

of head of Executive agency or military department” in item 3345, “Time limitation” for “Details; to subordinate offices” in item 3346, “Exclusivity” for “Details; Presidential authority” in item 3347, “Vacant office” for “Details; limited in time” in item 3348, and “Reporting of vacancies” for “Details; to fill vacancies; restrictions” in item 3349 and added items 3349a to 3349d.

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

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

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

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

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

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

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

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

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

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

1988—Pub. L. 100-398, §7(a)(3), Aug. 17, 1988, 102 Stat. 988, inserted “agency” after “Executive” in item 3345. 1985—Pub. L. 99-145, title XVI, §1622(a)(2), Nov. 8, 1985, 99 Stat. 777, added item 3328.

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

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

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

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

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

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

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

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

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

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

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

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

1966—Pub. L. 89-762, §1(b), Nov. 5, 1966, 80 Stat. 1312, struck out item 3342 “Details; field to departmental service prohibited”.

## SUBCHAPTER I—EXAMINATION, CERTIFICATION, AND APPOINTMENT

### § 3301. Civil service; generally

The President may—

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

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

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

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

#### HISTORICAL AND REVISION NOTES

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

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

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

#### Statutory Notes and Related Subsidiaries

##### SHORT TITLE OF 1998 AMENDMENT

Pub. L. 105-277, div. C, title I, §151(a), Oct. 21, 1998, 112 Stat. 2681-611, provided that: “This section [enacting sections 3345 to 3349d of this title, repealing former sections 3345 to 3349 of this title, and enacting provisions set out as a note under section 3345 of this title] may be cited as the ‘Federal Vacancies Reform Act of 1998’.”

##### SHORT TITLE OF 1991 AMENDMENT

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

#### MODIFICATIONS TO NATIONAL SECURITY EDUCATION PROGRAM

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

“(a) FINDINGS AND POLICIES.—

“(1) FINDINGS.—Congress finds that—

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

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

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

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

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

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

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

Pub. L. 102-484, div. D, title XLIV, § 4432, Oct. 23, 1992, 106 Stat. 2720, directed executive agencies and the Department of Defense, in filling vacant positions, to give full consideration to the applications of certain individuals who became displaced employees before Oct. 1, 1997, before selecting any candidate from outside the agency for the position.

#### NATIONAL ADVISORY COUNCIL ON THE PUBLIC SERVICE

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

##### “SECTION 1. SHORT TITLE.

“This Act may be cited as the ‘National Advisory Council on the Public Service Act of 1990’.

##### “SEC. 2. FINDINGS.

“The Congress finds that—

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

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

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

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

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

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

##### “SEC. 3. ESTABLISHMENT.

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

##### “SEC. 4. FUNCTIONS.

“The Council shall—

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

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

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

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

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

##### “SEC. 5. MEMBERSHIP.

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

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

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

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

“(4) 10 individuals appointed by the President—

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

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

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

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

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

“(c) TERMS.—Members of the Council shall be appointed for the life of the Council.

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

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

“(2) While serving away from their homes or regular places of business in the performance of duties for the Council, members shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as authorized by section 5703 of title 5, United States Code, for persons employed intermittently in Government service.

“(f) QUORUM.—Eight members of the Council shall constitute a quorum.

“(g) CHAIRMAN.—The Chairman of the Council shall be designated by the President from among the members appointed under subsection (a)(4)(D).

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

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

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

“(b) STAFF.—With the approval of the Chairman, the Director may appoint and fix the pay of such personnel as may be necessary to carry out the functions of the Council. The staff of the Council shall be appointed subject to the provisions of title 5, United States Code, governing appointments in the competitive service, and shall be paid in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

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

“(d) STAFF OF FEDERAL AGENCIES.—Upon the request of the Chairman, the head of a Federal agency may detail, on a reimbursable or nonreimbursable basis, any personnel of such agency to the Council to assist the Council in carrying out its functions under this Act.

#### “SEC. 7. POWERS.

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

“(b) ADMINISTRATIVE SUPPORT SERVICES.—The Administrator of General Services shall provide to the Council, on a reimbursable basis, such administrative support services as the Council may request.

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

“(d) GIFTS.—The Council—

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

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

#### “SEC. 8. REPORTS.

“The Council shall transmit to the President and each House of the Congress—

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

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

#### “SEC. 9. COMMENCEMENT; TERMINATION.

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

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

#### “SEC. 10. AUTHORIZATION.

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

### Executive Documents

#### EX. ORD. NO. 8743. EXTENDING THE CLASSIFIED CIVIL SERVICE

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

By virtue of the authority vested in me by section 1 of the act of November 26, 1940, entitled “Extending the

Classified Executive Civil Service of the United States” (54 Stat. 1211), by the Civil Service Act (22 Stat. 403), and by section 1753 of the Revised Statutes of the United States [sections 3301 and 7301 of this title], it is hereby ordered as follows:

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

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

SECTION 3. (a) Upon consideration of the report of the Committee on Civil Service Improvement (House Document No. 118, 77th Congress) appointed by Executive Order No. 8044 of January 31, 1939, it is hereby found and determined that the regulations and procedures hereinafter prescribed in this section with respect to attorney positions in the classified civil service are required by the conditions of good administration.

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

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

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

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

(f) The number of names to be placed upon any register of eligibles for attorney positions shall be limited to the number recommended by the Board; and such registers shall not be ranked according to the ratings

received by the eligibles, except that persons entitled to veterans' preference as defined in section 1 of Civil Service Rule VI shall be appropriately designated thereon.

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

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

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

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

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

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

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

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

SECTION 6. (a) Any person who, in order to perform active service with the military or naval forces of the

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

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

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

#### EXECUTIVE ORDER No. 9367

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

#### EX. ORD. NO. 10577. CIVIL SERVICE RULES

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

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

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

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

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

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

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

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

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

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

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

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

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

Ex. Ord. No. 12748, §6(a), formerly §8(a), Feb. 1, 1991, 56 F.R. 4521, as amended, set out as a note under section 5301 of this title.

Ex. Ord. No. 12896, Feb. 3, 1994, 59 F.R. 5515.  
 Ex. Ord. No. 12940, Nov. 28, 1994, 59 F.R. 61519.  
 Ex. Ord. No. 13124, §2(b), June 4, 1999, 64 F.R. 31103.  
 Ex. Ord. No. 13197, Jan. 18, 2001, 66 F.R. 7853.  
 Ex. Ord. No. 13764, §1, Jan. 17, 2017, 82 F.R. 8115.  
 Ex. Ord. No. 13843, §3(a), July 10, 2018, 83 F.R. 32756.  
 Ex. Ord. No. 14029, §3, May 14, 2021, 86 F.R. 27025.

## EXECUTIVE ORDER No. 10590

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

## EXECUTIVE ORDER No. 10880

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

## EXECUTIVE ORDER No. 10925

Ex. Ord. No. 10925, Mar. 7, 1961, 26 F.R. 1977, as amended by Ex. Ord. No. 11114, June 24, 1963, 28 F.R. 6485; Ex. Ord. No. 11162, July 28, 1964, 29 F.R. 10563, which established the President's Committee on Equal Employment Opportunity, was superseded by Ex. Ord. No. 11246, Sept. 24, 1965, 30 F.R. 12319, set out as a note under section 2000e of Title 42, The Public Health and Welfare.

## EXECUTIVE ORDER No. 11114

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

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

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

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

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

WHEREAS President Kennedy, mindful that maximum national growth depends on the utilization of all manpower resources, issued a memorandum on March 14, 1963, reaffirming the policy of the Executive Branch of the Government of hiring and promoting employees on the basis of merit alone and emphasizing the need to assure that older people are not discriminated against because of their age and receive fair and full consideration for employment and advancement in Federal employment; and

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

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

LYNDON B. JOHNSON.

## EXECUTIVE ORDER No. 11162

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

## EXECUTIVE ORDER No. 11202

Ex. Ord. No. 11202, Mar. 5, 1965, 30 F.R. 3185, which established career or career-conditional appointments for student trainees, was revoked by Ex. Ord. No. 11813, Oct. 7, 1974, 39 F.R. 36317, formerly set out below.

## EX. ORD. NO. 11203. CAREER APPOINTMENTS TO CERTAIN QUALIFIED EMPLOYEES OF TREASURY DEPARTMENT

Ex. Ord. No. 11203, Mar. 12, 1965; 30 F.R. 3417, as amended by Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, provided:

By virtue of the authority vested in me by Section 2 of the Civil Service Act (22 Stat. 403) and Section 1753 of the Revised Statutes of the United States (5 U.S.C. 631) [sections 3301 and 7301 of this title] and as President of the United States, it is hereby ordered as follows—

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

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

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

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

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

SEC. 2. For the purposes of Section 1—

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

(2) except as provided in paragraph (3) of this section, active service in the Armed Forces of the United States

shall be deemed to be full-time continuous service in a position concerned with the protective function if the employee concerned shall have left a position concerned with the protective function to enter the Armed Forces and shall have been re-employed in a position concerned with the protective function within 120 days after he shall have been discharged from the Armed Forces under honorable conditions; and

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

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

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

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

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

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

By virtue of the authority vested in me by section 1753 of the Revised Statutes [sections 3301 and 7301 of this title] and the Civil Service Act (22 Stat. 403), and as President of the United States, it is hereby ordered as follows:

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

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

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

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

(d) Is appointed within 3 years after his separation from the Foreign Service, or he completed at least 3 years of substantially continuous service under one or more nontemporary appointments in the Foreign Service immediately before his separation from the unlimited, career-type appointment in that Service which may include the service that made him eligible for such appointment, or he is entitled to preference under section 2 of the Veterans' Preference Act of 1944, as amended [sections 1302 and 2108 of this title].

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

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

(1) Has completed at least 3 years of substantially continuous service under one or more nontemporary

appointments in the Foreign Service immediately before his separation from the unlimited, career-type appointment in that Service which may include the service that made him eligible for such appointment;

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

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

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

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

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

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

#### EXECUTIVE ORDER NO. 11315

Ex. Ord. No. 11315, Nov. 17, 1966, 31 F.R. 14729, as amended by Ex. Ord. No. 12107, §2-101(a), Dec. 28, 1978, 44 F.R. 1055, added Civil Service Rule IX and amended Civil Service Rule VI, provided for transition to the full establishment of executive assignments under Rule IX, and delegated responsibility for the administration of the executive assignment system established by this Order to the Office of Personnel Management and heads of agencies affected by Rule IX. Civil Service Rule IX, as established by this Order, was revoked by Ex. Ord. No. 12748, §8(a), Feb. 1, 1991, 56 F.R. 4521, set out under section 5301 of this title.

#### EXECUTIVE ORDER NO. 11598

Ex. Ord. No. 11598, June 16, 1971, 36 F.R. 11711, formerly set out as a note under this section, which related to the listing of certain job vacancies by federal agencies and government contractors and subcontractors, was superseded by Ex. Ord. No. 11701, Jan. 24, 1973, 38 F.R. 2675, set out as a note under section 4212 of Title 38, Veterans' Benefits.

#### EXECUTIVE ORDER NO. 11813

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

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

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

By virtue of the authority vested in me by section 3301 of title 5 of the United States Code [this section], and as President of the United States of America, it is hereby ordered as follows:

SECTION 1. The appointment of a Command Pilot, Pilot or Mission Specialist candidate to a position in the Space Shuttle Astronaut Program of the National Aeronautics and Space Administration, which is listed under Schedule B of the Schedule of Excepted Positions, may be converted to career or career-conditional appointment if:

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

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

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

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

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

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

#### EXECUTIVE ORDER NO. 12008

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

#### EXECUTIVE ORDER NO. 12015

Ex. Ord. No. 12015, Oct. 26, 1977, 42 F.R. 56947, as amended by Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055; Ex. Ord. No. 13024, Nov. 7, 1996, 61 F.R. 58125, which related to career or career-conditional appointments in competitive service for students completing approved career-related work-study programs, was revoked by Ex. Ord. No. 13562, §8(b), Dec. 27, 2010, 75 F.R. 82588, set out below, on the effective date of final regulations promulgated by the Director of OPM to implement the Internship Program [July 10, 2012, see 77 F.R. 28194].

#### EXECUTIVE ORDER NO. 12026

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

#### EXECUTIVE ORDER NO. 12257

Ex. Ord. No. 12257, Dec. 18, 1980, 45 F.R. 84005, which provided for noncompetitive conversion of participants in the Comprehensive Employment and Training Act program to career or career-conditional Civil Service status, was revoked by Ex. Ord. No. 12553, Feb. 25, 1986, 51 F.R. 7237.

#### EXECUTIVE ORDER NO. 12362

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

#### EXECUTIVE ORDER NO. 12364

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

#### EX. ORD. NO. 12505. CAREER APPOINTMENTS TO CERTAIN OFFICE OF MANAGEMENT AND BUDGET EMPLOYEES

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

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

(a) The employee has completed at least one year of full-time continuous service in a position concerned with the paperwork reduction and regulatory program;

(b) There is a continuing need for the position filled by the employee;

(c) The employee's past performance has been satisfactory and the employee possesses the qualifications necessary to continue in the position; and

(d) The employee meets the citizenship requirements and qualification standards appropriate for the position.

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

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

RONALD REAGAN.

#### EXECUTIVE ORDER NO. 12596

Ex. Ord. No. 12596, May 7, 1987, 52 F.R. 17537, which provided for noncompetitive conversion to career status of certain employees in professional and administrative career positions, was revoked by Ex. Ord. No. 13162, July 6, 2000, 65 F.R. 43212, set out as a note below.

#### EX. ORD. NO. 12685. NONCOMPETITIVE CONVERSION OF PERSONAL ASSISTANTS TO EMPLOYEES WITH DISABILITIES

Ex. Ord. No. 12685, July 28, 1989, 54 F.R. 31796, provided:

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

SECTION 1. Upon recommendation by the employing agency, and subject to qualifications and other requirements prescribed by the Office of Personnel Management, an employee in a position in the excepted service under 5 C.F.R. 213.3102(11) as a reader, interpreter, or personal assistant for a handicapped employee, whose employment in such position is no longer necessary and who has completed at least 1 year of satisfactory service in such position under a non-temporary appointment, may be converted noncompetitively to a career or career-conditional appointment.

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

GEORGE BUSH.

#### EX. ORD. NO. 12718. PRESIDENT'S ADVISORY COMMISSION ON THE PUBLIC SERVICE

Ex. Ord. No. 12718, June 29, 1990, 55 F.R. 27451, provided:

By the authority vested in me as President by the Constitution and laws of the United States of America, including the Federal Advisory Committee Act, as amended ([former] 5 U.S.C. App.) [see 5 U.S.C. 1001 et seq.], and in order to provide a continuing source of ad-

vice on the public service from outstanding leaders in various walks of private life, it is hereby ordered as follows:

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

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

(1) improving the efficiency and attractiveness of the Federal civil service;

(2) increasing the interest among American students in pursuing careers in the public service; and

(3) strengthening the image of the public service in American life.

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

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

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

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

SEC. 4. *General.* Notwithstanding any other Executive order, the functions of the President under the Federal Advisory Committee Act, as amended [see 5 U.S.C. 1001 et seq.], except that of reporting to the Congress, which are applicable to the Commission, shall be performed by the Office of Personnel Management in accordance with the guidelines and procedures established by the Administrator of General Services.

GEORGE BUSH.

EX. ORD. NO. 12721. ELIGIBILITY OF OVERSEAS  
EMPLOYEES FOR NONCOMPETITIVE APPOINTMENTS

Ex. Ord. No. 12721, July 30, 1990, 55 F.R. 31349, provided:

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

SECTION 1. A United States citizen who is a family member of a Federal civilian employee, of a non-appropriated fund employee, or of a member of a uniformed service and who meets the qualifications and other requirements established by the Director of the Office of Personnel Management, including an appropriate period of satisfactory service under one or more overseas appointments in the excepted or competitive civil service, may be appointed noncompetitively to a competitive service position in the executive branch within the United States (including Guam, Puerto Rico, and the Virgin Islands). The employing agency in the United States may waive a requirement for a written test for an individual appointed under this order if

the agency determines that the duties and responsibilities of the position occupied overseas were similar enough to those of the position to which the individual is being appointed under this order to make the written test unnecessary.

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

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

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

(b) Existing regulations prescribed by the Director of the Office of Personnel Management under Executive Order No. 12362, as amended, shall continue in effect until modified or superseded by the Director of the Office of Personnel Management.

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

GEORGE BUSH.

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

Ex. Ord. No. 13124, June 4, 1999, 64 F.R. 31103, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 3301 and 3302 of title 5, United States Code, and in order to give individuals with psychiatric disabilities the same hiring opportunities as persons with severe physical disabilities or mental retardation under the Civil Service Rules, and to permit individuals with psychiatric disabilities to obtain Civil Service competitive status, it is hereby ordered as follows:

SECTION 1. *Policy.*

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

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

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

SEC. 2. *Implementation.*

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

(b) [Amended Civil Service Rule III.]

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

WILLIAM J. CLINTON.

EXECUTIVE ORDER NO. 13162

Ex. Ord. No. 13162, July 6, 2000, 65 F.R. 43211, which established the Federal Career Intern Program and pro-

vided for its oversight by the Office of Personnel Management, was revoked, effective Mar. 1, 2011, by Ex. Ord. No. 13562, §8(a), Dec. 27, 2010, 75 F.R. 82588, set out as a note below.

#### EXECUTIVE ORDER NO. 13318

Ex. Ord. No. 13318, Nov. 21, 2003, 68 F.R. 66317, which related to the Presidential Management Fellows Program, was revoked by Ex. Ord. No. 13562, §8(c), Dec. 27, 2010, 75 F.R. 82588, set out below, on the effective date of final regulations promulgated by the Director of OPM to implement required changes to the PMF Program [July 10, 2012, see 77 F.R. 28194].

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

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

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

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

**SEC. 2. Definitions.** As used in this order:

(a) the term “agency” has the meaning specified for the term “executive agency” in section 105 of title 5, United States Code, but does not include the Government Accountability Office;

(b) the term “Armed Forces” has the meaning specified for that term in section 101 of title 10, United States Code;

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

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

(i) specify the duty as temporary;

(ii) provide for assignment, detail, or transfer, after that different permanent duty station, to a further different permanent duty station; or (iii) [sic] direct return to the present permanent duty station; and

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

(i) retired under chapter 61 of title 10, United States Code, with a disability rating at the time of retirement of 100 per cent; or (ii) [sic] retired or separated from the Armed Forces and has a disability rating of 100 percent from the Department of Veterans Affairs.

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

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

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

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

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

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

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

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

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

GEORGE W. BUSH.

#### EX. ORD. NO. 13518. EMPLOYMENT OF VETERANS IN THE FEDERAL GOVERNMENT

Ex. Ord. No. 13518, Nov. 9, 2009, 74 F.R. 58533, provided:

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

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

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

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

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

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

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

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

(i) the Department of State;

(ii) the Department of the Treasury;

(iii) the Department of Defense;

(iv) the Department of Justice;

(v) the Department of the Interior;

(vi) the Department of Agriculture;

(vii) the Department of Commerce;

(viii) the Department of Labor;

- (ix) the Department of Health and Human Services;
- (x) the Department of Housing and Urban Development;
- (xi) the Department of Transportation;
- (xii) the Department of Energy;
- (xiii) the Department of Education;
- (xiv) the Department of Veterans Affairs;
- (xv) the Department of Homeland Security;
- (xvi) the Environmental Protection Agency;
- (xvii) the National Aeronautics and Space Administration;
- (xviii) the Agency for International Development;
- (xix) the General Services Administration;
- (xx) the National Science Foundation;
- (xxi) the Nuclear Regulatory Commission;
- (xxii) the Office of Personnel Management;
- (xxiii) the Small Business Administration; and
- (xxiv) the Social Security Administration.

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

(c) Administration of the Council. The Co-Chairs shall convene meetings of the Council, determine its agenda, and direct its work. At the direction of the Co-Chairs, the Council may establish subgroups consisting exclusively of Council members or their designees, as appropriate. The Vice Chair shall designate an Executive Director for the Council to support the Vice Chair in managing the Council's activities. The OPM shall provide administrative support for the Council to the extent permitted by law and within existing appropriations.

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

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

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

(b) within 120 days of the date of this order, establish a Veterans Employment Program Office, or designate an agency officer or employee with full-time responsibility for its Veterans Employment Program, to be responsible for enhancing employment opportunities for veterans within the agency, consistent with law and merit system principles, including developing and implementing the agency's Operational Plan, veterans recruitment programs, and training programs for veterans with disabilities, and for coordinating employment counseling to help match the career aspirations of veterans to the needs of the agency;

(c) provide mandatory annual training to agency human resources personnel and hiring managers concerning veterans' employment, including training on veterans' preferences and special authorities for the hiring of veterans;

(d) identify key occupations for which the agency will provide job counseling and training to better enable veterans to meet agency staffing needs associated with those occupations; and

(e) coordinate with the Departments of Defense and Veterans Affairs to promote further development and application of technology designed to assist transitioning service members and veterans with disabilities.

SEC. 4. *Additional Responsibilities of the Director of the Office of Personnel Management.* The Director of OPM

shall, in consultation with the Council and to the extent permitted by law:

(a) develop a Government-wide Veterans Recruitment and Employment Strategic Plan, to be updated at least every 3 years, addressing barriers to the employment of veterans in the executive branch and focusing on:

(i) identifying actions that agency leaders should take to improve employment opportunities for veterans;

(ii) developing the skills of transitioning military service members and veterans;

(iii) marketing the Federal Government as an employer of choice to transitioning service members and veterans;

(iv) marketing the talent, experience, and dedication of transitioning service members and veterans to Federal agencies; and

(v) disseminating Federal employment information to veterans and hiring officials;

(b) provide Government-wide leadership in recruitment and employment of veterans in the executive branch;

(c) identify key occupations, focusing on positions in high-demand occupations where talent is needed to meet Government-wide staffing needs, for which the Federal Government will provide job counseling and training under section 5(a) of this order to veterans and transitioning military service personnel;

(d) develop mandatory training for both human resources personnel and hiring managers on veterans' employment, including veterans' preference and special hiring authorities;

(e) compile and post on the OPM website Government-wide statistics on the hiring of veterans; and

(f) within 1 year of the date of this order and with the advice of the Council, provide recommendations to the President on improving the ability of veterans' preference laws to meet the needs of the new generation of veterans, especially those transitioning from the conflicts in Iraq and Afghanistan, and the needs of Federal hiring officials.

SEC. 5. *Responsibilities of the Secretaries of Defense, Labor, Veterans Affairs, and Homeland Security.* The Secretaries of Defense, Labor, Veterans Affairs, and Homeland Security shall take the following actions, to the extent permitted by law:

(a) The Secretaries of Defense, Labor, Veterans Affairs, and Homeland Security shall, in consultation with OPM, develop and implement counseling and training programs to align veterans' and transitioning service members' skills and career aspirations to Federal employment opportunities, targeting Federal occupations that are projected to have heavy recruitment needs.

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

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

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

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

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

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

(ii) provide training to employment and rehabilitation counselors on the Federal hiring process, veterans' preferences, special hiring authorities, and identifying Federal employment opportunities for veterans.

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

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

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

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

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

BARACK OBAMA.

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

Ex. Ord. No. 13562, Dec. 27, 2010, 75 F.R. 82585, provided:

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

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

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

Accordingly, pursuant to my authority under 5 U.S.C. 3302(1), and in order to achieve a workforce that represents all segments of society as provided in 5 U.S.C. 2301(b)(1), I find that conditions of good administration (specifically, the need to promote employment opportunities for students and recent graduates in the Federal workforce) make necessary an exception to the competitive hiring rules for certain positions in the Federal civil service.

