

tion of the system, including peer review, and in any further planning or development required with respect to the system as a result of such review and evaluation; and

(B) provide exclusive employee representatives appropriate access to information to ensure that the participation of such exclusive employee representative in activities under subparagraph (A) is productive.

(7)(A) The Secretary may from time to time modify a system of promotion and advancement under this subsection.

(B) In modifying a system, the Secretary shall take into account any recommendations made by the exclusive employee representatives concerned.

(C) In modifying a system, the Secretary shall comply with paragraphs (2) through (5) and shall treat any proposal for the modification of a system as a proposal for a system for purposes of such paragraphs.

(D) The Secretary shall promptly submit to the congressional veterans' affairs committees a report on any modification of a system. Each report shall include—

(i) an explanation and justification of the modification; and

(ii) a description of any recommendations of exclusive employee representatives with respect to the modification and a statement whether or not the modification was revised in light of such recommendations.

(8) In the case of employees who are not within a unit with respect to which a labor organization is accorded exclusive recognition, the Secretary may develop procedures for input from representatives under this subsection from any appropriate organization that represents a substantial percentage of such employees or, if none, in such other manner as the Secretary considers appropriate, consistent with the purposes of this subsection.

(9) In this subsection, the term "congressional veterans' affairs committees" means the Committees on Veterans' Affairs of the Senate and the House of Representatives.

(Added Pub. L. 102-40, title IV, § 401(b)(2), May 7, 1991, 105 Stat. 224; amended Pub. L. 102-405, title III, § 302(c)(1), Oct. 9, 1992, 106 Stat. 1984; Pub. L. 108-170, title III, §§ 301(b), 302(c), Dec. 6, 2003, 117 Stat. 2055, 2058; Pub. L. 111-163, title VI, § 601(b), May 5, 2010, 124 Stat. 1168.)

Editorial Notes

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 4106 of this title prior to the repeal of that section as part of the complete revision of chapter 73 of this title by Pub. L. 102-40.

AMENDMENTS

2010—Subsec. (b)(1). Pub. L. 111-163, § 601(b)(1), substituted "Except as otherwise provided in this subsection, appointments" for "Appointments".

Subsec. (b)(2) to (4). Pub. L. 111-163, § 601(b)(2), (3), added pars. (2) and (3) and redesignated former par. (2) as (4).

2003—Subsec. (a)(2)(H). Pub. L. 108-170, § 302(c), added subpar. (H).

Subsec. (f)(3). Pub. L. 108-170, § 301(b)(1), inserted "reductions-in-force, the applicability of the principles of

preference referred to in paragraph (2), rights of part-time employees," after "adverse actions," ", whether appointed under this section or section 7405(a)(1)(B) of this title" after "such positions", and comma after "status)".

Subsec. (h). Pub. L. 108-170, § 301(b)(2), added subsec. (h).

1992—Subsec. (f)(1). Pub. L. 102-405 substituted "Under Secretary for Health" for "Chief Medical Director".

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by section 302(c) of Pub. L. 108-170 effective at end of 180-day period beginning on Dec. 6, 2003, see section 302(h) of Pub. L. 108-170, set out as a note under section 7316 of this title.

§ 7404. Grades and pay scales

(a)(1)(A) The annual rates or ranges of rates of basic pay for positions provided in section¹ 7306 and 7401(4) of this title shall be prescribed from time to time by Executive order as authorized by chapter 53 of title 5 or as otherwise authorized by law.

(B) Section 5377 of title 5 shall apply to a position under section 7306 or 7401(4) of this title as if such position were included in the definition of "position" in section 5377(a) of title 5.

(2)(A) The pay of physicians, podiatrists, and dentists serving in positions to which an Executive order applies under paragraph (1) shall be determined under subchapter III of this chapter instead of such Executive order.

(B) The basic pay of registered nurses and physician assistants serving in positions to which an Executive order applies under paragraph (1) may be determined under subchapter IV of this chapter instead of such Executive order. Such positions shall not otherwise be covered by such subchapter, except with respect to bonuses under section 7452 or 7458 or special pay under subsection (g) of such section 7452.

(3)(A) The rate of basic pay for a position to which an Executive order applies under paragraph (1) and is not described by paragraph (2) shall be set in accordance with section 5382 of title 5 as if such position were a Senior Executive Service position (as such term is defined in section 3132(a) of title 5).

(B) A rate of basic pay for a position may not be set under subparagraph (A) in excess of—

(i) in the case the position is not described in clause (ii), the rate of basic pay payable for level III of the Executive Schedule; or

(ii) in the case that the position is covered by a performance appraisal system that meets the certification criteria established by regulation under section 5307(d) of title 5, the rate of basic pay payable for level II of the Executive Schedule.

