

(Added Pub. L. 114-47, §2(a), Aug. 7, 2015, 129 Stat. 485; amended Pub. L. 114-328, div. A, title XI, §1135, Dec. 23, 2016, 130 Stat. 2459.)

Editorial Notes

AMENDMENTS

2016—Subsec. (a). Pub. L. 114-328, §1135(1), substituted in introductory provisions “such land management agency when such agency is accepting applications from individuals within the agency’s workforce under merit promotion procedures, or any agency, including a land management agency, when the agency is accepting applications from individuals outside its own workforce under the merit promotion procedures of the applicable agency” for “any land management agency or any other agency (as defined in section 101 of title 31) under the internal merit promotion procedures of the applicable agency”.

Subsec. (d). Pub. L. 114-328, §1135(2), inserted “of the agency from which the former employee was most recently separated” after “deemed a time-limited employee” in introductory provisions.

CHAPTER 97—DEPARTMENT OF HOMELAND SECURITY

Sec.
9701. Establishment of human resources management system.

§ 9701. Establishment of human resources management system

(a) IN GENERAL.—Notwithstanding any other provision of this part, the Secretary of Homeland Security may, in regulations prescribed jointly with the Director of the Office of Personnel Management, establish, and from time to time adjust, a human resources management system for some or all of the organizational units of the Department of Homeland Security.

(b) SYSTEM REQUIREMENTS.—Any system established under subsection (a) shall—

- (1) be flexible;
- (2) be contemporary;
- (3) not waive, modify, or otherwise affect—

(A) the public employment principles of merit and fitness set forth in section 2301, including the principles of hiring based on merit, fair treatment without regard to political affiliation or other nonmerit considerations, equal pay for equal work, and protection of employees against reprisal for whistleblowing;

(B) any provision of section 2302, relating to prohibited personnel practices;

(C)(i) any provision of law referred to in section 2302(b)(1), (8), and (9); or

(ii) any provision of law implementing any provision of law referred to in section 2302(b)(1), (8), and (9) by—

(I) providing for equal employment opportunity through affirmative action; or

(II) providing any right or remedy available to any employee or applicant for employment in the civil service;

(D) any other provision of this part (as described in subsection (c)); or

(E) any rule or regulation prescribed under any provision of law referred to in any of the preceding subparagraphs of this paragraph;

(4) ensure that employees may organize, bargain collectively, and participate through

labor organizations of their own choosing in decisions which affect them, subject to any exclusion from coverage or limitation on negotiability established by law; and

(5) permit the use of a category rating system for evaluating applicants for positions in the competitive service.

(c) OTHER NONWAIVABLE PROVISIONS.—The other provisions of this part as referred to in subsection (b)(3)(D), are (to the extent not otherwise specified in subparagraph (A), (B), (C), or (D) of subsection (b)(3))—

(1) subparts A, B, E, G, and H of this part; and

(2) chapters 41, 45, 47, 55, 57, 59, 72, 73, and 79, and this chapter.

(d) LIMITATIONS RELATING TO PAY.—Nothing in this section shall constitute authority—

(1) to modify the pay of any employee who serves in—

(A) an Executive Schedule position under subchapter II of chapter 53 of title 5, United States Code; or

(B) a position for which the rate of basic pay is fixed in statute by reference to a section or level under subchapter II of chapter 53 of such title 5;

(2) to fix pay for any employee or position at an annual rate greater than the maximum amount of cash compensation allowable under section 5307 of such title 5 in a year; or

(3) to exempt any employee from the application of such section 5307.

(e) PROVISIONS TO ENSURE COLLABORATION WITH EMPLOYEE REPRESENTATIVES.—

(1) IN GENERAL.—In order to ensure that the authority of this section is exercised in collaboration with, and in a manner that ensures the participation of employee representatives in the planning, development, and implementation of any human resources management system or adjustments to such system under this section, the Secretary of Homeland Security and the Director of the Office of Personnel Management shall provide for the following:

(A) NOTICE OF PROPOSAL.—The Secretary and the Director shall, with respect to any proposed system or adjustment—

(i) provide to each employee representative representing any employees who might be affected, a written description of the proposed system or adjustment (including the reasons why it is considered necessary);

(ii) give each representative 30 calendar days (unless extraordinary circumstances require earlier action) to review and make recommendations with respect to the proposal; and

(iii) give any recommendations received from any such representatives under clause (ii) full and fair consideration in deciding whether or how to proceed with the proposal.

(B) PRE-IMPLEMENTATION CONGRESSIONAL NOTIFICATION, CONSULTATION, AND MEDIATION.—Following receipt of recommendations, if any, from employee representatives