

Public Law 102-378
102d Congress

An Act

Oct. 2, 1992
[H.R. 2850]

Technical and
Miscellaneous
Civil Service
Amendments
Act of 1992.
5 USC 1101 note.

To make technical and conforming changes in title 5, United States Code, and the Federal Employees Pay Comparability Act of 1990, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Technical and Miscellaneous Civil Service Amendments Act of 1992”.

(b) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Amendments to title 5, United States Code.
- Sec. 3. Amendments to the Federal Employees Pay Comparability Act of 1990.
- Sec. 4. Amendments relating to the Ethics in Government Act of 1978.
- Sec. 5. Amendments to other provisions of law.
- Sec. 6. Restoration of coverage of certain Federal personnel provisions to certain Veterans Health Administration employees.
- Sec. 7. Retroactive performance awards.
- Sec. 8. Miscellaneous provisions.
- Sec. 9. Effective dates.

SEC. 2. AMENDMENTS TO TITLE 5, UNITED STATES CODE.

Title 5, United States Code, is amended—

(1) in the analysis for part II by striking, in the item relating to chapter 12, “Individual Right of Action” and inserting “Employee Right of Action”;

(2) by striking the heading for former section 1209 (the text of which was redesignated as sections 1205 and 1206 by paragraphs (9) and (10), respectively, of section 3(a) of the Whistleblower Protection Act of 1989 (Public Law 101-12; 103 Stat. 18));

(3) by striking the heading for former section 1204 (which was redesignated as section 1211(b) by section 3(a)(6) of the Whistleblower Protection Act of 1989 (Public Law 101-12; 103 Stat. 17));

(4) in section 1305 by striking “section 3105,” and inserting “sections 3105,”;

(5) in section 2302(b)(8)(B) by striking “Special Counsel of the Merit Systems Protection Board,” and inserting “Special Counsel,”;

(6) in section 2304(b) by striking “(b) the” and inserting “(b) The”;

(7) in section 3104(a)—

(A) by striking “(not to exceed 517)”; and

(B) by amending the second sentence to read as follows:

“Any such position may be established by action of the Director or, under such standards and procedures as the Office prescribes (including procedures under which the prior approval of the Director may be required), by agency action.”;

(8) in section 3109 by adding at the end thereof the following new subsections:

“(d) The Office of Personnel Management shall prescribe regulations necessary for the administration of this section. Such regulations shall include—

Regulations.

“(1) criteria governing the circumstances in which it is appropriate to employ an expert or consultant under the provisions of this section;

“(2) criteria for setting the pay of experts and consultants under this section; and

“(3) provisions to ensure compliance with such regulations.

“(e) Each agency shall report to the Office of Personnel Management on an annual basis with respect to—

Reports.

“(1) the number of days each expert or consultant employed by the agency during the period was so employed; and

“(2) the total amount paid by the agency to each expert and consultant for such work during the period.”;

(9) by amending section 3152 to read as follows:

“§ 3152. Limitation on pay

“Members of the FBI-DEA Senior Executive Service shall be subject to the limitation under section 5307.”;

(10) in section 3323(b)(1) by striking “annuitant as defined by section 8331 of this title” and inserting “annuitant, as defined by section 8331 or 8401.”;

(11) in section 3324—

(A) by amending the heading to read as follows:

“§ 3324. Appointments to positions classified above GS-15”;

and

(B) in subsection (a) by amending paragraph (1) to read as follows:

“(1) to which appointment is made by the Chief Judge of the United States Tax Court.”;

(12) in section 3325(b) by striking “section 3104(a)(7) of this title” and inserting “section 3104(c)”;

(13)(A) by striking section 3342; and

(B) in the table of sections for chapter 33 by striking the item relating to section 3342;

(14) by amending the heading for section 3373 to read as follows:

“§ 3373. Assignment of employees to State or local governments”;

(15) in section 3401(1)(iv) by striking “Virgin Island” and inserting “Virgin Islands”;

(16) in section 3594(c)(1)(A) by striking “5108,” and inserting “5108,”;

(17) in section 4109 by striking subsection (d);

(18) in section 4302(a) by striking the semicolon at the end and inserting a period;

(19) in section 4505a—

(A) in subsection (b)(2) by striking “chapter 12 or under” and inserting “chapter 12, chapter 71, or”;

(B) in subsection (c) by inserting “of Personnel Management” after “Office”; and

(C) by striking subsection (d) and inserting the following:

"(d) The preceding provisions of this section shall be applicable with respect to any employee to whom subchapter III of chapter 53 applies, and to any category of employees provided for under subsection (e).

"(e) At the request of the head of an Executive agency, the President may authorize the application of subsections (a) through (c) with respect to any category of employees within such agency who would not otherwise be covered by this section."

