

1014, and 1032 of Title 18, Crimes and Criminal Procedure, sections 321 and 714 of Title 31, Money and Finance, section 41501 of Title 34, Crime Control and Law Enforcement, sections 4003 and 8105 of Title 42, The Public Health and Welfare, and section 3502 of Title 44, Public Printing and Documents, repealed section 1441a of this title, enacted provisions set out as notes under sections 1, 16, 1438, 1787, 1812, 1817, and 1821 of this title and section 906 of Title 2, and amended provisions set out as notes under sections 1437, 1463, 1464, 1467a, 1707, 1812, and 1818 of this title. For complete classification of title III to the Code, see Short title note set out under section 5301 of this title and Tables.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE

Section effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111-203, set out as a note under section 5301 of this title.

### § 5432. Transfer of employees

#### (a) In general

##### (1) Office of Thrift Supervision employees

###### (A) In general

Except as provided in section 5584 of this title, all employees of the Office of Thrift Supervision shall be transferred to the Office of the Comptroller of the Currency or the Corporation for employment in accordance with this section.

###### (B) Allocating employees for transfer to receiving agencies

The Director of the Office of Thrift Supervision, the Comptroller of the Currency, and the Chairperson of the Corporation shall—

(i) jointly determine the number of employees of the Office of Thrift Supervision necessary to perform or support the functions that are transferred to the Office of the Comptroller of the Currency or the Corporation by this title;<sup>1</sup> and

(ii) consistent with the determination under clause (i), jointly identify employees of the Office of Thrift Supervision for transfer to the Office of the Comptroller of the Currency or the Corporation.

##### (2) Employees transferred; service periods credited

For purposes of this section, periods of service with a Federal home loan bank, a joint office of Federal home loan banks, or a Federal reserve bank shall be credited as periods of service with a Federal agency.

##### (3) Appointment authority for excepted service transferred

###### (A) In general

Except as provided in subparagraph (B), any appointment authority of the Office of Thrift Supervision under Federal law that relates to the functions transferred under section 5412 of this title, including the regulations of the Office of Personnel Management, for filling the positions of employees in the excepted service shall be transferred to the Comptroller of the Currency or the Chairperson of the Corporation, as appropriate.

#### (B) Declining transfers allowed

The Comptroller of the Currency or the Chairperson of the Corporation may decline to accept a transfer of authority under subparagraph (A) (and the employees appointed under that authority) to the extent that such authority relates to positions excepted from the competitive service because of their confidential, policy-making, policy-determining, or policy-advocating character.

#### (4) Additional appointment authority

Notwithstanding any other provision of law, the Office of the Comptroller of the Currency and the Corporation may appoint transferred employees to positions in the Office of the Comptroller of the Currency or the Corporation, respectively.

#### (b) Timing of transfers and position assignments

Each employee to be transferred under subsection (a)(1) shall—

(1) be transferred not later than 90 days after the transfer date; and

(2) receive notice of the position assignment of the employee not later than 120 days after the effective date of the transfer of the employee.

#### (c) Transfer of functions

##### (1) In general

Notwithstanding any other provision of law, the transfer of employees under this part shall be deemed a transfer of functions for the purpose of section 3503 of title 5.

##### (2) Priority

If any provision of this part conflicts with any protection provided to a transferred employee under section 3503 of title 5, the provisions of this part shall control.

#### (d) Employee status and eligibility

The transfer of functions and employees under this part, and the abolishment of the Office of Thrift Supervision under section 5413 of this title, shall not affect the status of the transferred employees as employees of an agency of the United States under any provision of law.

#### (e) Equal status and tenure positions

##### (1) Status and tenure

Each transferred employee from the Office of Thrift Supervision shall be placed in a position at the Office of the Comptroller of the Currency or the Corporation with the same status and tenure as the transferred employee held on the day before the date on which the employee was transferred.

##### (2) Functions

To the extent practicable, each transferred employee shall be placed in a position at the Office of the Comptroller of the Currency or the Corporation, as applicable, responsible for the same functions and duties as the transferred employee had on the day before the date on which the employee was transferred, in accordance with the expertise and preferences of the transferred employee.

#### (f) No additional certification requirements

An examiner who is a transferred employee shall not be subject to any additional certifi-

<sup>1</sup> See References in Text note below.

cation requirements before being placed in a comparable position at the Office of the Comptroller of the Currency or the Corporation, if the examiner carries out examinations of the same type of institutions as an employee of the Office of the Comptroller of the Currency or the Corporation as the employee was responsible for carrying out before the date on which the employee was transferred.

