§ 3101  TITLE 5—GOVERNMENT ORGANIZATION AND EMPLOYEES  Page 188

by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007.

Subpart B—Employment and Retention

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 experts; 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 appointment.
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.¹

SUBCHAPTER II—THE SENIOR EXECUTIVE SERVICE

3131. The Senior Executive Service.
3132. Definitions and exclusions.
3133. Authorization of positions; authority for appointment.
3134. Limitations on noncareer and limited appointments.
3135. Repealed.
3136. Regulations.

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

SUBCHAPTER I—EMPLOYMENT AUTHORITIES

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

<table>
<thead>
<tr>
<th>Derivation</th>
<th>U.S. Code</th>
<th>Revised Statutes and Statutes at Large</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>5 U.S.C. 43</td>
<td>R.S. 1169</td>
</tr>
<tr>
<td></td>
<td></td>
<td>June 26, 1930, ch. 618, 46 Stat. 817</td>
</tr>
</tbody>
</table>

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 section catchline.

¹So in original. Does not conform to section catchline.
ed the section to refer to the Classification Act of 1949, which is carried into this title. The proviso in former section 43 and former section 514d (2d par.) are omitted as suspended by former section 22a, which is carried into section 302. The last sentence of the Act of June 26, 1930, is omitted as executed.

This section was part of title IV of the Revised Statutes. The Act of 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 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.

REDUCTION OF FEDERAL FULL-TIME EQUIVALENT POSITIONS


"(a) DEFINITION.—For the purpose of this section, the term 'agency' means an Executive agency (as defined by section 105 of title 5, United States Code), but does not include the Government Accountability Office.

(b) LIMITATIONS ON FULL-TIME EQUIVALENT POSITIONS.—The President, through the Office of Management and Budget (in consultation with the Office of Personnel Management), shall ensure that the total number of full-time equivalent positions in all agencies shall not exceed—

"(1) 2,084,600 during fiscal year 1994;

"(2) 2,043,300 during fiscal year 1995;

"(3) 2,003,300 during fiscal year 1996;

"(4) 1,963,300 during fiscal year 1997;

"(5) 1,922,300 during fiscal year 1998; and

"(6) 1,882,300 during fiscal year 1999.

(c) MONITORING AND NOTIFICATION.—The Office of Management and Budget, after consultation with the Office of Personnel Management, shall—

"(1) continuously monitor all agencies and make a determination on the first day of each quarter of each applicable fiscal year of whether the requirements under subsection (b) are met; and

"(2) notify the President and the Congress on the first day of each quarter of each applicable fiscal year of any determination that any requirement of subsection (b) is not met.

(d) COMPLIANCE.—If, at any time during a fiscal year, the Office of Management and Budget notifies the President and the Congress that any requirement under subsection (b) is not met, no agency may hire any employee for any position in such agency until the Office of Management and Budget notifies the President and the Congress that the total number of full-time equivalent positions for all agencies equals or is less than the applicable number required under subsection (b).

(e) WAIVER.—

"(1) EMERGENCIES.—Any provision of this section may be waived upon a determination by the President that—

"(A) the existence of a state of war or other national security concern so requires; or

"(B) the existence of an extraordinary emergency threatening life, health, safety, property, or the environment so requires.

"(2) AGENCY EFFICIENCY OR CRITICAL MISSION.—

"(A) Subsection (d) may be waived, in the case of a particular position or category of positions in an agency, upon a determination of the President that the efficiency of the agency or the performance of a critical agency mission so requires.

"(B) Whenever the President grants a waiver pursuant to subparagraph (A), the President shall take all necessary actions to ensure that the overall limitations set forth in subsection (b) are not exceeded.

(f) EMPLOYMENT BACKFILL PREVENTION.—

"(1) IN GENERAL.—The total number of funded employee positions in all agencies (excluding the Department of Defense) shall be reduced by one position for each vacancy created by the separation of any employee who has received, or is due to receive, a voluntary separation incentive payment under section 3(a)–(e) (5 U.S.C. 5597 note). For purposes of this subsection, positions and vacancies shall be counted on a full-time-equivalent basis.

"(2) RELATED RESTRICTION.—No funds budgeted for and appropriated by any Act for salaries or expenses of positions eliminated under this subsection may be used for any purpose other than authorized separation costs.

"(3) APPLICABILITY OF BACKFILL PREVENTION PROVISIONS TO AGENCIES OTHERWISE EXEMPTED FROM FTE REDUCTION.—

"(A) IN GENERAL.—If any agency is otherwise exempted by any law from the limitations on full-time equivalent positions or the restrictions on hiring established by this section—

"(i) paragraph (1) shall apply to vacancies created in such agency; and

"(ii) the reductions required pursuant to clause (i) shall be made in the number of funded employee positions in such agency.

"(B) WAIVER AUTHORITY.—In the case of a particular position in an agency, subparagraph (A) may be waived upon a determination by the head of the agency that the performance of a critical agency mission requires the waiver.

"(C) RELATION TO OTHER LAW.—No law may be construed as suspending or modifying this paragraph unless such law specifically amends this paragraph.

(g) LIMITATION ON PROCUREMENT OF SERVICE CONTRACTS.—The President shall take appropriate action to ensure that there is no increase in the procurement of service contracts by reason of the enactment of this Act [see Tables for classification], except in cases in which a cost comparison demonstrates such contracts would be to the financial advantage of the Federal Government.

LIMITATION ON NUMBER OF CIVILIAN EMPLOYEES IN EXECUTIVE BRANCH


FREEZE ON HIRING OF FEDERAL CIVILIAN EMPLOYEES

Memorandum of the President of the United States, dated Jan. 20, 1961, 46 F.R. 9007, provided for a freeze on the hiring of Federal civilian employees in the executive branch.

CITIZENSHIP REQUIREMENT FOR EMPLOYEES COMPENSATED FROM APPROPRIATED FUNDS

Pub. L. 112-74, div. C, title VII, § 704, Dec. 23, 2011, 125 Stat. 929, provided that: "Unless otherwise specified during the current fiscal year, no part of any appropriation contained in this or any other Act shall be used to pay the compensation of any officer or employee of the Government of the United States (including any agency the majority of the stock of which is owned by the Government of the United States) whose post of duty is in the continental United States unless such person: (1) is a citizen of the United States; (2) is
a person who is lawfully admitted for permanent residence and is seeking citizenship as outlined in 8 U.S.C. 1324(a)(3)(B); (3) is a person who is admitted as a refugee under 8 U.S.C. 1157 or is granted asylum under 8 U.S.C. 1158 and has filed a declaration of intention to become a lawful permanent resident and then a citizen when eligible; or (4) is a person who owes allegiance to the United States: Provided, That for purposes of this section, affidavits signed by any such person shall be considered prima facie evidence that the requirements of this section with respect to his or her status are being complied with: Provided further, That for purposes of subsections (2) and (3) such affidavits shall be submitted prior to employment and updated thereafter as necessary: Provided further, That any person making a false affidavit shall be guilty of a felony, and upon conviction, shall be fined no more than $4,000 or imprisoned for not more than 1 year, or both:

§ 3101

Title 5—Government Organization and Employees

Table of Citations

Page 190


§ 3102

Title 5—Government Organization and Employees

Table of Citations

Page 191


§ 3103

Title 5—Government Organization and Employees

Table of Citations

Page 192


§ 3104

Title 5—Government Organization and Employees

Table of Citations

Page 193


§ 3105

Title 5—Government Organization and Employees

Table of Citations

Page 194


§ 3106

Title 5—Government Organization and Employees

Table of Citations

Page 195


§ 3107

Title 5—Government Organization and Employees

Table of Citations

Page 196


§ 3108

Title 5—Government Organization and Employees

Table of Citations

Page 197

§ 1302. Employment of personal assistants for handicapped employees, including blind and deaf employees

(a) For the purpose of this section—

(1) "agency" means—

(A) an Executive agency;

(B) the Library of Congress; and

(C) an office, agency, or other establishment in the judicial branch;

(2) "handicapped employee" means an individual employed by an agency who is blind or deaf or who otherwise qualifies as a handicapped individual within the meaning of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 794); and

(3) "nonprofit organization" means an organization determined by the Secretary of the Treasury to be an organization described in section 501(c) of the Internal Revenue Code of 1986 (26 U.S.C. 501(c)) which is exempt from taxation under section 501(a) of such Code.

(b)(1) The head of each agency may employ one or more personal assistants who the head of the agency determines are necessary to enable a handicapped employee of that agency to perform the employee's official duties and who shall serve without pay from the agency, without regard to—

(A) the provisions of this title governing appointment in the competitive service;

(B) chapter 51 and subchapter III of chapter 53 of this title; and

(C) section 1342 of title 31.

Such employment may include the employing of a reading assistant or assistants for a blind employee or an interpreting assistant or assistants for a deaf employee.

(2) A personal assistant, including a reading or interpreting assistant, employed under this subsection may receive pay for services performed by the assistant from the handicapped employee or a nonprofit organization, without regard to section 209 of title 18.

(c) The head of each agency may also employ or assign one or more personal assistants who the head of the agency determines are necessary to enable a handicapped employee of that agency to perform the employee's official duties. Such employment may include the employing of a reading assistant or assistants for a blind employee or an interpreting assistant or assistants for a deaf employee.

(d)(1) In the case of any handicapped employee (including a blind or deaf employee) traveling on official business, the head of the agency may authorize the payment to an individual to accompany or assist (or both) the handicapped employee for all or a portion of the travel period involved. Any payment under this subsection to such an individual may be made either directly to that individual or by advancement or reimbursement to the handicapped employee.

(2) With respect to any individual paid to accompany or assist a handicapped employee under paragraph (1) of this subsection—

(A) the amount paid to that individual shall not exceed the limit or limits which the Office of Personnel Management shall prescribe by regulation to ensure that the payment does not exceed amounts (including pay and, if appropriate, travel expenses and per diem allowances) which could be paid to an employee assigned to accompany or assist the handicapped employee; and

(B) that individual shall be considered an employee, but only for purposes of chapter 81 of this title (relating to compensation for injury) and sections 2671 through 2680 of title 28 (relating to tort claims).

(e) This section may not be held or considered to prevent or limit in any way the assignment to a handicapped employee (including a blind or deaf employee) by an agency of clerical or secretarial assistance, at the expense of the agency under statutes and regulations currently applicable at the time, if that assistance normally is provided, or authorized to be provided, in that manner under currently applicable statutes and regulations.

William J. Clinton.

§ 3102. Employment of personal assistants for handicapped employees, including blind and deaf employees (a) For the purpose of this section—

(1) "agency" means—

(A) an Executive agency;

(B) the Library of Congress; and

(C) an office, agency, or other establishment in the judicial branch;

(2) "handicapped employee" means an individual employed by an agency who is blind or deaf or who otherwise qualifies as a handicapped individual within the meaning of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 794); and

(3) "nonprofit organization" means an organization determined by the Secretary of the Treasury to be an organization described in section 501(c) of the Internal Revenue Code of 1986 (26 U.S.C. 501(c)) which is exempt from taxation under section 501(a) of such Code.

(b)(1) The head of each agency may employ one or more personal assistants who the head of the agency determines are necessary to enable a handicapped employee of that agency to perform the employee’s official duties and who shall serve without pay from the agency, without regard to—

(A) the provisions of this title governing appointment in the competitive service;

(B) chapter 51 and subchapter III of chapter 53 of this title; and

(C) section 1342 of title 31.

Such employment may include the employing of a reading assistant or assistants for a blind employee or an interpreting assistant or assistants for a deaf employee.

(2) A personal assistant, including a reading or interpreting assistant, employed under this subsection may receive pay for services performed by the assistant from the handicapped employee or a nonprofit organization, without regard to section 209 of title 18.

(c) The head of each agency may also employ or assign one or more personal assistants who the head of the agency determines are necessary to enable a handicapped employee of that agency to perform the employee’s official duties. Such employment may include the employing of a reading assistant or assistants for a blind employee or an interpreting assistant or assistants for a deaf employee.

(d)(1) In the case of any handicapped employee (including a blind or deaf employee) traveling on official business, the head of the agency may authorize the payment to an individual to accompany or assist (or both) the handicapped employee for all or a portion of the travel period involved. Any payment under this subsection to such an individual may be made either directly to that individual or by advancement or reimbursement to the handicapped employee.

(2) With respect to any individual paid to accompany or assist a handicapped employee under paragraph (1) of this subsection—

(A) the amount paid to that individual shall not exceed the limit or limits which the Office of Personnel Management shall prescribe by regulation to ensure that the payment does not exceed amounts (including pay and, if appropriate, travel expenses and per diem allowances) which could be paid to an employee assigned to accompany or assist the handicapped employee; and

(B) that individual shall be considered an employee, but only for purposes of chapter 81 of this title (relating to compensation for injury) and sections 2671 through 2680 of title 28 (relating to tort claims).

(e) This section may not be held or considered to prevent or limit in any way the assignment to a handicapped employee (including a blind or deaf employee) by an agency of clerical or secretarial assistance, at the expense of the agency under statutes and regulations currently applicable at the time, if that assistance normally is provided, or authorized to be provided, in that manner under currently applicable statutes and regulations.
§ 3103. Employment at seat of Government only for services rendered

An individual may be employed in the civil service in an Executive department at the seat of Government only for services actually rendered in connection with and for the purposes of the appropriation from which he is paid. An individual who violates this section shall be removed from the service.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 415.)
All after the 75th words of section 4 of the Act of Aug. 5, 1882, as amended by section 7(b) of the Act of Sept. 23, 1950, except the 255th through 316th words, are omitted as superseded by the provisions of the Lloyd-LaFollette Act, 57 Stat. 555, as amended, and the Veterans’ Preference Act of 1944, 58 Stat. 387, as amended, which are carried into this title.

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

§3104. Employment of specially qualified scientific and professional personnel

(a) The Director of the Office of Personnel Management may establish, and from time to time revise, the maximum number of scientific or professional positions for carrying out research and development functions which require the services of specially qualified personnel which may be established outside of the General Schedule. Any such position may be established by action of the Director or, under such standards and procedures as the Office prescribes and publishes in such form as the Director may determine (including procedures under which the prior approval of the Director may be required), by agency action.

(b) The provisions of subsection (a) of this section shall not apply to any Senior Executive Service position (as defined in section 3132(a) of this title).

(c) In addition to the number of positions authorized by subsection (a) of this section, not more than 8 scientific or professional positions authorized by section 302 of the Act of July 31, 1956, 70 Stat. 761; 42 U.S.C. 2453, and transfer plan, effective as of March 15, 1969, 25 Federal Register 2151, section (2)(a)(2), (b) of which in effect transferred from the Department of Defense to the National Aeronautics and Space Administration 12 of the 450 scientific and professional positions authorized by section 2 of Public Law 86–377 (10 U.S.C. 1581).

The amendment to 5 U.S.C. 3104(a)(5) reflects Public Law 89–492, section 5.


Provisions relating to the date for reporting to Congress are based on 10 U.S.C. 1582.

AMENDMENTS

2008—Subsec. (a). Pub. L. 110–372 substituted “prescribes and publishes in such form as the Director may determine” for “prescribes”.

1992—Subsec. (a). Pub. L. 102–378 struck out “(not to exceed 517)” after “positions” in first sentence and amended second sentence generally, substituting provisions authorizing establishment of positions by Director and by agency action for provisions specifying that only Director may establish positions.

1986—Pub. L. 99–386 struck out subsec. (b) relating to reports to Congress, redesignated pars. (1), (2), and (3) of subsec. (a) as subssecs. (a), (b), and (c), respectively, and substituted “subsections (a) through (d) of this section” for “paragraph (1) of this subsection” wherever appearing in subssecs. (b) and (c) as redesignated.

1979—Subsec. (a). Pub. L. 95–454, §14(a)(2)(B), substituted provisions authorizing the Director to establish the maximum number of scientific or professional positions, excepting Senior Executive Service positions, and authorizing the Librarian to establish not more than 8 such positions for provisions authorizing the head of certain named agencies to establish a specified number of scientific or professional positions.

1975—Subsec. (b). Pub. L. 94–434, §14(a)(2)(B), struck out subsec. (b), redesignated subsec. (c) as (b), and substituted in subsec. (b), as redesignated, “to fix under section 5361 of this title the pay for positions established under this section” for “to establish and fix the pay of positions under this section and section 5361 of this title”.

Subsec. (c). Pub. L. 95–454, §801(a)(3)(C), substituted in subsec. (b), as redesignated, “section 5371 of this title” for “section 5361 of this title”.

Subsec. (c). Pub. L. 95–454, §14(a)(2)(C)(i), redesignated subsec. (c) as (b).

1970—Subsec. (a)(5). Pub. L. 91–375 repealed provision for employment in Post Office Department in scientific or professional positions of not more than 6 qualified individuals.
Effective Date of 2008 Amendment
Amendment by Pub. L. 110–372 effective on the first day of the first pay period beginning on or after the 180th day following Oct. 8, 2008, see section 2(d) of Pub. L. 110–372, set out as a note under section 5376 of this title.

Effective Date of 1978 Amendment
Amendment by section 801(a)(3)(C) of Pub. L. 95–454 effective on first day of first applicable pay period beginning on or after 90th day after Oct. 13, 1978, see section 801(a)(4) of Pub. L. 95–454, set out as an Effective Date note under section 801(a)(4) of this title.

Effective Date of 1970 Amendment
Amendment by Pub. L. 91–375 effective within 1 year after Aug. 12, 1970, on date established therefor by Board of Governors of United States Postal Service and published by it in Federal Register, see section 15(a) of Pub. L. 91–375, set out as an Effective Date note preceding section 151 of Title 39, Postal Service.

EXPERIMENTAL PERSONNEL PROGRAM FOR SCIENTIFIC AND TECHNICAL PERSONNEL

(a) PROGRAM AUTHORIZED.—During the program period specified in subsection (e)(1), the Secretary of Defense may carry out a program of experimental use of the special personnel management authority provided in subsection (b) in order to facilitate recruitment of eminent experts in science or engineering for research and development projects administered by the Defense Advanced Research Projects Agency and research and development projects administered by laboratories designated for the program by the Secretary from among the laboratories of each of the military departments.

(b) SPECIAL PERSONNEL MANAGEMENT AUTHORITY.—Under the program, the Secretary may—

(1) without regard to any provision of title 5, United States Code, governing the appointment of employees in the civil service, appoint scientists and engineers from outside the civil service and uniformed services (as such terms are defined in section 2101 of such title) to—

(A) not more than 40 scientific and engineering positions in the Defense Advanced Research Projects Agency; and

(B) not more than 40 scientific and engineering positions in the designated laboratories of each of the military services;

(2) not more than a total of 10 scientific and engineering positions in the National Geospatial-Intelligence Agency and the National Security Agency;

(3) not more than a total of 10 scientific and engineering positions in the Office of the Assistant Secretary of Defense for Research and Engineering; and

(4) not more than a total of 10 scientific and engineering positions in the Office of the Director of Operational Test and Evaluation;

(5) prescribe the rates of basic pay for positions to which employees are appointed under paragraph (1) at rates not in excess of the maximum rate of basic pay authorized for senior-level positions under section 5376 of title 5, United States Code, as increased by locality-based comparability payments under section 5304 of such title, notwithstanding any provision of such title governing the rates of pay or classification of employees in the executive branch; and

(6) pay any employee appointed under paragraph (1) payments in addition to basic pay within the limit applicable to the employee under subsection (d).

(c) LIMITATION ON TERM OF APPOINTMENT.—(1) Except as provided in paragraph (2), the service of an employee under an appointment under subsection (b)(1) may not exceed 4 years.

(2) The Secretary may, in the case of a particular employee, extend the period to which service is limited under paragraph (1) by up to 2 years if the Secretary determines that such action is necessary to promote the efficiency of the Defense Advanced Research Projects Agency.

(d) LIMITATIONS ON ADDITIONAL PAYMENTS.—(1) Subject to paragraph (3), the total amount of additional payments paid to an employee under subsection (b)(3) for any 12-month period may not exceed the lesser of the following amounts:

(A) $50,000 in fiscal year 2010, which may be adjusted annually thereafter by the Secretary, with a percentage increase equal to one-half of 1 percentage point less than the percentage by which the Employment Cost Index published quarterly by the Bureau of Labor Statistics, for the base quarter of the year before the preceding calendar year exceeds the Employment Cost Index for the base quarter of the second year before the preceding calendar year.

(B) The amount equal to 50 percent of the employee's annual rate of basic pay.

(2) In paragraph (1), the term 'base quarter' has the meaning given that term in section 5302(3) of title 5, United States Code.

(3) Notwithstanding any other provision of this section or section 5307 of title 5, United States Code, no additional payments may be paid to an employee under subsection (b)(3) in any calendar year if, or to the extent that, the employee's total annual compensation in such calendar year will exceed the maximum amount of total annual compensation payable at the salary set in accordance with section 104 of title 3, United States Code.

(4) An employee appointed under the program is not eligible for any bonus, monetary award, or other monetary incentive for service under the appointment other than payments authorized by this section.

(e) PERIOD OF PROGRAM.—(1) The period for carrying out the program authorized under this section begins on October 17, 1998, and ends on September 30, 2016.

(2) After the termination of the program—

(A) no appointment may be made under paragraph (1) of subsection (b); and

(B) a rate of basic pay prescribed under paragraph (2) of that subsection may not take effect for a position; and

(3) no period of service may be extended under subsection (c)(2).

(4) SAVINGS PROVISIONS.—In the case of an employee who, on the last day of the program period specified in subsection (e)(1), is serving in a position pursuant to an appointment under subsection (b)(1)—

(A) the termination of the program does not terminate the employee's employment in that position before the expiration of the lesser of—

(i) the period for which the employee was appointed; or

(ii) the period to which the employee's service is limited under subsection (c), including any extension made under paragraph (2) of that subsection before the termination of the program; and

(B) the rate of basic pay prescribed for the position under subsection (b)(2) may not be reduced for so long (within the period applicable to the employee under paragraph (1)) as the employee continues to serve in the position without a break in service.
“(g) ANNUAL REPORT.—(1) Not later than December 31 of each year in which the authority under this section is in effect, the Secretary of Defense shall submit to the committees of Congress specified in subparagraph (B) a report on the operation of this section. Each report shall cover the fiscal year that most recently ended before such December 31.

“(2) The annual report shall contain, for the period covered by the report, the following:

“(A) A detailed discussion of the exercise of authority under this section.

“(B) The sources from which individuals appointed under subsection (b)(1) were recruited.

“(C) The methodology used for identifying and selecting such individuals.

“(D) Any additional information that the Secretary considers helpful for assessing the utility of the authority under this section.”

[For reference to maximum rate under section 5376 of this title, see section 2(d)(3) of Pub. L. 110–372, set out as an Effective Date of 2008 Amendment note under section 5376 of this title.]

FBI PERSONNEL MANAGEMENT SYSTEM FOR NON-SPECIAL AGENT EMPLOYEES; SECRETARY OF THE TREASURY


HISTORICAL AND REVISION NOTES

Derivation U.S. Code Revised Statutes and


§ 3105. Appointment of administrative law judges

Each agency shall appoint as many administrative law judges as are necessary for proceedings required to be conducted in accordance with sections 556 and 557 of this title. Administrative law judges shall be assigned to cases in rotation so far as practicable, and may not perform duties inconsistent with their duties and responsibilities as administrative law judges.


§ 3105. Appointment of administrative law judges

Each agency shall appoint as many administrative law judges as are necessary for proceedings required to be conducted in accordance with sections 556 and 557 of this title. Administrative law judges shall be assigned to cases in rotation so far as practicable, and may not perform duties inconsistent with their duties and responsibilities as administrative law judges.


HISTORICAL AND REVISION NOTES

Derivation U.S. Code Revised Statutes and


§ 3105. Appointment of administrative law judges

Each agency shall appoint as many administrative law judges as are necessary for proceedings required to be conducted in accordance with sections 556 and 557 of this title. Administrative law judges shall be assigned to cases in rotation so far as practicable, and may not perform duties inconsistent with their duties and responsibilities as administrative law judges.


HISTORICAL AND REVISION NOTES

Derivation U.S. Code Revised Statutes and


§ 3105. Appointment of administrative law judges

Each agency shall appoint as many administrative law judges as are necessary for proceedings required to be conducted in accordance with sections 556 and 557 of this title. Administrative law judges shall be assigned to cases in rotation so far as practicable, and may not perform duties inconsistent with their duties and responsibilities as administrative law judges.

The words “Subject to the civil service” are omitted as unnecessary inasmuch as appointments are made subject to the civil service laws unless specifically excepted. The words “and other laws not inconsistent with this chapter” are omitted as unnecessary because of the organization of this title.

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

AMENDMENTS
1978—Pub. L. 95–251 substituted references to administrative law judges for references to hearing examiners in section catchline and wherever appearing in text.

REFERENCES TO HEARING EXAMINER DEEMED REFERENCES TO ADMINISTRATIVE LAW JUDGE
Section 3 of Pub. L. 95–251 provided that: “Any reference in any law, regulation, or order to a hearing examiner appointed under section 3118 of title 5, United States Code, shall be deemed to be a reference to an administrative law judge.”

HEARING EXAMINERS EMPLOYED BY DEPARTMENT OF AGRICULTURE
Functions vested by section 551 et seq. of this title in hearing examiners employed by Department of Agriculture not included in functions of officers, agencies, and employees of that Department transferred to Secretary of Agriculture by 1953 Reorg. Plan No. 2, § 1, eff. June 4, 1953, 18 F.R. 3219, 67 Stat. 633, set out in the Appendix to this title.

HEARING EXAMINERS EMPLOYED BY DEPARTMENT OF COMMERCE
Functions vested by section 551 et seq. of this title in hearing examiners employed by Department of Commerce not included in functions of officers, agencies, and employees of that Department transferred to Secretary of Commerce by 1950 Reorg. Plan No. 5, § 1, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to this title.

HEARING EXAMINERS EMPLOYED BY DEPARTMENT OF THE INTERIOR
Functions vested by section 551 et seq. of this title in hearing examiners employed by Department of the Interior not included in functions of officers, agencies, and employees of that Department transferred to Secretary of the Interior by 1950 Reorg. Plan No. 3, § 1, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, transferred set out in the Appendix to this title.

HEARING EXAMINERS EMPLOYED BY DEPARTMENT OF JUSTICE
Functions vested by section 551 et seq. of this title in hearing examiners employed by Department of Justice not included in functions of officers, agencies, and employees of that Department transferred to Attorney General by 1950 Reorg. Plan No. 2, § 1, eff. May 24, 1950, 15 F.R. 3173, 64 Stat. 1261, set out in the Appendix to this title.

HEARING EXAMINERS EMPLOYED BY DEPARTMENT OF LABOR
Functions vested by section 551 et seq. of this title in hearing examiners employed by Department of Labor not included in functions of officers, agencies, and employees of Department transferred to Secretary of Labor by 1950 Reorg. Plan No. 6, § 1, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1260, set out in the Appendix to this title.

HEARING EXAMINERS EMPLOYED BY DEPARTMENT OF THE TREASURY
Functions vested by section 551 et seq. of this title in hearing examiners employed by Department of the Treasury not included in functions of officers, agencies, and employees of Department transferred to Secretary of the Treasury by 1950 Reorg. Plan No. 26, § 1, eff. July 31, 1956, 15 F.R. 4835, 64 Stat. 1280, set out in the Appendix to this title.

HEARING EXAMINERS APPOINTED FOR INDIAN PROBATE WORK
Hearing examiners appointed for Indian probate work pursuant to former section 372–1 of Title 25, Indians, having met qualifications required for appointment pursuant to this section, deemed to have been appointed pursuant to this section, see section 12(b) of Pub. L. 101–301, set out as a Savings Provision note under former section 372–1 of Title 25.

§ 3106. Employment of attorneys; restrictions
Except as otherwise authorized by law, the head of an Executive department or military department may not employ an attorney or counsel for the conduct of litigation in which the United States, an agency, or employee thereof is a party, or is interested, or for the securing of evidence therefor, but shall refer the matter to the Department of Justice. This section does not apply to the employment and payment of counsel under section 1037 of title 10.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 415.)

HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Derivation</th>
<th>U.S. Code</th>
<th>Revised Statutes and Statutes at Large</th>
</tr>
</thead>
</table>

Sections 189 and 365 of the Revised Statutes, as amended, are combined and the section is revised to express the effect of the law since department heads have long employed, with the approval of Congress, attorneys to advise them in the conduct of their official duties. The law which concentrates the authority for the conduct of litigation in the Department of Justice is codified in section 516 of title 28 by this bill.

The words “Executive department” are substituted for “department” as the definition of “department” applicable to R.S. § 189 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 (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 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. 561), which is set out in the reviser’s note for section 301.

R.S. § 189 was part of title IV of the Revised Statutes. The Act of July 26, 1947, ch. 343, §201(d), as added Aug. 1, 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 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.
§ 3107. Employment of publicity experts; restrictions

Appropriated funds may not be used to pay a publicity expert unless specifically appropriated for that purpose.


HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Derivation</th>
<th>U.S. Code</th>
<th>Revised Statutes and Statutes at Large</th>
</tr>
</thead>
</table>

The prohibition is restated in positive form.

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

§ 3108. Employment of detective agencies; restrictions

An individual employed by the Pinkerton Detective Agency, or similar organization, may not be employed by the Government of the United States or the government of the District of Columbia.


HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Derivation</th>
<th>U.S. Code</th>
<th>Revised Statutes and Statutes at Large</th>
</tr>
</thead>
</table>

The prohibition is restated in positive form.

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

§ 3109. Employment of experts and consultants; temporary or intermittent

(a) For the purpose of this section—

(1) “agency” has the meaning given it by section 5721 of this title; and

(2) “appropriation” includes funds made available by statute under section 9104 of title 31.

(b) When authorized by an appropriation or other statute, the head of an agency may procure by contract the temporary (not in excess of 1 year) or intermittent services of experts or consultants or an organization thereof, including stenographic reporting services. Services procured under this section are without regard to—

(1) the provisions of this title governing appointment in the competitive service;

(2) chapter 51 and subchapter III of chapter 53 of this title; and

(3) section 6101(b) to (d) of title 41, except in the case of stenographic reporting services by an organization.

However, an agency subject to chapter 51 and subchapter III of chapter 53 of this title may pay a rate for services under this section in excess of the daily equivalent of the highest rate payable under section 3332 of this title only when specifically authorized by the appropriation or other statute authorizing the procurement of the services.

(c) Positions in the Senior Executive Service or the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service may not be filled under the authority of subsection (b) of this section.

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

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

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

(3) provisions to ensure compliance with such regulations.

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

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

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


HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Derivation</th>
<th>U.S. Code</th>
<th>Revised Statutes and Statutes at Large</th>
</tr>
</thead>
</table>

In subsection (a), the definitions of “agency” and “appropriation” are added on authority of the Act of Aug. 2, 1946, ch. 744, §16, 60 Stat. 811.

In subsection (b), the words “the provisions of this title governing appointment in the competitive service” are substituted for “the civil-service laws”. The words “chapter 51 and subchapter III of chapter 53 of this title” are substituted for the reference to the classification laws which originally meant the Classification Act of 1923, as amended. Exception from the Classification Act of 1949 is based on sections 202(27) and 1106(a) of the Act of Oct. 28, 1949, ch. 782, 63 Stat. 956, 972.

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

2011—Subsec. (b)(3). Pub. L. 111–350 substituted “section 6101(b) to (d) of title 41” for “section 5 of title 41”.

1992—Subsecs. (d), (e). Pub. L. 102–378 added subsecs. (d) and (e).


EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 9 months after Oct. 13, 1978, and congressional review of provisions of
Appropriations relating to labor, health and human services, and education; public disclosure of consulting service through procurement contract

Pub. L. 102-394, title V, §501, Oct. 6, 1992, 106 Stat. 1825, provided that: “The expenditure of any appropriation under this Act or subsequent Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Acts for any consulting service through procurement contract, pursuant to 5 U.S.C. 3109, shall be limited to those contracts where such expenditures are a matter of public record and available for public inspection, except where otherwise provided under existing law, or under existing Executive order issued pursuant to existing law.”

Similar provisions were contained in the following prior appropriation acts:


Availability of appropriations for services

Pub. L. 102-394, title V, §503, Oct. 6, 1992, 106 Stat. 1825, provided that: “Appropriations contained in this Act or subsequent Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Acts, available for salaries and expenses, shall be available for services as authorized by 5 U.S.C. 3109 but at rates for individuals not to exceed the per diem rate equivalent to the maximum rate payable for senior-level positions under 5 U.S.C. 5375.”

For reference to maximum rate under section 5376 of this title, see section 2(d)(3) of Pub. L. 110-372, set out as an Effective Date of 2008 Amendment note under section 3109 of this title.

Similar provisions were contained in the following prior appropriation acts:


Appropriations relating to energy and water development; public disclosure of consulting service through procurement contract

Pub. L. 102-377, title V, §504, Oct. 2, 1992, 106 Stat. 1942, provided that: “The expenditure of any appropriation under this Act or subsequent Energy and Water Development Appropriations Acts for any consulting service through procurement contract, pursuant to section 3109 of title 5, United States Code, hereafter shall be limited to those contracts where such expenditures are a matter of public record and available for public inspection, except where otherwise provided under existing law, or under existing Executive Order issued pursuant to existing law.”

Ex. Ord. No. 13433, Protecting American Taxpayers From Payment of Contingency Fees

Ex. Ord. No. 13433, May 16, 2007, 72 F.R. 28441, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, it is hereby ordered as follows:

Section 1. Policy. To help ensure the integrity and effective supervision of the legal and expert witness services provided to or on behalf of the United States, it is the policy of the United States that organizations or individuals that provide such services to or on behalf of the United States shall be compensated in amounts that are reasonable, not contingent upon the outcome of litigation or other proceedings, and established according to criteria set in advance of performance of the services, except when otherwise required by law.

Section 2. Duties of Agency Heads. (a) Heads of agencies shall implement within their respective agencies the policy set forth in section 1, consistent with such instructions as the Attorney General may prescribe.

(b) After the date of this order, no agency shall enter into a contingency fee agreement for legal or expert witness services addressed by section 1 of this order, unless the Attorney General has determined that the agency’s entry into the agreement is required by law.

(c) Within 90 days after the date of this order, the head of each agency shall notify the Attorney General and the Director of the Office of Management and Budget of any contingency fee agreements for services addressed by section 1 of this order that are in effect as of the date of this order.

Section 3. Definitions. For purposes of this order:

(a) The term “agency” means an executive agency as defined in section 105 of title 5, United States Code, and the United States Postal Service and the Postal Regulatory Commission, but shall exclude the Government Accountability Office and elements of the intelligence community (as defined in section 3(4) of the National Security Act of 1947 as amended (50 U.S.C. 401a(4))).

(b) The term “contingency fee agreement” means a contract or other agreement to provide services under which the amount or the payment of the fee for the services is contingent in whole or in part on the outcome of the matter for which the services were obtained. The term does not include:

(i) qualified tax collection contracts defined in section 6306 of title 26, United States Code, and

(ii) contracts described in sections 3711 and 3718 of title 31, United States Code.

Section 4. General Provisions. (a) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(b) Nothing in this order shall be construed to impair or otherwise affect:

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

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

(c) This order is not intended to, and does not, create any right, benefit, or privilege, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, instrumentalities, or entities, its officers or employees, or any other person.
(A) an Executive agency;
(B) an office, agency, or other establishment in the legislative branch;
(C) an office, agency, or other establishment in the judicial branch; and
(D) the government of the District of Columbia;

(2) “public official” means an officer (including the President and a Member of Congress), a member of the uniformed service, an employee and any other individual, in whom is vested the authority by law, rule, or regulation, or to whom the authority has been delegated, to appoint, employ, promote, or advance individuals, or to recommend individuals for appointment, employment, promotion, or advancement in connection with employment in an agency; and

(3) “relative” means, with respect to a public official, an individual who is related to the public official as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister.

(b) A public official may not appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a civilian position in the agency in which he is serving or over which he exercises jurisdiction, or control any individual who is a relative of the public official. An individual may not be appointed, employed, promoted, or advanced in or to a civilian position in an agency if such appointment, employment, promotion, or advancement has been advocated by a public official, serving in or exercising jurisdiction or control over the agency, who is a relative of the individual.

(c) An individual appointed, employed, promoted, or advanced in violation of this section is not entitled to pay, and money may not be paid from the Treasury as pay to an individual so appointed, employed, promoted, or advanced.

(d) The Office of Personnel Management may prescribe regulations authorizing the temporary employment, in the event of emergencies resulting from natural disasters or similar unforeseen events or circumstances, of individuals whose employment would otherwise be prohibited by this section.

(e) This section shall not be construed to prohibit the appointment of an individual who is a preference eligible in any case in which the passing over of that individual on a certificate of eligibles furnished under section 3017(a) of this title will result in the selection for appointment of an individual who is not a preference eligible.


AMENDMENTS

§ 3111a  TITLE 5—GOVERNMENT ORGANIZATION AND EMPLOYEES  Page 200

compensation for injury) and sections 2671 through 2680 of title 26 (relating to tort claims).

(2) In addition to being considered a Federal employee for the purposes specified in paragraph (1), any student who provides voluntary service as part of a program established under subsection (b) of this section in the Internal Revenue Service, Department of the Treasury, shall be considered an employee of the Department of the Treasury for purposes of—

(A) section 552a of this title (relating to disclosure of records);

(B) subsections (a)(1), (h)(1), (k)(6), and (f)(4) of section 6103 of title 26 (relating to confidentiality and disclosure of returns and return information);

(C) sections 7213(a)(1) and 7431 of title 26 (relating to unauthorized disclosures of returns and return information by Federal employees and other persons); and

(D) section 7423 of title 26 (relating to suits against employees of the United States); except that returns and return information (as defined in section 6103(b) of title 26) shall be made available to students under such program only to the extent that the Secretary of the Treasury or his designee determines that the duties assigned to such students so require.

(d) Notwithstanding section 1342 of title 31, the head of an agency may accept voluntary service for the United States under chapter 37 of this title and regulations of the Office of Personnel Management.

(e) For purposes of this section the term ‘‘agency’’ shall include the Architect of the Capitol. With respect to the Architect of the Capitol, the authority granted to the Office of Personnel Management under this section shall be exercised by the Architect of the Capitol.


AMENDMENTS


2002—Subsec. (c)(1). Pub. L. 107–296 substituted ‘‘section 7905 (relating to commuting by means other than single-occupancy motor vehicles), chapter 81’’ for ‘‘chapter 81 of this title’’.


1983—Subsec. (c)(1). Pub. L. 97–437, § 1(1), substituted ‘‘(c)(1) Except as provided in par. (2), any’’ for ‘‘(c) Any’’.


§ 3111a. Federal internship programs

Amendment by Pub. L. 107–107 effective 120 days after Dec. 17, 2002, see section 492(a) of Pub. L. 107–347, set out as an Effective Date note under section 3601 of Title 44, Public Printing and Documents.

Amendment by Pub. L. 107–296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

Effective Date

Section effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

§ 3111a. Federal internship programs

(a) INTERNSHIP COORDINATOR.—The head of each agency operating an internship program shall appoint an individual within such agency to serve as an internship coordinator.

(b) ONLINE INFORMATION.—

(1) AGENCIES.—The Office of Personnel Management shall make publicly available on the Internet—

(A) the name and contact information of the internship coordinator for each agency; and

(B) information regarding application procedures and deadlines for each internship program.

(2) OFFICE OF PERSONNEL MANAGEMENT.—The Office of Personnel Management shall make publicly available on the Internet links to the websites where the information described in paragraph (1) is displayed.

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

(1) the term ‘‘internship program’’ means—

(A) a volunteer service program under section 3111(b);

(B) an internship program established under Executive Order 13562, dated December 27, 2010 (75 Federal Register 82585);

(C) a program operated by a nongovernment organization for the purpose of providing paid internships in agencies under a written agreement that is similar to an internship program established under Executive Order 13562, dated December 27, 2010 (75 Federal Register 82585); or

(D) a program that—

(i) is similar to an internship program established under Executive Order 13562, dated December 27, 2010 (75 Federal Register 82585); and

(ii) is authorized under another statutory provision of law;

(2) the term ‘‘intern’’ means an individual participating in an internship program; and

(3) the term ‘‘agency’’ means an Executive agency.


REFERENCES IN TEXT

Executive Order 13562, referred to in subsec. (c)(1), is set out as a note under section 3301 of this title.

REGULATIONS

Pub. L. 112–81, div. A, title XI, § 1109(c), Dec. 31, 2011, 125 Stat. 1615, provided that: ‘‘The Office of Personnel Management may prescribe regulations to carry out the amendment made by subsection (a) [enacting this section].’’

§ 3112. Disabled veterans; noncompetitive appointment

Under such regulations as the Office of Personnel Management shall prescribe, an agency
may make a noncompetitive appointment leading to conversion to career or career-conditional employment of a disabled veteran who has a compensable service-connected disability of 30 percent or more.


Effective Date
Section effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

§ 3113. Restriction on reemployment after conviction of certain crimes

An employee shall be separated from service and barred from reemployment in the Federal service, if—

(1) the employee is convicted of a violation of section 201(b) of title 18; and

(2) such violation related to conduct prohibited under section 1010(a) of the Controlled Substances Import and Export Act (21 U.S.C. 960(a)).


Effective Date
Section 638(c) of Pub. L. 105–61 provided that: “This section [enacting this section] shall apply during fiscal year 1998 and each fiscal year thereafter.”

§ 3114. Appointment of candidates to certain positions in the competitive service by the Securities and Exchange Commission

(a) APPLICABILITY.—This section applies with respect to any position of accountant, economist, and securities compliance examiner at the Commission that is in the competitive service, and any position at the Commission in the competitive service that requires specialized knowledge of financial and capital market formation or regulation, financial market structures or surveillance, or information technology.

(b) APPOINTMENT AUTHORITY.—

(1) IN GENERAL.—The Commission may appoint candidates to any position described in subsection (a)—

(A) in accordance with the statutes, rules, and regulations governing appointments in the excepted service; and

(B) notwithstanding any statutes, rules, and regulations governing appointments in the competitive service.

(2) RULE OF CONSTRUCTION.—The appointment of a candidate to a position under authority of this subsection shall not be considered to cause such position to be converted from the competitive service to the excepted service.

(c) REPORTS.—No later than 90 days after the end of fiscal year 2003 (for fiscal year 2003) and 90 days after the end of fiscal year 2005 (for fiscal years 2004 and 2005), the Commission shall submit a report with respect to its exercise of the authority granted by subsection (b) during such fiscal years to the Committee on Government Reform and the Committee on Financial Services of the House of Representatives and the Committee on Governmental Affairs and the Committee on Banking, Housing, and Urban Affairs of the Senate. Such reports shall describe the changes in the hiring process authorized by such subsection, including relevant information related to—

(1) the quality of candidates;

(2) the procedures used by the Commission to select candidates through the streamlined hiring process;

(3) the numbers, types, and grades of employees hired under the authority;

(4) any benefits or shortcomings associated with the use of the authority;

(5) the effect of the exercise of the authority on the hiring of veterans and other demographic groups; and

(6) the way in which managers were trained in the administration of the streamlined hiring system.

(d) COMMISSION DEFINED.—For purposes of this section, the term ‘‘Commission’’ means the Securities and Exchange Commission.


Amendments
2010—Pub. L. 111–203 substituted ‘‘Appointment of candidates to certain positions in the competitive service by the Securities and Exchange Commission’’ for ‘‘Appointment of accountants, economists, and examiners by the Securities and Exchange Commission’’ in section catchline, added subsec. (a), and struck out former subsec. (a). Prior to amendment, text read as follows: ‘‘This section applies with respect to any position of accountant, economist, and securities compliance examiner at the Commission that is in the competitive service.’’

Change of Name
Committee on Government Reform of House of Representatives changed to Committee on Oversight and Government Reform of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007.

Committee on Governmental Affairs of 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, Oct. 9, 2004.

Effective Date of 2010 Amendment
Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5901 of Title 12, Banks and Banking.

Subchapter II—The Senior Executive Service

§ 3131. The Senior Executive Service

It is the purpose of this subchapter to establish a Senior Executive Service to ensure that the executive management of the Government of the United States is responsive to the needs, policies, and goals of the Nation and otherwise of the highest quality. The Senior Executive Service shall be administered so as to—

(1) provide for a compensation system, including salaries, benefits, and incentives, and for other conditions of employment, designed to attract and retain highly competent senior executives;
(2) ensure that compensation, retention, and tenure are contingent on executive success which is measured on the basis of individual and organizational performance (including such factors as improvements in efficiency, productivity, quality of work or service, cost, efficiency, and timeliness of performance and success in meeting equal employment opportunity goals);

(3) assure that senior executives are accountable and responsible for the effectiveness and productivity of employees under them;

(4) recognize exceptional accomplishment;

(5) enable the head of an agency to reassign senior executives to best accomplish the agency's mission;

(6) provide for severance pay, early retirement, and placement assistance for senior executives who are removed from the Senior Executive Service for nondisciplinary reasons;

(7) protect senior executives from arbitrary or capricious actions;

(8) provide for program continuity and policy advocacy in the management of public programs;

(9) maintain a merit personnel system free of prohibited personnel practices;

(10) maintain accountability for honest, economical, and efficient Government;

(11) ensure compliance with all applicable civil service laws, rules, and regulations, including those related to equal employment opportunity, political activity, and conflicts of interest;

(12) provide for the initial and continuing systematic development of highly competent senior executives;

(13) provide for an executive system which is guided by the public interest and free from improper political interference; and

(14) appoint career executives to fill Senior Executive Service positions to the extent practicable, consistent with the effective and efficient implementation of agency policies and responsibilities.


**Effective Date**

Section 415 of title IV of Pub. L. 95–454 provided that:

"(a)(1) The provisions of this title, other than sections 413 and 414(a) [enacting this subchapter and sections 413 and 414(a) of this title] shall continue to have effect unless, during the first period of 60 calendar days of continuous session of the Congress beginning after 5 years after the effective date of such amendments, a concurrent resolution is introduced and adopted by the Congress disapproving the continuation of the Senior Executive Service. Such amendments shall cease to have effect on the first day of the first fiscal year beginning after the date of the adoption of such concurrent resolution.

"(2) The continuity of a session is broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of the 60-day period.

"(3) The provisions of subsections (d), (e), (f), (g), (h), (i), (j), and (k) of section 5305 of title 5, United States Code, shall apply with respect to any concurrent resolution referred to in paragraph (1) of this subsection, except that for the purpose of this paragraph the reference in such subsection (e) to 10 calendar days shall be considered a reference to 30 calendar days.

"(4) During the 5-year period referred to in paragraph (1) of this subsection, the Director of the Office of Personnel Management shall include in each report required under section 3135 of title 5, United States Code (as added by this title) an evaluation of the effectiveness of the Senior Executive Service and the manner in which such Service is administered."

Congressional Findings Respecting Continuation of Senior Executive Service

Pub. L. 98–615, title III, § 301, Nov. 8, 1984, 98 Stat. 3217, provided that: "The Congress finds that the Senior Executive Service should be continued indefinitely."

§ 3132. Definitions and exclusions

(a) For the purpose of this subchapter—

(1) "agency" means an Executive agency, except a Government corporation and the Government Accountability Office, but does not include—

(A) any agency or unit thereof excluded from coverage by the President under subsection (c) of this section; or

(B) the Federal Bureau of Investigation, the Drug Enforcement Administration, the Central Intelligence Agency, the Defense Intelligence Agency, the National Geospatial-Intelligence Agency, the National Security Agency, Department of Defense Intelligence activities the civilian employees of which are subject to section 1590 of title 10, and, as determined by the President, an Executive agency, or unit thereof, whose principal function is the conduct of foreign intelligence or counterintelligence activities;

(C) the Federal Election Commission or the Election Assistance Commission;

(D) the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Resolution Trust Corporation, the Farm Credit Administration, the Federal Housing Finance Agency, the National Credit Union Administration, the Bureau of Consumer Financial Protection, and the Office of Financial Research;

(E) the Securities and Exchange Commission; or

(F) the Commodity Futures Trading Commission;

(2) "Senior Executive Service position" means any position in an agency which is clas-
sified above GS–15 pursuant to section 5108 or in level IV or V of the Executive Schedule, or an equivalent position, which is not required to be filled by an appointment by the President by and with the advice and consent of the Senate, and in which an employee—
(A) directs the work of an organizational unit;
(B) is held accountable for the success of one or more specific programs or projects;
(C) monitors progress toward organizational goals and periodically evaluates and makes appropriate adjustments to such goals;
(D) supervises the work of employees other than personal assistants; or
(E) otherwise exercises important policy-making, policy-determining, or other executive functions;

but does not include—
(i) any position in the Foreign Service of the United States; or
(ii) an administrative law judge position under section 3105 of this title;

(3) "senior executive" means a member of the Senior Executive Service;

(4) "career appointee" means an individual in a Senior Executive Service position whose appointment to the position or previous appointment to another Senior Executive Service position was based on approval by the Office of Personnel Management of the executive qualifications of such individual;

(5) "limited term appointee" means an individual appointed under a nonrenewable appointment for a term of 3 years or less to a Senior Executive Service position the duties of which will expire at the end of such term;

(6) "limited emergency appointee" means an individual appointed under a nonrenewable appointment, not to exceed 18 months, to a Senior Executive Service position who is not a career appointee, a limited term appointee, or a limited emergency appointee;

(7) "noncareer appointee" means an individual in a Senior Executive Service position who is not a career appointee, a limited term appointee, or a limited emergency appointee;

(8) "career reserved position" means a position which is required to be filled by a career appointee and which is designated under subsection (b) of this section; and

(9) "general position" means any position, other than a career reserved position, which may be filled by either a career appointee, noncareer appointee, limited emergency appointee, or limited term appointee.