(20) in the heading for subchapter III of chapter 45 by striking "OFFICER" and inserting "OFFICERS";

(21) by amending section 4521 to read as follows:

"§ 4521. Definition

"For the purpose of this subchapter, the term 'law enforcement officer' means—

"(1) a law enforcement officer within the meaning of section 5541(3) and to whom the provisions of chapter 51 apply;

"(2) a member of the United States Secret Service Uniformed Division;

"(3) a member of the United States Park Police;

"(4) a special agent in the Diplomatic Security Service;

"(5) a probation officer (referred to in section 3672 of title 18); and

"(6) a pretrial services officer (referred to in section 3153 of title 18).";

(22) in the table of sections for chapter 51 by striking the item relating to section 5108 and inserting the following:

"5108. Classification of positions above GS-15.;"

(23) in section 5108(a)(2) by striking the semicolon at the end and inserting a period;

(24) in the table of sections for chapter 53—

(A) in the item relating to section 5379 by striking "repayment." and inserting "repayments."; and

(B) by striking "Sec." immediately before the item relating to section 5391;

(25) in section 5302—

(A) in paragraph (1) by amending subparagraph (C) to read as follows:

"(C) chapter 74 of title 38, relating to the Veterans Health Administration (other than a position subject to section 7451 of title 38);"; and

(B) in paragraph (8)—

(i) in subparagraph (A) by striking "and" at the end; and

(ii) by adding after subparagraph (B) the following:

"(C) in the case of an employee receiving a retained rate of basic pay under section 5363, the rate of basic pay payable under such section; and";

(26) in section 5304—

(A) in subsection (a)(3)—

(i) by striking "Subject to paragraphs (4) and (5)," and inserting "Subject to paragraph (4).", and by striking "a comparative payment" and inserting "a comparability payment";

(ii) in subparagraph (H) by inserting "and" after the semicolon; and

(iii) in subparagraph (I) by striking the semicolon and inserting a period;

(B) in subsection (d)(1)(A) by inserting "(disregarding any described in section 5302(8)(C))" after "General Schedule", and by striking "annual";

(C) in subsection (e)—

(i) in paragraph (1) by inserting after the second sentence the following: "However, members under subparagraph (A) may be paid expenses in accordance with section 5703."; and

(ii) in paragraph (2)(A)(ii) by striking "annual survey" and inserting "surveys of pay localities", and by striking "industries," and inserting "industries";

(D) in subsection (g) by amending paragraph (2) to read as follows:

"(2) The applicable maximum under this subsection shall be level III of the Executive Schedule for—

"(A) positions under subparagraphs (A)–(E) of subsection (h)(1); and

"(B) any positions under subsection (h)(1)(F) which the President may determine.";

(E) in subsection (h)—

(i) in paragraph (1)—

(I) by amending subparagraph (F) to read as follows:

"(F) a position within an Executive agency not covered under the General Schedule or any of the preceding subparagraphs, the rate of basic pay for which is (or, but for this section, would be) no more than the rate payable for level IV of the Executive Schedule";

(II) in clause (i) by striking "or" at the end;

(III) in clause (ii) by striking the period at the end and inserting "; or"; and

(IV) by adding at the end the following:

"(iii) a position to which subchapter II applies (relating to the Executive Schedule).";

(ii) in paragraph (2) by adding at the end the following:

"(C) Notwithstanding subsection (c)(4) or any other provision of law, but subject to paragraph (3), in the case of a category with positions that are in more than 1 Executive agency, the President may, on his own initiative, provide that each employee who holds a position within such category, and in the locality involved, shall be entitled to receive comparability payments. No later than 30 days before an employee receives comparability payments under this subparagraph, the President or the President's designee shall submit a detailed report to the Congress justifying the reasons for the extension, including consideration of recruitment and retention rates and the expense of extending locality pay."; and

(iii) in paragraph (3) by amending subparagraph

(B) to read as follows:

"(B) shall take effect, within the locality involved, on the first day of the first applicable pay period commencing on or after such date as the President designates (except that no date may be designated which would require any retroactive

President.
Reports.

payments), and shall remain in effect through the last day of the last applicable pay period commencing during that calendar year.”;

(27) in section 5306(a)(1)(B) by striking “166b-3” and inserting “166b-3a”;

(28) in section 5314 by striking each of the following: “Under Secretary of Education.”, “Under Secretary of Health and Human Services.”, “Under Secretary of the Interior.”, and “Under Secretary of Housing and Urban Development.”;

(29) in section 5332 by amending subsection (a) to read as follows:

“(a)(1) The General Schedule, the symbol for which is ‘GS’, is the basic pay schedule for positions to which this subchapter applies. Each employee to whom this subchapter applies, except an employee covered by the performance management and recognition system established under chapter 54, is entitled to basic pay in accordance with the General Schedule.

