

§ 3363. Preference eligibles; promotion; physical qualifications; waiver

In determining qualifications of a preference eligible for promotion 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
(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. 427; Pub. L. 94-183, §2(5), 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

Table with 3 columns: Derivation, U.S. Code, Revised Statutes and Statutes at Large. Row 1: 5 U.S.C. 854 (1st 2 sentences, so much as relates to promotion), June 27, 1944, ch. 287, §5 (1st 2 sentences, so much as relates to promotion), 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.

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".

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.

[§ 3364. Repealed. Pub. L. 94-183, §2(6), Dec. 31, 1975, 89 Stat. 1057]

Section, Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 427, related to promotion to regular force of substitute employees in postal field service.

SUBCHAPTER VI—ASSIGNMENTS TO AND FROM STATES

§ 3371. Definitions

For the purpose of this subchapter—

- (1) "State" means—
(A) a State of the United States, the District of Columbia, the Commonwealth of

Puerto Rico, the Trust Territory of the Pacific Islands, and a territory or possession of the United States; and

(B) an instrumentality or authority of a State or States as defined in subparagraph (A) of this paragraph (1) and a Federal-State authority or instrumentality;

(2) "local government" means—

(A) any political subdivision, instrumentality, or authority of a State or States as defined in subparagraph (A) of paragraph (1);

(B) any general or special purpose agency of such a political subdivision, instrumentality, or authority; and

(C) any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village as defined in the Alaska Native Claims Settlement Act (85 Stat. 688), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians and includes any tribal organization as defined in section 4 of the Indian Self-Determination and Education Assistance Act;

(3) "Federal agency" means an Executive agency, military department, a court of the United States, the Administrative Office of the United States Courts, the Library of Congress, the Botanic Garden, the Government Publishing Office, the Congressional Budget Office, the United States Postal Service, the Postal Regulatory Commission, the Office of the Architect of the Capitol, the Office of Technology Assessment, and such other similar agencies of the legislative and judicial branches as determined appropriate by the Office of Personnel Management; and

(4) "other organization" means—

(A) a national, regional, State-wide, area-wide, or metropolitan organization representing member State or local governments;

(B) an association of State or local public officials;

(C) a nonprofit organization which has as one of its principal functions the offering of professional advisory, research, educational, or development services, or related services, to governments or universities concerned with public management; or

(D) a federally funded research and development center.

(Added Pub. L. 91-648, title IV, §402(a), Jan. 5, 1971, 84 Stat. 1920; amended Pub. L. 93-638, title I, §104(a), formerly §105(a), Jan. 4, 1975, 88 Stat. 2208, renumbered §104(a), Pub. L. 100-472, title II, §203(a), Oct. 5, 1988, 102 Stat. 2290; Pub. L. 95-454, title VI, §603(a), Oct. 13, 1978, 92 Stat. 1189; Pub. L. 100-472, title II, §203(b), Oct. 5, 1988, 102 Stat. 2290; Pub. L. 101-301, §2(c), May 24, 1990, 104 Stat. 207; Pub. L. 103-337, div. A, title X, §1068(a), Oct. 5, 1994, 108 Stat. 2852; Pub. L. 109-435, title VI, §604(b), Dec. 20, 2006, 120 Stat. 3241; Pub. L. 113-235, div. H, title I, §1301(b), Dec. 16, 2014, 128 Stat. 2537.)

REFERENCES IN TEXT

The Alaska Native Claims Settlement Act, referred to in par. (2)(C), is Pub. L. 92-203, Dec. 18, 1971, 85 Stat.

688, as amended, which is classified generally to chapter 33 (§1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

Section 4 of the Indian Self-Determination and Education Assistance Act, referred to in par. (2)(C), is classified to section 5304 of Title 25, Indians.

#### AMENDMENTS

2006—Par. (3). Pub. L. 109-435 substituted “Postal Regulatory Commission” for “Postal Rate Commission”.

1994—Par. (4)(D). Pub. L. 103-337 added subpar. (D).

1990—Par. (2)(C). Pub. L. 101-301 substituted “section 4” for “section 4(m)”.

1988—Par. (2)(C). Pub. L. 100-472, §203(b), amended Pub. L. 93-638, by substituting “section 4(m)” for “section 4(c)” in the provision it added as par. (2)(C) of this section. See 1975 Amendment note below.

1978—Par. (1)(A). Pub. L. 95-454, §603(a)(1), inserted reference to the Trust Territory of the Pacific Islands.