SEC. 2. *Establishment.* There are hereby established the Internship Program and the Recent Graduates Program, which, along with the Presidential Management Fellows Program, as modified herein, shall collectively be known as the Pathways Programs. I therefore direct the Director of the Office of Personnel Management (OPM) to issue regulations implementing the Pathways Programs consistent with this order, including:

(a) a description of the positions that executive departments and agencies (agencies) may fill through the Pathways Programs because conditions of good administration necessitate excepting those positions from the competitive hiring rules;

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

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

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

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

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

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

SEC. 3. *Internship Program.* The Internship Program shall provide students in high schools, community colleges, 4-year colleges, trade schools, career and technical education programs, and other qualifying educational institutions and programs, as determined by OPM, with paid opportunities to work in agencies and explore Federal careers while still in school. The Internship Program would replace the existing Student Career Experience Program, established pursuant to Executive Order 12015 of October 26, 1977. The following principles and policies shall govern the Internship Program:

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

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

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

SEC. 4. *Recent Graduates Program.* The Recent Graduates Program shall provide individuals who have recently graduated from qualifying educational institutions or programs with developmental experiences in the Federal Government intended to promote possible careers in the civil service. The following principles and policies shall govern the Recent Graduates Program:

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

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

SEC. 5. *Presidential Management Fellows Program.* The Presidential Management Fellows (PMF) Program is an existing program established pursuant to Executive Order 13318 of November 21, 2003, that aims to attract to the Federal service outstanding men and women from a variety of academic disciplines at the graduate level who have a clear interest in, and commitment to, the leadership and management of public policies and programs. The following requirements shall govern the PMF Program upon the revocation of Executive Order 13318, as provided in section 8 of this order:

(a) Participants in this program shall continue to be known as Presidential Management Fellows (PMFs) or

Fellows) and must have received, within the preceding 2 years, a qualifying advanced degree, as determined by OPM.

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

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

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

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

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

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

(b) The Director of OPM shall:

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

(ii) provide oversight of the Pathways Programs;

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

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

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

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

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

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

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

(iii) apply veterans' preference criteria; and

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

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

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

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

SEC. 9. *General Provisions.* (a) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

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

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

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

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

BARACK OBAMA.

EX. ORD. NO. 13678. CONVERSION AUTHORITY FOR CRIMINAL INVESTIGATORS (SPECIAL AGENTS) OF THE BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES

Ex. Ord. No. 13678, Oct. 3, 2014, 79 F.R. 60949, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 3301 and 3302 of title 5, United States Code, and section 301 of title 3, United States Code, it is hereby ordered as follows:

SECTION 1. *Providing Conversion Authority.* I find that conditions of good administration (specifically, the need to make the Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice (ATF), competitive in recruiting high quality special agents by giving the ATF an authority held by other Federal law enforcement agencies) make necessary an exception to the competitive examination rules for appointment to certain positions in the Federal civil service.

Criminal Investigators of the ATF, who have been appointed under Schedule B, and who have completed 3 years of fully satisfactory service, may be converted non-competitively to career appointments if they meet qualifications and other requirements established by the Director of the Office of Personnel Management.

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

SEC. 3. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

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

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

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

BARACK OBAMA.

EX. ORD. NO. 13704. PRESIDENTIAL INNOVATION FELLOWS PROGRAM

Ex. Ord. No. 13704, Aug. 17, 2015, 80 F.R. 50751, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

SECTION 1. *Policy.* It is in the national interest for the Federal Government to attract the brightest minds skilled in technology or innovative practices to serve in the Federal Government to work on some of the Nation's biggest and most pressing challenges. This order establishes a program to encourage successful entrepreneurs, executives, and innovators to join the Federal Government and work in close cooperation with

Federal Government leaders, to create meaningful solutions that can help save lives and taxpayer money, fuel job creation, and significantly improve how the Federal Government serves the American people.

SEC. 2. *Establishment and Administration.* (a) The Administrator of General Services (Administrator) shall establish the Presidential Innovation Fellows Program (Program) to enable exceptional individuals with proven track records to serve time-limited appointments in executive branch departments and agencies (agencies) to address some of the Nation's most significant challenges and improve existing Government efforts that would particularly benefit from expertise using innovative techniques and technology. Individuals selected for the Program shall be known as Presidential Innovation Fellows (Fellows).

(b) The Program shall be administered by a Director, appointed by the Administrator under authorities of the General Services Administration (GSA). GSA shall provide necessary staff, resources and administrative support for the Program to the extent permitted by law and within existing appropriations.

(c) GSA shall appoint the Fellows and, in cooperation with agencies, shall facilitate placement of the Fellows to participate in projects that have the potential for significant positive effects and are consistent with the President's goals.

SEC. 3. *Advisory Board.* (a) The Administrator shall establish an Advisory Board to advise the Director by recommending such priorities and standards as may be beneficial to fulfill the mission of the Program and assist in identifying potential projects and placements for Fellows. The Advisory Board will not participate in the Fellows' selection process.

(b) The Administrator will designate a representative to serve as the Chair of the Advisory Board. In addition to the Chair, the membership of the Advisory Board shall include the Deputy Director for Management of the Office of Management and Budget, the Director of the Office of Personnel Management, the Office of Management and Budget's Administrator of the Office of Electronic Government, and the Assistant to the President and Chief Technology Officer, or their designees and such other persons as may be designated by the Administrator. Consistent with law, the Advisory Board may consult with industry, academia, or non-profits to ensure the Program is continually identifying opportunities to apply advanced skillsets and innovative practices in effective ways to address the Nation's most significant challenges.

SEC. 4. *Application Process.* (a) The Director, in accordance with applicable law, shall prescribe the process for applications and nominations of individuals to the Program.

(b) Following publication of these processes, the Director may accept for consideration applications from individuals. The Director shall establish, administer, review, and revise, if appropriate, a Government-wide cap on the number of Fellows.

The Director shall establish and publish salary ranges, benefits, and standards for the Program.

SEC. 5. *Selection, Appointment, and Assignment of Fellows.* (a) The Director, in accordance with applicable law, shall prescribe appropriate procedures for the selection, appointment, and assignment of Fellows.

(b) Prior to the selection of Fellows, the Director will consult with agencies and executive branch departments, regarding potential projects and how best to meet those needs. Following such consultation, the Director shall select and appoint individuals to serve as Fellows.

(c) The Fellows shall serve under short-term, time-limited appointments. As a general matter, they shall be appointed for no less than 6 months and no longer than 2 years in the Program. The Director shall facilitate the process of placing Fellows at requesting agencies and executive branch departments.

SEC. 6. *Responsibilities of Agencies.* Each executive branch department or agency, as defined in section 105 of title 5, United States Code, is encouraged to work

with the Director and Advisory Board to attempt to maximize the Program's benefits to the department or agency and the Federal Government, including by identifying initiatives that will have a meaningful effect on the people served and that will benefit from involvement by one or more Fellows. Departments and agencies also are encouraged to ensure that each Fellow will work closely with responsible senior officials for the duration of the assignment.

SEC. 7. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

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

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

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

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

BARACK OBAMA.

EX. ORD. NO. 13749. PROVIDING FOR THE APPOINTMENT IN THE COMPETITIVE SERVICE OF CERTAIN EMPLOYEES OF THE FOREIGN SERVICE

Ex. Ord. No. 13749, Nov. 29, 2016, 81 F.R. 87391, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 3301 and 3302 of title 5, United States Code, and section 301 of title 3, United States Code, it is hereby ordered as follows:

SECTION 1. *Policy.* The Federal Government benefits from a workforce that can be recruited from the broadest and deepest pools of qualified candidates for our highly competitive, merit-based positions. The recruitment and retention of workforce participants who serve in the Foreign Service of the Department of State under a Limited Non-Career Appointment under section 309 of the Foreign Service Act of 1980, Public Law 96-465 (22 U.S.C. 3949), as amended, are critical to our ability to meet consular staffing levels (now in substantial deficit) and thereby enhance our capacity to meet high national security standards and efficiently process visas in accordance with our policy of "open doors, safe borders." Program participants undergo a rigorous merit-based evaluation process, which includes a written test and an oral assessment and to which a veteran preference applies, and develop advanced- to superior-level skills in languages and in cultural competence in particular regions, skills that are essential for mission-critical positions throughout the entire Federal workforce.

Executive Order 13597 of January 19, 2012, sought to ensure that 80 percent of nonimmigrant visa applicants be interviewed within three weeks of receiving an application. The Department of State's ability to maintain this 80 percent benchmark will come under increasing pressure in the future given current and projected staffing shortfalls through 2023. These staffing gaps could adversely affect the Department of State's ability to sustain border security and immigration control at peak efficiency and effectiveness, which will have effects on tourism, job creation, and U.S. economic growth. Use of the Limited Non-Career Appointment hiring authority will provide flexibility to address, for the foreseeable future, both this increased demand and recurring institutional and national needs across the Federal Government.

Accordingly, pursuant to my authority under 5 U.S.C. 3302(1), and in order to achieve a workforce that represents all segments of society as provided in 5 U.S.C. 2301(b)(1), I find that conditions of good administration make necessary an exception to the competitive hiring rules for certain positions in the Federal civil service.

SEC. 2. The head of any agency in the executive branch may appoint in the competitive service an individual who served for at least 48 months of continuous service in the Foreign Service of the Department of State under a Limited Non-Career Appointment under section 309 of the Foreign Service Act of 1980, and who passes such examination as the Office of Personnel Management (OPM) may prescribe.

SEC. 3. In order to be eligible for noncompetitive appointment to positions under section 2 of this order, such an individual must:

(a) have received a satisfactory or better performance rating (or equivalent) for service under the qualifying Limited Non-Career Appointment; and

(b) exercise the eligibility for noncompetitive appointment within a period of 1 year after completion of the qualifying Limited Non-Career Appointment. Such period may be extended to not more than 3 years in the case of persons who, following such service, are engaged in military service, in the pursuit of studies at an institution of higher learning, or in other activities that, in the view of the appointing authority, warrant an extension of such period. Such period may also be extended to permit the adjudication of a background investigation.

SEC. 4. A person appointed under section 2 of this order shall become a career conditional employee.

SEC. 5. Any law, Executive Order, or regulation that would disqualify an applicant for appointment in the competitive service shall also disqualify a person for appointment under section 2 of this order. Examples of disqualifying criteria include restrictions on employing persons who are not U.S. citizens or nationals, who have violated the anti-nepotism provisions of the Civil Service Reform Act [of 1978], 5 U.S.C. 2302(b)(7), 3110, who have knowingly and willfully failed to register for Selective Service when required to do so, 5 U.S.C. 3328(a)(2), who do not meet occupational qualifying standards prescribed by OPM, or who do not meet suitability factors prescribed by OPM.

SEC. 6. The Office of Personnel Management is authorized to issue such additional regulations as may be necessary to implement this order. Any individual who meets the terms of this order, however, is eligible for noncompetitive eligibility with or without additional regulations.

SEC. 7. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department, agency, or the head thereof, or the status of that department or agency within the Federal Government; or

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

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

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

BARACK OBAMA.

EX. ORD. NO. 13750. PROVIDING FOR THE APPOINTMENT OF ALUMNI OF THE FULBRIGHT U.S. STUDENT PROGRAM, THE BENJAMIN A. GILMAN INTERNATIONAL SCHOLARSHIP PROGRAM, AND THE CRITICAL LANGUAGE SCHOLARSHIP PROGRAM TO THE COMPETITIVE SERVICE

Ex. Ord. No. 13750, Nov. 29, 2016, 81 F.R. 87393, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 3301 and 3302 of title 5, United States Code, and section 301 of title 3, United States Code, it is hereby ordered as follows:

SECTION 1. *Policy.* The Federal Government benefits from a workforce that can be recruited from the broad-

est and deepest pools of qualified candidates for our highly competitive, merit-based positions. The issuance of an order granting Non-Competitive Eligibility (NCE) to certain alumni of the Fulbright U.S. Student Program, the Benjamin A. Gilman International Scholarship Program, and the Critical Language Scholarship (CLS) Program, all of which are academic exchange programs carried out under the authorities of the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87-256, as amended, also known as the Fulbright-Hays Act, and the International Academic Opportunity Act of 2000, title III of Public Law 106-309, would be in the best interest of the Federal Government. Participants in these programs develop advanced- to superior-level skills in languages and cultural competence in regions that are strategically, diplomatically, and economically important to the United States. It is in the interest of the Federal Government to retain the services of these highly skilled individuals, particularly given that the Federal Government aided them in the acquisition of their skills. Participants in the Fulbright, Gilman, and CLS programs are drawn from highly competitive, merit-based national selection processes to which a veterans' preference applies to ensure that the most qualified individuals are selected.

Accordingly, pursuant to my authority under 5 U.S.C. 3302(1), and in order to achieve a workforce that is drawn from all segments of society as provided in 5 U.S.C. 2301(b)(1), I find that conditions of good administration make necessary an exception to the competitive hiring rules for certain positions in the Federal civil service.

SEC. 2. *Establishment.* The head of any agency in the executive branch may appoint in the competitive service any person who is certified by the Secretary of State or designee as having participated successfully in the Fulbright, Gilman, or CLS international exchange programs, and who passes such examination as the Office of Personnel Management (OPM) may prescribe.

SEC. 3. The Secretary of State or designee shall issue certificates, upon request, to persons whom the Department of State determines have completed the requirements of a program described in section 1 of this order.

SEC. 4. Any appointment under this order shall be effected within a period of 1 year after completion of the appointee's participation in the programs described in section 1. Such period may be extended to not more than 3 years for persons who, following participation in the programs described in section 1, are engaged in military service, in the pursuit of studies at an institution of higher learning, or in other activities which, in the view of the appointing authority, warrant an extension of such period. Such period may also be extended to permit the adjudication of a background investigation.

SEC. 5. A person appointed under section 2 of this order becomes a career conditional employee.

SEC. 6. Any law, Executive Order, or regulation that would disqualify an applicant for appointment in the competitive service shall also disqualify an applicant for appointment under this order. Examples of disqualifying criteria include restrictions on employing persons who are not U.S. citizens or nationals, who have violated the anti-nepotism provisions of the Civil Service Reform Act [of 1978], 5 U.S.C. 2302(b)(7), 3110, who have knowingly and willfully failed to register for Selective Service when required to do so, 5 U.S.C. 3328(a)(2), who do not meet occupational qualifying standards prescribed by OPM, or who do not meet suitability factors prescribed by OPM.

SEC. 7. The Office of Personnel Management is authorized to issue such additional regulations as may be necessary to implement this order. Any individual who meets the terms of this order, however, is eligible for noncompetitive hiring with or without additional regulations.

SEC. 8. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department, agency, or the head thereof, or the status of

that department or agency within the Federal Government; or

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

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

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

BARACK OBAMA.

EX. ORD. NO. 13842. ESTABLISHING AN EXCEPTION TO COMPETITIVE EXAMINING RULES FOR APPOINTMENT TO CERTAIN POSITIONS IN THE UNITED STATES MARSHALS SERVICE, DEPARTMENT OF JUSTICE

Ex. Ord. No. 13842, July 10, 2018, 83 F.R. 32753, provided:

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

SECTION 1. *Providing Appointment Authority.* (a) Good administration of the executive branch necessitates that the U.S. Marshals Service (USMS), a component of the Department of Justice, have a hiring authority that is currently available to other Federal law enforcement agencies and that would, among other things, enable the USMS to be competitive in recruiting high-quality Deputy U.S. Marshals and Criminal Investigators, to better hire and retain qualified individuals in certain duty locations, and to more expeditiously fill vacant positions consistent with law enforcement needs. Accordingly, it is appropriate to place Deputy U.S. Marshals and Criminal Investigators of the USMS in Schedule B of the excepted service, as it is impracticable to hold open competition or to apply usual competitive examining procedures for those positions related to Federal law enforcement.

(b) Appointments to the positions identified in subsection (a) of this section:

(i) may not be made to positions of a confidential or policy-determining character or to positions in the Senior Executive Service; and

(ii) shall constitute Schedule B appointments that are:

(A) excepted from the competitive service; and

(B) subject to laws and regulations governing Schedule B appointments, including basic qualification standards established by the Director of the Office of Personnel Management (Director) for the applicable occupation and grade level.

SEC. 2. *Providing Conversion Authority.* (a) Deputy U.S. Marshals and Criminal Investigators of the USMS appointed under Schedule B may, upon completion of 3 years of substantially continuous, fully satisfactory service, be converted non-competitively to career appointments, provided they meet the qualifications and other requirements established by the Director.

(b) The Director shall prescribe such regulations as may be necessary to implement this order.

SEC. 3. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

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

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

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

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

DONALD J. TRUMP.

EX. ORD. NO. 13843. EXCEPTING ADMINISTRATIVE LAW JUDGES FROM THE COMPETITIVE SERVICE

Ex. Ord. No. 13843, July 10, 2018, 83 F.R. 32755, provided:

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

SECTION 1. *Policy.* The Federal Government benefits from a professional cadre of administrative law judges (ALJs) appointed under section 3105 of title 5, United States Code, who are impartial and committed to the rule of law. As illustrated by the Supreme Court's recent decision in *Lucia v. Securities and Exchange Commission*, No. 17-130 (June 21, 2018), ALJs are often called upon to discharge significant duties and exercise significant discretion in conducting proceedings under the laws of the United States. As part of their adjudications, ALJs interact with the public on issues of significance. Especially given the importance of the functions they discharge—which may range from taking testimony and conducting trials to ruling on the admissibility of evidence and enforcing compliance with their orders—ALJs must display appropriate temperament, legal acumen, impartiality, and sound judgment. They must also clearly communicate their decisions to the parties who appear before them, the agencies that oversee them, and the public that entrusts them with authority.

Previously, appointments to the position of ALJ have been made through competitive examination and competitive service selection procedures. The role of ALJs, however, has increased over time and ALJ decisions have, with increasing frequency, become the final word of the agencies they serve. Given this expanding responsibility for important agency adjudications, and as recognized by the Supreme Court in *Lucia*, at least some—and perhaps all—ALJs are “Officers of the United States” and thus subject to the Constitution’s Appointments Clause, which governs who may appoint such officials.

As evident from recent litigation, *Lucia* may also raise questions about the method of appointing ALJs, including whether competitive examination and competitive service selection procedures are compatible with the discretion an agency head must possess under the Appointments Clause in selecting ALJs. Regardless of whether those procedures would violate the Appointments Clause as applied to certain ALJs, there are sound policy reasons to take steps to eliminate doubt regarding the constitutionality of the method of appointing officials who discharge such significant duties and exercise such significant discretion.

Pursuant to my authority under section 3302(1) of title 5, United States Code, I find that conditions of good administration make necessary an exception to the competitive hiring rules and examinations for the position of ALJ. These conditions include the need to provide agency heads with additional flexibility to assess prospective appointees without the limitations imposed by competitive examination and competitive service selection procedures. Placing the position of ALJ in the excepted service will mitigate concerns about undue limitations on the selection of ALJs, reduce the likelihood of successful Appointments Clause challenges, and forestall litigation in which such concerns have been or might be raised. This action will also give agencies greater ability and discretion to assess critical qualities in ALJ candidates, such as work ethic, judgment, and ability to meet the particular needs of the agency. These are all qualities individuals should have before wielding the significant authority conferred on ALJs, and each agency should be able to assess them without proceeding through complicated and elaborate examination processes or rating procedures that do not necessarily reflect the agency’s particular needs. This change will also promote confidence in, and the durability of, agency adjudications.

SEC. 2. *Excepted Service.* Appointments of ALJs shall be made under Schedule E of the excepted service, as established by section 3 of this order.

SEC. 3. *Implementation.* (a) [Amended Civil Service Rule VI.]

(b) The Director of the Office of Personnel Management (Director) shall:

(i) adopt such regulations as the Director determines may be necessary to implement this order, including, as appropriate, amendments to or rescissions of regulations that are inconsistent with, or that would impede the implementation of, this order, giving particular attention to 5 CFR, part 212, subpart D; 5 CFR, part 213, subparts A and C; 5 CFR 302.101; and 5 CFR, part 930, subpart B; and

(ii) provide guidance on conducting a swift, orderly transition from the existing appointment process for ALJs to the Schedule E process established by this order.

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

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

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

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

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

DONALD J. TRUMP.

EX. ORD. NO. 13932. MODERNIZING AND REFORMING THE ASSESSMENT AND HIRING OF FEDERAL JOB CANDIDATES

Ex. Ord. No. 13932, June 26, 2020, 85 F.R. 39457, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, and sections 1104(a)(1), 3301, and 7301 of title 5, United States Code, it is hereby ordered as follows:

SECTION 1. *Purpose.* The foundation of our professional merit-based civil service is the principle that employment and advancement rest on the ability of individuals to fulfill their responsibilities in service to the American public. Accordingly, Federal Government employment opportunities should be filled based on merit. Policies or practices that undermine public confidence in the hiring process undermine confidence in both the civil service and the Government.

America's private employers have modernized their recruitment practices to better identify and secure talent through skills- and competency-based hiring. As the modern workforce evolves, the Federal Government requires a more efficient approach to hiring. Employers adopting skills- and competency-based hiring recognize that an overreliance on college degrees excludes capable candidates and undermines labor-market efficiencies. Degree-based hiring is especially likely to exclude qualified candidates for jobs related to emerging technologies and those with weak connections between educational attainment and the skills or competencies required to perform them. Moreover, unnecessary obstacles to opportunity disproportionately burden low-income Americans and decrease economic mobility.

The Office of Personnel Management (OPM) oversees most aspects of the civilian Federal workforce, including creating and maintaining the General Schedule classification system and determining the duties, responsibilities, and qualification requirements for Federal jobs. Executive departments and agencies (agencies), however, are responsible for vetting and selecting specific candidates to fill particular job openings consistent with statutory requirements and OPM rules and guidance, including applicable minimum educational requirements. Currently, for most Federal jobs, traditional education—high school, college, or graduate-level—rather than experiential learning is either an ab-

solute requirement or the only path to consideration for candidates without many years of experience. As a result, Federal hiring practices currently lag behind those of private sector leaders in securing talent based on skills and competency.

My Administration is committed to modernizing and reforming civil service hiring through improved identification of skills requirements and effective assessments of the skills job seekers possess. We encourage these same practices in the private sector. Modernizing our country's processes for identifying and hiring talent will provide America a more inclusive and demand-driven labor force.

Through the work of the National Council for the American Worker and the American Workforce Policy Advisory Board, my Administration is fulfilling its commitment to expand employment opportunities for workers. The increased adoption of apprenticeship programs by American employers, the creation of Industry-Recognized Apprenticeship Programs, and the implementation of Federal hiring reforms, including those in this order, represent important steps toward providing more Americans with pathways to family-sustaining careers. In addition, the Principles on Workforce Freedom and Mobility announced by my Administration in January 2020 detail reforms that will expand opportunities and eliminate unnecessary education costs for job seekers. This order builds on the broader work of my Administration to expand opportunity and create a more inclusive 21st-century economy.

This order directs important, merit-based reforms that will replace degree-based hiring with skills- and competency-based hiring and will hold the civil service to a higher standard—ensuring that the individuals most capable of performing the roles and responsibilities required of a specific position are those hired for that position—that is more in line with the principles on which the merit system rests.

SEC. 2. *Revision of Job Classification and Qualification Standards.* (a) The Director of OPM, in consultation with the Director of the Office of Management and Budget, the Assistant to the President for Domestic Policy, and the heads of agencies, shall review and revise all job classification and qualification standards for positions within the competitive service, as necessary and consistent with subsections (a)(i) and (a)(ii) of this section. All changes to job classification and qualification standards shall be made available to the public within 120 days of the date of this order [June 26, 2020] and go into effect within 180 days of the date of this order.

