

Date of 1992 Amendment note under section 6303 of this title.]

PROHIBITION OF DECREASE IN BASIC PAY RATE OF EMPLOYEES OF NONAPPROPRIATED FUND INSTRUMENTALITIES

Amendments by Pub. L. 92-392 not to decrease basic pay rate of subsec. (c) employees in service before effective date of the amendments as to such employees, see section 9(a)(2) of Pub. L. 92-392, set out as a note under section 5343 of this title.

**§ 2106. Member of Congress**

For the purpose of this title, “Member of Congress” means the Vice President, a member of the Senate or the House of Representatives, a Delegate to the House of Representatives, and the Resident Commissioner from Puerto Rico.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 409; Pub. L. 91-405, title II, §204(b), Sept. 22, 1970, 84 Stat. 852; Pub. L. 96-54, §2(a)(7), Aug. 14, 1979, 93 Stat. 381.)

HISTORICAL AND REVISION NOTES

The section is supplied to avoid the necessity of defining “Member of Congress” each time the term is used in this title.

AMENDMENTS

1979—Pub. L. 96-54 substituted “to the House of Representatives” for “from the District of Columbia”.

1970—Pub. L. 91-405 included Delegate from District of Columbia.

EFFECTIVE DATE OF 1979 AMENDMENT

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

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-405 effective Sept. 22, 1970, see section 206(b) of Pub. L. 91-405, set out as an Effective Date note under section 25a of Title 2, The Congress.

**§ 2107. Congressional employee**

For the purpose of this title, “Congressional employee” means—

(1) an employee of either House of Congress, of a committee of either House, or of a joint committee of the two Houses;

(2) an elected officer of either House who is not a Member of Congress;

(3) the Legislative Counsel of either House and an employee of his office;

(4) a member or employee of the Capitol Police;

(5) an employee of a Member of Congress if the pay of the employee is paid by the Secretary of the Senate or the Chief Administrative Officer of the House of Representatives;

[(6) Repealed. Pub. L. 90-83, §1(5)(A), Sept. 11, 1967, 81 Stat. 196.]

(7) the Architect of the Capitol and an employee of the Architect of the Capitol;

(8) an employee of the Botanic Garden; and

(9) an employee of the Office of Congressional Accessibility Services.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 409; Pub. L. 90-83, §1(5), Sept. 11, 1967, 81 Stat. 196; Pub. L. 91-510, title IV, §442(a), Oct. 26, 1970, 84 Stat. 1191; Pub. L. 104-186, title II, §215(1), Aug. 20, 1996, 110 Stat. 1745; Pub. L. 110-437, title IV,

§ 422(c), Oct. 20, 2008, 122 Stat. 4997; Pub. L. 111-145, §7(a), Mar. 4, 2010, 124 Stat. 55.)

HISTORICAL AND REVISION NOTES

1966 ACT

The section is supplied to avoid the necessity of defining “Congressional employee” each time the term is used in this title.

1967 ACT

Section of title 5	Source (U.S. Code)	Source (Statutes at Large)
2107(6) .....	2:126-1.	July 27, 1965, Pub. L. 89-90, §101 (proviso on p. 265), 79 Stat. 265.
2107(8) .....	5 App.: 2251(c).	Sept. 26, 1966, Pub. L. 89-604, §1(a), 80 Stat. 846.

Paragraph (6), relating to Official Reporters of Debates of the Senate and their employees, is eliminated as unnecessary on authority of the act of July 27, 1965 (2 U.S.C. 126-1). Pursuant to that act, the Official Reporters and their employees became employees of the Senate; accordingly, they are now included within the definition of “Congressional employee” under paragraph (1).

In paragraph (8), based on the act of September 26, 1966 (5 App. U.S.C. 2251(c)), the word “officers” is omitted as included in “employees,” and the words “United States” preceding the words “Botanic Garden” are omitted as unnecessary.

AMENDMENTS

2010—Par. (4). Pub. L. 111-145, inserted “or employee” after “member”.

2008—Par. (9). Pub. L. 110-437 amended par. (9) generally. Prior to amendment, par. (9) read as follows: “an employee of the Capitol Guide Service.”

1996—Par. (5). Pub. L. 104-186 substituted “Chief Administrative Officer” for “Clerk”.

1970—Par. (9). Pub. L. 91-510 added par. (9).

