Subpart A—General Provisions

CHAPTER 21—DEFINITIONS

Sec. 2101. Civil service; armed forces; uniformed services.

2101a. The Senior Executive Service.

2102. The competitive service.

2103. The excepted service.

2104. Officer.

2105. Employee.

2106. Member of Congress.

2107. Congressional employee.

2108. Veteran; disabled veteran; preference eligible.

2108a. Treatment of certain individuals as veterans, disabled veterans, and preference eligibles.

2109. Air traffic controller; Secretary.

AMENDMENTS


§ 2101. Civil service; armed forces; uniformed services.

For the purpose of this title—

(1) the “civil service” consists of all appointive positions in the executive, judicial, and legislative branches of the Government of the United States, except positions in the uniformed services;

(2) “armed forces” means the Army, Navy, Air Force, Marine Corps, and Coast Guard; and

(3) “uniformed services” means the armed forces, the commissioned corps of the Public Health Service, and the commissioned corps of the National Oceanic and Atmospheric Administration.


HISTORICAL AND REVISION NOTES

1966 Act

The section is supplied to establish basis of reference to employees in this title.

1967 Act

This section amends various sections §§2101, 4102, 4109, 5541, 6101 of title 5, United States Code, to reflect
§ 2101a

§ 2101a. The Senior Executive Service

The “Senior Executive Service” consists of Senior Executive Service positions (as defined in section 3132(a)(2) of this title).


Effective Date


§ 2102. The competitive service

(a) The “competitive service” consists of—

(1) all civil service positions in the executive branch, except—

(A) positions which are specifically excepted from the competitive service by or under statute;

(B) positions to which appointments are made by nomination for confirmation by the Senate, unless the Senate otherwise directs; and

(C) positions in the Senior Executive Service;

(2) civil service positions not in the executive branch which are specifically included in the competitive service by statute; and

(3) positions in the government of the District of Columbia which are specifically included in the competitive service by statute.

(b) Notwithstanding subsection (a)(1)(B) of this section, the “competitive service” includes positions to which appointments are made by nomination for confirmation by the Senate when specifically included therein by statute.

(c) As used in other Acts of Congress, “classified civil service” or “classified service” means the “competitive service”.


Historical and Revision Notes

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Subsection (a) is restated in the form of a definition. Subsection (a)(1) is based on former section 638, which placed positions in the executive branch of the Government generally in the competitive service by the requirement that employment be predicated on passing an examination or being exempted from examination, and section 1 of the Act of Nov. 26, 1940, ch. 919, title I, 54 Stat. 1211 (see table III), which authorized the President, subject to certain exceptions, to place in the classified civil service positions in the Executive departments, independent establishments, and other agencies of the Government. In that Act the word “executive” has been construed to modify “departments”, “independent establishments”; and “other agency”. This construction is supported by the language of the Act of Jan. 16, 1983, and is embodied in Civil Service Rule I. Acting under this statute, the President has placed all but a comparatively few of the positions covered by the Act of Nov. 26, 1940, in the competitive service. The remainder are covered by the exceptions contained in the Civil Service Rules and Regulations. The authority of the President conferred by the Act of Nov. 26, 1940, has been superseded in part by exceptions created by statutes enacted after that date. The effect of these exceptions and the power conferred on the President by former section 633/2/8 (last sentence) to make exceptions to the Civil Service Rules are preserved by the words “positions which are specifically excepted from the competitive service by or under statute”.

In subsection (a)(1)(B), the words “or to pass an examination” are omitted as covered by the exclusion from the “competitive service”.

Subsection (a)(2) preserves the exception stated in former section 638 modified to recognize the several statutory exceptions to this exception that have been enacted. The language of former section 638 relative to examination is codified in sections 3304(b) and 3361. The reference to veterans’ preference is omitted because the statute referred to, R.S. §1754, was superseded by sections 3 and 21 of the Act of June 27, 1929, ch. 29, 46 Stat. 21. Section 3 of the Act of June 18, 1929, was superseded by the Act of June 27, 1944, ch. 287, 58 Stat. 387, as amended, which is carried into this title. Rights preserved by section 18 of the Act of June 27, 1944, are further preserved by technical section 8. The exception for laborers and workmen was superseded by the Act of Nov. 26, 1940.

Subsection (b) is added because of the provisions in section 3311 of title 39.

Subsection (c) is supplied for conformity inasmuch as the terms are coextensive by definition. 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


Effective Date of 1978 Amendment


§ 2103. The excepted service

(a) For the purpose of this title, the “excepted service” consists of those civil service positions which are not in the competitive service or the Senior Executive Service.

(b) As used in other Acts of Congress, “unclassified civil service” or “unclassified service” means the “excepted service”.


Historical and Revision Notes

The section is supplied for convenience. The “excepted service” has come to mean all employees not in the competitive service, for whatever reason.

Amendments


Effective Date of 1978 Amendment

Amendment by Pub. L. 95–454 effective 9 months after Oct. 13, 1978, and congressional review of provisions of
§ 2104. Officer

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

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

(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.

Amendments


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 precedeing 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 title 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.
**HISTORICAL AND REVISION NOTES**

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<td>(d)</td>
<td>5 U.S.C. 30r(d)</td>
<td>July 26, 1946, ch. 675, §2 (last proviso), 60 Stat. 704.</td>
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</tbody>
</table>

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**


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”.


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 subsection IV of chapter 53 of this title, subsection 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, subsection 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”.


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”.


**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 5363, 5364, 5365, 5343, 5360, 5351, 6386, 6312, 6331, 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(e) 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(e); 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(e) to employment in a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard, respectively, that is described in such section 2105(e).”

“(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 (i) 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 an Effective Date note under section 385 of this title.

**Effective Date of 1978 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 8331 of this title.

**Effective Date of 1976 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 8411 of this title.

**Effective Date of 1975 Amendment**

Amendment by Pub. L. 94–180 effective within 1 year after Oct. 13, 1978, see section 9(b) of Pub. L. 94–180, set out as an Effective Date note under section 9(b)(6) of title 5, United States Code.

**Effective Date of 1974 Amendment**

Amendment by Pub. L. 93–443 effective Jan. 1, 1974, see section 2101 of this title, set out as an Effective Date note under section 2101 of title 5, United States Code.

**Effective Date of 1973 Amendment**

Amendment by Pub. L. 92–500 effective Oct. 1, 1973, see section 2106(b)(2) of this title, set out as an Effective Date note under section 2106 of title 5, United States Code.

**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 8411 of this title.

**Effective Date of 1971 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 1970 Amendment**


**Effective Date of 1968 Amendment**

Amendment by Pub. L. 90–486 effective Jan. 1, 1968, except that no deductions or withholdings 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), 531(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 462 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. 1388, provided that:“(1) For the purpose of this section [amending this section and sections 3502, 3504, 3505, 3506, 3507, 3511, 3512, 3531, 8147, 8401, 8461, and 8905 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, any nonappropriated fund instrumentality thereof 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 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 [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), 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, any nonappropriated fund instrumentality thereof 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 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.”


**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 8343 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.


**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”. 
§ 2107  TITLE 5—GOVERNMENT ORGANIZATION AND EMPLOYEES  Page 170


EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 96–54 effective July 12, 1970, 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.

§ 2107. Congressional employee

For the purpose of this title, “Congressional employee” means—

(1) an employee of either House of Congress, of a committee of either House, or of a joint committee of the two Houses;

(2) an elected officer of either House who is not a Member of Congress;

(3) the Legislative Counsel of either House and an employee of his office;

(4) a member or employee of the Capitol Police;

(5) an employee of a Member of Congress if the pay of the employee is paid by the Secretary of the Senate or the Chief Administrative Officer of the House of Representatives;


(7) the Architect of the Capitol and an employee of the Architect of the Capitol;

(8) an employee of the Botanic Garden; and

(9) an employee of the Office of Congressional Accessibility Services.


HISTORICAL AND REVISION NOTES

1966 ACT

The section is supplied to avoid the necessity of defining “Congressional employee” each time the term is used in this title.

1967 ACT

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Paragraph (6), relating to Official Reporters of Debates of the Senate and their employees, is eliminated as unnecessary on authority of the act of July 27, 1965 (2 U.S.C. 126–1). Pursuant to that act, the Official Reporters and their employees became employees of the Senate; accordingly, they are now included within the definition of “Congressional employee” under paragraph (1).

In paragraph (8), based on the act of September 26, 1966 (5 App. U.S.C. 2251(c)), the word “officers” is omitted as included in “employees,” and the words “United States” preceding the words “Botanic Garden” are omitted as unnecessary.

AMENDMENTS

2010—Par. (4). Pub. L. 111–145, inserted “or employee” after “member”.


1996—Par. (5). Pub. L. 104–186 substituted “Chief Administrative Officer” for “Clerk”.


EFFECTIVE DATE OF 2010 AMENDMENT


EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–437 effective first day of first pay period (applicable to employees transferred under section 2241 of Title 2, The Congress) on or after 30 days after Oct. 20, 2008, see section 422(d) of Pub. L. 110–437, set out as a note under section 1301 of Title 2.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–510 effective immediately prior to noon on June 3, 1971, see section 601(1) of Pub. L. 91–510, set out as a note under section 72a of Title 2, The Congress.