(i) An agency may prescribe a minimum educational requirement for employment in the Federal competitive service only when a minimum educational qualification is legally required to perform the duties of the position in the State or locality where those duties are to be performed.

(ii) Unless an agency is determining a candidate's satisfaction of a legally required minimum educational requirement, an agency may consider education in determining a candidate's satisfaction of some other minimum qualification only if the candidate's education directly reflects the competencies necessary to satisfy that qualification and perform the duties of the position.

(b) Position descriptions and job postings published by agencies for positions within the competitive service should be based on the specific skills and competencies required to perform those jobs.

SEC. 3. *Improving the Use of Assessments in the Federal Hiring Process.* (a) In addition to the other requirements of this order, the Director of OPM shall work with the heads of all agencies to ensure that, within 180 days of the date of this order, for positions within the competitive service, agencies assess candidates in a manner that does not rely solely on educational attainment to determine the extent to which candidates possess relevant knowledge, skills, competencies, and abilities. The heads of all agencies shall develop or identify such assessment practices.

(b) In assessing candidates, agencies shall not rely solely on candidates' self-evaluations of their stated abilities. Applicants must clear other assessment hurdles in order to be certified for consideration.

(c) Agencies shall continually evaluate the effectiveness of different assessment strategies to promote and protect the quality and integrity of their hiring processes.

SEC. 4. *Definitions.* For purposes of this order:

(a) the term "assessment" refers to any valid and reliable method of collecting information on an individual for the purposes of making a decision about qualification, hiring, placement, promotion, referral, or entry into programs leading to advancement;

(b) the term "competitive service" has the meaning specified by section 2102 of title 5, United States Code;

(c) the term "education" refers to Post High-School Education as that term is defined in the OPM General Schedule Qualification Policies; and

(d) the term "qualification" means the minimum requirements necessary to perform work of a particular position or occupation successfully and safely.

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

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

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

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

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

DONALD J. TRUMP.

#### EXECUTIVE ORDER NO. 13957

Ex. Ord. No. 13957, Oct. 21, 2020, 85 F.R. 67631, which created Schedule F in the Excepted Service for positions of a confidential, policy-determining, policy-making, or policy-advocating character not normally subject to change as a result of a Presidential transition, was revoked by Ex. Ord. No. 14003, §2(a), Jan. 22, 2021, 86 F.R. 7231, set out below.

#### EX. ORD. NO. 14003. PROTECTING THE FEDERAL WORKFORCE

Ex. Ord. No. 14003, Jan. 22, 2021, 86 F.R. 7231, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

SECTION 1. *Policy.* Career civil servants are the backbone of the Federal workforce, providing the expertise and experience necessary for the critical functioning of the Federal Government. It is the policy of the United States to protect, empower, and rebuild the career Federal workforce. It is also the policy of the United States to encourage union organizing and collective bargaining. The Federal Government should serve as a model employer.

SEC. 2. *Revocation of Schedule F.* (a) The creation of a new Schedule F excepted service category in Executive Order 13957 of October 21, 2020 (Creating Schedule F in the Excepted Service) [formerly set out above], not only was unnecessary to the conditions of good administration, but also undermined the foundations of the civil service and its merit system principles, which were essential to the Pendleton Civil Service Reform Act of 1883's [22 Stat. 403] repudiation of the spoils system. Accordingly, to enhance the efficiency of the civil service and to promote good administration and systematic application of merit system principles, Executive Order 13957 is hereby revoked.

(b) The heads of all executive departments and agencies (agencies) shall, consistent with law, immediately suspend, revise, or rescind proposed actions, decisions,

petitions, rules, regulations or other guidance pursuant to, or to effectuate, Executive Order 13957. The Director of the Office of Personnel Management (OPM) shall immediately cease processing or granting any petitions that seek to convert positions to Schedule F or to create new positions in Schedule F.

SEC. 3. *Revocation of Certain Presidential and Regulatory Actions.* (a) Executive Order 13836 of May 25, 2018 (Developing Efficient, Effective, and Cost-Reducing Approaches to Federal Sector Collective Bargaining) [former 5 U.S.C. 7101 note], is hereby revoked. The Interagency Labor Relations Working Group is hereby disbanded and the Director of OPM shall withdraw all materials issued by this working group that are inconsistent with the policy set forth in section 1 of this order.

(b) Executive Order 13837 of May 25, 2018 (Ensuring Transparency, Accountability, and Efficiency in Taxpayer-Funded Union Time Use) [former 5 U.S.C. 7131 note], is hereby revoked.

(c) Executive Order 13839 of May 25, 2018 (Promoting Accountability and Streamlining Removal Procedures Consistent with Merit System Principles) [former 5 U.S.C. 7501 note prec.], is hereby revoked.

(d) The Presidential Memorandum of October 11, 2019 (Executive Orders 13836, 13837, and 13839) [former 5 U.S.C. 7101 note], is hereby revoked.

(e) The heads of agencies whose practices were covered by Executive Orders 13836, 13837, and 13839 (affected agencies) shall review and identify existing agency actions related to or arising from those orders. Such actions include:

(i) Actions related to the authorization of union time described in sections 4(b) and 5(b) of Executive Order 13837;

(ii) Actions related to the system for monitoring the use of union time described in section 5(c) of Executive Order 13837;

(iii) Guidance promulgated pursuant to section 7(d) of Executive Order 13837;

(iv) Actions taken pursuant to section 8 of Executive Order 13837;

(v) Revisions to discipline and unacceptable performance policies, including ones codified in bargaining agreements, issued pursuant to section 7(b) of Executive Order 13839; and

(vii) The final rule entitled "Probation on Initial Appointment to a Competitive Position, Performance-Based Reduction in Grade and Removal Actions and Adverse Actions," 85 Fed. Reg. 65940 (October 16, 2020).

(f) The heads of affected agencies shall, as soon as practicable, suspend, revise, or rescind, or publish for notice and comment proposed rules suspending, revising, or rescinding, the actions identified in the review described in subsection (e) of this section, as appropriate and consistent with applicable law and the policy set forth in section 1 of this order.

SEC. 4. *Ensuring the Right to Engage in Collective Bargaining.* The head of each agency subject to the provisions of chapter 71 of title 5, United States Code, shall elect to negotiate over the subjects set forth in 5 U.S.C. 7106(b)(1) and shall instruct subordinate officials to do the same.

SEC. 5. *Progress Toward a Living Wage for Federal Employees.* The Director of OPM shall provide a report to the President with recommendations to promote a \$15/hour minimum wage for Federal employees.

SEC. 6. *Severability.* If any provision of this order, or the application of such provision to any person or circumstance, is held to be invalid, the remainder of this order and the application of such provision to other persons or circumstances shall not be affected thereby.

SEC. 7. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

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

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

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

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

J.R. BIDEN, JR.

#### IMPROVING THE FEDERAL RECRUITMENT AND HIRING PROCESS

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

Memorandum for the Heads of Executive Departments and Agencies

To deliver the quality services and results the American people expect and deserve, the Federal Government must recruit and hire highly qualified employees, and public service should be a career of choice for the most talented Americans. Yet the complexity and inefficiency of today's Federal hiring process deters many highly qualified individuals from seeking and obtaining jobs in the Federal Government.

I therefore call on executive departments and agencies (agencies) to overhaul the way they recruit and hire our civilian workforce. Americans must be able to apply for Federal jobs through a commonsense hiring process and agencies must be able to select high-quality candidates efficiently and quickly. Moreover, agency managers and supervisors must assume a leadership role in recruiting and selecting employees from all segments of our society. Human resource offices must provide critical support for these efforts. The ability of agencies to perform their missions effectively and efficiently depends on a talented and engaged workforce, and we must reform our hiring system to further strengthen that workforce.

By the authority vested in me as President by the Constitution and the laws of the United States, including section 3301 of title 5, United States Code, I hereby direct the following:

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

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

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

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

(3) provide for selection from among a larger number of qualified applicants by using the "category rating" approach (as authorized by section 3319 of title 5, United States Code), rather than the "rule of 3" approach, under which managers may only select from among the three highest scoring applicants;

(b) require that managers and supervisors with responsibility for hiring are:

(1) more fully involved in the hiring process, including planning current and future workforce requirements, identifying the skills required for the job, and engaging actively in the recruitment and, when applicable, the interviewing process; and

(2) accountable for recruiting and hiring highly qualified employees and supporting their successful transition into Federal service, beginning with the first performance review cycle starting after November 1, 2010;

(c) provide the OPM and the Office of Management and Budget (OMB) timelines and targets to:

(1) improve the quality and speed of agency hiring by:

(i) reducing substantially the time it takes to hire mission-critical and commonly filled positions;

(ii) measuring the quality and speed of the hiring process; and

(iii) analyzing the causes of agency hiring problems and actions that will be taken to reduce them; and

(2) provide every agency hiring manager training on effective, efficient, and timely ways to recruit and hire well-qualified individuals;

(d) notify individuals applying for Federal employment through USAJOBS, an OPM-approved Federal web-based employment search portal, about the status of their application at key stages of the application process; and

(e) identify a senior official accountable for leading agency implementation of this memorandum.

SEC. 2. *Directions to the OPM.* The OPM shall take the following actions no later than 90 days after the date of this memorandum:

(a) establish a Government-wide performance review and improvement process for hiring reform actions described in section 1 of this memorandum, including:

(1) a timeline, benchmarks, and indicators of progress; and

(2) a goal-focused, data-driven system for holding agencies accountable for improving the quality and speed of agency hiring, achieving agency hiring reform targets, and satisfying merit system principles and veterans' preference requirements; and [sic]

(b) develop a plan to promote diversity in the Federal workforce, consistent with the merit system principle (codified at 5 U.S.C. 2301(b)(1)) that the Federal Government should endeavor to achieve a workforce from all segments of society;

(c) evaluate the Federal Career Intern Program established by Executive Order 13162 of July 6, 2000, provide recommendations concerning the future of that program, and propose a framework for providing effective pathways into the Federal Government for college students and recent college graduates;

(d) provide guidance or propose regulations, as appropriate, to streamline and improve the quality of job announcements for Federal employment to make sure they are easily understood by applicants;

(e) evaluate the effectiveness of shared registers used in filling positions common across multiple agencies and develop a strategy for improving agencies' use of these shared registers for commonly filled Government-wide positions;

(f) develop a plan to increase the capacity of USAJOBS to provide applicants, hiring managers, and human resource professionals with information to improve the recruitment and hiring processes; and

(g) take such further administrative action as appropriate to implement sections 1 and 2 of this memorandum.

SEC. 3. *Senior Administration Officials.* Agency heads and other senior administration officials visiting university or college campuses on official business are encouraged to discuss career opportunities in the Federal Government with students.

SEC. 4. *Reporting.* (a) The OPM, in coordination with the OMB and in consultation with other agencies, shall develop a public human resources website to:

(1) track key human resource data, including progress on hiring reform implementation; and

(2) assist senior agency leaders, hiring managers, and human resource professionals with identifying and replicating best practices within the Federal Government for improving new employee quality and the hiring process.

(b) Each agency shall regularly review its key human resource performance and work with the OPM and the OMB to achieve timelines and targets for correcting agency hiring problems.

(c) The OPM shall submit to the President an annual report on the impact of hiring initiatives set forth in this memorandum, including its recommendations for further improving the Federal Government's hiring process.

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

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

(2) functions of the Director of the OMB relating to budgetary, administrative, or legislative proposals.

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

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

(d) The Director of the OPM, in consultation with the OMB, may grant an exception to any of the requirements set forth in section 1 of this memorandum to an agency that demonstrates that exceptional circumstances prevent it from complying with that requirement.

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

BARACK OBAMA.

ENHANCING SAFEGUARDS TO PREVENT THE UNDUE DENIAL OF FEDERAL EMPLOYMENT OPPORTUNITIES TO THE UNEMPLOYED AND THOSE FACING FINANCIAL DIFFICULTY THROUGH NO FAULT OF THEIR OWN

Memorandum of President of the United States, Jan. 31, 2014, 79 F.R. 7045, provided:

Memorandum for the Heads of Executive Departments and Agencies

The Federal Government is America's largest employer. While seeking to employ a talented and productive workforce, it has a responsibility to lead by example. Although executive departments and agencies (agencies) generally can, and do, take job applicants' employment history and other factors into account when making hiring decisions, it is the policy of my Administration that applicants should not face undue obstacles to Federal employment because they are unemployed or face financial difficulties. The Government must continue to take steps to ensure the fair treatment of applicants, as well as incumbent Federal employees, who face financial difficulties through no fault of their own and make good faith efforts to meet those obligations. Therefore, I hereby direct as follows:

SECTION 1. *Individuals Who Are Unemployed or Facing Financial Difficulty.* (a) Agencies shall not make an unfavorable determination with respect to the suitability, fitness, or qualifications of an applicant for Federal employment because that applicant:

(i) is or was unemployed; or  
(ii) has experienced or is experiencing financial difficulty through no fault of the applicant, if the applicant has undertaken a good-faith effort to meet his or her financial obligations.

(b) Consistent with existing law, agencies shall not remove, suspend, or demote a current Federal employee if the basis of the action is that the employee has experienced, or is experiencing, financial difficulty through no fault of the employee, and the employee has undertaken a good-faith effort to meet his or her financial obligations.

(c) Agencies shall review their recruiting and hiring practices to determine whether such processes intentionally or inadvertently place applicants at an undue disadvantage because of the factors set forth in subsection (a) of this section and report the results to the Director of the Office of Personnel Management (OPM) within 90 days of the date of this memorandum. Taking into account the results, the Director of OPM shall issue guidance to Chief Human Capital Officers to assist agencies with implementation of this memorandum.

SEC. 2. *General Provisions.* (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

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

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

(iii) the authority granted by law, Executive Order, or regulation to a department or agency, or the head thereof, to determine eligibility for access to classified information or to occupy a sensitive position; or

(iv) the authority granted by law or Executive Order to a department or agency, or the head thereof, to take adverse actions against Federal employees for their failure to comply with any law, rule, or regulation imposing upon them an obligation to satisfy in good faith their just financial obligations, including Federal, State, or local taxes.

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

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

(d) The Director of OPM is authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA.

§ 3302. **Competitive service; rules**

The President may prescribe rules governing the competitive service. The rules shall provide, as nearly as conditions of good administration warrant, for—

- (1) necessary exceptions of positions from the competitive service; and
- (2) necessary exceptions from the provisions of sections 2951, 3304(a), 3321, 7202, and 7203 of this title.

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

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

HISTORICAL AND REVISION NOTES

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

The reference to the competitive service is substituted for the reference to the Act creating that service. The reference to reasons for the exceptions is omitted as covered by section 1308 of this title. The words “provide for” are substituted for “provide and declare”. Paragraph (1) is supplied to preserve the President's power to except positions from the competitive service, previously implied from the power to except from the first rule in former section 633(2). Authority to make exceptions to so much of former section 633(2) as is restated in this section and section 1302(a) is omitted as meaningless. Authority to make exceptions to so much of former section 633(2) as is restated in section 3318(a) is omitted as superseded by former section 857, which is carried into section 3318(a). In the last sentence, the words “Each officer and individual employed in an agency” are substituted for “officers of the United States in the departments and offices” because of the restrictive definition of “officer” in section 2104.

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

**Editorial Notes****AMENDMENTS**

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

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

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

Pub. L. 95-228 struck out reference to section 3306(a)(1) of this title. Amendments by section 703(c)(1) and (c)(2) of Pub. L. 95-454 appear to have been inadvertently reversed. Subsec. (c)(1) purported to amend subsec. (c)(1) of section 2105 of this title, and subsec. (c)(2) purported to amend par. (2) of this section. However, the amendments specified by Pub. L. 95-454, § 703(c)(1) and (2), were impossible to execute literally. Thus, amendment by Pub. L. 95-454, § 703(c)(2) was executed to section 2105 of this title, and amendment by section 703(c)(1) was executed to this section as the probable intent of Congress.

**Statutory Notes and Related Subsidiaries****EFFECTIVE DATE OF 1993 AMENDMENT; SAVINGS PROVISION**

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

**EFFECTIVE DATE OF 1979 AMENDMENT**

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

**EFFECTIVE DATE OF 1978 AMENDMENT**

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

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

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

WHEREAS this Nation has an obligation to assist veterans of the armed forces in readjusting to civilian life;

WHEREAS the Federal Government, as an employer, should reflect its recognition of this obligation in its personnel policies and practices;

WHEREAS veterans, by virtue of their military service, have lost opportunities to pursue education and training oriented toward civilian careers;

WHEREAS the Federal Government is continuously concerned with building an effective workforce, and veterans constitute a major recruiting source; and

WHEREAS the development of skills is most effectively achieved through a program combining employment with education or training:

NOW, THEREFORE, by virtue of the authority vested in me by the Constitution of the United States, by sections 3301 and 3302 of title 5, United States Code, and as President of the United States, it is ordered as follows:

SECTION 1. (a) Subject to paragraph (b) of this section, the head of an agency may make an excepted appoint-

ment, to be known as a “veterans readjustment appointment”, to any position in the competitive service up to and including GS-5 or the equivalent thereof, of a veteran or disabled veteran as defined in section 2108(1), (2), of title 5, United States Code, who:

(1) served on active duty in the armed forces of the United States during the Vietnam era;

(2) at the time of his appointment has completed not more than fourteen years of education; and

(3) is found qualified to perform the duties of the position.

(b) Employment under paragraph (a) of this section is authorized only under a training or educational program developed by an agency in accordance with guidelines established by the Office of Personnel Management.

(c) An employee given a veterans readjustment appointment under paragraph (a) of this section shall serve subject to:

(1) the satisfactory performance of assigned duties; and

(2) participation in the training or educational program under which he is appointed.

(d) An employee who does not satisfactorily meet the conditions set forth in paragraph (c) of this section shall be removed in accordance with appropriate procedures.

(e) An employee serving under a veterans readjustment appointment may be promoted, reassigned, or transferred.

(f) An employee who completes the training or educational program and who has satisfactorily completed two years of substantially continuous service under a veterans readjustment appointment shall be converted to career-conditional or career employment. An employee converted under this paragraph shall automatically acquire a competitive status.

(g) In selecting an applicant for appointment under this section, an agency shall not discriminate because of race, color, religion, sex, national origin, or political affiliation.

SEC. 2. (a) A person eligible for appointment under section 1 of this order may be appointed only within one year after his separation from the armed forces, or one year following his release from hospitalization or treatment immediately following his separation from the armed forces, or one year after involuntary separation without cause from (i) a veterans readjustment appointment or (ii) a transitional appointment, or one year after the effective date of this order if he is serving under a transitional appointment.

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

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

SEC. 4. For the purpose of this order:

(a) “agency” means a military department as defined in section 102 of title 5, United States Code, an executive agency (other than the General Accounting Office [now Government Accountability Office]) as defined in section 105 of title 5, United States Code, and those portions of the legislative and judicial branches of the Federal Government and of the government of the District of Columbia having positions in the competitive service; and

(b) “Vietnam era” means the period beginning August 5, 1964, and ending on such date thereafter as may be determined by Presidential proclamation or concurrent resolution of the Congress.

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

SEC. 6. Executive Order No. 11397 of February 9, 1968, is revoked. Such revocation shall not affect the right of

an employee to be converted to career-conditional or career employment if he meets the requirements of section 1(d) of Executive Order No. 11397 after the effective date of this order.

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

### § 3303. Competitive service; recommendations of Senators or Representatives

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

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

#### HISTORICAL AND REVISION NOTES

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

The prohibition is restated in positive form. The words “An individual concerned in examining an applicant for or appointing him in the competitive service” are substituted for “any person concerned in making any examination or appointment under this act”. The word “applicant” is substituted for “person who shall apply for office or place under the provisions of this act”. The word “Representative” is substituted for “Member of the House of Representatives”.

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

#### Editorial Notes

#### AMENDMENTS

1996—Pub. L. 104-197 substituted “Competitive service; recommendations of Senators or Representatives” for “Political recommendations” in section catchline and amended text generally, substituting provisions prohibiting receipt or consideration of recommendations of applicants in competitive service made by Senators or Representatives for provisions which directed that personnel actions be taken without solicitation of or regard to such recommendations from Members of Congress, congressional employees, any elected official of the government of any State (including D.C. and Puerto Rico) or subdivision thereof, or political party official, prohibited such persons from making such recommendations, prohibited employees or applicants from soliciting such recommendations and required notification of such prohibition, but allowed for certain exceptions regarding solicitation and consideration of recommendations if subject of recommendation was limited to factors pertinent to work performance, ability, aptitude, general qualifications, related to suitability or security standards, or furnished pursuant to law or regulation.

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

### Statutory Notes and Related Subsidiaries

#### EFFECTIVE DATE OF 1996 AMENDMENT

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

#### EFFECTIVE DATE OF 1993 AMENDMENT; SAVINGS PROVISION

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

### § 3304. Competitive service; examinations

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

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

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

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

(A) public notice has been given; and

(B) the Office of Personnel Management has determined that there exists a severe shortage of candidates (or, with respect to the Department of Veterans Affairs, that there exists a severe shortage of highly qualified candidates) or that there is a critical hiring need.

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

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

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

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

(A) is involuntarily separated from service as a technician other than by removal for

cause on charges of misconduct or delinquency;

(B) passes a suitable noncompetitive examination; and

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

(d) The Office of Personnel Management shall promulgate regulations on the manner and extent that experience of an individual in a position other than the competitive service, such as the excepted service (as defined under section 2103) in the legislative or judicial branch, or in any private or nonprofit enterprise, may be considered in making appointments to a position in the competitive service (as defined under section 2102). In promulgating such regulations OPM shall not grant any preference based on the fact of service in the legislative or judicial branch. The regulations shall be consistent with the principles of equitable competition and merit based appointments.

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

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

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

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

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

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

(g) ELIGIBILITY OF DEPARTMENT OF DEFENSE EMPLOYEES IN TIME-LIMITED APPOINTMENTS TO COMPETE FOR PERMANENT APPOINTMENTS.—

(1) DEFINITIONS.—In this subsection—

(A) the term “Department” means the Department of Defense; and

(B) the term “time-limited appointment” means a temporary or term appointment in the competitive service.

(2) ELIGIBILITY.—Notwithstanding any other provision of this chapter or any other provision of law relating to the examination, certification, and appointment of individuals in the competitive service, an employee of the Department serving under a time-limited appointment is eligible to compete for a permanent appointment in the competitive service when the Department is accepting applications from individuals within its own workforce, or from individuals outside its own workforce, under merit promotion procedures, if—

(A) the employee was appointed initially under open, competitive examination under subchapter I of this chapter to the time-limited appointment;

(B) the employee has served under 1 or more time-limited appointments within the Department for a period or periods totaling more than 2 years without a break of 2 or more years; and

(C) the employee's performance has been at an acceptable level of performance throughout the period or periods referred to in subparagraph (B).

(3) CAREER-CONDITIONAL STATUS; COMPETITIVE STATUS.—An individual appointed to a permanent position under this section—

(A) becomes a career-conditional employee, unless the employee has otherwise completed the service requirements for career tenure; and

(B) acquires competitive status upon appointment.

(4) FORMER EMPLOYEES.—If the Department is accepting applications as described in paragraph (2), a former employee of the Department who served under a time-limited appointment and who otherwise meets the requirements of this section shall be eligible to compete for a permanent position in the competitive service under this section if—

(A) the employee applies for a position covered by this section not later than 2 years after the most recent date of separation; and

(B) the employee's most recent separation was for reasons other than misconduct or performance.

