SUBCHAPTER I—RETENTION PREFERENCE

§ 3501. Definitions; application

(a) For the purpose of this subchapter, except section 3504—

(1) ''active service'' has the meaning given it by section 101 of title 37;

(2) ''a retired member of a uniformed service'' means a member or former member of a uniformed service who is entitled, under statute, to retired, retirement, or retainer pay on account of his service as such a member; and

(3) a preference eligible employee who is a retired member of a uniformed service is considered a preference eligible only if—

(A) his retirement was based on disability—

(i) resulting from injury or disease received in line of duty as a direct result of armed conflict; or

(ii) caused by an instrumentality of war and incurred in the line of duty during a period of war as defined by sections 101 and 1101 of title 38;

(B) his service does not include twenty or more years of full-time active service, regardless of when performed but not including periods of active duty for training; or

(C) on November 30, 1964, he was employed in a position to which this subchapter applies and thereafter he continued to be so employed without a break in service of more than 30 days.

(b) Except as otherwise provided by this subsection and section 3504 of this title, this subchapter applies to each employee in or under an Executive agency. This subchapter does not apply to an employee whose appointment is required by Congress to be confirmed by, or made with the advice and consent of, the Senate or to a member of the Senior Executive Service or the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 428; Pub. L. 94–183, § 2(8), Dec. 31, 1975, 89 Stat. 1057; Pub. L. 95–454, title IV, § 404(a), Oct. 13, 1978, 92 Stat. 1165; Pub. L. 100–325, § 2(e), May 30, 1988, 102 Stat. 581; Pub. L. 102–83, § 5(c)(2), Aug. 6, 1991, 105 Stat. 406.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(a)(1), (2) ...	5 U.S.C. 3101 (as applicable to 5 U.S.C. 861).	Aug. 19, 1964, Pub. L. 88–448, § 101 (as applicable to § 202), 78 Stat. 484.
(a)(3)	5 U.S.C. 861(b).	June 27, 1944, ch. 287, § 12(b); added Aug. 19, 1964, Pub. L. 88–448, § 202(4) (''(b)''), 78 Stat. 486.

In subsection (a), the definitions of ''uniformed services'' and ''armed forces'' are omitted as unnecessary in view of the definitions in section 2101. The definition of ''civilian office'' is omitted as unnecessary as subsection (b) of this section states the application of this subchapter.

In subsection (a)(3), the words ''Notwithstanding any other provision of this Act'' are omitted as unnecessary. The words ''preference eligible employee'' are coextensive with and substituted for ''employee * * * included under section 2 of this Act'' in view of the definition of preference eligible in section 2108. In paragraph (3)(C), the words ''on November 30, 1964, he was employed in a position to which this subchapter applies and thereafter he continued to be so employed'' are substituted for ''immediately prior to the effective date of this subsection, he was employed in a civilian office to which this Act applies and, on and after such date, he continues to be employed in any such office''.

Subsection (b) is supplied on authority of sections 2, 12, and 20 of the Act of June 27, 1944, ch. 287, 58 Stat. 387, 391, which are carried into this title.

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

AMENDMENTS

1991—Subsec. (a)(3)(A)(ii). Pub. L. 102–83 substituted reference to section 1101 of title 38 for reference to section 301 of title 38.

1988—Subsec. (b). Pub. L. 100–325 inserted reference to Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service.

1978—Subsec. (b). Pub. L. 95–454 inserted reference to a member of Senior Executive Service.

1975—Subsec. (b). Pub. L. 94–183 struck out '', except an employee whose appointment is 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 9 months after Oct. 13, 1978, and congressional review of provisions of sections 401 through 412 of Pub. L. 95–454, see section 415 of Pub. L. 95–454, set out as an Effective Date note under section 3131 of this title.

§ 3502. Order of retention

(a) The Office of Personnel Management shall prescribe regulations for the release of competing employees in a reduction in force which give due effect to—

(1) tenure of employment;

(2) military preference, subject to section 3501(a)(3) of this title;

(3) length of service; and

(4) efficiency or performance ratings.