§ 2108. Veteran; disabled veteran; preference eligible

For the purpose of this title—

(1) “veteran” means an individual who—

(A) served on active duty in the armed forces during a war, in a campaign or expedition for which a campaign badge has been authorized, or during the period beginning April 28, 1952, and ending July 1, 1955;

(B) served on active duty as defined by section 101(21) of title 38 at any time in the armed forces for a period of more than 180 consecutive days any part of which occurred after January 31, 1955, and before October 15, 1976, not including service under section 12103(d) of title 10 pursuant to an enlistment in the Army National Guard or the Air National Guard or as a Reserve for service in the Army Reserve, Navy Reserve, Air Force Reserve, Marine Corps Reserve, or Coast Guard Reserve;

(C) served on active duty as defined by section 101(21) of title 38 in the armed forces during the period beginning on August 2, 1990, and ending on January 2, 1992; or

(D) served on active duty as defined by section 101(21) of title 38 at any time in the armed forces for a period of more than 180 consecutive days any part of which occurred during the period beginning on September 11, 2001, and ending on the date prescribed by Presidential proclamation or by law as the last date of Operation Iraqi Freedom;

and, except as provided under section 2108a, who has been discharged or released from active duty in the armed forces under honorable conditions;

(2) “disabled veteran” means an individual who has served on active duty in the armed forces, (except as provided under section 2108a) has been separated therefrom under honorable
conditions, and has established the present existence of a service-connected disability or is receiving compensation, disability retirement benefits, or pension because of a public statute administered by the Department of Veterans Affairs or a military department; 

(3) “preference eligible” means, except as provided in paragraph (4) of this section or section 2108a(c)—

(A) a veteran as defined by paragraph (1)(A) of this section;

(B) a veteran as defined by paragraph (1)(B), (C), or (D) of this section;

(C) a disabled veteran;

(D) the unmarried widow or widower of a veteran as defined by paragraph (1)(A) of this section;

(E) the wife or husband of a service-connected disabled veteran if the veteran has been unable to qualify for any appointment in the civil service or in the government of the District of Columbia;

(F) the mother of an individual who lost his life under honorable conditions while serving in the armed forces during a period named by paragraph (1)(A) of this section, if—

(i) her husband is totally and permanently disabled;

(ii) she is widowed, divorced, or separated from the father and has not remarried; or

(iii) she has remarried but is widowed, divorced, or legally separated from her husband when preference is claimed;

(G) the mother of a service-connected permanently and totally disabled veteran, if—

(i) her husband is totally and permanently disabled;

(ii) she is widowed, divorced, or separated from the father and has not remarried; or

(iii) she has remarried but is widowed, divorced, or legally separated from her husband when preference is claimed; and

(H) a veteran who was discharged or released from a period of active duty by reason of a sole survivorship discharge (as that term is defined in section 1174(i) of title 10); but does not include applicants for, or members of, the Senior Executive Service, the Defense Intelligence Senior Executive Service, the Senior Cryptologic Senior Executive Service, or the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service;

(4) for the purposes of chapters 43 and 75 of this title, “preference eligible” does not include a retired member of the armed forces unless—

(A) the individual is a disabled veteran; or

(B) the individual retired below the rank of major or its equivalent; and

(5) “retired member of the armed forces” means a member or former member of the armed forces who is entitled, under statute, to retired, retirement, or retainer pay on account of service as a member.


HISTORICAL AND REVISION NOTES
1966 ACT

Derivation U.S. Code Revised Statutes and Statutes at Large

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<tr>
<td>June 27, 1944, ch. 297, §2 (less 1st 76 words), 58 Stat. 387.</td>
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<td>Jan. 19, 1948, ch. 1, §1, 62 Stat. 3.</td>
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<td>Dec. 27, 1950, ch. 1151, §1, 64 Stat. 1177.</td>
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In paragraph (2), the words “a military department” are substituted for “the War Department or Navy Department” (appearing in section 2 of the Act of June 27, 1944) because of the definition of “military department” in section 102. The Department of War was designated the Department of the Army by the Act of July 26, 1947, ch. 343, §205, 61 Stat. 501. “Department of the Air Force” is included on authority of the Act of July 26, 1947, ch. 343, §205(a)(1), (f), (i), 61 Stat. 502.

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

1967 ACT

Section of Title 5 | Source (U.S. Code) | Source (Statutes at Large)
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AMENDMENTS

2011—Par. (1). Pub. L. 112–56, §235(a)(2)(A)(i), in concluding provisions, inserted “, except as provided under section 2108a,” before “who has been”.

Par. (2). Pub. L. 112–56, §235(a)(2)(A)(i), inserted “(except as provided under section 2108a)” before “has been separated”.


Par. (4). Pub. L. 109–183, §§1112(a), in concluding provisions, substituted “discharged or released from active duty in” for “separated from”.


Par. (3)(B). Pub. L. 109–163, §1111(b), substituted “paragraph (1)(B), (C), or (D)” for “paragraph (1)(B) or (C)”. 
1998—Par. (3). Pub. L. 105–339, in concluding provisions, substituted “or the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service” for “the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service, or the General Accounting Office;”.


Par. (3)(B). Pub. L. 105–85, §1102(a)(2), inserted “or (C)” after “‘paragraph (1)(B)’”.

1991—Par. (3). Pub. L. 102–54 substituted “‘Department of Veterans Affairs’ or ‘Veterans’ Administration’” for “‘department’”.


1979—Par. (3). Pub. L. 96–54, §2(a)(8), inserted provision excepting applicants for, or members of, Senior Executive Service.

Par. (3). Pub. L. 96–54, §2(a)(9)(A), struck out provision excepting applicants for, or members of, Senior Executive Service.


Par. (3). Pub. L. 95–454, §307(a)(2), (3), inserted ‘‘, except as provided in paragraph (4) of this section’’ after ‘‘means,’’ and substituted a semicolon for the period at end.

Pars. (4). (5), Pub. L. 95–454, §307(a)(4), added pars. (4) and (5) relating to retired members of the armed forces.

Par. (5). Pub. L. 95–454, §401(d), inserted ‘‘, but does not include applicants for, or members of, the Senior Executive Service’’ before the period at end.

1976—Par. (1)(B), Pub. L. 94–502 substituted ‘‘the request of the member, pursuant to the Department of Defense policy permitting the early separation of a member from the Armed Forces, at the date of enactment of this Act (Aug. 29, 1980)’’ for ‘‘the request of the member in accordance with section 2108 of title 5, United States Code.’’


Par. (5). Pub. L. 95–454, §401(d), inserted ‘‘; but does not include any part of the date of enactment of title 5, United States Code’’.


1971—Par. (3)(D), Pub. L. 92–187 inserted ‘‘or widower’’ after ‘‘unmarried widow’’.

Par. (3)(E). Pub. L. 92–187 inserted ‘‘or husband’’ after ‘‘the wife’’.

1969—Par. (3)(D), Pub. L. 90–623 inserted ‘‘as defined by paragraph (1)(A) of this section’’ after ‘‘‘veteran’’’.

EFFECTIVE DATE OF 2008 AMENDMENT
Pub. L. 110–93, §10, Aug. 29, 2008, 122 Stat. 3530, provided that:

‘‘(a) RETROACTIVE EFFECTIVE DATE.—Except as provided in subsection (b) and section 9 [amending section 885 of Title 26, Internal Revenue Code, and enacting provisions set out as a note under section 885 of Title 26], this Act [amending this section, section 8521 of this title, sections 1145, 1146, and 1174 of Title 10, Armed Forces, section 685 of Title 26, section 303a of Title 37, Pay and Allowances of the Uniformed Services, and sections 3011, 3012, 3075, and 4211 of Title 38, Veterans’ Benefits, and enacting provisions set out as notes under section 101 of Title 10 and section 685 of Title 26] and the amendments made by this Act shall apply with respect to any sole survivorship discharge granted after September 11, 2001.

(b) DATE OF ENACTMENT EFFECTIVE DATE FOR CERTAIN AMENDMENTS.—The amendments made by sections 4, 7, and 8 [amending this section and section 8521 of this title and section 1145 of Title 10] shall apply with respect to any sole survivorship discharge granted after the date of enactment of this Act [Aug. 29, 2008].

(c) SOLE SURVIVORSHIP DISCHARGE DEFINED.—In this section, the term ‘sole survivorship discharge’ means the separation of a member from the Armed Forces, at the request of the member, pursuant to the Department of Defense policy permitting the early separation of a member who is the only surviving child in a family in which—

‘‘(1) the father or mother or one or more siblings—

‘‘(A) served in the Armed Forces; and

‘‘(B) was killed, died as a result of wounds, accident, or disease, is in a captured or missing in action status, or is permanently 100 percent disabled or hospitalized on a continuing basis (and is not employed gainfully because of the disability or hospitalization); and

‘‘(2) the death, status, or disability did not result from the intentional misconduct or willful neglect of the parent or sibling and was not incurred during a period of unauthorized absence.

EFFECTIVE DATE OF 1981 AMENDMENT

EFFECTIVE DATE OF 1980 AMENDMENT

EFFECTIVE DATE OF 1979 AMENDMENT
Amendment by section 2(a)(8) of 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.

Section 2(a)(9)(B) of Pub. L. 96–54 provided that: ‘‘The amendment made by subparagraph (A) [amending this section] shall take effect October 1, 1980.’’

EFFECTIVE DATE OF 1978 AMENDMENT
Section 307(a) of Pub. L. 95–454 provided that the amendment made by that section is effective Oct. 1, 1980.


EFFECTIVE DATE OF 1968 AMENDMENT
Amendment by Pub. L. 90–623 effective Sept. 11, 1967, for all purposes, see section 6 of Pub. L. 90–623, set out as a note under section 5334 of this title.

SAVINGS PROVISION
Pub. L. 109–163, div. A, title XI, §1112(b), Jan. 6, 2006, 119 Stat. 3451, provided that: ‘‘Nothing in the amendment made by subsection (a) [amending this section] may be construed to affect a determination made before the date of enactment of this Act [Jan. 6, 2006] that an individual is a preference eligible (as defined in section 2108(c) of title 5, United States Code).’’

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), 531(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.

§ 2108a. Treatment of certain individuals as veterans, disabled veterans, and preference eligibles

(a) VETERAN.—

(1) IN GENERAL.—Except as provided under paragraph (3), an individual shall be treated

1 So in original. Subsec. does not contain a par. (3).
as a veteran defined under section 2108(1) for purposes of making an appointment in the competitive service, if the individual—

(A) meets the definition of a veteran under section 2108(1), except for the requirement that the individual has been discharged or released from active duty in the armed forces under honorable conditions; and

(B) submits a certification described under paragraph (2) to the Federal officer making the appointment.