“(2) The General Schedule is a schedule of annual rates of basic pay, consisting of 15 grades, designated ‘GS-1’ through ‘GS-15’, consecutively, with 10 rates of pay for each such grade. The rates of pay of the General Schedule are adjusted in accordance with section 5303.”;

(30) in section 5347(g)—

(A) by striking “(g) Members” and inserting “(g)(1) Except as provided in paragraph (2), members”;

(B) by striking the second sentence; and

(C) by adding at the end the following:

“(2) The position of Chairman shall be considered to be a Senior Executive Service position within the meaning of section 3132(a), and shall be subject to all provisions of this title relating to Senior Executive Service positions, including section 5383.”;

(31) in section 5371(b)—

(A) by striking “chapter 73” and inserting “chapter 74”; and

(B) by inserting “subchapter V of chapter 55,” after “61,” each place it appears;

(32) in section 5372(c) by striking “shall,” and inserting “shall”;

(33) in section 5375(2) by striking “GS-8,” and inserting “GS-8”;

(34) in section 5377—

(A) in subsection (a)(2)—

(i) in subparagraph (C) by striking “and” at the end;

(ii) in subparagraph (D) by striking the period at the end and inserting a semicolon; and

(iii) by adding after subparagraph (D) the following:

“(E) a position established under section 3104; and

“(F) a position in a category as to which a designation is in effect under subsection (i).”; and

(B) by adding at the end the following:

“(i)(1) For the purpose of this subsection, the term ‘position’ means the work, consisting of the duties and responsibilities, assignable to an employee, except that such term does not include any position under subsection (a)(2)(A)–(E).

"(2) At the request of an agency head, the President may designate 1 or more categories of positions within such agency to be treated, for purposes of this section, as positions within the meaning of subsection (a)(2).";

(35) in section 5383 by amending subsection (b) to read as follows:

"(b) Members of the Senior Executive Service shall be subject to the limitation under section 5307.";

(36) in subchapter IX of chapter 53 by striking the matter after the subchapter heading and before the heading for section 5391;

(37) in section 5401(1) by striking "(a)" and inserting "(A)", and by striking "(b)" and inserting "(B)";

(38) in section 5403(d) by striking "section 5305" and inserting "section 5303";

(39) in section 5519 by striking "section 6323(c) or (d) of this title" and inserting "section 6323 (b) or (c)";

(40) in section 5541—

(A) in paragraph (1) by striking "and" at the end;

(B) in paragraph (2) by striking the period at the end and inserting "; and"; and

(C) by adding at the end the following:

"(3) 'law enforcement officer' means an employee who—

"(A) is a law enforcement officer within the meaning of section 8331(20) or 8401(17);

"(B) in the case of an employee who holds a supervisory or administrative position and is subject to subchapter III of chapter 83, but who does not qualify to be considered a law enforcement officer within the meaning of section 8331(20), would so qualify if such employee had transferred directly to such position after serving as a law enforcement officer within the meaning of such section;

"(C) in the case of an employee who holds a supervisory or administrative position and is subject to chapter 84, but who does not qualify to be considered a law enforcement officer within the meaning of section 8401(17), would so qualify if such employee had transferred directly to such position after performing duties described in section 8401(17) (A) and (B) for at least 3 years; and

"(D) in the case of an employee who is not subject to subchapter III of chapter 83 or chapter 84—

"(i) holds a position that the Office of Personnel Management determines would satisfy subparagraph (A), (B), or (C) if the employee were subject to subchapter III of chapter 83 or chapter 84; or

"(ii) is a special agent in the Diplomatic Security Service.";

(D) SENSE OF THE CONGRESS RELATING TO LAW ENFORCEMENT OFFICER PROVISIONS.—It is the sense of the Congress that—

(i) the provisions of section 5541(3) of title 5, United States Code (as added by section 2(40)(C) of this Act)—

(I) are enacted only for the purposes of pay and not for the purposes of retirement;

5 USC 5541 note.

(II) do not reflect any intent of the Congress to change retirement eligibility standards for law enforcement officers; and

(ii) law enforcement officers in primary positions have different retirement eligibility standards than employees in supervisory or administrative positions because of the different requirements in their responsibilities.

