

**Statutory Notes and Related Subsidiaries**

EFFECTIVE DATE

Section effective 30 days after Oct. 21, 1998, and applicable to any office that becomes vacant after such effective date, with certain exceptions, see section 151(d) of Pub. L. 105-277, set out as a note under section 3345 of this title.

**§ 3349e. Presidential explanation of failure to nominate an inspector general**

If the President fails to make a formal nomination for a vacant inspector general position that requires a formal nomination by the President to be filled within the period beginning on the later of the date on which the vacancy occurred or on which a nomination is rejected, withdrawn, or returned, and ending on the day that is 210 days after that date, the President shall communicate, within 30 days after the end of such period and not later than June 1 of each year thereafter, to the appropriate congressional committees, as defined in section 12 of the Inspector General Act of 1978 (5 U.S.C. App.)<sup>1</sup>—

- (1) the reasons why the President has not yet made a formal nomination; and
- (2) a target date for making a formal nomination.

(Added Pub. L. 117-263, div. E, title LII, § 5221(a), Dec. 23, 2022, 136 Stat. 3234.)

**Editorial Notes**

REFERENCES IN TEXT

Section 12 of the Inspector General Act of 1978, referred to in text, is section 12 of Pub. L. 95-452, which was set out in the Appendix to this title and was repealed and restated as section 401 of this title by Pub. L. 117-286, §§ 3(b), 7, Dec. 27, 2022, 136 Stat. 4207, 4361. For definition of “appropriate congressional committees”, see Amendments Not Shown in Text note set out under section 401 of this title.

**Statutory Notes and Related Subsidiaries**

EFFECTIVE DATE

Pub. L. 117-263, div. E, title LII, § 5221(c), Dec. 23, 2022, 136 Stat. 3234, provided that: “The amendment made by subsection (a) [enacting this section] shall take effect—  
“(1) on the date of enactment of this Act [Dec. 23, 2022] with respect to any vacancy first occurring on or after that date; and  
“(2) on the day that is 210 days after the date of enactment of this Act with respect to any vacancy that occurred before the date of enactment of this Act.”

SUBCHAPTER IV—TRANSFERS

**§ 3351. Preference eligibles; transfer; physical qualifications; waiver**

In determining qualifications of a preference eligible for transfer to another position in the competitive service, an Executive agency, or the government of the District of Columbia, the Office of Personnel Management or other examining agency shall waive—

- (1) requirements as to age, height, and weight, unless the requirement is essential to the performance of the duties of the position; and

<sup>1</sup> See References in Text note below.

(2) physical requirements if, in the opinion of the Office or other examining agency, after considering the recommendation of an accredited physician, the preference eligible is physically able to perform efficiently the duties of the position.

This section does not apply to an appointment required by Congress to be confirmed by, or made with the advice and consent of, the Senate.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 426; Pub. L. 94-183, § 2(4), Dec. 31, 1975, 89 Stat. 1057; Pub. L. 95-454, title IX, § 906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1224.)

HISTORICAL AND REVISION NOTES

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

The section is restated to conform to section 3312.

The words “in the competitive service, an Executive agency, or the government of the District of Columbia” are added on authority of former sections 851, 858, and 869, which are carried into this title. The last sentence is added on authority of former section 869.

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

**Editorial Notes**

AMENDMENTS

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

1975—Pub. L. 94-183 struck out “, except an appointment made under section 3311 of title 39” after “or made with the advice and consent of, the Senate”.

**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.

**§ 3352. Preference in transfers for employees making certain disclosures**

(a) Subject to the provisions of subsections (d) and (e), in filling a position within any Executive agency, the head of such agency may give preference to any employee of such agency, or any other Executive agency, to transfer to a position of the same status and tenure as the position of such employee on the date of applying for a transfer under subsection (b) if—

- (1) such employee is otherwise qualified for such position;
- (2) such employee is eligible for appointment to such position; and
- (3) the Merit Systems Protection Board makes a determination under the provisions of chapter 12 that a prohibited personnel action described under section 2302(b)(8) was taken against such employee.

(b) An employee who meets the conditions described under subsection (a)(1), (2), and (3) may voluntarily apply for a transfer to a position, as