the provisions of this subchapter (subject to any conditions or limitations the Office may establish)—

(1) to any individual reduced to a grade of a covered pay schedule from a position not subject to this subchapter;

(2) to individuals to whom such provisions do not otherwise apply; and

(3) to situations the application to which is justified for purposes of carrying out the mission of the agency or agencies involved.

Individuals with respect to whom authority under paragraph (2) may be exercised include individuals who are moved without a break in service of more than 3 days from employment in nonappropriated fund instrumentalities of the Department of Defense or the Coast Guard described in section 2105(c) to employment in the Department of Defense or the Coast Guard, respectively, that is not described in section 2105(c).

(Added Pub. L. 95–454, title VIII, § 801(a)(1), Oct. 13, 1978, 92 Stat. 1220; amended Pub. L. 101–508, title VII, § 7202(f), Nov. 5, 1990, 104 Stat. 1388–336; Pub. L. 108–411, title III, § 301(a)(6), Oct. 30, 2004, 118 Stat. 2317.)

PRIOR PROVISIONS

A prior section 5365, added Pub. L. 91–34, § 1(a), June 30, 1969, 83 Stat. 41; amended Pub. L. 94–183, § 2(20), Dec. 31, 1975, 89 Stat. 1058, which related to the police force of National Zoological Park, was renumbered section 5375 of this title by Pub. L. 95–454, title VIII, § 801(a)(3)(A)(ii), Oct. 13, 1978, 92 Stat. 1221.

AMENDMENTS

2004—Subsec. (b). Pub. L. 108–411 inserted ''(subject to any conditions or limitations the Office may establish)'' after ''provisions of this subchapter'' in introductory provisions.

1990—Subsec. (b). Pub. L. 101–508 inserted at end ''Individuals with respect to whom authority under paragraph (2) may be exercised include individuals who are moved without a break in service of more than 3 days from employment in nonappropriated fund instrumentalities of the Department of Defense or the Coast Guard described in section 2105(c) to employment in the Department of Defense or the Coast Guard, respectively, that is not described in section 2105(c).''

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–411 effective on the first day of the first applicable pay period beginning on or after the 180th day after Oct. 30, 2004, with provisions relating to conversion rules, see section 301(d) of Pub. L. 108–411, set out as a note under section 5363 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable with respect to any individual who, on or after Jan. 1, 1987, moves from employment in nonappropriated fund instrumentality of Department of Defense or Coast Guard, that is described in section 2105(c) of this title, to employment in Department or Coast Guard, that is not described in section 2105(c), or who moves from employment in Department or Coast Guard, that is not described in section 2105(c), to employment in nonappropriated fund instrumentality of Department or Coast Guard, that is described in section 2105(c), see section 7202(m)(1) of Pub. L. 101–508, set out as a note under section 2105 of this title.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 5366. Appeals

(a)(1) In the case of the termination of any benefits available to an employee under this subchapter on the grounds such employee declined a reasonable offer of a position the grade or pay of which was equal to or greater than his retained grade or pay, such termination may be appealed to the Office of Personnel Management under procedures prescribed by the Office.

(2) Nothing in this subchapter shall be construed to affect the right of any employee to appeal—

(A) under section 5112(b) or 5346(c) of this title, or otherwise, any reclassification of a position; or

(B) under procedures prescribed by the Office of Personnel Management, any reduction-in-force action.

(b) For purposes of any appeal procedures (other than those described in subsection (a) of this section) or any grievance procedure negotiated under the provisions of chapter 71 of this title—

(1) any action which is the basis of an individual's entitlement to benefits under this subchapter, and

(2) any termination of any such benefits under this subchapter,

shall not be treated as appealable under such appeals procedures or grievable under such grievance procedure.

(Added Pub. L. 95–454, title VIII, § 801(a)(1), Oct. 13, 1978, 92 Stat. 1221.)

SUBCHAPTER VII—MISCELLANEOUS PROVISIONS

AMENDMENTS

1978—Pub. L. 95–454, title VIII, § 801(a)(3)(A)(i), Oct. 13, 1978, 92 Stat. 1221, redesignated former subchapter VI as VII.

