

fers 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.

(i) 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 voluntary 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 28, relating to tort claims.

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

(Added Pub. L. 106-398, §1 [[div. A], title XI, §1101(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A-308.)

CHAPTER 33—EXAMINATION, SELECTION, AND PLACEMENT

SUBCHAPTER I—EXAMINATION, CERTIFICATION, AND APPOINTMENT

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3304.	Competitive service; examinations.
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¹ So in original. Does not conform to section catchline.

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AMENDMENTS

2002—Pub. L. 107-296, title XIII, §§ 1312(b), 1321(a)(1)(C), Nov. 25, 2002, 116 Stat. 2291, 2296, added item 3319 and struck out item 3393a “Recertification”.

1998—Pub. L. 105-339, § 3(b), Oct. 31, 1998, 112 Stat. 3184, added items 3330a to 3330c.

Pub. L. 105-277, div. C, title I, § 151(c)(1), Oct. 21, 1998, 112 Stat. 2681-616, substituted “DETAILS, VACANCIES, AND APPOINTMENTS” for “DETAILS” in heading for subchapter III, “Acting officer” for “Details; to office of head of Executive agency or military department” in item 3345, “Time limitation” for “Details; to subordinate offices” in item 3346, “Exclusivity” for “Details; Presidential authority” in item 3347, “Vacant office” for “Details; limited in time” in item 3348, and “Reporting of vacancies” for “Details; to fill vacancies; restrictions” in item 3349 and added items 3349a to 3349d.

1996—Pub. L. 104-197, title III, § 315(b)(1), Sept. 16, 1996, 110 Stat. 2416, substituted “Competitive service; recommendations of Senators or Representatives” for “Political recommendations” in item 3303.

Pub. L. 104-106, div. A, title X, § 1037(b)(2), Feb. 10, 1996, 110 Stat. 432, which directed substitution of “3330. Government-wide list of vacant positions” for the item relating to section 3329, as added by section 4431(b) of Pub. L. 102-484, could not be executed because of the intervening amendment by Pub. L. 104-52, § 4(2). See 1995 Amendment note below.

1995—Pub. L. 104-52, title IV, § 4(2), Nov. 19, 1995, 109 Stat. 490, redesignated item 3329 “Government-wide list of vacant positions” as item 3330.

1993—Pub. L. 103-94, § 8(b), Oct. 6, 1993, 107 Stat. 1007, substituted “Political recommendations” for “Competitive service; recommendations of Senators or Representatives” in item 3303.

1992—Pub. L. 102-484, div. A, title V, § 544(b), div. D, title XLIV, § 4431(b), Oct. 23, 1992, 106 Stat. 2415, 2720, added two items 3329.

Pub. L. 102-378, § 2(13)(B), Oct. 2, 1992, 106 Stat. 1347, struck out item 3342 “Federal participants in executive exchange programs”.

1990—Pub. L. 101-509, title V, § 529 [title I, § 101(b)(9)(C)(iii)], Nov. 5, 1990, 104 Stat. 1427, 1441, substituted “Appointments to positions classified above GS-15” for “Appointments at GS-16, 17, and 18” in item 3324.

Pub. L. 101-416, § 2(a)(2), Oct. 12, 1990, 104 Stat. 903, added item 3342.

1989—Pub. L. 101-194, title V, § 506(a)(2), Nov. 30, 1989, 103 Stat. 1758, added item 3393a.

Pub. L. 101-12, § 5(b), Apr. 10, 1989, 103 Stat. 33, added item 3352.

1988—Pub. L. 100-398, § 7(a)(3), Aug. 17, 1988, 102 Stat. 988, inserted “agency” after “Executive” in item 3345.

1985—Pub. L. 99-145, title XVI, § 1622(a)(2), Nov. 8, 1985, 99 Stat. 777, added item 3328.

1979—Pub. L. 96-54, § 2(a)(13), Aug. 14, 1979, 93 Stat. 382, struck out item 3315a “Registers; individuals receiving compensation for work injuries”.

1978—Pub. L. 95-454, title III, §§ 303(b), 307(h)(2), 309(b), title IV, § 403(b), title IX, § 906(c)(4), Oct. 13, 1978, 92 Stat. 1146, 1149, 1152, 1165, 1227, substituted “probationary period” for “probation; period of” in item 3321, struck out item 3319 “Competitive service; selection; members of family restriction”, added items 3327 and 3391 to 3397, and struck out items 3391 to 3398.

Pub. L. 95-437, § 3(b), Oct. 10, 1978, 92 Stat. 1058, added heading for subchapter VII and items 3391 to 3398.

Pub. L. 95-256, § 5(b)(2), Apr. 6, 1978, 92 Stat. 191, struck out item 3322 “Competitive service; temporary appointments after age 70”.

Pub. L. 95-251, § 2(c)(3), Mar. 27, 1978, 92 Stat. 184, substituted “administrative law judges” for “hearing examiners” in item 3344.

Pub. L. 95-228, § 2(a), Feb. 10, 1978, 92 Stat. 25, struck out item 3306 “Competitive service; departmental service; apportionment”.

1975—Pub. L. 94-183, § 2(7), Dec. 31, 1975, 89 Stat. 1057, struck out item 3364 “Promotion; substitute employees in the postal field service”.

1972—Pub. L. 92-297, §§ 2(b), 3(b), May 16, 1972, 86 Stat. 142, 144, substituted “maximum age entrance requirements, exceptions” for “maximum age requirement; restriction on use of appropriated funds” in item 3307, and added subchapter VII and items 3381 to 3385.

1971—Pub. L. 91-648, title IV, § 402(b), Jan. 5, 1971, 84 Stat. 1925, added heading for subchapter VI and items 3371 to 3376.

1970—Pub. L. 91-375, § 6(c)(7)(B), Aug. 12, 1970, 84 Stat. 776, struck out item 3327 “Postmasters; standards for determination of qualifications”.

1967—Pub. L. 90-105, § 1(b), Oct. 11, 1967, 81 Stat. 273, added item 3304a.

Pub. L. 90-83, § 1(9)(B), Sept. 11, 1967, 81 Stat. 197, added item 3315a.

1966—Pub. L. 89-762, § 1(b), Nov. 5, 1966, 80 Stat. 1312, struck out item 3342 “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

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 631 (less last 16 words).	R.S. §1753 (less last 16 words).

The words “civil service in the executive branch” are substituted for “civil service of the United States” to confirm 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 ‘Federal Vacancies Reform Act of 1998’.”

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, bureaus, 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

Pub. L. 102-484, div. D, title XLIV, §4432, Oct. 23, 1992, 106 Stat. 2720, directed executive agencies and the De-

partment of Defense, in filling vacant positions, to give full consideration to the applications of certain individuals who became displaced employees before Oct. 1, 1997, before selecting any candidate from outside the agency for the position.

NATIONAL ADVISORY COUNCIL ON THE PUBLIC SERVICE

Pub. L. 101-363, Aug. 14, 1990, 104 Stat. 424, provided that:

“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.

“The Council shall—

“(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 5703 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 under subsection (a)(4)(D).

“(h) MEETINGS.—The Council shall meet at the call of the Chairman or a majority of its members, and shall meet on at least a quarterly basis.

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

“(a) DIRECTOR.—With the approval of the Council, the Chairman may appoint a Director and fix the pay of such Director at a rate not to exceed the rate for level IV of the Executive Schedule [5 U.S.C. 5315]. The Director shall be a person who, by reason of demonstrated ability in the area of management, government, or public administration, is especially well qualified to serve.

“(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. The staff of the Council shall be appointed subject to the provisions of title 5, United States Code, governing appointments in the competitive service, and shall be paid in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

“(c) EXPERTS AND CONSULTANTS.—The Council may procure temporary or intermittent services under section 3109(b) of title 5, United States Code, but 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 personnel 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 use, 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.

“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

Ex. Ord. No. 8743, Apr. 23, 1941, as amended by Ex. Ord. No. 9230, Aug. 20, 1942; Ex. Ord. No. 9678, Jan. 14, 1946; Ex. Ord. No. 9712, Apr. 13, 1946; Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, provided:

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 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 Docu-

ment No. 118, 77th Congress) appointed by Executive Order No. 8044 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). The Board 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 officers of the Executive departments, agencies or corporate instrumentalities of the Government, two from the law-teaching profession, 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.

(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, appointed 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 by the Board. Unless 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 appoint regional or local boards of examiners 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 thereon.

(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 subsequently established 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 all 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 pur-

suant 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 into 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 that 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, may, upon his applications and upon the request of the head of the same or any other department or agency, 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 non-competitive 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 prohibited, 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

Ex. Ord. No. 10577, Nov. 22, 1954, 19 F.R. 7521, eff. Jan. 23, 1955, as amended by Ex. Ord. No. 10675, Aug. 21, 1956, 21 F.R. 6327; Ex. Ord. No. 10745, Dec. 12, 1957, 22 F.R. 10025; Ex. Ord. No. 12107, §2-101(a), Dec. 28, 1978, 44 F.R. 1055, amended generally the Civil Service Rules, provided for transition from the indefinite appointment system to the career-conditional appointment system, and revoked Ex. Ord. No. 9830, Feb. 24, 1947, 12 F.R. 1259; Ex. Ord. No. 9973, June 28, 1948, 13 F.R. 3600; Ex. Ord. No. 10180, Nov. 13, 1950, 15 F.R. 7745; Ex. Ord. No. 10440, Mar. 31, 1953, 18 F.R. 1823; and Ex. Ord. No. 10463, June 25, 1953, 18 F.R. 3655. The Civil Service Rules are set out in Parts 1 to 10 of Title 5, Code of Federal Regulations. The Civil Service Rules were also amended by the following Executive Orders:

Ex. Ord. No. 10641, Oct. 26, 1955, 20 F.R. 8137, as amended by Ex. Ord. No. 12107, §2-101(a), Dec. 28, 1978, 44 F.R. 1055.

Ex. Ord. No. 10869, Mar. 9, 1960, 25 F.R. 2073.

Ex. Ord. No. 11315, Nov. 17, 1966, 31 F.R. 14729, as amended by Ex. Ord. No. 12107, §2-101(a), Dec. 28, 1978, 44 F.R. 1055.

Ex. Ord. No. 11839, Feb. 15, 1975, 40 F.R. 7351.

Ex. Ord. No. 11856, May 7, 1975, 40 F.R. 20259.

Ex. Ord. No. 11887, Nov. 4, 1975, 40 F.R. 51411.

Ex. Ord. No. 11935, Sept. 2, 1976, 41 F.R. 37301, as amended by Ex. Ord. No. 12107, §2-101(a), Dec. 28, 1978, 44 F.R. 1055.

Ex. Ord. No. 12021, Nov. 30, 1977, 42 F.R. 61237.

Ex. Ord. No. 12043, Mar. 7, 1978, 43 F.R. 9773, as amended by Ex. Ord. No. 12107, §2-101(a), Dec. 28, 1978, 44 F.R. 1055.

Ex. Ord. No. 12125, Mar. 15, 1979, 44 F.R. 16879.

Ex. Ord. No. 12148, §5-212, July 20, 1979, 44 F.R. 43239, set out in a note under section 5195 of Title 42, The Public Health and Welfare.

Ex. Ord. No. 12300, Mar. 23, 1981, 46 F.R. 18683, which was superseded by Ex. Ord. No. 12940, Nov. 28, 1994, 59 F.R. 61519.

Ex. Ord. No. 12748, §8(a), Feb. 1, 1991, 56 F.R. 4521, set out as a note under section 5301 of this title.

Ex. Ord. No. 12896, Feb. 3, 1994, 59 F.R. 5515.

Ex. Ord. No. 12940, Nov. 28, 1994, 59 F.R. 61519.

Ex. Ord. No. 13124, §2(b), June 4, 1999, 64 F.R. 31103.

Ex. Ord. No. 13197, Jan. 18, 2001, 66 F.R. 7853.

EXECUTIVE ORDER NO. 10590

Ex. Ord. No. 10590, Jan. 18, 1955, 20 F.R. 409, as amended by Ex. Ord. No. 10722, Aug. 7, 1957, 22 F.R. 6287; Ex. Ord. No. 10773, July 1, 1958, 23 F.R. 5061; Ex. Ord. No. 10782, Sept. 8, 1958, 23 F.R. 6971, which established the President's Committee on Government Employment Policy, was superseded by Ex. Ord. No. 11246, Sept. 24, 1965, 30 F.R. 12319, set out as a note under section 2000e of Title 42, The Public Health and Welfare.

EXECUTIVE ORDER NO. 10880

Ex. Ord. No. 10880, June 7, 1960, 25 F.R. 5131, as amended by Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, which provided for conversion of indefinite or temporary appointments to career or career-conditional appointments, was revoked by Ex. Ord. No. 12608, Sept. 9, 1987, 52 F.R. 34617.

EXECUTIVE ORDER NO. 10925

Ex. Ord. No. 10925, Mar. 7, 1961, 26 F.R. 1977, as amended by Ex. Ord. No. 11114, June 24, 1963, 28 F.R. 6485; Ex.

Ord. No. 11162, July 28, 1964, 29 F.R. 10563, which established the President's Committee on Equal Employment Opportunity, was superseded by Ex. Ord. No. 11246, Sept. 24, 1965, 30 F.R. 12319, set out as a note under section 2000e of Title 42, The Public Health and Welfare.

EXECUTIVE ORDER NO. 11114

Ex. Ord. No. 11114, June 24, 1963, 28 F.R. 6485, as amended by Ex. Ord. No. 11162, July 28, 1964, 29 F.R. 10563, which extended the authority of the President's Committee on Equal Employment Opportunity, was superseded by Ex. Ord. No. 11246, Sept. 24, 1965, 30 F.R. 12319, set out as a note under section 2000e of Title 42, The Public Health and Welfare.

EX. ORD. NO. 11141. DISCRIMINATION ON THE BASIS OF AGE

Ex. Ord. No. 11141, Feb. 12, 1964, 29 F.R. 2477, provided: WHEREAS the principle of equal employment opportunity is now an established policy of our Government and applies equally to all who wish to work and are capable of doing so; and

WHEREAS discrimination in employment because of age, except upon the basis of a *bona fide* occupational qualification, retirement plan, or statutory requirement, is inconsistent with that principle and with the social and economic objectives of our society; and

WHEREAS older workers are an indispensable source of productivity and experience which our Nation can ill afford to lose; and

WHEREAS President Kennedy, mindful that maximum national growth depends on the utilization of all 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 people 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, or in 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, and (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. 11246, Sept. 24, 1965, 30 F.R. 12319, set out as a note under section 2000e of Title 42, The Public Health and Welfare.

EXECUTIVE ORDER NO. 11202

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. 11813, 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. 11203, Mar. 12, 1965; 30 F.R. 3417, as amended by 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. 403) 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, members 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.

SEC. 2. 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 been re-employed in a position concerned with the protective function within 120 days after he shall have 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.

SEC. 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.

SEC. 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 em-

ployee shall be separated by the date on which his current Schedule B appointment expires.

SEC. 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

Ex. Ord. No. 11219, May 6, 1965, 30 F.R. 6381, as amended by Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055; Ex. Ord. No. 12292, Feb. 23, 1981, 46 F.R. 13967, provided:

By virtue 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. 403), 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 1302 and 2108 of this title].

SEC. 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.

SEC. 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.

SEC. 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.

