

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”.

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, Space Force, 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; Pub. L. 116–283, div. A, title IX, § 927(a), Jan. 1, 2021, 134 Stat. 3831.)

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.

Editorial Notes

AMENDMENTS

2021—Par. (2). Pub. L. 116–283 inserted “Space Force,” after “Marine Corps”.

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

Subpart A—General Provisions

CHAPTER 21—DEFINITIONS

Sec.	
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Editorial Notes

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.

Statutory Notes and Related Subsidiaries

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 Non-appropriated 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.)

Statutory Notes and Related Subsidiaries

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

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

Subsection (a)(2) preserves the exception stated in former section 638 modified to recognize the several statutory exceptions to this exception that have been enacted. The language of former section 638 relative to examination is codified in sections 3304(b) and 3361. The reference to veterans’ preference is omitted because the statute referred to, R.S. §1754, was superseded by sections 3 and 21 of the Act of June 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.

Editorial Notes

AMENDMENTS

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

Statutory Notes and Related Subsidiaries

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.

Editorial Notes

AMENDMENTS

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

Statutory Notes and Related Subsidiaries

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.

Editorial Notes

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).

Statutory Notes and Related Subsidiaries

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 midshipmen’s laundry, the midshipmen’s tailor shop, the midshipmen’s cobbler and barber shops, and the midshipmen’s store, except an individual employed by the Academy dairy (if

any), and whose employment in such a position began before October 1, 1996, and has been uninterrupted in such a position since that date is deemed an employee.

(c) An employee paid from nonappropriated funds of the Army and Air Force Exchange Service, 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.

Editorial Notes

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, 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).

Statutory Notes and Related Subsidiaries

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 non-appropriated 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.

Editorial Notes

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.

Statutory Notes and Related Subsidiaries

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.

Editorial Notes**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).

Statutory Notes and Related Subsidiaries**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.

Editorial Notes

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”.

Statutory Notes and Related Subsidiaries

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

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

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

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

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

(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—

¹ So in original. Subsec. does not contain a par. (3).

(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.)

Editorial Notes

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.

Statutory Notes and Related Subsidiaries

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.

Sec.
[2307. Repealed.]

Editorial Notes

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

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

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

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

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

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

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

(8) Employees should be—

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

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

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

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

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

(c) In administering the provisions of this chapter—

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

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

which is consistent with the provisions of this title and which the President or the head, as the case may be, determines is necessary to ensure that personnel management is based on and embodies the merit system principles.

(Added Pub. L. 95-454, title I, §101(a), Oct. 13, 1978, 92 Stat. 1113; amended Pub. L. 101-474, §5(c), Oct. 30, 1990, 104 Stat. 1099; Pub. L. 113-235, div. H, title I, §1301(b), Dec. 16, 2014, 128 Stat. 2537.)

Editorial Notes

AMENDMENTS

1990—Subsec. (a). Pub. L. 101-474 redesignated par. (3) as (2) and struck out former par. (2) which provided that this section is applicable to Administrative Office of United States Courts.

Statutory Notes and Related Subsidiaries

CHANGE OF NAME

“Government Publishing Office” substituted for “Government Printing Office” in subsec. (a)(2) 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

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

TRAINING FOR SUPERVISORS

Pub. L. 115-73, title I, §106, Oct. 26, 2017, 131 Stat. 1238, provided that: “In consultation with the Special Counsel and the Inspector General of the agency (or senior ethics official of the agency for an agency without an Inspector General), the head of each agency shall provide training regarding how to respond to complaints alleging a violation of whistleblower protections (as defined in [former] section 2307 of title 5, United States Code, as added by section 107) available to employees of the agency—

“(1) to employees appointed to supervisory positions in the agency who have not previously served as a supervisor; and

“(2) on an annual basis, to all employees of the agency serving in a supervisory position.”

[For definitions of “agency” and “employee” as used in section 106 of Pub. L. 115-73, set out above, see sec-

tion 101 of Pub. L. 115-73, set out as a note under section 1212 of this title.]

NOTIFICATION AND FEDERAL EMPLOYEE ANTIDISCRIMINATION AND RETALIATION

Pub. L. 107-174, May 15, 2002, 116 Stat. 566, as amended by Pub. L. 109-435, title VI, §604(f), Dec. 20, 2006, 120 Stat. 3242; Pub. L. 116-283, div. A, title XI, §§1132-1134(a)(1), (b), 1135-1137, Jan. 1, 2021, 134 Stat. 3900-3903, provided that:

“SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

“(a) SHORT TITLE.—This Act may be cited as the ‘Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002’.

“(b) TABLE OF CONTENTS.—[Omitted.]

“TITLE I—GENERAL PROVISIONS

“SEC. 101. FINDINGS.

“Congress finds that—

“(1) Federal agencies cannot be run effectively if those agencies practice or tolerate discrimination;

“(2) Congress has heard testimony from individuals, including representatives of the National Association for the Advancement of Colored People and the American Federation of Government Employees, that point to chronic problems of discrimination and retaliation against Federal employees;

“(3) in August 2000, a jury found that the Environmental Protection Agency had discriminated against a senior social scientist, and awarded that scientist \$600,000;

“(4) in October 2000, an Occupational Safety and Health Administration investigation found that the Environmental Protection Agency had retaliated against a senior scientist for disagreeing with that agency on a matter of science and for helping Congress to carry out its oversight responsibilities;

“(5) there have been several recent class action suits based on discrimination brought against Federal agencies, including the Federal Bureau of Investigation, the Bureau of Alcohol, Tobacco, and Firearms, the Drug Enforcement Administration, the Immigration and Naturalization Service, the United States Marshals Service, the Department of Agriculture, the United States Information Agency, and the Social Security Administration;

“(6) notifying Federal employees of their rights under discrimination and whistleblower laws should increase Federal agency compliance with the law;

“(7) requiring annual reports to Congress on the number and severity of discrimination and whistleblower cases brought against each Federal agency should enable Congress to improve its oversight over compliance by agencies with the law; and

“(8) requiring Federal agencies to pay for any discrimination or whistleblower judgment, award, or settlement should improve agency accountability with respect to discrimination and whistleblower laws.

“SEC. 102. SENSE OF CONGRESS.

“It is the sense of Congress that—

“(1) Federal agencies should not retaliate for court judgments or settlements relating to discrimination and whistleblower laws by targeting the claimant or other employees with reductions in compensation, benefits, or workforce to pay for such judgments or settlements;

“(2) the mission of the Federal agency and the employment security of employees who are blameless in a whistleblower incident should not be compromised;

“(3) Federal agencies should not use a reduction in force or furloughs as means of funding a reimbursement under this Act;

“(4) accountability in the enforcement of the rights of Federal employees is furthered when Federal agencies agree to take appropriate disciplinary action against Federal employees who are found to have intentionally committed discriminatory (including retaliatory) acts;

“(5)(A) accountability is not furthered if Federal agencies react to the increased accountability under this Act for what, by law, the agency is responsible by taking unfounded disciplinary actions against managers or by violating the procedural rights of managers who have been accused of discrimination; and

“(B) Federal agencies should ensure that managers have adequate training in the management of a diverse workforce and in dispute resolution and other essential communication skills; and

“(6)(A) Federal agencies are expected to reimburse the General Fund of the Treasury within a reasonable time under this Act; and

“(B) a Federal agency, particularly if the amount of reimbursement under this Act is large relative to annual appropriations for that agency, may need to extend reimbursement over several years in order to avoid—

“(i) reductions in force;

“(ii) furloughs;

“(iii) other reductions in compensation or benefits for the workforce of the agency; or

“(iv) an adverse effect on the mission of the agency.

“SEC. 103. DEFINITIONS.

“For purposes of this Act—

“(1) the term ‘applicant for Federal employment’ means an individual applying for employment in or under a Federal agency;

“(2) the term ‘basis of alleged discrimination’ shall have the meaning given such term under section 303;

“(3) the term ‘Federal agency’ means an Executive agency (as defined in section 105 of title 5, United States Code), the United States Postal Service, or the Postal Regulatory Commission;

“(4) the term ‘Federal employee’ means an individual employed in or under a Federal agency;

“(5) the term ‘former Federal employee’ means an individual formerly employed in or under a Federal agency; and

“(6) the term ‘issue of alleged discrimination’ shall have the meaning given such term under section 303.

“SEC. 104. EFFECTIVE DATE.

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

“TITLE II—FEDERAL EMPLOYEE DISCRIMINATION AND RETALIATION

“SEC. 201. REIMBURSEMENT REQUIREMENT.

“(a) **APPLICABILITY.**—This section applies with respect to any payment made in accordance with section 2414, 2517, 2672, or 2677 of title 28, United States Code, and under section 1304 of title 31, United States Code (relating to judgments, awards, and compromise settlements) to any Federal employee, former Federal employee, or applicant for Federal employment, in connection with any proceeding brought by or on behalf of such employee, former employee, or applicant under—

“(1) any provision of law cited in subsection (c); or

“(2) any other provision of law which prohibits any form of discrimination, as identified under rules issued under section 204.

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

“(c) **SCOPE.**—The provisions of law cited in this subsection are the following:

“(1) Section 2302(b) of title 5, United States Code, as applied to discriminatory conduct described in para-

graphs (1) and (8), or described in paragraph (9) of such section as applied to discriminatory conduct described in paragraphs (1) and (8), of such section.

“(2) The provisions of law specified in section 2302(d) of title 5, United States Code.

“SEC. 202. NOTIFICATION REQUIREMENT.

“(a) **IN GENERAL.**—Written notification of the rights and protections available to Federal employees, former Federal employees, and applicants for Federal employment (as the case may be) in connection with the respective provisions of law covered by paragraphs (1) and (2) of section 201(a) shall be provided to such employees, former employees, and applicants—

“(1) in accordance with otherwise applicable provisions of law; or

“(2) if, or to the extent that, no such notification would otherwise be required, in such time, form, and manner as shall under section 204 be required in order to carry out the requirements of this section.

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

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

“(d) **NOTIFICATION OF FINAL AGENCY ACTION.**—

“(1) **IN GENERAL.**—Not later than 90 days after the date on which an event described in paragraph (2) occurs with respect to a finding of discrimination (including retaliation), the head of the Federal agency subject to the finding shall provide notice—

“(A) on the public internet website of the agency, in a clear and prominent location linked directly from the home page of that website;

“(B) stating that a finding of discrimination (including retaliation) has been made; and

“(C) which shall remain posted for not less than 1 year.

“(2) **EVENTS DESCRIBED.**—An event described in this paragraph is any of the following:

“(A) All appeals of a final action by a Federal agency involving a finding of discrimination (including retaliation) prohibited by a provision of law covered by paragraph (1) or (2) of section 201(a) have been exhausted.