(5) REGULATIONS.—The Office of Personnel Management shall prescribe regulations necessary for the administration of this subsection.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 418; Pub. L. 95-454, title IX, §906(a)(5), Oct. 13, 1978, 92 Stat. 1225; Pub. L. 99-586, Oct. 29, 1986, 100 Stat. 3325; Pub. L. 104-65, §§16(a), (b), 17(a), Dec. 19, 1995, 109 Stat. 703; Pub. L. 104-186, title II, §215(2), Aug. 20, 1996, 110 Stat. 1745; Pub. L. 105-339, §2, Oct. 31, 1998, 112 Stat. 3182; Pub. L. 106-117, title V, §511(c), Nov. 30, 1999, 113 Stat. 1575; Pub. L. 107-296, title XIII, §1312(a)(1), Nov. 25, 2002, 116 Stat. 2290; Pub. L. 108-375, div. A, title XI, §1105(g), Oct. 28, 2004, 118 Stat. 2075; Pub. L. 109-163, div. A, title XI, §1104(e)(2), Jan. 6, 2006, 119 Stat. 3450; Pub. L. 111-84, div. A, title XI, §1102(d)(2), Oct. 28, 2009, 123 Stat. 2485; Pub. L. 115-46, title II, §213, Aug. 12, 2017, 131 Stat. 967;

Pub. L. 117-263, div. A, title XI, §1108, Dec. 23, 2022, 136 Stat. 2818.)

#### HISTORICAL AND REVISION NOTES

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

In subsection (a), the authority of the President to prescribe rules is added on authority of former section 633(1), which is carried into section 3302. The words “competitive service” are substituted for “public service” since the requirements do not apply to the accepted or uniformed service.

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

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

In subsection (d), the word “Employees” is substituted for “collector, postmaster, and other officers of the United States”.

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

#### Editorial Notes

##### AMENDMENTS

2022—Subsec. (g). Pub. L. 117-263 added subsec. (g).  
2017—Subsec. (a)(3)(B). Pub. L. 115-46 inserted “(or, with respect to the Department of Veterans Affairs, that there exists a severe shortage of highly qualified candidates)” after “severe shortage of candidates”.

2009—Subsec. (a)(3)(B). Pub. L. 111-84 amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows:

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

“(ii) the candidate is a participant in the Science, Mathematics, and Research for Transformation

(SMART) Defense Defense Education Program under section 2192a of title 10, United States Code.”

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

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

2002—Subsec. (a)(3). Pub. L. 107-296 added par. (3).  
1999—Subsec. (f)(2), (3). Pub. L. 106-117, §511(c)(2), (3), added par. (2) and redesignated former par. (2) as (3). Former par. (3) redesignated (4).

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

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

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

1995—Subsec. (c). Pub. L. 104-65, §16(a), (b), redesignated subsec. (d) as (c) and struck out former subsec. (c) which read as follows: “Notwithstanding a contrary provision of this title or of the rules and regulations prescribed under this title for the administration of the competitive service, an individual who served—

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

“(2) for at least 4 years as a secretary or law clerk, or both, to a justice or judge of the United States;

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

Subsec. (d). Pub. L. 104-65, §17(a), which directed amendment of this section by adding subsec. (d) at the end thereof, was executed by adding subsec. (d) after subsec. (c) to reflect the probable intent of Congress.

Pub. L. 104-65, §16(b), redesignated subsec. (d) as (c).  
1986—Subsecs. (d), (e). Pub. L. 99-586 added subsec. (d) and redesignated former subsec. (d) as (e).

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

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 2002 AMENDMENT

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

##### EFFECTIVE DATE OF 1999 AMENDMENT

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

##### EFFECTIVE DATE OF 1995 AMENDMENT

Pub. L. 104-65, §16(c), Dec. 19, 1995, 109 Stat. 703, provided that: “The repeal and amendment made by this

section [amending this section] shall take effect 2 years after the date of the enactment of this Act [Dec. 19, 1995].”

Pub. L. 104-65, §17(b), Dec. 19, 1995, 109 Stat. 703, provided that: “The amendment made by this section [amending this section] shall take effect 2 years after the date of the enactment of this Act [Dec. 19, 1995], except the Office of Personnel Management shall—

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

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

#### EFFECTIVE DATE OF 1978 AMENDMENT

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

#### DIRECT HIRING FOR FEDERAL WAGE SCHEDULE EMPLOYEES

Pub. L. 114-328, div. A, title XI, §1139, Dec. 23, 2016, 130 Stat. 2470, provided that: “The Director of the Office of Personnel Management shall permit an agency with delegated examining authority under 1104(a)(2) of title 5, United States Code, to use direct-hire authority under section 3304(a)(3) of such title for a permanent or non-permanent position or group of positions in the competitive services at GS-15 (or equivalent) and below, or for prevailing rate employees, if the Director determines that there is either a severe shortage of candidates or a critical hiring need for such positions.”

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

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

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

(2) he passes a suitable noncompetitive examination;

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

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

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

(c) In computing years of service under subsection (a)(1) of this section for an individual

who leaves a position in the competitive service to enter the armed forces and is reemployed in such a position within 120 days after separation under honorable conditions, the period from the date he leaves his position to the date he is reemployed is included.

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

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

#### Editorial Notes

##### AMENDMENTS

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

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

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

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

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 1990 AMENDMENT

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

##### EFFECTIVE DATE OF 1978 AMENDMENT

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

##### EFFECTIVE DATE OF 1970 AMENDMENT

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

##### EFFECTIVE DATE

Pub. L. 90-105, §4, Oct. 11, 1967, 81 Stat. 274, provided that:

“(a) This section and section 3 of this Act [amending provisions set out as a note under section 3101 of this title] shall become effective on the date of enactment of this Act [Oct. 11, 1967].

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

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

deemed to have completed such 3-year period on such effective date.”

### § 3305. Competitive service; examinations; when held

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

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

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

#### HISTORICAL AND REVISION NOTES 1966 ACT

Derivation	U.S. Code	Revised Statutes and Statutes at Large
(a) .....	5 U.S.C. 635 (last 24 words of 6th sentence).	Jan. 16, 1883, ch. 27, §3 (last 24 words of 6th sentence), 22 Stat. 404.
(b) .....	5 U.S.C. 859.	June 27, 1944, ch. 287, §10, 58 Stat. 390. Jan. 19, 1948, ch. 1, §3, 62 Stat. 3. Dec. 27, 1950, ch. 1151, §2(b), 64 Stat. 1117.

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

#### 1967 ACT

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

#### Editorial Notes

##### AMENDMENTS

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

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

#### 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.

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

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

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

(a) Except as provided in subsections (b), (c), (d), (e), and (f) of this section appropriated funds

may not be used to pay an employee who establishes a maximum-age requirement for entrance into the competitive service.

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

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

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

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

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

(B) For purposes of this paragraph—

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

(ii) the term “head of the agency” means—

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

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

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

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

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 419; Pub. L. 92–297, §2(a), May 16, 1972, 86 Stat. 141; Pub. L. 93–350, §1, July 12, 1974, 88 Stat. 355; Pub. L. 96–347, §1(b), Sept. 12, 1980, 94 Stat. 1150; Pub. L. 100–238, title I, §103(a)(1), Jan. 8, 1988, 101 Stat. 1744; Pub. L. 105–261, div. C, title XXXI, §3154(a), Oct. 17, 1998, 112 Stat. 2254; Pub. L. 110–161, div. E, title V, §535(c), Dec. 26, 2007, 121 Stat. 2076; Pub. L. 112–81, div. A, title XI, §1107, Dec. 31, 2011, 125 Stat. 1614.)

#### HISTORICAL AND REVISION NOTES

Derivation	U.S. Code	Revised Statutes and Statutes at Large
.....	5 U.S.C. 638b (less proviso).	June 27, 1956, ch. 452, §302 (less proviso), 70 Stat. 355.

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

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

### Editorial Notes

#### REFERENCES IN TEXT

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

#### AMENDMENTS

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

2007—Subsec. (g). Pub. L. 110-161 added subsec. (g).

1998—Subsec. (a). Pub. L. 105-261, §3154(a)(1), substituted “(d), (e), and (f)” for “and (d)”.

Subsec. (f). Pub. L. 105-261, §3154(a)(2), added subsec. (f).

1988—Subsec. (d). Pub. L. 100-238, §103(a)(1)(A), substituted “may” for “may, with the concurrence of such agent as the President may designate.”

Subsec. (e). Pub. L. 100-238, §103(a)(1)(B), added subsec. (e).

1980—Subsec. (b). Pub. L. 96-347 substituted “Secretary” for “Secretary of Transportation”.

1974—Subsec. (a). Pub. L. 93-350, §1(1), inserted reference to subsec. (d).

Subsec. (d). Pub. L. 93-350, §1(2), added subsec. (d).

1972—Pub. L. 92-297 designated existing provisions as subsec. (a) and added subsecs. (b) and (c).

### Statutory Notes and Related Subsidiaries

#### EFFECTIVE DATE OF 2007 AMENDMENT; TRANSITION RULES

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

“(1) **EFFECTIVE DATE.**—The amendments made by this section [amending this section and sections 8331, 8334 to 8336, 8401, 8412, 8415, 8422, 8423, and 8425 of this title] shall become effective on the later of June 30, 2008, or the first day of the first pay period beginning at least 6 months after the date of the enactment of this Act [Dec. 26, 2007].

“(2) **TRANSITION RULES.**—

“(A) **NONAPPLICABILITY OF MANDATORY SEPARATION PROVISIONS TO CERTAIN INDIVIDUALS.**—The amendments made by subsections (a)(3) and (b)(6) [amending sections 8335 and 8425 of this title], respectively, shall not apply to an individual first appointed as a customs and border protection officer before the effective date under paragraph (1).

“(B) **TREATMENT OF PRIOR CBPO SERVICE.**—

“(i) **GENERAL RULE.**—Except as provided in clause (ii), nothing in this section [amending this section and sections 8331, 8334 to 8336, 8401, 8412, 8415, 8422, 8423, and 8425 of this title and enacting provisions set out as a note under this section] or any amendment made by this section shall be considered to apply with respect to any service performed as a customs and border protection officer before the effective date under paragraph (1).

“(ii) **EXCEPTION.**—Service described in section 8331(31) or 8401(36) of title 5, United States Code (as amended by this section) rendered before the effective date under paragraph (1) may be taken into account to determine if an individual who is serving on or after such effective date then qualifies as a customs and border protection officer by virtue of holding a supervisory or administrative position in the Department of Homeland Security.

“(C) **MINIMUM ANNUITY AMOUNT.**—The annuity of an individual serving as a customs and border protection officer on the effective date under paragraph (1) pursuant to an appointment made before that date shall, to the extent that its computation is based on service rendered as a customs and border protection officer on or after that date, be at least equal to the amount that would be payable—

“(i) to the extent that such service is subject to the Civil Service Retirement System, by applying section 8339(d) of title 5, United States Code, with respect to such service; and

“(ii) to the extent such service is subject to the Federal Employees’ Retirement System, by applying section 8415(d) [now 8415(e)] of title 5, United States Code, with respect to such service.

“(D) **RULE OF CONSTRUCTION.**—Nothing in the amendment made by subsection (c) [amending this section] shall be considered to apply with respect to any appointment made before the effective date under paragraph (1).

“(3) **ELECTION.**—

“(A) **INCUMBENT DEFINED.**—For purposes of this paragraph, the term ‘incumbent’ means an individual who is serving as a customs and border protection officer on the date of the enactment of this Act.

“(B) **NOTICE REQUIREMENT.**—Not later than 30 days after the date of the enactment of this Act, the Director of the Office of Personnel Management shall take measures reasonably designed to ensure that incumbents are notified as to their election rights under this paragraph, and the effect of making or not making a timely election.

“(C) **ELECTION AVAILABLE TO INCUMBENTS.**—

“(i) **IN GENERAL.**—An incumbent may elect, for all purposes, either—

“(I) to be treated in accordance with the amendments made by subsection (a) or (b) [amending sections 8331, 8334 to 8336, 8401, 8412, 8415, 8422, 8423, and 8425 of this title], as applicable; or

“(II) to be treated as if subsections (a) and (b) had never been enacted.

“Failure to make a timely election under this paragraph shall be treated in the same way as an election made under subclause (I) on the last day allowable under clause (ii).

“(ii) **DEADLINE.**—An election under this paragraph shall not be effective unless it is made at least 14 days before the effective date under paragraph (1).

“(4) **DEFINITION.**—For purposes of this subsection, the term ‘customs and border protection officer’ has the meaning given such term by section 8331(31) or 8401(36) of title 5, United States Code (as amended by this section).

“(5) **EXCLUSION.**—Nothing in this section or any amendment made by this section shall be considered to afford any election or to otherwise apply with respect to any individual who, as of the day before the date of the enactment of this Act—

“(A) holds a position within U.S. Customs and Border Protection; and

“(B) is considered a law enforcement officer for purposes of subchapter III of chapter 83 or chapter 84 of title 5, United States Code, by virtue of such position.”

#### EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100-238, title I, §103(f), Jan. 8, 1988, 101 Stat. 1745, provided that: “This section, and the amendments made by this section [amending this section and sections 8401 and 8704 of this title and enacting provisions set out as a note under section 8334 of this title], shall be effective as of January 1, 1987.”

#### EFFECTIVE DATE OF 1980 AMENDMENT

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

#### EFFECTIVE DATE OF 1974 AMENDMENT

Pub. L. 93-350, §7, July 12, 1974, 88 Stat. 356, provided that: “The amendments made by the first section [amending this section], and sections 2(b), 5, and 6 [amending sections 8331, 8336, and 8339 of this title], of this Act shall become effective on the date of enactment of this Act [July 12, 1974]. The amendments made

by sections 2(a) and 3 [amending sections 8331 and 8334 of this title] of this Act shall become effective at the beginning of the first applicable pay period which begins after December 31, 1974. The amendment made by section 4 of this Act [amending section 8335 of this title] shall become effective on January 1, 1978."

#### EFFECTIVE DATE OF 1972 AMENDMENT

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

#### REGULATIONS

Pub. L. 110-161, div. E, title V, §535(d), Dec. 26, 2007, 121 Stat. 2077, provided that: "Any regulations necessary to carry out the amendments made by this section [amending this section and sections 8331, 8334 to 8336, 8401, 8412, 8415, 8422, 8423, and 8425 of this title] shall be prescribed by the Director of the Office of Personnel Management in consultation with the Secretary of Homeland Security."

#### UNITED STATES PARK POLICE; AGE LIMITS FOR ORIGINAL APPOINTMENTS

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

#### Executive Documents

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

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

By virtue of the authority vested in me by section 3307(d) of title 5 of the United States Code, as added by the first section of the Act of July 12, 1974 (Public Law 93-350; 88 Stat. 355), I hereby designate the Office of Personnel Management as the agency to concur with determinations made by agencies to fix the minimum and maximum limits of age within which an original appointment may be made to a position as a law enforcement officer or firefighter, as defined by section 8331(20) and (21), respectively, of title 5 of the United States Code. The designation made by this order shall be effective as of October 15, 1974.

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

The Office of Personnel Management or other examining agency may not prescribe a minimum educational requirement for an examination for the competitive service except when the Office decides that the duties of a scientific, technical, or professional position cannot be performed by an individual who does not have a prescribed minimum education. The Office shall make the reasons for its decision under this section a part of its public records.

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

#### HISTORICAL AND REVISION NOTES

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

The prohibition is restated in positive form. The words "The Civil Service Commission or other examining agency" are added because these are the only agencies to which the prohibition could apply.

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

#### Editorial Notes

##### AMENDMENTS

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

#### 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.

#### § 3309. Preference eligibles; examinations; additional points for

A preference eligible who receives a passing grade in an examination for entrance into the competitive service is entitled to additional points above his earned rating, as follows—

- (1) a preference eligible under section 2108(3)(C)–(G) of this title—10 points; and
- (2) a preference eligible under section 2108(3)(A)–(B) of this title—5 points.

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

#### HISTORICAL AND REVISION NOTES

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

The word "competitive" is added before "service" for clarity. Application of this section to the excepted service in the executive branch and to the government of the District of Columbia, as provided in former section 858, is carried into section 3320.

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

#### Editorial Notes

##### AMENDMENTS

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

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

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

In examinations for positions of guards, elevator operators, messengers, and custodians in the competitive service (other than for positions of housekeeping aides in the Department of Veterans Affairs), competition is restricted to preference eligibles as long as preference eligibles are available.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 420; Pub. L. 117-168, title IX, §905, Aug. 10, 2022, 136 Stat. 1811.)

HISTORICAL AND REVISION NOTES

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

The words "in the competitive service" are added for clarity. The reference to "examinations held prior to December 31, 1954, for positions of apprentices" is omitted as obsolete. Application of this section to the excepted service in the executive branch and to the government of the District of Columbia, as provided in former section 858, is carried into section 3320.

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

**Editorial Notes**

AMENDMENTS

2022—Pub. L. 117-168 inserted "(other than for positions of housekeeping aides in the Department of Veterans Affairs)" after "competitive service".

**§ 3311. Preference eligibles; examinations; crediting experience**

In examinations for the competitive service in which experience is an element of qualification, a preference eligible is entitled to credit—

(1) for service in the armed forces when his employment in a similar vocation to that for which examined was interrupted by the service; and

(2) for all experience material to the position for which examined, including experience gained in religious, civic, welfare, service, and organizational activities, regardless of whether he received pay therefor.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 420.)

HISTORICAL AND REVISION NOTES

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

The words "for the competitive service" are added after "examinations" for clarity. Application of this section to the excepted service in the executive branch and to the government of the District of Columbia, as provided in former section 858, is carried into section 3320.

In paragraph (1), the words "service in the armed forces" are substituted for "in the military or naval service of the United States" on authority of the Act of

July 26, 1947, ch. 343, §305(a), 61 Stat. 508. The word "actual" is omitted as surplusage.

In paragraph (2), the words "material to the position for which examined" are substituted for "valuable" for clarity.

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

**§ 3312. Preference eligibles; physical qualifications; waiver**

(a) In determining qualifications of a preference eligible for examination for, appointment in, or reinstatement in the competitive service, the Office of Personnel Management or other examining agency shall waive—

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

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

(b) If an examining agency determines that, on the basis of evidence before it, a preference eligible under section 2108(3)(C) of this title who has a compensable service-connected disability of 30 percent or more is not able to fulfill the physical requirements of the position, the examining agency shall notify the Office of the determination and, at the same time, the examining agency shall notify the preference eligible of the reasons for the determination and of the right to respond, within 15 days of the date of the notification, to the Office. The Office shall require a demonstration by the appointing authority that the notification was timely sent to the preference eligible's last known address and shall, before the selection of any other person for the position, make a final determination on the physical ability of the preference eligible to perform the duties of the position, taking into account any additional information provided in any such response. When the Office has completed its review of the proposed disqualification on the basis of physical disability, it shall send its findings to the appointing authority and the preference eligible. The appointing authority shall comply with the findings of the Office. The functions of the Office under this subsection may not be delegated.

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

HISTORICAL AND REVISION NOTES

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

The section is restated for clarity and conciseness. The words "for which examination is given" and "for which the examination is given" are omitted as surplusage. The application of this section to the excepted service in the executive branch and the government of the District of Columbia is preserved by section 3320.

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

### Editorial Notes

#### AMENDMENTS

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

### 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.

### § 3313. Competitive service; registers of eligibles

The names of applicants who have qualified in examinations for the competitive service shall be entered on appropriate registers or lists of eligibles in the following order—

(1) for scientific and professional positions in GS-9 or higher, in the order of their ratings, including points added under section 3309 of this title; and

(2) for all other positions—

(A) disabled veterans who have a compensable service-connected disability of 10 percent or more, in order of their ratings, including points added under section 3309 of this title; and

(B) remaining applicants, in the order of their ratings, including points added under section 3309 of this title.

The names of preference eligibles shall be entered ahead of others having the same rating.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 420.)

#### HISTORICAL AND REVISION NOTES

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

The section is restated for clarity and conciseness. The words “for the competitive service” are added for clarity. Application of this section to the excepted service in the executive branch and to the government of the District of Columbia is carried into section 3320. The words “employment lists” are omitted as included in “appropriate registers or lists of eligibles”.

In paragraph (1), the words “in GS-9 or higher” are substituted for “in grade 9 or higher of the General Schedule of the Classification Act of 1949, as amended” in view of the codification of the Act in this title, and, in specific sections 5104 and 5332.

In paragraph (2)(A), the term “disabled veterans” is substituted for “preference eligibles” in view of the definition of “disabled veteran” in section 2108(2).

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

### § 3314. Registers; preference eligibles who resigned

A preference eligible who resigns, on request to the Office of Personnel Management, is entitled to have his name placed again on all reg-

isters for which he may have been qualified, in the order named by section 3313 of this title.

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

#### HISTORICAL AND REVISION NOTES

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

The last 28 words of former section 865 relating to recertification and reappointments are omitted since under sections 3317 and 3318(a) certification and appointment follow from placing on registers.

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

### Editorial Notes

#### AMENDMENTS

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

### § 3315. Registers; preference eligibles furloughed or separated

(a) A preference eligible who has been separated or furloughed without delinquency or misconduct, on request, is entitled to have his name placed on appropriate registers and employment lists for every position for which his qualifications have been established, in the order named by section 3313 of this title. This subsection applies to registers and employment lists maintained by the Office of Personnel Management, an Executive agency, or the government of the District of Columbia.

(b) The Office may declare a preference eligible who has been separated or furloughed without pay under section 7512 of this title to be entitled to the benefits of subsection (a) of this section.

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

#### HISTORICAL AND REVISION NOTES

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

In subsection (a), the term “Executive agency” is substituted for “any agency or project of the Federal Government” on authority of former section 869. The last 28 words of the 1st sentence of former section 864 relating to recertification and reappointment are omitted since under sections 3317 and 3318(a) certification and appointment follow from placing on registers.

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

**Editorial Notes****AMENDMENTS**

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

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

**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.

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

Section, added Pub. L. 90-83 §1(9)(A), Sept. 11, 1967, 81 Stat. 197, related to registration by Civil Service Commission of employees receiving compensation for injuries for certification for appointment to vacant positions.

**§ 3316. Preference eligibles; reinstatement**

On request of an appointing authority, a preference eligible who has resigned or who has been dismissed or furloughed may be certified for, and appointed to, a position for which he is eligible in the competitive service, an Executive agency, or the government of the District of Columbia.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 421.)

**HISTORICAL AND REVISION NOTES**

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

The word “authority” is substituted for “officer” in recognition of the several appointing authorities named in section 2105(a)(1).

The words “in the competitive service, an Executive agency, or the government of the District of Columbia” are substituted for “in the civil service, Federal, or District of Columbia, or in any establishment, agency, bureau, administration, project, or department, temporary or permanent” on authority of former section 869.

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

**§ 3317. Competitive service; certification from registers**

(a) The Office of Personnel Management shall certify enough names from the top of the appropriate register to permit a nominating or appointing authority who has requested a certificate of eligibles to consider at least three names for appointment to each vacancy in the competitive service.

(b) When an appointing authority, for reasons considered sufficient by the Office, has three times considered and passed over a preference eligible who was certified from a register, certification of the preference eligible for appointment may be discontinued. However, the preference eligible is entitled to advance notice of discontinuance of certification.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 421; Pub. L. 95-454, title IX, §906(a)(3), Oct. 13, 1978, 92 Stat.

1224; Pub. L. 96-54, §2(a)(14), (15), Aug. 14, 1979, 93 Stat. 382.)

