

**Editorial Notes****PRIOR PROVISIONS**

A prior section 5403, added Pub. L. 95-454, title V, § 501, Oct. 13, 1978, 92 Stat. 1182; amended Pub. L. 98-615, title II, § 201(a), Nov. 8, 1984, 98 Stat. 3209; Pub. L. 101-509, title V, § 529 [title I, § 101(b)(4)(C)], Nov. 5, 1990, 104 Stat. 1427, 1439; Pub. L. 102-378, § 2(38), Oct. 2, 1992, 106 Stat. 1351, related to general pay increases, prior to repeal by Pub. L. 103-89, § 3(a)(1), (c), Sept. 30, 1993, 107 Stat. 981, 983, eff. Nov. 1, 1993.

**§ 5404. Human capital performance payments**

(a)(1) Notwithstanding any other provision of law, the Office may authorize an agency to provide human capital performance payments to individual employees based on exceptional performance contributing to the achievement of the agency mission.

(2) The number of employees in an agency receiving payments from the Fund, in any year, shall not be more than the number equal to 15 percent of the agency's average total civilian full- and part-time permanent employment for the previous fiscal year.

(b)(1) A human capital performance payment provided to an individual employee from the Fund, in any year, shall not exceed 10 percent of the employee's rate of basic pay.

(2) The aggregate of an employee's rate of basic pay, adjusted by any locality-based comparability payments, and human capital performance pay, as defined by regulation, may not exceed the rate of basic pay for Executive Level IV in any year.

(3) Any human capital performance payment provided to an employee from the Fund is in addition to any annual pay adjustment (under section 5303 or any similar provision of law) and any locality-based comparability payment that may apply.

(c) No monies from the Human Capital Performance Fund may be used to pay for a new position, for other performance-related payments, or for recruitment or retention incentives paid under sections 5753 and 5754.

(d)(1) An agency may finance initial human capital performance payments using monies from the Human Capital Performance Fund, as available.

(2) In subsequent years, continuation of previously awarded human capital performance payments shall be financed from other agency funds available for salaries and expenses.

(Added Pub. L. 108-136, div. A, title XI, § 1129(a), Nov. 24, 2003, 117 Stat. 1643.)

**Editorial Notes****REFERENCES IN TEXT**

Executive Level IV, referred to in subsec. (b)(2), is set out in section 5315 of this title.

**PRIOR PROVISIONS**

A prior section 5404, added Pub. L. 95-454, title V, § 501, Oct. 13, 1978, 92 Stat. 1183; amended Pub. L. 98-615, title II, § 201(a), Nov. 8, 1984, 98 Stat. 3210; Pub. L. 101-103, § 3(a), Sept. 30, 1989, 103 Stat. 670, related to merit increases, prior to repeal by Pub. L. 103-89, § 3(a)(1), (c), Sept. 30, 1993, 107 Stat. 981, 983, eff. Nov. 1, 1993.

**§ 5405. Regulations**

The Office shall issue such regulations as it determines to be necessary for the administration of this chapter, including the administration of the Fund. The Office's regulations shall include criteria governing—

(1) an agency plan under section 5406;

(2) the allocation of monies from the Fund to agencies;

(3) the nature, extent, duration, and adjustment of, and approval processes for, payments to individual employees under this chapter;

(4) the relationship to this chapter of agency performance management systems;

(5) training of supervisors, managers, and other individuals involved in the process of making performance distinctions; and

(6) the circumstances under which funds may be allocated by the Office to an agency in amounts below or in excess of the agency's pro rata share.

(Added Pub. L. 108-136, div. A, title XI, § 1129(a), Nov. 24, 2003, 117 Stat. 1643.)

**Editorial Notes****PRIOR PROVISIONS**

A prior section 5405, added Pub. L. 95-454, title V, § 501, Oct. 13, 1978, 92 Stat. 1183; amended Pub. L. 98-615, title II, § 201(a), Nov. 8, 1984, 98 Stat. 3211; Pub. L. 101-509, title V, § 529 [title I, § 101(b)(3)(C)], Nov. 5, 1990, 104 Stat. 1427, 1439, related to pay administration, prior to repeal by Pub. L. 103-89, § 3(a)(1), (c), Sept. 30, 1993, 107 Stat. 981, 983, eff. Nov. 1, 1993.

**§ 5406. Agency plan**

(a) To be eligible for consideration by the Office for an allocation under this section, an agency shall—

(1) develop a plan that incorporates the following elements:

(A) adherence to merit principles set forth in section 2301;

(B) a fair, credible, and transparent employee performance appraisal system;

(C) a link between the pay-for-performance system, the employee performance appraisal system, and the agency's strategic plan;

(D) a means for ensuring employee involvement in the design and implementation of the system;

(E) adequate training and retraining for supervisors, managers, and employees in the implementation and operation of the pay-for-performance system;

(F) a process for ensuring ongoing performance feedback and dialogue between supervisors, managers, and employees throughout the appraisal period, and setting timetables for review;

(G) effective safeguards to ensure that the management of the system is fair and equitable and based on employee performance; and

(H) a means for ensuring that adequate agency resources are allocated for the design, implementation, and administration of the pay-for-performance system;

(2) upon approval, receive an allocation of funding from the Office;