(A) the President;

(B) a court of the United States;

(C) the head of an Executive agency; or

(D) the Secretary of a military department;

(2) engaged in the performance of a Federal function under authority of law or an Executive act; and

(3) subject to the supervision of an authority named by paragraph (1) of this section, or the Judicial Conference of the United States, while engaged in the performance of the duties of his office.

(b) Except as otherwise provided by law, an officer of the United States Postal Service or of the Postal Regulatory Commission is deemed not an officer for purposes of this title.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 408; Pub. L. 91–375, § 6(c)(3), Aug. 12, 1970, 84 Stat. 775; Pub. L. 109–435, title VI, § 604(b), Dec. 20, 2006, 120 Stat. 3241.)

HISTORICAL AND REVISION NOTES

The section is supplied for convenience.

AMENDMENTS

2006—Subsec. (b). Pub. L. 109–435 substituted ''Postal Regulatory Commission'' for ''Postal Rate Commission''.

1970—Subsec. (a). Pub. L. 91–375, § 6(c)(3)(A), (B), designated existing provisions as subsec. (a) and inserted in introductory text ''as otherwise provided by this section or'' after ''except''.

Subsec. (b). Pub. L. 91–375, § 6(c)(3)(C), added subsec. (b).

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–375 effective within 1 year after Aug. 12, 1970, on date established therefor by Board of Governors of United States Postal Service and published by it in Federal Register, see section 15(a) of Pub. L. 91–375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

§ 2105. Employee

(a) For the purpose of this title, ''employee'', except as otherwise provided by this section or when specifically modified, means an officer and an individual who is—

(1) appointed in the civil service by one of the following acting in an official capacity—

(A) the President;

(B) a Member or Members of Congress, or the Congress;

(C) a member of a uniformed service;

(D) an individual who is an employee under this section;

(E) the head of a Government controlled corporation; or

(F) an adjutant general designated by the Secretary concerned under section 709(c) of title 32;

(2) engaged in the performance of a Federal function under authority of law or an Executive act; and

(3) subject to the supervision of an individual named by paragraph (1) of this subsection while engaged in the performance of the duties of his position.

(b) An individual who is employed at the United States Naval Academy in the midshipmen's laundry, the midshipmen's tailor shop, the midshipmen's cobbler and barber shops, and the midshipmen's store, except an individual employed by the Academy dairy (if any), and whose employment in such a position began before October 1, 1996, and has been uninterrupted in such a position since that date is deemed an employee.

(c) An employee paid from nonappropriated funds of the Army and Air Force Exchange Service, Army and Air Force Motion Picture Service, Navy Ship's Stores Ashore, Navy exchanges, Marine Corps exchanges, Coast Guard exchanges, and other instrumentalities of the United States under the jurisdiction of the armed forces conducted for the comfort, pleasure, contentment, and mental and physical improvement of personnel of the armed forces is deemed not an employee for the purpose of—

(1) laws administered by the Office of Personnel Management, except—

(A) section 7204;

(B) as otherwise specifically provided in this title;

(C) the Fair Labor Standards Act of 1938;

(D) for the purpose of entering into an interchange agreement to provide for the noncompetitive movement of employees between such instrumentalities and the competitive service; or

(E) subchapter V of chapter 63, which shall be applied so as to construe references to benefit programs to refer to applicable programs for employees paid from nonappropriated funds; or

(2) subchapter I of chapter 81, chapter 84 (except to the extent specifically provided therein), and section 7902 of this title.

This subsection does not affect the status of these nonappropriated fund activities as Federal instrumentalities.

(d) A Reserve of the armed forces who is not on active duty or who is on active duty for training is deemed not an employee or an individual holding an office of trust or profit or discharging an official function under or in connection with the United States because of his appointment, oath, or status, or any duties or functions performed or pay or allowances received in that capacity.

(e) Except as otherwise provided by law, an employee of the United States Postal Service or of the Postal Regulatory Commission is deemed not an employee for purposes of this title.