(b)(1) For the purpose of paragraph (8) of subsection (a) of this section, the Office shall prescribe the criteria and regulations governing the designation of career reserved positions. The criteria and regulations shall provide that a position shall be designated as a career reserved position only if the filling of the position by a career appointee is necessary to ensure impartiality, or the public’s confidence in the impartiality, of the Government. The head of each agency shall be responsible for designating career reserved positions in such agency in accordance with such criteria and regulations.

(2) The Office shall periodically review general positions to determine whether the positions should be designated as career reserved. If the Office determines that any such position should be so designated, it shall order the agency to make the designation.

(3) Notwithstanding the provisions of any other law, any position to be designated as a career reserved position in the Executive Office of the President shall be designated as a career reserved position if the position entails direct responsibility to the public for the management or operation of particular government programs or functions.

(4) Not later than March 1 of each year, the head of each agency shall publish in the Federal Register a list of positions in the agency which were career reserved positions during the preceding calendar year.

(5) An agency may file an application with the Office setting forth reasons why it, or a unit thereof, should be excluded from the coverage of this subchapter. The Office shall—
(1) review the application and stated reasons,
(2) undertake a review to determine whether the agency or unit should be excluded from the coverage of this subchapter, and
(3) upon completion of its review, recommend to the President whether the agency or unit should be excluded from the coverage of this subchapter.

If the Office recommends that an agency or unit thereof be excluded from the coverage of this subchapter, the President may, on written determination, make the exclusion for the period determined by the President to be appropriate.

(d) Any agency or unit which is excluded from coverage under subsection (c) of this section shall make a sustained effort to bring its personnel system into conformity with the Senior Executive Service to the extent practicable.

(6) The Office may at any time recommend to the President that any exclusion previously granted to an agency or unit thereof under subsection (c) of this section be revoked. Upon recommendation of the Office, the President may revoke, by written determination, any exclusion made under subsection (c) of this section.

(f) If—
(1) any agency is excluded under subsection (c) of this section, or
(2) any exclusion is revoked under subsection (e) of this section,
the Office shall, within 30 days after the action, transmit to the Congress written notice of the exclusion or revocation.

§ 3133  TITLE 5—GOVERNMENT ORGANIZATION AND EMPLOYEES  Page 204


REFERENCES IN TEXT

Level IV or V of the Executive Schedule, referred to in subsec. (a)(2), are set out in sections 5315 and 5316 of title 5.

The date of the enactment of the Civil Service Reform Act of 1978, referred to in subsec. (b)(3), is the date of the enactment of Pub. L. 95–454, which was approved Oct. 13, 1978.

AMENDMENTS

2010—Subsec. (a)(1)(D). Pub. L. 111–203 substituted “‘the National Credit Union Administration, the Bureau of Consumer Financial Protection, and the Office of Financial Research,’” for “‘and the National Credit Union Administration,’’”.


Effective Date of 2010 Amendment

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

Effective Date of 2008 Amendment

Pub. L. 110–289, div. A, title I, §1167, July 30, 2008, 122 Stat. 2782, provided that: “Except as otherwise specifically provided in this title [see Tables for classification], this title and the amendments made by this title shall take effect on, and shall apply beginning on, the date of enactment of this Act [July 30, 2008].”

Effective Date of 2002 Amendments

Amendment by Pub. L. 107–252 effective upon appointment of all members of the Election Assistance Commission under section 15233 of Title 42, The Public Health and Welfare, see section 3133 of this title.


Effective Date of 1996 Amendment

Amendment by Pub. L. 104–201 effective Oct. 1, 1996, see section 1124 of Pub. L. 104–201, set out as a note under section 190 of Title 10, Armed Forces.

Effective Date of 1990 Amendment

Amendment by Pub. L. 101–509 effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title III, §305] of Pub. L. 101–509, set out as a note under section 5301 of this title.

Effective Date of 1980 Amendment

Amendment by Pub. L. 96–354 effective on a date the President shall determine, but not earlier than 90 days, and not later than 180 days, after Jan. 8, 1980, see section 301(a) of Pub. L. 96–354, set out as a note under section 431 of Title 2, The Congress.

Effective Date of 1979 Amendment

Amendment by Pub. L. 96–354 effective July 12, 1979, see section 2(b) of Pub. L. 96–354, set out as a note under section 305 of this title.

§ 3133. Authorization of positions; authority for appointment

(a) During each even-numbered calendar year, each agency shall—

(1) examine its needs for Senior Executive Service positions for each of the 2 fiscal years beginning after such calendar year; and

(2) examine its needs for Senior Executive Service positions for each of the 2 fiscal years beginning after such calendar year; and

(3) submit to the President a report on such examination.
(2) submit to the Office of Personnel Management a written request for a specific number of Senior Executive Service positions for each of such fiscal years.

(b) Each agency request submitted under subsection (a) of this section shall—

(1) be based on the anticipated type and extent of program activities and budget requests of the agency for each of the 2 fiscal years involved, and such other factors as may be prescribed from time to time by the Office; and

(2) identify, by position title, positions which are proposed to be designated as or removed from designation as career reserved positions, and set forth justifications for such proposed actions.

(c) The Office of Personnel Management, in consultation with the Office of Management and Budget, shall review the request of each agency and shall authorize, for each of the 2 fiscal years covered by requests required under subsection (a) of this section, a specific number of Senior Executive Service positions for each agency.

(d)(1) The Office of Personnel Management may, on a written request of an agency or on its own initiative, make an adjustment in the number of positions authorized for any agency. Each agency request under this paragraph shall be submitted in such form, and shall be based on such factors, as the Office shall prescribe.

(2) The total number of positions in the Senior Executive Service may not at any time during any fiscal year exceed 105 percent of the total number of positions authorized under subsection (c) of this section for such fiscal year.

(e)(1) Not later than July 1, 1979, and from time to time thereafter as the Director of the Office of Personnel Management finds appropriate, the Director shall establish, by rule issued in accordance with section 1103(b) of this title, the number of positions out of the total number of positions authorized under subsection (c) of this section for such fiscal year.

(e)(2) The Director may, by rule, designate a number of career reserved positions which is less than the number required by paragraph (1) of this subsection only if the Director determines such lesser number necessary in order to designate as general positions one or more positions other than positions described in section 3132(b)(3) of this title which—

(A) involve policymaking responsibilities which require the advocacy or management of programs of the President and support of controversial aspects of such programs;

(B) involve significant participation in the major political policies of the President; or

(C) require the senior executives in the positions to serve as personal assistants of, or advisers to, Presidential appointees.

The Director shall provide a full explanation for his determination in each case.


REFERENCES IN TEXT


CONVERSION TO SENIOR EXECUTIVE SERVICE

Section 413 of Pub. L. 95–454 provided that:

“(a) For the purpose of this section, ‘agency’, ‘Senior Executive Service position’, ‘career appointee’, ‘career reserved position’, ‘limited term appointee’, ‘noncareer appointee’, and ‘general position’ have the meanings set forth in section 3132(a) of title 5, United States Code (as added by this title) and ‘Senior Executive Service’ has the meaning set forth in section 2101a of such title 5 (as added by this title).

“(b)(1) Under the guidance of the Office of Personnel Management, each agency shall—

“(A) designate those positions which it considers should be Senior Executive Service positions and designate which of those positions it considers should be career reserved positions; and

“(B) submit to the Office a written request for—

“(i) a specific number of Senior Executive Service positions; and

“(ii) authority to employ a specific number of noncareer appointees.

“(2) The Office of Personnel Management shall review the designations and requests of each agency under paragraph (1) of this subsection, and shall establish interim authorizations in accordance with sections 3133 and 3134 of title 5, United States Code (as added by this Act), and shall publish the titles of the authorized positions in the Federal Register.

“(c) Each employee serving in a position at the time it is designated as a Senior Executive Service position under subsection (b) of this section shall elect to—

“(A) decline conversion and be appointed to a position under such employee’s current type of appointment and pay system, retaining the grade, seniority, and other rights and benefits associated with such type of appointment and pay system; or

“(B) accept conversion and be appointed to a Senior Executive Service position in accordance with the provisions of subsections (d), (e), (f), (g), and (h) of this section.

“The appointment of an employee in an agency because of an election under subparagraph (A) of this paragraph shall not result in the separation or reduction in grade of any other employee in such agency.

“(2) Any employee in a position which has been designated a Senior Executive Service position under this section shall be notified in writing of such designation, the election required under paragraph (1) of this subsection, and the provisions of subsections (d), (e), (f), (g), and (h) of this section. The employee shall be given 90 days from the date of such notification to make the election under paragraph (1) of this subsection.

“(d) Each employee who has elected to accept conversion to a Senior Executive Service position under subsection (c)(1)(B) of this section and who is serving under—

“(1) a career or career-conditional appointment; or

“(2) a similar type of appointment in an excepted service position, as determined by the Office;

in a position which is designated as a Senior Executive Service position shall be appointed as a career appointee to such Senior Executive Service position without regard to section 3393(b)(e) of title 5, United States Code (as added by this title).

“(e) Each employee who has elected conversion to a Senior Executive Service position under subsection...
§ 3134. Limitations on noncareer and limited appointments

(a) During each calendar year, each agency shall—

(1) examine its needs for employment of noncareer appointees for the fiscal year beginning in the following year; and

(2) submit to the Office of Personnel Management, in accordance with regulations prescribed by the Office, a written request for authority to employ a specific number of noncareer appointees for such fiscal year.

(b) The number of noncareer appointees in each agency shall be determined annually by the Office on the basis of demonstrated need of the agency. The total number of noncareer appointees in all agencies may not exceed 10 percent of the total number of Senior Executive Service positions in all agencies.

(c) Subject to the 10 percent limitation of subsection (b) of this section, the Office may adjust the number of noncareer positions authorized for any agency under subsection (b) of this section if emergency needs arise that were not anticipated when the original authorizations were made.

(d) The number of Senior Executive Service positions in any agency which are filled by noncareer appointees may not at any time exceed the greater of—

(1) 25 percent of the total number of Senior Executive Service positions in the agency; or

(2) the number of positions in the agency which were filled on the date of the enactment of the Civil Service Reform Act of 1978 by—

(A) noncareer executive assignments under subpart F of part 305 of title 5, Code of Federal Regulations, as in effect on such date, or

(B) appointments to level IV or V of the Executive Schedule which were not required on such date to be made by and with the advice and consent of the Senate.

This subsection shall not apply in the case of any agency having fewer than 4 Senior Executive Service positions.

(e) The total number of limited emergency appointees and limited term appointees in all agencies may not exceed 5 percent of the total number of Senior Executive Service positions in all agencies.


REFERENCES IN TEXT

The date of enactment of the Civil Service Reform Act of 1978, referred to in subsec. (d)(2), is the date of enactment of Pub. L. 95–454, which was approved Oct. 13, 1978.

Level IV or V of the Executive Schedule, referred to in subsec. (d)(2)(B), are set out in sections 5315 and 5316 of this title.


§ 3136. Regulations

The Office of Personnel Management shall prescribe regulations to carry out the purpose of this subchapter.

§ 3151. The Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service

(a) The Attorney General may by regulation establish a personnel system for senior personnel within the Federal Bureau of Investigation and the Drug Enforcement Administration to be known as the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service (hereinafter in this subchapter referred to as the “FBI–DEA Senior Executive Service”). The regulations establishing the FBI–DEA Senior Executive Service shall—

(1) meet the requirements set forth in section 3131 for the Senior Executive Service;

(2) provide that positions in the FBI–DEA Senior Executive Service meet requirements that are consistent with the provisions of section 3132(a)(2);

(3) provide rates of pay for the FBI–DEA Senior Executive Service that are not in excess of the maximum rate or less than the minimum rate of basic pay established for the Senior Executive Service under section 5382 and that are adjusted at the same time and to the same extent as rates of basic pay for the Senior Executive Service are adjusted;

(4) provide a performance appraisal system for the FBI–DEA Senior Executive Service that conforms to the provisions of subchapter II of chapter 43;

(5) provide for—

(A) removal consistent with section 3592;

(B) reduction-in-force procedures consistent with section 3595(a), together with measures to ensure that a member of the FBI–DEA Senior Executive Service may not be removed due to a reduction in force unless reasonable efforts to place such member in another such position are first taken;

(C) procedures in accordance with which any furlough affecting the FBI–DEA Senior Executive Service shall be carried out;

(D) removal or suspension consistent with subsections (a), (b), and (c) of section 7543 (except that any hearing or appeal to which a member of the FBI–DEA Senior Executive Service is entitled shall be held or decided pursuant to procedures established by regulations of the Attorney General); and

(E) recertification consistent with section 3393a; 1

(6) permit the payment of performance awards to members of the FBI–DEA Senior Executive Service consistent with the provisions applicable to performance awards under section 5384; and

(7) provide that members of the FBI–DEA Senior Executive Service may be granted sabbatical leaves consistent with the provisions of section 3396(c).

(b) Except as provided in subsection (a), the Attorney General may—

(1) make applicable to the FBI–DEA Senior Executive Service any of the provisions of this title applicable to applicants for or members of the Senior Executive Service; and

(2) appoint, promote, and assign individuals to positions established within the FBI–DEA Senior Executive Service without regard to the provisions of this title governing appointments and other personnel actions in the competitive service.

(c) The President, based on the recommendations of the Attorney General, may award ranks to members of the FBI–DEA Senior Executive Service in a manner consistent with the provisions of section 4507.

(d) Notwithstanding any other provision of this section, the Attorney General may detail or assign any member of the FBI–DEA Senior Executive Service to serve in a position outside the Federal Bureau of Investigation or the Drug Enforcement Administration (as the case may be) in which the member’s expertise and experience may be of benefit to the Federal Bureau of Investigation or the Drug Enforcement Administration (as the case may be) or another Government agency. Any such member shall not by reason of such detail or assignment lose any entitlement or status associated with membership in the FBI–DEA Senior Executive Service.

(e) The Attorney General shall each year submit to Congress, at the time the budget is submitted by the President to the Congress for the next fiscal year, a report on the FBI–DEA Senior Executive Service. The report shall include, in the aggregate and by agency—

(1) the number of FBI–DEA Senior Executive Service positions established as of the end of the preceding fiscal year;

(2) the number of individuals being paid at each rate of basic pay for the FBI–DEA Senior Executive Service as of the end of the preceding fiscal year;

(3) the number, distribution, and amount of awards paid to members of the FBI–DEA Senior Executive Service during the preceding fiscal year; and

(4) the number of individuals removed from the FBI–DEA Senior Executive Service during the preceding fiscal year—

(A) for less than fully successful performance;

(B) due to a reduction in force; or

(C) for any other reason.


REFERENCES IN TEXT


Provisions of this title governing appointments and other personnel actions in the competitive service, referred to in subsec. (b)(2), are classified generally to section 3301 et seq. of this title.

AMENDMENTS

2005—Subsec. (b), Pub. L. 109–108 struck out par. (1) designation before “Except as provided”, redesignated subpars. (A) and (B) as pars. (1) and (2), respectively, and struck out former par. (2) which read as follows:

1 See References in Text note below.
§ 3152

TITLE 5—GOVERNMENT ORGANIZATION AND EMPLOYEES

Page 208

“(A) Notwithstanding any other provision of this section, an individual may not be selected for the FBI–DEA Senior Executive Service unless such individual is a career employee in the civil service.

“(B) For the purpose of subparagraph (A), ‘career employee in the civil service’ shall have such meaning as the Attorney General, in consultation with the Director of the Office of Personnel Management, by regulation prescribes.”


EFFECTIVE DATE OF 1989 AMENDMENT

Section 506(d) of Pub. L. 101-194 provided that: ‘‘The amendments made by this section [enacting section 3393a of this title and amending this section, sections 3394 to 3594, 7701, 8336, 8339, 8414, and 8421 of this title, section 1601 of Title 10, Armed Forces, section 3945 of Title 22, Foreign Relations and Intercourse, and chapter III of chapter 50, War and National Defense] shall take effect on January 1, 1991.’’

§ 3152. Limitation on pay

Members of the FBI–DEA Senior Executive Service shall be subject to the limitation under section 5307.


AMENDMENTS

1992—Pub. L. 102-378 amended section generally. Prior to amendment, section read as follows: ‘‘Nothing in this subchapter shall be construed to allow the aggregate amount payable to a member of the FBI–DEA Senior Executive Service under this subchapter during any fiscal year to exceed the annual rate payable for positions at level I of the Executive Schedule in effect at the end of such year. This section shall be applied in a manner consistent with paragraphs (1) and (2) of section 5338(b).’’

SUBCHAPTER IV—TEMPORARY ORGANIZATIONS ESTABLISHED BY LAW OR EXECUTIVE ORDER

§ 3161. Employment and compensation of employees

(a) Definition of Temporary Organization.—For the purposes of this subchapter, the term ‘‘temporary organization’’ means a commission, committee, board, or other organization that—

(1) is established by law or Executive order for a specific period not in excess of three years for the purpose of performing a specific study or other project; and

(2) is terminated upon the completion of the study or project or upon the occurrence of a condition related to the completion of the study or project.

(b) Employment Authority.—(1) Notwithstanding the provisions of chapter 51 of this title, the head of a temporary organization may appoint persons to positions of employment in a temporary organization in such numbers and with such skills as are necessary for the performance of the functions required of a temporary organization.

(2) The period of an appointment under paragraph (1) may not exceed three years, except that under regulations prescribed by the Office of Personnel Management the period of appointment may be extended for up to an additional two years.

(3) The positions of employment in a temporary organization are in the excepted service of the civil service.

(c) Detail Authority.—Upon the request of the head of a temporary organization, the head of any department or agency of the Government may detail, on a nonreimbursable basis, any personnel of the department or agency to that organization to assist in carrying out its duties.

(d) Compensation.—(1) The rate of basic pay for an employee appointed under subsection (b) shall be established under regulations prescribed by the Office of Personnel Management without regard to the provisions of chapter 51 and subchapter III of chapter 53 of this title.

(2) The rate of basic pay for the chairman, a member, an executive director, a staff director, or another executive level position of a temporary organization may not exceed the maximum rate of basic pay established for the Senior Executive Service under section 5302 of this title.

(3) Except as provided in paragraph (4), the rate of basic pay for other positions in a temporary organization may not exceed the maximum rate of basic pay authorized for grade GS–15 of the General Schedule under section 5382 of this title.

(4) The rate of basic pay for a senior staff position of a temporary organization may, in a case determined by the head of the temporary organization as exceptional, exceed the maximum rate of basic pay authorized under paragraph (3), but may not exceed the maximum rate of basic pay authorized for an executive level position under paragraph (2).

(5) In this subsection, the term ‘‘basic pay’’ includes locality pay provided for under section 5304 of this title.

(e) Travel Expenses.—An employee of a temporary organization, whether employed on a full-time or part-time basis, may be allowed travel and transportation expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of this title, while traveling away from the employee’s regular place of business in the performance of services for the temporary organization.

(f) Benefits.—An employee appointed under subsection (b) shall be afforded the same benefits and entitlements as are provided temporary employees under this title.

(g) Return Rights.—An employee serving under a career or career conditional appointment or the equivalent in an agency who transfers to or converts to an appointment in a temporary organization with the consent of the head of the agency is entitled to be returned to the employee’s former position or a position of like seniority, status, and pay without grade or pay retention in the agency if the employee—

(1) is being separated from the temporary organization for reasons other than misconduct, neglect of duty, or malfeasance; and

(2) applies for return not later than 30 days before the earlier of—

(A) the date of the termination of the employment in the temporary organization; or

(B) the date of the termination of the temporary organization.
(h) Temporary and Intermittent Services.—
The head of a temporary organization may procure for the organization temporary and intermittent services under section 3109(b) of this title.

(1) Acceptance of Volunteer Services.—(1) The head of a temporary organization may accept volunteer services appropriate to the duties of the organization without regard to section 1342 of title 31.

(2) Donors of volunteer services accepted for a temporary organization under this subsection may include the following:

(A) Advisors.

(B) Experts.

(C) Members of the commission, committee, board, or other temporary organization, as the case may be.

(D) A person performing services in any other capacity determined appropriate by the head of the temporary organization.

(3) The head of the temporary organization—

(A) shall ensure that each person performing voluntary services accepted under this subsection is notified of the scope of the voluntary services accepted;

(B) shall supervise the volunteer to the same extent as employees receiving compensation for similar services; and

(C) shall ensure that the volunteer has appropriate credentials or is otherwise qualified to perform in each capacity for which the volunteer’s services are accepted.

(4) A person providing volunteer services accepted under this subsection shall be considered an employee of the Federal Government in the performance of those services for the purposes of the following provisions of law:

(A) Chapter 81 of this title, relating to compensation for work-related injuries.

(B) Chapter 171 of title 26, relating to tort claims.

(C) Chapter 11 of title 18, relating to conflicts of interest.


Chapter 33—Examination, Selection, and Placement

Subchapter I—Examination, Certification, and Appointment

Sec. 3301. Civil service; generally.

3302. Competitive service; rules.

3303. Competitive service; recommendations of Senators or Representatives.

3304. Competitive service; examinations.

3304a. Competitive service; career appointment after 3 years’ temporary service.

3305. Competitive service; examinations; when held.

[3306. Repealed.]

3307. Competitive service; maximum-age entrance requirements; exceptions.

3308. Competitive service; examinations; educational requirements prohibited; exceptions.

3309. Preference eligibles; examinations; additional points for.

3310. Preference eligibles; examinations; guards, elevator operators, messengers, and custodians.

3311. Preference eligibles; examinations; crediting experience.

3312. Preference eligibles; physical qualifications; waiver.

3313. Competitive service; registers of eligibles.

3314. Registers; preference eligibles who resigned.

3315. Registers; preference eligibles furloughed or separated.

[3315a. Repealed.]

3316. Preference eligibles; reinstatement.

3317. Competitive service; certification from registers.

3318. Competitive service; selection from certificates.

3319. Alternative ranking and selection procedures.

3320. Excepted service; government of the District of Columbia; selection.

3321. Competitive service; probationary period.

[3322. Repealed.]

3323. Automatic separations; reappointment; reemployment of annuitants.


3325. Appointments to scientific and professional positions.

3326. Appointments of retired members of the armed forces to positions in the Department of Defense.

3327. Civil service employment information.

3328. Selective Service registration.

3329. Appointments of military reserve technicians to positions in the competitive service.

3330. Government-wide list of vacant positions.

3330a. Preference eligibles; administrative redress.

3330b. Preference eligibles; judicial redress.

3330c. Preference eligibles; remedy.

Subchapter II—Oath of Office

3331. Oath of office.

3332. Officer affidavit; no consideration paid for appointment.

3333. Employee affidavit; loyalty and striking against the Government.

Subchapter III—Details, Vacancies, and Appointments

3341. Details; within Executive or military departments.

[3342. Repealed.]

3343. Details; to international organizations.

3344. Details; administrative law judges.

3345. Acting officer.

3346. Time limitation.

3347. Exclusivity.

3348. Vacant office.

3349. Reporting of vacancies.

3349a. Presidential inaugural transitions.

3349b. Holdover provisions relating to certain independent establishments.

3349c. Exclusion of certain officers.

3349d. Notification of intent to nominate during certain recesses or adjournments.

Subchapter IV—Transfers

3351. Preference eligibles; transfer; physical qualifications; waiver.

3352. Preference in transfers for employees making certain disclosures.

Subchapter V—Promotion

3361. Promotion; competitive service; examination.

3362. Promotion; effect of incentive award.

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

[3364. Repealed.]

Subchapter VI—Assignments to and from States

3371. Definitions.

1 So in original. Does not conform to section catchline.
§ 3301 TITLE 5—GOVERNMENT ORGANIZATION AND EMPLOYEES

3372. General provisions.
3373. Assignments of employees to State or local governments.
3374. Assignments of employees from State or local governments.
3375. Travel expenses.
3376. Regulations.

SUBCHAPTER VII—AIR TRAFFIC CONTROLLERS

3381. Training.
3382. Involuntary separation for retirement.
3383. Determinations; review procedures.
3384. Regulations.

3385. Effect on other authority.

SUBCHAPTER VIII—APPOINTMENT, REASSIGNMENT, TRANSFER, AND DEVELOPMENT IN THE SENIOR EXECUTIVE SERVICE

3391. Definitions.
3392. General appointment provisions.
3393. Career appointments.
3394. Noncareer and limited appointments.
3395. Reassignment and transfer within the Senior Executive Service.
3396. Development for and within the Senior Executive Service.
3397. Regulations.

AMENDMENTS


1972—Pub. L. 92–297, §§6(b), 3(b), May 16, 1972, 86 Stat. 142, 144, substituted “maximum age entrance requirements, exceptions” for “maximum age requirement; restrictions on use of appropriated funds.”


1966—Pub. L. 90–365, §1(b), Nov. 5, 1966, 80 Stat. 1312, struck out item 3324 “Details, field to departmental service prohibited.”

SUBCHAPTER I—EXAMINATION, CERTIFICATION, AND APPOINTMENT

§ 3301. Civil service generally.

The President may—

(1) prescribe such regulations for the admission of individuals into the civil service in the executive branch as will best promote the efficiency of that service;

(2) ascertain the fitness of applicants as to age, health, character, knowledge, and ability for the employment sought; and

(3) appoint and prescribe the duties of individuals to make inquiries for the purpose of this section.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 417.)

HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Derivation</th>
<th>U.S. Code</th>
<th>Revised Statutes and Statutes at Large</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 3301</td>
<td>5 U.S.C. 331 (less last 16 words).</td>
<td>R.S. §1753 (less last 16 words).</td>
</tr>
</tbody>
</table>

The words “civil service in the executive branch” are substituted for “civil service of the United States” to conform to the grant of authority in view of the definition of “civil service” in section 2101. The word “will” is substituted for “may.” The words “for the employment sought” are substituted for “for the branch of service.”
into which he seeks to enter" as the latter are archaic since there are no "branches" within the executive branch. The word "applicant" is substituted for "candidate".

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

**SHORT TITLE OF 1998 AMENDMENT**

Pub. L. 105–277, div. C, title I, §151(a), Oct. 21, 1998, 112 Stat. 2681–611, provided that: "This section [enacting sections 3345 to 3349d of this title, repealing former sections 3345 to 3349 of this title, and enacting provisions set out as a note under section 3345 of this title] may be cited as the "Senior Executive Service Improvements Act."

**SHORT TITLE OF 1991 AMENDMENT**

Pub. L. 102–175, §1, Dec. 2, 1991, 105 Stat. 1222, provided that: "This Act [amending sections 3395, 3396, 5383, and 7701 of this title] may be cited as the 'Senior Executive Service Improvements Act."

**MODIFICATIONS TO NATIONAL SECURITY EDUCATION PROGRAM**

Pub. L. 107–296, title XIII, §1332(a), Nov. 25, 2002, 116 Stat. 2299, provided that:

"(a) FINDINGS AND POLICIES.—"(1) FINDINGS.—Congress finds that—

"(A) the United States Government actively encourages and financially supports the training, education, and development of many United States citizens;

"(B) as a condition of some of those supports, many of those citizens have an obligation to seek either compensated or uncompensated employment in the Federal sector; and

"(C) it is in the United States national interest to maximize the return to the Nation of funds invested in the development of such citizens by seeking to employ them in the Federal sector.

"(2) POLICY.—It shall be the policy of the United States Government to—

"(A) establish procedures for ensuring that United States citizens who have incurred service obligations as the result of receiving financial support for education and training from the United States Government and have applied for Federal positions are considered in all recruitment and hiring initiatives of Federal departments, agencies, and offices; and

"(B) advertise and open all Federal positions to United States citizens who have incurred service obligations with the United States Government as the result of receiving financial support for education and training from the United States Government."

**TEMPORARY MEASURES TO FACILITATE REEMPLOYMENT OF CERTAIN DISPLACED FEDERAL EMPLOYEES**


**NATIONAL ADVISORY COUNCIL ON THE PUBLIC SERVICE**


"SECTION 1. SHORT TITLE."

"This Act may be cited as the 'National Advisory Council on the Public Service Act of 1990'."

"SEC. 2. FINDINGS."

"The Congress finds that—"

"(1) recognition of the services rendered by Federal employees (hereinafter in this Act referred to as 'national public service') should be accorded a high and continuing place on the national agenda;

"(2) the National Commission on the Public Service, through its good works, has documented the need for greater advocacy on behalf of those performing national public service;

"(3) although public service is an honorable profession, members of the public do not always perceive it favorably;

"(4) serious obstacles often hinder the Government's efforts to recruit and retain the best and the brightest for national public service;

"(5) just as the public has a right to expect Federal employees to adhere to the highest standards of excellence and ethicality, so Federal employees have a right to expect an atmosphere of trust and respect, and a sense of accomplishment from their work; and

"(6) an advisory council is needed to provide the President and the Congress with bipartisan, objective assessments of, and recommendations concerning, the Federal workforce.

"SEC. 3. ESTABLISHMENT."

"There shall be established a council to be known as the National Advisory Council on the Public Service (hereinafter in this Act referred to as the 'Council').

"SEC. 4. FUNCTIONS."

"(1) regularly assess the state of the Federal workforce;

"(2) in conjunction with the President, the Congress, and the Judiciary, seek to attract individuals of the highest caliber to careers involving national public service, and encourage them and others of similar distinction who are already part of the Federal workforce to make a continuing commitment to national public service;

"(3) promote better public understanding of the role of Federal employees in implementing Government programs and policies, and otherwise seek to improve the public perception of Federal employees;

"(4) encourage efforts to build student interest in performing national public service (whether those efforts are undertaken at the community level, in the classroom, or otherwise); and

"(5) develop methods for improving motivation and excellence among Federal employees.

"SEC. 5. MEMBERSHIP."

"(a) NUMBER AND APPOINTMENT.—The Council shall be composed of 15 members as follows:

"(1) 2 Members of the Senate, 1 of whom shall be appointed by the majority leader of the Senate and the other of whom shall be appointed by the minority leader of the Senate.

"(2) 2 Members of the House of Representatives, 1 of whom shall be appointed by the Speaker of the House of Representatives and the other of whom shall be appointed by the minority leader of the House of Representatives.

"(3) The Director of the Administrative Office of the United States Courts (or his delegate)."

"(4) 10 individuals appointed by the President—"

"(A) 4 of whom shall be chosen from among officers serving in the executive branch;

"(B) 1 of whom shall be chosen from among career employees in the civil service;

"(C) 1 of whom shall be a Federal employee who is a member of a labor organization (as defined by section 7103(a)(4) of title 5, United States Code); and

"(D) 4 of whom shall be chosen from among members of the public who do not hold any Government office or position.

"(b) CONTINUATION OF MEMBERSHIP.—If any member of the Council whose appointment is based on that individual's holding a Government office or position leaves such office or position, or if any member of the Council under subsection (a)(4)(D) is appointed or elected to a Government office or position, that individual may continue to serve as such a member for not longer than
the 90-day period beginning on the date of leaving that office or position, or entering into that office or position, as the case may be.

"(c) Terms.—Members of the Council shall be appointed for the life of the Council.

"(d) Vacancies.—A vacancy in the Council shall be filled in the manner in which the original appointment was made.

"(e) Compensation.—(1) Members of the Council shall not be entitled to pay (or, in the case of members holding any Government office or position, pay in addition to any to which they are otherwise entitled for service in such office or position) by virtue of membership on the Council.

"(2) While serving away from their homes or regular places of business in the performance of duties for the Council, members shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as authorized by section 5705 of title 5, United States Code, for persons employed intermittently in Government service.

"(f) Quorum.—Eight members of the Council shall constitute a quorum.

"(g) Chairman.—The Chairman of the Council shall be designated by the President from among the members appointed pursuant to subsection (a)(1).

"(h) Meetings.—The Council shall meet at the call of the Chairman or a majority of its members, and shall meet at least once in every 3 months.

"SEC. 6. DIRECTOR AND STAFF; EXPERTS AND CONSULTANTS.

"(a) Director.—With the approval of the Council, the Director may appoint and fix the pay of such personnel as may be necessary to carry out the functions of the Council.

"(b) Staff.—With the approval of the Chairman, the Director may appoint and fix the pay of such personnel as may be necessary to carry out the functions of the Council.

"(c) Experts and Consultants.—The Council may procure temporary or intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals not to exceed the daily equivalent of the maximum rate payable under the General Schedule.

"(d) Staff of Federal Agencies.—Upon the request of the Chairman, the head of a Federal agency may detail, on a reimbursable or nonreimbursable basis, any person of such agency to the Council to assist the Council in carrying out its functions under this Act.

"SEC. 7. POWERS.

"(a) Mails.—The Council may use the United States mails in the same manner and under the same conditions as other Federal agencies.

"(b) Administrative Support Services.—The Administrator of General Services shall provide to the Council, on a reimbursable basis, such administrative support services as the Council may request.

"(c) Official Data.—The Council may secure directly from any Federal agency information necessary to carry out its functions under this Act. Each such agency is authorized and directed to furnish, to the extent permitted by law, any information requested by the Council.

"(d) Gifts.—The Council—

"(1) may accept money and other property donated, bequeathed, or devised to the Council without condition or restriction (other than that it be used to carry out the work of the Council); and

"(2) may sell, or otherwise dispose of any such property to carry out its functions under this Act, except that, upon the termination of the Council, any such property shall be disposed of in accordance with applicable provisions of law governing the disposal of Federal property.

"SEC. 8. REPORTS.

"(a) Reports.—The Council shall transmit to the President and each House of the Congress—

"(1) within 1 and 2 years, respectively, after the date on which the Council first meets, reports containing its preliminary findings and recommendations; and

"(2) within 3 years after the date on which the Council first meets, a final report containing a detailed statement of the findings and conclusions of the Council, together with its recommendations for such legislation or administrative actions as it considers appropriate.

"SEC. 9. COMMENCEMENT; TERMINATION.

"(a) Commencement.—Appointments under section 5 shall be made, and the Council shall first meet, within 90 days after the date of the enactment of this Act [Aug. 14, 1990].

"(b) Termination.—The Council shall cease to exist upon transmitting its final report under section 8(2).

"SEC. 10. AUTHORIZATION.

"There is authorized to be appropriated such sums as may be necessary to carry out this Act.

EX. ORD. No. 8743. EXTENDING THE CLASSIFIED CIVIL SERVICE


By virtue of the authority vested in me by section 1 of the act of November 26, 1940, entitled "Extending the Classified Executive Civil Service of the United States" (54 Stat. 1211), by the Civil Service Act (22 Stat. 403), and by section 1753 of the Revised Statutes of the United States [sections 3301 and 7301 of this title], it is hereby ordered as follows:

SECTION 1. All offices and positions in the executive civil service of the United States except (1) those that are temporary, (2) those expressly excepted from the provisions of section 1 of the said act of November 26, 1940, (3) those excepted from the classified service under Schedules A and B of the Civil Service Rules, and (4) those which now have a classified status, are hereby covered into the classified civil service of the Government.

SECTION 2. Section 1 of this order shall become effective on January 1, 1942, except that as to positions affected thereby which are vacant at any time after June 30, 1941, and before January 1, 1942, it shall become effective thereby which are vacant at any time after June 30, 1941, and before January 1, 1942, it shall become effective when the vacancies first exist during such period, and appointments to such vacant positions shall be made in accordance with the Civil Service Rules as amended by section 3 of this order, unless prior express permission is given by the Office of Personnel Management for appointment without regard thereto.

SECTION 3. (a) Upon consideration of the report of the Committee on Civil Service Improvement (House Document No. 118, 77th Congress) appointed by Executive Order No. 8904 of January 31, 1939, it is hereby found and determined that the regulations and procedures hereinafter prescribed in this section with respect to attorney positions in the classified civil service are required by the conditions of good administration,

(b) There is hereby created in the Office of Personnel Management (hereinafter referred to as the Office) a board to be known as the Board of Legal Examiners (hereinafter referred to as the Board), which shall consist of the Solicitor General of the United States and the chief law officer of the Office of Personnel Management, as members ex officio, and nine members to be appointed by the President, four of whom shall be attorneys chosen from the chief officials of the Executive departments, agencies or corporate instrumentalities of the Government, two from the law-teaching profes-
sion, and three from attorneys engaged in private practice. The President shall designate the chairman of the Board. Five members shall constitute a quorum, and the Board may transact business notwithstanding vacancies thereon. Members of the Board shall receive no salary as such, but shall be entitled to necessary expenses incurred in the performance of their duties hereunder. The Board shall have such rule-making powers as may be necessary to carry out the provisions of this section.

(c) It shall be the duty of the Board to promote the development of a merit system for the recruitment, selection, appointment, promotion, and transfer of attorneys in the classified civil service in accordance with the general procedures outlined in Plan A of the report of the Committee on Civil Service Improvement, approved by Executive Order No. 8044 of January 31, 1939.

(d) The Board, in consultation with the Office, shall determine the regulations and procedures under this section governing the recruitment and examination of applicants for attorney positions, and the selection, appointment, promotion and transfer of attorneys, in the classified service.

(e) The Office shall, in the manner determined by the Board, establish a register or registers for attorney positions in the classified service and such positions shall thereafter be filled from such registers as are designated otherwise determined by the Board, any register so established shall not be in effect for a period longer than one year from the date of its establishment. Upon request of the Board, the Office shall establish or local boards of examination composed of persons approved by the Board, within or without the Federal service, to interview and examine applicants as the Board shall direct.

(f) The number of names to be placed upon any register of eligibles for attorney positions shall be limited to the number recommended by the Board, and such registers shall not be ranked according to the ratings received by the eligibles, except that persons entitled to veterans' preference as defined in section 1 of Civil Service Rule VI shall be appropriately designated therein.

(g) Any person whose name has been placed upon three registers of eligibles covering positions of the same grade, and who has not been appointed therefrom, shall not thereafter be eligible for placement upon any subsequent register covering positions of such grade.

(h) So far as practicable and consistent with good administration, the eligibles on any register for attorney positions and appointments for such register shall be apportioned among the several States and Territories and the District of Columbia upon the basis of population as ascertained in the last preceding census. The Office shall certify to the appointing officer for each vacancy among the eligibles on the appropriate register except those whose appointment would, in the determination of the Board, be inconsistent with the apportionment policy herein prescribed. The appointing officer shall make selections for any vacancy or vacancies in attorney positions from the register so certified, with sole reference to merit and fitness.

(i) Any position affected by this section may be filled before appropriate registers have been established pursuant to this section only by a person whose appointment is approved by the Board. The Board may require as a condition of its approval that persons thus proposed for appointment pass a noncompetitive examination and may designate examining committees composed of persons within or without the Federal service to conduct such examinations. Persons whose appointment was approved by the Board prior to March 16, 1942, and who pass a noncompetitive examination prescribed by the Board shall be eligible for a classified civil-service status after the expiration of six months from the date of appointment upon compliance with the provisions of Section 6 of Civil Service Rule II other than those provisions relating to examination. Effective March 16, 1942, all appointments to attorney and law clerk (trainee) positions shall be for the duration of the present war and for six months thereafter unless specifically limited to a shorter period.

(j) The incumbent of any attorney position covered by the classified service by section 1 of this order may acquire a classified civil-service status in accordance with the provisions of Section 2(a) of the act of November 26, 1940 (54 Stat. 1211) or, in the discretion of the Board and when applicable, Section 6, of Civil Service Rule II: Provided, That the noncompetitive examination required thereunder shall be prescribed by the Office with the approval of the Board.

(k) The Office with the approval of the Board shall appoint a competent person to act as Executive Secretary to the Board, and the Office shall furnish such further professionals, clerical, stenographic, and other assistants as may be necessary to carry out the provisions of this section.

(l) The Civil Service Rules are hereby amended to the extent necessary to give effect to the provisions of this section.

SECTION 4. The noncompetitive examinations prescribed pursuant to sections 3 and 6 of this order and section 2(a) of the said act of November 26, 1940, shall, among other things, require any person taking such examination to meet such reasonable standards of physical fitness and personal suitability as the Office of Personnel Management may prescribe.

SECTION 5. Persons who on the effective date of section 1 of this order are on furlough or leave without pay from any position covered into the classified service by this section may be recalled to duty within one year of the date that they are furloughed or given leave without pay, and may be continued in such positions thereafter but shall not thereby acquire a classified civil-service status. If they are not recalled to duty within the time specified herein, they shall be separated from the service.

SECTION 6. (a) Any person who, in order to perform active service with the military or naval forces of the United States, has left a position (other than a temporary position) which is covered into the classified civil service under section 1 of this order, shall be reinstated in such position or to a position of like seniority, status, and pay in the same department or agency, and may, upon reinstatement, acquire a classified civil-service status: Provided, (1) that he has been honorably discharged from the military or naval service, (2) that he makes application for reinstatement within 90 days after termination of his service with the armed forces or of hospitalization continuing after discharge for a period of not more than one year, and (3) that he qualifies in such suitable noncompetitive examination as the Office may prescribe.

(b) Any person who, in order to perform active service with the military or naval forces of the United States, has left a position in any department or agency (other than a temporary position) which is covered into the classified civil service under section 1 of this order, shall be reinstated in any position for which the Office finds he is qualified, and upon reinstatement shall acquire a classified civil-service status: Provided, (1) that he has been honorably discharged from the military or naval service, and (2) that he qualifies in such suitable noncompetitive examination as the Office may prescribe.

SECTION 7. Executive Order No. 8044 of January 31, 1939, is hereby revoked so far as it applies to positions covered into the classified civil service by this order.

EXECUTIVE ORDER NO. 9367

Ex. Ord. No. 9367, Aug. 4, 1943, 8 F.R. 11017, which provided, with certain exceptions, instructions of applicants for civil service and foreign service examinations by officers or employees of the government, was revoked by Ex. Ord. No. 11408, Apr. 25, 1968, 33 F.R. 6459.

Ex. Ord. No. 10577. CIVIL SERVICE RULES


WHEREAS older workers are an indispensable source of manpower resources, issued a memorandum on March 14, 1963, reaffirming the policy of the Executive Branch of the Government of hiring and promoting employees on the basis of merit alone and emphasizing the need to assure that older persons are not discriminated against because of their age and receive fair and full consideration for employment and advancement in Federal employment; and

WHEREAS, to encourage and hasten the acceptance of the principle of equal employment opportunity for older persons by all sectors of the economy, private and public, the Federal Government can and should provide maximum leadership in this regard by adopting that principle as an express policy of the Federal Government not only with respect to Federal employees but also with respect to persons employed by contractors and subcontractors engaged in the performance of Federal contracts:

NOW, THEREFORE, by virtue of the authority vested in me by the Constitution and statutes of the United States and as President of the United States, I hereby declare that it is the policy of the Executive Branch of the Government that (1) contractors and subcontractors engaged in the performance of Federal contracts shall not, in connection with the employment, advancement, or discharge of employees, on the connection with the terms, conditions, or privileges of their employment, discriminate against persons because of their age except upon the basis of a bona fide occupational qualification, retirement plan, or statutory requirement, or (2) that contractors and subcontractors, or persons acting on their behalf, shall not specify, in solicitations or advertisements for employees to work on Government contracts, a maximum age limit for such employment unless the specified maximum age limit is based upon a bona fide occupational qualification, retirement plan, or statutory requirement. The head of each department and agency shall take appropriate action to enunciate this policy, and to this end the Federal Procurement Regulations and the Armed Services Procurement Regulation shall be amended by the insertion therein of a statement giving continuous notice of the existence of the policy declared by this order.

LYNDON B. JOHNSON.

EXECUTIVE ORDER No. 11162

Ex. Ord. No. 11162, July 28, 1964, 29 F.R. 10563, which related to membership of the President’s Committee on Equal Employment Opportunity, was superseded by Ex. Ord. No. 11202, Mar. 5, 1965, 30 F.R. 3185, which established career or career-conditional appointments for student trainees, was revoked by Ex. Ord. No. 11131, Oct. 7, 1974, 39 F.R. 36317, formerly set out below.

Ex. Ord. No. 11203, Career Appointments to Certain Qualified Employees of Treasury Department

Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, provided:
By virtue of the authority vested in me by Section 2 of the Civil Service Act (22 Stat. 463) and Section 1753 of the Revised Statutes of the United States (5 U.S.C. 631) (sections 3301 and 7301 of this title) and as President of the United States, it is hereby ordered as follows:

SECTION 1. Any employee of the Treasury Department serving under an appointment under Schedule B of the Civil Service Rules in a position concerned with the protection of the life and safety of the President, member of his immediate family, or other persons for whom similar protective services are provided by law (which responsibility is hereinafter referred to as the protective function) may have his appointment converted to a career appointment if:

1. He has completed at least three years of full-time continuous service in a position concerned with the protective function;

2. The Secretary of the Treasury, or his designee, recommends the conversion of the employee’s appointment within 90 days after the employee meets the service requirements of this section, or within 90 days after the date of this Order, whichever is later;

3. He shall have passed a competitive examination appropriate for the position he is occupying or meets noncompetitive examination standards the Office of Personnel Management prescribes for his position; and

4. He meets all other requirements prescribed by the Office pursuant to Section 5 of this Order.

Sic. For the purposes of Section 1—

(1) “full-time continuous service” means service without a break of more than 30 calendar days;

(2) except as provided in paragraph (3) of this section, active service in the Armed Forces of the United States shall be deemed to be full-time continuous service in a position concerned with the protective function if the employee concerned shall have left a position concerned with the protective function to enter the Armed Forces and shall have re-employed in a position concerned with the protective function within 120 days after he has been discharged from the Armed Forces under honorable conditions; and

(3) active service in the Armed Forces shall not be deemed to be full-time continuous service in a position concerned with the protective function if such active service exceeds a total of four years plus any period of additional service imposed pursuant to law.

Sic. 3. Any employee who shall have left a position concerned with the protective function to enter active service in the Armed Forces of the United States, who is re-employed in such a position within 120 days after his discharge under honorable conditions from such service, and who meets the requirements of Section 1 as the result of being credited with his period of active service in the Armed Forces pursuant to Section 2(2), may have his appointment converted if the Secretary of the Treasury or his designee, recommends that conversion within 90 days after his re-employment.

Sic. 4. Whenever the Secretary of the Treasury, or his designee, decides not to recommend conversion of the appointment of an employee under this Order or whenever the Secretary, or his designee, recommends conversion and the employee fails to qualify, the employee shall be separated by the date on which his current Schedule B appointment expires.

Sic. 5. The Office of Personnel Management shall prescribe such regulations as may be necessary to carry out the purposes of this Order.

EX. ORD. NO. 11219. APPOINTMENT IN COMPETITIVE SERVICE OF FOREIGN SERVICE OFFICERS AND EMPLOYEES


1. The President of the authority vested in me by section 1753 of the Revised Statutes (sections 3301 and 7301 of this title) and the Civil Service Act (22 Stat. 463) and as President of the United States, it is hereby ordered as follows:

SECTION 1. Under regulations and conditions prescribed by the Office of Personnel Management, a present or former member of the Foreign Service may be appointed in the competitive service if he:

(a) Is qualified for the position in the competitive service;

(b) Was appointed in the Foreign Service under authority of the Foreign Service Act of 1946 as amended (former section 801 et seq. of Title 22, Foreign Relations and Intercourse), the Foreign Service Act of 1980 (section 3901 et seq. of Title 22), or legislation that supplements or replaces the latter Act;

(c) Served in the Foreign Service under an unlimited, career-type appointment and, immediately before his separation from that appointment, he completed at least one year of continuous service under one or more nontemporary appointments in the Foreign Service which may include the service that made him eligible for his career-type appointment; and

(d) Is appointed within 3 years after his separation from the Foreign Service, or he completed at least 3 years of substantially continuous service under one or more nontemporary appointments in the Foreign Service immediately before his separation from the unlimited, career-type appointment in that Service which may include the service that made him eligible for such appointment, or he is entitled to preference under section 2 of the Veterans’ Preference Act of 1944, as amended (sections 3352 and 2108 of this title).

Sic. 2. (a) Except as provided in paragraph (b) of this section, a person appointed under Section 1 of this Order becomes a career conditional employee.

(b) A person appointed under Section 1 of this Order becomes a career employee when he:

(1) Has completed at least 3 years of substantially continuous service under one or more nontemporary appointments in the Foreign Service immediately before his separation from the unlimited, career-type appointment in that Service which may include the service that made him eligible for such appointment;

(2) Is appointed to a position in the competitive service required by law or Executive order to be filled on a permanent or career basis; or

(3) Has completed the service requirement for career tenure in the competitive service.

For the purpose of subparagraph (3) of this paragraph, service in the Foreign Service is creditable in meeting the service requirement only if the person concerned is appointed to a nontemporary position in the competitive service under Section 1 of this Order within 30 days after his separation from the Foreign Service.

Sic. 3. A person appointed to a nontemporary position in the competitive service under Section 1 of this Order acquires a competitive status automatically on appointment.

Sic. 4. Any law, Executive order, or regulation that would disqualify an applicant for appointment in the competitive service shall also disqualify a person for appointment under Section 1 of this Order.

Sic. 5. For the purpose of this Order, a person is deemed to be a member of the “Foreign Service” if he was appointed in any agency under authority of the Foreign Service Act of 1946, as amended (former section 801 et seq. of Title 22, Foreign Relations and Intercourse), the Foreign Service Act of 1980 (section 3901 et seq. of Title 22), or legislation that supplements or replaces the latter Act.

EXECUTIVE ORDER NO. 11315

Ex. Ord. No. 11315, Nov. 17, 1966, 31 F.R. 14728, as amended by Ex. Ord. No. 12107, §2-10(a), Dec. 28, 1978, 44 F.R. 10555, added Civil Service Rule IX and amended Civil Service Rule VI, provided for transition to the full establishment of executive assignments under Rule IX, and delegated responsibility for the administration of the executive assignment system established by this Order to the Office of Personnel Management and heads of agencies affected by Rule IX. Civil Service Rule IX, as established by this Order, was revoked by Ex. Ord. No. 12748, §8(a), Feb. 1, 1991, 56 F.R. 4531, set out under section 5301 of this title.
EXECUTIVE ORDER No. 11598
Ex. Ord. No. 11598, June 16, 1971, 36 F.R. 11711, formerly set out as a note under this section, which related to the listing of certain job vacancies by federal agencies and government contractors and subcontractors, was superseded by Ex. Ord. No. 11701, Jan. 24, 1975, 38 F.R. 2675, set out as a note under section 4212 of Title 38, Veterans’ Benefits.

