

(2) at any time for less than fully successful executive performance as determined under subchapter II of chapter 43 of this title,

except that in the case of a removal under paragraph (2) of this subsection the career appointee shall, at least 15 days before the removal, be entitled, upon request, to an informal hearing before an official designated by the Merit Systems Protection Board at which the career appointee may appear and present arguments, but such hearing shall not give the career appointee the right to initiate an action with the Board under section 7701 of this title, nor need the removal action be delayed as a result of the granting of such hearing.

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

(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 remove the career appointee.

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

(A) any removal 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.

(c) A limited emergency appointee, limited term appointee, or noncareer appointee may be removed from the service at any time.

(Added Pub. L. 95-454, title IV, § 404(b), Oct. 13, 1978, 92 Stat. 1165; amended Pub. L. 101-194, title V, § 506(b)(3), Nov. 30, 1989, 103 Stat. 1758; Pub. L. 107-296, title XIII, § 1321(a)(2)(A), Nov. 25, 2002, 116 Stat. 2297.)

AMENDMENTS

2002—Subsec. (a). Pub. L. 107-296, § 1321(a)(2)(A)(iv), struck out last sentence which read as follows: “In the case of a removal under paragraph (3) of this subsection, the career appointee shall have the right to appeal the removal from the Senior Executive Service to the Merit Systems Protection Board under section 7701.”

Subsec. (a)(1). Pub. L. 107-296, § 1321(a)(2)(A)(i), inserted “or” at end.

Subsec. (a)(2). Pub. L. 107-296, § 1321(a)(2)(A)(ii), struck out “or” at end.

Subsec. (a)(3). Pub. L. 107-296, § 1321(a)(2)(A)(iii), struck out par. (3) which read as follows: “if the career appointee is not recertified as a senior executive under section 3393a.”

1989—Subsec. (a). Pub. L. 101-194, § 506(b)(3)(D), inserted at end “In the case of a removal under paragraph (3) of this subsection, the career appointee shall have the right to appeal the removal from the Senior Executive Service to the Merit Systems Protection Board under section 7701.”

Subsec. (a)(3). Pub. L. 101-194, § 506(b)(3)(A)-(C), added par. (3).

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-296 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.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-194 effective Jan. 1, 1991, see section 506(d) of Pub. L. 101-194, set out as a note under section 3151 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 a note under section 3131 of this title.

SAVINGS PROVISION

Pub. L. 107-296, title XIII, § 1321(b), Nov. 25, 2002, 116 Stat. 2297, provided that: “Notwithstanding the amendments made by subsection (a)(2)(A) [amending this section], an appeal under the final sentence of section 3592(a) of title 5, United States Code, that is pending on the day before the effective date of this section [see Effective Date of 2002 Amendment note above]—

“(1) shall not abate by reason of the enactment of the amendments made by subsection (a)(2)(A); and

“(2) shall continue as if such amendments had not been enacted.”

§ 3593. Reinstatement in the Senior Executive Service

(a) A former career appointee may be reinstated, without regard to section 3393(b) and (c) of this title, to any Senior Executive Service position for which the appointee is qualified if—

(1) the appointee has successfully completed the probationary period established under section 3393(d) of this title; and

(2) the appointee left the Senior Executive Service for reasons other than misconduct, neglect of duty, malfeasance, or less than fully successful executive performance as determined under subchapter II of chapter 43.

(b) A career appointee who is appointed by the President to any civil service position outside the Senior Executive Service and who leaves the position for reasons other than misconduct, neglect of duty, or malfeasance shall be entitled to be placed in the Senior Executive Service if the appointee applies to the Office of Personnel Management within 90 days after separation from the Presidential appointment.

(c)(1) A former career appointee shall be reinstated, without regard to section 3393(b) and (c) of this title, to any vacant Senior Executive Service position in an agency for which the appointee is qualified if—

(A) the individual was a career appointee on May 31, 1981;

(B) the appointee was removed from the Senior Executive Service under section 3595 of this title before October 1, 1984, due to a reduction in force in that agency;

(C) before the removal occurred, the appointee successfully completed the probationary period established under section 3393(d) of this title; and

(D) the appointee applies for that vacant position within one year after the Office receives certification regarding that appointee pursuant to section 3595(b)(3)(B) of this title.

(2) A career appointee is entitled to appeal to the Merit Systems Protection Board under section 7701 of this title any determination by the agency that the appointee is not qualified for a position for which the appointee applies under paragraph (1) of this subsection.

(Added Pub. L. 95-454, title IV, § 404(b), Oct. 13, 1978, 92 Stat. 1166; amended Pub. L. 97-35, title XVII, § 1704(b), Aug. 13, 1981, 95 Stat. 757; Pub. L. 98-615, title III, § 303(a), Nov. 8, 1984, 98 Stat. 3217; Pub. L. 101-194, title V, § 506(b)(4), Nov. 30, 1989, 103 Stat. 1758; Pub. L. 107-296, title XIII, § 1321(a)(2)(B), Nov. 25, 2002, 116 Stat. 2297.)

