

Subsec. (b). Pub. L. 106-398, §1 [[div. A], title X, §1076(c)], in first sentence of par. (1), inserted “any of the following:” after “eligibility for” and substituted subpars. (A) to (D) for “(A) access to classified information or (B) assignment to or retention in sensitive national security duties.”, designated second sentence of par. (1) as par. (2), designated third sentence of par. (1) as par. (3) and substituted a period for “, nor shall they in any event exceed those charged to State or local agencies other than criminal justice agencies for such information.”, and redesignated former par. (2) as (4).

Subsec. (b)(1). Pub. L. 106-398, §1 [[div. A], title X, §1076(a)(2)], substituted “by the head of a covered agency” for “by the Department of Defense, the Department of State, the Office of Personnel Management, the Central Intelligence Agency, or the Federal Bureau of Investigation” and “that covered agency” for “such department, office, agency, or bureau”.

Subsec. (b)(3). Pub. L. 106-398, §1 [[div. A], title X, §1076(b)], struck out par. (3) which related to agreements between Federal departments and agencies and States and localities to indemnify and hold harmless the States and localities from claims arising from the disclosure or use of criminal history record information.

Subsec. (c). Pub. L. 106-398, §1 [[div. A], title X, §1076(a)(3)], substituted “A covered agency” for “The Department of Defense, the Department of State, the Office of Personnel Management, the Central Intelligence Agency, or the Federal Bureau of Investigation”.

Subsecs. (e), (f). Pub. L. 106-398, §1 [[div. A], title X, §1076(d)], added subsec. (e) and redesignated former subsec. (e) as (f).

1990—Subsecs. (b)(1), (3)(A), (B), (c). Pub. L. 101-246, §114(1), inserted “the Department of State,” after “Defense,” wherever appearing.

Subsec. (e). Pub. L. 101-246, §114(2), added subsec. (e).

1986—Subsecs. (b)(1), (3), (c). Pub. L. 99-569 inserted references to the Federal Bureau of Investigation and such bureau.

#### EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99-569, title IV, §402(c), Oct. 27, 1986, 100 Stat. 3196, provided that: “The amendments made by this section [amending this section and provisions set out as a note under this section] shall become effective with respect to any inquiry which begins after the date of enactment of this Act [Oct. 27, 1986] conducted by the Federal Bureau of Investigation for purposes specified in paragraph (b)(1) of section 9101 of title 5, United States Code.”

#### EFFECTIVE DATE

Pub. L. 99-169, title VIII, §802, Dec. 4, 1985, 99 Stat. 1010, provided that: “The amendments made by section 801(a) of this Act [enacting this section] shall become effective with respect to any inquiry which begins after the date of enactment of this Act [Dec. 4, 1985] conducted by the Department of Defense, the Office of Personnel Management, or the Central Intelligence Agency, for the purposes specified in paragraph (b)(1) of section 9101 of title 5, United States Code, as added by this Act.”

#### TERMINATION DATE OF SUBSECTION (b)(3) OF THIS SECTION

Pub. L. 100-453, title I, §101(d), Sept. 29, 1988, 102 Stat. 1904, extended the expiration date provided in section 803(b) of Pub. L. 99-169, formerly set out below, until Dec. 31, 1989.

Pub. L. 99-169, title VIII, §803(b), Dec. 4, 1985, 99 Stat. 1011, provided that subsec. (b)(3) of this section expired three years after Dec. 4, 1985.

#### REPORT TO CONGRESSIONAL COMMITTEES ON EFFECT OF PROVISIONS FOR INDEMNIFICATION AGREEMENTS

Pub. L. 99-169, title VIII, §803(a), Dec. 4, 1985, 99 Stat. 1010, as amended by Pub. L. 99-569, title IV, §402(b), Oct.

27, 1986, 100 Stat. 3196, directed Department of Justice, within two years after Dec. 4, 1985, and after consultation with Department of Defense, Office of Personnel Management, Central Intelligence Agency, and Federal Bureau of Investigation, to report to appropriate committees of Congress concerning the effect of 5 U.S.C. 9101(b)(3), as added by this Act, including the effect of the absence of indemnification agreements upon States and localities not eligible under 5 U.S.C. 9101(b)(3) for such agreements.

## Subpart I—Miscellaneous

### CHAPTER 95—PERSONNEL FLEXIBILITIES RELATING TO THE INTERNAL REVENUE SERVICE

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#### § 9501. Internal Revenue Service personnel flexibilities

(a) Any flexibilities provided by sections 9502 through 9510 of this chapter shall be exercised in a manner consistent with—

(1) chapter 23 (relating to merit system principles and prohibited personnel practices);

(2) provisions relating to preference eligibles;

(3) except as otherwise specifically provided, section 5307 (relating to the aggregate limitation on pay);

(4) except as otherwise specifically provided, chapter 71 (relating to labor-management relations); and

(5) subject to subsections (b) and (c) of section 1104, as though such authorities were delegated to the Secretary of the Treasury under section 1104(a)(2).

(b) The Secretary of the Treasury shall provide the Office of Personnel Management with any information that Office requires in carrying out its responsibilities under this section.

(c) Employees within a unit to which a labor organization is accorded exclusive recognition under chapter 71 shall not be subject to any flexibility provided by sections 9507 through 9510 of this chapter unless the exclusive representative and the Internal Revenue Service have entered into a written agreement which specifically provides for the exercise of that flexibility. Such written agreement may be imposed by the Federal Services Impasses Panel under section 7119.