EXECUTIVE ORDER No. 11813

Ex. Ord. No. 11955, CAREER OR CAREER-CONDITIONAL APPOINTMENT TO CERTAIN QUALIFIED EMPLOYEES OF NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
By virtue of the authority vested in me by section 3301 of title 5 of the United States Code [this section], and as President of the United States of America, it is hereby ordered as follows:

SECTION 1. The appointment of a Command Pilot, Pilot or Mission Specialist candidate to a position in the Space Shuttle Astronaut Program of the National Aeronautics and Space Administration, or the Administrator’s designee, recommends the conversion of the candidate’s appointment within ninety days of completion of the requirements of section 1(a):

(a) the candidate has successfully completed two years of service as a candidate in an appropriate training program;

(b) the Administrator of the National Aeronautics and Space Administration, or the Administrator’s designee, recommends the conversion of the candidate’s appointment within ninety days of completion of the requirements of section 1(a);

(c) the candidate meets noncompetitive examination standards prescribed by the Office of Personnel Management; and

(d) the candidate meets all other requirements prescribed by the Office of Personnel Management pursuant to section 3 of this order.

SECTION 2. Whenever the Administrator of the National Aeronautics and Space Administration, or the Administrator’s designee, decides not to recommend conversion of an appointment under this order or whenever the Administrator, or the Administrator’s designee, recommends conversion and the candidate fails to qualify, the candidate shall be separated not later than the date of expiration of the current Schedule B appointment, unless the appointment can be converted through appropriate competitive examination or the candidate can be assigned to a suitable position under another excepted authority prior to the expiration date.

SECTION 3. The Office of Personnel Management shall prescribe such regulations as may be necessary to carry out the purpose of this order.

EXECUTIVE ORDER No. 12008

Ex. Ord. No. 12015, CAREER OR CAREER-CONDITIONAL APPOINTMENTS IN COMPETITIVE SERVICE FOR STUDENTS COMPLETING APPROVED CAREER-RELATED WORK-STUDY PROGRAMS
By virtue of the authority vested in me by Sections 3301 and 3302 of title 5 of the United States Code, and as President of the United States of America, it is hereby ordered as follows:

SECTION 1. As used in this order “career-related work-study programs” are those programs established by the Office of Personnel Management which provide for a formally-arranged schedule of periods of attendance at an accredited school combined with periods of career-related work in a Federal agency under a Schedule B appointment.

SECTION 2. The appointment of a student to a position in a career-related work-study program may be converted noncompetitively to a term, career, or career-conditional appointment if the student:

(a) has completed within the preceding 120 days an educational program that meets the provisions established by the Office of Personnel Management;

(b) has satisfied all course requirements leading to completion of the related curriculum at an accredited school;

(c) is recommended for such an appointment by the employing agency in which the career-related work was performed; and,

d) satisfies such other requirements and conditions as the Office of Personnel Management may prescribe for term, career, or career-conditional appointment of an individual in career-related work-study programs.

SECTION 3. The Office of Personnel Management shall prescribe such regulations as it deems necessary to carry out the provisions of this order and to provide for the continuation of planning, implementation and evaluation of employment programs for students throughout the Government. These regulations shall provide for the periodic evaluation of the work of each student and require that each student’s continuation in the program shall be dependent upon a finding of satisfactory performance.

SECTION 4. Students converted to term appointment under section 2 may subsequently be converted noncompetitively to a career or career-conditional appointment before the term appointment expires.

SECTION 5. Executive Order No. 11813 of October 7, 1974, is hereby revoked.

[Ex. Ord. No. 12015, set out above, is revoked on the effective date of final regulations promulgated by the Director of OPM to implement the Internship Program, see Ex. Ord. No. 13562, § 8(b), Dec. 27, 2010, 75 F.R. 82588, set out below.]

EXECUTIVE ORDER No. 12026
For provisions relating to eligibility for reinstatement in the competitive civil service of certain employees of the Energy Department, see Ex. Ord. No. 12026, Dec. 5, 1977, 42 F.R. 61849, set out as a note under section 7292 of Title 42, The Public Health and Welfare.

EXECUTIVE ORDER No. 12257
Ex. Ord. No. 12257, Dec. 18, 1980, 45 F.R. 84005, which provided for noncompetitive conversion of participants in the Comprehensive Employment and Training Act program to career or career-conditional Civil Service status, was revoked by Ex. Ord. No. 12533, Feb. 25, 1986, 51 F.R. 7237.

EXECUTIVE ORDER No. 12362

EXECUTIVE ORDER No. 12364

Ex. Ord. No. 12505, CAREER APPOINTMENTS TO CERTAIN OFFICE OF MANAGEMENT AND BUDGET EMPLOYEES
Ex. Ord. No. 12505, Feb. 12, 1985, 50 F.R. 6151, provided:
By the authority vested in me as President by the laws of the United States of America, including Section 3301 and 3302 of Title 5, and Section 521 of Title 31 of the United States Code, it is hereby ordered as follows:

SECTION 1. No later than April 1, 1985, any employee of the Office of Management and Budget serving under an appointment under Schedule A in a position not limited to one year or less, concerned with implementation of the President’s paperwork reduction and regulatory review and planning programs, may have his or her appointment converted to a career or career-conditional appointment if the Director of the Office of Management and Budget determines that:

(a) The employee has completed at least one year of full-time continuous service in a position concerned with the paperwork reduction and regulatory program;
(b) There is a continuing need for the position filled by the employee;
(c) The employee’s past performance has been satisfactory and the employee possesses the qualifications necessary to continue in the position; and
(d) The employee meets the citizenship requirements and qualification standards appropriate for the position.

SEC. 2. If the Director determines not to convert an employee’s appointment to career or career-conditional status under the preceding Section, the employee shall be separated not later than the date of expiration of the current appointment.

SEC. 3. Employees whose appointments are converted under this Order shall become career-conditional employees or career employees if they have completed the service requirements for career tenure, and all converted employees shall acquire a competitive status.

RONALD REAGAN.

EXECUTIVE ORDER NO. 12396
Ex. Ord. No. 12396, May 7, 1987, 52 F.R. 17537, which provided for noncompetitive conversion to career status of certain employees in professional and administrative career positions, was revoked by Ex. Ord. No. 13162, July 6, 2000, 65 F.R. 43212, set out as a note below.

Ex. Ord. No. 12396. NONCOMPETITIVE CONVERSION OF PERSONAL ASSISTANTS TO EMPLOYEES WITH DISABILITIES
Ex. Ord. No. 12396, July 28, 1989, 54 F.R. 31766, provided:

By the authority vested in me as President by the Constitution and laws of the United States of America, including sections 3301 and 3302 of title 5, United States Code, it is hereby ordered as follows:

SECTION 1. Upon recommendation by the employing agency, and subject to qualifications and other requirements prescribed by the Office of Personnel Management, an employee in a position in the excepted service under 5 U.S.C. 213102(11) as a reader, interpreter, or personal assistant for a handicapped employee, whose employment in such position is no longer necessary and who has completed at least 1 year of satisfactory service in such position under a non-temporary appointment, may be converted noncompetitively to a career or career-conditional appointment.

SEC. 2. This order shall be effective upon publication in the Federal Register.

GEORGE BUSH.

Ex. Ord. No. 12718. PRESIDENT’S ADVISORY COMMISSION ON THE PUBLIC SERVICE
Ex. Ord. No. 12718, June 29, 1990, 55 F.R. 27451, provided:

By the authority vested in me as President by the Constitution and laws of the United States of America, including the Federal Advisory Committee Act, as amended (5 U.S.C. App.), and in order to provide a continuing source of advice on the public service from outstanding leaders in various walks of private life, it is hereby ordered as follows:

SECTION 1. Establishment. The President’s Advisory Commission on the Public Service (“Commission”) is hereby established. The Commission shall be comprised of 13 members to be appointed by the President from among leading citizens in private life. The members shall be appointed for 2-year terms, except that initial appointments shall include six members appointed to serve 1-year terms. Any vacancy in the Commission shall be filled by an appointment for the remainder of the term for which the original appointment was made, and a member whose term has expired may serve until his or her successor has been appointed. The President shall designate one of the members of the Commission to serve as Chairperson.

SEC. 2. Functions. (a) The Commission shall meet from time to time at the request of the Chairperson and shall consider ways to enhance the public service in American life, including:

(1) improving the efficiency and attractiveness of the Federal civil service;
(2) increasing the interest among American students in pursuing careers in the public service; and
(3) strengthening the image of the public service in American life.

(b) The Commission shall submit a report on its activities to the Director of the Office of Personnel Management and the President each year.

SEC. 3. Administrative Provisions. (a) The members of the Commission shall serve without compensation, but may receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code.

(b) All executive agencies are directed, to the extent permitted by law, to provide such information, advice, and assistance to the Commission as the Commission may request.

(c) The Director of the Office of Personnel Management shall, to the extent permitted by law and subject to the availability of funds, provide the Commission with administrative services, staff support, and necessary expenses.

SEC. 4. General. Notwithstanding any other Executive order, the functions of the President under the Federal Advisory Committee Act, as amended [5 U.S.C. App.], except that of reporting to the Congress, which are applicable to the Commission, shall be performed by the Office of Personnel Management in accordance with the guidelines and procedures established by the Administrator of General Services.

GEORGE BUSH.

Ex. Ord. No. 12721. ELIGIBILITY OF OVERSEAS EMPLOYEES FOR NONCOMPETITIVE APPOINTMENTS
Ex. Ord. No. 12721, July 30, 1990, 55 F.R. 31349, provided:

By the authority vested in me as President by the Constitution and laws of the United States of America, including sections 3301 and 3302 of title 5 and section 301 of title 3 of the United States Code, and in order to permit certain overseas employees to acquire competitive status upon returning to the United States, it is hereby ordered as follows:

SECTION 1. A United States citizen who is a family member of a Federal civilian employee, of a nonappropriated fund employee, or of a member of a uniformed service and who meets the qualifications and other requirements established by the Director of the Office of Personnel Management, including an appropriate period of satisfactory service under one or more overseas appointments in the excepted or competitive civil service, may be appointed noncompetitively to a competitive service position in the executive branch within the United States (including Guam, Puerto Rico, and the Virgin Islands). The employing agency in the United States may waive a requirement for a written test for an individual appointed under this order if the agency determines that the duties and responsibilities of the position occupied overseas were similar enough to those of the position to which the individual is being appointed under this order to make the written test unnecessary.
§ 3301

TITLE 5—GOVERNMENT ORGANIZATION AND EMPLOYEES

Ssc. 2. The Director of the Office of Personnel Management shall prescribe such regulations as may be necessary to implement this order.

Ssc. 3. To the extent there is any conflict between this order and Civil Service Rule 8.2 (5 CFR 8.2), the provisions of this order shall control.

Ssc. 4. (a) Executive Order No. 12362 of May 12, 1982, as amended, and Executive Order No. 12585 of March 3, 1987, are revoked.

(b) Existing regulations prescribed by the Director of the Office of Personnel Management under Executive Order No. 12962, as amended, shall continue in effect until modified or superseded by the Director of the Office of Personnel Management.

Ssc. 5. This order shall be effective upon publication in the Federal Register.

GEORGE H. W. BUSH.

EX. ORD. No. 13124, AMENDING THE CIVIL SERVICE RULES RELATING TO FEDERAL EMPLOYEES WITH PSYCHIATRIC DISABILITIES

Ex. Ord. No. 13124, June 4, 1999, 64 F.R. 31103, provided: By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 3301 and 3302 of title 5, United States Code, and in order to give individuals with psychiatric disabilities the same hiring opportunities as persons with severe physical disabilities or mental retardation under the Civil Service Rules, and to permit individuals with psychiatric disabilities to obtain Civil Service competitive status, it is hereby ordered as follows:

SECTION 1. Policy.

(a) It is the policy of the United States to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for persons with disabilities. The Federal Government as an employer should serve as a model for the employment of persons with disabilities and utilize the full potential of these talented citizens.

(b) The Civil Service Rules governing appointment of persons with psychiatric disabilities were adopted years ago when attitudes about mental illness were different than they are today, which led to stricter standards for hiring persons with psychiatric disabilities than for persons with mental retardation or severe physical disabilities. The Civil Service Rules provide that persons with mental retardation, severe physical disabilities, or psychiatric disabilities may be hired under excepted appointing authorities. While persons with mental retardation or severe physical disabilities may be appointed for more than 2 years and may convert to competitive status after completion of 2 years of satisfactory service in their excepted position, people with psychiatric disabilities may not.

(c) The Office of Personnel Management (OPM) and the President's Task Force on Employment of Adults with Disabilities believe that the Federal Government could better benefit from the contributions of persons with psychiatric disabilities if they were given the same opportunities available to people with mental retardation or severe physical disabilities.

Ssc. 2. Implementation.

(a) The Director of the Office of Personnel Management shall, consistent with OPM authority, provide that persons with psychiatric disabilities are subject to the same hiring rules as persons with mental retardation or severe physical disabilities.

(b) [Amended Civil Service Rule III.]

Ssc. 3. The Director of the Office of Personnel Management shall prescribe such regulations as may be necessary to implement this order.

WILLIAM J. CLINTON.

EXECUTIVE ORDER No. 13162


EX. ORD. No. 13318, PRESIDENTIAL MANAGEMENT FELLOWS PROGRAM

Ex. Ord. No. 13318, Nov. 21, 2003, 68 F.R. 66317, provided:

(a) It is the policy of the United States to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for persons with disabilities. The Federal Government as an employer should serve as a model for the employment of persons with disabilities and utilize the full potential of these talented citizens.

(b) The Civil Service Rules governing appointment of persons with psychiatric disabilities were adopted years ago when attitudes about mental illness were different than they are today, which led to stricter standards for hiring persons with psychiatric disabilities than for persons with mental retardation or severe physical disabilities. The Civil Service Rules provide that persons with mental retardation, severe physical disabilities, or psychiatric disabilities may be hired under excepted appointing authorities. While persons with mental retardation or severe physical disabilities may be appointed for more than 2 years and may convert to competitive status after completion of 2 years of satisfactory service in their excepted position, people with psychiatric disabilities may not.

(c) The Office of Personnel Management (OPM) and the President's Task Force on Employment of Adults with Disabilities believe that the Federal Government could better benefit from the contributions of persons with psychiatric disabilities if they were given the same opportunities available to people with mental retardation or severe physical disabilities.

Ssc. 2. Implementation.

(a) The Director of the Office of Personnel Management shall, consistent with OPM authority, provide that persons with psychiatric disabilities are subject to the same hiring rules as persons with mental retardation or severe physical disabilities.

(b) [Amended Civil Service Rule III.]

Ssc. 3. The Director of the Office of Personnel Management shall prescribe such regulations as may be necessary to implement this order.

WILLIAM J. CLINTON.

EX. ORD. No. 13124, AMENDING THE CIVIL SERVICE RULES RELATING TO FEDERAL EMPLOYEES WITH PSYCHIATRIC DISABILITIES

Ex. Ord. No. 13124, June 4, 1999, 64 F.R. 31103, provided: By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 3301 and 3302 of title 5, United States Code, and in order to give individuals with psychiatric disabilities the same hiring opportunities as persons with severe physical disabilities or mental retardation under the Civil Service Rules, and to permit individuals with psychiatric disabilities to obtain Civil Service competitive status, it is hereby ordered as follows:

SECTION 1. Policy.

(a) It is the policy of the United States to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for persons with disabilities. The Federal Government as an employer should serve as a model for the employment of persons with disabilities and utilize the full potential of these talented citizens.

(b) The Civil Service Rules governing appointment of persons with psychiatric disabilities were adopted years ago when attitudes about mental illness were different than they are today, which led to stricter standards for hiring persons with psychiatric disabilities than for persons with mental retardation or severe physical disabilities. The Civil Service Rules provide that persons with mental retardation, severe physical disabilities, or psychiatric disabilities may be hired under excepted appointing authorities. While persons with mental retardation or severe physical disabilities may be appointed for more than 2 years and may convert to competitive status after completion of 2 years of satisfactory service in their excepted position, people with psychiatric disabilities may not.

(c) The Office of Personnel Management (OPM) and the President's Task Force on Employment of Adults with Disabilities believe that the Federal Government could better benefit from the contributions of persons with psychiatric disabilities if they were given the same opportunities available to people with mental retardation or severe physical disabilities.

Ssc. 2. Implementation.

(a) The Director of the Office of Personnel Management shall, consistent with OPM authority, provide that persons with psychiatric disabilities are subject to the same hiring rules as persons with mental retardation or severe physical disabilities.

(b) [Amended Civil Service Rule III.]

Ssc. 3. The Director of the Office of Personnel Management shall prescribe such regulations as may be necessary to implement this order.

WILLIAM J. CLINTON.

EX. ORD. No. 13162

ther Federal employment in either the competitive or excepted service upon the expiration of the fellow’s appointment; and

(4) competitive civil service status may be granted to a fellow who satisfactorily completes the Program and meets such other requirements as the Director of OPM may prescribe. A fellow appointed by an agency excepted from the competitive service may also be appointed to a permanent position in an excepted service agency without further competition.

Sec. 5. The Director of OPM shall provide for an orderly transition, including with respect to nominations, selection processes, and appointments, from the Presidential Management Intern Program established by Executive Order 12364 (formerly set out above) of May 24, 1982, to the Presidential Management Fellows Program established by this order. Until that transition is provided for, individuals who were selected or appointed under the provisions of Executive Order 12364 and who have not completed their scheduled periods of excepted service are hereby redesignated as Presidential Management Fellows, and continue their internships under the terms of Executive Order 12364.

Sec. 6. The Director of OPM shall prescribe such regulations as may be necessary to carry out the purposes of this order.

Sec. 7. Executive Order 12364 (formerly set out above) is superseded, except as provided in section 5 of this order.

Sec. 8. This order 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, instrumentalities or entities, its officers or employees, or any other person.

GEORGE W. BUSH.

[Ex. Ord. No. 13318, set out above, is revoked on the effective date of final regulations promulgated by the Director of OPM to implement required changes to the PMP Program, see Ex. Ord. No. 13562, §8(c), Dec. 27, 2010, 75 F.R. 82588, set out below.]

EX. ORD. No. 13473. TO AUTHORIZE CERTAIN NONCOMPETITIVE APPOINTMENTS IN THE CIVIL SERVICE FOR SPOUSES OF CERTAIN MEMBERS OF THE ARMED FORCES

Ex. Ord. No. 13473, Sept. 25, 2008, 73 F.R. 56703, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 3301 and 3302 of title 5, United States Code, it is hereby ordered as follows:

SECTION 1. Policy. It shall be the policy of the United States to provide for the recruitment and selection of spouses of members of the Armed Forces for appointment to positions in the competitive service of the Federal civil service as part of the Armed Forces in order to facilitate the recruitment and retention of skilled and experienced members of the Armed Forces and to recognize and honor the service of such members injured, disabled, or killed in connection with their service.

Sec. 2. Definitions. As used in this order:

(a) the term “agency” has the meaning specified for that term in section 101 of title 5, United States Code, but does not include the Government Accountability Office;

(b) the term “Armed Forces” has the meaning specified for that term in section 1 of title 10, United States Code;

(c) the term “active duty” means full-time duty in a armed force and includes full-time National Guard duty, except that, for Reserve Component members, the term “active duty” does not include training duties or attendance at service schools.

(d) the term “permanent change of station” means the assignment, detail, or transfer of a member of the Armed Forces serving at a present permanent duty station to a different permanent duty station under a competent authorization or order that does not:

(i) specify the duty as temporary;

(ii) provide for assignment, detail, or transfer, after that different permanent duty station, to a further different permanent duty station; or

(iii) [sic] direct return to the present permanent duty station; and

(e) the term “totally disabled retired or separated member” means a member of the Armed Forces who:

(i) retired under chapter 61 of title 10, United States Code, with a disability rating of 100 percent; or

(ii) [sic] retired or separated from the Armed Forces and has a disability rating of 100 percent from the Department of Veterans Affairs.

Sec. 3. Noncompetitive Appointment Authority. Consistent with the policy set forth in section 1 of this order and such regulations as the Director of the Office of Personnel Management may prescribe, the head of an agency may make a noncompetitive appointment to any position in the competitive service, for which the individual is qualified, of an individual who is:

(a) the spouse of a member of the Armed Forces who, as determined by the Secretary of Defense, is performing active duty pursuant to orders that authorize a permanent change of station move, if such spouse relocates to the member’s new permanent duty station;

(b) the spouse of a totally disabled retired or separated member of the Armed Forces; or

(c) the unmarried widow or widower of a member of the Armed Forces killed while performing active duty.

Sec. 4. Administrative Provisions. The heads of agencies shall employ, as appropriate, appointment authority available to them, in addition to the authority granted by section 3 of this order, to carry out the policy set forth in section 1.

Sec. 5. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) authority granted by law to a department or agency or the head thereof; and

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

(b) This order 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 agencies, instrumentalities, or entities, its officers, employees, or agents, or any other person.

GEORGE W. BUSH.

EX. ORD. No. 13518. EMPLOYMENT OF VETERANS IN THE FEDERAL GOVERNMENT

Ex. Ord. No. 13518, Nov. 9, 2009, 74 F.R. 58583, provided:

By the authority vested in me by the Constitution and the laws of the United States of America, including section 301 of title 3 of the United States Code, I hereby order as follows:

SECTION 1. Policy. Veterans have served and sacrificed in defense of our Nation. When they complete their service, we must do everything in our power to assist them in re-entering civilian life and finding employment. Government as well as private employers should play a prominent role in helping veterans who may be struggling to find jobs. As one of the Nation’s leading employers, the Federal Government is in need of highly skilled individuals to meet agency staffing needs and to support mission objectives. Our veterans, who have benefited from training and development during their military service, possess a wide variety of skills and experiences, as well as the motivation for public service, that will help fulfill Federal agencies’ staffing needs. It is therefore the policy of my Administration to enhance recruitment of and promote employment opportunities for veterans within the executive branch, consistent with merit system principles and veterans’ preferences prescribed by law. The Federal Government will thereby help lead by example in promoting veterans’ employment.

Sec. 2. Council on Veterans Employment. There is hereby established an Interagency Council on Veterans Employment (Council), to be co-chaired by the Secretaries
of Labor and Veterans Affairs. The Director of the Office of Personnel Management (OPM) shall serve as Vice Chair of the Council.

Sect. 1. Independence of the Council. The Council shall: (a) develop a Government-wide Veterans Recruitment and Employment Strategic Plan, to be updated at least every 3 years, addressing barriers to the employment of veterans in the executive branch and focusing on: (i) identifying actions that agency leaders should take to improve employment opportunities for veterans; (ii) developing the skills of transitioning military service members and veterans; (iii) marketing the Federal Government as an employer of choice to transitioning service members and veterans; (iv) marketing the talent, experience, and dedication of transitioning service members and veterans to Federal agencies; and (v) disseminating Federal employment information to veterans and hiring officials; (b) provide Government-wide leadership in recruitment and employment of veterans in the executive branch; (c) identify key occupations, focusing on positions in high-demand occupations where talent is needed to meet Government-wide staffing needs, for which the Federal Government will provide job counseling and training under section 5(a) of this order to veterans and transitioning military service personnel; (d) develop mandatory training for both human resources personnel and hiring managers on veterans' employment, including veterans' preference and special hiring authorities; (e) compile and post on the OPM website Government-wide statistics on the hiring of veterans; and (f) within 120 days of the date of this order, establish a Veterans Employment Program Office, or designate an agency officer or employee with full-time responsibility for its Veterans Employment Program, to be responsible for enhancing employment opportunities for veterans within the agency, consistent with law and merit system principles, including developing and implementing the agency’s Operational Plan, recruitment programs, and training programs for veterans with disabilities, and for coordinating employment counseling to help match the career aspirations of veterans to the needs of the agency; (c) provide mandatory annual training to agency human resources personnel and hiring managers concerning veterans' employment, including training on veterans' preferences and special authorities for the hiring of veterans; (d) identify key occupations for which the agency will provide job counseling and training to better enable veterans to meet agency staffing needs associated with those occupations; and (e) coordinate with the Departments of Defense and Veterans Affairs to promote further development and application of technology designed to assist transitioning service members and veterans with disabilities.

Sect. 4. Additional Responsibilities of the Director of the Office of Personnel Management. The Director of OPM shall, in consultation with the Council and to the extent permitted by law: (a) develop a Government-wide Veterans Recruitment and Employment Strategic Plan, to be updated at least every 3 years, addressing barriers to the employment of veterans in the executive branch and focusing on: (i) identifying actions that agency leaders should take to improve employment opportunities for veterans; (ii) developing the skills of transitioning military service members and veterans; (iii) marketing the Federal Government as an employer of choice to transitioning service members and veterans; (iv) marketing the talent, experience, and dedication of transitioning service members and veterans to Federal agencies; and (v) disseminating Federal employment information to veterans and hiring officials; (b) provide Government-wide leadership in recruitment and employment of veterans in the executive branch; (c) identify key occupations, focusing on positions in high-demand occupations where talent is needed to meet Government-wide staffing needs, for which the Federal Government will provide job counseling and training under section 5(a) of this order to veterans and transitioning military service personnel; (d) develop mandatory training for both human resources personnel and hiring managers on veterans' employment, including veterans' preference and special hiring authorities; (e) compile and post on the OPM website Government-wide statistics on the hiring of veterans; and (f) within 1 year of the date of this order and with the advice of the Council, provide recommendations to the President on improving the ability of veterans' preference laws to meet the needs of the new generation of veterans, especially those transitioning from the conflicts in Iraq and Afghanistan, and the needs of Federal hiring officials.

Sect. 5. Responsibilities of the Secretaries of Defense, Labor, Veterans Affairs, and Homeland Security. The Secretaries of Defense, Labor, Veterans Affairs, and Homeland Security shall take the following actions, to the extent permitted by law: (a) The Secretaries of Defense, Labor, Veterans Affairs, and Homeland Security shall, in consultation with OPM, develop and implement counseling and training programs to align veterans’ and transitioning service members’ skills and career aspirations to Federal employment opportunities, targeting Federal oc-
ocupations that are projected to have heavy recruitment needs.

(b) The Secretary of Labor shall conduct employment workshops for veterans and transitioning military service personnel as part of the Transition Assistance Program (TAP), and integrate in those workshops information about the Federal hiring process, veterans' preferences, special hiring authorities, and Federal job opportunities.

(c) The Secretary of Defense and Secretary of Homeland Security (with respect to the Coast Guard) shall:

(i) reinforce military leadership's commitment and support of the service members' transition process; and

(ii) institute policies that encourage every eligible service member to take the opportunity to enroll in any or all of the four components of the TAP.

(d) The Secretaries of Labor and Veterans Affairs shall:

(i) assist veterans and transitioning service members in translating military skills, training, and education to Federal occupations through programs developed under subsection (a) of this section; and

(ii) provide training to employment and rehabilita-
tional agencies; and organizations; and in federal employment opportunities for veterans.

Sic. 6. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) authority granted by law to a department or agen-
cy or the head thereof; or

(ii) functions of the Director of the Office of Manage-
ment and Budget relating to budgetary, administra-
tive, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropri-
ations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforce-
able 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.

Barack Obama.

EX. ORD. No. 13562, Recruiting and Hiring Students and Recent Graduates

Ex. Ord. No. 13562, Dec. 27, 2010, 75 F.R. 82585, pro-
vided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 3301 and 3302 of title 5, United States Code, it is hereby ordered as follows:

SECTION 1. Policy. The Federal Government benefits from a diverse workforce that includes students and recent graduates, who infuse the workplace with their enthusiasm, talents, and unique perspectives. The existing competing hiring process for the Federal civil service, however, is structured in a manner that, even at the entry level, favors job applicants who have signifi-
cant previous work experience. This structure, along with the complexity of the rules governing ad-
mision to the career civil service, creates a barrier to recruiting and hiring students and recent graduates. It places the Federal Government at a competitive dis-
advantage compared to private-sector employers when it comes to hiring qualified applicants for entry-level positions.

To compete effectively for students and recent grad-
uates, the Federal Government must improve its re-
cruiting efforts; offer clear paths to Federal internships for students from high school through post-graduate school; offer clear paths to civil service careers for re-
cent graduates; and provide meaningful training, men-
toring, and career-development opportunities. Further, exposing students and recent graduates to Federal jobs through internships and similar programs attracts them to careers in the Federal Government and enables agency employers to evaluate them on the job to deter-
mine whether they are likely to have successful careers in Government.

Accordingly, pursuant to my authority under 5 U.S.C. 3302(1), and in order to achieve a workforce that re-
prents all segments of society as provided in 5 U.S.C. 2301(b)(1), I find that conditions of good admin-
istration necessitate excepting those positions from the competitive hiring rules;

(b) rules governing whether, to what extent, and in what manner public notice should be provided of job opportunities in the Pathways Programs;

(c) a description of career-development and training, and mentorship opportunities for participants in the Path-
ways Programs;

(d) requirements that managers meaningfully assess the performance of participants in the Pathways Programs to identify those who should be considered for conversion to career civil service positions;

(e) a description of OPM oversight of agency use of the Pathways Programs to ensure that (i) they serve as a supplement to, and not a substitute for, the competi-
tive hiring process, and (ii) agencies are using the Pathways Programs in a genuine effort to develop talent for careers in the civil service;

(f) a description of OPM plans to evaluate agencies' effectiveness in recruiting and retaining talent using the Pathways Programs and of the satisfaction of Path-
ways Programs participants and their hiring managers;

and

(g) standard naming conventions across agencies, so that students and recent graduates can clearly under-
stand and compare the career pathway opportunities available to them in the Federal Government.

Sic. 2. Establishment. There are hereby estab-
lished the Internship Program and the Recent Graduates Pro-
gram, which, along with the Presidential Management Fellows Program, as modified herein, shall collectively be known as the Pathways Programs. I therefore direct the Director of the Office of Per-
sonnel Management (OPM) to issue regulations implementing the Pathways Programs consistent with this order, including:

(a) a description of the positions that executive de-
partments and agencies (agencies) may fill through the Pathways Programs because conditions of good admin-
istration necessitate excepting those positions from the competitive hiring rules;

(b) rules governing whether, to what extent, and in what manner public notice should be provided of job opportunities in the Pathways Programs;

(c) a description of career-development and training, and mentorship opportunities for participants in the Path-
ways Programs;

(d) requirements that managers meaningfully assess the performance of participants in the Pathways Programs to identify those who should be considered for conversion to career civil service positions;

(e) a description of OPM oversight of agency use of the Pathways Programs to ensure that (i) they serve as a supplement to, and not a substitute for, the competi-
tive hiring process, and (ii) agencies are using the Pathways Programs in a genuine effort to develop talent for careers in the civil service;

(f) a description of OPM plans to evaluate agencies' effectiveness in recruiting and retaining talent using the Pathways Programs and of the satisfaction of Path-
ways Programs participants and their hiring managers; and

and

(g) standard naming conventions across agencies, so that students and recent graduates can clearly under-
stand and compare the career pathway opportunities available to them in the Federal Government.

Sic. 3. Internship Program. The Internship Program shall provide students in high schools, community col-
leges, 4-year colleges, trade schools, career and tech-
nical education programs, and other qualifying edu-
cational institutions and programs, as determined by OPM, with paid opportunities to work in agencies and explore Federal careers while still in school. The In-
ternship Program would replace the existing Student Career Experience Program, established pursuant to Executive Order 12105 of October 26, 1977. The following principles and policies shall govern the Internship Pro-
gram:

(a) Participants in the program shall be referred to as "Interns" and shall be students enrolled, or accepted for enrollment, in qualifying educational institutions and programs, as determined by OPM;

(b) Subject to any exceptions OPM may establish by regulation, agencies shall provide Interns with meaningful developmental work and set clear expectations regarding the work experience of the intern;

(c) Students employed by third-party internship pro-
viders but placed in agencies may, to the extent per-
mitted by OPM regulations, be treated as participants in the Internship Program.

Sic. 4. Recent Graduates Program. The Recent Grad-
uates Program shall provide individuals who have re-
cently graduated from qualifying educational institu-
tions or programs with developmental experiences in the Federal Government intended to promote possible careers in the civil service. The following principles and policies shall govern the Recent Graduates Pro-
gram:

(a) Participants in the program shall be referred to as "Recent Graduates" and must have obtained a qualifi-
ing degree, or completed a qualifying career or technical education program, as determined by OPM, within the preceding 2 years, except that veterans who, due to their military service obligation, were precluded from participating in the Recent Graduates Program during the 2-year period after obtaining a qualifying degree or completing a qualifying program shall be eligible to participate in the Program within 6 years of obtaining a qualifying degree or completing a qualifying program.

(b) Responsibilities assigned to a Recent Graduate shall be consistent with his or her qualifications, educational background, and career interests, the purpose of the Recent Graduates Program, and agency needs.

Sect. 5. Presidential Management Fellows Program. The Presidential Management Fellows (PMF) Program is an existing program established pursuant to Executive Order 13318 of November 21, 2003, that aims to attract to the Federal service outstanding men and women from a variety of academic disciplines at the graduate level who have a clear interest in, and commitment to, the leadership and management of public policies and programs. The following shall apply to PMFs.

PMF Program upon the revocation of Executive Order 13318, as provided in section 8 of this order:

(a) Participants in this program shall continue to be known as Presidential Management Fellows (PMFs) and must have received, within the preceding 2 years, a qualifying advanced degree, as determined by OPM.

(b) Responsibilities assigned to a PMF shall be consistent with the PMF’s qualifications, educational background, and career interests, the purposes of the PMF Program, and agency needs.

(c) OPM shall establish the eligibility requirements and minimum qualifications for the program, as well as a process for assessing eligible individuals for consideration for appointment as PMFs.

Sect. 6. Appointment and Conversion. (a) Appointments to any of the Pathways Programs shall be under Schedule D of the excepted service, as established by section 7 of this order.

(b) Appointments to the Recent Graduates or PMF Programs shall not exceed 2 years, unless extended by the employing agency for up to 120 days thereafter.

(c) Appointment to a Pathways Program shall confer no right to further Federal employment in either the competitive or excepted service upon the expiration of the appointment, except that agencies may convert eligible participants noncompetitively to term, career, or career conditional appointments after satisfying requirements to be established by OPM, and agencies may noncompetitively convert participants who were initially converted to a term appointment under this section to a career or career-conditional appointment before the term appointment expires.

Sect. 7. Implementation. (a) [Amended Civil Service Rule VI.]

(b) The Director of OPM shall:

(i) promulgate such regulations as the Director determines may be necessary to implement this order;

(ii) provide oversight of the Pathways Programs;

(iii) establish, if appropriate, a Government-wide cap on the number of noncompetitive conversions to the competitive service of Interns, Recent Graduates, or PMFs (or a Government-wide combined conversion cap applicable to all three categories together);

(iv) administer, and review and revise annually or as needed, any Government-wide cap established pursuant to this subsection;

(v) provide guidance on conducting an orderly transition from existing student and internship programs to the Pathways Programs established pursuant to this order;

(vi) consider for publication in the Federal Register at an appropriate time a proposed rule seeking public comment on the elimination of the Student Temporary Employment Program, established through OPM regulations at 5 CFR 213.3202(a).

(c) In accordance with regulations prescribed pursuant to this order and applicable law, agencies shall:

(i) use appropriate merit-based procedures for recruitment, assessment, placement, and ongoing career development for participants in the Pathways Programs;

(ii) provide for equal employment opportunity in the Pathways Programs without regard to race, ethnicity, color, religion, sex, national origin, age, disability, sexual orientation, or any other non-merit-based factor;

(iii) apply veterans’ preference criteria; and

(iv) within 45 days of the date of this order, designate a Pathways Programs Officer (at the agency level, or at the bureaus or components within the agency) to administer Pathways Programs, to serve as liaison with OPM, and to report to OPM on the implementation of the Pathways Programs and the individuals hired under them.

Sect. 8. Prior Executive Orders. (a) Effective March 1, 2011, Executive Order 13162 (Federal Career Intern Program) is superseded and revoked. Any individuals serving in appointments under that order on March 1, 2011, shall be converted to the competitive service, effective on that date, with no loss of pay or benefits.

(b) On the effective date of final regulations promulgated by the Director of OPM to implement the Internship Program, Executive Order 12015 (pursuant to which the Student Career Experience Program was established), as amended, is superseded and revoked.

(c) On the effective date of final regulations promulgated by the Director of OPM to implement changes to the PMF Program required by this order, Executive Order 13318 (Presidential Management Fellows Program), as amended, is superseded and revoked.

Sect. 9. General Provisions. (a) This order shall be implemented consistent with applicable law and subject to the availability of appropriated funds.

(b) Nothing in this order shall be construed to impair or otherwise affect:

(i) authority granted by law, regulation, Executive Order, or Presidential Directive to an executive department, agency, or head thereof; or

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

(c) This order 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.

Barack Obama.

IMPROVING THE FEDERAL RECRUITMENT AND HIRING PROCESS

Memorandum of the President of the United States, May 11, 2010, 75 F.R. 27157, provided:

Memorandum for the Heads of Executive Departments and Agencies

To deliver the quality services and results the American people expect and deserve, the Federal Government must recruit and hire highly qualified employees, and public service should be a career of choice for the most talented Americans. Yet the complexity and inefficiency of today’s Federal hiring process deters many highly qualified individuals from seeking and obtaining jobs in the Federal Government. I therefore call on executive departments and agencies (agencies) to overhaul the way they recruit and hire our civilian workforce. Americans must be able to apply for Federal jobs through a commonsense hiring process and agencies must be able to select high-quality candidates efficiently and quickly. Moreover, agency managers and supervisors must assume a leadership role in recruiting and selecting employees from all segments of our society. Human resource offices must provide critical support for these efforts. The ability of agencies to perform their missions effectively and efficiently depends on a talented and engaged workforce, and we must reform our hiring system to further strengthen that workforce.

By the authority vested in me as President by the Constitution and the laws of the United States, includ-
they are easily understood by applicants; students and recent college graduates; established by Executive Order 13162 of July 6, 2000, protective pathways into the Federal Government for college program, and propose a framework for providing effectiveness should endeavor to achieve a workforce from all qualified applicants by using the “category rating” approach (as authorized by section 3319 of title 5, United States Code), rather than the “rule of 3” approach, under which managers may only select from among the three highest scoring applicants; (b) require that managers and supervisors with responsibility for hiring are: (1) more fully involved in the hiring process, including planning current and future workforce requirements, identifying the skills required for the job, and engaging actively in the recruitment and, when applicable, the interviewing process; and (2) accountable for recruiting and hiring highly qualified employees and supporting their successful transition into Federal service, beginning with the first performance review cycle starting after November 1, 2010; (c) provide the OP and the Office of Management and Budget (OMB) timelines and targets to: (1) improve the quality and speed of agency hiring by: (i) reducing substantially the time it takes to hire mission-critical and commonly filled positions; (ii) measuring the quality and speed of the hiring process; and (iii) analyzing the causes of agency hiring problems and actions that will be taken to reduce them; and (2) provide every agency hiring manager training on effective, efficient, and timely ways to recruit and hire well-qualified individuals; (d) notify individuals applying for Federal employment through USAJOBS, an OPM-approved Federal web-based employment search portal, about the status of their application at key stages of the application process; and (e) identify a senior official accountable for leading agency implementation of this memorandum. Sec. 2. Directions to the OPM. The OPM shall take the following actions no later than 90 days after the date of this memorandum: (a) establish a Government-wide performance review and improvement process for hiring reform actions described in section 1 of this memorandum, including: (1) a timeline, benchmarks, and indicators of progress; and (2) a goal-focused, data-driven system for holding agencies accountable for improving the quality and speed of agency hiring, achieving agency hiring reform targets, and satisfying merit system principles and veterans’ preference requirements; and [sic] (b) develop a plan to promote diversity in the Federal workforce, consistent with the merit system principle (codified at 5 U.S.C. 2301(b)(1)) that the Federal Government should endeavor to achieve a workforce from all segments of society; (c) evaluate the Federal Career Intern Program established by Executive Order 13162 of June 7, 2000, provide recommendations concerning the future of that program, and propose a framework for providing effective pathways into the Federal Government for college students and recent college graduates; (d) provide guidance or propose regulations, as appropriate, to streamline and improve the quality of job announcements for Federal employment to make sure they are easily understood by applicants; (e) evaluate the effectiveness of shared registers used in filling positions common across multiple agencies and develop a strategy for improving agencies’ use of these shared registers for commonly filled Government-wide positions; (f) develop a plan to increase the capacity of USAJOBS to provide applicants, hiring managers, and human resource professionals by informing to improve the recruitment and hiring processes; and (g) take such further administrative action as appropriate to implement sections 1 and 2 of this memorandum. Sec. 3. Senior Administration Officials. Agency heads and other senior administration officials visiting university or college campuses on official business are encouraged to discuss career opportunities in the Federal Government with students. Sec. 4. Reporting. (a) The OPM, in coordination with the OMB and in consultation with other agencies, shall develop a public human resources website to: (1) track key human resource data, including progress on hiring reform implementation; and (2) assist senior agency leaders, hiring managers, and human resource professionals with identifying and replicating best practices within the Federal Government for improving new employee quality and the hiring process. (b) Each agency shall regularly review its key human resource performance and work with the OPM and the OMB to achieve timelines and targets for correcting agency hiring problems. (c) The OPM shall submit to the President an annual report on the impact of hiring initiatives set forth in this memorandum, including its recommendations for further improving the Federal Government’s hiring process. Sec. 5. General Provisions. (a) Except as expressly stated herein, nothing in this memorandum shall be construed to impair or otherwise affect: (1) authority granted by law or Executive Order to an agency, or the head thereof; or (2) functions of the Director of the OMB 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. (d) The Director of the OPM, in consultation with the OMB, may grant an exception to any of the requirements set forth in section 1 of this memorandum to an agency that demonstrates that exceptional circumstances prevent it from complying with that requirement. Sec. 6. Publication. The Director of the OPM is hereby authorized and directed to publish this memorandum in the Federal Register.

Barack Obama.

§ 3302. Competitive service; rules

The President may prescribe rules governing the competitive service. The rules shall provide, as nearly as conditions of good administration warrant, for— (1) necessary exceptions of positions from the competitive service; and (2) necessary exceptions from the provisions of sections 2951, 3304(a), 3321, 7202, and 7203 of this title.

Each officer and individual employed in an agency to which the rules apply shall aid in carrying out the rules.


HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Derivation</th>
<th>U.S. Code</th>
<th>Revised Statutes and Statutes at Large</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>§ 633(f)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(less</td>
<td>Jan. 16, 1863, ch. 27, §2(1)</td>
</tr>
<tr>
<td></td>
<td>function</td>
<td></td>
</tr>
<tr>
<td></td>
<td>of Civil</td>
<td>(less function of Civil</td>
</tr>
<tr>
<td></td>
<td>Service</td>
<td>Service Commission). (2) (last</td>
</tr>
<tr>
<td></td>
<td>Commission</td>
<td>sentence).</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The reference to the competitive service is substituted for the reference to the Act creating that service. The reference to reasons for the exceptions is omitted as covered by section 1308 of this title. The words "provide for" are substituted for "provide and declare". Paragraph (1) is supplied to preserve the President's power to except positions from the competitive service, previously implied from the power to except from the first rule in former section 633(2). Authority to make exceptions to so much of former section 633(2) as is re-stated in this section and section 1302(a) is omitted as meaningless. Authority to make exceptions to so much of former section 633(2) as is re-stated in section 3318(a) is omitted as superseded by former section 837, which is carried into section 3318(a). In the last sentence, the words "Each officer and individual employed in an agency" are substituted for "officers of the United States in the departments and offices" because of the restrictive definition of "officer" in section 2104.

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
1963—Par. (2). Pub. L. 88–194 substituted "and 7203" for "7203, 7231, and 7322".
1978—Par. (2). Pub. L. 95–454 substituted "7203, 7231" for "7132, 7133".
Pub. L. 95–228 struck out reference to section 3306(a)(1) of this title. 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 section 2105 of this title, and subsec. (c)(2) purported to amend par. (2) of this section. However, the amendments specified by Pub. L. 95–454, §703(c)(1) and (2), were impossible to execute literally. Thus, amendment by Pub. L. 95–454, §703(c)(2) was executed to section 2105 of this title, and amendment by section 703(c)(1) was executed to this section as the probable intent of Congress.

EFFECTIVE DATE OF 1963 AMENDMENT; SAVINGS Provision
Amendment by Pub. L. 88–194 effective 120 days after Oct. 6, 1963, 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 1979 AMENDMENT
Amendment by Pub. L. 96–54 effective July 12, 1979, see section 2(b) of Pub. L. 96–54, set out as a note under section 365 of this title.

EX. ORD. NO. 11521, VETERANS READJUSTMENT APPOINTMENT FOR VETERANS OF VIETNAM ERA
WHEREAS this Nation has an obligation to assist veterans of the armed forces in readjusting to civilian life;
WHEREAS the Federal Government, as an employer, should reflect its recognition of this obligation in its personnel policies and practices;
WHEREAS veterans, by virtue of their military service, have lost opportunities to pursue education and training oriented toward civilian careers;
WHEREAS the Federal Government is continuously concerned with building an effective workforce, and veterans constitute a major recruiting source; and
WHEREAS the development of skills is most effectively achieved through a program combining employment with education or training;
NOW, THEREFORE, by virtue of the authority vested in me by the Constitution of the United States, by sections 3301 and 3302 of title 5, United States Code, and as President of the United States, it is ordered as follows:
SECTION 1. (a) Subject to paragraph (b) of this section, the head of an agency may make an excepted appointment, to be known as a "veterans readjustment appointment", to any position in the competitive service up to and including GS–5 or the equivalent thereof, of a veteran or disabled veteran as defined in section 2108(1), (2), of title 5, United States Code, who:
(1) served on active duty in the armed forces of the United States during the Vietnam era;
(2) at the time of his appointment has completed not more than fourteen years of education; and
(3) is found qualified to perform the duties of the position.
(b) Employment under paragraph (a) of this section is authorized only under a training or educational program developed by an agency in accordance with guidelines established by the Office of Personnel Management.
(c) An employee given a veterans readjustment appointment under paragraph (a) of this section shall serve subject to:
(1) the satisfactory performance of assigned duties; and
(2) participation in the training or educational program under which he is appointed.
(d) An employee who does not satisfactorily meet the conditions set forth in paragraph (c) of this section shall be removed in accordance with appropriate procedures.
(e) An employee serving under a veterans readjustment appointment may be promoted, reassigned, or transferred.
(f) An employee who completes the training or educational program and who has satisfactorily completed two years of substantially continuous service under a veterans readjustment appointment shall be converted to career-conditional or career employment. An employee converted under this paragraph shall automatically acquire a competitive status.
(g) In selecting an applicant for appointment under this section, an agency shall not discriminate because of race, color, religion, sex, national origin, or political affiliation.
SEC. 2. (a) A person eligible for appointment under section 1 of this order may be appointed only within one year after his separation from the armed forces, or one year following his release from hospitalization or treatment immediately following his separation from the armed forces, or one year after involuntary separation without cause from (1) a veterans readjustment app-
appointment or (ii) a transitional appointment, or one year after the effective date of this order if he is serving under a transitional appointment.

(b) The Office of Personnel Management may determine the circumstances under which service under a transitional appointment may be deemed service under a veterans readjustment appointment for the purpose of paragraph (f) of section 1 of this order.

Sisc. 3. Any law, Executive order, or regulation which would disqualify an applicant for appointment in the competitive service shall also disqualify a person otherwise eligible for appointment under section 1 of this order.

Sisc. 4. For the purpose of this order:
(a) “agency” means a military department as defined in section 102 of title 5, United States Code, an executive agency (other than the General Accounting Office (now Government Accountability Office)) as defined in section 185 of title 5, United States Code, and those portions of the legislative and judicial branches of the Federal Government and of the government of the District of Columbia having positions in the competitive service; and
(b) “Vietnam era” means the period beginning August 5, 1964, and ending on such date thereafter as may be determined by Presidential proclamation or concurrent resolution of the Congress.

Sisc. 5. The Office of Personnel Management shall prescribe such regulations as may be necessary to carry out the provisions of this order.

Sisc. 6. Executive Order No. 11397 of February 9, 1968, is revoked. Such revocation shall not affect the right of an employee to be converted to career-conditional or career employment if he meets the requirements of section 1(d) of Executive Order No. 11397 after the effective date of this order.

Sisc. 7. This order is effective 14 days after its date.

§ 3303. Competitive service; recommendations of Senators or Representatives

An individual concerned in examining an applicant for or appointing him in the competitive service may not receive or consider a recommendation of the applicant by a Senator or Representative, except as to the character or residence of the applicant.


HISTORICAL AND REVISION NOTES

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


The prohibition is restated in positive form. The words “An individual concerned in examining an applicant for or appointing him in the competitive service” are substituted for “any person concerned in making any examination or appointment under this act”. The word “applicant” is substituted for “person who shall apply for office or place under the provisions of this act”. The word “Representative” is substituted for “Member of the House of Representatives”. Standard changes are made in conformity with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1966—Pub. L. 89–554 substituted “Competitive service; recommendations of Senators or Representatives” for “Political recommendations” in section catchline and amended text generally, substituting provisions prohibiting receipt or consideration of recommendations of applicants in competitive service made by Senators or Representatives for provisions which directed that personnel actions be taken without solicitation of or recommendations from Members of Congress, congressional employees, any elected official of the government of any State (including D.C. and Puerto Rico) or subdivision thereof, or political party official, prohibited such persons from making such recommendations, prohibited employees or applicants from soliciting such recommendations and required notification of such prohibition, but allowed for certain exceptions regarding solicitation and consideration of recommendations if subject of recommendation was limited to factors pertinent to work performance, ability, aptitude, general qualifications, related to suitability or security standards, or furnished pursuant to law or regulation.

