may make a noncompetitive appointment leading to conversion to career or career-conditional employment of a disabled veteran who has a compensable service-connected disability of 30 percent or more.

(Added Pub. L. 95–454, title III, § 307(b)(1), Oct. 13, 1978, 92 Stat. 1147.)

EFFECTIVE DATE

Section effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

§ 3113. Restriction on reemployment after conviction of certain crimes

An employee shall be separated from service and barred from reemployment in the Federal service, if—

(1) the employee is convicted of a violation of section 201(b) of title 18; and

(2) such violation related to conduct prohibited under section 1010(a) of the Controlled Substances Import and Export Act (21 U.S.C. 960(a)).

(Added Pub. L. 105–61, title VI, § 638(a), Oct. 10, 1997, 111 Stat. 1316.)

EFFECTIVE DATE

Section 638(c) of Pub. L. 105–61 provided that: ''This section [enacting this section] shall apply during fiscal year 1998 and each fiscal year thereafter.''

§ 3114. Appointment of candidates to certain positions in the competitive service by the Securities and Exchange Commission

(a) APPLICABILITY.—This section applies with respect to any position of accountant, economist, and securities compliance examiner at the Commission that is in the competitive service, and any position at the Commission in the competitive service that requires specialized knowledge of financial and capital market formation or regulation, financial market structures or surveillance, or information technology.

(b) APPOINTMENT AUTHORITY.—

(1) IN GENERAL.—The Commission may appoint candidates to any position described in subsection (a)—

(A) in accordance with the statutes, rules, and regulations governing appointments in the excepted service; and

(B) notwithstanding any statutes, rules, and regulations governing appointments in the competitive service.

(2) RULE OF CONSTRUCTION.—The appointment of a candidate to a position under authority of this subsection shall not be considered to cause such position to be converted from the competitive service to the excepted service.

(c) REPORTS.—No later than 90 days after the end of fiscal year 2003 (for fiscal year 2003) and 90 days after the end of fiscal year 2005 (for fiscal years 2004 and 2005), the Commission shall submit a report with respect to its exercise of the authority granted by subsection (b) during such fiscal years to the Committee on Government Reform and the Committee on Financial Services of the House of Representatives and the Committee on Governmental Affairs and the Committee on Banking, Housing, and Urban Affairs of the Senate. Such reports shall describe the changes in the hiring process authorized by such subsection, including relevant information related to—

(1) the quality of candidates;

(2) the procedures used by the Commission to select candidates through the streamlined hiring process;

(3) the numbers, types, and grades of employees hired under the authority;

(4) any benefits or shortcomings associated with the use of the authority;

(5) the effect of the exercise of the authority on the hiring of veterans and other demographic groups; and

(6) the way in which managers were trained in the administration of the streamlined hiring system.

(d) COMMISSION DEFINED.—For purposes of this section, the term ''Commission'' means the Securities and Exchange Commission.

(Added Pub. L. 108–44, § 2(a), July 3, 2003, 117 Stat. 842; amended Pub. L. 111–203, title IX, § 929G(a), July 21, 2010, 124 Stat. 1855.)

AMENDMENTS

2010—Pub. L. 111–203 substituted ''Appointment of candidates to certain positions in the competitive service by the Securities and Exchange Commission'' for ''Appointment of accountants, economists, and examiners by the Securities and Exchange Commission'' in section catchline, added subsec. (a), and struck out former subsec. (a). Prior to amendment, text read as follows: ''This section applies with respect to any position of accountant, economist, and securities compliance examiner at the Commission that is in the competitive service.''

CHANGE OF NAME

Committee on Government Reform of House of Representatives changed to Committee on Oversight and Government Reform of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007.

Committee on Governmental Affairs of Senate changed to Committee on Homeland Security and Governmental Affairs of Senate, effective Jan. 4, 2005, by Senate Resolution No. 445, One Hundred Eighth Congress, Oct. 9, 2004.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

SUBCHAPTER II—THE SENIOR EXECUTIVE SERVICE

§ 3131. The Senior Executive Service

It is the purpose of this subchapter to establish a Senior Executive Service to ensure that the executive management of the Government of the United States is responsive to the needs, policies, and goals of the Nation and otherwise is of the highest quality. The Senior Executive Service shall be administered so as to—

(1) provide for a compensation system, including salaries, benefits, and incentives, and for other conditions of employment, designed to attract and retain highly competent senior executives;

(2) ensure that compensation, retention, and tenure are contingent on executive success which is measured on the basis of individual and organizational performance (including such factors as improvements in efficiency, productivity, quality of work or service, cost efficiency, and timeliness of performance and success in meeting equal employment opportunity goals);