In computing length of service, a competing employee—

(A) who is not a retired member of a uniformed service is entitled to credit for the total length of time in active service in the armed forces;

(B) who is a retired member of a uniformed service is entitled to credit for—

(i) the length of time in active service in the armed forces during a war, or in a campaign or expedition for which a campaign badge has been authorized; or

(ii) the total length of time in active service in the armed forces if he is included under section 3501(a)(3)(A), (B), or (C) of this title; and

(C) is entitled to credit for—

(i) service rendered as an employee of a county committee established pursuant to section 8(b) of the Soil Conservation and Allotment Act or of a committee or association of producers described in section 10(b) of the Agricultural Adjustment Act; and

(ii) service rendered as an employee described in section 2105(c) if such employee

moves or has moved, on or after January 1, 1966, without a break in service of more than 3 days, from a position in a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard to a position in the Department of Defense or the Coast Guard, respectively, that is not described in section 2105(c).

(b) A preference eligible described in section 2108(3)(C) of this title who has a compensable service-connected disability of 30 percent or more and whose performance has not been rated unacceptable under a performance appraisal system implemented under chapter 43 of this title is entitled to be retained in preference to other preference eligibles.

(c) An employee who is entitled to retention preference and whose performance has not been rated unacceptable under a performance appraisal system implemented under chapter 43 of this title is entitled to be retained in preference to other competing employees.

(d)(1) Except as provided under subsection (e), an employee may not be released, due to a reduction in force, unless—

(A) such employee and such employee's exclusive representative for collective-bargaining purposes (if any) are given written notice, in conformance with the requirements of paragraph (2), at least 60 days before such employee is so released; and

(B) if the reduction in force would involve the separation of a significant number of employees, the requirements of paragraph (3) are met at least 60 days before any employee is so released.

(2) Any notice under paragraph (1)(A) shall include—

(A) the personnel action to be taken with respect to the employee involved;

(B) the effective date of the action;

(C) a description of the procedures applicable in identifying employees for release;

(D) the employee's ranking relative to other competing employees, and how that ranking was determined; and

(E) a description of any appeal or other rights which may be available.

(3) Notice under paragraph (1)(B)—

(A) shall be given to—

(i) the State or entity designated by the State to carry out rapid response activities under section 134(a)(2)(A) of the Workforce Investment Act of 1998; and

(ii) the chief elected official of such unit or each of such units of local government as may be appropriate; and

(B) shall consist of written notification as to—

(i) the number of employees to be separated from service due to the reduction in force (broken down by geographic area or on such other basis as may be required under paragraph (4));

(ii) when those separations will occur; and

(iii) any other matter which might facilitate the delivery of rapid response assistance or other services under title I of the Workforce Investment Act of 1998.

(4) The Office shall prescribe such regulations as may be necessary to carry out this subsection. The Office shall consult with the Secretary of Labor on matters relating to title I of the Workforce Investment Act of 1998.

(e)(1) Subject to paragraph (3), upon request submitted under paragraph (2), the President may, in writing, shorten the period of advance notice required under subsection (d)(1)(A) and (B), with respect to a particular reduction in force, if necessary because of circumstances not reasonably foreseeable.

(2) A request to shorten notice periods shall be submitted to the President by the head of the agency involved, and shall indicate the reduction in force to which the request pertains, the number of days by which the agency head requests that the periods be shortened, and the reasons why the request is necessary.

(3) No notice period may be shortened to less than 30 days under this subsection.

(f)(1) The Secretary of Defense or the Secretary of a military department may—

(A) separate from service any employee who volunteers to be separated under this subparagraph even though the employee is not otherwise subject to separation due to a reduction in force; and

(B) for each employee voluntarily separated under subparagraph (A), retain an employee in a similar position who would otherwise be separated due to a reduction in force.

(2) The separation of an employee under paragraph (1)(A) shall be treated as an involuntary separation due to a reduction in force.