(2) Certification.—A certification referred to under paragraph (1) is a certification that the individual is expected to be discharged or released from active duty in the armed forces under honorable conditions not later than 120 days after the date of the submission of the certification.

(b) Disabled Veteran.—

(1) In General.—Except as provided under paragraph (3), 1 an individual shall be treated as a disabled veteran defined under section 2108(2) for purposes of making an appointment in the competitive service, if the individual—

(A) meets the definition of a disabled veteran under section 2108(2), except for the requirement that the individual has been separated from active duty in the armed forces under honorable conditions; and

(B) submits a certification described under paragraph (2) to the Federal officer making the appointment.

(2) Certification.—A certification referred to under paragraph (1) is a certification that the individual is expected to be separated from active duty in the armed forces under honorable conditions not later than 120 days after the date of the submission of the certification.

(c) Preference Eligible.—Subsections (a) and (b) shall apply with respect to determining whether an individual is a preference eligible under section 2108(3) for purposes of making an appointment in the competitive service.


§ 2109. Air traffic controller; Secretary

For the purpose of this title—

(1) “air traffic controller” or “controller” means a civilian employee of the Department of Transportation or the Department of Defense who, in an air traffic control facility or flight service station facility—

(A) is actively engaged—

(i) in the separation and control of air traffic; or

(ii) in providing preflight, inflight, or airport advisory service to aircraft operators; or

(B) is the immediate supervisor of any employee described in subparagraph (A); and

(2) “Secretary”, when used in connection with “air traffic controller” or “controller”, means the Secretary of Transportation with respect to controllers in the Department of Transportation, and the Secretary of Defense with respect to controllers in the Department of Defense.


AMENDMENTS

1986—Par. (1). Pub. L. 99–335 amended par. (1) generally including within term “air traffic controller” or “controller” references to a flight service station facility and to employment providing preflight, inflight, or airport advisory service to aircraft operators and striking out provision that regulations prescribed by the Secretary be used in determining who is an air traffic controller.

1980—Pub. L. 96–347 substituted “controller; Secretary” for “controller” in section catchline, and in text included employees of the Department of Defense within the meaning of air traffic controller or controller and defined “Secretary” to mean Secretary of Transportation with respect to controllers in the Department of Transportation and Secretary of Defense with respect to controllers in the Department of Defense.

Effective Date

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 1980 Amendment

Section 3 of Pub. L. 96–347 provided that: “This Act [amending this section and sections 3307, 3381 to 3385, and 8335 of this title and enacting provisions set out as a note under section 8335 of this title] shall take effect on the later of—

“(1) October 1, 1980, or

“(2) the ninetieth day after the date of the enactment of this Act [Sept. 12, 1980].”

Effective Date

Section effective on 90th day after May 16, 1972, see, section 10 of Pub. L. 92–297, set out as a note under section 3381 of this title.

CHAPTER 23—MERIT SYSTEM PRINCIPLES

Sec.

2301. Merit system principles.

2302. Prohibited personnel practices.

2303. Prohibited personnel practices in the Federal Bureau of Investigation.


2305. Coordination with certain other provisions of law.

Amendments


§ 2301. Merit system principles

(a) This section shall apply to—

(1) an Executive agency; and

(2) the Government Printing Office.

(b) Federal personnel management should be implemented consistent with the following merit system principles:

(1) Recruitment should be from qualified individuals from appropriate sources in an endeavor to achieve a work force from all segments of society, and selection and advancement should be determined solely on the basis of relative ability, knowledge, and skills, after fair and open competition which assures that all receive equal opportunity.
(2) All employees and applicants for employment should receive fair and equitable treatment in all aspects of personnel management without regard to political affiliation, race, color, religion, national origin, sex, marital status, age, or handicapping condition, and with proper regard for their privacy and constitutional rights.

(3) Equal pay should be provided for work of equal value, with appropriate consideration of both national and local rates paid by employers in the private sector, and appropriate incentives and recognition should be provided for excellence in performance.

(4) All employees should maintain high standards of integrity, conduct, and concern for the public interest.

(5) The Federal work force should be used efficiently and effectively.

(6) Employees should be retained on the basis of the adequacy of their performance, inadequate performance should be corrected, and employees should be separated who cannot or will not improve their performance to meet required standards.

(7) Employees should be provided effective education and training in cases in which such education and training would result in better organizational and individual performance.

(8) Employees should be—
(A) protected against arbitrary action, personal favoritism, or coercion for partisan political purposes, and
(B) prohibited from using their official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for election.

(9) Employees should be protected against reprisal for the lawful disclosure of information which the employees reasonably believe evidences—
(A) a violation of any law, rule, or regulation, or
(B) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

(c) In administering the provisions of this chapter—
(1) with respect to any agency (as defined in section 2302(a)(2)(C) of this title), the President shall, pursuant to the authority otherwise available under this title, take any action, including the issuance of rules, regulations, or directives; and
(2) with respect to any entity in the executive branch which is not such an agency or part of such an agency, the head of such entity shall, pursuant to authority otherwise available, take any action, including the issuance of rules, regulations, or directives; which is consistent with the provisions of this title and which the President or the head, as the case may be, determines is necessary to ensure that personnel management is based on and embodies the merit system principles.

“(4)(A) accountability in the enforcement of employee rights is not furthered by terminating—
   “(i) the employment of other employees; or
   “(ii) the benefits to which those employees are entitled through statute or contract; and
“(B) this Act is not intended to authorize those actions;
“(5)(A) nor is accountability furthered if Federal agencies react to the increased accountability under this Act by taking unfounded disciplinary actions against managers or by violating the procedural rights of managers who have been accused of discrimination; and
“(B) Federal agencies should ensure that managers have adequate training in the management of a diverse workforce and in dispute resolution and other essential communication skills; and
“(6)(A) Federal agencies are expected to reimburse the General Fund of the Treasury within a reasonable time under this Act; and
“(B) a Federal agency, particularly if the amount of reimbursement under this Act is large relative to annual appropriations for that agency, may need to extend the reimbursement over several years in order to avoid—
   “(i) reductions in force;
   “(ii) furloughs;
   “(iii) other reductions in compensation or benefits for the workforce of the agency; or
   “(iv) an adverse effect on the mission of the agency.

“SEC. 103. DEFINITIONS.

“(1) the term ‘applicant for Federal employment’ means an individual applying for employment in or under a Federal agency;
“(2) the term ‘basis of alleged discrimination’ shall have the meaning given such term under section 303;
“(3) the term ‘Federal agency’ means an Executive agency (as defined in section 105 of title 5, United States Code), the United States Postal Service, or the Postal Regulatory Commission;
“(4) the term ‘Federal employee’ means an individual employed in or under a Federal agency; and
“(5) the term ‘former Federal employee’ means an individual formerly employed in or under a Federal agency; and
“(6) the term ‘issue of alleged discrimination’ shall have the meaning given such term under section 303.

“SEC. 104. EFFECTIVE DATE.

This Act and the amendments made by this Act shall take effect on the 1st day of the 1st fiscal year beginning more than 180 days after the date of the enactment of this Act [May 15, 2002].

“TITLE II—FEDERAL EMPLOYEE DISCRIMINATION AND RETALIATION

“SEC. 201. REIMBURSEMENT REQUIREMENT.

“(a) APPLICABILITY.—This section applies with respect to any payment made in accordance with section 2414, 2517, 2672, or 2677 of title 28, United States Code, and under section 1304 of title 31, United States Code (relating to judgments, awards, and compromise settlements) to any Federal employee, former Federal employee, or applicant for Federal employment, in connection with any proceeding brought by or on behalf of such employee, former employee, or applicant under—
   “(1) any provision of law cited in subsection (c); or
   “(2) any other provision of law which prohibits any form of discrimination, as identified under rules issued under section 204.

“(b) REQUIREMENT.—An amount equal to the amount of each payment described in subsection (a) shall be reimbursed to the fund described in section 1304 of title 31, United States Code, out of any appropriation, fund, or other account (excluding any appropriation, fund, or of such account available for the enforcement of any Federal law) available for operating expenses of the Federal agency to which the discriminatory conduct involved is attributable as determined under section 204.

“(c) SCOPE.—The provisions of law cited in this subsection are the following:
   “(1) Section 2302(b) of title 5, United States Code, as applied to discriminatory conduct described in paragraphs (1) and (8), or described in paragraph (9) of such section as applied to discriminatory conduct described in paragraphs (1) and (8), of such section.
   “(2) The provisions of law specified in section 3252(d) of title 5, United States Code.

“SEC. 202. NOTIFICATION REQUIREMENT.

“(a) IN GENERAL.—Written notification of the rights and protections available to Federal employees, former Federal employees, and applicants for Federal employment (as the case may be) in connection with the respective provisions of law covered by paragraphs (1) and (2) of section 201(a) shall be provided to such employees, former employees, and applicants—
   “(1) in accordance with otherwise applicable provisions of law; or
   “(2) if, or to the extent that, no such notification would otherwise be required, in such time, form, and manner as shall under section 204 be required in order to carry out the requirements of this section.

“(b) POSTING ON THE INTERNET.—Any written notification under this section shall include, but not be limited to, the posting of the information required under paragraph (1) or (2) (as applicable) of subsection (a) on the Internet site of the Federal agency involved.

“(c) EMPLOYEE TRAINING.—Each Federal agency shall provide to the employees of such agency training regarding the rights and remedies applicable to such employees under the laws cited in section 201(c).

“SEC. 203. REPORTING REQUIREMENT.

