

“(c) The preceding provisions of this section shall cease to apply to an employee who—

“(1) has a break in service of one workday or more;

“(2) is entitled by operation of this subchapter or chapter 51 or 53 of this title to a rate of basic pay which is equal to or higher than, or declines a reasonable offer of a position the rate of basic pay for which is equal to or higher than, the rate to which the employee is entitled under this section; or

“(3) is demoted for personal cause or at the employee’s request.”

1993—Subsec. (c)(2). Pub. L. 103-89 substituted “chapter 51 or 53” for “chapter 51, 53, or 54”.

1990—Subsec. (a)(2) to (4). Pub. L. 101-509 substituted “5305 of this title (or corresponding prior provision of this title);” for “5303 of this title; or” in par. (2), inserted “or” at end of par. (3), and added par. (4).

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108-411, title III, § 301(d), Oct. 30, 2004, 118 Stat. 2317, provided that:

“(1) EFFECTIVE DATE.—This section [amending this section, sections 4505a, 5302, 5305, 5334, 5361, and 5365 of this title, and provisions set out as a note under section 5305 of this title] shall take effect on the first day of the first applicable pay period beginning on or after the 180th day after the date of the enactment of this Act [Oct. 30, 2004].

“(2) CONVERSION RULES.—

“(A) INDIVIDUALS RECEIVING A RETAINED RATE OR A RATE GREATER THAN THE MAXIMUM RATE FOR THE GRADE.—Subject to any regulations the Office of Personnel Management may prescribe, an employee under a covered pay schedule who, on the day before the effective date of this section, is receiving a retained rate under section 5363 of title 5, United States Code, or is receiving under similar authority a rate of basic pay that is greater than the maximum rate of basic pay payable for the grade of the employee’s position shall have that rate converted as of the effective date of this section, and the employee shall be considered to be receiving a retained rate under section 5363 of such title (as amended by this section). The newly applicable retained rate shall equal the formerly applicable retained rate as adjusted to include any applicable locality-based payment under section 5304 of title 5, United States Code, or similar provision of law.

“(B) DEFINITION.—For purposes of this paragraph, the term ‘covered pay schedule’ has the meaning given such term by section 5361 of title 5, United States Code.”

##### EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-89 effective Nov. 1, 1993, see section 3(c) of Pub. L. 103-89, set out as a note under section 3372 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.

#### § 5364. Remedial actions

Under regulations prescribed by the Office of Personnel Management, the Office may require any agency—

(1) to report to the Office information with respect to vacancies (including impending vacancies);

(2) to take such steps as may be appropriate to assure employees receiving benefits under section 5362 or 5363 of this title have the oppor-

tunity to obtain necessary qualifications for the selection to positions which would minimize the need for the application of such sections;

(3) to establish a program under which employees receiving benefits under section 5362 or 5363 of this title are given priority in the consideration for or placement in positions which are equal to their retained grade or pay; and

(4) to place certain employees, notwithstanding the fact their previous position was in a different agency, but only in circumstances in which the Office determines the exercise of such authority is necessary to carry out the purpose of this section.

(Added Pub. L. 95-454, title VIII, § 801(a)(1), Oct. 13, 1978, 92 Stat. 1220.)

#### Editorial Notes

##### PRIOR PROVISIONS

A prior section 5364, Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 473, which related to miscellaneous positions in the executive branch, was renumbered section 5374 of this title by Pub. L. 95-454, title VIII, § 801(a)(3)(A)(ii), Oct. 13, 1978, 92 Stat. 1221.

#### § 5365. Regulations

(a) The Office of Personnel Management shall prescribe regulations to carry out the purpose of this subchapter.

(b) Under such regulations, the Office may provide for the application of all or portions of the provisions of this subchapter (subject to any conditions or limitations the Office may establish)—

(1) to any individual reduced to a grade of a covered pay schedule from a position not subject to this subchapter;

(2) to individuals to whom such provisions do not otherwise apply; and

(3) to situations the application to which is justified for purposes of carrying out the mission of the agency or agencies involved.

Individuals with respect to whom authority under paragraph (2) may be exercised include individuals who are moved without a break in service of more than 3 days from employment in nonappropriated fund instrumentalities of the Department of Defense or the Coast Guard described in section 2105(c) to employment in the Department of Defense or the Coast Guard, respectively, that is not described in section 2105(c).

(Added Pub. L. 95-454, title VIII, § 801(a)(1), Oct. 13, 1978, 92 Stat. 1220; amended Pub. L. 101-508, title VII, § 7202(f), Nov. 5, 1990, 104 Stat. 1388-336; Pub. L. 108-411, title III, § 301(a)(6), Oct. 30, 2004, 118 Stat. 2317.)