(3) An employee with critical knowledge and skills (as defined by the Secretary concerned) may not participate in a voluntary separation under paragraph (1)(A) if the Secretary concerned determines that such participation would impair the performance of the mission of the Department of Defense or the military department concerned.

(4) The regulations prescribed under this section shall incorporate the authority provided in this subsection.

(5) No authority under paragraph (1) may be exercised after September 30, 2014.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 428; Pub. L. 90–367, § 3, June 29, 1968, 82 Stat. 278; Pub. L. 90–623, § 1(23), Oct. 22, 1968, 82 Stat. 1313; Pub. L. 95–454, title III, § 307(e), title IX, § 906(a)(2), Oct. 13, 1978, 92 Stat. 1149, 1224; Pub. L. 99–251, title III, § 306(a), Feb. 27, 1986, 100 Stat. 27; Pub. L. 101–508, title VII, § 7202(c), Nov. 5, 1990, 104 Stat. 1388–335; Pub. L. 102–484, div. D, title XLIV, § 4433(a)(1), Oct. 23, 1992, 106 Stat. 2721; Pub. L. 104–106, div. A, title X, §§ 1034, 1043(d)(1), Feb. 10, 1996, 110 Stat. 430, 438; Pub. L. 104–201, div. A, title XVI, § 1609, Sept. 23, 1996, 110 Stat. 2738; Pub. L. 105–277, div. A, § 101(f) [title VIII, § 405(d)(1), (f)(1)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–417, 2681–429; Pub. L. 106–398, § 1 [[div. A], title XI, § 1103], Oct. 30, 2000, 114 Stat. 1654, 1654A–311; Pub. L. 109–163, div. A, title XI, § 1102, Jan. 6, 2006, 119 Stat. 3447; Pub. L. 110–417, [div. A], title XI, § 1105, Oct. 14, 2008, 122 Stat. 4617.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
(a)	5 U.S.C. 861(a) (less 2d and 3d provisos), (c).	June 27, 1944, ch. 287, § 12 (less 2d and 3d provisos), 58 Stat. 390. Aug. 19, 1964, Pub. L. 88–448, § 202 (1)–(3), (4) (''(c)''), 78 78 Stat. 486.
(b)	5 U.S.C. 861(a) (2d proviso).	June 27, 1944, ch. 287, § 12 (2d proviso), 58 Stat. 390.

In subsection (a), the words ''reduction in force'' are substituted for ''reduction in personnel''. The words ''in any civilian service of any Federal agency'' are omitted as unnecessary because of the application stated in section 3501. In the second sentence, the word ''total'' in the phrase ''length of service'' is omitted for consistency with paragraph (3), and the words ''subject to subsection (c) of this section'' are omitted as unnecessary in view of the supplied distinction between a competing employee who is not a retired member of a uniformed service and such an employee who is a retired member of a uniformed service. In paragraph (A), the words ''total length of time in active service'' are substituted for ''length of time spent in active service'' for consistency with paragraph (B)(ii).

In subsections (a) and (b), the references to ''performance'' ratings and ratings of ''satisfactory'' are added on authority of former section 2005, which is carried into section 4304.

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

Section 8(b) of the Soil Conservation and Allotment Act, referred to in subsec. (a)(C)(i), probably means section 8(b) of the Soil Conservation and Domestic Allotment Act, which is classified to section 590h(b) of Title 16, Conservation.

Section 10(b) of the Agricultural Adjustment Act, referred to in subsec. (a)(C)(i), is classified to section 610(b) of Title 7, Agriculture.

The Workforce Investment Act of 1998, referred to in subsec. (d)(3), (4), is Pub. L. 105–220, Aug. 7, 1998, 112 Stat. 936, as amended. Title I of the Act is classified principally to chapter 30 (§ 2801 et seq.) of Title 29, Labor. Section 134(a)(2)(A) of the Act is classified to section 2864(a)(2)(A) of Title 29. For complete classification of this Act to the Code, see Short Title note set out under section 9201 of Title 20, Education, and Tables.

