

(d) A senior executive may not appeal any appraisal and rating under any performance appraisal system under this section.

(Added Pub. L. 95-454, title IV, § 405(a), Oct. 13, 1978, 92 Stat. 1167; amended Pub. L. 98-615, title III, § 306(b)(2), Nov. 8, 1984, 98 Stat. 3220.)

AMENDMENTS

1984—Subsec. (b)(3). Pub. L. 98-615 inserted “, or (with the consent of the senior executive) a commissioned officer in the uniformed services serving on active duty,” and directed that “executive” be struck out which was executed by striking “executive” only where it appeared before “level in the agency”.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-615 effective following expiration of 90-day period beginning on Nov. 8, 1984, see section 307 of Pub. L. 98-615, set out as a note under section 3393 of this title.

§ 4313. Criteria for performance appraisals

Appraisals of performance in the Senior Executive Service shall be based on both individual and organizational performance, taking into account such factors as—

- (1) improvements in efficiency, productivity, and quality of work or service, including any significant reduction in paperwork;
- (2) cost efficiency;
- (3) timeliness of performance;
- (4) other indications of the effectiveness, productivity, and performance quality of the employees for whom the senior executive is responsible; and
- (5) meeting affirmative action goals, achievement of equal employment opportunity requirements, and compliance with the merit systems principles set forth under section 2301 of this title.

(Added Pub. L. 95-454, title IV, § 405(a), Oct. 13, 1978, 92 Stat. 1168; amended Pub. L. 103-424, § 6, Oct. 29, 1994, 108 Stat. 4364.)

AMENDMENTS

1994—Par. (5). Pub. L. 103-424 amended par. (5) generally. Prior to amendment, par. (5) read as follows: “meeting affirmative action goals and achievement of equal employment opportunity requirements.”

§ 4314. Ratings for performance appraisals

(a) Each performance appraisal system shall provide for annual summary ratings of levels of performance as follows:

- (1) one or more fully successful levels,
- (2) a minimally satisfactory level, and
- (3) an unsatisfactory level.

(b) Each performance appraisal system shall provide that—

- (1) any appraisal and any rating under such system—
 - (A) are made only after review and evaluation by a performance review board established under subsection (c) of this section;
 - (B) are conducted at least annually, subject to the limitation of subsection (c)(3) of this section;
 - (C) in the case of a career appointee, may not be made within 120 days after the beginning of a new Presidential administration; and

(D) are based on performance during a performance appraisal period the duration of which shall be determined under guidelines established by the Office of Personnel Management, but which may be terminated in any case in which the agency making an appraisal determines that an adequate basis exists on which to appraise and rate the senior executive’s performance;

(2) any career appointee receiving a rating at any of the fully successful levels under subsection (a)(1) of this section may be given a performance award under section 5384 of this title;

(3) any senior executive receiving an unsatisfactory rating under subsection (a)(3) of this section shall be reassigned or transferred within the Senior Executive Service, or removed from the Senior Executive Service, but any senior executive who receives 2 unsatisfactory ratings in any period of 5 consecutive years shall be removed from the Senior Executive Service; and

(4) any senior executive who twice in any period of 3 consecutive years receives less than fully successful ratings shall be removed from the Senior Executive Service.

(c)(1) Each agency shall establish, in accordance with regulations prescribed by the Office, one or more performance review boards, as appropriate. It is the function of the boards to make recommendations to the appropriate appointing authority of the agency relating to the performance of senior executives in the agency.

(2) The supervising official of the senior executive shall provide to the performance review board, an initial appraisal of the senior executive’s performance. Before making any recommendation with respect to the senior executive, the board shall review any response by the senior executive to the initial appraisal and conduct such further review as the board finds necessary.

(3) Performance appraisals under this subchapter with respect to any senior executive shall be made by the appointing authority only after considering the recommendations by the performance review board with respect to such senior executive under paragraph (1) of this subsection.

(4) Members of performance review boards shall be appointed in such a manner as to assure consistency, stability, and objectivity in performance appraisal. Notice of the appointment of an individual to serve as a member shall be published in the Federal Register.

(5) In the case of an appraisal of a career appointee, more than one-half of the members of the performance review board shall consist of career appointees. The requirement of the preceding sentence shall not apply in any case in which the Office determines that there exists an insufficient number of career appointees available to comply with the requirement.

(Added Pub. L. 95-454, title IV, § 405(a), Oct. 13, 1978, 92 Stat. 1169; amended Pub. L. 104-66, title II, § 2181(b), Dec. 21, 1995, 109 Stat. 732.)

AMENDMENTS

1995—Subsec. (d). Pub. L. 104-66 struck out subsec. (d) which related to reports to Congress.