(C) Notwithstanding the provisions of subsection (d) of section 5307 of title 5, the Secretary may make any certification under that subsection instead of the Office of Personnel Management and without concurrence of the Office of Management and Budget.

(b) The grades for positions provided for in paragraph (1) of section 7401 of this title shall be

¹ So in original. Probably should be "sections".

as follows. The annual ranges of rates of basic pay for those grades shall be prescribed from time to time by Executive order as authorized by chapter 53 of title 5 or as otherwise authorized by law:

PHYSICIAN AND SURGEON (MD/DO), PODIATRIST (DPM), AND DENTIST AND ORAL SURGEON (DDS, DMD) SCHEDULE

Physician and surgeon grade.
Podiatrist grade.
Dentist grade.

NURSE SCHEDULE

Nurse V.
Nurse IV.
Nurse III.
Nurse II.
Nurse I.

CLINICAL CHIROPRACTOR AND OPTOMETRIST SCHEDULE

Chief grade.
Senior grade.
Intermediate grade.
Full grade.
Associate grade.

(c)(1) Notwithstanding the provisions of section 7425(a) of this title, a person appointed under section 7306 or 7401(4) of this title or in a covered executive position under section 7401(1) of this title shall be deemed to be a career appointee for the purposes of section 4507 of title 5.

(2) In this subsection, the term “covered executive position” means a position that the Secretary has determined is of equivalent rank to a Senior Executive Service position (as such term is defined in section 3132(a) of title 5) and is subject to an agency performance management system.

(d) Except as provided under subsection (e), subchapter III, and section 7457 of this title, and except for individuals appointed under sections 7401(4) and 7306 of this title, pay for positions for which basic pay is paid under this section may not be paid at a rate in excess of the rate of basic pay authorized by section 5316 of title 5 for positions in Level V of the Executive Schedule.

(e) The position of Chief Nursing Officer, Office of Nursing Services, shall be exempt from the provisions of section 7451 of this title and shall be paid basic pay at a rate determined by the Secretary, not to exceed the maximum rates established under subchapter IV of this chapter.

(Added Pub. L. 102–40, title IV, § 401(b)(2), May 7, 1991, 105 Stat. 225; amended Pub. L. 102–405, title II, § 206, title III, § 302(c)(1), Oct. 9, 1992, 106 Stat. 1984; Pub. L. 102–585, title III, § 301(a), Nov. 4, 1992, 106 Stat. 4951; Pub. L. 108–170, title III, § 302(d), Dec. 6, 2003, 117 Stat. 2058; Pub. L. 108–445, § 3(a), (f), Dec. 3, 2004, 118 Stat. 2636, 2643; Pub. L. 109–461, title II, § 202, Dec. 22, 2006, 120 Stat. 3410; Pub. L. 111–163, title VI, § 601(d)(1), May 5, 2010, 124 Stat. 1169; Pub. L. 115–41, title II, § 207(b), June 23, 2017, 131 Stat. 877; Pub. L. 115–182, title V, § 502(b)(1), June 6, 2018, 132 Stat. 1475; Pub. L. 116–12, § 1(a), Apr. 8, 2019, 133 Stat. 845; Pub. L. 116–146, § 1(a), July 2, 2020, 134 Stat. 658; Pub. L. 117–96, § 1(b), Mar. 14, 2022, 136 Stat. 34; Pub. L. 117–103, div. S, title I, § 102(b), Mar. 15,

2022, 136 Stat. 822; Pub. L. 117–168, title IX, §§ 904(b), 906(a), Aug. 10, 2022, 136 Stat. 1811.)

Editorial Notes

REFERENCES IN TEXT

Level III of the Executive Schedule, referred to in subsec. (a)(3)(B)(i), is set out in section 5314 of Title 5, Government Organization and Employees.

Level II of the Executive Schedule, referred to in subsec. (a)(3)(B)(ii), is set out in section 5313 of Title 5, Government Organization and Employees.

CODIFICATION

Pub. L. 115–182, title V, § 502(b)(1), June 6, 2018, 132 Stat. 1475, which directed amendment of “section 7404(b) of such title” without specifying the Code title to be amended, was executed to this section, which is section 7404 of Title 38, Veterans' Benefits, to reflect the probable intent of Congress. See 2018 Amendment note below.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 4107(a)–(d) of this title prior to the repeal of that section as part of the complete revision of chapter 73 of this title by Pub. L. 102–40.