Pars. (3), (4). Pub. L. 95-454, §603(a)(2), added pars. (3) and (4).

1975—Par. (2)(C). Pub. L. 93-638, as amended by Pub. L. 100-472, §203(b), added par. (2)(C).

#### CHANGE OF NAME

“Government Publishing Office” substituted for “Government Printing Office” in par. (3) on authority of section 1301(b) of Pub. L. 113-235, set out as a note preceding section 301 of Title 44, Public Printing and Documents.

#### 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

Pub. L. 91-648, title IV, §404, Jan. 5, 1971, 84 Stat. 1925, provided that: “This title [enacting this subchapter and repealing sections 1881 to 1888 of Title 7, Agriculture, section 869b of Title 20, Education, and section 246(f) of Title 42, The Public Health and Welfare, (less applicability to commissioned officers of the Public Health Service)] shall become effective sixty days after the date of enactment of this Act [Jan. 5, 1971].”

#### TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

#### EMPLOYEE EXCHANGE PROGRAM BETWEEN FEDERAL EMPLOYEES AND EMPLOYEES OF STATE AND LOCAL GOVERNMENTS

Pub. L. 108-196, §3, Dec. 19, 2003, 117 Stat. 2896, provided that:

“(a) DEFINITIONS.—In this section—

“(1) the term ‘employing agency’ means the Federal, State, or local government agency with which the participating employee was employed before an assignment under the Program;

“(2) the term ‘participating employee’ means an employee who is participating in the Program; and

“(3) the term ‘Program’ means the employee exchange program established under subsection (b).

“(b) ESTABLISHMENT.—The President shall establish an employee exchange program between Federal agencies that perform law enforcement functions and agencies of State and local governments that perform law enforcement functions.

“(c) CONDUCT OF PROGRAM.—The Program shall be conducted in accordance with subchapter VI of chapter 33 of title 5, United States Code.

“(d) QUALIFICATIONS.—An employee of an employing agency who performs law enforcement functions may

be selected to participate in the Program if the employee—

“(1) has been employed by that employing agency for a period of more than 3 years;

“(2) has had appropriate training or experience to perform the work required by the assignment;

“(3) has had an overall rating of satisfactory or higher on performance appraisals from the employing agency during the 3-year period before being assigned to another agency under this section; and

“(4) agrees to return to the employing agency after completing the assignment for a period not less than the length of the assignment.

“(e) WRITTEN AGREEMENT.—An employee shall enter into a written agreement regarding the terms and conditions of the assignment before beginning the assignment with another agency.”

#### DECLARATION OF PURPOSE

Pub. L. 91-648, title IV, §401, Jan. 5, 1971, 84 Stat. 1920, as amended by Pub. L. 95-454, title VI, §602(b), Oct. 13, 1978, 92 Stat. 1189, provided that: “The purpose of this title [see Effective Date note above] is to provide for the temporary assignment of personnel between the Federal Government and State and local governments, institutions of higher education, and other organizations.”

#### § 3372. General provisions

(a) On request from or with the concurrence of a State or local government, and with the consent of the employee concerned, the head of a Federal agency may arrange for the assignment of—

(1) an employee of his agency, other than a noncareer appointee, limited term appointee, or limited emergency appointee (as such terms are defined in section 3132(a) of this title) in the Senior Executive Service and an employee in a position which has been excepted from the competitive service by reason of its confidential, policy-determining, policy-making, or policy-advocating character, to a State or local government; and

(2) an employee of a State or local government to his agency;

for work of mutual concern to his agency and the State or local government that he determines will be beneficial to both. The period of an assignment under this subchapter may not exceed two years. However, the head of a Federal agency may extend the period of assignment for not more than two additional years. In the case of assignments made to Indian tribes or tribal organizations as defined in section 3371(2)(C) of this subchapter, the head of an executive agency may extend the period of assignment for any period of time where it is determined that this will continue to benefit both the executive agency and the Indian tribe or tribal organization. If the assigned employee fails to complete the period of assignment and there is another employee willing and available to do so, the Secretary may assign the employee to complete the period of assignment and may execute an agreement with the tribal organization with respect to the replacement employee. That agreement may provide for a different period of assignment as may be agreed to by the Secretary and the tribal organization.

(b) This subchapter is authority for and applies to the assignment of—

(1) an employee of a Federal agency to an institution of higher education;