**REPEAL AND REENACTMENT OF SECTION**

*Pub. L. 115-232, div. A, title XI, §1107(a), (d), Aug. 13, 2018, 132 Stat. 2002, 2005, provided that, effective on the date on which the Director of the Office of Personnel Management issues final regulations for implementation, with such regulations due not later than one year after Aug. 13, 2018, this section is repealed and a new section 3317 is enacted to read as follows:*

**§ 3317. Competitive service; certification using numerical ratings****(a) CERTIFICATION.—**

(1) **IN GENERAL.**—The Director of the Office of Personnel Management, or the head of an agency to which the Director has delegated examining authority under section 1104(a)(2), shall certify a sufficient number of names from the top of the appropriate register or list of eligibles, as determined pursuant to regulations prescribed under subsection (c), and provide a certificate with such names to an appointing authority that has requested a certificate of eligibles to consider when filling a job in the competitive service.

(2) **MINIMUM NUMBER OF NAMES CERTIFIED.**—Unless otherwise provided for in regulations prescribed under subsection (c), the number of names certified under paragraph (1) shall be not less than three.

(b) **DISCONTINUANCE OF CERTIFICATION.**—When an appointing authority, for reasons considered sufficient by the Director or head of an agency, has three times considered and passed over a preference eligible who was certified from a register, the Director or head of any agency may discontinue certifying the preference eligible for appointment. The Director or the head of an agency shall provide to such preference eligible notice of the intent to discontinue certifying such preference eligible prior to the discontinuance of certification.

(c) **REGULATIONS.**—The Director shall prescribe regulations for the administration of this section. Such regulations shall include the establishment of mechanisms for identifying the eligibles who will be considered for each vacancy. Such mechanisms may include cut-off scores.

(d) **DEFINITION.**—In this section, the term “Director” means the Director of the Office of Personnel Management.

**HISTORICAL AND REVISION NOTES**

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

In subsection (a), the word “authority” is substituted for “officer” in recognition of the several appointing authorities named in section 2105(a)(1). The words “in the competitive service” have been added for clarity. Application of the section to the excepted service in the executive branch and to the government of the District of Columbia, as provided in former section 858, is carried into section 3320.

In subsection (b), the word “thereafter” is omitted as unnecessary.

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

### Editorial Notes

#### AMENDMENTS

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

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

1978—Subsec. (b). Pub. L. 95-454 which purported to amend section 3317b of this title by substituting “Office” for “Commission” was executed to subsec. (b) of this section as the probable intent of Congress.

### Statutory Notes and Related Subsidiaries

#### EFFECTIVE DATE OF 2018 AMENDMENT

Pub. L. 115-232, div. A, title XI, §1107(d), Aug. 13, 2018, 132 Stat. 2005, provided that:

“(1) IN GENERAL.—The amendments made by this section [enacting this section and section 3318 of this title, amending sections 3319 and 3320 of this title, and repealing this section and section 3318 of this title] shall take effect on the date on which the Director of the Office of Personnel Management issues final regulations to implement sections 3317, 3318, and 3319 of title 5, United States Code, as amended or added by this section.

“(2) REGULATIONS REQUIRED.—The Director shall issue regulations under paragraph (1) not later than one year after the date of enactment of this section [Aug. 13, 2018].”

#### EFFECTIVE DATE OF 1979 AMENDMENT

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

#### EFFECTIVE DATE OF 1978 AMENDMENT

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

### § 3318. Competitive service; selection from certificates

(a) The nominating or appointing authority shall select for appointment to each vacancy from the highest three eligibles available for appointment on the certificate furnished under section 3317(a) of this title, unless objection to one or more of the individuals certified is made to, and sustained by, the Office of Personnel Management for proper and adequate reason under regulations prescribed by the Office.

(b) OTHER APPOINTING AUTHORITIES.—

(1) IN GENERAL.—During the 240-day period beginning on the date of issuance of a certificate of eligibles under section 3317(a), an appointing authority other than the appointing authority requesting the certificate (in this subsection referred to as the “other appointing authority”) may select an individual from that certificate in accordance with this subsection for an appointment to a position that is—

(A) in the same occupational series as the position for which the certification of eligibles was issued (in this subsection referred to as the “original position”); and

(B) at a similar grade level as the original position.

(2) APPLICABILITY.—An appointing authority requesting a certificate of eligibles may share the certificate with another appointing authority only if the announcement of the original position provided notice that the resulting list of eligible candidates may be used by another appointing authority.

(3) REQUIREMENTS.—The selection of an individual under paragraph (1)—

(A) shall be made in accordance with subsection (a); and

(B) subject to paragraph (4), may be made without any additional posting under section 3327.

(4) INTERNAL NOTICE.—Before selecting an individual under paragraph (1), and subject to the requirements of any collective bargaining obligation of the other appointing authority, the other appointing authority shall—

(A) provide notice of the available position to employees of the other appointing authority;

(B) provide up to 10 business days for employees of the other appointing authority to apply for the position; and

(C) review the qualifications of employees submitting an application.

(5) COLLECTIVE BARGAINING OBLIGATIONS.—Nothing in this subsection limits any collective bargaining obligation of an agency under chapter 71.

(c)(1) If an appointing authority proposes to pass over a preference eligible on a certificate in order to select an individual who is not a preference eligible, such authority shall file written reasons with the Office for passing over the preference eligible. The Office shall make the reasons presented by the appointing authority part of the record of the preference eligible and may require the submission of more detailed information from the appointing authority in support of the passing over of the preference eligible. The Office shall determine the sufficiency or insufficiency of the reasons submitted by the appointing authority, taking into account any response received from the preference eligible under paragraph (2) of this subsection. When the Office has completed its review of the proposed passover, it shall send its findings to the appointing authority and to the preference eligible. The appointing authority shall comply with the findings of the Office.

(2) In the case of a preference eligible described in section 2108(3)(C) of this title who has a compensable service-connected disability of 30 percent or more, the appointing authority shall at the same time it notifies the Office under paragraph (1) of this subsection, notify the preference eligible of the proposed passover, of the reasons therefor, and of his right to respond to such reasons to the Office within 15 days of the date of such notification. The Office shall, before completing its review under paragraph (1) of this subsection, require a demonstration by the appointing authority that the passover notification was timely sent to the preference eligible's last known address.

(3) A preference eligible not described in paragraph (2) of this subsection, or his representative, shall be entitled, on request, to a copy of—

(A) the reasons submitted by the appointing authority in support of the proposed passover, and

(B) the findings of the Office.

(4) In the case of a preference eligible described in paragraph (2) of this subsection, the functions of the Office under this subsection may not be delegated.

(d) When three or more names of preference eligibles are on a reemployment list appropriate for the position to be filled, a nominating or appointing authority may appoint from a register of eligibles established after examination only an individual who qualifies as a preference eligible under section 2108(3)(C)–(G) of this title.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 421; Pub. L. 90–83, §1(8), Sept. 11, 1967, 81 Stat. 197; Pub. L. 95–454, title III, §307(d), title IX, §906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1148, 1224; Pub. L. 114–137, §2(a), Mar. 18, 2016, 130 Stat. 310.)

#### REPEAL AND REENACTMENT OF SECTION

*Pub. L. 115–232, div. A, title XI, §1107(a), (d), Aug. 13, 2018, 132 Stat. 2003, 2005, provided that, effective on the date on which the Director of the Office of Personnel Management issues final regulations for implementation, with such regulations due not later than one year after Aug. 13, 2018, this section is repealed and a new section 3318 is enacted to read as follows:*

§ 3318. Competitive service; selections using numerical ratings

(a) **IN GENERAL.**—An appointing authority shall select for appointment from the eligibles certified for appointment on a certificate furnished under section 3317(a), unless objection to one or more of the individuals certified is made to, and sustained by, the Director of the Office of Personnel Management or the head of an agency to which the Director has delegated examining authority under section 1104(a)(2), for proper and adequate reason under regulations prescribed by the Director.

(b) **OTHER APPOINTING AUTHORITIES.**—

(1) **IN GENERAL.**—During the 240-day period beginning on the date of issuance of a certificate of eligibles under section 3317(a), an appointing authority other than the appointing authority requesting the certificate (in this subsection referred to as the “other appointing authority”) may select an individual from that certificate in accordance with this subsection for an appointment to a position that is—

(A) in the same occupational series as the position for which the certification of eligibles was issued (in this subsection referred to as the “original position”); and

(B) at a similar grade level as the original position.

(2) **APPLICABILITY.**—An appointing authority requesting a certificate of eligibles may share the certificate with another appointing authority only if the announcement of the original position provided notice that the resulting list of eligible candidates may be used by another appointing authority.

(3) **REQUIREMENTS.**—The selection of an individual under paragraph (1)—

(A) shall be made in accordance with subsection (a); and

(B) subject to paragraph (4), may be made without any additional posting under section 3327.

(4) **INTERNAL NOTICE.**—Before selecting an individual under paragraph (1), the other appointing authority shall—

(A) provide notice of the available position to employees of the other appointing authority;

(B) provide up to 10 business days for employees of the other appointing authority to apply for the position; and

(C) review the qualifications of employees submitting an application.

(c) **PASS OVER.**—

(1) **IN GENERAL.**—Subject to subparagraph (2), if an appointing authority proposes to pass over a preference eligible certified for appointment under subsection (a) and select an individual who is not a preference eligible, the appointing authority shall file written reasons with the Director or the head of the agency for passing over the preference eligible. The Director or the head of the agency shall make the reasons presented by the appointing authority part of the record of the preference eligible and may require the submission of more detailed information from the appointing authority in support of the passing over of the preference eligible. The Director or the head of the agency shall determine the sufficiency or insufficiency of the reasons submitted by the appointing authority, taking into account any response received from the preference eligible under paragraph (2). When the Director or the head of the agency has completed review of the proposed pass-over of the preference eligible, the Director or the head of the agency shall send its findings to the appointing authority and to the preference eligible. The appointing authority shall comply with the findings.

(2) **PREFERENCE ELIGIBLE INDIVIDUALS WHO HAVE A COMPENSABLE SERVICE-CONNECTED DISABILITY.**—In the case of a preference eligible described in section 2108(3)(C) who has a compensable service-connected disability of 30 percent or more, the appointing authority shall notify the Director under paragraph (1) and, at the same time, notify the preference eligible of the proposed pass-over, of the reasons for the proposed pass-over, and of the individual’s right to respond to those reasons to the Director within 15 days of the date of the notification. The Director shall, before completing the review under paragraph (1), require a demonstration by the appointing authority that the notification was timely sent to the preference eligible’s last known address.

(3) **FURTHER CONSIDERATION NOT REQUIRED.**—When a preference eligible, for reasons considered sufficient by the Director, or in the case of a preference eligible described in paragraph (1), by the head of an agency, has been passed over in accordance with this subsection for the same position, the appointing authority is not required to give further consideration to that preference eligible while selecting from the

same list for a subsequent appointment to such position.

(4) **DELEGATION PROHIBITION.**—In the case of a preference eligible described in paragraph (2), the functions of the Director under this subsection may not be delegated to an individual who is not an officer or employee of the Office of Personnel Management.

(d) **SPECIAL RULE REGARDING REEMPLOYMENT LISTS.**—When the names of preference eligibles are on a reemployment list appropriate for the position to be filled, an appointing authority may appoint from a register of eligibles established after examination only an individual who qualifies as a preference eligible under subparagraph (C), (D), (E), (F), or (G) of section 2108(3).

(e) **CONSIDERATION NOT REQUIRED.**—In accordance with regulations prescribed by the Director, an appointing officer is not required to consider an eligible who has been considered by the appointing officer for three separate appointments from the same or different certificates for the same position.

(f) **REGULATIONS.**—The Director shall prescribe regulations for the administration of this section.

(d)[sic] **DEFINITION.**—In this section, the term “Director” means the Director of the Office of Personnel Management.

HISTORICAL AND REVISION NOTES

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

The word “authority” is substituted for “officer” in recognition of the several appointing authorities named in section 2105(a)(1).

In subsection (a), the provisions of former section 633(2)2 are merged in the requirement of former section 857, since the certificate must be of the three highest on the register and the nominating or appointing employee may select one of the three.

In subsection (c), the prohibition in former section 864 is restated in positive form. The words “an individual who qualifies as a preference eligible under section 2108(3)(B)–(F)” are substituted for “ten-point preference eligibles”.

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

Editorial Notes

AMENDMENTS

2016—Subsecs. (b) to (d). Pub. L. 114–137 added subsec. (b) and redesignated former subsecs. (b) and (c) as (c) and (d), respectively.

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

Subsec. (b). Pub. L. 95–454, § 307(d), designated existing provisions as par. (1), substituted provisions respecting authority of the Office with respect to the se-

lection procedures applicable, for provisions respecting authority of the Commission with respect to the selection procedures applicable, and added pars. (2) to (4).

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

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2018 AMENDMENT

Repeal and reenactment of section effective on the date on which the Director of the Office of Personnel Management issues final regulations for implementation, with such regulations due not later than one year after Aug. 13, 2018, see section 1107(d) of Pub. L. 115–232, set out as a note under section 3317 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.

REGULATIONS

Pub. L. 114–137, § 2(d), Mar. 18, 2016, 130 Stat. 312, provided that: “Not later than 1 year after the date of enactment of this Act [Mar. 18, 2016], the Director of the Office of Personnel Management shall issue an interim final rule with comment to carry out the amendments made by this section [amending this section and sections 3319 and 9510 of this title].”

§ 3319. Alternative ranking and selection procedures

(a) The Office, in exercising its authority under section 3304, or an agency to which the Office has delegated examining authority under section 1104(a)(2), may establish category rating systems for evaluating applicants for positions in the competitive service, under 2 or more quality categories based on merit consistent with regulations prescribed by the Office of Personnel Management, rather than assigned individual numerical ratings.

(b) Within each quality category established under subsection (a), preference-eligibles shall be listed ahead of individuals who are not preference eligibles. For other than scientific and professional positions at GS–9 of the General Schedule (equivalent or higher), qualified preference-eligibles who have a compensable service-connected disability of 10 percent or more shall be listed in the highest quality category.

(c) **SELECTION.**—

(1) **IN GENERAL.**—An appointing official may select any applicant in the highest quality category or, if fewer than 3 candidates have been assigned to the highest quality category, in a merged category consisting of the highest and the second highest quality categories.

(2) **USE BY OTHER APPOINTING OFFICIALS.**—Under regulations prescribed by the Office of Personnel Management, appointing officials other than the appointing official described in paragraph (1) (in this subsection referred to as the “other appointing official”) may select an applicant for an appointment to a position that is—

(A) in the same occupational series as the position for which the certification of eligibles was issued (in this subsection referred to as the “original position”); and

(B) at a similar grade level as the original position.

(3) **APPLICABILITY.**—An appointing authority requesting a certificate of eligibles may share the certificate with another appointing authority only if the announcement of the original position provided notice that the resulting list of eligible candidates may be used by another appointing authority.

(4) **REQUIREMENTS.**—The selection of an individual under paragraph (2)—

(A) shall be made in accordance with this subsection; and

(B) subject to paragraph (5), may be made without any additional posting under section 3327.

(5) **INTERNAL NOTICE.**—Before selecting an individual under paragraph (2), and subject to the requirements of any collective bargaining obligation of the other appointing authority (within the meaning given that term in section 3318(b)(1)), the other appointing official shall—

(A) provide notice of the available position to employees of the appointing authority employing the other appointing official;

(B) provide up to 10 business days for employees of the other appointing authority to apply for the position; and

(C) review the qualifications of employees submitting an application.

(6) **COLLECTIVE BARGAINING OBLIGATIONS.**—Nothing in this subsection limits any collective bargaining obligation of an agency under chapter 71.

(7) **PREFERENCE ELIGIBLES.**—Notwithstanding paragraphs (1) and (2), an appointing official may not pass over a preference eligible in the same category from which selection is made, unless the requirements of section<sup>1</sup> 3317(b) and<sup>1</sup> 3318(c), as applicable, are satisfied.

(d) Each agency that establishes a category rating system under this section shall submit in each of the 3 years following that establishment, a report to Congress on that system including information on—

(1) the number of employees hired under that system;

(2) the impact that system has had on the hiring of veterans and minorities, including those who are American Indian or Alaska Natives, Asian, Black or African American, and native Hawaiian or other Pacific Islanders; and

(3) the way in which managers were trained in the administration of that system.

(e) The Office of Personnel Management may prescribe such regulations as it considers necessary to carry out the provisions of this section.

(Added Pub. L. 107-296, title XIII, §1312(a)(2), Nov. 25, 2002, 116 Stat. 2290; amended Pub. L. 114-137, §2(b), Mar. 18, 2016, 130 Stat. 311; Pub. L. 115-232, div. A, title XI, §1107(b)(1), Aug. 13, 2018, 132 Stat. 2005.)

#### AMENDMENT OF SECTION

*Pub. L. 115-232, div. A, title XI, §1107(b)(1), (d), Aug. 13, 2018, 132 Stat. 2005, provided that,*

<sup>1</sup> So in original.

*effective on the date on which the Director of the Office of Personnel Management issues final regulations for implementation, with such regulations due not later than one year after Aug. 13, 2018, this section is amended—*

*(1) by amending the section heading to read as follows: “§ 3319. Competitive service; selection using category rating”; and*

*(2) in subsection (c), by striking paragraph (6), redesignating paragraph (7) as paragraph (6), and amending paragraph (6) (as so redesignated) to read as follows:*

*(6) Preference eligibles.—*

*(A) Satisfaction of certain requirements.—Notwithstanding paragraphs (1) and (2), an appointing official may not pass over a preference eligible in the same category from which selection is made, unless the requirements of sections 3317(b) and 3318(c), as applicable, are satisfied.*

*(B) Further consideration not required.—When a preference eligible, for reasons considered sufficient by the Director, or in the case of a preference eligible described in section 3318(c)(1), by the head of an agency, has been passed over in accordance with section 3318(c) for the same position, the appointing authority is not required to give further consideration to that preference eligible while selecting from the same list for a subsequent appointment to such position.*

*(C) List of eligibles issued from a standing register; discontinuation of certification.—In the case of lists of eligibles issued from a standing register, when an appointing authority, for reasons considered sufficient by the Director or the head of an agency, has three times considered and passed over a preference eligible who was certified from a register, certification of the preference eligible for appointment may be discontinued. However, the preference eligible is entitled to advance notice of discontinuance of certification in accordance with regulations prescribed by the Director.*

*See 2018 Amendment notes below.*

#### Editorial Notes

##### REFERENCES IN TEXT

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

##### PRIOR PROVISIONS

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

##### AMENDMENTS

2018—Pub. L. 115-232, §1107(b)(1)(A), substituted “Competitive service; selection using category rating” for “Alternative ranking and selection procedures” in section catchline.

Subsec. (c)(6). Pub. L. 115-232, §1107(b)(1)(B), redesignated par. (7) as (6) and amended it generally. Prior to amendment, text read as follows: “Notwithstanding paragraphs (1) and (2), an appointing official may not pass over a preference eligible in the same category from which selection is made, unless the requirements of section 3317(b) and 3318(c), as applicable, are satisfied.”

Pub. L. 115-232, §1107(b)(1)(B), struck out par. (6). Text read as follows: “Nothing in this subsection limits any

collective bargaining obligation of an agency under chapter 71.”

Subsec. (c)(7). Pub. L. 115-232, § 1107(b)(1)(B), redesignated par. (7) as (6).

2016—Subsec. (c). Pub. L. 114-137 added subsec. (c) and struck out former subsec. (c) which read as follows:

“(1) An appointing official may select any applicant in the highest quality category or, if fewer than 3 candidates have been assigned to the highest quality category, in a merged category consisting of the highest and the second highest quality categories.

“(2) Notwithstanding paragraph (1), the appointing official may not pass over a preference-eligible in the same category from which selection is made, unless the requirements of section 3317(b) or 3318(b), as applicable, are satisfied.”

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115-232 effective on the date on which the Director of the Office of Personnel Management issues final regulations for implementation, with such regulations due not later than one year after Aug. 13, 2018, see section 1107(d) of Pub. L. 115-232, set out as a note under section 3317 of this title.

##### EFFECTIVE DATE

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

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

The nominating or appointing authority shall select for appointment to each vacancy in the excepted service in the executive branch and in the government of the District of Columbia from the qualified applicants in the same manner and under the same conditions required for the competitive service by sections 3308-3318 of this title. This section does not apply to an appointment required by Congress to be confirmed by, or made with the advice and consent of, the Senate.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 422; Pub. L. 115-232, div. A, title XI, § 1107(b)(2), Aug. 13, 2018, 132 Stat. 2005.)

##### AMENDMENT OF SECTION

*Pub. L. 115-232, div. A, title XI, § 1107(b)(2), (d), Aug. 13, 2018, 132 Stat. 2005, provided that, effective on the date on which the Director of the Office of Personnel Management issues final regulations for implementation, with such regulations due not later than one year after Aug. 13, 2018, this section is amended by striking “sections 3308-3318” and inserting “sections 3308 through 3319”. See 2018 Amendment note below.*

##### HISTORICAL AND REVISION NOTES

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

Former sections 858 and 869 are combined and restated for clarity and to conform to section 3318(a). The word “authority” is substituted for “officer” in recognition of the several appointing authorities named in section 2105(a)(1). The words “shall select for appoint-

ment to each vacancy in the expected service in the executive branch and in the government of the District of Columbia from the qualified applicants in the same manner and under the same conditions required for the competitive service by sections 3308-3318 of this title” are substituted for “In the unclassified Federal, and District of Columbia, civil service, and in all other positions and employment hereinbefore referred to in (c) of section 851 of this title . . . shall make selection from the qualified applicants in accordance with the provisions of this chapter”. The reference to the excepted service “in the executive branch” is substituted for the exception of the legislative and judicial branches in former section 869. Former section 869 did not prohibit the application of those provisions of the Act of June 27, 1944, which relate to the competitive service in the legislative or judicial branch by reason of the specific provisions of section 311 of the Act of June 10, 1921, as amended (31 U.S.C. 52); 28 U.S.C. 602; and Executive Order No. 67 of June 13, 1895. The reference to appointments of postmasters is omitted from this section since those referred to are in the competitive service. The application of former section 869 to the remainder of the Act of June 27, 1944, is covered by the sections into which the remainder is carried (see Table I).

This section merely continues, and does not in any way change, the requirements in former section 858 relative to the selection of applicants for positions in the excepted service. Under this section, the Federal Bureau of Investigation and other agencies having positions in the excepted service will continue to fill those positions in the same manner that they have been filled under former section 858. Such excepted appointments are appointments authorized to be made without regard to the statutes, rules, and regulations governing appointments in the competitive service and this is not changed.

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

#### Editorial Notes

##### AMENDMENTS

2018—Pub. L. 115-232 substituted “sections 3308 through 3319” for “sections 3308-3318”.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115-232 effective on the date on which the Director of the Office of Personnel Management issues final regulations for implementation, with such regulations due not later than one year after Aug. 13, 2018, see section 1107(d) of Pub. L. 115-232, set out as an Effective Date of Repeal note under section 3317 of this title.

##### ASSISTANCE OF UNITED STATES CIVIL SERVICE COMMISSION IN DEVELOPING MERIT SYSTEM FOR DISTRICT OF COLUMBIA

Pub. L. 93-198, title VII, § 734, Dec. 24, 1973, 87 Stat. 823, authorized the United States Civil Service Commission to advise and assist the District of Columbia Mayor and Council in the further development of the merit system or systems required by the District of Columbia charter, which was approved on May 7, 1974, and authorized the Commission to enter into agreements with the District government to make available its registers of eligibles as a recruiting source to fill District positions as needed, with the costs of any specific services furnished by the Civil Service Commission to be compensated for under the provisions of section 685a of former Title 31, Money and Finance [31 U.S.C. 1537].

#### § 3321. Competitive service; probationary period

(a) The President may take such action, including the issuance of rules, regulations, and

directives, as shall provide as nearly as conditions of good administration warrant for a period of probation—

(1) before an appointment in the competitive service becomes final; and

(2) before initial appointment as a supervisor or manager becomes final.