1993—Pub. L. 103–94 substituted “Political recommendations” for “Competitive service; recommendations of Senators or Representatives” as section catchline and amended text generally. Prior to amendment, text read as follows: “An individual concerned in examining an applicant for or appointing him in the competitive service may not receive or consider a recommendation of the applicant by a Senator or Representative, except as to the character or residence of the applicant.”

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–197 effective 30 days after Sept. 16, 1996, see section 315(c) of Pub. L. 104–197, set out as a note under section 2302 of this title.

EFFECTIVE DATE OF 1996 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,out as an Effective Date; Savings Provision note under section 7321 of this title.

§ 3304. Competitive service; examinations

(a) The President may prescribe rules which shall provide, as nearly as conditions of good administration warrant, for—

(1) open, competitive examinations for testing applicants for appointment in the competitive service which are practical in character and as far as possible relate to matters that fairly test the relative capacity and fitness of the applicants for the appointment sought;

(2) noncompetitive examinations when competent applicants do not compete after notice has been given of the existence of the vacancy; and

(3) authority for agencies to appoint, without regard to the provision of sections 3309 through 3318, candidates directly to positions for which:

(A) public notice has been given; and

(B) the Office of Personnel Management has determined that there exists a severe shortage of candidates or that there is a critical hiring need.

The Office shall prescribe, by regulation, criteria for identifying such positions and may delegate authority to make determinations under such criteria.
§ 3304

TITLE 5—GOVERNMENT ORGANIZATION AND EMPLOYEES

Page 226

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

(c)(1) For the purpose of this subsection, the term "technician" has the meaning given such term by section 8337(b)(1) of this title.

(2) Notwithstanding a contrary provision of this title or of the rules and regulations prescribed under this title for the administration of the competitive service, an individual who served for at least 3 years as a technician acquires a competitive status for transfer to the competitive service if such individual—

(A) is involuntarily separated from service as a technician other than by removal for cause on charges of misconduct or delinquency;

(B) passes a suitable noncompetitive examination; and

(C) transfers to the competitive service within 1 year after separating from service as a technician.

(d) The Office of Personnel Management shall promulgate regulations on the manner and extent that experience of an individual in a position other than the competitive service, such as the excepted service (as defined under section 2102), in the legislative or judicial branch, or in any private or nonprofit enterprise, may be considered in making appointments to a position in the competitive service (as defined under section 2102). In promulgating such regulations OPM shall not grant any preference based on the fact of service in the legislative or judicial branch. The regulations shall be consistent with the principles of equitable competition and merit based appointments.

(e) Employees at any place outside the District of Columbia where the President or the Office of Personnel Management directs that examinations be held shall allow the reasonable use of public buildings for, and in all proper ways facilitate, holding the examinations.

(f)(1) Preference eligibles or veterans who have been separated from the armed forces under honorable conditions after 3 years or more of active service may not be denied the opportunity to compete for vacant positions for which the agency making the announcement will accept applications from individuals outside its own workforce under merit promotion procedures.

(2) If selected, a preference eligible or veteran described in paragraph (1) shall receive a career or career-conditional appointment, as appropriate.

(3) This subsection shall not be construed to limit an entitlement to veterans' preference that is not otherwise required by law.

(4) The area of consideration for all merit promotion announcements which include consideration of individuals of the Federal workforce shall indicate that preference eligibles and veterans who have been separated from the armed forces under honorable conditions after 3 years or more of active service are eligible to apply. The announcements shall be publicized in accordance with section 3327.

(5) The Office of Personnel Management shall prescribe regulations necessary for the administration of this subsection. The regulations shall ensure that an individual who has completed an initial tour of active duty is not excluded from the application of this subsection because of having been released from such tour of duty shortly before completing 3 years of active service, having been honorably released from such duty.


HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Derivation</th>
<th>U.S. Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) ..........</td>
<td>5 U.S.C. 633(2)</td>
</tr>
<tr>
<td>.............</td>
<td>Jan. 16, 1883, ch. 27, §3(2)</td>
</tr>
<tr>
<td>.............</td>
<td>22 Stat. 403.</td>
</tr>
<tr>
<td>(b) ..........</td>
<td>5 U.S.C. 633(2)</td>
</tr>
<tr>
<td>.............</td>
<td>Jan. 16, 1883, ch. 27, §3(4)</td>
</tr>
<tr>
<td>(c) ..........</td>
<td>5 U.S.C. 633(2)</td>
</tr>
<tr>
<td>.............</td>
<td>Jan. 16, 1883, ch. 27, §7 (as applicable to appointment), 22 Stat. 406.</td>
</tr>
<tr>
<td>(d) ..........</td>
<td>5 U.S.C. 633(2)</td>
</tr>
<tr>
<td>.............</td>
<td>22 Stat. 408.</td>
</tr>
<tr>
<td>.............</td>
<td>5 U.S.C. 631b(c).</td>
</tr>
<tr>
<td>.............</td>
<td>June 24, 1912, ch. 311, 37 Stat. 311.</td>
</tr>
<tr>
<td>.............</td>
<td>37 Stat. 312.</td>
</tr>
</tbody>
</table>

In subsection (a), the authority of the President to prescribe rules is added on authority of former section 3331, which is carried into section 3392. The words "competitive service" are substituted for "public service" since the requirements do not apply to the excepted or uniformed service.

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

In subsection (c), the provisions of former section 631b(b) and (c) are combined and restated for clarity. The words "From and after the effective date of this Act" and "From and after the date of approval of this Act" are omitted as executed. The words "competitive service" are substituted for "classified civil service" in view of the definition of "competitive service" in section 2102. The words "or as a clerical employee of the Senate or House of Representatives" are omitted as included in the reference to "an individual...in the legislative branch in a position in which he was paid by the Secretary of the Senate or the Clerk of the House of Representatives". The words "and nothing in this Act shall be construed to impair any right of retransfer
provided for under civil service laws or regulations made thereunder' are omitted as unnecessary. In subsection (d), the word 'Employee' is substituted for "collector, postmaster, and other officers of the United States'.'

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**

2009—Subsec. (a)(3)(B). Pub. L. 111–14 amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows:

"(i) the Office of Personnel Management has determined that there exists a severe shortage of candidates or there is a critical hiring need; or

"(ii) the candidate is a participant in the Science, Mathematics, and Research for Transformation (SMART) Defense Education Program under section 2192a of title 10, United States Code.''


2004—Subsec. (a)(3)(B), Pub. L. 108–375 added subpar. (B) and struck out former subpar. (B) which read as follows: ‘‘the Office of Personnel Management has determined that there exists a severe shortage of candidates or there is a critical hiring need.’’


1999—Subsec. (f)(2), (3). Pub. L. 106–117, § 511(c)(2), (3), added par. (2) and redesignated former par. (2) as (3). Former par. (3) redesignated (4). Subsec. (f)(4). Pub. L. 106–117, § 511(c)(1), (2), redesignated par. (3) as (4) and struck out former par. (4) which read as follows: ‘‘The Office of Personnel Management shall establish an appointing authority to appoint such preference eligibles and veterans.’’


1996—Subsec. (c)(1). Pub. L. 104–186 substituted ‘‘Chief Administrative Officer’’ for ‘‘Clerk’’.

1986—Subsec. (c). Pub. L. 100–65 substituted subpar. (d) for (c) and struck out subpar. (c) which read as follows: ‘‘Notwithstanding a contrary provision of this title or of the rules and regulations prescribed under this title for the administration of the competitive service, an individual who served—

"(1) for at least 3 years in the legislative branch in a position in which he was paid by the Secretary of the Senate or the Chief Administrative Officer of the House of Representatives; or

"(2) for at least 4 years as a secretary or law clerk, or both, to a justice or judge of the United States, acquires a competitive status for transfer to the competitive service if he is involuntarily separated without prejudice from the legislative or judicial branch, passes a suitable noncompetitive examination, and transfers to the competitive service within 1 year of the separation from the legislative or judicial branch. For the purpose of this subsection, an individual who has served for at least 2 years in a position in the legislative branch described by paragraph (1) of this subsection and who is separated from that position to enter the armed forces is deemed to have held that position during his service in the armed forces.’’

Subsec. (d). Pub. L. 104–65, § 17(a), which directed amendment of this section by adding subsec. (d) at the end thereof, was executed by adding subsec. (d) after subsec. (c) to reflect the probable intent of Congress. Pub. L. 104–65, § 16(b), redesignated subsec. (d) as (c), 1986—Subsecs. (d), (e). Pub. L. 99–586 added subsec. (d) and redesignated former subsec. (d) as (e).


**EFFECTIVE DATE OF 2002 AMENDMENT**

Amendment by Pub. L. 107–296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of Title 6,Domestic Security.

**EFFECTIVE DATE OF 1999 AMENDMENT**

Pub. L. 106–117, title V, § 511(d)(2), Nov. 30, 1999, 113 Stat. 1576, provided that: ‘‘If pursuant to subsection (a) [113 Stat. 1575] the amendments specified in subsection (c) [amending this section] are made, those amendments shall take effect as of October 31, 1998, as if included in subsection (f) of section 3304 of title 5, United States Code, as enacted by section 2 of the Veterans Employment Opportunities Act of 1998 [Public Law 105–339; 112 Stat. 3182].’’

**EFFECTIVE DATE OF 1995 AMENDMENT**

Section 16(c) of Pub. L. 104–65 provided that: ‘‘The repeal and amendment made by this section [amending this section] shall take effect 2 years after the date of the enactment of this Act [Dec. 19, 1995].’’

Section 17(b) of Pub. L. 104–65 provided that: ‘‘The amendment made by this section [amending this section] shall take effect 2 years after the date of the enactment of this Act [Dec. 19, 1995], except the Office of Personnel Management shall—

"(1) conduct a study on excepted service considerations for competitive service appointments relating to such amendment; and

"(2) take all necessary actions for the regulations described under such amendment to take effect as final regulations on the effective date of this section.’’

**EFFECTIVE DATE OF 1978 AMENDMENT**


**§ 3304a. Competitive service; career appointment after 3 years' temporary service**

(a) An individual serving in a position in the competitive service under an indefinite appointment or a temporary appointment pending establishment of a register (other than an individual serving under an overseas limited appointment, or in a position classified above GS–15 pursuant to section 5108) acquires competitive status and is entitled to have his appointment converted to a career appointment, without condition, when—

(1) he completes, without break in service of more than 30 days, a total of at least 3 years of service in such a position;

(2) he passes a suitable noncompetitive examination;

(3) the appointing authority (A) recommends to the Office of Personnel Management that the appointment of the individual be converted to a career appointment and (B) certifies to the Office that the work performance of the individual for the past 12 months has been satisfactory; and

(4) he meets Office qualification requirements for the position and is otherwise eligible for career appointment.

(b) The employing agency shall terminate the appointment of an individual serving in a position in the competitive service under an indefinite or temporary appointment described in subsection (a) of this section, not later than 90 days after he has completed the 3-year period referred to in subsection (a)(1) of this section, if, prior to the close of such 90-day period, such individual has not met the requirements and conditions of subparagraphs (2) to (4), inclusive, of subsection (a) of this section.
§ 3305. Competitive service; examinations; when held

(a) The Office of Personnel Management shall hold examinations for the competitive service at least twice a year in each State and territory or possession of the United States where there are individuals to be examined.

(b) The Office shall hold an examination for a position to which an appointment has been made within the preceding 3 years, on the application of an individual who qualifies as a preference eligible under section 2108(3)(C)–(G) of this title. The examination shall be held during the quarter following the application.

(c) The Secretary of the Interior may determine and fix the minimum and maximum limits of age within which original appointments to the United States Park Police may be made.

(d) The head of any agency may determine and fix the minimum and maximum limits of age within which an original appointment may be made to a position as a law enforcement officer or firefighter, as defined by section 8331(20) and (21), respectively, of this title.

(e)(1) Except as provided in paragraph (2), the head of an agency may determine and fix the maximum age limit for an original appointment to a position as a firefighter or law enforcement officer, as defined by section 8401(14) or (17), respectively, of this title.

(2)(A) In the case of the conversion of an agency function from performance by a contractor to performance by an employee of the agency, the head of the agency, in consultation with the Director of the Office of Personnel Management, may waive any maximum limit of age, determined or fixed for positions within such agency under paragraph (1), if necessary in order to promote the recruitment or appointment of experienced personnel.

(B) For purposes of this paragraph—

(i) the term ‘‘agency’’ means the Department of Defense or a military department; and

(ii) the term ‘‘head of the agency’’ means—

(I) in the case of the Department of Defense, the Secretary of Defense; and

(II) in the case of a military department, the Secretary of such military department.

(f) The Secretary of Energy may determine and fix the maximum age limit for an original appointment to a position as a nuclear materials courier, as defined by section 8331(27) or 8401(33).

(g) The Secretary of Homeland Security may determine and fix the maximum age limit for an original appointment to a position as a customs and border protection officer, as defined by section 8401(36).


‘‘(1) EFFECTIVE DATE.—The amendments made by this section [amending this section and sections 8331, 8334 to 8336, 8401, 8412, 8415, 8422, 8423, and 8425 of this title] shall become effective on the first day of the first pay period beginning at least 6 months after the date of the enactment of this Act [Dec. 29, 2007].

‘‘(2) TRANSITION RULES.—

‘‘(A) NONAPPLICABILITY OF MANDATORY SEPARATION PROVISIONS TO CERTAIN INDIVIDUALS.—The amendments made by subsections (a)(4) and (a)(5) [amending sections 8335 and 8425 of this title] respectively, shall not apply to an individual first appointed as a customs and border protection officer before the effective date under paragraph (1).

‘‘(B) TREATMENT OF PRIOR CBP SERVICE.—

‘‘(i) GENERAL RULE.—Except as provided in clause (ii), nothing in this section [amending this section and sections 8331, 8334 to 8336, 8401, 8412, 8415, 8422, 8423, and 8425 of this title] shall be applied to any service performed as a customs and border protection officer before the effective date under paragraph (1).

‘‘(ii) EXCEPTION.—Service described in section 3331(31) or 8401(36) of the United States Code (as amended by this section) rendered before the effective date under paragraph (1) may be taken into account to determine if an individual who is serving on or after such effective date then qualifies as a customs and border protection officer by virtue of having served in such capacity.

The prohibition is reated in positive form. The word ‘‘officers’’ is omitted as included in ‘‘employees’’ in view of the definition of ‘‘employee’’ in section 2109. 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

For definition of Secretary, referred to in subsec. (b), see section 2109 of this title.

HISTORICAL AND REVISION NOTES

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

AMENDMENTS

2011—Subsec. (e). Pub. L. 112–81 designated existing provisions as par. (1), substituted ‘‘Except as provided in paragraph (2), the’’ for ‘‘The’’, and added par. (2).


1998—(a) Pub. L. 105–261, § 3154(a)(1), substituted ‘‘(d), (e), and (f)’’ for ‘‘and (d)’’.


1988—(a) Pub. L. 100–238, § 833(a)(1)(A), substituted ‘‘may’’ for ‘‘may, with the concurrence of such Secretary’’ for ‘‘Secretary of Transportation’’.

(b) Pub. L. 100–238, § 833(a)(1)(B), added subsec. (e).

1980—Pub. L. 96–347 substituted ‘‘Secretary’’ for ‘‘Secretary of Transportation’’.


1972—Pub. L. 92–297 designated existing provisions as subsec. (a) and added subsecs. (b) and (c).

EFFECTIVE DATE OF 2007 AMENDMENT; TRANSITION RULES


‘‘(1) EFFECTIVE DATE.—The amendments made by this section [amending this section and sections 8331, 8334 to 8336, 8401, 8412, 8415, 8422, 8423, and 8425 of this title] shall become effective on the later of June 30, 2008, or the first day of the first pay period beginning at least 6 months after the date of the enactment of this Act [Dec. 29, 2007].

‘‘(2) TRANSITION RULES.—

‘‘(A) NONAPPLICABILITY OF MANDATORY SEPARATION PROVISIONS TO CERTAIN INDIVIDUALS.—The amendments made by subsections (a)(4) and (a)(5) [amending sections 8335 and 8425 of this title], respectively, shall not apply to an individual first appointed as a customs and border protection officer before the effective date under paragraph (1).

‘‘(B) TREATMENT OF PRIOR CBP SERVICE.—

‘‘(i) GENERAL RULE.—Except as provided in clause (ii), nothing in this section [amending this section and sections 8331, 8334 to 8336, 8401, 8412, 8415, 8422, 8423, and 8425 of this title] shall be applied to any service performed as a customs and border protection officer before the effective date under paragraph (1).

‘‘(ii) EXCEPTION.—Service described in section 8331(31) or 8401(36) of the United States Code (as amended by this section) rendered before the effective date under paragraph (1) may be taken into account to determine if an individual who is serving on or after such effective date then qualifies as a customs and border protection officer by virtue of having served in such capacity.

The annuity of an individual serving as a customs and border protection officer on the effective date under paragraph (1) pursuant to an appointment made before that date shall, to the extent that its computation is based on service rendered as a customs and border protection officer on or after that date, be at least equal to the amount that would be payable—

‘‘(i) to the extent that such service is subject to the Civil Service Retirement System, by applying section 8339(d) of title 5, United States Code, with respect to such service; and

‘‘(ii) to the extent such service is subject to the Federal Employees’ Retirement System, by applying section 8415(d) of title 5, United States Code, with respect to such service.

(D) RULE OF CONSTRUCTION.—Nothing in the amendment made by subsection (c) [amending this section] shall be considered to apply with respect to
any appointment made before the effective date under paragraph (1).

(3) ELECTION.

(A) INCUMBENT DEFINED.—For purposes of this paragraph, the term ‘incumbent’ means an individual who is serving as a customs and border protection officer on the date of the enactment of this Act.

(B) NOTICE REQUIREMENT.—Not later than 30 days after the date of the enactment of this Act, the Director of the Office of Personnel Management shall take measures reasonably designed to ensure that incumbents are notified as to their election rights under this paragraph, and the effect of making or not making a timely election.

(C) ELECTION AVAILABLE TO INCUMBENTS.—

(i) IN GENERAL.—An incumbent may elect, for all purposes, either—

(ii) to be treated in accordance with the amendments made by subsection (a) or (b) [amending sections 8331, 8334 to 8336, 8401, 8412, 8415, 8422, 8423, and 8425 of this title], as applicable; or

(ii) to be treated as if subsections (a) and (b) had never been enacted.

Failure to make a timely election under this paragraph shall be treated in the same way as an election made under clause (i) on the last day allowable under clause (ii).

(ii) DEADLINE.—An election under this paragraph shall not be effective unless it is made at least 14 days before the effective date under paragraph (1).

(4) DEFINITION.—For purposes of this subsection, the term ‘customs and border protection officer’ has the meaning given such term by section 8331(31) or 8401(36) of title 5, United States Code (as amended by this section).

(5) EXCLUSION.—Nothing in this section or any amendment made by this section shall be considered to afford any election or to otherwise apply with respect to any individual who, as of the date of the enactment of this Act—

(A) holds a position within U.S. Customs and Border Protection; and

(B) is considered a law enforcement officer for purposes of subchapter III of chapter 83 or chapter 84 of title 5, United States Code, by virtue of such position.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 101(f) of Pub. L. 100–250 provided that: ‘‘This section, and the amendments made by this section [amending sections 8401 and 8704 of this title and enacting provisions set out as a note under section 8526 of this title], shall be effective as of January 1, 1987.’’

EFFECTIVE DATE OF 1980 AMENDMENT


EFFECTIVE DATE OF 1974 AMENDMENT

Section 7 of Pub. L. 93–350 provided that: ‘‘The amendments made by the first section [amending this section], and sections 2(b), 5, and 6 [amending sections 8331, 8334, and 8339 of this title], of this Act shall become effective on the date of enactment of this Act [July 12, 1974]. The amendments made by sections 2(a) and 3 [amending sections 8331 and 8334 of this title] of this Act shall become effective at the beginning of the first applicable pay period which begins after December 31, 1974. The amendment made by section 4 of this Act [amending section 8335 of this title] shall become effective on January 1, 1975.’’

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92–297 effective on 90th day after May 16, 1972, see section 10 of Pub. L. 92–297, set out as an Effective Date note under section 8381 of this title.

REGULATIONS

§ 3308. Competitive service; examinations; educational requirements prohibited; exceptions

The Office of Personnel Management or other examining agency may not prescribe a minimum educational requirement for an examination for the competitive service except when the Office decides that the duties of a scientific, technical, or professional position cannot be performed by an individual who does not have a prescribed minimum education. The Office shall make the reasons for its decision under this section a part of its public records.


HISTORICAL AND REVISION NOTES

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

<table>
<thead>
<tr>
<th>Historical and Revision Notes</th>
</tr>
</thead>
</table>

The prohibition is restated in positive form. The words ‘‘The Civil Service Commission or other examining agency’’ are added because these are the only agencies to which the prohibition could apply.

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

AMENDMENTS

1978—Pub. L. 95–454 substituted ‘‘Office of Personnel Management’’ and ‘‘Office’’ for ‘‘Civil Service Commis-
§ 3309. Preference eligibles; examinations; additional points for

A preference eligible who receives a passing grade in an examination for entrance into the competitive service is entitled to additional points above his earned rating, as follows—

(1) a preference eligible under section 2108(3)(C)–(G) of this title—10 points; and

(2) a preference eligible under section 2108(3)(A)–(B) of this title—5 points.


Historical and Revision Notes

<table>
<thead>
<tr>
<th>Derivation</th>
<th>U.S. Code</th>
<th>Revised Statutes and Statutes at Large</th>
</tr>
</thead>
</table>

The word “competitive” is added before “service” for clarity. Application of this section to the excepted service in the executive branch and to the government of the District of Columbia, as provided in former section 858, is carried into section 3320. 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


§ 3310. Preference eligibles; examinations; guards, elevator operators, messengers, and custodians

In examinations for positions of guards, elevator operators, messengers, and custodians in the competitive service, competition is restricted to preference eligibles as long as preference eligibles are available.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 420.)

Historical and Revision Notes

<table>
<thead>
<tr>
<th>Derivation</th>
<th>U.S. Code</th>
<th>Revised Statutes and Statutes at Large</th>
</tr>
</thead>
</table>

The words “in the competitive service” are added for clarity. The reference to “examinations held prior to December 31, 1954, for positions of apprentices” is omitted as obsolete. Application of this section to the excepted service in the executive branch and to the government of the District of Columbia, as provided in former section 858, is carried into section 3320. Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

§ 3311. Preference eligibles; examinations; credit-
ing experience

In examinations for the competitive service in which experience is an element of qualification, a preference eligible is entitled to credit—

(1) for service in the armed forces when his employment in a similar vocation to that for which examined was interrupted by the service; and

(2) for all experience material to the position for which examined, including experience gained in religious, civic, welfare, service, and organizational activities, regardless of whether he received pay therefor.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 420.)

Historical and Revision Notes

<table>
<thead>
<tr>
<th>Derivation</th>
<th>U.S. Code</th>
<th>Revised Statutes and Statutes at Large</th>
</tr>
</thead>
</table>

The words “for the competitive service” are added after “examinations” for clarity. Application of this section to the excepted service in the executive branch and to the government of the District of Columbia, as provided in former section 858, is carried into section 3320. In paragraph (1), the words “service in the armed forces” are substituted for “in the military or naval service of the United States” on authority of the Act of July 26, 1947, ch. 343, §303(a), 61 Stat. 508. The word “actual” is omitted as surplusage.

In paragraph (2), the words “material to the position for which examined” are substituted for “valuable” for clarity.

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

§ 3312. Preference eligibles; physical qualifications; waiver

(a) In determining qualifications of a preference eligible for examination for, appointment in, or reinstatement in the competitive service, the Office of Personnel Management or other examining agency shall waive—

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

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

(b) If an examining agency determines that, on the basis of evidence before it, a preference eligible under section 2108(3)(C) of this title who has a compensable service-connected disability of 30 percent or more is not able to fulfill the physical requirements of the position, the exam-
§ 3313. Competitive service; registers of eligibles

The names of applicants who have qualified in examinations for the competitive service shall be entered on appropriate registers or lists of eligibles in the following order—

(1) for scientific and professional positions in GS–9 or higher, in the order of their ratings, including points added under section 3309 of this title; and

(2) for all other positions—

(A) disabled veterans who have a compensable service-connected disability of 10 percent or more, in the order of their ratings, including points added under section 3309 of this title; and

(B) remaining applicants, in the order of their ratings, including points added under section 3309 of this title.

The names of preference eligibles shall be entered ahead of others having the same rating.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 420.)

HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Derivation</th>
<th>U.S. Code</th>
<th>Revised Statutes and Statutes at Large</th>
</tr>
</thead>
</table>

The section is restated for clarity and conciseness. The words “for the competitive service” are added for clarity. Application of this section to the excepted service in the executive branch and to the government of the District of Columbia is carried into section 3320. The words “employment lists” are omitted as included in “appropriate registers or lists of eligibles”.

In paragraph (1), the words “in GS–9 or higher” are substituted for “in grade 9 or higher of the General Schedule of the Classification Act of 1949, as amended” in view of the codification of the Act in this title, and, in specific sections 5104 and 5332.

In paragraph (2)(A), the term “disabled veterans” is substituted for “preference eligibles” in view of the definition of “disabled veteran” in section 3108(b).

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

§ 3314. Registers; preference eligibles who resigned

A preference eligible who resigns, on request to the Office of Personnel Management, is entitled to have his name placed again on all registers for which he may have been qualified, in the order named by section 3313 of this title.


HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Derivation</th>
<th>U.S. Code</th>
<th>Revised Statutes and Statutes at Large</th>
</tr>
</thead>
</table>

The last 28 words of former section 865 relating to re-certification and reappointments are omitted since under sections 3317 and 3318(a) certification and appointment follow from placing on registers.

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


§ 3315. Registers; preference eligibles furloughed or separated

(a) A preference eligible who has been separated or furloughed without delinquency or misconduct, on request, is entitled to have his name placed on appropriate registers and employment lists for every position for which his qualifications have been established, in the order named...

NOTE: See section 865 relating to re-certification and reappointments.
by section 3313 of this title. This subsection applies to registers and employment lists maintained by the Office of Personnel Management, an Executive agency, or the government of the District of Columbia. The Office may declare a preference eligible who has been separated or furloughed without pay under section 7512 of this title to be entitled to the benefits of subsection (a) of this section.


### Historical and Revision Notes

<table>
<thead>
<tr>
<th>Derivation</th>
<th>U.S. Code</th>
<th>Revised Statutes and Statutes at Large</th>
</tr>
</thead>
</table>

In subsection (a), the term “Executive agency” is substituted for “any agency of the Federal Government” on authority of former section 869. The last 28 words of the 1st sentence of former section 864 relating to recertification and reappointment are omitted since under sections 3317 and 3318(a) certification and appointment follow from placing on registers. 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 1979 Amendment**

Amendment by Pub. L. 96–54 effective July 12, 1979, see section 2(b) of Pub. L. 96–54, set out as a note under section 335 of this title.


Section, added Pub. L. 90–93 §1(b)(A), Sept. 11, 1967, 81 Stat. 197, related to registration by Civil Service Commission of employees receiving compensation for injuries for certification for appointment to vacant positions.

§3316. Preference eligibles; reinstatement

On request of an appointing authority, a preference eligible who has resigned or who has been dismissed or furloughed may be certified for, and appointed to, a position for which he is eligible in the competitive service, an Executive agency, or the government of the District of Columbia.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 421.)

### Historical and Revision Notes

<table>
<thead>
<tr>
<th>Derivation</th>
<th>U.S. Code</th>
<th>Revised Statutes and Statutes at Large</th>
</tr>
</thead>
</table>

The word “authority” is substituted for “officer” in recognition of the several appointing authorities named in section 2105(a)(1).

The words “in the competitive service, an Executive agency, or the government of the District of Columbia” are substituted for “in the civil service, Federal, or District of Columbia, or in any establishment, agency, bureau, administration, project, or department, temporary or permanent” on authority of former section 869.

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

### §3317. Competitive service; certification from registers

(a) The Office of Personnel Management shall certify enough names from the top of the appropriate register to permit a nominating or appointing authority who has requested a certificate of eligibles to consider at least three names for appointment to each vacancy in the competitive service.

(b) When an appointing authority, for reasons considered sufficient by the Office, has three times considered and passed over a preference eligible who was certified from a register, certification of the preference eligible for appointment may be discontinued. However, the preference eligible is entitled to advance notice of discontinuance of certification.


### Historical and Revision Notes

<table>
<thead>
<tr>
<th>Derivation</th>
<th>U.S. Code</th>
<th>Revised Statutes and Statutes at Large</th>
</tr>
</thead>
</table>

In subsection (a), the word “authority” is substituted for “officer” in recognition of the several appointing authorities named in section 2105(a)(1). The words “in the competitive service” have been added for clarity. Application of the section to the excepted service in the executive branch and to the government of the District of Columbia, as provided in former section 836, is carried into section 3320.

In subsection (b), the word “thereafter” 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.

### Amendments


1978—Subsec. (b). Pub. L. 95–454 which purported to amend section 3317b of this title by substituting “Office” for “Commission” was executed to subsec. (b) of this section as the probable intent of Congress.

**Effective Date of 1979 Amendment**

Amendment by Pub. L. 96–54 effective July 12, 1979, see section 2(b) of Pub. L. 96–54, set out as a note under section 335 of this title.

**Effective Date of 1978 Amendment**

§ 3318. Competitive service; selection from certificates

(a) The nominating or appointing authority shall select for appointment to each vacancy from the highest three eligibles available for appointment on the certificate furnished under section 3317(a) of this title, unless objection to one or more of the individuals certified is made to, and sustained by, the Office of Personnel Management for proper and adequate reason under regulations prescribed by the Office.

(b)(1) If an appointing authority proposes to pass over a preference eligible on a certificate in order to select an individual who is not a preference eligible, such authority shall file written reasons with the Office for passing over the preference eligible. The Office shall make the reasons presented by the appointing authority part of the record of the preference eligible and may require the submission of more detailed information from the appointing authority in support of the passing over of the preference eligible. The Office shall determine the sufficiency or insufficiency of the reasons submitted by the appointing authority, taking into account any response received from the preference eligible under paragraph (2) of this subsection. When the Office has completed its review of the proposed passover, it shall send its findings to the appointing authority and to the preference eligible. The appointing authority shall comply with the findings of the Office.

(2) In the case of a preference eligible described in section 2108(3)(C) of this title who has a compensable service-connected disability of 30 percent or more, the appointing authority shall at the same time it notifies the Office under paragraph (1) of this subsection, notify the preference eligible of the proposed passover, of the reasons therefor, and of his right to respond to such reasons to the Office within 15 days of the date of such notification. The Office shall, before completing its review under paragraph (1) of this subsection, require a demonstration by the appointing authority that the passover notification was timely sent to the preference eligible’s last known address.

(3) A preference eligible not described in paragraph (2) of this subsection, or his representative, shall be entitled, on request, to a copy of—

(A) the reasons submitted by the appointing authority in support of the proposed passover, and

(B) the findings of the Office.

(4) In the case of a preference eligible described in paragraph (2) of this subsection, the functions of the Office under this subsection may not be delegated.

(c) When three or more names of preference eligibles are on a reemployment list appropriate for the position to be filled, a nominating or appointing authority may appoint from a register of eligibles established after examination only an individual who qualifies as a preference eligible under section 2108(3)(C)–(G) of this title.


Historical and Revision Notes

Derivation | U.S. Code | Revised Statutes and Statutes at Large
---|---|---
(a), (b) | § 5 U.S.C. 633(2) | Jan. 16, 1983, ch. 27, §322, 22 Stat. 404
(b) | § U.S.C. 865 (less 1st sentence, 2d proviso, and last sentence) | June 27, 1944, ch. 287, §18 (less 1st sentence, 2d proviso, and last sentence), 58 Stat. 689

The word “authority” is substituted for “officer” in recognition of the several appointing authorities named in section 2105(a)(1).

In subsection (a), the provisions of former section 633(2) are merged in the requirement of former section 857, since the certificate must be of the three highest on the register and the nominating or appointing employee may select one of the three.

In subsection (c), the prohibition in former section 864 is restated in positive form. The words “an individual who qualifies as a preference eligible under section 2108(3)(B)–(F)” are substituted for “ten-point preference eligible”.

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


Subsec. (b). Pub. L. 95–454, §307(d), designated existing provisions as par. (1), substituted provisions respecting authority of the Office with respect to the selection procedures applicable, for provisions respecting authority of the Commission with respect to the selection procedures applicable, and added pars. (2) to (4).


Effective Date of 1978 Amendment


§ 3319. Alternative ranking and selection procedures

(a) The Office, in exercising its authority under section 3304, or an agency to which the Office has delegated examining authority under section 1104(a)(2), may establish category rating systems for evaluating applicants for positions in the competitive service, under 2 or more quality categories based on merit consistent with regulations prescribed by the Office of Personnel Management, rather than assigned individual numerical ratings.

(b) Within each quality category established under subsection (a), preference-eligibles shall be listed ahead of individuals who are not preference eligibles. For other than scientific and professional positions at GS–9 of the General Schedule (equivalent or higher), qualified preference-eligibles who have a compensable service-connected disability of 10 percent or more shall be listed in the highest quality category.

(c)(1) An appointing official may select any applicant in the highest quality category or, if fewer than 3 candidates have been assigned to
the highest quality category, in a merged category consisting of the highest and the second highest quality categories.

(2) Notwithstanding paragraph (1), the appointing official may not pass over a preference-eligible in the same category from which selection is made, unless the requirements of section 3317(b) or 3318(b), as applicable, are satisfied.

(d) Each agency that establishes a category rating system under this section shall submit in each of the 3 years following that establishment, a report to Congress on that system including information on—

(1) the number of employees hired under that system;

(2) the impact that system has had on the hiring of veterans and minorities, including those who are African Indian or Alaska Natives, Asian, Black or American Indian, and native Hawaiian or other Pacific Islanders; and

(3) the way in which managers were trained in the administration of that system.

(e) The Office of Personnel Management may prescribe such regulations as it considers necessary to carry out the provisions of this section.


REFERENCES IN TEXT

The General Schedule, referred to in subsec. (b), is set out under section 3320 of this title.

PRIOR PROVISIONS


§ 3320. Excepted service; government of the District of Columbia; selection

The nominating or appointing authority shall select for appointment to each vacancy in the excepted service in the executive branch and in the government of the District of Columbia from the qualified applicants in the same manner and under the same conditions required for the competitive service by sections 3308–3318 of this title. The provisions of section 858 of this title are substituted for “In the unclassified Federal, and District of Columbia, civil service, and in all other positions and employment hereinbefore referred to in (c) of section 851 of this title . . . shall make selection from the qualified applicants in accordance with the provisions of this chapter”. The reference to the excepted service “in the executive branch” is substituted for the exception of the legislative and judicial branches in former section 869. Former section 869 did not prohibit the application of those provisions of the Act of June 27, 1944, which relate to the competitive service in the legislative or judicial branch by reason of the specific provisions of section 311 of the Act of June 10, 1921, as amended (31 U.S.C. 52); 28 U.S.C. 602; and Executive Order No. 67 of June 13, 1895. The reference to agencies having positions in the excepted service will continue to fill those positions in the same manner that they have been filled under former section 858. Such excepted appointments are appointed to be made without regard to the statutes, rules, and regulations governing appointments in the competitive service and this is not changed.

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

ASSISTANCE OF UNITED STATES CIVIL SERVICE COMMISSION IN DEVELOPING MERIT SYSTEM FOR DISTRICT OF COLUMBIA

Pub. L. 93–198, title VII, § 734, Dec. 24, 1973, 87 Stat. 625, authorized the United States Civil Service Commission to advise and assist the District of Columbia Mayor and Council in the further development of the merit system or systems required by the District of Columbia charter, which was approved on May 7, 1974, and authorized the Commission to enter into agreements with the District government to make available its registers of eligibles as a recruiting source to fill District positions as needed, with the costs of any specific services furnished by the Civil Service Commission to be compensated for under the provisions of section 883a of former Title 31, Money and Finance (31 U.S.C. 1537).

§ 3321. Competitive service; probationary period

(a) The President may take such action, including the issuance of rules, regulations, and directives, as shall provide as nearly as conditions of good administration warrant for a period of probation—

(1) before an appointment in the competitive service becomes final; and

(2) before initial appointment as a supervisor or manager becomes final.

(b) An individual—

(1) who has been transferred, assigned, or promoted from a position to a supervisory or managerial position, and

(2) who does not satisfactorily complete the probationary period under subsection (a)(2) of this section,
shall be returned to a position of no lower grade and pay than the position from which the individual was transferred, assigned, or promoted. Nothing in this section prohibits an agency from taking an action against an individual serving a probationary period under subsection (a) of this section for cause unrelated to supervisory or managerial performance.

(c) Subsections (a) and (b) of this section shall not apply with respect to appointments in the Senior Executive Service or the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service.


**Historical and Revision Notes**

**Derivation**

<table>
<thead>
<tr>
<th>U.S. Code</th>
<th>Revised Statutes and Statutes at Large</th>
</tr>
</thead>
<tbody>
<tr>
<td>§633</td>
<td>5 U.S.C. 633(2)/4</td>
</tr>
<tr>
<td>§633</td>
<td>Jan. 16, 1883, ch. 27, §2(2)/4, 22 Stat. 494</td>
</tr>
</tbody>
</table>

The authority of the President to prescribe rules is added on authority of former section 633(1), which is carried into section 3302. Wording is changed because in practice an appointment is not made after probation. The words “or employment” are omitted as included within “appointment”.

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

**AMENDMENTS**


1978—Pub. L. 95–454 substituted “probationary period” for “probation; period of” in section catchline, designated existing provisions as subsec. (a), substituted provisions authorizing the President to take necessary action, for provisions authorizing the President to prescribe rules, and added subsecs. (b) and (c).

**Effective Date of 1978 Amendment**


Section, Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 422, related to temporary appointments after age 70 in the competitive service.

**Effective Date of Repeal**

Repeal effective Sept. 30, 1978, see section 5(f) of Pub. L. 95–256, set out as an Effective Date of 1978 Amendment note under section 633a of Title 29, Labor.

**§ 3323. Automatic separations; reappointment; re-employment of annuants**

(a) An individual who reaches the retirement age prescribed for automatic separation applicable to him may not be continued in the civil service or in the government of the District of Columbia. An individual separated on account of age under a statute or regulation providing for retirement on account of age is not eligible for appointment in the civil service or in the government of the District of Columbia. The President, when in his judgment the public interest so requires, may except an individual from this subsection by Executive order. This subsection does not apply to an individual named by a statute providing for the continuance of the individual in the civil service or in the government of the District of Columbia.

(b)(1) Notwithstanding other statutes, an annuitant, as defined by section 8331 or 8401, receiving annuity from the Civil Service Retirement and Disability Fund is not barred by reason of his retired status from employment in an appointive position for which the annuitant is qualified. An annuitant so reemployed, other than an annuitant reemployed under paragraph (2) of this subsection, serves at the will of the appointing authority.

(2) Subject to such regulations as the Director of the Office of Personnel Management may prescribe, any annuitant to whom the first sentence of paragraph (1) of this subsection applies and who has served as an administrative law judge pursuant to an appointment under section 3105 of this title may be reappointed an administrative law judge under such section for a specified period or for such period as may be necessary for such administrative law judge to conduct and complete the hearing and disposition of one or more specified cases. The provisions of this title that apply to or with respect to administrative law judges appointed under section 3105 of this title shall apply to or with respect to administrative law judges reappointed under such section pursuant to the first sentence of this paragraph.

(c) Notwithstanding subsection (a) of this section, a member of the Foreign Service retired under section 812 of the Foreign Service Act of 1980 is not barred by reason of his retired status from employment in a position in the civil service for which he is qualified. An annuitant so reemployed serves at the will of the appointing authority.

(d) Notwithstanding subsection (a) of this section, the Chief of Engineers of the Army, under section 569a of title 33, may employ a retired employee whose expert assistance is needed in connection with river and harbor or flood control works. There shall be deducted from the pay of an employee so reemployed an amount equal to the annuity or retired pay allocable to the period of actual employment.


**Historical and Revision Notes**

**Derivation**

<table>
<thead>
<tr>
<th>U.S. Code</th>
<th>Revised Statutes and Statutes at Large</th>
</tr>
</thead>
<tbody>
<tr>
<td>(b)</td>
<td>5 U.S.C. 2263(a). July 31, 1956, ch. 804, §401 “Sec. 13(a)”, 70 Stat. 757</td>
</tr>
<tr>
<td>(c)</td>
<td>22 U.S.C. 915(c). Sept. 8, 1966, Pub. L. 89–782, §10(d), 74 Stat. 832</td>
</tr>
<tr>
<td>(d)</td>
<td>33 U.S.C. 544a, 701. June 20, 1938, ch. 555, §5, 52 Stat. 805</td>
</tr>
</tbody>
</table>

In subsection (a), the words “On and after July 1, 1932” are omitted as executed. The words “heretofore or hereafter” are omitted as unnecessary. The words “in the civil service” are substituted for “civilian serv-
ice in any branch or service of the United States Government and to any appointive office, position, or employment under the United States in view of the definition of "civil service" in section 2101.

In subsection (b), the words "receiving annuity from the Civil Service Retirement and Disability Fund" are substituted for "heretofore or hereafter retired under this chapter". The word "authority" is substituted for "officer" in recognition of the several appointing authorities named in section 2105(a)(1).

In subsection (c), the words "Notwithstanding subsection (a) of this section" are substituted for "Notwithstanding the provisions of sections 62 and 715a of title 5" to reflect the codification of former section 715a in subsection (a) of this section and in view of the repeal of section 62 of title 5 by §402(a)(7) of the Act of Aug. 19, 1964, Pub. L. 88–448, 78 Stat. 492. The words "heretofore or hereafter" and "hereafter" are omitted as unnecessary. The words "in a position in the civil service" are substituted for "in Federal Government service in any appointive position" in view of the definition of "civil service" in section 2101. The word "authority" is substituted for "officer" in recognition of the several appointing authorities named in section 2105(a)(1).

In subsection (d), the words "Notwithstanding subsection (a) of this section" are substituted for "The provisions of section 715a of title 5 shall not be so construed as to prevent" to reflect the codification of former section 715a in subsection (a) of this section, and to conform to the style of this section. The words "under section 569a of title 33" are substituted for "under agreement as authorized by sections 569a, 584a and 607a of title 33" on authority of the provision contained in section 569a of title 33. The word "employee" is coextensive with and substituted for "civilian employee" in view of the definition of "employee" in section 2105. The last sentence is restated for clarity.

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

REFERENCES IN TEXT
Section 812 of the Foreign Service Act of 1980, referred to in subsec. (c), is classified to section 4052 of Title 22, Foreign Relations and Intercourse.

AMENDMENTS
1992—Subsec. (b)(1). Pub. L. 102–378 substituted "annuitant, as defined by section 8331 or 8401," for "annuitant as defined by section 8331 of this title".

1984—Subsec. (b). Pub. L. 98–229 designated existing provisions as par. (1), substituted the "annuitant" for "he" and inserted ", other than an annuitant reappointed under paragraph (2) of this subsection," and added par. (2).

1980—Subsec. (c). Pub. L. 96–465 substituted "member of the Foreign Service retired under section 812 of the Foreign Service Act of 1980" for "Foreign Service officer retired under section 1001 or 1002 of title 22 or a Foreign Service staff officer or employee retired under section 1063 of title 22".

EFFECTIVE DATE OF 1980 AMENDMENT
Amendment by Pub. L. 96–465 effective Feb. 15, 1981, except as otherwise provided, see section 2803 of Pub. L. 96–465, set out as an Effective Date note under section 3901 of Title 22, Foreign Relations and Intercourse.

§ 3324. Appointments to positions classified above GS–15

(a) An appointment to a position classified above GS–15 pursuant to section 5108 may be made only on approval of the qualifications of the proposed appointee by the Director of the Office of Personnel Management on the basis of qualification standards developed by the agency involved in accordance with criteria specified in regulations prescribed by the Director. This section does not apply to a position—

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

(2) to which appointment is made by the President;

(3) to which appointment is made by the Librarian of Congress; or

(4) the incumbent of which is paid from—

(A) appropriations for the Executive Office of the President under the heading "The White House Office", "Special Projects", "Council of Economic Advisers", or "National Security Council"; or

(B) funds appropriated to the President under the heading "Emergency Fund for the President" by the Treasury, Post Office, and Executive Office Appropriation Act, 1966, or a later statute making appropriations for the same purpose.

(b) The Office may prescribe regulations necessary for the administration of this section.


HISTORICAL AND Revision Notes
1966 Act

<table>
<thead>
<tr>
<th>Derivation</th>
<th>U.S. Code</th>
<th>Revised and Statutes at Large</th>
</tr>
</thead>
</table>

In subsection (a), the words "in grades 16, 17, and 18" are substituted for "in grades 16, 17, and 18 of the General Schedule".

In subsection (a)(2), the words "by the President" are coextensive with and substituted for "by the President alone or by the President by and with the advice and consent of the Senate".


In subsection (a)(4)(B), the words "Emergency Fund for the President" by the Treasury, Post Office, and Executive Office Appropriation Act, 1966" are substituted for "Emergency Fund for the President, National Defense" by the General Government Matters Appropriations Act, 1959" to reflect the heading and title of the current appropriation act.

Subsection (b) is added on authority of former sections 1072 and 1072a, which are carried into section 5115.

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

This section amends 5 U.S.C. 3324(a)(4)(A) to correct typographical errors.
REFERENCES IN TEXT


AMENDMENTS

2008—Subsec. (a). Pub. L. 110–372 substituted “the Director of the Office of Personnel Management on the basis of qualification standards developed by the agency involved in accordance with criteria specified in regulations prescribed by the Director” for “the Office of Personnel Management” in introductory provisions.


1986—Pub. L. 99–573 substituted “section 305 of this title” for “section 302 of this title”.


EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–372 effective on the first day of the first pay period beginning on or after the 180th day following Oct. 8, 2008, see section 2(d) of Pub. L. 110–372, set out as a note under section 5376 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT


EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–509 effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title III, §305] of Pub. L. 101–509, set out as a note under section 5301 of this title.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–54 effective July 12, 1979, see section 2(b) of Pub. L. 96–54, set out as a note under section 305 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 8, 1980, see section 907 of Pub. L. 95–454, set out as a note under section 5101 of this title.

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90–83 effective as of Sept. 6, 1968, for all purposes, see section 9(b) of Pub. L. 90–83, set out as a note under section 5102 of this title.

§ 3325. Appointments to scientific and professional positions

(a) Positions established under section 3104 of this title are in the competitive service. However, appointments to the positions are made without competitive examination on approval of the qualifications of the proposed appointee by the Office of Personnel Management on the basis of standards developed by the agency involved in accordance with criteria specified in regulations prescribed by the Director of the Office of Personnel Management.

(b) This section does not apply to positions established under section 3104(c).

(c) The Director of the Office of Personnel Management shall prescribe such regulations as may be necessary to carry out the purpose of this section.


HISTORICAL AND REVISION NOTES

Derivation

<table>
<thead>
<tr>
<th>U.S. Code</th>
<th>Revised Statutes and Statutes at Large</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a)</td>
<td>§ 1161a.</td>
</tr>
<tr>
<td>(b)</td>
<td>§ 1161 (g) (24 sentence).</td>
</tr>
</tbody>
</table>

In subsection (a), the words “or its designee” are substituted for “or such officers or agents as the Commission may designate”.


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

2008—Subsec. (a). Pub. L. 110–372, §2(c)(3)(A), substituted “on the basis of standards developed by the agency involved in accordance with criteria specified in regulations prescribed by the Director of the Office of Personnel Management” for “or its designee for this purpose”.


EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–372 effective on the first day of the first pay period beginning on or after the 180th day following Oct. 8, 2008, see section 2(d) of Pub. L. 110–372, set out as a note under section 5376 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT


§ 3326. Appointments of retired members of the armed forces to positions in the Department of Defense

(a) For the purpose of this section, “member” and “Secretary concerned” have the meanings given them by section 101 of title 37.

(b) A retired member of the armed forces may be appointed to a position in the civil service in or under the Department of Defense (including a nonappropriated fund instrumentality under the jurisdiction of the armed forces) during the period of 180 days immediately after his retirement only if—
(1) the proposed appointment is authorized by the Secretary concerned or his designee for the purpose, and, if the position is in the competitive service, after approval by the Office of Personnel Management;
(2) the minimum rate of basic pay for the position has been increased under section 5305 of this title; or
(3) a state of national emergency exists.

(c) A request by appropriate authority for the authorization, or the authorization and approval, as the case may be, required by subsection (b)(1) of this section shall be accompanied by a statement which shows the actions taken to assure that—
(1) full consideration, in accordance with placement and promotion procedures of the department concerned, was given to eligible career employees;
(2) when selection is by other than certification from an established civil service register, the vacancy has been publicized to give interested candidates an opportunity to apply;
(3) qualification requirements for the position have not been written in a manner designed to give advantage to the retired member;
and
(4) the position has not been held open pending the retirement of the retired member.


HISTORICAL AND REVISION NOTES

Derivation U.S. Code Revised Statutes and

(a) .......... 5 U.S.C. 3103 (as applicable to 5 U.S.C.
(b), (c) ...... 5 U.S.C. 3103.

In subsection (a), the definition of "armed forces" is omitted as unnecessary in view of the definition in section 2101.

In subsection (b), the words "position in the civil service" are substituted for "civilian office" in view of the definition of "civil service" in section 2101. The words "(including a nonappropriated fund instrumentality under the jurisdiction of the armed forces)" are added on authority of former section 3103(a).