SEC. 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 Inter-course], 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. 14729, as amended by Ex. Ord. No. 12107, § 2-101(a), Dec. 28, 1978, 44 F.R. 1055, 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. 4521, 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, 1973, 38 F.R. 2675, set out as a note under section 4212 of Title 38, Veterans' Benefits.

EXECUTIVE ORDER NO. 11813

Ex. Ord. No. 11813, Oct. 7, 1974, 39 F.R. 36317, which related to career or career-conditional appointments for cooperative education students, was revoked by Ex. Ord. No. 12015, Oct. 26, 1977, 42 F.R. 56947, set out below.

EX. ORD. NO. 11955. CAREER OR CAREER-CONDITIONAL APPOINTMENT TO CERTAIN QUALIFIED EMPLOYEES OF NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Ex. Ord. No. 11955, Jan. 10, 1977, 42 F.R. 2499, as amended by Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, provided:

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, which is listed under Schedule B of the Schedule of Excepted Positions, may be converted to career or career-conditional appointment if:

(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.

SEC. 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.

SEC. 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. 12008, Aug. 25, 1977, 42 F.R. 43373, as amended by Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, which established a Presidential Management Intern Program, was revoked by Ex. Ord. No. 12364, May 24, 1982, 47 F.R. 22931, formerly set out below.

EX. ORD. NO. 12015. CAREER OR CAREER-CONDITIONAL APPOINTMENTS IN COMPETITIVE SERVICE FOR STUDENTS COMPLETING APPROVED CAREER-RELATED WORK-STUDY PROGRAMS

Ex. Ord. No. 12015, Oct. 26, 1977, 42 F.R. 56947, as amended by Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055; Ex. Ord. No. 13024, Nov. 7, 1996, 61 F.R. 58125, provided:

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.

SEC. 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.

SEC. 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.

SEC. 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.

SEC. 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. 12553, Feb. 25, 1986, 51 F.R. 7237.

EXECUTIVE ORDER No. 12362

Ex. Ord. No. 12362, May 12, 1982, 47 F.R. 21231, as amended by Ex. Ord. No. 12585, Mar. 3, 1987, 52 F.R. 6773, which related to appointment to competitive status of certain overseas employees upon return to the United States, was revoked by Ex. Ord. No. 12721, July 30, 1990, 55 F.R. 31349, set out below.

EXECUTIVE ORDER No. 12364

Ex. Ord. No. 12364, May 24, 1982, 47 F.R. 22931, as amended by Ex. Ord. No. 12645, July 12, 1988, 53 F.R. 26750, which related to the Presidential Management Intern Program, was superseded by Ex. Ord. No. 13318, Nov. 21, 2003, 68 F.R. 66317, set out below.

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. 12596

Ex. Ord. No. 12596, 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. 12685. NONCOMPETITIVE CONVERSION OF PERSONAL ASSISTANTS TO EMPLOYEES WITH DISABILITIES

Ex. Ord. No. 12685, July 28, 1989, 54 F.R. 31796, 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 C.F.R. 213.3102(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 appoint-

ment, 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.

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

SEC. 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.

SEC. 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. 12362, as amended, shall continue in effect until modified or superseded by the Director of the Office of Personnel Management.

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

GEORGE 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.

SEC. 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.]

SEC. 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. FEDERAL CAREER INTERN PROGRAM

Ex. Ord. No. 13162, July 6, 2000, 65 F.R. 43211, 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 provide for the recruitment and selection of exceptional employees for careers in the public sector, it is hereby ordered as follows:

SECTION 1. There is hereby constituted the Federal Career Intern Program (Program). The purpose of the Program is to attract exceptional men and women to the Federal workforce who have diverse professional experiences, academic training, and competencies, and to prepare them for careers in analyzing and implementing public programs. "Career Intern" is a generic term, and agencies may use occupational titles as appropriate.

SEC. 2. The Program is another step in the Administration's effort to recruit the highest caliber people to the Federal Government, develop their professional abilities, and retain them in Federal departments and agencies. Cabinet secretaries and agency administrators should view the Program as complementary to existing programs that provide career enhancement opportunities for Federal employees, and departments and agencies are encouraged to identify and make use of those programs, as well as the new Program, to meet department and agency needs.

SEC. 3. (a) The Office of Personnel Management (OPM) shall develop appropriate merit-based procedures for the recruitment, screening, placement, and continuing career development of Career Interns.

(b) In developing those procedures, the OPM shall provide for such actions as deemed appropriate to assure equal employment opportunity and the application of appropriate veterans' preference criteria.

SEC. 4. (a) A successful candidate shall be appointed to a position in Schedule B of the excepted service at the GS-5, 7, or 9 (and equivalent) or other trainee level appropriate for the Program, unless otherwise approved by the OPM. The appointment shall not exceed 2 years unless extended by the Federal department or agency, with the concurrence of the OPM, for up to 1 additional year.

(b) Tenure for a Career Intern shall be governed by the following principles and policies:

(1) Assigned responsibilities shall be consistent with a Career Intern's competencies and career interests, and the purposes of the Program.

(2) Continuation in the Program shall be contingent upon satisfactory performance by the Career Intern throughout the internship period.

(3) Except as provided in subsections (4) and (5) of this section, service as a Career Intern confers no rights to further Federal employment in either the competitive or excepted service upon the expiration of the internship period.

(4) Competitive civil service status may be granted to a Career Intern who satisfactorily completes the internship and meets all other requirements prescribed by the OPM.

(5) Within an agency, an employee who formerly held a career or career-conditional appointment immediately before entering the Career Intern Program,

and who fails to complete the Career Intern Program for reasons unrelated to misconduct or suitability, shall be placed in a career or career-conditional position in the current agency at no lower grade or pay than the one the employee left to accept the position in the Career Intern Program.

SEC. 5. A Career Intern shall participate in a formal program of training and job assignments to develop competencies that the OPM identifies as core to the Program, and the employing agency identifies as appropriate to the agency's mission and needs.

SEC. 6. The OPM shall prescribe such regulations as it determines necessary to carry out the purpose of this order.

SEC. 7. The OPM shall provide oversight of the Program.

SEC. 8. Executive Order 12596 of May 7, 1987, is revoked.

SEC. 9. *Judicial Review.* This order is intended only to improve the internal management of the executive branch. It does not create any right or benefit, substantive or procedural, enforceable in law or equity, by a party against the United States, its agencies, its officers or employees, or any other person.

WILLIAM J. CLINTON.

[Ex. Ord. No. 13162, set out above, is revoked effective Mar. 1, 2011, see Ex. Ord. No. 13562, §8(a), Dec. 27, 2010, 75 F.R. 82588, set out below.]

EX. ORD. NO. 13318. PRESIDENTIAL MANAGEMENT FELLOWS PROGRAM

Ex. Ord. No. 13318, Nov. 21, 2003, 68 F.R. 66317, 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 provide for the recruitment and selection of outstanding employees for service in public sector management, it is hereby ordered as follows:

SECTION 1. There is hereby constituted the Presidential Management Fellows Program. The purpose of the Program is to attract to the Federal service outstanding men and women from a variety of academic disciplines and career paths who have a clear interest in, and commitment to, excellence in the leadership and management of public policies and programs. Individuals selected for the Program shall be known as Presidential Management Fellows (PMFs) or Senior Presidential Management Fellows (Senior PMFs).

SEC. 2. (a) Individuals eligible for appointment as a PMF under this order are those who, in pursuing a course of study at the graduate level, have demonstrated both exceptional ability and the commitment to which section 1 refers. Such individuals at the time of application must have received, or must expect to receive soon thereafter, an appropriate advanced degree as defined by the Director of the Office of Personnel Management (OPM).

(b) Individuals eligible for appointment as a Senior PMF under this order are those who have, through extensive work experience, demonstrated both exceptional leadership or analytical ability and the commitment to which section 1 refers.

SEC. 3. The Director of OPM shall prescribe appropriate merit-based rules for the recruitment, nomination, assessment, selection, appointment, placement, and continuing career development of fellows, including rules that:

(a) reserve to the head of a department or agency or component within the Executive Office of the President (EOP) the authority to appoint a fellow who is to be employed in that department, agency, or component;

(b) provide for nomination by universities and colleges, through competitive selection processes, of eligible individuals for consideration for appointment as PMFs;

(c) carry out the policy of the United States to ensure equal employment opportunities for employees without

discrimination because of race, color, religion, sex, or national origin; and

(d) ensure the application of appropriate veterans' preference criteria.

SEC. 4. (a) Fellows shall be appointed to positions in either:

(1) Schedule A of the excepted service; or

(2) an agency or component within the EOP excepted from the competitive service.

(b) Appointments under subsection (a) shall not exceed 2 years in duration unless extended by the head of the department or agency or component within the EOP, with the concurrence of the Director of OPM, for a period not to exceed 1 additional year.

(c) The following principles and policies shall govern service and tenure by fellows:

(1) responsibilities assigned to a PMF shall be consistent with the PMF's educational background and career interests, and the purposes of the Program; and responsibilities assigned to a Senior PMF shall be consistent with the Senior PMF's experience and career interests, and the purposes of the Program;

(2) continuation of a fellow's appointment shall be contingent upon satisfactory performance by the fellow throughout the fellowship appointment;

(3) except as provided in paragraph (4) of this subsection, service as a fellow shall confer no right to further 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 PMF 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 appropriately expedited re-

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 effort of the United States to recruit and retain in military service, 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 the term “executive agency” in section 105 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 101 of title 10, United States Code;

(c) the term “active duty” means full-time duty in an 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 at the time of retirement of 100 per cent; 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. 58533, 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.

(a) Mission and Function of the Council. The Council shall:

(i) advise and assist the President and the Director of OPM in establishing a coordinated Government-wide effort to increase the number of veterans employed by the Federal Government by enhancing recruitment and training;

(ii) serve as a national forum for promoting veterans’ employment opportunities in the executive branch; and

(iii) establish performance measures to assess the effectiveness of, and submit an annual report to the President on the status of, the Veterans Employment Initiative described in section 3 of this order.

(b) Membership of the Council. The Council shall consist of the heads of the following agencies and such other executive branch agencies as the President may designate:

(i) the Department of State;

(ii) the Department of the Treasury;

(iii) the Department of Defense;

(iv) the Department of Justice;

(v) the Department of the Interior;

(vi) the Department of Agriculture;

(vii) the Department of Commerce;

(viii) the Department of Labor;

(ix) the Department of Health and Human Services;

(x) the Department of Housing and Urban Development;

(xi) the Department of Transportation;

(xii) the Department of Energy;

(xiii) the Department of Education;

(xiv) the Department of Veterans Affairs;

(xv) the Department of Homeland Security;

(xvi) the Environmental Protection Agency;

(xvii) the National Aeronautics and Space Administration;

(xviii) the Agency for International Development;

(xix) the General Services Administration;

(xx) the National Science Foundation;

(xxi) the Nuclear Regulatory Commission;

(xxii) the Office of Personnel Management;

(xxiii) the Small Business Administration; and

(xxiv) the Social Security Administration.

A member of the Council may designate, to perform the Council functions of the member, a senior official who is part of the member’s agency, and who is a full-time officer or employee of the Federal Government.

(c) Administration of the Council. The Co-Chairs shall convene meetings of the Council, determine its agenda, and direct its work. At the direction of the Co-Chairs, the Council may establish subgroups consisting

exclusively of Council members or their designees, as appropriate. The Vice Chair shall designate an Executive Director for the Council to support the Vice Chair in managing the Council's activities. The OPM shall provide administrative support for the Council to the extent permitted by law and within existing appropriations.

(d) Steering Committee. There is established within the Council a Steering Committee consisting of the Secretaries of Defense, Labor, Veterans Affairs, and Homeland Security, the Director of OPM, and any other Council member designated by the Co-Chairs. The Steering Committee shall be responsible for providing leadership, accountability, and strategic direction to the Council.

SEC. 3. *Veterans Employment Initiative.* The agencies represented on the Council shall participate in a Veterans Employment Initiative (Initiative). Under the Initiative, each participating agency shall, to the extent permitted by law:

(a) develop an agency-specific Operational Plan for promoting employment opportunities for veterans, consistent with the Government-wide Veterans Recruitment and Employment Strategic Plan described in section 4 of this order, merit system principles, the agency's strategic human capital plan, and other applicable workforce planning strategies and initiatives;

(b) 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, veterans 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.

SEC. 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.

SEC. 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 occupations 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' preference laws, 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 rehabilitation counselors on the Federal hiring process, veterans' preferences, special hiring authorities, and identifying Federal employment opportunities for veterans.

SEC. 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 agency or the head thereof; or

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

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

(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.

EX. ORD. NO. 13562. RECRUITING AND HIRING STUDENTS AND RECENT GRADUATES

Ex. Ord. No. 13562, Dec. 27, 2010, 75 F.R. 82585, 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.* The Federal Government benefits from a diverse workforce that includes students and re-

cent graduates, who infuse the workplace with their enthusiasm, talents, and unique perspectives. The existing competitive hiring process for the Federal civil service, however, is structured in a manner that, even at the entry level, favors job applicants who have significant previous work experience. This structure, along with the complexity of the rules governing admission to the career civil service, creates a barrier to recruiting and hiring students and recent graduates. It places the Federal Government at a competitive disadvantage compared to private-sector employers when it comes to hiring qualified applicants for entry-level positions.

To compete effectively for students and recent graduates, the Federal Government must improve its recruiting efforts; offer clear paths to Federal internships for students from high school through post-graduate school; offer clear paths to civil service careers for recent graduates; and provide meaningful training, mentoring, 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 determine 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 represents all segments of society as provided in 5 U.S.C. 2301(b)(1), I find that conditions of good administration (specifically, the need to promote employment opportunities for students and recent graduates in the Federal workforce) make necessary an exception to the competitive hiring rules for certain positions in the Federal civil service.

SEC. 2. *Establishment.* There are hereby established the Internship Program and the Recent Graduates Program, 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 Personnel Management (OPM) to issue regulations implementing the Pathways Programs consistent with this order, including:

(a) a description of the positions that executive departments and agencies (agencies) may fill through the Pathways Programs because conditions of good administration 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, training, and mentorship opportunities for participants in the Pathways 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 competitive 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 Pathways Programs participants and their hiring managers; and

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

SEC. 3. *Internship Program.* The Internship Program shall provide students in high schools, community colleges, 4-year colleges, trade schools, career and technical education programs, and other qualifying educational 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 12015 of October 26, 1977. The following principles and policies shall govern the Internship Program:

(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 providers but placed in agencies may, to the extent permitted by OPM regulations, be treated as participants in the Internship Program.

SEC. 4. *Recent Graduates Program.* The Recent Graduates Program shall provide individuals who have recently graduated from qualifying educational institutions 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 Program:

(a) Participants in the program shall be referred to as "Recent Graduates" and must have obtained a qualifying 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.

SEC. 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 requirements shall govern the 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 or Fellows) 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.

SEC. 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.

SEC. 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; and

(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 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.

SEC. 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.