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111-145, §7(d), Mar. 4, 2010, 124 Stat. 56, provided that: “The amendments made by this section [amending this section and sections 5515, 5531, 5533, and 5537 of this title] shall take effect as though enacted as part of section 1018 of the Legislative Branch Appropriations Act, 2003 (2 U.S.C. 1907).”

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110-437 effective first day of first pay period (applicable to employees transferred under section 2241 of Title 2, The Congress) on or after 30 days after Oct. 20, 2008, see section 422(d) of Pub. L. 110-437, set out as a note under section 1301 of Title 2.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-510 effective immediately prior to noon on June. 3, 1971, see section 601(1) of Pub. L. 91-510, set out as a note under section 4301 of Title 2, The Congress.

**§ 2108. Veteran; disabled veteran; preference eligible**

For the purpose of this title—

(1) “veteran” means an individual who—

(A) served on active duty in the armed forces during a war, in a campaign or expedition for which a campaign badge has been authorized, or during the period beginning April 28, 1952, and ending July 1, 1955;

(B) served on active duty as defined by section 101(21) of title 38 at any time in the armed forces for a period of more than 180

consecutive days any part of which occurred after January 31, 1955, and before October 15, 1976, not including service under section 12103(d) of title 10 pursuant to an enlistment in the Army National Guard or the Air National Guard or as a Reserve for service in the Army Reserve, Navy Reserve, Air Force Reserve, Marine Corps Reserve, or Coast Guard Reserve;

(C) served on active duty as defined by section 101(21) of title 38 in the armed forces during the period beginning on August 2, 1990, and ending on January 2, 1992; or

(D) served on active duty as defined by section 101(21) of title 38 at any time in the armed forces for a period of more than 180 consecutive days any part of which occurred during the period beginning on September 11, 2001, and ending on the date prescribed by Presidential proclamation or by law as the last date of Operation Iraqi Freedom;

and, except as provided under section 2108a, who has been discharged or released from active duty in the armed forces under honorable conditions;

(2) “disabled veteran” means an individual who has served on active duty in the armed forces, (except as provided under section 2108a) has been separated therefrom under honorable conditions, and has established the present existence of a service-connected disability or is receiving compensation, disability retirement benefits, or pension because of a public statute administered by the Department of Veterans Affairs or a military department;

(3) “preference eligible” means, except as provided in paragraph (4) of this section or section 2108a(c)—

(A) a veteran as defined by paragraph (1)(A) of this section;

(B) a veteran as defined by paragraph (1)(B), (C), or (D) of this section;

(C) a disabled veteran;

(D) the unmarried widow or widower of a veteran as defined by paragraph (1)(A) of this section;

(E) the wife or husband of a service-connected disabled veteran if the veteran has been unable to qualify for any appointment in the civil service or in the government of the District of Columbia;

(F) the mother of an individual who lost his life under honorable conditions while serving in the armed forces during a period named by paragraph (1)(A) of this section, if—

(i) her husband is totally and permanently disabled;

(ii) she is widowed, divorced, or separated from the father and has not remarried; or

(iii) she has remarried but is widowed, divorced, or legally separated from her husband when preference is claimed;

(G) the mother of a service-connected permanently and totally disabled veteran, if—

(i) her husband is totally and permanently disabled;

(ii) she is widowed, divorced, or separated from the father and has not remarried; or

(iii) she has remarried but is widowed, divorced, or legally separated from her husband when preference is claimed; and

(H) a veteran who was discharged or released from a period of active duty by reason of a sole survivorship discharge (as that term is defined in section 1174(i) of title 10);

but does not include applicants for, or members of, the Senior Executive Service, the Defense Intelligence Senior Executive Service, the Senior Cryptologic Executive Service, or the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service;

(4) except for the purposes of chapters 43 and 75 of this title, “preference eligible” does not include a retired member of the armed forces unless—