(3) assure that senior executives are accountable and responsible for the effectiveness and productivity of employees under them;

(4) recognize exceptional accomplishment;

(5) enable the head of an agency to reassign senior executives to best accomplish the agency's mission;

(6) provide for severance pay, early retirement, and placement assistance for senior executives who are removed from the Senior Executive Service for nondisciplinary reasons;

(7) protect senior executives from arbitrary or capricious actions;

(8) provide for program continuity and policy advocacy in the management of public programs;

(9) maintain a merit personnel system free of prohibited personnel practices;

(10) ensure accountability for honest, economical, and efficient Government;

(11) ensure compliance with all applicable civil service laws, rules, and regulations, including those related to equal employment opportunity, political activity, and conflicts of interest;

(12) provide for the initial and continuing systematic development of highly competent senior executives;

(13) provide for an executive system which is guided by the public interest and free from improper political interference; and

(14) appoint career executives to fill Senior Executive Service positions to the extent practicable, consistent with the effective and efficient implementation of agency policies and responsibilities.

(Added Pub. L. 95–454, title IV, § 402(a), Oct. 13, 1978, 92 Stat. 1154.)

EFFECTIVE DATE

Section 415 of title IV of Pub. L. 95–454 provided that:

''(a)(1) The provisions of this title, other than sections 413 and 414(a) [enacting this subchapter and sections 2101a, 3391 to 3397, 3591 to 3595, 4311 to 4315, 4507, 5381 to 5385, 5752, and 7541 to 7543 of this title, amending sections 2102, 2103, 2108, 3109, 3501, 5311, 5331, 5504, 5541, 5595, 5723, 6304, 8336, and 8339 of this title, and enacting provisions set out as a note under section 5311 of this title], shall take effect 9 months after the date of the enactment of this Act [Oct. 13, 1978].

''(2) The provisions of section 413 of this title [set out as a note under section 3133 of this title] shall take effect on the date of the enactment of this Act [Oct. 13, 1978].

''(3) The provisions of section 414(a) of this title [amending sections 3104 and 5108 of this title and enacting provisions set out as notes under sections 3104 and 5108 of this title] shall take effect 180 days after the date of the enactment of this Act [Oct. 13, 1978].

''(b)(1) The amendments made by sections 401 through 412 of this title [enacting this subchapter and sections 2101a, 3391 to 3397, 3591 to 3595, 4311 to 4315, 4507, 5381 to 5385, 5752, and 7541 to 7543 of this title, amending sections 2102, 2103, 2108, 3109, 3501, 5311, 5331, 5504, 5541, 5595, 5723, 6304, 8336, and 8339 of this title] shall continue to have effect unless, during the first period of 60 calendar days of continuous session of the Congress beginning after 5 years after the effective date of such amendments, a concurrent resolution is introduced and adopted by the Congress disapproving the continuation of the Senior Executive Service. Such amendments shall cease to have effect on the first day of the first fiscal year beginning after the date of the adoption of such concurrent resolution.

''(2) The continuity of a session is broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of the 60-day period.

''(3) The provisions of subsections (d), (e), (f), (g), (h), (i), (j), and (k) of section 5305 of title 5, United States Code, shall apply with respect to any concurrent resolution referred to in paragraph (1) of this subsection, except that for the purpose of this paragraph the reference in such subsection (e) to 10 calendar days shall be considered a reference to 30 calendar days.

''(4) During the 5-year period referred to in paragraph (1) of this subsection, the Director of the Office of Personnel Management shall include in each report required under section 3135 of title 5, United States Code (as added by this title) an evaluation of the effectiveness of the Senior Executive Service and the manner in which such Service is administered.''

CONGRESSIONAL FINDINGS RESPECTING CONTINUATION OF SENIOR EXECUTIVE SERVICE

Pub. L. 98–615, title III, § 301, Nov. 8, 1984, 98 Stat. 3217, provided that: ''The Congress finds that the Senior Executive Service should be continued indefinitely.''

