

positions to which appointments are made by nomination for confirmation by the Senate when specifically included therein by statute.

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

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

#### HISTORICAL AND REVISION NOTES

Derivation	U.S. Code	Revised Statutes and Statutes at Large
(a) .....	5 U.S.C. 638 (less applicability to appointment and promotion).	Jan. 16, 1883, ch. 27, §7 (less applicability to appointment and promotion), 22 Stat. 406.

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

Subsection (a)(1) is based on former section 638, which placed positions in the executive branch of the Government generally in the competitive service by the requirement that employment be predicated on passing an examination or being exempted from examination, and section 1 of the Act of Nov. 26, 1940, ch. 919, title I, 54 Stat. 1211 (see table III), which authorized the President, subject to certain exceptions, to place in the classified civil service positions in the Executive departments, independent establishments, and other agencies of the Government. In that Act the word “executive” has been construed to modify “departments”, “independent establishments”; and “other agency”. This construction is supported by the language of the Act of Jan. 16, 1883, and is embodied in Civil Service Rule I. Acting under this statute, the President has placed all but a comparatively few of the positions covered by the Act of Nov. 26, 1940, in the competitive service. The remainder are covered by the exceptions contained in the Civil Service Rules and Regulations. The authority of the President conferred by the Act of Nov. 26, 1940, has been superseded in part by exceptions created by statutes enacted after that date. The effect of these exceptions and the power conferred on the President by former section 633(2)(8) (last sentence) to make exceptions to the Civil Service Rules are preserved by the words “positions which are specifically excepted from the competitive service by or under statute”.

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

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

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

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

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

#### Editorial Notes

##### AMENDMENTS

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

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 1978 AMENDMENT

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

#### § 2103. The excepted service

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

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

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

#### HISTORICAL AND REVISION NOTES

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

#### Editorial Notes

##### AMENDMENTS

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

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 1978 AMENDMENT

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

#### § 2104. Officer

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

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

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

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

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

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

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

## HISTORICAL AND REVISION NOTES

The section is supplied for convenience.

## Editorial Notes

## AMENDMENTS

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

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

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

## Statutory Notes and Related Subsidiaries

## EFFECTIVE DATE OF 1970 AMENDMENT

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

## § 2105. Employee

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

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

(A) the President;

(B) a Member or Members of Congress, or the Congress;

(C) a member of a uniformed service;

(D) an individual who is an employee under this section;

(E) the head of a Government controlled corporation; or

(F) an adjutant general designated by the Secretary concerned under section 709(c) of title 32;

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

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

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

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

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

(A) section 7204;

(B) as otherwise specifically provided in this title;

(C) the Fair Labor Standards Act of 1938;

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

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

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

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

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

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

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

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 409; Pub. L. 90-486, § 4, Aug. 13, 1968, 82 Stat. 757; Pub. L. 91-375, § 6(c)(4), Aug. 12, 1970, 84 Stat. 775; Pub. L. 92-392, § 2, Aug. 19, 1972, 86 Stat. 573; Pub. L. 95-454, title VII, § 703(c)(2), title IX, § 906(a)(2), Oct. 13, 1978, 92 Stat. 1217, 1224; Pub. L. 96-54, § 2(a)(5), (6), Aug. 14, 1979, 93 Stat. 381; Pub. L. 99-335, title II, § 207(a), June 6, 1986, 100 Stat. 594; Pub. L. 99-638, § 2(b)(1), Nov. 10, 1986, 100 Stat. 3536; Pub. L. 101-508, title VII, § 7202(b), Nov. 5, 1990, 104 Stat. 1388-335; Pub. L. 103-3, title II, § 201(b), Feb. 5, 1993, 107 Stat. 23; Pub. L. 103-424, § 7, Oct. 29, 1994, 108 Stat. 4364; Pub. L. 104-201, div. A, title III, § 370(b), Sept. 23, 1996, 110 Stat. 2499; Pub. L. 105-85, div. B, title XXVIII, § 2871(c)(2), Nov. 18, 1997, 111 Stat. 2015; Pub. L. 109-435, title VI, § 604(f), Dec. 20, 2006, 120 Stat. 3242; Pub. L. 113-66, div. A, title VI, § 642, Dec. 26, 2013, 127 Stat. 787.)

## HISTORICAL AND REVISION NOTES

Derivation	U.S. Code	Revised Statutes and Statutes at Large
(b) .....	[Uncodified].	Aug. 5, 1939, ch. 448, § 2, 53 Stat. 1210.
	[Uncodified].	Dec. 3, 1945, ch. 510, § 2, 59 Stat. 590.
	[Uncodified].	Dec. 28, 1945, ch. 593, § 2, 59 Stat. 660.
	[Uncodified].	Dec. 28, 1945, ch. 594, § 2, 59 Stat. 660.
	[Uncodified].	July 26, 1946, ch. 675, § 2 (last proviso), 60 Stat. 704.