AMENDMENTS

2008—Subsec. (f)(5). Pub. L. 110–417 substituted ''September 30, 2014'' for ''September 30, 2010''.

2006—Subsec. (f)(5). Pub. L. 109–163 substituted ''September 30, 2010'' for ''September 30, 2005''.

2000—Subsec. (f)(5). Pub. L. 106–398 substituted ''September 30, 2005'' for ''September 30, 2001''.

1998—Subsec. (d)(3)(A)(i). Pub. L. 105–277, § 101(f) [title VIII, § 405(f)(1)(A)(i)], added cl. (i) and struck out former cl. (i) which read as follows: ''the appropriate State dislocated worker unit or office (referred to in section 311(b)(2) of the Job Training Partnership Act), or the State or entity designated by the State to carry out rapid response activities under section 134(a)(2)(A) of the Workforce Investment Act of 1998; and''.

Pub. L. 105–277, § 101(f) [title VIII, § 405(d)(1)(A)(i)], added cl. (i) and struck out former cl. (i) which read as follows: ''the appropriate State dislocated worker unit or units (referred to in section 311(b)(2) of the Job Training Partnership Act); and''.

Subsec. (d)(3)(B)(iii). Pub. L. 105–277, § 101(f) [title VIII, § 405(f)(1)(A)(ii)], struck out ''under the Job Training Partnership Act or'' before ''under title I of''.

Pub. L. 105–277, § 101(f) [title VIII, § 405(d)(1)(A)(ii)], substituted ''other services under the Job Training Partnership Act or under title I of the Workforce Investment Act of 1998'' for ''other services under the Job Training Partnership Act''.

Subsec. (d)(4). Pub. L. 105–277, § 101(f) [title VIII, § 405(f)(1)(B)], struck out ''the Job Training Partnership Act or'' before ''title I of''.

Pub. L. 105–277, § 101(f) [title VIII, § 405(d)(1)(B)], substituted ''Secretary of Labor on matters relating to the Job Training Partnership Act or title I of the Workforce Investment Act of 1998'' for ''Secretary of Labor on matters relating to the Job Training Partnership Act''.

1996—Subsec. (a)(C)(ii). Pub. L. 104–106, § 1043(d)(1), substituted ''January 1, 1966'' for ''January 1, 1987''.

Subsec. (f). Pub. L. 104–201 amended subsec. (f) generally. Prior to amendment, subsec. (f) read as follows:

''(f)(1) The Secretary of Defense or the Secretary of a military department may—

''(A) release in a reduction in force an employee who volunteers for the release even though the employee is not otherwise subject to release in the reduction in force under the criteria applicable under the other provisions of this section; and

''(B) for each employee voluntarily released in the reduction in force under subparagraph (A), retain an employee in a similar position who would otherwise be released in the reduction in force under such criteria.

''(2) A voluntary release of an employee in a reduction in force pursuant to paragraph (1) shall be treated as an involuntary release in the reduction in force.

''(3) An employee with critical knowledge and skills (as defined by the Secretary concerned) may not participate in a voluntary release under paragraph (1) if the Secretary concerned determines that such participation would impair the performance of the mission of the Department of Defense or the military department concerned.

''(4) The regulations prescribed under this section shall incorporate the authority provided in this subsection.

''(5) The authority under paragraph (1) may not be exercised after September 30, 1996.''

Pub. L. 104–106, § 1034, added subsec. (f).

1992—Subsecs. (d), (e). Pub. L. 102–484 added subsecs. (d) and (e).

1990—Subsec. (a)(C). Pub. L. 101–508 amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''is entitled to credit for service rendered as an employee of a county committee established pursuant to section 590h(b) of title 16, or of a committee or an association of producers described in section 610(b) of title 7.''

1986—Subsec. (a)(C). Pub. L. 99–251 struck out ''who is an employee in or under the Department of Agriculture'' before ''is entitled to credit''.