(A) the individual is a disabled veteran; or

(B) the individual retired below the rank of major or its equivalent; and

(5) “retired member of the armed forces” means a member or former member of the armed forces who is entitled, under statute, to retired, retirement, or retainer pay on account of service as a member.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 410; Pub. L. 90-83, §1(6), Sept. 11, 1967, 81 Stat. 196; Pub. L. 90-623, §1(2), Oct. 22, 1968, 82 Stat. 1312; Pub. L. 92-187, §1, Dec. 15, 1971, 85 Stat. 644; Pub. L. 94-502, title VII, §702, Oct. 15, 1976, 90 Stat. 2405; Pub. L. 95-454, title III, §307(a), title IV, §401(d), Oct. 13, 1978, 92 Stat. 1147, 1154; Pub. L. 96-54, §2(a)(8), (9)(A), Aug. 14, 1979, 93 Stat. 381; Pub. L. 96-191, §8(a), Feb. 15, 1980, 94 Stat. 33; Pub. L. 97-89, title VIII, §801, Dec. 4, 1981, 95 Stat. 1161; Pub. L. 100-325, §2(a), May 30, 1988, 102 Stat. 581; Pub. L. 102-54, §13(b)(1), June 13, 1991, 105 Stat. 274; Pub. L. 105-85, div. A, title XI, §1102(a), (c), Nov. 18, 1997, 111 Stat. 1922; Pub. L. 105-339, §4(a), Oct. 31, 1998, 112 Stat. 3185; Pub. L. 109-163, div. A, title V, §515(f)(1), title XI, §§1111, 1112(a), Jan. 6, 2006, 119 Stat. 3236, 3451; Pub. L. 110-317, §8, Aug. 29, 2008, 122 Stat. 3529; Pub. L. 112-56, title II, §235(a)(2)(A), Nov. 21, 2011, 125 Stat. 723.)

HISTORICAL AND REVISION NOTES  
1966 ACT

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 851 (less 1st 76 words).	June 27, 1944, ch. 287, §2 (less 1st 76 words), 58 Stat. 387. Jan. 19, 1948, ch. 1, §1, 62 Stat. 3. July 2, 1948, ch. 816, 62 Stat. 1233. Aug. 26, 1949, ch. 513, 63 Stat. 666. Dec. 27, 1950, ch. 1151, §1, 64 Stat. 1117. July 14, 1952, ch. 728, §1, 66 Stat. 626.

In paragraph (2), the words “a military department” are substituted for “the War Department or Navy Department” (appearing in section 2 of the Act of June 27, 1944) because of the definition of “military department” in section 102. The Department of War was designated the Department of the Army by the Act of July 26, 1947, ch. 343, §205, 61 Stat. 501. “Department of the Air Force” is included on authority of the Act of July 26, 1947, ch. 343, §207 (a), (f), 61 Stat. 502.

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

## 1967 ACT

Section of title 5	Source (U.S. Code)	Source (Statutes at Large)
2108 .....	5 App.: 851.	Mar. 3, 1966, Pub. L. 89-358, § 11, 80 Stat. 28.

## AMENDMENTS

2011—Par. (1). Pub. L. 112-56, § 235(a)(2)(A)(i), in concluding provisions, inserted “, except as provided under section 2108a,” before “who has been”.

Par. (2). Pub. L. 112-56, § 235(a)(2)(A)(ii), inserted “(except as provided under section 2108a)” before “has been separated”.

Par. (3). Pub. L. 112-56, § 235(a)(2)(A)(iii), in introductory provisions, inserted “or section 2108a(c)” after “paragraph (4) of this section”.

2008—Par. (3)(H). Pub. L. 110-317 added subpar. (H).

2006—Par. (1). Pub. L. 109-163, § 1112(a), in concluding provisions, substituted “discharged or released from active duty in” for “separated from”.

Par. (1)(B). Pub. L. 109-163, § 515(f)(1), substituted “Navy Reserve” for “Naval Reserve”.

Par. (1)(D). Pub. L. 109-163, § 1111(a), added subpar. (D).

Par. (3)(B). Pub. L. 109-163, § 1111(b), substituted “paragraph (1)(B), (C), or (D)” for “paragraph (1)(B) or (C)”.

1998—Par. (3). Pub. L. 105-339, in concluding provisions, substituted “or the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service;” for “the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service, or the General Accounting Office;”.

1997—Par. (1)(B). Pub. L. 105-85, § 1102(c), substituted “October 15, 1976,” for “the date of enactment of the Veterans’ Education and Employment Assistance Act of 1976,” and “12103(d) of title 10” for “511(d) of title 10”.

Par. (1)(C). Pub. L. 105-85, § 1102(a)(1), added subpar. (C).

