

791 and 793 of this title or any extension thereof suffers disability or death after capture, detention, or other restraint by an enemy of the United States, during the present war, such disability or death shall in the administration of sections 751-791 and 793 of this title be deemed to have resulted from injury occurring while in the performance of duty, whether or not the employee was engaged in the course of his employment when taken by the enemy: *Provided*, That this section shall not apply in the case of any person (1) whose residence is at or in the vicinity of the place from whence he was thus taken, and (2) who was not living there solely by virtue of the exigencies of his employment, unless such person was so taken while he was engaged in the course of his employment: *Provided further*, That compensation for disability or death shall not be paid during any period of time during which the disabled person (or the dependents of such person, or any one of them) should receive or be entitled to receive any pay, other benefit, or gratuity from the United States on account of detention by the enemy or by reason of the same disability or death, unless such pay, benefit, or gratuity is refunded or renounced. (July 28, 1945, ch. 328, § 5 (b), 59 Stat. 505.)

CODIFICATION

Section is based on subsec. (b) of section 5 of act July 28, 1945, cited to text. Subsec. (a) (1), (a) (2), and (a) (3) of said section are set out as notes under sections 770, 760, and 761 of this title, respectively.

Chapter 16.—SUBSISTENCE EXPENSE ACT OF 1926

§ 823. Officers and employees away on official business; allowance of actual necessary expenses.

Civilian officers and employees of the departments and establishments, while traveling on official business and away from their designated posts of duty, shall be allowed, in lieu of their actual expenses for subsistence and all fees or tips to porters and stewards, a per diem allowance to be prescribed by the heads of the departments and establishments concerned at a rate not to exceed \$6 within the limits of the continental United States, and not to exceed an average of \$7 beyond the limits of the continental United States. (As amended Jan. 30, 1942, ch. 29, 56 Stat. 39.)

AMENDMENTS

1942—Act of Jan. 30, 1942, cited to text, increased rates from \$5 and \$6 to \$6 and \$7, respectively.

§ 823a. Transportation of effects; automobiles.

CROSS REFERENCES

Transportation of dependents and household effects of personnel of Army of the United States, see section 764 of Appendix to Title 50, War.

War, household and personal effects of civilian employees appointed and transferred to foreign service, evacuation of dependents for military reasons, see section 763 of Appendix to Title 50, War.

§ 834. Mileage and expenses for employees of the Federal Housing Administration.

Employees of the Federal Housing Administration may be allowed, in addition to mileage at a rate not to exceed 4 cents per mile for travel by motor vehicle, reimbursement for the actual cost of

ferry fares and bridge, road, and tunnel tolls, and employees engaged in the inspection of property, servicing of loans, or the liquidation of delinquent accounts, may be paid an allowance not to exceed 4 cents per mile for all travel performed in privately owned automobiles within the limits of their official posts of duty when such travel is performed in connection with such inspection, servicing, or liquidation. (As amended Apr. 5, 1941, ch. 40, § 1, 55 Stat. 100; June 27, 1942, ch. 450, § 1, 56 Stat. 401; June 26, 1943, ch. 145, title I, § 1, 57 Stat. 187; June 27, 1944, ch. 286, title I, 58 Stat. 377; May 3, 1945, ch. 106, title I, § 1, 59 Stat. 123.)

AMENDMENTS

1945—Act May 3, 1945, cited to text, amended section by adding "servicing of loans, or the liquidation of delinquent accounts" following "inspection of property", and "servicing, or liquidation" following "such inspection,".

Chapter 17.—PREFERENCE OF VETERANS IN GOVERNMENT EMPLOYMENT (NEW)

Sec.