“(B) All appeals of a final decision by the Equal Employment Opportunity Commission involving a finding of discrimination (including if the finding included a finding of retaliation) prohibited by a provision of law covered by paragraph (1) or (2) of section 201(a) have been exhausted.

“(C) A court of jurisdiction issues a final judgment involving a finding of discrimination (including retaliation) prohibited by a provision of law covered by paragraph (1) or (2) of section 201(a).

“(3) **CONTENTS.**—A notification provided under paragraph (1) with respect to a finding of discrimination (including retaliation) shall—

“(A) identify the date on which the finding was made, the date on which each discriminatory act occurred, and the law violated by each such discriminatory act; and

“(B) advise Federal employees of the rights and protections available under the provisions of law covered by paragraphs (1) and (2) of section 201(a).

“SEC. 203. REPORTING REQUIREMENT.

“(a) **ANNUAL REPORT.**—Subject to subsection (b), not later than 180 days after the end of each fiscal year, each Federal agency shall submit to the Speaker of the House of Representatives, the President pro tempore of the Senate, the Committee on Homeland Security and Governmental Affairs of the Senate, the Committee on Oversight and Reform [now Committee on Oversight and Accountability] of the House of Representatives, each committee of Congress with jurisdiction relating to the agency, the Equal Employment Opportunity

Commission, and the Attorney General an annual report (in an electronic format prescribed by the Director of the Office of Personnel Management), which shall include, with respect to the fiscal year—

“(1) the number of cases arising under each of the respective provisions of law covered by paragraphs (1) and (2) of section 201(a) in which discrimination on the part of such agency was alleged;

“(2) the status or disposition of cases described in paragraph (1);

“(3) the amount of money required to be reimbursed by such agency under section 201 in connection with each of such cases, separately identifying the aggregate amount of such reimbursements attributable to the payment of attorneys’ fees, if any;

“(4) the number of employees disciplined for discrimination, retaliation, harassment, or any other infraction of any provision of law referred to in paragraph (1);

“(5) the final year-end data posted under section 301(c)(1)(B) for such fiscal year (without regard to section 301(c)(2));

“(6) a detailed description of—

“(A) the policy implemented by that agency relating to appropriate disciplinary actions against a Federal employee who—

“(i) discriminated against any individual in violation of any of the laws cited under section 201(a)(1) or (2); or

“(ii) committed another prohibited personnel practice that was revealed in the investigation of a complaint alleging a violation of any of the laws cited under section 201(a)(1) or (2); and

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

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

“(A) an examination of trends;

“(B) causal analysis;

“(C) practical knowledge gained through experience; and

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

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

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

“(c) DISCIPLINARY ACTION REPORT.—Not later than 120 days after the date on which a Federal agency takes final action, or a Federal agency receives a final decision issued by the Equal Employment Opportunity Commission, involving a finding of discrimination (including retaliation) in violation of a provision of law covered by paragraph (1) or (2) of section 201(a), as applicable, the applicable Federal agency shall submit to the Commission a report stating—

“(1) whether disciplinary action has been proposed against a Federal employee as a result of the violation; and

“(2) the reasons for any disciplinary action proposed under paragraph (1).

“SEC. 204. RULES AND GUIDELINES.

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

“(1) rules to carry out this title;

“(2) rules to require that a comprehensive study be conducted in the executive branch to determine the best practices relating to the appropriate disciplinary

actions against Federal employees who commit the actions described under clauses (i) and (ii) of section 203(a)(6)(A); and

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

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

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

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

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

“SEC. 205. CLARIFICATION OF REMEDIES.

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

“SEC. 206. STUDIES BY GENERAL ACCOUNTING OFFICE [now GOVERNMENT ACCOUNTABILITY OFFICE] ON EXHAUSTION OF ADMINISTRATIVE REMEDIES AND ON ASCERTAINMENT OF CERTAIN DEPARTMENT OF JUSTICE COSTS.

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

“(1) STUDY.—

“(A) IN GENERAL.—Not later than 180 days after the date of enactment of this Act [May 15, 2002], the General Accounting Office [now Government Accountability Office] shall conduct a study relating to the effects of eliminating the requirement that Federal employees aggrieved by violations of any of the laws specified under section 201(c) exhaust administrative remedies before filing complaints with the Equal Employment Opportunity Commission.

“(B) CONTENTS.—The study shall include a detailed summary of matters investigated, information collected, and conclusions formulated that lead to determinations of how the elimination of such requirement will—

“(i) expedite handling of allegations of such violations within Federal agencies and will streamline the complaint-filing process;

“(ii) affect the workload of the Commission;

“(iii) affect established alternative dispute resolution procedures in such agencies; and

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

“(2) REPORT.—Not later than 90 days after completion of the study required by paragraph (1), the General Accounting Office [now Government Accountability Office] shall submit to the Speaker of the House of Representatives, the President pro tempore of the Senate, the Equal Employment Opportunity Commission, and the Attorney General a report containing the information required to be included in such study.

“(b) STUDY ON ASCERTAINMENT OF CERTAIN COSTS OF THE DEPARTMENT OF JUSTICE IN DEFENDING DISCRIMINATION AND WHISTLEBLOWER CASES.—

“(1) STUDY.—Not later than 180 days after the date of enactment of this Act [May 15, 2002], the General Accounting Office [now Government Accountability Office] shall conduct a study of the methods that could be used for, and the extent of any administra-

tive burden that would be imposed on, the Department of Justice to ascertain the personnel and administrative costs incurred in defending in each case arising from a proceeding identified under section 201(a)(1) and (2).

“(2) REPORT.—Not later than 90 days after completion of the study required by paragraph (1), the General Accounting Office [now Government Accountability Office] shall submit to the Speaker of the House of Representatives and the President pro tempore of the Senate a report containing the information required to be included in the study.

“(c) STUDIES ON STATUTORY EFFECTS ON AGENCY OPERATIONS.—

“(1) IN GENERAL.—Not later than 18 months after the date of enactment of this Act [May 15, 2002], the General Accounting Office [now Government Accountability Office] shall conduct—

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

“(B) a study on the effects of section 13 of the Contract Disputes Act of 1978 (41 U.S.C. 612) [now 41 U.S.C. 7108] on the operations of Federal agencies.

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

“(A) a summary of the number of cases in which a payment was made in accordance with section 2414, 2517, 2672, or 2677 of title 28, United States Code, and under section 1304 of title 31, United States Code;

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

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

“(i) the operations of Federal agencies;

“(ii) funds appropriated on an annual basis;

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

“(iv) settlements; and

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

“(3) REPORTS.—Not later than 90 days after the completion of each study under paragraph (1), the General Accounting Office [now Government Accountability Office] shall submit a report on each study, respectively, to the Speaker of the House of Representatives, the President pro tempore of the Senate, the Committee on Governmental Affairs [now Committee on Homeland Security and Governmental Affairs] of the Senate, the Committee on Government Reform [now Committee on Oversight and Accountability] of the House of Representatives, and the Attorney General.

“(d) STUDY ON ADMINISTRATIVE AND PERSONNEL COSTS INCURRED BY THE DEPARTMENT OF THE TREASURY.—

“(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act [May 15, 2002], the General Accounting Office [now Government Accountability Office] shall conduct a study on the extent of any administrative and personnel costs incurred by the Department of the Treasury to account for payments made in accordance with section 2414, 2517, 2672, or 2677 of title 28, United States Code, and under section 1304 of title 31, United States Code, as a result of—

“(A) this Act; and

“(B) the Contracts Dispute [Contract Disputes] Act of 1978 (41 U.S.C. 601 note [see 41 U.S.C. 7101 et seq.]; Public Law 95-563).

“(2) REPORT.—Not later than 90 days after the completion of the study under paragraph (1), the General Accounting Office [now Government Accountability Office] shall submit a report on the study to the Speaker of the House of Representatives, the President pro tempore of the Senate, the Committee on

Governmental Affairs [now Committee on Homeland Security and Governmental Affairs] of the Senate, the Committee on Government Reform [now Committee on Oversight and Accountability] of the House of Representatives, and the Attorney General.

“SEC. 207. COMPLAINT TRACKING.

“Not later than 1 year after the date of enactment of the Elijah E. Cummings Federal Employee Anti-discrimination Act of 2020 [Jan. 1, 2021], each Federal agency shall establish a system to track each complaint of discrimination arising under section 2302(b)(1) of title 5, United States Code, and adjudicated through the Equal Employment Opportunity process from the filing of a complaint with the Federal agency to resolution of the complaint, including whether a decision has been made regarding disciplinary action as the result of a finding of discrimination.

“SEC. 208. NOTATION IN PERSONNEL RECORD.

“If a Federal agency takes an adverse action covered under section 7512 of title 5, United States Code, against a Federal employee for an act of discrimination (including retaliation) prohibited by a provision of law covered by paragraph (1) or (2) of section 201(a), the agency shall, after all appeals relating to that action have been exhausted, include a notation of the adverse action and the reason for the action in the personnel record of the employee.

“TITLE III—EQUAL EMPLOYMENT OPPORTUNITY COMPLAINT DATA DISCLOSURE

“SEC. 301. DATA TO BE POSTED BY EMPLOYING FEDERAL AGENCIES.

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

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

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

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

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

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

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

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

“(A) for all such complaints,

“(B) for all such complaints in which a hearing before an administrative judge of the Equal Employment Opportunity Commission is not requested, and

“(C) for all such complaints in which a hearing before an administrative judge of the Equal Employment Opportunity Commission is requested.

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

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

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

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

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

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

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

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

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

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

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

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

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

“(C) with respect to each finding described in subparagraph (A)—

“(i) the date of the finding,

“(ii) the affected Federal agency,

“(iii) the law violated, and

“(iv) whether a decision has been made regarding disciplinary action as a result of the finding.

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

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

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

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

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

“(11) Data regarding each class action complaint filed against the agency alleging discrimination (including retaliation), including—

“(A) information regarding the date on which each complaint was filed,

“(B) a general summary of the allegations alleged in the complaint,

“(C) an estimate of the total number of plaintiffs joined in the complaint, if known,

“(D) the current status of the complaint, including whether the class has been certified, and

“(E) the case numbers for the civil actions in which discrimination (including retaliation) has been found.

“(c) TIMING AND OTHER REQUIREMENTS.—

“(1) CURRENT YEAR DATA.—Data posted under this section for the then current fiscal year shall include both—

“(A) interim year-to-date data, updated quarterly, and

“(B) final year-end data.

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

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

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

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

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

“(b) SPECIFIC REQUIREMENTS.—The data posted under this section shall, with respect to the hearings and appeals described in subsection (a), include summary statistical data corresponding to that described in paragraphs (1) through (11) of section 301(b), and shall be subject to the same timing and other requirements as set forth in section 301(c).

