

**Statutory Notes and Related Subsidiaries****CHANGE OF NAME**

Committee on Governmental Affairs of Senate changed to Committee on Homeland Security and Governmental Affairs of Senate, effective Jan. 4, 2005, by Senate Resolution No. 445, One Hundred Eighth Congress, Oct. 9, 2004.

Committee on Government Operations of House of Representatives treated as referring to Committee on Government Reform and Oversight of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Government Reform and Oversight of House of Representatives changed to Committee on Government Reform of House of Representatives by House Resolution No. 5, One Hundred Sixth Congress, Jan. 6, 1999. Committee on Government Reform of House of Representatives changed to Committee on Oversight and Government Reform of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007. Committee on Oversight and Government Reform of House of Representatives changed to Committee on Oversight and Reform of House of Representatives by House Resolution No. 6, One Hundred Sixteenth Congress, Jan. 9, 2019. Committee on Oversight and Reform of House of Representatives changed to Committee on Oversight and Accountability of House of Representatives by House Resolution No. 5, One Hundred Eighteenth Congress, Jan. 9, 2023.

**Subpart B—Employment and Retention****CHAPTER 31—AUTHORITY FOR EMPLOYMENT****SUBCHAPTER I—EMPLOYMENT AUTHORITIES**

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3103. Employment at seat of Government only for services rendered.
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3105. Appointment of administrative law judges.
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**SUBCHAPTER II—THE SENIOR EXECUTIVE SERVICE**

3131. The Senior Executive Service.
3132. Definitions and exclusions.

<sup>1</sup> So in original. Does not conform to section catchline.

<sup>2</sup> So in original. Probably should be followed by a period.

- Sec.
3133. Authorization of positions; authority for appointment.
3134. Limitations on noncareer and limited appointments.
- [3135. Repealed.]
3136. Regulations.

**SUBCHAPTER III—THE FEDERAL BUREAU OF INVESTIGATION AND DRUG ENFORCEMENT ADMINISTRATION SENIOR EXECUTIVE SERVICE**

3151. The Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service.
3152. Limitation on pay.

**SUBCHAPTER IV—TEMPORARY ORGANIZATIONS ESTABLISHED BY LAW OR EXECUTIVE ORDER**

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**SUBCHAPTER V—PRESIDENTIAL INNOVATION FELLOWS PROGRAM**

3171. Presidential Innovation Fellows Program.
3172. Presidential Innovation Fellows Program Advisory Board.

**Editorial Notes****AMENDMENTS**

2018—Pub. L. 115-232, div. A, title XI, § 1108(b), Aug. 13, 2018, 132 Stat. 2009, added items 3115 and 3116.

2017—Pub. L. 115-1, § 2(b), Jan. 20, 2017, 131 Stat. 5, added subchapter V heading and items 3171 and 3172.

2011—Pub. L. 112-81, div. A, title XI, § 1109(b), Dec. 31, 2011, 125 Stat. 1615, added item 3111a.

2010—Pub. L. 111-203, title IX, § 929G(b), July 21, 2010, 124 Stat. 1856, added item 3114 and struck out former item 3114 “Appointment of accountants, economists, and examiners by the Securities and Exchange Commission”.

2003—Pub. L. 108-44, § 2(b), July 3, 2003, 117 Stat. 843, added item 3114.

2000—Pub. L. 106-398, § 1 [[div. A], title XI, § 1101(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A-310, added subchapter IV heading and item 3161.

1997—Pub. L. 105-61, title VI, § 638(b), Oct. 10, 1997, 111 Stat. 1317, added item 3113.

1995—Pub. L. 104-66, title II, § 2181(a)(2), Dec. 21, 1995, 109 Stat. 732, struck out item 3135 “Biennial report”.

1988—Pub. L. 100-325, § 1(b), May 30, 1988, 102 Stat. 581, added subchapter III heading and items 3151 and 3152.

1980—Pub. L. 96-523, § 1(b), Dec. 12, 1980, 94 Stat. 3040, substituted “personal assistants for handicapped employees, including blind and” for “reading assistants for blind employees and interpreting assistants for” in item 3102.

1978—Pub. L. 95-454, title III, §§ 301(b), 302(b)(1), 307(b)(3), title IV, § 402(c), Oct. 13, 1978, 92 Stat. 1145, 1146, 1148, 1160, added heading for subchapter I, substituted “reading assistants for blind employees and interpreting assistants for deaf employees” for “readers for blind employees” in item 3102, and added items 3111, 3112, heading for subchapter II, and items 3131 to 3136.

Pub. L. 95-251, § 2(c)(2), Mar. 27, 1978, 92 Stat. 184, substituted “administrative law judges” for “hearing examiners” in item 3105.

1967—Pub. L. 90-206, title II, § 221(b), Dec. 16, 1967, 81 Stat. 640, added item 3110.

**SUBCHAPTER I—EMPLOYMENT AUTHORITIES****Editorial Notes****AMENDMENTS**

1979—Pub. L. 96-54, § 2(a)(10), Aug. 14, 1979, 93 Stat. 381, added heading for subchapter I.

**§ 3101. General authority to employ**

Each Executive agency, military department, and the government of the District of Columbia

may employ such number of employees of the various classes recognized by chapter 51 of this title as Congress may appropriate for from year to year.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 414.)

#### HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 43.	R.S. § 169. June 26, 1930, ch. 618, 46 Stat. 817.
.....	5 U.S.C. 514d (2d par.).	Sept. 21, 1944, ch. 412, § 709, 58 Stat. 743.

The authorization is restated to conform to the style of this title. The word “Executive agency” are substituted for “executive department, independent establishment” in view of the definitions in sections 103, 104, and 105. The source statute (an act to authorize the appointment of employees in the executive branch etc.) applied to the entire executive branch, and government corporations as well as other agencies in the executive branch were included within the words “independent establishment”. The words “or a military department” are inserted to preserve the application of the source statute. Before enactment of the National Security Act Amendments of 1949 (63 Stat. 578), the Department of the Army, the Department of the Navy, and the Department of the Air Force were Executive departments. The National Security Act Amendments of 1949 established the Department of Defense as an Executive department including the Department of the Army, the Department of the Navy, and the Department of the Air Force as military departments, not as Executive departments. However, the source statute for this subsection, which was in effect in 1949, remained applicable to the Secretaries of the military departments by virtue of section 12(g) of the National Security Act Amendments of 1949 (63 Stat. 591), which is set out in the reviser’s note for section 301. The words “for services in the District of Columbia or elsewhere” are eliminated as surplusage. The reference to chapter 51 is substituted for the reference to the Classification Act of 1923 because the Act of Oct. 28, 1949, ch. 782, § 1106(a), 63 Stat. 972, amended the section to refer to the Classification Act of 1949, which is carried into this title. The proviso in former section 43 and former section 514d (2d par.) are omitted as superseded by former section 22a, which is carried into section 302. The last sentence of the Act of June 26, 1930, is omitted as executed.

This section was part of title IV of the Revised Statutes. The Act of July 26, 1947, ch. 343, § 201(d), as added Aug. 10, 1949, ch. 412, § 4, 63 Stat. 579 (former 5 U.S.C. 171-1), which provides “Except to the extent inconsistent with the provisions of this Act [National Security Act of 1947], the provisions of title IV of the Revised Statutes as now or hereafter amended shall be applicable to the Department of Defense” is omitted from this title but is not repealed.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

#### Statutory Notes and Related Subsidiaries

##### REPORTS ON POLITICAL APPOINTEES APPOINTED TO NONPOLITICAL PERMANENT POSITIONS

Pub. L. 114-136, § 4, Mar. 18, 2016, 130 Stat. 305, provided that:

“(a) DEFINITIONS.—In this section—

“(1) the term ‘agency’ has the meaning given the term ‘Executive agency’ in section 105 of title 5, United States Code;

“(2) the term ‘covered civil service position’ means a position in the civil service (as defined in section 2101 of title 5, United States Code) that is not—

“(A) a temporary position; or

“(B) a political position;

“(3) the term ‘former political appointee’ means an individual who—

“(A) is not serving in an appointment to a political position; and

“(B) served as a political appointee during the 5-year period ending on the date of the request for an appointment to a covered civil service position in any agency;

“(4) the term ‘political appointee’ means an individual serving in an appointment to a political position; and

“(5) the term ‘political position’ means—

“(A) a position described under sections 5312 through 5316 of title 5, United States Code (relating to the Executive Schedule);

“(B) a noncareer appointment in the Senior Executive Service, as defined under paragraph (7) of section 3132(a) of title 5, United States Code; or

“(C) a position in the executive branch of the Government of a confidential or policy-determining character under schedule C of subpart C of part 213 of title 5, Code of Federal Regulations.

“(b) REPORTING ON CURRENT OR RECENT POLITICAL APPOINTEES APPOINTED TO COVERED CIVIL SERVICE POSITIONS.—

“(1) ANNUAL REPORT.—Except as provided in paragraph (2), the Director of the Office of Personnel Management shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Government Reform [now Committee on Oversight and Accountability] of the House of Representatives an annual report regarding requests by agencies to appoint political appointees or former political appointees to covered civil service positions. Each report shall cover one calendar year and shall—

“(A) for each request by an agency that a political appointee be appointed to a covered civil service position during the period covered by the report, provide—

“(i) the date on which the request was received by the Office of Personnel Management;

“(ii) subject to subsection (c), the name of the individual and the political position held by the individual, including title, office, and agency;

“(iii) the date on which the individual was first appointed to a political position in the agency in which the individual is serving as a political appointee;

“(iv) the grade and rate of basic pay for the individual as a political appointee;

“(v) the proposed covered civil service position, including title, office, and agency, and the proposed grade and rate of basic pay for the individual;

“(vi) whether the Office of Personnel Management approved or denied the request; and

“(vii) the date on which the individual was appointed to a covered civil service position, if applicable; and

“(B) for each request by an agency that a former political appointee be appointed to a covered civil service position during the period covered by the report, provide—

“(i) the date on which the request was received by the Office of Personnel Management;

“(ii) subject to subsection (c), the name of the individual and the political position held by the individual, including title, office, and agency;

“(iii) the date on which the individual was first appointed to any political position;

“(iv) the grade and rate of basic pay for the individual as a political appointee;

“(v) the date on which the individual ceased to serve in a political position;

“(vi) the proposed covered civil service position, including title, office, and agency, and the proposed grade and rate of basic pay for the individual;

“(vii) whether the Office of Personnel Management approved or denied the request; and

“(viii) the date on which the individual was first appointed to a covered civil service position, if applicable.

“(2) QUARTERLY REPORT IN CERTAIN YEARS.—In the last year of the term of a President, or, if applicable, the last year of the second consecutive term of a President, the report required under paragraph (1) shall be submitted quarterly and shall cover each quarter of the year, except that the last quarterly report shall also cover January 1 through 20 of the following year.

“(c) NAMES AND TITLES OF CERTAIN APPOINTEES.—If determined appropriate by the Director of the Office of Personnel Management, a report submitted under subsection (b) may exclude the name or title of a political appointee or former political appointee—

“(1) who—

“(A) was requested to be appointed to a covered civil service position; and

“(B) was not appointed to a covered civil service position; or

“(2) relating to whom a request to be appointed to a covered civil service position is pending at the end of the period covered by that report.”

#### REDUCTION OF FEDERAL FULL-TIME EQUIVALENT POSITIONS

Pub. L. 103-226, § 5, Mar. 30, 1994, 108 Stat. 115, as amended by Pub. L. 103-329, title VI, § 631, Sept. 30, 1994, 108 Stat. 2424; Pub. L. 108-271, § 8(b), July 7, 2004, 118 Stat. 814, provided that:

“(a) DEFINITION.—For the purpose of this section, the term ‘agency’ means an Executive agency (as defined by section 105 of title 5, United States Code), but does not include the Government Accountability Office.

“(b) LIMITATIONS ON FULL-TIME EQUIVALENT POSITIONS.—The President, through the Office of Management and Budget (in consultation with the Office of Personnel Management), shall ensure that the total number of full-time equivalent positions in all agencies shall not exceed—

“(1) 2,084,600 during fiscal year 1994;

“(2) 2,043,300 during fiscal year 1995;

“(3) 2,003,300 during fiscal year 1996;

“(4) 1,963,300 during fiscal year 1997;

“(5) 1,922,300 during fiscal year 1998; and

“(6) 1,882,300 during fiscal year 1999.

“(c) MONITORING AND NOTIFICATION.—The Office of Management and Budget, after consultation with the Office of Personnel Management, shall—

“(1) continuously monitor all agencies and make a determination on the first date of each quarter of each applicable fiscal year of whether the requirements under subsection (b) are met; and

“(2) notify the President and the Congress on the first date of each quarter of each applicable fiscal year of any determination that any requirement of subsection (b) is not met.