AMENDMENTS

2022—Subsec. (a)(1)(B). Pub. L. 117–168, § 904(b), inserted “7306 or” before “7401(4)”.

Subsec. (a)(2). Pub. L. 117–103, § 102(b)(1), designated existing provisions as subpar. (A) and added subpar. (B).

Pub. L. 117–96, § 1(b)(1), inserted “, podiatrists,” after “physicians”.

Subsec. (b). Pub. L. 117–96, § 1(b)(2), substituted “PODIATRIST (DPM)” for “PODIATRIST” in first heading in table.

Subsec. (c). Pub. L. 117–168, § 906(a), designated existing provisions as par. (1), inserted “or 7401(4)” after “section 7306”, substituted “or in a covered executive position under section 7401(1) of this title” for “who is not eligible for pay under subchapter III” and “section 4507” for “sections 4507 and 5384”, and added par. (2).

Subsec. (e). Pub. L. 117–103, § 102(b)(2), inserted “basic pay” after “paid” and substituted “rates established under subchapter IV of this chapter” for “rate established for the Senior Executive Service under section 5382 of title 5”.

2020—Subsec. (d). Pub. L. 116–146 inserted “and except for individuals appointed under sections 7401(4) and 7306 of this title,” after “section 7457 of this title.”

2019—Subsec. (b). Pub. L. 116–12 substituted “PODIATRIST” for “PODIATRIC SURGEON (DPM)” in first heading in table and inserted item relating to Podiatrist grade under that heading.

2018—Subsec. (b). Pub. L. 115–182 substituted “PHYSICIAN AND SURGEON (MD/DO), PODIATRIC SURGEON (DPM), AND DENTIST AND ORAL SURGEON (DDS, DMD) SCHEDULE” for “PHYSICIAN AND DENTIST SCHEDULE” as first heading in table and “Physician and surgeon grade” for “Physician grade” as first item under that heading and substituted “CHIROPRACTOR, AND” for “PODIATRIST, CHIROPRACTOR, AND” in third heading in table. See Codification note above.

2017—Subsec. (a)(1). Pub. L. 115–41 designated existing provisions as subpar. (A), inserted “and 7401(4)” after “section 7306”, and added subpar. (B).

2010—Subsec. (a). Pub. L. 111–163 designated first sentence as par. (1) and second sentence as par. (2), substituted “under paragraph (1)” for “under the preceding sentence” in par. (2), and added par. (3).

2006—Subsec. (d). Pub. L. 109–461, § 202(1), substituted “subsection (e), subchapter III, and” for “subchapter III and in”.

Subsec. (e). Pub. L. 109–461, § 202(2), added subsec. (e).

2004—Subsec. (a). Pub. L. 108–445, § 3(a)(2), inserted at end “The pay of physicians and dentists serving in posi-

tions to which an Executive order applies under the preceding sentence shall be determined under subchapter III of this chapter instead of such Executive order.”

Subsec. (b). Pub. L. 108-445, §3(a)(1), struck out “(1)” after “(b)”, inserted items relating to Physician grade and Dentist grade under heading “PHYSICIAN AND DENTIST SCHEDULE” and struck out former items under that heading, which read “Director grade”, “Executive grade”, “Chief grade”, “Senior grade”, “Intermediate grade”, “Full grade”, and “Associate grade”, and struck out par. (2). Prior to amendment, par. (2) read as follows: “A person may not hold the director grade in the Physician and Dentist Schedule unless the person is serving as a director of a hospital, domiciliary, center, or outpatient clinic (independent), or comparable position. A person may not hold the executive grade in that Schedule unless the person holds the position of chief of staff at a hospital, center, or outpatient clinic (independent), or comparable position.”

Subsec. (c). Pub. L. 108-445, §3(f)(1), substituted “pay” for “special pay”.

Subsec. (d). Pub. L. 108-445, §3(f)(2), substituted “pay for positions for which basic pay is paid under this section may not be paid at a rate in excess of the rate of basic pay authorized by section 5316 of title 5 for positions in Level V of the Executive Schedule.” for “pay may not be paid at a rate in excess of the rate of basic pay for an appropriate level authorized by section 5315 or 5316 of title 5 for positions in the Executive Schedule, as follows:

“(1) Level IV for the Deputy Under Secretary for Health.

“(2) Level V for all other positions for which such basic pay is paid under this section.”

