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### AMENDMENTS

2015—Pub. L. 114–113, div. M, title III, § 306(a)(2), Dec. 18, 2015, 129 Stat. 2916, added items for subpart J and chapter 110.

Pub. L. 114–47, § 2(b), Aug. 7, 2015, 129 Stat. 487, added item for chapter 96.

2011—Pub. L. 112–81, div. A, title XI, § 1101(d)(2), Dec. 31, 2011, 125 Stat. 1610, added item for chapter 99 and struck out former item for chapter 99 “Department of Defense National Security Personnel System”.

2010—Pub. L. 111–292, § 2(b)(1), Dec. 9, 2010, 124 Stat. 3170, added item for chapter 65.

Pub. L. 111–282, § 4(c)(3), Oct. 15, 2010, 124 Stat. 3044, added item for chapter 102.

2006—Pub. L. 109–295, title VI, § 621(b), Oct. 4, 2006, 120 Stat. 1416, added item for chapter 101.

2004—Pub. L. 108–496, § 4, Dec. 23, 2004, 118 Stat. 4010, added items for chapters 89A and 89B.

Pub. L. 108–201, § 3(b), Feb. 24, 2004, 118 Stat. 477, added item for chapter 98.

2003—Pub. L. 108–136, div. A, title XI, §§ 1101(a)(2), 1129(b), Nov. 24, 2003, 117 Stat. 1633, 1645, added items for chapters 54 and 99.

2002—Pub. L. 107–347, title II, § 209(c)(3), Dec. 17, 2002, 116 Stat. 2930, added item for chapter 37.

Pub. L. 107–296, title VIII, § 841(a)(3), Nov. 25, 2002, 116 Stat. 2233, added item for chapter 97.

Pub. L. 107–123, § 8(d)(1)(A), Jan. 16, 2002, 115 Stat. 2399, added item for chapter 48.

2000—Pub. L. 106–398, § 1 [[div. A], title X, § 1076(f)(1)(B)], Oct. 30, 2000, 114 Stat. 1654, 1654A–282, substituted “and Other Purposes” for “Purposes” in item for chapter 91.

Pub. L. 106–265, title I, § 1002(b), Sept. 19, 2000, 114 Stat. 769, added item for chapter 90.

1998—Pub. L. 105–206, title I, § 1201(b), July 22, 1998, 112 Stat. 719, added items for subpart I and chapter 95.

1993—Pub. L. 103–89, § 3(a)(2), Sept. 30, 1993, 107 Stat. 981, struck out item for chapter 54 “Performance Management and Recognition System”.

1986—Pub. L. 99–335, title I, § 101(b), June 6, 1986, 100 Stat. 588, added item for chapter 84.

1985—Pub. L. 99–169, title VIII, § 801(b), Dec. 4, 1985, 99 Stat. 1010, added items for subpart H and chapter 91.

1984—Pub. L. 98–615, title II, § 201(b), Nov. 8, 1984, 98 Stat. 3214, substituted “Performance Management and Recognition System” for “Merit Pay and Cash Awards” in item for chapter 54.

1978—Pub. L. 95–454, title I, § 101(b)(1), title II, § 203(b), title V, § 503(i), title VI, § 601(b), title VII, § 703(b), title IX, § 906(c)(5), Oct. 13, 1978, 92 Stat. 1118, 1134, 1184, 1188, 1217, 1227, added items for chapters 23, 34, 47, 54, and 72, substituted in item for chapter 43 “Appraisal” for “Rating” and in item for chapter 71 “Labor-Management Relations” for “Policies”, and inserted in heading of subpart F “Labor-Management and” before “Employee”.

## Subpart A—General Provisions

### CHAPTER 21—DEFINITIONS

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|--------|--|
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| 2101.  | Civil service; armed forces; uniformed services.   |
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| 2108a. | Treatment of certain individuals as veterans, disabled veterans, and preference eligibles. |
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### AMENDMENTS

2011—Pub. L. 112–56, title II, § 235(a)(2)(B), Nov. 21, 2011, 125 Stat. 723, added item 2108a.

1980—Pub. L. 96–347, § 1(d), Sept. 12, 1980, 94 Stat. 1150, substituted “controller; Secretary” for “controller” in item 2109.

1978—Pub. L. 95–454, title IV, § 401(e), Oct. 13, 1978, 92 Stat. 1154, added item 2101a.

1972—Pub. L. 92–297, § 1(b), May 16, 1972, 86 Stat. 141, added item 2109.

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

For the purpose of this title—

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

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

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

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 408; Pub. L. 90–83, § 1(4), Sept. 11, 1967, 81 Stat. 196; Pub. L. 96–54, § 2(a)(4), Aug. 14, 1979, 93 Stat. 381.)

### HISTORICAL AND REVISION NOTES

#### 1966 ACT

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

#### 1967 ACT

This section amends various sections [§§ 2101, 4102, 4109, 5541, 8101] of title 5, United States Code, to reflect 1965 Reorganization Plan No. 2 (79 Stat. 1318), effective July 13, 1965, which consolidated the Coast and Geodetic Survey and the Weather Bureau to form a new agency in the Department of Commerce to be known as the Environmental Science Services Administration.

### AMENDMENTS

1979—Par. (3). Pub. L. 96–54 substituted “National Oceanic and Atmospheric” for “Environmental Science Services”.

<sup>2</sup> So in original. Probably should be capitalized.