“(d) COMPLIANCE.—If, at any time during a fiscal year, the Office of Management and Budget notifies the President and the Congress that any requirement under subsection (b) is not met, no agency may hire any employee for any position in such agency until the Office of Management and Budget notifies the President and the Congress that the total number of full-time equivalent positions for all agencies equals or is less than the applicable number required under subsection (b).

“(e) WAIVER.—

“(1) EMERGENCIES.—Any provision of this section may be waived upon a determination by the President that—

“(A) the existence of a state of war or other national security concern so requires; or

“(B) the existence of an extraordinary emergency threatening life, health, safety, property, or the environment so requires.

“(2) AGENCY EFFICIENCY OR CRITICAL MISSION.—

“(A) Subsection (d) may be waived, in the case of a particular position or category of positions in an

agency, upon a determination of the President that the efficiency of the agency or the performance of a critical agency mission so requires.

“(B) Whenever the President grants a waiver pursuant to subparagraph (A), the President shall take all necessary actions to ensure that the overall limitations set forth in subsection (b) are not exceeded.

“(f) EMPLOYMENT BACKFILL PREVENTION.—

“(1) IN GENERAL.—The total number of funded employee positions in all agencies (excluding the Department of Defense and the Central Intelligence Agency) shall be reduced by one position for each vacancy created by the separation of any employee who has received, or is due to receive, a voluntary separation incentive payment under section 3(a)-(e) [5 U.S.C. 5597 note]. For purposes of this subsection, positions and vacancies shall be counted on a full-time-equivalent basis.

“(2) RELATED RESTRICTION.—No funds budgeted for and appropriated by any Act for salaries or expenses of positions eliminated under this subsection may be used for any purpose other than authorized separation costs.

“(3) APPLICABILITY OF BACKFILL PREVENTION PROVISIONS TO AGENCIES OTHERWISE EXEMPTED FROM FTE REDUCTION.—

“(A) IN GENERAL.—If any agency is otherwise exempted by any law from the limitations on full-time equivalent positions or the restrictions on hiring established by this section—

“(i) paragraph (1) shall apply to vacancies created in such agency; and

“(ii) the reductions required pursuant to clause (i) shall be made in the number of funded employee positions in such agency.

“(B) WAIVER AUTHORITY.—In the case of a particular position in an agency, subparagraph (A) may be waived upon a determination by the head of the agency that the performance of a critical agency mission requires the waiver.

“(C) RELATION TO OTHER LAW.—No law may be construed as suspending or modifying this paragraph unless such law specifically amends this paragraph.

“(g) LIMITATION ON PROCUREMENT OF SERVICE CONTRACTS.—The President shall take appropriate action to ensure that there is no increase in the procurement of service contracts by reason of the enactment of this Act [see Tables for classification], except in cases in which a cost comparison demonstrates such contracts would be to the financial advantage of the Federal Government.”

#### LIMITATION ON NUMBER OF CIVILIAN EMPLOYEES IN EXECUTIVE BRANCH

Pub. L. 95-454, title III, § 311, Oct. 13, 1978, 92 Stat. 1153, which provided that the total number of civilian employees in the executive branch, on Sept. 30, 1979, on Sept. 30, 1980, and Sept. 30, 1981, shall not exceed the number of such employees on Sept. 30, 1977, terminated by its own terms on Jan. 31, 1981.

Pub. L. 91-47, title V, § 503, July 22, 1969, 83 Stat. 83, repealed section 201 of Pub. L. 90-364, title II, June 28, 1968, 82 Stat. 270, which provided for limitation on the number of civilian officers and employees in the executive branch and which was formerly set out under this section.

#### CITIZENSHIP REQUIREMENT FOR EMPLOYEES COMPENSATED FROM APPROPRIATED FUNDS

Pub. L. 117-328, div. E, title VII, § 704, Dec. 29, 2022, 136 Stat. 4705, provided that: “Unless otherwise specified in law during the current fiscal year, no part of any appropriation contained in this or any other Act shall be used to pay the compensation of any officer or employee of the Government of the United States (including any agency the majority of the stock of which is owned by the Government of the United States) whose post of duty is in the continental United States unless

such person: (1) is a citizen of the United States; (2) is a person who is lawfully admitted for permanent residence and is seeking citizenship as outlined in 8 U.S.C. 1324b(a)(3)(B); (3) is a person who is admitted as a refugee under 8 U.S.C. 1157 or is granted asylum under 8 U.S.C. 1158 and has filed a declaration of intention to become a lawful permanent resident and then a citizen when eligible; or (4) is a person who owes allegiance to the United States: *Provided*, That for purposes of this section, affidavits signed by any such person shall be considered prima facie evidence that the requirements of this section with respect to his or her status are being complied with: *Provided further*, That for purposes of paragraphs (2) and (3) such affidavits shall be submitted prior to employment and updated thereafter as necessary: *Provided further*, That any person making a false affidavit shall be guilty of a felony, and upon conviction, shall be fined no more than \$4,000 or imprisoned for not more than 1 year, or both: *Provided further*, That the above penal clause shall be in addition to, and not in substitution for, any other provisions of existing law: *Provided further*, That any payment made to any officer or employee contrary to the provisions of this section shall be recoverable in action by the Federal Government: *Provided further*, That this section shall not apply to any person who is an officer or employee of the Government of the United States on the date of enactment of this Act [Dec. 29, 2022], or to international broadcasters employed by the Broadcasting Board of Governors [now the United States Agency for Global Media], or to temporary employment of translators, or to temporary employment in the field service (not to exceed 60 days) as a result of emergencies: *Provided further*, That this section does not apply to the employment as Wildland firefighters for not more than 120 days of nonresident aliens employed by the Department of the Interior or the USDA Forest Service pursuant to an agreement with another country.”

Similar provisions to those in the Citizenship Requirement for Employees Compensated From Appropriated Funds note above were contained in the following prior appropriation acts:

- Pub. L. 117-103, div. E, title VII, § 704, Mar. 15, 2022, 136 Stat. 293.
- Pub. L. 116-260, div. E, title VII, § 704, Dec. 27, 2020, 134 Stat. 1430.
- Pub. L. 116-93, div. C, title VII, § 704, Dec. 20, 2019, 133 Stat. 2484.
- Pub. L. 116-6, div. D, title VII, § 704, Feb. 15, 2019, 133 Stat. 187.
- Pub. L. 115-141, div. E, title VII, § 704, Mar. 23, 2018, 132 Stat. 588.
- Pub. L. 115-31, div. E, title VII, § 704, May 5, 2017, 131 Stat. 377.
- Pub. L. 114-113, div. E, title VII, § 704, Dec. 18, 2015, 129 Stat. 2473.
- Pub. L. 113-235, div. E, title VII, §§ 704, 750, Dec. 16, 2014, 128 Stat. 2379, 2392.
- Pub. L. 113-76, div. E, title VII, §§ 704, 744, Jan. 17, 2014, 128 Stat. 231, 243.
- Pub. L. 112-74, div. C, title VII, § 704, Dec. 23, 2011, 125 Stat. 929.
- Pub. L. 111-117, div. C, title VII, § 704, Dec. 16, 2009, 123 Stat. 3205.
- Pub. L. 111-8, div. D, title VII, § 704, Mar. 11, 2009, 123 Stat. 680.
- Pub. L. 110-161, div. D, title VII, § 705, Dec. 26, 2007, 121 Stat. 2019.
- Pub. L. 109-115, div. A, title VIII, § 805, Nov. 30, 2005, 119 Stat. 2496.
- Pub. L. 108-447, div. H, title VI, § 605, Dec. 8, 2004, 118 Stat. 3273.
- Pub. L. 108-199, div. F, title VI, § 605, Jan. 23, 2004, 118 Stat. 350.
- Pub. L. 108-7, div. J, title VI, § 605, Feb. 20, 2003, 117 Stat. 464.
- Pub. L. 107-67, title VI, § 605, Nov. 12, 2001, 115 Stat. 545, as amended by Pub. L. 108-188, title I, § 110, Dec. 17, 2003, 117 Stat. 2757.
- Pub. L. 106-554, § 1(a)(3) [title VI, § 605], Dec. 21, 2000, 114 Stat. 2763, 2763A-155.

- Pub. L. 106-58, title VI, § 605, Sept. 29, 1999, 113 Stat. 466.
- Pub. L. 105-277, div. A, § 101(h) [title VI, § 606], Oct. 21, 1998, 112 Stat. 2681-480, 2681-513.
- Pub. L. 105-61, title VI, § 606, Oct. 10, 1997, 111 Stat. 1309.
- Pub. L. 104-208, div. A, title I, § 101(f) [title VI, § 606], Sept. 30, 1996, 110 Stat. 3009-314, 3009-354.
- Pub. L. 104-52, title VI, § 606, Nov. 19, 1995, 109 Stat. 497.
- Pub. L. 103-329, title VI, § 606, Sept. 30, 1994, 108 Stat. 2416.
- Pub. L. 103-123, title VI, § 606, Oct. 28, 1993, 107 Stat. 1259.
- Pub. L. 102-393, title VI, § 607, Oct. 6, 1992, 106 Stat. 1766.
- Pub. L. 102-141, title VI, § 607, Oct. 28, 1991, 105 Stat. 868.
- Pub. L. 101-509, title VI, § 603, Nov. 5, 1990, 104 Stat. 1471.
- Pub. L. 101-136, title VI, § 603, Nov. 3, 1989, 103 Stat. 816.
- Pub. L. 100-440, title VI, § 603, Sept. 22, 1988, 102 Stat. 1751.
- Pub. L. 100-202, § 101(m) [title VI, § 603], Dec. 22, 1987, 101 Stat. 1329-390, 1329-419.
- Pub. L. 99-500, § 101(m) [title VI, § 603], Oct. 18, 1986, 100 Stat. 1783-308, 1783-328, and Pub. L. 99-591, § 101(m) [title VI, § 603], Oct. 30, 1986, 100 Stat. 3341-308, 3341-328.
- Pub. L. 99-190, title I, § 101(h) [H.R. 3036, title VI, § 603], Dec. 19, 1985, 99 Stat. 1291.
- Pub. L. 98-473, title I, § 101(j) [H.R. 5798, title VI, § 604], Oct. 12, 1984, 98 Stat. 1963.
- Pub. L. 98-151, § 101(f) [H.R. 4139, title VI, § 603], Nov. 14, 1983, 97 Stat. 973.
- Pub. L. 97-377, title I, § 101(a) [incorporating H.R. 4121, title VI, § 603, for FY 1982], Dec. 21, 1982, 96 Stat. 1830.
- Pub. L. 97-92, § 101(a) [H.R. 4121, title VI, § 603], Dec. 15, 1981, 95 Stat. 1183.
- Pub. L. 96-536, § 101(a) [incorporating Pub. L. 96-74, title VI, § 602], Dec. 16, 1980, 94 Stat. 3166.
- Pub. L. 96-74, title VI, § 602, Sept. 29, 1979, 93 Stat. 574.
- Pub. L. 95-429, title VI, § 602, Oct. 10, 1978, 92 Stat. 1015.
- Pub. L. 95-81, title VI, § 602, July 31, 1977, 91 Stat. 354.
- Pub. L. 94-419, title VII, § 750, Sept. 22, 1976, 90 Stat. 1299.
- Pub. L. 94-363, title VI, § 602, July 14, 1976, 90 Stat. 977.
- Pub. L. 94-212, title VII, § 753, Feb. 9, 1976, 90 Stat. 177.
- Pub. L. 94-91, title VI, § 602, Aug. 9, 1975, 89 Stat. 458.
- Pub. L. 93-381, title VI, § 602, Aug. 21, 1974, 88 Stat. 630.
- Pub. L. 93-143, title VI, § 602, Oct. 30, 1973, 87 Stat. 524.
- Pub. L. 92-351, title VI, § 602, July 13, 1972, 86 Stat. 487.
- Pub. L. 92-49, title VI, § 602, July 9, 1971, 85 Stat. 122.
- Pub. L. 91-439, title V, § 502, Oct. 7, 1970, 84 Stat. 902.
- Pub. L. 91-144, title V, § 502, Dec. 11, 1969, 83 Stat. 336.
- Pub. L. 90-479, title V, § 502, Aug. 12, 1968, 82 Stat. 717.
- Pub. L. 90-147, title V, § 502, Nov. 20, 1967, 81 Stat. 483.
- Pub. L. 89-689, title V, § 502, Oct. 15, 1966, 80 Stat. 1014.
- Pub. L. 89-299, title V, § 502, Oct. 28, 1965, 79 Stat. 1108.
- Pub. L. 88-511, title V, § 502, Aug. 30, 1964, 78 Stat. 693.
- Pub. L. 88-257, title V, § 502, Dec. 31, 1963, 77 Stat. 855.
- Pub. L. 87-880, title V, § 502, Oct. 24, 1962, 76 Stat. 1227.
- Pub. L. 87-125, title V, § 502, Aug. 3, 1961, 75 Stat. 282.
- Pub. L. 86-642, title II, § 202, July 12, 1960, 74 Stat. 476.
- Pub. L. 86-79, title II, § 202, July 8, 1959, 73 Stat. 165.
- Pub. L. 85-468, title II, § 202, June 25, 1958, 72 Stat. 224.
- Pub. L. 85-48, title II, § 202, June 5, 1957, 71 Stat. 53.
- June 13, 1956, ch. 385, title II, § 202, 70 Stat. 280.
- June 29, 1955, ch. 226, title II, § 202, 69 Stat. 195.
- Aug. 26, 1954, ch. 935, Ch. XIII, § 1302, 68 Stat. 828.
- Aug. 7, 1953, ch. 340, Ch. XIII, § 1302, 67 Stat. 435.
- July 15, 1952, ch. 758, Ch. XIV, § 1402, 66 Stat. 659.
- Nov. 1, 1951, ch. 664, Ch. XIII, § 1302, 65 Stat. 755.
- Sept. 6, 1950, ch. 897, Ch. XII, § 1202, 64 Stat. 763.
- Aug. 24, 1949, ch. 506, title III, § 302, 63 Stat. 661.
- Apr. 20, 1948, ch. 219, title II, § 202, 62 Stat. 193.
- July 30, 1947, ch. 359, title II, § 202, 61 Stat. 608.
- Mar. 28, 1946, ch. 113, title II, § 206, 60 Stat. 80.
- May 3, 1945, ch. 106, title II, § 206, 59 Stat. 132.

