

“(iv) if the employee’s rate of basic pay is equal to or greater than the rate for pay rate 4 but less than the rate for pay rate 7 of the applicable grade, such employee’s rate of basic pay shall be governed by paragraph (2) of section 5335(a) of such title; and

“(v) if the employee’s rate of basic pay is equal to or greater than the rate for pay rate 7 but less than the maximum rate of the applicable grade, such employee’s rate of basic pay shall be governed by paragraph (3) of section 5335(a) of such title.

No rate of basic pay for an employee may be increased, as a result of this subparagraph (or any provision of law to which any clause of this subparagraph relates), if or to the extent that the resulting rate would exceed the maximum rate for the grade of the position occupied by such employee.

“(d) REGULATIONS.—The Office of Personnel Management shall prescribe any regulations which may be necessary for the administration of this section.”

#### § 5401. Purpose

The purpose of this chapter is to promote, through the creation of a Human Capital Performance Fund, greater performance in the Federal Government. Monies from the Fund will be used to reward agencies’ highest performing and most valuable employees. This Fund will offer Federal managers a new tool to recognize employee performance that is critical to the achievement of agency missions.

(Added Pub. L. 108–136, div. A, title XI, §1129(a), Nov. 24, 2003, 117 Stat. 1642.)

#### Editorial Notes

##### PRIOR PROVISIONS

A prior section 5401, added Pub. L. 95–454, title V, §501, Oct. 13, 1978, 92 Stat. 1180; amended Pub. L. 97–346, §2, Oct. 15, 1982, 96 Stat. 1647; Pub. L. 98–615, title II, §201(a), Nov. 8, 1984, 98 Stat. 3208; Pub. L. 102–378, §2(37), Oct. 2, 1992, 106 Stat. 1351, stated purpose of chapter to provide a performance management and recognition system, prior to repeal by Pub. L. 103–89, §3(a)(1), (c), Sept. 30, 1993, 107 Stat. 981, 983, eff. Nov. 1, 1993.

#### § 5402. Definitions

For the purpose of this chapter—

(1) “agency” means an Executive agency under section 105, but does not include the Government Accountability Office;

(2) “employee” includes—

(A) an individual paid under a statutory pay system defined in section 5302(1);

(B) a prevailing rate employee, as defined in section 5342(a)(2); and

(C) a category of employees included by the Office of Personnel Management following the review of an agency plan under section 5403(b)(1);

but does not include—

(i) an individual paid at an annual rate of basic pay for a level of the Executive Schedule, under subchapter II of chapter 53, or at a rate provided for one of those levels under another provision of law;

(ii) a member of the Senior Executive Service paid under subchapter VIII of chapter 53, or an equivalent system;

(iii) an administrative law judge paid under section 5372;

(iv) a contract appeals board member paid under section 5372a;

(v) an administrative appeals judge paid under section 5372b; and

(vi) an individual in a position which is excepted from the competitive service because of its confidential, policy-determining, policy-making, or policy-advocating character; and

(3) “Office” means the Office of Personnel Management.

(Added Pub. L. 108–136, div. A, title XI, §1129(a), Nov. 24, 2003, 117 Stat. 1642; amended Pub. L. 108–271, §8(b), July 7, 2004, 118 Stat. 814.)

#### Editorial Notes

##### PRIOR PROVISIONS

A prior section 5402, added Pub. L. 95–454, title V, §501, Oct. 13, 1978, 92 Stat. 1181; amended Pub. L. 98–615, title II, §201(a), Nov. 8, 1984, 98 Stat. 3208, related to applicability of chapter, prior to repeal by Pub. L. 103–89, §3(a)(1), (c), Sept. 30, 1993, 107 Stat. 981, 983, eff. Nov. 1, 1993.

##### AMENDMENTS

2004—Par. (1). Pub. L. 108–271 substituted “Government Accountability Office” for “General Accounting Office”.

#### § 5403. Human Capital Performance Fund

(a) There is hereby established the Human Capital Performance Fund, to be administered by the Office for the purpose of this chapter.

(b)(1)(A) An agency shall submit a plan as described in section 5406 to be eligible for consideration by the Office for an allocation under this section. An allocation shall be made only upon approval by the Office of an agency’s plan.

(B)(i) After the reduction for training required under section 5408, ninety percent of the remaining amount appropriated to the Fund may be allocated by the Office to the agencies. Of the amount to be allocated, an agency’s pro rata distribution may not exceed its pro rata share of Executive branch payroll.

(ii) If the Office does not allocate an agency’s full pro rata share, the undistributed amount remaining from that share will become available for distribution to other agencies, as provided in subparagraph (C).

(C)(i) After the reduction for training under section 5408, ten percent of the remaining amount appropriated to the Fund, as well as the amount of the pro rata share not distributed because of an agency’s failure to submit a satisfactory plan, shall be allocated among agencies with exceptionally high-quality plans.

(ii) An agency with an exceptionally high-quality plan is eligible to receive an additional distribution in addition to its full pro rata distribution.

(2) Each agency is required to provide to the Office such payroll information as the Office specifies necessary to determine the Executive branch payroll.

(Added Pub. L. 108–136, div. A, title XI, §1129(a), Nov. 24, 2003, 117 Stat. 1642.)