

§211.101

5 CFR Ch. I (1–1–23 Edition)

§211.101 Purpose.

The purpose of this part is to define veterans' preference and the administration of preference in Federal employment. (5 U.S.C. 2108, 2108a)

§211.102 Definitions.

For the purposes of preference in Federal employment, the following definitions apply:

(a) *Veteran* means a person who has been discharged or released from active duty in the armed forces under honorable conditions, or who has a certification as defined in paragraph (h) of this section, if the active duty service was performed:

- (1) In a war;
- (2) In a campaign or expedition for which a campaign badge has been authorized;
- (3) During the period beginning April 28, 1952, and ending July 1, 1955;
- (4) For more than 180 consecutive days, other than for training, any part of which occurred during the period beginning February 1, 1955, and ending October 14, 1976;
- (5) During the period beginning August 2, 1990, and ending January 2, 1992; or
- (6) For more than 180 consecutive days, other than for training, any part of which occurred during the period beginning September 11, 2001, and ending on August 31, 2010, the last day of Operation Iraqi Freedom.

(b) *Disabled veteran* means a person who has been discharged or released from active duty in the armed forces under honorable conditions performed at any time, or who has a certification as defined in paragraph (h) of this section, and who has established the present existence of a service-connected disability or is receiving compensation, disability retirement benefits, or a pension because of a statute administered by the Department of Veterans Affairs or a military department.

(c) *Sole survivor veteran* means a person who was discharged or released from a period of active duty after August 29, 2008, by reason of a sole survivorship discharge (as that term is defined in 10 U.S.C. 1174(i)), and who meets the definition of a "veteran" in paragraph (a) of this section, with the

exception that he or she is not required to meet any of the length of service requirements prescribed by paragraph (a).

(d) *Preference eligible* means a veteran, disabled veteran, sole survivor veteran, spouse, widow, widower, or parent who meets the definition of "preference eligible" in 5 U.S.C. 2108.

(1) Preference eligibles other than sole survivor veterans are entitled to have 5 or 10 points added to their earned score on a civil service examination in accordance with 5 U.S.C. 3309.

(2) Under numerical ranking and selection procedures for competitive service hiring, preference eligibles are entered on registers in the order prescribed by §332.401 of this chapter.

(3) Under excepted service examining procedures in part 302 of this chapter, preference eligibles are listed ahead of persons with the same ratings who are not preference eligibles, or listed ahead of non-preference eligibles if numerical scores have not been assigned.

(4) Under alternative ranking and selection procedures, *i.e.*, category rating, preference eligibles are listed ahead of individuals who are not preference eligibles in accordance with 5 U.S.C. 3319.

(5) Preference eligibles, other than those who have not yet been discharged or released from active duty, are accorded a higher retention standing than non-preference eligibles in the event of a reduction in force in accordance with 5 U.S.C. 3502.

(6) Veterans' preference does not apply, however, to inservice placement actions such as promotions.

(e) *Armed forces* means the United States Army, Navy, Air Force, Marine Corps, and Coast Guard.

(f) *Active duty* or *active military duty*:

(1) For veterans defined in paragraphs (a)(1) through (3) and disabled veterans defined in paragraph (b) of this section, means active duty with military pay and allowances in the armed forces, and includes training, determining physical fitness, and service in the Reserves or National Guard; and

(2) For veterans defined in paragraphs (a)(4) through (6) of this section, means full-time duty with military pay and allowances in the armed forces,

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and does not include training, determining physical fitness, or service in the Reserves or National Guard.

(g) *Discharged or released from active duty* means with either an honorable or general discharge from active duty in the armed forces. The Department of Defense is responsible for administering and defining military discharges.

(h) *Certification* means any written document from the armed forces that certifies the service member is expected to be discharged or released from active duty service in the armed forces under honorable conditions not later than 120 days after the date the certification is submitted for consideration in the hiring process, at the time and in the manner prescribed by the applicable job opportunity announcement. Prior to appointment, the service member's character of service and qualifying discharge or release must be verified through a DD form 214 or equivalent documentation.

[81 FR 83109, Nov. 21, 2016, as amended at 81 FR 94909, Dec. 27, 2016; 83 FR 63042, Dec. 7, 2018]

§ 211.103 Administration of preference.

Agencies are responsible for making all preference determinations except for preference based on a common law marriage. Such a claim must be referred to OPM's General Counsel for decision.

PART 212—COMPETITIVE SERVICE AND COMPETITIVE STATUS

Subpart A—Competitive Service

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212.401 Effect of competitive status on position.

AUTHORITY: 5 U.S.C. 1302, 3301, 3302; E.O. 10577, 3 CFR, 1954-1958 Comp., p. 218.

SOURCE: 33 FR 12408, Sept. 4, 1968, unless otherwise noted.

Subpart A—Competitive Service

§ 212.101 Definitions.

In this chapter:

(a) *Competitive service* has the meaning given that term by section 2102 of title 5, United States Code, and includes:

(1) All civilian positions in the executive branch of the Federal Government not specifically excepted from the civil service laws by or pursuant to statute, by the President, or by the Office of Personnel Management, and not in the Senior Executive Service; and

(2) All positions in the legislative and judicial branches of the Federal Government and in the government of the District of Columbia specifically made subject to the civil service laws by statute.

(b) *Competitive position* means a position in the competitive service.

(5 U.S.C. 2102)

[33 FR 12408, Sept. 4, 1968, as amended at 45 FR 62413, Sept. 19, 1980]

§ 212.102 Authority to make determinations.

OPM determines finally whether a position is in the competitive service.

Subpart B [Reserved]

Subpart C—Competitive Status

§ 212.301 Competitive status defined.

In this chapter, competitive status means an individual's basic eligibility for noncompetitive assignment to a competitive position. Competitive status is acquired by completion of a probationary period under a career-conditional or career appointment, or under a career executive assignment in the former executive assignment system, following open competitive examination, or by statute, Executive order, or the Civil Service rules, without open competitive examination. An individual with competitive status may be, without open competitive examination,