**(g) Personnel actions limited**

**(1) Protection**

**(A) In general**

Except as provided in paragraph (2), each affected employee shall not, during the 30-month period beginning on the transfer date, be involuntarily separated, or involuntarily reassigned outside his or her locality pay area.

**(B) Affected employees**

For purposes of this paragraph, the term “affected employee” means—

- (i) an employee transferred from the Office of Thrift Supervision holding a permanent position on the day before the transfer date; and
- (ii) an employee of the Office of the Comptroller of the Currency or the Corporation holding a permanent position on the day before the transfer date.

**(2) Exceptions**

Paragraph (1) does not limit the right of the Office of the Comptroller of the Currency or the Corporation to—

- (A) separate an employee for cause or for unacceptable performance;
- (B) terminate an appointment to a position excepted from the competitive service because of its confidential policy-making, policy-determining, or policy-advocating character; or
- (C) reassign an employee outside such employee’s locality pay area when the Office of the Comptroller of the Currency or the Corporation determines that the reassignment is necessary for the efficient operation of the agency.

**(h) Pay**

**(1) 30-month protection**

Except as provided in paragraph (2), during the 30-month period beginning on the date on which the employee was transferred under this part, a transferred employee shall be paid at a rate that is not less than the basic rate of pay, including any geographic differential, that the transferred employee received during the pay period immediately preceding the date on which the employee was transferred. Notwithstanding the preceding sentence, if the employee was receiving a higher rate of basic pay on a temporary basis (because of a temporary assignment, temporary promotion, or other temporary action) immediately before the transfer, the Agency may reduce the rate of basic pay on the date the rate would have been reduced but for the transfer, and the protected rate for the remainder of the 30-month period will be the reduced rate that would have applied but for the transfer.

**(2) Exceptions**

The Comptroller of the Currency or the Corporation may reduce the rate of basic pay of a transferred employee—

- (A) for cause, including for unacceptable performance; or
- (B) with the consent of the transferred employee.

**(3) Protection only while employed**

This subsection shall apply to a transferred employee only during the period that the transferred employee remains employed by Office of the Comptroller of the Currency or the Corporation.

**(4) Pay increases permitted**

Nothing in this subsection shall limit the authority of the Comptroller of the Currency or the Chairperson of the Corporation to increase the pay of a transferred employee.

**(i) Benefits**

**(1) Retirement benefits for transferred employees**

**(A) In general**

**(i) Continuation of existing retirement plan**

Each transferred employee shall remain enrolled in the retirement plan of the transferred employee, for as long as the transferred employee is employed by the Office of the Comptroller of the Currency or the Corporation.

**(ii) Employer’s contribution**

The Comptroller of the Currency or the Chairperson of the Corporation, as appropriate, shall pay any employer contributions to the existing retirement plan of each transferred employee, as required under each such existing retirement plan.

**(B) Definition**

In this paragraph, the term “existing retirement plan” means, with respect to a transferred employee, the retirement plan (including the Financial Institutions Retirement Fund), and any associated thrift savings plan, of the agency from which the employee was transferred in which the employee was enrolled on the day before the date on which the employee was transferred.

**(2) Benefits other than retirement benefits**

**(A) During first year**

**(i) Existing plans continue**

During the 1-year period following the transfer date, each transferred employee may retain membership in any employee benefit program (other than a retirement benefit program) of the agency from which the employee was transferred under this title,<sup>1</sup> including any dental, vision, long term care, or life insurance program to which the employee belonged on the day before the transfer date.

**(ii) Employer’s contribution**

The Office of the Comptroller of the Currency or the Corporation, as appropriate, shall pay any employer cost required to

extend coverage in the benefit program to the transferred employee as required under that program or negotiated agreements.

**(B) Dental, vision, or life insurance after first year**

If, after the 1-year period beginning on the transfer date, the Office of the Comptroller of the Currency or the Corporation determines that the Office of the Comptroller of the Currency or the Corporation, as the case may be, will not continue to participate in any dental, vision, or life insurance program of an agency from which an employee was transferred, a transferred employee who is a member of the program may, before the decision takes effect and without regard to any regularly scheduled open season, elect to enroll in—

- (i) the enhanced dental benefits program established under chapter 89A of title 5;
- (ii) the enhanced vision benefits established under chapter 89B of title 5; and
- (iii) the Federal Employees' Group Life Insurance Program established under chapter 87 of title 5, without regard to any requirement of insurability.