- 851. Persons entitled to federal employment preferences.
- 852. Examinations; earned ratings; additional credit.
- 853. Credit for experience.
- 854. Waiver of physical and educational qualifications.
- 855. Exemption from certain restrictive laws.
- 856. Register of lists of eligibles; entry rank.
- 857. Certification of eligibles; selection from available names; exceptions; promotion of substitutes in postal service.
- 858. Unclassified civil service; selection from qualified applicants.
- 859. Periodic examinations by Civil Service Commission.
- 860. Rules and regulations by Civil Service Commission.
- 861. Reduction in personnel; considerations affecting release.
- 862. Recertification and reappointment of resigned, dismissed, or furloughed employees.
- 863. Discharge, suspension, etc., only for cause; reason in writing; advance notice; personal appearance; findings and recommendations.
- 864. Separated or furloughed eligibles as entitled to reclassification and reappointment.
- 865. Resigned eligibles as entitled to reclassification and reappointment.
- 866. Definition of "Civil Service Commission" or "Commission."
- 867. Repeal of inconsistent laws; saving clause.
- 868. Enforcement of rules and regulations by Commission.
- 869. Positions exempt from chapter.

§ 851. Persons entitled to federal employment preferences.

In certification for appointment, in appointment, in reinstatement, in reemployment, and in retention in civilian positions in all establishments, agencies, bureaus, administrations, projects, and departments of the Government, permanent or temporary, and in either (a) the classified civil service; (b) the unclassified civil service; (c) any temporary or emergency establishment, agency, bureau, administration, project, and department created by Acts of Congress or Presidential Executive order; and (d) the civil service of the District of Columbia, preference shall be given to (1) those ex-servicemen and women who have served on active duty in any branch of the armed forces of the United States and have been separated therefrom under honorable condi-

tions and who have established the present existence of a service-connected disability or who are receiving compensation, disability retirement benefits, or pension by reason of public laws administered by the Veterans' Administration, the War Department or the Navy Department; (2) the wives of such service-connected disabled ex-servicemen as have themselves been unable to qualify for any civil-service appointment; (3) the unmarried widows of deceased ex-servicemen who served on active duty in any branch of the armed forces of the United States during any war, or in any campaign or expedition (for which a campaign badge has been authorized), and who were separated therefrom under honorable conditions; and (4) those ex-servicemen and women who have served on active duty in any branch of the armed forces of the United States, during any war, or in any campaign or expedition (for which a campaign badge has been authorized), and have been separated therefrom under honorable conditions. (June 27, 1944, ch. 287, § 2, 58 Stat. 387.)

SHORT TITLE

Section 1 of act June 27, 1944, cited to text, provided: "That this Act [sections 851-869 of this title] may be cited as the 'Veterans' Preference Act of 1944'."

SEPARABILITY PROVISIONS

Section 21 of act June 27, 1944, cited to text, provided: "If any part of this Act [sections 851-869 of this title] shall be found to be unconstitutional, the rest of it shall be considered as in full force and effect."

CROSS REFERENCES

Mustering-out pay for veterans, see sections 691-691g of Title 38, Pensions, Bonuses, and Veterans' Relief.

Readjustment of servicemen to civilian life, see sections 693-697e of Title 38, Pensions, Bonuses, and Veterans' Relief.

§ 852. Examinations; earned ratings; additional credit.

In all examinations to determine the qualifications of applicants for entrance into the service ten points shall be added to the earned ratings of those persons included under section 851 (1), (2), and (3) of this title, and five points shall be added to the earned ratings of those persons included under section 851 (4) of this title: *Provided*, That in examinations for the positions of guards, elevator operators, messengers, and custodians competition shall be restricted to persons entitled to preference under this chapter as long as persons entitled to preference are available and during the present war and for a period of five years following the termination of the present war as proclaimed by the President or by a concurrent resolution of the Congress for such other positions as may from time to time be determined by the President. (June 27, 1944, ch. 287, § 3, 58 Stat. 388.)

SAVING CLAUSE

Separability provisions, see note set out under section 851 of this title.

§ 853. Credit for experience.

In examinations where experience is an element of qualification, time spent in the military or naval service of the United States shall be credited in a veteran's rating where his or her actual employment in a similar vocation to that for which he or she

is examined was interrupted by such military or naval service. In all examinations to determine the qualifications of a veteran applicant, credit shall be given for all valuable experience, including experience gained in religious, civic, welfare, service, and organizational activities, regardless of whether any compensation was received therefor. (June 27, 1944 ch. 287, § 4, 58 Stat. 388.)