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


SUSPENSION OF SECTION

Pub. L. 101–510, div. A, title XII, §1206(f), Nov. 5, 1990, 104 Stat. 1661, provided that: "Section 3228 of title 5, United States Code, shall not be in effect for the period beginning on the date of the enactment of this Act [Nov. 5, 1990] and ending two years after such date."

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–509 effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title III, §305] of Pub. L. 101–509, set out as a note under section 5301 of this title.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–54 effective July 12, 1979, see section 2(b) of Pub. L. 96–54, set out as a note under section 385 of this title.

§ 3327. Civil service employment information

(a) The Office of Personnel Management shall provide that information concerning opportunities to participate in competitive examinations conducted by, or under authority delegated by, the Office of Personnel Management shall be made available to the employment offices of the United States Employment Service.

(b) Subject to such regulations as the Office may issue, each agency shall promptly notify the Office and the employment offices of the United States Employment Service of—
(1) each vacant position in the agency which is in the competitive service or the Senior Executive Service and for which the agency seeks applications from persons outside the Federal service, and
(2) the period during which applications will be accepted.

As used in this subsection, "agency" means an agency as defined in section 5102(a)(1) of this title other than an agency all the positions in which are excepted by statute from the competitive service.


PRIOR PROVISIONS

A prior section 3327, Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 424, which prescribed standards for determination of qualifications of postmasters, including experience in postal field service, seniority, length of service, level of difficulty and responsibility of work, attendance, awards and commendations, and performance rating, was repealed by Pub. L. 91–375, § 6(c)(7)(A), Aug. 12, 1970, 84 Stat. 776. See section 1001 of Title 39, Postal Service.

EFFECTIVE DATE

Section effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

§ 3328. Selective Service registration

(a) An individual—
(1) who was born after December 31, 1959, and is or was required to register under section 3 of the Military Selective Service Act (50 U.S.C. App. 453); and
(2) who is not so registered or knowingly and willfully did not so register before the requirement terminated or became inapplicable to the individual,
shall be ineligible for appointment to a position in an Executive agency.

(b) The Office of Personnel Management, in consultation with the Director of the Selective Service System, shall prescribe regulations to carry out this section. Such regulations shall include provisions prescribing procedures for the adjudication of determinations of whether a failure to register was knowing and willful. Such procedures shall require that such a determina-
tion may not be made if the individual concerned shows by a preponderance of the evidence that the failure to register was neither knowing nor willful. Such procedures may provide that determinations of eligibility under the requirements of this section shall be adjudicated by the Executive agency making the appointment for which the eligibility is determined.


REFERENCES IN TEXT
Section 8401(30) of this title, referred to in subsecs. (a) and (b), was amended generally by Pub. L. 106–65, div. A, title V, §522(c)(2), Oct. 5, 1999, 113 Stat. 597, and, as so amended, no longer contains a subpar. (B).

CONDIFICATION
Another section 3329 was renumbered section 3330 of this title.

AMENDMENTS


1997—Subsec. (b). Pub. L. 105–85 struck out “a position described in subsection (c) not later than 6 months after the date of the application” after “program of the Department of Defense”.

1996—Subsec. (b). Pub. L. 104–106, §1037(a)(1), substituted “be provided placement consideration in a position described in subsection (c) through a priority placement program of the Department of Defense” for “be offered”.

Subsec. (c). Pub. L. 104–106, §1037(a)(2), added subsec. (c) and struck out former subsec. (c) which read as follows: “The position to be offered shall be a position—

"(1) in the competitive service;

"(2) within the Department of Defense;

"(3) for which the individual is qualified; and

"(4) the rate of basic pay for which is not less than the rate last received for technician service before separation.”

§3330. Government-wide list of vacant positions

(a) For the purpose of this section, the term “agency” means an Executive agency, excluding the Government Accountability Office and any agency (or unit thereof) whose principal function is the conduct of foreign intelligence or counterintelligence activities, as determined by the President.

(b) The Office of Personnel Management shall establish and keep current a comprehensive list of all announcements of vacant positions in the competitive service within each agency that are to be filled by appointment for more than one year and for which applications are being (or will soon be) accepted from outside the agency’s work force.

(c) Included for any position listed shall be—

(1) a brief description of the position, including its title, tenure, location, and rate of pay;

(2) application procedures, including the period within which applications may be submitted and procedures for obtaining additional information; and

(3) any other information which the Office considers appropriate.

(d) The list shall be available to members of the public.
(e) The Office shall prescribe such regulations as may be necessary to carry out this section. Any requirement under this section that agencies notify the Office as to the availability of any vacant positions shall be designed so as to avoid any duplication of information otherwise required to be furnished under section 3327 of this title or any other provision of law.

(f) The Office may, to the extent it determines appropriate, charge such fees to agencies for services provided under this section and for related Federal employment information. The Office shall retain such fees to pay the costs of providing such services and information.


AMENDMENTS


1996—Pub. L. 104–106, which directed renumbering of the section 3329 of this title that was added by Pub. L. 102–484, § 4331, as section 3339 of this title, could not be executed because of the intervening renumbering of that section by Pub. L. 104–52, § 4(1)(A). See 1995 Amendment note below.

1995—Pub. L. 104–52, § 4(1)(A), renumbered section 3329 of this title, relating to government-wide list of vacant positions, as this section.


§ 3330a. Preference eligibles; administrative redress

(a)(1)(A) A preference eligible who alleges that an agency has violated such individual’s rights under any statute or regulation relating to veterans’ preference may file a complaint with the Secretary of Labor.

(B) A veteran described in section 3304(f)(1) who alleges that an agency has violated such section with respect to such veteran may file a complaint with the Secretary of Labor.

(2) A complaint under this subsection must be filed within 60 days after the date on which the alleged violation.

(B) Such complaint shall be in writing, be in such form as the Secretary may prescribe, specify the agency against which the complaint is filed, and contain a summary of the allegations that form the basis for the complaint.

(3) The Secretary shall, upon request, provide technical assistance to a potential complainant with respect to a complaint under this subsection.

(b)(1) The Secretary of Labor shall investigate each complaint under subsection (a).

(2) In carrying out any investigation under this subsection, the Secretary’s duly authorized representatives shall, at all reasonable times, have reasonable access to, for purposes of examination, and the right to copy and receive, any documents of any person or agency that the Secretary considers relevant to the investigation.

(3) In carrying out any investigation under this subsection, the Secretary may require by subpoena the attendance and testimony of witnesses and the production of documents relating to any matter under investigation. In case of disobedience of the subpoena or contumacy and on request of the Secretary, the Attorney General may apply to any district court of the United States in whose jurisdiction such disobedience or contumacy occurs for an order enforcing the subpoena.

(4) Upon application, the district courts of the United States shall have jurisdiction to issue writs commanding any person or agency to comply with the subpoena of the Secretary or to comply with any order of the Secretary made pursuant to a lawful investigation under this subsection and the district courts shall have jurisdiction to punish failure to obey a subpoena or other lawful order of the Secretary as a contempt of court.

(c)(1)(A) If the Secretary of Labor determines as a result of an investigation under subsection (b) that the action alleged in a complaint under subsection (a) occurred, the Secretary shall attempt to resolve the complaint by making reasonable efforts to ensure that the agency specified in the complaint complies with applicable provisions of statute or regulation relating to veterans’ preference.

(B) The Secretary of Labor shall make determinations referred to in subparagraph (A) based on a preponderance of the evidence.

(2) If the efforts of the Secretary under subsection (b) with respect to a complaint under subsection (a) do not result in the resolution of the complaint, the Secretary shall notify the person who submitted the complaint, in writing, of the results of the Secretary’s investigation under subsection (b).

(d)(1) If the Secretary of Labor is unable to resolve a complaint under subsection (a) within 60 days after the date on which it is filed, the complainant may elect to appeal the alleged violation to the Merit Systems Protection Board in accordance with such procedures as the Merit Systems Protection Board shall prescribe, except that in no event may any such appeal be brought—

(A) before the 61st day after the date on which the complaint is filed; or

(B) later than 15 days after the date on which the complainant receives written notification from the Secretary under subsection (c)(2).

(2) An appeal under this subsection may not be brought unless—

(A) the complainant first provides written notification to the Secretary of such complainant’s intention to bring such appeal; and

(B) the Secretary issues a preponderance of the evidence with subparagraph (A) is included (in such form and manner as the Merit Systems Protection Board may prescribe) with the notice of appeal under this subsection.

(3) Upon receiving notification under paragraph (2)(A), the Secretary shall not continue to investigate or further attempt to resolve the claim to which the notification relates.

(e)(1) This section shall not be construed to prohibit a preference eligible from appealing directly to the Merit Systems Protection Board from any action which is appealable to the
Board under any other law, rule, or regulation, in lieu of administrative redress under this section.

(2) A preference eligible may not pursue redress for an alleged violation described in subsection (a) under this section at the same time that the preference eligible pursues redress for such violation under any other law, rule, or regulation.


AMENDMENTS

§ 3330b. Preference eligibles; judicial redress

(a) In lieu of continuing the administrative redress procedure provided under section 3330a(d), a preference eligible, or a veteran described by section 3330a(a)(1)(B) with respect to a violation described by such section, may elect, in accordance with this section, to terminate those administrative proceedings and file an action with the appropriate United States district court not later than 60 days after the date of the election.

(b) An election under this section may not be made—

(1) before the 121st day after the date on which the appeal is filed with the Merit Systems Protection Board under section 3330a(d); or

(2) after the Merit Systems Protection Board has issued a judicially reviewable decision on the merits of the appeal.

(c) An election under this section shall be made, in writing, in such form and manner as the Merit Systems Protection Board shall by regulation prescribe. The election shall be effective as of the date on which it is received, and the administrative proceeding to which it relates shall terminate immediately upon the receipt of such election.


AMENDMENTS
2004—Subsec. (a). Pub. L. 108–454, which directed in -

§ 3330c. Preference eligibles; remedy

(a) If the Merit Systems Protection Board (in a proceeding under section 3330a) or a court (in a proceeding under section 3330b) determines that an agency has violated a right described in section 3330a, the Board or court (as the case may be) shall order the agency to comply with such provisions and award compensation for any loss of wages or benefits suffered by the individual by reason of the violation involved. If the Board or court determines that such violation was willful, it shall award an amount equal to backpay as liquidated damages.

(b) A preference eligible who prevails in an action under section 3330a or 3330b shall be awarded reasonable attorney fees, expert witness fees, and other litigation expenses.


SUBCHAPTER II—OATH OF OFFICE

§ 3331. Oath of office

An individual, except the President, elected or appointed to an office of honor or profit in the civil service or uniformed services, shall take the following oath: "I, AB, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I will obey the Constitution and laws of the United States; that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God." This section does not affect other oaths required by law.


HISTORICAL AND REVISION NOTES

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

May 13, 1884, ch. 46, § 2, 23 Stat. 32.

HISTORICAL AND REVISION NOTES

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

Sept. 23, 1950, ch. 1010, §10, 64 Stat. 967.

The section is restated for clarity and conciseness. The term "officer" is coextensive with and substituted
for “Each individual appointed hereafter as a civil officer of the United States by the President, by and with the advice and consent of the Senate, or by the President alone, or by a court of law, or by the head of a department” in view of the definition of “officer” in section 2014.

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

§ 3333. Employee affidavit; loyalty and striking against the Government

(a) Except as provided by subsection (b) of this section, an individual who accepts office or employment in the Government of the United States or in the government of the District of Columbia shall execute an affidavit within 60 days after accepting the office or employment that his acceptance and holding of the office or employment does not or will not violate section 7311 of this title. The affidavit is prima facie evidence that the acceptance and holding of office or employment by the affiant does not or will not violate section 7311 of this title.

(b) An affidavit is not required from an individual employed by the Government of the United States or the government of the District of Columbia for less than 60 days for sudden emergency work involving the loss of human life or the destruction of property. This subsection does not relieve an individual from liability for violation of section 7311 of this title.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 424.)

Historical and Revision Notes

<table>
<thead>
<tr>
<th>Derivation</th>
<th>U.S. Code</th>
<th>Revised Statutes and Statutes at Large</th>
</tr>
</thead>
</table>

The section is restated for clarity and to conform to the style of section 3332.

In subsection (a), the words “after August 9, 1955” are omitted as executed. The words “if the affidavit is executed prior to acceptance of such office or employment” are omitted as unnecessary. The words “From and after July 1, 1956”, appearing in the Act of June 29, 1956, are omitted as executed.

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

SUBCHAPTER III—DETAILS, VACANCIES, AND APPOINTMENTS

Amendments


Annual Report to Congress on Employees or Members of Armed Services Detailed to Executive Agencies; Exemptions

Pub. L. 103–329, title VI, §619, Sept. 30, 1993, 108 Stat. 2420, which directed each Executive agency detailing personnel submit an annual report to Senate and House Committees on Appropriations on all employees or members of armed services detailed to Executive agencies, listing grade, position, and offices of each person detailed and agency to which each such person was detailed, with exemptions for certain intelligence agencies, terminated, effective May 15, 2000, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 151 of House Document No. 103–7. Similar provisions were contained in the following prior appropriations acts:


§ 3341. Details; within Executive or military departments

(a) The head of an Executive department or a military department may detail employees among the bureaus and offices of his department, except employees who are required by law to be exclusively engaged on some specific work.

(b)(1) Details under subsection (a) of this section may be made only by written order of the head of the department, and may be for not more than 120 days. These details may be renewed by written order of the head of the department, in each particular case, for periods not exceeding 120 days.

(2) The 120-day limitation in paragraph (1) for details and renewals of details does not apply to the Department of Defense in the case of a detail—

(A) made in connection with the closure or realignment of a military installation pursuant to a base closure law or an organizational restructuring of the Department as part of a reduction in the size of the armed forces or the civilian workforce of the Department; and

(B) in which the position to which the employee is detailed is eliminated on or before the date of the closure, realignment, or restructuring.

(c) For purposes of this section, the term “base closure law” has the meaning given such term in section 101(a)(17) of title 10.


Historical and Revision Notes

<table>
<thead>
<tr>
<th>Derivation</th>
<th>U.S. Code</th>
<th>Revised Statutes and Statutes at Large</th>
</tr>
</thead>
<tbody>
<tr>
<td>..................</td>
<td></td>
<td>May 28, 1866, ch. 252, §3, 29 Stat. 179.</td>
</tr>
</tbody>
</table>

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 (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 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. 501), which is set out in the reviser’s note for section 301.

The word “detail” is coextensive with and is substituted for “alter the distribution”. The word “clerks” is omitted as included in “employees”. The words “as he may find it necessary and proper to do” and “from time to time” are omitted as surplusage.

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 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.

AMENDMENTS

2006—Subsec. (c). Pub. L. 109–163 amended subsec. (c) generally. Prior to amendment, subsec. (c) defined the terms “base closure law” and “military installation” for purposes of this section.

1996—Subsec. (b). Pub. L. 104–106 designated existing provisions as par. (1) and added par. (2).


Effective Date of 1996 Amendment

Section 1033(b) of Pub. L. 104–106 provided that: “The amendments made by subsection (a) [amending this section] apply to details made before the date of the enactment of this Act [Feb. 16, 1996] but still in effect on that date and details made on or after that date.”

Transfer of Appropriated Funds; Funding of Detailed Employees

For restriction on availability of funds for salaries of employees reassigned on temporary detail basis to another position without independent approval by head of employing department or agency, see section 515(c) of Pub. L. 103–333, set out as a note under section 1301 of Title 31, Money and Finance.


Effective Date of Repeal


§ 3343. Details to international organizations

(a) For the purpose of this section—

(1) “agency”, “employee”, and “international organization” have the meanings given them by section 3581 of this title; and

(2) “detail” means the assignment or loan of an employee to an international organization without a change of position from the agency by which he is employed to an international organization.

(b) The head of an agency may detail, for a period of not more than 5 years, an employee of his agency to an international organization which requests services, except that under special circumstances, where the President determines it to be in the national interest, he may extend the 5-year period for up to an additional 3 years.

(c) An employee detailed under subsection (b) of this section is deemed, for the purpose of preserving his allowances, privileges, rights, seniority, and other benefits, an employee of the agency from which detailed, and he is entitled to pay, allowances, and benefits from funds available to that agency. The authorization and payment of these allowances and other benefits from appropriations available therefor is deemed to comply with section 5536 of this title.

(d) Details may be made under subsection (b) of this section—

(1) without reimbursement to the United States by the international organization; or

(2) with agreement by the international organization to reimburse the United States for all or part of the pay, travel expenses, and allowances payable during the detail, and the reimbursement shall be credited to the appropriation, fund, or account used for paying the amounts reimbursed.

(e) An employee detailed under subsection (b) of this section may be paid or reimbursed by an international organization for allowances or expenses incurred in the performance of duties required by the detail, without regard to section 209 of title 18.


Historical and Revision Notes

<table>
<thead>
<tr>
<th>Derivation</th>
<th>U.S. Code</th>
<th>Revised Statutes and Statutes at Large</th>
</tr>
</thead>
</table>

In subsection (a)(2), the words “without a change of position from the agency by which he is employed to an international organization” are substituted for “without the employee’s transfer from the Federal agency by which he is employed” to eliminate the necessity of carrying into this section the definition of “transfer” appearing in former section 2331(5).

In subsection (e), the words “section 209 of title 18” are substituted for “section 1914 of title 18” on authority of the Act of Oct. 23, 1962, Pub. L. 87–849, § 2, 76 Stat. 1126.

Other definitions appearing in former section 2331 are omitted from this section as inappropriate but are carried into section 3581.

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

1969—Subsec. (b). Pub. L. 91–175 substituted “5” for “3” and inserted provision enabling President, regard-
ing an agency employee detailed to an international organization for 5 years, to extend the 5-year period for up to an additional 3 years.

**Details to International Organizations**

For provisions concerning the providing for details of Federal employees to international organizations and the delegation of Presidential authority, concerning the extension of a detail under this section, to the Secretary of State, see Ex. Ord. No. 11552, Aug. 24, 1970, 35 F.R. 13569, set out as a note under section 3344 of this title.

§ 3344. Details; administrative law judges

An agency as defined by section 551 of this title which occasionally or temporarily is insufficiently staffed with administrative law judges appointed under section 3105 of this title may use administrative law judges selected by the Office of Personnel Management from and with the consent of other agencies.


**Historical and Revision Notes**

<table>
<thead>
<tr>
<th>Derivation</th>
<th>U.S. Code</th>
<th>Revised Statutes and Statutes at Large</th>
</tr>
</thead>
</table>

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**


§ 3345. Acting officer

(a) If an officer of an Executive agency (including the Executive Office of the President, and other than the Government Accountability Office) whose appointment to office is required to be made by the President, by and with the advice and consent of the Senate, dies, resigns, or is otherwise unable to perform the functions and duties of the office—

(1) the first assistant to the office of such officer shall perform the functions and duties of the office temporarily in an acting capacity subject to the time limitations of section 3346; or

(2) notwithstanding paragraph (1), the President (and only the President) may direct a person who serves in an office for which appointment is required to be made by the President, by and with the advice and consent of the Senate, to perform the functions and duties of the vacant office temporarily in an acting capacity subject to the time limitations of section 3346; or

(3) notwithstanding paragraph (1), the President (and only the President) may direct an officer or employee of such Executive agency to perform the functions and duties of the vacant office temporarily in an acting capacity, subject to the time limitations of section 3346, if—

(A) during the 365-day period preceding the date of death, resignation, or beginning of inability to serve of the applicable officer, the officer or employee served in a position in such agency for not less than 90 days; and

(B) the rate of pay for the position described under subparagraph (A) is equal to or greater than the minimum rate of pay payable for a position at GS–15 of the General Schedule.

(b)(1) Notwithstanding subsection (a)(1), a person may not serve as an acting officer for an office under this section, if—

(A) during the 365-day period preceding the date of death, resignation, or beginning of inability to serve, such person—

(i) did not serve in the position of first assistant to the office of such officer; or

(ii) served in the position of first assistant to the office of such officer for less than 90 days; and

(B) the President submits a nomination of such person to the Senate for appointment to such office.

(2) Paragraph (1) shall not apply to any person if—

(A) such person is serving as the first assistant to the office of an officer described under subsection (a);

(B) the office of such first assistant is an office for which appointment is required to be made by the President, by and with the advice and consent of the Senate; and

(C) the Senate has approved the appointment of such person to such office.

(c)(1) Notwithstanding subsection (a)(1), the President (and only the President) may direct an officer who is nominated by the President for reappointment for an additional term to the same office in an Executive department without a break in service, to continue to serve in that office subject to the time limitations in section 3346, until such time as the Senate has acted to confirm or reject the nomination, notwithstanding adjournment sine die.

(2) For purposes of this section and sections 3346, 3347, 3348, 3349, 3349a, and 3349d, the expiration of a term of office is an inability to perform the functions and duties of such office.


**References in Text**


**Prior Provisions**

AMENDMENTS


EFFECTIVE DATE


“(1) Effective date.—Subject to paragraph (2), this section (enacting this section and sections 3346 to 3349 of this title, repealing former sections 3345 to 3349 of this title, and enacting provisions set out as a note under section 3301 of this title) and the amendments made by this section shall take effect 30 days after the date of enactment of this section (Oct. 21, 1998).

“(2) Application.—

“(A) In general.—This section shall apply to any office that becomes vacant prior to the effective date of this section.

“(B) Immediate application of time limitation.—Notwithstanding subparagraph (A), for any office vacant on the effective date of this section, the time limitations under section 3346 of title 5, United States Code (as amended by this section) shall apply to such office. Such time limitations shall apply as though such office first became vacant on the effective date of this section.

“(C) Certain nominations.—If the President submits to the Senate the nomination of any person after the effective date of this section for an office for which such person had been nominated before such date, the next nomination of such person after such date shall be considered a first nomination of such person to that office for purposes of sections 3345 through 3349 and section 3349d of title 5, United States Code (as amended by this section).”

ORDER OF SUCCESSION WITHIN DEPARTMENT OF HOMELAND SECURITY


EXECUTIVE ORDER No. 10513

Ex. Ord. No. 10513, Jan. 19, 1954, 19 F.R. 369, which designated certain officers of the Department of Labor to act as Secretary of Labor during any period of unavailability of both the Secretary and the Deputy Secretary of Labor, was revoked by Ex. Ord. No. 13246, ¶4, Dec. 18, 2001, 66 F.R. 66270, set out below.

EXECUTIVE ORDER No. 12724


EXECUTIVE ORDER No. 11467


EXECUTIVE ORDER No. 11822

Ex. Ord. No. 11822, Dec. 19, 1974, 39 F.R. 43275, which designated certain officers of the Department of the Treasury to act as Secretary of the Treasury during any period of unavailability of both the Secretary and the Deputy Secretary of the Treasury, was revoked by Ex. Ord. No. 13246, ¶4, Dec. 18, 2001, 66 F.R. 66270, set out below.

EXECUTIVE ORDER No. 11880


EXECUTIVE ORDER No. 11957

Ex. Ord. No. 11957, Jan. 13, 1977, 42 F.R. 3295, which designated certain officers of the Department of Agriculture to act as Secretary of Agriculture during any period of unavailability of both the Secretary and the Deputy Secretary of Agriculture, was revoked by Ex. Ord. No. 13241, ¶4, Dec. 18, 2001, 66 F.R. 66259, set out below.

EXECUTIVE ORDER No. 12343

Ex. Ord. No. 12343, Jan. 27, 1982, 47 F.R. 4225, which designated certain officers of the Department of State to act as Secretary of State during any period of unavailability of both the Secretary and the Deputy Secretary of State, was revoked by Ex. Ord. No. 13241, ¶4, Dec. 18, 2001, 67 F.R. 15999, set out below.

EXECUTIVE ORDER No. 12879

Order of Succession of Officers to Act as Secretary of the Navy

Ex. Ord. No. 12879, Nov. 8, 1993, 58 F.R. 30662, provided:

“By the authority vested in me as President by the Constitution and the laws of the United States of America, including [former] section 3347 of title 5, United States Code, it is hereby ordered as follows:

SECTION 1. Succession to the Authority of the Secretary of the Navy.

(a) In the event of the death, permanent disability, or resignation of the Secretary of the Navy, the incumbents holding the positions designated below, in the order indicated, shall act for and exercise the powers of the Secretary of the Navy:

(1) The Under Secretary of the Navy.

(2) The Assistant Secretaries and General Counsel of the Navy. In the order fixed by their length of service as permanent appointees in such positions.

(3) The Chief of Naval Operations.

(4) The Commandant of the Marine Corps.

(b) In the event of the temporary absence or temporary disability of the Secretary of the Navy, the incumbents holding the Department of the Navy positions designated in paragraph (a) of this section, in the order indicated, shall act for and exercise the powers of the Secretary of the Navy:

(1) in such instances, the designation of an Acting Secretary of the Navy applies only for the duration of the Secretary’s absence or disability, and does not affect the authority of the Secretary to resume the powers of his office upon his return.

(2) In the event that the Secretary of the Navy is merely absent from this position, the Secretary of the Navy may continue to exercise the powers and fulfill the duties of his office during his absence, notwithstanding the provisions of this order.

(c) Precedence among those officers designated in paragraph (a) of this section who have the same date of appointment shall be determined by the Secretary of the Navy at the time that such appointments are made.

(d) Notwithstanding paragraph (a) and (b) of this section, an officer shall not act for or exercise the powers of the Secretary of the Navy under this order if that officer serves only in an acting capacity in the position that would otherwise entitle him to do so.

Sec. 2. Temporary Nature of Succession. Succession to act for and exercise the powers of the Secretary of the
Navy pursuant to this order shall be on a temporary or interim basis and shall not have the effect of vacating the statutory appointment held by the successor.

WILLIAM J. CLINTON.

EX. ORD. No. 12908. ORDER OF SUCCESSION OF OFFICERS TO ACT AS SECRETARY OF THE ARMY

Ex. Ord. No. 12908, Apr. 22, 1994, 59 F.R. 21967, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including [former] section 3347 of title 5, United States Code, it is hereby ordered as follows:

SECTION 1. Succession To Act as the Secretary of the Army.

(a) In the event of the death, permanent disability, or resignation of the Secretary of the Army, the incumbents holding the positions designated below, in the order indicated, shall act for and exercise the powers of the Secretary of the Army:

(1) The Under Secretary of the Army.
(2) The Assistant Secretaries and General Counsel of the Army, in the order fixed by their length of service as permanent appointees in such positions.
(3) The Chief of Staff of the Army.

(b) In the event of the absence or temporary disability of the Secretary of the Army, the incumbents holding the Department of the Army positions designated in paragraph (a) of this section, in the order indicated, shall act for and exercise the powers of the Secretary of the Army.

(1) The designation of an Acting Secretary of the Army under this subsection applies only for the duration of the Secretary’s absence or disability, and does not affect the authority of the Secretary to resume the powers of the Secretary’s office.

(2) When the Secretary of the Army is temporarily absent from the position, the Secretary of the Army may continue to exercise the powers and fulfill the duties of his office during his absence, notwithstanding the provisions of this order.

(c) Precedence among those officers designated in paragraph (a) of this section who have the same date of appointment shall be determined by the Secretary of the Army at the time that such appointments are made.

(d) Notwithstanding paragraphs (a) and (b) of this section, an officer shall not act for or exercise the powers of the Secretary of the Army under this order if that officer serves only in an acting capacity in the position that would otherwise entitle him to do so.

SUC. 2. Temporary Nature of Succession. Succession to act for and exercise the powers of the Secretary of the Army under this order shall be on a temporary or interim basis and shall not have the effect of vacating the statutory appointment held by the successor.

WILLIAM J. CLINTON.

EXECUTIVE ORDER No. 13000


EXECUTIVE ORDER No. 13241


EXECUTIVE ORDER No. 13242. PROVIDING AN ORDER OF SUCCESSION WITHIN THE DEPARTMENT OF COMMERCE


By the authority vested in me as President by the Constitution and the laws of the United States of America, including Subchapter III of Chapter 33 of title 5 of the United States Code, it is hereby ordered that:

SECTION 1. Subject to the provisions of section 3 of this Executive Order, the officers named in section 2, in the order listed, shall act as and perform the functions and duties of the office of Secretary of Commerce (Secretary) during any period when both the Secretary and the Deputy Secretary of Commerce (Deputy Secretary) have died, resigned, or are otherwise unable to perform the functions and duties of the office of Secretary.

SUC. 2. Order of Succession.

(a) General Counsel of the Department of Commerce;
(b) Under Secretary of Commerce for International Trade;
(c) Under Secretary of Commerce for Economic Affairs;
(d) Under Secretary of Commerce for Oceans and Atmosphere and Administrator of the National Oceanic and Atmospheric Administration;
(e) Under Secretary of Commerce for Technology;
(f) Under Secretary of Commerce for Export Administration;
(g) Chief Financial Officer of the Department of Commerce and Assistant Secretary of Commerce in charge of Administration; and

WILLIAM J. CLINTON.

EXECUTIVE ORDER No. 12909.

EX. ORD. No. 12909, ORDER OF SUCCESSION OF OFFICERS TO ACT AS SECRETARY OF THE AIR FORCE

Ex. Ord. No. 12909, Apr. 22, 1994, 59 F.R. 21969, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including [former] section 3347 of title 5, United States Code, it is hereby ordered as follows:

SECTION 1. Succession To Act as the Secretary of the Air Force.

(a) In the event of the death, permanent disability, or resignation of the Secretary of the Air Force, the incumbents holding the positions designated below, in the order indicated, shall act for and exercise the powers of the Secretary of the Air Force:

(1) The Under Secretary of the Air Force.
(2) The Assistant Secretaries and General Counsel of the Air Force, in the order fixed by their length of service as permanent appointees in such positions.
(3) The Chief of Staff of the Air Force.

(b) In the event of the absence or temporary disability of the Secretary of the Air Force, the incumbents holding the Department of the Air Force positions designated in paragraph (a) of this section, in the order indicated, shall act for and exercise the powers of the Secretary of the Air Force.

(1) The designation of an Acting Secretary of the Air Force applies only for the duration of the Secretary’s absence or disability, and does not affect the authority of the Secretary to resume the powers of the Secretary’s office.

(2) In the event that the Secretary of the Air Force is temporarily absent from the position, the Secretary of the Air Force may continue to exercise the powers and fulfill the duties of his office during the absence, notwithstanding the provisions of this order.

(c) Precedence among those officers designated in paragraph (a) of this section who have the same date of appointment shall be determined by the Secretary of the Air Force at the time that such appointments are made.

(d) Notwithstanding paragraphs (a) and (b) of this section, an officer shall not act for or exercise the powers of the Secretary of the Air Force under this order if that officer serves only in an acting capacity in the position that would otherwise entitle him to do so.

SUC. 2. Temporary Nature of Succession. Succession to act for and exercise the powers of the Secretary of the Air Force pursuant to this order shall be on a temporary or interim basis and shall not have the effect of vacating the statutory appointment held by the successor.

WILLIAM J. CLINTON.

EXECUTIVE ORDER No. 13261.

Ex. Ord. No. 13261, § 4(a), Mar. 19, 2002, 67 F.R. 12285, which designated certain officers of the Department of Defense to act as Secretary of Defense during any period of unavailability of both the Secretary and the Deputy Secretary of Defense, was revoked by Ex. Ord. No. 13394, § 5, Dec. 22, 2005, 70 F.R. 76666, formerly set out below.
(h) Assistant Secretary of Commerce in charge of Legislative and Intergovernmental Affairs.

Sic. 3. Exceptions.
(a) No individual who is serving in an office listed in section 2(a)–(h) in an acting capacity shall, by virtue of so serving, act as Secretary pursuant to this order.

(b) Notwithstanding the provisions of this Executive Order, the President retains discretion, to the extent permitted by Subchapter III of Chapter 33 of title 5 of the United States Code, to depart from this Executive Order in designating an acting Secretary.

Sic. 4. Executive Order 11880 of October 2, 1975, Executive Order 12998 of April 5, 1996, and section 26 of Executive Order 12608 of September 9, 1987, are hereby revoked.

GEORGE W. BUSH.

EX. ORD. No. 13243. PROVIDING AN ORDER OF SUCCESSION WITHIN THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT


By the authority vested in me as President by the Constitution and the laws of the United States of America, including Subchapter III of Chapter 33 of title 5 of the United States Code, it is hereby ordered that:

§ 3345

1. Subject to the provisions of section 3 of this Executive Order, the officers named in section 2, in the order listed, shall act as and perform the functions and duties of the office of Secretary pursuant to this order.

2. Subject to the provisions of section 3 of this Executive Order, the President retains discretion, to the extent permitted by Subchapter III of Chapter 33 of title 5 of the United States Code, to depart from this Executive Order in designating an acting Secretary.

3. Subject to the provisions of section 3 of this Executive Order, the officers named in section 2, in the order listed, shall act as and perform the functions and duties of the office of Secretary.

Sic. 2. Order of Succession.
(a) Solicitor of the Department of the Interior;
(b) Assistant Secretary of the Interior in charge of Policy, Management and Budget;
(c) Assistant Secretary of the Interior in charge of Land and Minerals Management;
(d) Assistant Secretary of the Interior in charge of Water and Science;
(e) Assistant Secretary of the Interior for Fish and Wildlife and Parks; and
(f) Assistant Secretary of the Interior for Indian Affairs.

Sic. 3. Exceptions.
(a) No individual who is serving in an office listed in section 2(a)–(f) in an acting capacity shall, by virtue of so serving, act as Secretary pursuant to this order.

(b) Notwithstanding the provisions of this Executive Order, the President retains discretion, to the extent permitted by Subchapter III of Chapter 33 of title 5 of the United States Code, to depart from this Executive Order in designating an acting Secretary.

Sic. 4. Executive Order 11467 of October 6, 1969, is hereby revoked.

GEORGE W. BUSH.

EX. ORD. No. 13245. PROVIDING AN ORDER OF SUCCESSION WITHIN THE DEPARTMENT OF LABOR


By the authority vested in me as President by the Constitution and the laws of the United States of America, including Subchapter III of Chapter 33 of title 5 of the United States Code, it is hereby ordered that:

§ 3345

1. Subject to the provisions of section 3 of this Executive Order, the officers named in section 2, in the order listed, shall act as and perform the functions and duties of the office of Secretary pursuant to this order.

2. Subject to the provisions of section 3 of this Executive Order, the President retains discretion, to the extent permitted by Subchapter III of Chapter 33 of title 5 of the United States Code, to depart from this Executive Order in designating an acting Secretary.

3. Subject to the provisions of section 3 of this Executive Order, the officers named in section 2, in the order listed, shall act as and perform the functions and duties of the office of Secretary.

Sic. 2. Order of Succession.
(a) Solicitor of Labor;
(b) Assistant Secretary of Labor in charge of Administration and Management;
(c) Assistant Secretary of Labor in charge of Policy;
(d) Assistant Secretary of Labor in charge of Congressional and Intergovernmental Affairs;
(e) Assistant Secretary of Labor in charge of the Employment and Training Administration;
(f) Assistant Secretary of Labor in charge of the Employment Standards Administration;
(g) Assistant Secretary of Labor in charge of the Pension and Welfare Benefits Administration;
(h) Assistant Secretary of Labor for Mine Safety and Health;
(i) Assistant Secretary of Labor for Mine Safety and Health;
(j) Assistant Secretary of Labor in charge of the Office of Public Affairs;
(k) Assistant Secretary of Labor for Veterans’ Employment and Training;
(l) Assistant Secretary of Labor in charge of the Office of Disability Employment Policy.

Sic. 3. Exceptions.
(a) No individual who is serving in an office listed in section 2(a)–(l) in an acting capacity shall, by virtue of so serving, act as Secretary pursuant to this order.
(b) Notwithstanding the provisions of this Executive Order, the President retains discretion, to the extent permitted by Subchapter III of Chapter 33 of title 5 of the United States Code, to depart from this Executive Order in designating an acting Secretary.

Sect. 4. Executive Order 10513 of January 19, 1954, is hereby revoked.

GEORGE W. BUSH.

EX. ORD. No. 13246. PROVIDING AN ORDER OF SUCCESSION WITHIN THE DEPARTMENT OF THE TREASURY


By the authority vested in me as President by the Constitution and the laws of the United States of America, including Subchapter III of Chapter 33 of title 5 of the United States Code, it is hereby ordered that:

SECTION 1. Subject to the provisions of section 3 of this Executive Order, the officers named in section 2, in the order listed, shall act as and perform the functions and duties of the office of Secretary of the Treasury (Secretary) during any period when both the Secretary and the Deputy Secretary of the Treasury (Deputy Secretary) have died, resigned, or are otherwise unable to perform the functions and duties of the office of Secretary.

Sect. 2. Order of Succession.

(a) Under Secretaries of the Treasury (including the Under Secretary of the Treasury for Enforcement), in the order in which they shall have taken the oath of office as such officers;

(b) General Counsel of the Department of the Treasury; and

(c) Deputy Under Secretaries of the Treasury and the Assistant Secretaries of the Treasury appointed by the President by and with the consent of the Senate, in the order in which they shall have taken the oath of office as such officers.

Sect. 3. Exceptions.

(a) No individual who is serving in an office listed in section 2(a)–(c) in an acting capacity shall, by virtue of so serving, act as Secretary pursuant to this order.

(b) Notwithstanding the provisions of this Executive Order, the President retains discretion, to the extent permitted by Subchapter III of Chapter 33 of title 5 of the United States Code, to depart from this Executive Order in designating an acting Secretary.

Sect. 4. Executive Order 11822 of December 10, 1974, is hereby revoked.

GEORGE W. BUSH.

EX. ORD. No. 13247. PROVIDING AN ORDER OF SUCCESSION WITHIN THE DEPARTMENT OF VETERANS AFFAIRS


By the authority vested in me as President by the Constitution and the laws of the United States of America, including Subchapter III of Chapter 33 of title 5 of the United States Code, it is hereby ordered that:

Sect. 1. Subject to the provisions of section 3 of this Executive Order, the officers named in section 2, in the order listed, shall act as and perform the functions and duties of the office of Secretary of Veterans Affairs (Secretary) during any period when both the Secretary and the Deputy Secretary of Veterans Affairs (Deputy Secretary) have died, resigned, or are otherwise unable to perform the functions and duties of the office of Secretary.

Sect. 2. Order of Succession.

(a) Under Secretary of Veterans Affairs for Health;

(b) Under Secretary of Veterans Affairs for Benefits;

(c) Under Secretary of Veterans Affairs for Memorial Affairs;

(d) General Counsel of the Department of Veterans Affairs;

(e) Assistant Secretaries of Veterans Affairs, in the order in which they shall have taken the oath of office as Assistant Secretaries, other than the Chief Financial Officer and, if an Assistant Secretary, the Chief Information Officer;

(f) Chief Information Officer of the Department of Veterans Affairs, if the Chief Information Officer is an officer appointed by the President by and with the consent of the Senate;

(g) Chief Financial Officer of the Department of Veterans Affairs; and

(h) Chairman, Board of Veterans’ Appeals.

Sect. 3. Exceptions.

(a) No individual who is serving in an office listed in section 2(a)–(h) in an acting capacity shall, by virtue of so serving, act as Secretary pursuant to this order.

(b) Notwithstanding the provisions of this Executive Order, the President retains discretion, to the extent permitted by Subchapter III of Chapter 33 of title 5 of the United States Code, to depart from this Executive Order in designating an acting Secretary.

GEORGE W. BUSH.

EX. ORD. No. 13250.

EXECUTIVE ORDER NO. 13250


EX. ORD. No. 13251. PROVIDING AN ORDER OF SUCCESSION WITHIN THE DEPARTMENT OF STATE


By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345 et seq., it is hereby ordered that:

SECTION 1. Subject to the provisions of section 3 of this order, the officers named in section 2, in the order listed, shall act as, and perform the duties of, the office of Secretary of State (Secretary) during any period in which the Secretary has died, resigned, or otherwise become unable to perform the functions and duties of the office of Secretary.

Sect. 2. Order of Succession.

(a) Deputy Secretary of State;

(b) Deputy Secretary of State for Management and Resources;

(c) Under Secretary of State designated for political affairs pursuant to section 2651a(b) of title 22, United States Code;

(d) Under Secretary of State designated for management affairs pursuant to section 2651a(b) of title 22, United States Code;

(e) The remaining Under Secretaries of State, in the order in which they shall have taken the oath of office as such;

(f) Assistant Secretaries of State designated for regional bureaus pursuant to section 2651a(c) of title 22, United States Code, in the order in which they shall have taken the oath of office as such;

(g) The following officers, in the order in which they shall have taken the oath of office as such:

(1) Remaining Assistant Secretaries of State;

(2) Coordinator for Counterterrorism;

(3) Director General of the Foreign Service; and

(4) Legal Adviser;

(h) United States Representative to the United Nations (New York);

(i) Deputy United States Representative to the United Nations (New York);

(j) The following other United States Representatives to the United Nations (New York), in the order in which they shall have taken the oath of office as such:

(1) United States Representative to the United Nations for United Nations Management and Reform;

(2) United States Representative to the United Nations on the Economic and Social Council of the United Nations; and
§ 3345  TITLE 5—GOVERNMENT ORGANIZATION AND EMPLOYEES Page 250

(3) Alternate United States Representative to the United Nations for Special Political Affairs in the United Nations;

(k) The following Chiefs of Mission, in the order listed:

(1) United States Ambassador to the United Kingdom;

(2) United States Ambassador to Canada;

(3) United States Ambassador to Australia;

(4) United States Ambassador to Mexico;

(5) United States Ambassador to Japan; and

(6) United States Ambassador to India;

1. (l) The following officers, in the order in which they shall have taken the oath of office as such:

(a) United States Ambassadors at Large;

(b) Counselor; and

(c) Special Representatives of the President; and

2. The remaining Chiefs of Mission, in the order in which they shall have taken the oath of office as such.


(a) No individual who has not been appointed by the President by and with the consent of the Senate shall act as Secretary pursuant to this order.

(b) No individual who is serving in an office listed in section 2(a)–(m) in an acting capacity shall, by virtue of so serving, act as Secretary pursuant to this order.

(c) Notwithstanding the provisions of this order, the President retains discretion, to the extent permitted by the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345 "et seq., to depart from this order in designating an acting Secretary.

(d) A successor office, intended to be the equivalent of an office identified in section 2 of this order, shall be deemed to be the position identified in section 2 for purposes of this order.


GEORGE W. BUSH.

EX. ORD. No. 13370. PROVIDING AN ORDER OF SUCCESSION IN THE OFFICE OF MANAGEMENT AND BUDGET

Ex. Ord. No. 13370, Jan. 13, 2005, 70 F.R. 3137, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America and pursuant to the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345 "et seq., it is hereby ordered that:

SECTION 1. During any period when the Director of the Office of Management and Budget (Director) and the Deputy Director of the Office of Management and Budget (Deputy Director) have died, resigned, or otherwise become unable to perform the functions and duties of the office of Director, the following officers of the Office of Management and Budget, in the order listed, shall perform the functions and duties of the office of Director:

Deputy Director for Management;

Executive Associate Director;

Associate Director (National Security Programs);

Associate Director (General Government Programs);

Associate Director (Human Resource Programs);

Associate Director (Natural Resource Programs);

General Counsel;

Controller, Office of Federal Financial Management; and

Administrator of the Office of Economic Policy;

Administrator of the Office of Information and Regulatory Affairs; and

Administrator of the Office of Electronic Government.

S. C. 2. Order of Succession.

(a) Assistant Administrator, Office of Solid Waste;

(b) Assistant Administrator for Toxic Substances;

(c) Assistant Administrator (Air and Radiation); and

(d) Assistant Administrator (Water Programs);

(e) Assistant Administrator (General Counsel);

(f) Assistant Administrator (Enforcement and Compliance Assurance);

(g) Chief Financial Officer;

(h) Assistant Administrator (Research and Development);

(i) Assistant Administrator (International Activities);

(j) Assistant Administrator (Administration and Resources Management); and

(k) Assistant Administrator (Environmental Information).


(a) No individual who is serving in an office listed in section 2(a)–(k) in an acting capacity, by virtue of so serving, shall act as Administrator pursuant to this order.

(b) Notwithstanding the provisions of this order, the President retains discretion, to the extent permitted by the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345 "et seq., to depart from this order in designating an acting Administrator.

S. C. 4. Amendments to Certain Executive Orders Providing Orders of Succession. Executive Orders 13241, 13242, 13243, 13244, 13245, and 13247 of December 18, 2001, and Executive Orders 13250 and 13251 of December 28, 2001, are hereby amended as follows:

(a) [Amended Ex. Ord. No. 13241, formerly set out above];

(b) [Amended Ex. Ord. No. 13242, set out above];

(c) [Amended Ex. Ord. No. 13243, set out above];

(d) [Amended Ex. Ord. No. 13244, set out above];

(e) [Amended Ex. Ord. No. 13245, set out above];

(f) [Amended Ex. Ord. No. 13246, set out above];

(g) [Amended Ex. Ord. No. 13247, set out above];

(h) [Amended Ex. Ord. No. 13250, formerly set out above]; and

(i) [Amended Ex. Ord. No. 13251, set out above.]

GEORGE W. BUSH.

EX. ORD. No. 13261. PROVIDING AN ORDER OF SUCCESSION IN THE ENVIRONMENTAL PROTECTION AGENCY AND AMENDING CERTAIN ORDERS ON SUCCESSION


By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345 "et seq., it is hereby ordered that:

SECTION 1. Subject to the provisions of section 3 of this order, the officers named in section 2, in the order listed, shall act as and perform the functions and duties of the office of the Administrator of the Environmental Protection Agency (Administrator) during any period when both the Administrator and the Deputy Administrator of the Environmental Protection Agency have died, resigned, or become otherwise unable to perform the functions and duties of the office of Administrator. The following officers of the Office of Management and Budget, in the order listed, shall perform the functions and duties of the office of Director:

Assistant Administrator (General Counsel);

Assistant Administrator for Federal Procurement Policy;

Associate Director (National Security Programs);

Assistant Administrator (Air and Radiation);

Assistant Administrator (Water Programs);

Assistant Administrator (General Counsel);

Assistant Administrator (Enforcement and Compliance Assurance); and

Chief Financial Officer.

S. C. 2. Order of Succession.

(a) Assistant Administrator, Office of Solid Waste;

(b) Assistant Administrator for Toxic Substances;

(c) Assistant Administrator (Air and Radiation); and

(d) Assistant Administrator (Water Programs);

(e) Assistant Administrator (General Counsel);

(f) Assistant Administrator (Enforcement and Compliance Assurance); and

(g) Chief Financial Officer.


(a) No individual who is serving in an office listed in section 2(a)–(m) in an acting capacity, by virtue of so serving, shall act as Administrator pursuant to this order.

(b) Notwithstanding the provisions of this order, the President retains discretion, to the extent permitted by the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345 "et seq., to depart from this order in designating an acting Administrator.
By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345 et seq., it is hereby ordered that:

SEC. 1. Subject to the provisions of section 3 of this order, the officers named in section 2, in the order listed, shall act as and perform the functions and duties of the office of the Secretary of Health and Human Services (Secretary), if they are eligible to act as Secretary under the provisions of the Federal Vacancies Reform Act of 1998, during any period in which the Secretary has died, resigned, or become otherwise unable to perform the functions and duties of the office of Secretary.

SEC. 2. Order of Succession.
(a) Deputy Secretary of Health and Human Services;
(b) General Counsel of the Department of Health and Human Services;
(c) Assistant Secretary (Resources and Technology);
(d) Assistant Secretary (Planning and Evaluation);
(e) Administrator of the Centers for Medicare and Medicaid Services;
(f) Commissioner of Food and Drugs;
(g) Director of the National Institutes of Health;
(h) Assistant Secretary for Family Support;
(i) Other Assistant Secretaries of the Department of Health and Human Services appointed by the President, in the order in which they shall have taken the oath of office as such;
(j) Director, Centers for Disease Control and Prevention;
(k) Director, Region 4.

SEC. 3. Exceptions.
(a) No individual who is serving in an office listed in section 2 of this order in an acting capacity, by virtue of so serving, shall act as Secretary pursuant to this order.
(b) Notwithstanding the provisions of this order, the President retains discretion, consistent with the Federal Vacancies Reform Act of 1998, to depart from this order in designating an acting Secretary.

SEC. 4. Revocation. Executive Order 13250 of December 26, 2001 (Providing An Order of Succession Within the Department of Health and Human Services), and the President’s memorandum of March 19, 2002 (Designation of Officers of the Department of Health and Human Services), are hereby revoked.

GEORGE W. BUSH.

EX. ORD. No. 13472. EXECUTIVE BRANCH RESPONSIBILITIES WITH RESPECT TO ORDERS OF SUCCESSION
Ex. Ord. No. 13472, Sept. 11, 2008, 73 F.R. 33353, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

(a) Policy. It is the policy of the Federal Government to ensure that each executive branch agency can perform its essential functions and remain an effectively functioning part of the Federal Government under all conditions. Accordingly, each agency shall take all appropriate actions to establish, maintain, and, as necessary, revise an order of succession, or to propose presidential action to establish or revise an order of succession.

SEC. 2. Definitions. As used in this order:
(a) “agency” means:
(i) an executive agency as defined in section 105 of title 5, United States Code, other than the Government Accountability Office; and
(ii) the United States Postal Service and the Postal Regulatory Commission; and
(b) “order of succession” means a list of officials by position who shall act as and perform the functions and duties of the office of the head of the agency in the event that the office-holder has died, resigned, or become otherwise unable to perform the functions and duties of the office. “Order of succession” does not include any order, rule, memorandum, or other document delegating or partially delegating the authority of an office.

SEC. 3. Orders of Succession Requiring Presidential Action.
(a) Each agency for which presidential action is required to establish an order of succession shall draft a proposed order of succession if no such order exists and, not later than 30 days from the date of this order, send such proposed draft order to the Counsel to the President for review and comment.