§ 3132. Definitions and exclusions

(a) For the purpose of this subchapter—

(1) ''agency'' means an Executive agency, except a Government corporation and the Government Accountability Office, but does not include—

(A) any agency or unit thereof excluded from coverage by the President under subsection (c) of this section; or

(B) the Federal Bureau of Investigation, the Drug Enforcement Administration, the Central Intelligence Agency, the Defense Intelligence Agency, the National Geospatial-Intelligence Agency, the National Security Agency, Department of Defense intelligence activities the civilian employees of which are subject to section 1590 of title 10, and, as determined by the President, an Executive agency, or unit thereof, whose principal function is the conduct of foreign intelligence or counterintelligence activities;

(C) the Federal Election Commission or the Election Assistance Commission;

(D) the Office of the Comptroller of the Currency, the Office of Thrift Supervision,,[1] the Resolution Trust Corporation, the Farm Credit Administration, the Federal Housing Finance Agency, the National Credit Union Administration, the Bureau of Consumer Financial Protection, and the Office of Financial Research;

(E) the Securities and Exchange Commission; or

(F) the Commodity Futures Trading Commission;

(2) ''Senior Executive Service position'' means any position in an agency which is clas-

[1] So in original.

sified above GS–15 pursuant to section 5108 or in level IV or V of the Executive Schedule, or an equivalent position, which is not required to be filled by an appointment by the President by and with the advice and consent of the Senate, and in which an employee—

(A) directs the work of an organizational unit;

(B) is held accountable for the success of one or more specific programs or projects;

(C) monitors progress toward organizational goals and periodically evaluates and makes appropriate adjustments to such goals;

(D) supervises the work of employees other than personal assistants; or

(E) otherwise exercises important policymaking, policy-determining, or other executive functions;

but does not include—

(i) any position in the Foreign Service of the United States; or

(ii) an administrative law judge position under section 3105 of this title;

(3) ''senior executive'' means a member of the Senior Executive Service;

(4) ''career appointee'' means an individual in a Senior Executive Service position whose appointment to the position or previous appointment to another Senior Executive Service position was based on approval by the Office of Personnel Management of the executive qualifications of such individual;

(5) ''limited term appointee'' means an individual appointed under a nonrenewable appointment for a term of 3 years or less to a Senior Executive Service position the duties of which will expire at the end of such term;

(6) ''limited emergency appointee'' means an individual appointed under a nonrenewable appointment, not to exceed 18 months, to a Senior Executive Service position established to meet a bona fide, unanticipated, urgent need;

(7) ''noncareer appointee'' means an individual in a Senior Executive Service position who is not a career appointee, a limited term appointee, or a limited emergency appointee;

(8) ''career reserved position'' means a position which is required to be filled by a career appointee and which is designated under subsection (b) of this section; and

(9) ''general position'' means any position, other than a career reserved position, which may be filled by either a career appointee, noncareer appointee, limited emergency appointee, or limited term appointee.

(b)(1) For the purpose of paragraph (8) of subsection (a) of this section, the Office shall prescribe the criteria and regulations governing the designation of career reserved positions. The criteria and regulations shall provide that a position shall be designated as a career reserved position only if the filling of the position by a career appointee is necessary to ensure impartiality, or the public's confidence in the impartiality, of the Government. The head of each agency shall be responsible for designating career reserved positions in such agency in accordance with such criteria and regulations.

(2) The Office shall periodically review general positions to determine whether the positions should be designated as career reserved. If the Office determines that any such position should be so designated, it shall order the agency to make the designation.

(3) Notwithstanding the provisions of any other law, any position to be designated as a Senior Executive Service position (except a position in the Executive Office of the President) which—

(A) is under the Executive Schedule, or for which the rate of basic pay is determined by reference to the Executive Schedule, and

(B) on the day before the date of the enactment of the Civil Service Reform Act of 1978 was specifically required under section 2102 of this title or otherwise required by law to be in the competitive service,

shall be designated as a career reserved position if the position entails direct responsibility to the public for the management or operation of particular government programs or functions.

(4) Not later than March 1 of each year, the head of each agency shall publish in the Federal Register a list of positions in the agency which were career reserved positions during the preceding calendar year.

(c) An agency may file an application with the Office setting forth reasons why it, or a unit thereof, should be excluded from the coverage of this subchapter. The Office shall—

(1) review the application and stated reasons,

(2) undertake a review to determine whether the agency or unit should be excluded from the coverage of this subchapter, and

(3) upon completion of its review, recommend to the President whether the agency or unit should be excluded from the coverage of this subchapter.

If the Office recommends that an agency or unit thereof be excluded from the coverage of this subchapter, the President may, on written determination, make the exclusion for the period determined by the President to be appropriate.

(d) Any agency or unit which is excluded from coverage under subsection (c) of this section shall make a sustained effort to bring its personnel system into conformity with the Senior Executive Service to the extent practicable.

(e) The Office may at any time recommend to the President that any exclusion previously granted to an agency or unit thereof under subsection (c) of this section be revoked. Upon recommendation of the Office, the President may revoke, by written determination, any exclusion made under subsection (c) of this section.

(f) If—

(1) any agency is excluded under subsection (c) of this section, or

(2) any exclusion is revoked under subsection (e) of this section,

the Office shall, within 30 days after the action, transmit to the Congress written notice of the exclusion or revocation.