SAVING CLAUSE

Separability provisions, see note set out under section 851 of this title.

§ 854. Waiver of physical and educational qualifications.

In determining qualifications for examination, appointment, promotion, retention, transfer, or reinstatement, with respect to preference eligibles, the Civil Service Commission or other examining agency shall waive requirements as to age, height, and weight, provided any such requirement is not essential to the performance of the duties of the position for which examination is given. The Civil Service Commission or other examining agency, after giving due consideration to the recommendation of any accredited physician, shall waive the physical requirements in the case of any veteran, provided such veteran is, in the opinion of the Civil Service Commission, or other examining agency physically able to discharge efficiently the duties of the position for which the examination is given. No minimum educational requirement will be prescribed in any civil-service examination except for such scientific, technical, or professional positions the duties of which the Civil Service Commission decides cannot be performed by a person who does not have such education. The Commission shall make a part of its public records its reasons for such decision. (June 27, 1944, ch. 287, § 5, 58 Stat. 388.)

SAVING CLAUSE

Separability provisions, see note set out under section 851 of this title.

§ 855. Exemption from certain restrictive laws.

Preference eligibles shall not be subject to the provisions of section 641 of this title concerning two or more members of a family in the service, or to the provisions of section 633 of this title concerning apportionment of appointments in the Government departments in the District of Columbia among the several States and Territories according to population, but may be required to furnish evidence of residence and domicile. (June 27, 1944, ch. 287, § 6, 58 Stat. 389.)

SAVING CLAUSE

Separability provisions, see note set out under section 851 of this title.

§ 856. Register or lists of eligibles; entry rank.

The names of preference eligibles shall be entered on the appropriate registers or lists of eligibles in accordance with their respective augmented ratings, and the name of a preference eligible shall be entered ahead of all others having the same rating: *Provided*, That, except for positions in the professional and scientific services for which the entrance salary is over \$3,000 per annum, the names of all qualified preference eligibles, entitled to ten points in

addition to their earned ratings shall be placed at the top of the appropriate civil-service register or employment list, in accordance with their respective augmented ratings. (June 27, 1944, ch. 287, § 7, 58 Stat. 389.)

SAVING CLAUSE

Separability provisions, see note set out under section 851 of this title.

§ 857. Certification of eligibles; selection from available names; exceptions; promotion of substitutes in postal service.

When, in accordance with civil-service laws and rules, a nominating or appointing officer shall request certification of eligibles for appointment purposes, the Civil Service Commission shall certify, from the top of the appropriate register of eligibles, a number of names sufficient to permit the nominating or appointing officer to consider at least three names in connection with each vacancy. The nominating or appointing officer shall make selection for each vacancy from not more than the highest three names available for appointment on such certification, unless objection shall be made, and sustained by the Commission, to one or more of the persons certified, for any proper and adequate reason, as may be prescribed in the rules promulgated by the Civil Service Commission: *Provided*, That an appointing officer who passes over a veteran eligible and selects a nonveteran shall file with the Civil Service Commission his reasons in writing for so doing, which shall become a part of the record of such veteran eligible, and shall be made available upon request to the veteran or his designated representative; the Civil Service Commission is directed to determine the sufficiency or such submitted reasons and, if found insufficient, shall require such appointing officer to submit more detailed information in support thereof; the findings of the Civil Service Commission as to the sufficiency or insufficiency of such reasons shall be transmitted to and considered by such appointing officer, and a copy thereof shall be sent to the veteran eligible or to his designated representative upon request therefor: *Provided further*, That if, upon certification, reasons deemed sufficient by the Civil Service Commission for passing over his name shall three times have been given by an appointing officer, certification of his name for appointment may thereafter be discontinued, prior notice of which shall be sent to the veteran eligible. Whenever in the Postal Service two or more substitutes are appointed on the same day, they shall be promoted to the regular force in the order in which their names appeared on the civil-service register from which they were originally appointed, whenever there are substitutes of the required sex who are eligible and will accept, unless such vacancies are filled by transfer or reinstatement. (June 27, 1944, ch. 287, § 8, 58 Stat. 389.)