AMENDMENTS

2002—Subsec. (a)(2). Pub. L. 107-296 added par. (2) and struck out former par. (2) which read as follows: “the appointee left the Senior Executive Service for reasons other than misconduct, neglect of duty, malfeasance, less than fully successful executive performance as determined under subchapter II of chapter 43 of this title, or failure to be recertified as a senior executive under section 3393a.”

1989—Subsec. (a)(2). Pub. L. 101-194 struck out “or” after “malfeasance,” and inserted “, or failure to be recertified as a senior executive under section 3393a” before period at end.

1984—Subsec. (c)(1)(B). Pub. L. 98-615 inserted “before October 1, 1984.”

1981—Subsec. (c). Pub. L. 97-35 added subsec. (c).

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-296 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.

Pub. L. 107-296, title XIII, § 1321(c), Nov. 25, 2002, 116 Stat. 2297, provided that: “The amendment made by subsection (a)(2)(B) [amending this section] shall not apply with respect to an individual who, before the effective date of this section [see note above], leaves the Senior Executive Service for failure to be recertified as a senior executive under section 3393a of title 5, United States Code.”

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-194 effective Jan. 1, 1991, see section 506(d) of Pub. L. 101-194, set out as a note under section 3151 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-615 effective following expiration of 90-day period beginning on Nov. 8, 1984, see section 307 of Pub. L. 98-615, set out as a note under section 3393 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-35 effective June 1, 1981, with certain exceptions and conditions, see section 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 a note under section 3131 of this title.

§ 3594. Guaranteed placement in other personnel systems

(a) A career appointee who was appointed from a civil service position held under a career or career-conditional appointment (or an appointment of equivalent tenure, as determined by the Office of Personnel Management) and who, for reasons other than misconduct, neglect of duty, or malfeasance, is removed from the Senior Executive Service during the probationary period under section 3393(d) of this title, shall be entitled to be placed in a civil service position (other than a Senior Executive Service position) in any agency.

(b) A career appointee who has completed the probationary period under section 3393(d) of this title, and who—

(1) is removed from the Senior Executive Service for less than fully successful executive performance as determined under subchapter II of chapter 43 of this title; or

(2) is removed from the Senior Executive Service under paragraph (4) or (5) of section 3595(b) of this title;

shall be entitled to be placed in a civil service position (other than a Senior Executive Service position) in any agency.

(c)(1) For purposes of subsections (a) and (b) of this section—

(A) the position in which any career appointee is placed under such subsections shall be a continuing position at GS-15 of the General Schedule or classified above GS-15 pursuant to section 5108, or an equivalent position, and, in the case of a career appointee referred to in subsection (a) of this section, the career appointee shall be entitled to an appointment of a tenure equivalent to the tenure of the appointment held in the position from which the career appointee was appointed;

(B) any career appointee placed under subsection (a) or (b) of this section shall be entitled to receive basic pay at the highest of—

(i) the rate of basic pay in effect for the position in which placed;

(ii) the rate of basic pay in effect at the time of the placement for the position the career appointee held in the civil service immediately before being appointed to the Senior Executive Service; or

(iii) the rate of basic pay in effect for the career appointee immediately before being placed under subsection (a) or (b) of this section; and

(C) the placement of any career appointee under subsection (a) or (b) of this section may not be made to a position which would cause the separation or reduction in grade of any other employee.

(2) An employee who is receiving basic pay under paragraph (1)(B)(ii) or (iii) of this subsection is entitled to have the basic pay rate of the employee increased by 50 percent of the amount of each increase in the maximum rate of basic pay for the grade of the position in which the employee is placed under subsection (a) or (b) of this section until the rate is equal to the rate in effect under paragraph (1)(B)(i) of this subsection for the position in which the employee is placed.

(Added Pub. L. 95-454, title IV, § 404(b), Oct. 13, 1978, 92 Stat. 1166; amended Pub. L. 98-615, title III, § 303(b), Nov. 8, 1984, 98 Stat. 3217; Pub. L. 101-194, title V, § 506(b)(5), Nov. 30, 1989, 103 Stat. 1758; Pub. L. 101-509, title V, § 529 [title I, § 101(b)(9)(E)], Nov. 5, 1990, 104 Stat. 1427, 1441; Pub. L. 102-378, § 2(16), Oct. 2, 1992, 106 Stat. 1347; Pub. L. 107-296, title XIII, § 1321(a)(2)(C), Nov. 25, 2002, 116 Stat. 2297.)

REFERENCES IN TEXT

GS-15 of the General Schedule, referred to in subsec. (c)(1)(A), is set out under section 5332 of this title.