## 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.

## SHORT TITLE OF 1998 AMENDMENT

Pub. L. 105-339, §1, Oct. 31, 1998, 112 Stat. 3182, provided that: “This Act [enacting sections 3330a to 3330c of this title, section 1316a of Title 2, The Congress, section 115 of Title 3, The President, and section 1354 of Title 31, Money and Finance, amending sections 2108, 2302, and 3304 of this title and section 4212 of Title 38, Veterans’ Benefits, repealing section 1599c of Title 10, Armed Forces, enacting provisions set out as notes under section 2302 of this title and section 601 of Title 28, Judiciary and Judicial Procedure, and amending provisions set out as a note under section 106 of Title 49, Transportation] may be cited as the ‘Veterans Employment Opportunities Act of 1998’.”

## SHORT TITLE OF 1994 AMENDMENT

Pub. L. 103-226, §1, Mar. 30, 1994, 108 Stat. 111, provided that: “This Act [amending sections 3381, 4101, 4103, 4105, 4107, 4108, 4113, 4118, 5597, 8351, 8433 to 8435, 8437, 8440a to 8440d of this title and section 1206 of Title 45, Railroads, repealing sections 4106 and 4114 of this title, enacting provisions set out as notes under sections 3101, 3381, 5597, 8331, and 8351 of this title, and amending provisions set out as a note under section 403-4 of Title 50, War and National Defense] may be cited as the ‘Federal Workforce Restructuring Act of 1994’.”

## SHORT TITLE OF 1990 AMENDMENT

Pub. L. 101-508, title VII, §7202(a), Nov. 5, 1990, 104 Stat. 1388-335, provided that: “This section [amending sections 2105, 3502, 5334, 5335, 5365, 5551, 6308, 6312, 8331, 8347, 8401, 8461, and 8901 of this title and enacting provisions set out as notes under section 2105 of this title] may be cited as the ‘Portability of Benefits for Nonappropriated Fund Employees Act of 1990’.”

## TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

## COORDINATION OF TITLE VII OF PUB. L. 101-508 WITH SECTION 909 OF TITLE 2

Pub. L. 101-508, title VII, §7301, Nov. 5, 1990, 104 Stat. 1388-341, provided that: “For purposes of section 202 of the Balanced Budget and Emergency Deficit Reaffirmation Act of 1987 [probably means section 202 of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987, Pub. L. 100-119, which was formerly classified to section 909 of Title 2, The Congress], this title and the amendments made by this title [amending sections 552a, 2105, 3502, 5334, 5335, 5365, 5551, 6308, 6312, 8331, 8334, 8339, 8342, 8343a, 8347, 8348, 8401, 8420a, 8461, 8901, 8902, 8904, 8906, 8909, and 8910 of this title, enacting provisions set out as notes under this section and sections 552a, 2105, 8334, 8343a, 8348, 8902, 8904, and 8906 of this title, amending provisions set out as notes under sections 8343a and 8906 of this title, and repealing provisions set out as notes under sections 8343a and 8348 of this title] shall be considered an exception under subsection (b) of such section.”

## § 2101a. The Senior Executive Service

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

(Added Pub. L. 95-454, title IV, §401(a), Oct. 13, 1978, 92 Stat. 1154.)

## EFFECTIVE DATE

Section effective 9 months after Oct. 13, 1978, and congressional review of provisions of sections 401 through 412 of Pub. L. 95-454, see section 415 of Pub. L. 95-454, set out as a note under section 3131 of this title.

## § 2102. The competitive service

(a) The “competitive service” consists of—

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

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

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

(C) positions in the Senior Executive Service;

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

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

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

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

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 408; Pub. L. 95-454, title IV, §401(b), Oct. 13, 1978, 92 Stat. 1154.)

## 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. 638 (less applicability to appointment and promotion).	Jan. 16, 1883, ch. 27, §7 (less applicability to appointment and promotion), 22 Stat. 406.

Subsection (a) is restated in the form of a definition.

Subsection (a)(1) is based on former section 638, which placed positions in the executive branch of the Government generally in the competitive service by the requirement that employment be predicated on passing an examination or being exempted from examination, and section 1 of the Act of Nov. 26, 1940, ch. 919, title I, 54 Stat. 1211 (see table III), which authorized the President, subject to certain exceptions, to place in the classified civil service positions in the Executive departments, independent establishments, and other agencies of the Government. In that Act the word “executive” has been construed to modify “departments”, “independent establishments”; and “other agency”. This construction is supported by the language of the Act of Jan. 16, 1883, and is embodied in Civil Service Rule I. Acting under this statute, the President has placed all but a comparatively few of the positions covered by the Act of Nov. 26, 1940, in the competitive service. The remainder are covered by the exceptions contained in the Civil Service Rules and Regulations. The authority of the President conferred by the Act of Nov. 26, 1940, has been superseded in part by exceptions created by statutes enacted after that date. The effect of these exceptions and the power conferred on the Presi-

dent by former section 633(2)8 (last sentence) to make exceptions to the Civil Service Rules are preserved by the words “positions which are specifically excepted from the competitive service by or under statute”.

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

Subsection (a)(2) preserves the exception stated in former section 638 modified to recognize the several statutory exceptions to this exception that have been enacted. The language of former section 638 relative to examination is codified in sections 3304(b) and 3361. The reference to veterans’ preference is omitted because the statute referred to, R.S. §1754, was superseded by sections 3 and 21 of the Act of June 18, 1929, ch. 28, 46 Stat. 21. Section 3 of the Act of June 18, 1929, was superseded by the Act of June 27, 1944, ch. 287, 58 Stat. 387, as amended, which is carried into this title. Rights preserved by section 18 of the Act of June 27, 1944, are further preserved by technical section 8. The exception for laborers and workmen was superseded by the Act of Nov. 26, 1940.