(Added Pub. L. 95–454, title IV, § 402(a), Oct. 13, 1978, 92 Stat. 1155; amended Pub. L. 96–54, § 2(a)(12), Aug. 14, 1979, 93 Stat. 382; Pub. L. 96–187, title II, § 203, Jan. 8, 1980, 93 Stat. 1368; Pub. L. 100–325, § 2(c), May 30, 1988, 102 Stat. 581;

Pub. L. 101–73, title VII, § 742(c), Aug. 9, 1989, 103 Stat. 437; Pub. L. 101–509, title V, § 529 [title I, § 101(b)(9)(A)], Nov. 5, 1990, 104 Stat. 1427, 1441; Pub. L. 101–624, title XVIII, § 1841, Nov. 28, 1990, 104 Stat. 3835; Pub. L. 102–496, title IV, § 402(b), Oct. 24, 1992, 106 Stat. 3184; Pub. L. 102–550, title XIII, § 1351(b), Oct. 28, 1992, 106 Stat. 3969; Pub. L. 103–359, title V, § 501(d), Oct. 14, 1994, 108 Stat. 3429; Pub. L. 104–201, div. A, title XI, § 1122(a)(1), Sept. 23, 1996, 110 Stat. 2687; Pub. L. 107–123, § 8(d)(1)(B), Jan. 16, 2002, 115 Stat. 2399; Pub. L. 107–171, title X, § 10702(c)(1), May 13, 2002, 116 Stat. 517; Pub. L. 107–252, title VIII, § 811(b), Oct. 29, 2002, 116 Stat. 1727; Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814; Pub. L. 110–289, div. A, title I, § 1161(g)(2), July 30, 2008, 122 Stat. 2781; Pub. L. 110–417, [div. A], title IX, § 931(a)(1), Oct. 14, 2008, 122 Stat. 4575; Pub. L. 111–203, title I, § 152(d)(4), July 21, 2010, 124 Stat. 1414.)

REFERENCES IN TEXT

Level IV or V of the Executive Schedule, referred to in subsec. (a)(2), are set out in sections 5315 and 5316 of this title.

The date of the enactment of the Civil Service Reform Act of 1978, referred to in subsec. (b)(3), is the date of the enactment of Pub. L. 95–454, which was approved Oct. 13, 1978.

AMENDMENTS

2010—Subsec. (a)(1)(D). Pub. L. 111–203 substituted ''the National Credit Union Administration, the Bureau of Consumer Financial Protection, and the Office of Financial Research;'' for ''and the National Credit Union Administration;''.

2008—Subsec. (a)(1)(B). Pub. L. 110–417 substituted ''National Geospatial-Intelligence Agency'' for ''National Imagery and Mapping Agency''.

Pub. L. 110–289, § 1161(g)(2)(A), substituted '', and'' for ''., and''.

Subsec. (a)(1)(D). Pub. L. 110–289, § 1161(g)(2)(B), struck out ''the Federal Housing Finance Board'' after ''the Office of Thrift Supervision,'', substituted ''the Federal Housing Finance Agency'' for ''the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development'', and struck out ''or or'' at end.

Subsec. (a)(1)(E), (F). Pub. L. 110–289, § 1161(g)(2)(C), (D), inserted ''or'' at end of subpar. (E), relating to Securities and Exchange Commission, and redesignated subpar. (E), relating to Commodity Futures Trading Commission, as (F).

2004—Subsec. (a)(1). Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office'' in introductory provisions.

2002—Subsec. (a)(1)(C). Pub. L. 107–252, § 811(b), inserted ''or the Election Assistance Commission'' after ''Commission''.

Pub. L. 107–171, § 10702(c)(1)(A), which directed amendment by striking ''or'' at the end, could not be executed because the word ''or'' did not appear at the end. See below.

Pub. L. 107–123, § 8(d)(1)(B)(i), struck out ''or'' at end.

Subsec. (a)(1)(D). Pub. L. 107–171, § 10702(c)(1)(B), inserted ''or'' at end.

Pub. L. 107–123, § 8(d)(1)(B)(ii), inserted ''or'' at end.

Subsec. (a)(1)(E). Pub. L. 107–171, § 10702(c)(1)(C), added subpar. (E) relating to Commodity Futures Trading Commission.

Pub. L. 107–123, § 8(d)(1)(B)(iii), added subpar. (E) relating to the Securities and Exchange Commission.

1996—Subsec. (a)(1)(B). Pub. L. 104–201 substituted ''National Imagery and Mapping Agency'' for ''Central Imagery Office''.