SEC. 9. *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, 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 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, including section 3301 of title 5, United States Code, I hereby direct the following:

SECTION 1. *Directions to Agencies.* Agency heads shall take the following actions no later than November 1, 2010:

(a) consistent with merit system principles and other requirements of title 5, United States Code, and subject to guidance to be issued by the Office of Personnel Management (OPM), adopt hiring procedures that:

(1) eliminate any requirement that applicants respond to essay-style questions when submitting their initial application materials for any Federal job;

(2) allow individuals to apply for Federal employment by submitting resumes and cover letters or completing simple, plain language applications, and assess applicants using valid, reliable tools; and

(3) provide for selection from among a larger number of 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 OPM 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 July 6, 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 with information 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.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 417; Pub. L. 95-228, §2(b), Feb. 10, 1978, 92 Stat. 25; Pub. L. 95-454, title VII, §703(c)(1), Oct. 13, 1978, 92 Stat. 1217; Pub. L. 96-54, §2(a)(16), Aug. 14, 1979, 93 Stat. 382; Pub. L. 103-94, §2(b)(1), Oct. 6, 1993, 107 Stat. 1004.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 633(1) (less function of Civil Service Commission), (2) 8 (last sentence).	Jan. 16, 1883, ch. 27, §2(1) (less function of Civil Service Commission), (2) 8 (last sentence), 22 Stat. 403, 404.

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 restated 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 restated in section 3318(a) is omitted as superseded by former section 857, 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

1993—Par. (2). Pub. L. 103-94 substituted "and 7203" for "7203, 7321, and 7322".

1979—Par. (2). Pub. L. 96-54 amended par. (2) in same manner as amendment by section 703(c)(1) of Pub. L. 95-454. See 1978 Amendment note below.

1978—Par. (2). Pub. L. 95-454 substituted "7202, 7203" for "7152, 7153".

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 1993 AMENDMENT; SAVINGS PROVISION

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

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-54 effective July 12, 1979, see section 2(b) of Pub. L. 96-54, set out as a note under section 305 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

EX. ORD. NO. 11521. VETERANS READJUSTMENT APPOINTMENT FOR VETERANS OF VIETNAM ERA

Ex. Ord. No. 11521, Mar. 26, 1970, 35 F.R. 5311, as amended by Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, provided:

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 (i) a veterans readjustment 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.

SEC. 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.

SEC. 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 105 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.

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

SEC. 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.

SEC. 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.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 418; Pub. L. 103-94, § 8(a), Oct. 6, 1993, 107 Stat. 1006; Pub. L. 104-197, title III, § 315(a), Sept. 16, 1996, 110 Stat. 2416.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 642.	Jan. 16, 1883, ch. 27, §10, 22 Stat. 406.

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

AMENDMENTS

1996—Pub. L. 104-197 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 regard to such 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 1993 AMENDMENT; SAVINGS PROVISION

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

§ 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.

(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(h)(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 2103) 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 confer 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.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 418; Pub. L. 95-454, title IX, §906(a)(5), Oct. 13, 1978, 92 Stat. 1225; Pub. L. 99-586, Oct. 29, 1986, 100 Stat. 3325; Pub. L. 104-65, §§16(a), (b), 17(a), Dec. 19, 1995, 109 Stat. 703; Pub. L. 104-186, title II, §215(2), Aug. 20, 1996, 110 Stat. 1745; Pub. L. 105-339, §2, Oct. 31, 1998, 112 Stat. 3182; Pub. L. 106-117, title V, §511(c), Nov. 30, 1999, 113 Stat. 1575; Pub. L. 107-296, title XIII, §1312(a)(1), Nov. 25, 2002, 116 Stat. 2290; Pub. L. 108-375, div. A, title XI, §1105(g), Oct. 28, 2004, 118 Stat. 2075; Pub. L. 109-163, div. A, title XI, §1104(e)(2), Jan. 6, 2006, 119 Stat. 3450; Pub. L. 111-84, div. A, title XI, §1102(d)(2), Oct. 28, 2009, 123 Stat. 2485.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
(a)	5 U.S.C. 633(2)1. 5 U.S.C. 633(2)7 (less last 17 words).	Jan. 16, 1883, ch. 27, §2(2)1, 22 Stat. 403. Jan. 16, 1883, ch. 27, §2(2)7 (less last 17 words), 22 Stat. 404.
(b)	5 U.S.C. 638 (as applicable to appointment).	Jan. 16, 1883, ch. 27, §7 (as applicable to appointment), 22 Stat. 406.
(c)	5 U.S.C. 631b(b). 5 U.S.C. 631b(c).	Nov. 26, 1940, ch. 919, §2(b), 54 Stat. 1212. Feb. 12, 1946, ch. 3, 60 Stat. 3. May 29, 1958, Pub. L. 85-432, §5, 72 Stat. 151. June 24, 1952, ch. 456, 66 Stat. 155.
(d)	5 U.S.C. 635 (7th sentence).	Jan. 16, 1883, ch. 27, §3 (7th sentence), 22 Stat. 404.

In subsection (a), the authority of the President to prescribe rules is added on authority of former section 633(1), which is carried into section 3302. The words

“competitive service” are substituted for “public service” since the requirements do not apply to the executed 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 “Employees” 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. 111-84 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.”

2006—Subsec. (a)(3)(B)(ii). Pub. L. 109-163 substituted “Defense Education Program” for “Scholarship Pilot Program” and “section 2192a of title 10, United States Code.” for “section 1105 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005.”

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.”

2002—Subsec. (a)(3). Pub. L. 107-296 added par. (3). 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.”

Subsec. (f)(5). Pub. L. 106-117, §511(c)(4), added par. (5). 1998—Subsec. (f). Pub. L. 105-339 added subsec. (f).

1996—Subsec. (c)(1). Pub. L. 104-186 substituted “Chief Administrative Officer” for “Clerk”.

1995—Subsec. (c). Pub. L. 104-65, §16(a), (b), redesignated subsec. (d) as (c) and struck out former subsec. (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).

1978—Subsec. (d). Pub. L. 95-454 substituted “the Office of Personnel Management” for “a Civil Service Commission board of examiners”.

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

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

§ 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.

(c) In computing years of service under subsection (a)(1) of this section for an individual who leaves a position in the competitive service to enter the armed forces and is reemployed in such a position within 120 days after separation under honorable conditions, the period from the date he leaves his position to the date he is reemployed is included.

(d) The Office of Personnel Management may prescribe regulations necessary for the administration of this section.

(Added Pub. L. 90-105, §1(a), Oct. 11, 1967, 81 Stat. 273; amended Pub. L. 91-375, §6(c)(6), Aug. 12, 1970, 84 Stat. 776; Pub. L. 95-454, title IX, §906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 101-509, title V, §529 [title I, §101(b)(9)(B)], Nov. 5, 1990, 104 Stat. 1427, 1441.)

AMENDMENTS

1990—Subsec. (a). Pub. L. 101-509, which directed the substitution of “in a position classified above GS-15 pursuant to section 5108)” for “in GS-16, 17, or 18)”, was executed by making the substitution for “in GS-16, GS-17, or GS-18)”, as the probable intent of Congress.

1978—Subsec. (a). Pub. L. 95-454, §906(a)(2), (3), substituted “Office of Personnel Management” and “Office” for “Civil Service Commission” and “Commission”, respectively, wherever appearing.

Subsec. (d). Pub. L. 95-454, §906(a)(2), substituted “Office of Personnel Management” for “Civil Service Commission”.

1970—Subsec. (a). Pub. L. 91-375 struck out “, in the postal field service,” after “limited appointment” in introductory parenthetical text.

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 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

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

EFFECTIVE DATE

Section 4 of Pub. L. 90-105 provided that: "(a) This section and section 3 of this Act [amending provisions set out as a note under section 3101 of this title] shall become effective on the date of enactment of this Act [Oct. 11, 1967].

"(b) Subject to subsection (c) of this section, the first section and section 2 of this Act [enacting this section and section 3303 of former Title 39, The Postal Service] shall become effective on the one hundred and twentieth day following the date of enactment of this Act [Oct. 11, 1967].

"(c) For the purpose of the application of section 3304a(b) of title 5, United States Code, as enacted by this Act, in the case of an individual who, prior to the effective date prescribed by subsection (b) of this section, shall have completed the 3-year period referred to in such section 3304a(b), such individual shall be deemed to have completed such 3-year period on such effective date."

§ 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.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 418; Pub. L. 90-83, §1(8), Sept. 11, 1967, 81 Stat. 197; Pub. L. 96-54, §2(a)(14), (15), Aug. 14, 1979, 93 Stat. 382.)

HISTORICAL AND REVISION NOTES 1966 ACT

Table with 3 columns: Derivation, U.S. Code, Revised Statutes and Statutes at Large. Rows (a) and (b) showing legislative history.

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 various sections [§§ 3305, 3309, 3318] of title 5, United States Code, to reflect the redesignation of paragraphs (3)(B) through (F) of section 2108 of title 5 as paragraphs (3)(C) through (G) by section 1(6) of this bill.

AMENDMENTS

1979—Subsec. (a). Pub. L. 96-54, §2(a)(14), substituted "Office of Personnel Management" for "Civil Service Commission".

Subsec. (b). Pub. L. 96-54, §2(a)(15), substituted "Office" for "Commission".

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.

§ 3306. Repealed. Pub. L. 95-228, § 1, Feb. 10, 1978, 92 Stat. 25]

Section, Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 419, related to apportionment of appointments in the departmental service in the District of Columbia among the States, territories, etc.

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

(a) Except as provided in subsections (b), (c), (d), (e), and (f) of this section appropriated funds may not be used to pay an employee who establishes a maximum-age requirement for entrance into the competitive service.

(b) The Secretary may, with the concurrence of such agent as the President may designate, determine and fix the maximum limit of age within which an original appointment to a position as an air traffic controller may be made.

(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) 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.

(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).

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 419; Pub. L. 92-297, §2(a), May 16, 1972, 86 Stat. 141; Pub. L. 93-350, §1, July 12, 1974, 88 Stat. 355; Pub. L. 96-347, §1(b), Sept. 12, 1980, 94 Stat. 1150; Pub. L. 100-238, title I, §103(a)(1), Jan. 8, 1988, 101 Stat. 1744; Pub. L. 105-261, div. C, title XXXI, §3154(a), Oct. 17, 1998, 112 Stat. 2254; Pub. L. 110-161, div. E, title V, §535(c), Dec. 26, 2007, 121 Stat. 2076.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Derivation, U.S. Code, Revised Statutes and Statutes at Large. Row showing derivation from 5 U.S.C. 638b.

The prohibition is restated in positive form. The word "officers" is omitted as included in "employees" in view of the definition of "employee" in section 2105.

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.

AMENDMENTS

- 2007—Subsec. (g). Pub. L. 110-161 added subsec. (g).
 1998—Subsec. (a). Pub. L. 105-261, §3154(a)(1), substituted “(d), (e), and (f)” for “and (d)”.
 Subsec. (f). Pub. L. 105-261, §3154(a)(2), added subsec. (f).
 1988—Subsec. (d). Pub. L. 100-238, §103(a)(1)(A), substituted “may” for “may, with the concurrence of such agent as the President may designate.”
 Subsec. (e). Pub. L. 100-238, §103(a)(1)(B), added subsec. (e).
 1980—Subsec. (b). Pub. L. 96-347 substituted “Secretary” for “Secretary of Transportation”.
 1974—Subsec. (a). Pub. L. 93-350, §1(1), inserted reference to subsec. (d).
 Subsec. (d). Pub. L. 93-350, §1(2), added subsec. (d).
 1972—Pub. L. 92-297 designated existing provisions as subsec. (a) and added subsections (b) and (c).

EFFECTIVE DATE OF 2007 AMENDMENT; TRANSITION RULES

Pub. L. 110-161, div. E, title V, §535(e), Dec. 26, 2007, 121 Stat. 2077, provided that:

“(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. 26, 2007].

“(2) TRANSITION RULES.—

“(A) NONAPPLICABILITY OF MANDATORY SEPARATION PROVISIONS TO CERTAIN INDIVIDUALS.—The amendments made by subsections (a)(3) and (b)(6) [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 CBPO 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 and enacting provisions set out as a note under this section] or any amendment made by this section shall be considered to apply with respect 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 title 5, 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 holding a supervisory or administrative position in the Department of Homeland Security.

“(C) MINIMUM ANNUITY AMOUNT.—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—

“(I) 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 subclause (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 day before 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 103(f) of Pub. L. 100-238 provided that: “This section, and the amendments made by this section [amending this section and sections 8401 and 8704 of this title and enacting provisions set out as a note under section 8334 of this title], shall be effective as of January 1, 1987.”

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-347 effective on 90th day after Sept. 12, 1980, see section 3 of Pub. L. 96-347, set out as a note under section 2109 of this title.

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, 8336, 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, 1978.”

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 3381 of this title.

REGULATIONS

Pub. L. 110-161, div. E, title V, §535(d), Dec. 26, 2007, 121 Stat. 2077, provided that: "Any regulations necessary to carry out 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 be prescribed by the Director of the Office of Personnel Management in consultation with the Secretary of Homeland Security."

UNITED STATES PARK POLICE; AGE LIMITS FOR ORIGINAL APPOINTMENTS

Pub. L. 91-73, Sept. 26, 1969, 83 Stat. 116, which provided for age limits for appointments to the United States Park Police, was repealed by Pub. L. 92-297, §11, May 16, 1972, 86 Stat. 145, effective at the end of the 89th day after May 16, 1972. The Secretary of the Interior may fix age limits for appointment under subsec. (c) of this section.

EX. ORD. NO. 11817. OFFICE OF PERSONNEL MANAGEMENT DESIGNATED AGENT TO CONCUR WITH AGENCY DETERMINATION FIXING AGE LIMITS FOR MAKING ORIGINAL APPOINTMENTS RESPECTING LAW ENFORCEMENT OFFICER AND FIREFIGHTER POSITIONS

Ex. Ord. No. 11817, Nov. 5, 1974, 39 F.R. 39427, as amended by Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, provided:

By virtue of the authority vested in me by section 3307(d) of title 5 of the United States Code, as added by the first section of the Act of July 12, 1974 (Public Law 93-350; 88 Stat. 355), I hereby designate the Office of Personnel Management as the agency to concur with determinations made by agencies to 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 title 5 of the United States Code. The designation made by this order shall be effective as of October 15, 1974.

§ 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.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 419; Pub. L. 95-454, title IX, §906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Derivation, U.S. Code, Revised Statutes and Statutes at Large. Row 1: 5 U.S.C. 854 (less 1st 2 sentences), June 27, 1944, ch. 287, §5 (less 1st 2 sentences), 58 Stat. 388.

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 Commission" and "Commission", respectively, wherever appearing.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

§ 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.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 419; Pub. L. 90-83, §1(8), Sept. 11, 1967, 81 Stat. 197; Pub. L. 105-85, div. A, title XI, §1102(b), Nov. 18, 1997, 111 Stat. 1922.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Derivation, U.S. Code, Revised Statutes and Statutes at Large. Row 1: 5 U.S.C. 852 (1st sentence), June 27, 1944, ch. 287, §3 (less proviso), 58 Stat. 388. Jan. 19, 1948, ch. 1, §2, 62 Stat. 3. Dec. 27, 1950, ch. 1151, §2(a), 64 Stat. 1117. July 14, 1952, ch. 728, §2, 66 Stat. 627. Aug. 14, 1953, ch. 485, §1(a) "Sec. 3 (1st sentence)", 67 Stat. 581.

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

1997—Par. (2). Pub. L. 105-85 substituted "section 2108(3)(A)–(B)" for "section 2108(3)(A)".

1967—Cl. (1). Pub. L. 90-83 substituted "section 2108(3)(C)–(G)" for "section 2108(3)(B)–(F)". See Historical and Revision Notes under section 3305 of this title.