June 27, 1944, ch. 286, title II, § 205, 58 Stat. 385.

June 26, 1943, ch. 145, title II, § 205, 57 Stat. 196.

Citizenship requirement for permanent officers and employees of Census Bureau, see section 22 of Title 13, Census.

Exceptions to citizenship requirement for—

Department of Defense personnel, see section 1584 of Title 10, Armed Forces.

Department of State employees, see sections 2669, 2672 of Title 22, Foreign Relations and Inter-course.

Department of the Navy personnel, see section 7473 of Title 10.

Library of Congress positions, see section 169 of Title 2, The Congress.

National Aeronautics and Space Administration employees, see section 20113 of Title 51, National and Commercial Space Programs.

#### EMPLOYMENT OF PERSONNEL DURING NATIONAL EMERGENCY PROCLAIMED ON DEC. 16, 1950

Section 1310 of act Nov. 1, 1951, ch. 664, Ch. XIII, 65 Stat. 757, as amended June 5, 1952, ch. 369, Ch. XIII, § 1302, 66 Stat. 122; Sept. 1, 1954, ch. 1208, title VI, § 602, 68 Stat. 1115; Oct. 11, 1962, Pub. L. 87-793, § 717(b), 76 Stat. 858; Aug. 6, 1965, Pub. L. 89-114, 79 Stat. 448; Oct. 11, 1967, Pub. L. 90-105, § 3, 81 Stat. 274; Apr. 21, 1976, Pub. L. 94-273, § 4(5), 90 Stat. 377, provided that, upon the enactment of this Act [Nov. 1, 1951] and until termination of the national emergency proclaimed by the President on Dec. 16, 1950, agencies shall use their authority to require initial appointment be made on other than a permanent basis to limit the number of permanent employees, the Civil Service Commission facilitate the transfer of Federal employees from non-defense to defense activities with reemployment rights and make use of its authority to prohibit excessively rapid promotions, and agencies review certain positions annually and report to Congressional committees. All powers and authorities under section 1310 of act Nov. 1, 1951, as amended, terminated 2 years from Sept. 14, 1976, pursuant to Pub. L. 94-412, title I, § 101, Sept. 14, 1976, 90 Stat. 1255 (50 U.S.C. 1601).

#### Executive Documents

##### EX. ORD. NO. 12839. REDUCTION OF 100,000 FEDERAL POSITIONS

Ex. Ord. No. 12839, Feb. 10, 1993, 58 F.R. 8515, provided: By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, section 3301 of title 5, United States Code, and section 1111 of title 31, United States Code, it is hereby ordered as follows:

**SECTION 1. *Limits on Hiring Civilian Personnel.*** Each executive department or agency with over 100 employees shall eliminate not less than 4 percent of its civilian personnel positions (measured on a full-time equivalent (FTE) basis) over the next 3 fiscal years. The positions shall be vacated through attrition or early out programs established at the discretion of the department and agency heads. At least 10 percent of the reductions shall come from the Senior Executive Service, GS-15 and GS-14 levels or equivalent.

**SEC. 2. *Coverage.*** This order applies to all executive branch departments and agencies with over 100 employees (measured on a FTE basis).

**SEC. 3. *Target Dates.*** Each department and agency shall achieve 25 percent of its total reductions by the end of fiscal year 1993, 62.5 percent by the end of fiscal year 1994, and 100 percent by the end of fiscal year 1995.

**SEC. 4. *Implementation.*** The Director of the Office of Management and Budget shall issue detailed instructions regarding the implementation of this order, including exemptions necessary for the delivery of essential services and compliance with applicable law.

**SEC. 5. *Independent Agencies.*** All independent regulatory commissions and agencies are requested to comply with the provisions of this order.

WILLIAM J. CLINTON.

#### FREEZE ON HIRING OF FEDERAL CIVILIAN EMPLOYEES

Memorandum of the President of the United States, dated Jan. 20, 1981, 46 F.R. 9907, provided for a freeze on the hiring of Federal civilian employees in the executive branch.

#### § 3102. Employment of personal assistants for handicapped employees, including blind and deaf employees

(a) For the purpose of this section—

(1) “agency” means—

(A) an Executive agency;

(B) the Library of Congress; and

(C) an office, agency, or other establishment in the judicial branch;

(2) “handicapped employee” means an individual employed by an agency who is blind or deaf or who otherwise qualifies as a handicapped individual within the meaning of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 794);<sup>1</sup> and

(3) “nonprofit organization” means an organization determined by the Secretary of the Treasury to be an organization described in section 501(c) of the Internal Revenue Code of 1986 (26 U.S.C. 501(c)) which is exempt from taxation under section 501(a) of such Code.

(b)(1) The head of each agency may employ one or more personal assistants who the head of the agency determines are necessary to enable a handicapped employee of that agency to perform the employee’s official duties and who shall serve without pay from the agency, without regard to—

(A) the provisions of this title governing appointment in the competitive service;

(B) chapter 51 and subchapter III of chapter 53 of this title; and

(C) section 1342 of title 31.

Such employment may include the employing of a reading assistant or assistants for a blind employee or an interpreting assistant or assistants for a deaf employee.

(2) A personal assistant, including a reading or interpreting assistant, employed under this subsection may receive pay for services performed by the assistant from the handicapped employee or a nonprofit organization, without regard to section 209 of title 18.

(c) The head of each agency may also employ or assign one or more personal assistants who the head of the agency determines are necessary to enable a handicapped employee of that agency to perform the employee’s official duties. Such employment may include the employing of a reading assistant or assistants for a blind employee or an interpreting assistant or assistants for a deaf employee.

(d)(1) In the case of any handicapped employee (including a blind or deaf employee) traveling on official business, the head of the agency may authorize the payment to an individual to accompany or assist (or both) the handicapped employee for all or a portion of the travel period involved. Any payment under this subsection to such an individual may be made either directly to that individual or by advancement or reimbursement to the handicapped employee.

<sup>1</sup> So in original. Probably should be “(29 U.S.C. 791);”.

(2) With respect to any individual paid to accompany or assist a handicapped employee under paragraph (1) of this subsection—

(A) the amount paid to that individual shall not exceed the limit or limits which the Office of Personnel Management shall prescribe by regulation to ensure that the payment does not exceed amounts (including pay and, if appropriate, travel expenses and per diem allowances) which could be paid to an employee assigned to accompany or assist the handicapped employee; and

(B) that individual shall be considered an employee, but only for purposes of chapter 81 of this title (relating to compensation for injury) and sections 2671 through 2680 of title 28 (relating to tort claims).

(e) This section may not be held or considered to prevent or limit in any way the assignment to a handicapped employee (including a blind or deaf employee) by an agency of clerical or secretarial assistance, at the expense of the agency under statutes and regulations currently applicable at the time, if that assistance normally is provided, or authorized to be provided, in that manner under currently applicable statutes and regulations.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 414; Pub. L. 90-623, §1(3), Oct. 22, 1968, 82 Stat. 1312; Pub. L. 95-454, title III, §302(a), (b)(2), Oct. 13, 1978, 92 Stat. 1145, 1146; Pub. L. 96-54, §2(a)(11), Aug. 14, 1979, 93 Stat. 382; Pub. L. 96-523, §1(a), Dec. 12, 1980, 94 Stat. 3039; Pub. L. 97-258, §3(a)(3), Sept. 13, 1982, 96 Stat. 1063; Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 106-518, title III, §311, Nov. 13, 2000, 114 Stat. 2421; Pub. L. 106-553, §1(a)(2) [title III, §307], Dec. 21, 2000, 114 Stat. 2762, 2762A-86.)

#### HISTORICAL AND REVISION NOTES

Derivation	U.S. Code	Revised Statutes and Statutes at Large
.....	5 U.S.C. 43a.	Aug. 29, 1962, Pub. L. 87-614, 76 Stat. 408.

In subsection (a)(1), the word “agency” is substituted for “department”. The words “Executive agency” are coextensive with and substituted for “each executive department of the Federal Government, each agency or independent establishment in the executive branch of such Government, each corporation wholly owned or controlled by such Government, and the General Accounting Office” in view of the definition of “Executive agency” in section 105.

In subsection (a)(3), the words “individual employed” are substituted for “employee” so as to include individuals employed by the government of the District of Columbia who are not employees as defined by section 2105.

In subsection (b), the word “may” is substituted for “is authorized” and the words “in his discretion” are omitted as unnecessary in view of the permissive nature of the authority. The words “in the provisions of this title governing appointment in the competitive service” are substituted for “the civil service rules”. The words “section 209 of title 18” are substituted for “section 1914 of title 18” on authority of the Act of Oct. 24, 1962, Pub. L. 87-849, §2, 76 Stat. 1126.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

#### Editorial Notes

##### AMENDMENTS

2000—Subsec. (a)(1)(C). Pub. L. 106-518 and Pub. L. 106-553 amended par. (1) identically, adding subpar. (C).  
1986—Subsec. (a)(3). Pub. L. 99-514 substituted “Internal Revenue Code of 1986” for “Internal Revenue Code of 1954”.

1982—Subsec. (b)(1)(C). Pub. L. 97-258 substituted “section 1342 of title 31” for “section 3679(b) of the Revised Statutes (31 U.S.C. 665(b))”.

1980—Pub. L. 96-523 amended section generally and, among other changes, in section catchline substituted “personal assistants for handicapped employees, including blind and” for “reading assistants for blind employees and interpreting assistants for”, in subsec. (a) substituted applicability to handicapped employees for applicability to blind and deaf employees omitted applicability to the government of the District of Columbia, in subsec. (b) substituted applicability to personal assistants for applicability to reading and interpreting assistants for blind and deaf employees, respectively, redesignated former subsec. (d) as (c) and made changes in phraseology, added subsec. (d), and redesignated former subsec. (c) as (e) and made changes in phraseology.

1979—Subsec. (a)(2). Pub. L. 96-54 substituted “Mayor” for “Commissioner”.

1978—Pub. L. 95-454, §302(b)(2), substituted “reading assistants for blind employees and interpreting assistants for deaf employees” for “readers for blind employees” in section catchline.

Subsec. (a)(4), (5). Pub. L. 95-454, §302(a)(1), added par. (4) and redesignated former par. (4) as (5).

Subsec. (b). Pub. L. 95-454, §302(a)(2), inserted provisions respecting applicability to employment and compensation for interpreting assistant or assistants for deaf employees.

Subsec. (c). Pub. L. 95-454, §302(a)(3), inserted “or deaf” after “blind”.

Subsec. (d). Pub. L. 95-454, §302(a)(4), added subsec. (d).

1968—Subsec. (a)(2). Pub. L. 90-623 substituted “Commissioner” for “Board of Commissioners”.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 1980 AMENDMENT

Pub. L. 96-523, §3, Dec. 12, 1980, 94 Stat. 3040, provided that: “The amendments made by this Act [amending this section, section 7 of the Federal Advisory Committee Act, formerly set out in the Appendix to this title, section 604 of Title 28, Judiciary and Judicial Procedure, and section 410 of Title 39, Postal Service] shall take effect sixty days after the date of the enactment of this Act [Dec. 12, 1980].”

##### EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-54 effective July 12, 1979, see section 2(b) of Pub. L. 96-54, set out as a note under section 305 of this title.

##### 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.

##### EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-623 intended to restate without substantive change the law in effect on Oct. 22, 1968, see section 6 of Pub. L. 90-623, set out as a note under section 5334 of this title.

#### § 3103. Employment at seat of Government only for services rendered

An individual may be employed in the civil service in an Executive department at the seat

of Government only for services actually rendered in connection with and for the purposes of the appropriation from which he is paid. An individual who violates this section shall be removed from the service.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 415.)

#### HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 46.	Aug. 5, 1882, ch. 389, § 4 (less 255th through 316th words), 22 Stat. 255. Sept. 23, 1950, ch. 1010, § 7, 64 Stat. 986.
.....	5 U.S.C. 47 (so much as relates to removal).	Aug. 23, 1912, ch. 350, § 5 (so much as relates to removal), 37 Stat. 414.

The words “civil officer, draughtsman, copyist, messenger, assistant messenger, mechanic, watchman, laborer, or other employee” are omitted as obsolete language and “individual” is substituted therefor. The words “in the civil service” are added to preserve the application of former section 46 to civilian employees. The words “or subordinate bureaus or offices thereof” are omitted as surplusage. The words “and at the rate of pay usual and proper for the services” are omitted as surplusage since all pay rates are governed by statute.

All after the 75th words of section 4 of the Act of Aug. 5, 1882, as amended by section 7(b) of the Act of Sept. 23, 1950, except the 255th through 316th words, are omitted as executed. The 255th through 296th words are scheduled for repeal as superseded (see Table II-b), and the 297th through 316th words are codified in section 5501. The Act of Aug. 15, 1876, ch. 287, § 5, 19 Stat. 169, cited as authority for former section 46 was repealed by section 7(a) of the Act of Sept. 23, 1950.

In the last sentence, the word “removed” is substituted for “summarily removed” because of the provisions of the Lloyd-LaFollette Act, 37 Stat. 555, as amended, and the Veterans’ Preference Act of 1944, 58 Stat. 387, as amended, which are carried into this title.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

#### § 3104. Employment of specially qualified scientific and professional personnel

(a) The Director of the Office of Personnel Management may establish, and from time to time revise, the maximum number of scientific or professional positions for carrying out research and development functions which require the services of specially qualified personnel which may be established outside of the General Schedule. Any such position may be established by action of the Director or, under such standards and procedures as the Office prescribes and publishes in such form as the Director may determine (including procedures under which the prior approval of the Director may be required), by agency action.

(b) The provisions of subsection (a) of this section shall not apply to any Senior Executive Service position (as defined in section 3132(a) of this title).

(c) In addition to the number of positions authorized by subsection (a) of this section, the Librarian of Congress may establish, without regard to the second sentence of subsection (a) of this section, not more than 8 scientific or professional positions to carry out the research and development functions of the Library of Congress which require the services of specially qualified personnel.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 415; Pub. L. 90-83, § 1(7), Sept. 11, 1967, 81 Stat. 196; Pub. L. 91-375, § 6(c)(5), Aug. 12, 1970, 84 Stat. 776; Pub. L. 95-454, title IV, § 414(a)(2)(B), (C), title VIII, § 801(a)(3)(C), Oct. 13, 1978, 92 Stat. 1178, 1221; Pub. L. 99-386, title I, § 101(b), Aug. 22, 1986, 100 Stat. 821; Pub. L. 102-378, § 2(7), Oct. 2, 1992, 106 Stat. 1346; Pub. L. 110-372, § 2(c)(1), Oct. 8, 2008, 122 Stat. 4044.)

#### HISTORICAL AND REVISION NOTES

##### 1966 ACT

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
(a) .....	5 U.S.C. 1161 (less 2d sentence of (g)).	Oct. 4, 1961, Pub. L. 87-367, § 202 “Sec. 1”, 75 Stat. 789. Oct. 11, 1962, Pub. L. 87-793, § 1001(a)(2) “(g) (less 2d sentence)”, 76 Stat. 863.
(b) .....	5 U.S.C. 1162(c).	Oct. 4, 1961, Pub. L. 87-367, § 202 “Sec. 2(c)”, 75 Stat. 790.
(c) .....	5 U.S.C. 1163.	Oct. 4, 1961, Pub. L. 87-367, § 202 “Sec. 3”, 75 Stat. 790.

In subsection (a), the authority to fix pay is omitted and carried into section 5361.

In subsection (b), the words “subsequent to February 1, 1958” appearing in former section 1162(c) are omitted as obsolete.

The Act of Aug. 1, 1947, ch. 433, 61 Stat. 715, as amended by the following Acts is omitted from the derivation and repealed (see Table II) as superseded by the Act of Oct. 4, 1961, Pub. L. 87-367, § 202, 75 Stat. 789, which is carried into this section and sections 3325 and 5361:

June 24, 1948, ch. 624, 62 Stat. 604.

July 13, 1949, ch. 332, 63 Stat. 410.

July 31, 1956, ch. 804 § 501(a), 70 Stat. 761.

Aug. 10, 1956, ch. 1041, § 28, 70A Stat. 631.

June 20, 1958, Pub. L. 85-462, § 12(a)-(d), 72 Stat. 213A.

Sept. 23, 1959, Pub. L. 86-370, § 4, 73 Stat. 651.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

##### 1967 ACT

<i>Section of title 5</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
3104(a)(5) ...	5 App.: 1161(e).	July 5, 1966, Pub. L. 89-492 § 5, 80 Stat. 262.

The amendment to 5 U.S.C. 3104(a)(5) reflects Public Law 89-492, section 5.

The other amendments to 5 U.S.C. 3104 are based on section 302 of the act of July 20, 1958, Public Law 85-568 (72 Stat. 433), 42 U.S.C. 2453, and transfer plan, effective March 15, 1960, 25 Federal Register 2151, section 2(a)(2), (b) of which in effect transferred from the Department of Defense to the National Aeronautics and Space Administration 12 of the 450 scientific and professional positions authorized by section 2 of Public Law 86-377 (10 U.S.C. 1581). Provisions relating to the date for reporting to Congress are based on 10 U.S.C. 1582.

#### Editorial Notes

##### REFERENCES IN TEXT

The General Schedule, referred to in subsec. (a), is set out under section 5332 of this title.

##### AMENDMENTS

2008—Subsec. (a). Pub. L. 110-372 substituted “prescribes and publishes in such form as the Director may determine” for “prescribes”.

1992—Subsec. (a). Pub. L. 102-378 struck out “(not to exceed 517)” after “positions” in first sentence and

amended second sentence generally, substituting provisions authorizing establishment of positions by Director and by agency action for provisions specifying that only Director may establish positions.

1986—Pub. L. 99-386 struck out subsec. (b) relating to reports to Congress, redesignated pars. (1), (2), and (3) of subsec. (a) as subsecs. (a), (b), and (c), respectively, and substituted “subsection (a) of this section” for “paragraph (1) of this subsection” wherever appearing in subsecs. (b) and (c) as redesignated.

1978—Subsec. (a). Pub. L. 95-454, § 414(a)(2)(B), substituted provisions authorizing the Director to establish the maximum number of scientific or professional positions, excepting Senior Executive Service positions, and authorizing the Librarian to establish not more than 8 such positions for provisions authorizing the head of certain named agencies to establish a specified number of scientific or professional positions.

Subsec. (b). Pub. L. 95-454, § 414(a)(2)(B), (C), struck out subsec. (b), redesignated subsec. (c) as (b), and substituted in subsec. (b), as redesignated, “to fix under section 5361 of this title the pay for positions established under this section” for “to establish and fix the pay of positions under this section and section 5361 of this title”.

Pub. L. 95-454, § 801(a)(3)(C), substituted in subsec. (b), as redesignated, “section 5371 of this title” for “section 5361 of this title”.

Subsec. (c). Pub. L. 95-454, § 414(a)(2)(C)(i), redesignated subsec. (c) as (b).

1970—Subsec. (a)(5). Pub. L. 91-375 repealed provision for employment in Post Office Department in scientific or professional positions of not more than 6 qualified individuals.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110-372 effective on the first day of the first pay period beginning on or after the 180th day following Oct. 8, 2008, see section 2(d) of Pub. L. 110-372, set out as a note under section 5376 of this title.

##### EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 801(a)(3)(C) of Pub. L. 95-454 effective on first day of first applicable pay period beginning on or after 90th day after Oct. 13, 1978, see section 801(a)(4) of Pub. L. 95-454, set out as an Effective Date note under section 5361 of this title.

Amendment by section 414(a)(2)(B), (C) of Pub. L. 95-454 effective 180 days after Oct. 13, 1978, see section 415(a)(3) of Pub. L. 95-454, set out as an Effective Date note under section 3131 of this title.

##### EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-375 effective within 1 year after Aug. 12, 1970, on date established therefor by Board of Governors of United States Postal Service and published by it in Federal Register, see section 15(a) of Pub. L. 91-375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

#### RETENTION PAY FOR EMPLOYEES SUBJECT TO A REDUCTION IN PAY UPON TERMINATION OF BUREAU'S PERSONNEL MANAGEMENT DEMONSTRATION PROJECT

Pub. L. 114-113, div. B, title II, § 206, Dec. 18, 2015, 129 Stat. 2312, provided that: “Funds appropriated by this or any other Act, with respect to any fiscal year, under the heading ‘Bureau of Alcohol, Tobacco, Firearms and Explosives, Salaries and Expenses’ shall be available for retention pay for any employee who would otherwise be subject to a reduction in pay upon termination of the Bureau’s Personnel Management Demonstration Project (as transferred to the Attorney General by section 1115 of the Homeland Security Act of 2002, Public Law 107-296 (28 U.S.C. 599B)); *Provided*, That such retention pay shall comply with section 5363 of title 5, United States Code, and related Office of Personnel

Management regulations, except as provided in this section: *Provided further*, That such retention pay shall be paid at the employee’s rate of pay immediately prior to the termination of the demonstration project and shall not be subject to the limitation set forth in section 5304(g)(1) of title 5, United States Code, and related regulations.”

#### EXPERIMENTAL PERSONNEL PROGRAM FOR SCIENTIFIC AND TECHNICAL PERSONNEL

Pub. L. 105-261, div. A, title XI, § 1101, Oct. 17, 1998, 112 Stat. 2139, as amended by Pub. L. 106-65, div. A, title X, § 1067(3), Oct. 5, 1999, 113 Stat. 774; Pub. L. 106-398, § 1 [[div. A] title X, § 1087(d)(6), title XI, § 1113], Oct. 30, 2000, 114 Stat. 1654, 1654A-293, 1654A-314; Pub. L. 108-136, div. A, title IX, § 921(g), title XI, § 1116, Nov. 24, 2003, 117 Stat. 1570, 1636; Pub. L. 109-364, div. A, title XI, § 1103, Oct. 17, 2006, 120 Stat. 2408; Pub. L. 110-181, div. A, title XI, § 1108, Jan. 28, 2008, 122 Stat. 358; Pub. L. 111-84, div. A, title XI, § 1104, Oct. 28, 2009, 123 Stat. 2485; Pub. L. 112-81, div. A, title XI, § 1110, Dec. 31, 2011, 125 Stat. 1615; Pub. L. 112-239, div. A, title X, § 1076(c)(2)(A)(vi), title XI, § 1102(a), Jan. 2, 2013, 126 Stat. 1950, 1973; Pub. L. 113-291, div. A, title XI, § 1104, Dec. 19, 2014, 128 Stat. 3525; Pub. L. 114-92, div. A, title X, §§ 1075(b), 1081(b)(5), Nov. 25, 2015, 129 Stat. 997, 1001, allowed Secretary of Defense, from Oct. 17, 1998, to Sept. 30, 2019, to carry out a program of experimental use of special personnel management authority to facilitate recruitment of eminent experts in science or engineering for certain research and development projects, prior to repeal by Pub. L. 114-328, div. A, title XI, § 1121(b), Dec. 23, 2016, 130 Stat. 2452. See section 4092 of Title 10, Armed Forces.

#### FBI PERSONNEL MANAGEMENT SYSTEM FOR NON-SPECIAL AGENT EMPLOYEES; SECRETARY OF THE TREASURY

Pub. L. 113-235, div. B, title II, § 206, Dec. 16, 2014, 128 Stat. 2197, provided that: “The Attorney General is authorized to extend through September 30, 2015, the Personnel Management Demonstration Project transferred to the Attorney General pursuant to [former] section 1115 of the Homeland Security Act of 2002 (Public Law 107-296; 28 U.S.C. 599B) without limitation on the number of employees or the positions covered.”

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 113-76, div. B, title II, § 206, Jan. 17, 2014, 128 Stat. 67.

Pub. L. 113-6, div. B, title II, § 206, Mar. 26, 2013, 127 Stat. 257.

Pub. L. 112-55, div. B, title II, § 206, Nov. 18, 2011, 125 Stat. 619.

Pub. L. 111-117, div. B, title II, § 206, Dec. 16, 2009, 123 Stat. 3139.

Pub. L. 111-8, div. B, title II, § 206, Mar. 11, 2009, 123 Stat. 585.

Pub. L. 110-161, div. B, title II, § 206, Dec. 26, 2007, 121 Stat. 1913.

Pub. L. 109-108, title I, § 106, Nov. 22, 2005, 119 Stat. 2304.

Pub. L. 108-447, div. B, title I, § 109, Dec. 8, 2004, 118 Stat. 2868.