**(C) Long term care insurance after 1st year**

If, after the 1-year period beginning on the transfer date, the Office of the Comptroller of the Currency or the Corporation determines that the Office of the Comptroller of the Currency or the Corporation, as appropriate, will not continue to participate in any long term care insurance program of an agency from which an employee transferred, a transferred employee who is a member of such a program may, before the decision takes effect, elect to apply for coverage under the Federal Long Term Care Insurance Program established under chapter 90 of title 5 under the underwriting requirements applicable to a new active workforce member, as described in part 875 of title 5, Code of Federal Regulations (or any successor thereto).

**(D) Contribution of transferred employee**

**(i) In general**

Subject to clause (ii), a transferred employee who is enrolled in a plan under the Federal Employees Health Benefits Program shall pay any employee contribution required under the plan.

**(ii) Cost differential**

The Office of the Comptroller of the Currency or the Corporation, as applicable, shall pay any difference in cost between the employee contribution required under the plan provided to transferred employees by the agency from which the employee transferred on July 21, 2010, and the plan provided by the Office of the Comptroller of the Currency or the Corporation, as the case may be, under this section.

**(iii) Funds transfer**

The Office of the Comptroller of the Currency or the Corporation, as the case may be, shall transfer to the Employees Health

Benefits Fund established under section 8909 of title 5, an amount determined by the Director of the Office of Personnel Management, after consultation with the Comptroller of the Currency or the Chairperson of the Corporation, as the case may be, and the Office of Management and Budget, to be necessary to reimburse the Fund for the cost to the Fund of providing any benefits under this subparagraph that are not otherwise paid for by a transferred employee under clause (i).

**(E) Special provisions to ensure continuation of life insurance benefits**

**(i) In general**

An annuitant, as defined in section 8901 of title 5, who is enrolled in a life insurance plan administered by an agency from which employees are transferred under this title<sup>1</sup> on the day before the transfer date shall be eligible for coverage by a life insurance plan under sections 8706(b), 8714a, 8714b, or 8714c of title 5, or by a life insurance plan established by the Office of the Comptroller of the Currency or the Corporation, as applicable, without regard to any regularly scheduled open season or any requirement of insurability.

**(ii) Contribution of transferred employee**

**(I) In general**

Subject to subclause (II), a transferred employee enrolled in a life insurance plan under this subparagraph shall pay any employee contribution required by the plan.

**(II) Cost differential**

The Office of the Comptroller of the Currency or the Corporation, as the case may be, shall pay any difference in cost between the benefits provided by the agency from which the employee transferred on July 21, 2010, and the benefits provided under this section.

**(III) Funds transfer**

The Office of the Comptroller of the Currency or the Corporation, as the case may be, shall transfer to the Federal Employees' Group Life Insurance Fund established under section 8714 of title 5, an amount determined by the Director of the Office of Personnel Management, after consultation with the Comptroller of the Currency or the Chairperson of the Corporation, as the case may be, and the Office of Management and Budget, to be necessary to reimburse the Federal Employees' Group Life Insurance Fund for the cost to the Federal Employees' Group Life Insurance Fund of providing benefits under this subparagraph not otherwise paid for by a transferred employee under subclause (I).

**(IV) Credit for time enrolled in other plans**

For any transferred employee, enrollment in a life insurance plan administered by the agency from which the em-

ployee transferred, immediately before enrollment in a life insurance plan under chapter 87 of title 5, shall be considered as enrollment in a life insurance plan under that chapter for purposes of section 8706(b)(1)(A) of title 5.

**(j) Incorporation into agency pay system**

Not later than 30 months after the transfer date, the Comptroller of the Currency and the Chairperson of the Corporation shall place each transferred employee into the established pay system and structure of the appropriate employing agency.