(Added Pub. L. 105-206, title I, §1201(a), July 22, 1998, 112 Stat. 712.)

#### § 9502. Pay authority for critical positions

(a) When the Secretary of the Treasury seeks a grant of authority under section 5377 for criti-

cal pay for 1 or more positions at the Internal Revenue Service, the Office of Personnel Management may fix the rate of basic pay, notwithstanding sections 5377(d)(2) and 5307, at any rate up to the salary set in accordance with section 104 of title 3.

(b) Notwithstanding section 5307, no allowance, differential, bonus, award, or similar cash payment may be paid to any employee receiving critical pay at a rate fixed under subsection (a), in any calendar year if, or to the extent that, the employee's total annual compensation will exceed the maximum amount of total annual compensation payable at the salary set in accordance with section 104 of title 3.

(Added Pub. L. 105-206, title I, §1201(a), July 22, 1998, 112 Stat. 712; amended Pub. L. 110-161, div. D, title I, §107, Dec. 26, 2007, 121 Stat. 1977.)

#### AMENDMENTS

2007—Subsec. (a). Pub. L. 110-161 substituted “Office of Personnel Management” for “Office of Management and Budget”.

### § 9503. Streamlined critical pay authority

(a) Notwithstanding section 9502, and without regard to the provisions of this title governing appointments in the competitive service or the Senior Executive Service and chapters 51 and 53 (relating to classification and pay rates), the Secretary of the Treasury may, Before<sup>1</sup> September 30, 2013, establish, fix the compensation of, and appoint individuals to, designated critical administrative, technical, and professional positions needed to carry out the functions of the Internal Revenue Service, if—

(1) the positions—

(A) require expertise of an extremely high level in an administrative, technical, or professional field; and

(B) are critical to the Internal Revenue Service's successful accomplishment of an important mission;

(2) exercise of the authority is necessary to recruit or retain an individual exceptionally well qualified for the position;

(3) the number of such positions does not exceed 40 at any one time;

(4) designation of such positions are approved by the Secretary of the Treasury;

(5) the terms of such appointments are limited to no more than 4 years;

(6) appointees to such positions were not Internal Revenue Service employees prior to June 1, 1998;

(7) total annual compensation for any appointee to such positions does not exceed the highest total annual compensation payable at the rate determined under section 104 of title 3; and

(8) all such positions are excluded from the collective bargaining unit.

(b) Individuals appointed under this section shall not be considered to be employees for purposes of subchapter II of chapter 75.

(Added Pub. L. 105-206, title I, §1201(a), July 22, 1998, 112 Stat. 712; amended Pub. L. 110-161, div.

D, title I, §105, Dec. 26, 2007, 121 Stat. 1977; Pub. L. 113-6, div. F, title III, §1309, Mar. 26, 2013, 127 Stat. 418.)

#### REFERENCES IN TEXT

The provisions of this title governing appointments in the competitive service, referred to in subsec. (a), are classified generally to section 3301 et seq. of this title.

#### AMENDMENTS

2013—Subsec. (a). Pub. L. 113-6, which directed substitution of “Before September 30, 2013” for “Before July 23, 2013” wherever appearing, was executed by making the substitution for “before July 23, 2013” in introductory provisions to reflect the probable intent of Congress.

2007—Subsec. (a). Pub. L. 110-161 substituted “before July 23, 2013” for “for a period of 10 years after the date of enactment of this section” in introductory provisions.

### § 9504. Recruitment, retention, relocation incentives, and relocation expenses

(a) Before September 30, 2013 and subject to approval by the Office of Personnel Management, the Secretary of the Treasury may provide for variations from sections 5753 and 5754 governing payment of recruitment, relocation, and retention incentives.

(b) Before September 30, 2013, the Secretary of the Treasury may pay from appropriations made to the Internal Revenue Service allowable relocation expenses under section 5724a for employees transferred or reemployed and allowable travel and transportation expenses under section 5723 for new appointees, for any new appointee appointed to a position for which pay is fixed under section 9502 or 9503 after June 1, 1998.

(Added Pub. L. 105-206, title I, §1201(a), July 22, 1998, 112 Stat. 713; amended Pub. L. 110-161, div. D, title I, §106, Dec. 26, 2007, 121 Stat. 1977; Pub. L. 113-6, div. F, title III, §1309, Mar. 26, 2013, 127 Stat. 418.)

#### AMENDMENTS

2013—Subsecs. (a), (b). Pub. L. 113-6 substituted “Before September 30, 2013” for “Before July 23, 2013”.

2007—Subsecs. (a), (b). Pub. L. 110-161 substituted “Before July 23, 2013” for “For a period of 10 years after the date of enactment of this section”.

### § 9505. Performance awards for senior executives

(a) Before September 30, 2013, Internal Revenue Service senior executives who have program management responsibility over significant functions of the Internal Revenue Service may be paid a performance bonus without regard to the limitation in section 5384(b)(2) if the Secretary of the Treasury finds such award warranted based on the executive's performance.

(b) In evaluating an executive's performance for purposes of an award under this section, the Secretary of the Treasury shall take into account the executive's contributions toward the successful accomplishment of goals and objectives established under the Government Performance and Results Act of 1993, subtitle III of title 40, Revenue Procedure 64-22 (as in effect on July 30, 1997), taxpayer service surveys, and other performance metrics or plans established in consultation with the Internal Revenue Service Oversight Board.

<sup>1</sup> So in original. Probably should not be capitalized.