1994—Subsec. (a)(1)(B). Pub. L. 103–359 inserted ''the Central Imagery Office,'' after ''Defense Intelligence Agency,''.

1992—Subsec. (a)(1)(B). Pub. L. 102–496 inserted '', Department of Defense intelligence activities the civilian employees of which are subject to section 1590 of title 10,'' after ''National Security Agency''.

Subsec. (a)(1)(D). Pub. L. 102–550 inserted ''the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development,'' after ''Farm Credit Administration,''.

1990—Subsec. (a)(1)(D). Pub. L. 101–624 inserted reference to Farm Credit Administration.

Subsec. (a)(2). Pub. L. 101–509 substituted ''classified above GS–15 pursuant to section 5108'' for ''in GS–16, 17, or 18 of the General Schedule''.

1989—Subsec. (a)(1)(D). Pub. L. 101–73 added subpar. (D).

1988—Subsec. (a)(1)(B). Pub. L. 100–325, § 2(c)(1), inserted reference to Drug Enforcement Administration.

Subsec. (a)(2)(iii). Pub. L. 100–235, § 2(c)(2), struck out cl. (iii) which read as follows: ''any position in the Drug Enforcement Administration which is excluded from the competitive service under section 201 of the Crime Control Act of 1976 (5 U.S.C. 5108 note; 90 Stat. 2425);''.

1980—Subsec. (a)(1)(C). Pub. L. 96–187 added subpar. (C).

1979—Subsec. (a)(1)(B). Pub. L. 96–54 inserted ''and,'' after ''Security Agency,''.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–289, div. A , title I, § 1163, July 30, 2008, 122 Stat. 2782, provided that: ''Except as otherwise specifically provided in this title [see Tables for classification], this title and the amendments made by this title shall take effect on, and shall apply beginning on, the date of enactment of this Act [July 30, 2008].''

EFFECTIVE DATE OF 2002 AMENDMENTS

Amendment by Pub. L. 107–252 effective upon appointment of all members of the Election Assistance Commission under section 15323 of Title 42, The Public Health and Welfare, see section 15534(a) of Title 42.

Amendment by Pub. L. 107–123 effective Oct. 1, 2001, see section 11 of Pub. L. 107–123, set out as a note under section 78ee of Title 15, Commerce and Trade.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–201 effective Oct. 1, 1996, see section 1124 of Pub. L. 104–201, set out as a note under section 193 of Title 10, Armed Forces.

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 1980 AMENDMENT

Amendment by Pub. L. 96–187 effective on Jan. 8, 1980, see section 301(a) of Pub. L. 96–187, set out as a note under section 431 of Title 2, The Congress.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–54 effective July 12, 1979, see section 2(b) of Pub. L. 96–54, set out as a note under section 305 of this title.

§ 3133. Authorization of positions; authority for appointment

(a) During each even-numbered calendar year, each agency shall—

(1) examine its needs for Senior Executive Service positions for each of the 2 fiscal years beginning after such calendar year; and

(2) submit to the Office of Personnel Management a written request for a specific number of Senior Executive Service positions for each of such fiscal years.

(b) Each agency request submitted under subsection (a) of this section shall—

(1) be based on the anticipated type and extent of program activities and budget requests of the agency for each of the 2 fiscal years involved, and such other factors as may be prescribed from time to time by the Office; and

(2) identify, by position title, positions which are proposed to be designated as or removed from designation as career reserved positions, and set forth justifications for such proposed actions.

(c) The Office of Personnel Management, in consultation with the Office of Management and Budget, shall review the request of each agency and shall authorize, for each of the 2 fiscal years covered by requests required under subsection (a) of this section, a specific number of Senior Executive Service positions for each agency.

(d)(1) The Office of Personnel Management may, on a written request of an agency or on its own initiative, make an adjustment in the number of positions authorized for any agency. Each agency request under this paragraph shall be submitted in such form, and shall be based on such factors, as the Office shall prescribe.

(2) The total number of positions in the Senior Executive Service may not at any time during any fiscal year exceed 105 percent of the total number of positions authorized under subsection (c) of this section for such fiscal year.

(e)(1) Not later than July 1, 1979, and from time to time thereafter as the Director of the Office of Personnel Management finds appropriate, the Director shall establish, by rule issued in accordance with section 1103(b) of this title, the number of positions out of the total number of positions in the Senior Executive Service, as authorized by this section or section 413 of the Civil Service Reform Act of 1978, which are to be career reserved positions. Except as provided in paragraph (2) of this subsection, the number of positions required by this subsection to be career reserved positions shall not be less than the number of the positions then in the Senior Executive Service which, before the date of such Act, were authorized to be filled only through competitive civil service examination.