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

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

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

#### AMENDMENTS

1978—Subsec. (a)(1)(C). Pub. L. 95-454 added cl. (C).

#### EFFECTIVE DATE OF 1978 AMENDMENT

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

### § 2103. The excepted service

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

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

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 408; Pub. L. 95-454, title IV, §401(c), Oct. 13, 1978, 92 Stat. 1154.)

#### HISTORICAL AND REVISION NOTES

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

#### AMENDMENTS

1978—Subsec. (a). Pub. L. 95-454 inserted reference to Senior Executive Service.

#### EFFECTIVE DATE OF 1978 AMENDMENT

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

### § 2104. Officer

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

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

- (A) the President;
- (B) a court of the United States;
- (C) the head of an Executive agency; or
- (D) the Secretary of a military department;

(2) engaged in the performance of a Federal function under authority of law or an Executive act; and

(3) subject to the supervision of an authority named by paragraph (1) of this section, or the Judicial Conference of the United States, while engaged in the performance of the duties of his office.

(b) Except as otherwise provided by law, an officer of the United States Postal Service or of the Postal Regulatory Commission is deemed not an officer for purposes of this title.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 408; Pub. L. 91-375, §6(c)(3), Aug. 12, 1970, 84 Stat. 775; Pub. L. 109-435, title VI, §604(b), Dec. 20, 2006, 120 Stat. 3241.)

#### HISTORICAL AND REVISION NOTES

The section is supplied for convenience.

#### AMENDMENTS

2006—Subsec. (b). Pub. L. 109-435 substituted “Postal Regulatory Commission” for “Postal Rate Commission”.

1970—Subsec. (a). Pub. L. 91-375, §6(c)(3)(A), (B), designated existing provisions as subsec. (a) and inserted in introductory text “as otherwise provided by this section or” after “except”.

Subsec. (b). Pub. L. 91-375, §6(c)(3)(C), added subsec. (b).

#### 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.

### § 2105. Employee

(a) For the purpose of this title, “employee”, except as otherwise provided by this section or when specifically modified, means an officer and an individual who is—

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

- (A) the President;
- (B) a Member or Members of Congress, or the Congress;
- (C) a member of a uniformed service;
- (D) an individual who is an employee under this section;
- (E) the head of a Government controlled corporation; or
- (F) an adjutant general designated by the Secretary concerned under section 709(c) of title 32;

(2) engaged in the performance of a Federal function under authority of law or an Executive act; and

(3) subject to the supervision of an individual named by paragraph (1) of this subsection while engaged in the performance of the duties of his position.

(b) An individual who is employed at the United States Naval Academy in the mid-

shipmen's laundry, the midshipmen's tailor shop, the midshipmen's cobbler and barber shops, and the midshipmen's store, except an individual employed by the Academy dairy (if any), and whose employment in such a position began before October 1, 1996, and has been uninterrupted in such a position since that date is deemed an employee.

(c) An employee paid from nonappropriated funds of the Army and Air Force Exchange Service, Navy Ships Stores Program, Navy exchanges, Marine Corps exchanges, Coast Guard exchanges, and other instrumentalities of the United States under the jurisdiction of the armed forces conducted for the comfort, pleasure, contentment, and mental and physical improvement of personnel of the armed forces is deemed not an employee for the purpose of—

(1) laws administered by the Office of Personnel Management, except—

(A) section 7204;

(B) as otherwise specifically provided in this title;

(C) the Fair Labor Standards Act of 1938;

(D) for the purpose of entering into an interchange agreement to provide for the noncompetitive movement of employees between such instrumentalities and the competitive service; or

(E) subchapter V of chapter 63, which shall be applied so as to construe references to benefit programs to refer to applicable programs for employees paid from nonappropriated funds; or

(2) subchapter I of chapter 81, chapter 84 (except to the extent specifically provided therein), and section 7902 of this title.

This subsection does not affect the status of these nonappropriated fund activities as Federal instrumentalities.

(d) A Reserve of the armed forces who is not on active duty or who is on active duty for training is deemed not an employee or an individual holding an office of trust or profit or discharging an official function under or in connection with the United States because of his appointment, oath, or status, or any duties or functions performed or pay or allowances received in that capacity.

(e) Except as otherwise provided by law, an employee of the United States Postal Service or of the Postal Regulatory Commission is deemed not an employee for purposes of this title.

(f) For purposes of sections 1212, 1213, 1214, 1215, 1216, 1221, 1222, 2302, and 7701, employees appointed under chapter 73 or 74 of title 38 shall be employees.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 409; Pub. L. 90-486, § 4, Aug. 13, 1968, 82 Stat. 757; Pub. L. 91-375, § 6(c)(4), Aug. 12, 1970, 84 Stat. 775; Pub. L. 92-392, § 2, Aug. 19, 1972, 86 Stat. 573; Pub. L. 95-454, title VII, § 703(c)(2), title IX, § 906(a)(2), Oct. 13, 1978, 92 Stat. 1217, 1224; Pub. L. 96-54, § 2(a)(5), (6), Aug. 14, 1979, 93 Stat. 381; Pub. L. 99-335, title II, § 207(a), June 6, 1986, 100 Stat. 594; Pub. L. 99-638, § 2(b)(1), Nov. 10, 1986, 100 Stat. 3536; Pub. L. 101-508, title VII, § 7202(b), Nov. 5, 1990, 104 Stat. 1388-335; Pub. L. 103-3, title II, § 201(b), Feb. 5, 1993, 107 Stat. 23; Pub. L. 103-424, § 7, Oct. 29, 1994, 108 Stat. 4364; Pub. L. 104-201,

div. A, title III, § 370(b), Sept. 23, 1996, 110 Stat. 2499; Pub. L. 105-85, div. B, title XXVIII, § 2871(c)(2), Nov. 18, 1997, 111 Stat. 2015; Pub. L. 109-435, title VI, § 604(f), Dec. 20, 2006, 120 Stat. 3242; Pub. L. 113-66, div. A, title VI, § 642, Dec. 26, 2013, 127 Stat. 787.)

#### HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
(b) .....	[Uncodified].	Aug. 5, 1939, ch. 448, § 2, 53 Stat. 1210.
	[Uncodified].	Dec. 3, 1945, ch. 510, § 2, 59 Stat. 590.
	[Uncodified].	Dec. 28, 1945, ch. 593, § 2, 59 Stat. 660.
	[Uncodified].	Dec. 28, 1945, ch. 594, § 2, 59 Stat. 660.
	[Uncodified].	July 26, 1946, ch. 675, § 2 (last proviso), 60 Stat. 704.
(c) .....	5 U.S.C. 150k.	June 19, 1952, ch. 444, § 1, 66 Stat. 138.
(d) .....	5 U.S.C. 30r(d).	Aug. 10, 1956, ch. 1041, § 29(d), 70A Stat. 632.

Subsection (a) is supplied to avoid the necessity of defining "employee" each time it appears in this title. The subsection is based on a definition worked out independently by the Civil Service Commission and the Department of Labor and in use by both for more than a decade.

In subsection (b), the provisions of the source statutes which relate to credit for prior service and diminution of pay are executed, or, insofar as to be executed preserved by technical section 8.

In subsection (d), the words "officer or" are omitted as included within "employee".

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

#### REFERENCES IN TEXT

The Fair Labor Standards Act of 1938, referred to in subsec. (c)(1)(C), is act June 25, 1938, ch. 676, 52 Stat. 1060, as amended, which is classified generally to chapter 8 (§ 201 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see section 201 of Title 29 and Tables.

#### AMENDMENTS

2013—Subsec. (c). Pub. L. 113-66 substituted "Navy Ships Stores Program" for "Army and Air Force Motion Picture Service, Navy Ship's Stores Ashore" in introductory provisions.

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

1997—Subsec. (b). Pub. L. 105-85 inserted "(if any)" after "Academy dairy".

1996—Subsec. (b). Pub. L. 104-201 inserted "who is" after "An individual" and "and whose employment in such a position began before October 1, 1996, and has been uninterrupted in such a position since that date" after "Academy dairy".

1994—Subsec. (f). Pub. L. 103-424 added subsec. (f).

1993—Subsec. (c)(1)(E). Pub. L. 103-3 added subpar. (E).

1990—Subsec. (c)(1). Pub. L. 101-508, § 7202(b)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "laws (other than subchapter IV of chapter 53 of this title, subchapter III of chapter 83 of this title to the extent provided in section 8332(b)(16) of this title, and sections 5550 and 7204 of this title) administered by the Office of Personnel Management; or".

Subsec. (c)(2). Pub. L. 101-508, § 7202(b)(2), inserted "(except to the extent specifically provided therein)" after "chapter 84".

1986—Subsec. (c)(1). Pub. L. 99-638 inserted "of this title, subchapter III of chapter 83 of this title to the extent provided in section 8332(b)(16) of this title,".

Subsec. (c)(2). Pub. L. 99-335 substituted “chapter 81, chapter 84,” for “chapter 81”.

1979—Subsec. (a)(1)(F). Pub. L. 96-54, §2(a)(5), substituted “an adjutant” for “the adjutants” and struck out “, United States Code” after “32”.

Subsec. (c)(1). Pub. L. 96-54, §2(a)(6), amended subsec. (c)(1) in same manner as amendment by section 703(c)(2) of Pub. L. 95-454. See 1978 Amendment note set out below.

1978—Subsec. (c)(1). Pub. L. 95-454 substituted “7204” for “7154”, and “Office of Personnel Management” for “Civil Service Commission”. Amendments by section 703(c)(1) and (c)(2) of Pub. L. 95-454 appear to have been inadvertently reversed. Subsec. (c)(1) purported to amend subsec. (c)(1) of this section, and subsec. (c)(2) purported to amend section 3302(2) of this title. However, the amendments specified by Pub. L. 95-454, §703(c)(1) and (2), were impossible to execute literally. Thus, the amendment by Pub. L. 95-454, §703(c)(2) was executed to this section, and the amendment by section 703(c)(1) was executed to section 3302(2) of this title as the probable intent of Congress.

1972—Subsec. (c)(1). Pub. L. 92-392 substituted “laws (other than subchapter IV of chapter 53 and sections 5550 and 7154 of this title)” for “laws”.

1970—Subsec. (e). Pub. L. 91-375 added subsec. (e).

1968—Subsec. (a)(1)(F). Pub. L. 90-486 added subpar. (F).

#### EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-201, div. A, title III, §370(e), Sept. 23, 1996, 110 Stat. 2499, provided that: “The amendments made by this section [amending this section and section 6971 of Title 10, Armed Forces, and repealing section 6970 of Title 10] shall take effect on October 1, 1996.”

#### EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-3 effective 6 months after Feb. 5, 1993, see section 405(b)(1) of Pub. L. 103-3, set out as an Effective Date note under section 2601 of Title 29, Labor.

#### EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101-508, title VII, §7202(m), Nov. 5, 1990, 104 Stat. 1388-339, provided that:

“(1) The amendments made by this section [amending this section and sections 3502, 5334, 5335, 5365, 5551, 6308, 6312, 8331, 8347, 8401, 8461, and 8901 of this title] shall apply with respect to any individual who, on or after January 1, 1987—

“(A) moves without a break in service of more than 3 days from employment in a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard that is described in section 2105(c) of title 5, United States Code, to employment in the Department of Defense or the Coast Guard, respectively, that is not described in such section 2105(c); or

“(B) moves without a break in service from employment in the Department of Defense or the Coast Guard that is not described in such section 2105(c) to employment in a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard, respectively, that is described in such section 2105(c).

“(2) The Secretary of Defense, the Secretary of Transportation, the Director of the Office of Personnel Management, and the Executive Director of the Federal Retirement Thrift Investment Board, as applicable, shall take such actions as may be practicable to ensure that each individual who has moved as described under paragraph (1) on or after January 1, 1987, and before the date of enactment of this Act [Nov. 5, 1990], receives the benefit of the amendments made by this section as if such amendments had been in effect at the time such individual so moved. Each such individual who wishes to make an election of retirement coverage under the amendments made by subsection (j) or (k) of this section [amending sections 8331, 8347, 8401, and 8461 of this title] shall complete such election within 180 days after the date of enactment of this Act.”

#### EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-335 effective Jan. 1, 1987, see section 702(a) of Pub. L. 99-335, set out as an Effective Date note under section 8401 of this title.

#### EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-54 effective July 12, 1979, see section 2(b) of Pub. L. 96-54, set out as 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 1972 AMENDMENT

Amendment by Pub. L. 92-392 effective on first day of first applicable pay period beginning on or after 90th day after Aug. 19, 1972, see section 15(a) of Pub. L. 92-392, set out as an Effective Date note under section 5341 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 OF 1968 AMENDMENT

Amendment by Pub. L. 90-486 effective Jan. 1, 1968, except that no deductions or withholding from salary which result therefrom shall commence before the first day of the first pay period that begins on or after Jan. 1, 1968, see section 11 of Pub. L. 90-486, set out as a note under section 709 of Title 32, National Guard.

#### TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

#### TREATMENT OF INDIVIDUALS ELECTING TO REMAIN SUBJECT TO THEIR FORMER RETIREMENT SYSTEM

Pub. L. 101-508, title VII, §7202(n), Nov. 5, 1990, 104 Stat. 1388-340, as amended by Pub. L. 102-378, §5(a)(2), Oct. 2, 1992, 106 Stat. 1358, provided that:

“(1) For the purpose of this section [amending this section and sections 3502, 5334, 5335, 5365, 5551, 6308, 6312, 8331, 8347, 8401, 8461, and 8901 of this title and enacting provisions set out as notes under this section and section 2101 of this title], the term ‘nonappropriated fund instrumentality’ means a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard, described in section 2105(c) of title 5, United States Code.

“(2)(A) If an individual makes an election under section 8347(q)(1) of title 5, United States Code, to remain covered by subchapter III of chapter 83 of such title, any nonappropriated fund instrumentality thereafter employing such individual shall deduct from such individual’s pay and contribute to the Thrift Savings Fund such sums as are required for such individual in accordance with section 8351 of such title.

“(B) Notwithstanding subsection (a) or (b) of section 8432 of title 5, United States Code, any individual who, as of the date of enactment of this Act [Nov. 5, 1990], becomes eligible to make an election under section 8347(q)(1) of such title may, within 30 days after such individual makes an election thereunder in accordance with subsection (m)(2) [set out as a note above], make

any election described in section 8432(b)(1)(A) of such title.

“(3)(A) If an individual makes an election under section 8461(n)(1) of title 5, United States Code, to remain covered by chapter 84 of such title, any nonappropriated fund instrumentality thereafter employing such individual shall deduct from such individual’s pay and shall contribute to the Thrift Savings Fund the funds deducted, together with such other sums as are required for such individual under subchapter III of such chapter.

“(B) Notwithstanding subsection (a) or (b) of section 8432 of title 5, United States Code, any individual who, as of the date of enactment of this Act, becomes eligible to make an election under section 8461(n)(1) of such title may, within 30 days after such individual makes an election thereunder in accordance with subsection (m)(2), make any election described in section 8432(b)(1)(A) of such title.

“(4) If an individual makes an election under section 8347(q)(2) or 8461(n)(2) of title 5, United States Code, to remain covered by a retirement system established for employees described in section 2105(c) of such title, any Government agency thereafter employing such individual shall, in lieu of any deductions or contributions for which it would otherwise be responsible with respect to such individual under chapter 83 or 84 of such title, make such deductions from pay and such contributions as would be required (under the retirement system for nonappropriated fund employees involved) if it were a nonappropriated fund instrumentality. Any such deductions and contributions shall be remitted to the Department of Defense or the Coast Guard, as applicable, for transmission to the appropriate retirement system.”

[Amendment by Pub. L. 102-378 to section 7202(n) of Pub. L. 101-508, set out above, effective Nov. 5, 1990, see section 9(b)(6) of Pub. L. 102-378, set out as an Effective Date of 1992 Amendment note under section 6303 of this title.]

