less than fully successful executive performance as determined under subchapter II of chapter 43 of this title, or failure to be recertified as a senior executive under section 3393a.''

1989—Subsec. (a)(2). Pub. L. 101–194 struck out ''or'' after ''malfeasance,'' and inserted '', or failure to be recertified as a senior executive under section 3393a'' before period at end.

1984—Subsec. (c)(1)(B). Pub. L. 98–615 inserted ''before October 1, 1984,''.

1981—Subsec. (c). Pub. L. 97–35 added subsec. (c).

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

Pub. L. 107–296, title XIII, § 1321(c), Nov. 25, 2002, 116 Stat. 2297, provided that: ''The amendment made by subsection (a)(2)(B) [amending this section] shall not apply with respect to an individual who, before the effective date of this section [see note above], leaves the Senior Executive Service for failure to be recertified as a senior executive under section 3393a of title 5, United States Code.''

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–194 effective Jan. 1, 1991, see section 506(d) of Pub. L. 101–194, set out as a note under section 3151 of this title.

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.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective June 1, 1981, with certain exceptions and conditions, see section 1704(e) of Pub. L. 97–35, set out as an Effective Date note under section 3595 of this title.

§ 3594. Guaranteed placement in other personnel systems

(a) A career appointee who was appointed from a civil service position held under a career or career-conditional appointment (or an appointment of equivalent tenure, as determined by the Office of Personnel Management) and who, for reasons other than misconduct, neglect of duty, or malfeasance, is removed from the Senior Executive Service during the probationary period under section 3393(d) of this title, shall be entitled to be placed in a civil service position (other than a Senior Executive Service position) in any agency.

(b) A career appointee who has completed the probationary period under section 3393(d) of this title, and who—

(1) is removed from the Senior Executive Service for less than fully successful executive performance as determined under subchapter II of chapter 43 of this title; or

(2) is removed from the Senior Executive Service under paragraph (4) or (5) of section 3595(b) of this title;

shall be entitled to be placed in a civil service position (other than a Senior Executive Service position) in any agency.

(c)(1) For purposes of subsections (a) and (b) of this section—

(A) the position in which any career appointee is placed under such subsections shall be a continuing position at GS–15 of the General Schedule or classified above GS–15 pursuant to section 5108, or an equivalent position, and, in the case of a career appointee referred to in subsection (a) of this section, the career appointee shall be entitled to an appointment of a tenure equivalent to the tenure of the appointment held in the position from which the career appointee was appointed;

(B) any career appointee placed under subsection (a) or (b) of this section shall be entitled to receive basic pay at the highest of—

(i) the rate of basic pay in effect for the position in which placed;

(ii) the rate of basic pay in effect at the time of the placement for the position the career appointee held in the civil service immediately before being appointed to the Senior Executive Service; or

(iii) the rate of basic pay in effect for the career appointee immediately before being placed under subsection (a) or (b) of this section; and

(C) the placement of any career appointee under subsection (a) or (b) of this section may not be made to a position which would cause the separation or reduction in grade of any other employee.

(2) An employee who is receiving basic pay under paragraph (1)(B)(ii) or (iii) of this subsection is entitled to have the basic pay rate of the employee increased by 50 percent of the amount of each increase in the maximum rate of basic pay for the grade of the position in which the employee is placed under subsection (a) or (b) of this section until the rate is equal to the rate in effect under paragraph (1)(B)(i) of this subsection for the position in which the employee is placed.

(Added Pub. L. 95–454, title IV, § 404(b), Oct. 13, 1978, 92 Stat. 1166; amended Pub. L. 98–615, title III, § 303(b), Nov. 8, 1984, 98 Stat. 3217; Pub. L. 101–194, title V, § 506(b)(5), Nov. 30, 1989, 103 Stat. 1758; Pub. L. 101–509, title V, § 529 [title I, § 101(b)(9)(E)], Nov. 5, 1990, 104 Stat. 1427, 1441; Pub. L. 102–378, § 2(16), Oct. 2, 1992, 106 Stat. 1347; Pub. L. 107–296, title XIII, § 1321(a)(2)(C), Nov. 25, 2002, 116 Stat. 2297.)

REFERENCES IN TEXT

GS–15 of the General Schedule, referred to in subsec. (c)(1)(A), is set out under section 5332 of this title.

AMENDMENTS

2002—Subsec. (b)(1). Pub. L. 107–296, § 1321(a)(2)(C)(i), inserted ''or'' at end.

Subsec. (b)(2). Pub. L. 107–296, § 1321(a)(2)(C)(ii), struck out ''or'' at end.

Subsec. (b)(3). Pub. L. 107–296, § 1321(a)(2)(C)(iii), struck out par. (3) which read as follows: ''is removed from the Senior Executive Service for failure to be recertified under section 3393a;''.

1992—Subsec. (c)(1)(A). Pub. L. 102–378 substituted ''section 5108,'' for ''section 5108.,''.

1990—Subsec. (c)(1)(A). Pub. L. 101–509 substituted ''at GS–15 of the General Schedule or classified above GS–15 pursuant to section 5108,'' for ''at GS–15 or above of the General Schedule''.