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

“SEC. 303. RULES.

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

“TITLE IV—PROCESSING AND REFERRAL

“SEC. 401. PROCESSING AND RESOLUTION OF COMPLAINTS.

“Each Federal agency shall—

“(1) be responsible for the fair and impartial processing and resolution of complaints of employment discrimination (including retaliation) prohibited by a provision of law covered by paragraph (1) or (2) of section 201(a); and

“(2) establish a model Equal Employment Opportunity Program that—

“(A) is not under the control, either structurally or practically, of the agency's Office of Human Capital or Office of the General Counsel (or the equivalent);

“(B) is devoid of internal conflicts of interest and ensures fairness and inclusiveness within the agency; and

“(C) ensures the efficient and fair resolution of complaints alleging discrimination (including retaliation).

“SEC. 402. NO LIMITATION ON ADVICE OR COUNSEL.

“Nothing in this title shall prevent a Federal agency or a subcomponent of a Federal agency, or the Department of Justice, from providing advice or counsel to employees of that agency (or subcomponent, as applicable) in the resolution of a complaint.

“SEC. 403. HEAD OF PROGRAM SUPERVISED BY HEAD OF AGENCY.

“The head of each Federal agency's Equal Employment Opportunity Program shall report directly to the head of the agency.

“SEC. 404. REFERRALS OF FINDINGS OF DISCRIMINATION.

“(a) EEOC FINDINGS OF DISCRIMINATION.—

“(1) IN GENERAL.—Not later than 30 days after the date on which the Equal Employment Opportunity

Commission (referred to in this section as the ‘Commission’) receives, or should have received, a Federal agency report required under section 203(c), the Commission may refer the matter to which the report relates to the Office of Special Counsel if the Commission determines that the Federal agency did not take appropriate action with respect to the finding that is the subject of the report.

“(2) NOTIFICATIONS.—The Commission shall—

“(A) notify the applicable Federal agency if the Commission refers a matter to the Office of Special Counsel under paragraph (1); and

“(B) with respect to a fiscal year, include in the Annual Report of the Federal Workforce of the Commission covering that fiscal year—

“(i) the number of referrals made under paragraph (1) during that fiscal year; and

“(ii) a brief summary of each referral described in clause (i).

“(b) REFERRALS TO SPECIAL COUNSEL.—The Office of Special Counsel shall accept and review a referral from the Commission under subsection (a)(1) for purposes of pursuing disciplinary action under the authority of the Office against a Federal employee who commits an act of discrimination (including retaliation).

“(c) NOTIFICATION.—The Office of Special Counsel shall notify the Commission and the applicable Federal agency in a case in which—

“(1) the Office of Special Counsel pursues disciplinary action under subsection (b); and

“(2) the Federal agency imposes some form of disciplinary action against a Federal employee who commits an act of discrimination (including retaliation).

“(d) SPECIAL COUNSEL APPROVAL.—A Federal agency may not take disciplinary action against a Federal employee for an alleged act of discrimination (including retaliation) referred by the Commission under this section, except in accordance with the requirements of section 1214(f) of title 5, United States Code.”

[Pub. L. 116-283, div. A, title XI, §1134(a)(2), Jan. 1, 2021, 134 Stat. 3901, provided that: “The amendment made by paragraph (1)(C) [amending section 203(a) of Pub. L. 107-174, set out above] shall take effect on the date that is 1 year after the date of enactment of this Act [Jan. 1, 2021].”]

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

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

[Pub. L. 116-283, div. A, title XI, §1134(a)(3), Jan. 1, 2021, 134 Stat. 3901, provided that: “Notwithstanding the requirements of section 203(a) of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 [Pub. L. 107-174] (5 U.S.C. 2301 note) [set out above], the report required under such section 203(a) may be submitted in an electronic format, as prescribed by the Director of the Office of Personnel Management, during the period beginning on the date of enactment of this Act [Jan. 1, 2021] and ending on the effective date in paragraph (2) [1 year after the date of enactment of this Act].”]

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

§ 2302. Prohibited personnel practices

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

(2) For the purpose of this section—

(A) “personnel action” means—

(i) an appointment;

(ii) a promotion;

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

(iv) a detail, transfer, or reassignment;

(v) a reinstatement;

(vi) a restoration;

(vii) a reemployment;

(viii) a performance evaluation under chapter 43 of this title or under title 38;

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

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

(xi) the implementation or enforcement of any nondisclosure policy, form, or agreement; and

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

with respect to an employee in, or applicant for, a covered position in an agency, and in the case of an alleged prohibited personnel practice described in subsection (b)(8), an employee or applicant for employment in a Government corporation as defined in section 9101 of title 31;

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

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

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

(C) “agency” means an Executive agency and the Government Publishing Office, but does not include—

(i) a Government corporation, except in the case of an alleged prohibited personnel practice described under subsection (b)(8) or section 2302(b)(9)(A)(i), (B), (C), or (D);

(ii)(I) the Federal Bureau of Investigation, the Central Intelligence Agency, the Defense Intelligence Agency, the National Geospatial-Intelligence Agency, the National Security Agency, the Office of the Director of National Intelligence, and the National Reconnaissance Office; and

(II) as determined by the President, any executive agency or unit thereof the principal function of which is the conduct of foreign intelligence or counterintelligence activities, provided that the determination be made prior to a personnel action; or

(iii) the Government Accountability Office; and

(D) “disclosure” means a formal or informal communication or transmission, but does not

include a communication concerning policy decisions that lawfully exercise discretionary authority unless the employee or applicant providing the disclosure reasonably believes that the disclosure evidences—

- (i) any violation of any law, rule, or regulation; or
- (ii) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

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

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

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

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

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

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

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

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

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

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

(3) coerce the political activity of any person (including the providing of any political contribution or service), or take any action against any employee or applicant for employment as a reprisal for the refusal of any person to engage in such political activity;

(4) deceive or willfully obstruct any person with respect to such person's right to compete for employment;

(5) influence any person to withdraw from competition for any position for the purpose of improving or injuring the prospects of any other person for employment;

(6) grant any preference or advantage not authorized by law, rule, or regulation to any employee or applicant for employment (including defining the scope or manner of competition or the requirements for any position) for the purpose of improving or injuring the prospects of any particular person for employment;

(7) appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a civilian po-

sition any individual who is a relative (as defined in section 3110(a)(3) of this title) of such employee if such position is in the agency in which such employee is serving as a public official (as defined in section 3110(a)(2) of this title) or over which such employee exercises jurisdiction or control as such an official;

(8) take or fail to take, or threaten to take or fail to take, a personnel action with respect to any employee or applicant for employment because of—

(A) any disclosure of information by an employee or applicant which the employee or applicant reasonably believes evidences—

(i) any violation of any law, rule, or regulation, or

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

if such disclosure is not specifically prohibited by law and if such information is not specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs;

(B) any disclosure to the Special Counsel, or to the Inspector General of an agency or another employee designated by the head of the agency to receive such disclosures, of information which the employee or applicant reasonably believes evidences—

(i) any violation (other than a violation of this section) of any law, rule, or regulation, or

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

(C) any disclosure to Congress (including any committee of Congress) by any employee of an agency or applicant for employment at an agency of information described in subparagraph (B) that is—

- (i) not classified; or
- (ii) if classified—

(I) has been classified by the head of an agency that is not an element of the intelligence community (as defined by section 3 of the National Security Act of 1947 (50 U.S.C. 3003)); and

(II) does not reveal intelligence sources and methods.¹

(9) take or fail to take, or threaten to take or fail to take, any personnel action against any employee or applicant for employment because of—

(A) the exercise of any appeal, complaint, or grievance right granted by any law, rule, or regulation—

(i) with regard to remedying a violation of paragraph (8); or

(ii) other than with regard to remedying a violation of paragraph (8);

(B) testifying for or otherwise lawfully assisting any individual in the exercise of any right referred to in subparagraph (A)(i) or (ii);

¹ So in original. The period probably should be a semicolon.

(C) cooperating with or disclosing information to the Inspector General (or any other component responsible for internal investigation or review) of an agency, or the Special Counsel, in accordance with applicable provisions of law; or

(D) refusing to obey an order that would require the individual to violate a law, rule, or regulation;

(10) discriminate for or against any employee or applicant for employment on the basis of conduct which does not adversely affect the performance of the employee or applicant or the performance of others; except that nothing in this paragraph shall prohibit an agency from taking into account in determining suitability or fitness any conviction of the employee or applicant for any crime under the laws of any State, of the District of Columbia, or of the United States;

(11)(A) knowingly take, recommend, or approve any personnel action if the taking of such action would violate a veterans' preference requirement; or

(B) knowingly fail to take, recommend, or approve any personnel action if the failure to take such action would violate a veterans' preference requirement;

(12) take or fail to take any other personnel action if the taking of or failure to take such action violates any law, rule, or regulation implementing, or directly concerning, the merit system principles contained in section 2301 of this title;

(13) implement or enforce any nondisclosure policy, form, or agreement, if such policy, form, or agreement—

(A) does not contain the following statement: "These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General or the Office of Special Counsel of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this agreement and are controlling."; or

(B) prohibits or restricts an employee or applicant for employment from disclosing to Congress, the Special Counsel, the Inspector General of an agency, or any other agency component responsible for internal investigation or review any information that relates to any violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or any other whistleblower protection; or

(14) access the medical record of another employee or an applicant for employment as a

part of, or otherwise in furtherance of, any conduct described in paragraphs (1) through (13).

This subsection shall not be construed to authorize the withholding of information from Congress or the taking of any personnel action against an employee who discloses information to Congress. For purposes of paragraph (8), (i) any presumption relating to the performance of a duty by an employee whose conduct is the subject of a disclosure as defined under subsection (a)(2)(D) may be rebutted by substantial evidence, and (ii) a determination as to whether an employee or applicant reasonably believes that such employee or applicant has disclosed information that evidences any violation of law, rule, regulation, gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety shall be made by determining whether a disinterested observer with knowledge of the essential facts known to and readily ascertainable by the employee or applicant could reasonably conclude that the actions of the Government evidence such violations, mismanagement, waste, abuse, or danger.

(c)(1) In this subsection—

(A) the term "new employee" means an individual—

(i) appointed to a position as an employee on or after the date of enactment of this subsection; and

(ii) who has not previously served as an employee; and

(B) the term "whistleblower protections" means the protections against and remedies for a prohibited personnel practice described in paragraph (8) or subparagraph (A)(i), (B), (C), or (D) of paragraph (9) of subsection (b).

