 of title 5 for positions in the Executive Schedule, as follows:

“(1) Level IV for the Deputy Under Secretary for Health.

“(2) Level V for all other positions for which such basic pay is paid under this section.”

2003—Subsec. (b)(1). Pub. L. 108-170 substituted “CLINICAL PODIATRIST, CHIROPRACTOR, AND OPTOMETRIST SCHEDULE” for “CLINICAL PODIATRIST AND OPTOMETRIST SCHEDULE” as third center heading in table.

1992—Subsec. (b)(1). Pub. L. 102-585 inserted items relating to Nurse V through I under heading “NURSE SCHEDULE” and struck out former items under that heading, “Director grade”, “Senior grade”, “Intermediate grade”, and “Entry grade”.

Subsec. (b)(2). Pub. L. 102-405, § 206, inserted “, or comparable position” before period at end of first sentence.

Subsec. (d)(1). Pub. L. 102-405, § 302(c)(1), substituted “Under Secretary for Health” for “Chief Medical Director”.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111-163, title VI, § 601(d)(2), May 5, 2010, 124 Stat. 1169, provided that: “The amendments made by paragraph (1) [amending this section] shall take effect on the first day of the first pay period beginning after the day that is 180 days after the date of the enactment of this Act [May 5, 2010].”

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108-170 effective at end of 180-day period beginning on Dec. 6, 2003, see section 302(h) of Pub. L. 108-170, set out as a note under section 7316 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102-585, title III, § 308, Nov. 4, 1992, 106 Stat. 4953, provided that: “The amendments made by sections 301, 302, 303, and 304 [amending this section and sections 7451 and 7452 of this title] shall take effect with respect to the first pay period beginning on or after the end of the six-month period beginning on the date of the enactment of this Act [Nov. 4, 1992].”

ADJUSTMENT OF PAY RATES

For adjustment of pay rates under this section, see the executive order detailing the adjustment of certain rates of pay set out as a note under section 5332 of Title 5, Government Organization and Employees.

EXECUTIVE ORDER NO. 12438

Ex. Ord. No. 12438, Aug. 23, 1983, 48 F.R. 39205, which related to review of increases in rates of basic pay for employees of the Veterans' Administration, was revoked by Ex. Ord. No. 12797, Apr. 3, 1992, 57 F.R. 11671, set out as a note under section 7455 of this title.

§ 7405. Temporary full-time appointments, part-time appointments, and without-compensation appointments

(a) The Secretary, upon the recommendation of the Under Secretary for Health, may employ, without regard to civil service or classification laws, rules, or regulations, personnel as follows:

(1) On a temporary full-time basis, part-time basis, or without compensation basis, persons in the following positions:

(A) Positions listed in section 7401(1) of this title.

(B) Positions listed in section 7401(3) of this title.

(C) Librarians.

(D) Other professional, clerical, technical, and unskilled personnel (including interns, residents, trainees, and students in medical support programs).

(2) On a fee basis, persons in the following positions:

(A) Positions listed in section 7401(1) of this title.

(B) Positions listed in section 7401(3) of this title.

(C) Other professional and technical personnel.

(b) Personnel employed under subsection (a)—

(1) shall be in addition to personnel described in section 7306, paragraphs (1) and (3) of section 7401, and section 7408 of this title; and

(2) shall be paid such rates of pay as the Secretary may prescribe.

(c)(1) Temporary full-time appointments under this section of persons in positions listed in paragraphs (1) and (3) of section 7401 of this title may be for a period in excess of 90 days only if the Under Secretary for Health finds that circumstances render it impracticable to obtain the necessary services through appointments under that section.

(2) A temporary full-time appointment may not be made for a period in excess of two years in the case of a person who—

(A) has successfully completed—

(i) a full course of nursing in a recognized school of nursing, approved by the Secretary; or

(ii) a full course of training for any category of personnel described in paragraph (3) of section 7401 of this title, or as a physician assistant, in a recognized education or training institution approved by the Secretary; and

(B) is pending registration or licensure in a State or certification by a national board recognized by the Secretary.

(3)(A) Temporary full-time appointments of persons in positions referred to in subsection (a)(1)(D) shall not exceed three years.

(B) Temporary full-time appointments under this paragraph may be renewed for one or more

additional periods not in excess of three years each.

(4) Temporary full-time appointments of other personnel may not be for a period in excess of one year except as authorized in subsection (f).

(d) A part-time appointment may not be for a period of more than one year, except for appointments of persons specified in subsection (a)(1)(A) and interns, residents, and other trainees in medical support programs and except as authorized in subsection (f).

(e) A student who has a temporary appointment under this section and who is pursuing a full course of nursing in a recognized school of nursing approved by the Secretary, or who is pursuing a full course of training for any category of personnel described in paragraph (3) of section 7401 of this title in a recognized education or training institution approved by the Secretary, may be reappointed for a period not to exceed the duration of the student's academic program.

(f) During any period during which the Secretary is exercising the authority provided in subsections (a) and (f)(1) of section 7403 of this title in connection with the appointment, under paragraph (3) of section 7401 of this title, of personnel in a category of personnel described in such paragraph—

(1) the Secretary may make temporary full-time appointments of personnel in such category for periods exceeding 90 days if the Under Secretary for Health finds that circumstances render it impractical to obtain the necessary services through appointments under paragraph (3) of section 7401 of this title; and

(2) part-time appointments of personnel in such category may be for periods of more than one year.

(g)(1) Except as provided in paragraph (3), employment of a registered nurse on a temporary part-time basis under subsection (a)(1) shall be for a probationary period of two years.

(2) Except as provided in paragraph (3), upon completion by a registered nurse of the probationary period described in paragraph (1)—

(A) the employment of such nurse shall—

(i) no longer be considered temporary; and

(ii) be considered an appointment described in section 7403(a) of this title; and

(B) the nurse shall be considered to have served the probationary period required by section 7403(b).

(3) This subsection shall not apply to appointments made on a term limited basis of less than or equal to three years of—

(A) nurses with a part-time appointment resulting from an academic affiliation or teaching position in a nursing academy of the Department;

(B) nurses appointed as a result of a specific research proposal or grant; or

(C) nurses who are not citizens of the United States and appointed under section 7407(a) of this title.

(Added Pub. L. 102-40, title IV, §401(b)(2), May 7, 1991, 105 Stat. 226; amended Pub. L. 102-405, title III, §302(c)(1), Oct. 9, 1992, 106 Stat. 1984; Pub. L.