“(a) ANNUAL REPORT.—Subject to subsection (b), not later than 180 days after the end of each fiscal year, each Federal agency shall submit to the Speaker of the House of Representatives, the President pro tempore of the Senate, the Committee on Governmental Affairs [now Committee on Oversight and Government Reform] of the House of Representatives, the Committee on Governmental Affairs of the Senate, the Committee on Government Reform [now Committee on Oversight and Government Reform] of the Senate, the Committee on Governmental Affairs of the Senate, the Committee on Governmental Affairs of the Senate, the Committee on Governmental Affairs [now Committee on Homeland Security and Governmental Affairs] of the Senate, the Committee on Governmental Affairs [now Committee on Homeland Security and Governmental Affairs] of the Senate, the Committee on Governmental Affairs [now Committee on Homeland Security and Governmental Affairs] of the Senate, the Committee on Governmental Affairs [now Committee on Homeland Security and Governmental Affairs] of the Senate, the Committee on Governmental Affairs [now Committee on Homeland Security and Governmental Affairs] of the Senate, each committee of Congress with jurisdiction relating to the agency, the Equal Employment Opportunity Commission, and the Attorney General an annual report which shall include, with respect to the fiscal year—
   “(1) the number of cases arising under each of the respective provisions of law covered by paragraphs (1) and (2) of section 201(a) in which discrimination on the part of such agency was alleged;
   “(2) the status or disposition of cases described in paragraph (1);
   “(3) the amount of money required to be reimbursed by such agency under section 201 in connection with each of such cases, separately identifying the aggregate amount of such reimbursements attributable to the payment of attorneys’ fees, if any;
   “(4) the number of employees disciplined for discrimination, retaliation, harassment, or any other infraction of any provision of law referred to in paragraph (1);
   “(5) the final year-end data posted under section 301(c)(1)(B) for such fiscal year (without regard to section 301(c)(2));
   “(6) a detailed description of—
      “(A) the policy implemented by that agency relating to appropriate disciplinary actions against a Federal employee who—
      “(i) discriminated against any individual in violation of any of the laws cited under section 201(a)(1) or (2); or
      “(ii) committed another prohibited personnel practice that was revealed in the investigation of a complaint alleging a violation of any of the laws cited under section 201(a)(1) or (2); and

“§ 2301
“(B) with respect to each of such laws, the number of employees who are disciplined in accordance with such policy and the specific nature of the disciplinary action taken;

“(7) an analysis of the information described under paragraphs (1) through (6) (in conjunction with data provided to the Equal Employment Opportunity Commission in compliance with part 1614 of title 29 of the Code of Federal Regulations) including—

“(A) an examination of trends;

“(B) causal analysis;

“(C) any practical knowledge gained through experience; and

“(D) any actions planned or taken to improve complaint or civil rights programs of the agency; and

“(8) any adjustment (to the extent the adjustment can be ascertained in the budget of the agency) to comply with the requirements under section 201.

“(b) FIRST REPORT.—The 1st report submitted under subsection (a) shall include for each item under subsection (a) data for each of the 5 immediately preceding fiscal years (or, if data are not available for all 5 fiscal years, for each of those 5 fiscal years for which data are available).

“SEC. 294. RULES AND GUIDELINES.

“(a) ISSUANCE OF RULES AND GUIDELINES.—The President (or the designee of the President) shall issue—

“(1) rules to carry out this title;

“(2) rules to require that a comprehensive study be conducted in the executive branch to determine the best practices relating to the appropriate disciplinary actions against Federal employees who commit the actions described under clauses (1) and (11) of section 203(a)(6)(A); and

“(3) based on the results of such study, advisory guidelines incorporating best practices that Federal agencies may follow to take such actions against such employees.

“(b) AGENCY NOTIFICATION REGARDING IMPLEMENTATION OF GUIDELINES.—Not later than 30 days after the issuance of guidelines under subsection (a), each Federal agency shall submit to the Speaker of the House of Representatives, the President pro tempore of the Senate, the Equal Employment Opportunity Commission, and the Attorney General a written statement specifying in detail—

“(1) whether such agency has adopted and will fully follow such guidelines;

“(2) if such agency has not adopted such guidelines, the reasons for the failure to adopt such guidelines; and

“(3) if such agency will not fully follow such guidelines, the reasons for the decision not to fully follow such guidelines and an explanation of the extent to which such agency will not follow such guidelines.

“SEC. 295. CLARIFICATION OF REMEDIES.

“Consistent with Federal law, nothing in this title shall prevent any Federal employee, former Federal employee, or applicant for Federal employment from exercising any right otherwise available under the laws of the United States.

“SEC. 296. STUDIES BY GENERAL ACCOUNTING OFFICE [now GOVERNMENT ACCOUNTABILITY OFFICE] ON EXHAUSTION OF ADMINISTRATIVE REMEDIES AND ON ASCERTAINMENT OF CERTAIN DEPARTMENT OF JUSTICE COSTS.

“(a) STUDY ON EXHAUSTION OF ADMINISTRATIVE REMEDIES.—

“(1) STUDY.—

“(A) IN GENERAL.—Not later than 180 days after the date of enactment of this Act [May 15, 2002], the General Accounting Office [now Government Accountability Office] shall conduct—

“(i) a study on the effects of section 201 on the operations of Federal agencies; and


“(2) CONTENTS.—Each study under paragraph (1) shall include, with respect to the applicable statutes of the study—

“(A) a summary of the number of cases in which a payment was made in accordance with section 2414, 2517, 2672, or 2677 of title 28, United States Code, and under section 1394 of title 31, United States Code;

“(B) a summary of the length of time Federal agencies used to complete reimbursements of payments described under subparagraph (A); and

“(C) conclusions that assist in making determinations on how the reimbursements of payments described under subparagraph (A) will affect—

“(i) the operations of Federal agencies;

“(ii) funds appropriated on an annual basis;

“(iii) employee relations and other human capital matters;

“(iv) settlements; and

“(v) any other matter determined by the General Accounting Office [now Government Accountability Office] to be appropriate for consideration.

“(3) REPORTS.—Not later than 90 days after the completion of each study under paragraph (1), the
"SEC. 301. DATA TO BE POSTED BY EMPLOYING FEDERAL AGENCIES.

"(a) In General.—Each Federal agency shall post on its public Web site, in the time, form, and manner prescribed under section 303 in conformance with the requirements of this section, summary statistical data relating to equal employment opportunity complaints filed with such agency by employees or former employees of, or applicants for employment with, such agency.

"(b) Content Requirements.—The data posted by a Federal agency under this section shall include, for the then current fiscal year, the following:

"(1) The number of complaints filed with such agency in such fiscal year.

"(2) The number of individuals filing those complaints (including as the agent of a class).

"(3) The number of individuals who filed 2 or more of those complaints.

"(4) The number of complaints (described in paragraph (1)) in which each of the various bases of alleged discrimination is alleged.

"(5) The number of complaints (described in paragraph (1)) in which each of the various issues of alleged discrimination is alleged.

"(6) The average length of time, for each step of the process, it is taking such agency to process complaints (taking into account all complaints pending for any length of time in such fiscal year, whether first filed in such fiscal year or earlier). Average times under this paragraph shall be posted—

"(i) for all such complaints,

"(ii) for all such complaints in which a hearing before an administrative judge of the Equal Employment Opportunity Commission is requested, and

"(iii) for all such complaints in which a hearing before an administrative judge of the Equal Employment Opportunity Commission is not requested.

"(7) The number of final agency actions rendered in such fiscal year involving a finding of discrimination and, of that number—

"(A) the number and percentage that were rendered without a hearing before an administrative judge of the Equal Employment Opportunity Commission, and

"(B) the number and percentage that were rendered after a hearing before an administrative judge of the Equal Employment Opportunity Commission.

"(8) Of the total number of final agency actions rendered in such fiscal year involving a finding of discrimination—

"(A) the number and percentage involving a finding of discrimination based on each of the respective bases of alleged discrimination, and

"(B) of the number specified under subparagraph (A) for each of the respective bases of alleged discrimination—

"(i) the number and percentage that were rendered without a hearing before an administrative judge of the Equal Employment Opportunity Commission, and

"(ii) the number and percentage that were rendered after a hearing before an administrative judge of the Equal Employment Opportunity Commission.

"(9) Of the total number of final agency actions rendered in such fiscal year involving a finding of discrimination—

"(A) the number and percentage involving a finding of discrimination in connection with each of the respective issues of alleged discrimination, and

"(B) of the number specified under subparagraph (A) for each of the respective issues of alleged discrimination—

"(i) the number and percentage that were rendered without a hearing before an administrative judge of the Equal Employment Opportunity Commission, and

"(ii) the number and percentage that were rendered after a hearing before an administrative judge of the Equal Employment Opportunity Commission.

"(10)(A) Of the total number of complaints pending in such fiscal year (as described in the parenthetical matter in paragraph (6)), the number that were first filed before the start of the then current fiscal year.

"(B) With respect to those pending complaints that were first filed before the start of the then current fiscal year—

"(i) the number of individuals who filed those complaints, and

"(ii) the number of those complaints which are at the various steps of the complaint process.

"(C) Of the total number of complaints pending in such fiscal year (as described in the parenthetical matter in paragraph (6)), the total number of complaints with respect to which the agency violated the requirements of section 1614.106(e)(2) of title 29 of the Code of Federal Regulations (as in effect on July 1, 2000, and amended from time to time) by failing to conduct within 180 days of the filing of such complaints an impartial and appropriate investigation of such complaints,

"(d)-interim year-to-date data, updated quarterly, and

"(f) final year-end data.

"(2) DATA FOR PRIOR YEARS.—The data posted by a Federal agency under this section for a fiscal year (both interim and final) shall include, for each item under subsection (b), such agency’s corresponding year-end data for each of the 5 immediately preceding fiscal years (or, if not available for all 5 fiscal years, for however many of those 5 fiscal years for which data are available).

"SEC. 302. DATA TO BE POSTED BY THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.