(f) For purposes of sections 1212, 1213, 1214, 1215, 1216, 1221, 1222, 2302, and 7701, employees appointed under chapter 73 or 74 of title 38 shall be employees.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 409; Pub. L. 90–486, § 4, Aug. 13, 1968, 82 Stat. 757; Pub. L. 91–375, § 6(c)(4), Aug. 12, 1970, 84 Stat. 775; Pub. L. 92–392, § 2, Aug. 19, 1972, 86 Stat. 573; Pub. L. 95–454, title VII, § 703(c)(2), title IX, § 906(a)(2), Oct. 13, 1978, 92 Stat. 1217, 1224; Pub. L. 96–54, § 2(a)(5), (6), Aug. 14, 1979, 93 Stat. 381; Pub. L. 99–335, title II, § 207(a), June 6, 1986, 100 Stat. 594; Pub. L. 99–638, § 2(b)(1), Nov. 10, 1986, 100 Stat. 3536; Pub. L. 101–508, title VII, § 7202(b), Nov. 5, 1990, 104 Stat. 1388–335; Pub. L. 103–3, title II, § 201(b), Feb. 5, 1993, 107 Stat. 23; Pub. L. 103–424,

§7, Oct. 29, 1994, 108 Stat. 4364; Pub. L. 104–201, div. A, title III, §370(b), Sept. 23, 1996, 110 Stat. 2499; Pub. L. 105–85, div. B, title XXVIII, §2871(c)(2), Nov. 18, 1997, 111 Stat. 2015; Pub. L. 109–435, title VI, §604(f), Dec. 20, 2006, 120 Stat. 3242.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(b)	[Uncodified].	Aug. 5, 1939, ch. 448, §2, 53 Stat. 1210.
	[Uncodified].	Dec. 3, 1945, ch. 510, §2, 59 Stat. 590.
	[Uncodified].	Dec. 28, 1945, ch. 593, §2, 59 Stat. 660.
	[Uncodified].	Dec. 28, 1945, ch. 594, §2, 59 Stat. 660.
	[Uncodified].	July 26, 1946, ch. 675, §2 (last proviso), 60 Stat. 704.
(c)	5 U.S.C. 150k.	June 19, 1952, ch. 444, §1, 66 Stat. 138.
(d)	5 U.S.C. 30r(d).	Aug. 10, 1956, ch. 1041, §29(d), 70A Stat. 632.

Subsection (a) is supplied to avoid the necessity of defining ''employee'' each time it appears in this title. The subsection is based on a definition worked out independently by the Civil Service Commission and the Department of Labor and in use by both for more than a decade.

In subsection (b), the provisions of the source statutes which relate to credit for prior service and diminution of pay are executed, or, insofar as to be executed preserved by technical section 8.

In subsection (d), the words ''officer or'' are omitted as included within ''employee''.

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

The Fair Labor Standards Act of 1938, referred to in subsec. (c)(1)(C), is act June 25, 1938, ch. 676, 52 Stat. 1060, as amended, which is classified generally to chapter 8 (§201 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see section 201 of Title 29 and Tables.

AMENDMENTS

2006—Subsec. (e). Pub. L. 109–435 substituted ''Postal Regulatory Commission'' for ''Postal Rate Commission''.

1997—Subsec. (b). Pub. L. 105–85 inserted ''(if any)'' after ''Academy dairy''.

1996—Subsec. (b). Pub. L. 104–201 inserted ''who is'' after ''An individual'' and ''and whose employment in such a position began before October 1, 1996, and has been uninterrupted in such a position since that date'' after ''Academy dairy,''.

1994—Subsec. (f). Pub. L. 103–424 added subsec. (f).

1993—Subsec. (c)(1)(E). Pub. L. 103–3 added subpar. (E).

1990—Subsec. (c)(1). Pub. L. 101–508, §7202(b)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''laws (other than subchapter IV of chapter 53 of this title, subchapter III of chapter 83 of this title to the extent provided in section 8332(b)(16) of this title, and sections 5550 and 7204 of this title) administered by the Office of Personnel Management; or''.

Subsec. (c)(2). Pub. L. 101–508, §7202(b)(2), inserted ''(except to the extent specifically provided therein)'' after ''chapter 84''.

1986—Subsec. (c)(1). Pub. L. 99–638 inserted ''of this title, subchapter III of chapter 83 of this title to the extent provided in section 8332(b)(16) of this title,''.

Subsec. (c)(2). Pub. L. 99–335 substituted ''chapter 81, chapter 84,'' for ''chapter 81''.