(2) The Director may, by rule, designate a number of career reserved positions which is less than the number required by paragraph (1) of this subsection only if the Director determines such lesser number necessary in order to designate as general positions one or more positions (other than positions described in section 3132(b)(3) of this title) which—

(A) involve policymaking responsibilities which require the advocacy or management of programs of the President and support of controversial aspects of such programs;

(B) involve significant participation in the major political policies of the President; or

(C) require the senior executives in the positions to serve as personal assistants of, or advisers to, Presidential appointees.

The Director shall provide a full explanation for his determination in each case.

(Added Pub. L. 95–454, title IV, §402(a), Oct. 13, 1978, 92 Stat. 1158.)

REFERENCES IN TEXT

Section 413 of the Civil Service Reform Act of 1978, referred to in subsec. (e)(1), is set out as a note below.

The date of such Act, referred to in subsec. (e)(1), probably means Oct. 13, 1978, the date of the enactment of the Civil Service Reform Act of 1978.

CONVERSION TO SENIOR EXECUTIVE SERVICE

Section 413 of Pub. L. 95–454 provided that:

''(a) For the purpose of this section, 'agency', 'Senior Executive Service position', 'career appointee', 'career reserved position', 'limited term appointee', 'noncareer appointee', and 'general position' have the meanings set forth in section 3132(a) of title 5, United States Code (as added by this title) and 'Senior Executive Service' has the meaning set forth in section 2101a of such title 5 (as added by this title).

''(b)(1) Under the guidance of the Office of Personnel Management, each agency shall—

''(A) designate those positions which it considers should be Senior Executive Service positions and designate which of those positions it considers should be career reserved positions; and

''(B) submit to the Office a written request for—

''(i) a specific number of Senior Executive Service positions; and

''(ii) authority to employ a specific number of noncareer appointees.

''(2) The Office of Personnel Management shall review the designations and requests of each agency under paragraph (1) of this subsection, and shall establish interim authorizations in accordance with sections 3133 and 3134 of title 5, United States Code (as added by this Act), and shall publish the titles of the authorized positions in the Federal Register.

''(c)(1) Each employee serving in a position at the time it is designated as a Senior Executive Service position under subsection (b) of this section shall elect to—

''(A) decline conversion and be appointed to a position under such employee's current type of appointment and pay system, retaining the grade, seniority, and other rights and benefits associated with such type of appointment and pay system; or

''(B) accept conversion and be appointed to a Senior Executive Service position in accordance with the provisions of subsections (d), (e), (f), (g), and (h) of this section.

The appointment of an employee in an agency because of an election under subparagraph (A) of this paragraph shall not result in the separation or reduction in grade of any other employee in such agency.

''(2) Any employee in a position which has been designated a Senior Executive Service position under this section shall be notified in writing of such designation, the election required under paragraph (1) of this subsection, and the provisions of subsections (d), (e), (f), (g), and (h) of this section. The employee shall be given 90 days from the date of such notification to make the election under paragraph (1) of this subsection.

''(d) Each employee who has elected to accept conversion to a Senior Executive Service position under subsection (c)(1)(B) of this section and who is serving under—

''(1) a career or career-conditional appointment; or

''(2) a similar type of appointment in an excepted service position, as determined by the Office;

in a position which is designated as a Senior Executive Service position shall be appointed as a career appointee to such Senior Executive Service position without regard to section 3393(b)–(e) of title 5, United States Code (as added by this title).

''(e) Each employee who has elected conversion to a Senior Executive Service position under subsection

(c)(1)(B) of this section and who is serving under an excepted appointment in a position which is not designated a career reserved position in the Senior Executive Service, but is—

''(1) a position in Schedule C of subpart C of part 213 of title 5, Code of Federal Regulations;

''(2) a position filled by noncareer executive assignment under subpart F of part 305 of title 5, Code of Federal Regulations; or

''(3) a position in the Executive Schedule under subchapter II of chapter 53 of title 5, United States Code [section 5311 et seq. of this title], other than a career Executive Schedule position;

shall be appointed as a noncareer appointee to a Senior Executive Service position.

''(f) Each employee who has elected conversion to a Senior Executive Service position under subsection (c)(1)(B) of this section, who is serving in a position described in paragraph (1), (2), or (3) of subsection (e) of this section, and whose position is designated as a career reserved position under subsection (b) of this section shall be appointed as a noncareer appointee to an appropriate general position in the Senior Executive Service or shall be separated.