"(a) In General.—The Equal Employment Opportunity Commission shall post on its public Web site, in
the time, form, and manner prescribed under section 303 for purposes of this section, summary statistical data relating to—

(1) hearings requested before an administrative judge of the Commission on complaints described in section 301, and

(2) appeals filed with the Commission from final agency actions on complaints described in section 301.

(b) Specific Requirements.—The data posted under this section shall, with respect to the hearings and appeals described in subsection (a), include summary statistical data corresponding to that described in paragraphs (1) through (10) of section 301(b), and shall be subject to the same timing and other requirements as set forth in section 301(c).

(c) Coordination.—The data required under this section shall be in addition to the data the Commission is required to post under section 301 as an employing Federal agency.

§ 2303. Rules.

The Equal Employment Opportunity Commission shall issue any rules necessary to carry out this title.

[For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of Title 8, Aliens and Nationality.]

[For transfer of authorities, functions, personnel, and assets of the Bureau of Alcohol, Tobacco and Firearms, including the related functions of the Secretary of the Treasury, to the Department of Justice, see section 531(c) of Title 6, Domestic Security, and section 599A(c)(1) of Title 28, Judiciary and Judicial Procedure.]

[Memorandum of President of the United States, July 8, 2003, 68 F.R. 45155, delegated to Director of Office of Personnel Management authority of President under section 204(a) of Public Law 107-174, set out above.]

§ 2302. Prohibited personnel practices

(a)(1) For the purpose of this title, "prohibited personnel practice" means any action described in subsection (b).

(2) For the purpose of this section—

(A) "personnel action" means—

(i) an appointment;

(ii) a promotion;

(iii) an action under chapter 75 of this title or other disciplinary or corrective action;

(iv) a detail, transfer, or reassignment;

(v) a reinstatement;

(vi) a restoration;

(vii) a reemployment;

(viii) a performance evaluation under chapter 43 of this title;

(ix) a decision concerning pay, benefits, or awards, or concerning education or training if the education or training may reasonably be expected to lead to an appointment, promotion, performance evaluation, or other action described in this subparagraph;

(x) a decision to order psychiatric testing or examination; and

(xi) any other significant change in duties, responsibilities, or working conditions;

with respect to an employee in, or applicant for, a covered position in an agency, and in the case of an alleged prohibited personnel practice described in subsection (b)(6), an employee or applicant for employment in a Government corporation as defined in section 9101 of title 31;

(B) "covered position" means, with respect to any personnel action, any position in the competitive service, a career appointee position in the Senior Executive Service, or a position in the excepted service, but does not include any position which is, prior to the personnel action—

(i) excepted from the competitive service because of its confidential, policy-determining, policy-making, or policy-advocating character; or

(ii) excluded from the coverage of this section by the President based on a determination by the President that it is necessary and warranted by conditions of good administration; and

(C) "agency" means an Executive agency and the Government Printing Office, but does not include—

(i) a Government corporation, except in the case of an alleged prohibited personnel practice described under subsection (b)(8);

(ii) the Federal Bureau of Investigation, the Central Intelligence Agency, the Defense Intelligence Agency, the National Geospatial-Intelligence Agency, the National Security Agency, and, as determined by the President, any Executive agency or unit thereof the principal function of which is the conduct of foreign intelligence or counterintelligence activities; or

(iii) the Government Accountability Office.

(b) Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority—

(1) discriminate for or against any employee or applicant for employment—

(A) on the basis of race, color, religion, sex, or national origin, as prohibited under section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16);

(B) on the basis of age, as prohibited under sections 12 and 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631, 633a);

(C) on the basis of sex, as prohibited under section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d));

(D) on the basis of handicapping condition, as prohibited under section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791); or

(E) on the basis of marital status or political affiliation, as prohibited under any law, rule, or regulation;

(2) solicit or consider any recommendation or statement, oral or written, with respect to any individual who requests or is under consideration for any personnel action unless such recommendation or statement is based on the personal knowledge or records of the person furnishing it and consists of—

(A) an evaluation of the work performance, ability, aptitude, or general qualifications of such individual; or

(B) an evaluation of the character, loyalty, or suitability of such individual;

(3) coerce the political activity of any person (including the providing of any political contribution or service), or take any action
against any employee or applicant for employment as a reprisal for the refusal of any person to engage in such political activity;
(4) deceive or willfully obstruct any person with respect to such person's right to compete for employment;
(5) influence any person to withdraw from competition for any position for the purpose of improving or injuring the prospects of any other person for employment;
(6) grant any preference or advantage not authorized by law, rule, or regulation to any employee or applicant for employment (including defining the scope or manner of competition or the requirements for any position) for the purpose of improving or injuring the prospects of any particular person for employment;
(7) appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a civilian position any individual who is a relative (as defined in section 3110(a)(2) of this title) of such employee if such position is in the agency in which such employee is serving as a public official (as defined in section 3110(a)(2) of this title) or over which such employee exercises jurisdiction or control as such an official;
(8) take or fail to take, or threaten to take or fail to take, a personnel action with respect to any employee or applicant for employment because of—
(A) any disclosure of information by an employee or applicant which the employee or applicant reasonably believes evidences—
(i) a violation of any law, rule, or regulation,
(ii) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety,
if such disclosure is not specifically prohibited by law and if such information is not specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs; or
(B) any disclosure to the Special Counsel, or to the Inspector General of an agency or another employee designated by the head of the agency to receive such disclosures, of information which the employee or applicant reasonably believes evidences—
(i) a violation of any law, rule, or regulation,
(ii) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;
(9) take or fail to take, or threaten to take or fail to take, any personnel action against any employee or applicant for employment because of—
(A) the exercise of any appeal, complaint, or grievance right granted by any law, rule, or regulation;
(B) testifying for or otherwise lawfully assisting any individual in the exercise of any right referred to in subparagraph (A);
(C) cooperating with or disclosing information to the Inspector General of an agency, or the Special Counsel, in accordance with applicable provisions of law; or
(D) for refusing to obey an order that would require the individual to violate a law;
(10) discriminate for or against any employee or applicant for employment on the basis of conduct which does not adversely affect the performance of the employee or applicant or the performance of others; except that nothing in this paragraph shall prohibit an agency from taking into account in determining suitability or fitness any conviction of the employee or applicant for any crime under the laws of any State, of the District of Columbia, or of the United States;
(11)(A) knowingly take, recommend, or approve any personnel action if the taking of such action would violate a veterans' preference requirement; or
(B) knowingly fail to take, recommend, or approve any personnel action if the failure to take such action would violate a veterans' preference requirement; or
(12) take or fail to take any other personnel action if the taking of or failure to take such action violates any law, rule, or regulation implementing, or directly concerning, the merit system principles contained in section 2301 of this title.

This subsection shall not be construed to authorize the withholding of information from the Congress or the taking of any personnel action against an employee who discloses information to the Congress.

(c) The head of each agency shall be responsible for the prevention of prohibited personnel practices, for the compliance with and enforcement of applicable civil service laws, rules, and regulations, and other aspects of personnel management, and for ensuring (in consultation with the Office of Special Counsel) that agency employees are informed of the rights and remedies available to them under this chapter and chapter 12 of this title. Any individual to whom the head of an agency delegates authority for personnel management, or for any aspect thereof, shall be similarly responsible within the limits of the delegation.

(d) This section shall not be construed to extinguish or lessen any effort to achieve equal employment opportunity through affirmative action or any right or remedy available to any employee or applicant for employment in the civil service under—
(1) section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16), prohibiting discrimination on the basis of race, color, religion, sex, or national origin;
(2) sections 12 and 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631, 633a), prohibiting discrimination on the basis of age;
(3) under section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)), prohibiting discrimination on the basis of sex;
(4) section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), prohibiting discrimination on the basis of handicapping condition; or

1 So in original. The word “for” probably should not appear.
(5) the provisions of any law, rule, or regulation prohibiting discrimination on the basis of marital status or political affiliation.

(e)(1) For the purpose of this section, the term "veterans' preference requirement" means any of the following provisions of law:
(A) Sections 2108, 3305(b), 3309, 3310, 3311, 3312, 3313, 3314, 3315, 3316, 3317(b), 3318, 3320, 3351, 3352, 3363, 3361, 3350, 3350(b), 3364, and 4303(e) and (f) of Title 38, and with respect to a preference eligible referred to in section 7511(a)(1)(B) of chapter 5 of title 38 and section 7701.
(B) Sections 943(c)(2) and 1784(c) of title 10.
(C) Section 1308(b) of the Alaska National Interest Lands Conservation Act.
(D) Section 301(c) of the Foreign Service Act of 1980.
(E) Sections 106(f), 7281(e), and 7802(5) of title 38.
(F) Section 1005(a) of title 30.
(G) Any other provision of law that the Director of the Office of Personnel Management designates in regulations as being a veterans' preference requirement for the purposes of this subsection.

(H) Any regulation prescribed under subsection (b) or (c) of section 1302 and any other regulation that implements a provision of law referred to in any of the preceding subparagraphs.

(2) Notwithstanding any other provision of this title, no authority to order corrective action shall be available in connection with a prohibited personnel practice described in subsection (b)(11). Nothing in this paragraph shall be considered to affect any authority under section 1215 (relating to disciplinary action).


References in Text
Section 1308(b) of the Alaska National Interest Lands Conservation Act, referred to in subsec. (e)(1), is classified to section 3306(b) of Title 16, Conservation.
Section 301(c) of the Foreign Service Act of 1980, referred to in subsec. (e)(1), is classified to section 399(c) of Title 22, Foreign Relations and Intercourse.
Section 106(f) of title 38, referred to in subsec. (e)(1)(E), was enacted subsequent to the enactment of subsec. (e) of this section.

