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### Editorial Notes

#### PRIOR PROVISIONS

A prior chapter 54, consisting of sections 5401 to 5410, related to 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.

#### Statutory Notes and Related Subsidiaries

##### TREATMENT OF EMPLOYEES COVERED BY PERFORMANCE MANAGEMENT AND RECOGNITION SYSTEM AS OF TERMINATION DATE

Pub. L. 103-89, §4, Sept. 30, 1993, 107 Stat. 983, provided that:

“(a) DEFINITIONS.—For purposes of this section—

“(1) the term ‘employee’ means an individual employed by an agency (within the meaning of section 7103(a)(3) of title 5, United States Code);

“(2) the term ‘performance management and recognition system’ means the performance management and recognition system under [former] chapter 54 of title 5, United States Code;

“(3) the term ‘basic pay’ does not include any amount payable under section 302 [set out as a note under section 5304 of this title] or title IV [see Short Title set out in a note under section 5305 of this title] of FEPCA or section 5304 or 5304a of title 5, United States Code;

“(4) the term ‘pay rate’, as used in clauses (iii) through (v) of subsection (c)(2)(B), is used in the same way as such term is used under section 5335(a) of title 5, United States Code; and

“(5) the term ‘FEPCA’ means the Federal Employees Pay Comparability Act of 1990 [section 529 [§§1-412] of Pub. L. 101-509, see Short Title of 1990 Amendment; Rules of Construction note set out under section 5301 of this title] (contained in the Treasury, Postal Service and General Government Appropriations Act, 1991 (Public Law 101-509; 104 Stat. 1427)).

“(b) APPLICABILITY.—Notwithstanding section 5332(a)(1) of title 5, United States Code (as amended by section 3(b)(1)(F)), or any other provision of law, the rate of basic pay for an employee covered by the performance management and recognition system on October 31, 1993, shall be determined in accordance with this section so long as such employee continues, without a break in service of more than 3 days, to occupy any position—

“(1) which is in the same grade of the General Schedule, and the same agency, as the position which such employee occupied on October 31, 1993; and

“(2) to which the provisions of [former] chapter 54 of title 5, United States Code (as in effect on October 31, 1993) would apply if such provisions had remained in effect.

“(c) SPECIAL RULES.—

“(1) IN GENERAL.—The rate of basic pay for an employee who is subject to this section shall be the rate payable to such employee on October 31, 1993, subject to paragraph (2).

“(2) ADJUSTMENTS.—Adjustments in the rate of basic pay for an employee who is subject to this section shall be made in accordance with the relevant provisions of title 5, United States Code, or otherwise applicable provisions of law, subject to the following:

“(A) DEEM RATES AND POSITIONS TO BE UNDER THE GENERAL SCHEDULE.—For purposes of applying subchapters I and III of chapter 53 of such title (and the provisions of section 302 [set out as a note under section 5304 of this title] and title IV [see Short Title set out in a note under section 5305 of this

title] of FEPCA with respect to any payment under any of those provisions)—

“(i) the rate of basic pay determined under this section for an employee shall be treated as a rate of basic pay described in section 5302(8) of such title;

“(ii) the position then currently occupied by an employee who is subject to this section shall be deemed to be a ‘General Schedule position’ within the meaning of section 5302(9) of such title; and

“(iii) any employee who is subject to this section shall be considered to be a ‘General Schedule employee’ (as referred to in section 302(b) of FEPCA).

“(B) SPECIAL RULES RELATING TO PROVISIONS GOVERNING STEP-INCREASES.—For purposes of applying the provisions of sections 5335 and 5336 of title 5, United States Code, with respect to any employee who is subject to this section—

“(i) any reference in such provisions to a ‘step-increase’ shall be considered to mean an increase equal to one-ninth of the difference between the minimum and maximum rates of pay for the applicable grade of the General Schedule;

“(ii) any reference in such provisions to the ‘next higher rate within the grade’ shall be considered to mean the rate of basic pay which exceeds such employee’s then current rate of basic pay by the amount of a step-increase;

“(iii) if the employee’s rate of basic pay is less than the rate for pay rate 4 of the applicable grade, such employee’s rate of basic pay shall be governed by paragraph (1) of section 5335(a) of such title;

“(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 remain-

ing 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.)

#### 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 po-