Pub. L. 105-119, title I, § 122, Nov. 26, 1997, 111 Stat. 2469, as amended by Pub. L. 105-277, div. C, title I, § 102, Oct. 21, 1998, 112 Stat. 2681-585; Pub. L. 107-67, title I, § 120, Nov. 12, 2001, 115 Stat. 525; Pub. L. 108-7, div. J, title I, § 119, Feb. 20, 2003, 117 Stat. 439; Pub. L. 108-199, div. F, title II, § 216, Jan. 23, 2004, 118 Stat. 320; Pub. L. 108-447, div. H, title II, § 216, Dec. 8, 2004, 118 Stat. 3241; Pub. L. 109-115, div. A, title II, § 216, Nov. 30, 2005, 119 Stat. 2439; Pub. L. 110-161, div. D, title I, § 115, Dec. 26, 2007, 121 Stat. 1978; Pub. L. 111-8, div. D, title I, § 113, Mar. 11, 2009, 123 Stat. 637; Pub. L. 111-117, div. C, title I, § 113, Dec. 16, 2009, 123 Stat. 3166; Pub. L. 112-74, div. C, title I, § 111, Dec. 23, 2011, 125 Stat. 890, provided that during 3-year period beginning on Nov. 26, 1997, Director of the Federal Bureau of Investigation could, with

approval of Attorney General, establish personnel management system providing for compensation and performance management of not more than 3,000 non-Special Agent employees to fill critical scientific, technical, engineering, intelligence analyst, language translator, and medical positions in Federal Bureau of Investigation, further authorized Secretary of the Treasury to establish, for period of 14 years from Oct. 21, 1998, personnel management demonstration project providing for compensation and performance management of not more than combined total of 950 employees who fill critical scientific, technical, engineering, intelligence analyst, language translator, and medical positions in Bureau of Alcohol, Tobacco and Firearms, and further provided for submittal of reports to Congress and termination of authority to establish demonstration project on Nov. 26, 2000.

[Personnel management demonstration project transferred to Attorney General for continued use by Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice, and Secretary of the Treasury for continued use by Tax and Trade Bureau, see section 599B of Title 28, Judiciary and Judicial Procedure.]

#### TERMINATION OF AUTHORITY TO ESTABLISH SCIENTIFIC OR PROFESSIONAL POSITIONS OUTSIDE THE GENERAL SCHEDULE

Pub. L. 95-454, title IV, § 414(a)(2)(A), Oct. 13, 1978, 92 Stat. 1177, provided that: “Notwithstanding any other provision of law (other than section 3104 of title 5, United States Code), the authority granted to an agency (as defined in section 5102(a)(1) of such title 5) to establish scientific or professional positions outside of the General Schedule is hereby terminated.”

Pub. L. 95-454, title IV, § 415(a)(3), Oct. 13, 1978, 92 Stat. 1179, provided that the provisions of section 414(a)(2)(A) take effect 180 days after Oct. 13, 1978.

#### LIMITATIONS ON EXECUTIVE POSITIONS NOT TO APPLY TO INDIVIDUALS OCCUPYING THOSE POSITIONS ON OCTOBER 12, 1978

Pub. L. 95-454, title IV, § 414(a)(3), Oct. 13, 1978, 92 Stat. 1178, provided that:

“(A) The provisions of paragraphs (1) and (2) of this subsection [amending sections 3104 and 5108 of this title] shall not apply with respect to any position so long as the individual occupying such position on the day before the date of the enactment of this Act [Oct. 13, 1978] continues to occupy such position.

“(B) The Director—

“(i) in establishing under section 5108 of title 5, United States Code, the maximum number of positions which may be placed in GS-16, 17, and 18 of the General Schedule, and

“(ii) in establishing under section 3104 of such title 5 the maximum number of scientific or professional positions which may be established, shall take into account positions to which subparagraph (A) of this paragraph applies.”

[Pub. L. 95-454, title IV, § 415(a)(3), Oct. 13, 1978, 92 Stat. 1179, provided that the provisions of section 414(a)(3) are effective 180 days after Oct. 13, 1978.]

[References in laws to rates of pay for GS-16, 17, or 18, or to maximum rates of pay under General Schedule, to be considered references to rates payable under specified sections of this title, see section 529 [title I, § 101(c)(1)] of Pub. L. 101-509, set out in a note under section 5376 of this title.]

### § 3105. Appointment of administrative law judges

Each agency shall appoint as many administrative law judges as are necessary for proceedings required to be conducted in accordance with sections 556 and 557 of this title. Administrative law judges shall be assigned to cases in rotation so far as practicable, and may not perform duties inconsistent with their duties and responsibilities as administrative law judges.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 415; Pub. L. 95-251, § 2(a)(1), (b)(2), (d)(1), Mar. 27, 1978, 92 Stat. 183, 184.)

#### HISTORICAL AND REVISION NOTES

Derivation	U.S. Code	Revised Statutes and Statutes at Large
.....	5 U.S.C. 1010 (1st sentence).	June 11, 1946, ch. 324, § 11 (1st sentence), 60 Stat. 244.

The words “Subject to the civil service” are omitted as unnecessary inasmuch as appointments are made subject to the civil service laws unless specifically excepted. The words “and other laws not inconsistent with this chapter” are omitted as unnecessary because of the organization of this title.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

#### Editorial Notes

##### AMENDMENTS

1978—Pub. L. 95-251 substituted references to administrative law judges for references to hearing examiners in section catchline and wherever appearing in text.

#### Statutory Notes and Related Subsidiaries

##### HEARING EXAMINERS APPOINTED FOR INDIAN PROBATE WORK

Hearing examiners appointed for Indian probate work pursuant to former section 372-1 of Title 25, Indians, having met qualifications required for appointment pursuant to this section, deemed to have been appointed pursuant to this section, see section 12(b) of Pub. L. 101-301, set out as a Savings Provision note under former section 372-1 of Title 25.

##### REFERENCES TO HEARING EXAMINER DEEMED REFERENCES TO ADMINISTRATIVE LAW JUDGE

Pub. L. 95-251, § 3, Mar. 27, 1978, 92 Stat. 184, provided that: “Any reference in any law, regulation, or order to a hearing examiner appointed under section 3105 of title 5, United States Code, shall be deemed to be a reference to an administrative law judge.”

#### Executive Documents

##### HEARING EXAMINERS EMPLOYED BY DEPARTMENT OF AGRICULTURE

Functions vested by section 551 et seq. of this title in hearing examiners employed by Department of Agriculture not included in functions of officers, agencies, and employees of that Department transferred to Secretary of Agriculture by 1953 Reorg. Plan No. 2, § 1, eff. June 4, 1953, 18 F.R. 3219, 67 Stat. 633, set out in the Appendix to this title.

##### HEARING EXAMINERS EMPLOYED BY DEPARTMENT OF COMMERCE

Functions vested by section 551 et seq. of this title in hearing examiners employed by Department of Commerce not included in functions of officers, agencies, and employees of that Department transferred to Secretary of Commerce by 1950 Reorg. Plan No. 5, § 1, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to this title.

##### HEARING EXAMINERS EMPLOYED BY DEPARTMENT OF THE INTERIOR

Functions vested by section 551 et seq. of this title in hearing examiners employed by Department of the Interior not included in functions of officers, agencies, and employees of that Department transferred to Sec-

retary of the Interior by 1950 Reorg. Plan No. 3, §1, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, transferred set out in the Appendix to this title.

#### HEARING EXAMINERS EMPLOYED BY DEPARTMENT OF JUSTICE

Functions vested by section 551 et seq. of this title in hearing examiners employed by Department of Justice not included in functions of officers, agencies, and employees of that Department transferred to Attorney General by 1950 Reorg. Plan No. 2, §1, eff. May 24, 1950, 15 F.R. 3173, 64 Stat. 1261, set out in the Appendix to this title.

#### HEARING EXAMINERS EMPLOYED BY DEPARTMENT OF LABOR

Functions vested by section 551 et seq. of this title in hearing examiners employed by Department of Labor not included in functions of officers, agencies, and employees of Department transferred to Secretary of Labor by 1950 Reorg. Plan No. 6, §1, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to this title.

#### HEARING EXAMINERS EMPLOYED BY DEPARTMENT OF THE TREASURY

Functions vested by section 551 et seq. of this title in hearing examiners employed by Department of the Treasury not included in functions of officers, agencies, and employees of Department transferred to Secretary of the Treasury by 1950 Reorg. Plan No. 26, §1, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in the Appendix to this title.

### § 3106. Employment of attorneys; restrictions

Except as otherwise authorized by law, the head of an Executive department or military department may not employ an attorney or counsel for the conduct of litigation in which the United States, an agency, or employee thereof is a party, or is interested, or for the securing of evidence therefor, but shall refer the matter to the Department of Justice. This section does not apply to the employment and payment of counsel under section 1037 of title 10.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 415.)

#### HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 49.	R.S. §189. Sept. 2, 1958, Pub. L. 85-861, §7(a), 72 Stat. 1555.
.....	5 U.S.C. 314.	R.S. §365. Sept. 2, 1958, Pub. L. 85-861, §7(b), 72 Stat. 1555.

Sections 189 and 365 of the Revised Statutes, as amended, are combined and the section is revised to express the effect of the law since department heads have long employed, with the approval of Congress, attorneys to advise them in the conduct of their official duties. The law which concentrates the authority for the conduct of litigation in the Department of Justice is codified in section 516 of title 28 by this bill.

The words “Executive department” are substituted for “department” as the definition of “department” applicable to R.S. §189 is coextensive with the definition of “Executive department” in section 101. The words “or military department” are inserted to preserve the application of the source law. Before enactment of the National Security Act Amendments of 1949 (63 Stat. 578), the Department of the Army, the Department of the Navy, and the Department of the Air Force were Executive departments. The National Security Act Amendments of 1949 established the Department of De-

fense as an Executive Department including the Department of the Army, the Department of the Navy, and the Department of the Air Force as military departments, not as Executive departments. However, the source law for this section, which was in effect in 1949, remained applicable to the Secretaries of the military departments by virtue of section 12(g) of the National Security Act Amendments of 1949 (63 Stat. 591), which is set out in the reviser’s note for section 301.

R.S. §189 was part of title IV of the Revised Statutes. The Act of July 26, 1947, ch. 343, §201(d), as added Aug. 1, 1949, ch. 412, §4, 63 Stat. 579 (former 5 U.S.C. 171-1), which provides “Except to the extent inconsistent with the provisions of this Act [National Security Act of 1947], the provisions of title IV of the Revised Statutes as now or hereafter amended shall be applicable to the Department of Defense” is omitted from this title but is not repealed.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

### § 3107. Employment of publicity experts; restrictions

Appropriated funds may not be used to pay a publicity expert unless specifically appropriated for that purpose.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 416.)

#### HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 54.	Oct. 22, 1913, ch. 32, §1 (last par. under “Interstate Commerce Commission”), 38 Stat. 212.

The prohibition is restated in positive form.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

### § 3108. Employment of detective agencies; restrictions

An individual employed by the Pinkerton Detective Agency, or similar organization, may not be employed by the Government of the United States or the government of the District of Columbia.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 416.)

#### HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 53.	Mar. 3, 1893, ch. 208 (5th par. under “Public Buildings”), 27 Stat. 591.

The prohibition is restated in positive form.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

### § 3109. Employment of experts and consultants; temporary or intermittent

(a) For the purpose of this section—

(1) “agency” has the meaning given it by section 5721 of this title; and

(2) “appropriation” includes funds made available by statute under section 9104 of title 31.

(b) When authorized by an appropriation or other statute, the head of an agency may pro-

cure by contract the temporary (not in excess of 1 year) or intermittent services of experts or consultants or an organization thereof, including stenographic reporting services. Services procured under this section are without regard to—

- (1) the provisions of this title governing appointment in the competitive service;
- (2) chapter 51 and subchapter III of chapter 53 of this title; and
- (3) section 6101(b) to (d) of title 41, except in the case of stenographic reporting services by an organization.

However, an agency subject to chapter 51 and subchapter III of chapter 53 of this title may pay a rate for services under this section in excess of the daily equivalent of the highest rate payable under section 5332 of this title only when specifically authorized by the appropriation or other statute authorizing the procurement of the services.

(c) Positions in the Senior Executive Service or the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service may not be filled under the authority of subsection (b) of this section.

(d) The Office of Personnel Management shall prescribe regulations necessary for the administration of this section. Such regulations shall include—

- (1) criteria governing the circumstances in which it is appropriate to employ an expert or consultant under the provisions of this section;
- (2) criteria for setting the pay of experts and consultants under this section; and
- (3) provisions to ensure compliance with such regulations.