(41) in section 5542—

(A) in subsection (a)(4)—

(i) by striking “officer (within the meaning of section 8331(20) or 8401(17)),” and inserting “officer,”; and

(ii) by moving the indentation for the matter following subparagraph (B) 2 ems to the right; and

(B) in subsection (c) by amending the second sentence to read as follows: “In the case of an employee who would, were it not for the preceding sentence, be subject to this section, the Office of Personnel Management shall by regulation prescribe what hours shall be deemed to be hours of work and what hours of work shall be deemed to be overtime hours for the purpose of such section 7 so as to ensure that no employee receives less pay by reason of the preceding sentence.”;

(42) in section 5544—

(A) in paragraphs (2) and (3) of subsection (a) by striking “2,080” each place it appears and inserting “2,087”;

(B) by amending the last two sentences of subsection (a) to read as follows: “The first and third sentences of this subsection shall not be applicable to an employee who is subject to the overtime pay provisions of section 7 of the Fair Labor Standards Act of 1938. In the case of an employee who would, were it not for the preceding sentence, be subject to the first and third sentences of this subsection, the Office of Personnel Management shall by regulation prescribe what hours shall be deemed to be hours of work and what hours of work shall be deemed to be overtime hours for the purpose of such section 7 so as to ensure that no employee receives less pay by reason of the preceding sentence.”; and

(C) by adding at the end the following:

“(c) The provisions of this section, including the last two sentences of subsection (a), shall apply to a prevailing rate employee described in section 5342(a)(2)(B).”;

(43) in section 5547(c) by striking paragraph (3);

(44)(A) by striking section 5550;

(B) in the table of sections for chapter 55 by striking the item relating to section 5550;

(C) in section 5548(b) by striking “sections 5545(d) and 5550 of this title.” and inserting “section 5545(d).”;

(D) in section 6123(a)(1) by striking “5543(a)(1), 5544(a), and 5550” and inserting “5543(a)(1) and section 5544(a)”;

(E) in section 6128—

(i) in subsection (a) by striking “5542(a), 5544(a), and 5550(2)” and inserting “5542(a) and 5544(a)”;

(ii) in subsection (c) by striking “5544(a), 5546(a), or 5550(1)” and inserting “5544(a) or 5546(a)”;

Regulations.

(45)(A) in subchapter VI of chapter 55 by adding at the end the following:

“§ 5553. Regulations

“The Office of Personnel Management may prescribe regulations necessary for the administration of this subchapter.”; and

(B) in the table of sections for chapter 55 by adding after the item relating to section 5552 the following:

“5553. Regulations.”;

(46) in the table of sections for chapter 57—

(A) by striking the item relating to section 5723 and inserting the following:

“5723. Travel and transportation expenses of new appointees and student trainees.”; and

(B) by adding after the item relating to section 5754 the following:

“5755. Supervisory differentials.”;

(47) in the heading for section 5702 by striking “employee” and inserting “employees”;

(48) in section 5723—

(A) by amending the heading to read as follows:

“§ 5723. Travel and transportation expenses of new appointees and student trainees”;

and

(B) by striking subsection (d) and redesignating subsection (e) as subsection (d);

(49) in section 5724(a)(3)(A) by striking “Service,” and inserting “Service or as a director under section 4103(a)(8) of title 38 (as in effect on November 27, 1988).”;

(50) in section 5901(a) by striking “5902.” each place it appears and inserting “5902”;

(51) in section 5948—

(A) in the first sentence of subsection (a) by striking “provisions of this section” and inserting “provisions of this section, section 5307.”;

(B) in subsection (g)(1)—

(i) by amending subparagraph (D) to read as follows:

“(D) section 5371, relating to certain health care positions.”;

(ii) by striking “or” at the end of subparagraph (H);

(iii) by striking “and” at the end of subparagraph (I); and

(iv) by inserting after subparagraph (I) the following:

“(J) section 5376, relating to certain senior-level positions;

“(K) section 5377, relating to critical positions; or

“(L) subchapter IX of chapter 53, relating to special occupational pay systems; and”;

(52) in section 6303(a) by amending the second sentence to read as follows: “In determining years of service, an employee is entitled to credit for all service of a type that would be creditable under section 8332, regardless of whether or not the employee is covered by subchapter III of chapter 83.”;

(53) in the second sentence of section 6304(e) by striking “date of” and inserting “date”;

(54) in section 7112 by redesignating subsection (a)(1) as subsection (a);

(55) in section 7113 by redesignating subsection (a)(1) as subsection (a);

(56) in section 7701(c)(1) by amending subparagraph (A) to read as follows:

“(A) in the case of an action based on unacceptable performance described in section 4303 or a removal from the Senior Executive Service for failure to be recertified under section 3393a, is supported by substantial evidence; or”;

(57) in section 8331—

(A) in paragraph (1)—

(i) in subparagraph (L) by striking “section 8347(p)(1)” and inserting “section 8347(q)(1)”; and

(ii) in clause (ii) by striking “section 8347(p)(2)” and inserting “section 8347(q)(2)”; and