See References in Text note below.
“(A) an evaluation of the work performance, ability, aptitude, or general qualifications of such individual; or
(B) an evaluation of the character, loyalty, or suitability of such individual.”;


1989—Subsec. (b)(8). Pub. L. 101–12, §4(a), in introductory provision inserted “, or threaten to take or fail to take,” after “fail to” and substituted “because of” for “as a reprisal for”, in subpar. (A) substituted “any disclosure” for “a disclosure”, in subpar. (A)(i) inserted “gross” before “mismanagement”, in subpar. (B) substituted “any disclosure” for “a disclosure”, and in subpar. (B)(ii) inserted “gross” before “mismanagement”.

Subsec. (b)(9). Pub. L. 101–12, §4(b), amended par. (9) generally. Prior to amendment, par. (9) read as follows: “take or fail to take any personnel action against any employee or applicant for employment as a reprisal for the exercise of any appeal right granted by any law, rule, or regulation.”;

**Effective Date of 1996 Amendments**

Amendment by section 1122(a)(1) of Pub. L. 104–201 effective Oct. 1, 1996, see section 1124 of Pub. L. 104–201, set out as a note under section 193 of Title 10, Armed Forces.

Section 315(c) of Pub. L. 104–197 provided that: “This section [amending this section and section 3303 of this title] shall take effect 30 days after the date of the enactment of this Act [Sept. 16, 1996].”

**Effective Date of 1993 Amendment; Savings Provision**

Amendment by Pub. L. 103–94 effective 120 days after Oct. 6, 1993, but not to release or extinguish any penalty, forfeiture, or liability incurred under amended provision, which is to be treated as remaining in force for purpose of sustaining any proper proceeding or action for enforcement of that penalty, forfeiture, or liability, and no provision of Pub. L. 103–94 to affect any proceedings with respect to which charges were filed on or before 120 days after Oct. 6, 1993, with orders to be issued in such proceedings and appeals taken therefrom as if Pub. L. 103–94 had not been enacted, see section 12 of Pub. L. 103–94, set out as an Effective Date; Savings Provision note under section 7321 of this title.

**Effective Date of 1989 Amendment**


**Savings Provision**

Pub. L. 105–339, §6(d), Oct. 31, 1998, 112 Stat. 3188, provided that: “This section [amending this section and repealing section 1599c of Title 10, Armed Forces] shall be treated as if it had never been enacted for purposes of any personnel action (within the meaning of section 2302 of title 5, United States Code) preceding the date of enactment of this Act [Oct. 31, 1998].”

**Federal Benefits and Non-Discrimination**

Memorandum of President of the United States, June 17, 2009, 74 F.R. 29393, provided:

Memorandum for the Heads of Executive Departments and Agencies

Millions of hard-working, dedicated, and patriotic public servants are employed by the Federal Government as part of the civilian workforce, and many of these devoted Americans have same-sex domestic partners. Leading companies in the private sector are free to provide to same-sex domestic partners the same benefits they provide to married people of the opposite sex.

Executive departments and agencies, however, may only provide benefits on that basis if they have legal authorization to do so. My Administration is not authorized by Federal law to extend a number of available Federal benefits to the same-sex partners of Federal employees. Within existing law, however, my Administration, in consultation with the Secretary of State, who oversees our Foreign Service employees, and the Director of the Office of Personnel Management, who oversees human resource management for our civil service employees, has identified areas in which statutory authority exists to achieve greater equality for the Federal workforce through extension to same-sex domestic partners of benefits currently available to married people of the opposite sex. Extending available benefits will help the Federal Government compete with the private sector to recruit and retain the best and the brightest employees.

I hereby request the following:

Section 1. Extension of Identified Benefits. The Secretary of State and the Director of the Office of Personnel Management shall, in consultation with the Department of Justice, extend the benefits they have respectively identified to qualified same-sex domestic partners of Federal employees where doing so can be achieved and is consistent with Federal law.

SIC. 2. Review of Governmentwide Benefits. The heads of all other executive departments and agencies, in consultation with the Office of Personnel Management, shall conduct a review of the benefits provided by their respective departments and agencies to determine what authority they have to extend such benefits to same-sex domestic partners of Federal employees. The results of this review shall be reported within 90 days to the Director of the Office of Personnel Management, who, in consultation with the Department of Justice, shall recommend to me any additional measures that can be taken, consistent with existing law, to provide benefits to the same-sex domestic partners of Federal Government employees.

SIC. 3. Promoting Compliance with Existing Law Requiring Federal Workplaces to be Free of Discrimination Based on Non-Merit Factors. The Office of Personnel Management shall issue guidance within 90 days to all executive departments and agencies regarding compliance with, and implementation of, the civil service laws, rules, and regulations, including 5 U.S.C. 2302(b)(10), which make it unlawful to discriminate against Federal employees or applicants for Federal employment on the basis of factors not related to job performance.

SIC. 4. General Provisions. (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

(i) Authority granted by law or Executive Order to an agency, or the head thereof; or

(ii) Functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

SIC. 5. Publication. The Director of the Office of Personnel Management is hereby authorized and directed to publish this memorandum in the Federal Register.

Barack Obama.

**Extension of Benefits to Same-Sex Domestic Partners of Federal Employees**

Memorandum of President of the United States, June 2, 2010, 75 F.R. 32247, provided:

Memorandum for the Heads of Executive Departments and Agencies

For far too long, many of our Government’s hard-working, dedicated LGBT employees have been denied
equal access to the basic rights and benefits their colleagues enjoy. This kind of systemic inequality undermines the health, well-being, and security not just of an employee’s same-sex domestic partner or his or her children, but also of their families and communities. That is why, last June, I directed the heads of executive departments and agencies (agencies) to conduct a thorough review of the benefits they provide and to identify any that could be extended to LGBT employees and their partners and families. Although legislative action is necessary to provide full equality to LGBT Federal employees, the agencies have identified a number of benefits that can be extended under existing law. OPM, in consultation with the Department of Justice, has provided me with a report recommending that all of the identified benefits be extended.

Accordingly, I hereby direct the following:

Section 1. Immediate Actions To Extend Benefits. Agencies should immediately take the following actions, consistent with existing law, in order to extend benefits to the same-sex domestic partners of Federal employees, and, where applicable, to the children of same-sex domestic partners of Federal employees:

(a) The Director of OPM should take appropriate action to:

(i) clarify that the children of employees’ same-sex domestic partners fall within the definition of “child” for purposes of Federal child-care subsidies, and, where appropriate, for child-care services;

(ii) clarify that, for purposes of employee assistance programs, same-sex domestic partners and their children qualify as “family members”;

(iii) issue a proposed rule that would clarify that employees’ same-sex domestic partners qualify as “family members” for purposes of noncompetitive appointments made pursuant to Executive Order 12721 of July 30, 1990;

(iv) issue a proposed rule that would add a Federal retiree’s same-sex domestic partner to the list of individuals presumed to have an insurable interest in the employee pursuant to 5 U.S.C. 8338(k)(1), 8426;

(v) clarify that under appropriate circumstances, employees’ same-sex domestic partners and their children qualify as dependents for purposes of evacuation payments made under 5 U.S.C. 5523–5523; Folio: 1632 [sic] 5523–5523; Folio: 1632 [sic] 5523–5523; Folio: 1632 [sic]

(vi) amend its guidance on implementing President Clinton’s April 11, 1997, memorandum to heads of executive departments and agencies on “Expanded Family and Medical Leave Policies” to specify that the 24 hours of unpaid leave made available to Federal employees in connection with (i) school and early childhood educational activities; (ii) routine family medical purposes; and (iii) elderly relatives’ health or care needs, may be used to meet the needs of an employee’s same-sex domestic partner or the same-sex domestic partner’s children; and

(vii) clarify that employees’ same-sex domestic partners qualify as dependents for purposes of calculating the extra allowance payable under 5 U.S.C. 5924a to assist employees stationed on Johnston Island, subject to any limitations applicable to spouses.

(b) The Administrator of General Services should take appropriate action to amend the definitions of “immediate family” and “dependent” appearing in the Federal Travel Regulations, 41 C.F.R. Chs. 300–304, to include same-sex domestic partners and their children, so that employees and their domestic partners and children can obtain the full benefits available under applicable law, including certain travel, relocation, and subsistence payments.

(c) All agencies offering any of the benefits specified by OPM in implementing guidance under section 3 of this memorandum, including credit union membership, access to fitness facilities, and access to planning and counseling services, should take all appropriate action to provide the same level of benefits that is provided to employees’ spouses and their children to employees’ same-sex domestic partners and their children.

(d) All agencies with authority to provide benefits to employees outside of the context of title 5, United States Code should take all appropriate actions to ensure that the benefits being provided to employees’ spouses and their children are also being provided, at an equivalent level wherever permitted by law, to their employees’ same-sex domestic partners and their children.

Section 2. Continuing Obligation To Provide New Benefits. In the future, all agencies that provide new benefits to the spouses of Federal employees and their children should, to the extent permitted by law, also provide them to the same-sex domestic partners of their employees and those same-sex domestic partners’ children. This section applies to appropriated and nonappropriated fund instrumentalities of such agencies.

Section 3. Monitoring and Guidance. The Director of OPM shall monitor compliance with this memorandum, and may instruct agencies to provide the Director with reports on the status of their compliance, and prescribe the form Folio: 1633 [sic] 1633 [sic] 1633 [sic] manner of such reports. The Director of OPM shall also issue guidance to ensure consistent and appropriate implementation.

Section 4. Reporting. By April 1, 2011, and annually thereafter, the Director of OPM shall provide the President with a report on the progress of the agencies in implementing this memorandum until such time as all recommendations have been appropriately implemented.

Section 5. General Provisions. (a) Except as expressly stated herein, nothing in this memorandum shall be construed to impair or otherwise affect:

(i) authority granted by law or Executive Order to an agency, or the head thereof; or

(ii) functions of the Director of the Office of Management and Budget relating to budgetary, administrative, and legislative proposals.

(b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

Section 6. Publication. The Director of OPM is hereby authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA.