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

Subsec. (b). Pub. L. 95–454, § 307(e), substituted provisions relating to retention of a preference eligible with a compensable service-connected disability of 30 percent or more, for provisions relating to retention of preference eligible employees on the basis of ratings.

Subsec. (c). Pub. L. 95–454, § 307(e), added subsec. (c).

1968—Subsec. (a). Pub. L. 90–623 made minor changes in form and punctuation in subpars. (A) and (B), and, in subpar. (C), substituted ''section 590h(b) of title 16'' and ''section 610(b) of title 7'' for ''section 8(b) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b))'' and ''section 10(b) of the Agricultural Adjustment Act of May 12, 1933 (48 Stat. 37)'' respectively.

Subsec. (a)(C). Pub. L. 90–367 added subsec. (a)(C).

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–277, div. A, § 101(f) [title VIII, § 405(g)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–434, as amended by Pub. L. 106–400, § 2, Oct. 30, 2000, 114 Stat. 1675, provided that:

''(1) IMMEDIATELY EFFECTIVE AMENDMENTS.—The amendments made by subsections (a) through (d)

[amending this section and sections 2014, 2015, and 2026 of Title 7, Agriculture, sections 1255a and 1613 of Title 8, Aliens and Nationality, sections 636, 1022a, 3116, and 3151 of Title 15, Commerce and Trade, section 79*l* of Title 16, Conservation, section 665 of Title 18, Crimes and Criminal Procedure, sections 2296 and 2311 of Title 19, Customs Duties, sections 1070d–2, 1087vv, 3443, 5934, 5938, 6365, 6434, 6453, and 6455 of Title 20, Education, section 5855 of Title 22, Foreign Relations and Intercourse, section 2102 of Title 29, Labor, section 6703 of Title 31, Money and Finance, sections 4102A, 4103A, and 4213 of Title 38, Veterans' Benefits, and sections 603, 1437u, 1474, 3013, 3056, 3056a, 3056h, 3796ee, 4368a, 4953, 4959, 6103, 6864, 6873, 7274h, 9806, 11302, 12637, 12653c, 12655m, 12899c, 12899e, and 13823 of Title 42, The Public Health and Welfare, amending provisions set out as notes under sections 1183a and 1522 of Title 8, sections 1143, 2391, 2501, 2701, and 2687 of Title 10, Armed Forces, section 3304 of Title 26, Internal Revenue Code, section 1721 of Title 29, and section 4101 of Title 38, and repealing provisions set out as notes under sections 1501 and 1551 of Title 29] shall take effect on the date of the enactment of this Act [Oct. 21, 1998].

''(2) SUBSEQUENTLY EFFECTIVE AMENDMENTS.—

''(A) MCKINNEY-VENTO HOMELESS ASSISTANCE ACT.—The amendments made by subsection (e) shall take effect on July 1, 1999.

''(B) JOB TRAINING PARTNERSHIP ACT.—The amendments made by subsection (f) [amending this section and sections 2014, 2015, and 2026 of Title 7, Agriculture, sections 1255a and 1613 of Title 8, Aliens and Nationality, sections 636 and 3116 of Title 15, Commerce and Trade, sections 2296 and 2311 of Title 19, Customs Duties, sections 1070d–2, 1087vv, 6365, 6434, 6453, and 6455 of Title 20, Education, section 2102 of Title 29, Labor, section 6703 of Title 31, Money and Finance, sections 4102A, 4103A, and 4213 of Title 38, Veterans' Benefits, and sections 603, 1437u, 1474, 3013, 3056, 3056a, 3056h, 3796ee, 4368a, 4953, 4959, 6864, 6873, 7274h, 9806, 11302, 12653c, 12655m, 12899c, and 13823 of Title 42, The Public Health and Welfare, and amending provisions set out as notes under sections 1183a and 1522 of Title 8, sections 1143, 2501, 2687, and 2701 of Title 10, Armed Forces, section 3304 of Title 26, Internal Revenue Code, section 1721 of Title 29, and section 4101 of Title 38] shall take effect on July 1, 2000.''