SAVING CLAUSE

Separability provisions, see note set out under section 851 of this title.

§ 858. Unclassified civil service; selection from qualified applicants.

In the unclassified Federal, and District of Columbia, civil service, and in all other positions and

employment hereinbefore referred to in (c) of section 851 of this title, the nominating or appointing officer or employing official shall make selection from the qualified applicants in accordance with the provisions of this chapter. (June 27, 1944, ch. 287, § 9, 58 Stat. 389.)

SAVING CLAUSE

Separability provisions, see note set out under section 851 of this title.

§ 859. Periodic examinations by Civil Service Commission.

The Civil Service Commission is authorized and directed to hold an examination, during the next succeeding quarterly period, for any position to which any appointment has been made within the preceding three years, for any person included under section 851 (1), (2), and (3) of this title upon application for examination for any such position. (June 27, 1944, ch. 287, § 10, 58 Stat. 390.)

SAVING CLAUSE

Separability provisions, see note set out under section 851 of this title.

§ 860. Rules and regulations by Civil Service Commission.

The Civil Service Commission is hereby authorized to promulgate appropriate rules and regulations for the administration and enforcement of the provisions of this chapter. (June 27, 1944, ch. 287, § 11, 58 Stat. 390.)

SAVING CLAUSE

Separability provisions, see note set out under section 851 of this title.

§ 861. Reduction in personnel; considerations affecting release.

In any reduction in personnel in any civilian service of any Federal agency, competing employees shall be released in accordance with Civil Service Commission regulations which shall give due effect to tenure of employment, military preference, length of service, and efficiency ratings: *Provided*, That the length of time spent in active service in the armed forces of the United States of each such employee shall be credited in computing length of total service: *Provided further*, That preference employees whose efficiency ratings are "good" or better shall be retained in preference to all other competing employees and that preference employees whose efficiency ratings are below "good" shall be retained in preference to competing nonpreference employees who have equal or lower efficiency ratings: *And provided further*, That when any or all of the functions of any agency are transferred to, or when any agency is replaced by, some other agency, or agencies, all preference employees in the function or functions transferred or in the agency which is replaced by some other agency shall first be transferred to the replacing agency, or agencies, for employment in positions for which they are qualified, before such agency, or agencies, shall appoint additional employees from any other source for such positions. (June 27, 1944, ch. 287, § 12, 58 Stat. 390.)

SAVING CLAUSE

Separability provisions, see note set out under section 851 of this title.

§ 862. Recertification and reappointment of resigned, dismissed, or furloughed employees.

Any preference eligible who has resigned or who has been dismissed or furloughed may, at the request of any appointing officer, be certified for, and appointed to, any position for which he may be eligible in the civil service, Federal, or District of Columbia, or in any establishment, agency, bureau, administration, project, or department, temporary or permanent. (June 27, 1944, ch. 287, § 13, 58 Stat. 390.)

SAVING CLAUSE

Separability provisions, see note set out under section 851 of this title.

§ 863. Discharge, suspension, etc., only for cause; reason in writing; advance notice; personal appearance; findings and recommendations.

No permanent or indefinite preference eligible, who has completed a probationary or trial period employed in the civil service, or in any establishment, agency, bureau, administration, project, or department, hereinbefore referred to shall be discharged, suspended for more than thirty days, furloughed without pay, reduced in rank or compensation, or debarred for future appointment except for such cause as will promote the efficiency of the service and for reasons given in writing, and the person whose discharge, suspension, for more than thirty days, furlough without pay, or reduction in rank or compensation is sought shall have at least thirty days' advance written notice (except where there is reasonable cause to believe the employee to be guilty of a crime for which a sentence of imprisonment can be imposed), stating any and all reasons, specifically and in detail, for any such proposed action; such preference eligible shall be allowed a reasonable time for answering the same personally and in writing, and for furnishing affidavits in support of such answer, and shall have the right to appeal to the Civil Service Commission from an adverse decision of the administrative officer so acting, such appeal to be made in writing within a reasonable length of time after the date of receipt of notice of such adverse decision: *Provided*, That such preference eligible shall have the right to make a personal appearance, or an appearance through a designated representative, in accordance with such reasonable rules and regulations as may be issued by the Civil Service Commission; after investigation and consideration of the evidence submitted, the Civil Service Commission shall submit its findings and recommendations to the proper administrative officer and shall send copies of same to the appellant or to his designated representative: *Provided further*, That the Civil Service Commission may declare any such preference eligible who may have been dismissed or furloughed without pay to be eligible for the provisions of section 864 of this title. (June 27, 1944, ch. 287, § 14, 58 Stat. 390.)

