

Stat. 183; renumbered § 5372 and amended Pub. L. 95-454, title VIII, § 801(a)(3)(A)(ii), title IX, § 906(a)(2), Oct. 13, 1978, 92 Stat. 1221, 1224; Pub. L. 101-509, title V, § 529 [title I, § 104(a)(1)], Nov. 5, 1990, 104 Stat. 1427, 1445; Pub. L. 102-378, § 2(32), Oct. 2, 1992, 106 Stat. 1350; Pub. L. 106-97, § 1, Nov. 12, 1999, 113 Stat. 1322.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 1010 (3d sentence).	June 11, 1946, ch. 324, § 11 (3d sentence), 60 Stat. 244.

The exception from the operation of the efficiency rating system is omitted as covered by sections 4301(2)(E) and 5335(a)(B). The reference to “subchapter III of this chapter and chapter 51 of this title” is substituted for “the Classification Act of 1923, as amended” on authority of section 1106(a) of the Act of Oct. 28, 1949, ch. 782, 63 Stat. 972.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

REFERENCES IN TEXT

Level IV of the Executive Schedule, referred to in subsec. (b)(1)(C), is set out in section 5315 of this title.

The General Schedule, referred to in subsec. (b)(4), is set out under section 5332 of this title.

AMENDMENTS

1999—Subsec. (b)(1). Pub. L. 106-97, § 1(1), designated first sentence as subpar. (A) and struck out after first sentence the following: “The rates of basic pay for those levels shall be as follows:

- AL-3, rate A ..... 65 percent of the rate of basic pay for level IV of the Executive Schedule.
- AL-3, rate B ..... 70 percent of the rate of basic pay for level IV of the Executive Schedule.
- AL-3, rate C ..... 75 percent of the rate of basic pay for level IV of the Executive Schedule.
- AL-3, rate D ..... 80 percent of the rate of basic pay for level IV of the Executive Schedule.
- AL-3, rate E ..... 85 percent of the rate of basic pay for level IV of the Executive Schedule.
- AL-3, rate F ..... 90 percent of the rate of basic pay for level IV of the Executive Schedule.
- AL-2 ..... 95 percent of the rate of basic pay for level IV of the Executive Schedule.
- AL-1 ..... The rate of basic pay for level IV of the Executive Schedule.”

Subsec. (b)(1)(B), (C). Pub. L. 106-97, § 1(1), added subpars. (B) and (C).

Subsec. (b)(3)(A). Pub. L. 106-97, § 1(2), substituted “at the beginning of the next pay period following” for “upon” in two places.

Subsec. (b)(4). Pub. L. 106-97, § 1(3), added par. (4).

1992—Subsec. (c). Pub. L. 102-378 substituted “shall” for “shall,”.

1990—Pub. L. 101-509 amended section generally. Prior to amendment, section read as follows: “Administrative law judges appointed under section 3105 of this title are entitled to pay prescribed by the Office of Personnel Management independently of agency recommendations or ratings and in accordance with subchapter III of this chapter and chapter 51 of this title.”

1978—Pub. L. 95-454, § 906(a)(2), substituted “Office of Personnel Management” for “Civil Service Commission”.

Pub. L. 95-251 substituted “Administrative law judges” for “Hearing examiners” in section catchline and text.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-509 effective on such date as the President shall determine, but not earlier than

90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title III, § 305] of Pub. L. 101-509, set out as a note under section 5301 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 906(a)(2) of Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

CONVERSION RULE FOR ADMINISTRATIVE LAW JUDGES

Section 529 [title I, § 104(e)] of Pub. L. 101-509 provided that: “In making initial pay adjustments for administrative law judges after this section and the amendments made by this section [enacting section 5372a of this title, amending this section, sections 5102, 5311, and 5335 of this title, section 938 of Title 30, Mineral Lands and Mining, and section 607 of Title 41, Public Contracts] take effect [see Effective Date of 1990 Amendment note set out under section 5301 of this title], the rate of basic pay for any such judge shall, upon conversion to the new pay system, be at least equal to the rate which was payable to that individual immediately before such conversion.”