(b) An individual—

(1) who has been transferred, assigned, or promoted from a position to a supervisory or managerial position, and

(2) who does not satisfactorily complete the probationary period under subsection (a)(2) of this section,

shall be returned to a position of no lower grade and pay than the position from which the individual was transferred, assigned, or promoted. Nothing in this section prohibits an agency from taking an action against an individual serving a probationary period under subsection (a)(2) of this section for cause unrelated to supervisory or managerial performance.

(c) Subsections (a) and (b) of this section shall not apply with respect to appointments in the Senior Executive Service or the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 422; Pub. L. 95-454, title III, § 303(a), Oct. 13, 1978, 92 Stat. 1146; Pub. L. 100-325, § 2(d), May 30, 1988, 102 Stat. 581; Pub. L. 114-92, div. A, title XI, § 1105(c)(1), Nov. 25, 2015, 129 Stat. 1024; Pub. L. 117-81, div. A, title XI, § 1106(b)(2)(A), Dec. 27, 2021, 135 Stat. 1950.)

#### 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)(4).	Jan. 16, 1883, ch. 27, § 2(24), 22 Stat. 404.

The authority of the President to prescribe rules is added on authority of former section 633(1), which is carried into section 3302. Wording is changed because in practice an appointment is not made after probation. The words “or employment” are omitted as included within “appointment”.

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

#### Editorial Notes

##### AMENDMENTS

2021—Subsec. (c). Pub. L. 117-81 struck out “, or any individual covered by section 1599e of title 10” before period at end.

2015—Subsec. (c). Pub. L. 114-92 inserted “, or any individual covered by section 1599e of title 10” before period at end.

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

1978—Pub. L. 95-454 substituted “probationary period” for “probation; period of” in section catchline, designated existing provisions as subsec. (a), substituted provisions authorizing the President to take necessary action, for provisions authorizing the President to prescribe rules, and added subsecs. (b) and (c).

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 117-81 applied as if effective Dec. 31, 2022, to correspond to the effective date of the

repeal of section 1599e of Title 10, Armed Forces, to reflect the probable intent of Congress. See Effective Date of Repeal note under section 1599e of Title 10.

##### EFFECTIVE DATE OF 1978 AMENDMENT

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

#### § 3322. Voluntary separation before resolution of personnel investigation

(a) With respect to any employee occupying a position in the competitive service or the excepted service who is the subject of a personnel investigation and resigns from Government employment prior to the resolution of such investigation, the head of the agency from which such employee so resigns shall, if an adverse finding was made with respect to such employee pursuant to such investigation, make a permanent notation in the employee's official personnel record file. The head shall make such notation not later than 40 days after the date of the resolution of such investigation.

(b) Prior to making a permanent notation in an employee's official personnel record file under subsection (a), the head of the agency shall—

(1) notify the employee in writing within 5 days of the resolution of the investigation and provide such employee a copy of the adverse finding and any supporting documentation;

(2) provide the employee with a reasonable time, but not less than 30 days, to respond in writing and to furnish affidavits and other documentary evidence to show why the adverse finding was unfounded (a summary of which shall be included in any notation made to the employee's personnel file under subsection (d)); and

(3) provide a written decision and the specific reasons therefore to the employee at the earliest practicable date.

(c) An employee is entitled to appeal the decision of the head of the agency to make a permanent notation under subsection (a) to the Merit Systems Protection Board under section 7701.

(d)(1) If an employee files an appeal with the Merit Systems Protection Board pursuant to subsection (c), the agency head shall make a notation in the employee's official personnel record file indicating that an appeal disputing the notation is pending not later than 2 weeks after the date on which such appeal was filed.

(2) If the head of the agency is the prevailing party on appeal, not later than 2 weeks after the date that the Board issues the appeal decision, the head of the agency shall remove the notation made under paragraph (1) from the employee's official personnel record file.

(3) If the employee is the prevailing party on appeal, not later than 2 weeks after the date that the Board issues the appeal decision, the head of the agency shall remove the notation made under paragraph (1) and the notation of an adverse finding made under subsection (a) from the employee's official personnel record file.

(e) In this section, the term “personnel investigation” includes—

(1) an investigation by an Inspector General; and

(2) an adverse personnel action as a result of performance, misconduct, or for such cause as will promote the efficiency of the service under chapter 43 or chapter 75.

(Added Pub. L. 114-328, div. A, title XI, § 1140(a), Dec. 23, 2016, 130 Stat. 2470.)

#### Editorial Notes

##### PRIOR PROVISIONS

A prior section 3322, Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 422, related to temporary appointments after age 70 in the competitive service, prior to repeal by Pub. L. 95-256, § 5(b)(1), Apr. 6, 1978, 92 Stat. 191, effective Sept. 30, 1978.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE

Pub. L. 114-328, div. A, title XI, § 1140(b), Dec. 23, 2016, 130 Stat. 2471, provided that: “The amendment made by subsection (a) [enacting this section] shall apply to any employee described in section 3322 of title 5, United States Code, (as added by such subsection) who leaves the service after the date of enactment of this Act [Dec. 23, 2016].”

#### § 3323. Automatic separations; reappointment; re-employment of annuitants

(a) An individual who reaches the retirement age prescribed for automatic separation applicable to him may not be continued in the civil service or in the government of the District of Columbia. An individual separated on account of age under a statute or regulation providing for retirement on account of age is not eligible for appointment in the civil service or in the government of the District of Columbia. The President, when in his judgment the public interest so requires, may except an individual from this subsection by Executive order. This subsection does not apply to an individual named by a statute providing for the continuance of the individual in the civil service or in the government of the District of Columbia.

(b)(1) Notwithstanding other statutes, an annuitant, as defined by section 8331 or 8401, receiving annuity from the Civil Service Retirement and Disability Fund is not barred by reason of his retired status from employment in an appointive position for which the annuitant is qualified. An annuitant so reemployed, other than an annuitant reappointed under paragraph (2) of this subsection, serves at the will of the appointing authority.

(2) Subject to such regulations as the Director of the Office of Personnel Management may prescribe, any annuitant to whom the first sentence of paragraph (1) of this subsection applies and who has served as an administrative law judge pursuant to an appointment under section 3105 of this title may be reappointed an administrative law judge under such section for a specified period or for such period as may be necessary for such administrative law judge to conduct and complete the hearing and disposition of one or more specified cases. The provisions of this title that apply to or with respect to administrative law judges appointed under section 3105 of this title shall apply to or with respect to administrative law judges reappointed under such section pursuant to the first sentence of this paragraph.

(c) Notwithstanding subsection (a) of this section, a member of the Foreign Service retired under section 812 of the Foreign Service Act of 1980 is not barred by reason of his retired status from employment in a position in the civil service for which he is qualified. An annuitant so reemployed serves at the will of the appointing authority.

(d) Notwithstanding subsection (a) of this section, the Chief of Engineers of the Army, under section 569a of title 33, may employ a retired employee whose expert assistance is needed in connection with river and harbor or flood control works. There shall be deducted from the pay of an employee so reemployed an amount equal to the annuity or retired pay allocable to the period of actual employment.

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

#### HISTORICAL AND REVISION NOTES

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

In subsection (a), the words “On and after July 1, 1932” are omitted as executed. The words “heretofore or hereafter” are omitted as unnecessary. The words “in the civil service” are substituted for “civilian service in any branch or service of the United States Government” and “to any appointive office, position, or employment under the United States” in view of the definition of “civil service” in section 2101.

In subsection (b), the words “receiving annuity from the Civil Service Retirement and Disability Fund” are substituted for “heretofore or hereafter retired under this chapter”. The word “authority” is substituted for “officer” in recognition of the several appointing authorities named in section 2105(a)(1).

In subsection (c), the words “Notwithstanding subsection (a) of this section” are substituted for “Notwithstanding the provisions of sections 62 and 715a of title 5” to reflect the codification of former section 715a in subsection (a) of this section and in view of the repeal of section 62 of title 5 by § 402(a)(7) of the Act of Aug. 19, 1964, Pub. L. 88-448, 78 Stat. 492. The words “heretofore or hereafter” and “hereafter” are omitted as unnecessary. The words “in a position in the civil service” are substituted for “in Federal Government service in any appointive position” in view of the definition of “civil service” in section 2101. The word “authority” is substituted for “officer” in recognition of the several appointing authorities named in section 2105(a)(1).

In subsection (d), the words “Notwithstanding subsection (a) of this section” are substituted for “The provisions of section 715a of title 5 shall not be so construed as to prevent” to reflect the codification of former section 715a in subsection (a) of this section, and to conform to the style of this section. The words “under section 569a of title 33” are substituted for “under agreement as authorized by sections 569a, 584a and 607a of title 33” on authority of the provision contained in section 569a of title 33. The word “employee” is coextensive with and substituted for “civilian employee” in view of the definition of “employee” in section 2105. The last sentence is restated for clarity.

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

### Editorial Notes

#### REFERENCES IN TEXT

Section 812 of the Foreign Service Act of 1980, referred to in subsec. (c), is classified to section 4052 of Title 22, Foreign Relations and Intercourse.

#### AMENDMENTS

1992—Subsec. (b)(1). Pub. L. 102-378 substituted “annuitant, as defined by section 8331 or 8401,” for “annuitant as defined by section 8331 of this title”.

1984—Subsec. (b). Pub. L. 98-224 designated existing provisions as par. (1), substituted “the annuitant” for “he” and inserted “, other than an annuitant reappointed under paragraph (2) of this subsection,” and added par. (2).

1980—Subsec. (c). Pub. L. 96-465 substituted “member of the Foreign Service retired under section 812 of the Foreign Service Act of 1980” for “Foreign Service officer retired under section 1001 or 1002 of title 22 or a Foreign Service staff officer or employee retired under section 1063 of title 22”.

### Statutory Notes and Related Subsidiaries

#### EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-465 effective Feb. 15, 1981, except as otherwise provided, see section 2403 of Pub. L. 96-465, set out as an Effective Date note under section 3901 of Title 22, Foreign Relations and Intercourse.

### § 3324. Appointments to positions classified above GS-15

(a) An appointment to a position classified above GS-15 pursuant to section 5108 may be made only on approval of the qualifications of the proposed appointee by the Director of the Office of Personnel Management on the basis of qualification standards developed by the agency involved in accordance with criteria specified in regulations prescribed by the Director. This section does not apply to a position—

- (1) to which appointment is made by the Chief Judge of the United States Tax Court;
- (2) to which appointment is made by the President;
- (3) to which appointment is made by the Librarian of Congress; or
- (4) the incumbent of which is paid from—

(A) appropriations for the Executive Office of the President under the heading “The White House Office”, “Special Projects”, “Council of Economic Advisers”, or “National Security Council”; or

(B) funds appropriated to the President under the heading “Emergency Fund for the President” by the Treasury, Post Office, and Executive Office Appropriation Act, 1966, or a later statute making appropriations for the same purpose.

(b) The Office may prescribe regulations necessary for the administration of this section.

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

1441; Pub. L. 102-378, §2(11), Oct. 2, 1992, 106 Stat. 1347; Pub. L. 110-372, §2(c)(2), Oct. 8, 2008, 122 Stat. 4044.)

### HISTORICAL AND REVISION NOTES 1966 ACT

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

In subsection (a), the words “in GS-16, 17, and 18” are substituted for “in grades 16, 17, and 18 of the General Schedule”.

In subsection (a)(2), the words “by the President” are coextensive with and substituted for “by the President alone or by the President by and with the advice and consent of the Senate”.

In subsection (a)(4)(A), the words “Office of Emergency Planning” are substituted for “Office of Defense Mobilization” on authority of 1958 Reorg. Plan No. 1, §2(a), effective July 1, 1958, 72 Stat. 1799, as amended Aug. 26, 1958, Pub. L. 85-763, 72 Stat. 861, and Sept. 22, 1961, Pub. L. 87-296, 75 Stat. 630. Reference to “President’s Advisory Committee on Government Organization” is omitted since the Committee was abolished by Executive Order No. 10917, February 10, 1961.

In subsection (a)(4)(B), the words “‘Emergency Fund for the President’ by the Treasury, Post Office, and Executive Office Appropriation Act, 1966” are substituted for “‘Emergency Fund for the President, National Defense’ by the General Government Matters Appropriation Act, 1959” to reflect the heading and title of the current appropriation Act.

Subsection (b) is added on authority of former sections 1072 and 1072a, which are carried into section 5115.

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

#### 1967 ACT

This section amends 5 U.S.C. 3324(a)(4)(A) to correct typographical errors.

### Editorial Notes

#### REFERENCES IN TEXT

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

#### AMENDMENTS

2008—Subsec. (a). Pub. L. 110-372 substituted “the Director of the Office of Personnel Management on the basis of qualification standards developed by the agency involved in accordance with criteria specified in regulations prescribed by the Director” for “the Office of Personnel Management” in introductory provisions.

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

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

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

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

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

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

**Statutory Notes and Related Subsidiaries****EFFECTIVE DATE OF 2008 AMENDMENT**

Amendment by Pub. L. 110-372 effective on the first day of the first pay period beginning on or after the 180th day following Oct. 8, 2008, see section 2(d) of Pub. L. 110-372, set out as a note under section 5376 of this title.

**EFFECTIVE DATE OF 1992 AMENDMENT**

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

**EFFECTIVE DATE OF 1990 AMENDMENT**

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

**EFFECTIVE DATE OF 1979 AMENDMENT**

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

**EFFECTIVE DATE OF 1978 AMENDMENT**

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

**EFFECTIVE DATE OF 1967 AMENDMENT**

Amendment by Pub. L. 90-83 effective as of Sept. 6, 1966, for all purposes, see section 9(h) of Pub. L. 90-83, set out as a note under section 5102 of this title.

**§ 3325. Appointments to scientific and professional positions**

(a) Positions established under section 3104 of this title are in the competitive service. However, appointments to the positions are made without competitive examination on approval of the qualifications of the proposed appointee by the Office of Personnel Management on the basis of standards developed by the agency involved in accordance with criteria specified in regulations prescribed by the Director of the Office of Personnel Management.

(b) This section does not apply to positions established under section 3104(c).

(c) The Director of the Office of Personnel Management shall prescribe such regulations as may be necessary to carry out the purpose of this section.

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

**HISTORICAL AND REVISION NOTES**

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

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

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

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

**Editorial Notes****AMENDMENTS**

2008—Subsec. (a). Pub. L. 110-372, §2(c)(3)(A), substituted "on the basis of standards developed by the agency involved in accordance with criteria specified in regulations prescribed by the Director of the Office of Personnel Management" for "or its designee for this purpose".

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

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

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

**Statutory Notes and Related Subsidiaries****EFFECTIVE DATE OF 2008 AMENDMENT**

Amendment by Pub. L. 110-372 effective on the first day of the first pay period beginning on or after the 180th day following Oct. 8, 2008, see section 2(d) of Pub. L. 110-372, set out as a note under section 5376 of this title.

**EFFECTIVE DATE OF 1978 AMENDMENT**

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

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

(a) For the purpose of this section, "member" and "Secretary concerned" have the meanings given them by section 101 of title 37.

(b) A retired member of the armed forces may be appointed to a position in the civil service in or under the Department of Defense (including a nonappropriated fund instrumentality under the jurisdiction of the armed forces) during the period of 180 days immediately after his retirement only if—

(1) the proposed appointment is authorized by the Secretary concerned or his designee for the purpose, and, if the position is in the competitive service, after approval by the Office of Personnel Management; or

(2) the minimum rate of basic pay for the position has been increased under section 5305 of this title.

(c) A request by appropriate authority for the authorization, or the authorization and approval, as the case may be, required by subsection (b)(1) of this section shall be accompanied by a statement which shows the actions taken to assure that—

(1) full consideration, in accordance with placement and promotion procedures of the department concerned, was given to eligible career employees;

(2) when selection is by other than certification from an established civil service register, the vacancy has been publicized to give interested candidates an opportunity to apply;

(3) qualification requirements for the position have not been written in a manner designed to give advantage to the retired member; and

(4) the position has not been held open pending the retirement of the retired member.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 423; Pub. L. 96-54, §2(a)(14), Aug. 14, 1979, 93 Stat. 382; Pub. L. 101-509, title V, §529 [title I, §101(b)(3)(A)], Nov. 5, 1990, 104 Stat. 1427, 1439; Pub. L. 114-328, div. A, title XI, §1111, Dec. 23, 2016, 130 Stat. 2450.)

#### HISTORICAL AND REVISION NOTES

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

In subsection (a), the definition of “armed forces” is omitted as unnecessary in view of the definition in section 2101.

In subsection (b), the words “position in the civil service” are substituted for “civilian office” in view of the definition of “civil service” in section 2101. The words “(including a nonappropriated fund instrumentality under the jurisdiction of the armed forces)” are added on authority of former section 3101(3).

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

#### Editorial Notes

##### AMENDMENTS

2016—Subsec. (b)(3). Pub. L. 114-328 struck out par. (3) which read as follows: “a state of national emergency exists.”

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

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

#### Statutory Notes and Related Subsidiaries

##### SUSPENSION OF SECTION

Pub. L. 101-510, div. A, title XII, §1206(f), Nov. 5, 1990, 104 Stat. 1661, provided that: “Section 3326 of title 5, United States Code, shall not be in effect for the period beginning on the date of the enactment of this Act [Nov. 5, 1990] and ending two years after such date.”

##### EFFECTIVE DATE OF 1990 AMENDMENT

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

##### EFFECTIVE DATE OF 1979 AMENDMENT

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

### § 3327. Civil service employment information

(a) The Office of Personnel Management shall provide that information concerning opportunities to participate in competitive examinations conducted by, or under authority delegated by, the Office of Personnel Management shall be made available to the employment offices of the United States Employment Service.

(b) Subject to such regulations as the Office may issue, each agency shall promptly notify the Office and the employment offices of the United States Employment Service of—

(1) each vacant position in the agency which is in the competitive service or the Senior Executive Service and for which the agency seeks applications from persons outside the Federal service, and

(2) the period during which applications will be accepted.

As used in this subsection, “agency” means an agency as defined in section 5102(a)(1) of this title other than an agency all the positions in which are excepted by statute from the competitive service.

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

#### Editorial Notes

##### PRIOR PROVISIONS

A prior section 3327, Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 424, which prescribed standards for determination of qualifications of postmasters, including experience in postal field service, seniority, length of service, level of difficulty and responsibility of work, attendance, awards and commendations, and performance rating, was repealed by Pub. L. 91-375, §6(c)(7)(A), Aug. 12, 1970, 84 Stat. 776. See section 1001 of Title 39, Postal Service.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE

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

### § 3328. Selective Service registration

(a) An individual—

(1) who was born after December 31, 1959, and is or was required to register under section 3 of the Military Selective Service Act (50 U.S.C. App. 453);<sup>1</sup> and

(2) who is not so registered or knowingly and willfully did not so register before the requirement terminated or became inapplicable to the individual,

shall be ineligible for appointment to a position in an Executive agency.

(b) The Office of Personnel Management, in consultation with the Director of the Selective Service System, shall prescribe regulations to carry out this section. Such regulations shall include provisions prescribing procedures for the adjudication of determinations of whether a failure to register was knowing and willful. Such procedures shall require that such a determination may not be made if the individual concerned shows by a preponderance of the evidence that the failure to register was neither knowing nor willful. Such procedures may provide that determinations of eligibility under the requirements of this section shall be adjudicated by the Executive agency making the appointment for which the eligibility is determined.

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

#### Editorial Notes

##### REFERENCES IN TEXT

Section 3 of the Military Selective Service Act, referred to in subsec. (a)(1), was classified to section 453

<sup>1</sup> See References in Text note below.

of the former Appendix to Title 50, War and National Defense, prior to editorial reclassification and renumbering as section 3802 of Title 50.

#### AMENDMENTS

1987—Subsec. (b). Pub. L. 100-180 struck out “within the Office” after “for the adjudication” in second sentence and inserted at end “Such procedures may provide that determinations of eligibility under the requirements of this section shall be adjudicated by the Executive agency making the appointment for which the eligibility is determined.”

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

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

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

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

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

(B) within the Department of Defense; and

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

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

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

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

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

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

(Added Pub. L. 102-484, div. A, title V, §544(a), Oct. 23, 1992, 106 Stat. 2415; amended Pub. L. 104-106, div. A, title X, §1037(a), Feb. 10, 1996, 110

Stat. 431; Pub. L. 105-85, div. A, title XI, §1103, Nov. 18, 1997, 111 Stat. 1923; Pub. L. 106-398, §1 [[div. A], title X, §1087(f)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A-293.)

#### Editorial Notes

#### REFERENCES IN TEXT

Section 8401(30) of this title, referred to in subsecs. (a) and (b), was amended generally by Pub. L. 106-65, div. A, title V, §522(c)(2), Oct. 5, 1999, 113 Stat. 597, and, as so amended, no longer contains a subpar. (B).

#### CODIFICATION

Another section 3329 was renumbered section 3330 of this title.

#### AMENDMENTS

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

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

1997—Subsec. (b). Pub. L. 105-85 struck out “a position described in subsection (c) not later than 6 months after the date of the application” after “program of the Department of Defense”.

1996—Subsec. (b). Pub. L. 104-106, §1037(a)(1), substituted “be provided placement consideration in a position described in subsection (c) through a priority placement program of the Department of Defense” for “be offered”.

Subsec. (c). Pub. L. 104-106, §1037(a)(2), added subsec. (c) and struck out former subsec. (c) which read as follows: “The position to be offered shall be a position—

“(1) in the competitive service;

“(2) within the Department of Defense;

“(3) for which the individual is qualified; and

“(4) the rate of basic pay for which is not less than the rate last received for technician service before separation.”

### § 3330. Government-wide list of vacant positions

(a) For the purpose of this section, the term “agency” means an Executive agency, excluding the Government Accountability Office and any agency (or unit thereof) whose principal function is the conduct of foreign intelligence or counterintelligence activities, as determined by the President.

(b) The Office of Personnel Management shall establish and keep current a comprehensive list of all announcements of vacant positions in the competitive service within each agency that are to be filled by appointment for more than one year and for which applications are being (or will soon be) accepted from outside the agency’s work force.

(c) Included for any position listed shall be—

(1) a brief description of the position, including its title, tenure, location, and rate of pay;

(2) application procedures, including the period within which applications may be submitted and procedures for obtaining additional information; and

(3) any other information which the Office considers appropriate.

(d) The list shall be available to members of the public.

(e) The Office shall prescribe such regulations as may be necessary to carry out this section. Any requirement under this section that agencies notify the Office as to the availability of

<sup>1</sup> See References in Text note below.

any vacant positions shall be designed so as to avoid any duplication of information otherwise required to be furnished under section 3327 of this title or any other provision of law.

(f) The Office may, to the extent it determines appropriate, charge such fees to agencies for services provided under this section and for related Federal employment information. The Office shall retain such fees to pay the costs of providing such services and information.

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

### Editorial Notes

#### AMENDMENTS

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

1996—Pub. L. 104-106, which directed renumbering of the section 3329 of this title that was added by Pub. L. 102-484, § 4431, as section 3330 of this title, could not be executed because of the intervening renumbering of that section by Pub. L. 104-52, § 4(1)(A). See 1995 Amendment note below.

1995—Pub. L. 104-52, § 4(1)(A), renumbered section 3329 of this title, relating to government-wide list of vacant positions, as this section.

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

### § 3330a. Preference eligibles; administrative redress

(a)(1)(A) A preference eligible who alleges that an agency has violated such individual's rights under any statute or regulation relating to veterans' preference may file a complaint with the Secretary of Labor.

(B) A veteran described in section 3304(f)(1) who alleges that an agency has violated such section with respect to such veteran may file a complaint with the Secretary of Labor.