1989—Subsec. (b)(3). Pub. L. 101–194 added par. (3).

1984—Subsec. (b). Pub. L. 98–615 inserted provision relating to career appointees removed from the Senior Executive Service under section 3595(b)(4) or (5) of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

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 1989 AMENDMENT

Amendment by Pub. L. 101–194 effective Jan. 1, 1991, see section 506(d) of Pub. L. 101–194, set out as a note under section 3151 of this title.

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.

§ 3595. Reduction in force in the Senior Executive Service

(a) An agency shall establish competitive procedures for determining who shall be removed from the Senior Executive Service in any reduction in force of career appointees within that agency. The competitive procedures shall be designed to assure that such determinations are primarily on the basis of performance, as determined under subchapter II of chapter 43 of this title.

(b)(1) This subsection applies to any career appointee who has successfully completed the probationary period prescribed under section 3393(d) of this title.

(2) Except as provided in paragraphs (4) and (5), a career appointee may not be removed from the Senior Executive Service due to a reduction in force within an agency.

(3) A career appointee who, but for this subsection, would be removed from the Senior Executive Service due to a reduction in force within an agency—

(A) is entitled to be assigned by the head of that agency to a vacant Senior Executive Service position for which the career appointee is qualified; or

(B) if the agency head certifies, in writing, to the Office of Personnel Management that no such position is available in the agency, shall be placed by the Office in any agency in any vacant Senior Executive Service position unless the head of that agency determines that the career appointee is not qualified for that position.

The Office of Personnel Management shall take all reasonable steps to place a career appointee under subparagraph (B) and may require any agency to take any action which the Office considers necessary to carry out any such placement.

(4) A career appointee who is not assigned under paragraph (3)(A) may be removed from the Senior Executive Service due to a reduction in force if the career appointee declines a reasonable offer for placement in a Senior Executive Service position under paragraph (3)(B).

(5) A career appointee who is not assigned under paragraph (3)(A) may be removed from the Senior Executive Service due to a reduction in force if the career appointee is not placed in another Senior Executive Service position under paragraph (3)(B) within 45 days after the Office receives certification regarding that appointee under paragraph (3)(B).

(c) A career appointee is entitled to appeal to the Merit Systems Protection Board under section 7701 of this title whether the reduction in force complies with the competitive procedures required under subsection (a).

(d) For purposes of this section, ''reduction in force'' includes the elimination or modification of a position due to a reorganization, due to a lack of funds or curtailment of work, or due to any other factor.

(e) The Office shall prescribe regulations under which the rights accorded to a career appointee in the event of a transfer of function are comparable to the rights accorded to a competing employee under section 3503 of this title in the event of such a transfer.

(Added Pub. L. 97–35, title XVII, § 1704(a)(1), Aug. 13, 1981, 95 Stat. 756; amended Pub. L. 97–346, § 5(a), (b), Oct. 15, 1982, 96 Stat. 1650; Pub. L. 98–615, title III, §§ 303(c), (d), 304(b), Nov. 8, 1984, 98 Stat. 3218, 3219.)

PRIOR PROVISIONS

A prior section 3595, added Pub. L. 95–454, title IV, § 404(b), Oct. 13, 1978, 92 Stat. 1167, which related to prescribing regulations, was renumbered section 3596 by Pub. L. 97–35, title XVII, § 1704(a)(1), Aug. 13, 1981, 95 Stat. 756.

AMENDMENTS

1984—Subsec. (b)(3)(B). Pub. L. 98–615, § 303(c)(1), struck out the designation ''(i)'' before provisions relating to placement in any agency in any vacant Executive Service position, and struck out former cl. (ii), which had related to detailing by the Office of Personnel Management to any vacant Senior Executive Service position for which the Office deemed the employee to be qualified in any agency for a period not to exceed 60 days, and placement in such position by the Office after the period of such detail, unless the head of the agency determined that the career appointee was not qualified for such position.

Subsec. (b)(4). Pub. L. 98–615, § 303(c)(2), struck out ''and the civil service'' after ''removed from the Senior Executive Service'', struck out the designation ''(A)'' before ''the career appointee declines'', and substituted a period for the semicolon and ''or'' at the end thereof. Former subpar. (B) redesignated par. (5).

Subsec. (b)(5). Pub. L. 98–615, § 303(c)(2), redesignated former par. (4)(B) as (5), substituted ''A career appointee who is not assigned under paragraph (3)(A) may be removed from the Senior Executive Service due to a reduction in force if'' for ''subject to paragraph (5),'', substituted ''45 days'' for ''120 days'', and struck out former par. (5), which had provided that persons who were career appointees as of May 31, 1981, could only be removed from the Senior Executive Service and the civil service due to a reduction in force after the 120-day period if the Director of the Office of Personnel Management certified to certain Congressional committees that the Office had taken all reasonable steps to place the appointee but had been unable to do so due to the appointee's highly specialized skills and experience.

Subsec. (c). Pub. L. 98–615, § 303(d), struck out the designation ''(1)'' before ''whether the reduction'', and struck out pars. (2) and (3), which had provided, respectively, the right to appeal any removal under subsec. (b)(4)(A) and the right to appeal any nonappointment