#### PROHIBITION OF DECREASE IN BASIC PAY RATE OF EMPLOYEES OF NONAPPROPRIATED FUND INSTRUMENTALITIES

Amendments by Pub. L. 92-392 not to decrease basic pay rate of subsec. (c) employees in service before effective date of the amendments as to such employees, see section 9(a)(2) of Pub. L. 92-392, set out as a note under section 5343 of this title.

### § 2106. Member of Congress

For the purpose of this title, “Member of Congress” means the Vice President, a member of the Senate or the House of Representatives, a Delegate to the House of Representatives, and the Resident Commissioner from Puerto Rico.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 409; Pub. L. 91-405, title II, § 204(b), Sept. 22, 1970, 84 Stat. 852; Pub. L. 96-54, § 2(a)(7), Aug. 14, 1979, 93 Stat. 381.)

#### HISTORICAL AND REVISION NOTES

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

#### AMENDMENTS

1979—Pub. L. 96-54 substituted “to the House of Representatives” for “from the District of Columbia”.

1970—Pub. L. 91-405 included Delegate from District of Columbia.

#### 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 1970 AMENDMENT

Amendment by Pub. L. 91-405 effective Sept. 22, 1970, see section 206(b) of Pub. L. 91-405, set out as an Effective

Date note under section 25a of Title 2, The Congress.

### § 2107. Congressional employee

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

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

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

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

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

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

[(6) Repealed. Pub. L. 90-83, § 1(5)(A), Sept. 11, 1967, 81 Stat. 196.]

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

(8) an employee of the Botanic Garden; and

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

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 409; Pub. L. 90-83, § 1(5), Sept. 11, 1967, 81 Stat. 196; Pub. L. 91-510, title IV, § 442(a), Oct. 26, 1970, 84 Stat. 1191; Pub. L. 104-186, title II, § 215(1), Aug. 20, 1996, 110 Stat. 1745; Pub. L. 110-437, title IV, § 422(c), Oct. 20, 2008, 122 Stat. 4997; Pub. L. 111-145, § 7(a), Mar. 4, 2010, 124 Stat. 55.)

#### HISTORICAL AND REVISION NOTES

##### 1966 ACT

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

##### 1967 ACT

<i>Section of title 5</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
2107(6) .....	2:126-1.	July 27, 1965, Pub. L. 89-90, § 101 (proviso on p. 265), 79 Stat. 265.
2107(8) .....	5 App.: 2251(c).	Sept. 26, 1966, Pub. L. 89-604, § 1(a), 80 Stat. 846.

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

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

#### AMENDMENTS

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

2008—Par. (9). Pub. L. 110-437 amended par. (9) generally. Prior to amendment, par. (9) read as follows: “an employee of the Capitol Guide Service.”

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

1970—Par. (9). Pub. L. 91-510 added par. (9).

#### EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111-145, § 7(d), Mar. 4, 2010, 124 Stat. 56, provided that: “The amendments made by this section

[amending this section and sections 5515, 5531, 5533, and 5537 of this title] shall take effect as though enacted as part of section 1018 of the Legislative Branch Appropriations Act, 2003 (2 U.S.C. 1907).”

#### EFFECTIVE DATE OF 2008 AMENDMENT

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

#### EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-510 effective immediately prior to noon on June. 3, 1971, see section 601(1) of Pub. L. 91-510, set out as a note under section 4301 of Title 2, The Congress.

### § 2108. Veteran; disabled veteran; preference eligible

For the purpose of this title—

(1) “veteran” means an individual who—

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

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

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

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

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

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

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

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

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

(C) a disabled veteran;

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

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

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

(i) the spouse of that parent is totally and permanently disabled; or

(ii) that parent, when preference is claimed, is unmarried or, if married, legally separated from his or her spouse;

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

(i) the spouse of that parent is totally and permanently disabled; or

(ii) that parent, when preference is claimed, is unmarried or, if married, legally separated from his or her spouse; and

(H) a veteran who was discharged or released from a period of active duty by reason of a sole survivorship discharge (as that term is defined in section 1174(i) of title 10);

but does not include applicants for, or members of, the Senior Executive Service, the Defense Intelligence Senior Executive Service, the Senior Cryptologic Executive Service, or the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service;

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

(A) the individual is a disabled veteran; or

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

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

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 410; Pub. L. 90-83, §1(6), Sept. 11, 1967, 81 Stat. 196; Pub. L. 90-623, §1(2), Oct. 22, 1968, 82 Stat. 1312; Pub. L. 92-187, §1, Dec. 15, 1971, 85 Stat. 644; Pub. L. 94-502, title VII, §702, Oct. 15, 1976, 90 Stat. 2405; Pub. L. 95-454, title III, §307(a), title IV, §401(d), Oct. 13, 1978, 92 Stat. 1147, 1154; Pub. L. 96-54, §2(a)(8), (9)(A), Aug. 14, 1979, 93 Stat. 381; Pub. L. 96-191, §8(a), Feb. 15, 1980, 94 Stat. 33; Pub. L. 97-89, title VIII, §801, Dec. 4, 1981, 95 Stat. 1161; Pub. L. 100-325, §2(a), May 30, 1988, 102 Stat. 581; Pub. L. 102-54, §13(b)(1), June 13, 1991, 105 Stat. 274; Pub. L. 105-85, div. A, title XI, §1102(a), (c), Nov. 18, 1997, 111 Stat. 1922; Pub. L. 105-339, §4(a), Oct. 31, 1998, 112 Stat. 3185; Pub. L. 109-163, div. A, title V, §515(f)(1), title XI, §§1111, 1112(a), Jan. 6, 2006, 119 Stat. 3236, 3451; Pub. L. 110-317, §8, Aug. 29, 2008, 122 Stat. 3529; Pub. L. 112-56, title II, §235(a)(2)(A), Nov. 21, 2011, 125 Stat. 723; Pub. L. 114-62, §2, Oct. 7, 2015, 129 Stat. 547.)

