1975—Pub. L. 94–183 struck out ‘‘, except an appointment made under section 3311 of title 39’’ after ‘‘or made with the advice and consent of, the Senate’’.

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.

§ 3352. Preference in transfers for employees making certain disclosures

(a) Subject to the provisions of subsections (d) and (e), in filling a position within any Executive agency, the head of such agency may give preference to any employee of such agency, or any other Executive agency, to transfer to a position of the same status and tenure as the position of such employee on the date of applying for a transfer under subsection (b) if—

(1) such employee is otherwise qualified for such position;

(2) such employee is eligible for appointment to such position; and

(3) the Merit Systems Protection Board makes a determination under the provisions of chapter 12 that a prohibited personnel action described under section 2302(b)(8) was taken against such employee.

(b) An employee who meets the conditions described under subsection (a)(1), (2), and (3) may voluntarily apply for a transfer to a position, as described in subsection (a), within the Executive agency employing such employee or any other Executive agency.

(c) If an employee applies for a transfer under the provisions of subsection (b) and the selecting official rejects such application, the selecting official shall provide the employee with a written notification of the reasons for the rejection within 30 days after receiving such application.

(d) An employee whose application for transfer is rejected under the provisions of subsection (c) may request the head of such agency to review the rejection. Such request for review shall be submitted to the head of the agency within 30 days after the employee receives notification under subsection (c). Within 30 days after receiving a request for review, the head of the agency shall complete the review and provide a written statement of findings to the employee and the Merit Systems Protection Board.

(e) The provisions of subsection (a) shall apply with regard to any employee—

(1) for no more than 1 transfer;

(2) for a transfer from or within the agency such employee is employed at the time of a determination by the Merit Systems Protection Board that a prohibited personnel action as described under section 2302(b)(8) was taken against such employee; and

(3) no later than 18 months after such a determination is made by the Merit Systems Protection Board.

(f) Notwithstanding the provisions of subsection (a), no preference may be given to any employee applying for a transfer under subsection (b), with respect to a preference eligible (as defined under section 2108(3)) applying for the same position.

(Added Pub. L. 101–12, § 5(a), Apr. 10, 1989, 103 Stat. 32.)

EFFECTIVE DATE

Section effective 90 days following Apr. 10, 1989, see section 11 of Pub. L. 101–12, set out as an Effective Date of 1989 Amendment note under section 1201 of this title.

SUBCHAPTER V—PROMOTION

§ 3361. Promotion; competitive service; examination

An individual may be promoted in the competitive service only if he has passed an examination or is specifically excepted from examination under section 3302 of this title. This section does not take from the President any authority conferred by section 3301 of this title that is consistent with the provisions of this title governing the competitive service.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 426.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 638 (as applicable to promotion).	Jan. 16, 1883, ch. 27, § 7 (as applicable to promotion), 22 Stat. 406.

The words ‘‘That after the expiration of six months from the passage of this act’’ are omitted as executed. The words ‘‘in the competitive service’’ are substituted for ‘‘in either of the said classes now existing, or that may be arranged hereunder pursuant to said rules’’ because of the definition of ‘‘competitive service’’ in section 2102. In the second sentence, the words ‘‘the provisions of this title governing the competitive service’’ are substituted for ‘‘this act’’.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

§ 3362. Promotion; effect of incentive award

An agency, in qualifying and selecting an employee for promotion, shall give due weight to an incentive award under chapter 45 of this title. For the purpose of this section, ‘‘agency’’ and ‘‘employee’’ have the meanings given them by section 4501 of this title.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 426.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 2123(f).	Sept. 1, 1954, ch. 1208, § 304(f), 68 Stat. 1113.

The word ‘‘incentive’’ is added for clarification. The second sentence is added on authority of former section 2122, which is carried into section 4501.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

§ 3363. Preference eligibles; promotion; physical qualifications; waiver

In determining qualifications of a preference eligible for promotion to another position in the competitive service, an Executive agency, or the government of the District of Columbia, the Office of Personnel Management or other examining agency shall waive—

(1) requirements as to age, height, and weight, unless the requirement is essential to the performance of the duties of the position; and

(2) physical requirements if, in the opinion of the Office or other examining agency, after considering the recommendation of an accredited physician, the preference eligible is physically able to perform efficiently the duties of the position.