''(g) Each employee who has elected conversion to a Senior Executive Service position under subsection (c)(1)(B) of this section, who is serving in a position described in paragraph (1), (2), or (3) of subsection (e) of this section, and whose position is designated as a Senior Executive Service position and who has reinstatement eligibility to a position in the competitive service, may, on request to the Office, be appointed as a career appointee to a Senior Executive Service position. The name of, and basis for reinstatement eligibility for, each employee appointed as a career appointee under this subsection shall be published in the Federal Register.

''(h) Each employee who has elected conversion to a Senior Executive Service position under subsection (c)(1)(B) of this section and who is serving under a limited executive assignment under subpart F of part 305 of title 5, Code of Federal Regulations, shall—

''(1) be appointed as a limited term appointee to a Senior Executive Service position if the position then held by such employee will terminate within 3 years of the date of such appointment;

''(2) be appointed as a noncareer appointee to a Senior Executive Service position if the position then held by such employee is designated as a general position; or

''(3) be appointed as a noncareer appointee to a general position if the position then held by such employee is designated as a career reserved position.

''(i) The rate of basic pay for any employee appointed to a Senior Executive Service position under this section shall be greater than or equal to the rate of basic pay payable for the position held by such employee at the time of such appointment.

''(j) Any employee who is aggrieved by any action by any agency under this section is entitled to appeal to the Merit Systems Protection Board under section 7701 of title 5, United States Code (as added by this title). An agency shall take any corrective action which the Board orders in its decision on an appeal under this subsection.

''(k) The Office shall prescribe regulations to carry out the purpose of this section.''

Section 415(a)(2) of Pub. L. 95–454 provided that section 413 is effective Oct. 13, 1978.

§ 3134. Limitations on noncareer and limited appointments

(a) During each calendar year, each agency shall—

(1) examine its needs for employment of noncareer appointees for the fiscal year beginning in the following year; and

(2) submit to the Office of Personnel Management, in accordance with regulations prescribed by the Office, a written request for authority to employ a specific number of noncareer appointees for such fiscal year.

(b) The number of noncareer appointees in each agency shall be determined annually by the Office on the basis of demonstrated need of the agency. The total number of noncareer appointees in all agencies may not exceed 10 percent of the total number of Senior Executive Service positions in all agencies.

(c) Subject to the 10 percent limitation of subsection (b) of this section, the Office may adjust the number of noncareer positions authorized for any agency under subsection (b) of this section if emergency needs arise that were not anticipated when the original authorizations were made.

(d) The number of Senior Executive Service positions in any agency which are filled by noncareer appointees may not at any time exceed the greater of—

(1) 25 percent of the total number of Senior Executive Service positions in the agency; or

(2) the number of positions in the agency which were filled on the date of the enactment of the Civil Service Reform Act of 1978 by—

(A) noncareer executive assignments under subpart F of part 305 of title 5, Code of Federal Regulations, as in effect on such date, or

(B) appointments to level IV or V of the Executive Schedule which were not required on such date to be made by and with the advice and consent of the Senate.

This subsection shall not apply in the case of any agency having fewer than 4 Senior Executive Service positions.

(e) The total number of limited emergency appointees and limited term appointees in all agencies may not exceed 5 percent of the total number of Senior Executive Service positions in all agencies.

(Added Pub. L. 95–454, title IV, § 402(a), Oct. 13, 1978, 92 Stat. 1159.)

REFERENCES IN TEXT

The date of enactment of the Civil Service Reform Act of 1978, referred to in subsec. (d)(2), is the date of enactment of Pub. L. 95–454, which was approved Oct. 13, 1978.

Level IV or V of the Executive Schedule, referred to in subsec. (d)(2)(B), are set out in sections 5315 and 5316 of this title.

[§ 3135. Repealed. Pub. L. 104–66, title II, § 2181(a)(1), Dec. 21, 1995, 109 Stat. 732]

Section, added Pub. L. 95–454, title IV, § 402(a), Oct. 13, 1978, 92 Stat. 1159; amended Pub. L. 98–168, title III, § 301(b), Nov. 29, 1983, 97 Stat. 1112; Pub. L. 98–615, title III, § 306(a), Nov. 8, 1984, 98 Stat. 3219, directed Office of Personnel Management to submit reports to Congress relating to Senior Executive Service.

§ 3136. Regulations

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

(Added Pub. L. 95–454, title IV, § 402(a), Oct. 13, 1978, 92 Stat. 1160.)