#### Editorial Notes

##### PRIOR PROVISIONS

A prior section 5365, added Pub. L. 91-34, § 1(a), June 30, 1969, 83 Stat. 41; amended Pub. L. 94-183, § 2(20), Dec. 31, 1975, 89 Stat. 1058, which related to the police force of National Zoological Park, was renumbered section 5375 of this title by Pub. L. 95-454, title VIII, § 801(a)(3)(A)(ii), Oct. 13, 1978, 92 Stat. 1221.

AMENDMENTS

2004—Subsec. (b). Pub. L. 108-411 inserted “(subject to any conditions or limitations the Office may establish)” after “provisions of this subchapter” in introductory provisions.

1990—Subsec. (b). Pub. L. 101-508 inserted at end “Individuals with respect to whom authority under paragraph (2) may be exercised include individuals who are moved without a break in service of more than 3 days from employment in nonappropriated fund instrumentalities of the Department of Defense or the Coast Guard described in section 2105(c) to employment in the Department of Defense or the Coast Guard, respectively, that is not described in section 2105(c).”

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-411 effective on the first day of the first applicable pay period beginning on or after the 180th day after Oct. 30, 2004, with provisions relating to conversion rules, see section 301(d) of Pub. L. 108-411, set out as a note under section 5363 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-508 applicable with respect to any individual who, on or after Jan. 1, 1987, moves from employment in nonappropriated fund instrumentality of Department of Defense or Coast Guard, that is described in section 2105(c) of this title, to employment in Department or Coast Guard, that is not described in section 2105(c), or who moves from employment in Department or Coast Guard, that is not described in section 2105(c), to employment in nonappropriated fund instrumentality of Department or Coast Guard, that is described in section 2105(c), see section 7202(m)(1) of Pub. L. 101-508, set out as a note under section 2105 of this title.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 5366. Appeals

(a)(1) In the case of the termination of any benefits available to an employee under this subchapter on the grounds such employee declined a reasonable offer of a position the grade or pay of which was equal to or greater than his retained grade or pay, such termination may be appealed to the Office of Personnel Management under procedures prescribed by the Office.

(2) Nothing in this subchapter shall be construed to affect the right of any employee to appeal—

(A) under section 5112(b) or 5346(c) of this title, or otherwise, any reclassification of a position; or

(B) under procedures prescribed by the Office of Personnel Management, any reduction-in-force action.

(b) For purposes of any appeal procedures (other than those described in subsection (a) of this section) or any grievance procedure negotiated under the provisions of chapter 71 of this title—

(1) any action which is the basis of an individual’s entitlement to benefits under this subchapter, and

(2) any termination of any such benefits under this subchapter,

shall not be treated as appealable under such appeals procedures or grievable under such grievance procedure.

(Added Pub. L. 95-454, title VIII, §801(a)(1), Oct. 13, 1978, 92 Stat. 1221.)

SUBCHAPTER VII—MISCELLANEOUS PROVISIONS

Editorial Notes

AMENDMENTS

1978—Pub. L. 95-454, title VIII, §801(a)(3)(A)(i), Oct. 13, 1978, 92 Stat. 1221, redesignated former subchapter VI as VII.

§ 5371. Health care positions

(a) For the purposes of this section, “health care” means direct patient-care services or services incident to direct patient-care services.

(b) The Office of Personnel Management may, with respect to any employee described in subsection (c), provide that 1 or more provisions of chapter 74 of title 38 shall apply—

(1) in lieu of any provision of chapter 51 or 61, subchapter V of chapter 55, or any other provision of this chapter; or

(2) notwithstanding any lack of specific authority for a matter with respect to which chapter 51 or 61, subchapter V of chapter 55, or this chapter, relates.

(c) Authority under subsection (b) may be exercised with respect to any employee holding a position—

(1) to which chapter 51 applies, excluding any Senior Executive Service position and any position in the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service; and

(2) which involves health care responsibilities.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 473, §5361; renumbered §5371 and amended Pub. L. 95-454, title VIII, §801(a)(3)(A)(ii), title IX, §906(a)(2), Oct. 13, 1978, 92 Stat. 1221, 1224; Pub. L. 101-509, title V, §529 [title II, §205(A)], Nov. 5, 1990, 104 Stat. 1427, 1456; Pub. L. 102-378, §2(31), Oct. 2, 1992, 106 Stat. 1350.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Derivation, U.S. Code, Revised Statutes and Statutes at Large. Row 1: ..... 5 U.S.C. 1162(b). Oct. 4, 1961, Pub. L. 87-367, §202 “Sec. 2(b)”, 75 Stat. 790. Oct. 11, 1962, Pub. L. 87-793, §1001(a)(1), 76 Stat. 863.

The authority to fix rates of pay is added on authority of former section 1161, which is carried into section 3104.

For repeal of the Act of Aug. 1, 1947, ch. 433, 61 Stat. 715, as amended, see revision note for section 3104.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.