(b) Each agency described in subsection 3(a) of this order shall send any proposed updates or revisions to the agency’s order of succession to the Counsel to the President for review and comment.

(c) Upon completion of the requirements set forth by subsections (a) or (b) of this section with respect to a proposed order, the agency shall submit the proposed order to the Office of Management and Budget in accordance with Executive Order 11030, as amended.

(a) Each agency for which presidential action is not required to establish an order of succession because of the agency’s existing legal authority shall establish and maintain such order in accordance with applicable law and any applicable guidance issued by the President or the Secretary of Homeland Security, including the laws and guidance regarding continuity plans and programs for the executive branch.

(b) Each agency described in subsection 4(a) of this order shall update and revise its order of succession as necessary. Before implementing any revisions to its order of succession, such agency shall send the proposed revisions to the Counsel to the President for review and comment.

(c) Not later than 30 days from the date of this order, and not later than 7 days from the issuance date of any subsequent final revision to an existing order of succession, each agency described in subsection 4(a) of this order shall provide a copy of its order of succession to the Counsel to the President, the Assistant to the President for Homeland Security and Counterterrorism, and the Director of the Office of Management and Budget.

SEC. 5. General Provisions.
(a) Nothing in this order shall be construed to impair or otherwise affect:
(i) authority granted by law to a department, agency, or the head thereof; or
(ii) functions of the Director of the Office of Management and Budget relating to budget, administrative, or legislative proposals.
(b) Nothing in this order shall be construed to delegate the President’s authority under the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345 et seq., to designate individuals to perform the functions and duties of a vacant office temporarily in an acting capacity.
(c) This order shall be implemented in a manner consistent with applicable law and subject to the availability of appropriations.
(d) This order 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 agencies, instrumentalities, or entities, its officers, employees, or agents, or any other person.

GEORGE W. BUSH.

EXECUTIVE ORDER No. 13481
Ex. Ord. No. 13481, Dec. 9, 2008, 73 F.R. 75531, which provided an order of succession within the Department of Justice, was revoked by Ex. Ord. No. 13557, §3, Nov. 4, 2010, 75 F.R. 68679, set out below.

EX. ORD. No. 13485. PROVIDING AN ORDER OF SUCCESSION WITHIN THE DEPARTMENT OF TRANSPORTATION
Ex. Ord. No. 13485, Jan. 9, 2009, 74 F.R. 2287, provided:

By the authority vested in me as President under the Constitution and the laws of the United States of America, including the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345 et seq., it is hereby ordered that:
SECTION 1. Order of Succession. Subject to the provisions of section 2 of this order, the following officials of the Department of Transportation, in the order listed, shall act as and perform the functions and duties of the office of the Secretary of Transportation (Secretary), during any period in which the Secretary, the Deputy Secretary of Transportation, the Under Secretary of Transportation for Policy, and the officials designated by the Secretary pursuant to 40 U.S.C. 102(e) have died, resigned, or otherwise become unable to perform the functions and duties of the office of Secretary, until such time as the Secretary or one of the officials listed above is able to perform the duties of that office:

(a) Administrator of the Federal Highway Administration;
(b) Administrator of the Federal Aviation Administration;
(c) Administrator of the Federal Motor Carrier Safety Administration;
(d) Administrator of the Federal Railroad Administration;
(e) Administrator of the Federal Transit Administration;
(f) Administrator of the Maritime Administration;
(g) Administrator of the Pipeline and Hazardous Materials Safety Administration;
(h) Administrator of the National Highway Traffic Safety Administration;
(i) Administrator of the Research and Innovative Technology Administration;
(j) Administrator of the Saint Lawrence Seaway Development Corporation;
(k) Regional Administrator, Southern Region, Federal Aviation Administration;
(l) Director, Resource Center, Lakewood, Colorado, Federal Highway Administration; and
(m) Regional Administrator, Northwest Mountain Region, Federal Aviation Administration.

SEC. 2. Exceptions. (a) No individual who is serving in an office listed in section 1 in an acting capacity, by virtue of so serving, shall act as Secretary pursuant to this section.
(b) No individual who is serving in an office listed in section 1 shall act as Secretary unless that individual is otherwise eligible to so serve under the Federal Vacancies Reform Act of 1998.
(c) Notwithstanding the provisions of this order, the President retains discretion, to the extent permitted by law, to depart from this order in designating an acting Secretary.

SEC. 3. This order supersedes the President’s Memorandum of March 19, 2002 (Designation of Officers of the Department of Transportation).

This order is intended to improve the internal management of the executive branch and 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 agencies, instrumentalities, or entities, its officers, employees, or agents, or any other person.

GEORGE W. BUSH.

EX. ORD. NO. 13333. PROVIDING AN ORDER OF SUCCESSION WITHIN THE DEPARTMENT OF DEFENSE

Ex. Ord. No. 13333, Mar. 1, 2010, 75 F.R. 10163, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Vacancies Reform Act of 1998, as amended, 5 U.S.C. 3345 et seq., it is hereby ordered that:

SECTION 1. Order of Succession.

(a) Subject to the provisions of section 2 of this order, the following officials of the Department of Defense, in the order listed, shall act as and perform the functions and duties of the office of the Secretary of Defense (Secretary) during any period in which the Secretary has died, resigned, or otherwise become unable to perform the functions and duties of the office of the Secretary, until such time as the Secretary is able to perform the functions and duties of that office:

(1) Deputy Secretary of Defense;
(2) Secretary of the Army;
(3) Secretary of the Navy;
(4) Secretary of the Air Force;
(5) Under Secretary of Defense for Acquisition, Technology, and Logistics;
(6) Under Secretary of Defense for Policy;
(7) Under Secretary of Defense (Comptroller);
(8) Under Secretary of Defense for Personnel and Readiness;
(9) Under Secretary of Defense for Intelligence;
(10) Deputy Chief Management Officer, Department of Defense;
(11) Principal Deputy Under Secretary of Defense for Acquisition, Technology, and Logistics;
(12) Principal Deputy Under Secretary of Defense for Policy;
(13) Principal Deputy Under Secretary of Defense (Comptroller);
(14) Principal Deputy Under Secretary of Defense for Personnel and Readiness;
(15) Principal Deputy Under Secretary of Defense for Intelligence;
(16) Director of Defense Research and Engineering (now Assistant Secretary of Defense for Research and Engineering);
(17) General Counsel of the Department of Defense, the Assistant Secretaries of Defense, the Assistant to the Secretary of Defense for Nuclear and Chemical and Biological Defense Programs (now Assistant Secretary of Defense for Nuclear, Chemical, and Biological Defense Programs), the Director of Operational Test and Evaluation, the Director of Operational Energy Plans and Programs (now Assistant Secretary of Defense for Operational Energy Plans and Programs), and the Director of Cost Assessment and Program Evaluation;
(18) Under Secretaries of the Army, the Navy, and the Air Force; and
(19) Assistant Secretaries of the Army, the Navy, and the Air Force, and General Counsels of the Army, the Navy, and the Air Force.

(b) Precedence among officers designated within the same paragraph of subsection (a) shall be determined by the order in which they have been appointed to such office. Where officers designated within the same paragraph of subsection (a) have the same appointment date, precedence shall be determined by the order in which they have taken the oath to serve in that office.

SEC. 2. Exceptions.

(a) No individual who is serving in an office listed in section 1 in an acting capacity, by virtue of so serving, shall act as Secretary pursuant to this order.
(b) No individual listed in section 1 shall act as Secretary unless that individual was appointed by the President, by and with the advice and consent of the Senate, and that individual is otherwise eligible to so serve under the Federal Vacancies Reform Act of 1998, as amended.
(c) Notwithstanding the provisions of this order, the President retains discretion, to the extent permitted by law, to depart from this order in designating an acting Secretary.

BARACK OBAMA.

EX. ORD. NO. 13542. PROVIDING AN ORDER OF SUCCESSION WITHIN THE DEPARTMENT OF AGRICULTURE

Ex. Ord. No. 13542, May 13, 2010, 75 F.R. 27921, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Vacancies Reform Act of 1998, as amended, 5 U.S.C. 3345 et seq., it is hereby ordered that:

(a) Subject to the provisions of section 2 of this order, the following officials of the Department of Agriculture, in the order listed, shall act as and perform the functions and duties of the office of the Secretary (Secretary) during any period in which the Secretary has died, resigned, or otherwise become unable to perform the functions and duties of the office of the Secretary, until such time as the Secretary is able to perform the functions and duties of that office:

(1) Deputy Secretary of Agriculture;
(2) Secretary of Agriculture;
(3) Under Secretary of Agriculture for Marketing and Regulatory Programs;
(4) Under Secretary of Agriculture for Food, Nutrition, and Consumer Services;
(5) Under Secretary of Agriculture for Rural Development.

(b) Precedence among officers designated within the same paragraph of subsection (a) shall be determined by the order in which they have been appointed to such office. Where officers designated within the same paragraph of subsection (a) have the same appointment date, precedence shall be determined by the order in which they have taken the oath to serve in that office.
America, including the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345 et seq., is hereby ordered that:

SECTION 1. Order of Succession. (a) Subject to the provisions of section 2 of this order, the following officials of the Department of Agriculture, in the order listed, shall act as and perform the functions and duties of the office of Secretary of Agriculture (Secretary) during any period in which the office of the Secretary is vacant or the Secretary is unable to perform the functions and duties of the office of Secretary, until such time as the Secretary or Deputy Secretary is able to perform the functions and duties of that office:

(1) Assistant Secretary of Agriculture for Administration;
(2) Under Secretary of Agriculture for Marketing and Regulatory Programs;
(3) Under Secretary of Agriculture for Food, Nutrition, and Consumer Services;
(4) Under Secretary of Agriculture for Food Safety;
(5) Under Secretary of Agriculture for Natural Resources and Environment;
(6) Under Secretary of Agriculture for Farm and Foreign Agricultural Services;
(7) Under Secretary of Agriculture for Rural Development;
(8) Under Secretary of Agriculture for Research, Education, and Economics;
(9) General Counsel of the Department of Agriculture;
(10) Chief of Staff, Office of the Secretary;
(11) Director, Kansas City Commodity Office, Farm Service Agency;
(12) State Executive Directors of the Farm Service Agency for the States of California, Iowa, and Kansas, in order of seniority fixed by length of unbroken service as State Executive Director of that State;
(13) Regional Administrators of the Food and Nutrition Service for the Mountain Plains Regional Office (Denver, Colorado), Midwest Regional Office (Chicago, Illinois), and Western Regional Office (San Francisco, California), in order of seniority fixed by length of unbroken service as Regional Administrator of that Regional Office;
(14) Chief Financial Officer of the Department of Agriculture;
(15) Assistant Secretary of Agriculture for Congressional Relations; and
(16) Assistant Secretary of Agriculture for Congressional Relations.

(b) The provisions of this order shall apply to any other officer or employee of the Department of Agriculture who is serving in an acting capacity, by virtue of so serving, as Secretary of Agriculture, until such time as the Secretary or Deputy Secretary is able to perform the functions and duties of the office of Secretary.

(c) Notwithstanding the provisions of this order, the President retains discretion, to the extent permitted by law, to depart from this order in designating an acting Secretary.

SEC. 2. Exceptions. (a) No individual who is serving in an office listed in section 1 of this order in an acting capacity, by virtue of so serving, shall act as Secretary of Agriculture pursuant to this order.

(b) No individual listed in section 1 shall act as Secretary of Agriculture pursuant to this order if they are eligible to act as Secretary under the provisions of section 1 of this order.

(c) The provisions of this order do not apply to any person who is serving as an acting Secretary of Agriculture pursuant to Executive Order 13247 of December 18, 2001.

Barack Obama.

Designation of Officers of the Federal Emergency Management Agency To Act As Secretary of the Federal Emergency Management Agency


Designation of Officers of the Department of Veterans Affairs To Act As Secretary of Veterans Affairs

Memorandum of President of the United States, Feb. 12, 2003, 68 F.R. 10141, provided:

Memorandum for the Secretary of Veterans Affairs By the authority vested in me as President under the Constitution and laws of the United States of America and pursuant to the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345 et seq., I hereby order that:

SECTION 1. Order of Succession. During any period when the Secretary of Veterans Affairs (Secretary), the Deputy Secretary of Veterans Affairs (Deputy Secretary), and the officers designated by Executive Order 13247 of December 18, 2001 (set out above), are unable to perform the functions and duties of the office of Secretary, the following officers of the Department of Veterans Affairs, in the order listed, shall perform the functions and duties of the office of Secretary, if they are eligible to act as Secretary under the provisions of the Federal Vacancies Reform Act of 1998, until

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345 et seq., I hereby order that:

SECTION 1. Order of Succession. Subject to the provisions of section 2 of this order, the following officers, in the order listed, shall act as and perform the functions and duties of the office of Secretary of Agriculture (Secretary) during any period in which the office of the Secretary is vacant or the Secretary is unable to perform the functions and duties of the office of Secretary, until such time as the Secretary or Deputy Secretary is able to perform the functions and duties of that office:

(1) Assistant Secretary of Agriculture for Administration;
(2) Under Secretary of Agriculture for Marketing and Regulatory Programs;
(3) Under Secretary of Agriculture for Food, Nutrition, and Consumer Services;
(4) Under Secretary of Agriculture for Food Safety;
(5) Under Secretary of Agriculture for Natural Resources and Environment;
(6) Under Secretary of Agriculture for Farm and Foreign Agricultural Services;
(7) Under Secretary of Agriculture for Rural Development;
(8) Under Secretary of Agriculture for Research, Education, and Economics;
(9) General Counsel of the Department of Agriculture;
(10) Chief of Staff, Office of the Secretary;
(11) Director, Kansas City Commodity Office, Farm Service Agency;
(12) State Executive Directors of the Farm Service Agency for the States of California, Iowa, and Kansas, in order of seniority fixed by length of unbroken service as State Executive Director of that State;
(13) Regional Administrators of the Food and Nutrition Service for the Mountain Plains Regional Office (Denver, Colorado), Midwest Regional Office (Chicago, Illinois), and Western Regional Office (San Francisco, California), in order of seniority fixed by length of unbroken service as Regional Administrator of that Regional Office;
(14) Chief Financial Officer of the Department of Agriculture;
(15) Assistant Secretary of Agriculture for Congressional Relations; and
(16) Assistant Secretary of Agriculture for Congressional Relations.

(b) If any two or more individuals designated in paragraphs (12) and (13) of subsection (a) were sworn in to, or commenced service in, their respective offices on the same day, precedence shall be determined by the alphabetical order of the State in which the individual serves.

SEC. 2. Exceptions. (a) No individual who is serving in an office listed in section 1 in an acting capacity, by virtue of so serving, shall act as Secretary of Agriculture pursuant to this order.

(b) No individual who is serving in an office listed in section 1 shall act as Secretary unless that individual is otherwise eligible to so serve under the Federal Vacancies Reform Act of 1998.

(c) Notwithstanding the provisions of this order, the President retains discretion, to the extent permitted by law, to depart from this order in designating an acting Secretary.

SEC. 3. Executive Order 13241 of December 18, 2001, as amended, is hereby revoked.

SEC. 4. This order 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.
such time as at least one of the officers mentioned above is able to perform the functions and duties of the office of Secretary;
Veterans Integrated Service Network (VISN) 8 Director, Veterans Health Administration;
VISN 7 Director, Veterans Health Administration;
Veterans Benefits Administration Southern Area Director; and
North Florida/South Georgia Healthcare System Director.

Ssc. 2. Exceptions
(a) No individual who is serving in an office listed in section 1 in an acting capacity, by virtue of so serving, shall act as Secretary pursuant to this memorandum.
(b) Notwithstanding the provisions of this memorandum, the President retains discretion, to the extent permitted by the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345 et seq., to depart from this memorandum in designating an acting Secretary.

Ssc. 3. Publication.
You are authorized and directed to publish this memorandum in the Federal Register.

GEORGE W. BUSH.

DESIGNATION OF OFFICERS OF THE DEPARTMENT OF JUSTICE
By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345 et seq., it is hereby ordered that:

SECTION 1. Order of Succession
During any period when the Director of the Federal Bureau of Investigation (Director) has died, resigned, or otherwise become unable to perform the functions and duties of the office of the Director, the following individuals of the Federal Bureau of Investigation, in the order listed, shall perform the functions and duties of the office of the Director of the Federal Bureau of Investigation, until such time as the Director is able to perform the functions and duties of the office of Director of the Federal Bureau of Investigation:
(a) Deputy Director of the Federal Bureau of Investigation;
(b) Associate Deputy Director of the Federal Bureau of Investigation;
(c) Executive Assistant Director for the National Security Branch;
(d) Executive Assistant Director for Criminal, Cyber, Response and Services; and
(e) The Assistant Directors of the Federal Bureau of Investigation, in the order listed:
(1) Assistant Director, Counterterrorism Division;
(2) Assistant Director, Criminal Investigative Division;
(3) Assistant Director, Counterintelligence Division;
(4) Assistant Director, Washington Field Office;
(5) Assistant Director, New York Field Office; and
(6) Assistant Director, Los Angeles Field Office.

Ssc. 2. Exceptions
(a) No individual who is serving in an office listed in section 1 in an acting capacity, by virtue of so serving, shall act as the Director pursuant to this memorandum.
(b) No individual shall act as Director unless that individual is otherwise eligible to so serve under the Federal Vacancies Reform Act of 1998.
(c) Notwithstanding the provisions of this memorandum, the President retains discretion, to the extent permitted by law, to depart from this memorandum in designating an acting Director.

Ssc. 3. Judicial Review
This memorandum is intended to improve the internal management of the executive branch and 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.

Ssc. 4. The Director of the Federal Bureau of Investigation is authorized and directed to publish this memorandum in the Federal Register.

GEORGE W. BUSH.
DESIGNATION OF OFFICERS OF THE OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE TO ACT AS THE UNITED STATES TRADE REPRESENTATIVE

Memorandum of President of the United States, Feb. 7, 2007, 72 F.R. 8085, provided:

Memorandum for the United States Trade Representative

By the authority vested in me as President under the Constitution and the laws of the United States of America, including the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345, et seq., it is hereby ordered that:

SECTION 1. Order of Succession.

During any period when the United States Trade Representative (USTR) has died, resigned, or otherwise become unable to perform the functions and duties of the office of the United States Trade Representative, the following officers of the Office of the United States Trade Representative, in the order listed, shall perform the functions and duties of the USTR, until such time as the USTR is able to perform the functions and duties of that office:

(a) Deputy United States Trade Representatives (stationed in Washington, D.C.; in order of their length of service as a Deputy USTR);
(b) Deputy United States Trade Representative (stationed in Geneva);
(c) General Counsel;
(d) Chief Negotiator for Agriculture;
(e) Deputy General Counsel; and
(f) Deputy Chief of Mission (stationed in Geneva).

SISC. 2. Exceptions.

(a) No individual who is serving in an office listed in section 1 in an acting capacity, by virtue of so serving, shall act as the USTR pursuant to this memorandum.
(b) No individual listed in section 1 shall act as USTR unless that individual is otherwise eligible to so serve under the Federal Vacancies Reform Act of 1998.
(c) Notwithstanding the provisions of this memorandum, the President retains discretion, to the extent permitted by law, to depart from this order in designating an acting Chairman.

SISC. 3. Judicial Review. This memorandum is intended to improve the internal management of the executive branch and 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.

SISC. 4. You are authorized and directed to publish this memorandum in the Federal Register.

GEORGE W. BUSH.

DESIGNATION OF OFFICERS OF THE COUNCIL ON ENVIRONMENTAL QUALITY TO ACT AS CHAIRMAN OF THE COUNCIL ON ENVIRONMENTAL QUALITY

Memorandum of President of the United States, Sept. 18, 2008, 73 F.R. 54487, provided:

Memorandum for the Chairman of the Council on Environmental Quality

By the authority vested in me as President by the Constitution and laws of the United States of America, including the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345 et seq., it is hereby ordered that:

SECTION 1. Order of Succession. Subject to the provisions of section 2 of this memorandum, the following officials of the Council on Environmental Quality in the order listed, shall act as and perform the functions and duties of the office of the Chairman of the Council on Environmental Quality (Chairman), during any period in which the Chairman has died, resigned, or otherwise become unable to perform the functions and duties of the office of Chairman until such time as the Chairman is able to perform the functions and duties of that office:

(a) Chief of Staff;
(b) General Counsel; and
(c) Associate Directors in the order that they shall have been appointed as such.

SISC. 2. Exceptions.

(a) No individual who is serving in an office listed in section 1 in an acting capacity, by virtue of so serving, shall act as the Chairman pursuant to this memorandum.
(b) No individual listed in section 1 shall act as Chairman unless that individual is otherwise eligible to so serve under the Federal Vacancies Reform Act of 1998.
(c) Notwithstanding the provisions of this memorandum, the President retains discretion, to the extent permitted by law, to depart from this order in designating an acting Chairman.

SISC. 3. Judicial Review. This memorandum is intended to improve the internal management of the executive branch and 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.

SISC. 4. You are authorized and directed to publish this memorandum in the Federal Register.

GEORGE W. BUSH.

DESIGNATION OF OFFICERS OF THE OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE TO ACT AS DIRECTOR OF NATIONAL INTELLIGENCE

Memorandum of President of the United States, Dec. 29, 2005, 70 F.R. 76375, which provided for a designation of officers of the Office of the Director of National Intelligence to act as Director of National Intelligence, was superseded by Memorandum of President of the United States, §4, Oct. 3, 2008, 73 F.R. 58669, formerly set out below.

Memorandum of President of the United States, Oct. 3, 2008, 73 F.R. 58669, which provided for a designation of officers of the Office of the Director of National Intelligence to act as Director of National Intelligence, was revoked by Memorandum of President of the United States, §5, Mar. 8, 2011, 76 F.R. 13499, set out below.

Memorandum of President of the United States, Mar. 8, 2011, 76 F.R. 13499, provided:

Memorandum for the Director of National Intelligence

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345 et seq., it is hereby ordered that:

SECTION 1. Subject to the provisions of sections 3 and 4 of this memorandum, the officers of the Office of the Director of National Intelligence named in section 2, in the order listed, shall act as and perform the functions and duties of the Director of National Intelligence (DNI), during any period in which the DNI and the Principal Deputy Director of National Intelligence have died, resigned, or otherwise become unable to perform the functions and duties of the DNI, until such time as the DNI or the Principal Deputy Director of National Intelligence is able to perform the functions and duties of the DNI.

SISC. 2. Order of Succession.

(a) Deputy Director of National Intelligence for Intelligence Integration;
(b) Director of the National Counterterrorism Center; and
(c) National Counterintelligence Executive.

SISC. 3. National Security Act of 1947. This memorandum shall not supersede the authority of the Principal Deputy Director of National Intelligence to act for, and exercise the powers of, the DNI during the absence or disability of the DNI or during a vacancy in the position of the DNI (National Security Act of 1947, as amended, 50 U.S.C. 403-3a).

SISC. 4. Exceptions. (a) No individual who is serving in an office listed in section 2 of this memorandum in an acting capacity shall act as the DNI pursuant to this memorandum.
(b) No individual listed in section 1 of this memorandum shall act as the DNI unless that individual is otherwise eligible to so serve under the Federal Vacancies Reform Act of 1998.
§ 3345  TITLE 5—GOVERNMENT ORGANIZATION AND EMPLOYEES  Page 256

(c) Notwithstanding the provisions of this memorandum, the President retains discretion, to the extent permitted by law, to depart from this memorandum in designating an acting DNI.
(d) In the event that the Director of the National Counterterrorism Center acts as and performs the functions and duties of the DNI pursuant to section 1 of this memorandum, that individual shall not simultaneously serve as Director of the National Counterterrorism Center during that time, in accordance with 50 U.S.C. 404o(b)(2).

Sec. 5. Revocation. The Presidential Memorandum of October 3, 2008 (Designation of Officers of the Office of the Director of National Intelligence to Act as Director of National Intelligence), is hereby revoked.

Sec. 6. 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 agencies, instrumentalities, or entities, its officers, employees, or agents, or any other person.

Sec. 7. You are authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA.

DESIGNATION OF OFFICERS OF THE SOCIAL SECURITY ADMINISTRATION TO ACT AS THE COMMISSIONER OF SOCIAL SECURITY

Memorandum of President of the United States, Apr. 17, 2006, 71 F.R. 20333, which provided for a designation of officers of the Social Security Administration, was superseded by Memorandum of President of the United States, Oct. 17, 2006, 73 F.R. 62845, set out below:

Memorandum of President of the United States, Oct. 17, 2006, 73 F.R. 62845, provided:

Memorandum for the Commissioner of Social Security

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345 et seq., I hereby ordered that:

SECTION 1. Order of Succession. Subject to the provisions of section 2 of this memorandum, the following officials of the Social Security Administration, in the order listed, shall act as and perform the functions and duties of the office of the Commissioner of Social Security (Commissioner), during any period in which both the Commissioner and Deputy Commissioner have died, resigned, or become otherwise unable to perform the functions and duties of the office of the Commissioner, until such time as the Commissioner or Deputy Commissioner are able to perform the duties of that office:

(a) Chief of Staff;
(b) Deputy Commissioner for Operations;
(c) Deputy Commissioner for Budget, Finance and Management;
(d) Deputy Commissioner for Systems;
(e) Deputy Commissioner for Quality Performance;
(f) Regional Commissioner, Atlanta; and
(g) Regional Commissioner, Dallas.

Sec. 2. Exceptions. (a) No individual who is serving in an office listed in section 1 in an acting capacity, by virtue of so serving, shall act as the Director pursuant to this memorandum.
(b) No individual listed in section 1 shall act as Director unless that individual is otherwise eligible to so serve under the Federal Vacancies Reform Act of 1998.

(c) Notwithstanding the provisions of this memorandum, the President retains discretion, to the extent permitted by law, to depart from this memorandum in designating an acting Director.

Sec. 3. This memorandum is intended to improve the internal management of the executive branch and 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 agencies, instrumentalities, or entities, its officers, employees, or agents, or any other person.

Sec. 4. You are authorized and directed to publish this memorandum in the Federal Register.

GEORGE W. BUSH.

DESIGNATION OF OFFICERS OF THE PENSION BENEFIT GUARANTY CORPORATION TO ACT AS DIRECTOR OF THE PENSION BENEFIT GUARANTY CORPORATION

Memorandum of President of the United States, Dec. 9, 2006, 73 F.R. 75535, provided:

Memorandum for the Director of the Pension Benefit Guaranty Corporation

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345 et seq., it is hereby ordered that:

SECTION 1. Order of Succession. Subject to the provisions of section 2 of this memorandum, the following officials of the Pension Benefit Guaranty Corporation, in the order listed, shall act as and perform the functions and duties of the office of the Director of the Pension Benefit Guaranty Corporation (Director), during any period in which the Director has died, resigned, or otherwise become unable to perform the functions and duties of the office of Director, until such time as the Director is able to perform the functions and duties of that office:

(a) Deputy Director for Operations;
(b) Chief Management Officer;
(c) Chief Operating Officer; and
(d) General Counsel.

Sec. 2. Exceptions. (a) No individual who is serving in an office listed in section 1 in an acting capacity, by virtue of so serving, shall act as the Director pursuant to this memorandum.
(b) No individual listed in section 1 shall act as Director unless that individual is otherwise eligible to so serve under the Federal Vacancies Reform Act of 1998.

(c) Notwithstanding the provisions of this memorandum, the President retains discretion, to the extent permitted by law, to depart from this memorandum in designating an acting Director.

Sec. 3. This memorandum is intended to improve the internal management of the executive branch and 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 agencies, instrumentalities, or entities, its officers, employees, or agents, or any other person.

Sec. 4. You are authorized and directed to publish this memorandum in the Federal Register.

GEORGE W. BUSH.

DESIGNATION OF OFFICERS OF THE UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT TO ACT AS ADMINISTRATOR

Memorandum of President of the United States, Dec. 9, 2006, 73 F.R. 75535, provided:

Memorandum for the Administrator of the United States Agency for International Development

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345 et seq., it is hereby ordered that:

SECTION 1. Order of Succession. Subject to the provisions of section 2 of this memorandum, the Assistant Administrators for the Bureaus, in the order in which they were appointed as Assistant Administrator, shall act as and perform the functions and duties of the office of the Administrator (Administrator), during any period in which the Administrator and the Deputy Administrator have died, resigned, or otherwise become unable to perform the functions and duties of the office of Administrator, until such time as the Administrator or Deputy Administrator are able to perform the functions and duties of that office:

(a) Bureau for Africa;
Section 1. Order of Succession. Subject to the provisions of section 2 of this memorandum, and to the limitations set forth in the Act, the following officials of the Overseas Private Investment Corporation (OPIC), in the order listed, shall act as and perform the functions and duties of the office of the President of OPIC during any period in which the President of OPIC has died, resigned, or otherwise become unable to perform the functions and duties of the office of the President of OPIC:

(a) Executive Vice President; (b) Vice President and General Counsel; (c) Vice President and Chief Financial Officer; (d) Chief of Staff; (e) Vice President, Investment Policy; (f) Vice President, External Affairs; (g) Vice President, Investment Funds; (h) Vice President, Insurance; (i) Vice President, Structured Finance; and (j) Vice President, Small and Medium Enterprise Finance.

Section 2. Exceptions. (a) No individual who is serving in an office listed in section 1(a)–(j) of this memorandum shall act as President of OPIC unless that individual is otherwise eligible to so serve under the Act.

(b) No individual who is serving in an office listed in section 1 shall act as Administrator pursuant to this memorandum.

Section 3. This memorandum is intended to improve the internal management of the executive branch and 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 agents, entities, its officers, employees, or agents, or any other person.

Section 4. You are authorized and directed to publish this memorandum in the Federal Register.

GEORGE W. BUSH.

Designation of Officers to Act as President of the Overseas Private Investment Corporation

Memorandum of President of the United States, Jan. 16, 2009, 74 F.R. 4101, which provided for a designation of officers to act as President of the Overseas Private Investment Corporation, was revoked by Memorandum of President of the United States, §3, June 6, 2011, 76 F.R. 33613, set out below.

Memorandum of President of the United States, June 6, 2011, 76 F.R. 33613, provided:

Memorandum for the President of the Overseas Private Investment Corporation

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345 et seq. (the “Act”), it is hereby ordered that:

SECTIONS 1. Order of Succession. Subject to the provisions of section 2 of this memorandum, and to the limitations set forth in the Act, the following officials of the Overseas Private Investment Corporation (OPIC), in the order listed, shall act as and perform the functions and duties of the office of the President of OPIC during any period in which the President of OPIC has died, resigned, or otherwise become unable to perform the functions and duties of the office of the President of OPIC:

(a) Executive Vice President; (b) Vice President and General Counsel; (c) Vice President and Chief Financial Officer; (d) Chief of Staff; (e) Vice President, Investment Policy; (f) Vice President, External Affairs; (g) Vice President, Investment Funds; (h) Vice President, Insurance; (i) Vice President, Structured Finance; and (j) Vice President, Small and Medium Enterprise Finance.

Section 2. Exceptions. (a) No individual who is serving in an office listed in section 1(a)–(j) of this memorandum shall act as President of OPIC unless that individual is otherwise eligible to so serve under the Act.

(b) No individual who is serving in an office listed in section 1 of this memorandum shall act as President of OPIC unless that individual is otherwise eligible to so serve under the Act.

(c) Notwithstanding the provisions of this memorandum, the President retains discretion, to the extent permitted by law, to depart from this memorandum in designating an acting Administrator.

BARACK OBAMA.

Designation of Officers of the Office of Science and Technology Policy to Act as Director

Memorandum of President of the United States, Aug. 5, 2009, 74 F.R. 39871, provided:
Memorandum for the Director of the Office of Science and Technology Policy

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345 et seq., it is hereby ordered that:

SECTION 1. Order of Succession. Subject to the provisions of section 2 of this memorandum, the following officials of the Office of Science and Technology Policy (OSTP), in the order listed, shall act as and perform the functions and duties of the office of the Director of OSTP (Director), during any period in which the Director has died, resigned, or otherwise become unable to perform the functions and duties of the office of the Director, until such time as the Director is able to perform the functions and duties of that office:

(a) Associate Director (National Security and International Affairs);
(b) Associate Director (Technology);
(c) Associate Director (Science); and
(d) Associate Director (Environment).

Sec. 2. Exceptions.

(a) No individual who is serving in an office listed in section 1 in an acting capacity, by virtue of so serving, shall act as Director pursuant to this memorandum.

(b) No individual listed in section 1 shall act as Director unless that individual is otherwise eligible to so serve under the Federal Vacancies Reform Act of 1998.

(c) Notwithstanding the provisions of this memorandum, the President retains the discretion, to the extent permitted by law, to depart from this memorandum in designating an acting Director.

Sec. 3. Revocation. The President’s memorandum of December 11, 2002 (Designation of Officers of the Office of Science and Technology Policy to Act as Director), is hereby revoked.

Sec. 4. This memorandum is intended to improve the internal management of the executive branch and 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.

Sec. 5. You are authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA.

Designation of Officers of the United States Section, International Boundary and Water Commission, United States and Mexico To Act as the Commissioner of the United States Section

Memorandum of President of the United States, Aug. 31, 2009, 74 F.R. 45534, provides:

Memorandum for the Commissioner of the United States Section, International Boundary and Water Commission, United States and Mexico.

By the authority vested in me as President by the Constitution and laws of the United States of America, it is hereby ordered that:

SECTION 1. Order of Succession. Subject to the provisions of section 2 of this memorandum, the following officials of the United States Section, International Boundary and Water Commission, United States and Mexico, in the order listed, shall act as and perform the functions and duties of the office of the Commissioner of the United States Section, International Boundary and Water Commission, United States and Mexico (Commissioner), during any period in which the Commissioner has died, resigned, or otherwise become unable to perform the functions and duties of the office of Commissioner, until such time as the Commissioner is able to perform the functions and duties of that office:

(a) United States Section Principal Engineer—Operations Department; and
(b) United States Section Principal Engineer—Engineering Department.

Sec. 2. Exceptions.

(a) No individual who is serving in an office listed in section 1 in an acting capacity, by virtue of so serving, shall act as Commissioner pursuant to this memorandum.

(b) Notwithstanding the provisions of this memorandum, the President retains discretion, to the extent permitted by law, to depart from this memorandum in designating an acting Commissioner.

Sec. 3. This memorandum is intended to improve the internal management of the executive branch and 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.

Sec. 4. You are authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA.

§ 3346. Time limitation

(a) Except in the case of a vacancy caused by sickness, the person serving as an acting officer as described under section 3345 may serve in the office—

(1) for no longer than 210 days beginning on the date the vacancy occurs; or

(2) subject to subsection (b), once a first or second nomination for the office is submitted to the Senate, from the date of such nomination for the period that the nomination is pending in the Senate.

(b) (1) If the first nomination for the office is rejected by the Senate, withdrawn, or returned to the President by the Senate, the person may continue to serve as the acting officer for no more than 210 days after the date of such rejection, withdrawal, or return.

(2) Notwithstanding paragraph (1), if a second nomination for the office is submitted to the Senate after the rejection, withdrawal, or return of the first nomination, the person serving as the acting officer may continue to serve—

(A) until the second nomination is confirmed; or

(B) for no more than 210 days after the second nomination is rejected, withdrawn, or returned.

(c) If a vacancy occurs during an adjournment of the Congress sine die, the 210-day period under subsection (a) shall begin on the date that the Senate first reconvenes.


Prior Provisions


Effective Date

Section effective 30 days after Oct. 21, 1998, and applicable to any office that becomes vacant after such effective date, with certain exceptions, see section 151(d) of Pub. L. 105–277, set out as a note under section 3345 of this title.

§ 3347. Exclusivity

(a) Sections 3345 and 3346 are the exclusive means for temporarily authorizing an acting official to perform the functions and duties of any office of an Executive agency (including the Executive Office of the President, and other than
the Government Accountability Office for which appointment is required to be made by the President, by and with the advice and consent of the Senate, unless—

(1) a statutory provision expressly—

(A) authorizes the President, a court, or the head of an Executive department, to designate an officer or employee to perform the functions and duties of a specified office temporarily in an acting capacity; or

(B) designates an officer or employee to perform the functions and duties of a specified office temporarily in an acting capacity; or

(2) the President makes an appointment to fill a vacancy in such office during the recess of the Senate pursuant to clause 3 of section 2 of article II of the United States Constitution.

(b) Any statutory provision providing general authority to the head of an Executive agency (including the Executive Office of the President, and other than the Government Accountability Office) to delegate duties statutorily vested in that agency head to, or to reassign duties among, officers or employees of such Executive agency, is not a statutory provision to which subsection (a)(1) applies.


PRIOR PROVISIONS

AMENDMENTS

1969—Subsec. (b) Pub. L. 90–31 substituted “subsection (a)(1)” for “subsection (a)(2)”.

 EFFECTIVE DATE
Section effective 30 days after Oct. 21, 1998, and applicable to any office that becomes vacant after such effective date, with certain exceptions, see section 151(d) of Pub. L. 105–277, set out as a note under section 3345 of this title.

§ 3348. Vacant office
(a) In this section—

(1) the term “action” includes any agency action as defined under section 551(3); and

(2) the term “function or duty” means any function or duty of the applicable office that—

(A)(i) is established by statute; and

(ii) is required by statute to be performed by the applicable officer (and only that officer); or

(B)(i) is established by regulation; and

(ii) is required by such regulation to be performed by the applicable officer (and only that officer); and

(ii) includes a function or duty to which clause (i)(I) and (II) applies, and the applicable regulation is in effect at any time during the 180-day period preceding the date on which the vacancy occurs.

(b) Unless an officer or employee is performing the functions and duties in accordance with sections 3345, 3346, and 3347, if an officer of an Executive agency (including the Executive Office of the President, and other than the Government Accountability Office) whose appointment to office is required to be made by the President, by and with the advice and consent of the Senate, dies, resigns, or is otherwise unable to perform the functions and duties of the office—

(1) the office shall remain vacant; and

(2) in the case of an office other than the office of the head of an Executive agency (including the Executive Office of the President, and other than the Government Accountability Office), only the head of such Executive agency may perform any function or duty of such office.

(c) If the last day of any 210-day period under section 3346 is a day on which the Senate is not in session, the second day the Senate is next in session and receiving nominations shall be deemed to be the last day of such period.

(d)(1) An action taken by any person who is not acting under section 3345, 3346, or 3347, or as provided by subsection (b), in the performance of any function or duty of a vacant office to which this section and sections 3346, 3347, 3349a, 3349b, and 3349c apply shall have no force or effect.

(2) An action that has no force or effect under paragraph (1) may not be ratified.

(e) This section shall not apply to—

(1) the General Counsel of the National Labor Relations Board;

(2) the General Counsel of the Federal Labor Relations Authority;

(3) any Inspector General appointed by the President, by and with the advice and consent of the Senate;

(4) any Chief Financial Officer appointed by the President, by and with the advice and consent of the Senate; or

(5) an office of an Executive agency (including the Executive Office of the President, and other than the Government Accountability Office) if a statutory provision expressly prohibits the head of the Executive agency from performing the functions and duties of such office.


PRIOR PROVISIONS

AMENDMENTS
§ 3349. Reporting of vacancies

(a) The head of each Executive agency (including the Executive Office of the President, and other than the Government Accountability Office) shall submit to the Comptroller General of the United States and to each House of Congress—

(1) notification of a vacancy in an office to which this section and sections 3345, 3346, 3347, 3348, 3349a, 3349b, 3349c, and 3349d apply and the date such vacancy occurred immediately upon the occurrence of the vacancy;

(2) the name of any person serving in an acting capacity and the date such service began immediately upon the designation;

(3) the name of any person nominated to the Senate to fill the vacancy and the date such nomination is submitted immediately upon the submission of the nomination; and

(4) the date of a rejection, withdrawal, or return of any nomination immediately upon such rejection, withdrawal, or return.

(b) If the Comptroller General of the United States makes a determination that an officer is serving longer than the 210-day period including the applicable exceptions to such period under section 3346 or section 3349a, the Comptroller General shall report such determination immediately to—

(1) the Committee on Governmental Affairs of the Senate;

(2) the Committee on Government Reform and Oversight of the House of Representatives;

(3) the Committees on Appropriations of the Senate and House of Representatives;

(4) the appropriate committees of jurisdiction of the Senate and House of Representatives;

(5) the President; and

(6) the Office of Personnel Management.


§ 3349a. Presidential inaugural transitions

(a) In this section, the term “transitional inauguration day” means the date on which any person swears or affirms the oath of office as President, if such person is not the President on the date preceding the date of swearing or affirming such oath of office.

(b) With respect to any vacancy that exists during the 60-day period beginning on a transitional inauguration day, the 210-day period under section 3346 or 3348 shall be deemed to begin on the later of the date occurring—

(1) 90 days after such transitional inauguration day; or

(2) 90 days after the date on which the vacancy occurs.


§ 3349b. Holdover provisions

Sections 3345 through 3349a shall not be construed to affect any statute that authorizes a person to continue to serve in any office—

(1) after the expiration of the term for which such person is appointed; and

(2) until a successor is appointed or a specified period of time has expired.


§ 3349c. Exclusion of certain officers

Sections 3345 through 3349b shall not apply to—

(1) any member who is appointed by the President, by and with the advice and consent of the Senate to any board, commission, or similar entity that—

(A) is composed of multiple members; and

(B) governs an independent establishment or Government corporation;

(2) any commissioner of the Federal Energy Regulatory Commission;
§ 3349d. Notification of intent to nominate during certain recesses or adjournments

(a) The submission to the Senate, during a recess or adjournment of the Senate in excess of 15 days, of a written notification by the President of the President’s intention to submit a nomination after the recess or adjournment shall be considered a nomination for purposes of sections 3345 through 3349c if such notification contains the name of the proposed nominee and the office for which the person is nominated.

(b) If the President does not submit a nomination of the person named under subsection (a) within 2 days after the end of such recess or adjournment, effective after such second day the notification considered a nomination under subsection (a) shall be treated as a withdrawn nomination for purposes of sections 3345 through 3349c.


§ 3351. Preference eligibles; transfer; physical qualifications; waiver

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

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

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

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


HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Derivation</th>
<th>U.S. Code</th>
<th>Revised Statutes and Statutes at Large</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>5 U.S.C. 854 (1st 2 sentences, so much as relates to transfer).</td>
<td>June 27, 1944, ch. 287, §5 (1st 2 sentences, so much as relates to transfer), 58 Stat. 388.</td>
</tr>
</tbody>
</table>

The section is restated to conform to section 3312.

AMENDMENTS


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

EFFECTIVE DATE OF 1978 AMENDMENT


§ 3352. Preference in transfers for employees making certain disclosures

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

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

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

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

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

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

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

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

(1) for no more than 1 transfer;

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

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

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


Effective Date

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

SUBCHAPTER V—PROMOTION

§ 3361. Promotion; competitive service; examination

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


Historical and Revision Notes

<table>
<thead>
<tr>
<th>Derivation</th>
<th>U.S. Code</th>
<th>Revised Statutes and Statutes at Large</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$ 5 U.S.C. 638 (as applicable to promotion).</td>
<td>Jan. 16, 1933, ch. 27, §7 (as applicable to promotion), 22 Stat. 496.</td>
</tr>
</tbody>
</table>

The words “That after the expiration of six months from the passage of this act” are omitted as executed. The words “in the competitive service” are substituted for “in either of the said classes now existing, or that may be arranged hereunder pursuant to said rules” because of the definition of “competitive service” in section 3302. In the second sentence, the words “the provisions of this title governing the competitive service” are substituted for “this act.”

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

§ 3362. Promotion; effect of incentive award

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

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

Historical and Revision Notes

<table>
<thead>
<tr>
<th>Derivation</th>
<th>U.S. Code</th>
<th>Revised Statutes and Statutes at Large</th>
</tr>
</thead>
</table>

The word “incentive” is added for clarification. The second sentence is added on authority of former section 2122, which is carried into section 4501. Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

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

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

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

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

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


Historical and Revision Notes

<table>
<thead>
<tr>
<th>Derivation</th>
<th>U.S. Code</th>
<th>Revised Statutes and Statutes at Large</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$ 5 U.S.C. 854 (1st 2 sentences, so much as relates to promotion).</td>
<td>June 27, 1944, ch. 287, §5 (1st 2 sentences, so much as relates to promotion), 58 Stat. 388.</td>
</tr>
</tbody>
</table>

The section is restated to conform to section 3312. The words “in the competitive service, an Executive agency, or the government of the District of Columbia” are added on authority of former sections 851, 858, and 869, which are carried into this title. The last sentence is added on authority of former section 969. 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


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

Effective Date of 1978 Amendment

§ 3371. Definitions

For the purpose of this subchapter—

(1) “State” means—
   (A) a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, and a territory or possession of the United States; and
   (B) an instrumentality or authority of a State or States as defined in subparagraph (A) of this paragraph (1) and a Federal-State authority or instrumentality;

(2) “local government” means—
   (A) any political subdivision, instrumentality, or authority of a State or States as defined in subparagraph (A) of paragraph (1);
   (B) any general or special purpose agency of such a political subdivision, instrumentality, or authority; and
   (C) any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village as defined in the Alaska Native Claims Settlement Act (85 Stat. 688), which is recognized as eligible for special programs and services provided by the United States to Indians because of their status as Indians and includes any tribal organization as defined in section 4 of the Indian Self-Determination and Education Assistance Act;

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

(4) “other organization” means—
   (A) a national, regional, State-wide, area-wide, or metropolitan organization representing member State or local governments;
   (B) an association of State or local public officials;
   (C) a nonprofit organization which has as one of its principal functions the offering of professional advisory, research, educational, or development services, or related services, to governments or universities concerned with public management; or
   (D) a federally funded research and development center.


TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

EMPLOYEE EXCHANGE PROGRAM BETWEEN FEDERAL EMPLOYEES AND EMPLOYEES OF STATE AND LOCAL GOVERNMENTS


“(a) Definitions.—In this section—
   (1) the term ‘employing agency’ means the Federal, State, or local government agency with which the participating employee was employed before an assignment under the Program;
   (2) the term ‘participating employee’ means an employee who is participating in the Program; and
   (3) the term ‘Program’ means the employee exchange program established under subsection (b).

“(b) Establishment.—The President shall establish an employee exchange program between Federal agen-
cies that perform law enforcement functions and agencies of State and local governments that perform law enforcement functions.

(c) Conduct of Program.—The Program shall be conducted in accordance with subchapter VI of chapter 33 of title 5, United States Code.

(d) Qualifications.—An employee of an employing agency who performs law enforcement functions may be selected to participate in the Program if the employee—

(1) has been employed by that employing agency for a period of more than 3 years;
(2) has had appropriate training or experience to perform the work required by the assignment;
(3) has had an overall rating of satisfactory or higher on performance appraisals from the employing agency during the 3-year period before being assigned to another agency under this section; and
(4) agrees to return to the employing agency after completing the assignment for a period not less than the length of the assignment.

(e) Written Agreement.—An employee shall enter into a written agreement regarding the terms and conditions of the assignment before beginning the assignment with another agency.

§ 3372. General provisions

(a) On request from or with the concurrence of a State or local government, and with the consent of the employee concerned, the head of a Federal agency may arrange for the assignment of—

(1) an employee of his agency, other than a noncareer appointee, limited term appointee, or limited emergency appointee (as such terms are defined in section 3132(a) of this title) in the Senior Executive Service and an employee in a position which has been excepted from the competitive service by reason of its confidential, policy-determining, policy-making, or policy-advocating character, to a State or local government; and

(2) an employee of a State or local government to his agency;

for work of mutual concern to his agency and the State or local government that he determines will be beneficial to both. The period of an assignment under this subchapter may not exceed two years. However, the head of a Federal agency may extend the period of assignment for not more than two additional years. If the assigned employee fails to complete the period of assignment and there is another employee willing and available to do so, the Secretary may assign the employee to complete the period of assignment and may execute an agreement with the tribal organization with respect to the replacement employee. That agreement may provide for a different period of assignment as may be agreed to by the Secretary and the tribal organization.

(b) This subchapter is authority for and applies to the assignment of—

(1) an employee of a Federal agency to an institution of higher education;
(2) an employee of an institution of higher education to a Federal agency;
(3) an employee of a Federal agency to any other organization; and

(4) an employee of another organization to a Federal agency.

(c)(1) An employee of a Federal agency may be assigned under this subchapter only if the employee agrees, as a condition of accepting an assignment under this subchapter, to serve in the civil service upon the completion of the assignment for a period equal to the length of the assignment.

(2) Each agreement required under paragraph (1) of this subsection shall provide that in the event the employee fails to carry out the agreement (except for good and sufficient reason, as determined by the head of the Federal agency from which assigned) the employee shall be liable to the United States for payment of all expenses (excluding salary) of the assignment. The amount shall be treated as a debt due the United States.

(d) Where the employee is assigned to a tribal organization, the employee shall be eligible for promotions, periodic step-increases, and additional step-increases, as defined in chapter 53 of this title, on the same basis as other Federal employees.

(e) Under regulations prescribed pursuant to section 3376 of this title—

(1) an assignment of an employee of a Federal agency to an other organization or an institution of higher education, and an employee so assigned, shall be treated in the same way as an assignment of an employee of a Federal agency to a State or local government, and an employee so assigned, is treated under the provisions of this subchapter governing an assignment of an employee of a Federal agency to a State or local government, except that the rate of pay of an employee assigned to a federally funded research and development center may not exceed the rate of pay that such employee would be paid for continued service in the position in the Federal agency from which assigned; and

(2) an assignment of an employee of an other organization or an institution of higher education to a Federal agency, and an employee so assigned, shall be treated in the same way as an assignment of an employee of a State or local government to a Federal agency, and an employee so assigned, is treated under the provisions of this subchapter governing an assignment of an employee of a State or local government to a Federal agency.