PAY INCREASES

For adjustment of rates of basic pay for administrative law judges under this section, see the executive order detailing the adjustment of certain rates of pay set out as a note under section 5332 of this title.

§ 5372a. Contract appeals board members

(a) For the purpose of this section—

(1) the term “contract appeals board member” means a member of an agency board of contract appeals appointed under section 7105(a)(2), (c)(2), or (d)(2) of title 41 or a member of the Civilian Board of Contract Appeals appointed under section 7105(b)(2) of title 41; and

(2) the term “appeals board” means an agency board of contract appeals established pursuant to section 7105(a)(1), (c)(1), or (d)(1) of title 41.

(b) Rates of basic pay for contract appeals board members shall be as follows:

(1) Chairman of an appeals board—the rate of basic pay payable for level IV of the Executive Schedule.

(2) Vice chairman of an appeals board—97 percent of the rate under paragraph (1).

(3) Other members of an appeals board—94 percent of the rate under paragraph (1).

(c) Rates of pay taking effect under this section shall be printed in the Federal Register and the Code of Federal Regulations.

(Added Pub. L. 101-509, title V, § 529 [title I, § 104(a)(2)], Nov. 5, 1990, 104 Stat. 1427, 1446; amended Pub. L. 109-163, div. A, title VIII, § 847(f)(1), Jan. 6, 2006, 119 Stat. 3395; Pub. L. 111-350, § 5(a)(9), Jan. 4, 2011, 124 Stat. 3841.)

REFERENCES IN TEXT

Level IV of the Executive Schedule, referred to in subsec. (b)(1), is set out in section 5315 of this title.

AMENDMENTS

2011—Subsec. (a)(1). Pub. L. 111-350, § 5(a)(9)(A), substituted “section 7105(a)(2), (c)(2), or (d)(2) of title 41” for “section 8 of the Contract Disputes Act of 1978” and “section 7105(b)(2) of title 41” for “section 42 of the Office of Federal Procurement Policy Act”.

Subsec. (a)(2). Pub. L. 111-350, § 5(a)(9)(B), substituted “section 7105(a)(1), (c)(1), or (d)(1) of title 41” for “section 8 of the Contract Disputes Act of 1978”.

2006—Subsec. (a)(1). Pub. L. 109-163 inserted “or a member of the Civilian Board of Contract Appeals appointed under section 42 of the Office of Federal Procurement Policy Act” after “of 1978”.

## EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-163, div. A, title VIII, §847(g), Jan. 6, 2006, 119 Stat. 3395, provided that: “Section 42 of the Office of Federal Procurement Policy Act, as added by this section, and the amendments and repeals made by this section [enacting section 438 of Title 41, Public Contracts, amending this section and sections 601 and 607 of Title 41, and enacting provisions set out as a note under section 607 of Title 41], shall take effect 1 year after the date of the enactment of this Act [Jan. 6, 2006].”

## EFFECTIVE DATE

Section effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title III, §305] of Pub. L. 101-509, set out as an Effective Date of 1990 Amendment note under section 5301 of this title.

## § 5372b. Administrative appeals judges

(a) For the purpose of this section—

(1) the term “administrative appeals judge position” means a position the duties of which primarily involve reviewing decisions of administrative law judges appointed under section 3105; and

(2) the term “agency” means an Executive agency, as defined by section 105, but does not include the Government Accountability Office.

(b) Subject to such regulations as the Office of Personnel Management may prescribe, the head of the agency concerned shall fix the rate of basic pay for each administrative appeals judge position within such agency which is not classified above GS-15 pursuant to section 5108.

(c) A rate of basic pay fixed under this section shall be—

(1) not less than the minimum rate of basic pay for level AL-3 under section 5372; and

(2) not greater than the maximum rate of basic pay for level AL-3 under section 5372.

(Added Pub. L. 106-554, §1(a)(3) [title VI, §645(a)(1)], Dec. 21, 2000, 114 Stat. 2763, 2763A-169; amended Pub. L. 108-271, §8(b), July 7, 2004, 118 Stat. 814.)