§ 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 with 3 columns: Derivation, U.S. Code, Revised Statutes and Statutes at Large. Row 1: 5 U.S.C. 852 (2d sentence), June 27, 1944, ch. 287, §3 (proviso), 58 Stat. 388. Aug. 14, 1953, ch. 485, §1(a) "Sec. 3 (2d sentence)", 67 Stat. 581.

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

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 853.	June 27, 1944, ch. 287, § 4, 58 Stat. 388.

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, § 305(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 examining agency shall notify the Office of the determination and, at the same time, the examining agency shall notify the preference eligible of the reasons for the determination and of the right to respond, within 15 days of the date of the notification, to the Office. The Office shall require a demonstration by the appointing authority that the notification was timely sent to the preference eligible’s last known address and shall, before the selection of any other person for the position, make a final determination on the physical ability of the preference eligible to perform the duties of the position, taking into account any additional information provided in any such response. When the Office has completed its review of the proposed disqualification on the basis of physical disability, it shall send its findings to the appointing authority and the preference eligible. The appointing authority shall comply with the findings of the Office. The functions of the Office under this subsection may not be delegated.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 420; Pub. L. 95-454, title III, § 307(c), title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1148, 1224.)

HISTORICAL AND REVISION NOTES

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

The section is restated for clarity and conciseness. The words “for which examination is given” and “for which the examination is given” are omitted as surplusage. The application of this section to the excepted service in the executive branch and the government of the District of Columbia is preserved by 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

1978—Pub. L. 95-454 designated existing provisions as subsec. (a), substituted “Office of Personnel Management” and “Office” for “Civil Service Commission” and “Commission”, respectively, and added subsec. (b).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

§ 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 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

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 856.	June 27, 1944, 287, § 7, 58 Stat. 389. Aug. 14, 1953, ch. 485, §1(b), 67 Stat. 581.

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 2108(2).

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.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 420; Pub. L. 95-454, title IX, §906(a)(2), Oct. 13, 1978, 92 Stat. 1224.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 865.	June 27, 1944, ch. 287, §16, 58 Stat. 391.

The last 28 words of former section 865 relating to recertification 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

1978—Pub. L. 95-454 substituted “Office of Personnel Management” for “Civil Service Commission”.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

§ 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 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.

(b) 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.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 420; Pub. L. 96-54, §2(a)(14), (15), Aug. 14, 1979, 93 Stat. 382.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
(a)	5 U.S.C. 864 (1st sentence).	June 27, 1944, ch. 287 §15 (1st sentence), 58 Stat. 391.
(b)	5 U.S.C. 863 (2d proviso).	June 27, 1944, ch. 287, §14 (2d proviso), 58 Stat. 391.

In subsection (a), the term “Executive agency” is substituted for “any agency or project 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

1979—Subsec. (a). Pub. L. 96-54, §2(a)(14), substituted “Office of Personnel Management” for “Civil Service Commission”.

Subsec. (b). Pub. L. 96-54, §2(a)(15), substituted “Office” for “Commission”.

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.

[§ 3315a. Repealed. Pub. L. 93-416, §22(c), Sept. 7, 1974, 88 Stat. 1150]

Section, added Pub. L. 90-83 §1(9)(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

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 862.	June 27, 1944, ch. 287, §13, 58 Stat. 390.

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.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 421; Pub. L. 95-454, title IX, §906(a)(3), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 96-54, §2(a)(14), (15), Aug. 14, 1979, 93 Stat. 382.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 857 (1st sentence and 2d proviso).	June 27, 1944, ch. 287, § 8 (1st sentence and 2d proviso), 58 Stat. 389.

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 858, 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

1979—Subsec. (a). Pub. L. 96-54, §2(a)(14), substituted “Office of Personnel Management” for “Civil Service Commission”.

Subsec. (b). Pub. L. 96-54, §2(a)(15), amended subsec. (b) in same manner as amendment by Pub. L. 95-454. See 1978 Amendment note set out below.

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 305 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

§ 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.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 421; Pub. L. 90-83, §1(8), Sept. 11, 1967, 81 Stat. 197; Pub. L. 95-454, title III, §307(d), title IX, §906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1148, 1224.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
(a), (b)	5 U.S.C. 633(2)2. 5 U.S.C. 857 (less 1st sentence, 2d proviso, and last sentence).	Jan. 16, 1883, ch. 27, §2(2)2, 22 Stat. 404. June 27, 1944, ch. 287, § 8 (less 1st sentence, 2d proviso, and last sentence), 58 Stat. 389. Aug. 14, 1953, ch. 485, § 2, 67 Stat. 582.
(c)	5 U.S.C. 864 (less 1st sentence).	June 27, 1944, ch. 287, §15 (less 1st sentence), 58 Stat. 391.

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)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 eligibles”.

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. (a). Pub. L. 95-454, §906(a)(2), (3), substituted “Office of Personnel Management” and “Office” for “Civil Service Commission” and “Commission”, respectively.

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).

1967—Subsec. (c). Pub. L. 90-83 substituted “section 2108(3)(C)–(G)” for “section 2108(3)(B)–(F).” See Historical and Revision Notes under section 3305 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

§ 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 American Indian or Alaska Natives, Asian, Black or African American, 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.

(Added Pub. L. 107-296, title XIII, §1312(a)(2), Nov. 25, 2002, 116 Stat. 2290.)

REFERENCES IN TEXT

The General Schedule, referred to in subsec. (b), is set out under section 5332 of this title.

PRIOR PROVISIONS

A prior section 3319, Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 421, related to prohibitions on employment of members of same family in the competitive service, prior to repeal by Pub. L. 95-454, title III, §307(h)(1), title IX, §907, Oct. 13, 1978, 92 Stat. 1149, 1227, effective 90 days after Oct. 13, 1978.

EFFECTIVE DATE

Section effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107-296, set out as a note under section 101 of Title 6, Domestic Security.

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

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 422.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 858.	June 27, 1944, ch. 287, §9, 58 Stat. 389.
.....	5 U.S.C. 869.	June 27, 1944, ch. 287, §20, 58 Stat. 391.

Former sections 858 and 869 are combined and reselected for clarity and to conform to section 3318(a). The

word “authority” is substituted for “officer” in recognition of the several appointing authorities named in section 2105(a)(1). The words “shall select for appointment to each vacancy in the expected 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” 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 appointments of postmasters is omitted from this section since those referred to are in the competitive service. The application of former section 869 to the remainder of the Act of June 27, 1944, is covered by the sections into which the remainder is carried (see Table I).

This section merely continues, and does not in any way change, the requirements in former section 858 relative to the selection of applicants for positions in the excepted service. Under this section, the Federal Bureau of Investigation and other 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 appointments authorized 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. 823, 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 685a 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)(2) 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.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 422; Pub. L. 95-454, title III, §303(a), Oct. 13, 1978, 92 Stat. 1146; Pub. L. 100-325, §2(d), May 30, 1988, 102 Stat. 581.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 633(2)A.	Jan. 16, 1883, ch. 27. §2(2)A, 22 Stat. 404.

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

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

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

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

§ 3322. Repealed. Pub. L. 95-256, § 5(b)(1), Apr. 6, 1978, 92 Stat. 191]

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 annuitants

(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 reappointed 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.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 422; Pub. L. 96-465, title II, §2314(a), Oct. 17, 1980, 94 Stat. 2167; Pub. L. 98-224, §2, Mar. 2, 1984, 98 Stat. 47; Pub. L. 102-378, §2(10), Oct. 2, 1992, 106 Stat. 1347.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
(a)	5 U.S.C. 715a.	June 30, 1932, ch. 314, §204, 47 Stat. 404.
(b)	5 U.S.C. 2263(a).	July 31, 1956, ch. 804, § 401 "Sec. 13(a)", 70 Stat. 757.
(c)	22 U.S.C. 915(c).	Sept. 8, 1960, Pub. L. 86-723, §10(d), 74 Stat. 832.
(d)	33 U.S.C. 544a, 701l.	June 20, 1938, ch. 535, §5, 52 Stat. 805.

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. 98-224 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 2403 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.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 422; Pub. L. 90-83, §1(10), Sept. 11, 1967, 81 Stat. 197; Pub. L. 95-454, title IX, §906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 96-54, §2(a)(17), Aug. 14, 1979, 93 Stat. 382; Pub. L. 101-509, title V, §529 [title I, §101(b)(9)(C)(i), (ii)], Nov. 5, 1990, 104 Stat. 1427, 1441; Pub. L. 102-378, §2(11), Oct. 2, 1992, 106 Stat. 1347; Pub. L. 110-372, §2(c)(2), Oct. 8, 2008, 122 Stat. 4044.)

HISTORICAL AND REVISION NOTES
1966 ACT

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 1105(i).	June 20, 1958, Pub. L. 85-462, §10 “(i)”, 72 Stat. 213. Sept. 13, 1960, Pub. L. 86-768, 74 Stat. 910.

In subsection (a), the words “in GS-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)(A), the words “Office of Emergency Planning” are substituted for “Office of Defense Mobilization” on authority of 1958 Reorg. Plan No. 1, §2(a), effective July 1, 1958, 72 Stat. 1799, as amended Aug. 26, 1958, Pub. L. 85-763, 72 Stat. 861, and Sept. 22, 1961, Pub. L. 87-296, 75 Stat. 630. Reference to “President’s Advisory Committee on Government Organization” is omitted since the Committee was abolished by Executive Order No. 10917, February 10, 1961.

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 Appropriation 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

The Treasury, Post Office, and Executive Office Appropriation Act, 1966, referred to in subsec. (a)(4)(B), is Pub. L. 89-57, June 30, 1965, 79 Stat. 196. For classification of this Act to the Code, see Tables.

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.

1992—Pub. L. 102-378, §2(11)(A), substituted “GS-15” for “GA-15” in section catchline.

Subsec. (a)(1). Pub. L. 102-378, §2(11)(B), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “provided for in section 5108(c)(2) of this title;”.

1990—Pub. L. 101-509, §529 [title I, §101(b)(9)(C)(ii)], which directed that “to positions classified above GA-15” be substituted for “at GS-16, 17, or 18” in section catchline, was executed by making the substitution for “at GS-16, 17, and 18”, as the probable intent of Congress.

Subsec. (a). Pub. L. 101-509, §529 [title I, §101(b)(9)(C)(i)], substituted “classified above GS-15 pursuant to section 5108” for “in GS-16, 17, or 18”.

1979—Subsec. (a)(4)(A). Pub. L. 96-54 struck out reference to Office of Emergency Planning.

1978—Subsecs. (a), (b). Pub. L. 95-454 substituted “Office of Personnel Management” for “Civil Service Commission” and “Office” for “Commission”.

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

Amendment by Pub. L. 102-378 effective May 4, 1991, see section 9(b)(4) of Pub. L. 102-378, set out as a note under section 6303 of this title.

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. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90-83 effective as of Sept. 6, 1966, for all purposes, see section 9(h) 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.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 423; Pub. L. 95-454, title IX, §906(a)(2), Oct. 13, 1978, 92 Stat. 1224; Pub. L. 102-378, §2(12), Oct. 2, 1992, 106 Stat. 1347; Pub. L. 110-372, §2(c)(3), Oct. 8, 2008, 122 Stat. 4044.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
(a)	5 U.S.C. 1162(a).	Oct. 4, 1961, Pub. L. 87-367, §202 "Sec. 2(a)", 75 Stat. 790.
(b)	5 U.S.C. 1161 (g) (2d sentence).	Oct. 11, 1962, Pub. L. 87-793, §1001(a)(2) "(g) (2d sentence)", 76 Stat. 863.

In subsection (a), the words "or its designee" are substituted for "or such officers or agents as the Commission may designate".

For repeal of the Act of Aug. 1, 1947, ch. 433, 61 Stat. 715, as amended, see revision note for section 3104.

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".

Subsec. (c). Pub. L. 110-372, §2(c)(3)(B), added subsec. (c).

1992—Subsec. (b). Pub. L. 102-378 substituted "section 3104(c)" for "section 3104(a)(7) of this title".

1978—Subsec. (a). Pub. L. 95-454 substituted "Office of Personnel Management" for "Civil Service Commission".

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 Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

§ 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.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 423; Pub. L. 96-54, §2(a)(14), Aug. 14, 1979, 93 Stat. 382; Pub. L. 101-509, title V, §529 [title I, §101(b)(3)(A)], Nov. 5, 1990, 104 Stat. 1427, 1439.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
(a)	5 U.S.C. 3101 (as applicable to 5 U.S.C. 3103).	Aug. 19, 1964, Pub. L. 88-448, §101 (as applicable to §204), 78 Stat. 484.
(b), (c)	5 U.S.C. 3103.	Aug. 19, 1964, Pub. L. 88-448, §204, 78 Stat. 487.

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 3101(3).

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

1990—Subsec. (b)(2). Pub. L. 101-509 substituted "5305" for "5303".

1979—Subsec. (b)(1). Pub. L. 96-54 substituted "Office of Personnel Management" for "Civil Service Commission".

SUSPENSION OF SECTION

Pub. L. 101-510, div. A, title XII, §1206(f), Nov. 5, 1990, 104 Stat. 1661, provided that: "Section 3326 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 305 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.

(Added Pub. L. 95-454, title III, § 309(a), Oct. 13, 1978, 92 Stat. 1151.)

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.

(Added Pub. L. 99-145, title XVI, § 1622(a)(1), Nov. 8, 1985, 99 Stat. 777; amended Pub. L. 100-180, div. A, title XII, § 1249, Dec. 4, 1987, 101 Stat. 1167.)

AMENDMENTS

1987—Subsec. (b). Pub. L. 100-180 struck out “within the Office” after “for the adjudication” in second sentence and inserted at end “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.”

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

(a) For the purpose of this section, the term “military reserve technician” has the meaning given the term “military technician (dual status)” by section 8401(30).

(b) The Secretary of Defense shall take such steps as may be necessary to ensure that, except as provided in subsection (d), any military reserve technician who is involuntarily separated from technician service, after completing at least 15 years of such service and 20 years of service creditable under section 12732 of title 10, by reason of ceasing to satisfy the condition described in section 8401(30)(B)¹ shall, if appropriate written application is submitted within 1 year after the date of separation, be provided placement consideration in a position described in subsection (c) through a priority placement program of the Department of Defense.

(c)(1) The position for which placement consideration shall be provided to a former military technician under subsection (b) shall be a position—

(A) in either the competitive service or the excepted service;

(B) within the Department of Defense; and

(C) in which the person is qualified to serve, taking into consideration whether the employee in that position is required to be a member of a reserve component of the armed forces as a condition of employment.

(2) To the maximum extent practicable, the position shall also be in a pay grade or other pay classification sufficient to ensure that the rate of basic pay of the former military technician, upon appointment to the position, is not less than the rate of basic pay last received by the former military technician for technician service before separation.

(d) This section shall not apply in the case of—

(1) an involuntary separation for cause on charges of misconduct or delinquency; or

(2) a technician who, as of the date of application under this section, is eligible for immediate (including for disability) or early retirement under subchapter III of chapter 83 or under chapter 84.

¹ See References in Text note below.

(e) The Secretary of Defense shall, in consultation with the Director of the Office of Personnel Management, prescribe such regulations as may be necessary to carry out this section.

