

1704(e) of Pub. L. 97-35, set out as an Effective Date note under section 3595 of this title.

#### EFFECTIVE DATE

Section 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 an Effective Date note under section 3131 of this title.

#### TEMPORARY INAPPLICABILITY OF CERTIFICATION OF EXECUTIVE QUALIFICATIONS BY QUALIFICATION REVIEW BOARDS OF OFFICE OF PERSONNEL MANAGEMENT

Pub. L. 115-232, div. A, title XI, §1109, Aug. 13, 2018, 132 Stat. 2010, provided that:

“(a) TEMPORARY INAPPLICABILITY.—Notwithstanding section 3393(c) of title 5, United States Code, or any regulations implementing that section, and subject to the provisions of this section, the Secretary of Defense may appoint individuals for service in the Senior Executive Service of the Department of Defense without such individuals being subject to the certification of executive qualifications by a qualification review board of the Office of Personnel Management in connection with such appointment otherwise required by that section.

“(b) QUALIFICATIONS OF INDIVIDUALS APPOINTED.—The Secretary shall ensure that individuals appointed under this section possess the necessary qualifications and experience for the position to which appointed.

“(c) LIMITATION.—The total number of appointments made under this section in any year may not exceed 50 appointments.

“(d) REPORTS.—

“(1) INITIAL REPORT.—Not later than one year after the date of the enactment of this Act [Aug. 13, 2018], the Secretary shall submit to the committees of Congress and official specified in paragraph (3) a report on the number and type of appointments made under this section as of the date of the report, including—

“(A) a description of the qualifications of the individuals appointed; and  
“(B) data on the time required to appoint the individuals.

“(2) FINAL REPORT.—Not later than two years after the date of the enactment of this Act, the Secretary shall submit to the committees of Congress and official specified in paragraph (3) a report on the use of the authority in this section. The report shall include the following:

“(A) The number and type of appointments made under this section during the one-year period ending on the date of the report.

“(B) Data on and an assessment whether appointments under the authority in this section reduced the time to hire when compared with the time to hire under the current review system of the Office of Personnel Management.

“(C) An assessment of the utility of the appointment authority and process under this section.

“(D) An assessment whether the appointments made under this section resulted in higher quality new executives for the Senior Executive Service of the Department when compared with the executives produced under the current review system of the Office of Personnel Management.

“(E) Any recommendation for the improvement of the selection and qualification process for the Senior Executive Service of the Department that the Secretary considers necessary in order to attract and hire highly qualified candidates for service in that Senior Executive Service.

“(3) COMMITTEES OF CONGRESS AND OFFICIAL.—The committees of Congress and official specified in this paragraph are—

“(A) the Committee on Armed Services and the Committee on Homeland Security and Governmental Affairs of the Senate;

“(B) the Committee on Armed Services and the Committee on Oversight and Government Reform of the House of Representatives; and

“(C) the Director of the Office of Personnel Management.

“(e) SUNSET.—Subsection (a) shall cease to be effective on the date that is two years after the date of the enactment of this Act.”

#### § 3393a. Repealed. Pub. L. 107-296, title XIII, § 1321(a)(1)(B), Nov. 25, 2002, 116 Stat. 2296]

Section, added Pub. L. 101-194, title V, §506(a)(1), Nov. 30, 1989, 103 Stat. 1756, related to recertification of career appointees.

#### EFFECTIVE DATE OF REPEAL

Repeal effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107-296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

#### § 3394. Noncareer and limited appointments

(a) Each noncareer appointee, limited term appointee, and limited emergency appointee shall meet the qualifications of the position to which appointed, as determined in writing by the appointing authority.

(b) An individual may not be appointed as a limited term appointee or as a limited emergency appointee without the prior approval of the exercise of such appointing authority by the Office of Personnel Management.

(Added Pub. L. 95-454, title IV, §403(a), Oct. 13, 1978, 92 Stat. 1162.)

#### PRIOR PROVISIONS

A prior section 3394, added Pub. L. 95-437, §3(a), Oct. 10, 1978, 92 Stat. 1057, which related to personnel ceilings, was renumbered as section 3404 of this title by Pub. L. 95-454, title IX, §906(c)(1)(B), Oct. 13, 1978, 92 Stat. 1226.

#### EFFECTIVE DATE

Section 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 an Effective Date note under section 3131 of this title.

#### § 3395. Reassignment and transfer within the Senior Executive Service

(a)(1) A career appointee in an agency—

(A) may, subject to paragraph (2) of this subsection, be reassigned to any Senior Executive Service position in the same agency for which the appointee is qualified; and

(B) may transfer to a Senior Executive Service position in another agency for which the appointee is qualified, with the approval of the agency to which the appointee transfers.

(2)(A) Except as provided in subparagraph (B) of this paragraph, a career appointee may be reassigned to any Senior Executive Service position only if the career appointee receives written notice of the reassignment at least 15 days before the effective date of such reassignment.