SAVING CLAUSE

Separability provisions, see note set out under section 851 of this title.

§ 864. Separated or furloughed eligibles as entitled to reclassification and reappointment.

Any preference eligible, who has been furloughed, or separated without delinquency or misconduct,

upon request, shall have his name placed on all appropriate civil-service registers and/or on all employment lists, for every position for which his qualifications have been established, as maintained by the Civil Service Commission, or as shall be maintained by any agency or project of the Federal Government, or of the District of Columbia, in the order as provided in section 856 of this title, and shall then be eligible for recertification and reappointment in the order and according to the procedure as provided for in sections 856 and 857 of this title. No appointment shall be made from an examination register of eligibles, except of ten-point preference eligibles, when there are three or more names of preference eligibles on any appropriate reemployment list for the position to be filled. (June 27, 1944, ch. 287, § 15, 58 Stat. 391.)

SAVING CLAUSE

Separability provisions, see note set out under section 851 of this title.

§ 865. Resigned eligibles as entitled to reclassification and reappointment.

Any preference eligible who has resigned shall, upon request to the Civil Service Commission, have his name again placed on all proper civil-service registers for which he may have been qualified, in the order as provided for in section 856 of this title, and shall then be eligible for recertification and reappointment in the order, and according to the procedure, as provided for in sections 856 and 857 of this title. (June 27, 1944, ch. 287, § 16, 58 Stat. 391.)

SAVING CLAUSE

Separability provisions, see note set out under section 851 of this title.

§ 866. Definition of "Civil Service Commission" or "Commission."

The term "Civil Service Commission" or "Commission" as used in this chapter shall mean the present United States Civil Service Commission or any body or person who may by law succeed to its powers and duties, or any of them, or which or who may be designated by law to perform any specific duty and possess any specific power concerning matters covered by this chapter. (June 27, 1944, ch. 287, § 17, 58 Stat. 391.)

SAVING CLAUSE.

Separability provisions, see note set out under section 851 of this title.

§ 867. Repeal of inconsistent laws; saving clause.

All Acts and parts of Acts inconsistent with the provisions hereof are hereby modified to conform herewith, and this chapter shall not be construed to take away from any preference eligible any rights heretofore granted to, or possessed by, him under any existing law, Executive order, civil-service rule or regulation, of any department of the Government or officer thereof. (June 27, 1944, ch. 287, § 18, 58 Stat. 391.)

SAVING CLAUSE

Separability provisions, see note set out under section 851 of this title.

§ 868. Enforcement of rules and regulations by Commission.

It shall be the authority and duty of the Civil Service Commission in all cases under the classified civil service to make and enforce appropriate rules and regulations to carry into full effect the provisions, intent, and purpose of this chapter and such Executive orders as may be issued pursuant thereto and in furtherance thereof. (June 27, 1944, ch. 287, § 19, 58 Stat. 391.)

SAVING CLAUSE

Separability provisions, see note set out under section 851 of this title.

§ 869. Positions exempt from chapter.

Nothing contained in this chapter is intended to apply to any position in or under the legislative or judicial branch of the Government or to any position or appointment which by the Congress is required to be confirmed by, or made with, the advice and consent of the United States Senate: *Provided, however,* That the provisions of this chapter shall apply to appointments under sections 31a, 31b, and 39a of title 39. (June 27, 1944, ch. 287, § 20, 58 Stat. 391.)

SAVING CLAUSE

Separability provisions, see note set out under section 851 of this title.

