

**TITLE 5 - GOVERNMENT ORGANIZATION AND EMPLOYEES****PART III - EMPLOYEES****Subpart B - Employment and Retention****CHAPTER 33 - EXAMINATION, SELECTION, AND PLACEMENT****SUBCHAPTER V - PROMOTION****§ 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**

Derivation	U.S. Code	Revised Statutes and Statutes at Large
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.