(B)(i) A career appointee may not be reassigned to a Senior Executive Service position outside the career appointee's commuting area unless—

(I) before providing notice under subclause (II) of this clause (or seeking or obtaining the consent of the career appointee under clause (ii) of this subparagraph to waive such notice), the agency consults with the career appointee

on the reasons for, and the appointee's preferences with respect to, the proposed reassignment; and

(II) the career appointee receives written notice of the reassignment, including a statement of the reasons for the reassignment, at least 60 days before the effective date of the reassignment.

(ii) Notice of reassignment under clause (i)(II) of this subparagraph may be waived with the written consent of the career appointee involved.

(b)(1) Notwithstanding section 3394(b) of this title, a limited emergency appointee may be reassigned to another Senior Executive Service position in the same agency established to meet a bona fide, unanticipated, urgent need, except that the appointee may not serve in one or more positions in such agency under such appointment in excess of 18 months.

(2) Notwithstanding section 3394(b) of this title, a limited term appointee may be reassigned to another Senior Executive Service position in the same agency the duties of which will expire at the end of a term of 3 years or less, except that the appointee may not serve in one or more positions in the agency under such appointment in excess of 3 years.

(c) A limited term appointee or a limited emergency appointee may not be appointed to, or continue to hold, a position under such an appointment if, within the preceding 48 months, the individual has served more than 36 months, in the aggregate, under any combination of such types of appointment.

(d) A noncareer appointee in an agency—

(1) may be reassigned to any general position in the agency for which the appointee is qualified; and

(2) may transfer to a general position in another agency with the approval of the agency to which the appointee transfers.

(e)(1) Except as provided in paragraph (2) of this subsection, a career appointee in an agency may not be involuntarily reassigned—

(A) within 120 days after an appointment of the head of the agency; or

(B) within 120 days after the appointment in the agency of the career appointee's most immediate supervisor who—

(i) is a noncareer appointee; and

(ii) has the authority to make an initial appraisal of the career appointee's performance under subchapter II of chapter 43.

(2) Paragraph (1) of this subsection does not apply with respect to—

(A) any reassignment under section 4314(b)(3) of this title; or

(B) any disciplinary action initiated before an appointment referred to in paragraph (1) of this subsection.

(3) For the purpose of applying paragraph (1) to a career appointee, any days (not to exceed a total of 60) during which such career appointee is serving pursuant to a detail or other temporary assignment apart from such appointee's regular position shall not be counted in determining the number of days that have elapsed since an appointment referred to in subparagraph (A) or (B) of such paragraph.

(Added Pub. L. 95-454, title IV, §403(a), Oct. 13, 1978, 92 Stat. 1163; amended Pub. L. 98-615, title III, §304(a), Nov. 8, 1984, 98 Stat. 3218; Pub. L. 102-175, §3, Dec. 2, 1991, 105 Stat. 1222.)

#### PRIOR PROVISIONS

A prior section 3395, added Pub. L. 95-437, §3(a), Oct. 10, 1978, 92 Stat. 1057, which related to nonapplicability of part-time career employment opportunities program was renumbered as section 3405 of this title by Pub. L. 95-454, title IX, §906(c)(1)(B), Oct. 13, 1978, 92 Stat. 1226.

#### AMENDMENTS

1991—Subsec. (e)(1)(B)(ii). Pub. L. 102-175, §3(1), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: "has the authority to reassign the career appointee."

Subsec. (e)(3). Pub. L. 102-175, §3(2), added par. (3).

1984—Subsec. (a)(2). Pub. L. 98-615 designated existing provisions as subpar. (A), inserted exception relating to subpar. (B), and added subpar. (B).

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-615 effective Nov. 8, 1984, see section 307 of Pub. L. 98-615, set out as a note under section 3393 of this title.

#### EFFECTIVE DATE

Section 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 an Effective Date note under section 3131 of this title.

### § 3396. Development for and within the Senior Executive Service

(a) The Office of Personnel Management shall establish programs for the systematic development of candidates for the Senior Executive Service and for the continuing development of senior executives, or require agencies to establish such programs which meet criteria prescribed by the Office.

(b) The Office shall assist agencies in the establishment of programs required under subsection (a) of this section and shall monitor the implementation of the programs. If the Office finds that any agency's program under subsection (a) of this section is not in compliance with the criteria prescribed under such subsection, it shall require the agency to take such corrective action as may be necessary to bring the program into compliance with the criteria.

(c)(1) The head of an agency may grant a sabbatical to any career appointee for not to exceed 11 months in order to permit the appointee to engage in study or uncompensated work experience which will contribute to the appointee's development and effectiveness. A sabbatical shall not result in loss of, or reduction in, pay, leave to which the career appointee is otherwise entitled, credit for time or service, or performance or efficiency rating. The head of the agency may authorize in accordance with chapter 57 of this title such travel expenses (including per diem allowances) as the head of the agency may determine to be essential for the study or experience.

(2) A sabbatical under this subsection may not be granted to any career appointee—

(A) more than once in any 10-year period;

(B) unless the appointee has completed 7 years of service—