(2)(A) A complaint under this subsection must be filed within 60 days after the date of the alleged violation.

(B) Such complaint shall be in writing, be in such form as the Secretary may prescribe, specify the agency against which the complaint is filed, and contain a summary of the allegations that form the basis for the complaint.

(3) The Secretary shall, upon request, provide technical assistance to a potential complainant with respect to a complaint under this subsection.

(b)(1) The Secretary of Labor shall investigate each complaint under subsection (a).

(2) In carrying out any investigation under this subsection, the Secretary's duly authorized representatives shall, at all reasonable times, have reasonable access to, for purposes of examination, and the right to copy and receive, any documents of any person or agency that the Secretary considers relevant to the investigation.

(3) In carrying out any investigation under this subsection, the Secretary may require by subpoena the attendance and testimony of witnesses and the production of documents relating to any matter under investigation. In case of

disobedience of the subpoena or contumacy and on request of the Secretary, the Attorney General may apply to any district court of the United States in whose jurisdiction such disobedience or contumacy occurs for an order enforcing the subpoena.

(4) Upon application, the district courts of the United States shall have jurisdiction to issue writs commanding any person or agency to comply with the subpoena of the Secretary or to comply with any order of the Secretary made pursuant to a lawful investigation under this subsection and the district courts shall have jurisdiction to punish failure to obey a subpoena or other lawful order of the Secretary as a contempt of court.

(c)(1)(A) If the Secretary of Labor determines as a result of an investigation under subsection (b) that the action alleged in a complaint under subsection (a) occurred, the Secretary shall attempt to resolve the complaint by making reasonable efforts to ensure that the agency specified in the complaint complies with applicable provisions of statute or regulation relating to veterans' preference.

(B) The Secretary of Labor shall make determinations referred to in subparagraph (A) based on a preponderance of the evidence.

(2) If the efforts of the Secretary under subsection (b) with respect to a complaint under subsection (a) do not result in the resolution of the complaint, the Secretary shall notify the person who submitted the complaint, in writing, of the results of the Secretary's investigation under subsection (b).

(d)(1) If the Secretary of Labor is unable to resolve a complaint under subsection (a) within 60 days after the date on which it is filed, the complainant may elect to appeal the alleged violation to the Merit Systems Protection Board in accordance with such procedures as the Merit Systems Protection Board shall prescribe, except that in no event may any such appeal be brought—

(A) before the 61st day after the date on which the complaint is filed; or

(B) later than 15 days after the date on which the complainant receives written notification from the Secretary under subsection (c)(2).

(2) An appeal under this subsection may not be brought unless—

(A) the complainant first provides written notification to the Secretary of such complainant's intention to bring such appeal; and

(B) appropriate evidence of compliance with subparagraph (A) is included (in such form and manner as the Merit Systems Protection Board may prescribe) with the notice of appeal under this subsection.

(3) Upon receiving notification under paragraph (2)(A), the Secretary shall not continue to investigate or further attempt to resolve the complaint to which the notification relates.

(e)(1) This section shall not be construed to prohibit a preference eligible from appealing directly to the Merit Systems Protection Board from any action which is appealable to the Board under any other law, rule, or regulation, in lieu of administrative redress under this section.

(2) A preference eligible may not pursue redress for an alleged violation described in subsection (a) under this section at the same time the preference eligible pursues redress for such violation under any other law, rule, or regulation.

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

#### Editorial Notes

##### AMENDMENTS

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

#### § 3330b. Preference eligibles; judicial redress

(a) In lieu of continuing the administrative redress procedure provided under section 3330a(d), a preference eligible, or a veteran described by section 3330a(a)(1)(B) with respect to a violation described by such section, may elect, in accordance with this section, to terminate those administrative proceedings and file an action with the appropriate United States district court not later than 60 days after the date of the election.

(b) An election under this section may not be made—

(1) before the 121st day after the date on which the appeal is filed with the Merit Systems Protection Board under section 3330a(d); or

(2) after the Merit Systems Protection Board has issued a judicially reviewable decision on the merits of the appeal.

(c) An election under this section shall be made, in writing, in such form and manner as the Merit Systems Protection Board shall by regulation prescribe. The election shall be effective as of the date on which it is received, and the administrative proceeding to which it relates shall terminate immediately upon the receipt of such election.

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

#### Editorial Notes

##### AMENDMENTS

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

#### § 3330c. Preference eligibles; remedy

(a) If the Merit Systems Protection Board (in a proceeding under section 3330a) or a court (in a proceeding under section 3330b) determines that an agency has violated a right described in section 3330a, the Board or court (as the case may be) shall order the agency to comply with such provisions and award compensation for any loss of wages or benefits suffered by the individual by reason of the violation involved. If the Board or court determines that such violation

was willful, it shall award an amount equal to backpay as liquidated damages.

(b) A preference eligible who prevails in an action under section 3330a or 3330b shall be awarded reasonable attorney fees, expert witness fees, and other litigation expenses.

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

#### § 3330d. Appointment of military and Department of Defense civilian spouses

(a) DEFINITIONS.—In this section:

(1) The term “active duty”—

(A) has the meaning given that term in section 101(d)(1) of title 10;

(B) includes full-time National Guard duty (as defined in section 101(d)(5) of title 10); and

(C) for a member of a reserve component (as described in section 10101 of title 10), does not include training duties or attendance at a service school.

(2) The term “agency”—

(A) has the meaning given the term “Executive agency” in section 105 of this title; and

(B) does not include the Government Accountability Office.

(3) The term “remote work” refers to a particular type of telework under which an employee is not expected to report to an officially established agency location on a regular and recurring basis.

(4)<sup>1</sup> The term “spouse of a disabled or deceased member of the Armed Forces” means an individual—

(A) who is married to a member of the Armed Forces who—

(i) is retired, released, or discharged from the Armed Forces; and

(ii) on the date on which the member retires, is released, or is discharged, has a disability rating of 100 percent under the standard schedule of rating disabilities in use by the Department of Veterans Affairs; or

(B) who—

(i) was married to a member of the Armed Forces on the date on which the member dies while on active duty in the Armed Forces; and

(ii) has not remarried.

(5) The term “telework” has the meaning given the term in section 6501.

(4)<sup>1</sup> The term “spouse of an employee of the Department of Defense” means an individual who is married to an employee of the Department of Defense who is transferred in the interest of the Government from one official station within the Department to another within the Department (that is outside of normal commuting distance) for permanent duty.

(b) APPOINTMENT AUTHORITY.—The head of an agency may appoint noncompetitively—

(1) a spouse of a member of the Armed Forces on active duty;

(2) a spouse of a disabled or deceased member of the Armed Forces; or

<sup>1</sup> So in original. Two pars. (4) have been enacted.

(3)<sup>2</sup> a spouse of a member of the Armed Forces on active duty, or a spouse of a disabled or deceased member of the Armed Forces, to a position in which the spouse will engage in remote work.

(3)<sup>2</sup> a spouse of an employee of the Department of Defense.

(c) SPECIAL RULES REGARDING SPOUSE OF A DISABLED OR DECEASED MEMBER OF THE ARMED FORCES.—

(1) IN GENERAL.—An appointment of an eligible spouse as described in subparagraph (A) or (B) of subsection (a)(4) is not restricted to a geographical area.

(2) SINGLE PERMANENT APPOINTMENT.—A spouse of a disabled or deceased member of the Armed Forces may not receive more than 1 permanent appointment under this section.

(Added Pub. L. 112–239, div. A, title V, §566(a), Jan. 2, 2013, 126 Stat. 1749; amended Pub. L. 114–328, div. A, title XI, §1131, Dec. 23, 2016, 130 Stat. 2457; Pub. L. 115–232, div. A, title V, §573(a), (c), Aug. 13, 2018, 132 Stat. 1779; Pub. L. 118–31, div. A, title XI, §§1112(a), 1119(a), Dec. 22, 2023, 137 Stat. 429, 434.)

#### AMENDMENT OF SECTION

*For expiration of amendments by Pub. L. 115–232 and Pub. L. 118–31 and revival of section, see Termination Date of 2018 Amendment and Termination Date of 2023 Amendment notes below.*

#### Editorial Notes

##### AMENDMENTS

2023—Pub. L. 118–31, §1119(a)(1), (d), temporarily amended section catchline, inserting “and Department of Defense civilian” after “military”. See Termination Date of 2023 Amendment note below.

Subsec. (a)(3). Pub. L. 118–31, §1112(a)(1)(B), added par. (3). Former par. (3) redesignated (4) defining spouse of a disabled or deceased member of the Armed Forces.

Subsec. (a)(4). Pub. L. 118–31, §1119(a)(2), (d), temporarily added par. (4), defining spouse of an employee of the Department of Defense, at end of subsec. (a). See Termination Date of 2023 Amendment note below.

Pub. L. 118–31, §1112(a)(1)(A) redesignated par. (3) as (4) defining spouse of a disabled or deceased member of the Armed Forces.

Subsec. (a)(5). Pub. L. 118–31, §1112(a)(1)(C), added par. (5).

Subsec. (b)(3). Pub. L. 118–31, §1119(a)(3), (d), temporarily added par. (3) relating to a spouse of an employee of the Department of Defense. See Termination Date of 2023 Amendment note below.

Pub. L. 118–31, §1112(a)(2), added par. (3) relating to appointment of a spouse to a position in which the spouse will engage in remote work.

Subsec. (c)(1). Pub. L. 118–31, §1112(a)(3), substituted “subsection (a)(4)” for “subsection (a)(3)”.

2018—Pub. L. 115–232, §573(c), (e), temporarily amended section catchline generally, substituting “Appointment of military spouses” for “Appointment of certain military spouses”. See Termination Date of 2018 Amendment note below.

Subsec. (a)(3) to (6). Pub. L. 115–232, §573(a)(1), (e), temporarily redesignated par. (6) as (3) and temporarily struck out former pars. (3) to (5) which defined geographic area of the permanent duty station, permanent change of station, and relocating spouse of a member of the Armed Forces, respectively. See Termination Date of 2018 Amendment note below.

Subsecs. (b) to (d). Pub. L. 115–232, §573(a)(2)–(4), (e), temporarily added subsec. (b) relating to appointment authority, temporarily redesignated subsec. (d) as (c) and substituted “subsection (a)(3)” for “subsection (a)(6)” in par. (1), and temporarily struck out former subsecs. (b) and (c) relating to appointment authority and special rules regarding relocating spouse, respectively. See Termination Date of 2018 Amendment note below.

2016—Subsec. (c)(3). Pub. L. 114–328 added par. (3).

#### Statutory Notes and Related Subsidiaries

##### TERMINATION DATE OF 2023 AMENDMENT

Pub. L. 118–31, div. A, title XI, §1119(d), Dec. 22, 2023, 137 Stat. 435, provided that: “Effective on December 31, 2028—

“(1) the authority provided by this section [amending this section and enacting provisions set out as a note below], and the amendments made by this section [amending this section], shall expire; and

“(2) the provisions of section 3330d of title 5, United States Code, amended or repealed by this section are restored or revived as if this section had not been enacted.”

##### TERMINATION DATE OF 2018 AMENDMENT

Pub. L. 115–232, div. A, title V, §573(e), Aug. 13, 2018, 132 Stat. 1779, as amended by Pub. L. 117–263, div. A, title XI, §1111(a), Dec. 23, 2022, 136 Stat. 2820, provided that: “Effective on December 31, 2028—

“(1) the authority provided by this section [amending this section and enacting provisions set out as a note below], and the amendments made by this section [amending this section], shall expire; and

“(2) the provisions of section 3330d of title 5, United States Code, amended or repealed by such section are restored or revived as if such section had not been enacted.”

##### REGULATIONS

Pub. L. 112–239, div. A, title V, §566(b), Jan. 2, 2013, 126 Stat. 1751, provided that: “Not later than 180 after the date of the enactment of this Act [Jan. 2, 2013], the Director of the Office of Personnel Management shall amend section 315.612 of title 5, Code of Federal Regulations (relating to noncompetitive appointment of certain military spouses), in accordance with the amendment made by subsection (a) [enacting this section] and promulgate or amend any other regulations necessary to carry out the amendment made by subsection (a).”

##### OPM LIMITATION AND REPORTS

Pub. L. 118–31, div. A, title XI, §1119(c), Dec. 22, 2023, 137 Stat. 434, provided that:

“(1) RELOCATING SPOUSES.—With respect to the noncompetitive appointment of a relocating spouse of an employee of the Department of Defense under paragraph (3) of section 3330d(b) of title 5, United States Code, as added by subsection (a), the Director of the Office of Personnel Management shall—

“(A) monitor the number of those appointments;

“(B) require the head of each agency with the authority to make those appointments under that provision to submit to the Director an annual report on those appointments, including information on the number of individuals so appointed, the types of positions filled, and the effectiveness of the authority for those appointments; and

“(C) not later than 18 months after the date of enactment of this Act [Dec. 22, 2023], submit, to the Committees on Armed Services and Homeland Security and Governmental Affairs of the Senate and the Committees on Armed Services and Oversight and Accountability of the House of Representatives, a report on the use and effectiveness of the authority described in subparagraph (B).

“(2) NON-RELOCATING SPOUSES.—With respect to the noncompetitive appointment of a spouse of an em-

<sup>2</sup> So in original. Two pars. (3) have been enacted.

ployee of the Department of Defense other than a relocating spouse described in paragraph (1), the Director of the Office of Personnel Management—

“(A) shall treat the spouse as a relocating spouse under paragraph (1); and

“(B) may limit the number of those appointments.”

[For termination of section 1119(c) of Pub. L. 118–31, set out above, see Termination Date of 2023 Amendment note set out above.]

Pub. L. 115–232, div. A, title V, § 573(d), Aug. 13, 2018, 132 Stat. 1779, which related to limitations on the non-competitive appointment of relocating spouses and required reports, was repealed by Pub. L. 117–263, div. A, title XI, § 1111(b), Dec. 23, 2022, 136 Stat. 2820.

#### Executive Documents

##### EX. ORD. NO. 13832. ENHANCING NONCOMPETITIVE CIVIL SERVICE APPOINTMENTS OF MILITARY SPOUSES

Ex. Ord. No. 13832, May 9, 2018, 83 F.R. 22343, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 1784 of title 10, United States Code, and sections 3301 and 3302 of title 5, United States Code, it is hereby ordered as follows:

SECTION 1. *Definitions.* (a) “Military spouse” means:

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

(ii) the husband or wife of a totally disabled retired or separated member of the Armed Forces; or

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

(b) “Member of the Armed Forces” has the meaning set forth in 5 CFR 315.612(b)(4).

(c) “Agency” has the meaning set forth in section 3330d of title 5, United States Code.

(d) “Military spouse hiring authority” shall refer to the appointment authority set forth in 5 U.S.C. 3330d and 5 CFR 315.612.

SEC. 2. *Policy.* (a) Military spouses make critical contributions to the personal and financial success of our military families. Military service of spouses, however, often impairs the spouse’s ability to obtain and maintain employment, and to achieve career goals. Multiple and frequent relocations make it challenging for military spouses to maintain the home front, to comply with licensure and other job requirements, and to obtain adequate childcare.

(b) It shall be the policy of the United States to enhance employment support for military spouses. This policy will assist agencies in tapping into a pool of talented individuals and will promote the national interest of the United States and the well-being of our military families. It will also help retain members of the Armed Forces, enhance military readiness, recognize the tremendous sacrifices and service of the members of our Armed Forces and their families, and decrease the burden of regulations that can inhibit the entry of military spouses into the workforce.

SEC. 3. *Promoting Hiring for Military Spouses.* (a) To the greatest extent possible consistent with hiring needs, agencies shall, when filling vacant positions in the competitive service, indicate in job opportunity announcements (JOAs) that they will consider candidates under the military spouse hiring authority in addition to candidates identified on the competitive or merit promotion certificate for the position as well as those candidates identified through any other hiring authority a JOA indicates an agency will consider.

(b) Agencies shall actively advertise and promote the military spouse hiring authority and actively solicit applications from military spouses for posted and other agency positions (including through USAJOBS).

(c) The Office of Personnel Management (OPM) shall consider whether changes to 5 CFR 315.612 are appro-

priate to account for cases in which there are no agency job openings within the geographic area of the permanent duty station of the member of the Armed Forces for which the member’s spouse is qualified.

(d) OPM shall also periodically circulate notifications concerning the military spouse hiring authority and its eligibility requirements to each agency’s Chief Human Capital Officer or the agency’s equivalent officer, for such officer to transmit to appropriate offices and to notify eligible populations. Within 180 days of the date of this order [May 9, 2018], OPM shall post to its website, and circulate to each agency’s Chief Human Capital Officer or the agency’s equivalent officer, information about the military spouse hiring authority. That posting shall include a discussion of section 1131 of the National Defense Authorization Act for Fiscal Year 2017, Public Law 114–328, which amended 5 U.S.C. 3330d(c) to eliminate the time limitation on non-competitive appointment for a relocating spouse of a member of the Armed Forces.

(e) Within 180 days of the date of this order, OPM shall educate agencies concerning the military spouse hiring authority and ensure human resources personnel and hiring managers are briefed on techniques for its effective use. Concurrently, within 180 days of the date of this order, OPM shall provide any additional clarifying guidance it deems appropriate to agencies on provisions of the Telework Enhancement Act of 2010, Public Law 111–292 [enacting chapter 65 and section 5711 of this title and provisions set out as a note under section 6501 of this title and amending provisions set out as a note and provisions listed in a table under section 6120 of this title], and agencies shall ensure that human resources personnel and hiring managers are briefed as needed on techniques for the effective use of telework.

(f) Beginning in Fiscal Year 2019, agencies shall report annually (by December 31 of each year) to OPM and the Department of Labor the number of positions made available under the military spouse hiring authority, the number of applications submitted under the military spouse hiring authority, and the number of military spouses appointed under the military spouse hiring authority during the preceding fiscal year. Such report shall also describe actions taken during that period to advertise the military spouse hiring authority, as well as any other actions taken to promote the hiring of military spouses.

SEC. 4. *Administrative Provisions.* (a) The Director of OPM shall administer this order and shall, in coordination with the Secretary of Labor, through the Assistant to the President for Domestic Policy, provide an annual report to the President regarding the implementation of this order and any recommendations for improving the hiring of military spouses, including steps to enhance the effectiveness of the military spouse hiring authority.

(b) The annual report described in subsection (a) of this section shall also include recommendations, developed in consultation with the Secretary of Defense and the Secretary of Homeland Security, for actions that could be taken to improve license portability and remove barriers to the employment of military spouses.

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

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

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

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

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

DONALD J. TRUMP.

EX. ORD. NO. 14100. ADVANCING ECONOMIC SECURITY FOR MILITARY AND VETERAN SPOUSES, MILITARY CAREGIVERS, AND SURVIVORS

Ex. Ord. No. 14100, June 9, 2023, 88 F.R. 39111, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

SECTION 1. *Policy.* Military-connected families are American working families. Military and veteran families, military caregivers, and survivors face many of the same challenges as their neighbors, but they can carry the additional strains of multiple deployments; frequent moves with little control over their geographic location; caring for wounded, ill, and injured service members or veterans; time apart for training and other demands of military life; and more. The unique demands of military life continue to affect veteran families, military caregivers, and survivors for years after a service member's time in uniform.

Military families, like their civilian counterparts, increasingly look to rely upon dual incomes; however, the 21 percent unemployment rate experienced by active-duty military spouses in the workforce makes that a difficult goal to achieve and maintain. Nearly one in five military families cite challenges with spousal employment as a reason when considering leaving active-duty service. The challenges associated with the military lifestyle, including permanent change-of-station moves every 2 to 3 years on average for active-duty families, mean that military spouses often struggle to find options for work that are portable or allow them to build a sustainable long-term career. Employment challenges are not limited to active-duty spouses, as Reserve and National Guard spouses must balance their careers against the unpredictable nature of the service member's schedule, activations, and deployments. Employment challenges can continue to affect the employability and career trajectory of veteran spouses well after a service member leaves the service.

Recognizing the importance of military family economic well-being to the all-volunteer force, the Federal Government employs more than 16,000 military, veteran, and surviving spouses. As the Nation's largest employer, we must be a model for diversity, equity, inclusion, and accessibility, and, in doing so, we recognize that military spouses are an underserved community. Whether they choose public service, employment in the private sector, or entrepreneurship through building a small business, it is the policy of my Administration to advance economic opportunity for military spouses. My Administration also recognizes the imperative of promoting economic security for military spouses—the vast majority of whom are women—under the National Strategy on Gender Equity and Equality.

In addition, my Administration understands that access to high-quality, affordable child care is a necessity for working families, and a military readiness issue. While the Department of Defense offers the largest employer-sponsored child care network in the country, military families still face challenges related to capacity and non-traditional work schedules. Many military families seeking care outside of the gates of our military bases struggle to find care they can afford. Because access to child care should not be an impediment to service, I have directed the Secretary of Defense to ensure the Fourteenth Quadrennial Review of Military Compensation, undertaken in January 2023, includes an assessment of child care access and cost in its review of military benefits and pay, along with consideration of factors such as the challenge of military spouse unemployment, frequent military moves, and periods of geographic separation between service members and their spouses, including dual military couples.

Military spouses can also be service members themselves, wearing the Nation's uniform in our Active Components, National Guard, or Reserve forces, with a higher percentage of women service members in a dual military marriage than their male counterparts. As we recognize the 75th anniversary of women's integration

into the Armed Forces, my Administration is committed to removing barriers to women's ability to serve, including difficulty in accessing child care, which poses a challenge for both spouses, but disproportionately affects retention for women, especially women in dual military couples, and can play a factor in women's early separation from the Armed Forces.

As we commemorate the 50th anniversary of the all-volunteer force, we must appreciate now more than ever that the commitment and resilience of military-connected families are essential to the recruitment, retention, and readiness of our Armed Forces and the enduring strength of our Nation. Meeting the economic, social, and emotional needs of our military and veteran families, military caregivers, and survivors is a national security imperative. In times of peace and of war, military and veteran families, military caregivers, and survivors have sacrificed much for our country, answering the call to duty time and again. We owe them nothing less than the dignity of a meaningful career and the opportunity to build economic security for their families.

SEC. 2. *Government-wide Military and Veteran Spouse, Military Caregiver, and Survivor Hiring and Retention Strategic Plan and Training.* Given the considerable Federal footprint around many military installations, military spouses are often interested in pursuing careers in the Federal civil service. To ensure that the Federal Government is an employer of choice for military and veteran spouses, military caregivers, and survivors, executive departments and agencies (agencies) must strengthen their ability to recruit, hire, develop, promote, and retain this skilled and diverse pool of talent. To that end:

(a) The Director of the Office of Personnel Management (OPM) and the Deputy Director for Management of the Office of Management and Budget, in consultation with the Secretary of State, the Secretary of Defense, the Secretary of Labor, the Secretary of Veterans Affairs, and the Secretary of Homeland Security, shall develop and issue a Government-wide Military and Veteran Spouse, Military Caregiver, and Survivor Hiring and Retention Strategic Plan (Military-Connected Plan) within 180 days of the date of this order [June 9, 2023] that builds upon the Government-wide plans required by Executive Order 13583 of August 18, 2011 (Establishing a Coordinated Government-Wide Initiative to Promote Diversity and Inclusion in the Federal Workforce) [42 U.S.C. 2000e note], and Executive Order 14035 of June 25, 2021 (Diversity, Equity, Inclusion, and Accessibility in the Federal Workforce) [42 U.S.C. 2000e note]. The Military-Connected Plan shall be updated as appropriate and at a minimum every 4 years. The Military-Connected Plan shall:

(i) define measures of success for the recruitment, hiring, and retention of military and veteran spouses, military caregivers, and survivors based on leading policies and practices in the public, private, and non-profit sectors;

(ii) include plans for OPM to consult with the Department of Defense and the Department of Homeland Security in developing enhanced support for the retention of military spouses in Federal careers, consistent with merit system principles as defined in 5 U.S.C. 2301;

(iii) consistent with merit system principles, identify strategies—including pursuing development of a legislative proposal, as appropriate—to eliminate, where applicable, barriers to the employment of military and veteran spouses, military caregivers, and survivors in the Federal workforce, including with respect to recruitment; hiring, including an assessment of whether to pursue expanded eligibility for derivative preference; promotion; retention; performance evaluations and awards; professional development programs; mentoring programs or sponsorship initiatives; internship, fellowship, and registered apprenticeship programs; employee resource group and affinity group programs; and training, learning, and onboarding programs;

(iv) identify strategies for marketing the talent, experience, and diversity of military and veteran spouses, military caregivers, and survivors to agencies; and

(v) develop a data-driven approach to increasing transparency and accountability in hiring and retention—including by encouraging agencies to set goals for hiring under the Military Spouse Noncompetitive Appointment Authority established by 5 U.S.C. 3330d and hiring individuals eligible for derivative preference, to use data internally to improve performance, and to use data to publicly report on progress—which would build upon, as appropriate, the reporting requirements of Executive Order 13832 of May 9, 2018 (Enhancing Noncompetitive Civil Service Appointments of Military Spouses) [set out above].