Chapter 18. FEDERAL EMPLOYEES PAY PROVISIONS (New)

SUBCHAPTER I. COVERAGE AND EXEMPTIONS

- Sec.
901. Coverage of employees.
902. Exemptions from coverage; definition.

SUBCHAPTER II. COMPENSATION FOR OVERTIME

911. Payment of overtime; time and one-half rate; computation schedule of rates.
912. Compensatory time off for irregular or occasional overtime work.
913. Payment of overtime to wage-board employees; computation.

SUBCHAPTER III. COMPENSATION FOR NIGHT AND HOLIDAY WORK

921. Night pay differential.
922. Compensation for holiday work; rate; effective date.

SUBCHAPTER IV. EMPLOYEES OF LEGISLATIVE AND JUDICIAL BRANCHES

931. Legislative branch employees; increases in basic compensation rates.
932. Same; temporary additional compensation in lieu of overtime; termination date.
933. Same; overtime compensation for certain employees of the Office of the Architect of the Capitol.
934. Judicial branch employees; increase in basic compensation rates; secretaries and law clerks of circuit and district judges affected.
935. Same; temporary additional compensation in lieu of overtime; termination date; definition.

SUBCHAPTER V. MISCELLANEOUS PROVISIONS

941. Inspectional groups exempted from coverage.
942. Increase in basic compensation rates of employees of customs and immigration services; employees not specifically provided for.
943. Limitations on reductions and increases in compensation.
944. Establishment of basic workweek; pay period; pay computation methods; application by Architect of the Capitol and Librarian of Congress.

- Sec.
945. Regulations.
946. Vessel employees.
947. Personnel ceilings.
 (a) Termination of unnecessary employment.
 (b) Reports to Director of the Budget; contents; determination of necessary personnel; reports by Director to Congress; contents; definition.
 (c) Determinations by Director.
 (d) Duties of Director.
 (e) Exclusion of casual and unpaid employees.
 (f) Exemption of certain employees until cessation of present war; definition.
948. Exemption of compensation increases from determination of annual income under veterans laws and regulations.

SUBCHAPTER I. COVERAGE AND EXEMPTIONS

§ 901. Coverage of employees.

(a) Subject to the exemptions specified in section 902 of this title, subchapters II and III of this chapter shall apply (1) to all civilian officers and employees in or under the executive branch of the Government, including Government-owned or controlled corporations, and in or under the District of Columbia municipal government, and (2) to those officers and employees of the judicial branch of the Government, the Library of Congress, the Botanic Garden, and the Office of the Architect of the Capitol who occupy positions subject to sections 661-663, 664-673, and 674 of this title.

(b) Sections 663, 667, 672a, and 673 of this title shall apply to officers and employees who occupy positions subject to sections 661-663, 664-673, and 674 of this title.

(c) Subject to the exemptions specified in section 902 of this title, subchapter IV of this chapter shall apply to officers and employees in or under the legislative or the judicial branch of the Government whose compensation is not fixed in accordance with sections 661-663, 664-673, and 674 of this title, and to the official reporters of proceedings and debates of the Senate and their employees.

(d) Subject to the exemptions specified in section 902 of this title, subchapter V of this chapter (containing miscellaneous provisions) shall apply to civilian officers and employees of the Government according to the terms thereof.

(e) All provisions of sections 84, 663, 667, 672a, 673 of this title, and this chapter applicable to the executive branch of the Government shall be applicable to the General Accounting Office. (June 30, 1945, ch. 212, title I, § 101, 59 Stat. 295.)

SHORT TITLE

Section 1 of act June 30, 1945, cited to text, provided: "That this Act [sections 84, 663, 667, 672a, 673 of this title, and this chapter] may be cited as the 'Federal Employees Pay Act of 1945'."

EFFECTIVE DATE

Section 610 of act June 30, 1945, cited to text, provided: "This Act [sections 84, 663, 667, 672a, 673 of this title, and this chapter] shall take effect on July 1, 1945."

APPROPRIATIONS

Section 609 of act June 30, 1945, cited to text, provided: "There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act [sections 84, 663, 667, 672a, 673 of this title and this chapter]."