(Added Pub. L. 102-484, div. A, title V, §544(a), Oct. 23, 1992, 106 Stat. 2415; amended Pub. L. 104-106, div. A, title X, §1037(a), Feb. 10, 1996, 110 Stat. 431; Pub. L. 105-85, div. A, title XI, §1103, Nov. 18, 1997, 111 Stat. 1923; Pub. L. 106-398, §1 [[div. A], title X, §1087(f)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A-293.)

REFERENCES IN TEXT

Section 8401(30) of this title, referred to in subssecs. (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).

CODIFICATION

Another section 3329 was renumbered section 3330 of this title.

AMENDMENTS

2000—Subsec. (a). Pub. L. 106-398, §1 [[div. A], title X, §1087(f)(1)(A)], substituted “the term ‘military technician (dual status)’” for “such term”.

Subsec. (b). Pub. L. 106-398, §1 [[div. A], title X, §1087(f)(1)(B)], substituted “section 12732 of title 10” for “section 1332 of title 10”.

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.

(Added Pub. L. 102-484, div. D, title XLIV, §4431(a), Oct. 23, 1992, 106 Stat. 2719, §3329; renumbered §3330 and amended Pub. L. 104-52, title IV, §4(1), Nov. 19, 1995, 109 Stat. 490; Pub. L. 104-106, div. A, title X, §1037(b)(1), Feb. 10, 1996, 110 Stat. 432; Pub. L. 108-271, §8(b), July 7, 2004, 118 Stat. 814.)

AMENDMENTS

2004—Subsec. (a). Pub. L. 108-271 substituted “Government Accountability Office” for “General Accounting Office”.

1996—Pub. L. 104-106, which directed renumbering of the section 3329 of this title that was added by Pub. L. 102-484, §4431, as section 3330 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.

Subsec. (f). Pub. L. 104-52, §4(1)(B), added subsec. (f).

§ 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) A complaint under this subsection must be filed within 60 days after the date of 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 wit-

nesses 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) appropriate evidence of compliance 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 complaint 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 the preference eligible pursues redress for such violation under any other law, rule, or regulation.

(Added Pub. L. 105-339, §3(a), Oct. 31, 1998, 112 Stat. 3182; amended Pub. L. 108-454, title VIII, §804(a), Dec. 10, 2004, 118 Stat. 3626.)

AMENDMENTS

2004—Subsec. (a)(1). Pub. L. 108-454 designated existing provisions as subpar. (A) and added subpar. (B).

§ 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.

(Added Pub. L. 105-339, §3(a), Oct. 31, 1998, 112 Stat. 3184; amended Pub. L. 108-454, title VIII, §804(b), Dec. 10, 2004, 118 Stat. 3626.)

AMENDMENTS

2004—Subsec. (a). Pub. L. 108-454, which directed insertion of “, or a veteran described by section 3330a(a)(1)(B) with respect to a violation described by such section,” after “a preference eligible” in subsec. (a) of section 3330b, without specifying the Code title to be amended, was executed by making the insertion in subsec. (a) of this section, to reflect the probable intent of Congress.

§ 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.

(Added Pub. L. 105-339, §3(a), Oct. 31, 1998, 112 Stat. 3184.)

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 take this obligation freely, without any mental reservation or purpose of evasion; and 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.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 424.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Derivation, U.S. Code, Revised Statutes and Statutes at Large. Row 1: 5 U.S.C. 16, R.S. §1757, May 13, 1884, ch. 46, §§2, 3, 23 Stat. 22.

All but the quoted language in R.S. §1757 is omitted as obsolete since R.S. §1757 was originally an alternative oath to the oath prescribed in R.S. §1756 which oath was repealed by the Act of May 13, 1884, ch. 46, §2, 23 Stat. 22. The words "An individual, except the President, . . . in the civil service or uniformed services" are substituted for "any person . . . either in the civil, military, or naval service, except the President of the United States". The second sentence of former section 16 is changed to read, "This section does not affect other oaths required by law."

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

§ 3332. Officer affidavit; no consideration paid for appointment

An officer, within 30 days after the effective date of his appointment, shall file with the oath of office required by section 3331 of this title an affidavit that neither he nor anyone acting in his behalf has given, transferred, promised, or paid any consideration for or in the expectation or hope of receiving assistance in securing the appointment.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 424.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Derivation, U.S. Code, Revised Statutes and Statutes at Large. Row 1: 5 U.S.C. 21a, Dec. 11, 1926, ch. 4, §1, 44 Stat. 918; Mar. 2, 1927, ch. 284, 44 Stat. 1346; Sept. 23, 1950, ch. 1010, §10, 64 Stat. 987.

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 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.

§ 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 with 3 columns: Derivation, U.S. Code, Revised Statutes and Statutes at Large. Row 1: 5 U.S.C. 118q, Aug. 9, 1955, ch. 690, §2, 69 Stat. 624. Row 2: [Uncodified], June 29, 1956, ch. 479, §3 (as applicable to the Act of Aug. 9, 1955, ch. 690, §2, 69 Stat. 624), 70 Stat. 453.

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

1998—Pub. L. 105-277, div. C, title I, §151(c)(2), Oct. 21, 1998, 112 Stat. 2681-616, substituted "DETAILS, VACANCIES, AND APPOINTMENTS" for "DETAILS" as subchapter heading.

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 de-

tailed, 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:

- Pub. L. 103-123, title VI, §617, Oct. 28, 1993, 107 Stat. 1263.
- Pub. L. 102-393, title VI, §619, Oct. 6, 1992, 106 Stat. 1769; repealed by Pub. L. 104-66, title III, §3001(h), Dec. 21, 1995, 109 Stat. 734.
- Pub. L. 102-141, title VI, §619, Oct. 28, 1991, 105 Stat. 871.
- Pub. L. 101-509, title VI, §616, Nov. 5, 1990, 104 Stat. 1474.
- Pub. L. 101-136, title VI, §616, Nov. 3, 1989, 103 Stat. 819.
- Pub. L. 100-440, title VI, §616, Sept. 22, 1988, 102 Stat. 1754.
- Pub. L. 100-202, §101(m) [title VI, §621], Dec. 22, 1987, 101 Stat. 1329-390, 1329-427.

§ 3341. Details; within Executive or military departments

(a) The head of an Executive department or 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.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 424; Pub. L. 104-106, div. A, title X, §1033(a), Feb. 10, 1996, 110 Stat. 429; Pub. L. 109-163, div. A, title X, §1056(a)(4), Jan. 6, 2006, 119 Stat. 3439.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 38.	R.S. §166. May 28, 1896, ch. 252, §3, 29 Stat. 179.

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. 591), 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).

Subsec. (c). Pub. L. 104-106, §1033(a)(2), added subsec. (c).

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. 10, 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(3) of Pub. L. 103-333, set out as a note under section 1301 of Title 31, Money and Finance.

§ 3342. Repealed. Pub. L. 102-378, § 2(13)(A), Oct. 2, 1992, 106 Stat. 1347

Section, added Pub. L. 101-416, §2(a)(1), Oct. 12, 1990, 104 Stat. 902, related to Federal participants in executive exchange programs.

A prior section 3342, Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 425, which prohibited details of employees from field service to Executive department in District of Columbia except for temporary duty, details specifically provided for by law, or detailing of one employee from Bureau of Customs for duty in District of Columbia, was repealed by Pub. L. 89-762, §1(a), Nov. 5, 1966, 80 Stat. 1312.

EFFECTIVE DATE OF REPEAL

Section repealed effective Oct. 1, 1991, see section 9(b)(3) of Pub. L. 102-378, set out as an Effective Date of 1992 Amendment note under section 6303 of this title.

§ 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.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 425; Pub. L. 91-175, pt. V, §502(a), Dec. 30, 1969, 83 Stat. 825.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
(a)	5 U.S.C. 2331.	Aug. 28, 1958, Pub. L. 85-795, § 2, 72 Stat. 959.
(b)-(e)	5 U.S.C. 2332.	Aug. 28, 1958, Pub. L. 85-795, § 3, 72 Stat. 959.

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 3584 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.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 425; Pub. L. 95-251, §2(a)(1), (b)(2), Mar. 27, 1978, 92 Stat. 183; Pub. L. 95-454, title IX, §906(a)(2), Oct. 13, 1978, 92 Stat. 1224.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 1010 (4th sentence).	June 11, 1946, ch. 324, § 11 (4th sentence), 60 Stat. 244.

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" for "Civil Service Commission".

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

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

§ 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;

(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 the 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.

(Added Pub. L. 105-277, div. C, title I, §151(b), Oct. 21, 1998, 112 Stat. 2681-611; amended Pub. L. 108-271, §8(b), July 7, 2004, 118 Stat. 814.)

REFERENCES IN TEXT

The General Schedule, referred to in subsec. (a)(3)(B), is set out under section 5332 of this title.

PRIOR PROVISIONS

A prior section 3345, Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 425; Pub. L. 100-398, §7(a)(1), (2), Aug. 17, 1988, 102 Stat. 988, provided for details to office of head of Executive agency or military department, prior to repeal by Pub. L. 105-277, div. C, title I, §151(b), (d)(1), Oct. 21, 1998, 112 Stat. 2681-611, 2681-616, effective 30 days after Oct. 21, 1998.

AMENDMENTS

2004—Subsec. (a). Pub. L. 108-271 substituted “Government Accountability Office” for “General Accounting Office” in introductory provisions.

EFFECTIVE DATE

Pub. L. 105-277, div. C, title I, §151(d), Oct. 21, 1998, 112 Stat. 2681-616, provided that:

“(1) EFFECTIVE DATE.—Subject to paragraph (2), this section [enacting this section and sections 3346 to 3349d 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 after 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

For order of succession within the Department of Homeland Security, see Ex. Ord. No. 13286, §88, Feb. 28, 2003, 68 F.R. 10632, as amended, set out as a note under section 111 of Title 6, Domestic 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. 13245, §4, Dec. 8, 2001, 66 F.R. 66269, set out below.

EXECUTIVE ORDER NO. 11274

Ex. Ord. No. 11274, Mar. 30, 1966, 31 F.R. 5243, as amended by Pub. L. 101-509, title V, §529 [title I, §112(c)], Nov. 5, 1990, 104 Stat. 1427, 1454, which designated certain officers of the Department of Housing and Urban Development to act as Secretary of Housing and Urban Development during any period of unavailability of the Secretary, was revoked by Ex. Ord. No. 13243, §4, Dec. 18, 2001, 66 F.R. 66263, set out below.

EXECUTIVE ORDER NO. 11487

Ex. Ord. No. 11487, Oct. 6, 1969, 34 F.R. 15593, as amended by Pub. L. 101-509, title V, §529 [title I, §112(c)], Nov. 5, 1990, 104 Stat. 1427, 1454, which designated certain officers of the Department of the Interior to act as Secretary of the Interior during any period of unavailability of both the Secretary and the Deputy Secretary of the Interior, was revoked by Ex. Ord. No. 13244, §4, Dec. 18, 2001, 66 F.R. 66267, set out below.

EXECUTIVE ORDER NO. 11822

Ex. Ord. No. 11822, Dec. 10, 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

Ex. Ord. No. 11880, Oct. 2, 1975, 40 F.R. 46089, as amended by Ex. Ord. No. 12608, Sept. 9, 1987, 52 F.R. 34617; Ex. Ord. No. 12998, Apr. 5, 1996, 61 F.R. 15873, which designated certain officers of the Department of Commerce to act as Secretary of Commerce during any period of unavailability of both the Secretary and the Deputy Secretary of Commerce, was revoked by Ex. Ord. No. 13242, § 4, Dec. 18, 2001, 66 F.R. 66261, set out below.

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, formerly 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. 13251, § 4, Dec. 28, 2001, 67 F.R. 1599, set out below.

EX. ORD. NO. 12879. ORDER OF SUCCESSION OF OFFICERS TO ACT AS SECRETARY OF THE NAVY

Ex. Ord. No. 12879, Nov. 8, 1993, 58 F.R. 59929, 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 services 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 these 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. 21907, 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.

SEC. 2. *Temporary Nature of Succession.* Succession to act for and exercise the powers of the Secretary of the Army 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. 12909. ORDER OF SUCCESSION OF OFFICERS TO ACT AS SECRETARY OF THE AIR FORCE

Ex. Ord. No. 12909, Apr. 22, 1994, 59 F.R. 21909, 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.

SEC. 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. 13000

Ex. Ord. No. 13000, Apr. 24, 1996, 61 F.R. 18483, which provided an order of succession of officers to act as Secretary of Defense, was revoked by Ex. Ord. No. 13394, § 5, Dec. 22, 2005, 70 F.R. 76666, formerly set out below.

EXECUTIVE ORDER NO. 13241

Ex. Ord. No. 13241, Dec. 18, 2001, 66 F.R. 66258, as amended by Ex. Ord. No. 13261, § 4(a), Mar. 19, 2002, 67 F.R. 13243; Ex. Ord. No. 13484, §§ 1, 2, Jan. 9, 2009, 74 F.R. 2285, 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. 13542, § 3, May 13, 2010, 75 F.R. 27922, set out below.

EX. ORD. NO. 13242. PROVIDING AN ORDER OF SUCCESSION WITHIN THE DEPARTMENT OF COMMERCE

Ex. Ord. No. 13242, Dec. 18, 2001, 66 F.R. 66260, as amended by Ex. Ord. No. 13261, § 4(b), Mar. 19, 2002, 67 F.R. 13243, provided:

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.

SEC. 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

(h) Assistant Secretary of Commerce in charge of Legislative and Intergovernmental Affairs.

SEC. 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.

SEC. 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

Ex. Ord. No. 13243, Dec. 18, 2001, 66 F.R. 66262, as amended by Ex. Ord. No. 13261, § 4(c), Mar. 19, 2002, 67 F.R. 13244, provided:

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 Housing and Urban Development (Secretary) during any period when both the Secretary and the Deputy Secretary of Housing and Urban Development (Deputy Secretary) have died, resigned, or are otherwise unable to perform the functions and duties of the office of Secretary.

SEC. 2. *Order of Succession.*

- (a) General Counsel of the Department of Housing and Urban Development;
- (b) Assistant Secretary of Housing and Urban Development in charge of Housing-Federal Housing Commission;
- (c) Assistant Secretary of Housing and Urban Development in charge of Community, Planning and Development;
- (d) Assistant Secretary of Housing and Urban Development in charge of Public and Indian Housing;
- (e) Assistant Secretary of Housing and Urban Development in charge of Policy Development and Research;
- (f) Assistant Secretary of Housing and Urban Development in charge of Fair Housing and Equal Opportunity;
- (g) Assistant Secretary of Housing and Urban Development in charge of Congressional and Intergovernmental Relations;
- (h) Assistant Secretary of Housing and Urban Development in charge of Administration; and
- (i) Assistant Secretary of Housing and Urban Development in charge of Public Affairs.

SEC. 3. *Exceptions.*

(a) No individual who is serving in an office listed in section 2(a)–(i) 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.

SEC. 4. Executive Order 11274 of March 30, 1996, is hereby revoked.

GEORGE W. BUSH.

EX. ORD. NO. 13244. PROVIDING AN ORDER OF SUCCESSION WITHIN THE DEPARTMENT OF THE INTERIOR

Ex. Ord. No. 13244, Dec. 18, 2001, 66 F.R. 66267, as amended by Ex. Ord. No. 13261, § 4(d), Mar. 19, 2002, 67 F.R. 13244, provided:

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 Interior (Secretary) during any period when both the Secretary and the Deputy Secretary of the Interior (Deputy Secretary) have died, resigned, or are otherwise unable to perform the functions and duties of the office of Secretary.

