(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.)

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 remaining 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.)

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 position, for other performance-related payments, or for recruitment or retention incentives paid under sections 5753 and 5754.

(d)(1) An agency may finance initial human capital performance payments using monies from the Human Capital Performance Fund, as available.

(2) In subsequent years, continuation of previously awarded human capital performance payments shall be financed from other agency funds available for salaries and expenses.

(Added Pub. L. 108–136, div. A, title XI, § 1129(a), Nov. 24, 2003, 117 Stat. 1643.)

REFERENCES IN TEXT

Executive Level IV, referred to in subsec. (b)(2), is set out in section 5315 of this title.

PRIOR PROVISIONS

A prior section 5404, added Pub. L. 95–454, title V, § 501, Oct. 13, 1978, 92 Stat. 1183; amended Pub. L. 98–615, title II, § 201(a), Nov. 8, 1984, 98 Stat. 3210; Pub. L. 101–103, § 3(a), Sept. 30, 1989, 103 Stat. 670, related to merit increases, prior to repeal by Pub. L. 103–89, § 3(a)(1), (c), Sept. 30, 1993, 107 Stat. 981, 983, eff. Nov. 1, 1993.

§ 5405. Regulations

The Office shall issue such regulations as it determines to be necessary for the administration of this chapter, including the administration of the Fund. The Office's regulations shall include criteria governing—

(1) an agency plan under section 5406;

(2) the allocation of monies from the Fund to agencies;

(3) the nature, extent, duration, and adjustment of, and approval processes for, payments to individual employees under this chapter;

(4) the relationship to this chapter of agency performance management systems;

(5) training of supervisors, managers, and other individuals involved in the process of making performance distinctions; and

(6) the circumstances under which funds may be allocated by the Office to an agency in amounts below or in excess of the agency's pro rata share.

(Added Pub. L. 108–136, div. A, title XI, § 1129(a), Nov. 24, 2003, 117 Stat. 1643.)

PRIOR PROVISIONS

A prior section 5405, added Pub. L. 95–454, title V, § 501, Oct. 13, 1978, 92 Stat. 1183; amended Pub. L. 98–615, title II, § 201(a), Nov. 8, 1984, 98 Stat. 3211; Pub. L. 101–509, title V, § 529 [title I, § 101(b)(3)(C)], Nov. 5, 1990, 104 Stat. 1427, 1439, related to pay administration, prior to repeal by Pub. L. 103–89, § 3(a)(1), (c), Sept. 30, 1993, 107 Stat. 981, 983, eff. Nov. 1, 1993.

§ 5406. Agency plan

(a) To be eligible for consideration by the Office for an allocation under this section, an agency shall—

(1) develop a plan that incorporates the following elements:

(A) adherence to merit principles set forth in section 2301;

(B) a fair, credible, and transparent employee performance appraisal system;

(C) a link between the pay-for-performance system, the employee performance appraisal system, and the agency's strategic plan;

(D) a means for ensuring employee involvement in the design and implementation of the system;

(E) adequate training and retraining for supervisors, managers, and employees in the implementation and operation of the pay-for-performance system;

(F) a process for ensuring ongoing performance feedback and dialogue between supervisors, managers, and employees throughout the appraisal period, and setting timetables for review;

(G) effective safeguards to ensure that the management of the system is fair and equitable and based on employee performance; and

(H) a means for ensuring that adequate agency resources are allocated for the design, implementation, and administration of the pay-for-performance system;

(2) upon approval, receive an allocation of funding from the Office;

(3) make payments to individual employees in accordance with the agency's approved plan; and

(4) provide such information to the Office regarding payments made and use of funds received under this section as the Office may specify.

(b) The Office, in consultation with the Chief Human Capital Officers Council, shall review and approve an agency's plan before the agency is eligible to receive an allocation of funding from the Office.

(c) The Chief Human Capital Officers Council shall include in its annual report to Congress under section 1303(d) of the Homeland Security Act of 2002 an evaluation of the formulation and implementation of agency performance management systems.

(Added Pub. L. 108–136, div. A, title XI, § 1129(a), Nov. 24, 2003, 117 Stat. 1644.)

REFERENCES IN TEXT

Section 1303(d) of the Homeland Security Act of 2002, referred to in subsec. (c), is section 1303(d) of Pub. L. 107–296, which is set out as a note under section 1401 of this title.

PRIOR PROVISIONS

A prior section 5406, added Pub. L. 98–615, title II, § 201(a), Nov. 8, 1984, 98 Stat. 3211; amended Pub. L. 101–103, § 4, Sept. 30, 1989, 103 Stat. 671; Pub. L. 102–22, § 2(b), Mar. 28, 1991, 105 Stat. 71, related to performance awards, prior to repeal by Pub. L. 103–89, § 3(a)(1), (c), Sept. 30, 1993, 107 Stat. 981, 983, eff. Nov. 1, 1993.

§ 5407. Nature of payment

Any payment to an employee under this section shall be part of the employee's basic pay for the purposes of subchapter III of chapter 83, and chapters 84 and 87, and for such other purposes (other than chapter 75) as the Office shall determine by regulation.

(Added Pub. L. 108–136, div. A, title XI, § 1129(a), Nov. 24, 2003, 117 Stat. 1645.)

PRIOR PROVISIONS

A prior section 5407, added Pub. L. 98–615, title II, § 201(a), Nov. 8, 1984, 98 Stat. 3213, related to cash award program, prior to repeal by Pub. L. 103–89, § 3(a)(1), (c), Sept. 30, 1993, 107 Stat. 981, 983, eff. Nov. 1, 1993.

§ 5408. Appropriations

There is authorized to be appropriated $500,000,000 for fiscal year 2004, and, for each subsequent fiscal year, such sums as may be necessary to carry out the provisions of this chapter. In the first year of implementation, up to 10 percent of the amount appropriated to the Fund