(B) in paragraph (7) by striking “Gallaudet College,” and inserting “Gallaudet University,”;

(58) in the last sentence of section 8332(b) by striking “paragrpah (16)” and inserting “paragraph (16)”;

(59) in section 8334(i) by redesignating the second paragraph (5) as paragraph (6);

(60) in section 8335(b) by amending the first sentence to read as follows: “A firefighter who is otherwise eligible for immediate retirement under section 8336(c) shall be separated from the service on the last day of the month in which such firefighter becomes 55 years of age or completes 20 years of service if then over that age.”;

(61) in the second sentence of section 8337(a) by striking “if the employee if” and inserting “if the employee is”;

(62) in section 8339 by redesignating the second subsection (o) as subsection (p);

(63) in section 8341 in subsections (b)(1) and (d) by striking “(o),” and inserting “(p),”;

(64) in section 8347—

(A) by redesignating the second subsection (p) as subsection (q); and

(B) in paragraphs (1) and (2) of subsection (q) (as so redesignated) by amending subparagraph (A) of each to read as follows:

“(A) has not previously made an election under this subsection or had an opportunity to make an election under this paragraph.”;

(65) in section 8421(a)(2) by adding a period at the end;

(66) in section 8423(a)(1)(B)(i) by striking “multiplied” and inserting “multiplied”;

(67) in section 8425(b)—

(A) by amending the first sentence to read as follows: “A member of the Capitol Police or firefighter who is otherwise eligible for immediate retirement under section 8412(d) shall be separated from the service on the last day of the month in which such member or firefighter becomes 55 years of age or completes 20 years of service if then over that age.”; and

- (B) in the second sentence by striking “become” and inserting “becomes”;
- (68) in section 8438(a)(7)(B) by striking “Federal Savings and Loan Insurance Corporation,” and inserting “Federal Deposit Insurance Corporation.”;
- (69) in section 8440(a)(3) by inserting “section 401(k)(4)(B) of such Code and” after “subject to”;
- (70) in section 8440a(b)(1) by striking “subchapters III and VII of chapter 84 of this title” and inserting “this subchapter and subchapter VII”;
- (71) in section 8461(n)—
 - (A) in paragraphs (1) and (2) by amending subparagraph (A) of each to read as follows:
 - “(A) has not previously made an election under this subsection or had an opportunity to make an election under this paragraph;” and
 - (B) in paragraph (2)(D) by striking “section 8347(p)” and inserting “section 8347(q)”;
 - (72) in section 8478(a)(2)(B)(iii) by striking “Corporation or the Federal Savings and Loan Insurance”;
 - (73) in the analysis for chapter 85 by adding after the item relating to section 8508 the following:

“8509. Federal Employees Compensation Account.”;

- (74) in section 8706 by redesignating subsection (g) as subsection (f);
- (75) in section 8901—
 - (A) in paragraph (3)(A)(iv) by striking “section 8347(p)(2)” and inserting “section 8347(q)(2)”;
 - (B) in paragraph (10)(C)(ii) by inserting a comma after “section 8341(h)”;
- (76) in section 8904(a) by striking “this section” each place it appears and inserting “this subsection”;
- (77) in section 8905—
 - (A) in subsection (b) by striking “this subchapter.” and inserting “this chapter”;
 - (B) in subsection (c)(1) by inserting a comma after “8341(h)”;
- (78) in section 8906—
 - (A) in subsection (b)(3) by inserting a period after “Office”;
 - (B) in subsection (c) by striking “and except” and inserting “and (except)”.

SEC. 3. AMENDMENTS TO THE FEDERAL EMPLOYEES PAY COMPARABILITY ACT OF 1990.

The Federal Employees Pay Comparability Act of 1990, as contained in the Treasury, Postal Service and General Government Appropriations Act, 1991 (Public Law 101-509; 104 Stat. 1427), is amended—

- (1) in each of paragraphs (1) and (2) of section 109(b) (104 Stat. 1451) by striking “section 5305” and inserting “section 5303”; 5 USC 5378 note.
- (2) in section 203 (104 Stat. 1456) by striking “5545(D)” and inserting “5545(d)”; 5 USC 5545.
- (3) in section 209(a) (104 Stat. 1460)—
 - (A) by striking “or” at the end of paragraph (1); 5 USC 5305 note.