(e) Each agency shall report to the Office of Personnel Management on an annual basis with respect to—

- (1) the number of days each expert or consultant employed by the agency during the period was so employed; and
- (2) the total amount paid by the agency to each expert and consultant for such work during the period.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 416; Pub. L. 95-454, title IV, § 402(b), Oct. 13, 1978, 92 Stat. 1160; Pub. L. 97-258, § 3(a)(4), Sept. 13, 1982, 96 Stat. 1063; Pub. L. 100-325, § 2(b), May 30, 1988, 102 Stat. 581; Pub. L. 102-378, § 2(8), Oct. 2, 1992, 106 Stat. 1347; Pub. L. 111-350, § 5(a)(4), Jan. 4, 2011, 124 Stat. 3841.)

#### HISTORICAL AND REVISION NOTES

Derivation	U.S. Code	Revised Statutes and Statutes at Large
.....	5 U.S.C. 55a.	Aug. 2, 1946, ch. 744, § 15, 60 Stat. 810.

In subsection (a), the definitions of “agency” and “appropriation” are added on authority of the Act of Aug. 2, 1946, ch. 744, § 18, 60 Stat. 811.

In subsection (b), the words “the provisions of this title governing appointment in the competitive service” are substituted for “the civil-service laws”. The words “chapter 51 and subchapter III of chapter 53 of this title” are substituted for the reference to the classification laws which originally meant the Classification Act of 1923, as amended. Exception from the Classi-

fication Act of 1949 is based on sections 202(27) and 1106(a) of the Act of Oct. 28, 1949, ch. 782, 63 Stat. 956, 972.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

#### Editorial Notes

##### AMENDMENTS

2011—Subsec. (b)(3). Pub. L. 111-350 substituted “section 6101(b) to (d) of title 41” for “section 5 of title 41”.

1992—Subsecs. (d), (e). Pub. L. 102-378 added subsecs. (d) and (e).

1988—Subsec. (c). Pub. L. 100-325 inserted reference to Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service.

1982—Subsec. (a)(2). Pub. L. 97-258 substituted “section 9104” for “section 849”.

1978—Subsec. (c). Pub. L. 95-454 added subsec. (c).

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 9 months after Oct. 13, 1978, and congressional review of provisions of sections 401 through 412 of Pub. L. 95-454, see section 415 of Pub. L. 95-454, set out as an Effective Date note under section 3131 of this title.

##### LIMITATION ON CONSULTING SERVICES

Pub. L. 113-76, div. G, title IV, § 401, Jan. 17, 2014, 128 Stat. 337, provided that: “In fiscal year 2014 and thereafter, the expenditure of any appropriation under this Act [div. G of Pub. L. 113-76, see Tables for classification] or any subsequent Act appropriating funds for departments and agencies funded in this Act, for any consulting service through procurement contract, pursuant to 5 U.S.C. 3109, shall be limited to those contracts where such expenditures are a matter of public record and available for public inspection, except where otherwise provided under existing law, or under existing Executive order issued pursuant to existing law.”

##### APPROPRIATIONS RELATING TO LABOR, HEALTH AND HUMAN SERVICES, AND EDUCATION; PUBLIC DISCLOSURE OF CONSULTING SERVICE THROUGH PROCUREMENT CONTRACT

Pub. L. 102-394, title V, § 501, Oct. 6, 1992, 106 Stat. 1825, provided that: “The expenditure of any appropriation under this Act or subsequent Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Acts for any consulting service through procurement contract, pursuant to 5 U.S.C. 3109, shall be limited to those contracts where such expenditures are a matter of public record and available for public inspection, except where otherwise provided under existing law, or under existing Executive order issued pursuant to existing law.”

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 102-170, title V, § 501, Nov. 26, 1991, 105 Stat. 1140.

Pub. L. 101-517, title V, § 501, Nov. 5, 1990, 104 Stat. 2220.

Pub. L. 101-166, title V, § 501, Nov. 21, 1989, 103 Stat. 1189.

Pub. L. 100-202, § 101(h) [title V, § 501], Dec. 22, 1987, 101 Stat. 1329-256, 1329-287.

Pub. L. 99-500, § 101(i) [H.R. 5233, title V, § 501], Oct. 18, 1986, 100 Stat. 1783-287, and Pub. L. 99-591, § 101(i) [H.R. 5233, title V, § 501], Oct. 30, 1986, 100 Stat. 3341-287.

Pub. L. 99-178, title V, § 501, Dec. 12, 1985, 99 Stat. 1132.

Pub. L. 98-619, title V, § 501, Nov. 8, 1984, 98 Stat. 3332.

Pub. L. 98-139, title V, § 501, Oct. 31, 1983, 97 Stat. 898.

Pub. L. 97-377, title I, § 101(e)(1) [title V, § 501], Dec. 21, 1982, 96 Stat. 1878, 1904.

##### AVAILABILITY OF APPROPRIATIONS FOR SERVICES

Pub. L. 102-394, title V, § 503, Oct. 6, 1992, 106 Stat. 1825, provided that: “Appropriations contained in this

Act or subsequent Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Acts, available for salaries and expenses, shall be available for services as authorized by 5 U.S.C. 3109 but at rates for individuals not to exceed the per diem rate equivalent to the maximum rate payable for senior-level positions under 5 U.S.C. 5376."

[For reference to maximum rate under section 5376 of this title, see section 2(d)(3) of Pub. L. 110-372, set out as an Effective Date of 2008 Amendment note under section 5376 of this title.]

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 102-170, title V, § 503, Nov. 26, 1991, 105 Stat. 1140.

Pub. L. 101-517, title V, § 503, Nov. 5, 1990, 104 Stat. 2221.

Pub. L. 101-166, title V, § 503, Nov. 21, 1989, 103 Stat. 1189.

Pub. L. 100-202, § 101(h) [title V, § 503], Dec. 22, 1987, 101 Stat. 1329-256, 1329-287.

Pub. L. 99-500, § 101(i) [H.R. 5233, title V, § 503], Oct. 18, 1986, 100 Stat. 1783-287, and Pub. L. 99-591, § 101(i) [H.R. 5233, title V, § 503], Oct. 30, 1986, 100 Stat. 3341-287.

Pub. L. 99-178, title V, § 503, Dec. 12, 1985, 99 Stat. 1132.

Pub. L. 98-619, title V, § 503, Nov. 8, 1984, 98 Stat. 3333.

Pub. L. 98-139, title V, § 503, Oct. 31, 1983, 97 Stat. 899.

Pub. L. 97-377, title I, § 101(e)(1) [title V, § 503], Dec. 21, 1982, 96 Stat. 1878, 1904.

#### APPROPRIATIONS RELATING TO ENERGY AND WATER DEVELOPMENT; PUBLIC DISCLOSURE OF CONSULTING SERVICE THROUGH PROCUREMENT CONTRACT

Pub. L. 102-377, title V, § 504, Oct. 2, 1992, 106 Stat. 1342, provided that: "The expenditure of any appropriation under this Act or subsequent Energy and Water Development Appropriations Acts for any consulting service through procurement contract, pursuant to section 3109 of title 5, United States Code, hereafter shall be limited to those contracts where such expenditures are a matter of public record and available for public inspection, except where otherwise provided under existing law, or under existing Executive Order issued pursuant to existing law."

#### Executive Documents

##### EX. ORD. NO. 13433. PROTECTING AMERICAN TAXPAYERS FROM PAYMENT OF CONTINGENCY FEES

Ex. Ord. No. 13433, May 16, 2007, 72 F.R. 28441, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, it is hereby ordered as follows:

**SECTION 1. Policy.** To help ensure the integrity and effective supervision of the legal and expert witness services provided to or on behalf of the United States, it is the policy of the United States that organizations or individuals that provide such services to or on behalf of the United States shall be compensated in amounts that are reasonable, not contingent upon the outcome of litigation or other proceedings, and established according to criteria set in advance of performance of the services, except when otherwise required by law.

**SEC. 2. Duties of Agency Heads.** (a) Heads of agencies shall implement within their respective agencies the policy set forth in section 1, consistent with such instructions as the Attorney General may prescribe.

(b) After the date of this order, no agency shall enter into a contingency fee agreement for legal or expert witness services addressed by section 1 of this order, unless the Attorney General has determined that the agency's entry into the agreement is required by law.

(c) Within 90 days after the date of this order, the head of each agency shall notify the Attorney General and the Director of the Office of Management and Budget of any contingency fee agreements for services addressed by section 1 of this order that are in effect as of the date of this order.

**SEC. 3. Definitions.** For purposes of this order:

(a) The term "agency" means an executive agency as defined in section 105 of title 5, United States Code, and the United States Postal Service and the Postal Regulatory Commission, but shall exclude the Government Accountability Office and elements of the intelligence community (as defined in section 3(4) of the National Security Act of 1947 as amended (50 U.S.C. 401a(4)) [now 50 U.S.C. 3003(4)][]).

(b) The term "contingency fee agreement" means a contract or other agreement to provide services under which the amount or the payment of the fee for the services is contingent in whole or in part on the outcome of the matter for which the services were obtained. The term does not include:

(i) qualified tax collection contracts defined in section 6306 of title 26, United States Code, and

(ii) contracts described in sections 3711 and 3718 of title 31, United States Code.

**SEC. 4. General Provisions.** (a) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(b) Nothing in this order shall be construed to impair or otherwise affect:

(i) authority granted by law to an agency or the head thereof; or

(ii) functions of the Director of the Office of Management and Budget relating to budget, administrative, or legislative proposals.

(c) This order is not intended to, and does not, create any right, benefit, or privilege, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, instrumentalities, or entities, its officers or employees, or any other person.

GEORGE W. BUSH.

#### § 3110. Employment of relatives; restrictions

(a) For the purpose of this section—

(1) "agency" means—

(A) an Executive agency;

(B) an office, agency, or other establishment in the legislative branch;

(C) an office, agency, or other establishment in the judicial branch; and

(D) the government of the District of Columbia;

(2) "public official" means an officer (including the President and a Member of Congress), a member of the uniformed service, an employee and any other individual, in whom is vested the authority by law, rule, or regulation, or to whom the authority has been delegated, to appoint, employ, promote, or advance individuals, or to recommend individuals for appointment, employment, promotion, or advancement in connection with employment in an agency; and

(3) "relative" means, with respect to a public official, an individual who is related to the public official as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister.

(b) A public official may not appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a civilian position in the agency in which he is serving or over which he exercises jurisdiction or control any individual who is a relative of the public official. An individual may not be ap-

pointed, employed, promoted, or advanced in or to a civilian position in an agency if such appointment, employment, promotion, or advancement has been advocated by a public official, serving in or exercising jurisdiction or control over the agency, who is a relative of the individual.

(c) An individual appointed, employed, promoted, or advanced in violation of this section is not entitled to pay, and money may not be paid from the Treasury as pay to an individual so appointed, employed, promoted, or advanced.

(d) The Office of Personnel Management may prescribe regulations authorizing the temporary employment, in the event of emergencies resulting from natural disasters or similar unforeseen events or circumstances, of individuals whose employment would otherwise be prohibited by this section.

(e) This section shall not be construed to prohibit the appointment of an individual who is a preference eligible in any case in which the passing over of that individual on a certificate of eligibles furnished under section 3317(a) of this title will result in the selection for appointment of an individual who is not a preference eligible.

(Added Pub. L. 90-206, title II, § 221(a), Dec. 16, 1967, 81 Stat. 640; amended Pub. L. 95-454, title IX, § 906(a)(2), Oct. 13, 1978, 92 Stat. 1224.)

#### Editorial Notes

##### AMENDMENTS

1978—Subsec. (d). Pub. L. 95-454 substituted “Office of Personnel Management” for “Civil Service Commission”.

#### Statutory Notes and Related Subsidiaries

##### 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.

##### EFFECTIVE DATE

Pub. L. 90-206, title II, § 220(a)(1), Dec. 16, 1967, 81 Stat. 639, provided, except as otherwise expressly provided, that: “This section [enacting provisions set out as a note under section 8704 of this title] and sections 201 [enacting provisions set out as Short Title note under section 5332 of this title], 207 [amending section 5303 of this title], 212 [enacting provisions set out as a note under section 5303 of this title], 218 [enacting provisions set out as a note under section 5332 of this title], 221 [enacting this section and provisions set out as a note under this section], 224(a) and (b) [amending sections 4101 and 8339 of this title], and 225 [enacting sections 351-361 of Title 2, The Congress] shall become effective on the date of enactment of this title [Dec. 16, 1967].”

##### RETROACTIVE EFFECT

Pub. L. 90-206, title II, § 221(c), Dec. 16, 1967, 81 Stat. 641, provided that: “The amendments made by this section [enacting this section] do not apply to an appointment, employment, advancement, or promotion made or advocated by a public official of any individual who is a relative of the public official if, prior to the effective date of this section [see Effective Date note above], the individual was appointed by the public official, or received an appointment advocated by the public official, and is serving under the appointment on such effective date.”

[Section 221(c) of Pub. L. 90-206 effective Dec. 16, 1967, see section 220(a)(1) of Pub. L. 90-206, set out as an Effective Date note above.]

