

shall identify each agency that does not agree to participate in the program and the reasons of the head of that agency for not agreeing to participate.

“(c) DEFINITIONS.—For purposes of this section:

“(1) The term ‘agency’ means an Executive agency as defined in section 105 of title 5, United States Code, except that such term does not include the Government Accountability Office.

“(2) The term ‘Federal employees affected by reductions in force’ means Federal employees who are separated, or are scheduled to be separated, from service under a reduction in force pursuant to—

“(A) regulations prescribed under section 3502 of title 5, United States Code; or

“(B) procedures established under section 3595 of such title.”

SPECIAL RULE ON APPLICATION OF SUBSECTIONS (d) AND (e)

Section 4433(b) of Pub. L. 102-484, as amended by Pub. L. 103-337, div. A, title III, §341(a), Oct. 5, 1994, 108 Stat. 2720, provided that:

“(1) The provisions of section 3502(d) and (e) of title 5, United States Code (as added by subsection (a)) shall apply to employees of the Department of Defense according to their terms, except that, with respect to any reduction in force within that agency that would involve the separation of a significant number of employees (as determined under paragraph (1)(B) of such section 3502(d)), any reference in such section 3502(d) to ‘60 days’ shall, in the case of the employees described in paragraph (2), be deemed to read ‘120 days’.

“(2) The employees described in this paragraph are those employees of the Department of Defense who are to be separated, due to a reduction in force described in paragraph (1), effective on or after the last day of the 90-day period referred to in subsection (a)(2) [see Effective Date of 1992 Amendment note above] and before February 1, 2000.

“(3) Nothing in this subsection shall prevent the application of the amendment made by subsection (a) [amending this section] with respect to an employee if—

“(A) the preceding paragraphs of this subsection do not apply with respect to such employee; and

“(B) the amendment made by subsection (a) would otherwise apply with respect to such employee.

“(4) The Secretary of Defense shall prescribe such regulations as may be necessary to carry out this subsection.”

INDIAN PREFERENCE LAWS APPLICABLE TO BUREAU OF INDIAN AFFAIRS AND INDIAN HEALTH SERVICE POSITIONS

Applicability of Indian preference laws to Bureau of Indian Affairs and Indian Health Service positions for purposes of reduction-in-force procedures under subsec. (a) of this section, see section 472a(a) of Title 25, Indians.

EX. ORD. NO. 12828. DELEGATION OF CERTAIN PERSONNEL MANAGEMENT AUTHORITIES

Ex. Ord. No. 12828, Jan. 5, 1993, 58 F.R. 2965, as amended by Ex. Ord. No. 13415, §2(b), Dec. 1, 2006, 71 F.R. 70641, 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 of the United States Code and sections 3502(e), 4505a(e), and 5377(1)(2) of title 5 of the United States Code, it is hereby ordered as follows:

SECTION 1. The Office of Personnel Management is designated and empowered to exercise, without the approval, ratification, or other action of the President, the following:

(1) The authority of the President under 5 U.S.C. 3502(e), as added by section 4433 of Public Law 102-484, to shorten the period of advance notice otherwise required by law with respect to reductions in force.

(2) The authority of the President under 5 U.S.C. 4505a(e), as added by section 2(19) of Public Law 102-378, to permit performance-based cash awards to be paid to categories of employees who would not otherwise be eligible.

SEC. 2. This order shall be effective immediately.

§ 3503. Transfer of functions

(a) When a function is transferred from one agency to another, each competing employee in the function shall be transferred to the receiving agency for employment in a position for which he is qualified before the receiving agency may make an appointment from another source to that position.

(b) When one agency is replaced by another, each competing employee in the agency to be replaced shall be transferred to the replacing agency for employment in a position for which he is qualified before the replacing agency may make an appointment from another source to that position.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 429; Pub. L. 95-454, title III, §307(f), Oct. 13, 1978, 92 Stat. 1149; Pub. L. 96-54, §2(a)(18), 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> |
|-------------------|-------------------------------|---|
| | 5 U.S.C. 861(a) (3d proviso). | June 27, 1944, ch. 287, §12 (3d proviso), 58 Stat. 390. |

In subsection (a), the words “a function” are substituted for “any or all of the functions”. The word “receiving” is substituted for “replacing” in the phrase “receiving agency” to avoid confusion with subsection (b).