(2) The head of each agency shall be responsible for—

(A) preventing prohibited personnel practices;

(B) complying with and enforcing applicable civil service laws, rules, and regulations and other aspects of personnel management; and

(C) ensuring, in consultation with the Special Counsel and the Inspector General of the agency, that employees of the agency are informed of the rights and remedies available to the employees under this chapter and chapter 12, including—

(i) information with respect to whistleblower protections available to new employees during a probationary period;

(ii) the role of the Office of Special Counsel and the Merit Systems Protection Board with respect to whistleblower protections; and

(iii) the means by which, with respect to information that is otherwise required by law or Executive order to be kept classified in the interest of national defense or the conduct of foreign affairs, an employee may make a lawful disclosure of the information to—

(I) the Special Counsel;

(II) the Inspector General of an agency;

(III) Congress (including any committee of Congress with respect to information

that is not classified or, if classified, has been classified by the head of an agency that is not an element of the intelligence community and does not reveal intelligence sources and methods); or

(IV) another employee of the agency who is designated to receive such a disclosure.

(3) The head of each agency shall ensure that the information described in paragraph (2) is provided to each new employee of the agency not later than 180 days after the date on which the new employee is appointed.

(4) The head of each agency shall make available information regarding whistleblower protections applicable to employees of the agency on the public website of the agency and on any online portal that is made available only to employees of the agency, if such portal exists.

(5) Any employee to whom the head of an agency delegates authority for any aspect of personnel management shall, within the limits of the scope of the delegation, be responsible for the activities described in paragraph (2).

(d) This section shall not be construed to extinguish or lessen any effort to achieve equal employment opportunity through affirmative action or any right or remedy available to any employee or applicant for employment in the civil service under—

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

(2) sections 12 and 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631, 633a), prohibiting discrimination on the basis of age;

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

(4) section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), prohibiting discrimination on the basis of handicapping condition; or

(5) the provisions of any law, rule, or regulation prohibiting discrimination on the basis of marital status or political affiliation.

(e)(1) For the purpose of this section, the term “veterans’ preference requirement” means any of the following provisions of law:

(A) Sections 2108, 3305(b), 3309, 3310, 3311, 3312, 3313, 3314, 3315, 3316, 3317(b), 3318, 3320, 3351, 3352, 3363, 3501, 3502(b), 3504, and 4303(e) and (with respect to a preference eligible referred to in section 7511(a)(1)(B)) subchapter II of chapter 75 and section 7701.

(B) Sections 943(c)(2) and 1784(c) of title 10.

(C) Section 1308(b) of the Alaska National Interest Lands Conservation Act.

(D) Section 301(c) of the Foreign Service Act of 1980.

(E) Sections 106(f),¹ 7281(e), and 7802(5)¹ of title 38.

(F) Section 1005(a) of title 39.

(G) Any other provision of law that the Director of the Office of Personnel Management designates in regulations as being a veterans’ preference requirement for the purposes of this subsection.

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

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

(f)(1) A disclosure shall not be excluded from subsection (b)(8) because—

(A) the disclosure was made to a supervisor or to a person who participated in an activity that the employee or applicant reasonably believed to be covered by subsection (b)(8)(A)(i) and (ii);

(B) the disclosure revealed information that had been previously disclosed;

(C) of the employee’s or applicant’s motive for making the disclosure;

(D) the disclosure was not made in writing;

(E) the disclosure was made while the employee was off duty;

(F) the disclosure was made before the date on which the individual was appointed or applied for appointment to a position; or

(G) of the amount of time which has passed since the occurrence of the events described in the disclosure.

(2) If a disclosure is made during the normal course of duties of an employee, the principal job function of whom is to regularly investigate and disclose wrongdoing (referred to in this paragraph as the “disclosing employee”), the disclosure shall not be excluded from subsection (b)(8) if the disclosing employee demonstrates that an employee who has the authority to take, direct other individuals to take, recommend, or approve any personnel action with respect to the disclosing employee took, failed to take, or threatened to take or fail to take a personnel action with respect to the disclosing employee in reprisal for the disclosure made by the disclosing employee.

(Added Pub. L. 95-454, title I, §101(a), Oct. 13, 1978, 92 Stat. 1114; amended Pub. L. 101-12, §4, Apr. 10, 1989, 103 Stat. 32; Pub. L. 101-474, §5(d), Oct. 30, 1990, 104 Stat. 1099; Pub. L. 102-378, §2(5), Oct. 2, 1992, 106 Stat. 1346; Pub. L. 103-94, §8(c), Oct. 6, 1993, 107 Stat. 1007; Pub. L. 103-359, title V, §501(c), Oct. 14, 1994, 108 Stat. 3429; Pub. L. 103-424, §5, Oct. 29, 1994, 108 Stat. 4363; Pub. L. 104-197, title III, §315(b)(2), Sept. 16, 1996, 110 Stat. 2416, Pub. L. 104-201, div. A, title XI, §1122(a)(1), title XVI, §1615(b), Sept. 23, 1996, 110 Stat. 2687, 2741; Pub. L. 105-339, §6(a), (b), (c)(2), Oct. 31, 1998, 112 Stat. 3187, 3188; Pub. L. 108-271, §8(b), July 7, 2004, 118 Stat. 814; Pub. L. 110-417, [div. A], title IX, §931(a)(1), Oct. 14, 2008, 122 Stat. 4575; Pub. L. 112-199, title I, §§101(a), (b)(1)(B), (2)(B), (C), 102-104(b)(1), 105, 112, Nov. 27, 2012, 126 Stat. 1465-1468, 1472; Pub. L. 112-277, title V, §505(a), Jan. 14, 2013, 126 Stat. 2478; Pub. L. 113-235, div. H, title I, §1301(b), Dec. 16, 2014, 128 Stat. 2537; Pub. L. 114-113, div. J, title II, §238, Dec. 18, 2015, 129 Stat. 2700; Pub. L. 115-40, §2, June 14, 2017, 131 Stat. 861; Pub. L. 115-73,

¹ See References in Text note below.

title I, §§ 103, 107(a)(1), Oct. 26, 2017, 131 Stat. 1236, 1238; Pub. L. 115–91, div. A, title X, § 1097(b)(1)(B), (c)(1), Dec. 12, 2017, 131 Stat. 1616, 1618; Pub. L. 116–92, div. E, title LVII, § 5721, Dec. 20, 2019, 133 Stat. 2175; Pub. L. 116–283, div. A, title XI, § 1138, Jan. 1, 2021, 134 Stat. 3905.)

Editorial Notes

REFERENCES IN TEXT

Section 1308(b) of the Alaska National Interest Lands Conservation Act, referred to in subsec. (e)(1)(C), is classified to section 3198(b) of Title 16, Conservation.

Section 301(c) of the Foreign Service Act of 1980, referred to in subsec. (e)(1)(D), is classified to section 3941(c) of Title 22, Foreign Relations and Intercourse.

Section 106(f) of title 38, referred to in subsec. (e)(1)(E), was enacted subsequent to the enactment of subsec. (e) of this section.

Section 7802(5) of title 38, referred to in subsec. (e)(1)(E), was redesignated section 7802(e) of title 38 by Pub. L. 108–170, title III, § 304(b)(3), Dec. 6, 2003, 117 Stat. 2059.

AMENDMENTS

2021—Subsec. (b)(13). Pub. L. 116–283 substituted “agreement—” for “agreement”, designated remainder of existing provisions as subpar. (A), inserted “or the Office of Special Counsel” after “Inspector General”, and added subpar. (B).

2019—Subsec. (b)(8)(C). Pub. L. 116–92, § 5721(1), added subpar. (C).

Subsec. (c)(2)(C)(iii)(III). Pub. L. 116–92, § 5721(2), inserted “(including any committee of Congress with respect to information that is not classified or, if classified, has been classified by the head of an agency that is not an element of the intelligence community and does not reveal intelligence sources and methods)” after “Congress”.

2017—Subsec. (b)(9)(C). Pub. L. 115–91, § 1097(c)(1)(A), inserted “(or any other component responsible for internal investigation or review)” after “Inspector General”.

Subsec. (b)(9)(D). Pub. L. 115–40 struck out “for” after “(D)” and inserted “, rule, or regulation” after “a law”.

Subsec. (b)(14). Pub. L. 115–73, § 103, added par. (14).

Subsecs. (c) to (f). Pub. L. 115–91, § 1097(b)(1)(B), added subsec. (c) and redesignated former subsecs. (c) to (e) as (d) to (f), respectively.

Pub. L. 115–73, § 107(a)(1), redesignated subsecs. (d) to (f) as (c) to (e), respectively, and struck out former subsec. (c) which read as follows: “The head of each agency shall be responsible for the prevention of prohibited personnel practices, for the compliance with and enforcement of applicable civil service laws, rules, and regulations, and other aspects of personnel management, and for ensuring (in consultation with the Office of Special Counsel) that agency employees are informed of the rights and remedies available to them under this chapter and chapter 12 of this title, including how to make a lawful disclosure of information that is specifically required by law or Executive order to be kept classified in the interest of national defense or the conduct of foreign affairs to the Special Counsel, the Inspector General of an agency, Congress, or other agency employee designated to receive such disclosures. Any individual to whom the head of an agency delegates authority for personnel management, or for any aspect thereof, shall be similarly responsible within the limits of the delegation.”

Subsec. (f)(1)(F), (G). Pub. L. 115–91, § 1097(c)(1)(B)(i), added subpar. (F) and redesignated former subpar. (F) as (G).

Subsec. (f)(2). Pub. L. 115–91, § 1097(c)(1)(B)(ii), added par. (2) and struck out former par. (2) which read as follows: “If a disclosure is made during the normal course of duties of an employee, the disclosure shall not be ex-

cluded from subsection (b)(8) if any employee who has authority to take, direct others to take, recommend, or approve any personnel action with respect to the employee making the disclosure, took, failed to take, or threatened to take or fail to take a personnel action with respect to that employee in reprisal for the disclosure.”

2015—Subsec. (a)(2)(A)(viii). Pub. L. 114–113 inserted “or under title 38” after “chapter 43 of this title”.

2013—Subsec. (a)(2)(C)(ii). Pub. L. 112–277 added cl. (ii) and struck out former cl. (ii) which read as follows:

“(I) the Federal Bureau of Investigation, the Central Intelligence Agency, the Defense Intelligence Agency, the National Geospatial-Intelligence Agency, the National Security Agency, the Office of the Director of National Intelligence, and the National Reconnaissance Office; and

“(II) as determined by the President, any Executive agency or unit thereof the principal function of which is the conduct of foreign intelligence or counterintelligence activities, provided that the determination be made prior to a personnel action; or”.

2012—Subsec. (a)(2)(A)(xi), (xii). Pub. L. 112–199, § 104(a), added cl. (xi) and redesignated former cl. (xi) as (xii).