#### § 3111. Acceptance of volunteer service

(a) For the purpose of this section, “student” means an individual who is enrolled, not less than half-time, in a high school, trade school, technical or vocational institute, junior college, college, university, or comparable recognized educational institution. An individual who is a student is deemed not to have ceased to be a student during an interim between school years if the interim is not more than 5 months and if such individual shows to the satisfaction of the Office of Personnel Management that the individual has a bona fide intention of continuing to pursue a course of study or training in the same or different educational institution during the school semester (or other period into which the school year is divided) immediately after the interim.

(b) Notwithstanding section 1342 of title 31, the head of an agency may accept, subject to regulations issued by the Office, voluntary service for the United States if the service—

(1) is performed by a student, with the permission of the institution at which the student is enrolled, as part of an agency program established for the purpose of providing educational experiences for the student;

(2) is to be uncompensated; and

(3) will not be used to displace any employee.

(c)(1) Except as provided in paragraph (2), any student who provides voluntary service under subsection (b) of this section shall not be considered a Federal employee for any purpose other than for purposes of section 7905 (relating to commuting by means other than single-occupancy motor vehicles), chapter 81 (relating to compensation for injury) and sections 2671 through 2680 of title 28 (relating to tort claims).

(2) In addition to being considered a Federal employee for the purposes specified in paragraph (1), any student who provides voluntary service as part of a program established under subsection (b) of this section in the Internal Revenue Service, Department of the Treasury, shall be considered an employee of the Department of the Treasury for purposes of—

(A) section 552a of this title (relating to disclosure of records);

(B) subsections (a)(1), (h)(1), (k)(6), and (l)(4) of section 6103 of title 26 (relating to confidentiality and disclosure of returns and return information);

(C) sections 7213(a)(1) and 7431 of title 26 (relating to unauthorized disclosures of returns and return information by Federal employees and other persons); and

(D) section 7423 of title 26 (relating to suits against employees of the United States);

except that returns and return information (as defined in section 6103(b) of title 26) shall be made available to students under such program only to the extent that the Secretary of the Treasury or his designee determines that the duties assigned to such students so require.

(d) Notwithstanding section 1342 of title 31, the head of an agency may accept voluntary service for the United States under chapter 37 of this title and regulations of the Office of Personnel Management.

(e)(1) For purposes of this section the term “agency” shall include the Architect of the Capitol. With respect to the Architect of the Capitol, the authority granted to the Office of Personnel Management under this section shall be exercised by the Architect of the Capitol.

(2) In this section, the term “agency” includes the Congressional Budget Office, except that in the case of the Congressional Budget Office—

(A) any student who provides voluntary service in accordance with this section shall be considered an employee of the Congressional Budget Office for purposes of section 203 of the Congressional Budget Act of 1974 (relating to the level of confidentiality of budget data); and

(B) the authority granted to the Office of Personnel Management under this section shall be exercised by the Director of the Congressional Budget Office.

(Added Pub. L. 95-454, title III, §301(a), Oct. 13, 1978, 92 Stat. 1144; amended Pub. L. 97-258, §3(a)(5), Sept. 13, 1982, 96 Stat. 1063; Pub. L. 97-437, Jan. 8, 1983, 96 Stat. 2285; Pub. L. 107-296, title XIII, §1314(b), Nov. 25, 2002, 116 Stat. 2296; Pub. L. 107-347, title II, §209(g)(1)(A), Dec. 17, 2002, 116 Stat. 2931; Pub. L. 111-68, div. A, title I, §1303(a), Oct. 1, 2009, 123 Stat. 2034; Pub. L. 113-76, div. I, title I, §1201(a), Jan. 17, 2014, 128 Stat. 426.)

#### Editorial Notes

##### REFERENCES IN TEXT

Section 203 of the Congressional Budget Act of 1974, referred to in subsec. (e)(2)(A), is classified to section 603 of Title 2, The Congress.

##### AMENDMENTS

2014—Subsec. (e). Pub. L. 113-76 designated existing provisions as par. (1) and added par. (2).

2009—Subsec. (e). Pub. L. 111-68 added subsec. (e).

2002—Subsec. (c)(1). Pub. L. 107-296 substituted “section 7905 (relating to commuting by means other than single-occupancy motor vehicles), chapter 81” for “chapter 81 of this title”.

Subsec. (d). Pub. L. 107-347 added subsec. (d).

1983—Subsec. (c)(1). Pub. L. 97-437, §1(1), substituted “(c)(1) Except as provided in par. (2), any” for “(c) Any”.

Subsec. (c)(2). Pub. L. 97-437, §1(2), added par. (2).

1982—Subsec. (b). Pub. L. 97-258 substituted “section 1342 of title 31” for “section 3679(b) of the Revised Statutes (31 U.S.C. 665(b))”.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 2014 AMENDMENT

Pub. L. 113-76, div. I, title I, §1201(b), Jan. 17, 2014, 128 Stat. 426, provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to fiscal year 2014 and each succeeding fiscal year.”

##### EFFECTIVE DATE OF 2002 AMENDMENTS

Amendment by Pub. L. 107-347 effective 120 days after Dec. 17, 2002, see section 402(a) of Pub. L. 107-347, set out as an Effective Date note under section 3601 of Title 44, Public Printing and Documents.

Amendment by Pub. L. 107-296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107-296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

##### EFFECTIVE DATE

Section effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

#### §3111a. Federal internship programs

(a) **INTERNSHIP COORDINATOR.**—The head of each agency operating an internship program shall appoint an individual within such agency to serve as an internship coordinator.

(b) **ONLINE INFORMATION.**—

(1) **AGENCIES.**—The Office of Personnel Management shall make publicly available on the Internet—

(A) the name and contact information of the internship coordinator for each agency; and

(B) information regarding application procedures and deadlines for each internship program.

(2) **OFFICE OF PERSONNEL MANAGEMENT.**—The Office of Personnel Management shall make publicly available on the Internet links to the websites where the information described in paragraph (1) is displayed.

(c) **DEFINITIONS.**—For purposes of this section—

(1) the term “internship program” means—

(A) a volunteer service program under section 3111(b);

(B) an internship program established under Executive Order 13562, dated December 27, 2010 (75 Federal Register 82585);

(C) a program operated by a nongovernment organization for the purpose of providing paid internships in agencies under a written agreement that is similar to an internship program established under Executive Order 13562, dated December 27, 2010 (75 Federal Register 82585); or

(D) a program that—

(i) is similar to an internship program established under Executive Order 13562, dated December 27, 2010 (75 Federal Register 82585); and

(ii) is authorized under another statutory provision of law;

(2) the term “intern” means an individual participating in an internship program; and

(3) the term “agency” means an Executive agency.

(Added Pub. L. 112-81, div. A, title XI, §1109(a), Dec. 31, 2011, 125 Stat. 1614.)

#### Editorial Notes

##### REFERENCES IN TEXT

Executive Order 13562, referred to in subsec. (c)(1), is set out as a note under section 3301 of this title.

#### Statutory Notes and Related Subsidiaries

##### REGULATIONS

Pub. L. 112-81, div. A, title XI, §1109(c), Dec. 31, 2011, 125 Stat. 1615, provided that: “The Office of Personnel Management may prescribe regulations to carry out the amendment made by subsection (a) [enacting this section].”

### § 3112. Disabled veterans; noncompetitive appointment

Under such regulations as the Office of Personnel Management shall prescribe, an agency may make a noncompetitive appointment leading to conversion to career or career-conditional employment of a disabled veteran who has a compensable service-connected disability of 30 percent or more.

(Added Pub. L. 95-454, title III, § 307(b)(1), Oct. 13, 1978, 92 Stat. 1147.)

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE

Section effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of this title.

### § 3113. Restriction on reemployment after conviction of certain crimes

An employee shall be separated from service and barred from reemployment in the Federal service, if—

- (1) the employee is convicted of a violation of section 201(b) of title 18; and
- (2) such violation related to conduct prohibited under section 1010(a) of the Controlled Substances Import and Export Act (21 U.S.C. 960(a)).

(Added Pub. L. 105-61, title VI, § 638(a), Oct. 10, 1997, 111 Stat. 1316.)

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE

Pub. L. 105-61, title VI, § 638(c), Oct. 10, 1997, 111 Stat. 1317, provided that: “This section [enacting this section] shall apply during fiscal year 1998 and each fiscal year thereafter.”

### § 3114. Appointment of candidates to certain positions in the competitive service by the Securities and Exchange Commission

(a) **APPLICABILITY.**—This section applies with respect to any position of accountant, economist, and securities compliance examiner at the Commission that is in the competitive service, and any position at the Commission in the competitive service that requires specialized knowledge of financial and capital market formation or regulation, financial market structures or surveillance, or information technology.

(b) **APPOINTMENT AUTHORITY.**—

(1) **IN GENERAL.**—The Commission may appoint candidates to any position described in subsection (a)—

(A) in accordance with the statutes, rules, and regulations governing appointments in the excepted service; and

(B) notwithstanding any statutes, rules, and regulations governing appointments in the competitive service.

(2) **RULE OF CONSTRUCTION.**—The appointment of a candidate to a position under authority of this subsection shall not be considered to cause such position to be converted from the competitive service to the excepted service.

(c) **REPORTS.**—No later than 90 days after the end of fiscal year 2003 (for fiscal year 2003) and 90 days after the end of fiscal year 2005 (for fiscal years 2004 and 2005), the Commission shall submit a report with respect to its exercise of the authority granted by subsection (b) during such fiscal years to the Committee on Government Reform and the Committee on Financial Services of the House of Representatives and the Committee on Governmental Affairs and the Committee on Banking, Housing, and Urban Affairs of the Senate. Such reports shall describe the changes in the hiring process authorized by such subsection, including relevant information related to—

- (1) the quality of candidates;
- (2) the procedures used by the Commission to select candidates through the streamlined hiring process;
- (3) the numbers, types, and grades of employees hired under the authority;
- (4) any benefits or shortcomings associated with the use of the authority;
- (5) the effect of the exercise of the authority on the hiring of veterans and other demographic groups; and
- (6) the way in which managers were trained in the administration of the streamlined hiring system.

(d) **COMMISSION DEFINED.**—For purposes of this section, the term “Commission” means the Securities and Exchange Commission.

(Added Pub. L. 108-44, § 2(a), July 3, 2003, 117 Stat. 842; amended Pub. L. 111-203, title IX, § 929G(a), July 21, 2010, 124 Stat. 1855.)

#### Editorial Notes

##### AMENDMENTS

2010—Pub. L. 111-203 substituted “Appointment of candidates to certain positions in the competitive service by the Securities and Exchange Commission” for “Appointment of accountants, economists, and examiners by the Securities and Exchange Commission” in section catchline, added subsec. (a), and struck out former subsec. (a). Prior to amendment, text read as follows: “This section applies with respect to any position of accountant, economist, and securities compliance examiner at the Commission that is in the competitive service.”

#### Statutory Notes and Related Subsidiaries

##### CHANGE OF NAME

Committee on Government Reform of House of Representatives changed to Committee on Oversight and Government Reform of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007. Committee on Oversight and Government Reform of House of Representatives changed to Committee on Oversight and Reform of House of Representatives by House Resolution No. 6, One Hundred Sixteenth Congress, Jan. 9, 2019. Committee on Oversight and Reform of House of Representatives changed to Committee on Oversight and Accountability of House of Representatives by House Resolution No. 5, One Hundred Eighteenth Congress, Jan. 9, 2023.

Committee on Governmental Affairs of Senate changed to Committee on Homeland Security and Governmental Affairs of Senate, effective Jan. 4, 2005, by Senate Resolution No. 445, One Hundred Eighth Congress, Oct. 9, 2004.

##### EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-203 effective 1 day after July 21, 2010, except as otherwise provided, see section

4 of Pub. L. 111-203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

**§ 3115. Expedited hiring authority for college graduates; competitive service**

(a) DEFINITIONS.—In this section:

(1) DIRECTOR.—The term “Director” means the Director of the Office of Personnel Management.

(2) INSTITUTION OF HIGHER EDUCATION.—The term “institution of higher education” has the meaning given the term in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)).

(b) APPOINTMENT.—

(1) IN GENERAL.—The head of an agency may appoint, without regard to any provision of sections 3309 through 3319 and 3330, a qualified individual to a position in the competitive service classified in a professional or administrative occupational category at the GS-11 level, or an equivalent level, or below.

(2) RESTRICTIONS.—An appointment under paragraph (1) shall be made in accordance with regulations prescribed by the Director.

(c) QUALIFICATIONS FOR APPOINTMENT.—The head of an agency may make an appointment under subsection (b) only if the individual being appointed—

(1) has received a baccalaureate or graduate degree from an institution of higher education;

(2) applies for the position—

(A) not later than 2 years after the date on which the individual being appointed received the degree described in paragraph (1); or

(B) in the case of an individual who has completed a period of not less than 4 years of obligated service in a uniformed service, not later than 2 years after the date of the discharge or release of the individual from that service; and

(3) meets each minimum qualification standard prescribed by the Director for the position to which the individual is being appointed.