§ 2303. Prohibited personnel practices in the Federal Bureau of Investigation

(a) Any employee of the Federal Bureau of Investigation who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority, take or fail to take a personnel action with respect to any employee of the Bureau to: (i) disclose any information by the employee to the Attorney General (or an employee designated by the Attorney General for such purpose) which the employee or applicant reasonably believes evidences—

(1) a violation of any law, rule, or regulation, or

(2) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

For the purpose of this subsection, “personnel action” means any action described in clauses (i) through (x) of section 2302(a)(2)(A) of this title with respect to an employee in, or applicant for, a position in the Bureau (other than a position of a confidential, policy-determining, policymaking, or policy-advocating character).

(b) The Attorney General shall prescribe regulations to ensure that such a personnel action
shall not be taken against an employee of the Bureau as a reprisal for any disclosure of information described in subsection (a) of this section.

(c) The President shall provide for the enforcement of this section in a manner consistent with applicable provisions of sections 1214 and 1221 of this title.


AMENDMENTS

1989—Subsec. (c). Pub. L. 101–12 substituted “applicable provisions of sections 1214 and 1221” for “the provisions of section 1206”.

EFFECTIVE DATE OF 1989 AMENDMENT


DELEGATION OF RESPONSIBILITIES CONCERNING FBI EMPLOYEES UNDER THE CIVIL SERVICE REFORM ACT OF 1978

Memorandum for the Attorney General

By the authority vested in me by the Constitution and laws of the United States of America, including section 301 of title 3, United States Code, I hereby delegate to the Attorney General the functions concerning employees of the Federal Bureau of Investigation vested in the President by section 101(a) of the Civil Service Reform Act of 1978 (Public Law 95–404), as amended by the Whistleblower Protection Act of 1989 (Public Law 101–12), and codified at section 2303(c) of title 5, United States Code, and direct the Attorney General to establish appropriate processes within the Department of Justice to carry out these functions. Not later than March 1 of each year, the Attorney General shall provide a report to the President stating the number of allegations of reprisal received during the preceding calendar year, the disposition of each allegation resolved during the preceding calendar year, and the number of unresolved allegations pending as of the end of the calendar year.

All of the functions vested in the President by section 2303(c) of title 5, United States Code, and delegated to the Attorney General, may be redelegated, as appropriate, provided that such functions may not be redelegated to the Federal Bureau of Investigation.

You are authorized and directed to publish this memorandum in the Federal Register.

WILLIAM J. CLINTON.

§ 2304. Responsibility of the Government Accountability Office

If requested by either House of the Congress (or any committee thereof), or if considered necessary by the Comptroller General, the Government Accountability Office shall conduct audits and reviews to assure compliance with the laws, rules, and regulations governing employment in the executive branch and in the competitive service, and to assess the effectiveness and soundness of Federal personnel management.


AMENDMENTS


1995—Pub. L. 104–66 struck out subsec. (a) designation before “If requested by” and struck out subsec. (b) which read as follows: “The General Accounting Office shall prepare and submit an annual report to the President and the Congress on the activities of the Merit Systems Protection Board and the Office of Personnel Management. The report shall include a description of—

“(1) significant actions taken by the Board to carry out its functions under this title; and

“(2) significant actions of the Office of Personnel Management, including an analysis of whether or not the actions of the Office are in accord with merit system principles and free from prohibited personnel practices.”


§ 2305. Coordination with certain other provisions of law


REFERENCES IN TEXT

The Central Intelligence Agency Act of 1949 (50 Stat. 208; 50 U.S.C. 403a and following), referred to in text, is act June 20, 1949, ch. 227, 63 Stat. 208, as amended, which is classified generally to section 403a et seq. of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 403a of Title 50 and Tables.


CHAPTER 29—COMMISSIONS, OATHS, RECORDS, AND REPORTS

SUBCHAPTER I—COMMISSIONS, OATHS, RECORDS, AND REPORTS

Sec.

2901. Commission of an officer.

2902. Commission; where recorded.

2903. Oath; authority to administer.

2904. Oath; administered without fees.
§ 2901. Commission of an officer

The President may make out and deliver, after adjournment of the Senate, the commission of an officer whose appointment has been confirmed by the Senate.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 411.)

Historical and Revision Notes

Derivation | U.S. Code | Revised Statutes and Statutes at Large
-----------|----------|---------------------------------
(a) .......... | 4 U.S.C. 42 (as applicable to civil commissions). |
(b) .......... | 5 U.S.C. 11. |
(c) .......... | 5 U.S.C. 12. |

In subsection (a), the words “Except as provided by subsections (b) and (c) of this section,” are added on authority of former sections 11 and 12, which are codified in subsections (b) and (c) of this section. The words “the commission of an officer” are substituted for “all civil commissions for officers of the United States” because of the definition of “officer” in section 2104. The words “by the President” are coextensive with and substituted for “by the President, by and with the advice and consent of the Senate, or by the President alone”.

In subsection (b), the words “officer in the civil service or uniformed services” are substituted for “officer” because of the definition of “officer” in section 2104. The words “direction and” are omitted as included within “the control”. The words “the Secretary of Defense” are added on authority of the Acts of July 26, 1947, ch. 343, § 205, 61 Stat. 502, and Aug. 8, 1888, ch. 786, 25 Stat. 387.

Subsection (c) is amended by striking “United States attorneys and marshals, appointed by the President, by and with the advice and consent of the Senate, and other commissions which before August 8, 1888, were prepared at the Department of State on the requisition of the Attorney General, shall be made out and recorded in the Department of Justice under the seal of that department and countersigned by the Attorney General. The departmental seal may not be affixed to the commission before the commission has been signed by the President.”

In subsection (a), the words “Except as provided by subsections (b) and (c) of this section,” are added on authority of former sections 11 and 12, which are codified in subsections (b) and (c) of this section. The words “the commission of an officer” are substituted for “all civil commissions for officers of the United States” because of the definition of “officer” in section 2104. The words “by the President” are coextensive with and substituted for “by the President, by and with the advice and consent of the Senate, or by the President alone”.

In subsection (b), the words “officer in the civil service or uniformed services” are substituted for “officer” because of the definition of “officer” in section 2104. The words “direction and” are omitted as included within “the control”. The words “the Secretary of Defense” are added on authority of the Acts of July 26, 1947, ch. 343, § 205, 61 Stat. 502, and Aug. 8, 1888, ch. 786, 25 Stat. 387.

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Subsection (c) is amended by striking “United States attorneys and marshals, appointed by the President, by and with the advice and consent of the Senate, and other commissions which before August 8, 1888, were prepared at the Department of State on the requisition of the Attorney General, shall be made out and recorded in the Department of Justice under the seal of that department and countersigned by the Attorney General. The departmental seal may not be affixed to the commission before the commission has been signed by the President.”

In subsection (a), the words “Except as provided by subsections (b) and (c) of this section,” are added on authority of former sections 11 and 12, which are codified in subsections (b) and (c) of this section. The words “the commission of an officer” are substituted for “all civil commissions for officers of the United States” because of the definition of “officer” in section 2104. The words “by the President” are coextensive with and substituted for “by the President, by and with the advice and consent of the Senate, or by the President alone”. The words “the commission of an officer” are substituted for “all civil commissions for officers of the United States” because of the definition of “officer” in section 2104. The words “direction and” are omitted as included within “the control”. The words “the Secretary of Defense” are added on authority of the Acts of July 26, 1947, ch. 343, § 205, 61 Stat. 502, and Aug. 8, 1888, ch. 786, 25 Stat. 387.

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agency, or the Secretary of a military department with respect to an employee of his department, may administer—

(1) the oath of office required by section 3331 of this title, incident to entrance into the executive branch; or

(2) any other oath required by law in connection with employment in the executive branch.

(c) An oath authorized or required under the laws of the United States may be administered by—

(1) the Vice President; or

(2) an individual authorized by local law to administer oaths in the State, District, or territory or possession of the United States where the oath is administered.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 411.)

### Historical and Revision Notes

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<th>Derivation</th>
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<td>(a)</td>
<td>§ U.S.C. 18.</td>
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<td>(c)</td>
<td>§ U.S.C. 92a.</td>
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In subsection (b), the words “On and after June 26, 1943” are omitted as executed, and the word “officer” is omitted as included in “employee”. The words “Executive agency” are coextensive with and substituted for “executive departments or independent establishments, including any agency the majority of the stock of which is owned by the Government of the United States” because of the definition of “Executive agency” in section 105. The words “or the Secretary of a military department with respect to an employee of his department” are inserted to preserve the application of the source law. Before enactment of the National Security Act Amendments of 1949 (63 Stat. 576), the Department of the Army, the Department of the Navy, and the Department of the Air Force were Executive departments. The National Security Act Amendments of 1949 established the Department of Defense as an Executive Department including the Department of the Army, the Department of the Navy, and the Department of the Air Force as military departments, not as Executive departments. However, the source law for this section, which was in effect in 1949, remained applicable to the Secretaries of the military departments by virtue of section 12(g) of the National Security Act Amendments of 1949 (63 Stat. 591), which is set out in the reviser’s note for section 301. The words “of the Federal Government” and “and to have the same force and effect as oaths administered by officers having seals” are omitted as unnecessary.

In subsection (c), the word “Constitution” is omitted because “laws”, as used in this title, encompasses the Constitution. In subsection (c)(1), the words “of the United States” are omitted as unnecessary. In subsection (c)(2), the words “an individual authorized by local law to administer oaths in the State, District, or territory, or possession of the United States where the oath is administered” are coextensive with and substituted for “notaries public duly appointed in any State, District, or Territory of the United States, by clerks and prothonotaries of courts of record of all such State, District, or Territory, by the deputes of such clerks and prothonotaries, and by all magistrates authorized by the laws of or pertaining to any such State, District, or Territory to administer oaths”.