(B) by striking the period at the end of paragraph (2) and inserting “; or”; and

(C) by inserting at the end the following:

“(3) any combination of classes of positions described in paragraph (1) or (2) for which the President determines a recruiting difficulty exists.”;

5 USC 5304 note.

(4) in section 302 (104 Stat. 1462)—

(A) by striking “(A) DEFINITIONS.—” and inserting “(a) DEFINITIONS.—”;

(B) by redesignating subsection (c) as subsection (d);

(C) by redesignating subsections (d) and (e) as subsections (e) and (f), respectively; and

(D) by amending subsection (e) (as so redesignated) by striking “Code,” and all that follows through the period and inserting the following: “Code (as in effect before the date of enactment of this Act), section 5305 of title 5, United States Code (as amended by section 101 of this Act), or any similar provision of law.”;

5 USC 5305 note.

(5) in section 402 (104 Stat. 1465) by striking “section 8331(20) or section 8401(17)” and inserting “section 5541(3)”;

5 USC 5305 note.

(6) in section 403(d) (104 Stat. 1465) by striking “section 303” and inserting “section 209”;

5 USC 5305 note.

(7) in section 404(a) (104 Stat. 1466) by striking “and any applicable special rate of pay under section 5305 of such title, as so amended, or any similar provision of law.” and inserting “and, to the extent determined appropriate by the Office of Personnel Management, any applicable special rate of pay under section 5305 of such title, as so amended, or any similar provision of law (other than section 403).”;

(8) in section 404(b) (104 Stat. 1466)—

(A) by striking “(b) Except” and inserting “(b)(1) Except”;

(B) by striking “Trention” and inserting “Trenton”; and

(C) by adding at the end the following:

“(2) In the case of any area specified in paragraph (1) that includes a portion, but not all, of a county, the Office of Personnel Management may, at the request of the head of 1 or more law enforcement agencies, extend the area specified in paragraph (1) to include, for the purposes of this section, the entire county, if the Office determines that such extension would be in the interests of good personnel administration. Any such extension shall be applicable to each law enforcement officer whose post of duty is in the area of the extension.”; and

5 USC 5305 note.

(9) in section 405(a) (104 Stat. 1466) by striking “403 and 404” and inserting “403, 404, and 407”.

SEC. 4. AMENDMENTS RELATING TO THE ETHICS IN GOVERNMENT ACT OF 1978.

(a) AMENDMENTS TO TITLE I OF THE ACT.—Title I of the Ethics in Government Act of 1978 (5 U.S.C. App.) is amended—

5 USC app. 101.

(1) in section 101(f)—

(A) in paragraph (3) by striking “whose position” and all that follows through “for GS-16” and inserting “who occupies a position classified above GS-15 of the General Schedule or, in the case of positions not under the General Schedule, for which the rate of basic pay is equal to or

greater than 120 percent of the minimum rate of basic pay payable for GS-15 of the General Schedule”;

(B) in paragraph (6) by striking “whose basic rate of pay” and all that follows through “GS-16” and inserting “who occupies a position for which the rate of basic pay is equal to or greater than 120 percent of the minimum rate of basic pay payable for GS-15 of the General Schedule”;

(2) in section 109—

5 USC app. 109.

(A) in paragraph (8) by striking “who is paid” and all that follows through “Schedule” and inserting “who occupies a position for which the rate of basic pay is equal to or greater than 120 percent of the minimum rate of basic pay payable for GS-15 of the General Schedule”;

(B) in paragraph (13)(B)(i) by striking “who is compensated” and all that follows through “Schedule” and inserting “who, for at least 60 days, occupies a position for which the rate of basic pay is equal to or greater than 120 percent of the minimum rate of basic pay payable for GS-15 of the General Schedule”; and

(C) in paragraph (13)(B)(ii) by striking “compensated” and all that follows through “Schedule” and inserting “who occupies a position for which the rate of basic pay is equal to or greater than 120 percent of the minimum rate of basic pay payable for GS-15 of the General Schedule”.

(b) AMENDMENTS TO TITLE V.—Title V of the Ethics in Government Act of 1978 (5 U.S.C. App.) is amended—

(1) in section 501(a)(1) by striking “whose rate of basic pay is equal to or greater than the annual rate of basic pay in effect for grade GS-16 of the General Schedule under section 5332 of title 5, United States Code,” and inserting “who occupies a position classified above GS-15 of the General Schedule or, in the case of positions not under the General Schedule, for which the rate of basic pay is equal to or greater than 120 percent of the minimum rate of basic pay payable for GS-15 of the General Schedule.”;

5 USC app. 501.

(2) in section 501(a)(2) by striking “who becomes a Member or an officer or employee who is a noncareer officer or employee and whose rate of basic pay is equal to or greater than the annual rate of basic pay in effect for grade GS-16 of the General Schedule during a calendar year,” and inserting “who during a calendar year becomes a Member or an officer or employee who is a noncareer officer or employee and who occupies a position classified above GS-15 of the General Schedule or, in the case of positions not under the General Schedule, for which the rate of basic pay is equal to or greater than 120 percent of the minimum rate of basic pay payable for GS-15 of the General Schedule.”; and

(3) in section 502(a) by striking “whose rate of basic pay is equal to or greater than the annual rate of basic pay in effect for grade GS-16 of the General Schedule” and inserting “who occupies a position classified above GS-15 of the General Schedule or, in the case of positions not under the General Schedule, for which the rate of basic pay is equal to or greater than 120 percent of the minimum rate of basic pay payable for GS-15 of the General Schedule”.

