

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 Publishing 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, renamed §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; Pub. L. 113-235, div. H, title I, §1301(b), Dec. 16, 2014, 128 Stat. 2537.)

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 5304 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 “section 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).

CHANGE OF NAME

“Government Publishing Office” substituted for “Government Printing Office” in par. (3) on authority of section 1301(b) of Pub. L. 113-235, set out as a note preceding section 301 of Title 44, Public Printing and Documents.

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

Pub. L. 91-648, title IV, §404, Jan. 5, 1971, 84 Stat. 1925, 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

Pub. L. 91-648, title IV, § 401, Jan. 5, 1971, 84 Stat. 1920, 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

Pub. L. 103-89, §3(c), Sept. 30, 1993, 107 Stat. 983, 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.

EFFECTIVE DATE

Section effective sixty days after Jan. 5, 1971, see section 404 of Pub. L. 91-648, set out as a note under section 3371 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 con-

tinued in his regular assignment in the agency, he is entitled to receive supplemental pay from the agency in an amount equal to the difference between the State or local government rate and the agency rate;

(2) he is entitled to annual and sick leave to the same extent as if he had continued in his regular assignment in the agency; and

(3) he is entitled, notwithstanding other statutes—

(A) to continuation of his insurance under chapter 87 of this title, and coverage under chapter 89 of this title or other applicable authority, so long as he pays currently into the Employee's Life Insurance Fund and the Employee's Health Benefits Fund or other applicable health benefits system (through his employing agency) the amount of the employee contributions;

(B) to credit the period of his assignment under this subchapter toward periodic step-increases, retention, and leave accrual purposes, and, on payment into the Civil Service Retirement and Disability Fund or other applicable retirement system of the percentage of his State or local government pay, and of his supplemental pay, if any, that would have been deducted from a like agency pay for the period of the assignment and payment by the Federal agency into the fund or system of the amount that would have been payable by the agency during the period of the assignment with respect to a like agency pay, to treat his service during that period as service of the type performed in the agency immediately before his assignment; and

(C) for the purpose of subchapter I of chapter 85 of this title, to credit the service performed during the period of his assignment under this subchapter as Federal service, and to consider his State or local government pay (and his supplemental pay, if any) as Federal wages. To the extent that the service could also be the basis for entitlement to unemployment compensation under a State law, the employee may 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.

EFFECTIVE DATE

Section effective sixty days after Jan. 5, 1971, see section 404 of Pub. L. 91-648, set out as a note under section 3371 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.

EFFECTIVE DATE

Section effective sixty days after Jan. 5, 1971, see section 404 of Pub. L. 91-648, set out as a note under section 3371 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.

EFFECTIVE DATE

Section effective sixty days after Jan. 5, 1971, see section 404 of Pub. L. 91-648, set out as a note under section 3371 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.)

EFFECTIVE DATE

Section effective sixty days after Jan. 5, 1971, see section 404 of Pub. L. 91-648, set out as a note under section 3371 of this title.

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 ([former] 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, 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

¹ See References in Text note below.