In subsections (a) and (b), the word “first” in the phrase “shall first be transferred” is omitted as redundant in view of the subsequent limitation imposed by the words following “before”. The words “make an appointment from another source to that position” are substituted for “appoint additional employees from any other source for such position”.

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

AMENDMENTS

1979—Subsecs. (a), (b). Pub. L. 96-54 substituted “competing employee” for “preference eligible employed”.

1978—Subsecs. (a), (b). Pub. L. 95-454 which directed the substitution of “competing employee” for “preference eligible employee” was impossible to execute literally because the text contained reference to “preference eligible employed”. See 1979 Amendment note above.

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.

§ 3504. Preference eligibles; retention; physical qualifications; waiver

(a) In determining qualifications of a preference eligible for retention in a position in the competitive service, an Executive agency, or the

government of the District of Columbia, the Office of Personnel Management or other examining agency shall waive—

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

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

(b) If an examining agency determines that, on the basis of evidence before it, a preference eligible described in 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 the 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. 429; Pub. L. 95-454, title III, §307(g), title IX, §906(a)(2), (3), Oct. 13, 1978, 92 Stat. 1149, 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 retention). | June 27, 1944, ch. 287, §5 (1st 2 sentences, so much as relates to retention), 58 Stat. 388. |

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 words “preference eligible” are substituted for “veteran”.

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

AMENDMENTS

1978—Pub. L. 95-454 designated existing provisions as subsec. (a), substituted “Office of Personnel Management” for “Civil Service Commission” and “Office” for “Commission”, and added subsec. (b).

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.

SUBCHAPTER II—VOLUNTARY SEPARATION INCENTIVE PAYMENTS

PRIOR PROVISIONS

A prior subchapter II of this chapter consisting of section 3551, related to restoration of positions of Federal and District of Columbia employees upon release from duty in Reserves or National Guard, prior to repeal by Pub. L. 103-353, §§2(b)(2)(B), 8, Oct. 13, 1994, 108 Stat. 3169, 3175, effective with respect to reemployments initiated on or after first day after 60-day period beginning Oct. 13, 1994, with transition rules.

§ 3521. Definitions

In this subchapter, the term—

(1) “agency” means an Executive agency as defined under section 105 (other than the Government Accountability Office); and

(2) “employee”—

(A) means an employee as defined under section 2105 employed by an agency and an individual employed by a county committee established under section 8(b)(5) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)(5)) who—

(i) is serving under an appointment without time limitation; and

(ii) has been currently employed for a continuous period of at least 3 years; and

(B) shall not include—

(i) a reemployed annuitant under subchapter III of chapter 83 or 84 or another retirement system for employees of the Government;

(ii) an employee having a disability on the basis of which such employee is or would be eligible for disability retirement under subchapter III of chapter 83 or 84 or another retirement system for employees of the Government;

(iii) an employee who is in receipt of a decision notice of involuntary separation for misconduct or unacceptable performance;

(iv) an employee who has previously received any voluntary separation incentive payment from the Federal Government under this subchapter or any other authority;

(v) an employee covered by statutory reemployment rights who is on transfer employment with another organization; or

(vi) any employee who—

(I) during the 36-month period preceding the date of separation of that employee, performed service for which a student loan repayment benefit was or is to be paid under section 5379;

(II) during the 24-month period preceding the date of separation of that employee, performed service for which a recruitment or relocation bonus was or is to be paid under section 5753; or

(III) during the 12-month period preceding the date of separation of that employee, performed service for which a retention bonus was or is to be paid under section 5754.

(Added Pub. L. 107-296, title XIII, §1313(a)(1)(A), Nov. 25, 2002, 116 Stat. 2291; amended Pub. L. 112-74, div. G, title I, §1401(b), Dec. 23, 2011, 125 Stat. 1134.)