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1043(d)(2) of Pub. L. 104–106 provided that: ''Notwithstanding any provision of subsection (c) [set out as a note under section 8347 of this title], the amendment made by paragraph (1) [amending this section] shall—

''(A) take effect on the date of the enactment of this Act [Feb. 10, 1996]; and

''(B) apply with respect to any reduction in force carried out on or after such date.''

EFFECTIVE DATE OF 1992 AMENDMENT

Section 4433(a)(2) of Pub. L. 102–484 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply with respect to any personnel action taking effect on or after the last day of the 90-day period beginning on the date of enactment of this Act [Oct. 23, 1992].''

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.

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 1968 AMENDMENT

Amendment by Pub. L. 90–623 intended to restate without substantive change the law in effect on Oct. 22, 1968, see section 6 of Pub. L. 90–623, set out as a note under section 5334 of this title.

REGULATIONS

For provisions relating to promulgation of regulations necessary to carry out amendment by section 1043(d)(1) of Pub. L. 104–106, see section 1043(b) of Pub. L. 104–106, set out as a Regulations; Effective Date of 1996 Amendment note under section 8347 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.

INTERAGENCY PLACEMENT PROGRAM FOR FEDERAL EMPLOYEES AFFECTED BY REDUCTIONS IN FORCE

Pub. L. 103–337, div. A, title X, § 1066, Oct. 5, 1994, 108 Stat. 2850, as amended by Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814, provided that:

''(a) STUDY AND REPORT.—(1) The Director of the Office of Personnel Management shall conduct a study on the feasibility of establishing a mandatory interagency placement program for Federal employees affected by reductions in force.

''(2) For purposes of paragraph (1), an interagency placement program is a program that provides a system to require the offering of a position in an agency to an employee of another agency affected by a reduction in force if—

''(A) the position cannot be filled through a placement program of the agency in which the position is located;

''(B) the employee to whom the offer is made is qualified for the offered position; and

''(C) the geographic location of the offered position is within the commuting area of—

''(i) the residence of the employee; or

''(ii) the employee's present or last-held position.

''(3) The Director shall carry out this subsection in consultation with the Secretary of Defense.

''(4) The Director shall seek comments from the heads of all appropriate Federal agencies in conducting the study required by paragraph (1).

''(5) Not later than six months after the date of the enactment of this Act [Oct. 5, 1994], the Director shall submit to Congress a report on the results of the study required by paragraph (1) and on any action taken by the Director under subsection (b).

''(b) AGREEMENTS TO ESTABLISH INTERAGENCY PLACEMENT PROGRAM.—(1) The Director may establish a Government-wide interagency placement program for Federal employees affected by reductions in force if, during the 6-month period beginning on the date of the enactment of this Act [Oct. 5, 1994], the Director, in consultation with the Secretary of Defense, determines that such a program is feasible. To carry out the program, the Director may enter into an agreement with the head of each agency that agrees to participate in the program. If the Director establishes a program under this subsection, it is not necessary that the program be an interagency placement program within the meaning of subsection (a)(2).

''(2) If the Director establishes a program pursuant to paragraph (1), the report required by subsection (a)(5)

shall identify each agency that does not agree to participate in the program and the reasons of the head of that agency for not agreeing to participate.

''(c) DEFINITIONS.—For purposes of this section:

''(1) The term 'agency' means an Executive agency as defined in section 105 of title 5, United States Code, except that such term does not include the Government Accountability Office.

''(2) The term 'Federal employees affected by reductions in force' means Federal employees who are separated, or are scheduled to be separated, from service under a reduction in force pursuant to—

''(A) regulations prescribed under section 3502 of title 5, United States Code; or

''(B) procedures established under section 3595 of such title.''