§ 4315. Regulations

The Office of Personnel Management shall prescribe regulations to carry out the purpose of this subchapter.

(Added Pub. L. 95-454, title IV, §405(a), Oct. 13, 1978, 92 Stat. 1170.)

CHAPTER 45—INCENTIVE AWARDS**SUBCHAPTER I—AWARDS FOR SUPERIOR ACCOMPLISHMENTS**

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AMENDMENTS

2001—Pub. L. 107-67, title VI, §641(c), Nov. 12, 2001, 115 Stat. 555, added item 4507a.

1994—Pub. L. 103-425, §2(b), Oct. 31, 1994, 108 Stat. 4370, added items 4508 and 4509.

1992—Pub. L. 102-487, §1(b), Oct. 24, 1992, 106 Stat. 3134, struck out item 4514 “Expiration of authority”.

1990—Pub. L. 101-509, title V, §529 [title II, §207(b), title IV, §408(b)], Nov. 5, 1990, 104 Stat. 1427, 1458, 1468, added item 4505a and heading for subchapter III and items 4521 to 4523.

1988—Pub. L. 100-611, §1(b), Nov. 5, 1988, 102 Stat. 3179, struck out “; reporting requirement” after “authority” in item 4514.

1985—Pub. L. 99-145, title XII, §1225(b)(1)(B), Nov. 8, 1985, 99 Stat. 730, inserted “; reporting requirement” in item 4514.

1981—Pub. L. 97-35, title XVII, §1703(b)(3), Aug. 13, 1981, 95 Stat. 756, added heading for subchapter I and subchapter II and items 4511 to 4514.

1978—Pub. L. 95-454, title IV, §406(b), Oct. 13, 1978, 92 Stat. 1171, added item 4507.

SUBCHAPTER I—AWARDS FOR SUPERIOR ACCOMPLISHMENTS**AMENDMENTS**

1981—Pub. L. 97-35, title XVII, §1703(b)(1), Aug. 13, 1981, 95 Stat. 756, added heading for subchapter I.

§ 4501. Definitions

For the purpose of this subchapter—

- (1) “agency” means—
- (A) an Executive agency;
 - (B) the Library of Congress;
 - (C) the Office of the Architect of the Capitol;
 - (D) the Botanic Garden;
 - (E) the Government Printing Office;
 - (F) the government of the District of Columbia; and
 - (G) the United States Sentencing Commission;

but does not include—

- (i) the Tennessee Valley Authority; or
- (ii) the Central Bank for Cooperatives;

(2) “employee” means—

- (A) an employee as defined by section 2105; and
- (B) an individual employed by the government of the District of Columbia; and

(3) “Government” means the Government of the United States and the government of the District of Columbia.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 442; Pub. L. 95-454, title V, §503(a), Oct. 13, 1978, 92 Stat. 1183; Pub. L. 97-35, title XVII, §1703(b)(2), Aug. 13, 1981, 95 Stat. 756; Pub. L. 98-615, title II, §204(a)(1), Nov. 8, 1984, 98 Stat. 3216; Pub. L. 100-690, title VII, §7106(a), Nov. 18, 1988, 102 Stat. 4418; Pub. L. 101-474, §5(f), Oct. 30, 1990, 104 Stat. 1100; Pub. L. 103-89, §3(b)(1)(C), Sept. 30, 1993, 107 Stat. 981.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 2122.	Sept. 1, 1954, ch. 1208, §303, 68 Stat. 1113. Aug. 18, 1959, Pub. L. 86-168, §202(d), 73 Stat. 389.

In paragraph (1), the term “Executive agency” is co-extensive with and substituted for “executive department or independent agency in the executive branch of the Government including a Government-owned or controlled corporation” in view of the definition of “Executive agency” in section 105. Application to the General Accounting Office (included in the term “Executive agency”) is based on former section 933a.

Paragraph (2) is supplied because the definition of “employee” in section 2105 does not encompass individuals employed by the government of the District of Columbia.

Paragraph (3) is supplied for clarity and convenience. Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1993—Par. (2)(A). Pub. L. 103-89 amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “an employee as defined by section 2105 of this title, but does not include an employee covered by the performance management and recognition system established under chapter 54 of this title; and”.

1990—Par. (1). Pub. L. 101-474 redesignated subpars. (C) to (H) as (B) to (G), respectively, and struck out former subpar. (B) which included Administrative Office of United States Courts within definition of “agency”.

1988—Par. (1)(H). Pub. L. 100-690 added subpar. (H).

1984—Par. (2)(A). Pub. L. 98-615 substituted “the performance management and recognition system established under chapter 54” for “the merit pay system established under section 5402”.

¹ So in original. Probably should not be capitalized.

² So in original. Does not conform to subchapter heading.