(d) PUBLIC NOTICE AND ADVERTISING.—

(1) IN GENERAL.—The head of an agency making an appointment under subsection (b) shall publicly advertise positions under this section.

(2) REQUIREMENTS.—In carrying out paragraph (1), the head of an agency shall—

(A) adhere to merit system principles;

(B) advertise positions in a manner that provides for diverse and qualified applicants; and

(C) ensure potential applicants have appropriate information relevant to the positions available.

(e) LIMITATION ON APPOINTMENTS.—

(1) IN GENERAL.—Except as provided in paragraph (2), the total number of employees that the head of an agency may appoint under this section during a fiscal year may not exceed the number equal to 15 percent of the number of individuals that the agency head appointed during the previous fiscal year to a position in the competitive service classified in a professional or administrative occupational category,

at the GS-11 level, or an equivalent level, or below, under a competitive examining procedure.

(2) EXCEPTIONS.—Under a regulation prescribed under subsection (f), the Director may establish a lower limit on the number of individuals that may be appointed under paragraph (1) of this subsection during a fiscal year based on any factor the Director considers appropriate.

(f) REGULATIONS.—Not later than 180 days after the date of enactment of this section, the Director shall issue interim regulations, with an opportunity for comment, for the administration of this section.

(g) REPORTING.—

(1) IN GENERAL.—Not later than September 30 of each of the first 3 fiscal years beginning after the date of enactment of this section, the head of an agency that makes an appointment under this section shall submit a report to—

(A) Congress that assesses the impact of the use of the authority provided under this section during the fiscal year in which the report is submitted; and

(B) the Director that contains data that the Director considers necessary for the Director to assess the impact and effectiveness of the authority described in subparagraph (A).

(2) CONTENT.—The head of an agency shall include in each report under paragraph (1)—

(A) the total number of individuals appointed by the agency under this section, as well as the number of such individuals who are—

(i) minorities or members of other underrepresented groups; or

(ii) veterans;

(B) recruitment sources;

(C) the total number of individuals appointed by the agency during the applicable fiscal year to a position in the competitive service classified in a professional or administrative occupational category at the GS-11 level, or an equivalent level, or below; and

(D) any additional data specified by the Director.

(h) SPECIAL PROVISION REGARDING THE DEPARTMENT OF DEFENSE.—

(1) AUTHORITY.—Nothing in this section shall preclude the Secretary of Defense from exercising any authority to appoint a recent graduate under section 1106 of the National Defense Authorization Act for Fiscal Year 2017 (10 U.S.C. note prec. 1580), or any applicable successor statute.

(2) REGULATIONS.—Any regulations prescribed by the Director for the administration of this section shall not apply to the Department of Defense during the period ending on the date on which the appointment authority of the Secretary of Defense under section 1106 of the National Defense Authorization Act for Fiscal Year 2017 (10 U.S.C. note prec. 1580), or any applicable successor statute, terminates.

(Added Pub. L. 115-232, div. A, title XI, §1108(a), Aug. 13, 2018, 132 Stat. 2006.)

**Editorial Notes****REFERENCES IN TEXT**

GS-11, referred to in subsecs. (b)(1), (e)(1), and (g)(2)(C), is contained in the General Schedule which is set out under section 5332 of this title.

The date of enactment of this section, referred to in subsecs. (f) and (g)(1), is the date of enactment of Pub. L. 115-232, which was approved Aug. 13, 2018.

Section 1106 of the National Defense Authorization Act for Fiscal Year 2017, referred to in subsec. (h), is section 1106 of Pub. L. 114-328, which is set out as a note preceding section 1580 of Title 10, Armed Forces.

**§ 3116. Expedited hiring authority for post-secondary students; competitive service**

(a) **DEFINITIONS.**—In this section:

(1) **DIRECTOR.**—The term “Director” means the Director of the Office of Personnel Management.

(2) **INSTITUTION OF HIGHER EDUCATION.**—The term “institution of higher education” has the meaning given the term in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)).

(3) **STUDENT.**—The term “student” means an individual enrolled or accepted for enrollment in an institution of higher education who is pursuing a baccalaureate or graduate degree on at least a part-time basis as determined by the institution of higher education.

(b) **APPOINTMENT.**—

(1) **IN GENERAL.**—The head of an agency may make a time-limited appointment of a student, without regard to any provision of sections 3309 through 3319 and 3330, to a position in the competitive service at the GS-11 level, or an equivalent level, or below for which the student is qualified.

(2) **RESTRICTIONS.**—An appointment under paragraph (1) shall be made in accordance with regulations prescribed by the Director.

(c) **PUBLIC NOTICE.**—

(1) **IN GENERAL.**—The head of an agency making an appointment under subsection (b) shall publicly advertise positions available under this section.

(2) **REQUIREMENTS.**—In carrying out paragraph (1), the head of an agency shall—

(A) adhere to merit system principles;

(B) advertise positions in a manner that provides for diverse and qualified applicants; and

(C) ensure potential applicants have appropriate information relevant to the positions available.

(d) **LIMITATION ON APPOINTMENTS.**—

(1) **IN GENERAL.**—Except as provided in paragraph (2), the total number of students that the head of an agency may appoint under this section during a fiscal year may not exceed the number equal to 15 percent of the number of students that the agency head appointed during the previous fiscal year to a position at the GS-11 level, or an equivalent level, or below.

(2) **EXCEPTIONS.**—Under a regulation prescribed under subsection (g), the Director may establish a lower limit on the number of students that may be appointed under paragraph (1) of this subsection during a fiscal year based

on any factor the Director considers appropriate.

(e) **CONVERSION.**—The head of an agency may, without regard to any provision of chapter 33 or any other provision of law relating to the examination, certification, and appointment of individuals in the competitive service, convert a student serving in an appointment under subsection (b) to a permanent appointment in the competitive service within the agency without further competition if the student—

(1) has completed the course of study leading to the baccalaureate or graduate degree;

(2) has completed not less than 640 hours of current continuous employment in an appointment under subsection (b); and

(3) meets the qualification standards for the position to which the student will be converted.

(f) **TERMINATION.**—The head of an agency shall, without regard to any provision of chapter 35 or 75, terminate the appointment of a student appointed under subsection (b) upon completion of the designated academic course of study unless the student is selected for conversion under subsection (e).

(g) **REGULATIONS.**—Not later than 180 days after the date of enactment of this section, the Director shall issue interim regulations, with an opportunity for comment, for the administration of this section.

(h) **REPORTING.**—

(1) **IN GENERAL.**—Not later than September 30 of each of the first 3 fiscal years beginning after the date of enactment of this section, the head of an agency that makes an appointment under this section shall submit a report to—

(A) Congress that assesses the impact of the use of the authority provided under this section during the fiscal year in which the report is submitted; and

(B) the Director that contains data that the Director considers necessary for the Director to assess the impact and effectiveness of the authority described in subparagraph (A).

(2) **CONTENT.**—The head of an agency shall include in each report under paragraph (1)—

(A) the total number of individuals appointed by the agency under this section, as well as the number of such individuals who are—

(i) minorities or members of other underrepresented groups; or

(ii) veterans;

(B) recruitment sources;

(C) the total number of individuals appointed by the agency during the applicable fiscal year to a position in the competitive service at the GS-11 level, or an equivalent level, or below; and

(D) any additional data specified by the Director.

(i) **SPECIAL PROVISION REGARDING THE DEPARTMENT OF DEFENSE.**—

(1) **AUTHORITY.**—Nothing in this section shall preclude the Secretary of Defense from exercising any authority to appoint a post-secondary student under section 1106 of the Na-

tional Defense Authorization Act for Fiscal Year 2017 (10 U.S.C. note prec. 1580), or any applicable successor statute.

(2) REGULATIONS.—Any regulations prescribed by the Director for the administration of this section shall not apply to the Department of Defense during the period ending on the date on which the appointment authority of the Secretary of Defense under section 1106 of the National Defense Authorization Act for Fiscal Year 2017 (10 U.S.C. note prec. 1580), or any applicable successor statute, terminates.

(Added Pub. L. 115-232, div. A, title XI, §1108(a), Aug. 13, 2018, 132 Stat. 2007; amended Pub. L. 116-92, div. A, title XI, §1115, Dec. 20, 2019, 133 Stat. 1604.)

#### Editorial Notes

##### REFERENCES IN TEXT

GS-11, referred to in subsecs. (b)(1), (d)(1), and (h)(2)(C), is contained in the General Schedule which is set out under section 5332 of this title.

The date of enactment of this section, referred to in subsecs. (g) and (h)(1), is the date of enactment of Pub. L. 115-232, which was approved Aug. 13, 2018.

Section 1106 of the National Defense Authorization Act for Fiscal Year 2017, referred to in subsec. (i), is section 1106 of Pub. L. 114-328, which is set out as a note preceding section 1580 of Title 10, Armed Forces.

##### AMENDMENTS

2019—Subsec. (d)(1). Pub. L. 116-92 amended par. (1) generally. Prior to amendment, text read as follows: “Except as provided in paragraph (2), the total number of students that the head of an agency may appoint under this section during a fiscal year may not exceed the number equal to 15 percent of the number of students that the agency head appointed during the previous fiscal year to a position in the competitive service at the GS-11 level, or an equivalent level, or below.”

#### SUBCHAPTER II—THE SENIOR EXECUTIVE SERVICE

### § 3131. The Senior Executive Service

It is the purpose of this subchapter to establish a Senior Executive Service to ensure that the executive management of the Government of the United States is responsive to the needs, policies, and goals of the Nation and otherwise is of the highest quality. The Senior Executive Service shall be administered so as to—

(1) provide for a compensation system, including salaries, benefits, and incentives, and for other conditions of employment, designed to attract and retain highly competent senior executives;

(2) ensure that compensation, retention, and tenure are contingent on executive success which is measured on the basis of individual and organizational performance (including such factors as improvements in efficiency, productivity, quality of work or service, cost efficiency, and timeliness of performance and success in meeting equal employment opportunity goals);

(3) assure that senior executives are accountable and responsible for the effectiveness and productivity of employees under them;

(4) recognize exceptional accomplishment;

(5) enable the head of an agency to reassign senior executives to best accomplish the agency's mission;

(6) provide for severance pay, early retirement, and placement assistance for senior executives who are removed from the Senior Executive Service for nondisciplinary reasons;

(7) protect senior executives from arbitrary or capricious actions;

(8) provide for program continuity and policy advocacy in the management of public programs;

(9) maintain a merit personnel system free of prohibited personnel practices;

(10) ensure accountability for honest, economical, and efficient Government;

(11) ensure compliance with all applicable civil service laws, rules, and regulations, including those related to equal employment opportunity, political activity, and conflicts of interest;

(12) provide for the initial and continuing systematic development of highly competent senior executives;

(13) provide for an executive system which is guided by the public interest and free from improper political interference; and

(14) appoint career executives to fill Senior Executive Service positions to the extent practicable, consistent with the effective and efficient implementation of agency policies and responsibilities.

(Added Pub. L. 95-454, title IV, §402(a), Oct. 13, 1978, 92 Stat. 1154.)

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE

Pub. L. 95-454, title IV, §415, Oct. 13, 1978, 92 Stat. 1179, provided that:

“(a)(1) The provisions of this title, other than sections 413 and 414(a) [enacting this subchapter and sections 2101a, 3391 to 3397, 3591 to 3595, 4311 to 4315, 4507, 5381 to 5385, 5752, and 7541 to 7543 of this title, amending sections 2102, 2103, 2108, 3109, 3501, 5311, 5331, 5504, 5541, 5595, 5723, 6304, 8336, and 8339 of this title, and enacting provisions set out as a note under section 5311 of this title], shall take effect 9 months after the date of the enactment of this Act [Oct. 13, 1978].

“(2) The provisions of section 413 of this title [set out as a note under section 3133 of this title] shall take effect on the date of the enactment of this Act [Oct. 13, 1978].

“(3) The provisions of section 414(a) of this title [amending sections 3104 and 5108 of this title and enacting provisions set out as notes under sections 3104 and 5108 of this title] shall take effect 180 days after the date of the enactment of this Act [Oct. 13, 1978].

“(b)(1) The amendments made by sections 401 through 412 of this title [enacting this subchapter and sections 2101a, 3391 to 3397, 3591 to 3595, 4311 to 4315, 4507, 5381 to 5385, 5752, and 7541 to 7543 of this title, amending sections 2102, 2103, 2108, 3109, 3501, 5311, 5331, 5504, 5541, 5595, 5723, 6304, 8336, and 8339 of this title] shall continue to have effect unless, during the first period of 60 calendar days of continuous session of the Congress beginning after 5 years after the effective date of such amendments, a concurrent resolution is introduced and adopted by the Congress disapproving the continuation of the Senior Executive Service. Such amendments shall cease to have effect on the first day of the first fiscal year beginning after the date of the adoption of such concurrent resolution.

“(2) The continuity of a session is broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of the 60-day period.