5 USC app. 502.

(c) AMENDMENTS TO GIFT PROVISIONS.—Section 314(g) of the Legislative Branch Appropriations Act, 1992 (Public Law 102-90; 105 Stat. 470) is amended to read as follows:

2 USC 31-2 note.

“(g)(1) The amendments made by subsections (b) through (f) shall take effect on January 1, 1992.

“(2) The amendment made by subsection (a) shall take effect on January 1, 1993.”.

SEC. 5. AMENDMENTS TO OTHER PROVISIONS OF LAW.

(a) OMNIBUS BUDGET RECONCILIATION ACT OF 1990.—The Omnibus Budget Reconciliation Act of 1990 (Public Law 101-508; 104 Stat. 1388) is amended—

5 USC 8348 note.

(1) in section 7101(c)(2) (104 Stat. 1388-332) by striking “took effect, subject to section 7104.” and inserting “took effect.”; and

5 USC 2105 note.

(2) in section 7202(n) (104 Stat. 1388-340)—

(A) in paragraph (2) by striking “section 8347(p)(1)” each place it appears and inserting “section 8347(q)(1);” and

(B) in paragraph (4) by striking “section 8347(p)(2)” and inserting “section 8347(q)(2)”.

(b) FEDERAL PAY COMPARABILITY ACT OF 1970.—Section 5(a) of the Federal Pay Comparability Act of 1970 (2 U.S.C. 60a-2(a)) is amended by inserting “of title 5, United States Code,” after “Whenever an adjustment under section 5303”.

(c) PUBLIC LAW 100-446.—Section 8(c)(2) of Public Law 100-446 (2 U.S.C. 178g(c)(2); 102 Stat. 1786) is amended by striking the second sentence.

5 USC 8440d.

(d) PUBLIC LAW 102-198.—Section 7(c)(4) of Public Law 102-198 (105 Stat. 1625) is amended—

(1) in subparagraph (A) by striking “2440d” and inserting “8440d”; and

(2) in subparagraph (B) by striking “subchapter III of”.

(e) PUBLIC LAW 102-233.—Section 21A(b)(9)(B)(i) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(b)(9)(B)(i)), as amended by section 201 of the Resolution Trust Corporation Refinancing, Restructuring, and Improvement Act of 1991 (Public Law 102-233; 105 Stat. 1765), is amended by striking the last 3 sentences.

SEC. 6. RESTORATION OF COVERAGE OF CERTAIN FEDERAL PERSONNEL PROVISIONS TO CERTAIN VETERANS HEALTH ADMINISTRATION EMPLOYEES.

(a) IN GENERAL.—Section 7511(b) of title 5, United States Code, is amended—

(1) by amending paragraph (7) to read as follows:

“(7) whose position is within the Central Intelligence Agency or the General Accounting Office;”;

(2) in paragraph (8) by striking “or” after the semicolon;

(3) in paragraph (9) by striking “title.” and inserting “title; or”; and

(4) by adding at the end the following:

“(10) who holds a position within the Veterans Health Administration which has been excluded from the competitive service by or under a provision of title 38, unless such employee was appointed to such position under section 7401(3) of such title.”.

(b) **APPLICABILITY.**—(1) The amendments made by subsection (a) shall apply with respect to any personnel action taking effect on or after the date of enactment of this Act. 5 USC 7511 note.

(2) In the case of an employee or former employee of the Veterans Health Administration (or predecessor agency in name)—

(A) against whom an adverse personnel action was taken before the date of enactment of this Act,

(B) who, as a result of the enactment of the Civil Service Due Process Amendments (5 U.S.C. 7501 note), became ineligible to appeal such action to the Merit Systems Protection Board,

(C) as to whom that appeal right is restored as a result of the enactment of subsection (a), or would have been restored but for the passage of time, and

(D) who is not precluded, by section 7121(e)(1) of title 5, United States Code, from appealing to the Merit Systems Protection Board,

the deadline for bringing an appeal under section 7513(d) or section 4303(e) of such title with respect to such action shall be the latter of—

(i) the 60th day after the date of enactment of this Act; or

(ii) the deadline which would otherwise apply if this paragraph had not been enacted.

SEC. 7. RETROACTIVE PERFORMANCE AWARDS.