SPECIAL RULE ON APPLICATION OF SUBSECTIONS (d) AND (e)

Section 4433(b) of Pub. L. 102–484, as amended by Pub. L. 103–337, div. A, title III, § 341(a), Oct. 5, 1994, 108 Stat. 2720, provided that:

''(1) The provisions of section 3502(d) and (e) of title 5, United States Code (as added by subsection (a)) shall apply to employees of the Department of Defense according to their terms, except that, with respect to any reduction in force within that agency that would involve the separation of a significant number of employees (as determined under paragraph (1)(B) of such section 3502(d)), any reference in such section 3502(d) to '60 days' shall, in the case of the employees described in paragraph (2), be deemed to read '120 days'.

''(2) The employees described in this paragraph are those employees of the Department of Defense who are to be separated, due to a reduction in force described in paragraph (1), effective on or after the last day of the 90-day period referred to in subsection (a)(2) [see Effective Date of 1992 Amendment note above] and before February 1, 2000.

''(3) Nothing in this subsection shall prevent the application of the amendment made by subsection (a) [amending this section] with respect to an employee if—

''(A) the preceding paragraphs of this subsection do not apply with respect to such employee; and

''(B) the amendment made by subsection (a) would otherwise apply with respect to such employee.

''(4) The Secretary of Defense shall prescribe such regulations as may be necessary to carry out this subsection.''

INDIAN PREFERENCE LAWS APPLICABLE TO BUREAU OF INDIAN AFFAIRS AND INDIAN HEALTH SERVICE POSITIONS

Applicability of Indian preference laws to Bureau of Indian Affairs and Indian Health Service positions for purposes of reduction-in-force procedures under subsec. (a) of this section, see section 472a(a) of Title 25, Indians.

EX. ORD. NO. 12828. DELEGATION OF CERTAIN PERSONNEL MANAGEMENT AUTHORITIES

Ex. Ord. No. 12828, Jan. 5, 1993, 58 F.R. 2965, as amended by Ex. Ord. No. 13415, § 2(b), Dec. 1, 2006, 71 F.R. 70641, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3 of the United States Code and sections 3502(e), 4505a(e), and 5377(i)(2) of title 5 of the United States Code, it is hereby ordered as follows:

SECTION 1. The Office of Personnel Management is designated and empowered to exercise, without the approval, ratification, or other action of the President, the following:

(1) The authority of the President under 5 U.S.C. 3502(e), as added by section 4433 of Public Law 102–484, to shorten the period of advance notice otherwise required by law with respect to reductions in force.

(2) The authority of the President under 5 U.S.C. 4505a(e), as added by section 2(19) of Public Law 102–378, to permit performance-based cash awards to be paid to categories of employees who would not otherwise be eligible.

SEC. 2. This order shall be effective immediately.

§ 3503. Transfer of functions

(a) When a function is transferred from one agency to another, each competing employee in the function shall be transferred to the receiving agency for employment in a position for which he is qualified before the receiving agency may make an appointment from another source to that position.

(b) When one agency is replaced by another, each competing employee in the agency to be replaced shall be transferred to the replacing agency for employment in a position for which he is qualified before the replacing agency may make an appointment from another source to that position.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 429; Pub. L. 95–454, title III, § 307(f), Oct. 13, 1978, 92 Stat. 1149; Pub. L. 96–54, § 2(a)(18), Aug. 14, 1979, 93 Stat. 382.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 861(a) (3d proviso).	June 27, 1944, ch. 287, § 12 (3d proviso), 58 Stat. 390.

In subsection (a), the words ''a function'' are substituted for ''any or all of the functions''. The word ''receiving'' is substituted for ''replacing'' in the phrase ''receiving agency'' to avoid confusion with subsection (b).

In subsections (a) and (b), the word ''first'' in the phrase ''shall first be transferred'' is omitted as redundant in view of the subsequent limitation imposed by the words following ''before''. The words ''make an appointment from another source to that position'' are substituted for ''appoint additional employees from any other source for such position''.

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

1979—Subsecs. (a), (b). Pub. L. 96–54 substituted ''competing employee'' for ''preference eligible employed''.