§ 5371. Health care positions

(a) For the purposes of this section, ''health care'' means direct patient-care services or services incident to direct patient-care services.

(b) The Office of Personnel Management may, with respect to any employee described in subsection (c), provide that 1 or more provisions of chapter 74 of title 38 shall apply—

(1) in lieu of any provision of chapter 51 or 61, subchapter V of chapter 55, or any other provision of this chapter; or

(2) notwithstanding any lack of specific authority for a matter with respect to which chapter 51 or 61, subchapter V of chapter 55, or this chapter, relates.

(c) Authority under subsection (b) may be exercised with respect to any employee holding a position—

(1) to which chapter 51 applies, excluding any Senior Executive Service position and any

position in the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service; and

(2) which involves health care responsibilities.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 473, § 5361; renumbered § 5371 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 II, § 205(A)], Nov. 5, 1990, 104 Stat. 1427, 1456; Pub. L. 102–378, § 2(31), Oct. 2, 1992, 106 Stat. 1350.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 1162(b).	Oct. 4, 1961, Pub. L. 87–367, § 202 ''Sec. 2(b)'', 75 Stat. 790. Oct. 11, 1962, Pub. L. 87–793, § 1001(a)(1), 76 Stat. 863.

The authority to fix rates of pay is added on authority of former section 1161, which is carried into section 3104.

For repeal of the Act of Aug. 1, 1947, ch. 433, 61 Stat. 715, as amended, see revision note for section 3104.

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

1992—Subsec. (b). Pub. L. 102–378 substituted ''chapter 74'' for ''chapter 73'' in introductory provisions and inserted ''subchapter V of chapter 55,'' after ''61,'' in pars. (1) and (2).

1990—Pub. L. 101–509 amended section generally, substituting designated provisions directing that Office of Personnel Management may provide that chapter 73 of title 38 provisions apply to certain health care professionals for undesignated text authorizing agency heads to fix pay rates for scientific and professional positions at between GS–16 and GS–18 rates.

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

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.

§ 5372. Administrative law judges

(a) For the purposes of this section, the term ''administrative law judge'' means an administrative law judge appointed under section 3105.

(b)(1)(A) There shall be 3 levels of basic pay for administrative law judges (designated as AL–1, 2, and 3, respectively), and each such judge shall be paid at 1 of those levels, in accordance with the provisions of this section.

(B) Within level AL–3, there shall be 6 rates of basic pay, designated as AL–3, rates A through F, respectively. Level AL–2 and level AL–1 shall each have 1 rate of basic pay.

(C) The rate of basic pay for AL–3, rate A, may not be less than 65 percent of the rate of basic pay for level IV of the Executive Schedule, and the rate of basic pay for AL–1 may not exceed the rate for level IV of the Executive Schedule.

(2) The Office of Personnel Management shall determine, in accordance with procedures which the Office shall by regulation prescribe, the level in which each administrative-law-judge position shall be placed and the qualifications to be required for appointment to each level.

(3)(A) Upon appointment to a position in AL–3, an administrative law judge shall be paid at rate A of AL–3, and shall be advanced successively to rates B, C, and D of that level at the beginning of the next pay period following completion of 52 weeks of service in the next lower rate, and to rates E and F of that level at the beginning of the next pay period following completion of 104 weeks of service in the next lower rate.

(B) The Office of Personnel Management may provide for appointment of an administrative law judge in AL–3 at an advanced rate under such circumstances as the Office may determine appropriate.

(4) Subject to paragraph (1), effective at the beginning of the first applicable pay period commencing on or after the first day of the month in which an adjustment takes effect under section 5303 in the rates of basic pay under the General Schedule, each rate of basic pay for administrative law judges shall be adjusted by an amount determined by the President to be appropriate.

(c) The Office of Personnel Management shall prescribe regulations necessary to administer this section.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 473, § 5362; Pub. L. 95–251, § 2(a)(1), (b)(1), Mar. 27, 1978, 92 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

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	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.