(b) Beginning with Fiscal Year 2025, the Director of OPM shall revise the title of the “Employment of Veterans in the Federal Executive Branch” annual report to “Employment of Veterans and Military-Connected Spouses and Survivors in the Federal Executive Branch,” and shall include in the report the existing data previously reported in the “Employment of Veterans in the Federal Executive Branch” report, including statistics on the hiring of military and veteran spouses and survivors in a manner that allows for comparison and analysis of the distinct populations and hiring mechanisms.

(c) The Secretary of Veterans Affairs and the Director of OPM shall collaborate on opportunities to better share Federal employee survey data to enable analysis and reporting relevant to the employment of military and veteran spouses and survivors.

(d) In collaboration with the Director of OPM and consistent with 5 U.S.C. 4103, agencies shall provide annual training for agency human resources personnel and hiring managers concerning the employment of military and veteran spouses, military caregivers, and survivors, including training on special authorities for the hiring of military spouses and survivors, and the provision of tools to build the agencies’ capacity to make use of applicable hiring authorities, including distribution of the Joining Forces military spouse hiring toolkit, which OPM shall publish on the FedHireVets website.

(e) The Office of Science and Technology Policy (OSTP) National Science and Technology Council Subcommittee on Equitable Data, as designated by Executive Order 14091 of February 16, 2023 (Further Advancing Racial Equity and Support for Underserved Communities Through the Federal Government) [5 U.S.C. 601 note], shall develop recommendations on ways in which agencies can expand Federal datasets to track outcomes for military and veteran spouses, military caregivers, and survivors. Such recommendations shall be included in the Director of OSTP’s reports to the White House Steering Committee on Equity under section 9 of Executive Order 14091.

(f) The Secretaries of Defense, Labor, Veterans Affairs, and Homeland Security shall work together through existing interagency collaborations, including the Transition Assistance Program, to increase training and employment opportunities for military spouses in the workforce through the transition to veteran spouse status.

SEC. 3. *Updates to Federal Training and Hiring Authorities.* To strengthen the ability of the Federal Government to train, develop, and hire military and veteran spouses and survivors:

(a) Beginning with Fiscal Year 2025, agencies shall list the Military Spouse Noncompetitive Appointment Authority established by 5 U.S.C. 3330d when soliciting applications from outside of their workforce for positions announced on USAJOBS or other job posting sites. This requirement applies when using merit promotion procedures to fill competitive service positions.

(b) The Secretary of Labor shall examine the eligibility of military and veteran spouses for programs that provide education, job training, employment services, employer engagement, and other relevant programs, and, as appropriate, shall work to reduce barriers that military and veteran spouses may face in accessing those programs.

(c) The Director of OPM shall examine the eligibility criteria for the Recent Graduates Program established

by section 2 of Executive Order 13562 of December 27, 2010 (Recruiting and Hiring Students and Recent Graduates) [5 U.S.C. 3301 note], and, as appropriate, including by recommending Presidential action as necessary, shall work to reduce barriers that military spouses may face in accessing the Program.

SEC. 4. *Retention of Military and Veteran Spouses and Military Caregivers, Including Those Employed by the Federal Government.* In order to support military and veteran spouses and military caregivers, including those who are employed by the Federal Government:

(a) The Director of OPM shall issue guidance to agencies:

(i) reinforcing existing telework and remote work flexibility options pursuant to 5 U.S.C. 6502 for Federal employees, including military spouses and military caregivers, and encouraging agency leaders to consider these as options for retaining Federal employee military spouses and military caregivers;

(ii) encouraging agencies to support the policies set forth in section 1 of this order by granting up to 5 days of administrative leave to military spouses during a geographic relocation occurring as directed by a service member’s orders; and

(iii) encouraging agencies to collaborate so that a military spouse or military caregiver Federal employee may be placed in another Federal agency position when arrangements to retain a military spouse or military caregiver—including following changes to support continuity of care or relocation due to permanent change-of-station orders for the active-duty service member—are unavailable to allow them to continue in their existing position.

(b) The Secretary of State and the Secretary of Defense, when reevaluating or entering agreements with host nations, shall consider work options for military spouses who are performing remote work for non-Department of Defense entities, so as to reduce barriers for military spouses seeking to continue their private sector- or self-employment.

(c) The Secretary of Defense shall coordinate with the heads of the Military Departments, and the Secretary of Homeland Security shall coordinate with the Commandant of the United States Coast Guard, to amend their respective legal assistance instructions to allow for consultation, advice, and assistance to military families on Status of Forces Agreements and other agreements with host nations affecting family employment, so as to provide support for military spouses navigating complex employment requirements related to working remotely while their active-duty service member spouse is stationed overseas. Those amendments shall specify that legal assistance is limited to the personal civil legal affairs of military dependents affected by employment restrictions related to a Status of Forces Agreement or other host nation agreement, and does not extend to their employers or the establishment, management, or taxation of small business organizations.

SEC. 5. *Domestic Employees Teleworking Overseas Policy.* In order to ensure that military spouses are able to equitably and reasonably access opportunities for remote work in their Federal jobs when their service-member spouse receives orders overseas, promote togetherness for military families, and enable agencies that employ military spouses—resilient and talented civil servants—to retain them, the following improvements shall be made to the Domestic Employees Teleworking Overseas (DETO) program implemented by agencies pursuant to the National Defense Authorization Act for Fiscal Year 2022 (Public Law 117–81) [see Tables for classification]:

(a) The Secretary of State and the Secretary of Defense shall enter into a Memorandum of Understanding (MOU) to address residential security and safety requirements for military spouses employed by the Federal Government and working overseas through the DETO program. The MOU shall be communicated to sponsoring agencies, and the Secretaries of State and Defense shall develop appropriate guidance to commu-

nicate the provisions of the MOU to military spouses who are civilian employees of the Federal Government.

(b) To promote consistency and effective coordination in the implementation of the DETO program across the executive branch, agencies shall:

(i) develop common standards for DETO policies, including identification of points of contact and creation of guidelines to ensure that such policies are communicated and advertised in a manner accessible to military spouse employees;

(ii) establish a DETO application system and develop a method to track DETO applications received and processed, as well as application processing timelines; and

(iii) establish time frames for DETO application processing and approvals, considering the time-sensitive nature of decisions for applications by military spouses due to permanent change-of-station moves and other factors unique to military families.

**SEC. 6. *Expanding Support for Military and Veteran Spouse Entrepreneurs.*** Many military spouses start their own businesses because of a need for flexibility or inability to find or maintain other employment. When military spouses must discontinue their businesses, however, they often cite military moves, rather than lack of profitability, as the reason. To support military spouse entrepreneurs in starting and sustaining their businesses, the Administrator of the Small Business Administration shall:

(a) expand access to resources tailored to military and veteran spouses who are interested in starting or growing a small business, including guidance to help military spouses with relocating a business following a military move; and

(b) evaluate access to capital gaps for military spouse entrepreneurs.

**SEC. 7. *Child Care for Military Families.*** The Department of Defense operates the largest employer-sponsored child care program in the United States in order to provide military families with support that is essential to overall mission readiness, retention, and recruitment. To build on the existing support and ensure that military families have access to affordable, high-quality child care allowing both the service member and the spouse to pursue professional opportunities, the Secretary of Defense shall:

(a) in coordination with the Director of OPM, establish flexible spending accounts for the care of military dependents, available to military personnel no later than January 1, 2024; and

(b) expand pathways for military spouses to provide certified, home-based child care on military installations, including by providing them with support in seeking licensure and achieving government-mandated quality benchmarks.

**SEC. 8. *Definitions.*** For the purposes of this order:

(a) The term “active duty” has the meaning set forth in 10 U.S.C. 101(d)(1), except that the term also includes “active Guard and Reserve duty,” as defined in 10 U.S.C. 101(d)(6)(a).

(b) The term “agency” means any authority of the United States that is an “agency” under 44 U.S.C. 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(5).

(c) The term “derivative preference” means those who are “preference eligible,” as defined in 5 U.S.C. 2108(3), because they are eligible spouses and parents who use a veteran’s preference when the veteran is unable to do so.

(d) The term “military caregiver” means the spouse, child, parent, or next of kin of a veteran who is the primary caregiver for a veteran undergoing medical treatment, recuperation, or therapy for a serious injury or illness who was a member of the Armed Forces (including a member of the National Guard or Reserves) and who was discharged or released under conditions other than dishonorable.

(e) The term “military spouse” means an individual married to a member of the Armed Forces who is performing active duty.

(f) The term “survivor” means the spouse, child, parent, or next of kin of a service member who died while on active duty, or from a service-connected disability following discharge or release under conditions other than dishonorable.

(g) The term “veteran spouse” means an individual married to a retired or separated member of the Armed Forces who was discharged or released under conditions other than dishonorable, so long as the marriage occurred prior to or during the service member’s active service.

**SEC. 9. *General Provisions.*** (a) Nothing in this order shall be construed to impair or otherwise affect:

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

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

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

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

J.R. BIDEN, JR.

### **§ 3330e. Review of official personnel file of former Federal employees before rehiring**

(a) If a former Government employee is a candidate for a position within the competitive service or the excepted service, prior to making any determination with respect to the appointment or reinstatement of such employee to such position, the appointing authority shall review and consider merit-based information relating to such employee’s former period or periods of service such as official personnel actions, employee performance ratings, and disciplinary actions, if any, in such employee’s official personnel record file.

(b) In subsection (a), the term “former Government employee” means an individual whose most recent position with the Government prior to becoming a candidate as described under subsection (a) was within the competitive service or the excepted service.

(c) The Office of Personnel Management shall prescribe regulations to carry out the purpose of this section. Such regulations may not contain provisions that would increase the time required for agency hiring actions.

(Added Pub. L. 114–328, div. A, title XI, § 1136(a), Dec. 23, 2016, 130 Stat. 2460.)

### **Statutory Notes and Related Subsidiaries**

#### **EFFECTIVE DATE**

Pub. L. 114–328, div. A, title XI, § 1136(b), Dec. 23, 2016, 130 Stat. 2460, provided that: “The amendment made by subsection (a) [enacting this section] shall apply to any former Government employee (as described in section 3330e of title 5, United States Code, as added by such subsection) appointed or reinstated on or after the date that is 180 days after the date of enactment of this Act [Dec. 23, 2016].”

### **§ 3330f. Government policy and supporting position data**

(a) **DEFINITIONS.**—In this section:

(1) **AGENCY.**—The term “agency” means—

(A) any Executive agency, the United States Postal Service, and the Postal Regulatory Commission;

(B) the Architect of the Capitol, the Government Accountability Office, the Government Publishing Office, and the Library of Congress; and

(C) the Executive Office of the President and any component within that Office (including any successor component), including—

- (i) the Council of Economic Advisors;
- (ii) the Council on Environmental Quality;
- (iii) the National Security Council;
- (iv) the Office of the Vice President;
- (v) the Office of Policy Development;
- (vi) the Office of Administration;
- (vii) the Office of Management and Budget;
- (viii) the Office of the United States Trade Representative;
- (ix) the Office of Science and Technology Policy;
- (x) the Office of National Drug Control Policy; and
- (xi) the White House Office, including the White House Office of Presidential Personnel.

(2) APPOINTEE.—The term “appointee”—

(A) means an individual serving in a policy and supporting position; and

(B) includes an individual serving in such a position temporarily in an acting capacity in accordance with—

- (i) sections 3345 through 3349d (commonly referred to as the “Federal Vacancies Reform Act of 1998”);
- (ii) any other statutory provision described in section 3347(a)(1); or
- (iii) a Presidential appointment described in section 3347(a)(2).

(3) COVERED WEBSITE.—The term “covered website” means the website established and maintained by the Director under subsection (b).

(4) DIRECTOR.—The term “Director” means the Director of the Office of Personnel Management.

(5) POLICY AND SUPPORTING POSITION.—The term “policy and supporting position”—

(A) means any position at an agency, as determined by the Director, that, but for this section and section 2(b)(3) of the PLUM Act of 2022, would be included in the publication entitled “United States Government Policy and Supporting Positions”, (commonly referred to as the “Plum Book”); and

(B) may include—

- (i) a position on any level of the Executive Schedule under subchapter II of chapter 53, or another position with an equivalent rate of pay;
- (ii) a general position (as defined in section 3132(a)(9)) in the Senior Executive Service;
- (iii) a position in the Senior Foreign Service;
- (iv) a position of a confidential or policy-determining character under schedule C of subpart C of part 213 of title 5, Code of Federal Regulations, or any successor regulation; and

(v) any other position classified at or above level GS-14 of the General Schedule (or equivalent) that is excepted from the competitive service by law because of the confidential or policy-determining nature of the position duties.

(b) ESTABLISHMENT OF WEBSITE.—Not later than 1 year after the date of enactment of the PLUM Act of 2022, the Director shall establish, and thereafter the Director shall maintain, a public website containing the following information for the President in office on the date of establishment and for each subsequent President:

(1) Each policy and supporting position in the Federal Government, including any such position that is vacant.

(2) The name of each individual who—

(A) is serving in a position described in paragraph (1); or

(B) previously served in a position described in such paragraph under the applicable President.

(3) Information on—

(A) any Government-wide or agency-wide limitation on the total number of positions in the Senior Executive Service under section 3133 or 3134 or the total number of positions under schedule C of subpart C of part 213 of title 5, Code of Federal Regulations; and

(B) the total number of individuals occupying such positions.

(c) CONTENTS.—With respect to any policy and supporting position listed on the covered website, the Director shall include—

(1) the agency, and agency component, (including the agency and bureau code used by the Office of Management and Budget) in which the position is located;

(2) the name of the position;

(3) the name of the individual occupying the position (if any);

(4) the geographic location of the position, including the city, State or province, and country;

(5) the pay system under which the position is paid;

(6) the level, grade, or rate of pay;

(7) the term or duration of the appointment (if any);

(8) the expiration date, in the case of a time-limited appointment;

(9) a unique identifier for each appointee;

(10) whether the position is vacant; and

(11) for any position that is vacant—

(A) for a position for which appointment is required to be made by the President, by and with the advice and consent of the Senate, the name of the acting official; and

(B) for other positions, the name of the official performing the duties of the vacant position.

(d) CURRENT DATA.—For each agency, the Director shall indicate in the information on the covered website the date that the agency last updated the data.

(e) FORMAT.—The Director shall make the data on the covered website available to the public at no cost over the internet in a search-

able, sortable, downloadable, and machine-readable format so that the data qualifies as an open Government data asset, as defined in section 3502 of title 44.

(f) AUTHORITY OF DIRECTOR.—

(1) INFORMATION REQUIRED.—Each agency shall provide to the Director any information that the Director determines necessary to establish and maintain the covered website, including the information uploaded under paragraph (4).

(2) REQUIREMENTS FOR AGENCIES.—Not later than 1 year after the date of enactment of the PLUM Act of 2022, the Director shall issue instructions to agencies with specific requirements for the provision or uploading of information required under paragraph (1), including—

(A) specific data standards that an agency shall follow to ensure that the information is complete, accurate, and reliable;

(B) data quality assurance methods; and

(C) the timeframe during which an agency shall provide or upload the information, including the timeframe described under paragraph (4).

(3) PUBLIC ACCOUNTABILITY.—The Director shall identify on the covered website any agency that has failed to provide—

(A) the information required by the Director;

(B) complete, accurate, and reliable information; or

(C) the information during the timeframe specified by the Director.

(4) ANNUAL UPDATES.—

(A) IN GENERAL.—Not later than 90 days after the date on which the covered website is established, and not less than once during each year thereafter, the head of each agency shall upload to the covered website updated information (if any) on—

(i) the policy and supporting positions in the agency;

(ii) the appointees occupying such positions in the agency; and

(iii) the former appointees who served in such positions in the agency under the President then in office.

(B) SUPPLEMENT NOT SUPPLANT.—Information provided under subparagraph (A) shall supplement, not supplant, previously provided information under that subparagraph.

(5) OPM HELP DESK.—The Director shall establish a central help desk, to be operated by not more than 1 full-time employee, to assist any agency with implementing this section.

(6) COORDINATION.—The Director may designate 1 or more agencies to participate in the development, establishment, operation, and support of the covered website. With respect to any such designation, the Director may specify the scope of the responsibilities of the agency so designated.

(7) DATA STANDARDS AND TIMING.—The Director shall make available on the covered website information regarding data collection standards, quality assurance methods, and time frames for reporting data to the Director.

(8) REGULATIONS.—The Director may prescribe regulations necessary for the administration of this section.

(g) RESPONSIBILITY OF AGENCIES.—

(1) PROVISION OF INFORMATION.—Each agency shall comply with the instructions and guidance issued by the Director to carry out this section, and, upon request of the Director, shall provide appropriate assistance to the Director to ensure the successful operation of the covered website in the manner and within the timeframe specified by the Director under subsection (f)(2).

(2) ENSURING COMPLETENESS, ACCURACY, AND RELIABILITY.—With respect to any submission of information described in paragraph (1), the head of an agency shall include—

(A) an explanation of how the agency ensured the information is complete, accurate, and reliable; and

(B) a certification that the information is complete, accurate, and reliable.

(h) INFORMATION VERIFICATION.—

(1) CONFIRMATION.—

(A) IN GENERAL.—On the date that is 90 days after the date on which the covered website is established, the Director, in coordination with the White House Office of Presidential Personnel, shall confirm that the information on the covered website is complete, accurate, reliable, and up-to-date.

(B) CERTIFICATION.—On the date on which the Director makes a confirmation under subparagraph (A), the Director shall publish on the covered website a certification that the confirmation has been made.

(2) AUTHORITY OF DIRECTOR.—In carrying out paragraph (1), the Director may—

(A) request additional information from an agency; and

(B) use any additional information provided to the Director or the White House Office of Presidential Personnel for the purposes of verification.

(3) PUBLIC COMMENT.—The Director shall establish a process under which members of the public may provide feedback regarding the accuracy of the information on the covered website.

(i) DATA ARCHIVING.—

(1) IN GENERAL.—As soon as practicable after a transitional inauguration day (as defined in section 3349a), the Director, in consultation with the Archivist of the United States, shall archive the data that was compiled on the covered website for the preceding presidential administration.

(2) PUBLIC AVAILABILITY.—The Director shall make the data described in paragraph (1) publicly available over the internet—

(A) on, or through a link on, the covered website;

(B) at no cost; and

(C) in a searchable, sortable, downloadable, and machine-readable format.

(Added Pub. L. 117–263, div. E, title LIII, § 5322(a)(1), Dec. 23, 2022, 136 Stat. 3255.)

**Editorial Notes**

## REFERENCES IN TEXT

Section 2(b)(3) of the PLUM Act of 2022, referred to in subsec. (a)(5)(A), probably means section 5322(b)(3) of Pub. L. 117-263, which is set out in a note under this section. The PLUM Act of 2022 is subtitle B of title LIII of div. E of Pub. L. 117-263, the second section of which is section 5322.

The General Schedule, referred to in subsec. (a)(5)(B)(v), is set out under section 5332 of this title.

The date of enactment of the PLUM Act of 2022, referred to in subssecs. (b) and (f)(2), is the date of enactment of subtitle B of title LIII of div. E of Pub. L. 117-263, which was approved Dec. 23, 2022.

**Statutory Notes and Related Subsidiaries**

## OTHER MATTERS RELATING TO PUBLIC WEBSITE

Pub. L. 117-263, div. E, title LIII, § 5322(b), Dec. 23, 2022, 136 Stat. 3259, provided that:

“(1) DEFINITIONS.—In this subsection, the terms ‘agency’, ‘covered website’, ‘Director’, and ‘policy and supporting position’ have the meanings given those terms in section 3330f of title 5, United States Code, as added by subsection (a).

“(2) GAO REVIEW AND REPORT.—Not later than 1 year after the date on which the Director establishes the covered website, the Comptroller General of the United States shall conduct a review of, and issue a briefing or report on, the implementation of this subtitle [subtitle B (§§ 5321, 5322) of title LIII of div. E of Pub. L. 117-263, enacting this section and provisions set out as a note under section 101 of this title] and the amendments made by this subtitle, which shall include—

“(A) the quality of data required to be collected and whether the data is complete, accurate, timely, and reliable;

“(B) any challenges experienced by agencies in implementing this subtitle and the amendments made by this subtitle; and

“(C) any suggestions or modifications to enhance compliance with this subtitle and the amendments made by this subtitle, including best practices for agencies to follow.

“(3) SUNSET OF PLUM BOOK.—Beginning on January 1, 2026—

“(A) the covered website shall serve as the public directory for policy and supporting positions in the Government; and

“(B) the publication entitled ‘United States Government Policy and Supporting Positions’, commonly referred to as the ‘Plum Book’, shall no longer be issued or published.

“(4) FUNDING.—

“(A) IN GENERAL.—No additional amounts are authorized to be appropriated to carry out this subtitle or the amendments made by this subtitle.

“(B) OTHER FUNDING.—The Director shall carry out this subtitle and the amendments made by this subtitle using amounts otherwise available to the Director.”

**SUBCHAPTER II—OATH OF OFFICE****§ 3331. Oath of office**

An individual, except the President, elected or appointed to an office of honor or profit in the civil service or uniformed services, shall take the following oath: “I, AB, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the

office on which I am about to enter. So help me God.” This section does not affect other oaths required by law.

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

## HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 16.	R.S. § 1757. May 13, 1884, ch. 46, §§ 2, 3, 23 Stat. 22.

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

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

**§ 3332. Officer affidavit; no consideration paid for appointment**

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

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

## HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 21a.	Dec. 11, 1926, ch. 4, § 1, 44 Stat. 918. Mar. 2, 1927, ch. 284, 44 Stat. 1346. Sept. 23, 1950, ch. 1010, § 10, 64 Stat. 987.

The section is restated for clarity and conciseness. The term “officer” is coextensive with and substituted for “Each individual appointed hereafter as a civil officer of the United States by the President, by and with the advice and consent of the Senate, or by the President alone, or by a court of law, or by the head of a department” in view of the definition of “officer” in section 2104.

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

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

(a) Except as provided by subsection (b) of this section, an individual who accepts office or employment in the Government of the United States or in the government of the District of Columbia shall execute an affidavit within 60 days after accepting the office or employment that his acceptance and holding of the office or employment does not or will not violate section 7311 of this title. The affidavit is prima facie evidence that the acceptance and holding of office