Par. (3)(B). Pub. L. 105-85, § 1102(a)(2), inserted “or (C)” after “paragraph (1)(B)”.

1991—Par. (2). Pub. L. 102-54 substituted “Department of Veterans Affairs” for “Veterans’ Administration”.

1988—Par. (3). Pub. L. 100-325 inserted reference to Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service in concluding provisions.

1981—Par. (3). Pub. L. 97-89 inserted reference to Defense Intelligence Senior Executive Service and Senior Cryptologic Executive Service in concluding provisions.

1980—Par. (3). Pub. L. 96-191 inserted reference to General Accounting Office in concluding provisions.

1979—Par. (3). Pub. L. 96-54, § 2(a)(8), inserted provision excepting applicants for, or members of, Senior Executive Service.

Par. (5). Pub. L. 96-54, § 2(a)(9)(A), struck out provision excepting applicants for, or members of, Senior Executive Service.

1978—Par. (2). Pub. L. 95-454, § 307(a)(1), struck out “and” at end.

Par. (3). Pub. L. 95-454, § 307(a)(2), (3), inserted “, except as provided in paragraph (4) of this section” after “means”, and substituted a semicolon for the period at end.

Pars. (4), (5). Pub. L. 95-454, § 307(a)(4), added pars. (4) and (5) relating to retired members of the armed forces.

Par. (5). Pub. L. 95-454, § 401(d), inserted “; but does not include applicants for, or members of, the Senior Executive Service” before the period at end.

1976—Par. (1)(B). Pub. L. 94-502 substituted “any part of which occurred after January 31, 1955, and before the date of enactment of the Veterans’ Education and Employment Assistance Act of 1976,” for “after January 31, 1955,”.

1971—Par. (3)(D). Pub. L. 92-187 inserted “or widower” after “unmarried widow”.

Par. (3)(E). Pub. L. 92-187 inserted “or husband” after “the wife”.

1968—Par. (3)(D). Pub. L. 90-623 inserted “as defined by paragraph (1)(A) of this section” after “veteran”.

## EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110-317, § 10, Aug. 29, 2008, 122 Stat. 3530, provided that:

“(a) RETROACTIVE EFFECTIVE DATE.—Except as provided in subsection (b) and section 9 [amending section 685 of Title 26, Internal Revenue Code, and enacting provisions set out as a note under section 685 of Title 26], this Act [amending this section, section 8521 of this title, sections 1145, 1146, and 1174 of Title 10, Armed Forces, section 685 of Title 26, section 303a of Title 37, Pay and Allowances of the Uniformed Services, and sections 3011, 3012, 3702, and 4211 of Title 38, Veterans’ Benefits, and enacting provisions set out as notes under section 101 of Title 10 and section 685 of Title 26] and the amendments made by this Act shall apply with respect to any sole survivorship discharge granted after September 11, 2001.

“(b) DATE OF ENACTMENT EFFECTIVE DATE FOR CERTAIN AMENDMENTS.—The amendments made by sections 4, 7, and 8 [amending this section and section 8521 of this title and section 1145 of Title 10] shall apply with respect to any sole survivorship discharge granted after the date of the enactment of this Act [Aug. 29, 2008].

“(c) SOLE SURVIVORSHIP DISCHARGE DEFINED.—In this section, the term ‘sole survivorship discharge’ means the separation of a member from the Armed Forces, at the request of the member, pursuant to the Department of Defense policy permitting the early separation of a member who is the only surviving child in a family in which—

“(1) the father or mother or one or more siblings—

“(A) served in the Armed Forces; and

“(B) was killed, died as a result of wounds, accident, or disease, is in a captured or missing in action status, or is permanently 100 percent disabled or hospitalized on a continuing basis (and is not employed gainfully because of the disability or hospitalization); and

“(2) the death, status, or disability did not result from the intentional misconduct or willful neglect of the parent or sibling and was not incurred during a period of unauthorized absence.”

## EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-89 effective Oct. 1, 1981, see section 806 of Pub. L. 97-89, set out as an Effective Date note under section 1621 of Title 10, Armed Forces.

## EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-191 effective Oct. 1, 1980, see section 10(a) of Pub. L. 96-191.

## EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by section 2(a)(8) of Pub. L. 96-54 effective July 12, 1979, see section 2(b) of Pub. L. 96-54, set out as a note under section 305 of this title.