**(k) Equitable treatment**

In administering the provisions of this section, the Comptroller of the Currency and the Chairperson of the Corporation—

(1) may not take any action that would unfairly disadvantage a transferred employee relative to any other employee of the Office of the Comptroller of the Currency or the Corporation on the basis of prior employment by the Office of Thrift Supervision;

(2) may take such action as is appropriate in an individual case to ensure that a transferred employee receives equitable treatment, with respect to the status, tenure, pay, benefits (other than benefits under programs administered by the Office of Personnel Management), and accrued leave or vacation time for prior periods of service with any Federal agency of the transferred employee;

(3) shall, jointly with the Director of the Office of Thrift Supervision, develop and adopt procedures and safeguards designed to ensure that the requirements of this subsection are met; and

(4) shall conduct a study detailing the position assignments of all employees transferred pursuant to subsection (a), describing the procedures and safeguards adopted pursuant to paragraph (3), and demonstrating that the requirements of this subsection have been met; and shall, not later than 365 days after the transfer date, submit a copy of such study to Congress.

**(l) Reorganization**

**(1) In general**

If the Comptroller of the Currency or the Chairperson of the Corporation determines, during the 2-year period beginning 1 year after the transfer date, that a reorganization of the staff of the Office of the Comptroller of the Currency or the Corporation, respectively, is required, the reorganization shall be deemed a “major reorganization” for purposes of affording affected employees retirement under section 8336(d)(2) or 8414(b)(1)(B) of title 5.

**(2) Service credit**

For purposes of this subsection, periods of service with a Federal home loan bank or a joint office of Federal home loan banks shall be credited as periods of service with a Federal agency.

(Pub. L. 111–203, title III, §322, July 21, 2010, 124 Stat. 1529.)

**Editorial Notes**

REFERENCES IN TEXT

This title, referred to in subsecs. (a)(1)(B)(i) and (i)(2)(A)(i), (E)(i), is title III of Pub. L. 111–203, July 21, 2010, 124 Stat. 1520, known as the Enhancing Financial Institution Safety and Soundness Act of 2010, which enacted this subchapter and sections 4b and 16 of this title, amended sections 1, 11, 248, 461, 481, 482, 1438, 1462, 1462a, 1463, to 1464, 1466a, 1467, 1467a, 1468, 1468a, to 1468b, 1470, 1701c, 1701p–1, 1708, 1757, 1785, 1786, 1787, 1812, 1813, 1817, 1818, 1820, 1821, 1823, 1828, 1829, 1831e, 1831j, 1833b, 1833e, 1834, 1841, 1843, 1844, 1861, 1867, 1881, 1882, 1884, 1972, 2709, 2902, 2905, 3206 to 3208, 3332, 4515, and 4517 of this title, section 906 of Title 2, The Congress, sections 78c, 78f, 78o–5, and 78w of Title 15, Commerce and Trade, sections 212, 657, 981, 982, 1006, 1014, and 1032 of Title 18, Crimes and Criminal Procedure, sections 321 and 714 of Title 31, Money and Finance, section 41501 of Title 34, Crime Control and Law Enforcement, sections 4003 and 8105 of Title 42, The Public Health and Welfare, and section 3502 of Title 44, Public Printing and Documents, repealed section 1441a of this title, enacted provisions set out as notes under sections 1, 16, 1438, 1787, 1812, 1817, and 1821 of this title and section 906 of Title 2, and amended provisions set out as notes under sections 1437, 1463, 1464, 1467a, 1707, 1812, and 1818 of this title. For complete classification of title III to the Code, see Short title note set out under section 5301 of this title and Tables.

**Statutory Notes and Related Subsidiaries**

EFFECTIVE DATE

Section effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as a note under section 5301 of this title.

**§ 5433. Property transferred**

**(a) Property defined**

For purposes of this section, the term “property” includes all real property (including leaseholds) and all personal property, including computers, furniture, fixtures, equipment, books, accounts, records, reports, files, memoranda, paper, reports of examination, work papers, and correspondence related to such reports, and any other information or materials.

**(b) Property of the Office of Thrift Supervision**

**(1) In general**

No later than 90 days after the transfer date, all property of the Office of Thrift Supervision (other than property described under paragraph (b)(2)) that the Comptroller of the Currency and the Chairperson of the Corporation jointly determine is used, on the day before the transfer date, to perform or support the functions of the Office of Thrift Supervision transferred to the Office of the Comptroller of the Currency or the Corporation under this title,<sup>1</sup> shall be transferred to the Office of the Comptroller of the Currency or the Corporation in a manner consistent with the transfer of employees under this part.

**(2) Personal property**

All books, accounts, records, reports, files, memoranda, papers, documents, reports of examination, work papers, and correspondence of the Office of Thrift Supervision that the Comptroller of the Currency, the Chairperson

<sup>1</sup> See References in Text note below.