SUBCHAPTER III—THE FEDERAL BUREAU OF INVESTIGATION AND DRUG ENFORCEMENT ADMINISTRATION SENIOR EXECUTIVE SERVICE

§3151. The Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service

(a) The Attorney General may by regulation establish a personnel system for senior personnel within the Federal Bureau of Investigation and the Drug Enforcement Administration to be known as the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service (hereinafter in this subchapter referred to as the ''FBI–DEA Senior Executive Service''). The regulations establishing the FBI–DEA Senior Executive Service shall—

(1) meet the requirements set forth in section 3131 for the Senior Executive Service;

(2) provide that positions in the FBI–DEA Senior Executive Service meet requirements that are consistent with the provisions of section 3132(a)(2);

(3) provide rates of pay for the FBI–DEA Senior Executive Service that are not in excess of the maximum rate or less than the minimum rate of basic pay established for the Senior Executive Service under section 5382 and that are adjusted at the same time and to the same extent as rates of basic pay for the Senior Executive Service are adjusted;

(4) provide a performance appraisal system for the FBI–DEA Senior Executive Service that conforms to the provisions of subchapter II of chapter 43;

(5) provide for—

(A) removal consistent with section 3592;

(B) reduction-in-force procedures consistent with section 3595(a), together with measures to ensure that a member of the FBI–DEA Senior Executive Service may not be removed due to a reduction in force unless reasonable efforts to place such member in another such position are first taken;

(C) procedures in accordance with which any furlough affecting the FBI–DEA Senior Executive Service shall be carried out;

(D) removal or suspension consistent with subsections (a), (b), and (c) of section 7543 (except that any hearing or appeal to which a member of the FBI–DEA Senior Executive Service is entitled shall be held or decided pursuant to procedures established by regulations of the Attorney General); and

(E) recertification consistent with section 3393a;[1]

(6) permit the payment of performance awards to members of the FBI–DEA Senior Executive Service consistent with the provisions applicable to performance awards under section 5384; and

(7) provide that members of the FBI–DEA Senior Executive Service may be granted sabbatical leaves consistent with the provisions of section 3396(c).

(b) Except as provided in subsection (a), the Attorney General may—

(1) make applicable to the FBI–DEA Senior Executive Service any of the provisions of this title applicable to applicants for or members of the Senior Executive Service; and

(2) appoint, promote, and assign individuals to positions established within the FBI–DEA Senior Executive Service without regard to the provisions of this title governing appointments and other personnel actions in the competitive service.

(c) The President, based on the recommendations of the Attorney General, may award ranks to members of the FBI–DEA Senior Executive Service in a manner consistent with the provisions of section 4507.

(d) Notwithstanding any other provision of this section, the Attorney General may detail or assign any member of the FBI–DEA Senior Executive Service to serve in a position outside the Federal Bureau of Investigation or the Drug Enforcement Administration (as the case may be) in which the member's expertise and experience may be of benefit to the Federal Bureau of Investigation or the Drug Enforcement Administration (as the case may be) or another Government agency. Any such member shall not by reason of such detail or assignment lose any entitlement or status associated with membership in the FBI–DEA Senior Executive Service.

(e) The Attorney General shall each year submit to Congress, at the time the budget is submitted by the President to the Congress for the next fiscal year, a report on the FBI–DEA Senior Executive Service. The report shall include, in the aggregate and by agency—

(1) the number of FBI–DEA Senior Executive Service positions established as of the end of the preceding fiscal year;

(2) the number of individuals being paid at each rate of basic pay for the FBI–DEA Senior Executive Service as of the end of the preceding fiscal year;

(3) the number, distribution, and amount of awards paid to members of the FBI–DEA Senior Executive Service during the preceding fiscal year; and

(4) the number of individuals removed from the FBI–DEA Senior Executive Service during the preceding fiscal year—

(A) for less than fully successful performance;

(B) due to a reduction in force; or

(C) for any other reason.

(Added Pub. L. 100–325, §1(a), May 30, 1988, 102 Stat. 579; amended Pub. L. 101–194, title V, §506(b)(1), Nov. 30, 1989, 103 Stat. 1758; Pub. L. 109–108, title I, §111, Nov. 22, 2005, 119 Stat. 2305.)

REFERENCES IN TEXT

Section 3393a, referred to in subsec. (a)(5)(E), was repealed by Pub. L. 107–296, title XIII, §1321(a)(1)(B), Nov. 25, 2002, 116 Stat. 2296.

Provisions of this title governing appointments and other personnel actions in the competitive service, referred to in subsec. (b)(2), are classified generally to section 3301 et seq. of this title.

AMENDMENTS

2005—Subsec. (b). Pub. L. 109–108 struck out par. (1) designation before ''Except as provided'', redesignated subpars. (A) and (B) as pars. (1) and (2), respectively, and struck out former par. (2) which read as follows:

[1] See References in Text note below.