SEC. 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.

SEC. 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.

SEC. 4. Executive Order 11487 of October 6, 1969, is hereby revoked.

GEORGE W. BUSH.

EX. ORD. NO. 13245. PROVIDING AN ORDER OF SUCCESSION WITHIN THE DEPARTMENT OF LABOR

Ex. Ord. No. 13245, Dec. 18, 2001, 66 F.R. 66268, as amended by Ex. Ord. No. 13261, §4(e), Mar. 19, 2002, 67 F.R. 13244, provided:

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 Labor (Secretary) during any period when both the Secretary and the Deputy Secretary of Labor (Deputy Secretary) have died, resigned, or are otherwise unable to perform the functions and duties of the office of Secretary.

SEC. 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 Occupational 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; and
- (l) Assistant Secretary of Labor in charge of the Office of Disability Employment Policy.

SEC. 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.

SEC. 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

Ex. Ord. No. 13246, Dec. 18, 2001, 66 F.R. 66270, as amended by Ex. Ord. No. 13261, §4(f), Mar. 19, 2002, 67 F.R. 13244, provided:

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.

SEC. 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 those 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.

SEC. 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.

SEC. 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

Ex. Ord. No. 13247, Dec. 18, 2001, 66 F.R. 66271, as amended by Ex. Ord. No. 13261, §4(g), Mar. 19, 2002, 67 F.R. 13244, provided:

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:

SEC. 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.

SEC. 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.

SEC. 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.

EXECUTIVE ORDER NO. 13250

Ex. Ord. No. 13250, Dec. 28, 2001, 67 F.R. 1597, as amended by Ex. Ord. No. 13261, §4(h), Mar. 19, 2002, 67 F.R. 13244, which provided an order of succession within the Department of Health and Human Services, was revoked by Ex. Ord. No. 13461, §4, Feb. 15, 2008, 73 F.R. 9438, set out below.

EX. ORD. NO. 13251. PROVIDING AN ORDER OF SUCCESSION WITHIN THE DEPARTMENT OF STATE

Ex. Ord. No. 13251, Dec. 28, 2001, 67 F.R. 1599, as amended by Ex. Ord. No. 13261, §4(i), Mar. 19, 2002, 67 F.R. 13244, provided:

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. 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.

SEC. 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

(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;

(l) The following officers, in the order in which they shall have taken the oath of office as such:

(1) United States Ambassadors at Large;

(2) Counselor; and

(3) Special Representatives of the President; and

(m) The remaining Chiefs of Mission, in the order in which they shall have taken the oath of office as such.

SEC. 3. *Exceptions.*

(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.

SEC. 4. Executive Order 12343 of January 27, 1982, is hereby revoked.

GEORGE W. BUSH.

EX. ORD. NO. 13261. PROVIDING AN ORDER OF SUCCESSION IN THE ENVIRONMENTAL PROTECTION AGENCY AND AMENDING CERTAIN ORDERS ON SUCCESSION

Ex. Ord. No. 13261, Mar. 19, 2002, 67 F.R. 13243, as amended by Ex. Ord. No. 13344, July 7, 2004, 69 F.R. 41747, 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, 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.

SEC. 2. *Order of Succession.*

(a) Assistant Administrator, Office of Solid Waste;

(b) Assistant Administrator for Toxic Substances;

(c) Assistant Administrator (Air and Radiation).[];

(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).

SEC. 3. *Exceptions.*

(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.

SEC. 4. *Amendments to Certain Executive Orders providing Orders of Succession.* Executive Orders 13241, 13242, 13243, 13244, 13245, 13246, 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. 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, if they are eligible to act as Director under the provisions of the Federal Vacancies Reform Act of 1998, until such time as at least one of the officers mentioned above is able to 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;
- Administrator for Federal Procurement Policy;
- Administrator of the Office of Information and Regulatory Affairs;
- Controller, Office of Federal Financial Management; and
- Administrator of the Office of Electronic Government.

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 order.

(b) 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 Director.

GEORGE W. BUSH.

EXECUTIVE ORDER NO. 13394

Ex. Ord. No. 13394, Dec. 22, 2005, 70 F.R. 76665, which provided an order of succession of officers to act as Secretary of Defense, was revoked by Ex. Ord. No. 13533, § 3, Mar. 1, 2010, 75 F.R. 10164, set out below.

EX. ORD. NO. 13461. PROVIDING AN ORDER OF SUCCESSION
WITHIN THE DEPARTMENT OF HEALTH AND HUMAN
SERVICES

Ex. Ord. No. 13461, Feb. 15, 2008, 73 F.R. 9437, 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, 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 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; and
- (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 28, 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. 53353, 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:

SECTION 1. *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 otherwise become 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.

SEC. 4. *Orders of Succession Not Requiring Presidential Action.* (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 49 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).

SEC. 4. 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. 13533. PROVIDING AN ORDER OF SUCCESSION WITHIN THE DEPARTMENT OF DEFENSE

Ex. Ord. No. 13533, 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.

SEC. 3. Revocation. Executive Order 13394 of December 22, 2005 (Providing An Order of Succession Within the Department of Defense), is hereby revoked.

SEC. 4. Judicial Review. 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.

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, 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 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 both the Secretary and the Deputy Secretary of Agriculture (Deputy Secretary) have died, resigned, or are otherwise 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 Civil Rights; 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 shall, by virtue of so serving, act as Secretary 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.

BARACK OBAMA.

EX. ORD. NO. 13557. PROVIDING AN ORDER OF SUCCESSION WITHIN THE DEPARTMENT OF JUSTICE

Ex. Ord. No. 13557, Nov. 4, 2010, 75 F.R. 68679, 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, 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 officers, in the order listed, shall act as and perform the functions and duties of the office of Attorney General, during any period in which the Attorney General, the Deputy Attorney General, the Associate Attorney General, and any officers designated by the Attorney General pursuant to 28 U.S.C. 508 to act as Attorney General have died, resigned, or otherwise become unable to perform the functions and duties of the office of Attorney General, until such time as at least one of the officers mentioned above is able to perform the functions and duties of that office:

(a) United States Attorney for the Eastern District of Virginia;

(b) United States Attorney for the District of Minnesota; and

(c) United States Attorney for the District of Arizona.

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 Attorney General pursuant to this order.

(b) No individual listed in section 1 shall act as Attorney General 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 Attorney General.

SEC. 3. Executive Order 13481 of December 9, 2008, is 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.

BARACK OBAMA.

DESIGNATION OF OFFICERS OF THE FEDERAL EMERGENCY MANAGEMENT AGENCY TO ACT AS DIRECTOR OF THE FEDERAL EMERGENCY MANAGEMENT AGENCY

Memorandum of President of the United States, Nov. 26, 2002, 67 F.R. 79513, which provided for an order of succession within the Federal Emergency Management Agency, terminated upon the transfer of the authorities, functions, personnel, and assets of the Federal Emergency Management Agency to the Department of Homeland Security.

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], to perform the functions and duties of the office of Secretary have died, resigned, or otherwise become 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

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.

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 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.

SEC. 3. *Publication.*

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

GEORGE W. BUSH.

DESIGNATION OF OFFICERS OF THE OFFICE OF PERSONNEL MANAGEMENT TO ACT AS DIRECTOR OF THE OFFICE OF PERSONNEL MANAGEMENT

Memorandum of President of the United States, Mar. 11, 2003, 68 F.R. 12281, which provided for an order of succession within the Office of Personnel Management, was superseded by Memorandum of President of the United States, May 5, 2005, 70 F.R. 28773, set out below.

Memorandum of President of the United States, May 5, 2005, 70 F.R. 28773, provided:

Memorandum for the Director of the Office of Personnel Management

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 Director of the Office of Personnel Management (Director), or the Deputy Director of the Office of Personnel Management, has died, resigned, or otherwise become unable to perform the functions and duties of the office of Director, the following officers of the Office of Personnel Management, in the order listed, shall perform the functions and duties of the office of Director, if they are eligible to act as Director under the provisions of the Federal Vacancies Reform Act of 1998, until such time as at least one of the officers mentioned above is able to perform the functions and duties of the office of Director:

General Counsel;

Chief of Staff;

Director, Office of Communications and Public Liaison;

Director, Office of Congressional Relations;

Associate Director, Human Resources Products and Services;

Associate Director for Management;

Associate Director, Strategic Human Resources Policy;

Chief Financial Officer;

Associate Director, Human Capital Leadership and Merit Systems Accountability;

Deputy Associate Director, Center for Investigations Services; and

Director, Federal Executive Institute.

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) 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. 3345-3349d, to depart from this memorandum in designating an acting Director.

SEC. 3. *Prior Memorandum Superseded.*

This memorandum supercedes the Presidential Memorandum of March 11, 2003 [formerly set out above], entitled, "Designation of Officers of the Office of Personnel Management to Act as Director of the Office of Personnel Management."

SEC. 4. *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

Memorandum of President of the United States, Dec. 8, 2006, 71 F.R. 74753, which provided a designation of officers of the Department of Justice, was superseded by Ex. Ord. No. 13481, § 3, Dec. 9, 2008, 73 F.R. 75531, formerly set out above.

DESIGNATION OF OFFICERS OF THE FEDERAL BUREAU OF INVESTIGATION

Memorandum of President of the United States, Feb. 9, 2007, 72 F.R. 7343, provided:

Memorandum for the Director of the Federal Bureau of Investigation

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 officials 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 of 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.

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 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. *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.

SEC. 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. 20, 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 becomes 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).

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 USTR pursuant to this memorandum.

(b) No individual 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 memorandum in designating an acting USTR.

SEC. 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.

SEC. 4. *Publication.* 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.

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 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.

SEC. 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.

SEC. 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. 20, 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. 58869, set out below.

Memorandum of President of the United States, Oct. 3, 2008, 73 F.R. 58869, 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 2 and 3 of this memorandum, the following officers of the office of the Director of National Intelligence, in the order listed, shall act as and perform the functions and duties of the office 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 office of the DNI, until such time as the DNI or the Principal Deputy Director is able to perform the functions and duties of the office of DNI:

- (a) Director of the Intelligence Staff;
- (b) Deputy Director of National Intelligence for Policy, Plans, and Requirements;
- (c) Deputy Director of National Intelligence for Analysis;
- (d) Deputy Director of National Intelligence for Collection;
- (e) Director of the National Counterterrorism Center; and
- (f) National Counterintelligence Executive.

SEC. 2. *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 Director of National Intelligence during the absence or disability of the Director of National Intelligence or during a vacancy in the position of Director of National Intelligence (National Security Act of 1947, as amended, 50 U.S.C. 403-3a).

SEC. 3. *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 DNI pursuant to this memorandum.

(b) No individual listed in section 1 shall act as DNI 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 DNI.

SEC. 4. This memorandum supersedes the President's memorandum of December 20, 2005 (Designation of Officers of the Office of the Director of National Intelligence to Act as Director of National Intelligence).

SEC. 5. 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. 6. You are authorized and directed to publish this memorandum in the Federal Register.

GEORGE W. BUSH.

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, §3, Oct. 17, 2008, 73 F.R. 62845, set out below.

Memorandum of President of the United States, Oct. 17, 2008, 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.*, 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 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 Commissioner pursuant to this memorandum.

(b) No individual listed in section 1 shall act as Commissioner 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 Commissioner.

SEC. 3. This memorandum supersedes the President's Memorandum of April 17, 2006 (Designation of Officers of the Social Security Administration).

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 agencies, instrumentalities, 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.

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, 2008, 73 F.R. 75533, 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.* [(Ja) 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, it [sic] 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, 2008, 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 an 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;
- (b) Bureau for Asia;
- (c) Bureau for Democracy, Conflict, and Humanitarian Assistance;
- (d) Bureau for Economic Growth, Agriculture, and Trade;
- (e) Bureau for Europe and Eurasia;
- (f) Bureau for Global Health;

- (g) Bureau for Latin America and the Caribbean;
- (h) Bureau for Legislative and Public Affairs;
- (i) Bureau for Management; and
- (j) Bureau for the Middle East.

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 Administrator pursuant to this memorandum.

(b) No individual listed in section 1 shall act as Administrator 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 Administrator.

SEC. 3. This memorandum supersedes the President's memorandum of July 10, 2002, (Designation of Officers of the United States Agency for International Development to Act as Administrator).

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, it [sic] agencies, instrumentalities, 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.

GEORGE W. BUSH.

DESIGNATION OF OFFICERS OF THE NATIONAL AERONAUTICS AND SPACE ADMINISTRATION TO ACT AS ADMINISTRATOR

Memorandum of President of the United States, Jan. 16, 2009, 74 F.R. 4099, provided:

Memorandum for the Administrator of the National Aeronautics and Space Administration

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 National Aeronautics and Space Administration (NASA), in the order listed, shall act as and perform the functions and duties of the office of the Administrator of NASA (Administrator), during any period in which both the Administrator and Deputy Administrator of NASA (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 is able to perform the functions and duties of that office:

- (a) Associate Administrator;
- (b) Chief of Staff to the NASA Administrator;
- (c) Director for Johnson Space Flight Center;
- (d) Director for Kennedy Space Flight Center; and
- (e) Director for Marshall Space Flight Center.

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 Administrator pursuant to this memorandum.

(b) No individual listed in section 1 shall act as Administrator 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 Administrator.

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, it [sic] 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 TO ACT AS PRESIDENT OF THE OVERSEAS PRIVATE INVESTMENT CORPORATION

Memorandum of President of the United States, Jan. 16, 2009, 74 F.R. 4101, 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.*, 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 Overseas Private Investment Corporation, in the order listed, shall act as and perform the functions and duties of the office of the President of the Overseas Private Investment Corporation (POPIC), during any period in which the POPIC has died, resigned, or otherwise become unable to perform the functions and duties of the office of POPIC, until such time as the POPIC is able to perform the functions and duties of that office:

- (a) Executive Vice President;
- (b) Vice President and General Counsel;
- (c) Vice President and Chief Financial Officer;
- (d) Deputy General Counsel; and
- (e) Director of Operations.

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 POPIC pursuant to this memorandum.

(b) No individual listed in section 1 shall act as POPIC 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 POPIC.

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 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. 45533, provided:

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.

(Added Pub. L. 105-277, div. C, title I, §151(b), Oct. 21, 1998, 112 Stat. 2681-612.)

PRIOR PROVISIONS

A prior section 3346, Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 426, provided for details to subordinate offices, prior to repeal by Pub. L. 105-277, div. C, title I, §151(b), (d)(1), Oct. 21, 1998, 112 Stat. 2681-611, 2681-616, effective 30 days after Oct. 21, 1998. See section 3345 of this title.

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.

(Added Pub. L. 105-277, div. C, title I, §151(b), Oct. 21, 1998, 112 Stat. 2681-613; amended Pub. L. 106-31, title V, §5011, May 21, 1999, 113 Stat. 112; Pub. L. 108-271, §8(b), July 7, 2004, 118 Stat. 814.)

PRIOR PROVISIONS

A prior section 3347, Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 426, provided for Presidential authority relating to details, prior to repeal by Pub. L. 105-277, div. C, title I, §151(b), (d)(1), Oct. 21, 1998, 112 Stat. 2681-611, 2681-616, effective 30 days after Oct. 21, 1998. See section 3345 of this title.