1979—Subsec. (a)(1)(F). Pub. L. 96–54, §2(a)(5), substituted ''an adjutant'' for ''the adjutants'' and struck out '', United States Code'' after ''32''.

Subsec. (c)(1). Pub. L. 96–54, §2(a)(6), amended subsec. (c)(1) in same manner as amendment by section 703(c)(2) of Pub. L. 95–454. See 1978 Amendment note set out below.

1978—Subsec. (c)(1). Pub. L. 95–454 substituted ''7204'' for ''7154'', and ''Office of Personnel Management'' for ''Civil Service Commission''. Amendments by section 703(c)(1) and (c)(2) of Pub. L. 95–454 appear to have been inadvertently reversed. Subsec. (c)(1) purported to amend subsec. (c)(1) of this section, and subsec. (c)(2) purported to amend section 3302(2) of this title. However, the amendments specified by Pub. L. 95–454, §703(c)(1) and (2), were impossible to execute literally. Thus, the amendment by Pub. L. 95–454, §703(c)(2) was executed to this section, and the amendment by section 703(c)(1) was executed to section 3302(2) of this title as the probable intent of Congress.

1972—Subsec. (c)(1). Pub. L. 92–392 substituted ''laws (other than subchapter IV of chapter 53 and sections 5550 and 7154 of this title)'' for ''laws''.

1970—Subsec. (e). Pub. L. 91–375 added subsec. (e).

1968—Subsec. (a)(1)(F). Pub. L. 90–486 added subpar. (F).

EFFECTIVE DATE OF 1996 AMENDMENT

Section 370(e) of Pub. L. 104–201 provided that: ''The amendments made by this section [amending this section and section 6971 of Title 10, Armed Forces, and repealing section 6970 of Title 10] shall take effect on October 1, 1996.''

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–3 effective 6 months after Feb. 5, 1993, see section 405(b)(1) of Pub. L. 103–3, set out as an Effective Date note under section 2601 of Title 29, Labor.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 7202(m) of Pub. L. 101–508 provided that:

''(1) The amendments made by this section [amending this section and sections 3502, 5334, 5335, 5365, 5551, 6308, 6312, 8331, 8347, 8401, 8461, and 8901 of this title] shall apply with respect to any individual who, on or after January 1, 1987—

''(A) moves without a break in service of more than 3 days from employment in a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard that is described in section 2105(c) of title 5, United States Code, to employment in the Department of Defense or the Coast Guard, respectively, that is not described in such section 2105(c); or

''(B) moves without a break in service from employment in the Department of Defense or the Coast Guard that is not described in such section 2105(c) to employment in a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard, respectively, that is described in such section 2105(c).

''(2) The Secretary of Defense, the Secretary of Transportation, the Director of the Office of Personnel Management, and the Executive Director of the Federal Retirement Thrift Investment Board, as applicable, shall take such actions as may be practicable to ensure that each individual who has moved as described under paragraph (1) on or after January 1, 1987, and before the date of enactment of this Act [Nov. 5, 1990], receives the benefit of the amendments made by this section as if such amendments had been in effect at the time such individual so moved. Each such individual who wishes to make an election of retirement coverage under the amendments made by subsection (j) or (k) of this section [amending sections 8331, 8347, 8401, and 8461 of this title] shall complete such election within 180 days after the date of enactment of this Act.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–335 effective Jan. 1, 1987, see section 702(a) of Pub. L. 99–335, set out as an Effective Date note under section 8401 of this title.

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.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by 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.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92–392 effective on first day of first applicable pay period beginning on or after 90th day after Aug. 19, 1972, see section 15(a) of Pub. L. 92–392, set out as an Effective Date note under section 5341 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–375 effective within 1 year after Aug. 12, 1970, on date established therefor by Board of Governors of United States Postal Service and published by it in Federal Register, see section 15(a) of Pub. L. 91–375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–486 effective Jan. 1, 1968, except that no deductions or withholding from salary which result therefrom shall commence before the first day of the first pay period that begins on or after Jan. 1, 1968, see section 11 of Pub. L. 90–486, set out as a note under section 709 of Title 32, National Guard.

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.