§ 3373. Assignment of employees to State or local governments

(a) An employee of a Federal agency assigned to a State or local government under this subchapter is deemed, during the assignment, to be either—

(1) on detail to a regular work assignment in his agency; or

(2) on leave without pay from his position in the agency.

An employee assigned either on detail or on leave without pay remains an employee of his agency. The Federal Tort Claims Act and any other Federal tort liability statute apply to an employee so assigned. The supervision of the duties of an employee on detail may be governed by agreement between the Federal agency and the State or local government concerned.

(b) The assignment of an employee of a Federal agency either on detail or on leave without pay to a State or local government under this subchapter may be made with or without reimbursement by the State or local government for the travel and transportation expenses to or from the place of assignment and for the pay, or supplemental pay, or a part thereof, of the employee during assignment. Any reimbursements shall be credited to the appropriation of the Federal agency used for paying the travel and transportation expenses or pay.

(c) For any employee so assigned and on leave without pay—

(1) if the rate of pay for his employment by the State or local government is less than the rate of pay he would have received had he continued in his regular assignment in the agency, he is entitled to receive supplemental pay from the agency in an amount equal to the difference between the State or local government rate and the agency rate;

(2) he is entitled to annual and sick leave to the same extent as if he had continued in his regular assignment in the agency; and

(3) he is entitled, notwithstanding other statutes—

(A) to continuation of his insurance under chapter 87 of this title, and coverage under chapter 89 of this title or other applicable authority, so long as he pays currently into the Employee’s Life Insurance Fund and the Employee’s Health Benefits Fund or other applicable health benefits system (through his employing agency) the amount of the employee contributions;

(B) to credit the period of his assignment under this subchapter toward periodic step-increases, retention, and leave accrual purposes, and, on payment into the Civil Service Retirement and Disability Fund or other applicable retirement system of the percentage of his State or local government pay, and of his supplemental pay, if any, that would have been deducted from a like agency pay for the period of the assignment and payment by the federal agency into the fund or system of the amount that would have been payable by the agency during the period of the assignment with respect to a like agency pay, to treat his service during that period as service of the type performed in the agency immediately before his assignment; and

(C) for the purpose of subchapter I of chapter 85 of this title, to credit the service performed during the period of his assignment under this subchapter as Federal service, and to consider his State or local government pay (and his supplemental pay, if any) as Federal wages. To the extent that the service could also be the basis for entitlement to unemployment compensation under a State law, the employee may not claim unemployment compensation on the basis of the service under either the State law or subchapter I of chapter 85 of this title.

However, an employee or his beneficiary may not receive benefits referred to in subparagraphs...
(A) and (B) of this paragraph (3), based on service during an assignment under this subchapter for which the employee or, if he dies without making such an election, his beneficiary elects to receive benefits, under any State or local government retirement or insurance law or program, which the Office of Personnel Management determines to be similar. The Federal agency shall deposit currently in the Employee’s Life Insurance Fund, the Employee’s Health Benefits Fund or other applicable health benefits system, respectively, the amount of the Government’s contributions on account of service with respect to which employee contributions are collected as provided in subparagraphs (A) and (B) of this paragraph (3).

(d)(1) An employee so assigned and on leave without pay who dies or suffers disability as a result of personal injury sustained while in the performance of his duty during an assignment under this subchapter shall be treated for the purpose of subchapter I of chapter 81 of this title, as though he were an employee as defined by section 8101 of this title who had sustained the injury in the performance of duty. When an employee (or his dependents in case of death) entitled by reason of injury or death to benefits under subchapter I of chapter 81 of this title is also entitled to benefits from a State or local government for the same injury or death, he (or his dependents in case of death) shall elect which benefits he will receive. The election shall be made within one year after the injury or death, or such further time as the Secretary of Labor may allow for reasonable cause shown. When made, the election is irrevocable unless otherwise provided by law.

(2) An employee who elects to receive benefits from a State or local government may not receive an annuity under subchapter III of chapter 83 of this title and benefits from the State or local government for injury or disability to himself covering the same period of time. This provision does not—

(A) bar the right of a claimant to the greater benefit conferred by either the State or local government or subchapter III of chapter 83 of this title for any part of the same period of time;

(B) deny to an employee an annuity accruing to him under subchapter III of chapter 83 of this title on account of service performed by him; or

(C) deny any concurrent benefit to him from the State or local government on account of the death of another individual.


REFERENCES IN TEXT

The Federal Tort Claims Act, referred to in subsec. (a), is title IV of 31 U.S.C., §§ 2375, 69 Stat. 842, which was classified principally to chapter 20 (§§ 921, 922, 931–941) of former Title 28, Judicial Code, and further classified to sections 1333, 1334, 1337 of title 28 and 2671 et seq. of Title 28, Judicial Code and Procedure, by acts June 25, 1948, ch. 446, 62 Stat. 992, the first section of which enacted Title 28. The Federal Tort Claims Act is also commonly used to refer to chapter 171 of Title 28, Judiciary and Judicial Procedure. For complete classification of title IV to the Code, see Tables. For distribution of former sections of Title 28 into the revised Title 28, see Table at the beginning of Title 28.

AMENDMENTS


1979—Subsecs. (a), (b), Pub. L. 95–454, § 603(b), substituted “a Federal” for “an executive” and “Federal agency” for “executive agency”.

Subsec. (c), Pub. L. 95–454, §§ 603(b), 906(a)(2), substituted “Federal agency” for “executive agency” wherever appearing, and “Office of Personnel Management” for “Civil Service Commission”.

EFFECTIVE DATE OF 1978 AMENDMENT


§ 3374. Assignments of employees from State or local governments

(a) An employee of a State or local government who is assigned to a Federal agency under an arrangement under this subchapter may—

(1) be appointed in the Federal agency without regard to the provisions of this title governing appointment in the competitive service for the agreed period of the assignment; or

(2) be deemed on detail to the Federal agency.

(b) An employee given an appointment is entitled to pay in accordance with chapter 51 and subchapter III of chapter 53 of this title or other applicable law, and is deemed an employee of the Federal agency for all purposes except—

(1) subchapter III of chapter 83 of this title or other applicable retirement system;

(2) chapter 87 of this title; and

(3) chapter 89 of this title or other applicable health benefits system unless his appointment results in the loss of coverage in a group health benefits plan the premium of which has been paid in whole or in part by a State or local government contribution.

The above exceptions shall not apply to non-Federal employees who are covered by chapters 83, 87, and 89 of this title by virtue of their non-Federal employment immediately before assignment and appointment under this section.

(c) During the period of assignment, a State or local government employee on detail to a Federal agency—

(1) is not entitled to pay from the agency, except to the extent that the pay received from the State or local government is less than the appropriate rate of pay which the duties would warrant under the applicable pay provisions of this title or other applicable authority;

(2) is deemed an employee of the agency for the purpose of chapter 73 of this title, the Ethics in Government Act of 1978, chapter 21 of title 41, sections 203, 205, 207, 209, 209a, 209b, 602, 603, 606, 607, 643, 654, 1905, and 1913 of title 18, sections 1343, 1344, and 1349(b) of title 31, and the Federal Tort Claims Act and any other Federal tort liability statute; and
(3) is subject to such regulations as the President may prescribe. The supervision of the duties of such an employee may be governed by agreement between the Federal agency and the State or local government concerned. A detail of a State or local government employee to a Federal agency may be made from the appropriations of the Federal agency and the State or local government concerned. A detail of a State or local government employee who is given an appointment in a Federal agency for the pay, or a part thereof, of the employee during the period of assignment, or for the contribution of the State or local government, or a part thereof, to employee benefit systems.

(d) A State or local government employee who is given an appointment in a Federal agency for the period of the assignment or who is on detail to a Federal agency and who suffers disability or dies as a result of personal injury sustained while in the performance of his duty during the assignment shall be treated, for the purpose of subchapter I of chapter 81 of this title, as though he were an employee as defined by section 8101 of this title who had sustained the injury in the performance of duty. When an employee (or his dependents in case of death) entitled by reason of injury or death to benefits under subchapter I of chapter 81 of this title is entitled to benefits from a State or local government for the same injury or death, he (or his dependents in case of death) shall elect which benefits he will receive. The election shall be made within 1 year after the injury or death, or such further time as the Secretary of Labor may allow for reasonable cause shown. When made, the election is irrevocable unless otherwise provided by law.

(e) If a State or local government fails to continue the employer's contribution to State or local government retirement, life insurance, and health benefit plans for a State or local government employee who is given an appointment in a Federal agency, the employer's contributions covering the State or local government employee's period of assignment, or any part thereof, may be made from the appropriations of the Federal agency concerned.


References in Text


The Federal Tort Claims Act, referred to in subsec. (c)(2), is title IV of act Aug. 2, 1946, ch. 755, 60 Stat. 842, which was classified principally to chapter 20 (§§ 921, 922, 931–934, 941–946) of former Title 28, Judicial Code and Judiciary. Title IV of act Aug. 2, 1946, was substantially repealed and reenacted as sections 1461(b) and 2671 et seq. of Title 28, Judicial and Judicial Procedure, by act June 25, 1948, ch. 466, 62 Stat. 992, the first section of which enacted Title 28. The Federal Tort Claims Act is also commonly used to refer to chapter 11 of Title 28, Judicial and Judicial Procedure. For complete classification of title IV to the Code, see Tables. For distribution of former sections of Title 28 into the revised Title 28, see Table at the beginning of Title 28.

Amendments


1982—Subsec. (c)(2). Pub. L. 97–258 substituted “sections 1343, 1344, and 1349(b)” for “section 688a”.


Subsec. (b). Pub. L. 95–454, § 603(b), (d)(1), inserted provisions relating to nonapplicability of exceptions to non-Federal employees, and substituted “Federal” for “executive”.

Subsec. (c). Pub. L. 95–454, § 603(b), (d)(2), (3), inserted provisions relating to pay received from the State or local government at less than the appropriate rate of pay, and provisions relating to contributions to employee benefit systems, and substituted “a Federal” for “an executive” and “Federal agency” for “executive agency” wherever appearing.

Subsec. (d). Pub. L. 95–454, § 603(b), substituted “a Federal” for “an executive” in two places.

Subsec. (e). Pub. L. 95–454, § 603(b), substituted “a Federal” for “an executive” and “Federal” for “executive”.

Effective Date of 1978 Amendment


§ 3375. Travel expenses

(a) Appropriations of a Federal agency are available to pay, or reimburse, a Federal or State or local government employee in accordance with—

(1) subchapter I of chapter 57 of this title, for the expenses of—

(A) travel, including a per diem allowance, to and from the assignment location;

(B) a per diem allowance at the assignment location during the period of the assignment; and

(C) travel, including a per diem allowance, while traveling on official business away from his designated post of duty during the assignment when the head of the Federal agency considers the travel in the interest of the United States;

(2) section 5724 of this title, for the expenses of transportation of his immediate family and of his household goods and personal effects to and from the assignment location; and

(3) section 5724a(a) of this title, for the expenses of per diem allowances for the immediate family of the employee to and from the assignment location;

(4) section 5724a(c) of this title, for subsistence expenses of the employee and his immediate family while occupying temporary quarters at the assignment location and on return to his former post of duty;

(5) section 5724a(g) of this title, to be used by the employee for miscellaneous expenses related to change of station where movement or storage of household goods is involved; and
(6) section 5726(c) of this title, for the expenses of nontemporary storage of household goods and personal effects in connection with assignment at an isolated location.

(b) Expenses specified in subsection (a) of this section, other than those in paragraph (1)(C), may not be allowed in connection with the assignment of a Federal or State or local government employee under this subchapter, unless and until the employee agrees in writing to complete the entire period of his assignment or one year, whichever is shorter, unless separated or reassigned for reasons beyond his control that are acceptable to the Federal agency concerned. If the employee violates the agreement, the money spent by the United States for these expenses is recoverable from the employee as a debt due the United States. The head of the Federal agency concerned may waive in whole or in part a right of recovery under this subsection with respect to a State or local government employee on assignment with the agency.

(c) Appropriations of a Federal agency are available to pay expenses under section 5742 of this title with respect to a Federal or State or local government employee assigned under this subchapter.


**AMENDMENTS**


Subsec. (a)(4). Pub. L. 104–201, § 1723(a)(1)(A)(ii), substituted “section 5724a(c)” for “section 5724a(c)(2)”.

Subsec. (a)(5). Pub. L. 104–201, § 1723(a)(1)(A)(iii), substituted “section 5724a(g)” for “section 5724a(b)”.

1978—Subsec. (a). Pub. L. 95–454, § 603(b), substituted “a Federal agency” for “an executive agency” in introductory text, substituted “section 5724a(a)” for “section 5724a(a)(1)”.

Subsec. (b). Pub. L. 95–454, § 603(b), substituted “the Federal” for “a Federal agency”, “an executive agency”.

**Effective Date of 1996 Amendment**

Amendment by Pub. L. 104–201 effective 180 days after Sept. 23, 1996, see section 1725(a) of Pub. L. 104–201, set out as a note under section 5722 of this title.

**Effective Date of 1978 Amendment**


**SUBCHAPTER VII—AIR TRAFFIC CONTROLLERS**

§ 3381. Training

(a) An air traffic controller with 5 years of service as a controller who is to be removed as a controller because the Secretary has determined—

(1) he is medically disqualified for duties as a controller;

(2) he is unable to maintain technical proficiency as a controller;

(3) such removal is necessary for the preservation of the physical or mental health of the controller;

is entitled to not more than the full-time equivalent of 2 years of training.

(b) During a period of training under this section, a controller shall be—

(1) retained at his last assigned grade and rate of basic pay as a controller;

(2) entitled to each increase in rate of basic pay provided under law; and

(3) excluded from staffing limitations otherwise applicable.

(c) Upon completion of training under this section, a controller may be—

(1) assigned to other duties in the Executive agency in which the controller is employed;

(2) released for transfer to another Executive agency;

(3) involuntarily separated from the service.

The involuntary separation of a controller under this subsection is not a removal for cause on charges of misconduct, delinquency, or inefficiency for purposes of section 5595 or section 8336 of this title.

(d) The Secretary, without regard to section 3324(a) and (b) of title 31, may pay, or reimburse a controller for, all or part of the necessary expenses of training provided under this section, including expenses authorized to be paid under chapter 41 and subchapter I of chapter 57 of this title, and the costs of other services or facilities directly related to the training of a controller.

(e) Except as provided by subsection (d) of this section, the provisions of chapter 41 of this title, other than sections 4105, 4107(a) and (b), and

1 See References in Text note below.
4111, shall not apply to training under this section.

(f) The provisions of this section shall not otherwise affect the authority of the Secretary to provide training under chapter 41 of this title or under any other provision of law.


REFERENCES IN TEXT

For definition of Secretary, referred to in subsec. (a), see section 2109 of this title.

Subsecs. (a) and (b) of section 4107 of this title, referred to in subsec. (e), were struck out, and subsecs. (c) and (d) of section 4107 were redesignated (a) and (b), respectively, by Pub. L. 103–226, §2(a)(5)(B), Mar. 30, 1994, 108 Stat. 112. Subsequently, section 4107 was amended generally by Pub. L. 107–296, title XIII, §1331(a), Nov. 25, 2002, 116 Stat. 2298.

AMENDMENTS


1982—Subsec. (d). Pub. L. 97–258 substituted “section 3324(a) and (b)” for “section 529”.

1980—Subsec. (a). Pub. L. 96–347, §1(b), substituted “Secretary” for “Secretary of Transportation”.

Subsec. (c)(1). Pub. L. 96–347, §1(c)(1), substituted “in the Executive agency in which the controller is employed” for “in the Department of Transportation”.

Effective Date of 1994 Amendment

Section 2(c) of Pub. L. 103–226 provided that: “The amendments made by this section [amending this section and sections 4101, 4103, 4105, 4107, 4108, 4113, and 4118 of this title] shall become effective on the ninetieth day after the date of enactment of this Act [Mar. 30, 1994].”

Effective Date of 1980 Amendment


Effective Date

Section 9 of Pub. L. 92–297 directed the Secretary of Transportation to report to Congress no later than 5 years after May 16, 1972, concerning his operations under the amendments made by Pub. L. 92–297, including a detailed statement of the effectiveness of Pub. L. 92–297 in meeting the needs of the Air Traffic Controller career program and of the air traffic control system plus recommendations for the management of the program or the system.

§ 3382. Involuntary separation for retirement

An air traffic controller who is eligible for immediate retirement under section 8336 of this title may be separated involuntarily from the service if the Secretary determines that the separation of the controller is necessary in the interest of—

1. aviation safety;

2. the efficient control of air traffic; or

3. the preservation of the physical or mental health of the controller.

Chapter 75 of this title does not apply to a determination or action under this section. Separation under this section shall not become final, without the consent of the controller, until the last day of the second month following the day the controller receives a notification of the determination by the Secretary under this section, or, if a review is requested under section 3383 of this title, the last day of the month in which a final decision is issued by a board of review under section 3383(c) of this title, whichever is later. A controller who is to be separated under this section is entitled to training under section 3381 of this title. Separation of such a controller who elects to receive training under section 3381 shall not become final until the last day of the month following the completion of his training.


References in Text

For definition of Secretary, referred to in text, see section 2109 of this title.

Amendments

1980—Pub. L. 96–347 in provisions preceding par. (1) substituted “Secretary determines” for “Secretary of Transportation determines”.

Effective Date of 1980 Amendment


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.

§ 3383. Determinations; review procedures

(a) An air traffic controller subject to a determination by the Secretary under section 3381(a) or section 3382 of this title shall be furnished a written notice of the determination and the reasons therefor, and a notification that the controller has 15 days after the receipt of the notification within which to file a written request for reconsideration of the determination. Unless the controller files such a request within the 15 days, or unless the determination is rescinded by the Secretary within the 15 days, the determination shall be final.

(b) If the Secretary does not rescind his determination within 15 days after his receipt of the written request filed by the controller under subsection (a) of this section, the Secretary shall immediately convene a board of review, consisting of—

1. a person designated by the controller;

2. a representative of the Executive agency in which the controller is employed designated by the Secretary; and

3. a representative of the Merit Systems Protection Board, designated by the Chairman, who shall serve as chairman of the board of review.
§ 3384. Regulations

The Secretary is authorized to issue regulations to carry out the provisions of this subchapter.


REFERENCES IN TEXT
For definition of Secretary, referred to in text, see section 2109 of this title.

AMENDMENTS
1980—Subsec. (a). Pub. L. 96–347 substituted “Secretary under” for “Secretary of Transportation under”.

Subsec. (b)(2). Pub. L. 96–347, §1(c)(2), substituted “the Executive agency in which such controller is employed” for “the Department of Transportation”.


EFFECTIVE DATE OF 1980 AMENDMENT

EFFECTIVE DATE OF 1978 AMENDMENT

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.

§ 3385. Effect on other authority

This subchapter shall not limit the authority of the Secretary to reassign temporarily an air traffic controller to other duties with or without notice, in the interest of the safe or efficient separation and control of air traffic or the physical or mental health of a controller; or to reassign permanently or separate a controller under any other provision of law.


REFERENCES IN TEXT
For definition of Secretary, referred to in text, see section 2109 of this title.

AMENDMENTS
1980—Pub. L. 96–347 substituted “Secretary” for “Secretary of Transportation”.


§ 3391. Definitions

For the purpose of this subchapter, “agency”, “Senior Executive Service position”, “senior executive”, “career appointee”, “limited term appointee”, “limited emergency appointee”, “noncareer appointee”, and “general position” have the meanings set forth in section 3132(a) of this title.


PRIOR PROVISIONS

EFFECTIVE DATE
Subchapter effective 9 months after Oct. 13, 1978, and congressional review of provisions of sections 401
§ 3392. General appointment provisions

(a) Qualification standards shall be established by the head of each agency for each Senior Executive Service position in the agency—

(1) in accordance with requirements established by the Office of Personnel Management, with respect to standards for career reserved positions, and

(2) after consultation with the Office, with respect to standards for general positions.

(b) Not more than 30 percent of the Senior Executive Service positions authorized under section 3133 of this title may at any time be filled by individuals who did not have 5 years of current continuous service in the civil service immediately preceding their initial appointment to the Senior Executive Service, unless the President certifies to the Congress that the limitation would hinder the efficiency of the Government. In applying the preceding sentence, any break in service of 3 days or less shall be disregarded.

(c)(1) If a career appointee is appointed by the President, by and with the advice and consent of the Senate, to a civilian position in the executive branch which is not in the Senior Executive Service, and the rate of basic pay payable for which is equal to or greater than the rate payable for level V of the Executive Schedule, the career appointee may elect (at such time and in such manner as the Office may prescribe) to continue to have the provisions of this title relating to basic pay, performance awards, awarding of ranks, severance pay, leave, and retirement apply as if the career appointee remained in the Senior Executive Service position from which he was appointed. Such provisions shall apply in lieu of the provisions which would otherwise apply—

(A) to the extent provided under regulations prescribed by the Office, and

(B) so long as the appointee continues to serve under such Presidential appointment.

(2) An election under paragraph (1) may also be made by any career appointee who is appointed to a civilian position in the executive branch—

(A) which is not in the Senior Executive Service; and

(B) which is covered by the Executive Schedule, or the rate of basic pay for which is fixed by statute at a rate equal to 1 of the levels of the Executive Schedule.

An election under this paragraph shall remain effective so long as the appointee continues to serve in the same position.

(d) Appointment or removal of a person to or from any Senior Executive Service position in an independent regulatory commission shall not be subject, directly or indirectly, to review or approval by any officer or entity within the Executive Office of the President.


REFERENCES IN TEXT

The Executive Schedule, referred to in subsec. (c), is set out as section 5311 et seq. of this title.

PRIOR PROVISIONS


AMENDMENTS

1990—Subsec. (c). Pub. L. 101–335 designated existing provisions as par. (1), redesignated former pars. (1) and (2) as subsars. (A) and (B), respectively, and added par. (2).

EFFECTIVE DATE OF 1990 AMENDMENT

Section 7(b)(1) of Pub. L. 101–335 provided that: "The amendments made by this section [amending this section] shall take effect on the date of enactment of this Act [July 17, 1990]."

ELECTION BY PERSONS PREVIOUSLY APPOINTED;
RETROACTIVE PERFORMANCE AWARDS


"(2) ELECTION BY PERSONS PREVIOUSLY APPOINTED.—The Office of Personnel Management shall prescribe regulations (including procedures and deadlines) under which an election under section 3392(c)(2) of title 5, United States Code (as amended by this section) may be made by any individual who—

"(A) on the date of enactment of this Act [July 17, 1990], is serving in a civilian position in the executive branch which—

"(i) is not in the Senior Executive Service; and

"(ii) satisfies section 3392(c)(2)(B) of such title 5 (as so amended);

"(B) was appointed to that position on or after November 1, 1986, and has served continuously in such position since then;

"(C) was a career appointee (within the meaning of section 3132(a)(4) of such title 5) immediately before having been so appointed; and

"(D) was not, based on such individual's appointment to the position described in subparagraph (A), eligible to make an election under section 3392(c) of such title 5 (as then in effect).

An election under this paragraph shall be effective as of the date of appointment to the position described in subparagraph (A).

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


§ 3393. Career appointments

(a) Each agency shall establish a recruitment program, in accordance with guidelines which shall be issued by the Office of Personnel Management, which provides for recruitment of career appointees from—

(1) all groups of qualified individuals within the civil service; or

(2) all groups of qualified individuals whether or not within the civil service.

(b) Each agency shall establish one or more executive resources boards, as appropriate, the members of which shall be appointed by the head of the agency from among employees of the agency or commissioned officers of the uniformed services serving on active duty in such agency. The boards shall, in accordance with merit staffing requirements established by the Office, conduct the merit staffing process for career appointees, including—

(1) reviewing the executive qualifications of each candidate for a position to be filled by a career appointee; and

(2) making written recommendations to the appropriate appointing authority concerning such candidates.

(c)(1) The Office shall establish one or more qualifications review boards, as appropriate. It is the function of the boards to certify the executive qualifications of candidates for initial appointment as career appointees in accordance with regulations prescribed by the Office. The members of each board more than one-half shall be appointed from among career appointees. Appointments to such boards shall be made on a non-partisan basis, the sole selection criterion being the professional knowledge of public management and knowledge of the appropriate occupational fields of the intended appointee.

(2) The Office shall, in consultation with the various qualification review boards, prescribe criteria for establishing executive qualifications for appointment of career appointees. The criteria shall provide for—

(A) consideration of demonstrated executive experience;

(B) consideration of successful participation in a career executive development program which is approved by the Office; and

(C) sufficient flexibility to allow for the appointment of individuals who have special or unique qualities which indicate a likelihood of executive success and who would not otherwise be eligible for appointment.

(d) An individual’s initial appointment as a career appointee shall become final only after the individual has served a 1-year probationary period as a career appointee.

(e) Each career appointee shall meet the executive qualifications of the position to which appointed, as determined in writing by the appointing authority.

(f) The title of each career reserved position shall be published in the Federal Register.

(g) A career appointee may not be removed from the Senior Executive Service or civil service except in accordance with the applicable provisions of sections 1215, 3592, 3595, 7532, or 7543 of this title.

1 So in original.
meet the qualifications of the position to which
appointed, as determined in writing by the ap-
pointing authority.

(b) An individual may not be appointed as a
limited term appointee or as a limited emer-
gency appointee without the prior approval of
the exercise of such appointing authority by the
Office of Personnel Management.

(Amended Pub. L. 95–454, title IV, § 403(a), Oct. 13,
1978, 92 Stat. 1162.)

PRIOR PROVISIONS

A prior section 3394, added Pub. L. 95–437, §3(a), Oct.
10, 1978, 92 Stat. 1657, which related to personnel ceil-
ings, was renumbered as section 3404 of this title by
Stat. 1226.

§ 3395. Reassignment and transfer within the
Senior Executive Service

(a)(1) A career appointee in an agency—

(A) may, subject to paragraph (2) of this sub-
section, be reassigned to any Senior Executive
Service position in the same agency for which
the appointee is qualified; and

(B) may transfer to a Senior Executive Serv-
ice position in another agency for which the
appointee is qualified, with the approval of the
agency to which the appointee transfers.

(2)(A) Except as provided in subparagraph (B)
of this paragraph, a career appointee may be re-
assigned to any Senior Executive Service posi-
tion only if the career appointee receives writ-
ten notice of the reassignment at least 15 days
before the effective date of such reassignment.

(B)(i) A career appointee may not be reas-
signed to a Senior Executive Service position
outside the career appointee’s commuting area
unless—

(I) before providing notice under subclause
(II) of this clause (or seeking or obtaining
the consent of the career appointee under clause
(ii) of this subparagraph to waive such notice),
the agency consults with the career appointee
on the reasons for, and the appointee’s pref-
ences with respect to, the proposed reassign-
ment; and

(II) the career appointee receives written no-
tice of the reassignment, including a state-
ment of the reasons for the reassignment, at
least 60 days before the effective date of the
reassignment.

(ii) Notice of reassignment under clause (i)(II)
of this subparagraph may be waived with the
written consent of the career appointee in-
volved.

(b)(1) Notwithstanding section 3394(b) of this
title, a limited emergency appointee may be re-
assigned to another Senior Executive Service
position in the same agency established to meet
a bona fide, unanticipated, urgent need, except
that the appointee may not serve in one or more
positions in such agency under such appoint-
ment in excess of 18 months.

(2) Notwithstanding section 3394(b) of this
Title 5—Government Organization and Employees
§ 3395

more positions in the agency under such ap-
pointment in excess of 3 years.

(c) A limited term appointee or a limited
emergency appointee may not be appointed to,
or continue to hold, a position under such an ap-
pointment if, within the preceding 48 months,
the individual has served more than 36 months,
in the aggregate, under any combination of such
types of appointment.

(d) A noncareer appointee in an agency—

(1) may be reassigned to any general posi-
tion in the agency for which the appointee is
qualified; and

(2) may transfer to a general position in an-
other agency with the approval of the agency
to which the appointee transfers.

(e)(1) Except as provided in paragraph (2) of
this subsection, a career appointee in an agency
may not be involuntarily reassigned—

(A) within 120 days after an appointment of
the head of the agency; or

(B) within 120 days after the appointment in
the agency of the career appointee’s most im-
mediate supervisor who—

(i) is a noncareer appointee; and

(ii) has the authority to make an initial
appraisal of the career appointee’s perform-
ance under subchapter II of chapter 43.

(2) Paragraph (1) of this subsection does not
apply with respect to—

(A) any reassignment under section 4314(b)(3)
of this title; or

(B) any disciplinary action initiated before
an appointment referred to in paragraph (1) of
this subsection.

(3) For the purpose of applying paragraph (1)
to a career appointee, any days (not to exceed a
total of 60) during which such career appointee
is serving pursuant to a detail or other tem-
porary assignment apart from such appointee’s
regular position shall not be counted in deter-
mining the number of days that have elapsed
since an appointment referred to in subpara-
graph (A) or (B) of such paragraph.

(Amended Pub. L. 95–454, title IV, §403(a), Oct. 13,
1978, 92 Stat. 1057, which related to nonapplicability
of part-time career employment opportunities program
was renumbered as section 3405 of this title by Pub. L.
Stat. 1226.)

PRIOR PROVISIONS

A prior section 3395, added Pub. L. 95–437, §3(a), Oct.
10, 1978, 92 Stat. 1057, which related to personnel ceil-
ings, was renumbered as section 3394 of this title by
Stat. 1226.

AMENDMENTS

amended cl. (ii) generally. Prior to amendment, cl. (ii)
read as follows: ‘‘has the authority to reassign the ca-
reer appointee.’’

Subsec. (e)(3). Pub. L. 102–175, §3(2), added par. (3).

provisions as subpar. (A), inserted exception relating to
subpar. (B), and added subpar. (B).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–615 effective Nov. 8, 1984,
see section 307 of Pub. L. 98–615, set out as a note under
section 3393 of this title.
§ 3396. Development for and within the Senior Executive Service

(a) The Office of Personnel Management shall establish programs for the systematic development of candidates for the Senior Executive Service and for the continuing development of senior executives, or require agencies to establish such programs which meet criteria prescribed by the Office.

(b) The Office shall assist agencies in the establishment of programs required under subsection (a) of this section and shall monitor the implementation of the programs. If the Office finds that any agency’s program under subsection (a) of this section is not in compliance with the criteria prescribed under such subsection, it shall require the agency to take such corrective action as may be necessary to bring the program into compliance with the criteria.

(c)(1) The head of an agency may grant a sabbatical to any career appointee for not to exceed 11 months in order to permit the appointee to engage in study or uncompensated work experience which will contribute to the appointee’s development and effectiveness. A sabbatical shall not result in loss of, or reduction in, pay, leave to which the career appointee is otherwise entitled, credit for time or service, or performance or efficiency rating. The head of the agency may authorize in accordance with chapter 57 of this title such travel expenses (including per diem allowances) as the head of the agency may determine to be essential for the study or experience.

(2) A sabbatical under this subsection may not be granted to any career appointee—

(A) more than once in any 10-year period;

(B) unless the appointee has completed 7 years of service—

(i) in one or more positions in the Senior Executive Service;

(ii) in one or more other positions in the civil service the level of duties and responsibilities of which are equivalent to the level of duties and responsibilities of positions in the Senior Executive Service; or

(iii) in any combination of such positions, except that not less than 2 years of such 7 years of service must be in the Senior Executive Service; and

(C) if the appointee is eligible for voluntary retirement with a right to an immediate annuity under section 8336 of this title.

Any period of assignment under section 3373 of this title, relating to assignments of employees to State and local governments, shall not be considered a period of service for the purpose of subparagraph (B) of this paragraph.

(3)(A) Any career appointee in an agency may be granted a sabbatical under this subsection only if the appointee agrees, as a condition of accepting the sabbatical, to serve in the civil service upon the completion of the sabbatical for a period of 2 consecutive years.

(B) Each agreement required under subparagraph (A) of this paragraph shall provide that in the event the career appointee fails to carry out the agreement (except for good and sufficient reason as determined by the head of the agency who granted the sabbatical) the appointee shall be liable to the United States for payment of all expenses (including salary) of the sabbatical. The amount shall be treated as a debt due the United States.

(d)(1) The Office shall encourage and assist individuals to improve their skills and increase their contribution by service in a variety of agencies as well as by accepting temporary placements in State or local governments or in the private sector.

(2) In order to promote the professional development of career appointees and to assist them in achieving their maximum levels of proficiency, the Office shall, in a manner consistent with the needs of the Government provide appropriate informational services and otherwise encourage career appointees to take advantage of any opportunities relating to—

(A) sabbaticals;

(B) training; or

(C) details or other temporary assignments in other agencies, State or local governments, or the private sector.


PRIOR PROVISIONS


AMENDMENTS

1991—Subsec. (d). Pub. L. 102–175 designated existing provisions as par. (1) and added par. (2).

§ 3397. Regulations

The Office of Personnel Management shall prescribe regulations to carry out the purpose of this subchapter.


PRIOR PROVISIONS


CHAPTER 34—PART-TIME CAREER EMPLOYMENT OPPORTUNITIES

Sec.

3401. Definitions.

3402. Establishment of part-time career employment programs.

3403. Limitations.

3404. Personnel ceilings.

3405. Nonapplicability.

3406. Regulations.

3407. Repealed.

3408. Employee organization representation.

AMENDMENTS

For the purpose of this chapter—
(1) “agency” means—
(A) an Executive agency;
(B) a military department;
(C) an agency in the judicial branch;
(D) the Library of Congress;
(E) the Botanic Garden; and
(F) the Office of the Architect of the Capitol; but does not include—
(i) a Government controlled corporation;
(ii) the Tennessee Valley Authority;
(iii) the Virgin Islands Corporation;
(iv) the Federal Bureau of Investigation, Department of Justice;
(v) the Central Intelligence Agency; and
(vi) the National Security Agency, Department of Defense; and
(2) “part-time career employment” means part-time employment of 16 to 32 hours a week (or 32 to 64 hours during a biweekly pay period in the case of a flexible or compressed work schedule under subchapter II of chapter 61 of this title) under a schedule consisting of an equal or varied number of hours per day, whether in a position which would be part-time without regard to this section or one established to allow job-sharing or comparable arrangements, but does not include employment on a temporary or intermittent basis.

Effective Date of 1983 Amendment
Amendment by Pub. L. 97–468 effective on date of transfer of Alaska Railroad to the State [Jan. 5, 1985], pursuant to section 1203 of Title 45, Railroads, see section 615(b) of Pub. L. 97–468.

Effective Date of 1978 Amendment

Short Title of 1978 Amendment
Section 1 of Pub. L. 95–437 provided that: “This Act [enacting this chapter, amending sections 8347, 8716, 8906, and 8913 of this title, and enacting provisions set out as notes under this section and sections 3407 and 8906 of this title] may be cited as the ‘Federal Employees Part-Time Career Employment Act of 1978’.”

Congressional Findings and Purpose
Section 2 of Pub. L. 95–437 provided that:
“(a) The Congress finds that—
“(1) many individuals in our society possess great productive potential which goes unused because they cannot meet the requirements of a standard workweek; and
“(2) part-time permanent employment—
“(A) provides older individuals with a gradual transition into retirement;
“(B) provides employment opportunities to handicapped individuals or others who require a reduced workweek;
“(C) provides parents opportunities to balance family responsibilities with the need for additional income;
“(D) benefits students who must finance their own education or vocational training;
“(E) benefits the Government, as an employer, by increasing productivity and job satisfaction, while lowering turnover rates and absenteeism, offering management more flexibility in meeting work requirements, and filling shortages in various occupations; and
“(F) benefits society by offering a needed alternative for those individuals who require or prefer shorter hours (despite the reduced income), thus increasing jobs available to reduce unemployment while retaining the skills of individuals who have training and experience.
“(b) The purpose of this Act [enacting this chapter, amending sections 8347, 8716, 8906, and 8913 of this title, and enacting provisions set out as notes under this section and sections 3407 and 8906 of this title] is to provide increased part-time career employment opportunities throughout the Federal Government.”

§ 3402. Establishment of part-time career employment programs
(a)(1) In order to promote part-time career employment opportunities in all grade levels, the head of each agency, by regulation, shall establish and maintain a program for part-time career employment within such agency. Such regulations shall provide for—
(A) the review of positions which, after such positions become vacant, may be filled on a part-time career employment basis (including the establishment of criteria to be used in identifying such positions);
(B) procedures and criteria to be used in connection with establishing or converting positions for part-time career employment, subject to the limitations of section 3403 of this title;
(C) annual goals for establishing or converting positions for part-time career employ-
ment, and a timetable setting forth interim and final deadlines for achieving such goals;

(D) a continuing review and evaluation of the part-time career employment program established under such regulations; and

(E) procedures for notifying the public of vacant part-time positions in such agency, utilizing facilities and funds otherwise available to such agency for the dissemination of information.

(2) The head of each agency shall provide for communication between, and coordination of the activities of, the individuals within such agency whose responsibilities relate to the part-time career employment program established within that agency.

(3) Regulations established under paragraph (1) of this subsection may provide for such exceptions as may be necessary to carry out the mission of the agency.

(b)(1) The Office of Personnel Management, by regulation, shall establish and maintain a program under which it shall, on the request of an agency, advise and assist such agency in the establishment and maintenance of its part-time career employment program under this chapter.

(2) The Office shall conduct a research and demonstration program with respect to part-time career employment within the Federal Government. In particular, such program shall be directed to—

(A) determining the extent to which part-time career employment may be used in filling positions which have not traditionally been open for such employment on any extensive basis, such as supervisory, managerial, and professional positions;

(B) determining the extent to which job-sharing arrangements may be established for various occupations and positions; and

(C) evaluating attitudes, benefits, costs, efficiency, and productivity associated with part-time career employment, as well as its various sociological effects as a mode of employment.


AMENDMENTS

1978—Pub. L. 95–454 renumbered section 3393 of this title as this section.

§ 3404. Personnel ceilings

In administering any personnel ceiling applicable to an agency (or unit therein), an employee employed by such agency on a part-time career employment basis shall be counted as a fraction which is determined by dividing 40 hours into the average number of hours of such employee’s regularly scheduled workweek. This section shall become effective on October 1, 1980.


AMENDMENTS

1978—Pub. L. 95–454 renumbered section 3394 of this title as this section.

§ 3405. Nonapplicability

(a) If, on the date of enactment of this chapter, there is in effect with respect to positions within an agency a collective-bargaining agreement which establishes the number of hours of employment a week, then this chapter shall not apply to those positions.

(b) This chapter shall not require part-time career employment in positions the rate of basic pay for which is fixed at a rate equal to or greater than the minimum rate payable under section 5376.


REFERENCES IN TEXT

The date of enactment of this chapter, referred to in subsec. (a), is the date of the enactment of Pub. L. 95–437, which was approved Oct. 10, 1978.

AMENDMENTS


1978—Pub. L. 95–454, § 906(c)(1)(B), renumbered section 3395 of this title as this section.

Subsecs. (a), (b). Pub. L. 95–454, § 906(c)(2)(C), substituted “chapter” for “subchapter” wherever appearing.

EFFECTIVE DATE OF 1978 AMENDMENT


§ 3403. Limitations

(a) An agency shall not abolish any position occupied by an employee in order to make the duties of such position available to be performed on a part-time career employment basis.

(b) Any person who is employed on a full-time basis in an agency shall not be required to accept part-time employment as a condition of continued employment.


AMENDMENTS

1978—Pub. L. 95–454 renumbered section 3393 of this title as this section.

EFFECTIVE DATE OF 1978 AMENDMENT

§ 3406. Regulations
Before any regulation is prescribed under this chapter, a copy of the proposed regulation shall be published in the Federal Register and an opportunity provided to interested parties to present written comment and, where practicable, oral comment. Initial regulations shall be prescribed not later than 180 days after the date of the enactment of this chapter.


REFERENCES IN TEXT
The date of the enactment of this chapter, referred to in text, is the date of the enactment of Pub. L. 95–437, which was approved Oct. 10, 1978.

AMENDMENTS

Effective Date of 1978 Amendment


§ 3408. Employee organization representation
If an employee organization has been accorded exclusive recognition with respect to a unit within an agency, then the employee organization shall be entitled to represent all employees within that unit employed on a part-time career employment basis.


AMENDMENTS
1978—Pub. L. 95–454 renumbered section 3398 of this title as this section.

CHAPTER 35—RETENTION PREFERENCE, VOLUNTARY SEPARATION INCENTIVE PAYMENTS, RESTORATION, AND REEMPLOYMENT

SUBCHAPTER I—RETENTION PREFERENCE

Sec. 3501. Definitions; application.
3502. Order of retention.
3503. Transfer of functions.
3504. Preference eligibles; retention; physical qualifications; waiver.

SUBCHAPTER II—VOLUNTARY SEPARATION INCENTIVE PAYMENTS

3521. Definitions.
3522. Agency plans; approval.
3523. Authority to provide voluntary separation incentive payments.
3524. Effect of subsequent employment with the Government.

3525. Regulations.

SUBCHAPTER III—RESTATEMENT OR RESTORATION AFTER SUSPENSION OR REMOVAL FOR NATIONAL SECURITY
3571. Reinstatement or restoration; individuals suspended or removed for national security.

SUBCHAPTER IV—REEMPLOYMENT AFTER SERVICE WITH AN INTERNATIONAL ORGANIZATION
3581. Definitions.
3582. Rights of transferring employees.
3583. Computations.
3584. Regulations.

SUBCHAPTER V—REMOVAL, RESTATEMENT, AND GUARANTEED PLACEMENT IN THE SENIOR EXECUTIVE SERVICE
3591. Definitions.
3592. Removal from the Senior Executive Service.
3593. Reinstatement in the Senior Executive Service.
3594. Guaranteed placement in other personnel systems.
3595. Reduction in force in the Senior Executive Service.
3595a. Furlough in the Senior Executive Service.
3596. Regulations.

SUBCHAPTER VI—REEMPLOYMENT FOLLOWING LIMITED APPOINTMENT IN THE FOREIGN SERVICE
3597. Reemployment following limited appointment in the Foreign Service.

AMENDMENTS

1 So in original. Two sections “3598” have been enacted.
2 So in original. Does not conform to section catchline.
SUBCHAPTER I—RETENTION PREFERENCE

§ 3501. Definitions; application

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

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

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

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

(A) his retirement was based on disability—

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

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

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

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

(b) Except as otherwise provided by this subsection and section 3504 of this title, this subchapter applies to each employee in or under an Executive agency. This subchapter does not apply to an employee whose appointment is made under section 2108. In paragraph (3)(C), the words “on November 30, 1964, he was employed in a position to which this subchapter applies and thereafter he continued to be so employed” are substituted for “immediately prior to the effective date of this subsection, he was employed in a civilian office to which this Act applies and, on and after such date, he continues to be employed in any such office”.

Subsection (b) is supplied on authority of sections 12, and 20 of the Act of June 27, 1944, ch. 287, 58 Stat. 387, 391, which are carried into this title. Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preference to the report.

AMENDMENTS


1979—Subsec. (b). Pub. L. 95–454 inserted reference to a member of Senior Executive Service.

1975—Subsec. (b). Pub. L. 94–183 struck out “, except an employee whose appointment is made under section 3511 of title 39” after “or made with the advice and consent of, the Senate”.

EFFECTIVE DATE OF 1978 AMENDMENT


§ 3502. Order of retention

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

(1) tenure of employment;

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

(3) length of service; and

(4) efficiency or performance ratings.

In computing length of service, a competing employee—

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

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

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

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

(C) is entitled to credit for—

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

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

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

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

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

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

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

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

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

(B) the effective date of the action;

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

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

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

(3) Notice under paragraph (1)(B)—

(A) shall be given to—

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

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

(B) shall consist of written notification as to—

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

(ii) when those separations will occur; and

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

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

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

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

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

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

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

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

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

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

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

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

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

In subsections (a) and (b), the references to "performance" ratings and ratings of "satisfactory" are added on authority of former section 2005, which is carried into section 2004.

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

REFERENCES IN TEXT

Section 8(b) of the Soil Conservation and Allotment Act, referred to in subsec. (a)(C)(i), probably means section 8(b) of the Soil Conservation and Domestic Allotment Act, which is classified to section 590h(b)(2) of Title 16, Conservation.

Section 10(b) of the Agricultural Adjustment Act, referred to in subsec. (a)(C)(i), is classified to section 616(b)(2) of Title 7, Agriculture.


Section 134(a)(2)(A) of the Act is classified to section 4304.

The Workforce Investment Act or under title I of the Workforce Investment Act of 1998 for "other services under the Job Training Partnership Act".


Subsec. (f). Pub. L. 104–203 amended subsec. (f) generally. Prior to amendment, subsec. (f) read as follows: "(f)(1) The Secretary of Defense or the Secretary of a military department may—

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

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

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

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

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

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


1992—Subsecs. (d), (e). Pub. L. 102–544 added subsecs. (d) and (e).

1990—Subsec. (a)(C). Pub. L. 101–508 amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: "is entitled to credit for service rendered as an employee of a county committee established pursuant to section 590(b)(2) of title 16, or of a committee or an association of producers described in section 610(b) of title 7.''

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


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

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

1968—Subsec. (a). Pub. L. 90–622 made minor changes in form and punctuation in subpars. (A) and (B), and, in subpar. (C), substituted "section 500(b)(2) of title 16" and "section 61(b)(2) of title 7" for "section 8(b) of the Soil Conservation and Domestic Allotment Act (48 U.S.C. 590(b))" and "section 10(b) of the Agricultural Adjustment Act of May 12, 1933 (48 Stat. 37)" respectively.


EFFECTIVE DATE OF 1998 AMENDMENT

[amending this section and sections 2014, 2015, and 2026 of Title 7, Agriculture, sections 1255a and 1613 of Title 8, Aliens and Nationality, sections 636, 1022a, 3116, and 3117 of Title 15, Commerce and Trade, section 79W of Title 16, Conservation, section 665 of Title 18, Crimes and Criminal Procedure, sections 2296 and 2311 of Title 19, Customs Duties, sections 10701–2, 1078v, 3435, 5931, 5930, 6383, 5434, 4543, and 6454 of Title 20, Education, section 3855 of Title 22, Foreign Relations and Intercourse, section 2102 of Title 29, Labor, section 6703 of Title 31, Money and Finance, sections 4102A, 4103A, and 4213 of Title 38, Veterans’ Benefits, and sections 603, 1437a, 1474, 3013, 3056, 3056a, 3056h, 3796ee, 4368a, 4953, 4959, 6103, 6864, 6873, 7274h, 9806, 11302, 12873, 12653c, 12655m, 12899e, and 13823 of Title 42, The Public Health and Welfare, and sections 3004 of Title 26, Internal Revenue Code, section 1721 of Title 29, and section 4101 of Title 32, and repealing provisions set out as notes under sections 1501 and 1551 of Title 29] shall take effect on the date of the enactment of this Act [Oct. 21, 1998].

“§ 3502 EFFECTIVE DATE OF 1978 AMENDMENT


“§ 3503 EFFECTIVE DATE OF 1968 AMENDMENT


“§ 3504 REGULATIONS

For provisions relating to promulgation of regulations necessary to carry out amendment by section 1043(d)(1) of Pub. L. 104–106, see section 1043(b)(2) of Pub. L. 104–106, set out as a Regulations: Effective Date of 1996 Amendment note under section 6347 of this title.

“§ 3505 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 408(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

“§ 3506 INTERAGENCY PLACEMENT PROGRAM FOR FEDERAL EMPLOYEES AFFECTED BY REDUCTIONS IN FORCE


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

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

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

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

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

“(i) the residence of the employee; or

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

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

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

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

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

“§ 3507 (a) If the Director establishes a program pursuant to paragraph (1), the report required by subsection (a)(5)
§ 3503  TITLE 5—GOVERNMENT ORGANIZATION AND EMPLOYEES  Page 282

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

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

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

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

(B) procedures established under section 3505 of such title.

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


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

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

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

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

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

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

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

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

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


By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3 of the United States Code and sections 3502(e), 3505a(e), and 5377(i)(2) of title 5 of the United States Code, it is hereby ordered as follows:

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

(1) The authority of the President under 5 U.S.C. 3502(e), as added by section 443(b) of Public Law 102–484, to shorten the period of advance notice otherwise required by law with respect to reductions in force.

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

SIC. 2. This order shall be effective immediately.

§ 3503. Transfer of functions

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

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


HISTORICAL AND REVISION NOTES

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

-------- 5 U.S.C. 861(a) (3d provision).


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

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

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

AMENDMENTS

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

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

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–54 effective July 12, 1979, see section 2(b) of Pub. L. 96–54, set out as a note under section 305 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT


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

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

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

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

(b) If an examining agency determines that, on the basis of evidence before it, a preference eligible described in section 2108(3)(C) of this title who has a compensable service-connected disability of 30 percent or more is not able to fulfill the physical requirements of the position, the examining agency shall notify the Office of the determination and, at the same time, the examining agency shall notify the preference eligible of the reasons for the determination and of the right to respond, within 15 days of the date of the notification, to the Office. The Office shall require a demonstration by the appointing authority that the notification was timely sent to the preference eligible and the appointing authority and the preference eligible.

The preference eligible shall notify the Office of the basis of evidence before it, a preference eligible who has a compensable service-connected disability described in section 2108(3)(C) of this title who has a compensable service-connected disability of 30 percent or more is not able to fulfill the physical requirements of the position, the examining agency shall notify the Office of the determination and, at the same time, the examining agency shall notify the preference eligible of the reasons for the determination and of the right to respond, within 15 days of the date of the notification, to the Office. The Office shall require a demonstration by the appointing authority that the notification was timely sent to the preference eligible and the appointing authority and the preference eligible.

The preference eligible shall notify the Office of the basis of evidence before it, a preference eligible who has a compensable service-connected disability described in section 2108(3)(C) of this title who has a compensable service-connected disability of 30 percent or more is not able to fulfill the physical requirements of the position, the examining agency shall notify the Office of the determination and, at the same time, the examining agency shall notify the preference eligible of the reasons for the determination and of the right to respond, within 15 days of the date of the notification, to the Office. The Office shall require a demonstration by the appointing authority that the notification was timely sent to the preference eligible and the appointing authority and the preference eligible.

