

(3) the name of any person nominated to the Senate to fill the vacancy and the date such nomination is submitted immediately upon the submission of the nomination; and

(4) the date of a rejection, withdrawal, or return of any nomination immediately upon such rejection, withdrawal, or return.

(b) If the Comptroller General of the United States makes a determination that an officer is serving longer than the 210-day period including the applicable exceptions to such period under section 3346 or section 3349a, the Comptroller General shall report such determination immediately to—

(1) the Committee on Governmental Affairs of the Senate;

(2) the Committee on Government Reform and Oversight of the House of Representatives;

(3) the Committees on Appropriations of the Senate and House of Representatives;

(4) the appropriate committees of jurisdiction of the Senate and House of Representatives;

(5) the President; and

(6) the Office of Personnel Management.

(Added Pub. L. 105-277, div. C, title I, §151(b), Oct. 21, 1998, 112 Stat. 2681-614; amended Pub. L. 108-271, §8(b), July 7, 2004, 118 Stat. 814.)

PRIOR PROVISIONS

A prior section 3349, Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 426, provided for restrictions relating to details to fill vacancies, prior to repeal by Pub. L. 105-277, div. C, title I, §151(b), (d)(1), Oct. 21, 1998, 112 Stat. 2681-611, 2681-616, effective 30 days after Oct. 21, 1998. See section 3347 of this title.

AMENDMENTS

2004—Subsec. (a). Pub. L. 108-271 substituted “Government Accountability Office” for “General Accounting Office” in introductory provisions.

CHANGE OF NAME

Committee on Governmental Affairs of Senate changed to Committee on Homeland Security and Governmental Affairs of Senate, effective Jan. 4, 2005, by Senate Resolution No. 445, One Hundred Eighth Congress, Oct. 9, 2004.

Committee on Government Reform and Oversight of House of Representatives changed to Committee on Government Reform of House of Representatives by House Resolution No. 5, One Hundred Sixth Congress, Jan. 6, 1999. Committee on Government Reform of House of Representatives changed to Committee on Oversight and Government Reform of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007.

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.

§ 3349a. Presidential inaugural transitions

(a) In this section, the term “transitional inauguration day” means the date on which any person swears or affirms the oath of office as President, if such person is not the President on the date preceding the date of swearing or affirming such oath of office.

(b) With respect to any vacancy that exists during the 60-day period beginning on a transi-

tional inauguration day, the 210-day period under section 3346 or 3348 shall be deemed to begin on the later of the date occurring—

(1) 90 days after such transitional inauguration day; or

(2) 90 days after the date on which the vacancy occurs.

(Added Pub. L. 105-277, div. C, title I, §151(b), Oct. 21, 1998, 112 Stat. 2681-615.)

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.

§ 3349b. Holdover provisions

Sections 3345 through 3349a shall not be construed to affect any statute that authorizes a person to continue to serve in any office—

(1) after the expiration of the term for which such person is appointed; and

(2) until a successor is appointed or a specified period of time has expired.

(Added Pub. L. 105-277, div. C, title I, §151(b), Oct. 21, 1998, 112 Stat. 2681-615.)

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.

§ 3349c. Exclusion of certain officers

Sections 3345 through 3349b shall not apply to—

(1) any member who is appointed by the President, by and with the advice and consent of the Senate to any board, commission, or similar entity that—

(A) is composed of multiple members; and

(B) governs an independent establishment or Government corporation;

(2) any commissioner of the Federal Energy Regulatory Commission;

(3) any member of the Surface Transportation Board; or

(4) any judge appointed by the President, by and with the advice and consent of the Senate, to a court constituted under article I of the United States Constitution.

(Added Pub. L. 105-277, div. C, title I, §151(b), Oct. 21, 1998, 112 Stat. 2681-615.)

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.

§ 3349d. Notification of intent to nominate during certain recesses or adjournments

(a) The submission to the Senate, during a recess or adjournment of the Senate in excess of 15 days, of a written notification by the President of the President’s intention to submit a nomination after the recess or adjournment shall be

considered a nomination for purposes of sections 3345 through 3349c if such notification contains the name of the proposed nominee and the office for which the person is nominated.

(b) If the President does not submit a nomination of the person named under subsection (a) within 2 days after the end of such recess or adjournment, effective after such second day the notification considered a nomination under subsection (a) shall be treated as a withdrawn nomination for purposes of sections 3345 through 3349c.

(Added Pub. L. 105-277, div. C, title I, §151(b), Oct. 21, 1998, 112 Stat. 2681-615.)

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.

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

(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.

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.

§ 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 described in subsection (a), within the Executive agency employing such employee or any other Executive agency.

(c) If an employee applies for a transfer under the provisions of subsection (b) and the selecting official rejects such application, the selecting official shall provide the employee with a written notification of the reasons for the rejection within 30 days after receiving such application.

(d) An employee whose application for transfer is rejected under the provisions of subsection (c) may request the head of such agency to review the rejection. Such request for review shall be submitted to the head of the agency within 30 days after the employee receives notification under subsection (c). Within 30 days after receiving a request for review, the head of the agency shall complete the review and provide a written statement of findings to the employee and the Merit Systems Protection Board.

(e) The provisions of subsection (a) shall apply with regard to any employee—

(1) for no more than 1 transfer;

(2) for a transfer from or within the agency such employee is employed at the time of a determination by the Merit Systems Protection Board that a prohibited personnel action as described under section 2302(b)(8) was taken against such employee; and

(3) no later than 18 months after such a determination is made by the Merit Systems Protection Board.

(f) Notwithstanding the provisions of subsection (a), no preference may be given to any employee applying for a transfer under subsection (b), with respect to a preference eligible (as defined under section 2108(3)) applying for the same position.

(Added Pub. L. 101-12, §5(a), Apr. 10, 1989, 103 Stat. 32.)