AMENDMENTS

2004—Pub. L. 108-271 substituted “Government Accountability Office” for “General Accounting Office” in introductory provisions of subsec. (a) and in subsec. (b). 1999—Subsec. (b). Pub. L. 106-31 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(13); 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)(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, 3349, 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.

(Added Pub. L. 105-277, div. C, title I, §151(b), Oct. 21, 1998, 112 Stat. 2681-613; amended Pub. L. 108-271, §8(b), July 7, 2004, 118 Stat. 814.)

PRIOR PROVISIONS

A prior section 3348, Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 426; Pub. L. 100-398, §7(b), Aug. 17, 1988, 102 Stat. 988, provided for time limitations relating to details, prior to repeal by Pub. L. 105-277, div. C, title I, §151(b), (d)(1), Oct. 21, 1998, 112 Stat. 2681-611, 2681-616, effective 30 days after Oct. 21, 1998. See section 3346 of this title.

AMENDMENTS

2004—Subsec. (b). Pub. L. 108-271 substituted “Government Accountability Office” for “General Accounting Office” in two places.

Subsec. (e)(5). Pub. L. 108-271 substituted “Government Accountability Office” for “General Accounting Office”.

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.

§ 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.

(Added Pub. L. 105-277, div. C, title I, §151(b), Oct. 21, 1998, 112 Stat. 2681-614; amended Pub. L. 108-271, §8(b), July 7, 2004, 118 Stat. 814.)

PRIOR PROVISIONS

A prior section 3349, Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 426, provided for restrictions relating to details to fill vacancies, prior to repeal by Pub. L. 105-277, div. C, title I, §151(b), (d)(1), Oct. 21, 1998, 112 Stat. 2681-616, effective 30 days after Oct. 21, 1998. See section 3347 of this title.

AMENDMENTS

2004—Subsec. (a). Pub. L. 108-271 substituted “Government Accountability Office” for “General Accounting Office” in introductory provisions.

CHANGE OF NAME

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 Government Reform and Oversight of House of Representatives changed to Committee on Government Reform of House of Representatives by House Resolution No. 5, One Hundred Sixth Congress, Jan. 6, 1999. Committee on Government Reform of House of Representatives changed to Committee on Oversight and Government Reform of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007.

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.

§ 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 transi-

tional 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.

(Added Pub. L. 105-277, div. C, title I, §151(b), Oct. 21, 1998, 112 Stat. 2681-615.)

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.

§ 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.

(Added Pub. L. 105-277, div. C, title I, §151(b), Oct. 21, 1998, 112 Stat. 2681-615.)

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.

§ 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;
- (3) any member of the Surface Transportation Board; or
- (4) any judge appointed by the President, by and with the advice and consent of the Senate, to a court constituted under article I of the United States Constitution.

(Added Pub. L. 105-277, div. C, title I, §151(b), Oct. 21, 1998, 112 Stat. 2681-615.)

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.

§ 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.

(Added Pub. L. 105-277, div. C, title I, §151(b), Oct. 21, 1998, 112 Stat. 2681-615.)

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.

SUBCHAPTER IV—TRANSFERS

§ 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, or the government of the District of Columbia, the Office of Personnel Management or other examining agency shall waive—

- (1) requirements as to age, height, and weight, unless the requirement is essential to the performance of the duties of the position; and
- (2) physical requirements if, in the opinion of the Office or other examining agency, after considering the recommendation of an accredited physician, the preference eligible is physically able to perform efficiently the duties of the position.

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

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 426; Pub. L. 94-183, §2(4), Dec. 31, 1975, 89 Stat. 1057; Pub. L. 95-454, title IX, §906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224.)

HISTORICAL AND REVISION NOTES

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

The section is restated to conform to section 3312.

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

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

AMENDMENTS

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

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

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

§ 3352. Preference in transfers for employees making certain disclosures

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

- (1) such employee is otherwise qualified for such position;
- (2) such employee is eligible for appointment to such position; and

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

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

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

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

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

- (1) for no more than 1 transfer;
- (2) for a transfer from or within the agency such employee is employed at the time of a determination by the Merit Systems Protection Board that a prohibited personnel action as described under section 2302(b)(8) was taken against such employee; and

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

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

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

EFFECTIVE DATE

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

SUBCHAPTER V—PROMOTION

§ 3361. Promotion; competitive service; examination

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

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

HISTORICAL AND REVISION NOTES

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

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

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

§ 3362. Promotion; effect of incentive award

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

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

HISTORICAL AND REVISION NOTES

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

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

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

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

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

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

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

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

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

HISTORICAL AND REVISION NOTES

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

The section is restated to conform to section 3312.

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

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

AMENDMENTS

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

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

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

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

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

SUBCHAPTER VI—ASSIGNMENTS TO AND FROM STATES

§ 3371. Definitions

For the purpose of this subchapter—

(1) "State" means—

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

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

(2) "local government" means—

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

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

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

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

(4) "other organization" means—

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

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

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

(D) a federally funded research and development center.

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

REFERENCES IN TEXT

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

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

AMENDMENTS

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

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

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

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

tion 4(c)" in the provision it added as par. (2)(C) of this section. See 1975 Amendment note below.

1978—Par. (1)(A). Pub. L. 95-454, §603(a)(1), inserted reference to the Trust Territory of the Pacific Islands.

Pars. (3), (4). Pub. L. 95-454, §603(a)(2), added pars. (3) and (4).

1975—Par. (2)(C). Pub. L. 93-638, as amended by Pub. L. 100-472, §203(b), added par. (2)(C).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

EFFECTIVE DATE

Section 404 of title IV of Pub. L. 91-648 provided that: "This title [enacting this subchapter and repealing sections 1881 to 1888 of Title 7, Agriculture, section 869b of Title 20, Education, and section 246(f) of Title 42, The Public Health and Welfare, (less applicability to commissioned officers of the Public Health Service)] shall become effective sixty days after the date of enactment of this Act [Jan. 5, 1971]."

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

Pub. L. 108-196, §3, Dec. 19, 2003, 117 Stat. 2896, provided that:

"(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 agencies 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."

DECLARATION OF PURPOSE

Section 401 of title IV of Pub. L. 91-648, as amended by Pub. L. 95-454, title VI, §602(b), Oct. 13, 1978, 92 Stat. 1189, provided that: "The purpose of this title [see Effective Date note above] is to provide for the temporary assignment of personnel between the Federal Government and State and local governments, institutions of higher education, and other organizations."

§ 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. In the case of assignments made to Indian tribes or tribal organizations as defined in section 3371(2)(C) of this subchapter, the head of an executive agency may extend the period of assignment for any period of time where it is determined that this will continue to benefit both the executive agency and the Indian tribe or tribal organization. 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 an other 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.

(Added Pub. L. 91-648, title IV, §402(a), Jan. 5, 1971, 84 Stat. 1921; amended Pub. L. 93-638, title I, §104(k), (l), as added Pub. L. 100-472, title II, §203(f), Oct. 5, 1988, 102 Stat. 2290; Pub. L. 95-454, title VI, §603(b), (c), Oct. 13, 1978, 92 Stat. 1190; Pub. L. 98-146, title II, Nov. 4, 1983, 97 Stat. 946; Pub. L. 103-89, §3(b)(1)(A), Sept. 30, 1993, 107 Stat. 981; Pub. L. 103-337, div. A, title X, §1068(b), Oct. 5, 1994, 108 Stat. 2852.)

AMENDMENTS

1994—Subsec. (e). Pub. L. 103-337 added subsec. (e).

1993—Subsec. (d). Pub. L. 103-89 substituted “and additional step-increases, as defined in chapter 53” for “additional step-increases, merit pay, and cash awards, as defined in chapters 53 and 54”.

1988—Subsecs. (a), (d). Pub. L. 100-472 added Pub. L. 93-638, §104(k), (l). See 1975 Amendment note below.

1983—Subsec. (a). Pub. L. 98-146 inserted sentence providing that, in the case of assignments made to Indian tribes or tribal organizations as defined in section 3371(2)(C) of this title, the head of an executive agency may extend the period of assignment for any period of time where it is determined that this will continue to benefit both the executive agency and the Indian tribe or tribal organization.

1978—Subsec. (a). Pub. L. 95-454, §603(b), (c)(1), substituted “a Federal” for “an executive” wherever appearing, and in cl. (1) inserted provisions relating to a noncareer appointee, limited term appointee, or limited emergency appointee, and an employee excepted from the competitive service.

Subsec. (b). Pub. L. 95-454, §603(b), (c)(2)–(4), in cls. (1) and (2) substituted “a Federal” for “an executive”, and added cls. (3) and (4).

Subsec. (c). Pub. L. 95-454, §603(c)(5), added subsec. (c).

1975—Subsec. (a). Pub. L. 93-638, §104(k), as added by Pub. L. 100-472, inserted at end “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.”

Subsec. (d). Pub. L. 93-638, §104(l), as added by Pub. L. 100-472, added subsec. (d).

EFFECTIVE DATE OF 1993 AMENDMENT

Section 3(c) of Pub. L. 103-89 provided that: “The amendments made by this section [amending this section and sections 4501, 4502, 5302, 5332, 5334 to 5336, 5361 to 5363, 5948, and 8473 of this title, sections 1602, 1732, and 1733 of Title 10, Armed Forces, and section 731 of Title 31, Money and Finance, repealing sections 4302a and 5401 to 5410 of this title, and amending provisions set out as a note under section 5304 of this title] shall take effect as of November 1, 1993.”

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

§ 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

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 elect to 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.

(Added Pub. L. 91-648, title IV, § 402(a), Jan. 5, 1971, 84 Stat. 1921; amended Pub. L. 95-454, title VI, § 603(b), title IX, § 906(a)(2), Oct. 13, 1978, 92 Stat. 1190, 1224; Pub. L. 102-378, § 2(14), Oct. 2, 1992, 106 Stat. 1347.)

REFERENCES IN TEXT

The Federal Tort Claims Act, referred to in subsec. (a), 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 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.

AMENDMENTS

1992—Pub. L. 102-378 substituted "or local" for "and local" in section catchline.

1978—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

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

§ 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, 208, 209, 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 with or without reimbursement by the 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 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 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.

(Added Pub. L. 91-648, title IV, §402(a), Jan. 5, 1971, 84 Stat. 1923; amended Pub. L. 95-454, title VI, §603(b), (d), Oct. 13, 1978, 92 Stat. 1190; Pub. L. 97-258, §3(a)(6), Sept. 13, 1982, 96 Stat. 1063; Pub. L. 107-107, div. A, title XI, §1117, Dec. 28, 2001, 115 Stat. 1241; Pub. L. 111-350, §5(a)(5), Jan. 4, 2011, 124 Stat. 3841.)

REFERENCES IN TEXT

The Ethics in Government Act of 1978, referred to in subsec. (c)(2), is Pub. L. 95-521, Oct. 26, 1978, 92 Stat. 1824. For complete classification of this Act to the Code, see Short Title note set out under section 101 of Pub. L. 95-521 in the Appendix to this title and Tables.

The Federal Tort Claims Act, referred to in subsec. (c)(2), 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 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.

AMENDMENTS

2011—Subsec. (c)(2). Pub. L. 111-350 substituted “chapter 21 of title 41” for “section 27 of the Office of Federal Procurement Policy Act”.

2001—Subsec. (c)(2). Pub. L. 107-107 inserted “the Ethics in Government Act of 1978, section 27 of the Office of Federal Procurement Policy Act,” after “chapter 73 of this title,”.

1982—Subsec. (c)(2). Pub. L. 97-258 substituted “sections 1343, 1344, and 1349(b)” for “section 638a”.

1978—Subsec. (a). Pub. L. 95-454, §603(b), substituted “a Federal” for “an executive”, and “Federal agency” for “executive agency” in two places.

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

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

§ 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;

(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.

(Added Pub. L. 91-648, title IV, §402(a), Jan. 5, 1971, 84 Stat. 1924; amended Pub. L. 95-454, title

VI, §603(b), (e), Oct. 13, 1978, 92 Stat. 1190, 1191; Pub. L. 104-201, div. A, title XVII, §1723(a)(1)(A), Sept. 23, 1996, 110 Stat. 2758.)

AMENDMENTS

1996—Subsec. (a)(3). Pub. L. 104-201, §1723(a)(1)(A)(i), substituted “section 5724a(a)” for “section 5724a(a)(1)”.

Subsec. (a)(4). Pub. L. 104-201, §1723(a)(1)(A)(ii), substituted “section 5724a(c)” for “section 5724a(a)(3)”.

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), (e), substituted “a Federal agency” for “an executive agency” in introductory text, substituted “Federal” for “executive” in cl. (1), added cl. (5), and redesignated former cl. (5) as (6).

Subsec. (b). Pub. L. 95-454, §603(b), substituted “the Federal” for “the executive”.

Subsec. (c). Pub. L. 95-454, §603(b), substituted “a Federal agency” for “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

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

§ 3376. Regulations

The President may prescribe regulations for the administration of this subchapter.

(Added Pub. L. 91-648, title IV, §402(a), Jan. 5, 1971, 84 Stat. 1925.)

EX. ORD. NO. 11589. DELEGATION OF FUNCTIONS TO OFFICE OF PERSONNEL MANAGEMENT

Ex. Ord. No. 11589, Apr. 1, 1971, 36 F.R. 6343, as amended by Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, provided:

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

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

(a) The authority of the President under section 3376 of title 5 of the United States Code [this section] to prescribe regulations for the administration of subchapter VI, “Assignments to and from States,” of chapter 33 of that title [this chapter].

(b) The authority of the President under section 205 (a)(4) of the Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2286(a)(4)), and as affected by Reorganization Plan No. 1 of 1958 (72 Stat. 1799) [set out in the Appendix to this title], relating to the establishment and maintenance of personnel standards on the merit basis.

SEC. 2. To the extent that section 1(b) of this order is inconsistent with the provisions of Executive Order No. 10952 of July 20, 1961, as amended [formerly set out as a note under section 2271 of Title 50, Appendix, War and National Defense], section 1(b) shall control.

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; or

(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; or

(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),¹ and 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.

(Added Pub. L. 92-297, §3(a), May 16, 1972, 86 Stat. 142; amended Pub. L. 96-347, §1(b), (c)(1), Sept. 12, 1980, 94 Stat. 1150; Pub. L. 97-258, §3(a)(7), Sept. 13, 1982, 96 Stat. 1063; Pub. L. 103-226, §2(b)(1), Mar. 30, 1994, 108 Stat. 112.)

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

1994—Subsec. (e). Pub. L. 103-226 substituted “4105,” for “4105(a).”

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”.

¹ See References in Text note below.

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 and repealing sections 4106 and 4114 of this title] shall become effective on the date of enactment of this Act [Mar. 30, 1994].”

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-347 effective on 90th day after Sept. 12, 1980, see section 3 of Pub. L. 96-347, set out as a note under section 2109 of this title.

EFFECTIVE DATE

Section 10 of Pub. L. 92-297 provided that: “This Act [enacting this subchapter and section 2109 of this title, amending sections 3307, 8332, 8334 to 8336, 8339, 8341, 8344 of this title, enacting provisions set out as notes under this section and section 8335 of this title, and repealing provisions set out as a note under section 3307 of this title] shall become effective at the beginning of the ninetieth day after the date of enactment of this Act [May 16, 1972].”