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. 851 (less 1st 76 words).	June 27, 1944, ch. 287, § 2 (less 1st 76 words), 58 Stat. 387. Jan. 19, 1948, ch. 1, § 1, 62 Stat. 3. July 2, 1948, ch. 816, 62 Stat. 1233. Aug. 26, 1949, ch. 513, 63 Stat. 666. Dec. 27, 1950, ch. 1151, § 1, 64 Stat. 1117. July 14, 1952, ch. 728, § 1, 66 Stat. 626.

In paragraph (2), the words “a military department” are substituted for “the War Department or Navy Department” (appearing in section 2 of the Act of June 27, 1944) because of the definition of “military department” in section 102. The Department of War was designated the Department of the Army by the Act of July 26, 1947, ch. 343, § 205, 61 Stat. 501. “Department of the Air Force” is included on authority of the Act of July 26, 1947, ch. 343, § 207 (a), (f), 61 Stat. 502.

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

1967 ACT

<i>Section of title 5</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
2108 .....	5 App.: 851.	Mar. 3, 1966, Pub. L. 89-358, § 11, 80 Stat. 28.

AMENDMENTS

2015—Par. (3)(F), (G). Pub. L. 114-62 added subpars. (F) and (G) and struck out former subpars. (F) and (G) which included in the definition of “preference eligible” certain mothers of individuals who lost their lives under honorable conditions in the armed forces and certain mothers of service-connected permanently and totally disabled veterans.

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

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

Par. (3). Pub. L. 112-56, § 235(a)(2)(A)(iii), in introductory provisions, inserted “or section 2108a(c)” after “paragraph (4) of this section”.

2008—Par. (3)(H). Pub. L. 110-317 added subpar. (H).

2006—Par. (1). Pub. L. 109-163, § 1112(a), in concluding provisions, substituted “discharged or released from active duty in” for “separated from”.

Par. (1)(B). Pub. L. 109-163, § 515(f)(1), substituted “Navy Reserve” for “Naval Reserve”.

Par. (1)(D). Pub. L. 109-163, § 1111(a), added subpar. (D).

Par. (3)(B). Pub. L. 109-163, § 1111(b), substituted “paragraph (1)(B), (C), or (D)” for “paragraph (1)(B) or (C)”.

1998—Par. (3). Pub. L. 105-339, in concluding provisions, substituted “or the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service;” for “the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service, or the General Accounting Office;”.

1997—Par. (1)(B). Pub. L. 105-85, § 1102(c), substituted “October 15, 1976,” for “the date of enactment of the Veterans’ Education and Employment Assistance Act of 1976,” and “12103(d) of title 10” for “511(d) of title 10”.

Par. (1)(C). Pub. L. 105-85, § 1102(a)(1), added subpar. (C).

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

1991—Par. (2). Pub. L. 102-54 substituted “Department of Veterans Affairs” for “Veterans’ Administration”.

1988—Par. (3). Pub. L. 100-325 inserted reference to Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service in concluding provisions.

1981—Par. (3). Pub. L. 97-89 inserted reference to Defense Intelligence Senior Executive Service and Senior Cryptologic Executive Service in concluding provisions.

1980—Par. (3). Pub. L. 96-191 inserted reference to General Accounting Office in concluding provisions.

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

Par. (5). Pub. L. 96-54, § 2(a)(9)(A), struck out provision excepting applicants for, or members of, Senior Executive Service.

1978—Par. (2). Pub. L. 95-454, § 307(a)(1), struck out “and” at end.

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

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

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

1976—Par. (1)(B). Pub. L. 94-502 substituted “any part of which occurred after January 31, 1955, and before the date of enactment of the Veterans’ Education and Employment Assistance Act of 1976,” for “after January 31, 1955,”.

1971—Par. (3)(D). Pub. L. 92-187 inserted “or widower” after “unmarried widow”.

Par. (3)(E). Pub. L. 92-187 inserted “or husband” after “the wife”.

1968—Par. (3)(D). Pub. L. 90-623 inserted “as defined by paragraph (1)(A) of this section” after “veteran”.

EFFECTIVE DATE OF 2015 AMENDMENT

Pub. L. 114-62, § 3, Oct. 7, 2015, 129 Stat. 548, provided that: “The amendment made by this Act [amending this section] shall take effect 90 days after the date of enactment of this Act [Oct. 7, 2015].”

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110-317, § 10, Aug. 29, 2008, 122 Stat. 3530, provided that:

“(a) RETROACTIVE EFFECTIVE DATE.—Except as provided in subsection (b) and section 9 [amending section 685 of Title 26, Internal Revenue Code, and enacting provisions set out as a note under section 685 of Title 26], this Act [amending this section, section 8521 of this title, sections 1145, 1146, and 1174 of Title 10, Armed Forces, section 685 of Title 26, section 303a of Title 37, Pay and Allowances of the Uniformed Services, and sections 3011, 3012, 3702, and 4211 of Title 38, Veterans’ Benefits, and enacting provisions set out as notes under section 101 of Title 10 and section 685 of Title 26] and the amendments made by this Act shall apply with respect to any sole survivorship discharge granted after September 11, 2001.

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

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

“(1) the father or mother or one or more siblings—  
“(A) served in the Armed Forces; and



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

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

#### EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-89 effective Oct. 1, 1981, see section 806 of Pub. L. 97-89, set out as an Effective Date note under section 1621 of Title 10, Armed Forces.

#### EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-191 effective Oct. 1, 1980, see section 10(a) of Pub. L. 96-191.

#### EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by section 2(a)(8) of Pub. L. 96-54 effective July 12, 1979, see section 2(b) of Pub. L. 96-54, set out as a note under section 305 of this title.

Pub. L. 96-54, §2(a)(9)(B), Aug. 14, 1979, 93 Stat. 381, provided that: “The amendment made by subparagraph (A) [amending this section] shall take effect October 1, 1980”.

#### EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95-454, title III, §307(a), Oct. 13, 1978, 92 Stat. 1147, provided that the amendment made by that section is effective Oct. 1, 1980.

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

#### EFFECTIVE DATE OF 1968 AMENDMENT

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

#### SAVINGS PROVISION

Pub. L. 109-163, div. A, title XI, §1112(b), Jan. 6, 2006, 119 Stat. 3451, provided that: “Nothing in the amendment made by subsection (a) [amending this section] may be construed to affect a determination made before the date of enactment of this Act [Jan. 6, 2006] that an individual is a preference eligible (as defined in section 2108(3) of title 5, United States Code).”

#### TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

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

#### (a) VETERAN.—

(1) IN GENERAL.—Except as provided under paragraph (3),<sup>1</sup> an individual shall be treated as a veteran defined under section 2108(1) for purposes of making an appointment in the competitive service, if the individual—

(A) meets the definition of a veteran under section 2108(1), except for the requirement

that the individual has been discharged or released from active duty in the armed forces under honorable conditions; and

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

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

#### (b) DISABLED VETERAN.—

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

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

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

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

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

(Added Pub. L. 112-56, title II, §235(a)(1), Nov. 21, 2011, 125 Stat. 722.)

### § 2109. Air traffic controller; Secretary

For the purpose of this title—

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

(A) is actively engaged—

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

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

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

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

(Added Pub. L. 92-297, §1(a), May 16, 1972, 86 Stat. 141; amended Pub. L. 96-347, §1(a), Sept. 12, 1980, 94 Stat. 1150; Pub. L. 99-335, title II, §207(b), June 6, 1986, 100 Stat. 594.)

<sup>1</sup> So in original. Subsec. does not contain a par. (3).

## AMENDMENTS

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

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

## EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-335 effective Jan. 1, 1987, see section 702(a) of Pub. L. 99-335, set out as an Effective Date note under section 8401 of this title.

## EFFECTIVE DATE OF 1980 AMENDMENT

Pub. L. 96-347, § 3, Sept. 12, 1980, 94 Stat. 1151, provided that: “This Act [amending this section and sections 3307, 3381 to 3385, and 8335 of this title and enacting provisions set out as a note under section 8335 of this title] shall take effect on the later of—

“(1) October 1, 1980, or

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

## EFFECTIVE DATE

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

## CHAPTER 23—MERIT SYSTEM PRINCIPLES

Sec.	
2301.	Merit system principles.
2302.	Prohibited personnel practices.
2303.	Prohibited personnel practices in the Federal Bureau of Investigation.
2304.	Prohibited personnel practices affecting the Transportation Security Administration.
2305.	Responsibility of the Government Accountability Office.
2306.	Coordination with certain other provisions of law.
[2307.	Repealed.]

## AMENDMENTS

2017—Pub. L. 115-91, div. A, title X, § 1097(b)(1)(A), Dec. 12, 2017, 131 Stat. 1616, struck out item 2307 “Information on whistleblower protections”.

Pub. L. 115-73, title I, § 107(c), Oct. 26, 2017, 131 Stat. 1240, added item 2307.

2012—Pub. L. 112-199, § 109(b), Nov. 27, 2012, 126 Stat. 1471, added items 2304 to 2306 and struck out former items 2304 “Responsibility of the Government Accountability Office” and 2305 “Coordination with certain other provisions of law”.

2004—Pub. L. 108-271, § 8(b), July 7, 2004, 118 Stat. 814, substituted “Government Accountability Office” for “General Accounting Office” in item 2304.

## § 2301. Merit system principles

(a) This section shall apply to—

- (1) an Executive agency; and
- (2) the Government Publishing Office.

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

- (1) Recruitment should be from qualified individuals from appropriate sources in an en-

deavor to achieve a work force from all segments of society, and selection and advancement should be determined solely on the basis of relative ability, knowledge, and skills, after fair and open competition which assures that all receive equal opportunity.

(2) All employees and applicants for employment should receive fair and equitable treatment in all aspects of personnel management without regard to political affiliation, race, color, religion, national origin, sex, marital status, age, or handicapping condition, and with proper regard for their privacy and constitutional rights.

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

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

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

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

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

(8) Employees should be—

(A) protected against arbitrary action, personal favoritism, or coercion for partisan political purposes, and

(B) prohibited from using their official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for election.

(9) Employees should be protected against reprisal for the lawful disclosure of information which the employees reasonably believe evidences—

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

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

(c) In administering the provisions of this chapter—

(1) with respect to any agency (as defined in section 2302(a)(2)(C) of this title), the President shall, pursuant to the authority otherwise available under this title, take any action, including the issuance of rules, regulations, or directives; and

(2) with respect to any entity in the executive branch which is not such an agency or part of such an agency, the head of such entity shall, pursuant to authority otherwise available, take any action, including the issuance of rules, regulations, or directives;

which is consistent with the provisions of this title and which the President or the head, as the case may be, determines is necessary to ensure