1978—Subsecs. (a), (b). Pub. L. 95–454 which directed the substitution of ''competing employee'' for ''preference eligible employee'' was impossible to execute literally because the text contained reference to ''preference eligible employed''. See 1979 Amendment note above.

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.

§ 3504. Preference eligibles; retention; physical qualifications; waiver

(a) In determining qualifications of a preference eligible for retention in a 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.

(b) If an examining agency determines that, on the basis of evidence before it, a preference eligible described in section 2108(3)(C) of this title who has a compensable service-connected disability of 30 percent or more is not able to fulfill the physical requirements of the position, the examining agency shall notify the Office of the determination and, at the same time, the examining agency shall notify the preference eligible of the reasons for the determination and of the right to respond, within 15 days of the date of the notification, to the Office. The Office shall require a demonstration by the appointing authority that the notification was timely sent to the preference eligible's last known address and shall, before the selection of any other person for the position, make a final determination on the physical ability of the preference eligible to perform the duties of the position, taking into account any additional information provided in the response. When the Office has completed its review of the proposed disqualification on the basis of physical disability, it shall send its findings to the appointing authority and the preference eligible. The appointing authority shall comply with the findings of the Office. The functions of the Office under this subsection may not be delegated.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 429; Pub. L. 95–454, title III, § 307(g), title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1149, 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 retention).	June 27, 1944, ch. 287, § 5 (1st 2 sentences, so much as relates to retention), 58 Stat. 388.

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 words ''preference eligible'' are substituted for ''veteran''.

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 designated existing provisions as subsec. (a), substituted ''Office of Personnel Management'' for ''Civil Service Commission'' and ''Office'' for ''Commission'', and added subsec. (b).

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.

SUBCHAPTER II—VOLUNTARY SEPARATION INCENTIVE PAYMENTS

PRIOR PROVISIONS

A prior subchapter II of this chapter consisting of section 3551, related to restoration of positions of Federal and District of Columbia employees upon release from duty in Reserves or National Guard, prior to repeal by Pub. L. 103–353, §§ 2(b)(2)(B), 8, Oct. 13, 1994, 108 Stat. 3169, 3175, effective with respect to reemployments initiated on or after first day after 60-day period beginning Oct. 13, 1994, with transition rules.

§ 3521. Definitions

In this subchapter, the term—

(1) ''agency'' means an Executive agency as defined under section 105 (other than the Government Accountability Office); and

(2) ''employee''—

(A) means an employee as defined under section 2105 employed by an agency and an individual employed by a county committee established under section 8(b)(5) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)(5)) who—

(i) is serving under an appointment without time limitation; and

(ii) has been currently employed for a continuous period of at least 3 years; and

(B) shall not include—

(i) a reemployed annuitant under subchapter III of chapter 83 or 84 or another retirement system for employees of the Government;

(ii) an employee having a disability on the basis of which such employee is or would be eligible for disability retirement under subchapter III of chapter 83 or 84 or another retirement system for employees of the Government;

(iii) an employee who is in receipt of a decision notice of involuntary separation for misconduct or unacceptable performance;

(iv) an employee who has previously received any voluntary separation incentive payment from the Federal Government under this subchapter or any other authority;

(v) an employee covered by statutory reemployment rights who is on transfer employment with another organization; or

(vi) any employee who—

(I) during the 36-month period preceding the date of separation of that employee, performed service for which a student loan repayment benefit was or is to be paid under section 5379;

(II) during the 24-month period preceding the date of separation of that employee, performed service for which a recruitment or relocation bonus was or is to be paid under section 5753; or

(III) during the 12-month period preceding the date of separation of that employee, performed service for which a retention bonus was or is to be paid under section 5754.

(Added Pub. L. 107–296, title XIII, § 1313(a)(1)(A), Nov. 25, 2002, 116 Stat. 2291; amended Pub. L. 112–74, div. G, title I, § 1401(b), Dec. 23, 2011, 125 Stat. 1134.)