

Public Law 101-376  
101st Congress

An Act

To amend title 5, United States Code, to grant appeal rights to members of the excepted service affected by adverse personnel actions, and for other purposes.

Aug. 17, 1990  
[H.R. 3086]

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

Civil Service  
Due Process  
Amendments.  
5 USC 7501  
note.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Civil Service Due Process Amendments".

SEC. 2. EXCEPTED SERVICE APPEAL RIGHTS.

(a) IN GENERAL.—Section 7511 of title 5, United States Code, is amended to read as follows:

“§ 7511. Definitions; application

“(a) For the purpose of this subchapter—

“(1) ‘employee’ means—

“(A) an individual in the competitive service—

“(i) who is not serving a probationary or trial period under an initial appointment; or

“(ii) who has completed 1 year of current continuous service under other than a temporary appointment limited to 1 year or less;

“(B) a preference eligible in the excepted service who has completed 1 year of current continuous service in the same or similar positions—

“(i) in an Executive agency; or

“(ii) in the United States Postal Service or Postal Rate Commission; and

“(C) an individual in the excepted service (other than a preference eligible)—

“(i) who is not serving a probationary or trial period under an initial appointment pending conversion to the competitive service; or

“(ii) who has completed 2 years of current continuous service in the same or similar positions in an Executive agency under other than a temporary appointment limited to 2 years or less;

“(2) ‘suspension’ has the same meaning as set forth in section 7501(2) of this title;

“(3) ‘grade’ means a level of classification under a position classification system;

“(4) ‘pay’ means the rate of basic pay fixed by law or administrative action for the position held by an employee; and

“(5) ‘furlough’ means the placing of an employee in a temporary status without duties and pay because of lack of work or funds or other nondisciplinary reasons.

“(b) This subchapter does not apply to an employee—

“(1) whose appointment is made by and with the advice and consent of the Senate;

“(2) whose position has been determined to be of a confidential, policy-determining, policy-making or policy-advocating character by—

“(A) the President for a position that the President has excepted from the competitive service;

“(B) the Office of Personnel Management for a position that the Office has excepted from the competitive service; or

“(C) the President or the head of an agency for a position excepted from the competitive service by statute;

“(3) whose appointment is made by the President;

“(4) who is receiving an annuity from the Civil Service Retirement and Disability Fund, or the Foreign Service Retirement and Disability Fund, based on the service of such employee;

“(5) who is described in section 8337(h)(1), relating to technicians in the National Guard;

“(6) who is a member of the Foreign Service, as described in section 103 of the Foreign Service Act of 1980;

“(7) whose position is with the Central Intelligence Agency, the General Accounting Office, or the Veterans Health Services and Research Administration;

“(8) whose position is within the United States Postal Service, the Postal Rate Commission, the Panama Canal Commission, the Tennessee Valley Authority, the Federal Bureau of Investigation, the National Security Agency, the Defense Intelligence Agency, or an intelligence activity of a military department covered under section 1590 of title 10, unless subsection (a)(1)(B) of this section or section 1005(a) of title 39 is the basis for this subchapter's applicability; or

“(9) who is described in section 5102(c)(11) of this title.

“(c) The Office may provide for the application of this subchapter to any position or group of positions excepted from the competitive service by regulation of the Office which is not otherwise covered by this subchapter.”.

(b) **ACTIONS BASED ON UNACCEPTABLE PERFORMANCE.**—Section 4303(e) of title 5, United States Code, is amended to read as follows:

“(e) Any employee who is—

“(1) a preference eligible;

“(2) in the competitive service; or

“(3) in the excepted service and covered by subchapter II of chapter 75,

and who has been reduced in grade or removed under this section is entitled to appeal the action to the Merit Systems Protection Board under section 7701.”.

(c) **APPLICABILITY.**—The amendments made by this section shall apply with respect to any personnel action taking effect on or after the effective date of this Act.

### SEC. 3. ANNUITANT STATUS NOT A BAR TO APPEALING ONE'S REMOVAL.

Section 7701 of title 5, United States Code, is amended—

(1) by redesignating subsection (j) as subsection (k); and

(2) by inserting after subsection (i) the following:

“(j) In determining the appealability under this section of any case involving a removal from the service (other than the removal of a reemployed annuitant), neither an individual's status under any

retirement system established by or under Federal statute nor any election made by such individual under any such system may be taken into account.”.

**SEC. 4. EFFECTIVE DATE.**

5 USC 4303  
note.

This Act and the amendments made by this Act shall become effective on the date of the enactment of this Act, and, except as provided in section 2(c), shall apply with respect to any appeal or other proceeding brought on or after such date.

Approved August 17, 1990.

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**LEGISLATIVE HISTORY—H.R. 3086:**

**HOUSE REPORTS:** No. 101-328 (Comm. on Post Office and Civil Service).

**CONGRESSIONAL RECORD:**

Vol. 135 (1989): Nov. 6, considered and passed House.

Vol. 136 (1990): July 30, considered and passed Senate, amended.

Aug. 3, House concurred in Senate amendment.