## REFERENCES IN TEXT

GS-15, referred to in subsec. (b), is contained in the General Schedule which is set out under section 5332 of this title.

## AMENDMENTS

2004—Subsec. (a)(2). Pub. L. 108-271 substituted “Government Accountability Office” for “General Accounting Office”.

## EFFECTIVE DATE

Pub. L. 106-554, §1(a)(3) [title VI, §645(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A-170, provided that: “The amendment made by subsection (a)(1) [enacting this section] shall apply with respect to pay for service performed on or after the first day of the first applicable pay period beginning on or after—

“(1) the 120th day after the date of the enactment of this Act [Dec. 21, 2000]; or

“(2) if earlier, the effective date of regulations prescribed by the Office of Personnel Management to carry out such amendment.”

## § 5373. Limitation on pay fixed by administrative action

(a) Except as provided in subsection (b) and by the Government Employees Salary Reform Act of 1964 (78 Stat. 400) and notwithstanding the provisions of other statutes, the head of an Executive agency or military department who is authorized to fix by administrative action the annual rate of basic pay for a position or employee may not fix the rate at more than the rate for level IV of the Executive Schedule. This section does not impair the authorities provided by—

(1) sections 248, 482, 1766, and 1819 of title 12, section 206 of the Bank Conservation Act, sections 2B(b)<sup>1</sup> and 21A(e)(4) of the Federal Home Loan Bank Act, section 2A(i)<sup>1</sup> of the Home Owners’ Loan Act, and sections 5.11 and 5.58 of the Farm Credit Act of 1971;

(2) section 831b of title 16;

(3) sections 403a-403c, 403e-403h, and 403j of title 50; or

(4)<sup>2</sup> section 4802.

(4)<sup>2</sup> section 2(a)(7) of the Commodity Exchange Act (7 U.S.C. 2(a)(7)).

(b) Subsection (a) shall not affect the authority of the Secretary of Defense or the Secretary of a military department to fix the pay of a civilian employee paid from nonappropriated funds, except that the annual rate of basic pay (including any portion of such pay attributable to comparability with private-sector pay in a locality) of such an employee may not be fixed at a rate greater than the rate for level III of the Executive Schedule.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 473, §5363; renumbered §5373, Pub. L. 95-454, title VIII, §801(a)(3)(A)(ii), Oct. 13, 1978, 92 Stat. 1221; Pub. L. 96-70, title III, §3302(e)(4), Sept. 27, 1979, 93 Stat. 498; Pub. L. 101-73, title VII, §742(b), title XII, §1209, Aug. 9, 1989, 103 Stat. 437, 523; Pub. L. 101-509, title V, §529 [title I, §101(b)(9)(H)], Nov. 5, 1990, 104 Stat. 1427, 1441; Pub. L. 104-201, div. C, title XXXV, §3548(a)(4), Sept. 23, 1996, 110 Stat. 2868; Pub. L. 106-65, div. A, title XI, §1102, Oct. 5, 1999, 113 Stat. 776; Pub. L. 107-123, §8(d)(1)(C), Jan. 16, 2002, 115 Stat. 2399; Pub. L. 107-171, title X, §10702(c)(3), May 13, 2002, 116 Stat. 517.)

## HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 2212.	Aug. 14, 1964, Pub. L. 88-426, §308, 78 Stat. 432. Oct. 6, 1964, Pub. L. 88-631, §3(e), 78 Stat. 1008.

The words “head of an Executive agency or military department” are coextensive with and substituted for “head of any executive department, independent establishment, or agency in the executive branch” because of the definitions in sections 102 and 105.

Standard changes are made to conform to the definitions applicable and the style of this title as outlined in the preface to the report.

## REFERENCES IN TEXT

The Government Employees Salary Reform Act of 1964 (78 Stat. 400), referred to in subsec. (a), is Pub. L.

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

<sup>2</sup> So in original. Two pars. (4) have been enacted.