TREATMENT OF INDIVIDUALS ELECTING TO REMAIN SUBJECT TO THEIR FORMER RETIREMENT SYSTEM

Section 7202(n) of Pub. L. 101–508, as amended by Pub. L. 102–378, § 5(a)(2), Oct. 2, 1992, 106 Stat. 1358, provided that:

''(1) For the purpose of this section [amending this section and sections 3502, 5334, 5335, 5365, 5551, 6308, 6312, 8331, 8347, 8401, 8461, and 8901 of this title and enacting provisions set out as notes under this section and section 2101 of this title], the term 'nonappropriated fund instrumentality' means a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard, described in section 2105(c) of title 5, United States Code.

''(2)(A) If an individual makes an election under section 8347(q)(1) of title 5, United States Code, to remain covered by subchapter III of chapter 83 of such title, any nonappropriated fund instrumentality thereafter employing such individual shall deduct from such individual's pay and contribute to the Thrift Savings Fund such sums as are required for such individual in accordance with section 8351 of such title.

''(B) Notwithstanding subsection (a) or (b) of section 8432 of title 5, United States Code, any individual who, as of the date of enactment of this Act [Nov. 5, 1990], becomes eligible to make an election under section 8347(q)(1) of such title may, within 30 days after such individual makes an election thereunder in accordance with subsection (m)(2) [set out as a note above], make any election described in section 8432(b)(1)(A) of such title.

''(3)(A) If an individual makes an election under section 8461(n)(1) of title 5, United States Code, to remain covered by chapter 84 of such title, any nonappropriated fund instrumentality thereafter employing such individual shall deduct from such individual's pay and shall contribute to the Thrift Savings Fund the funds deducted, together with such other sums as are required for such individual under subchapter III of such chapter.

''(B) Notwithstanding subsection (a) or (b) of section 8432 of title 5, United States Code, any individual who, as of the date of enactment of this Act, becomes eligible to make an election under section 8461(n)(1) of such title may, within 30 days after such individual makes an election thereunder in accordance with subsection (m)(2), make any election described in section 8432(b)(1)(A) of such title.

''(4) If an individual makes an election under section 8347(q)(2) or 8461(n)(2) of title 5, United States Code, to remain covered by a retirement system established for employees described in section 2105(c) of such title, any Government agency thereafter employing such individual shall, in lieu of any deductions or contributions for which it would otherwise be responsible with respect to such individual under chapter 83 or 84 of such title, make such deductions from pay and such contributions as would be required (under the retirement system for nonappropriated fund employees involved) if it were a nonappropriated fund instrumentality. Any such deductions and contributions shall be remitted to the Department of Defense or the Coast Guard, as applicable, for transmission to the appropriate retirement system.''

[Amendment by Pub. L. 102–378 to section 7202(n) of Pub. L. 101–508, set out above, effective Nov. 5, 1990, see section 9(b)(6) of Pub. L. 102–378, set out as an Effective Date of 1992 Amendment note under section 6303 of this title.]

PROHIBITION OF DECREASE IN BASIC PAY RATE OF EMPLOYEES OF NONAPPROPRIATED FUND INSTRUMENTALITIES

Amendments by Pub. L. 92–392 not to decrease basic pay rate of subsec. (c) employees in service before effective date of the amendments as to such employees, see section 9(a)(2) of Pub. L. 92–392, set out as a note under section 5343 of this title.

§ 2106. Member of Congress

For the purpose of this title, ''Member of Congress'' means the Vice President, a member of the Senate or the House of Representatives, a Delegate to the House of Representatives, and the Resident Commissioner from Puerto Rico.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 409; Pub. L. 91–405, title II, § 204(b), Sept. 22, 1970, 84 Stat. 852; Pub. L. 96–54, § 2(a)(7), Aug. 14, 1979, 93 Stat. 381.)

HISTORICAL AND REVISION NOTES

The section is supplied to avoid the necessity of defining ''Member of Congress'' each time the term is used in this title.

AMENDMENTS

1979—Pub. L. 96–54 substituted ''to the House of Representatives'' for ''from the District of Columbia''.

1970—Pub. L. 91–405 included Delegate from District of Columbia.

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.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–405 effective Sept. 22, 1970, see section 206(b) of Pub. L. 91–405, set out as an Effective Date note under section 25a of Title 2, The Congress.