Subsec. (a)(2)(C)(i). Pub. L. 112–199, § 101(b)(1)(B), inserted “or section 2302(b)(9)(A)(i), (B), (C), or (D)” after “(b)(8)”.

Subsec. (a)(2)(C)(ii). Pub. L. 112–199, § 105, added cl. (ii) and struck out former cl. (ii) which read as follows: “the Federal Bureau of Investigation, the Central Intelligence Agency, the Defense Intelligence Agency, the National Geospatial-Intelligence Agency, the National Security Agency, and, as determined by the President, any Executive agency or unit thereof the principal function of which is the conduct of foreign intelligence or counterintelligence activities; or”.

Subsec. (a)(2)(D). Pub. L. 112–199, § 102, added subpar. (D).

Subsec. (b). Pub. L. 112–199, § 103, amended concluding provisions generally. Prior to amendment, concluding provisions read as follows: “This subsection shall not be construed to authorize the withholding of information from the Congress or the taking of any personnel action against an employee who discloses information to the Congress.”

Subsec. (b)(8)(A)(i). Pub. L. 112–199, § 101(a)(1), substituted “any violation” for “a violation”.

Subsec. (b)(8)(B)(i). Pub. L. 112–199, § 101(a)(2), substituted “any violation (other than a violation of this section)” for “a violation”.

Subsec. (b)(9)(A). Pub. L. 112–199, § 101(b)(2)(B)(i), added subpar. (A) and struck out former subpar. (A) read as follows: “the exercise of any appeal, complaint, or grievance right granted by any law, rule, or regulation;”.

Subsec. (b)(9)(B). Pub. L. 112–199, § 101(b)(2)(B)(ii), inserted “(i) or (ii)” after “subparagraph (A)”.

Subsec. (b)(13). Pub. L. 112–199, § 104(b)(1), added par. (13).

Subsec. (c). Pub. L. 112–199, § 112, inserted “, including how to make a lawful disclosure of information that is specifically required by law or Executive order to be kept classified in the interest of national defense or the conduct of foreign affairs to the Special Counsel, the Inspector General of an agency, Congress, or other agency employee designated to receive such disclosures” after “chapter 12 of this title”.

Subsec. (f). Pub. L. 112–199, § 101(b)(2)(C), added subsec. (f).

2008—Subsec. (a)(2)(C)(ii). Pub. L. 110–417 substituted “National Geospatial-Intelligence Agency” for “National Imagery and Mapping Agency”.

2004—Subsec. (a)(2)(C)(iii). Pub. L. 108–271 substituted “Government Accountability Office” for “General Accounting Office”.

1998—Subsec. (a)(1). Pub. L. 105–339, § 6(c)(2), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “For purposes of this title, ‘prohibited personnel practice’ means the following:

“(A) Any action described in subsection (b) of this section.

“(B) Any action or failure to act that is designated as a prohibited personnel action under section 1599c(a) of title 10.”

Subsec. (b)(10) to (12). Pub. L. 105-339, §6(a), struck out “or” at end of par. (10), added par. (11), and redesignated former par. (11) as (12).

Subsec. (e). Pub. L. 105-339, §6(b), added subsec. (e).

1996—Subsec. (a)(1). Pub. L. 104-201, §1615(b), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “For the purpose of this title, ‘prohibited personnel practice’ means any action described in subsection (b) of this section.”

Subsec. (a)(2)(C)(ii). Pub. L. 104-201, §1122(a)(1), substituted “National Imagery and Mapping Agency” for “Central Imagery Office”.

Subsec. (b)(2). Pub. L. 104-197 amended par. (2) generally. Prior to amendment, par. (2) read as follows: “solicit or consider any recommendation or statement, oral or written, with respect to any individual who requests or is under consideration for any personnel action except as provided under section 3303(f);”.

1994—Subsec. (a)(2)(A). Pub. L. 103-424, §5(a)(3), in concluding provisions, inserted before semicolon “, and in the case of an alleged prohibited personnel practice described in subsection (b)(8), an employee or applicant for employment in a Government corporation as defined in section 9101 of title 31”.

Subsec. (a)(2)(A)(x), (xi). Pub. L. 103-424, §5(a)(1), (2), added cls. (x) and (xi) and struck out former cl. (x) which read as follows: “any other significant change in duties or responsibilities which is inconsistent with the employee’s salary or grade level;”.

Subsec. (a)(2)(B). Pub. L. 103-424, §5(b), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “‘covered position’ means any position in the competitive service, a career appointee position in the Senior Executive Service, or a position in the excepted service, but does not include—

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

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

Subsec. (a)(2)(C)(i). Pub. L. 103-424, §5(c), inserted before semicolon “, except in the case of an alleged prohibited personnel practice described under subsection (b)(8)”.

Subsec. (a)(2)(C)(ii). Pub. L. 103-359 inserted “the Central Imagery Office,” after “Defense Intelligence Agency.”

Subsec. (c). Pub. L. 103-424, §5(d), inserted before period at end of first sentence “, and for ensuring (in consultation with the Office of Special Counsel) that agency employees are informed of the rights and remedies available to them under this chapter and chapter 12 of this title”.

1993—Subsec. (b)(2). Pub. L. 103-94 amended par. (2) generally. Prior to amendment, par. (2) read as follows: “solicit or consider any recommendation or statement, oral or written, with respect to any individual who requests or is under consideration for any personnel action unless such recommendation or statement is based on the personal knowledge or records of the person furnishing it and consists of—

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

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

1992—Subsec. (b)(8)(B). Pub. L. 102-378 substituted “Special Counsel” for “Special Counsel of the Merit Systems Protection Board”.

1990—Subsec. (a)(2)(C). Pub. L. 101-474 struck out “, the Administrative Office of the United States Courts,” after “means an Executive agency”.

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

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

Statutory Notes and Related Subsidiaries

CHANGE OF NAME

“Government Publishing Office” substituted for “Government Printing Office” in subsec. (a)(2)(C) 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 2012 AMENDMENT

Amendment by Pub. L. 112-199 effective 30 days after Nov. 27, 2012, see section 202 of Pub. L. 112-199, set out as a note under section 1204 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

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

Pub. L. 104-197, title III, §315(c), Sept. 16, 1996, 110 Stat. 2416, provided that: “This section [amending this section and section 3303 of this title] shall take effect 30 days after the date of the enactment of this Act [Sept. 16, 1996].”

EFFECTIVE DATE OF 1993 AMENDMENT; SAVINGS PROVISION

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

EFFECTIVE DATE OF 1989 AMENDMENT

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

SAVINGS PROVISION

Pub. L. 112-199, title II, §201, Nov. 27, 2012, 126 Stat. 1475, provided that: “Nothing in this Act [see section 1 of Pub. L. 112-199, set out as a Short Title of 2012 Amendment note under section 101 of this title] shall be construed to imply any limitation on any protections afforded by any other provision of law to employees and applicants.”

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

AGENCY WEBSITES

Pub. L. 112-199, title I, §104(b)(2), Nov. 27, 2012, 126 Stat. 1467, provided that: “Agencies making use of any

nondisclosure policy, form, or agreement shall also post the statement required under section 2302(b)(13) of title 5, United States Code (as added by this Act) on the agency website, accompanied by the specific list of controlling Executive orders and statutory provisions.”

NONDISCLOSURE POLICY, FORM, OR AGREEMENT IN EFFECT BEFORE THE EFFECTIVE DATE

Pub. L. 112-199, title I, §104(b)(3), Nov. 27, 2012, 126 Stat. 1467, provided that: “With respect to a nondisclosure policy, form, or agreement that was in effect before the effective date of this Act [see Effective Date of 2012 Amendment note above], but that does not contain the statement required under section 2302(b)(13) of title 5, United States Code (as added by this Act) for implementation or enforcement—

“(A) it shall not be a prohibited personnel practice to enforce that policy, form, or agreement with regard to a current employee if the agency gives such employee notice of the statement; and

“(B) it shall not be a prohibited personnel practice to enforce that policy, form, or agreement after the effective date of this Act with regard to a former employee if the agency complies with paragraph (2) of this subsection [set out as a note above].”

DISCLOSURE OF CENSORSHIP RELATED TO RESEARCH, ANALYSIS, OR TECHNICAL INFORMATION

Pub. L. 112-199, title I, §110, Nov. 27, 2012, 126 Stat. 1471, as amended by Pub. L. 115-73, title I, §107(a)(2)(C), Oct. 26, 2017, 131 Stat. 1239; Pub. L. 115-91, div. A, title X, §1097(b)(3)(C), Dec. 12, 2017, 131 Stat. 1618, provided that:

“(a) DEFINITIONS.—In this subsection—

“(1) the term ‘agency’ has the meaning given under section 2302(a)(2)(C) of title 5, United States Code;

“(2) the term ‘applicant’ means an applicant for a covered position;

“(3) the term ‘censorship related to research, analysis, or technical information’ means any effort to distort, misrepresent, or suppress research, analysis, or technical information;

“(4) the term ‘covered position’ has the meaning given under section 2302(a)(2)(B) of title 5, United States Code;

“(5) the term ‘employee’ means an employee in a covered position in an agency; and

“(6) the term ‘disclosure’ has the meaning given under section 2302(a)(2)(D) of title 5, United States Code.

“(b) PROTECTED DISCLOSURE.—

“(1) IN GENERAL.—Any disclosure of information by an employee or applicant for employment that the employee or applicant reasonably believes is evidence of censorship related to research, analysis, or technical information—

“(A) shall come within the protections of section 2302(b)(8)(A) of title 5, United States Code, if—

“(i) the employee or applicant reasonably believes that the censorship related to research, analysis, or technical information is or will cause—

“(I) any violation of law, rule, or regulation; or

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

“(ii) such disclosure is not specifically prohibited by law or such information is not specifically required by Executive order to be kept classified in the interest of national defense or the conduct of foreign affairs; and

“(B) shall come within the protections of section 2302(b)(8)(B) of title 5, United States Code, if—

“(i) the employee or applicant reasonably believes that the censorship related to research, analysis, or technical information is or will cause—

“(I) any violation of law, rule, or regulation; or

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

“(ii) the disclosure is made to the Special Counsel, or to the Inspector General of an agency or another person designated by the head of the agency to receive such disclosures, consistent with the protection of sources and methods.

“(2) DISCLOSURES NOT EXCLUDED.—A disclosure shall not be excluded from paragraph (1) for any reason described under section 2302(f)(1) or (2) of title 5, United States Code.

“(3) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to imply any limitation on the protections of employees and applicants afforded by any other provision of law, including protections with respect to any disclosure of information believed to be evidence of censorship related to research, analysis, or technical information.”