This section does not apply to an appointment required by Congress to be confirmed by, or made with the advice and consent of, the Senate.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 427; Pub. L. 94–183, § 2(5), Dec. 31, 1975, 89 Stat. 1057; Pub. L. 95–454, title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 854 (1st 2 sentences, so much as relates to promotion).	June 27, 1944, ch. 287, § 5 (1st 2 sentences, so much as relates to promotion), 58 Stat. 388.

The section is restated to conform to section 3312.

The words ''in the competitive service, an Executive agency, or the government of the District of Columbia'' are added on authority of former sections 851, 858, and 869, which are carried into this title. The last sentence is added on authority of former section 869.

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

1978—Pub. L. 95–454 substituted ''Office of Personnel Management'' and ''Office'' for ''Civil Service Commission'' and ''Commission'', respectively.

1975—Pub. L. 94–183 struck out '', except an appointment made under section 3311 of title 39'' after ''or made with the advice and consent of, the Senate''.

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.

[§ 3364. Repealed. Pub. L. 94–183, § 2(6), Dec. 31, 1975, 89 Stat. 1057]

Section, Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 427, related to promotion to regular force of substitute employees in postal field service.

SUBCHAPTER VI—ASSIGNMENTS TO AND FROM STATES

§ 3371. Definitions

For the purpose of this subchapter—

(1) ''State'' means—

(A) a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, and a territory or possession of the United States; and

(B) an instrumentality or authority of a State or States as defined in subparagraph (A) of this paragraph (1) and a Federal-State authority or instrumentality;

(2) ''local government'' means—

(A) any political subdivision, instrumentality, or authority of a State or States as defined in subparagraph (A) of paragraph (1);

(B) any general or special purpose agency of such a political subdivision, instrumentality, or authority; and

(C) any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village as defined in the Alaska Native Claims Settlement Act (85 Stat. 688), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians and includes any tribal organization as defined in section 4 of the Indian Self-Determination and Education Assistance Act;

(3) ''Federal agency'' means an Executive agency, military department, a court of the United States, the Administrative Office of the United States Courts, the Library of Congress, the Botanic Garden, the Government Printing Office, the Congressional Budget Office, the United States Postal Service, the Postal Regulatory Commission, the Office of the Architect of the Capitol, the Office of Technology Assessment, and such other similar agencies of the legislative and judicial branches as determined appropriate by the Office of Personnel Management; and

(4) ''other organization'' means—

(A) a national, regional, State-wide, area-wide, or metropolitan organization representing member State or local governments;

(B) an association of State or local public officials;

(C) a nonprofit organization which has as one of its principal functions the offering of professional advisory, research, educational, or development services, or related services, to governments or universities concerned with public management; or

(D) a federally funded research and development center.

(Added Pub. L. 91–648, title IV, § 402(a), Jan. 5, 1971, 84 Stat. 1920; amended Pub. L. 93–638, title I, § 104(a), formerly § 105(a), Jan. 4, 1975, 88 Stat. 2208, renumbered § 104(a), Pub. L. 100–472, title II, § 203(a), Oct. 5, 1988, 102 Stat. 2290; Pub. L. 95–454, title VI, § 603(a), Oct. 13, 1978, 92 Stat. 1189; Pub. L. 100–472, title II, § 203(b), Oct. 5, 1988, 102 Stat. 2290; Pub. L. 101–301, § 2(c), May 24, 1990, 104 Stat. 207; Pub. L. 103–337, div. A, title X, § 1068(a), Oct. 5, 1994, 108 Stat. 2852; Pub. L. 109–435, title VI, § 604(b), Dec. 20, 2006, 120 Stat. 3241.)

REFERENCES IN TEXT

The Alaska Native Claims Settlement Act, referred to in par. (2)(C), is Pub. L. 92–203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§ 1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

Section 4 of the Indian Self-Determination and Education Assistance Act, referred to in par. (2)(C), is classified to section 450b of Title 25, Indians.

AMENDMENTS

2006—Par. (3). Pub. L. 109–435 substituted ''Postal Regulatory Commission'' for ''Postal Rate Commission''.

1994—Par. (4)(D). Pub. L. 103–337 added subpar. (D).

1990—Par. (2)(C). Pub. L. 101–301 substituted ''section 4'' for ''section 4(m)''.

1988—Par. (2)(C). Pub. L. 100–472, § 203(b), amended Pub. L. 93–638, by substituting ''section 4(m)'' for ''sec-