2003—Subsec. (b)(1). Pub. L. 108-170 substituted “CLINICAL PODIATRIST, CHIROPRACTOR, AND OPTOMETRIST SCHEDULE” for “CLINICAL PODIATRIST AND OPTOMETRIST SCHEDULE” as third center heading in table.

1992—Subsec. (b)(1). Pub. L. 102-585 inserted items relating to Nurse V through I under heading “NURSE SCHEDULE” and struck out former items under that heading, “Director grade”, “Senior grade”, “Intermediate grade”, and “Entry grade”.

Subsec. (b)(2). Pub. L. 102-405, §206, inserted “, or comparable position” before period at end of first sentence.

Subsec. (d)(1). Pub. L. 102-405, §302(c)(1), substituted “Under Secretary for Health” for “Chief Medical Director”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111-163, title VI, §601(d)(2), May 5, 2010, 124 Stat. 1169, provided that: “The amendments made by paragraph (1) [amending this section] shall take effect on the first day of the first pay period beginning after the day that is 180 days after the date of the enactment of this Act [May 5, 2010].”

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108-170 effective at end of 180-day period beginning on Dec. 6, 2003, see section 302(h) of Pub. L. 108-170, set out as a note under section 7316 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Pub. L. 102-585, title III, §308, Nov. 4, 1992, 106 Stat. 4953, provided that: “The amendments made by sections 301, 302, 303, and 304 [amending this section and sections 7451 and 7452 of this title] shall take effect with respect to the first pay period beginning on or after the end of the six-month period beginning on the date of the enactment of this Act [Nov. 4, 1992].”

WAIVERS

Pub. L. 116-146, §1(b), July 2, 2020, 134 Stat. 658, provided that:

“(1) IN GENERAL.—The Secretary of Veterans Affairs may waive the limitation described in section 7404(d) of such title [38 U.S.C. 7404(d)], as in effect on the day before the date of the enactment of this Act [July 2, 2020], on the amount of basic pay payable to individuals appointed under section 7401(4) or 7306 of such title [38 U.S.C. 7401(4), 7306] for basic pay payable during the period—

“(A) beginning on November 1, 2010; and

“(B) ending on the day before the date of the enactment of this Act.

“(2) FORM.—The Secretary shall prescribe the form for requesting a waiver under paragraph (1).

“(3) TREATMENT OF WAIVER.—A decision not to grant a waiver under paragraph (1) shall not be treated as an adverse action and is not subject to further appeal, third-party review, or judicial review.”

APPLICATION

Pub. L. 115-182, title V, §502(b)(2), June 6, 2018, 132 Stat. 1475, provided that: “The amendments made by paragraph (1) [amending this section] shall apply with respect to a pay period of the Department of Veterans Affairs beginning on or after the date that is 30 days after the date of the enactment of this Act [June 6, 2018].”

Executive Documents

ADJUSTMENT OF PAY RATES

For adjustment of pay rates under this section, see the executive order detailing the adjustment of certain rates of pay set out as a note under section 5332 of Title 5, Government Organization and Employees.

EXECUTIVE ORDER NO. 12438

Ex. Ord. No. 12438, Aug. 23, 1983, 48 F.R. 39205, which related to review of increases in rates of basic pay for employees of the Veterans' Administration, was revoked by Ex. Ord. No. 12797, Apr. 3, 1992, 57 F.R. 11671, set out as a note under section 7455 of this title.

§ 7404A. Awards

(a) SUPERIOR ACCOMPLISHMENTS AND PERFORMANCE AWARDS PROGRAM.—The Secretary may establish an awards program for personnel listed in section 7421(b) of this title consistent with chapter 45 of title 5, to the extent practicable.

(b) EXECUTIVE PERFORMANCE AWARDS PROGRAM.—Notwithstanding section 7425 of this title or any other provision of law, the Secretary may establish a performance awards program consistent with section 5384 of title 5 for—

(1) personnel appointed under section 7401(1) of this title for a position that the Secretary has determined is of equivalent rank to a Senior Executive Service position (as such term is defined in section 3132(a) of title 5) and is subject to an agency performance management system; and

(2) personnel appointed under section 7306 or 7401(4) of this title.

(c) PAYMENT OF AWARDS.—Awards under this section may be paid based on criteria established by the Secretary and shall not be considered in calculating the limitation under section 7431(e)(4) of this title.

(d) NOT CONSIDERED BASIC PAY.—Awards under this section shall not be considered basic pay for any purpose.

(e) REGULATIONS.—The Secretary may prescribe regulations for the administration of this section.

(Added Pub. L. 117-168, title IX, §906(b)(1), Aug. 10, 2022, 136 Stat. 1812.)