(a) **IN GENERAL.**—Section 7(b) of the Thrift Savings Plan Technical Amendments Act of 1990 (5 U.S.C. 3392 note; Public Law 101-335) is amended by adding at the end thereof the following new paragraph:

“(3) **RETROACTIVE PERFORMANCE AWARDS.**—If an individual elects under paragraph (2) to continue to be subject to performance awards, the head of the agency in which such individual is serving shall determine whether to grant retroactive performance awards for any fiscal years prior to fiscal year 1991 to such individual, and the amount of any such awards, without regard to the provisions of subsection (b) of section 5383 of title 5, United States Code, and subsections (b) and (c) of section 5384 of such title. Before granting an award, the head of the agency shall make a written determination that the individual’s performance during the fiscal year for which the award is given was at least fully successful, and shall consider the recommendation of the agency’s performance review board with respect to the award. No such award for performance during any fiscal year may be less than 5 percent nor more than 15 percent of the individual’s rate of basic pay as of the end of such fiscal year.”.

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall be effective as if enacted as a part of section 7 of the Thrift Savings Plan Technical Amendments Act of 1990. 5 USC 3392 note.

SEC. 8. MISCELLANEOUS PROVISIONS.

(a) **ELIMINATION OF DUPLICATIVE AMENDMENTS MADE BY THE DEFENSE ACQUISITION WORKFORCE IMPROVEMENT ACT.**—Subsections (i) and (j) of section 1206 of the Defense Acquisition Workforce Improvement Act, as contained in the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101-510; 104

5 USC 5380 and
note, 5532 and
note, prec. 5301,
8344, 8468.

Stat. 1662, 1663), are repealed, and title 5, United States Code, shall read as if such subsections had not been enacted.

(b) PROVISIONS RELATING TO COMPARABILITY PAYMENTS IN 1994 AND 1995.—Notwithstanding section 5304 of title 5, United States Code, for purposes of any comparability payments scheduled to take effect under such section during calendar years 1994 and 1995, respectively—

(1) the report required by subsection (d)(1) of such section may be submitted not later than 1 month before the start of the calendar year for purposes of which it is prepared; and

(2) the surveys conducted by the Bureau of Labor Statistics for use in preparing any such report may be other than annual surveys, and shall, to the greatest extent practicable, be completed not later than 4 months before the start of the calendar year for purposes of which the surveys are conducted.

5 USC 6303 note.

SEC. 9. EFFECTIVE DATES.

(a) IN GENERAL.—Except as otherwise provided in this section, this Act and the amendments made by this Act shall take effect as of the date of enactment of this Act.

(b) EXCEPTIONS.—(1) The amendment made by section 4(c) shall be effective as of December 31, 1991.

(2) The amendments made by section 5(d) shall be effective as of December 9, 1991.

(3) The amendments made by sections 2(13) and 2(17) shall be effective as of October 1, 1991.

(4) The amendments made by sections 2(11), 2(19), 2(29), and 2(38) shall be effective as of May 4, 1991.

(5) The amendments made by section 2(25) shall be effective as of February 3, 1991.

(6) The provisions of section 8(a) and the amendments made by sections 2(57)(A), 2(60), 2(64), 2(67), 2(71), 2(75)(A), 3(1), 3(4), 3(6), and 5(a) shall be effective as of November 5, 1990.

(7) The amendment made by section 2(52) shall be effective as of January 1, 1989, except that no amount shall become payable, as a result of the enactment of such amendment, under—

(A) subchapter VI of chapter 55 of title 5, United States Code, based on a separation that takes effect or an election that is made before the date of enactment of this Act; or

(B) section 5551(b) of title 5, United States Code, which is attributable to an individual's being excepted from subchapter I of chapter 63 of such title before the date of enactment of this Act.

(8) The amendment made by section 2(69) shall be effective as of November 10, 1988.

(9) The amendments made by sections 2(40), 2(41), 2(42), 2(43), and 3(5) shall be effective as of the first day of the first applicable pay period beginning on or after the date of enactment of this Act.

(10) The amendments made by section 2(28) shall be effective as of the first day of the first applicable pay period beginning on or after November 5, 1990.

(11) The amendment made by section 2(49) shall apply with respect to a separation that takes effect on or after the date of enactment of this Act.

(12) The amendment made by section 5(e) shall apply with respect to any action (described in subclause (I) or (II) of the provisions struck by such amendment) occurring on or after the date of enactment of this Act.

Approved October 2, 1992.

LEGISLATIVE HISTORY—H.R. 2850:

CONGRESSIONAL RECORD, Vol. 138 (1992):

Mar. 17, considered and passed House.

Aug. 6, considered and passed Senate, amended.

Sept. 22, House concurred in Senate amendment.