

ically 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.)

AMENDMENTS

2011—Par. (1). Pub. L. 112-74 substituted "section 105 (other than the Government Accountability Office)" for "section 105".

EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by Pub. L. 112-74 applicable to voluntary separation incentive payments made during fiscal year 2012 or any succeeding fiscal year, see section 1401(c) of Pub. L. 112-74, set out as a note under section 4505 of Title 2, The Congress.

## EFFECTIVE DATE

Pub. L. 107-296, title XIII, § 1313(a)(4), Nov. 25, 2002, 116 Stat. 2294, provided that: “This subsection [enacting this subchapter and provisions set out as notes under this section] shall take effect 60 days after the date of enactment of this Act [Nov. 25, 2002].”

## SMITHSONIAN INSTITUTION EMPLOYEES

Pub. L. 108-72, § 5, Aug. 15, 2003, 117 Stat. 889, provided that: “The Secretary of the Smithsonian Institution may establish a program for making voluntary separation incentive payments for employees of the Smithsonian Institution which is substantially similar to the program established under subchapter II of chapter 35 of title 5, United States Code (as added by section 1313(a) of the Homeland Security Act of 2002 [Pub. L. 107-296]).”

## JUDICIAL BRANCH EMPLOYEES

Pub. L. 107-296, title XIII, § 1313(a)(2), Nov. 25, 2002, 116 Stat. 2294, provided that: “The Director of the Administrative Office of the United States Courts may, by regulation, establish a program substantially similar to the program established under paragraph (1) [enacting this subchapter] for individuals serving in the judicial branch.”

## CONTINUATION OF OTHER AUTHORITY

Pub. L. 107-296, title XIII, § 1313(a)(3), Nov. 25, 2002, 116 Stat. 2294, provided that: “Any agency exercising any voluntary separation incentive authority in effect on the effective date of this subsection [see Effective Date note above] may continue to offer voluntary separation incentives consistent with that authority until that authority expires.”

## SENSE OF CONGRESS

Pub. L. 107-296, title XIII, § 1313(c), Nov. 25, 2002, 116 Stat. 2296, provided that: “It is the sense of Congress that the implementation of this section [enacting this subchapter, amending sections 8336 and 8414 of this title, enacting provisions set out as notes under this section and section 8336 of this title, and repealing provisions set out as notes under sections 8336 and 8414 of this title] is intended to reshape the Federal workforce and not downsize the Federal workforce.”

**§ 3522. Agency plans; approval**

(a) Before obligating any resources for voluntary separation incentive payments, the head of each agency shall submit to the Office of Personnel Management a plan outlining the intended use of such incentive payments and a proposed organizational chart for the agency once such incentive payments have been completed.

(b) The plan of an agency under subsection (a) shall include—

- (1) the specific positions and functions to be reduced or eliminated;
- (2) a description of which categories of employees will be offered incentives;
- (3) the time period during which incentives may be paid;
- (4) the number and amounts of voluntary separation incentive payments to be offered; and
- (5) a description of how the agency will operate without the eliminated positions and functions.

(c) The Director of the Office of Personnel Management shall review each agency’s plan and<sup>1</sup> may make any appropriate modifications in

<sup>1</sup> So in original. Probably should be “and”.

the plan, in consultation with the Director of the Office of Management and Budget. A plan under this section may not be implemented without the approval of the Directive<sup>2</sup> of the Office of Personnel Management.

(Added Pub. L. 107-296, title XIII, § 1313(a)(1)(A), Nov. 25, 2002, 116 Stat. 2292.)

## EFFECTIVE DATE

Section effective 60 days after Nov. 25, 2002, see section 1313(a)(4) of Pub. L. 107-296, set out as a note under section 3521 of this title.

**§ 3523. Authority to provide voluntary separation incentive payments**

(a) A voluntary separation incentive payment under this subchapter may be paid to an employee only as provided in the plan of an agency established under section 3522.

(b) A voluntary incentive payment—

(1) shall be offered to agency employees on the basis of—

- (A) 1 or more organizational units;
- (B) 1 or more occupational series or levels;
- (C) 1 or more geographical locations;
- (D) skills, knowledge, or other factors related to a position;

(E) specific periods of time during which eligible employees may elect a voluntary incentive payment; or

(F) any appropriate combination of such factors;

(2) shall be paid in a lump sum after the employee’s separation;

(3) shall be equal to the lesser of—

(A) an amount equal to the amount the employee would be entitled to receive under section 5595(c) if the employee were entitled to payment under such section (without adjustment for any previous payment made); or

(B) an amount determined by the agency head, not to exceed \$25,000;

(4) may be made only in the case of an employee who voluntarily separates (whether by retirement or resignation) under this subchapter;

(5) shall not be a basis for payment, and shall not be included in the computation, of any other type of Government benefit;

(6) shall not be taken into account in determining the amount of any severance pay to which the employee may be entitled under section 5595, based on another other<sup>1</sup> separation; and

(7) shall be paid from appropriations or funds available for the payment of the basic pay of the employee.

(Added Pub. L. 107-296, title XIII, § 1313(a)(1)(A), Nov. 25, 2002, 116 Stat. 2293.)

## EFFECTIVE DATE

Section effective 60 days after Nov. 25, 2002, see section 1313(a)(4) of Pub. L. 107-296, set out as a note under section 3521 of this title.

**§ 3524. Effect of subsequent employment with the Government**

(a) The term “employment”—

<sup>2</sup> So in original. Probably should be “Director”.

<sup>1</sup> So in original.