

LII > U.S. Code > Title 5 > PART III > Subpart B > CHAPTER 35
> SUBCHAPTER I > **§ 3502**

Quick search by citation:

Title

Section

Go!

5 U.S. Code § 3502 - Order of retention

U.S. Code Notes Authorities (CFR)

(a) The Office of Personnel Management shall prescribe regulations for the release of competing employees in a reduction in force which give due effect to—

- (1)** tenure of employment;
- (2)** military preference, subject to [section 3501\(a\)\(3\) of this title](#);
- (3)** length of service; and
- (4)** efficiency or performance ratings.

In computing length of service, a competing employee—

(A) who is not a retired member of a uniformed service is entitled to credit for the total length of time in active service in the armed forces;

(B) who is a retired member of a uniformed service is entitled to credit for—

(i) the length of time in active service in the armed forces during a war, or in a campaign or expedition for which a campaign badge has been authorized; or

(ii) the total length of time in active service in the armed forces if he is included under section 3501(a)(3)(A), (B), or (C) of this title; and

(C) is entitled to credit for—

(i) service rendered as an employee of a county committee established pursuant to section 8(b) of the Soil Conservation and Allotment Act or of a committee or association of producers described in section 10(b) of the Agricultural Adjustment Act; and

(ii) service rendered as an employee described in section 2105(c) if such employee moves or has moved, on or after January 1, 1966, without a break in service of more than 3 days, from a position in a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard to a position in the Department of Defense or the Coast Guard, respectively, that is not described in section 2105(c).

(b) A preference eligible described in section 2108(3)(C) of this title who has a compensable service-connected disability of 30 percent or more and whose performance has not been rated unacceptable under a performance appraisal system implemented under chapter 43 of this title is entitled to be retained in preference to other preference eligibles.

(c) An employee who is entitled to retention preference and whose performance has not been rated unacceptable under a performance appraisal system implemented under chapter 43 of this title is entitled to be retained in preference to other competing employees.

(d)

(1) Except as provided under subsection (e), an employee may not be released, due to a reduction in force, unless—

(A) such employee and such employee's exclusive representative for collective-bargaining purposes (if any) are given written notice, in

conformance with the requirements of paragraph (2), at least 60 days before such employee is so released; and

(B) if the reduction in force would involve the separation of a significant number of employees, the requirements of paragraph (3) are met at least 60 days before any employee is so released.

(2) Any notice under paragraph (1)(A) shall include—

- (A)** the personnel action to be taken with respect to the employee involved;
- (B)** the effective date of the action;
- (C)** a description of the procedures applicable in identifying employees for release;
- (D)** the employee's ranking relative to other competing employees, and how that ranking was determined; and
- (E)** a description of any appeal or other rights which may be available.

(3) Notice under paragraph (1)(B)—

- (A)** shall be given to—
 - (i)** the State or entity designated by the State to carry out rapid response activities under section 134(a)(2)(A) of the Workforce Investment Act of 1998; ^[1] and
 - (ii)** the chief elected official of such unit or each of such units of local government as may be appropriate; and
- (B)** shall consist of written notification as to—
 - (i)** the number of employees to be separated from service due to the reduction in force (broken down by geographic area or on such other basis as may be required under paragraph (4));
 - (ii)** when those separations will occur; and
 - (iii)** any other matter which might facilitate the delivery of rapid response assistance or other services under title I of the Workforce Investment Act of 1998.¹

(4) The Office shall prescribe such regulations as may be necessary to carry out this subsection. The Office shall consult with the Secretary of Labor on matters relating to title I of the Workforce Investment Act of 1998.¹

(e)

(1) Subject to paragraph (3), upon request submitted under paragraph (2), the President may, in writing, shorten the period of advance notice required under subsection (d)(1)(A) and (B), with respect to a particular reduction in force, if necessary because of circumstances not reasonably foreseeable.

(2) A request to shorten notice periods shall be submitted to the President by the head of the agency involved, and shall indicate the reduction in force to which the request pertains, the number of days by which the agency head requests that the periods be shortened, and the reasons why the request is necessary.

(3) No notice period may be shortened to less than 30 days under this subsection.

(f)

(1) The Secretary of Defense or the Secretary of a military department may—

(A) separate from service any employee who volunteers to be separated under this subparagraph even though the employee is not otherwise subject to separation due to a reduction in force; and

(B) for each employee voluntarily separated under subparagraph (A), retain an employee in a similar position who would otherwise be separated due to a reduction in force.

(2) The separation of an employee under paragraph (1)(A) shall be treated as an involuntary separation due to a reduction in force.

(3) An employee with critical knowledge and skills (as defined by the Secretary concerned) may not participate in a voluntary separation under paragraph (1)(A) if the Secretary concerned determines that such participation would impair the performance of the mission of the Department of Defense or the military department concerned.

(4) The regulations prescribed under this section shall incorporate the authority provided in this subsection.

(5) No authority under paragraph (1) may be exercised after September 30, 2018.

(Pub. L. 89-554, Sept. 6, 1966, [80 Stat. 428](#); Pub. L. 90-367, § 3, June 29, 1968, [82 Stat. 278](#); Pub. L. 90-623, § 1(23), Oct. 22, 1968, [82 Stat. 1313](#); Pub. L. 95-454, title III, § 307(e), title IX, § 906(a)(2), Oct. 13, 1978, [92 Stat. 1149](#), 1224; Pub. L. 99-251, title III, § 306(a), Feb. 27, 1986, [100 Stat. 27](#); Pub. L. 101-508, title VII, § 7202(c), Nov. 5, 1990, [104 Stat. 1388-335](#); Pub. L. 102-484, div. D, title XLIV, § 4433(a)(1), Oct. 23, 1992, [106 Stat. 2721](#); Pub. L. 104-106, div. A, title X, §§ 1034, 1043(d)(1), Feb. 10, 1996, [110 Stat. 430](#), 438; Pub. L. 104-201, div. A, title XVI, § 1609, Sept. 23, 1996, [110 Stat. 2738](#); Pub. L. 105-277, div. A, § 101(f) [title VIII, § 405(d)(1), (f)(1)], Oct. 21, 1998, [112 Stat. 2681-337](#), 2681-417, 2681-429; Pub. L. 106-398, § 1 [[div. A], title XI, § 1103], Oct. 30, 2000, [114 Stat. 1654](#), 1654A-311; Pub. L. 109-163, div. A, title XI, § 1102, Jan. 6, 2006, [119 Stat. 3447](#); Pub. L. 110-417, [div. A], title XI, § 1105, Oct. 14, 2008, [122 Stat. 4617](#); Pub. L. 113-66, div. A, title XI, § 1103, Dec. 26, 2013, [127 Stat. 885](#).)



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