NONDISCLOSURE POLICIES, FORMS, AND AGREEMENTS

Pub. L. 112-199, title I, §115, Nov. 27, 2012, 126 Stat. 1472, provided that:

“(a) IN GENERAL.—

“(1) REQUIREMENT.—Each agreement in Standard Forms 312 and 4414 of the Government and any other nondisclosure policy, form, or agreement of the Government shall contain the following statement: ‘These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this agreement and are controlling.’.

“(2) AGENCY WEBSITES.—Agencies making use of any nondisclosure policy, form, or agreement shall also post the statement required under paragraph (1) on the agency website, accompanied by the specific list of controlling Executive orders and statutory provisions.

“(3) ENFORCEABILITY.—

“(A) IN GENERAL.—Any nondisclosure policy, form, or agreement described under paragraph (1) that does not contain the statement required under paragraph (1) may not be implemented or enforced to the extent such policy, form, or agreement is inconsistent with that statement.

“(B) NONDISCLOSURE POLICY, FORM, OR AGREEMENT IN EFFECT BEFORE THE EFFECTIVE DATE.—With respect to a nondisclosure policy, form, or agreement that was in effect before the effective date of this Act [see Effective Date of 2012 Amendment note above], but that does not contain the statement required under paragraph (1) for implementation or enforcement—

“(i) it shall not be a prohibited personnel practice to enforce that policy, form, or agreement with regard to a current employee if the agency gives such employee notice of the statement; and

“(ii) it shall not be a prohibited personnel practice to enforce that policy, form, or agreement after the effective date of this Act with regard to a former employee if the agency complies with paragraph (2).

“(b) PERSONS OTHER THAN GOVERNMENT EMPLOYEES.—Notwithstanding subsection (a), a nondisclosure policy, form, or agreement that is to be executed by a person connected with the conduct of an intelligence or intelligence-related activity, other than an employee or of-

ficer of the United States Government, may contain provisions appropriate to the particular activity for which such document is to be used. Such policy, form, or agreement shall, at a minimum, require that the person will not disclose any classified information received in the course of such activity unless specifically authorized to do so by the United States Government. Such nondisclosure policy, form, or agreement shall also make it clear that such forms do not bar disclosures to Congress or to an authorized official of an executive agency or the Department of Justice that are essential to reporting a substantial violation of law, consistent with the protection of sources and methods."

Executive Documents

FEDERAL BENEFITS AND NON-DISCRIMINATION

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

Memorandum for the Heads of Executive Departments and Agencies

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

I hereby request the following:

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

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

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

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

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

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

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

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

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

BARACK OBAMA.

EXTENSION OF BENEFITS TO SAME-SEX DOMESTIC PARTNERS OF FEDERAL EMPLOYEES

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

Memorandum for the Heads of Executive Departments and Agencies

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

Accordingly, I hereby direct the following:

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

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

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

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

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

(iv) issue a proposed rule that would add a Federal retiree's same-sex domestic partner to the list of individuals presumed to have an insurable interest in the employee pursuant to 5 U.S.C. 8339(k)(1), 8420;

(v) clarify that under appropriate circumstances, employees' same-sex domestic partners and their children qualify as dependents for purposes of evacuation payments made under 5 U.S.C. 5522-5523; Folio: 1632 [sic]

(vi) amend its guidance on implementing President Clinton's April 11, 1997, memorandum to heads of executive departments and agencies on "Expanded Family

and Medical Leave Policies” to specify that the 24 hours of unpaid leave made available to Federal employees in connection with (i) school and early childhood educational activities; (ii) routine family medical purposes; and (iii) elderly relatives’ health or care needs, may be used to meet the needs of an employee’s same-sex domestic partner or the same-sex domestic partner’s children; and

(vii) clarify that employees’ same-sex domestic partners qualify as dependents for purposes of calculating the extra allowance payable under 5 U.S.C. 5942a to assist employees stationed on Johnston Island, subject to any limitations applicable to spouses.

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

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

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

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

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

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

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

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

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

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

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

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

BARACK OBAMA.

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

(a) Any employee of the Federal Bureau of Investigation who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority, take or fail to take a personnel action with respect to an employee in, or applicant for, a position in the Bureau as a reprisal for a disclosure of information—

(1) made—

(A) in the case of an employee, to a supervisor in the direct chain of command of the employee, up to and including the head of the employing agency;

(B) to the Inspector General;

(C) to the Office of Professional Responsibility of the Department of Justice;

(D) to the Office of Professional Responsibility of the Federal Bureau of Investigation;

(E) to the Inspection Division of the Federal Bureau of Investigation;

(F) as described in section 7211;

(G) to the Office of Special Counsel; or

(H) to an employee designated by any officer, employee, office, or division described in subparagraphs (A) through (G) for the purpose of receiving such disclosures; and

(2) which the employee or applicant reasonably believes evidences—

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

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

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

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

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

(d)(1) An employee of the Federal Bureau of Investigation who makes an allegation of a reprisal under regulations promulgated under this section may appeal a final determination or corrective action order by the Bureau under those regulations to the Merit Systems Protection Board pursuant to section 1221.

(2) If no final determination or corrective action order has been made or issued for an allegation described in paragraph (1) before the expiration of the 180-day period beginning on the date on which the allegation is received by the Federal Bureau of Investigation, the employee described in that paragraph may seek corrective action directly from the Merit Systems Protection Board pursuant to section 1221.

(Added Pub. L. 95-454, title I, §101(a), Oct. 13, 1978, 92 Stat. 1117; amended Pub. L. 101-12, §9(a)(1), Apr. 10, 1989, 103 Stat. 34; Pub. L. 114-302, §2, Dec. 16, 2016, 130 Stat. 1516; Pub. L. 117-263, div. E, title LIII, §5304(a), Dec. 23, 2022, 136 Stat. 3250.)

Editorial Notes

AMENDMENTS

2022—Subsec. (d). Pub. L. 117-263 added subsec. (d).

2016—Subsec. (a). Pub. L. 114-302 substituted “an employee in, or applicant for, a position in the Bureau as a reprisal for a disclosure of information—” for “any employee of the Bureau as a reprisal for a disclosure of information by the employee to the Attorney General (or an employee designated by the Attorney General for such purpose) which the employee or applicant reasonably believes evidences—” in introductory provisions, added pars. (1) and (2), and struck out former pars. (1) and (2) which read as follows:

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

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

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

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1989 AMENDMENT

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

WHISTLEBLOWER PROTECTIONS FOR FEDERAL BUREAU OF INVESTIGATION CONTRACTORS

Pub. L. 115-118, title I, §110(b), Jan. 19, 2018, 132 Stat. 16, provided that:

“(1) IN GENERAL.—Any employee of a contractor, subcontractor, grantee, subgrantee, or personal services contractor, of the Federal Bureau of Investigation who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority, take or fail to take a personnel action with respect to a contractor employee as a reprisal for a disclosure of information—

“(A) made—

“(i) to a supervisor in the direct chain of command of the contractor employee;

“(ii) to the Inspector General;

“(iii) to the Office of Professional Responsibility of the Department of Justice;

“(iv) to the Office of Professional Responsibility of the Federal Bureau of Investigation;

“(v) to the Inspection Division of the Federal Bureau of Investigation;

“(vi) to the Office of Special Counsel; or

“(vii) to an employee designated by any officer, employee, office, or division described in clauses (i) through (vii) for the purpose of receiving such disclosures; and

“(B) which the contractor employee reasonably believes evidences—

“(i) any violation of any law, rule, or regulation (including with respect to evidence of another employee or contractor employee accessing or sharing classified information without authorization); or

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

“(2) ACTIONS BY REQUEST.—A personnel action under paragraph (1) is prohibited even if the action is undertaken at the request of an official of the Federal Bureau of Investigation, unless the request takes the form of a nondiscretionary directive and is within the authority of the official making the request.

“(3) REGULATIONS.—The Attorney General shall prescribe regulations to ensure that a personnel action described in paragraph (1) shall not be taken against a contractor employee of the Federal Bureau of Investigation as a reprisal for any disclosure of information described in subparagraph (A) of such paragraph.

“(4) ENFORCEMENT.—The President shall provide for the enforcement of this subsection.

“(5) DEFINITIONS.—In this subsection:

“(A) The term ‘contractor employee’ means an employee of a contractor, subcontractor, grantee, subgrantee, or personal services contractor, of the Federal Bureau of Investigation.

“(B) The term ‘personnel action’ means any action described in clauses (i) through (x) of section 2302(a)(2)(A) of title 5, United States Code, with respect to a contractor employee.”

Executive Documents

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

Memorandum of President of the United States, Apr. 14, 1997, 62 F.R. 23123, provided:

Memorandum for the Attorney General

By the authority vested in me by the Constitution and laws of the United States of America, including section 301 of title 3, United States Code, I hereby delegate to the Attorney General the functions concerning employees of the Federal Bureau of Investigation vested in the President by section 101(a) of the Civil Service Reform Act of 1978 (Public Law 95-454), as amended by the Whistleblower Protection Act of 1989 (Public Law 101-12), and codified at section 2303(c) of title 5, United States Code, and direct the Attorney General to establish appropriate processes within the Department of Justice to carry out these functions. Not later than March 1 of each year, the Attorney General shall provide a report to the President stating the number of allegations of reprisal received during the preceding calendar year, the disposition of each allegation resolved during the preceding calendar year, and the number of unresolved allegations pending as of the end of the calendar year.

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

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

WILLIAM J. CLINTON.

§ 2304. Prohibited personnel practices affecting the Transportation Security Administration

(a) IN GENERAL.—Notwithstanding any other provision of law, any individual holding or applying for a position within the Transportation Security Administration shall be covered by—

(1) the provisions of section 2302(b)(1), (8), and (9);

(2) any provision of law implementing section 2302(b)(1), (8), or (9) by providing any right or remedy available to an employee or applicant for employment in the civil service; and

(3) any rule or regulation prescribed under any provision of law referred to in paragraph (1) or (2).

(b) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to affect any rights, apart from those described in subsection (a), to which an individual described in subsection (a) might otherwise be entitled under law.

(Added Pub. L. 112-199, title I, §109(a)(2), Nov. 27, 2012, 126 Stat. 1470.)

Editorial Notes**PRIOR PROVISIONS**

A prior section 2304 was renumbered section 2305 of this title.

Statutory Notes and Related Subsidiaries**EFFECTIVE DATE**

Pub. L. 112-199, title I, §109(c), Nov. 27, 2012, 126 Stat. 1471, provided that: “The amendments made by this section [enacting this section and renumbering sections 2304 and 2305 of this title as sections 2305 and 2306, respectively, of this title] shall take effect on the date of enactment of this section [Nov. 27, 2012].”