Pub. L. 96-54, § 2(a)(9)(B), Aug. 14, 1979, 93 Stat. 381, provided that: “The amendment made by subparagraph (A) [amending this section] shall take effect October 1, 1980”.

## EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95-454, title III, § 307(a), Oct. 13, 1978, 92 Stat. 1147, provided that the amendment made by that section is effective Oct. 1, 1980.

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

## EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-623 effective Sept. 11, 1967, for all purposes, see section 6 of Pub. L. 90-623, set out as a note under section 5334 of this title.

## SAVINGS PROVISION

Pub. L. 109-163, div. A, title XI, §1112(b), Jan. 6, 2006, 119 Stat. 3451, provided that: "Nothing in the amendment made by subsection (a) [amending this section] may be construed to affect a determination made before the date of enactment of this Act [Jan. 6, 2006] that an individual is a preference eligible (as defined in section 2108(3) of title 5, United States Code)."

## TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

### § 2108a. Treatment of certain individuals as veterans, disabled veterans, and preference eligibles

## (a) VETERAN.—

(1) IN GENERAL.—Except as provided under paragraph (3),<sup>1</sup> an individual shall be treated as a veteran defined under section 2108(1) for purposes of making an appointment in the competitive service, if the individual—

(A) meets the definition of a veteran under section 2108(1), except for the requirement that the individual has been discharged or released from active duty in the armed forces under honorable conditions; and

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

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

## (b) DISABLED VETERAN.—

(1) IN GENERAL.—Except as provided under paragraph (3),<sup>1</sup> an individual shall be treated as a disabled veteran defined under section 2108(2) for purposes of making an appointment in the competitive service, if the individual—

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

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

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

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

<sup>1</sup> So in original. Subsec. does not contain a par. (3).

(Added Pub. L. 112-56, title II, §235(a)(1), Nov. 21, 2011, 125 Stat. 722.)

### § 2109. Air traffic controller; Secretary

For the purpose of this title—

(1) "air traffic controller" or "controller" means a civilian employee of the Department of Transportation or the Department of Defense who, in an air traffic control facility or flight service station facility—

(A) is actively engaged—

(i) in the separation and control of air traffic; or

(ii) in providing preflight, inflight, or airport advisory service to aircraft operators; or

(B) is the immediate supervisor of any employee described in subparagraph (A); and

(2) "Secretary", when used in connection with "air traffic controller" or "controller", means the Secretary of Transportation with respect to controllers in the Department of Transportation, and the Secretary of Defense with respect to controllers in the Department of Defense.

(Added Pub. L. 92-297, §1(a), May 16, 1972, 86 Stat. 141; amended Pub. L. 96-347, §1(a), Sept. 12, 1980, 94 Stat. 1150; Pub. L. 99-335, title II, §207(b), June 6, 1986, 100 Stat. 594.)

## AMENDMENTS

1986—Par. (1). Pub. L. 99-335 amended par. (1) generally including within term "air traffic controller" or "controller" references to a flight service station facility and to employment providing preflight, inflight, or airport advisory service to aircraft operators and striking out provision that regulations prescribed by the Secretary be used in determining who is an air traffic controller.

1980—Pub. L. 96-347 substituted "controller; Secretary" for "controller" in section catchline, and in text included employees of the Department of Defense within the meaning of air traffic controller or controller and defined "Secretary" to mean Secretary of Transportation with respect to controllers in the Department of Transportation and Secretary of Defense with respect to controllers in the Department of Defense.

## EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-335 effective Jan. 1, 1987, see section 702(a) of Pub. L. 99-335, set out as an Effective Date note under section 8401 of this title.

## EFFECTIVE DATE OF 1980 AMENDMENT

Pub. L. 96-347, §3, Sept. 12, 1980, 94 Stat. 1151, provided that: "This Act [amending this section and sections 3307, 3381 to 3385, and 8335 of this title and enacting provisions set out as a note under section 8335 of this title] shall take effect on the later of—

"(1) October 1, 1980, or

"(2) the ninetieth day after the date of the enactment of this Act [Sept. 12, 1980]."

## EFFECTIVE DATE

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

## CHAPTER 23—MERIT SYSTEM PRINCIPLES

Sec.	
2301.	Merit system principles.
2302.	Prohibited personnel practices.