(2) ''employee''—

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

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

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

(B) shall not include—

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

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

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

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

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

(vi) any employee who—

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

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

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


\section{Prior Provisions}

A prior subchapter II of this chapter consisting of section 3551, related to restoration of positions of Federal and District of Columbia employees upon release from duty in Reserves or National Guard, prior to repeal by Pub. L. 109–336, §2(b)(2)(B), 8, Oct. 13, 1994, 108 Stat. 3169, 3175, effective with respect to reemployments initiated on or after first day after 60-day period beginning Oct. 13, 1994, with transition rules.

\section{Definitions}

In this subchapter, the term—

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

(2) "employee"—

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

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

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

(B) shall not include—

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

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

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

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

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

(vi) any employee who—

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

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

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

AMENDMENTS

2011—Par. (1). Pub. L. 112–74 substituted “section 105 (other than the Government Accountability Office)” for “section 105”.

EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by Pub. L. 112–74 applicable to voluntary separation incentive payments made during fiscal year 2012 or any succeeding fiscal year, see section 1401(c) of Pub. L. 112–74, set out as a note under section 60q of Title 2, The Congress.

EFFECTIVE DATE


(1) the specific positions and functions to be reduced or eliminated;

(2) a description of which categories of employees will be offered incentives;

(3) the time period during which incentives may be paid;

(4) the number and amounts of voluntary separation incentive payments to be offered; and

(5) a description of how the agency will operate without the eliminated positions and functions.

(c) The Director of the Office of Personnel Management shall review each agency’s plan and may make any appropriate modifications in the plan, in consultation with the Director of the Office of Management and Budget. A plan under this section may not be implemented without the approval of the Office of Personnel Management.


§ 3523. Authority to provide voluntary separation incentive payments

(a) A voluntary separation incentive payment under this subchapter may be paid to an employee only as provided in the plan of an agency established under section 3522.

(b) A voluntary incentive payment—

(1) shall be offered to agency employees on the basis of—

(A) 1 or more organizational units;

(B) 1 or more occupational series or levels;

(C) 1 or more geographical locations;

(D) skills, knowledge, or other factors related to a position;

(E) specific periods of time during which eligible employees may elect a voluntary incentive payment; or

(F) any appropriate combination of such factors;

(2) shall be paid in a lump sum after the employee’s separation;

(3) shall be equal to the lesser of—

(A) an amount determined by the agency head, not to exceed $25,000;

(B) an amount determined by the agency head, not to exceed $25,000;

(4) may be made only in the case of an employee who voluntarily separates (whether by retirement or resignation) under this subchapter;

(5) shall not be a basis for payment, and shall not be included in the computation, of any other type of Government benefit;

(6) shall not be taken into account in determining the amount of any severance pay to which the employee may be entitled under section 5595, based on another other separation; and

(7) shall be paid from appropriations or funds available for the payment of the basic pay of the employee.


1 So in original. Probably should be “and”.

2 So in original. Probably should be “Director”. 

3 So in original.
§ 3524. Effect of subsequent employment with the Government

(a) The term "employment"—

(1) in subsection (b) includes employment under a personal services contract (or other direct contract) with the United States Government (other than an entity in the legislative branch); and

(2) in subsection (c) does not include employment under such a contract.

(b) An individual who has received a voluntary separation incentive payment under this subchapter and accepts any employment for compensation with the Government of the United States with 5 years after the date of the separation on which the payment is based shall be required to pay, before the individual's first day of employment, the entire amount of the incentive payment to the agency that paid the incentive payment.

(c)(1) If the employment under this section is with an agency, other than the Government Accountability Office, the United States Postal Service, or the Postal Regulatory Commission, the Director of the Office of Personnel Management may, at the request of the head of the agency, may waive the repayment if—

(A) the individual involved possesses unique abilities and is the only qualified applicant available for the position; or

(B) in case of an emergency involving a direct threat to life or property, the individual—

(i) has skills directly related to resolving the emergency; and

(ii) will serve on a temporary basis only so long as that individual's services are made necessary by the emergency.

(2) If the employment under this section is with the judicial branch, the head of the entity or the appointing official may waive the repayment if the individual involved possesses unique abilities and is the only qualified applicant available for the position.

(3) If the employment under this section is with the judicial branch, the Director of the Administrative Office of the United States Courts may waive the repayment if the individual involved possesses unique abilities and is the only qualified applicant available for the position.


PRIOR PROVISIONS


SUBCHAPTER III—REINSTATEMENT OR RESTORATION AFTER SUSPENSION OR REMOVAL FOR NATIONAL SECURITY

§ 3571. Reinstatement or restoration; individuals suspended or removed for national security

An individual suspended or removed under section 7532 of this title may be restored to duty in the discretion of the head of the agency concerned.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 429.)

HISTORICAL AND REVISION NOTES

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

1 Sec. 3571

The words “suspended or removed under section 7532 of this title” are coextensive with and substituted for “whose employment is so suspended or terminated under the authority of said sections.”

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

SUBCHAPTER IV—REEMPLOYMENT AFTER SERVICE WITH AN INTERNATIONAL ORGANIZATION

§ 3581. Definitions

For the purpose of this subchapter—

(1) “agency” means—

(A) an Executive agency;

(B) a military department; and

(C) an employing authority in the legislative branch;

(2) “employee” means an employee in or under an agency;

(3) “international organization” means a public international organization or international-organization preparatory commission in which the Government of the United States participates;

(4) “transfer” means the change of position by an employee from an agency to an international organization; and

(5) “reemployment” means—

(A) the reemployment of an employee under section 3582(b) of this title; or

(B) the reemployment of a Congressional employee within 90 days from his separation from an international organization;

following a term of employment not extending beyond the period named by the head of the agency at the time of consent to transfer or,
§ 3582. Rights of transferring employees

(a) An employee serving under an appointment not limited to 1 year or less who transfers to an international organization with the consent of the head of his agency is entitled—

(1) to retain coverage, rights, and benefits under any system established by law for the retirement of employees, if necessary employee deductions and agency contributions in payment for the coverage, rights, and benefits for the period of employment with the international organization are currently deposited in the system's fund or depository; and the period during which coverage, rights, and benefits are retained under this paragraph is deemed creditable service under the system, except that such service shall not be considered creditable service for the purpose of any retirement system for transferring personnel, if such service forms the basis, in whole or in part, for an annuity or pension under the retirement system of the international organization;

(2) to retain coverage, rights, and benefits under chapters 87 and 89 of this title, if necessary employee deductions and agency contributions in payment for the coverage, rights, and benefits for the period of employment with the international organization are currently deposited in the Employees' Life Insurance Fund and the Employees' Health Benefits Fund, as applicable, and the period during which coverage, rights, and benefits are retained under this paragraph is deemed service as an employee under chapters 87 and 89 of this title;

(3) to retain coverage, rights, and benefits under subchapter I of chapter 81 of this title, and for this purpose his employment with the international organization is deemed employment by the United States, but if he or his dependents receive from the international organization a payment, allowance, gratuity, payment under an insurance policy for which the premium is wholly paid by the international organization, or other benefit of any kind on account of the same injury or death, the amount thereof is credited against disability or death compensation, as the case may be, payable under subchapter I of chapter 81 of this title; and

(4) to elect to retain to his credit all accumulated and current accrued annual leave to which entitled at the time of transfer which would otherwise be liquidated by a lump-sum payment. On his request at any time before reemployment, he shall be paid for the annual leave retained. If he receives a lump-sum payment and is reemployed within 6 months after transfer, he shall refund to the agency the amount of the lump-sum payment. This paragraph does not operate to cause a forfeiture of retained annual leave following reemployment or to deprive an employee of a lump-sum payment to which he would otherwise be entitled.

(b) An employee entitled to the benefits of subsection (a) of this section is entitled to be reemployed within 30 days of his application for reemployment in his former position or a position of like seniority, status, and pay in the agency from which he transferred, if—

(1) he is separated from the international organization within 5 years, or any extension thereof, after entering on duty with the international organization or within such shorter period as may be named by the head of the agency at the time of consent to transfer; and

(2) he applies for reemployment not later than 90 days after the separation.

On reemployment, an employee entitled to the benefits of subsection (a) is entitled to the rate of basic pay to which the employee would have been entitled had the employee remained in the civil service. On reemployment, the agency shall restore the sick leave account of the employee, by credit or charge, to its status at the time of transfer. The period of separation caused by the employment of the employee with the international organization and the period necessary
to effect reemployment are deemed creditable service for all appropriate civil service employment purposes. This subsection does not apply to a congressional employee.

(c) This section applies only with respect to so much of a period of employment with an international organization as does not exceed 5 years, or any extension thereof, or such shorter period named by the head of the agency at the time of consent to transfer, except that for retirement and insurance purposes this section continues to apply during the period after separation from the international organization in which—

1. an employee, except a Congressional employee, is properly exercising or could exercise the reemployment right established by subsection (b) of this section; or
2. a Congressional employee is effecting or could effect a reemployment.

During that reemployment period, the employee is deemed on leave without pay for retirement and insurance purposes.

(d) During the employee’s period of service with the international organization, the agency from which the employee is transferred shall make contributions for retirement and insurance purposes from the appropriations or funds of that agency so long as contributions are made by the employee.


**Historical and Revision Notes**

<table>
<thead>
<tr>
<th>Derivation</th>
<th>U.S. Code</th>
<th>Revised Statutes and Statutes at Large</th>
</tr>
</thead>
</table>

In subsection (a), the words “Notwithstanding the provisions of any law, Executive order, or regulation” are omitted as unnecessary. In paragraph (2), the words “an employee under chapter 87 of this title” are substituted for “an officer or employee of the United States”. In paragraph (4), the words “under no circumstances” are 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.

**Amendments**

1998—Subsec. (b). Pub. L. 105–277 inserted concluding provisions and struck out former concluding provisions which read as follows: “On reemployment, the employee is entitled to the rate of basic pay to which he would have been entitled had he remained in the civil service. On reemployment, the agency shall restore his sick leave account, by credit or charge, to its status at the time of transfer. The period of separation caused by his employment with the international organization and the period necessary to effect reemployment are deemed creditable service for all appropriate civil service employment purposes. On reemployment, he is entitled to be paid, under such regulations as the President may prescribe and from appropriations or funds of the agency from which transferred, an amount equal to the difference between the pay, allowances, post differential, and other monetary benefits paid by the international organization and the pay, allowances, post differential, and other monetary benefits that would have been paid by the agency had he been detailed to the international organization under section 3343 of this title. Such a payment shall be made to an employee who is unable to exercise his reemployment right because of disability incurred while on transfer to an international organization under this subchapter and, in the case of any employee who dies while on such a transfer or during the period after separation from the international organization in which he is properly exercising or could exercise his reemployment right, in accordance with subchapter VIII of chapter 55 of this title. This subsection does not apply to a congressional employee nor may any payment provided for in the preceding two sentences of this subsection be based on a period of employment with an international organization occurring before the first day of the first pay period which begins after December 29, 1969.”


1969—Subsec. (a). Pub. L. 91–175, §502(c), inserted provision at end of cl. (1) excepting from creditable service, for the purpose of any retirement system, an agency employee who transfers to an international organization, if such service forms the basis for an annuity or pension under the retirement system of the international organization, and, in cl. (2), inserted references to chapter 89 and Employees’ Health Benefits Fund.

Subsec. (b). Pub. L. 91–175, §502(d), struck out “, except a Congressional employee,” in provisions preceding cl. (1), substituted “5 years or any extension thereof,” for “3 years,” in cl. (1), and, in provisions following cl. (2), inserted provision dealing with pay differentials to be received by former agency employee on reemployment with agency after service with international organization.

Subsec. (c). Pub. L. 91–175, §502(e), substituted “5 years, or any extension thereof,” for “3 years”.

Subsec. (d). Pub. L. 91–175, §502(f), made contributions for retirement and insurance purposes mandatory by the agency from which employee is transferred, during employee’s period of service with international organization, so long as contributions are made by employee.

**Effective Date of 1998 Amendment**


**Delegation of Authority**

Authority of President under subsec. (b) of this section delegated to Office of Personnel Management, and authority to define and specify pay, allowances, etc., to be paid by the agency, delegated to Secretary of State, see section 3 of Ex. Ord. No. 11552, Aug. 24, 1970, 35 F.R. 13569, set out as a note under section 3584 of this title.

§ 3583. Computations

A computation under this subchapter before reemployment is made in the same manner as if the employee had received basic pay, or basic pay plus additional pay in the case of a Congressional employee, at the rate at which it would have been payable had the employee continued in the position in which he was serving at the time of transfer.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 431.)

**Historical and Revision Notes**

<table>
<thead>
<tr>
<th>Derivation</th>
<th>U.S. Code</th>
<th>Revised Statutes and Statutes at Large</th>
</tr>
</thead>
</table>
Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

§ 3584. Regulations

The President may prescribe regulations necessary to carry out this subchapter and section 3343 of this title and to protect and assure the retirement, insurance, leave, and reemployment rights and such other similar civil service employment rights as he finds appropriate. The regulations may provide for the exclusion of employees from the application of this subchapter and section 3343 of this title on the basis of the nature and type of employment including excepted appointments of a confidential or policy-determining character, or conditions pertaining to the employment including short-term appointments, seasonal or intermittent employment, and part-time employment.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 431.)

HISTORICAL AND REVISION NOTES

<table>
<thead>
<tr>
<th>Derivation</th>
<th>U.S. Code</th>
<th>Revised Statutes and Statutes at Large</th>
</tr>
</thead>
</table>

The words “civil service employment rights” are substituted for “Federal employment rights”. The word “including” is substituted for “such as, but not limited to”.

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

EXECUTIVE ORDER NO. 10804

Ex. Ord. No. 10804, Feb. 12, 1959, 24 F.R. 1147, which delegated to the United States Civil Service Commission the authority vested in the President by section 5 of the Federal Employees International Organization Service Act (72 Stat. 961) [now this section], was revoked by Ex. Ord. No. 11552, Aug. 24, 1970, 35 F.R. 13569, set out below.

Ex. Ord. No. 11552. PROVIDING FOR DETAILS AND TRANSFERS OF FEDERAL EMPLOYEES TO INTERNATIONAL ORGANIZATIONS


By virtue of the authority vested in me by section 301 of title 3 and section 3584 of title 5 [this section], United States Code, and as President of the United States, it is ordered as follows:

SECTION 1. Leadership and coordination. The Secretary of State shall provide leadership and coordination for the effort of the Federal Government to increase and improve its participation in international organizations through transfers and details of well-qualified Federal employees, and shall develop policies, procedures, and programs consistent with this order to advance and encourage such participation.

Sect. 2. Federal agency cooperation. Each agency in the executive branch of the Federal Government shall to the maximum extent feasible and with due regard to its manpower requirements assist and encourage details and transfers of employees to international organizations by observing the following policies and procedures:

1. Vacancies in international organizations shall be brought to the notice of well-qualified agency employees whose abilities and levels of responsibility in the Federal service are commensurate with those required to fill such vacancies.

2. Subject to prior approval of his agency, no leave shall be charged an employee who is absent for a maximum of three days for interview for a proposed detail or transfer at the formal request of an international organization of a Federal official; an agency may approve official travel for necessary travel within the United States in connection with such an interview.

3. An agency, upon request of an appropriate authority, shall provide international organizations with detailed assessments of the technical or professional qualifications of individual employees being formally considered for details and transfers to specific positions.

4. Upon return of an employee to his agency, the agency shall give due consideration to the employee’s overall qualifications, including those which may have been acquired during his service with the international organization, in determining the position and grade in which he is reemployed.

Sect. 4. Revocation. Executive Order No. 10804 of Feb. 12, 1959, is hereby revoked.

SUBCHAPTER V—REMOVAL, REINSTATEMENT, AND GUARANTEED PLACEMENT IN THE SENIOR EXECUTIVE SERVICE

§ 3591. Definitions

For the purpose of this subchapter, “agency”, “Senior Executive Service position”, “career executive”, “career appointee”, “limited term appointee”, “limited emergency appointee”, “noncareer appointee”, and “general position” have the meanings set forth in section 3132(a) of this title.


EFFECTIVE DATE


§ 3592. Removal from the Senior Executive Service

(a) Except as provided in subsection (b) of this section, a career appointee may be removed from the Senior Executive Service to a civil service position outside of the Senior Executive Service—

1. during the 1-year period of probation under section 3393(d) of this title, or

2. at any time for less than fully successful executive performance as determined under subchapter II of chapter 43 of this title, except that in the case of a removal under paragraph (2) of this subsection the career appointee
shall, at least 15 days before the removal, be entitled, upon request, to an informal hearing before an official designated by the Merit Systems Protection Board at which the career appointee may appear and present arguments, but such hearing shall not give the career appointee the right to initiate an action with the Board under section 7701 of this title, nor need the removal action be delayed as a result of the granting of such hearing.

(b)(1) Except as provided in paragraph (2) of this subsection, a career appointee in an agency may not be involuntarily removed—

(A) within 120 days after an appointment of the head of the agency; or

(B) within 120 days after the appointment in the agency of the career appointee’s most immediate supervisor who—

(i) is a noncareer appointee; and

(ii) has the authority to remove the career appointee.

(2) Paragraph (1) of this subsection does not apply with respect to—

(A) any removal under section 3314(b)(3) of this title; or

(B) any disciplinary action initiated before an appointment referred to in paragraph (1) of this subsection.

(c) A limited emergency appointee, limited term appointee, or noncareer appointee may be removed from the service at any time.


§3593. Reinstatement in the Senior Executive Service

(a) A former career appointee may be reinstated, without regard to section 3393(b) and (c) of this title, to any Senior Executive Service position for which the appointee is qualified if—

(1) the appointee has successfully completed the probationary period established under section 3393(d) of this title; and

(2) the appointee left the Senior Executive Service for reasons other than misconduct, neglect of duty, malfeasance, or less than fully successful executive performance as determined under subchapter II of chapter 43.

(b) A career appointee who is appointed by the President to any civil service position outside the Senior Executive Service and who leaves the position for reasons other than misconduct, neglect of duty, or malfeasance shall be entitled to be placed in the Senior Executive Service if the appointee applies to the Office of Personnel Management within 90 days after separation from the Presidential appointment.

(c)(1) A former career appointee shall be reinstated, without regard to section 3393(b) and (c) of this title, to any vacant Senior Executive Service position in an agency for which the appointee is qualified if—

(A) the individual was a career appointee on May 31, 1981;

(B) the appointee was removed from the Senior Executive Service under section 3595 of this title before October 1, 1984, due to a reduction in force in that agency;

(C) before the removal occurred, the appointee successfully completed the probationary period established under section 3393(d) of this title; and

(D) the appointee applies for that vacant position within one year after the Office receives certification regarding that appointee pursuant to section 3595(b)(3)(B) of this title.

(2) A career appointee is entitled to appeal to the Merit Systems Protection Board under section 7701 of this title any determination by the agency that the appointee is not qualified for a position for which the appointee applies under paragraph (1) of this subsection.


AMENDMENTS

2002—Subsec. (a)(2). Pub. L. 107–296 added par. (2) and struck out former par. (2) which read as follows: “the appointee left the Senior Executive Service for reasons other than misconduct, neglect of duty, malfeasance,
less than fully successful executive performance as determined under subchapter II of chapter 43 of this title, or failure to be recertified as a senior executive under section 3393a.".

1989—Subsec. (a)(2). Pub. L. 101–194 struck out "or" after "malfeasance," and inserted ", or failure to be recertified as a senior executive under section 3393a." before period at end.


**Effective Date of 2002 Amendment**

Amendment by Pub. L. 107–296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

Pub. L. 107–296, title XIII, § 1321(c), Nov. 25, 2002, 116 Stat. 2297, provided that: "The amendment made by subsection (a)(2)(B) [amending this section] shall not apply with respect to an individual who, before the effective date of this section [see note above], leaves the Senior Executive Service for failure to be recertified as a senior executive under section 3393a of title 5, United States Code."

**Effective Date of 1989 Amendment**


**Effective Date of 1984 Amendment**

Amendment by Pub. L. 98–615 effective following expiration of 90-day period beginning on Nov. 8, 1984, see section 307 of Pub. L. 98–615, set out as a note under section 3393 of this title.

**Effective Date of 1981 Amendment**

Amendment by Pub. L. 97–35 effective June 1, 1981, with certain exceptions and conditions, see section 194(e) of Pub. L. 97–35, set out as an Effective Date note under section 3595 of this title.

§ 3594. Guaranteed placement in other personnel systems

(a) A career appointee who was appointed from a civil service position held under a career or career-conditional appointment (or an appointment of equivalent tenure, as determined by the Office of Personnel Management) and who, for reasons other than misconduct, neglect of duty, or malfeasance, is removed from the Senior Executive Service during the probationary period under section 3393(d) of this title, shall be entitled to be placed in a civil service position (other than a Senior Executive Service position) in any agency.

(b) A career appointee who has completed the probationary period under section 3393(d) of this title, and who—

(1) is removed from the Senior Executive Service for less than fully successful executive performance as determined under subchapter II of chapter 43 of this title; or

(2) is removed from the Senior Executive Service under paragraph (4) or (5) of section 3595(b) of this title;

shall be entitled to be placed in a civil service position (other than a Senior Executive Service position) in any agency.

(c)(1) For purposes of subsections (a) and (b) of this section—

(A) the position in which any career appointee is placed under such subsections shall be a continuing position at GS–15 of the General Schedule or classified above GS–15 pursuant to section 5108, or an equivalent position, and, in the case of a career appointee referred to in subsection (a) of this section, the career appointee shall be entitled to an appointment of a tenure equivalent to the tenure of the appointment held in the position from which the career appointee was appointed;

(B) any career appointee placed under subsection (a) or (b) of this section shall be entitled to receive basic pay at the highest of—

(i) the rate of basic pay in effect for the position in which placed;

(ii) the rate of basic pay in effect at the time of the placement for the position the career appointee held in the civil service immediately before being appointed to the Senior Executive Service; or

(iii) the rate of basic pay in effect for the career appointee immediately before being placed under subsection (a) or (b) of this section; and

(C) the placement of any career appointee under subsection (a) or (b) of this section may not be made to a position which would cause the separation or reduction in grade of any other employee.

(2) An employee who is receiving basic pay under paragraph (1)(B)(ii) or (iii) of this subsection is entitled to have the basic pay rate of the employee increased by 50 percent of the amount of each increase in the maximum rate of basic pay for the grade of the position in which the employee is placed under subsection (a) or (b) of this section until the rate is equal to the rate in effect under paragraph (1)(B)(i) of this subsection for the position in which the employee is placed.


**References in Text**


**Amendments**


Subsec. (b)(3). Pub. L. 107–296, § 1321(a)(2)(C)(III), struck out par. (3) which read as follows: "is removed from the Senior Executive Service for failure to be recertified under section 3393a.".


1984—Subsec. (b). Pub. L. 98–615 inserted provision relating to career appointees removed from the Senior Executive Service under section 3595(b)(4) or (5) of this title.
§ 3595. Reduction in force in the Senior Executive Service

(a) An agency shall establish competitive procedures for determining who shall be removed from the Senior Executive Service in any reduction in force of career appointees within that agency. The competitive procedures shall be designed to assure that such determinations are primarily on the basis of performance, as determined under subchapter II of chapter 43 of this title.

(b)(1) This subsection applies to any career appointee who has successfully completed the probationary period prescribed under section 3393(d) of this title.

(2) Except as provided in paragraphs (4) and (5), a career appointee may not be removed from the Senior Executive Service due to a reduction in force within an agency.

(3) A career appointee who, but for this subsection, would be removed from the Senior Executive Service due to a reduction in force within an agency—

(A) is entitled to be assigned by the head of that agency to a vacant Senior Executive Service position for which the career appointee is qualified; or

(B) if the agency head certifies, in writing, to the Office of Personnel Management that no such position is available in the agency, shall be placed by the Office in any agency in any vacant Senior Executive Service position unless the head of that agency determines that the career appointee is not qualified for that position.

The Office of Personnel Management shall take all reasonable steps to place a career appointee under subparagraph (B) and may require any agency to take any action which the Office considers necessary to carry out any such placement.

(4) A career appointee who is not assigned under paragraph (3)(A) may be removed from the Senior Executive Service due to a reduction in force if the career appointee declines a reasonable offer for placement in a Senior Executive Service position under paragraph (3)(B).

(5) A career appointee who is not assigned under paragraph (3)(A) may be removed from the Senior Executive Service due to a reduction in force if the career appointee is not placed in another Senior Executive Service position under paragraph (3)(B) within 45 days after the Office receives certification regarding that appointee under paragraph (3)(B).

(c) A career appointee is entitled to appeal to the Merit Systems Protection Board under section 7701 of this title whether the reduction in force complies with the competitive procedures required under subsection (a).

(d) For purposes of this section, “reduction in force” includes the elimination or modification of a position due to a reorganization, due to a lack of funds or curtailment of work, or due to any other factor.

(e) The Office shall prescribe regulations under which the rights accorded to a career appointee in the event of a transfer of function are comparable to the rights accorded to a competing employee under section 3503 of this title in the event of such a transfer.


PRIORITY PROVISIONS


AMENDMENTS

1984—Subsec. (b)(3)(B). Pub. L. 98–615, § 303(c)(1), struck out the designation “(i)” before provisions relating to placement in any agency in any vacant Executive Service position, and struck out former cl. (ii), which related to detailing by the Office of Personnel Management to any vacant Senior Executive Service position for which the Office deemed the employee to be qualified in any agency for a period not to exceed 60 days, and placement in such position by the Office after the period of such detail, unless the head of the agency determined that the career appointee was not qualified for such position.

Subsec. (b)(4). Pub. L. 98–615, § 303(c)(2), struck out “and the civil service” after “removed from the Senior Executive Service”, struck out the designation “(A)” before “the career appointee declines”, and substituted a period for the semicolon and “or” at the end thereof. Former subpar. (B) redesignated par. (5).

Subsec. (b)(5). Pub. L. 98–615, § 303(c)(2), redesignated former par. (4)(B) as (5), substituted “A career appointee who is not assigned under paragraph (3)(A) may be removed from the Senior Executive Service due to a reduction in force if:” for “subject to paragraph (5),” substituted “45 days” for “120 days”, and struck out former par. (5) which had provided that persons who were career appointees as of May 31, 1981, could only be removed from the Senior Executive Service and the civil service due to a reduction in force after the 120-day period if the Director of the Office of Personnel Management certified to certain Congressional committees that the Office had taken all reasonable steps to place the appointee but had been unable to do so due to the appointee’s highly specialized skills and experience.

Subsec. (c). Pub. L. 98–615, § 303(d), struck out the designation “(i)” before “whether the reduction”, and struck out pars. (2) and (3), which had provided, respectively, the right to appeal any nonappointment.
§ 3595a TITLE 5—GOVERNMENT ORGANIZATION AND EMPLOYEES Page 292

under subsec. (b)(3), and, in the event of such nonappointment, whether the Office of Personnel Management took all reasonable steps to achieve such placement and whether the agency correctly decided under subsec. (b)(3)(B) that the career appointee was not qualified for such placement.


Subsec. (c)(3). Pub. L. 97–346, §5(b), designated as subpar. (A) existing provisions relating to taking of all reasonable steps by Office of Personnel Management, and added subpar. (B).

EFFECTIVE DATE OF 1984 AMENDMENT
Amendment by section 303(c), (d) of Pub. L. 98–615 effective following expiration of 90-day period beginning on Nov. 8, 1984, and amendment by section 304(b) of Pub. L. 98–615 effective Nov. 8, 1984, see section 307 of Pub. L. 98–615, set out as a note under section 3393 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT
Section 5(c) of Pub. L. 97–346 provided that:

“(1) Except as provided in paragraph (2), the amendments made by this section [amending this section, redesignating former section 3595 as section 3596 of this title, and amending sections 3393, 3593, 7542, and 7543 of this title] shall be effective as of June 1, 1981.

“(2) The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Oct. 13, 1982].


§ 3595a. Furlough in the Senior Executive Service

(a) For the purposes of this section, “furlough” means the placement of a senior executive in a temporary status in which the senior executive has no duties and is not paid when the placement in such status is by reason of insufficient work or funds or for other nondisciplinary reasons.

(b) An agency may furlough a career appointee only in accordance with regulations issued by the Office of Personnel Management.

(c) A career appointee who is furloughed is entitled to appeal to the Merit Systems Protection Board under section 7701 of this title.


EFFECTIVE DATE
Section effective following expiration of 90-day period beginning on Nov. 8, 1984, see section 307 of Pub. L. 98–615, set out as an Effective Date of 1984 Amendment note under section 3393 of this title.

§ 3596. Regulations

The Office of Personnel Management shall prescribe regulations to carry out the purpose of this subchapter.


AMENDMENTS
1981—Pub. L. 97–35 renumbered section 3596 of this title as this section.

SUBCHAPTER VI—REEMPLOYMENT FOLLOWING LIMITED APPOINTMENT IN THE FOREIGN SERVICE

§ 3597. Reemployment following limited appointment in the Foreign Service

An employee of any agency who accepts, with the consent of the head of that agency, a limited appointment in the Foreign Service under section 309 of the Foreign Service Act of 1980 is entitled, upon the expiration of that appointment, to be reemployed in that employee’s former position or in a corresponding or higher position in that agency. Upon reemployment under this section, an employee shall be entitled to any within-grade increases in pay which the employee would have received if the employee had remained in the former position in the agency.


REFERENCES IN TEXT
Section 309 of the Foreign Service Act of 1980, referred to in text, is classified to section 3949 of Title 22, Foreign Relations and Intercourse.

EFFECTIVE DATE
Section effective Feb. 15, 1981, except as otherwise provided, see section 2403 of Pub. L. 96–465, set out as a note under section 3901 of Title 22, Foreign Relations and Intercourse.

SUBCHAPTER VII—RETENTION OF RETIRED SPECIALIZED EMPLOYEES AT THE FEDERAL BUREAU OF INVESTIGATION

CODIFICATION

§ 3598.¹ Federal Bureau of Investigation Reserve Service

(a) ESTABLISHMENT.—The Director of the Federal Bureau of Investigation may provide for the

¹Another section 3598 is set out after this section.
establishment and training of a Federal Bureau of Investigation Reserve Service (hereinafter in this section referred to as the “FBI Reserve Service”) for temporary reemployment of employees in the Bureau during periods of emergency as determined by the Director.

(b) Membership.—Membership in the FBI Reserve Service shall be limited to individuals who previously served as full-time employees of the Bureau.

(c) Annuities.—If an annuitant receiving an annuity from the Civil Service Retirement and Disability Fund becomes temporarily reemployed pursuant to this section, such annuity shall not be discontinued thereby. An annuitant so reemployed shall not be considered an employee for the purposes of chapter 83 or 84.

(d) No Impact on Bureau Personnel Ceiling.—FBI Reserve Service members reemployed on a temporary basis pursuant to this section shall not count against any personnel ceiling applicable to the Bureau.

(e) Expenses.—The Director may provide members of the FBI Reserve Service transportation and per diem in lieu of subsistence, in accordance with applicable provisions of this title, for the purpose of participating in any training that relates to service as a member of the FBI Reserve Service.

(f) Limitation on Membership.—Membership of the FBI Reserve Service is not to exceed 500 members at any given time.

(g) Limitation on Duration of Service.—An individual may not be reemployed under this section for more than 180 days in connection with any particular emergency unless, in the judgment of the Director, the public interest so requires.


CHAPTER 37—INFORMATION TECHNOLOGY EXCHANGE PROGRAM

§ 3701. Definitions

For purposes of this chapter—

(1) the term “agency” means an Executive agency, but does not include the Government Accountability Office; and

(2) the term “detail” means—

(A) the assignment or loan of an employee of an agency to a private sector organization without a change of position from the agency that employs the individual, or

(B) the assignment or loan of an employee of a private sector organization to an agency without a change of position from the private sector organization that employs the individual,

whichever is appropriate in the context in which such term is used.


AMENDMENTS


EFFECTIVE DATE

Chapter effective 120 days after Dec. 17, 2002, see section 402(a) of Pub. L. 107–347, set out as a note under section 3601 of Title 44, Public Printing and Documents.

§ 3702. General provisions

(a) Assignment Authority.—On request from or with the agreement of a private sector organization, and with the consent of the employee concerned, the head of an agency may arrange for the assignment of an employee of the agency to a private sector organization or an employee of a private sector organization to the agency. An eligible employee is an individual who—

(1) works in the field of information technology management;

(2) is considered an exceptional performer by the individual’s current employer; and

*Another section 3598 is set out preceding this section.*
(3) is expected to assume increased information technology management responsibilities in the future.

An employee of an agency shall be eligible to participate in this program only if the employee is employed at the GS-11 level or above (or equivalent) and is serving under a career or career-conditional appointment or an appointment of equivalent tenure in the excepted service, and applicable requirements of section 209(b) of the E-Government Act of 2002 are met with respect to the proposed assignment of such employee.

(b) AGREEMENTS.—Each agency that exercises its authority under this chapter shall provide for a written agreement between the agency and the employee concerned regarding the terms and conditions of the employee’s assignment. In the case of an employee of the agency, the agreement shall—

(1) require the employee to serve in the civil service, upon completion of the assignment, for a period equal to the length of the assignment; and

(2) provide that, in the event the employee fails to carry out the agreement (except for good and sufficient reason, as determined by the head of the agency from which assigned) the employee shall be liable to the United States for payment of all expenses of the assignment.

An amount under paragraph (2) shall be treated as a debt due the United States.

(c) TERMINATION.—Assignments may be terminated by the agency or private sector organization concerned for any reason at any time.

(d) DURATION.—Assignments under this chapter shall be for a period of between 3 months and 1 year, and may be extended in 3-month increments for a total of not more than 1 additional year, except that no assignment under this chapter may commence after the end of the 5-year period beginning on the date of the enactment of this chapter.

(e) ASSISTANCE.—The Chief Information Officers Council, by agreement with the Office of Personnel Management, may assist in the administration of this chapter, including by maintaining lists of potential candidates for assignment under this chapter, establishing mentoring relationships for the benefit of individuals who are given assignments under this chapter, and publicizing the program.

(f) CONSIDERATIONS.—In exercising any authority under this chapter, an agency shall take into consideration—

(1) the need to ensure that small business concerns are appropriately represented with respect to the assignments described in sections 3703 and 3794, respectively; and

(2) how assignments described in section 3703 might best be used to help meet the needs of the agency for the training of employees in information technology management.


REFERENCES IN TEXT

GS–11, referred to in subsec. (a), is contained in the General Schedule which is set out under section 5332 of this title.

Section 209(b) of the E-Government Act of 2002, referred to in subsec. (a), is section 209(b) of Pub. L. 107–347, which is set out in a note under section 3501 of Title 44, Public Printing and Documents.

The date of the enactment of this chapter, referred to in subsec. (d), is the date of enactment of Pub. L. 107–347, which was approved Dec. 17, 2002.

PILOT PROGRAM FOR THE TEMPORARY ASSIGNMENT OF INFORMATION TECHNOLOGY PERSONNEL TO PRIVATE SECTOR ORGANIZATIONS


“(a) ASSIGNMENT AUTHORITY.—The Secretary of Defense may, with the agreement of the private sector organization concerned, arrange for the temporary assignment of an employee to such private sector organization, or from such private sector organization to a Department of Defense organization under this section. An employee shall be eligible for such an assignment only if—

“(1) the employee—

“(A) works in the field of information technology management;

“(B) is considered by the Secretary of Defense to be an exceptional employee;

“(C) is expected to assume increased information technology management responsibilities in the future; and

“(D) is compensated at not less than the GS–11 level (or the equivalent); and


“(b) AGREEMENTS.—The Secretary of Defense shall provide for a written agreement among the Department of Defense, the private sector organization, and the employee concerned regarding the terms and conditions of the employee’s assignment under this section. The agreement—

“(1) shall require that employees of the Department of Defense, upon completion of the assignment, will be assigned to any organization the Secretary considers appropriate for the employee concerned; and

“(2) shall provide that if the employee of the Department of Defense or of the private sector organization (as the case may be) fails to carry out the agreement, such employee shall be liable to the United States for payment of all expenses of the assignment, unless that failure was for good and sufficient reason, as determined by the Secretary of Defense.

An amount for which an employee is liable under paragraph (2) shall be treated as a debt due the United States.

“(c) TERMINATION.—An assignment under this section may, at any time and for any reason, be terminated by the Department of Defense or the private sector organization concerned.

“(d) DURATION.—An assignment under this section shall be for a period of not less than 3 months and not more than 1 year, and may be extended in 3-month increments for a total of not more than 1 additional year; however, no assignment under this section may commence after September 30, 2013.

“(e) TERMS AND CONDITIONS FOR PRIVATE SECTOR EMPLOYEES.—An employee of a private sector organization who is assigned to a Department of Defense organization under this section—

“(1) may continue to receive pay and benefits from the private sector organization from which such employee is assigned;

“(2) is deemed to be an employee of the Department of Defense for the purposes of—

“(A) chapter 73 of title 5, United States Code;

“(B) sections 201, 203, 255, 257, 208, 209, 603, 606, 607, 643, 654, 1005, and 1913 of title 18, United States Code;

“(C) sections 1343, 1344, and 1349(b) of title 31, United States Code;

“(D) the Federal Tort Claims Act (see Short Title note under section 2871 of Title 28, Judiciary and
Judicial Procedure] and any other Federal tort liability statute;


“(F) section 1043 of the Internal Revenue Code of 1986 [26 U.S.C. 1043]; and

“(G) section 27 of the Office of Federal Procurement Policy Act [now 41 U.S.C. 201 et seq.]; and

“(3) may not have access to any trade secrets or to any other nonpublic information which is of commercial value to the private sector organization from which such employee is assigned.

“(f) Prohibition Against Charging Certain Costs to the Federal Government.—A private sector organization may not charge the Department of Defense or any other agency of the Federal Government, as direct or indirect costs under a Federal contract, the costs of pay or benefits paid by the organization to an employee assigned to a Department of Defense organization under this section for the period of the assignment.

“(g) Considerations.—In carrying out this section, the Secretary of Defense—

“(1) shall ensure that, of the assignments made under this section each year, at least 20 percent are from small business concerns (as defined by section 3703(e)(2)(A) of title 5, United States Code); and

“(2) shall take into consideration the question of how assignments under this section might best be used to help meet the needs of the Department of Defense with respect to the training of employees in information technology management.

“(h) Numerical Limitation.—In no event may more than 10 employees be participating in assignments under this section at any given time.

“(i) Reporting Requirement.—For each of fiscal years 2010 through 2015, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives], not later than 1 month after the end of the fiscal year involved, a report on any activities carried out under this section during such fiscal year, including information concerning—

“(1) the respective organizations (as referred to in subsection (a) to and from which any employee was assigned under this section; and

“(2) the positions those employees held while they were so assigned;

“(3) a description of the tasks they performed while they were so assigned; and

“(4) a discussion of any actions that might be taken to improve the effectiveness of the program under this section, including any proposed changes in law.

“(J) General of Superceded Section.—Section 1109 of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181; 122 Stat. 358) [formerly set out as a note under this section] is repealed, except that—

“(1) nothing in this subsection shall, in the case of any assignment commencing under such section 1109 on or before the date of the enactment of this Act [Oct. 28, 2009], affect—

“(A) the duration of such assignment or the authority to extend such assignment in accordance with subsection (d) of such section 1109, as last in effect; or

“(B) the terms or conditions of the agreement governing such assignment, including with respect to any service obligation under subsection (b) thereof; and

“(2) any employee whose assignment is allowed to continue by virtue of paragraph (1) shall be taken into account for purposes of—

“(A) the numerical limitation under subsection (b); and

“(B) the reporting requirement under subsection (d).

“(L) Application of Certain Laws.—Section 3703(e)(2)(A) of title 5, United States Code; and

“(M) Definition.—The term ‘assignment’ means an arrangement between the agency and the organization under certain terms, conditions, and considerations, and for a limited period, and required the Secretary to submit to the Committees on Armed Services a report on the potential benefits of temporarily assigning information technology specialists from private sector organizations to the Department of Defense, was repealed, with certain exceptions, by Pub. L. 111-84, div. A, title XI, §1110(i), Oct. 28, 2009, 123 Stat. 2465, see above.

§ 3703. Assignment of employees to private sector organizations

(a) In General.—An employee of an agency assigned to a private sector organization under this chapter is deemed, during the period of the assignment, to be on detail to a regular work assignment in his agency.

(b) Coordination With Chapter 81.—Notwithstanding any other provision of law, an employee of an agency assigned to a private sector organization under this chapter is entitled to retain coverage, rights, and benefits under subchapter I of chapter 81, and employment during the assignment is deemed employment by the United States, except that, if the employee or the employee’s dependents receive from the private sector organization any payment under an insurance policy for which the premium is wholly paid by the private sector organization, or other benefit of any kind on account of the same injury or death, then the amount of such payment or benefit shall be credited against any compensation otherwise payable under subchapter I of chapter 81.

(c) Reimbursements.—The assignment of an employee to a private sector organization under this chapter may be made with or without reimbursement by the private sector organization for the travel and transportation expenses to or from the place of assignment, subject to the same terms and conditions as apply with respect to an employee of a Federal agency or a State or local government under section 3375, and for the pay, or a part thereof, of the employee during assignment. Any reimbursements shall be credited to the appropriation of the agency used for paying the travel and transportation expenses or pay.

(d) Tort Liability; Supervision.—The Federal Tort Claims Act and any other Federal tort liability statute apply to an employee of an agency assigned to a private sector organization under this chapter. The supervision of the duties of an employee of an agency so assigned to a private sector organization may be governed by an agreement between the agency and the organization.

(e) Small Business Concerns.—

(1) In General.—The head of each agency shall take such actions as may be necessary to ensure that, of the assignments made under this chapter from such agency to private sector organizations in each year, at least 20 percent are to small business concerns.

(2) Definitions.—For purposes of this subsection—

(A) the term ‘small business concern’ means a business concern that satisfies the definitions and standards specified by the Administrator of the Small Business Administration under section 3(a)(2) of the Small Business Act (as from time to time amended by the Administrator);
(b) the term "year" refers to the 12-month period beginning on the date of the enactment of this chapter, and each succeeding 12-month period in which any assignments under this chapter may be made; and
(c) the assignments "made" in a year are those commencing in such year.

(3) REPORTING REQUIREMENT.—An agency which fails to comply with paragraph (1) in a year shall, within 90 days after the end of such year, submit a report to the Committees on Government Reform and Small Business of the House of Representatives and the Committees on Governmental Affairs and Small Business of the Senate. The report shall include—

(A) the total number of assignments made under this chapter from such agency to private sector organizations in the year;
(B) of that total number, the number (and percentage) made to small business concerns; and
(C) the reasons for the agency's noncompliance with paragraph (1).

(4) EXCLUSION.—This subsection shall not apply to an agency in any year in which it makes fewer than 5 assignments under this chapter to private sector organizations.


REFERENCES IN TEXT
The Federal Tort Claims Act, referred to in subsec. (d), is title IV of act Aug. 2, 1946, ch. 753, 60 Stat. 842, which was classified principally to chapter 20 (§§921, 922, 931–934, 941–946) of former Title 28, Judicial Code and Judiciary. Title IV of act Aug. 2, 1946, was substantially reenacted and renumbered as sections 1346(b) and 2671 et seq. of Title 28, Judiciary and Judicial Procedure, by act June 25, 1948, ch. 446, 62 Stat. 692, the first section of which enacted Title 28. The Federal Tort Claims Act is also commonly used to refer to chapter 171 of Title 28, Judiciary and Judicial Procedure. For complete classification of title IV to the Code, see Tables. For distribution of former sections of Title 28 into the revised Title 28, see Table at the beginning of Title 28.

Section 3(a)(2) of the Small Business Act, referred to in subsec. (e)(2)(A), is classified to section 632(a)(2) of Title 15, Commerce and Trade.

The date of the enactment of this chapter, referred to in subsec. (e)(2)(B), is the date of enactment of Pub. L. 107–347, which was approved Dec. 17, 2002.

CHANGE OF NAME
Committee on Government Reform of House of Representatives changed to Committee on Oversight and Government Reform of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Oct. 9, 2007.

Committee on Governmental Affairs of 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, Oct. 9, 2004.

Committee on Small Business of Senate changed to Committee on Small Business and Entrepreneurship of Senate. See Senate Resolution No. 123, One Hundred Seventh Congress, June 29, 2002.

§3704. Assignment of employees from private sector organizations

(a) IN GENERAL.—An employee of a private sector organization assigned to an agency under this chapter is deemed, during the period of the assignment, to be on detail to such agency.

(b) TERMS AND CONDITIONS.—An employee of a private sector organization assigned to an agency under this chapter—

(1) may continue to receive pay and benefits from the private sector organization from which he is assigned;
(2) is deemed, notwithstanding subsection (a), to be an employee of the agency for the purposes of—
(A) chapter 73;
(B) sections 201, 203, 205, 207, 208, 209, 603, 606, 607, 643, 654, 1905, and 1913 of title 18;
(C) sections 1343, 1344, and 1349(b) of title 31;
(D) the Federal Tort Claims Act and any other Federal tort liability statute;
(E) the Ethics in Government Act of 1978;
(F) section 1403 of the Internal Revenue Code of 1986; and
(G) chapter 21 of title 41;

(3) may not have access to any trade secrets or to any other nonpublic information which is of commercial value to the private sector organization from which he is assigned; and

(4) is subject to such regulations as the President may prescribe.

The supervision of an employee of a private sector organization assigned to an agency under this chapter may be governed by agreement between the agency and the private sector organization concerned. Such an assignment may be made with or without reimbursement by the agency for the pay, or a part thereof, of the employee during the period of assignment, or for any contribution of the private sector organization to employee benefit systems.

(c) COORDINATION WITH CHAPTER 81.—An employee of a private sector organization assigned to an agency under this chapter who suffers disability or dies as a result of personal injury sustained while performing duties during the assignment shall be treated, for the purpose of subchapter I of chapter 81, as an employee as defined by section 8101 who had sustained the injury in the performance of duty, except that, if the employee or the employee's dependents receive from the private sector organization any payment under an insurance policy for which the premium is wholly paid by the private sector organization, or other benefit of any kind on account of the same injury or death, then, the amount of such payment or benefit shall be credited against any compensation otherwise payable under subchapter I of chapter 81.

(d) PROHIBITION AGAINST CHARGING CERTAIN COSTS TO THE FEDERAL GOVERNMENT.—A private sector organization may not charge the Federal Government, as direct or indirect costs under a Federal contract, the costs of pay or benefits paid by the organization to an employee assigned to an agency under this chapter for the period of the assignment.


REFERENCES IN TEXT
§ 3705. Application to Office of the Chief Technology Officer of the District of Columbia

(a) In General.—The Chief Technology Officer of the District of Columbia may arrange for the assignment of an employee of the Office of the Chief Technology Officer to a private sector organization, or an employee of a private sector organization to such Office, in the same manner as the head of an agency under this chapter.

(b) Terms and Conditions.—An assignment made pursuant to subsection (a) shall be subject to the same terms and conditions as an assignment made by the head of an agency under this chapter, except that in applying such terms and conditions to an assignment made pursuant to subsection (a), any reference in this chapter to a provision of law or regulation of the United States shall be deemed to be a reference to the applicable provision of law or regulation of the District of Columbia, including the applicable provisions of the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (sec. 1–601.01 et seq., D.C. Official Code) and section 601 of the District of Columbia Campaign Finance Reform and Conflict of Interest Act (sec. 1–1106.01, D.C. Official Code).

(c) Definition.—For purposes of this section, the term “Office of the Chief Technology Officer” means the Office established in the executive branch of the government of the District of Columbia under the Office of the Chief Technology Officer Establishment Act of 1998 (sec. 1–1401 et seq., D.C. Official Code).

§ 3706. Reporting requirement

(a) In General.—The Office of Personnel Management shall, not later than April 30 and October 31 of each year, prepare and submit to the Committee on Government Reform of the House of Representatives and the Committee on Governmental Affairs of the Senate a semiannual report summarizing the operation of this chapter during the immediately preceding 6-month period ending on March 31 and September 30, respectively.

(b) Content.—Each report shall include, with respect to the 6-month period to which such report relates—

(1) the total number of individuals assigned to, and the total number of individuals assigned from, each agency during such period;

(2) a brief description of each assignment included under paragraph (1), including—

(A) the name of the assigned individual, as well as the private sector organization and the agency (including the specific bureau or other agency component) to or from which such individual was assigned;

(B) the respective positions to and from which the individual was assigned, including the duties and responsibilities and the pay grade or level associated with each; and

(C) the duration and objectives of the individual’s assignment; and

(3) such other information as the Office considers appropriate.

(c) Publication.—A copy of each report submitted under subsection (a)—

(1) shall be published in the Federal Register; and

(2) shall be made publicly available on the Internet.

(d) Agency Cooperation.—On request of the Office, agencies shall furnish such information and reports as the Office may require in order to carry out this section.

§ 3707. Regulations

The Director of the Office of Personnel Management shall prescribe regulations for the administration of this chapter.

§§ 921, 922, 931–934, 941–946 of former Title 28, Judicial Code and Judiciary. Title IV of act Aug. 2, 1974, was substantially repealed and reenacted as sections 1346(b) and 2671 et seq. of Title 28, Judiciary and Judicial Procedure, by act June 25, 1948, ch. 646, 62 Stat. 992, the first section of which enacted Title 28. The Federal Tort Claims Act is also commonly used to refer to chapter 171 of Title 28, Judiciary and Judicial Procedure. For complete classification of title IV to the Code, see Tables. For distribution of former sections of Title 28 into the revised Title 28, see Table at the beginning of Title 28.