§ 2305. Responsibility of the Government Accountability Office

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

(Added Pub. L. 95-454, title I, §101(a), Oct. 13, 1978, 92 Stat. 1118, §2304; amended Pub. L. 102-378, §2(6), Oct. 2, 1992, 106 Stat. 1346; Pub. L. 104-66, title II, §2181(e), Dec. 21, 1995, 109 Stat. 732; Pub. L. 108-271, §8(b), July 7, 2004, 118 Stat. 814; renumbered §2305, Pub. L. 112-199, title I, §109(a)(1), Nov. 27, 2012, 126 Stat. 1470.)

Editorial Notes**PRIOR PROVISIONS**

A prior section 2305 was renumbered section 2306 of this title.

AMENDMENTS

2012—Pub. L. 112-199 renumbered section 2304 of this title as this section.

2004—Pub. L. 108-271 substituted “Government Accountability Office” for “General Accounting Office” in section catchline and text.

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

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

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

1992—Subsec. (b). Pub. L. 102-378 substituted “The” for “the” at beginning of first sentence.

§ 2306. Coordination with certain other provisions of law

No provision of this chapter, or action taken under this chapter, shall be construed to impair the authorities and responsibilities set forth in section 102 of the National Security Act of 1947 (61 Stat. 495; 50 U.S.C. 403),¹ the Central Intel-

ligence Agency Act of 1949 (63 Stat. 208; 50 U.S.C. 403a and following),¹ the Act entitled “An Act to provide certain administrative authorities for the National Security Agency, and for other purposes”, approved May 29, 1959 (73 Stat. 63; 50 U.S.C. 402 note),¹ and the Act entitled “An Act to amend the Internal Security Act of 1950”, approved March 26, 1964 (78 Stat. 168; 50 U.S.C. 831-835).

(Added Pub. L. 95-454, title I, §101(a), Oct. 13, 1978, 92 Stat. 1118, §2305; renumbered §2306, Pub. L. 112-199, title I, §109(a)(1), Nov. 27, 2012, 126 Stat. 1470.)

Editorial Notes**REFERENCES IN TEXT**

The National Security Act of 1947, referred to in text, is act July 26, 1947, ch. 343, 61 Stat. 495, which was formerly classified principally to chapter 15 (§401 et seq.) of Title 50, War and National Defense, prior to editorial reclassification in chapter 44 (§3001 et seq.) of Title 50. Section 102 of the Act was repealed by Pub. L. 104-293, title VIII, §805(a), Oct. 11, 1996, 110 Stat. 3477, another section 102 was repealed by Pub. L. 108-458, title I, §1011(a), 1097(a), Dec. 17, 2004, 118 Stat. 3643, 3698, and subsequently another section 102, as added by Pub. L. 108-458, title I, §1011(a), Dec. 17, 2004, 118 Stat. 3644, was classified to section 403 of Title 50 prior to editorial reclassification to section 3023 of Title 50. For complete classification of this Act to the Code, see Tables.

The Central Intelligence Agency Act of 1949, referred to in text, is act June 20, 1949, ch. 227, 63 Stat. 208, which was formerly classified generally to section 403a et seq. of Title 50, War and National Defense, prior to editorial reclassification in Title 50, and is now classified generally to chapter 46 (§3501 et seq.) of Title 50. For complete classification of this Act to the Code, see Tables.

The Act entitled “An Act to provide certain administrative authorities for the National Security Agency, and for other purposes”, approved May 29, 1959, referred to in text, is Pub. L. 86-36, May 29, 1959, 73 Stat. 63, which was formerly set out as a note under section 402 of Title 50, War and National Defense, prior to editorial reclassification in Title 50, and is now classified generally to chapter 47 (§3601 et seq.) of Title 50. For complete classification of this Act to the Code, see Tables.

The Act entitled “An Act to amend the Internal Security Act of 1950”, approved March 26, 1964, referred to in text, is act Sept. 23, 1950, ch. 1024, title III, as added Mar. 26, 1964, Pub. L. 88-290, 78 Stat. 168, which is classified principally to subchapter III (§831 et seq.) of chapter 23 of Title 50. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

2012—Pub. L. 112-199 renumbered section 2305 of this title as this section.

[§ 2307. Repealed. Pub. L. 115-91, div. A, title X, § 1097(b)(1)(A), Dec. 12, 2017, 131 Stat. 1616]

Section, added Pub. L. 115-73, title I, §107(b), Oct. 26, 2017, 131 Stat. 1239, related to information on whistleblower protections and agency responsibilities.

CHAPTER 29—COMMISSIONS, OATHS, RECORDS, AND REPORTS**SUBCHAPTER I—COMMISSIONS, OATHS, AND RECORDS**

Sec.

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Commission of an officer.

2902.

Commission; where recorded.

2903.

Oath; authority to administer.

2904.

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¹ See References in Text note below.

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Editorial Notes

AMENDMENTS

1978—Pub. L. 95-454, title IX, §906(a)(16), Oct. 13, 1978, 92 Stat. 1226, substituted “Office of Personnel Management” for “Civil Service Commission” in item 2951.

SUBCHAPTER I—COMMISSIONS, OATHS, AND RECORDS

§ 2901. Commission of an officer

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

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

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 10.	R.S. §1773.

The words “confirmed by” are substituted for “advised and consented to”.

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

§ 2902. Commission; where recorded

(a) Except as provided by subsections (b) and (c) of this section, the Secretary of State shall make out and record, and affix the seal of the United States to, the commission of an officer appointed by the President. The seal of the United States may not be affixed to the commission before the commission has been signed by the President.

(b) The commission of an officer in the civil service or uniformed services under the control of the Secretary of Agriculture, the Secretary of Commerce, the Secretary of Defense, the Secretary of a military department, the Secretary of the Interior, the Secretary of Homeland Security, or the Secretary of the Treasury shall be made out and recorded in the department in which he is to serve under the seal of that department. The departmental seal may not be affixed to the commission before the commission has been signed by the President.

(c) The commissions of judicial officers and United States attorneys and marshals, appointed by the President, by and with the advice and consent of the Senate, and other commissions which before August 8, 1888, were prepared at the Department of State on the requisition of the Attorney General, shall be made out and recorded in the Department of Justice under the seal of that department and countersigned by the Attorney General. The departmental seal

may not be affixed to the commission before the commission has been signed by the President.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 411; Pub. L. 94-183, §2(3), Dec. 31, 1975, 89 Stat. 1057; Pub. L. 109-241, title IX, §902(a)(2), July 11, 2006, 120 Stat. 566.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
(a)	4 U.S.C. 42 (as applicable to civil commissions).	[None.]
(b)	5 U.S.C. 11.	Mar. 3, 1875, ch. 131, §14, 18 Stat. 420. Mar. 28, 1896, ch. 73, 29 Stat. 75. Mar. 3, 1905, ch. 1422, 33 Stat. 990.
(c)	5 U.S.C. 12.	Aug. 8, 1888, ch. 786, 25 Stat. 387.

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

In subsection (b), the words “officer in the civil service or uniformed services” are substituted for “officer” because of the definition of “officer” in section 2104. The words “direction and” are omitted as included within “the control”. The words “the Secretary of Defense” are added on authority of the Acts of July 26, 1947, ch. 343, §305(a), 61 Stat. 508, and Aug. 10, 1949, ch. 412, §12(g), 63 Stat. 591. The words “the Secretary of a military department” are substituted for “the Secretary of War, the Secretary of the Navy” (appearing in the Act of Mar. 28, 1896) because of the definition of “military department” in section 102. The title of the Secretary of War was changed to Secretary of the Army by the Act of July 26, 1947, ch. 343, §205, 61 Stat. 501. “Secretary of the Air Force” is included on authority of the Act of July 26, 1947, ch. 343, §207(a), (f), 61 Stat. 502. The words “Secretary of Commerce” are substituted for “Secretary of Commerce and Labor” on authority of the Act of Mar. 4, 1913, ch. 141, §1, 37 Stat. 736. The words “under the departmental seal” are substituted for “and the departmental seal affixed thereto”. The words “any laws to the contrary notwithstanding” are omitted as unnecessary. The last sentence of section 14 of the Act of Mar. 3, 1875, is omitted as executed.

In subsection (c), the words “and shall be” and “any laws to the contrary notwithstanding” are omitted as unnecessary.

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

Editorial Notes

AMENDMENTS

2006—Subsec. (b). Pub. L. 109-241 inserted “the Secretary of Homeland Security,” after “the Secretary of the Interior,”.

1975—Subsec. (b). Pub. L. 94-183 struck out “the Postmaster General,” after “under the control of”.

§ 2903. Oath; authority to administer

(a) The oath of office required by section 3331 of this title may be administered by an individual authorized by the laws of the United

States or local law to administer oaths in the State, District, or territory or possession of the United States where the oath is administered.

(b) An employee of an Executive agency designated in writing by the head of the Executive agency, or the Secretary of a military department with respect to an employee of his department, may administer—

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

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

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

(1) the Vice President; or

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

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

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
(a)	5 U.S.C. 18.	R.S. §1758.
(b)	5 U.S.C. 16a(a) (less 1st 9 words after last comma).	June 26, 1943, ch. 145, §206 (less 1st 9 words after last comma), 57 Stat. 196.
(c)	5 U.S.C. 16a(b).	Sept. 30, 1961, Pub. L. 87-332 (par. under "General Provision"), 75 Stat. 743.
	5 U.S.C. 92a.	July 3, 1926, ch. 752, 44 Stat. 830.

In subsection (b), the words "On and after June 26, 1943" are omitted as executed, and the word "officer" is omitted as included in "employee". The words "Executive agency" are coextensive with and substituted for "executive departments or independent establishments, including any agency the majority of the stock of which is owned by the Government of the United States" because of the definition of "Executive agency" in section 105. The words "or the Secretary of a military department with respect to an employee of his department" are inserted to preserve the application of the source law. Before enactment of the National Security Act Amendments of 1949 (63 Stat. 578), the Department of the Army, the Department of the Navy, and the Department of the Air Force were Executive departments. The National Security Act Amendments of 1949 established the Department of Defense as an Executive Department including the Department of the Army, the Department of the Navy, and the Department of the Air Force as military departments, not as Executive departments. However, the source law for this section, which was in effect in 1949, remained applicable to the Secretaries of the military departments by virtue of section 12(g) of the National Security Act Amendments of 1949 (63 Stat. 591), which is set out in the reviser's note for section 301. The words "of the Federal Government" and "and to have the same force and effect as oaths administered by officers having seals" are omitted as unnecessary.

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

clerks and prothonotaries of courts of record of any such State, District, or Territory, by the deputies of such clerks and prothonotaries, and by all magistrates authorized by the laws of or pertaining to any such State, District, or Territory to administer oaths".