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

### §§ 2904. Oath; administered without fees

An employee of an Executive agency who is authorized to administer the oath of office required by section 3331 of this title, or any other oath required by law in connection with employment in the executive branch, may not charge or receive a fee or pay for administering the oath.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 412.)

### Historical and Revision Notes

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<td>(b)</td>
<td>§ U.S.C. 20.</td>
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The section is restated to combine former sections 16(a)(1st 9 words after last comma) and 20. The prohibition is restated in positive form. The words “officer” and “clerk” are omitted as included in “employee”. Reference to oaths taken on promotion is omitted as unnecessary.

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

### §§ 2905. Oath; renewal

(a) An employee of an Executive agency or an individual employed by the government of the District of Columbia who, on original appointment, subscribed to the oath of office required by section 3331 of this title is not required to renew the oath because of a change in status so long as his service is continuous in the agency in which he is employed, unless, in the opinion of the head of the Executive agency, the Secretary of a military department with respect to an employee of his department, or the Commissioners of the District of Columbia, the public interest so requires.

(b) An individual who, on appointment as an employee of a House of Congress, subscribed to the oath of office required by section 3331 of this title is not required to renew the oath so long as his service as an employee of that House of Congress is continuous.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 412.)

### Historical and Revision Notes

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In subsection (a), the word “civilian” is omitted as unnecessary because of the definition of “employee” in...
The authority of the President to prescribe rules is added on authority of former section 633(1), which is carried into section 3302.

In paragraph (1), the word “authority” is substituted for “power”. The words “or employment” are omitted as included within “appointment”.

In paragraph (1)(b), the words “separation during probation” are substituted for “of the rejection of any such person after probation”. The words “rejection . . . after probation” refer to a rejection, i.e., separation, after a portion of the probationary period has been served but before the end of the probationary period. This is so because an individual can be rejected only during the probationary period. After he has completed the probationary period, he can be removed only under procedures governing removals from the competitive service, and removals of this nature are covered by paragraph (e).

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


EFFECTIVE DATE OF 1978 AMENDMENT


§ 2952. Time of making annual reports

Except when a different time is specifically prescribed by statute, the head of each Executive department or military department shall make the annual reports, required to be submitted to Congress, at the beginning of each regular session of Congress. The reports shall cover the transactions of the preceding year.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 413.)

HISTORICAL AND REVISION NOTES

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The words “Executive department” are substituted for “department” as the definition of “department” applicable to this section is coextensive with the definition of “Executive department” in section 101.

The words “or military department” are inserted to preserve the application of the source law. Before enactment of the National Security Act Amendments of 1949, the Department of the Army, the Department of the Navy, and the Department of the Air Force were Executive departments. The National Security Act Amendments of 1949 established the Department of Defense as an Executive department including the Department of the Army, the Department of the Navy, and the Department of the Air Force as military departments, not as Executive departments. However, the source law for this section, which was in effect in 1949, remained applicable to the Secretaries of the military departments by virtue of section 12(g) of the National Security Act Amendments of 1949 (63 Stat. 591), which is set out in the reviser’s note for section 301.

This section was part of title IV of the Revised Statutes. The Act of July 26, 1947, ch. 343, 201(d), as added Aug. 10, 1949, ch. 412, § 4, 63 Stat. 579 (former 5 U.S.C. 171-1), which provides “Except to the extent inconsistent with the provisions of this Act [National Security Act of 1947], the provisions of title IV of the Revised Statutes . . . .”
Statutes as now or hereafter amended shall be applicable to the Department of Defense’’ is omitted from this title but is not repealed.

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

§ 2953. Reports to Congress on additional employee requirements

(a) Each report, recommendation, or other communication, of an official nature, of an Executive agency which—

(1) relates to pending or proposed legislation which, if enacted, will entail an estimated annual expenditure of appropriated funds in excess of $1,000,000;

(2) is submitted or transmitted to Congress or a committee thereof in compliance with law or on the initiative of the appropriate authority of the executive branch; and

(3) officially proposes or recommends the creation or expansion, either by action of Congress or by administrative action, of a function, activity, or authority of the Executive agency to be in addition to those functions, activities, and authorities thereof existing when the report, recommendation, or other communication is so submitted or transmitted;

shall contain a statement, concerning the Executive agency, for each of the first 5 fiscal years during which each additional or expanded function, activity, or authority so proposed or recommended is to be in effect, setting forth the following information—

(A) the estimated maximum additional—

(i) man-years of civilian employment, by general categories of positions;

(ii) expenditures for personal services; and

(iii) expenditures for all purposes other than personal services;

which are attributable to the function, activity, or authority and which will be required to be effected by the Executive agency in connection with the performance thereof; and

(B) such other statement, discussion, explanation, or other information as is considered advisable by the appropriate authority of the executive branch or that is required by Congress or a committee thereof.

(b) Subsection (a) of this section does not apply to—

(1) the Central Intelligence Agency;

(2) a Government controlled corporation; or

(3) the Government Accountability Office.


HISTORICAL AND REVISION NOTES

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<td>5 U.S.C. 105a</td>
<td>May 29, 1928, ch. 961, §2, 45 Stat. 996</td>
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The words “Executive agency” are substituted for “executive department and independent establishment.” in view of the definition of “Executive agency” in section 105. The exception of “a Government controlled corporation” is subsection (b) (2) is added to preserve the application to corporations wholly owned by the United States.

The exception of “the General Accounting Office” in subsection (b)(3) is added to preserve application to the executive branch.

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


§ 2954. Information to committees of Congress on request

An Executive agency, on request of the Committee on Government Operations of the House of Representatives, or of any seven members thereof, or on request of the Committee on Government Affairs of the Senate, or any five members thereof, shall submit any information requested of it relating to any matter within the jurisdiction of the committee.


HISTORICAL AND REVISION NOTES

In subsection (a), the words, “Executive agency” are substituted for “department, agency, or independent establishment of the executive branch of the Federal Government (including any corporation wholly owned by the United States)” in view of the definition of “Executive agency” in section 105. The exception of “a Government controlled corporation” is subsection (b) (2) is added to preserve the application to corporations wholly owned by the United States.

AMENDMENTS

1994—Pub. L. 103–437 substituted “Committee on Governmental Affairs of the Senate” for “Committee on Government Operations of the Senate”.

CHANGE OF NAME

Committee on Governmental Affairs of the Senate changed to Committee on Homeland Security and Governmental Affairs of Senate, effective Jan. 4, 2005, by Senate Resolution No. 445, One Hundred Eighth Congress, Sept. 25, 2003. By House Resolution No. 5, One Hundred Sixth Congress, Jan. 6, 1999, Committee on Government Reform of House of Representatives changed to Committee on Oversight and Government Reform of House of Representatives.
§ 3101  GENERAL AUTHORITY TO EMPLOY

Chapter 31—Authority for Employment

Subchapter I—Employment Authorities

Sec. 3101. General authority to employ.
3102. Employment of personal assistants for handicapped employees, including blind and deaf employees.
3103. Employment at seat of Government only for services rendered.
3104. Employment of specially qualified scientific and professional personnel.
3105. Appointment of administrative law judges.
3106. Employment of attorneys; restrictions.
3107. Employment of publicity persons; restrictions.
3108. Employment of detective agencies; restrictions.
3109. Employment of experts and consultants; temporary or intermittent.
3110. Employment of relatives; restrictions.
3111. Acceptance of volunteer service.
3111a. Federal internship programs.
3112. Disabled veterans; noncompetitive appointments.
3113. Restriction on reemployment after conviction of certain crimes.
3114. Appointment of candidates to positions in the competitive service by the Securities and Exchange Commission.

Subchapter II—The Senior Executive Service

3131. The Senior Executive Service.
3132. Definitions and exclusions.
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Subchapter III—The Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service

3151. The Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service.
3152. Limitation on pay.

Subchapter IV—Temporary Organizations Established by Law or Executive Order

3161. Employment and compensation of employees.

Amendments


$ 3101. General authority to employ

Each Executive agency, military department, and the government of the District of Columbia may employ such number of employees of the various classes recognized by chapter 51 of this title as Congress may appropriate for from year to year.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 414.)

Historical and Revision Notes

U.S. Code

R.S. 169.

64 Stat. 640.

93 Stat. 381.

94 Stat. 3040.

102 Stat. 581.

58 Stat. 743.

92 Stat. 184.

92 Stat. 640.

92 Stat. 1145.

93 Stat. 381.

94 Stat. 3040.

96 Stat. 55.

5 U.S.C. 514d (2d par.).

5 U.S.C. 43.

61 Stat. 618.

46 Stat. 817.

5 U.S.C. 514d.

Each Executive agency, military department, and the government of the District of Columbia may employ such number of employees of the various classes recognized by chapter 51 of this title as Congress may appropriate for from year to year.

The authorization is restated to conform to the style of this title. The word “Executive agency” are substituted for “executive department, independent establishment” in view of the definitions in sections 103, 104, and 105. The source statute (an act to authorize the appointment of employees in the executive branch etc.) applied to the entire executive branch, and government corporations as well as other agencies in the executive branch were included within the words “independent establishment”. The words “or a military department” are inserted to preserve the application of the source statute. Before enactment of the National Security Act Amendments of 1949 (63 Stat. 578), the Department of the Army, the Department of the Navy, and the Department of the Air Force were Executive departments. The National Security Act Amendments of 1949 established the Department of Defense as an Executive department including the Department of the Army, the Department of the Navy, and the Department of the Air Force as military departments, not as Executive departments. However, the source statute for this subsection, which was in effect in 1949, remained applicable to the Secretaries of the military departments by virtue of section 12(g) of the National Security Act Amendments of 1949 (63 Stat. 591), which is set out in the reviser’s note for section 301. The words “for services in the District of Columbia or elsewhere” are eliminated as surplusage. The reference to chapter 51 is substituted for the reference to the Classification Act of 1923 because the Act of Oct. 28, 1949, ch. 782, § 1106(a), 63 Stat. 792, amend-