REPORT TO CONGRESS

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. (Added Pub. L. 92-297, §3(a), May 16, 1972, 86 Stat. 142; amended Pub. L. 96-347, §1(b), Sept. 12, 1980, 94 Stat. 1150.)

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

Amendment by Pub. L. 96-347 effective on 90th day after Sept. 12, 1980, see section 3 of Pub. L. 96-347, set out as a note under section 2109 of this title.

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.

(c) The board of review shall review evidence supporting and inconsistent with the determination of the Secretary and, within a period of 30 days after being convened, shall issue its findings and furnish copies thereof to the Secretary and the controller. The board may approve or rescind the determination of the Secretary. A decision by the board under this subsection is final. The Secretary shall take such action as may be necessary to carry out the decision of the board.

(d) Except as provided under section 3382 of this title, the review procedure of this section is in addition to any other review or appeal procedures provided under any other provision of law, but is the sole and exclusive administrative remedy available to a controller within the Executive agency in which such controller is employed.

(Added Pub. L. 92-297, §3(a), May 16, 1972, 86 Stat. 143; amended Pub. L. 95-454, title IX, §906(a)(6), Oct. 13, 1978, 92 Stat. 1225; Pub. L. 96-347, §1(b), (c)(2), (3), Sept. 12, 1980, 94 Stat. 1150.)

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, §1(b), substituted “Secretary under” for “Secretary of Transportation under”.

Subsec. (b)(2). Pub. L. 96-347, §1(c)(2), substituted “the Executive agency in which the controller is employed” for “the Department of Transportation”.

Subsec. (d). Pub. L. 96-347, §1(c)(3), substituted “within the Executive agency in which such controller is employed” for “within the Department of Transportation”.

1978—Subsec. (b)(3). Pub. L. 95-454 substituted “Merit Systems Protection Board” for “Civil Service Commission”.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-347 effective on 90th day after Sept. 12, 1980, see section 3 of Pub. L. 96-347, set out as a note under section 2109 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

EFFECTIVE DATE

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.

§ 3384. Regulations

The Secretary is authorized to issue regulations to carry out the provisions of this subchapter.

(Added Pub. L. 92-297, §3(a), May 16, 1972, 86 Stat. 143; amended Pub. L. 96-347, §1(b), Sept. 12, 1980, 94 Stat. 1150.)

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”.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-347 effective on 90th day after Sept. 12, 1980, see section 3 of Pub. L. 96-347, set out as a note under section 2109 of this title.

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.

(Added Pub. L. 92-297, §3(a), May 16, 1972, 86 Stat. 143; amended Pub. L. 96-347, §1(b), Sept. 12, 1980, 94 Stat. 1150.)

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”.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-347 effective on 90th day after Sept. 12, 1980, see section 3 of Pub. L. 96-347, set out as a note under section 2109 of this title.

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.

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

PRIOR PROVISIONS

A prior subchapter VIII, added Pub. L. 95-437, §3(a), Oct. 10, 1978, 92 Stat. 1056, which related to part-time career employment opportunities, was redesignated as chapter 34 of this title by Pub. L. 95-454, title IX, §906(c)(1)(A), Oct. 13, 1978, 92 Stat. 1226.

§ 3391. Definitions

For the purpose of this subchapter, “agency”, “Senior Executive Service position”, “senior executive”, “career appointee”, “limited term appointee”, “limited emergency appointee”, “non-career appointee”, and “general position” have the meanings set forth in section 3132(a) of this title.

(Added Pub. L. 95-454, title IV, §403(a), Oct. 13, 1978, 92 Stat. 1161.)

PRIOR PROVISIONS

A prior section 3391, added Pub. L. 95-437, §3(a), Oct. 10, 1978, 92 Stat. 1056, which related to definitions for part-time career employment opportunities, was renumbered as section 3401 of this title by Pub. L. 95-454, title IX, §906(c)(1)(B), Oct. 13, 1978, 92 Stat. 1226.

EFFECTIVE DATE

Subchapter effective 9 months after Oct. 13, 1978, and congressional review of provisions of sections 401 through 412 of Pub. L. 95-454, see section 415(a)(1), (b) of Pub. L. 95-454, set out as an Effective Date note under section 3131 of this title.

§ 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.

(Added Pub. L. 95-454, title IV, §403(a), Oct. 13, 1978, 92 Stat. 1161; amended Pub. L. 101-335, §7(a), July 17, 1990, 104 Stat. 325.)

REFERENCES IN TEXT

The Executive Schedule, referred to in subsec. (c), is set out as section 5311 et seq. of this title.

PRIOR PROVISIONS

A prior section 3392, added Pub. L. 95-437, §3(a), Oct. 10, 1978, 92 Stat. 1056, which related to the establishment of part-time career employment programs, was renumbered as section 3402 of this title by Pub. L. 95-454, title IX, §906(c)(1)(B), Oct. 13, 1978, 92 Stat. 1226.

AMENDMENTS

1990—Subsec. (c). Pub. L. 101-335 designated existing provisions as par. (1), redesignated former pars. (1) and (2) as subpars. (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**

Section 7(b)(2), (3) of Pub. L. 101-335, as amended by Pub. L. 102-378, §7(a), Oct. 2, 1992, 106 Stat. 1359, provided that:

“(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.”

[Pub. L. 102-378, §7(b), Oct. 2, 1992, 106 Stat. 1359, provided that: “The amendment made by subsection (a) [enacting section 7(b)(3) of Pub. L. 101-335, set out above] shall be effective as if enacted as a part of section 7 of the Thrift Savings Plan Technical Amendments Act of 1990 [Pub. L. 101-335].”]

§ 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. Of 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 1215,¹ 3592, 3595, 7532, or 7543 of this title.

(Added Pub. L. 95-454, title IV, §403(a), Oct. 13, 1978, 92 Stat. 1161; amended Pub. L. 97-35, title XVII, §1704(c), Aug. 13, 1981, 95 Stat. 758; Pub. L. 98-615, title III, §306(b)(1), Nov. 8, 1984, 98 Stat. 3220; Pub. L. 101-12, §9(b), Apr. 10, 1989, 103 Stat. 35; Pub. L. 101-194, title V, §506(b)(2), Nov. 30, 1989, 103 Stat. 1758; Pub. L. 101-280, §6(d)(1), May 4, 1990, 104 Stat. 160; Pub. L. 107-296, title XIII, §1321(a)(1)(A), Nov. 25, 2002, 116 Stat. 2296.)

PRIOR PROVISIONS

A prior section 3393, added Pub. L. 95-437, §3(a), Oct. 10, 1978, 92 Stat. 1057, which related to limitations concerning part-time career employment opportunities, was renumbered as section 3403 of this title by Pub. L. 95-454, title IX, §906(c)(1)(B), Oct. 13, 1978, 92 Stat. 1226.

AMENDMENTS

2002—Subsec. (g). Pub. L. 107-296 struck out “3393a” after “1215.”

1990—Subsec. (g). Pub. L. 101-280 made technical correction to directory language of Pub. L. 101-194, see 1989 Amendment below.

1989—Subsec. (g). Pub. L. 101-194, as amended by Pub. L. 101-280, inserted “3393a,” after “1215.”

Pub. L. 101-12 substituted “1215” for “1207”.

1984—Subsec. (b). Pub. L. 98-615 inserted provision referring to commissioned officers of the uniformed services serving on active duty in such agency in provisions preceding par. (1).

1981—Subsec. (g). Pub. L. 97-35 added subsec. (g).

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

¹ So in original.

an Effective Date note under section 101 of Title 6, Domestic Security.

EFFECTIVE DATE OF 1989 AMENDMENTS

Amendment by Pub. L. 101-194 effective Jan. 1, 1991, see section 506(d) of Pub. L. 101-194, set out as a note under section 3151 of this title.

Amendment by Pub. L. 101-12 effective 90 days following Apr. 10, 1989, see section 11 of Pub. L. 101-12, set out as a note under section 1201 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 307 of title III of Pub. L. 98-615 provided that: "The amendments made by this title [enacting section 3595a of this title, amending this section and sections 3135, 3593 to 3595, 4312, 5383, and 5384 of this title, and enacting provisions set out as a note under section 3131 of this title] shall be effective following the expiration of the 90-day period beginning on the date of enactment of this Act [Nov. 8, 1984], except that the amendments made by section 304 [amending sections 3395, 3595, 7543, and 8336 of this title] shall be effective as of such date of enactment."

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-35 effective June 1, 1981, with certain exceptions and conditions, see section 1704(e) of Pub. L. 97-35, set out as an Effective Date note under section 3595 of this title.

§ 3393a. Repealed. Pub. L. 107-296, title XIII, § 1321(a)(1)(B), Nov. 25, 2002, 116 Stat. 2296]

Section, added Pub. L. 101-194, title V, § 506(a)(1), Nov. 30, 1989, 103 Stat. 1756, related to recertification of career appointees.

EFFECTIVE DATE OF REPEAL

Repeal 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.

§ 3394. Noncareer and limited appointments

(a) Each noncareer appointee, limited term appointee, and limited emergency appointee shall meet the qualifications of the position to which appointed, as determined in writing by the appointing authority.

(b) An individual may not be appointed as a limited term appointee or as a limited emergency appointee without the prior approval of the exercise of such appointing authority by the Office of Personnel Management.

(Added 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. 1057, which related to personnel ceilings, was renumbered as section 3404 of this title by Pub. L. 95-454, title IX, § 906(c)(1)(B), Oct. 13, 1978, 92 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 subsection, 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 Service 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 reassigned to any Senior Executive Service position only if the career appointee receives written notice of the reassignment at least 15 days before the effective date of such reassignment.

(B)(i) A career appointee may not be reassigned 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 preferences with respect to, the proposed reassignment; and

(II) the career appointee receives written notice of the reassignment, including a statement 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 involved.

(b)(1) Notwithstanding section 3394(b) of this title, a limited emergency appointee may be reassigned 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 appointment in excess of 18 months.

(2) Notwithstanding section 3394(b) of this title, a limited term appointee may be reassigned to another Senior Executive Service position in the same agency the duties of which will expire at the end of a term of 3 years or less, except that the appointee may not serve in one or more positions in the agency under such appointment 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 appointment 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 position in the agency for which the appointee is qualified; and

(2) may transfer to a general position in another 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 immediate supervisor who—

(i) is a noncareer appointee; and

(ii) has the authority to make an initial appraisal of the career appointee's performance 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 temporary assignment apart from such appointee's regular position shall not be counted in determining the number of days that have elapsed since an appointment referred to in subparagraph (A) or (B) of such paragraph.

(Added Pub. L. 95-454, title IV, §403(a), Oct. 13, 1978, 92 Stat. 1163; amended Pub. L. 98-615, title III, §304(a), Nov. 8, 1984, 98 Stat. 3218; Pub. L. 102-175, §3, Dec. 2, 1991, 105 Stat. 1222.)

PRIOR PROVISIONS

A prior section 3395, added Pub. L. 95-437, §3(a), Oct. 10, 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. 95-454, title IX, §906(c)(1)(B), Oct. 13, 1978, 92 Stat. 1226.

AMENDMENTS

1991—Subsec. (e)(1)(B)(ii). Pub. L. 102-175, §3(1), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: "has the authority to reassign the career appointee."

Subsec. (e)(3). Pub. L. 102-175, §3(2), added par. (3).

1984—Subsec. (a)(2). Pub. L. 98-615 designated existing 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.

(Added Pub. L. 95-454, title IV, §403(a), Oct. 13, 1978, 92 Stat. 1163; amended Pub. L. 102-175, §4, Dec. 2, 1991, 105 Stat. 1223.)

PRIOR PROVISIONS

A prior section 3396, added Pub. L. 95-437, §3(a), Oct. 10, 1978, 92 Stat. 1057, which related to issuance of regulations, was renumbered as section 3406 of this title by

Pub. L. 95-454, title IX, §906(c)(1)(B), Oct. 13, 1978, 92 Stat. 1226.

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.

(Added Pub. L. 95-454, title IV, §403(a), Oct. 13, 1978, 92 Stat. 1164.)

PRIOR PROVISIONS

A prior section 3397, added Pub. L. 95-437, §3(a), Oct. 10, 1978, 92 Stat. 1058, which related to reports, was renumbered as section 3407 of this title by Pub. L. 95-454, title IX, §906(c)(1)(B), Oct. 13, 1978, 92 Stat. 1226.

A prior section 3398, added Pub. L. 95-437, §3(a), Oct. 10, 1978, 92 Stat. 1058, which related to representation by employee organizations of employees employed on a part-time career employment basis, was renumbered as section 3408 of this title by Pub. L. 95-454, title IX, §906(c)(1)(B), Oct. 13, 1978, 92 Stat. 1226.

CHAPTER 34—PART-TIME CAREER EMPLOYMENT OPPORTUNITIES

Sec.	
3401.	Definitions.
3402.	Establishment of part-time career employment programs.
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[3407.	Repealed.]
3408.	Employee organization representation.

AMENDMENTS

1995—Pub. L. 104-66, title III, §3001(a)(2), Dec. 21, 1995, 109 Stat. 734, struck out item 3407 "Reports".

1978—Pub. L. 95-437, §3(b), Oct. 10, 1978, 92 Stat. 1058, added items 3391 to 3398, which were renumbered 3401 to 3408 by Pub. L. 95-454, title IX, §906(c)(1)(A), Oct. 13, 1978, 92 Stat. 1226, which section also substituted "CHAPTER 34" for "SUBCHAPTER VIII" in heading.

§ 3401. Definitions

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.

(Added Pub. L. 95-437, §3(a), Oct. 10, 1978, 92 Stat. 1056, §3391; renumbered §3401 and amended Pub. L. 95-454, title IX, §906(c)(1)(B), (2)(A), Oct. 13, 1978, 92 Stat. 1226; Pub. L. 97-221, §3, July 23, 1982, 96 Stat. 233; Pub. L. 97-468, title VI, §615(b)(1)(B), Jan. 14, 1983, 96 Stat. 2578; Pub. L. 102-378, §2(15), Oct. 2, 1992, 106 Stat. 1347; Pub. L. 104-201, div. C, title XXXV, §3548(a)(1), Sept. 23, 1996, 110 Stat. 2868.)

AMENDMENTS

1996—Par. (1). Pub. L. 104-201, which directed amendment of par. (1) by striking cl. (v) and redesignating cls. (vi), (vii), and (viii) as (v), (vi), and (vii), respectively, was executed by striking cl. (iv), relating to the Panama Canal Company, and redesignating cls. (v), (vi), and (vii) as (iv), (v), and (vi), respectively, to reflect the probable intent of Congress, because par. (1) does not contain a cl. (viii) and the amendments were included in a series of conforming amendments relating to the Panama Canal.

1992—Par. (1)(iii). Pub. L. 102-378, which directed the amendment of cl. (iv) by substituting "Virgin Islands" for "Virgin Island", was executed by making the substitution in cl. (iii) to reflect the probable intent of Congress.

1983—Par. (1)(iii) to (viii). Pub. L. 97-468 struck out cl. (iii) which excluded the Alaska Railroad, and redesignated cls. (iv) to (viii) as (iii) to (vii), respectively.

1982—Par. (2). Pub. L. 97-221 inserted "(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)" after "week".

1978—Pub. L. 95-454, §906(c)(1)(B), renumbered section 3391 of this title as this section.

Pub. L. 95-454, §906(c)(2)(A), substituted "chapter" for "subchapter".

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

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

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;