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

§ 2904. Oath; administered without fees

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

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

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 16a(a) (1st 9 words after last comma).	June 26, 1943, ch. 145, §206 (1st 9 words after last comma), 57 Stat. 196.
		Sept. 30, 1961, Pub. L. 87-332 (so much of par. under "General Provision" as inserted "(a)"), 75 Stat. 743.
.....	5 U.S.C. 20.	Aug. 29, 1890, ch. 820, §1 (2d sentence under "Fourth Auditor's Office"), 26 Stat. 371.

The section is restated to combine former sections 16a(a) (1st 9 words after last comma) and 20. The prohibition is restated in positive form. The words "officer" and "clerk" are omitted as included in "employee". Reference to oaths taken on promotion is omitted as unnecessary.

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

§ 2905. Oath; renewal

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

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

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

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
(a)	5 U.S.C. 17b.	Aug. 14, 1937, ch. 624, 50 Stat. 640.
		Nov. 22, 1943, ch. 303, 57 Stat. 591.

HISTORICAL AND REVISION NOTES—CONTINUED

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
(b)	5 U.S.C. 17c.	Mar. 28, 1955, ch. 17, 69 Stat. 14.

In subsection (a), the word “civilian” is omitted as unnecessary because of the definition of “employee” in section 2105. The words “Executive agency” are coextensive with and substituted for “executive departments and independent establishments of the United States” because of the definition of “Executive agency” in section 105. The words “the Secretary of a military department with respect to an employee of his department” are inserted to preserve the application of the source law. Before enactment of the National Security Act Amendments of 1949 (63 Stat. 578), the Department of the Army, the Department of the Navy, and the Department of the Air Force were Executive departments. The National Security Act Amendments of 1949 established the Department of Defense as an Executive Department including the Department of the Army, the Department of the Navy, and the Department of the Air Force as military departments, not as Executive departments. However, the source law for this section, which was in effect in 1949, remained applicable to the Secretaries of the military departments by virtue of section 12(g) of the National Security Act Amendments of 1949 (63 Stat. 591), which is set out in the reviser’s note for section 301.

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

§ 2906. Oath; custody

The oath of office taken by an individual under section 3331 of this title shall be delivered by him to, and preserved by, the House of Congress, agency, or court to which the office pertains.

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

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 21.	R.S. § 1759.

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

SUBCHAPTER II—REPORTS

§ 2951. Reports to the Office of Personnel Management

The President may prescribe rules which shall provide, as nearly as conditions of good administration warrant, that—

(1) the appointing authority notify the Office of Personnel Management in writing of the following actions and their dates as to each individual selected for appointment in the competitive service from among those who have been examined—

- (A) appointment and residence of appointee;
- (B) separation during probation;
- (C) transfer;
- (D) resignation; and
- (E) removal; and

(2) the Office keep records of these actions.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 412; Pub. L. 95-454, title IX, § 906(a)(2), (3), (16), Oct. 13, 1978, 92 Stat. 1224, 1226.)

HISTORICAL AND REVISION NOTES

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

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

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

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

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

Editorial Notes

AMENDMENTS

1978—Pub. L. 95-454, § 906(a)(16), substituted “Office of Personnel Management” for “Civil Service Commission” in section catchline.

Pars. (1), (2). Pub. L. 95-454 substituted “Office of Personnel Management” for “Civil Service Commission” and “Office” for “Commission”.

Statutory Notes and Related Subsidiaries

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.

§ 2952. Time of making annual reports

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

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

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 106.	R.S. § 195.

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

The words “or military department” are inserted to preserve the application of the source law. Before enactment of the National Security Act Amendments of 1949 (63 Stat. 578), the Department of the Army, the Department of the Navy, and the Department of the Air Force were Executive departments. The National Security Act Amendments of 1949 established the Department of Defense as an Executive Department including the Department of the Army, the Department of the Navy, and the Department of the Air Force as military

departments, not as Executive departments. However, the source law for this section, which was in effect in 1949, remained applicable to the Secretaries of the military departments by virtue of section 12(g) of the National Security Act Amendments of 1949 (63 Stat. 591), which is set out in the reviser's note for section 301.

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

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

§ 2953. Reports to Congress on additional employee requirements

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

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

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

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

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

(A) the estimated maximum additional—

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

(ii) expenditures for personal services; and

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

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

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

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

(1) the Central Intelligence Agency;

(2) a Government controlled corporation; or

(3) the Government Accountability Office.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 413; Pub. L. 108-271, § 8(b), July 7, 2004, 118 Stat. 814.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 642a.	Jan. 16, 1883, ch. 27, § 11; added July 25, 1956, ch. 730, § 1, 70 Stat. 652.

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

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

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

Editorial Notes

AMENDMENTS

2004—Subsec. (b)(3). Pub. L. 108-271 substituted "Government Accountability Office" for "General Accounting Office".

§ 2954. Information to committees of Congress on request

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

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 413; Pub. L. 103-437, § 3(b), Nov. 2, 1994, 108 Stat. 4581.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 105a.	May 29, 1928, ch. 901, § 2, 45 Stat. 996.

The words "Executive agency" are substituted for "executive department and independent establishment" in view of the definition of "Executive agency" in section 105.

The words "Committee on Government Operations of the House of Representatives" are substituted for "Committee on Expenditures in the Executive Departments of the House of Representatives" on authority of H. Res. 647 of the 82d Congress, adopted July 3, 1952.

The words "Committee on Government Operations of the Senate" are substituted for "Committee on Expenditures in the Executive Departments of the Senate" on authority of S. Res. 280 of the 82d Congress, adopted Mar. 3, 1952.

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

Editorial Notes

AMENDMENTS

1994—Pub. L. 103-437 substituted "Committee on Governmental Affairs of the Senate" for "Committee on Government Operations of the Senate".

Statutory Notes and Related Subsidiaries**CHANGE OF NAME**

Committee on Governmental Affairs of Senate changed to Committee on Homeland Security and Governmental Affairs of Senate, effective Jan. 4, 2005, by Senate Resolution No. 445, One Hundred Eighth Congress, Oct. 9, 2004.

Committee on Government Operations of House of Representatives treated as referring to Committee on Government Reform and Oversight of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Government Reform and Oversight of House of Representatives changed to Committee on Government Reform of House of Representatives by House Resolution No. 5, One Hundred Sixth Congress, Jan. 6, 1999. Committee on Government Reform of House of Representatives changed to Committee on Oversight and Government Reform of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007. Committee on Oversight and Government Reform of House of Representatives changed to Committee on Oversight and Reform of House of Representatives by House Resolution No. 6, One Hundred Sixteenth Congress, Jan. 9, 2019. Committee on Oversight and Reform of House of Representatives changed to Committee on Oversight and Accountability of House of Representatives by House Resolution No. 5, One Hundred Eighteenth Congress, Jan. 9, 2023.

Subpart B—Employment and Retention**CHAPTER 31—AUTHORITY FOR EMPLOYMENT****SUBCHAPTER I—EMPLOYMENT AUTHORITIES**

- Sec.
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3105. Appointment of administrative law judges.
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3113. Restriction on reemployment after conviction of certain crimes.
3114. Appointment of candidates to positions in the competitive service by the Securities and Exchange Commission.¹
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SUBCHAPTER II—THE SENIOR EXECUTIVE SERVICE

3131. The Senior Executive Service.
3132. Definitions and exclusions.

¹ So in original. Does not conform to section catchline.

² So in original. Probably should be followed by a period.

- Sec.
3133. Authorization of positions; authority for appointment.
3134. Limitations on noncareer and limited appointments.
- [3135. Repealed.]
3136. Regulations.

SUBCHAPTER III—THE FEDERAL BUREAU OF INVESTIGATION AND DRUG ENFORCEMENT ADMINISTRATION SENIOR EXECUTIVE SERVICE

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

SUBCHAPTER IV—TEMPORARY ORGANIZATIONS ESTABLISHED BY LAW OR EXECUTIVE ORDER

3161. Employment and compensation of employees.

SUBCHAPTER V—PRESIDENTIAL INNOVATION FELLOWS PROGRAM

3171. Presidential Innovation Fellows Program.
3172. Presidential Innovation Fellows Program Advisory Board.

Editorial Notes**AMENDMENTS**

2018—Pub. L. 115-232, div. A, title XI, § 1108(b), Aug. 13, 2018, 132 Stat. 2009, added items 3115 and 3116.

2017—Pub. L. 115-1, § 2(b), Jan. 20, 2017, 131 Stat. 5, added subchapter V heading and items 3171 and 3172.

2011—Pub. L. 112-81, div. A, title XI, § 1109(b), Dec. 31, 2011, 125 Stat. 1615, added item 3111a.

2010—Pub. L. 111-203, title IX, § 929G(b), July 21, 2010, 124 Stat. 1856, added item 3114 and struck out former item 3114 “Appointment of accountants, economists, and examiners by the Securities and Exchange Commission”.

2003—Pub. L. 108-44, § 2(b), July 3, 2003, 117 Stat. 843, added item 3114.

2000—Pub. L. 106-398, § 1 [[div. A], title XI, § 1101(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A-310, added subchapter IV heading and item 3161.

1997—Pub. L. 105-61, title VI, § 638(b), Oct. 10, 1997, 111 Stat. 1317, added item 3113.

1995—Pub. L. 104-66, title II, § 2181(a)(2), Dec. 21, 1995, 109 Stat. 732, struck out item 3135 “Biennial report”.

1988—Pub. L. 100-325, § 1(b), May 30, 1988, 102 Stat. 581, added subchapter III heading and items 3151 and 3152.

1980—Pub. L. 96-523, § 1(b), Dec. 12, 1980, 94 Stat. 3040, substituted “personal assistants for handicapped employees, including blind and” for “reading assistants for blind employees and interpreting assistants for” in item 3102.

1978—Pub. L. 95-454, title III, §§ 301(b), 302(b)(1), 307(b)(3), title IV, § 402(c), Oct. 13, 1978, 92 Stat. 1145, 1146, 1148, 1160, added heading for subchapter I, substituted “reading assistants for blind employees and interpreting assistants for deaf employees” for “readers for blind employees” in item 3102, and added items 3111, 3112, heading for subchapter II, and items 3131 to 3136.

Pub. L. 95-251, § 2(c)(2), Mar. 27, 1978, 92 Stat. 184, substituted “administrative law judges” for “hearing examiners” in item 3105.

1967—Pub. L. 90-206, title II, § 221(b), Dec. 16, 1967, 81 Stat. 640, added item 3110.

SUBCHAPTER I—EMPLOYMENT AUTHORITIES**Editorial Notes****AMENDMENTS**

1979—Pub. L. 96-54, § 2(a)(10), Aug. 14, 1979, 93 Stat. 381, added heading for subchapter I.

§ 3101. General authority to employ

Each Executive agency, military department, and the government of the District of Columbia